

**ORDINANCE NO. 2020-463**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ARVIN  
ADDING CHAPTER 17.65, OF TITLE 17 HEMP TO THE ARVIN  
MUNICIPAL CODE**

**WHEREAS**, Pursuant to Article XI, Section 7, of the California Constitution, the City of Arvin (“City”) 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; and

**WHEREAS**, on or about November 1, 2016, the City of Arvin adopted Ordinance No. 436, amending Title 8 of the Arvin Municipal Code and adopting Chapter 8.29 pertaining to marijuana, to take effect after thirty (30) days after its final passage and adoption and contingent upon passage of California Proposition 64; and

**WHEREAS**, on or about November 8, 2016, California voters passed Proposition 64, to become law immediately; and

**WHEREAS**, on or about January 1, 2017, The California Industrial Hemp Farming Act became effective, California Food and Agriculture Code sections 81000 et seq., authorizing certain activities of industrial hemp growers and established agricultural research institutions; and

**WHEREAS**, on or about November 21, 2017, the City Council adopted Ordinance No. 443, which added Chapter 17.62 “Commercial Cannabis Activity” to Title 17 of the Arvin Municipal Code; and

**WHEREAS**, on June 19, 2018, the City Council Adopted Ordinance No. 447, amending and renumbering Chapter 17.62 (“Commercial Cannabis Activity”) of Title 17 of the Arvin Municipal Code and thereby adding Chapter 17.64 (“Commercial Cannabis Activity”) to Title 17 of the Arvin Municipal Code, to establish certain regulations pertaining to commercial cannabis activity; and

**WHEREAS**, in December of 2018, the President of the United States 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 and authorized the U.S. Department of Agriculture to create quality control standards for hemp production, further giving states that desire to have primary regulatory authority over the production of hemp the ability to adopt their own state plans, which plan may include a reference to a law of the state regulating the production of hemp, to the extent consistent with federal law; and

**WHEREAS**, under California Food and Agriculture Code, section 81006, subdivisions (d)(3) and (5), the California Department of Food and Agriculture (“CDFA”) is required to establish regulations for sampling procedures and approved laboratories for sample testing of all hemp crops (except when grown by an established agricultural research institution) no more than thirty (30) days before harvest; and

**WHEREAS**, in September 2018, SB 1409 was enacted, in which the definition of industrial hemp in Health and Safety Code, section 11018.5(a) was amended to delete the reference to its being a crop for fiber or oilseed production, and the Industrial Hemp Farming Act was also amended to its current form, including revising Food and Agriculture Code section 81006 to remove requirement for dense planting and restrictions against pruning, tending, or culling, in order to “remov[e] limitations on the manner in which industrial hemp may be grown and the uses for which it may be grown,” thereby “remov[ing] barriers to the growth of industrial hemp as an agricultural product, and for agricultural or academic research”; and

**WHEREAS**, in June of 2019, the CDFA adopted emergency regulations, and in October of 2019 the CDFA revised those regulations, to establish timeframes, procedures, methods, and confirmation for industrial hemp sampling, laboratory testing, and destruction for industrial hemp cultivation; and

**WHEREAS**, CDFA found a pressing need for the swift establishment of regulations to prevent delay of the first industrial hemp harvest, and calculated that the absence of regulation could result in a potential direct loss of over \$43,000,000.00 to California farmers; and

**WHEREAS**, industrial hemp, the extracts and derivatives from processing industrial hemp, and products manufactured with industrial hemp or its extracts and derivatives, may be useful and valuable to both producers and consumers, and therefore may serve as a source of economic development; and

**WHEREAS**, researching strains of industrial hemp plants, the methods for cultivating and processing industrial hemp, and the methods for manufacturing products using industrial hemp and its extracts and derivatives, is important for identifying and optimizing the beneficial uses and value of industrial hemp, and is itself a useful and productive economic activity; and

**WHEREAS**, research and commercial activity relating to industrial hemp and its cultivation, processing, and manufacturing are not mutually exclusive activities, but can be and should be mutually supporting and reinforcing; and

