



MARIPOSA COUNTY

Planning · 209-966-5151



RESOLUTION - ACTION REQUESTED 2019-188

MEETING: April 9, 2019

TO: The Board of Supervisors

MINUTE ORDER ATTACHED

FROM: Sarah Williams, Planning Director

RE: Initiate Zoning Ordinance Amendments: Regulate Industrial Hemp Cultivation

RECOMMENDATION AND JUSTIFICATION:

Adopt a Resolution of Intention pursuant to Zoning Ordinance Section 17.128.020.B Initiating Amendments to the Zoning Ordinance to establish regulations and development standards for the cultivation of industrial hemp and to prohibit the cultivation of hemp by "established agricultural research institutions."

This resolution will initiate proceedings to amend the Zoning Ordinance to include regulations that will apply to the future cultivation of hemp within the County of Mariposa and direct staff to spend time processing the amendments. This action does not commit the Board regarding future actions on the project.

Amendments will require noticed Public Hearings before the Planning Commission and Board of Supervisors.

BACKGROUND AND HISTORY OF BOARD ACTIONS:

On March 26, 2019 the Board of Supervisors adopted Ordinance 1141, an Interim Urgency Ordinance prohibiting industrial hemp cultivation and prohibiting the cultivation of hemp by "established agricultural research institutions."

The Board directed staff to process the amendments to regulate the cultivation of industrial hemp.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

Alternative: Amend proposed regulations. Continue item to bring back different regulations after direction from Board. This alternative will still necessitate extending Urgency Ordinance 1141.

Alternative: Extend Urgency Ordinance 1141 until California has a federally certified hemp plan.

Negative action: Do not initiate amendments. After Urgency Ordinance expiration, there will be no local regulations for the industrial cultivation of hemp.

Resolution - Action Requested 2019-188

FINANCIAL IMPACT:

None other than staff time to process amendments.

ATTACHMENTS:

190409 BOS Memo to Initiate Amendments(DOC)

190409 BOS Reso Initiate Amendment (DOC)

Ordinance 1141 (PDF)

RESULT: ADOPTED AS AMENDED [UNANIMOUS]

MOVER: Marshall Long, District III Supervisor

SECONDER: Rosemarie Smallcombe, District I Supervisor

AYES: Smallcombe, Jones, Long, Cann, Menetrey



COUNTY of MARIPOSA

P.O. Box 784, Mariposa, CA 95338 (209) 966-3222



**MILES MENETREY, CHAIR
KEVIN CANN, VICE-CHAIR
ROSEMARIE SMALLCOMBE
MERLIN JONES
MARSHALL LONG**

**DISTRICT V
DISTRICT IV
DISTRICT I
DISTRICT II
DISTRICT III**

MARIPOSA COUNTY BOARD OF SUPERVISORS MINUTE ORDER

TO:	SARAH WILLIAMS/Planning Director
FROM:	RENÉ LaROCHE/Clerk of the Board <i>RL</i>
SUBJECT:	Adopt a Resolution of Intention Pursuant to Zoning Ordinance Section 17.128.020.B Initiating Amendments to the Zoning Ordinance to Establish Regulations and Development Standards for the Cultivation of Industrial Hemp and to Prohibit the Cultivation of Hemp by “Established Agricultural Research Institutions”
RESOLUTION:	19-188

The following action was taken by the Mariposa County Board of Supervisors on **April 9, 2019:**

I. 2. Planning RES-2019-188

Adopt a Resolution of Intention Pursuant to Zoning Ordinance Section 17.128.020.B Initiating Amendments to the Zoning Ordinance to Establish Regulations and Development Standards for the Cultivation of Industrial Hemp and to Prohibit the Cultivation of Hemp by “Established Agricultural Research Institutions”

Sarah Williams/Planning Director gave the staff report. No public input. Board discussion ensued.

AMENDMENT: Addition of a Point 14 that requires a performance bond be posted; staff is not required to follow the tentative timeline in the item but may work on it as staff is able to; with direction to planning to come back on May 7th to extend the emergency ordinance until such time as the work is completed.

