



Title 9: Zoning

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2011

Chapter 1: Zoning Purpose and Administration

This chapter establishes administrative components of the zoning code including the purpose and authority of the code as the key implementation tool of the City of Lemoore general plan. Also included are administrative procedures and guidelines for how to interpret and enforce provisions of the code.

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Title 9, Chapter 1

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Chapter 1: Zoning Purpose and Administration

Sections:

- 9-1-1 Purpose and Authority
- 9-1-2 Zoning Administration
- 9-1-3 Interpretation
- 9-1-4 Enforcement, Legal Procedures, and Penalties
- 9-1-5 Nonconforming Uses, Structures, and Property

Draft Zoning Code Changes:

- *This chapter consolidates many of the administrative section of the zoning code in one location and adds more detail to make the code more legally defensible.*
- *This chapter includes expanded enforcement provisions.*

9-1-1 Purpose and Authority

A. Title

This Title shall be known as the Lemoore zoning code, hereafter referred to as the zoning code.

B. Purpose of the Zoning Code

This Title establishes regulations governing the development and use of land in accordance with the City of Lemoore general plan in a manner that protects the public health, safety, comfort and convenience, and welfare of residents and businesses of Lemoore. The zoning code provides information to facilitate the efficient review of development proposals, while providing opportunity for public review and comment for proposals that may have a significant impact on the community. Further, the zoning code:

1. Supports the general plan's goals, policies, and land use framework through:
 - a. Compact urban form as depicted on the general plan land use diagram;
 - b. Promotion of small town character;
 - c. Accommodating economic development and jobs through adequately zoned properties;
 - d. Integration of neighborhoods and neighborhood centers;
 - e. Enhancement of community character and aesthetics;
 - f. Promotion of an interconnected network of open space and parks;
 - g. Support for a complete roadway system;
 - h. Promotion of a range of commercial and retail opportunities; and
 - i. Support for adequate, flexible school sites;

2. Creates a comprehensive and stable pattern of land uses to help ensure the provision of adequate water, sewage, transportation, drainage, parks, open space, and other public facilities and services;
3. Protects and promotes appropriately located commercial and industrial activities in order to preserve and strengthen the City's economic base;
4. Fosters a wholesome, serviceable, and attractive living environment, the beneficial development of areas that exhibit conflicting patterns of use, and the stability of existing land uses that conform with objectives, policies, principles and standards of the general plan;
5. Provides a guide for the rezoning of properties within the sphere of influence in conjunction with the potential annexation proceedings, as provided by law;
6. Conserves and protects the City's natural resources and features such as canals, significant trees, and historic and environmental resources in accordance with the policies of the general plan;
7. Requires that permitted uses and development provide reasonable protection from fire, flood, landslide, erosion, or other man-made or natural hazards; and
8. Ensures compatibility between residential and nonresidential development and land uses.

C. Authority

This Title is enacted based on the authority vested to the City of Lemoore by the state of California, including, but not limited to, Article XI, §7 of the state Constitution; the Planning and Zoning Law (Government Code §65000 et seq.); and the California Environmental Quality Act (California Public Resources Code §21000 et seq.)

D. Applicability of Regulations

This Title applies to all land uses, structures, subdivisions, and development within the City of Lemoore, including:

1. **Relationship to Prior Code.** The provisions of this Title, as it existed prior to the effective date of the ordinance enacting this Title, are repealed and superseded as provided in ordinance number _____. No provision of this Title shall validate or legalize any land use or structure established, constructed, or maintained in violation of the Title as it existed prior to its repeal by ordinance number _____.
2. **Prior Rights and Violations.** The enactment of this Title shall not terminate or otherwise affect vested land use development permits, approvals, or agreements authorized under the provisions of any ordinance, nor shall violation of prior ordinance be excused by the adoption of this Title.
3. **New or Altered Land Uses or Structures.** Compliance with this Title is required to lawfully establish, construct, reconstruct, alter, or replace any use of land or structure.
4. **Land Use Permits (Entitlements).** Land use permits are required when a development as defined by this Title is proposed. No person shall initiate a development requiring a land use permit, and the City shall not issue any other permit related to the development, until a land use permit has been approved and the appeals period has expired.
5. **Existing Uses and Structures.** An existing land use or structure is lawful only when it was legally established and is operated and maintained in compliance with all applicable provisions of this

code. A land use or structure that was lawfully established before this Title was enacted, or before enactment of any applicable amendment to this Title, may continue except as provided in section 9-1-5 (nonconforming uses, structures, and properties). No expansion or modification to a pre-existing legal nonconforming use or structure shall be permitted except as allowed by section 9-1-5 (nonconforming uses, structures, and properties)

