



ORDINANCE NO. 5111

AN ORDINANCE ADDRESSING THE RETAIL SALE, DISTRIBUTION, INDOOR CULTIVATION, LABORATORY TESTING, AND MANUFACTURING OF COMMERCIAL CANNABIS

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

Section 1. Section 130.14.330 of Title 130, Article 9 of the El Dorado County Ordinance Code entitled “Retail Sale, Commercial Distribution, and Commercial Indoor Cultivation of Cannabis for Recreational Adult Use” is hereby repealed in its entirety.

Section 2. Section 130.14.320 of Title 130, Article 9 of the El Dorado County Ordinance Code entitled “Retail Sale, Commercial Distribution, and Commercial Indoor Cultivation of Cannabis for Medicinal Use” is hereby renumbered as Section 130.41.300 of Title 130, Article 4, re-titled “Retail Sale, Distribution, Indoor Cultivation, Laboratory Testing, and Manufacturing of Commercial Cannabis,” and amended to read as follows:

ARTICLE 4 – SPECIAL USE REGULATIONS CHAPTER 130.41 – COMMERCIAL CANNABIS

Sec. 130.41.300 – Retail Sale, Distribution, Indoor Cultivation, Laboratory Testing, and Manufacturing of Commercial Cannabis

1. Applicability.

A. The purpose of this ordinance is to permit certain specified commercial cannabis activities and uses in the unincorporated areas of the County, subject to the regulation and control of the Board of Supervisors. While this ordinance was originally enacted by voters, the Board of Supervisors retains discretion to regulate such uses, including without limitation the density, intensity, number, proximity, location, and environmental standards of such uses without further voter approval.

B. Cannabis is not an agricultural crop or product with respect to the “right to farm” ordinance in Article 4, Section 130.40.290 (Right to Farm), the establishments of Agricultural Preserves under Section 130.40.290, or any other provision in this Code that defines or allows

cultivation of crops or agricultural products and nothing in this Chapter shall be construed to the contrary.

C. This ordinance applies regardless of whether commercial cannabis is cultivated for medicinal or recreational adult use.

2. Definitions.

The terms and phrases in this section shall have the meaning ascribed to them in Section 130.41.100(2), unless the context in which they are used clearly suggests otherwise.

3. Limit on the number of commercial cannabis cultivation operations.

The maximum number of commercial cannabis cultivation operations in the unincorporated portions of the County shall be limited to 150. This section sets the maximum possible permits only and nothing in this section shall be construed to require the County to issue a minimum or the maximum number of permits.

4. General Requirements.

A. In addition to any state requirements, the requirements in this section are applicable to all commercial cannabis activities authorized under this section 130.41.300. Any violation of state regulations, site specific requirements in a Commercial Cannabis Use Permit or Commercial Cannabis Annual Operating Permit, or the requirements in this section 130.41.300 is subject to enforcement, abatement, and revocation of a County permit under Section 130.41.100 and Article 5, Section 130.54.090 (Revocation or County Mandated Modification of a Permit).

B. *Odor.* Commercial cannabis activities, including but not limited to cultivating, drying, curing, processing, manufacturing, testing, and storing of cannabis, shall not adversely affect the health, safety, or enjoyment of property of persons residing near the property on which the commercial cannabis activity occurs due to odor that is 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 commercial cannabis activity occurs 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 a commercial cannabis activity violates this subsection, the permittee must reduce the odor below the 7 DT one hour at property line threshold within the time required by the County. Notwithstanding the prior issuance of a permit, the County may require installation of one or more odor control options, which may include but are not limited to the use of activated carbon filtration or equivalent odor abatement control equipment on air exhaust, a vapor-phase odor

control system, 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 section subject to enforcement, abatement, and revocation of the Commercial Cannabis Use Permit and Commercial Cannabis Annual Operating Permit under Section 130.41.100 and Article 5, Section 130.54.090 (Revocation or County Mandated Modification of a Permit).

