

ORDINANCE 2007-04
OF THE CITY OF LEMOORE ADDING
Chapter 10, Article 10, to Title 1 of the Lemoore Municipal Code
Relating to Establishment of Administrative Hearing Procedures

The City Council of the City of Lemoore does ordain as follows:

SECTION 1. Chapter 10, Article 10, is added to Title 1 of the Lemoore Municipal Code to read:

- 10-10-1. TITLE
- 10-10-2. APPLICABILITY
- 10-10-3. RULES AND REGULATIONS
- 10-10-4. HEARING OFFICER SELECTION
- 10-10-5. SERVICE OF PROCESS
- 10-10-6. FILING A NOTICE OF APPEAL
- 10-10-7. CONDUCT OF HEARING
- 10-10-8. HEARING OFFICER AUTHORITY
- 10-10-9. DECISION

10-10-1. **TITLE.** This article shall be known as the “Administrative Hearing Procedures Ordinance.”

10-10-2. **APPLICABILITY.** Except where specifically provided otherwise in this Code, this article shall provide the procedures, rules and standards for all administrative hearings provided under this Code or administrative hearings provided under rules or regulations promulgated pursuant to this Code.

10-10-3. **RULES AND REGULATIONS.** The City Manager may adopt rules, regulations, policies and procedures, that are consistent with the intent or provisions of this article as may be necessary or desirable to aid in the administration or enforcement of the provisions of this article.

10-10-4. **HEARING OFFICER SELECTION.** Hearing Officers may be selected as follows:

- A. The City Manager may appoint any person willing to serve without compensation or valuable consideration or promise of future compensation or valuable consideration, on a case by case basis;
- B. The City Manager may appoint a State Administrative Law Judge under a contract with the Office of Administrative Hearings or a hearing officer or an arbitrator employed by a private independent arbitration service, such as JAMS or the American Arbitration Association, on a case by case basis.
- C. The City may award a contract to a person to serve as permanent hearing officer. The permanent hearing officer shall be hired under a contract with a minimum one year term. The hearing officer may not be terminated without cause and the basis for termination shall not be related to the outcomes of hearings.

10-10-5. **SERVICE OF PROCESS.** Service of any notice, hearing packet, or order under this article shall be by personal service or first class mail. The date of service shall be considered the date the notice, hearing packet or order was personally served or three days after the date of mailing.

10-10-6. **FILING A NOTICE OF APPEAL.**

- A. **Standing.** A person who has a legal existing interest in the property, right or entitlement subject to the City order, citation, decision or determination sought to be appealed from has standing and a right to appeal under this article. A notice of appeal that fails to show standing may be rejected as defective.
- B. **Notice of Appeal.** Unless otherwise provided in this Code, a notice of appeal shall be filed in writing with the City Clerk within fifteen calendar days after the service of the order, citation, decision, or determination appealed from. The appeal shall contain the following:
1. The name, address, and telephone number of the appellant;
 2. A statement describing the appellant's legal existing interest in the property, right or entitlement subject to the city order, citation, decision or determination sought to be appealed from;
 3. A brief description of the specific order, citation, decision, or determination being appealed;
 4. A statement of the relief sought;
 5. The reasons why such relief should be granted.
- C. **Late Appeals.** Upon a showing of good cause, the hearing officer may, in his or her discretion, permit the filing of an appeal, or an amended appeal, after fifteen calendar days, in which case the appeal shall be considered in the same manner as if it had been timely filed.
- D. **Defective Notice of Appeals.** If, in the opinion of the City Clerk, the appeal or an amended appeal fails to comply substantially with the requirements of this section, the City Clerk may give written notice of such insufficiency to the appellant, stating with particularity the defects or omissions therein. Failure of the appellant to file an amended appeal within seven calendar days of the date of service of such notice of insufficiency shall constitute a waiver of the appeal. Failure of the City Clerk to give notice of any insufficiency within seven calendar days shall result in the appeal being heard on its merits, without regard to any insufficiency.
- E. **Notice of Hearing.** Upon receipt of an appeal, or if notice of insufficiency is given in accordance with this section, upon receipt of an amended appeal within the time specified, the City Clerk shall cause one copy to be stamped indicating the date of receipt. The City Clerk shall set the appeal for hearing and shall give to the appellant and to the officer or employee whose order, citation, decision, or determination is being appealed not less than fifteen calendar days written notice of the date, time, and place of hearing. The appellant may waive the fifteen calendar days written notice, so long as said waiver is in writing

