

RESOLUTION NO. 6399(21)

A Resolution of the City Council of the City of Lompoc, County of Santa Barbara, State of California, Denying Appeals by the Lompoc Artificial Kidney Center of the Utility Director's Rulings on Requests for Reconsideration Regarding Enforcement of the Certain Provisions of the Lompoc Municipal Code, Chapter 13.16 Due to Human Dialysis Waste Materials

WHEREAS, the following events relevant to the subject appeals occurred on the referenced dates:

- September 24, 2018 – the City of Lompoc (City) issued a Notice of Violation – Enforcement Order to Lompoc Artificial Kidney Center (LAKC) determining LAKC must discontinue use of water softeners, take samples of its wastewater constituents and comply with a wastewater permit (NOV-1);
- May 29, 2019 – LAKC delivered a Request for Consideration of NOV 1 to the City;
- June 18, 2019 – the City issued a Ruling on Request for Reconsideration;
- June 25, 2019 – City and LAKC staff met regarding the Ruling on Request for Reconsideration;
- June 27, 2019 – The City issued a Revised and Reissued Ruling on Request for Reconsideration to LAKC (Ruling 1);
- July 12, 2019 – LAKC appealed Ruling 1 (Appeal 1). LAKC filed Appeal 1 contending its activities were more akin to domestic wastewater than commercial or industrial activities;
- September 3, 2019 and November 5, 2019 – the City Council heard Appeal 1. With the consent of LAKC, the City Council suspended the processing of Appeal 1 and directed staff to submit to the US Environmental Protection Agency (EPA) for approval of various amendments to the Lompoc Municipal Code (LMC) chapter 13.16 relating to human dialysis waste materials;
- November 24, 2020 – Proposed changes to LMC Chapter 13.16 regarding human dialysis waste materials were submitted to EPA;
- March 2, 2021 – EPA disapproved the proposed changes to LMC chapter 13.16;
- March 2, 2021 – The City issued a Notice of Violation – Enforcement Order (NOV 2) to LAKC;
- March 16, 2021 – LAKC filed a request for reconsideration of NOV-2;
- March 30, 2021 – The City Clerk issued a letter to LAKC setting April 20, 2021, as the date the City Council would hear the stayed appeal of NOV-1;
- March 30, 2021 – The Utility Director denied that request (Ruling 2), which included a decision to consolidate Appeal 1 with anticipated appeal (Appeal 2) from LAKC for Ruling 2;
- April 6, 2021 – LAKC agreed to the consolidation of Appeal 1 with Appeal 2;
- April 14, 2021 – Email from LAKC's attorney requesting postponement of the appeal hearing;

- April 15, 2021 – Email from the Utility Director to LAKC’s attorney agreeing to postponement and setting criteria for rescheduling of appeal hearing;
- May 6, 2021 – The City Clerk issued a letter to LAKC setting May 18, 2021, as the date the City Council would hear the stayed appeal of NOV-1;
- May 14, 2021 – Email from the Utility Director to LAKC’s attorney agreeing to another postponement and setting criteria for rescheduling of the appeal hearing and related clarifying emails between LAKC and the City’s attorneys as to the date for that rescheduled hearing;
- June 7, 2021 – Email from LAKC’s attorney responding to the Utility Director’s May 14, 2021, email and follow up emails from LAKC’s attorney and the Utility Director;
- July 8, 2021 – Email from the Utility Director to LAKC’s attorney further responding to LAKC’s attorney’s email of June 7, 2021;
- July 26, 2021 – Email from LAKC’s attorney responding to the Utility Director’s July 8, 2020, email;

WHEREAS, on August 17, 2021, the City Council held a duly noticed public hearing regarding Appeal 1 and Appeal 2;

WHEREAS, at the public hearing, City staff recommended both Appeal 1 and Appeal 2 be denied based on their determination human dialysis waste materials are more akin to industrial waste than domestic waste in order to ensure the City remains in compliance with the pollutant discharge limits in its National Pollutant Discharge Elimination System (NDPES) permit (Permit) issued by the California Regional Water Quality Control Board (Water Board), and to avoid the risk of incurring fines from the Water Board for violation of the Permit conditions; and

WHEREAS, the City Council received and considered testimony from representatives of LAKC, City staff, and members of the public, and reviewed the written materials in the record (collectively, Record).

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LOMPOC, CALIFORNIA, DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. The above recitals are true and correct and are incorporated herein.

SECTION 2. Appeal 1 and Appeal 2 are hereby denied; Ruling 1 and Ruling 2 are hereby upheld; and LAKC shall fully comply with the LMC as it relates to human dialysis waste materials.

SECTION 3. The City Council’s determination is based on the following findings, which are based on the Record:

- (a) LAKC does not deny being out of compliance with LMC, chapter 13.16, as relates to human dialysis materials, but rather claims human dialysis materials are more akin to human waste materials than industrial materials and, therefore, LMC 13.16 as it relates to human dialysis materials should be amended to reflect that;
- (b) EPA has determined human waste materials are more akin to industrial waste than domestic waste; and
- (c) EPA has disapproved the changes proposed by the City to treat human waste materials similar to domestic waste materials.

SECTION 4. Effective Date. This Resolution is effective on the day of its adoption.

The foregoing Resolution was proposed by Council Member _____, seconded by Council Member _____, and was duly passed and adopted by the Council of the City of Lompoc at its regular meeting on August 17, 2021, by the following vote:

AYES: Council Member(s):

NOES: Council Member(s):

ABSENT: Council Member(s):

Jenelle Osborne, Mayor
City of Lompoc

ATTEST:

Stacey Haddon, City Clerk
City of Lompoc