



ORDINANCE NO. 5107

AN ORDINANCE ADDRESSING THE TAXATION OF INDEPENDENTLY AUTHORIZED
COMMERCIAL CANNABIS ACTIVITIES

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

Section 1. Section 130.14.280 of Title 130, Article 9 of the El Dorado County Ordinance Code entitled "Taxation of Commercial Cannabis Activities" is hereby renumbered as Chapter 22 of Title 3, and amended to read as follows:

**TITLE 3 – REVENUE AND FINANCE
CHAPTER 22 – TAXATION OF COMMERCIAL CANNABIS ACTIVITIES**

Section 3.22.010. Purpose.

A. The purpose of this ordinance is to provide for a voter-approved tax pursuant to California Elections Code Section 9140, California Government Code Section 53723, and California Revenue and Taxation Code Section 34021.5, as may be amended, on the privilege to engage in any commercial cannabis activity in the unincorporated area of the County of El Dorado, provided that the activity is authorized in an independent ordinance, either at the time of passage of this tax or in the future. The Commercial Cannabis Activities Tax is an excise tax, i.e., it is not a sales and use tax, a transaction and use tax, a tax upon income, a tax upon real property, or any other type of tax.

B. While this section was originally enacted by the voters, the Board of Supervisors retains discretion to amend the procedures and regulations provided in this ordinance without further voter approval, with the exception of any action that would broaden or increase the taxes beyond the scope and rates established herein.

C. This section is enacted solely for the purpose of raising revenue for general County purposes, and is not intended to be regulatory. The intent of this section is to levy a tax on all commercial cannabis activities that operate in the unincorporated area of the County, regardless of whether such activities would have been legal at the time this section was enacted. Nothing in this section shall be interpreted to authorize or permit any commercial cannabis activity that would not otherwise be legal or permissible under laws, ordinances, and regulations

applicable to the activity at the time the activity is undertaken. Nothing in this chapter is intended, nor shall be construed, to exempt cannabis businesses from compliance with all applicable provisions of the El Dorado County Code and all other applicable state and federal laws. The payment of a commercial cannabis activity tax required by this chapter, and its acceptance by the County, shall not entitle any person to carry on any commercial cannabis activity unless the person has complied with all of the requirements of this Code and all other applicable state laws and regulations.

Section 3.22.020. General Tax.

The Commercial Cannabis Activities Tax is a general tax enacted solely for general governmental purposes of the County and not for specific purposes. The tax revenue raised by this Chapter shall be placed in the County's general fund and used for unrestricted general revenue purposes.

Section 3.22.030. 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.

Section 3.22.040. Tax Imposed.

A. There is established and imposed a Commercial Cannabis Activities Tax at the rates set forth in this section.

B. Each person engaged in any commercial cannabis activity in the unincorporated area of the County, regardless if the person has been issued a permit to operate lawfully in the County or is operating unlawfully, shall pay an annual Commercial Cannabis Activities Tax. Said tax shall be imposed upon any and all commercial cannabis activities, regardless of whether the activity is undertaken individually, collectively, or cooperatively, and regardless of whether the activity is for compensation or gratuitous.

C. The County Board of Supervisors may, in its discretion, at any time by resolution or ordinance, set the initial rate and/or adjust the tax rate for all persons engaged in any commercial cannabis activity in the unincorporated area of the County subject to the minimum and maximum rates established for each type of commercial cannabis activity in this section. The Board may establish different tax rates for each commercial cannabis activity type, state license type, or subset of activity within each type of commercial cannabis activity and establish different tax rates for medicinal and recreational adult use.

D. Tax on Cultivation Type Commercial Cannabis Activities.

1. Every person who is engaged in cultivation type commercial cannabis activity in the unincorporated area of the County shall pay an annual

Commercial Cannabis Activities Tax, which the Board of Supervisors shall set based on either (1) canopy square footage; or (2) gross receipts. The tax may be set under either method within the range provided herein.

2. The minimum and maximum rates of the Commercial Cannabis Activities Tax for cultivation type commercial cannabis activity, set under either the canopy square footage or gross receipts method, shall be as follows:

Commercial Cannabis Activity Type: Cultivation	Square Footage - Minimum	Square Footage - Maximum	Gross Receipts - Minimum	Gross Receipts - Maximum
Nursery	\$1.00	\$30.00	1%	15%
Outdoor (specialty cottage)	\$1.00	\$30.00	1%	15%
Outdoor (specialty)	\$1.00	\$30.00	1%	15%
Outdoor (small)	\$1.00	\$30.00	1%	15%
Outdoor (medium)	\$1.00	\$30.00	1%	15%
Outdoor (large)	\$1.00	\$30.00	1%	15%
Indoor (specialty cottage)	\$1.00	\$30.00	1%	15%
Indoor (specialty)	\$1.00	\$30.00	1%	15%
Indoor (small)	\$1.00	\$30.00	1%	15%
Indoor (medium)	\$1.00	\$30.00	1%	15%
Indoor (large)	\$1.00	\$30.00	1%	15%
Mixed-Light (specialty cottage)	\$1.00	\$30.00	1%	15%
Mixed-Light (specialty)	\$1.00	\$30.00	1%	15%
Mixed-Light (small)	\$1.00	\$30.00	1%	15%
Mixed Light (medium)	\$1.00	\$30.00	1%	15%
Mixed-Light (large)	\$1.00	\$30.00	1%	15%

