

DEPARTMENT: Board of Supervisors

BY: Bob Pickard, Chairman

PHONE: 966-3222

**RECOMMENDED ACTION AND JUSTIFICATION:**

Discussion, Direction to Staff, and Possible Action Regarding: 1) The Declaration Served on the Board of Supervisors by Michael Bird on May 27, 2003, Regarding the Validity of County Ordinance No. 986; and 2) County Ordinance No. 986, which Changes the Regular Meeting Place of the Board of Supervisors from the County Courthouse to the County Government Center.

**BACKGROUND AND HISTORY OF BOARD ACTIONS:**

**ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:**

Financial Impact? ( ) Yes (X) No	Current FY Cost: \$	Annual Recurring Cost: \$
Budgeted In Current FY? ( ) Yes ( ) No ( ) Partially Funded		
Amount in Budget: \$ _____		List Attachments, number pages consecutively _____
Additional Funding Needed: \$ _____		Declaration, Memorandum of Law, Discussion _____
Source:		And Final Demand of Michael Bird, Pgs. 1-5 _____
Internal Transfer _____		Mariposa County Ordinance No. 986, Pgs 1 & 2 _____
Unanticipated Revenue _____ 4/5's vote		_____
Transfer Between Funds _____ 4/5's vote		_____
Contingency _____ 4/5's vote		_____
( ) General ( ) Other _____		_____

**CLERK'S USE ONLY:**

Res. No.: 03-210 Ord. No. \_\_\_\_\_  
Vote - Ayes: \_\_\_\_\_ Noes: \_\_\_\_\_  
Absent: \_\_\_\_\_  
( ) Approved  
 Minute Order Attached ( ) No Action Necessary

The foregoing instrument is a correct copy of the original on file in this office.

Date: \_\_\_\_\_  
Attest: MARGIE WILLIAMS, Clerk of the Board  
County of Mariposa, State of California  
By: \_\_\_\_\_  
Deputy

**COUNTY ADMINISTRATIVE OFFICER:**

\_\_\_\_\_ Requested Action Recommended  
\_\_\_\_\_ No Opinion  
Comments:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

CAO: \_\_\_\_\_



# COUNTY of MARIPOSA

P.O. Box 784, Mariposa, CA 95338 (209) 966-3222

BOB PICKARD, CHAIR  
GARRY R. PARKER, VICE-CHAIR  
LEE STETSON  
DOUG BALMAIN  
JANET BIBBY

DISTRICT V  
DISTRICT IV  
DISTRICT I  
DISTRICT II  
DISTRICT III



## MARIPOSA COUNTY BOARD OF SUPERVISORS

### MINUTE ORDER

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TO: JEFF GREEN, County Counsel

FROM: MARGIE WILLIAMS, Clerk of the Board *MW*

SUBJECT: DISCUSSION, DIRECTION TO STAFF, AND POSSIBLE ACTION REGARDING  
DECLARATION SERVED ON THE BOARD OF SUPERVISORS BY MICHAEL BIRD  
Resolution No. 03-210

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THE BOARD OF SUPERVISORS OF MARIPOSA COUNTY, CALIFORNIA,

ADOPTED THIS Order on June 10, 2003

#### ACTION AND VOTE:

Bob Pickard, Board of Supervisors, Chairman;

Discussion, Direction to Staff, and Possible Action Regarding: 1) The Declaration Served on the Board of Supervisors by Michael Bird on May 27, 2003, Regarding the Validity of County Ordinance No. 986; and 2) County Ordinance No. 986, which Changes the Regular Meeting Place of the Board of Supervisors from the County Courthouse to the County Government Center.

**BOARD ACTION:** Input from the public was provided by the following:

- Mike Bird read his letter into the record advising that he does not feel that Ordinance No. 986, which changes the location of the Board's meetings from the Courthouse to the Government Center, was properly adopted. Therefore, he feels the Ordinance is void and needs to be rescinded this date and redone. Without taking that action, he feels that future meetings will not be valid.

