

ORDINANCE NO. 275 A

**AN INTERIM URGENCY ORDINANCE EXTENDING THE TEMPORARY
MORATORIUM RESTRICTING MEDICAL MARIJUANA DISPENSARIES
FROM BEING LOCATED IN THE CITY OF SARATOGA, TO TAKE EFFECT
IMMEDIATELY**

**THE CITY COUNCIL OF THE CITY OF SARATOGA FINDS AND
DECLARES AS FOLLOWS:**

WHEREAS, the possession, cultivation, possession for sale, transportation, distribution, furnishing, and giving away of marijuana is generally unlawful under California law; and

WHEREAS, in 1996 the voters of the State of California approved Proposition 215 which was codified as Health and Safety Code Section 11362.5 *et seq.*, and entitled “The Compassionate Use Act of 1996” (“the Act”); and

WHEREAS, the intent of the Act was to enable seriously ill persons to obtain, use and cultivate marijuana for medical use under limited, specified circumstances; and

WHEREAS, on January 1, 2004, Senate Bill 420, the Medical Marijuana Program Act (“MMPA”), codified at Health and Safety Code Section 11362.7 *et seq.*, became effective to clarify the scope of the Act and to allow cities and counties to adopt and enforce rules and regulations consistent with the MMPA and the Act; and

WHEREAS, the MMPA establishes a limited defense to criminal prosecution for qualified patients, persons with valid identification cards and primary caregivers as those terms are defined in the statute who collectively or cooperatively cultivate medical marijuana; and

WHEREAS, as a result of the Act and the MMPA, individuals have established medical marijuana dispensaries in various cities in California; and

WHEREAS, the federal Controlled Substances Act, codified as 21 USC section 801 *et seq.* (“CSA”), makes it unlawful under federal law to manufacture, distribute, or possess any controlled substances, including marijuana, except in accordance with the CSA; and

WHEREAS, the United States Supreme Court found in *United States v. Oakland Cannabis Buyers’ Cooperative*, 532 U.S. 483 (2001) there to be no legally cognizable medical necessity exception under the Federal Controlled Substances Act to the prohibition of possession, use, manufacture, or distribution of marijuana under federal law; and

WHEREAS, in October 2009, the U.S. Department of Justice issued a memorandum to federal prosecutors in California and in other states that provide for medical use of marijuana stating that federal resources should not be focused on prosecution of individuals whose actions are in clear and unambiguous compliance with existing state laws; and

WHEREAS, there is considerable uncertainty regarding the legal status of medical marijuana dispensaries under existing state law; and

WHEREAS, the decision in a case currently pending before the Court of Appeal for the Fourth District, *Qualified Patients Ass'n v. City of Anaheim*, Case No. G040077, as well as decisions in other cases currently pending in the California courts, may resolve or clarify some of the legal issues regarding regulation of medical marijuana dispensaries; and

WHEREAS, while the experiences in the regulation and policing of medical marijuana dispensaries have varied from city to city, several California cities have reported an increase in crime, such as burglary, robbery, odor, loitering around the dispensaries, an increase in vehicular traffic and noise in the vicinity of dispensaries, and the sale of illegal drugs, including the illegal resale of marijuana from dispensaries, in the areas immediately surrounding such medical marijuana dispensaries; and

WHEREAS, there are no medical marijuana dispensaries currently operating in the City, but City staff has received inquiries from several persons regarding whether such a use is permitted by the City;

WHEREAS, a current and immediate threat to the public health, safety and welfare exists because the City has not adopted rules and regulations specifically applicable to the establishment and operation of MMDs and the lack of such controls may lead to the establishment of MMDs and the inability for the City to regulate these establishments in a manner that will protect the general public, homes and businesses adjacent and near such businesses, and the patients or clients of such establishments; and

WHEREAS, based on the lack of any consistent experience of cities statewide and in the absence of any regulatory program in the City regarding the review of the establishment and operation of medical dispensaries, the City should consider options for regulating MMDs; and

WHEREAS, on November 18, 2009, the City Council adopted by a unanimous vote an interim ordinance imposing as an urgency measure a moratorium on granting approvals and entitlements for use for medical marijuana dispensaries; and

WHEREAS, pursuant to Government Code section 65858, the interim ordinance will expire on January 2, 2010, unless extended by the Council for an additional period of up to 10 months and 15 days; and

WHEREAS, City staff requires additional time to evaluate the relevant issues and develop guidance for legally appropriate regulation, and

WHEREAS, the establishment of, or the issuance or approval of any permit, certificate of occupancy, or other entitlement for the legal establishment of a medical marijuana dispensary in the City of Saratoga would result in a current and immediate threat to public health, safety and welfare in that the Saratoga City Code does not currently regulate the location and operation of medical marijuana dispensaries and does not have a regulatory program in effect that will appropriately regulate the location, establishment, and operation of medical dispensaries in the City, and

WHEREAS, this ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) (Title 14, of the California Code of Regulations) because it has no potential for resulting in physical change to the environment, directly or indirectly; it prevents changes in the environment pending the completion of the contemplated City Code review; and

WHEREAS, there is no feasible alternative to satisfactorily study the potential impact identified above as well or better than the adoption of this interim urgency moratorium ordinance, in accordance with Government Code section 65858, extending the ordinance adopted November 18, 2009 until November 17, 2010, or such additional period as may subsequently be authorized by the City Council in accordance with applicable laws.

NOW, THEREFORE BE IT ORDAINED by the City Council of the City of Saratoga as follows:

SECTION 1. Section 6 of the interim urgency ordinance adopted by the Saratoga City Council on November 18, 2009 is hereby amended to state the following:

SECTION 6. This interim urgency ordinance shall continue in effect until November 17, 2010 and shall thereafter be of no further force and effect unless, after notice pursuant to California Government Code Section 65090 and a public hearing, the City Council extends this interim urgency ordinance for an additional period of time pursuant to California Government Code Section 65858.

SECTION 2. This interim urgency ordinance shall take effect immediately upon its adoption by a four-fifths (4/5) vote of the City Council.

SECTION 3. This ordinance or a comprehensive summary thereof shall be published in a newspaper of general circulation of the City of Saratoga within fifteen days after its adoption.

The foregoing ordinance was introduced and read at the regular meeting of the City Council of the City of Saratoga held on the 16th day of December, 2009, and was adopted by at least a four-fifths (4/5) vote of the City Council as follows:

AYES: Councilmembers Chuck Page, Howard Miller, Vice Mayor Jill Hunter,
Mayor Kathleen M. King

NAYS: None

ABSTAIN: None

ABSENT: Councilmember Susie Nagpal

SIGNED:

KATHLEEN M. KING
MAYOR OF THE CITY OF SARATOGA
Saratoga, California

ATTEST:

ANN SULLIVAN
CLERK OF THE CITY OF SARATOGA
Saratoga, California

APPROVED AS TO FORM:

RICHARD TAYLOR, CITY ATTORNEY