



County of Monterey

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

Board Report

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Receive a Cannabis Program informational report on industrial hemp; and provide direction to staff concerning treating the uses associated with commercial industrial hemp as similar uses as commercial cannabis activities.

RECOMMENDATION:

1. Receive a Cannabis Program informational report on industrial hemp; and
2. Provide direction to staff concerning treating the uses associated with commercial industrial hemp as similar uses as commercial cannabis activities.

SUMMARY/DISCUSSION:

Industrial Hemp Background

Industrial hemp, like cannabis, are both species of the *Cannabis sativa* plant. There are three main types (cultivar groups) of hemp grown for fiber production, oilseed production, and extracts, such as cannabidiol ("CBD"). Within each of those cultivar groups there are many different varieties.

There is a legal distinction between industrial hemp and other cannabis varieties 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. Fiber or seed varieties will have little or no THC or other cannabinoids. Among the medicinal varieties, there are some that have low THC and high CBD. The most important hemp research goal is to develop varieties that have high CBD but are consistently under 0.3% THC. Cannabis used for medical or recreation typically contains 20% to 25% THC. There are varieties of cannabis that can be grown as industrial hemp as they are low in THC and high in CBD. CBD production offers a much greater economic return than fiber or oilseed, and this has been the predominant interest for hemp production in Monterey County.

Fiber and oilseed varieties of hemp will have plants with male flowers. CBD hemp is grown as an unpollinated flower (*sinsemilla*), just as cannabis for medical or adult use, and pollination may destroy these crops because of pollen drift. Pollen drift could be a significant issue, depending on the varieties grown and the skill of the grower.

Many useful products can be made from the hemp plant, but hemp fiber and seed are relatively low-value commodities. Examples of products include the following:

- The nut of the hemp seed can produce bread, protein powder, and cereal.
- The oil of the hemp seed can produce fuel, ink, paint, cosmetics, and margarine.
- The cake of the hemp seed can produce animal food.
- The hurd (short fiber) of the hemp stalks can produce mulch, fiberboard, and concrete.
- The bast (long fiber) of the hemp stalk can produce netting, canvas, carpet, and shoes.
- The hemp stalk can produce paper products, cardboard, and fibers.

State and Federal law

In September 2013, Governor Brown signed the California Industrial Hemp Farming Act which permitted the growth and cultivation of industrial hemp in California, when authorized under federal law.

In February 2014, President Obama signed the 2013 Farm Bill, which authorized institutions of higher education to legally cultivate hemp for research.

In November 2016, due to a provision in the Adult Use of Marijuana Act, the California Industrial Hemp Farming Act became effective on January 1, 2017. As directed by this Act, California Department of Food and Agriculture (CDFA) developed a program to administer this new law and established the Industrial Hemp Advisory Board (IHAB). The IHAB has completed eleven meetings since June 29, 2017. The IHAB anticipates regulations to be available for public comment in early 2019.

Effective January 1, 2019, SB 1409 was signed into law by Governor Brown which revised the California Industrial Hemp Farming Act. The law now requires that industrial hemp cultivators, other than “Established Agricultural Research Institutions”, must pay an annual fee and register with local Agricultural Commission offices. There are other requirements concerning approved cultivar groups, and lab testing. Additionally, the law requires that “Established Agricultural Research Institutions” provide GPS coordinates to Agricultural Commissioners.

An “Established Agricultural Research Institution” is defined as either: (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 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.

CDFA has made clear that all growers of industrial hemp for commercial purposes must register with the county agricultural commissioner prior to cultivation, and registration is not yet available. Once the fees and process for registration are set by regulation, cultivation may commence.

Lastly, in December 2018, President Trump signed the 2018 Farm Bill which legalized the cultivation and sale of industrial hemp that is defined as cannabis that contain less than 0.3 percent THC. This removes hemp from the list of controlled substances and allows states to regulate its production, commerce and research with approval from the USDA.

Other County Jurisdictions

The following counties have interim ordinances in place to ban the production of all industrial hemp, including by established agricultural research institutions: San Joaquin, Shasta, and Riverside. Yolo and Sonoma County will be taking interim ordinances to their Boards in early 2019.

Santa Barbara County began discussions on industrial hemp and will review in early 2019.

