Yurok Tribal Code, Agriculture

YUROK TRIBE HEMP ORDINANCE

Pursuant to its authority under Article IV, Section 5, of the Yurok Constitution, as certified on November 24, 1993, the Yurok Tribal Council hereby enacts the following ordinance regulating Hemp.

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GENERAL PROVISIONS

SECTION 4001. Short Title
This Ordinance shall be referred to as the “Yurok Tribe Hemp Ordinance.”

SECTION 4002. Legislative Findings
The Yurok Tribal Council hereby finds and declares that:

(a) this Yurok Tribe Hemp Ordinance will protect the health, safety, and welfare of the Tribe by becoming the primary regulatory authority over the production of Hemp within the Territory of the Tribe, and

(b) having an ordinance governing the growing and processing of Hemp is in the Yurok Tribe’s best interest; and

(c) the Agriculture Improvement Act of 2018 (commonly known as the 2018 Farm Bill) allows for the growth and processing of Hemp, subject to regulations, so long as the hemp has a THC concentration of less than the Federally Defined THC Concentration Level For Hemp.

SECTION 4003. Purpose
The purpose of this Ordinance is to assert tribal sovereignty and to:

(a) create a Department of Agriculture to manage the Yurok Tribe Hemp Program; and

(b) regulate Hemp as an agricultural commodity in compliance with tribal and federal law; and

(c) promote economic development for the Yurok Tribe through the production/processing of Hemp and the development of new commercial markets for farmers and businesses through the sale of Hemp Products; and

(d) enable the Yurok Tribe, its Licensees, and any potentially affiliated Institutions of Higher Education, to conduct research regarding the production of Hemp within the Territory of the Tribe; and

(e) promote this territory’s Hemp industry; and

(f) encourage and empower research into Hemp production and the creation of Hemp Products at Institutions of Higher Education and in the private sector.

SECTION 4004. Sovereign Immunity Preserved
In accordance with the Yurok Tribe’s Supreme Ordinance, nothing in this ordinance shall be interpreted as a waiver of the Tribe’s sovereign immunity from unconsented lawsuit, or as authorization for a claim for monetary damages against the Tribe.
SECTION 4005. Severability

If any provision of this Ordinance or its application to any Person or circumstance is held invalid, the remainder of the Ordinance or application of its provisions to other persons or circumstances shall not be affected, and to this end, the provisions of this Ordinance are severable.

SECTION 4006. Effective Date

This Ordinance shall take effect immediately upon its adoption by Council.

SECTION 4007. Repeal of Conflicting Ordinance Provisions

All prior ordinance provisions previously enacted by the Tribal Council and inconsistent with the provisions of this Ordinance are hereby repealed. If the provisions of this Ordinance conflict with the provisions of any other previously enacted ordinance, the provisions of this Ordinance shall control. This Ordinance is, however, intended to be read in conjunction with certain existing ordinances, including, but not limited to: the Yurok Cultural Resources Protection Ordinance and the Yurok Tribe Environmental Protection Code.

SECTION 4008. Licensee Agreement

All Hemp growers, processors, handlers, Applicants and agents are bound to all Yurok ordinances, codes, laws, and Department policies and procedures. By applying for a license, Hemp Growers, processors, handlers, Applicants, and agents submit to the jurisdiction of the Yurok Tribe and Yurok Tribal Court. All codes are available at the Yurok Justice Center or online at https://Yurok.Tribal.Codes

SECTION 4009. Definitions

(a) “Applicant” means a person, or a person who is authorized to sign for a business entity, who submits an application to participate in the Yurok Tribe Hemp programs.

(b) “Commercial Sales” means the sale of a product in the stream of commerce at retail or at wholesale, including sales on the Internet.

(c) “Consumable Product” means a Hemp Product Intended for Consumption.

(d) “Cultivate” means to plant, water, grow, or harvest a plant or crop.

