

ORDINANCE NO. 1617

AN ORDINANCE AMENDING CHAPTER 7.42 OF THE YUBA COUNTY ORDINANCE CODE RELATING TO INDUSTRIAL HEMP CULTIVATION

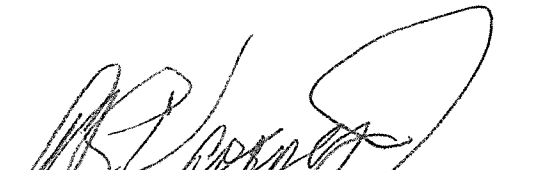
The following ordinance consisting of three (3) sections, was duly and regularly passed and adopted by the Board of Supervisors of the County of Yuba, State of California, at a regular meeting of the Board of Supervisors held on 9 day of May, 2023. By the following vote:

AYES: Supervisors Vasquez, Blaser, Fuhrer, Bradford, Messick

NOES: None


ABSENT: None

ABSTAIN: None

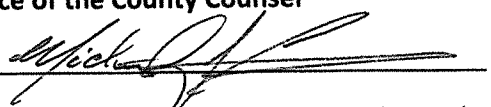


Chairperson of the Board of Supervisors
Of the County of Yuba, State of California
Andy Vasquez

ATTEST: Mary Pasillas
Clerk of the Board of Supervisors

By: 
Natalie Allen, Board Clerk

APPROVED AS TO FORM
Office of the County Counsel

By: 

Michael J. Ciccozzi, County Counsel

**THE BOARD OF SUPERVISORS OF THE COUNTY OF YUBA, STATE OF CALIFORNIA DOES ORDAIN AS
FOLLOWS:**

SECTION 1: This ordinance shall take effect thirty (30) days after the date of its adoption and before the expiration of fifteen (15) days from the date of passage thereof shall be published at least once in the Appeal-Democrat, a newspaper of general circulations, printed and published in the County of Yuba, State of California, together with the names of the members of the Board of Supervisors voting for and against the same.

SECTION 2: Chapter 7.42 of the Yuba County Ordinance Code is hereby amended to read as follows:

CHAPTER 7.42

INDUSTRIAL HEMP CULTIVATION

(Prior Ordinance Number(s) 1603)

ARTICLE 1. - GENERAL PROVISIONS

7.42.100. - Authority.

Pursuant to California Constitution Article XI, Section 7, Government Code sections 25123, Government Code Section 25131, and other applicable laws, the Yuba County Board of Supervisors does hereby enact this Chapter.

7.42.110. - Purpose and intent.

Pursuant to Article XI, section 7, of the California Constitution, the County of Yuba ("County") may adopt and enforce ordinances and regulations not in conflict with general laws to protect and promote the public health, safety, and welfare of its citizens.

The purpose of this section is to prohibit the cultivation of industrial hemp and registration of industrial hemp cultivation sites within the County of Yuba which will prevent the negative impacts of industrial hemp cultivation on our community and environment.

7.42.120. - Findings.

The Board of Supervisors of the County of Yuba makes the following findings in support of the adoption and enactment of this Chapter:

(1) The 2018 Farm Bill directed the United States Department of Agriculture (USDA) to establish a national regulatory framework for hemp production in the United States.

(2) On or about March 26, 2019 The Yuba County Board of Supervisors enacted a moratorium on the cultivation of Industrial hemp within the unincorporated areas of the County of Yuba.

(3) On January 19, 2021 the USDA's Final Rule for the domestic production of hemp was published and became effective March 22, 2021.

(4) The USDA's Final Rule recognized that Section 297B of the Agricultural Marketing Act of 1946 (AMA) requires the Secretary of Agriculture (Secretary) to evaluate and approve or disapprove State or Tribal plans regulating the production of hemp.

(5) The USDA's Final Rule includes regulations used by the Department of Agriculture (USDA) to approve plans submitted by States and Indian Tribes for the domestic production of hemp.

(6) In late December 2021, the California Department of Food and Agriculture (CDFA) announced that the USDA formally approved the California State Plan for Industrial Hemp and that CDFA's regulations would be amended to align with the approved State Plan.

