

## ORDINANCE NO. 730

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CALISTOGA AMENDING THE CALISTOGA MUNICIPAL CODE TO AMEND CHAPTER 8.30 TO ALIGN IT WITH DEFINITIONS CONTAINED WITHIN THE CONTROL, REGULATE, AND TAX ADULT USE OF MARIJUANA ACT OF 2016; AMEND CHAPTER 9.16 TO PROHIBIT THE PROVISION OF ALL INTOXICATING SUBSTANCES TO MINORS; AND AMEND CHAPTER 17.48 TO REGULATE THE CULTIVATION OF MARIJUANA FOR PERSONAL USE ON RESIDENTIAL PROPERTIES (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 contains definitions of marijuana/cannabis and related activities that are not reflected in CMC Chapter 8.30; and

**WHEREAS**, the Social Host Ordinance set forth in CMC Chapter 9.16 focuses on the provision of alcohol and needs to address all intoxicating substances, including marijuana/cannabis; and

**WHEREAS**, the AUMA allows the City to enact and enforce reasonable regulations on cultivation within dwelling unit and enclosed structures for personal use, and to ban or limit any type of outdoor cultivation; and

**WHEREAS**, the cultivation of marijuana has the potential to generate significant 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 is 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 after considering the public record, including the staff report and findings, adopted PC Resolution 2016-20 forwarding a recommendation that the City Council approve amendments that are substantially in conformance with those contained herein; and

**WHEREAS**, three community forums were held to gather community input and opinions on the cultivation of marijuana for personal use on residential properties; and

**WHEREAS**, the City Council of the City of Calistoga reviewed and considered this ordinance at a public hearing on April 18, 2017, noticed in accordance with state and local law, and which included the written and oral staff reports, the Planning Commission's recommendation and comments received from the general public and interested parties.

**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**

CMC Chapter 8.30 amendments. CMC Chapter 8.30 Marijuana Activities Regulations is hereby amended as follows:

1. The following subsections of CMC Section 8.30.010 Definitions are amended to read as follows:
  - A. "Commercial cannabis activity" includes the cultivation, possession, manufacture, storing, laboratory testing, labeling, transporting, distribution, or sale of cannabis or a cannabis product for which a state license is required under Business and Professions Code sections 19300 et seq. and 26000 et seq.
  - 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 (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.
2. CMC Section 8.30.030 Marijuana/Cannabis Cultivation Prohibited is amended to add the following language designated with underlining:

The cultivation of marijuana/cannabis is prohibited in all zoning districts within the City of Calistoga, except as provided in CMC Section 17.48.040.
3. The following subsection of CMC Section 8.30.050 Violation – Penalty is amended to add the following language designated with underlining:
  - A. It shall be a violation to establish and/or operate a medical marijuana dispensary, conduct commercial cannabis activities, or cultivate marijuana/cannabis in any zoning district within the City of Calistoga, except as provided in CMC Section 17.48.040.

## **SECTION THREE**

CMC Chapter 9.16 amendments. CMC Chapter 9.16 Social Host Accountability is hereby amended as follows.

1. The following subsections of CMC Section 9.16.020 Legislative Purpose are amended to add the following language designated with underlining and delete the word designated with strikeout:
  - B. Promote the reduction of underage drinking and use of intoxicating substances by imposing a civil fine on persons responsible for loud or unruly gatherings at which alcohol or other intoxicating substances are ~~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 or other intoxicating substances by minors
2. CMC Section 9.16.030 Definitions is amended to add the following definition:

“Intoxicating substance” means a controlled substance listed in the schedules of the Controlled Substances Act of 1970 that can cause stimulation or excitement, or inhibit a person’s normal capacity to act or reason.
3. The third sentence of CMC Section 9.16.040 Loud or Unruly Gathering – Public Nuisance – Penalty is amended to add the following language designated with underlining and delete the word designated with strikeout:

Any person violating any provision of this chapter shall also be subject to a civil fine if alcohol or other intoxicating substances are ~~is~~ served to, consumed by, or in the possession of a minor at the loud or unruly gathering.
4. CMC Section 9.16.070 Public Safety Services Fee is amended to add the following language designated with underlining and delete the word designated with strikeout:
  - A. Regardless of whether alcohol or other intoxicating substances are ~~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.

