#### **ORDINANCE NO. 1178**

# AN INTERIM URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAUSALITO EXTENDING THE MORATORIUM ON THE APPROVAL OF MEDICINAL MARIJUANA DISPENSARIES FOR A PERIOD OF 12 MONTHS

WHEREAS, in 1996 the voters of the state of California approved Proposition 215 (codified as Health and Safety Code Section 11362.5 <u>et. seq.</u> and entitled the "Compassionate Use Act of 1996") legalizing the use of marijuana for specific medical purposes; and

WHEREAS, the state of California adopted SB 420 which clarified the scope of the Compassionate Use Act and allowed cities and other governing bodies to adopt and enforce rules consistent with SB 420; and

WHEREAS, the City has received several inquiries and one application regarding applications for medicinal marijuana dispensaries; and

WHEREAS, the Compassionate Use Act and SB 420 are silent on the authority of local jurisdictions to permit and/or regulate medicinal marijuana dispensaries; and

WHEREAS, on May 17, 2005 the Sausalito City Council adopted Ordinance No. 1176, establishing a 45-day moratorium on the approval of medicinal marijuana dispensaries to provide time to study and consider enactment of zoning standards for this use; and

WHEREAS, on June 28, 2005 the Sausalito City Council adopted Ordinance No. 1177, extending the moratorium on medicinal marijuana dispensaries as established by Ordinance No. 1176 for a period of 10 months and 15 days; and

WHEREAS, upon adoption of Ordinance No. 1177 the Council noted that the following factors contributed to the Council's decision to extend the moratorium on medicinal marijuana dispensaries:

- On June 6, 2005, the Supreme Court decided in Gonzales v. Raich that Congress's constitutional authority to regulate the interstate market in drugs extends to doctor-recommended marijuana consumed under the Compassionate Use Act.
- The Gonzales v. Raich ruling clarified that those who try to use marijuana as a medical treatment risk legal action by the U.S. Drug Enforcement Administration or other federal agencies, and that state law provides no defense.
- The Federal Government maintains that the distribution and consumption of marijuana for any purpose is a violation of federal law.
- The conflict between federal and state law on medicinal marijuana calls into question the City's ability to permit medicinal marijuana dispensaries as a legally permissible use.

- Permitting a use that is illegal under federal law could result in harmful impacts for City residents, businesses, and medicinal marijuana patients and their caregivers; and
- Further study of the legality of medicinal marijuana dispensaries is necessary to protect the health, safety, and welfare of the community; and

WHEREAS, the Council finds that the factors contributing to the Council's extension of the medicinal marijuana moratorium through the adoption of Ordinance No. 1177 remain applicable and valid; and

WHEREAS, the moratorium on the approval of medicinal marijuana dispensaries, extended by Ordinance No. 1177 on May 28, 2005 for a period of 10 months, will expire on May 15, 2006; and

WHEREAS, Government Code section 65858 allows the City Council to extend the medicinal marijuana moratorium for an additional maximum period of 12 months; and

WHEREAS, Six months prior to the expiration of this interim ordinance (November 6, 2006) staff will return to the City Council to further discuss policy options available for regulating dispensaries upon the final expiration of the medicinal marijuana moratorium; and

WHEREAS, the City Council continues to affirm its support of an individual's right to consume marijuana for specific medical purposes as guaranteed by the Compassionate Use Act; and

WHEREAS, notice of the extension of the moratorium established by Ordinance No. 1176 and extended by Ordinance No. 1177 has been provided in accordance with applicable provisions of the California Government Code; and

WHEREAS, the adoption of this interim ordinance is exempt from the California Environmental Quality Act ("CEQA") pursuant to section 15061 (b)(3), 15262 and 15306 of the State CEQA Guidelines because it can be seen with certainty that there is no possibility that such adoption may have a significant effect on the environment.

## NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SAUSALITO HEREBY ORDAINS AS FOLLOWS:

Part 1. The City Council finds and determines as follows:

- (a) The above recitals are incorporated herein and are each relied upon independently by the City Council for its adoption of this urgency ordinance; and
- (b) The adoption of this Ordinance is exempt from the application of the California Environmental Quality Act, Public Resources Code Section 21000 et seq., pursuant to Sections 15061(b), 15262 and 15306 of the State CEQA Guidelines, 14 California Code of Regulations Section 15000, et seq.; and

- (c) The City must protect the character of residential neighborhoods and promote and encourage commercial economic diversity under its General Plan Land Use Element; and
- (d) The City cannot ensure that the City's objectives and policies will be implemented properly without specific development standards in place; and
- (e) There exists a current and immediate threat to the public health, safety and welfare, and California Government Code § 65858 authorizes the City Council to adopt as an urgency measure an interim ordinance prohibiting any uses which may be in conflict with the contemplated general plan implementing regulations and development standard proposals that the City is considering or intends to study within a reasonable time; and
- (f) There is no feasible alternative to enactment of this interim moratorium that will satisfactorily mitigate or avoid the previously identified impacts to the public health, safety and welfare with a less burdensome or restrictive effect; and
- (g) In order to ensure the effective implementation of the City's land use objectives and policies, a temporary moratorium on approval of medicinal marijuana dispensaries is necessary.

#### Part 2. Imposition of Moratorium.

- (a) From and after the date of this ordinance, no use permit, occupational permit, variance, building permit, or any other entitlement for use, including but not limited to the issuance of a business license, shall be approved or issued for the establishment or operation of a medicinal marijuana dispensary for a period of 10 months and 15 days from the expiration of the moratorium established by Ordinance No. 1177.
- (b) For purposes of this ordinance, "medicinal marijuana dispensary" means any facility or location where a primary caregiver intends to make available, sell, transmit, give, or otherwise provide medicinal marijuana to two or more of the following: a qualified patient or a person with an identification card, or a primary caregiver in strict accordance to Health and Safety Code Section 11362.7(d)(2) and (3). The terms "primary caregiver," "qualified patient", and "person with an identification card" shall be as defined in Health and Safety Code Sections 11362.5 and 11362.7 et seq.
- (c) For purposes of this ordinance, a "medicinal marijuana dispensary" shall not include the following uses, as long as the location of such uses are otherwise regulated by applicable law: a clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code, a health care facility licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code, a residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 of Division 2 of the Health and Safety Code, a residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code, a hospice, or a home health agency licensed pursuant to Chapter 8 of Division 2 of the Health and Safety Code, as long as any such use complies strictly with applicable law including but not limited to, Health and Safety Code Section 11362.7, et seq.

Part 3. Effective Date and Term. This Ordinance shall take effect immediately upon the expiration of Ordinance No. 1177 (May 15, 2006), and shall be in effect for a period of 12 months (May 15, 2007), unless repealed or by further action of the City Council as provided in Government Code section 65858.

Part 4. Expiration. Ten days prior to the expiration of this interim ordinance (May 15, 2007) or any extension thereof, the City Council shall issue a written report describing new information, legal or otherwise, relevant to City policies regarding the regulation of medicinal marijuana dispensaries.

Part 5. Publication. Within 15 days after adoption of this ordinance, the City Clerk shall cause this ordinance to be published one time in a newspaper of general circulation within the City.

PASSED, APPROVED AND ADOPTED this 28th day of May, 2006, by the following vote:

AYES:

Councilmembers: Albritton, Belser, Scremin, Vice Mayor Kelly, Mayor Albert

NOES:

Councilmembers: None

ABSENT:

Councilmembers: None

ABSTAIN:

Councilmembers: None

/s/ Ronald Albert Mayor of the City of Sausalito

ATTEST: /s/ Dale Vaughn Deputy City Clerk



## City of Sausalito

420 Litho Street, Sausalito CA 94965 Phone (415) 289-4100 / FAX (415) 289-4167

#### FACSIMILE COVER SHEET

Date:

May 23, 2006

To:

Marin Independent Journal

FAX Number:

415-382-1535

From:

Ms. Dale Vaughn, Administrative Services Manager

Phone (415) 289-4130

RE:

Please publish City of Sausalito Ordinance No. 1178;

must be published no later than May 28, 2006.

If you need payment in advance, please leave a message on my voice mail and I will call on Thursday to give you a credit card number. (I'll be unavailable

on Wednesday.)

You should receive _	5	pages including this cover sheet.	If any pages	are missing,
please contact Ms. D	ale Vau	ghn at (415) 289-4130.		

### HP Officejet 6100 Series 6110 Personal Printer/Fax/Copier/Scanner

Log for Dale Vaughn 415-289-4130 May 24 2006 12:11am

Last	Transa	action

<u>Date Time Type Identification</u> <u>Duration Pages Result</u>

May 24 12:09am Fax Sent 93821535 1:14 5 OK