



Legislation Details (With Text)

**File #:** 16-400      **Version:** 1      **Name:**

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**File created:** 8/16/2016      **In control:** City Council/Public Finance and Economic Development Authority/Parking Authority

**On agenda:** 9/6/2016      **Final action:** 9/6/2016

**Title:** SUBJECT: Public Hearing - Zoning Ordinance Amendment #16-01 - Adoption of a New Zoning Ordinance for the City of Merced

REPORT IN BRIEF

The City Council will be asked to consider adoption of a new Zoning Ordinance for the City of Merced.

RECOMMENDATION

City Council - Adopt a motion:

A. Adopting a Negative Declaration and Introducing Ordinance 2465, "An Ordinance of the City Council of the City of Merced, California, Amending Title 20 'Zoning' of the Merced Municipal Code;" and,

B. Approving a supplemental appropriation in Fund 017 in the amount of \$2,260 to pay for the State filing fees for the Negative Declaration and allowing the Finance Officer to make the necessary budget adjustments.

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:** 1. Att 1--Zoning Code--Changes since Public Review Draft.pdf, 2. Att 2--Res #3071 ZOA #16-01.pdf, 3. Att 3--PC Minute Excerpts-07-06-16.pdf, 4. Att 4--PC Staff Rpt ZOA 16-01.pdf, 5. Att 5--Correspondence Rcd.pdf, 6. Att 6--Tobacco Letters.pdf, 7. Att 7--Draft CC Ordinance ZOA 16-01.pdf

| Date     | Ver. | Action By  | Action   | Result |
|----------|------|--|----------|--------|
| 9/6/2016 | 1    | City Council/Public Finance and Economic Development Authority/Parking Authority | approved | Pass   |

*Report Prepared by: Kim Espinosa, Planning Manager, Development Services Department*

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## **ALTERNATIVES**

1. Approve the project as recommended by the Planning Commission, Zoning Ordinance Update Task Force, and staff; or,
2. Approve the project, subject to modifications as specified by Council; or,
3. Deny the request; or,
4. Refer back to staff for reconsideration of specific items (specific items to be addressed in City Council motion); or,
5. Continue to a future City Council meeting (date and time to be specified in City Council motion).

## **AUTHORITY**

The Zoning Ordinance is Title 20 of the Merced Municipal Code.

## **CITY COUNCIL PRIORITIES**

A New Zoning Code was listed as a City Council priority under "Future Planning" in the adopted FY 2015-16 Budget.

## **DISCUSSION**

### **Introduction**

This is the first comprehensive update of the Zoning Ordinance (Title 20 of the Merced Municipal Code) since its adoption in the early 1960's and represents a complete redesign, update, and modernization of the Zoning Ordinance in order to make the Ordinance easier to use and understand for the general public and to provide specific guidance to developers, making the development process simpler and faster. The goal was to facilitate the City's overall growth and development and enhance the community's overall appearance, access to services, and economic health.

After a process that began over four years ago and with a special thanks to the Zoning Ordinance Focus Group (see below), the Planning Commission and City staff are pleased to recommend adoption of a new Zoning Ordinance for the City of Merced.

### **Background**

The process of updating the Zoning Code began in 2012 with the hiring of a consultant, The Planning Center (now known as Placeworks), with the use of grant funds. Before the grant funds ran out in December 2013, the consultants prepared a preliminary draft of the new ordinance. Since that time, City Planning Staff took over responsibility for the project and facilitated the Focus Group meetings from July 2013 to March 2015, along with two additional meetings in January-February 2016 (see below). City staff also completely reformatted the ordinance with the use of color, enhanced graphics and photographs, and added provisions to address various issues that came up throughout the Focus Group process.

