

ORDINANCE NO. ____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CALISTOGA AMENDING THE CALISTOGA MUNICIPAL CODE TO REVISE THE REQUIREMENTS FOR USE PERMITS (ZOA 2016-2)

1 **WHEREAS**, Title 17, Zoning, allows or requires the approval of administrative
2 use permits by Planning Department staff for a wide range of activities and projects; and

3 **WHEREAS**, there is a need to create a “temporary use permit” to process certain
4 limited special events that are routinely approved by Planning Department staff without
5 the need for input from other departments or nearby property owners, and similar
6 activities that do not involve public property; and

7 **WHEREAS**, requiring the approval of an administrative use permit for certain
8 restaurants and similar uses in the Downtown Commercial Zoning District is
9 unnecessary because any potential issues can be addressed through established
10 procedures and practices for new businesses, and it is the desire of the City to
11 streamline the review process to improve its economic conditions; and

12 **WHEREAS**, requiring the approval of an administrative use permit for otherwise-
13 permitted uses on properties that are zoned Downtown Commercial or Community
14 Commercial that are located within a General Plan-designated Entry Corridor is
15 unnecessary, because most new construction is subject to design review approval and
16 all new construction in the Community Commercial District is subject to a Planning
17 Commission-approved use permit; and

18 **WHEREAS**, requiring the approval of an administrative use permit to allow
19 certain fences, walls and hedges up to eight feet in height is burdensome on property
20 owners and this height should be allowed by right; and

21 **WHEREAS**, neighboring property owners should be informed of pending
22 administrative use permit applications prior to staff taking action on them; and

23 **WHEREAS**, revisions are need to Chapter 17.40, Use Permits, to add a purpose
24 statement, clarify responsibilities and processes, delete references to minor use
25 permits, reduce the number of required findings because many are unnecessary or
26 repetitive, and clarify revocation procedures; and

27 **WHEREAS**, the Planning Commission considered the proposed amendments at
28 a public hearing on November 30, 2016, and unanimously adopted PC Resolution
29 2016-21 recommending their approval to the Council.

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

32 **SECTION ONE**

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

37 **SECTION TWO**

38 Chapter 17.21, DC Downtown Commercial District, is hereby amended as follows.

39 1. Subsection 17.21.020(A) is amended as follows:

40 A. The following primary uses are permitted in the DC district, ~~except that an~~
41 ~~administrative use permit pursuant to Chapter 17.40 CMC is required when the~~
42 ~~use is located within an entry corridor designated in the General Plan:~~

43 2. Subsection 17.21.020(A)(9) is amended as follows:

44 9. Restaurants, bakeries, cafes and similar uses, with or without outdoor seating,
45 pursuant to the following:

46 ~~a. The proposed establishment meets all of the following criteria:~~

47 ~~i~~a. No live entertainment or dancing is proposed.

48 ~~ii~~b. No outdoor seating is proposed in a public right-of-way.

49 ~~iii~~c. The establishment is not a formula business or formula restaurant.

50 3. Subsection 17.21.020(A)(9)(b) is deleted in its entirety.

51 4. The following subsections are added to Section 17.21.030:

52 B. The following uses require an administrative use permit in the DC District,
53 pursuant to CMC Chapter 17.40:

54 1. Outdoor bicycle rentals in conjunction with an established retail sales
55 operation

56 2. Outdoor dining in conjunction with an established restaurant operation

57 3. Outdoor live entertainment with non-amplified instruments in conjunction with
58 an established business operation on an ongoing basis

59 C. The following uses require a temporary use permit in the DC District, pursuant to
60 CMC Chapter 17.40:

61 1. One-time events held in conjunction with an established business operation,
62 limited to four events per year. Use of public right-of-way as part of an event
63 also requires approval of an encroachment permit.

64 2. Outdoor holiday and other seasonal events and sales that do not involve the
65 use of public property or right-of-way.

