

ORDINANCE NO.

AN UNCODIFIED URGENCY INTERIM ORDINANCE OF THE COUNTY OF SHASTA EXTENDING URGENCY ORDINANCE NO. 739 AND IMPOSING A TEMPORARY MORATORIUM ON THE CULTIVATION OF INDUSTRIAL HEMP WITHIN THE UNINCORPORATED AREAS OF THE COUNTY OF SHASTA

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

SECTION 1. PURPOSE AND AUTHORITY.

The purpose of this urgency ordinance is to extend a temporary moratorium, previously established by Ordinance Number 739, on the cultivation of industrial hemp by “Established Agricultural Research Institutions,” as defined by California Food and Agricultural Code Section 81000(c), and others, 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 Shasta makes the following findings in support of the immediate adoption and application of this urgency ordinance:

- A. 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.”
- B. Division 24. Industrial Hemp [81000-81010] of the California Food and Agricultural Code (hereafter “FAC”) addresses the growing and cultivation of industrial hemp in California.
- C. On January 1, 2017, Division 24, Industrial Hemp [8100-81010] of the FAC became operative.
- D. FAC Division 24 does not provide for the California Department of Food and Agriculture to establish a pilot program or to participate in, or promote, research projects recognized under Section 5940 of Title 7 of the United States Code.

- E. 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.
- F. The Industrial Hemp Advisory Board is expected to make its recommendation to the Secretary of the California Department of Agriculture for a regulatory framework allowing the cultivation of industrial hemp for commercial purposes in approximately late 2018.
- G. Under FAC Division 24, all commercial growers of industrial hemp must register with the County Agricultural Commissioner prior to cultivation. Registration is not yet available. The fees and process for registration will be developed in conjunction with the Industrial Hemp Advisory Board. Therefore, the cultivation of industrial hemp for commercial purposes as defined under FAC Division 24 is prohibited within the State of California and the County of Shasta until the Industrial Hemp Advisory Board has developed and implemented the requisite industrial hemp law, regulations, and enforcement mechanisms, including the registration process and fees.
- H. 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.
- I. 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.”
- J. Industrial hemp is defined under FAC Section 81000 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.”
- 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. 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 virtually indistinguishable to the untrained eye. Absent a laboratory performed chemical analysis for tetrahydrocannabinol (THC) content, the two plants cannot be distinguished under their legal definitions.
- M. 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. Farming industrial hemp requires growing the entire marijuana plant which at some point contains psychoactive levels of THC.
- N. 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 exploit the “Establish Agricultural Research Institution” exemption to grow industrial hemp with more than .3% THC is great.
- O. Section 17.88.325 of the Shasta County Code prohibits commercial cannabis activity in the unincorporated area of the County, which includes the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, packaging, labeling, transportation, delivery, or sale of cannabis and cannabis products as defined in California Business & Professions Code section 26001.
- P. Due to the fact that industrial hemp and cannabis are virtually indistinguishable to the untrained eye, the cultivation of industrial hemp by an “Established 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.
- Q. 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.
- R. The cultivation of industrial hemp by an “Established Agricultural Research Institution” prior to the adoption of reasonable regulations creates a high likelihood of attracting crime and associated violence, including without limitation, theft, robberies, illegal firearms, shootings and homicides.

- S. The Sheriff and other enforcing officers will have to investigate each 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.
- T. Industrial hemp can serve as a host to mites and other insects. At this time, there are no pesticides specifically labeled for hemp that address such mites or other insects. The few pesticides that can legally be applied to hemp are not always effective, which allows for such insects to move into other nearby crops.
- U. 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.
- V. Industrial hemp and cannabis are not compatible crops. Thus, if this Board of Supervisors elects to pursue a particular option with respect to the outdoor cultivation of cannabis, the existence of industrial hemp grows maintained by “Established Agricultural Research Institutions” may preclude the Board of Supervisors from considering certain projects or development plans.
- W. 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.
- X. There is an urgent need for the Agricultural Commissioner, the Sheriff, and Resource Management to assess the impacts of industrial hemp grown by “Established Agricultural Research Institutions” and to explore reasonable regulatory options relating thereto.
- Y. The allowance of cultivation of industrial hemp 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 Shasta County.
- Z. Shasta County has a compelling interest in protecting the public health, safety, and welfare of its residents and businesses, in preventing the establishment of nuisances by the cultivation of industrial hemp.
- AA. There is a current and immediate threat to public health, safety, and welfare in that the establishment of industrial hemp cultivation in the unincorporated areas of the County of Shasta will result in land uses and land developments that may

conflict with amendments to the Shasta County Code that may be adopted as a result of the study that is to be undertaken.

