## Comment from EDC Growers Alliance to Staff Memo dated 6/26/23 - Legistar no: 23-1032

PC 7/13/2023
Item #4
4 pages

Lee Tannenbaum <lee.tannenbaum@gmail.com>
Mon 7/10/2023 10:01 AM

To:Planning Department <planning@edcgov.us>
Cc:kevinwmccarty@pm.me <kevinwmccarty@pm.me>;Kris Payne <krispayne999@gmail.com>;lexi boeger <lexiboeger@gmail.com>;Andy Nevis <andynevis@gmail.com>;Jon X. Vegna <JVegna@edcgov.us>;Daniel Harkin <Daniel.Harkin@edcgov.us>;Lee Tannenbaum <lee.tannenbaum@gmail.com>

1 attachments (29 KB)
Summary list - Google Docs.pdf;

Dear Commissioners,

The Alliance have several comments related to the document sent to you from Staff - Jefferson Billingsley for this meeting. While well written and covering a majority of our topics of discussion from the June 8th study session, there are a couple of corrections I'd like to point out as well as some missing items of discussion that were not included. While Mr. Billingsley admits to discarding the individual suggestions for a broader brush, which we support, we would like the individual points to be included for reference should anyone reviewing the findings of this hearing to see all that has been discussed. Even if as an addendum to the decision made by this commission and potentially sent to the BoS for a possible ROI. If we are going to fix this, let's look at all of it.

At the time of this writing, the EDSO has still not commented on the June 8th study session. While EDSO was largely responsible and present during the original cannabis meetings in 2018, they are strangely absent from the current discussions and they should be included/consulted if they wish to participate. However, if EDSO continues to have no comment, then it is our belief that this body should proceed without them and that they will accept what the BoS and this commission suggest for any changes. This relates to Point 6 in Mr. Billingsley's report.

- I'd also like to point out that lawmakers, like yourselves and the BoS, make laws with the input and/or suggestions from law enforcement (EDSO) of these laws when possible. It is completely reasonable and constitutional for any governing body to create/modify laws and have the expectation that law enforcement will follow them. It's why our forefathers created separate branches of government. Also of note is that according to the US constitution, of which our EDSO claims to follow, law enforcement reports to the executive branch, but is not a lawmaking entity.

- According to the California State Association of Counites, of which EDC is a member, the responsibilities of the Sheriff are defined as: The Sheriff's Department typically has six functional operations: Patrol — Besides patrol cars, may include boat or air patrol; answer calls for service; conduct investigations; detect and prevent crimes; and make arrests. Nowhere in this definition, nor in our county charter does it state the office of the Sheriff is considered a policy maker.

Point 1 – Setback consideration. There are two real issues at the heart of this and why the setbacks were created to begin with. One is smell. The second, which is part of another discussion point today is Parcel vs. Premise. In addition to this very large issue, Mr. Jefferson's points on the November, 2018 waiver eligibility, the other points are reasonable.

- Let's look at smell. The scientific study I submitted as part of my license application (CCUP) stated very clearly, and was by an stamped/signed Odor Engineer, that the 'DT' smell issue on our property line was

significantly less than the 7 DT threshold of county ordinance. Even at 300' from the fields, the smell would be well below the level 7 DT at the property line requirement of the ordinance.

- There was one odor complaint during the 2020 hemp growing year in EDC. The distance of the field to where the 'supposed' smell was indicated, was, and should have been scientifically lower than the 7 DT threshold. However, because the complaint was made by the wife of an EDSO officer, there was no testing or scientific study to insure this was not just a NIMBY. It was just accepted and made fact. Go forward, all issues such as this, and according to our county ordinance, should be based on the 'science'.

- But beyond the science, let's put matters into practicality. I personally invite the members of this commission, the BoS, the EDSO or any other concerned county government official to come to our farm. We have enough plants in the ground in both flower (mature) and vegetative (immature) at this time to do a real-life experiment. I challenge anyone to smell anything from 100 feet, let alone 800 feet or 1500 feet.

- Important to note is, this issue is the act of farming itself. Whether the cannabis plant is considered a commercial application or not is not relevant to this point. What is relevant is that I believe everyone will agree cannabis is a plant, it is put into dirt and grown like a plant. If it walks like a duck and looks like a duck.... But the point here is this. This plant is the only 'crop' that is limited to setbacks. No one will disagree that livestock excrement smells, or certain crops have unique and pungent odor to them, so why then does this crop require odor setbacks when every other plant or agricultural commodity does not?

- Lastly to this is what other counties are doing? EDC setbacks are 500 feet greater than any other county in the state. I'd like to understand why EDC feels that our terrain, location, or anything warrants our setbacks be 500 feet greater than any other county in CA.

Point 4 - Should expanded uses be considered on agricultural cultivation sites. Mr. Billingsley states, "It must be noted that state law restricts full vertical integration of cannabis activities". This statement is not accurate. I cite Microbusiness licenses which allow full vertical integration. Also, in conferring with the DCC, a cultivation site can also have a Microbusiness license, which further disputes Mr. Billingsley's comment.

- Further to respond to comments of point 4, there seems to be a concern regarding creating nuisances or sensitive receptors. This also is inaccurate and can very easily be solved with proper mitigation if needed. But more to the point, having the ability to manufacture on premises is much less likely to create these issues than the cultivation itself. All activities are done indoors, are much further away from residents and because they are so contained, the smell and other potential issues are much less likely to create issues.

- The last part of point 4 which is critical in our opinion, is that the risk to public safety is significantly greater if cannabis has to be shipped around the county to be processed when it could stay in one place for this same processing.

Point 7 - The last paragraph discusses a countywide EIR for cannabis. In the spirit of the original ordinance, this would continue to be fully funded by the cannabis businesses in the county. Once a county wide EIR cost is established, this number can be divided by the expected number of licenses (currently 150) and these costs be shared by all applicants. This will greatly increase the licensing process speed to completion, and greatly lower the cost barrier to entry. If the BoS ultimately decides to allow this, it could become a source of revenue generation.

Topics discussed and not addressed in this report are (not in any order of priority):

1. The ability for a very low cost, easy access to cottage growers (>= 2500 sq/ft). There are a number of cultivators in EDC who desire this type of license and the costs to do this are identical to a large cultivator.

In the spirit of lessening illegal cannabis activities, we strongly suggest implementing a cottage growers program as it will allow smaller growers to move from illegal to legal business.

2. Make cannabis an agricultural crop.
3. Direct to consumer and on site consumption
4. Speeding up the licensing process
5. Multiyear licenses
6. Removal of seeds from definitions (considered hemp federally and available anywhere)
7. Changing of definition of Manufacturing and Processing (they currently read the same in the ordinance)
8. Mixed lighting definitions
9. Premise vs. Parcel – While mentioned, it seems glossed over and is extremely important.
10. Removal of setback language re November, 2018 date as this is no longer relevant.
11. Transfer of ownership language – shuts down business. While not the intent, it is how code reads.
12. Not mentioned in Sheriff comments of the Staff Report – let code enforcement do their job. Cost to taxpayers every time EDSO rolls to an illegal grow is $200K (this was determined and verified by EDSO during the Hemp Ad-Hoc hearings). Also not addressed, nor in the original ordinance are the background check questionnaires. There are many questions which are 5th amendment violations that need to be removed.
13. Revocation of license is for 3 violations. Clean up language to allow for minor infractions to be fixed and not count against the 3 currently noted. Staff agreed that what we're requesting is the intent, but not how the ordinance is written.
14. Continual neighbor notification is a burden no given to any other business.
15. Lighting between 6 and 25 watts needs to be addressed.

And lastly, think of a cultivation site like a winery. They are truly closer than you think. I am including the summary list from the June 8th PC meeting for your review to insure all areas are covered.

Thanks for your consideration.

lee

Lee Tannenbaum
CEO Cybele Holdings, Inc.
President El Dorado County Growers Alliance
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Not in any particular order or priority.

