



ORDINANCE NO. _____

**AN ORDINANCE ADDRESSING
THE CULTIVATION OF CANNABIS FOR PERSONAL USE**

**THE BOARD OF SUPERVISORS OF THE COUNTY OF EL DORADO DOES ORDAIN
AS FOLLOWS:**

Section 1. Section 130.14.260 of Title 130, Article 9 of the El Dorado County Ordinance Code entitled "Outdoor Medical Cannabis Cultivation for Personal Use" is hereby renumbered as Section 130.42.100 of Title 130, Article 4, and amended to read as follows:

ARTICLE 4 – SPECIAL USE REGULATIONS

CHAPTER 130.42– CULTIVATION OF CANNABIS FOR PERSONAL USE

Sec. 130.42.100 – Cultivation of Cannabis for Personal Use. ~~Outdoor Medical Cannabis Cultivation for Personal Use.~~

Sec. ~~130.42~~14.100~~260~~ -

1. *Findings and Declaration of Facts.*

- A. In 1970, Congress enacted the Controlled Substances Act ("CSA") which, among other things, makes it illegal to import, manufacture, distribute, possess, or use marijuana in the United States.

- B. In 1996, the voters of the State of California approved Proposition 215, which was codified as Health and Safety Code Section 11362.5 et seq., and entitled “The Compassionate Use Act of 1996” (“CUA”).
- C. The intent of the CUA was to enable seriously ill persons who need medical cannabis for specified medical purposes to obtain and use cannabis under limited, specified circumstances. The CUA provided a limited exception from criminal prosecution under state law for the cultivation, possession, and use of cannabis for specified medical purposes. The CUA did not address land use, zoning, or building code impacts or issues that arise from cannabis cultivation within local jurisdictions.
- D. On January 1, 2004, SB 420, the Medical Marijuana Program Act (“MMPA”), went into effect. The MMPA was enacted by the California Legislature to clarify the scope of the ~~Compassionate Use Act~~CUA. The MMPA allows cities, counties, and other governing bodies to adopt and enforce rules and regulations consistent with the MMPA.
- E. In 2015, the state implemented the Medical Cannabis Regulation and Safety Act (“MCRSA”), which implemented AB 243, AB 266, and SB 643 and was subsequently modified in 2016 by budget trailer legislation (SB 837).
- F. On June 27, 2017, as part of budget trailer legislation (SB 94), the state enacted the Medicinal and Adult-Use Cannabis Regulation and Safety Act (“MAUCRSA”), which generally synthesized the regulation and licensing of cannabis. Prior to SB 94, regulation was under MCRSA for medicinal cannabis and Proposition 64, which enacted the Control, Regulate and Tax Adult Use of Marijuana Act (“AUMA”), for nonmedicinal cannabis.
- G. Health and Safety Code Section 11362.83 and Business and Professions Code Section 26200 preserve the authority of local governments to enact local ordinances regulating cannabis. ~~Pursuant to Business and Professions Code Section 26055, state licensing authorities cannot approve an application for a state commercial cannabis license if the applicant is not in compliance with all applicable local ordinances or regulations.~~
- ~~HH. The County zoning ordinance contained in this title currently does not make any distinction between the cultivation of medical cannabis and the cultivation of any other agricultural crop or landscaping; the zoning ordinance contained in this title does not contain any explicit regulations governing the cultivation of medical cannabis.~~
- I. The cultivation of cannabis has caused an increase in violent ~~the potential for increased~~ crime, intimidation, and threats in El Dorado County. As cannabis plants mature, certain varieties can develop a strong odor that creates an attractive nuisance by alerting people to the location of valuable cannabis plants and large amounts of cash often associated with the sale of cannabis, which ~~;~~ ~~this~~ creates an increased risk of crimes, including murder, burglary, trespassing, robbery, and armed robbery. Law enforcement officers have also reported an increase in calls from reported respiratory problems and allergic reactions to cannabis plants. The odor associated with cannabis plants increases as the

plants reach maturity and enforcement before plants reach maturity will protect the public health.

