

ORDINANCE NO. 343A

URGENCY INTERIM ORDINANCE EXTENDING A TEMPORARY MORATORIUM ON THE OUTDOOR CULTIVATION OF MARIJUANA IN THE CITY OF SARATOGA FOR A PERIOD OF 22 MONTHS AND 15 DAYS TO OCTOBER 22, 2018 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 On November 8, 2016, California voters adopted the Control, Regulate and Tax Adult Use of Marijuana Act ("AUMA", also known as Proposition 64) The AUMA legalized under state law the possession, cultivation, and consumption of marijuana for persons 21 years of age or older It also established state laws to regulate marijuana cultivation, distribution, sale, and use.
- 2 The AUMA allows 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)).
- 3 In anticipation of the passage of the AUMA, the City Council adopted Ordinance No 343 on November 2, 2016, which imposed a 45-day ban on the outdoor cultivation of marijuana pursuant to Government Code section 65858(b) That Ordinance will expire on December 17, 2016
4. Government Code section 65858(d) provides that prior to the expiration of Ordinance No 343, the City Council must issue a written report describing the measures being taken by the City to alleviate the circumstances and conditions which led to the adoption of that Ordinance ("Written Report").
- 5 Government Code section 65858(b) provides that the City Council may extend Ordinance No. 343 for up to an additional twenty-two (22) months and fifteen (15) days
- 6 As described in the Written Report, the circumstances and conditions that led to the adoption of Ordinance No 343 have not been alleviated as of the date of this Ordinance and continue to create the concerns described in Ordinance No 343, which are fully incorporated herein by this reference
- 7 The purpose and necessity of extending Ordinance No 343 is to avoid the potentially significant adverse impacts to the public's health, safety, and welfare described in Ordinance No 343.

8. 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 December 7, 2016 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. Written Report

The City Council issues the written report attached as Attachment A to the staff report for this Ordinance describing the measures and actions taken by the City to alleviate the circumstances and conditions which led to the adoption of Ordinance No 343, as required by Government Code section 65858(d)

Section 2. Urgency Interim Ordinance Extension

The prohibition on the outdoor cultivation of marijuana in all zoning districts established by Ordinance No. 343 is hereby extended as provided in Sections 3 and 4 below

Section 3. 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, 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 4. 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(a) 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 5. Second 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 second 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.

Section 6. 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 7. 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 twenty-two months (22) and fifteen (15) days from the date of its adoption and shall thereafter be of no further force and effect

Section 8. 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 9. 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

Following a duly noticed public hearing the foregoing urgency ordinance was adopted by the following vote on December 7, 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

 *Debbie Bretschneider*
Crystal Bothelio, CITY CLERK *Deputy City Clerk* DATE 12/12/16

APPROVED AS TO FORM



Richard Taylor, CITY ATTORNEY

DATE

12/8/16