

CITY OF SOUTH LAKE TAHOE
ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF SOUTH LAKE TAHOE CITY COUNCIL
AMENDING CITY CODE BY ADDING CHAPTER 15C -
MEDICAL MARIJUANA CULTIVATION

15C-1 DEFINITIONS

For purposes of this Chapter, the following words shall have the following meaning, unless the context clearly indicates otherwise.

Abatement. The removal of marijuana plants, and improvements that support or assist with marijuana cultivation that are in violation of this Chapter.

Accessory Use. An accessory use is defined as a use, building, or other facility customarily a part of any primary use; that is clearly incidental and secondary to the primary use; that does not change the character or the intensity of the primary use; and that does not operate independent of the primary use.

Cultivation. The planting, growing, harvesting, drying, or processing of marijuana plants, or any part thereof.

Dwelling Unit. A room or group of rooms (including sleeping, eating, cooking and sanitation facilities, but not more than one kitchen) which constitutes an independent housekeeping unit, occupied or intended for occupancy by one household for a period of time in excess of thirty (30) days.

Fully enclosed and secure structure. A space within a building, greenhouse or other structure which has a complete roof enclosure supported by connecting walls extending from the ground to the roof, which is secure against unauthorized entry, provides complete visual screening, and which is accessible only through one or more lockable doors.

Indoor. Within a fully enclosed and secure structure.

Medical Marijuana or medical cannabis. Marijuana otherwise known as the plant Cannabis sativa, including constituents of marijuana or cannabis, Tetrahydrocannabinol (THC) and other cannabinoids, used as a physician-recommended form of medicine or herbal therapy.

Medical Marijuana Cooperative or Collective. An association, cooperative, affiliation, or collective of persons who are qualified patients or primary caregivers that provide education, referral, or network services, and/or facilitation or assistance in the lawful production, cultivation, processing or distribution of medical marijuana, and where

medical marijuana is made available to or distributed by or to a primary caregiver or a qualified patient in strict accordance with California Health and Safety Code Section 11362.5 et seq.

Medical Marijuana Cultivation, Processing and Manufacturing Facility. A facility at which medical marijuana is grown and harvested, stored, processed and/or manufactured. Medical Marijuana Cultivation Facility includes Medical Marijuana nursery and/or research facilities. Any establishment engaged in, permitted to be engaged in, or carrying on any medical cannabis cultivation, processing, or manufacturing of marijuana.

Medical Marijuana Cultivation Area. The maximum dimensions allowed for the growing and processing of medical marijuana. For the purpose of this Chapter, the allowable cultivation area shall be calculated using the total area of the area or room being used for cultivation relative to the total square foot of the dwelling unit, excluding garage space and/or outdoor structure.

Outdoor. Any location within the City of South Lake Tahoe that is not within a fully enclosed and secure structure.

Primary caregiver. As defined in California Health and Safety Code Section 11362.5 et seq., and as it may be amended.

Qualified patient. As defined in California Health and Safety Code Section 11362.5 et seq., and as it may be amended.

Residence. A legal dwelling unit.

15C-2 CULTIVATION OF MEDICAL MARIJUANA

- A. Outdoor cultivation. It is hereby declared to be unlawful and a public nuisance per se for any person owning, leasing, occupying, or having charge or possession of any property within the City of South Lake Tahoe to cause or allow such property to be used for the outdoor cultivation of marijuana plants.
- B. Cultivation Not In Compliance with this Chapter. Cultivation of medical marijuana shall be prohibited in all areas of the City, including but not limited to, commercial areas, open space, parks, wetlands and environmentally sensitive lands except as set forth in this Chapter.

15C-3 CULTIVATION OF MEDICAL MARIJUANA AT PRIVATE RESIDENCES

- A. Purpose. To regulate the cultivation of medical marijuana for personal use in a manner that protects the health, safety and welfare of the community and minimizes

or eliminates the potential nuisances associated with marijuana cultivation. This section is not intended to conflict with State Law, or interfere with a patient's right to medical marijuana as provided in California Health & Safety Code Section 11362.

