

AGENDA
YREKA PLANNING COMMISSION
Yreka City Council Chamber – 701 Fourth Street, Yreka, Ca.
November 18, 2015 at 6:30 P.M.

Call to Order

Pledge of allegiance

Conflict of Interest Declaration – Planning Commissioners

PUBLIC COMMENTS: This is the time for public comments. Commissioners may ask questions but may take no action during the public comment section of the meeting, except to direct staff to prepare a report or place an item on a future agenda. If you are here to make comments on a specific agenda item, please speak at that time. If not, this is the time. Please limit your remarks to 5 minutes.

SPEAKERS: Please state your name and mailing address so that City Staff can respond to you in regard to your comments, or provide you with information, if appropriate. You are not required to state your name and address if you do not desire to do so.

1. Consent Calendar - Discussion/Possible Action – All matters listed under the consent calendar are considered routine and will be enacted by one motion unless any member of the Planning Commission wishes to remove an item for discussion or a member of the audience wishes to comment on an item. The City Manager recommends approval of the following consent calendar item:
 - a. Approval of Minutes of the meeting held September 16, 2015.
2. Discussion/Possible Action – Adopt Resolution finding that the proposed partial vacation of water and sewer easements conforms to the General Plan of the City of Yreka. Location – 915 S. Main Street, Assessor’s Parcel Number 061-163-010.
 - a. Staff Report
 - b. Public Hearing
 - c. Decision
 - Adopt Resolution No. 2015-9 finding that the posed partial vacation of water and sewer easements conforms to the General Plan of the City of Yreka.
3. City Manager Report
 - Discussion – Marijuana Cultivation

Commissioner’s Statements and Comments

Adjournment

Decisions of the Planning Commission may be appealed to the City Council by filing a written notice of appeal within 10 calendar days of the decision. Appeal must be submitted to the City Clerk's office together with the appeal fee of \$150.00 plus publication fee if required.

If you challenge any action taken pursuant to the California Environmental Quality Act, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the Planning Department at, or prior to, the public hearing. (Public Resources Code Section 21177)

All documents produced by the City which are related to an open session agenda item and distributed to the Planning Commission are made available for public inspection in the City Clerk's office during normal business hours.

In compliance with the requirements of the Brown Act, notice of this meeting has been posted in a public accessible place, 72 hours in advance of the meeting.

In compliance with the Americans with Disabilities Act, those requiring accommodations for this meeting should notify the City Clerk 48 hours prior to the meeting at (530) 841-2324 or by notifying the Clerk at casson@ci.yreka.ca.us.

MINUTES OF THE REGULAR MEETING OF THE
YREKA PLANNING COMMISSION HELD
ON THE 16th OF SEPTEMBER 2015

On the 16th day of September, 2015 at 6:30 p.m., the Planning Commission of the City of Yreka met in the City Council Chamber in said City in regular session. The meeting was called to order by Vice Chair McCoy and present were:

Commissioners: Duane Kegg, Steve Leal, Paul McCoy, Barry Ohlund, and Richard Rolzinski.
Absent – Diane Knitter & Matt Osborn.

Conflict of Interest Declaration – N/A

PUBLIC COMMENTS:

Consent Calendar – Vice Chair McCoy announced that all matters listed under the consent calendar are considered routine and will be enacted by one motion unless any member of the Planning Commission wishes to remove an item for discussion or a member of the audience wishes to comment on an item:

- a. Approval of Minutes of the regular meeting held on August 19, 2015.

Following Commission discussion, Commissioner Ohlund moved to approve the minutes of the regular meeting held August 19, 2015 as submitted.

Commissioner Rolzinski seconded the motion, and upon roll call, the following voted YEA: Kegg, Leal, McCoy, Ohlund, and Rolzinski.

Vice Chair McCoy thereupon declared the motion carried.

Discussion/Possible Action – Discussion/Possible Action – Consideration of proposed categorical exemption and Conditional Use Permit to construct, establish and operate a storage yard.

The Commission reviewed Resolution No. PC 2015-08 Consideration of proposed categorical exemption and Conditional Use Permit to construct, establish and operate a storage yard. Property location 1752 S. Oregon Street, Yreka, California, CH (Commercial Highway) Zone and GC (General Commercial) General Plan Designation. Assessor's Parcel Number: 062-011-280.

Assistant City Manager Liz Casson presented the Commission with the staff report and the following background – The subject property is zoned CH – Commercial Highway. Yreka Municipal Code (YMC) provides that a use such as Storage buildings and yards is a permitted use in the CH Zone upon approval of a conditional use permit.

City staff recommends approval subject to the proposed findings and conditions of approval, which includes a determination that the proposed project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Section 15332, Infill Development Projects, of the California Public Resources Code.

Notification of the public hearing was mailed to property owners/occupants located within 300 feet of the proposed project on September 1, 2015 and a Notice of Public Hearing was published in the Siskiyou Daily News on September 4, 2015.

Public Hearing – This being the time and date set for the public hearing, Vice Chair McCoy opened the hearing to the audience.

There being no statements or comments received, Vice Chair McCoy closed the public hearing and discussion was opened to the Commission.

