

Applicant's Exhibits for Public Hearing

**Medical Marijuana Caregivers Association, CCUP19-0005
October 13, 2022 (Item #22-1613)**

Exhibit 1:

State License Info for MMCA as of October 12, 2022



[New Search](#)

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[Report Unlicensed Business](#)

Medical Marijuana Caregivers Association

License Information



Active

Lic. No. **C10-0000588-LIC (Provisional)**

Commercial - Retailer

Medicinal

Effective on **2019-08-27**

Expires on **2023-08-26**

Business Information



Legally named **Medical Marijuana Caregivers Association**

Registered as Corporation

Matthew Vaughn

Shuz4ind@yahoo.Com

530-677-5362

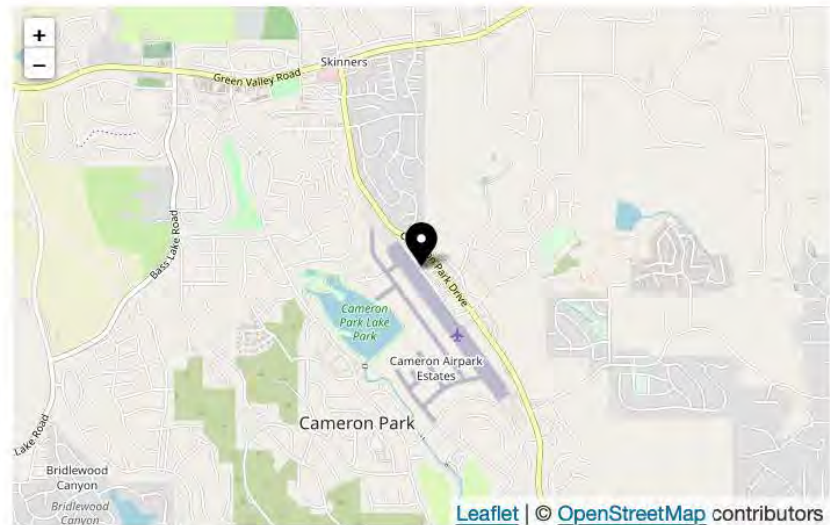
Location



3031 Alhambra Dr

Cameron Park, CA 95682

El Dorado County



Data for this record refreshed on: 10/12/2022

Have an Issue?

[File a Complaint for this License](#)

Last update of license data: 10/12/2022

Exhibit 2.1:

Excerpt from El Dorado County Zoning Code (§130.41.100(4)(G))

El Dorado Zoning Code 130.41.100(4)(G):

“No Commercial Cannabis Use Permit may be issued until a background check of all owners and the Designated Local Contact is completed with review and recommendation by the Sheriff's Office, including but not limited to criminal history, fingerprinting, and any pending charges. The applicant shall be responsible for the cost of the background check. The County may deny an application based on the results of a background check if the County determines that information in the background check makes it more likely than not that any amount of funding for the operation will be or was derived from illegal activity or because the criminal history or other information discovered in the background check of an owner or spouse of an owner weighs against the owner's trustworthiness or ability to run a legal business in compliance with all regulations, including but not limited to the risk of involvement or influence by organized crime, prior convictions involving controlled substances or violent crimes, the likelihood that sales and income will not be truthfully reported, or the risk that cannabis will be illegally provided or sold to individuals under the age of 21.”

Exhibit 2.2:

Excerpt from Waiver Agreement for Cannabis Applicants

necessary, in its sole discretion, to facilitate implementation of the interim background check process.

4. Conditional Recommendation. The Applicant understands that because this interim process cannot be verified through fingerprinting and the Live Scan database, a recommendation of approval from the Sheriff's Office will be conditional. If the application is approved by the Planning Commission or Board of Supervisors on any appeal, conditions will be imposed in the Commercial Cannabis Use Permit and/or Commercial Cannabis Annual Operating Permit (collectively, "Commercial Cannabis Permits") that, at a minimum, include: (a) once the Sheriff's Office receives approval to utilize the Live Scan database, fingerprinting will be required of all owners, spouses or registered domestic partners of owners, and the Designated Local Contact through Live Scan within one week of the request by the Sheriff's Office, unless the Sheriff's Office agrees to additional time; (b) notwithstanding Section 130.54.090 and Section 130.41.100(7) or any other provision of the County Code or state or federal law, automatic revocation of the Commercial Cannabis Permit will occur without a hearing or opportunity for appeal if it is determined, in the County's sole discretion, that a material misrepresentation was made in the self-disclosure application submitted to HdL; (c) if automatic revocation occurs, immediate termination of all operations and proof of destruction of all cannabis plants and cannabis products within 24 hours of the written notice of automatic revocation of the Commercial Cannabis Permits; and (d) if destruction of cannabis plants and cannabis products is required due to automatic revocation and sufficient proof of destruction is not provided within 24 hours, agreement and consent for the County, including but not limited to the Sheriff's Office, to enter the premises and eradicate or seize any cannabis plants and cannabis products and provide for their immediate destruction. If the Sheriff's Office makes a conditional recommendation of denial, the Applicant may elect to have the application placed on hold until the Live Scan database is available and the Sheriff's Office completes a background check with Live Scan and make a recommendation based on that process.

5. Automatic Revocation. The Applicant understands that, once the Sheriff's Office has Live Scan access, the Sheriff's Office will perform a background check with the Live Scan database to verify the accuracy of all information reported on the self-disclosure application. The Applicant understands and agrees that if the Sheriff's Office determines that any information was materially misrepresented on the self-disclosure application, the Commercial Cannabis Permits shall be automatically revoked without the right to a hearing or appeal of that automatic revocation. If a material misrepresentation is made by a Designated Local Contact or less than all Owners for the commercial cannabis business and the remaining Owner(s) wish to continue with the commercial cannabis business, the involvement of the Designated Local Contact or Owner(s) who made the material misrepresentation(s), the remaining Owner(s) may submit an application to reinstate the Commercial Cannabis Permits provided that adequate assurances are given to ensure that the Designated Local Contact or Owner(s) who made the material misrepresentation will no longer have any involvement with, financial gain from, or

Exhibit 3:

Email from EDSO Regarding Authority to Approve or Deny Permits

Mr. Vaughn

Lance Bryant <BryantL@edso.org>

Tue, Jun 21, 2022 at 8:09 AM

To: Lauren Mendelsohn <lauren@omarfigueroa.com>

Cc: Stephen Mansell <stephen.mansell@edcgov.us>, Tasha Thompson <ThompsoTa@edso.org>

Dear Ms. Mendelsohn:

This letter is in response to your correspondence dated May 5, 2022, in which you requested that the El Dorado County Sheriff's Office "reconsider" a "decision" related to Matthew Vaughn's application for an adult-use cannabis retail permit. This request is improperly directed to the El Dorado County Sheriff's Office, as the El Dorado County Sheriff's Office does not make any decisions related to the issuance or denial of adult-use cannabis permits (known as "Commercial Cannabis Use Permits" under the El Dorado County Ordinance Code). Section 130.41.100(4)(A) of the County's Ordinance Code places such authority with the County's Planning Commission. The El Dorado County Sheriff's Office role is limited to conducting a background check on the applicant and making a recommendation based upon its review of the information found. The El Dorado County Sheriff's Office does not have the authority to deny a permit application, nor to reconsider a decision made by the Planning Commission on a Commercial Cannabis Use permit application. Any requests or additional information regarding your client's application should be directed to the County's Planning Commission in accordance with its processes.

Sincerely, Lt. Lance Bryant

From: Lauren Mendelsohn <lauren@omarfigueroa.com>

Sent: Wednesday, May 18, 2022 3:21 PM

To: Lance Bryant <BryantL@edso.org>

Cc: Stephen Mansell <stephen.mansell@edcgov.us>

Subject: Re: Mr. Vaughn

[Quoted text hidden]

Exhibit 4:

Excerpt from State Law Regarding Use of Expunged Convictions for Licensing

Business and Professions Code § 480(c):

“Notwithstanding any other provision of this code, a person shall not be denied a license on the basis of any conviction, or on the basis of the acts underlying the conviction, that has been dismissed pursuant to Section 1203.4, 1203.4a, 1203.41, 1203.42, or 1203.425 of the Penal Code, or a comparable dismissal or expungement. An applicant who has a conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, 1203.41, or 1203.42 of the Penal Code shall provide proof of the dismissal if it is not reflected on the report furnished by the Department of Justice.”

Exhibit 5:

**Petition filed in related case challenging EDSO's background check process –
El Dorado County Growers Advocacy Alliance et. al. v. County of El Dorado et. al.
(Case No. 21CV0161)**

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JAMES L. BRUNELLO, SBN 047522
Attorney at Law
P.O. Box 4155
El Dorado Hills, CA 95762
Phone: (916) 358-8585
Fax: (916) 358-8588

Attorney for Petitioners and Plaintiffs

FILED

MAR 25 2022

EL DORADO CO. SUPERIOR COURT
BY W. Warden
(DEPUTY CLERK)

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF EL DORADO

EL DORADO COUNTY GROWERS
ADVOCACY ALLIANCE, a California
Nonprofit Mutual Benefit Corporation;
CYBELE HOLDINGS, INC., a California
corporation; SINGLE SOURCE
SOLUTIONS INC., a California
corporation; LOTUS VALLEY FARMS,
INC, a California corporation

Petitioners and Plaintiffs,

v.

COUNTY OF EL DORADO; EL
DORADO COUNTY BOARD OF
SUPERVISORS; EL DORADO
COUNTY SHERIFF'S DEPARTMENT,
A PUBLIC ENTITY; JOHN
D'AGOSTINI AND DOES 1 - 100,
INCLUSIVE

Respondents and Defendants.

Case No. 21CV0161

FIRST AMENDED VERIFIED PETITION
FOR WRIT OF MANDATE AND
COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF AND FOR
ATTORNEY FEES

(CCP § 1085; CCP § 1060; CCP § 1021.5)

RECEIVED

MAR 25 2022

EL DORADO CO. SUPERIOR COURT
BY W. Warden
(DEPUTY CLERK)

FIRST AMENDED PETITION FOR WRIT OF MANDATE; COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF AND ATTORNEY'S FEES

1 3. As to criminal history background checks for cannabis licenses, state regulations
2 require every person with an ownership interest of 20% or more in the cannabis business and
3 certain individuals with management authority to submit fingerprints to the DOJ for a state and
4 federal criminal history background check. The dissemination of criminal history information
5 for employment and licensing purposes impacts fundamental privacy rights of individuals, and is
6 thus governed by a comprehensive federal and state statutory scheme that transcends local
7 control.

8 4. With regard to state treatment of owners and financial interest holders of cannabis
9 businesses, state regulations define “owners” as persons with an ownership interest of 20% or
10 more in the business and certain individuals with management control over the business.
11 “Financial interest holders” include persons with an ownership interest of less than 20%, persons
12 entitled to a 10% or greater share of the profits, and certain lenders; these persons must be
13 disclosed in the application, but are not subject to background checks.¹ This hierarchy allows
14 flexibility for a cannabis business to sell stock, secure new investors, or obtain financing without
15 triggering the requirement for a new license with every stock sale. Related state regulations
16 provide for continuity of operations during the time a license must be modified due to addition of
17 a new owner, or an involuntary transfer arising from death or incapacity of an owner.

18 5. As for the state’s use of criminal history information as grounds for denial or
19 revocation of a license, the regulations allow an agency to deny a cannabis license if an
20 applicant, owner, or licensee has been convicted of an offense that is “substantially related” to
21 the qualifications, functions, or duties of the business or profession for which the application is
22 made, except as otherwise provided. (Bus. & Prof. Code § 26057 (b)(4)) Offenses that are
23 considered “substantially related” include, but are not limited to, a violent felony conviction
24 (Penal Code § 667.5), a serious felony conviction (Penal Code § 1192.7 (c)), a felony involving
25 fraud, deceit or embezzlement, among others. (See also, Bus. and Prof. Code §§ 475, et. seq.,
26 Ch. 1321, Statutes of 1974) Far from subjective, these limitations are grounded in and must
27 comply with the same privacy laws enacted during the 1970s to protect the privacy rights of
28 individuals through limitations on dissemination of criminal history information.

29
30
31 ¹ A complete definition of “owner” is found at Cal. Code of Regulations Title 4, § 15003, and
“financial interest holder” is found at Cal. Code of Regulations Title 4, § 15004.

1 **Local Jurisdiction Role in Dual Licensing Framework**

2 6. Local control was a key element of Prop. 64. AUMA provided that state law could not
3 “be interpreted to supersede or limit the authority of a local jurisdiction to adopt and enforce
4 local ordinances to regulate” cannabis businesses, “including, but not limited to, local zoning and
5 land use requirements, business license requirements, and requirements related to reducing
6 exposure to second hand smoke, or to completely prohibit the establishment or operation of one
7 or more types of [cannabis business] within the local jurisdiction.” (Prop. 64, § 6, codified in
8 relevant part at Bus. & Prof. Code § 26200(a)(1).) Later legislative amendments to Section 26200
9 clarified the regulatory scheme did not “supersede or limit existing local authority” for, among
10 other things, “enforcement of local zoning requirements or local ordinances, or enforcement of
11 local license, permit, or other authorization requirements.” (Cal. Stat. 2017, Ch. 27 (Sen. Bill No.
12 94 (2017-2018 Reg. Sess.)), § 102, codified in relevant part at Bus. & Prof. Code § 26200(a)(2).)

13 7. With or without these statutory provisions, local jurisdictions retain significant local
14 control, including the authority to regulate land use and zoning – the number, distribution, size
15 and standards of every type of cannabis land use, certification of CEQA documentation, issuance
16 of business licenses, the authority to tax cannabis operations and the authority to ban one or all
17 cannabis uses outright. Local authority is not unlimited, however. Where the operational effect
18 of local regulations implicates issues including, but not limited to, constitutional rights of privacy
19 and due process, and limitations on dissemination or misuse of criminal history information, a
20 partial conflict with state or federal law will preempt the conflicting local regulation.

21 **El Dorado County Voters Authorize Commercial Cannabis**

22 8. On November 6, 2018 El Dorado County voters enacted five local initiative measures
23 authorizing a range of commercial cannabis activities in the unincorporated territory of the
24 County. Ballot Measures N, P, Q, R, S initiatives were approved by substantial margins, ranging
25 from 59% to 65% in favor. After passage of the initiatives, the initiative language was
26 incorporated into the El Dorado County Ordinance Code (EDC Code). The Board of
27 Supervisors later enacted amendments to the ordinances. Current Chapter 13.22 of the EDC
28 Code is entitled “Taxation of Commercial Cannabis Activities”; Current Chapter 13.41 of the
29 EDC Code is entitled “Commercial Cannabis Activities”. El Dorado County Resolution Number
30 5109, 5110, 5111, 5123 and 5124 in conjunction of these ordinances, have been adopted by the
31 Board.

1 12. The overly broad characterization of an “owner” in the EDC Code impacts the
2 operation of a lawful cannabis business. The sale of a single share of stock, death or incapacity
3 of a partner, or a temporary loan constitutes a transfer of “ownership” causing immediate
4 expiration of the local permits required to lawfully operate a cannabis business.
5 Mischaracterizing persons as “owners” rather than lenders or passive investors creates a number
6 of real and potential tax and liability consequences.

7 13. As to the local use of criminal history data as grounds for denial of cannabis permits,
8 the County’s criteria are highly subjective, in contrast to the state regulations. For example, the
9 County may deny an application if the information in the background check “...makes it more
10 likely than not that ... funding for the operation will be or was derived from illegal activity ...”,
11 or that “... information discovered in the background check of an owner or spouse of an owner
12 weighs against the owner’s trustworthiness or ability to run a legal business...”. These subjective
13 standards conflict with state and federal laws and regulations governing the use of criminal
14 history records provided to local agencies in connection with employment and licensing.

15 **Other Local Jurisdictions Have Not Enacted Conflicting Regulations**

16 14. Other cities and counties have largely avoided such conflicts with state regulations.
17 Most local jurisdictions surveyed conduct electronic fingerprint background checks of federal
18 and state criminal records through the DOJ, but, on information and belief, the El Dorado County
19 Sheriff remains unwilling to follow this process. Some counties consider the state cannabis
20 license background checks, which reviews both state and federal criminal history records as
21 sufficient to satisfy the background check criteria for local permits.

22 15. Persons defined as “owner” and provisions for transfer of ownership interests in
23 other jurisdictions typically conform to those enacted by the state; any variations are slight and
24 do not materially interfere with the operation of a cannabis business. Rights to a hearing and
25 appeal involving denial or revocation of a license are routinely provided. Most of the counties
26 surveyed rely on the objective grounds for denial of licenses based on criminal history data
27 consistent with the provisions of Bus. and Prof. Code § 26057.

28 16. More than 10,000 cannabis licenses issued by the state to date required as a matter of
29 law, some form of local authorization, permit or license. Other cities and counties have found a
30 way to implement these local approvals but El Dorado County has not.

1 **Summary of Standards**

2 17. Counties and cities generally have broad “police power” authority to make and
3 enforce within their boundaries laws not in conflict with general laws. (Cal. Const. art VI, § 7)
4 Authority to regulate, permit or ban outright commercial cannabis activity is one example of
5 these police powers and is subject to the limitation that local law cannot “conflict” with state
6 law. Implementation and enforcement of the County’s cannabis regulation operates within a
7 framework involving at least constitutional and statutory rights of privacy and due process, and
8 preemption of local laws which conflict with and frustrate implementation of state and federal
9 laws. The right of local control is not absolute.

10 **PARTIES AND ATTORNEY FEES**

11 18. Petitioner, El Dorado County Growers Advocacy Alliance is a California Nonprofit
12 Mutual Benefit Corporation in good standing. Prior to the decision of the El Dorado County
13 Board of Supervisors to place the five El Dorado County initiative measures on the ballot in
14 2018, Petitioner actively participated as a stakeholder in the process of developing the
15 initiatives on behalf of its members, customers of members and taxpayers of El Dorado County.
16 These efforts included encouraging legal commercial cannabis and the financial benefit to the
17 county of legal cannabis. Advocating on behalf of its members and the community, Petitioner
18 supports the development of legal commercial cannabis-related activities including cannabis
19 cultivation, retail sales, distribution, processing and manufacturing of commercial cannabis
20 products. Petitioner’s members represent a cross-section of these legal cannabis-related
21 businesses in El Dorado County, and their customers represent a cross-section of land owners,
22 citizens and voters of El Dorado County. Petitioner and its members agree to submit to lawful
23 background checks, including fingerprinting and opposes the staff waiver alternative.

24 19. Petitioner, Cybele Holdings, Inc. is a California corporation in good standing
25 (hereafter “Cybele”). Cybele’s County commercial cannabis cultivation permit application,
26 (CCUP20-0001) was filed with El Dorado County in April, 2020, and deemed complete by the
27 El Dorado County Planning Department. A draft Mitigated Negative Declaration was circulated
28 for public review through February 22, 2021, but the public hearing was postponed until Cybele
29 agreed to proceed under the Waiver Agreement and modified its corporate structure and
30 ownership to obviate the need for background checks of minority financial interest holders.
31 Further information is hereinafter provided.

1 20. Petitioner Single Source Solutions Inc, is a California corporation in good standing
2 (hereafter “Single Source”). The proposed Single Source cannabis cultivation project would
3 convert approximately 2 acres of existing unproductive vineyard within a 46.53 acre
4 agriculturally zoned parcel for outdoor full-season THC cannabis cultivation. The project
5 application was deemed complete by the El Dorado County Planning Department in July of
6 2021. CEQA documentation is in process by the County’s environmental consultant. Single
7 Source has been unwilling to sign the County’s Waiver Agreement due to the impact on due
8 process rights, but is informed and believes that refusal to do so will indefinitely delay action on
9 the commercial cannabis application. Petitioner agrees to submit to lawful background checks,
10 including fingerprinting and opposes the staff waiver alternative.

11 21. Petitioner Plaintiff Lotus Valley Farms, Inc. is a California corporation in good
12 standing, wholly owned by Thomas Van Noord. Thomas Van Noord is also the owner, as
13 trustee, of certain real property located in El Dorado County upon which a 2-acre commercial
14 cannabis cultivation use permit is to be submitted on behalf of Lotus Valley Farms, Inc. It is
15 anticipated that shares in Lotus Valley Farms, Inc. will be divested, sold, and transferred in the
16 future.

17 22. A commercial cannabis conditional use permit “pre-application review” for the
18 Lotus Valley Farms, Inc. project and Van Noord property has been performed by the El Dorado
19 County planning staff.

20 23. The application by Lotus Valley Farms, Inc will require a background check for
21 Thomas Van Noord, as the principal shareholder and President of the Corporation, as well as
22 having a financial interest in the underlying real property. Thomas Van Noord is a licensed
23 attorney in the State of California. He is licensed to practice before all courts in California,
24 including Federal courts, and the Supreme Court. He has served in the US Navy Reserves with
25 an honorable discharge as Lieutenant. He is a graduate of the California Maritime Academy
26 with United States Coast Guard licenses as a Marine Engineer. He has no criminal convictions.
27 He has had previous FBI live scan background investigations related to his military service,
28 licensing with the California State Bar, and more recently as an approved licensee/registrant for
29 El Dorado County Hemp cultivation program.

30 24. The El Dorado County Agricultural Commissioner was able to obtain, review, and
31 approve Thomas Van Noord’s Live Scan fingerprint-based criminal history background check

1 without any delay or difficulty. Lotus Valley Farms, Inc. and its officers and shareholders agree
2 to submit to lawful background checks, including fingerprinting and oppose the staff waiver
3 alternative.

4 25. Respondent El Dorado County Board of Supervisors, (hereinafter, (the "Board") is
5 the governing board of Respondent, El Dorado County, (hereinafter, "County" or "EDC") a
6 political subdivision created under the laws of the State of California to provide governance over
7 private lands south of Placer County, north of Amador County, east of Sacramento County, and
8 west of Lake Tahoe (Gov. Code, section 23109).

9 26. Respondent Sheriff John D'Agostini is the Sheriff of the El Dorado County
10 Sheriff's Department. The El Dorado County Sheriff's Department is a public entity within the
11 definition of Government Code Section 815.

12 27. The true names and capacities, whether individual, corporate or otherwise, of Does
13 1 through 50 are unknown to Petitioner. Petitioners will amend this Petition to set forth the true
14 names and capacities of said Doe parties when they have been ascertained. Petitioners allege
15 that each of said Doe parties 1 through 50 has jurisdiction by law over one or more aspects of
16 the implementation of the commercial cannabis initiatives and ordinances. Petitioners allege
17 that each of said Doe parties 51 through 100 are Real Parties in Interest.

18 28. In pursuing this action which involves the enforcement of important rights
19 affecting the public interest, the Petitioners will confer a substantial benefit on the citizens of El
20 Dorado County, and therefore will be entitled to an award of reasonable attorney's fees,
21 pursuant to California law, including Code of Civil Procedure 1021.5.

22 **JURISDICTION AND VENUE**

23 29. This Court has jurisdiction over this petition for writ of mandate and complaint for
24 declaratory and injunctive relief pursuant to sections 525, 526, 1060, 1085 and 1094.5 of the
25 California Code of Civil Procedure.

26 30. Venue is proper in this Court pursuant to Code of Civil Procedure § 393, since the
27 cause of action arose and the impact of the Respondents' actions are felt in El Dorado County.

28 31. Petitioners have performed any and all conditions precedent to filing this instant
29 action. Petitioners have no plain, speedy, or adequate remedy at law, unless the court grants the
30 requested writ of mandate.

31 **I. CANNABIS REGULATION: HISTORY AND STATUTORY FRAMEWORK**

1 **A. Overview – Dual-Track Licensing and Permitting**

2 32. California has a dual-track licensing system for commercial medical and adult-use
3 cannabis businesses. Lawful cannabis cultivation, transportation, distribution, manufacturing,
4 dispensing and testing under California law are highly regulated and licensed at both the state
5 and local level. In July 2021, the authority of three separate state agencies to issue more than a
6 dozen types of cannabis licenses was consolidated under a single agency, the Department of
7 Cannabis Control (DCC). Notwithstanding legalization of cannabis at the state level, local
8 jurisdictions retain authority to permit, regulate through zoning laws, or impose an outright ban
9 on cannabis businesses within their boundaries. Businesses engaging in cannabis-related
10 activities that are required to be licensed by the state must obtain a local license, permit or other
11 authorization in addition to any required state license. (Business and Professions Code § 26032)
12 The state cannot issue cannabis licenses within a local jurisdiction that prohibits cannabis
13 activity, and the state must confirm that a specific cannabis activity is authorized by a local
14 jurisdiction before issuing a state license. Background checks are a required part of cannabis
15 licensing, including a thorough fingerprint-based federal and state criminal history record check
16 conducted by California Department of Justice (DOJ) on behalf of state and local licensing
17 agencies.

18 **B. History of State Regulation of Commercial Cannabis Activities**

19 33. More than two decades ago, on November 5, 1996, California voters passed the
20 ballot initiative known as the Compassionate Use Act (Proposition 215). The Compassionate
21 Use Act removed criminal penalties for the possession, use and sale of cannabis for medicinal
22 purposes, thus making California the first U.S. state to decriminalize cannabis since the
23 substance had first been classified by the federal government, in 1970, as a Schedule I narcotic.

24 34. Proposition 64, the Control, Regulate and Tax Adult Use of Marijuana Act of 2016
25 (AUMA) initiative measure approved at the November 8, 2016, statewide California general
26 election, permits adults 21 years of age and over to possess and grow specified amounts of
27 marijuana for recreational use and authorizes a person who obtains a state license under AUMA
28 to engage in commercial adult-use cannabis activity pursuant to that license and applicable local
29 ordinances.² Commercial adult-use cannabis activity includes cultivation, distribution, transport,

30 _____
31 ² Proposition 64 was codified, in part, as Bus. & Prof. Code sections 26000 et. seq.

1 storage, manufacturing, testing, processing, sale, and use of marijuana for nonmedical purposes
2 by people 21 years of age and older.

3 35. California’s cannabis laws were substantially revised in 2017 by comprehensive
4 new legislation (SB 94 and AB 133) known as the Medicinal and Adult Use Cannabis
5 Regulation and Safety Act (MAUCRSA). MAUCRSA established a uniform licensing regime
6 for both medical and adult-use cannabis. MAUCRSA supplants prior legislation, which
7 applied only to medical cannabis. As of January 9, 2019, the collective and cooperative model
8 for medical marijuana dispensaries, as authorized under Proposition 215, was formally sunset,
9 and any dispensary that was in place under the Compassionate Use Act was required to convert
10 to the new regulatory system under MAUCRSA. MAUCRSA also made adjustments to
11 Proposition 64 consistent with the intent of the initiative. MAUCRSA commercial cannabis
12 licensing provisions are codified in Bus. and Prof. Code section 26000 et seq.

13 **C. The State Regulatory, Licensing and Enforcement Statutory Scheme**

14 36. Under MAUCRSA, implementation of the state statutory scheme was the
15 responsibility of the Bureau of Cannabis Control (BCC) within the California Department of
16 Consumer Affairs, but the various cannabis licenses and regulations were administered through
17 at least three state agencies – the BCC (distributor, retailer, testing laboratory and
18 microbusiness licenses), the California Department of Food and Agriculture (CDFA)
19 (commercial cultivation of cannabis), and the California Department of Public Health (CDPH)
20 Manufactured Cannabis Safety Branch (commercial cannabis manufacturing). The passage of
21 AB 141 in July 2021, has consolidated these functions under a new agency, the Department of
22 Cannabis Control (DCC). The DCC merged the regulations of the three agencies to create a
23 consistent set of licensing and enforcement guidelines for cannabis businesses.

24 37. The comprehensive state regulations (found at Cal. Code of Regulations, Title 4, §§
25 15000, et seq.) require detailed information concerning the cannabis business. An applicant
26 must disclose a complete list of “owners”, as that term is defined (See Cal. Code of
27 Regulations, Title 4, § 15003) and a complete list of “financial interest holders” (Cal. Code of
28 Regulations, Title 4, 15004) State regulators acknowledge that commercial cannabis businesses
29 must often rely on alternative methods to acquire capital, because traditional business loans are
30 often unavailable to them. Because of these nontraditional methods, some commercial cannabis
31 businesses have multi-level ownership structures that result in aggregate ownership

1 percentages. Under the state regulations, an “owner” having an aggregate interest of 20% or
2 more in the cannabis business as well as an individual who manages, directs or controls the
3 operations of the commercial cannabis must submit electronic fingerprints to the state DOJ for
4 state and federal criminal history background checks. (Cal. Code of Regulations, Title 4,
5 §15002 (c) (16) (K)) Financial interest holders of aggregate interests less than 20% are not
6 treated as owners and not subject to background checks for state licensure.

7 **D. Commercial Cannabis Regulations in El Dorado County**

8 38. California’s Proposition 64 expressly preserved local control of cannabis activities,
9 allowing cities and counties to adopt and enforce local regulations including zoning and land
10 use restrictions, business license regulations, local cannabis business taxes, or a total ban on the
11 establishment or operation of one or more types of cannabis businesses within the local
12 jurisdiction.

13 39. El Dorado County, in cooperation with the legal growing community, drafted five
14 ballot measures comprising a local statutory framework to decide the future of various aspects of
15 the commercial cannabis industry in the County. These five related ballot measures (N, P, Q, R,
16 and S) (collectively, **Exhibit 2** herein) were submitted to voters in November 2018. Measure N
17 laid out a detailed plan for taxation, permitting and enforcement of commercial cannabis
18 activities. It created tax rates for various types of cultivation, as well as manufacturing,
19 distribution, retail and testing. It also created a regulatory enforcement program. Passage of
20 Measure N was required for any of the other measures authorizing commercial activities to
21 become effective. Measures P and Q authorized outdoor and greenhouse cannabis cultivation for
22 medical and recreational use, respectively. Measures R and S allowed for retail sale, commercial
23 distribution and indoor cultivation for medicinal and recreational purposes, respectively.

24 40. Before placing the measures on the ballot, the County obtained a financial analysis
25 from HdL Companies projecting tax revenue of \$3,000,000 to \$4,000,000 annually to the County
26 if the measures were adopted. (**Exhibit 3**) On November 6, 2018, each measure passed with at
27 least 59% of the vote. Measure N, which authorized taxation of commercial cannabis activities
28 and had to be approved as a condition of passage of the other measures, was adopted with 65%
29 voter approval.

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41. Although the five initiative measures were enacted by voters, the Board of Supervisors retained the authority to amend the procedures and regulations or to regulate authorized uses without further voter approval, subject to certain limitations.

E. Adoption and Amendment of El Dorado County Zoning Ordinances

42. After voters approved the five local ballot measures, the County moved to implement the measures by amending the Zoning Ordinance of the EDC Code (Title 130, Ch. 130.41) to incorporate a commercial cannabis permitting and enforcement program. Commercial cannabis taxation provisions, which are non-regulatory in nature, were added to Title 3 (Revenue and Taxation Code), Chapter 3.22.

43. On or about September 10, 2019, the Board of Supervisors amended the ordinances approved by voters in November 2018 by adoption of Ordinances 5109, 5110 and 5111, and adopted Ordinance 5112 to amend the Zoning Code Matrix of Allowed Uses in Article 2 (Zones, Allowed Uses and Zoning Standards) to identify the limited zones where commercial cannabis uses are allowed subject to subject to specific regulations. The amendments also combined provisions for medicinal and adult recreational use cannabis and incorporated cannabis activities authorized and licensed by the state that were not included in the ballot measures including: Nursery (Nursery cloning and seed propagation), Processing (only trimming, drying, curing, grading, or packaging), Manufacturer and Testing Laboratories.

44. Every commercial cannabis activity approved in El Dorado County requires a Commercial Cannabis Use Permit (CCUP), a type of Conditional Use Permit under state law and the Zoning Code; a Commercial Cannabis Annual Operating Permit (CCAOP), originally issued with the CCUP; state cannabis license(s) in the appropriate category; and a County business license. The CCAOP must be renewed annually; it is not transferrable, thus a new CCAOP application must be submitted upon a change of ownership that results in the addition of a new owner or owners or a new funding source. While the CCAOP is not a conditional use permit, it requires submittal of the same application materials as a CCUP. At the time a new CCAOP is issued, the County has reserved the right to add or remove conditions from the existing CCUP; such a change in conditions may require a Planning Commission hearing. A commercial cannabis business cannot lawfully operate with an expired CCAOP. (EDC § 130.41.100 (5) E.)

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F. El Dorado County Begins the Permitting Process

45. In December 2019, El Dorado County began accepting commercial cannabis applications for up to 7 retail applications and 150 cultivation operations. The application process consists of three phases, including a pre-application, application, and post-approval monitoring process. A single application is used for the CCUP and CCAOP. If it is determined that CEQA environmental review is required, the necessary documents and technical studies (which, if required might relate to subjects such as biological resources, traffic, noise, or air quality) are prepared. A public hearing before the Planning Commission is held to consider certification of the CEQA document and conditional approval or denial of the CCUP and CCAOP. After County approval of the CCUP and CCAOP, the applicant must obtain the required state cannabis license. Finally, the applicant must obtain a County business license.

G. Lack of “Live Scan” Authorization Stalls Issuance of County Permits.

46. Under the *dual licensing* framework, both state licenses and County permits require completion of a background check including state and federal criminal history information prior to approval. The background checks use “Live Scan”, an electronic system for submission of fingerprints to the state DOJ or FBI and the subsequent automated criminal history background check and response.³ While Live Scan fingerprinting has been used by El Dorado County law enforcement agencies for criminal justice purposes for years, a separate authorization is required under federal and state law to access this information for “employment, licensing, and certification” purposes.

47. Following the November 2018 passage of the five El Dorado County cannabis initiatives, the County began accepting cannabis permit applications in December 2019. To date, the County has not issued a single cannabis use permit, for one reason: the Sheriff, an outspoken opponent of the local cannabis initiatives, on information and belief, is still not satisfied with the scope of Live Scan access available, including federal criminal history records for cannabis licensing and employment. Other than a few existing storefront dispensary locations that were in business under the previous county code, the Sheriff has not made a recommendation to the

³ Live Scan fingerprints are submitted to the state DOJ for processing. The DOJ will transmit fingerprints to the FBI if a federal-level background check is requested (including criminal records maintained by other states). Local agencies are not authorized to submit fingerprints directly to the FBI for processing for employment, certification and licensing purposes.

1 Planning Department to be provided to the Planning Commission as part of a cannabis use
2 permit, as required by the EDC Code, except where the applicant has signed the due process
3 Waiver Agreement; accordingly, the Planning Department will not schedule a hearing to certify
4 CEQA documents or to take final action on most pending cannabis use permits, including those
5 for cannabis cultivation.

6 48. This problem appears largely isolated to El Dorado County. Over 45,000 agencies
7 throughout California are authorized to process fingerprint-based state and/or federal criminal
8 history background checks through the DOJ. Two million state-level background checks and 1.2
9 million FBI background checks are processed by DOJ each year. More than 10,000 permits for
10 various commercial cannabis businesses have been issued by the state with approval of local
11 jurisdictions since the November 2016 passage of Proposition 64 and 2017 adoption of
12 MAUCRSA legislation. The City of South Lake Tahoe can obtain background checks for
13 cannabis permits, but a solution escapes the El Dorado County Sheriff.

14 **II. CRIMINAL HISTORY BACKGROUND CHECKS FOR** 15 **EMPLOYMENT AND LICENSING: STATUTORY FRAMEWORK**

16 49. The collection, maintenance and dissemination of personal criminal history data is
17 closely regulated by an extensive federal and state statutory framework, designed to protect
18 public safety while safeguarding fundamental privacy rights of individuals. This statutory
19 scheme dates back to the 1970's.

20 50. The federal Privacy Act of 1974 (Privacy Act) was enacted to impose restrictions and
21 safeguards against the invasion of personal privacy through the misuse of data and records
22 collected by federal agencies. The "No Disclosure Without Consent" general rule under the
23 Privacy Act is that an agency cannot disclose a record contained in a system of records ***"to any***
24 ***person, or to another agency, except pursuant to a written request by, or with the prior written***
25 ***consent of, the individual to whom the record pertains"***, unless the disclosure is covered by a
26 listed exception (5 U.S.C. § 552a (b)).

27 51. The California Constitution, as amended by the voters in 1974, protects the right of
28 privacy of California citizens. (Cal. Const., art. I, 1.) This "inalienable" right encompasses
29 privacy protections broader than those recognized by the U.S. Constitution. California's
30 Information Practices Act of 1977 (Civil Code § 1798, et. seq.) similarly restricts the disclosure
31 of personal information collected or maintained by a state agency. Similar to the federal statutes,

1 information may be disclosed to the individual to whom the information pertains, or with the
2 individual's prior written voluntary consent. (Civ. Code § 1798.24)

3 52. Both federal and state laws and regulations allow disclosure and dissemination of
4 criminal history information, if needed in the course of their duties, to courts, law enforcement
5 agencies, district attorneys, prosecuting city attorneys, probation and parole officers and others
6 allowed by law. These disclosures are considered as having a "criminal justice" purpose.

7 **Federal and State Law Limit Criminal History Data that may be**
8 **Furnished for Employment and Licensing Purposes**

9 53. The statutory framework allows dissemination of CHRI for non-criminal justice
10 purposes, such as employment and licensing, but limits the scope of information provided and
11 the manner in which it may be used.

12 54. Public Law (Pub. L.) 92-544 and 28 C.F.R. § 20.33 authorizes the FBI to disseminate
13 and exchange of Criminal History Record Information (CHRI) with officials of state and local
14 governments for employment, licensing, and other similar noncriminal justice purposes, if
15 authorized by a state statute which has been approved by the US Attorney General. The state
16 statute establishing guidelines for a category of employment or the issuance of a license must, in
17 itself, require fingerprinting and authorize the governmental licensing or employing agency to
18 exchange fingerprint data directly with the FBI.

19 55. Federal guidelines for the dissemination of CHRI are found at 28 C.F.R. § 50.12.
20 These guidelines require that an applicant must be given the opportunity to complete or
21 challenge the accuracy information in the FBI record, and must be informed that the procedures
22 for such challenge are found in 28 C.F.R. 16.34. Further, an official making a determination of
23 suitability for licensing or employment "should not deny the license or employment based on
24 information in the record until the applicant has been afforded a reasonable time to correct or
25 complete the record, or has declined to do so." The reasons articulated for the policy is to both
26 protect the public safety and to "protect the interests of the prospective employee/licensee who
27 may be affected by the information or lack of information in an identification record." (28 C.F.R.
28 § 50.12 (b))

29 56. The California Legislature has created a comprehensive scheme for the maintenance
30 and dissemination of criminal history information meeting the federal criteria for dissemination
31 of CHRI. (See Penal Code § 11006 et seq.) The state DOJ is required to maintain "state summary

1 criminal history information” (Penal Code §11105, subd. (a)(1), “pertaining to the identification
2 and criminal history of any person.” The information shall include “date of arrests, arresting
3 agencies and booking numbers, charges, dispositions and similar data about such person,” (Penal
4 Code § 11105, subd. (a)(2)(i).)

