



Legislation Text

File #: 2019-1775, **Version:** 1

To: Board of Supervisors

Department or Agency Name(s): Department of Agriculture/Weights & Measures

Staff Name and Phone Number: Sue Ostrom 565-2371

Vote Requirement: 4/5th

Supervisorial District(s): Countywide

Title:

10:00 A.M. - Industrial Hemp Ordinance

Recommended Action:

- A) Conduct a public hearing and adopt a Resolution introducing, reading the title of, and waiving future reading of a proposed Ordinance amending Chapter 1 (General Provisions), Chapter 26 (Zoning Code), and Chapter 37 (Industrial Hemp Ordinance) of the Sonoma County Code to regulate industrial hemp cultivation and make other minor amendments.
- B) Adopt a Resolution to set fees to recover the reasonable cost of providing services related to industrial hemp registrations.
- C) Adopt a resolution authorizing a budgetary adjustment programming of \$41,262 of General Fund contingencies to finance County Counsel costs related to the development of the Industrial Hemp ordinance and related activities. (4/5th Vote Required)

Executive Summary:

On April 2, 2019, the Board of Supervisors established a moratorium on industrial hemp cultivation in Sonoma County and directed the Department of Agriculture/Weights & Measures (Department) to develop local regulations for the cultivation of industrial hemp. The moratorium will sunset on April 30, 2020. The Department has developed a proposed ordinance that encompasses zoning restrictions on industrial hemp, enforcement provisions to prevent illegal cannabis cultivation and measures to ensure crop compatibility by managing pollen dispersal. In addition, the Department is recommending clarifying changes to Chapter 26 of the Sonoma County Code related to industrial hemp cultivation, processing and extraction. On November 21, 2019, the Agricultural Commissioner presented the proposed zoning code amendments to the Sonoma County Planning Commission that included recommendations for zoning restrictions on the cultivation of industrial hemp and clarifying changes to the zoning code related to post-harvest handling activities and processing. The Planning Commission voted to recommend approval all of the Agricultural Commissioner's recommended amendments to Chapter 26 of the Sonoma County Code as set forth in this report.

Discussion: 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 industrial 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 not considered controlled substances under the Controlled Substances Act. The 2018 Farm Bill defines industrial 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).

On October 31, 2019, the federal government released the interim federal rule detailing the requirements for state regulatory plans to meet federal requirements.

State Law

In California, industrial hemp cultivation is governed by Division 24 of the Food and Ag Code (Section 81000 et seq.), which was originally adopted in 2013 pursuant to SB 566 which 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. 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, thus legalizing industrial hemp and activating the provisions of SB 566 and Division 24 of the Food and Ag Code.

SB 1409 was signed into law by Governor Brown on September 30, 2018. This 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. Since industrial hemp cultivation will be visually indistinguishable from cannabis, State regulations will require that industrial hemp plantings be identified by clear signage to allow them to be readily identified.

The State has finalized regulations pertaining to registration of hemp producers by county agricultural commissioners and has put emergency regulations in place for sampling and testing of industrial hemp for THC. They are currently developing their full regulatory package.

Recently, the State adopted legislation to clarify the requirements for the cultivation of industrial hemp by research institutions and to start to align the State industrial hemp program with the Federal requirements (SB 153). This identifies parameters for state program development, requires Established Agricultural Research Institutions cultivating industrial hemp to register with the county Agricultural Commissioner, and includes eligibility requirements for registrants and associated enforcement responses.

Sonoma County Law

On April 2, 2019, the Sonoma County Board of Supervisors adopted an ordinance enacting a moratorium on the cultivation of industrial hemp due to the fact that State regulations were still under development, and to address the compatibility of industrial hemp with legal cannabis crops and other industrial hemp farms. Another goal of the ordinance was to determine where it may be appropriate to restrict hemp cultivation in the County. The moratorium will sunset on April 30, 2020.

When the Board of Supervisors adopted the moratorium, they directed the Department to further study the issues associated with regulating industrial hemp and return with an ordinance prior to the expiration of the moratorium. To inform this process, the Department formed an informal advisory group which included hemp farmers, prospective hemp farmers, processors, distributors, environmental community members, local academic researchers, the University of California Cooperative Extension, neighborhood members, Permit Sonoma, and the Farm Bureau. Outreach to the Community Alliance of Family Farmers (CAFF), Farmer's Guild, and local environmental groups was also conducted by the Department.

