

DEPARTMENT OF AGRICULTURE/WEIGHTS & MEASURES

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Sonoma County Planning Commission STAFF REPORT

DATE: November 21, 2019
TIME: 1:20 pm
STAFF: Tony Linegar, Agricultural Commissioner/Sealer of Weights & Measures
Andrew Smith, Deputy Agricultural Commissioner

**Board of Supervisors Hearing
Scheduled for December 16, 2019**

SUMMARY

APPLICANT: Sonoma County Department of Agriculture/Weights & Measures

LOCATION: Countywide

SUBJECT: Industrial Hemp Ordinance

PROPOSAL: Amend Chapter 26 of the Sonoma County Code to limit cultivation of industrial hemp to certain Zoning Districts, and make clarifying changes to definitions and allowed uses related to industrial hemp cultivation, processing, and extraction. Amend Chapter 37 to add certain zoning restrictions on industrial hemp cultivation in the AR (Agriculture and Residential) and RRD (Resources and Rural Development) Zoning Districts.

ENVIRONMENTAL DETERMINATION: Categorically exempt under CEQA Guidelines Section 15307 (Actions by Regulatory Agencies for Protection of Natural Resources), Section 15308 (Actions by Regulatory Agencies for Protection of the Environment), and Section 15061(b)(3) (Common Sense Exemption).

RECOMMENDATION: Staff recommends that the Planning Commission Adopt a Resolution recommending that the Board of Supervisors approve Zoning Code amendments to Chapter 26 of the Sonoma County Code to limit cultivation of industrial hemp within certain zoning code designations and make other clarifying changes to definitions and allowed uses related to industrial hemp cultivation, processing, and extraction.

EXECUTIVE SUMMARY: As directed by the Board of Supervisors, the Department of Agriculture/Weights & Measures proposes to amend the Zoning Code (Chapter 26 of the County Code) to clarify the allowance for industrial hemp production, to prohibit industrial hemp production in certain zoning districts, and clarify the allowance for non-volatile oil extraction as agricultural processing and volatile oil extraction as manufacturing; and amend Chapter 37 of the Sonoma County Code to impose certain zoning restrictions on industrial hemp production, which require consideration by the Planning Commission, including setbacks in the Agriculture and Residential (AR) zoning district and prohibiting tree removal and grading in the Resources and Rural Development (RRD) zoning district. Other non-zoning regulations incorporated in the proposed Industrial Hemp Ordinance that will be considered by the Board of Supervisors (but do not require a recommendation by the Planning Commission) include requiring and regulating pollen management for crop compatibility; and establishing a robust enforcement framework to distinguish between hemp and cannabis code violations.

ANALYSIS

BACKGROUND

Federal Law

Prior to 2014, industrial hemp food and fiber could be imported into the United States, but industrial hemp could not legally be grown domestically. The Agricultural Improvement Act of 2014 (2014 Farm Bill) allowed legal cultivation of industrial hemp by institutions of higher education or state departments of agriculture in states that legalized hemp cultivation, allowing states to regulate and conduct research pilot programs.

The Agricultural Improvement Act of 2018 (2018 Farm Bill) carried forward the provisions for research and also legalized commercial industrial hemp production. In doing so, the bill redefined “marijuana” to exclude industrial hemp, which means that industrial hemp (grown in accordance with federal law) and its derivatives are not considered controlled substances under the Controlled Substances Act. The 2018 Farm Bill defines industrial hemp as an agricultural commodity and allows states to create their own regulatory programs subject to approval by the U.S. Department of Agriculture (USDA).

State Law

In California, industrial hemp cultivation is governed by Division 24 of the Food and Ag Code (Section 81000 et seq.), which was originally adopted in 2013 pursuant to SB 566 which allowed for the cultivation of industrial hemp for research and commercial purposes. The law included a provision, however, that it would not become operative until authorized by federal law. In 2016, the voters passed Proposition 64, the Adult Use of Marijuana Act (AUMA), which entirely removed the provision that made operation of state law contingent on federal legalization, thus legalizing industrial hemp and activating the provisions of SB 566 and Division 24 of the Food and Ag Code.

SB 1409 was signed into law by Governor Brown on September 30, 2018. This new state law changes the manner in which industrial hemp may be grown and tended. This change expands the intended use for the end product of industrial hemp beyond seed production and fiber, namely allowing production for cannabidiol (CBD) extraction. Included in these changes is an allowance for the plants to be planted and tended in the same manner as cannabis. Since industrial hemp cultivation will be visually indistinguishable from cannabis, State regulations will require that industrial hemp plantings be identified by clear signage to allow them to be readily identified.

The State has finalized regulations pertaining to registration of hemp producers by the county agricultural commissioners and has put emergency regulations in place for sampling and testing of industrial hemp for THC. They are currently developing their full regulatory package.

Recently the State adopted legislation to clarify the requirements for the cultivation of industrial hemp by research institutions and to start to align the State industrial hemp program with the Federal requirements (SB 153). This identifies parameters for state program development, requires Established Agricultural Research Institutions cultivating industrial hemp to register with the county Agricultural Commissioner, and includes eligibility requirements for registrants and associated enforcement responses.

Sonoma County Law

On April 2, 2019, the Sonoma County Board of Supervisors adopted an ordinance enacting a moratorium on the cultivation of industrial hemp due to the fact that State regulations were still under development, and to address the compatibility of industrial hemp with legal cannabis crops and other industrial hemp farms. Another goal of the ordinance was to determine where it may be appropriate to restrict hemp cultivation in the County. The moratorium is set to sunset on April 30, 2020.

When the Board of Supervisors adopted the moratorium, they directed the Department of Agriculture/Weights & Measures (Department) to further study the issues associated with regulating industrial hemp and return with an ordinance prior to the expiration of the moratorium. To inform this process, the Department formed an informal advisory group which included hemp farmers, prospective hemp farmers, processors, distributors, environmental community members, local academic researchers, the University of California Cooperative Extension, neighborhood members, Permit Sonoma, and the Farm Bureau. Outreach to the Community Alliance of Family Farmers (CAFF), Farmer's Guild, and local environmental groups was also conducted by the Department.

Additionally, the Agricultural Commissioner visited hemp farms in Southern Oregon to learn about how hemp is planted, harvested, processed, marketed, and what challenges the industry in Oregon has faced with the advent of industrial hemp farming. The Department has been participating in weekly conference calls with the California Department of Food and Agriculture and agricultural commissioners throughout the state to discuss the experiences, challenges and issues arising in counties that currently allow industrial hemp cultivation.

Based on the information and feedback gathered, the Agricultural Commissioner's approach to local regulation is to treat industrial hemp like any other legal crop to the greatest extent possible and to promote agricultural opportunity and diversification while addressing three specific areas of concern:

1. Compatibility in residential zoning districts and environmental protections in resource zoning designations
2. Pollen management/crop compatibility
3. Enforcement/fraud mitigation

Industrial hemp is an agricultural crop. As such, in Sonoma County its cultivation and production are allowed uses in most zoning districts and it is otherwise only subject to existing regulations applicable to other agricultural crops. Industrial hemp cultivation is currently prohibited under a temporary moratorium until April 30, 2020. The proposed ordinance would go into effect upon the expiration of this moratorium to ensure concerns unique to industrial hemp are properly regulated. Given the crop's

similarity to cannabis and unique incompatibility issues, the proposed regulation would put limits on the zoning districts in which industrial hemp could be cultivated and establish a local registration program to enforce against fraud, prevent pollen contamination of industrial hemp and cannabis farms, and appropriately restrict industrial hemp cultivation in certain zoning districts.

Industrial hemp is 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 flowering tops; whether growing or not; the seeds of the plant; the resin extracted from any part of the plant; and every compound, salt, derivative, mixture, or preparation of the plant, its seeds or resin produced therefrom (Health and Safety Code section 11018.5). Cannabis and industrial hemp are the same plant. Industrial hemp is simply strains of cannabis that have been bred to have low THC content. Industrial hemp is indistinguishable from cannabis in the field, and can only be distinguished through laboratory analysis for THC content.

There are currently 32 counties allowing industrial hemp cultivation in California with over 35,320 acres registered for the 2019 growing season.

The agricultural community in Sonoma County has expressed an interest in the cultivation of industrial hemp in the unincorporated areas of Sonoma County. Both the federal and state governments recognize and define industrial hemp as legal agricultural crop. As such, industrial hemp represents a viable economic opportunity to diversify agriculture in Sonoma County. The primary interest is in the production of industrial hemp for cannabidiol (CBD).

PROJECT DESCRIPTION

- Amend Chapter 26 of the Sonoma County Code to prohibit industrial hemp cultivation in Rural Residential (RR) zoning district, and to place restrictions on its cultivation in Agriculture and Residential (AR) zoning district and Resources and Rural Development (RRD) zoning district.
- Describe and clarify post-harvest handling practices of industrial hemp that are ancillary agricultural activities allowed by right under the County Code.
- Describe and clarify industrial hemp extraction activities that are allowed as either agricultural production with a use permit in agricultural zones, or as manufacturing allowed within select industrial zones.
- Amend Chapter 37 to regulate the cultivation of industrial hemp. (Chapter 37 informational only).
- Create a county registration process for industrial hemp cultivation. (Chapter 37 informational only).
- Recommended Best Management Practices will be established by the Agricultural Commissioner to define accepted proper cultivation practices for the growing of industrial hemp. (Chapter 37 informational only).

BACKGROUND ON PROPOSED NON-ZONING REGULATIONS

Pollen Management/Crop Compatibility

The cultivation of industrial hemp in Sonoma County poses some compatibility issues with existing cannabis cultivation and hemp that will be grown for CBD production. The presence of male plants poses a risk for pollen dispersal and potential contamination of both hemp and cannabis crops. Therefore, appropriate management of male plants is paramount to the compatibility of these two industries. The fertilization of cannabis and hemp plants by pollen drift significantly reduces the value of both crops.

To reduce the potential for pollen drift and crop contamination the Department would require that all industrial hemp be grown from clones (female cuttings) or feminized seed. Cultivation of male plants for breeding or seed production should be conducted indoor or in a greenhouse with appropriate intake and output filtration systems to eliminate the potential for pollen contamination.

Enforcement/Fraud Mitigation

Cultivation of industrial hemp provides an opportunity for unpermitted cannabis cultivation. The Department believes it is important to incorporate fraud mitigation measures into any hemp ordinance and that this is critical to the success of Sonoma County's cannabis program and the hemp industry alike. Department staff have consulted with Permit Sonoma Code Enforcement staff to develop a coordinated approach to enforcement.

In our proposed hemp ordinance, we have included a robust enforcement section with a range of enforcement responses depending on the type of violation. Registered industrial hemp cultivators that violate the ordinance will primarily be subject to the same administrative enforcement and civil penalties as any other commercial use under Chapter 1 of the Sonoma County Code. Enforcement responses for registered cultivators may include revocation and suspension from registration.

Unregistered cultivation of industrial hemp may be enforced as unpermitted commercial cannabis cultivation, which is subject to immediate abatement and enhanced civil penalties. Those circumstances include: 1) unregistered industrial hemp cultivation (including when any portion of a cultivation site is not identified on the registration); 2) unauthorized removal or destruction of plants from a registered site; and 3) if a registered industrial hemp sample tests over 10% total THC. A system to track the number of plants or scale of cultivation in each commercial industrial hemp planting will be established to enforce against unauthorized removal of plants. Individuals who have been subject to a County enforcement action for unpermitted cannabis cultivation will be prohibited from growing industrial hemp for two years from the time the action is closed. Recent state legislation provides for additional suspensions from cultivation for violations of industrial hemp laws and regulations.

Establish a County Industrial Hemp Program and Registration Process (fees associated)

Anyone in the state of California that wishes to cultivate industrial hemp must register with their county agricultural commissioner before planting pursuant to state regulations enforced by the California Department of Food and Agriculture (CDFA). The CDFA industrial hemp program regulates cultivation through this registration process and is also responsible for regulating the sampling and testing of hemp to insure compliance with state law. Many of these regulations are enforced at the local level by the Agricultural Commissioner/Sealer and their staff through contracts with CDFA.

The Department proposes through the adoption of Chapter 37 to establish a county registration process, which will enable the county to collect more detailed information on the cultivation site, verify compliance

with additional county regulations for compatibility, and enhance monitoring and enforcement of industrial hemp cultivation in the county. This local program will complement the state regulatory program and collect additional fees for administration of our local program and its enforcement including a county registration fee, additional site/acreage fees, and a monitoring fee. All registrant information will be maintained in a permitting software platform to facilitate administration and enforcement of the program. This will allow real time verification of who is and who is not registered as an industrial hemp cultivator and provide for coordination of enforcement efforts with Sonoma County Permit Sonoma Code Enforcement.

DISCUSSION OF ZONING ISSUES

1. Industrial Hemp Land Use Compatibility by Zoning District
 - a. Rural Residential
 - b. Agriculture and Residential
 - c. Resources and Rural Development
 - d. Agricultural Zones
2. Post-Harvest Handling Practices of Industrial Hemp That Are Ancillary Agricultural Production Activities
3. Allowances for Industrial Hemp Extraction Activities

ISSUE #1: Industrial Hemp Land Use Compatibility by Zoning District

As an agricultural crop, industrial hemp cultivation is currently allowed by right anywhere in the county where agriculture is allowed (Chapter 37 currently adds a temporary prohibition). Industrial hemp has a physical trait, specifically odor, which causes concern for the compatibility with residential neighborhoods. Therefore, we must determine where it may be appropriate to restrict hemp cultivation to address this issue.

ISSUE #1a: Rural Residential (RR) Zoning District

Rural Residential (RR) zoning district's stated purpose is to preserve the rural character of these lands best suited for low-density residential development taking precedence over permitted agricultural uses. The following policy options are offered for consideration by the Planning Commission:

ISSUE #1a: Policy Options

1. **Prohibit industrial hemp cultivation in RR*:** This option limits legal agriculture in a zoning district where agriculture is allowed but recognizes the primary use of this land as residential with regard to impacts of industrial hemp odor.
2. **Require discretionary permit for industrial hemp cultivation:** This would set a precedent as the cultivation of other legal agricultural crops does not require a discretionary permit. Given the time and expense of a discretionary permit, it would be difficult for farmers to take advantage of existing market opportunities. The benefit of requiring a discretionary permit is that it would allow for a site-specific review to ensure all impacts and concerns are addressed. This also provides the authority to condition the project as needed and offers public participation in the permitting process.

3. **Allow cultivation with local registration with recommended Best Management Practices (BMPs):** This approach avoids the need for a permit while providing a vehicle for the local regulation of industrial hemp. By utilizing recommended BMPs, the Department is encouraging good practices without creating additional regulatory burdens on farmers. Since this is an annual crop, BMPs could be codified after the first year if problems arise. The registration process does not however allow the project to be conditioned to address site-specific concerns and does not allow for public participation.

4. **Allow cultivation with local registration with recommended BMPs and mandatory setbacks:** Same as above with added authority to enforce setbacks on all cultivation in agricultural zones. Provides more regulatory authority but reduces flexibility and reduces the number of properties eligible to cultivate industrial hemp.

5. **Allow cultivation with no restriction:** This option is the least burdensome on the cultivator but does not give the county a vehicle to apply local regulations or address residential concerns.

***ISSUE #1a: Department recommendation is policy option 1.** Recognizing the primary use of this zoning district, the Department recommends a prohibition on industrial hemp cultivation the RR zone.