5 57. The dissemination of criminal history information significantly affects an
6 individual's right to privacy as guaranteed by article I, section 1 of the California Constitution.
7 (*Central Valley Ch. 7th Step Foundation, Inc. v. Younger* (1989) 214 Cal.App.3d 145, 151-152
8 and fn. 3, mod. 214 Cal.App.3d 753, 262 Cal.Rptr. 496.) Accordingly, the Legislature has
9 narrowly defined the instances in which such information may be disseminated (see *Loder v.*
10 *Municipal Court* (1976) 17 Cal.3d 859, 872-873) and has established criminal sanctions for its
11 unauthorized dissemination.

12 58. The Penal Code authorizes dissemination of criminal history information:

13 “Section 11105 (b) The Attorney General shall furnish state summary criminal
14 history information to the following, if needed in the course of their duties,
15 provided that when information is furnished to assist an agency, officer, or
16 official of state or local government, a public utility, or any other entity, in
17 fulfilling employment, certification, or licensing duties, Chapter 1321 of the
18 Statutes of 1974 and Section 432.7 of the Labor Code shall apply (emphasis
19 added):

20 “...(11) A city, county, city and county, or district, or an officer or official
21 thereof, if access is needed in order to assist that agency, officer, or official in
22 fulfilling employment, certification, or licensing duties, and if the access is
23 specifically authorized by the city council, board of supervisors, or governing
24 board of the city, county, or district if the state summary criminal history
25 information is required to implement a statute, ordinance, or regulation that
26 expressly refers to specific criminal conduct applicable to the subject person of
27 the state summary criminal history information, and contains requirements or
28 exclusions, or both, expressly based upon that specified criminal conduct. The
29 city, county, city and county, district, or the officer or official thereof authorized
30 by this paragraph may also transmit fingerprint images and related information to
31 the Department of Justice to be transmitted to the Federal Bureau of
Investigation.”⁴

59. As emphasized above, this authorization is subject to the following condition: “when
information is furnished to assist an agency, officer, or official of state or local government, a
public utility, or any other entity, in fulfilling employment, certification, or licensing duties,

⁴ Formerly Penal Code § 11105(b)(10); renumbered without change to subd. (b)(11) by AB 1049 (2007-08).

1 *Chapter 1321 of the Statutes of 1974* and Section 432.7 of the Labor Code shall apply.”
2 (*emphasis added*.) Chapter 1321 of the Statutes of 1974 (**Exhibit 4**) substantially rewrote Bus.
3 and Prof. Code, div. 1.5, § 475 et seq. governing denial, suspension and revocation of business
4 and professional licenses, prohibiting the prior practice "whereby state and local agencies denied
5 or revoked a business or professional license on the ground that a record of arrest or conviction
6 demonstrated a lack of 'good moral character.' " (*Loder v. Municipal Court*, supra, 17 Cal.3d at p.
7 874, see Bus. & Prof.Code, div. 1.5, § 475 et seq.) *Housing Authority v. Van de Kamp*, 223
8 Cal.App.3d 109 (Cal. App. 1990)

9 60. Under the statutory scheme set forth by the Legislature, nondisclosure of criminal
10 records is the general rule. (*Younger v. Berkeley City Council* (1975) 45 Cal.App.3d 825, 832)
11 While the Legislature has set forth the exceptions to the general rule in section 11105,
12 subdivisions (b) and (c), those exceptions are to be narrowly construed. (*Ibid.*) Because these
13 records contain extremely sensitive and private information, all doubts are resolved against
14 disclosure. (See 36 Ops.Cal.Atty.Gen. 1, 3 (1960).) *Housing Authority v. Van de Kamp*, (1990)
15 223 Cal.App.3d 109

16 61. Penal Code § 11105 (p) (1) describes the process for dissemination of state and
17 federal criminal history records for employment and licensing purposes by the Department of
18 Justice:

19 **Penal Code § 11105 . . .**

20 (p)(1) This subdivision shall apply whenever state or federal criminal history
21 information is furnished by the Department of Justice as the result of an
22 application by an agency, organization, or individual not defined in subdivision
23 (k), (l), (m), (n), or (o), . . . and the information is to be used for employment,
24 licensing, or certification purposes.(2) Notwithstanding any other law, whenever
25 state summary criminal history information is initially furnished pursuant to
26 paragraph (1), the Department of Justice shall disseminate the following
27 information:

28 (A) Every conviction rendered against the applicant, except a conviction for
29 which relief has been granted pursuant to Section 1203.4, 1203.4a, 1203.41,
30 1203.42, 1203.425, or 1203.49. . .

31 (B) Every arrest for an offense for which the applicant is presently awaiting trial,
whether the applicant is incarcerated or has been released on bail or on their own
recognizance pending trial.

(C) Sex offender registration status of the applicant.

(D) Sentencing information, if present in the department's records at the time of
the response.

1 62. State regulations (11 CCR §§ 720-724) direct that DOJ will suppress incomplete
2 criminal history information when furnishing records for employment and licensing purposes:

3 **§ 723. Suppression of Incomplete Criminal History Information.**

4 ...(b) Unless information release is otherwise authorized by law, whenever DOJ
5 furnishes either national or state summary criminal history information to an
6 authorized entity for employment, licensing or certification purposes, the
7 Department shall not disclose any information related to any arrest for which it is
8 unable to obtain a corresponding disposition. The Department shall furnish all
9 other criminal history information, if any, which it is authorized to disclose
10 pursuant to the statute(s) governing the specific applicant type.

11 (c) Unless otherwise authorized by law, where only an arrest record exists but the
12 Department is unable to obtain corresponding disposition information, the
13 Department shall suppress that arrest information and provide the authorized
14 agency with a response that no criminal history information exists.

15 **The State Statutory Scheme Preempts the Field to Preclude Local Regulation**

16 63. The scheme for the dissemination of criminal records is a matter of statewide
17 importance. (*Younger v. Berkeley City Council*, supra, at p. 830) The Legislature has preempted
18 the field to preclude local regulation. (Id. at p. 832) Although Penal Code § 11105, subd. (b)(11)
19 contemplates that local governmental entities can by ordinance or regulation authorize access to
20 criminal history information, such access must be consistent with the statutory scheme which
21 provides only narrow exceptions to the general rule prohibiting disclosure. ... (See *Loder v.*
22 *Municipal Court*, supra, 17 Cal.3d at pp. 872-873, [Section 11105, subdivision (b)(11)]
23 authorizes local agencies access to criminal history information “in strictly limited
24 circumstances.”.) *Housing Authority v. Van de Kamp*, (1990) 223 Cal.App.3d 109

25 64. “The voters are presumed to have been aware of existing laws at the time the
26 initiative was enacted.” *Professional Engineers in Cal. Gov. v. Kempton*, 40 Cal.4th 1016 (2007).
27 Here, El Dorado County voters are presumed to have been aware that limitations in state and
28 federal law would govern the Sheriff’s background check process for commercial cannabis
29 permits, when they approved the five initiatives.

30 **County’s “Waiver Agreement” and Due Process Violations**

31 65. Apparently unwilling to narrow the scope and extent of the overly broad application
to obtain FBI authorization to access Live Scan for licensing purposes, or to utilize the criminal
history information available to the Sheriff through the state DOJ, the County offered applicants

1 an alternative that ostensibly would allow applications, many of which have been in process for
2 more than 18 months, to move forward rather than wait an indeterminate length of time for the
3 Sheriff to attain Live Scan access.

4 66. This Interim Background Check/Waiver of Due Process and Covenant Not to Sue
5 **(Exhibit 5)** (“Waiver Agreement”) provides that the background checks described in EDC Code
6 § 130.41.100(4)(G) will be satisfied as follows:

7 A. Applicant(s) will self-disclose his/her “entire criminal history” to a third-party
8 contractor for the County and complete a Sheriff’s Commercial Cannabis Background Check
9 Investigation Questionnaire (Exhibit 1) (“Questionnaire”). The contractor will investigate the
10 criminal background of the applicant(s) using public databases and provide a report to the
11 Sheriff. In addition, the third party contractor background check process has been expanded to
12 require a complete credit history and detailed bank account information for all “owners” of the
13 cannabis business, no matter how small the interest.

14 B. The Sheriff will make a qualified recommendation to the Planning Commission to
15 approve or deny the CCUP based on the report. If the CCUP is approved, it will include a
16 condition requiring verification of the self-disclosures once the County is authorized to obtain
17 Live Scan criminal history data. The CCUP condition would (1) require fingerprinting of all
18 “owners” and spouses of “owners” and the Designated Local Contact as all are defined in the
19 EDC Code, and (2) provide that the CCUP is automatically revoked if the County determines, in
20 its sole discretion, that a material misrepresentation was made in the self-disclosure application
21 that is later revealed in the Live Scan rap sheet.

22 C. The Sheriff’s Office, upon determining a material misrepresentation was made, will
23 give the applicant written notice and three (3) days from the date of notice to provide evidence to
24 dispute the determination. The Sheriff’s Office will consider the additional information, and
25 issue a final determination.

26 D. If the Sheriff’s Office determines that a material misrepresentation has been made, the
27 CCUP is automatically revoked, all operations must immediately cease, and any cannabis plants
28 or products must be eradicated and destroyed within 24 hours of the automatic revocation; after
29 24 hours, the Sheriff has the right to enter the property to destroy any cannabis crop or products
30 not destroyed by the owner.

1 67. The Waiver Agreement requires an applicant to (i) waive any right to a hearing or
2 appeal concerning the material misrepresentation determination or the revocation of the CCUP,
3 and (ii) execute a comprehensive Waiver of Claims and Covenant Not to Sue covering
4 procedural and substantive due process claims, violations of County Code and state or federal
5 law, economic damages, warrantless seizure and destruction of cannabis crops, among others.

6 68. The ostensible reason for the Waiver is the El Dorado County Sheriff has not yet
7 received authorization to receive his desired fingerprinting information for Cannabis Live Scan.
8 For the past two years, the El Dorado County Sheriff, has made multiple requests for direct
9 access to state and federal criminal history records, but the Sheriff's request has been denied on
10 grounds including that the request is overbroad. See **Exhibit 6**, attached hereto and incorporated
11 herein.

12 **The Background Questionnaire Violates an Applicant's Constitutional and Statutory**
13 **Right to Privacy but Fails to Satisfy a Legitimate Government Interest**

14 69. The Questionnaire (Exhibit 1) required for County cannabis permits is both extensive
15 and invasive. In addition to requiring disclosure of an applicant's criminal convictions, the form
16 asks whether an applicant has been arrested, detained, questioned, or investigated for suspicion
17 of having committed a criminal act, whether or not it resulted in a conviction; has ever
18 "committed" any of number of felonies, misdemeanors or infractions; owns any illegal weapons;
19 has used or experimented with any drugs; has ever failed to make or been late in paying any
20 legally required child support obligations; or has resigned from a job in lieu of termination. This
21 Questionnaire must be signed by the applicant(s) under penalty of perjury.

22 70. Penal Code § 11105 (b) provides that "Chapter 1321 of the Statutes of 1974 (Exhibit
23 4) and Section 432.7 of the Labor Code shall apply when information is furnished by the State
24 DOJ to assist a local government official in fulfilling employment or licensing duties." Chapter
25 1321 of the Statutes of 1974 substantially revised the laws governing denial, suspension and
26 revocation of licenses⁵ based on an applicant's criminal history, including that denial, suspension
27 or revocation of a license on the basis of a criminal history requires that the crime or act is
28 "substantially related to the qualifications, functions or duties" of the business or profession for
29 which application is made or the license granted. Subsequent amendments to these code sections

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31 ⁵ (Bus. & Prof. Code div. 1.5, § 475, et seq.)

1 prohibit denial of a license on the basis of an arrest that resulted in a disposition other than
2 conviction, including an infraction, citation or juvenile adjudication.

3 71. Penal Code § 11105 (p) applies to dissemination of state or federal criminal history
4 information to local governments and others for employment and licensing purposes. Penal
5 Code § 11105 (p) (2) limits information furnished by state DOJ to the convictions for which
6 relief has not been granted, every arrest for an offense for which the applicant is presently
7 awaiting trial, sex offender registration status of the applicant, and sentencing information, if
8 present if the DOJ records at the time of the response. It does not permit dissemination of
9 information pertaining to arrests or detentions that did not result in a conviction.

10 72. The statutory scheme for the dissemination of criminal records is a matter of
11 statewide importance. (*Younger v. Berkeley City Council*, supra, at 830) The Legislature has
12 preempted the field to preclude local regulation. (Id. at p. 832) Although section 11105,
13 subdivision (b)(11) contemplates that local government entities can, by ordinance or regulation,
14 authorize access to criminal history information, such access must be consistent with the
15 statutory scheme which provides only narrow exceptions to the general rule prohibiting
16 disclosure.

17 73. The Questionnaire appears as a local attempt to preempt the statutory limitations on
18 criminal record disclosure by requiring an applicant to self-disclose criminal history information
19 which will not be disclosed under the statutory scheme. Because the information cannot be used
20 as the basis for denial of a license, requiring such disclosure violates an applicant's privacy rights
21 and fails to serve any legitimate or compelling governmental interest. "[D]issemination of
22 information regarding arrests not resulting in convictions to nonexempt employers and licensing
23 agencies for employment, licensing, and certification purposes is not justified by a compelling
24 state interest." *Central Valley Ch. 7 Step Foundation, Inc. v. Younger* (1989) 214 Cal.App.3d
25 145, 151. The Questionnaire also warns the applicant that the information collected may be
26 subject to disclosure under the Public Records Act; such disclosure would further violate an
27 applicant's constitutional and statutory privacy rights while serving no legitimate governmental
28 purpose.

29 **The Waiver Agreement Overreaches**

30 74. The Waiver Agreement overreaches in a number of respects, including:
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1 A. There is no objective standard defining a “material” omission or misrepresentation;
2 instead, the criteria are subjective, such as the omission “weighs against the Applicant’s
3 trustworthiness”. An appropriate standard, found in Bus. and Prof. Code § 478 (b), defines
4 “material” to include “a statement or omission substantially related to the qualifications,
5 functions, or duties of the business or profession”.

6 B. An omission can be the basis for revocation of a permit without recourse whether or
7 not it is material, whether or not it was knowing and willful or a good faith mistake, and whether
8 or not it would have been grounds for the Sheriff to recommend denial if the information had
9 been self-disclosed in the Questionnaire. The standard included in Bus. and Prof. Code § 475
10 requires the applicant has “knowingly” made such omission or misrepresentation for denial or
11 revocation of a license.

12 C. Federal regulations (28 CFR § 50.12) authorizing the exchange of FBI criminal
13 history records for employment and licensing purposes require that an applicant shall be given
14 the opportunity to complete, or challenge the accuracy of, the information contained in the FBI
15 identification record. Officials making licensing or employment determinations “should not
16 deny the license or employment based on information in the record until the applicant has been
17 afforded a reasonable time to correct or complete the record, or has declined to do so.” The
18 Waiver Agreement allows an applicant only three (3) days to respond from the date of
19 notification by the Sheriff of his determination that the application contains a material omission
20 or representation based on later review of the criminal history report. Three days is not a
21 reasonable time for an applicant to obtain a copy of their criminal history report and respond to
22 the Sheriff, and correct or complete the record, and the Waiver Agreement therefore fails to
23 comply with federal regulations that authorize dissemination of the information to the local
24 agency.

25 D. The Waiver Agreement grants the Sheriff the sole authority to revoke the CCUP and
26 order destruction of any cannabis crop or product within 24 hours, without the right of notice,
27 hearing or appeal, subject to a mandatory waiver of all legal recourse against the Sheriff and the
28 County, even if the action is arbitrary and capricious. Revocation of a CUP in this manner is
29 inconsistent with County Zoning Code § 130.54.090, which requires notice to the applicant and a
30 hearing before the Planning Commission, the “review authority of original jurisdiction” for a
31 CCUP, along with the right of appeal to the Board of Supervisors. The Sheriff, on the other

1 hand, has no authority to issue the CCUP in the first instance; his role is advisory only, and
2 limited only to providing his recommendation to the Planning Department concerning the
3 background check. The County has a range of procedural remedies to deal with a material
4 misrepresentation or omission in an application for CCUP, including revocation under Zoning
5 Code Section 130.54.090; nuisance abatement proceedings (County Ordinance Code Chapter
6 9.02) with shortened notice, hearing and decision deadlines and enhanced fines (Section
7 130.41.100.11 (F) and (G); administrative fines, authorized in Chapter 9.02, and enhanced under
8 Section 130.41.100.11(C); and revocation or suspension of the Commercial Cannabis Annual
9 Operating Permit (CCAOP).

10 E. Finally, the Waiver Agreement presents a CCUP applicant with a “Hobson’s Choice”
11 – either wait an indeterminate length of time until the Sheriff receives authorization to access the
12 state and federal criminal history records in the format he seeks, or move forward with the
13 application under a waiver of virtually all due process rights which allows the Sheriff – an
14 admitted opponent of the County’s commercial cannabis initiatives – absolute authority to shut
15 down the business without recourse even if the conduct is arbitrary and capricious.

16 75. These flaws are substantial, but may be corrected by judicial action. The Waiver
17 Agreement to implement the Interim Procedure can be modified to conform to applicable
18 provisions of the Bus. and Prof. Code, the Code of Federal Regulations, the EDC Zoning Code
19 and to limit the required waiver of due process rights. The Questionnaire can be revised to limit
20 self-disclosure of criminal history information to that which can lawfully be considered as a basis
21 for license denial, and of the type that would be contained in a state or federal criminal history
22 record furnished by the state DOJ in compliance with the law.

23 **The County’s Characterization of “Ownership” is Overly Broad, Affecting Both the**
24 **Background Check Process and Disrupting Normal Business Operations**

25 76. In conflict with the constitutional and statutory rights of privacy and state statutory
26 scheme, the County has expanded the definition of owner, with far-reaching consequences.

27 77. The County’s 2019 Zoning Code amendments modified definitions in the cannabis
28 ordinances, including the definition of “Owner”. Although information presented to the Board
29 for the hearing indicated the amended ordinance would “update definitions to remain consistent
30 with amended definitions in the State’s current regulations”, the amendments actually combined
31

1 the state and local language and greatly expanded the County's definition of "Owner"⁶. To
2 illustrate the expanded definition, excerpts from state regulations are inserted in ***bold, italicized***
3 ***text*** into the County definition below:

4 EDC Code 130.41.100(2): "Owner means any person that constitute[s] an "owner"
5 under the regulations promulgated by the [state]..."

6 ***CCR Title 4, § 15003(a) (1) A person with an aggregate ownership interest of 20***
7 ***percent or more in the commercial cannabis business, unless the interest is solely a***
8 ***security, lien, or encumbrance. For purposes of this section, "aggregate" means the***
9 ***total ownership interest held through an entity. For example, an individual owning***
10 ***50% of an entity that owns 50% of the cannabis business would have a 25%***
11 ***aggregate ownership interest in the cannabis business.***

12 ***(2) An individual who manages, directs, or controls the operations of the commercial***
13 ***cannabis business, including but not limited to:***

14 ***(A) A member of the board of directors of a nonprofit.***

15 ***(B) A general partner of a commercial cannabis business that is organized as a***
16 ***partnership.***

17 ***(C) A non-member manager or managing member of a commercial cannabis***
18 ***business that is organized as a limited liability company.***

19 ***(D) The trustee(s) and all persons who have control of the trust and/or the***
20 ***commercial cannabis business that is held in trust.***

21 ***(E) An individual with the authority to provide strategic direction and oversight for***
22 ***the overall operations of the commercial cannabis business, such as the chief***
23 ***executive officer, president or their equivalent, or an officer, director, vice president,***
24 ***general manger or their equivalent.***

25 ***(F) An individual with the authority to execute contracts on behalf of the commercial***
26 ***cannabis business.***

27 EDC Code 130.41.100(2), continued: "...and, (1) a person with any ownership interest,
28 however small, in the person applying for a permit, unless the interest is solely a
29 security, lien, or encumbrance;

30 (2) the chief executive officer of a nonprofit or other entity;

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⁶ Following is the text of the definition of "Owner" from the EDC Zoning Code (Section 130.41.100(2)) reflecting the 2019 amendments. Additions are shown in underlined text, deletions are shown in ~~strikeout text~~.

"Owner means any person that constitute [sic] an "owner" under the regulations promulgated by the Bureau of Cannabis Control and (1) a person with any ownership interest, however small, in the person applying for a permit, unless the interest is solely a security, lien, or encumbrance; (2) the chief executive officer of a nonprofit or other entity; (3) a member of the board of directors of a nonprofit entity; ~~or~~ (4) a person who will be participating in the direction, control, or management of the person applying for a permit, including but not limited to a general partner of a partnership, a non-member manager or managing member of a limited liability company, and an officer or director of a corporation; or (5) a person who will share in any amount of the profits of the person applying for a permit or has a financial interest, as defined by the regulations promulgated by the Bureau of Cannabis Control, in the person applying for the permit."

1 (3) a member of the board of directors of a nonprofit entity;
2 (4) a person who will be participating in the direction, control, or management of the
3 person applying for a permit, including but not limited to a general partner of a
4 partnership, a non-member manager or managing member of a limited liability
5 company, and an officer or director of a corporation; or (5) a person who will share in
any amount of the profits of the person applying for a permit or has a financial interest,
as defined by the regulations promulgated by the Bureau of Cannabis Control, in the
person applying for the permit.”

6 **[CCR Title 4, § 15004 Financial Interest in a Commercial Cannabis Business**

7 **(a) ... A financial interest holder of the commercial cannabis business includes all of
the following, except as provided in subsection (b) of this section:**

8 **(1) A person with an aggregate ownership interest of less than 20 percent, except as
specified in subsection (b).**

9 **(2) A person providing a loan to the commercial cannabis business, except as
specified in subsection (b).**

10 **(3) A person that contracts with the cannabis business to cultivate, manufacture,
package, or label cannabis or cannabis products under that person’s brand name.**

11 **(4) A person entitled to receive 10 percent or more of the profits of the commercial
cannabis business, including:**

12 **(A) An employee who has entered into a profit share plan with the commercial
cannabis business.**

13 **(B) A landlord who has entered into a lease agreement with the commercial cannabis
business for a share of the profits.**

14 **(C) A consultant who is providing services to the commercial cannabis business for a
share of the profits.**

15 **(D) A person acting as an agent, such as an accountant or attorney, for the
commercial cannabis business for a share of the profits.**

16 **(E) A broker who is engaging in activities for the commercial cannabis business for a
share of the profits.**

17 **(F) A salesperson who earns a commission.**

18 **(b) Financial interest holders do not include any of the following:**

19 **(1) A bank or financial institution whose interest constitutes a loan;**

20 **(2) Persons whose only financial interest in the commercial cannabis business is
through an interest in a diversified mutual fund, blind trust, or similar instrument;**

21 **(3) Persons whose only financial interest is a security interest, lien, or encumbrance
on property that will be used by the commercial cannabis business; and**

22 **(4) Persons who hold a share of stock that is less than 10 percent of the total shares in
a publicly traded or privately held company.**

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27 78. To summarize, state regulations define an “owner” as a person with an aggregate
28 interest in the cannabis business of 20% or greater, or an individual who manages, directs, or
29 controls the business operations. The County greatly expanded the definition to include a person
30 with any ownership interest in the business, however small; any person entitled to any amount of
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1 the profits of the business⁷; or an individual with a financial interest, including but not limited to
2 a private lender, passive investor, stockholder, partner, or trustee.

3 79. The County's expansive definition of "owner" is problematic for several reasons.
4 First, as part of the application for a CCUP, the EDC Zoning Ordinance requires "consent to a
5 background check of all owners, [and] spouses of owners...including providing the information
6 necessary for performing the background check and fingerprinting." (EDC Zoning Code §
7 130.41.100(4) F.2.) Consequently, an "owner" of a few shares of stock in a publicly held
8 company, a minority position in a partnership or limited liability company, an employee with a
9 profit-sharing agreement, or a private lender, and the spouses of each of these are subject to
10 federal and state criminal history background checks, implicating constitutional and statutory
11 privacy rights. Although the EDC Zoning Code gives the Sheriff's Office the discretion to waive
12 fingerprinting if the individual owns five percent or less of the business, the waiver is not
13 mandatory and the discretion to "waive" fingerprinting includes the discretion not to do so.
14 Cybele has recently learned that the Sheriff has no plans to apply this waiver, and his
15 shareholders with a mere 2% interest will be required to submit to background checks. The
16 background checks and privacy rights implications are discussed in detail, below. Whether
17 intentional or not, the effect of this change is to expand the reach of Live Scan background
18 checks for a large number of individuals.

19 80. In addition, as a condition of approval of a CCUP, EDC Code section 130.41.100 (4)
20 (I) 4 requires, that the "permittee *and all owners* shall defend, indemnify, and hold harmless the
21 County of El Dorado and its agents, officers, elected officials, and employees for any claims,
22 damages, or injuries brought by affected property owners or other third parties due to the
23 issuance of a permit or the commercial cannabis activities and for any claims brought by any
24 person for problems, injuries, damages, or liabilities of any kind that may arise out of the
25 issuance of a permit or the commercial cannabis activities". Where such provision would require
26 an "owner", a term broadly defined by the County to include a corporate officer, a limited
27 partner, a non-managing member of a limited liability company, a lender, a person with an

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29 ⁷ The state regulations and county ordinance conflict where state regulations define a financial
30 interest holder using numeric thresholds, such as a person entitled to 10% or more of the profits
31 of the business, and the County language states "any amount of the profits". We have resolved
this conflict by assuming the County means "any amount" not "10% or more".

1 interest in the profits, or certain managing employees, to individually indemnify the County, this
2 requirement would defeat a whole range of statutory protections and the very purpose for some
3 organizational structures, and would clearly conflict with state law.

4 81. Further, although a CCAOP is required to lawfully engage in a cannabis business in
5 the County, the EDC Code (§ 130.41.100(5) E) provides that the CCAOP “is not transferrable
6 and automatically expires upon any change of ownership to the applicant that results in a new
7 owner or owners or new funding source. Before or upon the transfer of the business or addition
8 of a new owner, an application for a new Commercial Cannabis Annual Operating Permit must
9 be submitted...” Although the CCUP may be transferred upon the issuance of a new CCAOP, at
10 that time, new conditions to the CCUP and CCAOP may be added or removed...”

11 82. Petitioners are informed and believe that, in order to maintain valid permits, a
12 cannabis business would have to obtain County approval, including background check review
13 and recommendation to Planning by the Sheriff, of a new CCAOP before selling a few shares of
14 stock (whether publicly or privately traded), adding a new investor, or obtaining a small private
15 loan, a process that could take months and may require a hearing before the Planning
16 Commission if the County wants to modify conditions of the CCUP. Every such stock sale, or
17 loan or perhaps a profit-sharing agreement with employees would create new “owners” and
18 thereby require a new CCAOP – an event that could occur multiple times in any given year.

19 83. On the other hand, if any transfer occurs before County approval of a new CCAOP,
20 including an involuntary transfer involving a partner who is incapacitated or dies and his/her
21 interests are transferred to an estate, trustee or beneficiary, or where an owner is declared
22 insolvent, the CCAOP would “automatically terminate” under the terms of the Zoning Code.
23 Since it is unlawful to operate a cannabis business without a valid CCAOP, any ongoing
24 operations, including cultivation of an existing cannabis crop, is likely regarded as an illegal
25 operation subject to nuisance abatement, including destruction of the crop. Further, state
26 regulations require a licensee to provide notice of revocation of a local permit within 48 hours,
27 and state law provides that a licensee’s failure to comply with a local ordinance is grounds for
28 disciplinary action. (Bus. & Prof. Code § 26030 (f)).

29 84. Although state licenses cannot be transferred or assigned, state regulations take a
30 reasonable approach to changes in business operations. When a transfer occurs that results in a
31 new person who meets the criteria of an “owner” (i.e., 20% or greater ownership interest, or a

1 person who manages, directs or controls the cannabis business operations) each new owner shall
2 submit the license application information required of an owner (CCR § 15002(c)(20)(16)) to the
3 Department of Cannabis Control (DCC) within 14 calendar days of the effective date of the
4 ownership change. If at least one existing owner will remain an owner under the new structure,
5 the business may continue to operate under the active license while DCC reviews the
6 qualifications of the new owner(s) to determine if the change would constitute grounds for denial
7 of the license. If all owners are transferring their ownership interest, the business shall not
8 operate under the new structure until a new license application has been obtained. When there is
9 a change in financial interest holders that do not qualify as “owners”, the licensee shall submit
10 the financial interest holder disclosure information required by CCR §§ 15002 (c) (15) and
11 15004 within 14 calendar days of the change. Finally, state regulations make reasonable
12 provisions for transfers of interest in the event of death, incapacity or insolvency (CCR § 15024),
13 and for the handling of cannabis and cannabis products after termination of a license, whether
14 through destruction of the products by the former licensee or the transfer to a distributor or
15 processor for further handling (CCR § 15024.1)

16 85. The ostensible reason of county for this overbroad definition of “owner” is to allow
17 an expansion of Live Scan to in order to thwart aggregating of interests by drug cartels. This
18 expansion of Live Scan creates real and potential conflicts with a myriad of federal and state
19 statutes and regulations dealing with privacy issues herein addressed. The characterization of
20 lenders and passive investors or financial interest holders as owners also conflict with extensive
21 state and federal tax, investing and liability regulations.

22 **County’s “Questionnaire” Requires Disclosure of Data that May Not be Used as**
23 **Grounds for Permit or License Denial; Violates a Person’s Privacy Rights, but**
24 **Serves no Compelling Governmental Interest**

25 86. The state and federal statutory scheme for dissemination of criminal history records
26 is designed to protect public safety while safeguarding fundamental privacy rights of individuals.
27 This statutory scheme is a matter of statewide importance, and the Legislature has preempted the
28 field to preclude local regulation. (*Younger v. Berkeley City Council*, supra, p. 830, 832)

29 87. Pursuant to subdivision (b)(10) of section 11105, the Attorney General is required to
30 furnish state summary criminal history information to any city, county, or district when: (1) such
31 record is needed to assist “in fulfilling employment, certification or licensing duties”; (2) access

1 to such record is authorized by resolution of a local governing board; and (3) the information is
2 required to implement a statute or regulation which expressly refers to specific criminal conduct
3 of the subject of the record and contains requirements or exclusions or both that are expressly
4 based on such conduct. (See *Loder v. Municipal Court*, supra, 17 Cal.3d at p. 873, fn. 15, 132)

5 88. Significantly, the opening paragraph of subdivision (b) expressly limits criminal
6 history information disseminated "in fulfilling employment, certification, or licensing duties" to
7 uses consistent with the provisions of law governing the denial, suspension and revocation of
8 business and professional licenses (Stats.1974, Ch. 1321, pp. 2874-2876, §§ 1-15; see generally
9 Bus. & Prof. Code, §§ 475-491) and regulating inquiries by employers into an employee's arrest
10 record. (Lab. Code, § 432.7.) Chapter 1321 of the Statutes of 1974 substantially rewrote the laws
11 governing denial, suspension and revocation of business and professional licenses, prohibiting
12 the prior practice whereby state and local agencies denied or revoked a business or professional
13 license on the ground that a record of arrest or conviction demonstrated a lack of 'good moral
14 character.' " (*Loder v. Municipal Court*, supra, 17 Cal.3d at p. 874, 132 Cal. Rptr. 464, 553 P.2d
15 624; see Bus. & Prof. Code, div. 1.5, § 475 et seq.) *Housing Authority v. Van de Kamp*, 272 Cal.
16 Rptr. 584, 223 Cal.App.3d 109 (Cal. App. 1990)

17 89. Instead, Bus. and Prof. Code section 480, as amended in 1974, provided that a
18 license may be denied only for the conviction of a crime; an act involving dishonesty, fraud, or
19 deceit; or an act which would be grounds for discipline if done by a licensee; or if the applicant
20 knowingly made a false statement of fact required to be revealed in the application. In addition,
21 a license could be denied under this section only if the crime or act is "substantially related to the
22 qualifications, functions, or duties of the business or profession for which the application is
23 made". Additionally, section 480 (d) prohibits denial of a license on the basis of an arrest that
24 resulted in a disposition other than a conviction, including an arrest that resulted in an infraction,
25 citation, or a juvenile adjudication.

26 90. As relevant here, when the DOJ furnishes state or federal criminal history
27 information to a city or county for employment, licensing or certification purposes, that
28 information is limited by Penal Code section 11105(p)(2) to every conviction, except a
29 conviction for which relief has been granted under specified code sections; every arrest for an
30 offense for which the applicant is presently awaiting trial; sex offender registration status of the
31 applicant; and sentencing information, if present in the department's records at the time of the

1 response. Other than pending charges for which an applicant is awaiting trial, the Penal Code
2 does not authorize release of an applicant's arrest record, if the arrest(s) did not result in a
3 conviction. (See also, 11 CCR §§ 720-724, requiring DOJ to suppress incomplete criminal
4 history information when furnishing records for employment and licensing purposes, if an arrest
5 record is not accompanied by disposition information.)

6 91. The Bus. and Prof. Code statutory framework in Division 1.5 has been frequently
7 amended since adoption in 1972. The effect of more recent amendments to section 480 has been
8 to limit the grounds for denial of licenses. Cal. Code of Regulations § 15021 define grounds for
9 denial of a state cannabis license to include grounds listed in Bus. and Prof. Code § 26057 and
10 Cal. Code of Regulations § 15018, and acts constituting grounds for disciplinary action. The
11 regulations also define specific acts which constitute "substantially related" offenses which is a
12 required element of a conviction justifying denial of a license.

13 92. Counties surveyed throughout the state use similar standards, often by reference to
14 Bus. & Prof. Code § 26057. This approach complies with the Penal Code requirements that the
15 local ordinance or regulation authorizing the background check "expressly refers to specific
16 criminal conduct of the subject of the record and contains requirements or exclusions or both that
17 are expressly based on such conduct". In other words, the local ordinance or regulation refers to
18 conviction of a violent or serious felony, and expressly provides that such conviction is grounds
19 for denial of a license. These other jurisdictions apparently do not collect information as part of
20 their background check applications, that do not relate to disqualifying convictions, such as
21 records of arrest that did not result in a conviction, and other conduct by an applicant that is
22 oriented to the applicant's moral character.

23 93. The County has taken a different approach. The EDC Code provides, in relevant part:
24 "...The County may deny an application based on the results of a background
25 check if the County determines that information in the background check makes it
26 more likely than not that any amount of funding for the operation will be or was
27 derived from illegal activity or because the criminal history or other information
28 discovered in the background check of an owner or spouse of an owner weighs
29 against the owner's trustworthiness or ability to run a legal business in compliance
30 with all regulations, including but not limited to the risk of involvement or
31 influence by organized crime, prior convictions involving controlled substances or
violent crimes, the likelihood that sales and income will not be truthfully reported,
or the risk that cannabis will be illegally provided or sold to individuals under the
age of 21." EDC Code § 130.41.100 (4) G.

1 94. The Questionnaire lists more than a dozen disqualifying criminal convictions, which
2 partially overlap, but in some respects are more restrictive than those in state law. While
3 acknowledging that “disqualifiers are typically felony convictions, or other crimes set forth...” in
4 Bus. and Prof. Code § 26057, the Questionnaire nevertheless requires an applicant to disclose,
5 under penalty of perjury, whether he or she has ever *committed any of a number of infractions,*
6 *misdemeanors, or felonies;* been late in payment of child support or alimony; been detained,
7 questioned, investigated or arrested for suspicion of having committed a criminal act; or used or
8 experimented with any of a number of drugs; and a number of other questions.

9 95. The County’s standards for denial of a license as described in the EDC Code are
10 entirely subjective, and do not satisfy the statutory requirements of Penal Code § 11105(b)(11),
11 requiring a local ordinance or regulation which expressly refers to specific criminal conduct of
12 the subject of the record and contains requirements or exclusions or both that are expressly based
13 on such conduct. Moreover, as discussed in more detail above, the Questionnaire: 1) seeks to
14 circumvent the statutory limitations requiring reliance only on conviction history for licensing
15 purposes; and 2) violates an applicant’s right to privacy by requiring disclosure of information
16 that cannot be used as a basis for denial of a license, and therefore lacks a legitimate or
17 compelling governmental purpose. “[D]issemination of information regarding arrests not
18 resulting in convictions to nonexempt employers and licensing agencies for employment,
19 licensing, and certification purposes is not justified by a compelling state interest.” (*Central*
20 *Valley Ch. 7 Step Foundation, Inc. v. Younger* (1989) 214 Cal.App.3d 145, 151) These issues are
21 compounded by the County’s overly broad characterization of “owners”, requiring a person with
22 any ownership interest, however small, a person’s spouse, and any person with any financial
23 interest in the cannabis business to complete the Questionnaire and submit to a Live Scan
24 criminal history records search. As applied, these requirements serve more to intimidate and
25 harass potential applicants and owners than to legitimately inform the permitting process.

26 **Summary**

27 96. As hereinabove described, the County’s ordinances, policies and actions violate an
28 applicant’s constitutional and statutory rights of privacy and due process, and are in conflict with
29 the state statutory scheme.
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1 **III. EFFECT OF COUNTY ORDINANCES, POLICIES AND ACTIONS AS APPLIED**
2 **TO PETITIONER CYBELE HOLDINGS, INC. – CCUP 20-0001**

3 97. Petitioner Cybele Holdings Inc. filed a CCUP application numbered as CCUP20-
4 0001 with El Dorado County to cultivate commercial cannabis on El Dorado County parcels
5 APN 046-071-010 (40 acres) and APN 046-071-011 (139.5 acres) with a street address of 3029
6 Freshwater Lane in the unincorporated Sand Ridge area of the county. The proposed project will
7 include two phases. The first phase will involve construction of an 87,000 square foot
8 (approximately 2 acres) outdoor grow facility. Included within the facility will be a 5,000 square
9 foot seedling and mother plant propagation greenhouse cloning grow room for cuttings, 77,120
10 square feet of full-term outdoor cultivation and 4,500 square feet of drying/harvesting/office
11 area. The second phase will be located near the first and will consist generally of a second
12 nursery area of 2 acres. The project area includes the two areas with the 180-acre area defined as
13 the grow site.

14 98. The application was deemed complete by the County Planning Department
15 (Planning) on April 13, 2020. On May 13, 2020 the El Dorado County Agricultural
16 Commission, at a regularly noticed meeting, considered the proposed CCUP, found that it
17 complied with all applicable agricultural policies and recommended approval of the project.

18 99. Helix Environmental Planning, Inc. was employed to assist County staff by
19 reviewing all documents, visit the project site and prepare an environmental Initial Study and
20 a Mitigated Negative Declaration (MND). A series of technical studies were prepared by
21 other consultants. On January 22, 2021 El Dorado County published a Notice of Intent (NOI)
22 to Adopt the MND. The public review period for the Draft MND began on January 23, 2021,
23 and ending February 22, 2021. Two public comments were submitted by neighbors, both of
24 whom had commented at the Agriculture Commission hearing.

