

ORDINANCE NO. _____

AN ORDINANCE OF THE COUNTY OF MONTEREY, STATE OF CALIFORNIA, AMENDING CHAPTER 21.49 OF TITLE 21 (NON-COASTAL ZONING) OF THE MONTEREY COUNTY CODE TO EXTEND THE INDUSTRIAL HEMP PILOT PROGRAM, AND AMENDING THE SECTIONAL DISTRICT MAPS TO ADD THE INDUSTRIAL HEMP “HMP” ZONING OVERLAY DESIGNATION TO PORTIONS OF CERTAIN PROPERTIES

County Counsel Summary

This ordinance amends the pilot program for the cultivation and processing of industrial hemp in the inland unincorporated area of Monterey County. This ordinance amends Chapter 21.49 of Title 21 (non-coastal zoning) of the Monterey County Code to extend the pilot program from August 31, 2020 to December 31, 2022. The ordinance also amends the Sectional District Zoning Maps to add the Industrial Hemp Zoning Overlay District (“HMP” District) to portions of parcels that are outside of the rural center and community area buffers established in the industrial hemp pilot program. Currently, if a portion of a parcel is transected by a rural center or community area buffer, the entire parcel is excluded from the HMP District on the Sectional District Zoning Maps.

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. Industrial 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 registration fees, registration application, criminal report history for industrial hemp registration, 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. On July 23, 2019, the Monterey County Board of Supervisors adopted Ordinance Number 5314, which created a pilot program for the cultivation and processing of industrial hemp in the inland unincorporated area of Monterey County.

J. On February 10, 2020, CDFA proposed emergency adoption of Title 3 California Code of Regulations (CCR) Sections 4901 and 4902 to create timeframes, definitions, and procedures for industrial hemp registration and program eligibility determination.

K. Due to the fact that industrial hemp and cannabis are varieties 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.

L. The purpose of this ordinance is to extend the industrial hemp pilot program, and amend the 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.

M. 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. Subsection B of Section 21.49.030 of the Monterey County Code is amended to read as follows:

The provisions of this Chapter, and all registrations approved by the Agricultural Commissioner pursuant to this Chapter, shall expire on ~~August 31, 2020~~December 31, 2022.

SECTION 3. Subsection B of Section 21.49.060 of the Monterey County Code is amended to read as follows:

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.

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.

1. Section 21-2A
2. Section 21-62
3. Section 21-71
4. Section 21-78
5. Section 21-79
6. Section 21-80
7. Section 21-88
8. Section 21-89
9. Section 21-90
10. 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 this ____ day of _____, 2020, by the following vote:

AYES:

NOES:

ABSENT:

Christopher M. Lopez, Chair
Monterey County Board of Supervisors

A T T E S T :
VALERIE RALPH
Clerk of the Board

APPROVED AS TO FORM:

KELLY L. DONLON
Deputy County Counsel

By: _____
Deputy