ISSUE #1b: Agriculture and Residential (AR) Zoning District

Agriculture and Residential (AR) zoning district’s stated purpose is to provide lands for raising crops and farm animals in areas designated primarily for rural residential use. Although this zoning district allows and encourages agriculture, the primary use remains residential.

When considering zoning issues related to industrial hemp, there may be a tendency to refer to existing cannabis cultivation regulations and setbacks as guidance (see Table 1). In contrast to these setbacks, there are only a couple of instances in the county code or general plan where there are required setbacks from agriculture. Those setbacks are listed in Table 2 below.

TABLE 1: EXISTING SETBACKS FOR CANNABIS (Sonoma County Code 26-88-254)

SETBACKS	TYPE OF CULTIVATION	ZONES
100 feet from property lines 300 feet from residence/business structures on surrounding properties 1,000 feet from K-12 schools, parks, childcare centers, drug/alcohol treatment facilities	Outdoor (10,000 square feet)	Ag Zones (LIA, LEA, DA)
600 feet from K-12 schools	Indoor	Ag and Resource Zones (LIA, LEA, DA, RRD)
100 feet from property lines 300 feet from residence/business structures on surrounding properties 1,000 feet from K-12 schools, parks, childcare centers, drug/alcohol treatment facilities	Mixed Light	All Zones

TABLE 2: EXISTING AGRICULTURAL SETBACKS/RESTRICTIONS

APPLICABLE COUNTY CODE OR POLICY	SETBACKS/ RESTRICTIONS
General Plan Policy AR-4c	Protect agricultural operations by establishing a buffer between an agricultural land use and residential interface. Buffers shall generally be defined as a physical separation of 100 feet to 200 feet and/or may be a topographic feature, a substantial tree stand, water course or similar feature. In some circumstances a landscaped berm may provide the buffer. The buffer shall occur on the parcel for which a permit is sought and shall favor protection of the maximum amount of farmable land
Zoning Sec. 26-16-030 Permitted residential density and development criteria	Watering troughs, feed troughs, accessory buildings used for the housing or maintenance of farm animals, and accessory buildings and runs used for the housing or maintenance of kennel animals shall be located at least fifty feet (50') from the front property line, twenty feet (20') from any side or rear property line, and thirty feet (30') from any dwelling on the adjacent property.

ISSUE #1b: Policy Options

1. **Prohibit industrial hemp cultivation in AR:** This option limits legal agriculture in a zoning district where agriculture is allowed but recognizes the primary use of this land as residential with regard to impacts of hemp odor.
2. **Require discretionary permit for industrial hemp cultivation:** This would set a precedent as the cultivation of other legal agricultural crops does not require a discretionary permit. Given the time and expense of a discretionary permit, it would be difficult for farmers to take advantage of existing market opportunities. The benefit of requiring a discretionary permit is that it would allow for a site-specific review to ensure all impacts and concerns are addressed. This also provides the authority to condition the project as needed and offers public participation in the permitting process.
3. **Allow cultivation with local registration with recommended BMPs and mandatory setbacks*:** The proposed setbacks are 600 feet from occupied structures and 200 feet from all property lines. The setbacks may be waived by neighbors. This option allows for some level of industrial hemp cultivation in AR while addressing odor concerns with mandatory setbacks. This option does not allow for site-specific conditions or public participation.
4. **Allow with no restriction:** This option increases land eligible for industrial hemp cultivation but does not recognize the primary use of the zoning designation as residential with regard to impacts on residents or address residential concerns.

***ISSUE #1b: Department recommendation is policy option 3.** The Department recommends that industrial hemp cultivation be restricted on AR zoned parcels.

Since cannabis cultivation has not been allowed in any residential zoning district in Sonoma County, the Department proposes a larger setback from residences and businesses in the AR zoning district than the 300 feet applied to cannabis in non-residential zoning districts (Table 1). The Department is recommending a 600 foot setback from occupied residences and businesses with a 200 foot setback from all property lines. 600 feet has been established by the State as the required setback for cannabis from

sensitive uses including schools, daycare centers, and youth centers. An additional factor influencing the recommendation is the fact that cannabis is limited to one acre per parcel and there is no limit to the size of industrial hemp plantings. To maximize opportunities under the proposed restrictions the Department recommends allowing neighbors to waive or reduce the setbacks.

The application of a 1,000 foot setback was considered in an effort to align with existing codified setbacks, (Table 1) however, it was determined that many of the considerations applied in that circumstance, such as potential for crime and sensitivity around drug treatment centers, were not applicable to industrial hemp.

ISSUE #1c: Resources and Rural Development (RRD) Zoning District

Resources and Rural Development (RRD) zoning district's stated purpose is to provide protection of lands needed for timber production, geothermal production, aggregate resource production, lands needed for protection of watersheds, fish and wildlife habitat, biotic resources, and for agricultural production activities that are not subject to all of the policies contained in the agricultural resources element of the general plan. Agricultural production activities are specifically allowed in this zoning district and there is already a significant amount of agriculture located in this zoning district.

ISSUE #1c: Policy Options

1. **Prohibit industrial hemp cultivation in RRD:** This option deprives farmers in Sonoma County the opportunity to grow this legal crop in an area zoned for agricultural production, and limits the diversity of agriculture in Sonoma County. Prohibition does however avoid the impacts of industrial hemp cultivation in a zoning district designated for watershed protection.
2. **Require discretionary permit for industrial hemp cultivation:** This would set a precedent as the cultivation of other legal agricultural crops does not require a discretionary permit. Given the time and expense of a discretionary permit, it would be difficult for farmers to take advantage of existing market opportunities. The benefit of requiring a discretionary permit is that it would allow for a site-specific review to ensure all impacts and concerns are addressed. This also provides the authority to condition the project as needed and offers public participation in the permitting process.
3. **Allow cultivation with registration and recommended BMPs as well as a prohibition on tree removal and grading*:** This option allows for cultivation while addressing concerns over resource protection, but does not allow site-specific conditions or public participation.
4. **Allow with no restriction:** This option increases land eligible for hemp cultivation but does not recognize the stated purpose of watershed protections for this zoning designation.

***ISSUE #1c: Department recommendation is policy option 3.** The Department recommends that industrial hemp cultivation not be restricted as in zoning districts that are primarily residential. However, since RRD zoning has been designated for protection of watersheds and fish and wildlife habitat, the Department is recommending a prohibition on the removal of trees and grading for industrial hemp cultivation.

ISSUE #1d: Agricultural (LIA, LEA, and DA) Zoning Districts

As a legal agricultural crop, the Department proposes that no restrictions be applied to industrial hemp cultivation within agricultural zoning designations (LIA, DA, and LEA) as the purpose of agricultural zoning

designations is to protect lands suited for permanent agricultural use. Farmers in these zoning districts are afforded protection by the Sonoma County Right to Farm Ordinance when engaged in properly conducted agricultural operations. The Department has developed Best Management Practices for industrial hemp, which clarify general good farming practices for Industrial Hemp cultivation in Sonoma County.

Best Management Practices encourage industrial hemp growers to consider surrounding land uses and maintain minimum setbacks where practicable to reduce conflict and provide for compatibility with other cropping systems.

While it is true that cannabis and industrial hemp are both the same species of plant, there are differences which affect selecting appropriate setbacks. Setbacks in state and local regulations for cannabis were established to address multiple concerns such as odor, public safety, and sensitivities around normalization of a controlled substance. Unlike cannabis, industrial hemp has access to banking, so there is not large sums of cash associated with cultivation sites. Also, industrial hemp is not a controlled substance and not psychoactive, so it does not have immediate street value. Additionally, all industrial hemp farms are required by State law to post signs indicating that the crop is industrial hemp, further mitigating any potential for crime.

The primary issue common to both crops is odor. Since industrial hemp is a legal agricultural crop, it is afforded nuisance protection under the State Right to Farm Law and the local Sonoma County Right to Farm Ordinance. When landowners purchase property in or adjacent to agriculturally zoned land, they are required to sign a disclosure acknowledging their acceptance of the right to farm protections. Excerpts from the disclosure that is codified in the Sonoma County Right to Farm Ordinance (Sonoma County Code, Chapter 30, Article II) are below:

“The undersigned do hereby further acknowledge that if the subject property is located near an agricultural operation on agricultural land, residents or users of the subject property may at times be subject to inconvenience or discomfort arising from that operation, including, without limitation, noise, odors, fumes, dust, smoke, insects, operation of machinery during any time of day or night, storage and disposal of manure, and ground or aerial application of fertilizers, soil amendments, seeds, and pesticides.”

“The undersigned do hereby further acknowledge that the County of Sonoma has determined in the Sonoma County Right to Farm Ordinance that inconvenience or discomfort arising from a properly conducted agricultural operation on agricultural land will not be considered a nuisance for purposes of the Sonoma County Code or County regulations, and that residents or users of nearby property should be prepared to accept such inconvenience or discomfort as a normal and necessary aspect of living in a county with a strong rural character and an active agricultural sector.”

It is important to note that while it is accepted that distance generally reduces odor, there is little scientific data on how much odor is reduced by specific separation distances and what level of odor is acceptable. Determination of odor or severity of odor remains subjective and is dependent upon a multitude of factors, not the least of which is a large variability in individual sensitivity to cannabis odors. Other factors affecting odor include, but are not limited to, distance from crop, prevailing wind direction, temperature, humidity, topography, strain of cannabis, maturity of the crop, size of planting, etc.

ISSUE #1d: Policy Options

1. **Prohibit industrial hemp cultivation in LIA, LEA, and DA:** This option deprives farmers in Sonoma County the opportunity to grow this legal crop in areas zoned specifically for agriculture and limits diversification of agriculture in Sonoma County.
2. **Require discretionary permit for industrial hemp cultivation:** This would set a precedent as the cultivation of other legal agricultural crops does not require a discretionary permit. Given the time and expense of a discretionary permit, it would be difficult for farmers to take advantage of existing market opportunities. The benefit of requiring a discretionary permit is that it would allow for a site-specific review to ensure all impacts and concerns are addressed. This also provides the authority to condition the project as needed and offers public participation in the permitting process.
3. **Allow cultivation with local registration with recommended Best Management Practices (BMPs)*:** This approach avoids the need for a permit while providing a vehicle for the local regulation of industrial hemp. By utilizing recommended BMPs, the Department is encouraging good practices without creating additional regulatory burdens on farmers. This level of oversight is consistent with other agricultural crops in the County and provides for diversification of agricultural crops and economic opportunity. The registration process does not however allow the project to be conditioned to address site-specific concerns and does not allow for public participation.
4. **Allow cultivation with local registration with recommended BMPs and mandatory setbacks:** Same as above with added authority to enforce setbacks on all cultivation in agricultural zones. Provides more regulatory authority but reduces flexibility and reduces the number of properties eligible to cultivate industrial hemp.
5. **Allow cultivation without restriction:** This option is the least burdensome on the cultivator but does not give the county a vehicle to apply local regulations.

***ISSUE #1d: Department recommendation is policy option 3.** Allow with local registration and Best Management Practices.

Issue #2: Post-Harvest Handling Practices of Industrial Hemp That Are Ancillary Agricultural Production Activities

Industrial hemp meets the current definition of “agricultural crop” in the zoning code, which is “Any cultivated crop grown and harvested for commercial purposes, except for cannabis and other controlled substances, which are defined and classified separately.”

Most zoning districts allow, as a permitted use, outdoor and indoor crop production/growing and harvesting of crops. For clarity, staff proposes to modify the definition of “outdoor crop production” and modify the language of allowed uses in each district in which industrial hemp cultivation is not prohibited to expressly include industrial hemp. Those districts include Land Intensive Agriculture (LIA), Land Extensive Agriculture (LEA), Diverse Agriculture (DA), Resources and Rural Development (RDD), Agriculture and Residential (AR), Agricultural Services (AS), Recreation and Visitor-Serving (K), Limited Urban Industrial (M1), Heavy Industrial (M2), and Limited Rural Industrial (M3). Similarly, staff proposes to modify the descriptions to clarify that indoor growing and harvesting of industrial hemp in structures 800 square feet or larger is allowed with a use permit in the RDD and AR zoning districts.

Examples of these clarifying changes include:

“Outdoor crop production including wholesale nurseries, for growing and harvesting of shrubs, plants, flowers, trees, vines, industrial hemp, fruits, vegetables, hay, grain and similar food and fiber crops other than cannabis, conducted and maintained in compliance with Article 65, RC Riparian Corridor Combining Zone.”

“Indoor growing and harvesting of shrubs, plants, flowers, trees, vines, industrial hemp, fruits, vegetables, hay, grain and similar food and fiber crops other than cannabis, in greenhouse or similar structures less than eight hundred (800) square feet, conducted and maintained in compliance with Article 65, RC Riparian Corridor Combining Zone.”

Most of the zoning districts listed above also allow incidental post-harvest handling activities associated with those crops grown onsite: “Incidental cleaning, grading, packing, polishing, sizing, storage and similar preparation of crops which are grown on the site, *but not including agricultural processing.*” Post-harvest activities commonly used for industrial hemp include drying, grading, trimming, curing, storing, and packaging and are already allowed under these provisions of the zoning code.

Issue #3: Allowances for Industrial Hemp Extraction Activities

Staff proposes to add language to the definition of agricultural processing to clarify the allowance for on-farm extraction of oil from industrial hemp, as follows:

“Agricultural Processing means the act of changing an agricultural product from its natural state to a different form, as grapes to wine, apples to juice or sauce, agricultural crops to extracted oils, etc.” Hemp oil is extracted from raw industrial hemp biomass using pressure and non-volatile solvents (CO₂ and ethanol). Using pressure to perform these processes is similar to those practices used for making wine, olive oil, and apple juices, and sauces.

Agricultural processing is allowed with a use permit in the following zoning districts: AR, LIA, LEA, DA, RRD, CR, AS, MP, M1, M2, and M3.

GENERAL PLAN CONSISTENCY

The cultivation of industrial hemp is classified under state and federal law as “agriculture” and can be found consistent with the Sonoma County General Plan’s overall goals, objectives, policies and programs. Industrial hemp cultivation is most suitably evaluated with respect to Sonoma County General Plan’s Agricultural Resources Element and Land Use Element. The Agricultural Resources Element defines agriculture as an “industry which produces and processes food, fiber, plant materials, and which includes the raising and maintaining of livestock.” (Agricultural Resources Element, pg. AR-1). The purpose of the Agricultural Resources Element is to establish policies that insure agriculture stability and productivity of the county’s agricultural lands. It is also intended to express measures that promote and protect the current and future needs of the agricultural industry. Industrial hemp cultivation and processing in Sonoma County is consistent with this purpose and with the County’s commitment to encourage the maintenance of a healthy agricultural sector of the County’s economy.

The Agricultural Resources Element applies primarily to lands designated within the three agricultural land use categories (LIA, LEA, and DA) and the diversity of conditions in the in those zoning designations. Many of the environmental and topographic conditions are present in other zoning designations where

agriculture occurs, which include the Resources and Rural Development (RRD) zones, as well as in the Agriculture and Residential (AR) zones. These are important considerations when deciding on where legal agricultural production shall be permitted.