25 100. CEQA Guidelines § 15074(b) requires the Lead Agency decision makers to
26 consider public comments on the proposed MND and to adopt the MND prior to taking action
27 to approve the project. The NOI included the following: “PUBLIC HEARING: A public
28 hearing before the Planning Commission has not been scheduled. Once that date has been
29 determined, a public notice will be issued.”

30 101. In May, 2021, Cybele reluctantly signed the County’s “Waiver Agreement”, in
31 the hope it would expedite the permitting process. Cybele has recently learned that the Sheriff’s

1 Office does not intend to implement the provisions of an ordinance designed to accommodate the
2 full range of legal business types by allowing the Sheriff to waive background checks for
3 “owners” of less than 5% interest in a cannabis business. Cybele intends to sell shares of stock in
4 the company, with no owner holding more than 2%, and as discussed above, the requirement for
5 background checks of passive minority investors and practical limitations on transfers of stock
6 requiring new permits will obstruct the operation of the business.

7
8 **FIRST CAUSE OF ACTION**

9 **(Writ of Mandate – CCP § 1085)**

10 102. Petitioners incorporate by reference the allegations of paragraphs 1 through 101 of
11 this First Amended Petition as if fully set forth herein.

12 103. County and Sheriff have a clear, present and ministerial duty under EDC Code §
13 130.41.100(4) G to conduct fingerprint-based background checks for cannabis permits, and to
14 review and make a recommendation to the Planning Commission based upon the Live Scan
15 access available.

16 104. Respondents have a clear, mandatory duty to comply with the requirements.
17 Respondents have failed to perform this duty and, unless mandated to do so by this Court, will
18 continue to fail and refuse to perform the duties imposed on them by law.

19 105. Petitioners have no available administrative remedies other than execute the
20 Waiver in derogation of their state constitutional and statutory due process rights and contrary to
21 the clear dictates of the duties imposed on Respondents by County ordinances.

22 106. Petitioners have no plain, speedy and adequate remedy in the ordinary course of
23 law, other than the relief sought herein.

24 107. Petitioners are beneficially interested in issuance of a writ of mandate. Petitioners
25 will be seriously harmed if Respondents continue to refuse to perform their duties.

26 108. At all times, Respondents have been able to perform this duty.

27 109. An actual controversy has arisen and now exists between Petitioners and
28 Respondents County of El Dorado, El Dorado County Sheriff’s Department and Sheriff John
29 D’Agostini concerning the County’s background Live Scan process. Petitioners contend that
30 whatever fingerprinting and/or Live Scan is available to the County and Sheriff meets the
31 requirement of the ordinance. On information and belief, Petitioner alleges that Live Scan access

1 is available to the County for employment, licensing and certification fingerprinting and
2 background checks on the same basis that it is provided to some 45,000 other local jurisdictions
3 and agencies, who collectively process millions of state and federal fingerprint-based criminal
4 history back ground checks each year. Under the dual licensing statutory scheme, each applicant
5 in El Dorado County must undergo full Live Scan fingerprinting and background checks by the
6 state of California.

7 **SECOND CAUSE OF ACTION**
8 **(Declaratory Relief - CCP § 1060)**

9 110. Petitioners incorporate by reference the allegations of paragraphs 1 through 109 of
10 this Petition as if fully set forth herein.

11 111. An actual controversy has arisen and now exists between Petitioners and
12 Respondents County of El Dorado, El Dorado County Sheriff's Department and Sheriff John
13 D'Agostini concerning elements of the County's background check process for cannabis
14 permitting as described at length above. Judicial determinations of the issues listed below and of
15 the respective duties of Petitioners and Respondents are necessary and appropriate at this time
16 under the circumstances because the practices at issue are presently being implemented by the
17 County for purposes of processing cannabis licenses. A judicial determination is necessary to
18 prevent the violations of due process, violations of individual privacy rights, and improper
19 dissemination of criminal history record information.

20 112. County's Waiver Agreement Violates Due Process. The County's Waiver
21 Agreement violates due process required by the state constitution, including Cal. Const., art. I, §
22 7, state statutory rights protections contained in El Dorado County nuisance abatement and other
23 applicable ordinances. The Waiver Agreement requires an applicant to waive procedural and
24 substantive due process rights, including the right to hearing or appeal concerning commercial
25 cannabis permits, and to waive the right to sue for violations of the County Code and state or
26 federal law, economic damages, and warrantless seizure, among others. The make-shift Waiver
27 is also contrary to County ordinance.

28 113. The 90 Day Statute of Limitations of Government Code § 65009 is Inapplicable.
29 Petitioners contend hereinabove described ordinances related to background checks, criminal
30 history, fingerprinting, ownership and financial interest holders are not land use matters and not
31

1 subject to Government Code Section 65009. Respondents contend otherwise and apparently
2 contend challenges to the hereinabove referenced ordinances based on state preemption must
3 await a county determination on a specific permit.

4 114. County's Fingerprint-Based Background Check Practices are Preempted. The
5 hereinabove County cannabis ordinances related to background checks, criminal history,
6 fingerprinting, ownership and financial interest holders are preempted by the hereinabove
7 described state and federal statutory scheme which limit the extent of information that may
8 lawfully be collected and disseminated for employment, licensing and certification purposes,
9 including but not limited to Public Law (Pub. L.) 92-544, 28 C.F.R. § 20.33, 28 C.F.R. § 50.12,
10 and California Penal Code § 11006 et seq. County's regulations broadly defining "owners" to
11 include even minor financial interest holders and individuals with profit sharing agreements as
12 "owners" subject to fingerprinting background checks also violates the privacy rights of
13 employees and lenders to the commercial cannabis business.

14 **PRAYER FOR RELIEF**

15 WHEREFORE, Petitioners and Plaintiffs prays that judgment be entered against
16 Defendants and Respondents as follows:

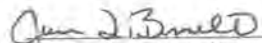
- 17 1. On the First Cause of Action, for a Writ of Mandate directing the Sheriff to process
18 each cannabis application with the available Live Scan.
- 19 2. On the Second Cause of Action, for Declaratory Judgments that:
 - 20 a. the County's Waiver Agreements violate an applicant's state constitutional,
21 statutory and County ordinance due process rights and are void;
 - 22 b. County cannabis ordinance provisions as hereinabove described related to
23 background checks, criminal history, fingerprinting, ownership and financial interest holders are
24 not land use matters and not subject to Government Code Section 65009;
 - 25 c. County cannabis ordinance provisions as hereinabove described related to
26 background checks, criminal history, fingerprinting, ownership and financial interest holders are
27 preempted by the state cannabis statutory scheme and state constitutional and statutory rights of
28 privacy and due process. hereinabove described.
- 29 3. For an award of attorney's fees pursuant to CCP § 1021.5 and costs; and

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4. For such other legal and equitable relief as the Court deems just and proper.

Dated: March 24, 2022


James L. Brunello
Attorney for Petitioners

VERIFICATION

I, Thomas R. Van Noord, hereby declare:

I am verifying the First Amended Petition as the sole owner and President of Lotus Valley Farms, Inc., a California corporation.

I am a registered voter, resident and taxpayer of the County of El Dorado.

I have read the foregoing First Amended Petition and know the content thereof. The facts alleged in the above First Amended Petition are true to my personal knowledge and belief, except as to those matters which are therein stated on information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct and the verification is executed on this 24th day of March, 2022 in the unincorporated area of El Dorado County



Thomas R. Van Noord

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VERIFICATION

I, Lee S. Tannenbaum, hereby declare:

I am the Chief Executive Officer and Secretary of Cybele Holdings, Inc., a California corporation and a registered voter, resident and taxpayer of the County of El Dorado. I have read the foregoing First Amended Petition and know the content thereof. The facts alleged in the above First Amended Petition are true to my personal knowledge and belief, except as to those matters which are therein stated on information and belief, and as to those matters, I believe it to be true.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct and the verification is executed on this 24th day of March, 2022 in the unincorporated area of El Dorado County


Lee S. Tannenbaum

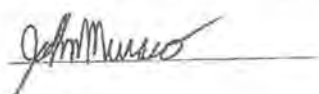
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VERIFICATION

I, John Muraco, Jr., hereby declare:

I am the authorized representative of SINGLE SOURCE SOLUTIONS INC., a California Corporation. I have read the foregoing Petition and know the content thereof. The facts alleged in the above First Amended Petition are true to my personal knowledge and belief, except as to those matters which are therein stated on information and belief, and as to those matters, I believe it to be true.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct and the verification is executed on this 24th day of March, 2022 in the unincorporated area of El Dorado County



John Muraco, Jr.

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VERIFICATION

I, Rodney Miller, hereby declare:

I am the Executive Director of Petitioner El Dorado County Growers Advocacy Alliance and a registered voter, resident and taxpayer of the County of El Dorado. I have read the foregoing First Amended Petition and know the content thereof. The facts alleged in the above First Amended Petition are true to my personal knowledge and belief, except as to those matters which are therein stated on information and belief, and as to those matters, I believe it to be true.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct and the verification is executed on this 24th day of March, 2022 in the unincorporated area of El Dorado County


Rodney Miller

EXHIBIT LIST

Exhibit 1	Background Questionnaire
Exhibit 2	Ballot Measures N, P, Q, R and S
Exhibit 3	HdL Companies – Cannabis Tax Revenue Report
Exhibit 4	Chapter 1321, Statutes of 1974
Exhibit 5	Waiver Agreement
Exhibit 6	Letter from FBI to CAL DOJ

Exhibit 1
Sheriffs Background Check/HdL Background Check Forms



El Dorado County Sheriff's Office
200 Industrial Drive Placerville, California 95667

Commercial Cannabis Use Permit and Background Application

DECLARATIONS AND ACKNOWLEDGEMENTS

By signing this application, the Applicant hereby declares and acknowledges:

I agree to defend, indemnify, and hold harmless the County of El Dorado and its agents, officers, elected officials, and employees for any claims, damages, or injuries brought by affected property owners or other third parties due to the issuance of a commercial cannabis permit or the commercial cannabis activities and for any claims brought by any person for problems, injuries, damages, or liabilities of any kind that may arise out of the issuance of a commercial cannabis permit or the commercial cannabis activities.

I authorize the County of El Dorado and its agents, officers, elected officials, and employees to access all premises upon which cannabis operations are occurring or intended to occur, including, but not limited to initial site visits prior to issuance or renewal of a permit and compliance checks. I consent to onsite inspection by County agents, officers, elected officials, and employees during my regular business hours and outside of my regular business hours if the County has reason to believe that violations are occurring outside of regular business hours.

I hereby declare and attest under penalty of perjury that, to the best of my knowledge, the information contained within and attached to this application is complete, true, and accurate. I understand any misstatements of material fact, omissions, incomplete answers, or inaccurate responses of fact is cause for rejection of this application, recommendation of denial of the Commercial Cannabis Use Permit, revocation of the Commercial Cannabis Use Permit, and/or non-renewal of the Commercial Cannabis Annual Operating Permit.

APPLICANT'S SIGNATURE	DATE	PERSON REVIEWING APPLICATION	DATE

**El Dorado County Sheriff's Office
Investigations Division**



**Commercial Cannabis
Background Investigation
Initial and Review Questionnaire**

To be completed by all applicants, owners(s) and person(s)
with financial interest, designated local contact, and
spouses/domestic partners.

200 Industrial Drive
Placerville, CA 95667
530-621-4723

"A modern approach to traditional law enforcement values; Total enforcement on crime and criminals; Total care for victims, witnesses and the community; Total professionalism, through training and by example"

Exhibit 1 - Background Questionnaire - Page 002

Background Investigation Questionnaire

(To be completed by all applicants, owners and persons with financial interest, designated local contact, and spouses/domestic partners)

All applicants, owners and persons with financial interest, designated local contact, and the spouses or domestic partners of the above must complete this questionnaire to help determine eligibility for a commercial cannabis use permit with El Dorado County.

Please read and answer all of the following questions. ALL QUESTIONS MUST BE ANSWERED TRUTHFULLY AND COMPLETELY. If any responses fail to fully answer any question or misstate any material facts, it will result in a delayed review or recommendation of denial from the Sheriff's Office and could lead to a denial of the Commercial Cannabis Use Permit.

The commission of one or more of the offenses listed on this questionnaire may not automatically result in a recommendation of denial. The responses to these questions will be evaluated and considered in relationship to the entire background and considered under the relevant El Dorado County and state standards for commercial cannabis background checks. Remember, all responses are subject to verification.

If "Yes" is answered on any question, your explanation must be provided for each affirmative response on a separate Background Investigation Questionnaire Explanation sheet, fully explaining the circumstance. The application may be typed or hand-written.



El Dorado County Sheriff's Office

200 Industrial Drive Placerville, California 95667

Commercial Cannabis Use Permit and Background Application

BACKGROUND INVESTIGATION RELEASE

I am an applicant/owner of a proposed or existing commercial cannabis operation in El Dorado County or a person with financial interest, a designated local contact, or spouse/domestic partner required to have a background check completed through the Sheriff's Office for an application for a Commercial Cannabis Use Permit. I desire and request the El Dorado County Sheriff, and/or his/her employees, agents, and lawful representatives to take my photograph and fingerprints or use the information in this application for the purpose of conducting a background check to verify that I meet the qualifications required to obtain a Commercial Cannabis Use Permit or to be employed with such business as required by the El Dorado County Code and/or State Law.

I agree to truthfully provide any information requested or deemed necessary to provide to the State of California Department of Justice and the Federal Bureau of Investigation or any other law enforcement agency or third-party consultant authorized by the El Dorado County, including but not limited to the El Dorado County Sheriff.

I understand this will serve to disclose all of the information requested regarding my criminal and financial background. If I was unsure whether information should be disclosed, I disclosed that information to provide all potentially relevant information.

I agree to hold El Dorado County, its officers, employees, agents, or lawfully delegated representatives, harmless from any action(s), or damages whatsoever or at all, which may result from the taking of such fingerprints or forwarding them to the appropriate law enforcement agency for a records check and/or obtaining access to any other documentation which pertains to meeting the qualifications for a Commercial Cannabis Use Permit or Commercial Cannabis Annual Operating Permit. I further agree to hold the County of El Dorado, its officials, officers, employees, agents, and lawfully delegated representatives, harmless from any action(s) or damages whatsoever or at all which may result from the disclosure of said records.

I hereby declare and attest under penalty of perjury that, to the best of my knowledge, the information contained within and attached to this application is complete, true, and accurate. I understand a misrepresentation of fact is cause for rejection of this application, recommendation of denial of the Commercial Cannabis Use Permit, revocation of the Commercial Cannabis Use Permit, and/or non-renewal of the Commercial Cannabis Annual Operating Permit.

APPLICANT'S SIGNATURE	DATE	PERSON REVIEWING APPLICATION	DATE
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El Dorado County Sheriff's Office
 200 Industrial Drive Placerville, California 95667

Commercial Cannabis Use Permit and Background Application

COMMERCIAL CANNABIS BUSINESS APPLICANT INFORMATION

The Authorized Agent/Applicant must have the legal authority to bind the entity. Provide information about the person who is completing this application. This information should be for a singular person, **NOT** the business name. The Authorized Agent will be considered the primary contact for the application unless another contact is identified.

Name as Shown On →		LAST NAME ON APPLICATION	FIRST NAME ON APPLICATION	MIDDLE NAME ON APPLICATION
APPLICANT INFORMATION				
SOCIAL SECURITY NUMBER		LAST NAME ON SOCIAL SECURITY CARD	FIRST NAME ON SOCIAL SECURITY CARD	MIDDLE NAME ON SOCIAL SECURITY CARD
CALIFORNIA DRIVERS LICENSE NUMBER		LAST NAME ON CA DRIVER'S LICENSE	FIRST NAME ON CA DRIVER'S LICENSE	MIDDLE NAME ON CA DRIVER'S LICENSE
SEX <input type="checkbox"/> Male <input type="checkbox"/> Female	AGE	DATE OF BIRTH	RACE	HEIGHT
			WEIGHT	HAIR
			EYES	
LIST YOUR CURRENT HOME ADDRESS, CITY, ZIP CODE <u>[NO P.O. BOXES ALLOWED]</u>			PHONE NUMBER	EMAIL
LIST ANY OTHER NAMES YOU HAVE EVER USED (Maiden, Married, Nicknames, ETC.)			BIRTH COUNTY/STATE	LANGUAGES SPOKEN
CURRENT MAILING ADDRESS, CITY, ZIP CODE				
BUSINESS PROPERTY ADDRESS, CITY, ZIP			PROPERTY ZONE	PARCEL NUMBER
PLEASE PROVIDE THE FOLLOWING INFORMATION REGARDING YOUR SPOUSE/DOMESTIC PARTNER				
SPOUSE/DOMESTIC PARTNER LAST NAME		FIRST NAME	MIDDLE	DATE OF BIRTH
				PHONE NUMBER
CURRENT MAILING ADDRESS, CITY, ZIP CODE			CA DRIVER'S LICENSE	SOCIAL SECURITY NUMBER
ADDRESS HISTORY				
LIST ALL PREVIOUS HOME ADDRESSES FOR THE PAST FIVE YEARS. USE ADDITIONAL PAGES IF NECESSARY.				
1	DATES RESIDED	ADDRESS, CITY, STATE, ZIP		REASON FOR LEAVING
2	DATES RESIDED	ADDRESS, CITY, STATE, ZIP		REASON FOR LEAVING
3	DATES RESIDED	ADDRESS, CITY, STATE, ZIP		REASON FOR LEAVING
4	DATES RESIDED	ADDRESS, CITY, STATE, ZIP		REASON FOR LEAVING
STATEMENT OF PERJURY				
I DECLARE UNDER THE PENALTY OF PERJURY, UNDER THE LAWS OF THE STATE OF CALIFORNIA AND THE COUNTY OF EL DORADO, THAT THE FOREGOING IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.				
APPLICANT SIGNATURE		TITLE (Applicant/Property Owner)		DATE



El Dorado County Sheriff's Office

200 Industrial Drive Placerville, California 95667

Commercial Cannabis Use Permit and Background Application

CRIMINAL HISTORY

List all arrest or convictions (other than infractions for traffic violations). IF ADDITIONAL SPACE IS NEEDED, ATTACH ADDITIONAL SHEETS TO THE APPLICATION. PLEASE NOTE ANY FALSE STATEMENTS, MISLEADING STATEMENTS OR OMISSIONS ON THIS APPLICATION OR ANY ATTACHMENTS MAY BE GROUNDS TO RECOMMEND DENIAL OR REVOCATION OF A PERMIT.

ARREST DATE	ARRESTING AGENCY/ LOCATION/ COURT NAME	CHARGE/ REASON FOR ARREST
1	DISPOSITION (WHAT WAS THE OUTCOME OF THE CASE: Were you sentenced? Did you have to pay a fine? Probation? Parole? Etc.)	
ARREST DATE	ARRESTING AGENCY/ LOCATION/ COURT NAME	CHARGE/ REASON FOR ARREST
2	DISPOSITION (WHAT WAS THE OUTCOME OF THE CASE: Were you sentenced? Did you have to pay a fine? Probation? Parole? Etc.)	
ARREST DATE	ARRESTING AGENCY/ LOCATION/ COURT NAME	CHARGE/ REASON FOR ARREST
3	DISPOSITION (WHAT WAS THE OUTCOME OF THE CASE: Were you sentenced? Did you have to pay a fine? Probation? Parole? Etc.)	

COMMERCIAL CANNABIS EMPLOYMENT HISTORY

LIST ALL REGULATED COMMERCIAL CANNABIS EMPLOYMENT ONLY. PLEASE USE ADDITIONAL PAGES AS NEEDED

BUSINESS NAME	CITY / STATE	PHONE	DATES WORKED	CONTACT PERSON



El Dorado County Sheriff's Office
 200 Industrial Drive Placerville, California 95667

Commercial Cannabis Use Permit and Background Application

Provide information in the table below for all "owners" of the commercial cannabis activity or entity that is subject of the application, which includes "(1) a person with any ownership interest, however small, in the person applying for a permit, unless the interest is solely a security, lien, or encumbrance; (2) the chief executive officer of a nonprofit or other entity; (3) a member of the board of directors of a nonprofit entity; (4) a person who will be participating in the direction, control, or management of the person applying for a permit, including but not limited to a general partner of a partnership, a non-member manager or managing member of a limited liability company, and an officer or director of a corporation; or (5) a person who will share in any amount of the profits of the person applying for a permit or has a financial interest, as defined by the regulations promulgated by the Bureau of Cannabis Control, in the person applying for the permit."

El Dorado County Sheriff's Office must be notified in writing of any changes or additions to the individuals identified on this form. Under County Code Section 130.41.100(5)(E), "A Commercial Cannabis Annual Operating Permit is not transferrable and automatically expires upon any change of ownership to the applicant that results in a new owner or owners or new funding source. Before or upon the transfer of the business or addition of a new owner, an application for a new Commercial Cannabis Annual Operating Permit must be submitted."

NAME (LAST, FIRST MI)	BUSINESS RELATIONSHIP AND % OWNERSHIP	MAILING ADDRESS	PHONE NUMBER



El Dorado County Sheriff's Office
200 Industrial Drive Placerville, California 95667

Commercial Cannabis Use Permit and Background Application

FINANCIAL INFORMATION FORM

FINANCIAL HISTORY - Attach additional copies if needed

Section A - List all investments made into the applicant's commercial cannabis business

1. Name of Investor	Address	Phone Number
Term(s) of Investment	Date of Investment	Amount \$
2. Name of Investor	Address	Phone Number
Term(s) of Investment	Date of Investment	Amount \$
3. Name of Investor	Address	Phone Number
Term(s) of Investment	Date of Investment	Amount \$
4. Name of Investor	Address	Phone Number
Term(s) of Investment	Date of Investment	Amount \$

SECTION B - List all loans made to the applicant's commercial cannabis business

1. Name of Lender	Address	Phone Number
Term(s) of Loan	Security Provided For Loan	Date of Loan
Amount		\$
2. Name of Lender	Address	Phone Number
Term(s) of Loan	Security Provided For Loan	Date of Loan
Amount		\$
3. Name of Lender	Address	Phone Number
Term(s) of Loan	Security Provided For Loan	Date of Loan
Amount		\$

SECTION C - List all funds belonging to the applicant

Financial Institution Name	Address	Account Type	Account Number	Amount \$
Financial Institution Name	Address	Account Type	Account Number	Amount \$
Financial Institution Name	Address	Account Type	Account Number	Amount \$
Financial Institution Name	Address	Account Type	Account Number	Amount \$

SECTION D - List all gifts of any kind given to the applicant for use in conducting commercial cannabis activity

Name of Provider	Address	Phone Number	Value/Description of Gift
Name of Provider	Address	Phone Number	Value/Description of Gift
Name of Provider	Address	Phone Number	Value/Description of Gift



El Dorado County Sheriff's Office

200 Industrial Drive Placerville, California 95667

Commercial Cannabis Use Permit and Background Application

INFRACTION OFFENSES

1. If you have committed any of the following infractions within the past seven years, please answer "Yes". If you have not, please write "No".
 - a. Violation of city ordinances? _____
 - b. Violation of any county ordinances? _____

MISDEMEANOR OFFENSES

2. If you have committed any of the following misdemeanor offenses since reaching the age of 18, please answer "Yes." If you have not, please answer "No." **If you answered "Yes" to any of the following questions below, please provide further explanation on the Background Investigation Questionnaire Explanation Sheet.**

- | | | | |
|--|-------|---|-------|
| a. Petty theft | _____ | b. Vandalism | _____ |
| c. N.S.F. Checks | _____ | d. Drunk in Public | _____ |
| e. Joy Riding | _____ | f. Illegal Gambling | _____ |
| g. Hit and Run | _____ | h. Brandish a Weapon | _____ |
| i. Possess Alcohol as a Minor | _____ | j. Possess/use Altered ID or License | _____ |
| k. Prostitution | _____ | l. Defraud an Innkeeper | _____ |
| m. Soliciting a Prostitute | _____ | n. Indecent Exposure | _____ |
| o. Voyeurism | _____ | p. Possess Stolen Property | _____ |
| q. Impersonate Police Officer, Sheriff | _____ | r. Carry Concealed or Illegal Weapon | _____ |
| s. Make Annoying /Prank Phone Calls | _____ | t. Assault or Battery (includes fighting) | _____ |
| u. Drunk Driving | _____ | v. Hunt or Fish without a License | _____ |
| w. Other | _____ | | |



El Dorado County Sheriff's Office

200 Industrial Drive Placerville, California 95667

Commercial Cannabis Use Permit and Background Application

FELONY OFFENSES

3. If you have ever committed any of the following offenses, please write "Yes" on the line. If you have not, please write "No" on the line. **If you answered "Yes" to any of the following questions below, please provide further explanation on the Background Investigation Questionnaire Explanation Sheet.**

- | | | | |
|----------------------------|-------|-------------------------------------|-------|
| a. Murder | _____ | b. Unlawful Sexual Intercourse | _____ |
| c. Rape | _____ | d. Spousal Battery | _____ |
| e. Robbery | _____ | f. Burglary | _____ |
| g. Arson | _____ | h. Grand Theft | _____ |
| i. Forgery | _____ | j. Kidnapping | _____ |
| k. Embezzlement | _____ | l. Any Sexual Activity with a Child | _____ |
| m. Child Abuse | _____ | n. Forcible Sexual Activity | _____ |
| o. Auto Theft | _____ | p. Domestic Violence | _____ |
| q. Hit and Run with Injury | _____ | r. Aggravated Felonious Assault | _____ |
| s. Credit Card Theft | _____ | t. Tax Evasion | _____ |
| u. Other | _____ | | |

4. Have you ever been subject to a court order or proceeding, which prevented you from possessing, cultivating, or exporting cannabis/marijuana? _____



El Dorado County Sheriff's Office

200 Industrial Drive Placerville, California 95667

Commercial Cannabis Use Permit and Background Application

GENERAL QUESTIONS

5. Do you own any illegal firearms? _____
If so, please provide the number and type on a Background Investigation Questionnaire Explanation Sheet.
6. Have you ever discharged any firearm other than at an approved range, during the course of approved training, while hunting, or during military operation? _____
7. Have you ever been detained, questioned, investigated, or arrested for suspicion of having committed a criminal act, whether or not you were convicted? _____
8. Have you ever been questioned as a witness in any criminal investigation? _____
9. Have you ever been contacted by the police for any reason not previously discussed? _____
10. Have you ever been adjudged as a "Mentally Disordered Sex Offender"? _____
11. Have you ever carried, either on your person or in your vehicle, any type of weapon for protection?

12. Are you currently delinquent on any child support or alimony? _____
13. Have you ever failed to make or been late in paying any child support obligations you were legally required to make? _____
14. Have you ever been a member of, or supported financially or otherwise, any organization or group, which advocates, advises, or supports, the use of force or other unlawful means to deny other persons their rights under the Constitution of the United States or the Constitution of the State of California?

GENERAL QUESTIONS CONTINUED

15. Did you in any way cheat, lie, or commit fraud during the application or evaluation process or during any portion of the background process? _____



El Dorado County Sheriff's Office

200 Industrial Drive Placerville, California 95667

Commercial Cannabis Use Permit and Background Application

EMPLOYMENT HISTORY

16. Have you ever resigned from employment in lieu of termination or as the result of any allegations of misconduct, whether founded or not? _____
17. Have you ever taken anything from your employer without authorization? _____

DRIVING RECORD

18. Has your automobile insurance ever been cancelled for any reason? _____
19. Have you ever been refused a driver's license? _____
20. Has your driver's license ever been suspended or revoked for any reason? _____
21. Have you ever had a driver's license issued by another state or country? _____
22. Has your automobile insurance ever been placed in an assigned risk category? _____

GENERAL TOPICS

Please answer these questions as part of this questionnaire. If you answer "Yes" to any question, please use the Background Investigation Questionnaire Explanation Sheet for your explanations.

23. Do you go by any other name other than the ones you have used on this background questionnaire (including any maiden names)? _____
24. Have you ever slapped, punched, kicked, or otherwise injured any spouse, roommate, or romantic partner? _____



El Dorado County Sheriff's Office

200 Industrial Drive Placerville, California 95667

Commercial Cannabis Use Permit and Background Application

FOR APPLICANTS WITH MILITARY SERVICE

25. Did you ever serve in any branch of the military, whether active or reserve? _____

26. List every base, fort, camp, station, ship, post, and location where you were assigned on a Background Investigation Questionnaire Explanations Sheet. Include all common and military addresses (i.e., Military District of Washington, Fort Myers, VA, or U.S.S. Enterprise, Long Beach, CA). Include dates of assignment.

27. Did you ever receive any non-judicial punishment (Article 15, Captain's Mast) including any punishment which was expunged or removed from your record? _____

If you answered "Yes", list the date(s), offense(s), unit of assignment, post, base or station where assigned, and punishment imposed on a Background Investigation Questionnaire Explanation Sheet.

28. Were you ever subjected to Article 32 proceedings? _____

If you answered "Yes", list the date(s), offense(s), investigation officer, and location for each such proceeding on a Background Investigation Questionnaire Explanation Sheet.

29. Were you ever tried by court-martial? _____

If you answered "Yes", list each such proceeding to include where the court – martial was held, the type of court-martial, date, charge, and specifications of each court-martial and the findings on a Background Investigation Questionnaire Explanation Sheet.

30. Were you ever detained, arrested, jailed, or held by police or security forces in another country for anything other than minor traffic offenses? _____

If you answered "Yes" on a separate Background Investigation Questionnaire Explanation Sheet provide the date(s), location(s), police or security force(s) involved, and the disposition of each such contact.

31. Were you ever denied a security clearance or have a clearance revoked, suspended, or downgraded? _____

If you answered "Yes", please provide details on a Background Investigation Questionnaire Explanation Sheet.



El Dorado County Sheriff's Office

200 Industrial Drive Placerville, California 95667

Commercial Cannabis Use Permit and Background Application

DRUG USE HISTORY

32. Have you ever used, experimented with, consumed, possessed, manufactured, except as provided for by a written prescription issued by a licensed physician any of the following drugs? _____

If you answered "Yes" to question 32, please complete the following. If "No", please go on to question 33.

	Type or Name of Substance	One Time	More Than One Time
A.	Cocaine		
B.	Barbiturates		
C.	Amphetamines (Uppers)		
D.	Heroin		
E.	LSD, STP		
F.	Psilocybin, Peyote, Mushrooms		
G.	Opium, Morphine, Base		
H.	Steroids (Injected or Oral)		
I.	Toluene (glue)		
J.	Designer Drugs, Synthetics		
K.	Other		

Note: Any drug, which has been prescribed by a licensed physician pursuant to Federal Laws, need not be disclosed in this questionnaire. Recreational or experimental drug use is not protected under the Americans with Disabilities Act or state law.



El Dorado County Sheriff's Office

200 Industrial Drive Placerville, California 95667

Commercial Cannabis Use Permit and Background Application

SUPPLEMENTAL QUESTIONS

33. Are you a member or been associated with any criminal street gang? _____ If you answered "Yes", please explain in the box below.

34. Is there anything else you feel the background investigator should know about you or your experiences? _____ If you answered "Yes", please explain in the box below.

CERTIFICATION

I hereby declare and attest under penalty of perjury that, to the best of my knowledge, the information contained within and attached to this application is complete, true, and accurate. I understand any misstatements of material fact, omissions, incomplete answers, or inaccurate responses is cause for rejection of this application, recommendation of denial of the Commercial Cannabis Use Permit, revocation of the Commercial Cannabis Use Permit, and/or non-renewal of the Commercial Cannabis Annual Operating Permit.

Signature of Applicant

Date

Printed Name of Applicant



El Dorado County Sheriff's Office

200 Industrial Drive Placerville, California 95667

Commercial Cannabis Use Permit and Background Application

BACKGROUND INVESTIGATION QUESTIONNAIRE EXPLANATION SHEET

Applicant's Name: _____

I hereby declare and attest under penalty of perjury that, to the best of my knowledge, the information contained within and attached to this application is complete, true, and accurate. I understand any misstatements of material fact, omissions, incomplete answers, or inaccurate responses is cause for rejection of this application, recommendation of denial of the Commercial Cannabis Use Permit, revocation of the Commercial Cannabis Use Permit, and/or non-renewal of the Commercial Cannabis Annual Operating Permit.

Signature of Applicant

Date



El Dorado County Sheriff's Office

200 Industrial Drive Placerville, California 95667

Commercial Cannabis Use Permit and Background Application

BACKGROUND INVESTIGATION QUESTIONNAIRE EXPLANATION SHEET

Applicant's Name: _____

I hereby declare and attest under penalty of perjury that, to the best of my knowledge, the information contained within and attached to this application is complete, true, and accurate. I understand any misstatements of material fact, omissions, incomplete answers, or inaccurate responses is cause for rejection of this application, recommendation of denial of the Commercial Cannabis Use Permit, revocation of the Commercial Cannabis Use Permit, and/or non-renewal of the Commercial Cannabis Annual Operating Permit.

Signature of Applicant

Date



El Dorado County Sheriff's Office

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Commercial Cannabis Use Permit and Background Application

BACKGROUND INVESTIGATION QUESTIONNAIRE EXPLANATION SHEET

Applicant's Name: _____

I hereby declare and attest under penalty of perjury that, to the best of my knowledge, the information contained within and attached to this application is complete, true, and accurate. I understand any misstatements of material fact, omissions, incomplete answers, or inaccurate responses is cause for rejection of this application, recommendation of denial of the Commercial Cannabis Use Permit, revocation of the Commercial Cannabis Use Permit, and/or non-renewal of the Commercial Cannabis Annual Operating Permit.

Signature of Applicant

Date



County of El Dorado, CA

CANNABIS BUSINESS OWNER/FINANCIAL INTEREST/LOCAL CONTACT
BACKGROUND CHECK APPLICATION

Any false or misleading statements or omissions on this application or on the Commercial Cannabis Use Permit application may be grounds for a recommendation of denial. The interim background check process accomplished through the submission of information to HdL Companies is subject to the "Election and Agreement to Utilize Interim Background Check Process." As provided for in the "Election and Agreement to Utilize Interim Background Check Process," any failure to self-report or accurately answer any question on this self-disclosure application could result in the automatic revocation of any issued Commercial Cannabis Use Permit or Commercial Cannabis Annual Operating Permit. The "Election and Agreement to Utilize Interim Background Check Process" addresses this in greater detail and information shall not be submitted to HdL Companies unless the applicant has executed the "Election and Agreement to Utilize Interim Background Check Process."

Exhibit 1 - Background Questionnaire - Page 019

Applicant Information

Type of application: *

New owner / financial interest / local contact \$400

This fee includes the financial background check

Credit Card *

Card number MM / YY CVC

Credit Card Name *

First Name

Middle Name (optional)

Last Name

Email for credit card receipt *

Email for financial check (can only be used once per each applicant) *

Job Title (position on the application) *

Employee ID (assigned by your employer) *

Social Security Number *

Name as shown on Social Security Card *

First Name

Middle Name (optional)

Last Name

Driver's License # *

Driver's License State *

Name as shown on Driver's License *

First Name

Middle Name (optional)

Last Name

Upload a scan/picture of your ID. *

Choose File Remove File No File Chosen

File uploads may not work on some mobile devices.

List any other names you have ever used (maiden, married, nicknames, etc.) *

Sex *

Female

Male

Age *

Date of Birth *

Form for date of birth with input fields for month, day, and year, and a calendar icon.

Birth Country/State *

Race *

Height *

Weight *

Hair Color *

Color of Eyes *

Current Home Address (NO P.O. BOXES ALLOWED) *

Address Line 1

Address Line 2

City

State/Province

ZIP / Postal

Country

Contact phone # *

Cannabis Business Information

Legal Business Name *

Doing Business As (DBA) *

State Business License Number *

County Business License Number *

Enter "N/A" if not known.

Business Address *

Address Line 1

Address Line 2

City

State

ZIP Code

CRIMINAL HISTORY

Have you ever committed a crime, been cited for a crime, been arrested for a crime, been convicted of a crime, or been charged with a crime? If yes, please identify below, as well as the requested financial information. For purposes of this self-disclosure application, a "crime" includes any arrest, citation, conviction, or charge for any violation of any law or regulation in any jurisdiction or foreign jurisdiction, including but not limited to a violation of a city or county ordinance or a misdemeanor or felony under state or federal law. If you are unsure whether any prior incident is a "crime" that should be listed, you should list it. Please remember that, under the "Election and Agreement to Utilize Interim Background Check Process," a failure to self-report or accurately answer any question on the self-disclosure application for the interim background check process may be a material misrepresentation warranting the automatic revocation of any Commercial Cannabis Permits.

How many times have you committed a crime, been cited for a crime, been arrested for a crime, been convicted of a crime, or been charged with a crime. Please refer above for what constitutes a "crime." *

0

Please explain each citation, arrest, or conviction *

Please explain any relevant financial issues (i.e. bankruptcy, etc.) *

Prior Regulated Cannabis Employers

of Prior Regulated Cannabis Employers During the Last Three (3) Years *

0

Statement of Perjury

I DECLARE UNDER THE PENALTY OF PERJURY, UNDER THE LAWS OF THE STATE OF CALIFORNIA, THAT THE FOREGOING IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

Signature *

Use your mouse or finger to draw your signature above

[\[clear\]](#)

Criminal Background Investigation Release

To Whom It May Concern:

I am an applicant, local contact, or hold a financial interest in a proposed commercial cannabis business in the County of El Dorado. I desire and request HdL Companies ("HdL") and the Sheriff of the County of El Dorado and/or his agents, employees, or lawful representative(s) to use the information in this application for the purpose of conducting a criminal and financial background check to verify that I meet the qualifications required to obtain a Commercial Cannabis Use Permit to operate with such business as required by the El Dorado County Code and state Law.

I understand this will serve to disclose all of the information requested regarding my criminal and financial background. If I was unsure whether information should be disclosed, I disclosed that information to provide all potentially relevant information. I further agree to hold the County of El Dorado, its officers, agents, or lawfully delegated representatives, harmless from any action(s) or damages whatsoever or at all which may result from the disclosure of said records.

By signing this application, I acknowledge, understand, and agree to the following:

1. HdL will not utilize Live Scan or identity verification through fingerprinting. Instead, I am electing to self-disclose all criminal history and requested information on this self-disclosure application submitted to HdL.
2. HdL will seek to confirm given information with the use of publicly available databases.
3. HdL will provide the results of its investigation and self-disclosure application directly to the County and identify any information it determined was omitted from the self-disclosure application or reported inaccurately. The Sheriff's Office will then review this information, interview me if necessary, and make a conditional recommendation to the Planning Commission consistent with the standards in County Code Section 130.41.100(4)(G) based on this information.
4. All documents utilized in the background check process are public records and may be made available to the public if requested.
5. I have executed an "Election and Agreement to Utilize Interim Background Check Process" and am bound to all terms therein, which are incorporated herein by reference.

Signature *

Use your mouse or finger to draw your signature above

[clear]

Submit Form

Exhibit 2
2018 Ballot Measure Language and Arguments –
Relevant Pages Measures N, P, Q, R and S

EL DORADO



COUNTY OF



**CONSOLIDATED GUBERNATORIAL
GENERAL ELECTION**

TUESDAY, NOVEMBER 6, 2018

**Supplemental
Voter Information Pamphlet
County Measures Only**

IMPORTANT NOTICE

This pamphlet contains only the information related to the county wide measures J, N, P, Q, R, S, U, and V. All other local voter information will be sent in a separate mailing that will be included with your vote-by-mail ballot package or your sample ballot package. Voter information is also available online at www.edcgov.us/elections.

