

**ORDINANCE NO. 02021.01**

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF GUADALUPE, ARIZONA, AMENDING THE TOWN OF GUADALUPE CODE OF ORDINANCES BY ADDING A NEW SUBCHAPTER TITLED RECREATIONAL MARIJUANA – § 154.086 THROUGH § 154.090 – TO CHAPTER 154 ZONING. SAID ORDINANCE REGULATES RECREATIONAL MARIJUANA, ESTABLISHING A PURPOSE SETTING FORTH DEFINITIONS; PROHIBITING MARIJUANA ON PUBLIC PROPERTY; PROHIBITING RECREATIONAL MARIJUANA ESTABLISHMENTS AND MARIJUANA TESTING FACILITIES; PROVIDING FOR THE REPEAL OF CONFLICTING ORDINANCES; SETTING FORTH VIOLATIONS; PROVIDING FOR ENFORCEMENT AND PENALTIES; PROVIDING FOR EXEMPTIONS; PROVIDING FOR SEVERABILITY; AND SETTING AN EFFECTIVE DATE.

WHEREAS, marijuana contains tetrahydrocannabinol (“THC”), which remains on Schedule I of the Controlled Substances Act pursuant to 21 U.S.C. § 811 et al. and any possession and use is a violation of federal law pursuant to 21 U.S.C. § 841 et. al.;

WHEREAS, the Arizona Medical Marijuana Act, Arizona Revised Statutes, Sections § 36-2801 et al., and Title 9, Chapter 17 of the Arizona Administrative Code allow the establishment and operation of nonprofit medical marijuana dispensaries in the Town according to a prescribed statutory and regulatory process;

WHEREAS, the statewide ballot measure known as the “Smart and Safe Arizona Act” was certified as Proposition 207 and was approved by the voters at the November 3, 2020 general election ballot and contains provisions authorizing the possession, consumption, purchase, processing, manufacturing or transporting of marijuana by an individual who is at least twenty-one (21) years of age; allowing a nonprofit medical marijuana dispensary or other non-dispensary applicant to apply to the Department of Health Services to become a licensed marijuana establishment authorized to engage in the retail sale, cultivation and manufacturing of marijuana; and allowing the Department, or another entity designated by the Department, to become a marijuana testing facility to test the potency of marijuana and detect any harmful contaminants;

WHEREAS, Proposition 207 authorizes marijuana establishments and testing facilities to use chemical extraction or chemical synthesis, including butane and other flammable gases, to extract marijuana concentrate, which poses a threat to the health, safety and welfare of the Town and increases the responsibility of the police, fire, and other departments of the Town to respond to violations of state and local laws;

WHEREAS, the Town seeks to protect public health, safety, and welfare by prohibiting marijuana establishments and marijuana testing facilities in the Town.

NOW THEREFORE, BE IT ORDAINED by the Town Council of the Town of Guadalupe, Arizona, as follows:

Section I. In General.

The Code of Ordinances of the Town of Guadalupe, Arizona, Chapter 154 Zoning, is hereby amended by adding a new Subchapter entitled Recreational Marijuana §154.086 through §154.090:

Subsection 154.086 Purpose

The purpose of this amendment is to protect the health, safety, and welfare of the community. Except as allowed by law for personal use, the Town prohibits the retail sale, cultivation, storage, processing, testing, and manufacturing of marijuana products in the Town, except as set forth hereafter.

Section 154.087 Definitions

The words listed hereafter are to be construed as defined in this Section unless it is clear for the context another meaning is intended.

- A. Chemical Extraction means the process of removing a particular component of a mixture from others present, including removing resinous tetrahydrocannabinol from marijuana.
- B. Chemical Synthesis means production of a new particular molecule by adding to, subtracting from, or changing the structure of a precursor molecule.
- C. Consume, Consuming, and Consumption mean the act of ingesting, inhaling or otherwise introducing marijuana into the human body.
- D. Consumer means a person who is at least 21 years old and who purchases marijuana or marijuana products.
- E. Cultivate and Cultivation mean to propagate, breed, grow, prepare, and package marijuana.
- F. Department means the State of Arizona Department of Health Services or its successor agency.
- G. Dual Licensee means an entity that holds both a nonprofit medical marijuana dispensary registration and a marijuana establishment license.
- H. Extraction means the process of extracting or separating resin from marijuana to produce or process any form of marijuana concentrates using water, lipids, gases, solvents, or other chemicals or chemical processes.

