

ORDINANCE NO. 696

AN ORDINANCE ADDING ARTICLE XI OF CHAPTER 14 OF THE KINGS COUNTY CODE OF ORDINANCES AND ESTABLISHING ONGOING REGULATIONS FOR INDUSTRIAL HEMP CULTIVATION IN THE UNINCORPORATED AREAS OF KINGS COUNTY FOLLOWING EXPIRATION OF THE INTERIM URGENCY ORDINANCE ON DECEMBER 31, 2020

The Board of Supervisors of the County of Kings, State of California, ordains as follows:

Section 1: Findings and Declarations.

The Board of Supervisors makes the following findings in support of the enactment of this ordinance:

A. Pursuant to Article XI, Section 7, of the California Constitution, the County of Kings (“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.

B. The Board of Supervisors finds that this ordinance is necessary for the preservation of the public peace, health, and safety based upon the following facts:

1. In September 2018, the California Legislature enacted SB 1409 which amended (1) the definition of “industrial hemp” in Health and Safety Code Section 11018.5, subdivision (a), to delete the reference to its being a crop solely for fiber or oilseed production, and (2) Food and Agricultural Code Section 81006 to remove the requirement for dense planting and restrictions against pruning, tending, or culling. SB 1409 included the finding: “By removing limitations on the manner in which industrial hemp may be grown and the uses for which it may be grown, this act removes barriers to the growth of industrial hemp as an agricultural product, and for agricultural or academic research.” The bill, however, did not address the product safety regarding cannabis products. Under Food and Agricultural Code Section 81007, the California Department of Food and Agriculture (“CDFA”) is authorized to establish by regulation an agricultural pilot program pursuant to Section 7606 of the federal Agricultural Act of 2014, as codified at Section 5940, title 7, U.S. Codes. The CDFA has not yet adopted regulations to participate in, or promote, research projects recognized under federal law.

2. In December 2018, the President signed into law the 2018 Federal Farm Bill, H.R. 2, P.L. 115-334, which removed industrial hemp from the federal list of controlled substances, authorized the U.S. Department of Agriculture to create quality control standards for hemp production, and gave states the ability to adopt their own plans to exercise primary regulatory authority over the production of hemp within the state. Any state plan may include a reference to a law of the state regulating the production of hemp, to the extent said law is consistent with federal law.

3. Under Food and Agricultural Code Section 81006, subdivisions (d)(3) and (5), the CDFA is required to establish regulations for sampling procedures and approved laboratories for sample testing of all hemp crops no more than 30 days before harvest.

4. In late May 2019, the CDFA proposed emergency regulations to establish timeframes, procedures, methods, and confirmation for industrial hemp sampling, laboratory testing, and destruction of industrial hemp cultivation. In its submission, the CDFA declared that the absence of hemp regulations constituted an emergency, and immediate action was necessary to prevent serious harm to the general welfare of California citizens.

5. CDFA further found a pressing need for the swift establishment of regulations to prevent delay of the first industrial hemp harvest, which could occur as early as June 2019. Based on its calculations, the absence of regulation could result in a potential direct loss of over \$43,000,000 to California farmers.

6. Industrial hemp strains grown for their cannabidiol (CBD) oil properties are indistinguishable in many ways from the high-THC cannabis strains used for medicinal and recreational purposes. Permitting hemp cultivation without a limitation on the acreage and location of hemp plants may lead to the same type of odor and public safety issues facing cannabis operations in counties that allow the cultivation of cannabis.

7. Hemp can serve as a host to mites and other insects. At this time, there are no pesticides registered for hemp that specifically address such mites or other insects. The pesticides that have been approved for hemp are not always effective, which allows for such insects to move to nearby crops. The cultivation of hemp must be done consistent with reasonable regulations to avoid harm to the welfare of residents, public nuisances, and threats to the safety and viability of nearby crops.