The various General Plan goals and policies applicable to the proposed zoning ordinance:

Goal AR-1: *Promote a healthy and competitive agricultural industry whose products are recognized as being produced in Sonoma County.*

Analysis: One of the main goals of the Agricultural Resources Element is the promotion of Sonoma County agricultural products and the reduction of economic pressure on farmers and ranchers to convert the land to non-agricultural uses. Specifically, Goal AR-1 seeks to promote a healthy and competitive agricultural industry whose products are recognized as being produced in Sonoma County. Industrial hemp represents another opportunity for Sonoma County to be recognized for the quality of the agricultural commodities it produces.

Policy AR-1e: *Encourage and support farms and ranches, both large and small that are seeking to implement sustainability, increase the viability of diverse family farms and improve opportunities for farm workers.*

Analysis: Encouraging and supporting the sustainability of farms and ranches includes support for innovation and other measures that increase the viability and diversity of family farms and improve the opportunities for farm workers. This includes the cultivation of new crops and the implementation of practices that protect resources and support the local food economy. Industrial hemp represents an opportunity to diversify farming operations and increase the viability of businesses, which allows them to maintain their food production in addition to providing more agricultural jobs in the County.

Goal AR-4: *Allow farmers to manage their operations in an efficient manner with minimal conflict.*

Analysis: The Agricultural Resources Element establishes policies that support the needs and practices of agriculture as the highest priority in areas designated for agriculture (LIA, LEA, and DA). This goal is focused on allowing farmers to manage their operations in the most economically feasible and efficient manner possible and to reduce conflicts with non-agricultural land use through policies that identify agriculture as the main priority in agriculture zoning designations (LIA, LEA, and DA).

Policy AR-4a: *The primary use of any parcel within the three agricultural land use categories (LIA, LEA, and DA) shall be agricultural production and related processing, support services, and visitor serving uses. Residential uses in these areas shall recognize that the primary use of the land may create traffic and agricultural nuisance situations, such as flies, noise, odors, and spraying of chemicals.*

Analysis: As legal agriculture industrial hemp is an agricultural use and any production, processing and support services conform to the use priorities covered under this policy.

Policy AR-4f: *Anticipated conflicts between a proposed new agricultural use and existing agricultural activities shall be mitigated by the newer use or application.*

Analysis: This policy specifies that any conflicts between a proposed new agricultural use like industrial hemp, and existing agricultural activity, shall be mitigated by the newer use. This policy is addressed in

the recommended best management practices as developed by the Department in order to address any potential conflict through voluntary setbacks of cultivation.

Policy AR-5b: Consider allowing the processing of non-viticultural agricultural products where the processing is demonstrated to support projected or new agricultural production, provided that the processing use is proportional to the new production on site or in the local area.

Analysis: Industrial hemp cultivation and processing represents a newer agricultural use and the processing of hemp crops on site is necessary for the economic viability of this industry. This policy supports the goal that these processing and support services should be located conveniently and accessibly in agricultural production areas.

Policy AR-8h: To the extent feasible, foster agricultural diversity by providing information to the agricultural industry through the Economic Development Board, UC Cooperative Extension, Agricultural Commissioner, Farm Bureau, and other agricultural organizations.

Analysis: Goal AR-8 in the Agricultural Resources Element of the General Plan speaks to the stabilization of farmers' economic situations. Investments in agriculture must be economically sustainable for farming to continue. Most farmers' personal and business finances are intimately connected. This puts pressure on farm families to insure the stability of their agricultural operations. As such, policies are needed to build support to stabilize farmers' economic situations and maintain the land in agriculture. Under this goal, policy AR-8h fosters agricultural diversity by nurturing information and technology transfer from local and state agriculturally-oriented agencies to farmers in Sonoma County's agricultural industry. Industrial hemp offers an opportunity for farming families to diversify their enterprises and stabilize farm income.

The Land Use Element identifies policies that the county uses to implement primary permitted uses and secondary uses of land through zoning designations. The land use zoning designations of Rural Residential Areas (RR), Resources and Rural Development (RRD), and the three zoning designations identified in the agricultural resources element (LIA, LEA, and DA) are the zoning designations relevant to industrial hemp cultivation.

Policy LU-6d: Provide for different levels of crop and animal production in the Rural Residential land use category by creating an "Agriculture and Residential" and a "Rural Residential" zoning district.

Rural Residential (RR) areas provide for very low-density residential development and the primary use shall be detached single family homes. Secondary uses include farming, small-scale animal husbandry, and a suite of other activities. Rural Residential district limits agricultural activities regardless of parcel size.

Agriculture and Residential (AR) areas permit unlimited animal and crop production on parcels two or more acres in size and limits agricultural processing, sales of products grown on site, product promotion, tours, educational visits, and small-scale events.

In both of these zoning districts, residential uses are designated as the primary use. Agricultural activities are considered secondary uses of the land and as such the policies of the Agricultural Resources Element will not apply.

Restricting industrial hemp production in RR and continuing to allow in AR with setbacks is consistent with this land use policy.

ENVIRONMENTAL DETERMINATION

Agricultural crop production is a use allowed by right and a prevalent and encouraged use in the majority of zoning districts. The definition of agricultural crop includes industrial hemp, and so agricultural crop production necessarily includes industrial hemp production. Crops in Sonoma County have changed many times throughout history for economic, biological, and legal reasons. Even from year to year, farmers add and substitute crops based on the same factors. Crop rotation is common practice because the benefits include increased soil fertility, decreased fertilizer use, decreased pest pressure, decreased pesticide use, diversification of farm income, and adaptability to changing markets. While industrial hemp only recently became an “agricultural crop,” crop rotation and the addition of new crop species is an inherent component of agricultural crop production. Thus, the proposed ordinance impacts an existing allowed use as opposed to a new use.

Staff has determined that the proposed ordinance is categorically exempt from the California Environmental Quality Act (CEQA) under CEQA Guidelines sections 15307 and 15308 as an action taken to assure the maintenance, restoration, enhancement, and protection of natural resources and the environment. This determination is because the regulations in the proposed ordinance would purely restrict agricultural crop production in the following ways: prohibiting industrial hemp production in certain residential zoning districts including RR, R1, R2, R3, and PC; adding setbacks for industrial hemp from residences and businesses in AR; controlling pollen drift to avoid contamination of other industrial hemp and cannabis production; and restricting grading and tree removal in RRD for industrial hemp cultivation. The proposed ordinance is further 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. This determination is because, in addition to above, the proposed ordinance primarily establishes a registration for industrial hemp for the purpose of ensuring effective oversight and enforcement of industrial hemp cultivation given its similarity to cannabis. Additionally, the minor changes to definitions and allowed uses related to crop production and agricultural processing in the zoning code are purely for clarification given industrial hemp’s classification as an agricultural crop and do not expand allowable uses or activities.

STAFF RECOMMENDATION

Staff recommends that the Planning Commission adopt a Resolution recommending that the Board of Supervisors approve Zoning Code amendments to Chapter 26 of the Sonoma County Code to limit cultivation of industrial hemp within certain zoning code designations and make other clarifying changes to definitions and allowed uses related to industrial hemp cultivation, processing, and extraction, and recommending amendments to Chapter 37 to impose certain zoning restrictions on the cultivation of industrial hemp.

LIST OF ATTACHMENTS

EXHIBIT A: Draft Planning Commission Resolution

EXHIBIT B: Draft Board of Supervisors Industrial Hemp Ordinance

1. Amendments to Chapter 26

2. Amendments to Chapter 37

EXHIBIT C: Agricultural Commissioner’s Recommended Best Management Practices (BMPs)

EXHIBIT D: Current state regulations for Registration, Sampling, and Testing

EXHIBIT E: Division 24 of California Food and Agriculture Code (FAC)

EXHIBIT F: Hemp Advisory Group Zoning Considerations

Resolution Number

County of Sonoma
Santa Rosa, California

November 21, 2019

RESOLUTION OF THE PLANNING COMMISSION OF THE
COUNTY OF SONOMA, STATE OF CALIFORNIA,
RECOMMENDING TO THE BOARD OF SUPERVISORS THE
PROPOSED AMENDMENTS TO CHAPTER 26 AND CHAPTER
37 OF THE SONOMA COUNTY CODE TO REGULATE AND
RESTRICT INDUSTRIAL HEMP CULTIVATION AND MAKE
CLARIFYING CHANGES RELATED TO INDUSTRIAL HEMP
CULTIVATION, PROCESSING, AND MANUFACTURING

WHEREAS, federal law, pursuant to the Agricultural Improvement Act of 2018 (2018 Farm Bill), and state law, pursuant to California Food and Agricultural Code Section 81000 et seq., legalized commercial industrial hemp production and defined industrial hemp as an agricultural commodity and crop, making its cultivation and production allowed uses under the zoning code in many zoning districts in the unincorporated Sonoma County;

WHEREAS, on April 2, 2019, the Board of Supervisors considered and adopted an urgency ordinance to impose a temporary moratorium on industrial hemp cultivation, and on April 30, 2019, the Board of Supervisors considered and adopted an ordinance adding Chapter 37 to the Sonoma County Code (Industrial Hemp Ordinance) imposing a moratorium on industrial hemp cultivation until April 30, 2020;

WHEREAS, the Board of Supervisors adopted the moratorium because state laws regulating industrial hemp were still under development, industrial hemp and cannabis cultivation would often be indistinguishable presenting public safety risks and challenges for enforcement, and unregulated industrial hemp cultivation could be harmful to the welfare of the County and its residents, and thus directed staff to study and propose how and whether to regulate industrial hemp cultivation;

WHEREAS, it is the determination of staff that the proposed ordinance is categorically exempt from the California Environmental Quality Act (CEQA) under CEQA Guidelines sections 15307 and 15308 as an action taken to assure the maintenance, restoration, enhancement, and protection of natural resources and the environment, and under section 15061(b)(3) because it can be seen with certainty that the project will have no significant effect on the environment; and

WHEREAS, in accordance with the provisions of law, the Planning Commission held a public hearing on November 7, 2019, at which time all interested persons were given an opportunity to be heard.

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission makes the following findings:

1. The proposed amendments are necessary and desirable for promoting agricultural opportunity and diversification while protecting the public health, safety, and environmental resources, and maintaining effective enforcement of unpermitted cannabis cultivation.
2. The proposed amendments are substantially consistent with the overall goals, objectives, policies, and programs of Sonoma County General Plan, in particular the Agricultural Resources and Land Use Elements, because by maintaining opportunities for industrial hemp cultivation the Ordinance: supports agricultural diversification and farm viability (Goal AR-1, Policy AR-e, and Policy AR-8h); enables efficient management of farm operations through inclusion of industrial hemp into crop rotations (Goal AR-4); recognizes agricultural production as the primary use of parcels in the agricultural land use categories (Policy AR-4a); reduces conflict with other agricultural activities by managing pollen and encouraging setbacks from vineyards (AR-4f); preserves processing of non-viticulture agricultural products on-farm (AR-5b); and maintains agricultural opportunities in the Agriculture and Residential zoning district (LU-6d).
4. The proposed ordinance is categorically exempt from the California Environmental Quality Act (CEQA) under CEQA Guidelines sections 15307 and 15308 as an action taken to assure the maintenance, restoration, enhancement, and protection of natural resources and the environment, because agricultural crop production is a use allowed by right in many zoning districts and the regulations in the proposed ordinance would solely restrict agricultural crop production by prohibiting industrial hemp production in certain zoning districts, adding setbacks, controlling pollen drift, and restricting grading and tree removal. The proposed ordinance is further 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 proposed ordinance primarily establishes a registration for industrial hemp to ensure effective oversight and enforcement and because minor changes to definitions and allowed uses in the zoning code are purely for clarification and do not expand allowable uses or activities.

BE IT FURTHER RESOLVED that the Planning Commission recommends that the Board of Supervisors find the project exempt from CEQA and adopt the amendments to Chapter 26 of the Sonoma County Code in Exhibit B-1 and the zoning regulations in the amendments to Chapter 37 of the Sonoma County Code in Exhibit B-2, including setbacks and regulations specific to zoning district; and

BE IT FURTHER RESOLVED that the Planning Commission designates the Secretary of the Planning Commission as the custodian of the documents and other material which constitute the record of proceedings upon which the decision herein is based. These documents may be found at the office of the Sonoma County Permit and Resource Management Department, 2550 Ventura Avenue, Santa Rosa, CA 95403.

THE FOREGOING RESOLUTION was introduced by Commissioner **NAME**, who moved its adoption, seconded by Commissioner **NAME**, and adopted on roll call by the following vote:

Resolution No.:
November 21, 2019
Page 3

Commissioner
Commissioner
Commissioner
Commissioner
Commissioner

Ayes: Noes: Absent: Abstain:

WHEREUPON, the Chair declared the above and foregoing Resolution duly adopted; and

SO ORDERED.

DRAFT

EXHIBIT “B”

CHAPTER 37 OF THE SONOMA COUNTY CODE

CHAPTER 37 - INDUSTRIAL HEMP ORDINANCE

Sec. 37-1 Title.

This chapter is known as the Sonoma County Industrial Hemp Ordinance.

Sec. 37-2 Purpose.

This chapter is enacted for the purpose of regulating industrial hemp cultivation within the unincorporated area of the county to promote agricultural diversification while protecting the environment, public safety, and welfare of the county.

Sec. 37-3 Definitions.

For the purposes of this chapter, the following words and phrases have the meanings respectively ascribed to them by this section. All citations to federal and state law refer to the act, statute, or regulations as may be amended from time to time.

- A. “Agricultural Commissioner” means the agricultural commissioner-sealer of the Sonoma County Department of Agriculture/Weights and Measures, or his or her authorized representative.
- B. “Applicant” means a person applying for registration under this chapter.
- C. “Cultivation” includes an activity involving the propagation, planting, growing, breeding, or other development of industrial hemp plants or propagative plant material.
- D. “Cultivation area” means the area designated in the registration materials for cultivation.
- E. “Established agricultural research institution” has the same meaning as that term is defined in California Food and Agricultural Code Section 81000.
- F. “Female industrial hemp plant” means an industrial hemp plant that possesses only female pistillate flowers and is capable of bearing seed, and is not a male industrial hemp plant.
- G. “Female propagative plant material” means propagative plant material that is bred, grown, or otherwise developed to become a female industrial hemp plant.

- H. “Incidental activities” includes harvesting, drying, curing, grading, trimming, wholesale packaging, and similar preparation of industrial hemp, but not including agricultural processing as defined by Chapter 26.
- I. “Industrial hemp” or “hemp” has the same meaning as that term is defined in California Food and Agricultural Code Section 81000.
- J. “Institution of higher education” has the same meaning as that term is defined in the federal Higher Education Act of 1965 Section 101 (20 U.S.C. Sec. 1001).
- K. “Male industrial hemp plant” means an industrial hemp plant that has male staminate flowers or is otherwise capable of producing pollen.
- L. “Nursery stock” has the same meaning as that term is defined in California Food and Agricultural Code Section 5005.
- M. “Outdoor(s)” means not within a structure, or within a structure that is not fully enclosed, such as a hoop house.
- N. “Person” includes an 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 other group or entity, or combination acting as a unit.
- O. “Pollen” means the fine powdery substance discharged from a male plant containing male gametes that is capable of causing a female plant, or female part of a plant, to produce seeds.
- P. “Propagative plant material” includes live plants, seeds, seedlings, clones, cuttings, transplants, or other propagules used to establish plants for planting.
- Q. “Registrant” means a person who is registered to cultivate industrial hemp under this chapter.
- R. “Registration” means the verification of the ability to cultivate hemp in accordance with this chapter and the registrant’s registration materials.
- S. “Registration form” means an application to register for industrial hemp cultivation pursuant to this chapter.
- T. “Registration materials” means the registration form and all plans and specifications, maps, and other information and materials on the list of required registration contents and all other information necessary to verify compliance with this chapter.
- U. “Site” means the area(s) designated in the registration materials that may contain industrial hemp, including, for example, the cultivation area(s) and structure(s) used for incidental activities.

