



County of El Dorado

330 Fair Lane, Building A
Placerville, California
530 621-5390
FAX 622-3645
www.edcgov.us/bos/

Legislation Details (With Text)

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Title: Department of Agriculture recommending the Board:
1) Receive and file a department presentation on the work of the Industrial Hemp Joint Working Committee relative to the concerns raised in regards to the cultivation of industrial hemp;
2) Direct staff to continue to pursue the Industrial Hemp Pilot Program Concept; and
3) Adopt and authorize the Chair to sign Resolution of Intention 140-2022 to amend Title 130 of the County Zoning Ordinance to enact a ban on the cultivation of industrial hemp for all purposes within the unincorporated area of the County to take effect prior to the expiration of the interim moratorium on industrial hemp.

FUNDING: N/A

Sponsors:

Indexes:

Code sections:

Attachments: 1. A - Resolution Review Industrial Hemp, 2. B - Resolution Routing Sheet, 3. C - Sheriff's Response, 4. D - Hemp Concept, 5. E - Ag Commission Recommendation 7-13-2022, 6. F - Letter of Opposition Final, 7. Public Comment BOS Rcvd. 9-12-2022, 8. Public Comment BOS Rcvd. 9-8-2022

Date	Ver.	Action By	Action	Result
9/13/2022	1	Board of Supervisors	Failed	Fail
9/13/2022	1	Board of Supervisors	Approved	Pass

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FUNDING: N/A

DISCUSSION / BACKGROUND

On December 15, 2020, the Board adopted Ordinance 5137 imposing a forty-five-day moratorium on the cultivation of industrial hemp for all purposes within the unincorporated area of the County consistent with Government Code section 65858.

On January 26, 2021, the Board adopted Ordinance 5138 extending the moratorium for an additional 10 months and 15 days.

On December 7, 2021, the Board adopted Ordinance 5154 extending the interim moratorium for one last time for an additional twelve (12) months and is set to expire on December 6, 2022.

On December 7, 2021 the Board directed staff and the joint working committee on industrial hemp, comprising two members of the Community & Economic Development Advisory Committee (CEDAC) and two members of the Agricultural Commission, to 1) continue to explore if all concerns raised in regards to law enforcement and safety issues, impact 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, bring back an ordinance for an industrial hemp pilot program or an ordinance for the permanent ban on industrial hemp.

The joint working committee met with various stakeholders, including County departments and industrial hemp growers, on February 10, 2022, February 16, 2022, March 23, 2022, March 25, 2022, March 28, 2022, April 7, 2022, and June 30, 2022, and held joint committee working meetings on January 19, 2022, February 4, 2022, and March 8, 2022.

The joint working committee developed an Industrial Hemp Pilot Program Concept which they presented to the Agricultural Commission on July 13, 2022, Legistar item 22-1270. The Agricultural Commission recommended sending the concept to the Board for their consideration for a two-year test ordinance.

The joint working committee presented the Industrial Hemp Pilot Program Concept to CEDAC on July 14, 2022, Legistar item 22-1277. The Committee voted to support the concept when it will be considered by the Board.

The industrial hemp pilot program would be a two-year program consisting of five or less producers. The program concept lists zoning requirements and parcel size minimums. Set-backs are based on parcel zoning, sensitive sites and existing crops. Notification to schools located within 300 feet would also include a fact sheet that schools could send out to parents.

Funding for the Agriculture Department would be a deposit from the hemp producer for time and materials costs. An abatement bond would be established by the hemp producer if destruction of the crop by the County becomes necessary. The abatement of industrial hemp, where the THC concentration tests higher than the acceptable hemp THC level allowed by law and up to a 1% THC concentration level would be overseen by the Agriculture Department, would require the hemp producer to destroy the crop in a manner compliant with federal law. Industrial hemp that tests higher than 1% becomes the purview of law enforcement or code enforcement.

Background checks, testing/sampling and inspections would follow state industrial hemp laws. Sampling would be conducted by trained/USDA-certified Agriculture Department staff.

The County would develop rules for the size and wording required for on site signage. The Agriculture Department would develop Best Management Practices and a program checklist for hemp producers which recommends developing a security plan for the site. In lease situations, the lease must acknowledge that industrial hemp will be grown on the parcel and the property owner must give permission to allow the county to perform abatement of the hemp crop if necessary.

Hemp producers must submit a site plan of the parcel to the Agriculture Department and the Sheriff's Department diagraming all growing areas, storage areas, structures, water features, easements, setbacks, and ground or surface water disturbances associated with the cultivation activities. Producers must also provide a designated local contact to the Sheriff's Department.

