

BEFORE THE BOARD OF SUPERVISORS OF THE COUNTY OF SAN BENITO

ORDINANCE NO. _____

AN ORDINANCE OF THE BOARD OF SUPERVISORS OF THE COUNTY OF SAN BENITO AMENDING PROVISIONS OF CHAPTER 7.04 TO TITLE 7 OF THE SAN BENITO COUNTY CODE RELATING TO HEMP ENTITIES.

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

Section 1. Findings. The Board of Supervisors hereby makes the findings and declarations, as more fully set forth in Exhibit “A” attached hereto, with regard to the following:

- A. Consistency with 2035 San Benito County General Plan.
- B. Protection of the public health, safety, and welfare.
- C. Amendments not subject to the California Environmental Quality Act (CEQA).

Section 2. San Benito County Code Section 7.04.030 is amended to add the following subsections:

- C. **Hemp Cultivation Exclusion Zone.** No outdoor hemp cultivation shall be conducted or permitted within one (1) mile of the sphere of influence boundary of the Cities of Hollister or San Juan Bautista, or the exterior boundaries of any County Service Area. No hemp cultivation may be conducted within the boundaries of the San Benito Wine/Hospitality Priority Area, as identified in the 2035 San Benito County General Plan, Figure 3-4, p. 3-19, except as provided in Section 7.04.050 E. No hemp cultivation may be conducted within five hundred feet (500’) of any public road (County Road or State Highway) [unless the cultivation area is fenced with a six foot high fence that provides a visual barrier or includes a six foot high perennial vegetative visual buffer at least six feet wide, in which the case, the distance to a public road may be reduced to X hundred feet (XXX’) insert number between 200 and 400 feet]. Outdoor hemp cultivation shall only be conducted within areas of the unincorporated County that are zoned Agriculture Production (AP) or Agricultural Rangeland (AR). Indoor hemp cultivation may only be permitted within the exclusion zone, provided that a Conditional Use Permit is first obtained on the condition that effective odor control measures are installed that will not cause detectable odors to any adjoining property in accordance with San Benito County Code section 19.43.080 (T).
- D. **Hemp Research Entity Hemp Activities Prohibition.** All hemp activities including but not limited to cultivation, harvesting, processing, storage, research, or testing conducted by any Established Agricultural Research Institution or Hemp Research Entity, as defined herein, are prohibited within the County of San Benito.

Section 3. San Benito County Code Section 7.04.050, subsection A. is amended to strike out and omit the words indicated by ~~strikeouts~~, as follows:

Section 7.04.050. H.E.M.P. Registration.

A. Registration Required. No person may operate any hemp entity or engage in any commercial ~~or research~~ hemp activity within the County unless the person has, at a minimum, complied with all applicable state, federal, and local laws and regulations pertaining to the hemp entity. All entities, except those engaged in research hemp activities (properly licensed/permitted by the State of California) shall have the duty to complete all of the following:

1. Complete the H.E.M.P. Registration with the County Agricultural Commissioner;
2. Pay the required registration or renewal fee; and
3. Provide the Global Positioning System coordinates of the planned cultivation site to the County Agricultural Commissioner.

~~For registration purposes, research hemp entities shall only be required to comply with all necessary State of California requirements relating to registration, licensing, and permitting.~~

Section 5. San Benito County Code Section 7.04.050 is amended to add the following subsections:

D. Drying, Processing, Storage or Manufacturing Facilities.

A Conditional Use Permit in accordance with San Benito County Code Chapter 25.43 is required for any facility to be used for the drying, processing, storage, or manufacturing of hemp. All such activities shall be conducted in facilities that shall be located in indoors in areas zoned AP, AR, CM, M-1, or M-2 and shall include effective measures to control odors as specified in San Benito County Code section 19.43.080 (T). Hemp registrants engaged in drying, storage, processing, or manufacturing shall also obtain a business license in accordance with San Benito County Code section 7.01.

E. Outdoor Hemp Cultivation, Drying, Processing, Storage or Manufacturing Facilities within the San Benito Wine/Hospitality Priority Area.

