

**ORDINANCE NO. 3393**

**AN URGENCY ORDINANCE OF THE COUNTY OF SAN LUIS OBISPO DECLARING A  
TEMPORARY MORATORIUM ON THE CULTIVATION OF INDUSTRIAL HEMP WITHIN THE  
UNINCORPORATED AREAS OF SAN LUIS OBISPO COUNTY**

The Board of Supervisors of the County of San Luis Obispo ordains as follows:

**Section 1. Purpose of Authority.** The purpose of this urgency ordinance is to establish a temporary moratorium on the cultivation of industrial hemp for commercial purposes or by “Established Agricultural Research Institutions,” as defined by California Food and Agricultural Code § 81000(c) while County staff determines the impact of such unregulated cultivation and develops reasonable regulations to mitigate such impacts. This urgency ordinance is adopted pursuant to California Constitution Article XI, Section 7, Government Code §§ 65800 et seq., particularly 65858, and other applicable law.

**Section 2. Findings and Declarations.**

The Board of Supervisors makes the following findings in support of the enactment of this interim urgency ordinance:

A. Pursuant to Article XI, section 7 of the California Constitution, the County of San Luis Obispo (“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.

B. Pursuant to Government Code section 25123, the County may enact an ordinance for the immediate preservation of the public peace, health, or safety, which contains a declaration of the facts constituting the urgency and which shall be effective immediately.

C. Pursuant to Government Code section 65858, to protect the public safety, health, and welfare, the County may as an urgency measure adopt an interim ordinance prohibiting land uses that may be in conflict with contemplated land use regulations that the County is studying or considering or intends to study within a reasonable time. As discussed in further detail below, the unregulated cultivation of industrial hemp threatens the public safety, health and welfare of the community and there is a need to temporarily prohibit such use so that County staff can better analyze the impacts of such use and proposed reasonable regulations to mitigate any impacts.

D. On November 27, 2017, the Board of Supervisors adopted a cannabis ordinance,

Ordinance Nos. 3357 and 3358 ("Cannabis Ordinance"), which sets forth comprehensive regulations upon cannabis activities in the unincorporated area of San Luis Obispo County, including land use permit requirements upon non-exempt cannabis activities. Under the Cannabis Ordinance 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* Linnaeus 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 the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin produced therefrom." "Cannabis" is also 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."

E. The Cannabis Ordinance excluded "industrial hemp." At the time the County adopted the Cannabis Ordinance, it did not fully appreciate the potential interest in industrial hemp nor fully understand the potential impacts that such a use may have on the public health, safety and welfare. The decision to exclude industrial hemp from the Cannabis Ordinance at the time wasn't a conscious acknowledgment that this use was appropriate within the County without regulation whatsoever.

F. Section 5940 of Title 7 of the United States Code states, "[n]otwithstanding the Controlled Substance 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."

G. Division 24 [81000-81011] of the Food and Agricultural Code (hereafter "FAC") addresses the growing and cultivation of industrial hemp in California. On January 1, 2017, Division 24, Industrial Hemp [81000-81010] of the FAC became operative.

H. 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 a fee schedule.

I. Under FAC Division 24, all commercial growers of industrial hemp must register with the county agricultural commissioner prior to cultivation. The regulation adopting a registration fee was recently approved and the California Department of Food and Agriculture (CDFA) has indicated registrations may be applied for and issued by County Agricultural Commissioners absent any local restrictions to the contrary. Proposed emergency regulations regarding testing requirements have recently been made publicly available by the CDFA. Registrations for commercial cultivation are currently being accepted and evaluated. Annual certificates to cultivate industrial hemp have been issued for those applications meeting all of the registration requirements, including the requirement of growing an approved seed cultivar. According to existing State law and pending regulations, registered industrial hemp will have to be sampled and tested within 30 days of harvest to confirm compliance with legal THC thresholds. The state has not established an official agricultural pilot program pursuant to FAC 81007 in compliance with Section 7606 of the federal Agricultural Act of 2014 (7 U.S.C. §5940). There remain open questions about whether the registration program established by the CDFA currently qualifies as a pilot program under federal law and whether additional restrictions should be imposed pursuant to FAC 81006(e). Pursuant to a May 28, 2019 legal opinion from the Office of General Counsel of the USDA, industrial hemp may only be cultivated under federal law "(1) with a valid USDA issued license, (2) under a USDA-approved State or Tribal plan, or (3) under the 2014 Farm Bill industrial hemp pilot authority. The pilot authority will expire one year after USDA establishes a plan for issuing USDA licenses under the provisions of the 2018 Farm Bill."

