

ORDINANCE NO.

AN ORDINANCE OF THE MENDOCINO COUNTY BOARD OF SUPERVISORS ADDING CHAPTER 10A.18 – INDUSTRIAL HEMP CULTIVATION PILOT PROGRAM TO THE MENDOCINO COUNTY CODE

THE MENDOCINO COUNTY BOARD OF SUPERVISORS ORDAINS AS FOLLOWS:

Section 1. Purpose and Authority.

The purpose of this ordinance is to create a temporary pilot program to allow for the cultivation of industrial hemp on a limited number of parcels within Mendocino County. Pursuant to Article XI, section 7, of the California Constitution, the County of Mendocino ("County") may adopt and enforce ordinances and regulations not in conflict with general laws to protect and promote the public health, safety and welfare of its citizens.

Section 2. Declarations and Findings.

The Mendocino County Board of Supervisors hereby make the following declarations and findings in support of the adoption and application of this ordinance:

A. Beginning in 2018, both State and Federal laws related to industrial hemp have been amended to allow hemp cultivation more broadly than previously allowed. However, the various statutory and regulatory changes that have been approved by State and Federal entities since 2018 has not yet resulted in a consistent or comprehensive system for the regulation of industrial hemp cultivation.

B. On February 26, 2019, the Mendocino County Board of Supervisors approved an initial urgency moratorium on the cultivation of industrial hemp, for a period not to exceed forty-five days, which moratorium was further extended on April 9, 2019, and on February 4, 2020.

C. Reasons for the moratorium on industrial hemp cultivation included that (1) since industrial hemp and cannabis are similar in appearance, allowing the cultivation of industrial hemp prior to the adoption of reasonable regulations, would create an increased likelihood of unlawful commercial cannabis cultivation and evasion of the County's cannabis tax; (2) the effects of hemp cultivation could create a public nuisance; and (3) cross-pollination from hemp plants poses a threat to licensed outdoor cannabis cultivators, which diminishes the cannabis plants.

D. While the regulatory setting for industrial hemp remains unsettled, the Board of Supervisors desires to implement a pilot program regulating the cultivation of hemp in a limited, responsible manner, to allow the County to better determine the compatibility of hemp cultivation with neighbors and with cannabis cultivation sites.

E. Adoption of the pilot program is intended to be an interim regulation for the cultivation of industrial hemp in Mendocino County that eliminates the need for the urgency moratorium extended by the Board of Supervisors on February 4, 2020.

Section 3. Adoption of Chapter 10.18A – Industrial Hemp Cultivation Pilot Program.

Chapter 10A.18 – Industrial Hemp Cultivation Pilot Program

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Sec. 10A.18.070	Establishment and Promulgation of Regulations.
Sec. 10A.18.080	Fees.
Sec. 10A.18.090	License Application Requirements.
Sec. 10A.18.100	Grounds for Notice of Termination of License.
Sec. 10A.18.110	Notice of Revocation of License.
Sec. 10A.18.120	Violations.
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Sec. 10A.18.140	Limitations on County's Liability.

Sec. 10A.18.010 - Purpose.

It is the purpose and intent of this chapter to implement a pilot program regulating the cultivation of hemp in a responsible manner to protect the health, safety, and welfare of the residents of Mendocino County and to enforce rules and regulations consistent with state law. It is the further purpose and intent of this chapter to require all persons cultivating hemp to obtain a license to operate within Mendocino County. Nothing in this chapter is intended to authorize the cultivation of hemp for purposes that violate state or federal law. The provisions of this chapter are in addition to any other permits, licenses and approvals which may be required to conduct activity in the county. The provisions of this chapter shall expire on December 31, 2022.

Sec. 10A.18.020 - Authority.

Pursuant to Section 7 of Article XI of the California Constitution, the Mendocino County is authorized to adopt ordinances that establish standards, requirements, and regulations for the licensing of hemp cultivation. Any standards, requirements, and regulations regarding health and safety, security, and worker protections established by the state of California, or any of its departments or divisions, shall be the minimum standards applicable in Mendocino County to all hemp cultivation.

Sec. 10A.18.030 - Definitions.

When used in this chapter, the following words shall have the meaning ascribed to them as set forth herein. Any reference to California statutes includes any regulations promulgated thereunder and is deemed to include any successor or amended version of the referenced statute or regular provision.

- (A) "Established agricultural research institution" has the same meaning as in Section 81000 of the California Food and Agricultural Code.
- (B) "Hearing officer" means the hearing officer established in Chapter 2.76 of the Mendocino County Code.
- (C) "Hemp cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of hemp, including activities carried out by hemp breeders.

