

City of Mt. Shasta Planning Commission
Regular Meeting Agenda

Mt. Shasta Community Center, 629 Alder Street
 Tuesday, July 19, 2016; 6:00 p.m.

“Our mission is to maintain the character of our “small town” community while striking an appropriate balance between economic development and preservation of our quality of life. We help create a dynamic and vital City by providing quality, cost-effective municipal services, and by forming partnerships with residents and organizations in the constant pursuit of excellence.”

Item
1. Call to Order and Flag Salute
2. Roll call
3. Approval of Minutes:
a. Minutes of June 21, 2016 Regular Planning Commission Meeting
4. Special Presentation
a. General Plan: Noise Element Work Program
b. Marijuana Dispensaries & Cultivation
5. Public Comment
<p>Welcome to our Planning Commission meeting. The Commission invites the public to address the Commission on issues not listed on the agenda and that are within the Commission’s subject matter jurisdiction. Those wishing to address the Commission are asked to sign-in and indicate their topic of interest. The public has a right to address the Commission on any subject within the Commission’s jurisdiction; however the Commission may limit public comment on matters that are outside of its jurisdiction. The Planning Commission may regulate the total amount of time on particular issues and for speakers (typically 3 minutes). The Commission may place additional time limits on comments, to ensure members of the public have opportunity to speak and the Commission is able to complete its work. A group may be asked to choose a spokesperson to address the Commission on a subject matter, or the Commission may limit the number of persons addressing the Commission whenever a group of persons wishes to address the Commission on the same subject matter. Speakers are asked to provide their name and address for the public record. We greatly appreciate your active participation.</p>
6. Consent Agenda
<p>Consent Agenda items are matters requiring a Planning Commission review but which, following an initial evaluation by staff, have been found to be totally consistent with existing City regulations and the City General Plan and are, therefore, recommended for “routine” approval. If it is determined by the Commission that a Consent Agenda item requires further discussion and review, it will be removed to the regular agenda for consideration. The remaining items will be handled as a group by a single action of the Commission.</p>

<p>7. Action Item: Approve General Plan Noise Element Work Program The state of California requires municipalities to create and utilize a General Plan to guide planning endeavors of the city. The Noise Element is a required element related to the noise levels in a community. A work program would outline goals and identify data needs for future Noise Element amendments.</p>
<p>8. Action item: Approve Recommendation of Amendments to Chapter 18.96 Medical Marijuana Dispensaries In preparation or changes in state regulations concerning marijuana, changes to the current marijuana dispensary ordinance are recommended to manage these changes.</p>
<p>9. Action Item: Approve Recommendation of Moratorium Concerning Marijuana Cultivation and Related Industry The City of Mt. Shasta currently does not hold an ordinance concerning industrial cultivation and production of marijuana products. The amount of available research on this topic is limited. The moratorium would allow more time to research and produce an appropriate ordinance and prevent premature develop of this type of industry.</p>
<p>10. Commission and Staff Comments</p>
<p>11. Future Agenda Items – Future items are topics brought to the Planning Commission from a public petition, city staff, Planning Commission member(s), and City Council for review and action. All dates refer to first introductions to the Planning Commission and can be altered due to time and priority level.</p> <ul style="list-style-type: none">a. Solar and Alternative Energy Options – 8/16/2016b. Noise Ordinance – 9/20/2016c. Smoking Limitations – 10/18/2016d. Sign Ordinance – 10/18/2016e. Orchard Property Annexation & Development Plan – 10/18/2016f. Lighting Ordinance – 11/22/2016g. Wayfinding Program – 12/20/2016h. Broadband Plan – 12/20/2016
<p>12. Adjourn: Next regular meeting to be held Tuesday August 16, 2016.</p> <p>Availability of Public Records: All public records related to an open session item on this agenda, which are not exempt from disclosure pursuant to the California Public Records Act, that are distributed to a majority of the legislative body will be available for public inspection at City Hall located at 305 North Mt. Shasta Blvd., Mt. Shasta, CA at the same time the public records are distributed or made available to the members of the legislative body. Agenda related writings or documents provided to a majority of the legislative body after distribution of the Agenda packet will be available for public review within a separate binder at City Hall at the same time as they are made available to the members of the legislative body. The City of Mt. Shasta does not discriminate on the basis of race, color, national origin, sex, religion, age or disability in employment or provision of</p>

services. In compliance with the Americans with Disabilities Act, persons requiring accommodations for a disability at a public meeting should notify the City Clerk or Deputy City Clerk at least 48 hours prior to the meeting at (530) 926-7510 in order to allow the City sufficient time to make reasonable arrangements to accommodate participation in this meeting.

Any writings or documents provided to a majority of the Planning Commission after distribution of the meeting Agenda Packet regarding any open session item on this agenda will be made available for public inspection during normal business hours within the binder entitled "Agenda Packet For Front Counter" located at City Hall at the desk on the right-hand side inside the front door.

Projects heard at this Planning Commission meeting may be subject to appeal. Please contact the Planning Department for information. Appeals must be submitted to the City Clerk's office together with the appeal fee of \$375. If you challenge the environmental review or the project proposal in court, you may be limited to raising only those issues raised at the public hearing or in written correspondence delivered to the Planning Department on, or prior to, closing of the public comment period.

Mt. Shasta City Council Regular Planning Commission Meeting **DRAFT Minutes**

Mt. Shasta Community Center, 629 Alder Street
Tuesday, June 21, 2016; 6:00 p.m.

“Our mission is to maintain the character of our “small town” community while striking an appropriate balance between economic development and preservation of our quality of life. We help create a dynamic and vital City by providing quality, cost-effective municipal services and by forming partnerships with residents and organizations in the constant pursuit of excellence.”

STANDING AGENDA ITEMS

1. Call to Order and Flag Salute: At the hour of 6:01 p.m. Chair Higuera called the meeting to order and led the audience in the Pledge of Allegiance.
2. Roll Call by Juliana Lucchesi, City Planner Commissioners Present: Higuera, Acord, Findling, Beck, Clure, and Wagner Commissioners Absent: Pardee
3. Approval of Minutes: May, 17, 2016 Wagner: Amendments to names and voting record. Moved to approve with amendments – 1 st – Findling, 2 nd – Acord AYES: Higuera, Acord, Findling, Beck, Clure, and Wagner NO: ABSENT: Pardee
4. Correspondence from Public and Staff: City Staff: Correspondence has been made to the City Council and city staff regarding current and future marijuana regulations. The city staff recommendations amending the current dispensary permit and creating regulations related to industrial cultivation in the following Planning Commission meetings.
5. Public Comment: N/A
6. Consent Agenda: N/A

7. Conditional Use Permit. Bed and Breakfast Inn

City Staff: The city staff presented findings indicating the use is in compliance with current ordinances and zoning practice.

Wagner: Discussion on longevity of the permit. The permit stays with the parcel but all conditions must be met to continue under a new owner.

Applicant: Discussion of the rules of the B&B

Meg Yerkes: Neighbor voicing support for the applicant

Eric Yerkes: Neighbor voicing support for the applicant

John Kennedy: Voiced support for the project

Bob Bordinaro: Neighbor voicing opposition to the

Pamela Nerona: Voiced support for the project

Jill: Voiced support for the project

Commissioner Findling: Discussion and amendments to include a condition that the B&B be harmonious with the surrounding neighborhood and decorative lights be limited to the holiday season.

Moved to approve with amendments – 1st Findling, 2nd Clure

AYES: Higuera, Acord, Findling, Beck, Clure, and Wagner

NO:

ABSENT: Pardee

8. Conditional Use Permit: Limited On-Site Used Auto Display

City Staff: The city staff presented the information regarding the display of vehicles at a commercially zoned parcel. City recommends approval with the condition of a DMV dealer's license.

Lily Stephen: Discussion on the use of the current space and the number of parking spots.

Derrick Hardman: Discussion on the selling of cars and the lot layout

John Purusha Price: Neighbor discussing the car dealing and the need for a permit to have the cars on the lot. Disagrees with the development and feels it is out of character with the neighborhood.

Commissioner Findling: Discussion on the number of car spaces and if the parking lot meets current regulations on the number of spots.

Chair Higuera: There may need to be more information submitted related to the site plan, photos from the other side of the street, and hours of operation.

City Staff: Discussion of suspending the decision until more information is presented.

Moved to suspend until more information is provided: building site plan, photos of the lot and on the other side of the street, and hours of operation are determined – 1st Findling, 2nd Beck

AYES: Higuera, Acord, Findling, Beck, Clure, and Wagner

NO:

ABSENT: Pardee

9. Open discussion: Planning Priorities

City Staff: The new City Planner discussed what types of priorities the Planning Commission wishes to pursue and how they would like to approach new ordinances.

Findling: Likes the attachment related to the planning process and future agenda items.

Pamela Nerona: Voiced support for investigating Broadband, but it is not on the top of the list

Higuera: Previously there was little communication between the planner and the commission. There should be a partnership and open communication.

<p>10. Open discussion: General Plan Review City Staff: Similar to the previous agenda item, there was discussion on where to start reviewing the general plan. Staff recommends beginning with the noise section of the plan Commission: Agrees with recommendation.</p>
<p>10. Commission and Staff Comments: City Staff: The city staff is currently working on a land management plan for the eastside of the Landing to prevent fire risk. City staff is working on addressing enforcement issues.</p>
<p>11. Adjourn: There being no further business, the meeting was adjourned at 8:50 p.m.</p>
<p>Respectfully Submitted by: Juliana Lucchesi, City Planner</p>

City of Mt. Shasta City Planner Report

Project Title: General Plan Review: Chapter 7 Noise
Request: City of Mt. Shasta Staff
Prepared by: Juliana Lucchesi, City Planner

Background

California General Plan legislation mandates that each incorporated area in the state of California create and maintain a General Plan. The City of Mt. Shasta in 2007 assembled and published the current General Plan. One of the required sections of the General Plan is the Noise element. The Noise element of the General Plan is in place to address noise levels of various projects and land use practices in communities.

Noise is normally referred to as the collection or unwanted, excess sound. Noise in this case can have a negative impact on communities and residents within the city. The majority of the City of Mt. Shasta Noise Element address alleviating loud and consistent noise related to railroads, transportation, and land use (Attachment 1). A number of the implementation goals for the Noise Element have not been met due to lack of coordination and ability to control certain activities in the City of Mt. Shasta. One such activity is the rail line through the city.

Discussion

The California Governors' Office of Planning and Research highlight a work program strategy to update General Plan elements (Attachment 2). The strategy for updating any element of the General Plan involves reviewing and drafting a purpose statement for the revision and goals to be met by data collection.

One topic that should be addressed by at least one of the goals of the work program is to assess beneficial noise in the City of Mt. Shasta. The City of Mt. Shasta Noise Element does address alleviating noise in the community. Unfortunately, there is little language on promoting noise related to activities that could strengthen the community. Special events, specifically musical, are common during the tourist season for the City of Mt. Shasta. Staff and residents have indicated wanting more of these events to

support economic growth through tourism and community development by giving residents events to attend during the evening and weekends. Unfortunately, the Noise Element of the General Plan does little to support or address the need for policies centered on preferred or beneficial noise.

Recommendations

The City Staff recommends that the planning commission approve a work program to collect and analyze data related to the Noise Element of the General Plan to be presented at the next meeting. The Work Program should include a purpose statement and list of goals.

Attachments

- 1. General Plan Chapter 7: Noise Element (Unaltered)***
- 2. California General Plan Guidelines (Work Program)***
- 3. State of California General Plan Guidelines (Noise element)***

7. NOISE ELEMENT

A. Introduction

The primary purpose of a general plan noise element is to clarify policies and standards by which the local government can limit the exposure of the community to excessive noise levels. Technical data relating to mobile and fixed sources is collected into a set of noise control policies and programs. The policies of the element are to be used as a basis for land use decisions.

The Mt. Shasta General Plan Noise Element is intended to be used to guide decisions concerning land use and the location of new roads and transit facilities, since these are common sources of excessive noise. Noise from existing land uses, including mining, agricultural, and industrial activities, must be closely analyzed to ensure compatibility, especially where residential and other sensitive receptors have encroached into areas previously occupied by these uses.

Noise sources in the Mt. Shasta Planning Area include traffic on major roadways and highways, railroad operations, and fixed noise sources. Noise modeling techniques and noise measurements were used to develop generalized "Ldn" (average day/night sound level) noise contours for the existing conditions of these sources. Noise contours are used as a guide for establishing a land use pattern that minimizes the exposure of residents to noise. Because local topography, vegetation or intervening structures may significantly affect noise exposure at a particular location, the noise contours should not be considered site-specific and will need to be adjusted for site-specific factors.

Acoustical Terminology and Noise Fundamentals

Discussion of noise issues requires the use of technical terminology. Following is a list of frequently used terms.

Acoustics	The science of sound.
Ambient Noise	The distinctive acoustical characteristics of a given area consisting of all noise sources audible at that location. In many cases, the term ambient is used to describe an existing or pre-project condition such as the setting in an environmental noise study.
Attenuation	The reduction of noise.
A-Weighting	A frequency-response adjustment of a sound level meter that conditions the output signal to approximate human response.

Decibel, or dB	The fundamental measurement unit of sound, defined as ten times the logarithm of the ratio of the sound pressure squared over the reference pressure squared.
CNEL	Community Noise Equivalent Level. Defined as the 24-hour average noise level with noise occurring during evening hours (7-10 p.m.) weighted by a factor of three and nighttime hours weighted by a factor of 10 prior to averaging.
Frequency	The measure of the rapidity of alterations of a periodic acoustic signal, expressed in cycles per second or Hertz.
Ldn	Day/Night Average Sound Level. Similar to CNEL, but with no evening weighting.
Leq	Equivalent or energy-averaged sound level.
Lmax	The highest root-mean-square (RMS) sound level measured over a given period of time.
Loudness	A subjective term for the sensation of the magnitude of sound.
Noise	Unwanted sound.

Noise is often described as unwanted sound. Sound is defined as any pressure variation in air that the human ear can detect. If the pressure variations occur frequently enough (at least 20 times per second), they can be heard and hence are called sound. The number of pressure variations per second is called the frequency of sound. Measurements of frequency are expressed as cycles per second, called Hertz (Hz).

Measuring sound directly in terms of pressure would require a very large and awkward range of numbers. To avoid this, the decibel scale was devised. The decibel scale uses the hearing threshold (20 micropascals), as a point of reference, defined as 0 dB. Other sound pressures are then compared to the reference pressure, and the logarithm is taken to keep the numbers in a practical range. The decibel scale allows a million-fold increase in pressure to be expressed as 120 dB. Another useful aspect of the decibel scale is that changes in levels (dB) correspond closely to human perception of relative loudness. **Figure 7-1** shows examples of noise levels for several common noise sources and environments.

The perceived loudness of sounds is dependent upon many factors including sound pressure level and frequency content. However, within the usual range of environmental noise levels, perception of loudness is relatively predictable and

can be approximated by weighing the frequency response of a sound level meter by means of the standardized “A-weighting” network. There is a strong correlation between A-weighted sound levels (expressed as dBA) and community response to noise. For this reason, the A-weighted sound level has become the standard tool of environmental noise assessment. All noise levels reported in this document are in terms of A-weighted levels.

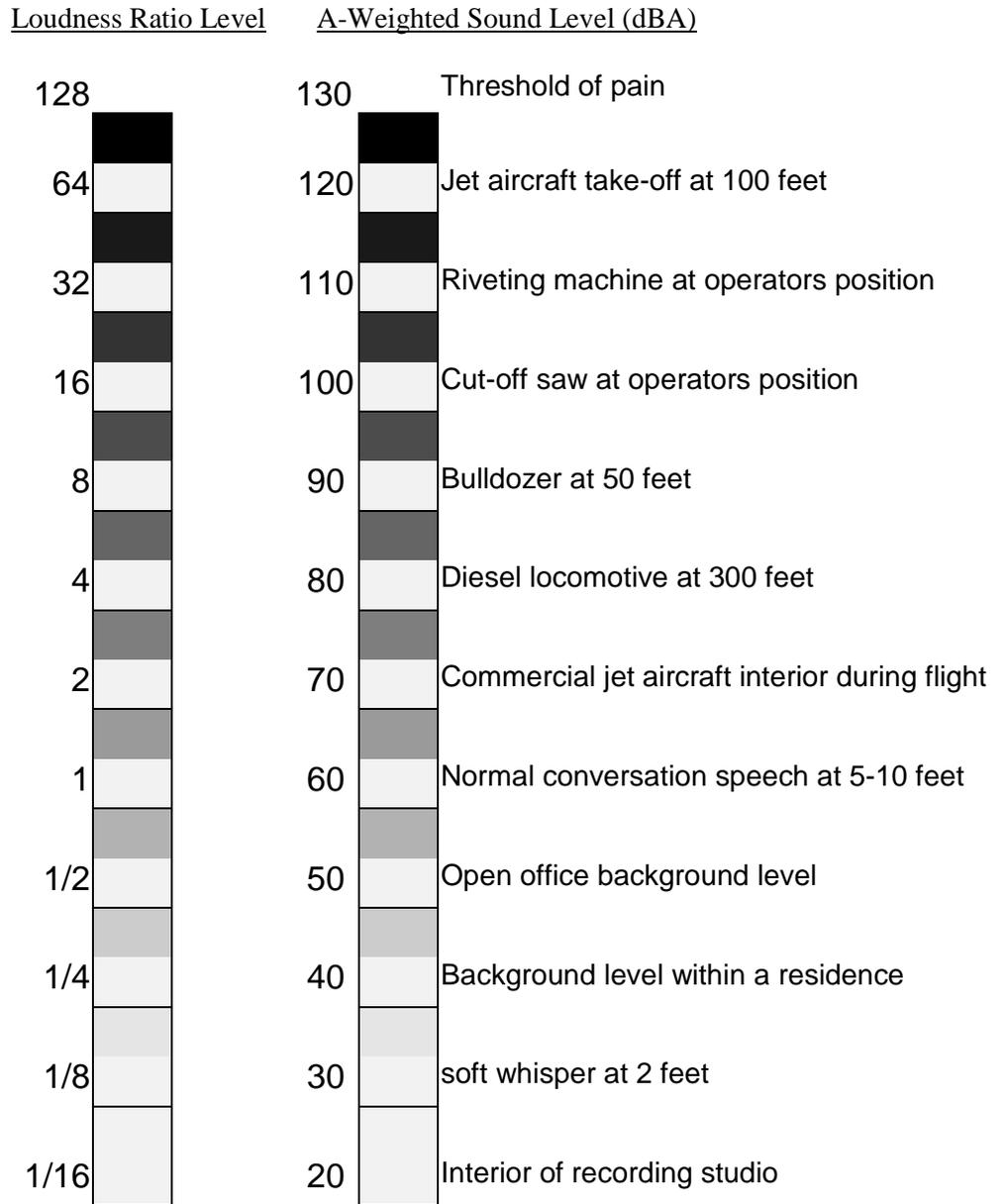
Community noise is commonly described in terms of the “ambient” noise level, which is defined as the all-encompassing noise level associated with a given noise environment. A common statistical tool to measure the ambient noise level is the average, or equivalent, sound level (Leq). This corresponds to a steady-state A-weighted sound level containing the same total energy as a time-varying signal over a given time period (usually one hour). The Leq is the foundation of the composite noise descriptor, Ldn, and has very good correlation with community response to noise.

The Day-Night Average Level (Ldn) is based upon the average noise level over a 24-hour day, with a +10 decibel weighting applied to noise occurring during nighttime (10:00 p.m. to 7:00 a.m.) hours. The nighttime penalty is based upon the assumption that people react to nighttime noise exposures as though they were twice as loud as daytime exposures. Because Ldn represents a 24-hour average, it tends to disguise short-term variations in the noise environment.

Excessive noise in a community has often been cited as being a health problem, not necessarily in terms of actual physiological damages such as hearing impairment but in terms of inhibiting general well-being and contributing to undue stress and annoyance. The health effects of noise in a community arise from interference with human activities such as sleep, speech, recreation and tasks demanding concentration or coordination. When community noise interferes with human activities or contributes to stress, public annoyance with the noise source increases and the acceptability of the environment for people decreases. This decrease in acceptability and the threat to public well-being is the bases for land use planning policies that limit exposure to excessive community noise levels.

To control noise from fixed sources that have developed from processes other than zoning or land use planning, many jurisdictions have adopted community noise control ordinances. Such ordinances are intended to abate noise nuisances and to control noise from existing sources. They may also be used as performance standards to evaluate the creation of a potential nuisance, or potential encroachment of sensitive uses upon noise-producing facilities. Community noise control ordinances are generally designed to resolve noise problems on a short term basis (usually by means of hourly noise level criteria), rather than on the basis of 24-hour or annual cumulative noise exposures.

Figure 7-1
Typical A-Weighted Sound Levels of Common Noise Sources



In addition to the A weighted noise level, other factors should be considered in establishing criteria for noise sensitive land uses. For example, sounds with noticeable tonal content such as whistles, horns, droning or high pitched sounds may be more annoying than the A weighted sound level alone suggests. Many noise standards apply a penalty, or correction, of 5 dBA to such sounds. The effects of unusual tonal content are generally more of a concern at nighttime when residents may notice the sound in contrast to low levels of background noise.

Because many rural residential areas experience very low noise levels, residents may express concern about the loss of "peace and quiet" due to the introduction of a sound that was not audible previously. In very quiet environments, the introduction of virtually any change in local activities will cause an increase in noise levels. A change in noise level and the loss of "peace and quiet" is the inevitable result of land use or activity changes in such areas. Audibility of a new noise source and/or increases in noise levels within recognized acceptable limits are not usually considered to be significant noise impacts, but these concerns should be addressed and considered in planning and environmental review processes.

B. Fixed-Noise Sources

Three primary noise source categories are recognized in this Noise Element. They are: 1) Fixed-Noise Sources; 2) Roadway Noise; and 3) Railroad Noise.

The production of noise from stationary, or "fixed-noise" sources is often associated with industrial facilities. Noise exposures within industrial facilities are controlled by federal and state employee health and safety regulations (OSHA and Cal-OSHA). Exterior noise, however, is a concern that falls within the jurisdiction of local agencies.

Commercial businesses, recreational sites, public works operations and construction activity may also produce noise that affects adjacent sensitive land uses. These noise sources can be frequent or continuous and may be annoying to individuals who live in the vicinity. Noise generated from fixed noise sources may vary due to climatic conditions, time of day, and existing ambient noise levels.

From a land use planning perspective, fixed-source noise control issues focus upon two general goals: 1) the prevention of the introduction of new noise-producing uses in noise-sensitive areas; and 2) the prevention of the encroachment of noise sensitive uses upon existing noise-producing facilities. The first goal can be achieved by applying noise performance standards to proposed new noise-producing uses. The second goal can be met by preventing the encroachment of noise sensitive uses through zoning and special permit requirements, and by requiring that new noise-sensitive uses in proximity to noise-producing facilities include effective attenuation measures to ensure compliance with noise performance standards.

There are three primary areas within and near the City of Mt. Shasta that have light industrial and commercial uses. The three areas include: 1) the area adjacent to North Mt. Shasta Boulevard between its intersection with Chestnut Street and the Mt. Shasta City Park; 2) the south end of Ream Avenue located near the intersection of Ream Avenue and Court Street; and 3) the south side area adjacent to Mt. Shasta Boulevard. In addition, the Sousa Ready Mix facilities at the north end of the City have been identified as sources of fixed noise.

