

FACT SHEET/STAFF REVIEW

Open Public Hearing before the Franklin County Board of Commissioners

- Case file:** **Emergency Interim Ordinance 03-2019**
Interim Franklin County Code Chapter 5.14
- Hearing Date:** July 30, 2019
- Department:** Franklin County Planning & Building
- Location:** Unincorporated Franklin County, including UGAs
- Purpose of Hearing:** **Provide an opportunity for public input regarding Emergency Interim Ordinance 03-2019, creating a new Chapter 5.14, adopted May 28, 2019.**

Brief History of Subject & Franklin County Actions to Date:

In the 2012 General Election, Washington voters passed People’s Initiative 502 (I-502), legalizing the possession, use, consumption, production, processing, and sale of retail marijuana to individuals 21-years or older in age in Washington State. However, the cultivation, production, processing, consumption, or possession of “hemp” was not considered or specifically authorized through I-502. This is because I-502 was focused on recreational use of cannabis (marijuana), and developing regulations to address the “grey market” sale of medical cannabis for recreational purposes that arose out of loopholes in the original medical marijuana regulations developed in the mid-1990s.

Hemp is one of the oldest known materials used by man for the fabrication of textiles and related uses. The U.S. has had a long, but complicated, history with hemp. The commercial production, transport, or growing of “raw”, or unprocessed, hemp and/or products, was prohibited, except during WWII, for decades prior to 2014. However, the possession, transport, or use of, finished “hemp” products was not. Before the initial prohibition of hemp production within the United States in the 1930s, it was commonly used for the manufacturing of rope, paper, fabrics, and other products. In fact, it was not uncommon for landowners possessing land of a certain size to be required to plant a certain acreage of hemp for use by the U.S. government, which was considered a tax.

The 2014 U.S. Farm Bill allowed states to create pilot programs for “industrial hemp” research. The 2016 Washington State Legislature created Washington State’s pilot program under Chapter 15.120 RCW, directing the Washington State Department of Agriculture (WSDA) to adopt rules for the Industrial Hemp Research Pilot (IHRP). WSDA developed rules for the IHRP over 2016 and 2017, culminating in the adoption of Chapter 16-305 Washington Administrative Code (WAC), regulating industrial hemp as an agricultural product; requiring licensure of industrial hemp operations, including parties in possession of industrial hemp; that such activities must be research based; and setting fees.

The United States Congress passed, and the President signed, the Agriculture Improvement Act of 2018, on December 20, 2018, authorizing states to allow for the commercial production, processing, transportation, and sale of “hemp”. The 66th Washington State Legislature passed Engrossed Second Substitute Senate Bill 5276 (E2SSB 5276) on April 25, 2019, authorizing the creation of a

new licensing and regulatory program for hemp production in Washington State, which became effective on April 26, 2019, following the Governor's signature. E2SSB 5276 directs the WSDA to replace the hemp pilot program with a new licensing and regulatory program, using the expedited rule-making process, with a non-binding due date of June 1, 2019. However, it does specifically acknowledge that this rulemaking may take longer.

Washington State now defines "Hemp" to mean the plant *Cannabis sativa L.* and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol (THC) concentration of not more than 0.3 percent on a dry weight basis. "Industrial hemp" is now defined to mean all parts and varieties of the genera *Cannabis*, cultivated or possessed by a grower, whether growing or not, that contain a delta-9 tetrahydrocannabinol (THC) concentration of 0.3 percent or less by dry weight that was grown under the industrial hemp research program as it existed on December 31, 2019. However, "industrial hemp" does not include plants of the genera *Cannabis* that meet the definition of "marijuana" as defined in RCW 69.50.101, or all parts of the plant *Cannabis*, whether growing or not, with a THC concentration greater than 0.3 percent on a dry weight basis; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

It is unclear as to when the WSDA will develop and implement the new licensing, and regulatory program(s) for hemp related activities in Washington State. RCW 36.70A.390 authorizes a county's governing body to adopt a six (6) month moratorium as an interim zoning control to preserve the status quo and a period of time for Franklin County to study, consider, and draft local regulatory controls pertaining to the siting, permitting, licensing, hemp production, processing, and/or sales within the County. Due to the lack of a clear regulatory framework, the newness of this crop, the potential scale, odor, and other unknowns associated with hemp operations, Franklin County adopted Ordinance 02-2019 on May 14, 2019, implementing a six (6) month moratorium on the establishment, locating, operation, licensure, or maintenance of premises, facilities, businesses, or any other activities or operations involving the production, processing, or sales of hemp or industrial hemp, in order to review the potential impacts of such activities to surrounding lands prior to allowing such activities within Franklin County.