- (D) "Hemp" has the same meaning as in Section 81000 of the California Food and Agricultural Code.
- (E) "Hemp breeder" has the same meaning as in Section 81000 of the California Food and Agricultural Code.
- (F) "Person" includes any individual, firm, partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit, and includes the plural as well as the singular number. For the purposes of this chapter, person shall include cultivation by an established agricultural research institution as defined in Section 81000 of the California Food and Agricultural Code.

Sec. 10A.18.040 – Hemp Cultivation License Required.

No person shall cultivate hemp in the unincorporated area of Mendocino County without first obtaining a license from the Agricultural Commissioner to cultivate as provided in this chapter. A license issued under this chapter does not grant any interest in real property or create any interest of value and is not transferable. A person may be issued only one (1) hemp cultivation license.

A license issued under this chapter shall have an expiration date of December 31 of the year issued. A license may be renewed on an annual basis.

No more than five (5) hemp cultivation licenses will be issued at any given time. Hemp cultivation licenses will be issued pursuant to the selection process stated in this chapter.

Sec. 10A.18.050 – Selection Process for Issuance of a License.

- (A) An application for a license to cultivate industrial hemp may be submitted only after the conclusion of a solicitation process conducted in accordance with this section. In advance of a solicitation, the Purchasing Agent will approve the solicitation and adopt forms and procedures necessary to implement the solicitation process, including the form of a request for proposals. The solicitation process will be administered by the Purchasing Agent and Agricultural Commissioner.
- (B) Notification Lists. Notification lists may be established to maintain lists of persons that have expressed an interest in obtaining a license to cultivate industrial hemp. Notification lists are to assist the County in providing notice of solicitations to interested persons. A person's inclusion on a notification list confers no priority or advantage with respect to any solicitation under this section. A person's inclusion on a notification list does not guarantee the person will receive notice about any solicitation.
- (C) Issuance of Request for Proposals. After the Purchasing Agent approves a solicitation for a license to cultivate industrial hemp, the County will issue a request for proposals. Persons on an applicable notification list may be notified of the availability of the request for proposals. Notice of the availability of the request for proposals also may be provided to other persons, or in any other manner, as determined by the Purchasing Agent.

- (D) Proposal Submission Deadline. All proposals must be submitted by the proposal submission deadline specified in the request for proposals.
- (E) Evaluation of Proposals. All proposals timely submitted in response to a request for proposals will be evaluated by a panel using scoring criteria specified in the request for proposals. Evaluation criteria may include, but not be limited to, the proximity of the proposed industrial hemp cultivation site to the nearest applied for or permitted cannabis cultivation site. All proposals will be ranked according to the scores determined by the panel.
- (F) Invitation to Apply for a License. Following the evaluation of proposals, the persons who submit the highest scoring proposals will be provided written notice that they may apply for a license under this chapter. The notice will specify the application deadline. The number of persons receiving notice will not exceed the number of licenses available. If the Department of Agriculture does not receive a timely submitted application from a person invited to apply for a license, the person who submitted the proposal with the next highest score may be invited to apply for a license. If a request for proposals specifies a minimum score needed to be eligible to be invited to apply for a permit, persons who receive scores below the minimum score will not be invited to apply for a license.
- (G) An application to renew a license issued under this chapter is not subject to the requirements of this section.

Sec. 10A.18.060 – Standards for Industrial Hemp Cultivation.

The following standards are applicable to all industrial hemp cultivation:

- (A) The property proposed for industrial hemp cultivation shall be no less than 10 acres in size and located in a zoning district which allows row and field crops as a permitted use.
- (B) All industrial hemp must be grown from female cloned plants.
- (C) Male hemp plants shall be prohibited.
- (D) Cultivation of industrial hemp for the purpose of seed or nursery production is prohibited.
- (E) All parcels used for the cultivation of industrial hemp shall have onsite signage indicating that hemp is being cultivated on site.
- (F) Industrial hemp shall be cultivated in a manner compliant with all applicable federal, state and local laws, and/or regulatory, licensing or certification requirements, and any specific additional operating procedures or requirements which may be imposed by the County. Such laws and requirements include, but are not limited to, Division 24 of the California Food and Agricultural Code (Food and Agricultural Code section 81000 *et seq.*), Chapter 8 of Division 4 of Title 3 of the California Code of Regulations (3 Cal. Code Regs. section 4900 *et seq.*), and any regulations issued by the Mendocino County Department of Agriculture pursuant to section 10A.18.070 herein. Nothing in this Chapter shall be construed as authorizing any actions that violate federal, state or local law regarding the

cultivation of industrial hemp.

