

BEFORE THE BOARD OF SUPERVISORS OF THE COUNTY OF SAN BENITO

AN ORDINANCE OF THE BOARD OF)
SUPERVISORS OF THE COUNTY OF SAN BENITO,) Ordinance No.:
ADOPTING A MARIJUANA CULTIVATION ORDINANCE)
BY ADDING CHAPTER 11.15 TO TITLE 11)
OF THE SAN BENITO COUNTY CODE)

THE BOARD OF SUPERVISORS OF THE COUNTY OF SAN BENITO ORDAINS AS
FOLLOWS:

SECTION 1. FINDINGS AND PURPOSE

The findings in support of this ordinance are set forth in Exhibit A, Findings and Purpose”,
attached hereto and incorporated herein by this reference.

SECTION 2. A new Chapter 11.15, “Marijuana Cultivation” shall be added to Title 11 “Public
Health and Safety”, which shall read as follows:

Chapter 11.15: Marijuana Cultivation.

- 11.15.010 - Authority and title.
- 11.15.020 - Reserved.
- 11.15.030 - Definitions.
- 11.15.040 - Nuisance declared/Prohibition on Cultivation.
- 11.15.050- Limitation on Location to Cultivate Marijuana.
- 11.15.060 - No duty to enforce.
- 11.15.070 - No activity permitted that violates State/Federal Law.
- 11.15.080 - Other nuisance.
- 11.15.090 - Enforcement.
- 11.15.100 - Limited immunity for existing lawful cultivation sites (effective
November 11, 2016 through February 11, 2017).
- 11.15.110 - Registration of existing cultivation sites (effective November 11, 2016
through February 11, 2017).
- 11.15. 120 – Request for Additional Amortization Period.
- 11.15.130 - No vested or nonconforming rights.
- 11.15.140 - Severability.
- 11.15.145 - Fees.
- 11.15.150 - Sunset.

11.15.010 AUTHORITY AND TITLE.

Pursuant to the authority granted by Article XI, section 7 of the California Constitution,
Health and Safety Code section 11362.83, and Government Code section 53069.4, the Board of

Supervisors does enact this Chapter, which shall be known and may be cited as the "San Benito County Marijuana Cultivation Ordinance."

11.15.020 RESERVED.

11.15.030 DEFINITIONS.

Except where the context otherwise requires, the following definitions shall govern the construction of this chapter:

(A) "Cannabis or marijuana." Cannabis, or marijuana, shall have the meaning set forth in the California Business and Professions Code Section 19300.5(f), the Medical Marijuana Regulation and Safety Act, as it was enrolled in 2015 in AB 266. This definition also includes medical cannabis or medical marijuana.

(B) "Cultivation" means the planting, growing, harvesting, drying, processing, or storage of one or more marijuana plants or any part thereof in any location, indoor or outdoor, including from within a fully enclosed and secure building.

(C) "Enforcing officer" means the health officer or the sheriff or the San Benito County Agricultural Commissioner, or the authorized deputies or designees of either, or any person employed by the County of San Benito and appointed to the position of code enforcement officer, each of whom is independently authorized to enforce this chapter.

(D) "Fence." A wall or a barrier connected by boards, masonry, rails, panels, wire or any other materials for the purpose of enclosing space or separating parcels of land. The term "fence" does not include retaining walls, plastic, tarp, bamboo coverings, corrugated metal, or other materials not designed or manufactured for use as a fence.

(E) "Identification card" shall have the same definition as California Health and Safety Code Section 11362.5 et seq, and as may be amended in the future.

(F) "Immature plant." A marijuana plant that has not begun to bloom or flower.

(G) "Indoor" or "Indoors" means within a fully enclosed structure.

(H) "Legal parcel" means a parcel of land for which one (1) legal title exists that may be separately sold in compliance with the Subdivision Map Act (Division 2 (commencing with Section 66410) of Title 7 of the Government Code). Where contiguous legal parcels are under common ownership or control, such legal parcels shall be counted as a single parcel for purposes of this Chapter.

(I) "Marijuana" shall have the same definition as in California Health & Safety Code §11018 as it now reads or as amended.

(J) "Marijuana plant" means any mature or immature marijuana plant, or any marijuana seedling.

(K) "Mature plant." A marijuana plant that has begun to bloom or flower; or that contains one or more blooms, flowers, or buds.

(L) "Medical marijuana cultivation business" means any location where marijuana is started, planted, cultivated, or harvested.

(M) "Outdoor cultivation" means cultivation activities that are not conducted within a fully enclosed, permitted building, accessible only through one or more locking doors, which is secure against unauthorized entry.

(N) "Premises" shall mean a single, legal parcel of property. Where contiguous legal parcels are under common ownership or control, such contiguous legal parcels shall be counted as a single "premises" for purposes of this chapter.

(O) "Primary caregiver" shall have the meaning set forth in Health and Safety Code sections 11362.5 and 11362.7 et seq.