RESULT: ADOPTED AS AMENDED [UNANIMOUS]
MOVER: Marshall Long, District III Supervisor
SECONDER: Rosemarie Smallcombe, District I Supervisor
AYES: Smallcombe, Jones, Long, Cann, Menetrey

**STATE OF CALIFORNIA
COUNTY OF MARIPOSA
BOARD OF SUPERVISORS**

Resolution
No 2019-188

A resolution of intention pursuant to Zoning Ordinance Section 17.128.020.B initiating amendments to the Zoning Ordinance to establish regulations and development standards for the cultivation of industrial hemp and to prohibit the cultivation of hemp by “established agricultural research institutions.”

WHEREAS, the California Industrial Hemp Farming Act was enacted in 2013 but remained inoperative until federal laws allowed industrial hemp production; and

WHEREAS, the passage of Proposition 64 removed the inoperative statement and the California Industrial Hemp Farming Act became effective January 1, 2017; and

WHEREAS, the California Industrial Hemp Farming Act authorized the commercial production of industrial hemp and provided for the registration of growers along with general registration requirements, set the maximum THC level for hemp at 0.3%, and required testing and sampling of industrial hemp prior to being harvested; and

WHEREAS, while the California Industrial Hemp Farming Act was effective, the regulations needed to govern industrial hemp production had not been created; thus no industrial hemp cultivation has been allowed since then; and

WHEREAS, the 2018 Farm Bill was signed into law on December 20, 2018, removing hemp from the definition of marijuana under the Federal Controlled Substances Act, defining hemp as an agricultural commodity, and including provisions regarding the cultivation, shipment, and sale of industrial hemp; and

WHEREAS, Senate Bill 1409 went into effect on January 1, 2019 and further expanded provisions for industrial hemp cultivation in California; and

WHEREAS, as of March 26, 2019, the California Department of Food and Agriculture’s (CDFA’s) expected release of initial registration regulations was anticipated to occur on April 3, 2019; and

WHEREAS, there was an urgent need for County staff to assess the potential local impacts of industrial hemp grown commercially or by “Established Agricultural Research Institutions” and to explore the feasibility of developing reasonable regulatory options relating thereto. Allowing the cultivation of commercial hemp or cultivation of hemp by “Established Agricultural Research Institutions” prior to studying whether or not its nuisance potential can be mitigated through reasonable regulations creates an urgent and immediate threat to the public health, safety and/or welfare of the citizens of Mariposa County; and

WHEREAS, on the 26th day of March 2019, the Board of Supervisors adopted Ordinance No. 1141, an interim urgency ordinance to temporarily prohibit the cultivation of industrial hemp and the cultivation of hemp by “established agricultural research institutions”; and

WHEREAS, based on the direction received during the discussion of the interim urgency ordinance, staff developed this resolution of intention to initiate processing of an ordinance to regulate the industrial cultivation of hemp and to prohibit the cultivation of hemp by “established agricultural research institutions; and

WHEREAS, as of April 1, 2019, the CDFA had revised the text of the proposed regulation and initial statement of reasons pertaining to the industrial hemp cultivation registration fee. The public comment period for the CDFA’s recent revised text is fifteen (15) days. The written comment period closes at 5 p.m. on Sunday, April 14, 2019; and

WHEREAS, once the CDFA’s proposed regulations are in place, the County Agricultural Commissioner shall issue a registration to an applicant that registers to cultivate industrial hemp; and

NOW BE IT THEREFORE RESOLVED THAT, the Board of Supervisors does hereby adopt this resolution to initiate amendments to Mariposa County Code, Title 17, the Zoning Ordinance to to establish regulations and development standards for the cultivation of industrial hemp and to prohibit the cultivation of hemp by “established agricultural research institutions.” The ordinance will include the following provisions:

1. Cultivation of industrial hemp may only occur within those districts identified as “Resource Districts” in the Zoning Ordinance, i.e. General Forest, Mountain Preserve, Agricultural Exclusive, and Industrial Mining.
2. Cultivation of industrial hemp shall be prohibited in all other zones, including those identified as “Residential Districts”, and all portions of Planning Study Areas and areas with adopted Specific Plans, Community Plans, and Town Plans.
3. An approved Administrative Use Permit shall be required prior to the establishment of any industrial hemp cultivation.
4. Minimum parcel size on which cultivation can occur shall be 160 acres.
5. Cultivation of industrial hemp by “established agricultural research institutions” would be prohibited throughout the county.
6. Only indoor cultivation shall be allowed, within a structure permitted by the Building Department under an occupancy that permits cultivation. For example, cultivation would be allowed in a greenhouse and would not be allowed within a residential structure, a barn, or garage.
7. Air scrubbers, which must be approved and permitted by the Mariposa County Air Pollution Control District, shall be required on the structure to contain all odors associated with industrial hemp cultivation.

