TOWN OF PARADISE
ORDINANCE NO. 523

AN ORDINANCE OF THE TOWN OF PARADISE REPEALING CHAPTER 17.31 OF THE PARADISE MUNICIPAL CODE AND ADDING A NEW CHAPTER 17.31 TO THE PARADISE MUNICIPAL CODE RESTRICTING MEDICAL MARIJUANA CULTIVATION

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

SECTION 1. Chapter 17.31 of the Paradise Municipal Code is hereby repealed.

SECTION 2. A new Chapter 17.31 is hereby added to the Paradise Municipal Code to read as follows:

Chapter 17.31

CULTIVATION OF MEDICAL MARIJUANA

Section:

17.31.100 Findings and purpose.
17.31.200 Applicability.
17.31.300 Definitions.
17.31.400 Cultivation in residential zoning districts for personal use.
17.31.500 Prohibition.
17.31.600 Nuisance and civil penalties.

17.31.100 Findings and purpose.

A. The town council hereby finds that the cultivation of medical marijuana significantly impacts, or has the potential to significantly impact, the town's jurisdiction. These impacts include damage to buildings in which cultivation occurs, including improper and dangerous electrical alterations and use, inadequate ventilation, increased occurrences of home-invasion robberies and similar crimes, and nuisance impacts to neighboring properties from the strong and potentially noxious odors from the plants and increased crime.

B. It is acknowledged that the voters of the State of California have provided a criminal defense to the cultivation, possession and use of marijuana for medical purposes through the adoption of the Compassionate Use Act in 1996 pursuant to Proposition 215 and codified as Health and Safety Code section 11362.5. The Compassionate Use Act ("CUA") does not address the land use or other impacts that are caused by the cultivation of medical marijuana.

C. The purpose of this chapter is to adopt rules consistent with the Compassionate Use Act and the Medical Marijuana Program Act ("MMPA") commencing with Health and Safety Code section 11362.7 to regulate medical marijuana in a manner that protects the public health, safety and welfare of the community and prevents the adverse impacts which such activities may have on nearby town properties and residents, without interfering with the rights of qualified patients and their primary caregivers to possess or cultivate medical marijuana pursuant to state law.

D. The Compassionate Use Act is limited in scope, in that it only provides a defense from criminal prosecution for possession and cultivation of marijuana to qualified patients and their primary caregivers. The scope of the Medical Marijuana Program Act is also limited in that it establishes a statewide identification program and affords qualified patients, persons with identification cards and their primary caregivers, an affirmative defense to certain enumerated criminal sanctions that would otherwise apply to transporting, processing, administering or distributing marijuana.

E. The Compassionate Use Act and Medical Marijuana Program Act do not appear to have facilitated the stated goals of providing access to marijuana for patients in medical need of marijuana, but instead the predominant use of marijuana has been for recreational and not-medicinal purposes. As the report issued by California Chiefs Association on September 2009, entitled "California Chiefs Association Position Paper on Decriminalizing Marijuana" states, "[i]t has become clear, despite the claims of use by critically ill people that only about 2% of those using crude Marijuana for medicine are critically ill. The vast majority of those using crude Marijuana as medicine are young and are using the substance to be under the influence of THC [tetrahydrocannabinol] and have no critical medical condition." (California Chiefs Association's Position Paper on Decriminalizing Marijuana, available at the Community Development Department.)

F. Facilities purportedly dispensing marijuana for medicinal purposes are commonly referred to as medical marijuana dispensaries, medical marijuana cooperatives, or medical marijuana collectives; however, these terms are not defined anywhere in the Compassionate Use Act nor Medical Marijuana Program Act. Significantly, nothing in the CUA or the MMPA specifically authorizes the operation and the establishment of medical marijuana dispensing facilities.

G. Further, neither the CUA nor the MMPA require or impose an affirmative duty or mandate upon local governments, such as the town, to allow, authorize or sanction the establishment and the operation and establishment of facilities dispensing medical marijuana within their jurisdictions. Moreover, the Compassionate Use Act did not create a constitutional right to obtain medical marijuana.

H. It is critical to note that neither Act abrogates the town's powers to regulate for public health, safety and welfare. Health and Safety Code § 11362.5(b)(2) provides that the Act does not supersede any legislation intended to prohibit conduct that endangers others. In addition, Health and Safety Code §

11352.83 authorizes cities and counties to adopt and enforce rules and regulations consistent with the Medical Marijuana Program Act.