North Mt. Shasta Boulevard

The commercial area along North Mt. Shasta Boulevard generally north of Chestnut Street is comprised largely of heavier commercial land uses that include petroleum product sales, automotive service and repair, tire and automotive supply, and similar uses. Typical noise sources associated with these land uses include, but are not limited to, truck traffic, HVAC systems (i.e., heating, ventilation, and air conditioning systems), tire breakers, impact wrenches and compressors.

The majority of the businesses in this area operate during the daytime hours. The noise environment in this area is largely dominated by local roadway and railroad traffic. Typically, single event noise levels associated with truck movements range between 70 and 85 dB SEL at a distance of 75 feet. Data for maximum noise levels associated with air impact wrenches and tire breakers are approximately 89 dB and 105 dB, respectively, at a distance of 10 feet.

South Ream Commercial Area

The South Ream Avenue area is comprised primarily of trucking facilities. Noise sources associated with the operation of these facilities include truck traffic, HVAC systems and refrigeration trucks. These facilities typically operate during the daytime hours. However, the refrigeration trucks have compressors that may operate 24 hours per day and are often the subject of complaints. Sound level measurements of refrigeration trailer compressors have indicated continuous noise levels of 64 dB measured at a distance of 50 feet from the trailers.

South Commercial and Industrial Area

This mixed-use area is off and to the east of South Mt. Shasta Boulevard, generally between Bear Springs Road and Church Street. It includes the City's Public Works Yard, an automotive repair and body shop, a contractors yard, the recycling center operated by the Siskiyou Opportunity Center, and other commercial uses. Noise associated with the Public Works Yard is primarily related to the movement of heavy equipment. However, these activities are infrequent and intermittent.

The recycling center operated by the Siskiyou Opportunity Center is located at the corner of Mt. Shasta Boulevard and Bear Springs Road. Major noise sources associated with operation of the recycling center include the operation of equipment, the handling and loading of aluminum cans and glass, and the operation of saws for recycling lumber. The Opportunity Center has a building to house its recycling equipment and provide shielding of noise from the recycling operation.

Across Mt. Shasta Boulevard and Church Street from this area is the site known as the Roseburg Commerce Park. Future development of the Roseburg property is expected to be mixed-use with commercial, light industrial and residential uses. Mixed-use development of the property will require careful attention to related noise impact issues to ensure land use compatibility.

Sousa Ready Mix

The Sousa Ready Mix plant is located at 100 Upton Road, outside of the city limits on the west side of Interstate 5 between the highway and the Union Pacific Railroad tracks. Sousa Ready Mix provides sand, aggregate and ready-mix concrete products. The Upton facility contains the operation's concrete batch plant and crushing, screening and washing facilities. Typical noise sources associated with the plant operation that can be heard within the city limits include the sound of heavy trucks, front loaders, back-up warning devices, conveyor belt systems, air vibrators that shake material from hoppers into trucks, and the sound of sand and gravel on metal as trucks are being loaded. The noise environment in the area of the plant is dominated by the fairly constant noise of highway traffic on Interstate 5 and periodic noise from trains on the railroad.

The Spring Hill Mine, also owned by Sousa Ready Mix, is 98 acres in size, located at the northern-most portion of the City. The permit to mine the site was approved in 1980 when the site was located outside the city limits. The property was annexed to the City soon after the mining operation began. Excavated aggregate is hauled by dump truck from the mine on a private road to Abrams Lake Road and across Interstate 5 to the Upton site. Excavation of aggregate involves the use of a variety of heavy equipment including scrapers, loaders, dump trucks, dozers, and water trucks. Portable crushing and screening plants have been used at the mine to process aggregates. Most of the work at the mine is conducted during the summer months.

The operators of the aggregate mine have expressed concern that encroachment of residential and certain types of commercial uses near their facilities may increasingly impose constraints to the operation, largely because of the noise that is characteristic of the operation. The Mt. Shasta General Plan Open Space/Conservation Element, in addressing Mineral Resources, acknowledges the need to protect the economic viability of existing mining and material processing operations (e.g., **Goal OC-6**) and supports provisions by the City to avoid the development of "noise sensitive" uses (e.g., residences, hotels and motels) near such operations.

Parks and School Playing Fields

Parks and school playgrounds and playing fields, while being very different in character from industrial and heavy commercial uses, may also be considered to be fixed-noise sources. There are several park and school uses within the Mt. Shasta city limits. The level of noise generated by these uses depends on the age and number of people utilizing the respective facility at a given time, and the types of activities they are engaged in. School playing field activities tend to generate more noise than those of neighborhood parks, as the intensity of school playground usage tends to be much higher. At a distance of 100 feet from an elementary school playground being used by 100 students, average noise levels of 60 dB can be expected and maximum noise levels of 75 dB are common. At organized events such as high school football games with large crowds and public address systems, the level of noise generated is often significantly higher.

A particular issue concerning noise related to parks and recreation has been the Siskiyou Ice Rink, located at Shastice Park. The park and ice rink are managed by the Mt. Shasta Recreation and Parks District. The ice rink was built in the fall and winter of 1999/2000 and operated briefly in the late winter of 2000. The ice rink has been the subject of complaints and legal action from certain residents in the vicinity of the park concerning noise and indirect impacts claimed to be related to noise (e.g., affected property values). In fact, the ice rink did not operate in the year following first-phase construction due to legal action against it, but seasonal use of the rink was able to be resumed following further environmental impact studies, clarification of design plans and resolution of related issues. Along with the typical noise of a playground (human voices shouting, etc.), ice rinks generate additional noise from operation of chiller units and a “zamboni” vehicle used to resurface ice in the skating area. Music is also often played through outdoor speakers. Various environmental studies were completed for the facility including an Initial Study and Mitigated Negative Declaration in 2001. Design and other mitigation measures were incorporated into the ice rink facility to reduce the level of noise impact in the neighborhood.

C. Roadway Noise

Traffic noise levels for existing and future traffic volumes were calculated for the Planning Area. The Federal Highway Administration (FHWA) Highway Traffic Noise Prediction Model was used to develop Ldn contours for all state highways and major arterial roadways in the Mt. Shasta area. Distances from the centerlines of selected roadways to the 60 and 65 dB Ldn contours are summarized in **Table 7-1, Roadway Noise Contour Data**. **Figure 7-2** illustrates the projected locations of the 60 dB Ldn future roadway noise contours. “Existing” conditions are for the year 2006 and “Future” conditions are projected for the year 2026.

The curve of a road, its steepness, and factors such as topography or a depressed road, and even buildup can affect how loud noise is perceived. The distances reported in **Table 7-1** are estimates of noise exposure along roadways

in the City of Mt. Shasta based on samples and modeling. Traffic noise contours were not developed for every roadway in the planning area, only arterials and collectors.

A general plan provides broad guidance to address noise impacts. The intent of the generalized roadway noise contours listed in **Table 7-1** and, concerning Interstate 5 and State Highway 89, shown graphically in **Figure 7-2** is to illustrate the potential for conflicts between traffic noise levels and potential noise-sensitive receivers within the identified noise contours. The noise contours for Interstate 5 and Highway 89 portrayed in **Figure 7-2** are projected for the year 2026. In areas where noise exposure may be significant, the effects of site-specific factors need to be evaluated and considered from more precise on-site noise measurements. For example, the 1993 General Plan recognized that, in some areas along Interstate 5, the actual noise levels associated with traffic on the highway ranged between 4.2 and 7.3 dB less than the noise levels predicted by the FHWA Model at certain measurement points. The actual measurements were influenced by the topography around the site. In some areas through the City, Interstate 5 is situated lower than the surrounding area and, therefore, adjacent properties may be shielded to some extent from traffic noise.

D. Railroad Noise

Railroad activity in the City of Mt. Shasta planning area includes freight and Amtrak activity on the Union Pacific Railroad (UPRR) tracks and occasional freight and excursion train activity on the tracks owned by the McCloud Railway Company. The UPRR line runs generally north/south through the planning area. Various land uses, including residential uses, are located adjacent to the railroad tracks. The McCloud Railway Company line extends east from its junction with the UPRR line to the town of McCloud.

Approximately 16 freight trains and two Amtrak trains operate daily on the UPRR tracks through the planning area. Freight train operations occur throughout the day and nighttime periods. The Amtrak trains come through the planning area primarily in the early morning hours.

The McCloud Railway Company averages approximately two trains a week in the City of Mt. Shasta.

The major noise sources associated with train operations in the City of Mt. Shasta are the locomotive engines and warning horns. There are a total of seven at-grade railroad crossings within the City of Mt. Shasta. Five are located along the Union Pacific line. Two crossings are on Nixon Street, and there are crossings at Alma Street, Lake Street and Ream Avenue. All five UPRR crossings are gated. There are two at-grade crossings for the McCloud Railway Company line: one for Everitt Memorial Highway and one for North Mt. Shasta Boulevard.

**Table 7-1
Roadway Noise Contour Data**

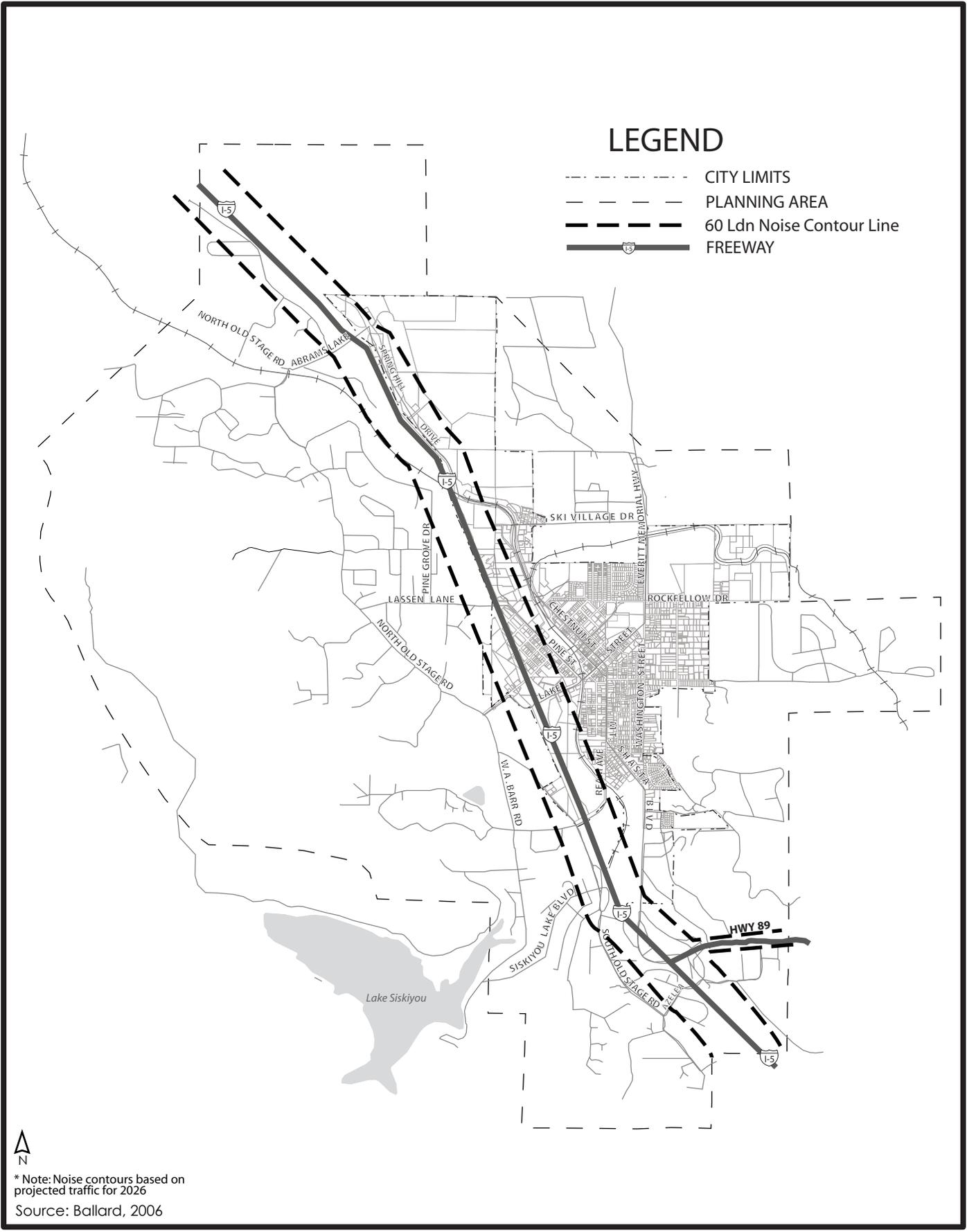
<i>Seg. No.</i>	<i>Description</i>	<i>Existing*</i>		<i>Future*</i>	
		<i>60 dB</i>	<i>65 dB</i>	<i>60 dB</i>	<i>65 dB</i>
Interstate 5:					
1	South of S.R. 89	990	459	1238	575
2	S.R. 89 to Lake Street	986	458	1234	573
3	Lake Street to N. Mt. Shasta Interchange	999	464	1250	580
4	N. Mt. Shasta Interchange to Abrams Lake Road	1037	481	1298	602
5	North of Abrams Lake Road	1021	474	1277	593
State Route 89:					
6	South of Interstate 5	263	122	330	153
Mt. Shasta Boulevard:					
7	Spring Hill Dr. to Nixon Road	63	29	87	40
8	Nixon Rd. to Alma Street	61	29	79	37
9	Alma St. to Lake Street	64	30	77	36
10	Lake St. to Chestnut Street	67	31	78	36
11	Chestnut St. to McCloud Avenue	78	36	94	44
12	McCloud Ave. to Old McCloud Road	71	33	84	39
13	South of Old McCloud Road	63	29	76	35
Alma Street:					
14	East of Pine Street	60	28	72	33
15	West of Pine Street	42	19	50	23
Pine Street:					
16	North of Alma Street	59	27	66	31
17	South of Alma Street	55	26	57	26
Morgan Way:					
18	South of W. Lake Street	36	17	42	20
W Lake Street:					
19	East of Morgan Way	81	38	90	42
20	West of Morgan Way	81	38	89	41
Rockfellow Drive:					
21	East of Everitt Memorial Hwy	25	12	31	14
22	West of Everitt Memorial Hwy	44	20	50	23
Everitt Memorial Hwy					

**Table 7-1
Roadway Noise Contour Data**

Seg. No.	Description	Existing*		Future*	
		60 dB	65 dB	60 dB	65 dB
23	North of Rockfellow Drive	57	27	70	32
N. Washington Dr.					
24	South of Rockfellow Drive	49	23	59	27
Ream Ave.					
25	East of Old Stage Coach Road	25	11	28	13
26	West of Old Stage Coach Road	14	7	14	7
Old Stage Coach Rd.					
27	North of Ream Avenue	21	10	25	11
28	South of Ream Avenue	24	11	30	14
Chestnut St.					
29	East of Mt. Shasta Boulevard	21	10	26	12
30	West of Mt. Shasta Boulevard	15	7	15	7
McCloud Ave.					
31	East of Mt. Shasta Boulevard	41	19	49	23
Old McCloud Rd.					
32	East of Mt. Shasta Boulevard	22	10	23	11
33	West of Mt. Shasta Boulevard	21	10	21	10

- Distance (in feet) from center of roadway to Ldn contours. "Existing" conditions are for the year 2006 and "Future" conditions are projected for the year 2026.

Source: FHWA-RD-77-108 with inputs from kdAnderson Transportation and Caltrans.



LEGEND

- CITY LIMITS
- - - PLANNING AREA
- - - 60 Ldn Noise Contour Line
- I-5 — FREEWAY


 * Note: Noise contours based on projected traffic for 2026
 Source: Ballard, 2006



FIGURE 7-2
INTERSTATE 5 AND STATE ROUTE 89 NOISE CONTOURS
PMC
 21

Both McCloud Railway crossings are “passive” and are equipped with flashing lights and bells but no gates.

Noise from UPRR trains have an impact on the sound environment in the City of Mt. Shasta, especially in the vicinity of the tracks. When a train is passing, normal conversation can be difficult in buildings with open windows and without adequate noise insulation near the tracks. Noise level measurements have been conducted to determine the contribution of UPRR railroad operations to the noise environment. Noise levels were measured to determine typical sound exposure levels (SEL). The results of the railroad noise measurements for the UPRR line are shown in **Table 7-2**.

**Table 7-2
Union Pacific Railroad Noise Measurement Results**

<i>Measurement Location</i>	<i># of Daily Trains</i>	<i>Noise Level (dB) @100 feet</i>	
		<i>Mean SEL</i>	<i>Lmax</i>
Near Intersection of I-5 and UPRR Tracks	18	102.5	75 - 110

Measurements taken August 14-15, 2006. Bollard Acoustical Consultants, Inc.

For the purposes of the General Plan Noise Element, it is useful to estimate the generalized distances of the 60 and 65 dB Ldn noise contours for each of the railroad tracks within the City. **Table 7-3** indicates the approximate width of the noise contours associated with the two railroad operations within the City. **Figure 7-3** illustrates the general 60 dB Ldn noise contours associated with the two railroad tracks.

**Table 7-3
Approximate Distance to Railroad Noise Contours**

<i>Train</i>	<i>Ldn dB, 100 feet from tracks</i>	<i>Distance to Ldn Contour (feet)</i>	
		<i>60 dB</i>	<i>65 dB</i>
Union Pacific Railroad	72.1	631	293
McCloud Railway Co.	51.9	30	14

Source: Bollard Acoustical Consultants, Inc., 2006, City of Mt. Shasta General Plan, 1993.

The Safety Element of this general plan discusses street-rail crossings from the perspective of public safety. The issue is also very much related to noise concerns because nearly all warning devices at the crossings involve loud warning signals. A warning provided by a train’s horn is required as a train approaches both at-grade crossings with active warning devices and crossings with “passive” warning measures. The impacts of noise from train horns as trains

approach street crossings has raised two particular issues concerning public safety and related noise impacts to neighborhoods around the crossings. These issues are 1) the alternative use of “wayside horns”, and 2) the establishment of “quiet zones”.

As noted in the Safety Element, locomotives typically sound their horns at least 15 seconds before the locomotive enters a public highway at-grade crossing. The intent is to sound the horn loud enough and timely for a vehicle on the street approaching the crossing to hear the horn. With the objective of the warning having a sound level of 95 dB(A) at the “motorist decision-making point” 50 feet in advance of the grade crossing, the Federal Railway Administration (FRA) has determined that 108 dB(A) is the optimal sound level for locomotive horns (Federal Railroad Administration, 2005). A horn sound level of 110 dB(A) is the maximum and 96 dB(A) is the minimum sound level. However, such a warning exposes a considerable segment of the local community near the tracks to the sound of the horn, in addition to motorists and pedestrians, as intended, who may be approaching the crossing.

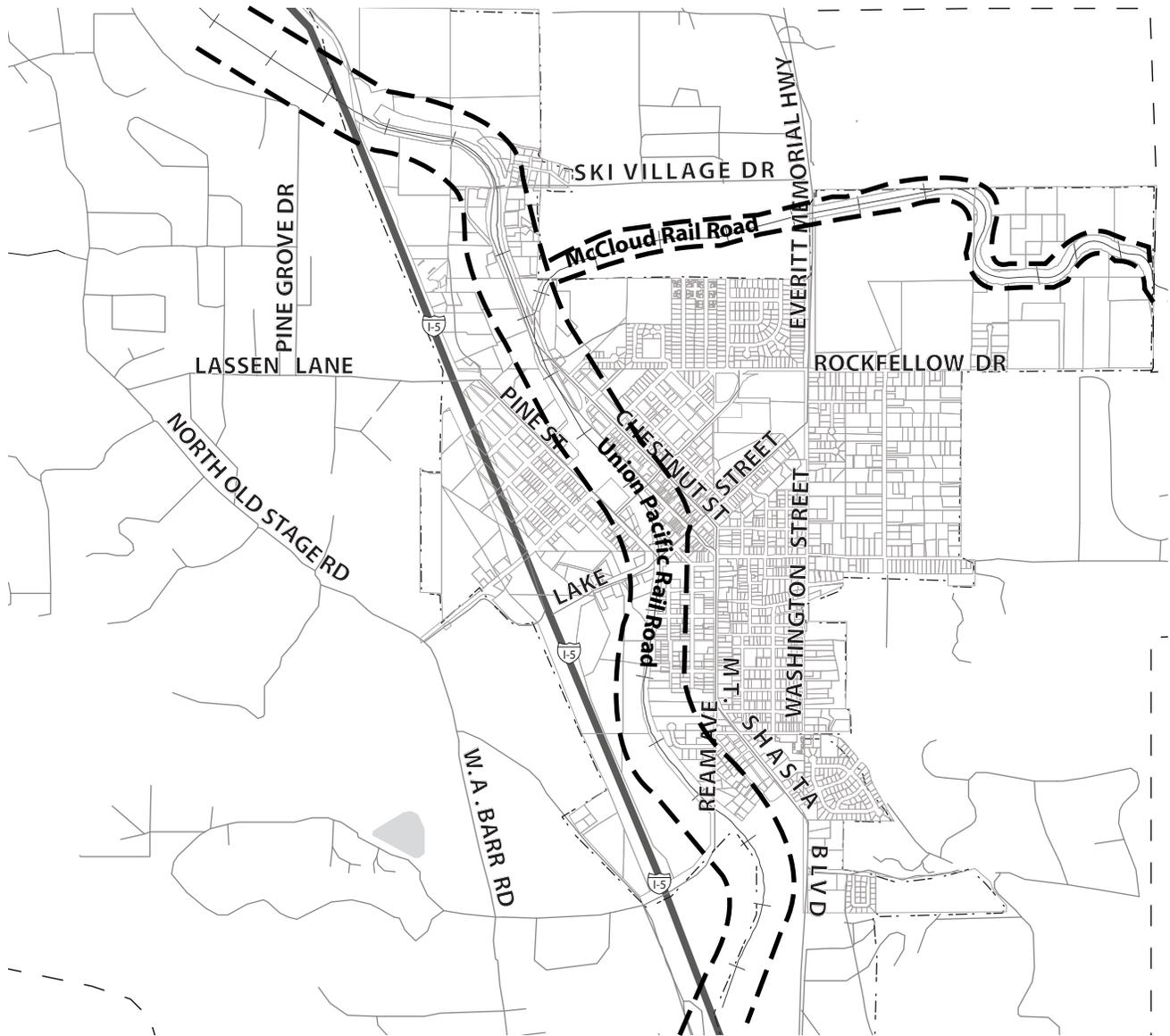
Wayside horns have been proposed in some communities as one alternative to the use of locomotive horns at some crossings. A wayside horn is a stationary horn mounted at a grade crossing and is aimed up and down the street on which vehicles would be approaching the crossing. Wayside horns may be used in lieu of a locomotive horn at highway-rail grade crossings equipped with an active warning system consisting of, at a minimum, flashing lights and gates. The FRA has determined that a wayside horn set to 92 dB(A) (as measured 100 feet from the centerline of the railroad track) would provide an audible warning comparable to a properly sounded locomotive horn (FRA, 2005). In terms of noise impacts, the advantage of the wayside horn is that the warning is focused more directly toward the motorists and pedestrians approaching the crossing with less imposing noise impacts, as occurs with locomotive horns, on residential and commercial districts along the tracks near the crossing.

The second issue concerning public safety and noise related to railroad grade crossings is the issue of establishing “quiet zones”. A quiet zone is a section of track approaching a railroad grade crossing in which trains do not need to and, in fact, are prohibited from sounding their horns. The train horns are rendered unnecessary only when other safety measures approved by the FRA provide an acceptable level of safety with the absence of locomotive horns. An FRA rule effective in June 2005 provides an opportunity for localities to establish quiet zones (i.e., *Final Rule on the Use of Locomotive Horns at Highway-Rail Grade Crossings*). To qualify for creation of a quiet zone, communities must equip proposed grade crossings with adequate safety measures to overcome the decrease in safety that would result from silencing the train horns. Quantifiable calculations must be made of the current “risk index” of the crossing with use of locomotive horns and the expected risk index without the horns but with supplementary safety measures.



LEGEND

- CITY LIMITS
- PLANNING AREA
- 60 dBLdn Noise Contour Line
- FREEWAY



Note: Noise Contours not to scale.
 McCloud contour line is approximately 30 feet from railroad tracks, Union Pacific contour line is approximately 631 feet from tracks.

Source: Ballard, 2006



FIGURE 7-3
RAILROAD NOISE CONTOURS

The FRA has outlined a list of Supplementary Safety Measures (SSMs) and Alternative Safety Measures (ASMs) that would be available to local jurisdictions that wish to reduce noise impacts in their communities. As provided in the Final Rule, communities have the sole discretion to designate a quiet zone if the recognized SSMs are used. Alternatively, a community may implement ASMs at some or all of the crossings within a quiet zone upon demonstrating the effectiveness of these measures to provide the acceptable level of public safety. The additional safety measures, which must meet federal specifications, usually must be constructed at the community's expense.

As a variation of a "quiet zone", communities may create "partial quiet zones". Such zones restrict locomotive horns sounding between the hours of 10 p.m. and 7 a.m. Outside of that time period, trains would use their horns as otherwise required for public safety.

The Safety Element expresses goals for maintaining public safety, but it also states that the City should look into reducing the impacts of noise related to railroad crossings. The Safety Element includes **Goal SF-7**: "Maintain adequate levels of public safety at street-rail grade crossings while, when possible, reducing noise impacts involved with warning systems". It follows this goal with **Policy SF-7.1**: "The City will consider the feasibility and means for modifying warning and control systems at selected street-rail grade crossings to reduce related noise impacts, provided that adequate public safety is provided." The related implementation measure is **Implementation Measure SF-7.1(a)**: "The City will consider the feasibility of establishing "quiet zones" and/or the use of wayside horns to reduce train horn noise impacts pursuant to the criteria of the Federal Railroad Administration. Determination to proceed with implementation will be based on the expected adequacy of public safety and cost feasibility."

E. Other Noise Sources

Mercy Medical Center in Mt. Shasta maintains a helipad on the hospital grounds. The hospital, however, is not a base station for a helicopter stationed on site. The closest base station for a medical helicopter is at the Weed Airport. Therefore, flights to and from Mercy Medical Center are less frequent than they would be if the site was being used as a base station. Flights are generally limited to the delivery or transport of emergency patients. The helipad is also occasionally used by the California Highway Patrol and during mountain rescue operations. No particular concerns have been noted regarding noise generated by typical use of the medical center helipad. (Greg Lippert, Senior Director of Support Services, Mercy Medical Center, personal communication, May 11, 2006.)

Community Noise Survey:

To quantify existing noise levels in the quieter parts of the City of Mt. Shasta, a community noise survey was performed at six locations that are removed from major noise sources. Two of the six locations were monitored over a continuous 24-hour period, while the other six locations were each monitored for 15-minute periods during daytime hours. The community noise survey noise measurement locations are shown on **Figure 7-4**. The results of the community noise survey are provided in **Table 7-4** and are shown graphically on **Figures 7-5 and 7-6**.

**Table 7-4
Community Noise Survey**

<i>Site</i>	<i>Location</i>	<i>Measured Sound Level, dBA</i>	
		<i>Average (Leq)</i>	<i>Maximum (Lmax)</i>
A	808 Mormon Way	44(Day), 43 (Night)	60(Day), 75 (Night)
B	Crossing of I-5 and UPRR	68 (Day), 71(Night)	95(Day),108 (Night)
C	Everitt Memorial Hwy. and Stellar Way	47	61
D	McCloud Avenue and Eagle Nest Road	44	63
E	Wyecka Way	40	56
F	North end of Spring Hill Drive	45	56

Source: Bollard Acoustical Consultants, Inc., August 11, 2006. See Figure 7.4 for locations.

F. Criteria for Acceptable Noise Exposure

1. Background

The State Office of Planning and Research (OPR) Noise Element Guidelines include recommended exterior and interior noise level standards for local jurisdictions to identify and prevent the creation of incompatible land uses due to noise. The OPR guidelines contain a land use compatibility table that describes the compatibility of different land uses with a range of environmental noise levels in terms of Ldn. A noise environment of 60 dB Ldn or less is considered to be normally acceptable for residential uses according to those guidelines.

The U.S. Environmental Protection Agency (EPA) also offers guidelines for community noise exposure in the publication “Information on the Levels of Environmental Noise Requisite to Protect Public Health and Welfare with an Adequate Margin of Safety”. These guidelines consider occupational noise exposure as well as noise exposure in the home. The “Levels Document” recognizes an exterior noise level of 55 dB Ldn as a goal to protect the public

LEGEND

- - - - - CITY LIMITS
- - - - - PLANNING AREA
- (#) : Continuous Hourly Measurement Site
- (#) : Short-Term Noise Measurement Site

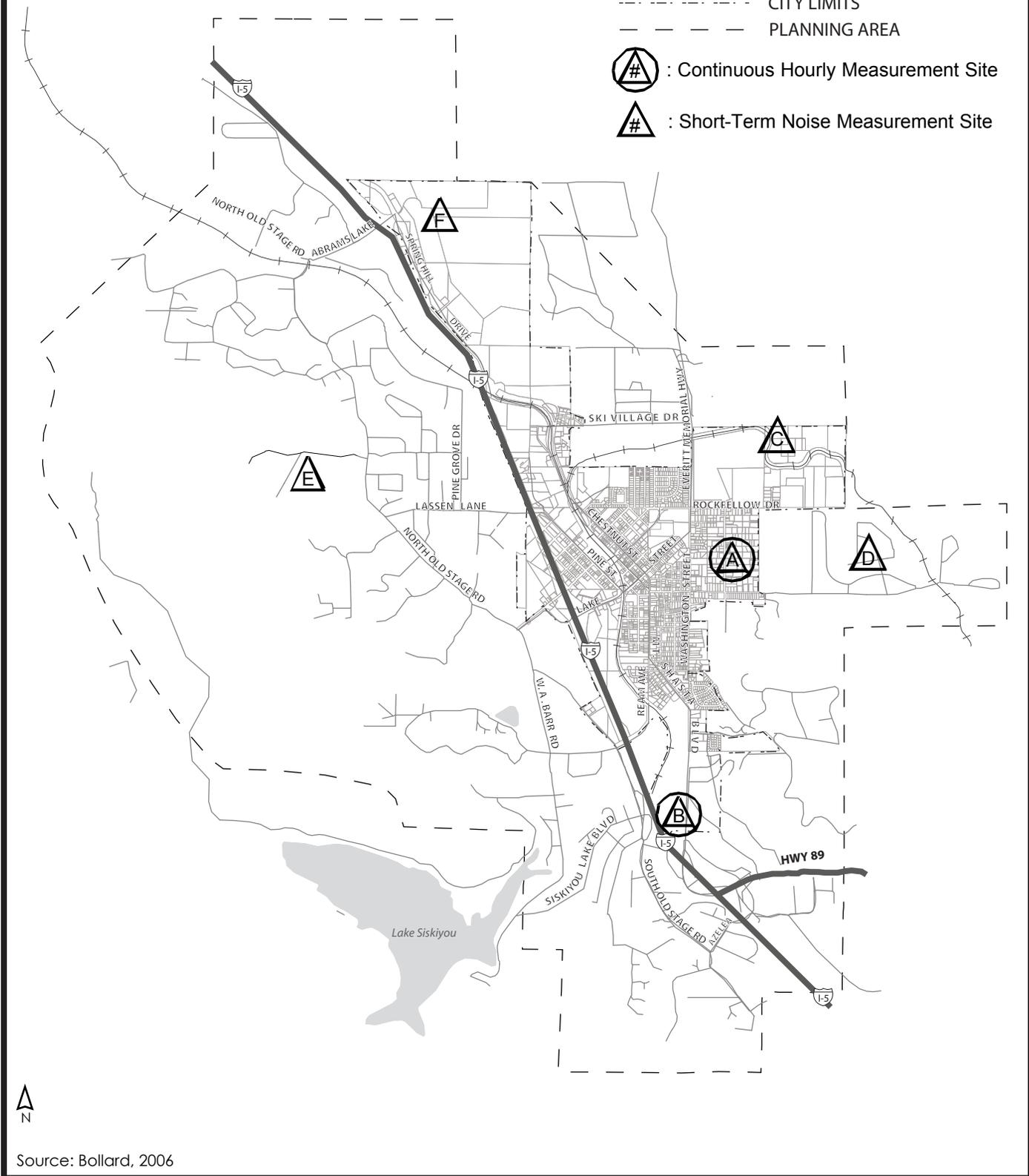
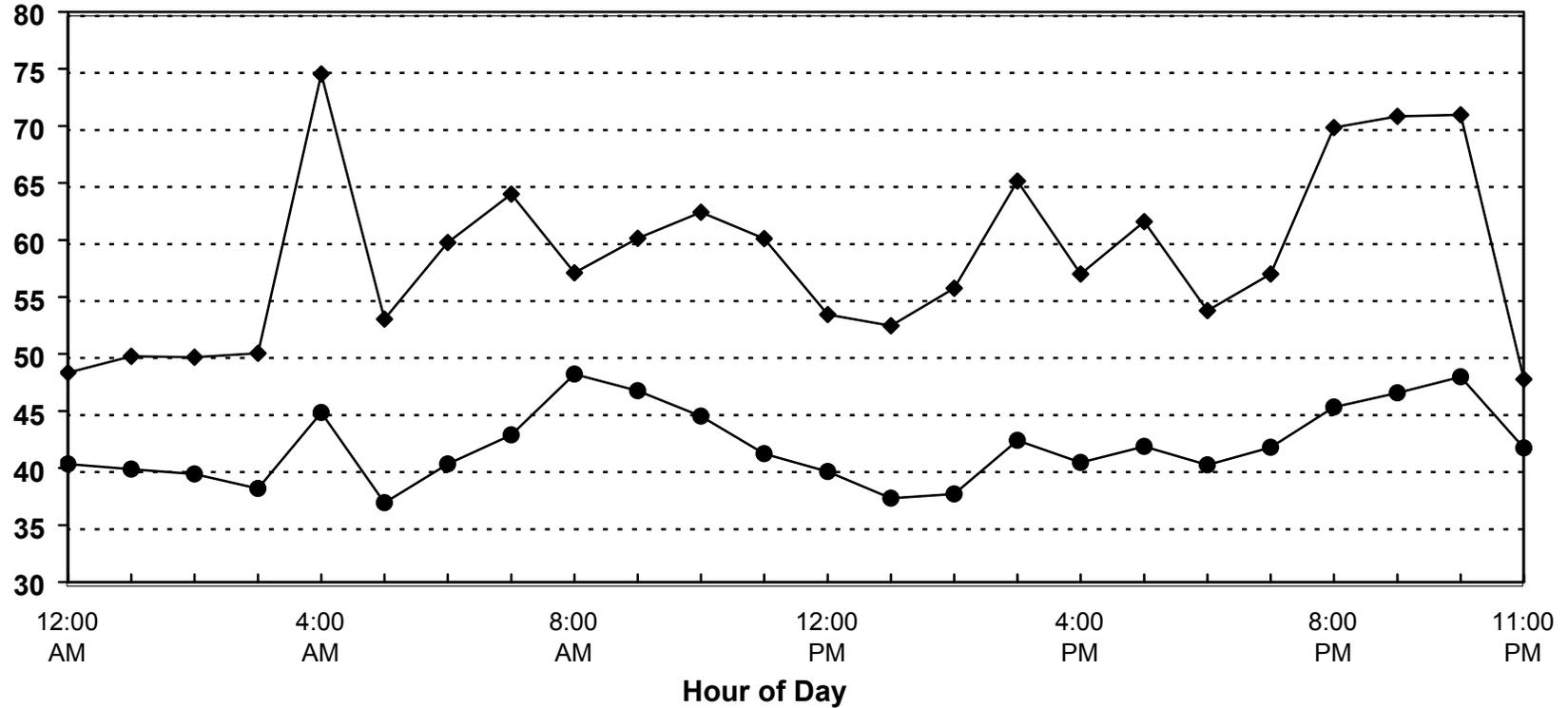


FIGURE 7-4

COMMUNITY NOISE SURVEY SITES

Sound Level, dBA



Ldn: 49 dB

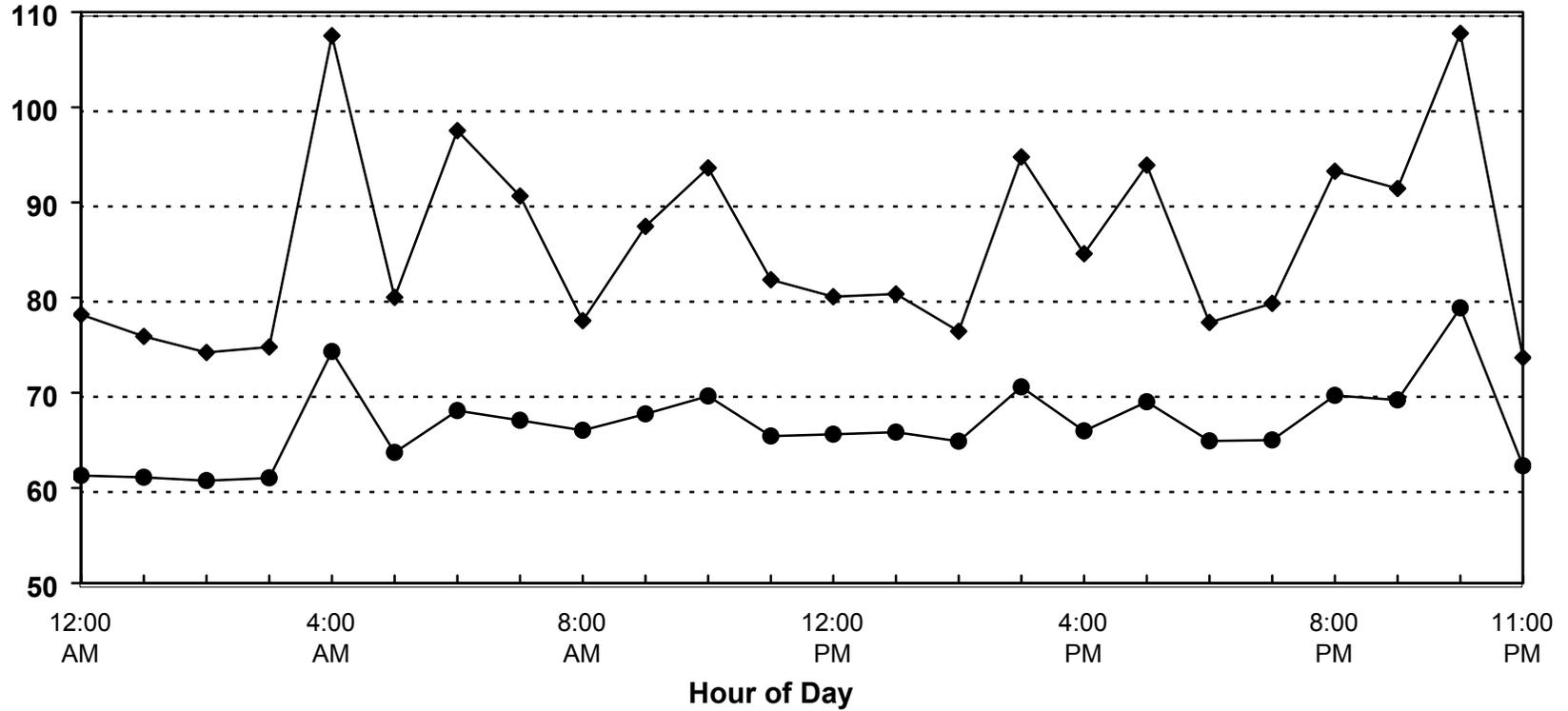
Source: Bollard, 2006

7-19

FIGURE 7-5
24HR CONTINUOUS NOISE MONITORING
AT 808 MORMON WAY
FRIDAY, AUGUST 11, 2006

PMC

Sound Level, dBA



Ldn: 77 dB

—●— Average (Leq) —◆— Maximum (Lmax)

Source: Bollard, 2006

7-20

FIGURE 7-6
24 HR CONTINUOUS NOISE MONITORING
AT I-5 AND UNION PACIFIC RAILROAD, NORTH OF SR 89
FRIDAY, AUGUST 11, 2006



from hearing loss, activity interference, sleep disturbance and annoyance. EPA notes, however, that this level is not a regulatory goal, but is a level defined by a negotiated scientific consensus without concern for economic and technological feasibility or the needs and desires of any particular community. EPA and other federal agencies have suggested land use compatibility guidelines indicating that residential noise exposures of 55 to 65 dB Ldn are acceptable.

The U.S. Environmental Protection Agency has also prepared a “Model Community Noise Control Ordinance”, using Leq as the means of defining allowable residential noise level limits. The EPA model contains no specific recommendations for local noise level standards, but reports a range of Leq values as adopted by various local jurisdictions. The mean daytime residential noise standard reported by the EPA is 57 dBA (Leq), and the mean nighttime residential noise standard is 52 dBA (Leq).

Other state laws and regulations regarding noise control are directed towards aircraft, motor vehicles and noise in general. The California Vehicle Code sets noise emission standards for new vehicles including autos, trucks, motorcycles and off-road vehicles. Performance standards also apply to all vehicles operated on public streets and roadways. Section 216 of the California Streets and Highways Code regulates traffic noise received at schools near freeways.

2. General Plan Objectives and Programs: Noise

Goal NZ-1: Protect City residents from the harmful and annoying effects of exposure to excessive noise.

Policy NZ-1.1: Enforce standards for noise exposure from proposed and existing non-transportation noise sources. The General Plan Noise Standards for the City of Mt. Shasta for new uses affected by non-transportation noise sources are shown on Table 7-5. The standards of Table 7-5 shall be applied to both new noise-sensitive land uses and new noise-generating uses, with the responsibility for noise attenuation placed on the new use. For example, if a developer proposes construction of a new apartment complex near an existing industry, the developer would be responsible for including appropriate noise attenuation in the project design to achieve compliance with the standards of Table 7-5 at the new apartments. Conversely, if a new industry was proposed near an existing apartment complex, the industry would be responsible for including appropriate noise attenuation in the project design to achieve compliance with the Table 7-5 standards at the existing apartment building.

Implementation Measures:

NZ-1.1(a): Enact a noise control ordinance.

NZ-1.1(b): When noise levels due to non-transportation noise sources exceed acceptable noise level standards as indicated in Table 7-5, noise mitigation measures shall be required to comply with the standards.

NZ-1.1(c): Noise created by new proposed non-transportation noise sources shall not exceed the noise level standards indicated in Table 7-5 at the property line.

Policy NZ-1.2: Review impacts more closely when a project is potentially a high noise generator.

Implementation Measure:

NZ-1.2(a): Proposed non-residential land uses that are likely to produce noise levels exceeding the acceptable noise standards at existing or planned noise-sensitive uses shall require an acoustical analysis as part of the application review process to ensure that methods of achieving noise standards are included in project design.

Policy NZ-1.3: Emergency service and agriculture uses shall be allowed to continue or be initiated even if noise standards are exceeded.

Implementation Measure:

NZ-1.3(a): Noise sources associated with agricultural operations (on lands zoned for such uses) or emergency equipment are exempt from noise standards.

Policy NZ-1.4: Enforce General Plan noise standards for noise exposure from proposed and existing transportation noise sources. The General Plan Noise Standards for the City of Mt. Shasta for new uses affected by transportation noise sources are shown on Table 7-6. Where the noise level standards of Table 7-6 are expected to be exceeded at proposed new uses that would be affected by traffic or railroad noise, appropriate noise mitigation measures shall be included in the project design to reduce projected noise levels to comply with the standards of Table 7-6.

Implementation Measures:

NZ-1.4(a): Evaluate transportation noise sources of proposed projects according to the noise level standards shown in Table 7-6.

NZ-1.4(b): Using acceptable acoustical engineering and construction standards, incorporate design features to reduce traffic noise to achieve the noise standards shown in Table 7-6.

NZ-1.4(c): Noise created by new transportation noise sources, including roadway improvements, shall be mitigated to comply with the noise level standards shown in Table 7-6.

NZ-1.4(d): Actively enforce the California Vehicle Code sections relating to adequate vehicle mufflers and modified exhaust systems.

Policy NZ-1.5: Actively work to reduce noise generated by City equipment.

Implementation Measure:

NZ-1.5(a): When purchasing new equipment, the City shall acquire equipment and vehicles that comply with noise level performance standards based upon the best feasible noise reduction technology.

Policy NZ-1.6: The City Development Code shall include procedures to ensure that required noise review and mitigation measures are implemented in the project review and building permit processes.

Implementation Measure:

NZ-1.6(a): Proposed noise-sensitive land uses in areas exposed to existing or projected exterior noise levels, which exceed acceptable noise standards, shall require an acoustical analysis as part of the environmental review process so that noise mitigation may be included in the project design. When an acoustical analysis is required by the City to assess compliance with the City's Noise Element standards, the analysis shall follow the guidelines of Table 7-7.

Policy NZ-1.7: Noise attenuation measures required to achieve acceptable noise standards shall emphasize site planning and project design.

Implementation Measures:

NZ-1.7(a): Use creative concepts and accepted acoustical engineering standards to achieve acceptable noise standards.

NZ-1.7(b): The use of noise barriers, such as soundwalls, shall be considered a supplemental means of achieving the noise standards after all practical design-related noise mitigation measures have been integrated into the project. When soundwalls and noise barriers are proposed, the City will consider the visual impacts in addition to their effectiveness in attenuating noise.

Policy NZ-1.8: Monitor compliance with noise standards.

Implementation Measures:

NZ-1.8(a): Develop and employ procedures to monitor compliance with the standards of the Noise Element after completion of projects where noise mitigation measures were required.

NZ-1.8(b): Building design shall be reviewed to enforce the State Noise Insulation Standards (California Code of Regulations, Title 24) and Chapter 35 of the Uniform Building Code (UBC).

NZ-1.8(c): Noise associated with construction activity between the hours of 7 a.m. and 5 p.m. shall be exempt from the standards cited in Table 7-5. Construction activity outside of this period may exceed the cited standards if an exemption is granted by the City to cover special circumstances.

**Table 7-5
Noise Standards for New Uses Affected by Non-Transportation Noise**

<i>New Land Use</i>	<i>Outdoor Activity Area - Leq</i>		<i>Interior – Leq Day & Night</i>	<i>Notes</i>
	<i>Daytime</i>	<i>Nighttime</i>		
All Residential	50	45	35	1, 2, 7
Transient Lodging	55	---	40	3
Hospitals & Nursing Homes	50	45	35	4
Theaters & Auditoriums	---	---	35	
Churches, Meeting Halls, Schools, Libraries, etc.	55	---	40	
Office Buildings	55	---	45	5, 6
Commercial Buildings	55	---	45	5, 6
Playgrounds, Parks, etc.	65	65	---	6
Industry	65	65	50	5

Notes:

1. Outdoor activity areas for single-family residential uses are defined as back yards. For large parcels or residences with no clearly defined outdoor activity area, the standard shall be applicable within a 100 foot radius of the residence.

