

 Outlook

Public Comment # 19  
25-1617 BOS Rcvd  
11/2/26

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**Agenda Item 25-1617**

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**From** Lee Tannenbaum <lee.tannenbaum@gmail.com>

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**To** BOS-Clerk of the Board <edc.cob@edcgov.us>

 1 attachment (27 KB)

Opposition Agenda Item 25-1617 Cannabis Setback Waivers.pdf;

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Madame Clerk,

Please post the attached document to the above agenda item. Thanks much.

lee

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EL DORADO

## **Formal Opposition to Elimination of Cannabis Setback Waivers**

Members of the Board of Supervisors,

I am submitting this comment to formally and unequivocally oppose Agenda Item 25-1617, which proposes eliminating setback waiver provisions from El Dorado County's cannabis ordinance.

This proposal is not a technical clarification. It is not a minor adjustment. It is a material policy reversal that fundamentally alters how the voter-approved cannabis ordinance operates, and it does so in a manner that is legally questionable, procedurally unsound, and dismissive of voter intent.

### **Disregard for the Ordinance's Discretionary Structure**

Under Title 130 of the El Dorado County Ordinance Code, and specifically Chapter 130.41, commercial cannabis activities are regulated as conditionally permitted uses. That designation was intentional. It reflects the County's recognition that rigid, by-right zoning standards are incompatible with the County's diverse rural parcel configurations, historic subdivisions, and topographic constraints.

The ordinance was expressly designed to pair objective standards with discretionary review tools, including setback waivers, to allow decision-makers to evaluate real-world conditions, impose mitigation, and reach reasoned outcomes.

Eliminating waiver authority does not strengthen the ordinance. It eviscerates its discretionary core.

What remains is not land-use planning, but mechanical exclusion — a pass-fail system based on geometry alone, untethered from actual impacts, mitigation potential, or surrounding land uses.

### **Arbitrary Outcomes and Land-Use Law Risk**

By removing setback waivers, the County would be forcing materially different parcels to be treated as identical, regardless of context. This invites arbitrary and capricious land-use outcomes.

Courts have consistently held that zoning decisions must bear a rational relationship to legitimate planning objectives. A framework that ignores site-specific conditions in favor of inflexible exclusion invites legal challenge.

### **CEQA Exposure and Piecemeal Policymaking**

Agenda Item 25-1617 raises serious CEQA concerns. Removing setback waivers is a discretionary policy change that alters development patterns, displaces projects, concentrates impacts, and increases environmental pressures in fewer qualifying locations.

Proceeding without analyzing these foreseeable impacts weakens the County's CEQA compliance posture and exposes it to claims of piecemeal decision-making.

### **Violation of Voter-Approved Initiative Integrity**

The cannabis ordinance was adopted as a voter-approved initiative. It reflects a negotiated policy balance presented to and approved by the electorate, including conditional permitting, discretionary review, and limited waiver authority.

While the initiative allows the Board to adopt implementing amendments, that authority is not unlimited. Amendments must further the purposes of the initiative, not materially alter them.

Eliminating setback waivers converts a flexible discretionary framework into a rigid exclusionary regime voters were never asked to approve.

### **Reliance Interests and Regulatory Fairness**

Applicants and property owners have made substantial investments in reasonable reliance on the ordinance as written. Abruptly removing waiver authority disregards those reliance interests and invites claims of unfair and exclusionary regulation.

### **The Wrong Remedy and Viable Alternatives**

If the Board believes setback waivers have been misunderstood, misapplied or overused, the appropriate response is to fix the ordinance, not eliminate discretion altogether.

One constructive alternative would be to revisit the ordinance's definitions of "parcel" and "premises," which are currently defined in a manner that effectively treats them as the same thing. That drafting choice creates unnecessary rigidity and is a primary driver of waiver requests.

By redefining "premises" to reflect the actual operational footprint of a licensed cannabis activity—rather than the entire legal parcel—the County could preserve setback protections while allowing meaningful, site-specific analysis. This approach would maintain setback integrity, reduce reliance on waivers, improve enforceability, and align regulation with real-world land-use conditions.

Additional appropriate remedies include clarifying waiver criteria, strengthening required findings under Title 130, and improving enforcement consistency.

Eliminating waiver authority is not reform. It is an overcorrection that replaces thoughtful planning with blunt exclusion and materially alters a voter-approved ordinance when narrower, defensible fixes are readily available.

For these reasons, I urge the Board of Supervisors to reject Agenda Item 25-1617 and retain setback waiver provisions within Title 130, Chapter 130.41.

Respectfully submitted,

Lee Tannenbaum

CEO Cybele Holdings

President, El Dorado Growers Alliance