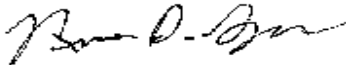


City of Calistoga

Staff Report

TO Honorable Mayor and City Council
FROM Lynn Goldberg, Planning and Building Director
DATE June 3, 2014
SUBJECT Second Reading of Ordinance No. 702 to amend the Municipal Code to simplify and clarify appeals, and to create a new Chapter 17.03, Zoning (MCA 2014-1, ZOA 2014-2)

APPROVAL FOR FORWARDING:



Richard D. Spitler, City Manager

ISSUE: Amendments to the Municipal Code to simplify and clarify appeals, and to create a new Chapter 17.03, Zoning

RECOMMENDATION: Adopt Ordinance No. 702 as submitted.

BACKGROUND: On May 20, 2014, the City Council held a public hearing to consider amending Municipal Code Chapter 1.20, Appeals, to delete the option of summarily denying an appeal without a public hearing and to clarify and simplify the appeal process. The Council also considered amendments to Zoning Code Chapter 17.02, Administrative Provisions, to add provisions for appeals to the Planning Commission, and to move certain sections of the chapter to a new Chapter 17.03, Zoning.

Concerns were raised during the public hearing by Michael Quast about various sections of the chapters that are being amended (see attached letter). Among the concerns was the lack of a maximum period for setting an appeal hearing before the City Council. Mr. Quast also suggested that the first paragraph of Zoning Code Section 17.02.030, Purpose of Title, did not accurately reflect the mix of uses found in the community:

Section 17.02.030

The City is determined to be primarily, essentially and predominately a residential community wherein business and commerce are an enhancement and supportive to the quality of life and the City's residential character. This determination is made having in mind the historic value and the development of the City, its growth and the causes thereof, and

also its geographical and topographical aspects, together with its proximity to other communities in the region.

At the conclusion of the hearing, the City Council directed the addition of a 90-day maximum period for setting appeal hearings for the City Council, then introduced and waived the first reading of the ordinance.

FURTHER RECOMMENDATION: Upon further review of Mr. Quast's concern about the first paragraph of Zoning Code Section 17.02.030, staff suggests that it be deleted because it is irrelevant to the intent of the Zoning Code, and the remaining paragraphs in the Section amply describe its purposes. The attached ordinance reflects the deletion of this paragraph.

Should the Council desire to retain the paragraph, it may do so by motion.

ATTACHMENTS

1. Ordinance No. 702
2. Letter from Michael Quast dated May 20, 2014

ORDINANCE NO. 702

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CALISTOGA, COUNTY OF NAPA, STATE OF CALIFORNIA, RESCINDING AND REPLACING MUNICIPAL CODE CHAPTERS 1.20, APPEALS, AND 17.02, ADMINISTRATIVE PROVISIONS, AND ADDING CHAPTER 17.03, ZONING (MCA 2014-1, ZOA 2014-2)

WHEREAS, there is a general need to simplify and clarify the process for appeals to the City Council and Planning Commission; and

WHEREAS, concerns have been raised about the two-step appeal process currently provided by CMC Section 1.20.030, including the length of time that it can take to conclude the appeal process, and the relative fairness of the summary denial process; and

WHEREAS, procedures for appeals to the Planning Commission should be located in the Zoning Code's administrative chapter, since the Commission can only hear appeals of matters governed by the Zoning Code; and

WHEREAS, the list of exceptions to the 10-day appeal filing deadline currently found under Section 1.20.030 (A) should be deleted because it is incomplete, and maintaining it would require an amendment to Chapter 1.20 every time an appeal procedure without a 10-day filing deadline is added to the Municipal Code; and

WHEREAS, appeals of decisions made by the "Napa County Health Officer" are outside the authority of the City Council and the enabling provision under Section 1.20.030 (A) should therefore be deleted; and

WHEREAS, numerous provisions under Section 1.20.030 (C) are duplicative or unnecessary and should be deleted; and

WHEREAS, Zoning Code Chapter 17.02, Administrative Provisions, contains a number of provisions relating to the zoning map, zoning districts and zoning regulations that should be moved to a separate chapter, Chapter 17.03, to improve ease of use; and

WHEREAS, general housekeeping edits are needed to Chapter 17.02 and proposed Chapter 17.03 to clarify provisions and use internally-consistent CMC references; and

WHEREAS, the Planning Commission reviewed the proposed Zoning Code amendments at a public hearing on April 23, 2014, and after considering the public record, including the staff report and findings, adopted PC Resolution 2014-11 forwarding a recommendation that the City Council approve the amendments included in this ordinance, including rescinding and replacing Chapter 17.02, Administrative Provisions, and creating a new Chapter 17.03, Zoning; and

WHEREAS, the City Council of the City of Calistoga reviewed and considered this ordinance at a public hearing on May 20, 2014, noticed in accordance with state and local law, and which included the written and oral staff report, the Planning

Commission's recommendation and comments received from the general public and interested agencies and parties.

