

City of Calistoga

Staff Report

TO Honorable Mayor and City Council
FROM Dylan Feik, City Manager
DATE November 1, 2016
SUBJECT Second Reading of Ordinance No. 725 Amending Title 1 of the Calistoga Municipal Code and adding a new section titled "Administrative Citations".

APPROVAL FOR FORWARDING:



Dylan Feik, City Manager

- 1 **ISSUE:** Consideration of an ordinance amending Title 1 of the Calistoga Municipal
- 2 Code and adding a new section titled "Administrative Citations". (Second Reading)
- 3 **RECOMMENDATION:** Adopt Ordinance No. 725 as submitted
- 4 **BACKGROUND:** On October 18, 2016, following a public hearing, the City Council
- 5 introduced and waived the first reading of the attached ordinance.
- 6 **ATTACHMENT**
- 7 1. Ordinance No. 725

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32

ORDINANCE NO. 725

**AN ORDINANCE OF THE CITY OF CALISTOGA AMENDING TITLE 1 OF THE
CALISTOGA MUNICIPAL CODE AND ADDING A NEW SECTION TITLED
“ADMINISTRATIVE CITATIONS”**

WHEREAS, on September 20, 2016, staff presented a report regarding adoption of an administrative citation ordinance to assist with code enforcement in the City of Calistoga; and

WHEREAS, staff has developed an administrative enforcement process for the adjudication of code enforcement issues, with input from the City Attorney, allowing all city departments the ability to issue administrative citations for violations of various City codes; and

WHEREAS, an Administrative Enforcement Program for code enforcement will achieve compliance through the possible imposition of administrative fines to violators of the Calistoga Municipal Code and the Calistoga Zoning Ordinance; and

WHEREAS, violators will receive a hearing in front of a hearing officer comprised of the city manager or designee if the violator wants to contest the administrative citations. This process consists of issuing “notice of violations” and “administrative citations” concerning code enforcement issues and adjudicating the citations in-house; and

WHEREAS, a public hearing was held by the City Council of the City of Calistoga on October 18, 2016, after due notice was given as required by law, at which time oral and documentary evidence was introduced to the City Council of the City of Calistoga; and

WHEREAS, the City Council has considered all information related to this matter, as presented at the public meeting of the City Council identified herein, including any supporting reports by City Staff, and any information provided during public meetings.

33
34
35
36
37

THE CALISTOGA CITY COUNCIL DOES HEREBY ORDAIN THE FOLLOWING:

**Chapter 1.28
Administrative Citations**

38 **1.28.010 Purpose and intent.**

39 Pursuant to Government Code Section 53069.4, the City is authorized to adopt
40 an administrative citation program. The purpose of this chapter is to provide the City
41 with an alternative method of enforcement of violations of the Calistoga Municipal Code
42 and conditions on land use entitlements by using a combination of judicial and
43 administrative remedies to gain compliance. Enforcement of the Calistoga Municipal
44 Code and conditions on land use entitlements is vital to the protection of the public's
45 health, safety and welfare, and such enforcement is a valid exercise of the City's police
46 power. Issuing administrative citations encourages voluntary and complete compliance
47 with the Calistoga Municipal Code and conditions on land use entitlements in a timely
48 and cost efficient manner for the protection and benefit of the entire community.

49 **1.28.020 Application.**

50 The provisions of this chapter apply to any violation of the Calistoga Municipal
51 Code and/or any condition imposed by any land use entitlement. The issuance of an
52 administrative citation under this chapter is solely at the City's discretion. This chapter
53 does not limit the City's discretion to utilize any other remedy, civil or criminal, to
54 address such violations, and multiple enforcement remedies may be used to achieve
55 compliance with respect to persons who commit continuing violations.

56 **1.28.030 Definitions.**

57 For purposes of this chapter, the following definitions apply:

58 "City Manager" means the City Manager of the City of Calistoga, or the City
59 Manager's designee.

60 "Code" means the Calistoga Municipal Code, as may be updated from time to
61 time.

62 "Continuing violation" means either (1) a particular violation of the Code or
63 violations of conditions imposed upon the issuance of a land use entitlement that
64 continues for more than twenty-four (24) hours without correction; or (2) a repeated,
65 consecutive violation of the same offense without intervening days.

