



ORDINANCE NO. 5109

**AN ORDINANCE ADDRESSING THE PERMITTING AND ENFORCEMENT OF
INDEPENDENTLY AUTHORIZED COMMERCIAL CANNABIS ACTIVITIES**

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

Section 1. Section 130.14.290 of Title 130, Article 9 of the El Dorado County Ordinance Code entitled "Commercial Cannabis Activities Permitting and Enforcement" is hereby renumbered as Section 130.41.100 of Title 130, Article 4, and amended to read as follows:

**ARTICLE 4 – SPECIAL USE REGULATIONS
CHAPTER 130.41– COMMERCIAL CANNABIS**

Sec. 130.41.100 – Commercial Cannabis Activities Permitting and Enforcement.

1. Applicability.

A. The purpose of this section is to provide for the permitting and enforcement procedures to regulate commercial cannabis activities that are independently authorized in a separate chapter. Nothing in this section is intended to authorize any commercial cannabis activity.

B. While this ordinance was originally enacted by voters, the Board of Supervisors retains discretion to amend the ordinance in any way, including but not limited to all procedures provided herein, permit requirements, and penalties, without further voter approval.

2. Definitions.

The terms and phrases in this section, any County Code authorizing a commercial cannabis activity, and Chapter 3.22 (Taxation of Commercial Cannabis Activities) shall have the meaning ascribed below, unless the context in which they are used clearly suggests otherwise. For any term not defined, the definition shall be that given by the state in the most current cannabis statutes or regulations.

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.)

Cannabis business means any person engaged in any commercial cannabis activity.

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; Revenue & Taxation Code, § 34010.)

Canopy means the designated area(s) at a licensed premises, calculated in square feet, that will contain mature plants at any point in time, as follows:

(1) For indoor and mixed-light cultivation and nurseries, canopy shall be calculated in square feet and measured using the room boundaries, walls, or ceiling-to-floor partitions of each enclosed area that will contain mature plants at any point in time, including all of the space(s) within the boundaries. If mature plants are being cultivated using a shelving system, the surface area of each level shall be included in the total canopy calculation.

(2) For outdoor cultivation and nurseries, canopy shall be calculated in square feet and measured using physical boundaries of all area(s) that will contain mature plants at any point in time, including the space within the boundaries. Canopy may be noncontiguous, but each unique area included in the total canopy calculation shall be separated by a physical boundary, such as a fence, hedgerow, garden plot, or other stable, semipermanent structure that clearly demarcates the canopy edge.

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

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

Commercial cannabis activity includes any activity involving the propagating, cultivating, harvesting, processing, drying, curing, storing, trimming, manufacturing, packaging, labeling, transporting, delivering, possessing, distributing, 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 Title 130, Article 9, section 130.14.260 (Outdoor Medical Cannabis Cultivation for Personal Use) or the transportation of cannabis or cannabis products through the County without delivery within the County on public roads by a transporter licensed under state law.

Commercial Cannabis Activities Tax means the tax due under this article for engaging in the commercial cannabis activities in the unincorporated area of the County.

Commercial cannabis operation includes all of the commercial cannabis activities performed at a premises by one person as a single operation regardless of the number of individual permits or state licenses required and regardless of whether the activity involves medicinal or adult recreational cannabis or cannabis products.

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

Delivery means the commercial transfer of cannabis or cannabis products to a customer and includes the use by a retailer of any technology platform. (California Business and Professions Code, § 26001.)

Distribution means the procurement, sale, and transport of cannabis and cannabis products between licensed cannabis businesses, but not the direct sale or transport to the general public.

Distributor means a person engaged in the distribution of cannabis and/or cannabis products between cannabis businesses.

Dried flower means all dead cannabis that has been harvested, dried, cured, or otherwise processed, excluding leaves and stems.

Flowering means that a cannabis plant has formed a mass of pistils measuring greater than one half inch wide at its widest point.

Gross receipts shall have the same meaning as set forth in California Revenue and Taxation Code Section 6012.

Immature plant or *immature* means a cannabis plant that has a first true leaf measuring greater than one half inch long from base to tip (if started from seed) or a mass of roots measuring greater than one half inch wide at its widest point (if vegetatively propagated), but which is not flowering.

Indoor cultivation means the cultivation of cannabis within a permanent structure using exclusively artificial light or within any type of structure using artificial light at a rate above twenty-five watts per square foot.

