

ORDINANCE NO. _____

AN ORDINANCE OF THE BOARD OF SUPERVISORS OF THE COUNTY OF SONOMA, STATE OF CALIFORNIA, ADDING CHAPTER 37 TO SONOMA COUNTY CODE AND ADOPTING AND IMPOSING A MORATORIUM ON THE CULTIVATION OF INDUSTRIAL HEMP

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

SECTION I. PURPOSE AND AUTHORITY. The purpose of this Ordinance is to establish a moratorium on industrial hemp cultivation, including hemp cultivation by Established Agricultural Research Institutions but excluding industrial hemp research by institutions of higher education, within the unincorporated area of Sonoma County. This Ordinance is adopted pursuant to California Government Code sections 25123 and 25131.

SECTION II. FINDINGS. The Board of Supervisors finds and determines as follows:

- (a) On April 2, 2019, the Board of Supervisors considered and adopted an urgency ordinance to impose a temporary moratorium on the cultivation of industrial hemp, with the exception of research conducted by institutions of higher education, because state laws regulating industrial hemp are still under development, industrial hemp and cannabis cultivation will often be indistinguishable presenting public safety risks and challenges for enforcement, and the unregulated cultivation of industrial hemp may be harmful to the welfare of the County and its residents, and for these reasons the County needs time to study and determine how and whether to regulate industrial hemp cultivation.
- (b) "Industrial hemp" is defined under the California Food and Agricultural Code (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."
- (c) "Hemp" is similarly defined under Federal law, 7 U.S.C. 1621 et seq., as "the plant *Cannabis sativa* L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis."
- (d) The County of Sonoma's current cannabis ordinance, County Code Section 26-88-250 through 258, does not regulate or define industrial hemp;
- (e) The Federal Agricultural Act of 2014 (2014 Farm Bill) first established the allowance for the cultivation of industrial hemp by an institution of higher education or a state department of agriculture under an agricultural pilot program or other agricultural or academic research if allowed by the state in which the cultivation occurred.

- (f) The Agricultural Improvement Act of 2018 (2018 Farm Bill) enacted on December 20, 2018, allows for industrial hemp to be grown throughout the United States and removes hemp and its derivatives from being classified as a “Schedule 1” drug under the Controlled Substances Act. The manner by which hemp is grown is no longer restricted to pilot programs and research. The Act also requires that there be a program which collects certain information (location, person responsible, etc.), testing for THC level, destruction of industrial hemp not in compliance with testing, and annual inspection. In lieu of the U.S. Department of Agriculture regulating, a state may choose to regulate the cultivation of industrial hemp through a plan submitted to the U.S. Secretary of Agriculture which contains the same components as the Federal requirements.
- (g) In California, the cultivation of industrial hemp for agricultural research and commercial purposes is governed by FAC Division 24 (Section 81000 et seq.). The laws governing hemp were first adopted in 2013 (SB 566), made partially operative by the 2014 Farm Bill, made fully operative by Proposition 64 passed in 2016, and amended in 2018 (SB 1409).
- (h) Under FAC Division 24, all commercial industrial hemp cultivators must register with the county Agricultural Commissioner prior to cultivation. Registration is not yet available.
- (i) FAC Section 81001 establishes an Industrial Hemp Advisory Board to advise the California Secretary of Food and Agriculture and make recommendations to the Secretary pertaining the cultivation of industrial hemp, including fees and process for registration, industrial hemp seed law and regulations, annual budgets, and the setting of an assessment rate.
- (j) The Industrial Hemp Advisory Board is expected to promulgate regulations governing the registration, testing, and enforcement of industrial hemp cultivation in 2019. In November 2018, regulations governing only registration were submitted to the Office of Administrative Law. It is anticipated that the State may open registration once these registration regulations are adopted and prior to promulgating any additional regulations.
- (k) FAC Division 24 exempts “Established Agricultural Research Institutions” from the registration requirements and some of the regulations that otherwise apply to commercial hemp cultivators. Established Agricultural Research Institutions includes institutions of higher education, which are defined under federal law, however, the State has not provided guidance to aid with implementation of State law with regards to which other institutions and organizations qualify as Established Agricultural Research Institutions.
- (l) Senate Bill (SB) 1409 was signed into law by Governor Brown on September 30, 2018 and went into effect on January 1, 2019. That bill changed the state’s definition of “industrial hemp,” to allow it to be grown for uses other than oilseed and fiber production (allowing, for example, cannabidiol (CBD) production). The bill also allowed for the individual tending of plants, similar to cannabis cultivation, whereas prior to passage industrial hemp could only be grown in densely planted plots.
- (m) The passage of SB 1409 makes distinguishing cannabis from industrial hemp cultivation particularly challenging for local officials. The physical appearance of cannabis and

