ORDINANCE 2018-1133

MEETING: July 10, 2018

TO: The Board of Supervisors

FROM: Sarah Williams, Planning Director

RE: Post-Disaster Recovery Ordinance

RECOMMENDED ACTION AND JUSTIFICATION:
Waive Second Reading and Adopt Ordinance Amending County Code Pursuant to County Code Amendment No. 2017-156, Adding Chapter 18.05 Post-Disaster Recovery; County of Mariposa, Project Proponent. Action is based on Planning Commission’s recommendation.

See Staff Report in MT Packet Item 8349 for additional information.

BACKGROUND AND HISTORY OF BOARD ACTIONS:
August 8, 2017: Urgency Ordinance 1126, adding Post Disaster Recovery provisions to code, as a result of the Detwiler Fire
September 22, 2017: Ordinance 1128, extending Urgency Ordinance for Post Disaster Recovery provisions (expires August 6, 2018)

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:
Alternatives: Amend text. Could necessitate returning to Planning Commission for recommendation.

No action would result in Post Disaster Recovery Ordinance provisions expiring on August 6, 2018. The provisions would not be available to county for future disasters.

ATTACHMENTS:
Attachment Board Ordinance (DOC)

RESULT: ADOPTED [UNANIMOUS]
MOVER: Marshall Long, District III Supervisor
SECONDER: Merlin Jones, District II Supervisor
AYES: Smallcombe, Jones, Long, Cann, Menetrey
COUNTY of MARIPOSA
P.O. Box 784, Mariposa, CA 95338 (209) 966-3222

ROSEMARIE SMALLCOMBE, CHAIR
MILES MENETREY, VICE-CHAIR
MERLIN JONES
MARSHALL LONG
KEVIN CANN

DISTRICT I
DISTRICT V
DISTRICT II
DISTRICT III
DISTRICT IV

MARIPOSA COUNTY BOARD OF SUPERVISORS
MINUTE ORDER

TO: SARAH WILLIAMS/Planning Department Director
FROM: RENÉ LaROCHE, Clerk of the Board
SUBJECT: Waive First Reading and Introduce an Ordinance Amending County Code Pursuant to County Code Amendment No. 2017-156, Adding Chapter 18.05 Post-Disaster Recovery; County of Mariposa, Project Proponent
RESOLUTION: Ord-1133 - Introduction

The following action was taken by the Mariposa County Board of Supervisors on June 26, 2018:

H.2. Planning
Waive First Reading and Introduce an Ordinance Amending County Code Pursuant to County Code Amendment No. 2017-156, Adding Chapter 18.05 Post-Disaster Recovery; County of Mariposa, Project Proponent
Sarah Williams gave the staff report noting the same correction as in preceding item. No public input.

CORRECTION: The first line of Section 18.05.060 should read "permitted or legally established structures" not "permitted of legally established structures".

RESULT: INTRODUCED [4-0] Next: 7/10/2018 9:00 AM
MOVER: Merlin Jones, District II Supervisor
SECONDER: Miles Menetrey, District V Supervisor
AYES: Rosemarie Smallcombe, Merlin Jones, Marshall Long, Miles Menetrey
EXCUSED: Kevin Cann
STATE OF CALIFORNIA
COUNTY OF MARIPOSA
BOARD OF SUPERVISORS

MARIPOSA COUNTY ORDINANCE NO. 1133

AN ORDINANCE ADDING CHAPTER 18.05 - POST-DISASTER RECOVERY TO TITLE 18 OF MARIPOSA COUNTY CODE; MISCELLANEOUS LAND USE REGULATIONS

WHEREAS, the Mariposa County Board of Supervisors adopted County Ordinance 1126, an Interim Urgency Ordinance establishing Chapter 18.05 – Post-Disaster Recovery within Title 18 – Miscellaneous Land Use Regulations on August 8, 2017, and adopted County Ordinance 1128 on September 12, 2017, which extended the urgency ordinance; and

WHEREAS, County Code Amendment Application No. 2017-156 codifies and makes permanent the Interim Urgency Ordinance by adding a new Chapter 18.05 to County Code to address post-disaster recovery efforts, including provisions for temporary replacement housing for persons displaced by a disaster; and

WHEREAS, the Planning Commission held a duly noticed public hearing on County Code Amendment Application No. 2017-156 on the 4th day of May 2018 in accordance with State law and County Code; and

WHEREAS, the Board of Supervisors held a duly noticed public hearing on County Code Amendment Application No. 2017-156 on the 26th day of June 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.

