

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT, STATE OF CALIFORNIA

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ORDINANCE AMENDING PROVISIONS OF TITLE III OF THE HUMBOLDT COUNTY CODE PROHIBITING ALL INDUSTRIAL HEMP ACTIVITIES OUTSIDE THE COASTAL ZONE

ORDINANCE NO. _____

The Board of Supervisors of the County of Humboldt ordains as follows:

SECTION 1. Findings and Declarations.

The Board of Supervisors makes the following findings in support of the enactment of this prohibition ordinance:

- A. Pursuant to Article XI, section 7, of the California Constitution, the County of Humboldt ("County") 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.
- B. The state and federal law governing the definition and cultivation of industrial hemp is complex, evolving, and as yet incomplete and uncertain, causing multiple issues which may adversely affect the public peace, health, or safety of residents or of visitors to Humboldt County, as outlined below.
- C. In 2013 the California Legislature adopted the California Industrial Hemp Farming Act, (SB 566 (Leno), Food and Agricultural Code (hereafter "FAC") sections 81000-81011, addressing the cultivation of industrial hemp, but it did not become effective until the Attorney General could certify that cultivation was authorized by federal law. As originally adopted, FAC § 81006 provided that industrial hemp shall be grown only as a densely planted fiber or oilseed crop, or both, in acreages of not less than five acres at the same time, and no portion of an acreage of industrial hemp shall include plots of less than one contiguous acre. Pruning, tending, and culling of individual plants was prohibited, as was possession, outside of a field of lawful cultivation, of resin, flowering tops, or leaves that were removed from the hemp plant, even though only non-psychoactive varieties of *Cannabis sativa* L. were permitted to be cultivated as industrial hemp. SB 566 also amended the definition of "marijuana" (now referred to as "cannabis") in Health and Safety Code § 11018 to exclude industrial hemp, and established the definition of industrial hemp in § 11018.5¹. This definition and the prescribed cultural practice restrictions effectively prohibited cultivation of *Cannabis sativa* L. as feminized plants for higher levels of cannabidiol (CBD) for purposes of CBD extract or CBD oil production from the leaves or flowering tops.

¹ "Industrial hemp" means a fiber or oilseed crop, or both, that is limited to nonpsychoactive types of the plant *Cannabis sativa* L. and the seed produced therefrom, having no more than three-tenths of 1 percent tetrahydrocannabinol (THC) contained in the dried flowering tops, and that is cultivated and processed exclusively for the purpose of producing the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, or any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks, except the resin or flowering tops extracted therefrom, fiber, oil, or cake, or the sterilized seed, or any component of the seed, of the plant that is incapable of germination.

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- D. The 2014 Farm Bill, P.L. 113-79, § 7606, 7 U.S.C.A § 5940, authorized an institution of higher education (as defined in section 101 of the Higher Education Act of 1965 (20 U.S.C. § 1001)) or a State department of agriculture to grow or cultivate industrial hemp² if:
- (1) grown or cultivated for purposes of research conducted under an agricultural pilot program or other agricultural or academic research; and
 - (2) the growing or cultivating of industrial hemp is allowed under the laws of the State in which such institution of higher education or State department of agriculture is located and where the research occurs.
- E. Proposition 64, the Adult Use of Marijuana Act (AUMA), passed by the voters in November 2016, included provisions affecting the regulation of industrial hemp. Section 3 included among AUMA’s purposes subsections (f) that products be “comprehensively tested by independent testing services for the presence of contaminants, including mold and pesticides, before it can be sold,” (h) “licensed nonmedical marijuana businesses to follow strict environmental and product safety standards as a condition of maintaining their license,” and (aa) to allow industrial hemp to be grown as an agricultural product, and for agricultural or academic research, and regulated separately from the strains of cannabis with higher delta-9 tetrahydrocannabinol (THC) concentrations. Section 9 amended the definition of industrial hemp in Health and Safety Code § 11018.5³, and amended provisions of the Industrial Hemp Farming Act but left in place requirements for its dense planting as a fiber or oilseed crop, and restrictions on pruning, tending, or culling. Section 9.6 of AUMA amended the effective date of the Industrial Hemp Farming Act to January 1, 2017, without regard to federal law. AUMA also added a definition of “marijuana products” as Health and Safety Code § 11018.1, which “means marijuana that has undergone a process whereby the plant material has been transformed into a concentrate, including, but not limited to, concentrated cannabis, or an edible or topical product containing marijuana or concentrated cannabis and other ingredients.” One promise of AUMA was that cannabis derived products for human consumption by ingestion or topical application would be produced while adhering to product safety and environmental standards, and be tested for

² 7 U.S.C.A. § 5940, provides: “The term “industrial hemp” means the plant *Cannabis sativa* L. and any part of such plant, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.”

