

## Staff Report

Meeting Date: March 10, 2020

To: Siskiyou County Board of Supervisors

From: Kirk Skierski, Planning Director

Subject: Proposed Industrial Hemp Zoning Text Amendment (Z-19-10) Adding Chapter 16 to Title 10 of the Siskiyou County Code and would allow and regulate cultivation of industrial hemp within AG-1 and AG-2 zoning districts with a minimum parcel size of 40 acres

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### Background

Federal, state, and local regulations form the legal framework for Industrial Hemp cultivation in California's counties. The California Industrial Hemp Farming Act was signed into law in 2013 to authorize the commercial production of industrial hemp in California and became effective on January 1, 2017. On September 30, 2018, former California Governor Brown signed SB 1409 into law, setting forth legal guidelines for a state permitting process, which was to allow for the cultivation of industrial hemp beginning on January 1, 2019.

In October 2019, the Governor signed into law SB 153, a bill intended to conform California's hemp laws to the federal requirements for a state plan under the 2018 Farm Bill. SB 153 now requires the California Secretary of the Department of Food and Agriculture, in consultation with the Governor and the Attorney General, to develop and submit a state plan to the United States Secretary of Agriculture, on or before May 1, 2020. Submission of a state plan is significant because until California has a federally approved plan, legal hemp cultivation is technically limited to that which is consistent with the 2014 Farm Bill, which only allows for established agricultural research institutions.

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.

### Industrial Hemp Cultivation Ordinance

The stated purpose and intent of the proposed Chapter 16 is to establish standards, requirements, and regulations governing industrial hemp cultivation, and through such regulations, to protect the County's residents, neighborhoods, businesses, and the environment from disproportionately negative impacts caused by industrial hemp cultivation, and to enforce rules and regulations consistent with state and federal law.

The following subsections outline the zoning regulations, administration, and enforcement of industrial hemp cultivation. The fiscal impact of the industrial hemp cultivation ordinance is discussed later in this staff report. The draft provisions of the proposed Chapter 16 of Title 10 of the Siskiyou County Code are included as Attachment 1, Draft Ordinance.

## Zoning Regulations and Definitions

The proposed provisions include a series of definitions and define “Industrial Hemp”, consistent with state law, as

*“an agricultural product, whether growing or not, that is limited to types of the plant Cannabis sativa L. and any part of that plant, including the seeds of the plant and all derivatives, extracts, the resin extracted from any part of the plant, cannabinoids, isomers, acids, salts, and salts of isomers, with a delta-9 tetrahydrocannabinol concentration of no more than 0.3 percent on a dry weight basis”.*

The definitions section would define “Cultivation” to include light processing as follows:

*“Cultivation” shall include any activity involving the propagation, planting, growing, harvesting, drying, curing, grading, trimming or the limited mechanical separation and sorting of hemp.*

The definition section also defines “Sensitive Receptor”, a term which is pertinent for purposes of the setback requirements, as

*“a facility or land use that serves or attracts members of a population who are particularly sensitive to the effects of air pollutants or strong odors, such as children, the elderly, and people with illnesses. Examples of sensitive receptors include: churches, child daycares, schools, youth-oriented facilities, and property in any residential zone.”*

The proposed provisions would confine the cultivation of industrial hemp to AG-1 and AG-2 zones, subject to a 40-acre minimum parcel size. Cultivation of industrial hemp would otherwise be prohibited in all zoning districts.<sup>1</sup>

The draft ordinance imposes the following setback requirements on the outdoor cultivation of hemp:

- 100 feet from any boundary line of the parcel, unless the boundary line is adjacent to the boundary line of a parcel that is either owned, managed, or otherwise under the control of the person who obtained the license for the cultivation of industrial hemp;
- 1000 feet from any parcel containing a sensitive receptor;
- 200 feet from any residential uses; and
- 200 feet from any off parcel permitted residence in any zone.

Under the proposed ordinance, the indoor cultivation of hemp would be limited to the cultivation of hemp transplants<sup>2</sup> or seed production in a structure dedicated solely to the cultivation of nursery stock, or seed located within AG-1 or AG-2 districts. All other indoor cultivation of industrial hemp would be prohibited.

