



SAN BENITO COUNTY PLANNING COMMISSION

Mark Tognazzini
District No. 1
Vice-Chair

Jean Zlotkin
District No. 2

Pat Loe
District No. 3
Chair

Ray Pierce
District No. 4
Commissioner

Robert Rodriguez
District No. 5

County Administration Building - Board of Supervisors Chambers, 481 Fourth Street, Hollister, California

REGULAR MEETING AGENDA June 21, 2017 6:00 PM

6:00 PM ~ CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL

BOARD ANNOUNCEMENTS

DEPARTMENT ANNOUNCEMENTS

PUBLIC COMMENT

The San Benito County Planning Commission welcomes you to this meeting and encourages your participation.

- If you wish to speak on a matter which does **NOT** appear on the agenda, you may do so during the Public Comment period at the beginning of the meeting. Please complete a Speaker Card and provide to the Clerk prior to the meeting. Except as otherwise provided by law; no action shall be taken on any item NOT appearing on the Agenda or items that have been continued to a future public hearing date. When addressing the Commission, **please state your name for the record**. Please address the Commission as a whole through the Chair. This open forum period is provided to allow members of the public an opportunity to address the Planning Commission on general issues of land use planning and community development. It is not intended for comments on items on the current agenda, any pending items.
- If you wish to speak on an item contained in the Agenda, please complete a Speaker Card identifying the Item(s) and provide it to the Clerk prior to consideration of the item.
- **Each individual speaker will be limited to a three (3) minute presentation.**

CONSENT AGENDA

ACKNOWLEDGEMENT OF PUBLIC HEARING

ACKNOWLEDGEMENT OF CERTIFICATE OF POSTING

- These items will be considered as a whole without discussion unless a particular item is requested

by a member of the Commission, Staff or the public to be removed from the Consent Agenda. Approval of a consent item means approval of the recommended action as specified in the Staff Report.

- If any member of the public wishes to comment on a Consent Agenda Item please fill out a speaker card present it to the Clerk prior to consideration of the Consent Agenda and request the item be removed and considered separately.

REGULAR AGENDA

PUBLIC HEARING

1. COUNTY COUNSEL'S OFFICE - M. GRANGER -

a) PUBLIC HEARING - Conduct public hearing regarding the draft Cannabis Businesses Ordinance (adding Chapter 7.02 of the San Benito County Code) proposed by the ad hoc committee in consultation with key stakeholders;

and

b) Consider adoption of a resolution recommending that the Board of Supervisors adopt an Ordinance adding Chapter 7.02 of the San Benito County Code relating to Cannabis Businesses, making 2035 General Plan consistency findings and determinations, and making appropriate findings and determinations under the California Environmental Quality Act ("CEQA").

SBC File Number: 105

2. COUNTY COUNSEL'S OFFICE - M. GRANGER

a) PUBLIC HEARING - Conduct public hearing regarding the draft Personal Cultivation of Cannabis Ordinance (amending Chapter 11.15 of the San Benito County Code) proposed by the ad hoc committee in consultation with key stakeholders;

and

b) Consider adoption of a resolution recommending that the Board of Supervisors adopt an Ordinance amending Chapter 11.15 of the San Benito County Code relating to Personal Cultivation of Cannabis, which is consistent with the 2035 General Plan, exempt from the requirements of 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), in addition to being categorically exempt from review under CEQA under the Class 8 Categorical Exemption (regulatory activity to assure the protection of the environment), and directs the RMA Director file a Notice of Exemption upon adoption of the ordinance.

DISCUSSION

ADJOURN

NOTE: A copy of this Agenda is published on the County's Web site by the Friday preceding each Commission meeting and may be viewed at www.cosb.us. All proposed agenda items with supportive documents are available for viewing at the San Benito County Administration Building, 481 Fourth Street, Hollister, CA between the hours of 8:00 a.m. & 5:00 p.m., Monday through Friday (except holidays.) This is the same packet that the Planning Commission reviews and discusses at the Commission meeting. The project planner's name and email address has been added at the end of each project description. As required by Government Code Section 54957.5 any public record distributed to the Planning Commission less than 72 hours prior to this meeting in connection with any agenda item shall be made available for public inspection at the Planning Department, 2301 Technology Parkway, Hollister, CA 95023. Public records distributed during the meeting will be available for public inspection at the meeting if prepared by the County. If the public record is prepared by some other person and distributed at the meeting it will be made available for public inspection following the meeting at the Planning Department.

APPEAL NOTICE: Any person aggrieved by the decision of the Planning Commission may appeal the decision within ten (10) calendar days to the Board of Supervisors. The notice of appeal must be in writing and shall set forth specifically wherein the Planning Commission's decision was inappropriate or unjustified. Appeal forms are available from the Clerk of the Board at the San Benito County Administration Office, 481 Fourth Street, Hollister and the San Benito County Planning Department, 2301 Technology Parkway, Hollister.

NOTE: In compliance with the Americans with Disabilities Act (ADA) the Board of Supervisors meeting facility is accessible to persons with disabilities. If you need special assistance to participate in this meeting, please contact the Clerk of the Board's office at (831) 636-4000 at least 48 hours before the meeting to enable the County to make reasonable arrangements to ensure accessibility.



SAN BENITO COUNTY AGENDA ITEM TRANSMITTAL FORM

Mark Tognazzini
District No. 1
Vice-Chair

Jean Zlotkin
District No. 2

Ray Pierce
District No. 3

Pat Loe
District No. 4
Chair

Robert Rodriguez
District No. 5

Item Number: 1.

MEETING DATE: 6/21/2017

DEPARTMENT: COUNTY COUNSEL

DEPT HEAD/DIRECTOR: M. Granger

AGENDA ITEM PREPARER: Sarah Dickinson for Barbara Thompson

SBC DEPT FILE NUMBER:

SUBJECT:

COUNTY COUNSEL'S OFFICE - M. GRANGER -

a) PUBLIC HEARING - Conduct public hearing regarding the draft Cannabis Businesses Ordinance (adding Chapter 7.02 of the San Benito County Code) proposed by the ad hoc committee in consultation with key stakeholders;

and

b) Consider adoption of a resolution recommending that the Board of Supervisors adopt an Ordinance adding Chapter 7.02 of the San Benito County Code relating to Cannabis Businesses, making 2035 General Plan consistency findings and determinations, and making appropriate findings and determinations under the California Environmental Quality Act ("CEQA").

SBC File Number: 105

AGENDA SECTION:

PUBLIC HEARING

BACKGROUND/SUMMARY:

Overview of State Cannabis Laws:

Over the past two years, there have been substantial changes in state law relating to cannabis cultivation and distribution, including the enactment of detailed state regulatory schemes for medicinal cannabis (the Medical Cannabis Regulation and Safety Act) and non-medicinal cannabis (sometimes referred to as "recreational marijuana" or "recreational cannabis") (Prop. 64, the Adult Use of Marijuana Act). These new state laws preserve strong local control over both personal cannabis cultivation and cannabis business activities, specifically, with regard to cannabis business activities (both medicinal and non-medicinal) which may be regulated or completely banned.

As relevant here, the Medical Cannabis Regulation and Safety Act ("MCRSA") phases out the collective and cooperative model of cannabis cultivation and distribution, and replaces it with a state licensing system that treats the medicinal cannabis industry like other commercial industries in the state. Under the MCRSA, both a state and local license or entitlement is required before a person may engage in cannabis business activities, e.g., cultivation of cannabis marijuana **except** cultivation for personal use in compliance with state and local laws.

Procedural Background:

On January 10, 2017, the Board of Supervisors appointed the current Marijuana Ad Hoc Committee members (Supervisor Rivas and Supervisor Medina) and directed staff to bring forward an ordinance pertaining to cannabis businesses in San Benito County.

The draft ordinance explicitly prohibits cannabis business activities (defined in state law as "commercial cannabis activities"), with the exception of cannabis businesses engaged in the cultivation or transportation of medicinal cannabis, which are not prohibited under the proposed ordinance.

The ad hoc committee and staff have met with affected stakeholders, and recommend that the Planning Commission consider the draft ordinance to address the local regulation of cannabis businesses and community concerns regarding the regulation and enforcement thereof. In May, the San Benito County Board of Supervisors and the San Benito County Planning Commission each held a meeting for staff to present the draft ordinance for review and direction with regard to whether any of the provisions should be explored further, stricken, or other provisions added. Members of the public were invited to provide their own input and perspectives at each of these meetings to either the Board of Supervisors or the Planning Commission on this draft ordinance.

Following those meetings, staff met and conferred again with the ad hoc committee and stakeholders. Medicinal cannabis nursery and transportation permits were added to the proposed ordinance, as well as, including regulatory provisions similar to those expected to be adopted at the state level.

General Plan Consistency:

Staff has reviewed the 2035 General Plan and has determined that the ordinance is consistent with said General Plan. The proposed findings and determinations are set forth in the proposed resolution.

Environmental Review:

Staff has conducted the environmental review of this ordinance under CEQA and CEQA Guidelines. The proposed findings and determinations are set forth in the proposed resolution.

The resolution is still being finalized at the time of posting the agenda and will be provided under separate cover.

BUDGETED:

SBC BUDGET LINE ITEM NUMBER:

CURRENT FY COST:

STAFF RECOMMENDATION:

a) Conduct public hearing regarding the draft Cannabis Businesses Ordinance (adding Chapter 7.02 of the San Benito County Code) proposed by the ad hoc committee in consultation with key stakeholders;

and

b) Consider adoption of a resolution recommending that the Board of Supervisors adopt an Ordinance adding Chapter 7.02 of the San Benito County Code relating to Cannabis Businesses, making 2035 General Plan consistency findings and determinations, and making appropriate findings and determinations under the California Environmental Quality Act ("CEQA").

ADDITIONAL PERSONNEL:

ATTACHMENTS:

Description

Ch. 7.02 - Cannabis Businesses

Upload Date Type

6/16/2017

Ordinance

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 - Cannabis Permit Required – Compliance.
- 7.02.050 - Cannabis Business Regulatory Program.
- 7.02.060 - Cannabis Permit Types.
- 7.02.070 - Cannabis Permit Application.
- 7.02.080 - Restrictions.
- 7.02.090 - Denial, Non-Renewal, Suspension, or Revocation of Permit.
- 7.02.100 - Procedure for Suspension or Revocation.
- 7.02.110 - Cannabis Business Facilities.
- 7.02.120 - Records.
- 7.02.130 - Cannabis Business Tax
- 7.02.140 - Nuisance Declared.
- 7.02.150 - Enforcement.
- 7.02.160 - 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 medicinal 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 Medical Cannabis Regulation and Safety Act (Business and Professions Code sections 19300 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 Medical Cannabis Regulation and Safety Act (“MCRSA”) creates a State licensing program for medicinal cannabis business activities. The MCRSA allows counties and cities to maintain local regulatory authority over medicinal cannabis. The State will not issue a cannabis business license authorized by MCRSA (“MCRSA license”) without first receiving authorization by the applicable local jurisdiction.
- (G) It is the purpose and intent of this Chapter to prohibit business activities involving non-medicinal cannabis (also referred to as “commercial cannabis activities” or “commercial recreational cannabis activities”) and to regulate medicinal cannabis business activities 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 by balancing the need to (1) accommodate medical patients, including the seriously ill, and their caregivers for enhanced access to medicinal cannabis and (2) limit nuisance and environmental impacts associated with cannabis cultivation.
- (H) This Chapter recognizes that cannabis business activities require land use controls due to the unique federal and state constraints on cannabis business activity, as well as, the potential environmental and social impacts associated with cannabis business activities. Cannabis businesses with facilities within the unincorporated area of San Benito County shall be subject to the zoning and land use regulations of the zoning district in which such cannabis business facility is established and will operate, as set forth in Title 25 of the San Benito County Code, and as otherwise established by the County.
- (I) The unregulated cultivation of cannabis 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 cannabis 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 cannabis cultivation, and that are especially significant if the cultivation occurs outdoors, or if the size of the cannabis cultivation on a single

premises is not regulated and substantial amounts of cannabis are thereby allowed to be concentrated in one place.

- (J) Cultivation of any amount of cannabis at locations or premises within one-thousand (1,000) feet of schools, school bus stops, school evacuation sites, churches, parks, child care centers, or youth-oriented facilities creates unique risks that the cannabis plants may be observed by juveniles, and therefore be especially vulnerable to theft or recreational consumption by juveniles. Further, the potential for criminal activities associated with cannabis cultivation in such locations poses heightened risks that juveniles will be involved or endangered. Therefore, cultivation of any amount of cannabis in such locations or premises, is especially hazardous to public health, safety, and welfare, and to the protection of children and the person(s) cultivating the cannabis plants. To adequately address these risks, the cultivation of all cannabis including personal cultivation in compliance with Chapter 11.15 of the San Benito Code, shall be prohibited. Notwithstanding the foregoing, it is proper and necessary that applications for cannabis permits for premises in such locations be considered on a case-by-case basis through a waiver process administered by the Cannabis Coordinator.
- (K) The cultivation or other concentration of cannabis 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.
- (L) It is the purpose and intent of this Chapter to provide local rules regarding cannabis businesses in the unincorporated area of San Benito County in a manner that is consistent with State law and which balances the interests of persons choosing to engage in cannabis business activities and promotes the health, safety, and welfare of the residents and businesses within the unincorporated area of the County of San Benito.
- (M) In order to ensure compliance with the regulations set forth in this Chapter, the County of San Benito will implement a strong and effective regulatory and enforcement system with regard to cannabis businesses that addresses threats to public safety, health and other law enforcement interests through robust controls and procedures that are effective in practice.
- (N) This Chapter is intended to provide regulations for the local permitting of medicinal cannabis businesses in the unincorporated areas of the County, under specified conditions in order to be in compliance with relevant provisions of the MCRSA.
- (O) It is also the purpose of this Chapter to mitigate the negative impacts and secondary effects associated with ongoing 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.
- (P) To address the added financial burden to the County that may result from this Chapter, including costs associated with processing applications under this Chapter as

well as additional law enforcement and other costs, this Chapter requires, and is contingent upon, voter passage of a County tax on cannabis businesses within eighteen (18) months of this Chapter becoming operative.

