

**Office of
The City Attorney
City of San Diego**

MEMORANDUM

DATE: June 15, 2010

TO: Mary Wright, Deputy Director of City Planning and Community Investment

FROM: Nina M. Fain, Deputy City Attorney

SUBJECT: Peninsula Community Planning Board Procedures to Fill Mid-term Vacancies

INTRODUCTION

On April 2, 2008, this Office issued a memorandum titled Peninsula Community Planning Board Election Run-Off Scheduled for Thursday, April 3, 2008. That memorandum analyzed, in part, the Peninsula Community Planning Board (PCPB) bylaws procedure for filling mid-term vacancies on the board. According to City staff, the practice of the PCPB was to fill mid-term vacancies by a vote of the PCPB members alone. The memorandum concluded that the PCPB bylaws procedure to fill mid-term vacancies must be interpreted to require a vote of all eligible members of the Peninsula Community planning area rather than a vote by the PCPB members exclusively. You have requested that this office revisit the issue.

QUESTION PRESENTED

Do the PCPB bylaws require a mid-term vacancy of a seat on the Board to be filled by an election of all eligible voters in the community?

SHORT ANSWER

No. The PCPB bylaws procedure to fill a mid-term vacancy could reasonably be interpreted to mean either that such a vacancy is to be filled by vote of the PCPB members exclusively, or that the PCPB is to fill such vacancy by holding an election in which all eligible voters in the community may vote. Because the PCPB is a private voluntary association, the PCPB has autonomy in determining the rights and duties established under its bylaws, so long as the determination does not result in an abuse of discretion or a clear, unreasonable invasion of private rights. Either interpretation of the bylaws procedure is allowed under Council Policy 600-24. Thus, the PCPB should determine, based on its own records and experience, the intended meaning of the language provided in the PCPB bylaws relating to filling mid-term vacancies.

ANALYSIS

Council Policy 600-24, titled Standard Operating Procedures and Responsibilities of Recognized Community Planning Groups, provides that:

The City does not direct or recommend the election of specified individual planning group members, nor does the City appoint members to planning groups, or recommend removal of individual members of a planning group. The City does not delegate legal authority to planning groups to take actions on behalf of the City. Planning groups are voluntarily created and maintained by members of communities within the City.

Therefore, the PCPB is a private voluntary organization. However, the PCPB is a recognized community planning group pursuant to Council Policy 600-24.¹

In addressing how recognized community planning groups may fill vacancies, Council Policy 600-24 provides that:

Vacancies of elected seats that occur on a recognized community planning group shall be filled by the planning group in a manner specified by the bylaws of the planning group. Vacancies shall be filled as they occur no later than 120 days following the date of the determination of the vacancy unless the end of the 120 day period would occur within 90 days of the annual March general election as described in Article V.

Vacancies of appointed seats shall be filled by the appointing agency in the manner specified in a planning group's bylaws.

The term of office of any member filling a vacancy in accordance with the procedure established in Article III, Section 4 above shall be for the balance of the vacated term.

Council Policy 600-24, Article IV, Section 2.

Therefore, the Council Policy allows community planning groups to choose the manner in which vacancies will be filled by specifying a procedure in the group's bylaws.

¹ Private, voluntary organizations may still be subject to the Brown Act. See City Att'y ML No. 2006-26 (Oct. 27, 2006). This memorandum does not change the prior conclusion that City recognized community planning groups are subject to the Brown Act.

Council Policy 600-24 also includes a bylaws shell to be used by recognized community planning groups. The bylaws shell narrows the options for community planning group procedures to fill mid-term vacancies:

The *[insert CPG name]* shall fill vacancies at the time the vacancies are declared *[provide detail and timeframe]*. Vacancies shall be filled by: CHOOSE ONE OPTION: (A.) selection by planning group members at the time the vacancies are declared. *[provide detail and timeframe]*; or (B.) an advertised general election pursuant to Article V. *[provide detail and timeframe. (sic)]*

Council Policy 600-24 Bylaws Shell, Article IV, Section 2.

Thus, a planning group may establish bylaws providing that mid-term vacancies will be filled by a vote of the community planning group members exclusively. Alternatively, a group may establish bylaws providing that mid-term vacancies will be filled by a general election. Either option is allowed to be specified in the bylaws of the particular group without jeopardizing the group's official recognition by the City.

