

**SPECIAL STUDY SESSION MEETING NOTICE**  
**TOWN COUNCIL OF DEWEY-HUMBOLDT**  
**Tuesday, July 10, 2012, 2:00 P.M.**

**COUNCIL SPECIAL STUDY SESSION MEETING**  
**2735 S. HWY 69**

**COUNCIL CHAMBERS, TOWN HALL**  
**DEWEY-HUMBOLDT, ARIZONA**

## **AGENDA**

The issues that come before the Town Council are often challenging and potentially divisive. In order to make sure we benefit from the diverse views to be presented, the Council believes that the meeting be a safe place for people to speak. With this in mind, the Council asks that everyone refrain from clapping, heckling and any other expressions of approval or disapproval. Council may vote to go into Executive Session for legal advice regarding any matter on the open agenda pursuant to A.R.S. 38-431.03 (A) (3), which will be held immediately after the vote and will not be open to the public. Upon completion of Executive Session, the Council may resume the meeting, open to the public, to address the remaining items on the agenda. Agenda items may be taken out of order. Please turn off all cell phones. The Council meeting may be broadcast via live streaming video on the internet in both audio and visual formats. One or more members of the Council may attend either in person or by telephone, video or internet conferencing. **NOTICE TO PARENTS:** Parents and legal guardians have the right to consent before the Town of Dewey-Humboldt makes a video or voice recording of a minor child. A.R.S. § 1-602.A.9. Dewey-Humboldt Council Meetings are recorded and may be viewed on the Dewey-Humboldt website. If you permit your child to participate in the Council Meeting, a recording will be made. You may exercise your right not to consent by not permitting your child to participate or by submitting your request to the Town Clerk that your child not be recorded.

**1. Call To Order.**

**2. Roll Call.**

**2.1. Town Council.** Town Council Members, David Hiles, Mark McBrady, Dennis Repan, Denise Rogers, Nancy Wright; Vice Mayor John Dibble; and Mayor Terry Nolan.

**3. Study Agenda.** No legal action to be taken.

Page **3.1. Old Black Canyon Highway Update by the Town Attorney.** Review and possible direction.

3 **3.2. Local Transaction Privilege Tax (TPT) research update by Staff.** Review and possible direction.

**4. Special Session.** Legal Action can be taken.

5 **4.1. Ordinance 12-92 to Amend Town Code provisions 31.22 Board of Adjustment, 34.01 Fee Schedule for Town Documents, and 153.021 Board of Adjustment; Zoning Administrator; and to Appoint Either the Town Council or the Planning and Zoning Advisory Commission to Serve as the Board of Adjustment.** Discussion and possible action.

**5. Comments from the Public.** The Council wishes to hear from Citizens at each meeting. Those wishing to address the Council need not request permission or give notice in advance. For the official record, individuals are asked to state their name. Public comments may appear on any video or audio record of this meeting. Please direct your comments to the Council. Individuals may address the Council on any issue within its jurisdiction. At the conclusion of Comments from the Public, Council members may respond to criticism made by those who have addressed the public body, may ask Town staff to review a matter, or may ask that a matter be put on a future agenda; however, Council members are forbidden by law from discussing or taking legal action on matters raised during the Comments from the Public unless the matters are properly noticed for discussion and legal action. The total time for Comments from the Public is **20** minutes. No time limit is

imposed on individuals within this total. The audience is asked to please be courteous and silent while others are speaking.

**6. Adjourn.**

**For Your Information:**

Next Town Council Meeting: Tuesday, July 17, 2012, at 6:30 p.m.

Next Planning & Zoning Commission Meeting: Thursday, August 9, 2012, at 6:00 p.m.

Next Town Council Work Session: Tuesday, August 14, 2012, at 2:00 p.m.

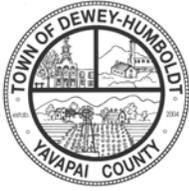
If you would like to receive Town Council agendas via email, please sign up at [AgendaList@dhaz.gov](mailto:AgendaList@dhaz.gov) and type Subscribe in the subject line, or call 928-632-7362 and speak with Judy Morgan, Town Clerk.

**Certification of Posting**

The undersigned hereby certifies that a copy of the attached notice was duly posted at the following locations: Dewey-Humboldt Town Hall, 2735 South Highway 69, Humboldt, Arizona, Chevron Station, 2735 South Highway 69, Humboldt, Arizona, Blue Ridge Market, Highway 69 and Kachina Drive, Dewey, Arizona, on the \_\_\_\_ day of \_\_\_\_\_, 2012, at \_\_\_\_ p.m. in accordance with the statement filed by the Town of Dewey-Humboldt with the Town Clerk, Town of Dewey-Humboldt.

By: \_\_\_\_\_, Town Clerk's Office.

Persons with a disability may request reasonable accommodations by contacting the Town Hall at 632-7362 at least 24 hours in advance of the meeting.



**TOWN OF DEWEY-HUMBOLDT**  
**P.O. BOX 69**  
**HUMBOLDT, AZ 86329**  
**Phone 928-632-8562 ▪ Fax 928-632-7365**

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**TOWN COUNCIL SPECIAL SESSION MEETING**  
**July 10, 2012– 2:00 pm Town Council Meeting Chambers**

**Agenda Item 3.2 # Local Transaction Privilege Tax (TPT) research update by Staff.** Review and possible direction.

**To: Mayor and Town Council Members**  
**From: Yvonne Kimball, Town Manager**

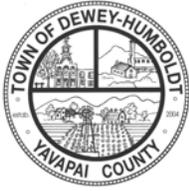
**Date submitted: July 5, 2012**

**Summary:**

Recently during the budget deliberation sessions, some questions were asked regarding collection and remittance of the local sales tax (officially called “Local Transaction Privilege Tax”). Staff conducted some research and would like to provide you with a quick update on these issues.

