



Department of Conservation and Development

County Planning Commission

Wednesday, June 23, 2021 – 6:30.P.M.

STAFF REPORT

Agenda Item # _____

Project Title:	Zoning Text Amendment for a County Industrial Hemp Cultivation Ordinance
County File(s):	CDZT21-00001
Project Location:	Countywide
California Environmental Quality Act (CEQA) Status:	Exempt Per Section 15061(b)(3) – Staff has determined with certainty that adoption of the proposed industrial hemp ordinance will not have a significant effect on the environment and therefore is not subject to CEQA.
Project Planner:	Dominique Vogelpohl, Senior Planner – phone: (925) 655-2880 and email: Dominique.Vogelpohl@dcd.cccounty.us
Staff Recommendation:	Approve (See Section II for Full Recommendation)

I. PROJECT SUMMARY

A hearing to consider a County initiated Zoning Text Amendment to regulate the cultivation of industrial hemp in the unincorporated areas of the County.

II. RECOMMENDATION

Department of Conservation and Development, Community Development Division (CDD) staff recommends that the County Planning Commission:

- A. OPEN the public hearing on a zoning ordinance regulating industrial hemp cultivation; RECEIVE testimony; and CLOSE the public hearing; and

- B. ADOPT a motion recommending that the Board of Supervisors take the following actions:
1. DETERMINE, that adoption of proposed zoning text amendment is exempt from the California Environmental Quality Act (CEQA) under CEQA Guidelines section 15061(b)(3) as it can be seen with certainty that adoption of the proposed zoning text amendment will not have a significant effect on the environment;
 2. FIND that the proposed zoning text amendment does not conflict with the County 2005-2020 General Plan;
 3. ADOPT the zoning ordinance regulating industrial hemp cultivation; and
 4. DIRECT staff to file a CEQA Notice of Exemption with the County Clerk.

III. EXECUTIVE SUMMARY

The Department of Conservation and Development has drafted an ordinance regulating the cultivation of industrial hemp. The proposed zoning ordinance would regulate industrial hemp cultivation by allowing industrial hemp cultivation in certain zoning districts with a land use permit. Industrial hemp is generally defined as the *Cannabis sativa* L. plant with a tetrahydrocannabinol (THC) concentration of 0.3% or less.

The ordinance is intended to address potential impacts from industrial hemp cultivation, including light pollution, odor, and need for heightened security. The required conditions of a land use permit issued under this ordinance would mitigate these potential impacts and provide the County with an enforcement mechanism in the event a permittee fails to conform to the required standards.

Under the proposed ordinance, a land use permit to cultivate industrial hemp may only be issued for cultivation on a lot in an agricultural zoning district located within the boundaries of the East Contra Costa Irrigation District, the Byron-Bethany Irrigation District, or the East Contra Costa County Groundwater Subbasin. The ordinance would establish different requirements and operational standards for indoor and outdoor cultivation.

A land use permit issued under the proposed ordinance would have an initial term of

five years. A permit could be renewed if the permittee has complied with all applicable regulations and industrial hemp cultivation is authorized in Contra Costa County at the time the renewal request is made. The term of a renewed permit would last until the permit is revoked. Generally, land use permits do not expire after a set term because they run with the land. Staff believes that an initial term of five years, with the opportunity for renewal, is appropriate here given the potential for significant impacts to neighbors and the community. If a permittee has not complied with permit conditions or the standards included in the ordinance, or if the industrial hemp cultivation is no longer authorized in the County, a request for renewal may be denied. As opposed to building construction or other development, the initial investment in an annual agricultural crop is substantially less and generally recoverable each year. Moreover, the value of agricultural land is not diminished if a land use permit for industrial hemp cultivation is not renewed as the land can be utilized for other agricultural uses. Accordingly, staff recommends an initial term of five years for land use permits issued under the proposed ordinance.

In addition to the zoning ordinance, the County Agricultural Department has also prepared an ordinance (Attachment 2) amending Title 5 of the County Ordinance Code that would establish standards for cultivating industrial hemp to require a person to obtain a permit from the Contra Costa County Agricultural Commissioner, in addition to all other required County and State permits and registrations prior to cultivation. Staff believes that the two ordinances, together, would provide appropriate regulation of industrial hemp cultivation.

Federal and State Law

In December 2018, the Agriculture Improvement Act of 2018 (the 2018 Farm Bill), was signed into law, authorizing hemp cultivation more broadly than previously allowed by removing hemp from Schedule I of the federal Controlled Substances Act.

Under state law, industrial hemp is not subject to the same regulatory provisions as cannabis. Health and Safety Code section 11018.5(b) exempts industrial hemp from regulation under the Medicinal and Adult-Use Cannabis Regulation and Safety Act (Business and Professions Code, § 26000 et seq.). Accordingly, the County's cannabis regulation ordinance, Chapter 88-28 of the County Ordinance Code, does not regulate the cultivation of industrial hemp within the unincorporated areas of Contra Costa County.

The methods for distinguishing industrial hemp (the non-intoxicating Cannabis sativa

L. plant) from cannabis (the psychotropic version of the plant) are evolving. Industrial hemp and cannabis are derivatives of the same plant, but industrial hemp is distinguished from cannabis by the amount of tetrahydrocannabinol (THC), the psychoactive chemical in the plant. If the plant has a concentration of 0.3% THC or less, it is categorized as industrial hemp. Industrial hemp and cannabis thus may be difficult to distinguish without a chemical analysis for the presence of THC content. THC levels are difficult to test reliably until the plant is close to maturity and ready for harvest. Testing is time sensitive, and it is important to get results in a timely manner. The similarities in the two types of plants present challenges for law enforcement and code enforcement when determining whether a cultivation site complies with applicable law, including Ordinance Code chapter 88-28, or has paid required taxes.

Failure to adopt the proposed ordinances or similar regulations will leave industrial hemp cultivation insufficiently regulated and may continue to result in problems with enforcement. Allowing more industrial hemp registration without proper regulation may also create incompatibility issues with approved land uses and licensed cannabis crops.

IV. BACKGROUND

On November 17, 2020, the Board of Supervisors adopted Ordinance No. 2020-28, an urgency interim ordinance that established a moratorium on the cultivation and processing of industrial hemp. On December 15, 2020, the Board of Supervisors adopted Ordinance No. 2020-30, an urgency interim ordinance that extended the moratorium through March 10, 2021. On March 9, 2021, the Board of Supervisors adopted Ordinance No. 2021-10, which extended the temporary moratorium on industrial hemp cultivation through September 30, 2021, to allow County staff time to continue developing and to finalize reasonable industrial hemp regulations.

Under the current urgency interim ordinance (Attachment 3), no person or entity, including any established agricultural research institution, may grow or process industrial hemp for any purpose within the unincorporated area of Contra Costa County. No County permit, registration, or approval of any type will be issued for industrial hemp cultivation or processing, and no County building permit or approval of any type will be issued for any structure used or intended to be used for industrial hemp cultivation. However, subject to specified conditions, a cultivator with an active registration with the Agricultural Commissioner may continue to cultivate industrial hemp under the current interim ordinance.

Under Food and Agricultural Code sections 81003 and 81004, before cultivation, a commercial grower or seed breeder of industrial hemp must register with the County Agricultural Commissioner. In 2020, the Contra Costa County Agricultural Commissioner registered five commercial industrial hemp growers in the unincorporated areas of Contra Costa County: US4GM (southeast corner of Orwood Tract in Knightsen), Pro Tree Nursery (4425 Sellers Avenue in Brentwood), Terpene Belt Farms (corner of Herdlyn Road and Byron Hwy in Byron), US Phoenix Management Inc. (4725 and 4835 Tranquility Bay Road in Knightsen), and Yi Feng Huang (1750 Arabian Lane in Brentwood). If the proposed ordinances are adopted, only those cultivators that meet the requirements of this proposed zoning ordinance would be able to apply for a land use permit.

V. ENVIRONMENTAL REVIEW

Under CEQA Guidelines Section 15061(b)(3), the proposed Zoning Text Amendment to adopt a County Industrial Hemp Cultivation Ordinance is exempt from CEQA because it can be seen with certainty that there is no possibility that adoption of the industrial hemp ordinance could have a significant effect on the environment. The proposed Industrial Hemp Cultivation Ordinance will help mitigate any potential impacts caused by the cultivation of industrial hemp, and therefore will reduce impacts on the environment.

VI. INDUSTRIAL HEMP CULTIVATION ZONING TEXT AMENDMENT

This proposed Industrial Hemp Cultivation Zoning Ordinance (Attachment 1) will add Chapter 88-34 to the County Ordinance Code to regulate industrial hemp cultivation by allowing industrial hemp cultivation in certain zoning districts within the unincorporated areas of Contra Costa County with a Land Use Permit.

A. Location Requirements: Industrial hemp may be cultivated on any lot in an agricultural district (A-2, A-3, A-4, A-20, A-40, and A-80) located within the boundaries of any of the following:

- The East Contra Costa Irrigation District.
- The Byron-Bethany Irrigation District.
- The East Contra Costa County Groundwater Subbasin.