industrial hemp, their odor, and their manner of cultivation are virtually identical. Absent a laboratory chemical analysis for THC content performed prior to harvest, the two plants cannot be reliably distinguished under their legal definitions.

- (n) The similarities in the two types of plants may present unique challenges for law enforcement and code enforcement when determining if a cultivation site is legal or illegal, or has paid appropriate taxes.
- (o) Industrial hemp may also threaten nearby cannabis farms because it may cause pollen contamination. Industrial hemp may be grown to produce seed which would require male plants to pollinate the female plants. Commercial cannabis is grown exclusively with female plants. Seed production from nearby industrial hemp cultivation could ruin a cannabis crop due to pollen contamination.
- (p) Allowing commercial cultivation of industrial hemp, particularly when the state laws are in flux, and prior to the adoption of reasonable regulations, if any, may exacerbate violations of the County's cannabis program, create opportunities for cannabis tax evasion, frustrate enforcement of the County's cannabis program, interfere with the County's ability to effectively implement environmental regulations, and may be harmful to the welfare of the County and its residents. Until the State has established laws, regulations, and guidelines for commercial industrial hemp cultivation, it is not possible for the County to establish effective local regulations. Any such local regulations would be at best unsettled and at worst possibly voided by subsequent State regulation.
- (q) Industrial hemp also presents opportunities for Sonoma County related to diversification of agriculture and economic opportunity. Federal and State law specifically allow for industrial hemp research conducted by institutions of higher education, as defined by 7 U.S.C. Section 1001. Such research could not only aid the future of the hemp industry, but could also assist the County in evaluating appropriate regulations. Given the narrow definition of institutions of higher education, any such research in the County would be naturally limited and thus does not present the concerns related to impacts and compatibility raised by widespread commercial industrial hemp cultivation.
- (r) To protect its residents and businesses from the potential negative effects of the commercial cultivation of industrial hemp, the County of Sonoma needs time to study and determine how best to regulate the cultivation of industrial hemp and if it does choose to regulate, consider appropriate zoning districts and regulatory standards.
- (s) The Board of Supervisors desires a robust public process concerning industrial hemp that builds on and does not conflict with the developing state law, that studies and shares information, including information gleaned from industrial hemp research, and that receives community input on potential decisions on whether or how best to regulate the commercial cultivation of industrial hemp in the unincorporated areas of the county.
- (t) It is necessary to establish a moratorium and prohibition on the cultivation of industrial hemp, with the exception of research conducted by institutions of higher education, within the unincorporated area of the County pending further development of State regulations and the County's completion of a review of the needs of its constituents and

residents and consideration of any impacts and compatibility associated with industrial hemp cultivation.

SECTION III. Chapter 37 is hereby added to the Sonoma County Code to read as follows:

Sec. 37-02-010. Title.

This chapter shall be known as the Industrial Hemp Ordinance.

Sec. 37-02-020. Purpose.

This chapter is enacted for the purpose of regulating industrial hemp cultivation within the unincorporated area of the county to protect the environment, public safety, and welfare of the county.

Sec. 37-02-030. Cultivation of Industrial Hemp Prohibited.

