



## City Council Agenda Item

**City Council Meeting Date:** November 7, 2019

**TO:** Jim Throop, City Manager

**FROM:** Brian Halvorson, Planning Manager  
b\_halvorson@ci.lompoc.ca.us

**SUBJECT:** Consideration of Planning Commission Recommendations for Approval of the Comprehensive Zoning Code Update to Title 17 (Zoning) of the Lompoc Municipal Code; Adoption of Resolution No. 6258(19); Introduction of Ordinance No. 1670(19) and Adoption of an Addendum to the 2030 General Plan Environmental Impact Report

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### **Recommendation:**

The Planning Commission recommends the City Council take the following actions:

- 1) Receive and consider the Planning Commission recommendations;
- 2) Hold a public hearing;
- 3) Review Draft Title 17 Zoning (including all redlines) of the Lompoc Municipal Code (LMC) (Attachments 7, 8, and 9)<sup>1</sup>;
- 4) Adopt Resolution No. 6258(19) to (i) rescind Resolutions No. 4895(00) and 4925(01), which, respectively, adopted the Old Town Specific Plan (OTSP) and added a map to the Land Use Element designating the area regulated by the OTSP, (ii) remove General Plan text referring to the Old Town Specific Plan and (iii) delete General Plan Land Use Element Implementation Measure 23 relating to orientation of buildings and parking (Attachment 1);
- 5) Introduce through first reading by title only with further reading waived, Ordinance No. 1670(19) (Attachment 2), which will:

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<sup>1</sup> For consistency of review, zoning code documents made a part of the June 18, 2019, staff report packets will be used again for review at this meeting as shown in Attachments 7 (Redlines #1, all changes), 8 (Redlines #2, changes made after February 19, 2019) and 9 (Clean Copy, all changes but not shown as redlines). Until the City Council adopts the final new zoning code, no additional changes (unless directed to do so) will be made to the draft code.

- (a) Repeal LMC section 10.28.150 relating to permit requirements for commercial vehicles used for solicitation of patronage;
  - (b) Delete the CO designation from the City's zoning map and Zoning Code, rename the C-2 (Central Business) zoning designation to CB (Central Business), rename the T (Mobile Home Park) zoning designation to MH (Residential Mobile Home Park);
  - (c) Revise Architectural Guidelines Section I.B. to be consistent with the updated Zoning Code regarding major architectural design and site development review;
  - (d) Add the Planned Development Overlay, Special Event Overlay, and H Street Overlay;
  - (e) Repeal the locational restrictions on cannabis uses contained in LMC Chapter 9.36 and incorporate its provisions into the Zoning Code;
  - (f) Rescind Planning Commission Resolution No. 88-67 regarding the use of metal storage containers; and
  - (g) Adopt the Comprehensive Zoning Code update to Title 17 (Zoning Code "Clean Copy") of the LMC (Update);or
- 6) Provide other direction.

**Background:**

A special City Council meeting was held on October 3, 2019, (staff report shown as Attachment 3) to further discuss the draft Zoning Code and adoption consideration. At that meeting, new comments were received in the form of a 13-page document, which included a total of 31 comments (Attachment 4) distributed by Council Member Mosby to the City Council and staff.

Most of that meeting included discussion of the comments (with associated action in the form of a motion for most items or direction for follow-up by staff), receiving additional public comments, and input from the City Council on other code sections.

In addition, a significant change that was not part of Ordinance No. 1670(19) considered on October 3, 2019, was new code regulations for the Special Event Overlay where the City Council directed staff to include the Overlay in the adopting Ordinance with specific code language that Council Member Mosby recommended as shown in Attachment 4 (Comment #29). That topic and additional recommended changes to the LMC are further discussed below.

**Discussion:**

Staff has prepared a mark-up copy of the 13-page comment letter (Attachment 4) entitled “*Zoning Code Amendments*” in order to provide a summary of actions taken by the City Council at the October 3, 2019, meeting.