Not in ordinance

- Agriculture not commercial
- Potential DTC and on site consumption
- Speed, or lack thereof to complete process
- Multi year licenses
- Specialty cottage license
- Annual fees to start when conditions are completed or allow for operations to begin while conditions are completed
- Remove need to resubmit entire package each year

From ordinance

- Remove seeds from cannabis definitions. No thx and feds consider hemp
- Change definition of Indoor cultivation to allow for propagation (the ability to grow for seeds or clones for business use)
- Manufacture and process/processing have same definitions
- Mixed light definition needs to be changed
- Premises and parcel need to be distinct, not the same
- Remove setback waiver language re November, 2018 date
- CEQA individual or county EIR. Goes to Ag Discussion
- Background check, change ownership definition to conform to state definition. Remove need for spouses, and all other non-decision makers to have check.
- Site plan to show propagation areas (from above)
- County cannot control crop size as there are other issues with Eid etc
- Background checks to be objective. Follow state guidelines.
- 2 hour be available for inspection is unreasonable. Vacations, travel, etc. designated local contact
- Square foot tax needs to be changed to gross sales. Tax collector agrees
- Transfer of ownership needs to be fixed
- Fines. Need to be enforced by code enforcement and not sheriff
- Revocation for flagrant violations, not small ones. Growing pains for all.
- Neighbor continual notification is not needed and no other business is required to do this
- Grow sizes. Emulate state regs
- Setbacks are significantly more than any other county
- Odor testing by qualified folks
- Allow indoor, manufacturing, distribution for outdoor cultivation. Public safety issue. Think vineyard.
- Lighting. Under 25 for mixed light. Over 25 for indoor. As long as neighbors are not disturbed, could remove this altogether.
- Allow porta potties

Several of the above should and could apply to all pieces of the ordinance.

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# Public Comment For 7/13/23 Commercial Cannabis Workshop

Heather Schafer <heather@armadalawyers.com>

Mon 7/10/2023 11:20 AM

To:Planning Department <planning@edcgov.us>;Jon X. Vegna <JVegna@edcgov.us>;Kris X. Payne <KPayne@edcgov.us>;Lexi Boeger <Lexi.Boeger@edcgov.us>;Andy Nevis <Andy.Nevis@edcgov.us>;Daniel Harkin <Daniel.Harkin@edcgov.us>
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1 attachments (237 KB)

23.07.10 - EDC.PlanningCommission.Comment.pdf;

All,

Attached for your review please find the public comment of Attorney Dale Schafer intended for the continuation of the 7/13/23 cannabis workshop.

Thank you,

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# ARMADA LAW CORP

July 10, 2023

**SENT VIA EMAIL**

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Re: Analysis for Cannabis workshop-July 13, 2023

Dear Commissioners Vegna, Payne, Boeger, Nevis, and Harkin:

Please accept this memorandum as my input into the cannabis workshop next scheduled for July 13, 2023. I will also provide my thoughts and analysis on the requests made by the El Dorado County growers alliance for changes to the current cannabis codes in El Dorado County.

I will endeavor to be as neutral a as I can. As I previously advised all of you, I do have a cannabis cultivation project in line for a planning commission hearing. However, my analysis will not be presented on behalf of my client but rather will be my independent analysis as a cannabis attorney with over 2 decades of experience with cannabis politics in El Dorado County. I do not purport to provide legal advice to anyone through this analysis. From a thirty-thousand-foot perspective, cannabis is not the biggest issue the county is facing. However, for those trying to open a cannabis operation, and involved neighbors, this is a big

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issue for them.

It is my understanding that a lawsuit filed by the El Dorado County Growers Alliance in 2021 has been resolved. One of the provisions of the settlement called for the planning commission to hold a workshop to consider and make recommendations to the Board of Supervisors with respect to changes to the El Dorado County cannabis ordinance that was passed by the voters in November 2018. A hearing was held on June 8, 2023, and the Growers Alliance submitted recommendations for changes to the county's cannabis ordinance.

**History of cannabis regulation in El Dorado County**

In the November 1996 general election, the voters of California passed proposition 215, landmark legislation which afforded qualified medical marijuana patients an affirmative defense in criminal proceedings to charges of cultivation, possession and/or transportation of marijuana. By the year 2000, cultivation guidelines were established in El Dorado County between the district attorney, the sheriff, and cannabis patients throughout the county. The guidelines allowed for the cultivation by qualified medical patients of 20 immature or 10 mature cannabis plants.

In the 2003 legislative session, SB 420 was passed, and signed by the Governor. SB 420 became effective on January 1, 2004, and established the collective and cooperative model for providing marijuana to qualified patients. SB420 also extended affirmative defenses to additional activities that involve the cultivation, manufacturing, and distribution of marijuana. Collective and cooperative marijuana cultivation operations began to appear throughout the county as did dispensaries, which appeared all over the state. Criminal charges against individuals and groups that collectively or cooperatively cultivated and/or dispensed marijuana proved increasingly unsuccessful. Accordingly, many jurisdictions opted to use nuisance procedures in an effort to pushback against an increasing unregulated cannabis market throughout the state.

At the end of the 2015 legislative session, the Medical Marijuana Regulation and Safety Act (MMRSA) was passed and signed by the Governor. MMRSA was the 1st attempt to provide for a statewide scheme to legalize commercial medical marijuana. The legislature provided specific authority for local governments to pass regulations controlling, or completely banning, commercial cannabis activities within a county or other local jurisdiction. The legislature also passed specific authority for local jurisdictions to place a general tax measure on the ballot that would tax commercial cannabis operations once a state cannabis license was

issued. In early 2016 the governor signed legislation which modified the name of MMRSA by changing "marijuana" to" cannabis", renaming the statutory scheme to MCRSA.

In the November election of 2016, the voters passed proposition 64, the Adult Use of Marijuana Act (AUMA) which legalized cannabis for adults aged 21 or over. Prop 64 also removed many criminal penalties for cannabis activities and reduced the penalty for cultivation of marijuana, in excess of the 6 plants authorized per residence for an adult, from a felony to a **misdemeanor.** The legislature repealed MCRSA and enacted the Medical and Adult Use of Cannabis Regulation and Safety Act (MAUCRSA), a comprehensive statewide scheme to legalize commercial medical and adult use cannabis activities. Local jurisdictions maintained control over whether to ban or regulate commercial cannabis activities within their jurisdiction. The state set about passing regulations in anticipation of issuing statewide commercial cannabis licenses beginning January 1, 2018. Per the state regulations, a local jurisdiction had to provide a cannabis permit, license, or authorization before a state application for a commercial cannabis license could be filed and considered.

In July 2018 the Board of Supervisors placed 5 cannabis initiatives on the ballot and in the November general election, all 5 passed with more than 60% of the vote. The initiatives included specific taxing authority for cannabis operations and set forth guidelines for medical and adult use cannabis operations in the county. Importantly, the ordinances are amendable by the Board of Supervisors. However, the maximum tax rate cannot be exceeded without going back to the voters for authority. The county began to develop the policies and procedures for receiving and processing applications for commercial cannabis operations. The Sheriff's office was given responsibility to do background checks and recommendations on all applicants, spouses and anyone who would receive any of the proceeds from a cannabis operation. On October 23, 2019, Deputy Brian Ishmael was murdered by a member of a criminal organization that was operating an illegal cultivation operation in the county. The course of cannabis in the county was altered thereafter.

## THE CANNABIS ORDINANCE IS AMENDABLE

The voters in El Dorado County, when they passed the cannabis ordinance in November 2018, authorized the Board of Supervisors, without going back to the voters, to adjust the tax rate within the minimum and maximum rates set for each type of license. The Board was also authorized to exempt or except any category of

cannabis operation from the county tax, amend or repeal the cannabis tax, so long as they did not increase the maximum tax approved by the voters, and to generally amend the ordinance in any way.

