

ORDINANCE NO. _____

AN ORDINANCE ESTABLISHING REGULATIONS FOR THE CULTIVATION AND PROCESSING OF INDUSTRIAL HEMP IN THE UNINCORPORATED AREAS OF TULARE COUNTY, ADDING CHAPTER 5-10 TO PART VI OF THE TULARE COUNTY CODE.

THE BOARD OF SUPERVISORS OF THE COUNTY OF TULARE, STATE OF CALIFORNIA, ORDAINS AS FOLLOWS:

SECTION 1: Chapter 5, Article 10, titled “Industrial Hemp Cultivation,” is added to the Tulare County Code as follows:

Article 10. INDUSTRIAL HEMP CULTIVATION

Sections:

- 5-10-010 Purpose and Authority
- 5-10-020 Definitions
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5-10-010 Purpose and Authority

Pursuant to Article XI, section 7, of the California Constitution, the County of Tulare (“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 residents and visitors. It is the purpose and intent of this Ordinance to establish standards, requirements, and regulations governing Industrial Hemp cultivation.

Further, it is the purpose and intent of this Chapter to impose reasonable land use regulations to protect the County's residents, neighborhoods, businesses, and the environment from disproportionately negative impacts caused by Industrial Hemp cultivation, and to enforce rules and regulations consistent with state and federal law.

The provisions of this Chapter are in addition to any other permits and approvals which may be required to conduct business in the County, and are in addition to any permits, licenses, and approvals required under State, County, or other law.

5-10-020 Definitions

For the purposes of this Chapter, the following definitions shall apply, unless the context clearly indicates otherwise. If a word is not defined in this Chapter, the common and ordinary meaning of the word shall apply. All citations to state law shall refer to the act, statute, or regulations as they may be amended from time to time.

- A. "Applicant" shall include any Person (as defined in Subsection G below) who is eligible to Cultivate Industrial Hemp under this Chapter. A Person with a State or Federal felony conviction relating to a controlled substance is subject to a 10-year ineligibility restriction on Cultivation of Industrial Hemp under Federal Law.
- B. "Cultivation" shall include any activity involving the propagation, planting, growing, harvesting, grading, or trimming of Industrial Hemp.
- C. "Established Agricultural Research Institution" is an institution of higher education, as defined in Section 101 of the federal Higher Education Act of 1965 (20 U.S.C Sec. 1001), that grows or cultivates Industrial Hemp for purposes of research conducted under an agricultural pilot program or other agricultural or academic research in accordance with Section 7606 of the Federal Agricultural Act of 2014 (7 U.S.C. Sec. 5940) or is otherwise approved by the California Secretary of Food and Agriculture.
- D. "Hemp" shall have the same meaning as Industrial Hemp. "Industrial Hemp" has the same meaning as that term is defined in Section 11018.5 of the California Health and Safety Code, which defines Industrial Hemp as "a crop that is limited to types of the plant *Cannabis sativa* L. having no more than three-tenths of 1 percent tetrahydrocannabinol (THC) contained in the dried flowing tops, whether growing or not; the seeds of the plant; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin produced therefrom."
- E. "Industrial Hemp Handler" means a Person engaged in the business of producing, grading, packing, or otherwise preparing Industrial Hemp or Industrial Hemp products for market or who engages in the operation of selling or marketing Industrial Hemp that such Person has produced, purchased, or acquired from a producer, or which such Person is marketing on behalf of a producer, whether as owner, agent, employee, or otherwise.
- F. "Nursery stock" shall have the meaning set forth in California Food and Agricultural Code section 5005.

