

CITY OF CALISTOGA

STAFF REPORT

TO: COMMUNITY RESOURCES COMMISSION

FROM: CHARLENE GALLINA, PLANNING & BUILDING DIRECTOR

DATE: APRIL 16, 2008

SUBJECT: ZONING ORDINANCE (ZO 2007-03) AMENDMENT – DESIGN REVIEW

1 **ISSUE:**

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3 Consideration of an amendment to the Calistoga Municipal Code and Zoning Ordinance
4 establishing provisions to authorize sidewalk dining establishments in the Commercial
5 Land Use Districts in the City of Calistoga.

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7 **RECOMMENDATION:**

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9 Staff recommends that the Community Resources Commission discuss this proposed
10 ordinance, take public comments, and provide recommendations to the Planning
11 Commission. Upon recommended action, staff proposes to address Commission
12 comments and formally present this item to the Planning Commission for
13 recommendation to the City Council.

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15 **BACKGROUND/DISCUSSION:**

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17 In response to City Council adoption of Resolution No. 2007-86 which approved the
18 Community Resources Commission Work Plan for Fiscal Year 2007/2008, the Planning
19 & Building Department was requested to assist the Community Resources Commission
20 in bringing forward an updated Sidewalk Dining Ordinance that was placed on hold by
21 the City Council on June 15, 2004.

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23 The proposed amendment to establish a Sidewalk Dining Ordinance per City Council
24 direction has been provided in Attachment 1. As presented, staff is recommending the
25 following components be included in the establishment of this Ordinance:

- 26
27 • Applicable to restaurant and retail food establishments in the Commercial Land
28 Use Zoning Districts – Downtown Commercial and Community Commercial. It
29 should be noted that at this time, the City will be unable to process and authorize
30 any sidewalk dining requests along Lincoln Avenue and Foothill Boulevard, since
31 these streets remain under the jurisdiction of Caltrans.
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33 • Requires the processing of a Conditional Use Permit by the Planning
34 Commission.

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- Requires an applicant to submit application materials including a proposed sidewalk dining plan and a description of any potential obstacles such as trees traffic signs, benches, etc. within a minimum 20' radius. Such materials to also include a description of proposed dining furniture and the type of eating and drinking utensils to be used.
- Processing of sidewalk dining requests to be subject to a public notice mailed to properties within a 300' radius of the subject property in order to solicit public comment on a proposal.
- Provides minimum standards and findings for approval.
- If approved, applicants will be subject to annual review by the Planning & Building Department to ensure compliance with conditions. Such review will be subject to the mailing of a notice to all property owners within 300' of the sidewalk dining establishment. This provision is similar to that required of Bed and Breakfast Facilities by the Planning and Fire Departments, as well as required inspections of visitor accommodations/restaurants by the Fire Department.

It should be noted at this time that the Planning & Building Department is still soliciting comments from the Public Works Department with respect to any amendments to the Municipal Code that may be necessary with respect to processing encroachments on public right-of-ways. Under current Calistoga Municipal Code provisions, such requests would require action by the City Council. Given this requirement, each applicant would be required to make such requests to the City Council prior to processing a conditional use permit before the Planning Commission. Staff needs additional time to work with the Public Works Director to recommend an alternative approach to the processing of such requests in order to streamline the process for applicants. It is staff's intent to resolve this issue prior to presenting the proposed sidewalk ordinance to the Planning Commission.

ATTACHMENT:

1. Proposed Sidewalk Ordinance

1 **Chapter 17.04**
2 **Definitions**
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4 Amend Chapter 17.04 Definitions of Title 17 (Zoning Ordinance) to incorporate the
5 following definitions related to sidewalk dining.
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7 **17.04.630b Sidewalk Dining**
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9 "Sidewalk Dining" shall mean the use of public sidewalks for the consumption of
10 food or beverages in conjunction with the operation of a food service establishment
11 property license for such service under state and county health regulations which
12 provides on-premises customer seating.
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14 **17.04.630c Sidewalk Dining Area**
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16 "Sidewalk Dining Area" shall mean an area generally defined by the building's
17 frontage on a public street.
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21 Add Chapter 17.33 to incorporate regulations for permitting sidewalk dining in the
22 Commercial Land Use Districts
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24 **Chapter 17.33**
25 **Sidewalk Dining**
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27 **Sections:**