66 **SECTION THREE**

67 Chapter 17.22, CC Community Commercial District is hereby amended as follows.

68 1. Subsection 17.22.020(A) is amended as follows:

69 A. The following primary uses are permitted in the DC district, ~~except that an~~
70 ~~administrative use permit pursuant to Chapter 17.40 CMC is required when the~~
71 ~~use is located within an entry corridor designated in the General Plan:~~

- 72 2. The following subsections are added to Section 17.22.030:
73 B. The following uses require an administrative use permit in the CC District,
74 pursuant to CMC Chapter 17.40:
75 1. Outdoor bicycle rentals in conjunction with an established retail sales
76 operation
77 2. Outdoor dining in conjunction with an established restaurant operation
78 3. Outdoor live entertainment with non-amplified instruments in conjunction with
79 an established business operation on an ongoing basis
80 C. The following uses require a temporary use permit in the CC District, pursuant to
81 CMC Chapter 17.40:
82 1. One-time events held in conjunction with an established business operation
83 that do not involve the use of public property or right-of-way
84 2. Outdoor holiday and other seasonal events and sales that do not involve the
85 use of public property or right-of-way

86 **SECTION FOUR**

87 Chapter 17.40, Use Permits, is repealed in its entirety and replaced with the
88 following.

89 Chapter 17.40
90 USE PERMITS

91 Sections:

- 92 17.40.010 Purpose.
93 17.40.020 Application requirements.
94 17.40.030 Review procedures.
95 17.40.040 Use permit validity and extensions.
96 17.40.050 Compliance and revocation procedures.

97 17.40.010 Purpose.

98 The purpose of this chapter is to establish procedures and general standards for the
99 review and approval of use permits required by various sections of this title. Uses
100 that require use permit approval have been determined to have a special character
101 that makes their establishment as a permitted or accessory use without prior review
102 impractical and undesirable. This review shall be for the purpose of determining that
103 each proposed use is, and will continue to be, compatible with surrounding existing
104 and planned uses. It is also for the purpose of establishing special conditions as may
105 be necessary to ensure the harmonious integration and compatibility of uses in the
106 neighborhood and with surrounding areas.

107 17.40.020 Application requirements.

- 108 A. A use permit application shall be filed in accordance with CMC 17.02.120. The
109 application shall be accompanied by the information identified in the Planning
110 and Building Department handout as being required for use permit applications.

- 111 B. Application completeness
- 112 1. Within 30 days of receipt of an application for a use permit, the City shall
- 113 notify the applicant in writing as to whether such application is complete for
- 114 processing.
- 115 2. If the application is determined to be incomplete, the City shall inform the
- 116 applicant of additional information required or the procedure by which such
- 117 application can be made complete.
- 118 3. Upon receipt of such additional materials, a new 30-day period shall begin
- 119 during which the City shall determine the completeness of the application.
- 120 4. Only an application for a use permit which has been determined to be
- 121 complete shall be processed pursuant to the requirements of this title.
- 122 C. The filing of the application for a use permit shall not preclude the securing of
- 123 additional information from the developer necessary for the proper consideration
- 124 of a use permit nor does it insure that the use permit request complies with the
- 125 law and with the requirements of this title.
- 126 D. If other approvals are required by this title, an application for a use permit may be
- 127 filed and processed concurrently with the related entitlement request(s), and shall
- 128 be acted upon simultaneously by the decision-making authority.
- 129 E. Following the denial of a use permit application or the revocation of a use permit,
- 130 no application for such permit for the same or substantially the same use and
- 131 design, or use of the same or substantially the same site shall be filed within one
- 132 year from the date of denial or revocation.
- 133 17.40.030 Review procedures.
- 134 A. The Planning Director shall act on administrative use permit and temporary use
- 135 permit applications.
- 136 1. Property owners within 300 feet of a property that is the subject of an
- 137 administrative use permit application shall receive notification of the
- 138 Department's pending action at least 10 days prior to such action being taken.
- 139 2. The Planning Director may refer an administrative use permit or temporary
- 140 use permit application to the Commission for action.
- 141 B. The Planning Commission shall act on a use permit application following a public
- 142 hearing.
- 143 C. Action on a use permit application may include approving the permit in its original
- 144 or modified form, and with such terms and conditions that are deemed
- 145 appropriate or necessary by required by Section 17.40.040. If no terms or
- 146 conditions are specified, the use permit shall be considered unconditional and
- 147 valid for an indefinite period, unless the use is abandoned for more than 180
- 148 days.
- 149 D. In approving or conditionally approving a use permit application, the decision-
- 150 making authority shall make the following findings that the proposed use:
- 151 1. Is in accord with the General Plan and any applicable planned development.

