



COUNTY OF HUMBOLDT

Legislation Text

File #: 19-721, **Version:** 1

To: Board of Supervisors

From: Planning and Building Department

Agenda Section: Public Hearing

SUBJECT:

Extension of Temporary Moratorium on the Cultivation of Industrial Hemp and Provide Direction on Preparation of Regulations for Cultivation of Industrial Hemp (4/5 Vote Required)

RECOMMENDATION(S):

That the Board of Supervisors:

1. Introduce the proposed ordinance extending for 6 months the temporary moratorium on Cultivation of Industrial Hemp by title [Attachment 1];
2. Request that staff present the project;
3. Open the public hearing and accept public comment;
4. Deliberate on the options for regulating industrial hemp activities within the unincorporated areas of Humboldt County in Attachment 2;
5. Direct staff to develop an ordinance to allow cultivation of Industrial Hemp in certain limited circumstances as a principally permitted use;
6. Adopt Ordinance No: _____ [Attachment 1] extending for 6 months the moratorium on industrial hemp cultivation and acceptance of applications for industrial hemp cultivation (4/5 vote required); and
7. Direct the Clerk of the Board to publish a Summary of the Ordinance within 15 days after adoption by the Board, along with the names of those Supervisors voting for and against each ordinance [Attachment 3] and to post in the Office of the Clerk of the Board of Supervisors a certified copy of the full text of the adopted ordinance along with the names of those Supervisors voting for and against the ordinance. (Government Code section 25124)

SOURCE OF FUNDING:

General Fund (1100)

DISCUSSION:

This item involves two decision points for the Board of Supervisors. First is to identify an approach to regulating Industrial Hemp, and second is on the extension of the Moratorium related to temporary prohibition of cultivation of Industrial Hemp. Staff recommends the Board direct staff to pursue development of an ordinance allowing cultivation of Industrial Hemp within certain limited prescribed

areas with minimum regulations, and to extend the moratorium for a period of six months.

A temporary moratorium on the cultivation of Industrial Hemp was approved by Ordinance 2624 on April 2, 2019, for a period of forty-five (45) days. At that time, the Board directed staff to prepare a work program for regulation of Industrial Hemp cultivation. At the April 2, 2019, meeting, the public expressed interest in the county adopting Industrial Hemp regulations without delay to capitalize on an emerging market for Industrial Hemp as an agricultural product and as a potential source for cannabidiol (CBD) extract production for medicinal use.

Regulation of Industrial Hemp at the federal and state level is still evolving. It is complicated by the fact that the definition of Industrial Hemp limits the amount of tetrahydrocannabinol (THC) to less than 3/10ths of a percent, but does not take into account that CBD oil may be derived from Industrial Hemp intended to be incorporated in products to be ingested or applied to the skin for medicinal purposes, or as a dietary supplement or cosmetic is still regulated by the U.S. Food and Drug Administration (FDA) and the California Department of Public Health. Both THC and CBD products are regulated by the Commercial Cannabis Land Use Ordinance (CCLUO) and the Medicinal and Adult Use Regulation and Safety Act (MAUCRSA), Business and Professions Code section 26000, *et seq.* for use within California only is a limited exception to this prohibition, according to the California Department of Public Health (FAQ 7/6/18), and a January 24, 2019, advisory letter from the California Attorney General to the California State Board of Pharmacy. There are significant differences in cultural practices in cultivation for fiber or seed production, than those that apply to cultivation for CBD oil.

<https://www.agweb.com/article/growing-hemp-for-cbd-seed-or-fiber-naa-chris-bennett>

<https://www.potnetwork.com/news/no-cbd-oil-not-made-industrial-hemp-and-stop-saying>

INDUSTRIAL HEMP VS. PCR/CBD-RICH HEMP COMPARISON

INDUSTRIAL HEMP	PCR/CBD-RICH HEMP
Grown closely packed together	Grown in pots/plots or hydroponically
Just inches between plants	A few feet between plants
Grown with little tending	Grown with care
Grown using little or no nutrients	Grown using complex nutrients
Grows tall and spindly	Grows shorter and bushier
Never “topped,” one large seed cluster	Topped, abundant resinous buds
Harvested before maturity for fiber	Grown to maturity
Males are required for seed production	Males are detrimental and culled
Low in cannabinoids and terpenes	High in cannabinoids and terpenes
Not as strong-smelling	Smells like marijuana
Looks like reeds	Looks like marijuana
Harvested with tractors	Harvested by hand
Processed by machinery	Processed by hand
Strains with long genetic lineage	A recently developed strain of THC-free marijuana

For purposes of this discussion and regulation, Industrial Hemp is limited to hemp grown only for fiber, hemp seed oil, seed cake or purposes other than for CBD oil.

It is also important to consider that many cultivators in Humboldt County have entered into the regulated medicinal cannabis process under the CCLUO and MAUCRSA to produce CBD oil products for human consumption. To allow a path producing the same product without the same level of regulation or taxation would not be equitable.

