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AGENDA ITEM NO.: 8 (Public Hearing and Action)

PLANNING COMMISSION MEETING DATE: November 28, 2018

SUBJECT: Zone Text Amendment No. 2018-03/Inyo County – Industrial Hemp Activities.

EXECUTIVE SUMMARY

On September 30, 2018, California Governor Brown signed SB 1409 into law, which sets forth legal guidelines for a state permitting process which will allow for the cultivation of industrial hemp beginning on January 1, 2019.

On September 15, 2018 the Board of Supervisors instituted an urgency ordinance that banned the cultivation of industrial hemp. This ordinance was meant to prevent cultivation of industrial hemp in the unincorporated portions of Inyo County while staff researched several concerns.

Based on staff's research, an Ordinance (attached) has been drafted addressing potential hemp activities in the County, including cultivation and manufacturing, for the Planning Commission's review; and, is requesting the Planning Commission adopt a Resolution (attached) providing a recommendation to the Board of Supervisor's for approval.

PROJECT INFORMATION

Supervisory District: Countywide

Project Applicant: Inyo County

Property Owner: Multiple/Countywide

Site Address/ Multiple/Countywide

Community: Multiple/Countywide

A.P.N. Multiple/Countywide

General Plan: Multiple/Countywide

Zoning: Open Space; Light Industrial; and, General Industrial and Extractive.

Recommended Actions:

1. Conduct a public hearing regarding Zone Text Amendment No. 2018-03/Inyo County – Industrial Hemp Activities; and,
2. Adopt a Resolution recommending that the Board of Supervisors approve Zone Reclassification No. 2018-03/Inyo County – Industrial Hemp Activities and certify that it is Exempt from CEQA.

Project Planners:

County Administrator Clint Quilter; Nathan Read, Agriculture Commissioner; Cathreen Richards, Planning Director; Marshal Rudolph, County Counsel; John Vallejo, Assistant County Counsel.

BACKGROUND

Inyo County adopted ordinances 1221 and 1223 on January 16, 2018. These two ordinances created code to regulate commercial cannabis activities locally and included land use elements meant to allow for the production of commercial cannabis under a conditional use permit. Inyo County will be issuing permits soon allowing cultivation of commercial cannabis under these rules. The ordinances passed by Inyo County were done so following extensive community outreach and consultation between county staff and state agencies.

On September 25, 2018, the Inyo County Board of Supervisors instituted an urgency ordinance that banned the cultivation of industrial hemp. This ordinance was meant to prevent cultivation of industrial hemp in the unincorporated portions of Inyo County while staff researched several concerns, two of which were significant and are outlined in greater detail to follow.

On September 30, 2018, California Governor Brown signed SB 1409 into law, which sets forth legal guidelines for a state permitting process which will allow for the cultivation of industrial hemp beginning on January 1, 2019. This action has made it necessary for the County to create landuse regulations for hemp activities.

ANALYSIS

Concerns

1. **An allowance for cultivation of industrial hemp without the need of a state license and with cultivars that could exceed .3% THC by established agricultural research institutions.**

The term “established agricultural research institution” is considered by many counties as poorly defined and a few counties have had difficulty taking enforcement actions on

unpermitted grow sites that claim to be such institutions. Inyo is not the only county that has concerns about these types of cultivations. San Joaquin, Mono, and Riverside Counties have all placed a ban on cultivation by such groups due to these worries. State law requires that industrial hemp farmers obtain a permit prior to cultivation. To obtain the permit, an entity must pay a fee and submit the following information:

- a. Name of grower
- b. Physical address
- c. Mailing address
- d. Legal description, GPS coordinates, and map of the land area where cultivation or storage will occur
- e. The approved seed cultivar type, and state or country where grown

An entity that claims to be an established agricultural research institution is exempt for all of the above requirements pursuant to California Food and Agriculture Code (FAC) section 81003(a)(1). This means that, absent local regulations, a cultivator claiming to be growing as an established agricultural research institution could basically grow anywhere in Inyo County that where zoning doesn't preclude agriculture.

