



Monterey County

Board of Supervisors
168 W. Alisal St., 1st Floor
Salinas, CA 93901

Board Report

Legistar File Number: ORD 19-021

July 23, 2019

Introduced: 7/12/2019

Current Status: Agenda Ready

Version: 1

Matter Type: Ordinance

REF190027 - INDUSTRIAL HEMP PILOT PROGRAM

Public hearing to consider:

- a. Adoption of an ordinance adding Chapter 21.49 to Title 21 to the Monterey County Code (non-coastal zoning) to create an industrial hemp combining zoning district ("HMP" District) containing limited pilot program regulations for cultivation and processing of industrial hemp; and amending Chapter 21.08 of the Monterey County Code to add the HMP District to the list of combining regulations and to amend the zoning classification to apply the HMP zoning designation to certain properties in the unincorporated area. This ordinance would establish a limited industrial hemp pilot program with regulations restricting the size, location, and number of industrial hemp cultivators in the inland unincorporated areas of Monterey County; or
- b. Adoption of a policy interpretation that industrial hemp cultivation and processing are not a similar use to cannabis and allow industrial hemp to be cultivated and processed as an agricultural product County-wide.

Location: County-wide

Proposed CEQA action: The ordinance is categorically exempt pursuant to Sections 15305 and 15306 of the CEQA Guidelines and the interpretation would not qualify as a "project" pursuant to the definition contained in Section 65931 of the CEQA Guidelines.

RECOMMENDATION:

It is recommended that the Board of Supervisors:

- a. Find that the ordinance represents a minor alteration in land use limitations and applies for a limited term for the purposes of collecting information on industrial hemp cultivation which is categorically exempt from the California Environmental Quality Act pursuant to Sections 15305 and 15306 and none of the exceptions listed in Section 15300.2 apply; and
- b. Adopt an ordinance (**Exhibit A**) adding Chapter 21.49 to Title 21 of the Monterey County Code (non-coastal zoning) to create an industrial hemp combining zoning district ("HMP" District) containing limited pilot program regulations for cultivation and processing of industrial hemp; and amending Chapter 21.08 of the Monterey County Code to add the HMP District to the list of combining regulations, and amending the zoning classification to apply the HMP zoning designation to certain properties in the unincorporated area.

SUMMARY/DISCUSSION:

Recent legislation has made the cultivation of industrial hemp for fiber, seed, and extracts legal at the federal and state levels. Industrial hemp production includes cultivation of cannabis sativa plants, the same species of plant cultivated for the still federally illegal cannabis market. The legal distinction between industrial hemp and other cannabis varieties is based on the amount of tetrahydrocannabinol ("THC") present in the flowering tops. If the plant has no more than 0.3% THC, it is defined under the

law as hemp. Cannabis used for medical or recreation purposes typically contains 20% to 25% THC. Rules adopted in Monterey County for cannabis exclude hemp from the definition. There are currently no adopted regulations in Monterey County specific to hemp.

Many jurisdictions around the state are working to address hemp cultivation based on the recent legislative changes. Approximately half of the counties in California have adopted interim ordinances banning hemp cultivation while regulations are developed, and the other half are allowing hemp cultivation in a variety of ways (regulated or allowed as an agricultural crop). Temporary bans on industrial hemp cultivation around the state have cited a lack of direction and oversight at the state level. On April 30, 2019, the California Department of Food and Agricultural (CDFA) made available applications for industrial hemp cultivators to register with the Agricultural Commissioner of the county in which they intend to grow. On June 10, 2019 regulations implementing the state law were adopted on an emergency basis to clarify testing, abatement, and enforcement requirements for industrial hemp. Due to the state regulations being implemented on an emergency basis, questions remain about final state implementing regulations, post-harvest standards (if any), the effect on enforcement efforts related to cannabis, whether hemp and cannabis can be grown or manufactured at the same premises, and potential effects of hemp cultivation including pollen drift and odor.

Monterey County has not adopted an interim ordinance but has interpreted hemp to be a “similar use” to cannabis, and therefore subject to adopted cannabis zoning regulations until such time that specific hemp regulations are adopted. This includes requiring an Administrative Permit in all cases, and for the operations to be contained in an existing greenhouse/industrial building.

