


City of Calistoga

Staff Report

TO Honorable Mayor and City Council
FROM Lynn Goldberg, Planning and Building Director
DATE January 3, 2017
SUBJECT Second Reading of Ordinance No. 728

APPROVAL FOR FORWARDING:



Dylan Feik, City Manager

- 1 **ISSUE:** Zoning Code amendments to revise the requirements for administrative use
- 2 permits and establish a temporary use permit (ZOA 2016-2)
- 3 **RECOMMENDATION:** Adopt Ordinance No. 728 as submitted
- 4 **BACKGROUND:** On December 20, 2016, following a public hearing, the City Council
- 5 introduced and waived the first reading of the attached ordinance.

ATTACHMENT

- 1. Ordinance No. 728

ORDINANCE NO. 728

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)

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

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

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

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

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

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

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

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

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

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

1. Subsection 17.21.020(A) is amended as follows:
 - A. The following primary uses are permitted in the DC district, ~~except that an administrative use permit pursuant to Chapter 17.40 CMC is required when the use is located within an entry corridor designated in the General Plan:~~
2. Subsection 17.21.020(A)(9) is amended as follows:
 9. Restaurants, bakeries, cafes and similar uses, with or without outdoor seating, pursuant to the following:
 - a. ~~The proposed establishment meets all of the following criteria:~~
 - i. No live entertainment or dancing is proposed.
 - ii. No outdoor seating is proposed in a public right-of-way.
 - iii. The establishment is not a formula business or formula restaurant.
3. Subsection 17.21.020(A)(9)(b) is deleted in its entirety.
4. The following subsections are added to Section 17.21.030:
 - B. The following uses require an administrative use permit in the DC District, pursuant to CMC Chapter 17.40:
 1. Outdoor bicycle rentals in conjunction with an established retail sales operation
 2. Outdoor dining in conjunction with an established restaurant operation
 3. Outdoor live entertainment with non-amplified instruments in conjunction with an established business operation on an ongoing basis
 - C. The following uses require a temporary use permit in the DC District, pursuant to CMC Chapter 17.40:
 1. One-time events held in conjunction with an established business operation, limited to four events per year. Use of public right-of-way as part of an event also requires approval of an encroachment permit.
 2. Outdoor holiday and other seasonal events and sales that do not involve the use of public property or right-of-way.

SECTION THREE

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

1. Subsection 17.22.020(A) is amended as follows:
 - A. The following primary uses are permitted in the DC district, ~~except that an administrative use permit pursuant to Chapter 17.40 CMC is required when the use is located within an entry corridor designated in the General Plan:~~

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

SECTION FOUR

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

Chapter 17.40 USE PERMITS

Sections:

- 17.40.010 Purpose.
- 17.40.020 Application requirements.
- 17.40.030 Review procedures.
- 17.40.040 Use permit validity and extensions.
- 17.40.050 Compliance and revocation procedures.

17.40.010 Purpose.

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

17.40.020 Application requirements.

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

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

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

17.40.040 Use permit validity and extensions.

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

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

17.40.050 Compliance and revocation procedures.

- A. The City may conduct investigations to ensure that a conditionally-permitted use is being maintained and operated as applied for in compliance with all conditions.
- B. Failure to operate in accordance with the conditions of the use permit may be the subject of an enforcement action and penalties as provided by CMC Title 1 and/or grounds for setting the matter for a public hearing to consider revocation or modification of the permit. The assessment of penalties shall in no way act as a waiver of the revocation of the permit. The City may also pursue any other option permitted by law to require compliance with the conditions of the permit.
- C. A use permit may be revoked or modified by the review authority that originally approved the permit following a public hearing, in the case of a use permit approved by the Planning Commission or the City Council, or an administrative hearing in the case of an administrative use permit approved by the Planning Department.
- D. If as the result of an investigation it is determined that one or more of the circumstances contained in subsection (E) of this section applies to a use permit granted in accordance with the provisions of this article, the review authority shall hold a public hearing to consider its revocation or modification. Written notice of the date, time, place and purpose of such public hearing shall be served to the following parties, as applicable:
 - 1. The owner of the property for which the permit was granted;
 - 2. The operator of the conditionally permitted use if the use is active; and
 - 3. The party or parties who hold an active business license for the conditionally-permitted use.

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

- E. The review authority may revoke or modify the use permit after making one or more of the following findings:
 - 1. The permit was approved on the basis of erroneous or misleading information, misrepresentation or fraud.
 - 2. One or more conditions of approval have not been completed or have been violated.
 - 4. The use authorized by the permit is conducted or maintained in a manner that is detrimental to the public health or safety, or constitutes a public nuisance.
 - 5. If a business license is required for the conditionally-permitted use, a current business license has not been issued for the use authorized by the permit.

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

SECTION FIVE

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

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

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

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

SECTION SIX

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

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

A. Residential, Commercial and Industrial Districts.

1. Walls and fences not exceeding ~~six~~six feet in height shall be permitted in ~~all~~required interior side and rear yards and along interior side and rear yard lot lines, unless otherwise permitted in this title ~~or by the Planning Commission.~~
2. Walls and fences not exceeding four and one-half feet in height may be permitted in ~~any~~ required front yard ~~or required and~~ street side yards and along front ~~or~~and street side yard lot lines.
3. In the corner cutoff area, as defined by Section 17.52.030, the maximum height of ~~any~~ walls, fences ~~or~~and landscaping shall be two and one-half feet.

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

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

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

SECTION SIX

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 exempt from CEQA under the general rule.

SECTION SEVEN

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 EIGHT

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 of Council meeting of the **20th day of December, 2016**, and was passed and adopted at a regular meeting of the Calistoga City Council on the **3rd day of January, 2017**, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Chris Canning, Mayor

ATTEST:

Kathy Flamson, City Clerk