Infusion means a process by which cannabis, cannabinoids, or cannabis concentrations are directly incorporated into a product formulation to produce a cannabis product.

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).

Manufacture means all aspects of the extraction and/or infusion processes, including processing, preparing, holding, storing, packaging, or labeling of cannabis, cannabis products, or other components and ingredients that is performed pursuant to a license issued by the California Department of Public Health's Manufactured Cannabis Safety Branch.

Mature plant means a cannabis plant that is flowering.

Medical or *medicinal cannabis* means cannabis grown for personal medicinal use by a qualified patient as defined in Health and Safety Code section 11362.7 or a person with a valid cannabis identification card issued under Health and Safety Code Section 11362.71.

Mixed-Light Cultivation means the cultivation of mature cannabis in a greenhouse, hoop-house, glass house, conservatory, hothouse, or other similar structure using a combination of natural light or light deprivation and artificial lighting at a rate of six watts per square foot or less.

Nursery means all activities associated with producing clones, immature plants, seeds, and other agricultural products used specifically for the propagation and cultivation of cannabis.

Organic certification standards means the organic certification adopted by the California Department of Food and Agriculture for cannabis pursuant to Business and Professions Code section 26062.

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.

Owner means any person that constitute an "owner" under the regulations promulgated by the Bureau of Cannabis Control and (1) a person with any ownership interest, however small, in the person applying for a permit, unless the interest is solely a security, lien, or encumbrance; (2) the chief executive officer of a nonprofit or other entity; (3) a member of the board of directors of a nonprofit entity; (4) a person who

will be participating in the direction, control, or management of the person applying for a permit, including but not limited to a general partner of a partnership, a non-member manager or managing member of a limited liability company, and an officer or director of a corporation; or (5) a person who will share in any amount of the profits of the person applying for a permit or has a financial interest, as defined by the regulations promulgated by the Bureau of Cannabis Control, in the person applying for the permit.

Person means any individual, firm, partnership, joint venture, association, corporation, limited liability company, cooperative, collective, organization, entity, 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.

Premises means a single, legal parcel of property. Where contiguous legal parcels are under common ownership or control, such contiguous legal parcels may be counted as a single “premises.”

Process or *processing* means all cannabis business activities associated with drying, curing, grading, trimming, storing, packaging, and labeling of raw cannabis, or any part thereof, for transport.

Processor means a cultivation site that conducts only trimming, drying, curing, grading, packaging, or labeling of cannabis and nonmanufactured cannabis products.

Propagate or *propagation* means to cultivate immature plants from cannabis plant cuttings or seeds.

Retail sale, *sell*, and *to sell* means any transaction whereby, for any consideration, title to cannabis or cannabis products is transferred from one person to another, and includes the delivery of cannabis or cannabis products pursuant to an order placed for the purchase of the same and soliciting or receiving an order for the same, but does not include the return of cannabis or cannabis products by a cannabis permittee to the cannabis permittee from whom the cannabis or cannabis product was purchased.

School means an institution of learning for minors, whether public or private, offering a regular course of instruction required by the California Education Code. This definition includes a nursery school, kindergarten, elementary school, middle or junior high school, senior high school, or any special institution of education, but does not include a home school or vocational or professional institution of higher education, including a community or junior college, college, or university.

School bus stop means any location designated in accordance with California Code of Regulations, Title 13, Section 1238, to receive school buses, as defined in Vehicle Code Section 233, or school pupil activity buses, as defined in Vehicle Code Section 546.

Testing laboratory or *laboratory* means a laboratory, facility, or entity in California that offers or performs tests of cannabis or cannabis products and that is accredited by an accrediting body that is independent from all other persons involved in commercial cannabis activity in the state.

Transport or *transportation* means the transfer of cannabis from the licensed cannabis business site of one state commercial cannabis licensee to the state licensed cannabis business site of another state commercial cannabis licensee for the purposes of conducting cannabis business activities as authorized pursuant to California Business and Professions Code Section 26000 et seq.

Treasurer-Tax Collector means the Treasurer-Tax Collector of the County of El Dorado, his or her deputies, unless another County officer or employee is assigned by resolution of the Board of Supervisors, to perform all or a portion of the duties as listed herein, in which case, the Treasurer-Tax Collector shall interpreted as the person defined in the resolution.