In December 2014, City staff produced a Focus Group Review Draft for the Focus Group to review. In September 2015, City staff produced the Public Review Draft with changes as asked for by the

Focus Group along with various changes that arose from City staff's experience with implementing the current Zoning Ordinance. On September 8 and 9, 2015, the Public Review Draft was presented to the City Council and Planning Commission as well as being made available on the City's website at:

[https://www.cityofmerced.org/depts/cd/planning/zoning\\_ordinance\\_update.asp](https://www.cityofmerced.org/depts/cd/planning/zoning_ordinance_update.asp) .

### **Organization of the New Zoning Ordinance**

The new Zoning Ordinance (Public Review Draft, September 2015) is organized into five parts as follows:

- 1) **Part 1-Enactment and Applicability**: Includes chapters regarding the purpose of the Zoning Ordinance, rules for interpretation, and provides an introduction to the Zoning Districts and Zoning Map.
- 2) **Part 2-Zoning District Standards**: Includes chapters regarding the purpose, land use regulations, and development standards for the six Residential, six Commercial, two Industrial, three Downtown, three Urban Villages, four Public Use and Agricultural, and two Special Use zoning districts as well as three Overlay Zones.
- 3) **Part 3-General Regulations**: Includes chapters regarding height, setbacks, accessory structures, walls and fences, interface, creek buffers, landscaping, parking and loading, small lot single family homes, second units, special land uses, residential design standards, home occupations, temporary uses and structures, nonconforming parcels/uses/structures, condominiums, density bonus, wireless communication facilities, adult entertainment businesses, and signs.
- 4) **Part 4-Permits and Administration**: Includes chapters regarding administrative responsibility, permit application and review, permit requirements, public notice and hearings, post-decision procedures, appeals, covenants for easements, conditional zoning, zoning ordinance amendments, general plan amendments, reasonable accommodations, and development agreements.
- 5) **Part 5-Glossary (Definitions)**: Includes definitions for 239 land uses and other terms used in the Zoning Ordinance.

### **General Overview of Proposed Changes to the Zoning Ordinance**

City staff completely reorganized and reformatted the new Zoning Ordinance with the use of color, enhanced graphics and photographs. Along with the Public Review Draft, City staff prepared a separate document, dated September 2, 2015, entitled "Zoning Code Update-Summary of Major Changes" (Attachment B of the Planning Commission Staff Report-Attachment 4), which summarizes the major changes to the Zoning Code in a table format.

These major changes include, but are not limited to:

- 1) The establishment of several new Zoning Districts (Rural Residential, Business Park, three Downtown zones, three Urban Village zones, three Public Use zones, and three Overlay zones), including several called for in the *Merced Vision 2030 General Plan* (adopted in 2012);
- 2) A major expansion to the list of uses allowed in each zoning district with various levels of review (Permitted, Minor Use Permits, Site Plan Reviews, and Conditional Use Permits);
- 3) Streamlining of the process for approving projects in the Planned Development zone;
- 4) Allowing 7-foot-high backyard fences in residential zones and up to 10-foot-high fences in non-residential zones along with new provisions regarding fence materials;
- 5) Streamlining the requirement for a Conditional Use Permit to a Site Plan Review Permit for Interface situations and expanding the use of the staff-level Site Plan Review Permit in other zones;

- 6) Substantial modifications to the Parking and Loading chapter, including the addition of more land use categories, adding flexibility and options in parking calculations for various land uses, and adding requirements for bicycle parking;
- 7) Adding regulations for specific land uses, such as mobile food trucks parked in a permanent location, check cashing establishments, community gardens, fraternities/sororities, live-work units, emergency shelters, recycling facilities, and placing new restrictions on tobacco sales in proximity to schools and other youth-oriented activities;
- 8) Substantial modifications to the City's regulations of home-based businesses ("home occupations") and Cottage Food industries;
- 9) Although the regulations and procedures themselves have not changed, the procedures for all the various planning permits (i.e. Conditional Use Permits, Zone Changes, etc.) are now spelled out in the Zoning Ordinance for easy reference;
- 10) A change in the appeals period from "calendar" days to "business" days;
- 11) Several new permits have been added (Minor Use Permits, Special Project Permits, etc.) have been added to increase flexibility; and,
- 12) The Definitions section has been expanded significantly from 45 definitions to 239 definitions for further clarity.

