

BOARD OF SUPERVISORS, COUNTY OF LAKE, STATE OF CALIFORNIA

ORDINANCE NO. _____

AN ORDINANCE ADDING ARTICLE VII TO CHAPTER 3 OF THE LAKE COUNTY CODE TO ESTABLISH AGRICULTURAL REGULATIONS AND STANDARDS FOR THE CULTIVATION OF INDUSTRIAL HEMP

WHEREAS, the California Industrial Hemp Farming Act became effective January 1 of 2017, authorizing the commercial production of industrial hemp and provided for the registration of growers; and

WHEREAS, in December of 2018, the Agricultural Improvement Act of 2018 (commonly known as the "Farm Bill") was signed into law, removing hemp, defined as cannabis (*Cannabis sativa* L.) and derivatives of cannabis with extremely low concentrations of the psychoactive compound delta_9_tetrahydrocannabinol (THC) (no more than 0.3 percent THC on a dry weight basis), from the definition of marijuana in the Controlled Substances Act; and

WHEREAS, California Senate Bill 1409, which went into effect on January 1, 2019, established that "industrial hemp" would no longer be defined in the California Uniform Controlled Substances Act as a fiber or oilseed crop and further expanded provisions for industrial hemp cultivation; and

WHEREAS, two members of the Board of Supervisors and staff have engaged in a series of meetings and workshops designed to culminate in the adoption of an Ordinance regulating the cultivation of industrial hemp

NOW THEREFORE, the Board of Supervisors of the County of Lake hereby ordains as follows:

Section One: Findings. The Board hereby adopts and incorporates by reference the foregoing recitals.

Section Two: Article VII is hereby added to Chapter 3 of the Lake County Code to read as follows:

"Article VII. Agricultural Regulations and Standards for the Cultivation of Industrial Hemp in the Unincorporated Areas of the County of Lake

Section 3-62. Purpose. The purpose of this Ordinance is to establish agricultural regulations and standards for the cultivation of industrial hemp in the unincorporated areas of the County of Lake.

Section 3-63. Industrial Hemp Permits - Application Requirements.

All commercial growers of industrial hemp must obtain a Lake County Industrial Hemp Permit from the County Agriculture Department prior to receiving a State Industrial Hemp Registration. Every applicant for an Industrial Hemp Permit from the County of Lake must adhere to all applicable requirements described in this Article.

Sec. 3-64. Definitions.

3-64.1. The following definitions apply:

- a. "Agricultural Commissioner" means the Lake County Agricultural Commissioner or his/her designee.

- b. "Applicant" means a person or entity who is applying to the Lake County Agriculture Department for, or who has obtained from that department, an industrial hemp permit..
- c. "County Industrial Hemp Permit" means an application that requires the grower to comply with county registration requirements that must be completed prior to registering with the State.
- d. "Cultivation Plan" is defined as a specific pre-plan that identifies plant selection, amounts, rotation, and cultivation practices for a growing cycle.
- e. "Industrial hemp" or "hemp" has the same meaning as that term is defined in California Food and Agriculture Code Section 81000.
- f. "Female propagative plant material" means propagative plant material that is bred, grown, or otherwise developed to become a female industrial hemp plant.
- g. "Key Participants" means any person in the entity producing industrial hemp who is: (1) a sole proprietor, a partner in partnership, or a person with executive managerial control in a corporation producing industrial hemp, or (2) a person with executive managerial control over the entity producing industrial hemp, including persons such as a chief executive officer, chief operating officer and chief financial officer. This definition does not include a person in a management position with no executive managerial control over the entity producing industrial hemp, such as farm, field, or shift managers.
- h. "Pollen" means the fine powdery substance discharged from a pollen producing plant that is capable of causing a female plant, or female part of a plant, to produce seeds.
- i. "Premises" has the same meaning as that term is defined in the California Business and Professions Code, Division 10, Chapter 1, Section 2601.
- j. "Propagative plant material" includes, but is not limited to, live plants, seeds, seedlings, clones, cuttings, transplants, or other propagules used to establish plants for planting.
- k. "THC" means the crystalline compound tetrahydrocannabinol that is the main psychoactive ingredient in cannabis.
- l. "Volunteer" for purposes of this Article means a plant that grows on its own, rather than being deliberately planted by a farmer or gardener.

Section 3-65. Background Checks.

3-65.1. Every applicant for an Industrial Hemp Permit and every key participant, as that term is defined herein, of the industrial hemp cultivation site subject to said Permit, must submit to and pass a background check as described in Title 3, California Codes & Regulations, Section 4902.

