

**CITY OF CALISTOGA  
PLANNING COMMISSION  
RESOLUTION PC 2016-\_\_**

**RECOMMENDING TO THE CITY COUNCIL APPROVAL OF AMENDMENTS TO THE  
CALISTOGA MUNICIPAL CODE TO REGULATE THE PERSONAL CULTIVATION  
OF MARIJUANA (MCA 2016-1)**

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1           **WHEREAS**, on November 8, 2016, California voters passed Proposition 64, the  
2 Control, Regulate, and Tax Adult Use of Marijuana Act (“AUMA”), which legalizes and  
3 regulates recreational marijuana in California; and

4           **WHEREAS**, although the City retains the ability to completely prohibit  
5 commercial marijuana businesses and private outdoor cultivation, the AUMA imposes  
6 certain restrictions on local police power with regard to private cultivation in residences;  
7 and

8           **WHEREAS**, the AUMA allows the City to enact and enforce reasonable  
9 regulations that reasonably regulate the personal cultivation of six or fewer marijuana  
10 plants; and

11           **WHEREAS**, the cultivation of marijuana on residential properties has the  
12 potential to generate significant negative impacts, including damage to buildings in  
13 which cultivation occurs from improper and dangerous cultivation and extraction  
14 methods, increased occurrences of robberies and similar crimes, and nuisance impacts  
15 to the public from the plants’ strong and noxious odors; and

16           **WHEREAS**, regulating the personal cultivation of marijuana on residential  
17 properties would be in conformance with Goal 5 of the City Council’s goals and  
18 objectives for Fiscal Year 2016-17, which calls for making Calistoga safe; and

19           **WHEREAS**, the Planning Commission reviewed the proposed amendments at a  
20 public hearing on November 30, 2016, and during its review, considered the public  
21 record, including the staff report, findings, written materials and testimony presented by  
22 the public during the hearing; and

23           **WHEREAS**, the Planning Commission has determined that this action is not  
24 subject to the California Environmental Quality Act (CEQA) under Section 15061(b)(3)  
25 of the CEQA Guidelines because it can be seen with certainty that there is no possibility  
26 that the proposed amendments may have a significant effect on the environment.

27           **NOW, THEREFORE, BE IT RESOLVED** by the City of Calistoga Planning  
28 Commission that, based on the above findings, it recommends that the City Council  
29 amend Calistoga Municipal Code Chapters 8.30 and 17.48 as shown in Exhibit A,  
30 where deleted language is indicated by ~~strikeout~~ and added language is indicated by  
31 underlining.

ADOPTED on November 30, 2016 by the following vote of the Calistoga Planning Commission:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

\_\_\_\_\_  
Paul Coates, Chairman

ATTEST: \_\_\_\_\_  
Lynn Goldberg, Secretary

Exhibit A

**CMC Title 8 Health and Safety**

**Chapter 8.30**

**MARIJUANA ACTIVITIES REGULATIONS**

Sections:

- 8.30.010 Definitions.
- 8.30.020 Medical marijuana dispensaries prohibited.
- 8.30.030 Marijuana/cannabis cultivation prohibited.
- 8.30.040 Commercial cannabis activity prohibited.
- 8.30.050 Violation – penalty.
- 8.30.060 Public nuisance.
- 8.30.010 Definitions.

