

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
AGENDA ITEM

DEPT: Agricultural Commissioner

BOARD AGENDA:7.1
AGENDA DATE: February 25, 2020

CONSENT ☐

CEO CONCURRENCE: YES

4/5 Vote Required: No

SUBJECT:

Approval to Introduce and Waive the First Reading of an Ordinance to Amend Stanislaus County Code Chapter 6.85 Hemp Cultivation

STAFF RECOMMENDATION:

1. Introduce and waive the first reading of an Ordinance amending Stanislaus County Code Chapter 6.85 Hemp Cultivation.

DISCUSSION:

Industrial hemp is defined under the California Food and Agricultural Code (FAC) Section 81000 and Health and Safety Code Section 11018.5 as fiber or oilseed crop, or both, that is limited to types of the plant Cannabis sativa L. having no more than 0.3% tetrahydrocannabinol (THC), the principal psychoactive constituent of cannabis. Thus, industrial hemp does not typically contain enough THC to induce intoxication.

Industrial hemp is now defined as an agricultural commodity and most of the new interest in industrial hemp is for its Cannabidiol (CBD) oil properties. This CBD oil extract is used for therapeutic purposes and is being infused into a variety of products including lotions, ointments, drinks, snacks, and human and animal food supplements. Visually, the types of industrial hemp cultivars that are grown for CBD oil are indistinguishable from the high THC cannabis strains used for recreational purposes.

There are three types of entities allowed to grow industrial hemp: Established Agricultural Research Institutions (EARI), industrial hemp growers, and hemp breeders (formally named seed breeders). California law does not provide for personal use cultivation and industrial hemp shall be grown on a minimum of one-tenth of an acre.

On June 18, 2019 the Board of Supervisors adopted an Industrial Hemp Cultivation pilot program that will expire on May 1, 2020. The industrial pilot program applies only to industrial hemp growers and hemp breeders. Established Agricultural Research Institutions (EARI) are not included but are allowed to operate under the provisions of the 2014 Farm Bill.

The County Ordinance and Code, Chapter 6.85 which governs the pilot program requires that:

- A County license is required in addition to the County registration to cultivate industrial hemp;

- Only one County license will be issued per person/business;
- Parcels must be a minimum of 10 acres in size;
- Parcels must be located in the A-2 zoning district, but outside of a Local Sphere of Influence and/or Urban Transition General Plan designation;
- A maximum of 12 cultivation acres is allowed per license;
- License applications to cultivate industrial hemp must be filed with the Agricultural Commissioner no later than 4:00 p.m. on July 18, 2019 (no restrictions on the number of applicants); and
- The pilot program expires on May 1, 2020.

The Agricultural Commissioner registered and licensed 32 entities. Of those licensed, 21 planted a crop in 2019. A total of 257 acres were registered, 159 acres or 62% were planted and 143 acres or 90% of the planted acres were harvested. Established Agricultural Research Institutions grew 18 acres but are not part of the pilot program. For comparison, the total registered acres in California as of February 5, 2020, is 40,736 with Kern and Riverside counties both exceeding 8,000 acres.

Compliance

- Twenty-four violations were documented which included missing signage, failure to submit a harvest report, exceeding the 0.3% THC limit, harvesting without obtaining a THC test report, planting prior to registration, harvesting after the 30-day harvest window, and providing incorrect information on registration forms.
- In total, 16 acres were ordered destroyed for exceeding THC content or for failure to obtain a THC test report.
- Two violations were issued for illegal pesticide applications and a shipment of 124 plants was ordered destroyed for violation of an inter-state agricultural quarantine.

Surveys

Surveys were conducted at the end of the growing season that included 21 industrial hemp growers, 121 individuals who expressed interest in growing industrial hemp, and 187 neighbors adjacent to industrial hemp sites.

Grower Survey Results:

- 68% of growers planted less acres than what they registered. Reasons included that it was too late to plant, problems getting seed or plants, market risk, affordability, and dead nursery stock.
- 50% grew for CBD biomass/oil, 33% for smokable bud, and 13% for starter plants and fiber.
- 24% (5) of growers reported theft and 50% of growers utilized additional security measures.

- 84% requested to grow more than 12 acres and 48% of growers requested to grow between 1 and 40 acres in 2020.

Neighbor Survey Results:

- 54% of the 87 neighbors responding to the survey had no issues with nearby industrial hemp sites.
- 31% expressed being negatively affected by odor and 5% (4) reported the issue to a government agency.
- 15% had concerns regarding security and/or safety.
- 15% expressed being negatively affected by lights and generators running at all hours.
- 15% noticed an increase in traffic on their road.
- 30% expressed various concerns including requiring buffers, unsavory people in the area, trespass issues, increased trash, health concerns and the need for notification regarding hemp sites.