3-65.2. No person or entity ineligible to participate in the State Industrial Hemp Program pursuant to Section 81013 of the Food and Agriculture Code may apply for or obtain a County industrial hemp permit.

a. California Food and Agriculture Division 24 Section 81013 states: "Any person convicted of a felony relating to a controlled substance under state or federal law before, on, or after January 1, 2020, shall be ineligible, during the 10-year period following the date of the conviction, to participate in the industrial hemp program."

3-65.3. The Lake County Agriculture Department shall determine the final pass or fail status of the background check of each applicant and/or key participant or shall obtain that status from the Lake County Sheriff's Office based upon the information received from the FBI Identity History Summary Report.

3-66. Applicant and Site Violations Review.

An applicant or property owner who has been found to be in violation of any federal, state, or local law relating to land use or agricultural activities will not receive a permit until violations have been remedied.

3-67. Proof of Ownership/Lease Agreement.

An applicant must show proof of ownership or a notarized lease agreement to show they have the present ability to cultivate on the property subject to the permit.

3-68. Commercial Cannabis Site License or Application Check.

3-68.1. The Lake County Agriculture Department will confirm if any cannabis cultivation is legally occurring on the same property that is on the application to cultivate industrial hemp.

3-68.2. Industrial hemp shall not be eligible to be cultivated on the same premises as cannabis.

3-68.3. Any illegal cannabis of more than six (6) plants grown on the same premises as the site for which an industrial hemp permit is applied for shall be immediately abated as a condition of obtaining the industrial hemp permit.

3-69. Identification of Legal Water Source.

Prior to obtaining an industrial hemp permit, the applicant must identify all legal water sources used for cultivation activities.

3-70. Zoning Permit.

An applicant for an industrial hemp permit must obtain a zoning permit from the Community Development Department. The zoning permit will address the need for grading and building permits, as applicable.

3-71. Water Board Registration Requirements.

3-71.1. State licensure and permits as required must be obtained. A person or entity shall not engage in the commercial cultivation of Industrial Hemp without first obtaining a permit from

the Central Valley Regional Water Quality Control Board Irrigated Lands Regulatory Program or registering with the Lake County Farm Bureau as a member of the Sacramento Valley Water Quality Coalition. Said Permit shall be obtained no later than October 31, 2020.

3-71.2. Annual review of and good standing in the Lake County Agriculture Department's industrial hemp permit program will be required to renew the county permit and state registration.

3-72. GPS Coordinates and Site Identification.

3-72.1. Applicant shall submit GPS coordinates with a minimum of four (4) points around the perimeter of the proposed growing area with clearly identified semi-permanent metal posts or markers.

3-72.2 Each site will be clearly identified with a sign indicating it is Industrial Hemp. Industrial Hemp signage information shall be posted at a semi-permanent site marker and must be visible from twenty-five (25) feet away.

3-72.3. Posting of industrial hemp signage at any other location is a violation of the industrial hemp permit.

3-73. Cultivation Plan.

3-73.1. An applicant shall submit a cultivation plan for approval prior to any new plantings on a current registration site.

3-73.2. A plant count shall be submitted for each site at the beginning of any new cultivation, as plants are culled and replanted. A final plant count shall be submitted in the harvest report.

3-74. Pollen Management Plan.

Applicant must submit a pollen management plan which includes the procedures to be employed to mitigate cross pollination of other cannabis and industrial hemp cultivation sites. The plan should include details on the process for pollinating their plants.

3-75. Pre-Permit Issuance Site Inspection.

Applicant shall allow for a pre-site inspection prior to permit issuance.

3-76. Operator Identification Number.

Applicant shall obtain a Pesticide Operator Identification Number from the County Agricultural Commissioner.

3-77. Destruction Plan.

An applicant must submit a destruction plan for their hemp crop. A hemp crop may be subject to destruction for any violation of this Article. Destruction shall occur pursuant to the requirements of Section 3-86 of this Article.

3-78. Surety Bond.

An applicant shall obtain and provide proof of a current surety bond prior to issuance of permit.

3-78.1. Minimum requirement of \$5000 for cultivation less than ten (10) acres.

3-78.2. Minimum requirement of \$10,000 for cultivation of more than or equal to (10) acres.

3-78.3. Additional \$1,000 per acre of surety bonds for cultivation sites equal to or larger than twenty-five (25) acres.

3-79. Authority to Inspect.

3-79.1. Applicant shall provide written permission authorizing the Agriculture Department, the Sheriff's Office, and/or Community Development Department to enter the applicant's property subject to the industrial hemp permit and to inspect and test, if applicable, the industrial hemp cultivation sites at reasonable times during the duration of said permit without a search warrant.

3-80. State License and Lake County Industrial Hemp Permit Fees.

All applicable County permit fees and charges which are due and payable must be paid in full prior to obtaining a Lake County Industrial Hemp Permit. All applicable State License Fees and charges which are due and payable must be paid in full upon approval of County Permit and prior to issuance of state Hemp Registration.