Watts per square foot means the sum of the maximum wattage of all lights identified in the designated canopy area(s) in the cultivation plan divided by the square feet of designated canopy area(s) identified in the cultivation plan.

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

3. Permits Required.

No person shall engage in any commercial cannabis activity in the unincorporated areas of the County without a valid Commercial Cannabis Use Permit and Commercial Cannabis Annual Operating Permit.

4. Commercial Cannabis Use Permit.

A. A Commercial Cannabis Use Permit shall be subject to Article 5 of Title 130 of the County Code (Application Forms, Submittal Process, and Fees), unless provided otherwise herein. It shall be treated as a Conditional Use Permit under Section 130.52.021 (Conditional Use Permits), subject to the public hearing procedures and recommendation from the Planning and Building Director and decision by the Planning Commission.

B. *Notice to interested parties, cities, and counties.* Prior to the hearing before the Planning Commission, notice of the application shall be provided pursuant to Section 130.04.015. If a commercial cannabis activity is proposed within a one-half mile radius of an incorporated city or county, notice of and an opportunity to comment on the application for the Commercial Cannabis Use Permit shall be provided to the applicable city or county before the permit is considered by the Planning Commission.

C. No Commercial Cannabis Use Permit may be granted unless the applicant demonstrates compliance with all standards in the County Code and state law and regulations for the particular commercial cannabis activity. Any setback for a commercial cannabis activity may be reduced in a Commercial Cannabis Use Permit so long as the applicant demonstrates that the actual setback will substantially achieve the purpose of the required setback and that the parcel was owned or leased by the applicant before voter approval of this ordinance on November 6, 2018.

D. Issuance of a Commercial Cannabis Use Permit under this chapter is a discretionary act requiring compliance with the California Environmental Quality Act (“CEQA”) and the applicant shall comply with Article 5, Section 130.51.030 (Environmental Review). The applicant shall be responsible for all costs associated with CEQA compliance, including but not limited to environmental analysis and studies, preparation of the appropriate CEQA document, and all County staff time, including attorney time, spent reviewing and pursuing final adoption of the appropriate environmental document.

E. Pursuant to Article 5, Section 130.51.020 (Application Forms, Submittal Process, and Fees), application fees adopted by resolution of the Board of Supervisors shall be paid upon application submittal. Additional fees may be required subject to the provisions of the adopted fee schedule, such as for “time and material” fee categories.

F. An application for a Commercial Cannabis Use Permit shall be submitted in accordance with Article 5, Section 130.51.020 (Application Forms, Submittal Process, and Fees) and, in addition to any information requested by the Planning and Building Department, shall include:

1. The name, contact address, and phone number of the applicant and all owners, as defined above, and spouses or registered domestic partners of owners, all documents providing for the establishing and ownership and control of the applicant, including but not limited to operational agreements, bylaws, stock agreements, and any other documents demonstrating the ownership interest of each owner and any other funding sources for the applicant.
2. Consent to a background check of all owners, spouses of owners, and the Designated Local Contact, including providing the information necessary for performing the background check and fingerprinting.
3. If the applicant is not the record title owner of the parcel, written consent of the owner of the parcel with original signature and notary acknowledgement. The written consent must be notarized within 30 days of the date that the application is submitted with the County.
4. Name and contact information for the Designated Local Contact.
5. Site plan showing the entire parcel, including any easements, streams, springs, ponds, and other surface water features and the location and area for cultivation on the parcel with dimensions of the area for cultivation and setbacks from property lines, if applicable. The site plan shall also