- V. “State industrial hemp laws” means California Food and Agricultural Code Section 81000 et seq. and Title 3 of the California Code of Regulations Section 4900 et seq.
- W. “THC” means the crystalline compound tetrahydrocannabinol that is the main psychoactive active ingredient in cannabis.

Sec. 37-4 Administration and Review.

- A. Administration. This chapter will be administered under the direction of the Board of Supervisors, by and through the Agricultural Commissioner.
- B. Review. Except for decisions made pursuant to Chapter 1, all decisions of the Agricultural Commissioner under this chapter are final, subject only to judicial review.

Sec. 37-5 Applicability.

- A. Compliance required. A person must register with the Agricultural Commissioner prior to industrial hemp cultivation, or preparing a site for cultivation, in the unincorporated county. Registrants must comply with the standards required by this chapter and all required best management practices.
- B. Liability. Nothing in this chapter, including the issuance of a registration, nor compliance with the provisions of this chapter, relieves a person from responsibility for damage to other persons or property, or imposes liability upon the county, its officers, agents, or employees, for damage to other persons or property.
- C. Other Laws and Permits. Nothing in this chapter eliminates the need for a person undertaking industrial hemp cultivation to comply with local, state, or federal law, or to obtain other permits, approvals, or authorizations required by this code or state or federal agencies.

Sec. 37-6 Best Management Practices.

- A. Required Best Management Practices. The Agricultural Commissioner may adopt, amend, or rescind required best management practices to implement or make specific the standards in this chapter. A registrant must comply with a best management practice adopted or amended pursuant to this provision.
- B. Recommended Best Management Practices. The Agricultural Commissioner may adopt, amend, or rescind recommended best management practices that include proper and accepted customs and standards for industrial hemp cultivation in the county.

Sec. 37-7 Registration Requirements.

Registration for industrial hemp cultivation must be issued if the following requirements are met:

- A. Apply to Register. Applicant must submit registration materials in accordance with the registration process established by the Agricultural Commissioner. The registration materials must be accompanied by all required fees and deposits.
- B. Property Owner Authorization. The property owner must authorize industrial hemp cultivation in a form acceptable to the Agricultural Commissioner.
- C. State Industrial Hemp Registration. Applicant must satisfy the registration requirements in California Food and Agricultural Code Section 81003.
- D. Pesticide Use. If pesticides are used, applicant must obtain an Operator Identification Number or Restricted Materials permit from the Agricultural Commissioner.
- E. Industrial Hemp Nurseries. Applicant for propagative plant material cultivation must have a license to sell nursery stock as required under California Food and Agricultural Code Section 6721 et seq.
- F. Consent to Inspections. Applicant must consent to inspections and testing that may be conducted at any time at the discretion of the Agricultural Commissioner. A fee may be established to cover the costs of such inspections and testing.
- G. Term and Renewal. Registration expires 1 year from the date of issuance and may be renewed annually in accordance with the registration renewal process established by the Agricultural Commissioner.

Sec. 37-8 Cultivation Requirements.

The following standards apply to industrial hemp cultivation:

- A. Propagative Material for Outdoor Cultivation. An outdoor cultivation area may only be planted with female propagative plant material.
- B. Pollen Management. Pollen from male industrial hemp plants must be managed as follows and in accordance with the required best management practices:
 - i. Indoor Cultivation for Male Plants. Cultivation of male industrial hemp plants may only occur in fully enclosed structures equipped with effective filtration devices to prevent pollen from escaping the structure.
 - ii. Inspections and Removal. A registrant must conduct regular inspections of an outdoor cultivation area to ensure no male industrial hemp plants are growing outdoors. If a male industrial hemp plant is growing outdoors, the registrant must remove the male industrial hemp plant and submit a destruction plan to the Agricultural Commissioner, in compliance with Section 37-9, within 24 hours of when the registrant knew or should have known of such occurrence.
 - iii. Violation. A male industrial hemp plant growing outdoors may be considered a violation of this chapter and a public nuisance.

C. Setbacks.

- i. Setback. On a parcel designated Agriculture and Residential (AR) under Chapter 26, an outdoor cultivation area must be setback 600 feet from residences and businesses on neighboring parcels.
- ii. Waiver or Reduction. A setback will be waived or reduced with the express written consent of the applicable neighboring property owner. Each setback waiver or reduction is valid for the registration term and may only be renewed with the express written consent of the applicable neighboring property owner.

D. Agricultural Grading and Drainage.

- i. Compliance Required. All agricultural grading and drainage work must comply with Chapter 36.
- ii. No Agricultural Grading in RRD. On a parcel designated Resources and Rural Development (RRD) under Chapter 26, industrial hemp cultivation is not allowed when an agricultural grading permit is required under Chapter 36 to accommodate an industrial hemp cultivation area.

E. Tree Removal in RRD. On a parcel designated Resources and Rural Development (RRD) under Chapter 26, no tree removal is allowed to accommodate an industrial hemp cultivation area.

F. Riparian Corridor. Industrial hemp cultivation must comply with all setbacks for agricultural cultivation required by Chapter 26.

G. Building Requirements. A structure used for industrial hemp cultivation or incidental activities must comply with all applicable sections of the county code.

H. State Industrial Hemp Laws. Registrant must comply with all provisions of state industrial hemp laws, including, but not limited to, requirements for cultivation, sampling, laboratory testing, harvesting, and crop destruction.

Sec. 37-9 Removal or Destruction of Industrial Hemp Prior to Harvest.

A. Destruction Plan Required. If industrial hemp is removed or destroyed prior to harvest for any purpose, registrant must submit a destruction plan to the Agricultural Commissioner. A destruction plan is not required for industrial hemp removal or destruction at an institution of higher education's registered site.

B. Destruction Plan Contents. A destruction plan must include all information required by state industrial hemp laws, and all other information required by the Agricultural Commissioner to ensure compliance with this chapter, including, but not limited to photographs, test results, reports, etc.

- C. Review and Approval. Except as allowed by Section 37-8(B)(ii), no industrial hemp plant may be removed prior to the Agricultural Commissioner's review and approval of the destruction plan. An inspection prior to and/or following removal and/or destruction, or other verification of compliance with an approved destruction plan, may be required at the discretion of the Agricultural Commissioner.

Sec. 37-10 Enforcement

A. Violations.

- i. An activity performed contrary to this chapter or registration is a violation of the Sonoma County Code and a public nuisance.
- ii. Each and every day during a portion of which a violation exists constitutes a separate and distinct offense.

B. Enforcing Officer. The Agricultural Commissioner is authorized to enforce the provisions of this chapter and is the enforcing officer for purposes of Chapter 1.

C. Administrative Remedies.

- i. Administrative Enforcement Action. A violation of this chapter or registration is subject to civil enforcement and abatement methods pursuant to Chapter 1, including but not limited to Sections 1-7, 1-7.3, or an administrative citation pursuant to Section 1-7.6, at the discretion of the enforcing officer.
- ii. Civil Penalties. A violation is subject to civil penalties and fines pursuant to Section 1-7.1 or Section 1-7.6, at the discretion of the enforcing officer.

D. Stop Work Order.

- i. Issuance of Stop Work Order. An activity performed in violation of this chapter or registration is subject to the issuance of a stop work order. Such activity must immediately stop until the Agricultural Commissioner authorizes the work to proceed.
- ii. Violation of Stop Work Order. A violation of a stop work order constitutes a misdemeanor and a public nuisance, and is subject to the remedies and penalties established by the county, including as set forth in this chapter and Chapter 1.

E. Cannabis Violations.

- i. Unregistered Cultivation. Unregistered industrial hemp cultivation will be subject to enforcement as an unpermitted commercial cannabis use pursuant to Section 26-88-252.
- ii. Noncompliance with Removal or Destruction Requirements. Industrial hemp removal or destruction in violation of Section 37-9 may, at the discretion of the

enforcing officer, be subject to enforcement as an unpermitted commercial cannabis use pursuant to Section 26-88-252.

- iii. High THC Content. If a registered industrial hemp sample tests over 5% Total THC, the industrial hemp cultivation site may, at the discretion of the enforcing officer, be subject to enforcement as an unpermitted commercial cannabis use pursuant to Section 26-88-252.
- iv. Enforcement Referral. A violation subject to enforcement as an unpermitted commercial cannabis use may be referred to the Department of Permit and Resource Management for enforcement action and abatement.
- v. Prior Violations.
 - a. Ineligibility for Registration. A person that has been subject to enforcement action for an unpermitted commercial cannabis violation is ineligible for registration, and ineligible to provide property owner authorization under this chapter, for a period of 2 years from the date the violation was removed.
 - b. Unknowing Property Owners. This restriction only applies to property owners who knew or should have known of the violation, as determined by the Agricultural Commissioner. Initiation of enforcement action is prima facie evidence that the property owner knew or should have known of the violation. The property owner bears the burden of proving by a preponderance of the evidence that this restriction does not apply. A determination of the Agricultural Commissioner under this provision is final, subject only to judicial review.

F. Suspension or Revocation of Registration.

The Agricultural Commissioner has the sole discretion to suspend or revoke a registration accepted pursuant to this chapter in the event of the following:

- i. Registration was based on inaccurate or incomplete information;
- ii. Registrant has operated in nonconformance with the county code or registration;
- iii. Registrant has failed to pay fees or penalties; or
- iv. Registrant has been subject to enforcement action for an unpermitted commercial cannabis violation.

G. Remedies are Cumulative. All remedies contained in this chapter are cumulative and in addition to other remedies or penalties available under this code or by law.

Odor from a registered industrial hemp site cannot be considered a nuisance if the site is operated in accordance with this chapter, required and recommended best management practices, and state industrial hemp laws.

Sec. 37-12 Fees

- A. County Fees. The Board of Supervisors will establish a schedule of fees for services provided under this chapter. Services subject to fees may include, but are not limited to, registration, testing, inspections, monitoring, and enforcement.
- B. Fees to Supplement State Fee Reimbursement. As authorized by California Food and Agriculture Code Section 81005(c), the Board of Supervisors may establish fees to cover the costs of implementing, administering, and enforcing state industrial hemp laws, except for costs that are otherwise reimbursed by the state.
- C. All fees may be changed from time to time by a resolution of the Board of Supervisors.

DRAFT

EXHIBIT “B1”

CHAPTER 26 OF THE SONOMA COUNTY CODE

I. Amendments to Definitions (Section 26-02-140)

Cannabis: All parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, or any other strain or varietal of the genus *Cannabis* that may exist or hereafter be discovered or developed whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. "Cannabis" also means the separated resin, whether crude or purified, obtained from cannabis. "Cannabis" does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. For the purpose of this section, "cannabis" does not mean "industrial hemp" as defined by [Section 81000 of the California Food and Agricultural Code](#) or [Section 11018.5 of the California Health and Safety Code](#) [Chapter 37 of the Sonoma County Code](#), or the weight of any other ingredient combined with cannabis to prepare topical or oral administrations, food, drink, or other product. Cannabis is classified as an agricultural product separately from other agricultural crops.

[Industrial hemp or hemp](#): has the same meaning as that term is defined by [Chapter 37 of the Sonoma County Code](#).

Agricultural Processing means the act of changing an agricultural product from its natural state to a different form, as grapes to wine, apples to juice or sauce, [agricultural crops to extracted oils](#), etc.

Crop production: The commercial growing and harvesting of agricultural crops including horticultural or ornamental shrubs, plants, flowers, trees, vines, [industrial hemp](#), fruits, vegetables, hay, grain and similar food and fiber crops or agricultural commodities, except for cannabis or other controlled substances, which shall be defined and classified separately.

II. Amendments to Zoning Districts

A. Industrial hemp production allowed – clarifying changes

The following Subsections of Chapter 26 of the Sonoma County Code are amended for Permitted Uses as follows:

Section 26-04-010(d) – LIA Land Intensive Agriculture
Section 26-06-010(d) – LEA Land Extensive Agriculture
Section 26-08-010(d) – DA Diverse Agriculture
Section 26-10-010(d) – RRD Resources and Rural Development
Section 26-16-010(h) – AR Agriculture and Residential

“Outdoor crop production including wholesale nurseries, for growing and harvesting of shrubs, plants, flowers, trees, vines, industrial hemp, fruits, vegetables, hay, grain and similar food and fiber crops other than cannabis, conducted and maintained in compliance with Article 65, RC Riparian Corridor Combining Zone;”

Section 26-04-010(o) – LIA Land Intensive Agriculture
Section 26-06-010(s) – LEA Land Extensive Agriculture
Section 26-08-010(r) – DA Diverse Agriculture

“Indoor crop production including wholesale nurseries for growing and harvesting of shrubs, plants, flowers, trees, vines, industrial hemp, fruits, vegetables, hay, grain and similar food and fiber crops other than cannabis, in greenhouses or similar structures less than two thousand five hundred (2,500) square feet, conducted and maintained in compliance with Article 65, RC Riparian Corridor Combining Zone;”

Section 26-10-010(e) – RRD Resources and Rural Development
Section 26-16-010(i) – AR Agriculture and Residential

“Indoor growing and harvesting of shrubs, plants, flowers, trees, vines, industrial hemp, fruits, vegetables, hay, grain and similar food and fiber crops other than cannabis, in greenhouse or similar structures less than eight hundred (800) square feet, conducted and maintained in compliance with Article 65, RC Riparian Corridor Combining Zone;”

Section 26-40-010(e) – AS Agricultural Services
Section 26-42-010(e) – K Recreation and Visitor-Serving

“The growing and harvesting of shrubs, plants, flowers, trees, vines, industrial hemp, fruits, vegetables, hay, grain and similar food and fiber crops, including wholesale nurseries, conducted and maintained in compliance with Article 65, RC Riparian Corridor Combining Zone”

Section 26-46-010(h) – M1 Limited Urban Industrial
Section 26-48-010(o) – M2 Heavy Industrial
Section 26-50-010(h) – M3 Limited Rural Industrial

“The outdoor growing and harvesting of shrubs, plants, flowers, trees, vines, industrial hemp, fruits, vegetables, hay, grain and similar food and fiber crops”

The following Subsections of Chapter 26 of the Sonoma County Code are amended for Uses Permitted with a Use Permit:

Section 26-10-020(h) – RRD Resources and Rural Development

Section 26-16-020(d) – AR Agriculture and Residential

“Indoor growing and harvesting of shrubs, plants, flowers, trees, vines, industrial hemp, fruits, vegetables, hay, grain and similar food and fiber crops other than cannabis, in greenhouses or similar structures of eight hundred (800) square feet or more, conducted and maintained in compliance with Article 65, RC Riparian Corridor Combining Zone”

B. Industrial hemp production prohibited

The following Subsections of Chapter 26 of the Sonoma County Code are amended for Permitted Uses as follows:

Section 26-18-010(e) – RR Rural Residential

“Outdoor crop production including wholesale nurseries, for growing and harvesting of shrubs, plants, flowers, trees, vines, fruits, vegetables, hay, grain and similar food and fiber crops, other than cannabis and industrial hemp, conducted and maintained in compliance with Article 65, RC Riparian Corridor Combining Zone”

Section 26-18-010 (g) – RR Rural Residential

“Indoor growing and harvesting of shrubs, plants, flowers, trees, vines, fruits, vegetables, hay, grain and similar food and fiber crops, other than cannabis and industrial hemp, in greenhouse or similar structures less than eight hundred (800) square feet, conducted and maintained in compliance with Article 65, RC Riparian Corridor Combining Zone”

Section 26-20-010(g) – R1 Low Density Residential

Section 26-22-010(i) – R2 Medium Density Residential

Section 26-24-010(i) – R3 High Density Residential

“The outdoor growing and harvesting of shrubs, plants, flowers, trees, vines, fruits, vegetables, hay, grain and similar food and fiber crops, other than cannabis and industrial hemp”

Section 26-26-030(g)(2) – PC Planned Community

“The growing and harvesting of shrubs, plants, flowers, trees, vines, fruits, vegetables, hay, grain and similar food and fiber crops, including wholesale nurseries, but

| excluding cannabis and industrial hemp, conducted and maintained in compliance with Article 65, RC Riparian Corridor Combining Zone”

DRAFT

EXHIBIT B-2

CHAPTER 37 OF THE SONOMA COUNTY CODE

CHAPTER 37 - INDUSTRIAL HEMP ORDINANCE

Sec. 37-1 Title.

