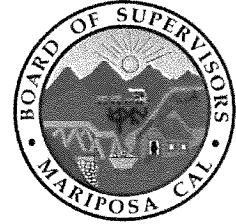




# MARIPOSA COUNTY

Planning • 209-966-5151



## ORDINANCE 2019-1142

MEETING: May 7, 2019  
TO: The Board of Supervisors  
FROM: Sarah Williams, Planning Director  
RE: Extension of Ordinance No. 1141-Moratorium of Industrial Hemp Cultivation

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### RECOMMENDED ACTION AND JUSTIFICATION:

**PUBLIC HEARING:** Adopt An Ordinance Extending for 10 Months and 15 Days, Ordinance No. 1141, an Interim Urgency Ordinance Imposing a Temporary Prohibition (Moratorium) on the Cultivation of Industrial Hemp, and the Cultivation of Industrial Hemp by "Established Agricultural Research Institutions", Within the County of Mariposa.

This extension is necessary to allow staff more time to process an ordinance to establish regulations for the cultivation of industrial hemp and the prohibition of hemp cultivation by "established agricultural research institutions." The extension will provide time to staff to review the State regulations when they become effective and to meet all noticing and processing requirements for the permanent ordinance. If less time (than 10 months and 15 days) is needed to complete the processing of the permanent ordinance, the moratorium ordinance will be revoked.

See Memorandum for background information and justification.

This public hearing to consider an extension has been noticed, pursuant to the requirements established by California Government Code Section 65858(a) and Mariposa County Code, Zoning, Section 17.132.020.

### BACKGROUND AND HISTORY OF BOARD ACTIONS:

**March 26, 2019**-Board adopted Urgency Ordinance No. 1141, imposing a moratorium on the cultivation of industrial hemp and the cultivation of industrial hemp by "established agricultural research institutions" with the County of Mariposa.

**April 9, 2019**-Board adopted Resolution of Intention initiating amendments to the Zoning Ordinance to establish regulations and development standards for the cultivation of industrial hemp and to prohibit the cultivation of hemp by "established

## Ordinance 2019-1142

agricultural research institutions.” Planning staff was directed to process the necessary ordinance and CEQA determination, to amend the Mariposa County Zoning Ordinance to establish regulations and development standards for the cultivation of industrial hemp and to prohibit the cultivation of hemp by “established agricultural research institutions.”

Board directed Planning staff to schedule and notice action to extend Urgency Ordinance No. 1141 for the May 7, 2019 Board meeting.

Board directed that staff is not required or expected to adhere to the expedited processing schedule outlined in memorandum. Board recognized that additional time will be needed, to monitor the continued development of the state’s regulatory program and testing protocol for industrial hemp, and the Federal Government’s certification of California’s program.

### **ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:**

Negative Action: Do not extend Urgency Ordinance. Industrial hemp will be legal to grow in Mariposa County with no regulations, following a registration with the County Agricultural Commissioner.

### **ATTACHMENTS:**

**Staff Report (DOC)**

**190412 Extension of Urgency Ordinance Temporarily Prohibiting Hemp (DOCX)**

**Summary Ordinance (DOC)**

**RESULT: ADOPTED [UNANIMOUS]**

**MOVER:** Merlin Jones, District II Supervisor

**SECONDER:** Marshall Long, District III Supervisor

**AYES:** Smallcombe, Jones, Long, Cann, Menetrey

**MARIPOSA COUNTY ORDINANCE NO. 1142**

**AN ORDINANCE EXTENDING INTERIM URGENCY ORDINANCE NO. 1141  
IMPOSING A TEMPORARY PROHIBITION (MORATORIUM) ON THE  
CULTIVATION OF INDUSTRIAL HEMP**

**WHEREAS**, Section 65858 of the California Government Code empowers the Board to adopt an Interim Urgency Ordinance to protect the public safety, health and welfare of the citizens of Mariposa County; and

**WHEREAS**, Interim Urgency Ordinance No. 1141 was adopted on the 26<sup>th</sup> day of March 2019 to establish a temporary prohibition (moratorium) on the cultivation of industrial hemp for commercial purposes or by “Established Agricultural Research Institutions,” as defined by California Food and Agricultural Code Section 81000(c); and