- include all areas of ground disturbance or surface water disturbance associated with cultivation activities, if applicable, and identify any areas where cannabis will be stored, handled, or displayed.
6. Detailed explanation of how the applicant will prevent theft and access to cannabis and cannabis products by individuals under the age of twenty-one unless the individual has a valid medical cannabis card and is lawfully purchasing medicinal cannabis from a licensed retailer.
 7. Proof that the operations will comply with all of the County regulations and standards in the County Code for the particular commercial cannabis activity and any other applicable County regulations and standards, including but not limited to Title 130, Chapter 130.36 (Signs).
 8. Proof that the operations will comply with all state standards and regulations by all state agencies with jurisdiction over the particular commercial cannabis activity, including submission of a copy of all documents and exhibits that are required for a state license.
 9. An operating plan demonstrating proper protocols and procedures that address enforcement priorities for cannabis activities, including ensuring that cannabis and cannabis products are obtained from and supplied only to other permitted licensed sources within the state and not distributed out of state.
 10. If applicable, description of how the applicant will meet and maintain organic certification standards or the substantial equivalent or, if pesticides and fertilizers are used, a list of all pesticides and fertilizers that may be used.
 11. If applicable, written acknowledgement that the County reserves the right to reduce the size of the area allowed for cultivation under any permit issued in the event that environmental conditions, such as a sustained drought or non-compliant odor, merit a reduction in the cultivation size.
 12. Complete copy of the state license application, including all exhibits, diagrams, and attachments, along with a certification under penalty of perjury that the copy provided is accurate and that the County will be notified in writing immediately if any information provided to the state differs from what was provided to the County.
 13. The security plan for the operation that includes adequate lighting, security video cameras with a minimum camera resolution of 1080 pixels and 360 degree coverage, alarm systems, and secure area for cannabis storage. The security plan shall include a requirement that there be at least 90 calendar days of surveillance video (that captures both inside and outside images) stored on an ongoing basis and made available to the County upon request. The County may require real-time access of the surveillance video for the Sheriff's Office. The video system for the security cameras must be located in a locked, tamper-proof compartment. The security plan shall remain confidential.
 14. Detailed diagrams of the premises, including any buildings, structures, fences, gates, parking, lighting, and signage.

15. Certification of the accuracy of the information submitted and agreement to comply with all conditions of the permit.

G. No Commercial Cannabis Use Permit may be issued until a background check of all owners and the Designated Local Contact is completed with review and recommendation by the Sheriff's Office, including but not limited to criminal history, fingerprinting, and any pending charges. The applicant shall be responsible for the cost of the background check. The County may deny an application based on the results of a background check if the County determines that information in the background check makes it more likely than not that any amount of funding for the operation will be or was derived from illegal activity or because the criminal history or other information discovered in the background check of an owner or spouse of an owner weighs against the owner's trustworthiness or ability to run a legal business in compliance with all regulations, including but not limited to the risk of involvement or influence by organized crime, prior convictions involving controlled substances or violent crimes, the likelihood that sales and income will not be truthfully reported, or the risk that cannabis will be illegally provided or sold to individuals under the age of 21.

H. Concentration of commercial cannabis activities and proximity to an existing or proposed commercial cannabis activity shall be considered in determining whether to grant a Commercial Cannabis Use Permit.

I. At a minimum, a Commercial Cannabis Use Permit shall include:

1. The name of all owners.
2. The single commercial cannabis activity authorized in the permit, including any site specific restrictions or conditions of approval under Section 130.51.060 (Conditions of Approval).
3. If applicable, statement that the County reserves the right to reduce the size of the area allowed for cultivation under any permit issued in the event that environmental conditions, such as a sustained drought or non-compliant odor, merit a reduction in the cultivation size.
4. Condition of approval that the permittee and all owners shall defend, indemnify, and hold harmless the County of El Dorado and its agents, officers, elected officials, and employees for any claims, damages, or injuries brought by affected property owners or other third parties due to the issuance of a permit or the commercial cannabis activities and for any claims brought by any person for problems, injuries, damages, or liabilities of any kind that may arise out of the issuance of a permit or the commercial cannabis activities.
5. Consent for onsite inspection by County officials during the permittee's regular business hours and outside of the permittee's regular business hours if the County has reason to believe that violations are occurring outside of regular business hours.
6. Indication of whether the Commercial Cannabis Use Permit is for approval of a commercial activity involving cannabis for medicinal, adult-use recreational, or both. A single Commercial Cannabis Use Permit may

allow for a commercial activity involving both medicinal and adult-use recreational cannabis provided that the operation is consistent with state law and regulations.

7. Name and contact information for the Designated Local Contact.
8. Condition of approval requiring timely payment of the Commercial Cannabis Activities Tax and all other applicable County taxes and assessments, including providing information related to such taxes and assessments to the County Treasurer-Tax Collector and Assessor upon request.

J. Authorization may not be provided to the appropriate state licensing agency for an annual state license unless the County has issued a Commercial Cannabis Use Permit and Commercial Cannabis Annual Operating Permit.