(P) "Qualified patient" shall have the meaning set forth in Health and Safety Code sections 11362.5 and 11362.7 et seq.

(Q) "Residence" or "Residential Structure" means any structure designed, approved, and maintained for permanent human habitation pursuant to Title 24 or Title 25 of the California Code of Regulations or constructed prior to the adoption of the California Building Standards Code by the County of San Benito. Residence or Residential Structure does not include a structure that has been deemed substandard by the County Building Official or his/her authorized agents.

(R) "School" means an institution of learning for minors, whether public or private, offering a regular course of instruction required by the California Education Code, or any licensed child or day care facility. This definition includes a nursery school, kindergarten, elementary school, middle or junior high school, senior high school, or any special institution of education, but it does not include a vocational or professional institution of higher education, including a community or junior college, college or university.

(S) "Youth-oriented facility" means elementary school, middle school, high school, public park, any establishment that advertises in a manner that identifies the establishment as catering to or providing services primarily intended for minors, or the individuals who regularly patronize, congregate or assemble at the establishment are predominately minors. This shall not include a day care or preschool facility.

11.15.040- NUISANCE DECLARED/PROHIBITION OF CULTIVATION.

(A) The cultivation of marijuana, by any person upon any premises is hereby declared to be unlawful and a public nuisance that may be abated in accordance with the San Benito County Code and State Law, unless all of the following conditions are satisfied, which shall qualify for an exemption for this section:

(1) The number of marijuana plants being cultivated on a parcel does not exceed six (6) plants (including both mature and immature plants) regardless of the number of patients or caregivers residing on the premises or participating directly or indirectly in the cultivation. This limitation shall be imposed notwithstanding any assertion that the person(s) cultivating marijuana are the primary caregiver(s) for qualified patients or that such person(s) are collectively or cooperatively cultivating marijuana.

(2) The marijuana is cultivated by a qualified patient or caregiver for medicinal purposes whose identification card(s) or physician recommendations are posted at the enclosure or structure surrounding the cultivation area.

(3) If the person(s) cultivating marijuana on any legal parcel is/are not the legal owner(s) of the parcel, such person(s) shall possess and retain for the duration of the cultivation a notarized letter from the legal owner(s) consenting to the cultivation of marijuana on the parcel, and such letter is posted at the enclosure or structure surrounding the cultivation area.

(4) If the cultivation is conducted outdoors, within one thousand feet of any residence on a separate legal parcel, the cultivation of marijuana must be conducted within a fully fenced area, with the fence no less than six feet in height or within a fully enclosed secure structure conforming to the provisions of paragraph (A) (5) below.

(5) If the cultivation is conducted indoors, the structure must comply with the following standards:

(a) The structure shall comply with all applicable state and local laws, codes and regulations, including without limit, the California Building Code, Electrical and Fire Codes as adopted by San Benito County. The structure shall be equipped with permanently installed and permitted electricity, and shall not be served by temporary extension cords.

(b) Windows shall have adequate coverings to prevent marijuana plants from being visible from any location not part of the premises, including the public right-of-way and/or neighboring properties. Such window coverings shall not restrict emergency egress from the structure.

(c) The structure, or room in which the cultivation occurs, shall have locking doors and shall be secured to prevent access by minors and/or unauthorized persons.

(d) Structures used for cultivation shall be equipped with an odor control filtration and ventilation system adequate to prevent an odor, humidity or mold problem within the structure, on the Parcel, or on adjacent parcels.

(e) Structures that are exempt from Building Permits shall not be used for the cultivation of marijuana.

(B) Qualified patients for whom the marijuana plants are being cultivated shall have valid medical marijuana identification card or medical recommendation. Any primary caregiver cultivating marijuana plants for a qualified patient shall have a copy of the qualified patient's valid medical marijuana identification card or medical recommendation which shall be kept at the site of cultivation at all times and available for inspection by an Enforcing Officer upon request.

(C) No person owning, leasing, occupying, or having charge or possession of any premises within the County shall cause, allow, suffer, or permit such premises to be used for the cultivation of marijuana plants in violation of this chapter.

11.15.050- LIMITATION ON LOCATION TO CULTIVATE MARIJUANA.

(A) The cultivation of marijuana, whether grown collectively or individually, in any amount or quantity, shall not be allowed in the following areas:

(1) Outdoors within one thousand (1,000) feet of a youth-oriented facility, a school, or a park. The distance between one of these uses and the marijuana that is being cultivated shall be measured in a straight line from the nearest part of marijuana cultivation if outdoors, or if the marijuana is cultivated indoors, from the nearest exterior wall of the building in which the marijuana is cultivated, to the nearest boundary line of the property on which the facility, building, structure, or portion of the facility, building or structure in which the above-listed use occurs is located.

11.15.060- NO DUTY TO ENFORCE.