- (Q) This Chapter is intended to establish criteria for issuing local medicinal cannabis permits pursuant to the MCRSA and to establish an effective regulatory and enforcement system consistent with the guidance issued by the United States Department of Justice.
- (R) 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.
- (S) 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) "Applicant" or "registrant" means an owner, as defined in this Chapter, applying for a County-issued cannabis permit pursuant to this Chapter.
- (B) "Application" means that form provided by the Cannabis Coordinator in accordance with this Chapter for the purpose of seeking a cannabis permit.
- (C) "Batch" or "harvest batch" means a specifically identified quantity of dried flower or trim, leaves, and other cannabis plant matter that is uniform in strain, harvested at the same time, and, if applicable, cultivated using the same pesticides and other agricultural chemicals.
- (D) "Cannabis" shall have the meaning set forth in California Business and Professions Code section 19300.5, subdivision (f).
- (E) "Cannabis business," "cannabis business facility," or "cannabis business site" means the location at which a cannabis permittee engages in permitted cannabis business activities. Cannabis business shall also include cannabis permittees holding transporter type cannabis permits.
- (F) "Cannabis business activity" or "cannabis business operation" shall have the meaning set forth in California Business and Professions Code section 19300.5, subdivision (j). Cannabis business activity does not include personal cultivation as defined in Chapter 11.15 of the San Benito County Code.
- (G) "Cannabis Coordinator" means the County official responsible for the issuance, renewal, or reinstatement of the cannabis permit, and the County official authorized to initiate and/or take disciplinary action against a cannabis permittee.
- (H) "Cannabis permit" means a permit issued by the County of San Benito pursuant to this Chapter in accordance with California Business and Professions Code Section 19300 et seq. for those permitted cannabis business activities in which a cannabis business is engaged, and includes an M-permit.

- (I) "Cannabis permittee" means any person issued a local license, permit, or other authorization that specifically authorizes a person to conduct cannabis business activities in that jurisdiction and an MCRSA license.
- (J) "Canopy," "canopy area," "plant canopy," "plants canopy area," or "cultivation area" means the cumulative total square footage of all areas occupied by any portion of a cannabis plant, inclusive of all vertical planes, whether contiguous or non-contiguous on any one site as calculated by the Cannabis Coordinator, or their designee, but does not include aisles or other open areas outside the canopy area. The canopy includes, but is not limited to, the area occupied by cannabis plant seeds, seedlings, immature plants, mature plants, or any cannabis plant, or part thereof, in any stage of processing, including harvesting, drying, curing, trimming, etc.
- (K) "Child care center" means any licensed child care center, daycare center, or childcare home, or any preschool.
- (L) "Church" means a structure or leased portion of a structure, which is used primarily for religious worship and related religious activities.
- (M) "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. Cultivation shall not include any manufacturing, including, but not limited to, extraction by any means.
- (N) "Cultivation site" means a location or facility existing on a legal parcel where cannabis is cultivated, as that term is defined in this Chapter, by a cannabis permittee.
- (O) "Day care center" shall have the meaning set forth in the California Health and Safety Code Section 1596.76.
- (P) "Dried flower" means all dead cannabis that has been harvested, dried, cured, or otherwise processed, excluding leaves and stems.
- (Q) "Enforcing officer" means the San Benito County Health Officer, Sheriff, or Agricultural Commissioner, or their authorized deputies or designees, any person employed by the County of San Benito and appointed to the position of Cannabis Coordinator, or 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.
- (R) "Flowering" means that a cannabis plant has formed a mass of pistils measuring greater than one half inch wide at its widest point.
- (S) "Greenhouse" means a completely enclosed structure whose structural members are made of pre-formed, rigid materials. The walls, roof, and ends are typically covered using a transparent material, often glass, and which allows solar radiation to penetrate the surface and affect the growing environment of plants.
- (T) "Hoop house" means a structure with structural members which are made of flexible and somewhat rigid construction materials, typically PVC pipe or similar material. The

ends may be covered or left open and the material covering the structural members is readily removable and is typically removed and re-affixed frequently.

- (U) “Immature plant” means a cannabis plant that is not flowering.
- (V) “Indoor cultivation” means cultivation that is conducted within a fully enclosed, permitted building or structure, accessible only through one or more locking doors, which is secure against unauthorized entry, and which uses artificial light.
- (W) “Labeled” or “labeling” shall have the meaning set forth in the California Business and Professions Code Section 19300.5, subdivision (v).
- (X) “Legal parcel” means a parcel of real property 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).
- (Y) “Lot” means a batch, or a specifically identified portion of a batch. “Mature plant” means a cannabis plant that is flowering.
- (Z) “MCRSA” means the Medical Cannabis Regulation and Safety Act, California Business and Professions Code Section 19300 et seq.
- (AA) “MCRSA license” means a State license issued pursuant to California Business and Professions Code Section 19300 et seq. for those cannabis business activities in which cannabis businesses are engaged.
- (BB) “M-cannabis business activity” includes permitted cannabis business activities related to medicinal cannabis.
- (CC) “M-cannabis business” means any cannabis business which engages in M-cannabis business activities.
- (DD) “Mixed-light” means the use of both natural and artificial or supplemental lighting sources during the growing cycle to cultivate cannabis.
- (EE) “Mixed-light cultivation” means cultivation of cannabis using light deprivation and/or artificial lighting, and is conducted within a permitted greenhouse or similar structure, accessible only through one or more locking doors, which is secure against unauthorized entry. Mixed-light cultivation does not include cultivation within a hoop house or other similar unsecure structure.
- (FF) “M-permit” means a cannabis permit issued by San Benito County to an M-permittee under this Chapter for cannabis or cannabis products that are intended for use solely by a qualified patient, and is required before any M-cannabis business activity may be conducted in the County. The initial M-permit and any annual renewal thereof is made expressly contingent upon the M-permittee’s ongoing compliance with all of the requirements of this Chapter and any regulations adopted by the County or State of California governing the permitted M-cannabis business activity.
- (GG) “M-permittee” means any person or entity holding an M-permit issued under this Chapter.
- (HH) “Non-medicinal cannabis” means cannabis used for recreational, or non-medicinal, purposes.

- (II) "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.
- (JJ) "Operation" means any cannabis business activity for which a cannabis permit and MCRSA license are required under the provisions of this Chapter.
- (KK) "Outdoor cultivation" means cannabis cultivation without the use of light deprivation and/or artificial lighting in the canopy area, and that is not conducted within a fully enclosed, permitted building, accessible only through one or more locking doors, which is secure against unauthorized entry. Outdoor cultivation includes, without limitation, cultivation of cannabis within a "hoop house" or similar structure.
- (LL) "Owner" means any of the following:
1. The property owner(s) of the proposed cannabis business site, including persons or entities having ownership interest other than a security interest, lien, or encumbrance on property that will be used by the premises.
 2. If the Applicant is an entity or non-profit:
 - a) The Chief Executive Officer;
 - b) All members of the Board of Directors;
 - c) Any person participating in the direction, control, or management of, or having financial interest in, the proposed premises, including, but not limited to, an individual delegated discretionary powers to organize, direct, carry on or control the operations of the cannabis business, or the authority to control one or more of the following functions: hire or terminate employees, contract for the purchase or sale of cannabis, and/or making or participation in making policy decisions related to the operations of the cannabis business;
 - d) If the entity is a publicly traded company, "owner" also means any person with an aggregate ownership interest of five percent (5%) or more in the entity applying for a cannabis permit, unless such interest is solely a security, lien, or encumbrance;
 - e) For all businesses other than publicly traded companies, "owner" also means any person with an aggregate ownership interest of twenty percent (20%) or more in the entity applying for a cannabis permit, unless such interest is solely a security, lien, or encumbrance;
- (MM) "Permitted cannabis business activity" includes the cultivation and/or transportation of medicinal cannabis by a cannabis permittee, as provided for in this Chapter.
- (NN) "Person" shall have the meaning set forth in the California Business and Professions Code Section 19300.5, subdivision (ah).
- (OO) "Premises" shall mean the designated structure(s) and land of a legal parcel specified in the application that are in possession of and used by the Applicant or cannabis permittee to conduct the permitted cannabis business activity.

- (PP) "Primary caregiver" has the same definition as in Section 11362.7 of the California Health and Safety Code, as it may be amended.
- (QQ) "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.
- (RR) "Property owner" means the individual or entity who is the record owner of the subject real property where cannabis business is located and the operations thereof occur or are proposed to occur.
- (SS) "Propagate" or "propagation" means to cultivate immature plants from cannabis plant cuttings or seeds.
- (TT) "Qualified patient" shall have the same definition as in Section 11362.7 of the California Health and Safety Code, as it may be amended, and which means a person who is entitled to the protections of California Health & Safety Code Section 11362.5. For purposes of this ordinance, qualified patient shall also refer to qualified patients who have obtained an identification card from the State Department of Health Services, as that term is defined by California Health and Safety Code Section 11362.7 et seq.
- (UU) "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.
- (VV) "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.
- (WW) "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.
- (XX) "Track and Trace" means a state approved monitoring system providing traceability through the production and distribution lifecycle of cannabis utilizing a unique identifier pursuant to Section 11362.777 of the Health and Safety Code to assist State and local government with enforcing regulations and preventing the illegal diversion of cannabis.
- (YY) "Transport" means the transfer of cannabis from the permitted cannabis business site of one cannabis permittee to the permitted cannabis business site of another cannabis permittee for the purposes of conducting cannabis business activities as authorized pursuant to California Business and Professions Code Section 19300 et seq.
- (ZZ) "Transporter" means an M-permittee authorized to transport cannabis between cannabis permittees in accordance to the provisions of California Business and Professions Code Section 19337 et seq.

- (AAA) “Unique identifier” or “unique ID” means individual, non-repeating identification issued to a permittee and attached to the base of each cannabis plant permitted at a cultivation site during the cultivation period or otherwise utilized in connection with an approved Track and Trace system.
- (BBB) “Youth center” shall have the meaning set forth in the California Health and Safety Code Section 11353.1.
- (CCC) “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) Except as specifically authorized in this Chapter, cannabis business activities are expressly prohibited in the County of San Benito, including, but not limited to any cannabis dispensary, mobile cannabis dispensary, and cannabis delivery within the County.
- (B) It is unlawful and shall constitute a public nuisance for anyone to engage in any non-medicinal cannabis business activity within the unincorporated area of San Benito County.
- (C) It is unlawful and shall constitute a public nuisance for anyone to engage in any medicinal cannabis business activity within the unincorporated area of San Benito County, except as provided in this Chapter.
- (D) Until such time as the licensing regulations promulgated under MCRSA are implemented and become operative or until Health and Safety Code section 11362.775, subdivision (a) is repealed, whichever occurs first, it shall be unlawful and shall constitute a public nuisance for anyone to engage in any medicinal cannabis business activity, unless the person (1) is eligible to cultivate medicinal cannabis for a collective or cooperative, (2) was granted an additional amortization period by the San Benito County Board of Supervisors in accordance with Chapter 11.15 of the San Benito County Code, and (3) is currently in compliance with all applicable State and local laws and regulations pertaining to the cultivation of medicinal cannabis, but only to the degree those activities are authorized under state law for collectives and cooperatives.
- (E) When the licensing regulations promulgated under MCRSA are implemented or become operative, or when Health and Safety Code section 11362.775, subdivision (a), is repealed, or as soon as collectives and cooperatives are no longer permitted under State law, whichever occurs first, it shall be unlawful and shall constitute a public nuisance for anyone to engage in cannabis business activities without:
 - 1. A valid cannabis permit required by this Chapter; and
 - 2. A valid MCRSA license required under California law.
- (F) Notwithstanding any grant for additional amortization period in accordance with San Benito County Ordinance No. 949, at such time as the MCRSA regulations become

operative, the provisions of subdivision (E) shall apply, and any person engaged in cannabis business activities who has not already obtained a cannabis permit under this Chapter shall not be authorized to engage in any cannabis business activities until they obtain a County-issued cannabis permit and a State-issued MCRSA license.

- (G) Cannabis Permittees that were in operation prior to January 1, 2018 are not prohibited from continuing to operate while their application for a State-issued MCRSA license is pending, so long as such application is timely submitted to the responsible state department, and the continuing operations of the Cannabis Permittee are the same cannabis business activities in which they seeking an MCRSA license.
- (H) Cannabis permittees are prohibited from commingling cannabis from other cannabis permittees, including other cultivations sites, regardless of ownership.
- (I) 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 – Cannabis Permit Required – Compliance.

- (A) Any person who intends to engage in a cannabis business activity shall obtain a cannabis permit for the location in which the cannabis business will operate.
- (B) It shall be unlawful for:
 - 1. Any person, group, organization or entity to conduct or carry on, or cause or permit to be conducted or carried on, any cannabis business activities, without first having obtained the required permit in accordance with this Chapter;
 - 2. Notwithstanding the foregoing, the permits issued under this Chapter do not provide any protection or immunity for any person from State or Federal laws, or from prosecution pursuant to any applicable State or Federal laws.
 - 3. Any person, group, organization or entity to willfully violate the terms and conditions of the permit.
- (C) All permits issued by the Cannabis Coordinator shall contain the following statements, displayed prominently on the permit itself:
 - 1. A warning that operators, employees, and members of facilities where cannabis business activities occur may be subject to prosecution under local, State, and Federal laws; and
 - 2. An acknowledgment that, by accepting the permit and engaging in cannabis business activities, the applicant and owners of the permitted cannabis business have released the County of San Benito from any and all liability for monetary damages related to, or arising from, the application for a permit, the issuance of the permit, the enforcement of the conditions of the permit, including compliance with state and Federal laws, and the suspension or revocation of the permit.

7.02.050 – Cannabis Business Regulatory Program.

There is hereby created the Cannabis Business Regulatory Program which shall be operated by the Cannabis Coordinator. The Cannabis Coordinator shall report directly to the County

Administrative Officer. The Cannabis Coordinator shall take the necessary steps to build and manage the Cannabis Business Regulatory Program. This includes, but is not limited to, accomplishing the following tasks in compliance with the rules set forth in this Chapter:

- (A) Creating application forms for cannabis permits;
- (B) Conducting pre-permit inspections;
- (C) Approving and denying cannabis permit applications;
- (D) Issuing, renewing, suspending, and revoking cannabis permits;
- (E) Creating a system on the County's website to communicate the number of cannabis permits issued and notifying the public as to whether applications for cannabis permits are being accepted; and
- (F) Creating and/or adopting any policies, procedures, rules, regulations, or fees necessary to implement the Cannabis Business Regulatory Program.

7.02.060 – Cannabis Permit Types.

- (A) There shall be no permit for any non-medicinal cannabis business activities in the unincorporated area of San Benito County and any such activity is unlawful and shall constitute a public nuisance.
- (B) There shall be no permit for the commercial manufacture, testing, delivery, dispensing, or distribution of medicinal cannabis in the unincorporated area of San Benito County and any such activity is unlawful and shall constitute a public nuisance.
- (C) The following M-permits are created under this Chapter:

Tier	Classification/Type	Area
M-Type 1A	Cultivation: Specialty indoor	501-5,000 ft ²
M-Type 1B	Cultivation: Specialty mixed-light	2,501-5,000 ft ²
M-Type 1C-i	Cultivation: Specialty cottage indoor	up to 500 ft ²
M-Type 1C-m	Cultivation: Specialty cottage mixed-light	up to 2,500 ft ²
M-Type 2A	Cultivation: Small indoor	5,001-10,000 ft ²
M-Type 2B	Cultivation: Small mixed-light	5,001-10,000 ft ²
M-Type 3A	Cultivation: Indoor	10,001-22,000 ft ²
M-Type 3B	Cultivation: Mixed-light	10,001-22,000 ft ²
M-Type 4	Cultivation: Nursery	up to 22,000 ft ²
M-Type 12	Transporter	N/A

7.02.070 – Cannabis Permit Application.