El Dorado County Code (EDC) section **3.22.040 (C)** authorizes the Board of Supervisors to adjust the tax rate for cannabis, subject to the minimum and maximum tax for each license type.
EDC section **3.22.050 (A)** authorizes the Board of Supervisors to exempt or except any category of cannabis operations from the cannabis tax.

EDC section **3.22.280 (A)** authorizes the Board of Supervisors to amend the county cannabis tax. However, the cannabis tax cannot be increased beyond the maximum rate authorized by the voters, without seeking voter approval.

EDC section **130.41.100 (B)** reserves to the Board of Supervisors the authority to amend the county cannabis ordinance in any way.

## AMENDMENTS PROPOSED BY EL DORADO COUNTY GROWERS ALLIANCE

For ease of operations, I will address the Growers Alliance's proposed amendments in numerical order. In my view, not all proposed amendments are equal in their importance, either legally or politically. I will provide by analysis and recommendations, both legally and politically, for the proposed amendments.

**Cannabis Definition**
EDC section **130.41.100 (2)**
The growers alliance wants to remove the term cannabis ruderalis from the definition because that varietal is hemp. They also want to remove the following words from the definition…" 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." because they assert all these terms are outlined in the definition of "Cannabis Products" in the ordinance.
**Cal. Health & Safety Code section 11018** defines cannabis as follows:
"Cannabis" means all parts of the plant Cannabis sativa L, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin.

**CCR Title 4, Division 19, section 15000 (j)** defines Cannabis Product as follows:

(j) "Cannabis product" 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.

**Section 15000 (h)** defines Cannabis Concentrate as follows:

(h) "Cannabis concentrate" means cannabis that has undergone a process to concentrate one or more active cannabinoids, thereby increasing the product's potency. For purposes of this division, "cannabis concentrate" includes, but is not limited to, the separated resinous trichomes of cannabis, tinctures, capsules, suppositories, extracts, vape cartridges, inhaled products (e.g., dab, shatter, and wax), and tablets as defined in subsection (nnn).

I would recommend that the board amend the definition of cannabis to align with the State definition referenced above. I would also recommend that the county maintain the language which excludes hemp from the definition of cannabis. The terms "Cannabis indica" and "Cannabis ruderalis" are varietals of Cannabis sativa L and have little but marketing significance. Neither term adds to the definition of cannabis under current scientific understanding.

I would also recommend the county add the above definition for cannabis concentrate to the County's cannabis ordinance. This should provide clarification that all usable parts of the cannabis plant containing above 0.3% THC are accurately defined in the county's cannabis ordinance.

**Mixed-light cultivation**

The Growers Alliance wants to remove the term…" or light deprivation" from the definition and to increase the watts per square foot to "less than or equal to 25" watts per square foot. The Growers Alliance wants to allow propagation and nurseries and assert these changes will accomplish that goal.

The state defines Mixed-Light Cultivation as follows:

**Section 15000 (ss)**

(ss) "Mixed-light cultivation" means the cultivation of mature cannabis in a greenhouse, hoop-house, glasshouse, conservatory, hothouse, or other similar structure using a combination of:

(1) Natural light and either of the models listed below:
(A) "Mixed-light Tier 1," without the use of artificial light or the use of artificial light at a rate above zero, but no more than six watts per square foot; or
(B) "Mixed-light Tier 2," the use of artificial light at a rate above six and below or equal to twenty-five watts per square foot.

I would recommend that the county adopt the above definition for Mixed-light cultivation. This would remove the light deprivation language and would expand the opportunities for Mixed-light cultivation in the county. I fail to see how these changes address the issues of propagation or nursery though.
The current County definition of cultivation or cultivating includes "propagation" and the state regulations allow all licensed cultivation operations to engage in self-propagation. The definition of "Nursery" in both the County ordinance and the state regulations is the same. A cultivator currently can self-propagate and adopting the state Mixed-light definition removes the "light deprivation" language. However, nurseries are required to comply with all outdoor and mixed-light requirements and that is an area that could be clarified by amendment to the County cannabis ordinance.

**EDC 130.41.100 (2)** defines Manufacturing. The definition includes "processing". Under state regulations section 15000, manufacture is defined as:
. (oo) "Manufacture" means to compound, blend, extract, infuse, or otherwise make or prepare a cannabis product.
(1) The term "manufacture" includes the following processes: (A) Extraction; (B) Infusion; (C) Packaging or repackaging of cannabis products; (D) Labeling or relabeling the packages of cannabis products; (E) Post-processing refinement of cannabis extract ("post-processing"); and (F) Remediation of failed harvest batches or cannabis product batches, other than relabeling to correct cannabinoid content.
(2) The term "manufacture" does not include the following: (A) The repacking of cannabis products from a bulk shipping container by a distributor or retailer where the product's original packaging and labeling is not otherwise altered; (B) The preparation of pre-rolls by a licensed distributor in accordance with the requirements of section 15303; (C) The collection of the resinous trichomes that are dislodged or sifted from the cannabis plant incidental to cultivation activities by a licensed cultivator; *(D) The processing of nonmanufactured cannabis products, as defined in subsection (eee) of this section*; or (E) The addition of cannabinoid content on the label of a package of cannabis or cannabis product by a distributor in accordance with section 17407. (Emphasis added)
(eee) "Processing" means all activities associated with the drying, curing, grading, trimming, rolling, storing, packaging, and labeling of cannabis or nonmanufactured

cannabis products.
(tt) "Nonmanufactured cannabis goods" means final form items that contain only cannabis.

I recommend that the term "including processing" be removed from the definition of manufacture in the cannabis ordinance. I also recommend that a processor be allowed on all cultivation operations and that the definition of nonmanufactured cannabis goods be included in the cannabis ordinance. State law allows for production of nonmanufactured cannabis goods by processors. These products are pre-rolls that are not infused with cannabis concentrates and packaged flower. A cultivator can produce their own nonmanufactured cannabis goods, but a processor is allowed to produce the nonmanufactured cannabis goods for others. This allows a property that cultivates cannabis to also include a processor which increases the options for income for a cultivation operation and property.

**Nursery**
**EDC 130.41.200 (6)** Commercial Cannabis Nurseries requires nurseries to comply with all restrictions and requirements for outdoor, mixed-light and indoor cultivation. This includes zoning, setbacks, the limit on the number of cultivation operations, and the restrictions on the amount of canopy allowed on a particular property. I would recommend that nurseries be exempt from the one hundred and fifty cultivation operations allowed in the county. The canopy of a nursery, as that term is defined in the cannabis ordinance and state regulations, does not produce cannabis or cannabis products for sale. Nurseries are not allowed, per state regulations, to sell the flower biomass that is a byproduct of seed production. Nurseries are allowed to produce and sell seeds and clones to other cultivators and retailers. I would also recommend that nurseries be allowed to be permitted on outdoor and mixed-light cultivation operations properties without affecting the square foot of canopy or the number of permitted cultivation business on the property.

**OWNER**
The Growers Alliance wants the definition of owner to align with the state regulations definition. State cannabis regulations, section 15003 defines owner as follows:

**§15003**. Owners of Commercial Cannabis Businesses.
(a) An applicant for a commercial cannabis license or a licensee shall disclose all owners of the commercial cannabis business. An owner of the commercial cannabis business includes all of the following:

(1) A person with an aggregate ownership interest of 20 percent or more in the commercial cannabis business, unless the interest is solely a security, lien, or encumbrance. For purposes of this section, "aggregate" means the total ownership interest held by a single person through any combination of individually held ownership interests in a commercial cannabis business and ownership interests in an entity that has an ownership interest in the same commercial cannabis business. For example, a person who owns 10 percent of the stock in a commercial cannabis business as an individual shareholder and 100 percent of the stock in an entity that owns 10 percent of the stock in the same commercial cannabis business has a 20 percent aggregate ownership interest in the commercial cannabis business.
(2) An individual who manages, directs, or controls the operations of the commercial cannabis business, including but not limited to: (A) A member of the board of directors of a nonprofit. (B) A general partner of a commercial cannabis business that is organized as a partnership. (C) A non-member manager or managing member of a commercial cannabis business that is organized as a limited liability company. (D) The trustee(s) and all persons who have control of the trust and/or the commercial cannabis business that is held in trust. (E) The chief executive officer, president or their equivalent, or an officer, director, vice president, general manger or their equivalent.
(b) If the commercial cannabis business is owned in whole or in part by an entity and the entity includes individuals who manage, direct, or control the operations of the commercial cannabis business, as described in subsection (a)(2)(E), those individuals shall also be disclosed as owners.
(c) If available evidence indicates that an individual qualifies as an owner, the Department may notify the applicant or licensee that they must either disclose the individual as an owner and submit the information required by section 15002 or demonstrate that the individual does not qualify as an owner.

