



County of Lassen
Department of Planning and Building Services

• Planning • Building Permits • Code Enforcement • Surveyor • Surface Mining

March 1, 2019

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TO: Board of Supervisors
Agenda Date: March 12, 2019

FROM: Maurice L. Anderson, Director *YMA*

Zoning & Building

Inspection Requests

Phone: 530 257-5263

SUBJECT: Consideration of an urgency ordinance to impose a 45 day moratorium on the establishment of industrial hemp cultivation in the unincorporated areas of Lassen County.

ACTION REQUESTED:

1. Consider introducing, waiving the reading of, and enacting an urgency ordinance to impose a 45-day moratorium on industrial hemp cultivation in the unincorporated areas of Lassen County; (4/5 vote required) and/or;
2. Direct staff to review potential regulatory procedures/policies and report back to the Board as soon as possible.

SUMMARY

At the Board's discretion, a temporary 45-day moratorium is proposed on the cultivation of industrial hemp to allow staff time to review and prepare, for the Board's consideration at a possible future meeting, additional options for the regulation of industrial hemp cultivation in the unincorporated areas of Lassen County.

The purpose of this meeting is to give the Board an opportunity to consider a moratorium and to provide direction to staff as to whether to return at a future date to consider potential regulatory procedures/policies and report. A 4/5 vote is required.

This urgency interim ordinance shall become effective immediately after it is adopted by the Board of Supervisors and shall remain in effect for 45 days from its date of adoption and may be extended in accordance with Government Code Section 65858.

BACKGROUND

On December 20, 2018, the President of the United States signed the 2018 Farm Bill, which included the Hemp Farming Act of 2018. The Hemp Farming Act of 2018 removes the cultivation of Hemp from a schedule one drug classification, making commercial and industrial cultivation of hemp legal with the federal government. It is this action that prompted consideration of this Moratorium Ordinance.

MLA:km

ORDINANCE NO. _____

**AN UNCODIFIED ORDINANCE OF THE COUNTY OF LASSEN, ESTABLISHING A
MORATORIUM ON THE CULTIVATION OF INDUSTRIAL HEMP.**

WHEREAS, Pursuant to Article XI, section 7 of the California Constitution, the County of Lassen ("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; and

WHEREAS, 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; and

WHEREAS, Pursuant to Government Code section 25123, the County may enact an ordinance for the immediate preservation of the public peace, health, or safety, which contains a declaration of the facts constituting the urgency and which shall be effective immediately; and

WHEREAS, The 2014 federal Farm Bill legalized state pilot programs for hemp, and 40 of the 50 states now have defined industrial hemp as distinct from cannabis and removed barriers to its production; and

WHEREAS, On December 20, 2018, the President of the United States signed the 2018 Farm Bill, which included the Hemp Farming Act of 2018. The Hemp Farming Act of 2018 removes the cultivation of Hemp from a schedule one drug classification, making commercial and industrial cultivation of hemp legal with the federal government.

WHEREAS, Without sufficient regulations, standards, procedures, and thresholds which are enforceable pursuant to an adopted ordinance, there is a current and immediate threat to the public health, safety, and welfare; and

WHEREAS, The study of potential land use regulation for hemp cultivation, processing and sale is urgently needed because the County has received inquiries from operators seeking to obtain licenses for existing or new hemp cultivation operations within the unincorporated areas of the County, notwithstanding the fact that the County has not yet adopted regulations and requirements for the establishment of such uses; and

NOW, THEREFORE, The Board of Supervisors of the County of Lassen, State of California, ordains as follows:

Section 1. Purpose and Authority. The purpose of this urgency ordinance is to establish a temporary moratorium on the cultivation of industrial hemp by "Established Agricultural Research Institutions," as defined by California Food and Agricultural Code Section 8100(c), while County staff determines the impact of such unregulated cultivation and reasonable regulations to mitigate such impacts. This urgency ordinance is adopted pursuant to California Constitution article 11, section 7, Government Code sections 65800, *et seq.*, particularly section 65858, and other applicable law.

Section 2. Findings. The Board of Supervisors of the County of Lassen makes the following findings in support of the immediate adoption and application of this urgency ordinance.