### **Proposed Changes to the Public Review Draft (June 2016)**

Since the release of the Public Review Draft in September 2015, City staff has received various comments on the Draft, including suggestions from the Planning Commission and City Council joint study sessions (and further recommendations from the Focus Group). Based on these suggestions, comments from the public, and recently adopted zoning ordinance amendments regarding medical marijuana and massage establishments, City staff has prepared a Final Draft of the Zoning Ordinance.

Instead of publishing a new Draft, however, City staff has prepared a document entitled "Proposed Changes to the Merced Zoning Ordinance Public Review Draft (June 2016)," which can be seen at Attachment 1. This document, in table format, spells out all the proposed changes to the Zoning Ordinance since the Public Review Draft was released. Please note that two minor modifications were made to this table after the Planning Commission staff report was prepared, and those modifications were presented to the Planning Commission at the meeting on July 6, 2016, so Attachment A of the Planning Commission Staff Report at Attachment 4 was deleted to avoid confusion. It should also be noted that City staff reserves the right to make very minor corrections, such as misspelled words or incorrect references or page numbers, in the final version of the Zoning Ordinance prior to publication.

These proposed changes include, but are not limited to:

- 1) Adding provisions from recent zoning ordinance amendments regarding medical marijuana and massage establishments (the medical marijuana regulations may be modified further depending on City Council action on August 1, 2016);
- 2) Adding the suggested guidelines regarding the design of single-family and multi-family units from the Planning Commission/City Council study sessions;
- 3) Amending the parking requirements for multi-family units as well as increasing the required width from 8.5 feet to 9 feet for all parking spaces;
- 4) Modifying the regulations for Community Gardens to allow them in more zones and to allow the on-site sale of products on a case by case basis.

### **Zoning Ordinance Focus Group**

The Merced Zoning Ordinance Update Focus Group was made up of Merced residents with various interests, including developers, engineers, planners, real estate, banking, and other interested citizens (see below for the members). The Zoning Ordinance Focus Group met 17 times from July 2013 to March 2015 to assist with the development of the Public Review Draft (Sept 2015) and then twice more in January and February 2016 to review suggested changes to the Public Review Draft from the Planning Commission and City Council. (A summary of their recommendations previously released has been amended to include their 2016 meetings and is provided at Attachment C of the Planning Commission Staff Report-Attachment 4.)

City staff would like to thank the Focus Group for all the time and effort that they put into the process. Their invaluable input made for a better product, which reflects the community's vision for future development.

Focus Group Members: Jim Abbate, Christina Alley, Ann Andersen, Todd Bender, Kenra Bragonier, Adam Cox, Tony Dossetti (Council Member), Ron Ewing, Loren Gonella, Forrest Hansen, Flip Hassett, Jack Lesch, Elmer Lorenzi, Des Johnston, Guy Maxwell, Carole McCoy (former Planning Commissioner), Michelle Paloutzian, Garth Pecchinino, Joe Ramirez, Mike Salvadori, Stan Thurston (Mayor), Brandon Williams (former Planning Commissioner), Jim Xu, and Chairman Bruce Logue

### **Public Input**

In addition to the work of the Zoning Ordinance Focus Group, community input into the process was accomplished in several ways, including public forums, stakeholder interviews, presentations to community groups and City Commissions, and joint Planning Commission/City Council study sessions. Please see Finding G of the Planning Commission Staff Report at Attachment 4 for more information.

### **Environmental Clearance**

The Planning staff has conducted an environmental review (Initial Study #16-20) of the project in accordance with the requirements of the California Environmental Quality Act (CEQA), and a Draft Negative Declaration (i.e., no significant adverse environmental effects have been found) is being recommended (see Attachment E of the Planning Commission Staff Report-Attachment 4).