This chapter is known as the Sonoma County Industrial Hemp Ordinance.

Sec. 37-2 Purpose.

This chapter is enacted for the purpose of regulating industrial hemp cultivation within the unincorporated area of the county to promote agricultural diversification while protecting the environment, public safety, and welfare of the county.

Sec. 37-3 Definitions.

For the purposes of this chapter, the following words and phrases have the meanings respectively ascribed to them by this section. All citations to federal and state law refer to the act, statute, or regulations as may be amended from time to time.

- A. "Agricultural Commissioner" means the agricultural commissioner-sealer of the Sonoma County Department of Agriculture/Weights and Measures, or his or her authorized representative.
- B. "Applicant" means a person applying for registration under this chapter.
- C. "Cultivation" includes any activity involving the propagation, planting, growing, breeding, or other development of industrial hemp plants or propagative plant material.
- D. "Cultivation area" means the area designated in the registration materials for cultivation.
- E. "Established agricultural research institution" has the same meaning as that term is defined in California Food and Agricultural Code Section 81000.
- F. "Female industrial hemp plant" means an industrial hemp plant that possesses only female pistillate flowers and is capable of bearing seed, and is not a male industrial hemp plant.

- G. “Female propagative plant material” means propagative plant material that has been bred, grown, or otherwise developed to become a female industrial hemp plant.
- H. “Incidental activities” includes harvesting, drying, curing, grading, trimming, wholesale packaging, and similar preparation of industrial hemp, but not including agricultural processing as defined by Chapter 26.
- I. “Industrial hemp” or “hemp” has the same meaning as that term is defined in California Food and Agricultural Code Section 81000.
- J. “Institution of higher education” has the same meaning as that term is defined in the federal Higher Education Act of 1965 Section 101 (20 U.S.C. Sec. 1001).
- K. “Male industrial hemp plant” means an industrial hemp plant that has developed male staminate flowers or is otherwise capable of producing pollen.
- L. “Nursery stock” has the same meaning as that term is defined in California Food and Agricultural Code Section 5005.
- M. “Outdoor(s)” means not within a structure, or within a structure that is not fully enclosed, such as a hoop house.
- N. “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.
- O. “Pollen” means the fine powdery substance discharged from a male plant containing male gametes that is capable of causing a female plant, or female part of a plant, to produce seeds.
- P. “Propagative plant material” includes live plants, seeds, seedlings, clones, cuttings, transplants, or other propagules used to establish plants for planting.
- Q. “Registrant” means a person who is registered to cultivate industrial hemp under this chapter.
- R. “Registration” means the verification of the ability to cultivate hemp in accordance with this chapter and the registrant’s registration materials.
- S. “Registration form” means an application to register for industrial hemp cultivation pursuant to this chapter.
- T. “Registration materials” means the registration form and all plans and specifications, maps, and other information and materials on the list of required registration contents and any other information necessary to verify compliance with this chapter.
- U. “Site” means the area(s) designated on the registration form that may contain

industrial hemp, including, for example, the cultivation area(s) and structure(s) used for incidental activities.

- V. "State industrial hemp laws" means California Food and Agricultural Code Section 81000 et seq. and Title 3 of the California Code of Regulations Section 4900 et seq.
- W. "THC" means the crystalline compound tetrahydrocannabinol that is the main psychoactive active ingredient in cannabis.

Sec. 37-4 Administration and Review.

- A. Administration. This chapter will be administered under the direction of the board of supervisors, by and through the Agricultural Commissioner.
- B. Review. Except for decisions made pursuant to Section 1-7.3 and Section 1-7.6 of this code, all decisions of the Agricultural Commissioner under this chapter are final, subject only to judicial review.

Sec. 37-5 Applicability.

- A. Compliance required. A person must register with the Agricultural Commissioner prior to industrial hemp cultivation, or preparing a site for cultivation, in the unincorporated county. Registrants must comply with the standards required by this chapter and all adopted required best management practices.
- B. Liability. Nothing in this chapter, including the issuance of a registration pursuant to this chapter, nor compliance with the provisions of this chapter, relieves any person from responsibility for damage to other persons or property, or imposes any liability upon the county, its officers, agents, or employees, for damage to other persons or property.
- C. Other Laws and Permits. Nothing in this chapter eliminates the need for any person undertaking industrial hemp cultivation to comply with any local, state, or federal law, or to obtain any other permits, approvals, or authorizations required by this code or state or federal agencies.

Sec. 37-6 Best Management Practices.

- A. Required Best Management Practices. The Agricultural Commissioner may adopt, amend, or rescind required best management practices to implement or make specific the standards in this chapter. A registrant must comply with a best management practice adopted or amended pursuant to this provision.
- B. Recommended Best Management Practices. The Agricultural Commissioner may adopt, amend, or rescind recommended best management practices that include proper and accepted customs and standards for industrial hemp cultivation in the county.

Sec. 37-7 Registration Requirements.

Registration for industrial hemp cultivation must be issued if each of the following requirements are met:

- A. Apply to Register. Applicant must submit registration materials in accordance with the registration process established by the Agricultural Commissioner. The registration materials must be accompanied by all required fees and deposits.
- B. Property Owner Authorization. The property owner must authorize industrial hemp cultivation in a form acceptable to the Agricultural Commissioner.
- C. State Industrial Hemp Registration. Applicant must satisfy the registration requirements in California Food and Agricultural Code Section 81003.
- D. Pesticide Use. If pesticides are used, applicant must obtain an Operator Identification Number or Restricted Materials permit from the Agricultural Commissioner.
- E. Industrial Hemp Nurseries. Applicant for propagative plant material cultivation must have a license to sell nursery stock as required under California Food and Agricultural Code Section 6721 et seq.
- F. Consent to Inspections. Applicant must consent to inspections and testing that may be conducted at any time at the discretion of the Agricultural Commissioner. A fee may be established to cover the costs of such inspections and testing.
- G. Term and Renewal. Registration pursuant to this chapter will expire one year from the date of issuance and may be renewed annually in accordance with the registration renewal process established by the Agricultural Commissioner.

Sec. 37-8 Cultivation Requirements.

The following standards apply to industrial hemp cultivation:

- A. Propagative Material for Outdoor Cultivation. An outdoor cultivation area may only be planted with female propagative plant material.
- B. Pollen Management. Pollen from male industrial hemp plants must be managed as follows and in accordance with the best management practices:
 - i. Indoor Cultivation for Male Plants. Cultivation of male industrial hemp plants may only occur in fully enclosed structures equipped with effective filtration devices to prevent pollen from escaping the structure.
 - ii. Inspections and Removal. A registrant must conduct regular inspections of outdoor cultivation area(s) to ensure no male industrial hemp plants are growing outdoors. If a male industrial hemp plant is growing outdoors, the registrant must remove the male industrial hemp plant and submit a

destruction plan to the Agricultural Commissioner, in compliance with section 37-9, within 24 hours of when the registrant knew or should have known of such occurrence.

- iii. Violation. A male industrial hemp plant growing outdoors may be considered a violation of this chapter and a public nuisance.

C. Setbacks.

- i. Setback. On a parcel designated Agriculture and Residential (AR) under Chapter 26, an outdoor cultivation area must be setback 600 feet from residences and businesses on neighboring parcels.
- ii. Waiver or Reduction. A setback will be waived or reduced with the express written consent of the applicable neighboring property owner. Each setback waiver or reduction is valid for the registration term and may only be renewed with the express written consent of the applicable neighboring property owner.

D. Agricultural Grading and Drainage.

- i. Compliance Required. All agricultural grading and drainage work must comply with Chapter 36 of this code.
- ii. No Agricultural Grading in RRD. On a parcel designated Resources and Rural Development (RRD) under Chapter 26, industrial hemp cultivation is not allowed when an agricultural grading permit is required under Chapter 36 to accommodate an industrial hemp cultivation area.

E. Tree Removal in RRD. On a parcel designated Resources and Rural Development (RRD) under Chapter 26, no tree removal is allowed to accommodate an industrial hemp cultivation area.

F. Riparian Corridor. Industrial hemp cultivation must comply with all setbacks for agricultural cultivation required by Chapter 26.

G. Building Requirements. A structure used for industrial hemp cultivation or incidental activities must comply with all applicable sections of the county code.

H. State Industrial Hemp Laws. Registrant must comply with all provisions of state industrial hemp laws, including, but not limited to, requirements for cultivation, sampling, laboratory testing, harvesting, and crop destruction.

Sec. 37-9 Removal or Destruction of Industrial Hemp Prior to Harvest.

A. Destruction Plan Required. If industrial hemp is removed or destroyed prior to harvest for any purpose, registrant must submit a destruction plan to the Agricultural

Commissioner. A destruction plan is not required for industrial hemp removal or destruction at an institution of higher education's registered site.

- B. Destruction Plan Contents. A destruction plan must include all information required by state industrial hems, and any other information required by the Agricultural Commissioner to ensure compliance with this chapter, including, but not limited to photographs, test results, reports, etc.
- C. Review and Approval. Except as allowed by Section 37-8(B)(ii), no industrial hemp plant may be removed prior to the Agricultural Commissioner's review and approval of the destruction plan. An inspection prior to and/or following removal and/or destruction, or other verification of compliance with an approved destruction plan, may be required at the discretion of the Agricultural Commissioner.

Sec. 37-10 Enforcement

A. Violations.

- i. Any activity performed contrary to this chapter or registration issued pursuant to this chapter is a violation of the Sonoma County Code and a public nuisance.
- ii. Each and every day during any portion of which any violation exists is a separate offense.

B. Enforcing Officer. The Agricultural Commissioner is authorized to enforce the provisions of this chapter and is the enforcing officer for purposes of Sections 1-7.3 and 1-7.6 of this code.

C. Administrative Remedies.

- i. Administrative Enforcement Action. A violation of this chapter is subject to civil enforcement and abatement methods pursuant to Section 1-7.3 of the county code or an administrative citation pursuant to Section 1-7.6 of the county code, at the discretion of the enforcing officer.
- ii. Civil Penalties. A violation of this chapter is subject to civil penalties and fines pursuant to Section 1-7.1 or Section 1-7.6, at the discretion of the enforcing officer.

D. Stop Work Order.

Any activity that constitutes a violation is subject to a stop work order. Such activity must stop until the Agricultural Commissioner authorizes the work to proceed. Any violation of a stop work order constitutes a violation of this code.

E. Cannabis Violations.

- i. Unregistered Cultivation. Unregistered industrial hemp cultivation will be subject to enforcement as an unpermitted commercial cannabis use pursuant to Section 26-88-252.
- ii. Noncompliance with Removal or Destruction Requirements. Industrial hemp removal or destruction in violation of Section 37-9 may, at the discretion of the enforcing officer, be subject to enforcement as an unpermitted commercial cannabis use pursuant to Section 26-88-252.
- iii. High THC Content. If a registered industrial hemp sample tests over 10% Total THC, the industrial hemp cultivation site may, at the discretion of the enforcing officer, be subject to enforcement as an unpermitted commercial cannabis use pursuant to Section 26-88-252.
- iv. Enforcement Referral. Any violation subject to enforcement as an unpermitted commercial cannabis use may be referred to the Department of Permit and Resource Management for enforcement action.
- v. Prior Violations. Any person responsible for an unpermitted commercial cannabis violation is ineligible for registration under this chapter, and ineligible to provide property owner authorization under this chapter, for a period of two (2) years from the date the violation was removed. For the purposes of this provision, persons responsible for the violation include those that actively caused the violation(s) and property owners who knew or should have known of the existence of the violation(s).

F. Suspension or Revocation of Registration.

The Agricultural Commissioner may suspend or revoke any registration accepted pursuant to this chapter in the event of the following:

- i. Registration was based on inaccurate or incomplete information;
- ii. Registrant has operated in substantial nonconformance with the county code or registration materials;
- iii. Registrant has failed to pay fees or penalties; or
- iv. Registrant is responsible for an unpermitted commercial cannabis violation.

G. Remedies are Cumulative. All remedies contained in this chapter are cumulative and in addition to any other remedies or penalties available under this code or by law.

Sec. 37-11 Nuisance

Odor from a registered industrial hemp cultivation site cannot be considered a nuisance if the industrial hemp cultivation site is operated in accordance with this chapter, required and recommended best management practices, and state industrial hemp laws.

Sec. 37-12 Fees

- A. County Fees. The Board of Supervisors will establish a schedule of fees for services provided under this chapter. Services subject to fees may include, but are not limited to, registration, testing, inspections, monitoring, and enforcement.
- B. Fees to Supplement State Fee Reimbursement. As authorized by California Food and Agriculture Code Section 81005(c), the Board of Supervisors may establish fees to cover the costs of implementing, administering, and enforcing state industrial hemp laws, except for costs that are otherwise reimbursed by the state.
- C. All fees may be changed from time to time by a resolution of the Board of Supervisors.

Industrial Hemp Recommended Best Management Practices

These methods or techniques are determined to be the most effective and practical means of establishing general good farming practices for Industrial Hemp cultivation in Sonoma County.

General

- All cultivation should maintain a setback of 200 feet from vineyard and orchard crops on adjacent parcels.
- All cultivation should maintain a setback of 200 feet from any occupied residential or business structure on adjacent parcels.
- Source and plant clean propagative material and nursery stock.
- Inspect planting stock for pests and disease before planting and avoid planting material with pests and disease.
- Where appropriate, hedgerows, windbreaks, and/or buffers should be established to modify climatological factors affecting crop production.

Pesticides

- Comply with all pesticide laws and regulations as enforced by the California Department of Pesticide Regulations.
- Prior to the use of any pesticide obtain an Operator Identification Number from the County Ag Commissioner.

Water Use

- Irrigation shall be conducted in manner that does not result in runoff from cultivated areas.
- Inspect irrigation system regularly for leaks and repair leaks before and during each cropping season.
- Irrigation systems should be equipped with a backflow prevention device to protect water sources.
- Where practicable employ water saving practices such as rainwater catchment systems, mulches, drip-irrigation, and water recycling and filtration systems.

