



**CITY OF LODI
COUNCIL COMMUNICATION**

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AGENDA TITLE: Ordinance No. 1757 entitled, "An Ordinance of the City Council of the City of Lodi Amending Lodi Municipal Code Title 17 – Zoning, by Repealing and Reenacting Sections 17.72.1 10, 17.73.070, 17.74.070, and 17.81.070; Repealing in Their Entirety Sections 17.84.050 and 17.84.060; and Further Adding Chapter 17.88 Relating to Appeals"

MEETING DATE: April 6, 2005

PREPARED BY: City Clerk

RECOMMENDED ACTION: Motion waiving reading in full and (following reading by title) adopting the attached Ordinance No. 1757.

BACKGROUND INFORMATION: Ordinance No. 1757 entitled, "An Ordinance of the City Council of the City of Lodi Amending Lodi Municipal Code Title 17 – Zoning, by Repealing and Reenacting Sections 17.72.1 10, 17.73.070, 17.74.070, and 17.81.070; Repealing in Their Entirety Sections 17.84.050 and 17.84.060; and Further Adding Chapter 17.88 Relating to Appeals" was introduced at the regular City Council meeting of March 16, 2005.

ADOPTION: With the exception of urgency ordinances, no ordinance may be passed within five days of its introduction. Two readings are therefore required – one to introduce and a second to adopt the ordinance. Ordinances may only be passed at a regular meeting or at an adjourned regular meeting; except for urgency ordinances, ordinances may not be passed at a special meeting. Id. All ordinances must be read in full either at the time of introduction or at the time of passage, unless a regular motion waiving further reading is adopted by a majority of all council persons present. **Cal. Gov't Code § 36934.**

Ordinances take effect 30 days after their final passage. **Cal. Gov't Code § 36937.**

This ordinance has been approved as to form by the City Attorney.

FISCAL IMPACT: None.

FUNDING AVAILABLE: None required.


Susan J. Blackston
City Clerk

APPROVED: 
Blair King, City Manager

ORDINANCE NO. 1757

AN ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF LODI AMENDING LODI MUNICIPAL CODE TITLE 17 -
ZONING, BY REPEALING AND REENACTING SECTIONS
17.72.1 10, 17.73.070, 17.74.070, AND 17.81.070; REPEALING IN
THEIR ENTIRETY SECTIONS 17.84.050 AND 17.84.060; AND
FURTHER ADDING CHAPTER 17.88 RELATING TO APPEALS

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LODI AS FOLLOWS:

SECTION 1. Lodi Municipal Code Title 17 - Zoning is hereby amended by repealing and re-enacting Sections 17.72.1 10, 17.73.070, 17.74.070, and 17.81.070 relating to appeals and shall read as follows:

17.72.1 10 Appeals to Council.

Any actions of the Planning Commission on matters referred to in this chapter may be appealed to the City Council by filing, within ten business days, a written appeal with the City Clerk. The appeal shall be processed in accordance with Chapter 17.88, Appeals, of the Lodi Municipal Code.

17.73.070 Appeals to Planning Commission.

Any actions of the reviewing authority on matters referred to in this chapter may be appealed to the planning commission by filing, within ten business days, a written appeal to the Community Development Director. The appeal shall be processed in accordance with Chapter 17.88, Appeals, of the Lodi Municipal Code.

17.74.070 Appeals to Planning Commission.

Any actions of the reviewing authority on matters referred to in this chapter may be **appealed to** the Planning Commission by filing, within ten business days, a written **appeal to** the Community Development Director. The appeal shall **be** processed in accordance with Chapter 17.88, Appeals, of the Lodi Municipal Code.

17.81.070 Appeal from Committee.

Any actions of the Site Plan and Architectural Committee on matters referred to in this chapter may be appealed to the Planning Commission by filing, within ten business days, a written appeal to the Community Development Director. The appeal shall be processed in accordance with Chapter 17.88, Appeals, of the Lodi Municipal Code.