On June 25, 2019, the Board of Supervisors considered options for regulation of industrial hemp in the County together with an agreement between the County (Agricultural Commissioner) and CDFA to perform work under the Industrial Hemp cultivation program. At the meeting, the Board provided direction to Resource Management Agency (RMA) and the Agricultural Commissioner to begin work on a pilot program for the limited cultivation and processing of industrial hemp in certain unincorporated areas of Monterey County.

On June 26, 2019, a town hall style meeting was held in the Board Chambers. At the meeting, hemp industry representatives urged the County to allow hemp cultivation in accordance with state law and expressed a desire to begin cultivation as soon as possible in order to allow for planting in August of this year. Concerns were raised by cannabis industry growers regarding the potential for pollen drift which could impact cannabis crops. Also, Mike LeBarre, Mayor of King City, expressed concern over “false positive” odor enforcement issues for cannabis grows permitted within their jurisdiction resulting from the proximity to hemp grows outside King City. The Mayor requested a setback from King City to aid in detection of odors and the source of odors for operations permitted within the City’s boundaries.

At the direction of the Board and with feedback from the town hall meeting, RMA staff drafted an ordinance that creates a one-year pilot program that would permit cultivation and processing of industrial hemp on a limited basis and, if adopted by the Board, would allow cultivators to begin cultivating hemp in specified areas this calendar year (see discussion on the draft ordinance that follows for more details).

On July 10, 2019, the draft ordinance was presented to the Planning Commission for a recommendation to the Board of Supervisors. At the conclusion of the hearing, the Planning Commission recommended that the Board:

1. Not adopt the proposed ordinance;
2. Make an interpretation that industrial hemp cultivation and processing are not a similar use to cannabis, and allow industrial hemp to be cultivated and processed as an agricultural product County-wide;
 - a. This interpretation would mean that hemp cultivation and processing would be governed only by state law and under the authority of the Agricultural Commissioner, meaning no specific zoning or land use controls would be implemented;
3. Direct staff to create regulations that set a half mile buffer between industrial hemp cultivation and all cities, Rural Centers, and Community Areas; and
4. Direct staff to create regulations that set a buffer between industrial hemp cultivation, and existing licensed cannabis operations and hemp seed breeders with a mutual waiver of consent to avoid the buffer.

In addition, at both the town hall meeting and the Planning Commission hearing, the Agricultural Commissioner has recommended that industrial hemp cultivation and processing are not a similar use to cannabis, and that industrial hemp be cultivated and processed as an agricultural product County-wide subject to the authority provided to the Agricultural Commissioner in state law. Despite this recommendation, the Agricultural Commissioner is not opposed to the pilot program regulations as a means of providing an opportunity to allow some hemp cultivation in the County this calendar year, as it would still provide an opportunity to learn about hemp cultivation in Monterey County.

With the Agricultural Commissioner and Planning Commission recommendations, there are two fundamentally different approaches to the regulation of industrial hemp. The policy question for the Board is whether to: (1) adopt a pilot program with a limited duration and specific regulations; or (2) treat hemp as an agricultural crop, fully under the authority of the Agricultural Commissioner, in the same manner as other agricultural crops with potential future consideration of regulations establishing buffers around cities, towns, and between hemp cultivation for seed or fiber and cannabis cultivation due to potential pollen drift concerns.

Draft Pilot Program Ordinance

At the direction of the Board and with feedback from the town hall meeting, RMA staff, in coordination with the Agricultural Commissioner and County Counsel, has drafted an ordinance that creates a one-year pilot program that would permit cultivation and processing of industrial hemp on a limited basis. The draft ordinance attached as **Exhibit A**, establishes a new combining zoning district in Chapter 21.49, “HMP” District, of the inland zoning ordinance where the cultivation of industrial hemp would be a use allowed subject to certain regulations. The ordinance also amends the Sectional District Zoning Maps for areas in the North County Area Plan and South County Area Plan boundaries that have a base zoning designation of Farmlands “F” and that were previously cultivated.

Within the HMP district, industrial hemp cultivation would be allowed subject to approval of a

registration by the Agricultural Commissioner consistent with state law (See **Exhibit C**, California Industrial Hemp Law). Limitations established within the draft industrial hemp pilot program include:

1. Approval of no more the 30 registrations for cultivation by the Agricultural Commissioner;
2. Location of industrial hemp cultivation sites with the HMP zoning district;
3. Cultivation only allowed on previously cultivated sites;
4. A maximum cultivated area per registration of 100 acres; and
5. Compliance with state law (includes registration process, testing requirements, and destruction of plants that do not pass tests).

