



## CITY OF SHASTA LAKE

Planning Commission Staff Report  
Meeting: March 7, 2016

**Staff Assigned:** Carla L. Thompson, AICP, Development Services Director

**Project:** Text Amendment to Zoning Code Chapter 17.82 (Medical Marijuana Collectives), Section 17.82.040 (Allowable Zoning/Locations)

**File:** Zoning Code Amendment Z 16-01

**Location:** The text amendment would apply to all locations in the City in which medical marijuana collectives/cooperatives are allowed (see discussion below).

The amendment is requested in order to allow a Collective to be located at 5310 Shasta Dam Boulevard (Assessor's Parcel Number 007-120-034) next to Rite Aid at the southwest intersection of Shasta Dam Boulevard and Cascade Boulevard. The subject building is on a separate legal lot from Rite Aid and is under different ownership.

Staff proposes limiting the area in which Collectives are allowed to the allowable zones between Cascade Boulevard and Ashby Road rather than to the UPRR trestle.

**Property Owner:** BCP Shasta LLC

**Applicant:** Stacy Lidie

**Significant / Applicable Legal Authority** State Planning and Zoning Act (Government Code)  
California Environmental Quality Act (Public Resources Code)  
Title 17 (Zoning) of the Shasta Lake Municipal Code

**Environmental Determination:** Proposed Negative Declaration pursuant to Section 15070 of the California Environmental Quality Act Guidelines (Title 14, Chapter 3, Article 3 of the California Code of Regulations)

### **PROJECT DESCRIPTION / SETTING:**

The applicant requests a reduction in the separation distance requirement between medical marijuana collectives/cooperatives (Collectives) from 1,000 feet to 900 feet, which would allow a Collective to operate at 5310 Shasta Dam Boulevard (next to Rite Aid). The property on which the building is located is approximately 920 feet from an existing Collective as shown on Exhibit A.

Because the City does not require a use permit or other discretionary permit for Collectives, the Planning Commission is not reviewing or approving this specific Collective. The only permits the City would issue to the Collective are for signage and building permits for tenant improvements, which are ministerial permits. Collectives are subject to the provisions of Zoning Code Chapter 17.82, which establishes regulations for Medical Marijuana Collectives/Cooperatives (see Exhibit A).

Staff proposes an additional amendment to state that Collectives would be allowed in the designated Zone Districts between Cascade Boulevard and Ashby Road (rather than to the UPRR trestle) to prevent a fourth Collective from establishing within the City.

## **BACKGROUND INFORMATION**

In 2009, the Planning Commission conducted several public hearings regarding establishing regulations for Collectives. At that time, staff proposed limiting the number of Collectives in the City to no more than two. Other methods considered by the Commission were to base the number of allowable Collectives on the City's population or limit the number of members per Collective.

The Commission discussed how to craft appropriate findings that would support limiting the number of Collectives, basing it on population, or limiting the number of members a Collective could have. This proved to be a challenge due to lack of historical information on the potential negative impacts of Collectives and having no method to determine the number of citizens requiring medical marijuana.

Other areas within the City considered by the Commission included both sides of Cascade Boulevard south of Rite Aid and Burger King to Bonneville Street; commercial areas on Cascade Boulevard between Pine Grove Avenue and Autumn Harvest Drive; and commercial areas along Twin View Boulevard.

The Commission recommended limiting Collectives as identified in Zoning Code Section 17.82.040 (Allowable Zoning/Locations), which states:

- A. **Allowable Zoning for Collectives/Cooperatives.** A collective or cooperative may be located within the Community Commercial **(C-2) zone district on State Route 151 (SR 151) between the Union Pacific Railroad trestle and Cascade Boulevard.**

A collective or cooperative may be located within the **Village Commercial (VC) zone district on properties abutting SR 151.**

- B. **Storefront Locations.** A collective or cooperative shall be located **only in a visible store-front type location** which provides good public views of the collective/cooperative entrance, its windows, and the entrance to the collective/cooperative premises from a public street.

