

MINUTES OF THE BOARD OF SUPERVISORS  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA



**3.9**

The above referenced Item is deleted from the agenda for Tuesday, November 14, 2017.

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**SUBMITTAL TO THE BOARD OF SUPERVISORS  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**



ITEM  
(ID # 5755)

**MEETING DATE:**

Tuesday, November 14, 2017

**FROM :** COUNTY COUNSEL:

**SUBJECT:** COUNTY COUNSEL AND AGRICULTURAL COMMISSIONER: Ordinance No. 449.248, An Urgency Interim Ordinance Of The County Of Riverside Declaring A Temporary Moratorium On The Cultivation Of Industrial Hemp By "Established Agricultural Research Institutions" Within The Unincorporated Areas Of The County Of Riverside - CEQA Exempt – All Districts [\$0] (4/5 Vote Required)

**RECOMMENDED MOTION:** That the Board of Supervisors:

1. Find Ordinance No. 449.248 exempt from the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines section 15061(b)(3) as it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment; and
2. Adopt Ordinance No. 449.248, an Urgency Interim Ordinance of the County Of Riverside Declaring a Temporary Moratorium on the Cultivation of Industrial Hemp by "Established Agricultural Research Institutions" within the Unincorporated Areas of the County Of Riverside based on the findings set forth within the ordinance under the provisions contained in Government Code Section 65858; and
3. Direct the Clerk of the Board to file the Notice of Exemption with the County Clerk for posting.

**ACTION:**

  
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Gregory V. Priamos, Director County Counsel 11/6/2017

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<b>FINANCIAL DATA</b>	<b>Current Fiscal Year:</b>	<b>Next Fiscal Year:</b>	<b>Total Cost:</b>	<b>Ongoing Cost</b>
<b>COST</b>	\$ 0	\$ 0	\$ 0	\$ 0
<b>NET COUNTY COST</b>	\$ 0	\$ 0	\$ 0	\$ 0
<b>SOURCE OF FUNDS: Departmental Budget</b>			<b>Budget Adjustment:</b>	No
			<b>For Fiscal Year:</b>	17/18

**C.E.O. RECOMMENDATION:** [CEO use]

**BACKGROUND:**

**Summary**

Section 5940 of Title 7 of the United States Code legalized the growing and cultivating of industrial hemp for research purposes in States where such growth and cultivation is legal under State law, without regard to existing federal law that would otherwise criminalize such conduct. However, the authorized conduct under the Federal Agricultural Act is limited to growth and cultivation by an institution of higher education or State department of agriculture for purposes of agricultural or other academic research or under the support of a State agricultural pilot program for the growth, cultivation, or marketing of industrial hemp. The Federal Agricultural Act then leaves it up to the states departments of agriculture to develop the rules to implement the state programs.

In California, while Proposition 64 and Senate Bill 94 decriminalized commercial cultivation of industrial hemp, the Proposition and Senate Bill left it up to the California Department of Food & Agriculture (CDFA) to regulate industrial hemp under the California Industrial Hemp Act (Act) Food and Agriculture Code section 81000 et seq.). Under state law, "Industrial Hemp" means a "fiber or oilseed crop, or both, 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." (Health and Safety Code section 11018.5). "Industrial hemp" is specifically excluded from the definition of "cannabis" under Proposition 64 and Senate Bill 94. The physical appearance of cannabis and industrial hemp are virtually the same and the only way to distinguish them is to test for the THC content.

In spring 2017, the Industrial Hemp Advisory Board was formed by the CDFA. Per state law, the Industrial Hemp Advisory Board is tasked with advising the CDFA and making recommendations with regarding to cultivation of industrial hemp, including industrial hemp seed law and regulations, enforcement mechanisms, registration processes and fees, setting the assessment rate, and making recommendations on all matters pertaining to the Act. The Industrial Hemp Advisory Board expects to complete such tasks in approximately 2019. Currently, commercial cultivators cannot register to grow industrial hemp. Therefore, until such time, or upon further notice from the Industrial Hemp Advisory Board or the CDFA,

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the cultivation of industrial hemp for commercial purposes is prohibited throughout the State of California and Riverside County.

Although the Act prohibits the cultivation of industrial hemp for commercial purposes until the Industrial Hemp Advisory Board has developed the requisite hemp seed laws, regulatory scheme, and enforcement mechanisms, the Act exempts "established agricultural research institutions" from many of the regulatory requirements. "Established Agricultural Research Institution" is defined 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."

Under this exemption, the growth, cultivation, or manufacturing of industrial hemp by an "Established Agricultural Research Institution" is not contingent upon the Industrial Hemp Advisory Board developing the industrial hemp seed law, regulations or enforcement mechanisms.

The definition of an "Established Agricultural Research Institution" is vague and neither the Legislature nor the Industrial Hemp Advisory Board have provided guidance on how the County can determine whether a cultivator claiming to be an "Established Agricultural Research Institution" is legitimate or that their cultivation of hemp constitutes "agricultural or academic research."

As stated above, the only way to distinguish between cannabis and industrial hemp is to test for the THC content. Given the vague definition of "Established Agricultural Research Institution", as well as the exemption from the reasonable regulations imposed by the Act, there is opportunity for exploitation by cultivators, such as the premature cultivation of industrial hemp for commercial purposes or the cultivation of cannabis under the guise of industrial hemp.

Moreover, the Act allows an "Established Agricultural Research Institution" to cultivate and possess industrial hemp with a greater than .3% THC level, thereby resulting in such "research" plants potentially meeting the definition of cannabis. As such, the unregulated cultivation of industrial hemp by "Established Agricultural Research Institutions" may pose the same threats to the public health, safety or welfare as the cultivation of cannabis.

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Such urgent and immediate threats include, but are not limited to: an increased likelihood of criminal activity; the attraction of crime and associated violence; a strain on County resources, including the Sheriff Department, as the County will be forced to investigate each and every industrial hemp grow conducted by an "Established Agricultural Research Institution" to ensure that the grow is not cannabis; and a detrimental impact on agriculture within the region resulting from exotic weeds, plant diseases, mites, and other insects that are prevalent in industrial hemp.

As an urgency measure, this interim zoning ordinance prohibits the cultivation of industrial hemp by "Established Research Institutions" for forty-five (45) days and may thereafter be extended as provided by law. The purpose of this ordinance and any extensions thereafter is to give the County the opportunity to study the issue and to formulate and adopt regular zoning regulations to mitigate or avoid negative effects of such grows.

Ordinance No. 449.248 is exempt from the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines section 15061(b)(3) because the urgency interim ordinance merely preserves the status quo and temporarily prohibits a specific use, the cultivation of industrial hemp by "Established Agricultural Research Institutions." Therefore, it can be seen with certainty that the interim urgency ordinance will not have significant effect on the environment.

**Impact on Residents and Businesses**

As stated above, the unpermitted permitted cultivation of industrial hemp may pose the same threats to the public health, safety or welfare as the unpermitted cultivation of cannabis. Such urgent and immediate threats include, but are not limited to: an increased likelihood of criminal activity; the attraction of crime and associated violence; a strain on County resources, and a detrimental impact on agriculture within the region resulting from exotic weeds, plant diseases, mites, and other insects that are prevalent in industrial hemp.


**ATTACHMENTS (if any, in this order):**

1. Ordinance No. 449.248
2. Notice of Exemption

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Ruben J. Arroyo, Agricultural Commissioner/Sealer

11/6/2017

  
Alex Gann

11/7/2017

  
Gregory V. Priamos, Director County Counsel

11/7/2017