- B. Indoor cultivation of marijuana restricted to Qualified Patients and Primary Care Givers: A qualified patient or primary caregiver shall be allowed to cultivate medical marijuana for their own personal use in an area not to cumulatively exceed ten (10) percent of the square footage of the residence, excluding any garage, attic, detached buildings or other areas not customarily used for living purposes. Cultivation of medical marijuana is permitted in a garage or a greenhouse that is fully secured, provided that parking is available as required by the City Code, but the area in the garage and greenhouse will count towards the total square footage of marijuana permitted by this Chapter. If medical necessity requires a person to cultivate marijuana in an area that would exceed ten (10) percent of the area of his/her home, such cultivation is permitted upon proof of the doctor's recommendation regarding the quantity of marijuana and compliance with the California Building Code, Electrical Code and Fire Code provisions.
- C. Permit Required. By no later than January 1, 2011, each qualified patient or primary caregiver cultivating marijuana at his/her residence shall obtain a permit from the City for the cultivation of marijuana. All permits for cultivation of marijuana shall be valid for one (1) year from the date of issuance, and shall allow cultivation in the part of the residence approved by the Community Development Director as described on the Permit. If a qualified patient or primary caregiver no longer resides at the residence, his/her permit shall automatically be terminated and cultivation of marijuana may no longer occur on the premises without a new permit for cultivation of marijuana, in compliance with this Chapter.
- D. Application for Permit.
1. The permit shall be filed with Community Development Director. The application for a permit shall include, but not be limited to, the following:
 - a. Application and inspection fees set by Resolution of the City Council; and
 - b. Adequate information and comments, such as a physician's recommendation, or verification that a qualified patient or primary caregiver resides in the residence; and
 - c. The location and area to be used for marijuana cultivation not to exceed ten (10) percent of the area of the dwelling unit, unless medical necessity requires a greater area for cultivation and compliance with Building, Electrical, and Fire Code provisions.
 2. Prior to issuance of the permit, the Building Official, or his/her designee, and the Fire Chief, or his/her designee, shall conduct an inspection of the cultivation area to confirm that no health or safety concerns are present, and the cultivation area complies with the standards set forth in this Chapter.

3. The Building Official or his/her designee and the Fire Chief or his/her designee may require additional specific standards to meet the standards set forth in the California Building Code, Electrical Code, Fire Code or other applicable law. Additional requirements may apply when cultivation exceeds ten percent of the area of dwelling unit. The property owner shall obtain building permits and any other permits necessary to comply with the applicable California Building Code, Electrical Code, Fire Code or other applicable law.
- E. Renewal of Permit for Cultivation of Marijuana. No later than thirty (30) days before expiration of a valid permit for cultivation of medical marijuana, the permittee shall submit to the City an application for renewal of his/her permit to cultivate medical marijuana. The application shall be on a City form and be accompanied by an application fee as set forth by Resolution of the City Council. An inspection of the premises shall be required as part of the process for renewal of a permit.
- F. Standards for Cultivation. Cultivation of medical marijuana for personal use shall be in conformance with the following standards:
1. The qualified patient or primary caregiver shall reside in the residence where the medical marijuana cultivation occurs.
 2. The residence shall remain at all times a residence with legal and functioning cooking, sleeping and sanitation facilities with proper egress. These rooms shall not be used for medical marijuana cultivation where such cultivation will prevent their primary use for cooking of meals, sleeping and bathing. Medical marijuana cultivation shall not become the primary use of the residence.
 3. Medical marijuana cultivation is permitted only on property with a dwelling unit. Medical marijuana cultivation is permitted only within a dwelling unit, a garage, or a fully enclosed and secure structure.
 4. Medical marijuana cultivation lighting shall be in compliance with the California Building Code, Electrical Code, Fire Code or other applicable law.
 5. Medical marijuana cultivation is prohibited as a Home Occupation, and retail operations related to the cultivation of marijuana are also prohibited.
 6. From a public right-of-way, there shall be no exterior evidence of medical marijuana cultivation occurring at the property.
 7. The medical marijuana cultivation area shall not adversely affect the health or safety of the residence, or accessory building in which it is cultivated, or nearby properties through creation of mold, mildew, dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibration, or other impacts, or be

hazardous because of the use or storage of materials, processes, products or wastes.

9. If the qualified patient or primary caregiver is renting or leasing the dwelling unit, written permission from the property owner is required. The authorization by the property owner shall be verified and filed with the Building Official. The property owner/landlord may require additional security as he/she deems appropriate.