No discussion is included in this report for items marked in Attachment 4 as “**Approved by Motion**” or “**Approved by a Previous Motion**,” as those comments will be revised in the final Zoning Code adopted by the City Council. An exception to that relates to the comments for the Special Event Overlay, which needed additional input from the Building Division and Fire Department in terms of how the City Council recommended code language could or could not be implemented once adopted.

Comments noted as “**Not Reviewed**” were not discussed by the City Council; and, therefore, no changes to the Zoning Code will be made. Items shown as “**Currently addressed in Code**” did not receive discussion at the last meeting as this comment was previously addressed in the draft Zoning Code; and, therefore, no further action is needed.

Comments, which are listed as “**Revised, Approved by Motion**,” are described below to clarify how the City Council directed the comment to be amended based on the discussion of the topic during the last City Council meeting. Therefore, a brief summary of the revision is explained for clarity prior to printing the code for adoption. For comments labeled “**Staff Follow-up needed**,” research or coordination with other departments was needed and is provided in the discussion of three items, which will allow the City Council to make fully-informed decisions regarding whether changes to the code are needed. Lastly, other items not part of Attachment 4, but discussed by the City Council at the last meeting, are discussed below.

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The following items marked as “**Revised, Approved by Motion**” depict the specific revision approved by the City Council as shown below:

- “**Banners shall be an allowed use with no fee or permit in all Commercial and Public Facility Zones; if the banner has the date it was installed and the name of the responsible party written on it and the banner is up for no more than 30 days. Any banner without a date or which is one or more days past the thirty days allowed may be taken down by City Staff and placed on the ground.**”

Approved revision to read:

**“Banners shall be an allowed use with no fee or permit in all Commercial and Public Facility Zones; if the banner has the date it was installed and the name of the responsible party written on it and the banner is up for no more than 30 days. Any banner without a date or which is one or more days past the thirty days allowed may be taken down by City Staff (with appropriate noticing) and stored at the City’s Fleet Yard.”**

Although not included in Attachment 4, the following revision to the staff recommended parking ratio for self-storage (mini-storage) facilities shall exclude requirements for interior storage units.

Approved revision to read:

**“1 space per 300 square feet of accessory office or business area. Units with direct exterior access do not require additional parking. An on-site caretaker unit shall provide 2 covered spaces (within a garage or carport)”.**

The following items are marked as **“Staff Follow-up Needed”** and the following additional information has been provided:

- **“Airport Overlay. Limitations and prohibited uses. The following are prohibited within the AO zone. Above ground utility facilities including transformers, telephone pedestals, fire hydrants or light poles.”** Based on input received from the Public Works Department, staff recommends deleting Subdivision 12.2.24.050 A.2.b. as this section is too restrictive and can be addressed appropriately without the need for this section.
- **“The maximum size of any retail location shall not exceed 100,000 square feet including accessory structures.”** In the proposed code there are additional permitting requirements on the size of retail with a threshold greater than 5,000 square feet. Specifically, retail spaces less than or equal to 5,000 square feet are permitted in the CC, CB, OTC and PCD zones but spaces greater than that size would be required to obtain a Minor Use Permit in those zones. On the other hand, the code is silent on retail spaces specifically larger than 100,000 square feet in those commercial zones. If the City Council would like to address this type of restriction or prohibition in the proposed code, staff recommends direction on which zone(s) that restriction should apply and the consideration of how it may affect existing or future large retailers that may desire to expand or locate in the City.
- **Southside Overlay Zone.** Staff has reviewed Ordinance No. 1566(13) and has verified that the City Council adopted specific code language from that Ordinance will be carried over into the proposed zoning code update. No further changes to the Southside Overlay in the proposed code is recommended at this time.