While the joint working committee was able to address many of the concerns raised during the process, the suggested use of Code Enforcement for abatement of non-compliant industrial hemp and levying fines under the Cannabis Ordinance did not look at the increased workload on Planning Department staff. This would need further review to determine if it could be a feasible option.

Concerns raised by law enforcement included a 1500-foot set-back from any schools, school bus stops, pre-schools and licensed drug or alcohol recovery facility. A school district contacted by a member of the joint working committee requested that schools within 300 feet of a hemp farm be notified and a fact sheet be available to the school to send to parents. Law enforcement also recommended security fencing around the hemp cultivation, security cameras, alarm systems and lighting. Hemp producers stated that the cost of additional fencing, gates, and security systems would be cost prohibitive. The profit margins for hemp would not cover the cost of implementing these items. Enforcement funding for the Sheriff's Office for eradication and investigation was estimated to cost between \$5,000-\$15,000 per 1,500 plant grow. This amount would also be cost prohibitive for most small hemp producers. Law enforcement recommended a background check of all owners be completed by the Sheriff's Office. Currently state law requires an FBI Criminal History report for each key participant be submitted along with the registration application. It would need to be determined if two separate background checks are necessary. Some law enforcement concerns may need further review.

Although staff recommends pursuing the pilot program concept, in reviewing the timeline necessary to develop an ordinance from the Industrial Hemp Pilot Program Concept, it was determined that such a process would not be completed in time to make the deadline of the December 6, 2022, which is the expiration date of the interim moratorium. It will be necessary to amend the Zoning Ordinance, to enact a ban on the cultivation of industrial hemp for an unlimited duration, to provide sufficient time to develop an ordinance from the Industrial Hemp Pilot Program Concept and schedule public hearings.

As such, staff is recommending that the Board amend the Zoning Ordinance to enact a ban on the cultivation of industrial hemp for all purposes within the unincorporated area of the County. Should the Board also wish to pursue an ordinance that allows for the Industrial Hemp Pilot Program Concept, or any other concept that allows for the cultivation of industrial hemp, staff would continue to pursue this while the ban is in place.

An initial step in amending the Zoning Ordinance is the adoption of a Resolution of Intention (ROI), as required by Section 130.63.020 (Ordinance Amendments and Zone Change Applications) of the Zoning Ordinance.

Following Adoption of the ROI, staff will prepare a public review draft of the proposed amendment and proceed with preparation of all necessary documentation and environmental review as required by the California Environmental Quality Act (CEQA).

Staff will then schedule a public hearing with the Planning Commission to receive public comments, review applicable environmental documents, and forward recommendations to the Board for consideration at the final adoption hearing(s).

Should the Board direct staff to pursue an additional ordinance to allow for the development of the Industrial Hemp Pilot Program Concept, staff would return to the Board with a subsequent ROI to

begin development of a new ordinance.

ALTERNATIVES

The Board may choose to not approve this ROI to enact a ban for an unlimited duration; however, once the interim moratorium expires December 6, 2022, and in absence of any ordinance addressing industrial hemp, the Industrial Hemp Program will revert to State regulations and there would be no County restrictions on farming industrial hemp.

The Board could also choose not to direct staff to continue exploring a pilot program relative to HEMP.

PRIOR BOARD ACTION

June 23, 2020 (Legistar 20-0468)

September 22, 2020 (Legistar 20-1181)

December 15, 2020 (Legistar 21-0045)

May 18, 2021 (Legistar 21-0540)

October 13, 2021 (Legistar 21-1623)

December 7, 2021 (Legistar 21-1516)

OTHER DEPARTMENT / AGENCY INVOLVEMENT

County Counsel, Sheriff's Department, and Planning and Building

CAO RECOMMENDATION / COMMENTS

Approve as recommended.

FINANCIAL IMPACT

There is no change to Net County Cost associated with this item. Funding for the staff time associated with the Zoning Ordinance amendment has been included in the FY 2022-23 Budget. There is no financial impact associated with the ban on industrial hemp, since it is currently banned under the moratorium. Pursuit of the Pilot Program could potentially result in cultivation of hemp, which would provide an economic benefit to agriculture in the County, however, the extent of the financial impact to the County is unknown.

CLERK OF THE BOARD FOLLOW UP ACTIONS

- 1) Clerk of the Board will obtain the Chair's signature on one (1) original copy of the ROI.
- 2) Clerk of the Board will forward one electronic copy of the fully-executed ROI to Myrna Tow for further processing.

STRATEGIC PLAN COMPONENT

Good Governance

CONTACT

Charlene Carveth, Agricultural Commissioner