IJ. Unlimited areas for cannabis cultivation exceed the amounts reasonably grown to serve as ~~medical~~ cannabis for personal use of residents of the land where the cultivation occurs, or patients under the care of the grower, and would likely be criminal operations and an unlicensed commercial cannabis activity. These criminal operations pose an immediate threat to the public peace, health, and safety and enactment of clear standards and immediate enforcement is necessary to protect the public peace, health, and safety.

JK. The unregulated use of pesticides, fungicides, and fertilizers has the potential to contaminate or otherwise damage adjacent property and waterways. Unauthorized use of public and private water supplies and a lack of adequate sanitation facilities further adversely impacts adjacent property and bodies of water. The use of pesticides in the cultivation of cannabis also poses a threat not only to the users of the cannabis, but to consumers of agricultural crops grown in proximity to the cannabis. Under Business and Professions Code Section 26060, the Department of Pesticide Regulation is required to develop guidelines for the use and application of pesticides in the cultivation of cannabis and residue in harvested cannabis.

KL. Standards are necessary to deter increased criminal activity resulting from the visibility of cannabis plants and to protect adjacent property owners and residents who find the odor of mature cannabis plants offensive; the standards will limit incompatible uses on smaller lots and protect the public safety and welfare.

LM. Given the increasing viability of growing cannabis to maturity in moveable containers or harvesting plants during the enforcement process, expedient enforcement of violations under this section is necessary to achieve compliance while ensuring a fair and adequate process.

MN. Since enactment, criminal enforcement of ~~illegal cannabis cultivation~~ ~~this Chapter~~ has not proved successful and an effective civil code enforcement system that accounts for the unique circumstances and cash value of cannabis cultivation is necessary. The existing ordinance has not provided sufficiently clear limitations for the public and criminal operations continue to claim that they are operating legally under the existing ordinance. Absent a medical cannabis registration program, the County lacks an efficient and accurate means to confirm whether a cultivation site is a legal medical cannabis grow under the existing County ordinance.

N. Health and Safety Code Section 11362.2 provides, “Not more than six living plants may be planted, cultivated, harvested, dried, or processed within a single private residence, or upon the grounds of that private residence, at one time.” That section further provides that, while a County “may enact and enforce reasonable regulations to regulate” the cultivation of six plants for personal use, the County shall not completely prohibit persons from cultivating six plants for personal use “inside a private residence,

or inside an accessory structure to a private residence located upon the grounds of a private residence that is fully enclosed and secure.”

- O. Because state law allows for six plants per residence regardless of whether the cannabis is used for medicinal or adult recreational use, consistent standards for cannabis grown for personal use would provide clarity and allow for more efficient and effective enforcement while preserving access to medicinal cannabis for qualified patients.
- P. Risks to the safety of enforcement officials and the public from delayed enforcement of illegal outdoor cannabis cultivation increases as the plants mature and enforcement officials have observed an increase in criminal activity in attempt to protect plants as they reach maturity because of the value of the product on the black market once a plant has matured. Delaying enforcement until the end of the grow season also allows plants to become large enough for individuals to hide amongst the plants and ambush enforcement officials and the public in attempt to protect the illegal plants. An immediate effective date of this ordinance will preserve public peace, health, and safety by allowing for enforcement to begin before plants have reached maturity and pose an increased risk to enforcement officials and the public.

2. *Cultivation.*

- A. *Purpose.* The purpose of this section is to regulate with zoning standards the ~~outdoor~~ cultivation of ~~medical~~-cannabis for personal, non-commercial use by authorized individuals under existing state law while protecting the health, safety, and welfare of adjacent property owners, minimizing ~~law~~-enforcement effort, limiting availability of and exposure to cannabis by the youth of El Dorado County, and protecting the environment and public resources. This ordinance applies to the cultivation of cannabis for personal use regardless of whether the cannabis is used for medicinal use or recreational use by adults over the age of twenty-one. This section does not apply to any commercial cannabis activity regulated and permitted under Section 130.41.100.
- B. *Definitions.* As used in this section, the following terms and phrases shall have the meaning ascribed to them as follows, unless the context in which they are used clearly suggests otherwise:

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.

Child care center means any licensed child care center, daycare center, childcare home, or preschool.