A financial Interest Holder is defined as follows:

**§15004**. Financial Interest in a Commercial Cannabis Business.
(a) An applicant for a commercial cannabis license or a licensee shall disclose all financial interest holders. A financial interest holder of the commercial cannabis business includes all of the following, except as provided in subsection (b):
(1) A person with an aggregate ownership interest of less than 20 percent. (2) A person providing a loan to the commercial cannabis business. (3) A person entitled to receive 10 percent or more of the profits of the commercial cannabis business, including: (A) An employee who has entered into a profit share plan with the commercial cannabis business. (B) A landlord who has entered into a lease agreement with the commercial cannabis business for a share of the profits. (C) A

consultant who is providing services to the commercial cannabis business for a share of the profits. (D) A person acting as an agent, such as an accountant or attorney, for the commercial cannabis business for a share of the profits. (E) A broker who is engaging in activities for the commercial cannabis business for a share of the profits. (F) A salesperson who earns a commission.
(b) Financial interest holders do not include any of the following: (1) A bank or financial institution whose interest constitutes a loan; (2) Persons whose only financial interest in the commercial cannabis business is through an interest in a diversified mutual fund, blind trust, or similar instrument; (3) Persons whose only financial interest is a security interest, lien, or encumbrance on property that will be used by the commercial cannabis business; and (4) Persons who hold a share of stock that is less than 10 percent of the total shares in a publicly traded or privately held company.

There are several differences between the state regulation's definition of owner and financial interest holder and the County's definition under the cannabis ordinance. Principal among the differences is that everyone, including spouses, that receives any profits from a cannabis business must have a background check performed by the Sheriff. Additionally, a financial interest holder must have a background check. Background checks have been problematic, for a number of reasons, so requiring that everyone receiving any profits, including spouses, be background checked is over-regulation. The state draws the ownership line at 20% and financial interest holders must be identified if they own less than 20% of a cannabis business or receive greater than 10% of the profits. If the goal is to identify, and root out, persons that should not be involved with the ownership and operation of a cannabis business, then there are methods to identify those persons. For example, if a person owns less than 20% and does not direct, manage or control the business, then the security plan can require that any such person must sign in and be tracked if they are on the cannabis premise. These records can be monitored by code enforcement and inquiry can be made about the person's presence on, and involvement with, the cannabis business. If a registered financial interest holder does not direct, manage or control the business, the security plan can require the person to sign in and inquiry can be made by code enforcement about the presence and involvement with the cannabis business. If a person is determined to violate the ownership and financial interest requirements/prohibitions, there currently are regulations, ordinances and laws that allow for suspension or revocation of the local permit and prosecution for perjury, at a minimum.

I recommend that the ownership and financial interest holder definitions of the state regulations be adopted by the county for their cannabis ordinance. Violations

of the letter, and spirit, of the ordinance respecting ownership should be enforced administratively, civilly, and criminally. The current definition of owner has resulted in delays that are not necessary for the success of cannabis businesses in the county.

**EDC section 130.41.100 (4) (c)** contains the ownership/lease date of 11/6/18 for eligibility to obtain a variance to setbacks of 800 feet from the property line. This language was included to prevent a cannabis land rush. After over 4 years it is apparent that no such land rush occurred. I recommend this date be removed so that any eligible property can seek a variance if they can substantially achieve the purpose of the setback. Importantly, this involves a measurement of 7 DTs or less of odor at the property line so that neighbors do not smell offensive odors on their property.

**EDC section 130.41.100 (4) (d)** contains the CEQA requirements for cannabis businesses in the county. The Growers Alliance wants the county to consider a countywide EIR and cite Nevada County as an example. They suggest that the costs for the EIR could be recouped from the applicants/permitees and could be a "profit center". However, the California Constitution does not allow fee recovery to be profitable. There must be a nexus between the costs for a particular group and what the county incurs as costs. The profit mentioned would seem to represent a tax and the voters have tied the tax to canopy or gross receipts. I'm concerned that any attempt to recover the costs for a countywide EIR through the tax ordinance could require another vote.

When the county voted on the cannabis tax and regulation initiatives, many jurisdictions gave exemptions or negative declarations under purported EIRs. The state allowed this during the temporary license period, but when provisional licenses came along the state balked. The requirement that the applicants perform, and pay for, the required CEQA studies was not a provision that developed from consultations with the cannabis community. It was drafted by Deputy County Counsel Bre Mobius and presented as a fait accompli. At this point, a major change to the CEQA provisions in the cannabis ordinance would require more analysis than what the Growers Alliance is suggesting. I agree the costs are high and this could discourage or prevent potential applicants from entering the process. I also agree that the goal should be to allow applicants for cannabis permits to enter the market as inexpensively and quickly as possible. The solution is complicated, and I don't have actual recommendations without further input from the county, other jurisdictions, and interested parties.

**EDC 130.41.100 (4) (f) (ii)** requires spouses and designated local contacts to provide consent for a background check when applying for a permit. I agree with the comments from the Growers Alliance that unless a spouse or designated local contact qualifies as an owner, director, manager, controls the operations or is a financial interest holder under a revised cannabis ordinance, they should be stricken from the ordinance.

The comments about the Sheriff's involvement in background checks, and waiver of fingerprinting, is complicated. It's hard to imagine from a political respective, how you remove or lessen the Sheriff's responsibility in doing background checks. The time frame of 45 days to make a decision does not seem unreasonable. However, the practical realities seem to be that the Sheriff wanted access to the FBI database and permission for that was not forthcoming. Accommodations were made through HDL to provide background checks, but when I spoke with the prior Sheriff, he was concerned that there could be additional information obtained from the FBI databank and he wanted to reserve the ability to change his recommendation if new information came to light. There were also serious concerns raised by me about the questionnaire the sheriff was requiring applicants to fill out under penalty of perjury. I believe most of my concerns over the questionnaires have been addressed and I received a red lined version from Deputy County counsel Jefferson Billingsly confirming the corrections.

I don't believe it can be overstated that the murder of Deputy Ishmail was a turning point in full cooperation from the previous sheriff. If a 45-day limit for approval/disapproval is followed, I believe many concerns can be alleviated. If there is disapproval, a detailed statement of reasons would be necessary so an applicant can appeal. We have a new sheriff, and the hope is that any foot dragging by the previous sheriff can be remedied. If the sheriff has discretion to waive fingerprinting if ownership is less than 5%, that should be evidence that the current ownership definitions are ripe for modification.

**EDC 130.41.100 (4) (f) (xi)** the Growers Alliance wants to remove from the cannabis ordinance the county's ability to decrease canopy size in the face of environmental problems such as drought or non-compliant odors. The rationale is that this is not applicable to any other agricultural crop in the county. At present, cannabis is not an agricultural crop. Should that designation change, there will remain the state's authority to reduce, or eliminate, cannabis cultivation operations in the face of drought. Further, should a cannabis cultivation operation fail the 7 DTs odor limit, the permit can be suspended or modified to remedy the odor problem. I do not recommend changes to this section.