and filed with the City Clerk. The notice of the hearing to the appellant shall include a statement as to the appellants' rights as provided in subsection 10-10-7.

- F. **Stay of Proceedings.** Unless otherwise provided by this Code, the filing of an appeal shall stay all proceedings in furtherance of the order, citation, decision, or determination appealed from until the determination of the appeal as provided herein.

10-10-7. CONDUCT OF HEARING.

- A. **Continuance.** At the hearing officer's discretion or upon good cause shown, the hearing officer may continue the hearing by written notice before the scheduled hearing or orally at or during the hearing.
- B. **Hearing.** At the hearing, the officer or employee who issued the order, citation, decision, or determination or his or her designee shall present evidence in support of the findings or reasons upon which the order, citation, decision, or determination, was based. The appellant, or any individual authorized in writing to represent the appellant, may then present evidence in support of the contentions made in the notice of appeal. The hearing shall be informally conducted.
- C. **Rights of Parties.** The parties and anyone who participates in a hearing may be represented by an attorney or other person of the parties' choice. The parties have a right to appear, testify, present evidence, examine and cross-examine witnesses, and present written or oral arguments. Additionally, the parties may request and the hearing officer may allow the parties to submit written briefs, either before, during or after the hearing.
- D. **Evidence.** The rules of evidence provided by State statute in civil and criminal actions shall not apply, except that irrelevant and unduly repetitious evidence may be excluded in the hearing officer's discretion.
- E. **Scope.** The scope of the hearing shall be limited to the order, citation, decision, or determination being appealed, the grounds for relief raised in the notice of appeal and any specific requirements of this Code.
- F. **Burden of Proof; Burden of Evidence.** Except where otherwise provided in this Code, the burden of proof and production of evidence shall be with the city. Except where otherwise provided in the Code, the burden of proof shall be preponderance of the evidence.
- G. **Waiver of Rights.** The failure of the appellant or any interested party to raise an objection to the hearing officer either before or during the hearing of any defect in notice or procedure provided under the Code or at law or in equity shall be deemed a waiver of the defect. For purposes of a waiver of objection in this subsection, defect in procedure shall include a claim that the hearing officer is biased when facts regarding the claimed bias is known or readily discoverable by the appellant or interested party or has been published to the appellant or interested party by the city. An objection of bias of the hearing officer shall be raised to the City Manager.
- H. **Failure of Appellant to Appear.** Unless otherwise provided in the Code, if the appellant fails to appear for the hearing at the time and place noticed, the hearing officer in his or her discretion may conduct the hearing to a conclusion or may dismiss the appeal. If the appeal is dismissed, the order, citation, decision, determination appealed from shall become final and effective on the date of the hearing. Within ten days from the date of the

hearing and upon a showing of good cause, the hearing officer may set aside his or her decision or dismissal upon the appellant's failure to appear and may reschedule the appeal for hearing.

- I. **Recording.** The proceedings at the hearing shall be recorded to a cassette tape, a CD-ROM, a video tape, a DVD or similar media. In addition to any one of the above, the proceedings may also be recorded by a certified shorthand reporter. If an appellant requests a certified shorthand reporter the costs of the reporter shall be borne by the appellant.
- J. **Communication with Hearing Officer.** Other than at the hearing, there shall be no direct oral communication between the parties and the hearing officer on any matter related to the hearing without both parties being present. Any written communication to the hearing officer by a party shall be copied and served to *the* other party. (Added *Ord.* 2005-14, § 49, *eff.* 4-9-05).
- K. **Record keeper.** The City shall maintain the administrative record of the hearing

10-10-8. HEARING OFFICER AUTHORITY.

