



**Agricultural Commissioner  
COUNTY OF TULARE  
AGENDA ITEM**

**BOARD OF SUPERVISORS**

KUYLER CROCKER  
District One  
PETE VANDER POEL  
District Two  
AMY SHUKLIAN  
District Three  
EDDIE VALERO  
District Four  
DENNIS TOWNSEND  
District Five

**AGENDA DATE:** April 30, 2019 **REVISED**

Public Hearing Required	Yes	<input checked="" type="checkbox"/>	N/A	<input type="checkbox"/>
Scheduled Public Hearing w/Clerk	Yes	<input checked="" type="checkbox"/>	N/A	<input type="checkbox"/>
Published Notice Required	Yes	<input checked="" type="checkbox"/>	N/A	<input type="checkbox"/>
Advertised Published Notice	Yes	<input checked="" type="checkbox"/>	N/A	<input type="checkbox"/>
Meet & Confer Required	Yes	<input type="checkbox"/>	N/A	<input checked="" type="checkbox"/>
Electronic file(s) has been sent	Yes	<input checked="" type="checkbox"/>	N/A	<input type="checkbox"/>
Budget Transfer (Aud 308) attached	Yes	<input type="checkbox"/>	N/A	<input checked="" type="checkbox"/>
Personnel Resolution attached	Yes	<input type="checkbox"/>	N/A	<input checked="" type="checkbox"/>
Agreements are attached and signature line for Chairman is marked with tab(s)/flag(s)	Yes	<input type="checkbox"/>	N/A	<input checked="" type="checkbox"/>
<b>CONTACT PERSON:</b> Tom Tucker		<b>PHONE:</b> (559) 684-3350		

**SUBJECT:** Extend urgency interim ordinance no. 3555 declaring a temporary moratorium on the cultivation of Industrial Hemp in the unincorporated areas of the County for an additional 22 months and 15 days.

**REQUEST(S):**  
That the Board of Supervisors:

1. Receive a presentation of the Agricultural Commissioner's written report, pursuant to uncodified urgency interim ordinance no. 3555, describing the measures taken to alleviate the conditions which led to the adoption of the interim hemp moratorium.
2. Hold a public hearing on April 30, 2019 regarding the extension of uncodified urgency interim ordinance no. 3555, adopted March 26, 2019, declaring a temporary moratorium on the cultivation of Industrial Hemp in the unincorporated areas of the County of Tulare.
3. Introduce and waive the reading of the ordinance extending uncodified ordinance no. 3555.
4. Approve/reaffirm the nonproject exemptions approved and filed for ordinance no. 3555--a General Rule Exemption [14 Cal. Code Regs. § 15061(b)(3)], and a Class 8 Categorical Exemption [14 Cal. Code Regs. § 15308] pursuant to the California Environmental Quality Act (CEQA) and the State CEQA Guidelines.
5. Adopt the Urgency Interim Ordinance extending the prohibition on the cultivation of Industrial Hemp in the unincorporated areas of the County for an additional twenty two (22) months and fifteen (15) days (4/5ths vote).
6. Approve a summary of this ordinance and direct the Clerk of the Board to

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publish and post the summary within fifteen (15) days after passage in accordance with Government Code section 25124(b)(1).

7. Direct the Environmental Assessment Officer of the Tulare County Resource Management Agency, or designee, to file a Notice of Exemption with the Tulare County Clerk.

**SUMMARY:**

On March 26, 2019, as an urgency measure, the Board of Supervisors adopted an interim zoning ordinance prohibiting in the incorporated areas of the County all "Industrial Hemp" cultivation, as defined by California Food and Agricultural Code section 81000 and Health and Safety Code section 11018.5, for both commercial purposes or by "Established Agricultural Research Institutions." The purpose of this urgency interim ordinance is to enact a 22 month and 15 day extension to the initial temporary moratorium on the cultivation of "Industrial Hemp," as defined by California Food and Agricultural Code section 81000 and Health and Safety Code section 11018.5, for both commercial purposes or by "Established Agricultural Research Institutions." This Urgency Interim Ordinance will allow County staff an opportunity to assess the potential impacts of Industrial Hemp cultivation and related activities, and to evaluate potential regulations to mitigate potential negative impacts related to Industrial Hemp.

Under State law, Industrial Hemp cultivation is allowed in accordance with the Food and Agricultural Code sections 81000 et seq. However, in order to implement regulations regarding the commercial cultivation of Industrial Hemp, the Food and Agricultural Code requires the Industrial Hemp Advisory Board (IHAB) to first make recommendations to the Secretary of the California Department of Food and Agriculture ("CDFA") for consideration and approval. Then, the CDFCA must follow the regular rule-making processes to adopt final rules on this topic. Some of these rules are now being considered; for instance, the CDFCA recently submitted a few initial regulations to the Office of Administrative Law that deal solely with registration and fees. These regulations are expected to be approved in early 2019. However, as of the date this agenda item was written, CDFCA had not yet adopted any final regulations regarding Industrial Hemp cultivation. As such, the cultivation of industrial hemp for commercial purposes is *de facto* prohibited in California.

Once those CDFCA initial regulations are in place, commercial growers of Industrial Hemp may try to register with the county agricultural commissioner, in accordance with the Food and Ag Code, and some might even put hemp plants into the ground. However, there are additional regulations that have yet to be promulgated by the CDFCA including regulations of Industrial Hemp sampling, testing, harvesting, and enforcement mechanisms. It is not yet clear how such regulations might affect hemp during these preliminary planting seasons.

Moreover, although there is currently a *de facto* prohibition on the cultivation of

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industrial hemp for commercial purposes, state law exempts from some of the regulatory requirements cultivation by an “Established Agricultural Research Institution”. The definition of an “Established Agricultural Research Institution” 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 whether that cultivation constitutes “agricultural or academic research.” Because the cultivation or manufacturing of Industrial Hemp by an “Established Agricultural Research Institution” is not contingent upon the development of a regulatory framework by the CDFA it is foreseeable that individuals or organizations may try to exploit the exemptions afforded to “Established Agricultural Research Institutions” in an effort to prematurely cultivate industrial hemp for commercial purposes, or to cultivate cannabis under the disguise of “agricultural or academic research” Industrial Hemp. Due to the fact that Industrial Hemp and cannabis are derivatives of the same plant, *Cannabis sativa L.*, the physical appearance of industrial hemp and cannabis are indistinguishable. Absent a laboratory performed chemical analysis for tetrahydrocannabinol (THC) content, the two plants cannot be readily distinguished. Until this exemption is clarified, entities may try to exploit the “Established Agricultural Research Institution” exemption, even after commercial cultivation regulations are in place.

