

**EDC Industrial Hemp Pilot Program CONCEPT**  
2023-2024 Seasons

**Presumption:** Do not over regulate for problems that we do not know actually exist. Use this controlled, small pilot program to see when and if additional rules and regulations need to be applied. It's only 5 farms working closely with the county. If thefts occur, then we add additional security requirements. If excessive odor complaints occur, then setbacks can be adjusted. But if not, then just proceed and scale up until problems arise/if they arise. This should be considered a research and fact finding endeavor to inform final policy at the end of the two year period.

**Pilot Program** to consist of FIVE or less Industrial Hemp producers for the 2023 and 2024 growing seasons.

**Who can participate:**

Growers who pass the CA standards for eligibility and meet the following El Dorado County conditions:

**I. Property Zoning and set-backs:**

**Allowed:**

Right to Farm zoning- PA, LA and AG

RE-20 acre minimum with 200' setback from adjacent property

RL-20 acre minimum with 200' setback from adjacent property

\* Smaller acreage can request an Administrative Permit

Adjoining small parcels can be grouped to equal 20 acres or more.

**Setbacks:**

200' setback on residential parcels

0' setback on Right to Farm (PA, LA, AG)

200' setback from existing permanent Ag crop

200' setback from sensitive sites

Sensitive sites: Tasting Rooms, Public Parks (Not undeveloped public land)

**II. Agricultural Department Policies**

1. Ag Dept/CA Best Management Practices
2. Program beginning checklist and information (Lights, track-out, fencing, etc.)
4. Owner/lease policies. Permissions for abatement.

**III. Time and Funding**

1. \$1,500- \$2,000 (10hrs x two staff) Time and materials
2. \$1,200- \$1,500 abatement bond

**IV. Abatement-**

1. Hot crop between .3% and 1% abatement overseen by Agricultural Department.
2. Crop 1% and higher qualifies as illegal cannabis and becomes the purview of law enforcement or code enforcement. Recommend processing under the current policies under Sec. 130.42.100 of the Cannabis Ordinance which has clear guidelines for remediation and the ability to levy fines to properties not in compliance. (See attachment)

**V. Odor**

1. No mitigation mandated or setbacks on Right to Farm parcels except for against pre-existing tasting room facilities.
2. All other parcels- no additional mitigation required aside from set-backs. Use the two year pilot program to record and analyze complaints and inform final policies. Have regulations based on hard data.
3. Production facilities: Follow Cannabis Ordinance guidelines for mitigation in indoor facilities. Production facilities on PA, LA, and AG do not require mitigation.

**VI. Schools:** *(From Erik Bonniksen, Superintendent of the Placerville Union School District)*

1. Notify schools that are located within 300 feet of the farm as part of the permitting process.
2. With the notification, send a one-page fact sheet about hemp that the school can send out to parents (if they choose), so that parents/community would understand the difference between hemp and cannabis.
3. Clear signage stating it is hemp, not cannabis, and doesn't have THC levels above a certain

**VII. Signage**

1. Large scale official signage at any point where plants are in public view.
2. Official signage at immediate perimeter of grow site.
3. Size of sign to public view must be large enough to be legible from passing cars/pedestrians.

**VIII. Testing**

1. Follow CA State and CDFA policies regarding testing methods and % definitions.
2. Testing will be done by the Agricultural Commissioner and USDA trained department staff. Ag Dept is required by state law to use D.E.A. Certified labs.
3. Testing by Law Enforcement would require a warrant.
4. THC levels over 1% will be reported to the Sheriff's Office and code enforcement.

**IX. Site Plan**

Site plan showing the entire parcel, including any easements, streams, ponds, and other surface water features and the location and area for cultivation and set backs 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 hemp will be stored, handled, or displayed. Detailed diagrams of the premises, including any buildings, structures, fences, gates, parking, lighting, and signage.

**X. Security Plan**

A security plan will be recommended in the applicant informational packet provided by the Ag Dept.

**X1. Background Check**

Use CA State requirements and processes for Industrial Hemp background checks.

**XII. Inspections**

Follow state guidelines for scheduled inspections during business hours by the Agricultural Department.

**XII. Designated Local Contact**

Provided to the Sheriff's Department.

