

Public Notice: A public hearing for the County of Elbert for contemplated approval upon first or second reading, the following regulatory ordinance(s). The public hearing will be held before the Board of County Commissioners of Elbert County, Colorado, on December 19, 2018 at 9 a.m. in the Board Meeting Room located at 215 Comanche Street, Kiowa, CO 80117 to consider the following proposed ordinance(s). WHEREAS, the Board of County Commissioners, Elbert County, Colorado, has prepared or caused to be prepared ordinance regulating the following: **ORDINANCE 18-1, AN ELBERT COUNTY ORDINANCE TO REGULATE CULTIVATION AND PROCESSING OF INDUSTRIAL HEMP; REPEALING ALL ORDINANCES AND RESOLUTIONS IN CONFLICT THEREWITH; AND PROVIDING PENALTIES FOR VIOLATION THEREOF.** Copies of the proposed ordinance(s) are available for inspection at the County Administration Building upon request at 215 Comanche Street, Kiowa, CO 80117 during normal business hours. The full text of the ordinance follows:

**WHEREAS**, pursuant to C.R.S. § 30-11-103, the Board of County Commissioners of Elbert County, Colorado (hereinafter the “Board”), has the authority to exercise all County powers for the Unincorporated Areas of Elbert County; and

**WHEREAS**, Elbert County, Colorado has the authority pursuant to C.R.S. §30-11-101(2), to adopt and enforce ordinances and resolutions regarding health, safety and welfare issues; and

**WHEREAS**, pursuant to C.R.S. § 35-61-101 et seq., a person engaged in the cultivation of industrial hemp holding a registration issued by the State of Colorado Department of Agriculture (hereafter: CDA), and in compliance with all requirements thereof, is not subject to any civil or criminal actions for engaging in said activity; and

**WHEREAS**, the Board has determined a prevailing public interest to clearly distinguish between industrial hemp and marijuana cultivation through a permitting process that places the onus on registered industrial hemp cultivators to ensure the County Government and public have the best information to protect both public interests and private property; and

**WHEREAS**, to ensure the permitting process and subsequent record-keeping and enforcement are sufficiently funded, the Board has determined that there is a reasonably calculated cost to the County that shall not exceed five hundred dollars (\$500) per calendar year per registered cultivator; and

**WHEREAS**, the Board of County Commissioners has determined the Elbert County Community Development Services Director (hereafter: CDS) is appropriately designated as the County’s principal element charged with implementation of all requirements set forth below for permitting and inspection of industrial hemp cultivators operating within the County and coordination with other elements of Elbert County Government necessary to implement the permitting, inspection, and enforcement of the requirements described below; and

**WHEREAS**, the Board of County Commissioners directs CDS to create and gain approval of a permit form, permit fee, recording method, and validation process which may utilize CDA registration documents (“Colorado Industrial Hemp Registration Application” dated February

2017 and any subsequent CDA documents with the same intent. Such registration and regulations shall go into effect on January 1<sup>st</sup>, 2019; and

**WHEREAS**, the Board desires to adopt this ordinance establishing a permitting process for the cultivation of industrial hemp and clearly stating the County's prohibition on the processing of industrial hemp into byproducts. Hereby superseding and revoking all prior ordinances and resolutions inconsistent or overlapping herewith.

**NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF ELBERT COUNTY, COLORADO**, that:

**Section 1. Title.**

1.1 This Ordinance shall be known and referred to as the "Elbert County Industrial Hemp Cultivation and Processing Ordinance," and may be cited and referenced as such.

**Section 2. Purpose.**

2.1 The purpose of this Ordinance is to promote the general public welfare and safety by imposing and enforcing reasonable and necessary restrictions on the cultivation of industrial hemp in Elbert County and prohibiting the processing of the same.

**Section 3. No Non-conforming Use Status.**

3.1 No person, business, activity or use involving the cultivation of industrial hemp in the unincorporated areas of the County prior to the enactment of this Ordinance shall be deemed to have been legally established under this Ordinance, and no such person, business, activity or use shall be entitled to claim legal nonconforming status under any provision of this Ordinance or applicable law.

**Section 4. Definitions.**

4.1 "Industrial Hemp" means a plant of the genus cannabis and any part of the plant, whether growing or not, containing a delta-9 tetrahydrocannabinol concentration of no more than three-tenths of one percent on a dry weight basis.

4.2 "Delta-9 tetrahydrocannabinol" has the same meaning as "tetrahydrocannabinols" as set forth in C.R.S. § 27-80-203(24) and may be abbreviated as THC.

