

# Draft Industrial Hemp Regulations

Industrial Hemp Regulations: Draft

During the February 3, 2021, Hemp Ad Hoc Committee meeting I had offered to provide draft ordinance language regarding setbacks to facilitate our discussions. I'm providing that language in this document to facilitate discussion and at the request of the Committee. In this draft, I focused on preparing language that I thought was consistent with the discussions the Committee has had and included comments explaining some of the choices I made. This draft does not address issues that the Committee has not discussed in detail such as enforcement, fees, destruction of crops, testing, and signage. This is meant as suggestions only and if the Committee wants a different approach I'm more than happy to develop appropriate language.

**Chapter 130.43 – Cultivation of Industrial Hemp**

**Sec. 130.43.100. Definitions**

For purposes of this chapter:

- A. "Any purpose" includes cultivation for commercial purposes, cultivation for purposes of a hemp breeder, and cultivation by an Established Agricultural Research Institution.
- B. "Applicant" means a person who submits an application
- C. "Cannabis" has the same meaning as defined in Section 130.41.100 of the County Code of Ordinances.
- D. "Cultivation" has the same meaning as defined in Section 130.41.100 of the County Code of Ordinances.
- E. "Established Agricultural Research Institution" has the same meaning as defined in Food and Agricultural Code Section 81000 as it now reads or may thereafter be amended.
- F. "Female industrial hemp plant" means an industrial hemp plant that possesses only female pistillate flowers and is capable of bearing seed, and is not a male industrial hemp plant.
- G. "Female propagative plant material" means propagative plant material that is bred, grown, or otherwise developed to become a female industrial hemp plant.
- A. "Hemp breeder" has the same meaning as defined in Food and Agricultural Code Section 81000 as it now reads or may thereafter be amended.

- B. "Industrial Hemp" has the same meaning as defined in Food and Agricultural Code Section 81000 and Health and Safety Code Section 11018.5, and the same meaning as "hemp" as defined in 7 Code of Federal Regulations Section 990.1, as those sections now reads or may thereafter be amended.
- C. "Licensee" means a person who has been issued an industrial hemp license and registration pursuant to this Chapter.
- D. "Male industrial hemp plant" means an industrial hemp plant that has male staminate flowers or is otherwise capable of producing pollen.
- E. "Pollen" means the fine powdery substance discharged from a male plant containing male gametes that is capable of causing a female plant, or female part of a plant, to produce seeds.
- F. "Propagative plant material" includes live plants, seeds, seedlings, clones, cuttings, transplants, or other propagules used to establish plants for planting.
- G. "Sensitive use" means the following:
  - a. A place of worship, as defined in Section 130.41.100.
  - b. A licensed child care facility.
  - c. A licensed child care home.
  - d. A day care center.
  - e. An employer-sponsored child care center.
  - f. A family day care home.
  - g. A school, as defined in Section 130.41.100.
  - h. A school bus stop, as defined in Section 130.41.100.
  - i. A school evacuation site.
  - j. A youth center.
  - k. A youth-oriented facility, as defined in Section 130.41.100.
  - l. Publicly owned property.
  - m. Ranch Marketing Facilities.

- n. Sales Rooms.
- o. Wineries.

#### **Sec. 130.43.101. License Requirements**

A person shall not cultivate industrial hemp for any purpose in the unincorporated area of the County unless that person first obtains a permit issued by the Agricultural Commissioner and satisfies all requirements of this chapter. A license issued under this chapter does not grant any entitlement or interest in real property, does not create any interest of value, and it does not run with the land. A licensee shall not transfer ownership or control of the license to another Person as the license is non-transferable and automatically terminates upon transfer of ownership. Any attempt to transfer ownership shall cause the license to be automatically revoked

In order to obtain a license to cultivate industrial hemp, the applicant shall meet all of the following requirements:

1. The person submits an application for a license to cultivate industrial hemp to the Agricultural Commissioner on a form provided by the Agricultural Commissioner. An applicant may submit a single application for multiple parcels. The application form shall include a statement that the applicant consents to inspections and testing by the Agricultural Commissioner as described in this chapter.
2. The applicant submits, along with the application, a completed Industrial Hemp Registration Application for Growers on the form developed by the California Department of Food and Agriculture to the Agricultural Commissioner, and satisfies all relevant state and federal requirements to obtain a registration to cultivate industrial hemp, including completion of a criminal history report. If the applicant has obtained a registration from the Agricultural Commissioner before the application is submitted, the applicant may instead submit the final registration to the Agricultural Commissioner.
3. The applicant is the record title holder of the land upon which hemp is to be cultivated. If the applicant is not the record title owner of the parcel, written consent of the owner of the parcel with original signature and notary acknowledgement. The written consent must be notarized within 30 days of the date that the application is submitted to the Agricultural Commissioner.
4. Each parcel for which a license application is submitted must be located in one of the following: Planned Agricultural (PA), Limited Agricultural (LA), Agricultural Grazing (AG), Forest Resource (FR), and Rural Lands (RL).
5. The applicant shall certify that the cultivation of the industrial hemp will comply with the setback requirements in Section 130.43.104, except that an applicant may request a reduced setback by submitting an application for an industrial hemp conditional use permit in compliance with Section 130.43.103.

