



**Department of Agriculture
Staff Report**

Meeting Date: October 13, 2022

To: Planning Commission

From: Agriculture Department

Subject: Ordinance 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.

Recommendation: Staff recommends the Planning Commission take the following actions:

1. Receive a presentation from Agriculture Department Staff on the Industrial Hemp Pilot Program Ordinance, including two amendments resulting from the Agricultural Commission's recommendations to staff.
2. Provide recommendations to staff that will be forwarded to the Board of Supervisors for consideration at the October 25, 2022, meeting.

Background / History

The California Industrial Hemp Farming Act authorized the commercial production of industrial hemp in California and became effective on January 1, 2017, due to a provision in the Adult Use of Marijuana Act (Proposition 64, November 2016). As directed by this Act, the California Department of Food and Agriculture (CDFA) developed an industrial hemp cultivation program and opened registration on April 30, 2019.

On December 20, 2018, the Agriculture Improvement Act of 2018 ("the 2018 Farm Bill") was signed into law legalizing the production of hemp as an agricultural commodity while removing it from the list of controlled substances. This allowed a broader hemp cultivation program than was previously allowed for pilot programs under the 2014 Farm Bill. The 2018 Farm Bill also redefined hemp to include all parts of the plant, including seeds, derivatives, extracts and cannabinoids and 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 state law. The 2018 Farm Bill requires states wishing to be the primary regulators of hemp cultivation to submit their proposed regulatory program (State Regulatory Plan) for federal compliance approval and directs the United States Department of Agriculture (USDA) to develop federal regulations for hemp farming which will override state regulatory programs containing less stringent requirements. The Federal Interim Final Rule for a U.S. Domestic Hemp Production Program was published October 31, 2019. California's proposed State Regulatory Plan for hemp production was submitted to USDA for review and approval on September 17, 2020. The Federal Final Rule was published on January 19, 2021, and became effective March 22, 2021. When this was published, California's State Regulatory Plan no longer met the Federal Rule, so it was sent back to the State for further work. California's State Regulatory Plan was approved and went into effect January 1, 2022.

The Board of Supervisors established an Ad Hoc Committee on June 23, 2020, and had multiple meetings to review how other counties had established industrial hemp programs. Research projects that were established were reviewed for information. The Ad Hoc Committee brought the discussion back to the full Board on May 18, 2021. The Board directed the Sheriff and Agricultural Commissioner to explore Hemp with the Agricultural Commission and directed the Planning and Building Department Director to explore economic opportunities relative to Hemp with the Community and Economic Development Advisory Committee (CEDAC). Both committees were directed to return to the Board with a recommendation. Both committees selected two members to work on hemp and formed a joint working committee. The joint sub-committee created key points for an Industrial Hemp Pilot Program. They also developed draft Letters of Recommendation to bring back to their committees for consideration. The Agricultural Commission approved their letter of recommendation and their revised Key Points at their October 13, 2021, meeting and forwarded it to the Board. The CEDAC committee approved their letter of recommendation and revised Key Points at their October 14, 2021, meeting. Both recommendations were informed by the guiding principles and goals outlined in the Agricultural and Forestry Element of the El Dorado County General Plan which promote agricultural production. CEDAC also discussed the economic potential for the emerging industrial hemp industry.

On December 7, 2021 the Board directed staff and the joint working committee on industrial hemp to 1) continue to explore if all concerns raised in regards 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.

On September 13, 2022, staff presented the work of the Industrial Hemp Joint Working Committee and recommended to the Board to pursue the Industrial Hemp Pilot Program Concept. The Board directed staff to return to the Board as soon as possible with a Resolution of Intention (ROI), as required by Zoning Ordinance Section 130.63.020, to pursue the pilot program and to return to the Board with an Industrial Hemp Ordinance as close as possible to the December 6, 2022, moratorium expiration.

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.

On September 29, 2022, the Agricultural Commission reviewed and provided recommendations on the proposed Ordinance Adopting a Pilot Program regarding cultivation of Industrial Hemp.

Program Summary:

The ordinance would adopt an Industrial Hemp Pilot Program regarding the cultivation of industrial hemp. The program would be for two years and consist of five or less licensed cultivators. The license will be issued for a one-year period. The identified parcel(s) used for industrial hemp cultivation are limited to Planned Agriculture (PA), Limited Agriculture (LA), Agricultural Grazing (AG), Rural Lands (RL) and Residential Estate (RE). There is a twenty (20) acre minimum parcel size for RL and RE zoned properties.

There will be a county application process and the applicant must also submit a completed state Industrial Hemp Registration Application for Growers and include fees for both.

The ordinance includes setbacks from the property line for industrial hemp grown next to a residential parcel, adjacent existing permanent agricultural crops, and for adjacent sensitive uses. RE and RL parcels must have the industrial hemp be a minimum of 200 feet from the adjacent property line. The ordinance defines what "Sensitive Uses" are, includes cultivation requirements, who will conduct inspections, and how enforcement will be conducted.