NOW THEREFORE BE IT ORDAINED, the Board of Supervisors of the County of Mariposa does hereby add Chapter 18.05 to Title 18 of the Mariposa County Code as follows:

Section I

Chapter 18.05

Post-Disaster Recovery

Sections:

18.05.010 Purpose.
18.05.020 Declaration of emergency; duration.
18.05.030 Definitions.
18.05.040 Temporary replacement housing on-site.
18.05.050 Replacement of damaged or destroyed housing or other structures.
18.05.060 Repair Criteria.
18.05.070 Temporary replacement housing off-site.
18.05.080 Fees; Replacement of damaged or destroyed housing or other structures.
18.05.090 Debris removal; site approval required.
18.05.100 Temporary facilities for post-disaster recovery.
18.05.110 Severability and pre-emption.

18.05.010 Purpose.
The purpose of this chapter is to facilitate the establishment of temporary replacement housing for residents who have lost their homes due to a disaster and to establish procedures for rebuilding structures damaged or destroyed as a result of a disaster. This chapter is also intended to protect the public health and safety of the residents within a declared disaster area, and to provide for temporary facilities for post-disaster recovery operations.

18.05.020 Declaration of emergency; duration.
The provisions of this chapter are applicable for a period of two (2) years following the date of action by the Board of Supervisors to declare a local emergency following a disaster. These provisions shall take precedence over any conflicting ordinances in the Mariposa County Code that would apply in the absence of the emergency. By resolution of the Board of Supervisors, the provisions of this chapter may be extended for one (1) additional year.

18.05.030 Definitions.
The following terms as used in this chapter shall have the following meanings, unless the context in which a term is used plainly requires another meaning:

A. "Disaster" means a wildfire, flood, earthquake, or other natural or human-caused event that damages or destroys dwellings or other property and displaces people, and which is the basis for a declared local state of emergency.

B. "Footprint" means the area that falls directly beneath and shares the perimeter of a structure and any area in which debris from a destroyed building or structure remained after the disaster.

C. "Recreational vehicle" means a motor home, travel trailer, truck camper, or camping trailer which is self-contained (meaning it shall have separate black water, grey water and fresh water tanks with stand-alone 12V power systems) and designed for human habitation for recreational or emergency occupancy; which is self-propelled, truck-mounted, or permanently towable on California roadways; and which is a California Department of Motor Vehicles licensed vehicle.

D. "Displaced resident or residents" means a Mariposa County resident or residents whose residential dwelling has been destroyed or damaged by a disaster, such that the resident(s) cannot occupy the dwelling as determined by the Building Department. Displaced resident(s) may be required to provide verification to the Building Department, to substantiate their eligibility for permits as described in this chapter. Evidence may consist of a driver's license or other government-issued identification card or utility bill, etc. with a
physical address showing the resident resided on a legal parcel impacted by the disaster.
E. "Health Department" shall mean the Director of the Health Department or designee.
F. "Building Department" shall mean the Director of the Building Department or designee.
G. "Planning Department" shall mean the Director of the Planning Department or designee.
H. "California Design professional of record" shall mean a California licensed architect or engineer.

18.05.040 Temporary replacement housing on-site.
Temporary replacement housing for displaced resident(s), consisting of a recreational vehicle or recreational vehicles, as defined herein, located on a legal parcel which sustained damage as a result of a disaster shall be authorized by the Building Department subject to the following provisions:
A. Except as provided in Section 18.05.040.B, temporary replacement housing authorized pursuant to this chapter shall no longer be used in lieu of permanent housing within two (2) years of the date of the Board of Supervisors' action declaring the local emergency, unless a one-year (1 year) extension is granted by the Board of Supervisors pursuant to section 18.05.020, in which case it shall be removed within three (3) years.
B. Temporary replacement housing shall no longer be used in lieu of permanent housing immediately following issuance by the Building Department of a final inspection or certificate of occupancy for a permanent replacement dwelling unit on-site.
C. Temporary replacement housing may only be occupied by a displaced resident or residents.
D. Temporary replacement housing shall meet the following standards:
1. The property owner or the property owner's authorized agent shall apply for a permit from the Building Department.
2. The permit shall only be considered for a parcel on which a permitted or legally established residence was destroyed, or substantially or partially damaged and uninhabitable as determined by the Building Department as a result of the disaster. Proof that a destroyed or damaged residence was permitted or legally established shall be verified by the Building Department based on prior finalized building permit or assessor's records, or other documentation satisfactory to the Building Department.
3. No more than two (2) recreational vehicles used for temporary replacement housing shall be permitted per parcel.
4. If the temporary replacement housing is utilized prior to approval by the Health Department of the site as being free of all public hazards and toxic debris, the following provisions shall apply:
   a. A waiver of County liability, approved as to legal form and sufficiency by County Counsel, shall be signed by the property owner and any authorized agent.
   b. The temporary replacement housing shall be located a minimum of one hundred and fifty (150) feet from the footprint of any damaged structure and in a manner that does not impede the debris
removal process. Lesser setbacks may be approved by the Health Department on a case by case basis.

