



City Council Agenda Item

City Council Meeting Date: August 20, 2019

TO: Honorable Mayor and City Council Members

FROM: Jeff Malawy, City Attorney
jmalawy@awattorneys.com

SUBJECT: Appeals Procedures in the Lompoc Municipal Code

Recommendation:

Staff recommends the City Council review the following informational report and provide direction, as desired.

Background:

At the March 19, 2019, City Council meeting, a City Council request was made for a staff report regarding appeals procedures contained in the Lompoc Municipal Code (LMC).

Discussion:

There are various appeals procedures contained in the LMC summarized sequentially as follows:

General Appeal Provision

For matters where there is no other appeal provision provided, an appeal may be presented by filing a notice of appeal with the City Clerk within 10 days of receipt of the decision. The City Clerk shall place the matter on the next available City Council meeting for hearing. The general appeal provision does not apply to any *ministerial* administrative decision made by an official of the City pursuant to any of the provisions of any rule, regulation, or policy of the City. The appeal process does not apply to any court procedure, civil or criminal, initiated to enforce any provision of the LMC. The general appeal process does not apply to determinations on whether or not to hire an employee. (LMC 1.32.010)

Administrative Penalties

To appeal administrative penalties imposed in connection with any violation of any provision, restriction, or requirement of the LMC, any ordinance of the City, any rule or

regulation, or any condition of any permit, the alleged violator may appeal to the City Manager by filing a letter of appeal within ten calendar days of the assessment of the fine. The City Manager, or a designee, must hold a hearing within 20 business days. The City Manager's decision is final. (LMC 1.36.070)

Transient Occupancy Tax (TOT)

When an operator fails to collect TOT, the Tax Administrator shall give notice of the amount assessed. The operator may, within ten days of the notice, make application in writing to the Tax Administrator for a hearing. Upon receiving notice of the Tax Administrator's hearing decision, an operator may appeal to the City Council by filing a notice of appeal with the City Clerk within 15 days. The finding of the City Council is final. (LMC 3.12.080, 3.12.090)

Cost Recovery

Any person aggrieved by a decision of the Chief of Police concerning emergency services cost recovery may appeal to the City Council. (LMC 3.32.060)

Purchasing

Any protestor to a formal bid may appeal in writing the decision of the procurement staff to an Administrative Hearing Officer within seven days. (LMC 3.36.170) If the protested procurement involves Federal funds, then the protestor has a right to appeal to the appropriate Federal agency, within seven days. (LMC 3.36.170 H.)

Cannabis Taxes

If the Management Services Director is not satisfied that a filed tax statement is correct, or that the amount of tax is correctly computed, then they may make a deficiency determination. Within ten days after the date of service of a determination, the person may apply in writing to the Management Services Director for a hearing before an independent hearing officer. Within 30 days after the receipt of an application for hearing, the Management Services Director shall set a hearing before the independent hearing officer. No later than ten days after the conclusion of the hearing, the hearing officer shall submit its decision to the City Clerk. The decision of the hearing officer is final. (LMC 3.50.090)

Airports

Any person who objects to a ruling of the Aviation/Transportation Administrator may, within 15 days of the ruling, appeal it to the Airport Commission. Decisions of the Commission may be appealed to the City Council within 15 days by either the appellant or the Aviation/Transportation Administrator. (LMC 4.04.100)

Business Licenses and Regulation

Any person aggrieved with respect to issuance or refusal of a business tax receipt may appeal to the City Council by filing a request with the City Clerk. (LMC 5.04.150)

Any person dissatisfied with the determination relative to application for permit or license, or the revocation or suspension of any business and activities permit, may appeal to the City Council by filing a request to the City Clerk within ten days. The City Council shall hear the appeal within 30 days. (LMC 5.08.190)

Whenever it appears to the City Clerk that a licensee is conducting a bingo game in violation of any of the provisions of law or the LMC, the City Clerk shall summarily suspend the license. The licensee shall have five days to request a hearing. The City Clerk shall provide a hearing within ten days. They may then appeal the decision of the City Clerk to the City Council. (LMC 5.16.050)

Any person denied a permit for a dance hall or cabaret, or when such a permit is revoked, may appeal to the City Manager or a designee within ten days. An appeal of the City Manager's decision may be made within ten days to the City Council. (LMC 5.20.060, 5.20.070)

Any person objecting to any denial, suspension or revocation of a pawnbrokers permit may appeal to the City Council by filing notice with the City Clerk within 14 days. The City Council's findings shall be final. (LMC 5.32.060)

In the event any taxi owner's permit is suspended, terminated, or not renewed, or any person whose application for a taxi driver's permit or request for its renewal has been denied, or any driver whose permit has been revoked by the Chief of Police, they may appeal within ten days to the City Clerk and a hearing shall be held before the City Council. (LMC 5.36.150, 5.36.190, 5.36.250)