3. The current tax rate for Nursery is 4% of gross receipts.
4. The current tax rate for Outdoor Cultivation is \$2.00 per square foot.
5. The current tax rate for Indoor Cultivation is \$7.00 per square foot.
6. The current tax rate for Mixed-Light Cultivation is \$4.00 per square foot.

E. Tax on Distribution Type Commercial Cannabis Activities.

1. Every person, including wholesaler, jobber, manufacturer, or supplier, who is engaged in distribution type commercial cannabis activity in the unincorporated area of the County shall pay an annual Commercial Cannabis Activities Tax, which shall be determined on a gross receipts per fiscal year basis.
2. The minimum and maximum rates of the Commercial Cannabis Activities

Tax for distribution type commercial cannabis activity shall be as follows:

Commercial Cannabis Activity Type: Distribution	Minimum	Maximum
Distributor	0%	10%
Distributor (Transportation-Only)	0%	10%

3. The current tax rate for Distributor is 2% of gross receipts.
4. The current tax rate for Distributor (Transportation-Only) is 2% of gross receipts.

F. Tax on Manufacturing Type Commercial Cannabis Activities.

1. Every person who is engaged in manufacturing type commercial cannabis activity in the unincorporated area of the County shall pay an annual Commercial Cannabis Activities Tax, which shall be determined on a gross receipts per fiscal year basis.
2. The minimum and maximum rates of the Commercial Cannabis Activities Tax for manufacturing type commercial cannabis activity shall be as follows:

Commercial Cannabis Activity Type: Manufacturing	Minimum	Maximum
Manufacturing (Level 1)	2.5%	10%
Manufacturing (Level 2)	2.5%	10%

3. Level 1 Manufacturing is the uses authorized by only a Type 7 or Type 6 license pursuant to the most current regulations promulgated by the California Department of Public Health’s Manufactured Cannabis Safety Branch. Level 2 Manufacturing is the uses authorized by a Type N or Type P license pursuant to the most current regulations promulgated by the California Department of Public Health’s Manufactured Cannabis Safety Branch or a Processor only license.
4. The current tax rate for Manufacturing (Level 1) is 2.5% of gross receipts.
5. The current tax rate for Manufacturing (Level 2) is 0% of gross receipts (exempt under section 3.22.050).

G. Tax on Retailer Type Commercial Cannabis Activities.

1. Every person who is engaged in retailer type commercial cannabis activity in the unincorporated area of the County shall pay an annual Commercial Cannabis Activities Tax, which shall be determined on a gross receipts per

fiscal year basis.

2. The minimum and maximum rates of the Commercial Cannabis Activities Tax for retailer type commercial cannabis activity shall be as follows:

Commercial Cannabis Activity Type: Retailer	Minimum	Maximum
Retailer (Delivery-Only)	0.5%	10%
Retailer	4%	10%

3. The current tax rate for Retailer is 4% of gross receipts.
4. The current tax rate for Retailer (Delivery-Only) is 4% of gross receipts.

H. Tax on Testing Laboratory Type Commercial Cannabis Activities.

1. Every person who is engaged in testing laboratory type commercial cannabis activity in the unincorporated area of the County shall pay an annual Commercial Cannabis Activities Tax, which shall be determined on a gross receipts per fiscal year basis.
2. The minimum and maximum rates of the Commercial Cannabis Activities Tax for testing laboratory type commercial cannabis activity shall be as follows:

Commercial Cannabis Activity Type: Testing Laboratory	Minimum	Maximum
Testing Laboratory	0.5%	5%

3. The current tax rate for Testing Laboratory is 0.5% of gross receipts.

I. Tax on Microbusiness Type Commercial Cannabis Activities.

A microbusiness, as defined in Business and Professions Code Section 26070, subdivision (a)(3)(A), shall pay the tax rates applicable for each commercial cannabis activity type engaged in as part of the microbusiness. The Board of Supervisors may determine that the tax for one or more commercial cannabis activity type may not be charged against all microbusinesses provided that the exemption is applied uniformly to all microbusinesses.

