



ORDINANCE NO. _____

**AN ORDINANCE ADDRESSING THE OUTDOOR AND MIXED-LIGHT CULTIVATION
OF COMMERCIAL CANNABIS**

THE PEOPLE OF THE COUNTY OF EL DORADO DO ORDAIN AS FOLLOWS:

Section 1. Section 130.14.310 of Title 130, Article 9 of the El Dorado County Ordinance Code entitled “Outdoor and Mixed-Light Cultivation of Recreational Adult Use Cannabis” is hereby repealed in its entirety.

Section 2. Section 130.14.300 of Title 130, Article 9 of the El Dorado County Ordinance Code, entitled “Outdoor and Mixed-Light Cultivation of Medicinal Use Cannabis” is hereby renumbered as Section 130.41.200 of Title 130, Article 4, re-titled “Outdoor and Mixed-Light Cultivation of Commercial Cannabis,” and amended to read as follows:

**ARTICLE 4 – SPECIAL USE REGULATIONS
CHAPTER 130.41 – COMMERCIAL CANNABIS**

Sec. 130.41.200 – Outdoor and Mixed-Light Cultivation of Commercial Cannabis

1. Applicability.

A. The purpose of this ordinance is to permit certain specified commercial cannabis activities and uses in the unincorporated areas of the County, subject to the regulation and control of the Board of Supervisors. While this ordinance was originally enacted by voters, the Board of Supervisors retains discretion to regulate such uses, including without limitation the density, intensity, number, proximity, location, and environmental standards of such uses without further voter approval.

B. Cannabis is not an agricultural crop or product with respect to the “right to farm” ordinance in Article 4, Section 130.40.290 (Right to Farm), the establishments of Agricultural Preserves under Section 130.40.290, or any other provision in this Code that defines or allows cultivation of crops or agricultural products and nothing in Chapter 130.41 shall be construed to the contrary.

C. This ordinance applies regardless of whether commercial cannabis is cultivated for medicinal or recreational adult use.

2. Definitions.

The terms and phrases in this section shall have the meaning ascribed to them in Section 130.41.100(2), unless the context in which they are used clearly suggests otherwise.

3. Limit on the number of commercial cannabis operations.

The maximum number of commercial cannabis cultivation operations in the unincorporated portions of the County shall be limited to 150. A minimum of 75 of the total 150 cannabis cultivation operations are reserved for outdoor or mixed-light cultivation operations that are less than 10,000 square feet in total canopy area, with 40 of the 75 reserved for operations limited to cultivation canopy of 3,000 square feet or less and cannabis that is grown exclusively with natural light and meets organic certification standards or the substantial equivalent. This section sets the maximum possible permits only and nothing in this section shall be construed to require the County to issue a minimum or the maximum number of permits.

4. Outdoor and Mixed-Light Commercial Cannabis Cultivation.

A. *Permitted Zones.* Outdoor or mixed-light commercial cannabis cultivation may only be permitted in the Rural Lands (RL), Planned Agricultural (PA), Limited Agricultural (LA), and Agricultural Grazing (AG) zoned districts subject to a Commercial Cannabis Use Permit and Commercial Cannabis Annual Operating Permit under Section 130.41.100. This section allows outdoor or mixed-light commercial cannabis cultivation as a new use authorized by this section only.

B. *Minimum Site Area.* Outdoor or mixed-light cultivation of commercial cannabis is limited to sites that meet the minimum premises area of 10 acres. The County may require a premises greater than 10 acres to maintain consistency with other laws, surrounding residential uses, and neighborhood compatibility.

C. *Canopy Coverage.* Outdoor or mixed-light commercial cannabis cultivation is subject to the following limits on maximum canopy based on zone district. The County may place additional and further restrictions on canopy size to maintain consistency with other laws, agricultural uses, and neighborhood compatibility. A cannabis cultivation operation shall not exceed the canopy size threshold established by State law.