In mid-2018, San Luis Obispo County Board of Supervisors rejected an interim ordinance banning industrial hemp.

Staff Recommendations

Staff met on January 16, 2019 to discuss the advantages and disadvantages of industrial hemp in Monterey County. Staff has recently been contacted by numerous businesses and individuals interested in cultivating hemp. Staff received department input from the District Attorney, Agricultural Commissioner Office, Health Department, Resource Management Agency, and County Counsel. Listed below are highlights from the discussion:

- Much is unknown about the CDFA's regulations that are currently being drafted. Staff recommends taking time to understand and interpret the regulations specifically related to testing, certification, crop destruction, and how track & trace might be utilized in this new industry.
- There will likely be an issue with odor and pollen drift from industrial hemp cultivation, which may require setback regulations.
- The Health Department has various areas of concern: public safety; crimes associated with industrial hemp given the presumption that it is cannabis; the creation of a nuisance such as odor; and the misuse of related pesticide use, waste and waste water. Also, additional research is needed as to the medical benefits of CBD, and improved regulation of CBD-containing products, including vape oils.
- The State does not allow cannabis waste to be tilled in to the soil. Further studies will need to be conducted with how industrial hemp waste should be treated.
- Enforcement concerns begin with the inability to have the expertise in the field to visually differentiate between cannabidiol plants (hemp and cannabis) and could impact others who are not involved in the industry.
- Most departments agreed that industrial hemp should be a "similar use" to cannabis than to the typical agricultural row crop.
 - For example, Monterey County Code Section 21.30.040 covers the permits required for cultivation within the Farmland Zoning District. Section 21.30.040 covers the uses when an administrative permit is required. Section 21.30.040(D) states "Other uses of a similar character, density and intensity to those listed in this section."
- If industrial hemp is treated as a "similar use", Cannabis Program resources will be impacted by additional compliance and inspection tasks, and enforcement when needed. However, cannabis ordinances are in place, and cannabis department staff continue to develop standard procedures and protocols to meet these regulations.

Recommendation:

Due to the lack of State regulations and for the points described above, staff recommends that industrial hemp currently be considered a "similar use" as stated in Titles 20 and 21. Monterey County Code Chapters 7.02 and 7.90 only apply to cannabis, which as defined does not include hemp. Therefore, the industrial hemp operator or "educational agricultural research institution" would not have to gain approval of a Cannabis Provisional/Annual Business License under Chapter 7.02, or a Cannabis Business Permit under Chapter 7.90. They would be required to obtain an administrative permit in the inland zone, and a coastal development permit in the coastal zone (the coastal ordinance to require a coastal administrative permit still needs to be certified by the Coastal Commission and adopted by the Board). There are no provisions for a tax on industrial hemp, such a tax would need to go to the voters.

Staff will continue to review the quickly changing industrial hemp landscape as state regulations are adopted and the new industry emerges. Once CDFA releases regulations, staff will analyze whether similar regulations should be considered in Monterey County to regulate industrial hemp and treat it differently than cannabis.

Other available options:

Another option available is to prepare an interim ordinance temporarily banning industrial hemp cultivation while staff studies the issue. The County has authority pursuant to Government Code section 65858 to adopt an interim ordinance as an urgency measure, to take effect immediately, to effect a “moratorium” on specified land uses which County is studying within a reasonable time, if the Board finds that there is a current and immediate threat to the public health, safety and welfare and that the approval of the additional land uses would result in that threat to the public health, safety and welfare. If adopted by a 4/5 vote by the Board, the ordinance would take effect immediately and would expire 45 days after its adoption unless the ordinance is extended by subsequent action of the Board at a subsequent noticed public hearing. Currently, the impact of an interim ordinance would be to preclude Established Agricultural Research Institutions from cultivating.

Another option available is to prepare an ordinance banning the cultivation of industrial hemp in Monterey County. If adopted, the Board could later allow industrial hemp cultivation by adopting another ordinance allowing the activities.

FINANCING:

None at this time.

BOARD OF SUPERVISORS STRATEGIC INITIATIVES:

The Monterey County Cannabis Program addresses each of the Strategic Initiative Policy Areas that promote the growth of a responsible and legal Monterey County cannabis industry including industrial hemp.

Related Board of Supervisors Strategic Initiatives include:

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

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