



**COUNTY OF NEVADA
COMMUNITY DEVELOPMENT AGENCY
PLANNING DEPARTMENT**

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Building Department

Environmental Health

Planning Department

Dept. of Public Works

**NEVADA COUNTY BOARD OF SUPERVISORS
Board Agenda Memo**

MEETING DATE: January 12, 2021
TO: Board of Supervisors
FROM: **Brian Foss, Planning Director**
Chris de Nijs, Agricultural Commissioner
SUBJECT: Ordinance amending Chapter II of the Nevada County Land Use and Development Code Sections L-II 3.3 and Section L-II 6.1. regarding Industrial Hemp cultivation

RECOMMENDATION: Approve the Ordinance to amend the Nevada County Land Use and Development Code to ban Industrial Hemp cultivation.

FUNDING: No funding is required for this item.

ATTACHMENTS:

1. Proposed Ordinance with attached Land Use and Development Code amended sections
2. Land Use and Development Code Sections L-II 3.3 and Section L-II 6.1 underlined
3. Planning Commission minutes, December 10, 2020
4. Board of Supervisors February 25, 2020 staff report, Ordinance 2476 and meeting minutes
5. Comment letters

BACKGROUND:

On December 20, 2018, the Agriculture Improvement Act of 2018 (hereafter “the 2018 Farm Bill”) was signed into law allowing hemp cultivation far more broadly than the previously allowed pilot programs for studying market interest in hemp-derived products. The 2018 Farm Bill also redefines 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 the law. The 2018 Farm Bill requires states

wishing to be the primary regulators of hemp cultivation to submit their proposed regulatory programs for federal compliance approval and directs the United States Department of Agriculture to develop federal regulations for hemp farming, which will override state regulatory programs containing less stringent requirements. California has yet to submit a state program to the United States Department of Agriculture for consideration.

The Board of Supervisors determined that the County was at risk of experiencing adverse impacts should the cultivation of Industrial Hemp be allowed without local regulations in place. Industrial Hemp has similar nuisance issues as cannabis, however, there may be compatibility issues between Industrial Hemp and Cannabis so treating Industrial Hemp and Cannabis the same may not be ideal. Also, regulations at the state level continue to evolve, and it is expected that this will continue throughout the coming years.

Therefore, on April 09, 2019 the Nevada County Board of Supervisors unanimously voted to place a 45-day temporary moratorium on the cultivation of Industrial Hemp within the unincorporated areas of Nevada County (ORD 2464). Subsequently, on April 23, 2019 the same Board, unanimously voted to extend that temporary moratorium an additional 10-months and 15 days, as allowed under California Government Code Section 65858 (ORD 2465). On February 25, 2020, using the Govt Code Section 65858, the Nevada County Board of Supervisors (BOS) passed an uncodified moratorium (Ord 2476) prohibiting the cultivation of Industrial Hemp within the unincorporated areas of Nevada County. Furthermore, the BOS provided direction to the Planning Department and Agricultural Department to bring back a codified ordinance prior to the expiration of the moratorium in February 2021.

ANALYSIS:

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.

Industrial hemp and cannabis are differentiated by definition in state law; with a major difference being industrial hemp may not contain more than 0.3% tetrahydrocannabinol (THC). However, industrial hemp and cannabis are derivatives of the same plant, *Cannabis sativa* L., and the appearance of industrial hemp and cannabis are virtually indistinguishable. Absent a laboratory performed chemical analysis for THC content, the two plants often cannot be distinguished. This would make it impossible for law enforcement or County Cannabis Compliance to independently distinguish between a "hemp" plant and a "cannabis" plant without entering the property and collecting samples for testing, thereby hampering civil and criminal enforcement of both the County's current and anticipated future cannabis cultivation regulations. A grower who fails to qualify at the state or local level for permission to cultivate cannabis might be incentivized by the similarity between the plants and the comparatively liberal hemp laws to cultivate illegal cannabis

disguised as industrial hemp, thereby increasing the likelihood of criminal activity, nuisances and danger to health, safety, and the environment.

Cross-pollination from hemp plants poses a threat to licensed outdoor cannabis cultivators when pollen from male hemp plants travels and cross-pollinates with female cannabis plants, which can inhibit the development of cannabis seed and lowers the marketability of the cannabis flower. Further study is required to determine if a distance can be established between a cannabis farm and a hemp farm that would adequately buffer the respective farms against harmful cross-pollination.

The prohibition of Industrial Hemp, at least until further study is completed, is needed due to potential compatibility issues with cannabis (pollen), the need for the County to continue to focus on refining the cannabis permitting process and the many inconsistencies and constant regulatory changes regarding Industrial Hemp at both the state and federal level.

The County, through its local police power authority under Section 7 of Article XI of the California Constitution (confirmed in 2019 Senate Bill 153) looks to expressly prohibit the cultivation of Industrial Hemp by modifying the Land Use and Development Code, Section L-II 3.3 and Section L-II 6.1. The draft ordinance proposes to achieve the following:

- a. Add the definition of Industrial Hemp to Section L-II 3.3, subsection B
- b. Add the prohibition of Industrial hemp in all zoning districts
- c. Clarify that Crop and Tree Farming, Section L-II 3.3; C (1) does not include the cultivation of Industrial Hemp
- d. Add the definition of Industrial Hemp to Section L-II 6.1, subsection I
- e. Clarify that the definition of Nursery, Retail and Nursery Wholesale, Section L-II 6.1, subsection N, does not include Industrial Hemp

PUBLIC AND AGENCY COMMENTS:

The draft ordinance with the proposed amendments was circulated for a period of 30 days between October 20, 2020 and November 20, 2020. The draft ordinance was sent to over 250 individuals, homeowner's associations, public agencies and was noticed in The Union and Sierra Sun newspapers in addition to a posting on the County's website. Six (6) comments were received regarding the proposed Ordinance amendments and are included as Attachment 5.

Additionally, the ordinance amendments were reviewed by the Agricultural Advisory Commission on November 18, 2020 as an informational item and no changes or alternatives were recommended.

PLANNING COMMISSION HEARING:

A public hearing was held on December 10, 2020, before the Planning Commission to hear the proposed ordinance changes. The Planning Commission discussed the amendments and discussed the benefits and the challenges with banning an agricultural crop. After discussion, the Planning

Commission voted 4-0 to recommend the approval of the ordinance amendments to ban Industrial Hemp cultivation in the unincorporated areas of the County.

RECOMMENDATION:

In summary, the proposed Zoning Ordinance Amendments were prepared in collaboration with the Nevada County Agricultural Commissioner at the direction of the County Board of Supervisors. The draft Ordinance intends to prohibit the cultivation of Industrial hemp in all zoning districts. Staff is recommending approval of the draft Ordinance to the Board of Supervisors.

Item Approved by: Brian Foss, Planning Director

Submittal Date: December 28, 2020