

ORDINANCE NO. 9517 (N.S.)

AN ORDINANCE ADDING CHAPTER 2 TO DIVISION 6 OF TITLE 8 OF THE SAN DIEGO COUNTY CODE, AND AMENDING OTHER SECTIONS IN THE SAN DIEGO COUNTY CODE AND THE SAN DIEGO COUNTY ZONING ORDINANCE, RELATED TO DEFENSE AND INDEMNIFICATION FOR LAND USE DEVELOPMENT PROJECTS

The Board of Supervisors of the County of San Diego ordains as follows:

Section 1. The Board of Supervisors finds and determines that there is a need for defense and indemnification of the County in connection with the processing of high risk land use development projects. This ordinance authorizes a defense and indemnification agreement to be required for discretionary land use development projects where the Board of Supervisors identifies significant risk to the County. Where a defense and indemnification agreement is not required, this ordinance requires applicants for discretionary land use projects to indemnify the County in the amount of liability which is equal to the proportion of fault caused by the applicant, as determined by a court.

Section 2. Chapter 2 is hereby added to Division 6 of Title 8 of the San Diego County Code to read as follows:

CHAPTER 2. DEFENSE AND INDEMNIFICATION FOR LAND USE DEVELOPMENT PROJECTS

SEC. 86.201. REQUIREMENT FOR DEFENSE AND INDEMNIFICATION AGREEMENT.

On a case by case basis, where significant risk to the County is identified in connection with the processing of a discretionary land use development project, the Board of Supervisors may require a defense and indemnification agreement from the project owner and/or applicant. The agreement shall be in a form approved by the Board of Supervisors.

SEC. 86.202. CONTENTS AND FORM OF DEFENSE AND INDEMNIFICATION AGREEMENT.

If the Board of Supervisors decides to require a defense and indemnification agreement from the project owner and/or applicant, the defense and indemnification agreement shall contain provisions and be in a standard form approved by the Board. On a case-by-case basis, the Board of Supervisors may determine to require security from the project owner and/or applicant. A determination to require security shall only be made by the Board of Supervisors, and shall not be made by any other decision maker. If the Board requires security, it shall establish the form and amount of the security, as well as the time the security is to be provided to the County. The Director of Planning and Land Use shall be authorized to execute the defense and indemnification agreement for the County of San Diego.

SEC. 86.203. INDEMNIFICATION FOR LAND USE DEVELOPMENT PROJECTS.

Each applicant for a discretionary land use development project (“Project”), to the extent the applicant is at fault in causing liability to the County, shall indemnify the County, its agents, officers and employees (collectively “County Parties”) from any claim, action, liability or proceeding against the County Parties to attack, set aside, void or annul the Project or any of the proceedings, acts or determinations taken, done or made as a result of County’s processing and/or approval of the Project, as specified below. Each applicant’s obligation to indemnify shall apply to any lawsuit or challenge against the County Parties alleging failure to comply with the California Environmental Quality Act or compliance with the requirements of any other federal, state, or local laws, including but not limited to general plan and zoning requirements. This indemnification requirement shall be included in the application form provided to all Project applicants.

Each applicant's obligation to indemnify the County Parties shall include, but not be limited to, payment of all court costs and attorneys' fees, costs of any judgments or awards against the County, damages, and/or settlement costs, which arise out of County's processing and/or approval of the Project, except that an applicant shall only be responsible for indemnifying the County Parties in the amount of liability which is equal to the proportion of fault caused by the applicant, as determined by a court. Where any court action results in a ruling for the plaintiff/petitioner, the applicant and the County shall request a determination on the percentage contribution of fault from the court which adjudicated the underlying challenge to the Project.

Notwithstanding this section, when a defense and indemnification agreement is required for a Project under Section 86.201 of this Code, the provisions of the defense and indemnification agreement shall apply to the Project owner and/or applicant and not the provisions of this section.

Section 3. Section 81.119 of the San Diego County Code is hereby amended to read as follows:

SEC. 81.119. DEFENSE OF LAWSUITS.

As a condition of approval of a tentative map, vesting tentative map, or tentative parcel map for which a complete application is submitted before January 3, 2003, or a map modification, resolution amendment, time extension, adjustment plat, certificate of compliance or conditional certificate of compliance approved before January 3, 2003, the applicant shall: (1) defend, indemnify and hold harmless the County, its agents, officers and employees from any claim, action or proceeding against the County, its agents, officers or employees to attack, set aside, void or annul such approval by the Board of Supervisors, Planning Commission, Planning and Environmental Review Board, Director of the Department of Planning and Land Use or any other County employee or agency, or any of the proceedings, acts or determinations taken, done or made prior to such decision, if the action is brought within the time period specified in Government Code Section 66499.37; and (2) reimburse the County, its agents, officers or employees for any court cost and attorney's fees which the County, its agents, officers or employees may be required by a court to pay as a result of such approval. At its sole discretion, the County may participate at its own expense in the defense of any such action, but such participation shall not relieve the applicant of any obligation imposed by this condition. The County shall notify the applicant promptly of any claim or action and cooperate fully in the defense. Each applicant seeking approval of a tentative map, vesting tentative map or tentative parcel map for which a complete application is submitted on or after January 3, 2003, and each applicant seeking approval of a map modification, resolution amendment, time extension, adjustment plat, certificate of compliance or conditional certificate of compliance, which is approved on or after January 3, 2003, shall be subject to the defense and indemnification provisions found at Chapter 2 (commencing at section 86.201) of Division 6 of Title 8 of the San Diego County Code.

