

ORDINANCE NO. 1972

AN ORDINANCE ESTABLISHING REGULATIONS FOR THE CULTIVATION OF INDUSTRIAL HEMP IN THE UNINCORPORATED AREAS OF MERCED COUNTY, ADDING CHAPTER 9.31 TO TITLE 9 OF THE MERCED COUNTY CODE.

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

SECTION 1: The County of Merced Urgency Interim Ordinance number 1969, imposing a temporary moratorium on the cultivation of industrial hemp within the unincorporated areas of the County by any person or entity including “established agricultural research institutions,” shall be repealed on the effective date of this Ordinance.

SECTION 2: Chapter 9.31, Title 9, titled “Industrial Hemp Cultivation,” is added to the Merced County Code as follows:

Chapter 9.31

INDUSTRIAL HEMP CULTIVATION

Sections:

9.31.010	Purpose and authority
9.31.020	Definitions
9.31.030	Administration
9.31.040	License required
9.31.050	License requirements
9.31.060	Cultivation requirements
9.31.070	Destruction of non-compliant hemp crops
9.31.080	Fees
9.31.090	Public nuisance
9.31.100	Violations

9.31.010 Purpose and authority

Pursuant to Article XI, section 7, of the California Constitution, the County of Merced (“County”) may adopt and enforce ordinances and regulations not in conflict with general laws to protect and promote the public health, safety, and welfare of its citizens. It is the purpose and intent of this Ordinance to establish standards, requirements, and regulations governing industrial hemp cultivation.

Further, it is the purpose and intent of this chapter to impose reasonable land use regulations to protect the County’s residents, neighborhoods, businesses, and the

environment from disproportionately negative impacts caused by industrial hemp cultivation, and to enforce rules and regulations consistent with state and federal law.

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

9.31.020 Definitions

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

- A. "Cultivation" shall include any activity involving the propagation, planting, growing, harvesting, drying, curing, grading, or trimming of hemp.
- B. "Established agricultural research institution" is an institution of higher education, as defined in Section 101 of the federal Higher Education Act of 1965 (20 U.S.C Sec. 1001), that grows or cultivates industrial hemp for purposes of research conducted under an agricultural pilot program or other agricultural or academic research in accordance with Section 7606 of the federal Agricultural Act of 2014 (7 U.S.C. Sec. 5940) or is otherwise approved by the California Secretary of Food and Agriculture.
- C. "Hemp" shall have the same meaning as "industrial hemp" set forth below.
- D. "Industrial hemp" has the same meaning as that term is defined in section 11018.5 of the Health and Safety Code. That section defines industrial hemp as "a crop that is limited to types of the plant *Cannabis sativa* L. having no more than three-tenths of 1 percent tetrahydrocannabinol (THC) contained in the dried flowing tops, whether growing or not; the seeds of the plant; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin produced therefrom."
- E. "Nursery stock" shall have the meaning set forth in Food and Agricultural Code section 5005.
- F. "Person" includes any individual, firm, partnership, joint venture, association, corporation, limited liability company, estate, trust, business, business trust, receiver, syndicate, collective, cooperative, institution, including an established agricultural research institution, or any other group or entity, or combination acting as a unit. Except where otherwise indicated by context, the singular shall include the plural, and vice versa.
- G. "Sensitive receptor" is a facility or land use that serves or attracts members of a population who are particularly sensitive to the effects of air pollutants or strong odors, such as children, the elderly, and people with illnesses. Examples of sensitive receptors include hospitals, schools, and parks.

- H. "Transplant" is a cultivated hemp plant grown from seed or cutting in soil or individual containers for less than 8 weeks that does not exceed a height of eight (8 inches).

9.31.030 Administration

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

9.31.040 License required

No person shall cultivate industrial hemp in the unincorporated areas of Merced County without first obtaining a license issued by the Agricultural Commissioner to cultivate as provided in this chapter. A license for cultivation may be issued to an established agricultural research institution only if it meets the definition of established agricultural research institution stated in section 9.31.020 of this chapter. A license issued under this chapter does not grant any interest in real property or create any interest of value and is not transferable.

9.31.050 License requirements

A license for the cultivation of industrial hemp may be issued only if each of the following requirements are met:

- A. Applicants shall submit an application in accordance with the application process established by the Agricultural Commissioner. A single license may be issued for multiple parcels.
- B. An applicant shall be the deed holder of the land upon which hemp is to be cultivated, or provide written consent in a form acceptable to the Agricultural Commissioner, from the deed holder granting permission for the cultivation of industrial hemp on the specified parcel(s).
- C. Each parcel for which a license application is submitted must be a minimum of 20 acres in size, and located in the A-1 (General Agricultural) zoning district.
- D. Before a license is issued under this chapter, the applicant shall submit a bond or other form of security acceptable to the agricultural commissioner in the amount of one hundred (100%) of the estimated cost to fully abate a crop of industrial hemp that does not meet requirements for legal harvest under applicable laws and regulations. The financial security provided shall be released to the applicant after the agricultural commissioner determines that the security is no longer needed to secure the abatement of a non-compliant hemp crop.
- E. An applicant shall fully satisfy the registration requirements stated in Food and Agricultural Code section 81003.

