

**REPORT/RECOMMENDATION TO THE BOARD OF SUPERVISORS
OF SAN BERNARDINO COUNTY
AND RECORD OF ACTION**

December 7, 2021

FROM

TERRI RAHHAL, Director, Land Use Services Department

SUBJECT

Introduction of Ordinances Amending Title 8 and Repealing and Reenacting Chapter 2 of Division 1 of Title 1 of the San Bernardino County Code Pertaining to County Code Violations and Enforcement

RECOMMENDATION(S)

1. Conduct a public hearing to consider a proposed ordinance to add Section 84.34.080, relating to abatement of items used to facilitate cannabis cultivation, and amend Section 86.09.090, relating to classification of violations as a misdemeanor offense.
2. Adopt findings recommended by the Planning Commission for adoption of proposed ordinance.
3. Make alterations, if necessary, to proposed ordinance.
4. Approve introduction of proposed ordinance.
 - a. An ordinance of San Bernardino County, State of California, to add Section 84.34.080 to Chapter 84.34 of Division 4 of Title 8 of the San Bernardino County Code relating to items typically used to facilitate the cultivation of cannabis and to amend Section 86.09.090 of Chapter 86.09 of Division 6 of Title 8 of the San Bernardino County Code relating to classifying all violations of the Development Code as misdemeanors unless otherwise stated.
5. SCHEDULE ORDINANCE FOR FINAL ADOPTION ON TUESDAY, DECEMBER 14, 2021, on the Consent Calendar.
6. Direct the Clerk of the Board to file a Notice of Exemption.
7. Consider proposed ordinance repealing and reenacting Chapter 2 of Division 1 of Title 1 of the San Bernardino County Code, relating to enforcement options and procedures to address violations of the County Code, including but not limited to violations of the County Code concerning illegal commercial cannabis activities.
8. Make alterations, if necessary, to proposed ordinance.
9. Approve introduction of proposed ordinance.
 - a. An ordinance of San Bernardino County, State of California, to repeal and add Chapter 2 of Division 1 of Title 1 of the San Bernardino County Code relating to procedures to enforce violations of the San Bernardino County Code.
10. SCHEDULE ORDINANCE FOR FINAL ADOPTION ON TUESDAY, DECEMBER 14, 2021, on the Consent Calendar.
11. Direct the Clerk of the Board to file a Notice of Exemption.
(Presenter: Terri Rahhal, Director, 387-4431)

COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES

Ensure Development of a Well-Planned, Balanced, and Sustainable County.

**Introduction of Ordinances Amending Title 8 and Repealing and
Reenacting Chapter 2 of Division 1 of Title 1 of the San Bernardino
County Code Pertaining to County Code Violations and Enforcement
December 7, 2021**

Provide for the Safety, Health and Social Service Needs of County Residents.

FINANCIAL IMPACT

Approval of these ordinances will not result in the use of additional Discretionary General Funding (Net County Cost). Adequate appropriation and revenue to complete this action have been included in the Land Use Services Department (LUS) 2021-22 budget.

BACKGROUND INFORMATION

The recommended actions consist of two ordinances. The first ordinance is an amendment to Title 8 (Development Code) of the County Code related to declaring certain equipment and structures used in connection with unlawful cannabis cultivation a public nuisance subject to abatement. In addition, the ordinance declares all violations of the Development Code a misdemeanor offense, unless indicated otherwise. The second ordinance is an amendment to Title 1 of the County Code related to alternative enforcement mechanisms and procedures available for enforcing violations of the County Code, including violations related to illegal commercial cannabis activities.

Title 8 Ordinance

On August 10, 2021 (Item No. 43), the Board of Supervisors passed an urgency ordinance, amending the County Code by establishing increased penalties and fines for violations of the commercial cannabis prohibition. As the County proceeds with enforcement of the illegal cannabis cultivation sites that have proliferated in the high desert, abatement of the remaining structures and equipment associated with each site may be necessary. The operators of illegal cultivation sites regularly utilize certain equipment and structures to facilitate the illegal cultivation of cannabis, which are critical to their operations. Examples of equipment and structures include items such as hoop houses, sheds, fencing, lights, fans and evaporative coolers. When these illegal cultivation sites are shut down by County employees, the operators typically abandon their equipment and structures, leaving a blight on our desert communities. The proposed amendment to the Development Code provides for these items, when found at illegal cannabis cultivation sites and directly connected to cannabis cultivation activity, to be declared a public nuisance and subject to abatement and destruction. Furthermore, changes to section 11.0203, as included in the second ordinance, would give jurisdiction to abate violations of the County Code to Enforcement Officers directly.

