

BEFORE THE BOARD OF SUPERVISORS OF THE COUNTY OF SAN JOAQUIN,
STATE OF CALIFORNIA

ORDINANCE NO. 4557

**ADOPTION OF AN ORDINANCE ESTABLISHING REASONABLE REGULATIONS
FOR THE CULTIVATION OF INDUSTRIAL HEMP IN THE UNINCORPORATED
AREAS OF SAN JOAQUIN COUNTY**

The Board of Supervisors of the County of San Joaquin ordains as follows:

SAN JOAQUIN COUNTY CODE OF ORDINANCES TITLE 6, DIVISION 1, is amended to add TITLE 6, DIVISION 1, CHAPTER 4: INDUSTRIAL HEMP CULTIVATION, which reads as follows:

TITLE 6, DIVISION 1, CHAPTER 4: INDUSTRIAL HEMP CULTIVATION

Sections: 6-1300 through 6-1321

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6-1300 Purpose and authority

Pursuant to Article XI, Section 7, of the California Constitution, the 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.

It is the purpose and intent of this Ordinance to establish standards, requirements, and regulations governing industrial hemp cultivation, including commercial and research industrial hemp activities.

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. Any standards, requirements and regulations established by the State of California, or any of its departments or divisions, regarding commercial and/or research industrial hemp cultivation shall be the minimum standards applicable within the unincorporated areas of the County.

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

6-1301 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 federal or state law shall refer to the act, statute, or regulations as may be amended from time to time.

- (a) "Cultivation" shall include any activity involving the propagation, planting, growing, harvesting, drying, curing, grading, or trimming of hemp.
- (b) "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.
- (c) "Hemp" shall have the same meaning as "industrial hemp" set forth below.
- (d) "Industrial hemp" has the same meaning as that term is defined in Section 11018.5 of the Health and Safety Code. That section 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 flowering 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) "Nursery stock" shall have the meaning set forth in Food and Agricultural Code Section 5005.
- (f) "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.

- (g) “Sensitive receptor” is a facility or land use that serves or attracts members of a population who are particularly sensitive to the effects of air pollutants or strong odors such as, children, the elderly, and people with illnesses. Examples of sensitive receptors include but are not limited to places of religious assembly, State licensed child daycares or adult care facilities, County or City parks, K-12 schools, outdoor sports facilities, and property with a Residential Zoning as identified in the County Development Title.
- (h) “Transplant” is a cultivated hemp plant grown from seed or vegetative cutting in soil or individual containers for less than 8 weeks that does not exceed a height of twelve (12) inches and has not begun the flowering process.
- (i) “Mother Plant” is an industrial hemp plant grown for use as the source plant for the vegetative production of hemp transplants.
- (j) “General Agricultural (AG) Zone” is established to preserve agricultural lands for the continuation of commercial agricultural enterprises. This zone is intended to implement the General Agriculture land use category of the General Plan. (examples would be AG 20, AG 40, AG 80, AG 160)
- (k) “Limited Agriculture (AL) Zone” is intended to recognize and preserve areas that contain existing concentrations of small-scale agricultural operations and dwellings. This zone is intended to implement the Limited Agriculture land use category of the General Plan. (Examples would be AL-5, AL-10)

6-1302 Administration

- (a) It is unlawful and shall constitute a public nuisance for anyone to engage in any industrial hemp cultivation for commercial and/or research purposes within the County without complying with all applicable federal, state, and local laws and regulations pertaining to such cultivation, including the duty to register with the state and obtain a separate license from the County Agricultural Commissioner.
- (b) The Sheriff, the Agricultural Commissioner, and/or the Director of Community Development, or their respective designees, are charged with the responsibility of administering, and exercising the authority conferred under this Chapter.

6-1303 License

- (a) No Person shall cultivate industrial hemp in the unincorporated areas of the County without first obtaining an Industrial Hemp Production License issued by the Agricultural Commissioner to cultivate hemp for commercial or research purposes pursuant to this Chapter.
- (b) An Industrial Hemp Production License for cultivation shall only be issued to an Established agricultural research institution if it meets the definition of an Established agricultural research institution as stated in Section 6-1301 of this Chapter.
- (c) An Industrial Hemp Production License issued under this Chapter does not grant any entitlement, interest in real property, or create any interest of value and does not run with the land. The license is non-transferable and automatically terminates upon transfer of ownership.