### Other items

Additional items that were discussed by the City Council, but are not part of Attachment 4, include the following items:

**Storage Containers** – The City Council’s recommendations for storage containers from the previous meeting (refer to Attachment 3) would remain, but with the following revisions:

- The table will be updated to differentiate standards between temporary and permanent containers to be allowed in residential zones;
- Residential zones would be allowed to have 1 container up to 14 feet in length and up to 120 square feet in size. Development standards allowed in “All Zones” also apply to non-residential uses (but includes Apartments) in residential zones;
- Non-residential zones would be allowed 1 container per parcel. For businesses and apartments that contain over 14,000 square feet of building floor area, 1 additional container is allowed for every 14,000 square feet of floor area, up to a maximum of 5 containers per acre;

Note: The California Building Code requires a building permit for containers exceeding 120 square feet.

**Decrease Minimum Lot width in the R-1 Zone** – Zoning Code subdivision 17.2.08.040 A. (Residential Zones Development Standards) requires newly created lots (does not apply to existing lots) in the 7-R-1 to be minimum of 65 feet in width. That standard is for interior lots. The City Council recommendation was to amend that requirement to 50 feet. Staff will need to clarify if the intent was to change the standard minimum lot width for corner lots as well. As currently proposed, corner lots are required to be a minimum width of 70 feet.

**Increase maximum fence height to 8 feet** – Zoning Code subdivision 17.3.12.040 C. (Landscape and Screening Standards, Screening Heights) outlines allowed screening heights that include maximum heights of 6 feet and 7 feet in the Non-Industrial and Industrial zones. There was a consensus to increase maximum fence height to 8 feet in all zones.

Note: The height limit in the front setback and within the street side setback would remain at a maximum height of 3 feet.

**Transportation Demand Management Plan** – The Parking Standards section of the proposed code includes Table 17.3.08.080.A (Additional Travel Demand Measures) which provide additional measures that may be incorporated into the transportation demand management plan, which is required for non-residential projects discretionary projects over 100,000 square feet.

The City Council had concerns that some of the suggested measures shown in the table were too restrictive and requested that the entire table be deleted from the code. After further review of the table and the listed measures, it has been determined that the table is not required and can be deleted from the code. In addition, a clarification will be made in the revised code that the 100,000 square foot reference is in relation to building area, not land area.

**Update to Noise Regulations** – The General Site Development Standards code section (Table 17.3.04.090.A) contains interior and exterior noise standards and concerns about those regulations were discussed; specifically noise thresholds for particular land uses (such as churches). Staff recognizes the need to revise the City’s noise standards (Zoning, General Plan as well as Chapter 8.08) but this item was not included in the contract for consulting services and will need to be addressed at a later date when funding and staffing is available.

**Proof of Legal Nonconformity** – Subdivision 17.6.20.020 A. requires a property owner provide sufficient evidence to the satisfaction of the Director a subject property is legal nonconforming. If the City has no building permit on file for a structure or addition, and if the property owner can provide evidence the structure or addition was built prior to 1945, then the Director will determine, to the best of their ability and based on all available evidence, whether the structure was legal at the time of its construction and is therefore a legal nonconforming structure. The City Council recommended changing the date cited in this section from 1945 to 1965.

**Flexible Options (2 to 3 years instead of 1 year, etc.) for Nonconforming properties. Refer to Attachment 14, comments #36 and #39 in the comment memo entitled “Issues to Consider from John Linn”.** – Non-conforming provisions in a zoning code are adopted so all properties eventually comply with the then current zoning requirements. Financing for the purchase of a non-conforming property is not an issue, as long as they are considered legal non-conforming by a city. The City Council could decide to adopt a provision of the Zoning Code that permits all uses and structures that were legally commenced and built and that are in existence when the new Zoning Code is adopted to remain forever, no matter if vacant for a period of time or changed in any way. Doing that, however, calls into question the purpose of the Zoning Code’s regulations, since a change of zoning to a property would likely never become a reality because the existing uses and buildings could remain forever, even if they did not meet the purposes of the changed zoning. To try to balance the rights of individual property owners with the goals of the community as declared in its zoning code, cities allow existing building and uses, which may not conform to current zoning, to remain unless certain conditions are met. Those conditions typically involve time limits, levels of improvements to a property or the length of time a property may be vacant. The most stringent of non-conforming rules sets a date by which all properties must be conforming with the then current zoning regulations, usually at least 20 years. That very aggressive non-conforming regulation typically results in community uproar when that deadline is at hand. A less harsh approach is to allow a legal use and building to remain unless the use changes, the property is vacant for some period of time or some level of improvement is done to the property. That latter can also have different permutations.