Nothing in this chapter shall be construed as imposing on the enforcing officer or the County of San Benito any duty to issue an notice to abate unlawful marijuana cultivation, nor to abate any unlawful marijuana cultivation, nor to take any other action with regard to any unlawful marijuana cultivation, and neither the enforcing officer nor the County of San Benito shall be held liable for failure to issue an order to abate any unlawful marijuana cultivation, nor for failure to abate any unlawful marijuana cultivation, nor for failure to take any other action with regard to any unlawful marijuana cultivation.

11.15.070 – NO ACTIVITY PERMITTED THAT VIOLATES STATE/FEDERAL LAW.

Nothing in this chapter shall be deemed to authorize or permit any activity that violates any provision of state or federal law.

11.15. 080 – OTHER NUISANCE.

Nothing in this chapter shall be construed as a limitation on the county's authority to abate any nuisance which may otherwise exist from the planting, growing, harvesting, drying, processing or storage of marijuana plants or any part thereof from any location, indoor or outdoor, including from within a fully enclosed and secure building.

11.15. 090 - ENFORCEMENT

(A) *Violation; criminal penalties.* The County may enforce this ordinance through all lawful provisions set forth in State Law and the San Benito County Code, including but not limited to the prosecution of a civil action, including an action for injunctive relief. The remedy of injunctive relief may take the form of a court order, enforceable through civil contempt proceedings, prohibiting the maintenance of the violation of this Ordinance or requiring compliance with other terms. Additionally, failure to abate a notice of violation may also be enforceable criminally, to the extent allowed by the County Code and State law. However, notwithstanding the foregoing, violation of this Ordinance does not constitute a misdemeanor or infraction.

(B) *Violation; public nuisance.* Any violation of this chapter is unlawful and a public nuisance and shall be abated, eliminated and enjoined as provided in Chapter 1.03 of this code, and/or as may be allowed by State Law.

(C) *Administrative citation.* Any person violating any provisions of this article may be issued an administrative citation as set forth in Chapter 1.04 of this Code, except that notwithstanding Section 1.04.005, any nuisance as described in this chapter may be subject to an administrative penalty of up to one thousand dollars per day. The administrative penalty may be imposed via the administrative process set forth in Chapter 1.04, as provided in Government Code Section 53069.4, or may be imposed by the court if the violation requires court enforcement without an administrative process.

(D) *Remedies; cumulative.* Except as otherwise provided by law, the remedies for violation(s) of this Chapter shall be cumulative and not exclusive. Nothing in this chapter is intended or shall be deemed or construed to limit or impair the ability of the county, or any of its officers, agents or employees, to take any administrative or judicial action, otherwise authorized by law, to abate any public nuisance.

11.15. 100 – LIMITED IMMUNITY FOR EXISTING NONCONFORMING CULTIVATION SITES (EFFECTIVE NOVEMBER 11, 2016 THROUGH FEBRUARY 11, 2017).

To allow the harvesting of any marijuana currently being cultivated as of November 11, 2016, and a reasonable amortization period for any current medical marijuana cultivation businesses existing in compliance with California State Law, this section sets forth limited immunity for alleged violations of subsections (A) of Section 11.15.040 or Section 11.15.050 for existing cultivation as set forth below.

(A) A medical marijuana cultivation site existing as of November 11, 2016, shall not be subject to the enforcement remedies set forth in the San Benito County Code solely on the basis of an activity prohibited by 11.15.040 (A) or Section 11.15.050; provided, however, that as authorized by California Health and Safety Code Section 11362.83, this limited immunity is available and may be asserted as an affirmative defense only if that medical marijuana cultivation does not violate any of the following:

(1) To qualify for the limited immunity set forth in this section, an owner/operator shall register existing marijuana cultivation pursuant to Section 11.15.110, not later than January 15, 2017. An application shall be submitted in a form prescribed by the County. Completed registration packets shall be received by the County Planning Department/Resource Management Agency not later than January 15, 2017.

(2) A registered medical marijuana cultivation business shall be in full compliance with all applicable state and local laws. Specifically, every medical marijuana cultivation business is prohibited that is not collectively or cooperatively cultivating marijuana for medical purposes, consistent with State Law, including but not limited to California Health and Safety Code 11362.7, et. seq.

(3) Every medical marijuana cultivation site is prohibited that does not operate in a manner that ensures the security of the crop and safeguards against diversion for nonmedical purposes.

(4) Every medical marijuana cultivation site is prohibited where marijuana is visible from any public right-of-way.

(5) The cultivation of marijuana outdoors is prohibited if within 1000 feet of residence on a separate parcel unless the area cultivated is fully enclosed by an opaque fence at least six feet in height. The fence must be adequately secured by a locked gate to prevent unauthorized entry.

(6) The number of marijuana plants on the premises at any one time shall not exceed the number cultivated on the premises at any one time during the last quarter (from August 11, 2016 through November 11, 2016, as documented in the registration application submitted pursuant to Section 11.15.110.

