

September 11, 2018

Honorable Linda L. Lofthus, Presiding Judge
San Joaquin County Superior Court
180 East Weber Avenue, Suite 1306J
Stockton, CA 95202

Re: Response to Grand Jury Final Report, Case No. 0117. (2017/2018)

Honorable Linda L. Lofthus:

Pursuant to Penal Code Section 933.05, this letter is to inform you that on September 10, 2018 at a regularly scheduled City Council Meeting, the City Council of the City of Lathrop reviewed and approved the above referenced Grand Jury Final Report and directed me to write this letter of response on their behalf.

The Grand Jury Final Report dated June 18, 2018 found that:

- Finding F7.1: “Lathrop has taken limited code enforcement action toward the illegal parking of commercial trucks and failed to resolve the problem for approximately six years, allowing blight and public safety issues to remain.”

Grand Jury Recommendation R7.1: “Lathrop take consistent code enforcement action on the illegal parking of commercial trucks.”

Council Response: The City of Lathrop respectfully disagrees with the Grand Jury finding. The City of Lathrop Code Compliance Division exercises all powers vested by the City in response to blight and public safety issues, including illegal parking of commercial vehicles. For the past 6 years, Lathrop has initiated a total of 3,830 new cases, of which 103 were for illegal parking of commercial trucks. The City of Lathrop hired a Code Enforcement Supervisor on 03/12/2018. Since October of 2016, Code Enforcement has initiated 1,149 new cases, 20 of which for illegal parking of commercial trucks. Of those 20 cases, 18 have been closed for corrected violations, 2 are currently open and under re-inspections.

- Finding F7.2.1: “Lathrop has a vacant budgeted position for code enforcement officer that city officials will not fill at this time. This has exacerbated the illegal truck parking issue.”

- **Finding 7.2.2:** The City has not consistently hired qualified code enforcement officers. This contributes to the lack of reliable code enforcement.”

Grand Jury Recommendation R7.2: “Lathrop advertise and fill the vacant position of code enforcement officer, adhering strictly to the job description guidelines.”

Council Response: The City of Lathrop respectfully disagrees with the Grand Jury finding. The City does not have a vacant, budgeted position for Code Enforcement. The City hired a Code Enforcement Supervisor on 03/12/2018.

- **Finding F7.3:** “Lathrop has no consistent appeals process that could be used to resolve the truck parking issue, causing the issue to persist.”

Grand Jury Recommendation R7.3: “Lathrop develop and implement a consistent appeals process that can be used to resolve enforcement disputes.”

Council Response: The City of Lathrop respectfully disagrees with the Grand Jury finding. On April 5, 2018 the City of Lathrop provided Grand Jury Staff a copy of the City’s appeals process. Attached, please find the following excerpts regarding the administrative hearing process as outlined in the Lathrop Municipal Code;

TITLE 1 GENERAL PROVISIONS

Chapter 1.12 ADMINISTRATIVE ENFORCEMENT PROCEDURES

1.12.340 ADMINISTRATIVE HEARING PROCEDURES

1.12.350 PROCEDURES FOR REQUESTING AN APPEALS HEARING

**1.12.360 PROCEDURES FOR NOTIFICATION OF
ADMINISTRATIVE HEARING**

1.12.370 PROCEDURES AT ADMINISTRATIVE HEARING

1.12.380 FAILURE TO ATTEND AN ADMINISTRATIVE HEARING

1.12.390 ADMINISTRATIVE ORDER

(Please see attached documentation).

Respectfully submitted,



Salvador V. Navarrete
City Attorney

SVN/trb

Enclosures

Cc: Trisa Martinez at grandjury@sjcourts.org

[Title 1 GENERAL PROVISIONS](#)[Chapter 1.12 ADMINISTRATIVE ENFORCEMENT PROCEDURES](#)**1.12.340 Administrative hearing procedures.**

This section establishes the procedures for the use of administrative hearing officers and the procedures for governing administrative hearings.

A. **Qualifications of Administrative Hearing Officer.** The city attorney shall develop and the city council shall ratify, rules and procedures as are necessary to establish a list of qualified persons who are capable of acting on behalf of the city as administrative hearing officers.

1. Candidates for the position of administrative hearing officer shall meet one of the following minimum qualifications:

a. Employed by a municipality other than the city of Lathrop as a city attorney, assistant city attorney or deputy city attorney.

b. Employed by a municipality other than the city of Lathrop as a code enforcement manager or code enforcement supervisor.

B. **Appointment of Administrative Hearing Officer.** The city attorney shall develop and the city council shall ratify policies and procedures relating to the appointment and compensation of hearing officers. Hearing officers presiding at administrative hearings shall be appointed and compensated by the city manager or city manager's designee. The employment, performance evaluation, compensation and benefits of the administrative hearing officer shall not be directly or indirectly conditioned upon the amount of administrative citation fines or other compensation upheld by the administrative hearing officer.

1. Hearing officers shall be compensated by a reciprocal services agreement whereas the city of Lathrop will provide like services to the agency of the individual acting as administrative hearing officer on behalf of the city of Lathrop.

2. Terms of any reciprocal services agreement for hearing officer services shall be approved by the city manager or city attorney.

C. **Disqualification of Hearing Officer.** Any person designated to serve as an administrative hearing officer is subject to disqualification for bias, prejudice, interest, or for any other reason for which a judge may be disqualified in a court of law. Rules and procedures for the disqualification of a hearing officer shall be promulgated by the city attorney and ratified by the city council.

Any party may petition the city manager to disqualify a designated hearing officer after receipt of a notice indicating the identity of the hearing officer or discovering facts which establish grounds for disqualification. The petition must be filed immediately with the city manager upon discovery of such facts.

