

ORDINANCE NO.

AN URGENCY ORDINANCE OF THE MENDOCINO COUNTY BOARD OF SUPERVISORS EXTENDING A TEMPORARY MORATORIUM ON THE CULTIVATION OF GENETICALLY MODIFIED ORGANISMS WITHIN THE UNINCORPORATED AREAS OF MENDOCINO COUNTY PENDING THE STUDY AND CONSIDERATION OF LAND USE AND OTHER REGULATIONS PERTAINING TO SUCH CULTIVATION

WHEREAS, on February 26, 2019, by Ordinance No. 4425, the Board of Supervisors approved an initial urgency moratorium on the cultivation of genetically modified organisms, for a period not to exceed forty-five days; and

WHEREAS, a 10-month, 15-day extension of the term of the urgency ordinance, pursuant to Government Code section 65858, is necessary to allow a reasonable amount of time to properly and carefully consider and further study the potential effects of the cultivation of genetically modified organisms and consider whether or what types of permanent regulations are appropriate; and

WHEREAS, on April 9, 2019, the Board of Supervisors held a noticed public hearing for the purpose of considering an extension of the urgency ordinance for a period of ten (10) months and fifteen (15) days.

NOW, THEREFORE, THE MENDOCINO COUNTY BOARD OF SUPERVISORS
ORDAINS AS FOLLOWS:

Section 1. Purpose and Authority.

The purpose of this urgency ordinance is to extend a temporary moratorium on the cultivation of genetically modified organisms, as defined herein 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 section 65800, *et seq.*, particularly section 65858, and other applicable law.

Section 2. Declarations and Findings.

The Mendocino County Board of Supervisors hereby find that the above recitals are true and correct and incorporated herein by this reference, and make the following declarations and findings in support of the immediate adoption and application of this urgency ordinance:

A. On March 2, 2004, the citizens of Mendocino County approved Measure H, a County Ordinance Prohibiting the Growing of Genetically Modified Organisms, which was subsequently codified as Mendocino County Code Chapter 10A.15.

B. The purpose of Measure H is to protect the County's agriculture, environment, economy, and private property from pollution by "genetically modified organisms," which phrase is defined in section 10A.15.030 as follows: "specific organisms whose native intrinsic DNA has been intentionally altered or amended with non-species specific DNA. For purposes of this Chapter, genetic modification does not include organisms created by traditional breeding or hybridization, or to microorganisms created by moving genes or gene segments between unrelated bacteria." "DNA" is defined in the same section as "a complex protein that is present in every cell of an organism and is the 'blueprint' for the organism's development." "Organism" is defined as "any living thing."

C. The Notice of Intent to Circulate Petition for Measure H contained the following statement of the reasons for the initiative measure:

GMO's have the potential for irreversible harm to the economy of Mendocino County and its environment because they have the potential for genetic pollution of indigenous and cultivated species including but not limited to agricultural products, marine organisms such as salmon, and livestock. Genetic material from GMO's such as pollen can also irreversibly contaminate organic agricultural products grown on private property. Because of these dangers, it is prudent to prohibit the propagation, cultivation, raising, and growing of GMO's in Mendocino County.

D. The argument submitted in favor of Measure H that appeared on the March 2004 ballot contained additional detail regarding the concerns surrounding genetically modified organisms, including the following:

1. Pollen and seed from genetically modified organisms can travel great distances and can contaminate non-genetically modified agricultural crops through cross-pollination.

2. Mendocino County has many organic farmers and wineries. If organic crops become contaminated by genetically modified organisms, these farms and wineries could lose organic certification, which would hurt the marketability of Mendocino agricultural products in foreign markets and lower County revenue.

E. Since the adoption of Measure H, additional methods of genetically modifying organisms have been created, including gene-editing techniques such as CRISPR, that can alter the native intrinsic DNA of an organism without the use of non-species specific DNA. These newer techniques do not necessarily fall within the definitions established by Measure H and so would not be included within the prohibitions of the ordinance.

F. The general purpose stated for Measure H is to prevent potential contamination of organic or non-genetically modified agricultural crops with crops that have been genetically modified. The concerns regarding genetically modified organisms created by newer gene editing techniques and other scientific developments are the same as the concerns stated at the time of adoption of Measure H.

G. Transgenic contamination can and does occur as a result of cross-pollination, commingling of conventional and genetically modified seeds, accidental transfer by animals, weather and other mechanisms, which results in genetically modified crops growing where they are not intended.

H. The contamination of both conventional and organic agriculture products with genetically modified material can have many significant impacts. Certain foreign markets prohibit genetically modified crops and transgenic contamination can lead to the rejection by buyers of crops contaminated by genetically modified organisms.

I. There are no mechanisms that currently exist that guarantee that transgenic contamination will not occur.

J. The impacts of introducing genetically modified organisms, however created, into

Mendocino County, or contamination by them, is unknowable in advance. However, such introduction or contamination would have the potential to seriously imperil local ecosystems and undermine critical local industries, including agriculture and tourism.

K. The Board of Supervisors desires to further study the issue of genetic modification of agricultural crops in order to adopt an ordinance that contains a more comprehensive definition of genetically modified organisms to best carry out the intent of the voters in adopting Measure H.

L. Mendocino 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.

M. There is an urgent need for the Department of Agriculture and the Department of Planning and Building Services to assess the issue of genetically modified organisms and explore reasonable and appropriate regulatory options in addition to Measure H relating thereto.

