



## City Council Agenda Item

**City Council Meeting Date:** January 7, 2020

**TO:** Honorable Mayor and Members of the City Council

**FROM:** Jeff Malawy, City Attorney  
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**SUBJECT:** Amendment to the Lompoc Municipal Code to Standardize Appeal Procedures and Appeal Timelines; Introduction of Ordinance No. 1673(20)

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### **Recommendation:**

Staff recommends the City Council:

- 1) Consider whether to introduce for first reading, by title only, Ordinance No. 1673(20) (attached) to standardize the appeal procedures and appeal timelines under the Lompoc Municipal Code;
- 2) Consider whether to direct staff to present a Zoning Code amendment to the Planning Commission to similarly standardize timelines for planning and zoning code appeals; and
- 3) Consider whether to direct staff to submit a wastewater ordinance amendment to the Regional Water Quality Control Board to similarly standardize timelines for wastewater ordinance appeals.

### **Background:**

On August 20, 2019, the City Council considered a staff report describing all of the various appeal procedures provided in the Lompoc Municipal Code (LMC). Following discussion, the City Council passed a motion asking the City Attorney's Office to bring back a second staff report providing further analysis of certain issues raised by the City Council and providing a draft ordinance with proposed changes to the LMC that would address the City Council's concerns.

This report provides analysis of the questions raised by the City Council. A draft ordinance is attached to this report.

**Discussion:**

**City Council Direction**

The City Council directed staff as follows:

- Suggest changes to the LMC that would standardize the City's appeal process.
- Give appellants 20 business days to file an appeal of a City decision.
- Provide that notice of appealable decisions must provide information about the right to appeal and how to appeal.
- Analyze whether state law requires specific time periods for any particular appeals.
- Consider whether to create a "two-track" appeal timeline for Planning Commission decisions appealed to the City Council: 10 business days to appeal decisions that are favorable to the applicant; 20 business days to appeal decisions that are not favorable to the applicant.

**Proposed Ordinance**

The proposed ordinance, attached to this staff report, would do each of the following:

1. **Expand General Appeals Provisions in LMC Chapter 1.32.** The current appeals provisions in Chapter 1.32 would be expanded to create a comprehensive appeals ordinance governing all appeals under the LMC, with a few exceptions (explained below).
2. **Require Notice of Right to Appeal and Instructions for Filing Appeals.** All decisions made by the City that can be appealed under the LMC would be required to be in writing, to give notice of the right to appeal, and to clearly state the procedures and timelines for filing an appeal.
3. **Require Fee for Appeal.** All appeals would require the payment of a fee as established by City Council. The amount of the fee can be evaluated by the City Council at a later time, and can be approved by resolution. The City Council should direct staff whether it wishes to provide a fee reimbursement for successful appeals, and that can be added to the ordinance.
4. **Require Written Notice of Appeal.** All persons filing an appeal would have to do so by filing a written notice of appeal with the City Clerk, unless another person is explicitly designated by the LMC.

- 5. Establish Uniform Timeline for Appeals.** Unless otherwise explicitly provided by the LMC, or required by state law, all notices of appeal would need to be filed within 20 business days of the decision that is being appealed.

Exceptions to Standard Appeals Timeline

The proposed ordinance does not amend the following appeal timelines, for the reasons stated:

- 1. Planning & Land Use Appeals (Zoning Code).** The City's Zoning Code includes appeal provisions for planning and land use appeals (LMC Chapter 17.612 and 17.552.020). These generally have 10-calendar-day appeal deadlines. If the City Council desires to increase those appeal deadlines and/or create a two-track appeals process for planning decisions, this will require a Zoning Code amendment, which must be reviewed by the Planning Commission before coming to the City Council. Consequently, the proposed changes now before the City Council do not amend the appeal provisions for planning and land use decisions.

The City Council can direct staff to bring a Zoning Code amendment to the Planning Commission if it wishes to amend the planning and land use appeal provisions.

