

**COUNTY OF MENDOCINO**  
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**Jim Donnelly**  
Assistant Agricultural Commissioner  
Assistant Sealer of Weights and Measures

## **MEMORANDUM**

**DATE:** January 24, 2020  
**TO:** Board of Supervisors  
**FROM:** Jim Donnelly, Agricultural Commissioner  
Matthew Kiedrowski, Deputy County Counsel  
**RE:** Report on Industrial Hemp Moratorium

On February 26, 2019, the Mendocino County Board of Supervisors adopted urgency Ordinance No. 4426, approving interim restrictions on the cultivation of industrial hemp, as defined in the ordinance, pending the study and consideration of land use and existing regulations pertaining to such activity. This urgency ordinance was adopted in response to concerns regarding the compatibility of industrial hemp and commercial cannabis, as well as uncertainty regarding how we regulate industrial hemp. The Board of Supervisors later extended the moratorium with the adoption of Ordinance No. 4430 on April 9, 2019.

The Board of Supervisors directed the Departments of Agriculture and Planning and Building Services to study and prepare for their consideration changes to the County's General Plan or County code with respect to the regulation of industrial hemp cultivation. This report serves to provide an update to the Board of Supervisors as to progress made by staff in the last ten (10) months of the moratorium.

The Department of Agriculture recommends that the urgency ordinance be extended by the Board of Supervisors for an additional twelve (12) month period, pursuant to Government Code section 65858, but staff intends to return to the Board in the near future with a pilot program for the Board's consideration.

### **STAFF UPDATE**

On September 10, 2019, the Board of Supervisors referred the development of an industrial hemp cultivation process to the Cannabis Economic Development Ad Hoc. Included in the direction was to work with cannabis and farming stakeholders to adequately protect existing cannabis cultivation. On November 1, 2019, the Ad Hoc met with staff regarding industrial hemp program options and stakeholder outreach. On November 18, 2019, the Ad Hoc and staff met with stakeholders from both the cannabis community and traditional agriculture. The stakeholder meeting focused on input regarding benefits and concerns with an industrial hemp program and exploring the feasibility of creating an industrial hemp pilot program. Staff from the Agriculture Department, Farm Advisor, Executive Office and Planning and Building Services are currently developing pilot program options for the Ad Hoc consideration and stakeholder feedback. Staff estimates the pilot program options will be ready for ad hoc and stakeholder review in February and with a draft pilot program before the Board of Supervisors for consideration in March or April 2020.

### **COUNTIES WITH MORATORIA**

The following table is the most recent data (as of January 14, 2020) of the County Agricultural Commissioners related to which counties have a moratorium in place:

	Yes	No
Alameda		X
Alpine	X	
Amador	X	
Butte		X
Calaveras	X	
Colusa		X
Contra Costa		X
Del Norte		X
El Dorado		X
Fresno		X
Glenn	X	
Humboldt	X	
Imperial		X
Inyo		X
Kern		X
Kings		X
Lake		X
Lassen		X
Los Angeles		X
Madera		X
Marin		X
Mariposa	X	
Mendocino	X	
Merced		X
Modoc	X	
Mono	X	
Monterey		X
Napa	X	
Nevada	X	

	Yes	No
Orange		X
Placer	X	
Plumas		X
Riverside		X
Sacramento	X	
San Benito		X
San Bernardino		X
San Diego		X
San Francisco		X
San Joaquin		X
San Luis Obispo	X	
San Mateo		X
Santa Barbara		X
Santa Clara		X
Santa Cruz		X
Shasta	X	
Sierra		X
Siskiyou	X	
Solano	X	
Sonoma	X	
Stanislaus		X
Sutter		X
Tehama	X	
Trinity	X	
Tulare	X	
Tuolumne	X	
Ventura		X
Yolo	X	
Yuba	X	

## **REGULATORY UPDATE**

The regulatory setting for industrial hemp cultivation continues to be fluid. Both the California Legislature and the California Department of Food and Agriculture (CDFA) were active during 2019 making changes to statutes and regulations, respectively, regarding the cultivation of industrial hemp. The Legislature enacted Senate Bill 153, which, among other changes, made certain updates to the Food and Agricultural Code to better align with Federal law. Changes made by Senate Bill 153 were enacted in October 2019 and effective January 1, 2020. CDFA adopted emergency regulations in June 2019 relating to timeframes, procedures, methods, and confirmation for industrial hemp planting, sampling, laboratory testing, harvest and destruction. These emergency regulations were made final in December 2019.

In addition, the United States Department of Agriculture (USDA) issued an interim final rule regarding the rules and regulations to produce hemp. The interim rule was effective as of October 31, 2019, and will be effective until November 1, 2021. However, the comment period on the interim rule was open through December 19, 2019. Based on review of these regulations, there appear to be inconsistencies between the Federal and State regulations on issues such as field sampling times and techniques.

Certain regulatory changes have led to modifications to the facts supporting the urgency moratorium. Registration processes were developed in 2019. The State of California has identified and approved seed

sources for industrial hemp, and a number of pesticides have been approved for use on hemp. These concerns had been listed in the declarations and findings section of the initial moratorium ordinance as well as the extension. However, concerns regarding the fluidity of regulations as well as the compatibility of industrial hemp and cannabis remain and these issues serve as the underpinnings of the reason for the extension of the moratorium.

### **ORDINANCE RECOMMENDATIONS/NEXT STEPS**

This report was developed pursuant to Ordinance No. 4430 and the requirements of Government Code section 65858. Staff of the Agricultural Commissioner's Office is following the State's development of the Industrial Hemp Program. Staff recommends that the Board of Supervisors adopt the ordinance extending the moratorium for the additional twelve (12) month period allowed by Government Code section 65858. However, staff intends to return to the Board with an interim pilot program for industrial hemp cultivation prior to the spring planting season.

### **ENVIRONMENTAL REVIEW**

This ordinance is categorically exempt from the California Environmental Quality Act under (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; (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) 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.

Prohibiting the cultivation of industrial hemp prevents physical changes to the environment of Mendocino County because that crop would not be permitted to be planted and introduced to the landscape. This action assures the protection of the natural environment of the County because the exclusion of the plant eliminates the potential for harm to the County's environment.