Additionally, the Agricultural Commissioner visited hemp farms in Southern Oregon to learn about how hemp is planted, harvested, processed, marketed, and what challenges the industry in Oregon has faced with the advent of industrial hemp farming. The Department has been participating in weekly conference calls with the California Department of Food and Agriculture and agricultural commissioners throughout the state to discuss the experiences, challenges, and issues arising in counties that currently allow industrial hemp cultivation.

Based on the information and feedback gathered, the Agricultural Commissioner's approach to local regulation is to treat industrial hemp like any other legal crop to the greatest extent possible and to promote agricultural opportunity and diversification while addressing three specific areas of concern:

1. Compatibility in residential zoning districts and environmental protections in resource zoning designations
2. Pollen management/crop compatibility
3. Enforcement/fraud mitigation

Industrial hemp is an agricultural crop. As such, in Sonoma County, its cultivation and production are allowed uses in most zoning districts and it is otherwise only subject to existing regulations applicable to other agricultural crops. The proposed ordinance would go into effect upon the expiration of this moratorium to ensure concerns unique to industrial hemp are properly regulated. Given the crop's similarity to cannabis and unique incompatibility issues, the proposed regulation would put limits on the zoning districts in which industrial hemp could be cultivated and establish a local registration program to enforce against fraud, prevent pollen contamination of industrial hemp and cannabis farms, and appropriately restrict industrial hemp cultivation in certain zoning districts.

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). Cannabis and industrial hemp are the same plant. Industrial hemp is simply strains of cannabis that have been bred to have low THC content. Industrial hemp is indistinguishable from cannabis in the field, and can only be distinguished through laboratory analysis for THC content.

There are currently 32 counties allowing industrial hemp cultivation in California with over 35,320 acres registered for the 2019 growing season. The agricultural community in Sonoma County has expressed an interest in the cultivation of industrial hemp in the unincorporated areas of Sonoma County. Both the federal and state governments recognize and define industrial hemp as legal agricultural crop. As such, industrial hemp represents a viable economic opportunity to diversify agriculture in Sonoma County. The primary

interest is in the production of industrial hemp for cannabidiol (CBD).

The Department has developed a set of “Recommended Best Management Practices” (BMPs) that will be provided to each registrant. These recommended BMPs apply to all cultivation and include recommended setbacks from occupied structures and certain crops that apply in zoning districts where there are not mandatory setbacks. Although these BMPs are not mandatory, there is a provision in the ordinance that provides for mandatory BMPs when tied to a codified standard.

In an effort to get the proposed ordinance out well before taking it to the Board of Supervisors the full draft ordinance was submitted on November 14, 2019 as part of the staff report and information packet that was made available to the public as part of the publicly noticed Planning Commission meeting on November 21, 2019. The complete packet that included the draft ordinance and staff report has remained posted and available to the public since November 14, 2019 on the Department’s website as well as being posted as a link on Permit Sonoma’s website. That Planning Commission meeting on November 21, 2019 was publicly noticed in the Press Democrat. The Press Democrat also ran a front page article about the Planning Commission meeting on November 21, 2019, detailing the proposal and the Planning Commissions support of the recommendations. The Department responded to several media requests, and utilized various other methods of public outreach, providing information about the process and the proposal as it was developed, including a radio interview on KSRO discussing the approach to regulating hemp. Besides the media coverage, the Commissioner made many presentations about the proposal to regulate hemp to interested groups including Community Alliance with Family Farms (CAFF), Sonoma County Farm Bureau, North Coast Regional Water Quality Control Board, Sonoma County Water Coalition, and many others. A public workshop sponsored by University of California Cooperative Extension (UCCE) was put on at Shone Farm to discuss the proposed regulations for hemp in Sonoma County. Notice of this workshop was sent to representatives of neighborhood groups that oppose cannabis, encouraging them to attend. The proposal to regulate hemp in Sonoma County was featured as part of the Annual Grower Workshop on December 5, 2019 which was attended by over 300 people. Throughout the process of developing the ordinance, the Commissioner and staff have responded to numerous emails and phone calls from neighborhood groups, interested farmers, environmental group representatives, and others, answering their questions and sharing information on the proposed ordinance as it was developed.

