



## City Council Report

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**File ID:** 2019-01580

November 5, 2019

**Public Hearing Item 26**

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**Title:** Emergency Interim Ordinance Extending the Interim Ordinance Imposing a Moratorium on Industrial Hemp Cultivation for 10 Months and 15 Days (Four-Fifths Vote Required) [Noticed 10/25/2019] {To be published in its entirety upon adoption}

**Location:** Citywide

**Recommendation:** Conduct a public hearing and upon conclusion, adopt an Interim Ordinance: 1) extending the term of Ordinance No. 2019-0033, relating to a moratorium on industrial hemp cultivation, for 10 months and 15 days, to expire on September 20, 2020; and 2) and declaring the ordinance to be an urgency measure to take effect immediately upon adoption.

**Contact:** Leyne Milstein, Assistant City Manager, (916) 808-8491; Nicholas McLean, Program Analyst, Office of Cannabis Management, Office of the City Manager.

**Presenter:** Leyne Milstein, Assistant City Manager, (916) 808-8491, Office of the City Manager

**Attachments:**

- 1-Description/Analysis
- 2-Ordinance

## Description/Analysis

**Issue Detail:** On September 24, 2019, the City Council adopted a 45-day moratorium to temporarily prohibit cultivation of industrial hemp in the city's boundaries. This item seeks to extend the moratorium for another 10 months and 15 days, while staff conducts further research on the subject, federal and state government regulations evolve, and field-test equipment is developed to assist law enforcement in distinguishing cannabis from industrial hemp.

On December 12, 2018, the federal 2018 Farm Bill, which covers the cultivation of industrial hemp, production of industrial hemp for agricultural research and transfer across state lines was signed into law. The Farm Bill immediately removed hemp from the federal government's list of Schedule I controlled substances under the Controlled Substances Act of 1970 and permitted the cultivation of industrial hemp for agricultural research purposes. California has regulated industrial hemp since 2013. Under California's law, industrial hemp may be cultivated for agricultural research and commercial purposes. (California Food and Agricultural Code sections 81000-81011.)

To date, federal and state regulatory schemes for industrial hemp is still evolving. On October 12, 2019, California Senate Bill 153 became law. The bill changes the definition for industrial hemp (the definition for industrial hemp has been changed several times before this bill), places new conditions on eligibility to participate in the industrial hemp program, requires county registration for growers of if industrial hemp for noncommercial purposes, and imposes new testing requirements and enforcement procedures to be established by a plan by California that has been approved by the federal government. In addition, tetrahydrocannabinol (THC) content is a critical factor in distinguishing industrial hemp from cannabis and field-testing equipment is still being developed to assist law enforcement activity.

Under both federal and state laws, industrial hemp can be grown outdoors and indoors. In the County of Sacramento, potential industrial hemp growers must register with the County of Sacramento Agricultural Commissioner in order to cultivate in the county or city. At least one individual has registered to cultivate within the city. And in the absence of any jurisdictional ban or moratorium, the County has opined that it cannot refuse to register an applicant.

Currently, the City Code does not expressly allow cultivation of industrial hemp, but the public may perceive that industrial hemp cultivation is allowed as plant nurseries. (Sacramento City Code section 17.108.170.)

City staff is still exploring and researching the industrial hemp industry and an appropriate approach to regulate industrial hemp to recommend to City Council. City staff anticipates

making a policy recommendation on how to regulate industrial hemp, if at all, subject to the regulatory framework released by the Federal and State governments prior to the end of the moratorium.

**Policy Considerations:** There are no immediate local policy considerations associated with extending the moratorium on industrial hemp. However, if the City chooses to regulate industrial hemp in the future, the City may need to create a regulatory framework for specifically for industrial hemp, which may require amendments to the City's land use (Title 17), business (Title 5), and the health and safety (Title 8) regulations. There may be other amendments to the City Code based on the state Legislature's adoption of any new legislation on the subject matter.