- 28 17.33.010 Purpose
- 29 17.33.020 Applicability
- 30 17.33.030 Permit Required
- 31 17.33.040 Procedures
- 32 17.33.050 General Provisions
- 33 17.33.060 Design Standards
- 34 17.33.070 Findings for Planning Commission Approval of Sidewalk Dining Permits
- 35 17.33.080 Conditions for Planning Commission Approval of Sidewalk Dining Permits
- 36 17.33.090 Revocation of a Sidewalk Dining Permit
- 37 17.33.100 Annual Renewal of a Sidewalk Dining Permit

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39 **17.33.010 Purpose**
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41 The intent of this Chapter is to provide for incidental sidewalk dining areas
42 connected to, and operated in conjunction with permanent commercial uses located
43 inside an adjacent building, provided that such uses complement existing storefronts
44 and do not block access to doorways or the public right-of-way. To ensure the public
45 health, safety and welfare of the community, this Chapter provides a mechanism for the
46 City to permit sidewalk dining areas and to establish criteria to ensure that sidewalk

47 dining areas conform to certain dimensional standards. This Chapter also provides a
48 mechanism to ensure that sidewalk dining areas are compatible with, and have no
49 adverse effect on, surrounding development. Creativity in the design of sidewalk dining
50 areas is encouraged and the quality, character and design of all items placed outside
51 shall contribute in a positive way to a high quality visual appearance of the community.
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53 **17.33.020 Applicability**

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55 This Chapter is applicable to restaurant and retail food establishments in the
56 Commercial Land Use Districts. This Chapter is not applicable to permanent benches
57 which are not considered a component of sidewalk dining.
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59 **17.33.030 Permit Required**

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61 No sidewalk dining shall be established unless a Conditional Use Permit is
62 approved by the Planning Commission in accordance with the provisions of this Title
63 and Chapter. It shall be unlawful for any person who owns, manages, operates or
64 otherwise controls the use of any premises subject to the regulations under this chapter
65 to fail to comply with its provisions.
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67 **17.33.040 Procedures**

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69 A. The Planning Commission shall review each application for a sidewalk
70 dining under the Conditional Use Permit provisions contained in Municipal Code
71 Chapter 17.40 to determine whether the requirements of this Chapter have been met.
72 The maximum term of an initial approval is one year. Thereafter, the Planning and
73 Building Director may extend the period for additional periods, following review and
74 approval of the operation.
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76 B. The Planning Commission shall review an application and issue a
77 Conditional Use Permit if all of the following requirements have been satisfied:
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79 1. Written notice of the application for a Conditional Use Permit shall
80 be mailed to all property owners within three hundred feet of the proposed sidewalk
81 dining area.
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83 2. If the Planning Commission denies an application for a Conditional
84 Use Permit, that determination may be appealed to the City Council in accordance with
85 Section 1.20.030.
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87 C. The Planning and Building Director shall review, on an annual basis,
88 Conditional Use Permit renewal requests to evaluate if all of the requirements of
89 Sections 17.33.050 and all of the Conditions of Approval and the following requirements
90 have been satisfied:
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92 1. Written notice of the annual renewal for a Conditional Use Permit
93 shall be mailed 10 days prior to the decision by the Planning and Building Director to all
94 property owners within three hundred feet of the sidewalk dining establishment.
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96 2. If the Planning and Building Director denies an annual renewal
97 application for a Conditional Use Permit, that determination may be appealed to the
98 Planning Commission in accordance with Section 1.20.020.
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100 **17.33.050 General Provisions**