**POLLS OPEN AT 7 A.M. AND CLOSE AT 8 P.M.
VOTE ON ELECTION DAY!**



COUNTY WIDE MEASURE TEXT PAGES

The following pages may include
any/all of the following items:

BALLOT MEASURES
ANALYSES
ARGUMENTS, FOR & AGAINST

**ARGUMENTS IN SUPPORT OF OR IN OPPOSITION TO THE
PROPOSED LAW ARE OPINIONS OF THE AUTHORS**

FULL TEXT OF MEASURE N

AN ORDINANCE PROVIDING FOR THE TAXATION, PERMITTING, AND ENFORCEMENT OF INDEPENDENTLY AUTHORIZED COMMERCIAL CANNABIS ACTIVITIES

WHEREAS, if any commercial cannabis activities are independently authorized in the unincorporated areas of El Dorado County ("County"), a tax generating revenue for the privilege of engaging in such commercial cannabis activities would provide revenue for the County for general government purposes, including funding for programs affected by cannabis, such as law enforcement and the eradication of illegal cannabis cultivation and public health education, including educating youth about the harms of recreational cannabis; and

WHEREAS, revenue from a general tax on commercial cannabis activities could also provide needed revenue for Countywide services, such as social services, parks, and roads; and

WHEREAS, if any commercial cannabis activities are independently authorized in the unincorporated areas of the County, a program providing for discretionary permitting of any authorized commercial cannabis activities, fees to cover the costs of the program, and enforcement procedures and fines are necessary; and

WHEREAS, this ordinance does not authorize any commercial cannabis activity, but establishes a general excise tax and discretionary permitting and enforcement program in the event that any commercial cannabis activity is authorized by the voters or the Board of Supervisors; and

WHEREAS, Section 26200 of the Business and Professions Code preserves the County's ability to adopt and enforce local ordinances to regulate commercial cannabis businesses, including but not limited to local zoning and land use requirements and business license requirements; and

WHEREAS, Revenue and Taxation Code Section 34021.5, subdivisions (a)(1) and (a)(2) authorize the County to "impose a tax on the privilege of cultivating, manufacturing, producing, processing, preparing, storing, providing, donating, selling, or distributing cannabis or cannabis products by a licensee operating under Division 10 (commencing with Section 26000) of the Business and Professions Code"; and

WHEREAS, after 18 public meetings discussing cannabis, the Board of Supervisors created the El Dorado County Ad Hoc Cannabis Committee on December 12, 2017 with the purpose of studying and creating ballot measures for different cannabis commercial uses tied to taxation; and

WHEREAS, after 9 public meetings with participation and presentations from a diverse spectrum of the public in support of and opposed to commercial cannabis activities, the Ad Hoc Cannabis Committee prepared this ordinance and the Board of Supervisors voted to place it on the ballot for consideration by the voters of El Dorado County.

THE PEOPLE OF THE COUNTY OF EL DORADO DO ORDAIN AS FOLLOWS:

Section 1. Section 130.14.280 of Title 130, Article 9 of the El Dorado County Ordinance Code entitled "Taxation of Commercial Cannabis Activities" is hereby enacted to read as follows:

**ARTICLE 9 – MISCELLANEOUS
CHAPTER 130.14 – CANNABIS**

Sec. 130.14.280 – Taxation of Commercial Cannabis Activities.

1. Purpose.

A. The purpose of this ordinance is to provide for a voter-approved tax pursuant to California Elections Code Section 9140, California Government Code Section 53723, and California Revenue and Taxation Code Section 34021.5, as may be amended, on the privilege to engage in any commercial cannabis activity in the unincorporated area of the County of El Dorado, provided that the activity is authorized in an independent ordinance, either at the time of passage of this tax or in the future. The Commercial Cannabis Activities Tax is an excise tax, i.e., it is not a sales and use tax, a transaction and use tax, a tax upon income, a tax upon real property, or any other type of tax.

B. While this section was enacted by the voters, the Board of Supervisors retains discretion to amend the procedures and regulations provided in this ordinance without further voter approval, with the exception of any action that would broaden or increase the taxes beyond the scope and rates established herein.

C. This section is enacted solely for the purpose of raising revenue for general County purposes, and is not intended to be regulatory. The intent of this section is to levy a tax on all commercial cannabis activities that operate in the unincorporated area of the County, regardless of whether such activities would have been legal at the time this section was enacted. Nothing in this section shall be interpreted to authorize or permit any commercial cannabis activity that would not otherwise be legal or permissible under laws, ordinances, and regulations applicable to the activity at the time the activity is undertaken. Nothing in this chapter is intended, nor shall be construed, to exempt cannabis businesses from compliance with all applicable provisions of the El Dorado County Code and all other applicable state and federal laws. The payment of a commercial cannabis activity tax required by this chapter, and its acceptance by the County, shall not entitle any person to carry on any commercial cannabis activity unless the person has complied with all of the requirements of this Code and all other applicable state laws and regulations.

2. General Tax.

The Commercial Cannabis Activities Tax is a general tax enacted solely for general governmental purposes of the County and not for specific purposes. The tax revenue raised by this Chapter shall be placed in the County's general fund and used for unrestricted general revenue purposes.

3. Definitions.

The terms and phrases in this section shall have the meaning ascribed to them in Section 130.14.290(2), unless the context in which they are used clearly suggests otherwise.

4. Tax Imposed.

A. There is established and imposed a Commercial Cannabis Activities Tax at the rates set forth in this section.

B. Each person engaged in any commercial cannabis activity in the unincorporated area of the County, regardless if the person has been issued a permit to operate lawfully in the County or is operating unlawfully, shall pay an annual Commercial Cannabis Activities Tax. Said tax shall be imposed upon any and all commercial cannabis activities, regardless of whether the activity is undertaken individually, collectively, or cooperatively, and regardless of whether the activity is for compensation or gratuitous.

C. The County Board of Supervisors may, in its discretion, at any time by resolution or ordinance, set the initial rate and/or adjust the tax rate for all persons engaged in any commercial cannabis activity in the unincorporated area of the County subject to the minimum and maximum rates established for each type of commercial cannabis activity in this section. The Board may establish different tax rates for each commercial cannabis activity type, state license type, or subset of activity within each type of commercial cannabis activity and establish different tax rates for medicinal and recreational adult use.

D. Tax on Cultivation Type Commercial Cannabis Activities.

1. Every person who is engaged in cultivation type commercial cannabis activity in the unincorporated area of the County shall pay an annual Commercial Cannabis Activities Tax, which the Board of Supervisors shall set based on either (1) canopy square footage; or (2) gross receipts. The tax may be set under either method within the range provided herein.
2. The minimum and maximum rates of the Commercial Cannabis Activities Tax for cultivation type commercial cannabis activity, set under either the canopy square footage or gross receipts method, shall be as follows:

Commercial Cannabis Activity Type: Cultivation	Square Footage - Minimum	Square Footage - Maximum	Gross Receipts - Minimum	Gross Receipts - Maximum
Nursery	\$1.00	\$30.00	1%	15%
Outdoor (specialty cottage)	\$1.00	\$30.00	1%	15%
Outdoor (specialty)	\$1.00	\$30.00	1%	15%
Outdoor (small)	\$1.00	\$30.00	1%	15%
Outdoor (medium)	\$1.00	\$30.00	1%	15%
Outdoor (large)	\$1.00	\$30.00	1%	15%
Indoor (specialty cottage)	\$1.00	\$30.00	1%	15%
Indoor (specialty)	\$1.00	\$30.00	1%	15%
Indoor (small)	\$1.00	\$30.00	1%	15%
Indoor (medium)	\$1.00	\$30.00	1%	15%
Indoor (large)	\$1.00	\$30.00	1%	15%
Mixed-Light (specialty cottage)	\$1.00	\$30.00	1%	15%
Mixed-Light (specialty)	\$1.00	\$30.00	1%	15%
Mixed-Light (small)	\$1.00	\$30.00	1%	15%
Mixed Light (medium)	\$1.00	\$30.00	1%	15%
Mixed-Light (large)	\$1.00	\$30.00	1%	15%

E. Tax on Distribution Type Commercial Cannabis Activities.

1. Every person, including wholesaler, jobber, manufacturer, or supplier, who is engaged in distribution type commercial cannabis activity in the unincorporated area of the County shall pay an annual Commercial Cannabis Activities Tax, which shall be determined on a gross receipts per fiscal year basis.
2. The minimum and maximum rates of the Commercial Cannabis Activities Tax for distribution type commercial cannabis activity shall be as follows:

Commercial Cannabis Activity Type: Distribution	Minimum	Maximum
Distributor	0%	10%
Distributor (Transportation-Only)	0%	10%

F. Tax on Manufacturing Type Commercial Cannabis Activities.

1. Every person who is engaged in manufacturing type commercial cannabis activity in the unincorporated area of the County shall pay an annual Commercial Cannabis Activities Tax, which shall be determined on a gross receipts per fiscal year basis.
2. The minimum and maximum rates of the Commercial Cannabis Activities Tax for manufacturing type commercial cannabis activity shall be as follows:

Commercial Cannabis Activity Type: Manufacturing	Minimum	Maximum
Manufacturing (Level 1)	2.5%	10%
Manufacturing (Level 2)	2.5%	10%

G. Tax on Retailer Type Commercial Cannabis Activities.

1. Every person who is engaged in retailer type commercial cannabis activity in the unincorporated area of the County shall pay an annual Commercial Cannabis Activities Tax, which shall be determined on a gross receipts per fiscal year basis.
2. The minimum and maximum rates of the Commercial Cannabis Activities Tax for retailer type commercial cannabis activity shall be as follows:

Commercial Cannabis Activity Type: Retailer	Minimum	Maximum
Retailer (Delivery-Only)	0.5%	10%
Retailer	4%	10%

H. Tax on Testing Laboratory Type Commercial Cannabis Activities.

1. Every person who is engaged in testing laboratory type commercial cannabis activity in the unincorporated area of the County shall pay an annual Commercial Cannabis Activities Tax, which shall be determined on a gross receipts per fiscal year basis.
2. The minimum and maximum rates of the Commercial Cannabis Activities Tax for testing laboratory type commercial cannabis activity shall be as follows:

Commercial Cannabis Activity Type: Testing Laboratory	Minimum	Maximum
Testing Laboratory	0.5%	5%

I. Tax on Microbusiness Type Commercial Cannabis Activities.

A microbusiness, as defined in Business and Professions Code Section 26070, subdivision (a)(3)(A), shall pay the tax rates applicable for each commercial cannabis activity type engaged in as part of the microbusiness. The Board of Supervisors may

determine that the tax for one or more commercial cannabis activity type may not be charged against all microbusinesses provided that the exemption is applied uniformly to all microbusiness.

5. Exemptions.

A. The Board of Supervisors may, in its discretion, at any time by ordinance, exempt or except certain categories of commercial cannabis activities from the Commercial Cannabis Activities Tax provided that any exemption applies equally to all businesses engaged in that category of commercial cannabis activity.

B. The provisions of this chapter shall not apply to personal cannabis cultivation, as defined by Health and Safety Code Section 11362.2, as may be amended, or as set forth in Section 130.14.260 of the El Dorado County Code, as amended.

C. The provisions of this chapter shall not apply to personal use of cannabis that is expressly exempted from state licensing requirements, and for which the individual receives no compensation whatsoever related to that personal use, including, personal adult, recreational use, as defined by Health and Safety Code Section 11362.1, as may be amended, or personal medicinal use, as defined by Health and Safety Code Section 11362.7 et seq., as may be amended.

6. Tax, Penalties, Interest, and Fees as a Debt.

A. The amount of any tax imposed by this chapter shall be deemed a debt owed to the County.

B. Any penalties, interest, and/or fees required to be paid under the provisions of this chapter shall also be deemed a debt owed to the County.

C. Any person owing any tax, penalties, interest, and/or fees shall be liable in an action brought in the name of the County for the cost recovery of such debt. The provisions of this chapter shall not be deemed a limitation upon the right of the County to bring any other action including criminal, civil, and equitable actions, based upon the failure to pay the tax imposed by this chapter or the failure to comply with any of the provisions hereof.

D. This chapter is subject to the fees of Chapter 3.29, as applicable.

7. Administration.

A. It shall be the duty of the County Treasurer-Tax Collector to collect the taxes, penalties, and fees and perform the duties required by this chapter.

B. For purposes of administration and enforcement of this chapter generally, the County Treasurer-Tax Collector may from time to time promulgate such administrative rules and procedures consistent with the purpose, intent, and express terms of this chapter as he or she deems necessary to implement or clarify such provisions or aid in enforcement.

C. The County Treasurer-Tax Collector may take such administrative actions as needed to administer the tax, including but not limited to:

1. Provide to all commercial cannabis activities taxpayers forms for the reporting of the tax;
2. Provide information to any taxpayer concerning the provisions of this chapter;
3. Receive and record all taxes remitted to the County as provided in this chapter;
4. Maintain records of taxpayer reports and taxes collected pursuant to this chapter;
5. Assess penalties and interest to taxpayers pursuant to this chapter; or waive such penalties and interest when there is demonstrated evidence of extenuating circumstances that were clearly beyond the control of the taxpayer; and
6. Determine amounts owed and enforce collection pursuant to this chapter.

8. Business License; Change of Ownership.

A. In order that the County will have an accurate record of persons liable for paying the Commercial Cannabis Activities Tax hereunder, prior to commencing commercial cannabis activities, each person engaged in any commercial cannabis activity shall obtain a Business License from the County Treasurer-Tax Collector, under Chapter 5.04, subject to all of the requirements of that Chapter, payment of the fee under Chapter 5.16, and enforcement under Chapter 5.36.

B. In addition to the provisions of Section 5.08.110 addressing the transfer of the ownership of a business, in the event that there is a change in ownership of any cannabis business:

1. The new owner is subject to an audit by the County Treasurer-Tax Collector or his or her designee; and
2. Unless otherwise provided by law, it is the joint and several liability of both the seller and buyer to remit any tax due up until the date of sale; otherwise, a Certificate of Delinquent Commercial Cannabis Activities Tax Lien may be filed against both the seller and/or buyer in an amount determined by the County Treasurer-Tax Collector.

C. Issuance of a Business License does not and shall not be construed to constitute authorization by the County of any commercial cannabis activity, even if the Business License is issued for a commercial cannabis activity.

9. Reporting and Remittance of Tax.

A. The Commercial Cannabis Activities Tax imposed by this chapter shall be imposed on a fiscal year basis and shall be due and payable in quarterly installments as follows:

1. If the commercial cannabis activities tax is set under the canopy square footage method, the tax due shall be based on the square footage of the cannabis business' canopy as determined by the square footage stated in the Commercial Cannabis Annual Operating Permit for that year and the quarterly rate shall be twenty-five percent (25%) of the applicable annual rate. If the cultivation begins in the middle of a fiscal year, the County Treasurer-Tax Collector shall prorate, in monthly increments, the amount due for the fiscal year.
2. If the Commercial Cannabis Activities Tax is owed based on gross receipts, the tax due shall be based on the gross receipts for the quarter.

B. The tax for each fiscal quarter shall be due and payable on that same date as the statement for the fiscal quarter is due. The tax due shall be no less than the quarterly installment due, but the taxpayer may at any time pay the entire amount due for the given fiscal year.

C. Each person owing a Commercial Cannabis Activities Tax shall, on or before the last day of the month following the close of each fiscal year quarter:

1. File with the County Treasurer-Tax Collector a statement of the tax owed for that fiscal quarter and the basis for calculating that tax. The County Treasurer-Tax Collector may require that the statement be submitted on a form prescribed by the County Treasurer-Tax Collector.
2. Remit to the County Treasurer-Tax Collector the tax due. Prior to remitting a payment under this chapter, the payee shall make an appointment with the County Treasurer-Tax Collector.

D. The County Treasurer-Tax Collector may, in his/her discretion, establish shorter report and payment periods for any taxpayer as the County Treasurer-Tax Collector deems necessary to ensure collection of the Commercial Cannabis Activities Tax.

E. The County Treasurer-Tax Collector may, in his/her discretion as part of administering the Commercial Cannabis Activities Tax, modify the form of payment and take such other administrative actions as needed to facilitate collection of the tax.

F. Upon cessation of a commercial cannabis activity for any reason, tax statements and payments for all outstanding taxes owed to the County shall be immediately due to the County. Tax statements and remittances will be deemed timely made if actually received by the County Treasurer-Tax Collector within thirty (30) calendar days following cessation of the commercial cannabis activity; otherwise the taxes shall be deemed delinquent and subject to penalties hereunder.

G. Any person required to remit taxes in excess of one-hundred thousand dollars (\$100,000.00) in any given fiscal year shall be required to make remittances on a monthly basis in the succeeding fiscal year. Said remittances shall be due on or before the last day of the month following the last day of the preceding month.

H. The correctness of any tax return filed pursuant to this chapter shall be subject to audit and verification by the County Treasurer-Tax Collector, or designee, who is authorized and empowered to inspect and audit the books and records of any cannabis business at a location to be determined by the County Treasurer-Tax Collector, including but not limited to the County Treasurer-Tax Collector's office or the cannabis business office. No cannabis business shall refuse or fail to allow the County Treasurer-Tax Collector, or designee, to inspect and audit such books and records, or shall refuse or fail to provide such additional information as requested by the County Treasurer-Tax Collector, or designee.

I. For the purposes of this Section, "on or before" shall be interpreted as: (1) hand delivery to the County Treasurer-Tax Collector during regular business hours; or (2) postal delivery of a properly stamped and addressed envelope containing the return and full amount of the tax to the United States Postal Service. Delivery to the Postal Service must be verified by cancellation by the Postal Service showing a postmark date no later than midnight on the date the tax is due. If the due date of the tax falls on a United States Post Office closure date, the tax due date shall be the next business day (excluding federal holidays). Private postal meter strips and dates shall not be considered evidence of delivery to the United States Postal Service.

J. Whenever any payment, statement, report, request, or other communication is due, it must be received by the County Treasurer-Tax Collector on or before the final due date. In accordance with Subdivision (I) of this Section, a postmark may be accepted as timely remittance. If the due date falls on Saturday, Sunday, or a holiday, the due date shall be the next regular business day on which the County is open to the public.

10. Deficiency.

A. If the County Treasurer-Tax Collector is not satisfied that any return filed as required under the provisions of this chapter is correct, or that the amount of tax is correctly computed, he/she may compute and determine the amount to be paid and make a deficiency determination upon the basis of the facts contained in the statement or upon the basis of any information in his/her possession or that may come into his/her possession within three (3) calendar years of the date the tax was originally due and payable.

B. One or more deficiency determinations of the amount of tax due for a period or periods may be made.

C. When a person discontinues engaging in a business, a deficiency determination may be made at any time within three (3) calendar years thereafter as to any liability arising from engaging in such business whether or not a deficiency determination is/was issued prior to the date the tax would otherwise be due, or issued after the discontinuation of the business.

D. Whenever a deficiency determination is made, a notice shall be given to the person concerned in accordance with Section 130.14.280(23).

11. Delinquency; Notice Not Required by County.

A. Unless otherwise specifically provided under other provisions of this chapter, the taxes required to be paid pursuant to this chapter shall be deemed delinquent if not received by the County Treasurer-Tax Collector on or before the due date as provided in this chapter.

B. The County Treasurer-Tax Collector is not required to send a delinquency or other notice or bill to any person subject to the provisions of this chapter. Failure to send such notice or bill shall not affect the validity of any tax or penalty due under the provisions of this chapter.

12. Penalties, Fees, and Interest.

A. The Commercial Cannabis Activities Tax shall be that amount due and payable from the first day in which the person was engaged in commercial cannabis activities in the unincorporated area of the County, together with all applicable penalties, fees, and interest calculated in accordance with this Section.

B. Any person who fails or refuses to pay any Commercial Cannabis Activities Tax required to be paid pursuant to this chapter on or before the due date shall pay penalties, fees, and interest as follows:

1. **Initial Delinquency.** A penalty equal to twelve and a half percent (12.5%) of the amount of the tax, in addition to the amount of the tax.
2. **Continuing Delinquency.** If the tax remains unpaid for a period exceeding thirty (30) calendar days beyond the date on which the remittance first became delinquent, an additional penalty equal to twelve and a half percent (12.5%) of the amount of the tax, shall be imposed.
3. **Bank Fees.** Whenever a check or electronic payment is submitted in payment of a Commercial Cannabis Activities Tax and the payment is subsequently returned unpaid by the bank for any reason, the taxpayer will be liable for the tax amount due plus any bank fees, penalties, and interest as provided for in this Chapter, and any other amount allowed under State law.
4. **Interest.** In addition to the penalties and/or fees amounts imposed, interest shall be applied at the rate of one and one-half percent (1.5%) per month on the first day of the month for the full month, and will continue to accrue monthly on the tax and penalty until the balance is paid in full.

C. In addition to the foregoing amounts, if the County determines that any remittance of the Commercial Cannabis Activities Tax due under this chapter is due to fraud or fraudulent, a penalty of twenty-five percent (25%) of the amount of the tax that should have been paid shall be added thereto in addition to penalties and interest otherwise stated in this chapter and any other penalties allowed by law.

13. Waiver of Penalties.

The County Treasurer-Tax Collector may waive the penalties imposed upon any person under this chapter, if:

1. The person engaged in commercial cannabis activities requests a waiver of penalties by submitting a Request for Waiver to the County Treasurer-Tax Collector within ten (10) calendar days after issuance of a Notice of Assessment.
2. The person provides evidence satisfactory to the County Treasurer-Tax Collector that failure to pay timely was due to circumstances beyond the control of the person and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, and the person paid the delinquent Commercial Cannabis Activities Tax and accrued interest owed the County prior to applying to the County Treasurer-Tax Collector for a waiver.

3. The amount determined to be owed to the County shall be due immediately. Remittances will be deemed timely made if actually received by the County Treasurer-Tax Collector within ten (10) calendar days; otherwise the taxes shall be deemed delinquent and subject to penalties under Section 130.14.280(12).

14. Refunds; Credits.

- A. No refund shall be made of any tax collected pursuant to this chapter, except as provided in Section.
- B. No refund of any tax collected pursuant to this chapter shall be made because of cessation of the commercial cannabis activity, discontinuation, dissolution, or other termination of the cannabis business.
- C. Whenever the amount of any tax or penalty under this chapter has been overpaid, paid more than once, or has been erroneously or illegally collected or received by the County under this chapter, it may be refunded to the claimant who paid the tax; provided a written claim, stating under penalty of perjury under the laws of the State of California the specific grounds upon which the claim is founded, is filed with the County Treasurer-Tax Collector within one (1) calendar year of the date of payment. The claim shall be on forms furnished by the County Treasurer-Tax Collector.
- D. Any person entitled to a refund of Commercial Cannabis Activities Taxes paid hereunder may elect, in writing, to have such refund applied as a credit against such person's taxes which will become due for the next fiscal year quarter.
- E. In the event that the Commercial Cannabis Activities Tax was erroneously paid and the error is attributable to the County, the County shall refund the amount of tax paid up to one (1) calendar year from when the error was identified, provided in no case, shall a claim for payment be made more than three years from the date of the actual payment of the tax.
- F. The County Treasurer-Tax Collector, his or her designee or any other County officer charged with the administration of this chapter, shall have the right to examine and audit all the books and business records of the claimant in order to determine the eligibility of the claimant to the claimed refund. No claim for refund shall be allowed if the claimant refuses to allow such examination of claimant's books and business records after request by the County Treasurer-Tax Collector, his or her designee or any other County officer charged with the administration of this chapter, to do so.
- G. The County Treasurer-Tax Collector may collect a fee adopted by the Board of Supervisors to pay for the cost of examination and audit should the books and records be provided in a form insufficient to allow the County Treasurer-Tax Collector to make a determination on the claim for the refund.
- H. No refund of any tax collected pursuant to this chapter shall be made because of the discontinuation, dissolution, or other termination of a cannabis business.

15. Notice of Assessment.

- A. Under any of the following circumstances, the County Treasurer-Tax Collector may issue a Notice of Assessment of the amount of tax owed by a person under this chapter at any time:
1. If the person has not filed a complete statement required under the provisions of this chapter;
 2. If the person has not paid the tax due under the provisions of this chapter;
 3. If the person has not, after demand by the County Treasurer-Tax Collector, filed a corrected statement, or furnished to the County Treasurer-Tax Collector adequate substantiation of the information contained in a statement already filed, or paid any additional amount of tax due under the provisions of this chapter.
- B. The Notice of Assessment shall be served in accordance with Section 130.14.280(23).
- C. The Notice of Assessment shall separately set forth the amount of any tax due. The amount due shall include the amount of any penalties or interest accrued on each amount through the date of the Notice of Assessment.
- D. If the amount of tax due is unknown, the County Treasurer-Tax Collector may estimate the amount of tax due based on consideration of all information within their knowledge concerning the business and activities of the person assessed. For purposes of estimating the amount of tax due, there shall be a rebuttable presumption that the minimum amount of tax due is the same as the maximum amount of tax due during any quarter during the previous fiscal year.

16. Assessment Hearing.

- A. Within ten (10) calendar days after the date of service of the Notice of Assessment, the person may apply in writing to the County Treasurer-Tax Collector for a hearing on the assessment.
- B. If application for a hearing is not made within the time herein prescribed, the tax, penalties, fees, and/or interest determined by the County Treasurer-Tax Collector shall become final and conclusive, and shall be immediately due and payable.
- C. If such application is made, the County Treasurer-Tax Collector shall, upon receipt of such application, cause the matter to be set for hearing. The hearing shall be held not fewer than ten (10) calendar days and not more than forty-five (45) calendar days from receipt of the written request for hearing, unless a later date is agreed to by the County Treasurer-Tax Collector and the person requesting the hearing.
- D. Notice of the hearing shall be given by the County Treasurer-Tax Collector to the person requesting such hearing not fewer than five (5) business days prior to such hearing. The notice shall set the date, time and place for hearing and shall order the person requesting the hearing to show cause why such amount specified in the Notice of Assessment should not be confirmed.
- E. The person requesting the hearing may appear and offer evidence at the hearing why the assessment as determined by the County Treasurer-Tax Collector should not be confirmed and fixed as the tax, penalties, fees, and/or interest due.
- F. After such hearing the County Treasurer-Tax Collector shall determine the proper tax to be charged and shall issue, in accordance with Section 130.14.280(23), a Notice of Determination of Tax Due to the person requesting the hearing stating the County Treasurer-Tax Collector's determination and the amount of tax, penalties, fees, and interest.
- G. The amount determined to be due shall be payable within fifteen (15) calendar days of written notice unless it is appealed to the Board of Supervisors.

17. Appeal From Assessment Hearing.

Any person aggrieved by any decision of the County Treasurer-Tax Collector with respect to the amount of tax, interest, penalties, and fees, if any, due under this chapter may appeal the decision by filing a written Notice of Appeal with the County Treasurer-Tax Collector within 30 days of the decision being appealed. The appeal shall be decided by a hearing officer under the procedures in sections 9.02.350 to sections 9.02.440. The administrative order issued by the hearing officer shall be final and conclusive and shall be served upon the appellant in accordance with Section 130.14.280(23). Any amount found to be owed to the County shall be immediately due and payable upon the service of the decision.

18. Enforcement.

- A. In addition to any other remedies available under federal, state, or local law, if any amount required to be paid to the County under this

chapter is not paid when due, the County Treasurer-Tax Collector may, within three (3) calendar years after the amount is due, record a certificate of lien specifying the amount of taxes, fees, interest and penalties due, and the name and address of the individual or business as it appears on the records of County Treasurer-Tax Collector. The lien shall also specify that the County Treasurer-Tax Collector has complied with all provisions of this chapter in the determination of the amount required to be paid. From the time of the filing for record, the amount required to be paid, together with penalties, fees and interest thereon, constitutes a lien upon all real property in the County owned by the individual or business, or subsequently acquired by the individual or business before the lien expires. The lien has the force, effect, and priority of a judgment lien and shall continue for ten (10) calendar years from filing of the certificate unless sooner released or otherwise discharged.

B. At any time within three (3) calendar years after any individual or business is delinquent in the payment of any amount required to be paid under this chapter or within three (3) calendar years after the last recording of a certificate of lien under Subdivision (B) of this Section, the County Treasurer-Tax Collector may issue a warrant for the enforcement of any liens and for the collection of any amount required to be paid to the County under this chapter. The warrant shall be directed to the Sheriff and shall have the same effect as a writ of execution. The warrant shall be levied and sale made pursuant to it in the same manner and with the same effect as a levy of and a sale pursuant to a writ of execution. The County Treasurer-Tax Collector may pay or advance to the Sheriff, the same fees, commissions and expenses for service provided by law for similar services pursuant to a writ of execution.

C. At any time within three (3) calendar years after recording a lien against any individual or business, if the lien is not discharged and released in full, the County Treasurer-Tax Collector may forthwith seize any asset or property, real or personal (including bank account), of the operator and sell at public auction or sale the asset or property, or a sufficient part of it to pay the amount due together with any penalties and interest imposed for the delinquency and any cost incurred on account of the seizure and sale. Assets or property of the business subject to seizure and sale subject to this chapter shall not include any assets or property which is exempt from execution under the provisions of Code of Civil Procedure.

D. Suspension or revocation of a Commercial Cannabis User Permit and Commercial Cannabis Annual Operating Permit pursuant to Section 130.14.290. The following shall constitute grounds for suspending or revoking a Commercial Cannabis User Permit and Commercial Cannabis Annual Operating Permit, in addition to any additional grounds identified in Section 130.14.290:

1. Failure to pay any cannabis business tax due under this chapter within thirty (30) calendar days of the due date.
2. Failure to cooperate with the County Treasurer-Tax Collector, or designee, as determined by County Treasurer-Tax Collector, or designee, during an audit pursuant to this chapter.
3. Underpaying any business tax due under this chapter in any period by fifty percent (50%) or more.
4. If the County determines that the nonpayment of any Commercial Cannabis Activities Tax due under this chapter is due to fraud.

19. Apportionment.

If a person subject to the Commercial Cannabis Activities Tax is operating both within and outside the unincorporated County, it is the intent of the County to apply Commercial Cannabis Activities Tax so that the measure of the tax fairly reflects the proportion of the taxed activity actually carried on in the unincorporated area of the County. To the extent Federal or State law requires that any tax due from any taxpayer be apportioned, the taxpayer may indicate said apportionment on their tax return. The County Treasurer-Tax Collector may promulgate administrative procedures and regulations for apportionment in accordance with state law.

20. Constitutionality and Legality.

This tax is intended to be applied in a manner consistent with the United States and California Constitutions and State law. None of the tax provided for by this chapter shall be applied in a manner that causes an undue burden upon interstate commerce, a violation of the equal protection and due process clauses of the Constitutions of the United States or the State of California or a violation of any other provision of the California Constitution or state law.

21. Recordkeeping; Audit.

A. It shall be the duty of every person liable for the collection and payment to the County of any tax imposed by this chapter to keep and preserve, for a period of at least seven (7) calendar years, all records as may be necessary to determine the amount of such tax as they may have been liable for the collection of and payment to the County, which records the County Treasurer-Tax Collector or their designee shall have the right to inspect at all reasonable times, including, but not limited to, records containing information related to the amount of cannabis and/or cannabis products sold and/or transferred. Said records shall be full, true, and accurate.

B. The County Treasurer-Tax Collector shall have the power to audit and examine all books and records of persons engaged in commercial cannabis activities, including both State and Federal income tax returns, California sales tax returns, or other evidence documenting the square footage of canopy and/or gross receipts of persons engaged in cannabis business, and, where necessary, all equipment, of any person engaged in commercial cannabis activities in the County, for the purpose of ascertaining the amount of Commercial Cannabis Activities Tax, if any, required to be paid by the provisions of this chapter, and for the purpose of verifying any statements or any item thereof when filed by any person pursuant to this chapter.

C. Upon demand by the County Treasurer-Tax Collector, each person liable for the collection and payment to the County of any tax imposed by this chapter shall make the records, together with any track and trace reports, shipping documents or sales invoices pertaining to such cannabis and/or cannabis products available for inspection by the County Treasurer-Tax Collector at all reasonable times.

D. If any person refuses to make available for audit, examination, or verification such books, records or equipment as the County Treasurer-Tax Collector requests, the County Treasurer-Tax Collector may, after full consideration of all information within their knowledge concerning the commercial cannabis activities of the person so refusing, make an assessment in the manner provided in Section 130.14.280(14) of any taxes estimated to be due. The County Treasurer-Tax Collector may collect a fee adopted by the Board of Supervisors to pay for the cost of examination and audit should the books and records be provided in a form insufficient to allow the County Treasurer-Tax Collector to make a determination of tax due.

22. Other Licenses, Permits, Tax, Fees, or Charges.

A. The tax imposed hereunder does not limit or prohibit the levy or collection of any other license, permit or service fee, tax, fee, or charge upon, or related to, any commercial cannabis activity.

B. Nothing contained in this chapter shall be deemed to repeal, amend, be in lieu of, replace or in any way affect any requirements for any permit or license required by, under or by virtue of any provision of any other title or chapter of this Code or any other ordinance or resolution of the County, nor be deemed to repeal, amend, be in lieu of, replace or in any way affect any tax, fee or other charge imposed, assessed or required by, under or by virtue of any other title or chapter of this Code or any other ordinance or resolution of the County. Any references made or contained in any other title or chapter of this code to any licenses, license taxes, fees, or charges, or to any schedule of license fees, shall be deemed to refer to the licenses, license taxes, fees or charges, or schedule of license fees, provided for in other titles or chapters of this Code.

23. Manner of Giving Notice.

A. Any notice required to be given hereunder by the County to any person shall be sufficiently given or served if it is served upon the person either by personal delivery, or by a deposit of the notice in the United States mail, postage prepaid thereon, addressed to the person at the address of the location of the business or to such other address as they shall register with the County Treasurer-Tax Collector for the purpose of receiving notices provided under this chapter; or, should the person have no address registered with the County Treasurer-Tax Collector for such purpose, then to such person's last known address. For the purposes of this chapter, a service by mail is complete at the time of deposit in the United States mail.

B. Failure of any person to receive any notice required by this chapter to be given shall not affect the validity of any proceedings taken thereto.

24. Unlawful Activities Designated; Misdemeanor.

Any person violating any provision of this chapter is guilty of a misdemeanor, punishable in accordance with Chapter 1.24.

25. Violation; Taxes Not Waived.

The conviction and punishment of any person for failure to pay the required tax shall not excuse or exempt such person from any civil action for the tax debt unpaid at the time of such conviction. No civil action shall prevent a criminal prosecution for any violation of the provisions of this Chapter or of any state law requiring the payment of all taxes.

26. Severability.

If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of this chapter or any part thereof is for any reason held to be unconstitutional, invalid, or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this chapter or any part thereof. The Board of Supervisors hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase of this chapter irrespective of whether one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases is held invalid or ineffective.

27. Remedies Cumulative.

All remedies and penalties prescribed by this chapter or which are available under any other chapter of the El Dorado County Code and any other provision of law or equity are cumulative. The use of one or more remedies by the chapter shall not bar the use of any other remedy for the purpose of enforcing the provisions of this chapter.

28. Effective Date.

This ordinance shall only be effective if approved by a majority vote of the voters voting in the election on the issue. If approved by the voters, this ordinance shall become effective immediately, or as soon thereafter as allowed by law.

29. Amendment or Repeal.

A. This chapter may be repealed or amended by the Board of Supervisors without a vote of the people to the extent allowed by law. However, as required by Article XIII C of the California Constitution, voter approval is required for any amendment that would increase the maximum rate of any tax levied pursuant to this article, that would increase the maximum rate specified for each type of commercial cannabis activity or that otherwise constitute a tax increase for which voter approval is required by Article XIII C of the California Constitution.

B. The following actions shall not constitute an increase of the rate of a tax:

1. The setting of the rate of any tax authorized hereunder to a rate that is no higher than the maximum rate set by this chapter, including the authorized cost of living adjustment, or the restoration of the rate of the tax to a rate that is no higher than the maximum rate set by this chapter, including the cost of living adjustment, if the Board of Supervisors has acted to reduce the rate of the tax;
2. An action that interprets or clarifies the methodology of the tax, or any definition applicable to the tax, so long as interpretation or clarification (even if contrary to some prior interpretation or clarification) is not inconsistent with the language of this chapter;
3. The collection of the tax imposed by this chapter, even if the chapter had, for some period of time, failed to collect the tax; or
4. The establishment or discontinuation of a class of persons that is exempted or excepted from the tax hereunder.

Section 2. Section 130.14.290 of Title 130, Article 9 of the El Dorado County Ordinance Code entitled "Commercial Cannabis Activities Permitting and Enforcement" is hereby enacted to read as follows:

**ARTICLE 9 – MISCELLANEOUS
CHAPTER 130.14 – CANNABIS**

Sec. 130.14.290 – Commercial Cannabis Activities Permitting and Enforcement.

1. Applicability.

A. The purpose of this section is to provide for the permitting and enforcement procedures to regulate commercial cannabis activities that are independently authorized in a separate chapter. Nothing in this section is intended to authorize any commercial cannabis activity.

B. While this ordinance was enacted by voters, the Board of Supervisors retains discretion to amend the ordinance in any way, including but not limited to all procedures provided herein, permit requirements, and penalties, without further voter approval.

2. Definitions.

The terms and phrases in this section and any County Code authorizing a commercial cannabis activity shall have the meaning ascribed below, unless the context in which they are used clearly suggests otherwise. For any term not defined, the definition shall be that given by the state in the most current cannabis statutes or regulations.

Cannabis means all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. "Cannabis" also means the separated resin, whether crude or purified, obtained from cannabis. "Cannabis" does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, the sterilized seed of the plant which is incapable of germination, or "industrial hemp" as defined by section 11018.5 of the Health and Safety Code. (Business & Professions Code, § 26001.)

Cannabis business means any person engaged in any commercial cannabis activity.

Cannabis products means cannabis that has undergone a process whereby the plant material has been transformed into a concentrate, including, but not limited to, concentrated cannabis or an edible or topical product containing cannabis or concentrated cannabis and other ingredients. (Health & Safety Code, § 11018.1; Revenue & Taxation Code, § 34010.)

Canopy means the designated area(s) at a licensed premises, calculated in square feet, that will contain mature plants at any point in time, as follows:

- (1) For indoor and mixed-light cultivation, canopy shall be calculated in square feet and measured using the room boundaries, walls, or ceiling-to-floor partitions of each enclosed area that will contain mature plants at any point in time, including all of the space (s) within the

boundaries. If mature plants are being cultivated using a shelving system, the surface area of each level shall be included in the total canopy calculation.

(2) For outdoor cultivation, canopy shall be calculated in square feet and measured using physical boundaries of all area(s) that will contain mature plants at any point in time, including the space within the boundaries. Canopy may be noncontiguous, but each unique area included in the total canopy calculation shall be separated by a physical boundary, such as a fence, hedgerow, garden plot, or other stable, semipermanent structure that clearly demarcates the canopy edge.

