

ORDINANCE NO. 2021-10

AN URGENCY INTERIM ORDINANCE EXTENDING A MORATORIUM ON
INDUSTRIAL HEMP CULTIVATION AND PROCESSING

The Contra Costa County Board of Supervisors ordains as follows:

Section 1. Purpose and Findings.

- A. The purpose of this urgency ordinance is to extend a temporary moratorium on industrial hemp cultivation and processing for commercial purposes while the County considers developing reasonable regulations to mitigate the impacts and regulate the location of the cultivation of industrial hemp, which is generally defined as the *Cannabis sativa L.* plant with a tetrahydrocannabinol (THC) concentration of 0.3% or less.
- B. In December 2018, H.R. 2, the Agriculture Improvement Act of 2018 (the 2018 Farm Bill), was signed into law, authorizing hemp cultivation more broadly than previously allowed by removing hemp from Schedule I of the federal Controlled Substances Act.
- C. The 2018 Farm Bill delegates to states and Indian tribes the authority to regulate and limit the production of hemp within their borders. It requires states to submit regulatory plans to the U.S. Department of Agriculture (USDA) for review and approval. The California Department of Food and Agriculture submitted a proposed state regulatory plan to the USDA for review and approval. California's proposed state regulatory plan is under review by the USDA.
- D. Under Food and Agricultural Code sections 81003 and 81004, before cultivation, a commercial grower or seed breeder of industrial hemp must register with the county agricultural commissioner. In 2020, the Contra Costa County Agricultural Commissioner registered five commercial industrial hemp growers in the unincorporated areas of Contra Costa County. A registration is valid for one year from the date of issuance.
- E. Under state law, industrial hemp is not subject to the same regulatory provisions as cannabis. Health and Safety Code section 11018.5(b) exempts industrial hemp from regulation under the Medicinal and Adult-Use Cannabis Regulation and Safety Act (Business and Professions Code, § 26000 et seq.). Accordingly, the County's cannabis regulation ordinance, Chapter 88-28 of the County Ordinance Code, does not regulate the cultivation of industrial hemp within the unincorporated areas of Contra Costa County.
- F. The methods for distinguishing industrial hemp (the non-intoxicating *Cannabis sativa L.* plant) from cannabis (the psychotropic version of the plant) are evolving. Industrial hemp and cannabis are derivatives of the same plant, *Cannabis sativa L.* Under state law, industrial hemp is distinguished from cannabis by the amount of tetrahydrocannabinol (THC), the psychoactive chemical in the plant. If the plant has a concentration of 0.3%

THC or less, it is categorized as industrial hemp. Industrial hemp and cannabis thus may be difficult to distinguish without a chemical analysis for the presence of THC content. THC levels are difficult to test reliably until the plant is close to maturity and ready for harvest. Testing is time sensitive, and it is difficult to perform and obtain results in a timely manner. The similarities in the two types of plants present challenges for law enforcement and code enforcement when determining whether a cultivation site complies with applicable law, including Ordinance Code chapter 88-28, or has paid required taxes.

- G. Industrial hemp can serve as a host to corn earworms and other insects. The pesticides that have been approved for industrial hemp may not provide the range of control needed to prevent movement of these pests from industrial hemp to nearby crops.
- H. Without local regulation, the cultivation of industrial hemp and cannabis may create incompatibility issues due to cross-pollination if male industrial hemp plants are grown or allowed to be grown close to cannabis.
- I. The cultivation of industrial hemp without local regulations may interfere with licensed and permitted cannabis cultivation operations under Ordinance Code chapter 88-28, particularly with respect to pollen drift and pest contamination.
- J. On November 17, 2020, the Board of Supervisors adopted Ordinance No. 2020-28, an urgency interim ordinance that established a moratorium on the cultivation and processing of industrial hemp. On December 15, 2020, the Board of Supervisors adopted Ordinance No. 2020-30, an urgency interim ordinance that continued a moratorium on the cultivation and processing of industrial hemp.
- K. An extended moratorium on the cultivation and processing of industrial hemp is urgent and necessary to give the County time to continue studying and determining how best to regulate the cultivation of industrial hemp and consider appropriate zoning districts and regulatory standards, including location requirements, security standards, water supply requirements, and size limits.
- L. Section 3 of this ordinance authorizes existing industrial hemp growers that meet specified criteria to continue cultivating industrial hemp at their existing sites. Allowing cultivation at existing sites under the location criteria and restrictions specified in Section 3 is appropriate because this restricted cultivation will result in minimal odor and lighting impacts on residential properties.

Section 2. Definitions. For purposes of this ordinance, the following terms have the following meanings:

- (a) “Established agricultural research institution” has the meaning set forth in Food and Agricultural Code section 81000(a)(4).

