

ORDINANCE NO. 2023-06

Ordinance adding Chapter 1.35 (Indemnification) to the Lassen County Code.


The following ordinance, consisting of four sections, was duly and regularly passed and adopted by the Board of Supervisors of the County of Lassen, State of California, at a regular meeting of the Board of Supervisors held on the 22nd day of August, 2023, by the following vote:

AYES: Supervisors Bridges, Gallagher, Neely, Albaugh, and Ingram.

NOES: None.

ABSTAIN: None.

ABSENT: None.



Chairman of the Board of Supervisors,
County of Lassen, State of California

Attest:

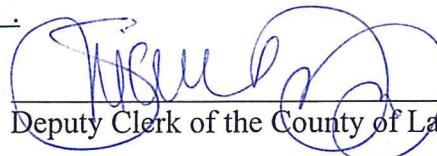
JULIE BUSTAMANTE

Clerk of the Board

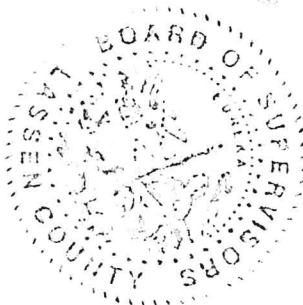
By: 

MICHELE YDERRAGA, Deputy Clerk of the Board

I, MICHELE YDERRAGA, Deputy Clerk of the Board of the Board of Supervisors, County of Lassen, do hereby certify that the foregoing ordinance was adopted by the said Board of Supervisors at a regular meeting thereof held on the 22nd day of August, 2023.



Deputy Clerk of the County of Lassen Board of Supervisors



**THE BOARD OF SUPERVISORS OF THE COUNTY OF LASSEN
ORDAINS AS FOLLOWS:**

SECTION ONE: This ordinance shall take effect thirty (30) days from the date of its passage, and before the expiration of fifteen (15) days after its passage a summary shall be published with the names of the members voting for and against the same, once in a local newspaper of the County of Lassen, State of California.

SECTION TWO: The Board of Supervisors hereby makes the following findings in support of adoption of this ordinance:

1. 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.
2. Section 66474.9 of the California Government Code allows local agencies to require the execution of indemnification agreements by applicants for subdivision as a condition of approval of tentative, parcel and final map applications.
3. Opinion Number 01-701 issued by the California 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.
4. California Attorney General Opinion Number 01-701 is widely viewed as applying to local agency action on all discretionary development permits.
5. Indemnification agreements are widely employed by local agencies in the state of California for a myriad of discretionary development permits.
6. Although the California Government Code contains a specific provision allowing local agencies to require indemnification agreements as a condition of approval for subdivision projects, the Government Code is silent on the application of such agreements to other types of developments.
7. It is the desire of the Board of Supervisors to require indemnification agreements as a condition of approval for all discretionary projects, subject to appeal in accordance with County appeal procedures.
8. Adoption of this ordinance is in the general public interest because indemnification will result in the general public (as a taxpayer) not being

responsible for the costs associated with the defense of private discretionary projects that are approved by Lassen County.

9. This ordinance is hereby found to be consistent with the Lassen County General Plan.
10. The County Code adopted through this ordinance conforms to the requirements of California State law and Lassen County policy. The ability to require indemnification agreements is allowed under the “police power” granted to local agencies through the California Constitution.
11. This ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to the General Rule Exemption found in CEQA Guidelines Subsection Number 15061(b)(3), as it codifies a practice currently allowed under the California Constitution.
12. This ordinance has been reviewed by Lassen County Counsel and has been found to meet all applicable requirements of California State law and Lassen County Code and policy.
13. The Board of Supervisors conducted a noticed public hearing on August 15, 2023, and has considered all information in the public record, including the staff report packet and testimony provided by the public.

SECTION THREE: Chapter 1.35 (Indemnification) is hereby added to the Lassen County Code to read as follows:

Chapter 1.35 Indemnification

1.35.010 Purpose

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

Judicial challenges to the County’s discretionary approvals of land use projects are costly and time consuming. In addition, project opponents often seek an award of attorneys’ fees in such challenges. As project applicants are the primary beneficiaries of such approvals, it is appropriate that such applicants should bear the expense of defending against any such judicial challenge, and bear the responsibility for any costs, attorneys’ fees, and damages which may be awarded to a successful challenger.

1.35.020 Indemnity Agreement Required for Discretionary Actions

- (a) As a condition for a land use entitlement and/or issuance of any discretionary development permit (hereafter referred to as “Project”), an owner or applicant shall provide an executed indemnity agreement that obligates an owner or applicant to defend, indemnify, and hold harmless (including legal fees and costs) Lassen County and its agents, officers, and employees from and against any and all claims, actions, or proceedings against Lassen County and its agents, officers, and employees including, but not limited to, efforts to attack, set aside, void, or annul the project or any prior or subsequent development approvals regarding the project or project condition imposed by Lassen 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 Lassen County.
- (b) Any condition of approval requiring an indemnity agreement may be appealed pursuant to the Lassen County appeals procedures.
- (c) The indemnification agreement required by this Section shall be executed on a form approved as to legal form by Lassen County counsel.

1.35.030 Indemnification of Director Determinations and Decisions

The involved applicant, property owner or permittee automatically and as a provision of Lassen County Code, agrees to indemnify, and holds harmless (including legal fees and costs) Lassen County and its agents, officers, and employees from and against any and all claims, actions, or proceedings against Lassen County or its agents, officers, or employees related to any decision, determination or permit made or issued by the Director of the Planning and Building Services Department.

1.35.040 Notification

In the event of any claim, action, or proceeding against Lassen County as described in this Chapter, Lassen County shall promptly notify the owner, applicant or permit holder of such claim, action, or proceeding and Lassen County shall fully cooperate with the owner, applicant or permit holder in the defense of the action.

SECTION FOUR: If any section, subsection, sentence, clause, or phase of this ordinance is for any reason held to be unconstitutional and invalid, such decision shall not affect the validity of the remaining portion of this ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance and every section,

subsection, sentence, clause or phrase thereof, irrespective of the fact any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional or invalid.