(7) On or about June 22, 2022 CDFA adopted amended regulations, 3 CCR §4890 et seq., to conform the regulations to the approved State Plan.

(8) Chapter 7.41 of the Yuba County Code prohibits commercial cannabis activity in the unincorporated area of the County.

(9) Beginning on December 28, 2017 and continuing through today, the Board of Supervisors has declared a local emergency concerning the proliferation of illegal cannabis cultivation in the unincorporated areas of the County.

(10) Because industrial hemp and cannabis are derivatives of the same plant, Cannabis sativa L., the appearance and odor of industrial hemp and cannabis are virtually indistinguishable, particularly when hemp is cultivated with feminized flowering plants for high levels of cannabidiol (CBD) for purposes of CBD extract or oil production. Absent a laboratory performed chemical analysis for tetrahydrocannabinol (THC) content, the two plants cannot be distinguished under their legal definitions.

(11) In order for the Sheriff's office and Code Enforcement personnel to verify that harvested product in transit is industrial hemp and not cannabis intended for sale in the illicit market, field analyzer kits must be available. The current cost of specialized chemical field analysis equipment is approximately \$18,000 per unit. The Sheriff's office would need at least six (6) kits, the Agricultural Commissioner at least two (2) and Code Enforcement would need at least two (2). This would require at least ten (10) kits at a cost to the County of \$180,000, if cultivation of industrial hemp were to be permitted in Yuba County.

(12) Because industrial hemp and cannabis are virtually indistinguishable to the untrained eye, the cultivation of industrial hemp poses similar threats to the public health, safety or welfare as the cultivation of cannabis including light pollution, water pollution, noise, traffic, and enforcement issues

(13) The cultivation of industrial hemp will create an increased likelihood of criminal activity.

(14) The cultivation of industrial hemp creates a high likelihood of attracting crime and associated violence, including without limitation, theft, robberies, illegal firearms, shootings and homicides.

(15) The Sheriff and other enforcing officers will have to investigate each industrial hemp grow " to ensure that the crop is not cannabis. Investigations of industrial hemp grows are time consuming, labor intensive, and potentially dangerous.

(16) Industrial hemp can serve as a host to mites and other insects. At this time, there are no pesticides specifically labeled for hemp that address such mites or other insects. The few pesticides that can legally be applied to hemp are not always effective, which allows for such insects to move into other nearby crops.

(17) There are no requirements for pesticide use reporting or testing for industrial hemp when cultivated by an "Established Agricultural Research Institution" if pesticides on the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) 25(b) list are used. In addition, "Established Agricultural Research Institutions" may be using chemicals or pesticides that are extremely toxic to people and wildlife and which may pollute soil, ground water, and/or nearby water sources.

(18) Industrial hemp and cannabis are not compatible crops. Thus, if this Board of Supervisors elects to pursue a particular option with respect to the outdoor cultivation of cannabis, the existence of industrial hemp grows may preclude the Board of Supervisors from considering certain projects or development plans.

(19) The cultivation of industrial hemp is harmful to the welfare of residents, creates a nuisance, and threatens the safety and land of nearby property owners.

(20) Yuba County has a compelling interest in protecting the public health, safety, and welfare of its residents and businesses, in preventing the establishment of nuisances by the cultivation of industrial hemp.

(21) In order to ensure the effective implementation of the County of Yuba's land-use objectives and policies, a prohibition on the establishment and/or approval of industrial hemp cultivation is necessary.

(22) There is a current and immediate threat to public health, safety, and welfare in that the establishment of industrial hemp cultivation in the unincorporated areas of the County of Yuba will result in land uses and land developments that may conflict with the Yuba County Code.

(23) There is no feasible alternative to enactment of this ordinance that will satisfactorily mitigate or avoid the previously identified impacts to the public health, safety and welfare with a less burdensome or restrictive effect.

(24) This ordinance is exempt from environmental review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15061(b)(3) (there is no possibility the activity in question may have a significant effect on the environment). In addition

to the foregoing general exemptions, the following categorical exemption applies: section 15308 (actions taken as authorized by local ordinance to assure protection of the environment). There are no unusual circumstances under CEQA Guideline 15300.2(c). Each exemption stands as a separate and independent basis for determining that this ordinance is not subject to CEQA.