5. Commercial Cannabis Annual Operating Permit.

A. In addition to a discretionary Commercial Cannabis Use Permit, a person may only conduct a commercial cannabis activity if the person obtains a Commercial Cannabis Annual Operating Permit. When a Commercial Cannabis Use Permit is first issued, the Building and Planning Department shall also issue a Commercial Cannabis Annual Operating Permit, subject to annual renewals. A Commercial Cannabis Annual Operating Permit is valid for one year from the date of issuance and may be renewed after staff-level review with public notice as provided for in Chapter 130.50 (Application Filing and Processing) of this Title.

B. In addition to any other information or documentation requested by the County Planning and Building Department, an application for renewal of a Commercial Cannabis Annual Operating Permit shall include all of the information required for a Commercial Cannabis Use Permit, noting any changes from the information submitted with the original application, and the complaint report required under section 9(B) (Designated Local Contact) below in this section. The applicant must demonstrate continued compliance with all County and state regulations and site specific conditions in the Commercial Cannabis Use Permit or Commercial Cannabis Annual Operating Permit. If the applicant is not the record title owner of the parcel, an updated written consent of the owner of the parcel with original signature and notary acknowledgement must be provided and be notarized within 30 days of the date that the renewal application is submitted with the County.

C. A Commercial Cannabis Annual Operating Permit shall not be issued if the applicant owes any delinquent Commercial Cannabis Activities Tax or any other fines, violations, assessments, fees, costs, or amounts related to the commercial cannabis activity. Prior to issuance, Building and Planning Department shall notify the Sheriff's Office and Code Enforcement of the application and request information on any resolved or pending complaints or violations.

D. If taxes under Chapter 3.22 (Taxation of Commercial Cannabis Activities) for cultivation of cannabis are assessed based on square footage, taxes shall be calculated based on

the maximum square footage stated in the Commercial Cannabis Annual Operating Permit. If a permittee does not intend to cultivate the entire square footage permitted in a Commercial Cannabis Use Permit in any given year, the permittee must request a reduction in square footage in the application for a Commercial Cannabis Annual Operating Permit. Failure to request a reduction in the application will result in taxes being assessed on the square footage stated in the Commercial Cannabis Use Permit.

E. A Commercial Cannabis Annual Operating Permit is not transferrable and automatically expires upon any change of ownership to the applicant that results in a new owner or owners or new funding source. Before or upon the transfer of the business or addition of a new owner, an application for a new Commercial Cannabis Annual Operating Permit must be submitted. While the Commercial Cannabis Use Permit may be transferred, upon issuance of the new Commercial Cannabis Annual Operating Permit, conditions to the Commercial Cannabis Use Permit and Commercial Cannabis Annual Operating Permit may be added or removed. The Director of Planning and Building may require a decision by the Planning Commission to impose any new conditions or remove any existing conditions of a Commercial Cannabis Use Permit or Commercial Cannabis Annual Operating Permit under this subsection consistent with Article 5, Section 130.54.070 (Revisions to an Approved Permit or Authorization).

6. Out-of-County Delivery and Distribution of Commercial Cannabis.

A. This section applies to any person located outside of the unincorporated areas of the County who delivers or distributes commercial cannabis to a physical location in an unincorporated area of the County as part of a legal commercial cannabis activity. No person operating a commercial cannabis retail or distribution facility located outside of the unincorporated area of the County may deliver or distribute commercial cannabis within the unincorporated area of the County without a valid business license under Chapter 5.08 (License Requirements and Procedure).

B. Cannabis delivery hours in the County are limited to commencing at 8:00 a.m. and ending at 8:00 p.m. Any delivery must be initiated by a customer by 7:00 p.m. These restricted hours apply regardless of whether the sale originates within or outside of the County.

C. The Commercial Cannabis Activities Tax shall be paid for the sale of all commercial cannabis delivered or distributed within El Dorado County regardless of where the retail or distribution facility is located.