N. Based on the above recitals and the evidence in the record before it, the Board of Supervisors finds that the cultivation of genetically modified organisms, as defined in this ordinance, poses a current and immediate threat to the public health, safety and welfare of Mendocino County and that adequate regulation is necessary. The Board of Supervisors desires to develop regulations related to the cultivation of genetically modified organisms in both the Inland and Coastal areas of the County.

O. The County needs a reasonable amount of time to properly and carefully consider the scope, nature and form of appropriate regulations on the cultivation of genetically modified organisms, and in order to ensure the effective implementation of Mendocino County's land use objectives and policies, a temporary moratorium on the establishment of cultivation sites of genetically modified organisms is necessary.

P. It is the desire of the Mendocino County Board of Supervisors to maintain the status quo and place a temporary moratorium on the cultivation of genetically modified organisms within the entire County, while, as set forth in Government Code section 65858, County staff and the Board of Supervisors study the issue and develop regulations appropriate for the County and its residents.

Q. 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.

R. 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 Genetically Modified Organisms Prohibited.

A. During the term of this interim ordinance, including any extensions hereto, no person or entity shall propagate, cultivate, raise or grow genetically modified organisms, as defined herein, in Mendocino County, nor shall any County permit, registration or approval of any type be issued therefor.

B. For the purposes of this ordinance, the following definitions apply:

1. “Genetically modified organism” or “GMO” means an organism, or the genetic descendant of an organism, the deoxyribonucleic acid (DNA) of which has been altered or amended through genetic engineering.

2. “Genetic engineering” means altering or amending the genetic material of an organism by using gene editing systems, such as CRISPR-Cas9, which directly edits DNA within an organism without necessarily inserting new genes, or by using recombinant DNA technology such as gene deletion, gene doubling, introducing a foreign gene, or changing the position of genes, including cell fusion, microencapsulation, macroencapsulation, gene splicing, and other similar processes. Genetic engineering does not include techniques such as traditional selective breeding, conjugation, transduction, fermentation, hybridization, in vitro fertilization, or tissue culture.

3. “Organism” means any living thing, exclusive of human beings and human fetuses.

C. Any violation of this ordinance constitutes a public nuisance, and may be abated in accordance with the procedures set forth in Chapter 8.75 of the Mendocino County Code, or in Chapter 8.76 if the GMO is from the cannabis genus. This ordinance may also be enforced by any means available by law, including but not limited to enforcement under the provisions of Chapter 1.08 of the Mendocino 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 Mendocino County Code or Mendocino County ordinances.

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 Mendocino or Mendocino County itself shall not become a personal liability of such person or a liability of the county.

F. 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. Without this urgency ordinance, genetically modified organisms could be planted which would detrimentally affect the health, safety and welfare of the County and which might conflict with the use regulations and development standards ultimately adopted with respect to the cultivation of genetically modified organisms. Therefore, this ordinance is necessary for the immediate preservation of the public peace, health and safety and its urgency is hereby declared.

Section 5. Report and Further Study.

As directed by Ordinance No. 4425, the Department of Agriculture prepared a written report pursuant to Government Code section 65858, describing the measures taken to alleviate the condition which led to the adoption of this ordinance, which report was included in the

agenda packet accompanying this ordinance. The Board of Supervisors further directs the Department of Agriculture and the Department of Planning and Building Services to study and prepare for the consideration of the Board of Supervisors changes to the County's General Plan and/or County code with respect to the regulation of the cultivation of industrial hemp. In addition, the Board of Supervisors authorizes and directs the Department of Agriculture and the Department of Planning and Building Services to prepare the report required by paragraph (d) of Government Code section 65858 describing the measures taken to alleviate the condition which led to the adoption of this ordinance, prior to any future extension of the moratorium or the termination of the moratorium.

Section 6. CEQA.

This ordinance is categorically exempt from the California Environmental Quality Act under (a) section 15060(c)(2) of the State CEQA Guidelines because it will not result in a direct or reasonably foreseeable indirect physical change in the environment; (b) section 15060(c)(3) of the State CEQA Guidelines because it is not a project within the meaning of CEQA since it has no potential for resulting in physical changes in the environment; (c) section 15061(b)(3) since there is no possibility the activity in question may have a significant effect on the environment; and (d) section 15308 since the action is a local ordinance adopted to assure protection of the environment and there are no unusual circumstances under section 15300.2 of the State CEQA Guidelines.

Section 7. Severability.

If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

Section 8. Conflicting Laws.

For the term of this ordinance, as set forth in Section 9 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 control.

Section 9. Effective Date and Term.

This urgency Ordinance shall take full force and effect immediately upon adoption by a vote of at least four-fifths of the Board of Supervisors. In accordance with Government Code Section 65858, this Ordinance shall be in full force and effect for a period of ten (10) months and fifteen (15) days from the date of adoption, or from April 9, 2019, until February 24, 2020, and shall expire as of that date unless extended by the Board of Supervisors as provided in Government Code Section 65858.

PASSED AND ADOPTED by the Board of Supervisors of the County of Mendocino, State of California, on this day of , 2019, by the following roll call vote:

AYES:
NOES:
ABSENT:

WHEREUPON, the Chair declared the Ordinance passed and adopted and **SO ORDERED**.

ATTEST: CARMEL J. ANGELO
 Clerk of the Board

Deputy

APPROVED AS TO FORM:
KATHARINE L. ELLIOTT,
County Counsel

CARRE BROWN, Chair
Mendocino County Board of Supervisors

I hereby certify that according to the provisions of Government Code section 25103, delivery of this document has been made.

BY: CARMEL J. ANGELO
 Clerk of the Board

Deputy