



August 27, 2019
Commercial Cannabis ad hoc Advisory Committee
PROPOSED ORDINANCE AMENDMENTS

Presentation

- Brief overview of the legality of cannabis in El Dorado County.
- Brief overview of the commercial cannabis licenses authorized by the State and the County commercial cannabis November 2016 ballot measures.
- Overview of proposed amendments.



Commercial Cannabis - 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 Attorney General Sessions rescinded prior non-enforcement policy.
 - Legal challenge to federal government's classification of cannabis as a Schedule 1 drug was unsuccessful.
 - Through spending bill, Department of Justice funds cannot be used to prosecute certain cannabis federal crimes if the individual is compliant with state cannabis laws.



Personal Use Cannabis

- The Ballot Measures and today's proposed amendments do not address cannabis grown for personal use.
- Personal outdoor cultivation for medicinal use:
 - Section 130.14.260: Allows cultivation of 200-600 square feet depending on the number of patients, parcel size, and zone district of the parcel. Many other conditions must be met as well (e.g. residency, environmental, etc.).
- Proposition 64 allows indoor cultivation of six plants per residence.
- Giving away more than an ounce of cannabis grown for personal use is considered commercial activity.



Current Ban in El Dorado County

- **Section 130.14.270 - Temporary ban on any commercial cannabis activity through 12/12/19.**
 - Cultivating, distributing, selling, or delivering commercial cannabis for medicinal or recreational adult use is not authorized in the County.
 - Measures P, Q, R, and S amended the temporary ban to remove the commercial cannabis activities authorized in each new ordinance.
 - Item before you recommends repeal of the ban entirely as all uses were authorized.
- Even absent the ban, commercial cannabis activities are authorized under the measures only upon issuance of a Commercial Cannabis Use Permit and Annual Operating Permit, thus no commercial cannabis activity is legal in El Dorado County until permits are issued.
- **Section 130.14.250 - Medical Cannabis Dispensaries**
 - Ordinance 4999 - Banned medicinal cannabis dispensaries.
 - 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.
 - Commercial cannabis ballot measures repealed this section.



State Commercial Licenses Available

- **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**
- **Cannabis Event Organizer**
- **Temporary Cannabis Event**



State Licenses Available

Green: Passed in El Dorado County with ballot measures.

Red: Not included in ballot measures; in proposed ordinance amendments.

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State Licensing Agencies

- Three state agencies regulate the various commercial cannabis uses:
 - Bureau of Cannabis Control
 - Manufactured Cannabis Safety Branch (MCSB) within the California Department of Public Health
 - CalCannabis Cultivation Licensing within the California Department of Food and Agriculture
- All state agencies adopted permanent regulations that were effective January 16, 2019.
 - No longer working under temporary emergency regulations.
 - With passage of AB 97 on July 1, 2019, state can issue provisional licenses until 2022 if a state annual application was submitted.
- State issues separate licenses for Medicinal (M-license) and Adult Use (A-license) cannabis, but each licensee can have both at same premises.



Ballot Measures Passed

	Commercial Cannabis Activity	Passage Rate
N	Commercial Cannabis Activities Tax	64.65%
	Permitting and Enforcement of Commercial Cannabis Activities	
P	Outdoor and Mixed-Light Cultivation – Medical Use	60.54%
Q	Outdoor and Mixed-Light Cultivation – Adult Recreational Use	59.24%
R	Indoor Uses: Indoor Cultivation; Retail; Delivery; and Distribution – Medical Use	61.20%
S	Indoor Uses: Indoor Cultivation; Retail; Delivery; and Distribution – Adult Recreational Use	60.02%
	Microbusiness <i>*Allowed because at least 3 commercial activities passed</i>	
	TAX RATES ONLY:	
	No Ballot Measure; Not Authorized Until Later Action	
	Nurseries	
	Laboratory Testing	
	Manufacturing / Processing Only	



Commercial Cannabis Activities: Measure N - County Permitting & Enforcement

- 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
 - Treated as a discretionary conditional use permit, requiring compliance with the California Environmental Quality Act and subject to a public hearing before and decision by the Planning Commission.
 - For outdoor and mixed-light cultivation, review and recommendation of Agricultural Commission will be required.
 - (2) Commercial Cannabis Annual Operating Permit
 - Avenue for County to ensure compliance with conditions of County Code and site-specific conditions in the Commercial Cannabis Use Permit.

More Information / Questions?

