

South Lake Tahoe City Code

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Article X. Medical Marijuana Cultivation and Medical Marijuana Dispensaries

32-68 Purpose.

It is the purpose and intent of this article to require that medical marijuana be cultivated in appropriately secured, enclosed, and ventilated structures, so as not to be visible to the public domain, to provide for the health, safety and welfare of the public, to prevent odor created by marijuana plants from impacting adjacent properties, and ensure that marijuana grown for medical purposes remains secured and does not find its way to nonpatients or illicit markets.

It is further the purpose and intent of this article to regulate medical marijuana dispensaries and their cultivation operations consistent with Senate Bill 420, known as the Medical Marijuana Program, codified at Health and Safety Code Section 11362.7 et seq. Medical marijuana dispensaries shall comply with all provisions of the South Lake Tahoe City Code, state law, and all other applicable local codes and regulations. It is neither the intent nor the effect of this article to condone or legitimize the illegal use or consumption of marijuana under federal, state, or local law.

This article is in compliance with California Health and Safety Code Section 11362 and does not interfere with a patient's right to medical marijuana, nor does it criminalize the possession or cultivation of medical marijuana by specifically defined classifications of persons, pursuant to Proposition 215 and Senate Bill 420. (Ord. 1028 § 1 (Exh. A); Ord. 1032 § 1 (Exh. A))

32-70 Cultivation of medical marijuana in a residence.

A. Restricted to Qualified Patients and Primary Caregivers. A qualified patient or primary caregiver shall only be allowed to cultivate medical marijuana for their personal use, and for the use of qualified patients, if such cultivation occurs in a residence as defined

in this article.

B. Only Permitted Pursuant to a Valid City Residential Cultivation Permit. Cultivation in a residence shall be deemed unlawful except pursuant to a valid residential cultivation permit. Issuance of a residential cultivation permit shall be subject to evaluation by the city building official. Residential cultivation permits require verification that the person(s) cultivating are qualified patients or primary caregivers. Residential cultivation permits shall require an annual inspection by the building official and fire marshal. Permits shall expire and become void two years following the date on which said permit was issued, unless said permit is renewed prior to the expiration date.

C. No Vested Rights. No person(s) shall have any vested rights to any permit, right or interest under this article, regardless of whether such person(s) cultivated marijuana prior to adoption of the ordinance codified in this article.

D. No Transferring of Rights. No residential cultivation permittee shall have any right to transfer or transfer interest in any permit which they are issued pursuant to this article. Permits issued pursuant to this article will become void if transferred, used, or relied upon by any person other than the person to whom the permit was issued.

E. 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 to cause or allow such property to be used for the outdoor cultivation of marijuana. Cultivation is limited to those areas within a fully enclosed and secure structure.

F. Authorization of Property Owner. If the residence where cultivation occurs is leased or rented, residential cultivation permits shall only be issued upon a written notarized authorization by the residence property owner which shall be submitted with said permit application. The property owner may require additional security as he/she deems appropriate. The property owner may revoke said

authorization by providing a 60-day notice of revocation of authorization, in writing, to the city and the residential cultivation permittee to whom property owner has provided authorization. Sixty days after receipt of said notification, the residential cultivation permit which has been issued pursuant to said property owner's authorization shall be considered null and void.

G. Authorization of Tenants. If the residence where cultivation occurs is a building, residence or property shared with other tenants, residential cultivation permits shall only be issued upon written authorization provided to city of adjacent tenants in the building, residence or property.

H. Public Nuisances. Cultivation shall not create a public nuisance and adversely affect the health or safety of persons residing in or near the residence where the cultivation occurs. A public nuisance may be deemed to exist, if cultivation produces:

1. Odors which are disturbing to people of normal sensitivity residing or present on adjacent or nearby properties or areas open to the public;
2. More than three substantiated responses to valid confirmed complaints in a one-year time period to the residence or medical marijuana cultivation facility from law enforcement officers;
3. More than three disruptions 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 properties or areas open to the public in accordance with SLTCC 18-10.2;
5. Adverse effects to health or safety through creation of mold, mildew, dust, glare, heat, noise, noxious gases, odor, smoke, traffic, parking, vibration, or other impacts, or be hazardous because of the use or storage of materials, processes, products or wastes.

