

# STAFF REPORT



## COMMUNITY DEVELOPMENT

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**DATE:** September 10, 2024

**TO:** Justin Hess, City Manager

**FROM:** Patrick Prescott, Community Development Director  
VIA: Fred Ramirez, Assistant Community Development Director - Planning  
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**SUBJECT:** Introduction of an Ordinance Amending Title 10, Chapter 1, Article 19, of the Burbank Municipal Code to Require an Indemnification Agreement on All Planning Applications and Associated Environmental Determinations

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### **RECOMMENDATION**

Introduce 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) (Attachment 1).

### **BACKGROUND**

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. The proposed Ordinance introduces an indemnification provision establishing an objective requirement that all applicants protect and hold the City harmless from all costs and liabilities associated with a legal challenge to the approval of their proposed project.

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). The City currently only applies indemnification requirements on projects and their associated environmental determinations processed

through Planned Development (PD) applications and associated Development Agreements<sup>1</sup>.

Pursuant to the California Constitution, local agencies possess police power to impose indemnity requirements as objective standards on project approvals (Cal. Const., art. XI, § 7). Further, 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. Since the indemnification requirement transfers the responsibility of all post-entitlement costs associated with a legal challenge to an applicant (i.e., legal consultation fees, administrative expenses, attorneys’ fee, 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.

## **DISCUSSION**

The indemnification requirements would be incorporated into the Burbank Municipal Code (BMC) through a Zone Text Amendment (ZTA), and would apply to all discretionary, administrative, and ministerial land use applications and environmental determinations from the California Environmental Quality Act and National Environmental Policy Act.

### **Proposed Zone Text Amendment**

The proposed ZTA will incorporate the indemnification requirements in Division 13 (Indemnification) under Article 19 (Zoning Procedures and Amendments), Chapter 1 (Zoning), Title 10 (Zoning Regulations) of the BMC. The regulations consist of the following subsections: (1) Purpose, (2) Indemnification for Land Use Applications, Entitlement Applications, and Environmental Determinations, and (3) Legal Challenges (Attachment 2).

The proposed regulations will clearly state the City’s authority to apply indemnification requirements to all planning applications, entitlements, and environmental determinations. Applicants, including their successors and assignees, would be required to:

“...defend, indemnify, and hold harmless the City 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 on a land use application and entitlement, or any action taken to provide an environmental determination under the California Environmental Quality Act and National Environmental Policy Act by its agents, officers, employees, agencies, boards, commissions, or City Council.”

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<sup>1</sup>Since the 1985 adoption of the PD application process into the BMC, the City has included an indemnity clause in all Development Agreements as standard practice. Development Agreements are required for all PD applications.

Acceptance of these indemnification regulations would be included as part of project application submittals and a project's conditions of approval. The indemnification requirements would cover damages, legal costs, fees, and administrative expenses.

Consistency with the Burbank2035 General Plan and City Goals & Policies

Cal. Gov. Code § 65860 requires that any ZTA be consistent with the City General Plan. The proposed ZTA 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.

Indemnification requirements provide the City with the following:

- 1. Financial Protection:** Indemnification requirements are intended to reduce the financial burden on the City budget that can result from unanticipated legal costs associated with challenges to City approved planning approvals and associated environmental determinations.
- 2. Risk Mitigation:** Indemnification requirements transfer the risk of legal disputes from the City to the project applicant, thereby reducing the City's exposure to potential liabilities.
- 3. Preservation of Resources:** The Ordinance will ensure that staff time and resources are not burdened defending private projects, thus protecting municipal responsibilities and operations.
- 4. Responsible Development:** Since applicants bear the financial responsibility of a future legal challenge, an indemnification agreement should encourage applicants to be proactive in ensuring consistency with all applicable City regulations and standards.

The proposed ZTA is also consistent with City Council (Council) 2023-2024 Goals and Burbank's Financial Policy by establishing indemnity provisions that hold the City harmless from all costs and liabilities associated with a legal challenge to the approval of an applicant proposed project. (*City Council Goal, City Services, No. 2 and 3; Burbank Financial Policies, No. 2*).

**COMMUNITY OUTREACH**

In conformance with Cal. Gov. Code § 66016, a notification letter was sent on August 26, 2024, to the three recipients that have requested a notification letter when qualifying items (e.g., planning fees) are scheduled to go before the Council. The Council public hearing notice for the proposed ZTA was also published with the *Burbank Leader* local newspaper on August 24, 2024. Notification of the Council meeting was also advertised on the City's website and social media channels. As of the date of this report, staff have not received any comments regarding the proposed ZTA.

## **ENVIRONMENTAL REVIEW**

The proposed ZTA has been reviewed for compliance with the California Environmental Quality Act (CEQA). It is staff's assessment that the ZTA is exempt from CEQA (Public Resources Code § 21000 et seq,) pursuant to California Code of Regulations § 15061(b)(3), common-sense exemption. The proposal consists of a ZTA to the BMC establishing indemnification requirements on planning applications, entitlements, and environmental determinations from CEQA and NEPA, 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 exempt.

## **FISCAL IMPACT**

There is no fiscal impact to the City's General Fund by adopting the proposed ZTA. The ZTA consists of adopting indemnification regulations for all planning applications and environmental determinations to shift the responsibility of all post-entitlement defense costs including but not limited to, legal consultation fees, administrative expenses, attorneys' fees, and settlements to the project applicant. The proposed ZTA is intended to reduce the potential impact to the City's budget and General Fund that could otherwise result from potential lawsuits challenging planning applications and associated environmental determinations.

## **CONCLUSION**

The proposed ZTA establishes BMC indemnification requirements for all planning applications, entitlements, and environmental determinations to protect and hold the City harmless from legal challenges related to private projects by ensuring the applicant is responsible for all post-entitlement costs from a legal challenge. The proposed ZTA is consistent with the California Government Code and the Burbank2035 General Plan. In addition, the proposed ZTA will implement several of the City's goals and policies to maintain a balanced budget and apply a proactive approach to City governance. Lastly, the proposed ZTA will promote responsible development in the City by incentivizing applicants to proactively ensure consistency with all applicable City land use standards and environmental regulations at all stages of a development project.

## **ATTACHMENTS**

Attachment 1 – Ordinance

Attachment 2 – BMC Section 10-1-19400 - Table Summary

Correspondences