



Agenda Submittal

Agenda #: 26 **Status:** Regular Calendar
Type: Ordinance **Department:** Resource Management
File #: 20-772 **Contact:** Bill Emlen X 3002
Agenda date: 10/27/2020 **Final action:**
Title: Consider introducing and receiving public comment on a proposed ordinance establishing regulations on the cultivation and processing of Industrial Hemp in unincorporated Solano County including provisions addressing permits and permit processing, defined geographic areas within the unincorporated area where Hemp Cultivation Permits may be requested, legal findings to approve a Hemp Cultivation Permit, security requirements, testing requirements and enforcement procedures
Governing body: Board of Supervisors
District:
Attachments: 1. A - Links to Board of Supervisors Minutes for Hemp, 2. B - Proposed Hemp Ordinance Boundary with title October 20, 2020, 3. C - September 16, 2020 Minutes of Hemp Community Mtg., 4. D - Hemp Ordinance

Date	Ver.	Action By	Action	Result
10/27/2020	1	Board of Supervisors		

Published Notice Required? Yes ☐ No ☒
Public Hearing Required? Yes ☐ No ☒

DEPARTMENTAL RECOMMENDATION:

The Agriculture Department and the Department of Resource Management recommends that the Board:

1. Read the proposed ordinance by title only and waive further reading by majority vote; and
2. Receive public comment on the proposed ordinance; and
3. Introduce for first reading the proposed ordinance establishing regulations on the cultivation and processing of Industrial Hemp in unincorporated Solano County including provisions addressing permits and permit processing, defined geographic areas within the unincorporated area where Hemp Permits may be requested, legal findings to approve a Hemp Cultivation Permit, security requirements, testing requirements and enforcement procedures.

SUMMARY:

The proposed ordinance was developed to address issues that emerged with Hemp cultivation and processing during the 2019 growing season. 2019 was the first year that Industrial Hemp was planted in Solano County following State and Federal actions to remove Hemp from the Controlled Substance list in 2018. On November 5, 2019 approximately 10 individuals residing in the vicinity of active Hemp fields generally located west of Highway 113 in the Hawkins Road vicinity provided public comments to the Board describing a variety of impacts associated with these fields. Personnel from the Sheriff's office confirmed impacts that had been identified. Responding to the identified issues, the Board adopted an Interim Urgency Ordinance for 45 days establishing a moratorium on the cultivation and processing of Industrial Hemp. The Board subsequently approved a 10 month 15 day extension to the Interim Urgency Ordinance on December

10, 2010 after conducting a public hearing. Also on this agenda is a proposed 1 year extension of the Interim Urgency Ordinance which would remain in effect until a permanent ordinance becomes effective or it is allowed to lapse. Minutes from prior Board discussions on Hemp are attached for reference.

On February 25, 2020 the Board heard an update on the County's analysis of hemp regulatory options. As part of that discussion the Board agreed to form a Task Force led by Supervisors Thomson and Vasquez to evaluate Hemp regulatory options and work with staff in developing a draft ordinance for consideration by the Board. The Task Force, which consisted of representatives from several County Departments, a representative from the Hemp growers group, and a representative of the citizen group who first raised this issue at the Board, met on several occasions from April through September. They considered various regulatory options and received technical information from Agriculture Department staff on the various forms of Hemp and how it is grown and harvested. Over the course of their meetings the Task Force provided guidance on various ordinance options that ultimately resulted in the draft ordinance now before the Board for consideration and possible action.

FINANCIAL IMPACT:

Costs to prepare this report and the analysis of the Hemp issue are absorbed by the Resource Management, Agriculture Department and County Counsel budgets. Should the Board adopt the proposed ordinance, fee schedules will be updated to recover costs for processing Hemp Cultivation Permits and ongoing monitoring of permit activities. The ordinance also requires security deposits and other cost recovery provisions to address cases where permit compliance issues are identified and clean-up/enforcement actions are required.