I. Environment. Runoff and waste disposal by the residence where cultivation occurs must be in compliance with any applicable city, county, regional, state, and federal laws and regulations. A violation of any applicable city, county, regional, state, or federal law will be deemed a violation of this article and of the permit, and shall render the permit void and revocable by the city.

J. Application for Residential Cultivation Permit.

1. The permit shall be filed with the city manager. The application for a permit shall include, but not be limited to, the following:
 - a. Application and biannual 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.
2. Prior to the issuance of the permit, the building official and the fire marshal shall conduct an inspection of the cultivation area to confirm that no health or safety concerns are present, and that the cultivation area complies with the standards set forth in this article.
3. The building official and the fire marshal may require additional specific standards to meet the standards set forth in the California Building Code or other applicable law. The property owner shall obtain building permits and any other permits necessary to comply with the applicable California Building Code or other applicable law.
4. The city council finds that the public interest served by not disclosing the name and address location of the applicant for a permit clearly outweighs the public interest served by disclosure of the record pursuant to the California Public Record Act. The council makes this determination based on the security and crime risk to the applicant if the name and address are

disclosed under the Public Records Act.

K. Renewal of Residential Cultivation Permit. No later than 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 by the building official or fire marshal shall be required as part of the process for renewal of a permit.

L. Cultivation of medical marijuana in residences shall be in conformance with the following requirements:

1. Cultivation of medical marijuana in a residence is limited to a medical marijuana cultivation area that does not cumulatively exceed 10 percent of the square footage of the living space of a dwelling unit, or 200 square feet, whichever is lesser. Cultivation may occur in attached or detached structures such as garages, sheds, greenhouses, and other structures on the same legal parcel(s) as the independent housekeeping unit, as long as such structures are fully enclosed and secure structures, and comply with the South Lake Tahoe City Code and all other applicable regulations and laws. The 10 percent limitation on cultivating marijuana shall be based only on the square footage of the living area of the dwelling unit and will not consider any square footage of detached or attached structures, attics or basements.
2. The qualified patient or primary caregiver shall have his/her primary residence be in the residence where the cultivation occurs.
3. Cultivation shall only occur in residences which are in full compliance with this code, including the building code and fire code.
4. Prior to the cultivation in any residence, the qualified patient or primary caregiver shall have the cultivation area inspected

by the building inspector and obtain or show proof of the necessary permits under the building code or fire code.

5. Cultivation shall remain at all times a secondary or accessory use to the residential use of the residence.

6. More than one residential cultivation permittee(s) may reside and cultivate in a single residence, however the number of permittees residing in a residence shall not affect the requirements set forth in subsection (L)(1) of this section or any other provision of this article.

7. No cooking, baking, or alteration as to form and substance of medical marijuana for commercial purposes, and/or sale, is permitted in a residence which cultivates medical marijuana.

8. From a public right-of-way, there shall be no exterior evidence of medical marijuana cultivation occurring at the residence.

M. Fees and Taxes. The costs to the city arising from the processing and oversight of residential cultivation permits issued pursuant to this article will be offset through application fees and annual renewal fees, to be adopted by the city council by resolution and updated as necessary from time to time. In the administration of the permitting requirements under this article, the city manager may require, as a condition to granting and renewal of the permits, any information reasonably necessary to implement the intent of this article, to ensure that the marijuana handled under the permit is grown, processed or distributed in a manner not in conflict with this article, and to ensure that any and all related sales taxes are being properly reported and paid.

N. Implementation of This Section. The city shall adopt procedures to require all cultivation of medical marijuana in a residence to be in compliance with this article no later than December 19, 2011. All cultivation occurring which is not in compliance with this article on or after December 20, 2011, shall cease operation immediately, unless

the city council adopts an ordinance to extend these provisions.
(Ord. 1028 § 1 (Exh. A); Ord. 1032 § 1 (Exh. A). Formerly 32-71)

32-77 Review, denial, suspension and revocation of residential cultivation permits and dispensary permits.