After the adoption of Ordinance 02-2019, Staff continued researching the established regulatory framework and required protocols for hemp or industrial hemp production, processing, transport and sales in Washington State. Staff found that the activities of hemp licensees in Washington State must coordinate with, and be approved by, WSDA. Also, under the current regulatory framework, hemp productions, processing, transport, and sales regulated by the WSDA through its IHRP program are required to be research based, as determined by WSDA. Through this program, licensed, research based hemp production in Washington State has been occurring since 2016. To date, Staff has not found evidence of excessive complaints or impacts to other farm or crop activities from existing hemp facilities beyond those normally found regarding agricultural operations.

Both Washington State and the Federal Government recognize hemp, and industrial hemp, as a

legal crop commodity. Sales of finished hemp products in the United States are projected to become a multi-billion industry, with projections of hemp product sales reaching \$2.1 to \$2.61-billion by 2022. Hemp and industrial hemp can provide new secondary crop potential for farm land not being utilized or can be used to assist in recharging soils previously depleted through crop production. Due to the newness of hemp as a crop commodity in the United States, there are opportunities to develop new processing and research facilities focused on maximizing the yield, use, or development of hemp and hemp related products and industries.

Based on hemp being a recognized agricultural commodity, comments received from the public about hemp and the moratorium established through Ordinance 02-2019, research into the existing regulatory framework, and existing Franklin County codes, Staff determined, in coordination with the Franklin County Prosecutor's office (Civil Division), adequate controls were in place to recommend an interim emergency ordinance. To this end, Staff recommended creating a new Chapter 5.14, recognizing hemp and industrial hemp as an agricultural product under the protections provided in FCC 5.12, Right to Farm, provided such facilities meet certain conditions.

Specifically, Chapter 5.14, Hemp and Industrial Hemp Production, Processing, Transport, and Sales provides the same right-to-farm protections for hemp related activities as any other recognized agricultural activity, provided the following conditions are met:

1. Possess a valid license from Washington State Department of Agriculture (WSDA) to grow hemp or industrial hemp by June 1, 2019.
2. Adhere to all requirements provided by the WSDA as a condition of receiving said license.
3. Are located at least ½ mile (2,640 linear feet) from designated residential zones or established Urban Growth Areas (UGA), as established at the time of licensure.
4. Post signage at least once every 600 linear feet around the perimeter of the site, of a size sufficient to be viewable from a right-of-way, stating the crop is hemp or industrial hemp, is part of the IHRP program, and providing the state issued license number for the site, at a minimum.

On May 28, 2019, Franklin County adopted Ordinance 03-2019, creating a new interim Chapter 5.14. It is expected that the final rules will be in place by the end of 2019. Once these standards are in place, amendments to Chapter 5.14 may be necessary, and any proposed amendments will be presented to the Board for action.

RCW 36.70A.390 requires that if an emergency interim ordinance is established without holding a public hearing in advance of the adoption of said interim ordinance, a public hearing shall be held before the adopting body within 60-days of the action being taken.

PUBLIC PARTICIPATION:

1. Members of the public have attended the May 21, 2019, May 28, 2019, and July 16, 2019 Board of County Commissioner meetings to speak in support for the production of hemp within Franklin County.
2. To date, Staff has received no comments against the allowance of hemp production and related activities within Franklin County.
3. A Public Hearing Notice was published in the **Franklin County Graphic and Tri-City Herald** on July 25, 2019.

SUUGGESTED ACTION: Maintain Interim Chapter 5.14, Hemp and Industrial Hemp Production, Processing, Transport, and Sales, as adopted on May 28, 2019, through Ordinance 03-2019, until such time as final rules regarding hemp related activities are adopted by the Washington State and the United States Departments of Agriculture.