³ “(a) ‘Industrial hemp’ means a fiber or oilseed crop, or both, that is limited to ~~nonpsychoactive~~ types of the plant *Cannabis sativa* L. ~~and the seed produced therefrom,~~ having no more than three-tenths of 1 percent tetrahydrocannabinol (THC) contained in the dried flowering tops, *whether growing or not; and that is cultivated and processed exclusively for the purpose of producing the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant; the resin extracted from any part of the plant; and or any other every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or mature stalks, except the resin or flowering tops extracted produced therefrom, fiber, oil, or cake, or the sterilized seed, or any component of the seed, of the plant that is incapable of germination.*

*(b) The possession, use, purchase, sale, cultivation, processing, manufacture, packaging, labeling, transporting, storage, distribution, use and transfer of industrial hemp shall not be subject to the provisions of this division or of Division 10 (commencing with Section 26000) of the Business and Professions Code, but instead shall be regulated by the Department of Food and Agriculture in accordance with the provisions of Division 24 (commencing with Section 81000) of the Food and Agricultural Code, inclusive. [deletions shown as ~~strikeouts~~, additions as *italics*.]*

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contaminants. Industrial hemp regulation was still inconsistent with its cultivation for production of cannabidiol (CBD).

- F. In 2017, SB 94, the Medicinal and Adult Use Cannabis Regulation and Safety Act (MAUCRSA), was enacted to integrate cannabis regulation provisions of AUMA with the Medical Cannabis Regulation and Safety Act originally adopted by the Legislature in 2015. MAUCRSA also amended the provision related to the regulation of industrial hemp in Health and Safety Code § 11018.5 (b)⁴ which left regulation of cannabis products for human consumption with applicable production quality standards and product testing in place.
- G. In September 2018, SB 1409 was enacted, in which the definition of industrial hemp in Health and Safety Code § 11018.5 (a) was yet again amended, deleting the reference to its being a crop for fiber or oilseed production. The Industrial Hemp Farming Act was also amended to its current form, including amendment of § 81006 to remove requirement for dense planting and restrictions against pruning, tending, or culling. SB 1409 includes the finding, “By removing limitations on the manner in which industrial hemp may be grown and the uses for which it may be grown, this act removes barriers to the growth of industrial hemp as an agricultural product, and for agricultural or academic research,” however the bill does not address the product safety or testing requirements of other law regarding cannabis products. In § 81007, the California Department of Food and Agriculture is authorized to establish by regulation an agricultural pilot program pursuant to Section 7606 of the federal Agricultural Act of 2014, 7 U.S.C.A. § 5940. The Department has not yet adopted regulations to participate in, or promote, research projects recognized by federal law.
- H. In December 2018, the President signed into law the 2018 Federal Farm Bill, H.R. 2, P.L. 115-334, which removed industrial hemp⁵ from the federal list of controlled substances⁶ and authorizes the U.S. Department of Agriculture to create quality control standards for commercial 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. The state plan may include a reference to a law of the state regulating the production of hemp, to the extent consist with federal law.
- I. FAC Section 81001 calls for the Industrial Hemp Advisory Board to advise the California Secretary of Food and Agriculture and make recommendations to the Secretary pertaining to the cultivation of industrial hemp, including but not limited to, developing the requisite industrial hemp seed law and regulations, enforcement mechanisms, and the setting of an assessment rate.

⁴ ~~“(b) The possession, use, purchase, sale, cultivation, processing, manufacture, packaging, labeling, transporting, storage, distribution, use and transfer of i~~Industrial hemp shall not be subject to the provisions of this division or of Division 10 (commencing with Section 26000) of the Business and Professions Code, but instead shall be regulated by the Department of Food and Agriculture in accordance with the provisions of Division 24 (commencing with Section 81000) of the Food and Agricultural Code, inclusive. [deletions shown as ~~strikeouts~~, additions as *italics*.]

⁵ 7 U.S.C.A. § 1639o (1), “The term ‘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 delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.”

⁶ 21 U.S.C.A § 802 (16)(B).