8. A limitation of one (1) acre per permit holder on the amount of land that may be used to cultivate hemp for research or educational purposes, whether grown by an established agricultural research institution or any other individual or entity, is reasonable and necessary to protect the public's health, safety, and welfare and prevent abuse of the County's registration and permitting requirements.


C. Pursuant to California Government Code Section 25123, subdivision (d), the Board of Supervisors may pass an ordinance that is effective immediately if necessary to preserve the public peace, health, or safety. On June 25, 2019, consistent with Government Code Section 25123, the Board of Supervisors adopted an Interim Urgency Ordinance Requiring Permitting and Registration for Hemp Cultivation set forth at Article XI of Chapter 14 of the Kings County Code of Ordinances ("Interim Ordinance"), which is set to expire on December 31, 2020, unless otherwise amended or repealed. The purpose of this ordinance is to repeal and replace the Interim Ordinance with a permanent and ongoing regulatory framework, as may be amended from time to time, for the cultivation of industrial hemp in the unincorporated areas of Kings County.

Section 2: Article XI of Chapter 14, attached hereto and incorporated herein by reference, is hereby added to the Kings County Code of Ordinances following the expiration of the current Interim Ordinance on December 31, 2020.

Section 3: This ordinance shall take effect on January 1, 2021 following its adoption by four-fifths of the Board of Supervisors and shall be published once with the names of the members of the Board of Supervisors voting for and against the same in the *Hanford Sentinel*, a newspaper of general circulation published in the County of Kings within fifteen (15) days after its passage.


The foregoing ordinance was introduced at a regular meeting of this Board of Supervisors of the County of Kings held on October 13, 2020, and was adopted at a regular meeting of the Board of Supervisors on October 20, 2020, by the following vote:

AYES:	Supervisors Neves, Fagundes, Valle, Pedersen, Verboon
NOES:	None
ABSENT:	None
ABSTAIN:	None



Doug Verboon
Chairman of the Board of Supervisors
County of Kings, State of California

WITNESS my hand and seal of said Board of Supervisors this 20th day of October, 2020.



Melanie Curtis
Deputy Clerk to the Board of Supervisors

ARTICLE XI. CULTIVATION OF HEMP

Sections:

- 14-190 Purpose
- 14-191 Authority
- 14-192 Definitions
- 14-193 Establishment and promulgation of County regulations
- 14-194 Hemp cultivation registration and permit required
- 14-195 Requirements for registration and issuance of a permit
- 14-196 Terms and conditions of permits
- 14-197 Destruction of non-compliant Hemp plants
- 14-198 Permit revocation
- 14-199 Limitation on the County’s liability
- 14-200 Violations declared a public nuisance
- 14-201 Each violation is a separate offense
- 14-202 Severability
- 14-203 Cumulative remedies

14-190 Purpose.

It is the purpose and intent of this article to implement an ongoing program to regulate the cultivation of industrial Hemp in a responsible manner to protect the health, safety, and welfare of the residents of the County of Kings and to enforce rules and regulations consistent with state law. It is further the purpose and intent of this article to require all persons cultivating Hemp to register and to obtain a permit to operate within the County of Kings. Nothing in this article is intended to authorize the cultivation of Hemp for purposes that violate state or federal law. The provisions of this article are in addition to any other permits, licenses, and approvals, which may be required to conduct activity in the county.

14-191 Authority.

Pursuant to Section 7 of Article XI of the California Constitution, the County of Kings is authorized to adopt ordinances that establish standards, requirements, and regulations for the permitting of Hemp cultivation. All standards, requirements, and regulations regarding health and safety, security, and worker protections established by the State of California, or any of its departments or divisions, shall be the minimum standards applicable in the County of Kings to all Hemp cultivation.

14-192 Definitions.

When used in this article, the following words shall have the meaning ascribed to them as set forth herein. Any reference to California statutes includes any regulations

promulgated thereunder and is deemed to include any successor or amended version of the referenced statute or regulatory provision.