A Conditional Use Permit in accordance with San Benito County Code Chapter 25.43 is required for any outdoor cultivation of hemp located within the boundaries of the San Benito Wine/Hospitality Priority Area, as identified in the 2035 San Benito County General Plan, Figure 3-4, p. 3-19. No Conditional Use Permit shall be approved for any outdoor cultivation of hemp located within one (1) mile of any existing permitted visitor-serving wine or hospitality site (e.g. tasting room, winery with tours, restaurant, hotel, bed & breakfast) that is located within the San Benito Wine/Hospitality Priority Area. The term of any Conditional Use Permit for outdoor cultivation of hemp, or any facility for the drying, processing, storage or manufacturing of hemp, located within the boundaries of the San Benito Wine/Hospitality Priority Area shall be limited to a term of five (5) years, subject to renewal. Notices of public hearing for any Conditional Use Permit or renewal of such permit for outdoor hemp cultivation, or any facility for the drying, processing, storage or manufacturing of hemp, proposed to be located within the

boundaries of the San Benito Wine/Hospitality Priority Area shall be given to all property owners within a one (1) mile radius of any proposed hemp cultivation site, measured from the exterior boundaries of the parcel where the proposed hemp cultivation site or facility for the drying, processing, storage or manufacturing of hemp, is proposed to be located. Hemp cultivation within the San Benito Wine/Hospitality Priority Area shall also be subject to annual registration. Failure to maintain annual registration shall be grounds for revocation of a Conditional Use Permit.

Section 6. San Benito County Code Section 7.04.050, subsection D. Registration Requirements, as originally set forth in San Benito County Ordinance 989, is re-designated as subsection F., and amended to add the following subdivision:

5. A notarized written consent signed by the record owners of the property where the cultivation is to be conducted.

Section 7. San Benito County Code Section 7.04.050, subsections E. through J., as originally set forth in San Benito County Ordinance 989, are re-designated as subsections G. through L., respectively.

Section 8. San Benito County Code Section 7.04.080, subsection C. is amended to read as follows:

- C. Minimum Premises Size. The minimum size premises upon which a commercial hemp entity may cultivate hemp is twenty (20) acres. Two adjoining parcels that together total twenty (20) or more acres in size may be utilized to meet this requirement.

Section 9. San Benito County Code Section 7.04.080, subsection D. Setbacks, subdivisions 3 and 4 are amended to read as follows:

3. No closer than one thousand (1,000) feet from any residentially developed parcel in the County that is ten (10) acres or less, including any legal non-conforming residential uses as of the date of first adoption of this Chapter. The distance between the hemp entity and the residential parcel shall be measured from the outer boundaries of the residential parcel to the closest area of cultivation on the Property seeking registration under this Chapter. This setback requirement shall not apply:
 - in an industrial zone, or
 - between contiguous parcels also engaging in hemp cultivation, or
 - with a written agreement of neighboring property owners for a reduced setback which must be recorded, is valid for one crop, and must be renewed on an annual basis
4. No closer than one thousand (1,000) feet from any off-parcel permitted residence in any zone that is in existence at the time of first adoption of this Chapter, if the hemp entity is located on a parcel that is thirty (30) acres or less. The distance between the hemp entity and the off-parcel residence shall be measured from the outer boundaries

of the residential parcel to the edge of the growing area. This setback requirement shall not apply in an industrial zone.

- in an industrial zone, or
- between contiguous parcels also engaging in hemp cultivation, or
- with a written agreement of neighboring property owners for a reduced setback which must be recorded, is valid for one crop, and must be renewed on an annual basis

Section 10. San Benito County Code Section 7.04.080, subsections E. and F. are amended to read as follows (deletions indicated by ~~strikeouts~~ and additions by underlined text.):

E. **Laboratory Testing and Destruction.** Hemp entities shall comply with all applicable provisions of the California Food and Agricultural Code and federal law pertaining to hemp, including, but not limited to, cultivation, laboratory testing, and destruction.

