

ORDINANCE № 08-43

AN ORDINANCE OF THE TOWN OF DEWEY-HUMBOLDT, ARIZONA, RELATING TO NOTICE OF CLAIM PROCEDURAL REQUIRMENTS; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, on April 25, 2008, the Arizona Supreme Court, in *Lee v. State*, 218 Ariz. 235, 182 P.3d 1169 (Ariz. 2008), held that the "filing" of a notice of claim against a public entity may be accomplished through regular mail, and any proof of mailing is evidence that the public entity actually received the notice;

WHEREAS, the Court further held that, absent a more instructive or stringent Town ordinance, if a claimant presents any proof of the proper mailing of the notice of claim, and the public entity denies its receipt, a jury must determine if the notice of claim was properly "filed;"

WHEREAS, the result of this opinion is that it permits a claimant to create a jury question if they testify that they sent a notice of claim to a municipality by mail, even if the municipality never received the notice of claim;

WHEREAS, the Town believes this result frustrates the goal of A.R.S. § 12-821.01, which is the avoidance of litigation;

WHEREAS, the Town believes that it has a duty to adopt an ordinance relating to the service of notices of claims that will at least provide defense counsel with colorable arguments for dismissal of cases in which plaintiffs allege they have complied with the state statute by mailing a notice of claim, but in which the Town has no record of ever having received that notice.

NOW THEREFORE, be it ordained by the Mayor and Town Council of the Town of Dewey-Humboldt, Arizona that:

Section 1: Authority. Any person who has a claim for damages or monetary compensation against the Town, any Town employee, or any Town official shall file and serve their claim in accordance with the provisions of **A.R.S. § 12-821.01**, and any amendments thereto which may from time to time be adopted and approved by the Arizona legislature.

Section 2: Procedure.

- A. Any claim required to be filed and served on the Town, any Town employee, or any Town official shall be presented to the Town or the Town employee on a claim form prescribed by the Town Manager with the Town Clerk's office, within one hundred eighty days (180) after the event, occurrence, or transaction complained of, or within one hundred eighty days (180) of the date of accrual of the cause of action out of which the claimant's damages allegedly occurred.

- B. The claim form may be filed and served on the Town by certified mail with signed return receipt, or in person at Town Hall during normal business hours.
- C. The filing, service, and denial of any claim required by this ordinance are prerequisites to the filing of a civil lawsuit against the Town, any Town employee, or any Town official (in their capacity as Town employee or official).

Section 3: Severability. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

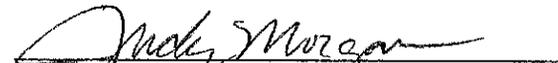
Section 4: Effective Date. The provisions of Section 1 of this Ordinance shall be effective as of the 1st day of January 2009.

PASSED AND ADOPTED by the Mayor and Council of the Town of Dewey-Humboldt, Arizona, this 16th day of September, 2008.



Earl Goodwin, Mayor

ATTEST:



Judy Morgan, Town Clerk

APPROVED AS TO FORM:



Kenton Jones, Town Attorney