Any person or entity that wishes to engage in cannabis business activities shall:

- (A) Prior to conducting or carrying on, engaging or participating in any cannabis business activities, an Applicant shall first obtain a cannabis permit by filing an application on a form designated for that purpose and promulgated by the Cannabis Coordinator.
- (B) The Applicant shall submit this application under penalty of perjury and shall pay all applicable fees as required by this Chapter and as established by ordinance and/or

resolution adopted by the Board of Supervisors. A separate application shall be made for each type of cannabis business activity, each cannabis permit classification, and/or each proposed cannabis business site.

- (C) The application shall be received and reviewed by the Cannabis Coordinator and other departments or agencies, including, but not limited to, the Resources Management Agency, Department of Agriculture, Sheriff's Office, Auditor, and Tax Collector's Office. Any referral to, or consultation with, an agency other than the County of San Benito shall state that a response must be returned within thirty (30) days of the date of the referral.
- (D) In addition to the application and processing fee, the Cannabis Coordinator shall collect from each cannabis permittee an annual permit fee, renewal fee as applicable, and, as a condition of permitting, a bond guaranteeing compliance with all applicable State laws and the San Benito County Code. No cannabis permit shall be issued for any cannabis business activity unless the Applicant pays the applicable fees and bond.
- (E) In addition to any specific requirement in this Section, all applicants shall provide the following information on, or as an attachment to, the Cannabis Permit Application:
 - 1. *Requirements for All Cannabis Permit Applications:*
 - a) Name, business and residential address, and telephone number(s) of the Applicant (person, entity or organization). Should this information change during the pendency of the application, the Applicant must notify the Cannabis Coordinator in writing and provide the new information within seventy-two (72) hours of the change.
 - b) The legal name, and any other names (e.g., fictitious business name), under which the Applicant will operate.
 - i. If the Applicant is an individual, the Applicant shall provide both the Applicant's legal first and last name, as well as, any former legal names, and/or aliases used.
 - ii. If Applicant is a corporation, Applicant shall set forth the name of the corporation exactly as shown in the Articles of Incorporation, and the name and address of each of the corporation's officers and/or directors. A copy of the Articles of Incorporation shall be attached to the application.
 - iii. If Applicant is a partnership, Applicant shall set forth the name and address of each of the partners, including the general partner(s) and any limited partner(s). A copy of the Partnership Agreement shall be attached to the application.
 - c) If the Applicant is a business entity, the physical address, mailing address (if different), phone number, and evidence satisfactory to the Cannabis Coordinator that the Applicant is duly authorized to submit the application on behalf of the business entity and to bind the business entity into the indemnification agreement required under this Chapter.

- d) If the Applicant is a business, a date-marked printout from the California Secretary of State's "Business Search" webpage indicating that the business entity is currently listed as "Active" and provide evidence of Applicant's valid Seller's Permit issued pursuant to Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code or indicate that the Applicant is currently applying for a Seller's Permit and provide proof thereof. In addition, the Applicant shall provide all documents filed with the California Secretary of State, including, but not limited to, articles of incorporation, operating agreement, etc.
- e) Complete legal name and any alias(es), address, date and place of birth, telephone number, and government issued photo identification card of each person with an ownership interest in the cannabis business and/or real property holding company upon which the cannabis business is operating.
- f) A written statement and evidence that the Applicant, and any other person who will be engaged in the cannabis business activity applied for is at least twenty-one (21) years of age. Notwithstanding the foregoing, if the application is for an M-permit, evidence that those persons under the age of twenty-one (21) are at least eighteen (18) years of age and are a qualified patient of a primary caregiver. Under no circumstances shall any person engaged in the cannabis business activity be under the age of eighteen (18).
- g) The exact location by street address and Assessor's Parcel Number of the parcel on which the Applicant will operate and an on-site telephone number of the cannabis business facility.
- h) If the Applicant is/are not the legal owner(s) of the premises, the Applicant shall submit evidence of the legal right to occupy and use the premises. Such evidence includes, but is not limited to:
 - i. The name and address of each person owning, leasing, occupying, or having charge of the premises.
 - ii. A copy of the lease and a notarized letter from the legal owner(s) acknowledging and consenting to permit the cannabis business activities to be conducted on the premises by the tenant Applicant. The Cannabis Coordinator may prescribe forms for such letters.
- i) The cannabis permit type for which the Applicant is applying.
- j) As applicable, designate an owner or other responsible party to administer the track-and-trace system.
- k) A written Cannabis Business Operations Plan which shall be in conformance with the requirements of this Chapter and shall include, at a minimum:
 - i. A written statement of the kind, character, and type of cannabis business activities the Applicant proposes to conduct and operating procedures to be utilized therefor, including, as applicable, a description of how chemicals and fertilizers will be stored, handled, and used; source(s) of usage of water; extraction and infusion methods; the transportation

process; inventory procedures; track and trace program and procedures; quality control procedures; and/or testing procedures.

- 1) Applications for cultivation-type permits shall include the number of harvests per year expected to occur at the cannabis business facility and the expected yield thereof.
- 2) Applications for transportation-type permits shall include detailed information regarding the transportation process.
- ii. Names, addresses, telephone numbers, and responsibilities of each owner, manager, assistant, employee, worker, volunteer, participant, or individual member of the cannabis business who participates in the cannabis business activities or daily operations thereof.
- iii. The proposed hours of operation of the cannabis business activities.
 - 1) Applications for cultivation-type permits shall include the cannabis business facility hours.
 - 2) Applications for transportation-type permits shall include the hours during which transport activities occur, including pick-up and drop-off.
- iv. The size of the cannabis business facility and the number of cannabis plants or amount of cannabis product on the premises, or the size and storage capacity of the vehicle used for transported cannabis between cannabis permittees.
- v. As applicable, a site and floor plan showing the entire legal parcel configuration with:
 - a. Assessor's Parcel Number(s), acreage, site address, boundaries
 - b. Location of easements, water sources (including natural waterways, streams, springs, ponds, culverts, etc.), flood plain or floodway, all areas of ground disturbance and/or surface water disturbance associated with the cannabis business activities, septic systems, leach fields, and water wells
 - c. Location of all access roads and widths thereof.
 - d. Location of all parking areas and a written parking plan.
 - e. Location and area of the cannabis business site on the legal parcel, denoting each boundary line of the premises to the location of cannabis business site, including, as applicable, measurements of the planned canopy area for cannabis cultivation, including aggregate square footage and individual square footage of separate cultivation areas, if any, except that cultivation shall take place in a single area, i.e., cannabis plants shall be contiguous and not spread throughout the premises.

- f. Location of all buildings and structures on the legal parcel (with labels identifying dimensions, type, purpose, and current use), identification of entrances and exits; interior partitions, walls, rooms, and storage; reception/waiting areas, ancillary support spaces, etc.; machinery, electrical, water supply (indicate storage capacity), liquid and solid waste facilities; fire suppression; site drainage and runoff; and illumination. If known, include permit numbers and date of construction. If any grading is proposed for site preparation, include a statement describing the project.
- g. A written statement of the relationship of the cannabis business facility to adjacent properties and land uses.
- h. A written security plan, including lighting, alarms, fencing, and video cameras, to ensure the safety of persons, and to protect the premises from theft, vandalism, and fire. The security plan shall address both interior and exterior areas of the cannabis business facility and its premises.
- i. A noise, odor, and light pollution control plan in accordance with the provisions of Chapter 19.31 of this Code and Title 24 of the California Building Code, including, but not limited to, a description of odor prevention systems and devices.
- j. A waste disposal plan in accordance with the provisions of Chapter 15.01 of this Code.
- vi. Procedures for identifying, managing, and disposing of contaminated, adulterated, deteriorated or excess cannabis or cannabis product, as applicable.
- vii. Procedures for inventory control, as applicable, to prevent diversion of medicinal cannabis to non-medicinal use, employee screening, storage of medicinal cannabis, personnel policies, and recordkeeping procedures.
- viii. Such other information and documentation as the Cannabis Coordinator determines is necessary to ensure compliance with this Chapter.
- l) A written statement that until such time as the licensing regulations promulgated under the Medical Cannabis Regulation and Safety Act (“MCRSA”) are implemented and become operative, or are revised by state Legislature or electors, the applicant and each owner, director, and manager of the cannabis business agree to operate under such terms and conditions outlined in their Cannabis Business Operations Plan as approved.
- m) Whether any food or beverages, including alcoholic beverages, will be sold at the premises.
- n) Identification of any previous law enforcement activity at the premises related to cannabis, or other controlled substances.

- o) Provide evidence that the proposed site of the cannabis business facility is located at least one-hundred (100) feet from any boundary line of the premises, at least four-hundred (400) feet from any residence, and 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, or as otherwise reduced or waived in accordance with Section 7.02.070.
 - p) Attach copies of other relevant permits and/or licenses obtained or applied for, including, but not limited to:
 - i. State Water Resources Control Board, SWPPP, Copy of Notice of Intent
 - ii. Streambed Alteration Permit (1603) obtained from Department of Fish and Wildlife
 - iii. Air Quality Control (Monterey Bay)
 - iv. Hazardous Waste Permit (Env. Health)
 - v. Pesticide Permit (Ag Commissioner)
 - vi. Solid Waste Diversion Plan (Integrated Waste)
 - vii. Building Permits, Well Permits, State Permits etc.
 - q) A written explanation of how the Applicant will ensure compliance with federal, state and local tax, health, and safety regulations.
 - r) A written statement that the Applicant has submitted to, and successfully completed, a LiveScan background check no earlier than thirty (30) days prior to the date the application is submitted; and
 - s) A written statement authorizing the Cannabis Coordinator to verify the information contained within the application, including, but not limited to, a criminal background check.
 - t) The Applicant's waiver and release of San Benito County from any and all liability for monetary damages related to or arising from the cannabis permit application, the issuance of the cannabis permit, or the enforcement of the conditions of the cannabis permit;
 - u) A written statement, signed by the Applicant under penalty of perjury that the information provided in the application is complete, true, and accurate.
 - v) Any additional or supplemental information as the Cannabis Coordinator deems is reasonably necessary to administer this Section or determine whether the cannabis business operations are in compliance with the provisions of this Chapter.
2. *Cultivation-Type Permit Application Requirements.* In reviewing the an application to operate a cultivation-type cannabis business facility, the Cannabis Coordinator, or his or her designee may request the Applicant provide the following additional information:
- a) A pest management plan;

- b) A waste management plan;
 - c) A landscape management plan for the preservation of agricultural lands;
 - d) A water management plan, including the proposed water supply, proposed conservation measures, and any water off-set requirements. Such plan may include an estimate of water demand for the cultivation site prepared by a licensed professional engineer or other expert on water demand and a detailed description of how the new water demand will be offset. New water demands shall be offset at a 1:1 ratio; or
 - e) An energy management plan, including proposed energy conservation measures.
3. *Transportation-Type Application Requirements.* In reviewing the an application to operate a transportation-type cannabis business, the Cannabis Coordinator, or his or her designee may request the Applicant provide the following additional information:
- a) A written statement detailing how, and from where, cannabis will be received, how any storage or transportation operations will be secured to prevent theft and trespass, and to whom the cannabis will be taken;
 - b) A quality control inspection and requirements plan;
 - c) Storage and handling plans;
 - d) Proof of ownership or a valid lease for any and all commercial vehicles that will be used to transport cannabis;
 - e) The year, make, model, license plate number, and numerical Vehicle Identification Number (VIN) for any and all commercial vehicles that will be used to transport cannabis; and
 - f) Proof of insurance in the amount of \$1,000,000 for any and all commercial vehicles being used to transport cannabis.
- (F) *Renewal Application.* In order to continue cannabis business activities after December 31st of the year in which the cannabis permit, or any renewal thereof, was issued, a cannabis permittee must obtain a renewal permit. It is incumbent on the cannabis permittee to ensure that the permit is renewed timely in order to continue cannabis business activities into the next calendar year. A renewal permit must be obtained annually via an application for a renewal permit which shall be made on a form designated for that purpose promulgated by the Cannabis Coordinator, submitted under penalty of perjury. In addition to any specific requirement in this Section, all applicants shall provide the following information on, or as an attachment to, the Renewal Application:
- 1. Any changes to the information the applicant submitted on the original permit application;
 - 2. Any law enforcement or permit enforcement activity related to the permittee's operations during the past calendar year;

3. A representation that the permittee continues to hold in good standing any County-issued cannabis permit or State-issued MCRSA license required by the State of California for cannabis businesses;
 4. A statement as to whether the location of the permittee's cannabis business operations are expanding and/or moving to a new location on the premises. In the event the size and/or location of the cannabis business operations changes, a mandatory inspection of the premises shall result in an additional fee as established by the Board of Supervisors.
 5. If the size and/or location of the cannabis business operations are changing, the permittee shall submit a map containing the exact area and/or location on the premises where cannabis business operations shall take place (e.g., cultivation shall take place in a single area, i.e., cannabis plants shall be contiguous and not spread throughout the premises).
 6. The Applicant's waiver and release of San Benito County from any and all liability for monetary damages related to or arising from the application for a renewal permit, the issuance of the permit, or the enforcement of the conditions of the permit;
 7. A written statement that the permittee has submitted to, and completed, a LiveScan background check no earlier than thirty (30) days prior to the date the renewal application is submitted; and
 8. Such other information as the Cannabis Coordinator deems reasonably necessary to a thorough review of the application.
- (G) *Amended Application.* Any changes or updates to an application form for a cannabis permit under this Chapter shall require the applicant submit an amended application on a form designated for that purpose promulgated by the Cannabis Coordinator, submitted under penalty of perjury, and the applicant shall pay all applicable fees. An amended application and applicable fees shall be submitted within fifteen (15) calendar days of any change to the information provided in the permit application, or any change in status of compliance with the provisions of this Chapter, including any change in the cannabis business facility's ownership or management members, or location of the cannabis business operations. In the event a cannabis permittee holding a transporter-type permit desires to add any new commercial vehicle that will be used to transport cannabis, the cannabis permittee shall, prior to using the commercial vehicle to transport cannabis, provide the County in writing with the required vehicle information within 30 calendar days.
- (H) The Cannabis Coordinator may refuse to accept an application for any premises upon which cannabis business operations in violation of this Chapter are conducted. The acceptance of an application pursuant to this Chapter shall not be deemed to be a permit for or an approval of any violation of this Chapter. The acceptance of an application shall not prevent the Cannabis Coordinator or enforcing officer from thereafter requiring correction of violation or from preventing cannabis business operations being carried out thereunder in violation of this Chapter.