~~*Church* means a structure or leased portion of a structure that is used primarily for religious worship and related religious activities.~~

~~*Cultivation* or *cultivating* means the propagation, planting, growing, harvesting, drying, curing, grading, or trimming of one or more cannabis plants or any part thereof.
~~the planting, growing, or harvesting of one or more cannabis plants or any part thereof.~~~~

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).

~~*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).~~

Outdoor cultivation means cultivation activities that are not conducted within a fully enclosed, permitted ~~building~~structure, constructed of solid materials, accessible only through one or more locking doors. For purposes of this section, cultivation within a greenhouse, ~~or hoop-~~house, glass house, conservatory, hothouse, or other similar structure shall be considered outdoor cultivation.

Personal use means the planting, cultivating, harvesting, processing, possession, storage, and use of cannabis for the exclusive use of the person or person(s) residing in the private residence and does not include providing, donating, gifting, selling, or distributing cannabis to any other person, except as otherwise allowed by state law.

Place of worship means a structure or leased portion of a structure that is used primarily for religious worship and related religious activities.

~~*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” for purposes of this section.~~

~~*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).~~
Private residence means a permitted house, apartment unit, mobile home, or other similar dwelling unit.

~~*Qualified patient* shall have the meaning set forth in Health and Safety Code Section 11362.7(f).~~

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.

Youth-oriented facility means any facility that caters to or provides services primarily intended for minors.

C. *Nuisance declared.*

1. Any violation of this section is hereby declared to be a public nuisance. The ~~outdoor~~ cultivation of cannabis plants is also declared to be a public nuisance and is prohibited in all zone districts, except as provided in ~~Subsection~~ Subsections 130.42.100(2)(-D) and (2)(E) of this section.

2. Through December 1, 2020, this Chapter 130.42 will not be enforced for cannabis cultivated exclusively for personal medicinal use provided that the cultivation commenced prior to May 6, 2020 in full compliance with all of the provisions of Section 130.14.260 of the El Dorado County Code as it read prior to the adoption of the Ordinance enacting this Chapter 130.42. A cannabis cultivation site under this Subsection 130.42.100(2)(C)(2) cannot be deemed to comply with Section 130.14.260 if any cannabis is cultivated in excess of the square footage limits previously allowed in Section 130.14.260. Cannabis cultivation described in this Subsection 130.42.100(2)(C)(2) shall be required to comply with all the provisions of Section 130.14.260 as it read prior to the adoption of the Ordinance enacting this Chapter 130.42 and will be subject to enforcement under this Chapter 130.42 for any violations of Section 130.14.260. This Subsection 130.42.100(2)(C)(2) shall remain in effect only through December 1, 2020 and is repealed automatically on December 1, 2020.

D. *Cannabis plant limit.* No more than six living cannabis plants may be planted, cultivated, harvested, dried, or processed within a single private residence, or upon the grounds of that residence, at one time. Even if a legal parcel has more than one private residence, no more than six living plants may be planted, cultivated, harvested, dried, or processed outdoors on a single legal parcel under any circumstances. The limitation of six living cannabis plants includes mature (flowering) plants and immature plants.

E. Regulations for Cultivation of Cannabis for Personal Use~~Personal Use Cultivation.~~

1. Location of cultivation. Cultivation of cannabis for personal use is prohibited in all zones unless, consistent with the six plant limits in Subsection 130.42.100(2)(D), it occurs within:
 - a. Indoors within a private residence, or inside an accessory structure to a private residence located upon the grounds of a private residence that is fully enclosed and secure, for the following zones: Multi-unit Residential (RM), Single-unit Residential (R1, R20,000), One-acre Residential (R1A), Two-acre Residential (R2A), Three-acre Residential (R3A), and Residential Estate (RE), Rural Lands (RL), Agricultural Grazing (AG), Forest Resource (FR), Limited Agriculture (LA), Planned Agriculture (PA), Meyers Community Center District (MAP-1), and Upper Truckee Residential/Tourist District (MAP-3).
 - b. Outdoors, including the use of a greenhouse, hoop-house, glass house, conservatory, hothouse, or other similar structure provided that the structure complies with all building and zoning codes, for the following zones: Single-unit Residential (R1, R20,000), One-acre Residential (R1A), Two-acre Residential (R2A), Three-acre Residential (R3A), and Residential Estate (RE), Rural Lands (RL), Agricultural Grazing (AG), Forest Resource (FR), Limited Agriculture (LA), Planned Agriculture (PA), Meyers Community Center District (MAP-1) only if the lot has a Single Family Dwelling, and Upper Truckee Residential/Tourist District (MAP-3) only if the lot has a Single Family Dwelling.

