



Solano County

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Legislation Text

File #: 20-146, Version: 1

Receive a staff presentation on regulatory options for addressing industrial hemp in Solano County; Provide feedback to staff on options to be considered; and Provide direction to staff on public outreach including consideration of formation of a task force, targeted outreach meetings, or other outreach options

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 of Supervisors:

1. Receive a staff presentation on regulatory options for addressing industrial hemp in Solano County;
2. Provide feedback to staff on options to be considered; and
3. Provide direction to staff on public outreach including consideration of formation of a task force, targeted outreach meetings, or other outreach options.

SUMMARY:

On November 5, 2019, in response to resident and law enforcement concerns about existing hemp cultivation sites in the County, the Board adopted an emergency interim ordinance imposing a 45-day moratorium on the cultivation and processing of industrial hemp in Solano County. On December 10, 2019, the Board extended that emergency moratorium for an additional 10 months and 15 days. Without further action by the Board, the moratorium will expire on November 5, 2020. On December 10th, the Board directed staff to bring back options for the Board to consider regarding potential regulation of industrial hemp. Options under consideration are summarized below and in the attached Decision Matrix. At the February 4, 2020 Board meeting, Supervisor Thomson, under Board member comments, asked that the Board consider forming a Task Force to explore the hemp issue, conduct outreach and provide recommendations. Public outreach approaches including Supervisor Thomson's suggestion are reviewed in the Discussion section.

FINANCIAL IMPACT:

The costs associated with preparing the agenda item are included in the Resource Management Department's FY2019/20 2910 Adopted Budget. Should industrial hemp regulations ultimately be adopted, a fee structure would need to be considered to cover the regulatory costs.

DISCUSSION:

The regulation of industrial Hemp is an emerging issue in the State. The attachment "State and National Hemp Regulations" provides further background on legal and legislative factors affecting this discussion. Many counties are in a similar mode as Solano County and are just beginning to explore the range of options available. A few counties are beginning to bring forward specific ordinances regarding hemp cultivation and processing. A summary of "Hemp Legal Status in California Counties" is attached. Provided below is a summary of options being evaluated by staff.

Option 1 - Permanently ban cultivation and processing of hemp:

This option would require an ordinance permanently banning the cultivation and/or processing of industrial hemp in the unincorporated areas of Solano County. The authority to do so derives from Article XI, section 7 of the California Constitution, which confers authority upon counties to make and enforce local, police, sanitary and other ordinances and regulations not in conflict with general laws. This is commonly known as the “police power,” and is the source of the county’s regulatory authority to protect public health, safety and welfare. If adopted, this ordinance could be altered by the Board of Supervisors in the future, including to align with regulations later adopted by the State or to conform with best practices developed by other jurisdictions as they develop and implement their hemp regulations.

Option 2 - Allow cultivation and processing of hemp with no local regulation:

Under this option, the County could terminate the moratorium early or allow it to expire on its own terms and thereafter impose no regulations on cultivation or processing of hemp. Cultivation and processing would only be subject to the regulations adopted by the State.

Option 3 - Allow and locally regulate cultivation and processing of hemp:

This option would require the Board to adopt an ordinance regulating the cultivation and/or processing of industrial hemp. A general list of options that staff has explored is attached.

Staff has been assessing locational standards that would address the interface issues caused by proximity to residential and other uses. In general the focus has been on provisions that would limit hemp activities to less populated portions of the County, primarily east of Highway 113 in areas zoned Exclusive Agriculture with minimum lot sizes of 80 and 160 acres. Also under consideration are separation requirements from the edge of city limits or sphere of influence lines. One, three and five mile radius separation requirements are being modeled. We are also evaluating whether such standards can be tiered based on the size and nature of an individual hemp operation. For example, could a hemp operation of a smaller size or contained fully within an enclosed building or buildings be allowed under a lesser separation standard than larger outside field cultivation activities? Maps depicting the locations of A-80 and A-80 zoning districts and the 1, 3 and 5 mile radius maps illustrating possible separation requirements from city/sphere boundaries are attached.