- (I) Fees shall be set forth in a schedule of fees and charges established by ordinance and/or resolution adopted by the Board of Supervisors. The purpose of any and all fees required under this Chapter is to pay for the costs of the Cannabis Business Regulatory Program.
1. *Application and Processing Fee.* The application and processing fee is non-refundable, and is due and payable in full at the time any permit application is submitted. This fee covers the costs of accepting and processing the application, including reviewing and investigating the completeness and accuracy of the information contained therein, and determining eligibility for issuance of a permit under this Chapter. This fee applies to any original application, renewal application, or amended application thereto. The fee may vary between an original, amended, and renewal application. The applicable amended application fee is in addition to, and separate from, any previously filed permit application and covers the costs for reviewing amendments or changes to the former permit application.
 2. *Annual Permitting Fee.* The annual permitting fee is non-refundable, and is due and payable in full at the time the permit is issued. If payment is not timely received, the permit will be automatically revoked. If an initial cannabis permit is automatically revoked under this subsection, all cannabis business operations authorized under said permit shall cease immediately. If the renewal permit is automatically revoked under this subsection, all cannabis business operations at that permitted site shall cease on December 31st of that year, or thirty (30) days after notification, whichever is earlier. If the Applicant wishes to be reconsidered for a permit, the Applicant must submit a new permit application and pay the non-refundable permit application fee. The new application will be reviewed as a new application and will not be given priority over other applications.
 3. *Other Fee.* Any fees for inspection or investigation that are not included within the other fees associated with acceptance and processing are due and payable in full upon request of the County.
- (J) As a condition of permitting, an Applicant shall submit financial assurances, in the form of a surety bond, in the amount of not less than two-thousand five-hundred dollars (\$2,500) guaranteeing compliance with all applicable provisions of federal and state law, and the San Benito County Code. Such bond shall be forfeited upon a final administrative determination under this Chapter or Chapter 1.06 of a public nuisance or other violation of the San Benito County Code occurring upon the premises. The proceeds from such forfeited bond may be used to defray any abatement costs, administrative costs, or administrative penalties assessed by the County relating to violation of the permitting requirements. The bond shall be issued by a corporate surety licensed to transact surety business in the State of California.
- (K) *Application Acceptance, Review, and Adjudication.*
1. *Cannabis Permit.*

- a) For the year 2017, applications for a cannabis permit shall only be accepted from October 1st through November 30th in order to allow the Cannabis Coordinator to timely investigate the initial applications submitted for that calendar year. In every year thereafter, cannabis permit applications shall only be accepted from January 1st through September 30th of any calendar year for the year for which the permit is applicable. Any application submitted after September 30th will be considered as an application for the year following that in which it was submitted.
- b) Upon receipt of a cannabis permit application, the Cannabis Coordinator will create a permitting file related to the application, and will conduct a mandatory inspection of the designated cannabis business site within ninety (90) days to determine whether it meets the requirements of the Cannabis Business Regulatory Program, including referring the application to such appropriate County officers and departments, and any state, federal, or local agencies, as he/she deems necessary from the nature of the application for review, evaluation, investigation and recommendations regarding approval or disapproval of the application or the imposition of conditions. The Cannabis Coordinator shall consider the existing surrounding uses in analyzing impacts of the proposed cannabis business site, and can deny use in any zoning district within which the cannabis business activity is not prohibited if the County feels the impacts on existing conforming uses are unreasonable. At the time of application, a review of the location, design, configuration, and potential impact of the proposed use shall be conducted by comparing it to established development standards and individual aspects of application.
- c) After concluding the required application review, including investigation, the Cannabis Coordinator shall notify the applicant in writing whether the permit has been granted or denied.

2. Renewal Permit.

- a) For the year 2018, and every year thereafter, applications for a renewal permit shall only be accepted from September 1st through November 30th, in order to allow the Cannabis Coordinator to timely investigate the renewal permit applications submitted for that calendar year.
- b) Upon receipt of a renewal permit application, the Cannabis Coordinator shall update the permittee's permitting file and perform whatever investigation the Cannabis Coordinator deems reasonably necessary to determine whether to grant or deny the renewal permit, including referring the application to such appropriate County officers and departments, and any state, federal, or local agencies, as he/she deems necessary from the nature of the application for review, evaluation, investigation and recommendations regarding approval or disapproval of the application or the imposition of conditions. Additionally, the investigation may include an inspection of the permittee's premises, at the discretion of the Cannabis

Coordinator, to determine whether the permittee remains in compliance with the regulations of the Cannabis Business Regulatory Program.

- c) If the renewal permit application indicates that the size and/or location of the cannabis business operations at the site will be changing with issuance of a renewal permit, the Cannabis Coordinator shall conduct a mandatory inspection of the permittee's premises to ensure that the permittee will remain compliant with the requirements of the Cannabis Business Regulatory Program if it is granted a renewal permit for the expanded area and/or new location.
- d) On or before December 31st of the year in which the renewal application is submitted, and after concluding the required renewal permit investigation, the Cannabis Coordinator shall notify the Applicant in writing of whether the renewal permit has been granted or denied. If the renewal permit is denied, all cannabis business operations on the Applicant's premises shall cease on December 31st of that year.

- 3. As part of any mandatory inspection outlined above, the Cannabis Coordinator may take photos of the specific site on the premises where the cannabis business activities under the permit will occur, and will keep a copy of those photos with the permitting file for enforcement purposes.
- 4. Meeting the minimum requirements of the Cannabis Business Regulatory Program does not automatically entitle an Applicant to receive a cannabis permit under this Chapter.

(L) *Expiration of Permit.* Each cannabis permit issued in accordance with this Chapter shall be valid for one (1) calendar year, or part thereof, beginning January 1st of the year in which it is issued and expiring on December 31st of the same year. If a permittee wishes to continue its cannabis business operations after December 31st of the year in which the cannabis permit, or any annual renewal permit, was issued, it must obtain a renewal permit, as set forth in this Section.

(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.
- 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.

(N) *Non-transferable.*

- 1. A cannabis permit does not create any interest of value, is not transferable, and automatically terminates upon transfer of ownership.

2. Whenever any individual, corporation, Limited Liability Company, partnership or other type of business entity permitted under this Chapter sells or transfers all or part of its corporate stock, partnership interest or other business interest in a cannabis business facility, a new cannabis permit shall be obtained pursuant to Section 7.02.060 of this Chapter.
3. A cannabis permit is issued to and covers only the permittee identified on the permit with respect to the premises identified on the permit. The cannabis permit does not run with the land.

7.02.080 - Restrictions.

- (A) Except as provided in a waiver granted in accordance with subdivision (B), no cannabis business facility shall be located less than 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.
- (B) At the time of application, the applicant may submit a written request that the Cannabis Coordinator waive the application of any provision of Subdivision (A) based upon a finding of unusual hardship or other good cause. Waiver requests shall not be unreasonably denied. The Cannabis Coordinator shall grant or deny each waiver request in writing, and may impose reasonable conditions upon any waiver granted. If granted, the waiver shall remain valid until expiration of the annual permit, at which time the waiver shall also expire. Renewal of any such waiver may be requested at the same time as renewal permit application. If the waiver request is denied or conditioned, the applicant may submit a written appeal to the Clerk of the Board of Supervisors within ten (10) calendar days. If an Administrative Hearing Officer has been appointed in accordance with Section 7.02.090, the appeal shall be heard by the Administrative Hearing Officer; otherwise the appeal shall be heard by the Board of Supervisors. The Board of Supervisors or Administrative Hearing Officer, as applicable, shall consider the matter *de novo*, and may affirm, reverse, or modify the determination of the Cannabis Coordinator. The decision of the Board of Supervisors or Administrative Hearing Officer, as applicable, shall be final and conclusive.
- (C) A permitted cannabis business facility shall operate at a single location only. Multiple buildings on the same or contiguous parcels shall not be considered a single cannabis business facility operating in a single location.
- (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 intersection located at Latitude: 36.407295, Longitude: - 120.993311 (N 36° 24' 26.2634", W 120° 59' 35.9211")

B.

1. 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.
 2. 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.
- (E) Each cannabis business facility shall operate in a reasonable manner such that the effects on the health or safety of nearby properties through creation of mold, mildew, dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibration, or other impacts of cannabis business activities are minimized:
1. Cannabis business activities shall not create hazards due to the use or storage of materials, processes, products, chemicals, fertilizers, or wastes.
 2. All cannabis business cultivation activity shall be conducted inside enclosed buildings or structures, and any and all cannabis, regardless of stage of growth, shall not be visible from the exterior of the building or structure within which cannabis is cultivated. Any cultivation occurring within greenhouse structures shall require additional steps to be taken toward screening, shielding, darkening, obscuring, or rendering opaque the structure to ensure the cannabis cultivated within is not visible. Structures that are exempt from building permits shall not be used for cultivation purposes, including structures previously permitted under an “Ag Exemption” as defined in Chapter 21.01 of the San Benito County Code.
 3. Exterior lighting on the premises and location shall ensure the safety of the public and the members and employees of the facility while not disturbing surrounding residential or commercial areas, and shall comply with all applicable provisions of Chapter 19.31 the San Benito County Code regarding exterior lighting in furtherance of the preservation and protection of “dark skies” within the County. Illumination of any portion of the cultivation site between the hours of 8:00 p.m. and 8:00 a.m. by lighting that is visible from the exterior of the cultivation site, except such lighting as is reasonably utilized for the security of the cultivation site, is prohibited.
 4. Driveways, sidewalks, parking strips, fire access roads and streets on or adjacent to the premises shall be kept in a clean and safe condition.
 5. Use of water from any water source that is not located on the parcel on which cultivation is taking place is prohibited.
 6. All irrigation runoff, fertilizer, and contaminants on site shall be contained, and as specified in the Cannabis Business Operation Plan submitted to the County as part of the application.
- (F) Designation of zoning districts in this Section does not give any owner, occupant, or lessor of real property any rights to operate under this Chapter, or provide that any permit applied for under this Chapter shall be granted.

- (G) The loitering by persons on or within one-hundred (100) feet of any cannabis business facility, or its associated parking area, is strictly prohibited. The cannabis business facility owner, manager, operator, or other responsible person shall report any loitering.
- (H) The sale, dispensing, or consumption of alcoholic beverages on or about a cannabis business facility or in its parking area is prohibited.

7.02.090 – Denial, Non-Renewal, Suspension, or Revocation of Permit.

- (A) *Grounds for Denial.* The Cannabis Coordinator, or designee, shall reject an application upon making any of the following findings:
 - 1. The application was not timely filed as set forth in Section 7.02.060 of this Chapter.
 - 2. The applicant did not pay to the County the required application and/or cannabis permit fees as set forth in Section 7.02.060, subdivision (B) of this Chapter.
 - 3. Revocation or suspension of any MCRSA license required to operate a cannabis business.
 - 4. The Applicant made one or more false or misleading statements or omissions on the application or during the application process;
 - 5. The Applicant fails to meet the requirements of this Chapter or any regulation adopted pursuant to this Chapter;
 - 6. The cannabis business' activities or its facility is in violation of any building, zoning, health, safety, or other provision of this code, or of any state or local law which substantially affects the public health, welfare, safety, or morals, or the facility or its location is not permitted in the proposed area, or the issuing or continuation of a cannabis permit would be contrary to the public health, welfare, safety, or morals;
 - 7. The Applicant, or any of its officers, directors, owners, managers, or employees is under twenty-one (21) years of age, unless those persons are at least eighteen (18) years of age, are a qualified patient or a primary caregiver, and the Applicant is applying for an M-permit;
 - 8. The Applicant either (1) did not timely submit to and complete his or her LiveScan background check, or (2) failed his or her LiveScan background check.
 - 9. The Applicant or cannabis permittee has been convicted of an offense that is substantially related to the qualifications, functions, or duties of the business or profession for which the application is made, except that if the Cannabis Coordinator determines that the Applicant or cannabis permittee is otherwise suitable to be issued a cannabis permit, and granting the cannabis permit would not compromise public safety, the Cannabis Coordinator shall conduct a thorough review of the nature of the crime, conviction, circumstances, and evidence of rehabilitation of the Applicant or cannabis permittee, and shall evaluate the suitability of the Applicant or cannabis permittee to be issued a cannabis permit based on the evidence found through the review. In determining which offenses are substantially related to the qualifications, functions, or duties of the business or

profession for which the application is made, the Cannabis Coordinator shall include, but not be limited to, the following:

- a) A violent felony conviction, as specified in subdivision (c) of Section 667.5 of the Penal Code;
- b) A serious felony conviction, as specified in subdivision (c) of Section 1192.7 of the Penal Code;
- c) A felony conviction involving fraud, deceit, or embezzlement;
- d) A felony conviction for hiring, employing, or using a minor in transporting, carrying, selling, giving away, preparing for sale, or peddling, any controlled substance to a minor; or selling, offering to sell, furnishing, offering to furnish, administering, or giving any controlled substance to a minor;
- e) A felony conviction for drug trafficking with enhancements pursuant to California Health and Safety Code sections 11370.4 or 11379.8.
- f) Except as provided in subparagraphs (9)(d) and (9)(e), and notwithstanding California Business and Professions Code section 480 et seq., a prior conviction for possession of, possession for sale, sale, manufacture, transportation, or cultivation of a controlled substance, where the sentence is completed for, shall not be the sole ground for denial of a license.

10. The Applicant, or any of its officers, directors, owners, or managers, is a licensed physician making patient recommendations for medicinal cannabis;

11. The Applicant, or any of its officers, directors, or owners, has been sanctioned by the Cannabis Coordinator or by any city, county, or city and county for unpermitted and/or unlicensed cannabis business operations or has had a permit revoked under this Chapter in the three (3) years immediately preceding the date the application is filed, or has been sanctioned under Sections 12025 or 12025.1 of the Fish and Game Code..

12. Failure to obtain and maintain a valid Seller's Permit required pursuant to Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code.

13. The Cannabis Coordinator, or designee, may place reasonable conditions upon registration if grounds exist for denial of the registration and those grounds may be removed by the imposition of those conditions.