Currently, the PCPB bylaws provide the following procedure to fill vacancies:

Vacancies that occur on the PCPB *shall be filled by the Board* not later than 120 days following the date of the determination of the vacancy. The vacancy shall be filled in accordance with the following policy:

Public notice of the vacancy shall be made known via a Peninsula community newspaper and to the Board at the next regularly scheduled meeting.

At the next subsequent meeting, all qualified candidates will be *presented to the Board and a replacement will be elected.*

The term of office of any member filling a vacancy shall be for the balance of the vacated term.

PCPB Bylaws, Article IV, Section 2 (emphasis added).

Article IV, Section 2 of the PCPB bylaws is ambiguous because it is open to more than one interpretation. *See e.g., Hughes v. Board of Architectural Examiners*, 17 Cal. 4th 763 (1998)(holding that a statute is ambiguous if it is susceptible to two different, reasonable interpretations). On one hand, the initial statement that mid-term vacancies "shall be filled by the Board" indicates that the PCPB members are to fill a vacancy by a vote of the PCPB

members exclusively. However, the use of the term “elected” later in the section could also reasonably mean that a replacement candidate is to be elected by eligible voters in the community through a general election held by the Board in accordance with Article V, Section II of the PCPB bylaws. Either interpretation is consistent with Council Policy 600-24.

Courts determine the rights and duties of private voluntary associations based on the association’s adopted constitution and bylaws. *California Dental Assn v. American Dental Assn.*, 23 Cal. 3d 346, 353-354 (1979). Courts will not decide disputes about rights or duties established by a private voluntary association’s bylaws if it will interfere with the association’s autonomy or substitute the court’s judgment for the association’s in areas “where the competence of the court does not equal that of the [s]ociety.” *Id.* at 354. Courts will only decide disputes over rights and duties established by private voluntary organizations where there is “an abuse of discretion, and a clear, unreasonable arbitrary invasion of . . . private rights.” *Id.* (internal citations omitted).

According to City staff, prior to the issuance of the City Attorney’s memorandum dated April 2, 2008, the PCPB interpreted Article IV, Section 2 of its bylaws to mean that vacancies are filled by an election in which only the Board votes.² As this is one reasonable interpretation of the language, which is consistent with Council Policy and existing laws, there is no abuse of discretion and no invasion of private rights. In cases of dispute about the interpretation of a private voluntary organization’s bylaws, the interest of the private organization’s autonomy and burdens on the courts that could result from trying to resolve such disputes strongly militate against judicial review. *Id.* at 355, fn. 3.³ Similarly, the City adheres to this same principle of autonomy and defers to the PCPB to interpret its bylaws.

The planning group is best able to ascertain from its records and experience the intended meaning of the language provided in the PCPB bylaws relating to filling mid-term vacancies. Therefore, it is at the PCPB’s discretion to determine whether the bylaws when adopted were intended to fill mid-term vacancies by vote of the PCPB members alone or by the community at large. Due to the current provision being susceptible to more than one interpretation, the PCPB may consider revising that section of the bylaws to clarify the intended procedure.

² While Article IV, Section 2 of the PCPB bylaws is in fact consistent with the current Council Policy 600-24, even parts of the PCPB bylaws that are inconsistent with Council Policy 600-24 are deemed to conform and remain in effect until amended to conform with current Council Policy. This Office understands that the PCPB is currently updating its bylaws to conform to Council Policy 600-24.

³ This is not a case where the PCPB’s practice for filling mid-term vacancies is arbitrary or clearly contravenes the bylaws. Even in such cases, “a court properly exercises only a limited role of review” so as to not interfere with the society’s autonomy. *California Dental Assn v. American Dental Assn.*, 23 Cal. 3d 346, 353 (1979).

CONCLUSION

The PCPB bylaws procedure to fill a mid-term vacancy could reasonably be interpreted to mean either that such a vacancy is to be filled by vote of the PCPB members exclusively, or that the PCPB is to fill such vacancy by holding an election in which all eligible voters in the community may vote. The PCPB is a private voluntary association and therefore has autonomy in determining the rights and duties established under its bylaws, so long as the determination does not result in an abuse of discretion or a clear, unreasonable invasion of private rights. Either interpretation of the bylaws procedure is allowed under Council Policy 600-24, thus the PCPB should determine based on its own records and experience the intended meaning of the language provided in the PCPB bylaws relating to filling mid-term vacancies. The PCPB may consider revising its bylaws to clarify the intended procedure. The City Attorney's prior memorandum dated April 2, 2008 is retracted with regard to the conclusion that the PCPB bylaws require vacancies to be filled by an election in which all eligible voters in the community may vote.

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By



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