I. On August 25, 2008, Edmund G. Brown, the California Attorney General issued "Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use" ("the Attorney General Guidelines"), which sets regulations intended to ensure the security and non-diversion of marijuana grown for medical use by qualified patients. Health and Safety Code §11362.81(d) authorizes the Attorney General to "develop and adopt appropriate guidelines to ensure the security and non-diversion of marijuana grown for medical use by patients qualified under" the Compassionate Use Act. Nothing in the Guidelines imposes an affirmative mandate or duty upon local governments, such as the town, to allow, sanction or permit the establishment or the operation of facilities dispensing medical marijuana within their jurisdictional limits.

J. Marijuana remains an illegal substance under the Federal Controlled Substances Act, 21 U.S.C. § 801, *et seq*. and is classified 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 its use under medical supervision. Furthermore, the Federal Controlled Substances Act makes it unlawful for any person to cultivate, manufacture, distribute or dispense, or possess with intent to manufacture, distribute or dispense marijuana. The Controlled Substances Act contains no statutory exemption for the possession of marijuana for medical purposes.

K. Pursuant to the town's police powers authorized in Article XI, Section 7 of the California Constitution, as well as under the Paradise Municipal Code, the town has the power to regulate permissible land uses throughout the town and to enact regulations for the preservation of public health, safety and welfare of its residents and community. And, pursuant to Government Code § 38771 the town also has the power through its Town Council to declare actions and activities that constitute a public nuisance.

L. The Town Council finds that neither the CUA nor the MMPA preempts the town's exercise of its traditional police powers in enacting land use and zoning regulations, as well as legislation for preservation of public health, safety and welfare, such as this zoning ordinance prohibiting the establishment and operation of medical marijuana cooperatives and collectives within the town.

M. The Town Council finds that the public health, safety and general welfare of the town and its residents necessitates and requires the adoption of this zoning ordinance, prohibiting the establishment and operation of medical marijuana cooperatives and collectives, in order to: (a) protect and safeguard against the detrimental secondary negative effects and adverse impacts of facilities dispensing medical marijuana; (b) preserve and safeguard the minors, children and students

in the community from the deleterious impacts of medical marijuana facilities; and (c) preserve the town's law enforcement services, in that monitoring and addressing the negative secondary effects and adverse impacts will likely burden the town's law enforcement resources. The Town Council further finds that due to the negative secondary effects and adverse impacts of facilities dispensing medical marijuana, the establishment and the operation of these facilities will negatively impact the town.

N. This zoning ordinance is consistent with the Paradise General Plan in that the General Plan, its objectives, policies and goals do not permit or contemplate the establishment or operation of medical marijuana cooperatives, collectives or similar facilities that engage in dispensing of marijuana for medicinal purposes.

17.31.200 Applicability.

A. Nothing in this chapter is intended, nor shall it be construed, to burden any defense to criminal prosecution under the Compassionate Use Act.

B. Nothing in this chapter is intended, nor shall it be construed, to make legal any cultivation, sale, or other use of medical marijuana that is otherwise prohibited under California law.

C. Nothing in this chapter is intended, nor shall it be construed, to preclude any landlord from limiting or prohibiting medical marijuana cultivation by tenants.

D. Nothing in this chapter is intended, nor shall it be construed, to exempt any activity related to the cultivation of medical marijuana from any applicable electrical, plumbing, land use, or other building or land use standards or permitting requirements.

E. All cultivation of medical marijuana within the town shall be subject to the provisions of this chapter.

17.31.300 Definitions.

A. "Director" means the town of paradise planning director or his or her designee.

B. "Medical marijuana" means marijuana used for medical purposes in accordance with California Health & Safety Code section 11362.5.

C. "Medical marijuana collective or cooperative" means a collective, cooperative, dispensary, operator, establishment, provider, association, or similar entity that cultivates, distributes, delivers, processes marijuana for medical purposes relating to a qualified patient or primary caregiver, pursuant to the

Compassionate Use Act and the Medical Marijuana Program Act.

D. "Medical marijuana cultivation" means the planting, growing and harvesting of marijuana.

E. "Primary Caregiver" means a primary caregiver as defined in Health & Safety Code section 11362.7.

F. "Qualified Patient" means a qualified patient as defined in Health & Safety Code section 11362.7.

G. "School" means an educational facility as defined in Health & Safety Code section 11362.768(h).

17.31.400 Cultivation in residential zoning districts for personal use.

It is unlawful for anyone to cultivate medical marijuana in any residential zoning district except as follows:

A. Outdoor Cultivation. Medical marijuana may be cultivated outdoors by a qualified patient or primary caregiver in a residential zoned district subject to the following conditions:

1. The owner of the property, if other than the resident, has consented in writing to the cultivation of marijuana on the property.