ZONING ISSUES

Industrial Hemp Land Use Compatibility by Zoning District

As an agricultural crop, industrial hemp cultivation is currently allowed by right anywhere in the county where agriculture is allowed (Chapter 37 currently adds a temporary prohibition). Industrial hemp has a physical trait, specifically odor, which causes concern for the compatibility with residential neighborhoods. Therefore, we must determine where it may be appropriate to restrict hemp cultivation to address this issue.

Rural Residential (RR) Zoning District

Purpose: Rural Residential (RR) zoning district’s stated purpose is to preserve the rural character and amenities of those lands best utilized for low-density residential development. Rural residential uses are

intended to take precedence over permitted agricultural uses. Based on this description, the following policy options were considered:

RR Zoning District Policy Options

1. Prohibit industrial hemp cultivation in RR: This option limits legal agriculture in a zoning district where agriculture is allowed but recognizes the primary use of this land as residential with regard to impacts of industrial hemp odor.

2. Require discretionary permit for industrial hemp cultivation: This would set a precedent as the cultivation of other legal agricultural crops does not require a discretionary permit. Given the time and expense of a discretionary permit, it would be difficult for farmers to take advantage of existing market opportunities. The benefit of requiring a discretionary permit is that it would allow for a site-specific review to ensure all impacts and concerns are addressed. This also provides the authority to condition the project as needed and offers public participation in the permitting process.

3. Allow cultivation with local registration with recommended Best Management Practices (BMPs): This approach avoids the need for a permit while providing a vehicle for the local regulation of industrial hemp. By utilizing recommended BMPs, the Department is encouraging good practices without creating additional regulatory burdens on farmers. Since this is an annual crop, BMPs could be codified after the first year if problems arise. The registration process does not however allow the project to be conditioned to address site-specific concerns and does not allow for public participation.

4. Allow cultivation with local registration with recommended BMPs and mandatory setbacks: Same as above with added authority to enforce setbacks on all cultivation in agricultural zones. Provides more regulatory authority but reduces flexibility and reduces the number of properties eligible to cultivate industrial hemp.

5. Allow cultivation with no restriction: This option is the least burdensome on the cultivator but does not give the county a vehicle to apply local regulations or address residential concerns.

Staff recommendation: Policy Option #1 - Prohibit industrial hemp cultivation in RR.

Agriculture and Residential (AR) Zoning District

Purpose: Agriculture and Residential (AR) zoning district's stated purpose is to provide lands for raising crops and farm animals in areas designated primarily for rural residential use pursuant to Objective LU-6.5 and Policy LU-6d of the General Plan. Although this zoning district allows and encourages agriculture, the primary use remains residential.

Objective LU-6.5: Create two Rural Residential zoning districts which provide different levels of permitted crop and animal production in the Rural Residential land use category.

Policy LU-6d: Provide for different levels of crop and animal production in the Rural Residential land use category by creating an "Agriculture and Residential" and a "Rural Residential" zoning district, one which

permits unlimited animal and crop production on parcels two or more acres in size, and one which limits agricultural activities regardless of parcel size. Allow expanded agricultural uses in the “Agricultural and Residential” zoning district limited to agricultural processing, sales of products grown on site, product promotion, tours, educational visits, and small scale events. Where appropriate, simplify permit processing for these uses. In neither zoning district will the agricultural activities be considered the primary use of the land; nor will all of the policies of the Agricultural Resources Element apply.

Odor mitigation/setbacks

When considering zoning issues related to industrial hemp, there may be a tendency to refer to existing cannabis cultivation regulations and setbacks as guidance (see *Existing Setbacks for Cannabis* below). In contrast to these setbacks, there are only a couple of instances in the county code or general plan where there are required setbacks from agriculture (see *Existing Agricultural Setbacks/Restrictions* below).

