

## **Recusals and Abstentions**

*Direct quotes from the listed sources.*

*Generally, the LJCPA Bylaws control and are supplemented by City Policy 600-24 with clarifications from the Administrative Guidelines*

### **La Jolla Community Planning Association Bylaws, March 2009**

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#### **Article I. Section 4.**

**H. Recusal:** The act of removing oneself from participation in the voting, discussion or other consideration of an agenda item in which the individual has, or may have, a conflict of interest, direct economic interest, or prejudice in the outcome.

#### **Article VI. Section 2.**

##### **D. Abstentions and Recusals**

- (1) RECUSALS - Any Trustee of the LJCPA with a direct economic interest in any project that comes before the LJCPA or any committee must disclose the economic interest, and must recuse from voting and not participate in any manner as a Trustee for that item on the agenda. In the event of a recusal, the individual must remove him or herself from the room prior to discussion if that individual is not part of the presentation. Section 3.5 of the Administrative Guidelines is the LJCPA's reference for determining direct economic interest.
- (2) ABSTENTIONS - In limited circumstances, LJCPA Trustees may abstain from either voting on an action item, or from participating and voting on an action item. The Trustee must state, for the record, the reason for the abstention.

### **City of San Diego Policy 600-24, 5/22/2007**

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#### **Article VI. Section 2**

##### **(c) Abstentions and Recusals**

###### **i. Recusals.**

Any member of a recognized community planning group with a direct economic interest in any project that comes before the planning group or its subcommittees must disclose to the planning group that economic interest, and must recuse himself or herself from voting and must not participate in any manner as a member of the planning group for that item on the agenda.

###### **ii. Abstentions.**

In limited circumstances, planning group members may abstain from either voting on an action item, or from participating and voting on an action item. The member must state, for the record, the reason for the abstention.

## **City of San Diego Policy 600-24, Administrative Guidelines, April 2010**

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### **(c) Abstentions and Recusals**

There are two legitimate situations that may prohibit a member from voting. They are recusals and abstentions.

#### **i. Recusals**

Recusal is required when a member of a planning group has a readily identifiable, distinguishable, direct economic interest in any project or matter being considered by the planning group. This applies to all planning group member seats including categorized and non-voting seats. If a member has a direct economic conflict, the member must:

1. Disclose the economic interest.
2. Recuse before the item is discussed.
3. Physically leave the planning group seating area.

A recusing member, who is also a member of the applicant team, may assist in the presentation of the project to the planning group.

The planning group chair should ask for recusals before starting any substantive discussion on an action item. The presence of the recusing member in the room in which the meeting occurs does not count toward a quorum for the item that the member recuses on. The vote on the item will not reflect the recusing member at all.

The duty to recuse due to a direct economic interest must be determined on a case-by-case basis. However, there are some common examples that have arisen in planning groups:

- An owner, or part owner, of all or part of the subject property, business or development.
- The project architect, engineer, sales agent, or other team member.
- An employee, in any capacity, of a company, or subcontractor, or representative which is part of the project team.
- A former member of the project team that has received significant compensation for project team work within the past twelve months.

When determining whether to recuse from an item, members should err on the side of caution but situations may arise where a member wishes to contact their community planner for advice. It is expected that planning group members will act in good faith to fulfill their authorized duties.

If a conflict is suspected, but it is not recognized by a member, a **two-thirds** vote of the planning group, taken before the item is discussed, can determine that a member should recuse. If the member refuses to recuse, the planning group should make it a part of the public record that a vote of the planning group considered the member ineligible to participate. The participation of the member will be deemed void and the vote of the member not counted toward the planning group recommendation. The refusal by a member to recuse from the planning group discussion and vote may result in discipline of the member under Council Policy 600-24, Article IX 3(a).

In general, members will not have to recuse themselves from large scale planning policy issues, matters related to land use plans such as community plans, specific plans, and precise plans. Even though actions of planning group members are governed by Council Policy 600-24, state law can be drawn upon for guidance to assist the member in determining whether they have a direct economic interest. State regulations find no disqualifying conflict of interest if the decision affects the member's economic interest in a manner which is indistinguishable from the manner in which the decision will affect the public generally. Relevant factors to determine ground for recusal include:

1. Whether the decision affects a significant segment of the public. As a general rule, this means if the decision affects:
  - A. 10 percent of residents and homeowners in the community, or
  - B. 25 percent of similar business owners in the community.
2. Whether the decision will affect the same type of economic interest as the public generally, and in a similar manner.
3. Whether, despite affecting the public in general, the decision "uniquely benefits" the member in which case there could be ground for recusal. A member is uniquely benefited if they as an individual stand to gain direct financial benefit from the proposed action.

## ii. Abstentions

Abstention is voluntary but strongly recommended where a member has legitimate, noneconomic, personal interests in the outcome that would, at minimum, give the appearance of impropriety, or cast doubt on their ability to make a fair decision, or a member lacks sufficient information upon which to cast a vote. The vote on the item will reflect the abstaining member as an abstention since they are still counted in a planning group quorum for that item, regardless of when they declare their abstention. An abstention should normally be declared prior to the start of the item. The member should declare the abstention and the reason for the abstention. If a planning group member realizes they need to abstain in the middle of a discussion item, they should immediately announce that fact and not participate in the item any further. It is inappropriate for a planning group member to participate in a planning group debate, ask questions, express opinions, perhaps even make the motion or the second, and then abstain from voting.

If there are multiple abstentions due to a lack of information, the planning group should consider a continuance in order to receive additional information. There should be agreement among the planning group members that more information is necessary to allow the planning group to make an informed decision, and the group should be as specific as possible about what information would assist it in formulating its recommendation.

The need to abstain is generally determined on a case by case basis. However, there are some common examples of abstention:

- A member lives adjacent to a proposed project, does not have an economic interest in the project, but wishes to participate as a concerned neighbor rather than a member of the planning group.
- A member has a personal relationship with the project team which may be perceived as a bias towards the project.