J. For any sale of cannabis or cannabis products in a non-arm's length transaction, such as the sale between a distributor, manufacturer, or retailer that are affiliated or under common ownership, the annual gross receipts for such transactions shall be based on the product's fair market value if it were sold in an arm's length transaction. For purposes of this section, an "arm's length transaction" means a sale entered into in good faith and for valuable

consideration that reflects the fair market value in the open market between two informed and willing parties, neither under any compulsion to participate in the transaction.

Section 3.22.050. Exemptions.

A. The Board of Supervisors may, in its discretion, at any time by ordinance, exempt or except certain categories of commercial cannabis activities from the Commercial Cannabis Activities Tax provided that any exemption applies equally to all businesses engaged in that category of commercial cannabis activity.

B. The provisions of this chapter shall not apply to personal cannabis cultivation, as defined by Health and Safety Code Section 11362.2, as may be amended, or as set forth in Section 130.14.260 of the El Dorado County Code, as amended.

C. The provisions of this chapter shall not apply to personal use of cannabis that is expressly exempted from state licensing requirements, and for which the individual receives no compensation whatsoever related to that personal use, including, personal adult, recreational use, as defined by Health and Safety Code Section 11362.1, as may be amended, or personal medicinal use, as defined by Health and Safety Code Section 11362.7 et seq., as may be amended.

Section 3.22.060. Tax, Penalties, Interest, and Fees as a Debt.

A. The amount of any tax imposed by this chapter shall be deemed a debt owed to the County.

B. Any penalties, interest, and/or fees required to be paid under the provisions of this chapter shall also be deemed a debt owed to the County.

C. Any person owing any tax, penalties, interest, and/or fees shall be liable in an action brought in the name of the County for the cost recovery of such debt. The provisions of this chapter shall not be deemed a limitation upon the right of the County to bring any other action including criminal, civil, and equitable actions, based upon the failure to pay the tax imposed by this chapter or the failure to comply with any of the provisions hereof.

D. This chapter is subject to the fees of Chapter 3.29, as applicable.

Section 3.22.070. Administration.

A. It shall be the duty of the County Treasurer-Tax Collector to collect the taxes, penalties, and fees and perform the duties required by this chapter.

B. For purposes of administration and enforcement of this chapter generally, the

County Treasurer-Tax Collector may from time to time promulgate such administrative rules and procedures consistent with the purpose, intent, and express terms of this chapter as he or she deems necessary to implement or clarify such provisions or aid in enforcement.

C. The County Treasurer-Tax Collector may take such administrative actions as needed to administer the tax, including but not limited to:

1. Provide to all commercial cannabis activities taxpayers forms for the reporting of the tax;
2. Provide information to any taxpayer concerning the provisions of this chapter;
3. Receive and record all taxes remitted to the County as provided in this chapter;
4. Maintain records of taxpayer reports and taxes collected pursuant to this chapter;
5. Assess penalties and interest to taxpayers pursuant to this chapter; or waive such penalties and interest when there is demonstrated evidence of extenuating circumstances that were clearly beyond the control of the taxpayer; and
6. Determine amounts owed and enforce collection pursuant to this chapter.

Section 3.22.080. Business License; Change of Ownership.

A. In order that the County will have an accurate record of persons liable for paying the Commercial Cannabis Activities Tax hereunder, prior to commencing commercial cannabis activities, each person engaged in any commercial cannabis activity shall obtain a Business License from the County Treasurer-Tax Collector, under Chapter 5.04, subject to all of the requirements of that Chapter, payment of the fee under Chapter 5.16, and enforcement under Chapter 5.36. The County Treasurer-Tax Collector shall not deny a Business License applied for under this section because the commercial cannabis activity is in violation of federal law under section 5.08.090(F).

B. In addition to the provisions of Section 5.08.110 addressing the transfer of the ownership of a business, in the event that there is a change in ownership of any cannabis business:

1. The new owner is subject to an audit by the County Treasurer-Tax Collector or his or her designee; and

2. Unless otherwise provided by law, it is the joint and several liability of both the seller and buyer to remit any tax due up until the date of sale; otherwise, a Certificate of Delinquent Commercial Cannabis Activities Tax Lien may be filed against both the seller and/or buyer in an amount determined by the County Treasurer-Tax Collector.

C. Issuance of a Business License does not and shall not be construed to constitute authorization by the County of any commercial cannabis activity, even if the Business License is issued for a commercial cannabis activity. No commercial cannabis activity is authorized absent the issuance of a Commercial Cannabis Use Permit and Commercial Cannabis Annual Operating Permit under Section 130.41.100.

Section 3.22.090. Reporting and Remittance of Tax.