WHEREAS, following the conclusion of the public hearing, the City Council introduced and waived the first reading of the ordinance.

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

SECTION ONE

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

SECTION TWO

Chapter 1.20, Appeals, is hereby rescinded and replaced in its entirety as follows:

**Chapter 1.20
APPEALS**

Sections:

- 1.20.010 Purpose.
- 1.20.020 General provisions.
- 1.20.030 Appeals to the City Council.

1.20.010 Purpose.

This Chapter provides provisions for the filing and processing of appeals in general, and procedures for appeals to the City Council.

1.20.020 General provisions.

A. Application.

1. An appeal application shall be filed in writing, set forth the specific grounds for the appeal, and be signed by the appellant.
2. The appeal application shall be accompanied by a nonrefundable processing fee, as set by resolution of the City Council from time to time.

B. Filing.

1. An appeal to the City Council or City Manager shall be filed with the City Clerk.
2. An appeal to the Planning Commission or Building Standards Advisory and Appeals Board shall be filed with the Planning and Building Director.

C. Deadline.

1. An appeal shall be made within 10 days of the action or decision for which the appeal is made, unless another time is specifically provided by the appeals provisions of the applicable Chapter.
2. If the deadline for the prescribed appeal time is on a weekend or a City holiday, the deadline is extended to the next business day of the City.

D. Hearing Notice. Public notice of an appeal hearing shall be given in accordance with the California Government Code and shall include the provision of notice to the appellant.

1.20.030 Appeals to the City Council.

A. Setting of Appeal Hearing.

1. Upon receipt of an appeal application, the City Clerk shall set the appeal for a public hearing on the agenda of the next available Council meeting, but no sooner than 10 days after the day of filing the appeal application, or later than 90 days after the day of filing the appeal application, unless otherwise provided by the applicable appeal procedure.
2. All appeals from decisions of the Planning Commission shall be considered by the Council within 30 days after the filing of the notice of appeal, unless the appellant consents to a continuance. All other types of appeals shall be considered within any timeframe stipulated by the applicable appeal procedure.

B. Council Action.

1. At the appeal hearing, the Council shall consider the grounds for the appeal, as submitted by the appellant. The Council may affirm, overturn or modify the initial decision of the administrative official or decision-making body, or refer the matter back to the official or body with direction for reconsideration.
2. The findings of the Council shall be final and conclusive and shall be served on the appellant in the manner prescribed in this Code for service of notice.

C. Amounts Owed. Any amount found to be due to the City shall be immediately due and payable upon the service of notice of the appeal decision of the Council.

SECTION THREE

Chapter 1.20, Appeals, is hereby rescinded and replaced in its entirety with the following:

Chapter 17.02 ADMINISTRATIVE PROVISIONS

Sections:

- 17.02.010 Effect on other laws or private restrictions.
- 17.02.020 Prior rights.
- 17.02.030 Purpose of Title.
- 17.02.040 Initiation of amendments.
- 17.02.050 Planning Commission.
- 17.02.060 Administration and enforcement.
- 17.02.070 Decisions subject to review.
- 17.02.080 Forms, filing and processing fees.
- 17.02.090 Notice of public hearing.
- 17.02.100 Lots of record.
- 17.02.110 Regulations are minimum – Relationship to private restrictions.
- 17.02.120 RMS compliance.

17.02.010 Effect on other laws or private restrictions.

Where this Title imposes a greater restriction than that imposed by other law or by private restrictions, this Title shall control.

17.02.020 Prior rights.

The enactment of the ordinance codified in this Title shall not terminate or otherwise affect variances, permits, or other adjustments authorized under the provisions of any ordinance repealed, nor shall any violation of such ordinances be excused.