In addition, the State Department of Revenue local sales tax Office accepted staff’s invitation to attend a future Town Council work session. Staff would like to gather a list of questions regarding local sales tax so that DOR representatives can prepare before their presence at a future council meeting. Please submit your questions on this subject.

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**TOWN COUNCIL SPECIAL SESSION MEETING**  
**July 10, 2012– 2:00 pm Town Council Meeting Chambers**

**Agenda Item # 4.1 Ordinance 12-92 to Amend Town Code provisions 31.22 Board of Adjustment, 34.01 Fee Schedule for Town Documents, and 153.021 Board of Adjustment; Zoning Administrator and to Appoint Either the Town Council or the Planning and Zoning Advisory**

**To: Mayor and Town Council Members**  
**From: Yvonne Kimball, Town Manager**

**Date submitted: July 5, 2012**

**Summary:**

At July 3's regular council meeting, the Council decided to dissolve the (current) Board of Adjustment. However, the Council did not stipulate who will fulfill the responsibilities of a BOA.

The Town's current Code 31.22 Board of Adjustment provides that "The Board of Adjustment is hereby established as a Board independent and separate from the Planning and Zoning Advisory Commission. Until such time as members are appointed to the BOA, the P&Z Commission will continue to act as the BOA when required..." The information was a bit confusing in whether the P&Z is the default replacement of the BOA. Further, this section of the Town Code is being revised along with two other sections regarding the BOA. As you might recall, on June 19, a draft ordinance 12-92 to amend those Town Code provisions was presented to the Council; some minor changes were asked to be made before your final review and approval.

Due to those considerations, the Town Attorney and I decided to continue with planned discussion of Ordinance 12-92 except that Ordinance 12-92 now contains two options based on July 3's Council decision: one is to establish the Town Council to serve as the Town's BOA; the other is to appoint the P&Z to serve as the BOA. In addition to establishing a new BOA, Ordinance 12-92 also clarifies confusions contained in the current BOA town code provisions so that they will confirm with the Statute's requirements and be consistent with the other Town Code provisions. Ordinance 12-92 provides stipulations for the BOA structure, procedure, powers and duties, hearing applications, hearings and ruling. Staff seeks Council's selection of either option of Ordinance 12-92.

Please note that there would be a 30 days waiting period before Ordinance 12-92 to be operative if the Ordinance is passed by the Council. I have also enclosed A.R.S. 9-462.06 Board of Adjustment for your review as Ordinance 12-92 refers to such.

**ORDINANCE No. 12-92**

**AN ORDINANCE OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF DEWEY-HUMBOLDT, COUNTY OF YAVAPAI, ARIZONA, AMENDING THE TOWN OF DEWEY-HUMBOLDT, ARIZONA CODE OF ORDINANCES, TITLE III ADMINISTRATION, CHAPTER 31 TOWN ORGANIZATIONS AND DEPARTMENTS, § 31.22 BOARD OF ADJUSTMENT, TITLE III ADMINISTRATION, CHAPTER 34 FINANCES AND TAXATION, § 34.01 FEE SCHEDULE FOR TOWN DOCUMENTS, AND TITLE XV LAND USES; CHAPTER 153 ZONING REGULATIONS, § 153.021 BOARD OF ADJUSTMENT RELATED TO CONFORMING THE REGULATIONS TO STATE LAW AND CLARIFYING THE POWERS AND DUTIES OF THE BOARD OF ADJUSTMENT; PROVIDING FOR A SAVINGS CLAUSE; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; AND PROVIDING PENALTIES.**

Now, Therefore, Be it ordained by the Mayor and Common Council of the Town of Dewey-Humboldt, Arizona, as follows:

Section I.     In General

The Town of Dewey-Humboldt, Arizona Code of Ordinances, Title III Administration, Chapter 31 Town Organizations and Departments, Section 31.22 Board of Adjustment is hereby amended to read as follows (additions in ALL CAPS; deletions in ~~strikeout~~).

**§ 31.22 Board of Adjustment.**

The Board of Adjustment (BOA) is hereby established AS FURTHER SET FORTH IN SECTION 153.021 OF THIS CODE. ~~as a Board independent and separate from the Planning and Zoning Advisory Commission (P&Z COMMISSION). Until such time as members are appointed to the BOA, the P&Z Commission will continue to act as the BOA when required. The BOA shall be formed of five members, all of whom must be residents of the town. Each member will be appointed to a four-year term, unless filling a vacancy appointment (in which case the term is the balance of the term of the person replaced). The BOA will use the Arizona Rules of Civil Procedure, the Arizona Rules of Evidence, and, when hearing an appeal, the Arizona Rules of Civil Appellate Procedure, as if the Board was a Superior Court. The BOA may set its own meeting schedule, but meetings will be held at the request of the Mayor, a Councilmember, or an applicant/appellant. The BOA has the duty to diligently perform all duties allocated to the BOA by Arizona law or town ordinance.~~

The Town of Dewey-Humboldt, Arizona Code of Ordinances, Title III Administration, Chapter 34 Finances and Taxation, Section 34.01 Fee Schedule for Town Documents is hereby amended to read as follows (additions in ALL CAPS; deletions in ~~strikeout~~):

**§ 34.01 Fee Schedule for Town Documents**

\* \* \*

(D) *Reduced Fees.*

\* \* \*

(2) Fees may be waived by the Town Council, OR the Town Hearing Officer, ~~or Board of Adjustment~~ to avoid undue hardship.