**EDC 130.41.100 (4) (g)** The Growers Alliance wants to strike the designated local contact in the background check requirement. I do not agree with this because the designated local contact will have the ability to manage or control a cannabis operation should complaints be received. I do believe there is room to amend the counties cannabis ordinance to allow for an additional designated local contact to give the primary designated local contact the ability to take time off and still satisfy the requirements of availability to deal with problems or complaints at a cannabis operation.

The Growers Alliance also wants to strike all language from this section that gives the county discretion to deny a permit if it's more likely than not that funding was derived from criminal activity, that an applicant or owner is not trustworthy, that sales will not be truthfully reported, or that cannabis we will be sold to minors. This language lacks any reasonable objective metrics and it appears to me to be ripe for allegations of abuse of discretion. Without knowing the objective criteria to be used to deny a permit, I cannot support the inclusion of this language in the cannabis ordinance.

**EDC 130.41.100 (4) (i) (iii) & (iv)** The Growers Alliance wants to remove language about reducing canopy size in the face of environmental factors and indemnifying the county. As previously stated, cannabis is not an agricultural crop in the County. Additionally, I am unaware of any jurisdiction in the state that does not require an indemnification agreement as a condition to obtaining a commercial cannabis permit. I do not support removing any language from either of these sections.

**EDC 130.41.100 (4) (i) (v)** The Growers Alliance wants to require that the county provide reasonable notice and make an appointment to visit and inspect a cannabis operation when the County suspects there are violations taking place outside of normal business hours. If the county has reasonable suspicion of illegal activities occurring on a permitted cannabis operation, I see no reason why the county should be required to notify the suspected offender and make an appointment. Cannabis operations are discretionary and highly regulated yet significant illegal activity has taken place and continues to take place, on the premises to these operations. If the county is unreasonable in making entry to and inspecting a cannabis operation after hours, there are remedies available to an aggrieved cannabis operation. If a cannabis operator's following all the rules, regulations, and laws, they should not be overly concerned about inspections with urgency. I do not support the addition to this section recommended by the Growers Alliance.

**EDC 130.41.100 (5) (D)** The Growers Alliance wants this section to be amended to use a gross sales tax for all cannabis operations other than cultivation and use a net sales tax for cultivation. As previously stated, I believe the board has the authority to set the tax on cannabis operations either as gross receipts or square foot of canopy for cultivation. I would advocate for the lowest taxes possible to allow cannabis operations to actually operate. I would also advocate to tax all cannabis operations equally. The current tax authority allows for gross receipts for both cultivation and all other cannabis operations. I would advocate that all cannabis operations in the county be taxed at the lowest possible gross receipts tax. Establishing a net sales receipt tax would require a definition for net sales receipts that is not currently contained in the county cannabis ordinance. Absent significant input regarding such a definition, I cannot currently support a net sales receipt tax for cultivators.

**EDC 130.41.100 (5) (E)** Currently, the cannabis ordinance does not allow for a change of ownership without reapplying for a permit. The state regulations allow for a change of ownership but there are conditions. I have assisted with many ownership transfers and the state requires that at least one owner (20% owner) remain on the license while the purchasing party, which can purchase up to 80% of the ownership interest in a cannabis business, goes through background checks and is approved or disapproved by the state. Once approved as an owner, the purchaser can obtain the remaining 20% ownership interest and a change of ownership is completed. I recommend that the county align their change of ownership with the State and allow a stepped purchase with appropriate background checks of the purchaser of the ownership interest.

**EDC 130.41.100 (7)** The Growers Alliance wants to reword this section to prevent 3 violations from resulting in revocation of the permit for at least 2 years. It appears they are arguing for Mulligans because these are new businesses to the county. I can't recommend these changes since commercial cannabis businesses have been legal in the state for over 5 years and the counties cannabis ordinance is not difficult to understand. I would argue that if you're going to invest the time and money into a highly regulated and highly taxed business, there should be internal policies, procedures, and education of all involved in operating a cannabis business on how to avoid violations. Further, if a cannabis business should happen to receive a violation it would seem to me to be prudent to put extra effort and resources into avoiding any further violations.

**EDC 130.41.100 (8)** The Growers Alliance wants the costs of the monitoring

program to reflect the actual costs of provide the services. Since the passage of prop 218 and 26, a local jurisdiction has been required to account for any fees that are imposed on special groups. This is because a local jurisdiction must pass a tax initiative to bring in more than what it costs to provide services. If the county monitoring program brings in more than it costs to provide the services, there are remedies available to bring the costs in line with the fees charged. I do not support any changes to the section.

**EDC 130.41.100 (9) (A) & (B) Designated Local Contact** The requirement that the designated local contact be available 24/7, 365 could use some modification to allow for a designated substitute local contact that would give an opportunity for vacations or time off. The county should require background checks on the substitute designated local contact and consider allowing a designated substitute local contacts to provide the service to multiple cannabis operations in the county. Neighbor notification about cannabis operations and designated local contacts is important to maintaining good relationships. The comment from the Growers Alliance that the neighbors know who the designated local contact is seems irrelevant to requiring notification of neighbors. There are multiple notification requirements of neighbors as cannabis projects proceed through the application and permitting process. I do not understand the rationale for not notifying neighbors and accordingly, I cannot support any changes to this section.

**EDC 130.41.100 (12)** I agree that the term "federal law" should be removed from this section.

**EDC 130.41.200 (1) (b)** Designating cannabis as an agricultural crop has ramifications that could restrict or prevent nuisance complaints from the voters emanating from an agricultural operation under the right to farm. It is a legal fiction to designate cannabis as a non-agricultural crop. De facto, cannabis is an agricultural crop. However, de jure, cannabis is not designated as an agricultural crop to avoid the right to farm ordinance and state law. I would argue that changing the designation of cannabis to an agricultural crop would require research and input from other jurisdictions who may have considered or actually designated cannabis as an agricultural crop. From the political standpoint I believe there would be pushback on anything that would diminish or remove the ability of neighbors to complain about odors from a cannabis operation. Without the additional research and input, I do not support changing the designation.

**EDC 130.41.200 (3)** This section limits cultivation operations to 150 total with 75 permits reserved for operations with less than 10,000 ft.$^2$ of canopy. In my

experience, and based upon the regulations and taxes involved, a cultivation operation with less than 10,000 ft.$^2$ of canopy is not economically and commercially viable. To date, there are approximately 20 applicants for cultivation permits and only two have been granted. There was no green rush to set up cultivation operations in the county so putting artificial limits on the number of cannabis cultivation permits appears to be irrelevant. I support striking this entire section and allowing the decision-making entities in the County to independently determine if issuing a cultivation permit is appropriate. Ultimately, the board can approve or deny any permit application.

**EDC 130.41.200 (4)** The growers alliance added the term "indoor" to this entire section. There are no comments, but it appears they would like indoor cultivation to be possible on all properties where outdoor and mixed light operations can be permitted. I don't believe it is as simple as adding indoor to this section. This would need to be coordinated with cannabis operations that are allowed in commercial zones. Further, if indoor cultivation operation are to be approved on the land designated for outdoor and mixed light cultivation, clarification will be needed for the requirements of the commercial structure that the indoor cultivation operation will be contained in.

Absent more input, especially regarding coordination with commercial property requirements, I don't support such a change in designation.

**EDC 130.41.200 (4) (C) (i), (ii), (iii), & (iv)** The growers alliance wants to readdress all these sections. Since the drafting of the initiative in 2018, the state regulations have removed the cap on medium-size cultivation licenses and now allow a large cultivation license with a canopy in excess of 1 acre.

For lots zoned RL, placing artificial limits of no more than 10,000 ft.$^2$ of canopy does not appear rational. Further, because of the change in state law, arbitrary limits on the number of cultivation operations per premise does not appear to be either reasonable or rational. Finally, including nursery canopy in calculating cultivation canopy size does not appear either reasonable or rational.

For lots zoned AG, LA and PA, placing caps on the cultivation canopy seems artificial and not rational. If the property can satisfy the setback requirements or meet the requirements of 7 DTs at the property line, why would these canopy restrictions remain in place. Additionally, why would there be limitations on the number of licensed cannabis operations on the property?