(7) The marijuana plants must be reasonably proven to have been under cultivation as of November 11, 2016 to be recognized as existing nonconforming cultivation. This exemption (of limited immunity) terminates for each cultivation site when existing nonconforming plants are harvested, but in no event shall this exemption apply after February 11, 2017.

(B) The limited immunity provided by this section shall not be available to and shall not be asserted as an affirmative defense to any violation of law except as expressly set forth in this Section. Further, nothing contained in this limited immunity is intended to provide or shall be asserted as a defense to a claim for violation of law brought by any State or Federal governmental authority. Finally, the limited immunity provided by this section shall be available and may be asserted only so long as each and every provision and clause of subsections (A)(1) through (6) of this section and this ordinance remain valid, effective and operative.

(C) This section shall be effective November 11, 2016 through February 11, 2017. This section shall be of no further force and effect after February 11, 2017.

11.15.110- REGISTRATION OF EXISTING CULTIVATION SITES (EFFECTIVE NOVEMBER 11, 2016 THROUGH FEBRUARY 11, 2017).

(A) Any person owning, leasing, occupying, or having charge or possession of any premises utilized for medical marijuana cultivation as of November 11, 2016, desiring to utilize the limited immunity set forth in 11.15.100 or an extended amortization period as allowed by Section 11.15.120, shall submit a required registration for the premises to the Resource Management Agency (“RMA”), and shall provide all of the following current information and documentation to the RMA:

(1) The name of each person, owning, leasing, occupying, or having charge or possession of the premises;

(2) The name of each qualified patient or primary caregiver who participates in the cultivation, either directly or by providing reimbursement for marijuana or the services provided in conjunction with the provision of that marijuana;

(3) The name of the person, and address, to which the marijuana is supplied and a copy of the current valid medical recommendation or State-issued medical marijuana card for each qualified patient identified, and for each qualified patient for whom any person identified as the primary caregiver;

(4) If the marijuana is being cultivated indoors, a written certification from a licensed electrician that the cultivation location has all necessary electrical permits required by the California Building Codes, or in the alternative, a building inspection, to ensure that the growing operations can be carried out safely;

(5) The physical site address of where the marijuana will be cultivated and a description of the growing area(s).

(6) The number of marijuana plants to be cultivated on the premises; and

(7) Description of marijuana cultivation, including the number of marijuana plants, on the site from August 11, 2016 through date of application; and evidence of the disposition or use of such marijuana consistent with State Law for medical purposes to the extent that such marijuana has been harvested;

(8) Evidence of the number of plants cultivated from August 11, 2016 through date of application); such evidence may consist, but not be limited to, declarations/affidavits, photographs, cultivation records, medical ID cards, etc.

(9) Such other information and documentation as the department determines is necessary to ensure compliance with State law and this chapter.

(B) The information and documentation required by this Section shall be received in confidence, and shall be used or disclosed only for purposes of administration or enforcement of this chapter or state law, or as otherwise required by law.

(C) The Board of Supervisors may, by resolution or ordinance, establish a fee for such annual registration in accordance with all applicable legal requirements.

(D) A completed registration on file with the County shall be necessary to claim the limited immunity set forth in Section 11.15.100 or Request for Additional Amortization Period under Section 11.15.120.

(E) This section shall be in effect until February 11, 2017. This section shall sunset and be of no further force and effect as of February 11, 2017.

11.15. 120 – REQUEST FOR ADDITIONAL AMORTIZATION PERIOD.

(A) **Purpose and Intent.** The purpose and intent of this Section is to provide an administrative procedure for determining whether cultivation prohibited by Sections 11.15.040 or 11.15.050 is exempt from the prohibitions of those sections for a longer amortization period than set forth automatically in section §11.15.100 in order to avoid an unconstitutional taking as it may apply to any specific parcel. This Section codifies an administrative process for an additional amortization period.

(1) In the event a Property Owner (which definition includes any party that may be entitled to bring an unlawful takings claim) contends that application of this Ordinance effects an unconstitutional taking of property, the Property Owner may request, and the Board may grant, an extended amortization period if the Board of Supervisors finds, based on substantial evidence, that the application of any aspect of this Ordinance would constitute an unconstitutional taking of property.

(2) The amortization period/limited immunity set forth in Section 11.15.100 above, may be extended on a case-by-case basis if the Board of Supervisors determines that the Property Owner has shown that limited immunity/amortization period set forth in Section 11.15.100 is not a reasonable amortization period pursuant to State law.

(B) **Contents of Application and Review for Completeness.**

Any application for an Extended Amortization Period shall be submitted by the

applicant seeking the exemption. The applicant shall submit as part of the application for an extended amortization period any and all evidentiary support reasonably available sufficient to establish the basis for the claim.

(C) Processing of Applications for an Extended Amortization Period.

(1) The Board shall hold at least one noticed public hearing on the application and shall approve, conditionally approve or deny the request.

