



RESOLUTION NO. 144-2018

OF THE BOARD OF SUPERVISORS OF THE COUNTY OF EL DORADO

**SUBMISSION TO VOTERS OF A MEASURE PROVIDING FOR THE
AUTHORIZATION AND REGULATION OF RETAIL SALE, COMMERCIAL
DISTRIBUTION, AND COMMERCIAL INDOOR CULTIVATION OF CANNABIS FOR
RECREATIONAL ADULT USE**

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

WHEREAS, on December 12, 2017, the Board of Supervisors created the El Dorado County Ad Hoc Cannabis Committee with the purpose of studying and creating ballot measures for different cannabis commercial uses tied to taxation; and

WHEREAS, after 9 public meetings with participation and presentations from a diverse spectrum of the public in support of and opposed to commercial cannabis activities and a total of 28 public meetings addressing cannabis overall, the Ad Hoc Cannabis Committee has prepared ballot measures that, if enacted by the voters, would allow for limited commercial uses subject to regulation and discretionary permitting to protect public health, safety, and welfare and the environment; and

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

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

WHEREAS, Section 26200 of the Business and Professions Code preserves the County’s ability to adopt and enforce local ordinances to regulate commercial cannabis businesses, including but not limited to local zoning and land use requirements and business license requirements; and

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

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

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

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

Shall the measure allowing for the retail sale, delivery, distribution, and indoor cultivation of commercial cannabis for recreational adult use on parcels zoned Community Commercial, Regional Commercial, General Commercial, Industrial High, and Industrial Low that are restricted in number and concentration, required to pay a County commercial cannabis tax, and subject to a site-specific review and discretionary permitting process with notification to surrounding property owners and environmental regulation be adopted?

- 2) The proposed ordinance providing for the authorization and regulation of retail sale, commercial distribution, and commercial indoor cultivation of cannabis for recreational adult use (Section 130.14.330) that is submitted to the voters is attached hereto as Exhibit A and shall be included in the voter information guide provided to the registered voters in the County.
- 3) That in all particulars not recited in this Resolution, the election shall be held and conducted as provided by law and the Registrar of Voters is hereby authorized and directed to take actions necessary for the conduct of the election, to canvass the results, and to certify the results to the Board of Supervisors. Said elections shall be consolidated with all other elections occurring in the County on that date pursuant to Elections Code Section 10418.
- 4) If enacted by a majority of the voters voting in the election on the issue, the ordinance in Exhibit A would become effective only if independent ordinances are enacted by the voters of the County providing for (1) a general or special tax on all of the commercial cannabis activities authorized in Exhibit A; and (2) discretionary permitting and enforcement procedures to regulate the commercial cannabis activities authorized in Exhibit A. If such general or special tax is passed but is challenged or invalidated for any reason, the ordinance in Exhibit A does not become effective unless and until the challenge concludes and the tax is upheld as valid. If the general or special tax is challenged for any reason after the ordinance becomes effective and

the tax is repealed or invalidated, the ordinance in Exhibit A shall automatically expire and be repealed.

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

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

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

By: Kyra Schaufenberg
Deputy Clerk

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

Michael Ranalli
Chairman, Board of Supervisors
Michael Ranalli

EXHIBIT A



ORDINANCE NO. _____

AN ORDINANCE PROVIDING FOR THE AUTHORIZATION AND REGULATION OF
RETAIL SALE, COMMERCIAL DISTRIBUTION, AND COMMERCIAL INDOOR
CULTIVATION OF CANNABIS FOR RECREATIONAL ADULT USE

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

Section 1. Section 130.14.330 of Title 130, Article 9 of the El Dorado County Ordinance Code entitled “Retail Sale, Commercial Distribution, and Commercial Indoor Cultivation of Cannabis for Recreational Adult Use” is hereby enacted to read as follows:

**ARTICLE 9 – MISCELLANEOUS
CHAPTER 130.14 – CANNABIS**

**Sec. 130.14.330 – Retail Sale, Commercial Distribution, and Commercial Indoor
Cultivation of Cannabis for Recreational Adult Use**

1. Applicability.

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

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

2. Definitions.

The terms and phrases in this section shall have the meaning ascribed to them in Section 130.14.290(2), unless the context in which they are used clearly suggests otherwise.

3. Limit on the number of commercial cannabis cultivation operations.

The maximum number of commercial cannabis cultivation operations in the unincorporated portions of the County shall be limited to 150. 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. Indoor Commercial Cannabis Cultivation for Recreational Adult Use.