**WHEREAS**, industrial hemp strains grown for its cannabidiol oil properties (CBD oil) may be indistinguishable from the high THC cannabis strains used for medicinal and recreational purposes, and permitting industrial hemp cultivation without regulation of the acreage and location of industrial hemp plants may lead to the same type of odor and public safety issues facing cannabis operations in the City; and

**WHEREAS**, industrial hemp may serve as a host to mites and other insects, and currently registered pesticides may not always be effective in either addressing such mites and insects or preventing them from moving into other nearby crops, thus threatening the safety of those nearby crops; and

**WHEREAS**, on April 27, 2020 the City of Arvin Planning Commission (“Commission”) conducted a public hearing to consider the proposed ordinance, and after considering public

testimony, the staff report and all submitted evidence to the support the ordinance, the Commission recommended the City Council (“Council”) [approve/deny] the proposed ordinance; and

**WHEREAS**, the City Council finds this ordinance is reasonable and necessary for the preservation of the public peace, health and safety; and

**WHEREAS**, the proposed ordinance is consistent with the General Plan and any applicable Specific Plan(s); and

**WHEREAS**, new Chapter 17.65 establishes hemp regulations within the City of Arvin; and

**WHEREAS**, in accordance with the California Environmental Quality Act (“CEQA”), and pursuant to CEQA Guideline, sections 15378 and 15061(b)(3), this activity is not a “project” subject to CEQA as it can be seen with certainty that there is no possibility that an activity may have a significant effect on the environment; and

**NOW THEREFORE**, the City Council of the City of Arvin does hereby ordain as follows:

**SECTION 1.** The above recitals are incorporated hereby by reference.

**SECTION 2.** The City Council has reviewed the proposed ordinance and hereby finds that it is consistent with the General Plan and all applicable Specific Plan(s).

**SECTION 3.** The City Council, based upon its own independent judgement, finds that the proposed ordinance promotes and protects the health, safety, welfare and quality of life of the City of Arvin residents, including promoting affordable housing and economic development.

**SECTION 4.** The proposed ordinance was assessed in accordance with the authority and criteria contained in CEQA, the State CEQA Guidelines (“CEQA Guidelines”), and the environment regulations of the City. The City Council finds and determines that the proposed ordinance is not a “project” for the purposes of CEQA and consistent with CEQA Guidelines section 15378, as it merely updates existing administrative processes and will not result in direct or indirect physical changes in the environment as compared to the current baseline. Additionally, the City Council finds and determines for the same reasons that even if the proposed ordinance were a project for the purpose of CEQA, there is no possibility that the project may have a significant adverse effect on the environment pursuant to CEQA Guidelines, section 15061(b)(3). Therefore, the proposed ordinance is not subject to CEQA.

**SECTION 5.** Newly added Chapter 17.65, of Title 17, of the Arvin Municipal Code is added to read as follows:

**Chapter 17.65**  
**Hemp**

**Section 17.65.010 Policy.**

It is the policy of the City to encourage responsible industrial hemp cultivation, processing, and manufacturing and to regulate such cultivation, processing, and manufacturing in a responsible

manner to promote economic development, protect the health, safety, and welfare of the residents of the City of Arvin and to enforce rules and regulations consistent with state law.

**Section 17.65.020 Definitions.**

When used in this chapter, 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 regular provision.

- A. "City" means the City of Arvin, a municipal corporation.
- B. "City Council" means the governing body of the City.
- C. "City Manager" means the city manager of the City of Arvin, or the city manager's authorized deputy, agent or representative.
- D. "Established agricultural research institution" or "EARI" has the same meaning as in section 81000 of the California Food and Agricultural Code.
- E. "EARI affiliate" means any person carrying out research pursuant to or for a research program of an EARI.
- F. "Hemp cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of hemp, including activities carried out by seed breeders which is authorized pursuant to state, federal or local statute.
- G. "Hemp processing" means any baling, bundling, or milling of industrial hemp, or the extraction or separation of any oils, fibers, or other derivatives of industrial hemp after harvesting.
- H. "Industrial Hemp" shall have the same meaning as in section 11018.5 of the California Health and Safety Code.
- I. "Person" means any individual, firm, partnership, joint venture, association corporation, limited liability company, estate, trust, activity trust, receiver, syndicate, or any other group or combination acting as a unit, and the plural as well as the singular.
- J. "Seed breeder" has the same meaning as in section 81000 of the California Food and Agricultural Code.