#### **SECTION FOUR**

CMC Chapter 17.48 amendments. CMC Chapter 17.48 Marijuana Activities Regulations is hereby amended as follows:

1. CMC Section 17.48.010 is added as follows:

17.48.010 Definitions.

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

2. Existing CMC Section 17.48.010 is renumbered to 17.48.020.
3. Existing CMC Section 17.48.020 is renumbered to 17.48.030 and is amended to add the following language designated with underlining.

The cultivation of marijuana/cannabis is prohibited in all zoning districts within the City of Calistoga, except as provided in CMC Section 17.48.040.

4. CMC Section 17.48.040 is added as follows:

**17.48.040 Marijuana cultivation and processing for personal use.**

The cultivation of marijuana and the manufacture of marijuana products/by-products for personal use is allowed, subject to the following regulations.

- A. Maximum number of plants No more than six marijuana plants per dwelling unit may be planted, cultivated, harvested, dried and processed. This limit shall apply regardless of how many individuals reside at the dwelling unit.
- B. Indoor cultivation
  1. Plants may be cultivated within:
    - a. A dwelling unit, or
    - b. A structure that is accessory to a dwelling unit located upon the same parcel, and that is located at least 10 feet from any property line.
  2. Marijuana cultivation in a garage associated with a residence shall not prevent compliance with the minimum parking standards required by this Title.
- C. Outdoor cultivation Marijuana may be cultivated outdoors in compliance with all of the following regulations.
  1. Outdoor cultivation may occur only within the following zoning districts:
    - Rural Residential (RR)
    - Rural Residential-Hillside (RR-H)
    - One-Family Residential (R-1 and R-1-10)
    - Planned Development District (PD)
  2. Outdoor cultivation is allowed only on a parcel that is occupied by one or more dwelling units.
  3. Outdoor cultivation of up to two plants is allowed per qualified parcel.
  4. Outdoor cultivation is prohibited on a parcel that is within 300 feet of a school, religious facility, park, child care facility, recreation center or youth-oriented facility. The distance shall be measured in a straight line, without regard to intervening structures, from the closest property line of the parcel on which the outdoor cultivation is occurring.

5. Outdoor cultivation must be enclosed by a solid fence at least six feet in height.
6. Marijuana plants may not be visible from a public right-of-way or neighboring property at ground level.

D. Off-site impacts

Odor, vibration and/or light associated with cultivation that causes discomfort or annoyance to any reasonable person of normal sensitivities residing in the area are prohibited.

Any structure used for marijuana cultivation must have a ventilation and filtration system that prevents odors from exiting the interior of the structure and that complies with the California Building Standards Code as adopted and amended by CMC Title 15.

E. Hazardous materials and processes

1. The use of ozone generators and supplemental carbon dioxide to cultivate marijuana is prohibited.
2. The use of compressed, flammable gas as a solvent in the extraction of tetrahydrocannabinol (THC) or other cannabinoids to cultivate marijuana is prohibited.

5. CMC Section 17.48.050 is added as follows:

**17.48.050 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 CMC Chapter 1.12.

## **SECTION FIVE**

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 therefore exempt from CEQA under the general rule.

## **SECTION SIX**

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 SEVEN**

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 Council meeting of the **18th day of April, 2017**, and was passed and adopted at a regular meeting of the Calistoga City Council on **May 16, 2017**, by the following vote:

**AYES: Councilmember Barnes, Vice Mayor Dunsford, Councilmember Lopez-Ortega and Mayor Canning**  
**NOES: None**  
**ABSENT: None**  
**ABSTAIN: Councilmember Kraus**

  
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**Chris Canning, Mayor**

**ATTEST:**

  
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**Kathy Flamson, City Clerk**