66 "Enforcement officer" means any officer or employee designated by the City
67 Manager to enforce this code.

68 “Hearing officer” means a person appointed by the City Manager, in compliance
69 with any and all applicable legal requirements, to serve as the hearing officer for
70 administrative citation hearings.

71 “Land use entitlement” means any approval required for a particular use of land,
72 including without limitation, licenses and conditional use permits.

73 “Owner” means the record owner of a parcel according to Napa County’s latest
74 equalized property tax assessment roll.

75 “Person” means and includes a natural person or legal entity, and the owners,
76 majority stockholders, corporate officers, trustees and general partners of a legal entity.

77 “Responsible person” has the same definition as set forth in CMC 1.08.010(B).

78 **1.28.040 Issuance of administrative citation.**

79 A. Any person violating any provision of this code and/or any condition imposed
80 by any land use entitlement may, at the City’s discretion, be issued an
81 administrative citation by an enforcement officer as provided in this chapter.

82 B. In accordance with Government Code Section 53069.4(a)(2), no responsible
83 person shall be assessed an administrative fine or penalty under this chapter
84 for a continuing violation pertaining to a building, plumbing, electrical or
85 similar structural or zoning issue that does not create an immediate danger to
86 the public health or safety without first receiving a reasonable opportunity to
87 correct or otherwise remedy the violation.

88 C. An administrative citation shall be issued on a form approved by the City
89 Manager and shall contain the following information:

90 1. Name of the person who is charged as a responsible person for the
91 violation;

92 2. Date, time and address, or definite description, of the location where the
93 violation was observed;

94 3. The code section or condition violated and a description of the violation;

95 4. A description of the action required to correct the violation;

96 5. An order prohibiting the continuation or repeated occurrence of the
97 violation;

98 6. Whether the offense is a continuing violation which shall accrue fines until
99 properly ceased and abated;

- 100 7. The amount of the fine for the violation, including the amount due for the
101 initial violation and any prospective daily fine for failure to correct the
102 violation (if applicable to a continuing violation);
- 103 8. An explanation of how the fine must be paid and when it must be paid;
- 104 9. Potential penalties for late payment or failure to pay the fine;
- 105 10. Notification of the right to appeal, including the time within which the
106 administrative citation may be contested and the place to obtain a request
107 for hearing form to appeal the administrative citation;
- 108 11. The name and signature of the enforcement officer; and
- 109 12. Date the citation was issued.

110 D. For the purposes of this chapter, there may be more than one responsible
111 person for any violation and each responsible person shall be jointly and
112 severally liable for any violation.

113 E. In the event that an enforcement officer determines that an administrative
114 citation was issued in error, the enforcement officer may cancel the
115 administrative citation, regardless of whether the responsible person has filed
116 a request for a hearing and any fines or fees paid under this chapter shall be
117 refunded.

118 **1.28.050 Amount and payment of administrative citation fines; satisfaction of**
119 **administrative citation.**

120 A. Upon receipt of the citation, the responsible person must immediately cease
121 and abate the violation. The abatement of a continuing violation must be
122 verified by an enforcement officer. The responsible person must contact the
123 phone number designated on the citation and schedule an inspection by an
124 enforcement officer. Fines shall accrue until the abatement is verified, less
125 any days delayed by action of the City in scheduling such inspection.

126 B. If the offense is a continuing violation and the responsible person fails to
127 properly cease and abate the violation, fines shall accrue for each day until
128 the abatement is properly verified. Additionally, subsequent administrative
129 citations may be issued for the same violation.

130 C. The amount of the fines for violations pursuant to this chapter shall be
131 established by separate resolution of the City Council, which may be
132 amended from time to time.

133 D. The fine must be paid to the City Administrative Services Department within
134 thirty (30) calendar days from the date on the citation that the administrative
135 citation was issued.