Following Commission discussion, Commissioner Leal moved to make the findings that the proposed project is exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Section 15332, Infill Development Projects, of the California Public Resources Code.

Commissioner Kegg seconded the motion, and upon roll call, the following voted YEA: Kegg, Leal, McCoy, Ohlund, and Rolzinski.

Vice Chair McCoy thereupon declared the motion carried.

Commissioner Leal moved to adopt Planning Commission Resolution #PC 2015- 08 making the findings and subject to the Conditions and Approval and Conditional Use Permit # 4261 to construct, establish and operate a storage yard.

The following conditions shall be complied with at all times that the conditional use permit is in effect:

1. All conditions hereinafter set forth shall be complied with by the Permittee prior to issuance of a certificate of occupancy. The premises shall not be occupied or opened to the public until all conditions hereinafter set forth have been complied with by the Permittee.
2. Permittee shall comply with all elements of the project application including site and landscape plans as approved.
3. Minor changes may be approved by the City Manager, or his designee, upon receipt of a substantiated written request by the applicant, or their respected designee, with all required fees. Prior to such approval, verification shall be made by each Department that the modification is consistent with the application, fees paid, and environmental determination as conditionally

approved. Changes deemed to be major or significant in nature shall require an application for amendment for approval by the City of Yreka with all applicable fees paid by the applicant.

4. Site development and grading shall be designed to provide access to all entrances and exterior ground-floor exits and to normal paths of travel and shall incorporate pedestrian ramps, curb ramps, etc. Access shall be provided within the boundary of the site from public transportation stops, accessible parking spaces, passenger-loading zones if provided, and public streets or sidewalks. When more than 1 building or facility is located on a site, accessible routes of travel shall be provided between buildings and accessible site facilities, accessible element, and accessible spaces that are on the same site. The accessible route of travel shall be the most practical direct route between accessible building entrances, accessible site facilities, and the accessible entrance to the site.

5. Sewer lines, waterlines, electric-service facilities, and other utilities; drainage facilities; necessary electric- and public-service easements; and street dedications are to be provided in accordance with the Yreka Municipal Code and as specified by the Engineering Division.

6. New utilities within the project, including, but not limited to, electric, cable television, and phone, shall be installed underground.

7. All commercial developments shall have backflow prevention devices on domestic and fire services as required by the City of Yreka Construction Standards.

8. Applicant shall note that the California Green Building Code Section 5.304.2 requires a separate water meter and water service for irrigation of landscape areas when a commercial project includes more than 1,000 square feet of irrigated landscape. All utility and landscape plans shall depict the proposed location of the water meter and identify the total area of landscape proposed with the project.

9. On-site and street-side fire hydrants are to be installed in accordance with the California Fire Code in locations approved by the City Fire Marshal. Fire hydrants shall have a fire flow meeting Appendix III-B of the California Fire Code. In no case shall the water mains be less than 6 inches in diameter. If a hydrant is located on private property, adequate access shall be provided to and around the hydrant as determined by the Fire Marshal.

10. Storm-drain facilities shall be designed consistent with the requirements of City Construction Standards. Project design shall incorporate Best Management Practices (BMPs) to minimize the polluting of stormwater, both during construction and long-term. Should the maintenance costs of the long-term pollution control measures exceed typical storm-drain-system costs, such costs shall be borne by the project by way of a landscape maintenance district, escrow account, or other such financing mechanism.

11. Prior to improvement-plan approval, the developer must obtain approval for proper management of stormwater peak flows in accordance with Technical Memorandum Storm drain

system design & Evaluation Criteria for City of Yreka, dated July 14, 2006 and the specifications of the City Engineer. Such measures shall address impacts from the 10-, 25-, and 100-year-storm events. Projects shall address peak flows to maintain predevelopment levels at all locations downstream of the project. A drainage report shall be prepared to the format outlined by the Engineering Division, stamped and signed by a qualified engineer, and provided to the Engineering Division with submittal of project improvement plans.

12. Permittee shall obtain approval of all required public improvements through the Department of Public Works and its encroachment permit process for construction of and/or connection to any City sewer, water, or storm drain. Plans prepared by a registered civil engineer may be required for the Department of Public Works, in addition to the plans prepared for the Building Department, for any public infrastructure improvements that need to be constructed. Site plan approval does not include approval of any public improvements.

13. Streetlights will be installed in accordance with City Construction Standards as need.

14. An encroachment permit shall be obtained prior to any work, including curb, gutter, sidewalk, and driveway approach, in the public right-of-way, or affecting public improvements.

15. Permittee shall submit a grading plan for review and approval prior to construction or any on-site grading. The plans for public improvements and for grading are to be submitted to and approved by the Department of Public Works and the Building Official, respectively.

16. The site and landscape plans submitted by Hunter Communications and approved by the City shall not be deviated from unless prior written approval is secured.

17. Off-street parking facilities are not required for this Use Permit, however, parking facilities would be required if an office was built on site. At such time, Permittee will be required to comply with Yreka Municipal Code Section 16.54.090 (Standards for off-street parking facilities), including but not limited to: The parking area, aisles and access drives shall be constructed with a minimum six-inch base and double chip seal so as to provide a durable, dustless surface and shall be so graded and drained to dispose of surface water, with the design and specifications of such work subject to the approval of the City Engineer and Building Official.