Erosion and Sediment Control

- Manage all crop residues in a manner that does not result in discharge of pollutants into a watercourse. Plant residues may be managed through composting, chipping or shredding, cultivating or otherwise incorporating plant residues into the soil.
- Composting of any material shall be conducted outside of riparian corridor setbacks for agriculture.
- Maintain a vegetative barrier around cultivated areas and interior watercourses to mitigate the movement of sediment and nutrients off site.
- Avoid any soil disturbance between November 1st and April 15th.

Pollen Management

- After initiation of flowering, walk crop on a daily basis to identify and remove all male plants.
- All indoor and greenhouse cultivation should be equipped with pollen filtration on air intake as well as exhaust systems to prevent introduction or dispersal of pollen.

California Code of Regulations
Title 3. Food and Agriculture
Division 4. Plant Industry
Chapter 8. Industrial Hemp Cultivation

3 CCR § 4900

§ 4900. Registration Fees.

(a) The Secretary establishes the following fees for registration of growers of industrial hemp for commercial purposes and seed breeders to be submitted along with the registration application as authorized in sections 81003 and 81004 of the Food and Agricultural Code:

(1) Prior to cultivation, a fee of nine-hundred dollars (\$900) per applicant shall be submitted with the application to the commissioner.

(2) A separate registration is required for each county in which the applicant intends to grow industrial hemp.

(3) This registration is valid for one year from date of issuance by the commissioner.

(b) The Secretary establishes the following fee for registration renewal of growers of industrial hemp for commercial purposes and seed breeders:

(1) Upon expiration of registration, a fee of nine-hundred dollars (\$900) per registrant shall be due to the commissioner in each county in which the applicant intends to continue to grow industrial hemp.

(2) Renewed registration is valid for one year from date of issuance of renewal by the commissioner.

Note: Authority cited: Sections 407, 483 and 81005, Food and Agricultural Code.

Reference: Sections 81003, 81004 and 81005, Food and Agricultural Code.

HISTORY

1. New article 1 (section 4900) and section filed 4-25-2019; operative 4-25-2019 pursuant to Government Code section 11343.4(b)(3) (Register 2019, No. 17).

This database is current through 10/4/19 Register 2019, No. 40

3 CCR § 4900, 3 CA ADC § 4900

3 CCR § 4920

§ 4920. List of Approved Seed Cultivars.

(a) The Secretary, as provided in Section 81002 of the Food and Agricultural Code, adopts the following list of approved seed cultivars.

(1) Industrial hemp seed or propagative materials certified as breeder, foundation, registered, or certified seed or stock by one of the following agencies:

(A) Member organizations of the Association of Official Seed Certifying Agencies,

(B) Organization of Economic Cooperation and Development, or

(C) An officially approved and recognized seed-certifying agency listed in Title 3, California Code of Regulations, Section 3875, as provided in Section 52401 of the Food and Agricultural Code.

(2) Industrial hemp seed or propagative materials produced in a quality assurance program approved by one of the following agencies:

(A) Member organizations of the Association of Official Seed Certifying Agencies,

(B) Organization of Economic Cooperation and Development, or

(C) An officially approved and recognized seed-certifying agency listed in Title 3, California Code of Regulations, Section 3875, as provided in Section 52401 of the Food and Agricultural Code.

(3) Industrial hemp seed or propagative materials produced by an authorized participant in a state industrial hemp agricultural pilot program, pursuant to Section 7606 of the federal Agricultural Act of 2014 (7 U.S.C. Sec. 5940).

(A) The crop from which the seed or propagative materials were harvested from shall have been tested in accordance with a testing method approved by the regulatory authority in the state of origin and found to have no more than three-tenths of one percent tetrahydrocannabinol (THC) on a dry weight basis.

(B) The commissioner shall be notified of the importation of all propagative materials into the county. The shipment is subject to inspection by the commissioner and shall not be used for cultivation until released by the commissioner (California Food and Agricultural Code Division 4, Part 2, Chapter 2 § 6401 and § 6501).

(4) Industrial hemp seeds or tissue culture plants imported from outside the United States that meets federal importation requirements.

(A) The crop from which the seeds or tissue culture plants were harvested from shall have been tested in accordance with a testing method approved by the department of agriculture in the country of origin and found to have no more than three-tenths of one percent THC on a dry weight basis.

(B) The commissioner shall be notified of the importation of all propagative materials into the county. The shipment is subject to inspection by the commissioner and shall not be used for cultivation until released by the commissioner (California Food and Agricultural Code Division 4, Part 2, Chapter 2 § 6401 and § 6501).

(C) For the purposes of this section, the term “tissue culture” means in vitro material introduced into culture from nodal cuttings at a particular time and from a single plant and grown in aseptic conditions to be used as a source of propagative material.

(5) Industrial hemp seed or propagative materials produced in California in accordance with the provisions of Division 24 of the Food and Agricultural Code and this chapter.

(A) The crop from which the seed or propagative materials were harvested from shall have been tested by a department-approved laboratory and found to have no more than three-tenths of one percent THC on a dry weight basis.

Note: Authority cited: Sections 407 and 81002, Food and Agricultural Code. Reference: Sections 81001 and 81002, Food and Agricultural Code

HISTORY

1. New section filed 2-28-2019; operative 2-28-2019. This regulatory action is exempt from the Administrative Procedure Act and OAL review pursuant to Food and Agricultural Code section 81002(c)(2) (Register 2019, No. 9). This database is current through 10/4/19 Register 2019, No. 40
3 CCR § 4920, 3 CA ADC § 4920

3 CCR § 4921

§ 4921. Methodology and Procedure to Update the List of Approved Seed Cultivars.

- (a) The Secretary adopts the following methodology and procedure to add, amend or remove a seed cultivar from the list of approved seed cultivars.
- (1) Upon request from the chair of the Board, or of any four members of the Board, the Department shall schedule a public hearing to consider a proposal to update the list of approved seed cultivars by adding, amending, or removing seed cultivars. A notice and text of the proposal shall be made available to the public no less than 30 days prior to the hearing.
- (2) The public hearing to consider a proposal to update the list of approved seed cultivars shall be part of a regularly scheduled meeting of the Industrial Hemp Advisory board.
- (3) The public hearing shall include:
- (A) Presentation of the proposal to update the list of approved seed cultivars;
 - (B) Presentation of the purpose for the update; and
 - (C) Opportunity for public comment, pursuant to Section 11125.7 of the Government Code.
- (4) After receiving comments from the public, the Board shall vote to accept, amend and accept, or deny a proposal for recommendation to the Secretary.
- (5) Upon recommendation by the Board to adopt a proposal and approval by the Secretary, the Department shall amend the list of approved seed cultivars and shall submit the amended list to the Office of Administrative Law to be filed promptly with the Secretary of State. Pursuant to Section 81002 of the Food and Agricultural Code, the proposal shall not be subject to further review.
- (6) The Department shall post the list of approved seed cultivars to its website and shall provide electronic and/or mail notification of amendments to list of approved seed cultivars to parties that have requested notification. An interested party may go to the Department's website and elect to receive automatic notifications of any changes to the list of approved seed cultivars via an electronic mail listserv.
- (b) Amendment of the methodology and procedure.
- (1) By motion, the Board may recommend amending the methodology and procedure in subsection (a). In consultation with the chair of the Board, the Department shall schedule a public hearing to consider the recommendation, and a notice and text of the proposed amendment shall be made available to the public no less than 30 days prior to the hearing.
- (2) The public hearing to consider a proposal to amend the methodology and procedure shall be part of a regularly scheduled meeting of the Industrial Hemp Advisory Board.
- (3) The public hearing shall include:

- (A) Presentation of the proposal to amend the methodology and procedure;
 - (B) Presentation of the purpose for the amendment; and
 - (C) Opportunity for public comment, pursuant to Section 11125.7 of the Government Code.
- (4) After receiving comments from the public, the Board shall vote to accept, amend and accept, or deny the proposal for recommendation to the Secretary.
- (5) Upon recommendation by the Board to adopt the amendment and approval by the Secretary, the Department shall amend the methodology and procedure, and shall submit the amended methodology and procedure to the Office of Administrative Law to be filed promptly with the Secretary of State. Pursuant to Section 81002 of the Food and Agricultural Code, the proposal shall not be subject to further review.
- (6) The Department shall provide electronic and/or mail notification of the amendment to the methodology and procedure to parties that have requested notification. An interested party may go to the Department's website and elect to receive automatic notifications of any changes to the methodology and procedure via an electronic mail listserv.

Note: Authority cited: Sections 407 and 81002, Food and Agricultural Code. Reference: Sections 81001 and 81002, Food and Agricultural Code.

HISTORY

1. New chapter 8 (article 2, section 4921), article 2 (section 4921) and section filed 12-18-2018; operative 12-18-2018. This regulatory action is exempt from the Administrative Procedure Act and OAL review pursuant to Food and Agricultural Code sections 81002(c)(1) and 81002(c)(3) (Register 2018, No. 51).
This database is current through 10/4/19 Register 2019, No. 40
3 CCR § 4921, 3 CA ADC § 4921

3 CCR § 4940

§ 4940. Sampling Timeframe and Pre-Harvest Notification for Industrial Hemp.

- (a) Sampling Timeframe.
 - (1) Sampling shall occur no more than 30 days before harvest.
 - (2) Any changes to the harvest date may require additional testing for THC content prior to harvest.
- (b) Sampling Request and Pre-Harvest Report.
 - (1) In order to request sampling, registrants shall submit a pre-harvest report to the commissioner at least 30 days before harvest to initiate the sampling process. The pre-harvest report shall include the:
 - (A) registrant's registration number,
 - (B) name and contact information of the registrant,
 - (C) anticipated harvest date,
 - (D) name of the seed cultivar(s),

(E) physical address, Global Positioning System coordinates, general description of the location, and acreage of the crop,

(F) Name and contact information of the laboratory to conduct the testing for THC content.

(2) The commissioner, or a third-party sampler designated by the commissioner, shall schedule a sampling date within 30 days of the anticipated harvest date.

(3) Registrants shall notify the commissioner of any changes to the above information no less than 5 calendar days prior to the scheduled sampling date.

Note: Authority cited: Sections 407 and 81006, Food and Agricultural Code. Reference: Sections 81000 and 81006, Food and Agricultural Code.

HISTORY

1. New section filed 6-10-2019 as an emergency; operative 6-10-2019 (Register 2019, No. 24). A Certificate of Compliance must be transmitted to OAL by 12-9-2019 or emergency language will be repealed by operation of law on the following day.

This database is current through 10/4/19 Register 2019, No. 40

3 CCR § 4940, 3 CA ADC § 4940

3 CCR § 4941

§ 4941. Sampling Procedures for Testing Industrial Hemp for THC Content.

(a) Collection of Samples.

(1) Samples for THC testing shall be collected by the commissioner, or a third-party sampler designated by the commissioner.

(2) The commissioner, or designated sampler, shall verify that the sample collection site corresponds to the registered location using GPS coordinates prior to the collection of the samples.

(3) The registrant must be present to observe the collection of samples and allow the commissioner, or designated sampler, access to all industrial hemp plants within the registered land area and all areas and facilities used for cultivation.

(b) Sample Volume and Composition

(1) Each primary sample shall include all parts of the plant, including stems, stalks, flowers, leaves, seeds, and buds from:

(A) If two or more lateral branches are present, the terminal 18 inches of the top lateral branch and terminal 18 inches of one lateral branch from the lower one-third of the plant. If any branch is less than 18 inches, the whole branch shall be taken.

(B) If two lateral branches are not present, the terminal 18 inches from the terminal bud at the top of the plant. If the plant is less than 18 inches tall, the whole plant shall be taken.

(2) A composite sample shall consist of at least five primary samples from different plants.

(3) A separate composite sample shall be taken for:

(A) Each cultivar within each contiguous field, and

- (B) Indoor and outdoor growing areas shall be treated as separate fields.
- (4) When feasible, the commissioner, or designated sampler, should not collect samples within 10 feet of field edges.
- (c) Handling of Samples.
- (1) All plant material collected for a composite sample shall be placed together in a permeable bag, and kept in a manner not conducive to mold growth.
- (2) The bag containing the composite sample shall be sealed and labeled in a manner to detect tampering and ensure chain of custody. Sample labels shall be signed by both the registrant and the commissioner or designated sampler.
- (3) Samples shall be labeled with a unique sample identification number and accompanied by the following documentation:
- (A) The registrant's proof of registration,
- (B) The pre-harvest report,
- (C) Seed certification documentation for the seed cultivar used,
- (D) The THC testing report for each certified seed cultivar used, and
- (E) A sample analysis request form with chain of custody information provided by the testing laboratory.
- (4) Samples shall be delivered to the testing laboratory within 24 hours of collection. The testing laboratory shall document the chain of custody by signing the sample label upon receiving the sample. A copy of the signed chain of custody documentation shall be provided by the testing laboratory to the commissioner or designated sampler.
- Note: Authority cited: Sections 407 and 81006, Food and Agricultural Code. Reference: Sections 81000 and 81006, Food and Agricultural Code.

HISTORY

1. New section filed 6-10-2019 as an emergency; operative 6-10-2019 (Register 2019, No. 24). A Certificate of Compliance must be transmitted to OAL by 12-9-2019 or emergency language will be repealed by operation of law on the following day. This database is current through 10/4/19 Register 2019, No. 40
3 CCR § 4941, 3 CA ADC § 4941

3 CCR § 4942

§ 4942. Approved Testing Method for Testing Industrial Hemp for THC Content.

- (a) Sample Preparation.
- (1) The laboratory shall maintain chain of custody upon receiving the samples.
- (2) Each composite sample shall be maintained and tested separately for THC content.
- (3) All parts of the plant included in the composite sample shall be processed and tested as a single sample. No plant parts shall be removed during the sample preparation and testing.
- (4) All parts of the plant included in the composite sample shall be dried until the weight of the composite sample remains constant after drying intervals. Drying temperature

must not exceed 90 degrees Celsius. Dried composite samples shall be milled to a homogenous powder-like consistency and combined before analysis.

(b) Suitable analytical instrumentation used to determine THC content in industrial hemp includes the following:

- (1) Gas chromatography with flame ionization detector
- (2) Gas chromatography coupled with mass spectrometry
- (3) Liquid chromatography coupled with mass spectrometry
- (4) Liquid chromatography coupled with ultraviolet detector

(c) Analytical instrumentation used must be able to establish a validated limit of quantification (LOQ) of one-tenth of 1 percent or lower for total THC content.

(d) Sample Retention.

(1) If the laboratory test report indicates a percentage content of THC that is equal to or less than three-tenths of 1 percent, the laboratory shall retain the sample for a minimum of 30 days from the testing date.

(2) If the laboratory test report indicates a percentage content of THC that is greater than three-tenths of 1 percent and does not exceed 1 percent, the laboratory shall retain the sample for a minimum of 60 days from the testing date.

(3) If the laboratory test report indicates a percentage content of THC that exceeds 1 percent, the laboratory shall retain the sample for a minimum of 90 days from the testing date.

Note: Authority cited: Sections 407 and 81006, Food and Agricultural Code. Reference: Sections 81000 and 81006, Food and Agricultural Code.

HISTORY

1. New section filed 6-10-2019 as an emergency; operative 6-10-2019 (Register 2019, No. 24). A Certificate of Compliance must be transmitted to OAL by 12-9-2019 or emergency language will be repealed by operation of law on the following day.

This database is current through 10/4/19 Register 2019, No. 40
3 CCR § 4942, 3 CA ADC § 4942

3 CCR § 4943

§ 4943. Approved Laboratory for Testing Industrial Hemp for THC Content.