Child care center means any licensed child care center, daycare center, childcare home, or preschool.

Place of worship means a structure or leased portion of a structure that is used primarily for religious worship and related religious activities.

Commercial cannabis activity includes any activity involving the propagating, cultivating, harvesting, processing, drying, curing, storing, trimming, manufacturing, packaging, labeling, transporting, delivering, possessing, distributing, or laboratory testing of cannabis or cannabis products for the sale, distribution, gifting, or donating to any other person regardless of whether the activity involves medicinal or adult recreational cannabis or cannabis products, is operated for profit, or is in compliance with state laws and regulations. "Commercial cannabis activity" does not include any activity expressly allowed under Business and Professions Code section 26033, Health and Safety Code section 11362.1, and County Code section 130.14.260 or the transportation of cannabis or cannabis products through the County without delivery within the County on public roads by a transporter licensed under state law.

Commercial Cannabis Activities Tax means the tax due under this article for engaging in the commercial cannabis activities in the unincorporated area of the County.

Commercial cannabis operation includes all of the commercial cannabis activities performed at a premises by one person as a single operation regardless of the number of individual permits or state licenses required and regardless of whether the activity involves medicinal or adult recreational cannabis or cannabis products.

Cultivation or cultivating means the propagation, planting, growing, harvesting, drying, curing, grading, or trimming of one or more cannabis plants or any part thereof.

Delivery means the commercial transfer of cannabis or cannabis products to a customer and includes the use by a retailer of any technology platform. (California Business and Professions Code, § 26001.)

Distribution means the procurement, sale, and transport of cannabis and cannabis products between licensed cannabis businesses, but not the direct sale or transport to the general public.

Distributor means a person engaged in the distribution of cannabis and/or cannabis products between cannabis businesses.

Dried flower means all dead cannabis that has been harvested, dried, cured, or otherwise processed, excluding leaves and stems.

Flowering means that a cannabis plant has formed a mass of pistils measuring greater than one half inch wide at its widest point.

Gross receipts shall have the same meaning as set forth in California Revenue and Taxation Code Section 6012.

Immature plant or immature means a cannabis plant that is not flowering.

Indoor cultivation means the cultivation of cannabis within a permanent structure using exclusively artificial light or within any type of structure using artificial light at a rate above twenty-five watts per square foot.

Legal parcel means any parcel of real property that may be separately sold in compliance with the Subdivision Map Act (Division 2 (commencing with Government Code Section 66410) of Title 7 of the Government Code).

Manufacture means all aspects of the extraction and/or infusion processes, including processing, preparing, holding, storing, packaging, or labeling of cannabis products. Manufacture also includes any processing, preparing, holding, or storing of components and ingredients.

Mature plant means a cannabis plant that is flowering.

Medical or medicinal cannabis means cannabis grown for personal medicinal use by a person with a cannabis identification card under Health and Safety Code Section 11362.71, a qualified patient, or a primary caregiver as contemplated by Health and Safety Code Section 11362.7(d) and Business and Professions Code Section 26033(b).

Mixed-Light Cultivation means the cultivation of mature cannabis in a greenhouse, hoop-house, glass house, conservatory, hothouse, or other similar structure using a combination of natural light or light deprivation and artificial lighting at a rate of six watts per square foot or less.

Nursery means a permittee that produces only cannabis clones, immature plants, seeds, and other agricultural products used specifically for the propagation and cultivation of cannabis.

Organic certification requirements means the organic certification adopted by the California Department of Food and Agriculture for cannabis pursuant to Business and Professions Code section 26062.

Outdoor cultivation means cultivation activities that are not conducted within a fully enclosed, permitted building, constructed of solid materials, accessible only through one or more locking doors.

Owner means (1) a person with any ownership interest, however small, in the person applying for a permit, unless the interest is solely a security, lien, or encumbrance; (2) the chief executive officer of a nonprofit or other entity; (3) a member of the board of directors of a nonprofit entity; or (4) a person who will be participating in the direction, control, or management of the person applying for a permit, including but not limited to a general partner of a partnership, a non-member manager or managing member of a limited liability company, and an officer or director of a corporation.

Person means any individual, firm, partnership, joint venture, association, corporation, limited liability company, cooperative, collective, organization, entity, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit, whether as principal, agent, employee, or otherwise, and the plural as well as the singular.

Premises means a single, legal parcel of property. Where contiguous legal parcels are under common ownership or control, such contiguous legal parcels shall be counted as a single "premises."

Primary caregiver means an individual designated by a patient who has consistently assumed responsibility for the housing, health, or safety of that patient and includes a caretaking relationship directed at the core survival needs of a seriously ill patient, as that meaning is set forth in Health and Safety Code Section 11362.7(d).

Process or processing means all cannabis business activities associated with drying, curing, grading, trimming, storing, packaging, and labeling of raw cannabis, or any part thereof, for transport.

Propagate or propagation means to cultivate immature plants from cannabis plant cuttings or seeds.

Qualified patient shall have the meaning set forth in Health and Safety Code Section 11362.7(f).

Retail sale, sell, and to sell means any transaction whereby, for any consideration, title to cannabis or cannabis products is transferred from one person to another, and includes the delivery of cannabis or cannabis products pursuant to an order placed for the purchase of the same and soliciting or receiving an order for the same, but does not include the return of cannabis or cannabis products by a cannabis permittee to the cannabis permittee from whom the cannabis or cannabis product was purchased.

School means an institution of learning for minors, whether public or private, offering a regular course of instruction required by the California Education Code. This definition includes a nursery school, kindergarten, elementary school, middle or junior high school, senior high school, or any special institution of education, but does not include a home school or vocational or professional institution of higher education, including a community or junior college, college, or university.

School bus stop means any location designated in accordance with California Code of Regulations, Title 13, Section 1238, to receive school buses, as defined in Vehicle Code Section 233, or school pupil activity buses, as defined in Vehicle Code Section 546.

Testing laboratory or laboratory means a laboratory, facility, or entity in California that offers or performs tests of cannabis or cannabis products and that is accredited by an accrediting body that is independent from all other persons involved in commercial cannabis activity in the state.

Transport or transportation means the transfer of cannabis from the licensed cannabis business site of one state commercial cannabis licensee to the state licensed cannabis business site of another state commercial cannabis licensee for the purposes of conducting cannabis business activities as authorized pursuant to California Business and Professions Code Section 26000 et seq.

Treasurer-Tax Collector means the Treasurer-Tax Collector of the County of El Dorado, his or her deputies, unless another County officer or employee is assigned by resolution of the Board of Supervisors, to perform all or a portion of the duties as listed herein, in which case, the Treasurer-Tax Collector shall be interpreted as the person defined in the resolution.

Watts per square foot means the sum of the maximum wattage of all lights identified in the designated canopy area(s) in the cultivation plan divided by the square feet of designated canopy area(s) identified in the cultivation plan.

Youth-oriented facility means any facility that caters to or provides services primarily intended for minors.

3. Permits Required.

No person shall engage in any commercial cannabis activity in the unincorporated areas of the County without a valid Commercial Cannabis Use Permit and Commercial Cannabis Annual Operating Permit.

4. Commercial Cannabis Use Permit.

A. A Commercial Cannabis Use Permit shall be subject to Article 5 of Title 130 of the County Code, unless provided otherwise herein. It shall be treated as a Conditional Use Permit under Section 130.52.021, subject to the public hearing procedures and recommendation from the Planning and Building Director and decision by the Planning Commission.

B. *Notice to interested parties and municipalities.* Prior to the hearing before the Planning Commission, notice of the application shall be provided to the property owners immediately adjacent to the subject property. If a commercial cannabis activity is proposed within a one-half mile radius of the cities of Placerville or South Lake Tahoe, notice of and an opportunity to comment on the application for the Commercial Cannabis Use Permit shall be provided to the applicable city before the permit is considered by the Planning Commission.

C. No Commercial Cannabis Use Permit may be granted unless the applicant demonstrates compliance with all standards in the County Code and state law and regulations for the particular commercial cannabis activity. Any setback for a commercial cannabis activity may be reduced in a Commercial Cannabis Use Permit so long as the applicant demonstrates that the actual setback will substantially achieve the purpose of the required setback and that the parcel was owned or leased by the applicant before enactment of this ordinance.

D. Issuance of a Commercial Cannabis Use Permit under this chapter is a discretionary act requiring compliance with the California Environmental Quality Act ("CEQA") and the applicant shall comply with Chapter 130.51.030. The applicant shall be responsible for all costs associated with CEQA compliance, including but not limited to environmental analysis and studies, preparation of the appropriate CEQA document, and all County staff time, including attorney time, spent reviewing and pursuing final adoption of the appropriate environmental document.

E. Pursuant to Chapter 130.51.020, application fees adopted by resolution of the Board of Supervisors shall be paid upon application submittal. Additional fees may be required subject to the provisions of the adopted fee schedule, such as for "time and material" fee categories.

F. An application for a Commercial Cannabis Use Permit shall be submitted in accordance with Section 130.51.020 and, in addition to any information requested by the Planning and Building Department, shall include:

1. The name, contact address, and phone number of the applicant and all owners, as defined above, and spouses of owners, all documents providing for the establishing and ownership and control of the applicant, including but not limited to operational agreements, bylaws, stock agreements, and any other documents demonstrating the ownership interest of each owner and any other funding sources for the applicant.
2. Consent to a background check of all owners and spouses of owners, including providing the information necessary for performing the background check and fingerprinting.
3. If the applicant is not the record title owner of the parcel, written consent of the owner of the parcel with original signature and notary acknowledgement. The written consent must be notarized within 30 days of the date that the application is submitted with the County.
4. Site plan showing the entire parcel, including any easements, streams, springs, ponds, and other surface water features and the location and area for cultivation on the parcel with dimensions of the area for cultivation and setbacks from property lines, if applicable. The site plan shall also include all areas of ground disturbance or surface water disturbance associated with cultivation activities, if applicable, and identify any areas where cannabis will be stored, handled, or displayed.
5. Detailed explanation of how the applicant will prevent theft and access to cannabis and cannabis products by individuals under the age of twenty-one unless the individual has a valid medical cannabis card and is lawfully purchasing medicinal cannabis from a licensed retailer.
6. Proof that the operations will comply with all of the County regulations and standards in the County Code for the particular commercial cannabis activity.
7. Proof that the operations will comply with all state standards and regulations by all state agencies with jurisdiction over the particular commercial cannabis activity.
8. An operating plan demonstrating proper protocols and procedures that address enforcement priorities for cannabis activities, including ensuring that cannabis and cannabis products are obtained from and supplied only to other permitted licensed sources within the state and not distributed out of state.
9. If applicable, description of how the applicant will meet and maintain organic certification standards or the substantial equivalent or, if

pesticides and fertilizers are used, a list of all pesticides and fertilizers that may be used.

10. If applicable, written acknowledgement that the County reserves the right to reduce the size of the area allowed for cultivation under any permit issued in the event that environmental conditions, such as a sustained drought or non-compliant odor, merit a reduction in the cultivation size.
11. Complete copy of the state license application, including all exhibits, diagrams, and attachments, along with a certification under penalty of perjury that the copy provided is accurate and that the County will be notified in writing immediately if any information provided to the state differs from what was provided to the County.
12. The security plan for the operation that includes adequate lighting, security video cameras with a minimum camera resolution of 1080 pixels and 360 degree coverage, alarm systems, and secure area for cannabis storage. The security plan shall include a requirement that there be at least 30 business days of surveillance video (that captures both inside and outside images) stored on an ongoing basis. The County may require real-time access of the surveillance video for the Sheriff's Office. The video system for the security cameras must be located in a locked, tamper-proof compartment. The security plan shall remain confidential.
13. Detailed diagrams of the premises, including any buildings, structures, fences, gates, parking, lighting, and signage.
14. Certification of the accuracy of the information submitted and agreement to comply with all conditions of the permit.

G. No Commercial Cannabis Use Permit may be issued until a background check of all owners is completed with review and recommendation by the Sheriff's Office, including but not limited to criminal history, fingerprinting, and any pending charges. The applicant shall be responsible for the cost of the background check. The County may deny an application based on the results of a background check if the County determines that information in the background check makes it more likely than not that any amount of funding for the operation will be or was derived from illegal activity or because the criminal history or other information discovered in the background check of an owner or spouse of an owner weighs against the owner's trustworthiness or ability to run a legal business in compliance with all regulations, including but not limited to the risk of involvement or influence by organized crime, prior convictions involving controlled substances or violent crimes, the likelihood that sales and income will not be truthfully reported, or the risk that cannabis will be illegally provided or sold to individuals under the age of 21.

H. Concentration of commercial cannabis activities and proximity to an existing or proposed commercial cannabis activity shall be considered in determining whether to grant a permit.

I. At a minimum, a Commercial Cannabis Use Permit shall include:

1. The name of all owners.
2. The single commercial cannabis activity authorized in the permit, including any site specific restrictions or conditions of approval under Section 130.51.060.
3. If applicable, statement that the County reserves the right to reduce the size of the area allowed for cultivation under any permit issued in the event that environmental conditions, such as a sustained drought or non-compliant odor, merit a reduction in the cultivation size.
4. Condition of approval that the permittee and all owners shall indemnify and hold harmless the County of El Dorado and its agents, officers, elected officials, and employees for any claims, damages, or injuries brought by affected property owners or other third parties due to the commercial cannabis activities and for any claims brought by any person for problems, injuries, damages, or liabilities of any kind that may arise out of the commercial cannabis activities.
5. Consent for onsite inspection by County officials during the permittee's regular business hours, unless the County has reason to believe that violations are occurring outside of regular business hours.

J. Authorization may not be provided to the appropriate state licensing agency for an annual state license unless the County has issued a Commercial Cannabis Use Permit and Commercial Cannabis Annual Operating Permit.

5. Commercial Cannabis Annual Operating Permit.

A. In addition to a discretionary Commercial Cannabis Use Permit, a person may only conduct a commercial cannabis activity if the person obtains a Commercial Cannabis Annual Operating Permit. When a Commercial Cannabis Use Permit is first issued, a Commercial Cannabis Annual Operating Permit shall also be issued, subject to annual renewals. A Commercial Cannabis Annual Operating Permit is valid for one year from the date of issuance and may be renewed after staff-level review with public notice as provided for in Chapter 130.50.

B. In addition to any other information or documentation requested by the County Planning and Building Department, an application for renewal of a Commercial Cannabis Annual Operating Permit shall include all of the information required for a Commercial Cannabis Use Permit, noting any changes from the information submitted with the original application. The applicant must demonstrate continued compliance with all County and state regulations and site specific conditions in the Commercial Cannabis Use Permit or Commercial Cannabis Annual Operating Permit. If the applicant is not the record title owner of the parcel, an updated written consent of the owner of the parcel with original signature and notary acknowledgement must be provided and be notarized within 30 days of the date that the renewal application is submitted with the County.

C. A Commercial Cannabis Annual Operating Permit shall not be issued if the applicant owes any delinquent Commercial Cannabis Activities Tax or any other fines, assessments, fees, costs, or amounts under this section.

D. If taxes under section 130.14.280 for cultivation of cannabis are assessed based on square footage, taxes shall be calculated based on the square footage stated in the Commercial Cannabis Annual Operating Permit. If a permittee does not intend to cultivate the entire square footage permitted in a Commercial Cannabis Use Permit in any given year, the permittee must request a reduction in square footage in the application for a Commercial Cannabis Annual Operating Permit. Failure to request a reduction in the application will result in taxes being assessed on the square footage stated in the Commercial Cannabis Use Permit.

E. A Commercial Cannabis Annual Operating Permit is not transferrable and automatically expires upon any change of ownership to the applicant that results in a new owner or owners or new funding source. Before or upon the transfer of the business or addition of a new owner, an application for a new Commercial Cannabis Annual Operating Permit must be submitted and new conditions to the Commercial Cannabis Use Permit may be added. The Director of Planning and Building may require a hearing before the Planning Commission before issuance of a new Commercial Cannabis Use Permit under this subsection.

6. Revocation After Three Violations.

In addition to revocation of a Commercial Cannabis Use Permit or Commercial Cannabis Annual Operating Permit under Section 130.54.090, upon receipt of any combination of three (3) administrative citations, verified violations, or hearing officer determinations of violation of any of the permit requirements or standards issued to one or more of the owners or operators at any property or combination of properties of the one or more of the same owners or operators within a two-year period, the Commercial Cannabis Annual Operating Permit shall be nullified, voided, or revoked, subject to prior notice and appeal under Section 130.54.090 and the Commercial Cannabis Use Permit may be revoked, subject to

prior notice and appeal under Section 130.54.090. Upon revocation, an application for a Commercial Cannabis Annual Operating Permit to reestablish a cannabis operation by one or more of the same owners or operators or at the subject property shall not be accepted for a minimum period of two (2) years. If only the Commercial Cannabis Annual Operating Permit is revoked under this section, reissuance shall be subject to the procedures to issue a Commercial Cannabis Use Permit, including hearing before and decision of the Planning Commission and any new or amended conditions may be added to the Commercial Cannabis Use Permit.

7. Monitoring Program.

All Commercial Cannabis Annual Operating Permits shall require the applicant's participation in a County-run monitoring program. The monitoring program shall be funded by applicants and will be used to conduct site visits and inspections of all commercial cannabis activities and verify compliance, including but not limited to all requirements of County Code and any site specific permit conditions and state regulations, including the State track-and-trace requirements. The Board of Supervisors shall by resolution or ordinance adopt such fees necessary to implement this monitoring program. The annual program fees shall be collected yearly at the time of renewal of the Commercial Cannabis Annual Operating Permit.

8. Criminal Enforcement.

A. Any person who engages or attempts to engage in any commercial cannabis activity without a County permit, owns the property upon which a commercial cannabis activity is conducted without a County permit, or otherwise violates or attempts to violate any of the provisions of the County's commercial cannabis activities ordinances can be charged with a misdemeanor or infraction at the discretion of the district attorney.

B. If charged as a misdemeanor, the violation shall be punishable by a fine not to exceed \$1,000 or by imprisonment in the County jail for a term not exceeding six months or by both such fine and imprisonment. If charged as an infraction, the violation shall be punishable by a fine not exceeding \$100 for the first violation, \$250 for the second violation within one year, and \$500 for each additional violation within one year. Such person, firm, partnership, association, corporation, or other entity may be charged with a separate offense for each and every day, or portion of a day, that a violation exists.

9. Administrative Enforcement and Abatement.

A. In addition to criminal enforcement and potential revocation of a Commercial Cannabis Use Permit or Commercial Cannabis Annual Operating Permit, a violation of this section or violation of any state regulation governing the particular commercial cannabis activity shall be deemed a public nuisance and shall be subject to enforcement as provided herein and the provisions of Chapter 9.02. Pursuant to section 9.02.020(B), the higher fines of this section shall control in any administrative enforcement action.

B. A notice to correct or notice to abate issued under Chapter 9.02 shall provide 72 hours for the responsible person to correct or abate the violation and shall identify the administrative fines of this section if the violation is not corrected or abated within 72 hours.

C. Fines for Persons Operating with a Commercial Cannabis Use Permit and Commercial Cannabis Annual Operating Permit:

1. For any violation by a person who has been issued a Commercial Cannabis Use Permit and Commercial Cannabis Annual Operating Permit and who does not correct the violation within the 72-hour notice to correct, an administrative fine of \$1,000 per day, per violation will accrue for each and every day, or portion of a day, that a violation exists.
2. Once a notice to abate is issued and the time to abate provided in the notice has expired or a decision of a Hearing Officer requires abatement and the time to abate provided in the decision has expired, the fine shall increase to \$2,500 per day, per violation for each and every day, or portion of a day, that a violation exists.
3. For a second violation within the 12-month period commencing from the date of a prior administrative citation by the same person or on the same premises if the property owner remains the same, the administrative fine shall be \$5,000 per day, per violation for each and every day, or portion of a day, that a violation exists.
4. For a third violation within the 12-month period commencing from the date of the first administrative citation by the same person or on the same premises if the property owner remains the same, the administrative fine shall be \$10,000 per day, per violation for each and every day, or portion of a day, that a violation exists.

D. Fines for Persons Operating a Commercial Cannabis Activity Without a Commercial Cannabis Use Permit or Commercial Cannabis Annual Operating Permit:

1. For any violation by a person who has not been issued a Commercial Cannabis Use Permit or Commercial Cannabis Annual Operating Permit and who does not correct the violation within the 72-hour notice to correct, an administrative fine of \$5,000 per day, per violation will accrue for each and every day, or portion of a day, that a violation exists.
2. Once a notice to abate is issued and the time to abate provided in the notice has expired or a decision of a Hearing Officer requires abatement and the time to abate provided in the decision has expired, the fine shall increase to \$10,000 per day, per violation for each and every day, or portion of a day, that a violation exists.
3. For a second violation within the 12-month period commencing from the date of a prior administrative citation by the same person or on the same premises if the property owner remains the same, the administrative fine shall be \$25,000 per day, per violation for each and every day, or portion of a day, that a violation exists.
4. For a third violation within the 12-month period commencing from the date of the first administrative citation by the same person or on the same premises if the property owner remains the same, the administrative fine shall be \$50,000 per day, per violation for each and every day, or portion of a day, that a violation exists.
5. If the violation is for operating without a Commercial Cannabis Use Permit or Commercial Cannabis Annual Operating Permit, the fine shall be tolled from the date the application is submitted until the permit is granted or denied by the County provided that all fines accrued prior to the date the permit is submitted are paid with the permit. If the violation is for failure to comply with the regulations of the County Code for the particular commercial cannabis activity, the fines shall not be tolled during the period that an application for a commercial cannabis activity permit is under review.

E. Each plant cultivated outside of the square footage provided for in the Commercial Cannabis Use Permit shall be deemed a separate violation.

F. Notwithstanding section 9.02.390, a request for an administrative hearing under Chapter 9.02 must be made within three days of service of the notice to correct, administrative citation, or notice to abate and the hearing shall be held within five days of the request for a hearing.

G. The decision of the Hearing Officer under section 9.02.440 shall be issued within five days of completion of the hearing.

H. A notice to abate or decision of a Hearing Officer requiring abatement shall provide that, if any plants cultivated under this section are removed as part of the abatement action because they are in excess of the allowable square footage, the responsible person may decide which plants will remain so long as the remaining plants are in compliance with the Commercial Cannabis Use Permit. The notice to abate shall require the responsible person to identify the plants to remain within the 72-hours provided in the notice to abate or the time provided for in the decision by the Hearing Officer. If the responsible person does not identify the plants to remain in writing within the time provided, the

enforcement official shall determine, in his or her sole discretion, which plants will remain.

I. Unless a notice is personally served, any notice provided under this section shall be mailed under Section 9.02.120 and posted conspicuously on or in front of the business or cultivation site, or other place reasonably anticipated to provide notice to the responsible person.

J. The remedies provided herein are cumulative to all other administrative, civil, and criminal remedies now or hereafter available to abate or otherwise regulate or prevent public nuisances or criminal activity.

K. All County officers with authority to enforce this Code shall also have the authority to enforce this section.

10. No authorization, defense, or immunity.

The issuance of a permit under this chapter shall not confer on any person the right to maintain a public or private nuisance or to authorize or facilitate any violation of state or federal law. Except for enforcement actions arising out of this chapter, no provision of this chapter shall be deemed a defense or immunity to any action brought against any person by the District Attorney, the State of California, the United States, or any other person. Nothing in this section shall be construed to authorize or facilitate a commercial cannabis activity that is otherwise illegal under state or federal law.

11. No duty to enforce.

Nothing in this section shall be construed as imposing on the Sheriff, the District Attorney, or the County any duty to abate any unlawful commercial cannabis activity, to prosecute a violation of County Code, or to take any other action with regard to any unlawful commercial cannabis activity. Furthermore, the Sheriff, District Attorney, County, and any of their officers or employees shall not be held liable for failure to abate any unlawful commercial cannabis activity, to prosecute a violation of this section, or to take any other action with regard to any unlawful commercial cannabis activity.

12. Ordinance Declarative of Existing Law.

Chapter 130.20 of the El Dorado County Zoning Ordinance provides that only uses specifically enumerated are permitted and, unless an exemption applies, any unenumerated use is not allowed within the County. Nothing in this ordinance shall be construed to legalize any existing commercial cannabis activity currently operating in the County, whether it is operating with or without a business license.

13. Severability.

If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of this chapter or any part thereof is for any reason held to be unconstitutional, invalid, or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this chapter or any part thereof. The Board of Supervisors hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase of this chapter irrespective of whether one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases is held invalid or ineffective.

14. Implementation.

The Planning and Building Department shall begin developing the program necessary to carry out this ordinance once the ordinance is effective and shall have applications available to the public no later than six months after the effective date of this ordinance and an ordinance authorizing a particular commercial cannabis activity, whichever is later. The Board of Supervisors may grant an extension of the time to have permits available or any other aspect of implementation based on a finding of unforeseen circumstances, changes in state or federal law, lack of sufficient funding, or other reason necessitating an extension.

15. Effective Date.

If enacted by a majority vote of the voters voting in the election on the issue, this Chapter is effective 30 days after an independent ordinance is enacted by the voters of El Dorado County providing for a general or special tax on all potential commercial cannabis activities and an independent ordinance authorizing at least one commercial cannabis activity

IMPARTIAL ANALYSIS OF MEASURE N

MEASURE PROVIDING FOR THE TAXATION, DISCRETIONARY PERMITTING PROGRAM, AND ENFORCEMENT OF INDEPENDENTLY AUTHORIZED COMMERCIAL CANNABIS ACTIVITIES

The El Dorado County Board of Supervisors voted to place Measure N on the ballot to impose a general tax on the privilege of engaging in any commercial cannabis activity in the unincorporated areas of the County. If approved by a majority of the voters voting thereon, Measure N would enact a general tax to raise revenue for general government purposes. All revenues from this tax would be deposited in the County's general fund and the Board of Supervisors could utilize the funds for any lawful County government purpose. Measure N would also provide for a regulatory and enforcement program for any independently authorized commercial cannabis activities.

Measure N does not allow for the operation of any commercial cannabis activity. Instead, it puts a tax and regulatory and enforcement program in place if any commercial cannabis activities are authorized through Measures P, Q, R, or S or a future ballot measure or decision. The tax would apply only in the unincorporated areas of the County and would not apply within the cities of Placerville or South Lake Tahoe. The tax would apply to all medicinal and recreational adult use commercial cannabis activities, but not to cannabis lawfully grown under state and local law exclusively for personal use. Measure N would enact El Dorado County Code Sections 130.14.280 and 130.14.290. Section 130.14.280 provides for the tax of commercial cannabis activities and would be administered by Treasurer-Tax Collector. Section 130.14.290 provides for the discretionary permitting and enforcement program and would be administered by the Planning and Building Department. Neither state law nor the passage of Measure N could legally affect the federal government's current criminalization of cannabis.

Measure N provides for a range of taxes depending on the type of commercial cannabis activity, and the Board could set and adjust the tax rates within the ranges. For cultivation, the rate would either be \$1 to \$30 per square foot of canopy or 1% to 15% of gross receipts. For all other uses the tax could be set within the ranges of 0% to 10% of gross receipts for distribution; 2.5% to 10% of gross receipts for manufacturing; 0.5% to 10% of gross receipts for retail sale and delivery; and 0.5% to 5% of gross receipts for testing laboratories.

The permitting program in Section 130.14.290 requires a detailed application, including a criminal background check of any person who has any financial interest in the commercial cannabis business. The permitting process includes environmental review required by the California Environmental Quality Act and allows for site-specific conditions and restrictions to be imposed in a permit. Issuance of a permit requires a recommendation from the Planning and Building Director and a hearing before the Planning Commission. Notice of the hearing would be provided to adjacent property owners and Placerville or South Lake Tahoe if the site is within a one-half mile radius of either city. Violations would be subject to criminal and civil code enforcement and section 130.14.290 provides the amount of the daily fines.

A "yes" vote is to approve enactment of the commercial cannabis activities tax and creation of the regulatory and enforcement program for commercial cannabis activities in the unincorporated areas of El Dorado County, but would not authorize any commercial cannabis activity.

A "no" vote is against enactment of the commercial cannabis activities tax and against creation of the regulatory and enforcement program for commercial cannabis activities.

Michael J. Ciccozzi, El Dorado County, County Counsel

ARGUMENT IN FAVOR OF MEASURE N

Everyone should pay their fair share for law enforcement, local roads, and other critical public services. The cannabis industry should not be an exception.

Passage of Measure N will ensure a tax is in place if commercial cannabis is ever authorized. Measure N also ensures that cannabis businesses pay their fair share and are positive contributors to the County.

Placed on the ballot by the El Dorado County Board of Supervisors, Measure N provides a general tax on the commercial cannabis industry. As a general tax, the revenue will be placed in the general fund and will give the Board the ability to react to the County's needs which includes effectively enforcing our ordinances and funding critical services such as the Sheriff's Department, District Attorney, mental health services, public health education, senior services, road maintenance and other important services.

Whether you agree with the legalization of cannabis or not, it is imperative that we tax the industry to ensure sufficient funding for compliance with existing laws and to deal with the illegal cannabis market. We must ensure that the public's safety is preserved and the illegal cannabis market is driven out of the County. That means having a sustainable revenue stream that allows for uses such as staffing, equipment and services for County departments/programs including but not limited to the Sheriff's Department, Code Enforcement, and District Attorney.

The tax will only be paid by cannabis businesses in the unincorporated areas of El Dorado County (outside the cities).

Voters in many California cities and counties have already approved similar cannabis business taxes and El Dorado County should do so now to protect law enforcement, public health, rural roads and other vital county services.

El Dorado County Board of Supervisors

- NO ARGUMENTS AGAINST THIS MEASURE WERE SUBMITTED -

FULL TEXT OF MEASURE P

**AN ORDINANCE PROVIDING FOR THE AUTHORIZATION AND REGULATION OF
COMMERCIAL OUTDOOR AND MIXED-LIGHT CULTIVATION OF CANNABIS FOR MEDICINAL USE**

THE PEOPLE OF THE COUNTY OF EL DORADO DO ORDAIN AS FOLLOWS:

Section 1. Section 130.14.300 of Title 130, Article 9 of the El Dorado County Ordinance Code entitled "Outdoor and Mixed-Light Cultivation of Medicinal Use Cannabis" is hereby enacted to read as follows:

**ARTICLE 9 – MISCELLANEOUS
CHAPTER 130.14 – CANNABIS**

Sec. 130.14.300 – Outdoor and Mixed-Light Cultivation of Medicinal Use Cannabis

1. Applicability.

A. The purpose of this ordinance is to permit certain specified commercial cannabis activities and uses in the unincorporated areas of the County, subject to the regulation and control of the Board of Supervisors. While this ordinance was enacted by voters, the Board of Supervisors retains discretion to regulate such uses, including without limitation the density, intensity, number, proximity, location, and environmental standards of such uses without further voter approval.

B. Cannabis is not an agricultural crop or product with respect to the "right to farm" ordinance in Section 130.40.290, the establishments of Agricultural Preserves under Section 130.40.290, or any other provision in this Code that defines or allows cultivation of crops or agricultural products and nothing in this Chapter shall be construed to the contrary.

2. Definitions.

The terms and phrases in this section shall have the meaning ascribed to them in Section 130.14.290(2), unless the context in which they are used clearly suggests otherwise.

3. Limit on the number of commercial cannabis operations.

The maximum number of commercial cannabis cultivation operations in the unincorporated portions of the County shall be limited to 150. A minimum of 75 of the total 150 cannabis cultivation operations are reserved for outdoor or mixed-light cultivation operations that are less than 10,000 square feet in total canopy area, with 40 of the 75 reserved for operations limited to cultivation canopy of 3,000 square feet or less and cannabis that is grown exclusively with natural light and meets organic certification standards or the substantial equivalent. This section sets the maximum possible permits only and nothing in this section shall be construed to require the County to issue a minimum or the maximum number of permits.

4. Outdoor and Mixed Light Commercial Cannabis Cultivation.

A. *Permitted Zones.* Outdoor or mixed-light commercial cannabis cultivation may only be permitted in the Rural Lands (RL), Planned Agricultural (PA), Limited Agricultural (LA), and Agricultural Grazing (AG) zoned districts subject to a Commercial Cannabis Use Permit and Commercial Cannabis Annual Operating Permit under Section 130.14.290. This section allows outdoor or mixed-light commercial cannabis cultivation as a new use authorized by this section only. Uses listed in Section 130.21.020 (Agricultural, Rural Lands and Resource Zone Districts Use Matrix) do not permit cannabis operations.

B. *Minimum Site Area.* Outdoor or mixed-light cultivation of commercial cannabis is limited to sites that meet the minimum premises area of 10 acres. The County may require a premises greater than 10 acres to maintain consistency with other laws, surrounding residential uses, and neighborhood compatibility.

C. *Canopy Coverage.* Outdoor or mixed-light commercial cannabis cultivation is subject to the following limits on maximum canopy based on zone district. The County may place additional and further restrictions on canopy size to maintain consistency with other laws, agricultural uses, and neighborhood compatibility. A cannabis cultivation operation shall not exceed the canopy size threshold established by State law.

1. Lots zoned RL: up to 1.5 percent of the size of the premises with a maximum of 1 outdoor or mixed-light cultivation operation per premises, but not to exceed 10,000 square feet of total canopy coverage for that premises.
2. Lots zoned AG, LA, and PA with a premises between 10 and 14.9 acres in area: up to 1.5 percent of the size of the premises per outdoor or mixed-light cultivation operation with a maximum of 2 outdoor or mixed-light cultivation operations, but not to exceed 0.45 acres of total canopy coverage for that premises.
3. Lots zoned AG, LA, and PA with a premises between 15 and 25 acres in area: up to 2 percent of the size of the premises per outdoor or mixed-light cultivation operation with a maximum of 4 outdoor or mixed-light cultivation operations, but not to exceed 1.5 acres of total canopy coverage for that premises.
4. Lots zoned AG, LA, and PA with a premises greater than 25 acres: up to 5 percent of the size of the premises per outdoor or mixed-light cultivation operation with a maximum of 6 outdoor or mixed-light cultivation operations, but not to exceed 2 acres of total canopy coverage for that premises.

5. Cultivation Standards.

A. In addition to any state requirements by any governing state agency and any site specific requirements in a permit, outdoor or mixed-light cultivation of commercial cannabis shall comply with the following requirements. Any violation of state regulations, site specific requirements in a Commercial Cannabis Use Permit and Commercial Cannabis Annual Operating Permit, or these requirements is subject to enforcement, abatement, and revocation of a County permit under Section 130.14.290.

B. *Location.* Outdoor or mixed-light commercial cannabis cultivation shall not be located within 1,500 feet from any school, school bus stop, place of worship, park, playground child care center, youth-oriented facility, pre-school, licensed drug or alcohol recovery facility, or licensed sober living facility. Distance shall be measured from the nearest point of the property line of the premises that contains the commercial cultivation to the nearest point of the property line of the enumerated use using a direct straight-line measurement. A new adjacent use does not affect the continuation of an existing use that was permitted and legally established under the standards of this chapter.

C. *Setbacks.* Outdoor or mixed-light cultivation of commercial cannabis shall be setback a minimum of 800 feet from the property line of the site or public right-of-way and shall be located at least 300 feet from the upland extent of riparian vegetation of any watercourse.

D. *Odor.* The cultivating, drying, curing, processing, and storing of cannabis shall not adversely affect the health, safety, or enjoyment of property of persons residing near the property on which cannabis is cultivated due to odor that is disturbing to people of normal sensitivity. Any cannabis odor shall not be equal or greater than a 7 dilution threshold ("DT") when measured by the County with a field olfactometer at the property line on which the cannabis is cultivated for a minimum of two olfactometer observations not less than fifteen minutes apart within a one hour period ("7 DT one hour"). If the odor from cannabis cultivating, drying, curing, processing, or storing violates this subsection, the permittee must reduce the odor below the 7 DT one hour at property line threshold within the time required by the County. Notwithstanding the prior issuance of a permit, the County may require installation of one or more odor control options, which may include but are not limited to the use of

a greenhouse or hoop house that includes activated carbon filtration or equivalent odor abatement control equipment on the air exhaust, a vapor-phase odor control system, increasing the required setback, growing fewer plants, or growing only low odor cannabis strains. Installation of certain odor control options may require a permit. Any such notice requiring the use of one or more odor control options will provide a deadline for completion and the dilution threshold will be retested upon expiration of that deadline. The continued odor in excess of 7 DT one hour upon retesting will constitute a violation of this section subject to enforcement, abatement, and revocation of a Commercial Cannabis Use Permit and Commercial Cannabis Annual Operating Permit under section 130.14.290.

E. Water Source. Commercial cannabis cultivation may only be permitted if sufficient evidence submitted to the County demonstrates: (1) there is adequate water supply in the watershed and water rights to serve the cultivation site; and (2) all required state permits from the State Water Resources Control Board and any other state agency with jurisdiction, Cultivation of cannabis shall not utilize water that has been or is illegally diverted from any spring, wetland, stream, creek, river, lake, unpermitted well, or body of water. The activities associated with the cultivation of cannabis shall not create erosion or result in contaminated runoff into any spring, wetland, stream, creek, river, lake, or body of water.

F. Water conservation measures. Cannabis cultivation operations shall include adequate measures that minimize the use of water for cultivation at the site. Water conservation measures, including but not limited to underground drip irrigation, soil moisture monitoring, water capture systems, grey water systems, or other equally effective water conservation measures, shall be incorporated into the cultivation operations in order to minimize the use of water where feasible.

G. Screening. Cannabis shall be screened from public view so that no part of a plant can be seen from an adjacent street or adjacent parcel. Screening shall be accomplished by use of a greenhouse or hoop house or by fencing or vegetation. All greenhouses, hoop houses, and fences shall comply with all building and zoning codes and any other applicable law or regulation. Greenhouses and hoop houses are the preferred means of screening.

H. Security and wildlife exclusionary fencing. Areas where cannabis is cultivated, the premises on which cannabis is cultivated, or a portion thereof that includes the cultivation area shall be secured by a minimum six-foot high solid wood or chain link wildlife exclusionary fence, such as cyclone or field game fencing, with locked gates built in compliance with building and zoning codes. All gates shall be lockable and remain locked at all times except to provide immediate entry and exit. A chain link fence is not sufficient for screening. Fencing may not be covered with plastic or cloth except that shade cloth may be used on the inside of the fence.

I. CEQA. As part of the environmental review under the California Environmental Quality Act, the applicant must show that there is no other environmentally superior cultivation site located on the same premises; the location and operation of the cannabis cultivation site will, to the maximum extent feasible, avoid or minimize its impact on environmentally sensitive areas including but not limited to oak woodland and other natural conditions or habitats.

J. Renewable energy. Electrical power for mixed-light cultivation operations, including but not limited to illumination, heating, cooling, and ventilation, shall be provided by on-grid power with 100% renewable source, on-site zero net energy renewable source, or with purchase of carbon offsets of any portion of power not from renewable sources. Generators may be used as a secondary or back-up power source pursuant to a valid permit from the El Dorado County Air Quality Management District. Impacts from generator use will also be considered in the CEQA analysis and site specific restrictions and conditions may be imposed to mitigate those impacts, including conditions to minimize noise.