Chapter 5.14
Hemp and Industrial Hemp Production, Processing, Transport, and Sales

5.14.010 - Applicability.

This chapter shall apply to the unincorporated areas of Franklin County.

5.14.020 - Findings and purpose.

Franklin County finds that “hemp” (*Cannabis Sativa L*, with a concentration of delta-9 tetrahydrocannabinol (THC) of not more than 0.3 percent on a dry weight basis) is now a recognized crop commodity in the United States and Washington State. It is therefore the purpose of this chapter to provide under what circumstances hemp production, processing, transport, or sales shall be permitted within Franklin County.

5.14.030 – Hemp Activities presumed reasonable—Not a nuisance.

Hemp activities licensed and approved by the Washington State Department of Agriculture, currently through its Industrial Hemp Research Pilot (IHRP) program are considered “agricultural activities”, as defined in FCC 5.12.040, and protected by FCC 5.12, Right to Farm, provided such facilities meet the following conditions:

1. Possess a valid license from Washington State Department of Agriculture (WSDA) to grow hemp or industrial hemp by June 1, 2019.
2. Adhere to all requirements provided by the WSDA as a condition of receiving said license.
3. Are located at least ½ mile (2,640 linear feet) from designated residential zones or established Urban Growth Areas (UGA), as established at the time of licensure.
4. Post signage at least once every 600 linear feet around the perimeter of the site, of a size sufficient to be viewable from a right-of-way, stating the crop is hemp or industrial hemp, is part of the IHRP program, and providing the state issued license number for the site, at a minimum.

ORDINANCE NUMBER 03-2019

AN INTERIM ORDINANCE AMENDING FRANKLIN COUNTY CODE TITLE 5, BUSINESS LICENSES AND REGULATIONS, ALLOWING FOR THE LIMITED ESTABLISHMENT, LOCATING, PERMITTING, LICENSING OR OPERATION OF HEMP OR INDUSTRIAL HEMP PRODUCTION, PROCESSING, OR WHOLESALE/RETAIL FACILITIES IN FRANKLIN COUNTY, WA; REPEALING ORDINANCE 02-2019; AND SETTING A DATE FOR A PUBLIC HEARING.

WHEREAS, in the 2012 General Election, Washington voters passed People’s Initiative 502 (I-502), legalizing the possession, use, consumption, production, processing, and sale of retail marijuana to individuals 21-years or older in age in Washington State; and

WHEREAS, cultivation, production, processing, consumption, or possession of “hemp” was not considered or specifically authorized through I-502; and

WHEREAS, the possession, fabrication, transport, or use of finished “hemp” products was not prohibited in the United States; and

WHEREAS, the commercial production, transport, or growing of “raw” or unprocessed hemp and/or products was prohibited in the United States for decades prior to 2014; and

WHEREAS, the 2014 Farm Bill allowed states to create pilot programs for “industrial hemp” research; and

WHEREAS, the 2016 Washington State Legislature created Washington State’s pilot program under Chapter 15.120 RCW, directing the Washington State Department of Agriculture (WSDA) to adopt rules for the Industrial Hemp Research Pilot (IHRP); and

WHEREAS, WSDA developed rules for the IHRP over 2016 and 2017, culminating in the adoption of Chapter 16-305 Washington Administrative Code (WAC), regulating industrial hemp as an agricultural product; requiring licensure of industrial hemp operations, including parties in possession of industrial hemp; and setting fees; and

WHEREAS, any licensed industrial hemp activities permitted under Chapter 16-305 WAC must be research based; and

WHEREAS, the United States Congress passed, and the President signed, the Agriculture Improvement Act of 2018, on December 20, 2018, authorizing states to allow for the commercial production, processing, transportation, and sale of “hemp”; and

WHEREAS, the 66th Washington State Legislature passed Engrossed Second Substitute Senate Bill 5276 (E2SSB 5276) on April 25, 2019, authorizing the creation of a new licensing and regulatory program for hemp production in Washington State; and

WHEREAS, the Governor signed E2SSB 5276 on April 26, 2019; and

WHEREAS, E2SSB 5276 directs the WSDA to replace the hemp pilot program with the new licensing and regulatory program; and