2. For multi-family residential uses, the exterior noise level standard shall be applied at the common outdoor recreation area, such as at pools, play areas or tennis courts.

3. Outdoor activity areas of transient lodging facilities include swimming pool and picnic areas, and are not commonly used during nighttime hours.

4. Hospitals are often noise-generating uses. The exterior noise level standards for hospitals are applicable only at clearly identified areas designated for outdoor relaxation by either hospital staff or patients.

5. Only the exterior spaces of these uses designated for employee or customer relaxation have any degree of sensitivity to noise.

6. The outdoor activity areas of office, commercial and park uses are not typically utilized during nighttime hours.

7. It may not be possible to achieve compliance with this standard at residential uses located immediately adjacent to loading dock areas of commercial uses while trucks are unloading. The daytime and nighttime noise level standards applicable to loading docks shall be 55 and 50 dB Leq, respectively.

General: The Table 5 standards shall be reduced by 5 dB for sounds consisting primarily of speech or music, and for recurring impulsive sounds. If the existing ambient noise level exceeds the standards of Table 7-5, then the noise level standards shall be increased at 5 dB increments to encompass the ambient.

**Table 7-6
Noise Standards for New Uses Affected by Traffic and Railroad Noise**

<i>New Land Use</i>	<i>Outdoor Activity Area - Ldn</i>	<i>Interior - Ldn/Peak Hour Leq¹</i>	<i>Notes</i>
All Residential	60-65	45	2, 3, 4
Transient Lodging	65	45	5
Hospitals & Nursing Homes	60	45	6
Theaters & Auditoriums	---	35	
Churches, Meeting Halls, Schools, Libraries, etc.	60	40	
Office Buildings	65	45	7
Commercial Buildings	65	50	7
Playgrounds, Parks, etc.	70	---	
Industry	65	50	7

Notes:

1. For traffic noise within the City, Ldn and peak-hour Leq values are estimated to be approximately similar. Interior noise level standards are applied within noise-sensitive areas of the various land uses, with windows and doors in the closed positions.
2. Outdoor activity areas for single-family residential uses are defined as back yards. For large parcels or residences with no clearly defined outdoor activity area, the standard shall be applicable within a 100-foot radius of the residence.
3. For multi-family residential uses, the exterior noise level standard shall be applied at the common outdoor recreation area, such as at pools, play areas or tennis courts.
4. Where it is not possible to reduce noise in outdoor activity areas to 60 dB Ldn or less using a practical application of the best-available noise reduction measures, an exterior noise level of up to 65 dB Ldn may be allowed provided that available exterior noise level reduction measures have been implemented and interior noise levels are in compliance with this table.
5. Outdoor activity areas of transient lodging facilities include swimming pool and picnic areas.
6. Hospitals are often noise-generating uses. The exterior noise level standards for hospitals are applicable only at clearly identified areas designated for outdoor relaxation by either hospital staff or patients.
7. Only the exterior spaces of these uses designated for employee or customer relaxation have any degree of sensitivity to noise.

Table 7-7
Acoustical Analysis Standards

An acoustical analysis prepared pursuant to this Noise Element shall:

- A. Be the responsibility of the applicant.
 - B. Be prepared by qualified persons experienced in the fields of environmental noise assessment and architectural acoustics.
 - C. Include representative noise level measurements with sufficient sampling periods and locations to adequately describe local conditions and the predominant noise sources.
 - D. Estimate existing and projected noise levels in terms of the City's standards and compare those levels to the adopted policies of the Noise Element.
 - E. Recommend appropriate mitigation to achieve compliance with the adopted policies and standards of the Noise Element. Where the noise source in question consists of intermittent single events, the report must address the effects of maximum noise levels in sleeping rooms in terms of possible sleep disturbance.
 - F. Estimate interior and exterior noise exposure after the prescribed mitigation measures have been implemented.
 - G. Describe a post-project assessment program that could be used to evaluate the effectiveness of the proposed mitigation measures.
-

3. Noise Mitigation Options

In considering proposals for projects that involve the generation of excessive noise, or the exposure of noise-sensitive uses in areas subject to high noise levels, mitigation measures are often needed to achieve desirable noise level standards. Noise problems can usually be considered as being composed of three basic elements: the noise source, a transmission path, and a receiver. The appropriate acoustical treatment for a given project should consider the nature of the noise source and the sensitivity of the receiver. The problem should be defined in terms of appropriate criteria (Ldn, Leq, or Lmax), the location of a sensitive receiver (inside or outside), and when the problem occurs (daytime or nighttime). Noise control techniques can then be selected to provide an acceptable noise environment for the receiving property while remaining consistent with local aesthetic standards and practical structural and economic

limits. Fundamental noise control techniques and mitigation options are discussed below:

Use of Setbacks

Noise exposure may be reduced by increasing the distance between the noise source and receiving use. Setback areas can take the form of open space, frontage roads, recreational areas, storage yards, etc. The available noise attenuation from this technique is limited by the characteristics of the noise source, but is generally about 4 to 6 dB per doubling of distance from the source.

Use of Barriers

Shielding by barriers can be obtained by placing walls, berms or other structures, such as buildings, between the noise source and the receiver. The effectiveness of a barrier depends upon blocking line-of-sight between the source and receiver, and is improved with increasing the distance the sound must travel to pass over the barrier as compared to a straight line from source to receiver. The difference between the distance over a barrier and a straight line between source and receiver is called the "path length difference," and is the basis for calculating barrier noise reduction.

Barrier effectiveness depends upon the relative heights of the source, barrier and receiver. In general, barriers are most effective when placed close to either the receiver or the source. An intermediate barrier location yields a smaller path-length-difference for a given increase in barrier height than does a location closer to either source or receiver.

For maximum effectiveness, barriers must be continuous and relatively airtight along their length and height. To ensure that sound transmission through the barrier is insignificant, barrier mass should be about 4 lbs./square foot, although a lesser mass may be acceptable if the barrier material provides sufficient transmission loss. Satisfaction of the above criteria requires substantial and well-fitted barrier materials, placed to intercept line of sight to all significant noise sources. Earth, in the form of berms or the face of a depressed area, is also an effective barrier material.

The attenuation provided by a barrier depends upon the frequency content of the source. Generally, higher frequencies are attenuated (reduced) more readily than lower frequencies. This results because a given barrier height is relatively large compared to the shorter wavelengths of high frequency sounds, while relatively small compared to the longer wavelengths of the frequency sounds. The effective center frequency for traffic noise is usually considered to be 550 Hz. Railroad engines, cars and horns emit noise with differing frequency content, so the effectiveness of a barrier will vary for each of these sources. Frequency analyses are necessary to properly calculate barrier effectiveness for noise from sources other than highway traffic.

There are practical limits to the noise reduction provided by barriers. For highway traffic noise, a 5 to 10 dB noise reduction may often be reasonably attained. A 15 dB noise reduction is sometimes possible, but a 20 dB noise reduction is extremely difficult to achieve. Barriers usually are provided in the form of walls, berms, or berm/wall combinations. The use of an earth berm in lieu of a solid wall may provide up to 3 dB additional attenuation over that attained by a solid wall alone, due to the absorption provided by the earth. Berm/wall combinations offer slightly better acoustical performance than solid walls, and are often preferred for aesthetic reasons.

Site Design

Buildings can be placed on a project site to shield other structures or areas, to remove them from noise-impacted areas, and to prevent an increase in noise level caused by reflections. The use of one building to shield another can significantly reduce overall project noise control costs, particularly if the shielding structure is insensitive to noise. As an example, carports or garages can be used to form or complement a barrier shielding adjacent dwellings or an outdoor activity area. Similarly, one residential unit can be placed to shield another so that noise reduction measures are needed for only the building closest to the noise source. Placement of outdoor activity areas within the shielded portion of a building complex, such as a central courtyard, can be an effective method of providing a quiet retreat in an otherwise noisy environment. Patios or balconies should be placed on the side of a building opposite the noise source, and "wing walls" can be added to buildings or patios to help shield sensitive uses.

Another option in site design is the placement of relatively insensitive land uses, such as commercial or storage areas, between the noise source and a more sensitive portion of the project. Examples include development of commercial buildings along a busy arterial to block noise affecting a residential area, or providing recreational vehicle storage or travel trailer parking along the noise-impacted edge of a mobile home park. If existing topography or development adjacent to the project site provides some shielding, as in the case of an existing berm, knoll or building, sensitive structures or activity areas may be placed behind those features to reduce noise control costs.

Site design should also guard against the creation of reflecting surfaces that may increase onsite noise levels. For example, two buildings placed at an angle facing a noise source may cause noise levels within that angle to increase by up to 3 dB. The open end of "U"-shaped buildings should point away from noise sources for the same reason. Landscaping walls or noise barriers located within a development may inadvertently reflect noise back to a noise-sensitive area unless carefully located. Avoidance of these problems while attaining an aesthetic site design requires close coordination between local agencies, the project engineer and architect, and the noise consultant.

Building Design

When structures have been located to provide maximum noise reduction by barriers or site design, noise reduction measures may still be required to achieve an acceptable interior noise environment. The cost of such measures may be reduced by placement of interior dwelling unit features. For example, bedrooms, living rooms, family rooms and other noise-sensitive portions of a dwelling can be located on the side of the unit farthest from the noise source.

Bathrooms, closets, stairwells and food preparation areas are relatively insensitive to exterior noise sources, and can be placed on the noisy side of a unit. When such techniques are employed, noise reduction requirements for the building facade can be significantly reduced, although the architect must take care to isolate the noise impacted areas by the use of partitions or doors. In some cases, external building facades can influence reflected noise levels affecting adjacent buildings. This is primarily a problem where high-rise buildings are proposed. The effect is most evident in urban areas where an "urban canyon" may be created. Bell-shaped or irregular building facades and attention to the orientation of the building can reduce this effect.

Noise Reduction by Building Facades

When interior noise levels are of concern in a noisy environment, noise reduction may be obtained through acoustical design of building facades. Standard residential construction practices provide 10-15 dB noise reduction for building facades with open windows, and approximately 25 dB noise reduction when windows are closed. Thus a 25 dB exterior-to-interior noise reduction can be obtained by the requirement that building design include adequate ventilation systems. This allows windows on a noise-impacted facade to remain closed under any weather condition.

Where greater noise reduction is required, acoustical treatment of the building facade is necessary. Reduction of relative window area is the most effective control technique, followed by providing acoustical glazing (thicker glass or increased air space between panes) in low air infiltration rate frames, use of fixed (non-movable) acoustical glazing or the elimination of windows. Exterior roll-up shades over windows may also be used to reduce noise.

Noise transmitted through walls can be reduced by increasing wall mass (using stucco or brick in lieu of wood siding), isolating wall members by the use of double or staggered stud walls, or mounting interior walls on resilient channels. Noise control for exterior doorways is provided by reducing door area, using solid-core doors, and by acoustically sealing door perimeters with suitable gaskets. Roof treatments may include the use of plywood sheathing under roofing materials.

Whichever noise control techniques are employed, it is essential that attention be given to installation of weather stripping and caulking of joints. Openings for attic or subfloor ventilation may also require acoustical treatment.

Design of acoustical treatment for building facades should be based upon analysis of the level and frequency content of the noise source. The transmission loss of each building component should be defined and the composite noise reduction for the complete facade calculated to account for absorption in the receiving room. A one-third octave band analysis is a definitive method of calculating the A-weighted noise reduction of a facade.

A common measure of transmission loss is the "Sound Transmission Class" (STC). STC ratings are not directly comparable to A-weighted noise reduction and must be corrected for the spectral content of the noise source. Requirements for transmission loss analyses are outlined by Title 24 of the California Code of Regulations.

Use of Vegetation

Trees and other vegetation are often thought to provide significant noise attenuation. However, approximately 100 feet of dense foliage (so that no visual path extends through the foliage) is required to achieve even a 5 dB attenuation of traffic noise. Thus, the use of vegetation as a noise barrier should not be considered a practical method of noise control unless large tracts of dense foliage are part of the existing landscape.

Vegetation can be used to acoustically "soften" intervening ground between a noise source and receiver, increasing ground absorption of sound and thus increasing the attenuation of sound with distance. Planting of trees and shrubs is also of aesthetic and psychological value and may reduce adverse public reaction to a noise source by removing the source from view, even though noise levels will be largely unaffected. It should be noted, however, that trees planted on the top of a noise control berm can actually slightly degrade the acoustical performance of the barrier. This effect can occur when high frequency sounds are diffracted (bent) by foliage and directed downward over a barrier.

In summary, the effects of vegetation upon noise transmission are minor and are primarily limited to increased absorption of high frequency sounds and to providing aesthetic benefits that may reduce adverse public reaction to the noise source.

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CHAPTER 3

Preparing and Amending the General Plan

All statutory references are to the California Government Code unless otherwise noted.

A local government often faces one or more of the following tasks: (1) amending its general plan, (2) preparing or revising one or more elements, (3) completely revising its general plan, or, in the case of a newly incorporated city, (4) preparing an entire general plan for the first time. In this chapter, we will primarily focus on publicly initiated general plan amendments—those described by items (2), (3), and (4) above. The most common sort of amendment, that initiated for a specific private development project, usually affects a limited area and does not require the type of detailed consideration afforded publicly initiated changes. However, privately initiated amendments are discussed briefly at the end of the chapter.

The first part of this chapter describes the development of a general plan work program. Beginning with the second section, we outline a strategic approach to the process of preparing or revising a general plan. This is a suggested approach and is not mandatory. The process will vary as circumstances dictate.

THE WORK PROGRAM

Developing the work program should be one of the first tasks after deciding to prepare or amend a general plan. The program should define the responsibilities of each department and/or individual, the scope and direction of the work to be performed, the funding mechanisms, the roles of any consultants, community participation, and budget. The following paragraphs detail a number of things to consider when putting together a general plan work program.

Early Policy Guidance

Receiving early policy direction from the legislative body is important in defining the scope of the work. The guidance may be as simple as a single purpose statement or as complex as a set of visions of how the planning area should be developed or how various population growth issues and public facility demands will be resolved.

The role of the legislative body in the ongoing development of the draft general plan will be different with each jurisdiction. Some may delegate the day-to-day role to a committee or a planning commission, while

others will stay directly involved. In either case, receiving clear early guidance and support is important to a successful general plan process.

Consultants

Due to the complexity of issues and demands upon local agency planning staff, most new general plans or comprehensive revisions will involve the use of consultants. A consultant team may be hired to do the lion's share of drafting the general plan, or individual consultants may be hired to supplement planning staff in specific areas such as transportation, noise, biology, geology, environmental review, and public participation. Consultants may also be used to prepare the CEQA document or carry out the community participation program.

Planning agency staff should be involved in the general plan process as much as time and budget considerations allow. Plans that are prepared entirely by consultants may be more difficult to implement. Having planning agency staff involved in the general plan provides a sense of ownership in the plan, creates familiarity with the details of the plan, which make implementation easier, and may build the capacity of the planning agency. When consultants and planning agency staff are both involved in a general plan process, there may be a tendency to have agency staff involved more with the background data and less with analysis and policy alternatives. This is understandable, given that it is often more cost effective to have staff compile background information. However, it is desirable to have staff directly involved with analysis and policy recommendations for the reasons discussed above.

The decision whether or not to hire a consultant will depend upon considerations such as the scope of the work to be completed, the available staff time, and the cost to the local agency in staff hours and/or consultant contracts. Talking to other jurisdictions that have recently gone through the process can offer insight into the role that consultants played and provide ideas for oversight and quality control. The American Planning Association's publication *Selecting and Retaining a Planning Consultant* (1993) is a useful reference.

The first step in selecting a consultant should be to send to prospective candidate firms a request for qualifications (RFQ) and a description of the consultants' expected role. The RFQ will help narrow the search for qualified consultants. After evaluating the responses, the agency should send a request for proposal (RFP) to the three to five firms that seem to be the best match. Responding to an RFP is costly for consultants, so RFPs should only be sent to those firms the agency would consider hiring. The firms with the top responses to the RFP can be interviewed to select the one best suited to the agency's needs, work program, and budget.

Adoption Deadlines

A newly incorporated city has 30 months after incorporation to prepare and adopt a complete general plan (§65360). During that time, the city is not subject to the requirements that a general plan be adopted or that its decisions be consistent with the general plan. However, the jurisdiction must make the following findings for each decision that would otherwise be required to be consistent with the general plan (§65360(b)):

- ◆ There is a reasonable probability that the land use or action proposed will be consistent with the general plan proposal being considered or studied or that will be studied within a reasonable time.
- ◆ There is little or no probability of substantial detriment to or interference with the future adopted general plan if the proposed use or action is ultimately inconsistent with the plan.
- ◆ The proposed use or action complies with all other applicable requirements of state law and local ordinances.

The director of the Governor's Office of Planning and Research (OPR) has the authority to grant a time extension of up to two years for the preparation and adoption of the general plan. The city or county must make certain findings when requesting an extension and the OPR director may place conditions upon the extension of time.

Each city and county is required by law to revise its housing element at least every five years (§65588). Deadlines for housing element revisions are defined in statute. To find the housing element deadline for a particular jurisdiction, go to the Department of Housing and Community Development's website at www.hcd.ca.gov.

OPR is required to notify a city or county when its general plan has not been revised within eight years. If a city or county has not revised its general plan within

ten years, OPR must also notify the Attorney General. This notification does not necessarily mean the plan is out of date, but may serve as a reminder to comprehensively review the general plan if the city or county has not already done so.

In order to help keep the planning process on track, the work program should establish realistic milestones for completion of its various stages (i.e., data gathering, workshops, draft plan completion, draft EIR completion, etc.). The work program should also set a projected completion date for the new plan or update. Most jurisdictions find that approximately two years is sufficient time to complete a new plan.

Environmental Review

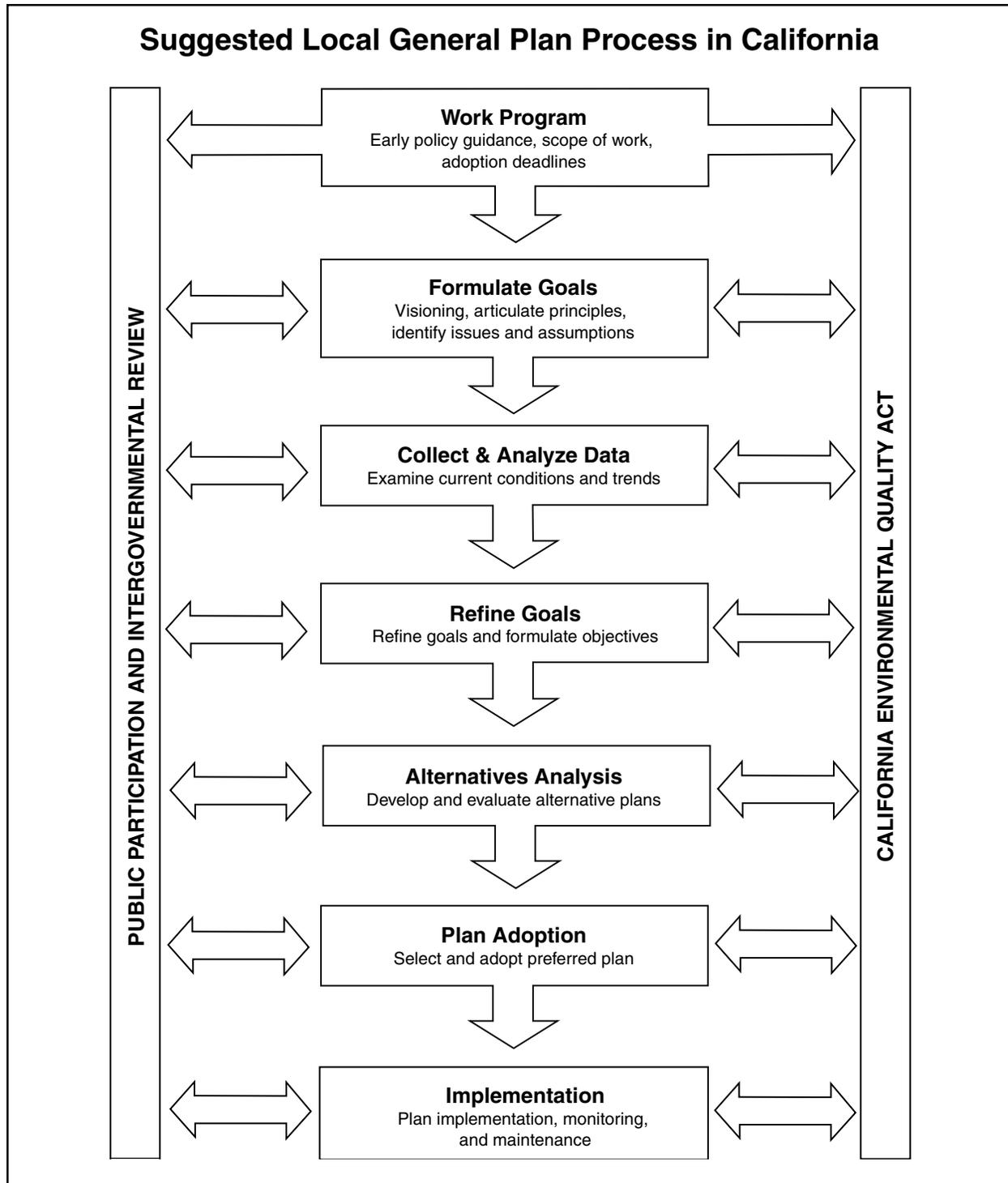
Environmental review is fundamental to the planning process, so undertaking a concurrent CEQA document is usually more efficient than waiting until the plan is ready for adoption to begin the EIR. The work program should schedule sufficient time for the consultation and review periods mandated under CEQA. In addition, the program should block out sufficient time to respond to comments on the EIR. Chapter 7 discusses CEQA's requirements in detail.

Public Participation

Public participation plays an important role in formulating a general plan; opportunities for participation should be reflected in the work program. State law specifies that "[d]uring the preparation or amendment of the general plan, the planning agency shall provide opportunities for the involvement of citizens, public agencies, public utility companies, and civic, education, and other community groups, through public hearings and any other means the city or county deems appropriate" (§65351). When drafting the housing element, the law requires local governments to "make a diligent effort to achieve public participation of all economic segments of the community" (§65583). Public participation is discussed in detail in Chapter 8.

Funding

The work program will also include a budget. The cost of preparing or revising the general plan will vary tremendously with the scope of the program and the jurisdiction's circumstances. A new plan or a comprehensive revision will be much more costly than a general plan amendment. On average, county general plans are more costly than city general plans. A recent survey by OPR indicated that the average cost of a general plan update was \$845,000 for counties



and \$255,000 for cities (*The 2003 California Planners' Book of Lists*, Governor's Office of Planning and Research).

For most jurisdictions, preparing and maintaining the general plan is a general fund expense. The availability of general purpose planning grants is limited. There are, however, federal and state funds for par-

ticular planning issues, such as housing, transportation, and habitat. These planning processes can be incorporated into the general plan process in order to leverage resources.

The cost of a general plan amendment associated with a particular development is typically passed on to the developer. Some jurisdictions attempt to recoup the

costs of comprehensive updates in a similar manner. In 2002, the Legislature changed state law to allow development fees to include “costs reasonably necessary to prepare and revise the plans and policies that a local agency is required to adopt before it can make any necessary findings and determinations” (§66014). This change makes it clear that an update of the general plan may be a recoverable expense. Exactions and development fees are discussed briefly in Chapter 9.

