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Jim Donnelly
Assistant Agricultural Commissioner
Assistant Sealer of Weights and Measures

MEMORANDUM

DATE: March 13, 2020

TO: Board of Supervisors

FROM: Jim Donnelly, Agricultural Commissioner
Matthew Kiedrowski, Deputy County Counsel

RE: Proposed Industrial Hemp Pilot Program Ordinance

BACKGROUND

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.

State and local governments scrambled to respond to the action of the federal government. Many counties, including Mendocino County, adopted urgency ordinances banning hemp cultivation pending the study and consideration of land use and other regulations pertaining to hemp cultivation. Over the course of 2019, both the United States Department of Agriculture and the California Department of Food and Agriculture engaged in drafting regulations, not all of which are yet in final form or consistent with each other.

On February 26, 2019, the Mendocino County Board of Supervisors adopted urgency Ordinance No. 4426, approving interim restrictions on the cultivation of industrial hemp, pending the study and consideration of land use and existing regulations pertaining to such activity. The 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, and by Ordinance No. 4458 on February 4, 2020.

On September 10, 2019, the Board of Supervisors referred the development of an industrial hemp cultivation process to the Cannabis Economic Development Ad Hoc Committee. Included in the direction was to work with cannabis and farming stakeholders to adequately protect existing cannabis cultivation. On November 1, 2019, the Committee met with staff regarding industrial hemp program options and stakeholder outreach. On November 18, 2019, the Committee and staff meet 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 Department of Agriculture, Farm Advisor, Executive Office and Planning and Building Services worked on developing pilot program options for the Committee's consideration and stakeholder feedback.

Draft pilot program components include regulations and a Request for Proposal application model was presented to the Committee and stakeholder group on February 24, 2020. Following the stakeholder meeting, staff began developing an Industrial Hemp Pilot Program Ordinance for Board consideration.

ORDINANCE REVIEW

The pilot program is designed to last for two (2) years, 2020 and 2021. A maximum of five (5) licenses will be issued in each year, with applicants for licenses selected through a request for proposals process. Hemp cultivation shall not be allowed without the issuance of a County license by the Agricultural Commissioner.

The ordinance provides for certain standards for industrial hemp cultivation, which are intended to limit the potential impact of hemp cultivation on cannabis cultivation in the County. In particular, all industrial hemp cultivation must use cloned plants, male hemp plants shall be prohibited, and cultivation for the purpose of seed or nursery production is prohibited. A primary concern of the urgency ordinance adopted by the County was that male hemp pollen would travel from hemp cultivation sites to cannabis cultivation sites, where it would cross-pollinate with female cannabis plants and diminish the value of the cannabis. The goal of the standards stated in the ordinance is to minimize the risk of such cross-pollination.

The ordinance allows for the adoption of regulations by either the Board of Supervisors or the Agricultural Commissioner. Draft regulations and best management practices are attached to this staff report. Due to the still-shifting regulatory environment and the experimental nature of the pilot program, it is intended that the Agricultural Commissioner finalize regulations and have the ability to amend them during the cultivation season if necessary.

The ordinance allows for the establishment of fees to offset the various costs of the hemp cultivation program. Proposed fees are intended to come before the Board later this Spring.

The ordinance also includes provisions related to the revocation of a license and enforcement for violations of the ordinance by both licensees and any person growing without a license. The use of both administrative citations and nuisance abatement are authorized. As is provided in State regulations, non-compliant industrial hemp shall be destroyed.

CEQA

This ordinance is categorically exempt from the California Environmental Quality Act under (a) section 15061(b)(3) since there is no possibility the activity in question may have a significant effect on the environment; and (b) 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.

Industrial hemp is an agricultural crop under federal and state law, and is reasonably classified as a row and field crop as defined in section 20.032.015 of the Mendocino County Code. A row and field crop is defined as “premises devoted to the cultivation for sale of agricultural products grown in regular or scattered patterns such as vines, field, forage and other plant crops intended to provide food or fibers.” Row and field crop is a use allowed by right in many zoning districts. The regulations proposed by this ordinance purely restrict agricultural crop production by placing a cap on the number of cultivation sites, requiring a request for proposals process, and places limitations on the types of plants that may be cultivated. The regulations are limiting activities that would otherwise be allowed and provide for oversight and enforcement; the regulations do not expand allowable uses or activities.

TERMINATION OF MORATORIUM

The County’s existing moratorium on hemp cultivation would expire in February 2020, and no further extensions are available. Adoption of Chapter 10A.18 creates a mechanism for the County to regulate industrial hemp cultivation in the County and is designed to be a final action that terminates the need for the

existing moratorium on hemp cultivation. The pilot program provides for a limited amount of hemp cultivation in the County, and can be amended to modify its conditions or parameters by the Board of Supervisors.

This staff memorandum is also intended to be the written report required pursuant to Government Code section 65858 describing the measures taken to alleviate the condition which led to the adoption of the ordinance. As the pilot program and Chapter 10A.18 will continue beyond the expiration of the current moratorium, it is appropriate to terminate the moratorium and let Chapter 10A.18 serve as the mechanism to regulate industrial hemp cultivation moving forward.

RECOMMENDATION

Staff recommends the Board move forward with the addition of Chapter 10A.18 to the Mendocino County Code. A recommended motion is provided in the agenda summary for this item.

ATTACHMENTS

1. Ordinance Adding Chapter 10A.18 – Industrial Hemp Cultivation Pilot Program
2. Draft Regulations and Best Management Practices
3. Ordinance Summary