(a) Testing of industrial hemp for THC content shall be conducted by a laboratory with International Organization for Standardization (ISO)/ International Electrotechnical Commission (IEC) 17025 accreditation using a validated method for total THC analysis.

(b) The laboratory shall retain, and make available to the commissioner upon request, a copy of the ISO/IEC 17025 certificate of accreditation.

Note: Authority cited: Sections 407 and 81006, Food and Agricultural Code. Reference: Sections 81000 and 81006, Food and Agricultural Code.

HISTORY

1. New section filed 6-10-2019 as an emergency; operative 6-10-2019 (Register 2019, No. 24). A Certificate of Compliance must be transmitted to OAL by 12-9-2019 or emergency language will be repealed by operation of law on the following day. This database is current through 10/4/19 Register 2019, No. 40
3 CCR § 4943, 3 CA ADC § 4943

3 CCR § 4944

§ 4944. Notification of Laboratory Test Report.

(a) Laboratories shall provide a laboratory test report to the registrant and commissioner within 10 days of the collection of samples.

(1) If the laboratory test report indicates a percentage content of THC that is equal to or less than three-tenths of 1 percent, the laboratory shall provide the registrant no fewer than 10 original copies with wet signatures and the commissioner one or more copies of the laboratory test report, signed by an employee authorized to sign by the laboratory. The laboratory shall retain one or more original copies of the laboratory test report for a minimum of two years from its date of sampling.

(2) If the laboratory test report indicates a percentage content of THC that exceeds three-tenths of 1 percent, the laboratory shall provide both the registrant and commissioner one or more copies of the laboratory test report, signed by an employee authorized to sign by the laboratory.

(b) Laboratories shall issue a laboratory test report for each composite sample. The laboratory test report shall include the:

(1) registration number,

(2) unique sample identification number,

(3) name and contact information of the registrant,

(4) name of the sampler,

(5) dates of the sample collection and testing,

(6) name of the cultivar tested,

(7) physical address, Global Positioning System coordinates, general description of the location, and acreage of the field sampled,

(8) name of approved analytical instrumentation used and the limit of quantification (LOQ),

(9) name of the person receiving the sample,

(10) name of the person testing the sample,

(11) percentage content of THC, a post-decarboxylation value or a calculated value using a conversion formula of delta-9-THC and eighty-seven and seven tenths (87.7) percent of THC-acid, on a dry weight basis, and words "PASSED AS CALIFORNIA INDUSTRIAL HEMP" or "FAILED AS CALIFORNIA INDUSTRIAL HEMP" at or near the top of page.

(A) If the laboratory test report indicates a percentage content of THC that is equal to or less than three-tenths of 1 percent, the words "PASSED AS CALIFORNIA INDUSTRIAL HEMP" shall appear.

(B) If the laboratory test report indicates a percentage content of THC that is greater than three-tenths of 1 percent, the words “FAILED AS CALIFORNIA INDUSTRIAL HEMP” shall appear.

Note: Authority cited: Sections 407 and 81006, Food and Agricultural Code. Reference: Sections 81000 and 81006, Food and Agricultural Code.

HISTORY

1. New section filed 6-10-2019 as an emergency; operative 6-10-2019 (Register 2019, No. 24). A Certificate of Compliance must be transmitted to OAL by 12-9-2019 or emergency language will be repealed by operation of law on the following day. This database is current through 10/4/19 Register 2019, No. 40
3 CCR § 4944, 3 CA ADC § 4944

3 CCR § 4945

§ 4945. Approved Testing Method for Retesting of Industrial Hemp for THC Content.

(a) If the laboratory test report indicates a percentage content of THC that is greater than three-tenths of 1 percent and does not exceed 1 percent, additional samples for retesting shall be collected in accordance with the sampling procedures outlined in Section 4941 and tested in accordance with the testing procedures outlined in Sections 4942 through 4944.

Note: Authority cited: Sections 407 and 81006, Food and Agricultural Code. Reference: Sections 81000 and 81006, Food and Agricultural Code.

HISTORY

1. New section filed 6-10-2019 as an emergency; operative 6-10-2019 (Register 2019, No. 24). A Certificate of Compliance must be transmitted to OAL by 12-9-2019 or emergency language will be repealed by operation of law on the following day. This database is current through 10/4/19 Register 2019, No. 40
3 CCR § 4945, 3 CA ADC § 4945

3 CCR § 4946

§ 4946. Final Disposition for Registered Industrial Hemp Crops.

(a) Registrants may harvest the sampled crop upon receipt of a laboratory test report that indicates a percentage content of THC that is equal to or less than three-tenths of 1 percent.

(1) Registrants shall submit a harvest report to the commissioner within 72 hours following the completion of the harvest. The harvest report shall include the:

- (A) registration number,
- (B) name and contact information of the registrant,
- (C) date(s) of harvest,

- (D) name of the cultivar(s) and unique sample identification number(s),
(E) physical address, Global Positioning System coordinates, general description of the location, and acreage of the harvested crop.
- (2) The commissioner may confirm the harvest of the crop by conducting field inspections.
- (b) Registrants shall destroy a crop that does not comply with the three-tenths of 1 percent THC limit in accordance with the provisions of Section 4950 within the following timeframes:
- (1) If a laboratory test report indicates a percentage content of THC exceeds 1 percent, the destruction shall begin within 48 hours, and be completed within seven days, after the registrant's receipt of the laboratory test report.
- (2) If a second laboratory test report indicates a percentage content of THC exceeds three-tenths of 1 percent but is less than 1 percent, the destruction shall take place as soon as practicable, but no later than 45 days after the registrant's receipt of the second laboratory test report.
- Note: Authority cited: Sections 407 and 81006, Food and Agricultural Code. Reference: Sections 81000 and 81006, Food and Agricultural Code.

HISTORY

1. New section filed 6-10-2019 as an emergency; operative 6-10-2019 (Register 2019, No. 24). A Certificate of Compliance must be transmitted to OAL by 12-9-2019 or emergency language will be repealed by operation of law on the following day. This database is current through 10/4/19 Register 2019, No. 40
3 CCR § 4946, 3 CA ADC § 4946

3 CCR § 4950

§ 4950. Destruction of Non-Compliant Industrial Hemp Crops.

- (a) Any industrial hemp crop that does not meet the requirements of Division 24 of the Food and Agricultural Code and this chapter shall be destroyed in a manner approved by the commissioner:
- (1) Unless otherwise specified in 4946(b), any non-compliant industrial hemp crop shall be destroyed as soon as practical, but no later than 45 days after the registrant's receipt of notification of abatement from the commissioner.
- (b) The grower of the industrial hemp crop shall submit a destruction plan to the commissioner at least 24 hours prior to the start of the destruction. The destruction plan shall include the:
- (1) Registration number, if applicable;
(2) Name and contact information of the grower;
(3) Anticipated destruction date(s) of the crop to be destroyed;
(4) Name of the cultivar(s) and unique sample identification number(s), if applicable;
(5) Physical address, Global Positioning System coordinates, general description of the location, and acreage of the crop to be destroyed; and

(6) Proposed destruction method.

(c) The proposed crop destruction method shall be approved by the commissioner prior to the start of the destruction.

(d) The commissioner shall confirm the destruction of the crop by conducting inspections.

Note: Authority cited: Sections 407 and 81006, Food and Agricultural Code. Reference: Sections 81000 and 81006, Food and Agricultural Code.

HISTORY

1. New Article 3 (sections 4950-4950.1) and section filed 6-10-2019 as an emergency; operative 6-10-2019 (Register 2019, No. 24). A Certificate of Compliance must be transmitted to OAL by 12-9-2019 or emergency language will be repealed by operation of law on the following day.

This database is current through 10/4/19 Register 2019, No. 40
3 CCR § 4950, 3 CA ADC § 4950

3 CCR § 4950.1 Voluntary Destruction of Industrial Hemp Crops § 4950.1 Voluntary Destruction of Industrial Hemp Crops.

(a) Any industrial hemp grower that wishes to voluntarily destroy a crop shall do so in a manner approved by the commissioner.

(b) The grower of the industrial hemp crop shall submit a destruction plan to the commissioner at least 24 hours prior to the start of the destruction. The destruction plan shall include the:

(1) Registration number, if applicable;

(2) Name and contact information of the grower;

(3) Anticipated destruction date(s) of the crop to be destroyed;

(4) Name of the cultivar(s) and unique sample identification number(s), if applicable;

(5) Physical address, Global Positioning System coordinates, general description of the location, and acreage of the crop to be destroyed; and

(6) Proposed destruction method.

(c) The proposed crop destruction method shall be approved by the commissioner prior to the start of the destruction.

(d) The commissioner shall confirm the destruction of the crop by conducting inspections.

Note: Authority cited: Sections 407 and 81006, Food and Agricultural Code. Reference: Sections 81000 and 81006, Food and Agricultural Code.

HISTORY

1. New section filed 6-10-2019 as an emergency; operative 6-10-2019 (Register 2019, No. 24). A Certificate of Compliance must be transmitted to OAL by 12-9-2019 or emergency language will be repealed by operation of law on the following day.

This database is current through 10/4/19 Register 2019, No. 40

3 CCR § 4950.1 Voluntary Destruction of Industrial Hemp Crops, 3 CA ADC § 4950.1
Voluntary Destruction of Industrial Hemp Crops

FOOD AND AGRICULTURAL CODE - FAC

DIVISION 24. INDUSTRIAL HEMP [81000 - 81011]

(Division 24 added by Stats. 2013, Ch. 398, Sec. 4.)

81000.

Definitions.

For purposes of this division, the following terms have the following meanings:

- (a) "Board" means the Industrial Hemp Advisory Board.
- (b) "Commissioner" means the county agricultural commissioner.
- (c) "Established agricultural research institution" means any institution that is either:
 - (1) A public or private institution or organization that maintains land or facilities for agricultural research, including colleges, universities, agricultural research centers, and conservation research centers; or
 - (2) An institution of higher education (as defined in Section 1001 of the Higher Education Act of 1965 (20 U.S.C. 1001)) that grows, cultivates or manufactures industrial hemp for purposes of research conducted under an agricultural pilot program or other agricultural or academic research.
- (d) "Industrial hemp" has the same meaning as that term is defined in Section 11018.5 of the Health and Safety Code.
- (e) "Secretary" means the Secretary of Food and Agriculture.
- (f) "Seed breeder" means an individual or public or private institution or organization that is registered with the commissioner to develop seed cultivars intended for sale or research.
- (g) "Seed cultivar" means a variety of industrial hemp.
- (h) "Seed development plan" means a strategy devised by a seed breeder, or applicant seed breeder, detailing his or her planned approach to growing and developing a new seed cultivar for industrial hemp.

(Amended November 8, 2016, by initiative Proposition 64, Sec. 9.2. Section operative January 1, 2017, pursuant to Section 81010.)

81001.

- (a) There is in the department an Industrial Hemp Advisory Board. The board shall consist of 11 members, appointed by the secretary as follows:

- (1) Three of the board members shall be growers of industrial hemp that are registered pursuant to the provisions of this division. In the case of forming the initial board, and if the registration program established pursuant to this division has not yet been implemented, these board members shall be those who intend to register as growers of industrial hemp. A member of the board who is a grower of industrial hemp, or who intends to register as a grower of industrial hemp, shall be a representative of at least one of the following functions:
 - (A) Seed production.
 - (B) Seed condition.
 - (C) Marketing.
 - (D) Seed utilization.
 - (2) Two of the board members shall be members of an established agricultural research institution.
 - (3) One member of the board shall be a representative as provided by the California State Sheriffs' Association and approved by the secretary.
 - (4) One member of the board shall be a county agricultural commissioner.
 - (5) One member of the board shall be a representative of the Hemp Industries Association or its successor industry association.
 - (6) One member of the board shall be a representative of industrial hemp product processors or manufacturers.
 - (7) One member of the board shall be a representative of businesses that sell industrial hemp products.
 - (8) One member of the board shall be a member of the public.
- (b) It is hereby declared, as a matter of legislative determination, that growers and representatives of industrial hemp product manufacturers and businesses appointed to the board pursuant to this division are intended to represent and further the interest of a particular agricultural industry, and that the representation and furtherance is intended to serve the public interest. Accordingly, the Legislature finds that persons who are appointed to the board shall be subject to the conflict-of-interest provisions described in Section 87103 of the Government Code.
- (c) The term of office for a member of the board is three years. If a vacancy exists, the secretary shall, consistent with the membership requirements described in subdivision (a), appoint a replacement member to the board for the duration of the term.

- (d) A member of the board shall not receive a salary but may be reimbursed by the department for attendance at meetings and other board activities authorized by the board and approved by the secretary.
- (e) The board shall advise the secretary and may make recommendations on all matters pertaining to this division, including, but not limited to, industrial hemp seed law and regulations, enforcement, annual budgets required to accomplish the purposes of this division, and the setting of an appropriate assessment rate necessary for the administration of this division.
- (f) The board shall annually elect a chair from its membership and, from time to time, other officers as it deems necessary.
- (g) The board shall meet at the call of its chair or the secretary, or at the request of any four members of the board. The board shall meet at least once a year to review budget proposals and fiscal matters related to the proposals.

(Added by Stats. 2013, Ch. 398, Sec. 4. (SB 566) Effective January 1, 2014. Section operative January 1, 2017, pursuant to Section 81010.)

81002.

- (a) Except when grown by an established agricultural research institution or by a seed breeder developing a new California seed cultivar, industrial hemp shall only be grown if it is on the list of approved seed cultivars, or produced by clonal propagation of industrial hemp that is on the list of approved seed cultivars and therefore genetically identical to, and capable of exhibiting the same range of characteristics as, the parent cultivar.
- (b) The list of approved seed cultivars shall include all of the following:
 - (1) Industrial hemp seed cultivars that have been certified by member organizations of the Association of Official Seed Certifying Agencies, including, but not limited to, the Canadian Seed Growers' Association.
 - (2) Industrial hemp seed cultivars that have been certified by the Organization of Economic Cooperation and Development.
 - (3) California varieties of industrial hemp seed cultivars that have been certified by a seed-certifying agency pursuant to Article 6.5 (commencing with Section 52401) of Chapter 2 of Division 18.
- (c) (1) Upon recommendation by the board or the department, the secretary may update the list of approved seed cultivars by adding, amending, or removing seed cultivars.

- (2) The adoption, amendment, or repeal of the list of approved seed cultivars, and the adoption of a methodology and procedure to add, amend, or remove a seed cultivar from the list of approved seed cultivars, pursuant to this section shall not be subject to the requirements of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).
- (3) The department, in consultation with the board, shall hold at least one public hearing with public comment to determine the methodology and procedure by which a seed cultivar is added, amended, or removed from the list of approved seed cultivars.
- (4) The department shall finalize the methodology and procedure to add, amend, or remove a seed cultivar from the list of approved seed cultivars and send the methodology and procedure to the Office of Administrative Law. The Office of Administrative Law shall file the methodology and procedure promptly with the Secretary of State without further review pursuant to Article 6 (commencing with Section 11349) of Chapter 3.5 of Part 1 of Division 3 of Title 2 of the Government Code. The methodology and procedure shall do all of the following:
 - (A) Indicate that the methodology and procedure are adopted pursuant to this division.
 - (B) State that the methodology and procedure are being transmitted for filing.
 - (C) Request that the Office of Administrative Law publish a notice of the filing of the methodology and procedure and print an appropriate reference in Title 3 of the California Code of Regulations.
- (d) The department, in consultation with the board, may determine the manner in which the public is given notice of the list of approved seed cultivars, and any addition, amendment, or removal from that list.

