

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT, STATE OF CALIFORNIA
Certified copy of portion of proceedings, Meeting of December 8, 2020

AN UNCODIFIED ORDINANCE EXTENDING FOR FOUR MONTHS AND 15 DAYS A TEMPORARY MORATORIUM ON CULTIVATION OF INDUSTRIAL HEMP

ORDINANCE NO. 2662

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 interim urgency moratorium extension 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. Pursuant to Government Code section 65858, to protect the public safety, health, and welfare, the County may adopt an interim ordinance prohibiting land uses that may be in conflict with contemplated land use regulations that the county is studying or considering or intends to study within a reasonable time.
- C. Pursuant to Government Code section 25123 (d), the County may enact an ordinance for the immediate preservation of the public peace, health, or safety, which contains a declaration setting forth the facts constituting the urgency, requiring passage by a four-fifths vote, and which shall be effective immediately.
- D. 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.
- E. 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 section 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 section 11018 to exclude industrial hemp, and

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT, STATE OF CALIFORNIA
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established the definition of industrial hemp in section 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.

- F. The 2014 Farm Bill, P.L. 113-79, section 7606, 7 U.S.C.A section 5940, authorized an institution of higher education (as defined in section 101 of the Higher Education Act of 1965 (20 U.S.C. section 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.
- G. 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 section 11018.5³, and amended provisions of the Industrial

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.

² 7 U.S.C.A. section 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.]

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT, STATE OF CALIFORNIA
Certified copy of portion of proceedings, Meeting of December 8, 2020

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 (as amended) also added a definition of “cannabis products” as Health and Safety Code section 11018.1, which “means cannabis 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 cannabis 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 contaminants. Industrial hemp regulation was still inconsistent with its cultivation for production of cannabidiol (CBD).

- H. 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 section 11018.5 (b)⁴ which left regulation of cannabis products for human consumption with applicable production quality standards and product testing in place.
- I. In September 2018, SB 1409 was enacted, in which the definition of industrial hemp in Health and Safety Code section 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 section 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 section 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. section 5940. The Department has not yet adopted regulations to participate in, or promote, research projects recognized by federal law.
- J. 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

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. section 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 section 802 (16)(B).

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT, STATE OF CALIFORNIA
Certified copy of portion of proceedings, Meeting of December 8, 2020

may include a reference to a law of the state regulating the production of hemp, to the extent consist with federal law.

- K. 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.
- L. 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. section 4900, effective 4/25/2019, and for the pre-harvest sampling and testing of industrial hemp as emergency regulations, 3 C.C.R. sections 4940 – 4946; 4950 – 4950.1, which went into effect June 10, 2019.
- M. Lawmakers failed to decide on a bill, AB 228, in the California legislature that would have been an emergency measure to take immediate effect that would have altered the regulatory landscape for the production, testing and manufacture of CBD hemp products for human or domestic animal consumption in California.
- N. 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 Humboldt County Commercial Cannabis Land Use Ordinance (“CCLUO”) (Ord. No. 2599; Humboldt County Code sections 314-55.4, *et seq.*) 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.
- O. 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.
- P. 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.
- Q. 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.

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT, STATE OF CALIFORNIA
Certified copy of portion of proceedings, Meeting of December 8, 2020

- R. The current CCLUO 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 pollen drift and pest contamination from cultivation of industrial hemp for fiber and oilseed production causing adverse effects on cultivation of cannabis or CBD hemp products.
- S. 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. The CDRA has not yet proposed regulations to implement this provision. Thus, EARIs are currently prohibited from cultivating or possessing hemp that tests greater than 0.3% THC. It is unclear when such regulations may be implemented.
- T. As industrial hemp and cannabis are indistinguishable, cultivation of industrial hemp prior to the County's adoption of regulations poses similar threats to the public health, safety and welfare as the cultivation of cannabis including light pollution, noise, traffic and enforcement. Industrial hemp also threatens the integrity of the CCLUO by potentially introducing cross pollination and pests to permitted cannabis growers, which threatens 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.
- U. The cultivation of industrial hemp prior to the adoption of reasonable regulations will create an increased likelihood of conflict between cannabis cultivators and industrial hemp producers.
- V. 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.
- W. The cultivation of industrial hemp prior to the adoption of reasonable regulations is harmful to the welfare of residents, creates a nuisance, and threatens the safety and crops of any nearby cannabis cultivators.
- X. There is an urgent need for the Agricultural Commissioner and the Planning Department to assess the impacts of industrial hemp grown by "Established Agricultural Research Institutions", and others, and to explore reasonable regulatory options relating thereto. The State's Industrial Hemp plan is currently under review by the USDA and has not yet been approved.
- Y. The allowance of cultivation of industrial hemp as defined by FAC section 81000, prior to the adoption of reasonable regulations, creates an urgent and immediate threat to the public health, safety or welfare of the citizens and existing agriculture in Humboldt County for the reasons set forth above.
- Z. Humboldt County has a compelling interest in protecting the public health, safety, and welfare of its residents and businesses, and in preventing the establishment of nuisances, by preventing industrial hemp production in the County prior to adoption of regulations.

