April 26, 1988

REPORT TO THE COMMITTEE ON PUBLIC FACILITIES AND RECREATION
HOLD HARMLESS - ITEM NO. 4, AGENDA OF APRIL 27, 1988

Traditionally, the City of San Diego has attempted to pass to the private sector the responsibility for defending any lawsuits which result from the developer's activity. The standard hold harmless clause which has been utilized for the last several years requires that the developer indemnify, defend and hold harmless the City of San Diego in the event a challenge to the developer's activity occurs which alleges, in whole or in part, misconduct on the part of a developer, its agents or employees.

The efforts of the developers to change the hold harmless to require that the city establish the developer's negligence prior to the duty to defend arising emasculates the agreement and will result in the city being required to expend large amounts of city funds in the defense of actions which arise due to the activity of the developer.

The language currently in use has been beneficial to the City of San Diego and has not resulted in any disadvantage or unfair expenditure of funds by the developer. While in theory the developer could be required to defend the city, for the city's own activity, such has not been the case in practice.

The requirement that the developer, in addition to defending and indemnifying, also insure both its own activities and name the city as additional insured, benefits the city and does not work to the detriment of the developer in that the city can be added to the existing insurance policy at little or no expense. By both the city and the developer being insured under the same policy, any conflict is removed and a unified defense can be provided to the benefit of all parties.



It is respectfully submitted that the existing hold harmless, indemnity and insurance requirements are working to protect the city's interest and do not result in any unfair burden being placed on the developer. If such an unfairness were to develop the individual agreement could be altered on a case by case basis where necessary.

Respectfully submitted,
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