(Amended by Stats. 2018, Ch. 986, Sec. 1. (SB 1409) Effective January 1, 2019.)

81003.

- (a) (1) Except for an established agricultural research institution, and before cultivation, a grower of industrial hemp for commercial purposes shall register with the commissioner of the county in which the grower intends to engage in industrial hemp cultivation.
- (2) The application shall include all of the following:
 - (A) The name, physical address, and mailing address of the applicant.

- (B) The legal description, Global Positioning System coordinates, and map of the land area on which the applicant plans to engage in industrial hemp cultivation, storage, or both.
- (C) The approved seed cultivar to be grown, including the state or county of origin.
- (3) (A) The application shall be accompanied by a registration fee, as determined pursuant to Section 81005.
 - (B) A registration issued pursuant to this section shall be valid for one year, after which the registrant shall renew his or her registration and pay an accompanying renewal fee, as determined pursuant to Section 81005.
- (b) If the commissioner determines that the requirements for registration pursuant to this division are met, the commissioner shall issue a registration to the applicant.
- (c) A registrant that wishes to alter the land area on which the registrant conducts industrial hemp cultivation, storage, or both, shall, before altering the area, submit to the commissioner an updated legal description, Global Positioning System coordinates, and map specifying the proposed alteration. Once the commissioner has received the change to the registration, the commissioner shall notify the registrant that it may cultivate industrial hemp on the altered land area.
- (d) A registrant that wishes to change the seed cultivar grown shall submit to the commissioner the name of the new, approved seed cultivar to be grown. Once the commissioner has received the change to the registration, the commissioner shall notify the registrant that it may cultivate the new seed cultivar.
- (e) The commissioner shall transmit information collected under this section to the department.

(Amended by Stats. 2018, Ch. 986, Sec. 2. (SB 1409) Effective January 1, 2019.)

81004.

- (a) (1) Except when grown by an established agricultural research institution, and before cultivation, a seed breeder shall register with the commissioner of the county in which the seed breeder intends to engage in industrial hemp cultivation.
- (2) The application shall include all of the following:
 - (A) The name, physical address, and mailing address of the applicant.
 - (B) The legal description, Global Positioning System coordinates, and map of the land area on which the applicant plans to engage in industrial hemp cultivation, storage, or both.

- (C) The approved seed cultivar to be grown for seed production, including the state or county of origin.
- (D) If an applicant intends to develop a new California seed cultivar to be certified by a seed-certifying agency, the applicant shall include all of the following:
 - (i) The name of the seed-certifying agency that will be conducting the certification.
 - (ii) The industrial hemp varieties that will be used in the development of the new California seed cultivar.
 - (iii) A seed development plan specifying how the listed industrial hemp varieties will be used in the development of the new seed cultivar, measures that will be taken to prevent the unlawful use of industrial hemp or seed cultivars under this division, and a procedure for the maintenance of records documenting the development of the new seed cultivar.
- (3) (A) The application shall be accompanied by a registration fee, as determined pursuant to Section 81005.
 - (B) A registration issued pursuant to this section shall be valid for one year, after which the registrant shall renew its registration and pay an accompanying renewal fee, as determined pursuant to Section 81005.
- (b) If the commissioner determines that the requirements for registration pursuant to this division are met, the commissioner shall issue a seed breeder registration to the applicant.
- (c) A registrant that wishes to alter the land area on which the registrant conducts industrial hemp cultivation, storage, or both, shall, before altering the area, submit to the commissioner an updated legal description, Global Positioning System coordinates, and map specifying the proposed alteration. Once the commissioner has received the change to the registration, the commissioner shall notify the registrant that it may cultivate industrial hemp on the altered land area.
- (d) A registrant that wishes to change the seed cultivar grown shall submit to the commissioner the name of the new, approved seed cultivar to be grown. Once the commissioner has received the change to the registration, the commissioner shall notify the registrant that it may cultivate the new seed cultivar.
- (e) A registrant developing a new California seed cultivar who wishes to change any provision of the seed development plan shall submit to the commissioner the revised seed development plan. Once the commissioner has received the change to the registration,

the commissioner shall notify the registrant that he or she may cultivate under the revised seed development plan.

- (f) All records pertaining to the seed development plan shall be kept and maintained by the seed breeder and be available upon request by the commissioner, a law enforcement agency, or a seed certifying agency.
- (g) The commissioner shall transmit information collected under this section to the department.

(Amended by Stats. 2018, Ch. 986, Sec. 3. (SB 1409) Effective January 1, 2019.)

81005.

- (a) The department shall establish a registration fee and appropriate renewal fee to be paid by growers of industrial hemp for commercial purposes and seed breeders, not including an established agricultural research institution, to cover the actual costs of implementing, administering, and enforcing the provisions of this division.
- (b) Fees established pursuant to subdivision (a) that are collected by the commissioners upon registration or renewal pursuant to Section 81003 or 81004, except for amounts retained pursuant to this subdivision, shall be forwarded, according to procedures set by the department, to the department for deposit into the Department of Food and Agriculture Fund to be used for the administration and enforcement of this division. A commissioner or the county, as appropriate, may retain the amount of a fee necessary to reimburse direct costs incurred by the commissioner in the collection of the fee.
- (c) The board of supervisors of a county may establish a reasonable fee, in an amount necessary to cover the actual costs of the commissioner and the county of implementing, administering, and enforcing the provisions of this division, except for costs that are otherwise reimbursed pursuant to subdivision (b), to be charged and collected by the commissioner upon registrations or renewals required pursuant to Section 81003 or 81004 and retained by the commissioner or the county, as appropriate.

(Amended by Stats. 2018, Ch. 986, Sec. 4. (SB 1409) Effective January 1, 2019.)

81006.

Industrial Hemp Growth Limitations; Prohibitions; Imports; Laboratory Testing.

- (a) (1) Except when grown by an established agricultural research institution or a seed breeder, industrial hemp shall be grown in acreages of not less than one-tenth of an acre at the same time.

- (2) Seed breeders, for purposes of seed production, shall only grow industrial hemp in acreages of not less than one-tenth of an acre at the same time.
 - (3) Seed breeders, for purposes of developing a new California seed cultivar, shall grow industrial hemp in dedicated acreage of not less than one-tenth of an acre and in accordance with the seed development plan. The entire area of the dedicated acreage is not required to be used for the cultivation of the particular seed cultivar.
- (b) Clandestine cultivation of industrial hemp is prohibited. All plots shall have adequate signage indicating they are industrial hemp.
- (c) Industrial hemp shall include products imported under the Harmonized Tariff Schedule of the United States (2013) of the United States International Trade Commission, including, but not limited to, hemp seed, per subheading 1207.99.03, hemp oil, per subheading 1515.90.80, oilcake, per subheading 2306.90.01, true hemp, per heading 5302, true hemp yarn, per subheading 5308.20.00, and woven fabrics of true hemp fibers, per subheading 5311.00.40.
- (d) (1) Except when industrial hemp is grown by an established agricultural research institution, a registrant that grows industrial hemp under this section shall, before the harvest of each crop and as provided below, obtain a laboratory test report indicating the THC levels of a random sampling of the dried flowering tops of the industrial hemp grown.
- (2) Sampling shall occur no more than 30 days before harvest.
 - (3) The sample collected for THC testing shall be taken with the grower or seed breeder present. The department shall establish, by regulation, the sampling procedures, including all of the following:
 - (A) The number of plants to be sampled per field, and any composting of samples.
 - (B) The portions of the plant to be sampled.
 - (C) The plant parts to be included in a sample.
 - (D) Additional procedures as necessary to ensure accuracy and the sanitation of samples and fields.
 - (4) The sample collected for THC testing shall be accompanied by the following documentation:
 - (A) The registrant's proof of registration.
 - (B) Seed certification documentation for the seed cultivar used.
 - (C) The THC testing report for each certified seed cultivar used.

- (5) The laboratory test report shall be issued by a laboratory approved by the department, using a department-approved testing method, and indicate the percentage content of THC on a dry-weight basis, indicate the date and location of samples taken, and state the Global Positioning System coordinates and total acreage of the crop. If the laboratory test report indicates a percentage content of THC that is equal to or less than three-tenths of 1 percent, the words "PASSED AS CALIFORNIA INDUSTRIAL HEMP" shall appear at or near the top of the laboratory test report. If the laboratory test report indicates a percentage content of THC that is greater than three-tenths of 1 percent, the words "FAILED AS CALIFORNIA INDUSTRIAL HEMP" shall appear at or near the top of the laboratory test report.
- (6) If the laboratory test report indicates a percentage content of THC that is equal to or less than three-tenths of 1 percent, the laboratory shall provide the person who requested the testing not less than 10 original copies signed by an employee authorized by the laboratory and shall retain one or more original copies of the laboratory test report for a minimum of two years from its date of sampling.
- (7) If the laboratory test report indicates a percentage content of THC that is greater than three-tenths of 1 percent and does not exceed 1 percent, the registrant that grows industrial hemp shall submit additional samples for testing of the industrial hemp grown.
- (8) A registrant that grows industrial hemp shall destroy the industrial hemp grown upon receipt of a first laboratory test report indicating a percentage content of THC that exceeds 1 percent or a second laboratory test report pursuant to paragraph (7) indicating a percentage content of THC that exceeds three-tenths of 1 percent but is less than 1 percent. If the percentage content of THC exceeds 1 percent, the destruction shall begin within 48 hours, and be completed within 7 days, after receipt of the laboratory test report. If the percentage content of THC in the second laboratory test report exceeds three-tenths of 1 percent but is less than 1 percent, the destruction shall take place as soon as practicable, but no later than 45 days after receipt of the second test report.
- (9) A registrant that intends to grow industrial hemp and who complies with this section shall not be prosecuted for the cultivation or possession of marijuana as a result of a laboratory test report that indicates a percentage content of THC that is greater than three-tenths of 1 percent but does not exceed 1 percent.
- (10) Established agricultural research institutions shall be permitted to cultivate or possess industrial hemp with a laboratory test report that indicates a percentage content of THC that is greater than three-tenths of 1 percent if that cultivation or

possession contributes to the development of types of industrial hemp that will comply with the three-tenths of 1 percent THC limit established in this division.

(11) Except for an established agricultural research institution, a registrant that grows industrial hemp shall retain an original signed copy of the laboratory test report for two years from its date of sampling, make an original signed copy of the laboratory test report available to the department, the commissioner, or law enforcement officials or their designees upon request, and shall provide an original copy of the laboratory test report to each person purchasing, transporting, or otherwise obtaining from the registrant that grows industrial hemp the fiber, oil, cake, or seed, or any component of the seed, of the plant.

(e) If, in the Attorney General's opinion issued pursuant to Section 8 of the act that added this division, it is determined that the provisions of this section are not sufficient to comply with federal law, the department, in consultation with the board, shall establish procedures for this section that meet the requirements of federal law.

(Amended by Stats. 2018, Ch. 986, Sec. 5. (SB 1409) Effective January 1, 2019. Note: This section was amended on Nov. 8, 2016, by initiative Prop. 64.)

81007.

As part of the registration program established pursuant to this division, the department may establish and carry out, by regulation, an agricultural pilot program pursuant to Section 7606 of the federal Agricultural Act of 2014 (7 U.S.C. Sec. 5940) in accordance with the purposes of that section.

(Added by Stats. 2018, Ch. 986, Sec. 6. (SB 1409) Effective January 1, 2019.)

81008.

Attorney General Reports; Requirements.

(a) Not later than January 1, 2019, the Attorney General shall report to the Assembly and Senate Committees on Agriculture and the Assembly and Senate Committees on Public Safety the reported incidents, if any, of the following:

(1) A field of industrial hemp being used to disguise marijuana cultivation.

(2) Claims in a court hearing by persons other than those exempted in subdivision (f) of Section 81006 that marijuana is industrial hemp.

(b) A report submitted pursuant to subdivision (a) shall be submitted in compliance with Section 9795 of the Government Code.

(c) Pursuant to Section 10231.5 of the Government Code, this section is repealed on January 1, 2023, or four years after the date that the report is due, whichever is later.

(Amended November 8, 2016, by initiative Proposition 64, Sec. 9.5. Section operative January 1, 2017, pursuant to Section 81010. Repealed on January 1, 2023, or later as prescribed by its own provisions.)

81009.

Not later than January 1, 2019, or five years after the provisions of this division are authorized under federal law, whichever is later, the board, in consultation with the Hemp Industries Association, or its successor industry association, shall report the following to the Assembly and Senate Committees on Agriculture and the Assembly and Senate Committees on Public Safety:

- (a) The economic impacts of industrial hemp cultivation, processing, and product manufacturing in California.
- (b) The economic impacts of industrial hemp cultivation, processing, and product manufacturing in other states that may have permitted industrial hemp cultivation.

(Added by Stats. 2013, Ch. 398, Sec. 4. (SB 566) Effective January 1, 2014. Section operative January 1, 2017, pursuant to Section 81010.)

81010.

This division, and Section 221 shall become operative on January 1, 2017.

(Amended by Stats. 2017, Ch. 27, Sec. 112. (SB 94) Effective June 27, 2017. Note: This section was amended on Nov. 8, 2016, by initiative Prop. 64, making Division 24 (commencing with Section 81000) operative on January 1, 2017.)

81011.

Before cultivating industrial hemp, an established agricultural research institution shall provide the Global Positioning System coordinates of the planned cultivation site to the commissioner of the county in which the site is located.

(Added by Stats. 2018, Ch. 986, Sec. 7. (SB 1409) Effective January 1, 2019.)

Hemp Advisory Group Zoning Considerations

DRAFT

LIA, LEA, DA	Cultivation Allowed?	Setbacks to Residence / Business	Minimum Parcel Size	Other
	Yes	n/a	n/a	n/a
	Yes	100'	n/a	From property line
	Yes	600'	n/a	
Ag Comm Recommend	Yes	Per BMPs	n/a	BMPs are not enforceable; recommendations only
	No	n/a	n/a	n/a

AR	Cultivation Allowed?	Setbacks to Residence / Business	Minimum Parcel Size	Other
	Yes	n/a	n/a	n/a
	Yes	100'	n/a	Setback from residence/business; reduced with consent from neighboring property(ies)
	Yes	300'	2 acres	
	Yes	300'	10 acres	n/a
	Yes	300'	10 acres	600' setback from sensitive uses
	Yes	n/a	n/a	Min 5,000 sq ft canopy
Ag Comm Recommend	Yes	600' from occupied structure	10 acres	200' from property line
	Yes	n/a	n/a	CUP required
	No	n/a	n/a	n/a

RR	Cultivation Allowed?	Setbacks to Residence / Business	Minimum Parcel Size	Other
	Yes	n/a	n/a	CUP required
	Yes (nursery)	Per Permit Sonoma requirements	Per zoning code	No flowering plants
Ag Comm Recommend	No	n/a	n/a	n/a

RRD	Cultivation Allowed?	Setbacks to Residence / Business	Minimum Parcel Size	Other
	Yes	n/a	n/a	n/a
	Yes	600'	n/a	With CUP only; not allowed in five impaired watersheds
Ag Comm Recommend	Yes	Per BMPs	n/a	BMPs are not enforceable; recommendations only
	Yes	n/a	n/a	Hydro study required unless converting from existing irrigated crop
	No	n/a	n/a	n/a