

ORDINANCE NO. 1782

AN UNCODIFIED INTERIM URGENCY ORDINANCE OF THE BOARD OF SUPERVISORS OF THE COUNTY OF AMADOR ESTABLISHING A TEMPORARY MORATORIUM ON THE CULTIVATION OF INDUSTRIAL HEMP, AND THE CULTIVATION OF INDUSTRIAL HEMP BY “ESTABLISHED AGRICULTURAL RESEARCH INSTITUTIONS,” WITHIN UNINCORPORATED AMADOR COUNTY

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

SECTION 1. PURPOSE AND AUTHORITY. The purpose of this ordinance is to establish a temporary moratorium on the cultivation of industrial hemp for commercial purposes or by “Established Agricultural Research Institutions,” as defined by California Food and Agricultural Code Section 81000(c), while County staff determines the impacts of such locally unregulated cultivation and whether reasonable regulations to mitigate such impacts are desirable or feasible. This interim 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 Amador makes the following findings in support of the immediate adoption and application of this temporary moratorium:

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 to develop federal regulations for hemp farming, which will override state regulatory programs containing less stringent requirements. These federal regulations are still pending, and federal compliance review of California’s hemp program is still pending.

C. Division 24, Industrial Hemp [81000-81010] of the Food and Agricultural Code (hereafter “FAC”), which was enacted on January 1, 2017, prior to the 2018 Farm Bill, addresses the growing and cultivation of industrial hemp in California. It remains unknown whether California will amend the FAC in the wake of federal review of its program under the 2018 Farm Bill.

D. On September 30, 2017, FAC Division 24. Industrial Hemp [81000-81010], also prior to the federal adoption of the 2018 Farm Bill, was amended to remove restrictions on hemp farming methods and to specifically authorize the tending of individual hemp plants, as opposed to requiring densely planted rows, making it far more difficult for an observer to distinguish between a hemp farm and a cannabis farm either on the ground or from the air. Neither the state nor federal government currently provides any restrictions on the amount of acreage that can be used for, or the total canopy size of, an industrial hemp cultivation site.

E. FAC Section 81001 creates and 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, and the setting of an assessment rate. The Industrial Hemp Advisory Board and California Department of Food and Agriculture are expected to implement the requisite regulations allowing the cultivation of industrial hemp for commercial purposes in early 2019. Like the adoption and amendment of FAC 81000 et seq., these regulations are being developed and adopted by the state without first vetting them through the federal government as part of its compliance review of California's regulatory program under the 2018 Farm Bill, and it is unclear whether the regulations, once adopted, will need to be further amended to meet federal compliance requirements.

F. Under FAC Division 24, all commercial growers of industrial hemp (not including cultivation by "Established Agricultural Research Institutions") must register with the county agricultural commissioner prior to beginning cultivation. Proposed registration regulations were submitted by the California Department of Food and Agriculture to the Office of Administrative Law on February 19, 2019 and are still pending.

G. Per the California Department of Food and Agriculture's Industrial Hemp Frequently Asked Questions website, registration with the agricultural commissioner will become available upon the state's adoption of final regulations but may be subject to further local restrictions.

H. An "Established Agricultural Research Institution" is defined under FAC Section 81000 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."

I. "Industrial hemp" is defined under FAC Section 81000 and Health and Safety Code section 11018.5 as "a crop that is limited to types of the plant *Cannabis sativa* L. having no more than three-tenths of 1 percent 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."

J. 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.

K. “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.”

L. 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.

M. 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.

N. 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.

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” under MAUCRSA. Unlike regular commercial hemp growers, research hemp growers are exempt under FAC Section 81003 from having to register with the county agricultural commissioner or otherwise notify the county of their status as “Established Agricultural Research Institutions” or their intentions to cultivate hemp within the county. Per Division 24 of the FAC, an “Established Agricultural Research Institution” is required only to provide its Global Positioning System coordinates to the county agricultural commissioner. An “Established Agricultural Research Institution” is also not subject to the restrictions imposed on

commercial hemp cultivation sites under Division 24 of the FAC, including restrictions on type of seed cultivars used or the requirement of limiting cultivation sites to areas of at least 1/10 of an acre. Without local restrictions in place, a qualifying research institution could cultivate industrial hemp within the county and could do so without any limit on acreage of the cultivation site, location of the cultivation site, or total canopy size.