15C-4 CULTIVATION OF MEDICAL MARIJUANA IN INDUSTRIAL AREAS

- A. Medical Marijuana Cultivation in Industrial Areas. A qualified patient, primary caregiver, or collective or cooperative, may cultivate, process and manufacture medical marijuana on any property in the City where said property is zoned industrial, with a valid Permit from the City issued pursuant to this Chapter, and with permission of the property owner.
- B. Permit Required. The qualified patient, primary caregiver or collective or cooperative shall obtain a permit from the City for the cultivation of medical marijuana in an industrial zoned area. It is unlawful for any entity organized on a for-profit basis to engage in any medical marijuana cultivation whatsoever. The Permit shall become void, and the medical marijuana cultivation shall be removed one (1) year following the date on which the permit is issued, unless the permit is renewed prior to expiration. No vested right shall ever inure to the benefit of such permit holder.
- C. Applications for Permit. Applications for a permit shall include, but not be limited to:
 1. All Applicants shall pay application and inspection fees as set forth by Resolution of the City Council.
 2. All Applicants shall submit written information to the Community Development Director including, but not limited to, plans for security, waste disposal, pest management, product testing, worker safety and compensation, non-diversion of product facility location, capitalization, business plans, Applicant complaint history, criminal background checks, and any additional information deemed necessary by the City Manager, or his/her designee.
 3. An inspection of the cultivation area by a Building Official and Fire Marshall to confirm that no health or safety concerns are present, and that all alterations are in compliance with applicable codes. The Building Official and Fire Marshall may require additional specific standards to meet the California Building Code, Electrical Code, and Fire Code, including, but not limited to, installation of fire suppression sprinklers.
 4. The Community Development Director, in consultation with the Police Chief, Building Official, and Fire Marshall, shall review the submitted application and recommend any other conditions of approval for the Permit.

5. The Permit approved for the cultivation of medical marijuana may be suspended or revoked based on a finding that the applicant or property has a history of any violations of this Ordinance, or is a public nuisance.

D. Renewal of Permit for Industrial Marijuana Cultivation. No Later than thirty (30) days before expiration of a valid permit for cultivation of medical marijuana, the permittee shall submit to the City an application for renewal of his/her permit to cultivate medical marijuana. The application shall be on a City form and be accompanied by an application fee as set forth by Resolution of the City Council. An inspection of the premises shall be included as part of the process for renewal of a permit

E. Standards for Cultivation at Industrial Facilities.

1. No cultivation shall occur outside. All cultivation of medical marijuana shall be indoors in fully enclosed and secure structures.
2. The medical marijuana cultivation area shall comply with all applicable Building Electric and Fire Codes.
3. From a public right of way, there shall be no exterior evidence of medical marijuana cultivation occurring at the property.
4. The medical marijuana cultivation shall not adversely affect the health or safety of the building in which it is cultivated, or nearby properties through creation of mold, mildew, dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibration, or other impacts, or be hazardous because of the use or storage of materials, processes, products or wastes.
5. The facility shall not permit the on-site display or sale of paraphernalia for use in the consumption of marijuana.

15C-5 LEGAL NONCONFORMING USES

A. Established Medical Marijuana Cooperatives or Collectives. Any Medical marijuana cooperative or collective deemed to be an “established operation” by the City as of November 1, 2009, may continue cultivating marijuana in compliance with the terms of this Section.

B. Limits on Cultivation. The cultivation shall be limited to the location of the cooperative or collective, and the cultivation area may not be increased, enlarged, extended, expanded or altered from the cultivation authorized as of _____, 2010. The Building Official and Fire Marshal shall inspect the cultivation operations of each of the cooperatives or collectives within thirty (30) days of the effective date of this Ordinance and determine the limits of cultivation area at each of the collective or cooperatives. Each of the cooperatives or cooperatives shall obtain a permit from the City to cultivate marijuana, as required by this Chapter for cultivation in industrial area. If a cooperative or cooperative ceases the cultivation of marijuana on the premises for a period of thirty (30) days or more, that cooperative or collective shall be deemed to have lost its right to cultivate marijuana.

C. Standards for Cultivation.

1. All cultivation of medical marijuana shall be indoors in a fully enclosed and secure structure.
2. At a minimum, the medical marijuana cultivation area shall be located in buildings constructed with a 1-hour firewall assembly of green board.
3. There shall be no exterior evidence of medical marijuana cultivation occurring at the property.
4. The medical marijuana cultivation shall not adversely affect the health or safety of the building in which it is cultivated, or nearby properties through creation of mold, mildew, dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibration, or other impacts, or be hazardous because of the use or storage of materials, processes, products or wastes.
5. The facility shall not permit the on-site display or sale of paraphernalia for use in the consumption of marijuana.
6. Any changes to the cultivation area required by the City, including those in order to ensure compliance with the California Building Codes, shall not constitute an alteration that would constitute a violation of this Ordinance. Noncompliance with such operating standards shall constitute a violation of the permit issued hereunder and may render such permit suspended or revoked