17.02.030 Purpose of Title.

This Title is adopted to provide minimum regulations designed to promote and protect the public health, safety, peace, comfort, convenience, general welfare, and for the accomplishment of the following specified purposes:

- A. To assist in providing a definite plan of development for the City, and to guide, control and regulate the future growth of the City in accordance with the City's General Plan.
- B. To protect the established character of the City and the social and economic stability of agriculture, residential, commercial, industrial, historical and other resource areas within the City which assures the orderly and beneficial development of such areas.

17.02.040 Initiation of amendments.

An amendment to the text of this Title may be initiated by the City Council, a property owner or interested party.

17.02.050 Planning Commission.

All references to the "Commission" or the "Planning Commission" in this Title are to the Planning Commission referenced in CMC Chapter 2.21.

17.02.060 Administration and enforcement.

This Title shall be administered and enforced by the Planning Commission and the City Council, assisted by the officers and employees of the City who are delegated to such duty by authority and direction of the Council.

17.02.070 Decisions subject to review.

A. Commission Decisions. Any Councilmember may call up an action or decision of the Commission within the allowed appeal period by written request to the City Clerk. The request must state the reason for calling up the Commission action or decision. The City Clerk shall schedule the item at the next possible Council meeting. The Council shall decide by majority vote of those present if it intends to set a public hearing to consider the call up request.

B. Administrative Decisions.

1. Appeals from the decision of any administrative official in taking any of the actions authorized by this Title shall be made to the Planning Commission through the Planning and Building Director and shall be filed in accordance with the provisions of Chapter 1.20, Appeals.
2. The Commission shall consider the appeal at a public hearing at the next available Commission meeting unless the appellant consents to a continuance. The Commission may add, modify, or delete conditions, or deny the appeal, if the Commission determines that such changes or denial, as the case may be, are necessary to ensure the public health, safety, or general welfare.

17.02.080 Forms, filing and processing fees.

- A. All applications filed as provided by this Title shall be on forms provided by the Planning and Building Department and accompanied by a filing fee as established by resolution of the Council. Failure to complete payment of any fees or charges under this section will be considered sufficient grounds to discontinue the processing of the application.
- B. Applications shall not be considered complete until all fees, maps and other documents required at the time of filing of such application have been submitted.

17.02.090 Notice of public hearing.

Where a public hearing is required by the terms of this Title, notice of the hearing shall be given in the manner provided by the California Government Code.

17.02.100 Lots of record.

- A. A lot, for the purposes of applying the provisions of this Title, shall be a parcel or unit of land which has been created under the provisions of the Subdivision Map Act, or CMC Title 16, or any law regulating the division of land.
- B. All lots of a subdivision recorded in the office of the County Recorder and all lot sizes approved by the Planning Commission pursuant to the approval of a record of survey, whether recorded or not, shall retain their approved form and dimension unless subsequent subdivision, lot merger, or lot line adjustment is approved by the City and recorded with the County Recorder.
- C. Two or more contiguous parcels or units of land held by the same owner, where any one of such contiguous parcels does not conform to standards for minimum parcel size and at least one of such nonconforming contiguous parcels is not developed with a building for which a building permit has been issued, shall be merged pursuant to CMC Title 16.
- D. Any lot of record existing prior to May 3, 1957, shall be considered a legal building site.
- E. Where a lot or a property under separate ownership is an existing lot of record created prior to the applicability of the Subdivision Map Act or any local ordinances and without privilege of other legal documents, it may continue to be considered as an individual lot for the purposes of applying the provisions of the zone in which said lot is located; provided, that a certificate of compliance is recorded with the County Recorder.

17.02.110 Regulations are minimum – Relationship to private restrictions.

- A. In interpreting and applying the provisions of this Title, unless otherwise stated, the regulations shall be held to be the minimum requirements for the promotion and protection of the public safety, health and general welfare.
- B. It is not intended that this Title shall interfere with or abrogate or annul any easement, covenants, or other agreements now in effect; where the ordinance codified in this title imposes greater restrictions than are imposed or required by other ordinances, rules or regulations, or by

easements, covenants or agreements, the provisions of this Title shall apply.

17.02.120 RMS compliance.

All uses and land use permits provided for in this Title shall comply with the provisions of the Resource Management System contained in CMC Chapter 13.16.