Section 4. Section 7060 of the San Diego County Zoning Ordinance is hereby amended to read as follows:

7060 DECISION AND NOTICE.

- a. Action. Upon completion of his review and evaluation of an application for an Administrative Permit, the administering agency shall either:
 - 1. Make such findings or other determination as is required by the pertinent sections of The Zoning Ordinance and approve the application, or
 - 2. Notify the applicant of the changes and modifications required for approval of the application, or

3. Deny the Administrative Permit. The administrative agency shall deny the permit if:
 - i. The permit cannot be conditioned by adequate requirements to insure compliance with applicable regulations, or
 - ii. The application for the permit cannot reasonably be modified to conform to the applicable requirements.

- b. Time Period. Within 60 days of receipt of a complete application for an administrative permit, the administering agency shall take such action as is specified in subsection a. of this section. The 60 day time period may be extended with the written consent of the applicant. Except for applications for an administrative permit for an adult entertainment establishment pursuant to Section 6930, failure of the administering agency to act within the specified time period or extension thereof, shall not affect the validity of the administering agency's decision. An application for an administrative permit for an adult entertainment establishment pursuant to Section 6930 shall be deemed approved if not denied by the Director within 60 days of the date such application is determined to be complete. Such application shall be deemed complete 30 days after submittal to the Department unless, prior to that date, either:
 1. The applicant is notified in writing that the application is complete, in which case the 60 day processing period specified in this subsection shall begin to run from the date of such written notice, or
 2. The applicant is notified in writing that the application is incomplete, which notice shall state with particularity the defects or omissions in the application, in which case the 60 day processing period specified in this subsection shall not begin to run until the date all requested information has been submitted to the Department.

- c. Notice to Property Owners. When required by applicable sections of the Zoning Ordinance, the applicant shall either obtain and submit to the Director on a form provided by the Director written consent for issuance of the administrative permit from all owners of contiguous property (including owners of parcels or lots across any street or alley from the site) or shall provide notice materials (as specified by the Director) with the permit application which shall be used by the Department to notify contiguous property owners of the receipt of said application. If required by applicable sections of the Zoning Ordinance, notice shall be given beyond such owners of contiguous property to any additional owners within the specified distance of the subject property.

- d. Public Hearing. A public hearing shall not be held unless the administering agency determines that such hearing would be in the best interest of the County, or, if required by applicable sections of the Zoning Ordinance, where a hearing is requested by the applicant or other affected person.
- e. Referral to Immigration and Naturalization Service. Applications filed pursuant to Section 4830 requesting to reduce the 150 foot setback along the International Border shall be referred to the local office of the Immigration and Naturalization Service. In the event the INS expresses an intent to acquire all or part of the subject property the administering agency shall defer final action on the application for six months or until such time as the INS completes acquisition or abandons acquisition proceedings, whichever time period is less.
- f. Defense of Lawsuits. As a condition of approval of an administrative permit for which an application was filed (as defined in Zoning Ordinance section 1019 b.) before January 3, 2003, the applicant shall: (1) defend, indemnify and hold harmless the County, its agents, officers and employees from any claim, action or proceeding against the County, its agents, officers or employees to attach, set aside, void or annul the administrative permit or any of the proceedings, acts or determinations taken, done or made prior to such decision granting such permit; and (2) reimburse the County, its agents, officers or employees for any court costs and attorney's fees which the County, its agents, officers or employees may be required by a court to pay as a result of such approval. At its sole discretion, the County may participate at its own expense in the defense of any such action, but such participation shall not relieve the applicant of any obligation imposed by this condition. Each applicant seeking approval of any administrative permit, for which an application was filed (as defined in Zoning Ordinance section 1019 b.) on or after January 3, 2003, shall be subject to the defense and indemnification provisions found at Chapter 2 (commencing at section 86.201) of Division 6 of Title 8 of the San Diego County Code.

Section 5. Section 7363 of the San Diego County Zoning Ordinance is hereby amended to read as follows:

7363 DEFENSE OF LAWSUITS.

As a condition of approval of a major use permit, minor use permit, use permit modification, or use permit extension for which an application was filed (as defined in Zoning Ordinance section 1019 b.) before January 3, 2003, the applicant shall: (1) defend, indemnify and hold harmless the County, its agents, officers and employees from any claim, action or proceeding against the County, its agents, officers or employees to attack, set aside, void or annul the major use permit, minor use permit, use permit modification or use permit extension or any of the proceedings, acts or determinations

taken, done or made prior to such decision; and (2) reimburse the County, its agents, officers or employees for any court costs and attorney's fees which the County, its agents, officers or employees may be required by a court to pay as a result of such approval. At its sole discretion, the County may participate at its own expense in the defense of any such action, but such participation shall not relieve the applicant of any obligation imposed by this condition. The County shall notify the applicant promptly of any claim or action and cooperate fully in the defense. Each applicant seeking approval of any major use permit, minor use permit, use permit modification, or use permit extension, for which an application was filed (as defined in Zoning Ordinance section 1019 b.) on or after January 3, 2003, shall be subject to the defense and indemnification provisions found at Chapter 2 (commencing at section 86.201) of Division 6 of Title 8 of the San Diego County Code.

Section 6. This ordinance shall take effect and be in force thirty days after its passage, and before the expiration of fifteen days after its passage, a summary hereof shall be published once with the names of the members of this Board voting for and against it in the San Diego Commerce, a newspaper of general circulation published in the County of San Diego.

PASSED, APPROVED AND ADOPTED this 4th day of December 2002