Discussion was held. Mr. Bird wished to speak again on two different occasions during the Board's discussion, and the Chairman did not recognize him. Supervisor Pickard stated he feels that the Board has followed the proper process in adopting Ordinance 986 to change the location of the Board's regular meetings from the Courthouse to the Government Center. Supervisor Parker stated he does not believe that there has been any violation of Government Code Section 54955.

(M)Parker, (S)Balmain, to direct the initiation of declaratory relief against Michael Bird for his allegations, and request that the Court render a decision. Further discussion was held. Supervisor Stetson stated he agrees with the requested action; however, he is not willing to go to that level at this time.

Supervisor Bibby stated she feels the text error in the County Code has been corrected, and that the Board should reaffirm its position versus seeking declaratory relief. The motion failed by the following vote:

Ayes: Balmain, Parker; Noes: Stetson, Bibby, Pickard.

(M)Bibby, (S)Stetson, Res. 03-210 was adopted directing staff to respond to Michael Bird's Declaration in writing by reaffirming the Board's position that the text error has been corrected to move the Board's meetings from the Courthouse to the Government Center/Ayes: Stetson, Bibby, Pickard; Noes: Balmain, Parker.

cc: Lee Stetson, District I Supervisor  
Doug Balmain, District II Supervisor  
Janet Bibby, District III Supervisor  
Garry R. Parker, District IV Supervisor  
Bob Pickard, District V Supervisor  
Rich Inman, County Administrative Officer  
File

# Mariposa County Board of Supervisors



District 1 ..... LEE STETSON  
District 2 ..... DOUG BALMAIN  
District 3 ..... JANET BIBBY  
District 4 ..... GARRY R. PARKER  
District 5 ..... BOB PICKARD

RICHARD H. INMAN  
County Administrative Officer

MARGIE WILLIAMS  
Clerk of the Board

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[www.mariposacounty.org/board](http://www.mariposacounty.org/board)

June 18, 2003

Mr. Michael G. Bird  
5320 Highway 49 N #5  
Mariposa, California 95338

Dear Mr. Bird,

At its meeting of June 10, 2003, the Mariposa County Board of Supervisors considered your demand of May 27<sup>th</sup> to rescind Ordinance No. 986.

The Board took action to reaffirm its position that the text error has been corrected to move the Board's meetings from the Courthouse to the Government Center.

A copy of the said action (Minute Order) is enclosed.

Sincerely,

BOB PICKARD  
Chairman, Board of Supervisors

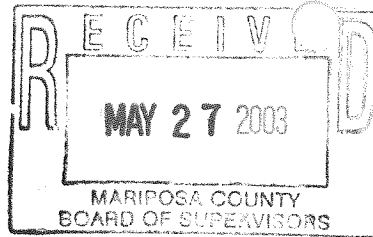
JGG:BP:mw

Enclosure

Cc: Board of Supervisors  
Rich Inman, County Administrative Officer  
Jeff Green, County Counsel



By Hand to the Clerk of the Board  
27<sup>th</sup> May, 2003



CC: B/S  
C/O  
C/O

Michael G Bird  
5320 Hwy 49 N #5  
Mariposa, CA 95338

Board of Supervisors  
Mariposa County  
State of California

DECLARATION, MEMORANDUM OF LAW,  
DISCUSSION, AND FINAL DEMAND.

I. DECLARATION

I, Michael G. ("Mike") Bird, am a resident and taxpayer of Mariposa County, a political subdivision of the State of California. I am not an attorney.

On April 22<sup>nd</sup> 2003, the Board of Supervisors convened an all-day meeting in Fish Camp. I explained to the Board why the meeting was illegal but on advice of County Counsel Jeffrey Green the Board persisted. During the meeting the Board purportedly adopted an ordinance to increase the Board Members' pay, and another ordinance. I explained why such actions were illegal and the ensuing ordinances would be void but the Board again persisted on advice of Counsel Green. The bulk of the meeting was devoted to a Public Hearing into the SilverTip development proposed by PacificUS.

