

## **ORDINANCE NO. 2059**

### **AN URGENCY ORDINANCE OF THE BOARD OF SUPERVISORS OF THE COUNTY OF TEHAMA AMENDING CHAPTER 9.06 OF THE TEHAMA COUNTY CODE PERTAINING TO THE CULTIVATION OF INDUSTRIAL HEMP WITHIN THE UNINCORPORATED AREAS OF THE COUNTY OF TEHAMA**

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

#### **SECTION 1. PURPOSE AND AUTHORITY.**

The purpose of this urgency ordinance is to establish a moratorium on the cultivation of industrial hemp by “Established Agricultural Research Institutions,” as defined by California Food and Agricultural Code Section 81000(c), and others, 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 25123 (d)., Government Code Section 25131, and other applicable law.

#### **SECTION 2. FINDINGS.**

The Board of Supervisors of the County of Tehama 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 Substances 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 California 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 make its recommendation to the Secretary of the California Department of Agriculture for a regulatory framework allowing the cultivation of industrial hemp for commercial purposes in approximately 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 Tehama until the Industrial Hemp Advisory Board has developed and implemented the requisite industrial hemp 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 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 virtually indistinguishable to the untrained eye. Absent a laboratory performed chemical analysis for tetrahydrocannabinol (THC) content, the two plants cannot be distinguished under their legal definitions.
- 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. Farming industrial hemp requires growing the entire marijuana plant which at some point contains psychoactive levels of THC.
- 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 “Establish Agricultural Research Institution” exemption to grow industrial hemp with more than .3% THC is great.
- O. Section 9.06.035 of the Tehama County Code prohibits commercial cannabis activity in the unincorporated area of the County.
- P. Due to the fact that industrial hemp and cannabis are virtually indistinguishable to the untrained eye, 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 by an “Established Agricultural Research Institution” prior to the adoption of reasonable regulations will create an increased likelihood of criminal activity.
- R. The cultivation of industrial hemp by an “Established Agricultural Research Institution” prior to the adoption of reasonable regulations creates a high likelihood of attracting crime and associated violence, including without limitation, theft, robberies, illegal firearms, shootings and homicides.
- S. The Sheriff and other enforcing officers will have to investigate each industrial hemp grow conducted by an “Established Agricultural Research Institution” prior to the adoption of reasonable regulations to ensure that the grow is not cannabis. Investigations of industrial hemp grows are time consuming, labor intensive, and potentially dangerous.

- T. Industrial hemp can serve as a host to mites and other insects. At this time, there are no pesticides specifically labeled for hemp that address such mites or other insects. The few pesticides that can legally be applied to hemp are not always effective, which allows for such insects to move into other nearby crops.
- U. 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.
- V. Industrial hemp and cannabis are not compatible crops. Thus, if this Board of Supervisors elects to pursue a particular option with respect to the outdoor cultivation of cannabis, the existence of industrial hemp grows maintained by “Established Agricultural Research Institutions” may preclude the Board of Supervisors from considering certain projects or development plans.
- W. The cultivation of industrial hemp by an “Established Agricultural Research Institutions” prior to the adoption of 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 Environmental Health to assess the impacts of industrial hemp grown by “Established Agricultural Research Institutions” and to explore reasonable regulatory options relating thereto.
- Y. The allowance of cultivation of industrial hemp by “Established Agricultural Research Institutions,” as defined by FAC 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 Tehama County.
- Z. Tehama County has a compelling interest in protecting the public health, safety, and welfare of its residents and businesses, in preventing the establishment of nuisances by the cultivation of industrial hemp.
- AA. There is a current and immediate threat to public health, safety, and welfare in that the establishment of industrial hemp cultivation in the unincorporated areas of the County of Tehama will result in land uses and land developments that may conflict with amendments to the Tehama County Code that may be adopted as a result of the study that is to be undertaken.
- 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. In order to ensure the effective implementation of the County of Tehama’s land use objectives and policies, a moratorium on the establishment and/or approval of industrial hemp cultivation is necessary.