In addition to the ability of an entity to grow unpermitted, FAC 81006(d)(1) removes the tetrahydrocannabinol (THC) testing requirement for established agricultural research institutions, and FAC 81006(d)(10) allows these entities to grow industrial hemp in excess of .3% THC.

It is important to note that both commercial cannabis and industrial hemp are plants from either *Cannabis sativa* or *Cannabis indica*. Hemp and Cannabis are impossible to tell apart without laboratory analysis. California Health and Safety Code section 11018.5(a) defines industrial hemp as *Cannabis sativa* or *Cannabis indica* varieties that don't exceed .3% THC. The FAC sections allow something that should be defined as cannabis due to THC levels be cultivated as industrial hemp if the cultivator claims to be an established agricultural research institution.

It should also be noted that if a true educational research institution, such as the University of California (UC) system, wanted to conduct research through growing industrial hemp, the local government would have no authority to prevent this from occurring. Consultation with UC staff indicated that the UC system has no intentions of conducting any such research in Inyo County for the foreseeable future.

2. Cross pollination of commercial cannabis and industrial hemp can ruin both crops.

Cannabis and hemp can cross pollinate because they are cultivars of the same plant. If this occurs the cannabis THC levels can be reduced, reducing its market value, while the hemp THC levels can be increased, raising levels above legal limits and requiring the destruction of the crop. These two crops are not compatible.

Studies from the Association of Official Seed Certifying Agencies and the Journal of Industrial Hemp indicate that pollen can travel up to 3 miles, while a report from the Oregon

Cannabis Connection cautions that pollen can travel up to 10 miles. With wind being a regular event in Inyo County, pollen may travel locally even farther than these studies indicate.

Potential Solutions

Since county code already allows for outdoor cultivation of commercial cannabis, and taking into account that the county will most likely issue permits allowing such cultivation shortly, it would be irresponsible for the county to not regulate industrial hemp in some manner as to avoid pollination issues between these two crops. Staff has identified the Conditional Use Permit (CUP) process as the easiest way to resolve land use conflicts between commercial cannabis and industrial hemp. County code could be added through ordinance that would require a CUP for any industrial hemp cultivation.

In addition to the CUP process, requirements for industrial hemp cultivation proposed for inclusion in Inyo County Code Title 18 include a requirement to grow industrial hemp indoors, requiring growers to mitigate odors, noise, and pollen escape as well as visual resource mitigation. Setback requirements are also included that are identical to those for cannabis, 300 feet, which is meant to provide additional odor mitigation.

Requiring a CUP for industrial hemp cultivation will allow staff to assess each proposed use with the goal of minimizing cross pollination issues.

Requiring a local permit for any industrial hemp production also allows the county to take abatement actions against a grower that claims to be growing industrial hemp, but is growing higher THC content cannabis through the county's expedited abatement procedure for nuisances caused by cannabis cultivation, which was put in place by county ordinance 1222, and is contained in Chapter 18.82 of the Inyo County Code.

Proposed Hemp Regulations

General

Conditional use permits will be required for all instances of landuse involving hemp activities. These activities will be conducted in compliance with all applicable state and local laws, including, but not limited to, regular testing of the hemp to determine compliance with potency levels at the reasonable discretion of the Commercial Cannabis Permitting Office. Hemp activities will also be prohibited in Inyo County Cannabis Business License Zones where commercial cannabis activities are prohibited.

Cultivation

The Draft Ordinance proposes to allow for hemp cultivation in the Open Space (OS), Light Industrial (M2) and General Industrial and Extractive zones (M1).