- 32 A. "Commercial cannabis activity" includes the cultivation, possession, manufacture,  
33 storing, laboratory testing, labeling, transporting, distribution, or sale of medical  
34 cannabis or a ~~medical~~ cannabis product for which a state license is required  
35 under Business and Professions Code sections 19300 et seq. and 26000 et seq.
- 36 B. "Cultivation" means any activity involving the planting, growing, harvesting,  
37 drying, curing, grading, or trimming of marijuana.
- 38 C. "Marijuana" or "cannabis" means all parts of the plant Cannabis, whether growing  
39 or not; the seeds thereof; the resin extracted from any part of the plant; and every  
40 compound, manufacture, salt, derivative, mixture, or preparation of the plant, its  
41 seeds or resin. It includes marijuana infused in foodstuff, and concentrated  
42 cannabis and the separated resin, whether crude or purified, obtained from  
43 marijuana. It does not include ~~the mature stalks of the plant, fiber produced from~~  
44 ~~the stalks, oil or cake made from the seeds of the plant, any other compound,~~  
45 ~~manufacture, salt, derivative, mixture, or preparation of the mature stalks (except~~  
46 ~~resin extracted therefrom), fiber, oil, or cake, or the sterilized seeds of the plant~~  
47 ~~that are incapable of germination~~(i) industrial hemp, as defined in Health and  
48 Safety Code Section 11018.5; or (ii) the weight of any other ingredient, combined  
49 with marijuana to prepare topical or oral administrations, food, drink, or other  
50 product.
- 51 D. "Medical marijuana" is marijuana used for medical purposes where that medical  
52 use is deemed appropriate and has been recommended by a physician who has  
53 determined that the person's health would benefit from the use of marijuana in  
54 the treatment of acquired immune deficiency syndrome ("AIDS"), anorexia,  
55 arthritis, cancer, chronic pain, glaucoma, migraine, spasticity, or any other  
56 serious medical condition for which marijuana is deemed to provide relief as  
57 defined in subsection (h) of Health and Safety Code § 11362.7.

58 E. A “medical marijuana dispensary” is any facility or location, whether fixed or  
59 mobile, where medical marijuana is sold, made available, delivered, transmitted,  
60 and/or distributed by or to two or more people.

61 “Medical marijuana dispensary” shall not include the following uses, so long as  
62 such uses comply with this code, Health and Safety Code Section 11362.5 et  
63 seq., and other applicable law:

- 64 1. A clinic licensed pursuant to Chapter 1 of Division 2 of the Health and  
65 Safety Code.
- 66 2. A health care facility licensed pursuant to Chapter 2 of Division 2 of the  
67 Health and Safety Code.
- 68 3. A residential care facility for persons with chronic life-threatening illness  
69 licensed pursuant to Chapter 3.01 of Division 2 of the Health and Safety  
70 Code.
- 71 4. A residential care facility for the elderly licensed pursuant to Chapter 3.2 of  
72 Division 2 of the Health and Safety Code.
- 73 5. A hospice or a home health agency, licensed pursuant to Chapter 8 of  
74 Division 2 of the Health and Safety Code.

75 8.30.020 Medical marijuana dispensaries prohibited.

76 Medical marijuana dispensaries, as defined in this chapter, are prohibited uses in all  
77 zoning districts within the City of Calistoga.

78 8.30.030 Marijuana/cannabis ~~outdoor~~ cultivation prohibited.

79 The ~~outdoor~~ cultivation of marijuana/cannabis is prohibited in all zoning districts within  
80 the City of Calistoga, except as provided in Municipal Code section 17.48.050.

81 8.30.040 Commercial cannabis activity prohibited.

82 Commercial cannabis activities are prohibited in all zoning districts within the City of  
83 Calistoga.

84 8.30.050 Violation – penalty.

85 A. It shall be a violation to establish and/or operate a medical marijuana dispensary,  
86 conduct commercial cannabis activities, or cultivate marijuana/cannabis, except  
87 as provided in section 17.48.050, in any zoning district within the City of  
88 Calistoga.

89 B. The City may, in its sole discretion, enforce any violation of this chapter by any  
90 remedy available to it, including without limitation pursuit of a civil injunction and  
91 imposition of civil fines and penalties.

92 C. The remedies set forth in this section are cumulative and shall not preclude the  
93 City from any other remedy or relief to which it may be entitled under law or  
94 equity.

95 8.30.060 Public nuisance.

96 Any use or condition caused or permitted to exist in violation of any of the provisions of  
97 this chapter shall be and is hereby declared a public nuisance and may be abated by  
98 the City pursuant to the procedures set forth in Chapter 1.12 CMC.

## CMC Title 17 Zoning

### Chapter 17.48

#### MARIJUANA ACTIVITIES REGULATIONS

99 Sections:

100	<u>17.48.010</u>	<u>Definitions</u>
101	<u>17.48.010020</u>	Medical marijuana dispensaries prohibited.
102	<u>17.48.020030</u>	Marijuana/cannabis cultivation prohibited.
103	<u>17.48.030040</u>	Commercial cannabis activities prohibited.
104	<u>17.48.050</u>	<u>Personal marijuana processing and cultivation.</u>

105 17.48.010 Definitions.