- A. Under Section 7606 of the Agricultural Act of 2014 ("The U.S. Farm Bill"), "Notwithstanding the Controlled Substance 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."
- B. Division 24. Industrial Hemp [8100-81010] of the State of California Food and Agricultural Code (hereafter "FAC") allows for the growing and cultivation of industrial hemp.
- C. On January 1, 2017, Division 24, Industrial Hemp [8100-81010] of the FAC became operative.
- D. The cultivation of industrial hemp for commercial purposes as defined under FAC Division 24 is prohibited within the State of California and Lassen County until the Industrial Hemp Advisory Board has developed and implemented the requisite industrial hemp seed law, regulations, or enforcement mechanisms.
- E. The Industrial Hemp Advisory Board is expected to implement the requisite regulations allowing the cultivation of industrial hemp for commercial purposes in approximately 2019.
- F. Despite the 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.
- G. An "Established Agricultural Research Institution" is defined under FAC Division 24 as:
“(1) A public or private institution or organization that maintains land or facilities for agricultural research, including colleges, universities, agricultural research centers, and conservation research centers; or (2) An institution of higher education (as defined in

Section 1001 of the Higher Education Act of 1965 (20 U.S.C. 1001) that grows, cultivates or manufactures industrial hemp for purposes of research conducted under an agricultural pilot program or other agricultural or academic research."

- H. Industrial hemp is defined under FAC Division 24 and Health and Safety Code Section 11018.5 as "a fiber or oilseed crop, or both, that is limited to types of the plant *Cannabis sativa* L. having no more than three-tenths of 1 percent (.3%) tetrahydrocannabinol (THC) contained in the dried flowering tops, whether growing or not; the seeds of the plant; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin produced therefrom."
- I. "Cannabis" is defined under the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA) codified as Business and Profession's Code Section 26001 as "all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin . . . "cannabis" does not mean "industrial hemp" as defined by Section 11018.5 of the Health and Safety Code.
- J. Despite the different definitions, 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 lab performed chemical analysis for tetrahydrocannabinol (THC) content, the two plants cannot be distinguished.
- K. 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.
- L. The definition of "Established Agricultural Research Institution" as provided above is vague and neither the Legislature nor the Industrial Hemp Advisory Board have provided guidelines on how the County can establish whether a cultivator claiming to be an "Established Agricultural Research Institution" is legitimate or that their cultivation constitutes "agricultural or academic research." Without clear guidelines, the ability and likelihood that cultivators exploit the "Establish Agricultural Research Institution" exemption to grow industrial hemp with greater than .3% THC is great.
- M. At this time, Lassen County Code Section 19.040(a), prohibits "Commercial Cannabis Activity," which includes cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, labeling, transportation, distribution, delivery or sale of cannabis or cannabis products as provided in the Medical Cannabis Regulation and Safety Act (MCRSA) or the Adult Use of Marijuana Act (AUMA), except possession of medical cannabis by qualified patient or primary caregiver and adult use described in Health and Safety Code section 11362.1 (a)(3) inside a private residence, or inside an accessory

structure to a private residence located upon the grounds of a private residence that is fully enclosed and secure.

- N. Due to the fact that industrial hemp and cannabis are indistinguishable, the cultivation of industrial hemp by an "Establish Agricultural Research Institution" prior to the adoption of reasonable regulations poses similar threats to the public health, safety or welfare as the cultivation of cannabis.
- O. The cultivation of industrial hemp by an "Established Agricultural Research Institution" prior to the adoption of reasonable regulations will create an increased likelihood of criminal activity.
- P. The cultivation of industrial hemp by an "Established Agricultural Research Institution" prior to the adoption of reasonable regulations will attract crime and associated violence, including without limitation, theft, robberies, illegal firearms, shootings and homicides.
- Q. The Lassen County Sheriff's Office and Code Enforcement will be forced to investigate each and every industrial hemp grow conducted by an "Established Agricultural Research Institution" prior to the adoption of reasonable regulations to ensure that the grow is not cannabis. Investigations of industrial hemp grows are time consuming, labor intensive, and potentially dangerous.
- R. Currently the State of California has not yet identified, nor approved seed sources for industrial hemp. Unregulated seed sources can be infested with exotic weed seed or carry plant diseases. Once exotic weeds or plant diseases are established they are difficult and costly to eradicate. Soil borne diseases, once established can result in quarantines that restrict plant movement as well as crop rotations.
- 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. There are no requirements for pesticide use reporting or testing for industrial hemp when cultivated by an "Established Agricultural Research Institution" if pesticides on the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) 25(b) list are used. In addition, "Established Agricultural Research Institutions" may be using chemicals or pesticides that are extremely toxic to people and wildlife and which may pollute soil, ground water, and/or nearby water sources.
- U. If cloned hemp plants are used for experimentation they are exempt from nursery standards at this time and may not be inspected for plant cleanliness standards leaving them susceptible to insect and disease infection.

