



City of Chula Vista

Staff Report

File#: 15-0413, **Item#:** 2.

ORDINANCE NO. 3349 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 (SECOND READING AND ADOPTION)

RECOMMENDED ACTION

Council adopt the ordinance.

SUMMARY

As a condition of permit issuance, the City requires applicants to defend, indemnify and hold the City harmless from risks associated with the issuance of such permits and actions associated therewith. This ordinance will codify this practice.

ENVIRONMENTAL REVIEW

The Development Services Director has reviewed the proposed activity for compliance with the California Environmental Quality Act (CEQA) and has determined that the proposed action is not a "Project" as defined under Section 15378(a) of the State CEQA Guidelines because the activity has no potential for resulting in a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment.

BOARD/COMMISSION RECOMMENDATION

Not Applicable

DISCUSSION

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." Land development and use is a traditional subject for the exercise of police power by a city. One aspect of land development is the issuance of permits to land owners and developers. 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. 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. 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.

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. 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. Indemnity obligations that the city

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obtains that are insured are better than those that are uninsured.

DECISION-MAKER CONFLICT

Staff has reviewed the decision contemplated by this action and has determined that it is not site specific and consequently, the 500-foot rule found in California Code of Regulations section 18704.2 (a)(1), is not applicable to this decision. Staff is not independently aware, and has not been informed by any City Councilmember, of any other fact that may constitute a basis for a decision maker conflict of interest in this matter.

LINK TO STRATEGIC GOALS

The City's Strategic Plan has five major goals: Operational Excellence, Economic Vitality, Healthy Community, Strong and Secure Neighborhoods and a Connected Community. This action promotes the City's goal of Operational Excellence as it will improve the City's permit process and assist applicants with their ability to obtain insurance for their projects.

CURRENT YEAR FISCAL IMPACT

There is no fiscal impact related to the adoption of this ordinance. This ordinance codifies the practice of the City requiring applicants to defend, indemnify and hold the City harmless from risks associated with the issuance of City permits. It 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.

ONGOING FISCAL IMPACT

There is no ongoing fiscal impact related to the adoption of this ordinance. Going forward, adoption of this ordinance is intended to protect the city and its taxpayers from risk associated with permit issuance. This ordinance will codify the practice of the City requiring applicants to defend, indemnify and hold the City harmless from risks associated with the issuance of City permits.

ATTACHMENTS

Staff Contact: David Miller, Deputy City Attorney