\* \* \*

The Town of Dewey-Humboldt, Arizona Code of Ordinances, Title XV Land Usage, Chapter 153 Zoning Regulations, Section 153.021 Board of Adjustment is hereby renamed and amended to read as follows (additions in ALL CAPS; deletions in ~~strikeout~~):

**§ 153.021 Board of Adjustment; ZONING ADMINISTRATOR**

~~—There shall be a~~THE Board of Adjustment OF THE TOWN OF DEWEY-HUMBOLDT (THE “BOARD”) IS ESTABLISHED PURSUANT TO ARIZONA REVISED STATUTES (A.R.S.) § 9-462.06. ~~, and it shall have jurisdiction over this chapter.~~

(A) *Structure.* The TOWN COUNCIL SHALL SERVE AS THE Board OF ADJUSTMENT ~~shall be composed of five resident taxpayers the incorporated area~~ of the town. THE MAYOR SHALL BE THE CHAIRPERSON OF THE BOARD. ~~who shall serve without pay. The Town Council may hire clerical and technical aid for the Board. The Zoning Administrator will serve as an ex officio member (without vote) in official matters of the Board.~~

(B) *Procedure.* MEETINGS OF The Board shall ~~have meetings, hold hearings~~ ~~which shall be open to the public and HELD AT THE CALL OF THE CHAIR. make decisions for which a quorum of three will be necessary;~~ The Board shall adopt rules TO GOVERN ITS PROCEEDINGS not inconsistent with this chapter and the laws of Arizona;. ~~The Board shall select, from its members, a Chairperson and a Secretary;~~ The Chairperson shall be the executive officer of the Board with the power of ~~administering~~ADMINISTERING oaths and taking evidence and shall preside over its meetings and hearings;. ~~The Secretary shall cause~~THE minutes ~~of the meetings~~and RECORDS OF ALL BOARD PROCEEDINGS SHALL ~~hearings to~~ be kept AS REQUIRED BY A.R.S. § 38-431.01 ~~, showing records of votes examinations, and other official actions, all of which shall be~~ AND filed AS PUBLIC RECORDS in the office of the ~~Zoning Administrator~~TOWN CLERK.

(C) *Powers AND DUTIES.* THE BOARD HAS THE FOLLOWING POWERS AND DUTIES:

(1) ~~The jurisdiction of the Board shall be limited to the incorporated area of the town.~~ HEAR AND DECIDE APPEALS FROM A DECISION, DETERMINATION OR INTERPRETATION MADE BY THE ZONING ADMINISTRATOR IN WHICH IT IS ALLEGED THERE IS AN ERROR IN AN ORDER, REQUIREMENT OR DECISION MADE BY THE ZONING ADMINISTRATOR IN THE ENFORCEMENT OF A ZONING ORDINANCE.

(2) HEAR AND DECIDE APPEALS FOR VARIANCES FROM THE TERMS OF THE ZONING ORDINANCE ONLY IF, BECAUSE OF SPECIAL CIRCUMSTANCES APPLICABLE TO THE PROPERTY, INCLUDING ITS SIZE, SHAPE, TOPOGRAPHY, LOCATION, OR SURROUNDINGS, THE STRICT APPLICATION OF THE ZONING ORDINANCE WILL DEPRIVE SUCH PROPERTY OF PRIVILEGES ENJOYED BY OTHER PROPERTY OF THE SAME CLASSIFICATION IN THE SAME ZONING DISTRICT. ANY VARIANCE GRANTED SHALL BE SUBJECT TO SUCH CONDITIONS AS WILL ASSURE THAT THE ADJUSTMENT AUTHORIZED SHALL NOT CONSTITUTE A GRANT OF SPECIAL PRIVILEGES INCONSISTENT WITH THE LIMITATIONS UPON OTHER PROPERTIES IN THE VICINITY AND ZONE IN WHICH SUCH PROPERTY IS LOCATED.

(3) HEAR AND DECIDE APPEALS FROM DECISIONS OF THE ZONING ADMINISTRATOR IN REQUESTS FOR ADJUSTMENTS AS SET FORTH IN SUBSECTION F, BELOW.

~~(2) The Board shall have power to:~~

~~\_\_\_\_\_ (a) Decide if there is error in any order, requirement or decision of the Zoning Administrator in the enforcement of this chapter;~~

(4) reverse or affirm, wholly or partly, or modify the order or decision appealed from and make such order or decision as ought to be made, ~~and to that end shall have the powers of the Zoning Administrator;~~

~~(5b)~~ Interpret this chapter when the meaning of any word, phrase, or section is in doubt, or where doubt exists as to the proper district of a specific use;

(6) THE BOARD SHALL NOT:

(a) MAKE ANY CHANGES IN THE USES PERMITTED IN ANY ZONING CLASSIFICATION OR DISTRICT;

(b) MAKE ANY CHANGES IN THE ZONING ORDINANCE;

(c) GRANT A VARIANCE IF THE SPECIAL CIRCUMSTANCES APPLICABLE TO THE PROPERTY ARE SELF-IMPOSED BY THE PROPERTY OWNER.

