

ORDINANCE NO.

INTRODUCTION OF AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COTATI REPLACING IN ITS ENTIRETY COTATI MUNICIPAL CODE CHAPTER 3.28, CLAIMS AGAINST CITY

WHEREAS, Cotati Municipal Code (CMC) Chapter 3.28 was adopted by the City Council in 1963 as Ordinance No. 3, and was subsequently amended by Ordinance No. 603 in 1993, Ordinance No. 732 in 2002, and Ordinance No. 832 in 2011; and

WHEREAS, City staff has proposed replacing current Chapter 3.28 in its entirety with new provisions intended to provide more procedural details that are aligned with current best practices in claims management; and

WHEREAS, the action of replacing Chapter 3.28 in its entirety with the recommended provisions regarding claims management does not constitute a “project” as defined by California Environmental Quality Act (CEQA) Guidelines Section 15378, and therefore no further environmental review is required.

NOW THEREFORE THE CITY COUNCIL OF THE CITY OF COTATI DOES ORDAIN AS FOLLOWS:

SECTION 1. Recitals Made Findings. The above recitals are hereby declared to be true and correct findings of the City Council of the City of Cotati and are incorporated herein by reference.

SECTION 2. Chapter 3.28 “Claims Against City”, shall be replaced in its entirety as follows:

**Chapter 3.28
CLAIMS AND DEMANDS AGAINST CITY**

Sections:

- 3.28.010 State provisions and applicability of chapter.
- 3.28.020 Presentation of claims – Prerequisite for bringing suit.
- 3.28.030 Authority of city manager.
- 3.28.040 Contents of claim – Review for sufficiency.
- 3.28.050 Time limitation for presentation of claims.
- 3.28.060 Time for action by city.
- 3.28.070 Application to file a late claim.
- 3.28.080 Time barred claim.
- 3.28.090 Effective date of chapter.
- 3.28.100 No enjoining collection of taxes, assessments, or fees/payments required as condition to filing suit.

3.28.010 State provisions and applicability of chapter.

The provisions of this chapter recognize that the general claim procedures applicable to the city

and all local public agencies are governed by the provisions of the California Government Code, Part 3, Chapters 1 and 2 of Division 3.6, commencing with Section 900 and following. The provisions of this chapter are enacted pursuant to the authority contained in Government Code Section 935 and shall apply to all claims against the city for money or damages, including all claims which are excepted by Government Code Section 905; provided, that such claims are not governed by any other statutes, ordinances or regulations.

3.28.020 Presentation of claims – Prerequisite for bringing suit.

No suit subject to this chapter may be brought against the city until a claim has been presented to and acted upon by the city, pursuant to the provisions of Government Code Section 945.4. Any action brought against the city on a claim after it has been presented to and acted upon by the city shall be subject to the provisions of Government Code Sections 945.6 and 946. Any action brought against any employee of the city of Cotati shall conform to the requirements of Sections 950 through 951 of the California Government Code. Only the person who filed the claim may bring such action, and if another person should do so, judgment shall not be rendered for the plaintiff.

3.28.030 Authority of city manager.

Pursuant to Government Code Section 935.4, the city council delegates authority to the city manager and his/her designees to review all claims for sufficiency and to reject any and all claims. The city council delegates to the city manager, or his or her designee, authority to allow, compromise, or settle claims, including workers' compensation claims, for an amount up to and including \$25,000. The city council shall have sole authority to allow, compromise, or settle claims for an amount in excess of \$25,000.

3.28.040 Contents of claim – Review for sufficiency.

A claim shall be in writing, verified by the claimant or by his or her guardian, conservator, executor or administrator, and shall be presented to the city clerk by the claimant or by a person acting on the claimant's behalf. The claims shall show all information as required by Government Code Section 910. The foregoing reference to Government Code Section 910 shall not be construed to authorize a class action, and no claim may be filed on behalf of a class of persons unless verified by every member of that class. The city manager, or his or her designee, shall review all claims for sufficiency of information. The city manager, or his or her designee, may, within 20 days of receipt of a claim, either personally deliver or mail to claimant a notice stating deficiencies in the claim presented. If such notice is delivered or sent to claimant, the city shall not act upon the claim until at least 15 days after such notice is sent.

