We May Disagree, but We Will Be Respectful of One Another
All Comments Will Be Directed to the Issue at Hand, and Addressed to the City Council
Personal Attacks are Unacceptable

I. CALL TO ORDER / FLAG SALUTE / ROLL CALL

II. ORAL COMMENTS FROM THE PUBLIC
Members of the Public may be heard on any item on the Special Meeting Agenda. Speakers addressing the Council will be limited to 3 minutes per speaker. Be advised, by law the City Council cannot deliberate or take action on issues presented during Oral Comments that are not shown on the Agenda.

III. BUSINESS ITEM

A. Consider Adopting an Interim Urgency Ordinance Establishing a Temporary Moratorium on the Cultivation of Industrial Hemp within the City of Fortuna, Ordinance 2019-736

IV. ADJOURN
Pursuant to Government Code Section 54957.5, any non-confidential documents or writings that the City distributes, less than 72 hours before a regular meeting, to all or a majority of the legislative body's members must be made available to members of the public at the same time as the distribution. Documents and information related to the agenda topics are available for review at City Hall, 621 11th Street, between the hours of 8:00 AM to 4:00 PM. Members of the public are invited to come to the meeting and comment. In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the City Clerk at 725-7600. Notification prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting.

Siana L. Emmons
City Clerk
STAFF REPORT
City Council Business Agenda Item

DATE: June 7, 2019

TO: Honorable Mayor and Council Members

FROM: Ryan Plotz, City Attorney

THRU: Merritt Perry, City Manager

SUBJECT: Consider adoption of an Interim Urgency Ordinance Establishing A Temporary Moratorium On The Cultivation Of Industrial Hemp By “Established Agricultural Research Institutions” Or Others Within The City Of Fortuna.

STAFF RECOMMENDATION:
Staff recommends the City Council adopt the urgency ordinance attached hereto as Attachment 1, approving a temporary moratorium on the cultivation of industrial hemp within the City for a period of 45 days. The ordinance requires a 4/5th vote for adoption and would take effect immediately.

EXECUTIVE SUMMARY:
As more particularly set forth in Section 1 of the ordinance, recent changes in both federal and state law have significantly expanded the ability of persons to cultivate industrial hemp for a variety of uses, including the production of CBD oil and products. Despite the foregoing, the regulations implementing the new state and federal laws have not been adopted and, accordingly, the City has not had an opportunity to study the regulations.

The ordinance will establish a temporary moratorium on the cultivation of industrial hemp within the City. This action follows similar action by the Humboldt County Board of Supervisors for all unincorporated areas of the County. The County action was at the recommendation of the County Agricultural Commissioner, who will have primary approval authority and regulatory authority for cultivation when the moratorium is lifted.

It is staff’s understanding the County Agricultural Commissioner has or expects to receive applications for hemp cultivation within the City of Fortuna. The Agricultural Commissioner takes the position that, unless the local jurisdiction prohibits the cultivation of industrial hemp, he has a legal obligation to approve legally sufficient applications because the County’s moratorium applies only to the unincorporated areas.

The moratorium being in place until adequate regulations can be established is important because the regulations are in a state of flux, the City needs to have sufficient time to review those regulations and adopt its own policies, and the cultivation of hemp is indistinguishable from the cultivation of cannabis without expensive and sophisticated testing equipment.

Absent full and final regulations for the state industrial hemp program, Humboldt County and at least 25 other California counties (Amador, Calaveras, Glenn, Mariposa, Mendocino, Merced, Modoc, Mono, Nevada, Placer, Sacramento, San Bernardino, San Joaquin, Shasta, Sierra,
Siskiyou, Sonoma, Tehama, Trinity, Tulare, Tuolumne, Yolo and Yuba) placed some form of moratorium on hemp production until regulations are in place.

The moratorium will remain in place for 45 days, after which time it will automatically expire unless the City Council votes to extend the moratorium.

**FISCAL IMPACT:**
There is no fiscal impact.

**RECOMMENDED COUNCIL ACTION:**
1. Receive staff report and review questions with staff
2. Open public comment
3. Close public comment
4. Motion to adopt *Ordinance 2019-736*, an Interim Urgency Ordinance Establishing a Temporary Moratorium on The Cultivation of Industrial Hemp By “Established Agricultural Research Institutions” or Others within The City of Fortuna and read by title only. Roll call vote. (4/5th Vote Required)
ORDINANCE NO. 2019-736

AN INTERIM URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FORTUNA ESTABLISHING A TEMPORARY MORATORIUM ON THE CULTIVATION OF INDUSTRIAL HEMP BY "ESTABLISHED AGRICULTURAL RESEARCH INSTITUTIONS" OR OTHERS WITHIN THE CITY OF FORTUNA, WHICH SHALL TAKE IMMEDIATE EFFECT

The City Council of the City of Fortuna does ordain as follows:

SECTION 1. Findings and Declarations.

