



The County of El Dorado

Community & Economic Development Advisory Committee

2850 Fairlane Court
Placerville, CA 95667-4197

October 6, 2022

From: Community and Economic Development Advisory Committee

To: El Dorado County Planning Commission

Regarding: Draft Ordinance Adopting a Pilot Program Regarding Cultivation of Industrial Hemp

CEDAC Recommending the Planning Commission approve the *Draft Ordinance Adopting a Pilot Program Regarding Cultivation of Industrial Hemp* with the following changes listed below.

Background: On December 7, 2021, the Board of Supervisors instructed the Agricultural Commission and the Community and Economic Development Advisory Committee to form a joint working committee to work with staff to:

- 1) Continue to explore if all concerns raised in regard to law enforcement and safety issues, impacts to neighbors, county cost to regulate, and internal county staffing capacity can be successfully addressed in an ordinance; and
- 2) By the end of 2022, to bring back an ordinance for an industrial hemp pilot program or an ordinance for the permanent ban on industrial hemp.

The joint working committee did research and analysis and engaged in a stakeholder feedback process and on September 13, 2022 presented the Board of Supervisors with a Concept for an Industrial Hemp Pilot Program (attached). At this same meeting the Board heard a Resolution to permanently ban industrial hemp for the stated reason: *"WHEREAS, not all concerns raised in regard to law enforcement and safety issues have been successfully addressed as directed by the Board."* The Board received comment and a presentation from law enforcement on these issues. The Board rejected the resolution for a ban and voted to instruct staff to bring back an ROI to adopt the Concept for a pilot program as presented.

On September 20, 2022 The Board adopted ROI 146-2022 to amend Title 130 of the County Zoning Ordinance to enact regulations for the cultivation of industrial hemp ***pursuant to the Industrial Hemp Pilot Program Concept.***

The following items either need clarification, are substantively different from the Concept or in direct opposition to it. We recommend that these items, outlined by the joint working committee on industrial hemp, be changed to be in alignment with the Concept as approved by the Board.

Tamara Johnston
Chair

**CEDAC Industrial Hemp
Draft Ordinance Items for Review**

SUMMARY:

Section 130.43.100 – Definitions - T. “Sensitive use”

Recommending:

Strike all non-licensed youth-oriented facilities or locations.

Section 130.43.101 License Requirements - 6.

Recommending:

Allow both hemp and cannabis permits on one parcel. Amend cannabis ordinance.

Section 130.43.105 Cultivation Requirements - B. Odors.

Recommending:

Remove language regarding mitigation requirements on Right to Farm zoned parcels. Agricultural crops are protected from odor as being considered a nuisance in Ag zoning.

If mitigation is required limit it to RE zoned parcels and remove language referencing costly infrastructure. This is a Pilot Program on one-year licenses. Mitigations can be applied for the following season if necessary.

No set-backs in agricultural zones. Keep other set-backs as approved by the Board of Supervisors in the Concept. (200ft)

Section 130.43.106 Inspections- A and B

Recommending:

All code enforcement and agricultural inspections should be done by county staff not law enforcement.

Remove language referencing law enforcement.

Section 130.43.107 Enforcement – C

Recommending:

Specify %THC that triggers cannabis enforcement in both hemp and cannabis ordinances for clarity and continuity.

Recommending Ag Dept under 1% , code enforcement above 1% and law enforcement for case-by-case dangerous or criminal situations that are unsafe for county staff to address.

DETAILS

Section 130.43.100 – Definitions

T. “Sensitive use” means the following:

1. A child day care facility licensed under the California Child Day Care Facilities Act
(Health and Safety Code section 1569.70 et seq.).
2. A licensed child care home.
3. ~~An employer sponsored child care center, as defined in Health and Safety Code section 1596.771.~~
4. A school, as defined in Section 130.41.100.
5. ~~A youth center, defined to mean any public or private facility that is used to host recreational or social activities for minors while minors are present.~~
6. ~~A youth oriented facility, as defined in Section 130.41.100.~~
7. Public Parks, defined to mean areas dedicated and used for active recreation operated by a public agency and open to the public.

From Concept:

Sensitive sites:

Existing agricultural crops (200ft)

Tasting Rooms (200ft)

Public Parks (Not undeveloped public land) (200ft)

Schools (300 ft)

Comments: If schools and youth oriented facilities are going to be included they need to at least be restricted to “licensed”, otherwise it is too difficult to track and regulate.

Section 130.43.101 License Requirements

6. The applicant shall confirm that the proposed cultivation of industrial hemp will not occur on a premise that is being used for the commercial cultivation or processing of cannabis, consistent with Food and Agricultural Code section

81006(c), as that section now reads or may thereafter be amended, and that the proposed cultivation of industrial hemp will not occur on a parcel or parcels that are being used for commercial cannabis activity pursuant to Chapter 130.41 (Commercial Cannabis).

From Concept: This was not addressed in the Concept because it is allowed under State law and is a likely business model that a producer will diversify between CBD and THC products. More importantly, there is no incentive for someone to illegally plant marijuana in their licensed hemp premise if they already hold a commercial cannabis license.