Some of these issues might potentially be addressed in future legislation. Several bills have already been proposed this session that could impact change or alter regulation of Industrial Hemp.

Further complicating this landscape is that on December 20, 2018, President Trump signed into law H.R. 2, the Agriculture Improvement Act of 2018 (the “2018 Farm Bill”). The 2018 Farm Bill removes hemp-derived products from Schedule I of the Controlled Substances Act; allows hemp cultivation more broadly than the pilot programs that were previously allowed under the 2014 Farm Bill; and allows the transfer of hemp-derived products across state lines for commercial or other purposes. In other words, the 2018 Farm Bill does not restrict the sale, transport, or possession of hemp-derived products, so long as those items are produced in a manner consistent with the law. However, under section 10113 of the 2018 Farm Bill, a state wishing to share responsibility for licensing and regulation of hemp must submit a plan to the Secretary of United States Department of Agriculture (USDA). A state’s plan to license and regulate hemp can only commence once the Secretary of USDA approves that state’s plan. In its frequently asked questions guidance document posted on its website, the USDA stated that until the state regulatory plans are submitted and approved by the USDA, it expects industrial hemp activities to proceed in accordance with the 2014 Farm Bill (i.e., smaller pilot projects which receive approval and permits from the State and Federal Government). To this date, California has not yet adopted a plan to submit to the USDA, and thus does not have licensing or regulatory authority in compliance with the 2018 Farm Bill.

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Given these recent changes, the Agricultural Commissioner’s office has already received several calls from individuals or entities that are interested in cultivating hemp; however, most people are confused about the state of the law. Without an interim ordinance, some people may attempt to plant industrial hemp before the County has had an opportunity to determine how Industrial Hemp may impact the County, or whether local regulations or changes to the zoning ordinance or the General Plan are appropriate.

Due to the new, evolving, and incomplete state and federal laws regarding Industrial Hemp; the potential for inappropriate land uses to become established before the County has had the opportunity to study or propose regulations; the potential health and safety issues related to people growing cannabis under the guise of industrial hemp; and the potential harm to farmers and residents related to unregulated or under-regulated Industrial Hemp cultivation, staff proposes adopting an interim, urgency ordinance to give the County an opportunity to study these issues and to determine whether to adopt local regulations to mitigate or avoid any negative effects related to Industrial Hemp cultivation. As an urgency measure, this interim ordinance would extend the moratorium on the cultivation of Industrial Hemp, both for commercial purposes and by Established Agricultural Research Institutions, for an additional 22 months and 15 days (total), as provided by Government Code section 65858.

The Urgency Interim Ordinance adopted on March 26, 2019 is categorically exempt from the California Environmental Quality Act (CEQA) under the following provisions: (a) section 15060(c)(2) of the State CEQA Guidelines because it will not result in a direct or reasonably foreseeable indirect physical change in the environment, as there are currently no authorized or known cultivators of Industrial Hemp in the County; (b) section 15060(c)(3) of the State CEQA Guidelines because it is not a project within the meaning of CEQA, since it has no potential for resulting in physical changes in the environment; (c) section 15061 (b)(3), general rule exemption, since there is no possibility the activity in question may have a significant effect on the environment; and (d) section 15308 since the action is a local ordinance adopted to assure protection of the environment and there are no unusual circumstances under section 15300.2 of the State CEQA Guidelines. As follows, this extension of Urgency Ordinance No. 3555 falls under the same categorical exemptions considered for Urgency Interim Ordinance No. 3555.

**FISCAL IMPACT/FINANCING:**

The primary financial impact to the County of enacting an Interim Ordinance will be related to the staff time dedicated to researching and studying the impacts of Industrial Hemp and proposed regulations, along with potential enforcement activities. It is difficult to predict how much time will be required for research or enforcement, though the impacted Departments will likely absorb these costs in their current budgeted activities.

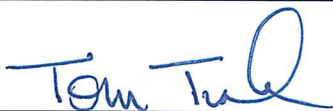
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**LINKAGE TO THE COUNTY OF TULARE STRATEGIC BUSINESS PLAN:**

The County's five-year strategic plan includes the Economic Well-Being Initiative, to promote economic development opportunities, effective growth management and a quality standard of living. This request to adopt an Urgency Interim Ordinance declaring a temporary moratorium on the cultivation of industrial hemp will ensure timely continuance of a long-standing program of protecting the County's agriculture-based economy.

**ADMINISTRATIVE SIGN-OFF:**



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Tom Tucker  
Agricultural Commissioner/Sealer

cc: County Administrative Office

Attachment(s)

- Proposed Urgency Interim Ordinance regarding Industrial Hemp Cultivation
- Pre-hearing summary of Ordinance
- Post-hearing summary of Ordinance
- Proposed draft Notice of Exemption

**BEFORE THE BOARD OF SUPERVISORS  
COUNTY OF TULARE, STATE OF CALIFORNIA**

IN THE MATTER OF ADOPT AN )  
EMERGENCY INTERIM ORDINANCE ) Resolution No. \_\_\_\_\_  
DECLARING A TEMPORARY ) Agreement No. \_\_\_\_\_  
MORATORIUM ON THE CULTIVATION OF )  
INDUSTRIAL HEMP )

UPON MOTION OF SUPERVISOR \_\_\_\_\_, SECONDED BY  
SUPERVISOR \_\_\_\_\_, THE FOLLOWING WAS ADOPTED BY THE  
BOARD OF SUPERVISORS, AT AN OFFICIAL MEETING HELD \_\_\_\_\_  
\_\_\_\_\_, BY THE FOLLOWING VOTE:

AYES:  
NOES:  
ABSTAIN:  
ABSENT:

ATTEST: JASON T. BRITT  
COUNTY ADMINISTRATIVE OFFICER/  
CLERK, BOARD OF SUPERVISORS

BY: \_\_\_\_\_  
Deputy Clerk

\* \* \* \* \*

1. Received a presentation of the Agricultural Commissioner’s written report, pursuant to uncodified urgency interim ordinance no. 3555, describing the measures taken to alleviate the conditions which led to the adoption of the interim hemp moratorium.
2. Held a public hearing on April 30, 2019 regarding the extension of uncodified urgency interim ordinance no. 3555, adopted March 26, 2019, declaring a temporary moratorium on the cultivation of Industrial Hemp in the unincorporated areas of the County of Tulare.
3. Introduced and waived the reading of the ordinance extending uncodified ordinance no. 3555.
4. Approved/reaffirmed the nonproject exemptions approved and filed for ordinance no. 3555--a General Rule Exemption [14 Cal. Code Regs. § 15061(b)(3)], and a Class 8 Categorical Exemption [14 Cal. Code Regs. § 15308] pursuant to the California Environmental Quality Act (CEQA) and the State CEQA Guidelines.
5. Adopted the Urgency Interim Ordinance extending the prohibition on the

cultivation of Industrial Hemp in the unincorporated areas of the County for an additional twenty two (22) months and fifteen (15) days (4/5ths vote).

6. Approved a summary of this ordinance and directed the Clerk of the Board to publish and post the summary within fifteen (15) days after passage in accordance with Government Code section 25124(b)(1).
7. Directed the Environmental Assessment Officer of the Tulare County Resource Management Agency, or designee, to file a Notice of Exemption with the Tulare County Clerk.

ORDINANCE NO. \_\_\_\_\_

**AN INTERIM ORDINANCE PURSUANT TO GOVERNMENT CODE SECTION 65858  
EXTENDING TULARE COUNTY ORDINANCE NO. 3555, PROHIBITING THE  
CULTIVATION OF INDUSTRIAL HEMP FOR AN ADDITIONAL PERIOD OF  
TWENTY-TWO (22) MONTHS AND FIFTEEN (15) DAYS, AND DECLARING THE  
URGENCY THEREOF.**

The Board of Supervisors of the County of Tulare ordains as follows:

**SECTION 1. Purpose/Authority.**

The purpose of this urgency ordinance is to establish a temporary moratorium on the cultivation of Industrial Hemp, including cultivation by “Established Agricultural Research Institutions,” as defined by California Food and Agricultural Code Section 81000(c), while County staff determines the impact of such unregulated cultivation and reasonable regulations to mitigate such impacts. This urgency ordinance is adopted pursuant to California Constitution article 11, section 7, Government Code sections 65800, et seq., particularly section 65868, and other applicable law.

**SECTION 2. Declarations and Findings.**

The Board of Supervisors of the County of Tulare makes the following findings in support of the immediate adoption and application of this urgency and interim zoning ordinance:

A. Section 5940 of Title 7 of the United States Code states, “Notwithstanding the Controlled Substances Act (21 U.S.C. 801 et seq.), chapter 81 of title 41, or any other Federal law, an institution of higher education (as defined in section 1001 of title 20) or a State department of agriculture may grow or cultivate Industrial Hemp if: (1) the Industrial Hemp is grown or cultivated for purposes of research conducted under an agricultural pilot program or other agricultural or academic research; and (2) the growing or cultivating of Industrial Hemp is allowed under the laws of the State in which such institution of higher education or State department of agriculture is located and such research occurs.”

B. On December 20, 2018 the Agricultural Improvement Act of 2018 was signed into law by President Donald Trump which amended the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 et seq.) to add Industrial Hemp to the list of approved crops, and allows for states who desire to have primary regulatory authority over the production of Industrial Hemp to submit a plan under which the State monitors and regulates that production.

C. California has not as of the date of this ordinance, submitted such a plan to the United States Secretary of Agriculture.

D. Division 24. Industrial Hemp [81000-81010] of the Food and Agricultural Code (hereafter “FAC”) addresses the growing and cultivation of Industrial Hemp in California.



E. On January 1, 2017, Division 24, Industrial Hemp [81000-81010] of the FAC became operative.

F. FAC Division 24 does not provide for the California Department of Food and Agriculture to establish a pilot program or to participate in, or promote, research projects recognized under Section 5940 of Title 7 of the United States Code.

G. FAC Section 81001 calls for the Industrial Hemp Advisory Board to advise the California Secretary of Food and Agriculture 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 mechanisms, and the setting of an assessment rate.

H. The Industrial Hemp Advisory Board was expected to implement requisite regulations allowing the cultivation of Industrial Hemp for commercial purposes in late 2018, but has not yet implemented such regulations.

I. Under FAC Division 24, all commercial growers of Industrial Hemp must register with the county agricultural commissioner prior to cultivation. However, registration is not yet available. The CDFA and the Industrial hemp Advisory Board have not yet finalized the regulations establishing fees and the process for registration, among other items. Though the State Office of Administrative Law has received proposed regulations establishing registration and renewal fees, and as of this date those regulations are still pending approval (Section 4900, Industrial Hemp Cultivation Registration Fees). Therefore, the cultivation of Industrial Hemp for commercial purposes as defined under FAC Division 24 is still *de facto* prohibited within the State of California.

J. Despite the current prohibition on the cultivation of Industrial Hemp for commercial purposes, FAC Division 24 exempts cultivation by an “Established Agricultural Research Institution” from some of the regulatory requirements enumerated therein.

K. 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.”

L. Industrial Hemp is defined under FAC Section 81000 and Health and Safety Code section 11018.5 as “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 (.3%) 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.”

M. “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.”

N. Due to the fact that Industrial Hemp and cannabis are derivatives of the same plant, *Cannabis sativa* L., the physical appearance of Industrial Hemp and cannabis are virtually indistinguishable. Absent a laboratory performed chemical analysis for tetrahydrocannabinol (THC) content, the two plants cannot be readily distinguished.

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.

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 whether the cultivation constitutes “agricultural or academic research.” Without clear guidelines, the ability and likelihood that cultivators exploit the “Established Agricultural Research Institution” exemption to grow Industrial Hemp with more than 0.3% THC is great.

Q. Except for medicinal and non-medicinal cultivation of cannabis conducted pursuant to Part V, Chapter 11 of the Tulare County Ordinance Code and Ordinance No. 352, the Zoning Ordinance of Tulare County, Tulare County has banned the cultivation of commercial cannabis.