6. **Minimum Requirements.** The provisions of this Title shall be the minimum to ensure the public health, safety, and welfare. For discretionary actions, City officials or bodies have the ability to impose more stringent requirements than set forth in this Title as may be necessary to promote orderly land use development.
7. **Effect of Zoning Code Changes on Projects in Process.** The enactment of this Title or amendments to its requirements may have the effect of imposing different standards on new land uses, development, and/or structures than those that applied to existing land uses, development, and/or structures. Following the effective date of this Title, or any amendments to this Title, the following provisions shall apply:
 - a. Pending applications. All land use permit applications that are active and that have been determined by the planning department to be complete before the effective date of this Title or any amendment, will be processed according to the regulations in effect when the application was accepted as complete.
 - b. Approved projects not yet under construction. Any structure authorized by a conditional use permit, site plan and architectural review, temporary use permit, or variance, for which construction has not begun as of the effective date of this Title or any amendment, may still be constructed in compliance with the approved permit, as long as construction is completed and the approved land use is established before the expiration of the permit or, where applicable, before the expiration of any approved time extension.
 - c. Projects under construction. A structure that is under construction pursuant to a valid building permit on the effective date of this Title or any amendment, may be completed and need not be changed to satisfy any new or different requirements of this Title as long as construction is beyond the approval of the first inspection on the effective date of this Title or any amendment, and provided that construction is diligently pursued to completion. Such a structure shall be deemed to be a lawfully existing building.
8. **Conflicting Requirements.** Wherever conflict occurs between the provisions of this Title and any other provision of law, the more restrictive of any such provisions shall apply.
 - a. Municipal code provisions. If conflicts occur between requirements of this Title and other portions of the municipal code, or between this Title and other plans and policies adopted by the City, the most restrictive shall apply.
 - b. General plan. If conflict occurs between the requirements of this Title and the adopted City general plan, the requirements of the general plan shall govern.
 - c. Specific plan. If conflict occurs between the requirements of this Title and any adopted specific plan, the requirements of the specific plan shall govern.
 - d. Development agreements. If conflicts occur between the requirements of this Title and standards adopted as part of any development agreement, the requirements of the development agreement shall govern.

- e. Private agreements. This Title applies to all land uses and development regardless of whether it imposes a greater or lesser restriction on the development or use of structures or land than a private agreement or restriction (for example, CC&Rs) without affecting the applicability of any agreement or restriction. The City shall not enforce any private covenant or agreement unless it is a party to the covenant or agreement.
9. **Other Requirements/Permits.** Nothing in this Title eliminates the need for obtaining any other permits required by the City, or any permit, approval, or entitlement required by the regulations of any regional, state, or federal agency.
10. **Public Nuisance.** Neither the provisions of this Title nor any permit or other approval authorized by this Title shall authorize the maintenance of any public nuisance as defined in this municipal code.
11. **Code Violations.** No development shall be permitted and no permits shall be issued for the division, improvement, or use of land that has been divided or otherwise developed in violation of this Title.
12. **Severability.** If any portion of this Title is for any reason held by a court of competent jurisdiction to be invalid, unconstitutional, or unenforceable, such decision shall not affect the validity of the remaining portions of this Title. The city council hereby declares that this Title and each chapter, article, section, subsection, paragraph, subparagraph, sentence, clause, phrase, and portion thereof is adopted, irrespective of the fact that one or more portions of this Title may be declared invalid, unconstitutional, or unenforceable.

9-1-2 Zoning Administration

A. Purpose

The purpose of this section is to establish administrative responsibilities and to describe which review body (e.g., planning director, planning commission, or city council) makes recommendations or final decisions on various types of land use permit applications.

B. Planning Agency

California Government Code §65100 requires each jurisdiction to establish a planning agency to carry out the land use and planning functions of the jurisdiction. The functions of the planning agency, as designated by this Title, may be carried out by the following bodies. In the absence of an assignment, the city council shall retain responsibility and authority as the legislative body of the City.