- (d) An Industrial Hemp Production License is parcel specific and non-transferrable.
- (e) To be eligible for an Industrial Hemp Production License, an applicant needs a valid registration from the California Department of Food and Agriculture (CDFA) for the production of industrial hemp.

6-1304 License Requirements

To obtain an Industrial Hemp Production License from the Agricultural Commissioner for the cultivation of industrial hemp, an applicant must meet each of the following requirements:

- (a) Applicants shall submit an application in accordance with the application process established by the Agricultural Commissioner. A single license may be issued for multiple parcels.
- (b) Applicants shall be the deed holder of the land upon which the hemp is to be cultivated, or provide written consent in a form acceptable to the Agricultural Commissioner, from the deed holder granting permission for the cultivation of industrial hemp on the specified parcel(s).
- (c) Each parcel for which a license application is submitted for the production of industrial hemp, or indoor production of industrial hemp seed must be zoned General Agriculture (AG) and be a minimum parcel size of 20 acres.
- (d) Each parcel for which a license application is submitted for greenhouse transplant production in the Agriculture Limited (AL) Zone shall be a minimum of 5 acres in size.
- (e) The Agricultural Commissioner shall not issue a license until Applicants fully satisfy the registration requirements of the California Department of Food and Agriculture (CDFA) as stated in Food and Agricultural Code Section 81003.
- (f) Applicants shall obtain an Operator Identification Number or Restricted Materials permit, whichever is more appropriate.
- (g) Applicants shall declare the intended type of industrial hemp production that shall occur on the parcel: seed/fiber, oil, or nursery production.
- (h) Applicants for the cultivation of transplants, or seed, shall have a license to sell nursery stock issued by the California Department of Food and Agriculture as required under California Food and Agricultural Code Section 6721 et seq.
- (i) Each license issued under this Chapter shall expire one year from the date of its issuance.

6-1305 Cultivation Requirements

The following standards shall apply to the cultivation of industrial hemp for commercial and research purposes.

- (a) The cultivation of industrial hemp is permitted in the General Agricultural Zones.
- (b) The cultivation of industrial hemp is prohibited in all other zones.

- (c) A person cultivating industrial hemp shall design the parcel to be used for cultivation in a manner that minimizes impacts, which may include, but are not limited to odor and pollen drift to surrounding areas.
- (d) The minimum size parcel upon which a person cultivating industrial hemp for commercial purposes may cultivate is 20 acres.
- (e) Outdoor industrial hemp cultivation in the County shall meet the following setback requirements:
 - (1) 100 feet from any boundary line of the parcel, unless the boundary line of the hemp cultivation area on the parcel is adjacent to the boundary line of the hemp cultivation area on an adjacent parcel that is under the legal control of the same.
 - (2) 1000 feet from the closest portion of any parcel containing a sensitive receptor.
 - (3) 200 feet from any residential dwelling not on the licensed parcel.
 - (4) 200 feet from the closest portion of any residentially zoned parcel.
- (f) Any structure(s) used for the processing of industrial hemp must have all permits required under state law and the County Code.
- (g) The indoor cultivation of industrial hemp is limited to the cultivation of hemp transplants, or seed production in a structure dedicated solely to the cultivation of nursery stock, or seed located within the General Agricultural Zone. All other indoor cultivation of industrial hemp is prohibited.
- (h) The indoor cultivation of Industrial Hemp transplants by either vegetative propagation or from seed are allowed in the AL zone if:
 - (1) There is a Nursery Sales & Services - wholesale facility established on the parcel by the required Improvement Plan issued by the Community Development Department as of the effective date of this ordinance; and
 - (2) There is no flowering hemp plants of any kind.
 - (3) Any Mother Plant used for the production of hemp transplants that reaches the flowering stage is destroyed in a manner approved by the Agricultural Commissioner.
- (i) Structures used for indoor cultivation of hemp must meet the following setback requirements:
 - (1) For seed production in the AG zones:
 - (i) 50 feet from any boundary line of the parcel under different ownership.
 - (ii) 1000 feet from any parcel containing a sensitive receptor.
 - (iii) 100 feet from any residential dwelling.
 - (2) For transplant production in the AL zones:

