



RESOLUTION NO. 141-2018

OF THE BOARD OF SUPERVISORS OF THE COUNTY OF EL DORADO

**SUBMISSION TO VOTERS OF A MEASURE PROVIDING FOR AUTHORIZATION
AND REGULATION OF COMMERCIAL OUTDOOR AND MIXED-LIGHT
CULTIVATION OF CANNABIS FOR MEDICINAL USE**

WHEREAS, while state law allows for commercial cannabis cultivation, Section 26200 reserves for each local government the power to decide whether to allow any commercial cannabis activity within its jurisdiction; and

WHEREAS, on December 12, 2017, the Board of Supervisors created the El Dorado County Ad Hoc Cannabis Committee 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 and a total of 28 public meetings addressing cannabis overall, the Ad Hoc Cannabis Committee has prepared ballot measures that, if enacted by the voters, would allow for limited commercial uses subject to regulation and discretionary permitting to protect public health, safety, and welfare and the environment; and

WHEREAS, the proposed ballot measures provide for the voters of El Dorado County ("County") to decide whether to allow particular commercial cannabis activities while maintaining the flexibility of the Board of Supervisors to amend the ordinances as state and federal cannabis law continues to change or new circumstances or considerations require new or amended regulations; and

WHEREAS, if commercial cannabis cultivation is permitted, a tax generating revenue for the privilege of engaging in such commercial cannabis activities is in the best interest of the County and a program providing for discretionary permitting of any authorized commercial cannabis activities, fees to cover the cost of the program, enforcement procedures and fines, and regulations protecting public health, safety, and welfare and the environment are necessary;

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, in accordance with Sections 324 and 1000 of the California Elections Code, the State of California is holding a statewide general election on November 6, 2018; and

WHEREAS, pursuant to Elections Code Section 9140, “the Board of Supervisors may submit to the voters, without a petition, an ordinance for the repeal, amendment, or enactment of any ordinance.”

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

- 1) The Board of Supervisors does hereby order submitted to the voters at the election on November 6, 2018, the following question:

Shall the measure allowing for outdoor and mixed-light (greenhouse) commercial cannabis cultivation for medicinal use on parcels of at least 10 acres zoned Rural Lands, Planned Agricultural, Limited Agricultural, and Agricultural Grazing that are restricted in canopy size, required to pay a County commercial cannabis tax, and subject to a site-specific review and discretionary permitting process with notification to surrounding property owners and environmental regulation be adopted?

- 2) The proposed ordinance providing for the authorization and regulation of commercial outdoor and mixed-light cultivation of cannabis for medicinal use (Section 130.14.300) that is submitted to the voters is attached hereto as Exhibit A and shall be included in the voter information guide provided to the registered voters in the County.
- 3) That in all particulars not recited in this Resolution, the election shall be held and conducted as provided by law and the Registrar of Voters is hereby authorized and directed to take actions necessary for the conduct of the election, to canvass the results, and to certify the results to the Board of Supervisors. Said elections shall be consolidated with all other elections occurring in the County on that date pursuant to Elections Code Section 10418.
- 4) If enacted by a majority of the voters voting in the election on the issue, the ordinance in Exhibit A would become effective only if independent ordinances are enacted by the voters of the County providing for (1) a general or special tax on all of the commercial cannabis activities authorized in Exhibit A; and (2) discretionary permitting and enforcement procedures to regulate the commercial cannabis activities authorized in Exhibit A. If such general or special tax is passed but is challenged or invalidated for any reason, the ordinance in Exhibit A 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 the ordinance becomes effective and the tax is repealed or invalidated, the ordinance in Exhibit A shall automatically expire and be repealed.

- 5) Pursuant to Section 26055, subdivision (h) of the Business and Professions Code, the California Environmental Quality Act does not apply to this action because the ballot measure proposes an ordinance that requires discretionary review and approval of permits to engage in any commercial cannabis activity.

PASSED AND ADOPTED by the Board of Supervisors of the County of El Dorado at a regular meeting of said Board, held the 17th day of July, 2018, by the following vote of said Board:

Ayes: Veerkamp, Frentzen, Ranalli, Hidahl
Novasel

Noes: None

Absent: None

Attest:

James S. Mitrising

Clerk of the Board of Supervisors

By: 

Deputy Clerk


Chairman, Board of Supervisors
Michael Ranalli



ORDINANCE NO. _____

**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.