I'm in agreement with the Growers Alliance that this entire scheme to limit the size of the canopy, the number of cultivation operations on the property, and including nursery canopy in determining overall canopy on a property, is in need of a reevaluation. I do not favor unnecessary regulations and it's unclear what the goal of these regulations was. Starting with a clear statement of goals, and fashioning regulations that effectively reach those goals, seems like a reasonable objective in reevaluating all sections of the cannabis ordinance.

**EDC 130.41.200 (4) (D)** The growers alliance wants to add language to allow retail sales on a permitted cultivation site should state law changed to allow such things. Currently, no retail sales are allowed on a cultivation site and until state law is actually changed, this is wishful thinking and I do not supported it.

**EDC 130.41.200 (5) (b)** The growers alliance wants to remove language identifying various facilities that must be setback 1500 foot from an outdoor or mixed light cultivation premise. The comments are that this language is too restrictive and no kids are going to go into a cannabis field over ¼ of a mile away. I agree that there have been some issues with bus stops around the county and there could be some room for modification of the setbacks of that particular site from the cultivation operation, especially if the cultivation operation cannot be seen from the bus stop and there's adequate security measures in place. However, the flippant statement that no kid will walk into cultivation field ¼ mile away does not jive with my experience of raising 5 kids through their teenage years. Although these facilities may be inconvenient for setback purposes, I do not support striking the language from the ordinance.

**EDC 130.41.200 (5) (c)** The growers alliance wants to reduce the property line setbacks from 800 feet to 200 feet and tie the setbacks to the requirement of 7 DTs at the property line. They also state that the 1500-foot setback from the facilities listed in section b above disallow cannabis operations to get started.
I support reducing the setbacks from property lines and requiring that the cultivator meet the 7 DT odor threshold at the property line. The distance of 200 feet does not seem unreasonable. If the Growers Alliance supports reducing the 1,500 foot setback, they should specifically state that. I do not support reducing the setback, but I would support some discretion to allow a variance.

**EDC 130.41.200 (5) (d)** The Growers Alliance wants to add language that mandates that operators of field olfactometer equipment be certified with a normal sense of smell. I'm unaware of any problems with the sense of smell for field operators of odor detecting equipment. Also, the device measures odor and if it is

properly calibrated, there should not be a problem. I don't see a need for this, and I don't support it.

**EDC 130.41.200 (5) (j)** The Growers Alliance wants to increase the watts per square foot for mixed-light to 25 and I support that change.

**EDC 130.41.200 (5) (m)** The Growers Alliance wants to add porta potties to the requirements of sewers on the property. If the county can approve such portable facilities, I would have no objection. However, if a long-term solution for a lack of sewer hookups or septic system is not sought in favor of a porta potty, I do not support that.

**EDC 130.41.200 (6) (b)** The Growers Alliance wants to put specific language into this section that allows a cultivator to propagate immature plants from seed or clone. I have no specific objection to clarifying this point. I'm not certain this is necessary if a cultivator is self-propagating.

**EDC 130.41.300 (4) (b) & (c)** The Growers Alliance wants the same changes for those individuals that operate the field olfactometers in the outdoor and mixed-light cultivation operations and I don't see the need. Also, they want modifications to the 1,500 setback and the facilities required to be setback from that they raised in the outdoor and mixed-light cultivation operations. I do not support either of these recommended changes.

**EDC 130.41.300 (4) (i)** The Growers Alliance wants to strike the language that allows discretion to require notification of the sheriff before transporting cannabis within the county. This notice requirement can be worked out as part of the security plan for any cannabis operation that will actually transport cannabis within the county. I am not aware of problems with this discretionary requirement. I do not support removing this language.

**EDC 130.41.300 (5) (a)** The Growers Alliance wants to add indoor cultivation to RL, PA, LA, and Ag if the buildings for indoor cultivation meets standards that are specifically cited. I support allowing indoor cultivation on outdoor or mixed-light premises. I support requiring that any building for indoor cultivation be permitted for the specific use intended. I do not understand the comment about safety issues associated with transporting cannabis for processing. This section is about indoor cultivation. This appears to me to be more of a profit-making issue than a safety issue.

**EDC 130.41.300 (6) (a)** The Growers Alliance wants to add language that allows full distribution on outdoor and mixed-light cultivation operations. Currently, only self-distribution is allowed on those operations. I support allowing full distribution on outdoor and mixed-light cultivation operations. This will allow for more profitability of the cultivation operations.

**EDC 130.41.300 (7) (a) & (b)** The Growers Alliance wants retail sales at a cultivation facility to be considered should the state change their regulations to allow retail sales at a cultivation facility. This is wishful thinking that I don't support. Should the state make the hoped-for changes, these sections can be reevaluated.

**EDC 130.41.300 (8) (a)** The Growers Alliance wants to add the outdoor and mixed-light zones to testing labs. Testing labs are very special operations that require specific facilities, personnel, training, must be separated legally from all other licensees, and have been the source of many problems throughout the state. I don't support allowing licensed testing labs on outdoor or mixed-light cultivation properties.

**EDC 130.41.300 (9) (a) (ii)** The Growers Alliance wants to allow Type 6 (nonvolatile) manufacturing on outdoor or mixed-light cultivation properties. I would support allowing Type 6 manufacturing on outdoor and mixed-light cultivation properties. However, these manufacturing operations require special permits to certify the buildings and operations because nonvolatile does not mean it won't blow up or burn. If ethanol, CO2, or closed loop extraction is requested, then the building standards should be the same for all similar facilities, wherever located.

## Comments and Analysis

The efforts by the state of California to prohibit the cultivation of cannabis began in 1914 with a poison control measure to prohibit "Indian Hemp", the popular name for cannabis before the introduction of "Marijuana" into the lexicon. The Federal Government first tried to prohibit marijuana in 1937 with the passage of the Marijuana Tax Act of 1937. In 1970, the Federal Government again tried to prohibit marijuana through the Controlled Substances Act (CSA), after the Supreme Court ruled the Marijuana Tax Act was unconstitutional in 1969. California followed by mimicking the prohibitions of the CSA in their Uniform Controlled Substances Act.

In California, the typical criminal penalties for marijuana were felonies. However, Californians continued to cultivate, and use, marijuana. The AIDS epidemic changed the narrative for marijuana from a drug the pot smoking hippies used to the medicinal substance cannabis has historically been. By 1996, the voting public was ready to give legal protection to medical marijuana users, and their caregivers, from the draconian penalties associated with marijuana by passing Prop 215. This voter initiative changed the paradigm for enforcement of marijuana laws. What followed was the adoption of guidelines for El Dorado County medical marijuana patients to avoid prosecution. Many other jurisdictions adopted such enforcement guidelines to avoid using law enforcement resources prosecuting medical patients. The Supreme Court aided in this process by putting the burden of proof on the government to prove a person was not a medical patient with too much marijuana. Cases were being dismissed by courts and juries were not convicting medical patients or their caregivers.

When the Legislature passed SB 420, the Medical Marijuana Program Act, in 2003, it was not foreseeable that an uncontrolled, unregulated grey market would develop in the way it did. It became increasingly difficult for cities and counties to enforce criminal laws against persons engaged in the unregulated commercial marijuana operations they were confronted with. Many cities and counties turned to traditional zoning and nuisance laws to attempt to control the unregulated collective and cooperative marijuana operations. From the standpoint of health and safety, an unregulated commercial cannabis industry was not acceptable.

In 2015, the Legislature passed MMRSA. This set of laws established a legal framework for health and safety laws overseeing commercial marijuana operations. Cannabis replaced marijuana and MCRSA was born in 2016. The general election of November 2016 saw the passage of (AUMA), which brought a new paradigm to cannabis rules and enforcement. Many laws prohibiting cannabis were either removed or drastically reduced to no more than a misdemeanor. The Legislature repealed MCRSA and adopted (MAUCRSA) to bring forth a scheme to legalize both medical and recreational commercial cannabis operations. The state followed the process for adopting regulations and developed emergency regulations in anticipation of issuing commercial cannabis licenses as early as January 1, 2018. Although the emergency regulations have gone through several iterations, the basic laws of MAUCRSA remain.

