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2. 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 \$2,500 per day, per violation for each and every day, or portion of a day, that a violation exists.

3. 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 \$5,000 per day, per violation for each and every day, or portion of a day, that a violation exists.

4. 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 \$10,000 per day, per violation for each and every day, or portion of a day, that a violation exists.

D. Fines for Persons Operating a Commercial Cannabis Activity Without a Commercial Cannabis Use Permit and Commercial Cannabis Annual Operating Permit:

1. For any violation by a person who has not been issued a Commercial Cannabis Use Permit and Commercial Cannabis Annual Operating Permit and who does not correct the violation within the 72-hour notice to correct, an administrative fine of \$5,000 per day, per violation will accrue for each and every day, or portion of a day, that a violation exists.

2. 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 \$10,000 per day, per violation for each and every day, or portion of a day, that a violation exists.

3. 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 \$25,000 per day, per violation for each and every day, or portion of a day, that a violation exists.

4. 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 \$50,000 per day, per violation for each and every day, or portion of a day, that a violation

exists.

5. If the violation is for operating without a Commercial Cannabis Use Permit and Commercial Cannabis Annual Operating Permit, the fine shall be tolled from the date the application is submitted until the permit is granted or denied by the County provided that all fines accrued prior to the date the permit is submitted are paid with the permit. If the violation is for failure to comply with the regulations of the County Code for the particular commercial cannabis activity, the fines shall not be tolled during the period that an application for a commercial cannabis activity permit is under review.

E. Each plant cultivated outside of the square footage provided for in the Commercial Cannabis Annual Operating Permit shall be deemed a separate violation. The determination of the plants outside of the permitted square footage shall be made with reference to the cultivation site plan submitted with an application. Each retail sale or attempted retail sale of cannabis shall be deemed a separate violation.

F. 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.

G. The decision of the Hearing Officer under section 9.02.440 shall be issued within five days of completion of the hearing.

H. A notice to abate or decision of a Hearing Officer requiring abatement shall provide that, if any plants cultivated under this section are removed as part of the abatement action because they are in excess of the allowable square footage, the responsible person may decide which plants will remain so long as the remaining plants are in compliance with the Commercial Cannabis Annual Operating Permit. 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.

I. 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 business or cultivation site, or other place reasonably anticipated to provide notice to the responsible person.

J. 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.

K. All County officers with authority to enforce this Code shall also have the authority to enforce this section.

**12. No authorization, defense, or immunity.**

The issuance of a permit under this chapter shall not confer on any person the right to maintain a public or private nuisance or to authorize or facilitate any violation of state or federal law. Except for enforcement actions arising out of this chapter, no provision of this chapter 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 a commercial cannabis activity that is otherwise illegal under state or federal law.

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

**14. Ordinance Declarative of Existing Law.**

Article 2, Chapter 130.20 of the El Dorado County Zoning Ordinance provides that only uses specifically enumerated are permitted and, unless an exemption applies, any unenumerated use is not allowed within the County. Nothing in this ordinance shall be construed to legalize any existing commercial cannabis activity currently operating in the County, whether it is operating with or without a business license.

**15. 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.

**16. Implementation.**



The Planning and Building Department shall have applications available to the public no later than September 30, 2019. The Board of Supervisors may grant an extension of the time to have permits available or any other aspect of implementation based on a finding of unforeseen circumstances, changes in state or federal law, lack of sufficient funding, or other reason necessitating an extension.

Pursuant to California Government Code section 25125, the amendments to this ordinance shall become effective 30 days from the date of final passage.

PASSED AND ADOPTED by the Board of Supervisors of the County of El Dorado at a regular meeting of said Board, held the \_\_\_\_ day of \_\_\_\_\_, 2019, by the following vote of said Board:

Ayes:

Noes:

Absent:

ATTEST

JAMES S. MITRISIN

Clerk of the Board of Supervisors

\_\_\_\_\_  
Deputy Clerk

\_\_\_\_\_  
Sue Novasel, Chair, Board of Supervisors

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

By: \_\_\_\_\_

Breann M. Moebius  
Deputy County Counsel