

RESOLUTION NO. 2017-26
A RESOLUTION OF THE PLANNING COMMISSION OF THE
COUNTY OF SAN BENITO, STATE OF CALIFORNIA,
REGARDING PROPOSED ORDINANCE ADDING CHAPTER 7.02

WHEREAS, the Planning Commission has held a duly noticed public hearing on the proposed regular ordinance amending adding Chapter 7.02, both related to marijuana cultivation within San Benito County; and,

WHEREAS, the proposed ordinance would not prohibit personal cultivation of cannabis subject to reasonable regulations and requirements consistent with State law; and

WHEREAS, the Planning Commission has determined that the proposed ordinance is consistent with the 2035 General Plan, Section 9 Health and Safety Element which “provides guidance for how to protect county residents, workers, visitors, and properties from unreasonable risks associated with natural and manmade hazards. One of the main strategies used by the County to maintain safety is to require distance between known hazards and places where people live, work, and congregate.” Goal HS-5.2, Sensitive Land Use Locations, states, “[t]he County shall ensure adequate distances between sensitive uses and facilities or operations that may produce toxic or hazardous air pollutants or substantial odors.” The Ordinances are consistent with Goal HS-5.2 in that setbacks are required from sensitive land use areas, as well as, from all boundary lines so as to reduce the contact with odors from cannabis cultivation on residential properties; and

WHEREAS, with regard to the ordinance adding Chapter 7.02, the Planning Commission further finds:

- 1) the proposed ordinance is consistent with the 2035 General Plan, Section 3 Land Use Element, GOAL LU-3.1 Agricultural Diversification, states, “[t]he County shall support existing farms, vineyards, and other agricultural operations and encourage the agricultural industry to continue diversification that includes organic, value-added, small-scale, sustainable, and community-supported agricultural practices throughout the county.” The Ordinance is consistent with Goal LU-3.1 in that not prohibiting certain cannabis business activities creates diversity of available agricultural-type opportunities and thereby promotes the diversification of use of agricultural and rangeland zones; and
- 2) the proposed ordinance is consistent with the 2035 General Plan, Section 3 Land Use Element, GOAL LU-6.3 Industrial Uses, states, “[t]he County shall encourage industrial land uses to locate in areas that would not pose significant land use conflicts and in a manner appropriate to the type of industrial activity proposed, such as industry in direct support of agricultural operations in agricultural areas and general light industrial services nodes near existing and proposed major transportation infrastructure (e.g., highways like State Route 25 corridor in the North County, arterial roads, rail, and airports).” The Ordinance is consistent with Goal LU-6.3 in

that the zones identified for cannabis business activities encompass all areas where the nodes have been identified, and that the ordinance allows cannabis cultivation in industrial areas.

- 3) the proposed ordinance is consistent with the 2035 General Plan, Section 4, Economic Development Element, focuses on diversifying the local economy. GOAL ED-1.5 Quality of Life Improvements, states, “[t]he County shall focus economic development efforts on creating positive change in the county relative to residents and workers’ quality of life. This should include considering air quality, education opportunities, safety, water quality, scenic beauty, and recreational opportunities during economic development decisions.” The Ordinance is consistent with Goal ED-1.5 in that cannabis cultivation sites and cannabis transporters will be subject to stringent regulations, including, but not limited to the prohibition of outdoor cultivation, odor filtration requirements, and a track-and-trace program which is intended to deter criminal activity and trespass; and
- 4) the proposed ordinance is consistent with the 2035 General Plan, Section 4, GOAL ED-1.6 Agricultural Base Diversification, states, “[t]he County shall diversify the existing agricultural base by encouraging strong relationships between traditional agricultural industries and emerging agricultural-related industries, and emphasizing the expansion of value-added agricultural products in the county.” The Ordinance is consistent with Goal ED-1.5 in that cannabis business is an emerging agricultural-related industry with a local base of persons interested in entering the cannabis industry, as well as, persons and entities outside the County looking for cannabis business opportunities in San Benito County.

