

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CALISTOGA
AMENDING TITLE 17 ZONING OF THE CALISTOGA MUNICIPAL CODE TO ADD
CHAPTER 17.50 RIGHT TO FARM**

1 WHEREAS, it is the policy of the City of Calistoga to preserve, protect and
2 encourage the use of agricultural lands within and adjacent to the city for the production
3 of food and other agricultural projects, recognizing that agriculture is an important
4 component of the local economy and contributed to the city's unique qualities; and

5 WHEREAS, as urban development occurs within the city, residential, commercial
6 and industrial land uses will locate adjacent to pre-existing agricultural activities. As a
7 result, agricultural operations may become the subject of nuisance complaints or
8 litigation, and could be pressured to cease or curtail operations, or may be discouraged
9 from making improvements; and

10 WHEREAS, to conserve and protect the continued viability of agricultural
11 operations, it is the intention of the City to limit the circumstances under which
12 agricultural operations may be deemed to constitute a nuisance, consistent with the
13 California Agricultural Protection Act (Civil Code 3482.5); and

14 WHEREAS, the proposed ordinance is consistent with the following provisions of
15 the Open Space and Conservation Element of the City of Calistoga's General Plan
16 reflect the City's intent to promote agricultural uses, and would fulfill an action calling for
17 the adoption for a right-to-farm ordinance:

18 *Goal OSC-3 Protect open space important for the managed production of*
19 *resources in the Planning Area, including agriculture and*
20 *viticulture.*

21 *Objective OSC-3.1 Preserve agricultural land, a vital part of Calistoga's open*
22 *space network.*

23 *Policy P2 The City shall encourage the continued agricultural use of*
24 *lands within the Planning Area that are currently being*
25 *farmed.*

26 *Objective OSC-3.2 Encourage agricultural production through City policies and*
27 *regulations.*

28 *Action A2 Adopt a right-to-farm ordinance to:*

- 29 ♦ *Advise purchasers and users of property near agricultural*
30 *operations of the inherent potential problems.*
- 31 ♦ *Prevent existing farms operating according to accepted*
32 *agricultural practices from being unfairly judged to be a*
33 *public nuisance or unacceptable use.; and*

34 WHEREAS, the Planning Commission held a duly noticed public hearing on the
35 ordinance on August 14, 2013, and adopted Resolution PC 2013-23 forwarding a
36 recommendation that the City Council approve the ordinance. Prior to taking action on
37 the resolution, the Planning Commission received written and oral reports from staff and
38 received public testimony; and

39 WHEREAS, the City Council of the City of Calistoga reviewed and considered
40 this ordinance at its meeting on October 1, 2013, noticed in accordance with state and
41 local law, and which included the written and oral staff report, proposed findings and
42 comments received from the general public and interested agencies and parties.

43 **NOW, THEREFORE, THE CALISTOGA CITY COUNCIL DOES HEREBY**
44 **ORDAIN AS FOLLOWS:**

45 **SECTION ONE**

46 Findings. The above recitals are incorporated herein as if set forth herein in full
47 and each is relied upon independently by the City Council for its adoption of this
48 ordinance.

49 **SECTION TWO**

50 Amendment. A new Chapter 17.50 entitled "Right to Farm" is hereby added to
51 Title 17 (Zoning) of the Calistoga Municipal Code to read and provide as follows:

52 Chapter 17.50 Right to Farm

53 15.50.010 Purpose and intent

- 54 A. It is the policy of the City of Calistoga to preserve, protect and
55 encourage the use of agricultural lands within and adjacent to the city
56 for the production of food and other agricultural projects, recognizing
57 that agriculture is an important component of the local economy and
58 contributed to the city's unique qualities.
- 59 B. As urban development occurs within the city, residential,
60 commercial and industrial land uses will locate adjacent to pre-existing
61 agricultural activities. As a result, agricultural operations may become
62 the subject of nuisance complaints or litigation, and could be pressured
63 to cease or curtail operations, or may be discouraged from making
64 improvements.
- 65 C. To conserve and protect the continued viability of agricultural
66 operations, it is the intention of the City to limit the circumstances
67 under which agricultural operations may be deemed to constitute a
68 nuisance, consistent with the California Agricultural Protection Act
69 (Civil Code 3482.5).
- 70 D. These provisions are not intended to prohibit the conversion of
71 agricultural operations to other uses allowed by the Calistoga General
72 Plan.

73 15.50.020 Definitions

74 For the purposes of this Chapter, the following words and phrases shall be
75 construed as defined in this section.

76 A. "Agricultural activity, operation, or facility, or appurtenances thereof"
77 includes, but is not limited to:

- 78 1. The preparation, tillage, and maintenance of soil and other growing
79 media;
- 80 2. The production, cultivation, raising and breeding of any living
81 organism having value as an agricultural commodity or product;
- 82 3. The harvesting, processing, transporting and storage of agricultural
83 commodities and products; and
- 84 4. Commercial practices performed incidental to or in conjunction with
85 such operations on the site where the agricultural product is being
86 produced, including preparation for market, and delivery to storage,
87 market, and carriers for transportation to market.

