



**City of Sutherlin  
Special Council Meeting  
Wednesday, April 22, 2015  
Civic Auditorium – 6:30 p.m.  
AGENDA**

**Mayor Todd McKnight**  
Council President Stone  
Councilors Luzier, Anderson, Egbert, Boggs, and Meier

**1. CALL TO ORDER / FLAG SALUTE**

**2. ROLL CALL**

**3. INTRODUCTION OF MEDIA**

**4. PUBLIC COMMENT**

[The purpose of citizen comment is to allow citizens to present information regarding agenda items only. A time limit of three minutes per citizen shall apply.]

**5. ACTION ITEMS / GENERAL BUSINESS**

- a. Ordinance – Marijuana Restrictions (first reading, title only)

**6. PUBLIC COMMENT**

[The purpose of citizen comment is to allow citizens to present information regarding items off the agenda. A time limit of three minutes per citizen shall apply.]

**7. ADJOURN**

*Members of the audience who wish to address the Council will be invited to do so. Speakers must use the microphone stating their name and address prior to addressing the Council.*



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# **Call to Order & Flag Salute**





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# ROLL CALL





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# **Introduction Of Media**





# **PUBLIC COMMENT**

**Agenda Items only**





# **Action Items and/or General Business**





# City of Sutherlin

STAFF REPORT					
<b>Re: Marijuana Dispensary Prohibition</b>				Meeting Date:	4/22/15
<b>Purpose:</b>	Action Item <input checked="" type="checkbox"/>	Workshop <input type="checkbox"/>	Report Only <input type="checkbox"/>	Discussion <input checked="" type="checkbox"/>	Update <input type="checkbox"/>
<b>Submitted By: Chad Jacobs, City Attorney's Office</b>				City Manager Review	<input type="checkbox"/>
<b>Attachments:</b> Draft Ordinance					

## WHAT IS BEING ASKED OF COUNCIL?

At your request, attached is a draft ordinance that would prohibit marijuana dispensaries from locating within City limits for Council discussion and possible action at your next meeting.

## EXPLANATION

At your last meeting, Council directed staff to bring back for Council consideration an ordinance that would prohibit marijuana dispensaries from locating within City limits. As the Council is aware, state law has recently been amended to provide for the opening of both medical and recreational marijuana dispensaries in Oregon. The proposed ordinance would prohibit such dispensaries from opening within City limits.

Specifically, the proposed ordinance declares that any business or other entity operating within the city that is not in compliance with the U.S. Controlled Substances Act ("Act") is prohibited and is declared to be a public nuisance. Under the Act, it is unlawful for any person to manufacture, distribute, dispense, or possess with intent to manufacture, distribute, or dispense marijuana for any purpose, including medical purposes. Thus, unless and until marijuana is legalized under the Act, the proposed ordinance would preclude the location of marijuana dispensaries within the City. The ordinance authorizes the City to use nuisance abatement procedures as well as other legal remedies to enforce the prohibition.

Finally, as the Council is also aware, there are potential legal issues related to the proposed ordinance, and a court may find that the ordinance, if enacted, is preempted by state law. If this were to occur, marijuana dispensaries would be able to locate within the City in only those areas permitted by the amendments to the City's development code approved by the Council at its last meeting. This proposed ordinance makes clear, in the purpose section that the prohibition applies notwithstanding the recent amendments to the development code.

<b>OPTIONS</b>
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Enact the proposed ordinance as presented.  
Enact the proposed ordinance as amended by Council.  
Do not enact the proposed ordinance.

