

ORDINANCE NO. _____

**AN INTERIM ORDINANCE EXTENDING A TEMPORARY MORATORIUM ON THE
CULTIVATION OR PROCESSING OF INDUSTRIAL HEMP WITHIN THE UNINCORPORATED
AREAS OF THE COUNTY OF SOLANO**

The Board of Supervisors of the County of Solano, State of California, ordains as follows:

SECTION 1. PURPOSE AND AUTHORITY. Solano County Ordinance Number 2019-1808, as previously extended by Ordinance Number 2019-1808-E, is extended for twelve months from the date of its expiration, through and including November 4, 2021, unless earlier terminated, during which time no person or entity, including Established Agricultural Research Institutions may grow or process hemp for any purposes within the unincorporated areas of Solano County, while County staff determines the impact of such unregulated cultivation and processing and develops reasonable regulations to mitigate such impacts. Cultivation or processing of hemp in violation of the prohibition in this interim ordinance constitutes a public nuisance. This ordinance is adopted pursuant to California Constitution Article 11, Section 7, Government Code sections 65800, et seq., particularly section 65858, and other applicable law.

SECTION 2. FINDINGS. The Board of Supervisors of the County of Solano makes the following findings in support of the immediate adoption and application of this urgency ordinance:

A. On December 20, 2018, President Trump signed H.R. 2, the Agriculture Improvement Act of 2018 (the 2018 Farm Bill) into law allowing hemp cultivation more broadly than the previously allowed pilot programs for studying market interest in hemp-derived products. The 2018 Farm Bill 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.

B. Industrial hemp is defined in section 11018.5 of the Health and Safety Code 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.”

C. Section 11018.5 expressly exempts industrial hemp from regulation under the Medicinal and Adult-Use Cannabis Regulation and Safety Act (Business and Professions Code, Division 10, § 26000 et seq.), so industrial hemp is not subject to the same regulatory provisions as cannabis.

D. Division 24 (§§ 81000-81011) of the Food and Agricultural Code addresses the growing and cultivation of industrial hemp in California. Under the Food and Agricultural Code, any commercial grower or seed breeder of industrial hemp must register with the county agricultural commissioner prior to cultivation.

E. In 2019, the Solano County Agricultural Commissioner registered several commercial growers within the unincorporated territory of Solano County.

F. Leading up to and during the 2019 harvest season, the Solano County Sheriff received numerous reports of nuisance activities, and possible criminal activities, occurring at or near hemp fields. These reported activities include attempted or actual theft of crop as well as actions by growers or their security personnel attempting to protect their crop from theft in a manner that causes nuisance or risk of harm to persons on neighboring properties.

G. The events that occurred during the 2019 harvest season demonstrate that hemp has a potential for theft unlike any other commercial agricultural commodity, and growers have responded to this potential for theft by employing extraordinary security practices. It is these actions of thieves and potential thieves, and the countermeasures taken by growers and their security personnel, that pose a risk to the community and

are a public nuisance.

H. The County's Zoning Regulation and other ordinances do not currently regulate the cultivation or processing of industrial hemp within the unincorporated territory of Solano County.

I. The County adopted an interim urgency ordinance on November 5, 2019 placing a 45-day moratorium on the cultivation and processing of hemp. Pursuant to Government Code section 65858, which allows the moratorium to be extended for an additional year period of 10 months and 15 days, the Board extended the moratorium on December 10, 2019, changing the expiration of the moratorium to November 5, 2020.

J. The County is currently in the process of developing a regulatory program to license hemp cultivation, which the Board will likely consider before the end of 2020.

K. An ordinance implementing a hemp cultivation regulatory program will not be adopted before the expiration of the moratorium, so the County is extending the moratorium until those regulations are in place.

L. This ordinance is exempt from environmental review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15061(b)(3) (there is no possibility the activity in question may have a significant effect on the environment). Each exemption stands as a separate and independent basis for determining that this ordinance is not subject to CEQA.

SECTION 3. REPORT. In adopting this ordinance, the Board of Supervisors reports that the following measures have been taken to alleviate the condition which lead to its adoption and the adoption of Ordinance Number 2019-1808-E. Staff presented regulatory options for addressing industrial hemp in Solano County to the Board of Supervisors at its meeting on February 25, 2020. In response, the Board of Supervisors convened an ad hoc committee comprised of two Board members, representatives from the Agriculture Department, the Department of Resource Management, County Counsel and representatives from the community and hemp cultivators. The committee conferred with the Sheriff's Office and a representative from the Farm Bureau and conducted a public meeting to review and discuss proposed regulations. County staff is also actively developing regulations and standards for hemp cultivation and processing, pursuant to this Board's direction.

SECTION 4. CULTIVATION AND PROCESSING OF INDUSTRIAL HEMP PROHIBITED.

A. During the term of this interim ordinance, including any extensions hereto, no person or entity, including Established Agricultural Research Institutions as defined in Food and Agricultural Code Section 81000, may grow or process industrial hemp for any purposes within the unincorporated areas of Solano County and no County permit, registration or approval of any type may be issued therefor. Cultivation or processing of industrial hemp in violation of the prohibition in this interim ordinance constitutes a public nuisance.

B. For purposes of this ordinance, the terms "cultivation" and "processing" have the same meaning as "crop production" and "agricultural processing," respectively, as defined in Section 28.01 of the Solano County Code.

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 Solano County Code or Solano County 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, and/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 Solano or Solano County itself shall not become a personal liability of such person or a liability of the County.

SECTION 5. AGRICULTURAL COMMISSIONER REGISTRATIONS.

- A. During the term of this interim ordinance, including any extensions hereto, the Solano County Agricultural Commissioner shall not issue a registration to an applicant pursuant to sections 81003 or 81004 of the Food and Agricultural Code.
- B. During the term of this interim ordinance, including any extension thereto, any registration issued by the Solano County Agricultural Commissioner to a grower of industrial hemp or a seed breeder shall not exempt the registration holder or the growing area subject to such registration from Section 4 of this ordinance.

SECTION 6. DECLARATION OF URGENCY. This ordinance is necessary for the immediate protection and preservation of the public peace, health, safety and welfare for the reasons stated in Section 2, and this ordinance is declared to be an urgency ordinance that shall be effective immediately upon adoption by the Board of Supervisors.

SECTION 7. SEVERABILITY. If any provision, clause, sentence or paragraph of this ordinance or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the other provisions of this ordinance which can be given effect without the invalid provision or application, and to this end, the provisions of this ordinance are hereby declared to be severable.

SECTION 8. CONFLICTING LAWS. For the term of this ordinance, as set forth in Section 8 below, 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.

SECTION 8. EFFECTIVE DATE AND TERM. This urgency Ordinance shall take full force and effect immediately upon adoption. As an extension of Solano County Ordinance Number 2019-1808 and Ordinance Number 2019-1808-E, this ordinance shall be operative for a period of twelve months from November 6, 2020 until and through November 5, 2021, unless earlier terminated.

PASSED AND ADOPTED by the Solano County Board of Supervisors at its regular meeting on _____, 2020, by the following vote:

AYES:	SUPERVISORS:	_____

NOES:	SUPERVISORS:	_____
EXCUSED:	SUPERVISORS:	_____

Erin Hannigan, Chairwoman
Solano County Board of Supervisors

ATTEST:

Birgitta E. Corsello, Clerk
Board of Supervisors

By: _____
Alicia Draves, Chief Deputy Clerk