1. **Planning Director.** The planning director, or designee, shall have the responsibility and authority to administer and enforce this Title as follows:
 - a. Maintain this Title, the zoning map, and all record of zoning actions and interpretations;
 - b. Advise the city council, city manager, and planning commission on planning matters;
 - c. Pursuant to §65900 of the Government Code, serve as the administrative zoning body and decide land use entitlements as provided in chapter 9-2 (procedures and entitlements);
 - d. Provide staff at meetings and provide administrative services for the planning commission;
 - e. Direct or prepare planning related policy amendments and special studies as necessary;

- f. Conduct administrative functions authorized by this Title, including but not limited to distribution and receipt of entitlement applications and corresponding fees, application review and public noticing, determination and issuance of administrative entitlements and approvals;
 - g. Prepare staff reports with recommendations, proposed findings, and proposed conditions for actions for the planning commission, city council, and other designated review bodies;
 - h. Provide information to the public and facilitate public participation on planning matters;
 - i. Exercise such other powers and duties as are prescribed by state law, local ordinance, or as directed by the city manager.
2. **City Manager.** The city manager shall oversee the work of the planning director and shall exercise such other powers and duties as are prescribed by state law or local ordinance, or as directed by the city council.
3. **Planning Commission.** Pursuant to §65101 of the Government Code, and as provided in chapter 2-1 (planning commission), there is established a planning commission for the City. The planning commission shall have the following land use responsibilities:
 - a. Hear and decide applications for entitlements as provided in chapter 9-2 (procedures and entitlements), including, but not limited to, conditional use permit, major site plan and architectural review, variance, and highway-oriented sign permit;
 - b. Initiate studies of amendments to this Title and make recommendations to the city council for amendments as provided in chapter 9-2 (procedures and entitlements) and in §65853 of the Government Code;
 - c. Hear and make recommendations to the city council on applications for zoning amendments, the general plan and amendments thereto, specific plans, rezoning, and other related planning studies;
 - d. Exercise such other powers and duties as are prescribed by state law, local ordinance, or as directed by the city council.
4. **City Council.** The city council is the legislative body of the City and shall have the following land use responsibilities:
 - a. Hear and decide appeals of the decisions of the planning director and the planning commission;
 - b. Hear and decide applications for entitlements as listed in chapter 9-2 (procedures and entitlements), including, but not limited to, planned unit development, specific plan, development agreement, zoning amendment (including rezoning), rezoning, and general plan amendment. In the event that applications for other land use permits are requested in conjunction with these entitlements, the city council shall also be the final decision-making body for all related land use entitlements;
 - c. Direct planning related policy amendments and special studies as necessary or desired; and
 - d. Exercise such other powers and duties as are prescribed by state law or local ordinance.

9-1-3 Interpretation

A. Purpose

The zoning administrator has the authority to interpret the zoning code on a regular basis. Certain interpretation may be elevated when necessary to the planning commission to make formal interpretations that may have a significant impact on the community at large. This section provides the framework for interpretations and clarifies the use of some basic terms.

B. Rules of Interpretation

The planning director shall have the authority and responsibility to interpret terms, provisions, and requirements of this Title according to the following:

1. **Terminology.** The following rules apply to all provisions of this Title.
 - a. **Language.** The words “shall,” “will,” “is to,” and “are to” and similar words and phrases are always mandatory. “Should” is not mandatory but is strongly recommended and “may” is permissive.
 - b. **Tense and number.** The present tense includes the past and future tense, and the future tense includes the present. The singular number includes the plural, and plural numbers include the singular unless the natural construction of the word indicates otherwise.
 - c. **Conjunctions.** “And” indicates that all connected items or provisions shall apply. “Or” indicates that the connected items or provisions may apply singly or in any combination. “Either...or” indicates that the connected items and provisions shall apply singly but not in combination. “Includes” and “including” shall mean “including but not limited to.”
2. **Number of Days.** Whenever a number of days is specified in this code, or in any entitlement, condition of approval, or notice issued or given as provided in this code, the number of days shall be construed as calendar days, unless business days are specified. Time limits will extend to the following business day where the last of the specified number of days falls on a day that the City is not open for business.
3. **Minimum Requirements.** All provisions of this code are considered to be minimum requirements, unless specifically stated otherwise.
4. **Calculations – Rounding.** Where any provision of this code requires calculation to determine applicable requirements, any fractional/decimal results of the calculation shall be rounded to the nearest whole number (0.5 or more is rounded up, less than 0.5 is rounded down).
5. **Exclusive Listings.** Any list of any item, including zones or uses, is exclusive. If a use or other item is not listed, it is not permitted, unless the use is determined to be similar to a listed use or use category.
6. **Zone Boundaries.** Where uncertainty exists with respect to the boundaries of the various zones as shown on the zoning map, the provisions of subsection 9-3-3-E (zoning map interpretation) shall apply.

