



Cannabis ad hoc Advisory Committee
7/17/18
COMMERCIAL CANNABIS
PROPOSED BALLOT MEASURES

Why Are We Here?

- Nearly 20 years after California become the first state in the country to legalize the medical use of cannabis, Governor Jerry Brown signed a package of bills, which went into effect January 1, 2016, that is designed to regulate the medicinal-cannabis industry, including medicinal commercial activities.
- Proposition 64 was on the November 8, 2016, ballot, called the California Marijuana Legalization Initiative, passed. Included language about commercial activities.
- Illegal grows still persist in El Dorado County.
 - Stanislaus County estimates that it would cost an additional \$3.1 million to enforce an unregulated market in the county.

The Process to Date

- To date on the Cannabis topic, since MMRSA was passed by the state, the County has conducted 28 public meetings (personal use/grows, enforcement, commercial).
- The process included presentations from the public, county staff, consulting firms, non-County government agencies, etc.
- Data and interviews from other counties and cities were used to see what was successful and mistakes to avoid.
- Conversation on what a regulated market would look like while trying to eliminate the illegal grows/activities that endanger our communities and environment.
- Goal of the Board to bring ballot measures.
 - Proposition 64 was too broad
 - Get the right questions answered with multiple measures



Current Commercial Ban in El Dorado County

- The ballot measures are limited to commercial use only; personal use or personal medicinal grows are not at issue.
- Commercial Cannabis:
 - Temporary ban on any commercial cannabis activity through 12/12/19.
 - Distributing, selling, or delivering cannabis for medicinal or recreational adult use is not authorized in the County.
 - All deliveries are currently banned in the County. Does not matter whether the delivery service is located in the County or in another County or City.
 - Ordinance 4999 - Medical Cannabis Dispensaries
 - Ordinance 4999 banned medicinal cannabis dispensaries.
 - At the time of banning, Ordinance 4999 provided that the ban would not be enforced against a limited number of medicinal cannabis dispensaries that were in operation for 6 months before October 30, 2011, provided that operations remain the same as they did in October 30, 2011. Not authorized to cultivate or manufacture cannabis sold at a dispensary.



Commercial Activity - Two Themes

- **Local Control:** State licensing system preserves local control over commercial cannabis activities. Each local government or its citizens decide whether to allow commercial cannabis activities and, if so, what type, how many, where, etc.
 - Authorization by the County or compliance with County regulations cannot affect independent authority of state agencies.
- **Federal Government:** Cannabis remains a Schedule 1 drug and possession, use, cultivation, distribution, etc. of cannabis is illegal under federal law. Authorization by the State or County or possession of a State license cannot protect a person from federal prosecution.
 - Current federal administration has indicated it will not be as permissive as prior administration. Attorney General Sessions rescinded prior non-enforcement policy.
 - Recent legal challenge to federal government's classification of cannabis as a Schedule 1 drug was unsuccessful.
 - Rohrabacher-Blumenauer amendment, which prohibits the use of Department of Justice funds if compliant with state medical cannabis laws, has been extended through September 2018.



Ballot Measures Proposed

- Board votes today whether to pass Resolutions placing the ballot measures on the ballot.
 - Ballot measures would enact County Ordinances, which are attached as Exhibits to the Resolutions.
 - Resolution directs Ad Hoc Cannabis Committee members to draft argument in favor of tax measure for the ballot.
 - If the Board votes to place the measures on the ballot, the County cannot expend public funds to advocate for or oppose the ballot measures.
- Proposed ordinances are the same for medicinal and recreational adult use cannabis, but the uses are placed on the ballot as separate measures.
- Votes Required:
 - Government Code section 53724 requires 2/3 vote of the Board to place the tax on the ballot.
 - All ballot measures would require more than 50% to pass. The tax measure only requires more than 50% because it is a general tax, not special tax.
 - The California Tax Fairness Transparency and Accountability Act was a state initiative that sought to require a 2/3 vote for any tax, whether general or special. However, the initiative was withdrawn on June 28, 2018.