4.3 "Cultivation" means the planting, growing and/or harvesting of industrial hemp, including but not limited to hydroponic cultivation and cloning.

**Section 5. Prohibition on the Processing of Industrial Hemp and Implementation of Restrictions on Cultivation of Industrial Hemp.**

5.1 In exercise of its police power authority, and having determined the common methodologies utilized to process hemp into byproducts bear a significant risk to health, safety, and welfare, the BOCC therefore prohibits the processing of hemp within the County, to include byproducts such as Cannabidiol (hereafter: CBD) derivatives, hemp or CBD oils of any kind, and any foods, sugars, solvents, plastics, or fuels derived from hemp. This prohibition includes extraction, or production of any hemp concentrate or derivative of a hemp plant, through any methods, to include:

- (1) Extraction using alcohol, ethanol, or any solvent;
- (2) The production of concentrate utilizing any source of heat from a fuel fired or electrified source;
- (3) Utilization of any process using hazardous chemicals, gases, explosives, fossil fuels/fluorocarbons or their derivatives, butane, or other flammable materials;
- (4) Extraction using carbon dioxide, or water, as part of an extraction process.

5.2 The growing of hemp seeds and harvesting of hemp seeds for purposes of agricultural seeding shall not be subject to the prohibition on processing of industrial hemp into byproducts described in section 5.1.

5.3 Provision of items (1)-(6), acknowledgement of items (7)-(11), and verification by CDS and/or signed affidavit to the same by applicant(s) of compliance with items (12)-(14) below, shall constitute grounds for approval to cultivate industrial hemp in Elbert County:

- (1) Provide annual proof of state registration with CDA.
- (2) Provide proof of testing from the prior year showing THC level for all hemp varieties planted in each registered area fell within the 0.3% THC content or below threshold (if applicant grew hemp in the County last year).
- (3) Provide letter indicating intended in-County use for hemp not sold or shipped out of County, or proof of contract for sale/proof of contract for processing/intent to buy hemp from an entity outside of Elbert County in order to ensure hemp processing is not taking place in Elbert County.
- (4) Provide a Crop Destruction plan, applicable if crop tests above 0.3% THC.
- (5) Provide a Fire District acceptance letter of destruction plan, if destruction includes burning.
- (6) Provide permitting fee of five hundred dollars (\$500), which may cover annual on-site inspection by CDS, County initiated tested samples, and possible law enforcement patrols, inspections, or visits.
- (7) Advise the voluntary submission of potency testing reports by registered cultivators to Elbert County CDS is encouraged and may take place at any time
- (8) Acknowledge Elbert County Sheriff's Office (hereafter: SO) ability engage in unimpeded access within 24 hours of notification to applicant, to all buildings and locations where hemp cultivation operations are occurring.
- (9) Acknowledge Elbert County CDS is entitled to unimpeded access within 24 hours of notification to applicant, to all buildings and locations where hemp cultivation operations are occurring the purpose of site inspection and testing up to two (2) samples per year from any varietal on each registered land area within the county, to

be tested for potency by a state-certified laboratory at cost to the County, and provide access as requested

- (10) Acknowledge the failure to comply with any of the above requirements may result in denial of a permit for the subsequent registration year
- (11) Acknowledge the failure to comply with CDA requirements discovered by Elbert County may result in referral of information collected by Elbert County to the CDA and may result in immediate revocation or denial of applications in present years, and future years, and/or referral to law enforcement for further investigation
- (12) Verify correct zoning (Agriculture) and, when cultivation takes place within any structure, compliance with all applicable laws, regulations, and codes, including but not limited to health, building, electrical, plumbing, mechanical, sign, fire, and other codes, statutes, and ordinances
- (13) Inspect fencing on any public access road and neighboring properties creates a clear boundary with adjacent properties and a deterrent effect (forty-eight [48] inch average height, comprising three (3) strands of barbed wire or posted electric fence with no more than fifteen (15) inch spacing, solid chain link, or three-rail wood, metal or vinyl fence)
- (14) Inspect signage declaring crop is industrial hemp, placed no more than one hundred and fifty (150) feet apart along any public road and at least one (1) sign facing all adjacent properties at the center point and all corners of the boundary for open fields; signage at each entrance to a fixed structure used for indoor cultivation and at any access point to the property from a public road; and all signage readable from at least twenty-five (25) feet distant

5.4 The cultivation of industrial hemp in Elbert County without an approved Elbert County Industrial Hemp Cultivator Application or subsequent Elbert County document with the same intent shall constitute a violation of this ordinance.