C. *Location.* A commercial cannabis activity authorized under this section shall not be located within 1,500 feet from any school, school bus stop, place of worship, park, playground child care center, youth-oriented facility, pre-school, public library, licensed drug or alcohol recovery facility, or licensed sober living facility. A commercial cannabis activity authorized under this section shall not be established on any parcel containing a dwelling unit used as a residence or within 500 feet of a residential zoning district. Distance shall be measured from the nearest point of the property line of the premises that contains the commercial cannabis activity to the nearest point of the property line of the enumerated use using a direct straight-line measurement. A new adjacent use does not affect the continuation of an existing use that was permitted and legally established under the standards of this chapter.

D. *Screening.* Commercial cannabis activities authorized under this section shall be screened from public view so that no part of a plant can be seen from an adjacent street or adjacent parcel. Coverings on any windows may not be made of tarps, canvas, tinfoil, or other fabrics affixed directly to the wall or window.

E. *Lighting.* Security lighting for any building utilized for commercial cannabis activities authorized under this section shall be motion activated and all outdoor lighting shall comply with Article 3, Chapter 130.34 (Outdoor Lighting).

F. *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 cannabis waste material is prohibited.

G. *Public Sewer or Sewage Disposal System.* The premises where commercial cannabis activities authorized under this section take place shall either be connected to a public sewer system or have a County inspected and approved sewage disposal system.

H. *Transportation Vehicles.* Cannabis may only be transported within the unincorporated areas of the County inside a commercial vehicle or trailer with sufficient security features and GPS tracking. Cannabis or cannabis signage or symbols may not be visible or identifiable from outside of the commercial vehicle or trailer. Transportation by means of aircraft, watercraft, drones, rail, human powered vehicles, and unmanned vehicles is prohibited.

I. *Notification to Sheriff's Office.* As a condition of any Commercial Cannabis Use Permit for an activity authorized under this section, the County may require the permittee to notify the Sheriff's Office before transporting cannabis within the unincorporated areas of the County.

J. *Review by Fire Code Official.* Prior to approval of any Commercial Cannabis Use Permit for any commercial cannabis activity authorized in this section, the application must be reviewed by the local fire code official and any recommendations of the local fire code official shall be incorporated as a condition of the Commercial Cannabis Use Permit or a written response to the local fire code official shall explain why a recommendation is not being incorporated.

K. *Retail sale.* Retail sale of cannabis shall not occur on any premises permitted under this section except for section 7(A).

5. Indoor Cultivation of Commercial Cannabis.

A. *Limitation on use.* Indoor cultivation of commercial cannabis may be permitted in the General Commercial (GC), Industrial High (IH), Industrial Low (IL), and Research and Development (R&D) zone districts subject to a Commercial Cannabis Use Permit and Commercial Cannabis Annual Operating Permit under Section 130.41.100.

B. The County may place restrictions on canopy size to maintain consistency with other laws, surrounding commercial uses, and neighborhood compatibility.

C. *Renewable energy source.* Electrical power for indoor commercial cultivation operations, including but not limited to illumination, heating, cooling, and ventilation, shall be provided by on-grid power with 100% renewable source, on-site zero net energy renewable source, or with the purchase of carbon offsets of any portion of power not from renewable sources. The use of generators for indoor cultivation is prohibited, except for temporary use in emergencies only.

D. All lights used for indoor commercial cannabis cultivation shall be fully contained within structures or otherwise shielded to fully contain any light or glare involved in the cultivation process.

E. *Water source.* Indoor cultivation of commercial cannabis may only be permitted if sufficient evidence submitted to the County demonstrates: (1) there is adequate water supply in the watershed and water rights to serve the cultivation site; and (2) all required state permits from the State Water Resources Control Board and any other state agency with jurisdiction. The premises where the cultivation of cannabis takes place shall either be connected to a public water supply or have a County inspected and approved private water source. Cultivation of cannabis

shall not utilize water that has been or is illegally diverted from any spring, wetland, stream, creek, river, lake, underground well, or body of water.

