



A Tradition of Stewardship
A Commitment to Service

Agenda Date: 8/27/2019
Agenda Placement: 9B
Set Time: 9:10 AM PUBLIC HEARING
Estimated Report Time: 45 Minutes

NAPA COUNTY BOARD OF SUPERVISORS Board Agenda Letter

TO: Board of Supervisors
FROM: Tracy Cleveland for Humberto Izquierdo - Agricultural Commissioner
Agricultural Commissioner
REPORT BY: Humberto Izquierdo, Agricultural Commissioner/Sealer of Weight & Measu - 265-2319
SUBJECT: Moratorium extension ordinance on the cultivation of Hemp.

RECOMMENDATION

Agricultural Commissioner/Sealer of Weights and Measures and Director of Planning, Building and Environmental Services request adoption of an interim ordinance extending a temporary moratorium on commercial and research cultivation of hemp within the unincorporated area of Napa County and declaring the urgency thereof. (4/5 vote required)

ENVIRONMENTAL DETERMINATION: The proposed action is not subject to review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines, 14 California Code of Regulations, sections 15060, subdivision (c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15061, subdivision (b)(3) (there is no possibility the activity in question may have a significant effect on the environment). In addition to the foregoing general exemptions, the ordinance is categorically exempt from review under CEQA under the Class 8 Categorical Exemption, 14 C.C.R. Section 15308 (regulatory activity to assure protection of the environment). In addition to the foregoing general exemptions, the ordinance is categorically exempt from review under CEQA under the Class 8 Categorical Exemption, 14 C.C.R. section 15308 (regulatory activity to assure protection of the environment).

EXECUTIVE SUMMARY

Recent changes in Federal and State laws regarding industrial hemp have allowed the growing of industrial hemp in California. The State passed emergency regulations on June 10th related to hemp sampling and testing requirements and is considering permanent regulations regarding certain elements of industrial hemp cultivation. In addition, there are several bills related to hemp cultivation making their way through the State Legislature, which increases the uncertainty regarding how this activity may be addressed and regulated in the future. Finally, the U.S. Department of Agriculture is still developing its regulations for what states must include in a qualifying "state plan" under the 2018 Farm Bill, which would allow the sale of industrial hemp across state lines. Cultivation of industrial

hemp poses several challenges at the local level including concerns over public safety, enforcement, compatibility with the winegrape and agricultural industry, and possible conflict with commercial cannabis cultivation as proposed in an initiative which is likely to be considered by voters on the March 3, 2020 ballot.

On July 23, the Board of Supervisors approved an interim urgency ordinance imposing a temporary (45-day) moratorium on the cultivation of industrial hemp within the unincorporated areas of Napa County (Ordinance No. 1444). Staff is requesting an extension of the existing moratorium that would become effective immediately upon adoption. The proposed ordinance would extend the existing moratorium by 10 months and 15 days from September 6, 2019, effectively extending the moratorium to July 21, 2020.

PROCEDURAL REQUIREMENTS

1. Open Public Hearing.
2. Staff reports. Public comments.
3. Close Public Hearing.
4. Clerk reads the Ordinance Title
5. Motion, second, discussion and vote to waive the balance of the reading of the ordinance.
6. Motion, second, discussion and vote to adopt the ordinance.

FISCAL IMPACT

Is there a Fiscal Impact? No

ENVIRONMENTAL IMPACT

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BACKGROUND AND DISCUSSION

On July 23, the Board of Supervisors approved an interim urgency ordinance imposing a temporary (45-day) moratorium on the cultivation of industrial hemp within the unincorporated areas of Napa County (Ordinance No. 1444). Since that time, staff has reached out to other California Counties that allow cultivation of Industrial Hemp, Cannabis, or both. In general, cultivation of Industrial Hemp is handled differently from county to county, but there is a general theme of adapting local programs as issues around hemp and cannabis arise. Some Counties highlighted issues including odor, proximity to residential or school zones, conflicts between hemp and cannabis growers, issues of pesticide drift, and crop sensitivity. Staff also contacted municipalities and elected officials for the cities of American Canyon, Napa, St. Helena, Calistoga, and the Town of Yountville. Some officials expressed their unfamiliarity with Industrial Hemp and had no opinion, some felt a moratorium was simply postponing what

was inevitable, and others agreed that more time was necessary to study its impact.

