ORDINANCE NO. 2011-02

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF GUADALUPE, ARIZONA, AMENDING THE TOWN OF GUADALUPE ZONING ORDINANCE ARTICLE 2, PART II COMMERCIAL DISTRICTS, SECTION 2.5 PERMITTED USES IN THE COMMERCIAL CM – MIXED USE DISTRICT AND ADDING ARTICLE 2, PART III TO ADD REASONABLE REGULATIONS TO IMPLEMENT THE ARIZONA MEDICAL MARIJUANA ACT APPROVED BY THE VOTERS ON NOVEMBER 2, 2010, AS PROPOSITION 203.

The Mayor and Town Council of Guadalupe make the following legislative findings:

The Arizona Medical Marijuana Act, Proposition 203, approved by voters in the statewide election on November 2, 2010, provides for defined possession, use, distribution and transportation of marijuana for medical use within the State of Arizona.

Federal law and related regulations classify marijuana as a Schedule I controlled substance and prohibit its cultivation, possession, dispensing and use, among other things, for medical reasons.

Federal agencies, including the United States Drug Enforcement Administration, Food and Drug Administration, Office of National Drug Control Policy, have concluded that no sound scientific studies support the safe and effective use of marijuana for treatment of any disease or condition or do not support the use of smoked marijuana for medical purposes.

Arizona law, likewise, prohibits the possession, delivery, manufacture, cultivation and sale of marijuana.

Law enforcement and residents of states that authorize the medical use of marijuana report, among other things, that dispensaries and the medical use of marijuana are correlated to myriad negative secondary effects such as an increase in violent armed robberies and murders, burglaries, traffic, noise and drug dealing, in gangs and gang activity, organized crime and other issues related to the presence of large amounts of cash, such as money laundering and firearms violations, and the underreporting of crimes committed at medical marijuana dispensaries, the creation of opportunities for the diversion of marijuana for medical use into illegal use and a disregard of environmental standards.

States that authorize the medical use of marijuana also report an increase in social costs related to the medical use of marijuana such as increased gang activity, poisonings, structural fires and mold growth, decreased quality of life and loss of business tax revenue.

Under the Arizona Act, the State issues Registry Identification Cards and renewals and adopts rules governing nonprofit medical marijuana dispensaries.

Under the Arizona Act, the Town of Guadalupe is expressly permitted to enact reasonable zoning regulations that limit the use of land for registered nonprofit medical marijuana dispensaries. Arizona law also allows the Town of Guadalupe to enact zoning regulations to protect and promote the public

health, safety and general welfare and regulate the use of buildings, structures and land as between agriculture, residence, industry, business and other purposes.

The current Town Code and Zoning Ordinance for the Town of Guadalupe does not address or regulate the establishment, location or operation of these dispensaries and related cultivation activities. The regulations, limits and prohibitions established in this Ordinance, including among other things, minimum separation requirements, environmental issues and security plans, will reduce or eliminate threats to the public health, safety and general welfare. The regulations, limits and prohibitions established in this Ordinance are necessary to protect and preserve the public health, safety and general welfare.

Nothing in this Ordinance is intended to establish any land use which violates federal or state law. Nothing in this Ordinance is intended to authorize or make legal any act that federal or state law does not permit or sanction or assist any violation of any federal or state law.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF GUADALUPE, ARIZONA, as follows:

SECTION 1. That Article 2, Part II Section 2.5 of the Zoning Ordinance is hereby amended to add the following permitted uses:

I. Medical Marijuana Dispensary owned and operated by a registered non-profit corporation

J. Medical Marijuana Cultivation or Infusion Facility owned and operated by a registered non-profit corporation

SECTION 2. That the Town of Guadalupe Zoning Ordinance is hereby amended by adding Article II, Part III as follows:

ARTICLE II, PART III MEDICAL MARIJUANA.

SECTION I PURPOSE, USE AND REQUIREMENTS

A. PURPOSE. THE PURPOSE OF THIS SECTION IS TO IMPLEMENT ARIZONA REVISED STATUTES, TITLE 36, CHAPTER 28.1; ENTITLED "ARIZONA MEDICAL MARIJUANA ACT".