Structures used for transplants or seed production would need to meet applicable building codes and be permitted by the Community Development Department as required by County code. In addition, staff has

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1 Prior to cultivation, the draft provisions would require a person to register with the state through the Agricultural Commissioner and obtain a separate license from the Agricultural Commissioner.

2 The proposed ordinance defines “Transplant” as a cultivated hemp plant grown from seed or cutting in soil or individual containers for less than 8 weeks that does not exceed a height of eight (8) inches.

added a condition that if indoor cultivation of hemp transplants or seed production occurs within a structure with transparent or translucent walls and/or roof materials, lighting shall be turned off by 10 p.m. to ensure that light glow or glare cannot be seen beyond the property boundary. This would ensure that there are no lighting impacts to the surrounding areas.

The draft ordinance imposes the following setback requirements for structures used for indoor cultivation:

- 50 feet from any boundary line of the parcel adjacent to a parcel under different ownership;
- 1000 feet from any parcel containing a sensitive receptor;
- 100 feet from any residential uses; and
- 100 feet from any off parcel permitted residence in any zone.

The proposed ordinance also requires that all parcels used for the cultivation of industrial hemp have onsite signage indicating that hemp is being cultivated on site, which are to be posted at the corners of the parcel and at all usual points of entry, as well as at 600 foot intervals when a parcel is adjacent to a public right-of-way, such as a road, trail, or path.

State law provided a vague definition of an “Established Agricultural Research Institution,” and further exempted such entities from many of the regulations imposed by Division 24 of the California Food and Agricultural Code. In addition, state law enabled such entities to cultivate or possess industrial hemp with a greater than 0.3% THC content, thereby resulting in “research” or “academic” plants constituting cannabis. Thus, it was foreseeable that individuals would exploit the loophole created by the inadequacies of the state law by attempting to cultivate industrial hemp under the guise of an “Established Agricultural Research Institution” with the intent of cultivating cannabis or industrial hemp for commercial purposes, ahead of the California Department of Food and Agriculture’s (“CDFA”) implementation of its requisite regulatory package. Therefore, staff is recommending the draft ordinance would limit hemp cultivation by an Established Agricultural Research Institution, as defined consistent with federal law, for research or educational purposes to a total of one (1) acre per license holder.

In addition, to the proposed land use regulations described above, the draft ordinance includes other provisions the Board will consider related to the establishment of a county licensing process for industrial hemp growers, license fees associated with same, and special enforcement and remedies provisions related to distinguishing between hemp cultivation and unpermitted cannabis cultivation.

#### Administration

The Industrial Hemp Ordinance would allow and regulate the cultivation of hemp on AG-1 and AG-2 parcels that are 40 acres or larger. The Ordinance would require individuals to obtain a license issued by the Agricultural Commissioner prior to the cultivation of hemp, including cultivation for research purposes. A license by the Agricultural Commissioner does not grant any entitlement, interest in real property, or create any interest of value and does not run with the land. The license would be non-transferable and would automatically terminate upon transfer of ownership. In addition, individuals seeking to cultivate hemp within Siskiyou County would be responsible for complying with all applicable federal, state, and local laws and regulations pertaining to such cultivation, including the duty to register and or obtain a state license.

The Ordinance also includes requirements in order to obtain a hemp cultivation license issued by the County's Agricultural Commissioner, some of which include:

- An applicant shall be the deed holder of the land upon which the hemp is to be cultivated, or provide written consent in a form acceptable to the Agricultural Commissioner, from the deed holder granting permission for the cultivation of industrial hemp on the specified parcel(s).
- An applicant shall fully satisfy the registration requirements stated in Food and Agricultural Code section 81003.
- An applicant shall obtain an Operator Identification Number, or Restricted Materials permit, whichever is more appropriate, from the Agricultural Commissioner.
- Each applicant shall declare the intended end use of the industrial hemp production that shall occur on the parcel: seed/fiber, oil, or nursery production.
- An applicant for the cultivation of Transplants shall have a license to sell nursery stock as required under California Food and Agricultural Code section 6721 et seq.
- Each license issued under this Chapter shall expire one year from the date of its issuance.