- F. An applicant for the cultivation of transplants shall have a license to sell nursery stock as required under California Food and Agricultural Code section 6721 et seq.
- G. Each license issued under this chapter shall expire one year from the date of its issuance.

9.31.060 Cultivation requirements

The following standards shall apply to the cultivation of industrial hemp.

- A. The cultivation of industrial hemp is permitted in the A-1 (General Agricultural) zoning district. Cultivation of industrial hemp is prohibited in all other zoning districts.
- B. A person cultivating industrial hemp shall design the parcel used for cultivation in a manner that minimizes odors to surrounding areas.
- C. Except as provided in a variance granted in accordance with Merced County Code, outdoor industrial hemp cultivation shall meet the following setback requirements:
 - i. 200 feet from any boundary line of the parcel, unless the boundary line is adjacent to the boundary line of a parcel that is either owned, managed, or otherwise under the control of the person who obtained the license for the cultivation of industrial hemp.
 - ii. 1000 feet from any sensitive receptor.
 - iii. 200 feet from any residence.
- D. Any structure(s) containing facilities used for the processing of industrial hemp must have all permits required under state law and Merced County Code.
- E. The indoor cultivation of hemp is limited to the cultivation of hemp transplants in a structure dedicated solely to the cultivation of nursery stock and located within the A-1 zoning district on a parcel with a minimum size of twenty (20) acres. All other indoor cultivation of industrial hemp is prohibited. Structures must comply with applicable building codes and be permitted by the Department of Public Works Building Division and the Community and Economic Development Department as required by County code.
 - i. Except as provided in a variance granted in accordance with Merced County Code, structures used for indoor cultivation of hemp shall meet the following setbacks:
 - i. 50 feet from any boundary line of the parcel adjacent to a parcel under different ownership.
 - ii. 500 feet from any sensitive receptor.
 - iii. 100 feet from any residence.
- F. All parcels used for the cultivation of industrial hemp shall have onsite signage indicating that hemp is being cultivated on site. The signs shall:
 - i. Be of a size so that the wording on the sign is clearly visible and readable to a person with normal vision from a distance of twenty five (25) feet; and

- ii. Use letters and symbols that are of a color that sharply contrasts with their immediate background; and
 - iii. Be posted at the corners of the parcel and at all usual points of entry to the parcel, including each road, footpath, walkway, or aisle that enters the cultivation area. When a parcel is adjacent to a public right-of-way, such as a road, trail, or path, signs shall be posted at intervals not exceeding 600 feet along the parcel's border with the right-of-way.
- G. A person cultivating industrial hemp shall comply with all provisions of California State law, and associated regulations, applicable to the cultivation of industrial hemp, including, but not limited to, requirements for cultivation, sampling, laboratory testing, harvesting, and crop destruction.

9.31.070 Destruction of non-compliant industrial hemp crops

An industrial hemp crop that does not comply with the provisions of this chapter and all applicable provisions of California State law, and associated regulations, shall be destroyed. Crop destruction shall proceed as provided for in all applicable laws and regulations, which includes Food and Agricultural Code section 81006 and California Code of Regulations, title 3, sections 4950 and 4950.1. The grower of the industrial hemp crop shall submit a destruction plan to the Agricultural Commissioner at least twenty-four (24) hours prior to the start of the destruction. The Agricultural Commissioner shall approve the method of destruction. An industrial hemp grower that fails to destroy an industrial hemp crop as required shall forfeit the financial security provided under section 9.31.050, subsection D, and the Agricultural Commission shall proceed to destroy the non-compliant crop.

9.31.080 Fees

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

9.31.090 Public nuisance

The cultivation of industrial hemp in violation of state law, state regulation, this chapter, or other local regulation constitutes a public nuisance subject to abatement and the imposition of administrative penalties under chapter 9.70 of the Merced County Code. Each and every day a violation of this chapter exists constitutes a separate and distinct violation.

9.31.100 Violations

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

SECTION 2: EFFECTIVE DATE

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

SECTION 3: VALIDITY

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

The foregoing ordinance was passed and adopted by the Board of Supervisors of the County of Merced, State of California at a regular meeting thereof held on the 27th day of August, 2019 by the following vote:

SUPERVISORS

AYES: Lloyd Pareira, Rodrigo Espinoza, Lee Lor, Daron McDaniel

NOES: None

ABSENT: Scott Silveira



Lloyd Pareira
Chairman, Board of Supervisors

ATTEST:

JAMES L. BROWN
Clerk of the Board of Supervisors

By  _____
Deputy



APPROVED AS TO FORM AND LEGAL EFFECT:
JAMES N. FINCHER,
MERCED COUNTY COUNSEL

By:  _____
Forrest W. Hansen