A. *Limitation on use.* Indoor commercial cannabis cultivation for recreational adult use may be permitted in the Community Commercial (CC), Regional Commercial (RC), and General Commercial (GC), Industrial High (IH), and Industrial Low (IL) zone districts subject to a Commercial Cannabis Use Permit and Commercial Cannabis Annual Operating Permit under Section 130.14.290.

B. The County may place restrictions on canopy size to maintain consistency with other laws, surrounding commercial uses, and neighborhood compatibility.

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

D. *Renewable energy source.* Electrical power for indoor commercial cultivation operations, including but not limited to illumination, heating, cooling, and ventilation, shall be provided by on-grid power with 100% renewable source, on-site zero net energy renewable source, or with the purchase of carbon offsets of any portion of power not from renewable sources. The use of generators for indoor cultivation is prohibited, except for temporary use in emergencies only.

E. All lights used for indoor commercial cannabis cultivation shall be fully contained within structures or otherwise shielded to fully contain any light or glare involved in the cultivation process. Security lighting shall be motion activated and all outdoor lighting shall comply with Chapter 130.34.

F. *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, or body of water.

G. *Water conservation measures.* Cannabis cultivation operations shall include adequate measures that minimize the use of water for cultivation at the site. Water conservation measures, 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.

H. *Screening.* Cannabis cultivated indoors shall be screened from public view so that no part of a plant can be seen from an adjacent street or adjacent parcel. Coverings on windows may not be made of tarps, canvas, tinfoil, or other fabrics affixed directly to the wall or window.

I. *Odor.* The cultivating, drying, curing, processing, and storing of cannabis shall not adversely affect the health, safety, or enjoyment of property of persons residing near the property on which cannabis is cultivated due to odor that is disturbing to people of normal sensitivity. Any cannabis odor shall not be equal or greater than a 7 dilution threshold (“DT”) when measured by the County with a field olfactometer at the property line on which the cannabis is cultivated for a minimum of two olfactometer observations not less than fifteen minutes apart within a one hour period (“7 DT one hour”). If the odor from cannabis cultivating, drying, curing, processing, or storing violates this subsection, the permittee must reduce the odor below the 7 DT one hour at property line threshold within the time required by the County. Notwithstanding the prior issuance of a permit, the County may require installation of one or more odor control options, which may include but are not limited to the use of a greenhouse or hoop house that includes activated carbon filtration or equivalent odor abatement control equipment on the air exhaust, a vapor-phase odor control system, increasing the required setback, growing fewer plants, or growing only low odor cannabis strains. Installation of certain odor control options may require a permit. Any such notice requiring the use of one or more odor control options will provide a deadline for completion and the dilution threshold will be retested upon expiration of that deadline. The continued odor in excess of 7 DT one hour upon retesting will constitute a violation of this section subject to enforcement, abatement, and revocation of the Commercial Cannabis Use Permit and Commercial Cannabis Annual Operating Permit under section 130.14.290.

J. *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.

K. *Public Sewer or Sewage Disposal System.* The premises where the cultivation of cannabis takes place shall either be connected to a public sewer system or have a County inspected and approved sewage disposal system.

5. Cannabis Distribution Facilities for Recreational Adult Use.

A. *Limitation on use.* Distribution facilities for recreational adult use cannabis may be permitted in the Community Commercial (CC), Regional Commercial (RC), and General Commercial (GC), Industrial High (IH), and Industrial Low (IL) zones districts subject to a Commercial Cannabis Use Permit and Commercial Cannabis Annual Operating Permit under Section 130.14.290.

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

C. *Screening.* Cannabis within distribution facilities shall be screened from public view so that no part of a plant can be seen from an adjacent street or adjacent parcel. Coverings on windows may not be made of tarps, canvas, tinfoil, or other fabrics affixed directly to the wall or window.

D. A County permit for distribution may be limited to transportation only so long as the Bureau of Cannabis Control allows for a Distributor – Transport only license or the substantial equivalent.

E. Cannabis may only be transported inside of a commercial vehicle or trailer with sufficient security features and GPS tracking. Cannabis or cannabis signage or symbols may not be visible or identifiable from outside of the commercial vehicle or trailer. Transportation by means of aircraft, watercraft, drones, rail, human powered vehicles, and unmanned vehicles is prohibited.