106 The definitions set forth in Municipal Code section 8.30.010 shall apply to this Chapter.

107 17.48.010-020 Medical marijuana dispensaries prohibited.

108 Medical marijuana dispensaries, as defined in Chapter 8.30 CMC, are prohibited uses in  
109 all zoning districts within the City of Calistoga.

110 17.48.020030 Marijuana/cannabis cultivation prohibited.

111 The cultivation of marijuana/cannabis is prohibited in all zoning districts within the City  
112 of Calistoga, except as provided in Municipal Code section 17.48.050.

113 17.48.030040 Commercial cannabis activities prohibited.

114 Commercial cannabis activities, as defined in Chapter 8.30 CMC, are prohibited in all  
115 zoning districts within the City of Calistoga.

116 17.48.050 Personal marijuana processing and cultivation.

117 The cultivation of marijuana and the manufacture of marijuana products/by-products is  
118 allowed at a private residence, subject to the following regulations.

119 A. Cultivation must be for personal use and may not occur for the purpose of sale or  
120 profit.

121 B. No more than six living marijuana plants per residence may be planted,  
122 cultivated, harvested, dried and processed. The limit of six plants per private  
123 residence shall apply regardless of how many individuals reside at the private  
124 residence.

125 C. From a public right-of-way, there shall be no exterior evidence of nonmedical  
126 marijuana cultivation occurring on the parcel.

127 D. Such plants shall be located within one of the following:

128 1. The residence, or

129 2. An accessory residential structure that is fully enclosed and secure.

130 a. "Fully-enclosed and secure structure" means a space within a  
131 building that complies with the applicable provisions of the  
132 California Building Standards Code as adopted and amended by  
133 Calistoga Municipal Code Title 15, and has a complete roof  
134 enclosure supported by connecting walls extending from the ground  
135 to the roof, a foundation, slab or equivalent base to which the floor  
136 is secured by bolts or similar attachments, is secure against  
137 unauthorized entry, and is accessible only through one or more  
138 lockable doors. Walls and roof must be constructed of solid  
139 materials that cannot be easily broken through, and must be  
140 constructed with non-transparent material. Plastic sheeting, canvas,  
141 vinyl, or similar products or materials, regardless of gauge, are not  
142 considered solid materials.

143 b. A fully-enclosed and secure structure must be an accessory  
144 structure to a private residence located upon the parcel on which  
145 that private residence is situated.

146 c. Any fully enclosed and secure structure or residence used for the  
147 cultivation of nonmedical marijuana must have a ventilation and  
148 filtration system installed that shall prevent marijuana plant odors  
149 from exiting the interior of the structure and that complies with the  
150 applicable provisions of the California Building Standards Code as  
151 adopted and amended by Title 15 of the Calistoga Municipal Code.

152 d. A fully enclosed and secure structure used for the cultivation of  
153 nonmedical marijuana shall be located in the rear yard area of the  
154 parcel, and must maintain a minimum 10 (ten) foot setback from  
155 any property line. The yard where the fully enclosed and secure  
156 structure is maintained must be enclosed by a solid fence at least  
157 six feet in height.

158 E. Cultivation in a garage shall not prevent compliance with the minimum parking  
159 standards required by this Title.

160 F. Any living plants and marijuana produced by the plants in excess of 28.5 grams  
161 must be contained in a locked space that is not visible from a public place.

162 G. The marijuana cultivation area, whether in a fully-enclosed and secure structure  
163 or inside a residence, shall not be accessible to persons under 21 years of age.

164 H. Odors and light that are associated with cultivation may not be discernible  
165 beyond a property's or residence's boundaries.

166 I. The use of ozone generators to cultivate marijuana is prohibited.

167 J. The use of compressed, flammable gas as a solvent in the extraction of  
168 tetrahydrocannabinol (THC) or other cannabinoids to cultivate marijuana is  
169 prohibited.