One could be any demolition of or increase in square-footage to a building requires the entire property to become conforming. Others could allow some percentage increase in or demolition of square-footage with only the new improvements needing to comply with current zoning. Still others can allow a structure that suffers a disaster to be rebuilt to its pre-disaster “envelope and location,” if done so within a certain period of time after the disaster occurs. With the foregoing in mind, the City Council is requested to provide staff further input on the level and specifics of how the Zoning Code should deal with non-conforming uses and buildings, if the currently proposed approaches are not acceptable. Creating a system that allows non-conforming structures and buildings to remain indefinitely is not recommended, since it would call into question the purposes of the new zoning regulations.

### Special Event Overlay

At the October 3, 2019, meeting, staff recommended the Special Event Overlay be removed from the Zoning Code update in order to allow additional time to coordinate revisions with the wine community through a working group. The City Council decided to insert the Special Event Overlay regulations back into the proposed zoning code without the need to have a working group and insert code language as shown in Attachment 4 (comment #29). Since that meeting, staff has reviewed this section of the code again and has also received additional input from the Fire Department and Building Division.

In summary, Administration, Planning, Building, Fire and the City Attorney staff do not recommend the Zoning Code language that was provided during the last City Council meeting as it would be difficult to implement for the following reasons:

### Building Division Concerns:

- A Temporary Permit for a function within a building that does not have a building permit approval for that use is not allowed under building code provisions. Allowable use of a space within a building can only be granted through a complete review/approval process based on plans prepared by a licensed design professional.
- The California Building Code does not grant authority to the Building Official to establish occupancy classifications. Occupancy classifications are expressly set forth in the Building Code and the determination of which classification applies to various uses can only be established through the formal processing of a building permit or request for a change in occupancy classification.
- The Building Division cannot approve an event that would involve a change of occupancy.
- Approval of a building or space for assembly purposes involves consideration of more than just occupant load and egress; it involves consideration of a number of different factors that can typically only be accomplished by a thorough review of the building plans.

- Temporary events that are of an assembly nature cannot be held inside a building, structure or space that has not been approved for that use.
- The Building Official duties do not allow him/her to approve the use of a building that does not comply with its occupancy classification (Section 104 of the CA Building Code).

Fire Department Concerns:

- The CA Fire Code specifically authorizes the Fire Code Official to enforce the code and states the Fire Code Official “**shall not have the effect of waiving requirements specifically provided for in this code.**” CA Fire Code Section 104.1.
- “A change of use or occupancy shall not be made unless the use or occupancy is made to comply with the requirements of this code ” CA Fire Code Section 102.3
- Alterations, additions, or changes in use or changes in the structures are to be within the scope of the CA Building Code, per CA Fire Code, section 102.4. A building permit is required as well.
- The subject of occupant load is covered in section 1004 of the CA Fire Code in its entirety. The maximum occupant load on the approved building plans for each individual room shall not be exceeded.
- The CA Fire Code also regulates outdoor events. “Outdoor Assembly Events” are defined as “an outdoor gathering for persons for any purpose.”
- The office of the CA State Fire Marshal does not approve of the proposed code language.
- Section 1.11 of the CA Fire Code states the Office of the State Fire Marshal mandates assembly or similar place of assemblage follow all Health and Safety Codes, Section 13143.

