

BEFORE THE BOARD OF SUPERVISORS OF THE COUNTY OF SAN BENITO

AN ORDINANCE OF THE BOARD OF SUPERVISORS)
OF THE COUNTY OF SAN BENITO, ADDING CHAPTER) Ordinance No.:
7.02 TO THE SAN BENITO COUNTY CODE RELATING)
TO CANNABIS BUSINESSES)
)

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

SECTION 1. Chapter 7.02 is hereby added to Title 7 "Business Regulations," of the San Benito County Code, which shall read as follows:

Chapter 7.02: Cannabis Businesses.

- 7.02.010 - Findings, Purpose, Effect, Authority, and Policy.
- 7.02.020 - Definitions.
- 7.02.030 - Prohibited Activities.
- 7.02.040 - Exemptions.
- 7.02.050 - [RESERVED.]
- 7.02.060 - [RESERVED.]
- 7.02.070 - [RESERVED.]
- 7.02.080 - [RESERVED.]
- 7.02.090 - [RESERVED.]
- 7.02.100 - [RESERVED.]
- 7.02.110 - [RESERVED.]
- 7.02.120 - [RESERVED.]
- 7.02.130 - [RESERVED.]
- 7.02.140 - Nuisance Declared.
- 7.02.150 - Nuisance Abatement Authority.
- 7.02.160 - Other Nuisance.
- 7.02.170 - Enforcement.
- 7.02.180 - Duty of Owners and Occupants; No Unlawful Activity Permitted.
- 7.02.190 - Remedies Cumulative.
- 7.02.200 - Severability.

7.02.010 – Findings, Purpose, Effect, Authority, and Policy.

- (A) Pursuant to Article XI, Section 7 of the California Constitution, the County of San Benito 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) The Federal Controlled Substances Act (21 U.S.C. § 801 et seq.) prohibits, except for certain research purposes, the possession, distribution, and manufacture of cannabis, and there is no medical necessity exception to prosecution and conviction under the Controlled Substances Act.

- (C) The Federal Government has issued guidelines for states and local governments that have enacted laws authorizing cannabis related conduct, requiring them to implement strong and effective regulatory and enforcement systems that will address the threat that medicinal cannabis activity could pose to public health, safety, and welfare, and other law enforcement interests.
- (D) California statutes specify that, except as authorized by law, the possession, cultivation, possession for sale, transportation, administration, or furnishing of cannabis 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 cannabis, except as expressly allowed by law.
- (E) California's cannabis laws, the Compassionate Use Act (Health and Safety Code section 11362.5), the Medical Marijuana Program Act (Health and Safety Code sections 11362.7 et seq.), and the Medicinal and Adult-Use Cannabis Regulation and Safety Act (Business and Professions Code sections 26000 et seq.), each recognize and preserve the authority of cities and counties under Section 7 of Article XI of the California Constitution to regulate the cultivation of cannabis.
- (F) The Medicinal and Adult-Use Cannabis Regulation and Safety Act ("MAUCRSA") creates a State licensing program for both medicinal and non-medicinal cannabis business activities. The MAUCRSA allows counties and cities to maintain local regulatory authority over cannabis businesses. The State will not issue a cannabis business license authorized by MAUCRSA ("MAUCRSA license") if the applicable local jurisdiction has provided notice that such activity for which a license is sought is prohibited by local ordinance or regulation. Furthermore, the State will not issue a MAUCRSA license if the local jurisdiction provides notice that the applicant is not in compliance with local ordinance or regulation.
- (G) Pursuant to California Business and Professions Code section 26200, nothing in the Medicinal and Adult-Use Cannabis Regulation and Safety Act shall be interpreted to supersede or limit existing local authority for law enforcement activity, enforcement of local zoning requirements or local ordinances, or enforcement of local permit or licensing requirements.
- (H) Although the MAUCRSA authorizes state licensing agencies to issue rules and regulations regarding cannabis business activities, the State has yet to issue any final and enforceable regulations. As such, until the state issues enforceable regulations, cannabis business activities will continue to be insufficiently regulated, thereby posing a current and immediate threat to the public health, safety, and welfare, including, but not limited to, the risks of criminal activity, juvenile cannabis use and endangerment therefrom, degradation of the natural environment, malodorous smells, and indoor electrical fire hazards that may result from unregulated cannabis business activities.
- (I) As a result of (i) the continued conflict between State and federal laws regarding cannabis, (ii) the unsettled State cannabis business rules and regulations, (iii) the environmental impacts and threat to the public health, safety, and welfare that insufficiently regulated cannabis businesses present, and (iv) the inadequate