K. Lighting. All lights used for mixed-light cultivation shall be fully contained within structures or otherwise shielded to fully contain any light or glare involved in the cultivation process. Artificial lighting for mixed-light cultivation is limited to a rate of six watts per square foot or less. For outdoor and mixed-light commercial cannabis cultivation, security lighting shall be motion activated and all outdoor lighting shall comply with Chapter 130.34.

L. Pesticide Usage. Preference shall be given to applicants that maintain organic certification standards or the substantial equivalent, provided that maintaining organic certification standards or the substantial equivalent is a condition of the Commercial Cannabis Annual Operating Permit. Until the California Department of Food and Agriculture adopts a certified organic certification, the County Agricultural Commissioner shall determine whether a particular operation satisfies substantially equivalent organic criteria. Documentation of all pesticides used shall be presented each year as part of the Commercial Cannabis Annual Operating Permit. All pesticides and fertilizers shall be properly labeled and stored and disposed of to avoid contamination through erosion, leakage, or inadvertent damages from rodents, pests, and wildlife and to prevent harm to persons, the environment, and wildlife.

M. Disposal of waste material. Cannabis waste material shall be disposed of in accordance with existing state and local laws and regulations at the time of disposal. Burning of cannabis waste material is prohibited.

N. Public Sewer or Sewage Disposal System. The premises where the cultivation of cannabis takes place shall either be connected to a public sewer system or have a County inspected and approved sewage disposal system.

O. Recommendation of the Agricultural Commission. An application for a Commercial Cannabis Use Permit for outdoor or mixed-light cultivation must be reviewed by the Agricultural Commission and the recommendation of the Agricultural Commission, including any suggested conditions or restrictions, shall be considered by the Planning Commission.

6. Ordinance Declarative of Existing Law.

Chapter 130.20 of the El Dorado County Zoning Ordinance provides that only uses specifically enumerated are permitted and, unless an exemption applies, any unenumerated use is not allowed within the County. Nothing in this ordinance shall be construed to legalize any existing commercial cannabis activity currently operating in the County, whether it is operating with or without a business license.

7. Severability.

If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of this chapter or any part thereof is for any reason held to be unconstitutional, invalid, or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this chapter or any part thereof. The Board of Supervisors hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase of this chapter irrespective of whether one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases is held invalid or ineffective.

8. Effective Date.

If enacted by a majority of the electorate voting in the election on the measure, this Chapter is effective 30 days after independent ordinances are enacted by the voters of El Dorado County providing for (1) a general or special tax on all of the commercial cannabis authorized herein; and (2) discretionary permitting and enforcement procedures to regulate the commercial cannabis activities authorized herein. If such general or special tax is passed but is challenged or invalidated for any reason, this ordinance does not become effective unless and until the challenge concludes and the tax is upheld as valid. If the general or special tax is challenged for any reason after this ordinance becomes effective and the tax is repealed or invalidated, this ordinance shall automatically expire and be repealed.

Section 2. Section 130.14.270(2) of Title 130, Article 9 of the El Dorado County Ordinance Code entitled "Commercial Cannabis Activities" is hereby amended to read as follows:

2. Imposition of Moratorium on Commercial Cannabis Activities.

- A. Pursuant to Government Code section 65858, subdivision (b), and with the exception of any existing medical cannabis distribution facilities that satisfy all of the requirements of section 130.14.250(2)(D) of the El Dorado County Code and any commercial cannabis activity expressly authorized under County Code and operating pursuant to a valid County permit, the establishment or operation of any commercial cannabis activity is prohibited in the unincorporated areas of the County and no use permit, variance, building permit, or any other applicable entitlement for use, including but not limited to the issuance of a business license, shall be approved or issued for the establishment or operation of a commercial cannabis activity for a period of two years from December 12, 2017.
- B. With the exception of any existing medical cannabis distribution facilities that satisfy all of the requirements of section 130.14.250(2)(D) of the El Dorado County Code and any commercial cannabis activity expressly authorized under County Code and operating pursuant to a valid County permit, a facility engaged in a commercial cannabis activity shall not be established, operated, or maintained at any location in any zone district in the unincorporated areas of the County, even if the facility engaged in a commercial cannabis activity is located within or operated with one or more additional otherwise permitted use(s), including but not limited to a health food store, bakery, tobacco shop, retail store, health education facility, health spa, fitness facility, wellness center, or health facility.

IMPARTIAL ANALYSIS OF MEASURE P

MEASURE PROVIDING FOR AUTHORIZATION AND REGULATION OF COMMERCIAL OUTDOOR AND MIXED-LIGHT CULTIVATION OF CANNABIS FOR MEDICINAL USE

State law legalized commercial cannabis activities within the state, but allows each local government to decide whether to authorize any commercial cannabis activity within its jurisdiction. The El Dorado County Board of Supervisors voted to place Measure P on the ballot to allow the citizens of the County to decide whether to authorize outdoor and mixed-light commercial cultivation of cannabis for medicinal use within the unincorporated areas of the County. Mixed-light is cultivation in a greenhouse, hoop-house, or other similar structure. The only difference between Measures P and Q is that Measure P applies to medicinal use cannabis and Measure Q applies to recreational use of cannabis by adults over the age of twenty-one.

If approved by a majority of the voters voting thereon, Measure P would enact El Dorado County Code Section 130.14.300. The ordinance could become effective only if Measure N passes, which provides for taxation of any authorized commercial cannabis activity and a County regulatory and enforcement program. Passage of Measure P would not affect Section 130.14.260, which allows for the limited outdoor cultivation of medicinal cannabis for personal use. Measure P would eliminate the County's two-year ban on commercial cannabis activities for the uses authorized in Measure P. Neither state law nor the passage of Measure P could legally affect the federal government's current criminalization of cannabis.

Measure P would only allow outdoor or mixed-light cultivation on parcels of at least 10 acres zoned Rural Lands, Planned Agricultural, Limited Agricultural, and Agricultural Grazing. Rural Lands would be restricted to a maximum of 10,000 square feet of canopy. For agricultural zones, the canopy is restricted based on the lot size with the largest canopy reaching a potential maximum of 2 acres on a parcel greater than 25 acres. Measure P limits the total number of cultivation operations in the unincorporated areas of the County to 150 regardless of whether the operations are outdoor, mixed-light, or indoor or for medicinal or recreational adult use cannabis. Of the 150 total cultivation permits, 75 are reserved for outdoor or mixed-light grows of 10,000 square feet or less and 40 of those 75 are reserved for organic outdoor grows of 3,000 square feet or less.

If Measure P passes, a person could cultivate commercial cannabis for medicinal use only after obtaining a permit from the County, which requires a background check reviewed by the Sheriff's Office, site-specific environmental review under the California Environmental Quality Act, odor reduction requirements, setbacks, screening of the plants from public view, a legal water source, security procedures, and other regulations to protect public health and safety and the environment. A permit also requires the recommendation of the Agricultural Commission and a hearing before the Planning Commission. Adjacent property owners and Placerville or South Lake Tahoe if the site is within a one-half mile radius of either city would be notified before the Planning Commission hearing. Compliance would be enforced through the civil administrative procedures and fines provided for in Measure N and could result in revocation of a permit.

A "yes" vote is to allow limited and regulated outdoor and mixed-light (greenhouse) cultivation of commercial cannabis for medicinal use on parcels zoned Rural Lands, Planned Agricultural, Limited Agricultural, and Agricultural Grazing.

A "no" vote is to not allow outdoor and mixed-light (greenhouse) cultivation of commercial cannabis for medicinal use in the unincorporated areas of El Dorado County and to maintain the status quo.

Michael J. Ciccozzi, El Dorado County, County Counsel

ARGUMENT IN FAVOR OF MEASURE P

This measure was placed on the ballot by the El Dorado County Board of Supervisors after many meetings with community stakeholders.

VOTE YES ON MEASURE P.

Measure N and Measures P,Q,R and S must all pass together to provide the county with the money necessary to build a new stronger enforcement program targeting illicit market cannabis.

This measure will authorize the County to permit no more than 150 cannabis cultivation operations. The extensive permit requirements, imposed by this measure, will prevent many cannabis cultivation problems. Permitted operations must comply with several hundred pages of state regulations, provide 24/7 video surveillance, security fencing, and extensive environmental protection review and compliance. Operations must obtain permits through Conditional Use Permits hearings and approval of the Planning Commission. Only parcels zoned rural lands or agriculture over 10 acres are eligible for permits. No commercial cultivation will occur near residential zoned parcels.

With the implementation of Proposition 64, El Dorado County patients have not had access to the medical cannabis from El Dorado County. Patients Deserve High Quality El Dorado County Grown Medicine.

These permits will generate new county revenue from sales through legal retail dispensaries. The estimated revenue from all the measures passed by the voters N,P,Q,R and S is \$1,900,000 to \$52,800,000.

In addition to new county enforcement resources, if the Board of Supervisors chooses to appropriate the money the new money can be used for road repair, law enforcement, First Five, youth trauma prevention, mental health services, veterans programs and substance abuse education.

VOTE YES ON MEASURE P for SAFER COMMUNITIES. Vote YES for Regulated El Dorado County Commercial Medical Cultivation.

Yesonnpqrs.org

Rod Miller, Treasurer, Committee Supporting El Dorado County Measures N, P, Q, R & S

Heather Schafer, Legal Assistant, The Law Office of Dale Schafer

Bill Prosser, Owner, Winterfalls Ranch

- NO ARGUMENTS AGAINST THIS MEASURE WERE SUBMITTED -

FULL TEXT OF MEASURE Q

**AN ORDINANCE PROVIDING FOR THE AUTHORIZATION AND REGULATION OF
COMMERCIAL OUTDOOR AND MIXED-LIGHT CULTIVATION OF CANNABIS FOR RECREATIONAL ADULT USE**

THE PEOPLE OF THE COUNTY OF EL DORADO DO ORDAIN AS FOLLOWS:

Section 1. Section 130.14.300 of Title 130, Article 9 of the El Dorado County Ordinance Code entitled "Outdoor and Mixed-Light Cultivation of Recreational Adult Use Cannabis" is hereby enacted to read as follows:

**ARTICLE 9 – MISCELLANEOUS
CHAPTER 130.14 – CANNABIS**

Sec. 130.14.310 – Outdoor and Mixed-Light Cultivation of Recreational Adult Use Cannabis

1. Applicability.

A. The purpose of this ordinance is to permit certain specified commercial cannabis activities and uses in the unincorporated areas of the County, subject to the regulation and control of the Board of Supervisors. While this ordinance was enacted by voters, the Board of Supervisors retains discretion to regulate such uses, including without limitation the density, intensity, number, proximity, location, and environmental standards of such uses without further voter approval.

B. Cannabis is not an agricultural crop or product with respect to the "right to farm" ordinance in Section 130.40.290, the establishments of Agricultural Preserves under Section 130.40.290, or any other provision in this Code that defines or allows cultivation of crops or agricultural products and nothing in this Chapter shall be construed to the contrary.

2. Definitions.

The terms and phrases in this section shall have the meaning ascribed to them in Section 130.14.290(2), unless the context in which they are used clearly suggests otherwise.

3. Limit on the number of commercial cannabis operations.

The maximum number of commercial cannabis cultivation operations in the unincorporated portions of the County shall be limited to 150. A minimum of 75 of the total 150 cannabis cultivation operations are reserved for outdoor or mixed-light cultivation operations that are less than 10,000 square feet in total canopy area, with 40 of the 75 reserved for operations limited to cultivation canopy of 3,000 square feet or less and cannabis that is grown exclusively with natural light and meets organic certification standards or the substantial equivalent. This section sets the maximum possible permits only and nothing in this section shall be construed to require the County to issue a minimum or the maximum number of permits.

4. Outdoor and Mixed Light Commercial Cannabis Cultivation.

A. *Permitted Zones.* Outdoor or mixed-light commercial cannabis cultivation may only be permitted in the Rural Lands (RL), Planned Agricultural (PA), Limited Agricultural (LA), and Agricultural Grazing (AG) zoned districts subject to a Commercial Cannabis Use Permit and Commercial Cannabis Annual Operating Permit under Section 130.14.290. This section allows outdoor or mixed-light commercial cannabis cultivation as a new use authorized by this section only. Uses listed in Section 130.21.020 (Agricultural, Rural Lands and Resource Zone Districts Use Matrix) do not permit cannabis operations.

B. *Minimum Site Area.* Outdoor or mixed-light cultivation of commercial cannabis is limited to sites that meet the minimum premises area of 10 acres. The County may require a premises greater than 10 acres to maintain consistency with other laws, surrounding residential uses, and neighborhood compatibility.

C. *Canopy Coverage.* Outdoor or mixed-light commercial cannabis cultivation is subject to the following limits on maximum canopy based on zone district. The County may place additional and further restrictions on canopy size to maintain consistency with other laws, agricultural uses, and neighborhood compatibility. A cannabis cultivation operation shall not exceed the canopy size threshold established by State law.

1. Lots zoned RL: up to 1.5 percent of the size of the premises with a maximum of 1 outdoor or mixed-light cultivation operation per premises, but not to exceed 10,000 square feet of total canopy coverage for that premises.
2. Lots zoned AG, LA, and PA with a premises between 10 and 14.9 acres in area: up to 1.5 percent of the size of the premises per outdoor or mixed-light cultivation operation with a maximum of 2 outdoor or mixed-light cultivation operations, but not to exceed 0.45 acres of total canopy coverage for that premises.
3. Lots zoned AG, LA, and PA with a premises between 15 and 25 acres in area: up to 2 percent of the size of the premises per outdoor or mixed-light cultivation operation with a maximum of 4 outdoor or mixed-light cultivation operations, but not to exceed 1.5 acres of total canopy coverage for that premises.
4. Lots zoned AG, LA, and PA with a premises greater than 25 acres: up to 5 percent of the size of the premises per outdoor or mixed-light cultivation operation with a maximum of 6 outdoor or mixed-light cultivation operations, but not to exceed 2 acres of total canopy coverage for that premises.

5. Cultivation Standards.

A. In addition to any state requirements by any governing state agency and any site specific requirements in a permit, outdoor or mixed-light cultivation of commercial cannabis shall comply with the following requirements. Any violation of state regulations, site specific requirements in a Commercial Cannabis Use Permit and Commercial Cannabis Annual Operating Permit, or these requirements is subject to enforcement, abatement, and revocation of a County permit under Section 130.14.290.

B. *Location.* Outdoor or mixed-light commercial cannabis cultivation shall not be located within 1,500 feet from any school, school bus stop, place of worship, park, playground child care center, youth-oriented facility, pre-school, licensed drug or alcohol recovery facility, or licensed sober living facility. Distance shall be measured from the nearest point of the property line of the premises that contains the commercial cultivation to the nearest point of the property line of the enumerated use using a direct straight-line measurement. A new adjacent use does not affect the continuation of an existing use that was permitted and legally established under the standards of this chapter.

C. *Setbacks.* Outdoor or mixed-light cultivation of commercial cannabis shall be setback a minimum of 800 feet from the property line of the site or public right-of-way and shall be located at least 300 feet from the upland extent of riparian vegetation of any watercourse.

D. *Odor.* The cultivating, drying, curing, processing, and storing of cannabis shall not adversely affect the health, safety, or enjoyment of property of persons residing near the property on which cannabis is cultivated due to odor that is disturbing to people of normal sensitivity. Any cannabis odor shall not be equal or greater than a 7 dilution threshold ("DT") when measured by the County with a field olfactometer at the property line on which the cannabis is cultivated for a minimum of two olfactometer observations not less than fifteen minutes apart within a one hour period ("7 DT one hour"). If the odor from cannabis cultivating, drying, curing, processing, or storing violates this subsection, the permittee must reduce the odor below the 7 DT one hour at property line threshold within the time required by the County. Notwithstanding the prior issuance of a permit, the County may require installation of one or more odor control options, which may include but are not limited to the use of

a greenhouse or hoop house that includes activated carbon filtration or equivalent odor abatement control equipment on the air exhaust, a vapor-phase odor control system, increasing the required setback, growing fewer plants, or growing only low odor cannabis strains. Installation of certain odor control options may require a permit. Any such notice requiring the use of one or more odor control options will provide a deadline for completion and the dilution threshold will be retested upon expiration of that deadline. The continued odor in excess of 7 DT one hour upon retesting will constitute a violation of this section subject to enforcement, abatement, and revocation of a Commercial Cannabis Use Permit and Commercial Cannabis Annual Operating Permit under section 130.14.290.

E. Water Source. Commercial cannabis cultivation may only be permitted if sufficient evidence submitted to the County demonstrates: (1) there is adequate water supply in the watershed and water rights to serve the cultivation site; and (2) all required state permits from the State Water Resources Control Board and any other state agency with jurisdiction. Cultivation of cannabis shall not utilize water that has been or is illegally diverted from any spring, wetland, stream, creek, river, lake, unpermitted well, or body of water. The activities associated with the cultivation of cannabis shall not create erosion or result in contaminated runoff into any spring, wetland, stream, creek, river, lake, or body of water.

F. Water conservation measures. Cannabis cultivation operations shall include adequate measures that minimize the use of water for cultivation at the site. Water conservation measures, including but not limited to underground drip irrigation, soil moisture monitoring, water capture systems, grey water systems, or other equally effective water conservation measures, shall be incorporated into the cultivation operations in order to minimize the use of water where feasible.

G. Screening. Cannabis shall be screened from public view so that no part of a plant can be seen from an adjacent street or adjacent parcel. Screening shall be accomplished by use of a greenhouse or hoop house or by fencing or vegetation. All greenhouses, hoop houses, and fences shall comply with all building and zoning codes and any other applicable law or regulation. Greenhouses and hoop houses are the preferred means of screening.

H. Security and wildlife exclusionary fencing. Areas where cannabis is cultivated, the premises on which cannabis is cultivated, or a portion thereof that includes the cultivation area shall be secured by a minimum six-foot high solid wood or chain link wildlife exclusionary fence, such as cyclone or field game fencing, with locked gates built in compliance with building and zoning codes. All gates shall be lockable and remain locked at all times except to provide immediate entry and exit. A chain link fence is not sufficient for screening. Fencing may not be covered with plastic or cloth except that shade cloth may be used on the inside of the fence.

I. CEQA. As part of the environmental review under the California Environmental Quality Act, the applicant must show that there is no other environmentally superior cultivation site located on the same premises; the location and operation of the cannabis cultivation site will, to the maximum extent feasible, avoid or minimize its impact on environmentally sensitive areas including but not limited to oak woodland and other natural conditions or habitats.

J. Renewable energy. Electrical power for mixed-light cultivation operations, including but not limited to illumination, heating, cooling, and ventilation, shall be provided by on-grid power with 100% renewable source, on-site zero net energy renewable source, or with purchase of carbon offsets of any portion of power not from renewable sources. Generators may be used as a secondary or back-up power source pursuant to a valid permit from the El Dorado County Air Quality Management District. Impacts from generator use will also be considered in the CEQA analysis and site specific restrictions and conditions may be imposed to mitigate those impacts, including conditions to minimize noise.

K. Lighting. All lights used for mixed-light cultivation shall be fully contained within structures or otherwise shielded to fully contain any light or glare involved in the cultivation process. Artificial lighting for mixed-light cultivation is limited to a rate of six watts per square foot or less. For outdoor and mixed-light commercial cannabis cultivation, security lighting shall be motion activated and all outdoor lighting shall comply with Chapter 130.34.

L. Pesticide Usage. Preference shall be given to applicants that maintain organic certification standards or the substantial equivalent, provided that maintaining organic certification standards or the substantial equivalent is a condition of the Commercial Cannabis Annual Operating Permit. Until the California Department of Food and Agriculture adopts a certified organic certification, the County Agricultural Commissioner shall determine whether a particular operation satisfies substantially equivalent organic criteria. Documentation of all pesticides used shall be presented each year as part of the Commercial Cannabis Annual Operating Permit. All pesticides and fertilizers shall be properly labeled and stored and disposed of to avoid contamination through erosion, leakage, or inadvertent damages from rodents, pests, and wildlife and to prevent harm to persons, the environment, and wildlife.

M. Disposal of waste material. Cannabis waste material shall be disposed of in accordance with existing state and local laws and regulations at the time of disposal. Burning of cannabis waste material is prohibited.

N. Public Sewer or Sewage Disposal System. The premises where the cultivation of cannabis takes place shall either be connected to a public sewer system or have a County inspected and approved sewage disposal system.

O. Recommendation of the Agricultural Commission. An application for a Commercial Cannabis Use Permit for outdoor or mixed-light cultivation must be reviewed by the Agricultural Commission and the recommendation of the Agricultural Commission, including any suggested conditions or restrictions, shall be considered by the Planning Commission.

6. Ordinance Declarative of Existing Law.

Chapter 130.20 of the El Dorado County Zoning Ordinance provides that only uses specifically enumerated are permitted and, unless an exemption applies, any unenumerated use is not allowed within the County. Nothing in this ordinance shall be construed to legalize any existing commercial cannabis activity currently operating in the County, whether it is operating with or without a business license.

7. Severability.

If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of this chapter or any part thereof is for any reason held to be unconstitutional, invalid, or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this chapter or any part thereof. The Board of Supervisors hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase of this chapter irrespective of whether one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases is held invalid or ineffective.

8. Effective Date.

If enacted by a majority of the electorate voting in the election on the measure, this Chapter is effective 30 days after independent ordinances are enacted by the voters of El Dorado County providing for (1) a general or special tax on all of the commercial cannabis authorized herein; and (2) discretionary permitting and enforcement procedures to regulate the commercial cannabis activities authorized herein. If such general or special tax is passed but is challenged or invalidated for any reason, this ordinance does not become effective unless and until the challenge concludes and the tax is upheld as valid. If the general or special tax is challenged for any reason after this ordinance becomes effective and the tax is repealed or invalidated, this ordinance shall automatically expire and be repealed.

Section 2. Section 130.14.270(2) of Title 130, Article 9 of the El Dorado County Ordinance Code entitled "Commercial Cannabis Activities" is hereby amended to read as follows:

2. Imposition of Moratorium on Commercial Cannabis Activities.

- A. Pursuant to Government Code section 65858, subdivision (b), and with the exception of any existing medical cannabis distribution facilities that satisfy all of the requirements of section 130.14.250(2)(D) of the El Dorado County Code and any commercial cannabis activity expressly authorized under County Code and operating pursuant to a valid County permit, the establishment or operation of any commercial cannabis activity is prohibited in the unincorporated areas of the County and no use permit, variance, building permit, or any other applicable entitlement for use, including but not limited to the issuance of a business license, shall be approved or issued for the establishment or operation of a commercial cannabis activity for a period of two years from December 12, 2017.
- B. With the exception of any existing medical cannabis distribution facilities that satisfy all of the requirements of section 130.14.250(2)(D) of the El Dorado County Code and any commercial cannabis activity expressly authorized under County Code and operating pursuant to a valid County permit, a facility engaged in a commercial cannabis activity shall not be established, operated, or maintained at any location in any zone district in the unincorporated areas of the County, even if the facility engaged in a commercial cannabis activity is located within or operated with one or more additional otherwise permitted use(s), including but not limited to a health food store, bakery, tobacco shop, retail store, health education facility, health spa, fitness facility, wellness center, or health facility.

IMPARTIAL ANALYSIS OF MEASURE Q

**MEASURE PROVIDING FOR AUTHORIZATION AND REGULATION OF COMMERCIAL
OUTDOOR AND MIXED-LIGHT CULTIVATION OF CANNABIS FOR RECREATIONAL ADULT USE**

State law legalized commercial cannabis activities within the state, but allows each local government to decide whether to authorize any commercial cannabis activity within its jurisdiction. The El Dorado County Board of Supervisors voted to place Measure Q on the ballot to allow the citizens of the County to decide whether to authorize outdoor and mixed-light commercial cultivation of cannabis for recreational adult use within the unincorporated areas of the County. Mixed-light is cultivation in a greenhouse, hoop-house, or other similar structure. The only difference between Measures P and Q is that Measure P applies to medicinal use cannabis and Measure Q applies to recreational use of cannabis by adults over the age of twenty-one.

If approved by a majority of the voters voting thereon, Measure Q would enact El Dorado County Code Section 130.14.310. The ordinance could become effective only if Measure N passes, which provides for taxation of any authorized commercial cannabis activity and a County regulatory and enforcement program. Passage of Measure Q would not affect Section 130.14.260, which allows for the limited outdoor cultivation of medicinal cannabis for personal use. Measure Q would eliminate the County's two-year ban on commercial cannabis activities for the uses authorized in Measure Q. Neither state law nor the passage of Measure Q could legally affect the federal government's current criminalization of cannabis.

Measure Q would only allow outdoor or mixed-light cultivation on parcels of at least 10 acres zoned Rural Lands, Planned Agricultural, Limited Agricultural, and Agricultural Grazing. Rural Lands would be restricted to a maximum of 10,000 square feet of canopy. For agricultural zones, the canopy is restricted based on the lot size with the largest canopy reaching a potential maximum of 2 acres on a parcel greater than 25 acres. Measure Q limits the total number of cultivation operations in the unincorporated areas of the County to 150 regardless of whether the operations are outdoor, mixed-light, or indoor or for medicinal or recreational adult use cannabis. Of the 150 total cultivation permits, 75 are reserved for outdoor or mixed-light grows of 10,000 square feet or less and 40 of those 75 are reserved for organic outdoor grows of 3,000 square feet or less.

If Measure Q passes, a person could cultivate commercial cannabis for recreational use only after obtaining a permit from the County, which requires a background check reviewed by the Sheriff's Office, site-specific environmental review under the California Environmental Quality Act, odor reduction requirements, setbacks, screening of the plants from public view, a legal water source, security procedures, and other regulations to protect public health and safety and the environment. A permit also requires the recommendation of the Agricultural Commission and a hearing before the Planning Commission. Adjacent property owners and Placerville or South Lake Tahoe if the site is within a one-half mile radius of either city would be notified before the Planning Commission hearing. Compliance would be enforced through the civil administrative procedures and fines provided for in Measure N and could result in revocation of a permit.

A "yes" vote is to allow limited and regulated outdoor and mixed-light (greenhouse) cultivation of commercial cannabis for recreational adult use on parcels zoned Rural Lands, Planned Agricultural, Limited Agricultural, and Agricultural Grazing.

A "no" vote is to not allow outdoor and mixed-light (greenhouse) cultivation of commercial cannabis for recreational adult use in the unincorporated areas of El Dorado County and to maintain the status quo.

Michael J. Ciccozzi, El Dorado County, County Counsel

ARGUMENT IN FAVOR OF MEASURE Q

This measure was placed on the ballot by the El Dorado County Board of Supervisors after many meetings with community stakeholders.

VOTE YES ON MEASURE Q.

Measures N,P,Q,R and S must all pass to provide the County with the money necessary to build stronger enforcement programs targeting illicit market cannabis. A county with less hilly area than our county estimated it would cost an additional \$3,100,000 to enforce an unregulated market. Additional money will be required for new enforcement in our county.

This measure will authorize the County to permit no more than 150 cannabis cultivation operations. The extensive permit requirements of this measure will prevent cannabis cultivation problems. Permitted operations must comply with 100s of pages of state regulations and provide 24/7 video surveillance, security fencing and storage, and extensive environmental protection review and compliance. Operations must obtain permits through Conditional Use Permit hearings of the Planning Commission and Agriculture Commission. Only parcels zoned rural lands or agriculture over 10 acres are eligible for permits. No commercial cultivation will occur near residential zoned parcels.

New permits will increase rural property values and add new jobs. Give El Dorado County businesses a chance to compete. More than 70% of the market is adult-use. Competing in only a portion of the market is like telling the wine industry they can only make Rose wine. Many other counties are getting a head start on El Dorado County businesses.

Estimated revenue from the measures passed by the voters is \$1,900,000 to \$52,800,000.

If the Board of Supervisors chooses to appropriate the new money it can be used for road repair, law enforcement, First Five, youth trauma prevention, mental health, veterans programs and substance abuse education.

VOTE YES ON MEASURE Q for SAFER communities.

Yesonnpqrs.org

Rod Miller, Treasurer, Committee Supporting El Dorado County Measures N, P, Q, R & S

Heather Schafer, Legal Assistant, The Law Office of Dale Schafer

Bill Prosser, Owner, Winterfalls Ranch

- NO ARGUMENTS AGAINST THIS MEASURE WERE SUBMITTED -

FULL TEXT OF MEASURE R

AN ORDINANCE PROVIDING FOR THE AUTHORIZATION AND REGULATION OF RETAIL SALE, COMMERCIAL DISTRIBUTION, AND COMMERCIAL INDOOR CULTIVATION OF CANNABIS FOR MEDICINAL USE THE PEOPLE OF THE COUNTY OF EL DORADO DO ORDAIN AS FOLLOWS:

Section 1. Section 130.14.320 of Title 130, Article 9 of the El Dorado County Ordinance Code entitled "Retail Sale, Commercial Distribution, and Commercial Indoor Cultivation of Cannabis for Medicinal Use" is hereby enacted to read as follows:

ARTICLE 9 – MISCELLANEOUS CHAPTER 130.14 – CANNABIS

Sec. 130.14.320 – Retail Sale, Commercial Distribution, and Commercial Indoor Cultivation of Cannabis for Medicinal Use

1. Applicability.

A. The purpose of this ordinance is to permit certain specified commercial cannabis activities and uses in the unincorporated areas of the County, subject to the regulation and control of the Board of Supervisors. While this ordinance was enacted by voters, the Board of Supervisors retains discretion to regulate such uses, including without limitation the density, intensity, number, proximity, location, and environmental standards of such uses without further voter approval.

B. Cannabis is not an agricultural crop or product with respect to the "right to farm" ordinance in Section 130.40.290, the establishments of Agricultural Preserves under Section 130.40.290, or any other provision in this Code that defines or allows cultivation of crops or agricultural products and nothing in this Chapter shall be construed to the contrary.

2. Definitions.

The terms and phrases in this section shall have the meaning ascribed to them in Section 130.14.290(2), unless the context in which they are used clearly suggests otherwise.

3. Limit on the number of commercial cannabis cultivation operations.

The maximum number of commercial cannabis cultivation operations in the unincorporated portions of the County shall be limited to 150. This section sets the maximum possible permits only and nothing in this section shall be construed to require the County to issue a minimum or the maximum number of permits.

4. Indoor Commercial Cannabis Cultivation for Medicinal Use.

A. *Limitation on use.* Indoor commercial cannabis cultivation for medicinal use may be permitted in the Community Commercial (CC), Regional Commercial (RC), and General Commercial (GC), Industrial High (IH), and Industrial Low (IL) zone districts subject to a Commercial Cannabis Use Permit and Commercial Cannabis Annual Operating Permit under Section 130.14.290.

B. The County may place restrictions on canopy size to maintain consistency with other laws, surrounding commercial uses, and neighborhood compatibility.

C. *Location.* Indoor commercial cannabis cultivation shall not be located within 1,500 feet from any school, school bus stop, place of worship, park, playground child care center, youth-oriented facility, pre-school, licensed drug or alcohol recovery facility, or licensed sober living facility. Distance shall be measured from the nearest point of the property line of the premises that contains the commercial cultivation to the nearest point of the property line of the enumerated use using a direct straight-line measurement. A new adjacent use does not affect the continuation of an existing use that was permitted and legally established under the standards of this chapter.

D. *Renewable energy source.* Electrical power for indoor commercial cultivation operations, including but not limited to illumination, heating, cooling, and ventilation, shall be provided by on-grid power with 100% renewable source, on-site zero net energy renewable source, or with the purchase of carbon offsets of any portion of power not from renewable sources. The use of generators for indoor cultivation is prohibited, except for temporary use in emergencies only.

E. All lights used for indoor commercial cannabis cultivation shall be fully contained within structures or otherwise shielded to fully contain any light or glare involved in the cultivation process. Security lighting shall be motion activated and all outdoor lighting shall comply with Chapter 130.34.

F. *Water source.* Commercial cannabis cultivation may only be permitted if sufficient evidence submitted to the County demonstrates: (1) there is adequate water supply in the watershed and water rights to serve the cultivation site; and (2) all required state permits from the State Water Resources Control Board and any other state agency with jurisdiction. Cultivation of cannabis shall not utilize water that has been or is illegally diverted from any spring, wetland, stream, creek, river, lake, or body of water.

G. *Water conservation measures.* Cannabis cultivation operations shall include adequate measures that minimize the use of water for cultivation at the site. Water conservation measures, water capture systems, grey water systems, or other equally effective water conservation measures shall be incorporated into the cultivation operations in order to minimize the use of water where feasible.

H. *Screening.* Cannabis cultivated indoors shall be screened from public view so that no part of a plant can be seen from an adjacent street or adjacent parcel. Coverings on windows may not be made of tarps, canvas, tin foil, or other fabrics affixed directly to the wall or window.

I. *Odor.* The cultivating, drying, curing, processing, and storing of cannabis shall not adversely affect the health, safety, or enjoyment of property of persons residing near the property on which cannabis is cultivated due to odor that is disturbing to people of normal sensitivity. Any cannabis odor shall not be equal or greater than a 7 dilution threshold ("DT") when measured by the County with a field olfactometer at the property line on which the cannabis is cultivated for a minimum of two olfactometer observations not less than fifteen minutes apart within a one hour period ("7 DT one hour"). If the odor from cannabis cultivating, drying, curing, processing, or storing violates this subsection, the permittee must reduce the odor below the 7 DT one hour at property line threshold within the time required by the County. Notwithstanding the prior issuance of a permit, the County may require installation of one or more odor control options, which may include but are not limited to the use of a greenhouse or hoop house that includes activated carbon filtration or equivalent odor abatement control equipment on the air exhaust, a vapor-phase odor control system, increasing the required setback, growing fewer plants, or growing only low odor cannabis strains. Installation of certain odor control options may require a permit. Any such notice requiring the use of one or more odor control options will provide a deadline for completion and the dilution threshold will be retested upon expiration of that deadline. The continued odor in excess of 7 DT one hour upon retesting will constitute a violation of this section subject to enforcement, abatement, and revocation of the Commercial Cannabis Use Permit and Commercial Cannabis Annual Operating Permit under section 130.14.290.

J. *Disposal of waste material.* Cannabis waste material shall be disposed of in accordance with existing state and local laws and regulations at the time of disposal. Burning of cannabis waste material is prohibited.

K. *Public Sewer or Sewage Disposal System.* The premises where the cultivation of cannabis takes place shall either be connected to a public sewer system or have a County inspected and approved sewage disposal system.

5. Cannabis Distribution Facilities for Medicinal Use.

A. *Limitation on use.* Distribution facilities for medicinal use cannabis may be permitted in the Community Commercial (CC), Regional Commercial (RC), and General Commercial (GC), Industrial High (IH), and Industrial Low (IL) zones districts subject to a Commercial Cannabis Use Permit and Commercial Cannabis Annual Operating Permit under Section 130.14.290.

B. *Location.* Cannabis distribution facilities shall not be located within 1,500 feet from any school, school bus stop, place of worship, park, playground child care center, youth-oriented facility, pre-school, licensed drug or alcohol recovery facility, or licensed sober living facility. Distance shall be measured from the nearest point of the property line of the premises that contains the commercial cultivation to the nearest point of the property line of the enumerated use using a direct straight-line measurement. A new adjacent use does not affect the continuation of an existing use that was permitted and legally established under the standards of this chapter.

C. *Screening.* Cannabis within distribution facilities shall be screened from public view so that no part of a plant can be seen from an adjacent street or adjacent parcel. Coverings on windows may not be made of tarps, canvas, tinfoil, or other fabrics affixed directly to the wall or window.

D. A County permit for distribution may be limited to transportation only so long as the Bureau of Cannabis Control allows for a Distributor – Transport only license or the substantial equivalent.

E. Cannabis may only be transported inside of a commercial vehicle or trailer with sufficient security features and GPS tracking. Cannabis or cannabis signage or symbols may not be visible or identifiable from outside of the commercial vehicle or trailer. Transportation by means of aircraft, watercraft, drones, rail, human powered vehicles, and unmanned vehicles is prohibited.

F. As a condition of a permit, the County may require a distributor or transporter to notify the Sheriff's Office before transporting cannabis within the unincorporated areas of the County.

6. Retail Sale and Delivery of Medicinal Use Cannabis.

A. *Limitation on use.* Retail sale or retail delivery facilities of cannabis for medicinal use may be permitted in the Community Commercial (CC), Regional Commercial (RC), and General Commercial (GC), and Industrial Low (IL) zone districts subject to a Commercial Cannabis Use Permit and Commercial Cannabis Annual Operating Permit under Section 130.14.290.

B. With the exception of a non-storefront retail facility providing only delivery service, no more than seven (7) cannabis retail storefront facilities that are open to the public shall be permitted at any one time. Concentration of commercial cannabis facilities and proximity to an existing or proposed cannabis retail facility shall be considered in determining whether to grant a permit. Provided that the application for a Commercial Cannabis Use Permit is received within 45 days of the availability of applications for retail sale, the County shall first review and take action on the application of any retail facility selling medicinal use cannabis that was issued a valid temporary license from the Bureau of Cannabis Control by July 17, 2018.

C. *Location.* Retail facilities, either storefront or non-storefront, shall not be located within 1,500 feet from any school, school bus stop, place of worship, park, playground child care center, youth-oriented facility, pre-school, licensed drug or alcohol recovery facility, or licensed sober living facility. Distance shall be measured from the nearest point of the property line of the premises that contains the commercial cultivation to the nearest point of the property line of the enumerated use using a direct straight-line measurement. A new adjacent use does not affect the continuation of an existing use that was permitted and legally established under the standards of this chapter.

D. Retail facilities, either storefront or non-storefront, shall not be established on any parcel containing a dwelling unit used as a residence nor within 500 feet of a residential zoning district.

E. *Screening.* Cannabis retail facilities shall be screened from public view so that no part of a plant can be seen from an adjacent street or adjacent parcel. Coverings on windows may not be made of tarps, canvas, tinfoil, or other fabrics affixed directly to the wall or window.

F. Cannabis may only be delivered inside of a commercial vehicle or trailer with sufficient security features and GPS tracking. Cannabis or cannabis signage or symbols may not be visible or identifiable from outside of the commercial vehicle or trailer. Transportation by means of aircraft, watercraft, drones, rail, human powered vehicles, and unmanned vehicles is prohibited.

G. As a condition of a permit, the County may require a retailer to notify the Sheriff's Office of scheduled commercial cannabis deliveries to or from the facility.

H. Hours of operation for retail sale and delivery are limited to 8:00 a.m. to 8:00 p.m. Any delivery must be initiated by a customer by 7:00 p.m.

I. A retail facility shall provide adequate security on the premises, including lighting and alarms, to insure the safety of persons and to protect the premises from theft. Security lighting shall be motion activated and all outdoor lighting shall comply with Chapter 130.34.

