

May 19, 2011

TO: MEMBERS OF THE PARADISE PLANNING COMMISSION

**FROM: TOWN MANAGER'S MEDICAL MARIJUANA MORATORIUM
STUDY GROUP** 

**SUBJECT: PROPOSED DRAFT ORDINANCE RESTRICTING MEDICAL
MARIJUANA CULTIVATION, PROCESSING, AND
DISTRIBUTION IN THE TOWN OF PARADISE**

In an effort to adequately study the issue of medical marijuana cultivation, processing and distribution in our community, the Paradise Town Council, on January 11, 2011, adopted Ordinance No. 509 that established a 45-day moratorium. The Town Council, at its February 8, 2011 meeting subsequently adopted Ordinance No. 514 that extended the moratorium study period for an additional 10 months and 15 days.

The Town Manager was charged with leading the study effort, and with the assistance of a working study group a proposed draft ordinance has been developed for consideration by the Planning Commission, and ultimately by the Town Council.

This study effort not only included a Town Hall public meeting that the Town Manager's Study Group conducted on March 24, but an evaluation of ordinances that other local government jurisdictions, especially in Butte County, had either already adopted, or that were in the process of being considered for adoption.

We are aware that the Planning Commission has set June 2, 2011 at 6:00 pm for the specially noticed meeting to consider the proposed draft medical marijuana ordinance that the Town Manager's Study Group has developed.

In keeping with the Town Manager's Study Group's promise to submit the proposed draft ordinance to the Planning Commission, as well as to the public, well in advance of the scheduled planning commission meeting, the proposed draft ordinance is hereby respectfully submitted for Planning Commission consideration 14 days prior to your special meeting.

This is a proposed *draft* ordinance with the emphasis on draft knowing that this proposed ordinance will go through thorough evaluation by two legislative bodies during public meetings, as well as by the public, and as such, is subject to further changes and modifications before it is adopted in final form.

Essentially, this is a proposed draft ordinance that through land use regulation seeks to respect the rights of lawful medical marijuana users under the law, but at the same time seeks to balance those rights with the rights of our greater community to be protected from adverse impacts from the consequences of cultivation, processing and distribution of medical marijuana.

The following is a summary of the proposed draft ordinance:

- The proposed ordinance defines the terms used in the ordinance. (See section 17.31.300.)
- Qualified patients or primary caregivers would be allowed to cultivate no more than 50 square feet of medical marijuana within a residential zoning district, in a rear or side yard with certain setbacks from adjacent properties. (See section 17.31.400A.)
- Indoor cultivation by qualified patients or primary caregivers in a residential zoning district would be allowed only with a permit issued by the Planning Director based on specific criteria. (See section 17.31.400B).
- All marijuana cultivated on residential property would be for the personal use of the qualified patient residing on the property (See section 17.31.400C.)
- Cooperative/collective medical marijuana cultivation, processing and distribution facilities would be allowed only in the Industrial Services Zoning District with a permit issued by the Planning Director based on specific criteria. (See section 17.31.1000 for the operating standards relating to such facilities.) The hours of operation would be limited to 8:00 a.m. to 6:00 p.m. daily. (See section 17.31.1000.) The permit would be renewed annually and nontransferable. (See section 17.31.1400).
- The permit for a cooperative/collective would be subject to revocation after a hearing before the Planning Director, which could be appealed to the Town Manager. (See section 17.31.1600.)

**TOWN OF PARADISE
ORDINANCE NO. _____**

**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, PROCESSING, AND DISTRIBUTION**

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, PROCESSING, AND DISTRIBUTION 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 Medical marijuana collectives and cooperatives.**
- 17.31.600 Compensation.**
- 17.31.700 Distance from schools, child day care centers and residential zones.**
- 17.31.800 Limitation on area used for cultivation purposes.**
- 17.31.900 Applications for medical marijuana cultivation, processing and distribution facilities.**
- 17.31.1000 Operating standards for cultivation, processing and distribution facilities.**
- 17.31.1100 Action on application.**
- 17.31.1200 Permit conditions.**
- 17.31.1300 Inspection.**
- 17.31.1400 Permits annual and non-transferable.**
- 17.31.1500 Appeal of permit denial.**
- 17.31.1600 Permit revocation.**
- 17.31.1700 Nuisance and civil administrative penalties.**
- 17.31.1800 Prohibition.**

17.31.100 Findings and purpose.

- A. The town council hereby finds that the cultivation, processing and distribution 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 does not address the land use or other impacts that are caused by the cultivation, processing and distribution 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 commencing with Health and Safety Code section 11362.7 to regulate the cultivation, processing and distribution of 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.