A. “Applicant” shall include any individual, firm, partnership, joint venture, association, corporation, limited liability company, estate, trust, business, business trust, activity trust, receiver, syndicate, or any other group or combination acting as a unit, in the plural as well as the singular, who is eligible to cultivate industrial Hemp under this article.

B. “Hemp cultivation” means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of industrial Hemp, including activities carried out by Hemp breeders or by established agricultural research institutions for research or educational purposes.

C. “Hemp” has the same meaning as in Health and Safety Code Section 11018.5 and is used interchangeably with “industrial Hemp.”

D. “Hemp breeder” has the same meaning as in Food and Agricultural Code Section 81000.

E. “Established agricultural research institution” has the same meaning as in Food and Agricultural Code Section 81000.

F. “Grow Field” shall mean the specific land area that is designated for the permitted cultivation of Hemp.

G. “Landlord” and “Owner” shall mean the deed holder of any land upon which Hemp is allowed to be cultivated where the Landlord/Owner is not the permitted grower.

H. “Sensitive Receptor” includes any church, child daycare, school, youth-oriented facility, and Residential Zone Districts established in the Kings County Development Code.

I. “Processing” shall mean the operation of receiving, grading, packing, fermenting, distilling, extracting, preserving, grinding, crushing or changing the form of any Hemp, including without limitation any and all methods, for the purpose of preparing it for market or of marketing such Hemp.

J. “Regrowth” shall mean all spontaneously generated Hemp plants resulting from the prior cultivation of Hemp, whether on the same site as the original crop or off-site as a result of volunteer seed.

K. “Tenant” shall mean the permitted cultivator of Hemp who does not own the property on which the cultivation is permitted.

14-193 Establishment and promulgation of county regulations.

In addition to any regulations adopted by the Board of Supervisors by resolution, the Agricultural Commissioner-Sealer, or his designee, is authorized to establish additional rules, regulations, or standards governing the issuance or denial of Hemp permits, the ongoing operation of Hemp cultivation, and the county's monitoring and inspection activities if the Agricultural Commissioner-Sealer determines the rule, regulation, or standard is necessary to carry out the purposes of this article.

A. Regulations issued by the Agricultural Commissioner-Sealer shall be published on the county's website. A copy of the regulations established by the Agricultural Commissioner-Sealer shall be filed with the clerk of the Board.

B. Regulations promulgated by the Agricultural Commissioner-Sealer shall become effective upon the date of publication.

14-194 Hemp cultivation registration and permit required.

Except as authorized in this article, no person, including an established agricultural research institution, shall cultivate Hemp in the unincorporated area of the County of Kings without first registering and obtaining a permit to cultivate as provided in this article. A permit issued under this article does not grant any interest in real property or create any interest of value and is not transferable.

14-195 Requirements for registration and issuance of a permit.

Prior to the cultivation of Hemp in the unincorporated area of the county, the following requirements shall be met:

A. Applicants shall demonstrate that they meet the standards established in the application requirements or further amendments thereof as established by the Agricultural Commissioner-Sealer. A person may be issued only one Hemp cultivation permit.

B. Applicants must be the Owner, or their designated agent, of the land upon which Hemp is to be cultivated or provide a notarized county consent form signed by the Owner or the Owner's designated agent.

C. The land upon which Hemp is to be cultivated must be located in General Agricultural Zone Districts (AG-20, AG-40), and must:

1. Have a minimum of a one-half mile setback from any Sensitive Receptor;

2. Have a minimum of a one-half mile setback from municipal jurisdictional boundaries, unless that municipality permits Hemp Processing and cultivation, in which case, no setback in the unincorporated area of the County is

required;

3. Have a minimum setback of two hundred feet (200') from the property boundary of any parcel containing non-Hemp, agricultural cultivation not owned by the Applicant, unless notarized written consent is obtained; and

4. Have a minimum setback of seven hundred feet (700') from the property boundary of any parcel containing a residence not owned by the Applicant, unless notarized written consent is obtained.

D. Applicants shall provide all information showing they satisfy the registration requirements set forth in Food and Agricultural Code Section 81003.