5.5 Once a registrant has begun to plant a crop under the authorization of an approved Elbert County Industrial Hemp Cultivator Application, the failure to provide the following items in the timeframes described shall constitute a violation of this ordinance:

- (1) Provide copies of all CDA-mandated planting and harvest reports no more than fifteen (15) days after planting or transferring cannabis plants in and within a registered land area; and no sooner than twenty-one (21) days and no later than seven (7) days prior to the anticipated harvest date so that Elbert County officials can elect to sample the proposed harvest plants for THC content
- (2) Provide Elbert County CDS proof of potency testing by a Colorado state-certified laboratory, at cultivator cost, for all varieties planted within each registered area, no sooner than twenty-one (21) days and no later than seven (7) days prior to the anticipated harvest date

5.6 Once a registrant has begun to plant a crop under the authorization of an approved Elbert County Industrial Hemp Cultivator Application, the failure to provide access in accordance with Section 5.3., items (8) and (9), shall constitute a violation of this ordinance and shall constitute a basis for immediate revocation of permitted agricultural cultivation of hemp.

5.7 Once a registrant has begun to plant a crop under the authorization of an approved Elbert County Industrial Hemp Cultivator Application, the failure to maintain compliance with Section 5.3., items (12), (14), and (15) shall constitute a violation of this ordinance and shall constitute a basis for immediate revocation of permitted agricultural cultivation of hemp

## **Section 6. Enforcement.**

6.1 This Ordinance shall be enforced by the Elbert County Sheriff and county code enforcement personnel.

6.2 *Violation:* It shall be unlawful for any person to violate any provision of this Ordinance.

6.2.1 Any person who violates this Ordinance commits a Class 2 Petty Offense.

6.2.2 The fine for a first offense and for any subsequent offense shall be no less than two-hundred fifty dollars (\$250) and not more than one thousand dollars (\$1,000) per violation and each day shall be deemed a separate violation.

6.2.3 The remedies provided in this Ordinance shall be cumulative and in addition to any other federal, state or local remedy, criminal or civil, which may be available. Nothing contained herein shall be construed to preclude prosecution under any other applicable statute, ordinance, rule, order or regulation.

6.3 *Penalty Assessment:* In accordance with C.R.S. §30-15-402, and §16-2-201 and all other applicable County and State Code, Regulations, or Laws, any applicable penalty assessment procedure is hereby authorized for use by any law or code enforcement officer, or County or District Attorney, vested with authority to issue a Summons and Complaint for violations of this Ordinance.

6.3.1 The penalty assessment notice (citation) shall be a Summons and Complaint containing identification of the alleged offender, specification of the offense and applicable fine, a requirement that the alleged offender pay the fine or appear to answer the charge at a specified time and place, and any other matter reasonably adapted to effectuating the purposes of this section.

6.3.2 A duplicate copy shall be sent to the Elbert County Clerk of the Court or otherwise in the county in which the alleged offense occurred.

6.3.3 The provisions herein shall not apply to penalties assessed pursuant to authority of law outside this Ordinance unless this Ordinance is specifically referred to in such other law.

6.3.4 If the person given a penalty assessment notice (citation) chooses to acknowledge their guilt, he or she may pay the specified fine in person or by mail at the place and within the time specified in the notice. If the individual chooses not to acknowledge their guilt, he or she shall appear as required in the notice. Upon trial, if the alleged offender is found guilty,

the fine imposed shall be that specified in the notice for the offense of which the individual was found guilty, but customary court costs and surcharges shall be assessed against the individual in addition to the fine.

6.4 *Graduated Fine Schedule and Procedure for Payment:* Any person who violates any part of Section 5, shall be punished, upon conviction, in accordance with the following schedule:

- (1) For the first offense, the sum of five-hundred dollars (\$500);
- (2) For the second or subsequent offense, the sum of one thousand dollars (\$1,000).

6.4.1 Whenever a penalty assessment notice (citation) is issued pursuant to this Ordinance, the penalty assessment notice (citation) which shall be served upon the defendant by a code or law enforcement officer, and shall contain the name and address of the defendant; a citation of the Ordinance section alleged to have been violated; a brief description of the offense; the date and approximate location of the commission of the offense; the amount of the penalty prescribed for such offense, including any surcharge and collection costs; and the date the penalty assessment notice (citation) is served on the defendant.

