

**Eff:** ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE COUNCIL OF THE CITY OF BURBANK AMENDING TITLE 10, CHAPTER 1, ARTICLE 19, OF THE BURBANK MUNICIPAL CODE TO ADD DIVISION 13, ESTABLISHING INDEMNIFICATION REQUIREMENTS ON LAND USE APPLICATIONS, ENTITLEMENTS, AND ASSOCIATED ENVIRONMENTAL DETERMINATIONS (PROJECT NO. 24-02242, ZONE TEXT AMENDMENT)

City Attorney's Synopsis

This Ordinance amends Title 10 ("Zoning Regulations"), Chapter 1 ("Zoning"), Article 19 ("Zoning Procedures and Amendments"), of the Burbank Municipal Code ("BMC") to add Division 13 ("Indemnification") to codify and expand the established City of Burbank (the "City") practice of imposing indemnification requirements on planning applications in the City of Burbank. This Division is enacted to ensure that the City and City taxpayers are not responsible for the legal defense or cost of lawsuits brought regarding the City's actions on private development projects.

THE COUNCIL OF THE CITY OF BURBANK FINDS, DETERMINES, AND DECLARES THAT:

A. Indemnity is defined by California Civil Code § 2772 as a contract by which one engages to save another from a legal consequence of the conduct of one of the parties.

B. Indemnification requirements are commonly applied as indemnification clauses or agreements on discretionary planning applications to allocate the future risk and costs associated with defending a lawsuit. Such liabilities are transferred from one party (i.e., the City) to another (i.e., the applicant).

C. Pursuant to the California Constitution local agencies possess police power to impose indemnity requirements as conditions of a project approval. (Cal. Const., art. XI, § 7).

D. California Government Code (Cal. Gov. Code) § 65104 grants the City broad authority to establish "any fees to support the work of the planning agency...not to exceed the reasonable cost of providing the service for which the fee is charged." While Cal. Gov. Code § 65104 does not expressly provide for attorneys' fees, it broadly applies to the "work of the planning agency," which could include defending a project from legal challenge.

E. Since the indemnification requirement transfers the responsibility of all post-entitlement costs associated with a legal challenge to an applicant (i.e., legal consultation

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fees, administrative expenses, attorneys' fees, and settlements), it supports the City's Planning Division by protecting it from costs required to defend challenged approvals. The City shall impose such exactions pursuant to Cal. Gov. Code § 66016.

F. The City has included indemnification requirements on all projects that have gone through a through a Planned Development (PD) and Development Agreement (DA) application process. No other planning applications currently include indemnification requirements.

G. It is the City's desire to ensure that such indemnification requirements apply to all land use applications, entitlements, and environmental determinations under the California Environmental Quality Act ("CEQA") or National Environmental Policy Act ("NEPA") for private projects.

H. Indemnification requirements provide the City with financial protection by reducing the financial burden on the City budget from legal costs associated with challenges to City approved planning approvals and related environmental determinations.

I. Indemnification requirements transfer the risk of legal challenge from the City to the project applicant thereby reducing the City's exposure to potential liabilities.

J. Indemnification requirements help to preserve the City's resources by ensuring that Staff time is not overly burdened defending private projects at the expense of municipal responsibilities and operations.

K. Indemnification requirements may motivate more responsible development that ensures proactive constancy with applicable City regulations and standards since applicants will bear the financial responsibility of a legal challenge to projects.

L. Cal. Gov. Code § 65860 requires that any Zone Text Amendment be consistent with the City General Plan. The proposed ZTA to establish indemnification requirements aligns with the vision and guiding principles of the Burbank2035 General Plan to provide a high-quality life for residents by ensuring that the City can provide a variety of reliable and supportive services, programs, and public facilities for a safe and vibrant City.

M. On September 10, 2024, the City Council at its regular meeting, held a public hearing on Project No. 24-02242, a Zone Text Amendment, and considered all the information in the public records, including the City's staff report and any testimony presented by the public.

N. Said hearing was properly noticed in accordance with the provisions of State law, including Cal. Gov. Code § 66016.

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O. This Ordinance is exempted from the CEQA (Public Resources Code § 21000 et seq.) pursuant to California Code of Regulations § 15061(b)(3), the common-sense exemption. The subject project consists of a zone text amendment to the BMC to establish regulations for indemnification on entitlement applications and environmental determinations on CEQA and NEPA. It can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment. The proposed ZTA will codify an established practice of the City allowed under State law.

THE COUNCIL OF THE CITY OF BURBANK DOES ORDAIN AS FOLLOWS:

**SECTION 1. Recitals.** The City Council finds the foregoing recitals and their findings to be true and correct, and hereby incorporates such recitals and their findings into this ordinance.

**SECTION 2. Environmental Review.** The City Council hereby finds and determines that this Ordinance is exempted from the California Environmental Quality Act (Public Resources Code § 21000 et seq.) (“CEQA”) pursuant to California Code of Regulations §15061(b)(3), the common-sense exemption. The project consists of a zone text amendment to the BMC to establish regulations for indemnification on entitlement applications and environmental determinations on CEQA, and it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment. Therefore, the activity is exempted.

