

ORDINANCE NO. 343
URGENCY INTERIM ORDINANCE IMPOSING A TEMPORARY MORATORIUM ON
THE OUTDOOR CULTIVATION OF MARIJUANA IN THE CITY OF SARATOGA
FOR A PERIOD OF 45 DAYS PENDING A STUDY OF ZONING REGULATIONS
THAT ARE NEEDED TO ALLEVIATE A CURRENT AND ACTUAL THREAT TO
THE PUBLIC HEALTH, SAFETY AND WELFARE

The City Council of the City of Saratoga finds that:

1. In 1970, Congress enacted the Controlled Substances Act (CSA) which, among other things, makes it illegal to import, manufacture, distribute, possess or use marijuana in the United States. The use, possession, and cultivation of marijuana remains illegal under the federal CSA. *Bearman v. California Medical Bd.* (2009) 176 Cal.App.4th 1588.
2. California voters will consider the Control, Regulate and Tax Adult Use of Marijuana Act (“AUMA”, also known as Proposition 64) on the November 8, 2016 ballot. If passed, the AUMA will legalize under state law the possession, cultivation, and consumption of marijuana for persons 21 years of age or older. It will also establish state laws to regulate marijuana cultivation, distribution, sale and use.
3. If passed, the AUMA will immediately allow personal cultivation of up to six marijuana plants inside a private residence and outside on the grounds of a private residence. The AUMA expressly anticipates the enactment of local legislation prohibiting personal outdoor cultivation by stating that “a city, county, or city and county may completely prohibit persons from [possessing, planting, cultivating, harvesting, drying, or processing living marijuana plants] outdoors upon the grounds of a private residence.” (H&S Code § 11362.2(b)(3), as proposed by the AUMA).
4. If passed, the AUMA will also allow the commercial cultivation of marijuana plants by individuals who receive a state license and comply with other state regulations, provided the activity is not prohibited by local ordinance. There may be a period of time after the AUMA passes when individuals are unaware that personal cultivation is limited to residential properties and that commercial cultivation requires a state license. Publicity associated with legalization can be expected to lead individuals to believe that the outdoor cultivation of marijuana is immediately allowed on non-residential properties as well. The AUMA expressly anticipates the enactment of local legislation prohibiting commercial and other outdoor cultivation by stating that “[n]othing in this division shall be interpreted to supersede or limit the authority of a local jurisdiction to . . . completely prohibit the establishment or operation of one or more types of businesses licensed under this division within the local jurisdiction” and that “[a] local jurisdiction may establish additional standards, requirements, and regulations” regarding health, safety, and environmental protection. (H&S Code §§ 26200, 26201, as proposed by the AUMA).
5. The Compassionate Use Act and the Medical Marijuana Program Act create limited exceptions from criminal liability for seriously ill persons and for their primary caregivers, collectives, and cooperatives who cultivate medical marijuana. In 2015, the legislature passed the Medical Marijuana Regulation and Safety Act to regulate the

medical marijuana industry. Pursuant to the Act, the California Department of Food and Agriculture is preparing a Medical Cannabis Cultivation Program, the purpose of which is to establish a regulatory licensing program for medical cannabis cultivation. That licensing and regulatory program has not yet been established, however, and is not anticipated to go into effect until the end of 2017. Under the state's medical marijuana laws, cities may prohibit the cultivation of medical marijuana. *Maral v. City of Live Oak* (2013) 221 Cal.App.4th 975; Bus. & Prof. Code §§ 19315, 19316.