18. Aesthetics

- a. Storage area to be improved with compacted ¾" – (4" deep) porous base rock over prepared subgrade with filter fabric in accordance with approved site plan. Permittee shall implement regular weed control of the storage area to prevent weeds from growing up through the gravel.
- b. Landscaping shall be installed to screen the property.

19. Landscaping shall be installed in accordance with the landscape plan submitted and approved by the Planning Commission, and shall be completed prior to issuance of a certificate of occupancy or until security is posted in the amount of one hundred fifty percent (150%) to cover the costs of the unfinished work.

20. The installation and maintenance of the landscaping shall be per the approved Landscape plan. As necessary, replacement of landscaping is required to match the approved plan. Water efficient irrigation system shall be installed for the landscaping in accordance with Yreka Municipal Code Section 16.52.030 (E).
21. Permittee shall obtain a building permit and shall pay the necessary fees including Utility Services, Impact and Connection fees prior to starting construction. Public infrastructure improvements such as curb, gutter, sidewalk, streetlights, curb ramps, driveway approaches and asphalt concrete street pavement may be required upon issuance of a building permit in accordance with Yreka Municipal Code Section 11.24.030. If such improvements already exist, damaged public improvements shall be repaired and/or replaced to restore the improvements to a condition satisfactory to the Director of Public Works in accordance with Yreka Municipal Code Section 11.24.030.
22. Exterior lighting shall be directed inward to reduce off-site light impacts. Exterior lighting shall be limited to a maximum off-site light escape of one-foot candle at the property line.
23. Exterior Mechanical equipment and/or HVAC units must be screened. Trash enclosure must contain opaque gates to screen visibility of the trash dumpster.
24. Permittee shall comply at all times with the zoning district regulations for the *CH Commercial Highway zone* as set forth in section 16.36 of the Yreka Municipal Code.
25. Permittee shall secure a Certificate of Occupancy and approval of the Building Official and Fire Marshal that structure meets building standards and the fire regulations of the Uniform Building and Fire Codes prior to use.
26. Permittee shall comply with Yreka Municipal Code Section 11.01.075 - It shall be the responsibility of anyone engaging in construction or demolition work to restrict the hours of work activity on the site as follows: No construction equipment shall be operated nor any outdoor construction or repair work shall be permitted within five hundred feet from any occupied residence except during the hours of seven a.m. to seven p.m., Monday through Saturday, and eight a.m. to five p.m., on Sunday. Interior work which would not create noise or disturbance noticeable to a reasonable person of normal sensitivity in the surrounding neighborhood shall not be subject to these restrictions.
27. All grading and construction work on the project site shall incorporate the following debris and dust control measures:
- The project shall apply for and receive approval of all necessary permits from the Siskiyou County Air Pollution Control District.
 - If visible soil material is carried onto adjacent public streets, such streets will be cleaned of the debris.

28. Permittee shall obtain a Sign Permit from the Planning Department prior to placing signs on the premises.
29. The site plan approval shall expire and the City may set hearings and take action to terminate if not used within one (1) year from the date of approval unless, prior to the expiration of one year, a building permit is issued and construction is commenced. Approval may be extended upon written application to the Planning Commission before expiration of the first approval.
30. The applicant shall submit a signed copy of the Conditions of Approval to the City of Yreka Planning Division within ten (10) days of approval.
31. Within ten (10) days following the date of the decision of the Planning Commission, the decision may be appealed to the Yreka City Council. The appeal shall be filed with the Yreka City Clerk.
32. Applicant shall within one business day of initial project approval, submit to the Planning Department a check payable to the Siskiyou County Clerk's Office in the amount of \$50.00 (or fee as may be modified by Fish and Game) to cover posting cost in order to allow the project's Notice of Exemption to be filed within the statutorily required timeframes. Failure to file the Notice of Exemption extends the statute of limitations for legal challenges to the categorical exemption from 35 days to 180 days. The applicant has the sole responsibility to ensure timely compliance with this condition.

Commissioner Kegg seconded the motion, and upon roll call, the following voted
YEA: Kegg, Leal, Ohlund, McCoy, and Rolzinski.

Vice Chair McCoy thereupon declared the motion carried.

The foregoing Resolution #2015-08 was adopted by the Planning Commission on the 16th day of September, 2015 by the following vote: Ayes: 5, Nays: 0

There being no further business before the Commission, the meeting was adjourned.

Matt Osborn
Approved by motion of the Planning
Commission on October 21, 2015



**CITY OF YREKA
PLANNING COMMISSION
AGENDA MEMORANDUM**

To: Yreka Planning Commission

Prepared by: Steve Baker, City Manager

Agenda Title: Discussion/Possible Action – Adopt Resolution finding that the proposed partial vacation of water and sewer easements conforms to the General Plan of the City of Yreka. Location 915 S. Main Street, Assessor's Parcel Number 061-163-030.

Meeting Date: November 18, 2015.