B. LOCATION REQUIREMENTS. A *MEDICAL MARIJUANA DISPENSARY* IS ALLOWED IN CM (C-MIX) DISTRICTS. A *MEDICAL MARIJUANA CULTIVATION/INFUSION FACILITY* IS ALLOWED IN THE CM (C-MIX) ZONING DISTRICTS. THE LOCATIONS ARE LIMITED TO THE FOLLOWING:

1. A *MEDICAL MARIJUANA DISPENSARY* OR *MEDICAL MARIJUANA CULTIVATION/INFUSION FACILITY* SHALL NOT BE OPERATED OR MAINTAINED ON A PARCEL WITHIN 1,320 FEET, MEASURED BY A STRAIGHT LINE IN ALL DIRECTIONS, WITHOUT REGARD TO INTERVENING

STRUCTURES OR OBJECTS, FROM THE NEAREST POINT ON THE PROPERTY LINE OF A PARCEL WHERE THE *MEDICAL MARIJUANA DISPENSARY* OR *MEDICAL MARIJUANA CULTIVATION/INFUSION FACILITY* IS LOCATED TO THE PROPERTY LINE OF ANOTHER PARCEL CONTAINING THE FOLLOWING:

a. ANOTHER *MEDICAL MARIJUANA DISPENSARY* OR *MEDICAL MARIJUANA CULTIVATION/INFUSION FACILITY;*

b. A CHILD CARE FACILITY;

c. A CHARTER SCHOOL, PRIVATE SCHOOL, OR PUBLIC SCHOOL, WHICH PROVIDES ELEMENTARY, SECONDARY OR COLLEGE EDUCATION;

d. A CHURCH, SYNAGOGUE, TEMPLE OR SIMILAR RELIGIOUS WORSHIP BUILDING;

e. A PUBLIC PARK, LIBRARY, COMMUNITY BUILDING, OR ANY LAND OWNED BY THE TOWN OF GUADALUPE OR IN WHICH THE TOWN OF GUADALUPE OWNS AN INTEREST, EXCLUDING PUBLIC STREETS;

f. SALE OR CONSUMPTION OF ALCOHOLIC BEVERAGES, BEER, WINE OR SPIRITS, ADULT ENTERTAINMENT, HOTEL, MOTEL, OR CONVENIENCE STORE; OR

g. DOMESTIC VIOLENCE SHELTER, DOMESTIC VIOLENCE COUNSELING, OR DRUG OR ALCOHOL COUNSELING.

2. A *MEDICAL MARIJUANA DISPENSARY* OR *MEDICAL MARIJUANA CULTIVATION/INFUSION FACILITY* SHALL NOT BE OPERATED OR MAINTAINED ON A PARCEL WITHIN FIVE HUNDRED (500) FEET FROM A RESIDENTIAL ZONING DISTRICT OR THE PROPERTY LINE OF A PARCEL SOLELY DEVOTED TO A RESIDENTIAL USE IN ANY ZONING DISTRICT, MEASURED BY A STRAIGHT LINE IN ALL DIRECTIONS, WITHOUT REGARD TO INTERVENING STRUCTURES OR OBJECTS, FROM THE NEAREST POINT OF THE PROPERTY LINE OF A PARCEL CONTAINING SUCH USE.

3. *MEDICAL MARIJUANA CULTIVATION/INFUSION* FOR A CAREGIVER OR PATIENT'S RESIDENCE IN A RESIDENTIAL DISTRICT IS NOT PERMITTED, UNLESS THE LOCATION IS GREATER THAN TWENTY-FIVE (25) MILES FROM A LICENSED *MEDICAL MARIJUANA DISPENSARY* AS ALLOWED BY THE STATE OF ARIZONA.

C. **OPERATION REQUIREMENTS.** ANY *MEDICAL MARIJUANA DISPENSARY* OR *CULTIVATION/INFUSION FACILITY*, EXCEPT WITHIN A RESIDENTIAL HOME, SHALL COMPLY WITH THE FOLLOWING REQUIREMENTS, AS WELL AS THOSE CONTAINED WITHIN ARIZONA REVISED STATUTES, TITLE 36, CHAPTER 28.1:

1. THE BUSINESS SHALL BE LOCATED IN A PERMANENT BUILDING, WITH AN ENGINEERED FOUNDATION THAT MEETS GUADALUPE BUILDING CODE, AND NOT LOCATED IN A MOBILE HOME, TRAILER, CARGO CONTAINER, MOTOR VEHICLE OR SIMILAR PERSONAL PROPERTY.

2. ONLY ONE (1) SECURED EXTERIOR DOORWAY SHALL BE ALLOWED FOR THE PURPOSE OF INGRESS OR EGRESS. THE MAXIMUM SIZE TENANT SPACE SHALL BE LIMITED TO THE SQUARE FOOTAGE DEDICATED FOR SUCH USE WITH ONE EXIT. ANY EXISTING DOORWAYS BEYOND THIS ALLOWANCE SHALL BE PERMANENTLY CLOSED BY REMOVING THE DOOR AND FRAME AND FILLING IN THE OPENING WITH PERMANENT CONSTRUCTION TO MATCH THE EXTERIOR WALL.