6. Government Code section 65858(a) provides that, without following the procedures otherwise required prior to adoption of a zoning ordinance, the legislative body of a city may adopt as an urgency measure an interim ordinance prohibiting any uses that may be in conflict with a contemplated zoning proposal that the city intends to study to protect the public safety, health, or welfare.
7. A temporary ban on outdoor marijuana cultivation is necessary to protect the public from current and immediate threats to public safety, health and welfare facilitated by the AUMA until a comprehensive study is conducted and permanent regulations are adopted. The City intends to proceed with a study and public meetings to consider an ordinance that most effectively regulates and/or licenses marijuana cultivation in manner appropriate for the City of Saratoga. Establishment of or entitlements for outdoor cultivation prior to completion of this process could be in conflict with such an ordinance, and would result in current and immediate threats to public health, safety and welfare for the reasons set forth in this Ordinance.
8. This Ordinance must be adopted and become effective immediately to prevent the following threats to public health, safety and welfare associated with outdoor marijuana cultivation:
 - a. **Odors.** Marijuana plants cultivated outdoors often produce, especially as they mature to harvest, a distinctive, strong odor that can be detectable and offensive beyond the borders of the property on which it grows. Cities, counties, and air quality districts in which marijuana is grown outdoors have received large numbers of complaints of odors related to the cultivation of marijuana.
 - b. **The risk of criminal activity and safety threats.** The strong smell and visibility of marijuana cultivated outdoors (such as from neighboring buildings in residential areas) creates an "attractive nuisance" that entices others to the cultivation, and increases the risks of crimes such as burglary, trespass, robbery, and armed robbery, potentially resulting in serious injury or death. The Santa Clara County Sheriff's Office believes the risks of crimes will continue if the AUMA passes given that marijuana will still be valuable and will remain illegal for individuals under 21 years of age. The cultivation of marijuana can also result in various code violations, including improper and dangerous electric alterations and use. These secondary effects pose serious safety risks, and require the commitment of scarce police, code enforcement, and other public resources.

- c. **The risk of fires.** Much of Saratoga is in a State-designated High or Very High Fire Hazard Severity Zone. Recent wildfires in northern California have been caused by outdoor marijuana cultivation.
 - d. **The risk of environmental degradation.** The Santa Clara District Attorney has stated that outdoor grow sites have been discovered throughout Santa Clara County, particularly in remote areas such as the eastern foothills of Saratoga. These outdoor grow sites frequently divert water without regulatory permits or permission and/or pollute adjacent waterways. Between 2011-2013, the County charged 54 outdoor marijuana gardens, including at least 24 gardens on private land. Many of these operations were charged with environmental crimes.
9. A prohibition on outdoor marijuana cultivation is more difficult to enforce once such uses have begun within a community. Those uses must be immediately prohibited to prevent them from establishing and causing the negative secondary effects in the City described above.
10. Notice of the public hearing for this Ordinance was published pursuant to Government Code section 65090 and the City Council held a public hearing on November 2, 2106 at which all interested parties had an opportunity to be heard.

Therefore, the City Council of the City of Saratoga hereby ordains as follows:

Section 1. Prohibition

The outdoor cultivation of marijuana is prohibited in all zoning districts within the City of Saratoga.

For purposes of this Ordinance:

- (a) “marijuana” shall have the same meaning as set forth in Health and Safety Code section 10018, as proposed to be added by the AUMA (as defined in the findings above), and shall be interpreted broadly to include the definitions of “cannabis” and “medical cannabis” set forth in Business and Professions Code section 19300.5 subdivisions (f) and (af);
- (b) “cultivation” shall have the same meaning as “cultivation” set forth in Business and Professions Code section 19300.5(k);
- (c) “outdoor” shall mean any location within the City of Saratoga that is not within a fully enclosed and secure structure; and
- (d) “fully enclosed and secure structure” shall mean a fully-enclosed space within a building that complies with Chapter 16 of the Saratoga Municipal Code, or if not subject to that Chapter, that has a complete roof and a foundation, slab or equivalent base to which the floor is secured and that is secure against unauthorized entry and accessible only through one or more lockable doors. Walls, doors, windows, and roofs must be constructed of solid and firm material such as wood, metal, or, in the case of windows, glass. Plastic sheeting or similar products do not satisfy this requirement.

Section 2. Enforcement

(a) Violations of this Ordinance are hereby declared to be public nuisances and determined to be an immediate hazard to the public health, safety or welfare for purposes of Article 3-20 (Emergency Nuisance Abatement Procedure) of the Saratoga Municipal Code.