R. Due to the fact that Industrial Hemp and cannabis are indistinguishable, the cultivation of Industrial Hemp by an “Established Agricultural Research Institution” prior to the adoption of reasonable regulations poses similar threats to the public health, safety, or welfare as the cultivation of cannabis.

S. The cultivation of Industrial Hemp prior to the adoption of State and/or local reasonable regulations will create an increased likelihood of unlawful commercial cannabis activity, which poses a threat to the health, safety and welfare of the community.

T. At this time, the State of California has not yet identified, nor approved, seed sources for Industrial Hemp. Unregulated seed sources can be infested with exotic weed seed or carry plant diseases. Once exotic weeds or plant diseases are established they are difficult and costly to eradicate. Soil borne diseases, once established can result in quarantines that restrict plant movement as well as crop rotations.

U. Industrial Hemp can serve as a host to mites and other insects. At this time, there are no pesticides registered for hemp that specifically address such mites or other insects. The pesticides that have been approved for hemp are not always effective, which allows for such insects to move into other nearby crops. Additionally, there are no requirements for pesticide use reporting or testing for Industrial Hemp when cultivated by an “Established Agricultural Research Institution” if pesticides on the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) 25(b) list are used.

V. If cloned hemp plants are used for experimentation they are exempt from nursery standards at this time and may not be inspected for plant cleanliness standards leaving them susceptible to insect and disease infection.

W. The County has already received inquiries from individuals interested in cultivating Industrial Hemp within the unincorporated areas of the County, notwithstanding the fact that the Federal government, State and County have yet adopt regulations and requirements for the establishment of such uses. The approval of use permits, variances, building permits, or any other applicable entitlement for use for Industrial Hemp cultivation before the County has adequate regulations in place would result in a threat to public health, safety, or welfare. In addition, based on the County’s experiences with cannabis, the County also anticipates that some individuals may choose to begin Industrial Hemp cultivation before State and federal regulations have been approved. If this occurs, there is a concern as to whether such activities could become established uses prior to the County establishing of zoning, business, or other health and safety regulations under the normal planning and zoning processes of the County.

X. Pursuant to 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.

Y. The commercial cultivation of Industrial Hemp or the cultivation of Industrial Hemp 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 Tulare County.

Z. Tulare County has a compelling interest in protecting the public health, safety, and welfare of its residents and business, in preventing the establishment of nuisances, and preserving the peace and integrity of neighborhoods within the unincorporated area. However, without sufficient regulations, standards, procedures, and thresholds for Industrial Hemp cultivation which are enforceable pursuant to an adopted ordinance, there is a current and immediate threat to the public health, safety and welfare from the unregulated cultivation of Industrial Hemp.

AA. At this time, the County urgently needs to study whether and to what extent the County’s General Plan, zoning and land use regulations and health and safety regulations should be modified to accommodate and/or address the impacts of Industrial Hemp to best protect the health, safety, and welfare of County residents and visitors. The uses prohibited by this ordinance may be conflict with a contemplated general plan, specific plan, or zoning proposal

that the Board of Supervisors and County agencies and departments intend to study within a reasonable time.

BB. Since Ordinance No. 3555 was adopted, County departments have begun gathering information about potential local regulations of industrial hemp that might address the threats to public health, safety, and welfare identified in the findings above. However, especially given that both the State and Federal governments still need to develop their own regulations and/or processes for this nascent industry, the threats identified above could not easily be resolved or fully understood within the initial forty-five (45) day interim ordinance period.

CC. Based on the findings above, and upon the information presented at the Board of Supervisors' regular meeting on February 26, 2019, and the public hearings held on March 26 and April 30, 2019, the Board of Supervisors finds that the immediate preservation of the public health, safety and welfare requires that this Ordinance be enacted as an interim zoning ordinance pursuant to Government Code section 65858, and also as an urgency ordinance pursuant to Government Code sections 25123 and 25131. 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. Cultivation of Industrial Hemp Prohibited.**

During the term of this interim ordinance, including any extensions hereto, no person or entity shall grow Industrial Hemp for any purpose within the unincorporated areas of Tulare County. Additionally, during this interim ordinance, including any extensions hereto, "Established Agricultural Research Institutions," as defined in FAC Section 81000, will similarly be prohibited from cultivating Industrial Hemp for agricultural or academic research purposes.

### **SECTION 4. Declaration of Urgency.**

Based on findings set forth in Section 2, this Ordinance is declared to be an urgency ordinance that shall be effective immediately upon adoption by the Board of Supervisors.

### **SECTION 5. Public Nuisance.**

Any use or condition caused, or permitted to exist, in violation of any provision of this Ordinance shall be, and hereby is declared to be, a public nuisance and shall be subject to abatement as provided in Chapter 1 of Part IV of the Tulare County Ordinance Code.

### **SECTION 6. Enforcement.**

Any violation of this ordinance shall be deemed a public nuisance and shall be subject to abatement as provided in Chapter 1 of Part IV of the Tulare County Ordinance Code and may be subject to administrative fines under Chapter 23 of Part 1 of the Tulare County Ordinance Code. The enforcement procedures provided for in this Ordinance are in addition to any other provided by statute, ordinance, or law.

### **SECTION 7. Severability.**

If any section, subsection, subdivision, sentence, clause, phrase, interpretation, or portion of this Ordinance is for any reason held to be 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 adopted this Ordinance, and each and every section, subsection, subdivision, sentence, clause, phrase, or portion thereof, without regard to the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof would be subsequently declared invalid or unconstitutional.

**SECTION 8. Effective Date.**

This Ordinance is intended to protect the public safety, health, and welfare pursuant to Government Code Section 65868 and shall be in full force and effect immediately upon a four-fifths vote of the Board of Supervisors. This Ordinance shall extend Ordinance No. 3555 for 22 months and 15 days from its date of adoption pursuant to Government Code Section 65868(b).

**SECTION 9. Effect.**

Section 1. The Supplementary Zoning Map of the County of Tulare, which part is designated as Part 95 is hereby amended and is described as follows:

Part 95: All of the unincorporated areas of Tulare County inclusive.