1. Lots zoned RL with a minimum premises of 10 acres: up to 1.5 percent of the size of the premises with a maximum of 1 outdoor or mixed-light cultivation operation per premises, but not to exceed 10,000 square feet of total canopy coverage for that premises, including any designated nursery area with mature plants and excluding any designated nursery area with only immature plants.

2. Lots zoned AG, LA, and PA with a premises between 10 and 14.9 acres in area: up to 1.5 percent of the size of the premises per outdoor or mixed-light cultivation operation with a maximum of 2 outdoor or mixed-light cultivation operations, but not to exceed 0.45 acres of total canopy coverage for that premises, excluding any nursery area.
3. Lots zoned AG, LA, and PA with a premises between 15 and 25 acres in area: up to 2 percent of the size of the premises per outdoor or mixed-light cultivation operation with a maximum of 4 outdoor or mixed-light cultivation operations, but not to exceed 1.5 acres of total canopy coverage for that premises, excluding any nursery area.
4. Lots zoned AG, LA, and PA with a premises greater than 25 acres: up to 5 percent of the size of the premises per outdoor or mixed-light cultivation operation with a maximum of 6 outdoor or mixed-light cultivation operations, but not to exceed 2 acres of total canopy coverage for that premises, excluding any nursery area.

D. *Retail sale.* Retail sale of cannabis shall not occur on any premises where cultivation occurs.

5. Cultivation Standards.

A. In addition to any state requirements by any governing state agency and any site specific requirements in a permit, outdoor or mixed-light cultivation of commercial cannabis shall comply with the following requirements. Any violation of state regulations, site specific requirements in a Commercial Cannabis Use Permit or Commercial Cannabis Annual Operating Permit, or these requirements is subject to enforcement, abatement, and revocation of a County permit under Section 130.41.100 (Commercial Cannabis Activities Permitting and Enforcement) and Section 130.54.090 (Revocation or County Mandated Modification of a Permit).

B. *Location.* Outdoor or mixed-light commercial cannabis cultivation shall not be located within 1,500 feet from any school, school bus stop, place of worship, park, playground child care center, youth-oriented facility, pre-school, public library, licensed drug or alcohol recovery facility, or licensed sober living facility. Distance shall be measured from the nearest point of the property line of the premises that contains the commercial cultivation to the nearest point of the property line of the enumerated use using a direct straight-line measurement. A new adjacent use does not affect the continuation of an existing use that was permitted and legally established under the standards of this chapter.

C. *Setbacks.* Outdoor or mixed-light cultivation of commercial cannabis shall be setback a minimum of 800 feet from the property line of the site or public right-of-way and shall be located at least 300 feet from the upland extent of the riparian vegetation of any watercourse.

D. *Odor.* The cultivating, drying, curing, processing, and storing of cannabis shall not adversely affect the health, safety, or enjoyment of property of persons residing near the

property on which cannabis is cultivated or processed due to odor that is disturbing to people of normal sensitivity. Any cannabis odor shall not be equal or greater than a 7 dilution threshold (“DT”) when measured by the County with a field olfactometer at the property line on which the cannabis is cultivated or processed for a minimum of two olfactometer observations not less than fifteen minutes apart within a one hour period (“7 DT one hour”). If the odor from cannabis cultivating, drying, curing, processing, or storing violates this subsection, the permittee must reduce the odor below the 7 DT one hour at property line threshold within the time required by the County. Notwithstanding the prior issuance of a permit, the County may require installation of one or more odor control options, which may include but are not limited to the use of a greenhouse or hoop house that includes activated carbon filtration or equivalent odor abatement control equipment on the air exhaust, a vapor-phase odor control system, increasing the required setback, growing fewer plants, or growing only low odor cannabis strains. Installation of certain odor control options may require a permit. Any such notice requiring the use of one or more odor control options will provide a deadline for completion and the dilution threshold will be retested upon expiration of that deadline. The continued odor in excess of 7 DT one hour upon retesting will constitute a violation of this section subject to enforcement, abatement, and revocation of a Commercial Cannabis Use Permit and Commercial Cannabis Annual Operating Permit under Section 130.41.100 and Article 5, Section 130.54.090 (Revocation or County Mandated Modification of a Permit).