While it is true that cannabis and industrial hemp are both the same species of plant, there are differences which affect the selection of appropriate setbacks. Setbacks in state and local regulations for cannabis were established to address multiple concerns such as odor, public safety, and sensitivities around the normalization of a controlled substance. Unlike cannabis, industrial hemp farmers have access to banking, so there are not large sums of cash associated with cultivation sites. Also, industrial hemp is not a controlled substance and not psychoactive, so it does not have immediate street value. Additionally, all industrial hemp farms are required by the State law to post signs indicating that the crop is industrial hemp, further mitigating any potential for crime.

The primary compatibility issue common to both cannabis and industrial hemp is odor. It is important to note that while it is accepted that distance generally reduces odor, there is little scientific data on how much odor is reduced by specific separation distances and what level of odor is acceptable. Determination of odor or severity of odor remains subjective and is dependent upon a multitude of factors, not the least of which is a large variability in individual sensitivity to cannabis odors. Other factors affecting odor include, but are not limited to, distance from crop, prevailing wind direction, temperature, humidity, topography, strain of cannabis, maturity of the crop, size of planting, etc.

Existing Setbacks for Cannabis (Sonoma County Code 26-88-254)

Type of Cultivation: Outdoor (10,000 square feet)

Zones: Ag Zones (LIA, LEA, DA)

Setbacks:

- 100 feet from property lines
- 300 feet from residence/business structures on surrounding properties
- 1,000 feet from K-12 schools, parks, childcare centers, drug/alcohol treatment facilities

Type of Cultivation: Indoor

Zones: Ag and Resource Zones (LIA, LEA, DA, RRD)

Setbacks:

- 600 feet from K-12 schools

Type of Cultivation: Mixed Light

Zones: All Zones

Setbacks:

- 100 feet from property lines
- 300 feet from residence/business structures on surrounding properties
- 1,000 feet from K-12 schools, parks, childcare centers, drug/alcohol treatment facilities

Existing Agricultural Setbacks/Restrictions

Applicable County Code or Policy: General Plan, Policy AR-4c

Setbacks/Restrictions: Protect agricultural operations by establishing a buffer between an agricultural land use and residential interface. Buffers shall generally be defined as a physical separation of 100 feet to 200 feet and/or may be a topographic feature, a substantial tree stand, water course or similar feature. In some circumstances a landscaped berm may provide the buffer. The buffer shall occur on the parcel for which a permit is sought and shall favor protection of the maximum amount of farmable land.

Existing Agricultural Setbacks/Restrictions (continued)

Applicable County Code or Policy: Zoning, Sec. 26-16-030, permitted residential density and development criteria.

Setbacks/Restrictions: Watering troughs, feed troughs, accessory buildings used for the housing or maintenance of farm animals, and accessory buildings and runs used for the housing or maintenance of kennel animals shall be located at least fifty feet (50') from the front property line, twenty feet (20') from any side or rear property line, and thirty feet (30') from any dwelling on the adjacent property.

Since cannabis cultivation has not been allowed in any residential zoning district in Sonoma County, the Department proposes a larger setback from residences and businesses in the AR zoning district than the 300 feet applied to cannabis in non-residential zoning districts (Table 1). The Department is recommending a 600 foot setback from occupied residences and businesses with a 200 foot setback from all property lines. 600 feet has been established by the State as the required setback for cannabis from sensitive uses including schools, daycare centers, and youth centers. An additional factor influencing the recommendation is the fact that cannabis is limited to one acre per parcel and there is no limit to the size of industrial hemp plantings. To maximize opportunities under the proposed restrictions the Department recommends allowing neighbors to waive or reduce the setbacks in writing.

The application of a 1,000 foot setback was considered in an effort to align with existing codified setbacks, (Table 1) however, it was determined that many of the considerations applied in that circumstance, such as potential for crime and sensitivity around drug treatment centers, were not applicable to industrial hemp.

AR Zoning District Policy Options

1. Prohibit industrial hemp cultivation in AR: This option limits legal agriculture in a zoning district where agriculture is allowed but recognizes the primary use of this land as residential with regard to impacts of hemp odor.

