

ORDINANCE NO. _____

ORDINANCE OF THE CITY OF CHULA VISTA AMENDING
CHAPTER 19.02 OF THE CHULA VISTA MUNICIPAL CODE
BY ADDING SECTION 19.02.060 RELATED TO INDEMNITY
PROVISIONS FOR CITY ISSUED PERMITS

WHEREAS, the California Constitution in article XI, §7, authorizes a “county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.” This authority is termed “police power”; and

WHEREAS, Land development and use is a traditional subject for the exercise of police power by a city; and

WHEREAS, one aspect of land development is the issuance of permits to land owners and developers.

WHEREAS, in the issuance of permits, a city incurs certain direct costs, such as those for processing and inspection, and the law permits the city to require applicants and property owners to reimburse the city for these costs; and

WHEREAS, there are also indirect costs that a city may incur, such as those associated with challenges to the issuance of the permit or actions of an applicant or property owner associated therewith; and

WHEREAS, through indemnity provisions, the city may require that the applicant and property owner bear these costs, rather than have the costs be borne by the general taxpayers; and.

WHEREAS, it has come to the attention of the City Attorney’s Office that certain insurance policies contain language excluding coverage for indemnity obligations that are conditions of a permit unless the city has an ordinance permitting the city to require an applicant to indemnify the city; and

WHEREAS, this ordinance is intended to assist applicants in obtaining insurance for their projects in those situations where they would otherwise not be able to acquire it and to protect the city and its taxpayers from risk associated with permit issuance.

NOW THEREFORE the City Council of the City of Chula Vista does ordain as follows:

Section I. Amendment to Chapter 19.02 – General Provisions

Chapter 19.02 of the Chula Vista Municipal Code shall be amended to include Section 19.02.060, which shall read as follows:

19.02.060 – Indemnity Provisions in City Permits.

In the issuance of permits, the City may require property owners and applicants to indemnify, protect, defend and hold City, its City Council members, officers, employees and representatives, harmless from and against any and all liabilities, losses, damages, demands, claims, expenses, and costs, including court costs and attorney's fees (collectively, Liabilities) incurred by the City arising, directly or indirectly, from any challenge to the City's approval and issuance of such permits and any actions taken or conduct by property owner or applicant in connection therewith. Such requirement shall be on terms approved as to form by the City Attorney and may include other terms deemed necessary or appropriate to protect the City from special risks related to business operations under the permit not specifically identified herein.

Section II. Severability

If any portion of this Ordinance, or its application to any person or circumstance, is for any reason held to be invalid, unenforceable or unconstitutional, by a court of competent jurisdiction, that portion shall be deemed severable, and such invalidity, unenforceability or unconstitutionality shall not affect the validity or enforceability of the remaining portions of the Ordinance, or its application to any other person or circumstance. The City Council of the City of Chula Vista hereby declares that it would have adopted each section, sentence, clause or phrase of this Ordinance, irrespective of the fact that any one or more other sections, sentences, clauses or phrases of the Ordinance be declared invalid, unenforceable or unconstitutional.

Section III. Construction

The City Council of the City of Chula Vista intends this Ordinance to supplement, not to duplicate or contradict, applicable state and federal law and this Ordinance shall be construed in light of that intent.

Section IV. Effective Date

This Ordinance shall take effect and be in force on the thirtieth day after its final passage.

Section V. Publication

The City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same to be published or posted according to law.

Presented by

Approved as to form by

Glen R. Googins
City Attorney

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