SECTION FOUR

Chapter 17.03, Zoning, is hereby added to Title 17, Zoning, as follows:

**Chapter 17.03
ZONING**

Sections:

- 17.03.010 Zoning map.
- 17.03.020 Rules governing use of zoning map and symbols.
- 17.03.030 Applicability of zoning plan.
- 17.03.040 Base zoning districts.
- 17.03.050 Combining districts.
- 17.03.060 Initiation of amendments.
- 17.03.070 Regulations applicable to all districts.
- 17.03.080 Compliance with regulations required.
- 17.03.090 Planning Commission determinations of similar uses.

17.03.010 Zoning map.

A precise zoning plan is adopted for the City. The designations, locations and boundaries of the district established by this Title are delineated upon the map entitled, "Zoning Map for the City of Calistoga, California," which map is on file in the office of the City Clerk and which map and all notations, information, amendments and changes thereon are made a part of this Title by reference.

17.03.020 Rules governing use of zoning map and symbols.

Where uncertainty exists as to the boundaries of any district shown on the zoning map, the following rules shall apply:

- A. Where such boundaries are indicated as approximately following property, street or alley lines, such lines shall be construed to be such boundaries;
- B. In subdivided property and where a district boundary divides a lot, the location of such boundaries, unless the same are indicated by dimensions, shall be determined by use of the scale appearing on the zoning map;

- C. A symbol indicating the classification of property on the zoning map shall in each instance apply to the whole of the area within the district boundaries, unless otherwise noted on said map;
- D. Where a public street, alley or parcel of land is officially vacated or abandoned, the regulations applicable to abutting property shall apply equally to such vacant or abandoned street or alley;
- E. Where one land ownership is divided by a district boundary, the total ownership may be placed in either district by approval of a rezoning application.

17.03.030 Applicability of zoning plan.

For the purpose of regulating the use of land, improvements, and structures, the City is divided into zoning districts as provided in this Title. The use of land, improvements and structures in each district is subject to the specific regulatory provisions provided for each of the districts as set forth in this Title.

17.03.040 Base zoning districts.

- A. The base zoning districts established and into which the City is divided are designated as follows:
 - RR Rural Residential (CMC Chapter 17.14)
 - RR-H Rural Residential - Hillside (CMC Chapter 17.15)
 - R-1, R-1-10 One-Family Residential (CMC Chapter 17.16)
 - R-2 Two-Family Residential (CMC Chapter 17.18)
 - R-3 Multi-Family Residential/Office District (CMC Chapter 17.19)
 - MHP Mobile Home Park (CMC Chapter 17.20)
 - DC Downtown Commercial (CMC Chapter 17.22)
 - CC Community Commercial (CMC Chapter 17.22)
 - P Public (CMC Chapter 17.23)
 - PD Planned Development (CMC Chapter 17.24)
 - I Light Industrial (CMC Chapter 17.26)
- B. The uses of land, buildings, and structures in each general zoning district is subject to the provisions of the particular chapter referred to above, as well as to the general regulations and requirements of this Title.
- C. No uses are allowed in a zoning district except those specifically listed in this Title and then only as limited by a use permit when required, height limits, lot or site requirements, parking, and other restrictions listed in the appropriate chapter.

17.03.050 Combining districts.

A. In addition to the base zoning districts set forth in CMC 17.03.040, certain combining districts are established and are designated as follows:

- PD Planned Development District (CMC Chapter 17.24)
- DD Design District (CMC Chapter 17.28)
- A Airport (CMC Chapter 17.30)
- VA Visitor Accommodations (CMC Chapter 17.31)

B. The base zoning district(s) to which a combining district may be applied shall be as provided in the applicable chapter set forth above.

17.03.060 Initiation of amendments.

An amendment to the zoning map may be initiated by the Council, a property owner or interested party.

17.03.070 Regulations applicable to all districts.

The boundaries of zoning and combining districts as are shown upon the zoning map are adopted and the specific regulations as set forth in this Title for each district and the general regulations applicable therein are established and declared to be in effect upon all lands included within the boundaries of each and every district as shown upon the zoning map.

17.03.080 Compliance with regulations required.

No land shall be used and no building or structure shall be erected, constructed, enlarged, altered, moved or used in any district as shown upon the zoning map except in accordance with the regulations established by this Title.

