

***BEFORE THE BOARD OF SUPERVISORS OF THE COUNTY OF SAN BENITO***

**AN URGENCY ORDINANCE OF THE BOARD OF )  
SUPERVISORS OF THE COUNTY OF SAN BENITO )  
ESTABLISHING A TEMPORARY MORATORIUM ON THE ) Ordinance No.:  
CULTIVATION OF INDUSTRIAL HEMP WITHIN THE )  
UNINCORPORATED AREAS OF SAN BENITO COUNTY )  
PENDING THE STUDY AND CONSIDERATION OF LAND )  
USE AND OTHER REGULATIONS PERTAINING TO SUCH )  
CULTIVATION )**

THE BOARD OF SUPERVISORS OF THE COUNTY OF SAN BENITO ORDAINS AS FOLLOWS:

**SECTION 1: Purpose and Authority.**

The purpose of this urgency 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, while County staff determines the impact of such unregulated cultivation and whether reasonable regulations to mitigate such impacts are desirable or feasible. This urgency ordinance is adopted pursuant to California Constitution Article XI, Section 7, Government Code section 65800 et seq., particularly section 65858, and other applicable law, for the immediate preservation of the public peace, health or safety.

**SECTION 2: Declarations and Findings.**

The findings in support of this ordinance are set forth in Exhibit A ("Declarations and Findings"), attached hereto and incorporated herein by reference.

**SECTION 3: Definitions.**

The definition of terms included in this ordinance are set forth in Exhibit B ("Definitions"), attached hereto and incorporated herein by reference.

**SECTION 4: Cultivation of Industrial Hemp Prohibited.**

- A. During the term of this urgency ordinance, including any extensions hereto, no person or entity, including "Established Agricultural Research Institutions" as defined in FAC section 81000, shall cultivate industrial hemp for any purposes, including, but not limited to, commercial, agricultural, or academic research purposes, within the unincorporated areas of San Benito County and no permit, registration, or approval of any type shall be issued therefor.
- B. Cultivation of industrial hemp in violation of the prohibitions articulated in this urgency ordinance constitutes a public nuisance and violations may be enforced and abated in accordance with Chapters 1.03, 1.04, 1.06, 1.07, 7.02, and/or 11.15 of the San Benito County Code, and by any other means available by law.

## **SECTION 5: Remedies Cumulative.**

All remedies provided for under this urgency ordinance are cumulative and not exclusive, and are in addition to any other remedy or penalty provided by law now or hereafter available to abate or otherwise regulate or prevent public nuisances or to enforce the provisions of the San Benito County Code or San Benito County ordinances.

## **SECTION 6: Limitation of Liability.**

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 San Benito County or San Benito County itself shall not become a personal liability of such person or a liability of the County.

## **SECTION 7: 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 four-fifths vote of the Board of Supervisors.

## **SECTION 8: Severability.**

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

## **SECTION 9: CEQA.**

The Board of Supervisors hereby finds that this Ordinance is exempt from environmental review under the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines sections 15060, subdivision (c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment). In addition to the foregoing general exemptions, the Board of Supervisors further finds that the Ordinance is categorically exempt from review under CEQA section 15308 ("Class 8 Categorical Exemption") because it is a regulatory action taken by the County pursuant to its police power and in accordance with Government Code section 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 urgency ordinance preserving the status quo and prohibiting a new land use that might impact the environment, the ordinance is also exempt under section 15061, subdivision (b)(3) (there is no possibility the activity in question may have a significant effect on the environment). There are no unusual circumstances under CEQA Guideline 15300.2, subdivision (c) that would render either of these exemptions inappropriate. Each exemption stands as a separate and independent basis for determining that this urgency ordinance is not subject to CEQA.

**SECTION 10: Conflict.**

For the term of this urgency ordinance, as set forth in Section 11 below, the provisions of this urgency ordinance shall govern. To the extent that there is any conflict between the provisions of this urgency ordinance and the provisions of any other County code, ordinance, resolution or policy, all such conflicting provisions shall be suspended.

**SECTION 11: Effective Date and Term.**

NOW, THEREFORE, BE IT RESOLVED, that the San Benito County Board of Supervisors hereby adopts, pursuant to Government Code sections 25123, subdivision (d), 25131, and 65858, this interim Ordinance as an urgency measure necessary for the immediate preservation of the public peace, health, and safety and shall be of full force and effect immediately upon adoption by four-fifths ( $\frac{4}{5}$ ) of the Board of Supervisors for an initial period of forty-five (45) days from the date of adoption, which may be extended pursuant to Government Code section 65858. Prior to the expiration of fifteen (15) days from adoption, notice shall be published at least one time in a newspaper of general circulation in San Benito County, with the names of the Supervisors voting for or against this urgency ordinance.