The City Council makes the following findings in support of the enactment of this interim urgency ordinance establishing a moratorium on the cultivation of industrial hemp within the City:

A. Pursuant to Section 7 of Article XI of the California Constitution, the City may make 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. Pursuant to Government Code section 65858, to protect the public safety, health, and welfare, the City may, as an urgency measure, adopt an interim ordinance prohibiting land uses that may be in conflict with contemplated land use regulations that the City is studying or considering or intends to study within a reasonable time.

C. Pursuant to Government Code section 36937, the City Council may enact an urgency ordinance, which shall take immediate effect, if necessary for the immediate preservation of the public peace, health or safety, and containing a declaration of the facts constituting the urgency, and is passed by a four-fifths vote of the City Council.

D. The state and federal law governing the definition and cultivation of industrial hemp is complex, evolving, and yet incomplete and uncertain, causing multiple issues which may adversely affect the public peace, health, or safety of residents of or visitors to the City, as outlined below.

E. In 2013, the California Legislature adopted the California Industrial Hemp Farming Act, (SB 566 (Leno), Food and Agricultural Code (hereafter "FAC") sections 81000-81011, addressing the cultivation of industrial hemp, but it did not become effective until the Attorney General could certify that cultivation was authorized by federal law. As originally adopted, FAC § 81006 provided that industrial hemp shall be grown only as a densely planted fiber or oilseed crop, or both, in acreages of not less than five acres at the same time, and no portion of an acreage of industrial hemp shall include plots of less than one contiguous acre. Pruning, tending, and culling of individual plants was prohibited, as was possession outside of a field of lawful cultivation of resin, flowering tops, or leaves that were removed from the hemp
plant, even though only non-psychoactive varieties of Cannabis sativa L. were permitted to be cultivated as industrial hemp. SB 566 also amended the definition of "marijuana" (now referred to as "cannabis") in Health and Safety Code § 11018 to exclude industrial hemp, and established the definition of industrial hemp in § 11018.5. This definition and the prescribed cultural practice restrictions effectively prohibited cultivation of Cannabis sativa L. as feminized plants for higher levels of cannabidiol (CBD) for purposes of CBD extract or CBD oil production from the leaves or flowering tops.

F. The 2014 Farm Bill, P.L. 113-79, § 7606, 7 U.S.C.A § 5940, authorized an institution of higher education (as defined in section 101 of the Higher Education Act of 1965 (20 U.S.C. § 1001)) or a State department of agriculture to grow or cultivate industrial hemp if: (1) 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 where the research occurs.

G. Proposition 64, the Adult Use of Marijuana Act (AUMA), passed by the voters in November 2016, included provisions affecting the regulation of industrial hemp. Section 3 included among AUMA's purposes subsections (f) that products be "comprehensively tested by independent testing services for the presence of contaminants, including mold and pesticides, before it can be sold," (h) "licensed nonmedical marijuana businesses to follow strict environmental and product safety standards as a condition of maintaining their license," and (aa) to allow industrial hemp to be grown as an agricultural product, and for agricultural or academic research, and regulated separately from the strains of cannabis with higher delta-9 tetrahydrocannabinol (THC) concentrations. Section 9 amended the definition of industrial hemp in Health and Safety Code § 11018.5, and amended provisions of the Industrial Hemp Farming Act but left in place requirements for its dense planting as a fiber or oilseed crop, and restrictions on pruning, tending, or culling. Section 9.6 of AUMA amended the effective date of the Industrial Hemp Farming Act to January 1, 2017, without regard to federal law. AUMA also added a definition of "marijuana products" as Health and Safety Code § 11018.1, which "means marijuana that has undergone a process whereby the plant material has been transformed into a concentrate, including, but not limited to, concentrated cannabis, or an edible or topical product containing marijuana or concentrated cannabis and other ingredients." One promise of AUMA was that cannabis derived products for human consumption by ingestion or topical application would be produced while adhering to product safety and environmental standards, and be tested for contaminants. Industrial hemp regulation was still inconsistent with its cultivation for production of cannabidiol (CBD).