FORMULATE GOALS

After the work program has been established, the first step in a general plan process is to formulate some initial goals. These goals, which are refined throughout the process, may come from the legislative body or through a public visioning process. The initial general plan goals may be in reaction to some other event, such as identification of seismic or flooding hazards, infrastructure limitations, or the need to accommodate regional housing needs. They may be internally driven, such as a desire to alter the jobs/housing balance within the community or revitalize certain neighborhoods.

At this point, planners may wish to identify the principles that will guide the development of the general plan. As discussed in Chapter 1, these principles are not always listed in the final product, but they help to guide the development of the plan. When jurisdictions do choose to enumerate guiding principles in the plan, they are often included in the introduction.

Community Vision

A number of jurisdictions have begun their general plan process by defining a vision of the community-preferred future. This vision, a statement of general goals to be achieved by the plan, provides the foundation for more specific objectives and policies. The visioning process also has the advantage of identifying issues important to the community and providing early direction to data collection. Jurisdictions that choose to begin with visioning should structure the process so that the resulting product will be useful and the process will be completed in a timely manner.

Evaluating Issues: The “Shoe Fits” Doctrine

Issues define the general scope of the work planners must undertake and the course of action they must follow in the planning process. Identify important local and regional issues that should be addressed in the general plan, as well as existing constraints and opportunities. These form the context within which the general plan will be prepared or updated.

While state law establishes the basic contents of the general plan, the full list of issues contained in §65302 and other statutes are not intended to apply in every jurisdiction. Section §65301(c) provides that each state-mandated element need address only those issues that are relevant to the city’s or county’s planning area. This is commonly referred to as the “shoe-fits” doctrine (from the old saying, “if the shoe fits, wear it”). For example, an urbanized city need not discuss prime agricultural soils. Open-space issues in a county where agricultural land and wildlife habitat are important will be very different than those in an urbanized city, which may have parks as its only open space. The exception is the housing element, which must meet all the specific requirements of §65580, et seq.

Several points should be kept in mind when evaluating issues. The elimination of a state-mandated issue from further consideration should be based on a reasonable assessment of the issue’s relevance. For example, wildland fire hazard may be eliminated as irrelevant if the local government has examined the available information and consulted local and state fire agencies that are likely to have information and found no hazard to exist. When an issue is found to be irrelevant, the basis for this judgment may be briefly noted in the general plan.

An issue that seems irrelevant in the short term but that may be important in the long term should be addressed in the general plan, even if only conceptually. This might include, for example, a major flood control system that is in a preliminary planning stage.

When new information becomes available indicating that a previously excluded issue is now relevant, the general plan must be revised to address the issue. The discovery of a previously unknown earthquake fault is an example. Another example is the increased potential fire hazard that follows growth in foothills and mountainous areas.

Whether the jurisdiction is a city or county, rural or urban, mature or growing will color its analysis and define the issues that are of greatest importance. As discussed later, the general plan should focus on those issues that are relevant to the planning area.

Traditionally, counties have been concerned with the management of natural resources. Counties also have an important role in coordinating the plans and programs of cities and special districts and in directing urban development to areas with available services. The county plan should also provide information for city planning through studies of areawide concerns such as population and economic trends, seismic hazards, wildfire hazards, agricultural

lands, natural resources, and environmental conditions. Cities control land use, provide urban services, and promote more localized community interests. Cities should operate within the context of the county, neighboring cities, and the region.

Differences also exist between rural and urban jurisdictions. The economies of rural jurisdictions generally rest on the use and development of natural resources, while the economies of urban jurisdictions normally revolve around industry, commerce, and services. Rural jurisdictions tend to deal extensively with the federal government on matters relating to federal lands, while urban jurisdictions tend to work closely with regional planning agencies, particularly concerning air and water quality programs.

Assumptions

In preparing a general plan, a city or county will make certain assumptions about its future. For example, a jurisdiction with winter ski resorts might assume that tourism will continue to be important to its economy. Urbanized areas might assume continued population growth. Assumptions such as these will influence a local government's selection of its planning policies and its preferred general plan alternative.

To ensure that the assumptions list will be comprehensive and representative of the community, cities and counties should promote community participation in the enumeration process. Naturally, at this stage, the list will be preliminary. It may be refined at later stages as general plan background data is collected and analyzed.

Assumptions are essential to the formulation of objectives, policies, and plan proposals. They need not be included in the final general plan, although they might be included in an appendix in order to document the basis for the plan.

COLLECT AND ANALYZE DATA

The next step is to examine existing physical conditions, regulatory requirements, and plans, including plans of other agencies. This step is sometimes begun concurrently with or in anticipation of goal formulation.

Data Collection

The general plan must be based on solid data if it is to serve as the primary source of community planning policy. Identifying issues, constraints, and opportunities and defining a community vision helps to set the direction for studies and establishes the range of infor-

mation and the level of detail that will be needed to complete the plan. Collecting and analyzing data can be expensive and the capacity of any government agency to process and use information is limited. Jurisdictions must consider their general objectives and use their best judgment when determining the types and amount of information they need for policymaking.

Background information for all of the elements should be referenced or summarized in the general plan. Technical appendices are a good place in the adopted general plan for this information. Placing background information in an appendix enables users of the plan to more easily find the plan's policies when they need them.

Information collection and analysis is important throughout the planning process. For example, additional information regarding the state of the community may be needed during the fine-tuning of draft policies by the city council.

After the plan has been adopted, evaluating its implementation and making course corrections relies upon the local agency's ability to continue collecting and analyzing information. The general plan is a long-term document. It must be regularly refreshed with new data as it becomes available in order to ensure that its long-term outlook does not become outdated. This ongoing revision and refreshment is particularly important where a master EIR is certified for the plan as described in Chapter 7.

Existing Land Uses

When preparing or revising a general plan, planners need an accurate picture of the existing land uses in the planning area. There are a number of sources of land use information:

- ◆ Subdivision maps and assessor's maps provide information on existing lot sizes and land uses, both of which can be indicators of land use intensity.
- ◆ Field surveys are useful both for identifying generalized land use distributions and for cataloging uses parcel by parcel.
- ◆ Low-altitude aerial photography provides an overhead view that can be translated to land use categories.
- ◆ High-altitude photography and satellite imagery can identify land uses at a broader scale. Satellite imagery, including LANDSAT and infrared photos, is available from the U.S. Geological Survey's Western Geographic Science Center (<http://wgsc.wr.usgs.gov>).

ments (see Chapter 10).

- ◆ Transfer of development rights.
- ◆ Open space in planned unit developments.
- ◆ Action programs for open space within urbanized areas:
 - Connect existing open spaces to the population with the greatest need for these open spaces. This can be facilitated by:
 1. Extending the hours of existing recreational facilities by lighting them at night.
 2. Creating a “vacant lot” task force to examine ways to allow publicly owned vacant parcels to convert to interim passive use parks and community gardens.
 3. Expanding parks and schools and assisting schools to convert asphalt to turf.
 4. Funding and expanding various types of parks and recreational programs.
 - Impose impact fees on new development where justified:
 1. Include open-space acquisition in capital improvement programs.
 2. Employ land use controls to impose reasonable and proportional impact fees to acquire open space.

Technical Assistance

The following state agencies may provide information or assistance for the preparation of the open space element:

- ◆ Air Resources Board
- ◆ Coastal Commission
- ◆ Coastal Conservancy
- ◆ Department of Boating and Waterways
- ◆ Department of Conservation
- ◆ Department of Fish and Game
- ◆ Department of Forestry and Fire Protection
- ◆ Department of Parks and Recreation
- ◆ Department of Water Resources
- ◆ Resources Agency, including the Legacy Project
- ◆ Seismic Safety Commission
- ◆ Wildlife Conservation Board

NOISE ELEMENT

The purpose of the noise element is to limit the exposure of the community to excessive noise levels. In 1976, the Department of Health Services issued the first

Noise Element Guidelines pursuant to Health and Safety Code §46050.1, followed shortly thereafter by a model noise ordinance. In 1984, revisions to the general plan statutes made extensive changes to the noise element requirements (Chapter 1009, Statutes of 1984). These revisions shortened the list of issues required by statute and gave flexibility to local governments in analyzing the issues and subjects pertinent to the local planning area.

Local governments must “analyze and quantify” noise levels and the extent of noise exposure through actual measurement or the use of noise modeling. Technical data relating to mobile and point sources must be collected and synthesized into a set of noise control policies and programs that “minimizes the exposure of community residents to excessive noise.” Noise level contours must be mapped and the conclusions of the element used as a basis for land use decisions. The element must include implementation measures and possible solutions to existing and foreseeable noise problems. Furthermore, the policies and standards must be sufficient to serve as a guideline for compliance with sound transmission control requirements. The noise element directly correlates to the land use, circulation, and housing elements.

The noise element must be used to guide decisions concerning land use and the location of new roads and transit facilities since these are common sources of excessive noise levels. The noise levels from existing land uses, including mining, agricultural, and industrial activities, must be closely analyzed to ensure compatibility, especially where residential and other sensitive receptors have encroached into areas previously occupied by these uses.

Caltrans administers several freeway noise control programs. In general, these are applied to residential and school uses that preexisted the particular freeway. For instance, noise attenuating walls are installed along the freeway frontages of qualified residential development under the New Construction or Reconstruction and Community Noise Abatement programs. In addition, there are a number of schools adjacent to freeways that have qualified for School Noise Abatement Program funds for the acoustical attenuation of classrooms.

Local airports are subject to the noise requirements of the Federal Aviation Administration and noise standards under Title 21, §5000, et seq., of the California Code of Regulations. These standards are designed to cause the airport proprietor, aircraft operators, local governments, pilots, and Caltrans to work cooperatively to diminish noise problems. The Federal Aviation Act,

however, preempts local regulations controlling noise at airports themselves and limits arrival and departure times of jet aircraft flights. (See *City of Burbank v. Lockheed Air Terminal* (1973) 93 S.Ct 1854 and 53 Ops.Cal.Atty.Gen 75 (1970)).

The Caltrans Office of Transportation Laboratory publishes the *Caltrans Noise Manual* and numerous reports on mitigating transportation noise. The *California Airport Land Use Planning Handbook*, published by Caltrans' Division of Aeronautics, includes noise information relating to airports.

Court and Attorney General Interpretations

As of this writing, no noise element prepared since the statutes' 1984 revision has been the subject of an appellate court decision or Attorney General opinion. However, three past appellate court cases remain germane.

The content of the noise element was one of the central issues in *Camp v. County of Mendocino* (1981) 123 Cal.App.3d 334. Mendocino County's element did not quantify noise levels, did not include an inventory of current and expected noise exposure (noise contours), and was apparently not supported by monitoring data. As a result, the court found the element to be inadequate. The county's argument that the existing element was sufficient for a quiet rural county was not persuasive to the court, since the statute was neither subjective nor geographical. The *Camp* decision underscores the importance of comprehensive data collection and analysis.

The decision in *Neighborhood Action Group v. County of Calaveras* (1984) 156 Cal.App.3d 1176, highlights the importance of including the noise element in the land use decision-making process. In this instance, where a conditional use permit for a surface mining operation was at issue, the appeal court stated that "a quantitative inventory of existing transportation noise must be compared with that added by a particular project. The aggregate noise level must be measured against policy statements and standards required to be in the general plan." This decision makes clear that the noise element must be adequate to serve as the basis for analyzing projects that may potentially increase noise levels.

Pursuant to the decision in *Guardians of Turlock's Integrity v. City of Turlock* (1983) 149 Cal.App.3d 584, a general plan is invalid if it lacks a noise element. Furthermore, in the words of the court, "unless the general plan sets noise guidelines, an EIR addressing noise issues lacks meaning."

Relevant Issues

The noise element should cover those issues and sources of noise relevant to the local planning area. The element should utilize the most accurate and up-to-date information available to reflect the noise environment, stationary sources of noise, predicted levels of noise, and the impacts of noise on local residents. It should be as detailed as necessary to describe the local situation and offer solutions to local noise problems. Issues to be addressed by the noise element include the following:

- ◆ Major noise sources, both mobile and stationary.
- ◆ Existing and projected levels of noise and noise contours for major noise sources.
- ◆ Existing and projected land uses and locational relationship to existing and projected noise sources. (MAP) (L)
- ◆ Existing and proposed sensitive receptors, including:
 - Hospitals.
 - Convalescent homes.
 - Schools.
 - Churches.
 - Sensitive wildlife habitat, including the habitat of rare, threatened, or endangered species.
- ◆ The extent of "noise problems in the community."
 - Survey of community to determine location and extent.
- ◆ Methods of noise attenuation and the protection of residences and other sensitive receptors from excess noise.
- ◆ Implementation measures and possible solutions that address existing and foreseeable noise problems.

Ideas for Data and Analysis

The following are suggested topics for data collection and analysis:

Identification and appraisal of major noise sources

- ◆ Identify major noise sources, including:
 - Highways and freeways.
 - Primary arterials and major local streets.
 - Passenger and freight on-line railroad operations and ground rapid transit systems.
 - Commercial, general aviation, heliport, helistop, and military airport operations; aircraft overflights; jet engine test stands; and all other ground facilities and maintenance func-

- tions related to airport operation.
- Local industry, including, but not limited to, railroad classification yards.
- Other ground stationary noise sources identified by local agencies as contributing to the community noise environment.

Analysis and quantification of the local noise environment

- ◆ Select the method of noise measurement or modeling to be used in the noise element.
- ◆ Measure major sources of noise, including, but not limited to, highways and freeways, arterial and major streets, railroads, railroad yards, ground rapid transit, airports and aviation-related sources, industrial plants, and other stationary ground sources.
- ◆ Map noise level contours, expressed in CNEL or Ldn, for the area surrounding each of the identified noise sources.
- ◆ Project future noise sources, noise levels, and anticipated impacts upon existing and proposed land uses.
- ◆ Analyze the current and future impacts on community residents of noise emanating from the identified sources. (L)
- ◆ Analyze current and predicted levels of transportation noise consistent with the requirements of the Federal Intermodal Surface Transportation Efficiency Act. (CI)

Minimization of noise exposure

- ◆ Inventory existing and proposed sensitive uses, including residential areas, hospitals, convalescent homes, schools, churches, and sensitive wildlife habitat.
- ◆ Identify local noise problems and areas of conflict between noise sources and sensitive uses.
- ◆ Identify means of noise mitigation, such as sound-proofing, landscaping and berms, building design and setbacks, buffer areas, operating hours of major sources, and other techniques.

Ideas for Development Policies

The following are the types of development policies that may be contained in a noise element, as locally relevant:

- ◆ The adoption of noise impact and attenuation standards, consistent with the Noise Element Guide-

lines and the Uniform Building Code.

- ◆ Guidance for zoning and development through the adoption of specified noise mitigation, including provisions for increased building setbacks, buffer areas, compatibility zoning, and other land use strategies. (L)
- ◆ The establishment of local standards and guidelines for noise evaluation, including baseline specifications.
- ◆ The evaluation of new residential and other sensitive uses for consistency with noise standards in areas adjacent to major sources of noise. (L)
- ◆ The review of all land use and development proposals for compliance with noise and land use compatibility standards.
- ◆ Guidance for the location and design of transportation facilities to maintain acceptable noise levels. (L, CI)
- ◆ The control of stationary noise at the source through the use of insulation, berms, building design/orientation, buffer areas, staggered operating hours, and other techniques. (L, O)
- ◆ The minimization of noise exposure around airports in correlation with the policies of the local Airport Land Use Plan and airport noise standards pursuant to Title 21, §5000, et seq., California Code of Regulations. (L)
- ◆ The correlation of noise element concerns with the objectives, policies, and plan proposals of the land use, circulation, and open-space elements in order to minimize community noise exposure.
- ◆ The achievement of noise compatibility between residential and other surrounding land uses, including commercial and industrial.

Technical Assistance

Various noise prediction models can be used to address transportation and aircraft noise in the noise element. For example, the Federal Highway Administration's Traffic Noise Model can calculate noise levels using acoustical algorithms and emission levels for five standard vehicle types: automobiles, medium trucks, heavy trucks, buses, and motorcycles. More information can be obtained from the Federal Highway Administration's Turner-Fairbank Highway Research Center at www.tfhrc.gov. Information regarding noise models can also be obtained from the Federal Aviation Administration's Office of Environment and Energy at www.aee.faa.gov.

City of Mt. Shasta City Planner Report

Project Title: Marijuana Dispensary Ordinance Amendment
Request: City of Mt. Shasta Staff
City of Mt. Shasta City Council
Prepared by: Juliana Lucchesi, City Planner

Background

The City of Mt. Shasta currently employs a single ordinance (18.96) to regulate medical marijuana dispensaries. The ordinance is concerned with meeting the needs of those who are protected by California Proposition 215. As the regulatory environment centered on marijuana changes, the ordinance could quickly become inefficient and ineffective.

The original Medical Marijuana Dispensary ordinance (Chapter 18.96 Medical Marijuana Dispensaries) was created to regulate marijuana businesses that were created in response to resident needs under California Proposition 215. Since the creation, business expansion and relocation has caused the Planning Department to adopt practices not found in the current ordinance. The practices used have been prescribed to maintain the businesses without adding undue economic hardship. The practices consist of a re-submission of a building plan, security plan, and security review by the Mt. Shasta Police Department for changes in the physical footprint of the dispensary.

Another development that has occurred since the original draft of the original ordinance is a petition submitted to the City of Mt. Shasta by downtown business owners. The petition requests that marijuana dispensaries are prohibited in the downtown area. The downtown area defined for this discussion is commercial zoning (C-1 and C-2) between Hinckley Street and McCloud Avenue. The major concern of the businesses is the odor and image of the downtown area.

The possible changes at the state level and the previously discussed changes in city policies and attitudes has created the need to review the current ordinance and recommend amendments to deal with future change.

State Discussion

The state of California since the passing of Proposition 215 has introduced new infrastructure and regulation under the Medical Marijuana Regulation and Safety Act (MMRSA). MMRSA is three bills enacted together to create a state licensing system for the "...commercial cultivation, manufacture, retail sale, transport, distribution, delivery, and testing of medical cannabis.". The MMRSA legislation will begin at the beginning of 2017 and is facilitated through the newly created Bureau of Medical Marijuana Regulation and current departments; Department of Food and Agriculture and Department of Consumer Affairs. The effects of MMRSA on local governments is not clearly defined, but dispensaries that supply medical marijuana will be required to submit new and/or additional licensing to operate.

Relevant Legislation

The state of Oregon in 2014 approved the legalization of recreational marijuana and the cultivation/manufacturing of marijuana based products. Similar to the discussion in the other City Staff report related to marijuana product industry, the City of Bend has created city regulation clearly defining allowable areas and building requirements for marijuana businesses.

Attachment 3 outlines the Bend, Oregon Marijuana Land Use ordinance which includes points pertinent to the City of Mt. Shasta discussion. The Bend ordinance is much more prescriptive to cover Home Occupation Permits, large-scale, and small-scale retail and production of marijuana products.

For the discussion of retail and dispensaries, the practices in section 4 "Marijuana Retail" could be adapted at the discretion of the Planning Commission. The ordinance has been identified as a best practice by the state of Oregon planning chapter.

Recommendations

The current marijuana dispensary ordinance serves as an adequate starting point for future dispensary regulation. Instead of creating new regulations centered on all dispensaries, it is recommended by City Staff to amend the current medical marijuana

ordinance to include all forms of dispensaries, clarify the reasoning for the number of total allowable dispensaries, revise the allowable locations for dispensaries, and address changes in practice mentioned in the *Background* section of this report.

The number of locations in the city limits should be amended to clarify why the city limits the number of dispensaries to three (3). One suggestion is to limit the number of dispensaries to one (1) dispensary per 1,000 residents in the city limits as listed in the last Census count. The 2010 Census Total for the City of Mt. Shasta is 3,394 from the United States Census Bureau. If the population count were to fall below the set threshold, the total number of dispensaries would be frozen until a higher population is reached.

The City of Mt. Shasta has received a petition from downtown business owners requesting the limitation of dispensaries in the downtown area. It is the opinion of the City Staff that the Planning Commission take the petition into perspective when discussing allowable zoning locations for dispensaries. A second recommendation concerning the location of dispensaries is to include language limiting the location of dispensaries near public facilities, like parks, community centers, and government buildings.

The final series of recommendations are found in Attachment 3 related to the expansion of dispensary space and relocation to newer facilities. The City Staff wish to amend the ordinance to include language to allow for annual review of the security for existing dispensaries and resubmission of building plan, security plan, and a security check by the City of Mt. Shasta Police Department for facility changes.

Attachments

- 1. Chapter 18.96 Medical Marijuana Dispensaries (Unaltered)***
- 2. Suggested Amendments Chapter 18.96 Medical Marijuana Dispensaries***
- 3. City of Bend, Oregon Marijuana Ordinance***

Chapter 18.96 MEDICAL MARIJUANA DISPENSARIES

Sections:

18.96.010	Purpose.
18.96.020	Definitions.
18.96.030	Location.
18.96.040	Number of dispensaries.
18.96.050	Medical marijuana dispensary administrative permit process.
18.96.060	Findings for issuance of a medical marijuana dispensary permit.
18.96.070	Conditions of operation.
18.96.080	Fees.
18.96.090	Violations.
18.96.100	Suspension and revocation – Appeal.
18.96.110	Existing dispensaries.
18.96.120	Severability.

18.96.010 Purpose.

The purpose of this chapter is to protect the public safety, health and welfare of the residents of Mt. Shasta by regulating the operation of medical marijuana dispensaries within City limits, to restrict the location of medical marijuana dispensaries to specific portions of commercial zones (C-1 and C-2), and to require dispensary operators to obtain an administrative permit prior to commencing operation. (Ord. CCO-10-04, 2010)

18.96.020 Definitions.

(A) Medical Marijuana Dispensary. A “medical marijuana dispensary” is a facility where marijuana is made available for medical purposes in accordance with Cal. Health and Safety Code § [11362.5](#) et seq. (Compassionate Use Act).

(B) Administrative Review Committee. The “Administrative Review Committee” is the committee that reviews dispensary permit applications submitted under this chapter, and consists of the Planning Director, Police Chief, and City Manager. (Ord. CCO-10-04, 2010)

18.96.030 Location.

(A) Medical marijuana dispensaries shall be permitted only in those portions of the C-1 and C-2 district located between Mountain View Drive and Hinckley Avenue.

(B) No medical marijuana dispensary shall be located within 1,000 feet of Mt. Shasta Elementary School, Sission Middle School, Mt. Shasta High School, or Jefferson High School.

(1) Distance shall be measured from the property line of the parcel containing the dispensary to the property line of the school, using the most direct vehicle or pedestrian route, whichever is shorter. (Ord. CCO-10-04, 2010)

18.96.040 Number of dispensaries.

No more than three medical marijuana dispensaries shall be permitted to operate within the City of Mt. Shasta at any one time. (Ord. CCO-10-04, 2010)

18.96.050 Medical marijuana dispensary administrative permit process.

(A) Prior to initiating operations, any person or entity wishing to operate a medical marijuana dispensary shall apply for and receive from the Planning Department a medical marijuana dispensary permit.

(B) The applicant for a medical marijuana dispensary permit shall submit to the Planning Department a permit application containing the information specified in subsection (C) of this section. Upon receipt of the application, the Planning Director shall review the application for completeness. Applications that are deemed incomplete by the Planning Department shall be returned to the applicant within 15 days of receipt.