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT, STATE OF CALIFORNIA
Certified copy of portion of proceedings, Meeting of December 8, 2020

AA. To ensure the effective implementation of the objectives and policies set forth in the CCLUO, a moratorium on the establishment and/or approval of industrial hemp cultivation is necessary.

SECTION 2. CEQA.

The Board of Supervisors hereby finds that this ordinance to temporarily prohibit Industrial Hemp cultivation in all zones 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 3. Declaration of Urgency.

- A. Based on the findings set forth above, the Board finds and declares 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 cultivation of Industrial Hemp in the unincorporated areas of the County.
- B. Based on the findings above, the Board of Supervisors determines this interim ordinance is urgently needed for the immediate preservation of the public peace, health, safety, and welfare pursuant to the Government Code sections 25123(d) and 65858, and is necessary to provide additional time to prepare the studies and reports required to consider a comprehensive ordinance addressing regulation of Industrial Hemp cultivation in the unincorporated areas of Humboldt County.

SECTION 4. Moratorium.

On May 21, 2019, the Humboldt County Board of Supervisors passed an initial 45-day moratorium on Industrial Hemp cultivation in the unincorporated areas of the County (Ordinance 2627). The Board extended the moratorium for six months on June 25, 2019 (Ordinance 2632). On December 10, 2019, the Board extended the temporary moratorium on Industrial Hemp cultivation until December 25th, 2020 (Ordinance 2637). The moratorium was enacted to protect the public health, safety and welfare pursuant to the provisions of Government Code sections 25123(d) and 65858. The existing moratorium is hereby extended for an additional four months and 15 days and is a moratorium on all the following:

- A. Cultivation of Industrial Hemp by any person or entity for any purposes, which is expressly prohibited in all zoning districts in the unincorporated area of the County. Additionally, during this interim ordinance, including any extension hereto, "Established Agricultural Research Institutions" as defined in FAC section 81000, will similarly be prohibited from cultivating industrial hemp for agricultural or academic research purposes.
- B. Acceptance of any application for or issuance of a registration, permit or entitlement, or approval of any type, that authorizes the establishment, operation, maintenance, development or construction of any facility or use for the purpose of the cultivation of Industrial Hemp in the unincorporated area of the County.

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT, STATE OF CALIFORNIA
Certified copy of portion of proceedings, Meeting of December 8, 2020

SECTION 5. Effective Date.

Pursuant to Government Code section 25123(d), this moratorium extension ordinance shall become effective immediately upon adoption.

SECTION 6. 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 7. Expiration.

This moratorium extension ordinance shall be of no further force or effect upon the expiration of the four months and 15-day extension on May 10, 2021, with is the maximum time allowance of twenty-two months and 15 days after the initial 45-day moratorium in accordance with Government Code section 65858(b).

SECTION 8. 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 this 8th day of December 2020, by the following vote, to wit:

AYES: Supervisors: Bass, Fennell, Bohn, Madrone, Wilson
NOES: Supervisors:
ABSENT: Supervisors:
ABSTAIN: Supervisors:



Estelle Fennell, Chair
Board of Supervisors of the County of Humboldt
State of California

(SEAL)

ATTEST:
Kathy Hayes
Clerk of the Board of Supervisors of the
County of Humboldt, State of California



By: Ryan Sharp, Deputy