City Attorney Comments to the above Building and Fire Concerns (in no order of preference):

- The fact a building permit is limited to 180 days (with possibility of extensions) does not mean a TUP under the Zoning Code must be limited to 180 days.
- While the City’s Zoning Code could allow a use in a building that would require a change to the occupancy load permitted for that building by the Building Code without a formal review by the City, if a change in occupancy is made and the Building Division or Fire Department becomes aware of that unpermitted use it



may need to issue a Notice of Violation for that building until a review of the building is conducted and needed changes made. Any change in use that increases the likely occupancy load of a building may require the occupancy classification for that building to be changed, which in turn may require structural or other physical changes to the building. The proposed Zoning Code language allows the Building Division to require a building permit for any non-exempt special event that would involve a change of occupancy (Subdivision D.3.d.6.) and for special events that are exempt from a TUP. That same subdivision would allow the Building Official and Fire Department to require plans be submitted by a professional.

- The Building Division or Fire Department may need to take enforcement action if the event takes place without any necessary approval or permit.

All that being said, it seems the goal is to exempt every special event from a TUP. Therefore, the TUP language seems superfluous. It seems the proposed language would allow any business to have any kind of temporary event without any City approval, as long as it meets the minimal standards in D.1. That then leaves it up to the Building Division and Fire Department to enforce Building Code / Fire Code violations they might come across or that may get reported. That may not be the most effective use of staff time, nor create a good working relationship between the City and its business constituents.

- The proposed language specifically refers to wine businesses. The SEO would best be applicable to all businesses. Therefore, the references to wine businesses should be reworded to any businesses. The TUP process should also be the same for all types of businesses under the SEO.
- It is also important to point out, regardless of what the Zoning Code says, the Building and Fire Code will still apply. So no event will be able to escape the requirements to get a Building Permit for a change of occupancy and comply with all other Building/Fire Code requirements for their new occupancy for temporary events. It will again be a matter of the City having the resources to enforce, which as discussed above, could lead to difficult relationships between the City and its businesses.

In an effort to assist the Council with moving this matter forward, a revision to the Special Event Overlay Zone section (Attachment 18) has been drafted that addresses all of the concerns listed above, simplifies the proposed Special Event Overlay Zone section and Special Event Temporary Use Permit process. The intent of the revision is to create a policy that is business friendly and the City can implement with current staffing levels. Staff recommends the City Council introduce, by first reading with further reading waived, the draft ordinance included as Attachment 2.

### **Environmental Review:**

The City Council certified the Final EIR (FEIR) during the adoption of the 2030 General Plan on October 19, 2010. For the Zoning Code Update, an Addendum to the FEIR has been prepared pursuant to the requirements of CEQA and was circulated for public review from August 10, 2018, to September 10, 2018. The Addendum is the sixth Addendum to the 2030 General Plan FEIR (Attachment 16). As a reminder, an Addendum to an EIR is appropriate when only minor technical changes or additions are necessary, and no substantial changes are proposed or new information available that would require major revisions to the EIR. Prior to the October 3, 2019, City Council meeting, the EIR Addendum analysis determined no new or more severe environmental impacts beyond those disclosed in the FEIR would occur as a result of the Zoning Code Update (Attachment 17 will be available at the public hearing).

At the August 6, 2019, City Council meeting, two changes were considered. Those changes related to restaurant uses in Industrial Zones and revising General Plan Implementation Measure 23 regarding building placement with parking required behind buildings on H Street. For restaurants, the requirement for a Minor Conditional Use was changed to a Permitted Use, which would allow restaurants in Industrial zoning districts with the review of a building permit. That is considered a minor change, as long as the Zoning Code notes adequate infrastructure/utilities are required. For Implementation Measure 23 (proposed to be deleted based on the October 3, 2019, City Council Meeting), not requiring (but instead encouraging) buildings to be placed adjacent to H Street with parking behind is a design preference and not a significant change from an environmental standpoint. Both changes (including deleting Implementation Measure 23 in the Land Use Element) can be accommodated in the existing Addendum without the need to re-circulate for additional public review.

