

Attachment B

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ORDINANCE NO. _____

AN ORDINANCE OF THE COUNTY OF MONTEREY, STATE OF CALIFORNIA, ADDING CHAPTER 21.49 TO TITLE 21 (NON-COASTAL ZONING) OF THE MONTEREY COUNTY CODE AND AMENDING CHAPTER 21.08 OF TITLE 21 OF THE MONTEREY COUNTY CODE TO ESTABLISH AN INDUSTRIAL HEMP (“HMP”) ZONING DISTRICT AND AMEND THE SECTIONAL DISTRICT MAPS TO ADD THE “HMP” ZONING DESIGNATION TO CERTAIN PROPERTIES

County Counsel Summary

This ordinance establishes a pilot program for the cultivation and processing of industrial hemp in the inland unincorporated area of Monterey County. This ordinance adds Chapter 21.49 to Title 21 (non-coastal zoning) of the Monterey County Code to create an Industrial Hemp District combining zoning designation (“HMP” District) establishing industrial hemp cultivation as an allowed use subject to certain restrictions under the pilot program, and allowing development of new industrial hemp processing plants as an allowed use with a use permit. The ordinance also amends Section 21.08.020 of Title 21 to add the “HMP” District to the list of combining zoning regulations, and amends Section 21.08.060 to apply the “HMP” District to certain properties in the inland unincorporated areas as shown in the Sectional District Zoning Maps attached to the ordinance. The “HMP” District is limited to certain properties in the North County Area Plan and South County Area Plan. Restrictions contained in this ordinance require approval of registration by the Monterey County Agricultural Commissioner, limit the number of industrial hemp cultivation registrations that may be issued to not exceed 30 in total, and provide for a maximum cultivated area of 100 acres. The effective period of this ordinance is limited from its adoption through August 31, 2020.

The Board of Supervisors of the County of Monterey ordains as follows:

SECTION 1. Findings and declarations.

A. Pursuant to Article XI, section 7 of the California Constitution, the County of Monterey 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.

B. In 2013, the California Legislature adopted the Industrial Hemp Farming Act (Food and Agricultural Code (hereafter “FAC”) §§ 81000-81011), addressing the cultivation of industrial hemp. However, the Act did not become operative until Proposition 64, the Adult Use of Marijuana Act (November 2016), amended FAC section 81010 that established the operative date of January 1, 2017.

C. The 2014 Federal Farm Bill (P.L. 113-79, § 7606, 7 U.S.C. § 5940), authorized an institution of higher education (as defined in section 101 of the Higher Education Act of 1965 (20 U.S.C. § 1001)), or a state department of agriculture to grow or cultivate industrial hemp if:

1. The hemp is grown or cultivated for purposes of research conducted under an agricultural pilot program or other agricultural or academic research; and

2. The growing or cultivating of industrial hemp is allowed under the laws of the state in which such institution of higher education, or state department of agriculture is located and where the research occurs.

D. In December 2018, President Trump signed into law the 2018 Federal Farm Bill, H.R. 2, P.L. 115-334, which removed industrial hemp from the federal list of controlled substances and authorizes the U.S. Department of Agriculture to create quality control standards for commercial hemp production.

E. Effective January 1, 2019, SB 1409 was signed into law by Governor Brown which revised the California Industrial Hemp Farming Act. The law now requires that industrial hemp cultivators, other than “Established Agricultural Research Institutions”, to pay an annual fee and register with local agricultural commissioner offices. Additionally, the law requires that “Established Agricultural Research Institutions” provide GPS coordinates to agricultural commissioners.

F. Pursuant to FAC section 81007, the California Department of Food and Agriculture (CDFA) is authorized to establish by regulation, an agricultural pilot program pursuant to section 7606 of the federal Agricultural Act of 2014, 7 U.S.C. § 5940. CDFA has adopted certain regulations, some on an emergency basis, concerning a registration fee, approved seed cultivars, sampling, laboratory testing, and enforcement.

G. On April 25, 2019, CDFA’s regulation establishing a \$900 registration fee became effective (3 CCR § 4900).

H. On April 30, 2019, CDFA made available applications for industrial hemp cultivators to register with the commissioner of the county in which the grower intends to engage in industrial hemp cultivation.

I. Due to the fact that industrial hemp and cannabis are derivatives of the same plant, *Cannabis sativa L.*, the appearance and odor of industrial hemp and cannabis can be indistinguishable, particularly when hemp is cultivated with feminized flowering plants for high levels of cannabidiol (CBD) for purposes of CBD extract or oil production.