A. The Commercial Cannabis Activities Tax imposed by this chapter shall be imposed on a fiscal year basis and shall be due and payable in quarterly installments as follows:

1. If the commercial cannabis activities tax is set under the canopy square footage method, the tax due shall be based on the square footage of the cannabis business' canopy as determined by the square footage stated in the Commercial Cannabis Annual Operating Permit for that year and the quarterly rate shall be twenty-five percent (25%) of the applicable annual rate. If the cultivation begins in the middle of a fiscal year, the County Treasurer-Tax Collector shall prorate, in monthly increments, the amount due for the fiscal year.
2. If the Commercial Cannabis Activities Tax is owed based on gross receipts, the tax due shall be based on the gross receipts for each quarter.

B. The tax for each fiscal quarter shall be due and payable on that same date as the statement for the fiscal quarter is due. The tax due shall be no less than the quarterly installment due, but the taxpayer may at any time pay the entire amount due for the given fiscal year.

C. Each person owing a Commercial Cannabis Activities Tax shall, on or before the last day of the month following the close of each fiscal year quarter:

1. File with the County Treasurer-Tax Collector a statement of the tax owed for that fiscal quarter and the basis for calculating that tax. The County Treasurer-Tax Collector may require that the statement be submitted on a form prescribed by the County Treasurer-Tax Collector.
2. Remit to the County Treasurer-Tax Collector the tax due. The County Treasurer-Tax Collector may require an appointment in advance of remitting a payment under this chapter.

D. The County Treasurer-Tax Collector may, in his/her discretion, establish shorter for any commercial cannabis activity and longer for commercial cannabis cultivation report and payment periods for any taxpayer as the County Treasurer-Tax Collector deems necessary to ensure collection of the Commercial Cannabis Activities Tax, including but not limited to monthly reporting and payment.

E. Returns and payments are due immediately upon cessation of business for any reason. All taxes collected by operators pursuant to this chapter shall be held in trust for the account of the County until payment thereof is made to the Treasurer-Tax Collector.

F. The County Treasurer-Tax Collector may, in his/her discretion as part of administering the Commercial Cannabis Activities Tax, modify the form of payment and take such other administrative actions as needed to facilitate collection of the tax.

G. Upon cessation of a commercial cannabis activity for any reason, tax statements and payments for all outstanding taxes owed to the County shall be immediately due to the County. Tax statements and remittances will be deemed timely made if actually received by the County Treasurer-Tax Collector within thirty (30) calendar days following cessation of the commercial cannabis activity; otherwise the taxes shall be deemed delinquent and subject to penalties hereunder.

H. Any person required to remit taxes in excess of one-hundred thousand dollars (\$100,000.00) in any given fiscal year shall be required to make remittances on a monthly basis in the succeeding fiscal year. Said remittances shall be due on or before the last day of the month following the last day of the preceding month.

I. The correctness of any tax return filed pursuant to this chapter shall be subject to audit and verification by the County Treasurer-Tax Collector, or designee, who is authorized and empowered to inspect and audit the books and records of any cannabis business at a location to be determined by the County Treasurer-Tax Collector, including but not limited to the County Treasurer-Tax Collector's office or the cannabis business office. No cannabis business shall refuse or fail to allow the County Treasurer-Tax Collector, or designee, to inspect and audit such books and records, or shall refuse or fail to provide such additional information as requested by the County Treasurer-Tax Collector, or designee.

J. For the purposes of this Section, "on or before" shall be interpreted as: (1) hand delivery to the County Treasurer-Tax Collector during regular business hours; or (2) postal delivery of a properly stamped and addressed envelope containing the return and full amount of the tax to the United States Postal Service. Delivery to the Postal Service must be verified by cancellation by the Postal Service showing a postmark date no later than midnight on the date the tax is due. If the due date of the tax falls on a United States Post Office closure date, the tax due date shall be the next business day (excluding federal holidays). Private postal meter strips and dates shall not be considered evidence of delivery to the United States Postal Service.

K. Whenever any payment, statement, report, request, or other communication is due, it must be received by the County Treasurer-Tax Collector on or before the final due date.

In accordance with Subdivision (I) of this Section, a postmark may be accepted as timely remittance. If the due date falls on Saturday, Sunday, or a holiday, the due date shall be the next regular business day on which the County is open to the public.

Section 3.22.100. Deficiency.

A. If the County Treasurer-Tax Collector is not satisfied that any return filed as required under the provisions of this chapter is correct, or that the amount of tax is correctly computed, he/she may compute and determine the amount to be paid and make a deficiency determination upon the basis of the facts contained in the statement or upon the basis of any information in his/her possession or that may come into his/her possession within three (3) calendar years of the date the tax was originally due and payable.

B. One or more deficiency determinations of the amount of tax due for a period or periods may be made.

C. When a person discontinues engaging in a business, a deficiency determination may be made at any time within three (3) calendar years thereafter as to any liability arising from engaging in such business whether or not a deficiency determination is/was issued prior to the date the tax would otherwise be due, or issued after the discontinuation of the business.