- C. **Areas Where Collectives/Cooperatives are not Allowed.** Notwithstanding subparagraph (A) above, a collective or cooperative shall not be allowed in the following locations or zones:

1. On a parcel located **within one thousand (1,000) feet of a school when on the same side of the street of SR 151 and at least six hundred (600) feet when on the opposite side of SR 151;** or
2. On a parcel located **within one thousand (1,000) feet of a day care center, day care home, recreation center, youth center, library or a public park when on the same side of the street of SR 151 and at least five hundred (500) feet when on the opposite side of SR 151;** or
3. On a parcel located **within one thousand (1,000) feet of another collective or cooperative.**

When establishing the areas along SR 151 in which Collectives would be allowed, the Commission recognized that with minimum separation distances between Collectives and other public places, the number of Collectives that could be established within the City would be self-limiting.

In deciding to limit Collectives to certain areas along SR 151, the Commission also discussed potential safety issues and potential demands on law enforcement for calls for service to the Collectives. The Commission determined high public visibility of the Collectives in areas that are frequently patrolled by the Sheriff's Department was essential.

## **ANALYSIS**

According to Captain Forrest Bartell with the Shasta Lake Sheriff's Department, there have been only five calls for service to law enforcement for the existing Collectives. There have been no complaints filed with the City related to the daily operation of either of the Collectives related to noise, odors, traffic impacts, parking, etc.

**Queen of Dragons:** Two calls for excessive noise during a single special fundraising event and one call related to vandalism since they opened in February 2011.

**530 Collectives:** Two calls for vandalism since they opened in September 2009.

The majority of developed parcels along the section of SR 151 in which Collectives are allowed are developed with commercial retail, office and service uses. Parcels adjacent to these areas are developed with commercial retail, office and service uses and also include single-family residences.

The building in which the applicant plans to open a Collective is in a highly visible area frequently patrolled by law enforcement, much more so than the area near the UPRR trestle. The property is approximately 900 feet from the Grand Oaks School property. The building itself is approximately 1,000 feet from the school property. The building is not visible from outdoor areas on the School property where children congregate as shown on the attached photograph (Exhibit C).

Even without the reduction in separation distances, a third Collective could currently be located in the VC Zone District adjacent to the UPRR trestle on the south side of SR 151 as shown on Exhibit B. This is due to the relocation of the library from its previous location on Ashby Court and also relocation of a day care home from Flower Street.

The text amendment as proposed would allow a third Collective to open at 5310 Shasta Dam Boulevard and prevent another Collective west of Ashby Road. There are no other areas along SR 151 that could accommodate another Collective at this time.

The operational requirements for a Collective included in SLMC Section 17.82.050 (see Exhibit A) include provisions to reduce the potential for impacts to surrounding properties and the community as a whole. Among other things, Collectives are required to provide adequate on-site security, install an alarm system, and install an air treatment system that prevents off-site odors. This is verified by the Building Official and Shasta Lake Fire Protection District prior to commencement of operations. Any issues with Collectives could be addressed as a public nuisance.

## **LEGAL OPINION**

Attached is a memo from Rob Taylor, Assistant City Attorney in response to staff's request to address issues related to the Controlled Substances Act (CSA). Staff's specific question was would approval of the proposed Zoning Code text amendment, which would allow an additional Collective to establish and operate in the City, be considered facilitating the distribution and use of marijuana, and could this lead to federal criminal ramifications and preemption issues.

The CSA lists marijuana as a Schedule I drug, and the manufacture, importation, possession, use and distribution of marijuana is illegal. In addition, the CSA prohibits any person from knowingly or intentionally facilitating the manufacture, distribution and use of marijuana. However, precedent exists in the State establishing that Cities have a right to regulate the cultivation and operation of medical marijuana establishments within their jurisdiction.

Mr. Taylor concludes even though the City's approval of the Zoning Code text amendment could result in another Collective moving into the City, this does not appear to knowingly facilitate the cultivation, sale or distribution of marijuana and it is within the City's discretion to determine the minimum separation distance between Collectives in the City. Such regulation is within a City's discretion as a land use / zoning issue.