E. *Water Source.* Commercial cannabis cultivation may only be permitted if sufficient evidence submitted to the County demonstrates: (1) there is adequate water supply in the watershed and water rights to serve the cultivation site; and (2) all required state permits from the State Water Resources Control Board and any other state agency with jurisdiction. Cultivation of cannabis shall not utilize water that has been or is illegally diverted from any spring, wetland, stream, creek, river, lake, unpermitted well, or body of water. The premises where the cultivation of cannabis takes place shall either be connected to a public water supply or have a County inspected and approved private water source. The activities associated with the cultivation of cannabis shall not create erosion or result in contaminated runoff into any spring, wetland, stream, creek, river, lake, or body of water.

F. *Water conservation measures.* Cannabis cultivation operations shall include adequate measures that minimize the use of water for cultivation at the site. Water conservation measures, including but not limited to underground drip irrigation, soil moisture monitoring, water capture systems, grey water systems, or other equally effective water conservation measures, shall be incorporated into the cultivation operations in order to minimize the use of water where feasible.

G. *Screening.* Cannabis shall be screened from public view so that no part of a plant can be seen from an adjacent street or adjacent parcel. Screening shall be accomplished by enclosure within a greenhouse or hoop house or by use of fencing or vegetation. All greenhouses, hoop houses, and fences shall comply with all building and zoning codes and any other applicable law or regulation. Greenhouses and hoop houses are the preferred means of screening.

H. *Security and wildlife exclusionary fencing.* Areas where cannabis is cultivated, the premises on which cannabis is cultivated, or a portion thereof that includes the cultivation area shall be secured by a minimum six-foot high solid wood or chain link wildlife exclusionary fence, such as cyclone or field game fencing, with locked gates built in compliance with building and zoning codes. All gates shall be lockable and remain locked at all times except to provide immediate entry and exit. A chain link fence is not sufficient for screening. Fencing may not be covered with plastic or cloth except that neutral-colored shade cloth may be used on the inside of the fence.

I. *Renewable energy.* Electrical power for outdoor or mixed-light cultivation operations, including but not limited to illumination, heating, cooling, water supply, and ventilation, shall be provided by on-grid power with a 100% renewable source, on-site zero net energy renewable source, or with the purchase of carbon offsets of any portion of power not from renewable sources. Generators may be used as a secondary back-up power source pursuant to a valid permit from the El Dorado County Air Quality Management District. Impacts from generator use will also be considered in the environmental analysis and site specific restrictions and conditions may be imposed to mitigate those impacts, including conditions to minimize noise.

J. *Lighting.* All lights used for mixed-light cultivation shall be fully contained within structures or otherwise shielded to fully contain any light or glare involved in the cultivation process. Artificial lighting for mixed-light cultivation is limited to a rate of six watts per square foot or less. For outdoor and mixed-light commercial cannabis cultivation, security lighting shall be motion activated and all outdoor lighting shall comply with Article 3, Chapter 130.34 (Outdoor Lighting).

K. *Pesticide Usage.* Preference shall be given to applicants that maintain organic certification standards or the substantial equivalent, provided that maintaining organic certification standards or the substantial equivalent is a condition of the Commercial Cannabis Use Permit and Commercial Cannabis Annual Operating Permit. Until the California Department of Food and Agriculture adopts a organic certification standards, the County Agricultural Commissioner shall determine whether a particular operation satisfies substantially equivalent organic criteria. Documentation of all pesticides used shall be presented each year as part of the Commercial Cannabis Annual Operating Permit. All pesticides and fertilizers shall be properly labeled and stored and disposed of to avoid contamination through erosion, leakage, or inadvertent damages from rodents, pests, and wildlife and to prevent harm to persons, the environment, and wildlife.