3-81. Agricultural Research and Cultivar Development Restrictions.

3-81.1. It is prohibited to cultivate industrial hemp under an agriculture research exemption.

3-81.2. All industrial hemp grown in Lake County must meet all county and state inspection and testing requirements.

3-81.3. Applicants developing a new cultivar must do so under the discretion and approval of the Agricultural Commissioner

3-82. Suspension, Denial or Revocation of Industrial Hemp Permit.

3-82.1. Applicant shall comply with all provisions of state industrial hemp laws, including, but not limited to, requirements for cultivation, sampling, laboratory testing, harvesting, and crop destruction.

3-82.2. The Agricultural Commissioner may suspend, deny, or revoke any permit pursuant to this chapter in the event of the following:

a. Registration was based on inaccurate or incomplete information.

California Department of Food and Agriculture Chapter 24 section 81014 states, "A person that materially falsifies any information contained in an application or registration under Section 81003 or 81004, or other application to participate in the industrial hemp program, shall be ineligible to participate in the industrial hemp program."

- b. Applicant has not complied with the county codes or state law.
- c. Applicant has failed to pay fees or penalties and/or has failed to comply with federal, state, and county enforcement actions
- d. Applicant and or landowner of property which is the subject of an industrial hemp permit is discovered to be responsible for a current or post January 1, 2018 unpermitted commercial cannabis violation.

3-82.3. If the applicant is in the process of crop destruction or has been issued an abatement order, the applicant shall not amend their permit, get additional permits, or add new sites until their crop destruction is completed.

3-82.4. Any pending requirements for registration compliance need to be completed prior to amending or obtaining any State Industrial Hemp registrations.

3-82.5. If a request for inspections by the County of Lake within 24 hours has not been approved, possible revocation of permit can occur.

3-83. Hearing and Appeal Process.

The applicant has the right to a hearing prior to the suspension, denial, or revocation of their industrial hemp permit.

3-83.1. The Deputy Agricultural Commissioner may initiate proceedings to suspend, deny, or revoke the approval of any industrial hemp permit issued pursuant to this Article based upon any of the grounds enumerated in Section 3-82.2 herein.

3-83.2. Notice of Pending Action. The Deputy Agricultural Commissioner shall notify the applicant of the action intended to be taken in regard to the applicant's industrial hemp permit at least 10 days before a hearing on said action. Such notice shall contain the following:

- a. A heading reading, "Notice of Hearing on Action to Suspend, Deny, or Revoke Permit".
- b. The provisions and/or conditions violated and the means to correct such violation(s), if any.
- c. The date and place of the hearing.

3-83.3. Hearing. Before any action described in this subsection is taken in regard to the industrial hemp permit, a hearing shall be conducted by the Agricultural Commissioner

3-83.4. Post-Hearing Action If after the revocation hearing, the Agricultural Commissioner finds that grounds for the proposed action have been established, he/she may:

- a. Allow the applicant additional time to correct the violation or non-compliance; or
- b. Modify conditions of approval on the basis of evidence presented at the hearing; or
- c. If applicable, revoke the approved industrial hemp permit and order the discontinuance or removal of the approved use within a time specified by the Agricultural Commissioner.

3-83.5. In the absence of an appeal pursuant to subsection d. of this section, action under this subsection shall become effective 14 days after the decision of the Agricultural Commissioner, who, upon the effective date of said action, may initiate nuisance abatement proceedings by preparing and serving a Notice of Nuisance pursuant to Section 13-7 of the Lake County Code, with the time limit for action by the applicant specified in the notice.

3-83.6. Appeal. The applicant may appeal the decision of the Agricultural Commissioner to the Board of Supervisors no more than seven (7) days after receiving the suspension, denial, or revocation of their permit.

a. Upon appeal, no action shall take effect until affirmed by the Board of Supervisors.

b. Following the filing of an appeal, the Board of Supervisors shall hold a public hearing on the matter scheduled and noticed as required by law. The Board shall proceed to hear the testimony of the Agricultural Commissioner, his/her assistants or deputies, the testimony of the applicant or his/her representatives, and the testimony of other competent persons concerning the conditions upon which the Agricultural Commissioner's decision was based, other matters which the Board may deem pertinent. The hearing may be continued from time to time.

c. After the hearing, the appeal hearing body may affirm, modify or reverse the decision to revoke the permit.

d. The Board of Supervisors may additionally direct the Agricultural Commissioner, upon the effective date of the action to be taken, to initiate nuisance abatement proceedings by preparing and serving a Notice of Nuisance pursuant to Section 13-7 of the Lake County Code, with the time limit for action by the permittee specified in the notice being that set by the Board of Supervisors in their order.

e. Finality and effective date: The decision of the Board of Supervisors shall be final, conclusive, and effective immediately.

f. Appeals pursuant to this Section shall be accompanied by a fee as established by the Board of Supervisors

g. In the absence of an appeal, the decision of the Agricultural Commissioner shall take effect fourteen (14) days after said decision is made.