Discussion: Jeannette Hook, Administrative Assistant, Department of Public Works, has submitted the attached memorandum requesting that the Planning Commission review the proposed partial vacation of water and sewer easements for consistency with the General Plan, in accordance with Government Code Section 65402.

Staff Recommendation: City staff has analyzed the vacation of a public service easement for utilities at 915 S. Main Street to ensure the conformity of the proposal with the goals, policies, and actions of the City of Yreka's current General Plan and recommends adoption of the Resolution as submitted, and recommends that the Planning Commission utilize the following process for the consideration of this matter:

1. Accept staff report.
2. Open the public hearing and take public testimony.
3. Close the public hearing initiate consideration by Planning Commission; and
4. Motion and vote by the Planning Commission.

Recommended Motion: If the Planning Commission determines that it finds the partial vacation of water and sewer easements conforms to the City's General Plan, staff presents the following motion for consideration: *I move that the Planning Commission adopt Planning Commission Resolution #PC 2015-9 finding that the proposed partial vacation of water and sewer easements conform to the General Plan of the City of Yreka.*

Attachments: Attachment A – Memorandum from the Department of Public Works requesting review of partial vacation of water and sewer easements for consistency with General Plan.

Attachment B – Planning Commission Resolution # PC 2015-9.

Approved by: _____


Steven Baker, City Manager



**CITY OF YREKA
DEPARTMENT OF PUBLIC WORKS
MEMORANDUM**

To: Yreka Planning Commission

Prepared by: Jeannette Hook, Administrative Assistant

Agenda title: REVIEW THE PARTIAL VACATION OF WATER AND SEWER EASEMENTS FOR
CONSISTENCY WITH THE GENERAL PLAN

Meeting date: November 18, 2015

Discussion:

The City received a request from property owner(s) to revise several easements at 915 S. Main Street (see attached letter). Two easements for water and sewer lines are proposed to be vacated and new easements for water, sewer and storm drains are to be established. There is no indication that the easements granted in 1958 were properly abandoned and new easements established in the 1980's when the store building was constructed and the utilities relocated.

In 2014, a sinkhole developed in the parking lot that exposed several utility lines. Staff assisted the property owner during these repairs and confirms that the pipes in the parking lot are currently active. The old infrastructure is not in use and the easements in the old locations have been superseded by relocation, and therefore it is appropriate to establish new easements in the current locations.

Staff believes that the location, purpose, and extent of the easements to be abandoned and acquired are consistent with the General Plan and requests the Commission's review and concurrence.

Background:

Streets and Highways Code Section 8313 states "if the proposed vacation of a street, highway, or public service easement is within an areas for which a general plan is adopted by a local agency, the legislative body of the public entity shall consider the general plan prior to vacating the street, highway, or public service easement. The procedure prescribed in Section 65402 of the Government Code shall be followed..."

In accordance with these sections of the California codes, the Planning Commission must report to the City Council regarding the conformity of the proposed actions with the city's general plan within 40 days or some other period of time designated by the city council. If the Planning Commission fails to make its report, it is considered to be conclusive evidence that the proposed actions are in conformity with the City's general plan.

Attachments:

1. Request Letter from Bray and Associates on behalf of Property Owner, PacTrust/Pacific Realty Associates, LLP.
2. Diagrams and maps showing locations of easements proposed for vacation and re-establishment.

Recommendation:

1. Review whether the abandonment of easements at 915 S. Main Street is consistent with the general plan.
2. Consider Adoption of Resolution



Bray & Associates
Civil Engineers & Land Surveyors
brayengineer.com

329 West Miner Street
Yreka CA 96097
530.842.6813
530-842.6645 (Fax)
brayengr@sbcglobal.net

August 7, 2015

Jeannette Hook
Administrative Assistant
City of Yreka Public Works
701 Fourth Street
Yreka CA 96097

Exhibit 1

To The Great City of Yreka,

Please see attached PDF for PacTrust,

Narrative: Before World War II a gas service station and small wood frame structures occupied the area shown on attached map. During that era the site topography was a hillside sloping to the East. Between 1927 through 1958 several easements for the City of Yreka were perfected, these easements are shown going through the existing building on said map.

In the late 1970's and early 1980's Safeway Stores proposed excavating the hillside for a large shopping center. The Construction created a large deep cut into the hillside requiring the existing infrastructure to be rerouted to the north, away from the new building, through the parking lot.

We believe the City's infrastructure was relocated during construction with no new easements obtained or abandoned.

In 2014 Bray and Associates mapped the current topography and easements as shown on the attached PDF.

Also in 2014, during a sink hole fix in the parking lot, a water line was discovered. PacTrust would like to grant to the City of Yreka easements across the parking lot in exchange for the City's abandonment of those easements bisecting the existing building.

After discussion with Public Works we find no evidence that the easements to be abandoned are in use.

If you have questions please give me a call.