**Section 17.65.030 Hemp Cultivation.**

- A. Hemp cultivation shall be prohibited within all zones of the City of Arvin, whether conducted indoors or outdoors, unless you have first received a permit issued by the City or enter into a development agreement with the City authorizing the cultivation of hemp.
- B. Hemp cultivation by an EARI or EARI affiliate, including cultivation of *Cannabis sativa L.* plants as part of an EARI's hemp research program, shall be permitted within the City of Arvin, provided that the EARI or EARI affiliate shall register with the City Manager the locations and nature of operations within the City of Arvin where such cultivation shall be conducted in advance of any such activity.
- C. An EARI or EARI affiliate may sell industrial hemp commercially, but only to the extent that the biomass so used is derived from crops that were sampled and tested consistent with the standards and procedures established pursuant to California

Food and Agriculture Code section 81006(d) and for which test results show THC levels equal to or less than three-tenths of 1 percent. The City Manager may establish rules and regulations relating to documenting and reporting the tests of any such biomass used by an EARI or EARI affiliate for commercial transactions.

- D. Except to the extent used or maintained by an EARI or EARI affiliate for research purposes, any *Cannabis sativa L.* plant cultivated with the intent of being industrial hemp that are tested and determined to have THC content in excess of three-tenths of 1 percent within 30 days of intended harvest shall be destroyed. For purposes of this requirement, transferring such a plant to a person authorized to conduct commercial cannabis activities under Chapter 17.64, for treatment and handling in accordance with the provisions of that Chapter 17.64, shall be deemed the destruction of the plant as industrial hemp provided the transfer is conducted in compliance with applicable state statutes and the Arvin Municipal Code. The City Manager may establish further rules and regulations relating to the process of destroying such plants, whether by means of transfer to permissible cannabis activities or otherwise, and documentation relating thereto.

#### **Section 17.65.040 Hemp Processing.**

- A. Hemp processing shall be prohibited within all zones of the City of Arvin, whether conducted indoors or outdoors, except to the extent such processing either is (i) conducted pursuant to a permit issued by the City of Arvin authorizing the processing of Hemp, or (ii) conducted pursuant to a development agreement with the City of Arvin.
- B. Hemp processing by an EARI or EARI affiliate, including processing of *Cannabis sativa L.* plants as part of an EARI's hemp research program, shall be permitted within the City of Arvin, provided that the EARI or EARI affiliate shall register with the City Manager the locations and nature of operations within the City of Arvin where such processing shall be conducted in advance of any such activity. Nothing in this subsection shall authorize an EARI or EARI affiliate to processing hemp without first receiving a permit or entering into a development agreement with the City of Arvin.
- C. An EARI or EARI affiliate may sell industrial hemp or extracts or derivatives of industrial hemp commercially, but only to the extent that the biomass so used is derived from crops that were sampled and tested consistent with the standards and procedures established pursuant to California Food and Agriculture Code section 81006(d) and for which test results show THC levels equal to or less than three-tenths of 1 percent. The City Manager may establish rules and regulations relating to documenting and reporting the tests of any such biomass used by an EARI or EARI affiliate for commercial transactions.

