



**ORDINANCE NO. \_\_\_\_\_**

AN ORDINANCE AMENDING the ban on medical cannabis dispensaries and the regulation of outdoor cultivation of medical cannabis for personal use in El Dorado County.

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

**Section 1.** Ordinance No. 4999, adopted September 24, 2013, which added Section 130.14.250 of Title 130, Article 9 of the El Dorado County Ordinance Code entitled "Distribution" is hereby entitled "Medical Cannabis Distribution" and amended to read as follows;

**Section 2.** Ordinance No. 5000, adopted September 24, 2013, which added Section 130.14.260 of Title 130, Article 9 of the El Dorado County Ordinance Code entitled "Outdoor Medical Cannabis" is hereby entitled "Outdoor Medical Cannabis Cultivation for Personal Use" and amended to read as follows:

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

Sec. 130.14.250 – Medical Cannabis Distribution.

1. *Findings.*

- 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").

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- C. The intent of the CUA was to enable seriously ill persons who need medical ~~marijuanacannabis~~ for medical purposes to obtain and use ~~marijuanacannabis~~ under limited, specified circumstances. The CUA provides a limited exception from criminal prosecution under ~~Statestate~~ law for specific crimes involving the cultivation, possession, and use of ~~marijuanacannabis~~ for specified medical purposes. The CUA ~~doesdid~~ not address land use, zoning, or building code impacts or issues that arise from the proliferation of medical ~~marijuanacannabis~~ dispensaries and large-scale 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 ~~StateCalifornia~~ Legislature to clarify the scope of the Compassionate Use Act of 1996. The MMPA allows cities, counties, and other governing bodies to adopt and enforce rules and regulations consistent with the MMPA.
- E. The MMPA included a list of facilities that could qualify as "primary caregivers" and dispense ~~marijuanacannabis~~ to qualified patients. The only facilities the Legislature authorized to serve as "primary caregivers" are licensed clinics, health care facilities, residential care facilities, home health facilities, and hospices which provide medical care and medical support services to qualified patients (Health and Safety Code ~~§Section~~ 11362.7(d)(1)).
- F. On June 5, 2005, the United States Supreme Court issued its decision in *Gonzales v. Raich* (2005) 125 S.Ct. 2195, which held that Congress, under the Commerce Clause of the United States Constitution, has the authority and power to prohibit local cultivation and use of ~~marijuanacannabis~~ even if the cultivation or use complied with ~~Californiastate~~ law.
- G. In ~~August 2011~~2015, the ~~State Legislature adopted AB 1300,~~state implemented the Medical Cannabis Regulation and Safety Act ("MCRSA"), which ~~amended California implemented AB 243, AB 266, and SB 643 and was subsequently modified in 2016 by budget trailer legislation (SB 837).~~
- H. 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 of Marijuana Act ("AUMA"), for nonmedicinal cannabis.
- I. Health and Safety Code §Section 11362.83 to read: "Nothing in this article shall prevent a city or other and Business and Professions Code Section 26200 preserve the authority of local governing body from adopting and enforcing any of the following: 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.

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~~(a) Adopting local ordinances that regulate the location, operation or establishment of a medical marijuana cooperative or collective.~~

~~(b) The civil and criminal enforcement of local ordinance described in Subdivision (a).~~

~~(c) Enacting other laws consistent with this article."~~

~~Such local regulatory authority over medical marijuana distribution facilities has been affirmed by the California Supreme Court. (See *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal. 4<sup>th</sup> 729.)~~

HJ. Citizens and law enforcement officers have reported an increase in crimes, such as loitering, and an increase in traffic, odor, and noise in the vicinity of dispensaries, and the sale of illegal drugs, including the illegal resale of marijuanacannabis from dispensaries, in the areas immediately surrounding such medical marijuanacannabis dispensaries.

IK. Law enforcement officials have indicated that they could more effectively prosecute the illegal operation of dispensaries if the prohibition on medical marijuanacannabis dispensaries was more clearly stated in the zoning ordinance contained in this title.

2. *Facilities.*

A. *Purpose.* The purpose of this section is to clearly set forth the prohibition on medical marijuana dispensaries which conforms with recent State and Federal case lawcannabis distribution facilities.