The two-track approach suggested by the City Council for planning and land use decisions is 10 business days to appeal decisions that are favorable to the applicant and 20 business days to appeal decisions that are not favorable to the applicant. This is permitted by law. However, the City Council should note it would be giving a shorter time period for citizens to appeal a project or approval the citizens oppose, and a longer time period for project applicants to appeal a City decision the applicant opposes.

- 2. Wastewater Ordinance Appeals.** The City's wastewater ordinance includes appeal provisions for wastewater appeals (wastewater discharge permit appeals, grease interceptor appeals, etc.) (LMC 13.16.140). Those have 15-business-day appeal deadlines. If the City Council desires to increase those appeal deadlines, approval by the Regional Water Quality Control Board is required before the City Council may adopt the amendment. The City Council can direct staff to submit a proposed amendment to the Regional Board to increase the wastewater appeal deadline if the City Council wishes.
- 3. Subdivision Map Act.** There is only one area of law covered by the LMC where state law requires a specific appeals timeline – namely, issues covered by the Subdivision Map Act. Those issues include the approval, conditional approval, denial, and extension of tentative maps. Pursuant to the Subdivision Map Act, appeals from decisions of the Planning Commission concerning the approval, conditional approval, or denial of a tentative map must be made within 10 days of the decision. Appeals of denials of requests for a time extension related to the validity of a tentative map or the rights under a vesting tentative map must be made within 15 days of the decision.

- 4. Bid Protests.** Bid protests regarding the award of a contract following a request for bids involve a quasi-appeal process. The City's current process is found in LMC section 3.36.170. That process requires protesters to (a) file a protest concerning the solicitation documents within 5 business days after the date the solicitation documents are issued or amended, or (b) file a protest concerning a notice of intent to award within within 5 business days after notice of intent to award is mailed.

Although this only gives protesters a fairly short period to file a protest, expanding this timeline to 20 business days would create significant delay in the City's purchasing process, since the City would not be able to award a contract until 20 business days after issuing the notice of intent to award. Consequently, staff recommends that the bid protest procedures not be revised.

- 5. DUI Cost Recovery By City.** Under LMC Chapter 3.32, the City may impose civil penalties on drivers involved in DUIs to which the City has to respond, in order to recover the costs incurred by the response. Such penalties are currently due to the City within 30 days and must be appealed with 30 days. The Finance Department recommends keeping these provisions unchanged, since 30 days is the industry standard. Consequently, the draft ordinance does not change the 30-day timelines for appeal of those penalties.
- 6. Firework Permit Revocation.** Under LMC 8.28.110(b), the revocation of a permit to sell fireworks must be appealed within 5 days of the revocation, during which time the revocation is stayed. Expanding the appeals period would therefore give the seller a longer time to operate after the permit was revoked, which would likely create a safety risk. Another option would be to make the revocation go into effect immediately, allow for an appeal within 20 business days, and then allow the permit to be reinstated if the appeal is successful. The current draft of the Ordinance included with this staff report has left these provisions unchanged, pending further direction from the City Council.

#### Additional Clean-Up Items

This comprehensive review of the Municipal Code provides an opportunity to address a few clean-up items. Thus, the draft ordinance also (a) changes all references to the "City Administrator" to the "City Manager," and (b) changes all references to "business tax receipt" to "business tax certificate," to reflect current conditions in the City.

#### Fiscal Impact:

Implementation of the ordinance provides no fiscal impact to the General Fund.

#### Conclusion:

The attached draft ordinance addresses the City Council's previous direction, provides an option for simplifying and clarifying the City's appeals procedures, and may be

introduced as is. Alternatively, staff can make revisions to the ordinance and/or provide further analysis as directed by the City Council.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Jeff Malawy", is written above a horizontal line.

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Jeff Malawy  
City Attorney

Attachment: Ordinance No.1673(20)