H. In 2017, SB 94, the Medicinal and Adult Use Cannabis-Regulation and Safety Act (MAUCRSA), was enacted to integrate cannabis regulation provisions of AUMA with the Medical Cannabis Regulation and Safety Act originally adopted by the Legislature in 2015. MAUCRSA also amended the provision related to the regulation of industrial hemp in Health
and Safety Code § 11018.5 (b), which left regulation of cannabis products for human consumption with applicable production quality standards and product testing in place.

I. In September 2018, SB 1409 was enacted, in which the definition of industrial hemp in Health and Safety Code § 11018.5 (a) was yet again amended, deleting the reference to its being a crop for fiber or oilseed production. The Industrial Hemp Farming Act was also amended to its current form, including amendment of § 81006 to remove requirement for dense planting and restrictions against pruning, tending, or culling. SB 1409 includes the finding, "By removing limitations on the manner in which industrial hemp may be grown and the uses for which it may be grown, this act removes barriers to the growth of industrial hemp as an agricultural product, and for agricultural or academic research," however the bill does not address the product safety or testing requirements of other laws regarding cannabis products. In § 81007, the California Department of Food and Agriculture was authorized to establish by regulation an agricultural pilot program pursuant to Section 7606 of the federal Agricultural Act of 2014, 7 U.S.C.A. § 5940. The Department has not yet adopted regulations to participate in, or promote, research projects recognized by federal law.

J. In December 2018, the President signed into law the 2018 Federal Farm Bill, H.R. 2, P.L. 115-334, which removed industrial hemp from the federal list of controlled substances and authorizes the U.S. Department of Agriculture to create quality control standards for commercial hemp production, further giving states that desire to have primary regulatory authority over the production of hemp the ability to adopt their own state plans. The state plan may include a reference to a law of the state regulating the production of hemp, to the extent consist with federal law.

K. FAG 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.

L. The California Department of Food and Agriculture has to date only adopted a regulation for the registration fee for growers of industrial hemp for commercial purposes and seed breeders in California, 3 C.C.R. § 4900, effective 4/25/2019.

M. Under FAC section 81006, subdivisions (d)(3) and (5), the CDFA is required to establish regulations for sampling procedures and approved laboratories for sample testing of all commercial industrial hemp crops no more than 30 days before harvest, which regulations have yet to be promulgated, published or adopted. Therefore, the cultivation of industrial hemp for commercial purposes as defined under FAC Division 24 is not yet authorized within the State of California until the requisite regulations, and enforcement mechanisms, are adopted. Given the
requirements of the California Administrative Procedure Act, Government Code § 11340, et seq., it is highly unlikely that regulations will be adopted in time for the 2019 crop year.

N. 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. However, before cultivating industrial hemp, an established agricultural research institution shall provide the Global Positioning System coordinates of the planned cultivation site to the Agricultural Commissioner of the county in which the site is located.

O. Public comment advocating for the unregulated cultivation of industrial hemp was predominantly on the basis of making medicinal CBD available at a cheaper cost. Production of CBD for medicinal purposes is permissible and regulated under the CCLUO and the Medicinal and Adult Use Regulation and Safety Act (MAUCRSA), Business and Professions Code section 26000, et seq., which requires testing of product for purity (free of pesticides, mold, heavy metals, contaminants, etc.), potency, and cannabinoid content, whereas CBD oil production under the Industrial Hemp Farming Law, Food and Agriculture Code section 81000 - 81011, includes no such safeguards to protect the health of consumers within the California regulated cannabis marketplace.

P. Due to the fact that industrial hemp and cannabis are derivatives of the same plant, Cannabis sativa L., the appearance and odor of industrial hemp and cannabis are indistinguishable, particularly when hemp is cultivated with feminized flowering plants for high levels of cannabidiol (CBD) for purposes of CBD extract or oil production.

Q. Absent a laboratory performed chemical analysis for tetrahydrocannabinol (THC) content, or specialized chemical field analysis equipment currently costing approximately $13,500 per unit, the two plants cannot be distinguished.

R. In order for the local law enforcement personnel to verify that harvested product in transit is permissible industrial hemp and not cannabis intended for sale in the illicit market, field analyzer kits must be available.

S. Division 24 of the FAC, allows an "Established Agricultural Research Institution" to cultivate or possess industrial hemp with a greater than .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.

