

ORDINANCE NO. 2019 – 1808-E

EXTENSION OF AN URGENCY INTERIM ORDINANCE IMPOSING A TEMPORARY MORATORIUM ON THE CULTIVATION OR PROCESSING OF INDUSTRIAL HEMP WITHIN THE UNINCORPORATED AREAS OF THE COUNTY OF SOLANO

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

SECTION 1. PURPOSE AND AUTHORITY. The purpose of this urgency ordinance is to establish a temporary moratorium on the cultivation and processing of industrial hemp for commercial purposes while County staff determines the impact of such unregulated cultivation and processing, and develops reasonable regulations to mitigate such impacts. This urgency ordinance is adopted pursuant to California Constitution Article 11, Section 7, Government Code section 65858, and other applicable law.

SECTION 2. FINDINGS. The Board of Supervisors of the County of Solano makes the following findings in support of the immediate adoption and application of this urgency ordinance:

A. On December 20, 2018, President Trump signed H.R. 2, the Agriculture Improvement Act of 2018 (the 2018 Farm Bill) into law allowing hemp cultivation more broadly than the previously allowed pilot programs for studying market interest in hemp-derived products. The 2018 Farm Bill 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.

B. Industrial hemp is defined in section 11018.5 of the Health and Safety Code 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. Section 11018.5 expressly exempts industrial hemp from regulation under the Medicinal and Adult-Use Cannabis Regulation and Safety Act (Business and Professions Code, Division 10, § 26000 et seq.), so that industrial hemp is not subject to the same regulatory provisions as cannabis.

D. Division 24 (§§ 81000-81011) of the Food and Agricultural Code addresses the growing and cultivation of industrial hemp in California. Under the Food and Agricultural Code, any commercial grower or seed breeder of industrial hemp must register with the county agricultural commissioner prior to cultivation.

E. In 2019, the Solano County Agricultural Commissioner registered several commercial growers within the unincorporated territory of Solano County. The fields planted by these registered growers are either in the process of being harvested or have recently been harvested.

F. Leading up to and during the harvest season, the Solano County Sheriff received numerous reports of nuisance activities, and possible criminal activities, occurring at or near industrial hemp fields. These reported activities include attempted or actual theft of crop as well

as actions by growers or their security personnel attempting to protect their crop from theft in a manner that might cause risk of harm to persons on neighboring properties.

G. The cultivation and processing of industrial hemp would not constitute a public nuisance if those activities were conducted in a manner similar to proper and accepted customs and practices utilized for other agricultural commodities. However, events that have occurred during the 2019 harvest season demonstrate that industrial hemp has a potential for theft unlike any other commercial agricultural commodity, and growers have responded to this potential for theft by employing extraordinary security practices. It is these actions of thieves and potential thieves, and the countermeasures taken by growers and their security personnel, that pose a risk to the community and are a public nuisance.

H. Although industrial hemp is not typically planted until Spring, farmers must make decisions about what crops to plant next season far in advance of actual planting. In addition, any farmer intending to grow industrial hemp next season must begin the registration process in advance of actual planting.

I. The County's Zoning Regulation and other ordinances do not currently regulate the cultivation or processing of industrial hemp within the unincorporated territory of Solano County.

J. The County intends to study, within a reasonable time, land use regulations or other County-imposed regulations related to the cultivation and processing of industrial hemp.

K. On November 5, 2019, the Board of Supervisors adopted Ordinance No. 2019-1808, an urgency interim ordinance imposing a temporary moratorium on the cultivation or processing of industrial hemp within the unincorporated areas of the County of Solano. The interim urgency ordinance is in effect for 45 days following its adoption and will expire on December 20, 2019, unless extended prior to that date by a four-fifths vote of the Board of Supervisors after notice and hearing.

L. During the Board's consideration of Ordinance No. 2019-1808 on November 5, 2019, several registered hemp growers expressed concerns regarding how a prohibition on processing would affect the on-site drying, storage, and processing of their current crop.

M. It is appropriate to modify Ordinance No. 2019-1808 to address the concerns expressed by the registered growers and to extend that to provide staff additional time to conduct the study described in these findings, and to provide time for public input and Planning Commission review of any proposed changes to the Zoning Regulations.

N. An extension of the interim ordinance as an urgency measure is necessary for the immediate protection of the public health, safety, and welfare.

O. 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). Each exemption stands as a separate and independent basis for determining that this ordinance is not subject to CEQA.

SECTION 3. CULTIVATION AND PROCESSING OF INDUSTRIAL HEMP PROHIBITED.

A. During the term of this interim ordinance, including any extensions hereto, no person or entity shall grow or process industrial hemp for any purposes within the unincorporated areas of Solano County and no County permit, registration or approval of any type shall be issued therefor. Cultivation or processing of industrial hemp in violation of the prohibition in this interim ordinance constitutes a public nuisance.

B. For purposes of this ordinance, the terms “cultivation” and “processing” have the same meaning as “crop production” and “agricultural processing,” respectively, as defined in section 28.01 of the Solano County Code.

C. Notwithstanding Paragraph A, industrial hemp currently being cultivated as of November 5, 2019, on a field registered with the Solano County Agricultural Commissioner, may continue to be cultivated through harvest, provided such crop is either removed from the property promptly after harvest or secured within an on-site enclosure for on-site processing using mobile equipment, which shall be completed no later than January 31, 2020.

D. This section is cumulative to all other remedies now or hereafter available to abate or otherwise regulate or prevent public nuisances and may be enforced in accordance with section 28.113 of the Solano County Code.

E. 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 the County of Solano or Solano County itself shall not become a personal liability of such person or a liability of the County.

SECTION 4. AGRICULTURAL COMMISSIONER REGISTRATIONS.

A. During the term of this interim ordinance, including any extensions hereto, the Solano County Agricultural Commissioner shall not issue a registration to an applicant pursuant to sections 81003 or 81004 of the Food and Agricultural Code.

B. During the term of this interim ordinance, including any extension thereto, any registration issued by the Solano County Agricultural Commissioner to a grower of industrial hemp or a seed breeder shall not exempt the registration holder or the growing area subject to such registration from Section 3 of this ordinance.

SECTION 5. 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 6. 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.