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- J. The California Department of Food and Agriculture has adopted regulations for the registration fee for growers of industrial hemp for commercial purposes and seed breeders in California, 3 C.C.R. § 4900, effective 4/25/2019, and for the pre-harvest sampling and testing of industrial hemp as emergency regulations, 3 C.C.R. §§ 4940 – 4946; 4950 – 4950.1, which went into effect June 10, 2019.
- K. There is now pending in the California legislature a major bill as emergency measures to take immediate effect that may significantly alter the regulatory landscape for industrial hemp testing and manufacture of CBD hemp products for human or domestic animal consumption in California, that is pending in the legislature, AB 228. Adoption of local regulations would best await completion of action on this pending legislation.
- L. Public comment advocating for the unregulated cultivation of industrial hemp was predominantly on the basis of making medicinal CBD available at a cheaper cost. Production of CBD for medicinal purposes is permissible and regulated under the CCLUO and the Medicinal and Adult Use Regulation and Safety Act (MAUCRSA), Business and Professions Code section 26000, *et seq.*, which requires testing of product for purity (free of pesticides, mold, heavy metals, contaminants, etc.), potency, and labeling of cannabinoid content, whereas CBD hemp products under the Industrial Hemp Farming Law, Food and Agriculture Code section 81000 – 81011, as yet includes no such safeguards to protect the health of consumers within the California regulated cannabis marketplace.
- M. Due to the fact that industrial hemp and cannabis are derivatives of the same plant, *Cannabis sativa L.*, the appearance and odor of industrial hemp and cannabis are indistinguishable, particularly when hemp is cultivated with feminized flowering plants for high levels of cannabidiol (CBD) for purposes of CBD extract or oil production.
- N. Absent a laboratory performed chemical analysis for tetrahydrocannabinol (THC) content, or specialized chemical field analysis equipment currently costing approximately \$13,500 per unit, the two plants cannot be distinguished.
- O. In order for the Sheriff’s office and Code Enforcement personnel to verify that harvested product in transit is permissible industrial hemp and not cannabis intended for sale in the illicit market, field analyzer kits must be available. The Sheriff’s office would need at least seven kits, the Agricultural Commissioner at least two and Code Enforcement would need at least one. This would require at least ten kits at a cost to the County of \$135,000.00, if cultivation of industrial hemp were to be permitted in Humboldt County while at the same time assuring the integrity of the legal cannabis program permitted under the CCLUO and MAUCRSA.
- P. The current Humboldt County Commercial Cannabis Land Use Ordinance (“CCLUO”) (Ord. No. 2599; Humboldt County Code §§ 314-55.4, *et seq.*) related to commercial cannabis production does not address the unique legal, land use, environmental, and public health, safety, and welfare issues and impacts associated with concomitant commercial cannabis and Industrial Hemp cultivation, particularly with respect to potential pollen drift and pest contamination from large scale industrial hemp cultivation that may cause adverse effects on cultivation of cannabis.

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- Q. Division 24 of the FAC, allows an "Established Agricultural Research Institution" to cultivate or possess industrial hemp with a greater than .3% THC level, causing such plant to no longer conform to the legal definition of industrial hemp, thereby resulting in such "research" plants constituting cannabis.
- R. Due to the fact that industrial hemp and cannabis are indistinguishable, the cultivation of industrial hemp prior to the adoption of reasonable regulations poses similar threats to the public health, safety or welfare as the cultivation of cannabis, and threatens the integrity of the CCLUO, the viability of Humboldt County's unique and leading position in the California cannabis regulated marketplace, and the cannabis industry's key role in the Humboldt County economy.
- S. The cultivation of industrial hemp will create an increased likelihood of conflict between cannabis cultivators and industrial hemp producers.
- T. Industrial hemp can serve as a host to mites and other insects. At this time, there are no pesticides registered for hemp that specifically address such mites or other insects. The pesticides that have been approved for hemp are not always effective, which allows for such insects to move into other nearby crops.
- U. The cultivation of industrial hemp is harmful to the welfare of residents, creates a nuisance, and threatens the safety and crops of any nearby cannabis cultivators.
- V. Humboldt County has a compelling interest in protecting the public health, safety, and welfare of its residents and businesses, in preventing the establishment of nuisances.
- W. To ensure the effective implementation of the County of Humboldt's Commercial Cannabis Land Use Ordinance objectives and policies, a prohibition on the establishment and/or approval of industrial hemp cultivation is necessary.
- X. CEQA. The Board of Supervisors hereby finds that this ordinance to prohibit Industrial Hemp activities in all zones is not subject to review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines, 14 California Code of Regulations, sections 15060, subdivision (c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15061, subdivision (b)(3) (there is no possibility the activity in question may have a significant effect on the environment). In addition to the foregoing general exemptions, the Board of Supervisors further finds that the ordinance is categorically exempt from review under CEQA under the Class 8 Categorical Exemption, 14 C.C.R. § 15308 (regulatory activity to assure protection of the environment).

