



# MARIPOSA COUNTY

Planning • 209-966-5151



## ORDINANCE 2018-1134

MEETING: September 11, 2018  
TO: The Board of Supervisors  
FROM: Sarah Williams, Planning Director  
RE: Indemnification Agreement Ordinance

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### RECOMMENDED ACTION AND JUSTIFICATION:

Waive the Second Reading and Adopt an Ordinance Amending County Code Pursuant to County Code Amendment No. 2018-085, Adding Chapter 18.06 Indemnification Agreements; County of Mariposa, Project Proponent. The purpose of the recommended action is to codify the practice of applying indemnification agreement requirements to conditions of approval on discretionary projects in Mariposa County.

See Staff Report in MT Packet Item 8509 for additional information.

### BACKGROUND AND HISTORY OF BOARD ACTIONS:

Aug. 28, 2018: Ordinance was introduced.

May 8, 2018: Resolution No. 2018-209 initiating process to codify the proposed text.

### ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

Alternatives: Amend text.

No action would result in no change to County Code, Title 18. The proposed regulatory provisions would not be available to the county.

### ATTACHMENTS:

**Draft Board Ordinance Indemnification Agreements (DOC)**  
**Summary Ordinance (DOCX)**

**RESULT: ADOPTED [UNANIMOUS]**

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

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

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

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

**MARIPOSA COUNTY ORDINANCE NO. 1134**

**AN ORDINANCE ADDING 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; and

**WHEREAS**, the Board of Supervisors held a duly noticed public hearing on County Code Amendment No. 2018-085 on the 28<sup>th</sup> day of August 2018 in accordance with State law and County Code; and

**WHEREAS**, it has been found that the project is exempt from the California Environmental Quality Act (CEQA) and a Notice of Exemption has been filed for the project.

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NOW THEREFORE BE IT ORDAINED, the Board of Supervisors of the County of Mariposa does hereby add Chapter 18.06 to Title 18 of the Mariposa County Code as follows:

**Section I**

**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.

**Section II:** If any provision of this ordinance is held to be unconstitutional, preempted by federal law, or otherwise invalid by any court or competent jurisdiction, the remaining provisions of the ordinance shall not be invalidated.

**Section III:** This ordinance shall become effective thirty (30) days after final passage pursuant to Government Code Section 25123.

**BE IT FINALLY ORDAINED THAT,** this action is based on the following findings:

1. **Finding:** The amendment is in the general public interest, and will not have a significant adverse effect on the general public health, safety, peace, and welfare.

**Evidence:** The amendment promotes the general public health, safety, peace, and welfare. The amendment is in the general public interest in that it indemnifies Mariposa County against legal action on decisions made on discretionary development projects. It 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 amendment codifies a practice utilized by local agencies throughout the state of California.

2. **Finding:** The amendment is desirable for the purpose of improving the Mariposa County General Plan with respect to providing a long term guide for county development and a short term basis for day-to-day decision making.

**Evidence:** The amendment is consistent with the Mariposa County General Plan. It codifies a practice already used in Mariposa County, which is allowable under the "police power" as granted to local agencies under the state Constitution to require project applicants to bear the costs of legal action on the issuance of the permit. The amendment will provide a long term guide for county development and a short term basis for day-to-day decision making by ensuring that there is specific code in place that can be referenced in project conditions of approval and if there be a dispute regarding the propriety of requiring indemnification agreements for projects in addition to those specifically allowed by state code for subdivisions. The amendment will help provide county decision makers and project applicants with a clear guide regarding the basis for the application of conditions of approval for development projects.

3. **Finding:** That amendment conforms to the requirements of state law and county policy.

**Evidence:** This project has been processed in accordance with State law and county policy, including consultation with applicable local and state agencies, and public noticing. The ability to require indemnification agreements is allowed under the “police power” granted to local agencies under the California Constitution.

4. **Finding:** The amendment is consistent with other guiding policies, goals, policies, and standards of the Mariposa County General Plan.

**Evidence:** There are no goals, policies and standards in the county’s General Plan with which this amendment would be inconsistent.

5. **Finding:** County Code Amendment No. 2018-085 is not subject to the California Environmental Quality Act (CEQA) pursuant to General Rule Exemption; Section 15061(b)(2), CEQA Guidelines. The amendment codifies a practice currently utilized in Mariposa County and which is allowed under the California Constitution.

**PASSED AND ADOPTED** on this 11th day of September, 2018 by the following vote:

AYES: SMALLCOMBE, JONES, LONG, CANN, MENETREY

NOES: NONE

ABSTAINED: NONE

EXCUSED: 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