Hemp processing facilities would be treated in the same manner as any other agricultural processing facility in the Farmland zoning district pursuant to the Monterey County Code. If a processing facility has been previously permitted on a site, it would be allowed to process hemp under the Agricultural Commissioner's registration. However, if no permitted facility exists, the appropriate land use entitlements would need to be obtained prior to construction, just like a traditional agricultural processing facility.

This pilot program includes a sunset date of August 31, 2020. Registrations for industrial hemp cultivation would need to be submitted to the Agricultural Commissioner on or before August 31, 2019. In accordance with state law, an approved registration is valid for one year. This pilot program would need to be amended in order to provide for new or extended registrations beyond August 31, 2020. It is the intent of staff to evaluate the pilot program and consider preparation of long-term industrial hemp regulations shortly after the first hemp harvests (around December 2019) and prior to August 31, 2020. The Agricultural Commissioner will oversee, inspect, and enforce all industrial hemp cultivation activities in the County.

Considerations and Possible Revisions to the Draft Ordinance

According to feedback from the Agricultural Commissioner, there is a desire for the number of registrations permitted under the pilot program and the total acreage of area permitted to be cultivated per registration to be increased. Currently, the draft ordinance limits the pilot program to no more than 30 registrations and cultivation of a maximum area of 100 acres per registration. The Agricultural Commissioner suggests that up to 50 cultivators have expressed interest in registering for hemp cultivation and that the maximum cultivated area should be increased to no more than 500 acres. To put this type change in perspective, the existing ordinance at 30 registrants and 100 acres maximum would permit a theoretical maximum total area of 4.7 square miles, whereas 50 registrants at 500 acres maximum would permit a theoretical maximum total area of 39 square miles. RMA staff would defer to the Board on the scope of the pilot program with respect to these numbers.

In addition to the number and size of hemp registrations described above, staff has highlighted another consideration with respect to the proposed ordinance relating to the existing "similar use" interpretation. As drafted, the ordinance would not permit industrial hemp cultivation outside of the HMP zoning district. The HMP zoning districts are currently proposed on properties within the North County and South County Planning Areas. To date, some hemp has been cultivated, or is planned to be cultivated, in greenhouses pursuant to the existing "similar use" interpretation and many of those greenhouses would fall outside of the HMP district. Staff has identified two potential considerations for how to address cultivation under the existing interpretation.

1. Adopt the ordinance as drafted. This option would result in existing hemp cultivators becoming “legal non-conforming” as a use of land that was established under the interpretation in place at the time but does not conform to the subsequently adopted regulations (the subject ordinance). The legal non-conforming status would allow the hemp cultivation to continue on the property except that those non-conforming grows could not be expanded from their existing footprint. No new hemp cultivators could be permitted in greenhouses after adoption of the ordinance.
2. Amend the ordinance to allow hemp cultivation in areas where cannabis cultivation is allowed, in conformance with all cannabis regulations (e.g.: existing greenhouse, Farmland Zoning, etc.).

Staff recommends option 1 (legal non-conforming approach) as allowing hemp cultivation together with cannabis cultivation can result in pollen drift issues affecting cannabis crops, can further complicate cannabis enforcement efforts as hemp grown for CBD oils is indistinguishable from cannabis without laboratory tests, and because ongoing CEQA analysis of cannabis cultivation could be complicated by adding hemp as a use allowed at this time.

Planning Commission Recommendation

On July 10, 2019, the Planning Commission considered the draft industrial hemp pilot program ordinance and by a vote of 8 ayes, 0 noes, and 2 abstentions, recommended that the Board of Supervisors not adopt the draft ordinance (**Exhibit E**). Instead, the Planning Commission suggests reconsidering the RMA’s current interpretation that hemp is a similar use to cannabis and adopt a policy that hemp is an agricultural crop allowed wherever agricultural uses are allowed. In making their recommendation, the Planning Commission found that the pilot program introduced unnecessary regulations, that hemp cultivation could be sufficiently controlled using state law, and that allowing hemp as an agricultural crop could provide more information than a pilot program would.