B. *Medical marijuanacannabis distribution facility defined.* Except where the context otherwise requires, a "medical marijuanacannabis distribution facility" means any medical marijuanacannabis dispensary, collective, or cooperative, in any facility or location, whether fixed or mobile, and whether or not the facility is operated for profit, where medical marijuanacannabis, in any form, is made available, sold, transferred, given, or otherwise provided to three or more qualified patients, primary caregivers, or patients with an identification card, as defined in California Health and Safety Code §Section 11362.5 et seq7.

C. *Exception.* A "medical marijuanacannabis distribution facility" shall not include dispensing bya primary earegivers tocaregiver who cultivates, possesses, stores, manufactures, transports, donates, or provides cannabis exclusively for the personal medical purposes of no more than three specified qualified parties in the following locations, so long as the locationpatients for whom he or she is otherwise permitted by this title and applicable State laws:

1. A clinic licensed pursuant to Chapter 1 of Division 2the primary caregiver within the meaning of Section 11362.7 of the Health and Safety Code, but who does not receive remuneration for these activities except for compensation in full compliance with Section 11362.765(c) of the Health and Safety Code;

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- ~~2. A health care facility licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code;~~
  - ~~3. A residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 of Division 2 of the Health and Safety Code; provided that~~
  - ~~4. A residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code;~~
  - ~~5. A residential hospice licensed pursuant to Chapter 8 of Division 2 of the Health and Safety Code; or~~
  - ~~6. A home health agency licensed pursuant to Chapter 8 of the Health and Safety Code, as long as any such use cannabis cultivating, drying, curing, processing, and storing complies strictly with applicable law including, but not limited to, Health and Safety Code § 11362.5 et seq. section 130.14.260.~~
- D. *Medical ~~marijuana~~cannabis distribution facilities prohibited.* The establishment, maintenance, or operation of any medical ~~marijuana~~cannabis distribution facility shall be prohibited, and no use permit, variance, building permit, or any other applicable entitlement for use, including, but not limited to, the issuance of a business license, shall be approved or issued for the establishment or operation of a medical ~~marijuana~~cannabis distribution facility. The County, however, shall not enforce the provisions of this section with respect to medical ~~marijuana~~cannabis distribution facilities that were existing as of the effective date of the ordinance from which this section is derived for at least six months prior to October 30, 2011 and, within 60 days of the effective date of the ordinance from which this section is derived, submitting that, no later than January 31, 2018, apply for a state license and submit documentation to the County Planning ~~Division~~and Building Department demonstrating all of the following:
1. Location within a commercial zone district;
  2. Continuous operation for a period of at least six months prior to October 30, 2011; and and continuous operation since October 30, 2011;
  3. Compliance with ~~State~~state law, ~~including, but not limited to, the Medical Marijuana Program Act.~~;
- ~~Such documentation shall also include a~~ 4. A detailed description of the full operations of the facility, including the hours of operation and the number of employees; and
5. Any other information requested by the County Planning and Building Department.

Those operations submitting documentation that the County finds satisfactory will be allowed to continue to operate without any expansion and at the same level of intensity with the same square footage without any expansion as existed on October 30, 2011, subject to reasonable conditions and regulations, including conditions on time of use, as

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may be established by the County, ~~subject to the County's regulations on nonconforming uses.~~

Nothing in this section or the County's authorization under Business and Professions Code Section 26055(g) of these limited distribution facilities shall provide those distribution facilities with the ability to continue operating and the County may, at a future date, ban all commercial cannabis distribution facilities at which time any state license would be subject to revocation under Business and Professions Code Section 26200(c).

E. *Zoning; shared facilities.* A medical ~~marijuana~~cannabis distribution facility as defined in Subsection 2.B of this section shall not be established, operated, or maintained at any location in any zone district in the unincorporated areas of the County, even if the medical ~~marijuana~~cannabis distribution facility is located within, or operated with one or more additional otherwise permitted use, including, but not limited to: a health food store, bakery, tobacco shop, other retail store, health education facility, health spa, fitness facility, wellness center, or a health facility other than a licensed facility identified in Subsection 2.C of this section.

F. *Penalties.*

1. Any person, firm, partnership, association, corporation, or other entity, whether as principal agent, employee, or otherwise, who owns the property upon which a medical ~~marijuana~~cannabis distribution facility is located or owns or operates a medical ~~marijuana~~cannabis distribution facility, or otherwise violates any of the provisions of this section shall be guilty of a misdemeanor or infraction at the discretion of the district attorney.