(B) *Grounds for Non-Renewal, Suspension, or Revocation.* Grounds for non-renewal, suspension, or revocation of a permit include, but are not limited to:

- 1. Any one of the grounds set forth in subdivision (A).
- 2. Violation of any provision of the San Benito County Code or state law.
- 3. Violation of any of the restrictions relating to the issuance of a cannabis permit set forth in Section 7.02.070 of this Chapter.
- 4. Failure to timely submit an amended application as required as stated in Section 7.02.060;

5. One (1) or more code enforcement actions related to unlawfully operating a cannabis business at the premises within a single year.
6. The cannabis business operated or is being operated in a manner that creates or results in a public nuisance;
7. The cannabis business facility ceased operation for more than ninety (90) calendar days;
8. Failure to post and maintain a copy of either the cannabis permit issued under this Chapter, or of any MCRSA license at the cannabis business facility in a prominent location as required to engage in cannabis business activities.
9. Failure to timely pay any local or State tax associated with cannabis business activities.
10. Failure to conduct cannabis business activities in a manner that ensures the security of the cannabis and, if applicable, safeguards against diversion for non-medicinal purposes.
11. Possession, storage, or use of any firearm on the premises, except if the permit which has been approved by the County contains a provision allowing armed security guards.
12. Allowance of any person under twenty-one (21) years of age to enter the cannabis business facility site without a parent or legal guardian, unless such person is at least eighteen (18) years of age, is a qualified patient or a primary caregiver, and the permittee holds a valid M-permit.
13. Printing, publishing, advertising, or disseminating in any way, including but not limited to the Internet, any notice or advertisement seeking or offering the availability of space to conduct cannabis business activities, regardless of whether the space is within a building or structure ~~or outdoors~~.
14. Use of a generator, hazardous materials, or flammable products for cannabis business activities.
15. Failure to allow unannounced inspections of the premises or records described in Section 7.02.100 by the Cannabis Coordinator or enforcing officer.
16. Failure to maintain and produce to the Cannabis Coordinator or enforcing officer upon request the following information:
 - a) If the premises where cannabis business activities occur is not owned by the cannabis permittee, written documentation from the owner of the premises that he or she has agreed to the use of the site for cannabis business operations; and
 - b) If applicable, written certification from a licensed electrician that the cannabis business facility for indoor cannabis cultivation has all necessary electrical permits required by the California Building Codes to ensure that the growing operations can be carried out safely.
17. If applicable, illumination of any portion of the cultivation site between the hours of 8:00 p.m. and 8:00 a.m. by lighting that is visible from the exterior of the

cultivation site, except such lighting as is reasonably utilized for the security of the cultivation site.

18. If applicable, failure to contain all irrigation runoff, fertilizer, and contaminants on site.

19. If applicable, use of water from any water source that is not located on the premises on which cultivation is taking place, except as expressly permitted.

7.02.100 – Procedure for Suspension or Revocation.

- (A) If the Cannabis Coordinator determines that grounds for suspension or revocation of the cannabis permit exists pursuant to Section 7.02.080 of this Chapter, the Cannabis Coordinator shall issue a written notice of intention to suspend or revoke the permit, as the case may be. The notice of intention shall be served on the permittee, as reported on the permit application, and on the property owner, as reported on the latest equalized assessment roll and/or the permit application, in accordance with the requirements set forth in Section 1.06.090. The failure of any permittee or owner to receive such notice shall not affect the validity of the proceedings.
- (B) The notice of intention shall describe the premises, the intention to revoke or suspend the permit, the grounds for suspension or revocation, the action necessary to abate the violation, the time limit for compliance, and the right to a hearing held before the County Hearing Officer appointed in accordance with Chapter 1.07 of the San Benito County Code to determine whether to suspend or revoke the permit. Except as provided in subdivision (D) the notice of intention shall inform the recipients of the opportunity to request a hearing before the County Hearing Officer within ten (10) calendar days from service of the notice of intention. Such request must be received by the Cannabis Coordinator no later than 5:00 p.m. on the tenth (10th) day after notice. If such a hearing is not timely requested, the Cannabis Coordinator may suspend or revoke the permit in accordance with this Section. Failure to submit the written request for a hearing shall be deemed a waiver of the right to challenge the suspension or revocation of the cannabis permit and a failure to exhaust administrative remedies.
- (C) Upon receipt of a timely written request for a hearing, the Cannabis Coordinator shall set a date for a hearing to be held within thirty (30) days of receipt of the request, unless an immediate threat to the public health, safety and welfare necessitates an earlier hearing date. Notice of the hearing, including the time, date, and location of the hearing, shall be served in accordance with the requirements set forth in Section [] of this Chapter. Failure of the person(s) requesting the hearing to appear and present evidence shall constitute a failure to exhaust administrative remedies.
- (D) The notice of intention shall inform the recipients that a hearing will be held before an Administrative Hearing Officer appointed in accordance with this Section and shall specify the date, time, and location of the hearing. Failure of the person(s) to whom the notice of intention was issued to appear and present evidence shall constitute a failure to exhaust administrative remedies.
- (E) In order to hear cases brought by the Cannabis Coordinator under this section, the Board of Supervisors hereby establishes for such purpose the Office of County

Hearing Officer pursuant to Chapter 14 (commencing with Section 27720) of Part 3 of Division 2 of Title 3 of the Government Code, to which Office the Board of Supervisors shall appoint one or more hearing examiners. Each such hearing examiner shall be an attorney at law having been admitted to practice before the courts of this state for at least five (5) years. Hearing examiners shall be appointed for a period of not less than one (1) year. In the event that the Board of Supervisors appoints more than one (1) hearing examiner, each day of hearings required under this section shall be assigned to a hearing examiner based upon an alphabetical rotation. Hearing examiners shall have those powers set forth in sections 27721 and 27722 of the Government Code, including the power to conduct the hearing, the power to decide the matter under this section upon which a hearing has been held, the power to make findings of fact and conclusions of law required for the decision, the power to issue subpoenas at the request of a party of interest, the power to receive evidence, the power to administer oaths, the power to rule on questions of law and the admissibility of evidence, the power to continue the hearing from time to time, and the power to prepare a record of the proceedings.

- (F) Pursuant to Government Code sections 25845, subdivision (i) and 27721, subdivision (A), the Administrative Hearing Officer shall hold an administrative hearing to determine whether the conditions existing on the property subject to the notice constitute a violation under this Chapter, or whether there is any other good cause why those conditions should not be waived. This hearing shall be held no less than thirty (30) calendar days after request for hearing.
- (G) The permittee or owner of the premises shall be given an opportunity at the hearing to present and elicit testimony and other evidence regarding whether the conditions existing on the property constitute grounds for suspension or revocation under this Chapter, or whether there is any other good cause why those conditions should not be waived.
- (H) In the event that the permittee or owner does not appear and present evidence at the hearing, the Administrative Hearing Officer may base their decision solely upon the evidence submitted by the Cannabis Coordinator or enforcing officer.
- (I) Any hearing conducted pursuant to this Chapter need not be conducted according to technical rules relating to evidence, witnesses and hearsay. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs regardless of the existence of any common law or statutory rule which might make improper the admission of the evidence over objection in civil actions. The Administrative Hearing Officer has discretion to exclude evidence if its probative value is substantially outweighed by the probability that its admission will necessitate undue consumption of time.
- (J) The Administrative Hearing Officer shall consider the matter *de novo*, and may affirm, reverse, or modify the determinations contained in the notice and order. The Administrative Hearing Officer shall issue a written decision, which shall include findings relating to the existence or nonexistence of the alleged grounds for suspension or revocation. Such decision shall be mailed to, or personally served upon, the party requesting the hearing, any other parties upon whom the notice was served,

and the Cannabis Coordinator or enforcing officer. The decision shall be final when signed by the Administrative Hearing Officer and served as herein provided.

- (K) In the event a civil action is initiated to obtain enforcement of the decision of the Administrative Hearing Officer, the prevailing party shall be entitled to recover the reasonable attorneys' fees incurred. Recovery of attorneys' fees under this subdivision shall be limited to those actions or proceedings in which the County elects, at the initiation of that action or proceeding, to seek recovery of its own attorneys' fees. In no action, administrative proceeding, or special proceeding shall an award of attorneys' fees to a prevailing party exceed the amount of reasonable attorneys' fees incurred by the County in the action or proceeding.
- (L) Failure of the permittee or owner, or their authorized representatives, to appear and present evidence at the noticed hearing, such failure to appear shall constitute an abandonment of the hearing request and a failure to exhaust administrative remedies.

7.02.110 – Cannabis Business Facilities

The following requirements shall apply to each classification of permit created under this Chapter:

(A) Cultivation-Type Cannabis Permits:

1. Under no circumstances shall a building intended for residential use be used for the cultivation of cannabis.
2. Cannabis permittees shall only propagate immature plants for plating at their cultivation sites in designated propagation areas, except that a cannabis permittee holding a Nursery permit shall not be prohibited from propagating immature plants or seeds for distribution to another cannabis permittee.
3. The propagation areas shall contain only immature plants.
4. Mother plants used for propagation shall be maintained as immature plants and located in the designated propagation area.
5. Compliance with the track and trace program requirements promulgated by the responsible state department, including, but not limited to:
 - i. Establish an account in the track-and-trace system prior to engaging in any cannabis business activities associated with the cannabis permit
 - ii. Designate an owner or other responsible party to administer the track-and-trace system.
 - iii. Tag all plants with a unique identifier.
 - iv. Monitor all notifications from the track-and-trace system and resolve all issues included in the notification.
 - v. Timely submit required reports or notifications through the track-and-trace system.
6. Medicinal cannabis cultivated by M-permittees shall be labeled and in a tamper-evident packaging. Labels and packages shall at least meet all of the minimum requirements promulgated by the responsible state department, including, but not

limited to, packaging cannabis harvested only from the same harvest batch.

(B) Transportation-Type Cannabis Permit:

1. An M-permittee holding an M-Type 12 permit shall be bonded and insured at the minimum level required by the California Department of Consumer Affairs.
2. The following requirements apply to vehicles used for transporting cannabis:
3. The following requirements apply when transporting cannabis:
 - i. Transportation by means of aircraft, watercraft, drones, rail, human powered vehicles, and unmanned vehicles is prohibited.
 - ii. Cannabis shall only be transported between permitted and licensed cannabis businesses.
 - iii. 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.
 - iv. Cannabis shall be locked in a box that is secured to the inside of the commercial vehicle or trailer.
 - v. While left unattended, the commercial vehicle and trailer shall be locked and secured.
 - vi. A transporter shall not leave a commercial vehicle containing cannabis unattended or parked overnight in a residential area.
 - vii. At a minimum, a transporter shall have a vehicle alarm system on all transport vehicles. Motion detectors, pressure switches, duress, panic, and hold-up alarms may also be used.
 - viii. Packages or containers containing medical cannabis goods may not be tampered with during transport.
 - ix. A transporter shall only travel between licensees shipping or receiving cannabis and its own licensed premises when engaged in the transportation of cannabis. The transporter may transport multiple shipments of cannabis at once in accordance with applicable laws. A transporter may not transport non-medicinal cannabis.
 - x. Transport vehicles and all cannabis business facilities are subject to inspection by the County. Commercial vehicles used to transport cannabis may be inspected by the County at the cannabis business facility or during transport.
4. The following requirements apply when storing cannabis:
 - i. Cannabis shall not be stored at the cannabis business facility longer than 72 hours.
 - ii. Cannabis batches shall be stored separately and distinctly from other cannabis batches on the transporter's premises.

- iii. Ensure a label with the following information is physically attached to each container of each batch:
 - a) The transporter's name and license number;
 - b) The date of entry into the transporter's storage area;
 - c) The unique identifiers and batch number associated with the batch;
 - d) Description of product with enough detail to easily identify the batch; and
 - e) Weight of or quantity of units in the batch.
- iv. Store cannabis goods in a building designed to permit control of temperature and humidity and shall prevent the entry of environmental contaminants such as smoke and dust. The area in which medical cannabis goods are stored shall not be exposed to direct sunlight. A transporter may not store medical cannabis goods outdoors.
- 5. Compliance with the track and trace program requirements promulgated by the responsible state department, including, but not limited to, entering the following information into the track and trace system:
 - i. Name and license number of the transporter;
 - ii. Date the transporter receives the cannabis from cannabis permittee for transport;
 - iii. Amount transported, by weight or count;
 - iv. Date the transporter delivers the cannabis to the cannabis permittee;
 - v. The unique identifiers associated with the cannabis transferred;
 - vi. Spoilage or fouling of the cannabis; and
 - vii. Any event resulting in exposure or compromise of the cannabis;
- 6. Prior to transporting cannabis, the transporter shall complete an electronic shipping manifest. The manifest shall include the following information:
 - i. Unique identifier information from the cultivation site;
 - ii. The name of the transporter and the names of authorized drivers;
 - iii. The make, model, and license plate number of the commercial vehicle.
 - iv. The type, quantity, amount, and/or weight of cannabis being transported;
 - v. The time and location of departure; and
 - vi. The time and location of expected arrival;
- 7. A physical copy of the shipping manifest shall be maintained during transportation and shall be made available upon request to law enforcement of any agents of the State or County charged with enforcement of this Chapter or applicable state law.
- 8. The transporter shall maintain security measures sufficient to restrict access to only those intended and to deter theft and trespass of cannabis, including, but not limited to, the secure storage of cannabis in a secured and locked area or vault.

Any violation of this Section shall result in the immediate suspension of any permit issued pursuant to this Chapter, and pending investigation and a hearing, shall result in revocation of

the permit at the Cannabis Coordinator's discretion. Under no circumstances shall a cause of action for monetary damages be allowed against the County of San Benito, the Cannabis Coordinator, or any County employee as a result of a denial, non-renewal, suspension, or revocation of a permit. The Cannabis Coordinator's denial of a permit application or revocation of a permit is a final action that is not subject to any further administrative remedy. The only legal remedy available to appeal the Cannabis Coordinator's action is to file a petition for writ of mandate in the superior court under California Code of Civil Procedure section 1085.

7.02.120 – Records.

