

**CITY OF CALISTOGA  
PLANNING COMMISSION  
RESOLUTION PC 2015-\_\_**

**RECOMMENDING TO THE CITY COUNCIL APPROVAL OF AMENDMENTS TO THE  
CALISTOGA MUNICIPAL CODE TO PROHIBIT COMMERCIAL CANNABIS  
ACTIVITIES AND THE CULTIVATION OF MARIJUANA/CANNABIS IN ALL ZONING  
DISTRICTS (MCA 2015-3)**

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1           **WHEREAS**, Assembly Bills 243 and 266 and Senate Bill 643 became state law  
2 on October 9, 2015, and establish "The Medical Marijuana Regulation and Safety Act"  
3 ("MMRSA"), create a broad state regulatory and licensing system governing the  
4 cultivation, manufacturing, testing, and distribution of medical marijuana, and physician  
5 recommendations for medical marijuana, provide immunity to marijuana businesses  
6 operating with both a state license and a local permit, and allow the establishment of  
7 various marijuana-related businesses known as commercial cannabis activities; and

8           **WHEREAS**, while the new legislation expressly preserves local control over  
9 medical marijuana facilities, commercial cannabis activities, and land uses, including the  
10 authority to prohibit all medical marijuana businesses and cultivation completely, newly-  
11 added Health & Safety Code section 11362.777(c)(4) provides that if a city does not  
12 have a land use regulation or ordinance regulating or prohibiting marijuana cultivation,  
13 either expressly or otherwise under principles of permissive zoning, or chooses not to  
14 administer a conditional permit program under that section, then commencing March 1,  
15 2016, the state Department of Food and Agriculture will become the sole licensing  
16 authority for marijuana cultivation in that jurisdiction

17           **WHEREAS**, while this provision regarding marijuana cultivation was apparently  
18 included inadvertently in the final version of AB 243 and the bill's author has agreed to  
19 delete it through clean-up legislation, cities have been advised to enact legislation by  
20 the end of February 2016 to protect themselves; and

21           **WHEREAS**, Health and Safety Code Section 11362.777(g) specifically allows the  
22 City to ban the cultivation of marijuana/cannabis, even by qualified patients and primary  
23 caregivers who are otherwise exempted by state law from cultivation licensing  
24 requirements; and

25           **WHEREAS**, the cultivation of marijuana/cannabis has the potential to  
26 significantly impact the City's jurisdiction. These impacts include damage to buildings in  
27 which cultivation occurs from improper and dangerous electrical alterations and use,  
28 increased occurrences of home-invasion robberies and similar crimes, and nuisance  
29 impacts to the public from the plants' strong and noxious odors; and

30           **WHEREAS**, allowing the cultivation of marijuana/cannabis by qualified patients  
31 and/or primary caregivers would exacerbate the impacts identified above as well as  
32 increase the availability of marijuana/cannabis to unauthorized users, particularly youth;  
33 and

34           **WHEREAS**, marijuana/cannabis remains an illegal substance under the Federal  
35 Controlled Substances Act because it is classified as a "Schedule I Drug", and the  
36 Federal Controlled Substances Act makes it unlawful for any person to cultivate  
37 marijuana/cannabis; and

38           **WHEREAS**, prohibiting commercial cannabis activities and the cultivation of  
39 marijuana, in addition to the existing ban on medical marijuana dispensaries, would be  
40 in conformance with the City Council's goals and objectives for Fiscal Year 2015-16,  
41 specifically Goal 5, which calls for making Calistoga safe; and

42           **WHEREAS**, the Planning Commission reviewed the proposed amendments at a  
43 public hearing at its meeting of December 9, 2015, and during its review, considered the  
44 public record, including the staff report, findings, written materials and testimony  
45 presented by the public during the hearing; and

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

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

ADOPTED on December 9, 2015 by the following vote of the Calistoga Planning  
Commission:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

\_\_\_\_\_  
Jeff Manfredi, Chairman

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

Exhibit A

**CMC Title 8 Health and Safety**

**Chapter 8.30**

**MEDICAL MARIJUANA DISPENSARIES ACTIVITIES REGULATIONS**

Sections:

- 8.30.010 Definitions.  
8.30.020 ~~Establishment and operation of m~~Medical marijuana dispensaries prohibited.  
~~8.30.030 Marijuana/cannabis cultivation prohibited.~~  
~~8.30.040 Commercial cannabis activity prohibited.~~  
8.30.0350 Violation – Penalty.  
8.30.0460 Public nuisance.

