



# MARIPOSA COUNTY

Planning · 209-966-5151



## **RESOLUTION - ACTION REQUESTED 2018-209**

MEETING: May 8, 2018  
TO: The Board of Supervisors  
FROM: Sarah Williams, Planning Director  
RE: Resolution Initiating County Code Amendment for Indemnification Agreements

---

**RECOMMENDATION AND JUSTIFICATION:** Adopt a Resolution Initiating a County Code Amendment to Add Chapter 18.08 - Indemnification Agreements to Title 18 - Miscellaneous Land Use Regulations, Mariposa County Code. Action is recommended to ensure requirements of indemnification agreements for discretionary development projects is clearly stated in County Code.

Mariposa County routinely requires indemnification agreements for discretionary development projects, to ensure that taxpayers are not liable for costs associated with legal challenges to government action on private development projects. However the authority for this requirement is not clearly stated in County Code, except for subdivisions.

The recommended action gives direction to staff to process this amendment, through the normal public hearing process.

### **BACKGROUND AND HISTORY OF BOARD ACTIONS:**

2002: Ordinance No. 976 establishing Indemnification Agreement Chapter in 16.36 in the Subdivision Ordinance

### **ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:**

Do not initiate amendment. Authority to require indemnification agreements for discretionary projects will not be clearly stated in code, except for subdivisions.

### **FINANCIAL IMPACT:**

**There is no direct impact to budget. There is potential positive impact to budget, because ordinance will ensure that private developers pay costs to defend county, if there is a legal challenge to county action approving a development project.**

### **ATTACHMENTS:**

**180508 Draft BOS Resolution Initiating Amendment (DOC)**

## Resolution - Action Requested 2018-209

**RESULT:** **ADOPTED BY CONSENT VOTE [UNANIMOUS]**

**MOVER:** Merlin Jones, District II Supervisor

**SECONDER:** Kevin Cann, District IV Supervisor

**AYES:** Smallcombe, Jones, Long, Cann, Menetrey

**STATE OF CALIFORNIA  
COUNTY OF MARIPOSA  
BOARD OF SUPERVISORS**

Resolution  
No 2018-209

**A Resolution Initiating a County Code Amendment to Add  
Chapter 18.06 - Indemnification Agreements to Title 18 -  
Miscellaneous Land Use Regulations, Mariposa County Code.**

---

**WHEREAS**, indemnification agreements are designed to ensure that taxpayers in local jurisdictions are not liable for costs associated with legal challenges to government action on private development projects; and

**WHEREAS**, Section 66474.9 of state Government Code specifically allows local agencies in California to require the execution of indemnification agreements by subdividers as a condition of approval on tentative, parcel and final map applications; and

**WHEREAS**, Chapter 16.36 (Indemnification Agreements) of Title 16, Subdivisions, Mariposa County Code, allows for the application of indemnification agreements to subdivision projects consistent with state Government Code, and

**WHEREAS**, Opinion No. 01-701 issued by the state Attorney General's office on February 4, 2002, regarding whether a local agency can require an applicant for a coastal development permit to execute an indemnification agreement, stated that it is in the agency's "police power" granted by the California Constitution to require the applicant to bear the costs of legal action on the issuance of the permit; and

**WHEREAS**, that opinion is widely viewed as applying to local agency action on all discretionary development permits; and

**WHEREAS**, indemnification agreements are widely employed by local agencies in the state of California, including Mariposa County, for a myriad of discretionary development projects; and

**WHEREAS**, although state Government Code contains a specific provision allowing local agencies to require indemnification agreements as conditions of approval for subdivision projects, Government Code is silent on the application of such agreements to other types of development projects, although it is in a local agency's general police power to do so; and


**WHEREAS**, while Mariposa County is consistent with other local agencies in the state of California in the application of indemnification agreements, it is the desire of Mariposa County to ensure that the ability to require such agreements for all discretionary development projects is clearly stated in County Code.

**NOW BE IT THEREFORE RESOLVED THAT**, the Board of Supervisors does hereby adopt this resolution to initiate an amendment to add Chapter 18.06 to Title 18, Mariposa County Code as shown in Exhibit 1.


**BE IT FURTHER RESOLVED THAT**, the Board of Supervisors does hereby direct and authorize staff to spend time processing this amendment to county code, which includes scheduling, noticing and conducting public hearings.

**ON MOTION BY** Supervisor Jones, seconded by Supervisor Cann, this resolution is duly passed and adopted this     day of     2018 by the following vote:


- AYES:           SMALLCOMBE, JONES, LONG, CANN, MENETREY
- NOES:           NONE
- ABSENT:        NONE
- ABSTAIN:       NONE

  
 Rosemarie Smallcombe, Chair  
 Mariposa County Board of Supervisors

Attest:

  
 René LaRoche  
 Clerk of the Board of Supervisors

Approved as to Form:

  
 Steven W. Dahlem  
 County Counsel

## Exhibit 1

### CHAPTER 18.06

#### INDEMNIFICATION AGREEMENTS

##### **Sections:**

- 18.06.010 Purpose.
- 18.06.020 Authority.
- 18.06.030 Agreement form.
- 18.06.040 Notification.
- 18.06.050 County participation.

##### **18.06.010 Purpose.**

This chapter is enacted to ensure the taxpayers of the County of Mariposa do not pay legal costs associated with private projects.

##### **18.06.020 Authority.**

As a condition for a land use entitlement or issuance of any development permit (hereafter referred to as "Project"), an Owner or Applicant shall provide an indemnity agreement that defends, indemnifies, and holds harmless Mariposa County and its agents, officers, and employees from and against any and all claims, actions, or proceedings against Mariposa County or its agents, officers, or employees to attack, set aside, void, or annul the Project or any prior or subsequent development approvals regarding the Project or Project condition imposed by the County or any of its agencies, departments, commissions, agents, officers or employees concerning the said Project, or to impose personal liability against such agents, officers or employees resulting from their involvement in the Project, including any claim for private attorney fees claimed by or awarded to any party from the County. The agreement will be on a form and in a format approved by the County of Mariposa. Any requirement for an indemnity agreement may be appealed pursuant to the Mariposa County Appeals Procedures.

##### **18.06.030 Agreement form.**

The indemnification agreement shall be executed on a form approved as to legal form and sufficiency by Mariposa County Counsel.

##### **18.06.040 Notification.**

In the event of any claim, action, or proceeding against Mariposa County as described in section 18.06.020, Mariposa County shall promptly notify the Owner, Applicant or permit holder of such claim, action, or proceeding and Mariposa County shall fully cooperate with the Owner, Applicant or permit holder in the defense of the action.

**18.06.050 County participation.**

Nothing contained in this chapter shall prohibit Mariposa County from participating in the defense of any claim, action, or proceeding if Mariposa County bears its own attorney's fees and costs and Mariposa County defends the action in good faith.