**SECTION 10. Publication.**

Within fifteen (15) days after adoption of this Ordinance, a summary shall be published once in the Exeter Sun Gazette, a newspaper printed and published in the County of Tulare, State of California, together with the names of the Board of Supervisors members voting for and against the same.

THE FOREGOING ORDINANCE was passed and adopted by the Board of Supervisors of the County of Tulare, State of California, on this 30<sup>th</sup> day of April 2019, at a regular meeting of said Board duly and regularly convened on said day by the following vote:

**AYES:**

**NOES:**

**ABSTAIN:**

**ABSENT:**

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Kuyler Crocker  
Chairman, Board of Supervisors

ATTEST: JASON T. BRITT

County Administrative Officer/  
Clerk of the Board of Supervisors  
of the County of Tulare

By: \_\_\_\_\_  
Deputy

Approved as to Legal Form:

COUNTY COUNSEL

By: \_\_\_\_\_  
Deputy, Matter No. 2019223

**ORDINANCE NO. \_\_\_\_**

**PURSUANT TO GOVERNMENT CODE SECTION 25124(b)(1), THE FOLLOWING IS A SUMMARY OF ORDINANCE NO. \_\_\_\_\_, AN URGENCY, INTERIM ORDINANCE EXTENDING ORDINANCE NO. 3555, PROHIBITING ALL INDUSTRIAL HEMP CULTIVATION IN THE UNINCORPORATED AREAS OF THE COUNTY FOR AN ADDITIONAL 22 MONTHS AND 15 DAYS.**

**SUMMARY OF PROPOSED ORDINANCE**

This interim ordinance is an urgency measure pursuant to Government Code sections 25123, 25131, and 65858 to protect the public health, safety and welfare of the residents of the County of Tulare from the threats posed by unregulated or inadequately regulated Industrial Hemp cultivation within the unincorporated area of the County of Tulare. For the purposes of this ordinance, the term "Industrial Hemp" shall have the same meaning as California Food and Agriculture Code section 81000 and Health and Safety Code section 11018.5.

This urgency interim ordinance is an extension of Tulare County Uncodified Urgency Interim Ordinance No. 3555 which prohibited for a period of forty-five (45) days all Industrial Hemp cultivation within the unincorporated area of the County of Tulare. This urgency interim ordinance will extend Tulare County Ordinance No. 3555 by an additional twenty-two (22) months and fifteen (15) days. This interim ordinance further prohibits the County of Tulare from processing any applications or issuing any building permit, occupancy permit, license, or other land use entitlement for such prohibited activities for a period of twenty-two (22) months and fifteen (15) days, to allow the County an opportunity to evaluate the primary and secondary effects of Industrial Hemp cultivation which has been decriminalized by Food and Agriculture Code 81000 et seq and Section 5940 of Title 7 of the United States Code, and whether and to what extent the County's General Plan, supplementary zoning map, zoning ordinance or other regulations should be modified to accommodate and/or address the impacts of Industrial Hemp cultivation on the County, to protect the health, safety, and welfare of its' residents and visitors.

This interim ordinance does not affect the ability of any individuals to cultivate cannabis in accordance with state law and local ordinances.

The ordinance herein summarized will be considered by the Board of Supervisors of the County of Tulare, State of California, on April 30, 2019, at a regular public meeting of said Board. This ordinance would take effect immediately upon adoption and will expire on May 15, 2021.

At least five (5) days prior to April 30, 2016, a certified copy of the full text of the proposed ordinance shall be posted in the office of the Clerk of the Board of Supervisors and shall be available for public inspection at that location. Within

fifteen (15) days of adoption, a certified copy of the full text of the ordinance shall be posted in the office of the Clerk of the Board of Supervisors and shall be available for public inspection at that location.

ATTEST: JASON T. BRITT  
County Administrative Officer/  
Clerk of the Board of Supervisors of  
Tulare County

By \_\_\_\_\_  
Deputy Clerk



**NOTICE OF PUBLIC HEARING REGARDING AN EXTENSION OF INTERIM ORDINANCE NO. 3555 PROHIBITING ALL INDUSTRIAL HEMP CULTIVATION IN THE UNINCORPORATED AREAS OF THE COUNTY FOR AN ADDITIONAL PERIOD OF 22 MONTHS AND 15 DAYS.**

On April 30, 2019, at its regular scheduled public meeting, the Tulare County Board of Supervisors will hold a public hearing to consider adoption of an ordinance extending Tulare County interim ordinance no. 3555 as an urgency measure, pursuant to California Government Code sections 25123, 25131, and 65858, prohibiting all Industrial Hemp Activities within the unincorporated areas of the County for a period of 22 months and 15 days. For the purposes of this proposed ordinance, the term “Industrial Hemp” shall have the same meaning as California Food and Agriculture Code section 81000 and Health and Safety Code section 11018.5.

The proposed extension will take effect on April 30, 2019, and will expire on March 15, 2021. Within fifteen (15) days of adoption of the proposed ordinance the Clerk of the Board of Supervisors will publish the ordinance in the Exeter Sun Gazette newspaper. The interim ordinance and this extension thereof will apply to the unincorporated area of the County of Tulare.

This public hearing will take place on Tuesday, April 30, 2019, at 9:30 am, or as soon thereafter as it can be heard, at the Board of Supervisors’ Chambers, 2800 West Burrel Avenue, Visalia, CA 93291. All interested persons may appear and be heard at said time and place.

If you challenge the decision of the Board of Supervisors on the foregoing matter in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the Board of Supervisors of the County of Tulare at, or prior to, the public hearing. In compliance with the American with Disabilities Act, if you need special assistance to participate in meetings call (559) 636-5000. If you have questions regarding this matter, please contact COUNTY OF TULARE AGRICULTURAL COMMISSIONER (559) 684-3350.