Staff also contacted Napa Valley Vintners, Winegrowers of Napa County, and Napa Valley Grapegrowers for their positions. Napa Valley Grapegrowers feels it is wise to be cautious, and allow more time to do research on the topic and its potential impacts to winegrapes. Other outreach included inquiring with UC Researchers about the impact of terpenes on adjacent commodities, specifically winegrapes, and knowledge of publications or studies that speak to this issue. Staff has not received any response yet from the Researchers on this topic.

Staff believes that more research and input is needed in order to help understand the impacts to the community and agriculture, and guide the creation of local controls and staff is requesting an extension of the existing moratorium. The ordinance proposed would extend the existing moratorium by 10 months and 15 days from September 6, 2019 (to July 21, 2020) and would become effective immediately upon adoption.

Recommendation

The cultivation of industrial hemp in Napa County, prior to adoption of reasonable local regulations and prior to state hemp laws stabilizing, is harmful to the welfare of residents, creates a nuisance, and threatens nearby agricultural operations. Staff recommends that the Board adopt the interim ordinance extending the temporary moratorium on cultivation of industrial hemp and hemp grown by research institutions within the unincorporated areas of Napa County.

Information related to cultivation of industrial hemp that was included in the July 23, 2019 staff report.

Industrial hemp is defined as a crop that is limited to types of the plant *Cannabis sativa L.* having no more than three tenths of 1 percent (0.3%) tetrahydrocannabinol (THC) contained in the flowering tops, whether growing or not; the seeds of the plant; the resin extracted from any part of the plant; and every compound, salt, derivative, mixture, or preparation of the plant, its seeds or resin produced therefrom (Health and Safety Code section 11018.5).

Changes in Federal Law

Prior to 2014, industrial hemp food and fiber could be imported into the United States, but industrial hemp could not legally be grown domestically. The Agricultural Improvement Act of 2014 (2014 Farm Bill) allowed legal cultivation of industrial hemp by institutions of higher education or state departments of agriculture in states that legalized hemp cultivation, allowing states to regulate and conduct research pilot programs.

The Agricultural Improvement Act of 2018 (2018 Farm Bill) carried forward the provisions for research and also legalized commercial hemp production. In doing so, they redefined "marijuana" to exclude industrial hemp, which means that industrial hemp (grown in accordance with federal law) and its derivatives are no longer considered controlled substances (much less Schedule 1 drugs) under the Controlled Substances Act. The 2018 Farm Bill defines hemp as an "agricultural commodity" and allows states to create their own regulatory programs subject to approval by the U.S. Department of Agriculture (USDA). The USDA has just begun developing regulations that would govern approval of state regulatory plans, but they have not been released for official comment yet. Once approval of state plans begins, growers from states with qualifying plans will be able to participate in interstate commerce.

State Law

In California, industrial hemp cultivation is governed by Division 24 of the Food & Agriculture Code (Section 81000 et seq.), which was originally adopted in 2013 pursuant to SB 566 that allowed for the cultivation of industrial hemp for research and commercial purposes. The law included a provision, however, that it would not become operative until authorized by federal law. With the enactment of the 2014 Farm Bill, the provisions consistent with the federal research exemptions became operative. In 2016, the voters passed Proposition 64, the Adult Use of Marijuana Act

(AUMA), which entirely removed the provision that made operation of state law contingent on federal legalization and included provisions affecting the regulation of industrial hemp.

SB 1409 (industrial hemp) was signed into law by Governor Brown on September 30, 2018. The new State law changes the manner in which industrial hemp may be grown and tended. This change expands the intended use for the end product of industrial hemp beyond seed production and fiber, namely allowing production for cannabidiol (CBD) extraction. Included in these changes is an allowance for the hemp plants to be planted and tended in the same manner as commercial cannabis. While industrial hemp is distinct from cannabis in that it is not allowed to have levels of THC that cause psychoactive effects when grown for commercial non-research purposes, the new State law now allows for industrial hemp plots that are indistinguishable from cannabis plots.

Currently, with the State's recent adoption of a commercial hemp registration regulation and emergency regulations for sampling and testing (3 C.C.R. 4900 et seq), industrial hemp can be grown as an agricultural product, and for agricultural or academic research, and commercial growers must register with the county Agricultural Commissioner and pay a prescribed fee of \$900. "Established Agricultural Research Institutions" needn't pay a fee, may grow hemp with THC content higher than 0.3%, and must only provide the G.P.S. coordinates of the planned cultivation site to the Agricultural Commissioner.

