

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

1 **RECOMMENDING THAT THE CITY COUNCIL AMEND TITLE 17, ZONING, TO**  
2 **REVISE THE REQUIREMENTS FOR USE PERMITS (ZOA 2016-2)**

3 WHEREAS, Title 17, Zoning, allows or requires the approval of administrative  
4 use permits by Planning Department staff for a wide range of activities and projects; and

5 WHEREAS, the recent increase in the processing fee for administrative use  
6 permits is an excessive charge for certain limited special events that are routinely  
7 approved by Planning Department staff without the need for input from other  
8 departments or nearby property owners, and there is a need to create a “temporary use  
9 permit” to process these types of activities and other temporary uses not involving  
10 public property; and

11 WHEREAS, the current requirement for the approval of an administrative use  
12 permit for certain restaurants, bakeries, cafes and similar uses in the Downtown  
13 Commercial Zoning District is unnecessary because any potential issues can be  
14 addressed through established procedures and practices for new businesses, and it is  
15 the desire of the City to streamline the review process to improve its economic  
16 conditions; and

17 WHEREAS, the current requirement for the approval of an administrative use  
18 permit for otherwise-permitted uses on properties that are zoned Downtown  
19 Commercial or Community Commercial that are located within a General Plan-  
20 designated Entry Corridor is unnecessary, because most new construction is subject to  
21 design review approval and all new construction in the Community Commercial District  
22 is subject to a Planning Commission-approved use permit; and

23 WHEREAS, the current requirement for the approval of an administrative use  
24 permit to allow certain fences, walls and hedges up to eight feet in height is  
25 burdensome on property owners and this height should be allowed by right; and

26 WHEREAS, the current Code does not require the notification to property owners  
27 prior to staff acting on most administrative use permits and this requirement needs to be  
28 added in order to inform neighbors of these applications; and

29 WHEREAS, revisions are need to Chapter 17.40, Use Permits, to add a purpose  
30 statement, clarify responsibilities and processes, delete references to minor use  
31 permits, reduce the number of required findings because many are unnecessary or  
32 repetitive, and clarify revocation procedures; and

33 WHEREAS, the Planning Commission reviewed the proposed amendments  
34 contained in Exhibit A to this resolution at a public hearing on November 30, 2016, and  
35 during its review, considered the public record, including the staff report, findings, and  
36 any written materials and testimony presented by the public during the hearing; and

37 WHEREAS, the Planning Commission has determined that the proposed  
38 amendments are not subject to the California Environmental Quality Act (CEQA) under

39 Section 15061(b)(3) of the CEQA Guidelines because it can be seen with certainty that  
40 there is no possibility that it may have a significant effect on the environment.

41 NOW, THEREFORE, BE IT RESOLVED by the City of Calistoga Planning  
42 Commission that, based on the above findings, it is recommended that the City Council  
43 adopt the Calistoga Municipal Code amendments attached as Exhibit A hereto.

44 APPROVED AND ADOPTED on November 30, 2016 by the following vote of the  
45 Calistoga Planning Commission:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

\_\_\_\_\_  
Paul Coates, Chair

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

Exhibit A

46 Amendments to Chapter 17.21, DC Downtown Commercial District

47 1. Subsection 17.21.020(A) of Section 17.21.020 Permitted primary uses is amended  
48 as follows:

49 A. The following primary uses are permitted in the DC district, ~~except that an~~  
50 ~~administrative use permit pursuant to Chapter 17.40 CMC is required when the~~  
51 ~~use is located within an entry corridor designated in the General Plan:~~

52 2. Subsection 17.21.020(A)(9.) of Section 17.21.020 Permitted primary uses, is  
53 amended as follows:

54 9. Restaurants, bakeries, cafes and similar uses, with or without outdoor seating,  
55 pursuant to the following:

56 ~~a. The proposed establishment meets all of the following criteria:~~

57 ~~ia. No live entertainment or dancing is proposed.~~

58 ~~ib. No outdoor seating is proposed in a public right-of-way.~~

59 ~~ic. The establishment is not a formula business or formula restaurant.~~

60 ~~b. Administrative review and approval by the Planning and Building Director,~~  
61 ~~subject to the following:~~

62 ~~i. The proposed establishment meets the requirements of all applicable code~~  
63 ~~regulations.~~

64 ~~ii. Written notice of the proposed establishment is mailed to all property~~  
65 ~~owners within 300 feet of the subject property. Such notice shall be given~~  
66 ~~not less than 10 days before the date the application is scheduled for a~~  
67 ~~decision by the Planning and Building Director.~~

68 ~~iii. No substantial concerns are raised by surrounding property owners or are~~  
69 ~~identified by the Planning and Building Director. If substantial concerns are~~  
70 ~~identified, the proposed establishment shall be referred to the Planning~~  
71 ~~Commission for review and approval pursuant to Chapter 17.40 CMC.~~

72 3. The following subsections are added to Section 17.21.030 Conditionally permitted  
73 uses.