<b>SUGGESTED MOTION(S)</b>
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None



*Administration*  
126 E. Central Avenue  
Sutherlin, OR 97479  
(541) 459-2856  
Fax (541) 459-3281  
[www.ci.sutherlin.or.us](http://www.ci.sutherlin.or.us)

# City of Sutherlin

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## NOTICE OF ORDINANCE ENACTMENT

### ORDINANCE NO.

**AN ORDINANCE ADDING A NEW CHAPTER 8.14 TO THE SUTHERLIN MUNICIPAL CODE REQUIRING COMPLIANCE WITH THE U.S. CONTROLLED SUBSTANCES ACT, AND DECLARING AN EMERGENCY**

**THIS ORDINANCE WILL BE CONSIDERED BY COUNCIL AT THE REGULAR COUNCIL MEETING OF**

**WEDNESDAY, APRIL 22, 2015 @ 6:30PM  
SUTHERLIN LIBRARY MEETING ROOM  
- 210 E. CENTRAL AVENUE**

Questions or copies of this Ordinance may be viewed by interested persons at the office of City Recorder, 126 E. Central Avenue, Sutherlin, Oregon, between the hours of 9:00 a.m. and 5:00 p.m., weekdays. A copy of this Ordinance may be purchased by interested persons for a sum determined to cover the City's expense for providing the copy.

Pursuant to Section 30 (b) (c) of the Sutherlin City Charter, this notice has been posted at the following locations: Sutherlin City Hall; Sutherlin Post Office; Sutherlin Visitor's Center and the City's website ([www.ci.sutherlin.or.us](http://www.ci.sutherlin.or.us)).

Posted this day, April 15, 2015  
By Diane Harris  
Deputy City Recorder

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE ADDING A NEW CHAPTER 8.14 TO THE SUTHERLIN MUNICIPAL CODE 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 Sutherlin 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 Sutherlin 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 May 1, 2015.

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

**Section 1.** The City establishes a new Chapter 8.14 – Compliance With U.S. Controlled Substances Act – to read as follows:

**SECTION 8.14.010 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.

**SECTION 8.14.020 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.

**SECTION 8.14.030 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 chapter or any other applicable provisions of the Sutherlin Municipal Code will be subject to any and all enforcement remedies available to the city under law and/or the Sutherlin Municipal Code including but not limited to enforcement pursuant to Chapter 8.16 of the Sutherlin Municipal Code and/or 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 chapter either pursuant to Chapter 8.16 of the Sutherlin Municipal Code 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.

**Section 2.** 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 May 1, 2015.

**PASSED BY THE COUNCIL THIS \_\_\_\_ DAY OF APRIL, 2015.**  
**APPROVED BY THE MAYOR THIS \_\_\_\_ DAY OF APRIL, 2015.**

**ATTEST:**

\_\_\_\_\_  
Mayor, Todd McKnight

\_\_\_\_\_  
City Recorder, Debra L. Hamilton, CMC



# **PUBLIC COMMENT**





# ADJOURNMENT





# **FOR YOUR INFORMATION**



## Diane Harris

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**From:** Diane Harris  
**Sent:** Thursday, April 16, 2015 3:17 PM  
**To:** Douglas County News; Jessica Prokop; KUGN; KYLE-KQUEN; News Review; Register Guard; Roseburg Beacon  
**Subject:** FW: Public Meeting Notice  
**Attachments:** Agenda 4.22 thru 4.23.15.pdf; CC APR 22.15- Special Meeting.pdf

Sorry, here it is PDF

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**From:** Diane Harris  
**Sent:** Thursday, April 16, 2015 3:02 PM  
**To:** Douglas County News; Jessica Prokop; KUGN; KYLE-KQUEN; News Review; Register Guard; Roseburg Beacon  
**Cc:** [d.hamilton@ci.sutherlin.or.us](mailto:d.hamilton@ci.sutherlin.or.us); Diane Harris ([d.harris@ci.sutherlin.or.us](mailto:d.harris@ci.sutherlin.or.us))  
**Subject:** Public Meeting Notice

Please see attached agendas for the April 22<sup>nd</sup> Council special meeting and Budget meeting.

The Council special meeting will take place at 6:30 in Civic Auditorium, the Budget meeting will follow in the Library meeting room at 7:00



*Diane Harris*

Deputy City Recorder  
City of Sutherlin  
126 E Central Ave  
Sutherlin, OR 97479  
(541)-459-2856  
[d.harris@ci.sutherlin.or.us](mailto:d.harris@ci.sutherlin.or.us)