

CALISTOGA PLANNING COMMISSION
STAFF REPORT

TO: Calistoga Planning Commission
FROM: Samantha Thomas, Associate Planner
MEETING DATE: October 13, 2021
SUBJECT: **Zoning Ordinance Amendment ZOA 2021-1**
Prohibit New Gas Station Land Uses

ITEM

Consider a recommendation from the Calistoga Green Committee to the City Council of amendments to Calistoga Municipal Code Title 17, Zoning, to prohibit new gas station land uses in all zoning districts and to provide uniform and comprehensive regulations and development standards for modifications, maintenance, operation, and discontinuation of fueling station/gas station uses and facilities in the City.

KEY ISSUES

- Removes gasoline service station as an allowed use citywide.
- Allows for ongoing maintenance and operation of the three existing gas stations, which have been found sufficient to meet Calistoga’s current and projected demand for fossil fuel.
- Provides avenues for modification and modernization of the three existing gas stations to include charging stations for zero emission vehicles.
- Incentivizes transition to and development of charging stations for zero emissions vehicles.

BACKGROUND

On August 3, 2021, the Calistoga City Council adopted Resolution No. 2021-063 Declaring a Climate Emergency and committed the city to new zero emission by 2030 (**Attachment 1**). Pursuant to Resolution No. 2021-063 (Declaring a Climate Emergency) the City Council, committed to evaluate all planning and policy decisions to implement both immediate and sustainable actions in support of net zero climate pollution by or before 2030, measured in terms of net contribution to excess trapped heat.

Resolution No. 2021-063 furthers the goals of the Climate Action Plan (“CAP”) adopted by City Council in 2014, which sought to reduce the City’s emissions by 15 percent from its 2005 baseline. As noted in the CAP, the transportation sector was the largest source of emissions for Calistoga in 2005 and 2010, generating over half of the total emissions in 2010.

In furtherance of the City’s dedication to addressing the Climate Emergency, the City’s Green Committee recommended that the City amend its Zoning Code, found in Title 17 of the City’s Municipal Code, to prohibit development of new fossil fuel gas stations. These

31 proposed amendments are supported by broad scientific consensus, the CAP, and the
32 City's General Plan commitments

33 The latest report by the Intergovernmental Panel on Climate Change (IPCC), published
34 on August 9, 2021, states "*Climate change is widespread, rapid, and intensifying, and*
35 *some trends are now irreversible, at least during the present time frame*¹."

36 IPCC scientists warn that without rapid and deep reductions in greenhouse gas emissions
37 in the coming decades, the earth will warm by 2 degrees Celsius in the 21st century – 0.5
38 degrees warmer than the internationally accepted threshold of 1.5 degrees pre-industrial
39 levels. However, with strong and sustainable reductions in emissions of carbon dioxide
40 (CO₂) and greenhouse gases, air quality could be improved, and in 20 to 30 years, global
41 temperatures could stabilize.

42 The proposed amendments constitute a public necessity and promote the general welfare
43 by preventing the future expansion of a fuel type resulting in the primary form of
44 greenhouse emissions (i.e., transportation sector) and, in doing so, put in place
45 regulations that support the goal of carbon neutrality. Moreover, the prohibition serves to
46 prevent future sources of environmental pollution through, for example, the transmission
47 of fossil fuels into the air, soil, groundwater, and surface waters. The City's General Plan
48 Land Use Elements and Open Space and Conservation Elements also include goals,
49 objectives, and policies supporting these environmentally sound policies.

50 Staff worked with the City Attorney's Office in vetting and carefully reviewing the proposed
51 amendments. After thoroughly researching what other neighboring cities have enacted,
52 such as the City of Petaluma and the City of American Canyon, Staff prepared draft
53 amendments to the Calistoga Municipal Code Title 17, Zoning for consideration.

54 **DISCUSSION**

55 **PROPOSED CODE AMENDMENTS – OVERVIEW**

56 The basic purpose of the amendments is to eliminate the potential for new adverse
57 effects of greenhouse gas emissions by (1) prohibiting development of new gas
58 stations in all zoning districts and (2) incentivize the use of environmentally friendly,
59 zero emissions vehicles ("ZEV").

