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Sean Powers, Agency Director

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NEVADA COUNTY BOARD OF SUPERVISORS
Board Agenda Memo

MEETING DATE: April 9, 2019

TO: Board of Supervisors

FROM: **Chris de Nijs, Agricultural Commissioner**

SUBJECT: Introduction and adoption of an urgency interim ordinance to place a temporary moratorium on the Cultivation of Industrial Hemp within the unincorporated area of Nevada County, pursuant to Government Code Section 65858.

RECOMMENDATION:
Introduce and adopt the attached urgency interim ordinance placing a temporary forty-five (45) day moratorium on the Cultivation of Industrial Hemp within the unincorporated area of Nevada County, pursuant to Government Code Section 65858.

FUNDING: N/A

BACKGROUND: The purpose of this urgency ordinance is to establish a temporary moratorium on the cultivation of Industrial Hemp as defined by Health and Safety Code section 11018.56 and by the California Food and Agricultural Code section 81000, for any purpose, including for commercial purposes or by “Established Agricultural Research Institutions”. A temporary moratorium on the cultivation of industrial hemp is recommended at least until a cannabis regulatory ordinance is fully in place and acreage and zoning restrictions for cannabis cultivation are agreed upon. An industrial hemp ordinance might then be developed that mirrors the restrictions and limitations of cannabis cultivation but includes buffer zones to prevent cross-pollination. In the meantime, there is a risk of unlicensed cannabis being grown and disguised as “hemp”, which will shortly be legal to grow in California via a registration that requires no background check or other conduct-based vetting.

The California Industrial Hemp Farming Act (Senate Bill 566, Chapter 398, Statutes of 2013) was signed into law which authorized the commercial production of Industrial Hemp in California. The Act became effective on January 1, 2017, due to a provision in the Adult Use of Marijuana Act (Proposition 64, November 2016). With the passage of Proposition 64, the California Food & Agricultural Code (FAC) was amended to include Division 24, which addresses the cultivation of industrial hemp. The recent passage of SB 1409, effective January 1, 2019 defines Industrial hemp

under Health and Safety Code section 11018.56 and the California Food and Agricultural Code (FAC) section 81000 as “a crop that is limited to types of the plant *Cannabis sativa* L. having no more than three-tenths of 1 percent (.3%) tetrahydrocannabinol (THC) contained in the dried flowering tops, whether growing or not; the seeds of the plant; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin produced therefrom.” This definition means that Cannabis and Industrial Hemp are nearly indistinguishable in the field to the untrained eye. Absent a laboratory test performed on chemical analysis for THC content, the two plants cannot be distinguished. In addition, industrial hemp cultivation creates a seasonal odor that is similar in type and intensity to the odor created by cannabis cultivation. Failure to regulate the location and size of industrial hemp cultivation sites is likely to result in nuisance odors impacting neighbors, neighborhoods and sensitive sites such as schools and parks.

Under current State law, Industrial Hemp cultivation is allowed in accordance with FAC sections 81000 et seq. However, FAC requires the Industrial Hemp Advisory Board to first make recommendations to the Secretary of the California Department of Food and Agriculture (CDFA) for consideration and approval to implement regulations regarding the commercial cultivation of Industrial Hemp. At this time, CDFA has not yet adopted any regulations, therefore the commercial cultivation of Industrial Hemp is not allowed. However, CDFA recently submitted a package of proposed regulations to the California Office of Administrative Law (OAL) for review. This package dealt exclusively with registration and associated fees with Industrial Hemp. Details of these regulations include, a requirement for the applicant to register with the local County Agricultural Commissioner, submit a \$900 registration fee payable to CDFA and collected by the local County Ag Commissioner, and the applicant providing additional information such as a legal description of site, G.P.S. coordinates, and whether strain and species is certified as a hemp derivative.

CDFA has requested an immediate adoption date of this package. It is anticipated that OAL will approve the package in mid-April 2019. Once these registration regulations are in place, commercial cultivators of Industrial Hemp will be able to register with the County Agricultural Commissioner and commence cultivation of Industrial Hemp. Implementation by the State may prevent or interfere with the County’s ability to regulate hemp in accordance with applicable land use and zoning regulations, including the inability to preclude hemp cultivation in residential areas or near sensitive sites such as parks and schools.