The map attached to this report (Attachment 4) shows the area where industrial hemp cultivation may be permitted under this ordinance.

Lastly, industrial hemp may not be cultivated outdoors at any property within the urban limit line or within one mile beyond the urban limit line.

B. Indoor/Outdoor Cultivation:

- “Indoor cultivation” is defined as cultivation of industrial hemp within a permanent building using exclusively artificial light or within a greenhouse. Indoor cultivation does not include cultivation of industrial hemp within a hoop house or other hoop structure.
- “Outdoor cultivation” is defined as any cultivation of industrial hemp that is not indoor cultivation. Outdoor cultivation includes cultivation of industrial hemp within a hoop structure.

C. Minimum Lot Size for Outdoor Cultivation: The minimum lot size on which to cultivate industrial hemp outdoors is five acres. Lots that are adjacent and under common ownership or control, with an aggregate size of five acres or larger, satisfy the acreage requirement of this subsection.

D. Setback Requirements:

- Indoor Cultivation: A structure in which industrial hemp is cultivated must comply with all requirements relating to yards (front setbacks, side, and rear) that generally apply to structures in the zoning district in which the property is located.
- Outdoor Cultivation: The cultivation area must be set back a minimum of 25-feet from any boundary line, except that no setback is required from a boundary line that abuts a property that is owned, managed, or otherwise under the control of the permittee. However, the cultivation area must be set back a minimum of 250-feet from any boundary line that abuts a residential land use district.

E. Land Use Permit Conditions of Approval: A land use permit issued under this ordinance will include conditions of approval to mitigate potential impacts of industrial hemp cultivation:

- Security: To mitigate possible theft of industrial hemp plants, security measures will be enforced that are inclusive of the overall process, such as how industrial

hemp will be received, stored, handled, cultivated, harvested, transported, and secured.

- Lighting: To mitigate lighting pollution, all industrial hemp cultivation lighting must be fully shielded, downward casting, and not spill over onto structures, other properties, or the night sky. Light will not be permitted to escape at a level that is visible from neighboring properties between sunset and sunrise.
 - Odor: To mitigate strong odors common to the industrial hemp plant, indoor cultivation will be conducted in a manner that prevents odors from being detected offsite, and outdoor cultivation will require implementation of a previously approved odor control plan.
 - Compliance Review: A compliance review may be performed at anytime during the term of a Land Use Permit to determine whether a permittee is complying with the permit's terms and conditions, the requirements of this ordinance, and all applicable laws and regulations.
- F. Permit Term and Renewal: A Land Use Permit issued under this ordinance has an initial term of five years. A permit may be renewed if the permittee remains compliant with all of the terms of the permit being renewed, and there are no grounds to suspend or revoke the permit, and the permittee maintains a current permit issued by the County Agricultural Commissioner. The term of a renewed permit lasts until the permit is revoked.
- G. Fiscal Impact: All applicable fees and costs charged by the County are borne of the project proponent, including but not limited to the application fee, all fees and costs required to complete CEQA environmental review, and all compliance review fees and deposits. The Land Use Permit will require payment of all fees for compliance reviews and inspections of the operation.

VII. STAFF ANALYSIS

- A. General Plan Consistency: The areas in which industrial hemp cultivation can be proposed to be located fall within several General Plan land use designations: Agricultural Lands (AL); Agricultural Core (AC); Delta Recreational and Resources (DR); Public and Semi-Public (PS); Parks and Recreation (PR); Open Space (OS); and Water (WA).

Uses that are allowed in the Agricultural Lands (AL), Agricultural Core (AC), and the Delta Recreational and Resources (DR) designations include agricultural production and related activities. The proposed use of industrial hemp cultivation for commercial distribution is a consistent agricultural use as industrial hemp is considered an agricultural product. Therefore, the proposed zoning ordinance is consistent with the intent and purpose of the AL, AC, and DR land use designations.

Uses that are allowed in the Public and Semi-Public (PS), Parks and Recreation (PR), Open Space (OS), and Water (WA) land use designations are normally associated with public use and not readily recognized as consistent with private agricultural production. However, all agricultural zoning districts can be found to be consistent with these land use designations per the County General Plan. Therefore, if the area where the cultivation of industrial hemp is proposed to be located is also in an area that is zoned agricultural and located in the areas permitted under this proposed zoning ordinance, then it can be found to be consistent with the intent and purpose of the PS, PR, OS, and WA land use designations.

The Land Use Element of the County General Plan also identifies policies for specific geographic areas of the unincorporated County. These specific area policies focus on providing additional policies that pertain to the unique characteristics and needs of each identified area, which includes East County. The East County Area contains Policies 3-47 through 3-77. The proposed zoning ordinance does not conflict with the specific policies designated for the East County Area.

- B. Zoning Compliancy: The zoning districts in which industrial hemp cultivation could be located includes all agricultural (A-) zoning districts, with approval of a land use permit. The agricultural zoning districts are intended to provide and protect areas for agricultural uses. The cultivation of industrial hemp is consistent with the intent and purpose of the agricultural zoning districts as industrial hemp is an agricultural product, and to plant, grow, breed, harvest, dry, cure, and trim industrial hemp plants are related agricultural activities. Therefore, the proposed zoning ordinance is consistent with the intent and purpose of all of the agricultural zoning districts after the granting of a land use permit.

In addition to creation of an Industrial Hemp Cultivation Ordinance, the zoning text amendment involves modifying the uses requiring a land use permit for each of the agricultural zoning districts: General Agricultural (A-2); Heavy Agricultural (A-3); Agricultural Preserve (A-4); Exclusive Agricultural (A-20); Exclusive Agricultural (A-40); and Exclusive Agricultural (A-80).

- C. Appropriateness of Use: If the proposed zoning ordinance is approved, the County will be able to mitigate the potential impacts caused by the cultivation of industrial hemp, and provide the County with the proper authority to enforce the regulations imposed on industrial hemp cultivation through the permit process.

The proposed requirement that industrial hemp cultivation be permissable only in agricultural zoning districts is appropriate because hemp cultivation is an intensive agricultural activity with more potential impacts to neighbors than most other crops that can be appropriate within agricultural areas but would cause greater impacts if allowed in other zoning districts. The requirement of a minimum of a 5-acre lot ensures there will be sufficient space to viably accommodate this use.

The proposed zoning ordinance would limit cultivation of industrial hemp to areas within the boundaries of the East Contra Costa Irrigation District (ECCID), the Byron-Bethany Irrigation District (BBID), or the East Contra Costa County Groundwater Subbasin (ECCCGS). This limitation is appropriate because industrial hemp cultivation requires substantial irrigation water, and this water should come from sustainable, adequately monitored and managed sources. ECCID and BBID are the only two irrigation districts that operate in the County. The ECCCGS is the only ground water basin in the County that supports cultivation to a significant degree and that will be monitored pursuant to a Groundwater Sustainability Plan as required by the Sustainable Groundwater Management Act adopted by the state in 2014.

The proposed ordinance also focuses on the potential impacts of industrial hemp cultivation such as: light pollution, odor, and possible theft of hemp plants. The requirements that pertain to these potential impacts will reduce potential negative impact on neighboring properties when executed. The ordinance also has different requirements for indoor and outdoor cultivation. The requirement for outdoor cultivation to be at least 1-mile outside the Urban Limit Line, and to have greater setbacks from a boundary line that abuts a residential zoning district, again will reduce potential negative impact on neighboring properties. To ensure these requirements remain in effect, the County reserves the right to suspend or revoke a permit for industrial hemp cultivation if not properly following the conditions of approval of the land use permit, or any County, State, or Federal regulations, under the provisions of this ordinance.

The proposed zoning ordinance will be consistent with the applicable General Plan land use designations and zoning districts. Lastly, adopting an ordinance that

requires issuance of a land use permit would allow the County to impose conditions of approval in a manner that enhances public safety and deters potential nuisances as described.

- D. Delta: The area in which industrial hemp may be cultivated is located within the Primary and Secondary Zones of the Delta Protection Act with the Delta Protection Commission (DPC), and also within the jurisdiction of the Delta Stewardship Council's (DSC) Delta Plan. As such, issuance of a land use permit under this proposed zoning ordinance will include determining compatibility with the DSC Delta Plan.

VIII. CONCLUSION

Staff has determined that the proposed Zoning Text Amendment regulating the cultivation of industrial hemp is consistent with the County General Plan and all applicable State and Federal laws and regulations. Therefore, staff recommends the County Planning Commission adopt a motion recommending that the Board of Supervisors adopt the proposed Zoning Text Amendment.

Attachments:

1. DRAFT Industrial Hemp Cultivation Ordinance
2. DRAFT Industrial Hemp Permits and Cultivation Ordinance
3. Current Urgency Interim Ordinance No. 2021-10
4. Map showing where industrial hemp can be cultivated
5. County Planning Commission Power Point Presentation

ATTACHMENT 1

DRAFT Industrial Hemp Cultivation
Ordinance

ORDINANCE NO. 2021-XX DRAFT

INDUSTRIAL HEMP CULTIVATION

The Contra Costa County Board of Supervisors ordains as follows (omitting the parenthetical footnotes from the official text of the enacted or amended provisions of the County Ordinance Code):

SECTION I. SUMMARY. This ordinance adds Chapter 88-34 to the County Ordinance Code to regulate industrial hemp cultivation by allowing industrial hemp cultivation in certain zoning districts with a land use permit.

