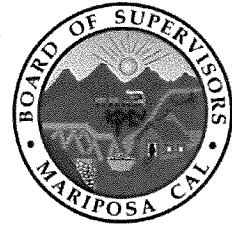




MARIPOSA COUNTY

Planning · 209-966-5151



ORDINANCE 2021-1161

MEETING: February 23, 2021
TO: The Board of Supervisors
FROM: Sarah Williams, Planning Director
RE: County Project (Zoning Amendment) No. 2021-010; Prohibition of Hemp Cultivation

RECOMMENDATION AND JUSTIFICATION:

Waive the Second Reading and Adopt an Ordinance amending Title 17, the Zoning Ordinance to prohibit industrial hemp cultivation and hemp cultivation by established agricultural research institutions in Mariposa County. The recommended action includes an environmental determination.

The proposed amendments would list hemp cultivation as a prohibited use in all zones.

The Board of Supervisors previously tabled amendments to the Zoning Ordinance (County Project No. 2019-071) which included development standards for hemp cultivation until such time as Federal and State regulations are finalized to ensure that the amendments are not in conflict. As of January 11, 2021, the USDA website shows that California's plan is still under review. Based on the current status of the state regulations, the Planning Commission and Board of Supervisors' previous direction, and the pending expiration of the urgency ordinance prohibiting industrial hemp cultivation, the proposed amendments to list hemp cultivation as a prohibited use in all zones has been developed. The amendments are intended to provide additional time for the state regulations to be finalized to ensure any ordinance to allow limited industrial hemp cultivation is not in conflict with state and federal regulations.

These amendments continue the Planning Commission and Board of Supervisor's prior direction to table the amendments in County Project No. 2019-071 until such time as the federal and state regulations are finalized.

BACKGROUND AND HISTORY OF BOARD ACTIONS:

March 26, 2019 - Adoption of urgency ordinance prohibiting cultivation of hemp.

April 9, 2019 - Adoption of Resolution No. 2019-188, initiating amendments to Title 17 to regulate the cultivation of hemp in Mariposa County.

Ordinance 2021-1161

May 7, 2019 - Extension of urgency ordinance prohibiting the cultivation of hemp for an additional 10 months and 15 days.

November 26, 2019 - Consideration of Planning Commission recommendation to table ordinance. The Board of Supervisors directed staff to table the amendment until such time as several unknowns could be answered and state and federal regulations are finalized.

March 24, 2020 - Final extension of urgency ordinance prohibiting the cultivation of hemp for an additional 12 months (expires on March 26, 2021).

February 9, 2021 - This ordinance was introduced.

Additional background information can be found in the Staff Report attached to this item.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

Second Reading (Adoption): No changes can be made to the ordinance at the Second Reading. Consequently, the Board's only potential actions at this time are to approve the ordinance or not.

First Reading (Introduction): The Board can direct staff to continue processing the previous ordinance establishing regulations to allow limited hemp cultivation in Mariposa County. Staff recommends proceeding with this ordinance banning hemp cultivation in the meantime to prevent a situation where hemp cultivation would be unregulated in the county. The proposed ordinance could be rescinded as part of the processing of an ordinance regulating hemp cultivation.

Negative Action: Not processing the ordinance would be inconsistent with Board direction on November 26, 2019. Upon expiration of the urgency ordinance moratorium on March 26, 2021, hemp cultivation would be allowed in Mariposa County with no regulations to address impacts of the use.

FINANCIAL IMPACT:

There will be no financial impact on the General Fund resulting from the initiated amendments.

ATTACHMENTS:

Staff Report (PDF)

Draft Ordinance (PDF)

Summary Ordinance for Publication (PDF)

Draft Notice of Exemption (PDF)

Final Rule-Federal Hemp Production Program (PDF)

California Industrial Hemp Law and Regulations (PDF)

PowerPoint Presentation (PDF)

RESULT: ADOPTED [UNANIMOUS]

MOVER: Miles Menetrey, District V Supervisor

SECONDER: Rosemarie Smallcombe, District I Supervisor

AYES: Smallcombe, Sweeney, Long, Forsythe, Menetrey

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

MARIPOSA COUNTY ORDINANCE NO. 1161

**AN ORDINANCE AMENDING COUNTY CODE TITLE 17 TO
ADD SECTION 17.108.200.E., SECTION 17.334.055.E., and DEFINITIONS TO
SECTION 17.148.010**