(e) “Department” means the Yurok Department of Agriculture.

(f) “Director” means the Director of Yurok Agriculture and Production programs.

(g) “Federally Defined THC Concentration Level for Hemp” means a THC concentration of not more than three-tenths of one percent (0.3%) on a dry weight basis, or the THC concentration for Hemp defined in Federal law, whichever is greater.

(h) “GPS” means Global Positioning System.

(i) “Grow Site” has the same meaning as “Registered Land Area” as that term is defined in this Section, below.

(j) “Harvest Lot” means a quantity of Hemp, of the same Variety, harvested in a distinct timeframe that is: (1) Cultivated in one contiguous production area within a Grow Site;
or (2) Cultivated in a portion or portions of one contiguous production area within a Grow Site. Harvest Lot does not include a quantity of Hemp comprised of Hemp grown in noncontiguous production areas.

(k) “Harvest Lot Identifier” means a unique identifier used by the Yurok Tribe to identify the Harvest Lot.

(l) “Hemp” means the plant *Cannabis sativa* L., and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not with a THC concentration of not more than three-tenths of one percent (0.3%) on a dry weight basis, or as otherwise defined in Federal law, whichever is greater.

(m) “Hemp Crop” means one (1) or more unprocessed Hemp plants or plant parts.

(n) “Hemp Grower” means a Person licensed by the Yurok Tribe to Cultivate Hemp within the Territory of the Tribe.

(o) “Hemp Ingredient” means all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers of any part of the Hemp plant included in the definition of “Hemp.”

(p) “Hemp Product” means a finished product with the Federally Defined THC Concentration Level for Hemp that is derived from, or made by, processing a Hemp Crop, and that is prepared in a form available for commercial sale. The term includes, but is not limited to cosmetics, personal care products, Consumable Products, cloth, cordage, fiber, fuel, paint, paper, particleboard, plastics, and any product containing one or more Hemp Ingredients such as cannabidiol.

(q) “Industrial Hemp” has the same meaning as “Hemp” as that term is defined in this Section, above.


(s) “Intended for Consumption” means intended for a human or animal to ingest, inhale, topically apply to the skin or hair, or otherwise absorb into the body.

(t) “Licensee” has the same meaning as “Hemp Grower” as that term is defined in this Section, above.

(u) “Non-commercial Personal Possession or Use” means possession and use of Hemp without the intent to transfer by anyone in the household, but does not include sale, trade or any other type of commercial use.

(v) “Person” means a natural person, corporation, foundation, organization, business trust, estate, limited liability company, licensed corporation, trust, partnership, limited liability partnership, association, or other form of legal business entity, as well as a state or local government entity.

(w) “Process” means to convert any portion of a Hemp Crop into a Hemp Ingredient, Hemp Product, or other marketable form.

(x) “Registered Land Area” means a contiguous lot, parcel, or tract of land registered with the Yurok Tribe on which a Licensee may Cultivate Hemp. A Registered Land
Area may include land and buildings that are not used to Cultivate Hemp.

(y) “THC” means tetrahydrocannabinol and has the same meaning as delta-9 THC, measured post-decarboxylation.

(z) “Territory of the Tribe” has the same meaning as defined in the Yurok Constitution Article I, Section 2.

(aa) “Variety” means a group of plants or an individual plant that exhibits distinctive observable physical characteristic(s) or has a distinct genetic composition.

CHAPTER 1. POLICIES AND PROCEDURES

SECTION 4101. Policies and Procedures set by the Department

This Ordinance creates the Department of Agriculture. The Department shall set the policies and procedures for all Hemp production.

(a) Tribal Council hereby delegates to the Department the authority to modify, adapt or amend their policies and procedures as necessary, to keep them in line with best practices and procedures.

