

## ORDINANCE NO. 669

### **AN ORDINANCE REQUIRING COMPLIANCE WITH THE U.S. CONTROLLED SUBSTANCES ACT, AND DECLARING AN EMERGENCY.**

**WHEREAS**, House Bill 3460 (2013) requires medical marijuana dispensaries to register with the Oregon Health Authority and establishes rules for the State of Oregon's regulation of medical marijuana dispensaries;

**WHEREAS**, Senate Bill 1531 (2014), placed additional restrictions on medical marijuana dispensaries and expressly permitted the City to impose a temporary moratorium on the operation of registered medical marijuana facilities within City limits;

**WHEREAS**, pursuant to SB 1531, the City imposed a moratorium on the operation of registered medical marijuana facilities within the City and such moratorium will expire on May 1, 2015;

**WHEREAS**, neither HB 3460, SB 1531 nor Senate Bill 863 (the genetically modified organism bill that passed in the Oregon State Legislature's 2013 special legislative session) require or impose an affirmative duty or mandate upon local governments such as the City of Winston to allow, authorize or sanction the establishment and operation of facilities dispensing marijuana in their respective jurisdictions. Moreover, neither HB 3460, SB 1531 nor SB 863 created a state constitutional right to obtain marijuana;

**WHEREAS**, HB 3460, SB 1531 and SB 863 do not abrogate the city's powers to regulate matters affecting the public's health, safety, and welfare, and as explained by the Josephine County Circuit Court in *City of Cave Junction v. State of Oregon*, Case No. 14CV0588 neither HB 3460 nor SB 863 expressly preempt the City's home rule authority to prohibit marijuana dispensaries within City limits;

**WHEREAS**, Ballot Measure 91, which was approved by the voters of Oregon in November of 2014, permits the manufacturing, distribution, sale, possession and use of recreational marijuana in this State, but nothing in BM 91 expressly preempts the City's home rule authority to prohibit marijuana dispensaries within City limits;

**WHEREAS**, marijuana remains an illegal substance under the U.S. Controlled Substances Act, 21 U.S.C. § 801 et seq. and is classified as a "Schedule I Drug" defined as a drug or other substance that has a high potential for abuse. In addition, the U.S. Controlled Substances Act, 21 U.S.C. § 841 makes it unlawful for any person to manufacture, distribute, dispense, or possess with intent to manufacture, distribute, or dispense marijuana for any purpose, including medical purposes;

**WHEREAS**, as explained by the Jackson County Circuit Court in *Nuckols v. City of Medford*, Case No. 14CV02349, the Court explained that pursuant to the Supremacy Clause of the U.S. Constitution, the U.S. Controlled Substances Act preempts any State law that permits the distribution of marijuana;

**WHEREAS**, persons in the City of Winston that may be in need of medical marijuana have access to facilities dispensing marijuana in nearby locations outside of the city or may grow their own medical marijuana;

**WHEREAS**, the City recognizes that secondary effects associated with the distribution of medical and recreational marijuana include increased crime in and about the dispensary, robberies of customers, negative impacts on nearby businesses, and increased DUI incidents (See “White Paper on Marijuana Dispensaries,” California Police Chiefs Association’s Task Force on Marijuana Dispensaries, April 2009);

**WHEREAS**, the City is concerned about the potential for crime in an all cash business such as a marijuana dispensary, and is further concerned about marijuana from dispensaries getting into the black market. As the chair of the Oregon Liquor Control Board recently noted, the state does not regulate the production of medical marijuana and medical marijuana growers already feed the lucrative black market in marijuana sales. (See [http://www.oregonlive.com/marijuana/index.ssf/2015/02/heavy\\_marijuana\\_consumers\\_like.html](http://www.oregonlive.com/marijuana/index.ssf/2015/02/heavy_marijuana_consumers_like.html) and [http://www.oregonlive.com/pacific-northwest-news/index.ssf/2015/02/woman\\_accused\\_of\\_attempting\\_to.html](http://www.oregonlive.com/pacific-northwest-news/index.ssf/2015/02/woman_accused_of_attempting_to.html));

**WHEREAS**, the city council finds that the public health, safety and general welfare of the city, its residents and its visitors necessitates and requires the adoption of this ordinance prohibiting the establishment and operation of marijuana dispensaries; and

**WHEREAS**, the council finds that the public health, safety and general welfare of the city, its residents and its visitors necessitates and requires it to adopt this ordinance with an emergency clause in order for it to take effect immediately.

**NOW, THEREFORE, THE CITY OF WINSTON ORDAINS AS FOLLOWS:**

**Section 1. In Compliance With U.S. Controlled Substances Act:**

**Purpose.**

- A. It is the purpose of this Chapter to preclude and prohibit the opening, establishment, maintenance or operation of facilities in the city that do not comply with the U.S. Controlled Substances Act, 21 U.S.C. § 801 et seq (the “Act”).
- B. The limitations imposed by this Chapter shall apply notwithstanding any other provision of this Code, including but not limited to sections 1.3 and 2.3.140 of Chapter 16 as well as Table 2.3.110 of Chapter 16.
- C. This Chapter will be broadly construed to require strict compliance with the Act and broadly construed to permit the city to prohibit any facility from violating it.

**Facilities Not in Compliance with U.S. Controlled Substances Act Prohibited.**

The establishment, maintenance, or operation of a facility by a person, business or any other entity within the city that is not in compliance with the Act is prohibited and is declared to be a public nuisance.

**Violation and Enforcement.**

- A. The establishment, maintenance or operation of a facility by a person, business or any other entity within the city in violation of the requirements of this Ordinance will be subject to any and all enforcement remedies available to the city under law and/or other Winston Ordinances including but not limited to the filing of an appropriate action and pursuit of an appropriate remedy in a court of competent jurisdiction.
- B. The city may abate any nuisance under this Ordinance or it may pursue any other remedies available to it, including but not limited to an action seeking declaratory relief and/or injunctive relief.
- C. In the event the city brings an action in either law or equity in any of the courts of this state (including the U.S. District Court for the District of Oregon) other than its municipal court for the enforcement of this Chapter, the city shall be entitled to the award of its reasonable attorney fees in the event it is the prevailing party.


**Penalties.**

Any person convicted of violating any of the provisions of this ordinance shall be punished by a fine not to exceed two hundred fifty dollars (\$250) for any one offense, each day constituting a separate offense.

**Section 2 – Emergency.** This Ordinance being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this Ordinance takes effect on its passage.

First reading before the City Council on the 27th day of April, 2015.

Second reading and adoption by the City Council on the 27th day of April, 2015.



Mayor, Sharon Harrison

ATTEST



City Recorder, David M. Van Dermark