- A. **Inspection of Premises.** The hearing officer may inspect the premises involved in the hearing at any time prior to a decision, to investigate or confirm the existence of the violation(s) or conditions which are on appeal, provided that:
 - 1. Consent is granted by a person with the lawful right to grant consent or an inspection warrant is obtained;
 - 2. Reasonable notice of such inspection is given to the owner before the inspection is made;
 - 3. The parties are given an opportunity to be present during the inspection;
 - 4. The hearing officer shall place in the record the material facts and the conclusions drawn from the inspection either orally at the time of the hearing or in writing after the hearing; and
 - 5. Each party then shall have a right to rebut or explain the matters so stated by the hearing officer for the record either at the hearing or by filing a written statement within ten calendar days after the hearing.
- B. **Oaths.** The hearing officer shall have the power to administer oaths and affirmations.
- C. **Procedures.** The hearing officer shall have the authority to establish procedures before or during a hearing consistent with this article and the Code for purposes of efficiency and order.
- D. **Review Authority.** The hearing officer shall sit as the trier of fact and shall rule on questions of law and admissibility of evidence. The hearing officer may affirm, reverse, modify, or set aside the order, citation, decision, or determination appealed from or may delete or impose conditions as the facts and law warrant. The hearing officer may not increase a penalty or impose a harsher remedy beyond the penalty or remedy imposed under the order, citation, decision or determination being appealed.

E. **Limitations.** The hearing officer shall not have authority to waive any requirements of the Code or law.

10-10-9. **DECISION.**

- A. **Decision.** Unless otherwise provided in this Code or agreed by the parties, within fifteen days of the conclusion of the hearing, after the hearing officer has considered all evidence presented and the relevant standard of review, the hearing officer shall issue a written decision. The decision shall include a statement of the issues, findings of fact, a summary of the relevant evidence, and the order.
- B. **Notice of Code of Civil Procedure Section 1094.6.** All final decisions shall include a notice that the appellant has ninety days to pursue a petition for a writ of administrative mandamus of the decision under Code of Civil Procedure Section 1094.6.
- C. **Effective.** Unless otherwise provided in the Code or the hearing officer's decision, the decision shall be effective upon issuance.
- D. **Finality.** Unless otherwise provided in the Code or the hearing officer's decision, the hearing officer's decision shall be a final agency action for purposes of writ review.

SECTION 2. The City Clerk is authorized and directed to cause this ordinance or a summary of this ordinance to be published in a newspaper of general circulation published and circulated by the City of Lemoore, within 15 days after its adoption. If a summary of the ordinance is published, then the City Clerk shall cause a certified copy of the full text of the proposed ordinance to be posted in the office of the City Clerk at least five days prior to the May 15, 2007 meeting at which the ordinance is adopted and again after the meeting at which the ordinance is adopted. The summary shall become effective 30 days after its adoption.

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The foregoing ordinance was introduced at a regular meeting of the City Council of the City of Lemoore held May 1, 2007, and was passed and adopted at a regular meeting of the City Council held in May 15, 2007 by the following roll call vote:

Ayes:
Noes:
Absent:
Abstain:

Approved:

John F. Murray, Mayor

Attest:

Nanci C. O. Lima, City Clerk

CERTIFICATE

STATE OF CALIFORNIA)

COUNTY OF KINGS)

CITY OF LEMOORE)

I, Nanci C. O. Lima, City Clerk of the City of Lemoore, do hereby certify the foregoing Ordinance was duly introduced at a Regular Meeting of the city Council of the City of Lemoore held on the 1st day of May, 2007 an passed and adopted at a Regular Meeting of the City Council held on the 15th day of May, 2007.

DATED: May 16, 2007

Nanci C. O. Lima, City Clerk

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