

# Opinion: Time to control marijuana odor in South Tahoe

By Steve Kubby

A citywide voter initiative to control marijuana odor and set rules for cultivation was filed Dec. 29 with the city clerk. The city attorney has 15 days to issue a Title and Summary so the signature gathering process can begin.

The new initiative requires 856 valid voter signatures to qualify for the Nov. 6 ballot.



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When people come to South Lake Tahoe, they expect to smell pine trees and fresh air. Odor from marijuana cultivation has a negative effect on visitors' experience and on property values, which should not be tolerated in a residential setting. Responsible marijuana growers control their odor emissions out of respect for their neighbors and out of the need for security from home invasions. This initiative will make the abatement of marijuana odor an enforcement priority.

Unfortunately, frustrated and frightened patients who are trying to comply with the current South Lake Tahoe Cultivation Ordinance are finding that it is impossible to get their landlords to sign notarized letters giving permission for them to grow – even though they already know and allow their tenants to do so. Apparently, landlords are reluctant to sign

something that would incriminate them for violating federal law and the Controlled Substance Act.

Patients must also register in public records that they are growing, a clear violation of their Fifth Amendment rights. Too bad if the city decides you are not in compliance, their ordinance allows them to publish patient's name and fine them \$1,000 per day. As a result, few patients have registered and now live in terrible fear that the city will raid them, cut off their power and turn their lives upside down.

The current cultivation ordinance punishes bona fide patients by creating expensive and difficult barriers to rights already granted to them by the voters of California. In contrast, the city rewards illegal growers, because nearly anyone can qualify, provided they have enough money and time to jump through all the hoops, give their landlords money under the table, and get a medical recommendation for the right price.

Under the current system that was adopted, illegal growers and out-of-towners will be flocking to the city of South Lake Tahoe by the thousands, something none of us wants.

It is not the job of the City Council to serve as property managers. That is the legal responsibility of property owners and rental property managers. It is their responsibility to clearly spell out the terms of their lease, to screen their potential tenants and perform whatever inspections are required to maintain their property. Absentee owners should take responsibility and hire a local property manager. If tenants are in violation of their lease, then owners and managers have ample legal remedies ranging from eviction to civil and even criminal actions in court.

It is also not the job of the City Council to thwart state law and the will of the voters. Medical marijuana patients have legal rights. This voter initiative will ensure that the rights and privacy of patients is respected, while marijuana

odor is brought under control and illegal growers are no longer protected by the City of South Lake Tahoe.

## **The South Lake Tahoe Marijuana Odor Control and Cultivation Ordinance**

The People of the City of South Lake Tahoe, California, do enact as follows:

### **Section A. Purpose and Finding**

The People of the City of South Lake Tahoe find that marijuana cultivation in homes can create a number of problems that need to be addressed. Number one among these issues is the odor of marijuana plants, which many people find offensive. At the same time, bona fide medical marijuana patients and caregivers find themselves facing a new city ordinance which creates difficult, expensive, illegal procedures and barriers to rights already granted to them by the People of California. As a result, many patients cannot comply and now live in fear, while the more pressing issue of marijuana odor goes ignored. This initiative is intended to make marijuana cultivation odor abatement the key issue, while leaving matters occurring within a dwelling up to owners, landlords, their lease agreements and existing real estate law.

### **Section B. Orders**

(1) Odor from the cultivation of marijuana is hereby deemed a serious problem within our city and any complaint of odor issues should be investigated and acted upon.

(2) Any property or dwelling which is found to be emitting marijuana cultivation odors should be tagged on the front door or gate, with a notice that odor has been detected, and the city requests appropriate actions be taken within 72 hours to remove or sufficiently suppress the odor, such as the purchase of a charcoal filter unit specifically designed to remove odors.

(3) Any property or dwelling which is found to be emitting marijuana cultivation odors 72 hours after being tagged can be fined up to \$50 per day until the odor is removed. Odor from the smoking of marijuana shall not be cause for any action.

(4) Adults 21 years and older, who are bona fide medical marijuana patients, may produce up to 6 mature outdoor flowering plants, or up to 12 mature indoor flowering plants per person; or a total number of plants cultivated per household not to exceed 12 mature flowering plants outdoors or 24 plants indoors. The cultivation shall take place in an indoor or outdoor space or area not visible from a public street or sidewalk.

(5) No taxes, fees, laws, rules, regulations, zones, local city or county zoning requirements may be adopted or enacted to defeat, deny, or prohibit the purposes of this Act, or to defeat, deny, or prohibit adult medical marijuana patients, 21 or older or from engaging in the activities authorized and protected by this Act, unless passed by the state or local voters.

(6) Nothing in this section shall prevent a property owner from prohibiting marijuana cultivation on their property or conduct that damages their property, so long as that is clearly stated in their rental agreement or lease.

(7) This Act repeals, preempts and nullifies any and all conflicting local regulations, but allows for a greater number of plants than authorized by this measure, if a physician has written a letter or recommendation that states that these limits are insufficient for their patient.

(8) No regulations, taxes, permits or fees shall be enacted or imposed upon marijuana for qualifying patients or their caregivers.

(9) Elected, appointed, hired employees, officers, and officials of the City of South Lake Tahoe shall not directly

or indirectly cooperate with or assist federal, state, or county officers or officials, volunteers, or employees who eradicate marijuana, act for seizure or forfeiture, or demand entry without a warrant or to defeat any liberally construed purpose of this Act, nor may any state or local agency contract to eradicate marijuana that is being grown, manufactured or stored under the provisions of this Act. Violation of this clause shall be a misdemeanor, punishable by fine and up to one year in prison.

(10) The City of South Lake Tahoe is ordered to protect and defend all provisions of this Act from any and all challenges or litigation, whether by persons, officials, cities, counties, the state or federal governments.

(11) South Lake Tahoe City Police are hereby enjoined from arresting anyone age 21 or older for any marijuana related offense, which is protected by this Act.

(12) This Act shall become effective immediately upon passage and may be applied retroactively to protect patients or caregivers from civil or criminal prosecution.

(13) Patients and caregivers shall have the right to transfer their marijuana to other patients or collectives and be paid a remuneration for their out of pocket expense and their time.

(14) The City of South Lake Tahoe is hereby enjoined from banning or limiting the number of medical marijuana collectives, dispensaries or delivery services operating within the City. However, the City shall have the power to regulate or even ban any signage by dispensaries and to ban the location of any dispensary within 600 feet of a school.

### Section C. Severability

If any of the provisions of this Act, or any part thereof, is for any reason held to be invalid or unconstitutional, the remaining provisions shall not be affected, but shall remain

in full force and effect, and to this end the provisions of this Act are severable.

*Steve Kubby is a resident of South Lake Tahoe.*