- (i) 30 feet from the boundary line of the parcel unless the parcel adjacent to the cultivation parcel is under the same ownership or control, in which case standard building setbacks for the AL zone as contained in Title 9 apply.
- (j) All parcels used for the cultivation of industrial hemp shall have onsite signage indicating that hemp is being cultivated on site. The signs shall:
 - (1) Have wording that is clearly visible and readable to a person with normal vision from a distance of twenty five (25) feet; and
 - (2) Use letters and symbols that are of a color that sharply contrasts with their immediate background; and
 - (3) Be posted at the corners of the parcel and at all usual points of entry to the parcel, including each road, footpath, walkway, or aisle that enters the cultivation area. When a parcel is adjacent to a public right-of-way, such as a road, trail, or path, signs shall be posted at intervals not exceeding 600 feet along the parcel's border with the right-of-way.
- (k) A licensee cultivating industrial hemp shall comply with all provisions of federal and state law, as well as all associated regulations therewith, as applicable to the cultivation of industrial hemp, including, but not limited to, requirements for registration, cultivation, sampling, laboratory testing, harvesting, and crop destruction.

6-1306 Cultivation of Industrial Hemp for Research

- (a) The cultivation of industrial hemp by an established agricultural research institution for research or educational purposes shall be:
 - (1) Subject to the registration requirements imposed by the California Department of Food and Agriculture, as well as this Chapter including, but not limited to, Section 6-1305; and
 - (2) Limited to a total of one (1) acre per license holder within the County.
- (b) Applicants wishing to grow industrial hemp for research purposes in the County shall be required to be licensed by the Agricultural Commissioner.

6-1307 Destruction of Non-compliant Industrial Hemp Crops

- (a) The Board adopts this Chapter pursuant to its police power for the purpose of preserving the health, safety and public welfare of the residents of the County. The Board finds that agriculture is extremely important to the County's economy and that ensuring the continued agricultural commodities is essential to the health and well-being of County residents. The Board determines that the enforcement of this Chapter is essential.
- (b) Each and every violation of the provisions of this Chapter is hereby deemed unlawful and a public nuisance.
- (c) It shall be the responsibility of the persons cultivating industrial hemp to ensure that they are, at all times, operating 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. Nothing in this Chapter shall be construed as authorizing any actions that violate federal, state, or local laws regarding the cultivation of industrial hemp.

- (d) 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 County. Additionally, as a nuisance per se, any violation of this Chapter shall be subject to injunctive relief, any license(s) issued pursuant to this Chapter being null and void, disgorgement and payment to the County for any monies unlawfully obtained, costs of abatement/destruction, costs of investigation, attorney fees, and any other relief or remedy available at law or in equity. 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.
- (e) An industrial hemp 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. 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. Any violations of this section are subject to abatement under Title 1, Division 2 of the County Code. The Person growing industrial hemp in violation of the law, 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.
- (f) The licensee and property owner shall be jointly and severally responsible for each and every violation of the provisions of this Chapter and destruction of any non-compliant hemp.
- (g) The remedies provided herein are not to be construed as exclusive remedies. The County is authorized to pursue any proceedings or remedies provided by law.

6-1308 Newly Developed Land Uses

Once a license is issued under this Chapter, then any new development of a sensitive receptor, or newly established zones around the licensed property will not affect the current licensee, or ability for the Agricultural Commissioner to issue a license in the future.

6-1309 Fees

- (a) Pursuant to Section 81005 of the California Food and Agriculture Code, the Board may, by resolution, establish a fee for a license issued under this Chapter.
- (b) The amount of the fees adopted pursuant to this section shall not exceed the amount reasonably required to inspect, administer, or process the required permits, certificates, licenses, or other forms or documents, or to defray the costs of enforcement required to be carried out by the County.

- (c) The Board shall, by Resolution, adopt a fee schedule for any fees it deems necessary under this Chapter for its implementation, administration, and enforcement of federal, state, and local laws including, but not limited to, such fees that cover the actual costs associated with services that may include, but are not limited to, processing of licenses, inspections, sampling and testing, and abatement/destruction.
- (d) Licensee's failure to pay all fees attributable to County costs incurred pursuant to this Chapter shall be cause for revocation or non-renewal of a person's license until all outstanding fees are paid in full.
- (e) No new licenses or renewals shall be issued without payment of fees for services rendered during the term of the existing or previous license.