SECTION II. Chapter 88-34 is added to the County Ordinance Code, to read:

**Chapter 88-34
INDUSTRIAL HEMP CULTIVATION**

**Article 88-34.2
General**

88-34.202 Purpose. The purpose of this chapter is to regulate industrial hemp cultivation by requiring all persons engaged in industrial hemp cultivation to obtain a land use permit from the Department of Conservation and Development. The requirements of this chapter are in addition to all other applicable requirements of this code and all applicable State and Federal laws and regulations. (Ord. 2021-XX § 2.)

88-34.204 Definitions. For purposes of this chapter, the following words and phrases have the following meanings:

- (a) “Cultivation” means any activity involving the propagation, planting, growing, breeding, harvesting, drying, curing, grading, trimming, or other development of industrial hemp plants or propagative plant material, and includes cultivation for research purposes.
- (b) “Cultivation area” means the area on a lot where industrial hemp is propagated, planted, grown, bred, harvested, dried, cured, graded, trimmed, or developed.
- (c) “Department” means the Contra Costa County Department of Conservation and Development.
- (d) “Greenhouse” means a structure that is used for the indoor propagation of plants; has permanent structural elements, such as footings or foundations; is constructed with a translucent roof or walls; and is served by utilities such as electrical, natural gas, or plumbing. The term “greenhouse” includes structures commonly known as “hothouses.”

- (e) “Hoop structure” means a structure consisting of a lightweight metal, plastic, or wooden frame, or a series of hoops, that is covered by an impermeable, removable layer of plastic or polyethylene film used to protect plants grown in the soil or in containers upon the soil. A hoop structure has no permanent structural elements, such as footings, foundations, plumbing, or electrical wiring. The term “hoop structure” includes structures commonly known as “berry hoops” or “hoop houses.”
- (f) “Indoor cultivation” means the cultivation of industrial hemp within a permanent building using exclusively artificial light or within a greenhouse. “Indoor cultivation” does not include cultivation of industrial hemp within a hoop structure.
- (g) “Industrial hemp” or “hemp” has the meaning set forth in Food and Agricultural Code Section 81000.
- (h) “Outdoor cultivation” means any cultivation of industrial hemp that is not indoor cultivation. “Outdoor cultivation” includes the cultivation of industrial hemp within a hoop structure. (Ord. 2021-XX § 2.)

Article 88-34.4
Permits

88-34.402 Land use permit–required. No person may cultivate industrial hemp in the unincorporated area of the County without first obtaining a land use permit as provided in this chapter. (Ord. 2021-XX § 2.)

88-34.404 Permit term.

- (a) A permit issued under this chapter has an initial term of five years.
- (b) A permit may be renewed following the initial five-year term, as set forth in Section 88-34.412. The term of a renewed permit lasts until the permit is revoked pursuant to Section 88-34.606. (Ord. 2021-XX § 2.)

88-34.406 Application. An application for a permit authorizing industrial hemp cultivation must be on a form approved by the director and contain all of the following information.

- (a) Proof of ownership of the property where the cultivation will be located. If the applicant is not the owner of the property where the cultivation will be located, the applicant must provide a notarized, written authorization from each owner of the property that is the subject of the application consenting to the application and the proposed industrial hemp cultivation on the subject property.

- (b) The address and assessor's parcel number of the property where the cultivation will be located.
- (c) A site plan identifying the location, dimensions, and boundaries of all proposed cultivation areas, taking into account space needed for ongoing care of plants, and a description of the proposed method of physically delineating those boundaries at the site.
- (d) An operating plan that includes all of the following information:
 - (1) An odor control plan that describes how the applicant will manage odors to minimize impacts to neighboring parcels.
 - (2) A security plan that establishes how the site proposed for cultivation will be secured to prevent theft and trespass.
 - (3) Details regarding how industrial hemp will be received, stored, handled, cultivated, harvested, transported, and secured to prevent theft and trespass. (Ord. 2021-XX § 2.)

88-34.408 Standards applicable to industrial hemp cultivation.

- (a) County Agricultural Commissioner Permit Required.
 - (1) Industrial hemp may not be cultivated under a permit issued under this chapter unless and until the permittee possesses a valid permit issued by the County Agricultural Commissioner pursuant to Chapter 512-4.
 - (2) Before cultivation, a permittee shall provide the Department a copy of the permit issued by the County Agricultural Commissioner. A permittee shall provide the Department a copy of each renewed Agricultural Commissioner permit within 30 days after that permit is renewed.
 - (3) All requirements of a permit issued under Chapter 512-4, including requirements for cultivation, sampling, laboratory testing, harvesting, and crop destruction, are incorporated as requirements of a permit issued under this chapter.
- (b) Location Requirements.
 - (1) Industrial hemp may be cultivated on any lot in an agricultural district (A-2, A-3, A-4, A-20, A-40, and A-80) located within the boundaries of any of the following:

- (A) The East Contra Costa Irrigation District.
 - (B) The Byron-Bethany Irrigation District.
 - (C) The East Contra Costa County Groundwater Subbasin.
- (2) Notwithstanding anything to the contrary in this chapter or elsewhere in this code, industrial hemp may not be cultivated outdoors at any property within the urban limit line established pursuant to Chapter 82-1 of this code or within one mile beyond the urban limit line.
- (c) **Minimum Lot Size for Outdoor Cultivation.** The minimum lot size on which to cultivate industrial hemp outdoors is five acres. Lots that are adjacent and under common ownership or control, with an aggregate size of five acres or larger, satisfy the acreage requirement of this subsection.
- (d) **Setback Requirements.**
- (1) For indoor cultivation, a structure in which industrial hemp is cultivated must comply with all requirements relating to yards (front setbacks, side, and rear) that generally apply to structures in the zoning district in which the property is located.
 - (2) For outdoor cultivation, the cultivation area is subject to the following setback requirements:
 - (A) Except as provided in subsection (B), the cultivation area shall be set back a minimum of 25 feet from any boundary line, except that no setback is required from a boundary line that abuts a property that is owned, managed, or otherwise under the control of the permittee.
 - (B) The cultivation area shall be set back a minimum of 250 feet from any boundary line that abuts a residential land use district.
- (e) **Generators.** Use of onsite generators is prohibited, except as a source of energy in an emergency.
- (f) **Lighting.** All industrial hemp cultivation lighting shall be fully shielded, downward casting, and not spill over onto structures, other properties, or the night sky. Light shall not escape at a level that is visible from neighboring properties between sunset and sunrise.

- (g) Odor. If indoor cultivation occurs on a property that is within the urban limit line established pursuant to Chapter 82-1 of this code or within one mile beyond the urban limit line, then the indoor cultivation shall be conducted in a manner that prevents odors from being detected offsite.
- (h) Compliance Review. The Department may perform a compliance review at any time during the term of a permit to determine whether a permittee is complying with the permit's terms and conditions, the requirements of this chapter, and all applicable laws and regulations. A permittee shall cooperate with the Department to complete the compliance review and must pay all applicable compliance review fees.
- (i) CEQA Compliance. The issuance of a permit under this chapter is a discretionary activity that is subject to environmental review under the California Environmental Quality Act (CEQA). A permit will not be issued under this chapter unless and until the County has completed all applicable CEQA environmental review. An applicant shall pay all costs that the County incurs to satisfy the requirements of CEQA. A permit issued under this chapter shall include appropriate measures to mitigate the impacts of industrial hemp cultivation, as determined by the County during CEQA environmental review.
- (j) Indemnity. As a condition of issuance of a permit under this chapter, an applicant shall be required to enter into an indemnification agreement with the County that requires the applicant to indemnify, defend (with counsel reasonably acceptable to the County), and hold harmless the County, its boards, commissions, officers, employees, and agents from any and all claims, costs, losses, actions, fees, liabilities, expenses, and damages arising from or related to the applicant's application for a land use permit, the County's discretionary approvals for the land use permit, the County's actions pursuant to CEQA and planning and zoning laws, and the cultivation of industrial hemp, regardless of when those liabilities accrue.
- (k) Notifications. A permittee shall provide written notice to the Department within five days after receiving any of the following from the Secretary of Food and Agriculture or the County Agricultural Commissioner: a notice of violation, a corrective action plan, a determination that the permittee is ineligible to participate in the State's industrial hemp program, or any other writing informing the permittee of any disciplinary action proposed to be taken or actually taken against the permittee. (Ord. No. 2021-XX, § 2.)

88-34.410 Permit conditions and issuance.

- (a) The County may include, in a permit issued under this chapter, reasonable conditions of approval related to the impacts of the industrial hemp cultivation.