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

E. All cultivation, processing and distribution 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 an incorporated or unincorporated group consisting solely of qualified patients and designated primary caregivers of qualified patients who associate voluntarily as a collective or cooperative for the purposes of cultivating and providing marijuana for medical purposes to members of the collective or cooperative in a safe and affordable manner in accordance with the Compassionate Use Act and the Medical Marijuana Program Act.
- D. "Medical marijuana cultivation and/or processing" means the planting, harvesting, trimming, drying and packaging of marijuana.
- E. "Medical marijuana cultivation, processing and distribution facility" means a facility at which medical marijuana is cultivated, harvested, processed and distributed, including the trimming, drying and packaging of marijuana, by a cooperative or collective for subsequent distribution to its members.
- F. "Primary Caregiver" means a primary caregiver as defined in Health & Safety Code section 11362.7.
- G. "Qualified Patient" means a qualified patient as defined in Health & Safety Code section 11362.7.

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 applicant, 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 at least fifty (50) feet from an unimproved adjacent property and takes place within a six (6) foot solid fence on all sides of the location of the plants in

conformance with all applicable zoning regulations.

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.
- B. Indoor Cultivation. It is unlawful for any person to cultivate medical marijuana inside any residence or other building 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 finding:
 - 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 location.
 - 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, based on substantial evidence, the director determines 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.
- E. The cultivation, processing or distribution of medical marijuana shall not be an allowed home occupation.

17.31.500 Medical marijuana collectives and cooperatives.

A medical marijuana cultivation, processing and distribution facility shall be allowed only in the Industrial Services zoning district and shall be allowed only upon the granting of a permit issued by the director pursuant to this chapter.

17.31.600 Compensation.

No medical marijuana cultivation, processing and distribution facility shall cultivate, process or distribute marijuana for profit. This restriction shall not prevent members of a collective or cooperative from sharing in the actual costs relating to the operation of their collective cultivation, processing and distribution. Nothing in this chapter shall affect reimbursements from qualified patients to their primary caregivers pursuant to California Health & Safety Code section 11362.765.

17.31.700 Distance from schools, child day care centers and residential zones.

- A. No permit shall be granted for a medical marijuana cultivation, processing and distribution facility for any location that is within:
1. Five hundred (500) feet from residentially zoned property, community facilities zoned property and community services zoned property;
 2. One thousand (1,000) feet from a child day care center located outside of a residential zoning district;
or
 3. One thousand (1,000) feet from a public or private school.
 4. One thousand (1,000) feet from a public or private park or recreational facility.
- C. The rezone of property to residential zone, community facilities zone or community services zone within five hundred (500) feet of a facility already permitted pursuant to the provisions of this

chapter, or the establishment of a new child day center, within one thousand (1,000) feet of a facility already permitted pursuant to the provisions of this chapter, or the establishment of a new school within one thousand (1000) feet of a facility already permitted pursuant to the provisions of this chapter, shall not affect the validity of the permit for that facility and shall not prevent the renewal of such a permit.

- D. No permit shall be granted for any cultivation, processing and distribution facility that is located within five hundred (500) feet of any other facility already permitted by this chapter.

17.31.800 Limitation on area used for cultivation purposes.

The cultivation area of any medical marijuana cultivation, processing, and distribution facility permitted by this chapter shall not exceed twenty-five (25) percent of the total floor area, but in no event greater than fifteen hundred (1,500) square feet.

17.31.900 Applications for medical marijuana cultivation, processing and distribution facilities.

An application by a medical marijuana collective or cooperative to operate a medical marijuana cultivation, processing and distribution facility shall be on a form prescribed by the town manager, accompanied by an application fee set by the town council, and shall include all of the following information.

- A. All Applications:
1. The address where the collective or cooperative will conduct operations.
 2. The name and type of entity of the collective or cooperative.
 3. If the applicant is a cooperative, a copy of the articles of incorporation of the cooperative.
 4. The full names of all members engaged in the management of the collective or cooperative.
 5. The number of members of the collective or cooperative.
 6. Types of activities, cultivation, processing or distribution, are proposed to take place at the facility.
 7. Written and graphic materials describing the site and floor plan for the facility, including the use of each room on the premises.
 8. A site plan illustrating the locations and uses of adjacent structures and properties.
 9. A vicinity map showing compliance with the separation distance requirements of this chapter.

