

City of Calistoga

Staff Report

TO Honorable Mayor and City Council
FROM Lynn Goldberg, Planning and Building Director
DATE November 3, 2015
SUBJECT Second Reading of Ordinance No. 717

APPROVAL FOR FORWARDING:



Mike Kirn, Public Works Director

- 1 **ISSUE:** Municipal Code Amendment to rescind and replace Chapter 17.44,
2 Nonconforming Uses, primarily to 1) allow the replacement of a nonconforming
3 residential structure if it is destroyed and 2) delete the provision allowing the Planning
4 Commission to require a nonconforming use to annually apply for a use and occupancy
5 permit (ZOA 2015-6) (Second Reading)
- 6 **RECOMMENDATION:** Adopt Ordinance No. 717 as submitted
- 7 **BACKGROUND:** On October 20, 2015, following a public hearing, the City Council
8 introduced and waived the first reading of the attached ordinance.
- 9 **ATTACHMENT**
- 10 1. Ordinance No. 717

ORDINANCE NO. 2015-717

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CALISTOGA AMENDING THE CALISTOGA MUNICIPAL CODE TO RESCIND AND REPLACE MUNICIPAL CODE CHAPTER 17.44 NONCONFORMING USES (ZOA 2015-6)

WHEREAS, certain residences located in residential, commercial and industrial zoning districts are deemed nonconforming and therefore may have problems obtaining insurance, loans and mortgages; and

WHEREAS, allowing nonconforming residential structures to be replaced if they are destroyed is consistent with the City’s desire to maintain its housing stock; and

WHEREAS, the Planning Commission reviewed the proposed Code amendment at a public hearing on September 9, 2015, and after considering the public record, including the staff report and findings, adopted PC Resolution 2015-21 forwarding a recommendation that the City Council approve the proposed Code amendment; and

WHEREAS, the proposed amendment is not subject to the California Environmental Quality Act (CEQA) under Section 15061(b)(3) of the CEQA Guidelines because it can be seen with certainty that there is no possibility that it may have a significant effect on the environment.

WHEREAS, the City Council of the City of Calistoga reviewed and considered this ordinance at a public hearing on October 20, 2015, 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.

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

CMC Chapter 17.44 Nonconforming Uses is hereby rescinded and replaced with the following:

Chapter 17.44

NONCONFORMING USES

Sections:

- 17.44.010 Continuation, alterations and extensions.
17.44.020 Discontinuance.
17.44.030 Replacement following destruction.
17.44.040 Completion of nonconforming structure.
17.44.050 Prohibited nonconforming uses.

40 17.44.010 Continuation, alterations and extensions.

41 Subject to the provisions of this section, a nonconforming use or structure
42 may be continued and maintained in reasonable repair but shall not be
43 altered or extended, except that:

- 44 A. The extension of a nonconforming use to a portion of a structure
45 that was provided for the nonconforming use at the time the
46 ordinance codified in this title was adopted shall be permitted
47 provided the parking requirements pursuant to CMC Chapter 17.36,
48 Off-Street Parking and Loading, are met.
- 49 B. A structure conforming as to use but nonconforming with respect to
50 height, setback or coverage may be altered or extended if the
51 alteration or extension does not further deviate from the standards
52 of this title.
- 53 C. Any structure or use for which parking facilities do not meet the
54 requirements of CMC Chapter 17.36 shall be considered a
55 nonconforming use. Such nonconforming uses may continue, but
56 no enlargement, expansion or increase in the number of
57 businesses shall be made on the lot or within existing structures
58 unless the entire parking requirements of CMC Chapter 17.36 for
59 the expanded floor area or use intensification are met or an in-lieu
60 parking fee can be applied in accordance with such title.

61 17.44.020 Discontinuance.

- 62 A. If a nonconforming use is replaced by another use, the new use
63 shall conform to this title.
- 64 B. If a nonconforming use is discontinued for a period of 180 days, all
65 future use shall conform to the current provisions of this title.

66 17.44.030 Replacement following destruction.

- 67 A. If a nonconforming structure or a structure containing a
68 nonconforming use is destroyed by any cause to an extent
69 exceeding 60 percent of fair market value as indicated by the
70 records of the County Assessor, a future structure or use on the
71 site shall conform to this title.
- 72 B. Notwithstanding the above, a nonconforming residential structure
73 may be replaced, provided that:
- 74 1. The number of dwelling units is not decreased.
 - 75 2. The replacement structure complies with all applicable
76 development standards, unless a variance is approved.

- 77 3. A building permit for the replacement structure shall be
78 applied for within two years of the former structure's
79 destruction and construction shall be diligently pursued.

80 17.44.040 Completion of nonconforming structure.

81 Nothing contained in this title shall require any change in the plans,
82 construction, alteration, or designated use of a structure for which a permit
83 has been issued and construction work has commenced prior to the
84 adoption of this title, or any amendment thereto, that caused the structure
85 or use to become nonconforming. However, such structure shall be
86 completed and in use within two years from the time the permit was
87 issued.

88 17.44.050 Prohibited nonconforming uses.

89 The following nonconforming uses are prohibited:

- 90 A. A nonconforming use not involving a structure.
91 B. A nonconforming use involving a structure having an assessed
92 value of less than \$1,000.

93 **SECTION THREE**

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

100 **SECTION FOUR**

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

110 **SECTION FIVE**

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

115 THIS ORDINANCE was introduced with the first reading waived at the City of
116 Calistoga City Council meeting of the **20th day of October, 2015**, and was passed and
117 adopted at a regular meeting of the Calistoga City Council **on November 3, 2015**, by
118 the following vote:

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120 **AYES:**
121 **NOES:**
122 **ABSENT:**
123 **ABSTAIN:**

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Chris Canning, Mayor

126 **ATTEST:**

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Kathy Flamson, City Clerk