

ARTICLE VI. MEDICAL MARIJUANA DISPENSARIES

§ 25.29.160 PROHIBITION OF ESTABLISHING OR OPERATION OF MARIJUANA DISPENSARIES.

(A) The establishment, development, construction, maintenance, or operation of a marijuana dispensary is hereby prohibited, and is not a permitted use in any zoning district, even if located within an otherwise permitted use. No person shall establish, develop, construct, maintain, or operate a marijuana dispensary, and no application for a building permit, use permit, variance, or any other entitlement authorizing the establishment, development, construction, maintenance, or operation of any marijuana dispensary shall be approved by the County of San Benito or any officer or employee thereof.

(B) (1) **MARIJUANA DISPENSARY** means any of the following:

(a) Any for profit or not-for-profit facility, building, structure, premises, or location, whether fixed, mobile, permanent or temporary, where any person(s) (including, but not limited to, any "primary caregiver(s)," "qualified patient(s)" or "person(s) with an identification card") makes available, sells, gives, distributes, or otherwise provides marijuana to any two or more other persons (including, but not limited to, any "primary caregiver(s)," "qualified patient(s)" or "person(s) with an identification card") pursuant to Cal. Health and Safety Code §§ 11362.5 *et seq.* and/or §§ 31362.7 *et seq.* or otherwise; or

(b) Any for profit or not-for-profit facility, building, structure, premises, or location, whether fixed, mobile, permanent or temporary, where qualified patients and/or persons with identification cards and/or primary caregivers meet or congregate to make available, sell, give away, distribute, or otherwise provide marijuana for medicinal or other purposes. **MARIJUANA DISPENSARY** includes medicinal marijuana "cooperatives," "collectives," and/or "clubs."

(2) **MARIJUANA DISPENSARY** shall not include the following uses, as long as the location of such uses is otherwise regulated by the San Benito County Code: a clinic licensed pursuant to Cal. Health and Safety Code Chapter 1 of Division 2; a health care facility licensed pursuant to Cal. Health and Safety Code Chapter 2 of Division 2; a residential care facility for persons with chronic life-threatening illness licensed pursuant to Cal. Health and Safety Code Chapter 3.01 of Division 2; a residential care facility for the elderly licensed pursuant to Cal. Health and Safety Code Chapter 3.2 of Division 2; a residential hospice or a home health agency licensed pursuant to Cal. Health and Safety Code Chapter 8 of Division 2; as long as any such use complies strictly with applicable law including, but not limited to, Cal. Health and Safety Code §§ 11362.5 *et seq.* and §§ 11362.7 *et seq.* and the San Benito County Code, including, but not limited, to the Zoning Code (Title 25 of the San Benito County Code).

(3) The terms "primary caregiver," "qualified patient," "person with an identification card," "cooperative," and "collective" shall be as defined in Proposition 215 (Cal. Health and Safety Code § 11362.5) and Senate Bill 420 (Cal. Health and Safety Code §§ 11362.7 *et seq.*).

(C) This section shall not affect the right to possess, use or cultivate marijuana for medicinal purposes as it is presently authorized by the laws of the State of California as set forth in the Cal. Health and Safety Code, Cal. Penal Code, or other state law, or by any federal law.

(D) The word **MARIJUANA** shall have the same meaning as that set forth in Cal. Health and Safety Code § 11018. The term "medical marijuana" is marijuana used for medicinal purposes in strict accordance with Cal. Health and Safety Code §§ 11362.5 and §§ 11362.7 *et seq.*

(E) Conflicting laws. To the extent that there is any conflict between the provisions of this article and the provisions of any other county code, ordinance, resolution, or policy, the provisions of this article shall prevail.

(Ord. 878, § 3, 2011)

ARTICLE VII. TREE PROTECTION

§ 25.29.210 TITLE.

This article shall be known as the San Benito County Permanent Tree Protection Article.

(Ord. 936, § 3 (part), 2015)

§ 25.29.211 PURPOSE AND INTENT AND FINDINGS.

