

**DRAFT**

**EXHIBIT ~~"X"~~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 on part of a parcel or adjoining parcels under single ownership or control 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.

W.X. “Tree” has the same meaning as that term is defined in Chapter 36.

**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, with or without prior notice, 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 as follows:

i-a. 600 feet from residences and businesses on neighboring parcels.

a-b. 200 feet from property lines.

- 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. In the case of a property owner, this restriction only applies to-if the 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.

a-c. Unpermitted commercial cannabis violation. For purposes of this restriction, unpermitted commercial cannabis violation means a violation for conducting commercial cannabis activity without the requisite land use permit or other county authorization. Unpermitted commercial cannabis violation does not include a violation of Sec. 26-88-250 through 26-88-258, or permit issued under those sections, by a permitted or otherwise authorized person, unless the violation is for a separate commercial cannabis activity not authorized by the land use permit or other county authorization.

#### 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.

### **Sec. 37-11 Nuisance**

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.