The next day, Counsel Green reversed himself as to the validity of the ordinances adopted in Fish Camp on April 22<sup>nd</sup>.

There was no regular meeting of the Board of Supervisors on April 29<sup>th</sup>, it being a fifth Tuesday.

The May 6<sup>th</sup> regular meeting of the Board was called to order by Vice Chair Parker at approximately 9am in the Mariposa County courthouse. Supervisor Bibby was also present but was not involved in the proceedings. No other Supervisor was present. Without motion or vote, Vice Chair Parker announced that said meeting was adjourned and would reconvene at 9:15am in the Government Center. I protested the illegality of such adjournment both at the courthouse and later at the Government Center, to no avail.

During the meeting at the Government Center on May 6<sup>th</sup> the Board of Supervisors rescinded the Board Members' pay raise ordinance which had purportedly been adopted April 22<sup>nd</sup> and also the other ordinance which had purportedly been adopted April 22<sup>nd</sup>.

The May 13<sup>th</sup> regular meeting of the Board was called to order by Vice Chair Parker at approximately 9am in the Mariposa County courthouse. Supervisor Bibby was also present but was not involved in the proceedings. No other Supervisor was present. Without motion or vote, Vice Chair Parker announced that said meeting was adjourned and would reconvene at 9:15am in the Government Center. I protested the illegality of such adjournment both at the courthouse and later at the Government Center, to no avail.

During the meeting at the Government Center on May 13<sup>th</sup> the Board of Supervisors purportedly adopted Mariposa County Ordinance No. 986 entitled "AN ORDINANCE AMENDING SECTION 2.04.010 OF CHAPTER 2.04 OF THE MARIPOSA COUNTY CODE", despite my objection that such action would be illegal.

On May 19<sup>th</sup> I asked Clerk of the Board Margie Williams whether an order of adjournment had been made and posted on May 6<sup>th</sup> and May 13<sup>th</sup> as required by Gov. Code § 54955 (*infra*). She stated that no such order existed. I asked Clerk Williams to accompany me to County Counsel Jeffrey Green to whom I related the substance of my conversation with Ms Williams which she then confirmed in his presence.

The May 20<sup>th</sup> regular meeting of the Board of Supervisors of Mariposa County was called to order by Vice Chair Parker at approximately 9am in the Mariposa County courthouse. Supervisors Bibby and Stetson were also present. The Board unanimously voted to adjourn to the Government Center to reconvene at 9:15am, and Clerk Williams told me in the interim that an order had been prepared for signature and would be posted before the adjourned meeting reconvened.

During the meeting at the Government Center on May 20<sup>th</sup> <sup>13th</sup> the Board was inclined to approve a request from PacificUS to re-initiate the Public Hearing process for the SilverTip project. I objected on the grounds that the matter was not on the agenda, and the decision was postponed to the May 27<sup>th</sup> meeting.

I have diligently searched without success for <sup>20th</sup> any grant of power to the Board which would authorize the meetings held at the Government Center on May 6<sup>th</sup> and 13<sup>th</sup>, and hereby assert on information and belief that none exists.

I have diligently searched without success for any grant of power to the Board which would authorize the purported adoption of Mariposa County Ordinance No. 986 in the Government Center on May 13<sup>th</sup>, and hereby assert on information and belief that none exists.

I hereby assert on information and belief that the purported adoption of Mariposa County Ordinance No. 986 is void and without consequence, and that purported Mariposa County Ordinance No. 986 is void.


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*I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and this declaration was executed this 27<sup>th</sup> day of May, 2003, at Mariposa, California.*



Michael G. Bird

TWO HANDWRITTEN CORRECTIONS  
BEFORE DELIVERY/SERVICE, EACH  
INITIALED ABOVE.