- For a more detailed presentation on the existing commercial cannabis ordinances in El Dorado County, please see the presentation to the Planning Commission on July 11, 2019 (Legistar File 19-1021).
- Before providing an overview of the proposed amendments, any questions on the current commercial cannabis ordinances enacted through the ballot measures?

Proposed Amendments

- While voters enacted the measures, the Board of Supervisors retains the discretion to amend them.
 - “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.”
- **Public Involvement:** The new uses and proposed amendments were presented to the ad hoc Commercial Cannabis Committee at public meetings on February 11, 2019, February 25, 2019, and June 3, 2019. The proposed amendments were considered by the Planning Commission on July 11, 2019. The Planning Commission added minor changes and recommended approval of the amendments.

Proposed Amendments

- Combine medicinal and adult use recreational ordinances:
 - To give voters the opportunity to differentiate between medicinal and adult-use recreational cannabis, the ballot measures separated these two distinct uses of cannabis. Because all measures passed, the proposed amendments combine the ordinances to regulate medicinal and adult-use recreational commercial cannabis in the same ordinance.
- Renumber the ballot measures to create a commercial cannabis section of the County's Zoning Ordinance and update the Matrices of Uses within the Zoning Ordinance.
- Propose minor changes related to implementation and address changes in state law with the adoption of the permanent regulations, including amending definitions to be consistent with new state regulations.



Proposed Amendments

- Add a section addressing out-of-County delivery services to ensure they are subject to same rules and taxes as in-County delivery services.
- Add requirement for a Designated Local Contact to ensure County and the public have a contact to effectively address complaints in a timely manner.
- Move general requirements that apply to all indoor uses to one section.
- Add requirement of review by the fire code official and consideration of conditions proposed by that official.
- For indoor cultivation, distribution, and retail delivery, adds Research and Development (R&D) as a permitted zone and removes Community Commercial (CC) and Regional Commercial (RC) as permitted zones.

Proposed Amendments – New Uses

- Amendments authorize the uses that were intentionally omitted from the ballot measures:
 - Nurseries
 - Manufacturing, including processing only as a cultivation license
 - Testing Laboratories
- All new proposed uses would be subject to the same permitting and monitoring process in the existing ordinances, which requires a Commercial Cannabis Use Permit and Commercial Cannabis Annual Operating Permit.
- Amendments are statutorily exempt from CEQA under Business and Professions Code section 26055(h), which exempts the “adoption of an ordinance, rule, or regulation by a local jurisdiction that requires discretionary review and approval of permits, licenses, or other authorizations to engage in commercial cannabis activity.”



New Use: Nursery

- Nursery: Produces only cannabis clones, immature plants, seeds, and other agricultural products used specifically for the propagation and cultivation of cannabis.
- Cultivation plan required under state regulations and must include:
 - Detailed premises diagram showing all boundaries and dimensions.
 - Distinct areas for cultivation of immature plants only verses research and development or seed production areas with mature plants.
 - Designated areas for pesticide and chemical storage and composting and cannabis waste.
 - Detailed pest management plan and pest management protocols.
- Track and Trace system requires licensed Cultivator to propagate a seed onsite or purchase it from a licensed Nursery.
- Licensed Distributor transports seeds or immature plants from licensed Nursery to licensed Cultivator.



Nurseries – Proposed Zones

- **Zoned consistent with cultivation:**

- **Outdoor or Mixed-Light Nursery:** Rural Lands (RL), Planned Agricultural (PA), Limited Agricultural (LA), and Agricultural Grazing (AG).

- For lots zoned Rural Lands (RL), designated nursery area with mature plants is included in the 10,000 square foot canopy maximum and designated nursery area with immature plants is excluded from the 10,000 square foot canopy maximum.
 - For lots zoned Planned Agricultural (PA), Limited Agricultural (LA), and Agricultural Grazing (AG), all designated nursery area is excluded from the total allowed canopy coverage.

- **Indoor Nursery:** General Commercial (GC), Industrial High (IH), Industrial Low (IL), and Research and Development (R&D)

- Provides that outdoor and mixed-light nurseries are subject to the same rules as outdoor and mixed-light cultivation and indoor nurseries are subject to the same rules as indoor cultivation.