(2) At least ten days prior to the public hearing, the Clerk of the Board shall give notice thereof by at least one publication in a newspaper of general circulation. Additionally, notice of the hearing shall be given by mail or delivery to all persons including businesses, or other public or private entities shown on the last equalized assessment roll as owning real property within 300 feet of the property.

(3) The hearing shall be held within 180 days of the determination that the application is complete. For good cause, the Board of Supervisors may delay the holding of the hearing for an additional 180 days.

(4) The Board may continue the hearing to allow or require the applicant or staff to submit additional information or legal analysis.

(5) The action of the Board shall be final.

(D) Findings Required for Approval.

An Application for an Extended Amortization Period shall be approved or conditionally approved only if the Board of Supervisors finds that there is sufficient evidence in the record to determine that approving or conditionally approving the application is required in order to avoid an unconstitutional taking of property, or that the applicant has shown that three month amortization period is not a reasonable amortization period pursuant to State Law.

(E) Enforcement.

(1) The County shall not take any action to enforce this Ordinance against any owner or operator of an existing facility if an application for an Extended Amortization Period has been filed in compliance with this Section and the application has not expired, or final action to deny the application has not occurred.

(2) This section does not apply to enforcement by any law enforcement, the District Attorney's Office, or State or Federal prosecuting authority.

11.15.130 – NO VESTED OR NONCONFORMING RIGHTS.

Neither this chapter, nor section 11.15.090, nor any other provision of this code or action, failure to act, statement, representation, certificate, approval, or permit issued by the County or its departments, or their respective representatives, agents, employees, attorneys or assigns, shall

create, confer, or convey any vested or nonconforming right or benefit regarding any marijuana cultivation.

11.15.140 SEVERABILITY.

If any section, subsection, sentence, clause, portion, or phrase of this chapter is for any reason held illegal, invalid, or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions hereof. The board hereby declares that it would have passed this chapter and each section, subsection, sentence, clause, portion, or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared illegal, invalid or unconstitutional.

11.15.145 FEES

The Board may establish fees related this chapter by ordinance or resolution.

11.15.150 SUNSET

This ordinance shall “sunset” in two years, and shall be of no further force and effect as of November 11, 2018.

Section 4 – CODIFICATION. Section two of this ordinance shall be codified. The remaining sections shall be not be codified.

Section 5 – CAPTIONS. The titles and headings of this ordinance and the sections hereunder are not part of this ordinance and shall have no effect upon the construction or interpretation of any part thereof.

Section 6 - EFFECTIVE DATE. This ordinance shall become effective thirty days after adoption. Prior to the expiration of fifteen (15) days from the adoption thereof shall be published at least one time in a newspaper of general circulation in San Benito County, with the names of the Supervisors voting for or against the same. In the alternative a summary or a display ad may be published as allowed by law.

The foregoing ordinance was introduced at a regular meeting of the Board of Supervisors of the County of San Benito on 27th day of September, 2016, and thereafter duly passed and adopted by the Board of Supervisors of the County of San Benito at a regular meeting held the 11th day of October, 2016, by the following vote:

AYES: Supervisor(s)

NOES: Supervisor(s)

ABSENT OR NOT VOTING:

Robert Rivas,
Chair, Board of Supervisors

ATTEST:

Louie Valdez, Clerk of the Board

By: _____
Clerk of the Board

APPROVED AS TO LEGAL FORM:

San Benito County Counsel

By: _____
Barbara Thompson
Assistant County Counsel

EXHIBIT “A”

FINDINGS AND PURPOSE.

The Board of Supervisors of the County of San Benito hereby finds and declares, the following:

(A) Pursuant to Article XI, section 7 of the California Constitution, the County of San Benito (“County”) may adopt and enforce ordinances and regulations not in conflict with general laws to protect and promote the public health, safety, and welfare of its citizens.

(B) In 1996, the voters of the State of California approved Proposition 215 (codified as California Health and Safety Code section 11362.5, and entitled "The Compassionate Use Act of 1996").

(C) The intent of Proposition 215 was to enable persons who are in need of marijuana for medical purposes to use it without fear of criminal prosecution under limited, specified circumstances. The proposition further provides that "nothing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, or to condone the diversion of marijuana for non-medical purposes." The ballot arguments supporting Proposition 215 expressly acknowledged that "Proposition 215 does not allow unlimited quantities of marijuana to be grown anywhere."

(D) In 2004, the Legislature enacted Senate Bill 420 (codified as California Health and Safety Code sections 11362.7 et seq., and referred to as the "Medical Marijuana Program") to clarify the scope of Proposition 215, and to provide qualifying patients and primary caregivers who collectively or cooperatively cultivate marijuana for medical purposes with a limited defense to certain specified State criminal statutes. Assembly Bill 2650 (2010) and Assembly Bill 1300 (2011) amended the Medical Marijuana Program to expressly recognize the authority of counties and cities to "[a]dopt[] local ordinances that regulate the location, operation, or establishment of a medical marijuana cooperative or collective" and to civilly and criminally enforce such ordinances. Pursuant to the MMPA, a qualified patient or primary caregiver may possess no more than eight ounces of dried marijuana per patient and may maintain no more than six mature or twelve immature marijuana plants per patient unless a doctor authorizes an additional amount.