F. *Water conservation measures.* Cannabis cultivation operations shall include adequate measures that minimize the use of water for cultivation at the site. Water conservation measures, water capture systems, grey water systems, or other equally effective water conservation measures shall be incorporated into the cultivation operations in order to minimize the use of water where feasible.

6. Commercial Cannabis Distribution Facilities.

A. *Limitation on use.* Distribution facilities for commercial cannabis may only be permitted in the General Commercial (CG), Industrial High (IH), Industrial Low (IL), and Research and Development (R&D) zone districts subject to a Commercial Cannabis Use Permit and Commercial Cannabis Annual Operating Permit under Section 130.41.100.

B. A County permit for distribution may be limited to transportation only so long as the Bureau of Cannabis Control allows for a Distributor – Transport only license or the substantial equivalent. If a Commercial Cannabis Use Permit is sought for transportation only to transport cannabis, cannabis seeds or plants, or other cannabis products grown or manufactured by the same applicant, then the transport only use is not subject to the zone restrictions in section 6(A) provided that the applicant is only transporting cannabis, cannabis seeds or plants, or other cannabis products grown or manufactured on the parcel for which the other commercial cannabis activity is authorized.

C. If a distributor is located outside of the unincorporated areas of the County, the distributor must comply with section 130.41.100(6).

7. Commercial Cannabis Retail Sale and Delivery Facilities.

A. *Limitation on use for storefront retail.* Retail sale storefront facilities open to the public for the sale of commercial cannabis may only be permitted in the Community Commercial (CC), Regional Commercial (CR), General Commercial (CG), and Industrial Low (IL) zone districts subject to a Commercial Cannabis Use Permit and Commercial Cannabis Annual Operating Permit under Section 130.41.100.

B. *Limitation on use for non-storefront retail (delivery only).* Retail non-storefront delivery facilities of commercial cannabis may only be permitted in the General Commercial (CG), Industrial High (IH), Industrial Low (IL), and Research and Development (R&D) zone districts subject to a Commercial Cannabis Use Permit and Commercial Cannabis Annual Operating Permit under Section 130.41.100.

C. If a retail delivery service is located outside of the unincorporated areas of the County, the retailer must comply with section 130.41.100(6).

D. With the exception of a non-storefront retail facility providing only delivery service, no more than seven (7) cannabis retail storefront facilities that are open to the public shall be permitted at any one time. Concentration of commercial cannabis facilities and proximity to an existing or proposed cannabis retail facility shall be considered in determining whether to grant a permit. Provided that the application for a Commercial Cannabis Use Permit is received within 45 days of the availability of applications for retail sale, the County shall first review and take action on the application of any retail facility that was issued a valid temporary license from the Bureau of Cannabis Control by July 17, 2018 and continuation within a zone inconsistent with those authorized under this section may be permitted for those retail facilities as part of the Commercial Cannabis Use Permit as a legal non-conforming use under Article 6, Chapter 130.61 (Nonconforming Uses, Structures, and Lots).

E. Hours of operation for retail sale and delivery 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.

F. A retail facility shall provide adequate security on the premises, including lighting and alarms, to insure the safety of persons and to protect the premises from theft. Security lighting shall be motion activated and all outdoor lighting shall comply with Chapter 130.34.

8. Commercial Cannabis Testing Laboratories.

A. *Limitation on use.* Commercial cannabis testing laboratories may only be permitted in the General Commercial (CG), Industrial High (IH), Industrial Low (IL), and Research and Development (R&D) zone districts subject to a Commercial Cannabis Use Permit and Commercial Cannabis Annual Operating Permit under Section 130.41.100.

B. The Director of the Environmental Management Department, or his or her authorized designee(s), may impose any additional restrictions or requirements for the laboratory testing of commercial cannabis to protect public health and safety and may inspect any portion of the commercial cannabis testing laboratory facility at any time during normal business hours to ensure compliance.