- Open Space: cultivation will be restricted to indoor only with a 300-foot buffer from all parcel lines. It will also require mitigation requirements for odor, noise, pollen escape and visual resources. This is similar to the restrictions on commercial cannabis with the addition of indoor growing only and mitigation for pollen escape. These were included

to address the issues of cross pollination potential between hemp and cannabis that could be destructive to both crops.

- Light Industrial: hemp cultivation restricted to indoors only, and subject to odor, noise, pollen escape and visual resource mitigation requirements. This is the same as the restriction on commercial cannabis with the addition of mitigation for pollen escape that was included to address the issues of cross pollination potential between hemp and cannabis that could be destructive to both crops.
- General Industrial and Extractive: hemp cultivation restricted to indoors only, and subject to odor, noise, pollen escape and visual resource mitigation requirements. This is the same as the restriction on commercial cannabis with the addition of mitigation for pollen escape that was included to address the issues of cross pollination potential between hemp and cannabis that could be destructive to both crops.

Manufacturing

The draft ordinance proposes manufacturing in the Light Industrial and General Industrial and Extractive zones.

- Light Industrial: non-volatile Hemp Manufacturing. This is the same level of manufacturing activity as allow for commercial cannabis.
- General Industrial and Extractive: hemp manufacturing. This is the same level of manufacturing activity as allow for commercial cannabis.

FINDINGS

California Environmental Quality Act (CEQA)

Zone Text Amendment No. 2018-03/Inyo County – Industrial Hemp Activities, is Exempt from CEQA by covered by the General Rule 15061(b)(3) that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. Since this proposal does not approve a development project or future development projects and subsequent to this ordinance projects proposed pursuant to it will require Conditional Use Permits that are subject to CEQA as required for discretionary approvals by the Inyo County Planning Commission it is Exempt from CEQA.

General Plan Consistency

- General Plan Land Use Policies that correspond to the Open Space Zone 18.12 LU-2.5 Rural Protection; LU-5.1 Open Space and Recreation; and, LU-5.3 Agriculture provide for agriculture lands and activities and therefore, hemp cultivation in the Open Space Zone is consistent with the General Plan.
- General Plan Land Use Policy that corresponds to the Light Industrial Zone 18.56 LU-4.1 Light Industrial, provides for light manufacturing activities similar to those of non-volatile hemp manufacturing and therefore, is consistent with the General Plan
- General Plan Land Use Policy that corresponds to the General Industrial and Extractive Zone 18.57 LU-4.2 General Industrial, provides for a full range of

manufacturing activities and therefore the manufacturing of hemp product in the General Industrial and Extractive zone is consistent with the General Plan.

Zoning Ordinance Consistency

Allowing for hemp cultivation as a Conditional Use in the Open Space zone, Light Industrial zone and General Industrial and Extractive zone; and, hemp non-volatile manufacturing as a Conditional Use in the Light Industrial zone; and, hemp manufacturing as a Conditional Use in the General Industrial and Extractive zone is similar to already allowed uses in those zones and will require discretionary approvals by the Inyo County Planning Commission and is therefore consistent with the County zoning code.

RECOMMENDATION

Staff is recommending that the Planning Commission make certain findings and adopt the Resolution recommending the Board of Supervisors adopt Zone Text Amendment No. 2018-03/Inyo County – Industrial Hemp Activities and certify that it is Exempt from CEQA.

ATTACHMENTS

1. Ordinance
2. Resolution

ORDINANCE NO. _____

AN ORDINANCE OF THE BOARD OF SUPERVISORS OF THE COUNTY OF INYO, STATE OF CALIFORNIA, ADDING SECTIONS 18.78.370, 18.06.263, 18.06.422 AND SUBSECTIONS 18.12.040.Q, 18.56.040.L, 18.56.040.M, 18.57.040.M AND 18.57.040.N TO THE INYO COUNTY CODE REGARDING HEMP ACTIVITIES

The Board of Supervisors of the County of Inyo ordains as follows:

SECTION ONE. Section 18.78.370 is added to the Inyo County Code to read as follows: “18.78.370 Hemp. Conditional use permits are required in all instances of land use involving hemp activities. Issuance of any conditional use permit for hemp activities shall be contingent upon the hemp activity being conducted in compliance with all applicable state and local laws, including, but not limited to, regular testing of the hemp to determine compliance with potency levels at the reasonable discretion of the County Commercial Cannabis Permitting Office (C3PO). Hemp activities are prohibited in any Inyo County Cannabis Business License Zones where commercial cannabis activities are prohibited.