**WHEREAS**, during this interim urgency period, staff was directed to:

1. determine the impacts of such locally unregulated cultivation and whether reasonable regulations to mitigate such impacts are desirable or feasible;
2. monitor the development of regulations for sampling and testing methods for hemp;
3. monitor the development of a state definition for an “Established Agricultural Research Institution;”
4. monitor the development of guidelines for establishing whether a cultivator claiming to be an “Established Agricultural Research Institution” is legitimate and for determining that the cultivation constitutes “agricultural or academic research;”
5. monitor the development of federal regulations and whether or not California’s program will need to be modified to comply;
6. monitor the development of adequate signage requirements for a hemp cultivation or seed breeding operations; and
7. bring their findings back to the Board of Supervisors for further consideration and direction; and

**WHEREAS**, on the 9<sup>th</sup> day of April 2019, the Board of Supervisors adopted a Resolution of Intention initiating amendments to County Code to establish regulations and development standards for the cultivation of industrial hemp; and

**WHEREAS**, as part of their action on the 9<sup>th</sup> day of April 2019, the Board of Supervisors recognized that additional time would be needed, to monitor the continued development of the state’s regulatory program and testing protocol for industrial hemp, and the Federal Government’s certification of California’s program; and

**WHEREAS**, as part of their action on the 9<sup>th</sup> day of April 2019, the Board of Supervisors directed staff to prepare and process and extension to Urgency Ordinance No. 1141; and

**WHEREAS**, Urgency Ordinance No. 1141 expires on the 10<sup>th</sup> day of May 2019.

**NOW, THEREFORE, THE BOARD OF SUPERVISORS OF MARIPOSA COUNTY**, a political subdivision of the State of California, does ordain as follows:

**Section I:** During the dates this Interim Urgency Ordinance is effective, approvals, registrations, and/or establishment of hemp is prohibited within the jurisdiction of Mariposa County; hemp is defined in H.R.2, the Agriculture Improvement Act of 2018, to include all parts of the plant, including seeds, derivatives, extracts, and cannabinoids.

**Section II:** The purpose of this Interim Urgency Ordinance is to protect the public safety, health and welfare of the citizens of Mariposa County and is based upon the following findings:

A. Until the 20<sup>th</sup> day of December 2018, Section 5490 of Title 7 of the United States Code prohibited the cultivation of industrial hemp except by certain institutes of higher education, State departments of agriculture, and agricultural research institutions.

B. On the 20<sup>th</sup> day of December 2018, President Trump signed H.R. 2, the Agriculture Improvement Act of 2018 (hereafter “the 2018 Farm Bill”), into law allowing hemp cultivation far more broadly than the previously allowed pilot programs for studying market interest in hemp-derived products. The 2018 Farm Bill also redefines hemp to include all parts of the plant, including seeds, derivatives, extracts, and cannabinoids, and 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. The 2018 Farm Bill requires states wishing to be the primary regulators of hemp cultivation to submit their proposed regulatory programs for federal compliance approval and directs the United States Department of Agriculture to develop federal regulations for hemp farming, which will override state regulatory programs containing less stringent requirements. These federal regulations are still pending, and federal compliance review of California’s hemp program is still pending.

C. Division 24, Industrial Hemp [Section 81000 – Section 81010] of the Food and Agricultural Code (hereafter referred to as “FAC”), which was enacted on 1<sup>st</sup> day of January 2017, prior to the 2018 Farm Bill, addresses the growing and cultivation of industrial hemp in California. It remains unknown whether California will amend the FAC in the wake of federal review of its program under the 2018 Farm Bill.

D. On the 30<sup>th</sup> day of September 2017, FAC Division 24, Industrial Hemp [Section 81000 – Section 81010], also prior to the federal adoption of the 2018 Farm Bill, was amended to remove restrictions on hemp farming methods and to specifically authorize the tending of individual hemp plants, as opposed to requiring densely planted rows, making it far more difficult for an observer to distinguish between a hemp farm and a cannabis farm either on the ground or from the air. Neither the state nor federal government currently provides any restrictions on the amount of acreage that can be used for, or the total canopy size of, an industrial hemp cultivation site.

E. FAC Section 81001 creates and calls for the Industrial Hemp Advisory Board to advise the California Secretary of Food and Agriculture (Secretary) 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, and the setting of an assessment rate. The Industrial Hemp Advisory Board and California Department of Food and Agriculture are expected to implement the requisite regulations allowing the cultivation of industrial hemp for commercial purposes in early 2019. Like the adoption and amendment of FAC Section 81000 et seq., these regulations are being developed and adopted by the state without first vetting them through the federal government as part of its compliance review of California’s regulatory program under the 2018 Farm Bill, and it is unclear whether the regulations, once adopted, will need to be further amended to meet federal compliance requirements.