Jason T. Britt, County Administrative Officer/Clerk, Board of Supervisors

# Notice of Exemption

Fee Exempt per Government Code Section 6103

- To:  Office of Planning and Research  
1400 Tenth Street, Room 121  
Sacramento, CA 95814
- Tulare County Clerk  
Room 105, Courthouse  
221 South Mooney Boulevard  
Visalia, California 93291

Date received for filing at Tulare County Clerk

**Lead Agency:** Tulare County Resource Management Agency  
5961 South Mooney Blvd.  
Visalia, Ca 93277  
Ph: (559) 624-7000

**Applicant(s):** Tulare County Board of Supervisors  
2800 West Burrel Avenue  
Visalia, CA 93291-4580  
Ph: (559) 636-5005

**Project Title:** Urgency Interim Ordinance Regarding Industrial Hemp Cultivation of Tulare County.

**Project Location – Specific:** Throughout all the unincorporated areas of the County of Tulare in Tulare County, CA

**Project Location- Section, Township, Range:** N/A

**Project Location - City:** N/A

**Project Location - County:** Tulare

**Description of Nature, Purpose, and Beneficiaries of Action(s)/Project(s):** The purpose of this urgency ordinance is to establish a temporary moratorium on the cultivation of “Industrial Hemp,” as defined by California Food and Agricultural Code section 81000 and Health and Safety Code section 11018.5, for both commercial purposes or by “Established Agricultural Research Institutions.” This Urgency Interim Ordinance will allow County staff an opportunity to assess the potential impacts of Industrial Hemp cultivation and related activities, and to evaluate potential regulations to mitigate potential negative impacts related to Industrial Hemp.

Under State law, Industrial Hemp cultivation is allowed in accordance with the Food and Agricultural Code sections 81000 et seq. However, the Food and Agricultural Code requires the Industrial Hemp Advisory Board (IHAB) to first recommend to the Secretary of the California Department of Food and Agriculture (“CDFA”) for consideration and approval in order to implement regulations regarding the commercial cultivation of Industrial Hemp. To this date, CDFAs has not yet adopted any regulations, so the cultivation of industrial hemp for commercial purposes is de facto prohibited in California. However, the CDFAs recently submitted a few initial regulations to the Office of Administrative Law that deal solely with registration and fees. These regulations are expected to be approved in early 2019.

Once those initial regulations are in place, commercial growers of Industrial Hemp may try to register with the county agricultural commissioner, in accordance with the Food and Ag Code, and some might even put hemp plants into the ground. However, there are additional regulations that have yet to be promulgated by the CDFAs including regulations of Industrial Hemp sampling, testing, harvesting, and enforcement mechanisms. It is not yet clear how such regulations might affect hemp during these preliminary planting seasons.

The Agricultural Commissioner’s office has already received several calls from individuals or entities that are interested in cultivating hemp; however, most people are confused about the state of the law. Some people may attempt to plant industrial hemp before the County has had an opportunity to determine how Industrial Hemp may impact the County, or whether local regulations or changes to the zoning ordinance or the General Plan are appropriate.

Due to the new, evolving, and incomplete state and federal laws regarding Industrial Hemp; the potential for inappropriate land uses to become established before the County has had the opportunity to study or propose regulations; the potential health and safety issues related to people growing cannabis under the guise of industrial hemp; and the potential harm to farmers and residents related to unregulated or under-regulated Industrial Hemp cultivation, staff proposes adopting an interim, urgency ordinance to give the County an opportunity to study these issues and to determine whether to adopt local regulations to mitigate or avoid any negative effects related to Industrial Hemp cultivation. As an urgency measure, this interim ordinance would prohibit the cultivation of Industrial Hemp, both for commercial purposes and by Established Agricultural Research Institutions, for a period of 45 days. This initial Urgency Interim Ordinance may be extended for a period of up to an additional 22 months and 15 days (total), as provided by Government Code section 65858.

**Exempt Status:** *(check one)*

- Ministerial (Sec. 21080(b)(1); 15268);
- Declared Emergency (Sec. 21080(b)(3); 15269(a));
- Emergency Project (Sec. 21080(b)(4); 15269(b)(c));
- General Rule: **CEQA guidelines 14 Cal. Code Regs. § 15061 (b)(3)**
- Categorical Exemption: **CEQA Guidelines 14 Cal. Code Regs. § 15308 (Class 8) Actions by Regulatory Agency for Protection of the Environment**
- Statutory Exemptions: **CEQA Guidelines 14 Cal. Code Regs. § 15378, Action is not a Project within the Meaning of CEQA**

**Reasons why activity(ies)/project(s) is/are exempt:** Under the California Environmental Quality Act (CEQA) three CEQA exemptions are applicable to County approval of the proposed project: (1) a “Non-Project” Exemption; (2) The General Rule Exemption and (3) the Class 8 Categorical Exemption (See State CEQA Guidelines, 14 Cal. Code Regs. 15061(b)(3), 15308, and 15378). This Urgency Interim Ordinance is categorically exempt from the California Environmental Quality Act (CEQA) under the following provisions: (a) section 15060(c)(2) of the State CEQA Guidelines because it will not result in a direct or reasonably foreseeable indirect physical change in the environment, as there are currently no authorized or known cultivators of Industrial Hemp in the County; (b) section 15060(c)(3) of the State CEQA Guidelines because it is not a project within the meaning of CEQA, since it has no potential for resulting in physical changes in the environment; (c) section 15061 (b)(3), general rule exemption, since there is no possibility the activity in question may have a significant effect on the environment; and (d) section 15308 since the action is a local ordinance adopted to assure protection of the environment and there are no unusual circumstances under section 15300.2 of the State CEQA Guidelines.

Therefore, the use of three CEQA exemptions are applicable to County approval of the proposed project: (1) a “Non-Project” Exemption; (2) The General Rule Exemption and (3) the Class 8 Categorical Exemption (See State CEQA Guidelines, 14 Cal. Code Regs. 15061(b)(3), 15308, and 15378).

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**Name of Public Agency Approving Project:** County of Tulare, Resource Management Agency

**Project Planner/Representative:** Jason T. Britt, CAO

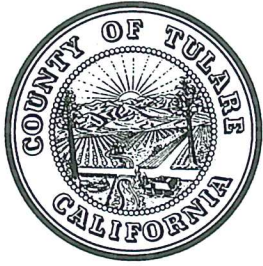
**Area Code/Telephone:** (559) 636-5005

Signature: \_\_\_\_\_ Date: \_\_\_\_\_ Title: Chief Environmental Planner  
Hector Guerra Ph: (559) 624-7121

Signature: \_\_\_\_\_ Date: \_\_\_\_\_ Title: Environmental Assessment Officer  
Reed Schenke, PE RMA Director

Signed by Lead Agency

Date received for filing at OPR: N/A



# Tulare County Agricultural Commissioner/Sealer

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Tom Tucker, Agricultural Commissioner  
Sealer of Weights and Measures

April 30, 2019

Tulare County Board of Supervisors  
Kuyler Crocker, Chairman

Re: Report Regarding Industrial Hemp Interim Ordinance and Related Activities.

