

ORDINANCE # 2010- 4

AN ORDINANCE OF THE CITY OF AMERICAN CANYON, CALIFORNIA, AMENDING TITLE 19, DIVISION 3, CHAPTER 19.40 OF THE CITY OF AMERICAN CANYON MUNICIPAL CODE, TO ADD SECTIONS 19.40.070 – 19.40.080 REQUIRING APPLICANTS FOR DISCRETIONARY LAND USE AND DEVELOPMENT PERMITS AND APPROVALS TO INDEMNIFY THE CITY

WHEREAS, the City of American Canyon (“City”) currently incurs significant costs and attorney fees associated with defending the City (and involved City officials) against claims filed by third parties challenging the City issuance of discretionary land use and development permits and approvals; and,

WHEREAS, requiring applicants to indemnify, defend, and hold the City harmless against such claims is consistent with established City policy requiring development applicants to reimburse the City for the full cost of processing their applications; and,

WHEREAS, California Constitution, Article XI, Section 7 and Government Code Section 66016 authorize the City through its police powers to levy fees on land use and development applications that do not exceed the reasonable cost of processing the applications and the City ability to levy such fees is consistent with the Government Code Section 66474.9, a provision of the Subdivision Map Act and the recent opinion of the California Attorney General (Opinion No. 01-07, 85 Ops.Cal.Atty Gen. 21); and,

WHEREAS, the City Council has reviewed the amended indemnification condition enacted on May 4, 2010, and determined that it is in the best interests of the City to also enact an ordinance to further ensure the City is protected from third party litigation and to ensure the City is indemnified against a legal challenge that occurs before a project is approved and / or before all appeal periods have expired, and to ensure that an applicant possesses sufficient financial resources to pay for the City’s related costs, including but not limited to legal expenses; and,

WHEREAS, the Ordinance is exempt from environmental review under CEQA.

NOW THEREFORE, the City Council of the City of American Canyon does hereby ordain the following:

SECTION 1. Title 19, Division 3, Chapter 19.40 of the Municipal Code is hereby amended by adding Sections 19.40.070 through 19.40.080 as follows:

19.40.070 INDEMNIFICATION AS CONDITION OF DISCRETIONARY LAND USE AND DEVELOPMENT PERMITS AND APPROVALS

Except where otherwise expressly prohibited by state or federal law, an applicant for any discretionary land use or development permit, license, authorization, entitlement, or other approval from the City of American Canyon or any of the City of American Canyon elected officials, officers, employees, attorneys, representatives, boards, commissions, volunteers, and agents shall as a prerequisite for the approval agree to defend, indemnify, and hold harmless the City of American Canyon, its elected officials, officers, employees, attorneys,

representatives, boards, commissions, volunteers and agents from and against all claims, actions, including actions to arbitrate or mediate, damages, losses, judgments, liabilities, expenses and other costs, or proceedings against the City, its elected officials, officers, employees, attorneys, representatives, boards, commissions, volunteers, or agents to attack, modify, set aside, void, or annul an approval, conditional approval, permit, entitlement, environmental document, environmental clearance, mitigation plan, or any other document or any of the proceedings, acts, or determinations taken, done, or made prior to granting of such approval, conditional approval, permit, entitlement, environmental clearance, environmental document, mitigation plan, or other document, by the City, including, without limitation, an action against an advisory agency, appeal board, or legislative body within the applicable limitation period.

Notwithstanding the foregoing, the City has the right to participate in the defense of any claim, action, or proceeding provided the City bears its own costs and attorney fees directly associated with such participation and defends the action in good faith. The applicant will not be required to pay or perform any settlement unless the applicant agrees to the settlement.

19.40.080 SCOPE OF INDEMNIFICATION REQUIREMENT

A. The obligation to defend, indemnify and hold the City harmless shall include the payment of all costs in connection with the defense of any claim, action, or proceeding challenging the entire or a portion of an approval, conditional approval, permit, entitlement or any other document of any related claim. Such defense costs include legal costs, attorney's fees (including a third party award of attorney's fees), and fees of persons and consultants retained by the City, arising out of, resulting from, or in connection with the City's act or acts leading up to and including approval of any environmental document, environmental clearance, or mitigation plan granting approvals to the applicant, incurred on behalf of, or by, the City, its elected officials, officers, employees, representatives, attorneys, boards, commissions, volunteers and agents.

B. The obligation to defend, indemnify, and hold the City harmless shall include, but not limited to, the cost of preparation of any administrative record by the City, staff time, copying costs, court costs, or attorney's fees arising out of a suit or challenge contesting the adequacy of a permit, approval, conditional approval, entitlement, environmental document, mitigation plan, environmental clearance, or any other document or approval related to the applicant's project.

The City will promptly notify the applicant of any claim, action, or proceeding and will cooperate fully in the defense. If the City fails to promptly notify the applicant of any claim, action, or proceeding, or the City fails to cooperate fully in the defense, the applicant shall not be responsible to defend, indemnify, or hold harmless the City.

C. In the event a legal challenge to a City permit, approval, conditional approval, environmental document, environmental clearance, mitigation plan, entitlement or any other document, proceeding, determination, or action related to the applicant's project is successful, and an award of attorneys' fees is granted against the City, the applicant shall be responsible to timely pay the full amount of such an award.

The foregoing ordinance was PASSED, APPROVED AND ADOPTED at a regular meeting of the City Council of the City of American Canyon, State of California held on the 15th day of June, 2010 by the following vote:

Mayor Garcia: yes
Vice Mayor West: yes
Council Member Bennett: yes
Council Member Callison: yes
Council Member Coffey: yes

Leon Garcia
Leon Garcia, Mayor

ATTEST:

Rebekah Barr
Rebekah Barr, CMC, City Clerk

APPROVED AS TO FORM:

William D. Ross
William D. Ross, City Attorney