- 152 2. Is in accord with all applicable provisions of this title.
- 153 3. Will not substantially impair or interfere with the development, use or
- 154 enjoyment of other property in the vicinity.
- 155 4. Is consistent with and enhances Calistoga's history of independently-owned
- 156 businesses, thus contributing to the uniqueness of the town, which is
- 157 necessary to maintain a viable visitor industry and promote its economy.
- 158 5. Is resident-serving, in the case of a formula business.

159 17.40.040 Use permit validity and extensions.

- 160 A. Approval of a use permit shall lapse and become void one year following the date
- 161 on which the use permit became effective, unless prior to the expiration of one
- 162 year:
 - 163 1. A building permit is issued and the applicant, in good faith, has diligently
 - 164 commenced construction and performed substantial work and incurred
 - 165 substantial liabilities in reliance thereon; or
 - 166 2. A certificate of occupancy is issued for the structure which was the subject of
 - 167 the use permit application; or
 - 168 3. The site is occupied and the activity has commenced, if no building permit or
 - 169 certificate of occupancy is required.
- 170 B. The Director may extend the time limit established by subsection (A) by up to 12
- 171 months for a use permit's approval to be exercised, subject to the following:
 - 172 1. A written request for an extension of time shall be filed with the Planning and
 - 173 Building Department at least 30 days before the expiration of the one-year
 - 174 period, together with the filing fee required by resolution of the City Council.
 - 175 Expiration of the approval will be stayed until the decision on the extension
 - 176 request if the request is filed 30 days before the original expiration.
 - 177 2. In approving a time extension, the Director shall determine that:
 - 178 a. The applicant has made a good faith effort to exercise the approval. The
 - 179 burden of proof is on the applicant to establish, with substantial evidence
 - 180 beyond the control of the applicant (e.g., demonstration of financial
 - 181 hardship, legal problems with the closure of the sale of the parcel, poor
 - 182 weather conditions in which to complete construction activities, etc.), why
 - 183 the permit or approval should be extended.
 - 184 b. Conditions of the site and in the vicinity are substantially the same as
 - 185 when the approval was originally granted.
 - 186 3. A use permit shall remain valid as long as the approved use is maintained in
 - 187 continuous operation and in full compliance with any adopted conditions of
 - 188 approval.
 - 189 4. A use permit shall become null and void under either of the following
 - 190 circumstances:
 - 191 a. Cessation of the use approved by the permit for a period of six months or
 - 192 more; or

193 b. Replacement of the use that is the subject of the use permit Institution with
194 a different use.

195 17.40.050 Compliance and revocation procedures.

196 A. The City may conduct investigations to ensure that a conditionally-permitted use
197 is being maintained and operated as applied for in compliance with all conditions.

198 B. Failure to operate in accordance with the conditions of the use permit may be the
199 subject of an enforcement action and penalties as provided by CMC Title
200 1 and/or grounds for setting the matter for a public hearing to consider revocation
201 or modification of the permit. The assessment of penalties shall in no way act as
202 a waiver of the revocation of the permit. The City may also pursue any other
203 option permitted by law to require compliance with the conditions of the permit.

204 C. A use permit may be revoked or modified by the review authority that originally
205 approved the permit following a public hearing, in the case of a use permit
206 approved by the Planning Commission or the City Council, or an administrative
207 hearing in the case of an administrative use permit approved by the Planning
208 Department.