A. The city manager may deny, revoke, or suspend a residential cultivation permit or dispensary permit on the following grounds:

1. The permit application(s) and/or documents submitted are incomplete, filed late, or not responsive and/or fail to demonstrate compliance with the requirements of this article.
2. The issuance of the residential cultivation permit or dispensary permit at the proposed location is inconsistent with state law, the provisions of this article, or this code.
3. The residence or dispensary has caused secondary criminal or public nuisance impacts in the surrounding area or neighborhood, including, but not limited to, disturbances of the peace, illegal drug activity, harassment of passersby, littering, loitering, illegal parking, loud noises, or lewd conduct.
4. The applicant, permittee, management member, or any employee is a juvenile.
5. The applicant, permittee, management member, or any employee has violated any provision of this article.
6. The residence or dispensary has failed to pay fees, penalties, or taxes required by this code or has failed to comply with the production of records or other reporting requirements of this article.
7. The residence or dispensary, or one or more management members, employees, or volunteers, has violated a provision of this article, conditions of the permit, conditions imposed by another city-issued permit, or any provision of any other local, state, or federal law, regulation, order or permit.

8. It appears, based upon the information before the city manager, that the applicant or permittee has provided a false statement of material fact or has knowingly omitted a material fact in the application for, or renewal of, a residential cultivation permit or dispensary permit.

9. The applicant, permittee, or one or more management members or employees of a dispensary has been convicted of a felony, or has engaged in misconduct that is substantially related to the qualifications, functions or duties of a medical marijuana cultivator or dispensary operator. A “conviction” within the meaning of this section means a plea or verdict of guilty, or a conviction following a plea of nolo contendere. Notwithstanding the above, an application shall not be denied solely on the basis that the applicant, any management member or any employee has been convicted of a felony if the person convicted has obtained a certificate of rehabilitation (expungement of felony record) under California law or under a similar federal statute or state law where the expungement was granted.

10. The applicant, permittee or dispensary has previously or is currently engaged in unlawful, fraudulent, unfair, or deceptive business acts or practices.

B. Notice of Permit Violation. When the city manager determines that acts are being performed, or conditions exist, which are in violation of a residential cultivation permit or dispensary permit, the city manager shall provide the permittee notice that a violation of this article has occurred. If, based on such violations, the city manager proposes to suspend, modify, or revoke a dispensary permit, written notice of the proposed suspension, modification or revocation shall be served on the dispensary at least 10 days prior to the date of the proposed suspension, modification or revocation. Upon the date of the proposed suspension, modification, or revocation, the dispensary permittee shall immediately cease all operations permitted under the dispensary permit.

The notice shall contain:

1. A brief statement of the grounds for such suspension, modification, or revocation.
2. A statement that the permittee may appeal the denial in accordance with SLTCC [32-78](#).
3. A statement that the failure to appeal the notice of suspension, modification or revocation will constitute a waiver of all rights to an appeal hearing, and the suspension, modification, or revocation will be final.

If the city manager determines that all operations permitted under the residential cultivation or dispensary permit have not ceased, the city manager may effectuate the abatement of the public nuisance by the use of city forces or by such contractors as may, in the judgment of the city manager, be necessary to abate the nuisance.

C. If any dispensary, management member, or employee of a dispensary is convicted of a felony or is convicted of a misdemeanor for misconduct that is substantially related to the qualifications, functions, or duties of a dispensary, the city manager may immediately revoke the dispensary permit without prior notice.

D. The city manager may abate any and all nuisances or violations of this article for cultivating or dispensing marijuana without a permit. (Ord. 1032 § 1 (Exh. A))

32-78 Denial, suspension, revocation, and nonrenewal of residential cultivation permits and dispensary permits – Appeals.

A. Except as otherwise provided in this article, an applicant, permittee, or dispensary aggrieved by the decision of the city manager in denying, suspending, revoking, or not renewing a residential cultivation permit or dispensary permit may appeal the decision by filing a written appeal, accompanied by a nonrefundable appeal fee, with the city manager's office within 10 days from the date of service of the violation notice or notice of denial, revocation, or suspension from the city manager. Nothing in this section shall confer on any person the right to appeal a notice of violation for

cultivating or dispensing marijuana without a permit. The written appeal shall contain:

1. A brief statement in ordinary and concise language of the specific action protested, together with any material facts claimed to support the contentions of the appellant.
2. A brief statement in ordinary and concise language of the relief sought, and the reasons why it is claimed the protested action should be reversed or otherwise set aside.
3. The verification (by declaration under penalty of perjury) of the applicant or permittee as to the truth of the matters stated in the appeal.