D. Whenever a deficiency determination is made, a notice shall be given to the person concerned in accordance with Section 3.22.230.

Section 3.22.110. Delinquency; Notice Not Required by County.

A. Unless otherwise specifically provided under other provisions of this chapter, the taxes required to be paid pursuant to this chapter shall be deemed delinquent if not received by the County Treasurer-Tax Collector on or before the due date as provided in this chapter.

B. The County Treasurer-Tax Collector is not required to send a delinquency or other notice or bill to any person subject to the provisions of this chapter. Failure to send such notice or bill shall not affect the validity of any tax or penalty due under the provisions of this chapter.

Section 3.22.120. Penalties, Fees, and Interest.

A. The Commercial Cannabis Activities Tax shall be that amount due and payable from the first day in which the person was engaged in commercial cannabis activities in the unincorporated area of the County, together with all applicable penalties, fees, and interest calculated in accordance with this Section.

B. Any person who fails or refuses to pay any Commercial Cannabis Activities Tax required to be paid pursuant to this chapter on or before the due date shall pay penalties, fees, and interest as follows:

1. **Initial Delinquency.** A penalty equal to twelve and a half percent (12.5%) of the amount of the tax, in addition to the amount of the tax.
2. **Continuing Delinquency.** If the tax remains unpaid for a period exceeding thirty (30) calendar days beyond the date on which the remittance first became delinquent, an additional penalty equal to twelve and a half percent (12.5%) of the amount of the tax, shall be imposed.
3. **Bank Fees.** Whenever a check or electronic payment is submitted in payment of a Commercial Cannabis Activities Tax and the payment is subsequently returned unpaid by the bank for any reason, the taxpayer will be liable for the tax amount due plus any bank fees, penalties, and interest as provided for in this Chapter, and any other amount allowed under State law.
4. **Interest.** In addition to the penalties and/or fees amounts imposed, interest shall be applied at the rate of one and one-half percent (1.5%) per month on the first day of the month for the full month, and will continue to accrue monthly on the tax and penalty until the balance is paid in full.

C. In addition to the foregoing amounts, if the County determines that any remittance of the Commercial Cannabis Activities Tax due under this chapter is due to fraud or fraudulent, a penalty of twenty-five percent (25%) of the amount of the tax that should have been paid shall be

added thereto in addition to penalties and interest otherwise stated in this chapter and any other penalties allowed by law.

Section 3.22.130. Waiver of Penalties.

The County Treasurer-Tax Collector may waive the penalties imposed upon any person under this chapter, if:

1. The person engaged in commercial cannabis activities requests a waiver of penalties by submitting a Request for Waiver to the County Treasurer-Tax Collector within ten (10) calendar days after issuance of a Notice of Assessment.
2. The person provides evidence satisfactory to the County Treasurer-Tax Collector that failure to pay timely was due to circumstances beyond the control of the person and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, and the person paid the delinquent Commercial Cannabis Activities Tax and accrued interest owed the County prior to applying to the County Treasurer-Tax Collector for a waiver.
3. The amount determined to be owed to the County shall be due immediately. Remittances will be deemed timely made if actually received by the County Treasurer-Tax Collector within ten (10) calendar days; otherwise the taxes shall be deemed delinquent and subject to penalties under Section 130.41.100(12).

Section 3.22.140. Refunds; Credits.

A. No refund shall be made of any tax collected pursuant to this chapter, except as provided in this section.

B. No refund of any tax collected pursuant to this chapter shall be made because of cessation of the commercial cannabis activity, discontinuation, dissolution, or other termination of the cannabis business.

C. Whenever the amount of any tax or penalty under this chapter has been overpaid, paid more than once, or has been erroneously or illegally collected or received by the County under this chapter, it may be refunded to the claimant who paid the tax; provided a written claim, stating under penalty of perjury under the laws of the State of California the specific grounds upon which the claim is founded, is filed with the County Treasurer-Tax Collector within one (1) calendar year of the date of payment. The claim shall be on forms furnished by the County Treasurer-Tax Collector.

D. Any person entitled to a refund of Commercial Cannabis Activities Taxes paid hereunder may elect, in writing, to have such refund applied as a credit against such person's taxes which will become due for the next fiscal year quarter.

E. In the event that the Commercial Cannabis Activities Tax was erroneously paid and the error is attributable to the County, the County shall refund the amount of tax paid up to one (1) calendar year from when the error was identified, provided in no case, shall a claim for payment be made more than three years from the date of the actual payment of the tax.

