



ORDINANCE No. 2465

OF THE BOARD OF SUPERVISORS OF THE COUNTY OF NEVADA

AN INTERIM ORDINANCE EXTENDING THE TEMPORARY MORATORIUM ON THE CULTIVATION OF INDUSTRIAL HEMP WITHIN THE UNINCORPORATED AREAS OF THE COUNTY OF NEVADA FOR AN ADDITIONAL TEN MONTHS AND FIFTEEN DAYS PERIOD (4/5ths vote required)

The Board of Supervisors of the County of Nevada, State of California, ordains as follows:

SECTION 1. PURPOSE AND AUTHORITY. The purpose of this interim ordinance is to extend the temporary moratorium on the cultivation of industrial hemp for any purpose, including but not limited to 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 any such impacts are desirable or feasible. This interim 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 Nevada makes the following findings in support of the adoption and application of this interim ordinance:

A. Until December 20, 2018, federal law 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. California has yet to submit a state program to the United States Department of Agriculture for consideration.

C. Division 24, Industrial Hemp, Sections 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, Division 24 of the FAC, 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 section 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. In the meantime, the cultivation of industrial hemp for commercial purposes is prohibited within the State of California and the County of Nevada 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.

G. Per the California Department of Food and Agriculture’s Industrial Hemp Frequently Asked Questions website, registration with the County’s Agricultural Commissioner will become available upon the State’s adoption of final regulations but may be subject to further local restrictions.

H. Despite the current prohibition on the cultivation of industrial hemp, 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 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.”

K. 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.

L. “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.”

M. Nevada County is in the process of developing commercial cannabis cultivation regulations to replace the County’s existing cannabis regulations. The proposed commercial cannabis cultivation regulations would allow regulated indoor and outdoor cannabis cultivation by qualified state-licensed cannabis growers who are eligible for a local permit and would prohibit or strictly limit such cannabis grows in residential zones.

N. 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 often cannot be distinguished. This would make it impossible for law enforcement or County Cannabis Compliance 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 and anticipated future cannabis cultivation regulations. 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.

O. 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.

P. 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 plants 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 types of seed cultivars used or the requirement of limiting cultivation sites to areas of at least 1/10th 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, total canopy size, or location of the cultivation site, including residential zones.

Q. The definition of “Established Agricultural Research Institution” as provided in FAC section 81000 is vague and neither the Legislature, the Industrial Hemp Advisory Board nor CDFR 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 “Established Agricultural Research Institution” exemption to grow industrial hemp or cannabis with more than 0.3% THC is great.

R. 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 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.

S. 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 can inhibit the development of cannabis seed and lowers the marketability of the cannabis flower. 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.

T. 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 to the location and operation of such cultivation activities. Allowing the cultivation of industrial hemp for any purpose prior to studying whether or not its nuisance potential can be mitigated through reasonable

regulations and the potential proliferation of industrial hemp cultivation without appropriate regulation creates an urgent and immediate threat to the public health, safety and/or welfare of the citizens of Nevada County and existing agriculture in Nevada County.

U. The County Agricultural Commissioner and the County's Community Agency Director have recently received requests to register both commercial and "research" hemp cultivation sites, and there is currently no guidance in the Nevada County Codes 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 Nevada County while such ordinances and regulations are being evaluated and developed will result in land uses and land developments that may conflict with the ordinances and regulations being contemplated by the County.

V. Nevada 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.

W. Nevada County has begun conducting research of the potential impacts of industrial hemp cultivation, anticipated changes and developments in both State and Federal law and possible amendments to the County's Land Use and Development Code related to the future regulation of industrial hemp and such process is ongoing.

X. In order to ensure the effective implementation of the County of Nevada's land use objectives and policies, and to allow sufficient time for the Board of Supervisors, the Planning Commission, County staff and the general public to study the issues surrounding industrial hemp and determine whether or not changes should be made to the Nevada County Codes, including the County Land Use and Development Code, a continued moratorium on the establishment and/or approval of industrial hemp cultivation is necessary.

Y. There is no feasible alternative to the extension of the 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. The extension of the temporary moratorium is necessary to allow the Board of Supervisors, the Planning Commission County staff and the general public sufficient time to study the issues presented by the cultivation of industrial hemp and to determine whether or not changes should be made to Nevada County Codes, including the County's Land Use and Development Code, in order to preserve the status quo and prevent the premature establishment of industrial hemp cultivation in Nevada County.