## **COMMENTS/CORRESPONDENCE RECEIVED:**

Legal notice of the proposed project was published in the Redding Record Searchlight, posted at designated locations throughout the City and mailed to 60 surrounding property owners within a minimum of 300 feet of areas that could be impacted by the proposed text amendment.

The proposed project was referred to City Departments and the Shasta Lake Fire Protection District for review and comment. No comments were submitted.

### **Public Comment**

One neighboring property owner, Susan Bryant, came into the Planning Division and discussed the proposal with the Development Services Director. She expressed she would like her property, directly south of Burger King on Cascade Boulevard, to be included in the area in which Collectives are allowed. She indicated she was going to submit written comments to be included with the staff report; however, no comments have been submitted to date.

## **CONSISTENCY FINDINGS/EVIDENCE**

### **1. The proposed Zoning Code text amendment is consistent with the Shasta Lake General Plan.**

The General Plan designations in which Collectives would be allowed include Commercial (C) and Village Commercial (VC). The Commercial designation is intended to provide for commercial uses and is consistent with the Community Commercial (C-2) Zone Districts. The Village Commercial designation is intended to provide for “local and tourist oriented retail and service commercial uses emphasizing rehabilitation and in-fill to create a village pedestrian-oriented concept with unified landscaping, signage, parking and circulation.”

The proposed Zoning Code text amendment addresses the location in which Collectives would be allowed but does not amend the Zoning Map or change any zone designations. Staff reviewed the goals, policies and implementation measures contained in the General Plan and determined the proposed text amendment would not conflict with any of the goals, policies or measures.

### **2. The proposed Zoning Code text amendments would not be detrimental to the health, safety, welfare or public interest of the City.**

According to Captain Forrest Bartell with the Shasta Lake Sheriff’s Department, there have been only a total of five calls for service to law enforcement for the existing Collectives, which is not considered unusual for similar commercial retail uses. For the Queen of Dragons Collective, there were two calls for excessive noise during a single special fundraising event and one call related to vandalism since they opened in February 2011. The 530 Collective has had two calls for vandalism since they opened in September 2009.

There have been no complaints filed with the City related to the daily operation of either of the Collectives related to noise, odors, traffic impacts, or parking.

The building in which a Collective is proposed (5310 Shasta Dam Boulevard) is in a highly visible area frequently patrolled by law enforcement, much more so than the area near the UPRR trestle. The operational requirements for a Collective included in SLMC Section 17.82.050 include provisions to reduce the potential for impacts to surrounding properties and the community as a whole. Among other things, Collectives are required to provide adequate on-site security, install an alarm system, and install an air treatment system that prevents off-site odors. This is verified by the Building Official and Shasta Lake Fire Protection District prior to commencement of operations. Any issues with Collectives could be addressed as a public nuisance.

The property on which the Applicant proposes to open a Collective is approximately 900 feet from the Grand Oaks School property. The building itself is approximately 1,000 feet from the school property. The building is not visible from outdoor areas on the School property where children congregate as shown on Exhibit C.

**3. The proposed Zoning Code amendments are internally consistent and do not conflict with the purposes, regulations of SLMC Title 17 (Zoning).**

The purpose of SLMC Chapter 17.82 (Medical Marijuana Collectives / Cooperatives) is to regulate the locations and operations of Collectives in order to promote the health safety and general welfare of residents and businesses within the City. The proposed text amendment does not conflict with the purpose and intent of the Zoning Code or Chapter 17.82.

Furthermore, the proposed text amendment would not change the Zoning Map or land use designations in the area in which Collectives would be allowed. The text amendment reduces the separation distance between Collectives from 1,000 feet to 900 feet, which would allow a Collective to establish and operate at 5310 Shasta Dam Boulevard. The text amendment also reduces the area in which Collectives would be allowed to applicable zoning districts (C-2) and VC) between Cascade Boulevard and Ashby Road. This would prevent an additional Collective in the area west of Ashby Road.