E. Applicants shall pay the state registration fee as set forth in the California Code of Regulations title 3, Section 4900.

F. Applicants shall obtain and provide an Operator Identification or Restricted Materials Permit from the Agricultural Commissioner-Sealer where appropriate.

G. Applicants shall submit a destruction plan that addresses the destruction, removal and abatement of a non-compliant crop, an abandoned crop, and all Regrowth to the Agricultural Commissioner-Sealer as part of its initial application for registration and a permit.

H. Before a permit is issued under this article, the Applicants shall submit a bond or other form of security acceptable to the Agricultural Commissioner-Sealer in the amount of one hundred percent (100%) of the estimated cost to fully abate a crop of Hemp that does not meet the requirements for legal harvest under applicable laws and regulations and to implement the destruction plan submitted pursuant to subsection (G) above. The financial security provided shall be released to the Applicant after the Agricultural Commissioner-Sealer determines that the security is no longer needed to secure the abatement of a non-compliant or abandoned Hemp crop or its Regrowth.

I. All applications for Hemp cultivation registration and permits shall be submitted to the Agricultural Commissioner-Sealer. Applicants shall be responsible for the actual costs, including, but not limited to, the costs of staff time, associated with processing a registration and permit for Hemp cultivation.

J. Any person who has been convicted of a felony related to a controlled substance under state or federal law shall be ineligible to hold a county Hemp cultivation permit during the 10-year period following the conviction. Each Applicant will be required to undergo a criminal background check before a permit will be granted.

14-196 Terms and Conditions of Permits.

Permit holders shall comply with the following terms and conditions:

A. Hemp cultivation by established agricultural research institutions for research or educational purposes shall be limited to a total of one (1) acre per permit holder within the County of Kings. Seed that is bred under research conditions may only be planted and cultivated by established agricultural research institutions for research or educational purposes.

B. Processing of Hemp onsite is prohibited. This prohibition does not include those general agricultural cultivation practices as defined in Section 14-192, subsection B, above.

C. To maintain the public health, safety, and welfare, permit holders shall allow monitoring and inspection of any Hemp cultivation site in any manner deemed necessary by the Kings County Sheriff's Office, any law enforcement agency, or any other county department, including monitoring and surveillance by drones. Permit holders shall be responsible for payment of the actual costs, including, but not limited to, the costs of staff time, for monitoring and inspection activities. Permit holders may be responsible for the actual costs of each law enforcement response to complaints of non-compliance at the permitted cultivation site.

D. Hemp cultivation shall be conducted in compliance with state and local laws and regulations related to land conversion, grading, electricity, water usage, water quality, woodland and riparian habitat protection, agricultural discharges, and similar matters, including, but not limited to, any rules, regulations or standards adopted by the Agricultural Commissioner-Sealer.

E. Each parcel permitted for Hemp cultivation shall be surrounded by a physical barrier, including, but not limited to, fencing, an irrigation ditch, or similar impediment to access, the adequacy of which shall be approved by the Agricultural Commissioner-Sealer. All access points to the parcel must have the ability to be secured.

F. Each parcel permitted for Hemp cultivation shall post signage indicating that Hemp is being cultivated at the site. The signage shall comply with the following requirements:

1. Required signage shall be posted at the corners of and at all usual points of entry to the parcel, including, but not limited to, each road, footpath, walkway or aisle that enters the cultivation area;

2. If the permitted parcel is adjacent to a public right-of-way, such as a road, path or trail, signage shall be posted at intervals not exceeding six hundred feet (600') along the boundary between the parcel and the right-of-way;

3. The signage shall contain letters, numbers and symbols at least five inches (5") in height in colors that contrast sharply with the immediate background to be visible and legible to a person with normal vision from a

distance of twenty-five feet (25'); and

4. The signage shall include, at a minimum, the words “Industrial Hemp”, “THC no more than .3%”, and “No Trespassing”.

G. Each structure used for the Hemp cultivation shall have all necessary permits required under state and county law and regulations. Structures for the indoor cultivation of Hemp shall:

1. Be subject to the same zoning and setback requirements as for outdoor cultivation;

2. Be fully enclosed, securable, and permitted under state and county laws and regulations;

3. Be subject to additional monitoring requirements as established by the Agricultural Commissioner-Sealer in consultation with the Sheriff’s Office; and

4. Implement measures for odor control, the adequacy of which will be determined, approved and permitted by the Community Development Agency.