After denial of an application for an adult business regulatory permit, or an adult business employee license, or after denial of renewal of a permit or license, or suspension or revocation of a permit or license, the applicant may seek prompt review by the City Council by filing an appeal within ten days. If the denial, suspension or revocation is affirmed on review, the applicant, permittee or licensee may seek prompt judicial review. (LMC 5.40.090)

If a permit for a massage parlor or technician is denied, then that decision may be appealed to the City Manager within ten days. The City Manager's decision may then be appealed to the City Council within 10 days. The decision of the City Council is final. (LMC 5.44.150, 5.44.160)

In the event the Fire Department denies an application for an alarm system permit for any reason, the applicant may appeal that decision to the City Council within ten days. (LMC 5.48.040)

The City Manager or designee will provide a state video franchise holder with written notice of any material breach of applicable customer service and protection standards, and will allow the franchise holder at least 30 calendar days to remedy the breach. The franchise holder may appeal any imposition of penalties to the City Manager within 30 calendar days by writing to the City Clerk. The City Manager's decision is final. (LMC 5.66.040)

Any applicant or licensee may appeal a refusal to issue a concealable firearms retail sales license pursuant to Section 5.08.190. (LMC 5.72.010)

Dogs

Whenever a dog is subject to mandatory sterilization, the owner may request a public hearing before the Hearing Officer within ten days. The Hearing Officer's determination may be appealed within 10 calendar days to the City Manager. The decision of the City Manager is final. (LMC 6.08.310)

Solid Waste

Upon receipt of a completed application for a permit to provide unscheduled solid waste handling services a decision to issue or not to issue the permit shall be made by the Utility Director within 30 days. If the Director recommends the suspension, amendment, or revocation of a permit, then the applicant may request a hearing before the City Council within 15 calendar days. The decision of the City Council is final. (LMC 8.04.190)

Sales of Safe and Sane Fireworks

The Fire Chief may revoke the permit of any qualified applicant who violates any provision of Chapter 8.28. If the revocation occurs between June 22nd and July 5th, the qualified applicant may seek review of the decision by the City Manager on the next City business day. The decision of the City Manager shall be final. If the revocation occurs before or after the specified period, then the revocation shall not take effect for five days, during which time the qualified applicant may seek review of the Fire Chief's, decision by submitting a written request for review to the City Manager. The decision of the City Manager is final. (LMC 8.28.110)

Citations for Violation of Safe and Sane Fireworks

A citee may contest a citation by filing a request for an administrative hearing on a City-approved form with the City Clerk within 30 calendar days after the issuance date of a citation. A decision of the hearing officer may be appealed to the City Manager by filing a notice of appeal with the City Clerk within 20 calendar days after the date of service of the decision. The City Manager shall conduct an appeal hearing. The City Manager's decision is final. (LMC 8.28.160)

Cannabis Use License Denial or Revocation

The City Manager's decision to deny a commercial cannabis use license is appealable to the City Council within ten days of the denial by filing an appeal with the City Clerk. (LMC 9.36.080)

Any decision to revoke a commercial cannabis use license may be appealed to the City Manager, by filing a written appeal with the City Clerk within ten calendar days after the date the license was revoked. The appeal hearing shall be held within 60 days. The City Manager's decision may be appealed within ten days, and a hearing before the City Council must be scheduled at the next available regular City Council meeting. (LMC 9.36.130)

Social Hosts

Any person upon whom a civil penalty is imposed concerning social hosts may file a written appeal with the City within ten working days. The hearing shall be set no sooner than 20 days and no later than 45 days. The decision of the hearing examiner shall constitute the final administrative order or decision of the local agency within the meaning of Government Code Section 53069.4(b)(1). (LMC 9.40.060)

Removal of Abandoned Vehicles LMC Chapter 10.44

Within ten days of the receipt of an intention for removal of an abandoned vehicle, the owner may request a public hearing by the City Manager. The City Manager's decision may be appealed to the City Council within five days of the hearing or the date the notice of decision is mailed. (LMC 10.44.090)

Streets, Sidewalks, and Public Places

In the event an applicant wishes to appeal the Public Works Director's decision to deny an application for, or revoke, an encroachment permit, the decision may be appealed to the City Council within ten days. (LMC 12.12.020)

A decision by the Community Development Director or Planning Commission concerning street dedication and improvement as a condition of a building permit may be appealed to the City Council by request to the City Clerk. The decision of the City Council is final. (LMC 12.28.070)

Trees

Any person may appeal a decision made with respect to Chapter 12.32 (Trees) by submitting request to the City Clerk within ten days of the decision or action. (LMC 12.32.100)