 27 MAY 2003  
AT MARIPOSA, CA  
MICHAEL G. BIRD

## II. MEMORANDUM OF LAW

Gov. Code § 23003 provides that "A county is a body corporate and politic, has the powers specified in this title and such others necessarily implied from those expressed."

Gov. Code § 25081 provides that "By ordinance the board shall provide for the holding of regular meetings of the board at the county seat."

Mariposa County Code § 2.04.010 on the dates in question provided in part that "Regular meetings of the board of supervisors shall be held at the Mariposa County Courthouse in the town of Mariposa on the first four Tuesdays of each month at 9:00 a.m."

Gov. Code § 54954.4(c) provides in part that "The Legislature hereby finds and declares that complete, faithful, and uninterrupted compliance with the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code) is a matter of overriding public importance."

Gov. Code § 54955 provides as follows (emphasis added):

54955. The legislative body of a local agency may adjourn any regular, adjourned regular, special or adjourned special meeting to a time and place specified in the order of adjournment. **Less than a quorum may so adjourn from time to time.** If all members are absent from any regular or adjourned regular meeting the clerk or secretary of the legislative body may declare the meeting adjourned to a stated time and place and he shall cause a written notice of the adjournment to be given in the same manner as provided in Section 54956 for special meetings, unless such notice is waived as provided for special meetings. **A copy of the order or notice of adjournment shall be conspicuously posted on or near the door of the place where the regular, adjourned regular, special or adjourned special meeting was held within 24 hours after the time of the adjournment. When a regular or adjourned regular meeting is adjourned as provided in this section, the resulting adjourned regular meeting is a regular**

**meeting for all purposes.** When an order of adjournment of any meeting fails to state the hour at which the adjourned meeting is to be held, it shall be held at the hour specified for regular meetings by ordinance, resolution, bylaw, or other rule.

### III. DISCUSSION

#### III.a Gov. Code § 54955 adjournment

In regards to the May 6<sup>th</sup> and May 13<sup>th</sup> adjournments, Counsel Green holds that “Less than a quorum may so adjourn from time to time” does not preclude less than a quorum from adjourning to a different place. Counsel Green seems to hold that “from time to time” here means “sometimes”. Counsel Green also holds that the Board was in substantial compliance with § 54955.

The Brown Act explicitly requires “complete, faithful, and uninterrupted compliance”. Mere substantial compliance is inadequate.

It is undisputed that no order or notice of adjournment was posted. Thus there was less than substantial compliance.

The expression “adjourn from time to time” has a long history of meaning an adjournment from one time to another. To interpret “from time to time” here to mean “sometimes” leads to an absurdity: if less than a quorum may sometimes not so adjourn are they imprisoned on certain unspecified occasions until rescued by the arrival of their colleagues? A third alternative, whereby the sentence is construed to mean “Less than a quorum may so adjourn”, is invalid as it imports no meaning to the Legislature's words “from time to time”.

#### III.b Related Matters

Purported Mariposa County Ordinance No. 986 would change the place of regular meetings of the Board of Supervisors to the Government Center. The Board of Supervisors has indicated its intention to convene its regular meetings at the Government Center once thirty days have elapsed from the purported adoption of Mariposa County Ordinance No. 986.

Meetings for several years prior to April 22<sup>nd</sup>, the April 22<sup>nd</sup> meeting, and the May 6<sup>th</sup> and May 13<sup>th</sup> adjourned meetings have all been illegal for varying but similar reasons. The Board's intent would lead it to further illegal activity.

Ordinances adopted at the April 22<sup>nd</sup> meeting have already been rescinded so that they can be readopted. Purported Mariposa County Ordinance No. 986 is void as explained here. The Board's intent would lead to further void ordinances. This would work



considerable harm and confusion to the residents and taxpayers of Mariposa County.