P. The definition of “Established Agricultural Research Institution” as provided in FAC Section 81000 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 the cultivation constitutes “agricultural or academic research.” Without clear guidelines, the ability and likelihood that cultivators would exploit the “Establish Agricultural Research Institution” exemption to grow industrial hemp or cannabis with more than .3% THC is great.

Q. Allowing the cultivation of industrial hemp, particularly prior to the adoption of reasonable regulations, if any, 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.

R. There is an urgent need for County staff to assess the potential local impacts of industrial hemp grown commercially or by “Established Agricultural Research Institutions” and to explore the feasibility of developing reasonable regulatory options relating thereto. Allowing the cultivation of commercial hemp or cultivation of hemp by Established Agricultural Research Institutions prior to studying whether or not its nuisance potential can be mitigated through reasonable regulations creates an urgent and immediate threat to the public health, safety and/or welfare of the citizens of Amador County.

S. The county agricultural commissioner has recently received requests to register both commercial and “research” hemp cultivation sites, and there is currently no guidance in the Amador County Code concerning industrial hemp cultivation. As such, there is a current and immediate threat to the public health, safety, and welfare in that the establishment of industrial hemp cultivation in the unincorporated areas of Amador County will result in land uses and land developments that may conflict the Amador County Code.

T. The allowance of cultivation of industrial hemp by commercial cultivators or by “Established Agricultural Research Institutions,” 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 Amador County.

U. 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.

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

W. There is no feasible alternative to enactment of this moratorium ordinance that will satisfactorily mitigate or avoid the previously identified impacts to the public health, safety and welfare with a less burdensome or restrictive effect.

X. This temporary moratorium 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) and 15061(b)(3) (“common sense exemption,” whereby there is no possibility the activity in question may have a significant effect on the environment). It is exempt pursuant to CEQA 15308 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 pending the evaluation and adoption of contemplated local legislation, regulation, and policies; and it consists of a temporary prohibition on industrial hemp cultivation within the County, which is currently unregulated at the local level. As an interim ordinance preserving the status quo and prohibiting a new land use that might impact the environment, the ordinance is also exempt under section 15061(b)(3).

Y. 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. CULTIVATION OF INDUSTRIAL HEMP PROHIBITED.

A. During the term of this interim ordinance, including any extensions hereto, no person or entity shall grow 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. Additionally, during this interim ordinance, including any extensions 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. Cultivation of industrial hemp in violation of the prohibitions articulated in this interim ordinance 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, the provisions of which are hereby incorporated by reference as applying equally to violations of this ordinance, and by any other means available by law.

C. No industrial hemp cultivation shall be deemed an “agricultural operation” for purposes of Chapter 19.80 of the Amador County Code.

D. 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.

E. The provisions of this section shall not be construed to protect any person from prosecution pursuant to any laws that may prohibit the cultivation, sale, distribution, possession, and/or use of controlled substances, or to authorize conduct that is unlawful under state or federal law. Further, to the fullest extent permitted by law, any actions taken under the provisions of this

ordinance by any public officer or employee of the County of Amador County or Amador County itself shall not become a personal liability of such person or a liability of the county.

SECTION 4. DECLARATION OF URGENCY. Based on the findings set forth in Section 2, this ordinance is declared to be an urgency ordinance that shall be effective immediately upon adoption by the Board of Supervisors.

SECTION 5. SEVERABILITY. If any provision, clause, sentence or paragraph of this ordinance or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the other provisions of this ordinance 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 6. CONFLICTING LAWS. For the term of this ordinance, as set forth in Section 7 below, the provisions of this ordinance shall govern. To the extent that there is any conflict between the provisions of this ordinance and the provisions of any other County code, ordinance, resolution or policy, all such conflicting provisions shall be suspended.

SECTION 7. EFFECTIVE DATE AND TERM. This ordinance shall take effect immediately upon passage by a four-fifths vote of the Board of Supervisors based upon the findings that this Ordinance is adopted pursuant to California Government Code section 65858 for the protection of the public safety, health, and welfare and shall remain in effect for forty-five (45) days from the date of its adoption unless extended pursuant to Government Code section 65858. The Clerk of the Board is hereby directed to publish this Ordinance as required by law.

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 9th day of April 2019, by the following vote:

AYES: Supervisors Forster, Axe, Brown and Crew


NOES: None

ABSENT: Supervisor Oneto



PATRICK CREW
Vice-Chairman, Board of Supervisors

ATTEST:



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