SECTION 2. Declaration of Need.

- A. Based on the findings set forth above, the Board finds and declares that there is a current and immediate threat to the public health, safety and welfare arising from the absence of adequate and reasonable regulations in the County Code or the California Code of Regulations regulating all activities associated with cultivation of Industrial Hemp in the unincorporated areas of the County.

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- B. Based on the findings above, that Industrial Hemp activities have the potential to adversely affect cannabis crops from pollen drift, new pests and pathogens.

SECTION 3. The following Section 314-55.5 regarding Industrial Hemp activities is added to Title III, Division 1, Chapter 4 of the Humboldt County Code as follows.

314-55.5 INDUSTRIAL HEMP LAND USE REGULATIONS FOR THE AREAS OUTSIDE THE COASTAL ZONE OF HUMBOLDT COUNTY

55.5.1 AUTHORITY AND TITLE

This Section regulates the cultivation of industrial hemp outside the Coastal Zone of the County of Humboldt.

55.5.2 PURPOSE AND INTENT

The purpose of this Section is to establish land use regulations for the purposes of prohibiting Industrial Hemp activities within the County of Humboldt to reduce negative impacts on our community and environment.

These regulations are intended to ensure the public health, safety and welfare of residents of the County of Humboldt and visitors to the County, to protect the environment from harm resulting from Industrial Hemp activities, including but not limited to streams, fish, and wildlife, residential neighborhoods, schools, community institutions and Tribal Cultural Resources. To this end, these regulations prohibit all Industrial Hemp activities in the County, except as authorized by the federal government on tribal lands.

55.5.3 APPLICABILITY AND INTERPRETATION

55.5.3.1 All facilities and activities involved in Industrial Hemp activities within the jurisdiction of the County of Humboldt outside the Coastal Zone shall be controlled by the provisions of this Section.

55.5.3.2 Severability. If any provision of this Section, or the application thereof, is held invalid, that invalidity shall not affect any other provision or application of this Section that can be given effect without the invalid provisions or application; and to this end, the provisions or application of this Section are severable.

55.5.4 DEFINITIONS

“Industrial Hemp” A crop agricultural product, whether growing or not, that is limited to types of the plant *Cannabis sativa Linnaeus* and any part of that plant, including the seeds of the plant and all derivatives, extracts, the resin extracted from any part of the plant, cannabinoids, isomers, acids, salts, and salts of isomers, with a delta-9 tetrahydrocannabinol (THC) concentration of no more than 0.3 percent on a dry weight basis.

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“Industrial Hemp Activities” All activities involving Industrial Hemp including without limitation cultivation, harvesting, processing, manufacturing, distribution, testing and sales. Industrial Hemp activities do not include sale of products manufactured from Industrial Hemp such as textiles, and rope, and sale of products incorporating processed Industrial Hemp such as baked goods, tinctures, lotions and salves, and soaps.

55.5.5 GENERAL PROHIBITION APPLICABLE TO ALL INDUSTRIAL HEMP ACTIVITIES

55.5.5.1 All Industrial Hemp Activities are prohibited in the unincorporated areas outside of the Coastal Zone of Humboldt County.

SECTION 4. Effective Date.

This ordinance shall become effective 30 days after adoption.

SECTION 5. Enforceability.

Violations of this ordinance shall constitute a public nuisance and may be enforced and abated through any available remedy provided by the Humboldt County Code or other law.

SECTION 6. Severability.

If any section, subsection, sentence, clause, phrase, or portion of this ordinance or the application thereof to any person or circumstance is held to be invalid or unenforceable by a court of competent jurisdiction, such invalidity shall not affect the remaining portions or other applications of the ordinance, and the provisions of this ordinance are declared to be severable.

PASSED, APPROVED, AND ADOPTED the 19th day of November 2019, on the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Rex Bohn, Chair
Board of Supervisors, County of Humboldt
State of California

ATTEST:

Kathy Hayes,
Clerk of the Board of Supervisors

By: _____
Ryan Sharp, Deputy