

ORDINANCE 1235

AN INTERIM ORDINANCE OF THE BOARD OF SUPERVISORS OF THE COUNTY OF INYO, STATE OF CALIFORNIA PURSUANT TO GOVERNMENT CODE SECTION 65858 PROHIBITING CULTIVATION OF INDUSTRIAL HEMP AND DECLARING THE URGENCY THEREOF.

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

SECTION ONE. PURPOSE/AUTHORITY.

The purpose of this urgency ordinance is to establish a temporary moratorium on the cultivation of industrial hemp, including cultivation by "Established Agricultural Research Institutions," as defined by California Food and Agricultural Code Section 8100(c), 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 TWO. DECLARATIONS AND FINDINGS.

The Board of Supervisors of the County of Inyo 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 Substance 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 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 implement requisite regulations allowing the cultivation of industrial hemp for commercial purposes in 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 Inyo 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.
- 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 indistinguishable. Absent a laboratory performed chemical analysis for tetrahydrocannabinol (THC) content, the two plants cannot be distinguished.
- 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.
- 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 "Established Agricultural Research Institution" exemption to grow industrial hemp with more than .3% THC is great.
- O. Except for personal cultivation, by an adult 21 years of age or older, of six or fewer cannabis plants within a private residence or inside a detached accessory structure on the grounds of a private residence that is fully enclosed and secured and personal use of cannabis otherwise allowed under the Medicinal and Adult-Use Cannabis Regulation and Safety Act (Senate Bill 94 (2017) ("MAUCRSA"), Section 5.40.040 of Inyo County Code states that "It is unlawful for any person to maintain, conduct, operate, or carry on within the unincorporated area of the county any commercial cannabis business, unless such person is issued a commercial cannabis business license pursuant to this chapter for such business, and such person is currently in compliance with all applicable state and local laws and regulations pertaining to the commercial cannabis business and the commercial cannabis activities, including the duty to obtain any required local land use approvals and state licenses".
- P. 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.
- Q. The cultivation of industrial hemp prior to the adoption of State &/or local reasonable regulations will create an increased likelihood of unlawful commercial cannabis activity.

- 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 insects. At this time, there are no pesticides registered for hemp that specifically address such mites or other insects. The pesticides that have been approved for hemp are not always effective, which allows for such insects to move into other 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. 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.
- 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. Industrial hemp and cannabis are not compatible crops and cultivation of industrial hemp near commercial cannabis crops can result in less marketable product due to cross pollination.
- W. The cultivation of industrial hemp prior to the adoption of State &/or local 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 County Counsel to assess the impacts of industrial hemp and to explore reasonable regulatory options relating thereto.
- Y. The allowance of cultivation of industrial hemp by "Established Agricultural Research Institutions," as defined by F AC 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 Inyo County.
- Z. Inyo County has a compelling interest in protecting the public health, safety, and welfare of its residents and businesses, in preventing the establishment of nuisances, and the unregulated cultivation of industrial hemp is hereby declared to constitute a public nuisance.

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 THREE. CULTIVATION OF INDUSTRIAL HEMP PROHIBITED.

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 Inyo County. 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.

SECTION FOUR. 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 FIVE. SEVERABILITY.

If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such a 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 and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of this ordinance would be subsequently declared invalid or unconstitutional.

SECTION SIX. EFFECTIVE DATE.

This Ordinance is intended to protect the public safety, health, and welfare pursuant to Government Code Section 65858 and shall be in full force and effect immediately upon a four-fifths vote of the Board of Supervisors. This Ordinance shall be of no further force and effect 45 days from its date of adoption, unless extended pursuant to Government Code Section 65858.

PASSED AND ADOPTED this 25th day of September 2018, by the following vote of the Inyo County Board of Supervisors:

AYES: -4- Supervisors Griffiths, Kingsley, Pucci, Totheroh

NOES: -0-

ABSTAIN: -0-

ABSENT: -1- Supervisor Tillemans



Chairperson Inyo County Board of Supervisors

**ATTEST: Clint G. Quilter
Acting Clerk to the Board**

By:



Darcy Ellis, Assistant