F. The County Treasurer-Tax Collector, his or her designee or any other County officer charged with the administration of this chapter, shall have the right to examine and audit all the books and business records of the claimant in order to determine the eligibility of the claimant to the claimed refund. No claim for refund shall be allowed if the claimant refuses to allow such examination of claimant's books and business records after request by the County Treasurer-Tax Collector, his or her designee or any other County officer charged with the administration of this chapter, to do so.

G. The County Treasurer-Tax Collector may collect a fee adopted by the Board of Supervisors to pay for the cost of examination and audit should the books and records be provided in a form insufficient to allow the County Treasurer-Tax Collector to make a determination on the claim for the refund.

H. No refund of any tax collected pursuant to this chapter shall be made because of the discontinuation, dissolution, or other termination of a cannabis business.

Section 3.22.150. Notice of Assessment

A. Under any of the following circumstances, the County Treasurer-Tax Collector may issue a Notice of Assessment of the amount of tax owed by a person under this chapter at any time:

1. If the person has not filed a complete statement required under the provisions of this chapter;
2. If the person has not paid the tax due under the provisions of this chapter;
3. If the person has not, after demand by the County Treasurer-Tax Collector, filed a corrected statement, or furnished to the County Treasurer-Tax Collector adequate substantiation of the information contained in a statement already filed, or paid any additional amount of tax due under the provisions of this chapter.

B. The Notice of Assessment shall be served in accordance with Section 3.22.230.

C. The Notice of Assessment shall separately set forth the amount of any tax due. The amount due shall include the amount of any penalties or interest accrued on each amount through the date of the Notice of Assessment.

D. If the amount of tax due is unknown, the County Treasurer-Tax Collector may estimate the amount of tax due based on consideration of all information within their knowledge concerning the business and activities of the person assessed. For purposes of estimating the amount of tax due, there shall be a rebuttable presumption that the minimum amount of tax due is the same as the maximum amount of tax due during any quarter during the previous fiscal year.

Section 3.22.160. Assessment Hearing.

A. Within ten (10) calendar days after the date of service of the Notice of Assessment, the person may apply in writing to the County Treasurer-Tax Collector for a hearing on the assessment.

B. If application for a hearing is not made within the time herein prescribed, the tax, penalties, fees, and/or interest determined by the County Treasurer-Tax Collector shall become final and conclusive, and shall be immediately due and payable.

C. If such application is made, the County Treasurer-Tax Collector shall, upon receipt of such application, cause the matter to be set for hearing. The hearing shall be held not fewer than ten (10) calendar days and not more than forty-five (45) calendar days from receipt of the written request for hearing, unless a later date is agreed to by the County Treasurer-Tax Collector and the person requesting the hearing.

D. Notice of the hearing shall be given by the County Treasurer-Tax Collector to the person requesting such hearing not fewer than five (5) business days prior to such hearing. The notice shall set the date, time and place for hearing and shall order the person requesting the hearing to show cause why such amount specified in the Notice of Assessment should not be confirmed.

E. The person requesting the hearing may appear and offer evidence at the hearing why the assessment as determined by the County Treasurer-Tax Collector should not be confirmed and fixed as the tax, penalties, fees, and/or interest due.

F. After such hearing the County Treasurer-Tax Collector shall determine the proper tax to be charged and shall issue, in accordance with Section 3.22.230, a Notice of Determination of Tax Due to the person requesting the hearing stating the County Treasurer-Tax Collector's determination and the amount of tax, penalties, fees, and interest.

G. The amount determined to be due shall be payable within fifteen (15) calendar days of written notice unless it is appealed to the Board of Supervisors.

Section 3.22.170. Appeal From Assessment Hearing.

Any person aggrieved by any decision of the County Treasurer-Tax Collector with respect to the amount of tax, interest, penalties, and fees, if any, due under this chapter may appeal the decision by filing a written Notice of Appeal with the County Treasurer-Tax Collector within 30 days of the decision being appealed. The appeal shall be decided by a hearing officer under the procedures in sections 9.02.350 to sections 9.02.440. The administrative order issued by the hearing officer shall be final and conclusive and shall be served upon the appellant in accordance with Section 3.22.230. Any amount found to be owed to the County shall be immediately due and payable upon the service of the decision.

Section 3.22.180. Enforcement.

A. In addition to any other remedies available under federal, state, or local law, if any amount required to be paid to the County under this chapter is not paid when due, the County Treasurer-Tax Collector may, within three (3) calendar years after the amount is due, record a certificate of lien specifying the amount of taxes, fees, interest and penalties due, and the name and address of the individual or business as it appears on the records of County Treasurer-Tax Collector. The lien shall also specify that the County Treasurer-Tax Collector has complied with all provisions of this chapter in the determination of the amount required to be paid. From the time of the filing for record, the amount required to be paid, together with penalties, fees and interest thereon, constitutes a lien upon all real property in the County owned by the individual or business, or subsequently acquired by the individual or business before the lien expires. The lien has the force, effect, and priority of a judgment lien and shall continue for ten (10) calendar years from filing of the certificate unless sooner released or otherwise discharged.