- 136 E. If the fine citation is not paid within the time prescribed in this section, a late
137 payment fee may be charged in an amount to be established by separate
138 resolution of the City Council, which may be amended from time to time.
- 139 F. Any administrative citation fine paid pursuant to this section shall be refunded
140 if after an administrative hearing the fine is cancelled or modified by the
141 hearing officer.
- 142 G. Payment of a fine under this chapter shall not excuse or discharge any
143 continuation or repeated occurrence of any violation that is the subject of the
144 administrative citation, nor shall it bar further enforcement action by the City.

145 **1.28.060 Request for administrative hearing.**

- 146 A. Any recipient of an administrative citation may appeal the citation by
147 completing a request for hearing form, to be obtained from and returned to
148 the City Clerk within fifteen (15) calendar days from the date on the citation
149 that the administrative citation was issued. The request for hearing must
150 contain the following information:
- 151 1. The name, address, and signature of the responsible person appealing
152 the administrative citation;
 - 153 2. A brief statement in ordinary and concise language of the specific item
154 that is contested, together with any supportive facts; and
 - 155 3. A brief statement in ordinary and concise language of the relief sought and
156 the reason why the administrative citation should be rescinded, modified,
157 or otherwise set aside.
- 158 B. Any request for hearing form submitted that fails to provide all of the
159 information required by this section shall be deemed incomplete and the
160 person submitting the form shall be notified of such determination.
- 161 C. The request for hearing form must be accompanied by a deposit of the fine in
162 the amount specified in the Administrative Citation or a request for a deposit
163 hardship waiver as described in Section 1.28.070. If the deposit is not timely
164 paid and no hardship waiver has been granted, an administrative hearing
165 shall not be scheduled.
- 166 D. A hearing before the hearing officer shall be set by the City Clerk for a date
167 that is not less than fifteen (15) or more than thirty (30) calendar days from
168 the date the request for hearing is submitted to the City. The person
169 requesting the hearing shall be notified by regular mail of the time and place
170 set for the hearing at least ten (10) calendar days before the date of the
171 hearing. If multiple citations are being appealed, the City Clerk and hearing
172 officer may consolidate the appeals into one hearing.

173 E. Failure of a responsible person to appeal the administrative citation within the
174 timeframe provided by this section shall constitute: (1) a waiver of any right to
175 an administrative hearing for a determination of the matter contested; and
176 (2) failure to exhaust his or her administrative remedies. The order of the
177 citation shall serve as a final determination and conclusive evidence of the
178 named responsible person's liability for the citation.

179 **1.28.070 Request for fine deposit hardship waiver.**

180 A. Any person who intends to request an administrative hearing to appeal an
181 administrative citation and who is financially unable to make the fine deposit
182 may request a fine deposit hardship waiver.

183 B. The request must be submitted to the City Clerk, and shall be processed by
184 the hearing officer. The requirement of depositing the full amount of the fine
185 shall be stayed unless or until the hearing officer, or his or her designee,
186 makes a determination to grant or deny the fine deposit hardship waiver.

187 C. The hearing officer, or his or her designee, may grant the advance deposit
188 hardship waiver if the cited person has submitted a sworn affidavit
189 documenting financial hardship to the satisfaction of the hearing officer, or his
190 or her designee.

191 F. The hearing officer, or his or her designee, shall issue a written determination
192 to issue or not issue the fine deposit hardship waiver. The written
193 determination shall be final and shall be served by regular mail upon the
194 person who applied for the hardship waiver.

195 G. If the hardship waiver is not issued, a deposit of the fine must be remitted to
196 the City within ten (10) calendar days of the date of the decision or thirty (30)
197 calendar days from the date of the administrative citation, whichever is later.
198 If the deposit is not paid within this time, an administrative hearing shall not
199 be scheduled.

200 **1.28.080 Administrative hearing procedure.**

201 A. No hearing to contest an administrative citation before a hearing officer shall
202 be held unless: (1) a request for hearing form has been completed and
203 returned to the City Clerk; and (2) the fine has been deposited or a fine
204 deposit hardship waiver obtained.

205 B. At least ten (10) calendar days before the hearing, the responsible person
206 shall be provided with copies of any and all citations, reports, and other
207 documents to be submitted by the enforcement officer to the hearing officer.

208 C. The administrative citation and any additional documents submitted by the
209 enforcement officer shall constitute prima facie evidence of the respective
210 facts contained in those documents.

