



# MARIPOSA COUNTY

Planning • 209-966-5151



## ORDINANCE 2019-1139

MEETING: February 19, 2019  
TO: The Board of Supervisors  
FROM: Sarah Williams, Planning Director  
RE: Ord Rescinding Ord 1137, and Amending Chapters 16.36 and 18.06 of the Mariposa County Code

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### RECOMMENDED ACTION AND JUSTIFICATION:

Waive the Second Reading and Adopt an Ordinance Rescinding Ordinance 1137, and Amending Chapter 16.36 of the Mariposa County Code Entitled "Indemnification Agreements" and Chapter 18.06 of the Mariposa County Code Entitled "Indemnification Agreements"

Rescinding Ordinance 1137 is recommended to allow staff to bring back the ordinance with a summary process of publishing, at an approximate cost of \$250, which will save the County approximately \$1,250.

Minor amendments to the text of these chapters are necessary. The amendments ensure consistency of County Code with State Law, as well as confirm current Mariposa County practice.

Staff is re-processing this ordinance, to save publication costs.

This ordinance was introduced on February 5, 2019.

### BACKGROUND AND HISTORY OF BOARD ACTIONS:

2002: Ordinance 976 was adopted, establishing Chapter 16.36.

2005: Ordinance 1017 was adopted, amending Chapter 16.36.

2018: Ordinance 1134 was adopted, establishing Chapter 18.06.

2019: Ordinance 1137 was adopted, amending Chapters 16.36 and 18.06.

2019: Ordinance 1137 scheduled to be rescinded.

### ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

Alternative (negative action): Do not approve rescinding. Ordinance 1137 in its

## Ordinance 2019-1139

entirety will be published at a cost of \$1,517.

Alternative: Amend the suggested edits to code.

Negative action: Do not waive first reading and introduce ordinance. Text in code would remain unchanged.

### **ATTACHMENTS:**

**Board Ordinance Indemnification Agreements- Final (DOC)**

**RESULT: ADOPTED [UNANIMOUS]**

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

**SECONDER:** Marshall Long, District III Supervisor

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

STATE OF CALIFORNIA  
COUNTY OF MARIPOSA  
BOARD OF SUPERVISORS

MARIPOSA COUNTY ORDINANCE NO. 1139

AN ORDINANCE RESCINDING ORDINANCE 1137 AND AMENDING CHAPTER  
16.36 OF THE MARIPOSA COUNTY CODE ENTITLED "INDEMNIFICATION  
AGREEMENTS" AND  
CHAPTER 18.06 OF THE MARIPOSA COUNTY CODE ENTITLED  
"INDEMNIFICATION AGREEMENTS"

**WHEREAS**, rescinding Ordinance 1137 allows staff to bring back the ordinance with a summary process of publishing, to save publication costs; and

**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**, 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**, Mariposa County Code Chapters 16.36 and 18.06 establish regulations for indemnification agreements; and

**WHEREAS**, the Board of Supervisors of the County of Mariposa desires to make amendments to Mariposa County Code Chapters 16.36 and 18.06; and

**WHEREAS**, it has been found that these amendments to Mariposa County Code are exempt from the California Environmental Quality Act (CEQA) and a Notice of Exemption has been prepared for the project.

**NOW THEREFORE BE IT ORDAINED**, the Board of Supervisors of the County of Mariposa does hereby ordain as follows:

**Section I:**

**CHAPTER 16.36**

**INDEMNIFICATION AGREEMENTS**

**Sections:**

- 16.36.010 Purpose.
- 16.36.020 Citation And Authority.
- 16.36.030 Subdivider's Obligation to Defend and Indemnify.
- 16.36.040 County Participation.
- 16.36.050 Form of Agreement.

**16.36.010 Purpose.**

This chapter is enacted to ensure the taxpayers of the County of Mariposa do not pay legal costs associated with private projects. (Ord. 976 Sec. I, 2002).