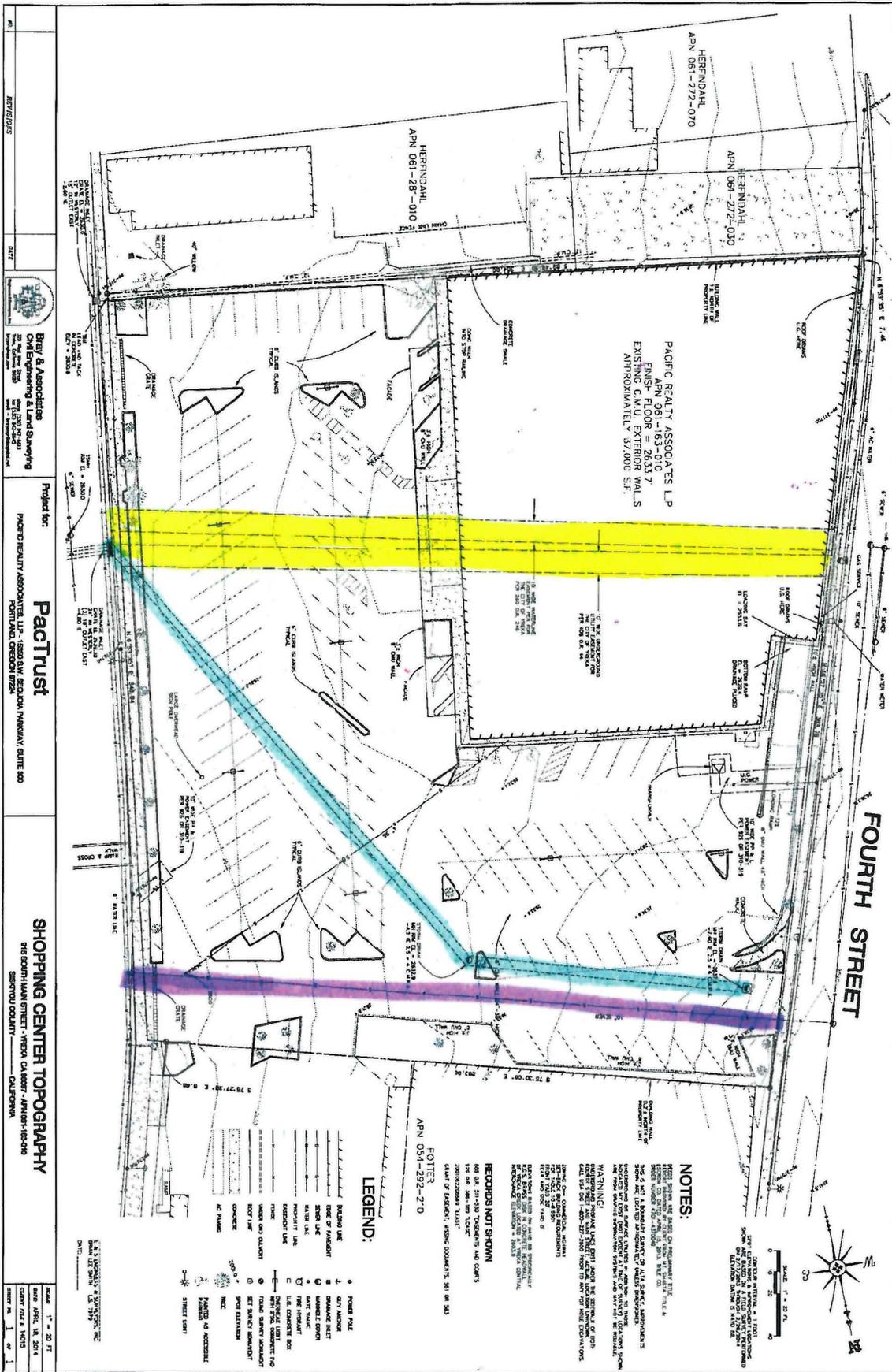
Sincerely,



Brian Smith L.S. 7979



Cc Dan Tapella CPM - Pacific Realty Associates, LLP



← Calaveras Lake Watershed

← New Water/Sanitation Sewerage

← New Gas Line

RESOLUTION PC 2015-9
RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF YREKA FINDING
THAT THE PROPOSED PARTIAL VACATION OF WATER AND SEWER EASEMENTS
CONFORMS TO THE GENERAL PLAN OF THE CITY OF YREKA
LOCATION 915 S. MAIN STREET – APN: 061-163-010

WHEREAS, the City is a Municipal Corporation and has adopted a General Plan; and,

WHEREAS, review is required pursuant to California Government Code Section 65402 as to whether acquisition and disposal of easements or fee title in favor of the City of Yreka will be consistent with the General Plan; and

WHEREAS, on August 7, 2015, the City of Yreka received a request to revise several easements at 915 S. Main Street; and

WHEREAS, pursuant to California Government Code Section 65402, the Planning Commission must make a report as to the conformity of the proposed acquisition and use of that property with the City's General Plan within 40 days or some other period of time designated by the City Council; and,

WHEREAS, pursuant to Title 14 of the California Code of Regulations, Section 15061, this action is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it is not a Project, which has the potential for causing any significant effect on the environment.

NOW THEREFORE, THE PLANNING COMMISSION DOES HEREBY RESOLVE, DETERMINE AND ORDER AS FOLLOWS:

Section 1. The Commission hereby finds and determines that the foregoing recitals are true and correct.