J. In addition, FAC Division 24 currently exempts cultivation by an "Established Agricultural Research Institution" from most of the regulatory requirements enumerated therein.

K. An "Established Agricultural Research Institution" is defined under FAC Section 81000 as: "(c) (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."

L. Because industrial hemp and cannabis are varieties of the same plant, *Cannabis sativa* Linnaeus, industrial hemp and cannabis may be virtually indistinguishable under their legal definitions absent a laboratory test for tetrahydrocannabinol (THC) levels. THC levels are difficult to reliably test until the plant is close to maturity and ready for harvest, and may be time sensitive and difficult to perform and obtain results in the field. Investigations of purported industrial hemp grows would be time consuming, labor intensive and difficult for the County to verify.

M. There is a considerable amount of interest in cultivating industrial hemp for the production of cannabidiol, otherwise more commonly referred to as "CBD." Since registration opened on May 1, 2019, the County Agricultural Commissioner's Department has received thirty one registration applications to commercially grow industrial hemp and has received hundreds of phone calls from interested parties to inquire about the registration process.

N. As cannabis cultivation permits have been processed, the County has received substantial amounts of public testimony regarding the potential harmful effects of cultivating cannabis, specifically, odor nuisance and public safety concerns. Individuals opposing either existing or proposed cannabis cultivations, cite foul "skunk-like" smells emanating from the operation, the need to close windows, people unable to go outside due to the noxious skunk-like odor, and people experiencing irritated eyes because of the odor. Cannabis cultivation projects are therefore individually reviewed to look at setbacks and locations of sensitive receptors in order to minimize odor nuisance. Individuals also cite similar odor complaints

regarding certain odor “masking” systems which are often used in the growing of cannabis identifying an “overwhelming Febreze like smell” which is similarly annoying and causing eye irritation. At this point, it is unclear if industrial hemp has similar odors thus implicating these same potential impacts and further study and analysis is needed in order to assess those potential risks to the public health, safety and welfare and impose any reasonable regulations which may be needed.

O. Cannabis cultivation has become increasingly more prolific in the County and certain places, like California Valley, experienced an almost immediate insurgence of cannabis related activity. This cannabis related activity resulted in an increase in public services, most specifically, increased need for public safety and law enforcement due to an increase in criminal conduct. Through the County's Cannabis Ordinance, site specific safety and security issues are reviewed and plans and conditions are put into place (i.e. special fencing, lights, security cameras, etc.) in order to address this potential impact. Because industrial hemp is virtually identical to cannabis, the County's Sheriff's Department notes that certain regulations are needed in order to deter or prevent individuals associating industrial hemp with cannabis and therefore deterring or preventing unlawful activities which are associated with cannabis (i.e. theft, trespass, and robbery).

P. Industrial hemp can serve as a host to mites and other insects. At this time, there are few pesticides registered for hemp that specifically address such mites or other insects.

Q. Absent regulation, the cultivation of industrial hemp and cannabis may pose incompatibility issues due to cross-pollination if male industrial hemp plants are grown or allowed to be grown. For example, due to cross-pollination and compatibility concerns, the state of Washington restricted the cultivation of industrial hemp within four miles of any licensed marijuana cultivation. Therefore, the cultivation of industrial hemp prior to the adoption of reasonable local regulations may interfere with licensed and permitted cultivation operations under the Cannabis Ordinance.

R. The cultivation of industrial hemp prior to the adoption of state or local regulations is potentially harmful to the welfare of residents, creates a nuisance, and may threaten the safety and land of nearby property owners. The allowance of cultivation of

industrial hemp prior to the adoption of reasonable state or local regulations, creates an urgent and immediate threat to the public health, safety or welfare of the citizens and existing agriculture in San Luis Obispo County.