By 2018, there were increasing calls for local rules and regulations in El Dorado County to legalize commercial cannabis operations. The proposed initiatives, that became the cannabis tax and regulation ordinance, were not drafted in cooperation

with the interested parties in the county. There was a prevailing attitude that passing a tax and regulation ordinance would start a commercial cannabis industry and that problems could be addressed, and the ordinance could be adjusted, as the industry matured. The voters of the county were clear that they wanted a commercial cannabis industry in the county. People that desired to enter the commercial cannabis industry were hopeful. The murder of Deputy Ishmail altered the course of cannabis in the county.

I believe it is important to clearly state that the "War on Drugs", particularly the attempts to prohibit cannabis, have been miserable failures. There is clear historical evidence that this plant has been used for about five thousand years (5,000) and when first began to use it is not known. Attempts to control or prohibit the use of cannabis have been failures throughout history. It's not surprising that current attempts are failures.

Cannabis is not a poison. The LD 50 (lethal dose for half the population) is theoretically 1,500 pounds consumed in fifteen (15) minutes. This number is theoretical because no human has died from an overdose and the number is from dog experiments. That is not to say there are no public health and safety concerns with consuming cannabis. There have been deaths and health consequences from adulterated products. Additionally, cannabis can cause impairment, which causes safety concerns for driving and operating dangerous equipment, at a minimum. Rules and regulations are important. However, treating the plant as if it were depleted uranium is not reasonable or factually warranted.

Voters and politicians have been promised tax revenues from cannabis operations. However, the over taxation and regulation of commercial cannabis operations has resulted in very few tax revenues. The failure of the county to actually get cannabis operations permitted has resulted in the illegal (black) market flourishing. The murder of Deputy Ishmael resulted in enforcement operations to attempt to control the black market as well as the rollback of personal medical regulations and hemp cultivation. I believe it should be emphasized that cultivating cannabis is a **MISDEMEANOR** soaking wet. At some point a serious discussion is in order about the resources going into enforcing misdemeanor offenses in the face of revenues in the county.

The adversary faced by the county with respect to cannabis is the black market. At this point the black market is eating the county's lunch. If the goal is to reduce the black market, I don't believe that statement is a leap of faith, then attention is needed to that goal. The failure of any policymaking body to solve, or address, the

cannabis problem leaves law enforcement to deal with the problem. We have a problem in the county where commercial cannabis is concerned because the process is uncoordinated and as slow as molasses in January. That leaves the sheriff to deal with a black market in cannabis that is out of control, and there is a murder in the thinking process for the sheriff. Additionally, enforcement against cannabis has been a miserable failure generally.

The black market is driven by money. As long as there is money to be made, there will be someone to make it. There is unquestionable demand for cannabis. If the legal commercial market cannot provide for the demand, the black market will. The legal cannabis market is overregulated and overtaxed. The money previously made in the unregulated (grey) market during the SB 420 era has not been transferred to the legal market. The thought that governments would grab tax dollars from cannabis operators has been a fantasy. The legal operators are losing numbers and the entire industry is currently circling the drain. In this environment, the black market is eating your lunch.

Solutions will require, in my opinion, coordination between enforcement and efforts by the elected policy makers to get commercial cannabis operations up and profitably operating. This exercise we are engaging in is an opportunity to bring attention to the problems and potential solutions to address the problems. If, and when, the legal market is operating profitably, the opportunities for the black market to make money will diminish. There is, and will be, a need for enforcement, both administrative and criminal. Neither side of this equation can accomplish the goals alone. The black market will cease being the problem it is, and has been, when the profit is not there. I sincerely hope this opportunity will bring common sense solutions, including amending the cannabis ordinance as has been suggested.

Respectfully submitted,

*DaleSchafer*

Dale Schafer, ESQ

Cc: BOS, Ag Commissioner, Sheriff, Aaron Mount, Jefferson Billingsley, and Lee Tannenbaum

**Re: Comment from EDC Growers Alliance to Staff Memo dated 6/26/23 - Legistar no: 23-1032**

PC 7/13/2023
Item #4
5 Pages

Lee Tannenbaum <lee.tannenbaum@gmail.com>
Mon 7/10/2023 1:20 PM

To:Planning Department <planning@edcgov.us>
Cc:kevinwmccarty@pm.me <kevinwmccarty@pm.me>;Kris Payne <krispayne999@gmail.com>;lexi boeger <lexiboeger@gmail.com>;Andy Nevis <andynevis@gmail.com>;Jon X. Vegna <JVegna@edcgov.us>;Daniel Harkin <Daniel.Harkin@edcgov.us>

1 attachments (29 KB)
Summary list - Google Docs.pdf;

Please accept this document as my revised version of comments sent earlier. Thanks!

Lee Tannenbaum
CEO Cybele Holdings, Inc.
President El Dorado County Growers Alliance
650.515.2484

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**From:** Lee Tannenbaum <lee.tannenbaum@gmail.com>
**Date:** Monday, July 10, 2023 at 10:01 AM
**To:** Planning Department <planning@edcgov.us>
**Cc:** "kevinwmccarty@pm.me" <kevinwmccarty@pm.me>, Kris Payne <krispayne999@gmail.com>, lexi boeger <lexiboeger@gmail.com>, Andy Nevis <andynevis@gmail.com>, "jvegna@edcgov.us" <jvegna@edcgov.us>, "daniel.harkin@edcgov.us" <daniel.harkin@edcgov.us>, Lee Tannenbaum <lee.tannenbaum@gmail.com>
**Subject:** Comment from EDC Growers Alliance to Staff Memo dated 6/26/23 - Legistar no: 23-1032

Dear Commissioners,

The Alliance have several comments related to the document sent to you from Staff - Jefferson Billingsley for this meeting. While well written and covering a majority of our topics of discussion from the June 8th study session, there are a couple of corrections I'd like to point out as well as some missing items of discussion that were not included. While Mr. Billingsley admits to discarding the individual suggestions for a broader brush, which we support, we would like the individual points to be included for reference should anyone reviewing the findings of this hearing to see all that has been discussed. Even if as an addendum to the decision made by this commission and potentially sent to the BoS for a possible ROI. If we are going to fix this, let's look at all of it.

At the time of this writing, the EDSO has still not commented on the June 8th study session. While EDSO was largely responsible and present during the original cannabis meetings in 2018, they are strangely absent from the current discussions and they should be included/consulted if they wish to participate. However, if EDSO continues to have no comment, then it is our belief that this body should proceed without them and that they will accept what the BoS and this commission suggest for any changes. This relates to Point 6 in Mr. Billingsley's report.

- I'd also like to point out that lawmakers, like yourselves and the BoS, make laws with the input and/or suggestions from law enforcement (EDSO) of these laws when possible. It is completely reasonable and constitutional for any governing body to create/modify laws and have the expectation that law enforcement will follow them. It's why our forefathers created separate branches of government. Also of

note is that according to the US constitution, of which our EDSO claims to follow, law enforcement reports to the executive branch, but is not a lawmaking entity.

- According to the California State Association of Counites, of which EDC is a member, the responsibilities of the Sheriff are defined as: The Sheriff's Department typically has six functional operations: Patrol — Besides patrol cars, may include boat or air patrol; answer calls for service; conduct investigations; detect and prevent crimes; and make arrests. Nowhere in this definition, nor in our county charter does it state the office of the Sheriff is considered a policy maker.

Point 1 – Setback consideration. There are two real issues at the heart of this and why the setbacks were created to begin with. One is smell. The second, which is part of another discussion point today is Parcel vs. Premise. In addition to this very large issue, Mr. Jefferson's points on the November, 2018 waiver eligibility, the other points are reasonable.