B. At any time within three (3) calendar years after any individual or business is delinquent in the payment of any amount required to be paid under this chapter or within three (3) calendar years after the last recording of a certificate of lien under Subdivision (B) of this Section, the County Treasurer-Tax Collector may issue a warrant for the enforcement of any liens and for the collection of any amount required to be paid to the County under this chapter. The warrant shall be directed to the Sheriff and shall have the same effect as a writ of execution. The warrant shall be levied and sale made pursuant to it in the same manner and with the same effect as a levy of and a sale pursuant to a writ of execution. The County Treasurer-Tax Collector may pay or advance to the Sheriff, the same fees, commissions and expenses for service provided by law for similar services pursuant to a writ of execution.

C. At any time within three (3) calendar years after recording a lien against any individual or business, if the lien is not discharged and released in full, the County Treasurer-Tax Collector may forthwith seize any asset or property, real or personal (including bank account), of the operator and sell at public auction or sale the asset or property, or a sufficient part of it to pay the amount due together with any penalties and interest imposed for the delinquency and any cost incurred on account of the seizure and sale. Assets or property of the business subject to seizure and sale subject to this chapter shall not include any assets or property which is exempt from execution under the provisions of Code of Civil Procedure.

D. Suspension or revocation of a Commercial Cannabis User Permit and Commercial Cannabis Annual Operating Permit pursuant to Section 130.41.100. The following shall constitute grounds for suspending or revoking a Commercial Cannabis User Permit and Commercial Cannabis Annual Operating Permit, in addition to any additional grounds identified in Section 130.41.100:

1. Failure to pay any cannabis business tax due under this chapter within thirty (30) calendar days of the due date.
2. Failure to cooperate with the County Treasurer-Tax Collector, or designee, as determined by County Treasurer-Tax Collector, or designee, during an audit pursuant to this chapter.
3. Underpaying any business tax due under this chapter in any period by fifty percent (50%) or more.
4. If the County determines that the nonpayment of any Commercial Cannabis Activities Tax due under this chapter is due to fraud.

Section 3.22.190. Apportionment.

If a person subject to the Commercial Cannabis Activities Tax is operating both within and outside the unincorporated County, it is the intent of the County to apply Commercial Cannabis Activities Tax so that the measure of the tax fairly reflects the proportion of the taxed activity actually carried on in the unincorporated area of the County. To the extent federal or State law requires that any tax due from any taxpayer be apportioned, the taxpayer may indicate said apportionment on their tax return. The County Treasurer-Tax Collector may promulgate administrative procedures and regulations for apportionment in accordance with state law.

Section 3.22.200. Constitutionality and Legality.

This tax is intended to be applied in a manner consistent with the United States and California Constitutions and State law. None of the tax provided for by this chapter shall be applied in a manner that causes an undue burden upon interstate commerce, a violation of the equal protection and due process clauses of the Constitutions of the United States or the State of California or a violation of any other provision of the California Constitution or state law.

Section 3.22.210. Recordkeeping; Audit.

A. It shall be the duty of every person liable for the collection and payment to the County of any tax imposed by this chapter to keep and preserve, for a period of at least seven (7) calendar years, all records as may be necessary to determine the amount of such tax as they may

have been liable for the collection of and payment to the County, which records the County Treasurer-Tax Collector or their designee shall have the right to inspect at all reasonable times, including, but not limited to, records containing information related to the amount of cannabis and/or cannabis products sold and/or transferred. Said records shall be full, true, and accurate.

B. The County Treasurer-Tax Collector shall have the power to audit and examine all books and records of persons engaged in commercial cannabis activities, including both State and federal income tax returns, California sales tax returns, or other evidence documenting the square footage of canopy and/or gross receipts of persons engaged in cannabis business, and, where necessary, all equipment, of any person engaged in commercial cannabis activities in the County, for the purpose of ascertaining the amount of Commercial Cannabis Activities Tax, if any, required to be paid by the provisions of this chapter, and for the purpose of verifying any statements or any item thereof when filed by any person pursuant to this chapter.

C. Upon demand by the County Treasurer-Tax Collector, each person liable for the collection and payment to the County of any tax imposed by this chapter shall make the records, together with any track and trace reports, shipping documents or sales invoices pertaining to such cannabis and/or cannabis products available for inspection by the County Treasurer-Tax Collector at all reasonable times.

