

ORDINANCE NO. 1469

AN ORDINANCE OF THE NAPA COUNTY BOARD OF SUPERVISORS, STATE OF CALIFORNIA, ADDING NEW COUNTY CODE CHAPTER 8.11 EXPRESSLY BANNING CULTIVATION OF INDUSTRIAL HEMP INCLUDING CULTIVATION BY "ESTABLISHED AGRICULTURAL RESEARCH INSTITUTIONS"

WHEREAS, Pursuant to Article XI, Section 7, of the California Constitution, Napa County ("County") may adopt and enforce ordinances and regulations not in conflict with general laws to protect and promote the public health, safety, and welfare of its citizens; and

WHEREAS, On July 23, 2019, the Board of Supervisors adopted Interim Urgency Ordinance No. 1444, which prohibited Cultivation of Industrial Hemp by any person or entity for any purpose, including "Established Agricultural Research Institutions" in all zones in the unincorporated area of the County ("Ordinance No. 1444"). Ordinance No. 1444 was set to expire on September 6, 2019, but was extended prior to that date; and

WHEREAS, Section 3 of Ordinance No. 1444 provided as follows:

Moratorium. In order to protect the public health, safety and welfare pursuant to the provisions of Government Code Sections 25123 (d) and 65858, during the term of this Ordinance, including any extensions hereto, a moratorium is hereby placed on the following:

A. Cultivation of Industrial Hemp by any person or entity for any purposes, which is expressly prohibited in all zoning districts in the unincorporated area of the County. Additionally, during this interim ordinance, including any extension 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.

B. Acceptance of any application for or issuance of a registration, permit or entitlement, or approval of any type, that authorizes the establishment, operation, maintenance, development or construction of any facility or use for the purpose of the cultivation of Industrial Hemp in the unincorporated area of the County.

WHEREAS, Government Code Section 65858(a) provides that after notice, pursuant to Section 65090 and a public hearing, a legislative body may extend an interim urgency ordinance for ten (10) months and fifteen (15) days and subsequently for one (1) year upon a four-fifths vote of the Board of Supervisors; and

WHEREAS, On August 27, 2019, the Board of Supervisors adopted Ordinance No. 1448, an Interim Zoning/Urgency Ordinance extending the prohibition established in Ordinance No. 1444 on Cultivation of Industrial Hemp by any person or entity for any purpose, including "Established Agricultural Research Institutions" in all zones for an additional ten (10) months

and fifteen (15) days beginning concurrently with Ordinance No. 1444's expiration. Ordinance No. 1448 was set to expire on July 21, 2020, unless extended prior to that date; and

WHEREAS, Ordinance 1444 was extended an additional twelve (12) months by Ordinance 1458 on July 14, 2020. Ordinance 1458 will expire on July 21, 2021 and may not be extended; and

WHEREAS, in December 2018, the President signed into law the 2018 Federal Farm Bill, which removes industrial hemp from the federal list of controlled substances and authorizes the U.S. Department of Agriculture to create quality control standards for commercial hemp production, further giving states that desire to have primary regulatory authority over the production of hemp the ability to adopt their own state plans. The state plan may include a reference to a law of the state regulating the production of hemp, to the extent it consists with federal law; and

WHEREAS, on January 1, 2017, Division 24, Industrial Hemp [8100-81010] of the California Food and Agricultural Code ("FAC") became operative; and

WHEREAS, Division 24 of the FAC addresses the growing and cultivation of industrial hemp in California; and

WHEREAS, in 2018, FAC Division 24 was amended by Senate Bill 1409 (2018 Cal Stats. Ch 986), and effective January 1, 2019, the California Department of Food and Agriculture (CDFA) may, by regulation, establish an agricultural pilot program pursuant to Section 7606 of the Federal Agricultural Act of 2014, Section 5940 of Title 7 of the United States Code; and

WHEREAS, 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." CDFA is currently drafting regulations to govern cultivation by established agricultural research institutions; and