In addition to the above, the proposed ordinance will reclassify each violation of the Development Code as a misdemeanor offense unless indicated otherwise. Pursuant to Government Code Section 25132, violations of a county ordinance are by default a misdemeanor unless by ordinance it is made an infraction. With limited exceptions, currently all violations of the Development Code are classified as infractions. In order to provide greater flexibility to the County to address more severe violations of Title 8, reclassifying all violations of the Development Code as misdemeanors consistent with Government Code Section 25132 is necessary. While a misdemeanor violation can always be charged as a lesser offense (e.g., infraction), a violation that is an infraction cannot be charged as a misdemeanor.

Planning Commission

The proposed ordinance amending the Development Code was considered in a public hearing by the Planning Commission on October 21, 2021. During the public hearing, the Planning

**Introduction of Ordinances Amending Title 8 and Repealing and
Reenacting Chapter 2 of Division 1 of Title 1 of the San Bernardino
County Code Pertaining to County Code Violations and Enforcement
December 7, 2021**

Commission asked for clarification regarding the potential impacts on property owners that may not be aware of the violations occurring on their property. County staff explained standard practices for working with owners who are truly unaware of violations on their properties. These include educating the owner about the violations and trying to allow time for the owner to bring the property into compliance, with an emphasis on addressing safety concerns first. The Planning Commission unanimously recommended approval of the proposed ordinance with a 5-0 vote.

Title 1 Ordinance

Subject to the requirements of due process, state law authorizes various enforcement mechanisms for the abatement of violations of a county ordinance. Due process requires proper noticing and the right of appeal. The procedures established in the proposed amendments to Chapter 2 of Division 1 of Title 1 of the County Code will be standardized to assist with expedited abatement for cannabis, as well as other nuisances that may require abatement. This includes noticing requirements, appeal rights, and procedures that predominately mirror those already applicable in administrative citation actions. Other key amendments proposed for this Chapter expand the enforcement authority to “enforcement officers” defined to specifically include Code Enforcement, where previously enforcement authority was limited to specified agencies. Another important revision to Section 11.0208 adopts the provisions in Government Code Section 53069.4(2)(B), which authorizes administrative citations to be issued immediately for specified violations existing in relation to the illegal cultivation of cannabis, instead of providing a Notice of Violation and reasonable time to correct before issuance. Additional provisions are also included that would allow abatement costs incurred by the County to abate violations on a property to be placed as a lien on the abated property to ensure cost recovery and reimburse the County taxpayers.

California Environmental Quality Act Compliance

The proposed ordinances would amend the County Code for the purpose of abatement and enforcement activities that will reduce environmental impacts. Therefore, the ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15061(b)(3) of the CEQA Guidelines because it can be determined with certainty that the proposed ordinance will not have a significant effect on the environment.

PROCUREMENT

Not applicable.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Jason Seales, Deputy County Counsel, 387-5455; Daniel Pasek, Deputy County Counsel, 387-9000) on November 8, 2021; Finance (Kathleen Gonzalez, Administrative Analyst III, 387-5412) on November 12, 2021; and County Finance and Administration (Robert Saldana, Deputy Executive Officer, 387-5423) on November 17, 2021.

**Introduction of Ordinances Amending Title 8 and Repealing and
Reenacting Chapter 2 of Division 1 of Title 1 of the San Bernardino
County Code Pertaining to County Code Violations and Enforcement
December 7, 2021**


Record of Action of the Board of Supervisors
San Bernardino County

Hearing Opened
Public Comment: Amy Tessier, Jeff Taylor
The Board approved changes to the ordinance
Hearing Closed

APPROVED AS AMENDED

Moved: Dawn Rowe Seconded: Joe Baca, Jr.
Ayes: Col. Paul Cook (Ret.), Janice Rutherford, Dawn Rowe, Curt Hagman, Joe Baca, Jr.

Lynna Monell, CLERK OF THE BOARD

BY 
DATED: December 7, 2021



cc: LUSD - Rahhal w/ NOEs
File - FINAL BAI

JLL 12/13/2021