Section 130.43.105 Cultivation Requirements

B. Odors. The licensee shall locate the cultivation area on their parcel or parcels used for cultivation in a manner that minimizes odors to surrounding areas. The Agricultural Commissioner shall include in the best management practices adopted under Section 130.43.104 (Best Management Practices) recommendations to reduce odor spread to surrounding parcels. Any odor associated with cultivation or processing activities shall not be equal to or greater than a seven-dilution threshold ("DT") when measured by the County with a field olfactometer at the property line on which the hemp is cultivated or processed for a minimum of two olfactometer observations not less than 15 minutes apart within a one-hour period ("seven DT one hour"). If the Agricultural Commissioner receives a complaint related to odor, and that complaint is verified based on the seven DT one hour threshold described in the previous sentence, the Agricultural Commissioner shall provide the Licensee with a written warning and suggestions to reduce odor. If, upon retesting, the odor has not been reduced to below the seven DT one hour threshold, then the Agricultural Commissioner shall refer the licensee to Code Enforcement. Any violation of this Subsection is subject to enforcement, abatement, and revocation of a license under Section 103.43.109 (Enforcement). Abatement may include, but is not limited to, the use of activated carbon filtration or equivalent odor abatement control equipment on the air exhaust, a vapor-phase odor control system, increasing the required setback, growing fewer plants, or growing only low odor industrial hemp strains. Installation of certain odor control options may require a permit. Any such notice requiring the use of one or more odor control options will provide a deadline for completion and the dilution threshold will be retested upon expiration of that deadline.

From Concept:

V. Odor

1. No mitigation mandated or setbacks on Right to Farm parcels except for against pre-existing tasting room facilities.
2. All other parcels- no additional mitigation required aside from set-backs. Use the two year pilot program to record and analyze complaints and inform final policies. Have regulations based on hard data.
3. Production facilities: Follow Cannabis Ordinance guidelines for mitigation in indoor facilities. Production facilities on PA, LA, and AG do not require mitigation.

Comments: This threatens Right to Farm protections on Ag Zoned parcels. Also, mid growing season requirements to install expensive mitigation infrastructure such as misters is too great and too unpredictable a financial risk for program applicants. Further in the draft only 72 hours is given to mitigate. This is not possible. If there is desire to have mitigation the committee recommends only having this requirement apply to RE zoning, which is not protected by RTF.

Section 130.43.106 Inspections

A. The Agricultural Commissioner shall conduct regular inspections of each licensee to ensure that that the licensee is in compliance with all the requirements of this Chapter and all state and federal law, including 3 CCR 4930. ~~The Sheriff's Office may accompany the Agricultural Commissioner on those inspections.~~ The Agricultural Commissioner shall conduct inspections at random intervals and shall ensure that each licensee is inspected at least once annually. The Agricultural Commissioner shall provide reasonable advance notice of the inspection, and that notice shall be no later than same day notice.

B. The licensee shall provide County staff, ~~including the Sheriff's office,~~ with complete and unrestricted access during business hours, consistent with 3 CCR 4930.

From Concept:

VIII. Testing

1. Follow CA State and CDFA policies regarding testing methods and % definitions.
2. Testing will be done by the Agricultural Commissioner and USDA trained department staff. Ag Dept is required by state law to use D.E.A. Certified labs.
3. Testing by Law Enforcement would require a warrant.
4. THC levels over 1% will be reported to the Sheriff's Office and code enforcement.

Comments: Law Enforcement is requesting this language because they want to use their authority to act as Code Enforcement and/or Inspectors on behalf of the county to enter the property. If they want to be on premise as law enforcement looking for a crime they need a warrant or permission from the owner.

Code Enforcement and Inspectors have to follow certain laws, such as inspections being random, so that they do not infringe on people's 4th Amendment Rights to be secure against unreasonable search and seizure. This creates a dilemma- if they are only acting as an inspector, we are already required by State law that the hemp inspections be done by the Ag Commissioner or other CDFA certified person and they must follow strict methods for sampling, including being accompanied by a DEA laboratory technician who ensures the samples are collected properly and manages a chain of custody. Code Enforcement officers are supposed to be trained and well versed in the industries they are regulating (such as building code enforcement).

Law Enforcement at the Sept. 21st meeting described the process they use so that they are not doing an illegal seizure- if they are on premise then the plants are in plain sight. They would not physically take the plant, but they would brush it with a swab and do a presumptive test in the field. The presumptive test shows a positive or negative for THC- but not the actual percentage to a tenth of a percent. If it is positive they can get a warrant to come back and do testing which would be sent to a DEA lab.

Law Enforcement has stated that they believe at .4% the hemp is illegal cannabis and under their purview.

The committee feels that there is too great a risk for law enforcement and the Ag. Dept, the State and the grower to have a dispute over the destruction of crops under 1%. By State law farmers cannot be prosecuted for hemp below 1%. The law also allows for the Ag Dept. to do a second test before abatement.

Allowing law enforcement on the property before the hemp tests at 1% creates a financial risk to the farmer, is in conflict with State laws and practices and may create logistical hardships for Ag Dept. regulation and inspection practices.

People have some protection from Code Enforcement infringing on 4th Amendment Rights when they have a reasonable presumption of privacy. Adding this language to the ordinance may erode the farmer's presumption of privacy, opening the door for an administrative warrant by law enforcement.

The committee are not lawyers and recommend getting legal clarification around these issues if the county wants to allow.

Committee recommending removing the language regarding law enforcement and follow the State standard of reporting percentages over 1% to code enforcement or law enforcement. If staff is uncomfortable or do not feel safe during inspections they should call for law enforcement for that reason on a case by case basis.

Section 130.43.107 Enforcement

- C.** Cannabis Enforcement. A licensee who is found to have engaged in commercial cannabis activities in violation of Chapter 130.41 (Commercial Cannabis) is subject to enforcement under Subsection 130.41.100.10 (Criminal Enforcement) or Subsection 130.41.100.11 (Administrative Enforcement and Abatement).

Comments: Clarify what % THC is a violation. In the referenced Commercial Cannabis Ordinance it does not specify. Law Enforcement has stated that they consider higher than .3% to be illegal.