10. The hours and days the facility will be open.
11. The number of persons, per shift, who will be working at the facility.
12. A security plan outlining the proposed security arrangements for ensuring the safety of persons and to protect the premises from theft. At a minimum the plan shall include the installation of a fire and burglar alarm system that is monitored by a state licensed operator and which provides for automatic notification of law enforcement when the alarm is activated.
13. If the applicant is a tenant, written consent of the property owner to the filing of the application and issuance of a permit.
14. The equipment and methods to be employed in the cultivation or processing of the medical marijuana.
15. The names and quantities of all chemicals, including fertilizers, stored on the premises.
16. A detailed operating manual containing, at a minimum:
 - a. The process for tracking medical marijuana quantities and inventory controls.
 - b. A description of the screening, registration and validation process for confirming that members are qualified patients.
 - c. A description of qualified patient records acquisition and retention procedures.
17. Such other information as the director may determine is necessary to ensure that the facility will be operated in compliance with the operating standards set forth in this chapter and this code.

17.31.1000 Operating standards for cultivation, processing and distribution facilities.

- A. Medical Marijuana Cultivation, Processing and Distribution Facilities. All medical marijuana cultivation, processing and distribution facilities shall be operated in conformance with all of the following standards.
 1. The facility shall be operated by a business form that satisfies California laws to act cooperatively or collectively in the cultivation and distribution of medical marijuana.
 2. All cultivation, processing and distribution activities shall occur only within a self-contained structure that is in compliance with California Building Standards Code, as amended by the town and all other applicable health and safety regulations of the State of California, the County of Butte and the town.
 3. The cultivation, processing and distribution shall comply with all stormwater, wastewater and other applicable laws, policies and regulations of the town.

4. The required number of off-street parking places shall be provided and available at all times.
5. The display or sale of paraphernalia employed in the use or consumption of medical marijuana shall not be allowed.
6. No other goods or services shall be sold or available at the site.
7. There shall be no on-site use or consumption of medical marijuana.
8. The premises shall be equipped with a fire and burglar alarm system that is monitored by a state licensed operator and which provides for automatic notification of law enforcement when the alarm is activated.
9. The cultivation, processing and distribution facility shall not be operated in a manner that adversely affects the health or safety of persons or the building in which the cultivation, processing and distribution occurs, or nearby buildings or properties through the creation of mold, mildew, dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibration, or other impacts, or be hazardous because of the use or storage of materials, processes, products or wastes.
10. Hours of operation during which the facility is open for members of the collective or cooperative to obtain medical marijuana shall be limited to 8 a.m. to 6 p.m., daily.
11. All marijuana shall be stored in a manner that does not cause odor impacts on neighboring premises or properties and, if necessary, the facility shall be ventilated with a system for odor control.
12. A facility shall not have a physician on-site to evaluate patients and provide recommendations for medical marijuana.
13. Each entrance to the facility shall be clearly posted with a notice indicating that:
 - a. Smoking, ingesting or consuming medical marijuana on the premises or within one thousand (1,000) feet of the facility is prohibited.
 - b. Persons under the age of 18 are prohibited from entering the premises unless they are a qualified patient and are accompanied by a parent or legal guardian.
14. Medical marijuana shall be distributed only to qualified patients and primary caregivers who are members of the collective or cooperative.
15. No marijuana shall be visible from the exterior of the building.
16. The medical marijuana collective or cooperative shall maintain books and records at all times that

track all marijuana distributed from the facility.

17. No criminal activities shall be permitted at the site.

17.31.1100 Action on application.

Upon receipt of a complete application for a facility for the cultivation, processing and distribution of medical marijuana, the director shall forward a copy of the application to the police chief who shall cause a review to be conducted of all of those listed as members in the management of the collective or cooperative for a determination of whether the permit should be denied because the applicant is ineligible under chapter 5.20A of this code to obtain a business license for the facility. If the police chief determines that the applicant is eligible to obtain a business license under chapter 5.20A of this code, the director shall issue the permit upon determining that all of the following findings can be made:

- A. The proposed operations are permitted in the applicable zoning district.
- B. The materials and information submitted with the application are complete and indicate that the activities will be carried out in conformance with the applicable operating standards as set forth in this chapter.
- C. The proposed use complies with all other applicable regulations set forth in this chapter. If the police chief determines that the applicant is ineligible to obtain a business license under chapter 5.20A of this code, or the director determines that any of the above findings cannot be made, the permit shall be denied and written notice shall be provided to the applicant setting forth the reasons for the denial.