Commercial Licenses Through State Ballot Measures Can Be Limited to Specific Uses

■ Cultivation

- Indoor - specialty small; non-specialty small, medium, or large
- Outdoor - specialty small; non-specialty small, medium, or large
- Mixed-Light - specialty small; non-specialty small, medium, or large
- Specialty cottage - small; outdoor; indoor; or mixed-light
- Nursery (cloning and seed propagation)
- Processing (only trimming, drying, curing, grading, or packaging)

■ Manufacturer

■ Testing Laboratory

■ Retailer (Storefront/Public and Nonstorefront/Not Public)

■ Distributor (transports, arranges for testing, and conducts quality control)

■ Distributor transport (transports between licensed cultivators, manufactures, and distributors, but not to licensed retailers)

■ Microbusiness



Ballot Measures Proposed

	Commercial Cannabis Activity	Code Section
1.	Commercial Cannabis Activities Tax	130.14.280
	Permitting and Enforcement of Commercial Cannabis Activities	130.14.290
2.	Outdoor and Mixed-Light Cultivation – Medical Use	130.14.300
3.	Outdoor and Mixed-Light Cultivation – Adult Recreational Use	130.14.310
4.	Indoor Uses: Indoor Cultivation; Retail; Delivery; and Distribution – Medical Use	130.14.320
5.	Indoor Uses: Indoor Cultivation; Retail; Delivery; and Distribution – Adult Recreational Use	130.14.330
	TAX RATES ONLY:	
	No Ballot Measure; Not Authorized Until Later Action	
	Nurseries	
	Laboratory Testing	
	Manufacturing	
	Microbusiness <i>*Would be allowed if at least 3 commercial activities pass</i>	



Tax Ballot Measure

- Is a general tax, which means it can be used for general revenue purposes.
- Taxes provided for any potential commercial cannabis activity so that taxes are in place for any ballot measure that passes and for any commercial cannabis activity the Board of Supervisors may authorize in the future.
- Taxes are set at a range within which the Board of Supervisors may set the rate. This allows for flexibility and the Board of Supervisors to consider the market and funding needs for the County.
- Taxes will be administered by the County Tax Treasurer and the ordinance provides the procedures for calculation, collection, and enforcement, including imposition of liens for unpaid taxes.
- **The measures authorizing specific commercial cannabis activities would pass only if the measure imposing the tax passes. If the tax measure is challenged or invalidated for any reason, the ordinance authorizing an activity does not become effective or automatically expires.**



Tax Ballot Measure: Ranges for Rates for Cultivation

County elects whether to impose the tax based on either canopy square footage or gross receipts.

Cultivation	Square Footage - Minimum	Square Footage - Maximum	OR	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%	



Tax Ballot Measure: Ranges for Rates for Other Uses

Calculated based on gross
receipts:

Distribution	Minimum	Maximum
Distributor	0%	10%
Distributor (Transportation-Only)	0%	10%

Manufacturing	Minimum	Maximum
Manufacturing (Level 1)	2.5%	10%
Manufacturing (Level 2)	2.5%	10%

Retailer	Minimum	Maximum
Retailer (Delivery-Only)	0.5%	10%
Retailer	4%	10%

Testing Laboratory	Minimum	Maximum
Testing Laboratory	0.5%	5%



Commercial Cannabis Activities: County Permitting Program in Ballot Measure 1

- The permitting and enforcement program will be universal for any of the authorized commercial cannabis activities.
- To operate a commercial cannabis activity, a person must have:
 - (1) Commercial Cannabis Use Permit
 - (2) Commercial Cannabis Annual Operating Permit
- County Costs:
 - Board of Supervisors sets fee rates by Resolution to cover the cost of permitting.
 - Permittees are also required to participate in and fund a monitoring program to cover the cost of County inspections.
 - Permittees are responsible for the costs of complying with the California Environmental Quality Act (CEQA).



Commercial Cannabis Use Permit

- Commercial Cannabis Use Permit
 - Treated as a conditional use permit, subject to recommendation from the Planning and Building Director and a public hearing before and decision by the Planning Commission.
 - Adjacent property owners and city within ½ mile radius must be notified before the Planning Commission hearing.
 - Issuance is a discretionary act requiring compliance with the California Environmental Quality Act (CEQA). Applicant is required to cover the cost of CEQA analysis and indemnify the County if issuance of permit is challenged.
 - For outdoor and mixed-light cultivation, review and recommendation of Agricultural Commission will be required.



Commercial Cannabis Annual Operating Permit

- Commercial Cannabis Annual Operating Permit
 - Initially issued with the Commercial Cannabis Use Permit and then subject to annual renewal.
 - Expires upon the transfer of ownership of the business or addition of a new owner or funding source.
 - Avenue for County to ensure compliance with conditions of County Code and site-specific conditions in the Commercial Cannabis Use Permit.
 - Cannot be renewed if there are violations of County Code or site-specific conditions.
 - Cannot be renewed if any commercial cannabis taxes or fines are delinquent.