(b) The Department shall produce and maintain the following forms:

(1) "Grower License Application Packet"
(2) "Field Planting Report"
(3) "Greenhouse/Indoor Planting Report"
(4) "Harvest/Destruction Report"
(5) "Grower Production Report Form"
(6) "Process/Handler Production Report and Annual License Renewal"
(7) "Site Modification Request Form"
(8) "Domestic Seed/Propagule Request Requirements"
(9) "International Seed Request Requirements"
(10) "Processor/Handler License Application"

(c) The Department shall set administrative procedures for and may impose damages, fines, and fees for violations of this Ordinance.

SECTION 4102. Recordkeeping and Reporting

(a) The Department shall retain for a period of at least three (3) calendar years, all information required to be collected by this Ordinance, for every Registered Land Area approved by the Department.

(b) Within thirty (30) calendar days after the date on which the information is received, the Yurok Tribe shall submit to the U.S. Secretary of Agriculture the following information for each Hemp Grower within the Territory of the Tribe.

(1) contact information for each Hemp Grower, including the legal entity name, full name of all authorized representatives, the street address
of each Registered Land Area, or other identifier such as an APN, the
business telephone number, and email address of each Licensee; and
(2) a legal description of the Registered Land Area; and
(3) the status of a license or other required authorization from the
Department.

SECTION 4103. Licensee Recordkeeping and Reporting

(a) Hemp Growers must report any changes of contact information to the Department in
writing within fourteen (14) calendar days of the change.

(b) Planting Report: Within fourteen (14) calendar days after planting any Industrial
Hemp, each Hemp Grower shall submit a Planting Report that includes the GPS
coordinates and a map showing the location and actual acreage or square feet of Hemp
planted.

(c) Pre-Harvest Notification: At least fourteen (14) calendar days prior to harvest, each
Hemp Grower shall submit a Pre-Harvest Notification, on a form provided by the
Department that includes the projected harvest date(s) and location(s) of each Variety
of Hemp Cultivated within a Registered Land Area. A Hemp Grower must notify the
Department immediately of any changes in the reported harvest dates in excess of
seven (7) calendar days.

(d) Post-Harvest Report: Within fourteen (14) calendar days post-harvest, each Hemp
Grower shall submit a Post-Harvest Report, on a form provided by the Department
that includes the actual harvest date(s) and location(s) of each Variety of Hemp
harvested within a Registered Land Area. A Hemp Grower is not required to
document the removal of male Hemp plants on a Post-Harvest Report if the male
Hemp plants are destroyed or utilized on the Registered Land Area and are not
transferred or sold.

(e) A Hemp Grower must retain all documentation of sampling and testing for at least
three (3) calendar years in a manner such that it can be readily provided to the
Department upon request.

SECTION 4104. Procedure for Inspecting, Sampling, and Testing

(a) The Department shall conduct regular inspections of Hemp Growers to ensure
compliance with this Ordinance and required THC Concentration.

(1) Inspections will be at least annually, may be randomly selected, and performed
without notice.

(2) All Licensees shall grant the Department unrestricted access to the Registered
Land Area(s) and accompanying facilities.

(3) All samples collected by the Department shall become the property of the
Department and no compensation shall be owed by the Department for such
samples.

(b) A Hemp Grower must arrange for and ensure the sampling of each Harvest Lot no
more than twenty-eight (28) calendar days prior to harvest for the purpose of ensuring that the Harvest Lot does not exceed permissible THC concentration on a dry weight basis.

(c) A Hemp Grower shall not remove a Harvest Lot from a Registered Land Area that has not been sampled and tested for compliance in accordance with this Section.

(d) Compliance and safety testing for Hemp and Hemp Products required by these rules shall be conducted by independent laboratories accredited to ISO/IEC 17025, the standard published by the International Organization for Standardization (the “ISO”) titled “General requirements for the competence of testing and calibration laboratories,” or an accreditation standard approved by the Department.