**16.36.020 Citation And Authority.**

This section is adopted pursuant to California Government Code sections 66474.9 and 66499.37. (Ord. 976 Sec. I, 2002).

**16.36.030 Subdivider's Obligation to Defend and Indemnify.**

The County may require, as a condition for a tentative, parcel, or final map application or approval, that the subdivider defend, indemnify, and hold harmless the County or its agents, officers, and employees from any claim, action, or proceeding against the County or its agents, officers, or employees to attack, set aside, void, or annul, an approval of the County concerning a subdivision, which action is brought within the time period provided for in California Government Code section 66499.37. The County shall promptly notify the subdivider of any claim, action, or proceeding and the County shall cooperate fully in the defense. Any requirement for an indemnity agreement may be appealed pursuant to the Mariposa County Appeals Procedure. (Ord. 1017 Sec. I, 2005; Ord. 976 Sec. I, 2002).

**16.36.040 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. (Ord. 976 Sec. I, 2002).

**16.36.050 Form of Agreement.**

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

**Section II:**

**CHAPTER 18.06**

**INDEMNIFICATION AGREEMENTS**

**Sections:**

- 18.06.010 Purpose.
- 18.06.020 Obligation to Defend and Indemnify.
- 18.06.030 Form of Agreement.
- 18.06.040 Notification.

**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 Obligation to Defend and Indemnify.**

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 (including legal fees and costs) 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. Any requirement for an indemnity agreement may be appealed pursuant to the Mariposa County Appeals Procedures.

**18.06.030 Form of Agreement.**

The indemnification agreement shall be executed on a form approved as to legal form 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.

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

**PASSED AND ADOPTED** on this 19<sup>th</sup> day of February, 2019 by the following vote:

AYES: SMALLCOMBE, JONES, LONG, CANN, MENETREY


NOES: NONE

ABSTAINED: NONE


EXCUSED: NONE

  
\_\_\_\_\_  
Miles Menetrey, Chair  
Mariposa County Board of Supervisors

ATTEST:

  
\_\_\_\_\_  
René LaRoche  
Clerk of the Board of Supervisors

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Steven W. Dahlem  
County Counsel

Post Court House  
Posted 1/23/2019  
to 2/25/2019

**FILED**

**MARIPOSA COUNTY  
NOTICE OF EXEMPTION**

~~KMM~~ JAN 23 2019  
**KEITH M. WILLIAMS**

MARIPOSA COUNTY CLERK  
*Karen M. Herman*  
**KAREN M. HERMAN**

**TO: County Clerk, County of Mariposa  
P.O. Box 247  
Mariposa, CA 95338**

**FROM: Mariposa County  
Planning Department  
P.O. Box 2039  
Mariposa, CA 95338**

**Project Title:** Amendments to Mariposa County Code Chapters 16.36 and 18.06

**Project Address:** Applies countywide

**Project Parcels:** N/A

**Description of Project:** Minor text amendments to Mariposa County Code Chapter 16.36 Indemnification Agreements and Chapter 18.06 Indemnifications Agreements.

**Name of Public Agency Approving Project:** Mariposa County Board of Supervisors


**Name of Proponent Carrying Out Project:** Mariposa County

**Exempt Status:** General Rule Exemption; Section 15060(c)(2) and Section 15061(b)(3)

**Reason Why Project Is Exempt:** This project is not subject to the California Environmental Quality Act (CEQA) pursuant to General Rule Exemption; Section 15061(b)(2), CEQA Guidelines. The amended text ensures consistency with State Law and confirms current Mariposa County practice. It can be seen with certainty that there is no possibility that the project may have a significant effect on the environment.