(25) This chapter complies with State law and imposes reasonable regulations that the Board of Supervisors concludes are necessary to protect the public safety, health and welfare of residents and business within the County.

7.42.130. - Scope.

The provisions of this Chapter shall apply generally to all industrial hemp cultivation throughout the unincorporated area of the County of Yuba.

7.42.140. - No vested rights.

The provisions contained in this Chapter shall supersede any previous regulations related to industrial hemp cultivation. No person, firm, corporation or entity shall have any vested right to cultivate industrial hemp in any manner that is contrary to or inconsistent with the provisions contained herein.

7.42.150. - Responsibilities.

(a) Regardless of whether an owner is in actual possession of his or her real property, it is the duty of every owner of real property within the unincorporated area of Yuba County to prevent a public nuisance from arising on, or from existing upon, his or her real property.

(b) No person or entity shall cause, permit, maintain, conduct or otherwise allow a public nuisance as defined in this Chapter to exist upon any property within their control and shall not cause a public nuisance to exist upon any other property within the unincorporated limits of the County of Yuba. It shall be the duty of every owner, occupant, and person that controls any land or interest therein within the unincorporated area of the County of Yuba to remove, abate and prevent the reoccurrence of any public nuisance upon such land.

7.42.160. - Private right of action.

Nothing contained in this Chapter shall be construed to prohibit the right of any person or public or private entity damaged by any violation of this Chapter to institute a civil proceeding for injunctive relief against such violation, for money damages, or for whatever other or additional relief the court deems appropriate. The remedies available under this Chapter shall be in addition to, and shall not in any way restrict other rights or remedies available under law.

ARTICLE 2 - DEFINITIONS

7.42.200. - Definitions.

Except where the context otherwise requires, the following definitions shall govern the construction of this Chapter:

(1) ***Cannabis*** shall have the same meaning as defined in the California Business and Professions Code, Section 26001(f), as: all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. "Cannabis" also means the separated resin, whether crude or purified, obtained from cannabis. "Cannabis" does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. For the purpose of this division, "cannabis" does not mean "industrial hemp" as defined by Section 11018.5 of the Health and Safety Code.

(2) ***Cannabis accessories*** shall have the same meaning as set forth in California Health and Safety Code, Section 11018.2.

(3) ***Cannabis concentrate*** shall have the same meaning as California Business and Professions Code, Section 26001(h).

(4) ***Cannabis products*** shall have the same meaning as set forth in California Health and Safety Code, Section 11018.1.

(5) ***Commissioner*** means the County Agricultural Commissioner

(6) ***Cultivation*** means the planting, growing, harvesting, drying, processing, or storage of one or more marijuana plants or any part thereof in any location, indoor or outdoor, including from within a fully enclosed and secure building.

(7) ***Enforcement official*** means any County official authorized to enforce the provisions of this Chapter.

(8) ***Established Agricultural Research Institution*** means

(1) A public or private institution or organization that maintains land or facilities for agricultural research, including colleges, universities, agricultural research centers, and conservation research centers; or

(2) An institution of higher education (as defined in section 1001 of the Higher Education Act of 1965 (20 U.S.C. 1001)) that grows, cultivates or manufactures industrial hemp for purposes of research conducted under an agricultural pilot program or other agricultural or academic research."

(9) ***Industrial hemp*** means a crop that is limited to types of the plant *Cannabis sativa* L. having no more than three-tenths of one percent tetrahydrocannabinol (THC) contained in the dried flowering tops, whether growing or not; the seeds of the plant; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin produced therefrom. Industrial hemp shall have the same meanings as defined under Food and Agricultural Code Section 81000 and Health and Safety Code Section 11018.5.

(10) *Legal parcel* means any parcel of real property that may be separately sold in compliance with the Subdivision Map Act (Division 2 (commencing with Section 66410) of Title 7 of the Government Code).(11) Marijuana shall have the same meaning as "Cannabis".

(11) *Marijuana plant* means any mature or immature, growing or not, marijuana plant including the stalks of the plant.