~~2. Cultivation standards.~~

- ~~1. Size of outdoor cultivation area.~~ Notwithstanding the limits set forth below, no person may cultivate more than 200 square feet of medical cannabis for personal use. The maximum area on a premises that may be used for the outdoor cultivation of medical cannabis shall be as follows:
 - ~~a. Lots zoned R1, R20,000, R1A, R2A, and R3A: 200 square feet;~~
 - ~~b. Lots zoned RE and RL: 400 square feet;~~
 - ~~c. Lots zoned AG, FR, LA, and PA: 600 square feet.~~

~~The cultivation of more than 200 square feet shall only be allowed as collective cultivation as provided in Subsection 2.E of this section.~~

~~The area of cultivation shall be measured from the outside edge of the stems of the plants on the perimeter of the cultivation area and shall include the space between the plants. The minimum width of a cultivation area shall be five feet.~~

~~—Screening. Medical 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 use of a greenhouse or hoop house or by 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.~~

23. *Registration.* The County may implement a registration program for any person cultivating cannabis for personal use outdoors under Subsection 130.42.100(2)(E)(b). The registration program may require up to annual registration with the County that includes the name and contact information of each person owning, leasing, occupying, or having control or possession of the premises and responsibility for the cannabis cultivated thereon and, if the person cultivating is not the owner, a copy of the written authorization under Subsection 130.42.100(2)(E)(8) and any such other information and documentation as the County determines necessary to ensure compliance with state law and this section. Any registration program shall not require an individual to disclose whether cannabis grown under this section is for medicinal use.
3. *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. Any greenhouse, hoop-house, glass house, conservatory, hothouse, structure, fence, or material used for screening shall comply with all building and zoning codes and any other applicable law or regulation.
4. *Security.* Areas where ~~medical~~—cannabis is cultivated under Subsection 130.42.100(2)(E)(1)(b), the premises on which ~~medical~~—cannabis is cultivated under that subsection, or a portion thereof that includes the cultivation area shall utilize legal security measures, including but not limited to a ~~be secured by a m~~minimum six-foot high solid wood or chain link fence with locked gates built in compliance with building and zoning codes. A chain link fence is not sufficient for screening. Areas where cannabis is cultivated under Subsection 130.42.100(2)(E)(1)(a) shall be secured with locks and other legal security measures to reduce theft or access to cannabis by individuals under the age of twenty-one.
54. *Distance from youth-oriented facilities.* The ~~outdoor~~—cultivation of ~~medical~~ cannabis under Subsection 130.42.100(2)(E)(1)(b) shall be located a minimum of 1,000 feet from any school, school bus stop, ~~church~~place of worship, park, child care center, or youth-oriented facility. T
- ~~a. If the premises on which medical cannabis is cultivated is in a zone listed in Subsection 2.D.1.a or b of this section, the distance shall be measured in a straight line from the closest boundary of the premises on which the ~~medical~~—cannabis is cultivated to the closest boundary of the premises on which the school, school bus stop, church, park, or youth oriented facility is located.~~
- ~~6b. If the premises on which medical cannabis is cultivated is in a zone listed in Subsection 2.D.1.c of this section, the distance shall be measured in a straight line from the fence required in Subsection 2.D.3 of this section to the boundary of the premises on which the school, school bus stop, church, park, or youth oriented facility is located.~~
5. *Setbacks.* The cultivation ~~area~~—set forth in Subsection 130.42.100(2)(E)(1)(b)~~2.D.1 of this section~~ shall be set back from all property lines no less than the following:

- a. Lots zoned R1, R20,000, R1A, R2A, and R3A: 50 feet;
- b. Lots zoned RE, RL, AG, FR, LA, and PA: 100 feet.