~~———— (c) Authorize in specific cases such variance from the terms of this chapter as will not be contrary to the public interest, where owing to special conditions, a literal enforcement of these provisions will, in the Board's opinion, result in unnecessary hardships;~~

~~———— (d) Allow the extension of a district where the boundary thereof divides a lot and providing the Board authority to grant this extension conditional upon development of the extended area following an approved plan, with particular significance in instances where the Town Council has adopted a zoning request in such a manner that a project development is to follow permission to extend the zoning;~~

~~———— (e) Determine the location of a district boundary where doubt exists as to the location of same on the zoning map;~~

~~———— (f) Modify the Zoning Administrator's protective requirements in instances where a district use is conditional upon certain stipulations to be specified by the Zoning Administrator; and~~

~~———— (g) Grant the Zoning Administrator clearance to issue a building permit where the applicant has failed to secure such prior to commencing construction (but only in cases where the Zoning Administrator or Building Official has chosen to allow the application to be filed prior to court action).~~

(D) *Hearing applications.* Hearing applications shall be filed IN WRITING in the office of the Zoning Administrator on forms provided therefor by any person or by any officer, department, board or bureau of the town affected by any order or decision of the Zoning Administrator within 30 days thereafter, and specifying the grounds thereof; or for rulings on other matters of Town Council jurisdiction.

(1) An appeal shall stay all proceedings in the matter appealed unless the Zoning Administrator certifies to the Board that, by reason of the fact stated in his or her approval letter, a stay would (in his or her opinion) cause imminent peril to life or property. In this case, proceedings shall not be stayed except by restraining order granted by the Board or by a court of record on application and notice to the Zoning Administrator.

(2) IN ADDITION TO ANY OTHER REQUIREMENTS SPECIFIED, APPLICATIONS FOR A varianceS SHALL AT A MINIMUM INCLUDE THE FOLLOWING ~~appeal applicant should be prepared to show that:~~

(a) EVIDENCE SHOWING WHY, DUE TO ~~There are special~~ circumstances or conditions applicable to the property ~~of application,~~

~~INCLUDING ITS SIZE, SHAPE, TOPOGRAPHY, LOCATION OR SURROUNDINGS, or to the adjacent property, or to the neighborhood, that justify variance from the requirements so that strict application thereof THE ZONING ORDINANCE WOULD DEPRIVE THE PROPERTY OWNER OF PRIVILEGES ENJOYED BY OTHER PROPERTY OWNERS OF THE SAME CLASSIFICATION IN THE SAME ZONING DISTRICT; would work an unnecessary hardship and that the granting of the request is necessary for preservation and enjoyment of substantial property rights; and/or~~

(b) EVIDENCE SHOWING THAT THE VARIANCE WILL NOT CONSTITUTE A GRANT OF SPECIAL PRIVILEGES INCONSISTENT WITH LIMITATIONS UPON OTHER PROPERTIES IN THE VICINITY AND DISTRICT IN WHICH THE PROPERTY IS LOCATED; AND

(c) EVIDENCE THAT THE SPECIAL CIRCUMSTANCES APPLICABLE TO THE PROPERTY WERE OR ARE NOT SELF-IMPOSED BY THE PROPERTY OWNER; AND

(d) EVIDENCE SHOWING WHY ~~The granting~~ THE VARIANCE SUBSTANTIALLY MEETS THE INTENT AND PURPOSE OF THE ZONING DISTRICT IN WHICH THE PROPERTY IS LOCATED AND will not ~~materially~~ DETRIMENTALLY affect the health or safety of the neighborhood residents or the public welfare or be injurious to property or improvements.

(E) *Hearings and rulings.* The Board of Adjustment shall hold at least one public hearing, within a reasonable time from the date of application, after giving a minimum of 15 days' notice thereof to parties of interest and the public by posting at the property of application (if property is involved) and by publishing once in a newspaper of general circulation in the ~~county~~-TOWN. The Board of Adjustment shall render a decision within 30 days after the initial hearing on same, unless an extension is agreed to by the Board and the applicant.

(1) In approving an application, in all or in part, the Board of Adjustment may ~~designate such~~ IMPOSE REASONABLE conditions ~~in conjunction therewith that will, in its opinion,~~ NECESSARY TO ~~secure substantially~~ ACHIEVE the GENERAL PURPOSES AND objectives of this chapter and PROTECT THE PUBLIC HEALTH, SAFETY AND GENERAL WELFARE OR TO ENSURE OPERATION AND MAINTENANCE OF THE USE IN A MANNER COMPATIBLE WITH EXISTING AND POTENTIAL USES ON ADJOINING PROPERTIES OR IN THE SURROUNDING AREAs ~~may require guarantees in such form as it deems proper under the circumstances to ensure that the condition be complied with. Where any~~ IF such conditions are violated or not complied with, UPON NOTICE TO THE PROPERTY OWNER BY THE ZONING ADMINISTRATOR, A HEARING SHALL BE HELD AND, IF THE VIOLATION IS SUSTAINED, the approval ~~shall cease~~ MAY BE REVOKED ~~and the Zoning Administrator shall act accordingly.~~

~~\_\_\_\_\_ (2) In granting of permission to proceed on a specific development scheme or of a permit for a construction variance, the same shall be contingent upon permits being obtained and work commenced within six months and being diligently pursued. Failure of such shall void the ruling unless a longer time had been granted or an extension in time is secured.~~

(32) The concurring vote of ~~three~~FOUR members shall be necessary to render a ruling, UNLESS OTHERWISE REQUIRED BY STATE LAW OR THE TOWN ZONING ORDINANCE.