(E) On January 1, 2016, Assembly Bill 266, Assembly Bill 243, and Senate Bill 643, which together constitute the “Medical Marijuana Regulation and Safety Act (“MMRSA”), became effective and set forth a comprehensive, state-wide regulatory structure for the cultivation and distribution of medical cannabis. The final state regulations pertaining to marijuana cultivation have not yet been adopted.

(F) Local marijuana cultivation regulations have been upheld in other parts of the State, including by the California Court of Appeal in *Browne v. County of Tehama* (2013) 213 Cal. App. 4th 704. In that case, the Court specifically held that "[n]either the Compassionate Use Act nor the Medical Marijuana Program grants . . . anyone . . . an unfettered right to

cultivate marijuana for medical purposes. Accordingly, the regulation of cultivation of medical marijuana does not conflict with either statute." Similarly, in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal. 4th 729, the California Supreme Court concurred that "[n]othing in the CUA or the MMP expressly or impliedly limits the inherent authority of a local jurisdiction, by its own ordinances, to regulate the use of its land . . ."

(G) The Federal Controlled Substances Act, 21 U.S.C. §§ 801 et seq., classifies marijuana as a Schedule I Drug, which is defined as a drug or other substance that has a high potential for abuse, that has no currently accepted medical use in treatment in the United States, and that has not been accepted as safe for use under medical supervision. The Federal Controlled Substances Act makes it unlawful, under federal law, for any person to cultivate, manufacture, distribute or dispense, or possess with intent to manufacture, distribute or dispense, marijuana. The Federal Controlled Substances Act contains no exemption for the cultivation, manufacture, distribution, dispensation, or possession of marijuana for medical purposes. The federal Controlled Substances Act (21 U.S.C. §801, *et seq.*) prohibits, except for certain research purposes, the possession, distribution, and manufacture of marijuana. California statutes specify that, except as authorized by law, the possession, cultivation, possession for sale, transportation, administration, or furnishing of marijuana are state criminal violations. State law further punishes one who maintains a place for the purpose of unlawfully selling, using or furnishing, or who knowingly makes available a place for storing, manufacturing, or distributing marijuana contrary to state law..

(H) The County's land use ordinances, set forth in the San Benito County, currently do not specifically permit or regulate the use of land or structures for cultivation or processing of marijuana. In light of the lack of specific regulation from the County and the lack of clarity in prior state laws governing medicinal marijuana, numerous marijuana growing sites have been encountered in the unincorporated areas of the County, as observed by the County Sheriff's Office and County Code Enforcement, which have reported the following:

1. It is estimated that there are multiple marijuana cultivation sites in operation in San Benito County. These sites occur in all areas of the unincorporated portion of the County. Over the past few years, there has been a steady increase in the number and size of these cultivations and the proximity to more populated areas.

2. Several of the marijuana cultivation sites are clearly visible from public areas and roadways and are easily accessible by the public, including youths and children, and in other counties, this has led to violent encounters with growers protecting their crops.

3. The strong, pungent odor of growing marijuana plants has also drawn attention to cultivation sites, and there has been a significant increase in odor complaints from neighbors and businesses near grow sites. Marijuana growers have been observed to live illegally in tents and trailers near their grow sites, dumping sewage and trash onto the ground. Due to the lack of local regulations for marijuana cultivation in the County, several collectives/dispensaries from other counties have moved their cultivation sites to this County.

4. A large variety of fertilizers, rodenticides, insecticides, and other harmful chemicals, many of them banned in California, are routinely found at these grow sites. Dangerous electrical and plumbing problems are also frequently encountered.

(I) Cultivation of marijuana has been associated with serious harmful effects in the areas where cultivation sites are located, to owners of property in such areas, and to people living, visiting, conducting business or otherwise present in the area, as reported by numerous other California counties and cities. Harmful effects at both outdoor and indoor cultivation operations have included an increase in criminal activity because of the high monetary value of the marijuana plants, adverse environmental impacts, noise pollution from generators, interference with farming practices, fire danger from grow light systems and marijuana oil extraction operations, excessive energy consumption, and strong offensive odors.

1. Each marijuana plant under various planting conditions may yield an average of two to four pounds in its lifetime. The street value of a single cannabis plant is substantial. Prices for domestically produced high-grade cannabis sold in California can reach a value of \$240 per ounce. Thus, a single marijuana plant can yield up to \$15,500 in salable marijuana.