SECTION TWO. Section 18.06.263 is added to the Inyo County Code to read as follows: “18.06.263 ‘Hemp’ or ‘Industrial Hemp’ is as defined in Section 11018.5 of the California Health and Safety Code as may be amended.”

SECTION THREE. Section 18.06.422 is added to the Inyo County Code to read as follows: “18.06.422 Non-volatile Hemp Manufacturing is defined as the manufacture hemp products using nonvolatile solvents, or no solvents.”

SECTION FOUR. 18.12.040 Open Space – Conditional Uses, is amended to add subsection Q as follows: “Q. Hemp Cultivation. Industrial hemp cultivation shall be conducted indoors only, and subject to odor, noise, pollen escape and visual resource mitigation requirements and shall be three hundred feet from all parcel lot lines.”

SECTION FIVE. 18.56.040 Light Industrial – Conditional Uses, is amended to add subsection L as follows: “L. Hemp Cultivation. Industrial hemp cultivation shall be conducted indoors only, and subject to odor, noise, pollen escape and visual resource mitigation requirements.”

SECTION SIX. 18.56.040 Light Industrial – Conditional Uses, is amended to add subsection M as follows: “M. Non-volatile Hemp Manufacturing.”

SECTION SEVEN. 18.57.040 General Industrial and Extractive – Conditional Uses is amended to add subsection M as follows: “M. Hemp Cultivation. Industrial help

cultivation shall be conducted indoors only, and subject to odor, noise, pollen escape and visual resource mitigation requirements.”

SECTION EIGHT. 18.57.040 General Industrial and Extractive – Conditional Uses is amended to add subsection N as follows: “N. Hemp manufacturing.”

SECTION NINE. Severability

If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such a decision shall not affect the validity of the remaining portions of this ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance, and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of this ordinance would be subsequently declared invalid or unconstitutional.

SECTION TEN. Effective date.

This Ordinance shall take effect and be in full force and effect thirty (30) days after its adoption. Before the expiration of fifteen (15) days from the adoption thereof, a summary of this Ordinance shall be published once in a newspaper of general circulation printed and published in the County of Inyo, State of California in accordance with Government Code Section 25124(b). The Clerk of the Board is hereby instructed and ordered to so publish a summary of this Ordinance together with the names of the Board voting for and against same.

PASSED AND ADOPTED this 4th day of December, 2018 by the following vote of the Inyo County Board of Supervisors:

AYES:
NOES:
ABSTAIN:
ABSENT:

Dan Totheroh, Chairperson

ATTEST: Clint Quilter
Clerk to the Board

By: _____
Darcy Ellis, Assistant

RESOLUTION NO.

A RESOLUTION OF THE PLANNING COMMISSION OF THE COUNTY OF INYO, STATE OF CALIFORNIA, RECOMMENDING THAT THE BOARD OF SUPERVISORS FIND THE PROPOSED PROJECT IS EXEMPT FROM THE REQUIREMENTS OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, AND TO MAKE CERTAIN FINDINGS WITH RESPECT TO AND RECOMMEND THE INYO COUNTY BOARD OF SUPERVISORS APPROVE ZONE TEXT AMENDMENT NO. 2018-03 INYO COUNTY

WHEREAS, the Inyo County Board of Supervisors, through Inyo County Code (ICC) Section 15.12.040, has designated the Planning Commission to serve as the Environmental Review Board pursuant to Section 15022 of the California Environmental Quality Act (CEQA) Guidelines, which is responsible for the environmental review of all County projects