7. Ordinance Declarative of Existing Law.

Chapter 130.20 of the El Dorado County Zoning Ordinance provides that only uses specifically enumerated are permitted and, unless an exemption applies, any unenumerated use is not allowed within the County. Nothing in this ordinance shall be construed to legalize any existing commercial cannabis activity currently operating in the County, whether it is operating with or without a business license.

8. Severability.

If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of this chapter or any part thereof is for any reason held to be unconstitutional, invalid, or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this chapter or any part thereof. The Board of Supervisors hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase of this chapter irrespective of whether one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases is held invalid or ineffective.

9. Effective Date.

If enacted by a majority of the electorate voting in the election on the measure, this Chapter is effective 30 days after independent ordinances are enacted by the voters of El Dorado County providing for (1) a general or special tax on all of the commercial cannabis authorized herein; and (2) discretionary permitting and enforcement procedures to regulate the commercial cannabis activities authorized herein. If such general or special tax is passed but is challenged or invalidated for any reason, this ordinance does not become effective unless and until the challenge concludes and the tax is upheld as valid. If the general or special tax is challenged for any reason after this ordinance becomes effective and the tax is repealed or invalidated, this ordinance shall automatically expire and be repealed.

Section 2. Section 130.14.250 of Title 130, Article 9 of the El Dorado County Ordinance Code entitled "Medical Cannabis Distribution" is hereby repealed.

Section 3. Section 130.14.270(2) of Title 130, Article 9 of the El Dorado County Ordinance Code entitled "Commercial Cannabis Activities" is hereby amended to read as follows:

2. *Imposition of Moratorium on Commercial Cannabis Activities.*

- A. Pursuant to Government Code section 65858, subdivision (b), and with the exception of any ~~existing medical cannabis distribution facilities that satisfy all of the requirements of section 130.14.250(2)(D) of the El Dorado County Code~~ commercial cannabis activity expressly authorized under County Code and operating pursuant to a valid County permit, the establishment or operation of any commercial cannabis activity is prohibited in the unincorporated areas of the County and no use permit, variance, building permit, or any other applicable entitlement for use, including but not limited to the issuance of a business license, shall be approved or issued for the establishment or operation of a commercial cannabis activity for a period of two years from December 12, 2017.
- B. With the exception of any ~~existing medical cannabis distribution facilities that satisfy all of the requirements of section 130.14.250(2)(D) of the El Dorado County Code~~ commercial cannabis activity expressly authorized under County Code and operating pursuant to a valid County permit, a facility engaged in a commercial cannabis activity shall not be established, operated, or maintained at any location in any zone district in the unincorporated areas of the County, even if the facility engaged in a commercial cannabis activity is located within or operated with one or more additional otherwise permitted use(s), including but not limited to a health food store, bakery, tobacco shop, retail store, health education facility, health spa, fitness facility, wellness center, or health facility.

IMPARTIAL ANALYSIS OF MEASURE R

MEASURE PROVIDING FOR THE AUTHORIZATION AND REGULATION OF RETAIL SALE, COMMERCIAL DISTRIBUTION, AND COMMERCIAL INDOOR CULTIVATION OF CANNABIS FOR MEDICINAL USE

State law legalized commercial cannabis activities within the state, but allows each local government to decide whether to authorize any commercial cannabis activity within its jurisdiction. The El Dorado County Board of Supervisors voted to place Measure R on the ballot to allow the citizens of the County to decide whether to authorize commercial indoor cultivation, retail sale and delivery, distribution, and transportation of cannabis for medicinal use within the unincorporated areas of the County. The only difference between Measures R and S is that Measure R applies to medicinal use cannabis and Measure S applies to recreational use of cannabis by adults over the age of twenty-one.

If approved by a majority of the voters voting thereon, Measure R would enact El Dorado County Code Section 130.14.320. The ordinance could become effective only if Measure N passes, which provides for taxation of any authorized commercial cannabis activity and a County regulatory and enforcement program. Measure R would repeal Section 130.14.250, which currently prohibits medical marijuana dispensaries, and would eliminate the County's two-year ban on commercial cannabis activities for the uses authorized in Measure R. Neither state law nor the passage of Measure R could legally affect the federal government's current criminalization of cannabis.

Indoor cultivation occurs in a structure with the use of artificial light. Measure R requires the use of 100% renewable energy or the purchase of carbon offsets. The total cultivation operations for all cannabis uses would be 150 for outdoor, mixed-light, and indoor sites, and 75 of the 150 could be indoor.

Distribution involves the sale and transport of cannabis and cannabis products between licensed cannabis businesses, but not the direct sale to the public. Transportation involves only the transfer of cannabis and cannabis products between licensed cannabis businesses. Retail sale and delivery involve the sale to qualified patients of cannabis and cannabis products that are tested, packaged, and labeled in accordance with state law. Measure R limits the number of storefront facilities open to the public to 7.

Measure R limits indoor cultivation and distribution and transportation facilities to parcels zoned Community Commercial, Regional Commercial, General Commercial, Industrial High, and Industrial Low. Retail sale and delivery facilities are limited to parcels zoned Community Commercial, Regional Commercial, General Commercial, and Industrial Low.

Measure R allows issuance of a permit only after a criminal background check, site-specific environmental review under the California Environmental Quality Act, odor reduction for cultivation, setbacks, screening of the plants from public view, a legal water source, security procedures, use of unmarked vehicles with GPS tracking, and other regulations to protect public health and safety and the environment. Issuance of a permit requires a recommendation from the Planning and Building Director and hearing before the Planning Commission, with notice to adjacent property owners and Placerville or South Lake Tahoe if the site is within one-half mile radius of either city. Compliance would be enforced through the civil administrative procedures and fines provided for in Measure N and could result in revocation of a permit.

A "yes" vote is to allow regulated indoor cultivation, retail sale and delivery, distribution, and transportation of commercial cannabis for medicinal use within commercial and industrial zones in the unincorporated areas of El Dorado County.

A "no" vote is to not allow indoor cultivation, retail sale and delivery, distribution, and transportation of commercial cannabis for medicinal use in the unincorporated areas of El Dorado County and to maintain the status quo.

Michael J. Ciccuzzi, El Dorado County, County Counsel

ARGUMENT IN FAVOR OF MEASURE R

This measure was placed on the ballot by the El Dorado County Board of Supervisors after many meetings with community stakeholders.

VOTE YES ON MEASURE R.

Measure N,P,Q,R and S must all pass to provide the County with the money necessary to build stronger enforcement programs targeting illicit market cannabis. A county with less hilly area than our county estimated it would cost an additional \$3,100,000 to enforce an unregulated market. Additional money will be required for new enforcement in our county. Cannabis is a significant part of our county's economy.

This measure will ensure that patients have access to safe affordable medicine in the county. It will authorize the existing retail dispensaries to get permits in the State system. Many county medical patients rely on dispensaries to get their medicine because they can't grow their medicine.

The existing dispensaries have had no more problems than any other retail businesses in the county.

The measure will authorize several new businesses or locations to open. New businesses will increase jobs in the county. Give El Dorado county businesses a chance to compete. Many other county's are getting a head start on El Dorado County businesses.

Keep El Dorado County money in the County.

These permits will generate new county revenue from commercial sales through legal retail and distribution companies. Estimated revenue from all the measures passed by the voters is \$1,900,000 to \$52,800,000.

If the Board of Supervisors chooses to appropriate the new money it can be used for road repair, law enforcement, First Five, youth trauma prevention, mental health, veterans programs and substance abuse education.

VOTE YES ON MEASURE R for SAFER ACCESS TO MEDICINE.

Yesonnpqrs.org

Rod Miller, Treasurer, Committee Supporting El Dorado County Measure N, P, Q, R & S

Kelly Chiusano, Owner, Pure Life Collective

- NO ARGUMENTS AGAINST THIS MEASURE WERE SUBMITTED -

FULL TEXT OF MEASURE S

AN ORDINANCE PROVIDING FOR THE AUTHORIZATION AND REGULATION OF RETAIL SALE, COMMERCIAL DISTRIBUTION, AND COMMERCIAL INDOOR CULTIVATION OF CANNABIS FOR RECREATIONAL ADULT USE

THE PEOPLE OF THE COUNTY OF EL DORADO DO ORDAIN AS FOLLOWS:

Section 1. Section 130.14.330 of Title 130, Article 9 of the El Dorado County Ordinance Code entitled "Retail Sale, Commercial Distribution, and Commercial Indoor Cultivation of Cannabis for Recreational Adult Use" is hereby enacted to read as follows:

ARTICLE 9 – MISCELLANEOUS CHAPTER 130.14 – CANNABIS

Sec. 130.14.330 – Retail Sale, Commercial Distribution, and Commercial Indoor Cultivation of Cannabis for Recreational Adult Use

1. Applicability.

A. The purpose of this ordinance is to permit certain specified commercial cannabis activities and uses in the unincorporated areas of the County, subject to the regulation and control of the Board of Supervisors. While this ordinance was enacted by voters, the Board of Supervisors retains discretion to regulate such uses, including without limitation the density, intensity, number, proximity, location, and environmental standards of such uses without further voter approval.

B. Cannabis is not an agricultural crop or product with respect to the "right to farm" ordinance in Section 130.40.290, the establishments of Agricultural Preserves under Section 130.40.290, or any other provision in this Code that defines or allows cultivation of crops or agricultural products and nothing in this Chapter shall be construed to the contrary.

2. Definitions.

The terms and phrases in this section shall have the meaning ascribed to them in Section 130.14.290(2), unless the context in which they are used clearly suggests otherwise.

3. Limit on the number of commercial cannabis cultivation operations.

The maximum number of commercial cannabis cultivation operations in the unincorporated portions of the County shall be limited to 150. This section sets the maximum possible permits only and nothing in this section shall be construed to require the County to issue a minimum or the maximum number of permits.

4. Indoor Commercial Cannabis Cultivation for Recreational Adult Use.

A. *Limitation on use.* Indoor commercial cannabis cultivation for recreational adult use may be permitted in the Community Commercial (CC), Regional Commercial (RC), and General Commercial (GC), Industrial High (IH), and Industrial Low (IL) zone districts subject to a Commercial Cannabis Use Permit and Commercial Cannabis Annual Operating Permit under Section 130.14.290.

B. The County may place restrictions on canopy size to maintain consistency with other laws, surrounding commercial uses, and neighborhood compatibility.

C. *Location.* Indoor commercial cannabis cultivation shall not be located within 1,500 feet from any school, school bus stop, place of worship, park, playground child care center, youth-oriented facility, pre-school, licensed drug or alcohol recovery facility, or licensed sober living facility. Distance shall be measured from the nearest point of the property line of the premises that contains the commercial cultivation to the nearest point of the property line of the enumerated use using a direct straight-line measurement. A new adjacent use does not affect the continuation of an existing use that was permitted and legally established under the standards of this chapter.

D. *Renewable energy source.* Electrical power for indoor commercial cultivation operations, including but not limited to illumination, heating, cooling, and ventilation, shall be provided by on-grid power with 100% renewable source, on-site zero net energy renewable source, or with the purchase of carbon offsets of any portion of power not from renewable sources. The use of generators for indoor cultivation is prohibited, except for temporary use in emergencies only.

E. All lights used for indoor commercial cannabis cultivation shall be fully contained within structures or otherwise shielded to fully contain any light or glare involved in the cultivation process. Security lighting shall be motion activated and all outdoor lighting shall comply with Chapter 130.34.

F. *Water source.* Commercial cannabis cultivation may only be permitted if sufficient evidence submitted to the County demonstrates: (1) there is adequate water supply in the watershed and water rights to serve the cultivation site; and (2) all required state permits from the State Water Resources Control Board and any other state agency with jurisdiction. Cultivation of cannabis shall not utilize water that has been or is illegally diverted from any spring, welland, stream, creek, river, lake, or body of water.

G. *Water conservation measures.* Cannabis cultivation operations shall include adequate measures that minimize the use of water for cultivation at the site. Water conservation measures, water capture systems, grey water systems, or other equally effective water conservation measures shall be incorporated into the cultivation operations in order to minimize the use of water where feasible.

H. *Screening.* Cannabis cultivated indoors shall be screened from public view so that no part of a plant can be seen from an adjacent street or adjacent parcel. Coverings on windows may not be made of tarps, canvas, tinfoil, or other fabrics affixed directly to the wall or window.

I. *Odor.* The cultivating, drying, curing, processing, and storing of cannabis shall not adversely affect the health, safety, or enjoyment of property of persons residing near the property on which cannabis is cultivated due to odor that is disturbing to people of normal sensitivity. Any cannabis odor shall not be equal or greater than a 7 dilution threshold ("DT") when measured by the County with a field olfactometer at the property line on which the cannabis is cultivated for a minimum of two olfactometer observations not less than fifteen minutes apart within a one hour period ("7 DT one hour"). If the odor from cannabis cultivating, drying, curing, processing, or storing violates this subsection, the permittee must reduce the odor below the 7 DT one hour at property line threshold within the time required by the County. Notwithstanding the prior issuance of a permit, the County may require installation of one or more odor control options, which may include but are not limited to the use of a greenhouse or hoop house that includes activated carbon filtration or equivalent odor abatement control equipment on the air exhaust, a vapor-phase odor control system, increasing the required setback, growing fewer plants, or growing only low odor cannabis strains. Installation of certain odor control options may require a permit. Any such notice requiring the use of one or more odor control options will provide a deadline for completion and the dilution threshold will be retested upon expiration of that deadline. The continued odor in excess of 7 DT one hour upon retesting will constitute a violation of this section subject to enforcement, abatement, and revocation of the Commercial Cannabis Use Permit and Commercial Cannabis Annual Operating Permit under section 130.14.290.

J. *Disposal of waste material.* Cannabis waste material shall be disposed of in accordance with existing state and local laws and regulations at the time of disposal. Burning of cannabis waste material is prohibited.

K. *Public Sewer or Sewage Disposal System.* The premises where the cultivation of cannabis takes place shall either be connected to a public sewer system or have a County inspected and approved sewage disposal system.

5. Cannabis Distribution Facilities for Recreational Adult Use.

A. *Limitation on use.* Distribution facilities for recreational adult use cannabis may be permitted in the Community Commercial (CC), Regional Commercial (RC), and General Commercial (GC), Industrial High (IH), and Industrial Low (IL) zones districts subject to a Commercial Cannabis Use Permit and Commercial Cannabis Annual Operating Permit under Section 130.14.290.

B. *Location.* Cannabis distribution facilities shall not be located within 1,500 feet from any school, school bus stop, place of worship, park, playground child care center, youth-oriented facility, pre-school, licensed drug or alcohol recovery facility, or licensed sober living facility. Distance shall be measured from the nearest point of the property line of the premises that contains the commercial cultivation to the nearest point of the property line of the enumerated use using a direct straight-line measurement. A new adjacent use does not affect the continuation of an existing use that was permitted and legally established under the standards of this chapter.

C. *Screening.* Cannabis within distribution facilities shall be screened from public view so that no part of a plant can be seen from an adjacent street or adjacent parcel. Coverings on windows may not be made of tarps, canvas, tinfoil, or other fabrics affixed directly to the wall or window.

D. A County permit for distribution may be limited to transportation only so long as the Bureau of Cannabis Control allows for a Distributor – Transport only license or the substantial equivalent.

E. Cannabis may only be transported inside of a commercial vehicle or trailer with sufficient security features and GPS tracking. Cannabis or cannabis signage or symbols may not be visible or identifiable from outside of the commercial vehicle or trailer. Transportation by means of aircraft, watercraft, drones, rail, human powered vehicles, and unmanned vehicles is prohibited.

F. As a condition of a permit, the County may require a distributor or transporter to notify the Sheriff's Office before transporting cannabis within the unincorporated areas of the County.

6. Retail Sale and Delivery of Recreational Adult Use Cannabis.

A. *Limitation on use.* Retail sale or retail delivery facilities of cannabis for recreational adult use may be permitted in the Community Commercial (CC), Regional Commercial (RC), and General Commercial (GC), and Industrial Low (IL) zone districts subject to a Commercial Cannabis Use Permit and Commercial Cannabis Annual Operating Permit under Section 130.14.290.

B. With the exception of a non-storefront retail facility providing only delivery service, no more than seven (7) cannabis retail storefront facilities that are open to the public shall be permitted at any one time. Concentration of commercial cannabis facilities and proximity to an existing or proposed cannabis retail facility shall be considered in determining whether to grant a permit. Provided that the application for a Commercial Cannabis Use Permit is received within 45 days of the availability of applications for retail sale, the County shall first review and take action on the application of any retail facility selling medicinal use cannabis that was issued a valid temporary license from the Bureau of Cannabis Control by July 17, 2018.

C. *Location.* Retail facilities, either storefront or non-storefront, shall not be located within 1,500 feet from any school, school bus stop, place of worship, park, playground child care center, youth-oriented facility, pre-school, licensed drug or alcohol recovery facility, or licensed sober living facility. Distance shall be measured from the nearest point of the property line of the premises that contains the commercial cultivation to the nearest point of the property line of the enumerated use using a direct straight-line measurement. A new adjacent use does not affect the continuation of an existing use that was permitted and legally established under the standards of this chapter.

D. Retail facilities, either storefront or non-storefront, shall not be established on any parcel containing a dwelling unit used as a residence nor within 500 feet of a residential zoning district.

E. *Screening.* Cannabis retail facilities shall be screened from public view so that no part of a plant can be seen from an adjacent street or adjacent parcel. Coverings on windows may not be made of tarps, canvas, tinfoil, or other fabrics affixed directly to the wall or window.

F. Cannabis may only be delivered inside of a commercial vehicle or trailer with sufficient security features and GPS tracking. Cannabis or cannabis signage or symbols may not be visible or identifiable from outside of the commercial vehicle or trailer. Transportation by means of aircraft, watercraft, drones, rail, human powered vehicles, and unmanned vehicles is prohibited.

G. As a condition of a permit, the County may require a retailer to notify the Sheriff's Office of scheduled commercial cannabis deliveries to or from the facility.

H. Hours of operation for retail sale and delivery are limited to 8:00 a.m. to 8:00 p.m. Any delivery must be initiated by a customer by 7:00 p.m.

I. A retail facility shall provide adequate security on the premises, including lighting and alarms, to insure the safety of persons and to protect the premises from theft. Security lighting shall be motion activated and all outdoor lighting shall comply with Chapter 130.34.

7. Ordinance Declarative of Existing Law.

Chapter 130.20 of the El Dorado County Zoning Ordinance provides that only uses specifically enumerated are permitted and, unless an exemption applies, any unenumerated use is not allowed within the County. Nothing in this ordinance shall be construed to legalize any existing commercial cannabis activity currently operating in the County, whether it is operating with or without a business license.

8. Severability.

If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of this chapter or any part thereof is for any reason held to be unconstitutional, invalid, or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this chapter or any part thereof. The Board of Supervisors hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase of this chapter irrespective of whether one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases is held invalid or ineffective.

9. Effective Date.

If enacted by a majority of the electorate voting in the election on the measure, this Chapter is effective 30 days after independent ordinances are enacted by the voters of El Dorado County providing for (1) a general or special tax on all of the commercial cannabis authorized herein; and (2) discretionary permitting and enforcement procedures to regulate the commercial cannabis activities authorized herein. If such general or special tax is passed but is challenged or invalidated for any reason, this ordinance does not become effective unless and until the challenge concludes and the tax is upheld as valid. If the general or special tax is challenged for any reason after this ordinance becomes effective and the tax is repealed or invalidated, this ordinance shall automatically expire and be repealed.

Section 2. Section 130.14.270(2) of Title 130, Article 9 of the El Dorado County Ordinance Code entitled "Commercial Cannabis Activities" is hereby amended to read as follows:

2. Imposition of Moratorium on Commercial Cannabis Activities.

A. Pursuant to Government Code section 65858, subdivision (b), and with the exception of any existing medical cannabis distribution facilities that satisfy all of the requirements of section 130.14.250(2)(D) of the El Dorado County Code ~~and any commercial~~

IMPARTIAL ANALYSIS OF MEASURE S

SUBMISSION TO VOTERS OF A MEASURE PROVIDING FOR THE AUTHORIZATION AND REGULATION OF RETAIL SALE, COMMERCIAL DISTRIBUTION, AND COMMERCIAL INDOOR CULTIVATION OF CANNABIS FOR RECREATIONAL ADULT USE

State law legalized commercial cannabis activities within the state, but allows each local government to decide whether to authorize any commercial cannabis activity within its jurisdiction. The El Dorado County Board of Supervisors voted to place Measure S on the ballot to allow the citizens of the County to decide whether to authorize commercial indoor cultivation, retail sale and delivery, distribution, and transportation of cannabis for recreational adult use within the unincorporated areas of the County. The only difference between Measures R and S is that Measure R applies to medicinal use cannabis and Measure S applies to recreational use of cannabis by adults over the age of twenty-one.

If approved by a majority of the voters voting thereon, Measure S would enact El Dorado County Code Section 130.14.330. The ordinance could become effective only if Measure N passes, which provides for taxation of any authorized commercial cannabis activity and a County regulatory and enforcement program. Measure S would eliminate the County's two-year ban on commercial cannabis activities for the uses authorized in Measure S. Neither state law nor the passage of Measure S could legally affect the federal government's current criminalization of cannabis.

Indoor cultivation occurs in a structure with the use of artificial light. Measure S requires the use of 100% renewable energy or the purchase of carbon offsets. The total cultivation operations for all cannabis uses would be limited to 150 for outdoor, mixed-light, and indoor sites, and 75 of the 150 could be indoor.

Distribution involves the sale and transport of cannabis and cannabis products between licensed cannabis businesses, but not the direct sale to the public. Transportation involves only the transfer of cannabis and cannabis products between licensed cannabis businesses. Retail sale and delivery involve the sale to adults over the age of 21 of cannabis and cannabis products that are tested, packaged, and labeled in accordance with state law. Measure S limits the number of storefront facilities open to the public to 7.

Measure S limits indoor cultivation and distribution and transportation facilities to parcels zoned Community Commercial, Regional Commercial, General Commercial, Industrial High, and Industrial Low. Retail sale and delivery facilities are limited to parcels zoned Community Commercial, Regional Commercial, General Commercial, and Industrial Low.

Measure S allows issuance of a permit only after a criminal background check, site-specific environmental review under the California Environmental Quality Act, odor reduction for cultivation, setbacks, screening of the plants from public view, a legal water source, security procedures, use of unmarked vehicles with GPS tracking, and other regulations to protect public health and safety and the environment. Issuance of a permit requires a recommendation from the Planning and Building Director and hearing before the Planning Commission, with notice to adjacent property owners and Placerville or South Lake Tahoe if the site is within one-half mile radius of either city. Compliance would be enforced through the civil administrative procedures and fines provided for in Measure N and could result in revocation of a permit.

A "yes" vote is to allow regulated indoor cultivation, retail sale and delivery, distribution, and transportation of commercial cannabis for recreational adult use within commercial and industrial zones in the unincorporated areas of El Dorado County.

A "no" vote is to not allow indoor cultivation, retail sale and delivery, distribution, and transportation of commercial cannabis for recreational adult use in the unincorporated areas of El Dorado County and to maintain the status quo.

Michael J. Ciccozzi, El Dorado County, County Counsel

ARGUMENT IN FAVOR OF MEASURE S

This measure was placed on the ballot by the El Dorado County Board of Supervisors after many meetings with community stakeholders.
VOTE YES ON MEASURE S.

Measures N,P,Q,R and S must all pass to provide the County with the money necessary to build stronger enforcement programs targeting illicit market cannabis. A county with less hilly area than our county estimated it would cost an additional \$3,100,000 to enforce an unregulated market. Additional money will be required for new enforcement in our county.

The existing dispensaries have had no more problems than any other retail businesses in the county.

This measure will authorize several new businesses or locations to open or allow existing dispensaries to sell adult-use cannabis.

This measure will ensure that the public has safe legal access to lab tested products. All state and county permitted cannabis must be tested for contaminants, for example pesticides.

CBDs are used as anti-inflammatory, pain relief, and nonintoxicating medicine. This measure will allow access to very safe CBD medication.

Give El Dorado county businesses a chance to compete. More than 70% of the market is adult-use. Competing in only a portion of the market is like telling the wine industry they can only sell Rose wine. Keep El Dorado County money in the county.

It is likely that cannabis is safer than alcohol. Cannabis cannot kill you.

Cannabis must be used responsibly.

The estimated revenue from all the measures (N,P,Q,R and S) passed by the voters is \$1,900,000 to \$52,800,000.

If the Board of Supervisors chooses to appropriate the new money it can be used for road repair, law enforcement, First Five, youth trauma prevention, mental health, veterans programs and substance abuse education.

VOTE YES ON MEASURE S for SAFER communities.

Yesonnpqrs.org

Rod Miller, Treasurer, Committee Supporting El Dorado County Measures N, P, Q, R & S

Kelly Chiusano, Owner, Pure Life Collective

- NO ARGUMENTS AGAINST THIS MEASURE WERE SUBMITTED -

**YOUR VOTE IS IMPORTANT!
YOUR VOTE COUNTS!
EXERCISE YOUR VOTE!**

WHETHER YOU CAST YOUR VOTE AT THE POLLS OR BY MAIL, YOUR VOTE WILL BE COUNTED. You are invited to the Election Department office at 2850 Fairlane Court, Placerville, to view the entire election process. A large public viewing area is available to you on election day and night. You are also welcome to ask for a short tour of the election office at any time during working hours. Election officials are dedicated to ensuring that every vote counts and that all elections are transparent and secure.

**EVERY VOTE
COUNTS!**

**Official Voter
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Official Voter Information

COUNTY OF EL DORADO
CONSOLIDATED GUBERNATORIAL GENERAL ELECTION
TUESDAY, NOVEMBER 6, 2018

Supplemental Voter Information Pamphlet
County Measures Only

IMPORTANT NOTICE

This pamphlet contains only the information related to the county wide measures J, N, P, Q, R, S, U, and V. All other local voter information will be sent in a separate mailing that will be included with your vote-by-mail ballot package or your sample ballot package. Voter information is also available online at www.edcgov.us/elections.

POLLS OPEN AT 7 A.M. AND CLOSE AT 8 P.M.

VOTE ONE ELECTION DAY!
EXHIBIT 2 Ballot Measure Language Page 033



Exhibit 3
HdL Companies – Cannabis Tax Revenue Projections
For El Dorado County

July 11, 2018



Creighton Avila
Deputy Chief Administrative Officer
El Dorado County
530-621-5153
Creighton.avila@edcgov.us

Subject: Summary Report and Revenue Projections

The County of El Dorado intends to place 5 cannabis-related measures on the November ballot. The first measure would be a commercial cannabis tax that allows the Board of Supervisors to set a range of rates on a variety of cannabis business types. The other 4 items are all advisory measures that ask the voters whether the County should allow a range of cannabis business activities, including:

- Outdoor or greenhouse (mixed light) cultivation for medicinal use
- Outdoor or greenhouse cultivation for adult (recreational) use
- Indoor cannabis business types for medicinal use, including cultivation, retail and distributors, but not including manufacturing
- Indoor cannabis business types (same) for adult use

The County does not currently anticipate permitting any commercial cannabis businesses unless the tax measure is approved. Cannabis nurseries, manufacturers and testing labs are not included within any of these advisory measures, but it is anticipated that the Board may consider approving them, depending upon voter support for the other activities. If cultivation is approved, then it is anticipated that the Board will approve cannabis nurseries as well. If indoor activities are approved, then it is anticipated that the Board will approve manufacturing as well. If any use is approved, then then It is anticipated that the Board will approve testing laboratories as well.

The proposed tax measure rates are as follows:

- Cultivation - 1% to 15% OR \$1 to \$30 per square foot
- Distributor - 0% to 10%
- Distributor (transportation) - 0% to 10%
- Manufacturing (level 1) - 2.5% to 10%
- Manufacturing (level 2) - 2.5% to 10%
- Retailer (delivery - only) - .5% to 10%
- Retailer - 4% to 10%
- Testing Laboratory - .5% to 5%

Total cannabis cultivation County-wide will be limited to 150 permits. Of these, 75 will be limited to outdoor or mixed-light cultivation, with a maximum size of 10,000 square feet of canopy. 40 of those 75 permits will be limited to a maximum size of just 3,000 square feet. The remaining 75 cultivation permits will not be limited by either size or cultivation method, allowing up to 22,000 square feet for indoor or greenhouse cultivation, or up to 1 acre (43,560 square feet) for outdoor cultivation.

The number of storefront dispensaries will be limited to 7. There is no limitation on the number of non-storefront retailers ("delivery services"), though they will be limited to commercial or industrial zones.

There is no cap on the number of cannabis distributors, nor is there currently any proposed cap on manufacturing, nurseries, or testing labs because they are not included in the advisory ballot measures.

The County has requested that HdL provide revenue projections for the ballot measure. HdL will provide a brief, summary report that provides a range of revenue estimates based upon the proposed range of tax rates, as well as a recommended "best projection" estimate for the ballot statement.

Cultivation

The proposed ordinance would allow up to 150 cultivation licenses, with certain limits as to how many of each size or type will be allowed. There are currently no licensed cultivators in El Dorado County, and so there is no existing data to indicate the level of local interest in each of the available license types.

To determine the likely distribution of these licenses among the 16 available cultivation license types, we have used nearby Calaveras County as a proxy. Though Calaveras has reversed course on whether to allow commercial cannabis cultivation, there was initially a large number of temporary State licenses issued in the County. As of June 1st, the CalCannabis Division of CDFA had issued 193 temporary licenses in Calaveras County. We have used the relative distribution of license types in Calaveras as the model for proportionally allocating the 150 licenses in El Dorado. That distribution is shown below in Figure 1.

Figure 1:

Type of Cultivation License	Number
Specialty Cottage Outdoor	1
Specialty Cottage Indoor	1
Specialty Cottage Mixed-Light Tier 1	12
Specialty Cottage Mixed-Light Tier 2	2
Specialty Outdoor	6
Specialty Indoor	5
Specialty Mixed-Light Tier 1	19
Specialty Mixed-Light Tier 2	0
Small Outdoor	11
Small Indoor	0
Small Mixed-Light Tier 1	14
Small Mixed-Light Tier 2	10
Medium Outdoor	17
Medium Indoor	2
Medium Mixed-Light Tier 1	28
Medium Mixed-Light Tier 2	22
Outdoor/Mixed-Light <3,000sf	40
Outdoor/Mixed-Light 3,000sf - 10,000sf	35
Unlimited	75
TOTAL CULTIVATION	150

The proposed limitation of 3,000 square feet for 40 of the licenses does not fit cleanly within the license categories as defined by the State. The only State cultivation license category that falls under 3,000 square feet is the "Specialty Cottage" license, which allows up to 25 plants outdoors, up to 500 square feet for indoor cultivation, and up to 2,500 square feet for mixed-light. The next step up, the "Specialty" license class, allows up to 5,000 square feet of cultivation whether outdoors, indoors or mixed-light.

We believe that the limitation being imposed would cause a number of growers to seek the 5,000 square foot "Specialty" licenses from the State, but limit their canopy to just 3,000 square feet. This limitation would only affect outdoor and mixed-light cultivation, as indoor cultivation would have to fall into the 75 "unlimited" licenses. However we would anticipate only a small number of indoor grows, as the "unlimited" licenses would be primarily be made up of

Medium Outdoor and Medium Mixed-Light grows.

The County is considering two possible structures for taxing cultivation: a tax of \$1 to \$30 per square foot of cultivation, or a tax of 1% to 15% of gross receipts. To estimate the amount of tax revenue that could be generated from a square footage tax, we need only know the total square footage for each outdoor, mixed-light and indoor cultivation. To estimate the amount of revenue from a gross receipts tax requires that we first estimate the amount of cannabis that can be grown, based upon the square footage. This takes a little more work.

Figure 2, below, shows the estimated average square footage for each of the license categories. We generally assume that the average cultivation area will be 75% of the allowable maximum for each license type. This allows for both cultivation premises that are below the maximum size, and for operations in which not all of the permitted cultivation space is utilized. Applying this 75% rule, and the

3,000 square foot limitation discussed previously, would give a total of just over 1.8 million square feet of cultivation.

Figure 2:

Type of Cultivation/License	Number	Avg SF	Total SF	Cycles	Yield @ 10sf/pd/cycle	Value @ \$750/lb
Specialty Cottage Outdoor	1	2,000	2,000	1	200	\$150,000
Specialty Cottage Indoor	1	500	500	5	250	\$187,500
Specialty Cottage Mixed-Light Tier 1	12	2,000	24,000	3	7,200	\$5,400,000
Specialty Cottage Mixed-Light Tier 2	2	2,000	4,000	3	1,200	\$900,000
Specialty Outdoor	6	3,000	18,000	1	1,800	\$1,350,000
Specialty Indoor	5	3,750	18,750	4	7,500	\$5,625,000
Specialty Mixed-Light Tier 1	19	3,000	57,000	3	17,100	\$12,825,000
Specialty Mixed-Light Tier 2	0	3,000	0	3	0	\$0
Small Outdoor	11	7,500	82,500	1	8,250	\$6,187,500
Small Indoor	0	7,500	0	4	0	\$0
Small Mixed-Light Tier 1	14	7,500	105,000	3	31,500	\$23,625,000
Small Mixed-Light Tier 2	10	7,500	75,000	3	22,500	\$16,875,000
Medium Outdoor	17	32,670	555,390	1	55,539	\$41,654,250
Medium Indoor	2	16,500	33,000	4	13,200	\$9,900,000
Medium Mixed-Light Tier 1	28	16,500	462,000	3	138,600	\$103,950,000
Medium Mixed-Light Tier 2	22	16,500	363,000	3	108,900	\$81,675,000
TOTAL CULTIVATION	150		1,800,140		413,739	\$310,304,250

We generally assume that outdoor cultivation yields 1 harvest cycle per year, while mixed-light can yield 3 cycles and indoor can yield 4¹. To this, we apply a standard yield factor of 0.1 pounds of cannabis per square foot of canopy, or 10 square feet per pound per cycle. Lastly, we apply an estimated market price of \$750 per pound of dried cannabis flower. Cannabis prices have fallen precipitously this past year due to market saturation. While it is still possible for some growers to sell their product at \$1,000 or more per pound, we believe this will become increasingly rare over the next few years.

To estimate the annual revenues that could potentially be generated by a tax on the gross receipts of cannabis cultivators, we have provided three scenarios. Scenario 1 assumes that the County will issue 25% of the maximum (150) cultivation permits. Scenario 2 assumes that the County will issue 50% of the maximum permits, and Scenario 3 assumes that all 150 permits will be issued. The gross receipts for each scenario are based on a proportional allocation of the various license types.

We have provided these smaller scenarios in recognition that the cannabis cultivation market in California is already oversaturated, producing more than twice as much cannabis as the legal market can absorb. We believe that these smaller projections are more realistic and would ultimately be more sustainable in a highly competitive industry.

To each of these scenarios we have applied a range of potential tax rates. The County is considering cultivation taxes ranging from 1% up to 15%. We have provided estimates for each of the three scenarios using rates of 1%, 3%, 5% and 15% of gross receipts. These rates and the resulting revenue projections are shown in Figure 3.

¹ Some indoor cultivators are able to produce 5 or even 6 cycles per year. However, we believe that 4 is a more consistent and conservative figure for purposes of revenue estimates. The one exception we have made here is for Specialty Cottage Indoor, as we anticipate that these smallest of growers will seek to maximize yield from their very limited (500sf) grow space.

Figure 3:

Cannabis Cultivation by Gross Receipts								
Cultivation Licenses	# of Licenses	% of 150 Total	Total Gross Receipts	Portion of Gross Receipts	Revenue @ 1.0% Tax Rate	Revenue @ 3.0% Tax Rate	Revenue @ 5.0% Tax Rate	Revenue @ 15.0% Tax Rate
Scenario 1	38	25%	\$310,304,250	\$77,576,063	\$775,761	\$2,327,282	\$3,878,803	\$11,636,409
Scenario 2	75	50%	\$310,304,250	\$155,152,125	\$1,551,521	\$4,654,564	\$7,757,606	\$23,272,819
Scenario 3	150	100%	\$310,304,250	\$310,304,250	\$3,103,043	\$9,309,128	\$15,515,213	\$46,545,638

A tax rate of 1% of gross receipts would generate between \$775,761 and \$3,103,043, depending upon the number, type and size of permits. A rate of 3% would generate between \$2,327,282 and \$9,309,128. A rate of 5% would generate between \$3,878,803 and \$15,515,213, and a rate of 15% would generate between \$11,636,409 and \$46,545,638.

In these and other projections, it is important to keep in mind that higher rates can be counter-productive to generating revenue, as they can discourage the industry from locating in the County, or discourage growers from seeking to become a part of the legal market. For this reason, we would advise the County to look upon the high revenue estimates from the 15% rate with some skepticism, as those numbers are unlikely to materialize.

As an alternative to a tax on gross receipts, the County is also considering a cultivation tax based on the square footage of the cultivation area. The rates being considered cover a very broad range, from \$1 per square foot all the way up to \$30 per square foot.

When applying a square footage tax to the same 3 scenarios, we consider different rates for each outdoor, mixed-light and indoor cultivation, in recognition of the different numbers of harvest cycles that are possible with each method. The range of rates used here are taken from HdL's experience working with more than 25 counties and cities on cannabis tax measures for November, 2018. From this work, we have seen a number of emerging norms for cannabis taxes. The most common practice is to provide both an initial rate and a maximum rate, so that the jurisdiction has the ability to adjust tax rates as needed within that range, without having to go back to the voters.

Working within the County's range of \$1 to \$30 per square foot, we have applied three different sets of tax rates for each outdoor, mixed-light and indoor cultivation. The lowest rates are those commonly used as initial rates for such tax measures, with a rate of \$2 per square foot for outdoor cultivation, \$4 per square foot for mixed-light, and \$7 for indoor. The medium rates are those generally used as the maximum rates in most tax measures, set at \$4 per square foot for outdoor, \$7 for mixed-light and \$10 for indoor. The highest rates are based on the County's maximum range of \$30 per square foot. Here we have applied it to the three different cultivation types by setting it at \$10 for outdoor, \$20 for mixed-light and \$30 for indoor.

We have applied these three ranges of tax rates to the same three scenarios used for the gross receipts tax, with 25%, 50% and 100% of the maximum 150 cultivation licenses. As before, the license types are distributed proportionally based upon the figures from Calaveras County. The potential revenues from these three scenarios are shown in Figures 4, 5 and 6.