(e) Except for samples collected by the Department for compliance, inspection, and auditing purposes, all samples collected to determine compliance with these rules shall be collected by the Hemp Grower, laboratory employees, or third-party contractors in accordance with procedures for statistical representation established by the Department.

(f) For each sample tested pursuant to this Section, the Hemp Grower shall obtain from a laboratory a certificate of analysis that includes, at a minimum, the following information:

(1) general information identifying that the Hemp that is the subject of the certificate of analysis is the product of a sample tested by the independent testing laboratory; and

(2) the date the Hemp was sampled, the date testing was performed, and methodology used to analyze the sample; and

(3) the THC concentration contained in the test sample; and

(4) a statement indicating whether the sample contained a THC concentration of not more than the Federally Defined THC Concentration Level for Hemp.

(g) The required number and size of samples shall be determined in accordance with the Departments established procedures for statistical representation.

(h) Nothing in this Section shall prevent a Hemp Grower from voluntarily collecting samples and testing Hemp for quality assurance and research and development purposes.

(i) A Hemp Grower may apply to the Department for retesting and/or resampling of any non-compliant Harvest Lot, which may be approved or denied at the Department’s discretion.

SECTION 4105. Procedure for Disposal

(a) Hemp that tests higher than the Federally Defined THC Concentration Level for Hemp shall be disposed of by the Hemp Grower in compliance with Department rules and all applicable tribal and federal laws, regulations, rules and other requirements.

(b) If a Harvest Lot tests higher than the Federally Defined THC Concentration Level for Hemp the Harvest Lot shall be promptly disposed of by the Hemp Grower according
to the following disposition:

(1) Hemp stalks (denuded) may be harvested, processed and used for fiber and/or any other lawful purpose; and

(2) Hemp seed may be harvested, processed, and rendered non-viable for finished or consumer products.

(c) All Hemp plant material not disposed of pursuant to the above Sections must be destroyed or utilized on site in a manner approved of and verified by the Department.

(d) Hemp Growers shall have fourteen (14) calendar days from the date of notification of test results higher than the Federally Defined THC Concentration Level or Hemp to contact the Department in writing and apply for retesting or propose a method for destruction or on-site utilization. Methods of destruction or on-site utilization may include, but are not limited to, incineration, composting, tilling into the soil, or grazing by livestock.

(e) Hemp subject to destruction or on-site utilization pursuant to this Section shall not be removed from the Registered Land Area unless otherwise authorized by the Department.

(f) With the exception of Hemp seeds rendered non-viable pursuant to this Ordinance, all Hemp subject to destruction or on-site utilization pursuant to this rule shall not be added to or Processed into any Consumable Product.

(g) The Hemp Grower shall provide any and all evidence requested by the Department to verify disposal to the satisfaction of the Department.

CHAPTER 2. YUROK TRIBE HEMP PROGRAM

SECTION 4201. Application

(a) Any Person desiring to Cultivate or Process Hemp within Territory of the Tribe must obtain a license from the Yurok Tribe prior to engaging in such activity. Persons seeking to Cultivate Hemp shall provide to the Department:

(1) the legal description and GPS coordinates sufficient for locating the Registered Land Area and each field, greenhouse, or structure where the Person Cultivates Hemp, or intends to Cultivate Hemp; and

(2) contact information for each Hemp Grower, including the legal entity name, full name of all authorized representatives, the street address of each Registered Land Area, the business telephone number, and email address of each Licensee; and

(3) a completed criminal background check report for the Applicant on a form determined by the Department, and a notarized attestation that Applicant does not have any disqualifying felony drug convictions pursuant to this Ordinance.

(b) Ineligible Applicants

(1) A Hemp Grower that negligently violates a State or Tribal plan 3 times in a 5-year calendar period shall be ineligible to produce hemp for a period of 5 calendar years beginning on the date of the third
violation; or

(2) Any person convicted of a felony relating to a controlled substance under Tribal, State or Federal law in the 10-year calendar period prior to the application date shall be ineligible to produce Hemp under the Yurok Tribe Hemp Program; or

(3) Any Person who materially falsifies any information contained in an application to participate in the Program established under this Ordinance shall be ineligible to produce Hemp under the Yurok Tribe Hemp Program.