- (A) Cannabis business facilities shall maintain an inventory control and reporting system that accurately documents the present location, amounts, and descriptions of all cannabis products throughout the distribution chain until purchase by or distribution to consumer. The inventory control and reporting system shall comply with the track and trace program required by section 19335 of the California Business and Professions Code and regulations issued pursuant thereto.
- (B) Cannabis business facilities shall have an electronic point of sale system that produces historical transactional data, including, but not limited to, the disposition of cannabis to the end user whether or not transferred for value, for review by the Cannabis Coordinator, or designee, for compliance and auditing purposes.
- (C) Each cannabis business facility shall maintain at the premises all records and documents required by this Chapter and all the information and records listed below and as otherwise required by applicable state law or regulation:
 - 1. The name, address, and telephone number(s) of the owner, landlord and/or lessee of the location;
 - 2. Up-to-date information for all savings accounts, checking accounts, investment accounts and trusts associated with the operation of the cannabis business facility;
 - 3. As applicable, complete and up-to-date records regarding the amount of cannabis cultivated at each cannabis business facility;
- (D) Until such time as state regulations are implemented under the track and trace program required by section 19335 of the California Business and Professions Code, complete and up-to-date records regarding cannabis transfers throughout the distribution chain, as applicable, from cultivation, to manufacturing, to its dispensing location, including the date and time of the transfer; the name and address of the cultivation and manufacturing facility and the name and address of the supplier if different from the cultivation or manufacturing facility; the amount, form, type, batch and lot number of cannabis transferred; the time of departure from the cultivation or manufacturing facility; the time of arrival at the dispensing location; the names of the employees transporting the product; and the name of the employee who received the product at the dispensing location;
- (E) All receipts of the cannabis business operation, including but not limited to all contributions and all expenditures incurred by the cannabis business facility for all cannabis business activities;

- (F) Proof of completed permit application with the Cannabis Coordinator in conformance with this Chapter
- (G) Records demonstrating compliance with state and federal rules and regulations regarding reporting and taxation of income received; and
- (H) All cannabis business facilities shall perform an inventory on the first business day of each month and shall record the total quantity of each form, as applicable, of cannabis on the premises.
- (I) All records related to cannabis business activity and as required by this section shall be maintained by the cannabis business facility for a period of seven (7) years and shall be made available to the Cannabis Coordinator, enforcing officer, and any other County official charged with enforcing the provisions of this Chapter upon request. Such records shall be maintained at the cannabis business site.
- (J) It shall be a violation of this Chapter for any cannabis permittee or its agent, or employee, to refuse, impede, obstruct, or interfere with an inspection of the premises or records of the cannabis permittee pursuant to this section.
- (K) If a cannabis permittee, its agent, or an employee of the cannabis permittee fails to maintain or provide the records required pursuant to this section, the cannabis permittee may be subject to a citation and fine of thirty thousand dollars (\$30,000) per individual violation.

7.02.130 - Cannabis Business Tax

This Chapter requires, and is contingent upon, voter passage of a County tax on cannabis businesses within eighteen (18) months of this Chapter becoming operative. If, eighteen months after this Chapter becomes operative, a County tax on cannabis businesses is not passed, this Chapter shall automatically be repealed.

7.02.140 - Nuisance Declared.

- (A) Any violation of any of the provisions of this Chapter is unlawful and 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 cannabis business activities without a cannabis permit required by 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 - Enforcement

- (A) The Cannabis Coordinator or other enforcing officer shall have the right to enter all cannabis business facilities from time to time unannounced during the cannabis business facility's hours of operation for the purpose of making reasonable inspections to observe and enforce compliance with this Chapter, to inspect and copy records required to be maintained under this Chapter, or to inspect, view, and copy recordings made by security cameras, all without requirement for a search warrant, subpoena, or court order.
- (B) Nothing in this Chapter shall require the disclosure of any private medical record or confidential information contained in such medical record.
- (C) In addition to the authority of the Cannabis Coordinator to deny, suspend, or revoke any permit pursuant to this Chapter, the Cannabis Coordinator may also elect to pursue one or more of those alternatives set forth in Chapters 1.03, 1.04, and/or 1.06 of the San Benito County Code. It shall be a separate offense for each and every day during any portion of which any violation of, or failure to comply with, any provision of this Chapter is committed, continued or permitted.
- (D) Whenever the Cannabis Coordinator, or designee, or 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 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 the notice, to abate the nuisance before the imposition of any civil administrative penalty under Chapter 1.06.
- (E) Nothing in this Chapter shall be construed as imposing on the Cannabis Coordinator 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 Cannabis Coordinator 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.

7.02.160 - 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.

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:

APPROVED AS TO LEGAL FORM:

Chase Graves, Clerk of the Board

San Benito County Counsel

By:

Clerk of the Board

By: _____

Barbara Thompson
Assistant County Counsel



SAN BENITO COUNTY AGENDA ITEM TRANSMITTAL FORM

Mark Tognazzini
District No. 1
Vice-Chair

Jean Zlotkin
District No. 2

Ray Pierce
District No. 3

Pat Loe
District No. 4
Chair

Robert Rodriguez
District No. 5

Item Number: 2.

MEETING DATE: 6/21/2017

DEPARTMENT: COUNTY COUNSEL

DEPT HEAD/DIRECTOR: M. Granger

AGENDA ITEM PREPARER: Sarah Dickinson for Barbara Thompson

SBC DEPT FILE NUMBER:

SUBJECT:

COUNTY COUNSEL'S OFFICE - M. GRANGER

a) PUBLIC HEARING - Conduct public hearing regarding the draft Personal Cultivation of Cannabis Ordinance (amending Chapter 11.15 of the San Benito County Code) proposed by the ad hoc committee in consultation with key stakeholders;

and

b) Consider adoption of a resolution recommending that the Board of Supervisors adopt an Ordinance amending Chapter 11.15 of the San Benito County Code relating to Personal Cultivation of Cannabis, which is consistent with the 2035 General Plan, exempt from the requirements of 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), in addition to being categorically exempt from review under CEQA under the Class 8 Categorical Exemption (regulatory activity to assure the protection of the environment), and directs the RMA Director file a Notice of Exemption upon adoption of the ordinance.

AGENDA SECTION:

PUBLIC HEARING

BACKGROUND/SUMMARY:

Overview of State Cannabis Laws:

Over the past two years, there have been substantial changes in state law relating to cannabis cultivation and distribution, including the enactment of detailed state regulatory schemes for medicinal cannabis (the Medical Cannabis Regulation and Safety Act) and non-medicinal cannabis (sometimes referred to as "recreational marijuana" or "recreational cannabis") (Prop. 64, the Adult Use of Marijuana Act). These new state laws preserve strong local control over both personal cannabis cultivation and cannabis business activities, including:

- Outdoor cultivation may be regulated or completely banned.
- Cultivation of more than six plants on any premises may be regulated or completely banned.
- Personal cultivation of six or fewer plants, conducted indoors "inside a private residence, or inside an accessory structure to a private residence" cannot be completely banned, but can be reasonably regulated.

Procedural Background:

Many local jurisdictions throughout California are studying their existing regulations to determine if any changes are required or desirable as a result of these new state laws. Upon review of San Benito County's Marijuana Cultivation Ordinance, the following changes have been recommended, both to clarify our ordinance's applicability to both medicinal and "adult use" cultivation under Prop. 64, and to address some "clean up" issues that have arisen during implementation of the current ordinance:

- Establishment of a uniform rule of six plants per premises maximum, cultivated on non-vacant parcels only.
- Provide for a registration process to uniformly cover both medicinal and non-medicinal cultivation. (The current process requires evidence of a doctors' recommendation, which is no longer necessary after Prop. 64.)
- Provide for setbacks and "waiver" provisions to authorize waivers - in appropriate cases - of the setback on case-by-case basis, thereby ensuring that our restrictions are always "reasonable" as applied
- Explicitly prohibit "commercial" cannabis cultivation, including both medicinal and non-medicinal cannabis business activities, as defined in state law, except as otherwise provided for in the cannabis businesses ordinance (proposed Ordinance adding Ch. 7.02).
- Allow administrative hearings to be conducted by the hearing officer (a proposed ordinance establishing the office of the hearing officer will be forthcoming).
- Eliminate the criminal penalty for the ordinance, and clarify that violation is neither a misdemeanor nor an infraction. (This change would conform to current case law.
 - Provide a \$1,000/day administrative penalty for unlawful cultivation.
 - Eliminate the limited immunity and amortization provisions

The resolution is still being finalized at the time of posting the agenda and will be provided under separate cover.

BUDGETED:

SBC BUDGET LINE ITEM NUMBER:

CURRENT FY COST:

STAFF RECOMMENDATION:

a) Conduct public hearing regarding the draft Personal Cultivation of Cannabis Ordinance (amending Chapter 11.15 of the San Benito County Code);

and

b) Consider adoption of a resolution recommending that the Board of Supervisors adopt an Ordinance amending Chapter 11.15 of the San Benito County Code relating to Personal Cultivation of Cannabis, which is consistent with the 2035 General Plan, exempt from the requirements of 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), in addition to being categorically exempt from review under CEQA under the Class 8 Categorical Exemption (regulatory activity to assure the protection of the environment), and directs the RMA Director file a Notice of Exemption upon adoption of the ordinance.

ADDITIONAL PERSONNEL:

ATTACHMENTS:

Description

Ch. 11.15 - Personal Cultivation of Cannabis

Upload Date Type

6/16/2017

Ordinance

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.:
AMENDING CHAPTER 11.15 OF THE SAN BENITO)
COUNTY CODE RELATING TO PERSONAL)
CULTIVATION OF CANNABIS)

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

SECTION 1. Chapter 11.15, “Personal Cultivation of Cannabis” shall be amended as follows:

Chapter 11.15: Personal Cultivation of Cannabis.

- 11.15.010 - Authority and Title.
- 11.15.020 - Findings and Purpose.
- 11.15.030 - Definitions.
- 11.15.040 - Nuisance Declared; Prohibition on Cultivation.
- 11.15.050 - Nuisance Abatement Authority.
- 11.15.060 - No Duty to Enforce.
- 11.15.070 - Duty of Owners and Occupants; No Unlawful Activity Permitted.
- 11.15.080 - Other Nuisance.
- 11.15.090 - Administrative Civil Penalties.
- 11.15.095 - Notices.
- 11.15.100 - Service of Notices.
- 11.15.105 - Recordation of Notices.
- 11.15.110 - Administrative Hearing.
- 11.15.115 - Enforcement of Abatement Order.
- 11.15.120 - Liability for Abatement Costs and/or Administrative Penalties; Interest.
- 11.15.125 - Lien Hearing.
- 11.15.130 - No Vested or Non-Conforming Rights.
- 11.15.140 - Severability.
- 11.15.145 - Fees.
- 11.15.150 - Enforcement by Civil Action.
- 11.15.160 - Summary Abatement.
- 11.15.170 - Remedies Cumulative.
- 11.15.180 - No Criminal Penalty.

SECTION 2. Section 11.15.010 of the San Benito County Code is hereby repealed.

SECTION 3. Section 11.15.010 is hereby added to the San Benito County Code to read:

11.15.010 - AUTHORITY AND TITLE.

Pursuant to the authority granted by Article XI, section 7 of the California Constitution, Health and Safety Code sections 11362.2, subdivision (b), 11362.777, subdivision (g), and 11362.83, and Government Code sections 25845 and 53069.4, the Board of Supervisors does enact this Chapter, which shall be known and may be cited as the "San Benito County Personal Cultivation of Cannabis Ordinance."

SECTION 4. Section 11.15.020 of the San Benito County Code is hereby repealed.

SECTION 5. Section 11.15.020 is hereby added to the San Benito County Code to read:

11.15.020 - FINDINGS AND PURPOSE

- (A) California's medicinal cannabis laws, the Compassionate Use Act (California Health and Safety Code section 11362.5), the Medical Marijuana Program (California Health and Safety Code sections 11362.7 et seq.), and the Medical Cannabis Regulation and Safety Act (California Business and Professions Code sections 19300 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 medicinal cannabis.
- (B) The Adult Use of Marijuana Act (California Health and Safety Code sections 11362.1 et seq. and California Business and Professions Code sections 26000 et seq.) likewise recognizes and preserves the authority of cities and counties to enact and enforce reasonable regulations for the cultivation of non-medicinal (sometimes referred to as "recreational marijuana" or "recreational cannabis").
- (C) 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 cannabis cultivation. There have been multiple cannabis grows located within San Benito County within the last year.
- (D) The limited immunity from specified state cannabis 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.
- (E) 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 . . ."

- (F) The unregulated cultivation of medicinal or non-medicinal cannabis 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 cannabis 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 cannabis cultivation, and that are especially significant if the cultivation occurs outdoors, or if the amount of cannabis cultivated on a single premises is not regulated and substantial amounts of cannabis are thereby allowed to be concentrated in one place.
- (G) 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.
- (H) The cultivation of cannabis 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 cannabis 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 cannabis within the unincorporated area of San Benito County.
- (I) The indoor cultivation of cannabis 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.
- (J) Cannabis 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.

- (K) Cultivation of any amount of cannabis at locations or premises within one-thousand (1,000) feet of schools, school bus stops, school evacuation sites, churches, parks, child care centers, or youth-oriented facilities creates unique risks that the cannabis plants may be observed by juveniles, and therefore be especially vulnerable to theft or recreational consumption by juveniles. Further, the potential for criminal activities associated with cannabis cultivation in such locations poses heightened risks that juveniles will be involved or endangered. Therefore, cultivation of any amount of cannabis in such locations or premises is especially hazardous to public health, safety, and welfare, and to the protection of children and the person(s) cultivating the cannabis plants. To adequately address these risks, it is proper and necessary that requests to cultivate cannabis in such locations be considered on a case-by-case basis through a waiver process administered by the San Benito County Resources Management Agency.
- (L) The cultivation or other concentration of cannabis 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.
- (M) The cultivation of cannabis upon vacant lots (i.e., premises without a permitted residential use) presents a heightened risk of the harms that Chapter 11.15 was designed to prevent, including criminal activity, degradation of the natural environment, malodorous smells, and indoor electrical fire hazards, due to the absence of an onsite caretaker eligible to cultivate marijuana in accordance with State law. Cannabis cultivation upon vacant lots is more likely to violate the registration, setback, plant limit, security, and location requirements of this Chapter than cannabis cultivated accessory to a permitted residential use, is more likely to be diverted to unlawful use, and is less likely to serve the legitimate needs of persons cultivating cannabis in accordance with State law. Limiting the cultivation of cannabis to premises that contain a permitted residential use 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 area of the County of San Benito.
- (N) 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 interests of persons choosing to cultivate and use marijuana and promotes the health, safety, and welfare of the residents and businesses within the unincorporated area of the County of San Benito. This Chapter is intended to be consistent with California's medicinal cannabis laws and the Adult Use of Marijuana Act, and towards that end, is not intended to prohibit persons from individually or jointly 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 cannabis may be cultivated, including restrictions on the amount of cannabis that may be individually or jointly cultivated in any location or premises, in order to protect the public health, safety, and welfare in San Benito County.
- (O) In order to ensure compliance with the regulations set forth in the Personal Cultivation of Cannabis Ordinance, facilitate enforcement in the event of non-

compliance, and reduce hazards to emergency and other public agency personnel responding to premises where cannabis is cultivated, it is reasonable, proper, and necessary to require that all premises where cannabis is cultivated register annually with the San Benito County Resources Management Agency.