Pursuant to Section 930.2 of the California Government Code, the city may enter into written agreements containing provisions governing the presentation of claims including, but not limited to, time limitations. The provisions of this chapter shall apply to all claims arising out of written agreements except to the extent the provisions of a written agreement conflict with the terms of this chapter, in which case the provisions of the written agreement shall control.

3.28.050 Time limitation for presentation of claims.

Pursuant to Government Code Section 911.2, any claim specified in Section 3.28.010 shall be presented within the following time limitations:

- A. Claims relating to a cause of action for death, injury to person or to personal property or growing crops shall be presented within six months after the accrual of the cause of action.
- B. Claims relating to any other cause of action shall be presented within one year after the accrual of the cause of action.

3.28.060 Time for action by city.

Pursuant to Government Code Section 912.4, the city council or city manager or his or her designee, as applicable, shall act on a claim within 45 days after the claim has been presented. By mutual agreement of the claimant and the city council or city manager or his or her designee, as applicable, such 45-day period may be extended by written agreement. If the claim is not acted on within 45 days, it shall be deemed to have been rejected on the forty-fifth day unless such time period has been extended, in which case it shall be denied on the last day of the period specified in the extension agreement.

3.28.070 Application to file a late claim.

Any applicant who fails to file a claim within the time period required by Section 3.28.050 may submit a written application to the city for leave to present a late claim, pursuant to the provisions of Government Code Section 911.4. The city manager, or his or her designee, shall grant or deny the application to present a late claim within 45 days after it is presented to the city, in accordance with the provisions of Government Code Sections 911.6 through 912.2, inclusive.

3.28.080 Time barred claim.

Nothing in this chapter revives or reinstates any cause of action that, on the effective date of this chapter, is barred by failure to comply with any previously applicable statute, ordinance, or regulation requiring the presentation of a claim prior to a suit subject to this chapter, or by failure to commence any action thereon within the period prescribed by an applicable statute of limitations.

3.28.090 Effective date of chapter.

Subject to Section 3.28.080, the provisions of this chapter shall apply retroactively to any causes of action occurring prior to the effective date of the ordinance codified in this chapter; provided, however, that a claimant who has a cause of action occurring more than 10 months before the effective date of the ordinance codified in this chapter shall file a claim within 60 days after this chapter's effective date in accordance with its provisions or such claim shall be barred.

3.28.100 No enjoining collection of taxes, assessments, or fees/payments required as condition to filing suit.

Notwithstanding any other provision of this code, no injunction, writ of mandate or other legal or equitable process shall issue in any suit, action or proceeding in any court against the city or an officer thereof, to prevent or enjoin the collection of taxes, assessments, or fees (whether established by ordinance, resolution or other action of the city) which are sought to be collected from any person by the city, or are otherwise due and owing from any person to the city pursuant

to this code or otherwise, and payment of all said taxes, assessments, fees, plus any interest and penalties, shall be required as a condition precedent to seeking judicial review of any tax, assessment or fee liability. For purposes of this section, the term “city” shall include but not be limited to any agency, district or entity formed or governed by the city.

SECTION 3. Severability. The provisions of this ordinance are severable and if any provision, clause, sentence, section, word or part thereof is held to be illegal, unconstitutional or inapplicable to any person or circumstance, such illegality, unconstitutionality or inapplicability shall not affect or impair any of the remaining provisions, clauses, sentences, sections, words or parts thereof of this ordinance or their applicability to other persons or circumstances.

SECTION 4. Posting. The City Clerk shall cause this ordinance to be published and/or posted within fifteen days after its adoption.

SECTION 5. Effective Date. This ordinance shall take effect 30 days following its adoption.

Approved: _____
Mayor

Attest: _____
Lauren Berges, Deputy City Clerk

Approved as to form:

Robin Donoghue, City Attorney

This document is a true and correct copy of Ordinance Number and has been published or posted pursuant to law. *California Government Code § 40806*

Lauren Berges, Deputy City Clerk