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STAFF REPORT

TO: Planning Commission

FROM: Glenn Spitzer, Deputy County Counsel 

DATE: February 3, 2021 [For Hearing on February 9, 2021]

RE: Consideration of an Ordinance Banning the Cultivation of Industrial Hemp

RECOMMENDATION:

Conduct a public hearing and recommend that (1) the Board of Supervisors find the adoption of an ordinance adding Chapter 19.88 to the municipal code prohibiting the cultivation of industrial hemp in the unincorporated areas of Amador County is exempt from CEQA and (2) the Board adopt the proposed ordinance.

BACKGROUND:

Recent changes in federal and state laws regarding industrial hemp authorize the growing of industrial hemp in California, and without local regulation, would permit the growing of industrial hemp in Amador County as permitted under State law. Cultivation of industrial hemp poses several challenges at the local level including concerns over public safety, enforcement, and compatibility with the existing land uses because, although industrial hemp is distinct from cannabis in that it is not allowed to have levels of THC that cause psychoactive effects, it is otherwise indistinguishable from cannabis.

At a public hearing on May 21, 2019, the Board of Supervisors unanimously passed an Interim Urgency Ordinance that imposed a temporary moratorium on the cultivation of industrial hemp in the unincorporated areas of Amador County. At that hearing, the Board also appointed an ad hoc committee of Supervisors Axe and Brown, to evaluate the issues raised in connection with the cultivation of hemp, and to provide a recommendation regarding potential permanent regulations regarding hemp cultivation.

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PAGE: 2
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At the March 10, 2020 meeting of the Board of Supervisors, the ad hoc committee presented its initial recommendations to the Board of Supervisors regarding the regulation of industrial hemp. Based on that recommendation, the Board of Supervisors passed Resolution of Intent directing staff to begin work on an ordinance banning the cultivation of industrial hemp in the unincorporated county. The Board also directed staff to return with an extension of the urgency ordinance.

On March 24, 2020, the Board of Supervisors adopted Ordinance No. 1785 extending the emergency ordinance prohibiting the cultivation of industrial hemp. That ordinance expires on April 5, 2021.

The draft ordinance adding Chapter 19.88 to the municipal code complies with the Board's directive on March 10, 2020 in that it permanently bans the cultivation and associated activities related to industrial hemp.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

The adoption of this ordinance is exempt from environmental review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines sections 15308 (actions taken as authorized by local ordinance to assure protection of the environment), 15321 (enforcement actions by regulatory agencies) and 15061(b)(3) ("common sense exemption," whereby there is no possibility the activity in question may have a significant effect on the environment). The adoption of the ordinance is exempt pursuant to CEQA sections 15308 and 15321 because it is a regulatory action taken by the County pursuant to its police power and in accordance with Government Code 65858 to assure maintenance and protection of the environment and because it mandates a prohibition on industrial hemp cultivation within the County. Because the regulation maintains the status quo, the ordinance is also exempt under section 15061(b)(3).