



ORDINANCE NO. 5075

AN INTERIM ORDINANCE MAKING FINDINGS AND EXTENDING THE TEMPORARY MORATORIUM ON THE ESTABLISHMENT AND OPERATION OF COMMERCIAL CANNABIS ACTIVITIES, TO BECOME EFFECTIVE IMMEDIATELY

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

Section 1. Section 130.14.270 of Title 130, Article 9 of the El Dorado County Ordinance Code entitled "Commercial Cannabis Activities" is hereby extended and amended to read as follows:

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

Sec. 130.14.270 - Commercial Cannabis Activities

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 then codified as Health and Safety Code section 11362.5 et seq., and entitled "The Compassionate Use Act of 1996."
- C. 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 cannabis even if the cultivation or use complies with state law.
- D. In 2016, the voters of the State of California passed Proposition 64, which decriminalized the growth and possession of a limited amount of cannabis for

recreational use by adults over the age of twenty-one and provided for the commercial cultivation and sale of cannabis for recreational use.

- E. 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 of medicinal cannabis was most recently under the Medical Cannabis Regulation and Safety Act (“MCRSA”) and regulation of adult recreational cannabis was under the Control, Regulate and Tax Adult of Marijuana Act (“AUMA”). MAUCRSA does not address land use, zoning, or building code impacts resulting from commercial cannabis activities and allows local governments to adopt and enforce rules and regulations consistent with MAUCRSA.
- F. After the passage of MAUCRSA, the California Bureau of Cannabis Control withdrew its commercial cannabis regulations and released emergency regulations on November 16, 2017 for public review. The controlling regulations by the Bureau of Cannabis Control and other state regulatory agencies are still developing and state cannabis law is continually shifting.
- G. Under the CSA, all commercial cannabis activities remain illegal and the federal government has not given clear direction as to whether it will pursue criminal or civil enforcement against individuals engaged in commercial cannabis activities or local governments that allow or regulate commercial cannabis activities. On January 4, 2018, Attorney General Jefferson B. Sessions issued a memorandum to all United States Attorneys regarding “Marijuana Enforcement” that emphasized prosecutorial discretion and rescinded “previous nationwide guidance specific to marijuana enforcement,” which had limited certain federal prosecutions involving marijuana.
- H. Despite the uncertainty at the federal and state levels, the Bureau of Cannabis Control, Manufactured Cannabis Safety Branch, and CalCannabis Cultivation Licensing have begun issuing licenses for commercial cannabis activities.
- I. Against the backdrop of these uncertainties and the limited time as the controlling law develops, El Dorado County has been unable to meaningfully examine or draft regulations addressing potential impacts to the public safety, health, and welfare and the environment from commercial cannabis activities. Nor does El Dorado County currently have an adequate program in place to effectively enforce regulations of new uses for commercial cannabis to protect the public and environment.
- J. Citizens and law enforcement officers have reported an increase in criminal behavior, traffic, odor, disturbances, and noise in the vicinity of existing illegal commercial cannabis grows and the sale of illegal drugs, including the illegal resale of cannabis from dispensaries, in the areas immediately surrounding cannabis grows and medical cannabis dispensaries.

K. Health and Safety Code section 11362.83 and Business and Professions Code section 26200 preserve the authority of local governments to enact local ordinances allowing or banning commercial cannabis activities. 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 and regulations.

L. On December 12, 2017, the Board of Supervisors adopted Ordinance 5071 imposing a forty-five-day moratorium on the establishment and operation of commercial cannabis activities that would expire unless extended pursuant to Government Code section 65858.

2. *Imposition of Moratorium on Commercial Cannabis Activities.*

A. Pursuant to Government Code section 65858, subdivision (b), and with the exception of any existing medical cannabis distribution facilities that satisfy all of the requirements of section 130.14.250(2)(D) of the El Dorado County Code, the establishment or operation of any commercial cannabis activity is prohibited in the unincorporated areas of the County 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 commercial cannabis activity for a period of two years from December 12, 2017.

B. With the exception of any existing medical cannabis distribution facilities that satisfy all of the requirements of section 130.14.250(2)(D) of the El Dorado County Code, a facility engaged in a commercial cannabis activity shall not be established, operated, or maintained at any location in any zone district in the unincorporated areas of the County, even if the facility engaged in a commercial cannabis activity is located within or operated with one or more additional otherwise permitted use(s), including but not limited to a health food store, bakery, tobacco shop, retail store, health education facility, health spa, fitness facility, wellness center, or health facility.

C. *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:

i. "Commercial cannabis activity" includes any activity involving the cultivating, harvesting, processing, drying, curing, storing, trimming, manufacturing, labeling, transporting, delivering, or laboratory testing of cannabis or cannabis products for the sale, distribution, gifting, or donating to any other person regardless of whether the activity involves medicinal or adult recreational cannabis or cannabis products, is operated for profit, or is in compliance with state laws and regulations. "Commercial cannabis activity" does not include any activity expressly allowed under Business and

Professions Code section 26033, Health and Safety Code section 11362.1, and County Code section 130.14.260 or the transportation of cannabis or cannabis products on public roads by a transporter licensed under state law.

ii. "Cannabis" means all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. "Cannabis" also means the separated resin, whether crude or purified, obtained from cannabis. "Cannabis" does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, the sterilized seed of the plant which is incapable of germination, or "industrial hemp" as defined by section 11018.5 of the Health and Safety Code. (Business & Professions Code, § 26001.)

iii. "Cannabis products" 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. (Health & Safety Code, § 11018.1.)

iv. "Person" includes any individual, firm, partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit, whether as principal, agent, employee, or otherwise, and the plural as well as the singular. (Business & Professions Code, § 26001.)