101
102 A. Sidewalk dining establishments shall be permitted in the public right-of-
103 way within any commercial zoning district when ancillary to restaurant and/or retail food
104 establishments which provide food or beverages for individual consumption, provided
105 the following standards are met:
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107 1. A minimum distance of not less than 4 feet wide pedestrian travel
108 aisle shall be maintained in the public right-of-way at all times. Additionally, all sidewalk
109 dining areas shall be set back a minimum of 4 feet from the edge of the curb, where
110 parking is available adjacent to said curb, and any fixed sidewalk obstruction including,
111 without limitation, curb lines, tree wells, street trees, fire hydrants, light poles, utility
112 equipment boxes, newspaper racks and benches;
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114 Sidewalk dining areas shall not intrude on pedestrian "clear zones" at corners, and thus
115 shall be set back a minimum of 10 feet from any crosswalk, driveway or alley. Sidewalk
116 dining areas shall not interfere with curbs, ramps or driveways, as determined by the
117 City Engineer;
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119 2. All sidewalk dining areas shall be adjacent to, and incidental to, the
120 operation of an indoor restaurant. Use of the sidewalk shall be confined to the actual
121 sidewalk and public right-of-way frontage of the indoor restaurant building;
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123 3. Umbrellas located in the sidewalk dining area shall have a
124 minimum seven-foot clearance from the ground to the lowest element of the umbrella
125 and shall be located completely within the approved boundaries of the permitted
126 sidewalk dining area;
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128 4. Portable heaters shall not be allowed;

129 5. Umbrellas with logos shall not be allowed;

130 6. Outdoor speakers shall not be allowed;
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132 7. Unless a permanent structure is approved pursuant to the Use
133 Permit, all fixtures and furniture used in an sidewalk dining area shall be removed from
134 the public right-of-way and stored out of public view during non-business hours;
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138 8. The materials and design of the furniture including the type of
139 eating and drinking utensils shall be reviewed and approved by the Planning
140 Commission as part of the Conditional Use Permit;

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142 9. The sidewalk dining area shall comply with all applicable provisions
143 of Title 15 of this Code, including, but not limited to, maintaining proper building egress
144 and ingress at all times, observing maximum seating capacities, providing proper
145 circulation and providing appropriate handicapped access;

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147 10. No additional parking shall be required;

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149 11. The sidewalk dining area shall only operate between 7 a.m. and 11
150 p.m.;

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152 12. The sidewalk dining area shall be cleared of non-permanent
153 sidewalk dining furniture within 30 minutes of the closing of the sidewalk dining
154 operation;

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156 13. The service of alcoholic beverages shall be restricted solely to on-
157 premise consumption by customers within the sidewalk dining area. Each of the
158 following standards apply to alcoholic service:

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160 a. The sidewalk dining area must be immediately adjacent to,
161 and abutting the indoor restaurant that provides it with food and beverage service;

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163 b. The sidewalk dining area must be clearly separated from
164 pedestrian traffic;

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166 c. The operator shall post a written notice to customers that the
167 drinking or carrying of an open container of beer or wine is prohibited and unlawful
168 outside the sidewalk dining area;

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170 d. The sidewalk dining operation must be duly licensed by the
171 State Department of Alcoholic Beverage Control (ABC) and shall demonstrate
172 conformance to any and all requirement of the ABC in the application for a Sidewalk
173 Dining Permit.

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175 14. Sidewalk dining is an interruptible or terminable privilege. The City
176 shall have the right and power, acting through the City Manager and his/her designee,
177 to prohibit the operation of a sidewalk dining area at any time because of anticipated or
178 actual problems or conflicts in the use of the sidewalk area. Such problems and
179 conflicts may arise from, but are not limited to, scheduled festivals and similar event, or
180 parades or marches, or repairs to the street or sidewalk, of from demonstrations of
181 emergencies occurring in the area. To the extent possible, the permittee shall be given
182 prior written notice of any time period during which the operation of the sidewalk dining
183 area will be prohibited by the City;

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17.33.060 Application Submittal Requirements

Prior to establishment of a sidewalk dining establishment, an application must be submitted to and approved by the Planning Commission. Each application shall state the name of the applicant, the name and address of the establishment, the proposed area to be occupied by the tables and chairs, and the hours and days that the area is to be so occupied. The application shall be accompanied by a professionally prepared space use plan indicating the location, number and arrangement of the tables and chairs to be used, the location of the entrance to the establishment, and the location of any existing sidewalk obstructions in the proposed area to be occupied by the tables and chairs within 20' from the proposed site. Trees, traffic signs, benches and all similar obstacles shall constitute obstructions.