- (b) All of the findings in Section 26-2.2008 and all of the following findings must be made before a permit is issued under this chapter:
- (1) The application for industrial hemp cultivation has been reviewed pursuant to all appropriate environmental laws and regulations, including the California Environmental Quality Act (CEQA).
 - (2) All mitigation measures identified by the County during CEQA environmental review are included as permit terms.
 - (3) A finding that the permit includes conditions to avoid adverse impacts to surrounding communities, neighborhoods, and neighboring parcels.
 - (4) The applicant has entered into an indemnity agreement that meets the requirements of Section 88-34.408(i).
 - (5) The applicant has paid all applicable fees and costs charged by the County and made all deposits required by the County, including but not limited to the application fee, all fees and costs required to complete CEQA environmental review, and all compliance review fees and deposits. The permit will require payment of all fees for compliance reviews and inspections of the operation. (Ord. No. 2021-XX, § 2.)

88-34.412 Permit renewal.

- (a) Eligibility for Renewal. A permit issued under this chapter may be renewed following an initial five-year term only if all of the following requirements are met as of the date the renewal application is made:
- (1) The permittee is in compliance with all of the terms of the permit being renewed, and there are no grounds to suspend or revoke the permit under this chapter or under Article 26-2.20.
 - (2) Industrial hemp cultivation is authorized by this code as of the date the renewal request is made.
- (b) Timing of Application. A permit renewal application must be submitted to the Department at least 180 days before the permit's current term expires.
- (c) Required Submittals. A permit renewal application must be made on forms provided by the Department. A permit renewal application must be submitted with all of the following:

- (1) A copy of the permit being renewed.
 - (2) A copy of the current or most-recent Agricultural Commissioner permit for the industrial hemp cultivation that is authorized under the permit being renewed.
 - (3) A copy of the original permit application.
 - (4) Any change to the information provided to the Department in the original permit application or in subsequent submittals.
 - (5) A copy of any environmental document that was certified or adopted for the permit.
- (d) Approval of Renewal Application.
- (1) A permit renewal application will be considered under the administrative procedure specified in Article 26-2.21.
 - (2) A permit renewal application will be approved by the zoning administrator if the zoning administrator determines all of the following:
 - (A) The permit renewal request and all required submittals were timely received.
 - (B) The permit is eligible for renewal under this Section 88-34.412.
 - (C) The applicant has paid all applicable fees required by the County, and has made all deposits required by the County, including but not limited to a renewal application fee and a condition compliance fee deposit. (Ord. No. 2021-XX, § 2.)

**Article 88-34.6
Enforcement**

88-34.602 Enforcement. The County may enforce this chapter by any remedy allowed under this code and any other remedy allowed by law. (Ord. No. 2021-XX, § 2.)

88-34.604 Modification, suspension, and revocation. A permit issued under this chapter may be modified, suspended, or revoked in the same manner as other conditional use permits under Article 26-2.20. (Ord. No. 2021-XX, § 2.)

88-34.606 Grounds for suspension or revocation. In addition to the grounds for permit suspension or revocation set forth in Article 26-2.20, a permit issued under this chapter may be suspended or revoked on any of the following grounds:

- (a) A permittee has not complied with one or more of the conditions of the permit issued under this chapter.
- (b) A permit was issued under this chapter based on any false material information, written or oral, given by the permittee.
- (c) A permittee has not complied with the requirements of this chapter, any other applicable requirements of this code, or any requirements of State or Federal laws or regulations.
- (d) A permittee's permit issued by the Agricultural Commissioner under Chapter 512-4 has been suspended or revoked.
- (e) A permittee has not been issued a permit by the Agricultural Commissioner under Chapter 512-4 in the preceding five-year period.
- (f) A permittee is ineligible to participate in the State's industrial hemp program pursuant to Division 24 of the Food and Agricultural Code.
- (g) A permittee fails to pay any fee, or make any deposit, required by the County as a condition of permit issuance, including but not limited to all condition compliance fees and deposits required by the County. (Ord. No. 2021-XX, § 2.)

SECTION III. Section 26-2.2102 of the County Ordinance Code is amended to read:

26-2.2102 Decisions without public hearing. Unless otherwise required by this article, the zoning administrator may, without public hearing, decide applications for any of the following:

- (a) A variance permit pursuant to subsection (1) of Section 26-2.1204.
- (b) A minor subdivision pursuant to subsection (3) of Section 26-2.1204, including an application for improvement exceptions.
- (c) A small lot occupancy permit pursuant to subsection (c) of Section 82-10.002.
- (d) A wireless facility access permit pursuant to Chapter 88-24.
- (e) A short-term rental permit that does not meet one or more of the short-term rental regulations specified in Section 88-32.602.

- (f) An industrial hemp cultivation permit renewal pursuant to Section 88-34.412. (Ords. 2020-XX § 2, 2020-12 § 3, 2020-01 § 3, 2017-11 § 3, 2016-11 § 3, 2011-05 § 5, 95-51 § 3, 80-87 § 2: See Gov. C. § 65901.)

SECTION IV. EFFECTIVE DATE. This ordinance becomes effective 30 days after passage, and within 15 days after passage shall be published once with the names of supervisors voting for or against it in the East Bay Times, a newspaper published in this County.

PASSED on _____, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST: MONICA NINO,
Clerk of the Board of Supervisors
and County Administrator

Board Chair

By: _____
Deputy

[SEAL]

KCK:

ATTACHMENT 2

DRAFT Industrial Hemp Permits and
Cultivation Ordinance

ORDINANCE NO. 2021-__**DRAFT**

INDUSTRIAL HEMP PERMITS AND CULTIVATION

The Contra Costa County Board of Supervisors ordains as follows (omitting the parenthetical footnotes from the official text of the enacted or amended provisions of the County Ordinance Code):

SECTION I. SUMMARY. This ordinance adds Chapter 512-4 to the County Ordinance Code to require all persons desiring to engage in industrial hemp cultivation in the unincorporated areas of Contra Costa County to obtain a permit from the Contra Costa County Agricultural Commissioner in addition to all other required County and State permits and registrations, and to establish standards for cultivating industrial hemp.

SECTION II. Chapter 512-4 is added to the County Ordinance Code, to read:

Chapter 512-4
INDUSTRIAL HEMP PERMITS AND CULTIVATION

Article 512-4.2
General Provisions

512-4.202 Purpose. The purpose of this chapter is to regulate industrial hemp cultivation by requiring all persons engaged in industrial hemp cultivation to obtain a permit from the Contra Costa County Agricultural Commissioner in addition to all other licenses, permits, authorizations, and registrations required by the County and the State. (Ord. 2021-__, § 2.)

512-4.204 Definitions. For purposes of this chapter, the following terms have the following meanings:

- (a) “Cultivation” includes any activity involving the propagation, planting, growing, breeding, harvesting, drying, curing, grading, trimming, other development of industrial hemp plants or propagative plant material, and includes cultivation for research purposes.
- (b) “Established agricultural research institution” has the meaning set forth in Food and Agricultural Code section 81000(a)(4).
- (c) “Greenhouse” means a structure that is used for the indoor propagation of plants; has permanent structural elements, such as footings or foundations; is constructed with a translucent roof or walls; and is served by utilities such as electrical, natural gas, or plumbing. The term “greenhouse” includes structures commonly known as “hothouses.”
- (d) “Hoop structure” means a structure consisting of a lightweight metal, plastic, or wooden frame, or a series of hoops, that is covered by an impermeable, removable layer of plastic or polyethylene film used to protect plants grown in the soil or in containers upon the soil. A hoop structure has no permanent structural elements, such as footings, foundations, plumbing, or electrical wiring. The term “hoop structure” includes structures commonly known as “berry hoops” or “hoop houses.”

- (e) “Industrial hemp” or “hemp” has the meaning set forth in Food and Agricultural Code section 81000(a)(6).
- (f) “Male industrial hemp plant” means an industrial hemp plant that has male staminate flowers or is otherwise capable of producing pollen.
- (g) “Nursery stock” has the meaning set forth in Food and Agricultural Code section 5005. (Ord. 2021- __, § 2.)

Article 512-4.4 Industrial Hemp Permits

512-4.402 Permit requirement.

- (a) It is unlawful for any person to engage in industrial hemp cultivation without obtaining and maintaining an industrial hemp permit from the Agricultural Commissioner pursuant to this chapter.
- (b) The requirements of this chapter are in addition to all other applicable requirements of this code and all applicable state laws and regulations. Nothing in this chapter eliminates the requirement for a person engaged in industrial hemp cultivation to comply with all applicable county, state, and federal laws and regulations, and to obtain all other permits, approvals, registrations, and authorizations required by this code and by state and federal agencies. (Ord. 2021- __, § 2.)

512-4.404 Permit applications. An application for an industrial hemp permit shall be submitted to the Agricultural Commissioner on a form available from the Agricultural Commissioner and shall contain the following information:

- (a) Identifying information for applicant. The name, address, and telephone number for the applicant. If the applicant is an entity and not an individual, the term “applicant” means each person participating in the direction, control, or management of the entity.
- (b) Description of premises. The address and assessor’s parcel number(s) of the property upon which the proposed industrial hemp activity will be located.
- (c) Proof of ownership of premises. Proof of the applicant’s ownership of the premises on which the industrial hemp cultivation is to occur, or if the premises is rented or leased, written permission from the property owner containing the property owner’s notarized signature that authorizes the tenant or lessee to engage in industrial hemp cultivation at the site.
- (d) State industrial hemp registration. The applicant must satisfy the registration requirements in Food and Agricultural Code sections 81003, 81004, and 81004.5, as applicable.