88 B. "Transfer" means, but is not limited to, the sale, exchange or lease of
89 property.

90 15.50.030 Nuisance prohibition

91 A. No agricultural activity, operation or facility, or any of its
92 appurtenances, conducted or maintained for commercial purposes in a
93 manner consistent with proper and accepted customs and standards,
94 as established and followed by similar agricultural operations in the
95 same locality, shall be determined to be a nuisance, public or private,
96 after the same has been in operation for more than three years if it was
97 not formally declared a nuisance by the City of Calistoga or County of
98 Napa during that time, or due to any changed condition in the city.

99 B. The right to farm does not protect the farm operator from operating in
100 an illegal manner or violating any standard farming practices or
101 regulations.

102 15.50.040 Disclosure requirements

103 A. No person shall transfer real property within the Calistoga city limits
104 until the following disclosure in the form required by of Civil Code
105 Section 1102.6(a) subparagraph (b) is made in writing to the transferee
106 and is signed by the transferee. The disclosure shall include a
107 statement containing the following language:

108 *The City of Calistoga recognizes and supports the right to farm*
109 *property upon which agricultural activities may be legally*
110 *operated, including but not limited to at any time, noise; lights,*
111 *odors; fumes; dust; smoke; insects; the operation of machinery*

112 *(including aircraft); the application of fertilizers, soil*
113 *amendments, seeds, herbicides, and pesticides; the storage of*
114 *livestock feed and other agricultural commodities; the storage,*
115 *application and disposal of manure; and the processing,*
116 *transport and storage of agricultural products. The City of*
117 *Calistoga has determined that inconveniences and discomforts*
118 *associated with such agricultural operations and activities,*
119 *conducted in a manner consistent with proper and accepted*
120 *customs and standards, is not a nuisance.*

121 B. An owner of rental property within the Calistoga city limits shall
122 disclose the above in writing to a tenant prior to their rental of the
123 property.

124 C. Any transferor of property within the Calistoga city limits shall insert the
125 disclosure recited above in the deed transferring any right, title or
126 interest in the property to the transferee.

127 D. Any visitor accommodations operation established, and any visitor
128 accommodations operation whose use permit is amended following the
129 effective date of this Chapter, shall display an informational card in its
130 guest rooms and/or in a conspicuous public location that recites the
131 disclosure set forth above.

132 E. Prior to the issuance of a building permit for the construction of a
133 residence or commercial building within the Calistoga city limits, the
134 property owner upon which the building is to be constructed shall file
135 with the City a signed and dated acknowledgement of the disclosure
136 set forth above.

137 15.50.050 Other applicable laws

138 This Chapter is not intended to, and shall not be construed or given effect
139 in a manner that modifies or abridges federal law or regulation, or state
140 law as set out in the Civil Code, Health and Safety Code, Fish and Game
141 Code, Food and Agricultural Code, Division 7 of the Water Code, or any
142 other applicable provision of state law relative to nuisances; instead, this
143 Chapter is only to be utilized in the interpretation and enforcement of
144 provisions of this Code and City regulations. Further, this article is not
145 intended to, and shall not be construed or given effect in a manner that
146 limits or restricts the City's authority to review and approve or disapprove
147 proposals for agricultural operations on agricultural land in accordance
148 with other provisions of this Code or other laws.

149 **SECTION THREE**

150 Environmental Review. This action has been reviewed in accordance with the
151 California Environmental Quality Act, CEQA Guidelines Section 15061(b)(3), the
152 “general rule” exemption. The City has determined that because it can be seen with

153 certainty that there is no possibility that the ordinance will have an impact on the
154 environment, it is therefore exempt from CEQA under the general rule.

155 **SECTION FOUR**

156 Severability. If any section, subsection, subdivision, paragraph, sentence,
157 clause, or phrase in this ordinance or any part thereof is for any reason held to be
158 unconstitutional or invalid or ineffective by any court of competent jurisdiction, such
159 decision shall not affect the validity or effectiveness of the remaining portions of this
160 ordinance or any part thereof. The City Council hereby declares that it would have
161 passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase
162 thereof irrespective of the fact that any one or more subsections, subdivisions,
163 paragraphs, sentences, clauses, or phrases be declared unconstitutional, or invalid, or
164 ineffective.

165 **SECTION FIVE**

166 Effective Date.

167 THIS ORDINANCE shall take effect thirty (30) days after its passage and before
168 the expiration of fifteen (15) days after its passage, shall be published in accordance
169 with law, in a newspaper of general circulation published and circulated in the City of
170 Calistoga.

171 THIS ORDINANCE was introduced with the first reading waived at the City of
172 Calistoga City of Council meeting of the 1st day of October, 2013, and was passed and
173 adopted at a regular meeting of the Calistoga City Council on the ___ day of ___, 2013,
174 by the following vote:

175 **AYES:**

176 **NOES:**

177 **ABSENT:**

178 **ABSTAIN:**

179

180

Chris Canning, Mayor

181 **ATTEST:**

182

183

184 **Kathy Flamson, Deputy City Clerk**