

# MEMO

**To:** TOWN COUNCIL

**From:** Joanna Gutierrez, Town Clerk 

**Subject:** Additional Agenda Material: Agenda Item 7a  
January 11, 2011 Council Meeting

**Date:** January 7, 2011

Attached is a revised urgency ordinance regarding agenda item 7a, regarding a moratorium on medical marijuana distribution facilities and establishment or operation of collectives for the cultivation of medical marijuana.

jmg/attachment(s)

cc: Chuck Rough  
Dwight Moore  
Paradise Post  
Public View Packet

**TOWN OF PARADISE  
ORDINANCE NO. \_\_\_\_\_**

**AN INTERIM URGENCY ORDINANCE OF THE TOWN COUNCIL OF THE  
TOWN OF PARADISE ENACTING A MORATORIUM ON THE  
ESTABLISHMENT OR OPERATION OF MEDICAL MARIJUANA  
DISTRIBUTION FACILITIES AND COLLECTIVES FOR  
THE CULTIVATION OF MEDICAL MARIJUANA**

The Town Council of the Town of Paradise, State of California does hereby **ORDAIN AS FOLLOWS:**

**SECTION 1.** Findings. The Town Council finds and declares as follows:

- a) In 1996, the voters of the State of California approved Proposition 215 (codified as California Health and Safety Code section 11362.5, and entitled “The Compassionate Use Act of 1996”). The intent of Proposition 215 was to enable persons who are in need of marijuana for medical purposes to use it without fear of criminal prosecution under limited, specific circumstances.
- b) In 2004, the Legislature enacted Senate Bill 420 (codified as California Health and Safety Code sections 11362.7 et seq.) to clarify the scope of Proposition 215, and to provide qualifying patients and primary caregivers who collectively or cooperatively cultivate marijuana for medical purposes with a limited defense to certain specified state criminal statutes.
- c) The federal Controlled Substances Act, 21 U.S.C. §§ 801 et seq., classifies marijuana as a Schedule I Drug, which is defined as a drug or other substance that has a high potential for abuse, that has no currently accepted medical use in treatment in the United States, and that has not been accepted as safe for use under medical supervision. The federal Controlled Substances Act makes it unlawful, under federal law, for any person to cultivate, manufacture, distribute or dispense, or possess with intent to manufacture, distribute or dispense, marijuana. The federal Controlled Substances Act contains no exemption for the cultivation, manufacture, distribution, dispensation, or possession of marijuana for medical purposes.
- d) For the above reasons, the Town Council has directed the Town Manager to develop proposed regulations which the Council will consider adopting to regulate the distribution or collective cultivation of medical marijuana so as to prevent the harmful effects on the Town from the unregulated distribution or collective cultivation of medical marijuana.
- e) The U.S. Attorney General has stated that federal law enforcement officials would ease enforcement at California medical marijuana facilities. This statement, along with other factors, has resulted in an increase in the establishment of collectives that cultivate of

marijuana in the State of California and the Town. In response, numerous cities and counties around the state are proposing new regulations. Among the jurisdictions near the Town, some are proposing new regulations regarding the distribution or collective cultivation of medical marijuana. These regulations can be expected to have the effect of redirecting persons desirous of establishing such collectives to consider doing so in the Town. In fact, the Town has received inquiries regarding the establishment of medical marijuana collectives and cooperatives in the Town.