T. The definition of "Established Agricultural Research Institution" as provided in FAC Section 81000 is vague. Without clear guidelines, the ability and likelihood that cultivators will exploit the "Establish Agricultural Research Institution" exemption to grow industrial hemp with more than .3% THC is great.
U. Due to the fact that industrial hemp and cannabis are indistinguishable, the cultivation of industrial hemp by an "Established Agricultural Research Institution", or others, prior to the adoption of reasonable regulations poses similar threats to the public health, safety or welfare as the cultivation of cannabis.

V. 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.

W. The cultivation of industrial hemp prior to the adoption of reasonable regulations is harmful to the welfare of residents, creates a nuisance, and threatens the safety and crops of any nearby farmers.

X. There is an urgent need for the Agricultural Commissioner, who will have primary approval authority to permit the cultivation of industrial hemp within the City, and the City to assess the impacts of industrial hemp grown by "Established Agricultural Research Institutions", and others, and to explore reasonable regulatory options relating thereto.

Y. The Humboldt County Board of Supervisors, on the recommendation of the County Agricultural Commissioner, adopted a similar urgency interim ordinance establishing a moratorium on the cultivation of industrial hemp within the unincorporated areas of the County. The moratorium does not apply within the incorporated areas of the County, and the Agricultural Commissioner takes the position that he is legally obligated to review and approve legally sufficient registration applications to cultivate industrial hemp within incorporated areas.

Z. The allowance of cultivation of industrial hemp as defined by FAC Section 81000, prior to the adoption of reasonable regulations or the opportunity for the City to consider those regulations and adopt its own, creates an urgent and immediate threat to the public health, safety or welfare of the citizens and existing agriculture in the City.

AA. CEOA. The City Council hereby finds that this ordinance to temporarily prohibit Industrial Hemp cultivation in all zones is not subject to review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines, 14 California Code of Regulations, sections 15060, subdivision (c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15061, subdivision (b)(3) (there is no possibility the activity in question may have a significant effect on the environment). In addition to the foregoing general exemptions, the Council further finds that the ordinance is categorically exempt from review under CEQA under the Class 8 Categorical Exemption, 14 C.C.R. § 15308 (regulatory activity to assure protection of the environment).
SECTION 2. Declaration of Urgency.

A. Based on the findings set forth above, the Council 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 Municipal Code regulating cultivation of Industrial Hemp in the City.

B. Based on the findings above, the Council determines that this interim urgency ordinance is urgently needed for the immediate preservation of the public peace, health, safety, and welfare pursuant to the Government Code sections 36937 and 65858, and is necessary to provide additional time to prepare the studies and reports required to consider a comprehensive ordinance and/or general plan amendment addressing regulation of Industrial Hemp cultivation in the City.

SECTION 3. Moratorium.

In order to protect the public health, safety and welfare and pursuant to the provisions of Government Code sections 36937 and 65858, during the term of this ordinance, including any extensions hereto, a moratorium is hereby placed on the following:

A. Cultivation of Industrial Hemp by any person or entity for any purposes, which is expressly prohibited in all zoning districts in the City. Additionally, during this interim ordinance, including any extension 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.

B. Acceptance of any application for or issuance of a registration, permit or entitlement, or approval of any type, that authorizes the establishment, operation, maintenance, development or construction of any facility or use for the purpose of the cultivation of industrial hemp in the City.

C. The Clerk is directed to send a certified copy of this Ordinance to the Humboldt County Agricultural Commissioner.

SECTION 4. Effective Date.

Pursuant to Government Code sections 36937 and 65858, this urgency ordinance shall become effective immediately upon adoption.

SECTION 5. Enforceability.

Violations of this ordinance shall constitute a public nuisance and may be enforced and abated through any available remedy provided by the Fortuna Municipal Code or other law.

This moratorium shall be of no further force or effect upon the expiration of forty-five (45) days from the date of adoption, unless extended in accordance with Government Code Section 65858.

SECTION 7. Severability.

If any section, subsection, sentence, clause, phrase, or portion of this ordinance or the application thereof to any person or circumstance is held to be invalid or unenforceable by a court of competent jurisdiction, such invalidity shall not affect the remaining portions or other applications of the ordinance, and the provisions of this ordinance are declared to be severable.

PASSED, APPROVED AND ADOPTED this 7th day of June, 2019 on the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

__________________________
Sue Long, Mayor

Attest:

By:_______________________

Siana Emmons, City Clerk