74 B. The following uses require an administrative use permit in the DC District,  
75 pursuant to CMC Chapter 17.40:

76 1. Outdoor bicycle rentals in conjunction with an established retail sales  
77 operation

78 2. Outdoor dining in conjunction with an established restaurant operation

79 3. Outdoor live entertainment with non-amplified instruments in conjunction with  
80 an established business operation on an ongoing basis

- 81 C. The following uses require a temporary use permit in the DC District, pursuant to  
82 CMC Chapter 17.40:
- 83 1. One-time events held in conjunction with an established business operation,  
84 limited to four events per year. Use of public right-of-way as part of an event  
85 also requires approval of an encroachment permit.
  - 86 2. Outdoor holiday and other seasonal events and sales that do not involve the  
87 use of public property or right-of-way.

88 Amendments to Chapter 17.22, CC Community Commercial District

- 89 4. Subsection 17.22.020(A) of Section 17.22.020 Permitted primary uses, is amended  
90 as follows:

91 A. The following primary uses are permitted in the DC district, ~~except that an~~  
92 ~~administrative use permit pursuant to Chapter 17.40 CMC is required when the~~  
93 ~~use is located within an entry corridor designated in the General Plan:~~

- 94 5. The following subsections are added to Section 17.22.030 Conditionally permitted  
95 uses.

96 B. The following uses require an administrative use permit in the CC District,  
97 pursuant to CMC Chapter 17.40:

- 98 1. Outdoor bicycle rentals in conjunction with an established retail sales  
99 operation
- 100 2. Outdoor dining in conjunction with an established restaurant operation
- 101 3. Outdoor live entertainment with non-amplified instruments in conjunction with  
102 an established business operation on an ongoing basis

103 C. The following uses require a temporary use permit in the CC District, pursuant to  
104 CMC Chapter 17.40:

- 105 1. One-time events held in conjunction with an established business operation  
106 that do not involve the use of public property or right-of-way
- 107 2. Outdoor holiday and other seasonal events and sales that do not involve the  
108 use of public property or right-of-way

109 Amendments to Chapter 17.40, Use Permits

- 110 6. Chapter 17.40, Use Permits, is repealed in its entirety and replaced with the  
111 following.

112 Chapter 17.40  
113 USE PERMITS

114 Sections:

115 17.40.010 Purpose.

116 17.40.020 Application requirements.

- 116 17.40.030 Review procedures.
- 117 17.40.040 Use permit validity and extensions.
- 118 17.40.050 Compliance and revocation procedures.
- 119 17.40.010 Purpose.

120 The purpose of this chapter is to establish procedures and general standards for the  
121 review and approval of use permits required by various sections of this title. Uses  
122 that require use permit approval have been determined to have a special character  
123 that makes their establishment as a permitted or accessory use without prior review  
124 impractical and undesirable. This review shall be for the purpose of determining that  
125 each proposed use is, and will continue to be, compatible with surrounding existing  
126 and planned uses. It is also for the purpose of establishing special conditions as may  
127 be necessary to ensure the harmonious integration and compatibility of uses in the  
128 neighborhood and with surrounding areas.

129 17.40.020 Application requirements.

130 A. A use permit application shall be filed in accordance with CMC 17.02.120. The  
131 application shall be accompanied by the information identified in the Planning  
132 and Building Department handout as being required for use permit applications.

133 B. Application completeness

- 134 1. Within 30 days of receipt of an application for a use permit, the City shall  
135 notify the applicant in writing as to whether such application is complete for  
136 processing.
- 137 2. If the application is determined to be incomplete, the City shall inform the  
138 applicant of additional information required or the procedure by which such  
139 application can be made complete.
- 140 3. Upon receipt of such additional materials, a new 30-day period shall begin  
141 during which the City shall determine the completeness of the application.
- 142 4. Only an application for a use permit which has been determined to be  
143 complete shall be processed pursuant to the requirements of this title.

144 C. The filing of the application for a use permit shall not preclude the securing of  
145 additional information from the developer necessary for the proper consideration  
146 of a use permit nor does it insure that the use permit request complies with the  
147 law and with the requirements of this title.

148 D. If other approvals are required by this title, an application for a use permit may be  
149 filed and processed concurrently with the related entitlement request(s), and shall  
150 be acted upon simultaneously by the decision-making authority.