2. Require discretionary permit for industrial hemp cultivation: This would set a precedent as the cultivation of other legal agricultural crops does not require a discretionary permit. Given the time and expense of a discretionary permit, it would be difficult for farmers to take advantage of existing market opportunities. The benefit of requiring a discretionary permit is that it would allow for a site-specific review to ensure all impacts

and concerns are addressed. This also provides the authority to condition the project as needed and offers public participation in the permitting process.

3. Allow cultivation with local registration, recommended BMPs and mandatory setbacks: The proposed setbacks are 600 feet from occupied structures and 200 feet from all property lines. The setbacks may be waived by neighbors. This option allows for some level of industrial hemp cultivation in AR while addressing odor concerns with mandatory setbacks. This option does not allow for site-specific conditions or public participation.

4. Allow with no restriction: This option increases land eligible for industrial hemp cultivation but does not recognize the primary use of the zoning designation as residential with regard to impacts on residents or address residential concerns.

Staff recommendation: Policy Option #3 - Allow cultivation with local registration, recommended BMPs and mandatory setbacks.

Resources and Rural Development (RRD) Zoning District

Resources and Rural Development (RRD) zoning district's stated purpose is to provide protection of lands needed for timber production, geothermal production, aggregate resource production, lands needed for protection of watersheds, fish and wildlife habitat, biotic resources, and for agricultural production activities that are not subject to all of the policies contained in the agricultural resources element of the general plan. Agricultural production activities are specifically allowed in this zoning district and there is already a significant amount of agriculture located in this zoning district.

RRD Zoning District Policy Options

1. Prohibit industrial hemp cultivation in RRD: This option deprives farmers in Sonoma County the opportunity to grow this legal crop in an area zoned for agricultural production, and limits the diversity of agriculture in Sonoma County. Prohibition does however avoid the impacts of industrial hemp cultivation in a zoning district designated for watershed protection.

2. Require discretionary permit for industrial hemp cultivation: This would set a precedent as the cultivation of other legal agricultural crops does not require a discretionary permit. Given the time and expense of a discretionary permit, it would be difficult for farmers to take advantage of existing market opportunities. The benefit of requiring a discretionary permit is that it would allow for a site-specific review to ensure all impacts and concerns are addressed. This also provides the authority to condition the project as needed and offers public participation in the permitting process.

3. Allow cultivation with registration and recommended BMPs as well as a prohibition on tree removal and grading: This option allows for cultivation while addressing concerns over resource protection, but does not allow site-specific conditions or public participation.

4. Allow with no restriction: This option increases land eligible for hemp cultivation but does not recognize the stated purpose of watershed protections for this zoning designation.

Staff recommendation: Policy Option #3 - Allow cultivation with registration and recommended BMPs as well as a prohibition on tree removal and grading.

Agricultural (LIA, LEA, and DA) Zoning Districts

Since industrial hemp is a legal agricultural crop, it is afforded nuisance protection under the State Right to Farm Law and the local Sonoma County Right to Farm Ordinance. When landowners purchase property in or adjacent to agriculturally zoned land, they are required to sign a disclosure acknowledging their acceptance of the right to farm protections. Excerpts from the disclosure that is codified in the Sonoma County Right to Farm Ordinance (Sonoma County Code, Chapter 30, Article II) are below:

“The undersigned do hereby further acknowledge that if the subject property is located near an agricultural operation on agricultural land, residents or users of the subject property may at times be subject to inconvenience or discomfort arising from that operation, including, without limitation, noise, odors, fumes, dust, smoke, insects, operation of machinery during any time of day or night, storage and disposal of manure, and ground or aerial application of fertilizers, soil amendments, seeds, and pesticides.”

“The undersigned do hereby further acknowledge that the County of Sonoma has determined in the Sonoma County Right to Farm Ordinance that inconvenience or discomfort arising from a properly conducted agricultural operation on agricultural land will not be considered a nuisance for purposes of the Sonoma County Code or County regulations, and that residents or users of nearby property should be prepared to accept such inconvenience or discomfort as a normal and necessary aspect of living in a county with a strong rural character and an active agricultural sector.”

As a legal agricultural crop, the Department proposes that no restrictions be applied to industrial hemp cultivation within agricultural zoning designations (LIA, DA, and LEA) as the purpose of agricultural zoning designations is to protect lands suited for permanent agricultural use. Farmers in these zoning districts are afforded protection by the Sonoma County Right to Farm Ordinance when engaged in properly conducted agricultural operations. The Department has developed Best Management Practices for industrial hemp, which clarify general good farming practices for industrial hemp cultivation in Sonoma County.

