

ORDINANCE NO. 4430

AN URGENCY ORDINANCE OF THE MENDOCINO COUNTY BOARD OF SUPERVISORS EXTENDING A TEMPORARY MORATORIUM ON THE CULTIVATION OF INDUSTRIAL HEMP 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. 4426, the Board of Supervisors approved an initial urgency moratorium on the cultivation of industrial hemp, 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 industrial hemp 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 industrial hemp for commercial purposes or by "Established Agricultural Research Institutions," as defined by California Food and Agricultural Code section 81000, 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 December 20, 2018, President Trump signed H.R. 2, the Agriculture Improvement Act of 2018 (the "2018 Farm Bill") into law allowing hemp cultivation more broadly than the previously allowed pilot programs for studying market interest in hemp-derived products. The 2018 Farm Bill 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.

B. Division 24 (Section 81000 *et seq.*) of the Food and Agricultural Code ("FAC") addresses the growing and cultivation of industrial hemp in California, and became operative on January 1, 2017.

C. 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.

D. The California Department of Food and Agriculture is expected to implement requisite regulations allowing the cultivation of industrial hemp for commercial purposes in early 2019.

E. 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, but is expected to be in early 2019. 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 Mendocino until the Industrial Hemp Advisory Board has developed and implemented the requisite industrial hemp seed law, regulations, and enforcement mechanisms, including the registration process and fees.

F. 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.

G. 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.”

H. 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.”

I. The definition of “cannabis” under Division 10 (commencing with Section 26000) of the Business and Professions Code (the Medicinal and Adult-Use Cannabis Regulation and Safety Act, or “MAUCRSA”) expressly states that “cannabis” does not mean “industrial hemp” as defined by Health and Safety Code section 11018.5, and so industrial hemp is not subject to the same regulatory provisions as cannabis.

J. 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% 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 to the untrained eye. Absent a laboratory performed chemical analysis for THC content, the two plants cannot be distinguished under their legal definitions.

K. FAC Division 24 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 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 “Established Agricultural Research Institution” exemption to grow industrial hemp with more than .3% THC is great.

M. Except for specific allowances for cultivation by qualified patients, persons with an identification card, primary caregivers, or persons cultivating for personal adult use, section 10A.17.030 of the Mendocino County Code provides that the cultivation of cannabis shall be allowed only following the issuance of a permit pursuant to the provisions of Chapter 10A.17 and review pursuant to the provisions of Chapter 20.242.

N. Due to the fact that industrial hemp and cannabis are indistinguishable, 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.

O. The cultivation of industrial hemp prior to the adoption of State and/or local reasonable regulations will create an increased likelihood of unlawful commercial cannabis activity.

P. Allowing the cultivation of industrial hemp prior to the adoption of reasonable regulations, if any, may result in violations of the County's cannabis regulations, evasion of the County's cannabis tax, interfere 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 the existing agricultural industry and nearby property owners.

Q. Industrial hemp and cannabis are not compatible crops. Cross-pollination from hemp plants poses a threat to licensed outdoor cannabis cultivators when pollen from male hemp plants travels and cross-pollinates with female cannabis plants, which diminishes the cannabis plants.

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 pests. The pesticides that have been approved for hemp may not provide the range of control needed to prevent movement of pests from hemp into 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 and such entities may be using chemicals or pesticides that are toxic to people and wildlife and which may pollute soil, groundwater 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. The allowance of cultivation of industrial hemp by “Established Agricultural Research Institutions” prior to the adoption of reasonable regulations creates an urgent and immediate threat to the public health, safety and welfare of the citizens and existing agriculture in Mendocino County.

W. There is an urgent need for the Department of Agriculture and the Department of Planning and Building Services to assess the impacts of industrial hemp and to explore reasonable regulatory options relating thereto.

X. 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.

Y. Based on the above recitals and the evidence in the record before it, the Board of Supervisors finds that the cultivation of industrial hemp 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 appropriate regulations for the cultivation of industrial hemp in both the Inland and Coastal areas of the County.

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

AA. 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 industrial hemp within the entire County, while, as set forth in Government Code section 65858, County staff and the Board of Supervisors study the issue of cultivation of industrial hemp and develop regulations appropriate for the County and its residents.

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. 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 Mendocino County, nor shall any County permit, registration or approval of any type 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 prohibition in this interim

ordinance constitutes a public nuisance. Any violation of this ordinance may 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 and abatement in accordance with the procedures set forth in Chapter 8.76 of the Mendocino County Code.

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 Mendocino County Code or Mendocino 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. 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.

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. Without this urgency ordinance, industrial hemp 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 industrial hemp. 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. 4426, 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 9th day of April, 2019, by the following roll call vote:

AYES: Supervisors Brown, McCowen, Haschak, Gjerde, and Williams
NOES: None
ABSENT: None

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