

MONTEREY COUNTY

COUNTY ADMINISTRATIVE OFFICE

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DATE: May 28, 2019

TO: Board Cannabis Committee

FR: Carl Holm, Resource Management Agency Director
Joann Iwamoto, Cannabis Program Manager

SUBJECT: Commercial/Industrial Hemp (Hemp)

SUMMARY:

Staff reported on the status of hemp at a Cannabis Committee meeting on January 28, 2019 (Attachment A). At that time, the State was in the process of drafting its regulations for hemp. Staff reported that based on County regulations in place, hemp was interpreted by the RMA Director, as zoning authority, to be a “similar use” to commercial cannabis. Under this interpretation, industrial hemp cultivation and manufacturing must obtain the same land use entitlements required for commercial cannabis cultivation and manufacturing and must follow the same zoning regulations.

This item is being presented to the Cannabis Committee to provide an update on the current status of industrial hemp, the regulatory environment, and enforcement.

DISCUSSION:

To assist parties interested in hemp cultivation and manufacturing, staff issued information about industrial hemp in Monterey County (Attachments B and C). Staff has continued to monitor this emerging industry. Many jurisdictions have adopted moratoriums to temporarily ban the cultivation industrial hemp while they develop regulations for their area. While industrial hemp is different from cannabis because it is legal under federal law and THC is limited, the challenge is separating industrial hemp from cannabis since both are species of cannabis and in many instances appear identical. Some Monterey County growers are interested in growing hemp as a rotational crop, particularly in South County and others are interested in developing certified seed varieties of hemp.

The Monterey County Code requires that all cannabis cultivation and manufacturing occur only within certain zones. The RMA Director has interpreted industrial hemp to be a similar use as cannabis. As

such, an Administrative Permit (discretionary permit) is required for all industrial hemp cultivation and manufacturing. Such activities can only occur within certain designated zones, and for cultivation, within greenhouses or industrial buildings that were legally established prior to January 1, 2016.

Per the California Industrial Hemp Farming Act (the “Act”, located at Food & Ag. Code §§ 81000, *et seq.*), the Department of Food and Agriculture (CDFA) is to create regulations concerning industrial hemp. CDFA has adopted regulations pertaining to a registration fee and list of approved seed cultivars (3 CA ADC §§ 4900, 4920, and 4921). As of April 30, 2019, the state informed the public that they may begin to register with agricultural commissioners’ offices to cultivate industrial hemp (Attachment D). CDFA continues to work on other regulations, including testing, crop destruction, and other requirements. There has been a question raised if the Act prohibits local agencies from regulating industrial hemp. Unless expressed by the legislature, a county or city may make and enforce within its limits all local, police, sanitary, and other ordinances not in conflict with state laws. Local legislation in conflict with state law is preempted and void. The Act is silent on the question of preemption; however, on April 30, 2019, CDFA issued a memorandum on industrial hemp cultivation requirements (Attachment D). This document specifically recognizes that Monterey County (and others) may regulate industrial hemp. A summary of local jurisdictions and their current position regarding industrial hemp is attached (Attachment E).

The Cannabis Program has incorporated industrial hemp into the Cannabis Compliance Inspection process to be proactive in visiting sites that are interested in cultivating industrial hemp, or as a response to complaints received regarding industrial hemp cultivation without a land use permit.

During the week of April 30, 2019, the Cannabis Compliance Inspection team conducted eleven site inspections of operators who submitted interest to the Agricultural Commissioner’s Office. Of the eleven site visits, the following inspection results were found:

- Bradley – one site, F/40/PG/40 zoning, Farmland, Permanent Grazing
- King City – one site, PG/40 zoning, Permanent Grazing
- Salinas – five sites, F/10, F/40, Area of Development (ADC), RC/10-D zoning areas, Farmland, ADC Resource Conservation
- San Ardo – one site, PG/40 zoning, Permanent Grazing
- San Miguel – one site, PG/160 zoning, Permanent Grazing
- Castroville – one site, RDR/B-7 coastal zone, Rural Density Residential
- Watsonville – one site, F/40 zoning – Farmland

Listed below are general findings:

- 4 of the 11 sites had no contact with the landowner, or designee. Information was left in the mailbox or in an appropriate area to leave documents.
- 1 site did not provide the correct Assessor Parcel Number (APN) and address.
- 1 site has an open land use permit and the operator was advised to revise the permit description to include the cultivation of industrial hemp.

As of May 9, 2019, an additional six interested industrial hemp cultivator names were received from the Agricultural Commissioner’s Office. However, there is insufficient information in order to schedule a

site inspection.

We have found instances where a landowner is growing hemp outdoors and is not registered with the Agricultural Commissioner. They have produced documents to validate their status as a research institution and indicated their understanding that research does not require registration under the law. Regardless of the registration component, these businesses are not allowed to operate without the appropriate land use permit. It has been necessary to expend our limited resources to investigate these illegal activities.

If Monterey County desires to develop the industrial hemp industry, staff recommends that regulations be established specific to industrial hemp. However, staff resources are currently prioritized for developing a pilot program for outdoor cultivation that will be directed to Big Sur, Carmel Valley, and Cachagua. If directed to create regulations, to reduce challenges with compliance/enforcement, staff recommends that industrial hemp be limited to areas where cannabis is not currently allowed (e.g., create an overlay district in certain unincorporated areas away from cannabis cultivation where outdoor hemp cultivation can take place), and subject to some type of permit. Such permits could be discretionary (Administrative Permit that runs with the land), and/or ministerial (Hemp Business Permit that is issued to the operator), but either way requiring a permit helps define legal versus illegal operations. The Monterey County Code will need to be amended to make these changes. The Resource Management Agency issues land use permits. The Cannabis Program issues the Cannabis Business Permit.

Attachment A:	Industrial Hemp Status Report dated January 28, 2019
Attachment B:	Industrial Hemp Memorandum dated April 16, 2019
Attachment C:	Industrial Hemp Frequently Asked Questions
Attachment D:	CDFA Industrial Hemp Memorandum dated April 30, 2019
Attachment E:	Industrial Hemp Moratorium Counties