On February 18, 2020, a meeting was held at the Stanislaus County Agricultural Center to update the industrial hemp industry on the 2019 pilot program and on the new laws and regulations that are likely to be in effect in 2020.

Recommendations for 2020 Growing Season

Staff recommends the following amendments to County Code, Chapter 6.85, Hemp Cultivation:

1. Extend the pilot program to May 1, 2021 and increase the acreage limit to 40 acres. Acreage under a greenhouse would not count towards the 40-acre limit.
 - a. State and federal regulations are not finalized, counties are still working under emergency regulations and the State does not have an approved USDA industrial hemp plan. The State plan will include: criminal background check regulations; laboratory certification regulations; sampling regulations that will require a much larger number of samples, likely resulting in higher THC levels; a shorter sample-to-harvest window; and require Established Agricultural Research Institutions to register with the Agricultural Commissioner. These are significant changes and the continuation of the pilot program will allow staff time to implement the changes under manageable acreage sizes.
 - b. Forty-eight percent (48%) of growers requested 1-40 acres. Continuing the pilot program for a second year at the 40-acre limit will allow larger plantings while keeping the countywide acreage at a manageable amount without adding staff. It will provide another year for staff and growers to learn and for the County to evaluate impacts and improve compliance before larger acreage limits are considered. In 2019, only 14 acres of greenhouse were used to grow hemp, mostly for clones, transplants and seed.

2. Include Established Agricultural Research Institutions in the industrial hemp ordinance and pilot program and allow sampling for THC content by the Agricultural Commissioner.
 - a. Currently there is no limit on how many acres an EARL can cultivate and under existing state law, the Agricultural Commissioner has no authority to sample EARL crops for THC content. The Agricultural Commissioner would promulgate regulations, as allowed by the ordinance to require research plans and destructions plans for crops that test above 0.3% THC. This would bring EARLs under comparable standards as industrial hemp growers and breeders and would provide better oversight by requiring THC testing. It is expected that overall EARL acreage might increase from 18 acres to 40 acres.
3. Add violations to the industrial hemp ordinance that could cause a suspension or revocation of a county industrial hemp license.
 - a. Provides the County with a means to address substantial violations of state industrial hemp laws, regulations and County code. Currently, state law does not provide remedies for violation of state industrial hemp laws or regulations.

The following is the estimated acreage for the 2020 growing season based on 40-acre and 12-acre limits and the anticipated increase in sampling and destruction activities in comparison to the 2019 pilot season. Estimates will be less if growers that request large acreage choose not to plant because of the 40-acre restriction.

Acreage Limit (% Increase)	Registered Acres	Registrations (% Increase)	Samples (% Increase)	Destruction Acres
40 acres	3,226 acres	111 (347%)	2,967 (605%)	645 (4,031%)
12 acres	1,273 acres	111 (347%)	1,273 (260%)	254 (1,588%)

The Agricultural Commissioner anticipates being able to handle the increased workload at the 40-acre limit. Until the impacts of these future State and Federal regulations are better understood, staff recommends continuing with a pilot program that is designed to limit the overall industrial hemp acres planted in the county. If an amended industrial hemp ordinance is not in place by May 1, 2020, the County industrial hemp program will only be governed by State and Federal regulations which do not limit the amount of acres that can be grown or require testing of EARLs by the Agricultural Commissioner.

POLICY ISSUE:

Board of Supervisors' approval is required to adopt an ordinance.

FISCAL IMPACT:

The 2019 pilot program (May-December) expenditures were \$66,317. Expected revenue is \$34,073 and the balance of \$32,244 is absorbed within the Department's existing budget. Additional expenditures from January – June 2020 are estimated to be \$20,000, which will also be absorbed.

The estimated expenditures in Fiscal Year (FY) 2020-2021 are \$280,103 at the 40-acre limitation. Expected revenue is \$179,063 leaving a balance of \$101,040 that will be absorbed within the Department's proposed budget. Costs will be absorbed by using staff and time from other programs, shifting management time, and utilizing unallocated time from two new inspector positions that were added during the FY 2018-2019 Mid-Year Budget and the FY 2019-2020 Final Budget.

BOARD OF SUPERVISORS' PRIORITY:

The recommended action is consistent with the Board's priorities of *Developing a Healthy Economy* and *Delivering Efficient Public Services* to protect and support the local agricultural and business communities.