Sewer System

Requests for reconsideration of the decisions made by the Utility Director concerning provisions of LMC Chapter 13.16 (Sewer System) must be submitted to the Utility Director within 15 working days. The Director then has 15 working days to rule. If the user is dissatisfied with that ruling, then they may appeal to the City Council by submitting a request to the City Clerk within 10 working days of the Utility Director's ruling on the request for reconsideration. The City Clerk then must set the matter for hearing before the City Council within 60 days. The ruling of the City Council is final. (LMC 13.16.140)

Unreinforced Masonry Buildings Code

Any person having a legal or equitable interest in a building identified as potentially hazardous may appeal such classification to the City Council. All appeals shall comply with the appeals provisions of the Uniform Code for the Abatement of Dangerous Buildings 1997 Edition. (LMC 15.40.020)

Floodplain Management

The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation. (LMC 15.48.070, 15.48.090)

Permit to Commence Construction on Unsubdivided Land

An applicant may appeal the decision of the Planning Commission concerning a permit to commence construction on unsubdivided land to the City Council within 10 days from the date of the Commission action. The City Council shall render its decision within 30 days. (LMC 15.56.060)

Buildings and Construction

Any person adversely affected by a decision of the City in enforcing the California Residential Code or the California Building Standards Code may appeal to the City Council.¹ (LMC 15.04.010, 15.08.010; Cal. Building Code Chapter 1.8.8)

If the City denies a request to use an alternate means of fire protection, the applicant may file a written appeal with the State Fire Marshall. (LMC 15.04.010, 15.08.010, 15.12.010; Cal. Residential Code Section 1.11.2.5; Cal. Building Code Section 1.11.2.5; Cal. Fire Code Section 1.11.2.5)

Appeals of orders, decisions, and determinations made by the fire code officer regarding the application or interpretation of the California Fire Code may be made to the Board of Appeals, which shall be designated by the City Council. Boardmembers must be qualified

¹ The City may establish an appeals board, but if it does not, the City Council serves as the appeals board. (Cal. Building Code 1.8.8.1.) Lompoc has not established an appeals board, so the City Council is the default appeals board.

and have relevant knowledge or expertise. (LMC 15.12.010; Cal. Fire Code Section 108 and Appendix A)

Appeals of orders made by the Building Official with respect to the Uniform Housing Code or the Uniform Code for Abatement of Dangerous Buildings must be filed with 30 days and set for hearing before the Housing Advisory and Appeals Board.² The hearing must take place within 60 days. The specific details of the hearing are described in Section 1201 of the Uniform Housing Code. (LMC 15.32.010, 15.36.010; Uniform Housing Code Section 1201; Uniform Code for Abatement of Dangerous Buildings Section 501)

If a person receiving a summary of costs related to processing violations and enforcements of Chapter 15.72 disputes the costs, then they may request to meet with the Building Official to discuss that summary, if that request is made in writing to the Building Official within ten days. The Building Official shall schedule a meeting within 30 calendar days. The Building Official's determination may be appealed pursuant to the general appeal procedure in LMC Chapter 1.32. (LMC 15.72.160, 15.72.420)

If an applicant is dissatisfied with a determination by the Building Official concerning grading permits, then they may appeal in writing within ten days as required by Section 1.32.010; provided that whenever that section refers to: (1) the City Council, it shall be deemed to mean the Public Works Director; (2) the City Clerk, it shall mean the Public Works Director's Secretary; and (3) a public hearing, it shall be deemed to mean an administrative hearing conducted by the Public Works Director. If a permittee is dissatisfied by the decision of the Building Official with regard to suspension of a grading permit, or the determination of costs, fees, and penalties assessed by the Building Official, then they may appeal in the same manner. (LMC 15.72.160, 15.72.310, 15.72.410)

Electric Vehicles Charging Station Permit

Decisions of the Building Official concerning electric vehicles charging station permits may be appealed to the Planning Commission. A written appeal must be filed with the City Clerk within 10 business days after the issuance of the decision of the Building Official. (LMC 15.76.080)

Subdivisions

Decisions of the Subdivision Review Board³ may be appealed in writing to the Planning Commission and be heard within 30 days. (LMC 16.16.040)

² The Housing Advisory and Appeals Board consists of members who are qualified by experience and training to pass upon matters pertaining to building construction and who are not employees (UHC 203.1).

³ Subdivision Review Board members consist of Fire Marshall/Building Official, Community Development Director or designee, City Engineer, Water Superintendent, Fire Chief, Electric Utility Manager, Park and Recreation Director, City Attorney and other department heads as requested by the Community Development Director or designee (LMC 16.04.050).