(c) Private Use

(1) No license is required by any Person for Non-Commercial Personal Possession or Use of Hemp or Hemp products.

CHAPTER 3. FEES AND FORMS

SECTION 4301. Schedule of Fees

The Department shall set and maintain a fee schedule for all applicable fees, including but not limited to, license application fees, testing fees, modification fees, and all other appropriate fees.

CHAPTER 4. PROHIBITED PRODUCTS

SECTION 4401. Products not to be Sold to Members of the Public.

Any Hemp Product in excess of Federally Defined THC Concentration Level for Hemp shall not be sold to members of the public or publicly offered for sale.

CHAPTER 5. VIOLATIONS AND CORRECTIVE ACTION PLANS

SECTION 4501. Negligent Violation

(a) A Hemp Grower shall be subject to this Section if the Department determines that the Hemp Grower has negligently violated the requirements of this Chapter, including by negligently:

(1) failing to provide a legal description of land on which the Hemp Grower Cultivates Hemp; and

(2) failing to obtain a license or other required authorization from the Department as applicable; and

(3) producing Cannabis sativa L. with a THC concentration of more than the Federally Defined THC Concentration Level For Hemp.

(b) A Hemp Grower that negligently violates this Ordinance shall not, as a result of that violation, be subject to any criminal enforcement action by the federal government or any state government, tribal government, or local government.

(c) A Hemp Grower that negligently violates this Ordinance under this Section 4501 three (3) times in a five (5)-year calendar period shall be ineligible to produce Hemp for a period of five (5) calendar years beginning on the date of the third violation.
SECTION 4502. Corrective Action Plans
(a) A Hemp Grower described in this Section shall comply with a plan established by the Department to correct the negligent violation, including:
   (1) a reasonable date by which the Hemp Grower shall correct the negligent violation; and
   (2) a requirement that the Hemp Grower shall periodically report to the Department on the compliance of the Hemp Grower with this Chapter for a period of not less than the next two (2) calendar years.

SECTION 4503. Other Violations
(a) In addition to being subject to the license suspension, license revocation, and monetary civil penalty procedures set forth in the Policies and Procedures promulgated by the Department, a Person who is found by the Department to have violated this regulation with a culpable mental state greater than negligence shall be subject to the reporting requirements set forth in this Ordinance.
(b) If the Department determines that a Hemp Grower in the Territory of the Tribe has violated this Chapter with a culpable mental state greater than negligence, the Department shall immediately report the Hemp Grower to:
   (1) the United States Attorney General; and
   (2) Yurok Tribe Public Safety Department.

CHAPTER 6. MATERIALS INCORPORATED BY REFERENCE
SECTION 4601. Incorporation by Reference.
(a) The following material, developed by the department, is incorporated by reference:
   (1) Department of Agriculture Hemp Policies and Procedures
THE FOREGOING ORDINANCE, ENTITLED THE YUROK TRIBE HEMP ORDINANCE, WAS PASSED AT A REGULARLY SCHEDULED MEETING OF THE YUROK TRIBAL COUNCIL ON __________, 2019, AT WHICH QUORUM WAS PRESENT, AND THIS ORDINANCE WAS ADOPTED BY A VOTE OF __ FOR, __ OPPOSED AND __ ABSTENTION IN ACCORDANCE WITH ARTICLE IV, SECTION 5(j) OF THE CONSTITUTION OF THE YUROK TRIBE.

DATED THIS__ DAY OF ______, 2019

____________________________________
Joseph L. James, Chairperson
Yurok Tribal Council

ATTEST:

__________________________________
Mindy Natt, Secretary
Yurok Tribal Council