151 E. Following the denial of a use permit application or the revocation of a use permit,  
152 no application for such permit for the same or substantially the same use and  
153 design, or use of the same or substantially the same site shall be filed within one  
154 year from the date of denial or revocation.

- 155 17.40.030 Review procedures.
- 156 A. The Planning Department shall act on administrative use permit and temporary  
157 use permit applications.
- 158 1. Property owners within 300 feet of a property that is the subject of an  
159 administrative use permit application shall receive notification of the  
160 Department's pending action at least 10 days prior to such action being taken.
- 161 2. The Planning Director may refer an administrative use permit or temporary  
162 use permit application to the Commission for action.
- 163 B. The Planning Commission shall act on a use permit application following a public  
164 hearing.
- 165 C. Action on a use permit application may include approving the permit in its original  
166 or modified form, and with such terms and conditions that are deemed  
167 appropriate or necessary by required by section 17.40.040. If no terms or  
168 conditions are specified, the use permit shall be considered unconditional and  
169 valid for an indefinite period, unless the use is abandoned for more than 180  
170 days.
- 171 D. In approving or conditionally approving a use permit application, the decision-  
172 making authority shall make the following findings that the proposed use:
- 173 1. Is in accord with the General Plan and any applicable planned development.
- 174 2. Is in accord with all applicable provisions of this title.
- 175 3. Will not substantially impair or interfere with the development, use or  
176 enjoyment of other property in the vicinity.
- 177 4. Is consistent with and enhances Calistoga's history of independently-owned  
178 businesses, thus contributing to the uniqueness of the town, which is  
179 necessary to maintain a viable visitor industry and promote its economy.
- 180 5. Is resident-serving, in the case of a formula business.
- 181 17.41.040 Use permit validity and extensions.
- 182 A. Approval of a use permit shall lapse and become void one year following the date  
183 on which the use permit became effective, unless prior to the expiration of one  
184 year:
- 185 1. A building permit is issued and the applicant, in good faith, has diligently  
186 commenced construction and performed substantial work and incurred  
187 substantial liabilities in reliance thereon; or
- 188 2. A certificate of occupancy is issued for the structure which was the subject of  
189 the use permit application; or
- 190 3. The site is occupied and the activity has commenced, if no building permit or  
191 certificate of occupancy is required.

- 192 B. The Director may extend the time limit established by subsection (A) by up to 12  
193 months for a use permit's approval to be exercised, subject to the following:
- 194 1. A written request for an extension of time shall be filed with the Planning and  
195 Building Department at least 30 days before the expiration of the one-year  
196 period, together with the filing fee required by resolution of the City Council.  
197 Expiration of the approval will be stayed until the decision on the extension  
198 request if the request is filed 30 days before the original expiration.
- 199 2. In approving a time extension, the Director shall determine that:
- 200 a. The applicant has made a good faith effort to exercise the approval. The  
201 burden of proof is on the applicant to establish, with substantial evidence  
202 beyond the control of the applicant (e.g., demonstration of financial  
203 hardship, legal problems with the closure of the sale of the parcel, poor  
204 weather conditions in which to complete construction activities, etc.), why  
205 the permit or approval should be extended.
- 206 b. Conditions of the site and in the vicinity are substantially the same as  
207 when the approval was originally granted.
- 208 3. A use permit shall remain valid as long as the approved use is maintained in  
209 continuous operation and in full compliance with any adopted conditions of  
210 approval.
- 211 4. A use permit shall become null and void under either of the following  
212 circumstances:
- 213 a. Cessation of the use approved by the permit for a period of six months or  
214 more; or
- 215 b. Replacement of the use that is the subject of the use permit Institution with  
216 a different use.

217 17.41.050 Compliance and revocation procedures.

- 218 A. The City may conduct investigations to ensure that a conditionally-permitted use  
219 is being maintained and operated as applied for in compliance with all conditions.
- 220 B. Failure to operate in accordance with the conditions of the use permit may be the  
221 subject of an enforcement action and penalties as provided by CMC Title  
222 1 and/or grounds for setting the matter for a public hearing to consider revocation  
223 or modification of the permit. The assessment of penalties shall in no way act as  
224 a waiver of the revocation of the permit. The City may also pursue any other  
225 option permitted by law to require compliance with the conditions of the permit.
- 226 C. A use permit may be revoked or modified by the review authority that originally  
227 approved the permit following a public hearing, in the case of a use permit  
228 approved by the Planning Commission or the City Council, or an administrative  
229 hearing in the case of an administrative use permit approved by the Planning  
230 Department.

