

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 Section 11.15.010 of the San Benito County Code is hereby repealed.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 Section 11.15.020 of the San Benito County Code is hereby repealed.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