The city manager shall determine whether to grant the petition for disqualification. A written statement of the facts and reasons for the determination shall be incorporated into the administrative record for the hearing. The decision of the city manager may be appealed to the city council within ten (10) days' notice of the decision.

If a substitute is required for a hearing officer due to disqualification or unavailability, a substitute shall be appointed by the city manager in accordance with these rules and regulations.

D. **Powers of Hearing Officer.** The hearing officer has the authority to do the following:

1. Administer oaths;

2. Conduct a pre-hearing conference to deal with such matters as exploration of a settlement, preparation of stipulations, clarification of issues, and other matters;

3. Continue a hearing based on good cause shown by one of the parties to the hearing or if the hearing officer independently determines that due process has not been adequately afforded;

4. Issue subpoenas in accordance with this section. Upon receipt of a written request which is submitted no later than five days before the hearing, the hearing officer shall subpoena witnesses, documents, and other evidence where the attendance of the witness or the admission of evidence is deemed necessary to decide the issues at the hearing. All costs related to the subpoena, including witness and mileage fees shall be borne by the party requesting the subpoena. The city attorney shall develop policies and procedures relating to the issuance of subpoenas in administrative hearings, including the form of the subpoena and related costs;

5. Maintain continuing jurisdiction over the subject matter of an administrative hearing for the purpose of granting a continuance, ensuring compliance with an administrative order, modifying an administrative order, or where extraordinary circumstances exist, granting a new hearing;

6. Require the posting of a performance bond or some other equivalent means of guaranteeing that compliance will occur, if necessary;

7. Approve any settlement voluntarily entered into by the parties. (Ord. 16-364 § 1; Ord. 07-267 § 1; Ord. 98-156)

View the [mobile version](#).

1.12.350 Procedures for requesting an appeals hearing.

A. A person served with one of the following documents, order or notices may file an appeal within ten (10) calendar days from the service of the notice:

1. Any civil penalty notice and order issued;
2. An administrative citation issued pursuant to Sections 1.12.130 and 1.12.140;
3. An application for a waiver of fees.

B. The appeal shall be made in writing stating the grounds for the appeal and filed with the director on or before the tenth day after service. (Ord. 98-156)

View the [mobile version](#).

1.12.360 Procedures for notification of administrative hearing.

A. Where an administrative remedy or proceeding provides for an appeal procedure, the director shall request the city attorney to appoint a hearing officer and to schedule a day, time and a place for the hearing.

B. Written notice of the time and place of the hearing shall be served at least ten (10) calendar days prior to the date of the hearing to the responsible person.

C. The format and contents of the hearing notice shall be in accordance with rules and policies promulgated by the city attorney.

D. The notice of hearing shall be served by any of the methods of service listed in Section 15.36.050.
(Ord. 98-156)

View the [mobile version](#).

[Title 1 GENERAL PROVISIONS](#)

[Chapter 1.12 ADMINISTRATIVE ENFORCEMENT PROCEDURES](#)

1.12.370 Procedures at administrative hearing.

A. Administrative hearings are intended to be informal in nature. Formal rules of evidence and discovery do not apply. The procedure and format of the administrative hearing shall follow the procedures promulgated by the city attorney.

B. The city bears the burden of proof at an administrative hearing to establish the existence of a violation of this code or applicable state codes.

C. The standard of proof to be used by the hearing officer in deciding the issues at an administrative hearing is by a preponderance of the evidence.

D. Each party shall have the opportunity to cross-examine witnesses and present evidence in support of his or her case.

E. Both the city and the party whose property and/or actions are the subject of an administrative hearing are entitled to representation by legal counsel. If the party whose property and/or actions are subject to the hearing is to be represented by an attorney, written notification of the attorney's name, address, and phone number must be supplied immediately to the city department which is holding the hearing. Upon notification by the other party of legal representation, the city department may contact the city attorney's officer to request representation at the hearing. Thereafter, all contact or communication should be made by the parties' attorneys. (Ord. 07-267 § 1; Ord. 98-156)

View the [mobile version](#).

1.12.380 Failure to attend administrative hearing.

Any responsible person who requests a hearing or whose actions are the subject of an administrative hearing and who fails to appear at the hearing is deemed to waive the right to a hearing and the adjudication of the issues related to the hearing, provided that the hearing was properly noticed. (Ord. 98-156)

View the [mobile version](#).

[Title 1 GENERAL PROVISIONS](#)

[Chapter 1.12 ADMINISTRATIVE ENFORCEMENT PROCEDURES](#)

1.12.390 Administrative order.

A. The decision of the hearing officer shall be entitled “administrative order” and shall be issued in accordance with the rules and procedures promulgated by the city attorney.

B. Once all evidence and testimony are completed, the hearing officer shall issue an administrative order which affirms, modifies or rejects the director’s action. In the case of a notice and order of civil penalty, the administrative order may affirm, modify or reject the daily rate or duration of the civil penalties depending upon the review of the evidence and may increase or decrease the total amount of civil penalties and costs assessed.

C. The hearing officer may issue an administrative order that requires the responsible person to cease from violating this code or applicable state codes and to make necessary corrections within a specific time frame.

D. As part of the administrative order, the hearing officer may establish specific deadlines for the payment of penalties and costs and condition the total or partial assessment of civil penalties on the responsible person’s ability to complete compliance by specified deadlines.

E. The hearing officer may issue an administrative order which imposes additional civil penalties that will continue to be assessed until the responsible person complies with the hearing officer’s decision and corrects the violation.

F. The hearing officer may schedule subsequent review hearings as may be necessary or as requested by a party to the hearing to ensure compliance with the administrative order.

G. The administrative order shall become final on the date of service of the order.

H. The administrative order shall be served on all parties by any one of the methods listed in this chapter. (Ord. 98-156)

View the [mobile version](#).