231 D. If as the result of an investigation it is determined that one or more of the  
232 circumstances contained in subsection (E) of this section applies to a use permit  
233 granted in accordance with the provisions of this article, the review authority shall  
234 hold a public hearing to consider its revocation or modification. Written notice of  
235 the date, time, place and purpose of such public hearing shall be served to the  
236 following parties, as applicable:

- 237 1. The owner of the property for which the permit was granted;
- 238 2. The operator of the conditionally permitted use if the use is active; and
- 239 3. The party or parties who hold an active business license for the conditionally-  
240 permitted use.

241 Such notice shall be provided by registered mail, postage prepaid, return receipt  
242 requested, not less than 10 days prior to the date of such hearing. Notice to the  
243 owner of the property shall be given at the address as shown on the latest  
244 equalized tax assessment roll. Notice to an operator of the conditionally-  
245 permitted use may be given at the property address of the use. Additional notice  
246 shall be given in the manner prescribed in CMC 17.02.090.

247 E. The review authority may revoke or modify the use permit after making one or  
248 more of the following findings:

- 249 1. The permit was approved on the basis of erroneous or misleading information,  
250 misrepresentation or fraud.
- 251 2. One or more conditions of approval have not been completed or have been  
252 violated.
- 253 4. The use authorized by the permit is conducted or maintained in a manner that  
254 is detrimental to the public health or safety, or constitutes a public nuisance.
- 255 5. If a business license is required for the conditionally-permitted use, a current  
256 business license has not been issued for the use authorized by the permit.

257 F. The revocation of a use permit shall have the effect of terminating the permit and  
258 denying the privileges granted by its approval.

259 Amendments to Chapter 17.38, General Provisions and Exceptions

260 6. Subsection 17.38.020(G) of Section 17.38.020 Yards – Permitted projections, is  
261 deleted and Subsection (H) is renumbered accordingly.

262 ~~G. In R districts, fences in side and rear yards may not exceed six feet in height, and  
263 may not exceed three and one-half feet in front yards or street side yards.~~

264 7. Subsections 17.38.020(I), (J) and (K) of Section 17.38.020 Yards – Permitted  
265 projections, are deleted.

266 ~~I. Nothing contained in the general provisions shall be deemed to reduce special  
267 yard requirements as set forth in the regulations for any R district.~~

268 ~~J. Yards required for residential buildings which may be permitted on use permit~~  
269 ~~shall be as required for the particular district or for R-3 districts, whichever yard~~  
270 ~~requirements are greater.~~

271 ~~K. Decorative entry gates, arbors, trellis and the like may be permitted subject to~~  
272 ~~provisions of Chapter 17.52 CMC.~~

273 Amendments to Chapter 17.52, Fences, Hedges or Walls

274 8. Subsection 17.52.020(A) of Section 17.52.020, Uses allowed, is amended as  
275 follows:

276 A. Residential, Commercial and Industrial Districts.

277 1. Walls and fences not exceeding ~~six~~eight feet in height shall be permitted in  
278 ~~all~~required interior side and rear yards and along interior side and rear yard  
279 lot lines, unless otherwise permitted in this title ~~or by the Planning~~  
280 ~~Commission.~~

281 2. Walls and fences not exceeding four and one-half feet in height may be  
282 permitted in ~~any~~required front yard or required and street side yards and  
283 along front ~~or~~and street side yard lot lines.

284 3. In the corner cutoff area, as defined by Section 17.52.030, the maximum  
285 height of any walls, fences ~~or~~and landscaping shall be two and one-half feet.

286 8. Subsection 17.52.020(B) of Section 17.52.020, Uses allowed, is amended as  
287 follows:

288 B. Notwithstanding the above, a fence, hedge, shrub or wall may be constructed or  
289 maintained within the street side yard setback of a corner lot; provided, however,  
290 that it does not exceed a height of ~~six~~eight feet, is located a minimum of five feet  
291 from the property line, is located outside the required front yard setback and  
292 maintains adequate site visibility distance from adjacent street corners and  
293 driveways as determined by the Planning Director.

294 9. Subsection 17.52.020(D) of Section 17.52.020, Uses allowed, is deleted in its  
295 entirety.

296 ~~D. Fences, walls and hedges between six feet and eight feet in height may be~~  
297 ~~approved in the required rear and side yard setback upon first securing an~~  
298 ~~administrative use permit. Written notice of the application for an administrative~~  
299 ~~use permit shall be mailed to all property owners within 300 feet of the proposed~~  
300 ~~fence, wall and hedge. Such notice shall be given not less than 10 days before~~  
301 ~~the date the application is scheduled for a decision by the Planning and Building~~  
302 ~~Director.~~

303 1. ~~The Planning and Building Director shall approve an application and issue an~~  
304 ~~administrative use permit if the following findings have been satisfied:~~

305 a. ~~Approval will not result in obstruction of sight distance so as to create or~~  
306 ~~increase any traffic safety hazard;~~