(12) *Person* includes any individual, firm, partnership, joint venture, association, corporation, limited liability company, estate, trust, business, business trust, receiver, syndicate, collective, cooperative, institution, including an established agricultural research institution, or any other group or entity, or combination acting as a unit. Except where otherwise indicated by context, the singular shall include the plural, and vice versa.

(13) *Premises* shall mean a single, legal parcel of property. Where contiguous legal parcels are under common ownership or control, such contiguous legal parcels shall be counted as a single "premises" for purposes of this Chapter.

(14) *Seed breeder* means an individual or public or private institution or organization that is registered with the commissioner to develop seed cultivars intended for sale or research.

(15) *Seed cultivar* means a variety of industrial hemp.

(16) *Seed development plan* means a strategy devised by a seed breeder, or applicant seed breeder, detailing his or her planned approach to growing and developing a new seed cultivar for industrial hemp.

ARTICLE 3. - CULTIVATION OF INDUSTRIAL HEMP PROHIBITED

7.42.300. - Cultivation prohibitions.

(a) No person or entity shall grow industrial hemp for any purposes within the unincorporated areas of Yuba County and no County permit or approval of any type shall be issued therefor.

(b) The cultivation of industrial hemp for commercial purposes, or by seed breeders within the unincorporated areas of Yuba County is prohibited.

(c) The cultivation of industrial hemp by an Established Agricultural Research Institution within the unincorporated areas of Yuba County is prohibited.

(d) The cultivation of industrial hemp, in any amount or quantity upon any premises is hereby declared to be unlawful and a public nuisance that may be abated in accordance with this Chapter.

ARTICLE 4. - PUBLIC NUISANCES

7.42.400. - Conditions creating public nuisance.

A public nuisance shall be deemed to exist when any person owning, leasing, occupying, or having charge or possession of any parcel within the unincorporated area of the County causes or allows such parcel to be used for the cultivation of industrial hemp in violation of the provisions contained herein.

ARTICLE 5. - ENFORCEMENT

7.42.500. - Enforcement authority.

The Yuba County Agricultural Commissioner and the Office of the Yuba County Sheriff are hereby designated to enforce this Chapter. The Commissioner may contract with Yuba County Code Enforcement to assist in the enforcement of this Chapter.

7.42.510. - Right of entry/inspection.

To enforce the provision of this Code, any designated Enforcement Official may, at a reasonable time, request inspection of any parcel suspected of cultivating industrial hemp in violation of this Chapter. If the person owning or occupying the parcel refuses the request for an inspection, the Enforcement Official shall have recourse to every remedy provided by law to secure entry, including obtaining an inspection warrant.

7.42.520. - Violations.

- (a) It is unlawful and a violation of this Chapter for any person to permit a public nuisance to exist upon real property in which such person has an ownership or possessory interest.
- (b) It shall be unlawful and a violation of this Chapter to do anything in contrary to the guidelines set forth in this Chapter.
- (c) Each person violating this Chapter shall be guilty of a separate offense for each and every day, or portion thereof, which any violation of any provision of this Chapter is committed, continued, or permitted by any such person. Any violation which persists for more than one day is deemed a continuing violation.

7.42.530. - Remedies.

- (a) Any violation of this Chapter may be deemed a public nuisance and is subject to any enforcement process authorized by law or as outlined in this Code.
- (b) Nothing herein shall be read, interpreted or construed in any manner so as to limit any existing right or power of the County of Yuba or any other governmental entity to enforce County ordinances, to abate any and all nuisances, or employ any remedy available at law or equity.
- (c) Issuance of a warning shall not be a requirement prior to using any enforcement provision of this Code. Violations are not tiered and are subject to enforcement without warning.
- (d) The remedies provided in this Chapter are cumulative to all other remedies now or hereinafter available to abate or otherwise regulate or prevent violations related to the cultivation of industrial hemp.

7.42.540. - Notice and order to abate.