**Lead Agency Contact Person:** Sarah Williams, Planning Director  
**Phone Number:** (209) 742-1215

Mariposa County Board of Supervisors

By 

Sarah Williams  
Planning Director

1/22/19  
Date



State of California - Department of Fish and Wildlife  
**2019 ENVIRONMENTAL FILING FEE CASH RECEIPT**  
 DFW 753.5a (REV. 12/01/18) Previously DFG 753.5a

**Print**    **StartOver**    **Finalize&Email**

RECEIPT NUMBER:  
 22 — 1/23/2019 — 001  
 STATE CLEARINGHOUSE NUMBER (If applicable)

SEE INSTRUCTIONS ON REVERSE. TYPE OR PRINT CLEARLY.

LEAD AGENCY <b>Mariposa County Board of Supervisors</b>	LEAD AGENCY EMAIL <b>swilliams@mariposacounty.org</b>	DATE <b>1/23/2019</b>
COUNTY/STATE AGENCY OF FILING <b>Mariposa</b>		DOCUMENT NUMBER

PROJECT TITLE

**Amendments to Mariposa County Code Chapter 16.36 and 18.06**

PROJECT APPLICANT NAME <b>Mariposa County Board of Supervisors</b>	PROJECT APPLICANT EMAIL <b>swilliams@mariposacounty.org</b>	PHONE NUMBER <b>(209) 742-1215</b>
PROJECT APPLICANT ADDRESS <b>PO Box 2039</b>	CITY <b>Mariposa</b>	STATE <b>CA</b>
		ZIP CODE <b>95338</b>

PROJECT APPLICANT (Check appropriate box)

- Local Public Agency   
  School District   
  Other Special District   
  State Agency   
  Private Entity

CHECK APPLICABLE FEES:

- |   |            |    |      |
|---|------------|----|------|
| <input type="checkbox"/> Environmental Impact Report (EIR)  | \$3,271.00 | \$ | 0.00 |
| <input type="checkbox"/> Mitigated/Negative Declaration (MND)(ND)   | \$2,354.75 | \$ | 0.00 |
| <input type="checkbox"/> Certified Regulatory Program (CRP) document - payment due directly to CDFW         | \$1,112.00 | \$ | 0.00 |
| <br>  |            |    |      |
| <input checked="" type="checkbox"/> Exempt from fee   |            |    |      |
| <input checked="" type="checkbox"/> Notice of Exemption (attach)  |            |    |      |
| <input type="checkbox"/> CDFW No Effect Determination (attach)  |            |    |      |
| <input type="checkbox"/> Fee previously paid (attach previously issued cash receipt copy)                   |            |    |      |
| <hr/>   |            |    |      |
| <input type="checkbox"/> Water Right Application or Petition Fee (State Water Resources Control Board only) | \$850.00   | \$ | 0.00 |
| <input checked="" type="checkbox"/> County documentary handling fee   |            | \$ | 0.00 |
| <input type="checkbox"/> Other  |            | \$ |      |

PAYMENT METHOD:

- Cash   
  Credit   
  Check   
  Other

TOTAL RECEIVED \$ 0.00

SIGNATURE <i>Karen M. Herman</i> <b>X Karen M. Herman</b>	Digitally signed by Karen M. Herman Date: 2019.01.23 09:09:35 -08'00'	AGENCY OF FILING PRINTED NAME AND TITLE <b>Karen M. Herman, Deputy County Clerk, County of Mariposa</b>
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State of California - Department of Fish and Wildlife  
**2019 ENVIRONMENTAL FILING FEE CASH RECEIPT**  
DFW 753.5a (REV. 12/01/18) Previously DFG 753.5a

### NOTICE

Each project applicant shall remit to the county clerk the environmental filing fee before or at the time of filing a Notice of Determination (Pub. Resources Code, § 21152; Fish & G. Code, § 711.4, subdivision (d); Cal. Code Regs., tit. 14, § 753.5). Without the appropriate fee, statutory or categorical exemption, or a valid No Effect Determination issued by the California Department of Fish and Wildlife (CDFW), the Notice of Determination is not operative, vested, or final, and shall not be accepted by the county clerk.

### COUNTY DOCUMENTARY HANDLING FEE

The county clerk may charge a documentary handling fee of fifty dollars (\$50) per filing in addition to the environmental filing fee (Fish & G. Code, § 711.4, subd. (e); Cal. Code Regs., tit. 14, § 753.5, subd. (g)(1)). A county board of supervisors shall have the authority to increase or decrease the fee or charge, that is otherwise authorized to be levied by another provision of law, in the amount reasonably necessary to recover the cost of providing any product or service or the cost of enforcing any regulation for which the fee or charge is levied (Gov. Code, § 54985, subd. (a)).

### COLLECTION PROCEDURES FOR COUNTY GOVERNMENTS

#### Filing Notice of Determination (NOD):

- Collect environmental filing fee or copy of previously issued cash receipt. *(Do not collect fee if project applicant presents a No Effect Determination signed by CDFW. An additional fee is required for each separate environmental document. An addendum is not considered a separate environmental document. Checks should be made payable to the county.)*
- Issue cash receipt to project applicant.
- Attach copy of cash receipt and, if applicable, previously issued cash receipt, to NOD.
- Mail filing fees for CRP document to CDFW prior to filing the NOD or equivalent final approval (Cal. Code Regs. Tit. 14, § 753.5 (b)(5)). The CRP should request receipt from CDFW to show proof of payment for filing the NOD or equivalent approval. Please mail payment to address below made attention to the Cash Receipts Unit of the Accounting Services Branch.

If the project applicant presents a **No Effect Determination** signed by CDFW, also:

- Attach No Effect Determination to NOD *(no environmental filing fee is due)*.

#### Filing Notice of Exemption (NOE) *(Statutorily or categorically exempt project (Cal. Code Regs., tit. 14, §§ 15260-15285, 15300-15333))*

- Issue cash receipt to project applicant.
- Attach copy of cash receipt to NOE *(no environmental filing fee is due)*.

**Within 30 days after the end of each month in which the environmental filing fees are collected**, each county shall summarize and record the amount collected on the monthly State of California Form No. CA25 (TC31) and remit the amount collected to the State Treasurer. Identify the remittance on Form No. CA25 as "Environmental Document Filing Fees" per Fish and Game Code section 711.4.

#### The county clerk shall mail the following documents to CDFW on a monthly basis:

- ✓ A photocopy of the monthly State of California Form No. CA25 (TC31)
- ✓ CDFW/ASB copies of all cash receipts (including all voided receipts)
- ✓ A copy of all CDFW No Effect Determinations filed in lieu of fee payment
- ✓ A copy of all NODs filed with the county during the preceding month
- ✓ A list of the name, address and telephone number of all project applicants for which an NOD has been filed. If this information is contained on the cash receipt filed with CDFW under California Code of Regulations, title 14, section 753.5, subdivision (e)(6), no additional information is required.

### DOCUMENT RETENTION

The county shall retain two copies of the cash receipt (for lead agency and county clerk) and a copy of all documents described above for at least 12 months.

### RECEIPT NUMBER

- # The first two digits automatically populate by making the appropriate selection in the County/State Agency of Filing drop down menu.
- # The next eight digits automatically populate when a date is entered.
- # The last three digits correspond with the sequential order of issuance for each calendar year. For example, the first receipt number issued on January 1 should end in 001. If a county issued 252 receipts for the year ending on December 31, the last receipt number should end in 252. CDFW recommends that counties and state agencies 1) save a local copy of this form, and 2) track receipt numbers on a spreadsheet tabbed by month to ensure accuracy.

**DO NOT COMBINE THE ENVIRONMENTAL FEES WITH THE STATE SHARE OF FISH AND WILDLIFE FEES.**

#### Mail to:

California Department of Fish and Wildlife  
Accounting Services Branch  
P.O. Box 944209  
Sacramento, California 94244-2090