



# TOWN OF PARADISE

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## PLANNING COMMISSION MINUTES

**April 18, 2017**

**6:00 PM**

**CALL TO ORDER** by Chair Groom at 6:01 p.m. who led the Pledge of Allegiance to the Flag of the United States of America.

**COMMISSIONERS PRESENT:** James Clarkson, Stephanie Neumann, Martin Nichols, Anita Towslee and Chair Groom.

### 1. APPROVAL OF MINUTES

- 1a. **MOTION** by Nichols, seconded by Towslee, approved minutes from the Regular March 21, 2017 and Special April 5, 2017 Planning Commission meetings. Roll call vote was unanimous.

### 2. COMMUNICATION

- a. Recent Council Actions

Community Development Director Baker informed the Planning Commissioners that at the April 11, 2017 Town Council meeting the Town Council reappointed Martin Nichols to a four-year term that will expire on June 30, 2021.

- b. Staff Comments - None

### 3. PUBLIC COMMUNICATION – None

### 4. CONTINUED PUBLIC HEARING - None.

### 5. PUBLIC HEARING

- 5a. Planning Commissioner Chair Groom announced that the Planning Commission would conduct a public hearing to consider adopting Planning Commission Resolution No 17-01, A Resolution recommending Town Council Adoption of Amendments to the Town's Zoning Ordinance Regulations regarding the Cultivation of Marijuana (Paradise Municipal Code Chapter 17.31). If adopted, the proposed text amendments ordinance would expressly regulate the cultivation and delivery of medical and non-medical marijuana and would prohibit marijuana collectives/cooperatives and dispensaries in all Town of Paradise zoning districts.

Community Development Director Craig Baker provided a brief summary of the new marijuana law that was approved by the voters on November 8, 2016 and informed the Commissioners of the proposed amendments to the Town of Paradise Ordinance contained within the resolution which include:

- Marijuana cultivation would be limited to secured and locked indoor locations in residential zoning districts on the site of a private residence occupied full time by a qualified grower. All outdoor cultivation of marijuana would be prohibited.
- Marijuana collectives, cooperatives, dispensaries would be prohibited.
- Marijuana cultivation would be limited to six plants, indoors only.
- Any visibility or evidence of marijuana cultivation from a public place would be prohibited.
- Except for delivery by a primary caregiver for a qualified medical marijuana patient the delivery of marijuana would be prohibited within the town.
- The Proposed ordinance would not restrict landlords from prohibiting the indoor cultivation of marijuana as part of a rental agreement.

Mr. Baker also stated that the proposed text amendments can be found to be exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to CEQA guidelines section 15061(general rule exemption)

Mr. Baker sited some changes to the proposed ordinance, changing page 18 of the agenda packet, item E (2) from twelve (12) to twenty-four (24) inches and page 19 Section 9, changing the California Building Standards Code section from 1203.4 to 1203.5.

The Planning Commissioners asked several questions, some for clarification. Town Attorney Dwight Moore provided responses. (*Attorney responses are italicized*):

- Is the Compassionate Use Act still in effect? *Yes, now there is also legal recreational marijuana/nonmedical use. (Prop 64-Adult Use of Marijuana Act-AUMA)*
- Do individuals still need a prescription? *A prescription would be necessary if an individual needed more than what was allowed under Prop 64.*
- Do landlords have legal authority to prohibit the cultivation of marijuana? *Yes*
- Should the AUMA be included in Section 2 of the ordinance? *Concerned with illegal use.*
- In the Ordinance Section 3- A, “Authorized grower” should the definition include resident? *It is only the definition of who the authorized grower would be.*
- In Section 4, subsection D, should recreation be included? *Purpose is to deal with different type of cultivation.*
- Section 4 Item 9 and 11 - Who defines what is noxious/nuisance? *Difficult to make case without scientific evidence, it is not supposed to be subjective.*
- Section 4 Item 9 discusses ventilation of the building code standards. *Was reviewed by the Building Official.*
- Section 4 Item 13 discusses excess of 28.5 grams, is there no limit, could they have more? *Item is only about indoor cultivation.*
- Section 4 Item #11 – How would the town attempt to take care of the smell? *The Town would try to determine whether others had the same problem with the odor and what is reasonable. It is difficult to enforce in court. All previous complaints have been from outdoor grows.*
- Is everything complaint driven? *Yes.*
- Ordinance requires that the authorized grower must reside in the residence where plants are being grown – *CA State Law requires certain criteria for growing to be allowed. The Town’s ordinance states that the resident must be full-time.*
- Can there be two grows on one parcel? *No more than 6 plants on one parcel.*