~~F. Other than for cultivation, all other hemp businesses, including but not limited to manufacturing and testing, shall obtain a conditional use prior to beginning operations if required by Title 25 of the San Benito County Code.~~

F. **Signage.** Each hemp cultivation site shall post signage of a size and with content specified by the Agricultural Commissioner at intervals of no less than fifty feet (50') around the entire exterior perimeter of the cultivation site to clearly identify that the crop is Industrial Hemp and not cannabis.

Section 11. San Benito County Code Section 7.04.080, is amended to add subsection G. and H., as follows:

G. **Transportation.** No vehicle transporting harvested hemp plants or products shall be driven or moved on any roadway unless the vehicle is so constructed, covered, or loaded as to prevent any of its contents or load from dropping, sifting, leaking, blowing, spilling, or otherwise escaping from the vehicle.

H. **Post-Harvest Field Treatment.** Within no more than thirty (30) days after harvest, stalks or other remaining hemp plant material shall be shredded by a power-driven shredder or other device that effectively reduces hemp plant material to particle size, permitting rapid decomposition and incorporation into the soil of the parcel where it has been cultivated. In the event that rain or other inclement weather event makes post-harvest field treatment impracticable in the opinion of the Agricultural Commissioner, the field treatment shall occur as soon thereafter as is feasible, within a time frame specified by the Agricultural Commissioner.

Section 12. San Benito County Code Section 7.04.100, subsection C. is amended to read as follows:

C. **Consent to entry, inspection, and additional testing.** Hemp registrants consent, as a condition of issuance of any hemp registration, business license or permit, to the entry by staff of the San Benito County Agricultural Commissioner; officers of the San Benito

County Sheriff; staff of the San Benito County Department of Environmental Health; Code Enforcement Officers, Building Inspectors and the Chief Building Official of the Department of Planning and Building, Resource Management Agency; Fire Inspectors and the Fire Marshall to make such inspections and to take such actions as may be necessary to enforce the provisions of this Ordinance, the San Benito County Code, the laws of the State of California, and the laws of the United States. Reasonable advance telephone notice of entry shall be given, to the extent feasible under the circumstances, or as otherwise authorized by law. To the extent reasonably necessary to verify that the hemp contains less than .3% THC, hemp registrants consent to additional testing by enforcement officials, which shall be at the cost and expense of the registrant.

Section 13. San Benito County Code Section 7.04.100, subsections C. through E., as originally set forth in San Benito County Ordinance 989, are re-designated as subsections D. through F., respectively, with the proviso that the term, "County Attorney," in the re-designated subsection E., shall be amended to, "County Counsel".

Section 14. Effective Date and Codification. This ordinance shall take effect thirty (30) days from the date of its adoption. Upon becoming effective, Section 2 through Section 13 of this Ordinance shall be codified; the remaining sections shall not be codified

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

AYES: Supervisor(s)

NOES: Supervisor(s)

ABSENT OR NOT VOTING:

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: _____
Barbara Thompson
County Counsel

EXHIBIT “A” FINDINGS AND DETERMINATIONS

A. **Consistency with 2035 San Benito County General Plan.** Local zoning and land use regulatory ordinances must be consistent with the general plan. (Gov. Code § 65860 (a).) The 2035 San Benito County General Plan establishes Guiding Principles, Goals, Policies, Standards and Implementation Measures, including the following:

1. Principles:

- a. Establish defined boundaries to separate cities and unincorporated communities from prime agricultural land and important natural resources, using such features as agriculture buffers, greenbelts, open space, and parks. (p. 2-3)
- b. Ensure that agriculture and agriculture-related industries remain a major economic sector by protecting productive agriculture lands and industries, promoting new and profitable agricultural sectors, and supporting new technologies that increase the efficiency and productivity of commodity farming. (p. 2-3)
- c. Encourage agriculture that is locally-produced, profitable, and attracts related businesses. (p. 2-3)
- d. Expand and diversify the local economy by supporting businesses, supporting jobs for the diverse population, and capitalizing on the county’s natural and human resources.
- e. Support existing and establish new local businesses that are based on industries that are innovative, technology-based, and sustainable.
- f. Support programs that educate the local workforce on conventional, productive, sustainable, and organic agriculture concepts; water conservation strategies; high-tech industries; and alternative energy production.
- g. Support the county’s growing tourism industry.
- h. Protect natural resources and open space areas from incompatible uses.
- i. Preserve the county’s environmental quality and diverse natural habitats.
- j. Coordinate County planning efforts with those of the City of Hollister and the City of San Juan Bautista.