c. The property owner and all occupants shall implement mitigation measures adequate to prevent exposure of hazardous wastes and safety risks to humans and animals, as determined necessary by the Health Department.

5. Except as provided in Section 18.05.040.D.4, a permit for temporary replacement housing shall not be issued by the Building Department until the site is approved by the Health Department as being free of all public hazards and all toxic debris or residue caused by the disaster.

6. The temporary replacement housing shall be located outside the boundaries of any recorded easements and may be located within the Zoning Ordinance required setback areas such that placement of the temporary replacement housing will allow for unobstructed reconstruction on the site.

7. The temporary replacement housing shall be connected to an approved source of water meeting one of the following criteria:
   a. Public water supply;
   b. Existing well provided that it has been approved by the Health Department as safe for domestic consumption; or
   c. Other water source approved by the Health Department.

8. The temporary replacement housing shall be connected to an approved sewage disposal system meeting one of the following criteria:
   a. Public sewer system;
   b. Existing on-site sewage disposal system that has been approved by the Health Department to be intact, adequately sized, and functioning following the disaster;
   c. Temporary holding tank with a contract with a pumping company for regular pumping. A copy of the contract shall be provided to the Health Department; or
   d. Other method of sewage disposal approved by the Health Department.

9. The temporary replacement housing shall be connected to an approved source of electricity meeting one of the following criteria:
   a. Permitted electrical service hook-up; or
   b. Other power source approved by the Building Department.

10. Temporary replacement housing shall not be located in either of the following areas:
    a. a flood hazard area established by separate action of the Board of Supervisors or other authorized Federal, State, or local official; or
    b. an area affected by the disaster which, due to hazards to health and safety directly or indirectly resulting from the disaster, require in-depth study before allowing rebuilding of any kind as determined by the Building Department or Health Department.

11. The temporary replacement housing allowed by this chapter may be converted to temporary construction housing upon issuance of a building permit for a permanent residence, pursuant to County Code Section 15.10.270.B.
12. Camping cabins, recreational vehicle park models, tiny homes, yurts, multiple bedroom FEMA trailers and/or FEMA trailers installed similarly to a mobile or manufactured home, mobile homes, and similar units as determined by the Building Official are not considered temporary replacement housing for the purposes of this chapter.

18.05.050 Permanent replacement of damaged or destroyed housing or other structures.

Structures damaged or destroyed by a disaster may be replaced pursuant to the following provisions:

A. Structures illegally constructed before the disaster may only be reconstructed if all current and applicable state and local requirements are satisfied.

B. Structures legally constructed before the disaster may be reconstructed provided all current and applicable state and local requirements are satisfied, including Zoning Ordinance provisions for nonconforming structures.

C. Prior to the issuance of a Building Permit, the site of the structure shall be approved by the Health Department as being free of all public hazards and toxic debris or residue caused by the disaster.


E. A garage or storage building may be permitted as an accessory structure prior to the issuance of a permit for a single family dwelling on any parcel on which a residence was destroyed by a disaster.

18.05.060 Repair criteria.

Permitted or legally established structures that have been damaged as the result of a disaster shall be repaired in accordance with the following criteria:

A. When the estimated value of repair is less than fifty percent (50%) of the replacement value of the structure, the damaged elements may be repaired. Any repairs must comply with the current California Code of Regulations, Title 24 standards, or, as an alternative, a California design professional of record shall be retained by the property owner to evaluate the damages, and design, oversee and approve repairs in accordance with the 2016 (or current) California existing Building Code.

B. When the estimated value of repair is fifty percent (50%) or more of the replacement value of the structure, the entire structure shall be brought into conformance with the current California Code of Regulations, Title 24 standards.