60 As described below, Staff's proposed amendments would eliminate the potential for
61 new adverse effects of greenhouse gas emissions through a prohibition on new gas
62 stations in all zoning districts. The proposed amendments would also enable and
63 incentivize existing gas stations to continue operations without future expansion(s) of
64 elements supportive of fossil fuels (e.g., pumps, tanks) by transitioning to serve ZEV.
65 The amendments also ensure that charging stations for ZEV are considered
66 accessory or primary uses in all zoning districts.

¹ <https://www.ipcc.ch/2021/08/09/ar6-wg1-20210809-pr/>

67 As a point of clarification, these amendments would change the way the City’s Zoning
68 Code treats car wash facilities. Currently car wash facilities are included in the
69 definition of “service station,” which means that car wash facilities are subject to the
70 same zoning regulations as gas stations. The amendments would “unlink” car wash
71 facilities from gas stations, such that zoning regulations related to car wash facilities
72 remain unchanged by the amendments, while gas station use, would be prohibited,
73 as described in detail below. Thus, car wash facilities shall continue to be allowed in
74 the Community Commercial (CC) district subject to a conditional use permit.

75 **STATUS OF EXISTING GAS STATIONS**

76 Staff’s inventory of gas stations/fueling stations within the City of Calistoga’s
77 incorporated limits shows three (3) existing stations (see **Attachment 2**). The existing
78 stations are located along Foothill Boulevard (State Highway 128/29), a major arterial
79 roadway in the County of Napa. All stations are presently operating with a valid
80 business license.

81 Based on this inventory, all stations are located within a 5-minute drive (2.1 miles at
82 25 miles per hour) of every existing residence as well as all areas planned for
83 residential development in the 2014 Housing Element but not yet constructed within
84 the City of Calistoga’s incorporated limits.

85 **ZERO EMISSION VEHICLES**

86 California established ambitious ZEV infrastructure and vehicle targets: 250,000
87 shared plug-in electric vehicle chargers, including 10,000 direct current fast chargers
88 (for battery powered ZEV) and 200 hydrogen stations (for hydrogen fuel cell powered
89 ZEV) by 2025.² These targets put California on the path to host 5 million ZEVs by
90 2030.³ While the General Plan is supportive of alternatives to fossil fuels, there are no
91 existing zoning regulations to provide standards for implementation of such
92 alternatives. Therefore, Staff studied and reviewed two types of ZEV – battery-
93 powered ZEV and hydrogen fuel cell-powered ZEV.

94 Battery Powered Zero Emission Vehicles

95 There are two types of battery-powered ZEV: (1) plug-in electric vehicles, which run
96 exclusively on batteries, and (2) plug-in hybrid electric vehicles, which also run-on
97 batteries, but have a back-up tank of gasoline. Battery-powered ZEV sales continue
98 to increase. Thus, a recent report from the California Energy Commission shows
99 California will need approximately 1.2 million public and shared chargers by 2030 to
100 meet the fueling demands of the 7.5 million passenger plug-in electric vehicles
101 anticipated to be on California roads.⁴

² <https://businessportal.ca.gov/wp-content/uploads/2019/07/GoBIZ-EVCharging-Guidebook.pdf>

³ *Id.*

⁴ <https://www.energy.ca.gov/news/2021-06/report-shows-california-needs-12-million-electric-vehicle-chargers-2030>

102 To help meet this need, the State sought to streamline creation of public charging
103 equipment with AB 1236. Codified in Government Code section 65850.7, California
104 law now limits the bases under which a local entity can deny a permit for a ZEV
105 charging station. Such permit applications must be approved through a building permit
106 or similar non-discretionary process focusing on public health and safety. These
107 provisions of state law facilitate streamlined and efficient development of ZEV
108 charging stations, with the expectation that an increased supply of charging stations
109 will translate to increased use of ZEVs and, thus, decreased use and dependence on
110 harmful fossil fuels.