211 D. The formal rules of evidence shall not apply to the administrative hearing. All
212 relevant evidence may be considered, and the hearing officer has the
213 discretion to exclude evidence that the hearing officer finds to be irrelevant or
214 redundant.

215 E. The responsible person contesting the administrative citation shall be given
216 the opportunity to: (1) testify and present witnesses; (2) introduce relevant
217 evidence; (3) cross-examine and/or rebut any witness testifying in support of
218 the administrative citation; and (4) be represented by anyone designated by
219 the responsible party.

220 F. Unless requested in advance by the person contesting the administrative
221 citation, neither the enforcement officer nor any other representative of the
222 City is required to attend the hearing, provided that any such appearance may
223 be made at the discretion of the enforcement officer or City Manager.

224 G. The hearing officer may continue the hearing and request additional
225 information from the enforcement officer or the responsible person contesting
226 the administrative citation before issuing a written decision.

227 H. The failure of any responsible person contesting an administrative citation to
228 appear at the administrative citation hearing shall constitute a forfeiture of the
229 fine and a failure to exhaust administrative remedies, and the order of the
230 citation shall become the final determination.

231 **1.28.090 Hearing officer's decision.**

232 A. After considering all of the testimony and evidence submitted at the hearing,
233 the hearing officer shall issue a written decision to uphold, modify, or cancel
234 all or part of the administrative citation, listing the reasons for the decision.
235 The hearing officer's decision must be supported by the preponderance of the
236 evidence.

237 B. The decision of the hearing officer shall be issued within fifteen (15) calendar
238 days of the hearing. Within five (5) calendar days of issuance of the hearing
239 officer's decision, the City shall provide notice of the written decision to
240 recipient of the administrative citation and include a copy of the decision.

241 C. The decision of the hearing officer shall be final.

242 D. If the hearing officer determines that the administrative citation should be
243 upheld, the amount of the fine on deposit with the City shall be retained by the
244 City. If the fine has not been deposited and hardship waiver has been
245 obtained, the hearing officer shall set forth a reasonable schedule of payment.
246 The hearing officer may also impose conditions and deadlines to correct the
247 violation or require payment of any outstanding fines, penalties, and interest.

248 E. If the hearing officer determines that the administrative citation should be
249 modified or cancelled in whole or in part, the City shall refund the applicable
250 amount of the deposited fine within fifteen (15) calendar days from the date of
251 issuance of the hearing officer's decision.

252 **1.28.110 Right to judicial review.**

253 Any person aggrieved by a decision of the hearing officer on an administrative
254 citation may obtain review of the decision by: (1) filing an appeal with the Napa County
255 Superior Court in accordance with the timelines and provisions set forth in California
256 Government Code section 53069.4; or (2) seeking a petition of writ of mandate in
257 accordance with Code of Civil Procedure Sections 1094.5 and 1094.6.

258 **1.28.120 Collection of unpaid fines and costs.**

259 A. To recover past due administrative citation fine(s) and recoverable costs:

260 1. The enforcement officer shall cause a copy of the citation(s) to be filed
261 with the City's Administrative Services Department.

262 2. An invoice for the citation fine(s) and recoverable costs shall be mailed to
263 the property owner and/or responsible party.

264 a. The invoice for property-related citations shall include
265 notification that if not paid within thirty (30) calendar days of
266 the date due, a lien and/or assessment on the property may
267 be recorded.

268 b. The invoice for non-property related citations shall include
269 notification that if not paid within thirty (30) calendar days of
270 the date due, the account may be referred to a collection
271 agency.

272 3. If the property owner and/or responsible party does not pay the non-
273 property related citation fine and recoverable costs within thirty (30)
274 calendar days from the date due, the account may be forwarded to a
275 collection agency.

276 4. If the property owner and/or responsible party does not pay a property
277 related citation fine and recoverable costs within thirty (30) calendar days
278 from the date due, City Manager or designee may authorize that a lien on
279 the property be recorded.