7. Revocation After Three Violations.

In addition to revocation of a Commercial Cannabis Use Permit or Commercial Cannabis Annual Operating Permit under Article 5, Section 130.54.090 (Revocation or County Mandated Modification of a Permit), upon receipt of any combination of three (3) administrative citations, verified violations, or hearing officer determinations of violation of any of the permit requirements or standards issued to one or more of the owners or operators at any property or

combination of properties of one or more of the same owners or operators within a two-year period, the Commercial Cannabis Annual Operating Permit shall be nullified, voided, or revoked, subject to prior notice and appeal under Section 130.54.090 (Revocation or County Mandated Modification of a Permit) and the Commercial Cannabis Use Permit may be revoked, subject to prior notice and appeal under Section 130.54.090. Upon revocation, an application for a Commercial Cannabis Annual Operating Permit to reestablish a cannabis operation by one or more of the same owners or operators or at the subject property shall not be accepted for a minimum period of two (2) years. If only the Commercial Cannabis Annual Operating Permit is revoked under this section, reissuance shall be subject to the procedures to issue a Commercial Cannabis Use Permit, including hearing before and decision of the Planning Commission and any new or amended conditions may be added to the Commercial Cannabis Use Permit.

8. Monitoring Program.

All Commercial Cannabis Annual Operating Permits shall require the applicant's participation in a County-run monitoring program. The monitoring program shall be funded by applicants and will be used to conduct site visits and inspections of all commercial cannabis activities and verify compliance, including but not limited to all requirements of County Code and any site specific permit conditions and state regulations, including the State track-and-trace requirements. The Board of Supervisors shall by resolution or ordinance adopt such fees necessary to implement this monitoring program. The annual monitoring program fees shall be collected yearly at the time of renewal of the Commercial Cannabis Annual Operating Permit.

9. Designated Local Contact.

A. No Commercial Cannabis Use Permit or Commercial Cannabis Annual Operating Permit may be issued unless a current name and contact information for a Designated Local Contact is included. The Designated Local Contact must be available by telephone on a 24-hour basis, 7 days per week and be able to respond to the County within two hours and corrective action, if required, must be completed within the time requested by the County.

B. No less than one week before commercial cannabis operations commence, the permittee must notify the property owners and residents of property located within 1,000 feet of the perimeter of the parcel(s) upon which the commercial cannabis operations will occur and provide the name and contact information for the Designated Local Contact. Complaints made to the Designated Local Contact by any member of the public must be responded to within 24 hours of the initial complaint and corrective action, if required under any state or local law or regulation, must commence within a reasonable time based on the nature of the corrective action required. Complaints by any member of the public shall be logged in writing and the complaint log, including any corrective action taken, shall be provided to the Building and Planning Department annually with the application to renew the Commercial Cannabis Annual Operating Permit.

C. The permittee must immediately notify the County and owners and residents covered property owners and residents of property located within 1,000 feet of the perimeter of the parcel(s) upon which the commercial cannabis operations occur of any change to the Designated Local Contact or change to the telephone number for the Designated Local Contact.

D. The failure to comply with any requirement of this section constitutes a violation subject to enforcement under this Chapter.

10. Criminal Enforcement.

A. Any person who engages or attempts to engage in any commercial cannabis activity without the required County permits, owns the property upon which a commercial cannabis activity is conducted without the required County permits, or otherwise violates or attempts to violate any of the provisions of the County's commercial cannabis activities ordinances 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 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 for the first violation, \$250 for the second violation within one year, and \$500 for each additional violation within one year. Each and every day, or portion of a day, that a violation exists may be charged as a separate offense.

11. Administrative Enforcement and Abatement.

A. In addition to criminal enforcement and potential revocation of a Commercial Cannabis Use Permit or Commercial Cannabis Annual Operating Permit, a violation of this section, violation of any County or state rule, regulation, or law governing the particular commercial cannabis activity, or violation of a condition in a Commercial Cannabis Use Permit or Commercial Cannabis Annual Operating Permit shall be deemed a public nuisance and shall be subject to enforcement as provided herein and the provisions of Chapter 9.02 (Code Enforcement). Pursuant to section 9.02.020(B), the higher fines of this section shall control in any administrative enforcement action.

B. A notice to correct or notice to abate issued under Chapter 9.02 shall provide 72 hours for the responsible person to correct or abate the violation and shall identify the administrative fines of this section if the violation is not corrected or abated within 72 hours.

C. Fines for Persons Operating with a Commercial Cannabis Use Permit and Commercial Cannabis Annual Operating Permit:

1. For any violation by a person who has 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 \$1,000 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 \$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 10th day of September, 2019, by the following vote of said Board:

Ayes: Hidahl, Frentzen, Veerkamp, Parlin, Novasel

Noes: None

Absent: None

ATTEST

Kim Dawson

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