(C) An applicant for a dispensary permit shall provide the following information:

- (1) The full name, current residence address, and phone number of the applicant;
- (2) The address to which notice of action on the application is to be mailed;
- (3) Written proof that the applicant is over 18 years of age;
- (4) A map or diagram, to scale, demonstrating that the location is not within 1,000 feet of the named locations in MSMC [18.96.030](#);
- (5) Authorization for the City, its agents and employees to seek verification of the information contained within the application;
- (6) A statement in writing by the applicant that he or she certifies under penalty of perjury that all the information within the application is true, and that the applicant has read the California Attorney General's Guidelines and will comply with those guidelines;
- (7) Any information or evidence substantiating the required findings of fact for approval of the administrative permit;
- (8) Criminal Background. A background investigation verifying whether the person or persons having the management or supervision of the applicant's business has been convicted of a crime(s), the nature of such offense(s), and the sentence(s) received therefor;
- (9) Security Plans. A dispensary shall submit a plan demonstrating adequate security on the premises, as approved by the Chief of Police and reviewed by the Administrative Review Committee, including lighting and alarms, to ensure the safety of persons and to protect the premises from theft. Security plans submitted must include plans for a professionally monitored robbery and burglary alarm system and a plan for adequate maintenance of the installed system so as to ensure it is maintained and in working condition;
- (10) Each applicant shall conspicuously post notice or notices on the premises stating that there has been an application for a medical marijuana dispensary submitted to the City of Mt. Shasta at that particular site for at least four weeks prior to the Administrative Review Committee receiving the application, and that application files are available for review at City of Mt. Shasta, 305 North Mt. Shasta Boulevard, Mt. Shasta, California.

(D) Once an application is deemed complete, the Planning Director shall distribute the application materials to the Administrative Review Committee for review and decision. The Administrative Review Committee shall have 30 days to approve or deny the permit application. Application determinations shall be based on the findings of fact required by this chapter. Dispensary operators must also comply with the additional conditions of operations that are required by this chapter and will be contained in the permit.

(E) Once the Administrative Review Committee has made its decision on the application, the Planning Director shall mail a written notice of decision to the applicant by certified U.S. mail, postage prepaid, return receipt requested. An applicant aggrieved by the Administrative Planning Commission Regular Meeting July 19, 2016

Review Committee's decision may appeal the decision to the City Council by filing a written notice with the City Clerk within 10 business days of receipt of the Planning Director's notice of decision. If an appeal is not taken within that time period, the decision shall be final.

(F) If a request for an appeal to the City Council is received within the applicable time period, the appeal shall be scheduled by the City Clerk for a public hearing within 45 days of receipt of the request. Public notice of the hearing shall be given pursuant to Cal. Gov't Code § [65091](#). (Ord. CCO-10-04, 2010)

18.96.060 Findings for issuance of a medical marijuana dispensary permit.

A permit to operate a medical marijuana dispensary shall be granted only if the Administrative Review Committee makes all the following findings of fact:

(A) The medical marijuana dispensary, as proposed and at the location specified in the application, will not create an adverse impact on surrounding uses; and

(B) The medical marijuana dispensary, as proposed and at the location specified in the application, will be compatible with adjacent uses; and

(C) The medical marijuana dispensary, as proposed and at the location specified in the application, will not result in the aggravation of crime problems in the area, nor will it make law enforcement unduly difficult. (Ord. CCO-10-04, 2010)

18.96.070 Conditions of operation.

A medical marijuana dispensary, once permitted by the City, shall meet the following conditions for the duration of its operation:

(A) The use shall be conducted in strict compliance with the provisions of the Compassionate Use Act (Cal. Health and Safety Code § [11362.5](#) et seq.).

(B) Consumption of any medical marijuana or medical marijuana product (including smoking) or ingestion is prohibited in, on, or adjacent to the permitted premises.

(C) All employees of the dispensary must be 18 years of age or older.

(D) No persons under the age of 18 shall be permitted in the dispensary at any time. The building entrance shall be clearly and legibly posted with a notice indicating that persons under the age of 18 are precluded from entering the premises.

(E) On-site cultivation of mature medical marijuana is not permitted at any dispensary location, with the exception of small immature cuttings, starts, or clones.

(F) No retail sales of any products other than medical marijuana or medical marijuana related products are permitted at the dispensary.

(G) The property owner and/or operator shall be required to report any illegal activity occurring on the site, or associated with the dispensary, to the Mt. Shasta Police Department.

(H) Sale of food products containing medical marijuana is prohibited unless the dispensary is in compliance with applicable Siskiyou County health regulations.

(I) The medical marijuana dispensary shall be open for business only between the hours of 9:00 a.m. and 8:00 p.m. Sunday through Saturday.

(J) All medical marijuana transactions shall occur at the dispensary, and medical marijuana products shall be dispensed directly to the patient or designated caregiver. No owner, operator, employee, or volunteer may provide any product to any patient or designated

caregiver at any location other than inside the dispensary building. No delivery services shall be permitted within the City limits.

(K) The permittee shall assume all legal responsibility and liability associated with the operation of the dispensary.

(L) A representative of the City has the right to enter the premises to audit the medical marijuana dispensary financial records, after notice to the owner or operator of not less than five business days. Financial records include, but are not limited to, income statements and balance sheets. Other information to be provided on request may include but not be limited to total pounds grown, total pounds purchased (identification card number or membership number as defined below), total pounds sold, and existing inventory.

(M) Patient Records. A dispensary shall maintain records of all patients and primary caregivers using only the identification card number issued by the County, or its agent, pursuant to Cal. Health and Safety Code § [11362.71](#) et seq., as a protection of the confidentiality of the cardholders. All patient and doctor confidentiality shall be upheld and preserved.

(N) All signage shall be in accordance with the City of Mt. Shasta sign ordinance.

(O) A dispensary shall maintain a general City of Mt. Shasta business license as a prerequisite to obtaining a permit pursuant to the terms hereof.

(P) Each dispensary shall display a sign at its entrance, in a legible and visible manner, conveying the following information:

- (1) Days and hours of operation.
- (2) Emergency contact information.
- (3) Notice that persons under the age of 18 are not allowed in the dispensary.
- (4) Notice that all illegal activity shall be reported to law enforcement authorities.

(Q) Each dispensary shall post on site a notice that smoking or other methods of consumption of medical marijuana is prohibited in, on, or in the vicinity of the dispensary.

(R) Each medical marijuana dispensary shall display at all times during business hours the permit issued pursuant to the provisions of this chapter in a conspicuous place so that it may be readily seen by all persons entering the business. (Ord. CCO-10-04, 2010)

18.96.080 Fees.

The City Council may, by resolution, impose such reasonable fees on both the application for, and the issuance of, a permit to operate a medical marijuana dispensary. The amount of the fee shall be commensurate with the City's cost to administer and implement the provisions of this chapter. (Ord. CCO-10-04, 2010)

18.96.090 Violations.

Violations of the terms and conditions of the dispensary permit, of this code, or of applicable local and State laws and regulations shall be grounds for suspension or revocation of the permit by the City Manager, and subject to the appeal rights set forth in MSMC [18.96.100](#). (Ord. CCO-10-04, 2010)

18.96.100 Suspension and revocation – Appeal.

Any permittee aggrieved by the decision of the City Manager to suspend or revoke a permit

may, within 10 calendar days of the issuance of the decision, appeal to the City Council by filing a written notice with the City Clerk. During the pendency of the appeal to the Council, the permit shall remain in effect. If an appeal is not filed within the 10-day period, the decision of the City shall be final. If an appeal is filed in a timely manner, the Council shall, within 45 days of the filing of the appeal, hold an appeal hearing. The Council may uphold the suspension or revocation of the permit if it finds that the permittee is in violation of the terms and conditions of the permit or other applicable law or regulation. The Council's decision shall be final. (Ord. CCO-10-04, 2010)

18.96.110 Existing dispensaries.

Dispensaries licensed to do business in the City of Mt. Shasta prior to the enactment of the ordinance codified in this chapter shall have 180 days from its final adoption to apply for and receive a medical marijuana dispensary permit pursuant to this chapter in order to remain in operation. (Ord. CCO-10-04, 2010)

18.96.120 Severability.

If any section, subsection, sentence, clause or phrase of this chapter is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this chapter; and the City Council of the City of Mt. Shasta hereby declares that it would have passed this chapter and each section, subsection, sentence, clause or phrase thereof irrespective of the fact that any one or more of the sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional. Provided further, that if any provision of this chapter or its application to any person or circumstance is held invalid, said chapter or the application of said provisions to other persons or circumstances shall not be affected thereby. (Ord. CCO-10-04, 2010)

The Mt. Shasta Municipal Code is current through Ordinance CCO-16-01, passed February 22, 2016.

Disclaimer: The City Clerk's Office has the official version of the Mt. Shasta Municipal Code. Users should contact the City Clerk's Office for ordinances passed subsequent to the ordinance cited above.

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Chapter 18.96

~~MEDICAL~~ MARIJUANA DISPENSARIES

Sections:

- 18.96.010 Purpose.
- 18.96.020 Definitions.
- 18.96.030 Location.
- 18.96.040 Number of dispensaries.
- 18.96.050 ~~Medical~~ marijuana dispensary administrative permit process.
- 18.96.060 Findings for issuance of a ~~medical~~ marijuana dispensary permit.
- 18.96.070 Conditions of operation.
- 18.96.080 Fees.
- 18.96.090 Violations.
- 18.96.100 Suspension and revocation – Appeal.
- 18.96.110 Existing dispensaries.
- 18.96.120 Severability.

18.96.010 Purpose.

The purpose of this chapter is to protect the public safety, health, and welfare of the residents of Mt. Shasta by regulating the operation of ~~medical~~ marijuana dispensaries within City limits, to restrict the location of ~~medical~~ marijuana dispensaries to specific portions of commercial zones (C1 and C2), and to require dispensary operators to obtain an administrative permit prior to commencing operation. (Ord. CCO1004, 2010)

18.96.020 Definitions.

(A) ~~Medical~~ Marijuana Dispensary. A “~~medical~~ marijuana dispensary” is a facility where marijuana is made available ~~for medical purposes in accordance with Cal. Health and Safety Code § 11362.5 et seq. (Compassionate Use Act).~~

(B) Administrative Review Committee. The “Administrative Review Committee” is the committee that reviews dispensary permit applications submitted under this chapter, and consists of the ~~Planning Department~~ ~~Planning Director~~, Police Chief, and City Manager. (Ord. CCO1004, 2010)

18.96.030 Location.

(A) ~~Medical-m~~Marijuana dispensaries shall be permitted only in those portions of the C1 and C2 district located between Mountain View Drive and Hinckley Avenue.

(B) No ~~medical~~-marijuana dispensary shall be located within 1,000 feet of Mt. Shasta Elementary School, Sission Middle School, Mt. Shasta High School, or Jefferson High School.

(1) Distance shall be measured from the property line of the parcel containing the dispensary to the property line of the school, using the most direct vehicle or pedestrian route, whichever is shorter. (Ord. CCO1004, 2010)

18.96.040 Number of dispensaries.

No more than three ~~medical~~-marijuana dispensaries shall be permitted to operate within the City of Mt. Shasta at any one time. (Ord. CCO1004, 2010)

18.96.050 ~~Medical-m~~Marijuana dispensary administrative permit process.

(A) Prior to initiating operations, any person or entity wishing to operate a ~~medical~~-marijuana dispensary shall apply for and receive from the Planning Department a ~~medical~~-marijuana dispensary permit.

(B) The applicant for a ~~medical~~-marijuana dispensary permit shall submit to the Planning Department a permit application containing the information specified in subsection (C) of this section. Upon receipt of the application, the ~~Planning Director~~Planning Department shall review the application for completeness. Applications that are deemed incomplete by the Planning Department shall be returned to the applicant within 15 days of receipt.

(C) An applicant for a dispensary permit shall provide the following information:

(1) The full name, current residence address, and phone number of the applicant;

(2) The address to which notice of action on the application is to be mailed;

(3) Written proof that the applicant is over 18 years of age;

(4) A map or diagram, to scale, demonstrating that the location is not within 1,000 feet of the named locations in MSMC [18.96.030](#);

(5) Authorization for the City, its agents and employees to seek verification of the information contained within the application;

(6) A statement in writing by the applicant that he or she certifies under penalty of perjury that all the information within the application is true, and that the applicant has read the California Attorney General's Guidelines and will comply with those guidelines;

(7) Any information or evidence substantiating the required findings of fact for approval of the administrative permit;

(8) Criminal Background. A background investigation verifying whether the person or persons having the management or supervision of the applicant's business has been convicted of a crime(s), the nature of such offense(s), and the sentence(s) received therefor;

(9) Security Plans. A dispensary shall submit a plan demonstrating adequate security on the premises, as approved by the Chief of Police and reviewed by the Administrative Review Committee, including lighting and alarms, to ensure the safety of persons and to protect the premises from theft. Security plans submitted must include plans for a professionally monitored robbery and burglary alarm system and a plan for adequate maintenance of the installed system so as to ensure it is maintained and in working condition;

(10) Each applicant shall conspicuously post notice or notices on the premises stating that there has been an application for a ~~medical~~ marijuana dispensary submitted to the City of Mt. Shasta at that particular site for at least four weeks prior to the Administrative Review Committee receiving the application, and that application files are available for review at City of Mt. Shasta, 305 North Mt. Shasta Boulevard, Mt. Shasta, California.

(D) Once an application is deemed complete, the ~~Planning Director~~ Planning Department shall distribute the application materials to the Administrative Review Committee for review and decision. The

Administrative Review Committee shall have 30 days to approve or deny the permit application. Application determinations shall be based on the findings of fact required by this chapter. Dispensary operators must also comply with the additional conditions of operations that are required by this chapter and will be contained in the permit.

(E) Once the Administrative Review Committee has made its decision on the application, the ~~Planning Director~~ Planning Department shall mail a written notice of decision to the applicant by certified U.S. mail, postage prepaid, return receipt requested. An applicant aggrieved by the Administrative

Review Committee's decision may appeal the decision to the City Council by filing a written notice with the City Clerk within 10 business days of receipt of the ~~Planning Director~~ Planning Department's notice of decision. If an appeal is not taken within that time period, the decision shall be final.

(F) If a request for an appeal to the City Council is received within the applicable time period, the appeal shall be scheduled by the City Clerk for a public hearing within 45 days of receipt of the request. Public notice of the hearing shall be given pursuant to Cal. Gov't Code

§ 65091. (Ord. CCO1004, 2010)

18.96.060 Findings for issuance of a ~~medical~~-marijuana dispensary permit.

A permit to operate a ~~medical~~-marijuana dispensary shall be granted only if the Administrative Review Committee makes all the following findings of fact:

- (A) The ~~medical~~-marijuana dispensary, as proposed and at the location specified in the application, will not create an adverse impact on surrounding uses; and
- (B) The ~~medical~~-marijuana dispensary, as proposed and at the location specified in the application, will be compatible with adjacent uses; and
- (C) The ~~medical~~-marijuana dispensary, as proposed and at the location specified in the application, will not result in the aggravation of crime problems in the area, nor will it make law enforcement unduly difficult. (Ord. CCO1004, 2010)

18.96.070 Conditions of operation.

A ~~medical~~-marijuana dispensary, once permitted by the City, shall meet the following conditions for the duration of its operation:

- (A) The use shall be conducted in strict compliance with the provisions of the ~~Compassionate Use Act (Cal. Health and Safety Code § 11362.5 et seq.)~~.
- (B) Consumption of any ~~medical~~-marijuana or ~~medical~~-marijuana product (including smoking) or ingestion is prohibited in, on, or adjacent to the permitted premises.
- (C) All employees of the dispensary must be 18 years of age or older.
- (D) No persons under the age of 18 shall be permitted in the dispensary at any time. The building entrance shall be clearly and legibly posted with a notice indicating that persons under the age of 18 are precluded from entering the premises.
- (E) Onsite cultivation of mature ~~medical~~-marijuana is not permitted at any dispensary location, with the exception of small immature cuttings, starts, or clones.
- (F) No retail sales of any products other than ~~medical~~-marijuana or ~~medical~~-marijuana related products are permitted at the dispensary.
- (G) The property owner and/or operator shall be required to report any illegal activity occurring on the site, or associated with the dispensary, to the Mt. Shasta Police Department.
- (H) Sale of food products containing ~~medical~~-marijuana is prohibited unless the dispensary is in compliance with applicable Siskiyou County health regulations.
- (I) The ~~medical~~-marijuana dispensary shall be open for business only between the hours of

9:00 a.m. and 8:00 p.m. Sunday through Saturday.

(J) All ~~medical~~-marijuana transactions shall occur at the dispensary, and ~~medical~~-marijuana products shall be dispensed directly to the patient or designated caregiver. No owner, operator, employee, or volunteer may provide any product to any patient or designated caregiver at any location other than inside the dispensary building. No delivery services shall be permitted within the City limits.

(K) The permittee shall assume all legal responsibility and liability associated with the operation of the dispensary.

(L) A representative of the City has the right to enter the premises to audit the ~~medical~~-marijuana dispensary financial records, after notice to the owner or operator of not less than five business days. Financial records include, but are not limited to, income statements and balance sheets. Other information to be provided on request may include but not be limited to total pounds grown, total pounds purchased (identification card number or membership number as defined below), total pounds sold, and existing inventory.

(M) Patient Records. A medical marijuana dispensary shall maintain records of all patients and primary caregivers using only the identification card number issued by the County, or its agent, pursuant to Cal. Health and Safety Code § 11362.71 et seq., as a protection of the confidentiality of the cardholders. All patient and doctor confidentiality shall be upheld and preserved.

(N) All signage shall be in accordance with the City of Mt. Shasta sign ordinance.

(O) A dispensary shall maintain a general City of Mt. Shasta business license as a prerequisite to obtaining a permit pursuant to the terms hereof.

(P) Each dispensary shall display a sign at its entrance, in a legible and visible manner, conveying the following information:

(1) Days and hours of operation.

(2) Emergency contact information.

(3) Notice that persons under the age of 18 are not allowed in the dispensary.

(4) Notice that all illegal activity shall be reported to law enforcement authorities.

(Q) Each dispensary shall post on site a notice that smoking or other methods of consumption of ~~medical~~-marijuana is prohibited in, on, or in the vicinity of the dispensary.

(R) Each ~~medical~~-marijuana dispensary shall display at all times during business hours the permit issued pursuant to the provisions of this chapter in a conspicuous place so that it may be readily seen by all persons entering the business. (Ord. CCO1004, 2010)

18.96.080 Fees.

The City Council may, by resolution, impose such reasonable fees on both the application for, and the issuance of, a permit to operate a ~~medical~~-marijuana dispensary. The amount of the fee shall be commensurate with the City's cost to administer and implement the provisions of this chapter. (Ord. CCO1004, 2010)

18.96.090 Violations.

Violations of the terms and conditions of the dispensary permit, of this code, or of applicable local and State laws and regulations shall be grounds for suspension or revocation of the permit by the City Manager, and subject to the appeal rights set forth in MSMC [18.96.100](#). (Ord. CCO1004, 2010)

18.96.100 Suspension and revocation – Appeal.

Any permittee aggrieved by the decision of the City Manager to suspend or revoke a permit may, within 10 calendar days of the issuance of the decision, appeal to the City Council by filing a written notice with the City Clerk. During the pendency of the appeal to the Council, the permit shall remain in effect. If an appeal is not filed within the 10day period, the decision of the City shall be final. If an appeal is filed in a timely manner, the Council shall, within 45 days of the filing of the appeal, hold an appeal hearing. The Council may uphold the suspension or revocation of the permit if it finds that the permittee is in violation of the terms and conditions of the permit or other applicable law or regulation. The Council's decision shall be final. (Ord. CCO1004, 2010)

18.96.110 Existing dispensaries.

Dispensaries licensed to do business in the City of Mt. Shasta prior to the enactment of the ordinance codified in this chapter shall have 180 days from its final adoption to apply for and receive a ~~medical~~-marijuana dispensary permit pursuant to this chapter in order to remain in operation. (Ord. CCO1004, 2010)

[18.96.120 Annual Security Check](#)

[Dispensaries licensed by the City of Mt. Shasta shall be subject to an annual security plan check by the Police Department. A record of the annual security check shall be filed with the Planning department to ensure security compliance.](#)

[18.96.130 Expansion of Dispensary Space](#)

The City of Mt. Shasta understands that businesses may require additional space to meet the needs of their customers. If a dispensary were to expand space, the dispensary must submit an updated building layout plan, security plan, and schedule a security review with the City of Mt. Shasta Police Department. The dispensary must update their permit within thirty (30) days of the expansion of the dispensary space.

18.96.1420 Severability.

If any section, subsection, sentence, clause or phrase of this chapter is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this chapter; and the City Council of the City of Mt. Shasta hereby declares that it would have passed this chapter and each section, subsection, sentence, clause or phrase thereof irrespective of the fact that any one or more of the sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional. Provided further, that if any provision of this chapter or its application to any person or circumstance is held invalid, said chapter or the application of said provisions to other persons or circumstances shall not be affected thereby. (Ord. CCO1004, 2010)

The Mt. Shasta Municipal Code is current through Ordinance CCO1601, passed February 22, 2016.

Disclaimer: The City Clerk's Office has the official version of the Mt. Shasta Municipal Code. Users should contact the City Clerk's Office for ordinances passed subsequent to the ordinance cited above.

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DRAFT

Marijuana Ordinance—Land Use

AN ORDINANCE AMENDING BDC CHAPTER 1.2 DEFINITIONS, CHAPTER 2.2 COMMERCIAL ZONING DISTRICTS, 2.3 MIXED-USE ZONING DISTRICTS, 2.4 INDUSTRIAL ZONING DISTRICTS, AND CHAPTER 3.6 SPECIAL STANDARDS FOR CERTAIN USES TO DEFINE, PERMIT AND ESTABLISH STANDARDS FOR MARIJUANA BUSINESSES AND DECLARING AND EMERGENCY

Findings:

A. Oregon voters approved Ballot Measure 67, the Oregon Medical Marijuana Act, in November 1998. The Oregon legislature has amended the Oregon Medical Marijuana Act and the Act authorizes local government to adopt reasonable regulations related to the hours of operation, location and manner in which medical marijuana dispensaries are regulated. Cities have home rule authority to adopt regulations that are not unconstitutional or preempted by federal or state law.

B. Oregon voters approved Ballot Measure 91 in November 2014, legalizing the personal use and possession of adult recreational marijuana on July 1, 2015, with certain limitations, including restrictions on use in public, no growing in public view, a restriction on minors attempting to buy or entering licensed premises, prohibiting the sale or use by persons under 21, and imposing licensing and other requirements on marijuana cultivation, processing and dispensing facilities. The measure, as amended by the legislature by HB 3400 in 2015, authorizes reasonable time, place and manner regulations of the nuisance aspects of establishments that sell marijuana based on specific findings of adverse effects to the community.

C. Senate Bill 460 allows medical marijuana retailers to sell limited amounts of adult recreational marijuana beginning October 1, 2015. This provision sunsets on December 31, 2016.

D. These regulations are also adopted in furtherance and protection of the health, safety and welfare of the citizens of Bend, including under the broad home rule authority of the City of Bend in Sections 6 and 4 of its municipal charter: “Except as this charter prescribes otherwise, and as the Oregon Constitution reserves municipal legislative powers to the voters of the city, all powers of the city are vested in the council.” “The City has all powers that the constitutions, statutes, and common law of the United States and of the State of Oregon now or hereafter expressly or impliedly grant or allow the City, as fully as though this charter specifically enumerated each of those powers.”

E. In determining what is “reasonable”, the City Council reviewed existing precedents across the state of Oregon, as well as Colorado and Washington states, particularly

communities that are most similar in population, industry, tourism, demographics and mindset, to the City of Bend.

F. The City Council, in adopting this measure, is concerned with fairness, neighborhood compatibility, respecting the will of the voters, protecting minors, crime and nuisance issues, a non-reactive balanced approach, allowing new businesses to emerge and grow, and learning from the experience of other communities.