111 Calistoga was the first city in Napa County to amend its Municipal Code to reflect the
112 requirements of AB 1236, with Ordinance 743, adopted on December 3, 2019.
113 Ordinance 743 established new Building Code provisions to bring the City into
114 compliance with the streamlined permitting scheme contemplated by AB 1236. Thus,
115 the City's Building Code currently treats charging equipment and related site
116 improvements as accessory uses, not requiring discretionary review (e.g., Site Plan
117 and Architectural Review). Further, the Building Code also includes a checklist for
118 electric vehicle charging station permitting, consistent with the provisions of AB 1236.

119 In the interest of clarity and consistency throughout the Municipal Code, the proposed
120 amendments make the Zoning Code clear that discretionary permits shall not be
121 required for electric vehicle charging stations.

122 Hydrogen Fuel Cell Powered – Zero Emission Vehicles

123 The other type of ZEV that Staff studied are vehicles powered by hydrogen fuel cells.
124 Hydrogen is a carbon-free, non-toxic fuel that is domestically produced from local
125 resources. Hydrogen is a recognized fuel for transportation and is classified as such
126 by the State of California. There are currently no retail hydrogen fuel stations in
127 Calistoga.

128 The application of appropriate codes and standards make hydrogen fuel as safe as
129 gasoline or other commonly used fuels, such as compressed natural gas. Retail and
130 fleet hydrogen stations are designed to be operated safely by new hydrogen users
131 with minimal training. Retail hydrogen stations look and function like retail gas stations
132 and, in fact, most existing retail hydrogen is integrated into existing gas stations,
133 although minor trenching is necessary to install pipes that convey hydrogen to each
134 pump. Lastly, hydrogen fuel is stored aboveground within a concrete masonry
135 enclosure, similar to those commonly used to enclose trash and recycling receptacles.
136 Once installed, the retail operation of hydrogen pumps provides drivers with a similar
137 experience to gasoline or diesel with respect to fueling, dispenser operation, fill time,
138 and payments.

139 California set hydrogen infrastructure targets with the goal of developing and growing
140 hydrogen fuel cell electric vehicle and hydrogen fueling market scale. Assembly Bill 8
141 (2013) requires the establishment of at least 100 hydrogen fueling stations to launch
142 the fuel cell electric vehicle market in the state. AB 8 also requires the California Air

143 Resources Board (CARB) and the California Energy Commission to assess industry
144 growth and provide a report.⁵

145 More recently, Executive Order B-48-18 tasked state agencies with working towards
146 a network of 200 stations by 2025.⁶ Recent estimates point to the AB 8 grant process
147 as enabling the establishment of as many as 122 stations in California’s hydrogen
148 fueling market. CARB estimates zero hydrogen fuel cell electric vehicles within Napa
149 County, with none projected through the year 2027 proposed.

150 After reviewing the State’s 2021 Hydrogen Station Permitting Guidebook,⁷ Staff
151 considers this a timely opportunity to use the proposed Zoning Code amendments as
152 an opportunity to implement General Plan Policy 7.1-1 through new zoning regulations
153 that enable fossil fuel gas stations to transition to retail hydrogen for fuel cell electric
154 vehicles.

155 **GENERAL PLAN CONSISTENCY**

156 Staff evaluated existing policy and regulations and the potential to advance
157 California’s aggressive ZEV targets to ensure consistency with the General Plan, the
158 City’s CAP, and Resolution No. 2021-063 Declaring a Climate Emergency (see
159 **Attachment 1**).

160 As the City’s constitution for development, the General Plan is the heart of the planning
161 process. Staff finds the following General Plan goals, objectives, and policies to be
162 consistent with the proposed prohibition of new gas station development:

- 163 • Land Use Element Goal LU 1. Protect the small-town qualities of Calistoga, which
164 include walkability, vineyards, orchards, natural habitats, and open space.
- 165 ○ Objective LU 1.3: Ensure that commercial and industrial development is
166 designed, located, and operated so as to not disturb Calistoga’s quality of
167 life, and approved at a rate and scale that retains Calistoga’s small-town
168 character.
- 169 ■ Policy P1.3-3: *“Commercial and industrial land shall be developed in
170 an environmentally-sensitive manner and shall be compatible with
171 any adjacent residential and commercial uses.”*