### **Section 17.65.050 Manufacturing of Hemp Products.**

- A. The manufacturing of products using industrial hemp or extracts or derivatives of industrial hemp shall be prohibited, unless you have first received a permit issued by the City of Arvin authorizing hemp manufacturing or entered into a development agreement with the City of Arvin authorizing hemp manufacturing. Upon receiving a City of Arvin permit or entering into a development agreement, hemp manufacturing shall be authorized solely within the M-1, M-2, M-3, A-1, and A-2 zoning districts. Further, a conditional use permit shall be required prior to engaging in the manufacturing of industrial hemp products.
- B. Manufacturing of industrial hemp products by an EARI or EARI affiliate shall be permitted within the City of Arvin as part of an EARI research program, provided that the EARI or EARI affiliate shall register with the City Manager the locations and nature of operations within the City of Arvin where such manufacturing shall be conducted in advance of any such activity.
- C. An EARI or EARI affiliate may sell industrial hemp products commercially, but only to the extent that the biomass so used is derived from crops that were sampled and tested consistent with the standards and procedures established pursuant to California Food and Agriculture Code section 81006(d) and for which test results show THC levels equal to or less than three-tenths of 1 percent. The City Manager may establish rules and regulations relating to documenting and reporting the tests of any such biomass used by an EARI or EARI affiliate for commercial transactions.

### **Section 17.65.060 Hemp Regulations.**

- A. Hemp cultivation, hemp processing, and manufacturing of hemp products within the City of Arvin shall comply with all applicable state, federal and City of Arvin regulations.
- B. Any hemp manufacturing facility shall not be located within 200' feet of a residential zoning districts.
- C. Odor Control.
  - (1) Odor control devices and techniques shall be incorporated in all industrial hemp manufacturing facilities to ensure that odors from hemp are not detectable off site. Industrial hemp manufacturing facility shall provide a sufficient odor absorbing ventilation and exhaust system so that odor generated inside is not detected outside of the facility, anywhere on an adjacent property or public rights-of-way, on or about the exterior or interior common area walkways, hallways, breezeways, foyers, lobby areas, or any other areas available for use by common tenants or the visiting public, or

within any other unit located inside the same building as the industrial hemp business.

- (2) In order to determine the existence of a violation of this chapter, the city may measure for hemp odor at the industrial hemp business with an approved field olfactometer device, including, but not limited to, a Nasal Ranger Field Olfactometer® or Scentometer®, according to the manufacturer's specifications and operating instructions. The threshold of detection (Dilutions to Threshold or D/T) will be determined in a sample of the ambient air after it is diluted with three equally sized samples of odor-free air. Two (2) samples or observations will be taken not less than fifteen minutes apart within a one (1) hour period. The two (2) samples will be taken at the building site of the industrial hemp business. If the threshold of detection is four (4) or greater, the industrial hemp business owner and/or the property owner will be issued a notice to abate public nuisance.
- (3) Any notice to abate public nuisance pursuant to this Section shall include the following:
  - (i) The Arvin Municipal Code violation which constitutes the public nuisance;
  - (ii) The required remedy for abating the public nuisance; and
  - (iii) Provide a reasonable time period to abate the public nuisance, unless the public nuisance constitutes an immediate threat to public health, safety and welfare.

Failure to timely abate the public nuisance may result in the revocation of the conditional use permit, pursuant to the Arvin Municipal Code. An appeal of the notice to abate public nuisance shall be filed with the city clerk within ten (10) calendar days from the date upon the notice and shall provide the specific basis for granting the appeal. An untimely filed appeal shall constitute a waiver of the appeal of the notice. Further, the ten (10) day time period for filing an appeal shall be jurisdictional, and as such, an untimely appeal shall not be considered by the city.

- (4) Every person or entity owning, possessing, or having charge or control of real property within the city shall manage that property and control the environment thereon in a manner so as not to violate the provisions of this chapter, and the owner shall be liable for violations of the provisions of this chapter, regardless of any contract or agreement with any third party regarding the property.
- (5) Every occupant, lessee, or holder of any possessory interest in real property shall maintain the property in a manner so as not to violate the provisions of this chapter.
- (6) In addition to any regulations adopted by the City of Arvin, the city manager, or his/her designee, shall be authorized to establish any necessary

rules, regulations or standards governing the issuance or denial of an industrial hemp conditional use permit, the ongoing operation of an industrial hemp manufacturing facility, and the City's oversight, if the city manager determines the rule, regulation or standard to be necessary to carry out this chapter.

(i) Regulations issued by the city manager shall be published on the city's website. A copy of the regulations established by the city manager shall be filed with the city clerk.