2. The location of the plants shall be in the rear or side yard at least seventy-five (75) feet from any habitable structure on adjacent property, or six hundred (600) feet from any school property line or at least fifty (50) feet from an unimproved adjacent property and takes place within a locked six (6) foot solid fence on all sides of the location of the plants in conformance with all applicable zoning regulations. These distance and fencing requirements shall also be applicable to cultivation of medical marijuana within an accessory structure on the property.

3. An area of no more than fifty (50) square feet shall be devoted to the cultivation of the marijuana. This restriction applies regardless of how many qualified patients are living on the property.

4. The plants are located, screened and maintained so that they are not visible from any adjacent public or private property.

5. No night lighting shall be used to grow marijuana plants.

B. Indoor Cultivation. It is unlawful for any person to cultivate medical marijuana inside any residence in a residential zoned district without an indoor cultivation permit issued by the director.

1. An application for an indoor cultivation permit shall be filed with the director on a form prescribed

by the town manager and accompanied by an application fee as adopted by the town council.

2. An indoor cultivation permit may be issued only if the director makes the following findings:

a. The applicant is either a qualified patient or primary caregiver.

b. The owner of the property, if other than the applicant, has consented in writing to the issuing of the indoor cultivation permit.

3. Any indoor cultivation permit shall be subject to the following conditions:

a. There shall be no cultivation of marijuana on the exterior of the residence.

b. An area no larger than fifty (50) square feet shall be devoted to the cultivation of marijuana. This restriction applies regardless of how many qualified patients are living on the property.

c. The lighting used for the cultivation shall not exceed 1200 watts.

d. The marijuana cultivation shall not be visible from any public or other private property.

e. The cultivation of marijuana shall not take place in the kitchen, bathrooms or occupied bedrooms of a residence.

f. The use of flammable or combustible products, including but not limited to, propane and butane for cultivation and processing is prohibited.

C. All medical marijuana cultivated pursuant to this section, whether outdoor or indoor, shall be for the personal use only of a qualified patient residing on the property and may not be distributed to any other person, collective, or cooperative.

D. Notwithstanding that cultivation which is otherwise in compliance with the standards set forth in paragraph A. above, or a permit issued pursuant to paragraph B. above, the cultivation of medical marijuana shall not be permitted if, after holding a noticed hearing, the director determines based on substantial evidence that the cultivation activity adversely affects the health or safety of any person, including children, residing at the property or nearby properties through the creation of mold, mildew, dust, glare, heat, noise, odor, or other impacts; provided, however, in finding that an outdoor cultivation under paragraph A above shall not be permitted, substantial evidence shall be supported by complaints from two (2) or more different property owners or tenants during a fourteen (14) day period.

E. The cultivation of medical marijuana shall not be an allowed home occupation.

17.31.500 Prohibition.

A. Medical Marijuana Collectives and Cooperatives shall be prohibited in all zoning districts within the town.

B. Except as provided in section 17.31.400, all other cultivation of marijuana within the town is prohibited.

17.31.600 Nuisance and civil penalties.

A. Any cultivation, processing or distribution of medical marijuana which takes place in violation of any provision of this chapter shall be unlawful, and is hereby declared a public nuisance and may be abated by the town as such in accordance with the procedure set forth in chapter 8.04 of this Code.

B. In addition, violation of this chapter shall be prosecuted under civil administrative citation procedure set forth in chapter 1.09 of this code.

SECTION 3. This ordinance shall take effect thirty (30) days after the date of its passage. Before the expiration of fifteen (15) days after its passage, this ordinance or a summary thereof shall be published in a newspaper of general circulation published and circulated within the Town of Paradise along with the names of the members of the Town Council of Paradise voting for and against same.

PASSED AND ADOPTED by the Town Council of the Town of Paradise, County of Butte, State of California, on this 4th day of October, 2011, by the following vote:

AYES: Steve "Woody" Culleton, Joe DiDuca, Tim Titus and Alan White, Mayor

NOES: None

ABSENT: Scott Lotter

ABSTAIN: None

[redacted]

Alan White, Mayor

ATTEST: 10·6·2011

[redacted]

Joanna Gutierrez, Town Clerk

APPROVED AS TO FORM:

[redacted]

Dwight L. Moore, Town Attorney