J. The purpose of this ordinance is to set parameters of where certain activities associated with industrial hemp can occur during a limited time period. The pilot program is intended to gather data and information related to industrial hemp cultivation and processing, hemp seed production, and associated activities to enable the County to evaluate the

establishment of long-term regulations and to reduce the potential for negative impacts on the community and environment for protection of public health, safety and welfare.

K. Properties rezoned to apply the Industrial Hemp combining zoning district (“HMP” District) pursuant to this ordinance are limited to those properties that have a base zoning designation that allows soil dependent agricultural uses, that have been previously cultivated for commercial agricultural purposes, and that are located within the North County Area Plan and South County Area Plan boundaries. Due to prevailing wind patterns in the South County area, buffers are proposed around rural centers including Pine Canyon, San Lucas, San Ardo, Lockwood, Pleyto, and Bradley.

L. This ordinance is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines sections 15305 and 15306, which exempt minor alterations in land use limitations in areas with an average slope of less than twenty percent (20%) that do not result in any changes in land use or density and information collection, research, experimental management and resource evaluation activities which do not result in a serious or major disturbance to an environmental resource. This ordinance establishes a limited term pilot program for the purposes of information collection, applies to lands that allow agricultural uses as a principal use, is limited to lands that have previously been cultivated, and to lands with an average slope of less than 20%. Temporary allowances for rotation of crops to hemp on lands previously cultivated with other agricultural products, is a minor alteration in land use limitations and will not result in serious disturbance to environmental resources.

SECTION 2. Chapter 21.49 is added to the Monterey County Code to read as follows:

Chapter 21.49
REGULATIONS FOR LIMITED INDUSTRIAL HEMP ZONING DISTRICT OR
“HMP” DISTRICT

Sections:

21.49.010 – Definitions.

21.49.020 – Purpose.

21.49.030 – Applicability and duration.

21.49.040 – Uses allowed.

21.49.050 – Uses allowed – Use permit required in each case (Chapter 21.74).

21.49.060 – Regulations applicable to industrial hemp cultivation registration.

21.49.010 Definitions.

For the purpose of this Chapter, unless the context otherwise requires, certain terms used in this Chapter shall be as defined below. The definitions in Chapter 21.06 shall otherwise apply.

- A. “Agricultural Commissioner” means the Monterey County Agricultural Commissioner and Sealer of Weights and Measures.
- B. “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. § 101)) that grows, cultivates or manufactures industrial hemp for purposes of research conducted under an agricultural pilot program or other agricultural or academic research.
- C. “Industrial hemp” means a crop that is limited to types of the plant *Cannabis sativa* L. having no more than three-tenths of 1 percent tetrahydrocannabinol (THC) contained in the dried flowering tops, whether growing or not; the seeds of the plant; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin produced therefrom.
- D. “Industrial hemp cultivation” means the tilling, growing, raising, harvesting, and other cultivation practices of industrial hemp for commerce. Industrial hemp cultivation includes cultivation of industrial hemp by a seed breeder and an established agricultural research institution.
- E. “Industrial hemp processing” means the refinement, treatment, or conversion of industrial hemp where a physical, chemical or similar change of the industrial hemp product occurs. Examples of hemp processing include but are not limited to, freezing, dehydrating, extracting oil, and the sorting, cleaning, packing, and storing of products preparatory to sale or shipment.
- F. “Industrial hemp processing plant” means a structure, building, facility, area, open or enclosed, or any other location for the refinement, treatment, or conversion of industrial hemp where a physical, chemical or similar change of an agricultural product occurs. Examples of hemp processing plant include but are not limited to, coolers, dehydrators, cold storage houses, oil extraction facilities, and areas for the sorting, cleaning, packing, and storing of products preparatory to sale or shipment.
- G. “Registration” means the industrial hemp registration process pursuant to California Food and Agricultural Code sections 81000 through 81011 with the Agricultural Commissioner, and also as amended by this Chapter, registration by an established agricultural research institution in the same manner as an industrial hemp cultivator or seed breeder.
- H. “Seed breeder” means an individual or public or private institution or organization that is registered with the Monterey County Agricultural Commissioner to develop seed cultivars intended for sale or research.

21.49.020 Purpose.

The purpose of this Chapter is to:

- A. Establish a pilot program to accommodate limited cultivation and processing of industrial hemp in specified areas while gathering data for long-term regulations;
- B. Minimize potential conflicts between cultivation and processing of industrial hemp and other land uses by limiting industrial hemp cultivation and processing to certain specified areas in the unincorporated area; and
- C. Aid in the enforcement against illegal cannabis activities and reduce negative impacts on the community and environment for protection of public health, safety and welfare by requiring all industrial hemp cultivators to register with the Agricultural Commissioner.