WHEREAS, Pursuant to the California Environmental Quality Act (CEQA), the proposed ordinance is covered by the General Rule 15061(b)(3) that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA

WHEREAS, ZTA 2018-03 does not approve a development project or future development projects and subsequent to this ordinance projects proposed pursuant to it will require Conditional Use Permits that are subject to CEQA as required for discretionary approvals by the Inyo County Planning Commission

WHEREAS, the Inyo County Planning Commission held a public hearing on November 28, 2018, to review and consider a request for approval of Zone Text Amendment No. 2018-03, and considered the staff report for the project and all oral and written comments regarding the proposal

WHEREAS, ICC Section 18.03.020 in part states that it is necessary for the zoning ordinance to be consistent with the General Plan

WHEREAS, General Plan Land Use Policies that correspond to the Open Space Zone 18.12 LU-2.5 Rural Protection; LU-5.1 Open Space and Recreation; and, LU-5.3 Agriculture provide for agriculture lands and activities and therefore, hemp cultivation in the Open Space Zone is consistent with the General Plan

WHEREAS, General Plan Land Use Policy that corresponds to the Light Industrial Zone 18.56 LU-4.1 Light Industrial, provides for light manufacturing activities similar to those of non-volatile hemp manufacturing and therefore, is consistent with the General Plan

WHEREAS, General Plan Land Use Policy that corresponds to the General Industrial and Extractive Zone 18.57 LU-4.2 General Industrial provides for a full range of manufacturing activities and therefore the manufacturing of hemp product in the General Industrial and Extractive zone is consistent with the General Plan

WHEREAS, ZTA 2018-03 is consistent with the Inyo County Zoning code as allowing for hemp cultivation as a Conditional Use in the Open Space zone, Light Industrial zone and General Industrial and Extractive zone; and, hemp non-volatile manufacturing as a Conditional Use in the Light Industrial zone; and, hemp manufacturing as a Conditional Use in the General Industrial and Extractive zone is similar to already allowed uses in those zones and will require discretionary approvals by the Inyo County Planning Commission.

NOW, THEREFORE, BE IT HEREBY RESOLVED, that based on all of the written and oral comment and input received at November 28, 2018, hearing, including the Planning Department Staff Report, the Planning Commission makes the following findings regarding the proposal and hereby recommends that the Board of Supervisors adopt the following findings for the proposed project:

RECOMMENDED FINDINGS

1. The proposed ordinance is covered by the General Rule 15061(b)(3) that states CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. Projects subsequent to this ordinance will require discretionary approval and therefore will be required to include a CEQA evaluation.
2. Based on substantial evidence in the record, the proposed Zoning Ordinance Amendment is consistent with the Goals and Policies of the Inyo County General Plan.
3. Based on substantial evidence in the record, the proposed Zoning Ordinance Amendment is consistent with Title 18 (Zoning Ordinance) of the Inyo County Code.

BE IT FURTHER RESOLVED that the Planning Commission recommends that the Board of Supervisors take the following actions:

RECOMMENDED ACTIONS

1. Approve the Amendment to the Open Space (OS) Zone based on all of the information in the public record and on the recommendation of the Planning Commission.

2. Approve the Amendment to the Light Industrial (M2) Zone based on all of the information in the public record and on the recommendation of the Planning Commission.
3. Approve the Amendment to the General Industrial and Extractive (M1) Zone based on all of the information in the public record and on the recommendation of the Planning Commission.

PASSED AND ADOPTED this 28th day of November, 2018, by the following vote of the Inyo County Planning Commission:

AYES:

NOES:

ABSTAIN:

ABSENT:

Frank Stewart, Chair
Inyo County Planning Commission

ATTEST:

Cathreen Richards, Planning Director

By _____
Ryan Standridge,
Secretary of the Commission