Recommended Best Management Practices encourage industrial hemp growers to consider surrounding land uses and maintain minimum setbacks where practicable to reduce conflict and provide for compatibility with other cropping systems. The BMPs recommend that hemp cultivators maintain a minimum 200 foot setback from occupied residences and business, as well as from vineyard and orchard crops.

LIA, LEA, and DA Zoning Districts Policy Options

1. Prohibit industrial hemp cultivation in LIA, LEA, and DA: This option deprives farmers in Sonoma County the opportunity to grow this legal crop in areas zoned specifically for agriculture and limits diversification of agriculture in Sonoma County.

2. Require discretionary permit for industrial hemp cultivation: This would set a precedent as the cultivation of other legal agricultural crops does not require a discretionary permit. Given the time and expense of a

discretionary permit, it would be difficult for farmers to take advantage of existing market opportunities. The benefit of requiring a discretionary permit is that it would allow for a site-specific review to ensure all impacts and concerns are addressed. This also provides the authority to condition the project as needed and offers public participation in the permitting process.

3. Allow cultivation with local registration with recommended Best Management Practices (BMPs): This approach avoids the need for a permit while providing a vehicle for the local regulation of industrial hemp. By utilizing recommended BMPs, the Department is encouraging good practices without creating additional regulatory burdens on farmers. This level of oversight is consistent with other agricultural crops in the County and provides for diversification of agricultural crops and economic opportunity. The registration process does not however allow the project to be conditioned to address site-specific concerns and does not allow for public participation.

4. Allow cultivation with local registration with recommended BMPs and mandatory setbacks: Same as above with added authority to enforce setbacks on all cultivation in agricultural zones. Provides more regulatory authority but reduces flexibility and reduces the number of properties eligible to cultivate industrial hemp.

5. Allow cultivation without restriction: This option is the least burdensome on the cultivator but does not give the county a vehicle to apply local regulations.

Staff recommendation: Policy Option #4 - Allow cultivation with local registration with recommended BMPs and mandatory setbacks.

BACKGROUND ON PROPOSED NON-ZONING REGULATIONS

Pollen Management/Crop Compatibility

The cultivation of industrial hemp in Sonoma County poses some compatibility issues with existing cannabis cultivation and hemp that will be grown for CBD production. The presence of male plants poses a risk for pollen dispersal and potential contamination of both hemp and cannabis crops. Therefore, appropriate management of male plants is paramount to the compatibility of these two industries. The fertilization of cannabis and hemp plants by pollen drift significantly reduces the value of both crops. To reduce the potential for pollen drift and crop contamination the Department would require that all industrial hemp be grown from clones (female cuttings) or feminized seed. In addition, growers planting from feminized seed will be required to have documentation as part of the county registration process that a test has been performed on the seed stock and that the results indicate a minimum female percentage of 98%. Every registrant planting from seed outdoors will be subject to a growing season inspection at the appropriate time to assure that they are properly managing male plants. These inspections will be fee based with fees determined by the size of the planting.

Cultivation of male plants for breeding or seed production must be conducted indoors or in a greenhouse with appropriate output filtration systems to eliminate the potential for pollen dispersal from these facilities.

Enforcement/Fraud Mitigation

Cultivation of industrial hemp provides an opportunity for unpermitted cannabis cultivation. The Department

believes it is important to incorporate fraud mitigation measures into any hemp ordinance and that this is critical to the success of Sonoma County's cannabis program and the hemp industry alike. Department staff have consulted with Permit Sonoma Code Enforcement staff to develop a coordinated approach to enforcement.

In our proposed hemp ordinance, we have included a robust enforcement section with a range of enforcement responses depending on the type of violation. Registered industrial hemp cultivators that violate the ordinance will primarily be subject to the same administrative enforcement and civil penalties as any other commercial use under Chapter 1 of the Sonoma County Code. Enforcement responses for registered cultivators may include revocation and suspension from registration.