**Sec. 130.42.100 - Cultivation of Cannabis for Personal Use.**

**Administrative Enforcement and Abatement.**

1 In addition to criminal enforcement, a violation of this Section shall be deemed a public nuisance and shall be subject to enforcement as provided herein and the provisions of Chapters 130.12 and 9.02. Pursuant to Subsection 9.02.020(B), the higher fines of this Section shall control in any administrative enforcement action.

2 A notice to correct or notice to abate issued under Chapter 9.02 shall provide no less than 96 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 the time stated on the notice. Notwithstanding Chapter 9.02, if the cultivation of cannabis in violation of this Section is confirmed through visual inspection or satellite imagery, a notice to correct and notice to abate may be simultaneously issued on a single form entitled "Notice to Correct and Abate," which would provide for abatement after expiration of no less than 96 hours from the date and time stated on the notice.

3 For any violation not corrected within the date and time stated on the notice to correct or notice to correct and abate, an administrative fine of up to \$1,000.00 per day, per violation will accrue for each and every day, or portion of a day, that a violation exists. Each plant cultivated in violation of this Section shall be deemed a separate violation. 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 up to \$2,500.00 per day, per violation for each and every day, or portion of a day, that a violation exists. 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 up to \$5,000.00 per day, per violation for each and every day, or portion of a day, that a violation exists.

4 Notwithstanding Section 9.02.390, a request for an administrative hearing under Chapter 9.02 must be made within three calendar days of service of the notice to correct, administrative citation, or notice to abate and the hearing shall be held within five business days of the request for a hearing. Consistent with Section 9.02.400(A), satellite images of cannabis cultivation shall be admissible in an administrative hearing under this Section provided that there is evidence establishing the date and time the image was captured and the parcel for which the image was taken.

5 The decision of the Hearing Officer under Section 9.02.440 shall be issued within five calendar days of completion of the hearing.

6 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 number of plants, the responsible person may decide which plants will remain so long as the remaining plants are in compliance with this Section. The notice to abate shall require the responsible person to identify the plants to remain within the time 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, if any, will remain.

7 Unless a notice is personally served, any notice provided under this Section shall be:

Mailed under Section 9.02.120 to the property address;

a.

Mailed under Section 9.02.120 to the property owner on record with the County Assessor's Office if the most current address on file with the Assessor's Office is different than the subject property; and

Posted conspicuously on or in front of the residence, cultivation site, or other place reasonably anticipated to provide notice to the responsible person.

8 Imposition of administrative fines may be delayed and a property owner may be permitted no less than 15 days to correct any violations other than removal of cannabis plants if all of the following conditions are met:

a. The property where the cultivation is occurring is being rented or leased and a tenant is in possession;

a.

The property owner or agent provides written evidence that the rental or lease agreement prohibits the cultivation of cannabis;

c. The property owner or agent did not know the tenant was illegally cultivating cannabis and no complaint, property inspection, or other information provided the property owner or agent with actual notice of the illegal cannabis cultivation; and

1 The property owner demonstrates good faith efforts to remove the illegal cannabis plants within the time  
d. required in the notice to correct or notice to abate.

9 Remediation Plan. Before a civil code enforcement case is closed, the County shall approve a remediation  
plan that provides for remediation activities that will restore the site to predevelopment (pre-cultivation)  
conditions to the maximum extent feasible. The County may require a mitigation and monitoring plan subject to  
review and approval of a Hearing Officer or the Planning and Building Department. The plan shall address  
prevention of damage to soil, plant and animal life, and surface and subsurface water supplies, and shall include  
standards for documentation, reporting, and adaptive management. Failure to comply with a mitigation and  
monitoring plan shall constitute a subsequent violation of this Section.

For purposes of this Section, if the last day for the performance of any act that is required by these rules to be  
1 performed within a specific period of time falls on a Saturday, Sunday, or other legal holiday, the period is  
0 extended to and includes the next day that is not a holiday.