Policy differences:

Staff is requesting recommendations from the Planning Commission on the following areas of policy:

1) Section 130.43.100—Definitions, T. “Sensitive Use”

The Sheriff’s Department recommended also including to the list: 1) a place of worship, 2) school bus stops, and 3) A school evacuation site. They recommended the list stay consistent with the Commercial Cannabis Chapter in the Zoning Ordinance.

County staff noted that school bus stops often change due to issues at the bus stop site so can be hard to consistently track.

The Agricultural Commission recommended that the sensitive use definition be modified to delete ranch marketing facilities and winery sales and tasting facilities. County staff has amended the draft ordinance to accept this recommendation.

2) Section 130.43.105 Cultivation Requirements

The Sheriff’s Department recommended adding two sections from Chapter 130.41 Commercial Cannabis:

A. Fencing:

Areas where hemp is cultivated, the premises on which hemp is cultivated, or a portion thereof that includes the cultivation area shall be secured by a minimum six-foot high solid wood or chain link wildlife exclusionary fence, such as cyclone or field game fencing, with locked gates built in compliance with building and zoning codes. All gates shall be lockable and remain locked at all times except to provide immediate entry and exit. A chain link fence is not sufficient for screening. Fencing may not be covered with plastic or cloth except neutral-colored shade cloth may be used on the inside of the fence.

B. Security Plan:

Detailed explanation of how the applicant will prevent theft and access to hemp and hemp products by individuals. The security plan for the operation that includes adequate lighting, security video cameras with a minimum camera resolution of 1080 pixels and 360 degree coverage, alarm systems, and secure area for hemp storage. The security plan shall include a requirement that there be at least 90 calendar days of surveillance video (that captures both inside and outside images) stored on an ongoing basis and made available to the County upon request. The County may require real-time access of the surveillance video for the Sheriff’s Office. The video system for the security cameras must be located in a locked, tamper-proof compartment. The security plan shall remain confidential. A point of contact for the property shall be provided to the County.

The Industrial Hemp Joint Working Group stated this could be cost prohibitive to hemp growers. County staff noted that this was discussed at the Board of Supervisors as a cost that could prevent growers from participating in a pilot program. These sections are not included in the ordinance.

3) Section 130.43.105. Cultivation Requirements H. Setbacks

The Sheriff's Department recommended: 1) 800-foot setback requirement from the boundary line of the parcel for RE or RL, 2) 800-foot setback from any residentially zoned parcel, 3) 800-foot setback from an existing commercial agricultural crop on an adjacent parcel not owned by the licensee, 4) 1500-foot setback from a parcel containing a sensitive use that was in existence at the time the licensee obtains their license.

The Industrial Hemp Joint Working Group and the Ag Department recommend the 200-foot setback listed in the proposed ordinance for these items. The 200-foot Setback allows for a starting point to gather data and was recommended in the Pilot Program Concept presented to the Board.

4) Section 130.43.106 Inspections, B.:

The Ag Department staff, and the Sheriff's Department recommended including the Sheriff's office in this section for the licensee to allow County staff, including the Sheriff's office to have complete and unrestricted access during business hours, consistent with 3 CCR 4930.

Not all members of the Joint Working Group agreed on allowing this access by Sheriff's staff.

The Agricultural Commission recommended that all references to the Sheriff be removed from this code section. Staff did not amend the draft ordinance to accept this recommendation as staff believes that issues that were noted in the previous hemp license project will be avoided with the Sheriff explicitly listed in the ordinance.

5) Section 130.43.106 Inspections, C:

The Sheriff's Department recommends the Agricultural Commissioner report promptly any THC concentration of more than 0.3% to the Sheriff's office.

The Agriculture Department recommends the 1% proposed in the ordinance. In state regulations the registered grower is allowed to request a second test if the first test exceeds the acceptable hemp THC level. If the crop does not have a

total THC concentration of more than 1% on a dry weight basis and the cultivators have not committed a negligent violation the crop can be abated according to federal rules.

6) Section 130.43.101 (B)(6) License Requirements

The Agricultural Commission recommended removing from section 130.43.100 (B)(6) “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)”. Staff did not amend the draft ordinance to accept this recommendation for consistency with Chapter 130.41 (Commercial Cannabis), which defines a premise as a parcel. Section 81006(c) of the California Food and Agricultural Code prohibits industrial hemp cultivation on premises licensed by CDFA to cultivate or process cannabis.

7) Section 130.43.105 Cultivation Requirements

The Agricultural Commission recommended removing from section 130.43.105 (B) “the use of activated carbon filtration or equivalent odor abatement control equipment on the air exhaust, a vapor-phase odor control system”. Staff amended the draft ordinance to accept this recommendation.

Summary:

The Industrial Hemp Industry has the potential to be a viable economic commodity and allow farms to diversify crops to ensure economic stability during weather or other disaster events. The Agriculture Department is recommending passage of the amended ordinance for these reasons.