G. Adverse effects to the community addressed through reasonable time, place and manner restrictions on the nuisance aspects of marijuana facilities, such as the ones adopted by this ordinance, include:

1. Exposure of minors to the use and commercial aspects of marijuana;
2. Offensive odors from marijuana cultivation, production and storage; and
3. Incompatible development in residential areas.

H. After waiting to see what amendments to Measure 91 would come out of the 2015 legislative session, and what regulations would be considered for adoption by the implementing agencies, the Oregon Health Authority (OHA) and the Oregon Liquor Control Commission (OLCC), at a City Council work session on August 19, 2015, the City Council gave direction to City Staff to begin to formulate reasonable regulations for council consideration prior to the effective date of the ability for retail marijuana sale licensing, sometime after January 4, 2016. The City Council tasked three councilors with working with staff on a preliminary basis on land use and licensing regulations.

I. On September 16, 2015, the City Council formed a Marijuana Technical Advisory Committee (MTAC) to act as a 9-member temporary committee to provide input to the Planning Commission and City Council regarding reasonable time, place and manner regulation of marijuana businesses, including retail, growing and processing. The MTAC was purposefully made up of knowledgeable members of the industry, marijuana law, the Bend LaPine School District, and the community at large. A Planning Commissioner was also a non-voting member. The Committee held five meetings _____ between September and November of 2015. The Committee had extensive discussion and debate on various policy recommendations, particularly distance requirements. The committee sought to balance a strong and heartfelt desire to protect the community's youth from drug use with the industry's willingness to be responsive but also serve legitimate medical needs and develop their legal businesses for adults.

J. During this period, the OLCC published several versions of draft rules, which staff and the MTAC took into consideration in formulating both the local land use code and operating license regulations. OHA has also published rules, temporary rules, and published additional draft rules on labeling, concentration and serving size and testing. Measure 91, HB 3400, other applicable statutes and the draft rules were all linked and made available for public review on the MTAC website, along with other relevant materials.

K. The MTAC forwarded its recommended land use ordinance to the Planning Commission on _____. The Planning Commission held a public hearing on _____, and forwarded its recommendation to the City Council on _____. [describe any changes.]

L. The City Council held a public hearing on _____.

Based on these findings, THE CITY OF BEND ORDAINS AS FOLLOWS:

Section 1. Bend Development Code Chapter 1.2 Definitions, Chapter 2.2 Commercial Zoning Districts, 2.3 Mixed-Use Zoning Districts, 2.4 Industrial Zoning Districts, and Chapter 3.6 Special Standards for Certain Uses are amended to define, permit and establish standards for marijuana businesses as shown below in Exhibit A.

Section 2. Declaration of Emergency. The City Council finds that this ordinance is necessary for the health, safety and welfare of the public, and finds that an emergency exists. The ordinance therefore becomes effective upon its passage.

EXHIBIT A

Note:

Text in underlined typeface is proposed to be added

Text in strikethrough typeface is proposed to be deleted.

***Indicates where text from the existing code has been omitted because it will remain unchanged.

Bend Development Code

Chapter 1.2

DEFINITIONS

Cannabinoid concentrate means a substance obtained by separating cannabinoids from marijuana by:

(a) A mechanical extraction process; or

(b) A chemical extraction process using a nonhydrocarbon-based or other solvent, such as water, vegetable glycerin, vegetable oils, animal fats, isopropyl alcohol or ethanol.

Cannabinoid edible means food or potable liquid into which a cannabinoid concentrate, cannabinoid extract or dried marijuana leaves or flowers have been incorporated.

Cannabinoid extract means a substance obtained by separating cannabinoids from marijuana by:

(a) A chemical extraction process using a hydrocarbon-based solvent, such as butane, hexane or propane;

(b) A chemical extraction process using the hydrocarbon-based solvent carbon dioxide, if the process uses heat or pressure; or

(c) Any other process identified by the commission, in consultation with the authority, by rule.

Cannabinoid product means a cannabinoid edible and any other product intended for human consumption or use, including a product intended to be applied to the skin or hair, that contains cannabinoids or dried marijuana leaves or flowers.

Cultivation or cultivate means: (i) all phases of growth of marijuana from seed to harvest; or (ii) preparing, packaging, or repackaging, labeling, or relabeling of marijuana prior to consumption, or incorporation into a recreational marijuana-infused product.

Marijuana means the plant Cannabis family Cannabaceae, any part of the plant of the Cannabis family Cannabaceae and the seeds of the plant Cannabis family Cannabaceae. “Marijuana” does not include industrial hemp, as defined in ORS 571.300.

Marijuana business means any person or entity appropriately licensed by the Oregon Health Authority or the Oregon Liquor Control Commission that sells, produces,

cultivates, grows, wholesales, processes, researches, develops or tests medical marijuana or recreational adult use marijuana within the City of Bend.

Marijuana grow sites. Grow site means a specific location registered by the Oregon Health Authority and used by the grower to produce marijuana for medical use by a specific patient. Medical grow sites are regulated by state law as follows: 12 mature plants are allowed per grow site in residential zones; 48 mature plants per grow site in all other zones. If all grows at the site had registered with the State of Oregon by January 2, 2015, the grow site is limited to the number of plants at the grow site as of December 31, 2015, not to exceed 24 mature plants per grow site in residential zones and 96 mature plants per grow site in other zones.

Marijuana processing means the preparing, compounding or conversion of marijuana into cannabinoid products, cannabinoid concentrates, and cannabinoid extracts for medical or recreations purposes.

Marijuana producing means the manufacture, planting, cultivation, growing, or harvesting of retail recreational marijuana.

Marijuana recreational retailer means a person or entity licensed by the Oregon Liquor Control Commission to sell useable recreational marijuana and marijuana-infused products in a retail outlet. Marijuana retailer is also referred to as “recreational retail facility” or a “marijuana recreational facility.”

Marijuana testing laboratory means a laboratory that tests marijuana items for producer, processor, wholesaler or retail licensees.

Marijuana wholesaler means a person or entity that purchases marijuana items in this state for resale to a person other than a consumer.

Medical marijuana dispensary means a medical marijuana facility or entity registered with the Oregon Health Authority under ORS 475.300 et. seq.

Recreational marijuana means any marijuana intended for recreational use which meets all requirements for recreational marijuana contained in this chapter, Oregon state law, and any other applicable law.

Recreational marijuana business means (a) any person or entity that cultivates, produces, distributes, possesses, transports, or makes available more than six marijuana plants or one ounce of marijuana, (b) any person that sells any amount of marijuana, or (c) any person who possesses marijuana openly or publicly. The term recreational marijuana business or retail shall not include the private cultivation, possession, production, or use within a person's residence of no more than (a) six plants in an enclosed, locked space, (b) one ounce of marijuana, or (c) the marijuana produced by no more than six plants on the premises where the plants were grown if the plants were grown in an enclosed, locked space.

School means a building where individuals gather to receive educational instruction, either public or private, except as otherwise specifically defined in this code. School does not include a child care facility as defined in this Chapter.

Usable Marijuana means the dried leaves and flowers of marijuana. “Usable marijuana” does not include:

(A) The seeds, stalks and roots of marijuana; or

(B) Waste material that is a by-product of producing or processing marijuana.

Chapter 2.2
COMMERCIAL ZONING DISTRICTS (CB, CC, CL, CG)

Table

2.2.300 – Permitted and Conditional Uses

Land Use	CB	*CC	CL	CG
<u>* Medical Marijuana Dispensary and Marijuana Recreational Retailer</u>	-	-	-	-
<u>– building footprint less than 50,000 square feet</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>
<u>– building footprint greater than 50,000 square feet</u>	<u>P</u>	<u>C</u>	<u>P</u>	<u>P</u>
<u>*Marijuana Wholesale (more than 75% of sales are wholesale)</u>	<u>N</u>	<u>N</u>	<u>P</u>	<u>P</u>
<u>*Marijuana Testing, Research and Development Facilities</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>
<u>* Marijuana Processing of Cannabinoid Concentrates and Cannabinoid Products Not Including Processing of Cannabinoid Extracts.</u>				
<u>– greater than 5,000 sq. ft.</u>	<u>N</u>	<u>N</u>	<u>C</u>	<u>N</u>
<u>– less than 5,000 sq. ft. with retail outlet</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>

Chapter 2.3
MIXED-USE ZONING DISTRICTS (ME, MR AND PO)

Table 2.3.200

Permitted and Conditional Uses

Land Use	ME	MR	PO
<u>* Medical Marijuana Dispensary and Marijuana Recreational Retailer</u> <ul style="list-style-type: none"> • <u>not to exceed 50,000 sq. ft. ground floor</u> • <u>not to exceed 75,000 sq. ft. ground floor for ME zoned property five acres or greater</u> 	P	P	N
	P	N	N
<u>*Marijuana Wholesale (more than 75% of sales are wholesale)</u>	P	P	N
<u>*Marijuana Testing, Research and Development Facilities</u>	P	P	N
<u>* Marijuana Processing of Cannabinoid Concentrates and Cannabinoid Products Not Including Processing of Cannabinoid Extracts.</u>	P	P	N

Chapter 2.4
INDUSTRIAL ZONING DISTRICTS (IG, IL)

Table 2.4.300 – Permitted and Conditional Uses

Land Use	IG	IL
<u>*Marijuana Grow Sites</u>	<u>P</u>	<u>P</u>
- <u>*Marijuana Wholesale</u>	<u>P</u>	<u>P</u>
- <u>*Marijuana Testing, Research and Development Facilities</u>	<u>P</u>	<u>P</u>
<u>* Marijuana Processing of Cannabinoid Concentrates and Cannabinoid Products.</u>	<u>P</u>	<u>P</u>
<u>* Marijuana Processing of Cannabinoid Extracts</u>	<u>P</u>	<u>P</u>

2.4.800 Special Development Standards.

The Industrial Districts accommodate a range of manufacturing, industrial office uses, and small personal service commercial uses.

A. Small-Scale Personal and Professional Services. Small-scale personal and professional services and incidental sales uses as specified in Table 2.4.300 shall comply with the following development standards:

1. Small-scale personal service commercial uses may be allowed when accessory to a primary user of the industrial development (in the case of a large industrial area). No more than 10 percent or 2,500 square feet

(whichever is greater) of a permitted or conditionally allowed industrial development may be occupied by an accessory commercial use, unless otherwise approved through a Conditional Use Permit.

2. Primary use, small-scale personal and professional and incidental sale uses may occur as stand-alone businesses when the total gross floor area of each use does not exceed 2,500 square feet. For multiple uses, where the uses share one building, the total building area shall not exceed 5,000 square feet. A single use may occupy 5,000 square feet if approved through a Conditional Use Permit. These nonindustrial use buildings shall comply with the provisions of BDC 2.2.600, Commercial Design Review Standards.

B. Location Standards. Child care centers and other similar uses shall be limited to properties located at the perimeter of the Industrial Districts with frontage on arterial or collector streets, unless they are accessory to a primary permitted use. When these uses occur as a stand-alone building, the provisions of BDC 2.2.600, Commercial Design Review Standards, apply.

C. Buffering. A buffer with a minimum width of 20 feet is required between industrial development and any adjacent Residential Zoning District. The buffer shall provide landscaping to screen the industrial activities, such as parking, service and delivery areas, from the Residential Districts. The buffer shall not contain trash receptacles or be used for the storage of equipment, materials, vehicles, etc. [Ord. NS-2195, 2013; Ord. NS-2016, 2006]

D. Prohibited Uses. Retail medical marijuana dispensaries and marijuana recreational facilities.

Chapter 3.6

SPECIAL STANDARDS AND REGULATIONS FOR CERTAIN USES

3.6.200 Residential Uses.

N. Home Occupations. The purpose of this subsection is to support those who are engaged in small business ventures that could not necessarily be sustained if it were necessary to lease commercial quarters, or which, by the nature of the venture, are appropriate in scale and impact to be operated within a residence. There are two types of home occupation uses.

2. Type II. A Type II home occupation exceeds the standards for a Type I home occupation and is subject to a Conditional Use Permit as described in BDC Chapter 4.4, Conditional Use Permits. In addition to the Type I requirements, a Type II home occupation shall also meet the following operational criteria:

3. Prohibited Home Occupation Uses.

- a. Any activity that produces radio or TV interference, noise, glare, vibration, smoke or odor beyond allowable levels as determined by local, State or Federal standards, or that can be detected beyond the property line, is prohibited.
- b. Any activity involving on-site retail sales is prohibited, except that the sale of items that are incidental to a permitted home occupation is allowed. For example, the sale of lesson books or sheet music by music teachers, art or craft supplies by arts or crafts instructors, computer software by computer consultants, and similar incidental items for sale by home business are allowed.
- c. Any uses described in this section or uses with similar objectionable impacts because of motor vehicle traffic, noise, glare, odor, dust, smoke or vibration, such as:
 - i. Ambulance service;
 - ii. Animal hospital, veterinary services, kennels or animal boarding;
 - iii. Auto and other vehicle repair, including auto painting;
 - iv. Repair, reconditioning or storage of motorized vehicles, boats, recreational vehicles, airplanes or large equipment on site.
- d. Marijuana businesses.

3.6.300 Nonresidential Uses.

- J. Neighborhood Commercial Uses.

2. Uses Not Permitted. Automobile-oriented and automobile-dependent uses and marijuana businesses are expressly prohibited.

P. Marijuana Businesses.

1. Purpose. The purpose of this section is to reasonably regulate those who are engaged in the retail sale, producing, growing, processing, wholesaling and testing of medical and recreational marijuana, consistent with state law, in the City of Bend and to:
 - a. Protect the general health, safety, property, and welfare of the public;
 - b. Balance the right of individuals to produce and access marijuana and marijuana derivatives consistent with state law, with the need to minimize adverse impacts to nearby land uses, residents, property owners and businesses that may result from the production, storage, distribution, sale, and/or use of marijuana and derivatives;
 - c. Adopt reasonable time, place and manner restrictions on both medical and recreational dispensaries tied to specific community impacts;
 - d. Prevent or reduce criminal activity that may result in harm to persons or property;
 - e. Limit the exposure of minors to the commercial aspects of marijuana;
 - f. Prevent or reduce diversion of state-licensed marijuana and marijuana derivatives to minors; and
 - g. Minimize impacts to the city's public safety services by reducing calls for service.
2. Applicability.
 - a. The provisions of this section apply to marijuana businesses within the Bend city limits.
 - b. Relationship to other development standards. Marijuana businesses must comply with all of the standards of this section and all applicable state laws and regulations.
3. Procedure.
 - a. All new marijuana businesses must be reviewed through Site Plan Review, Minimum Development Standards or other applicable development review process listed in BDC Chapter 4, to ensure the standards of this section and other relevant portions of this code are met.
 - b. The City will require a proof of a license from the State (either OHS or OLCC) showing the security plan and all other required improvements, prior to final occupancy.

4. Standards for Retail Marijuana.

- a. Permitted. Medical Marijuana Dispensaries and Marijuana Recreational Facilities are permitted in all CB, CC, CI, CG, ME and MR zoning districts (unless listed as a conditional use, and subject to size limitations). See use tables in BDC Title 2.
- b. Co-Location of Marijuana Dispensaries and Marijuana Recreational Facilities. Dispensaries and facilities selling medical and retail marijuana may co-locate only during such time and selling the product as allowed by state law and regulation.
- c. Medical Marijuana Dispensaries and Marijuana Recreational Facilities and Proximity to Other Land Uses.
 - i. The distance limitations and definition established by this section shall control over the minimum distance limitations set forth by the state of Oregon.
 - ii. The distance limitation are based upon the uses surrounding the proposed marijuana dispensary or facility site on the date the development application is submitted.
 - iii. A dispensary or facility shall not be located within the specified proximity of any of the uses listed below. For purposes of this paragraph, the distance specified is a straight line measurement from the closest points between property lines of the affected properties.
- d. Medical Marijuana Dispensaries. No medical marijuana dispensary may operate or conduct business within:
 - i. 1,000 feet of a public or secondary school for which attendance is compulsory under ORS 339.020 (2013); or a private or parochial elementary or secondary school, teaching children as described in ORS 339.030(1)(a) (2013);
 - ii. 1000 feet of another medical marijuana dispensary; or
 - iii. 150 feet of a licensed child care facility, as defined in BDC 1.2.
- e. Existing Medical Marijuana Dispensaries.
 - i. A medical marijuana dispensary existing as of December 15, 2015 is considered a permitted use regardless if (1) an existing licensed child care facility is located within 150 feet; (2) an existing public or secondary school for which attendance is compulsory under ORS 339.020 (2013), or a private

or parochial elementary or secondary school, teaching children as described in ORS 339.030(1)(a) (2013), is located within 1,000 feet, or (3) a another medical marijuana dispensary is located within 1,000 feet.

- ii. A marijuana dispensary existing at the time any use listed in subsection P.4.d above is subsequently sited within the specified proximity of the dispensary, may remain at that location and is considered a permitted use and not a nonconforming use.
 - iii. An existing marijuana dispensary may change to a recreational facility provided the business complies with applicable state laws and permitted and conditional use tables, and goes through the procedure identified in P.3.
- f. Marijuana Recreational Facility. No marijuana recreational facility may operate or conduct business within:
- i. 1,000 feet of a public or secondary school for which attendance is compulsory under ORS 339.020 (2013); or a private or parochial elementary or secondary school, teaching children as described in ORS 339.030(1)(a) (2013); or
 - ii. 150 feet of a licensed child care facility, as defined in BDC 1.2.
- g. Existing Marijuana Recreational Facility.
- i. A Marijuana Recreational Facility existing at the time any use listed in subsection P.4.f above is subsequently sited within the specified proximity of the Facility, may remain at that location and is considered a permitted use and not a nonconforming use.
 - ii. An existing recreational retail facility may change to a marijuana dispensary provided the business complies with applicable state laws and permitted and conditional use tables, and goes through the process identified in P.3.
- h. Building Site. The proposed development must be located inside a permanent building. Outdoor storage of any merchandise, plants, or other materials is not allowed.
- i. Display. All marijuana plants, products, and paraphernalia must be completely screened from view from all marijuana dispensaries and recreational facilities. There must be no marijuana, marijuana product, or marijuana paraphernalia visible from the exterior of the building.

5. Production and Growing of Commercial Marijuana.

- a. Recreational Production of Marijuana. Recreational production (growing) facilities are prohibited in all residential and commercial zoned and designated areas. It is allowed in industrial zoned and designated areas, as further set forth in the use tables in Title 2. Retail marijuana is not permitted at the same facility as industrial production.
 - b. Medical Grow Sites. Medical grow sites are permitted as allowed by State law up to the possession limitations for registered cardholders or designated primary caregivers of the cardholder in all zones.
 - c. The private growing or cultivating of marijuana for non-commercial personal use, as defined by state law, is not regulated by this chapter.
6. Commercial Marijuana Wholesale. Marijuana wholesale is permitted in CL, CG, MR and ME zones, similar to other wholesale uses (75% of the business use needs to be wholesale). Wholesale is not permitted in residential designated areas. Wholesale is permitted in all industrial zoned and designated areas. See use tables in BDC Title 2.
7. Marijuana Processing.
- a. Residential Zones. Marijuana processing is prohibited in residentially zoned and designated areas.
 - b. Marijuana processing of cannabinoid concentrates and cannabinoid products not including processing of cannabinoid extracts is permitted in all CB, CC, CL, CG, ME and MR zoned and designated areas, provided that the area is less than 5000 square feet and the use includes a retail component as identified in the use tables in BDC Title 2, and specifically subject to Fire Marshal approval. It is permitted conditionally subject to size limitations in the CL zoned and designated areas, and in all Industrial zoned and designated areas. See use tables.
 - c. Marijuana processing of cannabinoid extracts is allowed only in Industrial zoned and designated areas, subject to state law and Fire Marshal approval. See use tables in BDC Title 2.
8. Marijuana Testing Laboratory. Marijuana testing laboratories is permitted in IL, IG, CB, CC, CI, CG and in the ME and MR zoned and designated areas, as further set forth in the use tables in BDC Title 2.
9. Operating License Required. All marijuana businesses operating in the City of Bend must obtain an operating license pursuant to Bend Municipal Code, Chapter 7.50, Marijuana Business Operating License. This applies to existing (businesses currently operating at the time of adoption of this code) in order to continue operating and as a condition to obtaining land use approval under this chapter.

10. Marijuana Businesses-Prohibited Uses. In addition to the other prohibitions identified in this Section, the following uses or practices are also prohibited:

- a. Drive-through dispensaries or facilities in any zone.
- b. Temporary dispensaries or facilities in any zone.
- c. On-site consumption of marijuana at a licensed dispensary or marijuana recreational facilities unless: (1)The consumption is conducted for testing in compliance with OAR 333-008-1190; or (2) The consumption is allowed under the medical exception granted in OAR 333-008-1200.
- d. Co-location of medical marijuana dispensaries at grow sites.
- e. Marijuana businesses in residential zones or designations.
- f. Retail medical marijuana dispensaries or marijuana recreational facilities in industrial zones.
- g. Marijuana businesses as a home occupation in any zone.
- h. Marijuana businesses as a Neighborhood Commercial use.

11. Compliance and Enforcement.

- a. Any premise, house, building, structure or place of any kind where marijuana is sold, manufactures, barter, distributed in violation of state law or this ordinance is a public nuisance. The City may institute an action in Deschutes County in the name of the City to temporarily or permanently enjoin such nuisance.
- b. This remedy is in addition to, and not in lieu of, any other civil, criminal or administrative remedies available to the City authorized under this code, or by law or equity.

First Reading:

Second reading and adoption by roll call vote:

YES: NO: ABSTAIN:

Jim Clinton, Mayor

Attest:

Robyn Christie, City Recorder

Approved as to form:

Mary A. Winters
City Attorney

City of Mt. Shasta City Planner Report

Project Title: Marijuana Cultivation and Product Manufacturing Ordinance
Request: City of Mt. Shasta Staff
City of Mt. Shasta City Council
Prepared by: Juliana Lucchesi, City Planner

Background

The City of Mt. Shasta currently employs limited language in Chapter 18.96 Medical Marijuana Dispensaries to deal with marijuana cultivation and product manufacturing. The language clarifies that dispensaries cannot cultivate full plants or contain full industrial cultivation processes. The language also limits the type of marijuana products produced in city limits to medical marijuana and medical marijuana food products.

As the state climate changes

State Discussion

The state of California since the passing of Proposition 215 has introduced new infrastructure and regulation under the Medical Marijuana Regulation and Safety Act (MMRSA). MMRSA is three bills enacted together to create a state licensing system for the "...commercial cultivation, manufacture, retail sale, transport, distribution, delivery, and testing of medical cannabis.". The MMRSA legislation will begin at the beginning of 2017 and is facilitated through the newly created Bureau of Medical Marijuana Regulation and current departments; Department of Food and Agriculture and Department of Consumer Affairs.

In addition to MMRSA, a statewide vote on recreational marijuana will reach the public in November of 2016. The passing of the legislation would open the marijuana market to recreational users. The language and effects of opening recreational marijuana are not well known in the context of California and the City of Mt. Shasta.

The City of Mt. Shasta municipal code contains limited language to address the changes in proliferation of marijuana related industries. Marijuana related industries can

be, but not limited to, any industrial cultivation, manufacturing, recreational marijuana, and home occupation permits.