WHEREAS, on the 26th day of March 2019, the Board of Supervisors adopted Interim Urgency Ordinance 1141 prohibiting all industrial hemp cultivation for 45 days; thereafter on the 7th day of May 2019 adopted Ordinance 1142 extending Ordinance 1141 for an additional 10 months and 15 days; and thereafter on the 23rd day of March 2020 adopted Ordinance 1155 extending Ordinance 1141 for an additional 12 months; and

WHEREAS, Ordinance 1141 directed the preparation of necessary documents, including a resolution, ordinance and CEQA determination, to amend the Mariposa County Zoning Ordinance to regulate, within Mariposa County, industrial hemp cultivation; and

WHEREAS, on the 9th day of April 2019, the Board of Supervisors, in accordance with Mariposa County Code Section 17.128.020.B, adopted Resolution 2019-188 initiating Zoning Ordinance Amendment No. 2019-071 to establish regulations and development standards for the cultivation of industrial hemp and to prohibit the cultivation of hemp by “established agricultural research institutions”; and

WHEREAS, on the 11th day of October 2019 the Planning Commission recommended that the Board of Supervisors table the amendments until such time as staff could answer unknowns related to state and federal regulations and how they will affect the proposed ordinance; and

WHEREAS, on the 26th day of November 2019 the Board of Supervisors considered the Planning Commission’s recommendation and directed staff to table the amendments until such time as staff could answer unknowns related to state and federal regulations and how they will affect the proposed ordinance; and

WHEREAS, as of 11th day of January 2021 the State of California had not received approval from the United States Department of Agriculture for their hemp production plan; and

WHEREAS, based on Board of Supervisors’ direction to staff to table the amendments until such time as staff could answer unknowns related to state and federal regulations, staff prepared this ordinance for adoption prior to the expiration of the Interim Urgency Ordinance on the 26th day of March 2021; and

WHEREAS, the amendments are intended to continue the prohibition of the cultivation of industrial hemp and the cultivation of hemp by established agricultural research institutions; and

WHEREAS, if directed by the Board of Supervisors, staff will bring back an action to rescind these amendments and complete processing an ordinance to establish regulations for industrial hemp cultivation once all state and federal regulations are in place and consistent; and

WHEREAS, it has been found that the project is exempt from the California Environmental Quality Act, and a Notice of Exemption has been filed for the project.

NOW, THEREFORE, THE BOARD OF SUPERVISORS OF MARIPOSA COUNTY, a political subdivision of the State of California, does ordain as follows:

Section I:

Zoning Ordinance Section 17.108.200 shall be amended to add subsection E. as follows (new text shown in underlined and italicized font):

17.108.200 Uses prohibited in all zones.

The following land uses are prohibited in all zoning districts:

- A. Medical marijuana dispensaries;
- B. The collective or cooperative cultivation of marijuana;
- C. The cultivation of marijuana for medical purposes by person(s) not residing on the property on a permanent basis;
- D. Any activity and use within Mariposa County for which a license is required pursuant to California Business and Professions Code, Division 10, as it may be amended, including activities requiring a license pursuant to the Adult Use Of Marijuana Act, including commercial, or not for profit, cultivation, processing, manufacture, wholesale or retail sale or public consumption;
- E. The cultivation of hemp, including the cultivation of hemp by established agricultural research institutions.

Section II:

Zoning Ordinance Section 17.334.055 shall be amended to add subsection E. as follows (new text shown in underlined and italicized font):

17.334.055 Uses prohibited in all zones.

The following land uses are prohibited in all zoning districts:

- A. Medical marijuana dispensaries;
- B. The collective or cooperative cultivation of marijuana;
- C. The cultivation of marijuana for medical purposes by person(s) not residing on the property on a permanent basis;
- D. Any activity and use within the Town of Mariposa, Mariposa County for which a license is required pursuant to California Business and Professions Code, Division 10, as it may be amended, including activities requiring a license pursuant the Adult Use Of Marijuana Act, including commercial, or not for profit, cultivation, processing, manufacture, wholesale or retail sale or public consumption; and
- E. The cultivation of hemp, including the cultivation of hemp by established agricultural research institutions.