**8.30.010 Definitions.**

- A. "Commercial cannabis activity" includes the cultivation, possession, manufacture, processing, storing, laboratory testing, labeling, transporting, distribution, or sale of medical cannabis or a medical cannabis product.
- B. "Cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of marijuana.
- C. "Marijuana" or "cannabis" means all parts of the plant Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It includes marijuana infused in foodstuff, and concentrated cannabis and the separated resin, whether crude or petrified, obtained from marijuana. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except resin extracted therefrom), fiber, oil, or cake, or the sterilized seeds of the plant that are incapable of germination.
- D. "Medical marijuana" is marijuana used for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of marijuana in the treatment of acquired immune deficiency syndrome ("AIDS"), anorexia, arthritis, cancer, chronic pain, glaucoma, migraine, spasticity, or any other serious medical condition for which marijuana is deemed to provide relief as defined in subsection (h) of Health and Safety Code § 11362.7.
- E. A "medical marijuana dispensary" is any facility or location, whether fixed or mobile, where medical marijuana is sold, made available, delivered, transmitted, and/or distributed by or to two or more people. a primary caregiver makes available, sells, transmits, gives or otherwise provides marijuana to two or more persons with identification cards or qualified patients, as defined in California Health and Safety Code Section 11362.5 et seq., or any facility where qualified

~~patients, persons with identification cards and primary caregivers meet or congregate collectively and cooperatively to cultivate or distribute marijuana/for medical purposes under the purported authority of California Health and Safety Code Section 11362.5 et seq.~~

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

1. A clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code.
2. A health care facility licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code.
3. A residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 of Division 2 of the Health and Safety Code.
4. A residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code.
5. A hospice or a home health agency, licensed pursuant to Chapter 8 of Division 2 of the Health and Safety Code.

**8.30.020 ~~Establishment and operation of m~~Medical marijuana dispensaries prohibited.**

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

**8.30.030 Marijuana/cannabis cultivation prohibited.**

The cultivation of marijuana/cannabis is prohibited in all zoning districts within the City of Calistoga.

**8.30.040 Commercial cannabis activity prohibited.**

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

**8.30.0350 Violation – Penalty.**

- A. It shall be a violation to establish and/or operate a medical marijuana dispensary, ~~or cultivate marijuana/cannabis~~ in any zoning district within the City of Calistoga.
- B. The City may, in its sole discretion, enforce any violation of this chapter by any remedy available to it, including without limitation pursuit of a civil injunction and imposition of civil fines and penalties.
- C. The remedies set forth in this section are cumulative and shall not preclude the City from any other remedy or relief to which it may be entitled under law or equity. ~~Notwithstanding the foregoing or any other provision of this code to the contrary, any person found to be in violation of this chapter shall not be subject to any criminal penalties.~~

**8.30.0460 Public nuisance.**

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

**CMC Title 17 Zoning**

**Chapter 17.48**

**MEDICAL MARIJUANA DISPENSARIES ACTIVITIES REGULATIONS**

Sections:

17.48.010 Medical marijuana dispensaries prohibited.

17.48.020 Marijuana/cannabis cultivation prohibited.

17.48.030 Commercial cannabis activities prohibited.

**17.48.010 Medical marijuana dispensaries prohibited.**

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

**17.48.020 Marijuana/cannabis cultivation prohibited.**

The cultivation of marijuana/cannabis is prohibited in all zoning districts within the City of Calistoga.

**17.48.030 Commercial cannabis activities prohibited.**

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