- (P) Neither California's medicinal cannabis laws nor the Adult Use of Marijuana Act 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 cannabis in the unincorporated area of San Benito County.
- (Q) Nothing in this ordinance shall be construed to allow the cultivation or use of cannabis for commercial or business purposes, or allow any activity relating to the cultivation, distribution, or consumption of cannabis that is otherwise illegal under State or federal law. No provision of this Chapter shall be 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.

SECTION 6. Section 11.15.030 of the San Benito County Code is hereby repealed.

SECTION 7. Section 11.15.030 is hereby added to the San Benito County Code to read:

11.15.030 - DEFINITIONS.

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

- (A) "Cannabis" shall have the meaning set forth in the California Business and Professions Code Section 19300.5, subdivision (f), the Medical Cannabis Regulation and Safety Act, as it was enrolled in 2015 in AB 266. This definition includes medicinal cannabis or non-medicinal cannabis.
- (B) "Cannabis plant" means any mature or immature cannabis plant, or any cannabis seedling.
- (C) "Child care center" means any licensed child care center, day care center, or childcare home, or any preschool.
- (D) "Church" means a structure or leased portion of a structure, which is used primarily for religious worship and related religious activities.
- (E) "Contiguous" shall mean any two parcels of real property which share a mutual boundary. Parcels shall be considered as contiguous units, even if it is separated by roads, streets, utility easements or railroad rights-of-way.
- (F) "Day care center" shall have the meaning set forth in the California Health and Safety Code Section 1596.76.
- (G) "County Hearing Officer" means a person designated by the Board of Supervisors and appointed to the position of Hearing Officer, as established by San Benito County Code Chapter 1.07, and who is independently authorized to conduct administrative hearings and issue decisions and orders pursuant to and as authorized by the San Benito County Code.

- (H) "Cultivation" means any activity involving the propagation, planting, growing, harvesting, drying, curing, grading, processing, trimming, or storage 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.
- (I) "Cultivation site" means a location where cannabis is cultivated.
- (J) "Enforcing officer" of "code enforcement officer" shall mean the San Benito County Resources Management Agency Director, Building Official, Building Inspector, Health Officer, Sheriff, Agricultural Commissioner, or their authorized deputies or designee(s), and 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 Number No. 90-27 and Ordinances 567 and 625, each of whom is independently authorized to enforce this Chapter.
- (K) "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.
- (L) "Immature plant" means a cannabis plant that has not begun to bloom or flower.
- (M) "Indoor cultivation" means cultivation that is conducted within a fully enclosed, permitted building or structure, accessible only through one or more locking doors, which is secure against unauthorized entry. Indoor cultivation includes cultivation within a greenhouse or similar structure.
- (N) "Legal parcel" means any parcel of real property 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 "premises" for purposes of this Chapter.
- (O) "Mature plant" means a cannabis plant that has begun to bloom or flower; or that contains one or more blooms, flowers, or buds.
- (P) "Outdoor cultivation" means cultivation that is not conducted within a fully enclosed, permitted building, accessible only through one or more locking doors, which is secure against unauthorized entry. Outdoor cultivation includes, without limitation, cultivation of cannabis within a "hoop house" or similar structure.
- (Q) "Premises" shall mean a single, legal parcel of real 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.
- (R) "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.

- (S) "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.
- (T) "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.
- (U) "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.
- (V) "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.

SECTION 8. Section 11.15.040 of the San Benito County Code is hereby repealed.

SECTION 9. Section 11.15.040 is hereby added to the San Benito County Code to read:

11.15.040 - NUISANCE DECLARED; PROHIBITION OF CULTIVATION

The following regulations shall apply to premises used for cannabis cultivation in the unincorporated area of San Benito County, and shall be imposed regardless of the number of persons residing at the premises or participating directly or indirectly in the cultivation, and shall further be imposed notwithstanding any assertion that the person(s) cultivating the cannabis are qualified patients or the primary caregiver(s) for qualified patients or that such person(s) are collectively or cooperatively cultivating cannabis:

- (A) The cultivation of more than six (6) cannabis plants on any premises is hereby declared to be unlawful and a public nuisance that may be abated in accordance with this Chapter.
- (B) Except as provided in a waiver granted in accordance with subdivision (C), the cultivation of cannabis, in any amount or quantity, upon any premises located within one-thousand (1,000) feet of any school, school bus stop, school evacuation site, church, park, child care center, or youth-oriented facility. Such distance shall be measured in a straight line from the boundary line of the premises upon which the school, school bus stop, school evacuation site, church, park, child care center, or youth-oriented facility is located to the nearest of either:
 1. If the cannabis is cultivated outdoors, to the boundary line of the premises upon which cannabis is cultivated, or

2. If the cannabis is cultivated indoors, to the nearest exterior wall of the building or structure within which cannabis is cultivated.
- (C) The cultivation of cannabis, in any amount or quantity, either indoors or outdoors, on any premises, is hereby declared to be unlawful and a public nuisance that may be abated in accordance with this Chapter, unless all of the following conditions are satisfied:
1. The person(s) owning, leasing, occupying, or having charge or possession of any premises have submitted the required annual registration for the premises and provided all of the following current information and documentation to the San Benito County Resources Management Agency:
 - i. The name of each person, owning, leasing, occupying, or having charge or possession of the premises;
 - ii. The name of each person who participates in the cultivation, either directly or by providing reimbursement for cannabis or the services provided in conjunction with the provision of that cannabis;
 - iii. A description of the cultivation site and number of cannabis plants.
 - iv. The number of cannabis plants to be cultivated on the premises; and
 - v. If the person(s) cultivating cannabis on any legal parcel is/are not the legal owner(s) of the parcel, such person(s) shall submit a notarized letter from the legal owner(s) acknowledging and consenting to permit the cultivation of cannabis to be conducted on the parcel by the registrant. This letter shall be examined by the Resources Management Agency and may then be returned. The Resources Management Agency may prescribe forms for such letter.
 - vi. Such other information and documentation as the San Benito County Resources Management Agency determines is necessary to ensure compliance with State law and this Chapter.

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.

The San Benito Resources Management Agency may refuse to accept a registration for any premises upon which cannabis cultivation is being conducted, or is proposed to be conducted, in violation of this Chapter. The acceptance of a registration pursuant to this Chapter shall not be deemed or construed to be a permit for or approval of any violation of this Chapter. The acceptance of a registration shall not prevent the enforcing officer from thereafter requiring correction of violations or from preventing cannabis cultivation being carried out thereunder when in violation of this Chapter.

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

Every registration under this Chapter shall be valid for no more than one (1) calendar year and shall expire on December 31st of that year. An expired registration shall be renewed in the same manner as an initial registration hereunder. In the event that the registration of any premises for any calendar year is submitted after March 1st of that year, the registrant shall pay a late registration penalty equal to fifty percent (50%) of the applicable registration fee. The Director of the Resources Management Agency may waive the late registration penalty if the failure to timely register was due to reasonable cause and not due to willful neglect.

At the time of registration, the owner or occupant of the premises may submit a written request that the Director of the Resources Management Agency waive the application of any provision of Subdivision (B) based upon a finding of unusual hardship or other good cause. Waiver requests shall not be unreasonably denied. In the event that the California Attorney General issues a determination under California Health and Safety Code section 11362.2, subdivision (b)(4). The Director of the Resources Management Agency shall grant or deny each waiver request in writing, and may impose reasonable conditions upon any waiver granted. If granted, the waiver shall remain valid until expiration of the registration, at which time the waiver shall also expire. Renewal of any such waiver may be requested at the same time as renewal of registration. If the waiver request is denied or conditioned, the owner or occupant may submit a written appeal to the Clerk of the Board of Supervisors within ten (10) calendar days. If the County Hearing Officer has been appointed, as established by Chapter 1.07 of the San Benito County Code, the appeal shall be heard by the County Hearing Officer; otherwise the appeal shall be heard by the Board of Supervisors. The Board of Supervisors or the County Hearing Officer, as applicable, shall consider the matter *de novo*, and may affirm, reverse, or modify the determination of the Director of the Resources Management Agency. The decision of the Board of Supervisors or County Hearing Officer, as applicable, shall be final and conclusive.

2. The cultivation site shall be set back at least one-hundred (100) feet from all boundaries of the premises. Such distance shall be measured in a straight line from the boundary line of the premises to the nearest of either:
 - i. If the cannabis is cultivated outdoors, to the nearest cannabis plant or to the nearest portion of the fence surrounding the cannabis plants, or
 - ii. If the cannabis is cultivated indoors, to the nearest exterior wall of the building or structure within which cannabis is cultivated.
3. If the cultivation is conducted outdoors and within one-thousand (1,000) feet of any residence on a separate legal parcel, the cultivation site must be conducted within a fully fenced area, with the fence no less than six (6) feet in height.
4. If the cultivation is conducted indoors, the structure must comply with the following standards:
 - i. 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.

- ii. 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.
 - iii. 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.
 - iv. 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.
 - v. Structures that are exempt from Building Permits shall not be used for the cultivation of cannabis.
- (D) The cultivation of cannabis, in any amount or quantity upon any premises is hereby declared to be unlawful and a public nuisance that may be abated in accordance with this Chapter, unless the premises contains a permitted residential use. For purposes of this subdivision, "permitted residential use" shall mean actual residential use of the premises that is conducted in a residential structure or manufactured home on a permanent foundation for which a final certificate of occupancy has been issued in accordance with Titles 19, 21, and 25 of the San Benito County Code.
- (E) The cultivation of cannabis, in any amount or quantity upon any premises, in connection with any cannabis business as defined in Chapter 7.02 of the San Benito County Code, or "commercial cannabis activity," as defined in the Medical Cannabis Regulation and Safety Act, or any "commercial marijuana activity," as defined in the Adult Use of Marijuana Act, or by any licensee or person required to obtain a license under either statute, is hereby declared to be unlawful and a public nuisance that may be abated in accordance with this Chapter, except as expressly provided in Chapter 7.02 of the San Benito County Code.
- (F) 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.
- (G) The extraction and refinement of chemical compounds from cannabis by way of a solvent-based method utilizing compressed flammable gases or alcohol in violation of state law is prohibited.
- (H) Subdivisions (A) and (E) of this Section shall not apply to applicants granted an extended amortization period by the San Benito County Board of Supervisors in accordance with the provisions of Ordinance 949 until the expiration of such extended amortization granted to said applicant. Upon expiration of any extended amortization period granted by the Board of Supervisors, applicants shall be

required to conform to the requirements of Chapter 11.15 regulating personal cannabis cultivation and/or Chapter 7.02 regulating cannabis businesses.

Acts, omissions, or conditions in violation of this Chapter that continue, exist, or occur on more than one (1) calendar day constitute separate violations on each day. Violations continuing, existing, or occurring on the service date, the effective date, and each day between the service date and the effective date are separate violations.

SECTION 10. Section 11.15.050 of the San Benito County Code is hereby repealed.

SECTION 11. Section 11.15.050 is hereby added to the San Benito County Code to read:

11.15.050 - NUISANCE ABATEMENT AUTHORITY.

- (A) 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 issues 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.
- (B) Whenever the enforcing officer determines that a public nuisance as described in Chapter exists on any premises within the unincorporated area of San Benito County, he or she is authorized to do any one or more of the following:
 - 1. 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, or any other action authorized by law; or
 - 2. Abate the nuisance in accordance the procedures of Sections 11.15.100 through and including 11.15.120; or
 - 3. Determine and collect an administrative civil penalty in accordance with the procedures provided in Sections 11.15.090 through and including 11.15.120; or
 - 4. Seek relief from any court to abate the nuisance and/or collect civil penalties through the Office of the County Counsel, without first going through the administrative procedures set forth in this Chapter.
 - 5. Notwithstanding any other provision of this Chapter, when any unlawful cannabis cultivation constitutes an immediate threat to public health or safety, and when the procedures set forth in Sections 11.15.090 through and including 11.15.126 would not result in abatement of that nuisance within a short enough time period to avoid that threat, the enforcing officer may direct any officer or employee of the county to summarily abate the nuisance. The enforcing officer shall make reasonable efforts to notify the persons identified in Section 11.15.095 but the formal notice and hearing procedures set forth in this Chapter shall not apply. The County may nevertheless recover its costs for abating that nuisance in the manner set forth in Sections 11.15.095 through and including 11.15.110.

SECTION 12. Section 11.15.060 of the San Benito County Code is hereby repealed.

SECTION 13. Section 11.15.060 is hereby added to the San Benito County Code to read:

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 any notice hereunder, nor to abate any unlawful cannabis cultivation, nor to take any other action with regard to any unlawful cannabis cultivation, and neither the enforcing officer nor the County of San Benito shall be held liable for failure to issue any notice hereunder, nor for failure to abate any unlawful cannabis cultivation, nor for failure to take any other action with regard to any unlawful cannabis cultivation.

SECTION 14. Section 11.15.070 of the San Benito County Code is hereby repealed.

SECTION 15. Section 11.15.070 is hereby added to the San Benito County Code to read:

11.15.070 – 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.

SECTION 16. Section 11.15.080 of the San Benito County Code is hereby repealed.

SECTION 17. Section 11.15.080 is hereby added to the San Benito County Code to read:

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 cultivation of cannabis plants or any part thereof from any location, indoor or outdoor, including from within a fully enclosed and secure building or structure.

SECTION 18. Section 11.15.090 of the San Benito County Code is hereby repealed.

SECTION 19. Section 11.15.090 is hereby added to the San Benito County Code to read:

11.15. 090 – ADMINISTRATIVE CIVIL PENALTIES

- (A) In addition to any other remedy or penalty prescribed in this Chapter, any nuisance as described in this Chapter may be subject to an administrative penalty of up to one-thousand dollars (\$1,000.00) per day.
- (B) In determining the amount of the administrative penalty, the enforcing officer, or the court if the violation requires court enforcement without an administrative process, shall take into consideration the nature, circumstances, extent, and gravity

of the violation or violations, any prior history of violations, the degree of culpability, economic savings, if any resulting from the violation, and any other matters justice may require.

- (C) The administrative penalty may be imposed via the administrative process set forth in Sections 11.15.095 through and including 11.15.110, 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) The enforcing officer may commence the administrative process by issuing an NOV in accordance with Section 11.15.095. In the case of a continuing violation, if the violation does not create an immediate danger to health or safety, the enforcing officer or the court shall provide for a reasonable period of time, not to exceed six (6) calendar days, for the person responsible for the violation to correct or otherwise remedy the violation prior to the imposition of administrative penalties.

SECTION 20. Section 11.15.095 is hereby added to the San Benito County Code to read:

11.15.095 – NOTICES

Whenever the enforcing officer determines that a public nuisance as described in this Chapter exists on any real property within the unincorporated area of San Benito County, he or she is authorized to issue notices 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 the notices provided in Chapter 1.06, to abate the nuisance before the imposition of any civil administrative penalty under this Chapter. Furthermore, the violator shall be provided with ten (10) calendar days, from issuance of an NOV provided in Chapter 1.06, to submit a written request for hearing to the Resources Management Agency.