Section 10-16.50 of the proposed Ordinance includes the licensing requirements for hemp cultivation, and is included as Attachment 1, Draft Ordinance.

#### Enforcement

The proposed Ordinance would also include sections pertaining to violations, fines/penalties for violation, enforcement, and cost recovery/remedies for non-compliant cultivation of hemp within Siskiyou County. The cultivation of industrial hemp in violation of federal, state, and local laws and/or rules and regulation, including the proposed Chapter 16, or other local regulation constitutes a public nuisance subject to abatement and the imposition of administrative penalties under Title 1, Chapter 5 of the Siskiyou County Code. Each day a violation of this chapter exists constitutes a separate and distinct violation.

Additionally, any violation of the proposed Ordinance shall be subject to injunctive relief, any license(s) issued would become null and void, and would require disgorgement and payment to the County for any monies unlawfully obtained, costs of abatement/destruction, costs of investigation, attorney fees, and any other relief or remedy available at law or in equity. Furthermore, an industrial hemp crop that does not comply with the proposed Ordinance and/or all applicable provisions of federal and state law, and associated rules and regulations, shall be destroyed. Crop destruction shall proceed as provided for in all applicable laws and regulations, which includes Food and Agricultural Code section 81006 and California Code of Regulations, title 3, sections 4950 and 4950.1. Any violations of this section are subject to abatement under Title 1, Chapter 5 of the Siskiyou County Code. The individual growing industrial hemp in violation of the law, shall submit a destruction plan to the Agricultural Commissioner at least 24 hours prior to the start of the destruction. The Agricultural Commissioner shall approve the method of destruction.

### **February 19, 2020 Planning Commission Meeting**

The proposed Industrial Hemp Zoning Text Amendment project (Z-19-10) was considered during the February 19, 2020 Planning Commission meeting. During the meeting, members of the public expressed concerns related to the proposed minimum parcel size of 40-acres. Individuals stated that hemp could be successfully cultivated on smaller sized parcels. In addition, members of the public felt that the minimum parcel size of 40-

acres would significantly reduce the number of properties able to cultivate hemp. The cultivation of hemp could provide an additional revenue-stream for small farms within the county that are currently struggling to compete with large acreage farms.

#### Planning Commission Recommendation

The Planning Commission generally felt the proposed Ordinance was appropriate, including the minimum parcel size of 40-acres. However, the Commission expressed concern regarding cultivation of hemp adjacent to riparian habitats. The Commission forwarded a recommendation to the Board to include an additional setback from riparian habitats with similar language to the Shasta and Scott River Total Maximum Daily Loads (TMDLs).

A brief background regarding Total Maximum Daily Loads begins with the Federal Clean Water Act. The Clean Water Act requires that state environmental agencies complete TMDLs for impaired waters. A TMDL is a planning and management tool intended to identify, quantify, and control the sources of pollution within a given watershed such that water quality objectives are achieved, and the beneficial uses of water are fully protected. The term TMDL is used in two ways. First, it is the total maximum daily load of a pollutant that a water body can handle and still achieve acceptable water quality, this is also known as the loading capacity. Second, it is the document that includes all the supporting components.

It is staff's opinion that the Planning Commission's recommendation to include an additional riparian setback would not be necessary because any applicable riparian setback associated with a TMDL would be enforced by the North Coast Regional Water Quality Control Board (NCRWQCB)<sup>3</sup> regardless of the proposed Industrial Hemp Ordinance language. TMDLs and their associated Implementation Plans are reviewed and enforced by the State's Water Quality Control Boards. It is possible that different waterways have different standards including riparian setbacks depending on the condition of a given waterway and associated TMDL. If the County were to include a riparian setback within the proposed Ordinance, all hemp cultivation would be subject to that specific setback regardless if an applicable TMDL identified a different standard. Keep in mind that individuals would still be required to comply with both State and local regulations. Furthermore, the Agricultural Commissioner has the ability to address setbacks as part of a pesticide permit that hemp cultivation would be required to obtain. Therefore, staff believes that NCRWQCB is best suited to ensure appropriate riparian setbacks through their TMDLs and Implementation Plans, along with the County's Agricultural Commissioner ability to address additional setbacks through the permitting process, and no additional setbacks are warranted at this time.