- G. "Person" includes any individual, firm, partnership, joint venture, association, corporation, limited liability company, estate, trust, business, business trust, receiver, syndicate, collective, cooperative, institution, including an established agricultural research institution, or any other group or entity, or combination acting as a unit. Except where otherwise indicated by context, the singular shall include the plural, and vice versa.
- H. "Processing" means the operation of receiving, grading, packing, fermenting, distilling, extracting, preserving, drying, grinding, crushing, or changing the form of any Industrial Hemp or Hemp for the purpose of preparing it for market or of marketing such Industrial Hemp or Hemp, or any other activities which are performed for the purpose of preparing it for market or of marketing such Hemp or Industrial Hemp. This definition specifically does not include operations which are solely dedicated to the retail sale of Industrial Hemp products.
- I. "Urban Development" is a City, any urban development boundary, any municipal or County park, any church, or any school.

5-10-030 Administration

The Sheriff and/or the Agricultural Commissioner, or their respective designees, are charged with the responsibility of administering, and exercising the authority conferred under, this Chapter.

5-10-040 Permits Required

- A. No Person, including an Established Agricultural Research Institution, shall cultivate Industrial Hemp in the unincorporated areas of Tulare County without first obtaining a permit issued by the Agricultural Commissioner to Cultivate Industrial Hemp as provided in this Chapter. A permit for Cultivation may be issued to an Established Agricultural Research Institution only if it meets the definition of Established Agricultural Research Institution stated in section 5-10-020 of this Chapter. A permit issued under this Chapter does not grant any interest in real property or create any interest of value and is not transferable.
- B. No Person, including an Established Agricultural Research Institution shall process Industrial Hemp in the unincorporated areas of Tulare County without first obtaining a permit issued by the Agricultural Commissioner to Process Industrial Hemp as provided in this Chapter. A permit for Processing may be issued to an Established Agricultural Research Institution only if it meets the definition of Established Agricultural Research Institution stated in section 5-10-020 of this Chapter. A permit issued under this Chapter does not grant any interest in real property or create any interest of value and is not transferable.

5-10-050 Permit Requirements

A permit for the Cultivation and/or Processing of Industrial Hemp may be issued only if each of the following requirements are met:

- A. Applicants shall submit an application in accordance with the application process established by the Agricultural Commissioner. A single permit may be issued for multiple sites.
- B. An applicant shall be the owner and/or record holder of title of the land upon which Hemp is to be cultivated, or provide written consent in a notarized form acceptable to the Agricultural Commissioner, from the owner and/or record holder of title of granting permission for the cultivation of Industrial Hemp on the specified parcel(s).
- C. Each parcel for which a Cultivation permit application is submitted must be located in the AE, AE-10, AE-20, AE-40, or AE-80 (Exclusive Agricultural), and M-1 (Light Manufacturing) zones.
- D. Each parcel for which a Processing permit application is submitted must be located in the AE, AE-10, AE-20, AE-40, AE-80 (Exclusive Agricultural), M-1, or M-2 (Manufacturing) zones. Any application submitted for a parcel located in the AE, AE-10 AE-20, AE-40, AE-80, or M-1 zone shall require a Special Use Permit from the Tulare County Resource Management Agency.
- E. Before a permit is issued under this Chapter, and if the Applicant is not the owner of the property upon which Industrial Hemp shall be cultivated, the Applicant shall submit a bond or other form of security acceptable to the Agricultural Commissioner in the amount of one hundred (100) percent of the estimated cost to fully abate a crop of Industrial Hemp that does not meet requirements for legal harvest under applicable laws and regulations. The financial security provided shall be released to the Applicant after the Agricultural Commissioner determines that the security is no longer needed to secure the abatement of a non-compliant hemp crop.
- F. An Applicant shall fully satisfy the registration requirements stated in California Food and Agricultural Code section 81003.
- G. An Applicant for the cultivation of nursery stock shall have a license to sell nursery stock as required under California Food and Agricultural Code section 6721 et seq.
- H. Each permit issued under this Chapter shall expire one year from the date of its issuance.

5-10-060 Cultivation Requirements

The following standards shall apply to the Cultivation of Industrial Hemp.