3. THE BUSINESS AND TENANT SPACE MUST COMPLY WITH GUADALUPE'S APPLICABLE BUILDING CODE AND FIRE CODE REQUIREMENTS.

4. DRIVE-THROUGH FACILITIES ARE PROHIBITED.

5. THE *MEDICAL MARIJUANA DISPENSARY* IS LIMITED TO THE HOURS OF OPERATION NOT EARLIER THAN 8:00 A.M. AND NOT LATER THAN 6:00 P.M.

6. *MEDICAL MARIJUANA* REMNANTS OR BI-PRODUCTS SHALL BE DISPOSED OF ACCORDING TO AN APPROVED PLAN AND NOT PLACED WITHIN THE FACILITY'S EXTERIOR REFUSE CONTAINERS.

7. THERE SHALL BE NO EMISSION OF DUST, FUMES, VAPORS, OR ODORS INTO THE ENVIRONMENT FROM THE PREMISE.

8. A SECURITY PLAN IS REQUIRED, WHICH SHALL INCLUDE, BUT IS NOT LIMITED TO, THE FOLLOWING:

    a. THE SINGLE DOORWAY FOR THE FACILITY SHALL PROVIDE A SECURITY VISION PANEL, EMPLOYEE SERVICE ENTRANCES AND EXITS, OR A 180 DEGREE ROTATABLE VIEWER. IF DOORWAY IS TRANSPARENT, THE DOOR SHALL BE DESIGNED WITH A MATERIAL THAT IS EITHER IMPACT RESISTANT OR RESTRICTS ENTRY BY MEANS OF A WROUGHT IRON GATE.

    b. CLOSED CIRCUIT TELEVISION CAMERAS, OPERATING 24 HOURS A DAY, SHALL BE PROVIDED AT THE BUILDING'S EXTERIOR ENTRANCE AND INSIDE THE BUILDING AT A DESIGNATED SERVICE AREA;

    c. ALL LIGHTING FOR THE SITE SHALL BE BROUGHT INTO CONFORMANCE WITH THE CURRENT GUADALUPE LIGHTING STANDARDS. THE BUILDING ENTRANCE OF THE BUSINESS SHALL BE

ILLUMINATED FROM DUSK TILL DAWN ACTIVATED BY PHOTOCELL RELAY TO THE LIGHTING CONTROLLER;

d. NO ONE UNDER THE AGE OF EIGHTEEN (18) SHALL ENTER THE ESTABLISHMENT; AND

e. THE PLAN SHALL PROVIDE FOR THE PROPER REMOVAL AND DISPOSAL OF MARIJUANA RESIDUE AND BY-PRODUCTS.

D. USE ACCEPTANCE. A ZONING ADMINISTRATIVE APPLICATION SHALL BE PROCESSED, CERTIFYING THAT ALL TOWN OF GUADALUPE REGULATIONS FOR THE *MEDICAL MARIJUANA DISPENSARY* OR *CULTIVATION/INFUSION FACILITY* ARE IN COMPLIANCE WITH THE PROVISIONS SET FORTH IN THIS ORDINANCE. THE USE SHALL NOT COMMENCE WITHOUT THE ZONING ADMINISTRATOR, OR DESIGNEE, ACCEPTANCE LETTER. THE APPLICATION SHALL INCLUDE, BUT IS NOT LIMITED TO, THE FOLLOWING ITEMS:

1. A PROJECT SUBMITTAL FORM WITH APPLICABLE FEE. IN ADDITION TO ALL OTHER APPLICABLE FEES, THE APPLICANT SHALL PAY AN APPLICATION FEE OF $5,000;

2. THE PROPERTY OWNER'S LETTER OF AUTHORIZATION FOR THE USE;

3. THE NAME AND LOCATION OF THE DISPENSARY'S OFF-SITE *MEDICAL MARIJUANA CULTIVATION FACILITY*, IF APPLICABLE;

4. A MAP SHOWING THE LOCATION IN COMPLIANCE WITH THE SEPARATION REQUIREMENTS LISTED IN ARTICLE II, PART III, B;

5. A COPY OF OPERATING PROCEDURES ADOPTED IN COMPLIANCE WITH A.R.S. 36-2804(B)(1)(C);

6. A SITE PLAN;

7. A FLOOR PLAN OF THE BUILDING OR TENANT SPACE;

8. IF APPLICABLE, BUILDING PERMITS, WHICH REQUIRE A SEPARATE SUBMITTAL, IN COMPLIANCE WITH GUADALUPE'S BUILDING CODE AND FIRE CODE;

9. A SECURITY PLAN, IN COMPLIANCE WITH ARTICLE II, PART III

10. PROOF THAT THE APPLICANT IS A REGISTERED NON-PROFIT CORPORATION, RECOGNIZED AS SUCH BY THE UNITED STATES INTERNAL REVENUE SERVICE.