15C-6 APPEAL FROM DENIAL OF PERMIT OR RENEWAL

- A. Denial. The Community Development Director, in consultation with the Police Chief, Chief Building Official and Fire Marshall, shall review all permit applications and renewal applications, and all other relevant information, and determine if permits should be granted or renewed. If the Community Development Director determines that the permit shall not be granted or renewed, the reasons for denial shall be in writing. The applicant shall then have fourteen (14) days to correct the reasons for denial, and request in writing a re-inspection of the property. The cost of any re-inspection shall be paid by the applicant. After conducting the re-inspection, and/or after the time to request a re-inspection passes, the City shall approve or deny the permit.
- B. Appeals. Applicants may appeal a decision on a permit to the City Manager, or his/her designee, by filing a written notice, with the City Clerk within ten (10) days of denial, stating the grounds for the appeal, and including an appeal processing fee as set by resolution of the City Council. If notice of the appeal is not filed and the required fee is not paid within the ten (10) day appeal period, the decision of the Community Development Director shall be final. The formal rules of evidence and the Administrative Procedures Act shall not apply to any hearing pursuant to this Chapter. The Decision of the City Manager, or his/her designee, shall be deemed the final action of the City. Failure to apply to the City Manager, or his/her designee, shall constitute a failure to exhaust administrative remedies.

15C-7 PUBLIC NUISANCE

- A. It is hereby declared to be unlawful for any person owning, leasing, occupying, or having charge or possession of any property within the City of South Lake Tahoe, to create a public nuisance in the course of cultivating marijuana plants, or any part thereof, in any location. A public nuisance may also be deemed to exist, if such activity produces:
1. Odors which are disturbing to people of normal sensitivity residing or present on adjacent or nearby property or areas open to the public;
 2. Repeated responses (more than three times in a one year time period) to the property from law enforcement officers;
 3. Repeated disruption (more than three times in a one year time period) to the free passage of persons or vehicles in the neighborhood;
 4. Excessive noise which is disturbing to people of normal sensitivity on adjacent or nearby property or areas open to the public; and
 5. Any other impacts on the neighborhood which are disruptive of normal activity in the area.

The above list is not an exhaustive list of those activities that could result in the cultivation producing a public nuisance, but is intended only as examples of conditions that will constitute a public nuisance under this ordinance.

- B. Any violation of this Chapter 15C of the City Code is deemed a public nuisance per se.

15C-8 PENALTIES; ENFORCEMENT

- A. Any person violating any provision of this Chapter shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine not to exceed One Thousand dollars (\$1,000.00), by imprisonment in the County jail not to exceed six months, or by both a fine and imprisonment. Such person shall be deemed guilty of a separate offense for each and every day during any portion of which any violation of this Ordinance is committed, continued, or permitted by such person, and shall be punishable as herein provided.
- B. The City Attorney, in the name of and on behalf of the City and/or people of the State, may bring a civil action in a court of competent jurisdiction to enforce any provision of this Ordinance, or to restrain or abate any violation of the provisions of this Ordinance as a public nuisance.
- C. Abatement procedure. The City Manager, or his or her designee (hereafter, the "Enforcement Official"), are hereby authorized to order the abatement of any violation of this Chapter by following the abatement procedure as defined in Chapter 17 of the City Code for any violation of this Chapter.

- D. Unless otherwise expressly provided, the remedies, procedures and penalties provided in this Ordinance are cumulative to each other and to any other remedies, procedures and penalties available under state law or the City Code.

15C-9 LANDLORD REMEDIES

Notwithstanding any provision of this Ordinance, a property owner who rents or leases a dwelling unit to any person who violates any provision of this Ordinance may recover for actual damages to the dwelling unit against the tenant as allowed under California law.

15C-10 CITY MANAGER AUTHORITY

The City Manager has the authority to implement and develop this Ordinance. The City Manager's authority includes, but is not limited to, all necessary application forms, policies, guidelines and procedures applicable to updating the Ordinance and ensuring its implementation.

15C-11 SEVERABILITY

If any provision of this Ordinance, or the application thereof to any person or circumstance, is held invalid or ineffective by any court of competent jurisdiction, or by reason of any preemptive legislation, that invalidity shall not affect the validity of the remaining provisions of this Ordinance. The City Council declares that it would have passed this Ordinance and each section, subsection, subdivision, sentence, clause and phrase, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases or words be declared invalid.

15C-12 LIABILITY & INDEMNIFICATION

- A. To the fullest extent permitted by law, any actions taken by a public officer or employee under the provisions of this Chapter shall not become a personal liability of any public officer or employee of the City of South Lake Tahoe.
- B. The Permittees under this Chapter hereby agree to save, defend, indemnify and keep harmless the City of South Lake Tahoe and its officials, officers, employees, representatives, agents and volunteers from all actions, claims, demands, litigation, or proceedings, including those for attorneys' fees, against the City in consequence of the granting of this permit, and will in all things strictly comply with the conditions under which this permit is granted, if any.