



Mendocino County Board of Supervisors Agenda Summary

Item #: 5i)

To: Board of Supervisors

From: County Counsel

Meeting Date: February 26, 2019

Department Contact: Matthew Kiedrowski

Phone: 234-6885

Item Type: Regular Agenda

Time Allocated for Item: 30 minutes

Agenda Title:

Discussion and Possible Action Including Adoption of Urgency Ordinance Establishing a Temporary Moratorium on the Cultivation of Industrial Hemp Within the Unincorporated Areas of Mendocino County Pending the Study and Consideration of Land Use and Other Regulations Pertaining to Such Cultivation (Sponsor: County Counsel)

Recommended Action/Motion:

Adopt Urgency Ordinance establishing a temporary moratorium on the cultivation of industrial hemp within the unincorporated areas of Mendocino County pending the study and consideration of land use and other regulations pertaining to such cultivation; and authorize Chair to sign same.

Previous Board/Board Committee Actions:

On February 5, 2019, the Board of Supervisors directed staff to prepare an Ordinance establishing a moratorium on industrial hemp cultivation.

Summary of Request:

The purpose of this urgency ordinance is to establish a temporary moratorium on the cultivation of industrial hemp for commercial purposes or 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.

On December 20, 2018, President Trump signed H.R. 2, the Agriculture Improvement Act of 2018 (the 2018 Farm Bill) into law allowing hemp cultivation more broadly than the previously allowed pilot programs for studying market interest in hemp-derived products. The 2018 Farm Bill allows the transfer of hemp-derived products across state lines for commercial or other purposes. It also puts no restrictions on the sale, transport, or possession of hemp-derived products, so long as those items are produced in a manner consistent with the law.

In California, the Industrial Hemp Advisory Board is expected to implement requisite regulations allowing the cultivation of industrial hemp for commercial purposes in early 2019. Once those regulations are in place, all commercial growers of industrial hemp must register with the county agricultural commissioner prior to cultivation. But until the Industrial Hemp Advisory Board has developed and implemented the requisite industrial hemp seed law, regulations, and enforcement mechanisms, including the registration process and

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fees, the cultivation of industrial hemp for commercial purposes is prohibited within the State of California.

Despite the current prohibition on the cultivation of industrial hemp for commercial purposes, state law exempts cultivation by an "Established Agricultural Research Institution" from some of the regulatory requirements. 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 that the cultivation constitutes "agricultural or academic research."

As a result of this exemption for "Established Agricultural Research Institutions", the cultivation or manufacturing of industrial hemp by an "Established Agricultural Research Institution" is not contingent upon the development of a regulatory framework addressing hemp seed, cultivation or any other provision set forth by the Industrial Hemp Advisory Board. It is foreseeable that individuals or organizations may 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 guise of "agricultural or academic research". Due to the fact that industrial hemp and cannabis are derivatives of the same plant, *Cannabis sativa* L., the appearance of industrial hemp and cannabis are indistinguishable. Absent a laboratory performed chemical analysis for tetrahydrocannabinol (THC) content, the two plants cannot be distinguished. The inability to distinguish the plants could be exploited by an "Established Agricultural Research Institution" or a commercial grower once the state regulations are in place allowing cultivation of industrial hemp for commercial purposes.

Moreover, whether cultivated by an "Established Agricultural Research Institution" or commercially, cross-pollination from hemp plants poses a threat to licensed outdoor cannabis cultivators when pollen from male hemp plants travels and cross-pollinates with female cannabis plants, which destroys the cannabis plants.

For the reasons set forth above, allowing the cultivation of industrial hemp prior to the adoption of reasonable local regulations, if any, may result in violations of the County's cannabis regulations, evasion of the County's cannabis tax, interfere with the County's ability to effectively regulate land use, and may threaten the existing cannabis industry. As an urgency measure, this interim zoning ordinance prohibits the commercial cultivation of industrial hemp for 45 days and may thereafter be extended as provided by law. Staff is not recommending a permanent moratorium on hemp production. Rather, the purpose of this ordinance and any extensions thereafter is to give the County the opportunity to study the issue and to formulate and adopt regulations to mitigate or avoid negative effects of such grows, namely the potential for the cross pollination of hemp and cannabis which can damage cannabis grows. Potential solutions may include buffers between cannabis and hemp grows and/or pre-plotting of cannabis and hemp production similar to the current process for sunflower cultivation.

As part of that study, staff will reach out to the U.C. Hopland Research and Extension Center to determine whether it has any interest in cultivating industrial hemp for research purposes. However, this interim ordinance will not prevent the U.C. Hopland facility from moving forward with a hemp research program because the Regents of California, a state agency created by the California Constitution, is not subject to the County's building or zoning ordinances. See *Regents of University of California v. City of Santa Monica* (1978) 77 Cal.App.3d 130.

The proposed ordinance is exempt from CEQA review for various reasons, as set forth in the ordinance. If the Board adopts the Ordinance, staff will file a Notice of Exemption.

Alternative Action/Motion:

Provide alternative direction.

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vote requirement: 4/5ths

Supplemental Information Available Online At:

Fiscal Details:

source of funding: n/a

current f/y cost: n/a

annual recurring cost: n/a

budget clarification: n/a

budgeted in current f/y: N/A

if no, please describe:

revenue agreement: N/A

Agreement/Resolution/Ordinance Approved by County Counsel: N/A

CEO Liaison: Executive Office

CEO Review: Yes

CEO Comments:



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Executed By: Meribeth Dermond, Deputy Clerk II

Date: FEBRUARY 27, 2019

Final Status: Adopted

Executed Item Number: Ordinance Item
Number: 4426