



RESOLUTION NO. 140-2018

OF THE BOARD OF SUPERVISORS OF THE COUNTY OF EL DORADO

**SUBMISSION TO VOTERS OF A MEASURE PROVIDING FOR THE TAXATION,
DISCRETIONARY PERMITTING PROGRAM, 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, 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, Section 2 of Article XIII C of the Constitution of the State of California and Government Code Section 53723 authorize the County to impose a general tax upon approval by a majority of the electorate voting in the election on the issue; and

WHEREAS, Section 2 of Article XIII C of the Constitution of the State of California and Government Code Section 53723, subdivision (c) require said election to be consolidated with a regularly scheduled general election; 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 Government Code Section 53724, in order for a tax subject to the vote requirements prescribed by Section 53723 to be presented at an election, the Board of Supervisors is required to, by ordinance or resolution, propose and approve the tax by 2/3 vote of all members of the Board of Supervisors; and

WHEREAS, Government Code Section 53724 requires the ordinance or resolution proposing said tax to include the “type of tax and rate of tax to be levied, the method of collection, the date upon which an election shall be held on the issue”; and

WHEREAS, pursuant to Government Code Section 53739, an ordinance or resolution presented for voter approval may state a range of rates or amounts; and

WHEREAS, Revenue and Taxation Code Section 34021.5, subdivisions (a)(2) and (a)(3) require the Board of Supervisors to “specify in the ordinance proposing the tax the activities subject to the tax, the applicable rate or rates, the method of apportionment, if necessary, and the manner of collection of the tax” and whether the tax applies throughout the entire County or only within the unincorporated area of the County; 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”; and

WHEREAS, pursuant to Elections Code Section 9162, subdivision (a), the Board of Supervisors may file a written argument not exceeding 300 words in length for or against any county measure.

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:

To provide revenue for general government services, such as law enforcement and public health education, shall the measure regulating and imposing a general tax on any independently authorized commercial cannabis activity in the unincorporated areas of El Dorado County at rates up to: \$30 per square foot or 15% for cultivation; 10% for distribution, manufacturing, and retail; and 5% for testing laboratories, effective until amended or repealed, with estimated annual revenue of \$1,900,000 to \$52,800,000, be adopted?

- 2) The proposed ordinance implementing the tax (Section 130.14.280) and the permitting and enforcement program (Section 130.14.290) of any independently authorized commercial cannabis activity 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 the 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) That the approval of this Resolution and the submittal of the measure referenced in Section 1 hereof to a vote of the people is not a project under the California Environmental Quality Act because it does not have the potential to result in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment (14 Cal. Code of Regs. Section 15378(a)) and because it is the creation of governmental funding mechanisms or other government fiscal activities which do not involve any commitment to any specific project that may result in a potentially significant physical impact on the environment, thus is expressly excluded from the definition of a "project" (14 Code of Cal. Regs. Section 15378(b)(4)). Moreover, pursuant to Section 26055 of the Business and Professions Code, the California Environmental Quality Act does not apply to the adoption of an ordinance that requires discretionary review and approval of permits to engage in commercial cannabis activities.
- 5) The two members of the Ad Hoc Cannabis Committee are authorized to prepare a written argument in favor of the measure on behalf of the Board of Supervisors as provided for in Elections Code Section 9162 and, if an argument is filed against the measure, those two members of the Ad Hoc Cannabis Committee are authorized to prepare a written rebuttal on behalf of the Board of Supervisors.
- 6) The commercial cannabis activities tax provided for in the ordinance in Exhibit A is a general tax imposed upon every person who engages in any commercial cannabis activity within the unincorporated area of the County. If approved by a majority of the electorate voting on the measure, the ordinance will establish a commercial cannabis excise tax, collected by the County Treasurer-Tax Collector in accordance with the ordinance and El Dorado County Code, and may be imposed by the Board of Supervisors within the following minimum and maximum rates:

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%

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

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

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

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

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:

Attest:
James S. Mitrising
Clerk of the Board of Supervisors

By: Kyra Schaffenberg
Deputy Clerk

Ayes: Veerkamp, Frentzen, Ranalli, Novasel, Hidahl
Noes: None
Absent: None


Chairman, Board of Supervisors
Michael Ranalli

EXHIBIT A



ORDINANCE NO. _____

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 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.