6. If pesticides are used, applicant must obtain an Operator Identification Number or Restricted Materials permit from the Agricultural Commissioner.
7. Each license shall expire one year from the date of its issuance. A licensee may request a renewal of their license by submitting an application for renewal to the Agricultural Commissioner.

The Agricultural Commissioner shall review any license submitted and shall approve the license if the applicant meets all of the requirements of this chapter. The Agricultural Commissioner shall deny a license if the Agricultural Commissioner concludes that:

1. The applicant is based on inaccurate or incomplete information.
2. The applicant has failed to pay any required application fees in full, including any past due fees or penalties imposed on the applicant that are related to the cultivation of hemp or the cultivation of commercial cannabis.
3. The Agricultural Commissioner denied the applicant a registration to cultivate industrial hemp because that applicant does not meet applicable state requirements. This includes if the applicant, registrant, or key participant is found to have a disqualifying conviction, as those terms are defined in 3 CCR Section 4902, as they now read or may be amended from time to time.
4. [The applicant, or a key participant of the applicant, has received sustained violation of this Chapter.]

If the Agricultural Commissioner denies the application, the Agricultural Commissioner shall provide the applicant a written statement indicating the reason for the denial. The applicant may submit a revised application that addresses the deficiencies identified by the Agricultural Commissioner, if possible.

#### **SEC. 130.43.103 Industrial Hemp Conditional Use Permit**

An applicant may request a reduced setback by submitting an application for an Industrial Hemp Conditional Use Permit, and comply with all the following requirements:

- A. An Industrial Hemp Conditional Use Permit shall be subject to Article 5 of Title 130 of the County Code (Application Forms, Submittal Process, and Fees), unless provided otherwise herein. It shall be treated as a Conditional Use Permit under Section 130.52.021 (Conditional Use Permits), subject to the public hearing procedures and recommendation from the Planning and Building Director and decision by the Planning Commission.
- B. The applicant shall demonstrate compliance with all standards in the County Code and State law and regulations for the particular industrial hemp activity.
- C. The Industrial Hemp Conditional Use Permit may be granted and the setback reduced if the applicant demonstrates that the actual setback will substantially achieve the purpose of the required setback.
- D. Issuance of an Industrial Hemp Conditional Use Permit under this Chapter is a discretionary act requiring compliance with the California Environmental Quality

Act ("CEQA") and the applicant shall comply with Article 5, Section 130.51.030 (Environmental Review). The applicant shall be responsible for all costs associated with CEQA compliance, including but not limited to environmental analysis and studies, preparation of the appropriate CEQA document, and all County staff time, including attorney time, spent reviewing and pursuing final adoption of the appropriate environmental document.

#### **SEC. 130.43.104 Cultivation Requirements**

A licensee shall, at all times, comply with all of the following requirements relating to cultivation of industrial hemp:

1. The licensee shall ensure that they are, at all times, operating in a manner compliant with all applicable federal, state, and local laws. This includes the Agriculture Improvement Act of 2018 (132 Stat. 4490; PL 115-334), including its implementing regulations, and Division 24 (commencing with Section 81000) of the Food and Agricultural Code, including its implementing regulations.
2. The licensee shall design the parcel used for cultivation in a manner that minimizes odors to surrounding areas.
3. The licensee engaging in the outdoor cultivation of industrial hemp may only plant female propagative plant material.
4. Cultivation of industrial hemp is permitted only in Planned Agricultural (PA), Limited Agricultural (LA), Agricultural Grazing (AG), Forest Resource (FR), and Rural Lands (RL).
5. Any structure(s) containing facilities used for the processing of industrial hemp must have all permits required under state law, Building Codes, and the El Dorado County Code.
6. Setbacks.
  - a. Except as provided in (c) below, a licensee engaging in the outdoor cultivation of industrial hemp shall comply with the following setback requirements:
    - i. If the total outdoor industrial hemp cultivation area is equal to or less than \_\_\_ acres:
      1. No less than seventy-five (75) feet from the boundary line of the parcel. This setback shall be measured in a straight line from the nearest point of the outdoor industrial hemp cultivation to the boundary line of the parcel. This setback will not apply if either of the following is met:
        - a. The property line is adjacent to the property line of a parcel that is either owned, managed, or otherwise under the control of the licensee.
        - b. The setback will not apply with respect to a particular parcel if the licensee obtains written consent from all owner of record of any adjacent parcels that are impacted by the setback to waive the setback