B. The appeal hearing shall be conducted by the city council.

C. Upon receipt of any appeal filed pursuant to this section, the city manager shall calendar it for hearing as follows:

1. If the appeal is received by the city manager no later than 10 days prior to the next regular city council meeting, it shall be calendared for hearing at said meeting.
2. If the appeal is received by the city manager on a date less than 10 days prior to the next regular city council meeting, it shall be calendared for the next subsequent meeting, or shall be calendared for a special meeting, upon the decision of the city manager to do so.

D. Failure of any person to file a timely appeal in accordance with the provisions of this section shall constitute an irrevocable waiver of the right to an administrative hearing and the city manager's decision shall be final.

E. Only those matters or issues specifically raised by the appellant in the appeal notice shall be considered in the hearing of the appeal.

F. Any denial, suspension, revocation, or nonrenewal of a residential cultivation permit or dispensary permit shall be stayed during the

pendency of an appeal which is properly and timely filed pursuant to this section. Such a stay shall have no impact on the city's right to abate any nuisances in accordance with abatement procedures set forth in this article. Fines assessed pursuant to this article shall be stayed beginning on the date that a proper appeal is filed with the city and shall resume upon a denial of the appeal.

G. Appeal Hearings.

1. The city manager shall prepare a staff report for the city council regarding the city's manager's decision to deny, suspend, revoke, or not renew a residential cultivation permit or dispensary permit. The staff report shall contain findings of fact and an explanation of the city manager's determination.
2. At the time set for hearing, the city council shall proceed to hear the testimony of the city manager, the appellant, or other competent persons, including members of the public, respecting those matters or issues specifically listed by the appellant in the notice of appeal.
3. If it is shown that one or more grounds exist to condition, deny, suspend, revoke, or not renew a residential cultivation permit or dispensary permit, the city council shall affirm the city manager's decision.
4. The decision of the city council shall be a final decision and shall not be appealable.

H. The appeal procedures set forth in this article shall be final and conclusive and appellant shall have no other right to appeal under the city code. (Ord. 1032 § 1 (Exh. A))

32-79 Penalties, violations.

A. Fines. Any person violating this article for failing to comply with a permit issued pursuant to this article, for cultivating marijuana without a permit, or for distributing marijuana without a permit shall be punished by a fine not to exceed \$1,000. Such person shall be deemed guilty of a separate offense for each and every day during

any portion of which any violation of this article is committed, continued or permitted by such person.

B. Complaints. Complaints of suspected violations of this article shall be directed to the building official.

C. Recovery by Property Owner. A property owner who rents or leases a residence, building, or any structure to any person who violates any provision of this article may recover for actual damages to the residence, building, or structure against the tenant as allowed under federal, state, or local law, or any other remedy provided by law.

D. Nuisance Per Se. Any violation of this article is hereby declared a public nuisance per se. Any person violating any provision of this article shall be deemed guilty of an infraction. (Ord. 1028 § 1 (Exh. A); Ord. 1032 § 1 (Exh. A). Formerly 32-72)

32-80 Remedies cumulative.

Unless otherwise expressly provided, the remedies, procedures and penalties provided in this article are cumulative to each other and to any other remedies, procedures and penalties available under state law or the city code.

In addition to any other remedy allowed by law, any person who violates a provision of this article is subject to revocation of a permit pursuant to this article, criminal sanctions, civil actions, and administrative penalties pursuant to the city code. In addition to criminal sanctions, civil penalties, and remedies as provided in this article, imposition of enforcement, collection and administrative review of violations of this article may be enforced pursuant to any applicable portions of the city code. (Ord. 1032 § 1 (Exh. A))

32-81 Liability and indemnification.

A. To the fullest extent permitted by law, any actions taken by a public officer or employee under the provisions of this article shall not become a personal liability of any public officer or employee of the city.

B. Permittees pursuant to this article hereby agree to save, defend, indemnify and keep harmless the city 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. (Ord. 1028 § 1 (Exh. A); Ord. 1032 § 1 (Exh. A). Formerly 32-73)

32-82 Severability.

If any provision of this article, 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 article. The city council declares that it would have passed this article 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. (Ord. 1028 § 1 (Exh. A); Ord. 1032 § 1 (Exh. A). Formerly 32-74)