STAFFING IMPACT:

No additional staff is requested. The Agricultural Commissioner, along with support from the Chief Executive Office, County Counsel, Planning and Community Development, and the Sheriff's Office will continue to administer the industrial hemp pilot program. Continuation of the pilot program will allow staff to analyze impacts necessary to support ongoing administration and enforcement of an industrial hemp program in Stanislaus County.

CONTACT PERSON:

Milton O'Haire, Agricultural Commissioner (209) 525-4730

ATTACHMENT(S):

1. Ordinance Amending Chapter 6.85 "Hemp Cultivation"

ORDINANCE NO. C.S. _____

AN ORDINANCE AMENDING CHAPTER 6.85 "HEMP CULTIVATION"

THE BOARD OF SUPERVISORS FOR THE COUNTY OF STANISLAUS, STATE OF CALIFORNIA, ORDAINS AS FOLLOWS:

SECTION 1. Section 6.85.010 of the Stanislaus County Code is amended to read as follows:

"6.85.010 Purpose.

It is the purpose and intent of this chapter to regulate the cultivation of hemp in a responsible manner to protect the health, safety, and welfare of the residents of Stanislaus County and to enforce rules and regulations consistent with state law. It is the further purpose and intent of this chapter to require all persons cultivating hemp to obtain a license to operate within Stanislaus County. Nothing in this chapter is intended to authorize the cultivation of hemp for purposes that violate state or federal law. The provisions of this chapter are in addition to any other permits, licenses and approvals which may be required to conduct activity in the county. The provisions of this chapter shall expire on May 1, 2021."

SECTION 2. Section 6.85.030 of the Stanislaus County Code is amended to read as follows:

"6.85.030 Definitions.

When used in this chapter, the following words shall have the meaning ascribed to them as set forth herein. Any reference to California statutes includes any regulations promulgated thereunder and is deemed to include any successor or amended version of the referenced statute or regular provision.

- A. "Hemp cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of hemp, including activities carried out by hemp breeders. For the purposes of this chapter, hemp

cultivation shall include cultivation by an Established agricultural research institution (EARI) as defined in Section 81000 of the California Food and Agricultural Code.

- B. "Hemp" has the same meaning as in Section 81000 of the California Food and Agricultural Code.
- C. "Hemp breeder" has the same meaning as in Section 81000 of the California Food and Agricultural Code.
- D. "Established agricultural research institution" has the same meaning as in Section 81000 of the California Food and Agricultural Code.
- E. "Person" includes any individual, firm, partnership, joint venture, association, corporation, limited liability company, estate, trust, activity trust, receiver, syndicate, or any other group or combination acting as a unit, and the plural as well as the singular.
- F. "Hearing Officer" means the Hearing Officer established in Section 6.78.185 of the Stanislaus County Code."

SECTION 3. Section 6.85.050 of the Stanislaus County Code is amended to read as follows:

"6.85.050 Requirements for issuance of a license.

Prior to the cultivation of hemp in the unincorporated area of the county, the following requirements shall be met:

- A. Prior to the issuance of a license, applicants shall demonstrate that they meet the standards that are established in the application requirements or further amendments to the application process as established by the Agricultural

Commissioner. A person may be issued only one hemp cultivation license.

- B. Each parcel upon which a license application is submitted must be a minimum of ten acres in size, located in the A-2 (General Agricultural) zoning district but outside of a Local Agency Formation Commission (LAFCO) Sphere of Influence (SOI) or Urban Transition (UT) General Plan designation of a city.
- C. Each hemp cultivation license shall permit the outdoor cultivation of not more than a cumulative total of forty (40) acres of land.
- D. All applications for hemp cultivation licenses shall be submitted to the Agricultural Commissioner no later than close of business on July 1, 2020.
- E. Each license issued pursuant to this chapter shall expire on May 1, 2021.
- F. No license shall be issued until the Agricultural Commissioner issues the applicant a registration under Division 24 of the California Food & Agriculture Code.
- G. By submitting an application for a hemp cultivation license, applicants consent to all inspections and testing that may be conducted at any time at the discretion of the Agricultural Commissioner.
- H. Applicants, including EARL, shall comply with all federal, state, and local laws and regulations, including, but not limited to, those promulgated by the Board of Supervisors and/or Agricultural Commissioner related to reporting, sampling, testing, and destruction.
- I. By submitting an application for a hemp cultivation license, applicants consent to providing the Agricultural Commissioner a criminal history report."