SECTION 2. Lodi Municipal Code Title 17 - Zoning is hereby amended by repealing in their entirety Section 17.84.050 - Disapproval Recommendation - Appeal to Council, and Section 17.84.060 - Protest of Property Owners.

SECTION 3. Lodi Municipal Code Title 17 - Zoning is hereby amended by adding Chapter 17.88 - Appeals, to read as follows:

CHAPTER 17.88 - APPEALS

Sections:

- 17.84.010 - Purpose of Chapter
- 17.84.020 - Commission's Review
- 17.84.030 - Council's Review
- 17.84.040 - Eligibility
- 17.84.050 - Appeal Subjects and Jurisdiction
- 17.84.060 - Application Filing, Processing, Review, and Action

17.88.010 - Purpose of Chapter

This Chapter establishes procedures for the following:

- A. Commission's review. The Commission's review of a decision rendered by the Director or SPARC.
- B. Council's review. The Council's review of a decision rendered by the Commission.
- C. Eligibility. Other eligible appellants, as identified in Section 17.84.040 (Eligibility), below.

17.88.020 - Commission's Review

- A. Review. The Commission may choose to review a decision rendered by the Director or SPARC.
- B. Discussion.
 - 1. A member of the Commission may request the opportunity to discuss any decision previously rendered.
 - 2. A majority vote of the Commission is required to initiate an appeal of the decision.
- C. Appeal. Once the vote to initiate an appeal is passed by a majority, the matter shall be scheduled for hearing by the Director.

17.88.030 - Council's Review

- A. Review. The Council may choose to review a decision rendered by the Commission.
- B. Discussion.
 - 1. A member of the Council may request the opportunity to discuss any decision previously rendered.

- 2. A majority vote of the Council is required to initiate an appeal of the decision.
- C. Appeal. Once the vote to initiate an appeal is passed by a majority, the matter shall be scheduled for hearing by the City Clerk.
- D. Decision final. The decision of the Council on the appeal shall be final and shall become effective upon adoption of the resolution by the Council.

17.88.040 – Eligibility

An appeal may be filed by:

- A. Administrative determination. Any person affected by an administrative determination or action by the Director.
- B. Land-use permit or hearing decision. In the case of a land use permit or hearing decision, by anyone who, in person or through a representative, presented testimony at a public hearing in connection with the decision being appealed, or who otherwise informed the City in writing of the nature of their concerns before the hearing.

17.88.050 - Appeal Subjects and Jurisdiction

Determinations and actions that may be appealed, and the authority to act up on an appeal shall be as follows:

- A. Ordinance administration and interpretation. The following determinations and actions of the Director or SPARC may be appealed to the Commission and then to the Council:
 - 1. Determinations on the meaning or applicability of the provisions of this Zoning Ordinance that are believed to be in error, and cannot be resolved with staff;
 - 2. Any determination that a permit application or information submitted with the application is incomplete, in compliance with State law (Government Code Section 65943); and
 - 3. Any enforcement action in compliance with Chapter 17.87 (Enforcement).
- B. Permit/entitlement and hearing decisions. Decisions by the Director or SPARC may be appealed to the Commission. Decisions by the Commission may be appealed to the Council.

17.88.060 - Appeal Filing, Processing, Review, and Action

- A. Timing and form of appeal.
 - 1. Appeal applications shall be submitted before 5:00 p.m. on the 10th business day following the date the decision is rendered by the Director or SPARC, or the adoption of the resolution by the Commission.