(a) Upon making a determination that a public nuisance exists, the Enforcement Official shall notify the owner or the alleged violator, or both, that a public nuisance exists. As to an owner, the notice and order to abate shall be delivered by personal service or by certified, return receipt mail, with postage prepaid, addressed to the owner as such owner's name and address appears on the last equalized assessment roll or to such other address as the owner directs. As to an alleged violator whom the Enforcement Official has determined directly or indirectly contributed to the condition creating the nuisance, the notice and order to abate shall be delivered by personal service or by certified, return receipt mail, with postage prepaid, to the last known address of the alleged violator. In addition, the notice and order to abate shall be delivered by first class mail, with postage prepaid, addressed to the owner and alleged violator at their last known addresses. A copy may also be posted on the property. The Enforcement Official shall complete a proof of service.

(b) The notice and order to abate shall describe the use or condition which constitutes the public nuisance, and shall order that the uses or conditions constituting the nuisance be abated by demolition, securing, removal, cleanup, repair or other means within a reasonable time certain, normally being three calendar days as determined necessary for such abatement by the Enforcement Official. Based upon the nature and complexity of the abatement process, the Enforcement Official shall identify the date certain for compliance on the notice and order to abate public nuisance.

7.42.550. - Administrative penalties.

(a) Any person who violates this Chapter shall be liable for a separate offense for each and every day, or portion thereof, the violation is committed, permitted, or continued. In addition to the actual abatement and administrative costs incurred by the County, any person who has been issued a notice and order to abate public nuisance shall be assessed an administrative penalty as follows:

(1) A penalty of \$100.00 for each violation of this Code as set forth in the notice and order to abate.

(2) A penalty of \$200.00 for each violation of this Code when a second notice and order to abate is issued for violations of this Code.

(3) A penalty of \$500.00 for each violation of this Code upon any subsequent notice and order issued beyond the second notice and order to abate for violations of this Code.

(b) For the purpose of calculating the administrative penalty, each offense of any Section of this Chapter shall be charged as a separate violation; in addition, each industrial hemp plant being cultivated in violation of this Chapter shall be charged as a separate violation.

(c) The administrative penalty, pursuant to this Section, shall be imposed upon the expiration of the time to remedy the violations as set forth in the notice and order to abate public nuisance. In the event an appeal has been properly filed with the County, the appeal shall have no effect on the administrative penalty. At the conclusion of the hearing the Yuba County Board of Supervisors is authorized to modify or waive the administrative penalty for cause and shall make express findings into the record for such modification or waiver.

7.42.560. - Enforcement costs.

(a) All costs and penalties associated with the enforcement of this Chapter are the joint and several responsibility of the owner(s) of any parcel(s) on which a nuisance has been found to exist and any person responsible for violating this Chapter. Such costs shall be paid within 30 days of the date of demand thereof.

(b) Where costs and penalties go unpaid beyond 30 days, the Enforcement Official shall take action to confirm the costs, record a lien for the amount of the costs and penalties. The Enforcement Official shall take the necessary steps to place the costs as a special tax assessment pursuant to procedures as set forth in Chapter 7.36 of the Yuba County Ordinance Code.

ARTICLE 6. - APPEALS AND UNIFORM HEARINGS AND PROCEDURES

7.42.600. - Appeal.

(a) All Appeals shall be processed and conducted in accordance with the provisions of Article 6 of Chapter 7.40.

(b) In addition, the request for appeal shall be received by the Clerk of the Board of Supervisors within ten calendar days of the date of the notice and order to abate; must be in writing on a form prescribed by the Board of Supervisors, and must be accompanied by a deposit for costs as enumerated in Title XIII, Section 13.20.500, of this Code.

ARTICLE 7 – CONCLUDING PROVISIONS

7.42.700 – Non-exclusivity.

Nothing in this chapter shall limit or preclude the enforcement of other applicable laws to conduct within the scope of this chapter and the remedies provided herein are cumulative to all other remedies now or hereafter available to abate or otherwise regulate the conduct described herein.

7.42.800 - Severability

If any section, subsection, sentence, clause, portion, or phrase of this ordinance is for any reason held illegal, invalid, or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions hereof. The Board of Supervisors hereby declares that it would have passed this Chapter and each section, subsection, sentence, clause, portion, or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared illegal, invalid or unconstitutional.

The following is a true and correct copy of the document on file in this office.

ATTEST: MARY PASILLAS
Clerk of the Board of Supervisors of
The County of Yuba , State of California

By: Natalie Allen

Date: May 9, 2023