WHEREAS, E2SSB 5276 directs the WSDA to develop new administrative rules using the expedited rulemaking process, with a non-binding due date of June 1, 2019, but acknowledges the new rules may take longer to adopt; and

WHEREAS, Washington State now defines "Hemp" to mean the plant *Cannabis sativa L.* and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol (THC) concentration of not more than 0.3 percent on a dry weight basis; and

WHEREAS, Washington State now defines "Industrial hemp" to mean all parts and varieties of the genera *Cannabis*, cultivated or possessed by a grower, whether growing or not, that contain a delta-9 tetrahydrocannabinol (THC) concentration of 0.3 percent or less by dry weight that was grown under the industrial hemp research program as it existed on December 31, 2019; and

WHEREAS, in Washington State, "Industrial hemp" does not include plants of the genera *Cannabis* that meet the definition of "marijuana" as defined in RCW 69.50.101; and

WHEREAS, in Washington State, "Marijuana", or "marihuana", now means all parts of the plant *Cannabis*, whether growing or not, with a THC concentration *greater* than 0.3 percent on a dry weight basis; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin.

WHEREAS, in Washington State, the term "Marijuana", or "marihuana", does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination; and

WHEREAS, E2SSB 5276 became effective on April 26, 2019; and

WHEREAS, due to the specific language regarding "marijuana" and citations of I-502 related RCWs associated with the prohibitions provided through Ordinance 10-2013, and the newly adopted definitions of "hemp", "industrial hemp" and "marijuana" in E2SSB 5276, Ordinance 10-2013 only prohibits I-502 related activities, and does not address "hemp" or "industrial hemp", as defined; and

WHEREAS, it is unclear as to when the WSDA will develop and implement the new rules, licensing, and regulatory program(s); and

WHEREAS, Franklin County has no regulatory framework regarding hemp production or processing established; and

WHEREAS, RCW 36.70A.390 authorizes a county's governing body to adopt a six (6) month moratorium as an interim zoning control to preserve the status quo and a period of time for Franklin County to study, consider, and draft local regulatory controls pertaining to the siting, permitting, licensing, hemp production, processing, and/or sales within the County; and

WHEREAS, due to the lack of a clear regulatory framework, the newness of this crop, the potential scale, odor, and other unknowns associated with hemp operations, Franklin County adopted Ordinance 02-2019 on May 14, 2019, implementing a six (6) month moratorium on the establishment, locating, operation, licensure, or maintenance of premises, facilities, businesses, or any other activities or operations involving the production, processing, or sales of hemp or industrial hemp in order to review the potential impacts of such activities to surrounding lands prior to allowing such activities within Franklin County; and

WHEREAS, since the adoption of Ordinance 02-2019, Staff has continued researching the established regulatory framework and required practices and protocols for hemp or industrial hemp production, processing, transport and sales in Washington State; and

WHEREAS, the activities of hemp licensees in Washington State must coordinate with, and be approved by, WSDA; and

WHEREAS, under the current regulatory framework, hemp productions, processing, transport, and sales regulated by the WSDA through its IHRP program are required to be research based, as determined by WSDA; and

WHEREAS, licensed, research based hemp production in Washington State has been occurring since 2016; and

WHEREAS, hemp or industrial hemp is now considered a legal crop commodity; and

WHEREAS, the sale of finished hemp products in the United States is projected to become a multi-billion industry, with projections of hemp product sales to reach \$2.1 to \$2.61-billion by 2022; and

WHEREAS, Franklin County has adopted Franklin County Code (FCC) Title 5, Business Licenses and Regulations, which includes FCC 5.12, Right to Farm; and

WHEREAS, to date, Staff has not found evidence of excessive complaints or impacts to other farm or crop activities from existing hemp facilities beyond those normally found regarding farm operations; and

WHEREAS, hemp and industrial hemp can provide new secondary crop potential for farm land not being utilized or can be used to assist in recharging soils previously depleted through crop production; and

WHEREAS, due to the newness of hemp or industrial hemp as a crop commodity, there are opportunities to develop new processing and research facilities focused on maximizing the yield, use, or development of hemp and hemp products; and

