

BEFORE THE BOARD OF SUPERVISORS OF THE COUNTY OF SAN BENITO

Ordinance No. _____

ORDINANCE OF THE BOARD OF SUPERVISORS OF THE COUNTY OF SAN BENITO AMENDING ADMINISTRATIVE CITATION PROVISIONS OF SAN BENITO COUNTY CODE, CHAPTER 1.04, SECTIONS 1.04.001, 1.04.003, AND 1.04.005

The Board of Supervisors of the County of San Benito ordains as follows:

SECTION 1. Purpose and Findings:

The San Benito County Code (“SBCC”), Chapter 1.04 “Administrative Citations,” sets forth provisions for the issuance of administrative citations along with the accompanying fines for violations of various codes. In order to enhance administrative tools for enforcement against illegal, unpermitted cannabis operations, and in conformance with recent amendments to California Government Code § 53069.4, amendments to San Benito County Code sections 1.04.001, 1.04.003, and 1.04.005 are warranted.

These proposed amendments would permit the imposition of immediate administrative penalties for any code violations related to illegal or unpermitted cannabis operations. Each violation could be punished by an administrative fine of up to \$10,000 per day. In cases where violations occur on rented property, the ordinance would permit owners avoid immediate penalties, provided they could meet the statutory criteria under Government Code §53069.4(a)(2)(C), as now amended. That criteria includes showing the property is in the possession of a tenant, that cannabis operations are prohibited in the lease, and that the owner did not know of the cannabis operations and had no actual notice thereof.

SECTION 2. Amendments to Chapter 1.04 of the San Benito County Code

The following sections of Title 1, Chapter 1.04 of the San Benito Code are hereby amended to read as follows (additions appearing in underline format and deletions appearing in ~~strikethrough~~):

§ 1.04.001 APPLICABILITY.

(A) This chapter provides for administrative citations and fines which are in addition to all other civil or criminal legal remedies, which the county may pursue to address any violation of the San Benito County Code.

(B) The use of this chapter shall be at the county’s sole discretion.

(C) County staff may prepare a procedures manual which provides additional guidance for implementing the administrative citation program consistent with the provisions of this chapter.

~~(D) Use of administrative citations shall not begin until the Board of Supervisors adopts a resolution authorizing implementation of the administrative citation program in San Benito County.~~

§ 1.04.003 ADMINISTRATIVE CITATION.

(A) Whenever an enforcement officer determines that a violation of this code has occurred, the enforcement officer shall have the authority to issue administrative citations, in accordance with Cal. Gov't Code § 53069.4 and this section, to any person(s) responsible for any violation(s) of this code, including but not limited to those violations not occurring the presence of the enforcing officer issuing the citation where the issuing officer determines through investigation that the responsible party committed, caused, allowed, or is otherwise responsible for the violation.

(B) Each administrative citation shall contain the following information:

- (1) The date, or approximate date, of the violation;
- (2) The address or a definite description of the location where the violation occurred;
- (3) The code or ordinance sections of the code violated and a description of the violation;
- (4) A description of how the violation can be corrected;
- (5) The amount of the fine for the code violation;
- (6) A description of the fine payment process, including a description of the time within which and the place to which the fine shall be paid;
- (7) An order prohibiting the continuation or repeated occurrence of the code violation described in the administrative citation;
- (8) A description of the administrative citation review process, including the time within which the administrative citation may be contested by submitting a request for hearing form; and
- (9) The name and signature of the citing enforcement officer.

(C) Except as provided in section 1.04.005(E), pPrior to the issuance of an administrative citation for a violation that does not create an immediate danger to health or safety, the enforcement officer shall provide a reasonable period of time not less than ten business days to correct or otherwise remedy the violation.

§ 1.04.005 AMOUNT OF FINES.

(A) The fine for a violation imposed pursuant to this chapter shall be \$100 for the first occurrence of a violation, \$200 for the second occurrence of the violation within one year, \$500 for the third citation and each subsequent occurrence of the same violation within one year.

(B) A violation of local building and safety codes determined to be an infraction is punishable by a fine of ~~\$100~~130 for the first occurrence of a violation, ~~\$500~~700 for the second occurrence of the violation within one year, and ~~\$1,000~~ 300 for the third and each subsequent occurrence of the same violation within one year of the first violation.

(C) The fine amounts shall be cumulative where multiple citations are issued.

(D) A late payment charge shall be paid to the county in the amount specified in § 1.04.012 if a fine has not been paid in full to the county on the date on which it is due.

(E) Notwithstanding any other part of this Code, any violation of building, plumbing, electrical, or other similar structural, health and safety, or zoning requirements, if the violation exists as a result of, or to facilitate, the illegal cultivation, manufacture, or distribution of cannabis, shall constitute a misdemeanor and be subject to an immediate fine of \$10,000. However, a reasonable period of time to remedy the violation(s) shall be provided prior to the imposition of such fine if the Responsible Party proves all of the following are true at a hearing:

1. A tenant is in possession of the property that is the subject of the administrative action,
2. The rental property owner or agent can provide evidence that the rental or lease agreement prohibits the cultivation, manufacture, or distribution of cannabis, and
3. The rental property owner or agent did not know the tenant was illegally cultivating, manufacturing, or distributing cannabis and no complaint, property inspection, or other information caused the rental property owner or agent to have actual notice of the illegal cannabis cultivation

SECTION 3. Severability

The provisions of this Ordinance are separate and severable. If any provision of this Ordinance is for any reason held by a court to be unconstitutional or invalid, the Board declares that it would have passed this Ordinance irrespective of the invalidity of the provision held to be unconstitutional or invalid. Such unconstitutionality or invalidity shall therefore not affect the remaining provisions of this Ordinance, or the validity of its application to other persons or circumstances.

SECTION 4. Effective Date and Codification

This Ordinance shall take legal effect thirty (30) days after adoption, as provided by law. Section 2 of this Ordinance shall be codified in the San Benito County Code.

In regular session of the Board of Supervisors of the County of San Benito, adopted this ___st day of August 2020, on regular roll call of the members of said Board by the following vote:

- AYES:
- NOES:
- ABSENT:
- ABSTENTION:

Jaime De La Cruz
Chair, Board of Supervisors

ATTEST:
Janet Slibsager, Clerk of the Board

APPROVED AS TO LEGAL FORM:
San Benito County Counsel
Barbara J. Thompson

By: _____
Clerk of the Board

By: _____
Reed Gallogly
Deputy County Counsel