

**REPORT/RECOMMENDATION TO THE BOARD OF SUPERVISORS
OF SAN BERNARDINO COUNTY
AND RECORD OF ACTION**

August 9, 2022

FROM

**DAVID DOUBLET, Director, Land Use Services Department
ANGELA GODWIN, Agricultural Commissioner/Sealer of Weights & Measures,
Department of Agriculture/Weights & Measures**

SUBJECT

Ordinances Relating to Regulation of the Cultivation and Manufacturing of Industrial Hemp

RECOMMENDATIONS

1. Conduct a public hearing to consider Land Use Service Department's proposed ordinance relating to allowed uses, permit requirements, and specific use regulations for the cultivation and manufacturing of industrial hemp.
2. Adopt findings recommended by the Planning Commission for proposed ordinance.
3. Make alterations, if necessary, to proposed ordinance.
4. Approve introduction of proposed ordinance.
 - An Ordinance of San Bernardino County, State of California, to amend Tables 82-4, 82-7, and 82-17 of Division 2, related to allowed use and permit requirements for the cultivation and manufacturing of industrial hemp; and to add Chapter 84.35 to Division 4, related to specific use regulations for the cultivation and manufacturing of industrial hemp, all of Title 8 of the San Bernardino County Code.
5. Consider Department of Agriculture/Weights & Measures' proposed ordinance relating to regulations for the cultivation of industrial hemp.
6. Make alterations, if necessary, to proposed ordinance.
7. Approve introduction of proposed ordinance.
 - An Ordinance of San Bernardino County, State of California, to add Chapter 16 of Division 3 of Title 3 of the San Bernardino County Code relating to regulation of the cultivation of industrial hemp.
8. SCHEDULE BOTH ORDINANCES FOR FINAL ADOPTION ON TUESDAY, AUGUST 23, 2022 on the Consent Calendar.
9. Direct the Clerk of the Board of Supervisors to file a Notice of Exemption for both ordinances.

(Presenters: David Doublet, Director, 387-4431)

COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES

**Ensure Development of a Well-Planned, Balanced, and Sustainable County.
Provide for the Safety, Health and Social Service Needs of County Residents.
Improve County Government Operations.
Operate in a Fiscally-Responsible and Business-Like Manner.**

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FINANCIAL IMPACT

Approval of this item will not result in the use of additional Discretionary General Funding (Net County Cost) for the Land Use Services Department (LUS). Sufficient appropriation and revenue to complete this action have been included in the LUS, Planning Division 2022-23 budget. All costs of processing applications for the cultivation or manufacturing of industrial hemp are paid by the applicant and all enforcement and abatement costs, if any, will be paid by a security deposit required by the applicant as part of a performance guarantee.

Approval of this item will not result in the use of Discretionary General Funding (Net County Cost), as this ordinance will allow the Department of Agriculture / Weights & Measures (AWM) to require an abatement bond for certain hemp cultivators. This will allow for the recovery costs associated with industrial hemp abatement in situations where registrants have failed to follow rules and regulations. In fiscal year 2020-21, AWM incurred abatement costs of \$17,811, and in fiscal year 2021-22 incurred costs of \$36,633. The abatement bond in this proposed ordinance will serve to offset these costs moving forward and was calculated utilizing previous costs for past abatements.

Bond Name	Bond Amount	Description
Performance Guarantee	\$5,000; additional \$1,000 per acre over 5 acres	Security deposit to guarantee compliance with conditions of approval and to protect neighboring residents, business, and the surrounding environment from negative impacts caused by industrial hemp.
Abatement Bond	\$1,250 per acre	Cost to reimburse the County for hemp destruction in the event the applicant or registered hemp entity does not adequately destroy the hemp in an approved manner.

BACKGROUND INFORMATION

The California Industrial Hemp Farming Act (Act), located at Division 24 (commencing with Section 81000) of the California Food and Agricultural Code and Title 3, Division 4, Chapter 8 (commencing with Section 4900) of the California Code of Regulations became effective on January 1, 2017. The Act authorized individuals and entities to cultivate industrial hemp with certain testing and reporting requirements to ensure what was being grown was in fact hemp and not cannabis. Industrial hemp and cannabis are both derivatives of the same plant *Cannabis sativa* Linnaeus, which are virtually indistinguishable. The primary difference between the plants is the amount of tetrahydrocannabinol (THC) present, which is detectable through laboratory testing. However, THC levels are difficult to reliably test until the plant is close to maturity and ready for harvest. Due to the difficulty in distinguishing industrial hemp and cannabis without laboratory testing, many cultivators of cannabis have done so under the guise of registered hemp. The County currently has one of the highest numbers of industrial hemp registrations within the State, which has exacerbated the cannabis problem many communities are facing.

On March 10, 2020 (Item No. 7), the Board of Supervisors (Board) approved the first revenue agreement between AWM and the California Department of Food and Agriculture (CDFA) to

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provide enforcement activities related to the cultivation of industrial hemp throughout the County on behalf of the State for the period of April 30, 2019 through June 30, 2020. On September 15, 2020 (Item No. 6), the Board approved the second revenue agreement between AWM and CDFA for the period of July 1, 2020 to July 30, 2022. During this time, AWM received 183 registration applications, and approximately 88 are currently active.