WHEREAS, the Planning Commission has determined that the proposed ordinance is categorically exempt 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). In addition to the foregoing general exemptions, the Board of Supervisors further finds that the Ordinances are categorically exempt from review under CEQA under the Class 8 Categorical Exemption (regulatory activity to assure the protection of the environment); and

WHEREAS, the Planning Commission further finds that based on the evidence in the record and described in the public hearing, the proposed ordinance (Project) is exempt from CEQA pursuant to CEQA Guideline Section 15183 of Title 14 of the California Code of Regulations. CEQA Guideline Section 15183 provide that projects which are consistent with a Community Plan, General Plan or Zoning for which an EIR has been certified “shall not require additional environmental review, except as might be necessary to examine whether there are project-specific significant effects which are peculiar to the project or its site.” An EIR was certified by the Board of Supervisors for the adoption of the County of San Benito General Plan. The proposed ordinance is consistent with the general plan. Therefore, the proposed project qualifies for the exemption under CEQA Guideline Section 15183, because the proposed ordinance is consistent with the General Plan, for which an EIR was certified; and,

WHEREAS, a Notice of Exemption has been prepared for the Project; and

WHEREAS, the Planning Commission has considered all public testimony and information presented during the public hearing regarding this item.

NOW, THEREFORE, BE IT RESOLVED by the Planning Commission of the County of San Benito as follows:

Section 1. Based on the review and determination of the Planning Department, the Planning Commission of the County of San Benito finds that the proposed Ordinance is consistent with the General Plan for the reasons set forth above.

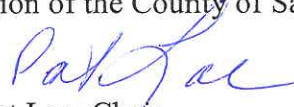
Section 2. Based on the review and determination of the Planning Department, the Planning Commission of the County of San Benito finds that the Project is exempt from review under the California Environmental Quality Act as set forth above.

Section 3. A Notice of Exemption is recommended for approval for the Project.

Section 4. The Planning Commission commends the work of the Ad Hoc committee, the Board of Supervisors, and staff in the development of the proposed ordinances to date. The Planning Commission hereby recommends that the Board of Supervisors give due consideration of the recommendations set forth in Exhibit "A", attached hereto when evaluating the proposed ordinance for adoption. These issues are those that are raised by individual Planning Commissioners, not by a formal vote on each item, except as where noted on the Exhibit.

Section 5. Upon approval of the Project by the San Benito County Board of Supervisors, the RMA Director may file the Notice of Exemption with the County Clerk.

PASSED AND ADOPTED by the Planning Commission of the County of San Benito at a public meeting held on June 21, 2017


Pat Loe, Chair

San Benito County Planning Commission

ATTEST:

By: 

Clerk

1. The Board of Supervisors should consider limiting the number of permits/cultivation sites which are allowed on prime agricultural land, by consideration of the addition of the following language in Subsection (M) of Section 7.02.070 ("Cannabis Permit Application).

(M) *Number of Cannabis Permits Limited.*

1. The number of cannabis permits issued in the unincorporated area of San Benito County may be limited or restricted by ordinance and/or resolution adopted by the Board of Supervisors. The Board of Supervisors may restrict the total number of permits and/or the total number of square feet of cannabis business facilities within the unincorporated area of San Benito County. **The Board of Supervisors shall not permit cannabis business facilities on prime agricultural land.**
2. If the number of permits is limited, application for the required permit may be submitted during the application period stated in subdivision (B).
3. The number of permits per premises shall comply with state law and regulations.