- (e) Consent to inspections. The applicant must consent to inspections, sampling, and testing that may be conducted at the discretion of the Agricultural Commissioner.
- (f) Land use permit. A copy of the land use permit issued pursuant to Chapter 88-34 of this code authorizing the proposed industrial hemp cultivation, and all applications and materials submitted in support of issuance of the land use permit.
- (g) Certification. Certification, under penalty of perjury, that all the information contained in the application is true and correct. (Ord. 2021-__, § 2.)

512-4.408 Review of application.

- (a) The Agricultural Commissioner will review each application for an industrial hemp permit. The Agricultural Commissioner will deem the application incomplete if it does not contain all required information and documents, or if any required application fees have not been paid.
- (b) After reviewing a complete application for an industrial hemp permit, the Agricultural Commissioner will approve the application unless any of the following grounds for denial exist:
 - (1) The applicant has knowingly made a false statement of material fact or has knowingly omitted a material fact from the application.
 - (2) The proposed industrial hemp cultivation will not comply with the provisions of this chapter.
 - (3) The proposed industrial hemp cultivation will not comply with all State and local laws and regulations.
 - (4) The applicant has not obtained all required State registrations and local permits.
- (c) The decision of the Agricultural Commissioner to approve or deny a permit application is final. If the Agricultural Commissioner denies the application, the Agricultural Commissioner will specify in writing the reasons for denial of the application and notify the applicant of the decision. (Ord. 2021-__, § 2.)

512-4.410 Permit renewal.

- (a) A permit issued under this chapter expires one year from the date of its issuance.
- (b) An application for renewal must be filed with the Agricultural Commissioner at least seven calendar days before the permit expires. If any of the documentation or information supplied by the applicant pursuant to Section 512-4.404 has changed since the permit was issued, the applicant must submit updated information and documentation with the application for renewal. The Agricultural Commissioner will deem the application incomplete if it does not contain all required information and documents.

- (c) After reviewing a renewal application, the Agricultural Commissioner will approve the renewal application unless any of the following grounds for denial exist:
 - (1) Any of the grounds for denial under Section 512-4.408.
 - (2) The application is filed less than seven calendar days before the permit expires.
 - (3) The permit is revoked at the time of application.
- (d) The decision of the Agricultural Commissioner to approve or deny a permit renewal application is final. If the Agricultural Commissioner denies the application for renewal, the Agricultural Commissioner will specify in writing the reasons for denial of the application for renewal and notify the applicant of the decision.
- (e) If a renewal application is denied, an applicant may file a new permit application pursuant to Section 512-4.404. (Ord. 2021-__, § 2.)

512-4.412 Fees. An industrial hemp permit or a renewed industrial hemp permit will not be issued until all required fees are paid. (Ord. 2021-__, § 2.)

512-4.414 Permit nontransferable. An industrial hemp permit is not transferable and automatically terminates upon transfer of ownership. (Ord. 2021-__, § 2.)

Article 512-4.6 Cultivation Standards

512-4.602 Cultivation

- (a) An outdoor cultivation area may only be planted with female propagative plant material.
- (b) A permittee 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 permittee must remove and destroy the male industrial hemp plant within 72 hours after the permittee knew of the occurrence and in accordance with California Code of Regulations, Title 3, Section 4950.1.
- (c) Cultivation of male industrial hemp plants may only occur in a permanent building or a greenhouse. Cultivation of male industrial hemp plants in a hoop structure is prohibited.
- (d) The sale or transfer of nursery stock is prohibited.
- (e) Signs. All premises used for the cultivation of industrial hemp must have signs indicating that it is an industrial hemp cultivation site. The signs shall:
 - (1) be placed at all premises entry points, including each road, trail, footpath, walkway, and aisle;

- (2) be posted at all premises corners;
 - (3) have minimum dimensions of three feet by three feet;
 - (4) contain words that are clearly visible and readable to a person with normal vision from a distance of 25 feet;
 - (5) use letters and symbols that are of a color that sharply contrasts with their immediate background; and
 - (6) when a premises is adjacent to a public right-of-way, be posted at intervals not exceeding 600 feet along the border of the premises with the public right-of-way.
- (g) If industrial hemp is to be removed from a premises before harvest for any purpose, the permittee must notify the Agricultural Commissioner of the proposed removal a minimum of three calendar days before the removal. The notification must identify the number of hemp plants to be removed and the proposed destination of the hemp to be removed, and must include any additional information required by the Agricultural Commissioner. No industrial hemp may be removed from a premises before the required notification to the Agricultural Commissioner is made. (Ord. 2021-__, § 2.)

512-4.604 Destruction

- (a) A destruction plan must contain all information required by State industrial hemp laws and regulations, and all other information required by the Agricultural Commissioner, to ensure compliance with this chapter and this code.
- (b) No industrial hemp plant may be destroyed before the Agricultural Commissioner's review and approval of the destruction plan. The Agricultural Commissioner may require one or more inspections before and after destruction, and may require other methods of verifying compliance with an approved destruction plan. (Ord. 2021-__, § 2.)

512-4.606 Cultivation of industrial hemp for research

- (a) An established agricultural research institution wishing to grow industrial hemp for research purposes in the County must have a permit issued by the Agricultural Commissioner.
- (b) The cultivation of industrial hemp by an established agricultural research institution for research or educational purposes is:
 - (1) Subject to the registration requirements imposed by the California Department of Food and Agriculture; and
 - (2) Limited to a total of one acre per permit holder within the County. (Ord. 2021-__, § 2.)

**Article 512-4.8
Administration**

512-4.802 Fees

- (a) The Board of Supervisors may establish a schedule of fees for services provided under this chapter.
- (b) 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, pursuant to Food and Agricultural Code section 81005. (Ord. 2021-__, § 2.)

512-4.804 Records. A permittee, upon request, shall provide the Agricultural Commissioner with copies of records that the Agricultural Commissioner requires to verify the permittee's compliance with this chapter and other applicable requirements of this code, as well as federal and State laws and regulations. (Ord. 2021-__, § 2.)

512-4.806 Report of theft and vandalism. A permittee must report any theft, vandalism, or other criminal or potentially criminal activity occurring on a parcel on which the permittee is cultivating industrial hemp to the Contra Costa County Sheriff within 24 hours after the permittee's knowledge of the incident, and must report the incident to the Agricultural Commissioner within five days after the permittee's knowledge of the incident. (Ord. 2021- , §2.)

**Article 512-4.10
Permit Enforcement**

512-4.1002 Enforcement. The County may enforce this chapter by any remedy allowed under this code, including permit revocation and administrative fines pursuant to Chapter 14-12 of this code, and any other remedy allowed by law. (Ord. 2021-__, § 2.)

512-4.1004 Permit revocation.

- (a) Grounds for revocation. An industrial hemp permit may be revoked on any of the following grounds:
 - (1) One or more of the grounds for denial of an industrial hemp permit under Section 512-4.408 existed either when the permit application was made or before the industrial hemp permit was issued.
 - (2) Any violation of this chapter.
 - (3) Any violation of State or local laws or regulations.
 - (4) The industrial hemp permit was transferred in violation of Section 512-4.414.
- (b) Notice of revocation hearing. If any grounds for revocation exist, the Agricultural Commissioner may issue a notice of revocation hearing. A written notice of revocation

hearing will be served on the permittee by either personal service or regular United States mail and will include all of the following information:

- (1) The date of the violation.
 - (2) The address or other description of the location where the violation occurred.
 - (3) The grounds for revocation.
 - (4) The date of the revocation hearing before the Agricultural Commissioner.
- (c) Revocation hearing. An industrial hemp permit may be revoked by the Agricultural Commissioner after a revocation hearing. At the hearing, the permittee will be given the opportunity to testify and to present evidence concerning the notice of revocation hearing. After considering the testimony and evidence submitted at the hearing, the Agricultural Commissioner will issue a written decision to revoke or not revoke the industrial hemp permit and will list in the decision the reason or reasons for the decision. The written decision will be served by either personal service or regular United States mail.
- (d) Revocation appeal. The decision of the Agricultural Commissioner to revoke an industrial hemp permit is appealable to the board of supervisors under Chapter 14-4.
- (e) Final order. The industrial hemp permit revocation becomes a final administrative order at one of the following times:
- (1) On the date of the revocation hearing, if the permittee fails to appear at a scheduled revocation hearing.
 - (2) On the date the Agricultural Commissioner's decision is served, if the permittee fails to file a written appeal to the board of supervisors within the time specified.
 - (3) On the date of the appeal hearing, if the permittee fails to appear at a scheduled appeal hearing before the board of supervisors.
 - (4) On the date of the decision by the board of supervisors, if the permittee appears at a scheduled appeal hearing before the board of supervisors.
- (f) If a permit is revoked under this section, the permittee may file a new permit application pursuant to Section 512-4.404, after remedying the grounds upon which the permit was revoked. (Ord. 2021-__, § 2.)