C. Official Zoning Interpretations

Official interpretations shall be prepared whenever an ambiguity in a zoning regulation exists, or a formal request for an interpretation is made by an applicant, property owner, or interested party to the planning director. The procedure for an official zoning interpretation shall be as provided in section 9-2B-8 (official zoning interpretation).

9-1-4 Enforcement, Legal Procedures, and Penalties

A. Purpose

Provisions within this section are intended to ensure compliance with the requirements of this Title and any conditions of land use permits to promote the City's planning efforts and for the protection of the public health, safety, and welfare of the City.

B. Authority to Enforce

The city manager, planning director, code enforcement officer, or designees may issue citations for any violations of the zoning code pertaining to the use of any land and the addition, alternation, construction, conversion, erection, moving, reconstruction, or use of any structure. Other officials of the City charged by the law with the general duty of enforcing City ordinances shall also enforce the provisions of this Title.

C. Zoning Code Applicability

No person shall erect, construct, alter, maintain, or use any building or structure or shall use, divide, or transfer any land in violation of this Title or any amendment thereto, except as otherwise provided in section 9-1-5 (nonconforming uses, structures, and properties). All departments, officials, and public employees of the City who are assigned the authority or duty to issue permits or licenses shall comply with the provisions of this zoning code. The following actions are determined to conflict with this code:

1. Permits for uses or structures that would be in conflict with the provisions of the zoning code shall not be issued.
2. Any permit issued in conflict with the provisions of this zoning code shall be deemed void.
3. Any action taken by an official or public employee of the City in conflict with the provisions of this zoning code shall be deemed void.

D. Addressing Violations

Any structure constructed or maintained contrary to the provisions of this Title and any use of land or structure operated or maintained contrary to the provisions of this Title are hereby declared to be a public nuisance.

1. **Public Nuisance.** Any structure or use which is altered, constructed, or established contrary to the provisions of this Title or any applicable condition of approval imposed on a permit is unlawful and a public nuisance, and shall be subject to the remedies and penalties identified in this chapter, the municipal code, and other remedies available to the City.
2. **Infractions.** It is an infraction for any person to do any act forbidden or fail to perform any act required by this Title. Penalties for infractions shall be in compliance with state law and chapter 1-4 of the Lemoore Municipal Code.
3. **Stop Work Order.** Any construction in violation of this Title or any conditions imposed on a permit shall be subject to the issuance of a stop work order.
4. **Remedies.** Each day any violation of this Title continues is a new and separate offense. Each violation of this Title is considered a separate offense. Should a person be convicted for violation of the zoning code, whether as an infraction or a misdemeanor, pursuant to chapter 1-4 of the Lemoore Municipal Code or as otherwise provided by state law, the conviction shall not prevent the City from pursuing any other available remedy to correct the violation.

E. Inspections

City officials are authorized to perform inspections related to permit issuance, as follows:

1. **Pre-Approval Inspections.** Every applicant seeking a permit or any other action in compliance with this Title shall allow the City officials handling the application access to any premises or property which is the subject of the application.
2. **Post-Approval Inspections.** If the permit or other action in compliance with this Title is approved, the owner or applicant shall allow City officials access to the premises in order to determine continued compliance with the approved permit and/or any conditions of approval imposed on the permit.

F. Permit Revocation or Modification

This section provides procedures for securing revocation or modification of previously approved land use permits or entitlements.