In summary, current State regulations only establish registration fees, a sampling process and testing procedures to determine THC levels, and authority for destruction of hemp that is over the 0.3% THC level. County staff has reviewed the industrial hemp regulations and identified several local concerns relating to protecting the health, safety, and welfare of County residents that are not directly addressed by the regulations. While Napa County has not received any credible inquiries for commercial hemp cultivation, a research institution or other grower could attempt to register at any time while local, state, and federal laws on hemp are still unsettled.

Local Concerns

With recent federal legalization and state laws and regulations continuously in flux and being adopted through emergency processes, local issues are currently understudied and unaddressed.

First, the similarities in the physical appearance of industrial hemp and cannabis are problematic. These two types of plants cannot be reliably distinguished without testing for THC content just prior to harvest requiring the use of specialized field testing kits costing approximately \$13,500 per unit. This may present unique challenges for law enforcement and code enforcement in trying to distinguish between the two types of plants and assessing which laws, regulations, and codes apply in any specific situation as the County currently prohibits growing of commercial cannabis. In addition, because industrial hemp and cannabis grows are indistinguishable, and because the poorly defined "Agricultural Research Institutions" may cultivate hemp with THC content greater than 0.3%, the cultivation of hemp, prior to the adoption of reasonable local regulations, poses similar threats to the health, safety, and welfare as the cultivation of cannabis, which may include crime and associated violence.

Currently, there is insufficient research into how growing industrial hemp in proximity to vineyards may affect grapes and vines. Cultivation of industrial hemp may be incompatible with the nearby cultivation of winegrapes and industrial hemp can serve as a host to mites and fungal disease, and at this time, there are very few pesticides registered for hemp to combat them. In this circumstance, such pest issues may move into other nearby crops, including vineyards.

In addition, industrial hemp and cannabis have the same odor, which could be problematic, both as a nuisance to nearby residents, and as a potential impact to the taste of adjoining winegrapes. Besides the odor concerns for residential areas and possible off flavor to grapes, there is also anecdotal evidence from Santa Barbara County that the odor is effecting winery visitation. This is of special concern due to the importance of winery visitation to the economy of the cities and county.

Hemp also has a high water demand (1.5 acre-feet of irrigation per acre planted), and may have similar security issues in protecting the crop from members of the public who may believe it to be cannabis. Although it does not generate as large a revenue as does cannabis, demand for CBD oil is significant and hemp value has been regularly reported as earning over \$100,000 per acre by Oregon growers.

Furthermore, in consideration of the potential commercial cannabis initiative, if industrial hemp is grown for seed there is potential for unintended pollination of cannabis plants (which are selected to be all female). This may cause cannabis crops to be unsalable because of the lower THC content. Seeds are not wanted in cannabis production, just the flower. This could pose a risk if the growing of commercial cannabis becomes legal in Napa County.

Medicinal and Adult Use Cannabis Regulation and Safety Act (MAUCRSA) requires cannabis comply with certain food safety and purity laws, however hemp grown and processed into CBD oil, which is ultimately consumed, is not currently subject to any consumer safety regulations or purity laws. As it is anticipated most hemp will be grown for CBD oil, the safety of CBD oil is currently unregulated and creates potential risk of harm to the consumer.

Unlike MAUCRSA, which explicitly recognized the authority of local agencies to additionally regulate cannabis, the current hemp statutes have not explicitly addressed local control and preemption issues. Accepting a registration for hemp growing prior to the County studying and adopting its own land use regulations would lead to uncertainty regarding the rights of the potential registrant.

Pending Legislation

At least three bills are currently winding their way through the legislative process which, if adopted, would strengthen and clarify current hemp regulations. It is anticipated that SB 153 will recognize local control, will close the academic research institution loophole, and will ensure California hemp regulations match the 2018 Farm Bill. AB 228 may subject CBD products derived from hemp to consumer safety regulations, manufacturing standards, and labeling standards. SB 527 proposes to change the definition of "agricultural commodity" under the Williamson Act to include growing industrial hemp. The Rural County Representatives of California are actively involved with and are tracking these bills.

SUPPORTING DOCUMENTS

A . Ordinance

CEO Recommendation: Approve

Reviewed By: Leigh Sharp