9. Commercial Cannabis Manufacturing Facilities.

A. *Limitation on use.* The following manufacturing license types, as defined in the most recent regulations promulgated by the California Department of Public Health's Manufactured Cannabis Safety Branch, may only be permitted in the following zone districts:

1. Type 7 license may be permitted in the Industrial High (IH) and Industrial Low (IL) zone districts subject to a Commercial Cannabis Use Permit and Commercial Cannabis Annual Operating Permit under Section 130.41.100.
2. Type 6 license may be permitted in the General Commercial (CG), Industrial High (IH), Industrial Low (IL), and Research and Development (R&D) zone districts subject to a Commercial Cannabis Use Permit and Commercial Cannabis Annual Operating Permit under Section 130.41.100.
3. Type N and Type P licenses may be permitted in the Community Commercial (CC), Regional Commercial (CR), General Commercial (CG), Industrial High (IH), Industrial Low (IL), Research and Development (R&D), Planned Agricultural (PA), Limited Agricultural (LA), and Agricultural Grazing (AG) zone districts subject to a Commercial Cannabis Use Permit and Commercial Cannabis Annual Operating Permit under Section 130.41.100. Permits in Planned Agricultural (PA), Limited Agricultural (LA), and Agricultural Grazing (AG) zone districts shall be limited to sites that meet the minimum premises area of 10 acres, and the County may require a premises greater than 10 acres to maintain consistency with other laws, surrounding residential uses, and neighborhood compatibility.
4. A registered shared-use facility (Type S license) may be issued in a particular zone district only if the manufacturing activity or activities to be performed in the shared-use facility (Type 7, Type 6, Type N, or Type P license) is or are authorized in that particular zone district.
5. The Commercial Cannabis Use Permit and Commercial Cannabis Annual Operating Permit must specify the manufacturing activities authorized and those activities must be consistent with the specific license types issued by the California Department of Public Health's Manufactured Cannabis Safety Branch at the time of issuance of the Commercial Cannabis Use Permit or Commercial Cannabis Annual Operating Permit.
6. No manufacturing of commercial cannabis may be permitted in a residential dwelling or accessory structure connected to a residential dwelling.

B. *Shared-Use Facility (Type S license)*. A single person shall be identified as the primary permittee for a shared-use facility. For any violation at a shared-use facility, the primary permittee and the permittee authorized to use the shared-use facility during the time of the violation may be held jointly and severally liable for the violation regardless of any agreement between the permittees. The occupancy schedule and designated area for a Type S license shall be included in the application for the Commercial Cannabis Use Permit and Commercial Cannabis Annual Operating Permit and may not be changed without prior written notification

and prior written approval from the Building and Planning Department and any such change shall be memorialized in the Commercial Cannabis Annual Operating Permit.

C. The Director of the Environmental Management Department, or his or her authorized designee(s), may impose any additional restrictions or requirements for the manufacturing of commercial cannabis to protect public health and safety and may inspect any portion of the commercial cannabis manufacturing facility at any time during normal business hours to ensure compliance.

10. 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.

11. 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.

12. Effective Date.

Pursuant to California Government Code section 25123, the amendments to this ordinance shall become effective 30 days from the date of final passage. If the general tax passed by the voters of El Dorado County in the November 2018 election, now codified at Chapter 3.22, is challenged or invalidated for any reason, no new Commercial Cannabis Use Permits or Commercial Cannabis Annual Operating Permits may be issued for commercial cannabis activities authorized under this section unless and until the challenge concludes and the tax is upheld as valid or a new tax of greater or equal amount is enacted. If any general tax for commercial cannabis activities is repealed or invalidated for any reason, this ordinance shall automatically expire and be repealed unless and until a new tax of greater or equal amount is enacted.

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

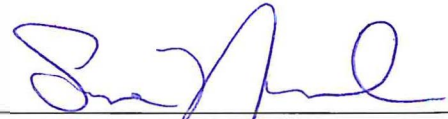
ATTEST

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