S. There is an urgent need for the County, including its Agricultural Commissioner, Planning and Building, Sheriff, and County Counsel departments, to assess the impacts of industrial hemp cultivation to review any state regulations subsequently issued and to explore reasonable regulatory options relating thereto.

T. The County of San Luis Obispo 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 prior to the adoption of reasonable state or local regulations.

U. In order to ensure the effective implementation of the County of San Luis Obispo's land use objectives and policies, a temporary moratorium on the cultivation of industrial hemp is necessary.

V. By adopting this ordinance, the County of San Luis Obispo will achieve a significant reduction in the various potential public and environmental harms caused or threatened by activities related to cultivation of industrial hemp in the unincorporated area of San Luis Obispo County prior to the adoption of reasonable state or local regulations.

W. 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 unincorporated area of San Luis Obispo County.

X. Adoption of this ordinance without delay is necessary for the immediate preservation of the public peace, health, and safety, as set forth in Government Code section 25123, subdivision (d), in order to prevent unregulated cultivation of industrial hemp in the unincorporated area of San Luis Obispo County, which would threaten significant impacts on the public peace, health, and safety if permitted, to occur.

Y. This ordinance is adopted as an urgency ordinance pursuant to the provisions of Government Code sections 25123, 25131 and 65858 and shall be effective for a period of 45 days from its passage. Based on the findings set forth above in this section of the Ordinance, the Board of Supervisors finds and determines that the adoption of this Ordinance as an urgency ordinance

is necessary for the immediate preservation of the public peace, health, safety, and welfare pursuant to the requirements of Government Code sections 25123, 25131 and 65858.

**Section 3. Applicability.**

This ordinance applies within all unincorporated areas of San Luis Obispo County. This urgency does not require certification from the California Coastal Commission. The Coastal Act does not deprive local governments from exercising their statutory power to enforce urgency ordinances, nor require prior review and approval of such ordinances by the Coastal Commission, provided that the ordinances are not in conflict with the Coastal Act. Certification by the Coastal Commission is required only for amendment that authorize a use other than that designated as a permitted use in the Local Coastal Plan. *Conway v. City of Imperial Beach* (1997) 52 Cal. App.4th 78.

**Section 4. Cultivation of Industrial Hemp by Commercial Growers or Established Agricultural Research Institutions or in Violation of State Law is Prohibited.**

Notwithstanding anything in the County Code to the contrary, during the term of this Ordinance, including any extensions hereto, except as allowed in Section 5, no industrial hemp, as defined in County Code, shall be grown for any purposes within the unincorporated areas of San Luis Obispo County. Cultivation of industrial hemp in violation of this Ordinance constitutes a public nuisance and may be abated in accordance with the abatement procedures set forth in Chapter 22.40 to Title 22, or Chapter 23.08 to Title 23 of the San Luis Obispo County Code and by any other means available by law.

**Section 5. Exemptions.**

A. The following exemptions shall apply to this ordinance:

1. Cultivation of Industrial Hemp by University of California (UC), California State University (CSU), or California Community Colleges (CCC) on federal, state, or district owned property or lands. Such cultivation allowed under this Section 5.A.1 shall be for research purposes only to study the growth or cultivation of Industrial Hemp. No portion of the cultivated Industrial Hemp plant, in whole or part, or its seeds, derivatives, resins, extracts, or any manufactured compounds developed from research shall be sold,

bartered, transferred or otherwise provided to another individual, agency, or entity, including for marketing research purposes.

2. Individuals who have been issued a registration by the San Luis Obispo County Ag Commissioner's Department may grow Industrial Hemp consistent with, and subject to, the terms set forth in the registration, including, but not limited to, the location and size of the proposed grow. Such cultivation allowed under this Section 5.A.2 shall only be allowed for the term of the registration.
  