C. Determinations made relative to the provisions within this section shall be the authority of the Building Department.

18.05.070 Temporary replacement housing off-site.
Installation of temporary replacement housing off-site for displaced resident(s), consisting of a recreational vehicle or recreational vehicles, as defined herein, may be authorized by the Building Department subject to the following provisions:
A. A maximum of two (2) recreational vehicles shall be authorized on a privately owned parcel which is off-site from the disaster and which is zoned for primary residential use as determined by the Planning Department.
B. Except as provided in Section 18.05.070.C, temporary replacement housing off-site authorized pursuant to this section shall no longer be used in lieu of permanent housing within two (2) years of the date of the Board action declaring the local emergency, unless a one-year (1 year) extension is granted by the Board of Supervisors pursuant to 18.05.020, in which case it shall be removed within three (3) years.
C. Temporary replacement housing off-site shall no longer be used in lieu of permanent housing immediately following issuance by the Building Department of a final inspection or certificate of occupancy for a permanent replacement dwelling unit for the displaced resident or residents.
D. The permit for temporary replacement housing off-site shall only be considered for a displaced resident who occupied a permitted or legally established residence that was destroyed, or substantially or partially damaged and uninhabitable as determined by the Building Department as a result of the disaster. Proof that a destroyed or damaged residence was permitted or legally established shall be verified by the Building Department based on prior finaled building permit or assessor's records, or other documentation satisfactory to the Building Department.
E. Temporary replacement housing shall be occupied by a displaced resident or residents.
F. Temporary replacement housing off-site shall be located outside the boundaries of any recorded easements and shall comply with all Zoning Ordinance setback requirements.
G. Temporary replacement housing off-site shall meet the following standards:
1. The property owner or the property owner’s authorized agent shall apply for a permit from the Building Department.
2. The temporary replacement housing off-site shall be connected to an approved source of water meeting one of the following criteria:
   a. Public water supply;
   b. Existing well provided that it has been approved by the Health Department as safe for domestic consumption; or
   c. Other water source approved by the Health Department.
3. The temporary replacement housing off-site shall be connected to an approved sewage disposal system meeting one of the following criteria:
   a. Public sewer system;
   b. Existing on-site sewage disposal system that has been approved by the Health Department to be intact and functioning following the disaster and adequately sized;
c. Temporary holding tank with a contract with a pumping company for regular pumping. A copy of the contract shall be provided to the Health Department; or
d. Other method of sewage disposal approved by the Health Department.

4. The temporary replacement housing off-site shall be connected to an approved source of electricity meeting one of the following criteria:
   a. Permitted electrical service hook-up; or
   b. Other power source approved by the Building Director.

5. Temporary replacement housing off-site shall not be located in either of the following:
   a. a flood hazard area established by separate action of the Board of Supervisors or other authorized Federal, State, or local official; or
   b. an area affected by the disaster which, due to hazards to health and safety caused by the disaster, require in-depth study before allowing rebuilding of any kind as determined by the Building Department or Health Department.

H. Camping cabins, recreational vehicle park models, tiny homes, yurts, multiple bedroom FEMA trailers and/or FEMA trailers installed similarly to a mobile or manufactured home, mobile homes, and similar units as determined by the Building Official are not considered temporary replacement housing for the purposes of this chapter.

18.05.080 Fees; replacement of damaged or destroyed housing or other structures.
   A. All current permit fees apply, including demolition permit fees, unless otherwise modified or waived by the Board of Supervisors.
   B. During the time period when this chapter is applicable pursuant to Section 18.05.020, application plan check fees that are normally paid at the time an application is submitted may be deferred by the Building Department, at the applicant's request, and paid at the time the permit is issued.
   C. The current process for determining school impact fees, which involves the Mariposa County Unified School District, shall be followed.

18.05.090 Debris removal; site approval required.
1. All hazardous materials and debris, including but not limited to household hazardous wastes, asbestos, ash from burned structures, metals, damaged or destroyed vehicles, and all public hazards shall be removed prior to reconstruction or reuse of property damaged by the disaster and shall, in all cases, be removed and disposed of within one hundred eighty (180) days of the disaster for which the local state of emergency was declared unless the Health Department grants a discretionary ninety (90) day extension upon a showing of good cause. Debris removal and disposal shall comply with all laws and regulations and shall be within the time period described herein. Upon completion of debris removal, the site shall be approved by the Health Department as being free of all toxic debris or residue caused by the disaster.
2. A demolition permit for hazardous materials and debris removal may be required by the Building Department, unless a county-approved
hazardous materials and debris removal program is utilized by the property owner.

