

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 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.

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 Section 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. (Ord. 721 § 2, 2016).

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. (Ord. 721 § 2, 2016).

8.30.030 Marijuana/cannabis cultivation prohibited.

The cultivation of marijuana/cannabis is prohibited in all zoning districts within the City of Calistoga. (Ord. 721 § 2, 2016).

8.30.040 Commercial cannabis activity prohibited.

Commercial cannabis activities are prohibited in all zoning districts within the City of Calistoga. (Ord. 721 § 2, 2016).

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. (Ord. 721 § 2, 2016).

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. (Ord. 721 § 2, 2016).

The Calistoga Municipal Code is current through Ordinance 728, passed January 3, 2017.

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Chapter 9.16 SOCIAL HOST ACCOUNTABILITY

Sections:

- 9.16.010 Title.
- 9.16.020 Legislative purpose.
- 9.16.030 Definitions.
- 9.16.040 Loud or unruly gathering – Public nuisance – Penalty.
- 9.16.050 Protected activities.
- 9.16.060 Violation – Civil fine.
- 9.16.070 Public safety services fee.
- 9.16.080 Notice of violation.
- 9.16.090 Payment of fines.
- 9.16.100 Administrative hearing.
- 9.16.110 Hearing officer decision – Appeal.
- 9.16.120 Billing – Debt to City – Enforcement.
- 9.16.130 Cumulative remedies.

9.16.010 Title.

This chapter shall be known as the “social host accountability ordinance.” (Ord. 669 § 2, 2010).

9.16.020 Legislative purpose.

The purposes of this chapter are to:

- A. Protect the public health, safety and general welfare;
- B. Promote the reduction of underage drinking by imposing a civil fine on persons responsible for loud or unruly gatherings at which alcohol is consumed by, served to, or in the possession of minors;
- C. Facilitate the enforcement of laws prohibiting the service to, consumption of, or possession of alcoholic beverages by minors; and
- D. Offset the City's costs associated with providing fire, police, and other emergency services to loud or unruly gatherings by recouping some of the costs associated with providing such services. (Ord. 669 § 2, 2010).

9.16.030 Definitions.

For the purpose of this chapter, the following definitions shall apply:

“Alcohol” means ethyl alcohol, hydrated oxide of ethyl, or spirits of wine, from whatever source or by whatever process produced.

“Alcoholic beverage” includes alcohol, spirits, liquor, wine, beer, and every liquid or solid containing alcohol, spirits, liquor, wine or beer, and which contains one-half of one percent or more of alcohol by volume and which is fit for beverage purposes either alone or when diluted, mixed, or combined with other substances.

“Juvenile” means any person less than 18 years of age.

“Loud or unruly gathering” means a party or gathering of two or more persons at a residence, other private property, or rented public property upon which loud or unruly conduct occurs. Loud or unruly conduct includes without limitation:

1. Making, continuing, maintaining, or causing to be made or continued any excessive, unnecessary, unreasonable, or unusually loud noise in such a manner as to disturb the quiet and repose of the residents of nearby properties so as to interfere with the comfortable and quiet enjoyment of life and property;
2. Making, continuing, maintaining, or causing to be made or continued excessive traffic;
3. Obstruction of public streets and/or public rights-of-way;
4. Public drunkenness or unlawful public consumption of alcohol, alcoholic beverages, or other intoxicating substance;
5. Service to or consumption of alcohol, alcoholic beverages, or other intoxicating substance by minors;
6. Assaults, batteries, fights, domestic violence or other disturbances of the peace;
7. Vandalism or litter; or
8. Conduct that constitutes a threat to the public health, safety, general welfare, or quiet enjoyment of residential property.

“Minor” means any person less than 21 years of age.

“Other private property” refers to a hotel or motel room, assembly hall or meeting room, common room of a dwelling unit used for a party (e.g., recreation room of an apartment building), site in a privately owned campground, privately owned vacant lot, privately owned agricultural land, or privately owned rural land however occupied and whether owned, leased, rented, or used without compensation.