(A) Trees in the residential areas of the county improve the lives of residents;

(B) Residents living in the R-I and RM zones of San Benito County may have less opportunity on a day to day basis to enjoy the natural environment as compared to other county residents living in Rural or Agricultural Districts of the county and in order to preserve and enhance quality of life of such residents, it is important to preserve existing mature trees within these zoning areas of the county;

(C) Tree protection and preservation is necessary for the health and welfare of San Benito County. Trees growing within the county are a natural, aesthetic resource, which help define the character of the county and provide many social, economic and environmental benefits. Trees are worthy of protection in order to preserve the scenic beauty, prevent soil erosion, provide shade and wind protection, serve as a natural buffer between adjacent land uses and counteract air pollution;

(D) It is pertinent to the public peace, harmony and welfare that such trees be protected from indiscriminate cutting or removal of mature trees. Trees have a positive economic effect on the county by making the county a more attractive place in which to live, visit and do business;

(E) This article establishes regulations necessary to ensure that the county will continue to realize the benefits provided by trees in the residential areas of the county, and to preserve mature trees. The purpose of this article is to promote the maintenance of tree cover on public and private lands in the residential areas of the county, while allowing the removal of trees in certain circumstances, including trees existing in the back yards of residential parcels;

(F) It is recognized that the preservation of trees enhances the natural scenic beauty, sustains the long term potential increase in property values which encourages quality development, maintains the original ecology, retains the original tempering effect of extreme temperatures, increases the attractiveness of the county to visitors, helps to reduce soil erosion, and increases the oxygen output of the area which is needed to combat air pollution; and

(G) For these reasons, in order to promote the health, safety, and general welfare, to enhance the beauty of the County of San Benito, and to complement and strengthen zoning, subdivision and land use standards and regulations, while at the same time recognizing individual rights to develop private property, the Board of Supervisors adopts this article to assist in the preservation and protection of individual mature trees within the residential areas of the unincorporated county, while allowing development and modification to residential parcels to continue in an orderly manner.

(Ord. 936, § 3 (part), 2015)

§ 25.29.212 DEFINITIONS.

For the purposes of this article, certain words or terms used herein shall be interpreted as follows: words in the present tense include the future; words in the singular include the plural number.

BOARD or **BOARD OF SUPERVISORS**. The San Benito County Board of Supervisors.

COUNTY. The County of San Benito.

DBH. Diameter at breast height is the diameter of a tree measured at four and one-half feet above the ground while standing on the high side of the tree. The diameter may be calculated by use of the following formula: Diameter = circumference/3.142

DESTROY or **DESTRUCTION**. With regard to a tree (including without limitation its root system), any physical state or condition in which a tree is killed or is so severely damaged that its death is imminent.

DEVELOPED. A parcel containing at least one permitted residential structure.

DRIP LINE. A line which may be drawn on the ground around a tree directly under its outermost branch tips and which identifies that location where rainwater tends to drip from the tree.

PERSON. Any individual, firm, partnership, association, corporation, company, organization or governmental agency.

PROTECTED ZONE. All lands zoned Single Family Residential (R-1) or Residential Multiple District (RM) in the unincorporated areas of the county.

REMOVAL/REMOVE. Removal or remove means the uprooting, cutting or severing of the main trunk, or major branches of a tree or any act which causes, or may be reasonably expected to cause a tree to die, including but not limited to the following: inflicting damage upon the a tree or a root system of a tree by machinery, storage of materials, soil compaction or other means; substantially changing the grade above the root system or trunk of the tree; or excessively or severely pruning or root pruning.

SERIOUS HARM. With regard to a tree, any act or activity that causes damage to a tree (including without limitation its root system), thereby leaving the tree in a physical state that, in the judgment of any Certified Arborist retained by the county; (i) makes the death of the tree reasonably eminent; (ii) significantly shortens the normal life expectancy of the tree; or (iii) makes it impossibly or reasonably unlikely that the Tree can be fully restored to a condition of good health and/or normal appearance within 30 calendar days of such harm having been inflicted.

TREE. As used in this article, a tree shall mean any living tree having at least one trunk of eight inches or more in diameter measured four and one-half feet above the ground, or a multi-trunked tree having an aggregate diameter of ten inches or more, measured four and one-half feet above the ground (dbh). However, **TREE** does not include the following fruit and nut trees: Almonds, Apples, Apricots, Avocados, Cherries, Chestnuts, Mandarins, Nectarines, Olives, Oranges, Peaches, Pears, Pecans, Persimmons, Pistachios, Plums, or English Walnuts. This exception shall only apply to trees varieties which are cultivated for edible fruit production. Decorative, ornamental, landscaping or flowering varieties of the above trees are not exempt.

TREES OF SPECIAL PROTECTION. Shall include any of the following:

- (1) **HERITAGE TREES**. Any tree, regardless of species, which has a trunk diameter of 36 inches or greater measured four and one-half feet above the ground;
- (2) A tree shown to be preserved on an approved Development Plan or specifically required by the Planning Commission to be retained as a condition of approval of an entitlement;
- (3) A tree required to be planted as mitigation or replacement for the removal of a protected tree; and/or