requirement. The Agricultural Commissioner shall prescribe the form to be used for this written agreement, and any written agreement must be approved by the Agricultural Commissioner. A written agreement will expire at the same date that the licensee's license expires, and if the licensee renews their license the licensee must obtain a new written agreement. The written agreement is only binding on those parties involved and does not bind any subsequent owner of the parcel.

2. No less than one thousand (1000) feet from a parcel containing a sensitive use that is in existence at the time the licensee obtains their license. This setback shall be measured in a straight line from the nearest point of the outdoor industrial hemp cultivation to the boundary line of the parcel containing the use.
  3. No less than one thousand (1000) feet from any occupied residential structure located on a separate legal parcel at the time the licensee obtains their license. This setback shall be measured from the nearest point of the outdoor industrial hemp cultivation to an exterior wall of the occupied residence.
- ii. If the total outdoor industrial hemp cultivation area is greater than \_\_\_ acres:
1. No less than \_\_\_ (\_\_\_) feet from the boundary line of the parcel. This setback shall be measured in a straight line from the nearest point of the outdoor industrial hemp cultivation to the boundary line of the parcel. This setback will not apply if either of the following is met:
    - a. The property line is adjacent to the property line of a parcel that is either owned, managed, or otherwise under the control of the licensee.
    - b. The setback will not apply with respect to a particular parcel if the licensee obtains written consent from all owner of record of any adjacent parcels that are impacted by the setback to waive the setback requirement. The Agricultural Commissioner shall prescribe the form to be used for this written agreement, and any written agreement must be approved by the Agricultural Commissioner. A written agreement will expire at the same date that the licensee's license expires, and if the licensee

renews their license the licensee must obtain a new written agreement. The written agreement is only binding on those parties involved and does not bind any subsequent owner of the parcel.

2. No less than one thousand and five hundred (1500) feet from a parcel containing a sensitive use that is in existence at the time the licensee obtains their license. This setback shall be measured in a straight line from the nearest point of the outdoor industrial hemp cultivation to the boundary line of the parcel containing the use.
  3. No less than one thousand and five hundred (1500) feet from any occupied residential structure located on a separate legal parcel at the time the licensee obtains their license. This setback shall be measured from the nearest point of the outdoor industrial hemp cultivation to an exterior wall of the occupied residence.
- b. Except as provided in (c) below, a licensee engaging in the indoor cultivation of industrial hemp shall comply with the following setback requirements:
- i. No less than \_\_\_ (\_\_\_) feet from the boundary line of the parcel, unless the property line is adjacent to the property line of a parcel that is either owned, managed, or otherwise under the control of the licensee. This setback shall be measured in a straight line from the nearest point of the outdoor industrial hemp cultivation to the boundary line of the parcel.
  - ii. No less than \_\_\_ (\_\_\_) feet from a parcel containing a sensitive use that is in existence at the time the licensee obtains their license. This setback shall be measured in a straight line from the nearest point of the outdoor industrial hemp cultivation to the boundary line of the parcel containing the use.
  - iii. No less than \_\_\_ (\_\_\_) feet from any occupied residential structure located on a separate legal parcel. This setback shall be measured from the nearest point of the outdoor industrial hemp cultivation to an exterior wall of the occupied residence.
- c. The setbacks required by (a) and (b) above do not apply to a licensee who has obtained an industrial hemp conditional use permit.

#### 7. [Signage requirements]

#### **SEC. 130.43.105 Inspections**

The Agricultural Commissioner shall conduct regular inspections of each licensee to ensure that licensee is in compliance with the requirements of this Chapter and all state and federal law. The Agricultural Commissioner shall conduct these inspections at random intervals, and shall ensure that every licensee is inspected at least annually. The Agricultural Commissioner



shall provide reasonable advance notice of the inspection, and that notice shall be no later than same day notice.

**SEC. 130.43.106 Enforcement and Abatement**

[A placeholder for language dealing with enforcement]

**SEC. 130.43.107 Fees**

[A placeholder for language that prescribes fees]