**Economic Impacts:** None

**Environmental Considerations:** This action is not a "project" subject to and is exempt from the California Environmental Quality Act (CEQA) because it involves only general policy and procedure making and does not have the potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. (CEQA Guidelines sections 15002(d), 15061(b)(3), and 15378).

**Sustainability:** Not Applicable

**Commission/Committee Action:** Not Applicable

**Rationale for Recommendation:** Extending the temporary interim ordinance will give the City the time it needs to be thorough in its efforts to develop rules that are fair and reasonable to business interests and protect the public's health and safety, especially with the continuing evolution of federal and state regulations. More time is necessary to develop regulations with the input of stakeholders. Additionally, extending the interim ordinance will prevent cultivation of industrial hemp within the City's boundaries. Lastly, it will give additional time for the development of the necessary field-equipment to assist law enforcement in distinguishing industrial hemp from cannabis.

**Financial Considerations:** None at this time.

**Local Business Enterprise (LBE):** Not Applicable.

ORDINANCE NO.

Adopted by the Sacramento City Council

[Date Adopted]

AN INTERIM ORDINANCE EXTENDING THE TERM OF ORDINANCE NO. 2019-0033, RELATING TO A MORATORIUM ON INDUSTRIAL HEMP CULTIVATION AND DECLARING THE ORDINANCE TO BE AN URGENCY MEASURE TO TAKE EFFECT IMMEDIATELY UPON ADOPTION

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

SECTION 1. Findings and Purpose

The City Council of the City of Sacramento finds and declares as follows:

- A. On September 24, 2019, the city council adopted Ordinance No. 2019-0033, an interim ordinance prohibiting the cultivation of industrial hemp in the city of Sacramento until the city council's consideration of suitable land use regulations, if any, can be completed. City staff anticipated bringing a report to the Law and Legislation Committee regarding additional regulations within six months of adoption of the ordinance. The ordinance was enacted as an urgency measure pursuant to California Government Code section 65858, subdivision (a), and Sacramento City Charter section 32(g)(2). The ordinance took effect immediately upon adoption and expires on November 7, 2019.
- B. The interim ordinance was adopted as both state and federal regulatory schemes for industrial hemp are evolving. Additionally, law enforcement does not have the field-testing equipment to determine the amount of tetrahydrocannabinol (THC) content, a critical factor distinguishing industrial hemp from cannabis, as the equipment for such testing is still being developed. The difficulty in distinguishing industrial hemp from cannabis may adversely affect the public health, safety, and welfare of the residents and visitors of the city of Sacramento because individuals may claim that cannabis plants are hemp plants, thus complicating enforcement efforts and causing an overall increase in crime.
- C. On October 12, 2019, the Governor signed Senate Bill 153 into law. Among other things, SB 153 changes the definition of industrial hemp; imposes new conditions on eligibility to participate in the industrial hemp program; requires county registration for growers of industrial hemp for noncommercial and commercial purposes; and imposes new testing requirements and enforcement procedures upon the approval by the federal government of California's plan to monitor and regulate industrial hemp production. To date, there is no approved plan.

- D. Since the adoption of the interim ordinance, city staff has reached out to the community and has collected information from parties interested in discussing the establishment of regulations for industrial hemp. However, city staff needs additional time to thoroughly and thoughtfully consider and recommend an approach for city council consideration to regulate industrial hemp.
- E. Therefore, an extension of the interim ordinance is necessary to protect the public health, safety, and welfare by prohibiting the cultivation of industrial hemp. City staff anticipates bringing a report to the Law and Legislation Committee regarding proposed regulations within six months.

SECTION 2. Term of the Interim Ordinance Extended

The term of the interim ordinance (Ordinance No. 2019-0033) is extended for 10 months and 15 days. The interim ordinance will have no further force or effect after September 20, 2020, unless extended pursuant to California Government Code section 65858, subdivision (a).

SECTION 3. Urgency Measure

This ordinance is declared to be an urgency measure to take effect immediately upon adoption of the City Council pursuant to California Government Code section 65858, subdivision (a) and City Charter, section 32(g)(2). The facts constituting the emergency are set forth in section 1 of this ordinance, all of which are incorporated into this section.