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

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**Industrial Hemp Joint Working Committee  
Items for review**

**Section 130.43.100 – Definitions - T. “Sensitive use”**

**Section 130.43.101 License Requirements - 6.**

**Section 130.43.105 Cultivation Requirements - B. Odors.**

**Section 130.43.106 Inspections- A and B**

**Section 130.43.107 Enforcement - B. 1. and C**

### **Section 130.43.100 – Definitions**

T. "Sensitive use" means the following:

- ~~1. A child day care facility licensed under the California Child Day Care Facilities Act (Health and Safety Code section 1569.70 et seq.).~~
- ~~2. A licensed child care home.~~
- ~~3. An employer-sponsored child care center, as defined in Health and Safety Code section 1596.771.~~
4. A school, as defined in Section 130.41.100.
- ~~5. A youth center, defined to mean any public or private facility that is used to host recreational or social activities for minors while minors are present.~~
- ~~6. A youth-oriented facility, as defined in Section 130.41.100.~~
7. Public Parks, defined to mean areas dedicated and used for active recreation operated by a public agency and open to the public.
- ~~8. Ranch Marketing Facilities.~~
- ~~9. Winery sales and tasting facilities.~~

#### **From Concept:**

##### **Sensitive sites:**

Existing agricultural crops (200ft)

Tasting Rooms (200ft)

Public Parks (Not undeveloped public land) (200ft)

Schools (300 ft)

### **Section 130.43.101 License Requirements**

6. The applicant shall confirm that the proposed cultivation of industrial hemp will not occur on a premise that is being used for the commercial cultivation or processing of cannabis, consistent with Food and Agricultural Code section 81006(c), as that section now reads or may thereafter be amended, and that the proposed cultivation of industrial hemp will not occur on a parcel or parcels that are being used for commercial cannabis activity pursuant to Chapter 130.41 (Commercial Cannabis).

**From Concept:** This was not addressed in the Concept because it is allowed under State law and is a likely business model that a producer will diversify between CBD and THC products. More importantly, there is no incentive for someone to illegally plant marijuana in their licensed hemp premise if they already hold a commercial cannabis license.

### **Section 130.43.105 Cultivation Requirements**

**B. Odors.** The licensee shall locate the cultivation area on their parcel or parcels used for cultivation in a manner that minimizes odors to surrounding areas. The Agricultural Commissioner shall include in the best management practices adopted under Section 130.43.104 (Best Management Practices) recommendations to reduce odor spread to surrounding parcels. Any odor associated with cultivation or processing activities shall not be equal to or greater than a seven-dilution threshold ("DT") when measured by the County with a field olfactometer at the property line on which the hemp is cultivated or processed for a minimum of two olfactometer observations not less than 15 minutes apart within a one-hour period ("seven DT one hour"). If the Agricultural Commissioner receives a complaint related to odor, and that complaint is verified based on the seven DT one hour threshold described in the previous sentence, the Agricultural Commissioner shall provide the Licensee with a written warning and suggestions to reduce odor. If, upon retesting, the odor has not been reduced to below the seven DT one hour threshold, then the Agricultural Commissioner shall refer the licensee to Code Enforcement. Any violation of this Subsection is subject to enforcement, abatement, and revocation of a license under Section 103.43.109 (Enforcement). Abatement may include, but is not limited to, the use of 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 industrial hemp 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.

#### **From Concept:**

##### **V. Odor**

1. No mitigation mandated or setbacks on Right to Farm parcels except for against pre-existing tasting room facilities.
2. All other parcels- no additional mitigation required aside from set-backs. Use the two year pilot program to record and analyze complaints and inform final policies. Have regulations based on hard data.
3. Production facilities: Follow Cannabis Ordinance guidelines for mitigation in indoor facilities. Production facilities on PA, LA, and AG do not require mitigation.

**Comments:** This threatens Right to Farm protections on Ag Zoned parcels. Also, mid growing season requirements to install expensive mitigation infrastructure such as misters is too great and too unpredictable a financial risk for program applicants. Further in the draft only 72 hours is given to mitigate. This is not possible. If there is desire to have mitigation the committee recommends only having this requirement apply to RE zoning, which is not protected by RTF.

### **Section 130.43.106 Inspections**

A. The Agricultural Commissioner shall conduct regular inspections of each licensee to ensure that that the licensee is in compliance with all the requirements of this Chapter and all state and federal law, including 3 CCR 4930. ~~The Sheriff's Office may accompany the Agricultural Commissioner on these inspections.~~ The Agricultural Commissioner shall conduct inspections at random intervals and shall ensure that each licensee is inspected at least once annually.