SECTION 21. Section 11.15.100 of the San Benito County Code is hereby repealed.

SECTION 22. Section 11.15.100 is hereby added to the San Benito County Code to read:

11.15.100 – SERVICE OF NOTICES

- (A) Any notice issued by the enforcing officer in accordance with this Chapter shall be served in the following manner:
 - 1. By either:
 - i. Delivering it personally to the owner and to the occupant. Service shall be deemed to have been completed upon personal delivery; or
 - ii. By overnight mail, addressed to (i) the owner at the address shown on the last equalized assessment roll or as otherwise known to the enforcing officer, and (ii) to anyone known to the enforcing officer to be in possession of the property at the street address of the property subject to the notice, if the property is capable of receiving mail. Service shall be deemed to have been completed upon the deposit of said notice, postage prepaid, in the United States mail; and
 - 2. In the event that, after reasonable effort, the enforcing officer is unable to serve the notice as set forth above, service shall be accomplished by posting a copy of such notice conspicuously along the frontage of the real property subject to the

notice, or if the property has no frontage, upon any street, highway, or road then upon the portion of the property nearest to a street, highway, or road, or most likely to give actual notice to the owner and any person known by the enforcing officer to be in possession of the property. Service shall be deemed to have been completed upon posting.

- (B) The failure to serve any person described in this subsection shall not affect the validity of service or the validity of any administrative penalties imposed pursuant to this Chapter upon any other person.

The failure of any owner or occupant to receive such notice shall not affect the validity of the proceedings.

SECTION 23. Section 11.15.105 is hereby added to the San Benito County Code to read:

11.15.105 – RECORDATION OF NOTICES

Whenever the enforcing officer determines that a public nuisance as described in this Chapter exists on any real property within the unincorporated area of San Benito County, he or she is authorized to record notices pursuant to Section 1.06.100 of the San Benito County Code.

SECTION 24. Section 11.15.110 of the San Benito County Code is hereby repealed.

SECTION 25. Section 11.15.110 is hereby added to the San Benito County Code to read:

11.15. 110 – ADMINISTRATIVE HEARING.

- (A) If the enforcing officer determines that all violations have been timely corrected, the enforcing officer shall not be required to clear the notice. Timely abatement of a violation under this Chapter shall not prohibit the enforcing officer from seeking a determination of existence of such violation from the County Hearing Officer.
- (B) The Board of Supervisors may delegate its authority to conduct the administrative proceedings set forth in this Section to the County Hearing Officer appointed by the Board of Supervisors pursuant to Chapter 1.07 of the San Benito County Code and Government Code Section 27720, as amended. The Hearing Officer shall have full authority and duty to preside over hearings in the manner set forth in Chapter 1.07 of San Benito County Code.
- (C) Administrative Hearing and Decision or Order:
 - 1. Pursuant to Government Code sections 25845, subdivision (i) and 27721, subdivision (A), the County Hearing Officer shall hold an administrative hearing as follows:
 - i. If the enforcing officer issued a Notice & Order, the hearing shall be held no less than six (6) calendar days after service of the Notice & Order. The County Hearing Officer shall determine whether:
 - a. The conditions existing on the property subject to the Notice & Order constitute a nuisance under this Chapter, and
 - b. There is any other good cause why those conditions should not be abated;

- ii. If the enforcing officer issued a NOV, the hearing shall be held within ten (10) days from receipt of the written request for hearing. The County Hearing Officer shall determine whether:
 - a. The conditions existing on the property subject to the NOV constitute a nuisance under this Chapter;
 - b. To impose, modify, or disapprove, in whole or in part, the proposed penalty set forth in the NOV; and
 - c. The enforcing officer may record the NOV.
 - iii. If the enforcing officer combined a Notice & Order with an NOV, the hearing shall be held no less than six (6) calendar days after service of the Notice. The County Hearing Officer shall determine whether:
 - a. The conditions existing on the property subject to the notice constitute a nuisance under this Chapter,
 - b. There is any other good cause why those conditions should not be abated;
 - c. To impose, modify, or disapprove, in whole or in part, by its own order, the proposed penalty set forth in the notice.
2. The owner(s) and/or occupant(s) of the property shall be given an opportunity at the hearing to present and elicit testimony and other evidence regarding whether the conditions existing on the property constitute a nuisance under this Chapter and whether there is any other good cause why those conditions should not be abated, and/or to contest the proposed amount of administrative penalty. Failure of the owner(s) and/or occupant(s) to appear and present evidence at the hearing shall be deemed a withdrawal of the request for hearing or a waiver of the right to be personally present at the hearing, and shall constitute a failure to exhaust administrative remedies.
 3. In the event owner(s) and/or occupant(s) do not appear and present evidence at the hearing, the County Hearing Officer may base its decision and order solely upon the evidence submitted by the enforcing officer.
 4. Any hearing conducted pursuant to this Chapter need not be conducted according to technical rules relating to evidence, witnesses and hearsay. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs regardless of the existence of any common law or statutory rule which might make improper the admission of the evidence over objection in civil actions. The County Hearing Officer has discretion to exclude evidence if its probative value is substantially outweighed by the probability that its admission will necessitate undue consumption of time.
 5. The standard of proof shall be by a preponderance of the evidence and the burden of proof to establish the existence of the nuisance shall be borne by the enforcing official. The burden of proof that the nuisance has been abated shall be borne by the owner(s) and/or occupant(s).

6. The County Hearing Officer may continue the administrative hearing from time to time. Prior to a scheduled hearing, the enforcing officer or the owner(s) and/or occupant(s) may submit a written request for continuance to the County Hearing Officer within two (2) calendar days following the time the party discovered or reasonably should have discovered the event or occurrence which establishes the good cause for the continuance. The County Hearing Officer shall issue his or her determination by any means likely to provide notice to the parties at the soonest time possible. In the event the request for continuance is granted, the County Hearing Officer shall also provide the date and time for the rescheduled hearing.
7. The County Hearing Officer shall consider the matter *de novo*.
8. After the hearing, the County Hearing Officer shall issue its decision in the form of an order which shall be served by first class mail, postage prepaid, to, or personally served upon, all parties appearing at the hearing and any other parties upon whom the notice was served. The decision shall include the following:
 - i. If the enforcing officer issued a Notice & Order:
 - a. Whether the determinations contained in the Notice & Order are affirmed, modified, or reversed, and
 - b. Findings related to the existence or non-existence of the alleged nuisance, as well as findings concerning the propriety and means of abatement of the conditions set forth in the Notice & Order.
 - ii. If the enforcing officer issued an NOV, whether the proposed penalty set forth in the NOV is imposed, modified, or disapproved, in whole or in part.
 - iii. If the enforcing officer combined a Notice & Order with an NOV, a decision which shall include the contents of the decision set forth in subdivision (A)(8)(i) and subdivision (A)(8)(ii).
9. The County Hearing Officer's Decision shall be final and conclusive when signed by the County Hearing Officer and served as provided herein. Service shall be deemed to have been completed upon personal service and/or the deposit of said decision, postage prepaid, in the United States mail. Payment of an administrative penalty specified in the County Hearing Officer's Decision shall be made to the County within twenty (20) calendar days of service of the Decision, unless timely appealed to the Superior Court in accordance with Government Code section 53069.4, subdivision (b).

SECTION 26. Section 11.15.115 is hereby added to the San Benito County Code to read:

11.15. 115 – ENFORCEMENT OF ABATEMENT ORDER.

- (A) Any owner or occupant may abate the nuisance or cause it to be abated at any time prior to commencement of abatement by, or at the direction of, the enforcing officer. An owner or occupant abating unlawful cannabis cultivation hereunder shall notify the enforcing officer upon completion of abatement. Abatement shall not be deemed completed until the unlawful cannabis cultivation has been completely

removed from the premises and notification has been provided as set forth in this section. Such abatement by any owner or occupant shall not impair the enforcing officer's ability to impose any administrative penalty accrued prior to such abatement.

- (B) Notwithstanding the foregoing, whenever the enforcing officer becomes aware that an owner or occupant has failed to abate any unlawful cannabis cultivation within two (2) calendar days of the date of service of the decision of the County Hearing Officer under this Chapter requiring such abatement, the enforcing officer may enter upon the property and abate the nuisance by county personnel, or by private contractor under the direction of the enforcing officer. The enforcing officer may apply to a court of competent jurisdiction for a warrant authorizing entry upon the property for purposes of undertaking the work, if necessary. If any part of the work is to be accomplished by private contract, that contract shall be submitted to and approved by the board of supervisors prior to commencement of work. Nothing herein shall be construed to require that any private contract under this Code be awarded through competitive bidding procedures where such procedures are not required by the general laws of the State of California.
- (C) The costs of abatement and administrative costs for every abatement carried out under this Section may be recovered in accordance with Sections 11.15.120 through 11.15.126.

SECTION 27. Section 11.15.120 of the San Benito County Code is hereby repealed.

SECTION 28. Section 11.15.120 is hereby added to the San Benito County Code to read:

11.15. 120 – LIABILITY FOR ABATEMENT COSTS AND/OR ADMINISTRATIVE PENALTIES; INTEREST

- (A) In any enforcement action brought pursuant to this Chapter, whether by administrative proceedings, judicial proceedings, or summary abatement, each person who causes, permits, suffers, or maintains the unlawful cannabis cultivation to exist shall be liable for:
 - 1. All costs incurred by the County, including, but not limited to, abatement costs, including administrative costs, and any and all costs incurred to undertake, or to cause or compel any responsible party to undertake, any abatement action in compliance with the requirements of this Chapter, whether those costs are incurred prior to, during, or following enactment of this Chapter. In addition, the prevailing party shall be entitled to a recovery of the reasonable attorneys' fees incurred. Recovery of attorneys' fees under this subdivision shall be limited to those actions or proceedings in which the County elects, at the initiation of that action or proceeding, to seek recovery of its own attorneys' fees. In no action, administrative proceeding, or special proceeding shall an award of attorneys' fees to a prevailing party exceed the amount of reasonable attorneys' fees incurred by the County in the action or proceeding.
 - 2. Any administrative penalty imposed pursuant to this Chapter. In the event that an administrative penalty is imposed pursuant to Sections 11.15.090 through and including 11.15.110 on two (2) or more persons for the same violation, all

such persons shall be jointly and severally liable for the full amount of the administrative penalty imposed. Payment of administrative penalties imposed pursuant to Sections 11.15.090 through and including 11.15.110 does not excuse or discharge any continuation or repeated occurrence of the violation that is the subject of the NOV. Payment of the administrative penalty does not bar the County from taking any other enforcement action regarding a violation that is not corrected.

- (B) Interest shall accrue on all amounts due under this Chapter, from the effective date of the Board of Supervisors' Decision, as set forth in Section 11.15.110, to the date paid pursuant to the laws applicable to civil money judgments.
- (C) At such time as the information becomes known, the enforcing officer shall make a demand for abatement costs and/or accrued administrative penalty by issuing an Invoice in accordance with Section 1.06.080 of the San Benito County Code to the owner(s) and/or occupant(s) of the premises subject to enforcement action.
- (D) Whenever the amount of abatement costs, including administrative costs, incurred by the County to abate the nuisance, or the amount of any administrative penalty imposed pursuant to this Chapter has not been satisfied in full within ninety (90) calendar days after service of the Invoice set forth in Chapter 1.06, and/or has not been timely appealed to the Superior Court in accordance with Government Code section 53069.4, subdivision (b), or if appealed, such appeal has been dismissed or denied, all or any part of, this obligation may constitute a lien against the real property on which the violation occurred in accordance with the procedures set forth in Sections 11.15.125 and 11.15.126.
- (E) In addition to any other legal remedy, the County may prosecute a civil action through the Office of the County Counsel to collect any costs incurred to abate the nuisance and/or any administrative penalty imposed pursuant to this Chapter.

SECTION 29. Section 11.15.125 is hereby added to the San Benito County Code to read:

11.15. 125 – LIEN HEARING; ALTERNATIVE LIEN HEARING PROCEDURE.

At such time as abatement costs and/or administrative penalties due and owing have not timely been paid, the enforcing officer shall follow the lien hearing and/or alternative lien hearing procedures set forth in Sections 1.06.140 and 1.06.150 of the San Benito County Code, except that in the event that the Board of Supervisors sets the matter for *de novo* hearing, such hearing shall be held in accordance with the provisions of Section 11.15.110.

SECTION 30. Section 11.15.130 of the San Benito County Code is hereby repealed.

SECTION 31. Section 11.15.130 is hereby added to the San Benito County Code to read:

11.15. 130 – NO VESTED OR NON-CONFORMING RIGHTS.

Neither this Chapter, nor section 11.15.050, 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 cannabis cultivation.

SECTION 32. Section 11.15.150 is hereby added to the San Benito County Code to read:

11.15.150 – ENFORCEMENT BY CIVIL ACTION.

As an alternative to the procedures set forth in Sections 9.06.050 through 9.06.080, the county may abate the violation of this chapter by the prosecution of a civil action through the office of the county counsel, 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 chapter or requiring compliance with other terms.

SECTION 33. Section 11.15.160 is hereby added to the San Benito County Code to read:

11.15.160 - SUMMARY ABATEMENT.

Notwithstanding any other provision of this chapter, when any unlawful marijuana cultivation constitutes an immediate threat to public health or safety, and when the procedures set forth in Sections 9.06.050 through 9.06.080 would not result in abatement of that nuisance within a short enough time period to avoid that threat, the enforcing officer may direct any officer or employee of the county to summarily abate the nuisance. The enforcing officer shall make reasonable efforts to notify the persons identified in Section 9.06.070, but the formal notice and hearing procedures set forth in this chapter shall not apply. The County may nevertheless recover its costs for abating that nuisance in the manner set forth in Sections 9.06.120 through 9.06.160.

SECTION 34. Section 11.15.170 is hereby added to the San Benito County Code to read:

11.15.170 – 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.

SECTION 35. Section 11.15.180 is hereby added to the San Benito County Code to read:

11.15.180 – NO CRIMINAL PENALTY.

Notwithstanding any other provision of this Code, violation of this Chapter shall not be an infraction or a misdemeanor.

SECTION 36. If any section, subsection, sentence, clause, portion, or phrase of this Ordinance 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.

SECTION 37. 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). 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). The Chief Administrator is hereby directed to file a Notice of Exemption.

SECTION 38. 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:

APPROVED AS TO LEGAL FORM:

Chase Graves, Clerk of the Board

San Benito County Counsel

By: _____
Clerk of the Board

By: _____
Barbara Thompson,
Assistant County Counsel