5. All new lighting shall be oriented away from sensitive uses, and shall be hooded, shielded and located to direct light pools downward and to prevent glare.

H. Each registration and permit issued pursuant to this article shall expire one (1) year from the date of its issuance.

14-197 Destruction of non-compliant Hemp plants.

A. A Hemp crop that does not comply with the provisions of this article and all applicable provisions of state law, county codes and associated regulations, as well as a crop that has not been harvested by the expiration date of the applicable permit without having secured a new permit, shall be destroyed. Crop destruction shall proceed as provided in all applicable laws and regulations, which includes Food and Agricultural Code section 81006 and California Code of Regulations, title 3, sections 4950 and 4950.1. The Agricultural Commissioner-Sealer shall approve the method of destruction. A Hemp grower who fails to destroy a Hemp crop as required shall forfeit the financial security provided under Section 14-195, subsection G above, and the Agricultural Commissioner-Sealer may proceed to destroy the non-compliant crop.

B. In the event the Tenant abandons a non-compliant Hemp crop, the Landlord will be responsible for destruction and removal of the crop consistent with the Tenant’s destruction plan. If the Tenant’s financial security provided under Section 14-195, subsection G above is inadequate to cover the actual costs of the abatement of the

crop, the Landlord will be responsible for any costs remaining after application of the bond.

C. The Hemp grower shall have forty-five (45) days from the date any test reveals the Hemp crop contains THC levels in excess of one percent (1%) or following a second test for a Hemp crop that initially tests between three-tenths of one percent (.3%) and one percent (1%) during which to destroy the crop. If a Tenant abandons the crop, the Landlord must initiate the process of destroying the crop within twenty-four (24) hours of receiving notice from the Agricultural Commissioner-Sealer directing the destruction and must complete the destruction within forty-five (45) days from the date of the initiation.

D. Once a Hemp crop is harvested, destroyed or removed, the Tenant and the Landlord are jointly responsible for abating all Regrowth from the harvested or destroyed crop at any time following the permitted cultivation season.

14-198 Permit revocation.

A. Any Person who violates this article knowingly and willfully may have their permit revoked and, if the permit is revoked, shall be ineligible to apply for a permit to cultivate Hemp within the County of Kings for three (3) years from the date of the final decision of the Agricultural Commissioner-Sealer that a violation has been made knowingly and willfully.

B. The Agricultural Commissioner-Sealer, Sheriff, District Attorney or County Counsel shall have the right to petition the Kings County Board of Supervisors for revocation of a Hemp cultivation permit upon a showing of good cause.

14-199 Limitations on county's liability.

To the fullest extent permitted by law, the County of Kings shall not assume any liability whatsoever with respect to having registered and issued a permit to cultivate Hemp pursuant to this article or otherwise approving the operation of any Hemp cultivation.

14-200 Violations declared a public nuisance.

Each and every violation of the provisions of this article is hereby deemed unlawful and a public nuisance.

14-201 Each violation is a separate offense.

Each and every violation of this article shall constitute a separate violation and shall be subject to all remedies and enforcement measures authorized by the Code of Ordinances of the County of Kings. Each and every day a violation of this article continues shall constitute a separate violation subject to all authorized remedies and enforcement measures.

14-202 Severability.

The provisions of this article are hereby declared to be severable. If any provision, clause, word, sentence, or paragraph of this article or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this article.

14-203 Cumulative remedies

Nothing in this articles shall prohibit or prevent prosecution for violations under any other law. All remedies provided for in this article are cumulative and not exclusive.

[341248]