WHEREAS, under FAC Division 24, all commercial growers of industrial hemp must register with the county agricultural commissioner prior to cultivation. Recently, CDFA passed regulations to make registration available and is currently operating under temporary emergency hemp regulations; and

WHEREAS, for the California legislature 2019-2020 regular session, two emergency measures were advanced that were intended to take immediate effect and significantly impact the regulatory scheme for the cultivation of industrial hemp, and the production, testing, and manufacturing of hemp products for human and animal consumption. One of the bills, SB 153, was passed and signed by the Governor, establishing May 1, 2020 as the deadline for California to submit the State's plan to the federal government for approval. California's State plan was

submitted by CDFA to the U.S. Department of Agriculture on September 17, 2020; and

WHEREAS, on October 29, 2019, the federal government published an interim final rule that outlines the provisions for the U.S. Department of Agriculture to approve plans submitted by states for production of hemp. It also establishes a federal plan for producers in states that do not have their own approved plan. The interim final rule includes provisions for maintaining information on the land where hemp is produced, testing the levels of delta-9 tetrahydrocannabinol, disposing of plants not meeting necessary requirements, licensing requirements, and ensuring compliance with the requirements of the new part; and

WHEREAS, March 22, 2021 the final rule became effective and incorporates modifications to regulations established under the interim final rule published in October 2019. The modifications are based on public comments following the publication of the IFR and lessons learned during the 2020 growing season. Key provisions of the final rule include licensing requirements; record keeping requirements for maintaining information about the land where hemp is produced; procedures for testing the THC concentration levels for hemp; procedures for disposing of non-compliant plants; compliance provisions; and procedures for handling violations; and

WHEREAS, the ongoing regulatory actions related to industrial hemp at the state and federal level create a regulatory environment that is in flux and, in some regards, such as in regards to registration and eligibility requirements, remains uncertain. Additionally, if California's State Plan is approved, additional revisions to California's hemp regulations will be required because the State Plan was submitted prior to the final rule becoming effective, thus creating more uncertainty; and

WHEREAS, the current County land use regulations related to crop production do not adequately address the unique legal, land use, environmental, and public health, safety, and welfare issues and impacts associated with commercial cultivation of industrial hemp; and

WHEREAS, industrial hemp is defined under FAC Section 81000 as "an agricultural product, whether growing or not, that is limited to types of the plant *Cannabis sativa* L. and any part of that plant, including the seeds of the plant and all derivatives, extracts, the resin extracted from any part of the plant, cannabinoids, isomers, acids, salts, and salts of isomers, with a delta-9 tetrahydrocannabinol concentration of no more than 0.3 percent on a dry weight basis."; and

WHEREAS, "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."; and

WHEREAS, the Federal Controlled Substances Act, 21 U.S.C. §801 et seq., classifies cannabis or marijuana as a Schedule I Drug, which is defined as a drug or other substance that

has a high potential for abuse, that has no currently accepted medical use in treatment in the United States. The Federal Controlled Substances Act prohibits, except for certain research purposes, the possession, distribution, and manufacture of marijuana; and

WHEREAS, 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. The methods to distinguish and identify industrial hemp (the non-intoxicating *Cannabis sativa* L. plant) from cannabis (the psychotropic version of the plant) are complex and evolving. Absent a laboratory performed chemical analysis for tetrahydrocannabinol (THC) content, the two plants could not be distinguished by County staff; and

WHEREAS, in order for the Agricultural Commissioner's Office, Sheriff's Office and Code Enforcement personnel to verify that harvested product in transit is permissible industrial hemp and not cannabis intended for sale in the illicit market, field analyzer kits must be purchased at an approximate cost of \$13,500.00 per kit. The Sheriff's Office would need at least two kits, the Agricultural Commissioner at least one and Code Enforcement would need at least one. This would cost the County a minimum of \$54,000.00 if cultivation of industrial hemp were to be permitted in Napa County; and