- Let's look at smell. The scientific study I submitted as part of my license application (CCUP) stated very clearly, and was by an stamped/signed Odor Engineer, that the 'DT' smell issue on our property line was significantly less than the 7 DT threshold of county ordinance. Even at 300' from the fields, the smell would be well below the level 7 DT at the property line requirement of the ordinance.

- There was one odor complaint during the 2020 hemp growing year in EDC. The distance of the field to where the 'supposed' smell was indicated, was, and should have been scientifically lower than the 7 DT threshold. However, because the complaint was made by the wife of an EDSO officer, there was no testing or scientific study to insure this was not just a NIMBY. It was just accepted and made fact. Go forward, all issues such as this, and according to our county ordinance, should be based on the 'science'.

- But beyond the science, let's put matters into practicality. I personally invite the members of this commission, the BoS, the EDSO or any other concerned county government official to come to our farm. We have enough plants in the ground in both flower (mature) and vegetative (immature) at this time to do a real-life experiment. I challenge anyone to smell anything from 100 feet, let alone 800 feet or 1500 feet.

- Important to note is, this issue is the act of farming itself. Whether the cannabis plant is considered a commercial application or not is not relevant to this point. What is relevant is that I believe everyone will agree cannabis is a plant, it is put into dirt and grown like a plant. If it walks like a duck and looks like a duck.... But the point here is this. This plant is the only 'crop' that is limited to setbacks. No one will disagree that livestock excrement smells, or certain crops have unique and pungent odor to them, so why then does this crop require odor setbacks when every other plant or agricultural commodity does not?

- Lastly to this is what other counties are doing? EDC setbacks are 500 feet greater than any other county in the state. I'd like to understand why EDC feels that our terrain, location, or anything warrants our setbacks be 500 feet greater than any other county in CA.

Point 4 - Should expanded uses be considered on agricultural cultivation sites. Mr. Billingsley states, "It must be noted that state law restricts full vertical integration of cannabis activities". This statement is not accurate. I cite Microbusiness licenses which allow full vertical integration. Also, in conferring with the DCC, a cultivation site can also have a Microbusiness license, which further disputes Mr. Billingsley's comment.

- Further to respond to comments of point 4, there seems to be a concern regarding creating nuisances or sensitive receptors. This also is inaccurate and can very easily be solved with proper mitigation if needed. But more to the point, having the ability to manufacture on premises is much less likely to create these issues than the cultivation itself. All activities are done indoors, are much further away from residents and because they are so contained, the smell and other potential issues are much less likely to create issues.

- The last part of point 4 which is critical in our opinion, is that the risk to public safety is significantly greater if cannabis has to be shipped around the county to be processed when it could stay in one place for this same processing.

Point 5 – Should any aspects of Ranch Marketing... - Mr. Billingsley states in the final paragraph that cannabis is not considered an agricultural product. However, according to state law, Section 26060 BPC states, "(a) (1) For the purposes of this division, cannabis is an agricultural product." The "Division" is the entirety of the cannabis law within the Business and Professions Code. As mentioned above, no one will disagree that cannabis looks and acts like an agricultural crop, so let's look at how the 10 other counties in CA are treating cannabis as an AG crop.

Point 7 - The last paragraph discusses a countywide EIR for cannabis. In the spirit of the original ordinance, this would continue to be fully funded by the cannabis businesses in the county. Once a county wide EIR cost is established, this number can be divided by the expected number of licenses (currently 150) and these costs be shared by all applicants. This will greatly increase the licensing process speed to completion, and greatly lower the cost barrier to entry. If the BoS ultimately decides to allow this, it could become a source of revenue generation.

Topics discussed and not addressed in this report are (not in any order of priority):

1. The ability for a very low cost, easy access to cottage growers (>= 2500 sq/ft). There are a number of cultivators in EDC who desire this type of license and the costs to do this are identical to a large cultivator. In the spirit of lessening illegal cannabis activities, we strongly suggest implementing a cottage growers program as it will allow smaller growers to move from illegal to legal business.
2. Make cannabis an agricultural crop.
3. Direct to consumer and on site consumption
4. Speeding up the licensing process
5. Multiyear licenses
6. Removal of seeds from definitions (considered hemp federally and available anywhere)
7. Changing of definition of Manufacturing and Processing (they currently read the same in the ordinance)
8. Mixed lighting definitions
9. Premise vs. Parcel – While mentioned, it seems glossed over and is extremely important.
10. Removal of setback language re November, 2018 date as this is no longer relevant.
11. Transfer of ownership language – shuts down business. While not the intent, it is how code reads.
12. Not mentioned in Sheriff comments of the Staff Report – let code enforcement do their job. Cost to taxpayers every time EDSO rolls to an illegal grow is $200K (this was determined and verified by EDSO during the Hemp Ad-Hoc hearings). Also not addressed, nor in the original ordinance are the background check questionnaires. There are many questions which are 5$^{th}$ amendment violations that need to be removed.
13. Revocation of license is for 3 violations. Clean up language to allow for minor infractions to be fixed and not count against the 3 currently noted. Staff agreed that what we're requesting is the intent, but not how the ordinance is written.
14. Continual neighbor notification is a burden no given to any other business.
15. Lighting between 6 and 25 watts needs to be addressed.

And lastly, think of a cultivation site like a winery. They are truly closer than you think. I am including the summary list from the June 8$^{th}$ PC meeting for your review to insure all areas are covered.

Thanks for your consideration.

lee

Lee Tannenbaum
CEO Cybele Holdings, Inc.
President El Dorado County Growers Alliance
650.515.2484

Not in any particular order or priority.

Not in ordinance

- Agriculture not commercial
- Potential DTC and on site consumption
- Speed, or lack thereof to complete process
- Multi year licenses
- Specialty cottage license
- Annual fees to start when conditions are completed or allow for operations to begin while conditions are completed
- Remove need to resubmit entire package each year

From ordinance

- Remove seeds from cannabis definitions. No thx and feds consider hemp
- Change definition of Indoor cultivation to allow for propagation (the ability to grow for seeds or clones for business use)
- Manufacture and process/processing have same definitions
- Mixed light definition needs to be changed
- Premises and parcel need to be distinct, not the same
- Remove setback waiver language re November, 2018 date
- CEQA individual or county EIR. Goes to Ag Discussion
- Background check, change ownership definition to conform to state definition. Remove need for spouses, and all other non-decision makers to have check.
- Site plan to show propagation areas (from above)
- County cannot control crop size as there are other issues with Eid etc
- Background checks to be objective. Follow state guidelines.
- 2 hour be available for inspection is unreasonable. Vacations, travel, etc. designated local contact
- Square foot tax needs to be changed to gross sales. Tax collector agrees
- Transfer of ownership needs to be fixed
- Fines. Need to be enforced by code enforcement and not sheriff
- Revocation for flagrant violations, not small ones. Growing pains for all.
- Neighbor continual notification is not needed and no other business is required to do this
- Grow sizes. Emulate state regs
- Setbacks are significantly more than any other county
- Odor testing by qualified folks
- Allow indoor, manufacturing, distribution for outdoor cultivation. Public safety issue. Think vineyard.
- Lighting. Under 25 for mixed light. Over 25 for indoor. As long as neighbors are not disturbed, could remove this altogether.
- Allow porta potties

Several of the above should and could apply to all pieces of the ordinance.

PC 7/13/2023
Item #4
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**File 23-1032 Cannabis Policy Workshop**

Rodney Miller <rod@earthgroovy.com>
Mon 7/10/2023 1:44 PM

To:Planning Department <planning@edcgov.us>
Cc:Lee Tannenbaum <lee.tannenbaum@gmail.com>

Dear Commissioners:

I believe the staff's statement that cannabis is not an agricultural product within state law is inaccurate.

Section 26060 Business and Professions Code states, "(a) (1) For the purposes of this division, cannabis is an agricultural product." The "Division" is the entirety of the cannabis law within the Business and Professions Code.

Thank you for your attention to this matter.

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