- DD. This ordinance is exempt from environmental review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15061(b)(3) (there is no possibility the activity in question may have a significant effect on the environment). In addition to the foregoing general exemptions, the following categorical exemption applies: section 15308 (actions taken as authorized by local ordinance to assure protection of the environment). There are no unusual circumstances under CEQA Guideline 15300.2(c). Each exemption stands as a separate and independent basis for determining that this ordinance is not subject to CEQA.
- EE. 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. ORDINANCE.**

A. Section 9.06.030 of the Tehama County Code is hereby repealed.

B. Section 9.06.030 is hereby added to the Tehama County code to read:

9.06.030 - Definitions. Except where the context otherwise requires, the following definitions shall govern the construction of this chapter:

- (A) "Child care center" means any licensed child care center, daycare center, or childcare home, or any preschool.
- (B) "Church" means a structure or leased portion of a structure, which is used primarily for religious worship and related religious activities.
- (C) "Cultivation" means the planting, growing, harvesting, drying, processing, or storage of one or more marijuana plants or any part thereof in any location, indoor or outdoor, including from within a fully enclosed and secure building.
- (D) "Enforcing officer" means the health officer or the sheriff, or the authorized deputies or designees of either, or any person employed by the County of Tehama and appointed to the position of code enforcement officer, as established by Tehama County Resolution Number 125-1991, each of whom is independently authorized to enforce this chapter.
- (E) "Legal parcel" means any parcel of real property that may be separately sold in compliance with the Subdivision Map Act (Division 2 (commencing with Section 66410) of Title 7 of the Government Code).
- (F) "Marijuana" means "cannabis" as defined in California Health and Safety Code Section 11018 and "industrial hemp" as defined in Health and Safety Code Section 11018.5.

- (G) "Marijuana plant" means any mature or immature marijuana plant, or any marijuana seedling.
- (H) "Outdoor cultivation" shall mean any cultivation of marijuana that is not conducted within a detached fully enclosed secure accessory structure conforming to the requirements of Section 9.06.035, subdivision (E)(1). Outdoor cultivation includes, without limitation, cultivation of marijuana within a greenhouse or "hoophouse" or similar facility.
- (I) "Premises" shall mean a single, legal parcel of property. Where contiguous legal parcels are under common ownership or control, such contiguous legal parcels shall be counted as a single "premises" for purposes of this chapter.
- (J) "School" means an institution of learning for minors, whether public or private, offering a regular course of instruction required by the California Education Code. This definition includes a nursery school, kindergarten, elementary school, middle or junior high school, senior high school, or any special institution of education, but it does not include a home school, vocational or professional institution of higher education, including a community or junior college, college, or university.
- (K) "School bus stop" means any location designated in accordance with California Code of Regulations, Title 13, section 1238, to receive school buses, as defined in California Vehicle Code section 233, or school pupil activity buses, as defined in Vehicle Code section 546.
- (L) "School evacuation site" means any location designated by formal action of the governing body, superintendent, or principal of any school as a location to which juveniles are to be evacuated to, or are to assemble at, in the event of an emergency or other incident at the school.
- (M) "Youth-oriented facility" means any facility that caters to or provides services primarily intended for minors, or the individuals who regularly patronize, congregate or assemble at the establishment are predominantly minors.

(Ord. No. 1936, § 1, 4-6-2010; Ord. No. 1980, §§ 5, 6, 8-6-2013; Ord. No. 2000, §§ 4, 5, 3-3-2015; Ord. No. 2040, §§ 5, 6, 5-2-2017; Ord. 2059 § 3, 4-17-18)

C. Section 9.06.036 is hereby added to the Tehama County code to read:

9.06.036 – Industrial Hemp.

- A. No person or entity shall grow industrial hemp for any purposes within the unincorporated areas of Tehama County and no County permit or approval of any type shall be issued therefor. As set forth above under Section 2, the cultivation of industrial hemp for commercial purposes is currently prohibited by the State of California. Additionally, “Established Agricultural Research Institutions” as defined in FAC Section 81000, will similarly be prohibited from cultivating industrial hemp. The cultivation of industrial hemp, in any amount or quantity upon any premises is hereby declared to be unlawful and a public nuisance that may be abated in accordance with this chapter.
- B. This section (9.06.036) shall remain in effect only until January 1, 2019, and as of that date is repealed, unless a later enacted ordinance, that is enacted before January 1, 2019, deletes or extends that date.

(Ord. 2059 § 3, 4-17-18)

**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.

**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, such invalidity shall not affect the other provisions of this ordinance which can be given effect without the invalid provision or application, and to this end, the provisions of this ordinance are hereby declared to be severable.

**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, all such conflicting provisions shall be suspended.

**SECTION 7. EFFECTIVE DATE AND TERM**

This ordinance is declared an urgency measure for the immediate protection and preservation of the public peace, health, safety and welfare for the reasons stated in Section 2, and it shall take effect immediately upon its adoption by a four-fifths (4/5) vote of the Board of Supervisors pursuant to Government Code section 25123 (d). The clerk shall cause this ordinance to be published as required by law.