While the proposed registration regulations deal only with cultivators registering with the local County Agricultural Commissioner, additional regulations are still needed to carry out the Industrial Hemp Program. Regulations will need to be further developed to deal with sampling, testing, harvesting and enforcement of the Industrial Hemp Program. It is unknown what these regulations may look like or how such regulations might affect hemp cultivators. Though, it is anticipated that the local County Agricultural Commissioner will be tasked with carrying out many of these provisions.

Not addressed in the proposed registration regulations or any other known regulatory package is the exemption of “Established Agricultural Research (EARI) from many of the provisions listed in FAC Division 24. An EARI is defined under FAC Division 24 as:

1. A public or private institution or organization that maintains land or facilities for agricultural research, including colleges, universities, agricultural research centers, and conservation research centers; or

2. An institution of higher education (as defined in Section 1001 of the Higher Education Act of 1965 (20 U.S.C. 1001) that grows, cultivates or manufactures industrial hemp for purposes of research conducted under an agricultural pilot program or other agricultural or academic research.”

As a result of this exemption in Division 24 for EARIs, the growth, cultivation, or manufacturing of industrial hemp by an EARI is not contingent upon the development of a regulatory framework addressing hemp seed, cultivation or any other provision set forth by the Industrial Hemp Advisory Board and CDFR, meaning that cultivators who claim to be part of an EARI can legally cultivate Industrial Hemp at this time. Currently there has been little guidance from CDFR to the counties on what constitutes a legal EARI nor how to verify one.

Further complicating the Industrial Hemp issue, is the recent passage of the Agriculture Improvement Act of 2018 (2018 Farm Bill). The 2018 Farm Bill removes hemp and hemp products from the Controlled Substance Act, provided that the products are produced in a manner consistent with the 2018 Farm Bill. However, under the 2018 Farm Bill, a State wishing to partake in the cultivation of Industrial Hemp must submit a plan to the Secretary of the United States Department of Agriculture, indicating how that State will remain compliant with the provisions of the 2018 Farm Bill. Once approved by the Secretary of USDA, only then can a state begin the cultivation of Industrial Hemp. To this date, California has not adopted nor submitted a plan to USDA for consideration, meaning that Industrial Hemp activities must be in accordance with the 2014 Farm Bill. (smaller pilot projects with permits from the State and Federal Government).

Due to the continuing evolution of the Industrial Hemp Industry and corresponding regulations, staff has had little time to fully examine the impacts that Industrial Hemp may have on the County. Delays in addressing Industrial Hemp cultivation could allow cultivators to establish themselves within the unincorporated County in a manner that is detrimental to the community and/or inconsistent with the regulations being contemplated by the County. Due to potential long-term impacts of unregulated Industrial Hemp Cultivation, the Community Development Agency and County Counsel's Office is recommending that the Board adopt the attached interim urgency ordinance pursuant to Government Code Section 65858.

Summary

Allowing the cultivation of industrial hemp, particularly prior to the adoption of reasonable regulations, if any, may result in violations of the County's current and future regulations, interference with the County's ability to effectively regulate land use, and may be harmful to the welfare of the County and its residents, create a public nuisance, and threaten existing agricultural and other land uses and nearby property owners. This ordinance would be adopted pursuant to Gov. Code 65858(b), which requires the item to return to the Board for further consideration within forty-five days.

In summary, cannabis and hemp present the same local challenges and will require similar governance by the County even though they are regulated very differently by the state and federal government. Cannabis Compliance and law enforcement would be hard pressed to distinguish between cannabis and hemp in the field. With hemp, water usage and other environmental impacts would be similar to cannabis but without acreage restrictions, making it even more problematic. Zoning and a fee structure for enforcement and the services that the county may be asked to provide will have to be studied, and, if feasible, enacted.

If approved, the interim urgency ordinance will take effect and be in force immediately for an initial period of forty-five (45) days from and after its passage. The Board may extend the interim ordinance for a total period not to exceed 2 years. Under Government Code Section 65858, at least a four-fifths (4/5) vote by the Board of Supervisors is required for the interim urgency ordinance to be adopted.

Item Initiated By: Chris de Nijs, Agricultural Commissioner
Approved by: Sean Powers, Community Development Agency Director

Submittal Date: April 2, 2019
Revision Date