DISCUSSION:

When the issues regarding hemp cultivation and processing emerged in fall of 2019, it became clear that the agricultural permitting processes normally utilized for other agricultural crops were not going to be sufficient to address the problems that were being experienced in the field and the impacts being felt by neighbors in the vicinity. The Interim Urgency Ordinance adopted by the Board has provided time for the County to study the issue and gain input from various stakeholders, including residents and growers, which has provided insights on the framework for a permanent ordinance and the types of provisions that should be contained therein.

Based on Board direction and comments from the three prior meetings where this issue was discussed, staff, which consisted primarily of representatives from the Agriculture Department, Resource Management, the County Counsel's office and the Sheriff's Department, considered options that ranged from a complete ban on Hemp cultivation, an added non-discretionary permit process with more defined standards to a blended discretionary process similar to a use permit with added standards and locational requirements. As discussions continued, the latter approach became the focus with refinement in such areas such as geographic areas where Hemp Cultivation Permits would be considered, the type of legal findings that would have to be made to approve a Hemp Cultivation Permit, the type of standards that would be applied, the terms of permits, security requirements and special enforcement provisions.

On September 27, 2020 the County conducted a meeting (see attached meeting summary) at the Elmira Fire Station attended by many of the residents who had expressed concerns with Hemp cultivation at the Board meetings in late 2019 and early 2020. A representative of the Farm Bureau was also in attendance. During the meeting the ordinance concept was presented to the group. Input ranged from a preference to banning Hemp cultivation entirely, limiting the area where hemp cultivation might be permitted even further, concerns over enforcement, more details on security requirements, questions on the effectiveness of testing to ensure THC levels weren't exceeded, odor issues, and lack of support for a concept that would allow for a non-discretionary process for Hemp cultivation that is contained within a fully enclosed building.

The final draft ordinance reflects guidance received from the Task Force, public comments received at the

September 27 community meeting and other settings and research on best practices used in other jurisdictions. Provided below is a summary of key provisions of the proposed ordinance.

Hemp Cultivation Permit

Said permit would be discretionary subject to approval of the Director of Resource Management or his/her designee and includes a public notice and public hearing. Any appeal of the Director's decision would be heard by the Board of Supervisors. As noted above, there was some consideration by the Task Force of a lesser permit with no public hearing for Hemp cultivation within a fully enclosed building. There was strong input from the public favoring a public hearing process and the opportunity to be heard even for cultivation of Hemp indoors. In response, and for simplicity sake, the current draft of the ordinance requires the same Hemp Cultivation Permit process regardless if cultivation is indoors or outdoors.

Terms of Hemp Cultivation Permits would be yearly but can be extended year to year at an administrative level by the Director of Resource Management. Focus of annual review would be permit compliance and any complaints that may have been received during the growing season.

Geographic Area where Hemp Cultivation Permits May Be Requested/Setback From Residence

This issue involved several considerations. It was clear when the Board heard public comments in November and December of 2019 that proximity of even very low density residential areas can create compatibility issues. In an effort to mitigate impacts of this agricultural activity with other uses in the vicinity, this ordinance limits cultivation to less densely populated areas, specifically in the far eastern portion of the County. Evaluation factored in the location of known Hemp cultivation properties from 2019. It was clear from resident testimony that cultivation in the vicinity of residents in the Clark Road area was problematic at several levels, some that might be overcome with better security standards and setbacks but others that probably were best addressed by limiting Hemp cultivation to more sparsely populated areas. The end result in the current proposal is to limit areas eligible to file a Hemp Cultivation Permit to an area bounded by Midway Road on the north, an east/west line 3 miles north of highway 12 on the south, a north/south line 1 mile west of highway 113 on the west and the easterly County line on the east. This area contains approximately 60,205 acres (See attached map). One of the 2019 Hemp Cultivation sites (New Boy Farms) for which the County did not receive complaints is within this area. The 2019 cultivation sites in the vicinity of Clark Road are not within this area nor is the site that was located in the vicinity of Old Davis Road.