(3) DECISIONS OF THE BOARD OF ADJUSTMENT MAY BE APPEALED TO THE SUPERIOR COURT WITHIN 30 DAYS OF THE DECISION BY THE BOARD.

\* \* \*

Section II. Savings Clause

If any section, subsection, sentence, clause, phrase, or portion of this Ordinance as amended 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 remainder of this Ordinance.

Section III. Repeal of Conflicting Ordinance

All other code provisions, ordinances, or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed as of the effective date hereof.

Section IV. Penalties

Any person found responsible for violating any provision of this Ordinance shall be subject to the civil sanctions and habitual offender provisions set forth in Section 10.99 of the Dewey-Humboldt Code of Ordinances

**PASSED AND ADOPTED** by the Mayor and Common Council of the Town of Dewey-Humboldt, Arizona, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by the following vote:

AYES: \_\_\_\_\_

NAYES: \_\_\_\_\_ ABSENT: \_\_\_\_\_

EXCUSED: \_\_\_\_\_ ABSTAINED: \_\_\_\_\_

APPROVED this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_

Terry Nolan, Mayor

ATTEST:

\_\_\_\_\_  
Judy Morgan, Town Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Curtis, Goodwin, Sullivan, Udall & Schwab, P.L.C.  
Town Attorneys  
By Susan D. Goodwin

I, JUDY MORGAN, TOWN CLERK, DO HEREBY CERTIFY THAT A TRUE AND CORRECT COPY OF THE ORDINANCE NO. \_\_\_\_\_ ADOPTED BY THE COMMON COUNCIL OF THE TOWN OF DEWEY-HUMBOLDT, ARIZONA ON THE \_\_\_\_ DAY OF \_\_\_\_\_, 201\_, WAS POSTED IN THREE PLACES ON THE \_\_\_\_ DAY OF \_\_\_\_\_, 201\_.

\_\_\_\_\_  
Judy Morgan, Town Clerk

**ORDINANCE No. 12-92**

**AN ORDINANCE OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF DEWEY-HUMBOLDT, COUNTY OF YAVAPAI, ARIZONA, AMENDING THE TOWN OF DEWEY-HUMBOLDT, ARIZONA CODE OF ORDINANCES, TITLE III ADMINISTRATION, CHAPTER 31 TOWN ORGANIZATIONS AND DEPARTMENTS, § 31.22 BOARD OF ADJUSTMENT, TITLE III ADMINISTRATION, CHAPTER 34 FINANCES AND TAXATION, § 34.01 FEE SCHEDULE FOR TOWN DOCUMENTS, AND TITLE XV LAND USES; CHAPTER 153 ZONING REGULATIONS, § 153.021 BOARD OF ADJUSTMENT RELATED TO CONFORMING THE REGULATIONS TO STATE LAW AND CLARIFYING THE POWERS AND DUTIES OF THE BOARD OF ADJUSTMENT; PROVIDING FOR A SAVINGS CLAUSE; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; AND PROVIDING PENALTIES.**

**Now, Therefore**, Be it ordained by the Mayor and Common Council of the Town of Dewey-Humboldt, Arizona, as follows:

Section I.     In General

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**§ 31.22 Board of Adjustment.**

The Board of Adjustment (BOA) is hereby established AS FURTHER SET FORTH IN SECTION 153.021 OF THIS CODE. ~~as a Board independent and separate from the Planning and Zoning Advisory Commission (P&Z COMMISSION). Until such time as members are appointed to the BOA, the P&Z Commission will continue to act as the BOA when required. The BOA shall be formed of five members, all of whom must be residents of the town. Each member will be appointed to a four-year term, unless filling a vacancy appointment (in which case the term is the balance of the term of the person replaced). The BOA will use the Arizona Rules of Civil Procedure, the Arizona Rules of Evidence, and, when hearing an appeal, the Arizona Rules of Civil Appellate Procedure, as if the Board was a Superior Court. The BOA may set its own meeting schedule, but meetings will be held at the request of the Mayor, a Councilmember, or an applicant/appellant. The BOA has the duty to diligently perform all duties allocated to the BOA by Arizona law or town ordinance.~~

The Town of Dewey-Humboldt, Arizona Code of Ordinances, Title III Administration, Chapter 34 Finances and Taxation, Section 34.01 Fee Schedule for Town Documents is hereby amended to read as follows (additions in ALL CAPS; deletions in ~~strikeout~~):

**§ 34.01 Fee Schedule for Town Documents**

\* \* \*

(D) *Reduced Fees.*

\* \* \*

(2) Fees may be waived by the Town Council, OR the Town Hearing Officer, ~~or Board of Adjustment~~ to avoid undue hardship.