regulations in the San Benito County Code to effectively address the negative impacts and secondary effects associated with cannabis business activities including, but not limited to, demands placed on law enforcement and administrative resources; neighborhood disruption; the exposure of children to cannabis; drug sales to minors and adults; fraud in issuing, obtaining, or using medicinal cannabis recommendations; robberies; burglaries; assaults; drug trafficking and other violent crimes; and the damage to the natural environment resulting from destructive cannabis cultivation, the San Benito County Board of Supervisors finds that cannabis business activities present a current and immediate threat to the public health, safety, and welfare, as well as, the environment.

- (J) It is the purpose and intent of this Chapter to prohibit, to the maximum extent allowed under State law, both medicinal and non-medicinal cannabis business activities, including, but not limited to, cultivation, delivery, dispensary or mobile dispensary, distribution, manufacture, microbusiness, nursery, processing, propagation, retail sale, storage, and testing laboratory, in a manner that is consistent with State law and Federal Guidelines and which promotes the health, safety, and general welfare of the residents and businesses within the unincorporated area of San Benito County and the environment while retaining the ability of adults 21 years and older and qualified patients to have access to cannabis in the County to the extent allowed under State law.
- (K) This Chapter is not intended to conflict with Federal or State law. It is the intention of the County that this Chapter be interpreted to be compatible with Federal and State enactments and in furtherance of the public purposes that those enactments encompass.
- (L) Nothing in this Chapter shall be construed to allow the use of cannabis or any cannabis business activity that is illegal under state law and/or in violation of this Chapter.

7.02.020 - Definitions.

- (A) "Cannabis" means all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. "Cannabis" also means the separated resin, whether crude or purified, obtained from cannabis. "Cannabis" 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. For the purpose of this division, "cannabis" does not mean "industrial hemp" as defined by Section 11018.5 of the Health and Safety Code.
- (B) "Cannabis business activity" or "cannabis business operation" shall have the meaning set forth in California Business and Professions Code section 26001, subdivision (k). Cannabis business activity does not include personal cultivation as defined in Chapter 11.15 of the San Benito County Code.

- (C) "Cannabis products" shall have the same meaning set forth in Revenue and Taxation Code section 34010, subdivision (g).
- (D) "Child care center" means any licensed child care center, daycare center, or childcare home, or any preschool.
- (E) "Church" means a structure or leased portion of a structure, which is used primarily for religious worship and related religious activities.
- (F) "County of San Benito" or "County" means the County of San Benito, as a political subdivision of the State of California or entity, and/or as related to the land or jurisdiction to which this Chapter applies, means the unincorporated area of San Benito County.
- (G) "Cultivation" means any activity involving the propagation, planting, growing, harvesting, or processing, as defined in this Chapter, of one or more cannabis plants, or any part thereof, in any location, indoor or outdoor, including from within a fully enclosed and secure building or structure.
- (H) "Day care center" shall have the meaning set forth in the California Health and Safety Code Section 1596.76.
- (I) "Delivery" shall have the same meaning set forth in California Business and Professions Code section 26001, subdivision (p). The County shall not prevent the carriage of cannabis or cannabis products on public roads by a MAUCRSA licensee acting in compliance with State law to transport cannabis or cannabis products for delivery.
- (J) "Distribution" means the procurement, sale, and transport of cannabis and cannabis products.
- (K) "Enforcing officer" means the San Benito County Health Officer, Sheriff, or Agricultural Commissioner, Resources Management Director, or their authorized deputies or designees, any person employed by the County of San Benito and appointed to the position of Code Enforcement Officer, as established by San Benito County Resolution No. 90-27 and Ordinances 567 and 625, each of whom is independently authorized to enforce this Chapter.
- (L) "Manufacture" means the production, preparation, propagation, or compounding of cannabis or cannabis products either directly or indirectly or by extraction methods, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis.
- (M) "MAUCRSA" means the Medicinal and Adult-Use Cannabis Regulation and Safety Act, California Business and Professions Code Section 26000 et seq.
- (N) "MAUCRSA license" means a State license issued pursuant to California Business and Professions Code Section 26000 et seq. for those cannabis business activities in which cannabis businesses are engaged.
- (O) "MAUCRSA licensee" means any person or entity holding a MAUCRSA license.
- (P) "Microbusiness" shall have the meaning set forth in the California Business and Professions Code Section 26070, subdivision (a)(3)(A).