F. As a condition of a permit, the County may require a distributor or transporter to notify the Sheriff's Office before transporting cannabis within the unincorporated areas of the County.

6. Retail Sale and Delivery of Recreational Adult Use Cannabis.

A. *Limitation on use.* Retail sale or retail delivery facilities of cannabis for recreational adult use may be permitted in the Community Commercial (CC), Regional Commercial (RC), and General Commercial (GC), and Industrial Low (IL) zone districts subject to a Commercial Cannabis Use Permit and Commercial Cannabis Annual Operating Permit under Section 130.14.290.

B. With the exception of a non-storefront retail facility providing only delivery service, no more than seven (7) cannabis retail storefront facilities that are open to the public shall be permitted at any one time. Concentration of commercial cannabis facilities and proximity to an existing or proposed cannabis retail facility shall be considered in determining whether to grant a permit. Provided that the application for a Commercial Cannabis Use Permit is received within 45 days of the availability of applications for retail sale, the County shall first review and take action on the application of any retail facility selling medicinal use cannabis that was issued a valid temporary license from the Bureau of Cannabis Control by July 17, 2018.

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

D. Retail facilities, either storefront or non-storefront, shall not be established on any parcel containing a dwelling unit used as a residence nor within 500 feet of a residential zoning district.

E. *Screening.* Cannabis retail facilities shall be screened from public view so that no part of a plant can be seen from an adjacent street or adjacent parcel. Coverings on windows may not be made of tarps, canvas, tinfoil, or other fabrics affixed directly to the wall or window.

F. Cannabis may only be delivered inside of a commercial vehicle or trailer with sufficient security features and GPS tracking. Cannabis or cannabis signage or symbols may not be visible or identifiable from outside of the commercial vehicle or trailer. Transportation by means of aircraft, watercraft, drones, rail, human powered vehicles, and unmanned vehicles is prohibited.

G. As a condition of a permit, the County may require a retailer to notify the Sheriff's Office of scheduled commercial cannabis deliveries to or from the facility.

H. Hours of operation for retail sale and delivery are limited to 8:00 a.m. to 8:00 p.m. Any delivery must be initiated by a customer by 7:00 p.m.

I. A retail facility shall provide adequate security on the premises, including lighting and alarms, to insure the safety of persons and to protect the premises from theft. Security lighting shall be motion activated and all outdoor lighting shall comply with Chapter 130.34.

7. 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.

8. 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.

9. Effective Date.

If enacted by a majority of the electorate voting in the election on the measure, this Chapter is effective 30 days after independent ordinances are enacted by the voters of El Dorado County providing for (1) a general or special tax on all of the commercial cannabis authorized herein; and (2) discretionary permitting and enforcement procedures to regulate the commercial cannabis activities authorized herein. If such general or special tax is passed but is challenged or invalidated for any reason, this ordinance does not become effective unless and until the challenge concludes and the tax is upheld as valid. If the general or special tax is challenged for any reason after this ordinance becomes effective and the tax is repealed or invalidated, this ordinance shall automatically expire and be repealed.

Section 2. Section 130.14.270(2) of Title 130, Article 9 of the El Dorado County Ordinance Code entitled “Commercial Cannabis Activities” is hereby amended to read as follows:

2. *Imposition of Moratorium on Commercial Cannabis Activities.*

- A. Pursuant to Government Code section 65858, subdivision (b), and with the exception of any existing medical cannabis distribution facilities that satisfy all of the requirements of section 130.14.250(2)(D) of the El Dorado County Code and any commercial cannabis activity expressly authorized under County Code and operating pursuant to a valid County permit, the establishment or operation of any commercial cannabis activity is prohibited in the unincorporated areas of the County and no use permit, variance, building permit, or any other applicable entitlement for use, including but not limited to the issuance of a business license, shall be approved or issued for the establishment or operation of a commercial cannabis activity for a period of two years from December 12, 2017.

- B. With the exception of any existing medical cannabis distribution facilities that satisfy all of the requirements of section 130.14.250(2)(D) of the El Dorado County Code and any commercial cannabis activity expressly authorized under County Code and operating pursuant to a valid County permit, a facility engaged in a commercial cannabis activity shall not be established, operated, or maintained at any location in any zone district in the unincorporated areas of the County, even if the facility engaged in a commercial cannabis activity is located within or operated with one or more additional otherwise permitted use(s), including but not limited to a health food store, bakery, tobacco shop, retail store, health education facility, health spa, fitness facility, wellness center, or health facility.