- BB. 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.
- CC. In order to ensure the effective implementation of the County of Shasta's land use objectives and policies, a temporary moratorium on the establishment and/or approval of industrial hemp cultivation is necessary.
- DD. On March 13, 2018, the Shasta County Board of Supervisors adopted Urgency Interim Ordinance Number 739 imposing a forty five (45) day moratorium on the cultivation of industrial hemp in the unincorporated areas of the County of Shasta by "Established Agricultural Research Institutions" and others in order for staff to assess the impacts of such unregulated cultivation and reasonable regulations to mitigate such impacts.
- EE. This Urgency Interim Ordinance extends Ordinance Number 739 for an additional twenty two (22) months and fifteen (15) days from the date of the expiration of the original moratorium.
- FF. This extension is necessary because the State has not yet adopted a regulatory framework for the cultivation of industrial hemp and the County needs additional time to consider, study, and assess the impacts of unregulated cultivation of industrial hemp and assess various approaches to regulating the cultivation of industrial hemp in order to protect the public health, safety, and welfare from impacts associated with the cultivation of industrial hemp.
- GG. This ordinance is exempt from environmental review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15061(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 following categorical exemption applies: section 15308 (actions taken as authorized by local ordinance to assure protection of the environment). There are no unusual circumstances under CEQA Guideline 15300.2(c). Each exemption stands as a separate and independent basis for determining that this ordinance is not subject to CEQA.
- HH. 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, no person or entity shall cultivate industrial hemp for any purposes within the unincorporated areas of Shasta County and no

County permit or approval of any type shall be issued therefor. 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 ordinance, "Established Agricultural Research Institutions" as defined in FAC Section 81000, will similarly be prohibited from cultivating industrial hemp.

- B. Cultivation of industrial hemp in violation of the prohibition in this interim ordinance constitutes a public nuisance and may be abated in accordance with Chapter 8.28 (Nuisances) of the Shasta County Code and Shasta County Code Chapter 17.94 and by any other means available by law. Furthermore, in the performance of his or her functions, the enforcing officer, as identified in Shasta County Code section 17.94.060, is authorized to enter upon and inspect private properties to ensure compliance with the provisions of this Ordinance. Any such entry and inspection remains subject to all requirements established by the United States Constitution, the California Constitution, and any other applicable state and federal law.
- C. 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 Shasta County Code or Shasta County ordinances.
- D. 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. Moreover, absent a certificate of registration from the federal government, the cultivation of industrial hemp remains a violation of federal law as of the date of adoption of this ordinance and this ordinance is not intended to, and does not authorize conduct or acts that violate federal law, does not serve in any manner as an obstacle to enforcement of federal law, and does not protect any of the above-described persons from arrest or prosecution under those federal laws. Such persons assume any and all risk and any and all liability that may arise or result under state and federal laws from the cultivation of industrial hemp. 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 Shasta or Shasta County itself shall not become a personal liability of such person or a liability of the county.
- E. As authorized by Government Code section 25132, and except as otherwise provided by state statute, any person or entity violating any provision of this ordinance shall be guilty of a misdemeanor.

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. WRITTEN REPORT

Ten days prior to the expiration of this ordinance, the Board of Supervisors shall issue a written

report describing the measures taken to alleviate the threat to public health, safety and welfare that led to the enactment of this ordinance.

SECTION 6. 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 7. CONFLICTING LAWS

For the term of this ordinance, as set forth in Section 8 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 8. EFFECTIVE DATE AND TERM

This ordinance is declared an urgency measure for the immediate protection and preservation of the public peace, health, safety and welfare for the reasons stated in Section 2, and it shall take effect immediately upon its adoption by a four-fifths (4/5) vote of the Board of Supervisors pursuant to Government Code section 65858 and Government Code section 25123 (d). This ordinance shall continue in effect for twenty-two (22) months and fifteen (15) days from the date of expiration of the forty-five (45) day moratorium established by Urgency Interim Ordinance Number 739 and shall thereafter be of no further force and effect. The Clerk of the Board shall cause this ordinance to be published as required by law.

DULY PASSED AND ADOPTED this 24th day of April, 2018, by the Board of Supervisors of the County of Shasta, State of California, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:
RECUSE:

LES BAUGH, CHAIRMAN
Board of Supervisors
County of Shasta
State of California

ATTEST:
LAWRENCE G. LEES
Clerk of the Board of Supervisors

By: _____
Deputy