**SECTION 3. Findings.** This Ordinance formalizes indemnification requirements for all discretionary, ministerial, and administrative applications and environmental determinations on CEQA or NEPA into the BMC. In accordance with Cal. Gov. Code § 65104, the City Council has the authority to establish fees that support the work of the City’s Planning Division. Indemnification requirements protect and hold the City harmless from all legal liabilities related to private development applications, which will shift the responsibility to cover all post-entitlement costs from a lawsuit to the applicant (i.e., legal consultation fees, defense costs, administrative expenses, and settlements). Additionally, as required by Cal. Gov. Code § 65860, the Ordinance is consistent with the vision and guiding principles of the Burbank2035 General Plan and City goals and policies as it applies a proactive approach to City governance to ensure that a high-quality level of life and services are provided to city residents. Lastly, the Ordinance will promote responsible development in the City, as applicants will be encouraged to proactively ensure consistency with all applicable City land use standards and environmental regulations.

**SECTION 4. Code Amendment.** Division 13 (“Indemnification”), Title 10 (“Zoning Regulations”), Chapter 1 (“Zoning”), Article 19 (“Zoning Procedures”) is added to the Burbank Municipal Code, and reads as follows:

**Division 13. Indemnification**

10-1-19400: Purpose

- A. The purpose of this provision is to establish indemnity requirements on discretionary, administrative, and ministerial land use and entitlement applications and environmental determinations to ensure that the City of Burbank is held harmless from damages, liabilities, and costs associated with a legal challenge to a City land use action.

10-1-19401: Indemnification Agreements on Land Use Applications, Entitlement Applications, and Environmental Determinations.

- A. At the time of submitting a discretionary, administrative, or ministerial land use and entitlement application for private projects and developments subject to the requirements of this chapter, and/or for environmental determination under the California Environmental Quality Act or National Environmental Policy Act, the applicant shall agree that the applicant, including their successors and assignees, will defend, indemnify, and hold harmless the City and its agents, officers, and employees from any claim, action or proceeding brought against the City, its agents, officers, or employees to attack, set aside, void or annul any such approval of the City, or any action taken to provide an environmental determination under the California Environmental Quality Act or National Environmental Policy Act by its agents, officers, employees, agencies, commissions, or City Council. The indemnification shall include damages awarded against the City, if any, cost of suit, attorney's fees, administrative expenses, and other costs and expenses incurred in connection with such action, including, but not limited to, all such City costs and expenses incurred by enforcing this indemnification provision. Such indemnification agreement shall be subject to the approval as to legal form by the City Attorney. This duty to defend, indemnify, and hold harmless the City and its agents, officials and employees shall also be placed as a condition of approval for all such permits, entitlements, and approvals whether or not expressly set forth in such permit, application, entitlement, or approval, and shall apply even if the applicant fails or refuses to enter into the indemnification agreement.

10-1-19402: Legal Challenges

- A. If a claim, action or proceeding described in subsection A of section 10-1-19401 is brought, the City shall promptly notify the applicant of the existence of the claim, action or proceeding and the City will cooperate fully in the defense of such claim, action or proceeding. Nothing in this section shall prohibit the City from participating in the defense of any claim, action or proceeding. In the event that the applicant is required to defend the City in connection with any such claim, action or proceeding, the City shall retain the right to: (1) approve the counsel to so defend the City; (2) approve all significant decisions concerning the manner in which the defense is conducted; and (3) approve any and all settlements, which approval shall not be

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unreasonably withheld. The City shall also have the right not to participate in such defense, except that the City agrees to cooperate with the applicant in the defense of such claim, action or proceeding.

**SECTION 5. Severability.** If any section, subsection, subdivision, paragraph, sentence, clause or phrase, or portion of this Ordinance is, for any reason, held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance or any part thereof. The City Council hereby declares that it would have adopted this Ordinance and each section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance irrespective of the fact that one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional or invalid or ineffective. To this end, the provisions of this Ordinance are declared to be severable.

**SECTION 6. Effective Date.** This Ordinance shall become effective at 12:01 a.m. on the thirty-first (31<sup>st</sup>) day after the date of adoption.

PASSED AND ADOPTED this \_\_\_\_ day of September, 2024.

\_\_\_\_\_  
Nick Schultz  
Mayor

Approved as to Form:  
Office of the City Attorney

Attest

\_\_\_\_\_  
Kimberley Clark, City Clerk

By: \_\_\_\_\_  
Jill Vander Borcht  
Senior Assistant City Attorney

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STATE OF CALIFORNIA            )  
COUNTY OF LOS ANGELES    ) ss.  
CITY OF BURBANK                )

I, Kimberley Clark, City Clerk of the City of Burbank, do hereby certify that the foregoing Ordinance No. \_\_\_\_\_ was duly and regularly passed and adopted by the Council of the City of Burbank at its regular meeting held on the \_\_\_\_ day of September 2024, by the following vote:

AYES:

NOES:

ABSENT:

I further certify that said Synopsis was published as required by law in a newspaper of general circulation in the City of Burbank, California within 14 days following the ordinance’s adoption on September \_\_\_\_ 2024.

\_\_\_\_\_  
Kimberley Clark, City Clerk