Section 2. The Commission hereby finds and determines that the proposed easement vacations and easements to be acquired as more particularly described in Exhibit 1 and Exhibit 2 and depicted on the associated diagrams are consistent with the General Plan of the City of Yreka.

Section 3. This Resolution shall take effect immediately upon its passage.

Passed and adopted this 18th day of November 2015, by the following vote:

AYES:

NAYS:

ABSENT:

Matt Osborne, Chair

Attest: _____
Elizabeth E. Casson,
City Clerk

NOTICE OF HEARING

GIVING NOTICE OF INTENT TO VACATE A PORTION OF WATER AND SEWER EASEMENTS AND NOTICE OF PUBLIC HEARING THEREON.

The City of Yreka does hereby give notice of its intent to vacate a portion of certain easements deeded to the City of Yreka on the property described as Parcel 1 for "Thrifty Drug Co." as recorded on December 10, 1974, Siskiyou County, in Book 2 of Parcel Maps at Page 64, with respect to the real properties located at 915 South Main Street, Yreka, California, and more particularly identified as Siskiyou County Assessor Parcel number 061-163-010.

The vacation of said portion of easements is being conducted pursuant to Chapter 3, Part 3 of Division 9 of the Streets and Highway Code commencing with Section 8300. The portion being vacated has not been used for more than 5 years and have been superseded by relocation.

A public hearing for the proposed vacation of said portion of right of way is hereby set for Thursday, November 19, 2015, at 6:30 p.m. at City Council Chambers located at 701 Fourth Street, Yreka, California. All interested persons are invited to attend the meeting and to participate in the public hearing or to deliver written comments to the City Clerk on or before 5 p.m. November 19, 2015.

This Notice of Hearing is published as required in Streets and Highways Code Section 8322.

October 30, 2015
City of Yreka
Elizabeth Casson, City Clerk



**CITY OF YREKA
PLANNING COMMISSION AGENDA MEMORANDUM**

To: Yreka Planning Commission
Prepared by: Steve Baker, City Manager
Agenda Title: Discussion – Marijuana Cultivation
Meeting date: November 18, 2015

Discussion:

Governor Jerry Brown signed a comprehensive package of bills recently to establish a regulatory structure around the State's multi-billion dollar medical marijuana industry. Known as AB 266, AB 243, and SB 643 which comprise the Medical Marijuana Regulation & Safety Act.

California's new medical marijuana laws will take effect on January 1, 2016. Cities and Counties that do not have ordinances regarding cultivation on the books by March 1, 2016 will be subject to state law only. State law appears to allow 100 square feet of medical cannabis for a patient, and allow caregivers to grow 500 square feet for up to five patients. State licensing or commercial-sized medical marijuana farms is allowable under the new law, provided local governments approve.

Attached is a copy of Ordinance No. 817 adopted by the Yreka City Council in October 2011 prohibiting marijuana dispensaries in all zoning districts within the City, however, the Council did not adopt an Ordinance regarding the cultivation.

Approved by: 
Steven Baker, City Manager

City of Yreka Ordinance Prohibiting Marijuana Dispensaries
in all zoning districts within the City.

ORDINANCE NO. 817

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
YREKA ADDING A NEW CHAPTER 9.25 (MEDICAL
MARIJUANA DISTRIBUTION FACILITIES) TO TITLE 9
(PUBLIC PEACE, MORALS AND WELFARE) AND A NEW
CHAPTER 16.100 (MEDICAL MARIJUANA DISTRIBUTION
FACILITIES) TO TITLE 16 (ZONING) AND
MODIFYING CHAPTERS 16.12 AND 16.34
OF THE YREKA MUNICIPAL CODE

WHEREAS, in 1970, Congress enacted the Controlled Substances Act (CSA) which, among other things, makes it illegal to import, manufacture, distribute, possess or use marijuana in the United States; and

WHEREAS, in 1996, the voters of the State of California approved Proposition 215, known as the Compassionate Use Act ("CUA") (codified as Health and Safety (H&S) Code Section 11362.5 et seq.); and

WHEREAS, the CUA creates a limited exception from criminal liability for seriously ill persons who are in need of medical marijuana for specified medical purposes and who obtain and use medical marijuana under limited, specified circumstances; and

WHEREAS, on January 1, 2004, the "Medical Marijuana Program Act:" (MMPA), codified as H&S Code Sections 11362.7 to 11362.83, was enacted by the state Legislature to clarify the scope of the Act and to allow cities and other governing bodies to adopt and enforce rules and regulations consistent with the MMPA; and

WHEREAS, the CUA expressly anticipates the enactment of additional local legislation. It provides: "Nothing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, nor to condone the diversion of marijuana for nonmedical purposes." (H&S Code Section 11362.5); and