This interpretation would allow industrial hemp cultivation County-wide (both inland and coastal) within all areas that permit agricultural crop cultivation which includes some residential zoning designations, some conservation zoning designations, farmlands, and grazing lands. The hemp cultivation would only be subject to registration with the Agricultural Commissioner under this interpretation. This approach would not be a pilot program, but the interpretation could be revised or superseded in the future with subsequent action by the Board.

In forwarding that recommendation, the Planning Commission also suggested that the Board establish regulations that would provide a half-mile buffer around all cities, Community Areas, and Rural Centers where hemp cannot be cultivated, and to establish a buffer from cannabis cultivators where hemp cultivation that includes male plants (e.g. seed breeders) cannot be cultivated unless the buffer is waived by mutual consent of the cannabis cultivator and hemp cultivator. It is unknown at this time if the Agricultural Commission has the authority to deny hemp cultivation registrations without adoption of an ordinance meaning this approach would likely require the preparation of a separate ordinance describing these restrictions.

CEQA

This ordinance is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Sections 15305 and 15306, which exempt minor alterations in land use limitations in areas with an average slope of less than twenty percent (20%) that do not result in any changes in land use

or density and information collection, research, experimental management and resource evaluation activities which do not result in a serious or major disturbance to an environmental resource. This ordinance establishes a limited term pilot program for the purposes of information collection, applies to lands that allow agricultural uses as a principal use, is limited to lands that have previously been cultivated, and to lands with an average slope of less than 20%. Temporary allowances for rotation of crops to hemp on lands previously cultivated with other agricultural products, is a minor alteration in land use limitations and will not result in serious disturbance to environmental resources.

Alternatively, if the Board considers an interpretation that hemp is an agricultural product, that interpretation would not be considered a project as defined in Section 65931 of the CEQA Guidelines. The interpretation would categorize hemp as an agricultural crop rather than a cannabis crop and would not change any existing land use regulations with respect to agriculture. Hemp, along with all other agricultural crops would continue to be subject to the restrictions for cultivation of land contained in the 2010 General Plan or the Local Coastal Program as applicable. No license, permit, or entitlement would be granted other than the “registration” established in California Industrial Hemp Law by the state.

OTHER AGENCY INVOLVEMENT:

The following Departments or Agencies have been involved:

- Resource Management Agency
- Agricultural Commissioner
- County Counsel’s Office
- CAO’s Office

FINANCING:

Funding for staff time associated with development of the pilot program is included in the FY19-20 Adopted Budget for each of the involved Departments/Agencies. Enforcement and implementation of the pilot program by the Agricultural Commissioner will be accomplished with existing staff and costs will be recovered through collection of registration fees and reimbursement of covered activities by the California Department of Food and Agriculture.

BOARD OF SUPERVISORS STRATEGIC INITIATIVES:

Providing for a policy or regulations that allow cultivation of industrial hemp in a timely manner and in accordance with new state law, will allow for new economic opportunities that currently do not exist, will aid in existing cannabis enforcement efforts by implementing state law regarding industrial hemp cultivation and testing, and will promote public safety by directing hemp to appropriate areas.

Check the related Board of Supervisors Strategic Initiatives:

- Economic Development
- Administration
- Health & Human Services
- Infrastructure
- Public Safety

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Approved by: John M. Dugan, FAICP, Deputy Director of Land Use and Community
Development

The following attachments are on file with the Clerk of the Board:

Attachment A - Industrial Hemp Pilot Program draft ordinance (clean signed version)

- Sectional District Zoning Maps

Attachment B - Industrial Hemp Pilot Program draft ordinance (redline version)

Attachment C - California Industrial Hemp Law

Attachment D - California Code of Regulations for Industrial Hemp Cultivation

Attachment E - Planning Commission Recommendation

cc: Front Counter Copy; Planning Commission; RMA-Environmental Services; Environmental Health Bureau; RMA-Code Enforcement; Health Department; County Counsel; Sheriff; Treasure/Tax Collector; Agricultural Commissioner; District Attorney; CAO's Budget Office; CAO's office; Craig Spencer, Project Planner; The Open Monterey Project (Molly Erickson); LandWatch; John H. Farrow; Planning File REF190027