2. The United States Drug Enforcement Administration reports that marijuana cultivation is associated with illegally diverted water, illegal deforestation, and soil contamination. Rodenticide and insecticide toxicants have frequently been discovered at marijuana cultivation sites and have detrimental impacts on wildlife. In addition, marijuana plants are relatively high water-using plants, requiring roughly 1,200 gallons of water.

3. According to a recent study of marijuana cultivation in Northern California by staff of the California Department of Fish and Wildlife and the National Marine Fisheries Services and academic researchers, water demand for marijuana cultivation has the potential to divert excessive amounts of water and to have harmful impacts on state and federally listed salmon and steelhead trout. The water demand associated with cultivation and its biological impacts are of particular concern in the County, which has known water supply constraints and state and federally listed species that could be affected by such water use.

(J) Without sufficient regulations, standards, procedures, and thresholds which are enforceable pursuant to an adopted ordinance, there is a current and immediate threat to the public health, safety, and welfare from these marijuana cultivation facilities.

(K) Crop production is allowed in all land use categories without the need for a use permit and the Board finds that this is intended to apply to the production of grains, field crops, vegetables, fruit, tree nuts, flower fields and seed production, ornamental crops, and tree and sod farms. The current County land use regulations related to crop production do not adequately address the unique legal, land use, environmental, and public health, safety, and welfare issues and impacts associated with cultivating marijuana, as described above.

(L) The study of potential land use regulation of marijuana cultivation is urgently needed because the County has received inquiries from operators seeking to obtain licenses for existing or new cultivation operations within the unincorporated areas of the County,

notwithstanding the fact that the County has not yet adopted regulations and requirements for the establishment of such uses.

(M) A temporary moratorium on cultivation of marijuana is necessary while the County develops a permanent ordinance. It is the intent of this interim ordinance to enact a moratorium that is only temporary in order to provide time for the County to study and develop appropriate regulations for marijuana cultivation consistent with the MMRSA, the CUA, the MMPA, and other applicable regulations.

(N) It is also the intent of this interim ordinance to act as a land use regulation or ordinance regulating or prohibiting the cultivation of marijuana, as described in Health & Safety Code section 11362.777.

(O) The county's unique geographic and climatic conditions, which include areas of prime agricultural land, along with a minimal population in many areas of the county, provide conditions that are favorable to marijuana cultivation. There have been multiple marijuana grows located within the last year within San Benito County.

(P) The unregulated cultivation of marijuana in the unincorporated area of San Benito County can adversely affect the health, safety, and well-being of the county and its residents. Comprehensive regulation of premises used for marijuana cultivation is proper and necessary to avoid the risks of criminal activity, degradation of the natural environment, malodorous smells, and indoor electrical fire hazards that may result from unregulated marijuana cultivation, and that are especially significant if the cultivation occurs outdoors, or if the amount of marijuana cultivated on a single premises is not regulated and substantial amounts of marijuana are thereby allowed to be concentrated in one place.

(Q) As recognized by the Attorney General's August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use, the cultivation or other concentration of marijuana in any location or premises without adequate security increases the risk that surrounding homes or businesses may be negatively impacted by nuisance activity such as loitering or crime.

(R) Many marijuana cultivations have served as avenues for exportation and distribution of marijuana for illegal use. Marijuana cultivations have been shown to involve avoidance of environmental laws and regulations. Unregulated medical marijuana cultivation is harmful to the welfare of the surrounding community and its residents and constitutes a public nuisance. Problems associated with marijuana cultivation seem to worsen as the cultivations become larger. Large marijuana grows have been found in San Benito County, in quantities far in excess of what might be cultivated for medicinal use.

(S) It is the purpose and intent of this chapter to implement state law by providing a means for regulating the cultivation of marijuana in a manner that is consistent with state law and which balances the needs of medical patients and their caregivers and promotes the health, safety, and welfare of the residents and businesses within the unincorporated territory of the County of San Benito. This Chapter is intended to be consistent with Proposition 215 and Senate

Bill 420, and towards that end, is not intended to prohibit persons from individually, collectively, or cooperatively exercising any right otherwise granted by state law. Rather, the intent and purpose of this chapter is to establish reasonable regulations upon the manner in which marijuana may be cultivated, including restrictions on the amount of marijuana that may be individually, collectively, or cooperatively cultivated in any location or premises, in order to protect the public health, safety, and welfare in San Benito County.

(T) Both outdoor and indoor grows require large amounts of water, which is sometimes illegally diverted, most particularly in the case of outdoor grows.

(U) Both outdoor and indoor grows may contain armed guards and/or booby trap devices that threaten serve bodily harm or death to those who attempt to access them. Such devices may be a threat to any person that enters the area of the grow, but are often designed specifically to injure law enforcement personnel. Especially during harvest and processing season, there is an immediate threat of violent crime depending on the size, location, gang/drug trafficker involvement, and monetary value of these medical marijuana grows.

(V) Eradication of an illegal marijuana grow may be dangerous and labor intensive for law enforcement officials because of the potential of armed suspects, booby traps, and varying conditions of the grow.