(ii) Regulations promulgated by the city manager shall become effective upon the date of publication. Industrial hemp manufacturing shall follow all state and local laws and regulations, including, but not limited to, any rules, regulations or standards adopted by the city manager.

#### **Section 17.65.070 Limitations on City's Liability.**

To the fullest extent permitted by the law, any industrial hemp manufacturing facility shall execute an agreement indemnifying and holding harmless the City of Arvin, its employees, agents and contractors from any liability or claims arising from issuance of a conditional use permit, pursuant to this chapter, the Arvin Municipal Code or otherwise approving a conditional use permit for an industrial hemp manufacturing facility.

#### **Section 17.65.080 Public Nuisance.**

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

#### **Section 17.65.090 Violation and Enforcement.**

- A. Any person that violates any provision of this chapter shall be guilty of a separate offense for each and every day during any portion of which any such person commits, continues, permits, or causes a violation thereof, and shall be penalized pursuant to this chapter and/or the provisions of the Arvin Municipal Code.
- B. Each and every violation of this chapter shall constitute a separate violation and shall be penalized pursuant to this chapter and/or the provisions of the Arvin Municipal Code.
- C. Any person who violates, causes, continues or permits another to violate the provisions of this chapter commits a misdemeanor and shall be punishable in accordance with the Arvin Municipal Code. The city may also pursue all applicable civil and administrative remedies, including, but not limited to, injunctive relief and administrative citations. Should a court of competent jurisdiction subsequently determine that the misdemeanor criminal penalty provision renders the provisions of this chapter, or the provisions of any chapter adopted by reference within the Arvin Municipal Code unlawful, the city intends that the misdemeanor provision be severable from the remaining penalty provisions and the city will only pursue criminal infraction penalties and/or non-criminal remedies for violations of this chapter.

- D. Each and every violation of the provisions of this chapter is hereby deemed unlawful and a public nuisance which may be abated by the city pursuant to the Arvin Municipal Code.
- E. The administrative citation penalty for all violations of this chapter, within a rolling twelve (12) month period shall be as follows: one thousand dollars (\$1,000.00) per violation.
- F. In addition to any other remedy or enforcement mechanism provided within this chapter or any other provision of the Arvin Municipal Code, the city may commence a civil action seeking any other relief or remedy available at law or in equity.
- G. The provisions of this chapter are complimentary, cumulative, supplementary, and additional to any other legal remedies available, whether found in the Arvin Municipal Code, state or federal laws, regulations, or case law.

**Section 17.65.100 Severability.**

The provisions of this chapter are hereby declared to be severable. If any provision, clause, word, sentence or paragraph of this chapter 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 chapter.

**SECTION 6.** This ordinance shall take effect and be in full force and effect from and after thirty (30) calendar days after its final passage and adoption. Within fifteen (15) calendar days after its adoption, the ordinance, or a summary of the ordinance, shall be published once in a newspaper of general circulation.

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**I HEREBY CERTIFY** that the foregoing Ordinance was introduced by the City Council of the City of Arvin after waiving reading, except by Title, at a regular meeting thereof held on the 28<sup>th</sup> day of April 2020, and adopted the Ordinance after the second reading at a regular meeting held on the 12<sup>th</sup> day of May 2020, by the following roll call vote:

AYES: CM Martinez, CM Trujillo, CM Franetovich, MPT Robles, Mayor Gurrola

NOES: \_\_\_\_\_

ABSTAIN: \_\_\_\_\_

ABSENT: \_\_\_\_\_

ATTEST

  
\_\_\_\_\_  
CECILIA VELA, City Clerk

**CITY OF ARVIN**

By:   
\_\_\_\_\_  
JOSE GURROLA, Mayor

APPROVED AS TO FORM:

By:   
\_\_\_\_\_  
SHANNON L. CHAFFIN, City Attorney  
Aleshire & Wynder, LLP

I, \_\_\_\_\_, City Clerk of the City of Arvin, California, DO HEREBY CERTIFY that the foregoing is a true and accurate copy of the Ordinance passed and adopted by the City Council of the City of Arvin on the date and by the vote indicated herein.