WHEREAS, except for personal cultivation of up to six (6) cannabis plants, whether indoors, outdoors, or any combination thereof, within a single private residence or upon the grounds of that private residence, the County prohibits all Commercial Cannabis Activities, which include cultivation, possession, manufacturing, processing, storing, testing, labeling, distribution, selling, giving away, or providing medical or adult-use cannabis and cannabis products, whether or not for profit; and

WHEREAS, the cultivation of industrial hemp by an "Established Agricultural Research Institution," or others, prior to the adoption of reasonable regulations will create an increased likelihood of criminal activity, and will attract crime and associated violence including, without limitation, theft, robberies, illegal firearms, shootings and homicides; and

WHEREAS, the Sheriff will have to investigate each industrial hemp grow conducted by an "Established Agricultural Research Institution" or others 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; and

WHEREAS, industrial hemp can serve as a host to mites and 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; and

WHEREAS, the cultivation of industrial hemp prior to the adoption of reasonable regulations is harmful to the welfare of residents, creates a nuisance, and threatens the safety and crops of any nearby agricultural operations including vineyards and wineries; and

WHEREAS, Napa County's primary agricultural product is wine grapes worth approximately one billion dollars annually. Currently there is insufficient research into how

growing industrial hemp in proximity to vineyards may affect grapes and vines. Therefore there is an urgent need for the Agricultural Commissioner to assess the impacts of growing industrial hemp and to explore reasonable regulatory options relating thereto due to the wine grape industry's vital role in Napa County's economy; and

WHEREAS, Napa County Elections Division previously validated signatures submitted in support of placing a voter initiative on the March 3, 2020 election ballot which would have allowed certain commercial cannabis activities in the unincorporated County. The initiative was ultimately withdrawn by the proponents. Because it is unknown whether a new initiative will be approved by County voters or whether the County's ordinances will be amended to allow cannabis cultivation, and because industrial hemp and cannabis are not compatible crops due to the potential for pollen drift from hemp plants to cause adverse effects on the cultivation of cannabis plants, the County has a compelling interest to ensure any regulations of cannabis and industrial hemp are in harmony with one another; and

WHEREAS, the Agricultural Commissioner, the Sheriff, Environmental Health and County Counsel continue to assess and monitor the impacts of industrial hemp grown by "Established Agricultural Research Institutions," and others, and to explore reasonable regulatory options relating thereto; and

WHEREAS, the allowance of cultivation of industrial hemp by "Established Agricultural Research Institutions," and others, as defined by FAC Section 81000, prior to the approval of the State Plan and adoption of reasonable regulations, creates an urgent and immediate threat to the public health, safety or welfare of the citizens and existing agriculture in Napa County; and

WHEREAS, Napa 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

WHEREAS, in order to ensure the effective implementation of the Napa County's land use objectives and policies, a prohibition on the establishment and/or approval of industrial hemp cultivation is necessary; and

WHEREAS, the Board finds and declares that the adoption of this Ordinance is necessary and desirable to ensure that environmental, public health, safety and nuisance factors related to the cultivation of industrial hemp are adequately addressed.

~The Napa County Board of Supervisors, State of California, ordains as follows:

SECTION 1. A new Chapter 8.11 (Industrial Hemp Cultivation) of the Napa County Code is added to read in full as follows:

Chapter 8.11

INDUSTRIAL HEMP CULTIVATION

Sections:

- 8.11.010 Purpose and Intent.**
- 8.11.020 Definitions.**
- 8.11.030 Industrial hemp cultivation prohibited.**
- 8.11.040 Public nuisance.**
- 8.11.050 Violations and penalties**

8.11.010 Purpose and Intent.

It is the intent of the board of supervisors to prohibit the cultivation of industrial hemp in the unincorporated area of the County, in order to protect Napa County's unique and sensitive environment, and to preserve the public peace, health, safety and general welfare of the citizens of, and visitors to the county.