Z. This interim ordinance extending an existing 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 Guidelines section 15308 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 interim ordinance preserving the status quo and prohibiting a new land use that might impact the environment, the ordinance is also exempt under CEQA Guideline section 15061(b)(3). There are no unusual circumstances under CEQA Guideline section 15300.2(c) that would render either of these exemptions inappropriate. Each exemption stands as a separate and independent basis for determining that this ordinance is not subject to CEQA. In addition, extension of the temporary moratorium will result in no physical changes to the existing environment.

AA. 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. For purposes of this Section, the following terms shall have the following definitions:

1. "Cannabis" shall have the same meaning as that set forth in Health and Safety Code section 11018, as may be amended.
2. "Cultivation" or "Cultivate" means the grading, planting, growing, harvesting, drying, curing, trimming, processing or storage, or any combination of these activities, of one or more Hemp plants or any part thereof in any location, indoors or outdoors, including from within a fully enclosed and secure building.
3. "Established Agricultural Research Institutions" shall have the same meaning as that set forth in FAC section 81000, et seq., as may be amended.
4. "Industrial Hemp" or "Hemp" shall have the same meaning as that set forth in Health and Safety Code section 11018.5 and FAC section 81000, et seq., as may be amended.

B. Notwithstanding any other provisions of Nevada County Codes, including but not limited to the County's Land Use and Development Code, no applications for a rezone, conditional use permit, development permit or site plan review, design review, use determination or any other entitlement, approval, registration or permits of any type shall be granted, nor shall any building, occupancy or other permit be issued for any development or tenant improvement, for or related to the Cultivation of Industrial Hemp or for the establishment or operation of any Industrial Hemp activity on any parcel or structure within the boundaries of the unincorporated County of Nevada. In addition, no person or entity shall Cultivate Industrial Hemp for any purposes within the unincorporated areas of Nevada County. For purposes of this ordinance, the term "establishment or operation of any Industrial Hemp activity" or Cultivation shall mean and include any of the following:

1. The opening or commencement of any such activity as a new activity.
2. The conversion or expansion of any existing business, whether or not defined as Industrial Hemp Cultivation by this ordinance, to any business or activity defined and

prohibited by this ordinance.

3. The addition to or the expansion of any existing business for the purpose of engaging in any activity prohibited by this ordinance.
4. The relocation of any such business.

C. 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 Article 5 of Chapter IV of the Nevada County General Code, by administrative citation and/or civil abatement under the County's Land Use and Development Code, as now enacted or as may be amended in the future, and by any other means available by law.

D. No Industrial Hemp Cultivation shall be deemed an agricultural activity, operation or facility under Civil Code section 3482.5 or an Agricultural Product as defined in Section L-II 3.3 of the Nevada County Land Use and Development Code, or an Agricultural Operation as defined in Sections L-II 3.3, L-II 6.1 and L-XIV 1.1 of the Nevada County Land Use and Development Code.

E. 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 Nevada County Codes or Nevada County ordinances.

F. 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 Nevada County or by the County itself shall not become a personal liability of such person or a liability of the County.

G. 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 its 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 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 and to this end, the provisions of this ordinance are hereby declared to be severable. The Board of Supervisors hereby declares that it would have passed this ordinance and adopted this ordinance and each section, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

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, the terms and conditions of this ordinance shall prevail and any such conflicting provisions in any other code, ordinance, resolution or policy shall be suspended.

SECTION 7. EFFECTIVE DATE AND TERM. Based on the evidence presented above, this ordinance is an interim urgency ordinance necessary for the immediate preservation of the public health, safety and welfare, and is adopted pursuant to the provisions of Government Code section 65858. This Ordinance shall take effect and be in full force immediately upon its adoption and shall remain in effect for a period of ten (10) months and fifteen (15) days unless this period is extended by the Board of Supervisors as provided in Government Code section 65858. Within fifteen (15) days after its passage, this Ordinance shall be published once, with the names of the Supervisors voting for and against the same, in The Union, a newspaper of general circulation printed and published in the County of Nevada. This ordinance is passed by at least a 4/5th vote of the Board of Supervisors, pursuant to Government Code section 65858.

PASSED AND ADOPTED by a majority vote of the Board of Supervisors of the County of Nevada at a regular meeting of said Board, held on the 23rd day of April, 2019, by the following vote of said Board:

Ayes: Supervisors Heidi Hall, Edward Scofield, Dan Miller, Susan K. Hoek and Richard Anderson.

Noes: None.

Absent: None.

Abstain: None.

ATTEST:

JULIE PATTERSON HUNTER
Clerk of the Board of Supervisors

By: 



Richard Anderson, Chair

4/23/2019 cc: GIS*
Union*
COB*
CoCo*
QC*
Ag. Comm*