209 D. If as the result of an investigation it is determined that one or more of the
210 circumstances contained in subsection (E) of this section applies to a use permit
211 granted in accordance with the provisions of this article, the review authority shall
212 hold a public hearing to consider its revocation or modification. Written notice of
213 the date, time, place and purpose of such public hearing shall be served to the
214 following parties, as applicable:

- 215 1. The owner of the property for which the permit was granted;
216 2. The operator of the conditionally permitted use if the use is active; and
217 3. The party or parties who hold an active business license for the conditionally-
218 permitted use.

219 Such notice shall be provided by registered mail, postage prepaid, return receipt
220 requested, not less than 10 days prior to the date of such hearing. Notice to the
221 owner of the property shall be given at the address as shown on the latest
222 equalized tax assessment roll. Notice to an operator of the conditionally-
223 permitted use may be given at the property address of the use. Additional notice
224 shall be given in the manner prescribed in CMC 17.02.090.

225 E. The review authority may revoke or modify the use permit after making one or
226 more of the following findings:

- 227 1. The permit was approved on the basis of erroneous or misleading information,
228 misrepresentation or fraud.
229 2. One or more conditions of approval have not been completed or have been
230 violated.
231 4. The use authorized by the permit is conducted or maintained in a manner that
232 is detrimental to the public health or safety, or constitutes a public nuisance.
233 5. If a business license is required for the conditionally-permitted use, a current
234 business license has not been issued for the use authorized by the permit.

235 F. The revocation of a use permit shall have the effect of terminating the permit and
236 denying the privileges granted by its approval.

237 **SECTION FIVE**

238 Chapter 17.38, General Provisions and Exceptions, is hereby amended as follows.

239 1. Subsection 17.38.020(G) of Section 17.38.020 Yards – Permitted projections, is
240 deleted and Subsection (H) is renumbered to (G) accordingly.

241 ~~G. In R districts, fences in side and rear yards may not exceed six feet in height, and~~
242 ~~may not exceed three and one-half feet in front yards or street side yards.~~

243 2. Subsections 17.38.020(I), (J) and (K) are deleted.

244 **SECTION SIX**

245 Chapter 17.52, Fences, Hedges or Walls, is hereby amended as follows.

246 1. Subsection 17.52.020(A) is amended as follows:

247 A. Residential, Commercial and Industrial Districts.

248 1. Walls and fences not exceeding ~~six~~eight feet in height shall be permitted in
249 ~~all~~required interior side and rear yards and along interior side and rear yard
250 lot lines, unless otherwise permitted in this title ~~or by the Planning~~
251 ~~Commission.~~

252 2. Walls and fences not exceeding four and one-half feet in height may be
253 permitted in ~~any~~required front yard ~~or required and~~ street side yards and
254 along front ~~or~~and street side yard lot lines.

255 3. In the corner cutoff area, as defined by Section 17.52.030, the maximum
256 height of ~~any~~ walls, fences ~~or~~and landscaping shall be two and one-half feet.

257 2. Subsection 17.52.020(B) is amended as follows:

258 B. Notwithstanding the above, a fence, hedge, shrub or wall may be constructed or
259 maintained within the street side yard setback of a corner lot; provided, however,
260 that it does not exceed a height of ~~six~~eight feet, is located a minimum of five feet
261 from the property line, is located outside the required front yard setback and
262 maintains adequate site visibility distance from adjacent street corners and
263 driveways as determined by the Planning Director.

264 3. Subsection 17.52.020(D) is deleted in its entirety.

265 **SECTION SIX**

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

271

272 **SECTION SEVEN**

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

282 **SECTION EIGHT**

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

287 THIS ORDINANCE was introduced with the first reading waived at the City of
288 Calistoga City of Council meeting of the **20th day of December, 2016**, and was passed
289 and adopted at a regular meeting of the Calistoga City Council on the **__ day of __,**
290 **2017**, by the following vote:

291 **AYES:**
292 **NOES:**
293 **ABSENT:**
294 **ABSTAIN:**

295 _____
296 **Chris Canning, Mayor**

297 **ATTEST:**

298 _____
299 **Kathy Flamson, City Clerk**
300