SECTION III. Section 14-12.002 of the County Ordinance Code is amended to read:

14-12.002 Applicability and Authorization.

- (a) This chapter provides for administrative fines, enforcement, and collection remedies that the County may pursue to address any violation of the following provisions of the Contra Costa County Ordinance Code:
 - (1) Division 413 and Chapters 414-4, 414-6, 416-14, 418-2, 418-6, 418-12, 420-2, 420-6, and 450-6 (environmental health regulations).
 - (2) Division 445 (smoking and tobacco regulations).
 - (3) Title 7 (building regulations).
 - (4) Title 8 (zoning regulations).
 - (5) Chapter 512-4 (industrial hemp).
- (b) Remedies under this chapter are in addition to any other remedy allowed by this code or applicable law. The use of this chapter is at the sole discretion of the director.
- (c) This chapter is authorized by California Government Code section 53069.4. (Ords. 2021-___ § 3, 2006-66 § 8, 2003-01 § 6, 2002-47 § 3, 2000-21 § 2.)

SECTION IV. Section 14-12.004 of the County Ordinance Code is amended to read:

14-12.004 Definitions. For purposes of this chapter, the following words and phrases have the following meanings:

- (a) “Director” includes the following officials and their designees:
 - (1) Director of Health Services.
 - (2) Director of Community Development.
 - (3) Director of Building Inspection (County Building Official).
 - (4) Agricultural Commissioner.
- (b) “Effective date” means the date by which a violation must be corrected, as specified in a notice of violation.
- (c) “Hearing Examiner” means the following officials:
 - (1) Director of Environmental Health.

- (2) Public Health Director.
 - (2) Director of Building Inspection.
 - (3) Zoning Administrator.
 - (4) Agricultural Commissioner.
- (d) “Owner” means the owner of property upon which a violation of this chapter exists, the occupant of that property, or any other party responsible for the violation.
- (e) “Service date” means the date a notice or decision is served in accordance with section 14-12.018. (Ords. 2021-___ § 4, 2003-01 § 7, 2002-47 § 3, 2000-21 § 2.)

SECTION V. Section 14-12.008 of the County Ordinance Code is amended to read:

14-12.008 Appeals.

- (a) Any person upon whom an administrative fine is imposed by the director may appeal the fine pursuant to the procedures set forth in this section. The appellant must file a written appeal with the director within 15 calendar days of the service date of the notice of fine. The written appeal must contain:
- (1) A brief statement setting forth the interest the appealing party has in the matter relating to the imposition of the penalty; and
 - (2) A brief statement of the material facts that the appellant claims supports his or her contention that no administrative penalty should be imposed or that an administrative penalty of a different amount is warranted.
- (b) Notice of the appeal hearing will be served as specified in section 14-12.018 and will set the appeal hearing no sooner than 20 days and no later than 45 days following the service date of the notice of appeal hearing.
- (c) An appeal of an administrative fine imposed for violations of this code will be heard by the following hearing examiners:
- (1) Director of Environmental Health for violations of Division 413 and Chapters 414-4, 414-6, 416-14, 418-2, 418-6, 418-12, 420-2, 420-6, and 450-6.
 - (2) Public Health Director for violations of Division 445.
 - (3) Director of Building Inspection for violations of Title 7.
 - (4) Zoning Administrator for violations of Title 8.
 - (5) Agricultural Commissioner for violations of Chapter 512-4.

- (d) At the hearing, the appellant will be given the opportunity to testify and to present evidence.
- (e) After considering the testimony and evidence submitted at the hearing, or after the appellant has failed to appear at the hearing, the hearing examiner will issue a written decision to uphold, modify, or cancel the administrative fine and will list in the decision the reason or reasons for that decision. The decision will be served as specified in section 14-12.018. (Ords. 2021-___ § 5, 2006-66 § 8, 2003-01 § 8, 2002-47 § 3, 2000-21 § 2.)

SECTION VI. EFFECTIVE DATE. This ordinance becomes effective 30 days after passage, and within 15 days after passage shall be published once with the names of supervisors voting for or against it in the East Bay Times, a newspaper published in this County.

PASSED ON _____, 2021, by the following vote:

AYES:
 NOES:
 ABSENT:
 ABSTAIN:

ATTEST:	MONICA NINO, Clerk of the Board of Supervisors and County Administrator	_____ Board Chair
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By:	_____ Deputy	[SEAL]
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HMS:

ATTACHMENT 3

Current Urgency Interim

Ordinance No. 2021-10

ORDINANCE NO. 2021-10

AN URGENCY INTERIM ORDINANCE EXTENDING A MORATORIUM ON
INDUSTRIAL HEMP CULTIVATION AND PROCESSING

The Contra Costa County Board of Supervisors ordains as follows:

Section 1. Purpose and Findings.

- A. The purpose of this urgency ordinance is to extend a temporary moratorium on industrial hemp cultivation and processing for commercial purposes while the County considers developing reasonable regulations to mitigate the impacts and regulate the location of the cultivation of industrial hemp, which is generally defined as the *Cannabis sativa L.* plant with a tetrahydrocannabinol (THC) concentration of 0.3% or less.
- B. In December 2018, H.R. 2, the Agriculture Improvement Act of 2018 (the 2018 Farm Bill), was signed into law, authorizing hemp cultivation more broadly than previously allowed by removing hemp from Schedule I of the federal Controlled Substances Act.
- C. The 2018 Farm Bill delegates to states and Indian tribes the authority to regulate and limit the production of hemp within their borders. It requires states to submit regulatory plans to the U.S. Department of Agriculture (USDA) for review and approval. The California Department of Food and Agriculture submitted a proposed state regulatory plan to the USDA for review and approval. California's proposed state regulatory plan is under review by the USDA.
- D. Under Food and Agricultural Code sections 81003 and 81004, before cultivation, a commercial grower or seed breeder of industrial hemp must register with the county agricultural commissioner. In 2020, the Contra Costa County Agricultural Commissioner registered five commercial industrial hemp growers in the unincorporated areas of Contra Costa County. A registration is valid for one year from the date of issuance.
- E. Under state law, industrial hemp is not subject to the same regulatory provisions as cannabis. Health and Safety Code section 11018.5(b) exempts industrial hemp from regulation under the Medicinal and Adult-Use Cannabis Regulation and Safety Act (Business and Professions Code, § 26000 et seq.). Accordingly, the County's cannabis regulation ordinance, Chapter 88-28 of the County Ordinance Code, does not regulate the cultivation of industrial hemp within the unincorporated areas of Contra Costa County.
- F. The methods for distinguishing industrial hemp (the non-intoxicating *Cannabis sativa L.* plant) from cannabis (the psychotropic version of the plant) are evolving. Industrial hemp and cannabis are derivatives of the same plant, *Cannabis sativa L.* Under state law, industrial hemp is distinguished from cannabis by the amount of tetrahydrocannabinol (THC), the psychoactive chemical in the plant. If the plant has a concentration of 0.3%

THC or less, it is categorized as industrial hemp. Industrial hemp and cannabis thus may be difficult to distinguish without a chemical analysis for the presence of THC content. THC levels are difficult to test reliably until the plant is close to maturity and ready for harvest. Testing is time sensitive, and it is difficult to perform and obtain results in a timely manner. The similarities in the two types of plants present challenges for law enforcement and code enforcement when determining whether a cultivation site complies with applicable law, including Ordinance Code chapter 88-28, or has paid required taxes.

- G. Industrial hemp can serve as a host to corn earworms and other insects. The pesticides that have been approved for industrial hemp may not provide the range of control needed to prevent movement of these pests from industrial hemp to nearby crops.
- H. Without local regulation, the cultivation of industrial hemp and cannabis may create incompatibility issues due to cross-pollination if male industrial hemp plants are grown or allowed to be grown close to cannabis.
- I. The cultivation of industrial hemp without local regulations may interfere with licensed and permitted cannabis cultivation operations under Ordinance Code chapter 88-28, particularly with respect to pollen drift and pest contamination.
- J. On November 17, 2020, the Board of Supervisors adopted Ordinance No. 2020-28, an urgency interim ordinance that established a moratorium on the cultivation and processing of industrial hemp. On December 15, 2020, the Board of Supervisors adopted Ordinance No. 2020-30, an urgency interim ordinance that continued a moratorium on the cultivation and processing of industrial hemp.
- K. An extended moratorium on the cultivation and processing of industrial hemp is urgent and necessary to give the County time to continue studying and determining how best to regulate the cultivation of industrial hemp and consider appropriate zoning districts and regulatory standards, including location requirements, security standards, water supply requirements, and size limits.
- L. Section 3 of this ordinance authorizes existing industrial hemp growers that meet specified criteria to continue cultivating industrial hemp at their existing sites. Allowing cultivation at existing sites under the location criteria and restrictions specified in Section 3 is appropriate because this restricted cultivation will result in minimal odor and lighting impacts on residential properties.