3-83.7. This subsection is not applicable to industrial hemp crop destruction pursuant to Sections 3-85.3 and 3-86 of this Article.

3-84. Pollen Mitigation and Pollen-Producing Plants.

3-84.1. Propagative Material for Outdoor Cultivation. An outdoor cultivation area may only be planted with female propagative plant material.

3-84.2. Pollen producing industrial hemp plants must be managed as follows and in accordance with the required best management practices:

3-84.3. Indoor Cultivation for pollen producing plants. Cultivation of pollen producing industrial hemp plants may only occur in fully enclosed structures equipped with effective filtration devices to prevent pollen from escaping the structure.

3-84.4. Inspections and Removal. An applicant must conduct regular inspections of an outdoor cultivation area to ensure no pollen producing industrial hemp plants are growing outdoors. If a pollen producing industrial hemp plant is growing outdoors, the applicant must remove the male industrial hemp plant and submit a destruction plan to the Agricultural Commissioner within 24 hours of when the applicant knew or should have known of such occurrence.

3-84.5. Violation. A pollen producing industrial hemp plant growing outdoors may be considered a violation of this ordinance and a public nuisance.

3-85. Testing.

3-85.1. In addition to the state regulations, the applicant shall allow for the Agriculture Department to test the THC levels of their crop at any given time during a registration year.

3-85.2. Upon failing the test, above 1% THC, the applicant shall be responsible for the cost of the test.

3-85.3. Crops at any age in development that test above the 1% THC threshold shall be destroyed pursuant to the requirements of Section 3-86 of this Article and the applicable guidelines from the USDA Hemp Regulations. Said destruction is not subject to the hearing and appeal procedures of Section 3-83 herein.

3-86. Destruction

3-86.1. Prior to destruction of any hemp plant(s), a destruction plan must be submitted to the County Agricultural Commissioner for approval prior to removal, except for the purposes of complying with Section 3-84 of this Article.

3-86.2. The destruction plan must be provided to the County Agricultural Commissioner at least 24 hours prior to the anticipated destruction start date. No destruction can occur prior to submission and approval by Agricultural Commissioner.

3-86.3. Any industrial hemp plant or crop that does not meet the standard of Division 24 of the California Food and Agriculture Code must be destroyed in a manner approved by the Agricultural Commissioner.

3-86.4. Burning is not an approved method of destruction. No destruction plan submitted for burning shall be approved. Burning of any hemp plants violates the California Clean Air Act.

3-87. Reporting.

Stolen or vandalized hemp plants shall be reported to law enforcement and the Agricultural Commissioner within twenty-four (24) hours of the event. This may be followed up with a site inspection.

3-88. Abandoned Cultivation Sites.

3-88.1. Failure to remove and destroy plants, including abandoned and/or volunteer industrial hemp plants, in a timely manner will be subject to abatement by the County Agricultural Commissioner.

3-88.2. Applicant and/or landowner will be responsible for all costs associated with said abatement.

3-89. Permit Renewal.

Industrial hemp permits must be renewed through the Agriculture Department annually. The Agriculture Department will review each renewal and ensure that all requirements of this Article are being met. An applicant who fails to timely renew said permit shall be required to reapply and initiate the application process described in this Article anew.

3-90. Fines

In addition to any other remedy provided herein, any violation of this Article is hereby deemed to constitute a public nuisance and may be subject to the abatement procedures of Chapter 13 of the Lake County Code. Additionally, such violations shall be subject to the administrative fines provisions of Chapter 13.

3-91. Review

This ordinance shall be reviewed annually in order to ensure compliance with new industry standards and regulations.

Section Three: The proposed ordinance is exempt under CEQA Guidelines section 15061(b)(3) because it can be seen with certainty that the project will have no significant effect on the environment because the Ordinance restricts to certain zoning areas what is already an allowed agricultural use and does not expand allowable uses beyond those designated as agricultural.

Section Four: All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict and no further.

Section Five: This ordinance shall take effect on the ____ day of ____, 2020 and before the expiration of fifteen days after its passage, it shall be published at least once in a newspaper of general circulation printed and published in the County of Lake.

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The Foregoing Ordinance was introduced before the Board of Supervisors on the _____ day
of _____, 2020, and passed by the following vote on the ____ day of _____, 2020.

AYES:

NOES:

ABSENT OR NOT VOTING:

COUNTY OF LAKE

Chair Board of Supervisors

ATTEST: CAROL J. HUCHINGSON
Clerk of the Board of Supervisors

APPROVED AS TO FORM:

ANITA L. GRANT

By: _____

Deputy

By: _____