F. Under FAC Division 24, all commercial growers of industrial hemp (not including cultivation by “Established Agricultural Research Institutions”) must register with the county agricultural commissioner prior to beginning cultivation. Proposed registration regulations were submitted by the California Department of Food and Agriculture to the Office of Administrative Law on February 19, 2019 and are still pending.

G. Per the California Department of Food and Agriculture’s Industrial Hemp Frequently Asked Questions website, registration with the agricultural commissioner will become available upon the state’s adoption of final regulations but may be subject to further local restrictions.

H. 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.”

I. “Industrial hemp” is defined under FAC Section 81000 and Health and Safety Code Section 11018.5 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.”

J. FAC Section 81000 expressly exempts industrial hemp from regulation under Division 10 (commencing with Section 26000) of the Business and Professions Code (the Medicinal and Adult-Use Cannabis Regulation and Safety Act), so industrial hemp is not subject to the same regulatory provisions as cannabis.

K. “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.”

L. Mariposa County currently bans commercial cannabis cultivation through County Code, Title 17, Zoning, Section 17.108.200 (Uses Prohibited In All Zones).

M. Industrial hemp and cannabis are differentiated by definition in state law, with a major difference being industrial hemp may not contain more than 0.3% tetrahydrocannabinol (THC). However, industrial hemp and cannabis are derivatives of the same plant, *Cannabis sativa* L., and the appearance of industrial hemp and cannabis are virtually indistinguishable. Absent a laboratory performed chemical analysis for THC content, the two plants cannot be distinguished. This would make it impossible for law enforcement or county code enforcement to independently distinguish between a “hemp” plant and a “cannabis” plant without obtaining samples for testing and having those samples tested, thereby hampering civil and criminal enforcement of the county’s current cannabis cultivation ban. A grower might be incentivized by the similarity between the plants and the comparatively liberal hemp laws to cultivate illegal cannabis disguised as industrial hemp, thereby increasing the likelihood of criminal activity, nuisances and danger to health, safety, and the environment.

N. Industrial hemp cultivation creates a pungent seasonal odor that is similar in type and intensity to the pungent seasonal odor created by cannabis cultivation. Failure to prohibit industrial hemp or to regulate the location and size of industrial hemp cultivation sites is likely to result in nuisance odors impacting neighbors and neighborhoods.

O. Division 24 of the FAC, allows an “Established Agricultural Research Institution” to cultivate or possess industrial hemp with a greater than 0.3% THC level, causing such plant to no

longer conform to the legal definition of industrial hemp, thereby resulting in such “research” plants constituting “cannabis” under MAUCRSA. Unlike regular commercial hemp growers, research hemp growers are exempt under FAC Section 81003 from having to register with the county agricultural commissioner or otherwise notify the county of their status as “Established Agricultural Research Institutions” or their intentions to cultivate hemp within the county. Per Division 24 of the FAC, an “Established Agricultural Research Institution” is required only to provide its Global Positioning System coordinates to the county agricultural commissioner. An “Established Agricultural Research Institution” is also not subject to the restrictions imposed on commercial hemp cultivation sites under Division 24 of the FAC, including restrictions on type of seed cultivars used or the requirement of limiting cultivation sites to areas of at least 1/10 of an acre. Without local restrictions in place, a qualifying research institution could cultivate industrial hemp within the county and could do so without any limit on acreage of the cultivation site, location of the cultivation site, or total canopy size.

P. The definition of “Established Agricultural Research Institution” as provided in FAC Section 81000 is vague and neither the Legislature nor the Industrial Hemp Advisory Board have provided guidelines on how the County can establish whether a cultivator claiming to be an “Established Agricultural Research Institution” is legitimate or that the cultivation constitutes “agricultural or academic research.” Without clear guidelines, the ability and likelihood that cultivators would exploit the “Established Agricultural Research Institution” exemption to grow industrial hemp or cannabis with more than 0.3% THC is great.

Q. Allowing the cultivation of industrial hemp, particularly prior to the adoption of reasonable regulations, if any, may result in violations of the County's current cannabis regulations, interference with the County's ability to effectively regulate land use, and may be harmful to the welfare of the County and its residents, create a public nuisance, and threaten existing agricultural and other land uses and nearby property owners. Such uses, without County review of location and operational standards, also have the potential to adversely affect neighborhoods and sensitive natural resource areas, resulting in a clear and immediate danger to public health, safety, and welfare.