Even with broad standards establishing separation requirements and limiting hemp operations to agriculturally zoned areas with larger minimum lot sizes, there are variables in specific locations that may need to be addressed. As part of any regulatory package addressing hemp, staff is considering the value of requiring a Use Permit for any hemp activity. A Use Permit would allow for consideration of factors that broad locational and operational standards may not fully capture. For example, even if a proposal for a hemp operation were in an agricultural area with large parcel sizes, there could be residential uses in the vicinity that that could be impacted. A Use Permit would provide the County with discretion to determine if such a site was suitable for a hemp related use, and if so, if additional conditions were necessary to assure compatibility.

At this point, it would be helpful to start focusing the list of initial options under consideration to help facilitate public outreach to follow. With additional outreach options can morph and evolve but it is helpful to highlight certain options to facilitate discussion. Below are the areas staff would suggest as a good starting point. This would not preclude an outright ban if the process so warrants but to further the discussion and determine if standards can be put in place short of a permanent ban the following areas are suggested for further discussion.

- Require a Use Permit for any hemp related activity.
- Establish broad separation requirements measured from the edge of City Sphere of Influence lines or city limits pending further evaluation.

- Limit hemp related activities to the A-80 and A-160 zone districts
- Consider tiering separation requirements based on nature and size of a hemp related use.
- Consider an additional separation requirement from individual residential uses on nearby properties in the vicinity of the proposed hemp use. This could be evaluated under a Use Permit application.
- Establish fencing and signage requirements.
- Any other of the items list in the Options attachment that the Board would like to see further considered.
- Require a security plan.
- Prohibit on site processing/drying unless within an enclosed building.
- Require a bond or security payment to cover potential County abatement costs.

Public outreach: If the Board directs staff to develop an ordinance regulating industrial hemp, it may wish to consider directing outreach to various groups such as the Agricultural Advisory Committee, the Farm Bureau, seed companies/researchers, residents and industry representatives.

Board direction on the method of outreach would be helpful at this point. Supervisor Thomson has suggested a Task Force represented by two Board members, local residents and representative from the hemp industry to conduct outreach and develop recommendations. Such a Task Force can provide a good framework for comprehensive information gathering but will take time.

A variation on this approach was used by the Board on the cannabis issue. A Board Committee was established and outreach was conducted including visits to various facilities. Staff also conducted several informational meeting at various County locations to seek resident input. This process also took time but was useful in gauging community views on the cannabis issue.

The hemp issue is similar to cannabis but may not be as expansive. An alternative would be for the Board to direct staff to conduct one or more outreach meetings as deemed necessary and factor input from those meetings in to work that is already underway. This would likely be a shorter process.

Regardless of the public outreach option chosen and the provisions to be included in a permanent ordinance, staff does not anticipate that a permanent ordinance can be brought forward quick enough to allow planting for this growing season. If the Board is interested in addressing grower's needs for this season, the one approach that might facilitate timely planting would be to modify the Interim Urgency Ordinance to allow growers to file for Conditional Use Permits for this growing season and allow consideration of proposals on a case by case basis. Even that approach could be time constrained as it typically takes several months to process a Use Permit on top of the time it would take to publish a notice and bring forward a change to the Interim Urgency Ordinance.

In terms of a permanent ordinance, there are factors at play that may make it prudent to not move too quickly with a permanent ordinance. Most notably, we are anticipating changes with State regulations regarding hemp in the coming months that could affect Agriculture Department operations and their permitting procedures. Also, the State is attempting to reconcile their rules with Federal requirements.

ALTERNATIVES:

A range of options are discussed in this report. The Board could direct staff to either allow industrial hemp without added regulation or to establish a permanent ban. Such actions are not recommended at this time as the County continues to review legal and legislative factors and determine the best approach for addressing hemp in Solano County.

OTHER AGENCY INVOLVEMENT:

The County Counsel's office has participated in preparation of this report.

CAO RECOMMENDATION:

APPROVE DEPARTMENTAL RECOMMENDATION