- When committee was working on this ordinance, were dispensaries considered from a tax viewpoint? *It was determined it would cause more problems than revenues could be generated, medical marijuana users would be exempt from tax, if dispensaries charged too much, people would be forced to buy on the black market, Colorado had trouble with dispensaries being robbed. In larger areas, people may not want to grow own plants.*
- Would a marijuana tax have to be voted on by citizens? – *Yes, just like Measure C.*

Chair Groom opened the public hearing at 6:28 p.m.

1. Jim Ratekin – lives at the Plantation, stated that there is a major grow in his neighborhood that has been there for several years, the smell is forcing neighbors to stay inside with closed windows, can't enjoy outside patio and it is very noisy, possibly from a generator, that keeps people up at night. He is also concerned with the grow site and its proximity to the school and park. Thinks it's ok if people want to smoke marijuana, just doesn't want to smell it. Supports the proposed ordinance.

Mr. Baker stated that if staff is not allowed on the property to inspect it then the next step is an inspection warrant from the court, but it is hard to prove that something is going on.

Commissioner Nichols asked if there was any way to write the ordinance to make it mandatory for the Town to be allowed to go on to someone's property if they are suspected of growing. *Attorney Moore stated that it would be a violation of the property owners constitutional rights to privacy, the Town could get an inspection warrant, but would need probable cause/facts.*

Commissioner Neumann asked if a search warrant was issued, the violation would only be for a misdemeanor not a felony, depending on the amount and if they had a medical marijuana license. *Currently there is no growing in Town limits and the individual would be issued a citation. How would fines change? Individuals would still be issued a citation/\$100 fine for first offense.*

Commissioner Clarkson stated that in order for indoor grows to not become health hazards, they need to be well ventilated. Indoor grows can be done at any time of the year where outdoor grows have a limited growing period. Thinks that indoor grows will be more problematic, the smell will be more concentrated coming from indoors and the bigger concern is health issues created from mold; and is concerned that the proposal before the Planning Commission is for indoor grows only, there is no provision for outdoor grows.

2. David Lundberg – lives next door to a rental property that had a large grow on it, is concerned with the smell, neighbors complained, but nothing was done; asked what will it take for something to be done about it. The property has a seven (7) foot fence and tarps up making it impossible to view. How will anyone know the grow is there if it's inside and nobody can see it. Asked if after a property was inspected, a citation was issued, if the Town confiscated the plants and if the landowner or renter was responsible for the property

Mr. Baker stated that Town staff does not confiscate plants, will respond as permitted; there is an expectation of privacy with private property, that inspection warrants are hard to obtain and that the landowner, not the renter, is responsible if there is marijuana being grown on the property.

Commissioner Nichols stated that he understood that the purpose of the ordinance is to minimize issues and be less of a burden on the neighbors.

Commissioner Groom asked that if someone was fined and they didn't pay the citation, can a lien be attached to the property per the ordinance.

Mr. Baker stated that the approach for violations of chapter 17.31 were changed to be more aggressive with marijuana cultivation.

Commissioner Neumann asked if we are confident that we can prove there's activity that's unlawful, we would be more proactive with a fine, but are limited on how to prove the activity is unlawful because we don't have permission to access the property.

Mr. Baker stated that that could work if the property can be viewed from someone else's property.

Commissioner Clarkson asked if there was potential in the ordinance to have a clause inserted that states if five residents within the suspected area complain about the smell, a process to resolve the problem could be implemented.

3. Jerry Lundberg – stated that the smell from the marijuana plants is obnoxious and has complained about it; she is not against marijuana, supports growing indoors, has issues with the smell.
4. Jim Ratekin – suggested that legal growers be required to register with the Town.

Chair Groom closed the public hearing at 6:55 p.m.