R. There is an urgent need for County staff to assess the potential local impacts of industrial hemp grown commercially or by “Established Agricultural Research Institutions” and to explore the feasibility of developing reasonable regulatory options relating thereto. Allowing the cultivation of commercial hemp or cultivation of hemp by “Established Agricultural Research Institutions” prior to studying whether or not its nuisance potential can be mitigated through reasonable regulations creates an urgent and immediate threat to the public health, safety and/or welfare of the citizens of Mariposa County.

S. The county agricultural commissioner has received requests to register both commercial and “research” hemp cultivation sites and the county planning department has received inquiries regarding hemp cultivations. There is currently no guidance in the Mariposa County Code concerning industrial hemp cultivation. As such, there is a current and immediate threat to the public health, safety, and welfare in that the establishment of industrial hemp cultivation in rural areas of Mariposa County will result in land uses and land developments that

may conflict with amendments to the Mariposa County Code that may be adopted as a result of the study that is to be undertaken.

T. The allowance of cultivation of industrial hemp by commercial cultivators or by “Established Agricultural Research Institutions,” as defined by FAC Section 81000, 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 Mariposa County.

U. Mariposa County has a compelling interest in protecting the public health, safety, and welfare of its residents and businesses, and in preventing the establishment of nuisances through the cultivation of industrial hemp.

V. In order to ensure the effective implementation of the County of Mariposa’s land use objectives and policies, a temporary prohibition (moratorium) on the establishment and/or approval of industrial hemp cultivation is necessary.

W. There is no feasible alternative to enactment of this prohibition (moratorium) ordinance that will satisfactorily mitigate or avoid the previously identified impacts to the public health, safety and welfare with a less burdensome or restrictive effect.

X. This temporary prohibition (moratorium) is exempt from environmental review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines sections 15308 (actions taken as authorized by local ordinance to assure protection of the environment) and 15061(b)(3) (there is no possibility the activity in question may have a significant effect on the environment). It is exempt pursuant to CEQA Guidelines Section 15308 because it is a regulatory action taken by the County pursuant to its police power and in accordance with Government Code Section 65858 to assure maintenance and protection of the environment pending the evaluation and adoption of contemplated local legislation, regulation, and policies; and it consists of a temporary prohibition on industrial hemp cultivation within the County, which is currently unregulated at the local level. As an interim ordinance preserving the status quo and prohibiting a new land use that might impact the environment, the ordinance is also exempt under CEQA Guidelines Section 15061(b)(3). There are no unusual circumstances under CEQA Guidelines Section 15300.2(c) that would render either of these exemptions inappropriate. Each exemption stands as a separate and independent basis for determining that this ordinance is not subject to CEQA.

Y. 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 County.

Z. The Board of Supervisors hereby further finds and declares that establishment of any hemp farm or operation, while the County is evaluating the adequacy of State of California and Federal standards and protocols to protect Mariposa County resources will conflict with the County General Plan Guiding Principles (General Plan Chapter 3):



1. Clear approval standards have not been developed;
2. A nexus between the impacts of any project and project conditions and mitigation measures cannot be determined;
3. Potential impacts on agricultural uses and activities have not been evaluated;
4. The effect on the desirability of neighborhoods located in Rural Residential and Mountain Home Districts has not been determined;
5. The need for infrastructure to accommodate hemp uses and activities has not been determined.


**Section III:** Failure to adopt this ordinance may result in significant irreversible changes to rural neighborhoods and the historical and rural community character of Mariposa County.

**Section IV:** Based on the foregoing, the Board of Supervisors does hereby declare this extension of Urgency Ordinance No. 1141 is necessary to protect the public health, safety, and welfare while considering any local regulations and standards that may apply to activities licensed pursuant to Division 24 of the Food and Agricultural Code.

**Section V:** This order extending Urgency Ordinance No. 1141 is made under the authority of California Government Code Section 65858 and shall become effective immediately upon adoption and shall be in effect for 10 months and 15 days unless extended by the Board of Supervisors pursuant to California Government Code § 65858.

**PASSED AND ADOPTED** on this 7<sup>th</sup> day of May, 2019 by the following vote:

AYES: SMALLCOMBE, JONES, LONG, CANN, MENETREY  
 NOES: NONE  
 ABSTAINED: NONE  
 EXCUSED: NONE

  
**MILES MENETREY, Chair**  
 Mariposa County Board of Supervisors

**ATTEST:**

**APPROVED AS TO FORM:**

  
**RENE LaROCHE**  
 Clerk of the Board

  
**STEVEN W. DAHLEM**  
 County Counsel