

RESOLUTION NO. 6018(15)

**A Resolution of the City Council of the City of Lompoc,
County of Santa Barbara, State of California,
Reaffirming and Confirming the City's Zoning Code,
Enumerated under Title 17 of the Lompoc Municipal Code,
is a Permissive Zoning Code, Such That Marijuana
Cultivation Uses, as Uses Not Specifically Enumerated
In the Zoning Code, Are Prohibited**

WHEREAS, the City of Lompoc has exercised its land use and zoning authority by enacting a zoning code that is enumerated under Title 17 of the Lompoc Municipal Code ("Zoning Code"); and

WHEREAS, the State Legislature recently passed, and the Governor Signed, the Medical Marijuana Regulation and Safety Act ("MMRSA"); and

WHEREAS, the MMRSA provides that the California Department of Food and Agriculture is a potential licensing authority for the cultivation of medical marijuana; and

WHEREAS, the MMRSA further provides, in Health & Safety Code § 11362.777(b)(3), if the City "does not have land use regulations or ordinances regulating or prohibiting the cultivation of marijuana, either expressly or otherwise under principles of permissive zoning, or chooses not to administer a conditional permit program pursuant to this section, then commencing March 1, 2016, the division shall be the sole licensing authority for medical marijuana cultivation applicants in that city..." and

WHEREAS, the court in *City of Corona v. Naulis* (2008) 166 Cal. App. 4th 418, 425 ("*Naulis*"), cited in *County of Sonoma v. Superior Court* (2010) 190 Cal. App. 4th 1312, FN 3 ("*County of Sonoma*") found a permissive zoning code is defined as a zoning code where, if a specific use is not enumerated, then that use is presumptively prohibited; and

WHEREAS, the court in *Naulis* further found the City of Corona's zoning code was a permissive zoning code; and

WHEREAS, Title 17 of the Lompoc Municipal Code ("LMC") contains language evidencing an intent to prohibit uses not expressly identified; and

WHEREAS, Division 2 of Title 17, Chapter 17.012, generally provides:

- LMC § 17.012.020(B): "No person shall use any land, building, or structure, nor shall any building or structure be erected, constructed, enlarged, altered, moved, or used in any district shown on said zoning map, except in accordance with the regulations established by this Title";

- LMC § 17.012.070: “Except as provided in Division 3 of this Title, no structure shall be erected, reconstructed, enlarged, altered, or moved, nor shall any building or land be used except as hereinafter specifically provided and allowed in the district in which such structure and land are located”; and

WHEREAS, Division 2 of Title 17, Chapters 17.016, 17.017, 17.24, 17.28, 17.32, 17.36, 17.040, 17.044, 17.048, 17.052, 17.056, 17.060, 17.62, 17.64, 17.68, 17.72, 17.80 and 17.84 go on to specifically enumerate the permitted uses in each designated use of the zone, and provide that “none but the following” permitted uses shall be authorized in said zone, at the following sub-sections of each respective chapter:

- LMC § 17.016.020 [Uses Permitted in R-A RESIDENTIAL AGRICULTURAL DISTRICT],
- LMC § 17.017.020 [Uses Permitted in R-1 SINGLE FAMILY RESIDENTIAL DISTRICT],
- LMC § 17.024.020 [Uses Permitted in R-2 MEDIUM DENSITY RESIDENTIAL DISTRICT],
- LMC § 17.028.020 [Uses Permitted in R-3 HIGH DENSITY RESIDENTIAL DISTRICT],
- LMC § 17.032.020 [Uses Permitted in P-D PLANNED DEVELOPMENT DISTRICT],
- LMC § 17.036.020 [Uses Permitted in C-C CONVENIENCE CENTER DISTRICT],
- LMC § 17.040.020 [Uses Permitted in C-O COMMERCIAL OFFICE DISTRICT],
- LMC § 17.044.020 [Uses Permitted in C-2 CENTRAL BUSINESS DISTRICT],
- LMC § 17.048.020 [Uses Permitted in P-C-D PLANNED COMMERCIAL DEVELOPMENT DISTRICT],
- LMC § 17.052.020 [Uses Permitted in OTC OLD TOWN COMMERCIAL DISTRICT],
- LMC § 17.056.020 [Uses Permitted in MU MIXED-USE DISTRICT],
- LMC § 17.060.020 [Uses Permitted in T RESIDENTIAL MOBILEHOME PARK DISTRICT],
- LMC § 17.064.020 [Uses Permitted in I INDUSTRIAL DISTRICT],
- LMC § 17.068.020 [Uses Permitted in P-F PUBLIC FACILITIES AND INSTITUTIONAL DISTRICT],
- LMC § 17.072.020 [Uses Permitted in O-S OPEN SPACE DISTRICT],
- LMC § 17.080.020 [Uses Permitted in SP SPECIFIC PLAN DISTRICT],
- LMC § 17.084.020 [Uses Permitted in CR CULTURAL RESOURCES OVERLAY DISTRICT]; and