- f) Proposition 215 and Senate Bill 420 do not preempt local zoning or nuisance regulations affecting marijuana-related land uses; rather, Senate Bill 420 (Health and Safety Code section 11362.83) expressly allows cities and counties to adopt and enforce ordinances that are consistent with state law.
- g) Under the current provisions of the Town Zoning Code, medical marijuana dispensaries are not identified as a permitted use in any zoning district in the Town. Further, marijuana dispensaries are not found to be substantially similar to other permitted, conditions, or accessory uses. The Town interprets these provisions to mean that such uses are prohibited.
- h) The Town Council and its staff intend to consider and study possible means of regulating the distribution or collective cultivation of marijuana, including zoning regulations and other regulations, and by this ordinance shall direct the immediate commencement of such consideration and study.
- i) If medical marijuana distribution facilities or collectives for cultivation of medical marijuana are allowed to be established, developed, constructed, maintained, or operated in the Town without appropriate regulations, such uses may be established in areas, or operated in a manner, that would conflict with the proposed regulations to be considered and studied by the Town Council and its staff, and would therefore defeat the purpose of the proposal to study and adopt new regulations regarding the distribution or collective cultivation of medical marijuana in the Town.
- j) The establishment, development, maintenance, or operation of medical marijuana distribution facilities or medical marijuana collectives would result in a current and immediate threat to the public health, safety and welfare, because such uses threaten to cause the harmful "secondary effects" identified above within the Town, and because such uses may frustrate the accomplishment of the goals of regulations relating to marijuana distribution facilities and marijuana collectives that the Town and its staff will consider and study. It is therefore necessary to adopt this ordinance to prohibit the establishment, development, construction, maintenance, or operation of medical marijuana distribution facilities and collectives for the cultivation of medical marijuana during the period of such consideration and study.

**SECTION 2.** Definitions. For the purpose of this ordinance, the following terms shall have the following meanings:

- a) "Development Application" shall mean an application for any permit or approval to be issued by any Town of Paradise officer, department or other agency, including subdivisions, use permits, variances, building permits, or any other entitlement for use.
- b) "Medical Marijuana Distribution Facility" shall mean: Any facility serving two or more persons that grows, processes or distributes medical marijuana in a manner other than as a marijuana collective.
- c) "Marijuana Collective" shall mean: Any group, association or organization that cooperatively, collectively or independently cultivates either indoors or outdoors marijuana for medical purposes of its members, or others in accordance with Health and Safety Code section 11362.5 or any state regulation adopted in furtherance thereof.
- d) "Marijuana" shall have the same meaning as that set forth in Health and Safety Code section 11018.
- e) "Person" shall include: Any natural person, association, corporation, cooperative, partnership, collective, limited liability company, or any other social or business entity.

**SECTION 3.** Prohibitions. No Person shall cause or permit the establishment, development, construction, maintenance, operation, or enlargement of a medical marijuana distribution facility or a marijuana collective within the Town of Paradise, nor shall any Development Application be accepted, filed, processed, issued or approved for such a marijuana distribution facility or a marijuana collective during the term of this moratorium ordinance. This interim ordinance shall in no way limit the right of an individual to possess, use or cultivate marijuana for medicinal purposes as is presently authorized by the laws of the State of California as set forth in Health and Safety Code Section 11362.5 and Sections 11362.7 through 11362.83.

**SECTION 4.** Report. The Town Manager is directed to issue a written report describing the measures taken by the Town to alleviate the conditions which have led to the adoption of this ordinance, at least 10 days prior to the expiration of this ordinance.

**SECTION 5.** Severability. If any provision of this ordinance or the application thereof to any person or circumstances is for any reason held to be invalid by a court or competent jurisdiction, such provision shall be deemed severable, and the invalidity thereof shall not affect the remaining provisions or other applications of the ordinance, which can be given effect without the invalid provision or application thereof.

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**SECTION 6.** Urgency, Duration and Publication. This ordinance is adopted by the Town Council pursuant to the California Constitution, article XI, section 7 and Government Code section 65858 by a four-fifths or greater vote, as an urgency measure to protect the public health, safety and welfare, and shall take effect immediately. The reasons for such urgency are set forth in Section 1 above. This ordinance shall expire and be of no further force or effect 45 days after its adoption, unless it is extended by the Town Council pursuant to California Government Code section 65858. Before the expiration of 15 days after the adoption of this ordinance, it shall be published once, with the names of the members of this Council voting for or against the same in a newspaper of general circulation published in the Town of Paradise.

**PASSED AND ADOPTED** by the Town Council of the Town of Paradise, County of Butte, State of California, on this \_\_\_\_ day of \_\_\_\_\_, 2011 by the following vote:

**AYES:**

**NOES:**

**ABSENT:**

**ABSTAIN:**

\_\_\_\_\_  
Alan White, Mayor

**APPROVED AS TO FORM:**

**ATTEST:**

\_\_\_\_\_  
DWIGHT L. MOORE, Town Attorney

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JOANNA GUTIERREZ, Town Clerk