- (b) “Industrial hemp” has the meaning set forth in Food and Agricultural Code section 81000(a)(6).
- (c) “Nursery stock” has the meaning set forth in Food and Agricultural Code section 5005.

Section 3. Cultivation and Processing of Industrial Hemp Prohibited. The moratorium established by Ordinance No. 2020-28 and continued by Ordinance No. 2020-30 is extended through March 9, 2022.

- (a) During the term of this interim ordinance, including any extensions:
 - (1) No person or entity, including any established agricultural research institution, may grow or process industrial hemp for any purpose within the unincorporated area of Contra Costa County.
 - (2) No County permit, registration, or approval of any type shall be issued for industrial hemp cultivation or processing.
 - (3) No County building permit or approval of any type shall be issued for a greenhouse, hoop house, or any other structure, used or intended to be used for industrial hemp cultivation or processing.
- (b) During the term of this interim ordinance, including any extensions:
 - (1) The Contra Costa County Agricultural Commissioner will not issue a registration to any applicant pursuant to Food and Agricultural Code sections 81003 and 81004, or otherwise.
 - (2) The Contra Costa County Agricultural Commissioner will not renew the registration of any applicant pursuant to Food and Agricultural Code sections 81003 and 81004, or otherwise.
- (c) Notwithstanding subdivisions (a) and (b) of this section, growers of industrial hemp that had, as of the adoption date of Ordinance No. 2020-28, an active registration issued by the County Agricultural Commissioner may grow industrial hemp consistent with, and subject to, the terms set forth in that registration, including, but not limited to, the location and size of the registered grow. Cultivation allowed under this Section 3(c) is allowed only for the term of that registration. The registration is not subject to renewal except as otherwise provided in Section 4 of this ordinance.
- (d) Cultivation or processing of industrial hemp in violation of this interim ordinance is a public nuisance. This ordinance may be enforced by any remedy allowed under the Contra Costa County Ordinance Code and any other remedy allowed by law.

Section 4. Exemptions.

- (a) The prohibitions set forth in Section 3 do not apply to a grower of industrial hemp that has an active registration issued by the County Agricultural Commissioner as long as the grower meets either of the following criteria:
 - (1) The grower’s existing cultivation site is located more than one mile outside the Urban Limit Line.
 - (2) The grower’s existing cultivation site is located within an existing, legally established greenhouse. A hoop house is not a greenhouse.

- (b) A grower that meets the criteria specified in subsection (a) of this section may continue cultivation of industrial hemp under this interim ordinance if the grower meets the following requirements and complies with the following restrictions:
 - (1) The grower must obtain a new registration for a one-year term from the County Agricultural Commissioner pursuant to Food and Agricultural Code sections 81003 and 81004.
 - (2) The cultivation of nursery stock is prohibited.
 - (3) The movement of plants from the site at any time prior to harvest is prohibited.
 - (4) Artificial lighting at an industrial hemp cultivation site is prohibited.
 - (5) The grower must comply with all provisions of state and federal law, and associated regulations, that apply to industrial hemp cultivation, including requirements for cultivation, sampling, laboratory testing, harvesting, and crop destruction.

Section 5. Reports. In accordance with subdivision (d) of Government Code section 65858, ten days before this ordinance expires and any extension of it, the Department of Conservation and Development shall file with the Clerk of the Board of Supervisors a written report describing the measures taken to alleviate the conditions that led to the adoption of this urgency interim ordinance.

Section 6. Severability. If any provision or clause of this ordinance or the application thereof to any person or circumstances is held to be unconstitutional or to be otherwise invalid by any court of competent jurisdiction, such invalidity shall not affect other ordinance provisions or clauses or applications thereof that can be implemented without the invalid provision or clause or application, and to this end the provisions and clauses are declared to be severable.

Section 7. Declaration of Urgency. This ordinance is hereby declared to be an urgency ordinance necessary for the immediate preservation of the public safety, health, and welfare of the County. The facts constituting the urgency of this interim ordinance’s adoption are set forth in Section 1.

Section 8. Effective Period. This ordinance becomes effective immediately upon passage by four-fifths vote of the Board of Supervisors and shall continue in effect through March 9, 2022, pursuant to Government Code section 65858.

Section 9. Publication. Within 15 days after passage, this ordinance shall be published once with the names of the supervisors voting for and against it in the East Bay Times, a newspaper published in this County.

PASSED ON March 9, 2021, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

ATTEST: MONICA NINO,
Clerk of the Board of Supervisors
and County Administrator

Board Chair

By: _____
Deputy

[SEAL]

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