

ORDINANCE NO. _____

**ORDINANCE ADDING CHAPTER 19.88 PROHIBITING
CULTIVATION OF INDUSTRIAL HEMP**

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

SECTION I. Legislative findings.

The Board of Supervisors of the County of Amador makes the following findings:

A. Until December 20, 2018, Section 5490 of Title 7 of the United States Code prohibited the cultivation of industrial hemp except by certain institutes of higher education, State departments of agriculture, and agricultural research institutions.

B. On December 20, 2018, President Trump signed H.R. 2, the Agriculture Improvement Act of 2018 (hereafter “the 2018 Farm Bill”) into law allowing hemp cultivation far more broadly than the previously allowed pilot programs for studying market interest in hemp-derived products. The 2018 Farm Bill also redefines hemp to include all parts of the plant, including seeds, derivatives, extracts, and cannabinoids, and allows the transfer of hemp-derived products across state lines for commercial or other purposes. It also puts no restrictions on the sale, transport, or possession of hemp-derived products, so long as those items are produced in a manner consistent with the law. The 2018 Farm Bill requires states wishing to be the primary regulators of hemp cultivation to submit their proposed regulatory programs for federal compliance approval and directs the United States Department of Agriculture (USDA) to develop federal regulations for hemp farming, which will override state regulatory programs containing less stringent requirements. California submitted a state program to the USDA for consideration, but the USDA has not yet approved California’s program.

C. Division 24, Industrial Hemp [81000-81015] of the Food and Agricultural Code (hereafter “FAC”), which was enacted on January 1, 2017, and amended most recently on January 1, 2020, addresses the growing and cultivation of industrial hemp in California.

D. “Industrial hemp” is defined as “an agricultural product, whether growing or not, that is limited to types of the plant *Cannabis sativa* L. 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 concentration of no more than 0.3 percent on a dry weight basis.”

E. FAC Section 81000 expressly exempts industrial hemp from regulation under Division 10 (commencing with Section 26000) of the Business and Professions Code (the Medicinal and Adult-Use Cannabis Regulation and Safety Act), so industrial hemp is not subject to the same regulatory provisions as cannabis.

F. “Cannabis” is defined under the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA) codified at Business and Professions 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.”

G. Amador County bans commercial cannabis cultivation through Chapter 19.84 of the County Code. However, the regulation of industrial hemp is not addressed because the County Code uses the definition of Cannabis in State law, which, as discussed above, excludes industrial hemp.

H. Industrial hemp and cannabis are differentiated by definition in state law, with a major difference being industrial hemp may not contain more than 0.3% tetrahydrocannabinol (THC). However, industrial hemp and cannabis are derivatives of the same plant, cannabis sativa L., and the appearance of industrial hemp and cannabis are virtually indistinguishable. Absent a laboratory performed chemical analysis for THC content, the two plants cannot be distinguished. This would make it impossible for law enforcement or county code enforcement to independently distinguish between a “hemp” plant and a “cannabis” plant without entering the property and collecting samples for testing, thereby hampering civil and criminal enforcement of both the county’s current cannabis cultivation ban as well as its anticipated future cannabis cultivation regulatory program. A grower who fails to qualify at the state or local level for permission to cultivate cannabis might be incentivized by the similarity between the plants and the comparatively liberal hemp laws to cultivate illegal cannabis disguised as industrial hemp, thereby increasing the likelihood of criminal activity, nuisances and danger to health, safety, and the environment.

I. Industrial hemp cultivation creates a pungent seasonal odor that is similar in type and intensity to the pungent seasonal odor created by cannabis cultivation. Failure to prohibit industrial hemp or to regulate the location and size of industrial hemp cultivation sites is likely to result in nuisance odors impacting neighbors and neighborhoods.

J. Allowing the cultivation of industrial hemp may result in violations of the County's current and future cannabis regulations, interference with the County's ability to effectively regulate land use, and may be harmful to the welfare of the County and its residents, create a public nuisance, and threaten existing agricultural and other land uses and nearby property owners.

K. Amador 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 through the cultivation of industrial hemp.

L. In order to ensure the effective implementation of the County of Amador’s land use objectives and policies, a permanent prohibition on the establishment and/or approval of industrial hemp cultivation is necessary.

M. 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.

N. The uncodified language of Senate Bill 153, adopted in 2019 to amend the FAC’s hemp statutes, expressly states, “It is the intent of the Legislature in enacting this act to neither limit nor prevent a city, county, or city and county from exercising its police power authority under Section 7 of Article XI

of the California Constitution.” (Stats. 2019, Ch. 838, § 1.) An uncodified portion of a statute “is fully part of the law.” (*See Grinzi v. San Diego Hospice Corp.* (2004) 120 Cal.App.4th 72, 86.)