In addition to the geographic limits the proposed ordinance contains a 2500 feet setback requirement from off-site residences to the closest edge of a Hemp cultivation site under separate ownership.

Legal Findings to Approve a Hemp Cultivation Permit

Two key legal findings are required for the Director of Resource Management or designee to approve a Hemp Cultivation Permit. The first requires that it be determined that the proposed site and use not constitute a nuisance or be detrimental to the public health, safety or welfare of residents or property in the vicinity of a site where a Hemp Cultivation Permit is requested. The other is that an adequate security plan has been submitted and reviewed by the Sheriff's Department and it has been demonstrated that odors will not significantly impact residents in the vicinity. On an appeal, the Board would evaluate a permit based on these same findings.

Harvesting & Processing

The Ordinance contains provisions requiring that storage and processing of a Hemp crop must be conducted indoors or in a greenhouse. Harvested crop may not remain outdoors on a cultivation site beyond the day harvest occurs. The provisions are intended to address concerns from residents of nuisance and criminal activity that has been experienced when a crop is stored or processed outdoors. The draft ordinance

prohibits processing with volatile solvents.

Security Plan Requirement

The ordinance contains provisions requiring submittal of a Hemp Cultivation Permit for review by the Solano County Sheriff's Department. It is expected plans would include physical and operation measures to deter theft and prevent other potential criminal activity. The adequacy of a security plan is a key measure to be used in determining if a Hemp Cultivation Permit may be approved.

Enforcement

Enforcement includes two different process: one under State laws and regulations for violations of maximum THC level and the second under the Ordinance for violations specific to the Ordinance. Hemp that exceeds the maximum amount of THC allowed by State law (.3%) but does not exceed one percent, must be tested again. Hemp that exceeds one percent concentration of THC on an initial test, or hemp that still exceeds .3% on the second test, must begin to be destroyed within 48 hours, with complete destruction in seven days.

For violations other than THC limit, the Ordinance contains enforcement provisions specific to hemp. Upon discovery of a violation, the process requires the County issue a notice of violation with the corrective action required and a deadline for compliance. The deadline for compliance will depend on the nature of the violation but can be shortened for more egregious issues. Failure to comply by the deadline will trigger a permit revocation process. Although due process requires an appeal right for both a notice of violation and a permit revocation, the process is as streamlined as possible to facilitate quick resolution. Alternatively, violation of the ordinance constitutes a misdemeanor, punishable by a fine not exceeding \$1,000 or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment.

Costs

The Ordinance is written for full cost recovery, which was a priority expressed by the community. As mentioned in the Financial Impact section, the County's fee schedules will be updated to recover costs for processing Hemp Cultivation Permits and ongoing monitoring. Applicants for a Hemp Cultivation Permit must submit a bond or cash in an amount sufficient to cover all costs and expenses likely to be incurred by the County in the implementation and enforcement of the ordinance, to the extent such costs exceed the fees collected. The owner of the property on which hemp will be cultivated, if different than the applicant, must provide a notarized written consent granting permission to engage in Hemp Cultivation on the property and will be liable for all violations of the Ordinance and applicable laws with respect to Hemp use on the property.

ALTERNATIVES:

The Board could choose to not adopt the proposed ordinance. Such action is not recommended as the draft ordinance reflects recommendation the Task Force and addresses the myriad of issues that emerged the first year that hemp was permitted in 2019.

The Board could send the proposed ordinance back to staff and the Task Force for further study and revision. If the Board were to take such action, it will be important to take action on the one year extension to the urgency ordinance to ensure that that no further hemp cultivation activity occurs in the unincorporated area of the County until permanent ordinance provisions are in place.

OTHER AGENCY INVOLVEMENT:

The County Counsel's Office and the Sheriff's Department were both consulted in preparation of this report,

CAO RECOMMENDATION:

APPROVE DEPARTMENTAL RECOMMENDATION