The Planning Commissioners discussed numerous issues regarding the proposed Resolution and Ordinance which are listed below:

Commissioner Clarkson stated that having individual register to grow is unlikely due to privacy issues.

Commissioner Nichols reason for having grows indoors was to limit the smell, that the Town could allow outdoor grows if they chose to and questioned about growing in a bedroom.

Attorney Moore stated that the Town did not have a choice about permitting the indoor grow but tried to regulate and leave a small footprint, limit activity and minimize negative impact on the community and had to be reasonable.

Commissioner Neumann asked if with the previous ordinance that smell was prohibited and nothing was done with a large grow, how can something be enforced now if it's inside?

Mr. Baker stated that there is not a lot of choices with permitting indoor and outdoor grows and in the past if a unlawful marijuana grow was found and the person cited, the marijuana grow was generally harvested immediately.

Commissioner Clarkson stated that indoor grows have health issues with ventilation, a lot of power is required to function, think outdoor grows could be limited to three plants, indoor grows will create mold issues and create uninhabitable housing.

Commissioner Nichols stated that the Planning Commission is dealing with a proposed Town Ordinance that regulate uses to minimize the impact to citizens, recommendation from staff is best way to comply with law.

Commissioner Neumann would like to consider allowing dispensaries to take the street element out of marijuana use.

Commissioner Clarkson stated that growing marijuana takes a lot of time to do it correctly and a dispensary may be easier for some individuals.

Commissioner Nichols stated that the criminal element will still be around even if dispensaries are allowed, they create an element that is not desirable in the Town.

Mr. Baker stated that the Town Council can change the ordinance due to the fact that the Planning Commission has discussed several items and that the issue may come back at a later date if necessary and recommends not including the dispensaries.

**Motion by Nichols** to adopt Planning Commission Resolution No 17-01, A Resolution recommending Town Council Adoption of Amendments to the Town's Zoning Ordinance Regulations regarding the Cultivation of Marijuana (Paradise Municipal Code Chapter 17.31). The motion failed due to the lack of a second.

Commissioner Clarkson stated that he thinks allowing an outdoor grow is the same as allowing an indoor grow.

Commissioner Nichols asked that if the ordinance was passed tonight to include indoor and outdoor grows if the Town Council could change it.

Attorney Moore stated that since the item was discussed the Town Council would be able to change the ordinance based on the Planning Commission discussion.

Commissioner Clarkson asked if the prior Marijuana ordinance could be referenced to make a motion to forward to Town Council.

Mr. Baker stated that the Planning Commissioners could provide direction to staff to revise the proposed ordinance to reflect the previous ordinance and set a date specific meeting to consider approval to forward to the Town Council.

Commissioner Clarkson asked if staff could research the option of including three plants to be grown outdoors.

**Motion by Nichols, seconded by Clarkson**, to request staff to draft a revised ordinance to allow both indoor and outdoor grow compliant with the new law with reasonable regulations to protect the citizens of the Town of Paradise.

**Commissioner Clarkson amended the motion to support staff's recommendation to** adopt Planning Commission Resolution No. 17-01, a Resolution recommending Town Council Adoption of Amendments to the Town's Zoning Ordinance Regulations regarding the Cultivation of Marijuana (Paradise Municipal Code Chapter 17.31). **The motion was seconded by Commissioner Nichols.** Ayes of Clarkson, Nichols, Towslee and Chair Groom, Noes of Neumann. Motion passed four to one.

6. **OTHER BUSINESS** - None

7. **COMMITTEE ACTIVITIES** - None

8. **COMMISSION MEMBERS**

a. Identification of future agenda items. (All Commissioners/Staff)

Director Baker explained that the Planning Commissioners may need to hold a special Planning Commission meeting to approve a Parcel Map Extension that will expire prior to the next regular meeting. The meeting may need to be held the week of May 8, 2017 if the completed application is submitted.

**9. ADJOURNMENT**

Chair Groom adjourned the meeting at 7:37 p.m.

Date Approved:

By: \_\_\_\_\_/s/\_\_\_\_\_  
Ray Groom, Chair

Attest:

\_\_\_\_\_/s/\_\_\_\_\_  
Dina Volenski, CMC, Town Clerk