“Public safety services fee” refers to the fee imposed to recover a portion of the costs associated with the response by law enforcement, fire and other emergency providers to loud or unruly gatherings, including but not limited to:

1. The portion of the cost of salaries and benefits of law enforcement, fire or other emergency response personnel for the amount of time spent responding to a loud or unruly gathering, together with the administrative costs attributable to such response;
2. The cost of any medical treatment to or for any law enforcement, fire or other emergency response personnel injured responding to a loud or unruly gathering; and
3. The cost of any equipment or property used or damaged while responding to a loud or unruly gathering.

“Residence” includes a dwelling unit such as a home, condominium or apartment; structures on the residence other than the dwelling unit such as a garage, studio, tent, boat dock, swimming pool, barn, or boat house; land on the residence whether improved or unimproved such as a yard, patio, open fields, piers, or lake shores; water bodies on the residence such as a pond, lake, river, or stream; a motor vehicle, camper, or trailer located on the residence or a boat, watercraft, or other marine vessel located on the residence, whether occupied on a temporary or permanent basis, whether occupied as a dwelling or used for a party or gathering, and whether owned, leased, rented, or used with or without compensation.

“Responsible person” means and includes without limitation:

1. The person who owns, rents, leases or otherwise has control of the premises where a loud or unruly gathering occurs;
2. The person in charge of the premises where a loud or unruly gathering occurs; and/or

3. The person who organized a loud or unruly gathering.

If the responsible person is a juvenile, the parent or guardian of that juvenile shall also be deemed a responsible person. (Ord. 669 § 2, 2010).

9.16.040 Loud or unruly gathering – Public nuisance – Penalty.

It shall be unlawful and constitute a public nuisance for any responsible person to conduct, aid, organize, permit, or host a loud or unruly gathering. A violation of this chapter shall constitute a misdemeanor unless the citing officer, in his or her discretion, charges the violation as an infraction. Any person violating any provision of this chapter shall also be subject to a civil fine if alcohol is served to, consumed by, or in the possession of a minor at the loud or unruly gathering. In addition to the imposition of any civil fines or any other lawful penalty, the responsible person may also be subject to a public safety services fee in accordance with CMC 9.16.070. (Ord. 669 § 2, 2010).

9.16.050 Protected activities.

This chapter shall not apply to activities (A) protected by Article 1, Section 4, of the California Constitution; (B) protected by the First or Fourteenth Amendment to the United States Constitution; or (C) regulated by the California Alcoholic Beverage Control Act. (Ord. 669 § 2, 2010).

9.16.060 Violation – Civil fine.

A. A violation of this chapter is punishable by the following civil fines:

1. Five hundred dollars for a first violation;
2. Seven hundred fifty dollars for a second violation within six months of the first violation; and
3. One thousand dollars for each additional violation within six months of the first violation.

B. In the event that a responsible person in violation of this chapter is a juvenile, the parent or guardian of that juvenile will be jointly and severally liable for the civil fine.

C. The civil fine provided for in this section is in addition to any public safety services fee that may be assessed pursuant to CMC 9.16.070. (Ord. 669 § 2, 2010).

9.16.070 Public safety services fee.

A. Regardless of whether alcohol is served to, consumed by, or in the possession of minors, a public safety officer responding to a violation of this chapter who determines that there is a threat to the public peace, health, safety, or general welfare may issue a written warning to any responsible person that a subsequent violation of this chapter within six months from the date of the first violation may result in the responsible person being liable for a public safety services fee.

B. Any responsible person who has been warned pursuant to this section shall be liable for a public safety services fee if such person is charged with a subsequent violation of this chapter within six months from the date of the first violation. If more than one responsible person is liable for the public safety services fee, such persons shall be jointly and severally liable.

C. In the event that the responsible person in violation of this section is a juvenile, the parent or guardian of that juvenile will be jointly and severally liable for the public safety services fee. (Ord. 669 § 2, 2010).

