

**CITY OF CALISTOGA
PLANNING COMMISSION
RESOLUTION PC 2016-20**

**RECOMMENDING TO THE CITY COUNCIL APPROVAL OF AMENDMENTS TO THE
CALISTOGA MUNICIPAL CODE TO REGULATE THE RESIDENTIAL CULTIVATION
OF MARIJUANA (MCA 2016-1)**

WHEREAS, on November 8, 2016, California voters passed Proposition 64, the Control, Regulate, and Tax Adult Use of Marijuana Act ("AUMA"), which legalizes and regulates recreational marijuana in California; and

WHEREAS, the AUMA imposes certain restrictions on local police power with regard to private cultivation in residences; and

WHEREAS, the AUMA allows the City to reasonably regulate the cultivation of up to six marijuana plants per residence; and

WHEREAS, the cultivation of marijuana on residential properties has the potential to generate negative impacts, including damage to buildings in which cultivation occurs from improper and dangerous cultivation and extraction methods, increased occurrences of robberies and similar crimes, and nuisance impacts to the public from the plants' strong and noxious odors; and

WHEREAS, regulating the personal cultivation of marijuana on residential properties would be in conformance with Goal 5 of the City Council's goals and objectives for Fiscal Year 2016-17, which calls for making Calistoga safe; and

WHEREAS, the Planning Commission reviewed the proposed amendments at a public hearing on November 30, 2016, and during its review, considered the public record, including the staff report, findings, written materials and testimony presented by the public during the hearing; and

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

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

ADOPTED on November 30, 2016 by the following vote of the Calistoga Planning Commission:

AYES: Coates, Cooper, McNair
NOES: Abernathy

Exhibit A

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 for which a state license is required under Business and Professions Code sections 19300 et seq. and 26000 et seq.~~
- 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 purified, 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~~(i) industrial hemp, as defined in Health and Safety Code Section 11018.5; or (ii) the weight of any other ingredient, combined with marijuana to prepare topical or oral administrations, food, drink, or other product.
- 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, except as provided in Municipal Code section 17.48.050.

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, conduct commercial cannabis activities, or cultivate marijuana/cannabis, except as provided in Section 17.48.050, 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.

Chapter 17.48
MARIJUANA ACTIVITIES REGULATIONS

Sections:

<u>17.48.010</u>	<u>Definitions</u>
<u>17.48.040020</u>	Medical marijuana dispensaries prohibited.
<u>17.48.020030</u>	Marijuana/cannabis cultivation prohibited.
<u>17.48.030040</u>	Commercial cannabis activities prohibited.
<u>17.48.050</u>	<u>Personal marijuana processing and cultivation.</u>

17.48.010 Definitions.

The definitions set forth in Municipal Code Section 8.30.010 shall apply to this Chapter.

17.48.040-020 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.

17.48.020030 Marijuana/cannabis cultivation prohibited.

The cultivation of marijuana/cannabis is prohibited in all zoning districts within the City of Calistoga, except as provided in Municipal Code section 17.48.050.

17.48.030040 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.

17.48.050 Personal marijuana processing and cultivation.

The cultivation of marijuana and the manufacture of marijuana products/by-products is allowed at a private residence, subject to the following regulations.

- A. Cultivation must be for personal use and may not occur for the purpose of sale or profit.
- B. No more than six living marijuana plants per residence may be planted, cultivated, harvested, dried and processed. The limit of six plants per private residence shall apply regardless of how many individuals reside at the residence.
- C. There shall be no exterior evidence from a public right-of-way of nonmedical marijuana cultivation occurring on the parcel.
- D. Up to two plants per residence may be grown outdoors. Any other plants shall be located within one of the following:
 1. The residence, or
 2. An accessory residential structure that is fully enclosed and secure.
 - a. "Fully-enclosed and secure structure" means a space within a building that complies with the applicable provisions of the California Building Standards Code as adopted and amended by