New Use:

Manufacturing – State License Types

■ License Types:

- **Type 7:** Extraction using volatile solvents (ex: butane, hexane, pentane). May also extract using non-volatile solvents; conduct infusions; and package and label.
- **Type 6:** Extraction using a non-volatile solvent or mechanical method (ex: food-grade butter, oil, water, ethanol, or carbon dioxide). May also conduct infusions and package and label.
- **Type N:** Infusions; products other than extracts or concentrates produced through extraction. May also package and label.
- **Type P:** Packaging, repackaging, and labeling only.
- **Type S:** Manufacturers that conduct commercial cannabis manufacturing at a registered shared-use facility. Allows for shared equipment provided that the common-use area is limited to one licensee at a time.
 - Limited to licensees with gross annual revenue of less than \$1,000,000.
 - Type S Licensee may infuse, package and label, and extract butter or food-grade oils, provided that the resulting extract or concentrate is only used by that licensee.
- Manufacturing licensee may also roll and package pre-rolls and package dried cannabis flower (expressly added in new regulations).



Manufacturing – State Requirements

- Licensees must have premises diagram and written procedures for inventory control, quality control, transportation, security, and cannabis waste disposal. These Standard Operating Procedures (SOPs) must be submitted with application. State sets minimum requirements for materials and maintenance of exterior and interior of facility.
- Closed-loop manufacturing system must be certified by a California-licensed engineer.
- Can only manufacture, prepare, package, or label cannabis products at premises; cannot manufacture at a retail food establishment or as a processed food registrant.
- Good manufacturing practices must be followed to ensure production occurs in a sanitary and hazard-free environment, cannabis products are contaminant free, and THC levels are consistent throughout the product and within required limits.
 - State sets specific requirements addressing disease control, employee attire, inspections, storage and handling, and raw materials and components.
- If operating under an annual license (not temporary), must ensure manufactured products are maintained in the Track and Trace system.
- State set numerous regulations as to THC content, product type, and packing.



Manufacturing – Proposed Zones

- **Processor (Cultivation License)**
 - Zoned consistent with outdoor, mixed-light, and indoor cultivation
- **Type 7 (volatile solvents):**
 - Industrial High (IH) and Industrial Low (IL)
- **Type 6 (non-volatile solvents):**
 - General Commercial (CG), Industrial High (IH), Industrial Low (IL), and Research and Development (R&D)
- **Type N (infusions) and Type P (packaging and labeling only):**
 - Community Commercial (CC), Regional Commercial (CR), General Commercial (CG), Industrial High (IH), Industrial Low (IL), Research and Development (R&D), Planned Agricultural (PA), Limited Agricultural (LA), and Agricultural Grazing (AG)
- Provides for Director of Environmental Management Department to impose additional restrictions or requirements to protect public health and safety.



New Use: Testing Laboratory

- Independent licensee that performs tests from samples of each cannabis goods batch obtained from the Distributor's premises.
 - Must develop chain of custody protocol.
 - Cannot have any other commercial cannabis license.
 - Cannabis cannot be sold if it does not pass the testing requirements.
- Must obtain and maintain ISO/IEC (International Organization for Standardization/International Electrotechnical Commission) 17025 accreditation.
 - ISO/IEC 17025 accreditation requires that the laboratory demonstrate that it is technically proficient and able to produce precise and accurate test and calibration data.
 - Testing laboratories may be issued an interim license allowing them to operate while they obtain ISO/IEC 17025 accreditation, provided they meet all other licensure requirements.



Testing Laboratory – Proposed Zones

- Testing Laboratories could be permitted in:
 - General Commercial (GC)
 - Industrial High (IH)
 - Industrial Low (IL)
 - Research and Development (R&D)
- Provides for Director of Environmental Management Department to impose additional restrictions or requirements to protect public health and safety.



What Are Other Counties Doing

- Looked at 58 California counties and two cities

- Manufacturing
 - El Dorado County – proposed
 - Allow - 13
 - Do not allow - 42
 - Working on a policy – 2

- Nurseries
 - El Dorado County - proposed
 - Allow - 15
 - Do not allow - 42
 - Working on a policy – 0

- Testing Labs
 - El Dorado County - proposed
 - Allow - 11
 - Do not allow - 45
 - Working on a policy – 1



What Are Other Counties Doing

- Where are these counties?
 - Mostly coastal or in the costal mountain range
 - Seen movement inland – Imperial, Inyo (indoors), Mono (indoors), and Stanislaus (indoors); Nevada (Nursery)
- Has a hard cap on licenses been created?
 - Have not seen one on these uses