

# City of Calistoga

## Staff Report

**TO** Honorable Mayor and City Council  
**FROM** Lynn Goldberg, Planning and Building Director  
**DATE** January 19, 2016  
**SUBJECT** **Second Reading of Ordinance 721, Code Amendments Prohibiting Marijuana Cultivation**

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APPROVAL FOR FORWARDING:



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Michael T. Kirn, Interim City Manager

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**ISSUE:** Amendments to the Calistoga Municipal Code to prohibit the cultivation of marijuana in Calistoga (MCA 2015-3)

**RECOMMENDATION:** Adopt Ordinance No. 721 as submitted.

**BACKGROUND:** On January 5, 2016, the City Council held a public hearing to consider prohibiting the cultivation of marijuana in Calistoga.

At the conclusion of the hearing, the City Council introduced and waived the first reading of the ordinance as presented.

**ATTACHMENT**

1. Ordinance No. 721

ORDINANCE NO. 721

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CALISTOGA AMENDING THE CALISTOGA MUNICIPAL CODE TO RESCIND AND REPLACE MUNICIPAL CODE CHAPTERS 8.30 AND 17.48, MEDICAL MARIJUANA DISPENSARIES (MCA 2015-2)**

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

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

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

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

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

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

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

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

**WHEREAS**, the Planning Commission reviewed the proposed Code amendments at a public hearing on December 9, 2015, and after considering the public record, including the staff report and findings, adopted PC Resolution 2015-29 forwarding a recommendation that the City Council approve the proposed Code amendments; and

**WHEREAS**, the City Council of the City of Calistoga reviewed and considered this ordinance at a public hearing on January 5, 2016, noticed in accordance with state and local law, and which included the written and oral staff reports, 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 8.30 is hereby rescinded and replaced with the following:

Chapter 8.30

MARIJUANA ACTIVITIES REGULATIONS

Sections:

- 8.30.010 Definitions.
- 8.30.020 Medical marijuana dispensaries prohibited.
- 8.30.030 Marijuana/cannabis cultivation prohibited.
- 8.30.040 Commercial cannabis activity prohibited.
- 8.30.050 Violation – Penalty.
- 8.30.060 Public nuisance.
- 8.30.010 Definitions.

- A. "Commercial cannabis activity" includes the cultivation, possession, manufacture, 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.

"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 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.

8.30.050 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.

8.30.060 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.

**SECTION THREE**

CMC Chapter 17.48 is hereby rescinded and replaced with the following:

Chapter 17.48

MARIJUANA 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.

#### **SECTION FOUR**

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 FIVE**

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 SIX**

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 Council meeting of the **5th day of January, 2016**, and was passed and adopted at a regular meeting of the Calistoga City Council on **19th day of January, 2016**, by the following vote:

**AYES:**

**NOES:**

**ABSENT:**

**ABSTAIN:**

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**Chris Canning, Mayor**

**ATTEST:**

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**Kathy Flamson, City Clerk**