

ORDINANCE NO. 3394

AN ORDINANCE OF THE COUNTY OF SAN LUIS OBISPO EXTENDING URGENCY ORDINANCE NO. 3393, WHICH ESTABLISHES 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 ordinance is to extend Urgency Ordinance No. 3393 which establishes 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 ordinance extending Urgency Ordinance No. 3393 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 moratorium extension ordinance:

A. On June 18, 2019, the San Luis Obispo County Board of Supervisors ("Board of Supervisors") adopted a 45-day interim zoning/urgency ordinance, Ordinance No. 3393 ("Ordinance"), pursuant to Government Code Sections 25123, 25131 and 65858. The Ordinance temporarily prohibits the cultivation of industrial hemp in the unincorporated portions of San Luis Obispo County, except for certain exemptions.

B. Pursuant to Government Code section 65858, after notice and public hearing, the Board of Supervisors may by four-fifths vote extend the Ordinance for 10 months and 15 days, if the Board finds and determines that the adoption of the Ordinance as an urgency ordinance is necessary for the immediate preservation of the public peace, health, safety and welfare pursuant to Government Code sections 25123 and 65858, and is necessary to provide additional time to prepare the studies and reports required to consider a comprehensive and permanent ordinance. After an initial extension, the Ordinance may be extended for another year following notice and another public hearing.

C. In enacting the Ordinance, the Board of Supervisors made several findings and

declarations constituting the grounds upon which the Ordinance is based, including: (a) the original exclusion of industrial hemp from the County's cannabis land use regulations was made without full appreciation of the potential interest in industrial hemp nor full understanding of the potential impacts that such a use may have on the public health, safety and welfare and was not a conscious acknowledgement that the use was appropriate within the County without regulation whatsoever; (b) various inconsistencies and potential conflicts exist between federal and state law; (c) industrial hemp and cannabis plants are virtually indistinguishable absent a laboratory test for tetrahydrocannabinol (THC) levels which are difficult to reliably test until the plant is close to maturity; (d) there has been an enormous amount of interest in cultivating industrial hemp for production of cannabidiol (CBD) within unincorporated County; (e) the County has received substantial amounts of public testimony regarding the potential harmful effects of cannabis, including odor nuisance and public safety, and it remains unclear if industrial hemp grown for CBD will have similar odors thus implicating these same potential impacts and risks to public health, safety and welfare; (f) the County has previously experienced an almost immediate insurgence of cannabis related activity which resulted in a large increase in public services, including public safety and law enforcement, and because cultivation of industrial hemp appears virtually identical to cannabis, additional regulations are needed in order to deter or prevent individuals from associating industrial hemp with cannabis and provide law enforcement greater ability to distinguish between lawful industrial hemp cultivation and illegal cannabis cultivation; (g) industrial hemp can serve as hosts to mites and other insects and there are few pesticides registered for hemp that address such mites or other insects; (h) absent regulation, the cultivation of industrial hemp and cannabis may pose incompatibility issues due to cross-pollination; and (i) the cultivation of industrial hemp prior to adoption of reasonable state and local regulations creates an urgent and immediate threat to the public health, safety and welfare of the citizens and existing agriculture in the County.

D. At the hearing regarding adoption of the Ordinance, the County Agricultural Commissioner testified that, as of June 18, 2019, forty-one applications for industrial hemp registration had been received and sixteen of those applications had been issued registrations for a total of 415 acres of industrial hemp cultivation. Previously, as of June 6, 2019, thirty-one applications for industrial hemp registration had been received and twelve applications had

been issued registrations for a total of 82.3 acres of industrial hemp cultivation. Between June 6, 2019, and June 18, 2019, there had been a five-fold increase in the amount of registered industrial hemp acreage within unincorporated County.

E. At the hearing regarding adoption of the Ordinance, the Board of Supervisors received significant written and public testimony, including from: (a) numerous individuals expressing immediate interest in cultivating industrial hemp in unincorporated County; (b) individuals in the industry who indicated that industrial hemp grown for CBD may emit odors similar to cannabis depending on the strain grown; and, (c) residents, neighbors and business owners concerned about the lack of regulation on industrial hemp which may have many of the same concerns as cannabis, including odor and public safety, and the impact unregulated industrial hemp may have on residents, tourists, businesses and existing agriculture operations within unincorporated County.

F. In enacting the ordinance, the Board found that current laws and regulations were incapable of preventing these deleterious effects to the public health, safety and welfare and that an urgency ordinance was needed while a permanent ordinance was studied and prepared. As a result, the Board of Supervisors, as the legislative body of the County of San Luis Obispo, determined that there is a need to consider and study potential changes in the County's General Plan and/or land use ordinances to assure appropriate oversight of industrial hemp cultivation in the County.

G. The state and federal law governing the definition, regulation and cultivation of industrial hemp remain complex, evolving, and as yet incomplete and uncertain, causing multiple issues which may adversely affect the public health, safety or welfare of residents or of visitors to San Luis Obispo County.

H. On July 16, 2019, prior to the expiration of the Ordinance and in accordance with the requirements of Government Code section 65858, the Board of Supervisors held a duly noticed public hearing on whether to extend the Ordinance for up to 10 months and 15 days. The Board of Supervisors heard and considered all evidence, both written and oral, that was duly presented during said hearing.

I. The Board of Supervisors' findings and declarations as contained in the Ordinance

remain and continue to be true under the present circumstances and are incorporated herein in their entirety by this reference.

J. As stated in those findings and declarations contained in the Ordinance, the County is contemplating amendments to its zoning ordinance to establish reasonable standards for the cultivation of industrial hemp in unincorporated County. The County continues to need more time to complete the necessary studies and reports to fully evaluate and support such contemplated amendments, while the current and immediate threat to health, safety, and welfare continues to exist.

K. The allowance of cultivation of industrial hemp 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 San Luis Obispo County.

L. San Luis Obispo County has a compelling interest in protecting the public health, safety, and welfare of its residents and businesses, in preventing the establishment of nuisances.

M. The extension of the Ordinance is necessary for continued study of a permanent industrial hemp ordinance. In light of said findings and declarations contained herein and in the Ordinance, a current and immediate threat to the public health, safety and welfare continues to exist, necessitating the extension of the Ordinance until and through June 18, 2020, pursuant to Government Code section 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. Extension

Based on all of the foregoing findings and declarations, Ordinance No. 3393 shall be extended until and through June 18, 2020.

Section 5. 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 6. Effective Date.

This ordinance extending urgency Ordinance No. 3393 is necessary for the protection of public health, safety and welfare, and shall take effect on July 16, 2019.

PASSED AND ADOPTED by the Board of Supervisors of the County of San Luis Obispo, State of California, on the 16th day of July 2019, by the following roll call vote, to wit:

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

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:

WADE HORTON
Ex-Officio Clerk of the Board of Supervisors
County of San Luis Obispo, State of California

By: Annette Ramirez
Deputy Clerk