⁵ https://ww2.arb.ca.gov/sites/default/files/2021-09/2021_AB-8_FINAL.pdf

⁶ <https://www.ca.gov/archive/gov39/2018/01/26/governor-brown-takes-action-to-increase-zero-emission-vehicles-fund-new-climate-investments/index.html>

⁷ https://cdn.businessportal.ca.gov/wp-content/uploads/2020/09/GO-Biz_Hydrogen-Station-Permitting-Guidebook_Sept-2020.pdf

- 172 • Land Use Element Goal LU 3. Ensure that new development mitigates significant
173 environmental, design and infrastructure impacts.
- 174 ○ Objective LU 3.2: Ensure that new development complements Calistoga’s
175 small town rural character and minimizes impacts on the environment.
- 176 • Open Space and Conservation Element Goal OSC-6. Protect and improve
177 Calistoga’s existing high standard of air quality
- 178 ○ Objective OSC-6.1: Minimize air pollution emissions.
- 179 ▪ Policy P6.1-1: *“The City should support efforts to reduce vehicular
180 emissions in the Calistoga Planning area by reducing congestion and
181 dependence on automobile related forms of transportation.”*
- 182 ▪ Policy P6.1-2: *“Growth and development types that can inhibit air
183 quality goals should be monitored and controlled, and the
184 approval of development should be conditional on the mitigation
185 of significant adverse impacts to air quality.”*
- 186 • Open Space and Conservation Element Goal OSC-7. Work to preserve the global
187 environment
- 188 ○ Objective OSC-7.1: Minimize Calistoga’s contribution to impacts on the
189 global environment such as dependence on fossil fuels, consumption of
190 non-renewable resources and discharge of toxins and pollutants.
- 191 ▪ Policy P7.1-1: *“The City shall promote the conservation of non-
192 renewable energy resources and encourage the use of solar
193 energy.”*
- 194 ▪ Policy P7.1-3: *“The City shall promote decreased reliance on motor
195 vehicle travel through effective land use policies, improved public
196 transit and facilities to accommodate bicycle and pedestrian modes
197 of travel.”*
- 198 ▪ Policy P7.1-5: *“The City shall encourage new development to
199 minimize impacts on the local environment.”*

200 The City’s Zoning Code does not provide specific standards for the implementation of
201 these policies. Indeed, the Zoning Code is entirely silent on the issues of ZEV charging
202 stations. The City adopted the California Green Building Standards Code, which
203 includes regulatory guidance (e.g., design and safety standards, number of charging
204 spaces required, accessibility requirements) for battery powered ZEV charging
205 stations. However, the Zoning Code does not indicate where these charging stations
206 are permissible and/or prohibited, thus development of such stations is currently

207 complicated and unclear. The proposed amendments work to clarify the City's
208 regulatory scheme for ZEV charging stations.

209 **IMPLEMENTING THE PROPOSED ZONING CODE AMENDMENTS**

210 Currently, gas stations are a conditionally permitted land use in the Downtown
211 Commercial (DC) and Community Commercial (CC) zoning districts. The proposed
212 amendments would alter the City's Zoning Code to instead, prohibit new gas stations in
213 all zones. Existing gas station uses may continue as non-conforming uses.

214 In addition to the overall prohibition on new gas station development, the proposed
215 amendments can be grouped into two categories:

216 (1) regulations to provide for and manage non-conforming gas stations; and

217 (2) new regulations to promote ZEVs.

218 *Regulations for Non-Conforming Fossil Fuel Gas Stations*

219 After review of the citywide non-conformity regulations, Staff determined that more
220 specific standards are necessary to provide clear standards for the manner which existing
221 gas stations may be modified in the future. Therefore, Staff proposes new provisions be
222 added to Chapter 17.44 of the City's Zoning Code, which governs regulation of
223 nonconforming uses and structures. (see **Attachment 3, Exhibit 8.**)

224 If these amendments are adopted by the City Council, an existing gas station may
225 only modify its existing site under certain circumstances by applying to the Planning
226 Commission for a use permit and design review approval. A use permit and design
227 review application to modify an existing gas station will only be considered if the
228 proposed modifications:

- 229 • accommodate battery charging stations or hydrogen fuel cell stations to serve
230 ZEV⁸;
- 231 • improve soil, groundwater, and stormwater quality;
- 232 • improve traffic safety; or
- 233 • further compliance with other General Plan requirements, such as overlay
234 designations.