SECTION II. DEFINITIONS, LEGISLATIVE INTENT, AND PENALTIES

A. The following definitions shall apply to this Ordinance:

1. **MEDICAL MARIJUANA.** All parts all parts of the genus cannabis whether growing or not, and the seed of such plants that may be administered to treat or alleviate a qualifying patient's debilitating medical condition or symptoms associated with the patient's debilitating medical condition.

2. **MEDICAL MARIJUANA CULTIVATION OR INFUSION.** The process by which a person grows a marijuana plant. A facility shall mean a building, structure or premises used for the cultivation or storage of medical marijuana that is physically separate and off-site from a medical marijuana dispensary. Infusion is the process by which medical marijuana (cannabis) is incorporated into consumable edible goods by cooking or blending.

3. **MEDICAL MARIJUANA DISPENSARY.** A non-profit entity defined in A.R.S. §36-2801(11), that sells, distributes, transmits, gives, dispenses, or otherwise provides medical marijuana to qualifying patients.

4. **MEDICAL MARIJUANA QUALIFYING PATIENT.** A person who has been diagnosed by a physician as having a debilitating medical condition as defined in A.R.S. §36-2801.13

B. That revisions to that certain document known as the Zoning Code of the Town of Guadalupe which is hereby adopted and incorporated herein by reference as if set forth in full.

C. It is the intent of the Guadalupe Town Council that this Ordinance shall be an amendment to the existing Zoning Ordinance of the Town of Guadalupe and to the extent that any provision of this Ordinance shall conflict with the Town Code of Guadalupe, the Zoning Ordinance or prior amendments to the Zoning Ordinance set forth in Ordinance No. 36 and Ordinance 89-06, this Ordinance shall prevail. All other provisions of the Town Code, the Town Zoning Ordinance, Ordinance No. 36 as amended by Ordinance 89-06 and Ordinance 89-06 not in conflict with this Ordinance shall be fully enforced.

D. Should any section, subsection, sentence, clause or phrase or portion of this Ordinance or any part of the Town Code or the Town Zoning Ordinance adopted herein, be found to be invalid or unconstitutional by any Court of competent jurisdiction, such ruling shall not affect the validity of the remaining portions thereof.

E. Any violation of this Ordinance shall be punishable as a class one misdemeanor punishable by a fine not to exceed $2,500 and a jail term not to exceed six months.

F. This Ordinance shall take effect 30 days after passage by the Guadalupe Town Council.

PASSED and ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF GUADALUPE, ARIZONA, this 24 day of March, 2011.

ATTEST:

Rose Mary Arellano, Town Clerk

TOWN OF GUADALUPE, an
Arizona Municipal Corporation

Lupita Avelar
~~A. Yolanda Solarez, Mayor~~
Vice Mayor

APPROVED AS TO FORM:

David E. Ledyard, Esq.
Town Attorney

PUBLIC NOTICE

The Town Council of the Town of Guadalupe, Arizona, will hold a public hearing on March 24, 2011, at 6:00 p.m. at the Guadalupe Town Hall located at 9241 South Avenida Del Yaqui in order to receive public comments on Ordinance # 2011-02 which would amend the zoning ordinance of the Town of Guadalupe to allow medical marijuana dispensaries and medical marijuana cultivation/infusion in CM (CMIX) commercial zones as a permitted use and to establish reasonable regulations concerning:

The location of such activities including allowable distances between such uses and residential zones, convenience stores, day care centers, places of worship, colleges, hotels, motels, parks, playgrounds, schools, property owned by the Town of Guadalupe, counseling agencies, businesses that sell liquor and businesses that provide adult entertainment; Hours of operation; Security; and Facility construction.

The Town Council will consider adoption of Ordinance # 2011-02 at the regular public meeting of the Guadalupe Town Council at 7:00 p.m. March 24, 2011. Public comments will also be taken at this public meeting. Copies of the proposed ordinance and the zoning map of the Town of Guadalupe are available at the Guadalupe Town Clerk's office at the Guadalupe Town Hall.

Those wishing to make comments may appear in person at the public hearing or the Council meeting. Those wishing to make written comments on the proposed ordinance may do so by mailing or delivering their comments to Rosemary Arellano, Town Clerk at the Guadalupe Town Hall, 9241 South Avenida Del Yaqui, Guadalupe Arizona 85283.

3-8-11
Date

Rosemary Arellano, Town Clerk