Application Materials – Highlights

- Name of every owner, which is every person with any financial interest.
 - Includes consent to and information to perform criminal background check and fingerprinting for every owner and spouse.
- Detailed premises diagram, operating protocols, and security procedures.
- Evidence of legal right to occupy the premises and notarized authorization from landlord for commercial cannabis activity.
- Detailed explanation of how the applicant will prevent theft and access to cannabis and cannabis products by individuals under the age of twenty-one.
- Security plan that includes adequate lighting, video surveillance with 360 degree coverage.
 - County may require ability for the Sheriff's Office to access real-time footage.
- Proof of compliance with all County requirements and state regulations.



Enforcement

- Enforcement provided for in the ordinance through civil code enforcement and fines. Criminal enforcement remains an option.
- Annual Operating Permit revoked for 2 years if there are 3 violations within a 2-year period.
- Fines accrue after 72-hour opportunity to correct the violation.
 - Fines for violations if operating with a Use Permit and Annual Operating Permit:
 - \$1,000 per day, per violation after 72-hour notice to correct issued.
 - \$2,500 per day, per violation after notice to abate issued.
 - \$5,000 per day, per violation for second violation within 12 months.
 - \$10,000 per day, per violation for third violation within 12 months.
 - Fines for violations if operating without a Use Permit and Annual Operating Permit:
 - \$5,000 per day, per violation after 72-hour notice to correct issued.
 - \$10,000 per day, per violation after notice to abate issued.
 - \$25,000 per day, per violation for second violation within 12 months.
 - \$50,000 per day, per violation for third violation within 12 months.



Ballot Measures 2 & 3:

Outdoor & Mixed-Light Cultivation

- **Outdoor:** cultivation activities that are not conducted within a fully enclosed, permitted building, constructed of solid materials, accessible only through one or more locking doors.
- **Mixed-Light:** 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.
- **Permitted Zones:**
 - Rural Lands (RL)
 - Planned Agricultural (PA)
 - Limited Agricultural (LA)
 - Agricultural Grazing (AG)



Limit on Number Cultivation Operations

- Number of cultivation operations within the County is limited to 150, including outdoor, mixed-light, or indoor cultivation.
 - Minimum of 75 of the total 150 cannabis cultivation operations are reserved for outdoor or mixed-light cultivation sites that are less than 10,000 square feet in total canopy area.
 - 40 of the 75 total operations are reserved for permits 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.
- **“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.



Outdoor & Mixed-Light Cultivation

- **Minimum Site Area: 10 acres**
 - The County may require a premises greater than 10 acres to maintain consistency with other laws, surrounding residential uses, and neighborhood compatibility.
- **Maximum Canopy Coverage:**
 - **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.
 - **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.
 - **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.
 - **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.

Outdoor & Mixed Light Cultivation: Public Health and Safety Protections

- Background checks and fingerprinting of any person with any financial interest in the company, including review of background checks by the Sheriff's Office.
- Detailed security plan required with 360 degree video surveillance that the Sheriff's Office can access and motion-activated security lighting.
- Minimum 1,500 feet setback 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.
 - Setback may be reduced in a Commercial Cannabis Use Permit so long as the applicant demonstrates that (1) the actual setback will substantially achieve the purpose of the required setback; and (2) the parcel was owned or leased by the applicant before enactment of this ordinance.
- Minimum 800 feet setback from property line.
- All plants must be screened so that no part of the plant is visible.
- Minimum six-foot high solid wood or chain link wildlife exclusionary fence with locking gates.
- Objective threshold to measure odor and enforce violations.

Outdoor & Mixed Light Cultivation: Environmental Protections

- Review and site-specific mitigation imposed through review under the California Environmental Quality Act (CEQA). Applicant must show that there is no other environmentally superior cultivation site located on the same premises.
- Proof of a legal and sufficient water source required. Activities cannot create erosion or result in contaminated runoff into any spring, wetland, stream, creek, river, lake, or body of water. Adequate water conservation measure required.
- Electrical power for mixed-light cultivation operations 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 only be used as a secondary or back-up power source.
- Cannabis disposal procedures required and cannabis waste cannot be burned.
- Public sewer or County inspected and approved sewage disposal system required.
- Preference given to applicants that maintain organic certification standards or the substantial equivalent. Otherwise, all pesticides must be disclosed and properly labeled and stored.



Ballot Measures 4 & 5:

Indoor Cultivation

- **Indoor:** 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.
- **Limitation:** Number of cultivation operations within the County is limited to 150, including outdoor, mixed-light, or indoor cultivation.
- **Permitted Zones:**
 - **Community Commercial (CC)**
 - **Regional Commercial (RC)**
 - **General Commercial (GC)**
 - **Industrial High (IH)**
 - **Industrial Low (IL)**
- County may place restrictions on canopy size to maintain consistency with other laws, surrounding commercial uses, and neighborhood compatibility.

