



## City Council Report

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**File ID:** 2019-01555

November 5, 2019

**Public Hearing Item 27**

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**Title:** Emergency Interim Ordinance Establishing a 45-Day Moratorium on the Manufacturing of Industrial Hemp (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 by four-fifths vote imposing a 45-day moratorium on the manufacturing of industrial hemp and declare the Ordinance to be an emergency measure to take effect immediately upon adoption.

**Contact:** Leyne Milstein, Assistant City Manager, (916) 808-8491; Zarah Cruz, Program Specialist, (916) 808-8925, 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 prohibit the cultivation of industrial hemp as the regulatory scheme for industrial hemp is evolving, testing equipment is still being developed to help law enforcement distinguish industrial hemp from cannabis, and City staff needs time to study the regulatory scheme and impacts on the city of Sacramento to propose appropriate recommendations concerning the regulation of industrial hemp to the City Council. (Ordinance No. 2019-0033) City staff is requesting an extension of the cultivation moratorium on this meeting agenda as a separate item.

The regulatory scheme for “industrial hemp” appears to be still evolving. Since 2013, the state of California has regulated the cultivation and sale of industrial hemp for both agriculture and commercial purposes. On December 20, 2018, the federal Agriculture Improvement Act of 2018 (commonly referred to as the “2018 Farm Bill”) was signed into law. The bill immediately removed hemp from the federal Controlled Substances Act of 1970 Schedule I controlled substances list. It also provided that industrial hemp may now be grown and produced for agricultural purposes, subject to local zoning and land use restrictions. In the last five years the definition for “industrial hemp” has changed several times under federal and state law. On October 12, 2019, Senate Bill 153 was signed by the Governor and again modified the rules and definition for industrial hemp.

Additionally, field-testing equipment that would assist law enforcement with distinguishing cannabis. Industrial hemp and cannabis are from the same plant species that produces cannabidiol (CBD), an increasingly popular ingredient used in alternative medicine. Currently, the level of tetrahydrocannabinol (THC) present in a cannabis plant is the main legal difference under federal and state law between industrial hemp and cannabis.

In light of the increasing popularity of hemp-derived CBD resulting from the legalization of industrial hemp, there has been a rise in the interest in hemp manufacturing in the city. An assembly bill that would have authorized licensed cannabis manufacturers to also produce hemp-derived products under existing regulations of the California Department of Public Health, failed in the California Legislature.

In addition, industrial hemp in its plant form would be at manufacturing locations before CBD can be processed from it and will in its plant form pose the same risks of hiding cannabis as industrial hemp. Based on experiences shared by other jurisdictions, the indistinguishability between hemp and cannabis is creating an opportunity for the illicit operators to enter the market using hemp as a cover. Currently, the City Code does not expressly allow industrial hemp manufacturing. Further, the lack of government oversight also creates health and safety

concerns over hemp-derived CBD products being produced in unpermitted and uninspected locations.

In the absence of clear City regulation of industrial hemp, the presence of changing regulatory federal and state regulatory schemes, the lack of the proper field-testing equipment to assist law enforcement with protecting the public from illicit cannabis activity, staff is recommending that Council adopt a 45-day moratorium on manufacturing, which is the maximum allowed by State law, to give staff time to study and report back appropriate regulatory options for Council to consider. Prior to the end of the 45 days, staff may return to City Council and make a recommendation to extend the moratorium on manufacturing for a longer period to do further research on the subject.

**Policy Considerations:** There are no immediate local policy considerations associated with establishing a temporary moratorium on industrial hemp manufacturing. However, future considerations may include amendments to the City's land use (Title 17) and business (Title 5) regulations.

**Economic Impacts:** None.

**Environmental Considerations:** This action is exempt from the California Environmental Quality Act (CEQA) because it is the adoption of an ordinance, rule, or regulation that requires discretionary review, including environmental review, and approval of permits, licenses, or other authorizations to engage in commercial cannabis activity (CEQA Guidelines sections 15061(B)(1), California Business and Professions Code section 26055(h)) and because it does not have the potential for causing a significant effect on the environment (CEQA Guidelines section 15061(b)(3)).

**Sustainability:** Not applicable

**Commission/Committee Action:** Not applicable. The item is an emergency ordinance and does not require an action of a commission/committee.(City Charter section 32, Council Rules of Procedure chapter 8(H)(1)(b).)