\* \* \*

The Town of Dewey-Humboldt, Arizona Code of Ordinances, Title XV Land Usage, Chapter 153 Zoning Regulations, Section 153.021 Board of Adjustment is hereby renamed and amended to read as follows (additions in ALL CAPS; deletions in ~~strikeout~~):

**§ 153.021 Board of Adjustment; ZONING ADMINISTRATOR**

~~There shall be a~~THE Board of Adjustment OF THE TOWN OF DEWEY-HUMBOLDT (THE "BOARD") IS ESTABLISHED PURSUANT TO ARIZONA REVISED STATUTES (A.R.S.) § 9-462.06. ~~, and it shall have jurisdiction over this chapter.~~

(A) *Structure.* THE PLANNING AND ZONING ADVISORY COMMISSION SHALL SERVE AS THE Board OF ADJUSTMENT ~~shall be composed of five resident taxpayers the incorporated area~~ of the town. THE COMMISSION CHAIRPERSON SHALL BE THE CHAIRPERSON OF THE BOARD. ~~who shall serve without pay. The Town Council may hire clerical and technical aid for the Board. The Zoning Administrator will serve as an ex-officio member (without vote) in official matters of the Board.~~

(B) *Procedure.* MEETINGS OF The Board shall ~~have meetings, hold hearings which shall be open to the public and HELD AT THE CALL OF THE CHAIR. make decisions for which a quorum of three will be necessary;~~ The Board shall adopt rules TO GOVERN ITS PROCEEDINGS not inconsistent with this chapter and the laws of Arizona;. ~~The Board shall select, from its members, a Chairperson and a Secretary;~~ The Chairperson shall be the executive officer of the Board with the power of ~~administering~~ADMINISTERING oaths and taking evidence and shall preside over its meetings and hearings;. ~~The Secretary shall cause THE minutes of the meetings and RECORDS OF ALL BOARD PROCEEDINGS SHALL hearings to be kept AS REQUIRED BY A.R.S. § 38-431.01 , showing records of votes~~

~~examinations, and other official actions, all of which shall be~~ AND filed AS PUBLIC RECORDS in the office of the ~~Zoning Administrator~~ TOWN CLERK.

(C) *Powers AND DUTIES.* THE BOARD HAS THE FOLLOWING POWERS AND DUTIES:

(1) ~~The jurisdiction of the Board shall be limited to the incorporated area of the town.~~ HEAR AND DECIDE APPEALS FROM A DECISION, DETERMINATION OR INTERPRETATION MADE BY THE ZONING ADMINISTRATOR IN WHICH IT IS ALLEGED THERE IS AN ERROR IN AN ORDER, REQUIREMENT OR DECISION MADE BY THE ZONING ADMINISTRATOR IN THE ENFORCEMENT OF A ZONING ORDINANCE.

(2) HEAR AND DECIDE APPEALS FOR VARIANCES FROM THE TERMS OF THE ZONING ORDINANCE ONLY IF, BECAUSE OF SPECIAL CIRCUMSTANCES APPLICABLE TO THE PROPERTY, INCLUDING ITS SIZE, SHAPE, TOPOGRAPHY, LOCATION, OR SURROUNDINGS, THE STRICT APPLICATION OF THE ZONING ORDINANCE WILL DEPRIVE SUCH PROPERTY OF PRIVILEGES ENJOYED BY OTHER PROPERTY OF THE SAME CLASSIFICATION IN THE SAME ZONING DISTRICT. ANY VARIANCE GRANTED SHALL BE SUBJECT TO SUCH CONDITIONS AS WILL ASSURE THAT THE ADJUSTMENT AUTHORIZED SHALL NOT CONSTITUTE A GRANT OF SPECIAL PRIVILEGES INCONSISTENT WITH THE LIMITATIONS UPON OTHER PROPERTIES IN THE VICINITY AND ZONE IN WHICH SUCH PROPERTY IS LOCATED.

(3) HEAR AND DECIDE APPEALS FROM DECISIONS OF THE ZONING ADMINISTRATOR IN REQUESTS FOR ADJUSTMENTS AS SET FORTH IN SUBSECTION F, BELOW.

~~(2) The Board shall have power to:~~

~~\_\_\_\_\_ (a) Decide if there is error in any order, requirement or decision of the Zoning Administrator in the enforcement of this chapter;~~

(4) reverse or affirm, wholly or partly, or modify the order or decision appealed from and make such order or decision as ought to be made, ~~and to that end shall have the powers of the Zoning Administrator;~~

~~(5b) Interpret this chapter when the meaning of any word, phrase, or section is in doubt, or where doubt exists as to the proper district of a specific use;~~

(6) THE BOARD SHALL NOT:

(a) MAKE ANY CHANGES IN THE USES PERMITTED IN ANY ZONING CLASSIFICATION OR DISTRICT;

(b) MAKE ANY CHANGES IN THE ZONING ORDINANCE;

(c) GRANT A VARIANCE IF THE SPECIAL CIRCUMSTANCES APPLICABLE TO THE PROPERTY ARE SELF-IMPOSED BY THE PROPERTY OWNER.

~~———— (c) Authorize in specific cases such variance from the terms of this chapter as will not be contrary to the public interest, where owing to special conditions, a literal enforcement of these provisions will, in the Board's opinion, result in unnecessary hardships;~~

~~———— (d) Allow the extension of a district where the boundary thereof divides a lot and providing the Board authority to grant this extension conditional upon development of the extended area following an approved plan, with particular significance in instances where the Town Council has adopted a zoning request in such a manner that a project development is to follow permission to extend the zoning;~~

~~———— (e) Determine the location of a district boundary where doubt exists as to the location of same on the zoning map;~~

~~———— (f) Modify the Zoning Administrator's protective requirements in instances where a district use is conditional upon certain stipulations to be specified by the Zoning Administrator; and~~

~~———— (g) Grant the Zoning Administrator clearance to issue a building permit where the applicant has failed to secure such prior to commencing construction (but only in cases where the Zoning Administrator or Building Official has chosen to allow the application to be filed prior to court action).~~

(D) *Hearing applications.* Hearing applications shall be filed IN WRITING in the office of the Zoning Administrator on forms provided therefor by any person or by any officer, department, board or bureau of the town affected by any order or decision of the Zoning Administrator within 30 days thereafter, and specifying the grounds thereof; or for rulings on other matters of Town Council jurisdiction.