WHEREAS, the City Council takes legislative notice of the fact that several California cities and counties which have permitted the establishment of medical marijuana distribution facilities or "dispensaries" have experienced serious adverse impacts associated with and resulting from such uses. According to these communities, according to news stories widely reported and according to medical marijuana advocates, medical marijuana dispensaries have resulted in and/or caused an increase in crime, including burglaries, robberies, violence, illegal sales of marijuana to, and use of marijuana by, minors and other persons without medical need in the areas immediately surrounding such medical marijuana distribution facilities. The City Council reasonably anticipates that the City of Yreka will experience similar adverse impacts and effects. A California Police Chiefs Association compilation of police reports, news stories and statistical research regarding such secondary impacts is contained in a 2009 white paper report located at <http://www.procon.org/sourcefiles/CAPCAWhitePaperonMarijuanaDispensaries.pdf>; and,

WHEREAS, the City Council further takes legislative notice that as of December 2010, according to at least one compilation, 103 cities and 14 counties in California have adopted moratoria or interim ordinances prohibiting medical marijuana dispensaries. The City Council further takes legislative notice that 139 cities and 11 counties have adopted prohibitions against medical marijuana dispensaries. The compilation is available at <http://www.safeaccessnow.org/article.php?id=3165>; and,

WHEREAS, the City Council further takes legislative notice that the California Attorney General has adopted guidelines for the interpretation and implementation of the state's medical marijuana laws, entitled "GUIDELINES FOR THE SECURITY AND NONDIVERSION OF MARIJUANA GROWN FOR MEDICAL USE (August 2008)" (http://ag.ca.gov/cms_attachments/press/pdfs/nl601_medicalmarijuanaguidelines.pdf). The Attorney General has stated in the guidelines that "[a]lthough medical marijuana 'dispensaries' have been operating in California for years, dispensaries, as such, are not recognized under the law"; and

WHEREAS, the City Council further takes legislative notice that the experience of other cities has been that many medical marijuana distribution facilities or "dispensaries" do not operate as true cooperatives or collectives in compliance with the MMPA and the Attorney General Guidelines, and thus these businesses are engaged in cultivation, distribution and sale of marijuana in a manner that remains illegal under both California and federal law; as a result, the City would be obligated to commit substantial resources to regulating and overseeing the operation of medical marijuana distribution facilities to ensure that the facilities operate lawfully and are not fronts for illegal drug trafficking; and, furthermore, it is uncertain whether even with the dedication of significant resources to the problem, the City would be able to prevent illegal conduct associated with medical marijuana distribution facilities, such as illegal cultivation and transport of marijuana and the distribution of marijuana between persons who are not qualified patients or caregivers under the CUA and MMPA; and,

WHEREAS, the City Council further takes legislative notice that concerns about nonmedical marijuana use arising in connection with the CUA and the MMPA also have been recognized by state and federal courts. (See, e.g., *Bearman v. California Medical Bd.* (2009) 176 Cal.App.4th 1588; *People ex rel. Lungren v. Peron* (1997) 59 Cal.App.4th 1383, 1386 to 1387; *Gonzales v. Raich* (2005) 545 U.S. 1); and,

WHEREAS, the City Council further takes legislative notice that the use, possession, distribution and sale of marijuana remain illegal under the CSA (*Bearman v. California Medical Bd.* (2009) 176 Cal.App.4th 1588); that the federal courts have recognized that despite California's CUA and MMPA, marijuana is deemed to have no accepted medical use (*Gonzales v. Raich*, 545 U.S. J; *United States v. Oakland Cannabis Buyers' Cooperative* (2001) 532 U.S. 483); that medical necessity has been ruled not to be a defense to prosecution under the CSA (*United States v. Oakland Cannabis Buyers' Cooperative*, 532 U.S. 483); and that the federal government properly may enforce the CSA despite the CUA and MMPA (*Gonzales v. Raich*, 545 U.S. 1); and,

WHEREAS, the City Council further takes legislative notice that the United States Attorney General on June 29, 2011 announced that the commercial cultivation, sale, distribution and use of marijuana for purported medical purposes is not shielded from federal enforcement action and prosecution, even if the activities otherwise comply with state law. The announcement reinforced the conflict between federal and state statutes remains and stated that enforcement of the Controlled Substances Act remains a core priority of the Department of Justice; and

WHEREAS, an ordinance prohibiting medical marijuana distribution facilities, and prohibiting the issuance of any permits, licenses and entitlements for medical marijuana distribution facilities, is necessary and appropriate to maintain and protect the public health, safety and welfare of the citizens of Yreka; and,

WHEREAS, the City Council finds, pursuant to Title 14 of the California Code of Regulations, Section 15061 (b)(3), that this ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it is not a Project which has the potential for causing a significant effect on the environment.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF YREKA DOES ORDAIN as follows:

Section 1. Title 9 (Public Peace, Morals and Welfare) of the Yreka Municipal Code is amended by adding a new Chapter 9.25 (Medical Marijuana Distribution Facilities) to read as follows:

"Chapter 9.25
MEDICAL MARIJUANA DISTRIBUTION FACILITIES

9.25.010 Definitions.

9.25.020 Operation of medical marijuana distribution facilities prohibited.

9.25.030 Violation- penalty.

9.25.040 Public nuisance.

9.25.010 Definitions.

"Medical marijuana distribution facility" is any facility or location, whether fixed or mobile, where a primary caregiver makes available, sells, transmits, gives or otherwise provides marijuana to two or more persons with identification cards or qualified patients, as defined in California Health and Safety Code section 11362.5 et. seq., or any facility where qualified patients, persons with identification cards and primary caregivers meet or congregate collectively and cooperatively to cultivate or distribute marijuana for medical purposes under the purported authority of California Health and Safety Code section 11362.5 et. seq. "Medical marijuana distribution facility" shall not include the following uses, so long as such uses comply with this Code, Health and Safety Code Section 11362.5 et seq., and other applicable law:

(1) A clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code.