Section III:

Zoning Ordinance Section 17.148.010 of Title 17 of the Mariposa County is amended to add the following terms (new text shown in underlined and italicized font; all other existing terms and phrases remain unchanged):

Chapter 17.148 Definitions

17.148.010 Definitions of terms and phrases

The following terms and phrases shall be used in this title and are listed alphabetically:

Hemp cultivation:

Any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of hemp, including activities carried out by seed breeders.

Hemp:

Same meaning as in Section 11018.5 of the California Health and Safety Code.

Seed breeder:

Same meaning as in Section 81000 of the California Food and Agricultural Code.

Established agricultural research institution:

Same meaning as in Section 81000 of the California Food and Agricultural Code.

Section IV: If any provision of this ordinance is held to be unconstitutional, preempted by federal law, or otherwise invalid by any court of competent jurisdiction, the remaining provisions of the ordinance shall not be invalidated.

Section V: This ordinance shall become effective thirty (30) days after final passage pursuant to Government Code Section 25123.

BE IT FINALLY ORDAINED, this action is based on the findings mandated by Section 17.128.050 of the Mariposa County Zoning Ordinance as follows:

- 1. Finding:** The Zoning amendments are in the general public interest and will not have a significant adverse effect on the general public health, safety, peace, and welfare.

Evidence: The amendment is in the general public interest because it establishes restrictions for the cultivation of hemp in Mariposa County. Regulations are needed to protect the public health, safety, and welfare of residents, children, and businesses from harmful secondary effect of the unregulated cultivation of hemp. The amendment will not have any adverse effect on the general public health, safety, peace and welfare, but will protect them.

- 2. Finding:** The amendment is desirable for the purpose of improving the Mariposa County General Plan with respect to providing a long-term guide for county development and a short-term basis for day-to-day decision making.

Evidence: One of the stated goals of the Mariposa County General Plan is to ensure that the rural character of Mariposa County is maintained (Goal 5-1). This amendment restricts a use that could result in increased traffic, noise, lights, and degradation of the natural environment associated with

unregulated cultivation of hemp. This amendment will enable Mariposa County to properly protect its residents from the risk of criminal activity, degradation of the natural environment, cultivation related odors, and the potential for increased marijuana distribution under the guise of hemp. The amendment will enable better day-to-day decision making, as it will provide clear regulations for hemp cultivation. The amendment will minimize negative impacts on residential properties. This amendment will provide additional time for the County to study the impacts associated with hemp cultivation and to ensure that any regulations and standards for hemp cultivation are consistent with State and Federal regulations which are not yet finalized.

- 3. **Finding:** That such an amendment conforms to the requirements of state law and county policy.

Evidence: The application has been processed in accordance with all applicable requirements of state law and county policy.

- 4. **Finding:** The amendment is consistent with other guiding policies, goals, policies, and standards of the Mariposa County general plan.

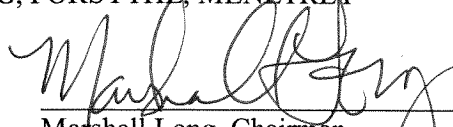
Evidence: The amendment will ensure that the rural character of Mariposa County is maintained (Goal 5-1, Mariposa County General Plan). The amendment implements Implementation Measure 5-1a(3) as the project establishes land use regulations to ensure future uses are complementary to the concept of rural character. The amendment has the effect of preventing the increased traffic, noise, lights, and degradation of the natural environment that is associated with large unregulated hemp cultivation. The amendment implements Policy 10-1c and Implementation Measure 10-1c(1) as it ensures that future uses in the Agriculture/Working Landscape are compatible with agriculture. The amendment establishes clearly defined regulations to uses associated with hemp.

- 5. **Finding:** The proposed amendments are exempt from environmental review pursuant to Sections 15060(c)(2) and 15061(b)(3). The amendments will not result in a direct or reasonably foreseeable indirect physical change in the environment and there is no possibility that the amendments may have a significant effect on the environment.

This project will not result in any new construction on the ground that would not already be allowed. The project will continue an existing moratorium on hemp cultivation.

PASSED AND ADOPTED on this 23rd day of February 2021, by the following vote:

AYES: SMALLCOMBE, SWEENEY, LONG, FORSYTHE, MENETREY
NOES: NONE
ABSTAINED: NONE
EXCUSED: NONE



Marshall Long, Chairman
Mariposa County Board of Supervisors

ATTEST:



René LaRoche, Clerk of the Board

APPROVED AS TO FORM:



Steven W. Dählem, County Counsel