## **Environmental Review**

The proposed project is a zoning text amendment intended to limit the cultivation of industrial hemp to parcels 40-acres and larger in Siskiyou County's prime and non-prime agricultural zoning districts (AG-1 and AG-2). The ordinance imposes setback limitations and signage requirements to reduce any odor effects and to protect and promote the public health, safety and welfare of Siskiyou County citizens.

Because there is no substantial evidence, in light of the whole record before the County, that the proposed text amendment may have a significant effect on the environment, staff is recommending the project be exempt from further environmental analysis under the "common sense exemption" in accordance with Section

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<sup>3</sup> The County also has territory subject to the jurisdiction of the Central Valley Region

15061(b)(3) of the CEQA Guidelines. Additionally, the ordinance is categorically exempt from review under CEQA Guidelines Section 15308 Class 8 (action by a regulatory agency for the protection of the environment).

## **Fiscal Impact**

The proposed Ordinance would allow the Board to establish a fee for a hemp cultivation license by resolution. The amount of the fees adopted pursuant to the proposed Ordinance shall not exceed the amount reasonably required to inspect, administer or process the required permits, certificates, licenses, or other forms or documents, or to defray the costs of enforcement required to be carried out by the County. In accordance with such authority, the Agricultural Commissioner is working to establish fees for its implementation, administration, and enforcement of federal, state, and local laws. Such fees shall cover the actual costs associated with services that may include, but are not limited to, processing of licenses, inspections, sampling and testing, and abatement/destruction.

At this time, the fee schedule for administration, licensing and enforcement has not been established because the fee structure continues to be affected by CDFA rules. The County's Agriculture Department and Auditor-Controller Department will be working to establish a fee schedule that captures the real costs of the program and will return to the Board of Supervisors for adoption of said fee schedule near the effective date of the ordinance.

## **Recommendation**

It is staff's opinion that the proposed Industrial Hemp Zoning Text Amendment project (Z-19-10) to allow and regulate cultivation of industrial hemp within AG-1 and AG-2 zoning districts with a minimum parcel size of 40 acres would not be in conflict with general laws to protect and promote the public health, safety, and welfare of the County's citizens. It is the purpose and intent of the proposed Ordinance to establish standards, requirements, and regulations governing industrial hemp cultivation, including commercial and research industrial hemp activities, to impose reasonable land use regulations to protect the County's residents, neighborhoods, businesses, and the environment from disproportionately negative impacts caused by industrial hemp cultivation. The proposed Ordinance includes zoning regulations that have been designed to minimize effects of hemp cultivation on surrounding properties. Therefore, staff is recommending that the Board of Supervisors adopt the Industrial Hemp Ordinance.

## **Recommended Motion**

I move to take the following actions:

1. Introduce, waive, and approve the first reading of the proposed Industrial Hemp Zoning Text Amendment project (Z-19-10) adding Chapter 16 to Title 10 of the Siskiyou County Code, which would allow and regulate cultivation of industrial hemp within AG-1 and AG-2 zoning districts with a minimum parcel size of 40 acres; and
2. Direct the Clerk to schedule a continued public hearing for the second reading of the proposed ordinance to allow and regulate cultivation of industrial hemp as soon as possible.

## **Attachments**

1. Draft Ordinance No. \_\_\_\_\_, An Ordinance of the Board of Supervisors of the County of Siskiyou, State of California, Adding Chapter 16 to Title 10 of the Siskiyou County Code, which would allow and regulate cultivation of industrial hemp within AG-1 and AG-2 zoning districts with a minimum parcel size of 40 acres
2. Planning Commission Staff Report dated February 19, 2020
3. Signed Planning Commission Resolution 2020-002