



ORDINANCE NO. 5067

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").

- C. The intent of the CUA was to enable seriously ill persons who need medical cannabis for medical purposes to obtain and use cannabis under limited, specified circumstances. The CUA provides a limited exception from criminal prosecution under state law for specific crimes involving the cultivation, possession, and use of cannabis for specified medical purposes. The CUA did not address land use, zoning, or building code impacts or issues that arise from the proliferation of medical cannabis 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 California 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 cannabis 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 cannabis even if the cultivation or use complied with state law.
- G. 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).
- 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 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.
- J. 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 cannabis from dispensaries, in the areas immediately surrounding such medical cannabis dispensaries.
- K. Law enforcement officials have indicated that they could more effectively prosecute the illegal operation of dispensaries if the prohibition on medical cannabis 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 cannabis distribution facilities.
- B. *Medical cannabis distribution facility defined.* Except where the context otherwise requires, a “medical cannabis distribution facility” means any medical cannabis 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 cannabis, 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 11362.7.
- C. *Exception.* A “medical cannabis distribution facility” shall not include a primary caregiver who cultivates, possesses, stores, manufactures, transports, donates, or provides cannabis exclusively for the personal medical purposes of no more than three specified qualified patients for whom he or she is the 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, provided that any cannabis cultivating, drying, curing, processing, and storing complies with section 130.14.260.
- D. *Medical cannabis distribution facilities prohibited.* The establishment, maintenance, or operation of any medical 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 cannabis distribution facility. The County, however, shall not enforce the provisions of this section with respect to medical cannabis distribution facilities that were existing for at least six months prior to October 30, 2011 and that, no later than January 31, 2018, apply for a state license and submit documentation to the County Planning 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 continuous operation since October 30, 2011;
 3. Compliance with state law;
 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 as existed on October 30, 2011, subject to reasonable conditions and regulations, including conditions on time of use, as may be established by the County.

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 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 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 cannabis distribution facility is located or owns or operates a medical 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 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.
 - 4. 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 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 cannabis for specified medical purposes to obtain and use cannabis under limited, specified circumstances. The CUA provided a limited exception from criminal prosecution under state law for the cultivation, possession, and use of cannabis for specified medical purposes. The CUA did not address land use, zoning, or building code impacts or issues that arise from 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 California Legislature to clarify the 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. 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 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 cannabis.
- I. The cultivation of cannabis has the potential for increased crime, intimidation, and threats. As cannabis plants mature, certain varieties can develop a strong odor that creates an attractive nuisance by alerting people to the location of valuable 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 cannabis plants.
- J. Unlimited area for cannabis cultivation exceed the amounts reasonably grown to serve as medical cannabis for residents of the land where the cultivation occurs, or patients under the care of the grower, and would likely be criminal operations.
- K. 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 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.
- L. 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 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 cannabis for personal, non-commercial use by authorized individuals under existing state law while protecting the health, safety, and welfare of adjacent property owners, minimizing law enforcement effort, limiting availability of and exposure to 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, childcare home, or preschool.

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

Cultivation or *cultivating* means the planting, growing, or harvesting of one or more 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).

Medical or medicinal cannabis means cannabis grown for personal medicinal use by a person with a cannabis identification card under Health and Safety Code Section 11362.71, a qualified patient, or a primary caregiver as contemplated by Health and Safety Code 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 an individual designated by a patient who has consistently assumed responsibility for the housing, health, or safety of that patient and includes a caretaking relationship directed at the core survival needs of a seriously ill patient, as that meaning is set forth in Health and Safety Code Section 11362.7(d).

Qualified patient shall have the meaning set forth in Health and 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 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.

C. *Nuisance declared.* Any violation of this section is hereby declared to be a public nuisance. The outdoor cultivation of cannabis plants is 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.*

1. *Size of outdoor cultivation area.* Notwithstanding the limits set forth below, no person may cultivate more than 200 square feet of medical cannabis for personal use. The maximum area on a premises that may be used for the outdoor cultivation of medical cannabis shall be as follows:

- a. Lots zoned R1, R20,000, R1A, R2A, and R3A: 200 square feet;
- b. Lots zoned RE and RL: 400 square feet;
- c. Lots zoned AG, FR, LA, and PA: 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 a cultivation area shall be five feet.