76. *Residency.* The primary place of residence for persons engaging in the ~~outdoor~~ cultivation of ~~medical~~-cannabis for personal use under this section, including a primary caregiver as defined under Health and Safety Code Section 11362.7(d), shall be the premises on which the ~~medical~~-cannabis is cultivated. ~~For collective cultivation as provided in Subsection 2.E of this section, the premises on which the medical cannabis is cultivated shall be the principal primary residence of at least one of the persons for whom the medical cannabis is being cultivated.~~ Only those premises with a permitted dwelling unit shall be used for the ~~outdoor~~-cultivation of ~~medical~~-cannabis for personal use under this section.

87. *Property owner authorization.* If a person cultivating ~~medical~~-cannabis for personal use on any legal parcel is not the legal owner of the parcel, such person shall obtain the written permission (including notarized signatures) of the legal owner consenting to the cultivation of ~~medical~~-cannabis for personal use on the parcel. Cultivation by a non-owner in the absence of notarized written permission constitutes a violation of this section.

98. *Environmental requirements.*

- a. All persons engaging in the cultivation of ~~medical~~-cannabis for personal use shall:
 - 1. Have a legal water source on the premises;
 - 2. Not engage in unlawful or unpermitted surface drawing of water for such cultivation;
 - 3. Not allow illicit discharges of irrigation or stormwater from the premises;
 - 4. Not allow the off-site drift or discharge of chemicals;
 - 5. Not use any pesticide, fungicide, or fertilizer that has been banned for use in the County or state or that violates the pesticide laws and regulations as enforced by the Department of Pesticide Regulation and the County agricultural commissioner under the authority of the California Food and Agriculture Code Ssection 11501.5; and
 - 6. Not allow the discharge of sediment from the site or the degradation of water quality of any water body.
- b. The premises where the cultivation of ~~medical~~-cannabis for personal use takes place shall either be connected to a public sewer system or have a County inspected and approved sewage disposal system.

~~c.~~ e.—Persons engaging in the cultivation of ~~medical~~-cannabis for personal use shall use, dispose, and store chemicals used in such cultivation pursuant to applicable laws and labeling requirements. 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, domestic animals, and wildlife.

d. Power utilized for the cultivation of cannabis for personal use under this section shall be provided with a legal power source that complies with all applicable laws and regulations and does not pose a risk to health and safety, including the risk of fire.

109. *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 ~~medical~~-cannabis waste material is prohibited.

110. *Contact information.* The names, and contact information of all individuals residing at the parcel who are responsible for the cannabis grown for personal use, doctor's recommendation for each person cultivating or participating in the cultivation of cannabis on the premises, and the doctor's name and contact information, along with the patient's medical cannabis identification number or card, if applicable, shall be posted at the site of cultivation and made available to enforcement personnel at the time of any inspection.

121. *Odor.* The cultivating, drying, curing, processing, and storing of ~~medical~~-cannabis for personal use shall not adversely affect the health, safety, or enjoyment of property of persons residing near the property on which ~~medical~~-cannabis is cultivated or processed due to dust, noise, smoke, or odors that are 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 County will notify the responsible person and that person must reduce the odor below the 7 DT one hour at property line threshold within the time required by the County. The County may require or suggest the 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, 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 Chapter subject to enforcement and abatement.

132. -Once harvested, cannabis shall only be dried, cured, processed, or stored in a shed, garage, residence, or other fully enclosed structure. Equipment used for drying, curing, or processing cannabis may require a permit.

~~E. *Collective cultivation.* Notwithstanding the restrictions on the establishment of a medical cannabis distribution facility provided in Section 130.14.250, not more than three persons may collectively cultivate medical cannabis for their personal use provided such cultivation is conducted consistent with the standards set forth in Subsection 2.D of this section, and as provided below:~~

~~1. The area of cultivation permitted in Subsection 2.D.1 of this section shall not exceed 200 square feet per person participating in the collective cultivation activity. Each person's plants or area of planting shall be clearly marked to identify the individual who is responsible for those plants.~~

~~2. All persons participating in the collective cultivation shall be residents of the County.~~