Chairman Crocker, and Supervisors,

My office respectfully submits the following report in accordance with the Board's direction at the March 26 Board meeting, as well as Government Code section 65858, subsection (d).

After the Board adopted the initial interim ordinance temporarily prohibiting the cultivation of industrial hemp in the unincorporated areas, I have gathered additional information about hemp and hemp-related issues and concerns by reaching out to and/or making contact with various County departments, including the Tulare County Sheriff's Office, Tulare County District Attorney's Office, Tulare County Health Officer, Tulare County Resource Management Agency (RMA), and Tulare County Counsel's Office. I've also made contact with the Cities of Visalia, Tulare, Porterville, and Woodlake to gather the perspective of leaders in those jurisdictions. Many of these issues and concerns are included in the list of issues below.

My report is also informed by information that my office has gathered from its public outreach efforts over the past two months, including phone calls, postcards, and emails. More than a dozen individuals have called into the office, including local farmers, want-to-be Industrial Hemp farmers, a Pest Control Advisor, consultants, and realtors from both in and out of the county. All of these individuals were asking if and when the County would start registering commercial industrial hemp growers. I did not personally talk with anyone who was not interested in allowing industrial hemp cultivation to occur. Of the 2,800 emails or postcards that went out almost two months ago soliciting input regarding industrial hemp, we have received only 59 direct comments. Fifteen (15) of these replies were unsure of or against hemp cultivation, with 44 responses in favor of Industrial Hemp cultivation in Tulare County.

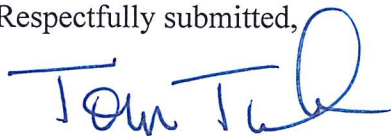
Though my office has begun outreach, there has not been enough time to catalog everyone's concerns, much less derive solutions. However, the list below includes a few of the top issues that will need clarification/ resolution if the County is to move forward with allowing hemp cultivation in a responsible way.

- The California Department of Food and Agriculture (CDFA) has not yet adopted or implemented a viable set of industrial hemp regulations, including the requisite forms, reports, lists, and methods, so no one knows what will ultimately be required by the State.

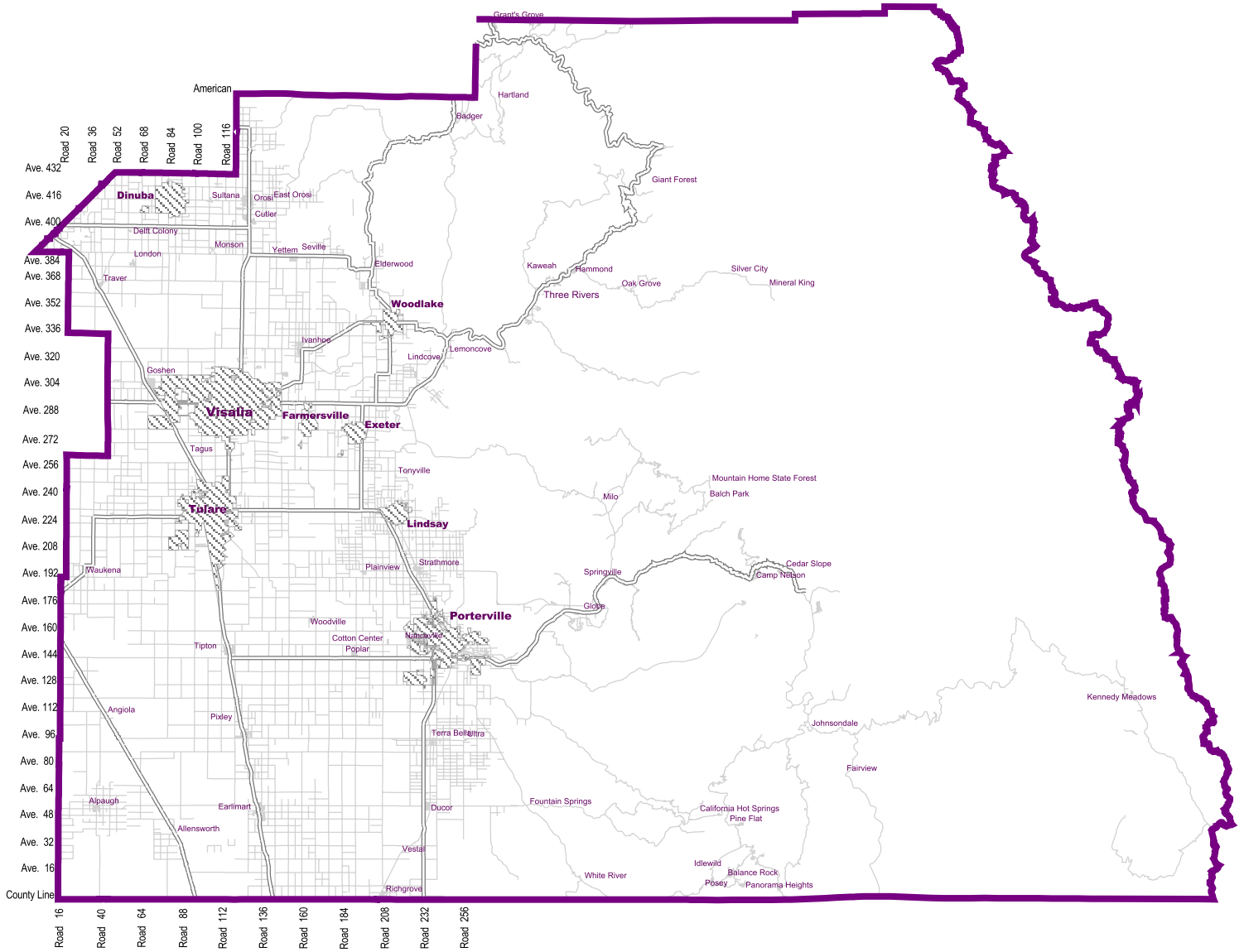
- There continues to be confusion over which entities would qualify as an “Established Agricultural Research Institution” due to a lack of State regulations. This vague term causes concern that people will use/abuse this perceived loophole to begin cultivating industrial hemp without complying with forthcoming regulations on commercial industrial hemp. Clarification of this definition will be essential in the near future.
- California has not yet submitted, and the United States Department of Agriculture (USDA) is not yet ready to approve plans submitted by States that wish to be the primary regulatory authority for Industrial Hemp in their respective States. As such, it is unclear how interstate commerce issues might impact industrial hemp cultivation until such plans are fully implemented. .
- At this time, County departments anticipate potentially needing regulations that provide acreage limits for industrial hemp, as well as the need to develop appropriate setback requirements to provide safe buffers between adjacent crops, residences, schools, rural residential areas, city limits and daycare facilities. However, additional research will be necessary to and formulate specific and appropriate zoning and land use regulations.
- Need for a methodology and/or equipment that would detect or prevent illegal cannabis from being interplanted, or hidden, in an Industrial Hemp field.
- Additional studies regarding pest control alternatives for Industrial Hemp farmers, since those farmers may have few resources to address potential insect and disease pests, which could lead to crop loss for the grower or his/her neighbor.
- Additional time to consult with those in the Industrial Hemp industry for input regarding appropriate local regulations and ordinances for Tulare County.
- Development of Tulare County policies that work cooperatively with other County and State agencies and assists them with their needs as they interact with those cultivating Industrial Hemp.
- Adequate time for Agricultural Commissioner staff to develop registration, inspection, and testing procedures to comply with yet unknown regulations.
- Time to work with the County Chief Administrative Officer and Human Resource Director to develop and approve new positions to accommodate the increased workload and expertise requirements necessitated by new policies and procedures.
- Development of a fee structure to cover Department expenses not covered by the proposed registration fee.