L. *Disposal of waste material.* Cannabis waste material shall be disposed of in accordance with existing state and local laws and regulations at the time of disposal. Burning of cannabis waste material is prohibited.

M. *Public Sewer or Sewage Disposal System.* The premises where the cultivation of cannabis takes place shall either be connected to a public sewer system, have a County inspected and approved sewage disposal system, or have restroom facilities deemed appropriate by the Director of the Environmental Management Department, or his or her authorized designee(s).

N. *Recommendation of the Agricultural Commission.* An application for a Commercial Cannabis Use Permit for outdoor or mixed-light cultivation must be reviewed by the Agricultural Commission and the recommendation of the Agricultural Commission, including any suggested conditions or restrictions, shall be forwarded to and considered by the Planning Commission.

6. Commercial Cannabis Nurseries.

A. A Commercial Cannabis Use Permit and Commercial Cannabis Annual Operating Permit for a commercial cannabis nursery shall be subject to all of the restrictions and requirements in this section 130.41.200 for any activities of the nursery that will be conducted outdoors or in mixed-light and all of the restrictions and requirements in section 130.41.300(4) and (5) for all activities of the nursery that will be conducted indoors.

B. A Commercial Cannabis Use Permit and Commercial Cannabis Annual Operating Permit for a commercial cannabis nursery shall state the maximum square footage allowed for designated nursery areas with only immature plants, designated nursery areas for seed propagation that may contain mature plants, and designated research and development areas that may contain mature plants if the permittee will be conducting research and development activities that require a plant to flower. The County may place restrictions on such square footage to maintain consistency with other laws, surrounding commercial uses, and neighborhood compatibility.

C. Nursery activities may not be permitted in a residential dwelling or accessory structure connected to a residential dwelling.

7. Commercial Cannabis Processors.

A. A Commercial Cannabis Use Permit and Commercial Cannabis Annual Operating Permit for a commercial cannabis processor shall be subject to all of the restrictions and requirements in this section 130.41.200 for any activities of the processor that will be conducted outdoors or in mixed-light and all of the restrictions and requirements in section 130.41.300(4) and (5)(A) for all activities of the processor that will be conducted indoors.

B. The County may place restrictions on square footage for commercial cannabis processing activities to maintain consistency with other laws, surrounding commercial uses, and

neighborhood compatibility. Commercial cannabis processing activities may not be permitted in a residential dwelling or accessory structure connected to a residential dwelling.

8. Ordinance Declarative of Existing Law.

Article 2, 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.

9. 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.

10. Effective Date.

Pursuant to California Government Code section 25123, the amendments to this ordinance shall become effective 30 days from the date of final passage. If the general tax passed by the voters of El Dorado County in the November 2018 election, now codified at Chapter 3.22, is challenged or invalidated for any reason, no new Commercial Cannabis Use Permits or Commercial Cannabis Annual Operating Permits may be issued for commercial cannabis activities authorized under this section unless and until the challenge concludes and the tax is upheld as valid or a new tax of greater or equal amount is enacted. If any general tax for commercial cannabis activities is repealed or invalidated for any reason, this ordinance shall automatically expire and be repealed unless and until a new tax of greater or equal amount is enacted.

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PASSED AND ADOPTED by the Board of Supervisors of the County of El Dorado at a regular meeting of said Board, held the _____ day of _____, 2019, by the following vote of said Board:

Ayes:

Noes:

Absent:

ATTEST

JAMES S. MITRISIN

Clerk of the Board of Supervisors

Deputy Clerk

Sue Novasel, Chair, Board of Supervisors

**APPROVED AS TO FORM
DAVID LIVINGSTON
COUNTY COUNSEL**

By: _____

Breann M. Moebius
Deputy County Counsel