SECTION 4. Section 6.85.120 of the Stanislaus County Code is added to read as follows:

"6.85.120 Grounds for Suspension or Revocation.

- A. Hemp cultivation licenses may be revoked by the Agricultural Commissioner for any violation of any law and/or any rule, regulation, condition of approval, and/or standard, including, but not limited to, those adopted pursuant to this Chapter.
- B. Any of the following shall be grounds for suspension or revocation of the hemp cultivation license, based on substantial evidence:
 - (1) Failure to destroy crops in the time and manner specified by the Agricultural Commissioner;
 - (2) Failure to timely submit all reports required by the Agricultural Commissioner;
 - (3) Failure to obtain a laboratory test report indicating the THC levels as required by law, rule, or regulation prior to harvest;
 - (4) Failure to comply with the maximum acreage limitations provided in this Chapter;
 - (5) Failure to comply with one or more of the conditions of the Hemp cultivation license or any County permits or land use conditions of approval, or any conditions placed on the County Registration;
 - (6) Providing false material information, written or oral, given willfully or negligently by the applicant;
 - (7) Any act or omission by a licensee that results in the violation of the

provisions of this Chapter;

- (8) Any act or omission by a licensee that results in the denial, revocation or suspension of the licensee's County Registration;
- (9) Any act or omission by a licensee which constitutes a violation of State law or the Stanislaus County Code; or
- (10) The licensee allows any hemp cultivation to operate in a manner which constitutes a nuisance, where the licensee has failed to abate the nuisance after notice."

SECTION 5. Section 6.85.130 of the Stanislaus County Code is added to read as follows:

"6.85.130 Notice of Suspension or Revocation of the Hemp Cultivation License.

- A. If the Agricultural Commissioner determines that grounds for suspension or revocation of the Hemp cultivation license exist pursuant to this Chapter, the Agricultural Commissioner shall issue a written Notice of Intention to revoke or suspend the license, as the case may be. The Notice of Intention shall be served on the licensee at the address reported on the license issued pursuant to this Chapter. The Notice of Intention shall be served by either personal delivery or by certified U.S. Mail, postage prepaid, return receipt requested.

The Notice of Intention shall:

- (1) Identify the licensee;
- (2) Describe the location of property;
- (3) State the intention to revoke or suspend the license;
- (4) Provide the grounds for revocation or suspension and the action

necessary to abate the violation, if any;

(5) Notify the licensee of the right to request a hearing before a Hearing Officer to present evidence as to why the license should not be suspended or revoked; and

(6) Inform the licensee of the ten-day deadline to submit a written request for a hearing.

B. The licensee shall have ten business days from the service of the Notice of Intention to submit a written request for a hearing to the Agricultural Commissioner, or designee, who shall immediately forward the request to the Hearing Officer for a hearing. Failure to submit the written request for a hearing shall be deemed a waiver of the right to challenge the suspension or revocation of the license and a failure to exhaust administrative remedies. If the hearing is not timely requested, the Agricultural Commissioner may suspend or revoke the license in accordance with the Notice of Intention.

C. Any hearing before the Hearing Officer shall be held pursuant to the hearing procedures established in Section 6.78.185 of the Stanislaus County Code."

SECTION 6. Section 6.85.140 of the Stanislaus County Code is added to read as follows:

"6.85.140 Fees. The Board of Supervisors may, by resolution, establish a schedule of fees for services provided under this chapter. Services subject to fees may include, but are not limited to, registration, licensing, sampling, testing, inspections, monitoring, and enforcement."

SECTION 7. This ordinance shall take effect thirty (30) days from and after the date of its passage and before the expiration of fifteen (15) days after its passage it shall be published once, with the names of the members voting for and against the same, in the Modesto Bee, a newspaper published in the County of Stanislaus, State of California.

Upon motion of Supervisor _____, seconded by Supervisor _____, the foregoing Ordinance was passed and adopted at a regular meeting of the Board of Supervisors of the County of Stanislaus, State of California, the ____ day of February 2020, by the following-called votes:

AYES: Supervisors:

NOES: Supervisors:

ABSENT: Supervisors:

Kristin Olsen, Chairwoman of the Board of
Supervisors of the County of Stanislaus,
State of California

ATTEST:

ELIZABETH KING, Clerk of the
Board of Supervisors of the County of Stanislaus,
State of California

By _____
Deputy Clerk

APPROVED AS TO FORM:

Thomas E. Boze, County Counsel

By *Daniel Solish*
Daniel Solish,
Deputy County Couse