F. ~~“*Right to farm*” not applicable.~~ This prohibition on the ~~outdoor~~ cultivation of ~~medical~~ cannabis ~~for personal use~~ shall supersede the provisions of the right to farm ordinance in Section 130.40.290 and any other provision in this Code that defines, addresses, or ~~or~~ allows cultivation of crops, ~~or~~ agricultural products, ~~or~~ cultivated agricultural lands, and nothing in this Chapter 130.42 shall be construed to the contrary. ~~to the extent that those provisions can be read in a manner inconsistent with this prohibition.~~

G. ~~*Violations Incident to Cultivation.* A violation of any other County Code or state regulation or law committed to facilitate the cultivation of cannabis, such as but not limited to grading violations and building code violations, shall constitute a violation of this section and enforcement may be pursued under this section or independently.~~

G. ~~Reserved.~~

H. *Criminal Enforcement.*

1. ~~To the extent allowed under state law, a~~Any person, firm, partnership, association, corporation, or other entity, whether as principal agent, employee, or otherwise, who owns or is a tenant upon the property upon which ~~medical~~ cannabis is cultivated ~~outdoors~~, except as provided in Subsection ~~130.42.100(2)(E)2.D of this section~~ or pursuant to a valid Commercial Cannabis Use Permit and Commercial Cannabis Annual Operating Permit under section 130.41.100, or owns the ~~medical~~ cannabis that is cultivated or otherwise violates any of the provisions of this section can be charged with a misdemeanor.

2. If charged as a misdemeanor, the violation shall be punishable by a fine not to exceed \$1,000.00 or by imprisonment in the County jail for a term not exceeding six months or by both such fine and imprisonment. 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.

I. *Administrative Enforcement and Abatement.*

1. In addition to criminal enforcement, a violation of this section shall be deemed a public nuisance and shall be subject to enforcement as provided herein and the provisions of Chapters 130.12 and 9.02. Pursuant to Subsection 9.02.020(B), the higher fines of this section shall control in any administrative enforcement action.
2. A notice to correct or notice to abate issued under Chapter 9.02 shall provide no less than 96~~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 the time stated on the notice.~~72 hours.~~ Notwithstanding Chapter 9.02, if the cultivation of cannabis in violation of this section is confirmed through visual inspection or satellite imagery, a notice to correct and notice to abate may be simultaneously issued on a single form entitled "Notice to Correct and Abate," which would provide for abatement after expiration of no less than 96 hours from the date and time stated on the notice.
3. For any violation not corrected within the date and time stated on the ~~the 72-hour~~ notice to correct or notice to correct and abate, an administrative fine of up to \$1,500 per day, per violation will accrue for each and every day, or portion of a day, that a violation exists. ~~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 \$1,000 per day, per violation for each and every day, or portion of a day, that a violation exists.~~ Each plant cultivated in violation of this section ~~or cultivated outside the square footage provided for in this section~~ shall be deemed a separate violation. For a second violation within the 12-month period commencing from the date of a prior administrative citation by the same person or on the same premises if the property owner remains the same, the administrative fine shall be up to \$2,500 per day, per violation for each and every day, or portion of a day, that a violation exists. For a third violation within the 12-month period commencing from the date of the first administrative citation by the same person or on the same premises if the property owner remains the same, the administrative fine shall be up to \$5,000 per day, per violation for each and every day, or portion of a day, that a violation exists.
4. Notwithstanding Ssection 9.02.390, a request for an administrative hearing under Chapter 9.02 must be made within three calendar days of service of the notice to correct, administrative citation, or notice to abate and the hearing shall be held within five business days of the request for a hearing. Consistent with Section 9.02.400(A), satellite images of cannabis cultivation shall be admissible in an administrative hearing under this section provided that there is evidence establishing the date and time the image was captured and the parcel for which the image was taken.