- A. The Cultivation of Industrial Hemp is permitted in zones of AE, AE-10, AE-20, AE-40, AE-80, and M-1, as defined in the Tulare County Zoning Ordinance. Cultivation of Industrial Hemp is prohibited in all other zones.
- B. Outdoor Industrial Hemp Cultivation shall meet the following setback requirements, from the outermost edges of the parcel upon which the Cultivation is occurring:
 - i. 50 feet from any boundary line of the parcel, unless the boundary line is adjacent to a parcel that is either owned, managed, or otherwise

under the control of the person who obtained the permit for the Cultivation of Industrial Hemp.

- ii. One-quarter mile from any Urban Development.
 - iii. 200 feet from any residence not owned by the grower.
- C. Any structure(s) containing facilities used for the Processing of Industrial Hemp must have all permits required under state law and Tulare County Code.
 - D. The indoor cultivation of hemp is limited to the cultivation of hemp in a structure dedicated solely to the cultivation of nursery stock and/or indoor Cultivation of Industrial Hemp and shall be located within the M-1, AE, AE-10, AE-20, AE-40, and AE-80 zones. Structures must comply with applicable building codes and be permitted by the Resource Management Agency by County Code.
 - E. A person cultivating Industrial Hemp shall comply with all provisions of Federal and California State law, and associated regulations, applicable to the cultivation of Industrial Hemp, including, but not limited to, requirements for cultivation, sampling, laboratory testing, harvesting, and crop destruction.

5-10-070 Processing Requirements

The following standards shall apply to the Processing of Industrial Hemp.

- A. The Processing of Industrial Hemp is permitted in zones of AE, AE-10, AE-20, AE-40, AE-80, M-1, and M-2 zones; as defined in, and subject to, Special Use Permit requirements outlined in the Tulare County Zoning Ordinance. Processing of Industrial Hemp is prohibited in all other zones.
- B. Industrial Hemp Processing shall meet the following setback requirements, from the outermost edge of the parcel upon which the Processing is occurring:
 - i. Any indoor Industrial Hemp Processing shall be 1000 feet from any Urban Development if in an AE, AE-10, AE-20, AE-40, or AE-80 zone. If the indoor Industrial Hemp Processing is in an M-1 or M-2 zone, there is no setback requirement from Urban Development.
 - ii. In the AE, AE-10, AE-20, AE-40, or AE-80 zone Industrial Hemp Processing shall be 200 feet from any residence not owned by the Processor.
 - iii. In the M-1 or M-2 zones Industrial Hemp Processing shall be 200 feet from any residential zone.
 - iv. Any outdoor Processing of Industrial Hemp in the AE, AE-10, AE-20, AE-40, AE-80, M-1, or M-2 zones must be 1000 feet from any Urban Development.
- C. Any structure(s) containing facilities used for the Processing of Industrial Hemp must have all permits required under state law and Tulare County Code.
- D. A person Processing Industrial Hemp shall comply with all provisions of Federal and California State law, and associated regulations, applicable to the Processing of Industrial Hemp, including, but not limited to sampling, laboratory testing, harvesting, and destruction.

5-10-080 Transportation Requirements

Any Person transporting Industrial Hemp within the boundaries of Tulare County shall carry with them the bill of lading and the test results from an International Organization for Standardization accredited lab specific to that site of Industrial Hemp. The bill of lading and/or test results must also include the name and Permit identification number of the Permittee and the name and address of the intended destination. The test results shall meet the THC level as required by law and/or regulation for Industrial Hemp and shall stay with that Industrial Hemp until that Industrial Hemp reaches its final destination for Processing. Once the Industrial Hemp reaches its final destination, the test results shall be kept on file by the Industrial Hemp Handler for at least 2 years.