2. Goals and Policies:

- a. LU-3.1 Agricultural Diversification
- b. LU-3.2 Agricultural Integrity and Flexibility
- c. LU-3.8 Visitor Serving Uses in Agricultural Areas
- d. LU-3.9 Right to Farm and Ranch
- e. ED-4 To expand the county’s wine and hospitality industries in order to ensure San Benito County becomes a regional leader in the wine industry and a premier tourist destination.
- f. ED-4.1 Wine and Hospitality Combining District
- g. ED-4.2 Wine Industry Promotion
- h. ED-4.3 Sustainable Wineries
- i. ED-4.4 Winery Special Events
- j. ED-4.6 Bed and Breakfast Inns and Boutique Resorts near wineries

The Board of Supervisors finds that the experience of the first year of legal hemp cultivation in San Benito County, which began even before the adoption of the Hemp Entities Management Program Ordinance in Chapter 7.04 of the County Code, identified underappreciated impacts that were not adequately addressed in that ordinance, in particular with respect to odor impacts adversely impacting cities, rural residential subdivisions, the winery industry and tourism in the Wine and Hospitality Combining District; and with vandalism and theft due to the inability of the general public to differentiate between cannabis and hemp in outdoor cultivation areas located adjacent to public rights of way. Adoption of amendments to Chapter 7.04 establishing hemp cultivation exclusion zones surrounding cities, county service areas associated with rural residential development, and the Wine and Hospitality Combining District, as well as increased setbacks from established residential uses on smaller parcels in rural areas and from public rights of way, will serve to greatly reduce, if not eliminate these impacts in a manner that is consistent with, and strikes an appropriate balance between, the competing principles, goals, policies and standards set forth in the General Plan identified above.

B. Protection of the public health, safety, and welfare. 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. Pursuant to the Planning and Zoning Law, Government Code section 65800, the Board of Supervisors may adopt ordinances to regulate the use of land as between industry, business, residences, open space, including agriculture and other uses, and for other purposes (Gov. Code § 65850). As set forth in San Benito County Code section 25.01.002, the purpose of county land use regulation is to promote and protect the public health, safety, peace, moral, comfort, convenience and general welfare, to protect the character and the social and economic stability of agricultural, residential, commercial, industrial and other areas within the county, and to obviate the menace to public safety resulting from the location and use of land adjacent to the highways.

The Board of Supervisors finds and determines that adoption of amendments to Chapter 7.04 establishing hemp cultivation exclusion zones surrounding cities, county service areas associated with rural residential development, and the Wine and Hospitality Combining District, as well as increased setbacks from established residential uses on smaller parcels in rural areas and from public rights of way, are necessary and appropriate for the protection and promotion of the public health, safety, and welfare and quality of life, while allowing for the development of hemp as a viable commercial agricultural crop with associated testing, processing and manufacturing facilities to benefit the San Benito County economy.

C. Amendments not subject to the California Environmental Quality Act (CEQA) The Board of Supervisors hereby finds that the adoption of amendments to Chapter 7.04 of the San Benito County Code establishing hemp cultivation exclusion zones surrounding cities, county service areas associated with rural residential development, and the Wine and

Hospitality Combining District, as well as increased setbacks from established residential uses on smaller parcels in rural areas and from public rights of way, is not subject to review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines, 14 California Code of Regulations, section 15060, subdivision (c)(2) because the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment. Additionally, adoption of amendments to 7.04 of the San Benito County Code is exempt in accordance with CEQA Guidelines section 15061, subdivision (b)(3) because it can be seen with certainty that there is no possibility the activity may have a significant effect on the environment, and is categorically exempt pursuant to CEQA Guidelines section 15308, as an action by the County for the enhancement or protection of the environment by limiting or restricting the places where hemp cultivation and related activities may occur within the County of San Benito.