17.33.070 Findings for Planning Commission Approval of Conditional Use Permits for Sidewalk Dining Uses

The Planning Commission shall approve an application and issue a Sidewalk Dining Permit provided the following findings can be made:

1. The proposed sidewalk dining use is consistent with the General Plan;
2. The proposed sidewalk dining use will not adversely affect existing and anticipated development in the vicinity and will promote the harmonious development of the area;
3. The nature, configuration, location, density and manner of operation of any sidewalk dining use proposed will not significantly and adversely interfere with the use and enjoyment of residential properties in the vicinity of the subject property;
4. The proposed sidewalk dining use will not create any significant traffic impacts, traffic safety hazards, pedestrian-vehicle conflicts, or pedestrian safety hazards and will not impede the safe and orderly flow of pedestrians along the public right-of-way;
5. The proposed sidewalk dining use will not create any significantly adverse parking impacts as a result of employee or patron parking demands;
6. The proposed sidewalk dining use will not create any significantly adverse impacts on neighboring properties as a result of:
 - a. The accumulation of garbage, trash or other waste;

229 b. Noise created by operation of the restaurant or by
230 employees or visitors entering or existing the restaurant;

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232 c. Light and glare; or

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234 d. Odors and noxious fumes;

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236 7. The proposed sidewalk dining use will not be detrimental to the
237 public health, safety or general welfare;

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239 8. The proposed sidewalk dining use is compatible with the use and
240 enjoyment of surrounding uses;

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242 9. The proposed sidewalk dining use does not unlawfully alter the
243 associated use of the abutting property;

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245 The business proposing sidewalk dining has previously received all necessary zoning
246 related approvals; and

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248 10. If the Planning Commission approves the service of alcohol in a
249 sidewalk dining area, the approval shall be based upon a finding that serving of alcohol
250 would not create a nuisance to passers-by or to adjoining businesses, or otherwise to
251 create a danger to public health, safety or welfare.

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253 **17.33.080 Conditions for Planning Commission Approval of Conditional Use**
254 **Permits for Sidewalk Dining Uses**

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256 A. In approving Conditional Use Permit for sidewalk dining, the Planning
257 Commission may impose such conditions as may be reasonably necessary to protect
258 the public health, safety and general welfare and to ensure that the proposed dining use
259 is established and conducted in a manner which is consistent with this Chapter and the
260 development standards in the underlying commercial district. The conditions imposed
261 by the Planning Commission may address and require, but shall not be limited to, the
262 following:

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264 1. The appropriate setback for the proposed dining use;

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266 2. Pedestrian access and safety;

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268 3. Barrier requirements;

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270 4. Time restrictions;

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272 5. An Encroachment Permit for sidewalk dining;

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321 **17.33.100 Annual Renewal of a Sidewalk Dining Permit**
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323 A. Thirty (30) days prior to expiration of a Sidewalk Dining Permit, an application for
324 renewal shall be submitted to and approved by the Planning Director in accordance with
325 Section 17.33.040 C. Procedures of this Chapter. Each application shall state the name
326 of the applicant, the name and address of the establishment, the proposed area to be
327 occupied by the tables and chairs, and the hours and days that the area is to be so
328 occupied.
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330 B. An annual rental fee shall be imposed on the use of sidewalk dining areas
331 located in the public right-of-way. The rental fee schedule shall be set by resolution of
332 the City Council and may change from time to time by adoption of a City Council
333 amending resolution. In the event that a permit is suspended, rental fees shall be
334 required to be paid during the period of suspension.
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