O. The adoption of this ordinance is exempt from environmental review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines sections 15308 (actions taken as authorized by local ordinance to assure protection of the environment), 15321 (enforcement actions by regulatory agencies) and 15061(b)(3) (“common sense exemption,” whereby there is no possibility the activity in question may have a significant effect on the environment). The adoption of the ordinance is exempt pursuant to CEQA sections 15308 and 15321 because it is a regulatory action taken by the County pursuant to its police power and in accordance with Government Code 65858 to assure maintenance and protection of the environment and because it mandates a prohibition on industrial hemp cultivation within the County. Because the regulation maintains the status quo, the ordinance is also exempt under section 15061(b)(3).

SECTION II. Chapter 19.88 is hereby added to the Amador County Municipal Code as follows:

“Chapter 19.88
RESTRICTION ON INDUSTRIAL HEMP

Sections:

19.88.01 Purpose and findings.

19.88.02 Definitions.

19.88.03 Cultivation, breeding, storing, or processing of industrial hemp prohibited.

19.88.04 Severability.

19.88.01 Purpose and findings.

Industrial Hemp and cannabis are differentiated by definition in State law, with a major difference being that Industrial Hemp may not contain more than 0.3% tetrahydrocannabinol (THC). However, Industrial Hemp and cannabis are derivatives of the same plant, *cannabis sativa L.*, and the attributes of Industrial Hemp and cannabis are virtually indistinguishable. Accordingly, the findings of Section 19.84.010 (E)-(K) of the Amador County Code are applicable to Industrial Hemp and are incorporated herein by reference as if the terms cannabis and Industrial Hemp were interchangeable.

Chapter 19.84 regulates cannabis, but does not regulate Industrial Hemp. The purpose of this Chapter is to prohibit the cultivation, breeding, storing, or processing of Industrial Hemp.

19.88.02 Definitions.

“Established Agricultural Research Institution” means an institution that is either of the following:

(A) 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

(B) An institution of higher education, as defined in Section 101 of the federal Higher Education Act of 1965 (20 U.S.C. Sec. 1001), that grows, cultivates, or manufactures industrial hemp for purposes of research conducted under an agricultural pilot program or other agricultural or academic research.

“Hemp Breeder” means an individual or a public or private institution or organization that is registered with the commissioner to develop varieties of Industrial Hemp intended for sale or research.

“Industrial Hemp” or “Hemp” means an agricultural product, whether growing or not, that is limited to types of the plant *Cannabis sativa* L. 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 (TCH) concentration of no more than 0.3 percent on a dry weight basis.

19.88.03 Cultivation, breeding, storing, or processing of industrial hemp prohibited.

- A. No person or entity shall cultivate Industrial Hemp for any purposes within the unincorporated areas of Amador County, and no County permit, registration, or approval of any type shall be issued therefor. Established Agricultural Research Institutions and Hemp Breeders shall similarly be prohibited from cultivating or breeding Industrial Hemp.
- B. No person or entity, including Established Agricultural Research Institutions, shall keep, store, process, or manufacture harvested Industrial Hemp in Amador County, except that consumer-ready finished products containing Industrial Hemp may be warehoused and sold.
- C. Cultivation, breeding, keeping, storing, processing, or manufacturing of Industrial Hemp in violation of the prohibitions articulated in this section constitutes a public nuisance, and violations may be enforced and abated in the same manner as prohibited cannabis cultivation is enforced under Chapter 19.84 of the Amador County Code and by any other means available by law. This section is cumulative to all other remedies now or hereafter available to abate or otherwise regulate or prevent public nuisances or to enforce the provisions of the Amador County Code.
- D. No Industrial Hemp cultivation, breeding, storing, processing, or manufacturing shall be deemed an “agricultural operation” for purposes of the application of Chapter 19.80. To the extent that there is any conflict between the provisions of this Chapter and the provisions of any other section of the Amador County Code, resolution, or policy, the provisions of this Chapter shall control.

19.88.04 Severability.

If any provision, clause, sentence, or paragraph of this Chapter or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the other provisions of this Chapter which can be given effect without the invalid provision or application, and to this end, the provisions of this ordinance are hereby declared to be severable.

SECTION III. A summary of this ordinance shall be published within fifteen days after the date hereof in a newspaper of general circulation printed and published in the County of Amador, State of California, and shall become effective thirty days after the date hereof.

The foregoing ordinance was duly passed and adopted by the Board of Supervisors of the County of Amador at a regular meeting thereof, held on the ____ day of _____ 2021, by the following vote:

AYES:

NOES:

ABSENT:

Chairman, Board of Supervisors

ATTEST:

JENNIFER BURNS, Clerk of the
Board of Supervisors, Amador County, California

Deputy