More time is required to vet these and other concerns and to develop a meaningful ordinance that allows honest cultivation of Industrial Hemp while protecting the rights of other growers and the general public.

Respectfully submitted,



Tom Tucker  
Agricultural Commissioner  
Sealer of Weights and Measures



 *Incorporated Cities*  
(Excluded from Part 94)



**ORDINANCE NO. 3555**  
**AMENDING PART 94**  
**Tulare County, California**  
**OFFICIAL ZONING MAP**  
**COUNTY OF TULARE, CA.**

**TULARE COUNTY BOARD OF SUPERVISORS ADOPTED**  
**3/26/2019**

(349-16)  
**NOTICE OF PUBLIC HEARING REGARDING AN EXTENSION OF INTERIM ORDINANCE NO. 3555 PROHIBITING ALL INDUSTRIAL HEMP CULTIVATION IN THE UNINCORPORATED AREAS OF THE COUNTY FOR AN ADDITIONAL PERIOD OF 22 MONTHS AND 15 DAYS.**

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you need special assistance to participate in meetings call (559) 636-5000. If you have questions regarding this matter, please contact COUNTY OF TULARE AGRICULTURAL COMMISSIONER (559) 684-3350  
Jason T. Britt,  
County Administrative Officer/Clerk, Board of Supervisors

*Sun-Gaz 4/17/19*

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(350-16)  
ORDINANCE NO. \_\_\_\_\_  
PURSUANT  
TO GOVERNMENT  
CODE SECTION  
25124(B)(1), THE  
FOLLOWING IS  
A SUMMARY OF  
ORDINANCE NO. \_\_\_\_\_,  
AN URGENCY,  
INTERIM ORDINANCE  
EXTENDING ORDINANCE NO.  
3555, PROHIBITING  
ALL INDUSTRIAL  
HEMP CULTIVATION  
IN THE UNINCORPORATED  
AREAS OF THE COUNTY FOR  
AN ADDITIONAL 22  
MONTHS AND 15  
DAYS.

SUMMARY OF PROPOSED ORDINANCE

This interim ordinance is an urgency measure pursuant to Government Code sections 25123, 25131, and 65858 to protect the public health, safety and welfare of the residents of the County of Tulare from the threats posed by unregulated or inadequately regulated Industrial Hemp cultivation within the unincorporated area of the County of Tulare. For the purposes of this ordinance, the term "Industrial Hemp" shall have the same meaning as California Food and Agriculture Code section 81000 and Health and Safety Code section 11018.5. This urgency interim ordinance is an extension of Tulare County Uncodified Urgency Interim Ordinance No. 3555 which prohibited for a period of forty-five (45) days all Industrial Hemp cultivation within the unincorporated area of the County of Tulare. This urgency interim ordinance will extend Tulare County Ordinance No. 3555 by an additional twenty-two (22) months and fifteen (15) days. This interim ordinance further prohibits the County of Tulare from processing any applications or issuing any building permit, occupancy permit, license, or other land use entitlement for such prohibited activities for a period of twenty-two (22) months and fifteen (15) days, to allow the County an opportunity to evaluate the primary and secondary effects of Industrial Hemp cultivation which has been decriminalized by Food and Agriculture Code 81000 et seq and Section 5940 of Title 7 of the United States Code, and whether and to what extent the

County's General Plan, supplementary zoning map, zoning ordinance or other regulations should be modified to accommodate and/or address the impacts of Industrial Hemp cultivation on the County, to protect the health, safety, and welfare of its' residents and visitors. This interim ordinance does not affect the ability of any individuals to cultivate cannabis in accordance with state law and local ordinances. The ordinance herein summarized will be considered by the Board of Supervisors of the County of Tulare, State of California, on April 30, 2019, at a regular public meeting of said Board. This ordinance would take effect immediately upon adoption and will expire on May 15, 2021. At least five (5) days prior to April 30, 2019, a certified copy of the full text of the proposed ordinance shall be posted in the office of the Clerk of the Board of Supervisors and shall be available for public inspection at that location. Within fifteen (15) days of adoption, a certified copy of the full text of the ordinance shall be posted in the office of the Clerk of the Board of Supervisors and shall be available for public inspection at that location.

ATTEST: JASON T.

BRITT  
County Administrative  
Officer/ Clerk of the  
Board of Supervisors of  
Tulare County  
By Deputy Clerk

*Sun-Gaz 4/17/19*

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