The Agricultural Commissioner shall provide reasonable advance notice of the inspection, and that notice shall be no later than same day notice.

B. The licensee shall provide County staff, ~~including the Sheriff's office~~, with complete and unrestricted access during business hours, consistent with 3 CCR 4930.

**From Concept:**

### **VIII. Testing**

1. Follow CA State and CDFA policies regarding testing methods and % definitions.
2. Testing will be done by the Agricultural Commissioner and USDA trained department staff. Ag Dept is required by state law to use D.E.A. Certified labs.
3. Testing by Law Enforcement would require a warrant.
4. THC levels over 1% will be reported to the Sheriff's Office and code enforcement.

**Comments:** Law Enforcement is requesting this language because they want to use their authority to act as Code Enforcement and/or Inspectors on behalf of the county to enter the property. If they want to be on premise as law enforcement looking for a crime they need a warrant or permission from the owner.

Code Enforcement and Inspectors have to follow certain laws, such as inspections being random, so that they do not infringe on people's 4<sup>th</sup> Amendment Rights to be secure against unreasonable search and seizure. This creates a dilemma- if they are only acting as an inspector, we are already required by State law that the hemp inspections be done by the Ag Commissioner or other CDFA certified person and they must follow strict methods for sampling, including being accompanied by a DEA laboratory technician who ensures the samples are collected properly and manages a chain of custody. Code Enforcement officers are supposed to be trained and well versed in the industries they are regulating (such as building code enforcement).

Law Enforcement at the Sept. 21<sup>st</sup> meeting described the process they use so that they are not doing an illegal seizure- if they are on premise then the plants are in plain sight. They would not physically take the plant, but they would brush it with a swab and do a presumptive test in the field. The presumptive test shows a positive or negative for THC- but not the actual percentage to a tenth of a percent. If it is positive they can get a warrant to come back and do testing which would be sent to a DEA lab.

Law Enforcement has stated that they believe at .4% the hemp is illegal cannabis and under their purview.

The committee feels that there is too great a risk for law enforcement and the Ag. Dept, the State and the grower to have a dispute over the destruction of crops under 1%. By State law farmers cannot be prosecuted for hemp below 1%. The law also allows for the Ag Dept. to do a second test before abatement.

Allowing law enforcement on the property before the hemp tests at 1% creates a financial risk to the farmer, is in conflict with State laws and practices and may create logistical hardships for Ag Dept. regulation and inspection practices.



People have some protection from Code Enforcement infringing on 4<sup>th</sup> Amendment Rights when they have a reasonable presumption of privacy. Adding this language to the ordinance may erode the farmer's presumption of privacy, opening the door for an administrative warrant by law enforcement.

*The committee are not lawyers and recommend getting legal clarification around these issues if the county wants to allow.*

**Comments: Committee recommending removing the language regarding law enforcement and follow the State standard of reporting percentages over 1% to code enforcement or law enforcement. If staff is uncomfortable or do not feel safe during inspections they should call for law enforcement for that reason on a case by case basis.**

### **Section 130.43.107 Enforcement**

**B. 1.** A notice to correct or notice to abate issued under Chapter 9.02 shall provide seventy-two (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 seventy-two (72) hours.

**Comments:** Clarify how this relates to mandated infrastructure such as misters.

### **Section 130.43.107 Enforcement**

**C.** Cannabis Enforcement. A licensee who is found to have engaged in commercial cannabis activities in violation of Chapter 130.41 (Commercial Cannabis) is subject to enforcement under Subsection 130.41.100.10 (Criminal Enforcement) or Subsection 130.41.100.11 (Administrative Enforcement and Abatement).

**Comments:** Clarify what % THC is a violation. In the referenced Commercial Cannabis Ordinance it does not specify. Law Enforcement has stated that they consider .4% and higher to be illegal.

### **Section 130.43.110 No Licenses Issued on or After January 1, 2025**

**Comments:** Add a Program Review and Update by staff and the joint working committee in October 2024 in order to have the Board determine if they wish to extend the program or adjust the number of licenses issued.