6.4.2 The penalty assessment shall inform the defendant of the opportunity to pay the fine and a five dollar (\$5.00) collection fee, within twenty (20) days unless otherwise provided by law, all fines paid for the violation of this ordinance shall be made payable to Elbert County and submitted to the Elbert County Treasurer's Office and deposited into the general fund of Elbert County, thereby avoiding imposition of court costs and surcharges at a later date.

6.4.3 The penalty assessment notice (citation) shall direct the defendant to appear in a specified county court at a specified time and place in the event such penalty is not paid; shall be signed by the code or law enforcement officer; and shall contain a place for the party issued a Penalty Assessment Notice (citation) to elect to execute a signed acknowledgment of guilt and an agreement to pay the penalty prescribed within twenty days (20), as well as such other information as may be required by law, to enable such Penalty Assessment Notice to become a Summons and Complaint, should the prescribed penalty not be paid within the time allowed in this Ordinance.

6.4.4 One (1) copy of said Penalty Assessment Notice shall be served upon the defendant by the code or law enforcement officer and one (1) copy sent to the Elbert County Treasurer. In the event the penalty assessment is not paid to the Elbert County Treasurer within the required twenty (20) day period, the Elbert County Treasurer shall forward all unpaid penalty assessments to the Elbert County Court for docketing on the date of first appearance indicated on the Summons and complaint/Penalty Assessment Notice.

6.4.5 The time specified in the summons portion of said Summons and Complaint must be at least twenty days (20) after the date such Summons and Complaint is served, unless the defendant shall demand an earlier court appearance date.

6.4.6 The time specified in the summons portion of said Penalty Assessment Notice shall be at least thirty days (30) but not more than ninety days (90) after the date such Penalty

Assessment Notice is served, unless the defendant shall demand an earlier court appearance date.

6.4.7 The place specified in the summons portion of said Summons and Complaint or of the Penalty Assessment Notice must be a county court within the county in which the offense is alleged to have been committed.

6.4.8 If the defendant is otherwise eligible to be issued a Summons and Complaint or a Penalty Assessment Notice for a violation of this Ordinance and if the defendant is not a resident of Elbert County, in order to secure release, must execute a promise to appear in court on the Penalty Assessment Notice or on the Summons and Complaint.

6.4.9 Unless a person who has been cited for an Ordinance violation pays in a timely manner with adequate and sufficient funds, the penalty assessment as provided in this Ordinance, the person shall appear at a hearing on the date and time specified in the summons portion of the Penalty Assessment Notice and answer the complaint against him or her.

6.4.10 If judgment is entered against a violator, he or she shall be assessed an appropriate penalty, a surcharge, a docket fee, and other applicable costs.

6.5 *Disposition of Fines and Surcharges*: Unless otherwise provided by law, all fines and penalties, and the surcharge thereon, for the violation of this Ordinance shall be paid into the treasury of Elbert County.

## **Section 7. Severability.**

7.1 If any section, subsection, clause, sentence or phrase of this Ordinance are for any reason adjudged by any court of competent jurisdiction to be invalid, such invalidity shall not affect, impair or invalidate any other provisions of this Ordinance which can be given effect without such invalid provision. The Board hereby declares that it would have passed this Ordinance and each part or parts thereof, irrespective of the fact that anyone part or parts be declared invalid.

## **Section 8. Repeal.**

8.1 Existing or parts of ordinances covering the same matters as embraced in this Ordinance are hereby repealed and all ordinances or parts of ordinances inconsistent with the provisions of this Ordinance are hereby repealed, except that this repeal shall not affect or prevent the prosecution or punishment of any person for any act done or committed in violation of any ordinance hereby repealed prior to the taking effect of this Ordinance.

## **Section 9. Interpretation.**

9.1 This ordinance shall be so interpreted and construed as to effectuate the prohibition of the processing of industrial hemp into byproducts, and regulate the cultivation of industrial hemp

for the purposes of protecting private property and ensuring the health, safety, and welfare of the public.

**Section 10. Effective date.**

10.1 This Ordinance, upon adoption on the second and final reading, shall become effective on the 1<sup>st</sup> day of January, 2019 and shall remain in effect until such time as this Ordinance is amended, temporarily suspended or repealed.

**Section 11. Certification.**

11.1 The Elbert County Clerk shall certify to the passage of this Ordinance and shall have on file copies of this Ordinance available for inspection by the public during normal working hours.

**End Text**

Following the hearing, consideration based on this first or second reading will be given to the final passage and adoption of the Ordinance(s). In case of any discrepancy between the summary of the ordinance(s) printed here and the official text of the ordinance(s), the official text shall control.