WHEREAS, any uses not expressly authorized pursuant to one of the above-detailed sub-sections of Division 2 of the Zoning Ordinance *may* nevertheless be permitted if determined by the Planning Commission to be “comparable” and the use is, therefore, permitted pursuant to a conditional use permit (*see*, LMC §§ 17.016.030, 17.017.030, 17.024.030, 17.028.030, 17.032.030, 17.036.030, 17.040.030, 17.044.030, 17.048.030, 17.052.030, 17.056.030, 17.060.030, 17.064.030, 17.068.030, 17.072.030, 17.080.030, and 17.084.030); and

WHEREAS, the City’s Zoning Code is substantially similar to the zoning code contemplated by the *Naulis* court; and

WHEREAS, as the court further found in *Naulis*, under the principle the expression of certain things in a statute necessarily involves the exclusion of other things not expressed, any use that is not specifically identified in the Zoning Code is, therefore, prohibited; and

WHEREAS, based upon the forgoing, the City’s Zoning Code, Title 17 of the LMC, is a permissive zoning code whereby any use that is not expressly enumerated in the code is presumptively prohibited under the principles of permissive zoning, as contemplated by Health & Safety Code § 11362.777(b)(3) and as provided in *Naulis* and *County of Sonoma*; and

WHEREAS, Chapter 9.36 of the LMC, as amended, further explicitly bans both dispensaries and cultivation in the City; and

WHEREAS, by this Resolution the City Council desires to re-affirm and confirm that the City’s Zoning Code operates as a permissive zoning code within the meaning of Health & Safety Code § 11362.777(b)(3) and *Naulis*, as cited in *County of Sonoma*.

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

SECTION 1. The forgoing Recitals are true and correct and are incorporated herein.

SECTION 2. The City Council of the City of Lompoc hereby reaffirms and confirms that the Zoning Code, found under Title 17 of the Lompoc Municipal Code, is a permissive zoning code, as contemplated by Health & Safety Code § 11362.777(b)(3) and *City of Corona v. Naulis* (2008) 166 Cal. App. 4th 418, 425, cited in *County of Sonoma v. Superior Court* (2010) 190 Cal. App. 4th 1312, FN. 3, such that any use not expressly enumerated in the Zoning Code is presumptively prohibited.

SECTION 3. With the potential exception of personal individual cultivation for personal use by the cultivator of medical marijuana, as permitted by the Compassionate Use Act of 1996, the cultivation of marijuana is, therefore, not a permitted use within the

City, because it is not expressly enumerated as a permitted use in the City's Zoning Code and, therefore, even in any zoning district or specific plan where medical marijuana cultivation is not expressly prohibited, it is nevertheless a prohibited use under the principles of permissive zoning.

SECTION 4. Based upon the forgoing, the City Council of the City of Lompoc hereby affirmatively determines, pursuant to Health & Safety Code § 11362.777(b)(3), the California Department of Food and Agriculture, or any other state agency, may not issue a state license to cultivate medical marijuana within the City.

SECTION 5. The City Manager and his authorized designees are hereby authorized and directed to take such other and further actions and sign such other and further documents as is necessary and proper to implement this Resolution on behalf of the City.

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 December 15, 2015, by the following vote:

AYES: Council Member(s):

NOES: Council Member(s):

ABSENT: Council Member(s):

Bob Lingl, Mayor
City of Lompoc

ATTEST:

Stacey Alvarez, City Clerk
City of Lompoc