(2) A health care facility licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code.

(3) A residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 of Division 2 of the Health and Safety Code.

(4) A residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code.

(5) A hospice or a home health agency, licensed pursuant to Chapter 8 of Division 2 of the Health and Safety Code.

9.25.020 Operation of medical marijuana distribution facilities prohibited.

Medical marijuana distribution facilities, as defined in this chapter, are prohibited uses in the City of Yreka.

9.25.030 Violation-penalty.

(a) Any person found to be in violation of any provision of this chapter shall not be subject to the criminal enforcement remedies set forth in Title 1.

(b) Each violation of this chapter and each day of violation of this chapter shall be considered as separate and distinct violations thereof and the imposition of a penalty shall be as set forth in subsection (a) of this section for each and every separate violation and each and every day of violation. Any violation of this chapter shall be subject to the civil penalties established for conduct equivalent to a misdemeanor as set forth in Title 1.

9.25.040 Public nuisance. Any use or condition caused or permitted to exist in violation of any of the provisions of this chapter shall be and is hereby declared a public nuisance and may be abated by the City pursuant to the procedures set forth in Title 1.

Section 2. Title 16 (Zoning) of the Yreka Municipal Code is amended by adding a new Chapter 16.100 (Distribution of Medical Marijuana) to read as follows:

"Chapter 16.100
MEDICAL MARIJUANA DISTRIBUTION FACILITIES

16.100.010. Medical marijuana distribution facilities.

16.100.010 Medical marijuana distribution facilities. Medical marijuana distribution facilities, as defined in Chapter 9.25, are prohibited uses in all zoning districts in the City of Yreka."

SECTION 3. Title 16 (Zoning) of the Yreka Municipal Code is amended to read as follows:

Section 16.12.705 is added and reads as: "Pharmacy" and "pharmaceuticals" mean its customary and usual definition as it relates to the dispensing of medicines according to prescriptions of physicians, and does not include medical marijuana distribution facility as defined in this Code.

Section 16.34.050 is amended to delete subparts 16.34.050.A.51, 16.34.050.B.34,

Section 13.34.070 is amended to delete subpart 16.34.070.X.

SECTION 4. If any section, subsection, part, clause, sentence or phrase of this Ordinance or the application thereof is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, the validity of the remaining portions of this Ordinance, the application thereof, shall not be effected thereby but shall remain in full force and effect, it being the intention of the City Council to adopt each and every section, subsection, part, clause, sentence phrase regardless of whether any other section, subsection, part, clause, sentence or phrase or the application thereof is held to be invalid or unconstitutional.

SECTION 5. Mandatory Duty Savings Clause. By the use of such words as "shall" and "must" herein the City Council does not intend to create a mandatory duty upon the city. In imposing duties in this ordinance the City is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury.

SECTION 6. Effective Date. This ordinance shall be in full force and effect thirty (30) days from and after the date of its adoption.

SECTION 7. Posting And Publication. The City Clerk is directed to cause a copy of the full text of this ordinance to be published once in an adjudicated newspaper of general circulation in the City of Yreka within fifteen (15) days after adoption of this ordinance. If the charge for publication of the ordinance exceeds the customary rate charged by the newspaper for publication of private legal notices, the City Clerk is directed to prepare, post and publish a summary of this ordinance as provided in Government Code Section 36933(c)(1) .

If the charge for publication of this ordinance exceeds the customary rate charged by the newspaper for publication of private legal notices, and the City Clerk determines that it is not feasible to prepare a fair and adequate summary of the proposed or adopted ordinance or amendment, the City Clerk is directed to prepare and cause a display advertisement of at least one-quarter of a page in a newspaper of general circulation in the city to be published at least five days prior to the City Council meeting at which this to be adopted as provided in Government Code Section 36933(c)(2).

SECTION 8. Codification. The City Clerk is directed and authorized to instruct the publisher of the City of Yreka Municipal Code that codification of this Ordinance is limited to Section 1 through Section 3.

Introduced at a regular meeting of the City Council held September 15, 2011, and adopted as an ordinance of the City of Yreka at a regular meeting of the City Council held on 10/6/, 2011, by the following vote:

AYES: BICEGO, FOSTER, MCNEIL & MERCIER

NOES: NONE

ABSENT: SIMMEN



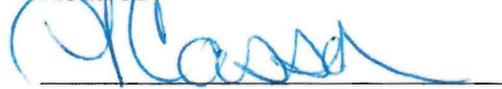
Rory McNeil, Mayor

Approved as to form:



Mary Frances McHugh
City Attorney

ATTEST:



Elizabeth E. Casson, City Clerk