### **Planning Commission Public Hearing**

On July 6, 2016, the Planning Commission held a public hearing on the Zoning Ordinance. 21 individuals testified. Although they expressed their appreciation for the efforts that went into preparing the new Ordinance and their support for including provisions for community gardens in the Ordinance, a number of them expressed concerns regarding the application fees for conditional use permits for community gardens in residential zones as proposed and asked for a reduction in fee costs, especially for non-profits. Correspondence from the public received at and prior to the Planning Commission public hearing is included at Attachment 5.

After the public hearing, the Planning Commission expressed their support for the proposed requirement for conditional use permits (CUP) for community gardens in residential zones, which would provide for input from the neighbors into how the gardens would operate in their neighborhoods. Staff had previously indicated that once the Zoning Ordinance was adopted, that the fee schedule would have to be updated to reflect the level of effort required for each type of permit and that staff felt that the cost for a minor conditional use permit, such as would be required for a community garden, would be much less than that for a regular CUP. The current fee for a minor CUP is \$577 vs. \$2,886 for a regular CUP. That lesser cost barely covers the cost of mailing and

publishing public hearing notices and minimal staff time.

The Planning Commission subsequently adopted a motion by a 6-0-1 vote (6 ayes, 0 no, 1 absent) to unanimously recommend approval to the City Council of the Negative Declaration and the Zoning Ordinance as proposed. See Attachments 2 and 3 for the Planning Commission Resolution and Minute excerpts.

### **Tobacco Sales Provisions**

After the Planning Commission meeting and just prior to the City Council hearing, a letter was received from the Greater Merced Chamber of Commerce (see Attachment 6) in opposition to the proposed new restrictions on tobacco sales in the new Zoning Code under Section 20.44.160 on page 164 of the Public Review Draft. In summary, the proposed provisions prohibit new tobacco retailers from locating within 1,000 feet of any parcel which has a public or private elementary, middle, junior high, or high school or playgrounds, parks, youth centers, City-owned and operated recreational facilities, and libraries. The prohibition does not apply to existing tobacco retailers who are currently operating legally and continue to operate with a suspension of no more than 90 days or to a tobacco retailer who entirely occupies a building of more than 20,000 square feet.

The Merced County Health Department had made a presentation to the Zoning Ordinance Focus Group at their meeting of January 29, 2015, asking for restrictions on tobacco sales near schools and other areas where children are often present. After the presentation, the Focus Group recommended that staff include provisions in the new Code that would ban the sale of tobacco products, including e-cigarettes, within 1,000 feet of schools and other youth-oriented areas, such as parks and playgrounds, but an exemption should be made for existing retailers and businesses over 20,000 square feet consistent with the current code regarding alcohol sales. (See page 17 of Attachment C of the Planning Commission Staff Report-Attachment 4 for details about the Focus Group discussion.) Staff has also included a copy of the original letter submitted by the Health Department to the Focus Group in January 2015 at Attachment 6.

### **IMPACT ON CITY RESOURCES**

There is \$2,260 in FY 2015-16 savings to carry over into FY 2016-17 for the supplemental appropriation.

### **ATTACHMENTS**

1. Proposed Changes to the Public Review Draft (June 2016, modified 8/2/16)
2. Planning Commission Resolution #3071
3. Minute Excerpts from Planning Commission Meeting of July 6, 2016
4. Planning Commission Staff Report #16-16
5. Correspondence received prior to or at the Planning Commission meeting
6. Correspondence regarding Tobacco Sales Restrictions
7. Draft City Council Ordinance

**PLEASE BRING YOUR COPY OF THE PUBLIC REVIEW DRAFT OF THE ZONING ORDINANCE (SEPTEMBER 2015) TO THE MEETING OR CONTACT PLANNING STAFF FOR ANOTHER COPY.**