Furthermore, at the October 3, 2019, City Council Meeting, additional changes were recommended by the City Council that will necessitate new General Plan Land Use Element amendments that were not anticipated nor analyzed as part of the currently drafted Addendum. Specifically, those recommendations include amending Subdivision 17.2.16.030 A. to allow an Equipment Rental Yard as a Permitted use in the BP zone (currently that use is prohibited in that zone) and amending Subdivision 17.2.16.040 A. to include a Floor Area Ratio (FAR) of 0.75 (instead of the current FAR of 0.50) in the Industrial zone. After coordinating with the environmental consultant, this change will require additional analysis with a timeline of approximately 3 weeks, and a cost of \$8,500 which was not included in the current budget. Therefore, this change requires a contract amendment but can be approved administratively. A revised Addendum can be brought back to the next Council meeting as part of final adoption of the Zoning Code.

### **Fiscal Impact:**

Funding for the Update was approved by the City Council on July 7, 2015. Following funding approval, consultant services by Lisa Wise Consulting, Inc., were secured on August 1, 2015, in the amount of \$396,294.00. The contract also included required environmental work (EIR Addendum) for the Project with Rincon Consultants, Inc.

To date, the City has been billed for \$386,304.03 for work performed on the Update. Therefore, \$9,989.97 remains in the original budget. The tasks remaining for the Update include adoption hearings (in progress), finalization of the Zoning Code, and environmental documentation (which further work is needed based on recent City Council recommendations). An administrative contract modification in the amount of \$8,500 is needed in order to increase the contract amount to accommodate additional environmental work. It is also important to note any more significant changes to the Zoning Code may require additional funding for more environmental review, which would be an expense of the General Fund.

**Conclusion:**

Based on strong public participation, outreach, numerous hearings and workshops that occurred during the Update, staff recommends adoption of the new Zoning Code, which complies with Federal and State Laws, is user-friendly, provides more flexible and streamlined modern regulations, implements General Plan goals, policies, and measures, while promoting revitalization and encouraging new housing development in the City. Due to upcoming new state laws that will take effect January 1, 2020, staff is recommending approval of the Zoning Code Update by December 31, 2019. Since, pursuant to state law, all ordinances must have their second readings at a regular Council meeting, to meet the above deadline the ordinance adopting the Zoning Code Update must have its second reading no later than the second regular meeting in December, which is December 17, 2019.

Respectfully submitted,

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Brian Halvorson, Planning Manager

**APPROVED FOR SUBMITTAL TO THE CITY MANAGER:**

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Christie Alarcon, Community Development Director

**APPROVED FOR SUBMITTAL TO THE CITY COUNCIL:**

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Jim Throop, City Manager

- Attachments: 1) Resolution No. 6258(19)  
2) Ordinance No. 1670(19)  
3) Staff Report from October 3, 2019 (No Attachments)  
4) Comments (Marked copy) Distributed at October 3, 2019 City Council Meeting  
5) ***Planning Commission Resolution Nos. 904 (19), 905 (19), 906 (19)***  
6) ***Planning Commission Resolution No. 907 (19)***  
7) ***Zoning Code Redlines #1 (All changes)***  
8) ***Zoning Code Redlines #2 (Changes made after February 19, 2019)***  
9) ***Zoning Code “Clean Copy” (All changes but not shown as redlines)***  
10) ***Comments Received from Public***  
11) ***Comments from John Linn (Metal Storage Containers)***  
12) ***Draft Staff Recommendations (Metal Storage Containers)***  
13) ***Supplemental Comments from John Linn and Staff Responses***  
14) ***Staff Recommended Changes to John Linn Comments (mark-up)***  
15) Letter from Housing Authority of Santa Barbara County – ***Not included, addressed at the July 16, 2019 City Council Meeting***  
16) 2030 General Plan Environmental Impact Report Addendum #6 (dated September 2019)  
17) ***2030 General Plan EIR***  
18) Recommended Special Event Overlay Zone

Attachments 5 through 14, and 17 are not attached in hard copy to this Staff report but are available for review at the Planning Division, City Clerk’s Office at City Hall or on the City’s website at:

<https://www.cityoflompoc.com/government/departments/economic-community-development/planning-division/zoning-code-update>