1. **Revocations.** The City's action to revoke an entitlement shall have the effect of terminating the entitlement and denying the privileges granted by the original approval.
2. **Modifications.** The City may choose to allow the modification of the operational characteristics instead of revoking an entitlement. These modifications may include operational aspects, including but not limited to, buffers, duration of the entitlement, hours of operation, landscaping, lighting, parking, performance guarantees, property maintenance, signs, surfacing, and traffic circulation.
3. **Hearings and Notice.** The appropriate review authority shall hold a public hearing to revoke or modify an application, entitlement, or permit granted in compliance with the provisions of this Title. A notice shall be delivered in writing to the applicant and/or owner of the property for which the permit was granted.
4. **Review Authority Action and Findings.** A land use entitlement or permit may be revoked or modified by the review authority which originally approved the entitlement if any of the following findings can be made:
 - a. Circumstances under which the entitlement or permit was granted have been changed by the applicant to a degree that one or more of the findings contained in the original permit can no longer be met;
 - b. The entitlement or permit was issued, in whole or in part, on the basis of a misrepresentation or omission of a material statement in the application, or in the applicant's testimony presented during the public hearing, for the entitlement or permit;
 - c. One or more of the conditions of the permit have not been substantially fulfilled or have been violated;
 - d. The use or structure for which the permit was granted has ceased to exist or has lost its legal nonconforming use status;
 - e. The improvement authorized in compliance with the permit is in violation of any code, law, ordinance, regulation, or statute; or

- f. The improvement/use allowed by the permit has become detrimental to the public health, safety, or welfare, or the manner of operation constitutes or is creating a public nuisance.

G. Enforcement Action

This section describes the procedures for initiating enforcement action in cases where the planning director, or other City official, has determined that real property within the City is being used in violation of the provisions of this Title.

1. **Notice to Responsible Parties.** The planning director shall provide the record owner of the subject site and any person in possession or control of the site with a written notice of violation, which shall include the following information:
 - a. A description of the violation and citations of applicable zoning code provisions being violated;
 - b. A time limit for correcting the violation;
 - c. A statement that the City intends to charge the property owner for all administrative costs associated with the abatement of the violation;
 - d. A statement that the property owner may request and be provided a meeting with the director or designee to discuss possible methods and time limits for the correction of the violations.
2. **Time Limit for Correction.** The notice of violation shall state that the violations shall be corrected within thirty (30) days from the date of the notice to avoid further enforcement action by the City. The thirty (30) day time limit may be extended by the planning director upon determining that the responsible party will likely correct the violations within a reasonable time period. The planning director may also require through the notice of violation that the correction occur within less than thirty (30) days if the violation constitutes a hazard to public health or safety.
3. **Use of Other Enforcement Procedures.** Failure to remedy the violation within the time limit for correction shall constitute a violation of this Title and shall entitle the City to pursue criminal and civil remedies as provided by law and chapter 1-4 of the Lemoore Municipal Code.

H. Cost Recovery

The City has the authority to recover costs related to enforcement actions as follows:

1. **Cost Recovery Where No Permit Is Required.** The City shall be reimbursed for administrative costs, including, but not limited to, staff and city attorney time expended on the enforcement of the provisions of this Title, in cases where no permit is required in order to correct a violation.
 - a. Record of cost. The planning department shall maintain records of all administrative costs incurred by responsible City departments and associated with the processing of violations and enforcement of this Title, and the City shall be entitled to recover costs from the property owner.
 - b. Notice. Upon investigation and a determination that a violation of any of the provisions of the zoning code is found to exist, the planning director or designee shall notify the record owner or any person having possession or control of the property by mail of the

existence of the violation and the department's intent to charge the property owner for all administrative costs associated with enforcement.

- c. Summary of costs. At the conclusion of the case, the planning director shall send a summary of costs associated with enforcement to the owner and/or persons having possession or control of the property by certified and first class mail.
 - d. Actions that require a permit. Any person who alters or establishes any land use or structure without first obtaining any permit required by this Title shall pay the additional permit processing fees as established by the City that result from this action.
2. **Inspection Fee.** An inspection fee as established by the City may be imposed on each person who receives a notice of violation, notice and order, or letter of correction of any provision of this Title, adopted building code, or state law. The fee may be assessed for each inspection or reinspection conducted when the particular violation is not fully abated or corrected as directed.