Purported Mariposa County Ordinance No. 986 should be rescinded as it is void. Additionally, I would hope that an equivalent ordinance be legally enacted but that is beyond my standing to demand.

This demand does not address other ordinances enacted in recent years. Nor does it address actions other than ordinance adoptions. The highest priority is given to removing the cloud over future meetings of the Board of Supervisors as all subsequent remedies depend upon them. The problems with past actions can be dealt with as a slightly lesser priority. Therefore, this demand focuses narrowly on the single most important issue.

Nevertheless I am concerned that, despite the passage of several weeks, no member has yet scheduled Board action to resolve the clouds over past actions. Board members have rescinded their own pay raise for reenactment but have put off the bulk of the problem for as long as possible by the device of a request to the Attorney General for a (non-binding) opinion. Faster and more binding solutions to the problems lie in their own hands and alternatively in the Courts.

Further illegal actions, inaction, or delay by the Board of Supervisors can be expected to have consequences. Mariposa citizens, residents and taxpayers are debating the merits of demands, writs, and recalls as mechanisms to bring to our laws that repose which is expected of a well-managed County.

#### IV. DEMAND

I have searched without success for any ordinance or regulation governing demands such as this. If such rule or rules exist you should notify me forthwith or be held estopped from requiring adherence thereto. (*Fredrichsen v. City of Lakewood*, 6 C.3d 353; 99 Cal.rptr. 13, 491 P.2d 805). In the absence of any such rule, it seems reasonable in the circumstances that a time limit of thirty days should apply to your response to this demand. If you reject this demand or fail to perform as demanded within thirty days I may have no recourse but to seek judicial relief.

I hereby demand that the Board of Supervisors of the County of Mariposa rescind the action whereby on the 13<sup>th</sup> day of May 2003 it purportedly adopted Mariposa County Ordinance No. 986 entitled "AN ORDINANCE AMENDING SECTION 2.04.010 OF CHAPTER 2.04 OF THE MARIPOSA COUNTY CODE".



Michael G. Bird

MARIPOSA COUNTY ORDINANCE NO. 986

AN ORDINANCE AMENDING SECTION 2.04.010 OF CHAPTER 2.04  
OF THE MARIPOSA COUNTY CODE

WHEREAS, the Board of Supervisors desire to amend Section 2.04.010 of Chapter 2.04 of the Mariposa County Code, and

WHEREAS, the regularly scheduled meetings of the Board of Supervisors are no longer held in the Mariposa County Courthouse, and

WHEREAS, the Mariposa County Government Center is now the meeting place of the Board of Supervisors.

NOW, THEREFORE, THE BOARD OF SUPERVISORS OF MARIPOSA COUNTY, a political subdivision of the State of California, does ordain as follows:

SECTION I: Section 2.04.010 of Chapter 2.04 of the Mariposa County Code is hereby amended to read as follows:

**2.04.010 Regular meeting time and place.**

Regular meetings of the Board of Supervisors shall be held at the Mariposa County Government Center at 5100 Bullion Street in the town of Mariposa on the first four Tuesdays of each month at 9:00 a.m. for the transaction of any and all business which may come before the Board, both as a Board of Supervisors and as the Board of Directors of the following districts and/or agencies:


1. County Service Area 1M (Don Pedro Subdivision),  
and
  - a. Mariposa Pines Sewer Zone
  - b. Sewer Zone (Don Pedro Subdivision)
  - c. Coulterville Sewer and Water Zone
2. Mariposa Parking District
3. Wawona County Services Area 2W
4. Hornitos Lighting District
5. Mariposa Lighting District
6. Coulterville Lighting District
7. Mariposa County Air Pollution Control District
8. Yosemite West Maintenance District
9. Mariposa County Water Agency
10. Mariposa County Local Transportation Commission
11. Housing and Community Development Agency
12. Redevelopment Agency of the County of Mariposa

In the event any Tuesday should be a legal holiday, the regular meeting of the Board, both as a Board of Supervisors and as the Board of Directors of the above districts and/or agencies, shall be held at 9:00 a.m. at the above-mentioned place on the next succeeding day which is not a legal holiday. In the event any Tuesday should be a county-wide election day, then and in such event, the regular meeting of the Board, both as a Board of Supervisors and as the Board of Directors of the above districts and/or agencies, shall be held at 9:00 a.m. at the above-mentioned place on the next succeeding Tuesday.