Section 2. Definitions. For purposes of this ordinance, the following terms have the following meanings:

- (a) “Established agricultural research institution” has the meaning set forth in Food and Agricultural Code section 81000(a)(4).

- (b) “Industrial hemp” has the meaning set forth in Food and Agricultural Code section 81000(a)(6).
- (c) “Nursery stock” has the meaning set forth in Food and Agricultural Code section 5005.

Section 3. Cultivation and Processing of Industrial Hemp Prohibited. The moratorium established by Ordinance No. 2020-28 and continued by Ordinance No. 2020-30 is extended through March 9, 2022.

- (a) During the term of this interim ordinance, including any extensions:
 - (1) No person or entity, including any established agricultural research institution, may grow or process industrial hemp for any purpose within the unincorporated area of Contra Costa County.
 - (2) No County permit, registration, or approval of any type shall be issued for industrial hemp cultivation or processing.
 - (3) No County building permit or approval of any type shall be issued for a greenhouse, hoophouse, or any other structure, used or intended to be used for industrial hemp cultivation or processing.
- (b) During the term of this interim ordinance, including any extensions:
 - (1) The Contra Costa County Agricultural Commissioner will not issue a registration to any applicant pursuant to Food and Agricultural Code sections 81003 and 81004, or otherwise.
 - (2) The Contra Costa County Agricultural Commissioner will not renew the registration of any applicant pursuant to Food and Agricultural Code sections 81003 and 81004, or otherwise.
- (c) Notwithstanding subdivisions (a) and (b) of this section, growers of industrial hemp that had, as of the adoption date of Ordinance No. 2020-28, an active registration issued by the County Agricultural Commissioner may grow industrial hemp consistent with, and subject to, the terms set forth in that registration, including, but not limited to, the location and size of the registered grow. Cultivation allowed under this Section 3(c) is allowed only for the term of that registration. The registration is not subject to renewal except as otherwise provided in Section 4 of this ordinance.
- (d) Cultivation or processing of industrial hemp in violation of this interim ordinance is a public nuisance. This ordinance may be enforced by any remedy allowed under the Contra Costa County Ordinance Code and any other remedy allowed by law.

Section 4. Exemptions.

- (a) The prohibitions set forth in Section 3 do not apply to a grower of industrial hemp that has an active registration issued by the County Agricultural Commissioner as long as the grower meets either of the following criteria:
 - (1) The grower’s existing cultivation site is located more than one mile outside the Urban Limit Line.
 - (2) The grower’s existing cultivation site is located within an existing, legally established greenhouse. A hoop house is not a greenhouse.

- (b) A grower that meets the criteria specified in subsection (a) of this section may continue cultivation of industrial hemp under this interim ordinance if the grower meets the following requirements and complies with the following restrictions:
 - (1) The grower must obtain a new registration for a one-year term from the County Agricultural Commissioner pursuant to Food and Agricultural Code sections 81003 and 81004.
 - (2) The cultivation of nursery stock is prohibited.
 - (3) The movement of plants from the site at any time prior to harvest is prohibited.
 - (4) Artificial lighting at an industrial hemp cultivation site is prohibited.
 - (5) The grower must comply with all provisions of state and federal law, and associated regulations, that apply to industrial hemp cultivation, including requirements for cultivation, sampling, laboratory testing, harvesting, and crop destruction.

Section 5. Reports. In accordance with subdivision (d) of Government Code section 65858, ten days before this ordinance expires and any extension of it, the Department of Conservation and Development shall file with the Clerk of the Board of Supervisors a written report describing the measures taken to alleviate the conditions that led to the adoption of this urgency interim ordinance.

Section 6. Severability. If any provision or clause of this ordinance or the application thereof to any person or circumstances is held to be unconstitutional or to be otherwise invalid by any court of competent jurisdiction, such invalidity shall not affect other ordinance provisions or clauses or applications thereof that can be implemented without the invalid provision or clause or application, and to this end the provisions and clauses are declared to be severable.

Section 7. Declaration of Urgency. This ordinance is hereby declared to be an urgency ordinance necessary for the immediate preservation of the public safety, health, and welfare of the County. The facts constituting the urgency of this interim ordinance’s adoption are set forth in Section 1.

Section 8. Effective Period. This ordinance becomes effective immediately upon passage by four-fifths vote of the Board of Supervisors and shall continue in effect through March 9, 2022, pursuant to Government Code section 65858.

Section 9. Publication. Within 15 days after passage, this ordinance shall be published once with the names of the supervisors voting for and against it in the East Bay Times, a newspaper published in this County.

PASSED ON March 9, 2021, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

ATTEST: MONICA NINO,
Clerk of the Board of Supervisors
and County Administrator

Board Chair

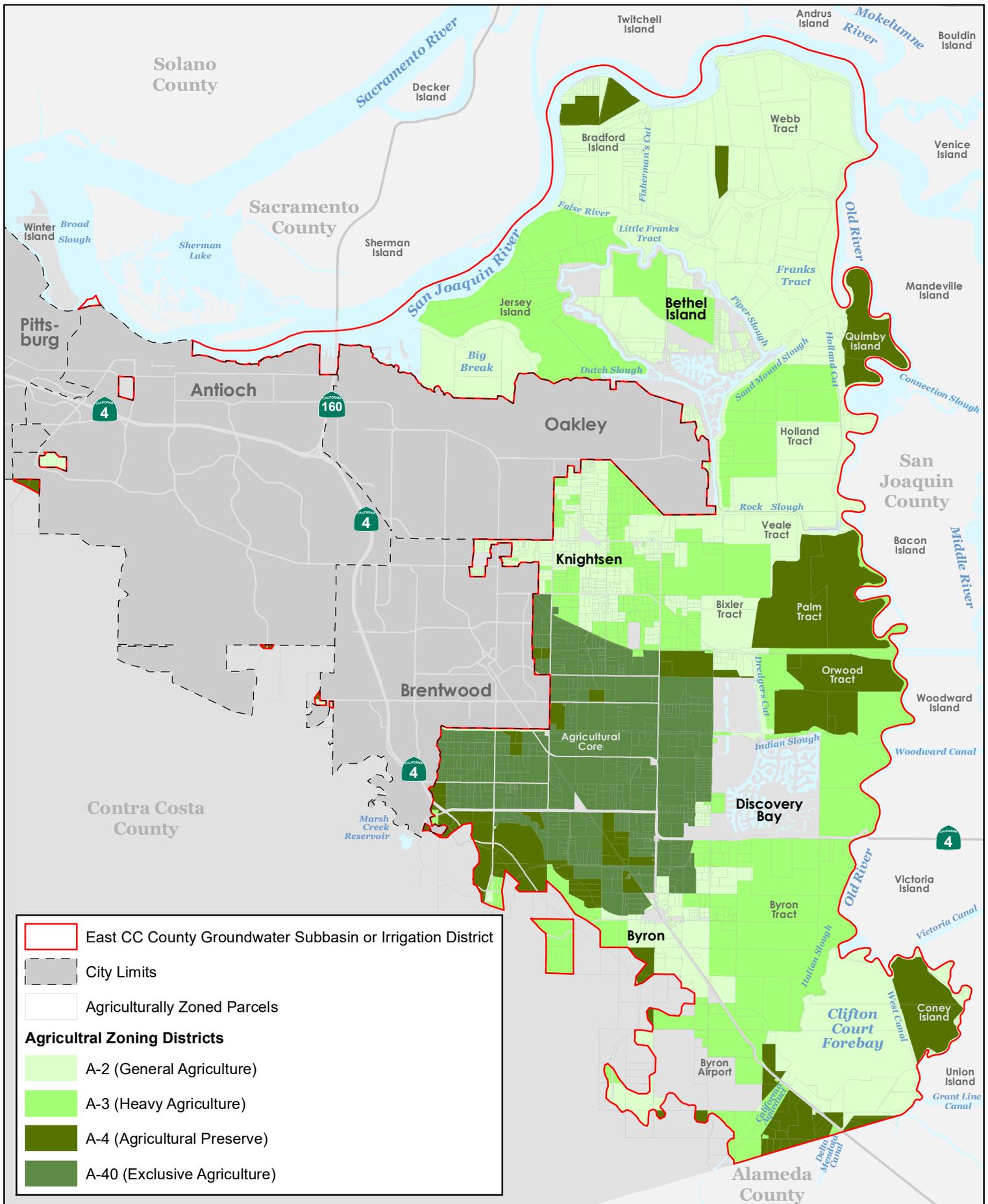
By: _____
Deputy

[SEAL]

H:\2021\Agriculture\urgency ordinance - industrial hemp - extend2.final.docx

ATTACHMENT 4

Map Showing Where Industrial Hemp
can be Cultivated in Unincorporated
Contra Costa County



	East CC County Groundwater Subbasin or Irrigation District
	City Limits
	Agriculturally Zoned Parcels
Agricultural Zoning Districts	
	A-2 (General Agriculture)
	A-3 (Heavy Agriculture)
	A-4 (Agricultural Preserve)
	A-40 (Exclusive Agriculture)

Map created 06/07/2021
 by Contra Costa County Department of
 Conservation and Development, GIS Group
 30 Muir Road, Martinez, CA 94553
 37:59:41.791N 122:07:03.756W

This map or dataset was created by the Contra Costa County Department of Conservation and Development with data from the Contra Costa County GIS Program. Some base data, primarily City Limits, is derived from the CA State Board of Equalization's tax rate areas. While obligated to use this data the County assumes no responsibility for its accuracy. This map contains copyrighted information and may not be altered. It may be reproduced in its current state if the source is cited. Users of this map agree to read and accept the County of Contra Costa disclaimer of liability for geographic information.