5. The decision of the Hearing Officer under Section 9.02.440 shall be issued within five calendar days of completion of the hearing.
6. A notice to abate or decision of a Hearing Officer requiring abatement shall provide that, if any plants cultivated under this section are removed as part of the abatement action because they are in excess of the allowable square footage number of plants, the responsible person may decide which plants will remain so long as the remaining plants are in compliance with this section. The notice to abate shall require the responsible person to identify the plants to remain within the time provided in the ~~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, if any, will remain.
7. Unless a notice is personally served, any notice provided under this section shall be (1) mailed under Section 9.02.120 to the property address; (2) mailed under section 9.02.120 to the property owner on record with the County Assessor's Office if the most current address on file with the Assessor's Office is different than the subject property; and (3) and posted conspicuously on or in front of the residence, cultivation site, or other place reasonably anticipated to provide notice to the responsible person.
8. Imposition of administrative fines may be delayed and a property owner may be permitted no less than fifteen (15) days to correct any violations other than removal of cannabis plants if all of the following conditions are met:
 - a. The property where the cultivation is occurring is being rented or leased and a tenant is in possession;
 - b. The property owner or agent provides written evidence that the rental or lease agreement prohibits the cultivation of cannabis;
 - c. The property owner or agent did not know the tenant was illegally cultivating cannabis and no complaint, property inspection, or other information provided the property owner or agent with actual notice of the illegal cannabis cultivation; and
 - d. The property owner demonstrates good faith efforts to remove the illegal cannabis plants within the time required in the notice to correct or notice to abate.
9. Remediation Plan. Before a civil code enforcement case is closed, the County shall approve a remediation plan that provides for remediation activities that will restore the site to predevelopment (pre-cultivation) conditions to the maximum extent feasible. The County may require a mitigation and monitoring plan subject to review and approval of a Hearing Officer or the Planning and Building Department. The plan shall address prevention of damage to soil, plant and animal life, and

surface and subsurface water supplies, and shall include standards for documentation, reporting, and adaptive management. Failure to comply with a mitigation and monitoring plan shall constitute a subsequent violation of this section.

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

11. 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.

J. *Administrative relief.* Any person who cannot comply with the provisions of this section due to undue hardship and unique circumstances applying to the property on which ~~outdoor medical~~ cannabis is cultivated or is proposed to be cultivated for personal use, may apply for administrative relief. The relief process shall be as follows:

1. A written request for a finding of undue hardship shall be submitted to the Chief Administrative Officer or his or her designee. The request shall include the reasons that the standards provided herein cannot be met and how that creates a hardship.
2. The Chief Administrative Officer or designee shall approve or disapprove the request for administrative relief and provide notice of the action to the property owners immediately adjacent to the subject property, Code Enforcement, and the County Sheriff, together with notice that the action may be appealed. The Chief Administrative Officer may expand the notice at his or her discretion based on the type of relief requested and the potential effects on nearby property.
3. An appeal of the Chief Administrative Officer's action may be filed as provided in Section 130.52.090 except that any appeal shall be heard by the Board of ~~S~~Supervisors and may be filed within thirty days~~one year~~ of the Chief Administrative Officer's action.
4. The Chief Administrative Officer may refer the matter to the Board of Supervisors at his or her discretion.
5. The Chief Administrative Officer or designee shall provide notice of the final decision on a request for administrative relief to Code Enforcement and the Sheriff. Additionally, should a request for administrative relief be granted, the applicant shall post documentation of such relief at the site of the cultivation and make such documentation available to enforcement personnel at the time of inspection.

K. *No authorization, defense, or immunity.* Nothing herein shall 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 section, no provision of this section 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 the cultivation or use of cannabis for ~~non-medical~~ commercial purposes or to allow any activity relating to the cultivation, distribution, or consumption of cannabis that is otherwise illegal under state or federal law.

- L. *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 cannabis cultivation, to prosecute a violation of this section, or to take any other action with regard to any unlawful cannabis cultivation. Furthermore, the Sheriff, District Attorney, County, and any of their officers or employees shall not be held liable for failure to abate any unlawful cannabis cultivation, to prosecute a violation of this section, or to take any other action with regard to any unlawful cannabis cultivation.

3. *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.

Pursuant to California Government Code Section 25123(d) and for the reasons stated in the Findings and Declaration of Facts herein, the Board of Supervisors hereby declares that this ordinance shall take effect immediately in order for the immediate preservation of the public peace, health, and safety.

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 _____, 20__, by the following vote of said Board:

ATTEST

KIM DAWSON

Clerk of the Board of Supervisors

Ayes:

Noes:

Absent:

Deputy Clerk

Brian Veerkamp, Chair, Board of Supervisors

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

By: _____

Breann M. Moebius
Deputy County Counsel