

ORDINANCE NO. 2021-21

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. 2021-21 § 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. 2021-21 § 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. 2021-21 § 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. 2021-21 § 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. 2021-21 § 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. 2021-21, § 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. 2021-21, § 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. 2021-21, § 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. 2021-21, § 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. 2021-21, § 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. 2021-21, § 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. 2021-21 § 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 July 27 2021, by the following vote:


AYES: John Gioia, Candace Andersen, Diane Burgis, Karen Mitchoff, Federal Glover

NOES: None

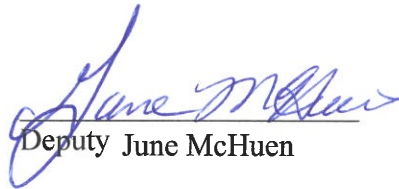
ABSENT: None

ABSTAIN: None

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


Board Chair Diane Burgis

By:


Deputy June McHuen

[SEAL]

KCK: