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ORDINANCE NO. 5138

AN URGENCY ORDINANCE EXTENDING AN INTERIM MORATORIUM ON THE CULTIVATION OF INDUSTRIAL HEMP FOR ALL PURPOSES WITHIN THE UNINCORPORATED AREAS OF THE COUNTY OF EL DORADO PENDING THE STUDY AND DEVELOPMENT OF REASONABLE REGULATIONS FOR TEN MONTHS (10) AND FIFTEEN (15) DAYS

THE BOARD OF SUPERVISORS OF THE COUNTY OF EL DORADO DOES ORDAIN AS FOLLOWS:

Section 1. Purpose and Authority.

On December 15, 2020, the Board of Supervisors adopted Ordinance 5137 imposing a forty-five-day moratorium on the cultivation of industrial hemp for all purposes within the unincorporated area of the County, including cultivation by a hemp breeder or by an Established Agricultural Research Institution, while County staff determines the impact of unregulated cultivation of hemp and develops reasonable regulations to mitigate those impacts. The purpose of this interim urgency ordinance is to extend that temporary moratorium for ten (10) months and fifteen (15) days pending the adoption of an ordinance regulating industrial hemp. This interim urgency ordinance is adopted pursuant to California Constitution Article XI, Section 7, and Government Code Section 65800 et seq, particularly Section 65858 and other applicable law.

Section 2. Findings and Declarations

The Board of Supervisors of the County of El Dorado makes the following findings in support of the immediate adoption and application of this interim urgency moratorium:

- A. Under Article XI, Section 7 of the California Constitution, the 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. Under 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 facts constituting the urgency and that ordinance will be effective immediately.
- C. Under Government Code Section 65858, 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. An urgency ordinance adopted under Government Code Section 65858 is initially effective for forty-five (45) days from the date of adoption. The County may extend that ordinance for ten months (10) and fifteen (15) days after notice and public hearing, and may extend it one last time after that for a full year.
- D. The state and federal law governing the definition and cultivation of industrial hemp are complex schemes that are still evolving, and as yet incomplete and uncertain, causing multiple issues which may adversely affect the public peace, health, or safety of residents or of visitors to the County, as outlined below.
- E. On December 20, 2018, Congress enacted the Agriculture Improvement Act of 2018 (132 Stat. 4490; PL 115-334; 2018 Farm Bill) that allows hemp

cultivation far more broadly than the previously permitted 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.

- F. The United States Department of Agriculture has promulgated regulations (84 FR 58522) establishing an interim final rule for the regulation of hemp. Those are codified at 7 Code of Federal Regulations Section 990.1 et seq, and are effective from October 31, 2019 through November 1, 2021 until a final rule can be adopted.
- G. 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 that will override state regulatory programs containing less stringent requirements. The California Department of Food and Agriculture submitted the California State Regulatory Plan for Hemp Production to the USDA on September 17, 2020. The USDA has 60 days from the date of submission to review and approve the California state plan.
- H. In 2017, the California Legislature added Division 24 (commencing with Section 81000 et seq) to the Food and Agricultural Code governing the growing and cultivation of industrial hemp in California. Food and Agricultural Code Sections 81003 and 81004 require a grower of industrial hemp for commercial purposes, and a hemp breeder, to register with the County Agricultural Commissioner before cultivation. Food and Agricultural

Code Section 81004.5 imposes similar registration requirements on cultivation by an Established Agricultural Research Institution.

- I. In 2019, the California Legislature enacted Senate Bill No. 153 (2019-2020 Reg. Session; Chapter 838 of the Statutes of 2019) that would make various changes to the Food and Agricultural Code if the California State Regulatory Plan for Hemp Production is approved by the USDA. This includes new requirements on the County Agricultural Commissioner for the handling and transmittal of registration information, new testing requirements, and new enforcement procedures. The California Department of Food and Agriculture (CDFA) have promulgated proposed regulations that will modify requirements on timeframes, procedures, methods, and confirmation for industrial hemp sampling, laboratory testing, and destruction of industrial hemp. The public comment period on those regulations closed on November 9, 2020, and it is possible that CDFA will make further changes to the regulations after the public comment period.
- J. In 2019, the County of El Dorado adopted an ordinance regulating commercial cannabis activities in the County. Under that scheme, a commercial cannabis business is required to obtain a Commercial Cannabis Annual Operating Permit and a Commercial Cannabis Use Permit from the Planning and Building Department. The County is still in the process of implementing the cannabis program.
- K. Section 130.41.100 of the County Code of Ordinances defines cannabis for purposes of the County commercial cannabis program to mean 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, and to exclude industrial hemp.

- L. Industrial hemp and cannabis are defined differently in both state and federal law, with the major difference being that industrial hemp must have a delta-9 tetrahydrocannabinol concentration of no more than 0.3 percent on a dry weight basis. However, industrial hemp is a derivative of the plant *Cannabis sativa* L. and that plant can also be grown for cannabis purposes. That can make it difficult to visually distinguish between *Cannabis sativa* L. grown for industrial hemp purposes and one grown for cannabis purposes. This makes it difficult for law enforcement and code enforcement to independently distinguish between an industrial 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 program. A grower might be incentivized by the similarity between the plants and the comparatively liberal hemp laws to cultivate cannabis disguised as industrial hemp instead of obtaining a Commercial Cannabis Annual Operating Permit and a Commercial Cannabis Use Permit from the Planning and Building Department. This would undermine the County's cannabis program and impose a danger to health, safety, and the environment.
- M. Allowing the cultivation of industrial hemp before the adoption of reasonable regulations may result in conflict with the County's current cannabis regulations, interfere with the County's ability to effectively regulate land use, harm the welfare of the County and its residents, create a public nuisance, and threaten existing agricultural and other land uses and nearby property owners. In addition, allowing the cultivation of industrial hemp before County staff has the opportunity to study these issues has the

potential to adversely affect neighborhoods and sensitive natural resource areas, resulting in a clear and immediate danger to public health, safety, and welfare.

- N. There is an urgent need for County staff to assess the potential local impacts of industrial hemp grown commercially, by a hemp breeder, or by an Established Agricultural Research Institution and to explore the feasibility of developing reasonable regulatory options. Allowing the cultivation of commercial hemp, by a hemp breeder, or cultivation of hemp by an Established Agricultural Research Institution before studying whether or not its nuisance potential can be mitigated through reasonable regulations creates an urgent and immediate threat to the public health, safety, or welfare of the citizens of the County of El Dorado.
- O. The County Agricultural Commissioner has registered thirteen commercial industrial hemp cultivators in 2020 of which only ten planted seeds or nursery plants for a total of approximately 17 planted acres. There are many zones that allow crop production in the County of El Dorado including residential zones. Increasing interest in the production of industrial hemp could lead to increased conflicts.
- P. The allowance of cultivation of industrial hemp by commercial cultivators, by a hemp breeder, or by an Established Agricultural Research Institution before 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 the County of El Dorado.
- Q. The County of El Dorado has a compelling interest in protecting the public health, safety, and welfare of its residents and businesses, and in preventing the establishment of nuisances resulting from the cultivation of industrial hemp.

- R. In order to ensure the effective implementation of the County of El Dorado’s land use objectives and policies, a temporary prohibition (moratorium) on the establishment or approval of industrial hemp cultivation is necessary.
- S. There is no feasible alternative to enactment of this interim 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.
- T. 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.

Section 3. Declaration of Urgency

Based on the finding set forth in Section 2, the Board finds and declares that there is a current and immediate threat to the public health, safety, and welfare arising from the absence of reasonable regulations in the County Code governing the cultivation of industrial hemp for all purposes in the unincorporated areas of the County. The Board determines that this urgency ordinance is needed to preserve the public peace, health, safety, and welfare by providing the County with additional time to prepare the studies and reports required to consider the comprehensive regulation of industrial hemp cultivation for all purposes in the unincorporated areas of the County.

Section 3. Moratorium

For purposes of this section:

- A. “Any purpose” includes cultivation for commercial purposes, cultivation for purposes of a hemp breeder, and cultivation by an Established Agricultural Research Institution.

- B. "Cannabis" has the same meaning as defined in Section 130.41.100 of the County Code of Ordinances.
- C. "Cultivation" has the same meaning as defined in Section 130.41.100 of the County Code of Ordinances.
- D. "Established Agricultural Research Institution" has the same meaning as defined in Food and Agricultural Code Section 81000 as it now reads or may thereafter be amended.
- E. "Hemp breeder" has the same meaning as defined in Food and Agricultural Code Section 81000 as it now reads or may thereafter be amended.
- F. "Industrial Hemp" has the same meaning as defined in Food and Agricultural Code Section 81000 and Health and Safety Code Section 11018.5, and the same meaning as "hemp" as defined in 7 Code of Federal Regulations Section 990.1, as those sections now reads or may thereafter be amended.

During the term of this interim ordinance, including any extensions hereto:

- A. A person or entity shall not cultivate industrial hemp for any purpose within the unincorporated areas of the County of El Dorado, except that a registrant who was issued a registration in 2020 may finish cultivating industrial hemp consistent with the terms of that registration.
- A. The County Agricultural Commissioner, and any other County official or employee, shall not issue any County permit, registration or approval of any type to authorize the cultivation of industrial hemp for any purpose within the unincorporated areas of the County.
- B. Cultivation of industrial hemp for any purpose in violation of the prohibition in this interim ordinance constitutes a public nuisance. Any violation of this urgency ordinance may be enforced by any means available by law, including the enforcement of prohibited cannabis cultivation under Chapter 130.41 of

the County Code of Ordinances, and under the County Code Enforcement Ordinance under Chapter 9.02 of the County Code of Ordinances, and public nuisances in general.

- C. This section is cumulative to all other remedies now or hereafter available to abate or otherwise regulate or prevent public nuisances or to enforce the provisions of the County Code of Ordinances.
- D. The provisions of this section shall not be construed to protect any person from prosecution pursuant to any laws that may prohibit the cultivation, sale, distribution, possession, or use of controlled substances, or to authorize conduct that is unlawful under state or federal law. Further, to the fullest extent permitted by law, any actions taken under the provisions of this ordinance by any public officer or employee of the County of El Dorado itself shall not become a personal liability of that person or a liability of the County.
- E. As authorized by Government Code Section 25132 and except as otherwise provided by state statute, any person or entity violating any provision of this ordinance shall be guilty of a misdemeanor.
- F. This temporary prohibition on the cultivation of industrial hemp for any purpose shall supersede the provisions of the right to farm ordinance in Section 130.30.290 of the County Code of Ordinances, and any other provision in the County Code of Ordinances that defines, addresses, or allows cultivation of crops, agricultural products, or cultivated agricultural lands, and nothing in this Section shall be construed to the contrary.

Section 4. Adoption of this Ordinance is Not a Project under CEQA.

This ordinance is not a “project” within the meaning of Public Resources Code Section 21065 and CEQA Guidelines Section 15378 because the temporary

moratorium on industrial hemp does not have the potential of resulting in a direct physical change to the environment or reasonably foreseeable indirect physical change in the environment. Even if the adoption of the moratorium were a project, it would be categorically exempt from CEQA under CEQA Guidelines Section 15308 because the moratorium is adopted in order for the County to adopt a regulatory process for the protection of the environment and there are no unusual circumstances under CEQA Guidelines Section 15300.2, and under the “common sense” exemption in CEQA Guidelines Section 15061(b)(3) because there is no possibility that adoption of this temporary moratorium would have a significant effect on the environment.

Section 5: Severability.

If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

Section 8. Conflicting Laws.

For the term of this ordinance, as set forth in Section 9 below, the provisions of this ordinance shall govern. The provisions of this Ordinance shall prevail in the event that they are in conflict between the provisions of this ordinance and the provisions of any provision of the County Code of Ordinances or any other County ordinance, resolution, or policy.

Section 9. Effective Date and Term.

This urgency Ordinance shall take full force and effect immediately upon adoption by a vote of at least four-fifths of the Board of Supervisors. In accordance with

Government Code Section 65858, this Ordinance shall be in full force and effect for a period of, ten (10) months and 15 (15) days from the date of adoption (January 26, 2021 - December 11, 2021), and shall expire as of that date, unless extended by the Board of Supervisors as provided in Government Code Section 65858.

PASSED AND ADOPTED by the Board of Supervisors of the County of El Dorado at a regular meeting of said Board, held on the 26th day of January, 2021, by the following vote of said Board:

ATTEST

Ayes: Hidahl, Parlin, Turnboo, Thomas, Novasel

Kim Dawson

Clerk of the Board of Supervisors

By 
Deputy Clerk

Noes: None

Absent: None



Chair, Board of Supervisors
John Hidahl

APPROVED AS TO FORM

DAVID LIVINGSTON

COUNTY COUNSEL

By: 

Daniel S. Vandekoolwyk

Title: _____