9.16.080 Notice of violation.

The citing officer shall give notice of a violation of this chapter by issuing a notice of violation to the responsible person within 30 days of the violation. The notice of violation shall be served in accordance with CMC 1.04.050 and shall include the following information:

- A. The name of the responsible person;
- B. The address of the residence or other public or private property where the loud or unruly gathering occurred;
- C. The date and time of the public safety and/or emergency response to the loud or unruly gathering;
- D. A description of the loud or unruly conduct;
- E. The law enforcement, fire and/or emergency service personnel who responded to the loud or unruly gathering, including the name and signature of the citing officer;
- F. The date and time of any previous warning given pursuant to CMC 9.16.070;
- G. If applicable, an itemized list of the public safety services fee for which the responsible person is liable;
- H. An order prohibiting the continuation or repeated occurrence of the violation;
- I. An explanation of how and when to pay the fine;
- J. Notification of the right to appeal, including the time within which the violation may be contested and the place to submit a written appeal;
- K. Notification that the City may impose a lien on the subject property in the event of nonpayment of any fines and/or fees;
- L. If applicable, any election by the City under Government Code Section 38773.5 or any other State or local law to allow for recovery of attorneys' fees in the event of an administrative proceeding or subsequent appeal. (Ord. 669 § 2, 2010).

9.16.090 Payment of fines.

- A. Within 30 days from the date of service of the notice of violation, the responsible person shall pay the fine and/or fee to the City Clerk.
- B. Any fine and/or fee paid pursuant to this section shall be refunded in accordance with CMC 9.16.110 if it is determined, after a hearing, that the person charged with the fine and/or fee was not responsible for the violation or that there was no violation as charged.
- C. Any responsible person who is unable to pay the fine and/or fee may file a request for fee waiver with the City Manager 10 calendar days from the date of service of the notice of violation.
 - 1. The request for fee waiver shall be in writing, describe why the fine cannot be paid, and include any relevant documentation supporting the request. The request must be accompanied by a sworn affidavit and must demonstrate to the satisfaction of the City Manager the responsible person's actual financial inability to pay the full amount of the fine and/or fee.
 - 2. Once the request for fee waiver is filed, the requirement to pay the fine and/or fee shall be stayed until the City Manager determines whether to grant or deny the request.
 - 3. If the City Manager grants the request for fee waiver, the responsible person shall not be required to pay the fine and/or fee. Granting a request for fee waiver shall not excuse or discharge any continuation or

repeated occurrence of any violation of this chapter, nor shall it bar further enforcement action by the City.

4. If the City Manager denies the request for fee waiver, the fine and/or fee must be paid within 15 calendar days from the date of service of the City Manager's determination. The City Manager may also impose a schedule for payment of the fine that shall not exceed 180 days from the date of his or her determination.

5. The City Manager's determination shall be made within 10 calendar days of the request, in writing, and served via U.S. certified mail, return receipt requested. The City Manager's determination shall be final. (Ord. 669 § 2, 2010).

9.16.100 Administrative hearing.

A. Any responsible person subject to a civil fine and/or public safety services fee may request an administrative hearing within 30 days from the date of service of the notice of violation. Any such request shall be in writing and presented to the City Clerk.

B. An administrative hearing shall not be held unless the responsible person has requested a hearing, in writing, from the City Clerk and deposited the civil fine and/or fee with the City.

C. The City Manager shall compile a list of qualified hearing officers and shall designate the hearing officer for the administrative hearing by random selection from the list, subject to availability of each particular hearing officer. The responsible person may request the City Manager to recuse a hearing officer for reasons of actual bias or prejudice against the responsible person's cause. The hearing officer shall not be an employee of the City nor have any employment relationship with the City, except for that of hearing officer. The hearing officer's employment, evaluation, compensation, and/or benefits shall not be conditioned, either directly or indirectly, upon the amount of fine imposed on the responsible person or the number of violations upheld by the hearing officer.

D. The hearing officer shall conduct the hearing within 60 days of the request for the hearing unless one of the parties requests a continuance for good cause.

E. At least 10 calendar days before the hearing, the responsible person shall be provided with copies of any and all citations, reports, and other documents submitted or relied upon by the citing officer. No other discovery shall be permitted.

F. The formal rules of evidence shall not apply to the administrative hearing. All relevant evidence may be considered, and the hearing officer has the discretion to exclude evidence that he or she finds to be irrelevant or repetitive.

G. The responsible person contesting the fine and/or fee shall be given the opportunity to (1) testify and present witnesses; (2) introduce relevant evidence; (3) cross-examine and/or rebut any witness testifying in support of the civil fine and/or fee; and (4) be represented by anyone who is lawfully permitted to do so.