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. If charged as an infraction, the violation shall be punishable by a fine not exceeding \$100.00 for the first violation, \$250.00 for the second violation within one year, and \$500.00 for each additional violation within one year. 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.

3. In addition to the above, enforcement of this section shall be subject to the provisions of Chapters 130.12 and 9.02. Any

~~4. Primary responsibility for enforcement of this section shall vest with the County Sheriff and his or her sworn officers. All other County officers with authority to enforce this Code shall also have the authority to enforce this section.~~

~~5. In addition to the foregoing, any~~ violation of this section shall constitute a public nuisance and shall be subject to abatement as provided by all applicable provisions of law, including but not limited to Chapter 9.02. Enforcement of this section under

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Chapter 9.02 shall be subject to the increased fines and expedited deadlines of section 130.14.260(2)(I) for each and every day, or portion of a day, that a violation exists.

4. ~~To that end, the~~ All County officers with authority to enforce this Code shall also have the authority to enforce this section.

5. The remedies provided herein are cumulative to all other remedies now or hereafter available to abate or otherwise regulate or prevent public nuisances.

G. *Section declarative of existing law.* Except as otherwise provided herein, nothing in this section shall be construed to legalize any existing dispensaries, collectives, cooperatives, or other facilities currently operating in the County, whether they are operating with or without a business license.

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.

Sec. 130.14.260 - Outdoor ~~medical marijuana~~ Medical Cannabis Cultivation for Personal Use.

1. *Findings.*

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 ~~marijuana~~ cannabis for specified medical purposes to obtain and use ~~marijuana~~ cannabis under limited, specified circumstances. The CUA provided a limited exception from criminal prosecution under ~~State~~ state law for the cultivation, possession, and use of ~~marijuana~~ cannabis for specified medical purposes. The CUA ~~does~~ did not address land use, zoning, or building code impacts or issues that arise from ~~marijuana~~ 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 ~~State~~ California Legislature to clarify the

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scope of the Compassionate Use Act. The MMPA allows cities, counties, and other governing bodies to adopt and enforce rules and regulations consistent with the MMPA.

~~E.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 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.

H. The County zoning ordinance contained in this title currently does not make any distinction between the cultivation of medical ~~marijuana~~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 ~~marijuana~~. ~~However, under State law, medical marijuana is not considered an agricultural crop~~cannabis.

~~F.~~ ~~Further, since State law does not consider medical marijuana an agricultural crop, there are no regulations governing the type or amounts of pesticides or fungicide used on marijuana plants. This poses a threat not only to the users of the marijuana, but to consumers of agricultural crops grown in proximity to the marijuana.~~

GI. The cultivation of ~~marijuana~~cannabis has the potential for increased crime, intimidation, and threats. As ~~marijuana~~cannabis plants mature, certain varieties can develop a strong odor ~~which~~that creates an attractive nuisance by alerting people to the location of valuable ~~marijuana~~cannabis plants; this creates an increased risk of crimes including burglary, trespassing, robbery, and armed robbery. Law enforcement officers have reported an increase in calls from reported respiratory problems and allergic reactions to ~~marijuana~~cannabis plants.

HJ. Unlimited area for ~~marijuana~~cannabis cultivation exceed the amounts reasonably grown to serve as medical ~~marijuana~~cannabis for residents of the land where the cultivation occurs, or patients under the care of the grower, and would likely be criminal operations.

IK. 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

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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.

JL. 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 ~~marijuana~~cannabis plants offensive; the standards will limit incompatible uses on smaller lots and protect the public safety and welfare.

M. 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.

N. Since enactment, criminal enforcement of 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.

2. *Cultivation.*

A. *Purpose.* The purpose of this section is to regulate with zoning standards the outdoor cultivation of medical ~~marijuana~~cannabis for personal, non-commercial use by authorized individuals under ~~the Compassionate Use Act of 1996 and the Medical Marijuana Program Act~~existing state law while protecting the health, safety, and welfare of adjacent property owners, minimizing law enforcement effort, limiting availability of and exposure to ~~marijuana~~cannabis by the youth of El Dorado County, and protecting the environment and public resources.

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:

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

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

*Cultivation or cultivating* means the planting, growing, or harvesting, ~~drying, processing, or storage~~ of one or more ~~marijuana~~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).