Decisions of the Planning Commission may be appealed as follows:

- A. “A subdivider may, within 15 days, appeal from any action of the Planning Commission with respect to a tentative map or parcel map to the City Council, as provided by Government Code Section 66452.5. Such appeal and the hearing thereon shall be conducted in the manner provided by Government Code Sections 66452.5(a) and (b).
- B. Any interested person adversely affected by a decision of the Planning Commission may file a complaint with the City Council concerning such decision. Any such complaint shall be filed within fifteen days or set the matter for public hearing. If the City Council rejects the complaint, the complainant shall be notified of such action. If the matter is set for hearing, the hearing shall be conducted and notice thereof given as provided by Government Code Section 66451.3.” (LMC 16.32.010)

If an application for a one-year extension vesting map is denied, the subdivider may appeal that denial to the City Council within 15 days. (LMC 16.40.090)

Zoning

“Decisions of the Community Development Director (or designee) on the issuance, revocation, or modification of discretionary permits may be appealed to the Planning Commission, as follows:

- A. The appeal, which shall be in writing on the City appeal form, must be filed with the Planning Division within ten business days after the date of the decision and accompanied by the appeal fee established by the City Council...
- C. The matter shall be placed on the next available agenda for a public hearing noticed as provided in California Government Code Sections 65090 and 65091. The Planning Division shall prepare a staff report transmitting the appeal...” (LMC 17.006.020)

“Decisions of the Planning Commission may be appealed to the City Council by the applicant or any interested person adversely affected by the decision, as follows:

- A. The appeal, which shall be in writing on the City appeal form, must be filed with the City Clerk within ten calendar days after the date of the Planning Commission’s decision, accompanied by the appeal fee established by the City Council...
- C. Following receipt of the appeal, the ... matter shall be placed on the next available agenda for a public hearing noticed as provided in California Government Code Sections 65090 and 65091. The Planning Division shall prepare a staff report transmitting the appeal...

- E. Except as otherwise provided in Section 17.132.060(C), recommendations of the Planning Commission which are required to be forwarded to the City Council for its consideration as part of the normal review process are not appealable.” (LMC 17.006.030)

An applicant may appeal a decision of the Planning Commission concerning specific development criteria to the City Council in accordance with LMC 17.006.030. (LMC 17.052.070)

The decision of the Planning Commission whether to approve a development plan shall be subject to appeal to the City Council in accordance with LMC 17.006.030. (LMC 17.068.030)

If an applicant is aggrieved by the decision of the Community Development Director with respect to Architectural Review, the decision may be appealed in accordance with LMC 17.006.030. (LMC 17.104.060, 17.104.070)

A final decision for a sign permit may be appealed in compliance with Chapter 17.006; however, the appeal hearing shall be set no later than 30 days after the appeal is filed. (LMC 17.108.030)

A decision to grant a temporary food services Special Use Permit is final and not appealable. (LMC 17.130.050)

The decision to revoke a food services Special Use Permit may be appealed to the City Council, but only for the City Council to determine whether the conditions of the food services Special Use Permit and LMC Chapter 17.130 were followed. While the appeal is pending, no food services shall be conducted on the subject property or by that permittee. (LMC 17.130.060)

Decisions of the Zoning Administrator (or designee) may be appealed to the Planning Commission in accordance with LMC 17.006.030. (LMC 17.136.050)

Denial of an adult business regulatory permit may be appealed in accordance with the general appeal provision at LMC 1.32.010. (LMC 17.137.090)

A Planning Commission recommendation for approval of a change of zone and/or amendment will proceed to the City Council for public hearing. The City Council is not required to take further action regarding a request for a change of zone and/or amendment if the Planning Commission recommends against such modification or rezoning, unless an interested party requests a hearing by filing an appeal pursuant to Section 17.006.030. The City Council shall hold one public hearing and may hold additional hearings. If, however, the report from the Planning Commission recommends against such modification or rezoning, then the City Council shall not be required to take any further action unless an interested party requests a hearing by filing a written request with the City Clerk within ten days after the Planning Commission files its

recommendations with the City Council. A written request calling for a hearing before the City Council shall be deemed as an appeal of the action of the Planning Commission and shall be filed in accordance with LMC 17.006.030. (LMC 17.132.040, 17.132.050)

Decisions or interpretations of the Zoning Ordinance by the Community Development Director may be appealed in accordance with LMC 17.006.030. (LMC 17.144.030)

If the Planning Commission denies a revised Interim Management Plan, then the operator may appeal to the City Council in accordance with Section 17.006.030. (LMC 17.160.110)

A decision by the Community Development Department with respect to surface mining and reclamation may be appealed in accordance with LMC 17.006.030. (LMC 17.160.150)

Fiscal Impact:

While many of the appeals provisions provide for the setting of fees, the following are the only fees for appeals currently provided for in the Master Fee Schedule:

Planning:	Appeal of Commission Decision to City Council	\$257.80
Planning:	Appeal of Staff Decision to Planning Commission	\$257.80

Conclusion:

Staff can provide further information on City appeal procedures, if desired.

Respectfully submitted,



Jeff Malawy, City Attorney