6-1310 Public Nuisance

The cultivation of industrial hemp in violation of federal, state, and local laws and/or rules and regulations, including this Chapter, or other local regulation constitutes a public nuisance subject to abatement and the imposition of administrative penalties under Title 1, Division 2, Chapter 2 of the County Code. Each and every day a violation of this Chapter exists constitutes a separate and distinct violation.

6-1311 Violations

- (a) 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 or state laws and regulations, and San Joaquin County Code.
- (b) Such violations of County Code, federal and state laws or regulations, and failure to pay fees or penalties assessed as a result of cultivating industrial hemp in the County, shall be cause to revoke a license. Failure to pay County fees or penalties shall also be cause for non-renewal of a license until such time as said fees or penalties have been paid in full.

6-1312 Fine/Penalties for Violation

A violation of this Chapter constitutes an unlawful violation of this Code pursuant to County Code Title 1, Division 2.

- (a) Each violation of this Chapter and each day each violation continues shall constitute a separate violation and be subject to the maximum penalty and any other enforcement remedies available to the County under Title 1, Division 2 and any applicable federal or state statute or pursuant to any other lawful power the County may possess.

6-1313 Inspections

All licensed industrial hemp operations in the unincorporated County are subject to review and inspection at any time, including crop and/or product testing by agents of the Agricultural Commissioner.

6-1314 Enforcement

Enforcement of this Chapter will be done pursuant to Title 1, Division 2 of this Code.

6-1315 Security

- (a) Indoor/Greenhouse Cultivation Operations:

- (1) Licensees shall ensure that a perimeter fence or trenching similar to an irrigation trench be in place around the perimeter of the growing facility prior to production.
 - (2) Licensed growing facilities shall have a secured and locked industrial grade gate at all vehicular ingress/egress points after the hours of normal operation.
 - (3) Licensees shall file a “No Trespassing” letter with the Sheriff’s Office containing contact information allowing for law enforcement action to occur after hours of normal operation.
 - (4) Licensed growing facilities shall have exterior lighting around its perimeter functioning between the hours of sunset and sunrise while in production.
- (b) Outdoor Cultivation Operations:
- (1) Licensees shall ensure that a perimeter fence or trenching similar to an irrigation trench be in place around the perimeter of the growing grounds prior to production.
 - (2) A secured and locked industrial grade gate shall be in place at all vehicular ingress/egress points of a growing location.
 - (3) Licensees shall file a “No Trespassing” letter with the Sheriff’s Office containing contact information allowing for law enforcement action to occur after hours of normal operation.

6-1316 Cost Recovery

- (a) The County shall be reimbursed for all time, services, and materials needed to implement, administer and enforce state law and this Chapter.
- (b) A tax lien shall be placed on any property where industrial hemp is grown, if any fees or fines have not been paid. Such a lien shall also be placed on any property where a non-compliant or nuisance industrial hemp has not been destroyed in a manner agreed to by the Agricultural Commissioner.

6-1317 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.

6-1318 Limitation of County’s Liability

To the fullest extent permitted by law, the County shall not assume any liability whatsoever with respect to having licensed any person pursuant to this Chapter.

6-1319 CEQA

The Board hereby finds that this ordinance is exempt from the California Environmental Quality Act (“CEQA”) pursuant to Section 15061(b)(3) because it can be seen with certainty that there is no possibility of a significant effect on the environment from the adoption of these regulations for industrial hemp. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. Moreover, pursuant to CEQA Guidelines Section 15309, Class 8: Actions by

Regulatory Agencies for Protection of the Environment consists of actions taken by regulatory agencies, as authorized by state or local ordinance, to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for the protection of the environment.

6-1320 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 at least once in a newspaper of general circulation printed and published in the County, together with the names of the members of the Board, voting for or against the same.

6-1321 Validity

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 hereby declares that they 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.

PASSED AND ADOPTED at a regular meeting of the Board of Supervisors of the County of San Joaquin, State of California, on this 7th of July 2020 to wit:

AYES: **Villapudua, Patti, Winn, Elliott, Miller**

NOES: **None**

ABSENT: **None**

ABSTAIN: **None**

Katherine M. Miller

Katherine M. Miller
Chair, Board of Supervisors
County of San Joaquin
State of California

ATTEST: RACHÉL DeBORD
Clerk of the Board of Supervisors
County of San Joaquin
State of California



Rachél DeBord