(1) An appeal shall stay all proceedings in the matter appealed unless the Zoning Administrator certifies to the Board that, by reason of the fact stated in his or her approval letter, a stay would (in his or her opinion) cause imminent peril to life or property. In this case, proceedings shall not be stayed except by restraining order granted ~~by the Board or~~ by a court of record on application and notice to the Zoning Administrator.

(2) IN ADDITION TO ANY OTHER REQUIREMENTS SPECIFIED, APPLICATIONS FOR A varianceS SHALL AT A MINIMUM INCLUDE THE FOLLOWING ~~appeal applicant should be prepared to show that:~~

(a) EVIDENCE SHOWING WHY, DUE TO ~~There are special~~ circumstances or conditions applicable to the property of application, INCLUDING ITS SIZE, SHAPE, TOPOGRAPHY, LOCATION OR SURROUNDINGS, ~~or to the adjacent property, or to the neighborhood, that justify variance from the requirements so that~~ strict application thereof THE ZONING ORDINANCE WOULD DEPRIVE THE PROPERTY OWNER OF PRIVILEGES ENJOYED BY OTHER PROPERTY OWNERS OF THE SAME CLASSIFICATION IN THE SAME ZONING DISTRICT; ~~would work an unnecessary hardship and that the granting of the request is necessary for preservation and enjoyment of substantial property rights; and/or~~

(b) EVIDENCE SHOWING THAT THE VARIANCE WILL NOT CONSTITUTE A GRANT OF SPECIAL PRIVILEGES INCONSISTENT WITH LIMITATIONS UPON OTHER PROPERTIES IN THE VICINITY AND DISTRICT IN WHICH THE PROPERTY IS LOCATED; AND

(c) EVIDENCE THAT THE SPECIAL CIRCUMSTANCES APPLICABLE TO THE PROPERTY WERE OR ARE NOT SELF-IMPOSED BY THE PROPERTY OWNER; AND

(d) EVIDENCE SHOWING WHY ~~The granting~~ THE VARIANCE SUBSTANTIALLY MEETS THE INTENT AND PURPOSE OF THE ZONING DISTRICT IN WHICH THE PROPERTY IS LOCATED AND will not ~~materially~~ DETRIMENTALLY affect the health or safety of the neighborhood residents or the public welfare or be injurious to property or improvements.

(E) *Hearings and rulings.* The Board of Adjustment shall hold at least one public hearing, within a reasonable time from the date of application, after giving a minimum of 15 days' notice thereof to parties of interest and the public by posting at the property of application (if property is involved) and by publishing once in a newspaper of general circulation in the ~~county~~ TOWN. The Board of Adjustment shall render a decision within 30 days after the initial hearing on same, unless an extension is agreed to by the Board and the applicant.

(1) In approving an application, in all or in part, the Board of Adjustment may ~~designate such~~ IMPOSE REASONABLE conditions ~~in conjunction therewith that will, in its opinion,~~ NECESSARY TO ~~secure substantially~~ ACHIEVE the GENERAL PURPOSES AND objectives of this chapter and PROTECT THE PUBLIC HEALTH, SAFETY AND GENERAL WELFARE OR TO ENSURE OPERATION AND MAINTENANCE OF THE USE IN A MANNER COMPATIBLE WITH EXISTING AND POTENTIAL USES ON ADJOINING PROPERTIES OR IN THE SURROUNDING AREA ~~may require guarantees in such form as it deems proper under the circumstances to ensure that the condition be complied with. Where any~~ IF such conditions are violated or not complied with, UPON NOTICE TO THE PROPERTY OWNER BY THE ZONING ADMINISTRATOR, A HEARING SHALL BE HELD AND, IF

THE VIOLATION IS SUSTAINED, the approval shall cease MAY BE REVOKED and the Zoning Administrator shall act accordingly.

~~(2) In granting of permission to proceed on a specific development scheme or of a permit for a construction variance, the same shall be contingent upon permits being obtained and work commenced within six months and being diligently pursued. Failure of such shall void the ruling unless a longer time had been granted or an extension in time is secured.~~

(32) The concurring vote of ~~three~~FOUR members shall be necessary to render a ruling, UNLESS OTHERWISE REQUIRED BY STATE LAW OR THE TOWN ZONING ORDINANCE.

(3) DECISIONS OF THE BOARD OF ADJUSTMENT MAY BE APPEALED TO THE SUPERIOR COURT WITHIN 30 DAYS OF THE DECISION BY THE BOARD.

\* \* \*

Section II. Savings Clause

If any section, subsection, sentence, clause, phrase, or portion of this Ordinance as amended 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 remainder of this Ordinance.

Section III. Repeal of Conflicting Ordinance

All other code provisions, ordinances, or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed as of the effective date hereof.