- V. Presently, there are no movement restrictions on hemp plants, including the industrial hemp plants that contain THC levels greater than .3%.
- W. Industrial hemp and cannabis are not compatible crops. Thus, if the Board elects to pursue a particular option with respect to the outdoor cultivation of cannabis, the existence of industrial hemp grows as maintained by "Established Agricultural Research Institutions" may preclude the Board from executing desirable projects and/or development plans.
- X. The cultivation of industrial hemp by an "Established Agricultural Research Institutions" prior to the adoption of reasonable regulations is harmful to the welfare of residents, creates a nuisance, and threatens the safety and land of nearby property owners.
- Y. There is an urgent need for the Agricultural Commissioner, Sheriff's Office, Code Enforcement, and County Counsel to assess the impacts of industrial hemp grown by "Established Agricultural Research Institutions" and to explore reasonable regulatory options relating thereto.
- Z. The allowance of cultivation of industrial hemp by "Established Agricultural Research Institutions," as defined by FAC Section 8100(c), 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 Lassen County.
- AA. Lassen County has a compelling interest in protecting the public health, safety, and welfare of its residents and businesses, in preventing the establishment of nuisances, while also allowing the cultivation of industrial hemp under FAC Division 24 by legitimate "Established Agricultural Research Institutions" for legitimate research purposes.
- BB. This ordinance complies with State law and imposes reasonable regulations that the Board of Supervisors concludes are necessary to protect the public safety, health and welfare of residents and business within the County.

SECTION 3. Declaration of Urgency. Based on the findings set forth in Section 2 hereof, this ordinance is declared to be an urgency ordinance that shall be effective immediately after it is adopted by the Board of Supervisors.

SECTION 4. Severability. If any part or provision of this ordinance, or the application to any person or circumstance is held invalid, the remainder of this ordinance, including the application of such part or provision to other persons or circumstances, shall not be affected and shall continue in full force and effect. To this end, the provisions of this ordinance are severable.

SECTION 5. Exempt from CEQA. The Board of Supervisors finds that the interim urgency ordinance is exempt from CEQA because it merely preserves the status quo and temporarily prohibits a specific use, the cultivation of industrial hemp by "Established Agricultural Research Institutions." Therefore, it can be seen with certainty that the interim urgency ordinance will not

have a significant effect on the environment. Thus, the interim urgency ordinance satisfies the "common sense exemption."

SECTION 6. Effective Date. This urgency interim ordinance shall become effective immediately after it is adopted by the Board of Supervisors and shall remain in effect for 45 days from its date of adoption and may be extended in accordance with Government Code Section 65858.

During the term of this interim moratorium, no person or entity shall grow industrial hemp for any purposes within the unincorporated areas of Lassen County. As set forth above under Section 2, the cultivation of industrial hemp for commercial purposes is currently prohibited by the State of California. Additionally, during this interim moratorium, "Established Agricultural Research Institutions" will similarly be prohibited from cultivating industrial hemp for agricultural or academic research purposes. Cultivation in violation of such prohibition constitutes a nuisance.

The foregoing ordinance was adopted at a regular meeting of the Lassen County Board of Supervisors of the County of Lassen, State of California, held on the ____ day of _____, 2019, by the following vote:

AYES: _____

NOES: _____

ABSTAIN: _____

ABSENT: _____

Chairman of the Board of Supervisors
County of Lassen, State of California

ATTEST:

JULIE BUSTAMANTE

Clerk of the Board

BY _____

MICHELE YDERRAGA, Deputy Clerk of the Board

I, MICHELE YDERRAGA, Deputy Clerk of the Board of the Board of Supervisors, County of Lassen, do hereby certify that the foregoing resolution was adopted by the said Board of Supervisors at a regular meeting thereof held on the _____ day of _____, 2019.

Deputy Clerk of the County of Lassen Board of Supervisors