(b) In addition to other remedies provided by the Saratoga Municipal Code or by other law, any violation of this Ordinance may be remedied by a civil action brought by the City Attorney, including, but not limited to, administrative or judicial nuisance abatement proceedings, civil code enforcement proceedings, unfair business practice proceedings under Business & Professions Code Section 17200 *et seq.*, and suits for injunctive relief. The remedies provided by this Section are cumulative and in addition to any other remedies available at law or in equity.

(c) Notwithstanding any other provision of the Saratoga Municipal Code, including Article 3-05 (Criminal Enforcement) and Article 15-95-030 (regarding misdemeanors and infractions), a qualified patient, person with a valid identification card, or primary caregiver, as those terms are defined in the Compassionate Use Act and the Medical Marijuana Program Act, California Health and Safety Code sections 1111362.5 and 11362.7 *et seq.*, shall not be subject to criminal liability under California Health and Safety Code section 11570 or any criminal abatement actions or complaints for outdoor cultivation of medical cannabis as that term is defined in Business and Professions Code section 19300.5(f). Any qualified patient, person with a valid identification card, or primary caregiver engaged in outdoor cultivation of medical cannabis in violation of this Section shall be subject to all other compliance actions set forth in this Section, code enforcement actions set forth in Chapter 3 of the Saratoga Municipal Code, and legal proceedings authorized in Section 15-95.020 of the Saratoga Municipal Code. Nothing in this Section shall prevent the criminal enforcement of other violations of this Ordinance, the Saratoga Municipal Code, or state law.

Section 3. Written Report

The City Manager, Community Development Department, and City Attorney's office shall (1) review and consider options for the regulation of marijuana cultivation in the City and (2) pursuant to Government Code section 65858, file a written report describing the measures that the City has taken to address the conditions which led to the adoption of this Ordinance with the City Council within 10 days prior to the expiration of this interim urgency ordinance, or any extension thereof.

Section 4. Severance Clause

The City Council declares that each section, sub-section, paragraph, sub-paragraph, sentence, clause and phrase of this ordinance is severable and independent of every other section, sub-section, paragraph, sub-paragraph, sentence, clause and phrase of this ordinance. If any section, sub-section, paragraph, sub-paragraph, sentence, clause or phrase of this ordinance is held invalid, the City Council declares that it would have adopted the remaining provisions of this ordinance irrespective of the portion held invalid, and further declares its express intent that the

remaining portions of this ordinance should remain in effect after the invalid portion has been eliminated.

Section 5. Effective Date

This Ordinance is an interim urgency ordinance that shall take effect immediately upon its adoption by a four-fifths (4/5) vote of the City Council. This Ordinance shall continue in effect for forty-five (45) days from the date of its adoption and shall thereafter be of no further force and effect unless the City Council extends it for an additional period of time pursuant to California Government Code section 65858.

Section 6. California Environmental Quality Act

The City Council finds that this Ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines (Title 14 of the California Code of Regulations) 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) because it has no potential for resulting in physical change in the environment, directly or indirectly; it prevents changes in the environment. Further, this action is exempt from CEQA under CEQA Guidelines section 15061(b)(3) (the amendments are exempt because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment).

Section 7. Publication

A summary of this ordinance shall be published in a newspaper of general circulation of the City of Saratoga within fifteen days after its adoption.

(Continued Next Page)

Following a duly noticed public hearing the foregoing urgency ordinance was adopted by the following vote on November 2, 2016:

COUNCIL MEMBERS:

AYES: Mayor E. Manny Cappello, Vice Mayor Emily Lo, Council Member Mary-Lynne Bernald, Howard A. Miller, Rishi Kumar

NOES: None

ABSENT: None

ABSTAIN: None

SIGNED:



E. Manny Cappello
MAYOR, CITY OF SARATOGA, CALIFORNIA

ATTEST:



Crystal Bothelio, CITY CLERK

DATE: 11/3/2016

APPROVED AS TO FORM:



Richard Taylor, CITY ATTORNEY

DATE: 11/2/16