Calistoga Municipal Code Title 15, and has a complete roof enclosure supported by connecting walls extending from the ground to the roof, a foundation, slab or equivalent base to which the floor is secured by bolts or similar attachments, is secure against unauthorized entry, and is accessible only through one or more lockable doors. Walls and roof must be constructed of solid materials that cannot be easily broken through, and must be constructed with non-transparent material. Plastic sheeting, canvas, vinyl, or similar products or materials, regardless of gauge, are not considered solid materials.

b. A fully-enclosed and secure structure must be an accessory structure to a private residence located upon the parcel on which that private residence is situated.

c. Any fully enclosed and secure structure or residence used for the cultivation of nonmedical marijuana must have a ventilation and filtration system installed that shall prevent marijuana plant odors from exiting the interior of the structure and that complies with the applicable provisions of the California Building Standards Code as adopted and amended by Title 15 of the Calistoga Municipal Code.

d. A fully enclosed and secure structure used for the cultivation of nonmedical marijuana shall be located in the rear yard area of the parcel, and must maintain a minimum 10 (ten) foot setback from any property line. The yard where the fully enclosed and secure structure is maintained must be enclosed by a solid fence at least six feet in height.

E. Cultivation in a garage shall not prevent compliance with the minimum parking standards required by this Title.

F. Any marijuana in excess of 28.5 grams produced by the plants at the residence must be contained in a locked space that is not visible from a public place.

G. Outdoor cultivation may not occur on a property that adjoins a school.

H. Odors and light that are associated with cultivation which causes discomfort or annoyance to any reasonable person of normal sensitivities residing in the area are prohibited.

I. The use of ozone generators to cultivate marijuana is prohibited.

J. The use of compressed, flammable gas as a solvent in the extraction of tetrahydrocannabinol (THC) or other cannabinoids to cultivate marijuana is prohibited.

Excerpt

MINUTES

CALISTOGA PLANNING COMMISSION

November 30, 2016

A. ROLL CALL

Commissioners present: Chair Paul Coates, Alissa McNair, Scott Cooper, Walter Abernathy. Absent: Vice Chair Tim Wilkes (excused). Staff present: Planning and Building Director Lynn Goldberg

G. PUBLIC HEARINGS

- 2. Municipal Code Amendments MCA 2016-1:** Consideration of a recommendation to the City Council regarding the regulation of residential cultivation of marijuana

Ms. Goldberg presented highlights of her written staff report. Although it is now lawful for individuals 21 years and older to possess six marijuana plants for personal, non-medical use under the recently-passed Control, Regulate, and Tax Adult Use of Marijuana Act, the City is still allowed to prohibit commercial marijuana businesses and outdoor cultivation. The City Council has indicated a preference for continuing to ban both of these. However, the City can enact and enforce reasonable regulations for indoor residential cultivation. The proposed amendments to the Zoning Code are intended to minimize the associated potentially-negative impacts. She noted that staff is hoping to get regulations in place as soon as possible, since residential cultivation is now legal, and that a ban could be revisited at a later date based on the actions and experiences of other jurisdictions. Two letters have been submitted to the Commission, one in support of allowing outdoor cultivation and the other opposed.

Commissioner Cooper agreed that it's important to have regulations in place that could be adjusted in the future as warranted.

Chair Coates opened the public hearing.

Sylvia Cottrell provided some information about the cannabis growing cycle. She feels that potential criminal activity, such as trespassing on someone's property to steal plants, would be minimal due to the de-criminalization of cultivation and the limited number of plants that can be grown at a residence. Just a few plants would be sufficient for personal cultivation. Based on her experience, odors associated with six outdoor plants would be negligible, even when they are mature. Past experience with outright prohibition on alcohol didn't work, but now alcohol is well-regulated and acceptable. The legalization of recreational marijuana should be viewed in a similar positive light.

Elizabeth Tangney would like to be able to grow marijuana in her garden. Allowing three plants would be a good compromise and limit potential odor

problems, especially since plants can only be grown half of the year. Limiting cultivation to indoors creates fire hazards and makes it seem like a criminal activity. We should focus on our attention to educating youth, if that's the concern about outdoor cultivation. Marijuana is going to be around for a long time and will eventually be legalized by the federal government, so we should deal with getting comfortable with it, rather than just re-banning it.