Under certain circumstances, industrial hemp may be enforced as unpermitted commercial cannabis cultivation, which is subject to immediate abatement and enhanced civil penalties. Those circumstances include: 1) unregistered industrial hemp cultivation (including when any portion of a cultivation site is not identified on the registration); 2) unauthorized removal or destruction of plants from a registered site; and 3) if a registered industrial hemp sample tests over 5% total THC. A system to track the number of plants or scale of cultivation in each commercial industrial hemp planting will be established to enforce against unauthorized removal of plants. Individuals who have been subject to a County enforcement action for unpermitted cannabis cultivation will be prohibited from growing industrial hemp for two years from the time the action is closed. Recent state legislation provides for additional suspensions from cultivation for violations of industrial hemp laws and regulations.

Establish a County Industrial Hemp Program and Registration Process (fees associated)

Anyone in the state of California that wishes to cultivate industrial hemp must register with their county agricultural commissioner before planting pursuant to state regulations enforced by the California Department of Food and Agriculture (CDFA). The CDFA industrial hemp program regulates cultivation through this registration process and is also responsible for regulating the sampling and testing of hemp to ensure compliance with state law. Many of these regulations are enforced at the local level by the Agricultural Commissioner/Sealer and their staff through contracts with CDFA.

The Department proposes through the adoption of Chapter 37 to establish a county registration process, which will enable the county to collect more detailed information on the cultivation site to verify compliance with county industrial hemp cultivation requirements. This local program will complement the state regulatory program and collect additional fees for administration including a \$900 county registration fee, and additional site/acreage fees for those planting from feminized seed. All registrant information will be maintained in a permitting software platform to facilitate administration and enforcement of the program. This will allow real-time verification of who is and who is not registered as an industrial hemp cultivator and provide for coordination of enforcement efforts with Sonoma County Permit Sonoma's Code Enforcement Division.

Post-Harvest Handling Practices of Industrial Hemp That Are Ancillary Agricultural Production Activities

Industrial hemp meets the current definition of "agricultural crop" in the zoning code, which is "Any cultivated crop grown and harvested for commercial purposes, except for cannabis and other controlled substances, which are defined and classified separately."

Most zoning districts allow, as a permitted use, outdoor and indoor crop production/growing and harvesting of crops. For clarity, staff proposes to modify the definition of “outdoor crop production” and modify the language of allowed uses in each district in which industrial hemp cultivation is not prohibited to expressly include industrial hemp. Those districts include Land Intensive Agriculture (LIA), Land Extensive Agriculture (LEA), Diverse Agriculture (DA), Resources and Rural Development (RDD), Agriculture and Residential (AR), Agricultural Services (AS), Recreation and Visitor-Serving (K), Limited Urban Industrial (M1), Heavy Industrial (M2), and Limited Rural Industrial (M3). Similarly, staff proposes to modify the descriptions to clarify that indoor growing and harvesting of industrial hemp in structures 800 square feet or larger is allowed with a use permit in the RRD and AR zoning districts.

Examples of these clarifying changes include:

“Outdoor crop production including wholesale nurseries, for growing and harvesting of shrubs, plants, flowers, trees, vines, industrial hemp, fruits, vegetables, hay, grain and similar food and fiber crops other than cannabis, conducted and maintained in compliance with Article 65, RC Riparian Corridor Combining Zone.”

“Indoor growing and harvesting of shrubs, plants, flowers, trees, vines, industrial hemp, fruits, vegetables, hay, grain and similar food and fiber crops other than cannabis, in greenhouse or similar structures less than eight hundred (800) square feet, conducted and maintained in compliance with Article 65, RC Riparian Corridor Combining Zone.”

Most of the zoning districts listed above also allow incidental post-harvest handling activities associated with those crops grown onsite: “Incidental cleaning, grading, packing, polishing, sizing, storage and similar preparation of crops which are grown on the site, *but not including agricultural processing.*” Post-harvest activities commonly used for industrial hemp include drying, grading, trimming, curing, storing, and packaging and are already allowed under these provisions of the zoning code.