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*Medical ~~marijuana~~ or medicinal cannabis* means ~~marijuana~~cannabis grown for ~~personal medicinal use by a person with a cannabis identification card under Health and Safety Code Section 11362.71, a qualified patients, persons with a valid doctor's recommendation, and the designated patient, or a primary caregivers of qualified patients for medical purposes, caregiver as provided in~~contemplated by Health and Safety Code ~~§ 11362.775.~~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, constructed of solid materials, accessible only through one or more locking doors. For purposes of this section, cultivation within a greenhouse or hoop house shall be considered outdoor cultivation.

*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 ~~the~~an individual designated by ~~the~~a patient who has consistently assumed responsibility for the housing, health, or safety of that ~~person, patient~~ and ~~shall imply~~includes a caretaking relationship directed at the core survival needs of a seriously ill patient, as that meaning is set forth in ~~Proposition 215 and Senate Bill 420.~~Health and Safety Code Section 11362.7(d).

*Qualified patient* shall have the meaning set forth in ~~Proposition 215~~Health and ~~Senate Bill 420.~~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 ~~it~~ 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, ~~or the individuals who regularly patronize, congregate or assemble at the establishment of predominantly minors.~~

C. *Nuisance declared.* Any violation of this section is hereby declared to be a public nuisance. The outdoor cultivation of ~~marijuana~~cannabis plants is ~~hereby~~also declared to be a public nuisance and is prohibited in all zone districts, except as provided in Subsection 2.D of this section.

D. *Cultivation standards.*

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1. *Size of outdoor cultivation area.* Notwithstanding the limits set forth below, no person may cultivate more than 200 square feet of medical ~~marijuana~~cannabis for personal use. The maximum area on a premises that may be used for the outdoor cultivation of medical ~~marijuana~~cannabis shall be as follows:
  - a. Lots zoned R1, R20,000, R1A, R2A, and R3A: 200 square feet;
  - b. Lots zoned ~~RE-5, RE-10, A~~ and SA10RL: 400 square feet;
  - c. Lots zoned ~~RA-20, RA-40, RA-80, RA-160, PA, APAG, FR, LA~~, and AEPA: 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 ~~the~~ cultivation ~~areas~~area shall be five feet.

2. *Screening.* ~~Areas where medical marijuana is cultivated~~Medical cannabis shall be screened from public view so that no part of a plant can be seen from an adjacent to the premises-street or adjacent parcel. Screening shall be accomplished by use of a greenhouse or hoop house or by fencing, structures 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.
3. *Security.* Areas where medical ~~marijuana~~cannabis is cultivated, the ~~property~~premises on which medical ~~marijuana~~cannabis is cultivated, or a portion thereof ~~which~~that includes the cultivation area shall be secured by a 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.
4. *Distance from youth-oriented facilities.* The outdoor cultivation of medical ~~marijuana~~cannabis shall be located a minimum of 1,000 feet from any school, school bus stop, church, park, child care center, or youth-oriented facility.
  - a. If the premises on which medical ~~marijuana~~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 boundary of the premises on which the medical ~~marijuana~~cannabis is cultivated to the boundary of the premises on which the school, school bus stop, church, park, or youth oriented facility is located.
  - b. If the premises on which medical ~~marijuana~~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.~~23~~23 of this section to the boundary of the premises on which the school, school bus stop, church, park, or youth oriented facility is located.

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5. *Setbacks.* The cultivation area set forth in Subsection 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-5, RE-10, A, SA10, RA-20, RA-40, RA-80, RA-160, PA, AP,~~ RL, AG, FR, LA, and AEPA: 100 feet.
6. *Residency.* The primary place of residence for persons engaging in the outdoor cultivation of medical marijuanacannabis shall be the premises on which the medical marijuanacannabis is cultivated. For collective cultivation as provided in Subsection 2.E of this section, the premises on which the medical marijuanacannabis is cultivated shall be the principal primary residence of at least one of the persons for whom the medical marijuanacannabis is being cultivated. Only those premises with a permitted dwelling unit shall be used for the outdoor cultivation of medical marijuanacannabis.
7. *Property owner authorization.* If ~~the~~ a person ~~planting, cultivating and/or harvesting~~ medical marijuanacannabis on any legal parcel is/~~are~~ 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 ~~and/or harvesting~~ of medical marijuanacannabis on the parcel. Cultivation by a non-owner in the absence of notarized written permission constitutes a violation of this section.
8. *Environmental requirements.*
  - a. All persons engaging in the cultivation of medical marijuanacannabis 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, ~~and;~~
    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 section 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 marijuanacannabis takes place shall either be connected to a public sewer system or have a County inspected and approved sewage disposal system.

