

**BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT, STATE OF CALIFORNIA**

Certified copy of portion of proceedings; meeting on April 2, 2019

**ORDINANCE NO.** \_\_\_\_\_

**AN UNCODIFIED INTERIM URGENCY ORDINANCE OF THE COUNTY OF HUMBOLDT ESTABLISHING A TEMPORARY MORATORIUM ON THE CULTIVATION OF INDUSTRIAL HEMP BY "ESTABLISHED AGRICULTURAL RESEARCH INSTITUTIONS" OR OTHERS WITHIN THE UNINCORPORATED AREAS OF THE COUNTY, WHICH SHALL TAKE IMMEDIATE EFFECT.**

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 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, as an urgency measure, 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. Section 5940 of Title 7 of the United States Code states, "Notwithstanding the Controlled Substances Act (21 U.S.C. 801 et seq.), the Safe and Drug Free Schools and Communities Act (20 U.S.C. 7101 et seq.), Chapter 81 of Title 41, United States Code, or any other Federal law, 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 may grow or cultivate industrial hemp if:
  - (1) the industrial hemp is 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 such research occurs.
- E. In December 2018, the President signed into law the 2018 Federal Farm Bill, which removes industrial hemp from the federal list of controlled substances and authorizes the U.S. Department of Agriculture to create quality control standards for commercial hemp production,

**BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT, STATE OF CALIFORNIA**

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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.

- F. Division 24. of the California Food and Agricultural Code (hereafter "FAC") Sections 81000-81011, the California Industrial Hemp Farming Act, addressing the growing and cultivation of industrial hemp in California was enacted by Senate Bill 566 (Leno) in 2013, but did not become operative until Proposition 64 amended section 81010, establishing the operative date of January 1, 2017.
- G. In 2018, FAC Division 24 was amended by Senate Bill 1409 (2018 Cal Stats. Ch. 986), and effective January 1, 2019, the California Department of Food and Agriculture may, by regulation, establish an agricultural pilot program pursuant to Section 7606 of the federal Agricultural Act of 2014, Section 5940 of Title 7 of the United States Code. The Department has not yet adopted regulations to participate in, or promote, research projects recognized by federal law.
- H. 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.
- I. The Industrial Hemp Advisory Board has made its recommendation and the California Department of Agriculture has issued a draft of the regulation only for the registration fee for growers of industrial hemp for commercial purposes and seed breeders in California and is expected to publish the regulation adopting the registration fee on April 3, 2019, which may become effective immediately, or within forty-five (45) days thereafter.
- J. Under FAC Section 81006 subdivisions (d)(3) and (5) the CDFA is required to establish regulations for sampling procedures and approved laboratories for sample testing of all commercial industrial hemp crops no more than 30 days before harvest, which regulations have yet to be promulgated, published or adopted. Therefore, the cultivation of industrial hemp for commercial purposes as defined under FAC Division 24 is not yet authorized within the State of California and the County of Humboldt until the requisite regulations, and enforcement mechanisms, are adopted.
- K. Despite the current prohibition on the cultivation of industrial hemp for commercial purposes, FAC Division 24 exempts cultivation by an "Established Agricultural Research Institution" from some of the regulatory requirements enumerated therein. However, before cultivating industrial hemp, an established agricultural research institution shall provide the Global Positioning System coordinates of the planned cultivation site to the commissioner of the county in which the site is located.
- L. The Federal Controlled Substances Act, 21 U.S.C. § 801 et seq., still classifies cannabis or marijuana as a Schedule I Drug, which is defined as a drug or other substance that has a high potential for abuse, that has no currently accepted medical use in treatment in the United States and prohibits its use, possession, or sale, with limited exceptions.

**BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT, STATE OF CALIFORNIA**

Certified copy of portion of proceedings; meeting on April 2, 2019

- M. Due to the fact that industrial hemp and cannabis are derivatives of the same plant, *Cannabis sativa* L., the appearance of industrial hemp and cannabis are indistinguishable. Absent a laboratory performed chemical analysis for tetrahydrocannabinol (THC) content, the two plants cannot be distinguished.
- N. 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.
- O. 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.
- P. The definition of "Established Agricultural Research Institution" as provided in FAC Section 81000 is vague. Without clear guidelines, the ability and likelihood that cultivators will exploit the "Establish Agricultural Research Institution" exemption to grow industrial hemp with more than .3% THC is great.
- Q. Due to the fact that industrial hemp and cannabis are indistinguishable, the cultivation of industrial hemp by an "Established Agricultural Research Institution", or others, 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.
- R. 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.
- S. 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.
- T. 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.
- U. 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.
- V. 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.

**BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT, STATE OF CALIFORNIA**

Certified copy of portion of proceedings; meeting on April 2, 2019

- W. 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.
- X. In order to ensure the effective implementation of the County of Humboldt's Commercial Cannabis Land Use Ordinance objectives and policies, a moratorium on the establishment and/or approval of industrial hemp cultivation is necessary.
- Y. CEQA. The Board of Supervisors hereby finds that this ordinance to temporarily prohibit Industrial Hemp cultivation 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 Urgency.**

- 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 reasonable regulations in the County Code regulating cultivation of Industrial Hemp in the unincorporated areas of the County.
- B. Based on the findings above, the Board of Supervisors determines that this interim urgency ordinance is urgently needed for the immediate preservation of the public peace, health, safety, and welfare pursuant to the Government Code section 25123 (d), and 65858, and is necessary to provide additional time to prepare the studies and reports required to consider a comprehensive ordinance and/or general plan amendment addressing regulation of Industrial Hemp cultivation in the unincorporated areas of Humboldt County.

**SECTION 3. Moratorium.**

In order to protect the public health, safety and welfare and pursuant to the provisions of Government Code Sections 25123 (d) and 65858, during the term of this ordinance, including any extensions hereto, a moratorium is hereby placed on 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

**BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT, STATE OF CALIFORNIA**

Certified copy of portion of proceedings; meeting on April 2, 2019

construction of any facility or use for the purpose of the cultivation of Industrial Hemp in the unincorporated area of the County.

**SECTION 4. Effective Date.**

Pursuant to Government Code section 25123, subdivision (d), this urgency ordinance shall become effective immediately upon 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. Expiration.**

This moratorium shall be of no further force or effect upon the expiration of forty-five (45) days from the date of adoption, unless extended in accordance with Government Code Section 65858.

**SECTION 7. 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 2nd day of April 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,  
Board of Supervisors

By \_\_\_\_\_  
Deputy