17.03.090 Planning Commission determinations of similar uses.

A. It is recognized that in the development of a comprehensive zoning ordinance, not all uses of land can be listed, nor all future uses be anticipated; or a “use” may have been omitted from the list of those specified as permissible in each of the various zones herein designated; or ambiguity may arise concerning the appropriate classification of a particular use within the meaning and intent of this Title. Therefore, the phrase “unless determined by the Planning Commission to be similar in nature” shall appear under “uses permitted” in each zone.

B. The Planning Commission shall make all the following findings when permitting an unlisted use in a zoning district or classifying an unlisted use:

1. That the use is in keeping with the stated intent and purpose of the zoning district;

2. That investigations have disclosed that the subject use and its operation are compatible with the uses permitted in the zoning district within which it is proposed to be located;
3. That the subject use is similar to one or more uses permitted in the zoning district within which it is proposed to be located; and
4. That the subject use will not cause substantial injury to the health, safety, or welfare of the occupants or their property in the zoning district in which it is proposed to be located.

SECTION FIVE

Environmental Review. This action has been reviewed in accordance with the California Environmental Quality Act, CEQA Guidelines Section 15061(b)(3), the “general rule” exemption. The City has determined that because it can be seen with certainty that there is no possibility that the proposed amendments will have an impact on the environment, this ordinance is therefore exempt from CEQA under the general rule.

SECTION SIX

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

SECTION SEVEN

Effective Date. This Ordinance shall take effect thirty (30) days after its passage and before the expiration of fifteen (15) days after its passage, shall be published in accordance with law, in a newspaper of general circulation published and circulated in the City of Calistoga.

THIS ORDINANCE was introduced with the first reading waived at the City of Calistoga City of Council meeting of the 20th day of May, 2014, and was passed and adopted at a regular meeting of the Calistoga City Council on the 3rd day of June 2014, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Chris Canning, Mayor

ATTEST:

Kathy Flamson, Deputy City Clerk

ROMAN SPA

Hot Springs Resort

Michael Quast
1300 Washington St.
Calistoga, CA 94515
May 20, 2014

MAY 20 2014

RECEIVED

City of Calistoga City Council Members and City Manager
City of Calistoga
1232 Washington St.
Calistoga, Ca 94515

Re: City Council Agenda of 5.20.14 Item I – 7 on the appeal Process

Dear Council Members,

It is understandable that you wish to adjust and simplify your code regarding the appeals process. Regarding the Item I-7 on your agenda tonight, I ask that you take the time to send the amendments back for further revisions for the following reasons:

- It is true that the appeal process of our Calistoga is complicated. You are setting an example in your appeals to the Planning Commission by making sure they are heard within 30 days, but you have not solved this problem for appeals to the City Council. There are many items that can be appealed yet they have no set time within which to have the appeal heard by the Council. An appellant can be held hostage by the City Manager or Council and be put on an indefinite stay of their appeal. I and others are a victim of this process. I have had a standing appeal since 2001 without the right to have my appeal heard by the Council. It is an earthly limbo. To truly simplify this ordinance please add that once an appeal is correctly filed and its fees paid that the City Clerk shall agendize all appeals for the Council within 60, 90, 120, or 180 days (let the Council pick its time) so that other appellates do not have to suffer their appeal's forced stay for decades.
- This Code change should not negate any current or pending appeals that have been delayed.
- In regards to the appeals associated with the Health Officer, for items not food related, the Calistoga City Council may be the appropriate oversight group. Do the County Supervisors have the right to legislate design matters within the City Limits of Calistoga? It is suggested that the City reserve the right to call up and review Health Officer Matters and hear an appeal when necessary or when the County Supervisors either do not have the purview or refuse to hear a matter that is associated within the City of Calistoga.
- The new section 17.02.03 Purpose of Title. This section reads that Calistoga is essentially a residential community and businesses are just an enhancement of that character. This statement is incorrect and does not align with the information contained within the City of Calistoga's General Plan which lists the city as ¼ is agricultural, 1/3 residential, about ¼ is businesses, and the rest of the area is public land. Calistoga is truly a synergy of our historic businesses, residents, and the agriculture both within and surrounding our community. Not a single element stands alone. It is this synergy that creates the small town rural character that is Calistoga. It is suggested that this section be amended to be aligned with the General Plan.

Thus I ask that you review this proposed ordinance to the City's appeals process and improve them with the above suggested revisions.

Respectfully yours,



Michael Quast
Roman Spa Resort

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