SECTION II: This Ordinance shall become effective thirty (30) days after final passage pursuant to Government Code Section 25123.

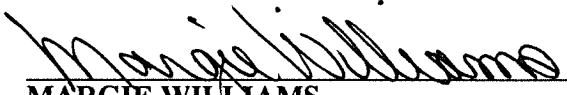
**PASSED AND ADOPTED** by the Board of Supervisors of Mariposa County this 13th day of May 2003 by the following vote:

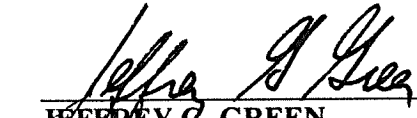
AYES:	STETSON, BALMAIN, BIBBY, PARKER, PICKARD
NOES:	NONE
ABSENT:	NONE
ABSTAINED:	NONE

  
\_\_\_\_\_  
**BOB PICKARD**, Chairman  
Mariposa County Board of Supervisors

**ATTEST:**

**APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY:**

  
\_\_\_\_\_  
**MARGIE WILLIAMS**  
Clerk of the Board

  
\_\_\_\_\_  
**JEFFREY G. GREEN**  
County Counsel

By Hand to the Clerk of the Board  
10<sup>th</sup> June, 2003

Michael G Bird  
5320 Hwy 49 N #5  
Mariposa, CA 95338

Board of Supervisors  
Mariposa County  
State of California

### Purported Ordinance 986

This place is very different from that where I was born, for here the People are Sovereign. The State has only those powers granted to it by the People in the Constitution. This Board, in turn, has only that fraction of those powers which the State has chosen to devolve upon it. Perhaps the most solemn of these is the power to enact Ordinances for, by that power, men may be imprisoned against their will.

Throughout the history of this State, the Judiciary has ensured that this power is accorded the respect which is its due. An Ordinance adopted without the required formality is void in Law. The passage of time does not cure it, nor do the potential consequences of judgement. Though a fault may have gone unnoticed a hundred years, though the consequences may be undesirable to everyone, a void Ordinance is incurable in Law. That is why your responsibility here today is so grave.

-0-

This Board has unfortunately held its meetings in the wrong location for several years. That is a big problem still facing us, but it is not the problem under discussion here today.

986 should have fixed the location of regular meetings and set us on the road to recovery. Unfortunately, 986 itself was not adopted at a regular meeting. You simply did not have the power to enact an Ordinance at that meeting, so the Ordinance is void. Nothing you or I or the Governor or the Legislature or the Supreme Court can do can change that, not even if they all wished it so.

-0-

This problem will not be left for our grandchildren. Your choice is whether to fix it here and now, or to do a year's work twice over – once under a cloud and once again under Court order.

In fact, today is your last opportunity to rescind 986 without Court intervention. 986 will soon be thirty days old. Come Friday, there's no place you can meet and no action you can take which won't have a legal cloud over it. If you meet in the Government Center your meeting is irregular because 986 is void. But you can't meet in the Courthouse to repeal 986 because 986 itself says you can't. You'll be stuck in limbo until the case has worked its way through the Courts.

Fortunately, the fix is simple. You need to rescind 986 today, before it comes into effect. Then you can do it over in a regular meeting, and in a few weeks we can stop this weekly parade to the Courthouse and back.

A handwritten signature in black ink, appearing to read 'Mike Bird', written in a cursive style.

Michael G. Bird