Indoor Cultivation: Public Health and Safety Protections

- Background checks and fingerprinting of any person with any financial interest in the company, including review of background checks by the Sheriff's Office.
- Detailed security plan required with 360 degree video surveillance that the Sheriff's Office can access and motion-activated security lighting.
- Minimum 1,500 feet setback 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.
 - Setback may be reduced in a Commercial Cannabis Use Permit so long as the applicant demonstrates that (1) the actual setback will substantially achieve the purpose of the required setback; and (2) the parcel was owned or leased by the applicant before enactment of this ordinance.
- All plants must be screened so that no part of the plant is visible.
- Objective threshold to measure odor and enforce violations.

Indoor Cultivation: Environmental Protections

- Review and site-specific mitigation imposed through review under the California Environmental Quality Act (CEQA).
- Proof of a legal and sufficient water source required.
- Adequate water conservation measure required.
- Electrical power for mixed-light cultivation operations 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 only be used as a secondary or back-up power source.
- 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.
- Cannabis disposal procedures required and cannabis waste cannot be burned.



Distribution & Transport

- **Distribution:** 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.
- **Transport:** 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
- **Permitted Zones:**
 - **Community Commercial (CC)**
 - **Regional Commercial (RC)**
 - **General Commercial (GC)**
 - **Industrial High (IH)**
 - **Industrial Low (IL)**

Distribution & Transport:

Public Health and Safety Protections

- Background checks and fingerprinting of any person with any financial interest in the company, including review of background checks by the Sheriff's Office.
- Detailed security plan required with 360 degree video surveillance that the Sheriff's Office can access and motion-activated security lighting.
- Minimum 1,500 feet setback 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. (*Same waiver potential.)
- All plants must be screened so that no part of the plant is visible.
- Cannabis may only be transported inside of a commercial vehicle or trailer with sufficient security features and GPS tracking. Cannabis or cannabis symbols or signage 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.
- County may require a distributor or transporter to notify the Sheriff's Office before transporting cannabis within the unincorporated areas of the County.



Retail Sale & Delivery

- **Retail:** Includes all sale of cannabis, whether from a store-front open to the public or non-storefront that exclusively delivers.
- **Permitted Zones:**
 - **Community Commercial (CC)**
 - **Regional Commercial (RC)**
 - **General Commercial (GC)**
 - **Industrial Low (IL)**
- **Limitation on Quantity:** With the exception of non-storefront retail facilities providing only delivery service, no more than 7 retail storefront facilities may be permitted at one time.
 - Concentration of commercial cannabis facilities and proximity to an existing or proposed cannabis retail facility shall be considered.
 - County will first review and take action on applications by facilities that (1) had a valid license with the Bureau of Cannabis Control by July 17, 2018; and (2) submit an application within 45 days of applications being available.

Retail Sale & Delivery:

Public Health and Safety Protections

- Background checks and fingerprinting of any person with any financial interest in the company, including review of background checks by the Sheriff's Office.
- Detailed security plan required with 360 degree video surveillance that the Sheriff's Office can access and motion-activated security lighting.
- Minimum 1,500 feet setback 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.
 - Setback may be reduced in a Commercial Cannabis Use Permit so long as the applicant demonstrates that (1) the actual setback will substantially achieve the purpose of the required setback; and (2) the parcel was owned or leased by the applicant before enactment of this ordinance.
- May not be established on any parcel containing a dwelling unit used as a residence or within 500 feet of a residential zoning district.
- All plants must be screened so that no part of the plant is visible.

Retail Sale & Delivery:

Public Health and Safety Protections *cont.*

- Cannabis may only be transported inside of a commercial vehicle or trailer with sufficient security features and GPS tracking. Cannabis or cannabis symbols or signage 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.
- County may require retailer to notify the Sheriff's Office before delivering cannabis within the unincorporated areas of the County.
- Signage and advertisement will be reviewed as part of the permitting process.
- 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.

Timeline of Implementation

- If one or more ballot measures pass, the County will need time to develop a cannabis program, including all application materials, procedures, etc.
- Enforcement and permitting ballot measure gives Planning and Building Department six months to develop the necessary program. Applications must be available at the end of that six months unless the Board of Supervisors grants 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.

Flexibility for County Remains

- Flexibility to adjust the rules and regulations within the County is important because, at this time, the state is still amending its regulations and state law, the response of the federal government remains unclear, and how the industry will adjust from the black market to a regulate market is unknown.
- Counties that have moved forward are also discovering issues they did not anticipate or could not have predicted.
- To retain flexibility, all of the ordinance states:
 - While this ordinance was enacted by voters, the Board of Supervisors retains discretion to amend the ordinance in any way