D. This ordinance is an interim ordinance adopted as an urgency measure pursuant to Government Code section 65858 and is for the immediate preservation of the public safety, health, and welfare. Based on the findings in section 1 of this ordinance, the facts constituting the urgency are: California regulatory agencies have begun issuing licenses for commercial cannabis activities and the legal framework surrounding such activities is uncertain given the recent changes in state law and uncertainty as to whether the federal government will enforce the CSA. California jurisdictions that have permitted commercial cannabis activities have recognized negative secondary effects, such as an increase in crime, including burglary, robbery, and the sale of illegal drugs, in the areas immediately surrounding the commercial cannabis activities and harmful effects to the environment from commercial cultivation that pose a risk to public health and welfare. The County does not currently authorize any commercial cannabis activities with the narrow exception of existing dispensaries under section 130.14.250(2)(D). Nonetheless, legalization and regulation at the state level has led to confusion about what is authorized in the County and, in the absence of an express ban, this confusion could result in the inadvertent issuance of a state license or new or continued illegal commercial cannabis activities. At this early stage, the County lacks a

sufficient program and funding at this time to regulate any new commercial cannabis activity in order to protect the public safety, health, and welfare and needs sufficient time to consider and address the risks to public safety, health, and welfare from any commercial cannabis activity. Absent the adoption of this urgency ordinance, the establishment and operation of additional commercial cannabis activities in the County would result in increases to the harmful secondary effects identified. As a result of the harmful secondary effects associated with commercial cannabis activities, the current and immediate threat such secondary effects pose to the public safety, health, and welfare, and the uncertainty of state and federal law addressing commercial cannabis activities, it is necessary to, in accordance with Government Code section 65858, temporarily establish a two-year moratorium on the establishment and operation of any new commercial cannabis activities in the County pending the completion of the amendments to the County's Zoning Ordinance.

- E. The Board of Supervisors hereby directs the Cannabis Advisory Committee to consider and study possible means to regulate or prohibit commercial cannabis activities, including possible amendments to the County Zoning Ordinance and the means to fund the regulation and enforcement of any new commercial cannabis activities. The Board further directs the Cannabis Advisory Committee to study and create ballot measures for different cannabis commercial uses tied to taxation for a local election.

3. *Penalties.*

- A. Any person who engages or attempts to engage in any commercial cannabis activity, owns the property upon which a commercial cannabis activity is conducted, or otherwise violates or attempts to violate any of the provisions of this ordinance can be charged with a misdemeanor or infraction at the discretion of the district attorney.
- B. 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.
- C. In addition to the above, enforcement of this section shall be subject to the provisions of Chapter 9.02. 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 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.

- D. All County officers with authority to enforce this Code shall also have the authority to enforce this section.
- E. The remedies provided herein are cumulative to all other remedies now or hereafter available to abate or otherwise regulate or prevent public nuisances.

4. *Ordinance Declarative of Existing Law.*

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. The County Zoning Ordinance does not authorize any commercial cannabis use and thus any such use is currently prohibited. 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.

5. *Compliance with California Environmental Quality Act.*

The Board of Supervisors finds that this ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to section 15060(c)(2) of the CEQA Guidelines (Title 14, Chapter 3 of the California Code of Regulations) because the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment; section 15060(c)(3) because the activity is not a "Project" as defined in section 15378 since the moratorium has no potential for resulting in physical change to the environment, directly or indirectly; and section 15308 because the proposed amendments are intended to protect the environment.

6. *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.

7. *Effective Date.*

This ordinance shall become effective immediately upon adoption, if adopted by at least four-fifths vote of the County Board of Supervisors. Pursuant to Government Code section 65858, subdivision (b), the ordinance shall be in effect an additional twenty-two months and fifteen days from the expiration of the original forty-five days of effectiveness of Ordinance 5071. This ordinance shall have no further force and effect after 11:59 p.m. on December 12, 2019.

PASSED AND ADOPTED by the Board of Supervisors of the County of El Dorado at a regular meeting of said Board, held the 23rd day of January, 2018, by the following vote of said Board:

ATTEST

JAMES S. MITRISIN

Clerk of the Board of Supervisors

Kyra Schaufenberg
Deputy Clerk

Ayes: Veerkamp, Novasel, Frentzen, Hidahl
Ranalli

Noes: None

Absent: None

Shiva Frentzen
Shiva Frentzen, Chair, Board of Supervisors
Michael Ranalli

APPROVED AS TO FORM
MICHAEL J. CICCOTZI
COUNTY COUNSEL

By: *Bre Moebius*

Breann M. Moebius
Deputy County Counsel