2. *Screening.* Medical cannabis shall be screened from public view so that no part of a plant can be seen from an adjacent street or adjacent parcel. Screening shall be accomplished by use of a greenhouse or hoop house or by fencing 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 cannabis is cultivated, the premises on which medical cannabis is cultivated, or a portion thereof 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 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 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 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 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.3 of this section to the boundary of the premises on which the school, school bus stop, church, park, or youth oriented facility is located.
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, RL, AG, FR, LA, and PA: 100 feet.
6. *Residency.* The primary place of residence for persons engaging in the outdoor cultivation of medical cannabis shall be the premises on which the medical cannabis is cultivated. For collective cultivation as provided in Subsection 2.E of this section, the premises on which the medical cannabis is cultivated shall be the principal primary residence of at least one of the persons for whom the medical cannabis is being cultivated. Only those premises with a permitted dwelling unit shall be used for the outdoor cultivation of medical cannabis.
7. *Property owner authorization.* If a person cultivating medical cannabis on any legal parcel is 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 of medical cannabis 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 cannabis 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;
 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 cannabis takes place shall either be connected to a public sewer system or have a County inspected and approved sewage disposal system.
 - c. Persons engaging in the cultivation of medical cannabis shall use, dispose, and store chemicals used in such cultivation pursuant to applicable laws and labeling requirements.
9. *Disposal of waste material.* Cannabis waste material shall be disposed of in accordance with existing state and local laws and regulations at the time of disposal. Burning of medical cannabis waste material is prohibited.
10. *Contact information.* The names, contact information, doctor's recommendation for each person cultivating or participating in the cultivation of 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 enforcement personnel at the time of inspection.
11. *Odor.* The cultivating, drying, curing, processing, and storing of medical cannabis shall not adversely affect the health, safety, or enjoyment of property of persons residing near the property on which medical cannabis is cultivated due to dust, noise, smoke, or odors 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 cannabis distribution facility provided in Section 130.14.250, not more than three persons may collectively cultivate medical cannabis for their 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 cannabis shall supersede the provisions of the right to farm ordinance in Section 130.40.290 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. Reserved.
- 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 cannabis is cultivated outdoors, except as provided in Subsection 2.D of this section, or owns the medical cannabis that is cultivated or otherwise violates any of the provisions of this section can be charged with a misdemeanor.
 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. 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.
- I. *Administrative Enforcement and Abatement.*
 1. In addition to criminal enforcement, a violation of this section shall be deemed a public nuisance and shall be subject to enforcement as provided herein and the provisions of Chapters 130.12 and 9.02. Pursuant to section 9.02.020(B), the higher fines of this section shall control in any administrative enforcement action.
 2. 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.

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 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 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.
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 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.

- J. *Administrative relief.* Any person who cannot comply with the provisions of this section due to undue hardship and unique circumstances applying to the property on which outdoor medical cannabis is cultivated or is proposed to be cultivated, 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 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 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 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 Chief Administrative Officer's action may be filed as provided in section 130.52.090 except that any appeal shall be heard by the Board of Supervisors and may be filed within one year of the Chief Administrative Officer's action.
 4. The Chief Administrative Officer may refer the matter to the Board of Supervisors at his or her discretion.
 5. The 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 enforcement personnel at the time of inspection.
- K. *No authorization, defense, or immunity.* Nothing herein shall 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 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.
- L. *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 cannabis cultivation, to prosecute a violation of this section, or to take any other action with regard to any unlawful cannabis cultivation. Furthermore, the Sheriff, District Attorney, County, and any of their officers or employees shall not be held liable for failure to abate any unlawful cannabis cultivation, to prosecute a violation of this section, or to take any other action with regard to any unlawful 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.

Pursuant to California Government Code section 25123, 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 7th day of November, 2017 by the following vote of said Board:

ATTEST

JAMES S. MITRISIN

Clerk of the Board of Supervisors

Kyza Schaufenberg
Deputy Clerk

Ayes: Hidahl, Veerkamp, Frentzen, Novasel,
Ranalli

Noes: None

Absent: None

Shiva E. Frentzen
Shiva Frentzen, Chair, Board of Supervisors

**APPROVED AS TO FORM
MICHAEL J. CICOZZI
COUNTY COUNSEL**

By: Bre Moebius

Breann M. Moebius
Deputy County Counsel