**Rationale for Recommendation:** The increasing popularity of hemp-derived CBD products has prompted an interest in manufacturing of these products in the city. While the city may benefit from having more manufacturers, it is premature to make a determination on the what regulations, if any, should be imposed on industrial hemp manufacturing. A temporary moratorium will give the City an opportunity to look any health and safety concerns surrounding hemp manufacturing.

**Financial Considerations:** None.

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

**ORDINANCE NO.**

Adopted by the Sacramento City Council

[Date Adopted]

**AN INTERIM ORDINANCE IMPOSING A 45-DAY MORATORIUM ON THE MANUFACTURING OF INDUSTRIAL HEMP 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. As of January 1, 2019, both California and federal law allow the cultivation and sale of industrial hemp. Since 2013, California has regulated the cultivation and sale of industrial hemp for both commercial and research purposes. (California Food and Agricultural Code, sections 81000-81011.) On January 1, 2019, the federal government decriminalized hemp by removing it from the list of Schedule 1 controlled substances under the Controlled Substances Act of 1972 and authorized an agricultural research pilot program for the growth, cultivation, and marketing of industrial hemp. (7 U.S.C.A., sections 1639o and 5940; and 21 U.S.C.A., section 802(16)(B).)
- B. The regulatory scheme for industrial hemp is changing. For example, under federal and California law, the definition for industrial hemp has already changed several times in the past five years. (7 U.S.C.A., section 5940 (2014 and 2018 versions); California Food and Agricultural Code, section 81000(d) (2013, 2016, and 2018 versions).) The definition for industrial hemp was recently changed by Senate Bill 153, signed by the Governor on October 12, 2019.
- C. Further, the methods to distinguish and identify industrial hemp (the non-intoxicating *Cannabis sativa L.* plant) from cannabis (the psychotropic version of the plant) are also complex and evolving. Industrial hemp and cannabis are derivatives of the same plant, *Cannabis sativa L.* Currently, under California law, industrial hemp is largely distinguished from cannabis by the amount of tetrahydrocannabinol (THC), the psychoactive chemical in the plant. If the plant has less than 0.3% THC, it is categorized industrial hemp. As such, industrial hemp and cannabis may be difficult to distinguish without a chemical analysis for the presence of THC content. The federal Drug Enforcement Administration is in the process of seeking companies to develop test kits that can verify THC content at a cultivation site. There may be other ways to distinguish cannabis and from hemp through the physical characteristics of the plants. However, such expertise requires training and the investigation could be time consuming and

labor intensive. This difficulty in distinguishing industrial hemp from cannabis plants may adversely affect the public health, safety, or welfare of the residents or visitors of the city of Sacramento because individuals may claim that cannabis plants are hemp plants thus thwarting enforcement efforts and causing an increase in crime.

- D. A moratorium is therefore necessary to protect the public health, safety, and welfare by expressly prohibiting the storage and manufacturing of industrial hemp, until the City Council's consideration of suitable land use regulations, if any, can be completed. City staff anticipates bringing a report to the Law and Legislation Committee regarding additional regulations within six months.
- E. This interim ordinance prohibiting the manufacturing of industrial hemp is enacted as an urgency measure, pursuant to California Government Code section 65858, subdivision (a). This interim ordinance shall be of no further force and effect 45 days from its date of adoption, unless extended pursuant to the California Government Code. The City Council anticipates that an extension will be necessary to complete the report.

## **SECTION 2. Moratorium**

During the term of this ordinance, the manufacturing of industrial hemp, as defined by California Health and Safety Code section 11018.5, subdivision (a), is not a permitted, conditional, or accessory use in any zone in the city of Sacramento.

## **SECTION 3. "Manufacturing" defined**

Federal and state law do not define "manufacturing" of industrial hemp. To clarify the scope of this moratorium, as used in this interim ordinance, "manufacturing" means compounding, processing, reprocessing, assembly, or packaging of; or placing or leaving in a location for preservation, later use, or disposal of harvested, drying or dried, trimmed, or cured plants.

## **SECTION 4. Term**

The term of this ordinance is 45 days from its date of adoption, and thereafter this ordinance has no further force or effect unless extended pursuant to the California Government Code section 65858, subdivision (a).

## **SECTION 5.**

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.