- (Q) "Non-medicinal cannabis" means cannabis used for adult-use, recreational, or non-medicinal purposes.
- (R) "Nursery" means a cannabis permittee that produces only clones, immature plants, seeds, and other agricultural products used specifically for the planting, propagation, and cultivation of cannabis.
- (S) "Process" or "processing" means all cannabis business activities associated with drying, curing, grading, trimming, storing, packaging, and labeling of raw cannabis, or any part thereof, for transport.
- (T) "Propagate" or "propagation" means to cultivate immature plants from cannabis plant cuttings or seeds.
- (U) "Retail sale," "sell," and "to sell" include any transaction whereby, for any consideration, title to cannabis or cannabis products is transferred from one person to another, and includes the delivery of cannabis or cannabis products pursuant to an order placed for the purchase of the same and soliciting or receiving an order for the same, but does not include the return of cannabis or cannabis products by a cannabis permittee to the cannabis permittee from whom the cannabis or cannabis product was purchased.
- (V) "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.
- (W) "School bus stop" means any location designated in accordance with California Code of Regulations, Title 13, section 1238, to receive school buses, as defined in California Vehicle Code section 233, or school pupil activity buses, as defined in Vehicle Code section 546.
- (X) "School evacuation site" means any location designated by formal action of the governing body, superintendent, or principal of any school as a location to which juveniles are to be evacuated to, or are to assemble at, in the event of an emergency or other incident at the school.
- (Y) "Testing laboratory" or "laboratory" means a laboratory, facility, or entity in California that offers or performs tests of cannabis or cannabis products and that is accredited by an accrediting body that is independent from all other persons involved in commercial cannabis activity in the state.
- (Z) "Transport" or "transportation" means the transfer of cannabis from the licensed cannabis business site of one MAUCRSA licensee to the licensed cannabis business site of another MAUCRSA licensee for the purposes of conducting cannabis business activities as authorized pursuant to California Business and Professions Code Section 26000 et seq. Cannabis may only be transported inside of a commercial vehicle or trailer and may not be visible or identifiable from outside of the commercial vehicle or trailer. Transportation by means of aircraft, watercraft, drones, rail, human

powered vehicles, and unmanned vehicles is prohibited. The County shall not prevent the carriage of cannabis or cannabis products on public roads by a MAUCRSA licensee acting in compliance with State law to transport cannabis or cannabis products from the licensed cannabis business site of one MAUCRSA licensee to the licensed cannabis business site of another MAUCRSA licensee.

- (AA) "Youth center" shall have the meaning set forth in the California Health and Safety Code Section 11353.1.
- (BB) "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.

7.02.030 - Prohibited Activities.

- (A) Cannabis business activities are expressly prohibited in the unincorporated area of the County of San Benito, including, but not limited to, any cannabis cultivation, delivery, dispensary or mobile dispensary, distribution, manufacture, microbusiness, nursery, processing, propagation, retail sale, storage, and testing laboratory.
- (B) It is unlawful and shall constitute a public nuisance for anyone to engage in any medicinal cannabis business activity and/or any non-medicinal cannabis business activity within the unincorporated area of San Benito County.
- (C) No person owning, leasing, occupying, or having charge or possession of any parcel within the County shall cause, or allow such premises to be used for operating a cannabis business in violation of this Chapter.

7.02.040 – Exemptions.

- (A) This Chapter does not apply to personal cannabis cultivation in full compliance with San Benito County Code Chapter 11.15
- (B) It is not a violation of this Chapter for any person employed by a cannabis distributor or cannabis retailer holding the applicable MAUCRSA license to travel on a public road within the unincorporated area of the County for the purpose of transporting or delivering cannabis to persons located in a city or county where the transportation or delivery of cannabis is not prohibited.

7.02.050 – [RESERVED.]

7.02.060 – [RESERVED.]

7.02.070 – [RESERVED.]

7.02.080 - [RESERVED.]

7.02.090 – [RESERVED.]

7.02.100 – [RESERVED.]

7.02.110 – [RESERVED.]

7.02.120 – [RESERVED.]

7.02.130 - [RESERVED.]

7.02.140 - Nuisance Declared.