3. Cultivation of Industrial Hemp by Established Agricultural Research Institutions as defined by California Food and Agricultural Code Section 81000(c) who have, prior to the Effective Date of this Ordinance, notified the County Agricultural Commissioner's Department of the planned cultivation site in accordance with California Food and Agricultural Code Section 81011 and who have either (i) commenced growing operations at the planned cultivation site prior to the Effective Date of this Ordinance; or (ii) purchased equipment, supplies or other materials, or incurred substantial costs or liabilities, to cultivate Industrial Hemp at the planned cultivation site prior to the Effective Date of this Ordinance. The County Agricultural Commissioner shall determine whether an Established Agricultural Research Institution has commenced growing operations at the subject site or has purchased equipment, supplies or other materials, or incurred substantial costs or liabilities, to cultivate Industrial Hemp at the planned cultivation site pursuant to this Section 5.A.4. The burden of proof shall be on Established Agricultural Research Institution. An Established Agricultural Research Institution cultivating Industrial Hemp pursuant to this Section 5.A.4 may only cultivate Industrial Hemp until December 31, 2019.

**Section 6. Environmental Determination.**

This Ordinance is exempt from the California Environmental Quality Act (Public Resources Code §21000, et seq.) (“CEQA”) because it can be seen with certainty that there is no possibility that it will have a significant effect on the environment (CEQA Guidelines §15061(b)(3)), the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment (CEQA Guidelines §15060(c)(2)) and because it consists of regulations and restrictions on activities to assure the maintenance, restoration, or enhancement of natural resources and the environment (Class 7 and Class 8, CEQA Guidelines §§15307, 15308). This Ordinance is also exempt from CEQA because it is an urgency measure necessary to protect San Luis Obispo County from a current and immediate threat to the public health, safety, and welfare. (Public Resources Code §21080(b)(4); CEQA Guidelines §15269.) There are no unusual circumstances. Each exemption stands as a separate and independent basis for determining that this ordinance is not subject to CEQA.

**Section 7. Severability.**

If any provision, word, phrase, section or subsection of this Ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the Ordinance and the application of such provision, word, phrase, section or subsection to other persons or circumstances shall not be affected thereby. To this end, provisions of this Ordinance are severable.

**Section 8. No Vested Right To Be Established.**

The Board of Supervisors declares that this urgency ordinance is enacted for the limited purposes described above and for the time period allowed by the ordinance and Government Code section 65858. Except as set forth in Section 5 of this Ordinance, no existing cultivation site or continuing cultivation site shall acquire any right to continue the cultivation of Industrial Hemp by virtue of the provisions of this Ordinance.

**Section 9. Declaration of Urgency; Effective Date.**

Based on the findings set forth in Section 2, and any further evidence or testimony that may be presented at the hearing, the Board of Supervisors declares that this Ordinance is necessary as an urgency measure for preserving the public health, safety and welfare. This

Ordinance shall take effect immediately upon its passage and shall expire 45 days thereafter unless extended pursuant to law.

**Section 10. Publication.**

Within fifteen (15) days of adoption, The County Clerk is hereby directed to publish a summary of this Ordinance once in a newspaper of general circulation, printed and published in the County of San Luis Obispo, together with the names of the Supervisors voting for and against the Ordinance.

**Section 11. Conflicting Laws.**

For the term of this Ordinance, as set forth in Section 8 and as may be extended, 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 and the terms of this Ordinance shall govern.

**PASSED AND ADOPTED** by the Board of Supervisors of the County of San Luis Obispo, State of California, on the 18<sup>th</sup> day of June 2019, by the following roll call vote, to wit:

AYES: Supervisors Lynn Compton, Debbie Arnold, John Peschong and Adam Hill

NOES: Supervisor Bruce S. Gibson

ABSENT: None

ABSTAINING: None

Debbie Arnold  
Chairperson of the Board of Supervisors,  
County of San Luis Obispo, State of California

ATTEST:

TOMMY GONG  
County Clerk and Ex-Officio Clerk  
of the Board of Supervisors  
County of San Luis Obispo, State of California

By: Annette Ramirez  
Deputy Clerk

[SEAL]

APPROVED AS TO FORM AND LEGAL EFFECT:

RITA L. NEAL

County Counsel

By: /s/ Jon Ansolabehere

Dated: June 10, 2019