Section IV. Penalties

Any person found responsible for violating any provision of this Ordinance shall be subject to the civil sanctions and habitual offender provisions set forth in Section 10.99 of the Dewey-Humboldt Code of Ordinances

**PASSED AND ADOPTED** by the Mayor and Common Council of the Town of Dewey-Humboldt, Arizona, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by the following vote:

AYES: \_\_\_\_\_

NAYES: \_\_\_\_\_ ABSENT: \_\_\_\_\_

EXCUSED: \_\_\_\_\_ ABSTAINED: \_\_\_\_\_

APPROVED this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Terry Nolan, Mayor

ATTEST:

\_\_\_\_\_  
Judy Morgan, Town Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Curtis, Goodwin, Sullivan, Udall & Schwab, P.L.C.  
Town Attorneys  
By Susan D. Goodwin

I, JUDY MORGAN, TOWN CLERK, DO HEREBY CERTIFY THAT A TRUE AND CORRECT COPY OF THE ORDINANCE NO. \_\_\_\_\_ ADOPTED BY THE COMMON COUNCIL OF THE TOWN OF DEWEY-HUMBOLDT, ARIZONA ON THE \_\_\_\_ DAY OF \_\_\_\_\_, 201\_, WAS POSTED IN THREE PLACES ON THE \_\_\_\_ DAY OF \_\_\_\_\_, 201\_.

\_\_\_\_\_  
Judy Morgan, Town Clerk



Fiftieth Legislature - Second Regular Session

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### 9-462.06. [Board of adjustment](#)

A. The legislative body shall, by ordinance, establish a board of adjustment, which shall consist of not less than five nor more than seven members appointed by the legislative body in accordance with provisions of the ordinance, except that the ordinance may establish the legislative body as the board of adjustment. The legislative body may, by ordinance, delegate to a hearing officer the authority to hear and decide on matters within the jurisdiction of the board of adjustment as provided by this section, except that the right of appeal from the decision of a hearing officer to the board of adjustment shall be preserved.

B. The ordinance shall provide for public meetings of the board, for a chairperson with the power to administer oaths and take evidence, and that minutes of its proceedings showing the vote of each member and records of its examinations and other official actions be filed in the office of the board as a public record.

C. A board of adjustment shall hear and decide appeals from the decisions of the zoning administrator, shall exercise such other powers as may be granted by the ordinance and adopt all rules and procedures necessary or convenient for the conduct of its business.

D. Appeals to the board of adjustment may be taken by persons aggrieved or by any officer, department, board or bureau of the municipality affected by a decision of the zoning administrator, within a reasonable time, by filing with the zoning administrator and with the board a notice of appeal specifying the grounds thereof. The zoning administrator shall immediately transmit all records pertaining to the action appealed from to the board.

E. An appeal to the board stays all proceedings in the matter appealed from, unless the zoning administrator certifies to the board that, in the zoning administrator's opinion by the facts stated in the certificate, a stay would cause imminent peril to life or property. Upon such certification proceedings shall not be stayed, except by restraining order granted by the board or by a court of record on application and notice to the zoning administrator. Proceedings shall not be stayed if the appeal requests relief which has previously been denied by the board except pursuant to a special action in superior court as provided in subsection K of this section.

F. The board shall fix a reasonable time for hearing the appeal, and shall give notice of hearing by both publication in a newspaper of general circulation in accordance with section 9-462.04 and posting the notice in conspicuous places close to the property affected.

G. A board of adjustment shall:

1. Hear and decide appeals in which it is alleged there is an error in an order, requirement or decision made by the zoning administrator in the enforcement of a zoning ordinance adopted pursuant to this article.
2. Hear and decide appeals for variances from the terms of the zoning ordinance only if, because of special circumstances applicable to the property, including its size, shape, topography, location, or surroundings, the strict application of the zoning ordinance will deprive such property of privileges enjoyed by other property of the same classification in the same zoning district. Any variance granted is subject to such conditions as will assure that the adjustment authorized shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is located.
3. Reverse or affirm, wholly or partly, or modify the order, requirement or decision of the zoning administrator appealed from, and make such order, requirement, decision or determination as necessary.

H. A board of adjustment may not:

1. Make any changes in the uses permitted in any zoning classification or zoning district, or make any changes in the terms of the zoning ordinance provided the restriction in this paragraph shall not affect the authority to grant variances pursuant

to this article.

2. Grant a variance if the special circumstances applicable to the property are self-imposed by the property owner.

I. If the legislative body is established as the board of adjustment, it shall exercise all of the functions and duties of the board of adjustment in the same manner and to the same effect as provided in this section.

J. In a municipality with a population of more than one hundred thousand persons according to the latest United States decennial census, the legislative body, by ordinance, may provide that a person aggrieved by a decision of the board or a taxpayer, officer or department of the municipality affected by a decision of the board may file, at any time within fifteen days after the board has rendered its decision, an appeal with the clerk of the legislative body. The legislative body shall hear the appeal in accordance with procedures adopted by the legislative body and may affirm or reverse, in whole or in part, or modify the board's decision.

K. A person aggrieved by a decision of the legislative body or board or a taxpayer, officer or department of the municipality affected by a decision of the legislative body or board may, at any time within thirty days after the board, or the legislative body, if the board decision was appealed pursuant to subsection J of this section, has rendered its decision, file a complaint for special action in the superior court to review the legislative body or board decision. Filing the complaint does not stay proceedings on the decision sought to be reviewed, but the court may, on application, grant a stay and on final hearing may affirm or reverse, in whole or in part, or modify the decision reviewed.