2. Appeal applications addressed to the Commission shall be filed with the Department, while appeals addressed to the Council shall be filed with the City Clerk.
 3. The appeal application shall:
 - a. Specifically state the pertinent facts of the case and the basis for the appeal;
 - b. Be accompanied by the information identified in the Department hand out for appeal applications; and
 - c. Be accompanied by the filing fee established by the Council's Fee Resolution.
- B. Delay of proceedings. Filing of an appeal shall delay all proceedings associated with the matter subject to the appeal (e.g., issuance of a Certificates of Occupancy, Building or Grading Permit, etc.), pending the City's final action on the appeal.
- C. Joining an appeal.
1. Only those persons who file an appeal within the specified appeal period shall be considered appellants of the matter under appeal.
 2. Any person who wishes to join an appeal shall follow the same procedures for an appellant.
 3. A person(s) shall not be allowed to join an appeal after the end of the specified appeal period.
- D. Action on appeals. The appeal body shall conduct a public hearing in compliance with Chapter 17.88 (Public Hearings).
1. Scope of review and decision. When reviewing an appeal the review authority may:
 - a. Consider any **issues** associated with the decision being appealed, in addition to the specific grounds for the appeal. The review authority shall also consider any environmental determination applicable to the entitlement or decision being appealed;
 - b. By resolution, uphold, uphold in part, or reverse the action, the determination, or decision that is the subject of the appeal;
 - c. Adopt additional conditions of approval deemed reasonable and necessary; and
 - d. Disapprove the land use permit approved by the previous review authority, even though the appellant only requested a modification or elimination of one or more conditions of approval.

2. New evidence. If new or different evidence is presented during the appeal hearing, the Commission or Council may refer the matter back to the Director, SPARC, or Commission, as applicable, for a report on the new or different evidence before a final decision on the appeal.
 3. Findings. When reviewing an appeal the review authority shall adopt findings in support of the intended action on the appeal. The nature of the findings shall be in compliance with the findings adopted by the original review authority.
- E. Mailing of resolution. The Director or City Clerk, as applicable to the level of review authority, shall mail a copy of the resolution to the appellant, the applicant (if not the appellant), the Commission, and the Council within 10 days after the date the decision is Rendered.

SECTION 4. All ordinances and parts of ordinances in conflict herewith are repealed insofar as such conflict may exist.

SECTION 5. No Mandatory Duty of Care. This ordinance is not intended to and shall not be construed or given effect in a manner which imposes upon the City, or any officer or employee thereof, a mandatory duty of care toward persons or property within the City or outside of the City so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

SECTION 6. Severability. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application. To this end, the provisions of this ordinance are severable. The City Council hereby declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof.

SECTION 7. This ordinance shall be published one time in the "Lodi News-Sentinel," a daily newspaper of general circulation printed and published in the City of Lodi and shall **be in force and take effect thirty days from and after its passage and approval.**

Approved this 6th day of April, 2005



JOHN BECKMAN
Mayor

Attest:



SUSAN J. BLACKSTON
City Clerk

State of California
County of San Joaquin, ss.

I, Susan J. Blackston, City Clerk of the City of Lodi, do hereby certify that Ordinance No. 1757 was introduced at a regular meeting of the City Council of the City of Lodi held March 16, 2005, and was thereafter passed, adopted and ordered to print at a regular meeting of said Council held April 6, 2005, by the following vote:

AYES: COUNCIL MEMBERS – Hansen, Johnson, Mounce, and
Mayor Beckman

NOES; COUNCIL MEMBERS – None

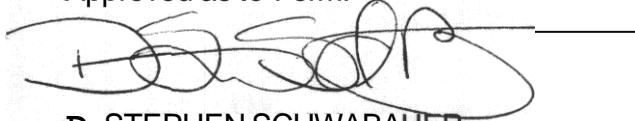
ABSENT: COUNCIL MEMBERS – Hitchcock

ABSTAIN: COUNCIL MEMBERS – None

I further certify that Ordinance No. 1757 was approved and signed by the Mayor on the date of its passage and the same has been published pursuant to law.

SUSAN J. BLACKSTON
City Clerk

Approved as to Form:

A handwritten signature in black ink, appearing to read 'D. Schwabauer', is written over a horizontal line. The signature is stylized and cursive.

D. STEPHEN SCHWABAUER
City Attorney