In contemplating how to address this issue, staff took seriously the Board’s concern about not making this an overly long process. There are two basic options which can produce regulations in an expedient and effective manner outlined below. Attachment 2 contains a more detailed comparison of the two options.

Option 1: Treat Industrial Hemp as a traditional agricultural row crop. Agricultural industrial hemp cultivation would be allowed in specified agricultural zones, where prior irrigated cultivation has previously occurred outside of Special Areas (as defined in Commercial Cannabis Land Use Ordinance (CCLUO) - e.g. spheres of influence of cities, etc.). The only regulations on Industrial Hemp in this scenario would be annual registration requirements imposed by the state and administered by the Agricultural Commissioner’s office. In this alternative the primary impacts of odor will be addressed using the CCLUO Special Areas as

locations where cultivation of Industrial Hemp is not allowed, and water impacts will be addressed by limited cultivation to areas where Industrial Hemp is grown in the soil as an agricultural commodity in previously irrigated soil or dry farmed. Findings for consistency with the requirements of the California Environmental Quality Act (CEQA) for this would be focused on allowing an agricultural crop in a location where irrigated row crops have traditionally been found. It could also tier off the Environmental Impact Report (EIR) for the CCLUO.

Option 2: Allow Industrial Hemp under the same or similar circumstances to cannabis with similar restrictions. This approach could incorporate industrial hemp into the existing Commercial Cannabis Land Use Ordinance (CCLUO) and would subject Industrial Hemp cultivation to a level of permitting comparable to commercial cannabis activities. This would allow much more flexibility, but that would come with increased discretion in order to protect natural resources. This option would be reliant upon the EIR prepared for the CCLUO which includes permitting limits and restrictions within critical watersheds. A mitigated negative declaration may be needed should additional mitigation measures be necessary to reduce environmental impacts to less than significant levels.

Other jurisdictions pursuing regulations of Industrial Hemp require use of feminized seeds or clones only in order to avoid potential impacts due to pollen drift from male plants contaminating other crops grown for high terpene flower production, and given the importance of the cannabis industry, staff recommends that such provisions be included in either option.

The two options presented can be completed relatively expediently with a projected time frame of six months. The schedule would be as follows:

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|-------------------------------------|----------------|
| 1. Initial Public Outreach | May 2019 |
| 2. Preparation of Draft Ordinance | June 2019 |
| 3. Public Review of Draft Ordinance | July 2019 |
| 4. Planning Commission Review | August 2019 |
| 5. Board of Supervisors Adoption | September 2019 |

These time frames would be greatly expanded with development of additional or different standards, and/or increased public engagement. If the desire is to allow Industrial Hemp to be grown to produce CBD oil, then the county will need to develop many new regulations which will take more time.

Staff is recommending the Board of Supervisors choose Option 1 based on two primary factors. The greatest concern from the Industrial Hemp advocates is the desire to produce CBD oil which is already allowed and regulated by the CCLUO. Second, this regulation would not allow CBD production but would primarily allow Industrial Hemp for fiber or other purposes, so it would be appropriate to allow cultivation of Industrial Hemp in traditional agricultural settings with regulations similar to a traditional row crop.

MORATORIUM EXTENSION:

Based upon the two approaches outlined above, staff recommends extending the ordinance for a six-month period. This would allow time for completion of either ordinance. If the Board of Supervisors wants to pursue a hybrid of the two options presented above, staff would recommend extending the moratorium to the maximum extent of ten months and 15 days.

FINANCIAL IMPACT:

Staff costs for preparation and review of this ordinance extension are less than \$2,000. These costs are supported by the General Fund contribution to the Planning and Building Department, Long Range Planning Unit's Fiscal Year 2018-19 budget.

Both options have been developed to minimize time and expense. Staff estimates either these options could be developed at a cost of less than \$35,000, and implementation would be covered by existing staff paid through registration and annual inspection fees. Food and Agriculture Code section 81005 (c) authorizes the Board of Supervisors to adopt additional fees if needed to cover the cost of administering Industrial Hemp regulation to the extent not covered by state established registration fees. Option 2 would result in application fees which would support the cost of processing future applications. It is not known at this time how many applications would be generated by this ordinance.

STRATEGIC FRAMEWORK:

This action supports the Board's Strategic Framework core role of enforcing laws and regulations to protect residents.

OTHER AGENCY INVOLVEMENT:

Agricultural Commissioner, County Counsel, and the California Department of Food and Agriculture

ALTERNATIVES TO STAFF RECOMMENDATIONS:

The Board may choose to direct additions, modifications, or deletions to the options being considered for the draft ordinance.

ATTACHMENTS:

1. Ordinance Extending Industrial Hemp Moratorium for Six Months
2. Industrial Hemp Regulations Options
3. Post Adoption Ordinance Summary

PREVIOUS ACTION/REFERRAL:

Board Order No.: 19-457

Meeting of: April 2, 2019