5-10-090 Destruction of Non-Compliant Industrial Hemp Crops

An Industrial Hemp crop that does not comply with the provisions of this Chapter and all applicable provisions of California State law, and associated regulations, shall be destroyed. Crop destruction shall proceed as provided for in all applicable laws and regulations, which includes Food and Agricultural Code section 81006 and California Code of Regulations, title 3, sections 4950 and 4950.1. The grower of the Industrial Hemp crop shall submit a destruction plan to the Agricultural Commissioner at least twenty-four (24) hours prior to the start of the destruction. The Agricultural Commissioner shall approve the method of destruction. An Industrial Hemp grower that fails to destroy an Industrial Hemp crop as required shall forfeit the financial security provided under section 5-10-050, subsection D, and the Agricultural Commissioner shall proceed to destroy the non-compliant crop.

5-10-100 Fees

The Board of Supervisors may, by resolution, establish a fee for a permit issued under this Chapter.

5-10-110 Public Nuisance

The Cultivation or Processing of Industrial Hemp in violation of state law, state regulation, this Chapter, or other local regulation constitutes a public nuisance subject to abatement and the imposition of administrative penalties under Chapter 23, Article 3 of the Tulare County Code. Each and every day a violation of this Chapter exists constitutes a separate and distinct violation.

5-10-120 Violations

Each and every violation of this Chapter shall constitute a separate violation. All violations of this Chapter are subject to punishment and enforcement measures authorized under federal, state, and Tulare County Code.

5-10-130 Cost Recovery

The County shall be reimbursed for all time, services, and materials needed to implement, administer and enforce any section of this Chapter, including destruction of non-compliant crops of Industrial Hemp, Inspections necessitated by reports of non-compliant Industrial Hemp crops, and other enforcement actions as necessary. All fees applied by the Agricultural Commissioner shall be listed in a document stored at the Agricultural Commissioner's Office and available upon request of the Agricultural Commissioner in a master fee schedule.

5-10-140 Remedies Cumulative

All remedies provided for herein are cumulative and not exclusive, and are in addition to any other remedy or penalty provided in this Code and by law. Nothing in this Chapter shall be deemed to authorize or permit any activity that violates any provision of state or federal law.

5-10-150 County's Right to Revocation of Permit

- A. Any Person who violates this Chapter knowingly and willfully, shall be stripped of their Permit and ability to apply for a Permit to Cultivate or Process Industrial Hemp within the County of Tulare for three (3) years from the date of the final decision of the Agricultural Commissioner that a violation has been made knowingly and willfully.
- B. The District Attorney shall have the right to petition the Tulare County Board of Supervisors for revocation of a Hemp Cultivation Permit or Processing Permit upon a showing of good cause.

5-10-160 Limitation of County's Liability

To the fullest extent permitted by law, the County of Tulare shall not assume any liability whatsoever with respect to having granted a permit to any Person pursuant to this Chapter.

5-10-170 Appeals

Any decision regarding the issuance of a Permit, the call for destruction of a Crop, the determination of a Violation under this Chapter, or the revocation of a Permit to Cultivate or Process Industrial Hemp made by the enforcing agency as defined within this Chapter shall be in writing and final unless appealed pursuant to Part 1, Chapter 31 of this Code, with a form furnished by the Clerk of the Board for such appeals. An appellant must pay a fee in an amount adequate to cover the cost of Processing and hearing the appeal, as that amount is established from time-to-time by resolution of the Board.

SECTION 2: EFFECTIVE DATE

This ordinance shall become effective and be in full force on and after thirty (30) days of its passage and adoption, and prior to the expiration of fifteen (15) days from the passage and adoption thereof, shall be published in a newspaper of general circulation printed and published in the County of Tulare, State of California, together with the names of the members of the Board of Supervisors of the County of Tulare, voting for or against the same.

SECTION 3: SEVERABILITY

If any section, subsection, sentence, clause, word, or phrase of this ordinance is held to be unconstitutional or otherwise invalid for any reason, such decision shall not affect the validity of the remainder of this ordinance. The Board of Supervisors hereby declare that it would have passed this ordinance, and each section, subsection, sentence, clause, word or phrase thereof, irrespective of the fact that one or more sections, subsections, sentences, clauses, words, or phrases be declared invalid or unconstitutional.