18.05.100 Temporary facilities for post-disaster recovery.
Temporary facilities necessary for the timely removal of debris, stabilization of soils, erosion control, and other needs as determined by the agency or agencies directing post-disaster recovery and clean-up operations may be established as needed. Temporary facilities may include staging areas for equipment, vehicles, and storage on private property. Temporary facilities may also include off-site processing and storage, recycling, or other handling of disaster-generated debris. Temporary facilities are subject to all of the following provisions:
A. The duration of the temporary facilities shall not exceed the time period established by Section 18.05.020 or the duration of the local emergency, whichever is more.
B. Temporary facilities shall be subject to issuance of an administrative use permit pursuant to County Code Chapter 17.114, prior to establishment or within 30 days of establishment.
C. In addition to the requirements established by County Code Chapter 17.114, approval of temporary facilities shall be based upon a finding that the site zoning allows for public uses and the proposed temporary facilities provide or address an immediate public need or immediate public purpose.
D. The administrative use permit shall identify the expiration date of the approval and shall specify clean-up and restoration provisions for the site upon termination of the use.
E. The administrative use permit may address impacts resulting from the temporary use, including but not limited to dust, noise, water quality, traffic safety, lighting, trespass and any secondary impacts.
F. Alternative sites that may be available resulting in fewer impacts shall be considered prior to issuance of an administrative use permit.
G. Temporary facilities on public land shall be subject to the authorization of the agency managing said land.

18.05.120 Severability and pre-emption.
A. If any section, subsection, sentence, clause, or phrase of this chapter, is for any reason held to be invalid, unlawful, or unconstitutional, such invalidity or unconstitutionality shall not affect the validity, lawfulness, or constitutionality of any or all other portions of this chapter.
B. To the extent that any part of this chapter conflicts with any portion of an executive order signed by the Governor of the State of California related to a disaster for which this chapter is invoked, the executive order shall control.

Section II: If any provision of this ordinance is held to be unconstitutional, preempted by federal law, or otherwise invalid by any court of 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 provides an expedited process to help county residents, whose homes are damaged or destroyed in a disaster, to obtain or establish safe temporary housing in-county, while repairing or rebuilding their homes and clearing hazardous debris. The amendment addresses temporary public facility needs following a disaster, including for timely removal of debris, stabilization of soils, erosion control and re-establishment of public services. The establishment of temporary public facility needs following a disaster is not currently addressed by Mariposa County Code and such provisions will enable critical facilities to be established immediately during a disaster, and enable nuisance impacts to be addressed. Amendment text relating to temporary replacement housing, with minimum relevant and necessary standards, will protect impacted residents and neighborhoods, and enable quick re-occupation of properties, while addressing potential hazards to public health, safety, and welfare. The process will ensure adequate site restoration following a disaster.

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, which includes a number of policies to support the amendment. The General Plan includes land use goals regarding continued use of legally established uses, safety element goals protecting public health and safety, housing goals and policies to reduce costs of housing while protecting the public health and safety and goals to accommodate special needs housing, including providing emergency shelter. The amendment will allow flexibility in addressing impacts on property following a disaster in the county, which will provide a long term guide for county development through ensuring structure replacement and temporary housing standards to limit population displacement and a short term basis for day-to-day decision making.

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.

4. **Finding:** The amendment is consistent with other guiding policies, goals, policies, and standards of the Mariposa County General Plan.
Evidence: The amendment is consistent with the goals, policies and standards in the county’s General Plan, including the Housing and Safety elements. The General Plan contains a number of policies to support the amendment, including land use goals regarding continued use of legally established uses, safety element goals protecting public health and safety, housing goals and policies to reduce costs of housing while protecting the public health and safety, and goals to accommodate special needs housing, including providing emergency shelter.

5. Finding: County Code Amendment No. 2017-156 is not subject to the California Environmental Quality Act (CEQA) pursuant to Section 15060(c)(2), (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and Section 15061(b)(3) (there is no possibility the activity in question may have a significant effect on the environment), CEQA Guidelines. A portion of the amendment addresses issues relating to the clearing of hazardous debris following a disaster. The amendment provides housing flexibility for those impacted by a disaster while ensuring environmental protections, including the proper removal and disposal of hazardous materials and debris from affected sites.

PASSED AND ADOPTED on this 10th day of July, 2018 by the following vote:

AYES: SMALLCOMBE, JONES, LONG, CANN, MENETREY

NOES: NONE

ABSTAINED: NONE

EXCUSED: NONE

NOT VOTING: 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