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- c. Persons engaging in the cultivation ~~and/or harvest~~ of medical ~~marijuana~~cannabis shall use, dispose, and store chemicals used in such cultivation pursuant to applicable laws and labeling requirements.
9. *Disposal of waste material.* ~~Marijuana~~Cannabis waste material shall be disposed of ~~lawfully in accordance with existing state and local laws and regulations at the time of disposal.~~ Burning of medical ~~marijuana~~cannabis waste material is prohibited.
10. *Contact information.* The names, contact information, ~~a~~ doctor's recommendation for each person cultivating or participating in the cultivation of ~~marijuana~~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 ~~law~~ enforcement personnel at the time of inspection.
11. *Odor.* The ~~outdoor cultivation~~cultivating, drying, curing, processing, and storing of medical ~~marijuana~~cannabis shall not adversely affect the health, safety, or enjoyment of property of persons residing near the property on which medical ~~marijuana~~cannabis is cultivated due to dust, noise, smoke, or odors ~~which 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 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.
12. Once harvested, cannabis shall only be dried, cured, processed, or stored in a greenhouse, hoop house, 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 ~~marijuana~~cannabis distribution facility provided in Section 130.14.250, not more than three persons may collectively cultivate medical ~~marijuana~~cannabis for their

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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 ~~marijuana~~cannabis shall supersede the provisions of the right to farm ordinance in ~~Chapter~~Section 130.1340.290 and any other provision in this Code that defines or allows cultivation of crops or agricultural products to the extent that those provisions can be read in a manner inconsistent with this prohibition.

G. Registration.

1. Any person cultivating cannabis under this section shall register annually with the El Dorado County Planning and Building Department and provide all of the following current information and documentation to the Planning and Building Department:

- a. The name and contact information of each person owning, leasing, occupying, or having charge or possession of the premises and, if the person cultivating is not the owner, a copy of the written authorization under section 130.14.260(2)(D)(7);
- b. The name of each patient with a medical cannabis identification card as defined in Health and Safety Code section 11362.71, qualified patient, or primary caregiver;
- c. A copy of the current medical cannabis identification card or valid medical recommendation for each patient and for each patient for whom any person is the primary caregiver;
- d. The total square footage and number of cannabis plants cultivated on the premises; and
- e. Such other information and documentation as the Planning and Building Department determines is necessary to ensure compliance with state law and this section.

2. Upon receiving a registration, the Planning and Building Department shall provide the registrant with a registration packet that includes a copy of this Chapter. The registration packet shall inform the registrant that failure to comply with this Chapter could result in the removal and destruction of cannabis plants. The Planning and Building Department shall confirm the registrant's receipt of

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- this packet in writing. Failure to provide the registration packet or obtain confirmation of receipt of the packet shall not affect or diminish the ability to enforce this Chapter.
3. Failure to register each year by March 1st shall constitute a violation of this section subject to the enforcement and penalties provided herein.
  4. ~~Abatement~~ Registration shall be in the name of a person and no registration will be accepted in the name of a corporation, partnership, non-profit, joint venture, coalition, collaborative, or any other entity. Cultivation authorized under this section 130.14.260 does not extend to a corporation, partnership, non-profit, joint venture, coalition, collaborative, or any other entity.
  5. Information and documentation received through registration shall be received in confidence and shall be used or disclosed only for purposes of administration or enforcement of this section or state law, or as otherwise required by law. A registrant may redact any diagnosis or other medical information from any medical recommendation or other document submitted as a part of registration.
  6. Every registration under this section shall be valid for no more than one calendar year and shall expire on December 31st of that year, unless the address of the registrant changes, upon which case the registration shall expire when the registrant moves and any new registration within the County shall be filed within 15 days of moving. An expired registration shall be renewed in the same manner as an initial registration hereunder. In the event that the registration for any calendar year is submitted after March 1st of that year, the registrant shall pay a late registration penalty equal to fifty percent of the applicable registration fee. The Director of the Planning and Building Department may waive the late registration penalty if the failure to timely register was due to reasonable cause and not due to willful neglect.
  7. The receipt of registration under this section shall not be deemed or construed to be a permit for or approval of any violation of this section or state or federal law. The receipt of registration shall not prevent the enforcing officer from thereafter requiring correction of violations or from preventing cannabis cultivation being carried out thereunder when in violation of this section 130.14.260.
  8. The Planning and Building Department shall not accept registration under this section if the applicant has unpaid fines or costs of abatement resulting from prior enforcement of a violation of this section 130.14.260.
  9. The Board of Supervisors may, by resolution, establish a fee for such annual registration in accordance with all applicable legal requirements.