During the period that AWM has performed services under the revenue agreements with the CDFA, it has become apparent that stronger enforcement is needed by AWM through an established Industrial Hemp Cultivation ordinance in order to successfully enforce the rules and regulations consistent with State and Federal law, as well as local zoning regulations to protect neighboring residents, businesses, and the surrounding environment from negative impacts that may be caused by the cultivation and manufacturing of industrial hemp. As currently constructed, the cultivation of industrial hemp is a use permitted by right within zoning districts that authorize crop production and AWM has limited authority to enforce many of the State and Federal rules and regulations governing hemp production. This has resulted in the proliferation of illegal commercial cannabis grows operated under the guise of legal industrial hemp cultivation. Furthermore, if illegal industrial hemp crops are located and the registrant fails to comply with proper destruction protocols, AWM is responsible for the full abatement costs with little practical ability to recoup expenses. This has resulted in registrants having little reason to comply with AWM in regard to industrial hemp cultivation and registration.

To address the issues discussed above, this item includes two ordinances designed to assist the County in its local regulation of industrial hemp. The LUS ordinance includes siting and operational standards for the cultivation and manufacturing of industrial hemp through land use controls. The AWM ordinance regulates the production of industrial hemp to ensure cultivation is consistent with State and Federal law.

LUS Ordinance

The proposed LUS ordinance will impose siting requirements for industrial hemp activities by limiting cultivation and manufacturing to appropriate zoning districts, require approval of a land use permit before cultivators or manufacturers can commence operation, impose special development standards related to setbacks from certain land uses and sensitive receptors, and require performance guarantees to ensure compliance with conditions of approval. The proposed ordinance will apply prospectively only and therefore authorize existing legal uses to continue operating as a legal non-conforming use. A detailed planning analysis of the proposed ordinance and written recommendation of the Planning Commission is included as an attachment to this item.

The proposed ordinance was considered in a public hearing by the Planning Commission on June 9, 2022. No written or oral opposition was submitted either before or during the public hearing. The Planning Commission unanimously recommended approval of the proposed ordinance with a 4-0 vote (Vice Chair Stoffel, absent).

AWM Ordinance

The proposed AWM ordinance will enhance AWM's ability to enforce rules and regulations consistent with State and Federal laws, including increasing overall administration, testing and oversight of the cultivation of industrial hemp. AWM will be afforded greater authority to suspend, revoke, and refuse to renew industrial hemp registrations in certain circumstances where State reporting requirements are not followed or upon confirmation of the cultivation of

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cannabis instead of industrial hemp. An appeal process is afforded for industrial hemp registration revocations. Verification of proper entitlements for proposed cultivation sites will be required, as well as performance bond administration for abatement costs. Industrial hemp cultivation sites that are not in compliance with County, State, or Federal law may be abated by the County. Full costs for the abatement are recoverable against the registered hemp entity and property owner. In addition, all new hemp cultivation registrations will require the posting of a \$1,250 per acre bond to cover these costs. AWM has used previous abatements to calculate this average cost. Currently operating industrial hemp entities with a valid industrial hemp registration will not be required to post this abatement bond unless their registration expires, is suspended, or is revoked or not renewed and later reinstated, not as a result of successful appeal.

The County Agricultural Commissioner, Sheriff, or their respective designees, are charged and authorized with the responsibility of administering and exercising the authority conferred within this ordinance. This ordinance will provide consent for AWM, Sheriff's Department or their respective designees to enter any and all industrial hemp grows for inspection and testing while establishing responsibility for violations.

California Environmental Quality Act Compliance

The proposed ordinances would amend the County Code for the purpose of adopting regulations governing the existing use of industrial hemp that is currently authorized within the County. Therefore, the ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) of the CEQA Guidelines because it can be determined with certainty that the proposed ordinances will not have a significant effect on the environment.

PROCUREMENT

Not applicable.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Daniel Pasek, Deputy County Counsel, and Jason Searles, Deputy County Counsel, 387-5455) on June 27, 2022; Finance (Elias Duenas, Administrative Analyst, 387-4052, and Erika Rodarte, Administrative Analyst, 387-4919) on July 6, 2022; and County Finance and Administration (Robert Saldana, Deputy Executive Officer, 387-5423) on July 11, 2022.

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Record of Action of the Board of Supervisors
San Bernardino County

Hearing Opened
Public Comment: Jeff Taylor
Hearing Closed

APPROVED

Moved: Joe Baca, Jr. Seconded: Dawn Rowe
Ayes: Col. Paul Cook (Ret.), Janice Rutherford, Dawn Rowe, Curt Hagman, Joe Baca, Jr.

Lynna Monell, CLERK OF THE BOARD

BY 
DATED: August 9, 2022



cc: LUSD - Doublet w/ NOE & Rec.
File w/ Final BAI
JLL 08/10/2022