(W) San Benito County, because of its current lack of a marijuana cultivation ordinance, has become an attractive location for out-of-county and out-of-state for profit cultivators to come to for the purpose of large scale marijuana grows. Recently many counties in Northern California have adopted more restrictive marijuana cultivation ordinances, making San Benito County, an even more attractive option for marijuana cultivators. The Board finds that action is necessary to curb the potential influx of large scale marijuana cultivation in the County.

(X) The cultivation of marijuana outdoors, where it is often readily observable by neighbors and the general public, increases the risk of trespassing and burglary, and acts of violence in connection with the commission of such crimes or the occupants' attempts to prevent such crimes. Outdoor cultivation further makes the premises more prone to act as an attractive nuisance for children, and increases the likelihood of offensive odors traveling off the premises. Additionally, experience in San Benito County and elsewhere demonstrates that outdoor cultivation of marijuana is often associated with violations of local, state, and federal environmental laws and pesticide regulations, threatening harm to local waterways and groundwater quality, and endangering the public health and safety. To adequately protect the public health, safety, and welfare, it is proper and necessary to limit the outdoor cultivation of marijuana within the unincorporated area of San Benito County.

(Y) Prohibiting commercial or large-scale cultivation of marijuana is proper and necessary to avoid the aforementioned harms, and to protect the health, safety, and welfare of the residents and businesses within the unincorporated territory of the County of San Benito.

(Z) The indoor cultivation of marijuana within a residence or other structure used or intended for human occupancy presents potential health and safety risks to those living in the

residence or otherwise occupying the structure, especially to children, including but not limited to, increased risk of fire from grow light systems, exposure to fertilizers, pesticides, anti-fungus/mold agents, and exposure to potential property crimes. One goal of this ordinance is to reduce or mitigate these risks by limiting the number of plants which may be cultivated indoors at any one location.

(AA) Marijuana that is grown indoors may require excessive use of electricity, which often is obtained or connected illegally, and which may overload standard electrical systems creating an unreasonable risk of fire. If indoor grow lighting systems are powered by diesel generators, improper maintenance of the generators and fuel lines and the improper storage and disposal of diesel fuel and waste oil may create an unreasonable risk of fire and pollution.

(BB) The limited immunity from specified state marijuana laws provided by the Compassionate Use Act and Medical Marijuana Program does not confer the right to create or maintain a public nuisance. By adopting the regulations contained in this Chapter, the County will achieve a significant reduction in the aforementioned harms caused or threatened by the unregulated cultivation of marijuana in the unincorporated area of San Benito County.

(CC) In nuisance abatement proceedings, physical abatement may be costly, and cost recovery can be slow and uncertain. Therefore, this ordinance is drafted to provide the broadest possible methods of abating a nuisance which may exist, through the application of other provisions of the San Benito County Code, and includes the potential for criminal and monetary sanctions to more effectively control the harms caused by unregulated and noncompliant marijuana cultivation, while still accommodating the needs of medical patients and their caregivers to the greatest extent practicable.

(DD) Nothing in this ordinance shall be construed to allow the use of marijuana for non-medical purposes, or allow any activity relating to the cultivation, distribution, or consumption of marijuana that is otherwise illegal under state or federal law. No provision of this chapter deemed a defense or immunity to any action brought against any person by the San Benito County District Attorney, the Attorney General of State of California, or the United States of America.

(EE) Adoption of this Ordinance without delay is necessary for the immediate preservation of the public peace, health and safety, as set forth in Government Code section 25123, subdivision (d), in order to prevent additional cultivation of marijuana at existing locations, new cultivation of marijuana either indoors or outdoors of more than six plants, all of which would threaten significant impacts on the public peace, health, and safety if permitted to occur.

(FF) The Board finds that it would have adopted this ordinance if any of the findings above are sufficient to justify its adoption, notwithstanding whether any one finding, or section of a finding above, may be found to be insufficient or not supported by sufficient evidence in the record.

(GG) The Board of Supervisors hereby finds that this Ordinance is not subject to review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines sections 15060, subdivision (c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15061, subdivision (b)(3) (there is no possibility the activity in question may have a significant effect on the environment.) This Ordinance is exempt from the California Environmental Quality Act (Public Resources Code §21000, et seq.) (“CEQA”) because it can be seen with certainty that there is no possibility that it will have a significant effect on the environment (CEQA Guidelines §15061(b)(3))

(HH) In addition to the foregoing general exemptions, the Board of Supervisors further finds that the Ordinance is categorically exempt from review under CEQA under the Class 8 Categorical exemption (regulatory activity to assure the protection of the environment). and because it consists of regulations and restrictions on activities to assure the maintenance, restoration, or enhancement of natural resources and the environment by prohibiting environmentally destructive components of currently unregulated marijuana cultivation, as well Class 7 exemption pursuant to the CEQA Guidelines §§15307, 15308).