H. Criminal Enforcement.

1. 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 marijuana~~cannabis~~ is cultivated outdoors, except as provided in Subsection 2.D of this section, or owns the medical marijuana~~cannabis~~ that is cultivated ~~outdoors~~ or otherwise violates any of the provisions of this section can be charged with a misdemeanor ~~or infraction at the discretion of the District Attorney.~~
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. ~~If charged as an infraction, the violation shall be punishable by a fine not exceeding \$100.00 for the first violation, \$250.00 for the second violation within one year, and \$500.00 for each additional violation within one year.~~ 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.

~~3.~~

I. Administrative Enforcement and Abatement.

In addition to ~~the above,~~criminal enforcement, a violation of this section shall be subject to deemed a public nuisance and shall be subject to enforcement as provided herein and the provisions of Chapters 130.12 and 9.02.

1. ~~4. Primary responsibility for enforcement Pursuant to section 9.02.020(B), the higher fines of this section shall vest with the County Sheriff and his or her sworn officers. All other County officers with authority to enforce this Code shall also have the authority to enforce this section.~~ control in any administrative enforcement action.
2. ~~5. In addition~~A notice to correct or notice to abate issued under Chapter 9.02 shall provide 72 hours for the foregoing, any violation responsible person to correct or abate the violation and shall identify the administrative fines of this section shall constituteif the violation is not corrected or abated within 72 hours.
3. For any violation not corrected within the 72-hour notice to correct, an administrative fine of \$500 per day, per violation will accrue for each and every day, or portion of a public nuisance and shall be subject to 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

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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 \$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 \$5,000 per day, per violation for each and every day, or portion of a day, that a violation exists, and the County may decline to accept registration under section 130.14.260(2)(G) for 12 months from the date of the third violation provided that the registration is for the same person or the same premises if the property owner remains the same.

4. Notwithstanding section 9.02.390, a request for an administrative hearing under Chapter 9.02 must be made within three days of service of the notice to correct, administrative citation, or notice to abate and the hearing shall be held within five days of the request for a hearing.
5. The decision of the Hearing Officer under section 9.02.440 shall be issued within five 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 ~~provided by all applicable provisions of law. To that end, the~~ part of the abatement action because they are in excess of the allowable square footage, 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 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 will remain.
7. Unless a notice is personally served, any notice provided under this section shall be mailed under section 9.02.120 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. 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.~~

**H**

- I. Administrative relief. Any person who, cannot comply with the provisions of this section due to undue ~~hardship~~hardship and unique circumstances applying to the property on which outdoor medical ~~marijuana~~cannabis is cultivated or is proposed to be



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cultivated, ~~cannot comply with the provisions of this section~~ 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 ~~Community Development Agency Director~~ 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 ~~Director~~ 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 ~~Director~~ 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 ~~Director's~~ Chief Administrative Officer's action may be filed as provided in ~~Section~~ section 130.22.22052.090 except that any appeal shall be heard by the Board of Supervisors and may be filed within one year of the ~~Director's~~ Chief Administrative Officer's action.
4. The ~~Director~~ Chief Administrative Officer may refer the matter to the Board of Supervisors at his or her discretion.
5. The ~~Director~~ 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 ~~law~~-enforcement personnel at the time of inspection.

IK. *No authorization, defense, or immunity.* Nothing herein shall confer on any person the right to maintain a public or private nuisance. ~~Except for 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 purposes or to allow any activity relating to the cultivation, distribution, or consumption of cannabis that is otherwise illegal under state or federal law.

JL. *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 ~~marijuana~~ cannabis cultivation, to prosecute a violation of this section, ~~nor~~ or to take any other action with regard to any unlawful ~~marijuana~~ cannabis cultivation. Furthermore, ~~neither~~ the Sheriff, ~~the~~ District Attorney, ~~nor~~ the County, and any of their officers or employees shall not be held liable for failure to abate any unlawful ~~marijuana~~ cannabis

cultivation, to prosecute a violation of this section, ~~nor~~ to take any other action with regard to any unlawful ~~marijuana~~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.