D. If any person refuses to make available for audit, examination, or verification such books, records or equipment as the County Treasurer-Tax Collector requests, the County Treasurer-Tax Collector may, after full consideration of all information within their knowledge concerning the commercial cannabis activities of the person so refusing, make an assessment in the manner provided in Section 3.22.140 of any taxes estimated to be due. The County Treasurer-Tax Collector may collect a fee adopted by the Board of Supervisors to pay for the cost of examination and audit should the books and records be provided in a form insufficient to allow the County Treasurer-Tax Collector to make a determination of tax due.

Section 3.22.220. Other Licenses, Permits, Tax, Fees, or Charges.

A. The tax imposed hereunder does not limit or prohibit the levy or collection of any other license, permit or service fee, tax, fee, or charge upon, or related to, any commercial cannabis activity.

B. Nothing contained in this chapter shall be deemed to repeal, amend, be in lieu of, replace or in any way affect any requirements for any permit or license required by, under or by virtue of any provision of any other title or chapter of this Code or any other ordinance or resolution of the County, nor be deemed to repeal, amend, be in lieu of, replace or in any way affect any tax, fee or other charge imposed, assessed or required by, under or by virtue of any other title or chapter of this Code or any other ordinance or resolution of the County. Any references made or contained in any other title or chapter of this code to any licenses, license taxes, fees, or charges, or to any schedule of license fees, shall be deemed to refer to the licenses, license taxes, fees or charges, or schedule of license fees, provided for in other titles or chapters of this Code.

Section 3.22.230. Manner of Giving Notice.

A. Any notice required to be given hereunder by the County to any person shall be sufficiently given or served if it is served upon the person either by personal delivery, or by a deposit of the notice in the United States mail, postage prepaid thereon, addressed to the person at the address of the location of the business or to such other address as they shall register with the County Treasurer-Tax Collector for the purpose of receiving notices provided under this chapter; or, should the person have no address registered with the County Treasurer-Tax Collector for such purpose, then to such person's last known address. For the purposes of this chapter, a service by mail is complete at the time of deposit in the United States mail.

B. Failure of any person to receive any notice required by this chapter to be given shall not affect the validity of any proceedings taken thereto.

Section 3.22.240. Unlawful Activities Designated; Misdemeanor.

Any person violating any provision of this chapter is guilty of a misdemeanor, punishable in accordance with Chapter 1.24.

Section 3.22.250. Violation; Taxes Not Waived.

The conviction and punishment of any person for failure to pay the required tax shall not excuse or exempt such person from any civil action for the tax debt unpaid at the time of such conviction. No civil action shall prevent a criminal prosecution for any violation of the provisions of this Chapter or of any state law requiring the payment of all taxes.

Section 3.22.260. 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.

Section 3.22.270. Remedies Cumulative.

All remedies and penalties prescribed by this chapter or which are available under any other chapter of the El Dorado County Code and any other provision of law or equity are cumulative.

The use of one or more remedies by the chapter shall not bar the use of any other remedy for the purpose of enforcing the provisions of this chapter.

Section 3.22.280. Amendment or Repeal.

A. This chapter may be repealed or amended by the Board of Supervisors without a vote of the people to the extent allowed by law. However, as required by Article XIII C of the California Constitution, voter approval is required for any amendment that would increase the maximum rate of any tax levied pursuant to this article, that would increase the maximum rate specified for each type of commercial cannabis activity or that otherwise constitute a tax increase for which voter approval is required by Article XIII C of the California Constitution.

B. The following actions shall not constitute an increase of the rate of a tax:

1. The setting of the rate of any tax authorized hereunder to a rate that is no higher than the maximum rate set by this chapter, including the authorized cost of living adjustment, or the restoration of the rate of the tax to a rate that is no higher than the maximum rate set by this chapter, including the cost of living adjustment, if the Board of Supervisors has acted to reduce the rate of the tax;

2. An action that interprets or clarifies the methodology of the tax, or any definition applicable to the tax, so long as interpretation or clarification (even if contrary to some prior interpretation or clarification) is not inconsistent with the language of this chapter;

3. The collection of the tax imposed by this chapter, even if the chapter had, for some period of time, failed to collect the tax; or

4. The establishment or discontinuation of a class of persons that is exempted or excepted from the tax hereunder.

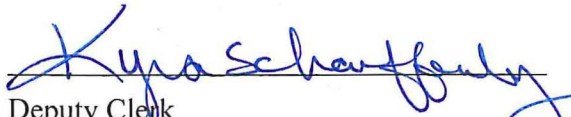
Pursuant to California Government Code section 25125, the amendments to this ordinance shall become effective 30 days from the date of final passage.


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: Frentzen, Novasel, Parlin, Hidahl, Veerkamp
Noes: None
Absent: None

ATTEST

Kim Dawson
Clerk of the Board of Supervisors


Deputy Clerk


Board of Supervisors
Vice-Chair Brian K. Veerkamp

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

By: 

Breann M. Moebius
Deputy County Counsel