235

236 *Regulations for Zero Emission Vehicles*

237 The proposed amendments seek to facilitate the transition of gas stations to serve ZEV
238 battery and hydrogen fuel cell vehicles by amending the Zoning Code to reflect both
239 California's and Calistoga's commitment to ZEVs. As detailed in **Attachment 3, Exhibit**

⁸ Use permit and design review approval would only be required in this case if substantial modifications were being proposed to the overall site rather than just the mere addition of battery charging stations.

240 **7,** Staff’s proposed amendments would make ZEV charging stations an allowed
241 accessory use in all zones. Hydrogen fuel cell stations would be considered either an
242 accessory or primary use, to enable incremental change to gas stations or a full transition
243 to hydrogen fuel cell service.

244 **FINDINGS**

245 To reduce repetition, all the necessary findings are contained in the draft resolution.

246 **ENVIRONMENTAL REVIEW**

247 No California Environmental Quality Act (CEQA) analysis is required for this action. The
248 proposed ordinance are not a project subject to CEQA review in accordance with Section
249 15378. Further, section 15601(b)(3) of the CEQA guidelines exempts these amendments
250 from CEQA analysis because the City’s action in adopting the amendments provides no
251 potential for resulting in physical change in the environment, directly or ultimately, and it
252 can be seen with certainty that there is no possibility that the activity in question may have
253 a significant effect on the environment, in part because the proposed amendments
254 prevent the negative environmental impacts arising from new gas station uses. Section
255 15308 also exempts these proposed amendments from CEQA analysis as the
256 amendments seek to protect the environment.

257 The new non-conformity regulations in this proposed ordinance for gas station uses that
258 generally prohibit the enlargement, extension, reconstruction, or relocation of gas station
259 uses are categorically exempt from CEQA under CEQA Guidelines Section 15301
260 (Existing Facilities).

261 The new non-conformity regulations in this proposed ordinance for gas stations uses that
262 allow modifications to improve soil, groundwater and stormwater quality and traffic safety,
263 are categorically exempt from CEQA in accordance CEQA Guidelines Section 15301
264 (Existing Facilities), Section 15303 (New Construction or Conversion of Small Structures),
265 Section 15304 (Minor Alterations to Land), and Section 15308 (Actions by Regulatory
266 Agencies for Protection of the Environment).

267 The provisions of this proposed ordinance pertaining to battery charging standards for
268 ZEV are not a project within the meaning of CEQA Guidelines Section 15378, because,
269 pursuant to Government Code Section 65850.7, all permit requests for such charging
270 stations shall be administratively reviewed through a building permit or similar
271 nondiscretionary permit.

272 The provisions of this proposed ordinance pertaining to hydrogen fuel cell station
273 standards for ZEV are categorically exempt from CEQA under CEQA Guidelines Section
274 15301 (Existing Facilities), 15303 (New Construction or Conversion of Small Structures),
275 Section 15304 (Minor Alterations to Land), and Section 15308 (Actions to Protect the
276 Environment).

277 **PUBLIC COMMENT**

278 As of October 8, 2021, no comments had been received by Staff.

279 **RECOMMENDATION**

280 Based on the information and analysis contained in this report, Staff recommends that
281 the Planning Commission, after conducting a public hearing on the matter, adopt the
282 resolution recommending to the City Council the approval of Zoning Code amendments
283 to prohibit new gas station land uses in all zoning districts and to provide uniform and
284 comprehensive regulations and development standards for modifications, maintenance,
285 operation, and discontinuation of gas station uses and facilities in the City.

ATTACHMENTS

1. Resolution No. 2021-063 Declaring a Climate Emergency
2. Gas Station Location Map
3. Draft Resolution with Exhibits 1 through 8