



County of San Diego, Planning & Development Services
DEFENSE AND INDEMNIFICATION FAQs
ZONING DIVISION

1. WHEN IS A DEFENSE AND INDEMNIFICATION AGREEMENT REQUIRED IN ASSOCIATION WITH A DISCRETIONARY LAND USE APPLICATION?

The Board of Supervisors may require a defense and indemnification agreement from the project owner and/or applicant on a case by case basis where significant risk to the County is identified in connection with the processing of a discretionary land use development project. To the extent feasible, the County will notify applicants of the requirement for a defense and indemnification agreement as early in the project processing as possible.

2. IF I ENTER INTO A DEFENSE AND INDEMNIFICATION AGREEMENT WITH THE COUNTY, WHAT ARE MY OBLIGATIONS?

The applicant's obligation to indemnify County Parties includes, but is not limited to, payment of all court costs and attorneys' fees, all litigation-related costs, all costs of any judgments or awards against the County, damages, and/or settlement costs, which arise out of the County's processing and/or approval of the Project, as specified in the agreement.

3. IF A DEFENSE AND INDEMNIFICATION AGREEMENT IS REQUIRED, DO I HAVE TO PROVIDE SECURITY?

On a case-by-case basis, the Board of Supervisors may require security from the project owner and/or applicant. When required, security must typically be in the form of an irrevocable letter of credit or performance bond, and could range from \$250,000 for small scale projects with limited legal risk to more than \$1,000,000 for larger, complex projects with significant legal risk. The Board of Supervisors makes the determination to require security, determines the form and amount of the security, as well as the time the security is to be provided to the County.

4. WHEN IS THE DEFENSE AND INDEMNIFICATION AGREEMENT EXECUTED?

If required, the defense and indemnification agreement is typically executed after authorization by the Board of Supervisors. This typically occurs at the end of the process, concurrent with the project decision and/or hearing. The Director of Planning and Development Services (PDS) is authorized to execute the defense and indemnification agreement for the County of San Diego.

5. I WAS NOT REQUIRED TO ENTER INTO A DEFENSE AND INDEMNIFICATION AGREEMENT, DO I HOLD ANY LIABILITY IF ANY CLAIMS ARE FILED AGAINST THE COUNTY RELATED TO MY PROJECT?

Each applicant for a discretionary land use development project is responsible for payment of all court costs and attorneys' fees, all litigation-related costs, all costs of any judgments or awards against the County, damages, and/or settlement costs, which arise out of County's processing and/or approval of the project, except that an applicant shall only be responsible for indemnifying the County in the amount of liability which is equal to the proportion of fault caused by the applicant, as determined by a court. If a defense and indemnification agreement was required as described in #1 above, then the provisions of the defense and indemnification agreement shall apply.

6. WHAT APPLICABLE CODES CONTAIN APPLICANT OBLIGATIONS TO INDEMNIFY THE COUNTY?

Sections 86.201 – 86.203 of the County Code of Regulatory Ordinances describe defense and indemnification for land use development projects.