The cultivation of industrial hemp for any purpose, including by Established Agricultural Research Institutions as defined by the California Food and Agricultural Code Section 81000, shall be prohibited within the unincorporated areas of Sonoma County prior to April 30, 2020. This prohibition shall not apply to industrial hemp research conducted in a greenhouse or other structure by institutions of higher education, as defined by 7 U.S.C. Section 1001, in accordance with Division 24 of the California Food and Agricultural Code and the Agricultural Improvement Act of 2014.

Sec. 37-02-040. Enforcement.

(a) Violations.

- a. Any activity performed contrary to this chapter is hereby declared to be a violation of the Sonoma County Code and a public nuisance.
- b. Each and every day during any portion of which any violation of this chapter is committed, continued, or allowed to continue shall be a separate offense.

(b) Enforcing Officer. The Agricultural Commissioner shall be responsible for enforcing the provisions of this chapter and act as the enforcing officer for purposes of exercising the authority provided in Sections 1-7.3 and 1-7.6 of this code. Such authority may be delegated to the Permit and Resources Management Department at the discretion of the Agricultural Commissioner.

(c) Administrative Remedies.

- a. A violation of this chapter may be subject to civil enforcement and abatement methods pursuant to Section 1-7.3 of the county code or an administrative citation pursuant to Section 1-7.6 of the county code, at the discretion of the enforcing officer.
- b. In accordance with Section 1-7.3 or 1-7.6 of the county code, civil penalties for a violation of this chapter shall be no more than ten thousand (\$10,000) per day for

the first violation; no more than twenty-five thousand (\$25,000) per day for the second violation within two (2) years; and no more than fifty thousand dollars (\$50,000) per day for the third violation within two (2) years.

SECTION IV. Chapter 1 Section 1-7.3(a) of the Sonoma County Code shall be amended to reference Chapter 37.

SECTION V. During the period this Ordinance remains in effect, the provisions of this Ordinance shall govern. If there is any conflict between the provisions of this Ordinance and any provision of the Sonoma County Code, or any County ordinance, resolution, or policy, the provisions of this Ordinance shall control.

SECTION VI. SEVERABILITY. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portion of this Ordinance. The Board of Supervisors hereby declares that it would have passed this Ordinance and every section, subsection, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional or invalid.

SECTION VII. CEQA DETERMINATION. Adoption of this Ordinance is exempt from the California Environmental Quality Act (CEQA) pursuant to State CEQA Guidelines section 15061(b)(3) in that it can be seen with certainty that there is no possibility that this Ordinance or its implementation would have a significant effect on the environment because the prohibition on industrial hemp cultivation maintains the status quo. This Ordinance is also exempt pursuant to State CEQA Guidelines sections 15307 and 15308 because it restricts activities to assure the maintenance and protection of natural resources and the environment by prohibiting unregulated hemp cultivation that could be destructive to the environment. There are no unusual circumstances under CEQA Guidelines 15300.2(c) that would render these exemptions inappropriate, and each exemption stands as a separate and independent basis for determining that this ordinance is not subject to CEQA. The Agricultural Commissioner is directed to file a notice of exemption in accordance with CEQA and the State CEQA Guidelines.

SECTION VIII. EFFECTIVE DATE. This Ordinance shall be and the same is hereby declared to be in full force and effect from and after thirty (30) days after the date of its passage. This Ordinance shall be published once before the expiration of fifteen (15) days after its passage, with the names of the Supervisors voting for or against the same, in *The Press Democrat*, a newspaper of general circulation published in the County of Sonoma, State of California.

In this regular session of the Board of Supervisors of the County of Sonoma, passed and adopted this _____, on regular roll call of the members of said Board by the following vote:

Supervisors:

Gorin:

Zane:

Gore:

Hopkins:

Rabbitt:

Ayes:

Noes:

Absent:

Abstain:

WHEREUPON, the Chair declared the above and foregoing Ordinance duly adopted and

SO ORDERED.

Chair, Board of Supervisors
County of Sonoma

ATTEST:

Clerk of the Board of Supervisors