**4. The proposed Zoning Code amendments are in compliance with the provisions of the California Environmental Quality Act.**

An Initial Study and Negative Declaration were prepared pursuant to Section 15070 *et seq.* of the California Code of Regulations, Title 14, Chapter 3 (California Environmental Quality Act Guidelines). The analysis concluded the proposed Zoning Code text amendment would not have significant environmental effects. The project avoids potentially significant environmental effects, and the preparation of an Environmental Impact Report is not required. As documented in the Initial Study, there is no substantial evidence, in light of the whole record before the City, that the project, as revised, may have a significant effect on the environment.

**PLANNING COMMISSION OPTIONS**

The Planning Commission has several options with respect to the proposed Zoning Code Amendment:

**1. Adopt the proposed Resolution as proposed or as amended by the Commission and make a recommendation to City Council.**

- a. The Commission could recommend approval of both parts of the text amendment (reducing the separation distance between Collectives and reducing the area in which Collectives would be allowed to the area in the C-2 and VC Zone Districts between Cascade Boulevard and Ashby Road);
- b. The Commission could approve only the reduction to the separation distance between Collectives;
- c. The Commission could approve only the reduction to the area in which Collectives would be allowed to the area in the C-2 and VC Zone Districts between Cascade Boulevard and Ashby Road.

The Planning Commission would direct staff to report the recommendation to City Council. Staff would schedule a City Council public hearing at which time City Council would consider taking action on the proposed Zoning Code text amendment. Prior to the public hearing, staff would prepare a public notice of the hearing for publication, posting and direct mailing to surrounding property owners, interested parties, and reviewing agencies.

**2. Continue Action and direct Staff to provide additional information**

The Planning Commission may desire additional information or further investigation by Staff. The Commission has the option to continue the matter to a certain future date in order for staff to obtain any additional information. The next Planning Commission meeting is March 17, 2016, and additional information could be presented at that meeting if an excessive amount of information or research is not required. The Planning Commission could also schedule a special meeting or continue action to the April 21, 2016, regular meeting.

**3. Recommend Denial of the proposed Zoning Code Text Amendment**

If the Planning Commission recommends denial, City Council takes no further action unless an appeal is filed. Any interested party, including the applicant has the option to appeal the decision of the Planning Commission to City Council within five calendar days of the Planning Commission's decision. Prior to the public hearing on the appeal, staff would complete public notice in the same manner as specified in Option 1 above. The current fee for an appeal is \$364.00.

**STAFF RECOMMENDATION**

Staff recommends the Planning Commission adopt the attached Resolution as proposed. The amendment would allow a third Collective to open at 5310 Shasta Dam Boulevard. This is a highly visible area frequently patrolled by law enforcement, much more so than the area near the UPRR trestle. The building itself is approximately 1,000 feet from the Grand Oaks School property and is not visible from outdoor areas of the School in which children congregate.

As stated above, the operational requirements for a Collective included in SLMC Section 17.82.050 include provisions to reduce the potential for impacts to surrounding properties and the community as a whole. There have been only a total of five calls for service to law enforcement for the existing Collectives, none related to the daily operations of a Collective. It is anticipated a Collective at 5310 Shasta Dam Boulevard would not operate in a manner resulting in any public nuisance.

**FISCAL IMPACTS:** Establishing a third Collective within the City would result in positive fiscal impacts from sales tax and the City's Marijuana Collective/Cooperative Business Tax, which is currently six percent of gross receipts.

**ATTACHMENTS**

Resolution of Approval

Initial Environmental Study/Negative Declaration

Exhibit A: SLMC Zoning Code Chapter 17.82 (Medical Marijuana Collectives/Cooperatives)

Exhibit B: Location and Separation Distances Map Exhibit;  
Ashby Road/UPRR Detail Map

Exhibit C: Site Map of 5310 Shasta Dam Boulevard;  
Photographs (Street View)

Exhibit D: Memorandum from Rob Taylor, Assistant City Attorney, January 4, 2016.