- (A) Any violation of any of the provisions of this Chapter is unlawful and shall constitute a public nuisance and shall, at the discretion of the County, create a cause of action for civil penalty and/or abatement pursuant to Chapters 1.03, 1.04, and/or 1.06 of the San Benito County Code, and any other action authorized by law. Additionally, any violation of this Chapter shall be subject to injunctive relief, disgorgement of any payment to the County of any and all monies unlawfully obtained, costs of abatement, costs of restoration, costs of investigation, attorneys' fees, and any other relief or remedy available at law or in equity. The County may also pursue any and all other remedies and/or actions available and applicable under State and local laws for any violations committed by the cannabis business facility or persons related thereto, or associated with, the cannabis business activity.
- (B) Notwithstanding subdivision (A), any person engaging in any cannabis business activity in violation of this Chapter shall be subject to criminal penalties. No proof of knowledge, intent, or other mental state is required to establish a violation.
- (C) Each and every violation of this Chapter, including each day the violation(s) continue(s) to exist, shall constitute a separate violation, and shall be subject to all remedies and enforcement measures authorized by the San Benito County Code or as otherwise authorized by law.

7.02.150 - Nuisance Abatement Authority.

Whenever necessary to investigate and ascertain, and/or to abate any violation of the provisions of this Chapter, or whenever there is reasonable cause to believe that there exists a violation of this Chapter, the enforcing officer may enter onto any premises or into any building upon presentation of proper credentials to the owner and/or the occupant thereof. Notwithstanding the foregoing, the enforcing officer may enter onto any premises or into any building under authority of warrant issued pursuant to Code of Civil Procedure sections 1822.50 et seq. All costs incurred by the County in seeking and obtaining an administrative warrant may be recoverable as abatement costs.

7.02.160 - 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 any cannabis business activity from any location, indoor or outdoor, including from within a fully enclosed and secure building or structure.

7.02.170 - Enforcement.

- (A) Whenever the enforcing officer determines that a public nuisance as defined in this Chapter exists at any location within the unincorporated area of San Benito County, he or she is authorized to issue notices, hold administrative hearings, enforce abatement orders, and recover abatement costs and/or administrative penalties pursuant to Chapters 1.03, 1.04, and/or 1.06 of the San Benito County Code, except that the violator shall be provided with six (6) calendar days, from issuance of a notice, to abate the nuisance before the imposition of any civil administrative penalty.

- (B) Nothing in this Chapter shall be construed as imposing on the enforcing officer or the County of San Benito any duty to issue any notice, nor to abate any unlawful cannabis business activity, nor to take any other action with regard to any unlawful cannabis business activity, and neither the enforcing officer, nor the County shall be held liable for failure to issue any notice, nor for failure to abate cannabis business activity, nor for failure to take any other action with regard to any cannabis business activity.

7.02.180 - Duty of Owners and Occupants; No Unlawful Activity Permitted.

No person or entity owning, leasing, occupying or having charge or possession of any premises within the unincorporated area of the County of San Benito shall cause, permit, maintain, conduct or otherwise suffer or allow a public nuisance as defined in this Chapter to exist. It shall be the duty of every owner, occupant, and person that controls any land or interest therein within the unincorporated area of the County of San Benito to remove, abate, and prevent the reoccurrence of the public nuisance upon such land. Such duty of an owner shall exist regardless of whether the owner is in actual possession of his or her real property, and may include an obligation to take action to evict or otherwise remove an occupier who creates a public nuisance upon the owner's property. Nothing in this Chapter shall be deemed to authorize or permit any activity that violates any provision of State or federal law.

7.02.190 – Remedies Cumulative.

All remedies provided for herein are cumulative and not exclusive, and are in addition to any other remedy or penalty provided by law.

7.02.200 - 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 of Supervisors 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.

SECTION 2. EFFECTIVE DATE. This ordinance shall take effect thirty (30) days from the date of its adoption, and 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 regular session of the Board of Supervisors of the County of San Benito, adopted this _____ day of _____, 201____, on regular roll call of the members of said Board by the following vote:

AYES: Supervisor(s)

NOES: Supervisor(s)

ABSENT OR NOT VOTING:

Jaime De La Cruz,
Chair, Board of Supervisors

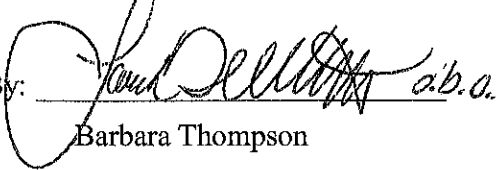
ATTEST:

Chase Graves, Clerk of the Board

By: _____
Clerk of the Board

APPROVED AS TO LEGAL FORM:

San Benito County Counsel

By:  a.b.o.
Barbara Thompson
Assistant County Counsel