WHEREAS, based on the existing regulatory structure, limited number of existing WSDA IHRP licenses, the requirement that such activities currently be research based, and limited available seed stock, it is determined that impacts from hemp production, processing, transport or sales are not likely to be more intense than other permitted farming activities; and

WHEREAS, adopting an interim ordinance allowing for limited hemp and/or industrial hemp production, processing, sales, and transport, as provided for in Engrossed Second Substitute Senate Bill 5276, Chapter 15.120 RCW, and/or the Industrial Hemp Research Pilot program authorized by Chapter 15.120 RCW, is in the best interest of Franklin County and is necessary to preserve the public health, safety, and welfare of the citizens of Franklin County; and

WHEREAS, RCW 36.70A.390 requires that if an interim ordinance is established without holding a public hearing in advance of the adoption of said interim ordinance, a public hearing shall be held before the adopting body within 60-days of the action being taken; and

NOW, THEREFORE, the Board of Franklin County Commissioners ordains as follows:

Section 1: **Preliminary Findings of Fact.** The recitals set forth above are hereby adopted as preliminary findings of fact in support of the interim ordinance.

Section 2: **Interim Ordinance Adopted and Moratorium Repealed.** Interim Ordinance 03-2019 is hereby adopted, repealing Ordinance 02-2019, and creating a new Interim Chapter 5.14, Hemp and Industrial Hemp Production, Processing, Transport and Sales, which shall allow for the establishment, location, operation, licensure, or maintenance of premises, facilities, businesses, or any other activities or operations involving the production, processing, or sales of hemp or industrial hemp as authorized by Engrossed Second Substitute Senate Bill 5276, Chapter 15.120 RCW, and/or the Industrial Hemp Research Pilot program authorized by Chapter 15.120 RCW, provided such activities are licensed through the WSDA IHRP program, as of June 1, 2019, and located at least ½ mile (2,640 linear feet) from a designated residential zone or Urban Growth Area (UGA), as established at the time of license issuance; and as further provided for in Attachment A.

Section 3: **No Nonconforming Uses.** No use that constitutes or purports to be production, processing, storage, sale, or specifically for the transport of hemp, industrial hemp, or hemp products that was engaged in prior to the enactment of this ordinance shall be deemed to have been a legally established use and shall not be entitled to claim legal non-conforming status.

Section 4: **Duration.** The interim ordinance shall continue until such time as final rules regarding the establishment, location, operation, licensure, or maintenance of premises, facilities, businesses, or any other activities or operations involving the production, processing, or sales of hemp or industrial hemp authorized by Engrossed Second Substitute Senate Bill 5276, Chapter 15.120 RCW, and/or the Industrial Hemp Research Pilot program authorized by Chapter 15.120 RCW are established by WSDA and USDA, or repealed or modified by the Board of Franklin County Commissioners in

accordance with applicable law.

Section 5: Public Hearing. The Board of Franklin County Commissioners shall hold a public hearing on this interim ordinance on July 11, 2019.

Section 6: Severability. If any section, sentence, clause, or portion of this ordinance or its application to any person or circumstance should be held to be invalid or unconstitutional for any reason by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining portions of this ordinance or its application to any other person or situation.

Section 7: Effective Date. This ordinance shall become effective on the date of its adoption, as set forth below.

APPROVED AND ADOPTED this 28th day of May, 2019.

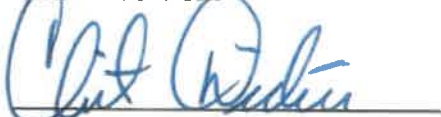
**BOARD OF COUNTY COMMISSIONERS
FRANKLIN COUNTY, WASHINGTON**



Chair

ABSTAINED


Chair Pro-Tem



Member

ATTEST:



Clerk of the Board

APPROVED AS TO FORM:



Deputy Prosecuting Attorney

Attachment A
Ordinance 03-2019

Chapter 5.14
Hemp and Industrial Hemp Production, Processing, Transport, and Sales

5.14.010 - Applicability.

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1. Possess a valid license from Washington State Department of Agriculture (WSDA) to grow hemp or industrial hemp by June 1, 2019.
2. Adhere to all requirements provided by the WSDA as a condition of receiving said license.
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