Figure 4:

Cultivation Scenario 1: Square Footage Tax Rates at 25% of Maximum										
Type of Cultivation License	Max Permits	25%	Avg SF	Total SF	Tax/sf 2/4/17	Revenue	Tax/sf 4/7/30	Revenue	Tax/sf 10/20/30	Revenue
Specialty Cottage Outdoor	1	0	2,000	0	\$2	\$0	\$4	\$0	\$10	\$0
Specialty Cottage Indoor	1	0	500	0	\$7	\$0	\$10	\$0	\$30	\$0
Specialty Cottage Mixed-Light Tier 1	12	3	2,000	6,000	\$4	\$24,000	\$7	\$42,000	\$20	\$120,000
Specialty Cottage Mixed-Light Tier 2	2	0	2,000	0	\$4	\$0	\$7	\$0	\$20	\$0
Specialty Outdoor	6	2	3,000	4,500	\$2	\$9,000	\$4	\$18,000	\$10	\$45,000
Specialty Indoor	5	1	3,750	4,688	\$7	\$32,813	\$10	\$46,875	\$30	\$140,625
Specialty Mixed-Light Tier 1	19	5	3,000	14,250	\$4	\$57,000	\$7	\$99,750	\$20	\$285,000
Specialty Mixed-Light Tier 2	0	0	3,000	0	\$4	\$0	\$7	\$0	\$20	\$0
Small Outdoor	11	3	7,500	20,625	\$2	\$41,250	\$4	\$82,500	\$10	\$206,250
Small Indoor	0	0	7,500	0	\$7	\$0	\$10	\$0	\$30	\$0
Small Mixed-Light Tier 1	14	4	7,500	26,250	\$4	\$105,000	\$7	\$183,750	\$20	\$525,000
Small Mixed-Light Tier 2	10	3	7,500	18,750	\$4	\$75,000	\$7	\$131,250	\$20	\$375,000
Medium Outdoor	17	4	32,670	138,848	\$2	\$277,695	\$4	\$555,390	\$10	\$1,388,475
Medium Indoor	2	1	16,500	8,250	\$7	\$57,750	\$10	\$82,500	\$30	\$247,500
Medium Mixed-Light Tier 1	28	7	16,500	115,500	\$4	\$462,000	\$7	\$808,500	\$20	\$2,310,000
Medium Mixed-Light Tier 2	22	6	16,500	90,750	\$4	\$363,000	\$7	\$635,250	\$20	\$1,815,000
TOTAL CULTIVATION	150	37		448,410		\$1,504,508		\$2,685,765		\$7,457,850

Figure 4 shows the range of tax rates applied to Scenario 1, with 25% of the maximum number of cultivation licenses. The three ranges would generate between \$1,504,508 and \$7,457,850 in annual revenue. As with the 15% tax on gross receipts, we would advise the County to consider the higher number from the 30% tax range as theoretical, as the high rates would likely have a discouraging effect on the industry.

Figure 5 shows the same range of rates applied to Scenario 2, with 50% of the maximum number of cultivation licenses. Here these rates would generate between \$3,035,015 and a theoretical \$15,035,700.

Figure 5:

Cultivation Scenario 2: Square Footage Tax Rates at 50% of Maximum										
Type of Cultivation License	Total	50%	Avg SF	Total SF	Tax/sf 2/4/17	Revenue	Tax/sf 4/7/30	Revenue	Tax/sf 10/20/30	Revenue
Specialty Cottage Outdoor	1	1	2,000	2,000	\$2	\$4,000	\$4	\$8,000	\$10	\$20,000
Specialty Cottage Indoor	1	1	500	2,000	\$7	\$14,000	\$10	\$20,000	\$30	\$60,000
Specialty Cottage Mixed-Light Tier 1	12	6	2,000	12,000	\$4	\$48,000	\$7	\$84,000	\$20	\$240,000
Specialty Cottage Mixed-Light Tier 2	2	1	2,000	2,000	\$4	\$8,000	\$7	\$14,000	\$20	\$40,000
Specialty Outdoor	6	3	3,000	9,000	\$2	\$18,000	\$4	\$36,000	\$10	\$90,000
Specialty Indoor	5	3	3,750	9,375	\$7	\$65,625	\$10	\$93,750	\$30	\$281,250
Specialty Mixed-Light Tier 1	19	10	3,000	28,500	\$4	\$114,000	\$7	\$199,500	\$20	\$570,000
Specialty Mixed-Light Tier 2	0	0	3,000	0	\$4	\$0	\$7	\$0	\$20	\$0
Small Outdoor	11	6	7,500	41,250	\$2	\$82,500	\$4	\$165,000	\$10	\$412,500
Small Indoor	0	0	7,500	0	\$7	\$0	\$10	\$0	\$30	\$0
Small Mixed-Light Tier 1	14	7	7,500	52,500	\$4	\$210,000	\$7	\$367,500	\$20	\$1,050,000
Small Mixed-Light Tier 2	10	5	7,500	37,500	\$4	\$150,000	\$7	\$262,500	\$20	\$750,000
Medium Outdoor	17	9	32,670	277,695	\$2	\$555,390	\$4	\$1,110,780	\$10	\$2,776,950
Medium Indoor	2	1	16,500	16,500	\$7	\$115,500	\$10	\$165,000	\$30	\$495,000
Medium Mixed-Light Tier 1	28	14	16,500	231,000	\$4	\$924,000	\$7	\$1,617,000	\$20	\$4,620,000
Medium Mixed-Light Tier 2	22	11	16,500	181,500	\$4	\$726,000	\$7	\$1,270,500	\$20	\$3,630,000
TOTAL CULTIVATION	150	75		902,820		\$3,035,015		\$5,413,530		\$15,035,700

Figure 6 shows the same rates applied to Scenario 3, with the maximum number of 150 cultivation permits being issued. This scenario would potentially generate between \$6,041,530 and \$29,946,400 in annual revenue. Again, we believe the higher figure is unlikely to materialize.

Figure 6:

Cultivation Scenario 3: Square Footage Tax Rates at 100% of Maximum										
Type of Cultivation License	Total	100%	Avg SF	Total SF	Tax/\$f	Revenue	Tax/\$f	Revenue	Tax/\$f	Revenue
					2/16/18		4/7/18		10/20/30	
Specialty Cottage Outdoor	1	1	2,000	2,000	\$2	\$4,000	\$4	\$8,000	\$10	\$20,000
Specialty Cottage Indoor	1	1	500	500	\$7	\$3,500	\$10	\$5,000	\$30	\$15,000
Specialty Cottage Mixed-Light Tier 1	12	12	2,000	24,000	\$4	\$96,000	\$7	\$168,000	\$20	\$480,000
Specialty Cottage Mixed-Light Tier 2	2	2	2,000	4,000	\$4	\$16,000	\$7	\$28,000	\$20	\$80,000
Specialty Outdoor	6	6	3,000	18,000	\$2	\$36,000	\$4	\$72,000	\$10	\$180,000
Specialty Indoor	5	5	3,750	18,750	\$7	\$131,250	\$10	\$187,500	\$30	\$562,500
Specialty Mixed-Light Tier 1	19	19	3,000	57,000	\$4	\$228,000	\$7	\$399,000	\$20	\$1,140,000
Specialty Mixed-Light Tier 2	0	0	3,000	0	\$4	\$0	\$7	\$0	\$20	\$0
Small Outdoor	11	11	7,500	82,500	\$2	\$165,000	\$4	\$330,000	\$10	\$825,000
Small Indoor	0	0	7,500	0	\$7	\$0	\$10	\$0	\$30	\$0
Small Mixed-Light Tier 1	14	14	7,500	105,000	\$4	\$420,000	\$7	\$735,000	\$20	\$2,100,000
Small Mixed-Light Tier 2	10	10	7,500	75,000	\$4	\$300,000	\$7	\$525,000	\$20	\$1,500,000
Medium Outdoor	17	17	32,670	555,390	\$2	\$1,110,780	\$4	\$2,221,560	\$10	\$5,553,900
Medium Indoor	2	2	16,500	33,000	\$7	\$231,000	\$10	\$330,000	\$30	\$990,000
Medium Mixed-Light Tier 1	28	28	16,500	462,000	\$4	\$1,848,000	\$7	\$3,234,000	\$20	\$9,240,000
Medium Mixed-Light Tier 2	22	22	16,500	363,000	\$4	\$1,452,000	\$7	\$2,541,000	\$20	\$7,260,000
TOTAL CULTIVATION	150	150	1,800,140	1,800,140		\$6,041,530		\$10,784,060		\$29,946,400

For the purpose of making conservative estimates of both the number of cultivation permits likely to be applied for and issued, and applying reasonable tax rates and projections, we would recommend that the County base its projections on the number of permits in Scenario 1, at initial rates of either 3% of gross receipts, or \$2, \$4 and \$7 per square foot for outdoor, mixed-light and indoor, respectively. This would generate either \$2,327,282 or \$1,504,508 in annual revenue, depending on the rate structure used.

Manufacturing

The County is not currently considering allowing cannabis manufacturing and has not included manufacturing in any of the advisory measures for the November ballot. However, the County may choose to allow cannabis manufacturing if voters show support for other indoor commercial cannabis business activities. Because of this, the County has not placed any limits on the number of permits that may be issued for cannabis manufacturers.

Cannabis manufacturing provides one of the best opportunities for industry growth. While the cultivation market is already oversaturated and retail is limited by the size of the local market, manufacturing is a market with relatively untapped potential. Sales of manufactured cannabis products now outpace flower as the preferred method of using cannabis, and new product types continue to emerge.

For purposes of making revenue projections, we have provided 3 scenarios, with 2, 4, and 10 manufacturers. HdL has reviewed over 1,200 pro-formas for commercial cannabis businesses, including manufacturers, and have seen expected averages of \$2.5 million in gross receipts for such businesses in some markets. In rural areas, however, such businesses tend to be smaller, providing “boutique” products. For this reason we have used an average of \$1.5 million in gross receipts for making our projections. We have applied rates of 2.5%, 3% and 4% to these numbers.

Based on these assumptions, 2 manufacturers would generate between \$75,000 and \$120,000 in annual revenue for the County, depending on the tax rate applied. 4 manufacturers would generate between \$150,000 and \$240,000 in revenue, and 10 manufacturers would generate between \$375,000 and \$600,000 in annual revenue for the County. These amounts are shown in Figure 7.

Figure 7:

Cannabis Manufacturers						
Type 6/7/N/P Manufacturer	# of Licenses	Avg Gross Receipts	Total Gross Receipts	Revenue @ 2.5% Tax Rate	Revenue @ 3.0% Tax Rate	Revenue @ 4.0% Tax Rate
Manufacturers	2	\$1,500,000	\$3,000,000	\$75,000	\$90,000	\$120,000
Manufacturers	4	\$1,500,000	\$6,000,000	\$150,000	\$180,000	\$240,000
Manufacturers	10	\$1,500,000	\$15,000,000	\$375,000	\$450,000	\$600,000

For purposes of revenue projections for the ballot measure, we would recommend the County assume 4 manufacturers taxed at the conservative rate of 2.5%, generating an estimated \$150,000 in annual revenue.

Distribution

The County provided a range of potential tax rates for distributors but placed no limits on the number of permits that may be issued. Distributors serve a vital supporting role in the cannabis industry, and having a number of distributors in El Dorado County would be critical in helping cultivators and manufacturers to compete in a statewide market.

We anticipate that the cannabis industry in El Dorado County could support (and be supported by) 2 to 4 distributors, given the numbers of other businesses being considered. While the model for cannabis distributorships is still evolving, we have seen average gross receipts in the range of \$2 million for smaller distributors in more rural areas.

The County has provided a range of up to 10% of gross receipts for cannabis distributors. Based on this, we have applied rates of 2%, 4% and 10% in Figure 8, below. We estimate that 2 distributors could generate between \$80,000 and \$400,000 in revenue, and 4 distributors could generate between \$160,000 and \$800,000. As with the high rates for other cannabis business types, we would caution that the 10% rate would likely have the effect of preventing any cannabis distributorships from locating in the County, which would likely have a negative impact on all other types of cannabis businesses.

Figure 8:

Cannabis Distributors						
License Type	# of Licenses	Avg. Gross Receipts	Total Gross Receipts	Revenue @ 2.0% Tax Rate	Revenue @ 4.0% Tax Rate	Revenue @ 10.0% Tax Rate
Distributors	2	\$2,000,000	\$4,000,000	\$80,000	\$160,000	\$400,000
Distributors	4	\$2,000,000	\$8,000,000	\$160,000	\$320,000	\$800,000

For purposes of revenue projections for the ballot measure, we would recommend that the County use the most conservative estimate of 2 distributors, taxed at a rate of 2%, generating \$80,000 in annual revenue.

Retail

The County is considering allowing both storefront and non-storefront (delivery) cannabis retailers, each with a different range of tax rates. Storefront retailers would be limited to a maximum of 7 locations, while there would be no limit on the number of delivery services.

From HdL's review of over 1,200 business pro-formas, we have seen typical averages of around \$2,500,000 in gross receipts for cannabis retailers, with some larger locations in metropolitan areas grossing \$4 million or more. We have used the figure of \$2,500,000 here, and have provided scenarios of 2 and 7 such retailers. HdL also has access to confidential sales tax data from the California Department of Tax and Fee Administration (CDTFA) which supports these numbers for the County. The County has provided a range of tax rates from 4% up to 10% of gross receipts.

Based on these numbers, we anticipate that two retailers could generate between \$200,000 and \$500,000 in annual revenue for the County, and 7 retailers could generate between \$700,000 and \$1,750,000. These rates are shown in Figure 9, below.

Figure 9:

Cannabis Retailers						
License type	# of Licenses	Avg. Gross Receipts	Total Gross Receipts	Revenue @ 4% Tax Rate	Revenue @ 6.0% Tax Rate	Revenue @ 10.0% Tax Rate
Retailers	2	\$2,500,000	\$5,000,000	\$200,000	\$300,000	\$500,000
Retailers	7	\$2,500,000	\$17,500,000	\$700,000	\$1,050,000	\$1,750,000

We would recommend that the County base its revenue estimates on 7 retailers, at a conservative rate of 4%, generating \$700,000 in annual revenue.

Retail Delivery

Developing revenue estimates for cannabis delivery services must be done differently than for storefront retailers. The number of delivery services is not particularly relevant, as the amount of sales and gross revenues are based upon population and demand. We apply a variety of assumptions, each based on data, to determine the percentage of the population that uses cannabis on a regular basis, the percentage of buyers that use delivery services, the average transaction size, and the average transaction frequency.

The County has provided a very broad tax range from 0.5% up to 10% of gross receipts. We have applied rates of 0.5%, 4%, 6% and 10% in Figure 10, below. Assuming "best estimates" for a number of assumptions, these rates could generate anywhere from \$84,990 to \$1,699,000 in annual revenue.

Figure 10:

Revenue Projections for Cannabis Delivery Tax in El Dorado County			
	Low Estimate	Best Estimate	High Estimate
County population	185,000	185,000	185,000
Unincorporated population	154,000	154,000	154,000
Percentage of population that uses cannabis	10.0%	14.0%	22.0%
Number of cannabis users	15,400	21,560	33,880
Percentage of cannabis users that use delivery	30.0%	45.0%	60.0%
Number of delivery customers	4,620	9,702	20,328
Average transaction amount	\$73	\$73	\$73
Transaction frequency (per month)	2	2	2
Monthly gross receipts	\$674,520	\$1,416,492	\$2,967,888
Annual gross receipts	\$8,094,240	\$16,997,904	\$35,614,656
Annual revenue by tax rate (below)			
0.5%	\$40,471	\$84,990	\$178,073
4.0%	\$323,770	\$679,916	\$1,424,586
6.0%	\$485,654	\$1,019,874	\$2,136,879
10.0%	\$809,424	\$1,699,790	\$3,561,466

For purposes of revenue projections, we would recommend that the County use the rate of 4% as applied to the "best estimate" model, generating \$679,916 in annual revenue.

Testing Laboratories

The Bureau of Cannabis Control has so far only permitted 28 cannabis testing laboratories statewide. Because of this, we believe it is unlikely that the County would be able to attract such a facility unless and until it has developed a "critical mass" of other cannabis businesses.

Testing laboratories typically generate in the range of \$2 million in gross receipts. Assuming the County were successful in attracting a cannabis testing facility, we have applied the proposed rates of 0.5%, 1.5% and 5.0% to this figure. Doing so would generate between \$10,000 and \$100,000 in annual revenue for the County. However, we would not recommend that the County include any revenue from testing laboratories in its revenue projections.

Figure 11:

Cannabis Testing Laboratories						
License Type	# of Licenses	Avg. Gross Receipts	Total Gross Receipts	Revenue @ 0.5% Tax Rate	Revenue @ 1.5% Tax Rate	Revenue @ 5.0% Tax Rate
Testing	1	\$2,000,000	\$2,000,000	\$10,000	\$30,000	\$100,000

Summary Revenue Projections

Cultivation:	\$1,504,508 to \$2,327,282
Manufacturing:	\$150,000
Distribution:	\$80,000
Storefront Retail:	\$700,000
Delivery:	\$679,916
Testing Laboratories:	\$0
Total Projected Revenue:	\$3,114,424 to \$3,937,198
Rounded Figures:	\$3 million to \$4 million in annual revenue

Exhibit 4
Chapter 1321, Statutes of 1974

CHAPTER 1321

An act to amend Sections 475, 477, 482, 484, 486, 487, and 491 of, to add Sections 480, 481, and 490 to, and to repeal Sections 480, 481, 483, 488, 490, and 492 of, the Business and Professions Code, relating to licenses.

[Approved by Governor September 26, 1974. Filed with Secretary of State September 26, 1974.]

The people of the State of California do enact as follows:

SECTION 1. Section 475 of the Business and Professions Code is amended to read:

475. (a) Notwithstanding any other provisions of this code, the provisions of this division shall govern the denial of licenses on the grounds of:

(1) Knowingly making a false statement of fact required to be revealed in an application for license;

(2) Conviction of a crime;

(3) Commission of any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another; and

(4) Commission of any act which, if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

(b) Notwithstanding any other provisions of this code, the provisions of this division shall govern the suspension and revocation of licenses on grounds specified in subdivision (a) (1) and (2) above.

(c) A license shall not be denied, suspended, or revoked on the grounds of a lack of good moral character or any similar ground relating to an applicant's character, reputation, personality, or habits.

SEC. 2. Section 477 of the Business and Professions Code is amended to read:

477. As used in this division: (a) "board" includes "bureau," "commission," "department," "division," and "agency."

(b) "License" includes certificate, registration or other means to engage in a business or profession regulated by this code.

SEC. 3. Section 480 of the Business and Professions Code is repealed.

SEC. 4. Section 480 is added to the Business and Professions Code, to read:

480. (a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(1) Been convicted of a crime; or

(2) Done any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another; or

(3) Done any act which if done by a licentiate of the business or profession in question, would be grounds for suspension or

revocation of license.

The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions or duties of the business or profession for which application is made.

(b) A board may deny a license regulated by this code on the ground that the applicant knowingly made a false statement of fact required to be revealed in the application for such license.

SEC. 5. Section 481 of the Business and Professions Code is repealed.

SEC. 6. Section 481 is added to the Business and Professions Code, to read:

481. Each board under the provisions of this code shall develop criteria to aid it, when considering the denial, suspension or revocation of a license, to determine whether a crime or act is substantially related to the qualifications, functions, or duties of the business or profession it regulates.

SEC. 7. Section 482 of the Business and Professions Code is amended to read:

482. Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

(a) Considering the denial of a license by the board under Section 480; or

(b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

SEC. 8. Section 483 of the Business and Professions Code is repealed.

SEC. 9. Section 484 of the Business and Professions Code is amended to read:

484. No person applying for licensure under this code shall be required to submit to any licensing board any attestation by other persons to his good moral character.

SEC. 9.5. Section 486 of the Business and Professions Code is amended to read:

486. Where the board has denied an application for a license under this chapter it shall, in its decision, or in its notice under subdivision (b) of Section 485, inform the applicant of the following:

(a) The earliest date on which the applicant may reapply for a license.

(b) That all competent evidence of rehabilitation presented will be considered upon a reapplication.

Along with the decision, or the notice under subdivision (b) of Section 485, the board shall serve a copy of the criteria relating to rehabilitation formulated under Section 482.

SEC. 10. Section 487 of the Business and Professions Code is amended to read:

487. If a hearing is requested by the applicant, the board shall conduct such hearing within 90 days from the date the hearing is

requested unless the applicant shall request or agree in writing to a postponement or continuance of the hearing. Notwithstanding the above, the Office of Administrative Hearings may order, or on a showing of good cause, grant a request for, up to 45 additional days within which to conduct a hearing but in no case shall more than two such orders be made or requests be granted.

SEC. 11. Section 488 of the Business and Professions Code is repealed.

SEC. 12. Section 490 of the Business and Professions Code is repealed.

SEC. 13. Section 490 is added to the Business and Professions Code, to read:

490. A board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued, or the ground of knowingly making a false statement of fact required to be revealed in an application for such license.

SEC. 14. Section 491 of the Business and Professions Code is amended to read:

491. Upon suspension or revocation of a license by a board on one or more of the grounds specified in Section 490, the board shall:

(a) Send a copy of the provisions of Section 11522 of the Government Code to the ex-licensee.

(b) Send a copy of the criteria relating to rehabilitation formulated under Section 492 to the ex-licensee.

SEC. 15. Section 492 of the Business and Professions Code is repealed.

CHAPTER 1322

An act to add Section 21364.2 to the Government Code, relating to Public Employees' Retirement System.

[Approved by Governor September 26, 1974. Filed with Secretary of State September 26, 1974.]

The people of the State of California do enact as follows:

SECTION 1. Section 21364.2 is added to the Government Code, to read:

21364.2. For the purposes of Section 21364, a person shall be considered to be under the age of 18 if he is under the age of 22 and a full-time student.

SEC. 2. There are no state-mandated local costs in this act that require reimbursement under Section 2231 of the Revenue and Taxation Code because there are no duties, obligations, or responsibilities imposed on local entities in 1974-75 by this act.

Exhibit 5
"Waiver Agreement"

check of all owners, spouses of owners, and the Designated Local Contact, including providing the information necessary for performing the background check and fingerprinting”; and

WHEREAS, the Sheriff’s Office has applied for the necessary approvals from the California Department of Justice and Federal Bureau of Investigation to utilize the Live Scan database to perform background checks pursuant to Sections 130.41.100(4)(G) and 130.41.100(4)(F), but the approval process is taking longer than anticipated; and

WHEREAS, absent the necessary approvals, the Sheriff’s Office cannot utilize the Live Scan database to perform background checks in accordance with Sections 130.41.100(4)(G) and 130.41.100(4)(F); and

WHEREAS, the County has developed an interim background check process to facilitate background checks until the Sheriff’s Office receives approval to utilize the Live Scan database for commercial cannabis permitting; and

WHEREAS, because the interim background check process cannot utilize the Live Scan database or fingerprinting, it requires reliance on unverified self-disclosures and publicly accessible records; and

WHEREAS, the failure of an applicant to fully and accurately self-disclose all information could result in the Sheriff’s Office making a recommendation different from the recommendation that would have been made with Live Scan access; and

WHEREAS, Applicant understands the risks of erroneous recommendations based on utilizing the interim background check process; and

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Applicant elects to utilize this interim background check process and the County and Applicant mutually agree as follows:

The recitals stated above are incorporated herein by reference.

A. INTERIM BACKGROUND CHECK PROCESS

1. **Applicant’s Election.** To facilitate compliance with Sections 130.41.100(4)(G) and 130.41.100(4)(F), Applicant elects to utilize the interim background check process described in this Agreement. Applicant understands the use of the interim background check process is not required and that Live Scan background checks will be utilized once the County obtains Live Scan access for commercial cannabis permitting purposes. Applicant understands that if the

Applicant does not elect to use the interim background check process, the Planning and Building Department will continue to process Applicant's project, including environmental review, but that a hearing before the Planning Commission will not be set until the County obtains approval to use the Live Scan database and the Sheriff's Office is able to complete a background check utilizing the Live Scan database. If Applicant does not utilize the interim background check process and elects to wait for Live Scan approvals, Applicant's project will retain its current priority processing position based on application submittal and, if Applicant's project seeks a Commercial Cannabis Use Permit for a use that has a cap on the total number of permits, the Planning and Building Department will hold an available permit for the Applicant until background checks are able to be completed with the Live Scan database. Applicant thus understands that use of the interim background check process is not required to ensure an available permit, if the permit sought has a cap on the total number of permits for that use. Applicant further understands and agrees that the election to utilize the interim background check process does not prioritize the Applicant's project different from its current prioritization based on application date, but could allow the application to be set for a Planning Commission hearing before the Sheriff's Office receives approval to use the Live Scan database.

2. Interim Background Check Process. The interim background check process provided for in this Agreement will not utilize Live Scan or identity verification through fingerprinting. Instead, Applicant will be required to self-disclose all criminal history and requested information on a self-disclosure application submitted to third-party consultant, HdL Companies ("HdL"). The self-disclosure application will request information relevant to the Sheriff Office's determination under Section 130.41.100(4)(G), including but not limited to all arrests, prior misdemeanor citations and felony convictions, and financial information. HdL will then seek to confirm that information with the use of publicly available databases. HdL will provide the results of its investigation and self-disclosure application directly to the County and identify any information it determined was omitted from the self-disclosure application or reported inaccurately. The Sheriff's Office will then review this information, interview the Applicant if necessary, and make a conditional recommendation to the Planning Commission based on this information. The Applicant will pay HdL's fees to utilize these background investigation services (estimated at approximately \$400 to \$600) directly to HdL. The time expended by the Sheriff's Office on this process will be charged to the Applicant on a time and materials basis consistent with [INSERT NAME OF TIME AND MATERIALS AGREEMENT]. The Applicant understands and agrees that all documents utilized in the background check process are public records and may be made available to the public.

3. Changes to Interim Background Check Process. At the time of entering this Agreement, the Parties understand that the County is still in the process of implementing the procedures for the interim background check process and this Agreement describes the process as currently anticipated by the County. The Applicant understands and agrees that the County retains the right to adjust the interim background check process as the County determines

necessary, in its sole discretion, to facilitate implementation of the interim background check process.

4. Conditional Recommendation. The Applicant understands that because this interim process cannot be verified through fingerprinting and the Live Scan database, a recommendation of approval from the Sheriff's Office will be conditional. If the application is approved by the Planning Commission or Board of Supervisors on any appeal, conditions will be imposed in the Commercial Cannabis Use Permit and/or Commercial Cannabis Annual Operating Permit (collectively, "Commercial Cannabis Permits") that, at a minimum, include: (a) once the Sheriff's Office receives approval to utilize the Live Scan database, fingerprinting will be required of all owners, spouses or registered domestic partners of owners, and the Designated Local Contact through Live Scan within one week of the request by the Sheriff's Office, unless the Sheriff's Office agrees to additional time; (b) notwithstanding Section 130.54.090 and Section 130.41.100(7) or any other provision of County Code or state or federal law, automatic revocation of the Commercial Cannabis Permits without a hearing or opportunity for appeal if it is determined, in the County's sole discretion, that a material misrepresentation was made in the self-disclosure application submitted to HdL; (c) if automatic revocation occurs, immediate termination of all operations and proof of destruction of all cannabis plants and cannabis products within 24 hours of the written notice of the automatic revocation of the Commercial Cannabis Permits; and (d) if destruction of cannabis plants and cannabis products is required due to automatic revocation and sufficient proof of destruction is not provided within 24 hours, agreement and consent for the County, including but not limited to the Sheriff's Office, to enter the premises and eradicate or seize any cannabis plants and cannabis products and provide for their immediate destruction. If the Sheriff's Office makes a conditional recommendation of denial, the Applicant may elect to have the application placed on hold until the Live Scan database is available and the Sheriff's Office can perform a background check with Live Scan and make a recommendation based on that process.

5. Automatic Revocation. The Applicant understands that, once the Sheriff's Office has Live Scan access, the Sheriff's Office will perform a background check with the Live Scan database to verify the accuracy of all information self-reported on the self-disclosure application. The Applicant understands and agrees that if the Sheriff's Office determines that any information was materially misrepresented on the self-disclosure application, the Commercial Cannabis Permits shall be automatically revoked without the right to a hearing or appeal of that automatic revocation. If a material misrepresentation was made by a Designated Local Contact or less than all Owners for the commercial cannabis business and the remaining Owner(s) wish to continue with the commercial cannabis business without involvement of the Designated Local Contact or Owner(s) who made the material misrepresentation(s), the remaining Owner(s) may submit an application to reinstate the Commercial Cannabis Permits provided that adequate assurances are given to ensure that the Designated Local Contact or Owner(s) who made the material misrepresentation will no longer have any involvement with, financial gain from, or

contribution to the commercial cannabis business. An application to reinstate the Commercial Cannabis Permits under this section will not delay or limit the requirement to cease all operations and destroy all cannabis plants and cannabis products upon receipt of the written notice of revocation.

6. Determination of Material Misrepresentation. The Applicant agrees that the County shall have the sole discretion to determine whether the failure to self-report or accurately answer any question on the self-disclosure application for this interim background check process is a material misrepresentation warranting the automatic revocation of the Commercial Cannabis Permits. The Applicant understands that the County may find a material misrepresentation based on the omission or erroneous self-reporting of any information even if the Sheriff's Office may not have recommended denial if the information had been accurately reported. The omission, erroneous self-reporting, or incomplete reporting of any information on the self-disclosure application may be deemed, in the sole discretion of the County, as sufficient grounds to recommend denial and ultimately deny a Commercial Cannabis Use Permit because the misrepresentation weighs against the Applicant's trustworthiness or ability to run a legal business in compliance with all regulations.

7. Procedure for Automatic Revocation. If the Sheriff's Office determines that a material misrepresentation has been made, the Sheriff's Office will notify the Applicant in writing of the determination. The Applicant will have three (3) calendar days from the date of the notification to provide any additional information in writing to the Sheriff's Office relevant to the material misrepresentation determination. The Sheriff's Office will consider the additional information and then issue a final written determination. If the Sheriff's Office determines that a material misrepresentation was made, the Commercial Cannabis Permits are automatically revoked. The Applicant understands and agrees that the determination of the Sheriff's Office is final and is not appealable. The Applicant also understands and agrees that the Applicant is waiving any administrative, judicial, or other legal challenge to the Sheriff Office's determination in this Agreement and the potential automatic revocation of the Commercial Cannabis permits. The Applicant further understands and agrees that the Applicant is waiving any right to a hearing, appeal, or process under the El Dorado County Code or state or federal law for revocation of a conditional use permit, including but not limited to Section 130.54.090 and Section 130.41.100(7).

8. Self-Disclosures Only. The self-disclosure application must be submitted based on self-disclosures alone and the Applicant cannot provide HdL or the County with any records obtained from the California Department of Justice or Federal Bureau of Investigation. The Parties understand that, under Penal Code section 11121, the Applicant has the "opportunity to obtain a copy of the record compiled from such files" of the California Department of Justice "and to refute any erroneous or inaccurate information contained therein." Similarly, under 28 C.F.R. Part 16, Subpart C and U.S. Department of Justice Order 556-73, an individual may obtain an Identification Record from the Federal Bureau of Investigation to "review it or to

1. The Parties agree to cooperate in good faith to carry out the provisions and intent of this Agreement.
2. This Agreement is entered into by the Parties freely and voluntarily without fraud, duress, or undue influence and without reliance on any representation by any person, Party, or entity, after full recommendation and approval by respective attorneys for represented Parties, each of whom has fully discussed the same with the particular Party which is his or her client.
3. Nothing herein shall be construed to limit the County's general police power to implement, based upon appropriate and adequate findings, specific measures necessary to alleviate legitimate and bona fide harmful and noxious uses, or protect against real, actual, and dangerous threats to the health and safety of County residents, in which event any rule, regulation or policy imposed on the development of the Property shall be done to the minimum extent necessary to correct such bona fide harmful and noxious uses or protect against any such real, actual and dangerous threats to the health and safety of County residents.
4. If suit is brought to enforce or interpret any part of this Agreement, or the rights or obligations of any Party, including, but not limited to, an action to recover damages for the breach or default of this Agreement or to secure specific performance of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees, expenses, and costs.
5. The County officer or employee with responsibility for administering this Agreement is Chris Perry Assistant Director, Planning and Building Department, or successor.
6. All notices to be given by the Parties shall be in writing and served by depositing the same in the United States Post Office, postage prepaid and return receipt requested.

Notices to County shall be addressed as follows:

COUNTY OF EL DORADO
Planning and Building Department
ATTN: Chris Perry, Assistant Director
2850 Fairlane Court
Placerville, CA 95667

Or to such other location as the County directs.

With a copy to:

COUNTY OF EL DORADO
County Counsel's Office
ATTN: Breann Moebius, Deputy County Counsel
330 Fair Lane
Placerville, CA 95667

Notices to the Applicant shall be addressed as follows:

[INSERT APPLICANT NAME AND CONTACT]

Or to such other location as Applicant directs.

7. This Agreement shall be interpreted as if drafted by all Parties. No provision of this Agreement shall be interpreted or construed against any Party because such Party or its counsel was the sole or principal drafter of the Agreement or any provision thereof.
8. If any provision, part, sentence, or word of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions, parts, sentences, or words will continue in full force and effect without being impaired or invalidated in any way.
9. This Agreement and any exhibits thereto are the entire agreement between the Parties and it supersedes all prior written or oral agreements or understandings between the Parties. This Agreement may only be modified by mutual consent of the Parties in writing fully executed by duly authorized officers of the Parties.
10. Each Party hereto acknowledges that each of them has the right and opportunity to secure the advice and assistance of legal counsel with respect to this Agreement and further acknowledges that they understand the terms and conditions of this Agreement.
11. This Agreement shall be governed by and construed in accordance with the laws of the State of California. Any action to enforce this Agreement shall be brought in the Superior Court in and for the County of El Dorado.
12. Each Party shall bear its own respective costs and expenses and pay its own respective attorneys' fees incurred in the events related to and undertaken to prepare and execute this Agreement.

13. This Agreement may be signed in counterparts and shall be effective on the date fully executed by all Parties and shall remain in effect until terminated by mutual consent of the Parties in writing fully executed by duly authorized officers of the Parties.

IN WITNESS WHEREOF, the parties do affix their signatures as follows:

DATED: _____

[INSERT NAME]
Applicant

DATED: _____

TIFFANY SCHMID
Director, Building and Planning

DATED: _____

JOHN D'AGOSTINI
Sheriff – Coroner – Public Administrator

APPROVED AS TO FORM:

DATED: _____

COUNTY OF EL DORADO

By: _____
Breann Moebius
Deputy County Counsel

Exhibit 6
Letter from FBI/CJILU to California DOJ



U.S. Department of Justice

Federal Bureau of Investigation

Office of the General Counsel

Clarksburg, WV 26306

January 14, 2021

Ms. Jenny Reich
Bureau Chief
Bureau of Criminal Information
& Analysis
California Department of Justice
4949 Broadway
Sacramento, CA 95820

Dear Ms. Reich:

This is in reference to an email, dated April 17, 2020, from Ms. Tara Burrows-Yates of your office, to the Criminal Justice Information Law Unit (CJILU), requesting a review of the County of El Dorado Resolution Number (Res. No) 059-2020, to determine if it meets the requirements of Public Law (Pub. L.) 92-544 for access to FBI criminal history record information (CHRI). Reference is also made to an email, dated October 8, 2020, wherein Ms. Burrows-Yates indicated the definition of "special business license" is located in El Dorado County Code of Ordinances, Chapter 5.14.

The CJILU legal staff has completed its review of County of El Dorado Res. No. 059-2020, pertaining to conducting a state and federal fingerprint--based criminal history record check for employment including volunteers and contract employees, licensing related to special business licenses and Commercial Cannabis Use Permits or certification purposes. The CJILU has determined that the County of El Dorado Res. No. 059-2020 does not qualify for access to FBI CHRI, when read with California Penal Code (CPC), Section 11105(b)(11). Specifically, it is overly broad and does not define special business licenses, commercial

Ms. Jenny Reich

cannabis use permits, or certification. The resolution also does not indicate if the employment including volunteers and contract employees is for El Dorado County or limited to employment with commercial cannabis businesses. Additionally, the CJILU recommends that future resolutions reference the specific county code they are amending.

As a matter of information, since 1972, the FBI, with assistance of the United States Department of Justice, has determined the parameters of Pub. L. 92-544. The criteria are as follows:

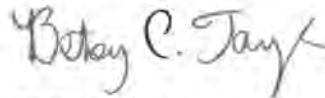
- a. The statute must exist as a result of a legislative enactment;
- b. It must require the fingerprinting of applicants who are to be subjected to a national criminal history background check;
- c. It must expressly or by implication authorize the use of FBI records for the screening of applicants;
- d. It must identify the specific category of applicants/licensees falling within its purview, thereby avoiding overbreadth;
- e. It must not be against public policy; and
- f. It must not authorize receipt of the CHRI by a private entity

Additionally, FBI policy requires that fingerprints be initially submitted to the state identification bureau (for a check of state records) and thereafter forwarded to the FBI for a national criminal history check.

Finally, should the County of El Dorado Res. No. 059-2020 be amended to reflect the changes discussed above, it must be resubmitted to CJILU for review and approval before any fingerprints will be accepted by the FBI for this purpose. The CJILU is also available to review draft versions prior to adoption to verify compliance under Pub. L. 92-544.

Should you have questions concerning this matter, please do not hesitate to contact Paralegal Specialist Brian A. Cain of the CJILU at (304) 625-7250.

Sincerely yours,



Betsy C. Taylor
Acting Unit
Chief
Criminal Justice Information Law Unit
Office of the General Counsel

JAMES L. BRUNELLO, SBN 047522
Attorney at Law
P.O. Box 4155
El Dorado Hills, CA 95762
Phone: (916) 358-8585
Fax: (916) 358-8588

Attorney for Petitioners and Plaintiffs

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF EL DORADO

EL DORADO COUNTY GROWERS
ADVOCACY ALLIANCE, a California
Nonprofit Mutual Benefit Corporation;
CYBELE HOLDINGS, INC., a California
corporation; SINGLE SOURCE
SOLUTIONS INC., a California
corporation; LOTUS VALLEY FARMS,
INC, a California corporation

Petitioners and Plaintiffs,

v.

COUNTY OF EL DORADO; EL
DORADO COUNTY BOARD OF
SUPERVISORS; EL DORADO
COUNTY SHERIFF'S DEPARTMENT,
A PUBLIC ENTITY; JOHN
D'AGOSTINI AND DOES 1 - 100,
INCLUSIVE

Respondents and Defendants.

Case No. 21CV0161

PROOF OF SERVICE

PROOF OF SERVICE

I am a citizen of the United States and a resident of the County of El Dorado. I am over the age of eighteen (18) years and not a party to the within action; my business address is 5176

PROOF OF SERVICE

Hillsdale Circle, Suite 100, P.O. Box 4155, El Dorado Hills, CA 95762. On March 24, 2022, I served the following document:


FIRST AMENDED PETITION FOR WRIT OF MANDATE; COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND ATTORNEY'S FEES

on the parties below, by placing a true copy thereof enclosed in a sealed envelope at El Dorado Hills, California, addressed as follows:

LYNN A. GARCIA
SPINELLI DONALD & NOTT
601 UNIVERSITY AVENUE, SUITE 225
SACRAMENTO CA 95825
lynng@sdnlaw.com

- X **By U. S. Mail:** I placed each such envelope(s) for collection and mailing via First Class Mail, following ordinary business practices. The envelope was deposited with U. S. Postal service on that same day with postage thereon fully prepaid at El Dorado Hills, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after the date of deposit for mailing an affidavit.
- X **By Electronic Mail:** I caused such document(s) to be transmitted by Electronic Mail to the email addresses indicated after the address(es) noted above.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 24th day of March, 2022 at El Dorado Hills, California.


Karen Pine