Allowances for Industrial Hemp Extraction Activities

Staff proposes to add language to the definition of agricultural processing to clarify the allowance for on-farm extraction of oil from industrial hemp, as follows:

“Agricultural Processing means the act of changing an agricultural product from its natural state to a different form, as grapes to wine, apples to juice or sauce, agricultural crops to extracted oils, etc.” Hemp oil is extracted from raw industrial hemp biomass using pressure and non-volatile solvents (CO2 and ethanol). Using pressure to perform these processes is similar to those practices used for making wine, olive oil, apple juices, and sauces. Agricultural processing is allowed with a use permit in the following zoning districts: AR, LIA, LEA, DA, RRD, CR, AS, MP, M1, M2, and M3.

Prior Board Actions:

4/2/2019 adopted Chapter 37 of the Sonoma County Code

FISCAL SUMMARY

Expenditures	FY 19-20 Adopted	FY20-21 Projected	FY 21-22 Projected
Budgeted Expenses	\$26,461	\$26,461	\$26,461

Additional Appropriation Requested	\$41,262		
Total Expenditures	\$67,723		
Funding Sources			
General Fund/WA GF			
State/Federal			
Fees/Other	\$26,461	\$26,461	\$26,461
Use of Fund Balance			
Contingencies	\$41,262		
Total Sources	\$67,723	\$26,461	\$26,461

Narrative Explanation of Fiscal Impacts:

The Department is requesting the adoption of fees related to the tasks required to administer the County Industrial Hemp Ordinance. Additional appropriations are not required, as the collection of these fees will offset any staffing costs related to the program. To recover costs related to the processing of registrations for industrial hemp cultivation the Department proposes creating a fee of \$900 per site. The activities covered by this fee include: intake/receipt of the registration application, review of the zoning of the proposed site, confirmation of applicable setbacks (property lines, riparian corridor, etc.), review/confirmation of the feminization test if planting by seed, a site visit to confirm information submitted in the application, processing the paperwork and entering data into Accela, technology fee, and issuing of a confirmation of registration. The fee is based on our experience on handling similar processes and projections of work flow for the registration process.

Costs related to inspections required to ensure that registrants are properly removing male plants are more variable and at this time we propose to charge at cost based on our hourly rate which currently is \$177/hour. The Department will be inspecting the planted area by completing a visual inspection using a statistically significant method to spot check for males. Costs could range from a \$200 for an acre or less to \$1,000 for a 50 acre planting. Because this work could be highly variable the Department feels charging an hourly rate will allow us to gather more information and potentially propose set fees in the future. These fees would offset the staffing costs for this program.

An estimated \$26,461 in revenue of for the remainder of fiscal year 2019-2020 is based on estimated participation in the program at 15-20 growers with 20 sites and plantings of approximately 300 acres. The Department is working with a consultant to review all department fees. We intend to take what we learn from that process and reevaluate fees when we have more data on the program.

County Counsel has spent 64.5 hours to date and expects another 85 hours for the remainder of the fiscal year to work with the Department in further development and implementation of the Industrial Hemp ordinance. If approved, this item will program \$41,262 of General Fund contingencies to offset those costs.

Staffing Impacts:			
Position Title (Payroll Classification)	Monthly Salary Range (A-I Step)	Additions (Number)	Deletions (Number)

n/a			

Narrative Explanation of Staffing Impacts (If Required):

At this time we are proposing to hire extra-help staff as needed for this workload. At a future date, as the program matures and workload becomes more known we may look to add permanent staff.

Attachments:

- Industrial Hemp Resolution Waiving Future Reading of Ordinance
- Industrial Hemp Resolution Authorizing the Adoption of Fees
- Industrial Hemp Resolution Authorizing a Budgetary Adjustment for County Counsel Fees
- Industrial Hemp Ordinance
- Industrial Hemp Ordinance Exhibit A - Chapter 26 Redline
- Industrial Hemp Ordinance Exhibit B - Chapter 37
- Industrial Hemp Ordinance Exhibit B - Chapter 37 Redline *(changes following Planning Commission meeting)*
- Industrial Hemp Planning Commission Resolution
- Industrial Hemp Planning Commission Actions
- Industrial Hemp Complete Planning Commission Packet
- Industrial Hemp Planning Commission Public Comments
- PowerPoint Presentation

Related Items "On File" with the Clerk of the Board:

None