H. The failure of a responsible person to appear at the administrative hearing shall constitute a forfeiture of the fine and/or fee and a failure to exhaust his or her administrative remedies.

I. The hearing officer may continue the hearing and request additional information from the citing officer or the responsible person before issuing a written decision.

J. In an administrative proceeding, the prevailing party shall be entitled to recover its reasonable attorneys' fees, but only if the City elects in writing, at the initiation of the administrative proceeding, to seek recovery of its own attorneys' fees. In no event shall an award of attorneys' fees to a prevailing party exceed the amount of reasonable attorneys' fees incurred by the City in the administrative proceeding. (Ord. 669 § 2, 2010).

9.16.110 Hearing officer decision – Appeal.

A. After considering all of the testimony and evidence submitted for the hearing, the hearing officer shall issue a written decision to uphold, modify or revoke the fine and/or fee that describes the reasons for the decision. The hearing officer's decision shall be final.

1. If the hearing officer determines that the fine and/or fee should be upheld, the amount of the fine and/or fee on deposit with the City shall be retained by the City.
2. If the hearing officer determines that the fine and/or fee should be modified, the City shall refund the difference between the amount of the original fine and/or fee and the modified fine and/or fee within 15 calendar days from the date of service of the hearing officer's decision.
3. If the hearing officer determines that the fine and/or fee should be revoked, the City shall refund the amount deposited within 15 calendar days from the date of service of the hearing officer's decision.

B. The hearing officer's decision shall include a statement that the aggrieved party may obtain review of the administrative decision by filing (1) an appeal with the Napa County Superior Court in accordance with Government Code Section 53069.4, or (2) a petition for writ of mandate in accordance with Code of Civil Procedure Sections 1094.5 and 1094.6.

C. Within five calendar days of issuance of the hearing officer's decision, the City shall serve a copy of the written decision on the responsible person by U.S. certified mail, return receipt requested. Service of the hearing officer's decision shall be deemed completed on the date of mailing. (Ord. 669 § 2, 2010).

9.16.120 Billing – Debt to City – Enforcement.

A. The amount of any civil fine and/or public safety services fee shall be deemed a debt owed to the City of Calistoga by the responsible person and, if that person is a juvenile, by his or her parent or guardian.

B. At its discretion, the City may pursue any and all legal and equitable remedies to collect unpaid fines and/or fees imposed pursuant to this chapter. Pursuit of one remedy does not preclude the pursuit of any other remedy. It is intended that persons causing, maintaining, and/or permitting the violation, and not the taxpayers, bear the financial burden of the City's enforcement efforts. Remedies available to the City to collect unpaid fines, fees, and costs include the following without limitation:

1. Referring the delinquent account to a collection agency;
2. Authorizing a lien to be recorded on the property; and/or
3. Authorizing a special assessment upon the property.

C. The City shall be entitled to recover all costs related to enforcing any violations of this chapter that are recoverable under Government Code Sections 54988 and 38771 et seq., or any other local, State or Federal law. Before invoking any of the procedures described in this section, the City shall provide notice to the property owner (if different from the responsible person) based on Napa County's last equalized property tax assessment roll, or the supplemental roll, whichever is more current.

D. Any person who fails to pay any fine and/or fee shall be liable in any proceeding brought by the City for the costs incurred in securing payment of the unpaid amount, including without limitation administrative costs and attorneys' fees. Such collection costs shall be in addition to any penalties, interest, and/or late charges imposed upon the unpaid fine. (Ord. 669 § 2, 2010).

9.16.130 Cumulative remedies.

The remedies provided under this chapter are cumulative, and shall not restrict the City's ability to pursue any other remedy to which it is entitled under law or equity. Nothing in this chapter shall be deemed to preclude the imposition of any criminal penalty, nor shall anything in this chapter be deemed to conflict with any penalty or provision under State law, or prohibit any conduct authorized by the State or Federal Constitutions. (Ord. 669 § 2, 2010).

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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. (Ord. 721 § 3, 2016).

17.48.020 Marijuana/cannabis cultivation prohibited.

The cultivation of marijuana/cannabis is prohibited in all zoning districts within the City of Calistoga. (Ord. 721 § 3, 2016).

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. (Ord. 721 § 3, 2016).

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