ATTACHMENT 5

County Planning Commission

Power Point Presentation

Industrial Hemp Cultivation Ordinance

COUNTY FILE #CDZT21-00001

Presented to Contra Costa County Planning Commission (CPC)

By the Department of Conservation and Development:

Ruben Hernandez, Principal Planner and Dominique Vogelpohl, Senior Planner

Wednesday, June 23, 2021 at 6:30 PM

Today's Presentation

- Background on industrial hemp cultivation for California and in Contra Costa County
- Overview of Proposed Ordinance
- Recommended Commission Action

Background

- The Agriculture Improvement Act of 2018 (the 2018 Farm Bill), was signed into law, removing hemp from Schedule I of the federal Controlled Substances Act.
- Industrial hemp and cannabis are derivatives of the same plant, but industrial hemp is distinguished from cannabis if the plant has a concentration of 0.3% tetrahydrocannabinol (THC) or less. As such, industrial hemp and cannabis are difficult to distinguish without a chemical analysis for the presence of THC content.
- On March 9, 2021, the Board of Supervisors adopted Ordinance No. 2021-10, which extended the in-place temporary moratorium on industrial hemp cultivation through September 30, 2021, to allow county staff time to continue developing and to finalize reasonable industrial hemp regulations.
- Addition to this zoning ordinance, the County Agricultural Department has also prepared for adoption an ordinance amending Title 5 of the County Ordinance Code that would require a person to obtain a permit from the Contra Costa County Agricultural Commissioner.

Ordinance Overview

Standards Applicable to Industrial Hemp Cultivation

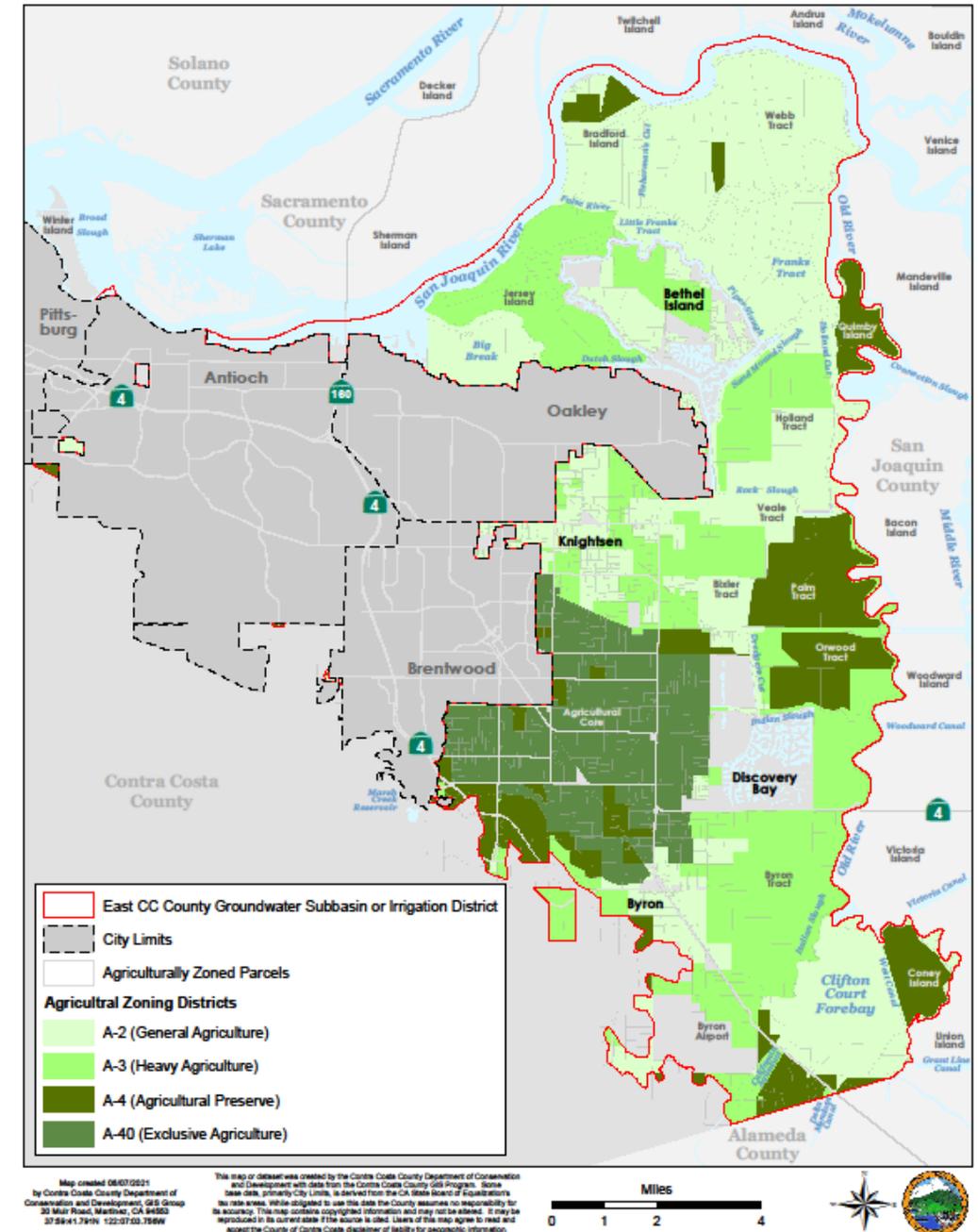
Industrial hemp may be cultivated on any lot in an agricultural district (A-_) located within the boundaries of any of the following:

- The East Contra Costa Irrigation District (ECCID)
- The Byron-Bethany Irrigation District (BBID)
- The East CCC Groundwater Subbasin (ECCCGS)

Industrial hemp cultivation requires substantial irrigation water.

ECCID and BBID are the only two irrigation districts that operate in the County.

The ECCCGS is the only ground water basin in the County that supports cultivation that will be monitored pursuant to a Groundwater Sustainability Plan as required by the Sustainable Groundwater Management Act.



Standards Applicable to Industrial Hemp Cultivation

- Industrial hemp may not be cultivated outdoors or in a hoop structure at any property within, or within one mile beyond, the urban limit line.
- The minimum lot size is 5 acres.
- Setback Requirements:
 - Indoor Cultivation: The structure(s) must comply with all setbacks that apply to the zoning district in which the property is located.
 - Outdoor Cultivation: The cultivation area must be setback 25-feet from any boundary line, and 250-feet from any boundary line that abuts a residential land use district.

Standards Applicable to Industrial Hemp Cultivation

A land use permit issued under this ordinance will include conditions of approval to mitigate the potential impacts that may be a product of industrial hemp cultivation:

- Security: To mitigate possible theft of industrial hemp plants.
- Lighting: To mitigate potential lighting pollution visible from neighboring properties.
- Odor: To mitigate strong odors common to the industrial hemp plant.
- Noise: Generators may only be used for emergencies to mitigate potential noise impacts.

Testing, and tracking of cultivation, transport and destruction of industrial hemp plants, will be conducted by the County Agricultural Department under the provisions of the Industrial Hemp Permits and Cultivation Ordinance to be added to Chapter 512-4 of the County Ordinance Code.

Land Use Permit Issuance and Renewal

- A land use permit issued under this zoning ordinance has an initial term of five years.
- An issued land use permit is required to obtain a permit issued by the County Agricultural Commissioner pursuant to Chapter 512-4 once adopted.
- Nothing in this zoning ordinance will eliminate the requirements and/or permits required by any other County or by State and Federal agencies.
- An issued land use permit may be renewed administratively and can last until the permit is revoked following the initial five-year term.
- An issued land use permit may be modified, suspended, or revoked if a permittee has not complied with the requirements of this ordinance, any other applicable requirements of County, State or Federal laws or regulations.
- A compliance review may be performed at any time during the term of the issued land use permit to determine compliancy with the permit's terms and conditions, and all applicable laws and regulations.

Staff Recommendation

Staff Recommendation to CPC

ADOPT a motion recommending that the Board of Supervisors take the following actions:

1. FIND, for the purposes of compliance with the California Environmental Quality Act (CEQA) and State and County CEQA Guidelines, that the proposed zoning text amendment establishing an industrial hemp ordinance will not have a significant effect on the environment and therefore is exempt from CEQA per Section 15061(b)(3);
2. FIND that the proposed zoning text amendment does not conflict with the County 2005-2020 General Plan;
3. ADOPT the zoning ordinance regulating industrial hemp cultivation and processing; and
4. DIRECT staff to file a Notice of Exemption with the County Clerk.

Questions?