Relevant Legislation

The state of Oregon in 2014 approved the legalization of recreational marijuana and the cultivation/manufacturing of marijuana based products. Similar to the discussion in the other City Staff report related to marijuana dispensary, the City of Bend has created city regulation clearly defining allowable areas and practices for marijuana cultivation and product manufacturing. The ordinance has been identified as a best practice by the state of Oregon planning chapter.

Recommendations

The City of Mt. Shasta does not currently address the possibility of marijuana industrial cultivation and product manufacturing. Since the industrial and production of marijuana products is a new topic to California, the City of Mt. Shasta, and the national planning community, the City Staff recommends a one (1) year moratorium on marijuana industrial cultivation and product manufacturing at all levels.

The conditions of the moratorium should be as follows:

- A timeframe for the moratorium should be one (1) calendar year from the time of passage by the City Council
- The timeframe can be shorted in the event the City Council passes an ordinance concerning marijuana industrial cultivation and product manufacturing.
- The moratorium does not supersede a medical card holder's ability to grow their allocated amount of plants on their property
- The moratorium does not supersede the Chapter 18.96 Medical Marijuana Dispensary or other version concerning dispensary regulation

The purpose of placing a one (1) year moratorium on the industrial cultivation and product manufacturing of marijuana and marijuana products would allow the City of Mt. Shasta to better prepare an educated ordinance on those topics and observe possible changes in the next year in state regulation.

Attachments

- 1. City of Bend, Oregon Marijuana Ordinance***

DRAFT

Marijuana Ordinance—Land Use

AN ORDINANCE AMENDING BDC CHAPTER 1.2 DEFINITIONS, CHAPTER 2.2 COMMERCIAL ZONING DISTRICTS, 2.3 MIXED-USE ZONING DISTRICTS, 2.4 INDUSTRIAL ZONING DISTRICTS, AND CHAPTER 3.6 SPECIAL STANDARDS FOR CERTAIN USES TO DEFINE, PERMIT AND ESTABLISH STANDARDS FOR MARIJUANA BUSINESSES AND DECLARING AND EMERGENCY

Findings:

A. Oregon voters approved Ballot Measure 67, the Oregon Medical Marijuana Act, in November 1998. The Oregon legislature has amended the Oregon Medical Marijuana Act and the Act authorizes local government to adopt reasonable regulations related to the hours of operation, location and manner in which medical marijuana dispensaries are regulated. Cities have home rule authority to adopt regulations that are not unconstitutional or preempted by federal or state law.

B. Oregon voters approved Ballot Measure 91 in November 2014, legalizing the personal use and possession of adult recreational marijuana on July 1, 2015, with certain limitations, including restrictions on use in public, no growing in public view, a restriction on minors attempting to buy or entering licensed premises, prohibiting the sale or use by persons under 21, and imposing licensing and other requirements on marijuana cultivation, processing and dispensing facilities. The measure, as amended by the legislature by HB 3400 in 2015, authorizes reasonable time, place and manner regulations of the nuisance aspects of establishments that sell marijuana based on specific findings of adverse effects to the community.

C. Senate Bill 460 allows medical marijuana retailers to sell limited amounts of adult recreational marijuana beginning October 1, 2015. This provision sunsets on December 31, 2016.

D. These regulations are also adopted in furtherance and protection of the health, safety and welfare of the citizens of Bend, including under the broad home rule authority of the City of Bend in Sections 6 and 4 of its municipal charter: “Except as this charter prescribes otherwise, and as the Oregon Constitution reserves municipal legislative powers to the voters of the city, all powers of the city are vested in the council.” “The City has all powers that the constitutions, statutes, and common law of the United States and of the State of Oregon now or hereafter expressly or impliedly grant or allow the City, as fully as though this charter specifically enumerated each of those powers.”

E. In determining what is “reasonable”, the City Council reviewed existing precedents across the state of Oregon, as well as Colorado and Washington states, particularly

communities that are most similar in population, industry, tourism, demographics and mindset, to the City of Bend.

F. The City Council, in adopting this measure, is concerned with fairness, neighborhood compatibility, respecting the will of the voters, protecting minors, crime and nuisance issues, a non-reactive balanced approach, allowing new businesses to emerge and grow, and learning from the experience of other communities.

G. Adverse effects to the community addressed through reasonable time, place and manner restrictions on the nuisance aspects of marijuana facilities, such as the ones adopted by this ordinance, include:

1. Exposure of minors to the use and commercial aspects of marijuana;
2. Offensive odors from marijuana cultivation, production and storage; and
3. Incompatible development in residential areas.

H. After waiting to see what amendments to Measure 91 would come out of the 2015 legislative session, and what regulations would be considered for adoption by the implementing agencies, the Oregon Health Authority (OHA) and the Oregon Liquor Control Commission (OLCC), at a City Council work session on August 19, 2015, the City Council gave direction to City Staff to begin to formulate reasonable regulations for council consideration prior to the effective date of the ability for retail marijuana sale licensing, sometime after January 4, 2016. The City Council tasked three councilors with working with staff on a preliminary basis on land use and licensing regulations.

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K. The MTAC forwarded its recommended land use ordinance to the Planning Commission on _____. The Planning Commission held a public hearing on _____, and forwarded its recommendation to the City Council on _____. [describe any changes.]

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(b) A chemical extraction process using a nonhydrocarbon-based or other solvent, such as water, vegetable glycerin, vegetable oils, animal fats, isopropyl alcohol or ethanol.

Cannabinoid edible means food or potable liquid into which a cannabinoid concentrate, cannabinoid extract or dried marijuana leaves or flowers have been incorporated.

Cannabinoid extract means a substance obtained by separating cannabinoids from marijuana by:

(a) A chemical extraction process using a hydrocarbon-based solvent, such as butane, hexane or propane;

(b) A chemical extraction process using the hydrocarbon-based solvent carbon dioxide, if the process uses heat or pressure; or

(c) Any other process identified by the commission, in consultation with the authority, by rule.

Cannabinoid product means a cannabinoid edible and any other product intended for human consumption or use, including a product intended to be applied to the skin or hair, that contains cannabinoids or dried marijuana leaves or flowers.

Cultivation or cultivate means: (i) all phases of growth of marijuana from seed to harvest; or (ii) preparing, packaging, or repackaging, labeling, or relabeling of marijuana prior to consumption, or incorporation into a recreational marijuana-infused product.

Marijuana means the plant Cannabis family Cannabaceae, any part of the plant of the Cannabis family Cannabaceae and the seeds of the plant Cannabis family Cannabaceae. “Marijuana” does not include industrial hemp, as defined in ORS 571.300.

Marijuana business means any person or entity appropriately licensed by the Oregon Health Authority or the Oregon Liquor Control Commission that sells, produces,

cultivates, grows, wholesales, processes, researches, develops or tests medical marijuana or recreational adult use marijuana within the City of Bend.

Marijuana grow sites. Grow site means a specific location registered by the Oregon Health Authority and used by the grower to produce marijuana for medical use by a specific patient. Medical grow sites are regulated by state law as follows: 12 mature plants are allowed per grow site in residential zones; 48 mature plants per grow site in all other zones. If all grows at the site had registered with the State of Oregon by January 2, 2015, the grow site is limited to the number of plants at the grow site as of December 31, 2015, not to exceed 24 mature plants per grow site in residential zones and 96 mature plants per grow site in other zones.

Marijuana processing means the preparing, compounding or conversion of marijuana into cannabinoid products, cannabinoid concentrates, and cannabinoid extracts for medical or recreations purposes.

Marijuana producing means the manufacture, planting, cultivation, growing, or harvesting of retail recreational marijuana.

Marijuana recreational retailer means a person or entity licensed by the Oregon Liquor Control Commission to sell useable recreational marijuana and marijuana-infused products in a retail outlet. Marijuana retailer is also referred to as “recreational retail facility” or a “marijuana recreational facility.”

Marijuana testing laboratory means a laboratory that tests marijuana items for producer, processor, wholesaler or retail licensees.

Marijuana wholesaler means a person or entity that purchases marijuana items in this state for resale to a person other than a consumer.

Medical marijuana dispensary means a medical marijuana facility or entity registered with the Oregon Health Authority under ORS 475.300 et. seq.

Recreational marijuana means any marijuana intended for recreational use which meets all requirements for recreational marijuana contained in this chapter, Oregon state law, and any other applicable law.

Recreational marijuana business means (a) any person or entity that cultivates, produces, distributes, possesses, transports, or makes available more than six marijuana plants or one ounce of marijuana, (b) any person that sells any amount of marijuana, or (c) any person who possesses marijuana openly or publicly. The term recreational marijuana business or retail shall not include the private cultivation, possession, production, or use within a person's residence of no more than (a) six plants in an enclosed, locked space, (b) one ounce of marijuana, or (c) the marijuana produced by no more than six plants on the premises where the plants were grown if the plants were grown in an enclosed, locked space.

School means a building where individuals gather to receive educational instruction, either public or private, except as otherwise specifically defined in this code. School does not include a child care facility as defined in this Chapter.

Usable Marijuana means the dried leaves and flowers of marijuana. “Usable marijuana” does not include:

(A) The seeds, stalks and roots of marijuana; or

(B) Waste material that is a by-product of producing or processing marijuana.

Chapter 2.2
COMMERCIAL ZONING DISTRICTS (CB, CC, CL, CG)

Table

2.2.300 – Permitted and Conditional Uses

Land Use	CB	*CC	CL	CG
<u>* Medical Marijuana Dispensary and Marijuana Recreational Retailer</u>	-	-	-	-
<u>– building footprint less than 50,000 square feet</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>
<u>– building footprint greater than 50,000 square feet</u>	<u>P</u>	<u>C</u>	<u>P</u>	<u>P</u>
<u>*Marijuana Wholesale (more than 75% of sales are wholesale)</u>	<u>N</u>	<u>N</u>	<u>P</u>	<u>P</u>
<u>*Marijuana Testing, Research and Development Facilities</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>
<u>* Marijuana Processing of Cannabinoid Concentrates and Cannabinoid Products Not Including Processing of Cannabinoid Extracts.</u>				
<u>– greater than 5,000 sq. ft.</u>	<u>N</u>	<u>N</u>	<u>C</u>	<u>N</u>
<u>– less than 5,000 sq. ft. with retail outlet</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>

Chapter 2.3
MIXED-USE ZONING DISTRICTS (ME, MR AND PO)

Table 2.3.200

Permitted and Conditional Uses

Land Use	ME	MR	PO
<u>* Medical Marijuana Dispensary and Marijuana Recreational Retailer</u> <ul style="list-style-type: none"> • <u>not to exceed 50,000 sq. ft. ground floor</u> • <u>not to exceed 75,000 sq. ft. ground floor for ME zoned property five acres or greater</u> 	P	P	N
	P	N	N
<u>*Marijuana Wholesale (more than 75% of sales are wholesale)</u>	P	P	N
<u>*Marijuana Testing, Research and Development Facilities</u>	P	P	N
<u>* Marijuana Processing of Cannabinoid Concentrates and Cannabinoid Products Not Including Processing of Cannabinoid Extracts.</u>	P	P	N

Chapter 2.4
INDUSTRIAL ZONING DISTRICTS (IG, IL)

Table 2.4.300 – Permitted and Conditional Uses

Land Use	IG	IL
<u>*Marijuana Grow Sites</u>	<u>P</u>	<u>P</u>
- <u>*Marijuana Wholesale</u>	<u>P</u>	<u>P</u>
- <u>*Marijuana Testing, Research and Development Facilities</u>	<u>P</u>	<u>P</u>
<u>* Marijuana Processing of Cannabinoid Concentrates and Cannabinoid Products.</u>	<u>P</u>	<u>P</u>
<u>* Marijuana Processing of Cannabinoid Extracts</u>	<u>P</u>	<u>P</u>

2.4.800 Special Development Standards.

The Industrial Districts accommodate a range of manufacturing, industrial office uses, and small personal service commercial uses.

A. Small-Scale Personal and Professional Services. Small-scale personal and professional services and incidental sales uses as specified in Table 2.4.300 shall comply with the following development standards:

1. Small-scale personal service commercial uses may be allowed when accessory to a primary user of the industrial development (in the case of a large industrial area). No more than 10 percent or 2,500 square feet

(whichever is greater) of a permitted or conditionally allowed industrial development may be occupied by an accessory commercial use, unless otherwise approved through a Conditional Use Permit.

2. Primary use, small-scale personal and professional and incidental sale uses may occur as stand-alone businesses when the total gross floor area of each use does not exceed 2,500 square feet. For multiple uses, where the uses share one building, the total building area shall not exceed 5,000 square feet. A single use may occupy 5,000 square feet if approved through a Conditional Use Permit. These nonindustrial use buildings shall comply with the provisions of BDC 2.2.600, Commercial Design Review Standards.

B. Location Standards. Child care centers and other similar uses shall be limited to properties located at the perimeter of the Industrial Districts with frontage on arterial or collector streets, unless they are accessory to a primary permitted use. When these uses occur as a stand-alone building, the provisions of BDC 2.2.600, Commercial Design Review Standards, apply.

C. Buffering. A buffer with a minimum width of 20 feet is required between industrial development and any adjacent Residential Zoning District. The buffer shall provide landscaping to screen the industrial activities, such as parking, service and delivery areas, from the Residential Districts. The buffer shall not contain trash receptacles or be used for the storage of equipment, materials, vehicles, etc. [Ord. NS-2195, 2013; Ord. NS-2016, 2006]

D. Prohibited Uses. Retail medical marijuana dispensaries and marijuana recreational facilities.

Chapter 3.6

SPECIAL STANDARDS AND REGULATIONS FOR CERTAIN USES

3.6.200 Residential Uses.

N. Home Occupations. The purpose of this subsection is to support those who are engaged in small business ventures that could not necessarily be sustained if it were necessary to lease commercial quarters, or which, by the nature of the venture, are appropriate in scale and impact to be operated within a residence. There are two types of home occupation uses.

2. Type II. A Type II home occupation exceeds the standards for a Type I home occupation and is subject to a Conditional Use Permit as described in BDC Chapter 4.4, Conditional Use Permits. In addition to the Type I requirements, a Type II home occupation shall also meet the following operational criteria:

3. Prohibited Home Occupation Uses.

- a. Any activity that produces radio or TV interference, noise, glare, vibration, smoke or odor beyond allowable levels as determined by local, State or Federal standards, or that can be detected beyond the property line, is prohibited.
- b. Any activity involving on-site retail sales is prohibited, except that the sale of items that are incidental to a permitted home occupation is allowed. For example, the sale of lesson books or sheet music by music teachers, art or craft supplies by arts or crafts instructors, computer software by computer consultants, and similar incidental items for sale by home business are allowed.
- c. Any uses described in this section or uses with similar objectionable impacts because of motor vehicle traffic, noise, glare, odor, dust, smoke or vibration, such as:
 - i. Ambulance service;
 - ii. Animal hospital, veterinary services, kennels or animal boarding;
 - iii. Auto and other vehicle repair, including auto painting;
 - iv. Repair, reconditioning or storage of motorized vehicles, boats, recreational vehicles, airplanes or large equipment on site.
- d. Marijuana businesses.

3.6.300 Nonresidential Uses.

- J. Neighborhood Commercial Uses.

2. Uses Not Permitted. Automobile-oriented and automobile-dependent uses and marijuana businesses are expressly prohibited.

P. Marijuana Businesses.

1. Purpose. The purpose of this section is to reasonably regulate those who are engaged in the retail sale, producing, growing, processing, wholesaling and testing of medical and recreational marijuana, consistent with state law, in the City of Bend and to:
 - a. Protect the general health, safety, property, and welfare of the public;
 - b. Balance the right of individuals to produce and access marijuana and marijuana derivatives consistent with state law, with the need to minimize adverse impacts to nearby land uses, residents, property owners and businesses that may result from the production, storage, distribution, sale, and/or use of marijuana and derivatives;
 - c. Adopt reasonable time, place and manner restrictions on both medical and recreational dispensaries tied to specific community impacts;
 - d. Prevent or reduce criminal activity that may result in harm to persons or property;
 - e. Limit the exposure of minors to the commercial aspects of marijuana;
 - f. Prevent or reduce diversion of state-licensed marijuana and marijuana derivatives to minors; and
 - g. Minimize impacts to the city's public safety services by reducing calls for service.
2. Applicability.
 - a. The provisions of this section apply to marijuana businesses within the Bend city limits.
 - b. Relationship to other development standards. Marijuana businesses must comply with all of the standards of this section and all applicable state laws and regulations.
3. Procedure.
 - a. All new marijuana businesses must be reviewed through Site Plan Review, Minimum Development Standards or other applicable development review process listed in BDC Chapter 4, to ensure the standards of this section and other relevant portions of this code are met.
 - b. The City will require a proof of a license from the State (either OHS or OLCC) showing the security plan and all other required improvements, prior to final occupancy.

4. Standards for Retail Marijuana.

- a. Permitted. Medical Marijuana Dispensaries and Marijuana Recreational Facilities are permitted in all CB, CC, CI, CG, ME and MR zoning districts (unless listed as a conditional use, and subject to size limitations). See use tables in BDC Title 2.
- b. Co-Location of Marijuana Dispensaries and Marijuana Recreational Facilities. Dispensaries and facilities selling medical and retail marijuana may co-locate only during such time and selling the product as allowed by state law and regulation.
- c. Medical Marijuana Dispensaries and Marijuana Recreational Facilities and Proximity to Other Land Uses.
 - i. The distance limitations and definition established by this section shall control over the minimum distance limitations set forth by the state of Oregon.
 - ii. The distance limitation are based upon the uses surrounding the proposed marijuana dispensary or facility site on the date the development application is submitted.
 - iii. A dispensary or facility shall not be located within the specified proximity of any of the uses listed below. For purposes of this paragraph, the distance specified is a straight line measurement from the closest points between property lines of the affected properties.
- d. Medical Marijuana Dispensaries. No medical marijuana dispensary may operate or conduct business within:
 - i. 1,000 feet of a public or secondary school for which attendance is compulsory under ORS 339.020 (2013); or a private or parochial elementary or secondary school, teaching children as described in ORS 339.030(1)(a) (2013);
 - ii. 1000 feet of another medical marijuana dispensary; or
 - iii. 150 feet of a licensed child care facility, as defined in BDC 1.2.
- e. Existing Medical Marijuana Dispensaries.
 - i. A medical marijuana dispensary existing as of December 15, 2015 is considered a permitted use regardless if (1) an existing licensed child care facility is located within 150 feet; (2) an existing public or secondary school for which attendance is compulsory under ORS 339.020 (2013), or a private

or parochial elementary or secondary school, teaching children as described in ORS 339.030(1)(a) (2013), is located within 1,000 feet, or (3) a another medical marijuana dispensary is located within 1,000 feet.

- ii. A marijuana dispensary existing at the time any use listed in subsection P.4.d above is subsequently sited within the specified proximity of the dispensary, may remain at that location and is considered a permitted use and not a nonconforming use.
 - iii. An existing marijuana dispensary may change to a recreational facility provided the business complies with applicable state laws and permitted and conditional use tables, and goes through the procedure identified in P.3.
- f. Marijuana Recreational Facility. No marijuana recreational facility may operate or conduct business within:
- i. 1,000 feet of a public or secondary school for which attendance is compulsory under ORS 339.020 (2013); or a private or parochial elementary or secondary school, teaching children as described in ORS 339.030(1)(a) (2013); or
 - ii. 150 feet of a licensed child care facility, as defined in BDC 1.2.
- g. Existing Marijuana Recreational Facility.
- i. A Marijuana Recreational Facility existing at the time any use listed in subsection P.4.f above is subsequently sited within the specified proximity of the Facility, may remain at that location and is considered a permitted use and not a nonconforming use.
 - ii. An existing recreational retail facility may change to a marijuana dispensary provided the business complies with applicable state laws and permitted and conditional use tables, and goes through the process identified in P.3.
- h. Building Site. The proposed development must be located inside a permanent building. Outdoor storage of any merchandise, plants, or other materials is not allowed.
- i. Display. All marijuana plants, products, and paraphernalia must be completely screened from view from all marijuana dispensaries and recreational facilities. There must be no marijuana, marijuana product, or marijuana paraphernalia visible from the exterior of the building.

5. Production and Growing of Commercial Marijuana.

- a. Recreational Production of Marijuana. Recreational production (growing) facilities are prohibited in all residential and commercial zoned and designated areas. It is allowed in industrial zoned and designated areas, as further set forth in the use tables in Title 2. Retail marijuana is not permitted at the same facility as industrial production.
 - b. Medical Grow Sites. Medical grow sites are permitted as allowed by State law up to the possession limitations for registered cardholders or designated primary caregivers of the cardholder in all zones.
 - c. The private growing or cultivating of marijuana for non-commercial personal use, as defined by state law, is not regulated by this chapter.
6. Commercial Marijuana Wholesale. Marijuana wholesale is permitted in CL, CG, MR and ME zones, similar to other wholesale uses (75% of the business use needs to be wholesale). Wholesale is not permitted in residential designated areas. Wholesale is permitted in all industrial zoned and designated areas. See use tables in BDC Title 2.
7. Marijuana Processing.
- a. Residential Zones. Marijuana processing is prohibited in residentially zoned and designated areas.
 - b. Marijuana processing of cannabinoid concentrates and cannabinoid products not including processing of cannabinoid extracts is permitted in all CB, CC, CL, CG, ME and MR zoned and designated areas, provided that the area is less than 5000 square feet and the use includes a retail component as identified in the use tables in BDC Title 2, and specifically subject to Fire Marshal approval. It is permitted conditionally subject to size limitations in the CL zoned and designated areas, and in all Industrial zoned and designated areas. See use tables.
 - c. Marijuana processing of cannabinoid extracts is allowed only in Industrial zoned and designated areas, subject to state law and Fire Marshal approval. See use tables in BDC Title 2.
8. Marijuana Testing Laboratory. Marijuana testing laboratories is permitted in IL, IG, CB, CC, CI, CG and in the ME and MR zoned and designated areas, as further set forth in the use tables in BDC Title 2.
9. Operating License Required. All marijuana businesses operating in the City of Bend must obtain an operating license pursuant to Bend Municipal Code, Chapter 7.50, Marijuana Business Operating License. This applies to existing (businesses currently operating at the time of adoption of this code) in order to continue operating and as a condition to obtaining land use approval under this chapter.

10. Marijuana Businesses-Prohibited Uses. In addition to the other prohibitions identified in this Section, the following uses or practices are also prohibited:

- a. Drive-through dispensaries or facilities in any zone.
- b. Temporary dispensaries or facilities in any zone.
- c. On-site consumption of marijuana at a licensed dispensary or marijuana recreational facilities unless: (1)The consumption is conducted for testing in compliance with OAR 333-008-1190; or (2) The consumption is allowed under the medical exception granted in OAR 333-008-1200.
- d. Co-location of medical marijuana dispensaries at grow sites.
- e. Marijuana businesses in residential zones or designations.
- f. Retail medical marijuana dispensaries or marijuana recreational facilities in industrial zones.
- g. Marijuana businesses as a home occupation in any zone.
- h. Marijuana businesses as a Neighborhood Commercial use.

11. Compliance and Enforcement.

- a. Any premise, house, building, structure or place of any kind where marijuana is sold, manufactures, barter, distributed in violation of state law or this ordinance is a public nuisance. The City may institute an action in Deschutes County in the name of the City to temporarily or permanently enjoin such nuisance.
- b. This remedy is in addition to, and not in lieu of, any other civil, criminal or administrative remedies available to the City authorized under this code, or by law or equity.

First Reading:

Second reading and adoption by roll call vote:

YES: NO: ABSTAIN:

Jim Clinton, Mayor

Attest:

Robyn Christie, City Recorder

Approved as to form:

Mary A. Winters
City Attorney