17.31.1200 Permit conditions.

All permits shall be issued subject to the following conditions:

- A. The permittee comply with all of the applicable operating standards set forth in this chapter;
- B. The execution of a release, which releases the town, its agents, officers, elected officials and employees from any injuries, damages or liabilities of any kind that result from any arrest or prosecution of the permittee, collective or cooperative members, operators, or employees for violation of state or federal law. In addition, each permittee shall agree to indemnify and hold harmless the town, its agents, officers, elected officials and employees from any claims, damages or injuries brought by adjacent or nearby property owners or other third parties due to the operations at the facility for which the permit was granted, and for any claims brought by any of their members for injuries or damages of any kind that may arise out of the distribution, cultivation, processing or use of the medical marijuana provided from a facility.
- C. Such other conditions as the director deems necessary to ensure the permitted facility is operated in conformance with the standards set forth in this chapter and all other applicable land use regulations

in this chapter.

17.31.1300 Inspection.

The town manager or designee or building official may enter a facility permitted under this chapter at any reasonable time during normal business hours to inspect the premises for compliance with this chapter and the permit. The town manager or designee shall also have the right to inspect the books and records of the permittee as necessary to determine compliance with this chapter and the permit. Books and records shall be made available for inspection within two business days of a request from the town manager or designee.

17.31.1400 Permits annual and non-transferable.

Permits issued under this chapter shall be renewed annually and nontransferable.

17.31.1500 Appeal of permit denial.

In lieu of the procedure set forth in section 17.45.240, any applicant for a permit authorized by this chapter who has had an application denied shall have the right to request administrative review by the town manager by filing a written appeal with the town clerk within ten (10) calendar days after the notice date that the application has been denied. This appeal procedure shall be the exclusive means of appeal for denial of a permit under this chapter.

17.31.1600 Permit revocation.

- A. Permit revocation or modification. In lieu of the procedure set forth in section 17.45.250, the director may modify or revoke any permit issued pursuant to this chapter based upon the making of one or more of the following findings:
1. The permit was issued based on a material misrepresentation by, or on behalf of, the permittee or property owner, whether as a result of its content or omissions therefrom and regardless of whether the misrepresentation was intentional or negligent or otherwise inadvertent;
 2. One or more of the conditions of the permit has not been met or has been violated; or
 3. Notwithstanding compliance with the conditions of the permit, the carrying out of the activities authorized by the permit adversely affects the health or safety of the residents or nearby properties through the creation of mold, mildew, dust, glare, heat, noise, odor, or other impacts.
- B. Notice. Prior to modifying or revoking any permit the director shall provide ten (10) days written notice to the permittee of the intent to modify or revoke the permit. The notice shall include a brief statement of the grounds for the proposed modification or revocation and shall notify the permittee of the opportunity to take any corrective actions necessary to remove the grounds for the

modification or revocation.

- C. Opportunity to respond. Prior to the expiration of the ten (10) days, the permittee may request a meeting with the director and/or submit documentation demonstrating that corrective action has been taken or documentation otherwise in response to the notice.
- D. Final decision. After the expiration of the fifteen days, the director shall issue a written notice indicating whether the permit is being maintained as originally granted, modified, or revoked. Any notice of modification or revocation shall include a statement of the reasons therefor.
- E. Appeal. The modification or revocation of a permit may be appealed by the permittee by filing a written request for administrative review by the town manager within ten (10) calendar days after the date of the decision notice. This appeal procedure shall be the exclusive means of appeal relating to the modification or revocation of a permit under this chapter.

17.31.1700 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, and is hereby declared a public nuisance and may be abated by the town as such.
- B. In addition, violation of this chapter shall be prosecuted under civil administrative citation procedure set forth in chapter 1.09 of this code.

17.31.1800 Prohibition.

Except as permitted in this chapter, all other medical marijuana operations, activities, dispensaries or facilities shall be unlawful and a prohibited use in any zoning district with the town.

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 ____ day of _____, 2011, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Mayor Alan White

ATTEST:

APPROVED AS TO FORM:

Joanna Gutierrez, Town Clerk

Dwight L. Moore, Town Attorney