21.49.030 Applicability and duration.

A. The regulations set forth in this Chapter shall apply in all districts which are combined with the “HMP” District, in addition to the regulations of the combined districts. However, if any of the regulations specified in this Chapter differ from any of the corresponding regulations specified in this Title for any district which is combined with the “HMP” District, then the provisions of this Chapter shall apply.

B. The provisions of this Chapter, and all registrations approved by the Agricultural Commissioner pursuant to this Chapter, shall expire on August 31, 2020.

21.49.040 Uses allowed.

- A. Uses permitted as “Uses Allowed” in the respective district with which the “HMP” District is combined;
- B. Industrial hemp cultivation pursuant to the requirements of Section 21.49.060 of this Chapter; and
- C. Use of an existing agricultural processing plant for industrial hemp processing.

21.49.050 Uses allowed – Use permit required in each case (Chapter 21.74).

- A. Uses permitted as “Uses allowed – Use permit required in each case” in the respective district with which the “HMP” District is combined; and
- B. New industrial hemp processing plant (ZA).

21.49.060 Regulations applicable to industrial hemp cultivation registration.

A. Registration approved by the Agricultural Commissioner shall be required before industrial hemp cultivation may commence.

B. An application for registration to cultivate industrial hemp shall be submitted to the Agricultural Commissioner no later than August 31, 2019. Registrations shall not be renewed or extended beyond the expiration date provided in Section 21.49.030 of this Chapter.

C. The Agricultural Commissioner shall approve no more than thirty (30) registrations pursuant to this pilot program. The Agricultural Commissioner shall approve such registrations if all of the following are met:

1. The industrial hemp will be cultivated within the “HMP” District.
2. The industrial hemp will be cultivated on land that was previously cultivated with any crop.
3. The industrial hemp cultivation will be grown in acreages of one hundred (100) acres or less.

D. Property owners and registrants will post all appropriate signs as required by state law, and will be subject to the regulations contained in Chapter 21.60 of this Title.

E. Property owners and registrants shall allow access to the industrial hemp cultivation site by the County, its officers, or agents, to verify compliance with all relevant rules, regulations, and conditions.

SECTION 3. Section 21.08.020 of the Monterey County Code is amended to read as follows until its termination date of August 31, 2020:

Designation	District Name
B	Building Site District
D	Design Control District
S	Site Plan Review District
VS	Visual Sensitivity District
A	Limited Agricultural District
<u>HMP</u>	<u>Industrial Hemp District</u>

UR	Urban Reserve District
RAZ	Residential Allocation District
HR	Historical Resources District
Z	Street Improvements District
RES	Regulations for Parking and Use of Major Recreational Equipment Storage Seaward Zone

SECTION 4. ZONING DISTRICT MAP. The following Sectional District Maps of Section 21.08.060 of the Monterey County Code are hereby amended to add the Industrial Hemp District (“HMP” District) designation to certain properties shown in the revised Sectional District Maps for each of the amended sections listed below with said maps being attached hereto and incorporated herein by reference. The addition of the Industrial Hemp District to the Sectional District Maps will terminate on August 31, 2020.

1. Section 21-1
2. Section 21-2A
3. Section 21-2B
4. Section 21-3
5. Section 21- 4C
6. Section 21-4D
7. Section 21-5
8. Section 21-6
9. Section 21-7
10. Section 21-54
11. Section 21-55
12. Section 21-56
13. Section 21-61
14. Section 21-62
15. Section 21-63
16. Section 21-64
17. Section 21-65
18. Section 21-70
19. Section 21-71
20. Section 21-73
21. Section 21-79
22. Section 21-80
23. Section 21-82
24. Section 21-83
25. Section 21-84
26. Section 21-88
27. Section 21-89

- 28. Section 21-90
- 29. Section 21-91
- 30. Section 21-92
- 31. Section 21-93
- 32. Section 21-94
- 33. Section 21-97
- 34. Section 21-98
- 35. Section 21-99
- 36. Section 21-100
- 37. Section 21-102
- 38. Section 21-103
- 39. Section 21-104

SECTION 5. SEVERABILITY. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.

SECTION 6. This ordinance shall become effective on the thirty-first day following its adoption.

PASSED AND ADOPTED on this ___ day of _____, 2019, by the following vote:

- AYES:
- NOES:
- ABSENT:
- ABSTAIN:

 Chair, John M. Phillips
 Monterey County Board of Supervisors

A T T E S T:

VALERIE RALPH
 Clerk of the Board of Supervisors

By: _____
 Deputy

<p>APPROVED AS TO FORM BY:</p> <p>_____ Kelly L. Donlon Deputy County Counsel</p>
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