Vote: Change Recommended by 4-1 Vote

2. The Board of Supervisors should consider whether marijuana cultivation sites are best located in industrial areas only, by consideration of the modification of subsection (D) of section 7.02.080 to read as follows:

(D) No cannabis permit created under this Chapter, as set forth in Section 7.02.060, subdivision (C), may be issued for any cannabis business facility, on any premises, unless the premises is:

1. Located north of the southernmost boundary of Paicines.
2. Located in a zone district designated as ~~Agricultural Productive, Agricultural Productive/Light Industrial, Agricultural Rangeland, Agricultural Rangeland/Mineral Resource,~~ Light Industrial, **or** Heavy Industrial, Rural, ~~or Rural Transitional~~ by the San Benito County Code.
3. Notwithstanding the foregoing, no cultivation-type cannabis permit, except those cannabis permits for indoor cultivation occurring within a fully enclosed building, may be issued for a cannabis business facility in an Industrial Zone.

Vote: No Vote

3. The Board of Supervisors should consider whether setbacks should be increased, by consideration of the modification of subsection (A) of section 7.02.080 to read as follows:

- (A) Except as provided in a waiver granted in accordance with subdivision (B), no cannabis business facility shall be located less than **three hundred (300)** ~~one hundred (100)~~ feet from any boundary line of the premises, at least four-hundred (400) feet from any residence, and shall be located at least one-thousand (1,000) feet from any school, school bus stop, school evacuation site, church, park, child care center, or youth-oriented facility. Such setback distances shall be measured in a straight line from the cannabis business facility to the boundary lines of the premises.

Vote: Change Not Recommended by 4-1 Vote

4. The Board of Supervisors should consider not allowing any cultivation (except as expressly allowed by law) on parcels less than five acres in size, by the modification of subsection (D) of section 7.02.080 to read as follows:

- (D) No cannabis permit created under this Chapter, as set forth in Section 7.02.060, subdivision (C), may be issued for any cannabis business facility, on any premises,, unless the premises is:

1. Located north of the southernmost boundary of Paicines.
2. Located in a zone district designated as Agricultural Productive, Agricultural Productive/Light Industrial, Agricultural Rangeland, Agricultural Rangeland/Mineral Resource, Light Industrial, Heavy Industrial, Rural, or Rural Transitional by the San Benito County Code.
3. Notwithstanding the foregoing, no cultivation-type cannabis permit, except those cannabis permits for indoor cultivation occurring within a fully enclosed building, may be issued for a cannabis business facility in an Industrial Zone
4. **Five (5) acres or more in size.**

Vote: Change Recommended by 5-0 Vote

5. The Board of Supervisors should consider not allowing any cultivation (except as expressly allowed by law) on parcels more than ten (10) acres in size, by the modification of subsection (D) of section 7.02.080 to read as follows:

(D) No cannabis permit created under this Chapter, as set forth in Section 7.02.060, subdivision (C), may be issued for any cannabis business facility, on any premises,, unless the premises is:

1. Located north of the southernmost boundary of Paicines.
2. Located in a zone district designated as Agricultural Productive, Agricultural Productive/Light Industrial, Agricultural Rangeland, Agricultural Rangeland/Mineral Resource, Light Industrial, Heavy Industrial, Rural, or Rural Transitional by the San Benito County Code.
3. Notwithstanding the foregoing, no cultivation-type cannabis permit, except those cannabis permits for indoor cultivation occurring within a fully enclosed building, may be issued for a cannabis business facility in an Industrial Zone
4. **Ten (10) acres or less in size.**

Vote: No Vote

6. The Board of Supervisors should consider allowing outdoor growth in certain isolated areas.

No language has been developed for this proposal at this time.

Vote: No Vote

7. The Board of Supervisors should consider a mailed notice requirement to neighbors prior to approval of an application.

No language has been developed for this proposal at this time.

Vote: Change Recommended by 5-0 Vote

8. The Board of Supervisors should consider the inclusion of an appeal process from a neighboring property owner affected by the application the Board of Supervisors (or Hearing Officer) of decisions of the Cannabis Coordinator regarding an application.

No language has been developed for this proposal at this time.

Vote: Change Recommended by 5-0 Vote

9. The Board of Supervisors should consider developing specific zoning and/or an overlay zone.

Vote: Change Recommended by 4-1 Vote