- (G) Industrial hemp shall be cultivated in accordance with federal, state and local laws related to land usage, building codes, grading, electricity, water usage, quality and discharge rules.

Sec. 10A.18.070 – Establishment and Promulgation of Regulations.

The Board of Supervisors or the Agricultural Commissioner may establish regulations for the cultivation of industrial hemp. Such regulations shall be published on the County's website, and a copy of the regulations shall be filed with the Clerk of the Board of Supervisors and shall be effective upon such publication and filing.

Sec. 10A.18.080 – Fees.

The Board of Supervisors may, by resolution, establish fees for a license issued under this Chapter, to offset the costs of processing applications, administering the program, inspecting industrial hemp cultivation sites, or to defray the costs of enforcement required to be carried out by the County. All inspection fees shall consist of the hourly rate for an inspector from the Department of Agriculture for the travel and inspection time plus the standard IRS mileage rate for travel distance.

Failure to pay all fees attributable to County costs incurred due to a Person's activities in the licensing or cultivation of industrial hemp shall be cause for revocation or non-renewal of a Person's license until all outstanding fees are paid in full.

Sec. 10A.18.090 – License Application Requirements; Renewals.

(A) A license for the cultivation of industrial hemp may be issued only if each of the following requirements are met:

- (1) Applicants for a County license to cultivate industrial hemp shall submit an application in accordance with the application process established by the Agricultural Commissioner.
- (2) Applicants shall pay all required application fees established pursuant to section 10A.18.070.
- (3) Each person applying for a license to cultivate industrial hemp shall include the following information in the permit application:
 - (a) Proof of ownership of the property where the hemp will be cultivated or written consent from the property owner in a form acceptable to the Agricultural Commissioner.
 - (b) The address and assessor's parcel number of the property or properties where the hemp will be cultivated.
 - (c) The name and address of each person or entity responsible for the industrial hemp cultivation operation.

- (d) All information as set forth in subdivision (a) of section 81003 of the Food and Agricultural Code.
- (4) Applicants for a County license shall simultaneously apply to the Agricultural Commissioner for a registration pursuant to section 81003 of the Food and Agricultural Code, and pay all required fees.
- (5) Applicants shall provide consent to all inspections and testing that may be conducted by the Agricultural Commissioner.

Sec. 10A.18.100 – Grounds for Notice of Termination of License.

- (A) Hemp cultivation licenses may be terminated by the Agricultural Commissioner for any violation of law and/or any rule, regulation, or standard, including, but not limited to, those adopted pursuant to this Chapter.
- (B) Any of the following shall be grounds for termination of the hemp cultivation license, based on substantial evidence:
 - (1) Failure to timely submit all reports required by the Agricultural Commissioner.
 - (2) Failure to obtain and submit to the Agricultural Commissioner a laboratory test report indicating the THC levels of the hemp as required by law, rule or regulation prior to harvest.
 - (3) Failure to comply with the standards and requirements of this Chapter.
 - (4) Providing false material information to the Agricultural Commissioner, written or oral, given willfully or negligently by the licensee.
 - (5) Any act or omission by a licensee that results in the violation of the provisions of this Chapter.
 - (6) Any act or omission by a licensee that results in the denial, revocation or suspension of the licensee's registration pursuant to Division 24 of the Food and Agricultural Code.
 - (7) Any act or omission directly related to the hemp cultivation by a licensee which constitutes a violation of State law or the Mendocino County Code.
 - (8) Allowing any hemp cultivation to operate in a manner which constitutes a nuisance, where the licensee has failed to abate the nuisance after notice.

Sec. 10A.18.110 – Notice of Revocation of License.

- (A) If the Agricultural Commissioner determines that grounds for revocation of the hemp cultivation license exist pursuant to this Chapter, the Agricultural Commissioner shall issue a written Notice of Intention to revoke the license.

The Notice of Intention shall be served on the licensee at the address stated on the license issued pursuant to this Chapter. The Notice of Intention may be served by either personal service or by first-class U.S. Mail; if by mail, service will be deemed complete five (5) days after mailing. The Notice of Intention shall:

- (1) Identify the licensee;
 - (2) Describe the location of the property;
 - (3) State the intention to revoke the license;
 - (4) Provide the grounds for revocation and the action necessary to abate the violation, if any;
 - (5) Notify the licensee of the right to request a hearing before a hearing officer to present evidence as to why the license should not be revoked; and
 - (6) Inform the licensee of the ten (10) day deadline to submit a written request for a hearing.
- (B) The licensee shall have ten (10) days from the service of the Notice of Intention to submit a written request for a hearing to the Agricultural Commissioner, or designee, along with any required appeal fee. A written request for a hearing submitted without a required fee shall be deemed incomplete. The Agricultural Commissioner shall immediately coordinate with County Counsel to schedule a hearing with a Hearing Officer. Failure to submit the written request for a hearing shall be deemed a waiver of the right to challenge the revocation of the license and a failure to exhaust administrative remedies. If the hearing is not timely requested, the Agricultural Commissioner may revoke the license.
- (C) A hearing before the Hearing Officer shall be set for a date that is not less than ten (10) days from the date that the written request for a hearing is received. Any hearing before the Hearing Officer shall be held pursuant to the procedures established in section 1.08.120 of the Mendocino County Code.
- (D) Determination after hearing. The Hearing Officer shall consider the evidence presented by the parties, and shall issue a signed, written decision and order that either affirms or reverses the determination to terminate the license in question. Such decision shall be delivered to the licensee by personal delivery or by first-class U.S. Mail, sent to the mailing address associated with the license. The decision shall become effective either on the day the decision is personally delivered to the licensee, or five (5) days after the decision is mailed to the licensee, whichever is earlier.

Sec. 10A.18.120 – Violations.

- (A) The cultivation of industrial hemp in violation of federal, state, ~~-local~~ laws and/or regulations, including this Chapter, including industrial hemp cultivation ~~w~~without a license, and regulations adopted pursuant to this Chapter, constitutes a public nuisance, and may be ~~-subject to abatement~~

~~pursuant to~~ abated in accordance with the procedures in either to Chapter 8.75 or 8.76.

- (B) Cultivation of industrial hemp in violation of the Mendocino County Code may be enforced by the imposition of administrative penalties pursuant to Chapter 1.08 of the Mendocino County Code. ~~After the violation(s) have been cured, the correction must be confirmed before the accumulation of penalties stops.~~
- (C) Each and every violation of this chapter shall constitute a separate violation and shall be subject to all remedies and enforcement measures authorized by the Mendocino County Code. The County may also pursue any and all remedies and actions available under state and local laws for any violations committed by Persons related to, or associated with, the unlawful cultivation of industrial hemp.
- (D) Inspection Fees. After initial substantiation of a violation related to any law related to a license, inspection fees shall be charged to the licensee for any compliance inspection undertaken by the Department of Agriculture for the purpose of determining if the cited violations have been cured.

Sec. 10A.18.130 – Destruction of Non-Compliant Industrial Hemp.

An industrial hemp plant or crop that does not comply with the provisions of this Chapter and all applicable provisions of federal and state law, and associated rules and regulations, shall be destroyed.

Following either (1) the termination of a license pursuant to the provisions of this Chapter, or (2) the confirmation, following inspection, of the cultivation of industrial hemp without a County license, all industrial hemp located on the subject property shall be destroyed. Crop destruction shall proceed as provided for in applicable laws and regulations, including, but not limited to, section 4950 of Title 3 of the California Code of Regulations.

In addition to any other remedy prescribed by law, the County may utilize the provisions of Chapter 8.76 of the Mendocino County Code as an alternative remedy to abate non-compliant industrial hemp plants.

Sec. 10A.18.140 – Limitations on County's Liability.

To the fullest extent permitted by the law, Mendocino County shall not assume any liability whatsoever with respect to having issued a license to cultivate hemp pursuant to this chapter or otherwise having approved the operation of any hemp cultivation.

Section 4. Termination of Moratorium.

As of the effective date of this ordinance, the moratorium initially adopted by Ordinance No. 4426, and extended by Ordinance Nos. 4430 and 4458, shall be terminated.

Section 5. CEQA.

This ordinance is categorically exempt from the California Environmental Quality Act under (a) section 15061(b)(3) since there is no possibility the activity in question may have a

significant effect on the environment; and (b) section 15308 since the action is a local ordinance adopted to assure protection of the environment and there are no unusual circumstances under section 15300.2 of the State CEQA Guidelines.

Section 6. Severability.

If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

PASSED AND ADOPTED by the Board of Supervisors of the County of Mendocino, State of California, on this _____ day of _____, 2020, by the following roll call vote:

AYES:
NOES:
ABSENT:

WHEREUPON, the Chair declared the Ordinance passed and adopted and **SO ORDERED**.

ATTEST: CARMEL J. ANGELO
Clerk of the Board

JOHN HASCHAK, Chair
Mendocino County Board of Supervisors

Deputy

APPROVED AS TO FORM:
CHRISTIAN M. CURTIS,
County Counsel

I hereby certify that according to the provisions of Government Code section 25103, delivery of this document has been made.

BY: CARMEL J. ANGELO
Clerk of the Board

Deputy