Ben Johnson noted that the lights and fans associated with indoor cultivation result in high energy demands that are very expensive. That could be avoided by taking advantage of Calistoga's climate and natural sunlight. He supports allowing cultivation on parcels that are large enough to have a garden, and keeping it away from schools, apartments and business areas.

Jeremiah Moore observed that if the City bans outdoor cultivation, it won't be eligible for grant money from the State. Ms. Goldberg explained that the funding is likely to be very limited and restricted to certain uses. The City would also have to allow the retail sale of cannabis to be eligible for it. Staff will monitor the amount of funding ultimately available and bring it to the Council's attention if it proves to be substantial.

In response to a question from **Commissioner Cooper**, Ms. Goldberg explained that it wouldn't be necessary for a certain number of supporters of outdoor cultivation to sign a petition to the City Council. They could simply show up at the Council public hearing, or communicate their opinion by sending letters or emails to the Council.

Chair Coates closed the public hearing.

Commissioner McNair isn't surprised that few people spoke up last year on the proposed cultivation ban, because personal cultivation was limited then. Now that it's legal, more people are willing to express their opinions. She supports reasonable regulations instead of a complete ban on outdoor cultivation, so she has concerns about the draft ordinance. It's very difficult to measure or monitor odors, and she's not particularly concerned about them given the local agricultural environs that generate potentially-offensive smells and are protected by the Right to Farm Act. Trying to regulate smell by using filters on exhaust fans adds another financial burden to indoor cultivation. She suggests limiting outdoor cultivation to larger parcels to minimize potential impacts on neighbors. It's not appropriate on small parcels, especially those near schools. Minimum setbacks of plants from property lines, and from businesses or residences on adjoining properties could be required. Those could be reduced if adjoining neighbors agreed. There are opportunities to explore reasonable regulations.

Commissioner Cooper observed that it's the Commission's duty to listen to the community, and that if there was significant opposition to outdoor cultivation, there would be some opponents at the meeting. However, all of the public speakers tonight are in support. Growing indoors is cumbersome and complicated. Although a grower informed him that 40 pounds of cannabis could

be harvested from six plants with intensive effort, he doesn't see the harm in allowing the outdoor cultivation of two plants by a non-professional. The city's decision makers should give credence to the public's views on the issue. He agrees that if anyone is allowed to grow a few plants outdoors, there won't be a problem with trespassing and theft. Separation between cultivation and schools should be required.

Commissioner Abernathy supports starting with a conservative approach, such as the ban on outdoor cultivation, then modifying it as warranted after we gain more experience with the issue.

Chair Coates observed that the Commission's role is to gather public input on the issue and make a recommendation to the City Council. The public will have ample opportunity to make their opinions known to the Council before their hearing. He is concerned with potential problems related to unapproved access to plants grown outdoors. However, allowing two outdoor plants wouldn't likely create odor problems and could be a compromise that is generally acceptable. He agrees that outdoor cultivation should be prohibited adjacent to schools, because it would just be teasing people, and should be limited to residential areas. The City could do a test run, and if complaints arise from outdoor cultivation, the regulations could be revised accordingly.

Commissioner McNair agrees with Chair Coates' suggestions. She would still like outdoor cultivation to be limited to larger parcels outside the city core.

Commissioner Abernathy thinks if cultivation is limited to certain areas of town, it could become complicated and difficult for people to understand. He supports staff's recommendation for a complete ban on outdoor cultivation. However, the City should continue to explore the issue.

Chair Coates agrees that having different regulations for different parts of town would be very difficult to explain and implement.

A motion by **Commissioner McNair** and seconded by **Commissioner Cooper** to adopt the resolution recommending to the City Council approval of amendments to the Municipal Code to regulate the personal cultivation of marijuana, with modifications to allow up to two plants to be cultivated outdoors and to ban outdoor cultivation on properties adjacent to schools, was approved on a 3-1 vote (Abernathy dissent).