

To: Board of Supervisors of the County of Sonoma
Department or Agency Name(s): Agriculture/Weights & Measures
Staff Name and Phone Number: Sue Ostrom 565-2371, Sita Kuteira 565-2421
Vote Requirement: 4/5th
Supervisory District(s): All

Title:

Industrial Hemp Ordinance

Recommended Actions:

- A) Adopt an Urgency Ordinance and make specific findings to impose a moratorium on the cultivation of industrial hemp in the unincorporated areas of Sonoma County.
- B) Adopt a Resolution introducing, reading the title of, and waiving further reading of a proposed Ordinance adding Chapter 37 to the Sonoma County Code and adopting and imposing a moratorium on the cultivation of industrial hemp in the unincorporated areas of Sonoma County.

(4/5th Vote Required)

Executive Summary:

Recent changes in federal and state laws regarding industrial hemp will soon allow the growing of industrial hemp in California. The State is currently promulgating regulations to regulate certain elements of industrial hemp cultivation, however they are not yet finalized. Cultivation of industrial hemp poses several challenges at the local level including concerns over public safety, enforcement and compatibility with the emerging legal cannabis industry. An ordinance prohibiting the growing of industrial hemp will allow time for the State to finalize regulations and for staff to better understand what local controls may be needed to ensure the cultivation of industrial hemp is compatible in Sonoma County.

Discussion:

Industrial hemp is 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 flowering tops; whether growing or not; the seeds of the plant; the resin extracted from any part of the plant; and every compound, salt, derivative, mixture, or preparation of the plant, its seeds or resin produced therefrom (Health and Safety Code section 11018.5).

Change in Federal Law

Prior to 2014, industrial hemp food and fiber could be imported into the United States, but industrial hemp could not legally be grown domestically. The Agricultural Improvement Act of 2014 (2014 Farm Bill) allowed legal cultivation of industrial hemp by institutions of higher education or state departments of agriculture in states that legalized hemp cultivation, allowing states to regulate and conduct research pilot programs.

The Agricultural Improvement Act of 2018 (2018 Farm Bill) carried forward the provisions for research and also legalized commercial hemp production. In doing so, the bill redefined

“marijuana” to exclude industrial hemp, which means that industrial hemp (grown in accordance with federal law) and its derivatives are no longer considered controlled substances (much less Schedule 1 drugs) under the Controlled Substances Act. The 2018 Farm Bill defines hemp as an agricultural commodity and allows states to create their own regulatory programs subject to approval by the U.S. Department of Agriculture (USDA). The USDA has not yet begun developing regulations that would govern approval of state regulatory plans.

State Law

In California, industrial hemp cultivation is governed by Division 24 of the Food & Ag. Code (Section 81000 et seq.), which was originally adopted in 2013 pursuant to SB 566 that allowed for the cultivation of industrial hemp for research and commercial purposes. The law included a provision, however, that it would not become operative until authorized by federal law. With the enactment of the 2014 Farm Bill, the provisions consistent with the federal research exemptions became operative. In 2016, the voters passed Proposition 64, the Adult Use of Marijuana Act (AUMA), which entirely removed the provision that made operation of state law contingent on federal legalization. Currently, however, industrial hemp may only be cultivated in California by established agricultural research institutions pending finalization of the commercial registration process by which growers would register with the county Agricultural Commissioner.

SB 1409 was signed into law by Governor Brown on September 30, 2018. The new State law changes the manner in which industrial hemp may be grown and tended. This change expands the intended use for the end product of industrial hemp beyond seed production and fiber, namely allowing production for cannabidiol (CBD) extraction. Included in these changes is an allowance for the plants to be planted and tended in the same manner as cannabis for medical and recreational purposes. While industrial hemp is distinct from cannabis in that it is not allowed to have levels of THC that cause psychoactive effects, the new State law now allows for industrial hemp plots that are indistinguishable from cannabis.

The State is currently developing regulations governing the cultivation of industrial hemp. The regulations establishing registration fees are currently under review at the Office of Administrative Law and are expected to be enacted and immediately go into effect as early as April 4, 2019. It is anticipated that that the State may open registration once these regulations are adopted, while the balance of the regulations that address sampling, testing, and seed cultivars are still under development. Once the registration process is approved and in effect the Agricultural Commissioner will be obligated to register hemp growers allowing hemp cultivation to commence in Sonoma County.

Local Concerns

With recent federal legalization and state laws in flux, local issues are currently unstudied and unaddressed. First, the similarities in the physical appearance of and odor from industrial hemp and cannabis is problematic. These two types of plants cannot be reliably distinguished without testing for THC content just prior to harvest. This may present unique challenges for law enforcement and code enforcement in trying to distinguish between the two types of plants and in assessing which laws, regulations, and codes to apply in any specific situation.

Further, the unregulated cultivation of industrial hemp may be incompatible with the nearby cultivation of cannabis. If industrial hemp is being grown for seed there is the potential for unintended pollination of cannabis plants (which are selected to be all female), potentially causing the crop to be unsalable. This poses a risk to the current legal cannabis industry in Sonoma County.

The Department of Agriculture/Weights & Measures has received interest from farmers in the growing of industrial hemp as well as concerns over the potential impacts of the crop to legal cannabis farms in Sonoma County.

Other Counties

Currently 15 counties have enacted moratoriums for the cultivation of industrial hemp including Mendocino County. Additionally, five other counties are in the process of considering moratoriums including Lake County.

Stakeholder Engagement

Since passage of SB 1409 the Commissioner has had discussions with Sonoma County Farm Bureau, Community Alliance with Family Farmers and representatives of the Sonoma County Growers Alliance regarding the pending state regulations. The scope of outreach has been limited by the rapid roll out of the hemp registration regulation at the state level.

Recommended Ordinances

To prevent the cultivation of industrial hemp prior to understanding what local controls may be needed to ensure industrial hemp cultivation is compatible in Sonoma County, staff recommends the Board adopt an ordinance prohibiting the cultivation of industrial hemp.

Additionally, to prevent cultivation of industrial hemp from commencing prior to the regular ordinance being in effect, staff recommends the Board adopt an Urgency Ordinance prohibiting the cultivation of industrial hemp.

Prior Board Actions:

None

FISCAL SUMMARY

Expenditures	FY 18-19 Adopted	FY19-20 Projected	FY 20-21 Projected
Budgeted Expenses			
Additional Appropriation Requested			
Total Expenditures	N/A		
Funding Sources			
General Fund/WA GF			
State/Federal			
Fees/Other			
Use of Fund Balance			
Contingencies			
Total Sources	N/A		

Narrative Explanation of Fiscal Impacts:

None

Staffing Impacts:			
Position Title (Payroll Classification)	Monthly Salary Range (A – I Step)	Additions (number)	Deletions (number)
N/A	N/A		

Narrative Explanation of Staffing Impacts (If Required):

None

Attachments:

Industrial Hemp Resolution

Industrial Hemp Urgency Ordinance

Permanent Industrial Hemp Ordinance

PowerPoint

Related Items “On File” with the Clerk of the Board:

N/A