In regular session of the Board of Supervisors of the County of San Benito, adopted this 2nd day of April, 2019, on regular roll call of the members of said Board by the following vote:

AYES: Supervisor(s)

NOES: Supervisor(s)

ABSENT OR NOT VOTING:

\_\_\_\_\_  
Mark Medina,  
Chair, Board of Supervisors

ATTEST:

APPROVED AS TO LEGAL FORM:

Janet Slibsager, Clerk of the Board

San Benito County Counsel  
Barbara J. Thompson

By: \_\_\_\_\_  
Clerk of the Board

By: \_\_\_\_\_  
Sarah M. Dickinson,  
Deputy County Counsel

## **EXHIBIT A**

### **Declarations and Findings**

The San Benito County Board of Supervisors, by four-fifths vote, hereby finds and declares the following in support of the immediate adoption and application of this urgency ordinance:

- A. Prior to 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,
- C. Prior to the federal adoption of the 2018 Farm Bill, California addressed industrial hemp cultivation by enacting Division 24, Industrial Hemp [81000-81010] of the Food and Agricultural Code (hereafter “FAC”) on January 1, 2017. Thereafter, on or about September 30, 2017, certain amendments to FAC Division 24, Industrial Hemp [81000-81010] were made which removed restrictions on hemp farming methods and specifically authorized 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.
- D. 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. It remains unknown whether California will amend the FAC in the wake of federal review of its program under the 2018 Farm Bill.
- F. 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 regulations allowing the cultivation of industrial hemp are anticipated to become effective April 2, 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 implemented, will need to be further amended to meet federal compliance requirements.
- G. Cannabis and industrial hemp are different varieties of the same plant species, *Cannabis sativa* L. For the purposes of regulation under the Medicinal and Adult-Use Cannabis Regulation and Safety Act (“MAUCRSA”), “‘cannabis’ does not mean ‘industrial hemp’ as

defined by Section 11018.5 of the Health and Safety Code.” (Business and Professions Code section 26001.) In order to be exempt from the definition of “cannabis,” industrial hemp shall not contain more than three-tenths of 1 percent (0.3%) tetrahydrocannabinol (“THC”). (See, Health and Safety Code section 11018.) Generally, in order to engage in industrial hemp cultivation, a person must first register with the County Agricultural Commissioner. “Established Agricultural Research Institutions,” as defined under FAC section 81000, are exempt from this registration requirement, however, prior to cultivating industrial hemp, an established agricultural research institution is required to provide GPS coordinates of the cultivation site to the County Agricultural Commissioner. (See, FAC section 81000 et seq.)

- H. Per the California Department of Food and Agriculture’s Industrial Hemp Frequently Asked Questions website, registration to with the County Agricultural Commissioner will become available upon the state’s adoption of final regulations, but may be subject to further local restrictions. The regulations allowing the cultivation of industrial hemp are anticipated to become effective April 2, 2019.
- I. San Benito County currently prohibits any outdoor cannabis cultivation, whether for personal use (Ch. 11.15) or for commercial/business purposes (Ch. 7.02).
- 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% 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 Cannabis Business 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.
- K. 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.
- L. Division 24 of the FAC, allows an “Established Agricultural Research Institution” to cultivate or possess industrial hemp with a greater than 0.3% 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.

- M. 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 0.3% THC is great.
- N. 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, evasion of the County's cannabis tax, 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.
- O. Industrial hemp and cannabis are incompatible in that cross-pollination from hemp plants poses a threat to permitted and licensed cannabis cultivators when pollen from male hemp plants travels and pollinates the female cannabis flower, which creates seeds, thereby reducing the value of the cannabis. Further study is required to determine if a distance can be established between a cannabis farm and a hemp farm that would adequately buffer the respective farms against harmful cross-pollination.
- P. 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 San Benito County.
- Q. The County Agricultural Commissioner has received multiple inquiries to register both “commercial” and “research” hemp cultivation sites, and there is currently no guidance in the San Benito 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 San Benito County will result in land uses and land developments that may conflict with amendments to the San Benito County Code that may be adopted as a result of the study that is to be undertaken.
- R. The allowance of cultivation of industrial hemp for “commercial” or “research” purposes 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 San Benito County.

- S. San Benito 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.
- T. In order to ensure the effective implementation of the County of San Benito's land use objectives and policies, a temporary moratorium on the establishment and/or approval of industrial hemp cultivation for "commercial" and "research" purposes is necessary.
- U. There is no feasible alternative to enactment of this temporary 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.
- V. This temporary moratorium is exempt from environmental review under the California Environmental Quality Act ("CEQA").
- W. 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 businesses within the County.

## **EXHIBIT B**

### **Definitions**

- A. “Cannabis” means all parts of the *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” also means the separated resin, whether crude or purified, obtained from cannabis. “Cannabis” does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.
- B. “Established agricultural research institution” means any institution that is either:
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.
- C. “Industrial hemp” means a crop that is limited to types of the plant *Cannabis sativa* L. having no more than three-tenths of 1 percent (0.3%) 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.