280 5. If the property related citation fine and recoverable costs remains unpaid
281 forty-five (45) calendar days from the due date, the City Manager may
282 submit the matter as a report to the City Council for a special assessment
283 hearing. The report shall include, at a minimum, the names and
284 addresses of the record owner of the property and all persons having any

285 record interest in the property (including but not limited to, holders of
286 mortgages or deeds of trust), the date upon which the violation occurred,
287 a description of the real property subject to the lien, and the total costs.

288 6. At least ten (10) calendar days prior to the hearing, the City Clerk shall
289 give notice, by certified mail, of the hearing to all persons named in the
290 report. The notice shall describe the property by assessor's parcel
291 number and street number or some other description sufficient to enable
292 identification of the property and contain a statement of the amount of the
293 proposed assessment.

294 7. At the time fixed for receiving and considering the report, the City Council
295 shall hear the report and the objections of any of the owners liable to be
296 assessed for the costs or any other persons who may have a legal
297 interest in the property. The City Council may add to the proposed
298 assessment an amount equal to the cost of conducting the assessment
299 hearing. The City Council may also make such other modifications in the
300 report as it deems necessary, after which, the Council may order the
301 report confirmed. The order and modified report shall be filed with the
302 City Clerk and shall be final and conclusive.

303 8. The amounts and the costs mentioned in the report as confirmed shall
304 constitute a special assessment against such property and are a lien on
305 the property for the amount of the respective assessment. The
306 assessment shall continue until it is paid, together with interest at the
307 legal maximum rate computed from the date of confirmation of the
308 statement until payment.

309 9. The County Assessor shall enter each assessment on the county tax roll
310 upon the parcel of land. The assessment shall be collected at the same
311 time and in the same manner as ordinary municipal taxes are collected,
312 and shall be subject to the same penalties and procedure and sale in
313 case of delinquency as is provided for ordinary municipal taxes. All laws
314 applicable to the levy, collection and enforcement of municipal taxes shall
315 be applicable to the special assessment. However, if any real property to
316 which the citation and recoverable costs relates has been transferred or
317 conveyed to a bona fide purchaser for value, or if a lien of a bona fide
318 encumbrancer for value has been created and attaches thereon, prior to
319 the date on which the first installment of the taxes would become
320 delinquent, then the citation and recoverable costs shall not result in a lien
321 against the real property but instead shall be transferred to the unsecured
322 roll for collection. The tax collector's power of sale shall not be affected
323 by the failure of the property owner to receive notice.

324 B. Notwithstanding any other provision of this chapter, the City Manager may, on
325 behalf of the City, collect any citation fines and recoverable costs by use of all
326 available legal means, including filing an action in a court of law or small

327 claims court, and the choice of one remedy does not affect the City's ability to
328 use alternative remedies.

329 **1.28.130 Service procedures.**

330 Except as otherwise provided in this chapter, whenever an administrative citation
331 is issued or a notice is required to be given under this chapter, it must be given as
332 follows:

333 A. Service on the responsible person or persons either by personal service, first
334 class mail, or by certified mail, return receipt requested.

335 B. When real property is involved in the violation, service on the responsible
336 person and, if not the responsible person, on the property owner at the
337 address as shown on the latest equalized county assessment roll. If personal
338 service or service by mail on the property owner is unsuccessful, a copy of
339 the citation must be conspicuously posted at the property which is the subject
340 of the violation. The City may, in its discretion, also serve notice on a tenant,
341 a mortgagor or any other person having an interest in the property by
342 personal service, by first class mail, or by certified mail, return receipt
343 requested.

344 C. The failure of any person to receive, accept, or sign any notice shall not affect
345 the validity of any proceedings taken under this chapter.

346 D. Service of an administrative citation by mail is effective on the date of mailing.

347

348 THIS ORDINANCE was introduced with the first reading waived at the City of
349 Calistoga City Council meeting of the 18th day of October, 2016, and was
350 passed and adopted at a regular meeting of the Calistoga City Council on the
351 ____ day of _____, 2016 by the following vote:

- 352
353 AYES:
354 NOES:
355 ABSTAIN:
356 ABSENT:
357

358
359 _____
CHRIS CANNING, Mayor

360
361 _____
362 KATHY FLAMSON, City Clerk