8.11.020 Definitions.

For purposes of this chapter, the following definitions shall apply:

“Cultivation” or “cultivate” means any activity involving the planting, growing, harvesting, drying, curing, processing or storage of industrial hemp in any location, indoor or outdoor, including within a fully enclosed and secure structure.

“Established agricultural research institution” shall have the same definition as set forth in California Food and Agricultural Code section 81000.

“Industrial Hemp” or “Hemp” shall have the same definition as set forth in California Food and Agricultural Code section 81000 and means an agricultural product, whether growing or not, that is limited to types of the plant *Cannabis sativa* L. and any part of that plant, including the seeds of the plant and all derivatives, extracts, the resin extracted from any part of the plant, cannabinoids, isomers, acids, salts, and salts of isomers, with a delta-9 tetrahydrocannabinol concentration of no more than 0.3 percent on a dry weight basis.

8.11.030 Industrial hemp cultivation prohibited.

A. Cultivation of Industrial Hemp by any person or entity for any purpose is expressly prohibited within the unincorporated area of the County. Additionally, "Established Agricultural Research Institutions" are similarly prohibited from cultivating Industrial Hemp for agricultural or academic research purposes.

B. Acceptance of any application for or issuance of a registration, permit or entitlement, or approval of any type, that authorizes the establishment, operation, maintenance, development or construction of any facility or use for the purpose of the cultivation of Industrial Hemp is expressly prohibited within the unincorporated area of the County.

8.11.040 Public nuisance.

Any violation of this chapter is a public nuisance.

8.11.050 Violations and penalties.

Any violation of this chapter shall be subject to abatement and penalties as provided in

Chapters 1.20 and 1.28 of this code or any successor chapters thereto.

SECTION 2. The adoption of this ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to 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).

SECTION 3. If anything in this Ordinance is for any reason held to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The Napa County Board of Supervisors declares it would have passed and adopted this Ordinance and each of its provisions irrespective of the fact that any provision be declared invalid.

SECTION 4. This Ordinance shall be effective thirty (30) days from and after the date of its passage.

SECTION 5. A summary of this Ordinance shall be published at least once five (5) days before adoption and at least once before the expiration of fifteen (15) days after its passage in the Napa Valley Register, a newspaper of general circulation published in Napa County, together with the names of members voting for and against the same.

The foregoing Ordinance was introduced and read at a regular meeting of the Napa County Board of Supervisors, State of California, held on the 18th day of May, 2021, and passed at a regular meeting of the Napa County Board of Supervisors, State of California, held on the 8th day of June, 2021, by the following vote:

AYES: SUPERVISORS GREGORY, WAGENKNECHT, DILLON
RAMOS and PEDROZA

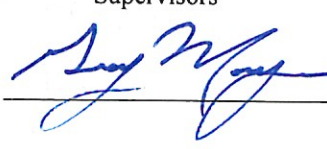
NOES: SUPERVISORS NONE

ABSTAIN: SUPERVISORS NONE

ABSENT: SUPERVISORS NONE

NAPA COUNTY, a political subdivision of
the State of California

By: 
ALFREDO PEDROZA, Chair of the
Board of Supervisors

APPROVED AS TO FORM Office of County Counsel By: <u>Chris R.Y. Apallas</u> Deputy County Counsel By: <u>/s/ Meredith Trueblood</u> Code Services Date: <u>May 18, 2021</u>	APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS Date: June 8, 2021 Processed By: <u>Linda Whitney</u> Deputy Clerk of the Board	ATTEST: GREG MORGAN Deputy Clerk of the Board of Supervisors By: 
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I HEREBY CERTIFY THAT THE ORDINANCE ABOVE WAS POSTED IN THE OFFICE
OF THE CLERK OF THE BOARD IN THE ADMINISTRATIVE BUILDING, 1195 THIRD
STREET ROOM 310, NAPA, CALIFORNIA ON _____.

_____, DEPUTY
GREG MORGAN, DEPUTY CLERK OF THE BOARD