Resolution No. 2019-188; April 9, 2019

8. Minimum setback requirements from property lines for hemp cultivation shall be 100 feet, when the property line is adjacent to a parcel of 160 acres in size or greater. Otherwise, minimum setback requirements from property lines for all activities associated with hemp cultivation shall be 500 feet.
9. Any and all testing required to confirm that a hemp crop's THC levels are below the 0.3% threshold shall be paid for by the cultivator. The County may require testing of a growing crop at regular intervals to monitor THC levels. A final testing shall be conducted at least ten (10) to fourteen (14) days prior to the crop's scheduled harvest, to ensure adequate time for the County to review test results prior to harvest. The County may require that crop sampling, for required testing, be conducted by an outside source or consultant who is not related to or employed by the business. Failure to complete any required testing may result in revocation of the Administrative Use Permit and County action to cause the crop to be destroyed and disposed.
10. Any and all testing shall be done in accordance with all protocols established by state law. All test results shall be provided directly to the County.
11. All costs associated with destroying a cultivation which exceeds the 0.3% threshold shall be paid for by the cultivator. This shall include, but not be limited to, the County's investigation, provision of on-site security, and destruction and disposal.
12. All registration and signage required under state law shall be maintained for the life of the cultivation.
13. Hemp extracts heavy metals from the soil. For hemp cultivations grown in native soils, especially soils which contain high levels of naturally occurring arsenic, the Health & Human Services Agency (HHSA) may require testing. Testing may be required of the hemp crop during cultivation (at intervals required by HHSA) and testing may be required of products made from hemp. As a result of the required testing, HHSA may require a Public Health Warning in the form of a disclosure of arsenic levels (Proposition 65 warning), including for the cultivated crop and/or products made using the hemp.
14. A bond or similar financial assurance shall be required, to ensure that there are sufficient funds available to the County to fully restore a cultivation site, if the operation is abandoned. Required restoration activities shall be defined by the Planning Director, through the AUP process. The value of the financial assurance shall be based on an engineer's estimate. An updated financial assurance, including engineer's estimate, shall be required prior to commencement of each growing season. All costs associated with this requirement shall be the responsibility of the cultivator.

BE IT FURTHER RESOLVED THAT, the amendments are not limited to the above list if other changes or amendments are found to be needed through the processing of the amendment or the public hearing process.


BE IT FURTHER RESOLVED THAT, this action by the Board of Supervisors is taken pursuant to authority established by the Mariposa County Code, Zoning Section 17.128.020.B.

BE IT FURTHER RESOLVED THAT, the Board of Supervisors directs staff to schedule and notice action to extend Urgency Ordinance No. 1141 at their regularly scheduled meeting on the 7th day of May, 2019.

BE IT FINALLY RESOLVED THAT, the Board of Supervisors directs that staff is not required or expected to adhere to the expedited processing schedule as outlined in the memorandum to the Board of Supervisors dated the 9th day of April, 2019, included in the Agenda Packet for this item. The Board recognizes that additional time will be needed, to monitor the continued development of the state's regulatory program and testing protocol for industrial hemp, and the Federal Government's certification of California's program. The Board is interested in ensuring that there is authority to implement the draft regulations as proposed.

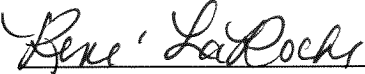
ON MOTION BY Supervisor Long, seconded by Supervisor Smallcombe, this resolution duly passed and adopted this 9th day of April, 2019 by the following vote:

- AYES: SMALLCOMBE, JONES, LONG, CANN, MENETREY
- NOES: NONE
- ABSENT: NONE
- ABSTAIN: NONE




Miles Menetrey, Chair
Mariposa County Board of Supervisors

Attest:



René LaRoche
Clerk of the Board of Supervisors

Approved as to Form:



Steven W. Dahlem
County Counsel