- I. Manufacture and Manufacturing mean to compound, blend, extract, infuse or otherwise make or prepare a marijuana product.
- J. Marijuana
1. Means all of the parts of the plant genus cannabis, whether growing or not, as well as the seeds from the plant, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture or preparation of the plant or its seeds or resin.
  2. Includes cannabis as defined in A.R.S. § 13-3401.
  3. Does not include industrial hemp, the fiber produced from the stalks of the plant of the genus cannabis, oil or cake made from the seeds of the plant, sterilized seeds of the plant that are incapable of germination, or the weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink or other products.
- K. Marijuana Concentrate
1. Means resin extracted from any part of a plant of the genus cannabis and every compound, manufacture, salt compound, derivative, mixture, or preparation of that resin or tetrahydrocannabinol.
  2. Does not include industrial hemp or the weight of any other ingredient combined with cannabis to prepare topical or oral administrations, food, drink or other products.
- L. Marijuana Establishment
- Means an entity licensed by the Department to operate all of the following:
1. A single retail location at which the licensee may sell marijuana and marijuana products to consumers, cultivate marijuana and manufacture marijuana products.
  2. A single off-site cultivation location at which the licensee may cultivate marijuana, process marijuana and manufacture marijuana products, but from which marijuana and marijuana products may not be sold.
  3. A single off-site location at which the licensee may manufacture marijuana products and package and store marijuana, and marijuana may not be sold to consumers.
- M. Marijuana Products means marijuana concentrate and products that are composed of marijuana and other ingredients and that are intended for use or consumption, including edible products, ointments, and tinctures.
- N. Marijuana Testing Facility means the Department or another entity that is licensed by the Department to analyze the potency of marijuana and test marijuana for harmful contaminants.
- O. Nonprofit Medical Marijuana Dispensary as defined in A.R.S. § 36-2801(12).

P. Open Space

To the fullest extent allowable by law means a public park, public sidewalk, public walkway, public trail, preserve, public pedestrian thoroughfare, public property, public conveyance, such as a taxi, bus or school bus, or other area that is open to the public.

Q. Person means an individual, partnership, corporation, association, or any other entity of whatever kind or nature.

R. Process and Processing means to harvest, dry, cure, trim or separate parts of the marijuana plant.

S. Public Place has the same meaning prescribed in the Smoke-Free Arizona Act, A.R.S. § 36-601.01.

T. "Smoke" means to inhale, exhale, burn, carry or possess any lighted marijuana or lighted marijuana products whether natural or synthetic. To the extent permitted by law, "smoke" shall also mean the use of an electronic cigarette.

**Subsection 154.087 Marijuana Prohibited on Public Property.**

A. The use, sale, cultivation, manufacture, production, storage, or distribution of marijuana or marijuana products is prohibited on property that is occupied, owned, controlled or operated by the Town.

B. It is unlawful for an individual to smoke marijuana or consume marijuana products on property that is occupied, owned, controlled or operated by the Town. This subsection shall not apply to lawful activities of law enforcement agencies.

C. It is unlawful for an individual to smoke marijuana or consume marijuana products in any open space in the Town.

**Subsection 154.088 Marijuana Establishment Prohibited; Exemptions**

A. To the fullest extent allowable by law, the operation of a marijuana establishment is prohibited in the Town, except where authorized for a dual licensee who:

1. Operates both a licensed nonprofit medical marijuana dispensary and said medical marijuana dispensary was licensed to operate within the Town limits of the Town of Guadalupe prior to the passage of Proposition 207 known as the "Smart and Safe Arizona Act," pursuant to Guadalupe Town Ordinance 2011-02 as modified by Guadalupe Town Ordinance 2016-01 and the right to continue such operation was confirmed by Guadalupe Town Ordinance 2017-02 and further has since obtained a license from the Department to operate a marijuana establishment from the Department at the same location as the medical marijuana dispensary; and
2. Has not forfeited or terminated the nonprofit medical marijuana dispensary registration from the Department.

- B. An allowed marijuana establishment shall:
1. Be open to the public for business no earlier than 8:00am and no later than 10:00pm; and
  2. In addition to any permits or licenses issued by the State of Arizona and any of its departments or subdivisions, such marijuana establishment shall obtain a Town of Guadalupe Business license and a privilege tax license.

**Section 154.089 Marijuana Testing Facility Prohibited**

To the fullest extent allowable by law, the operation of a marijuana testing facility is prohibited in the Town.

**Section 154.090 Violations; Enforcement; Penalties.**

- A. It is unlawful and a violation for a person to sell, cultivate, process, manufacture, store, or transport marijuana or marijuana products if the person fails to meet all of the requirements in this code or state law, including the Department's rules.
- B. Each day any violation of any provision of this Section of the Code shall continue shall constitute a separate, public offense.
- C. Except as otherwise provided in A.R.S. § 36-2853, any violation of this Subchapter § 154.086 through § 154.090 shall be a violation of Section 10.99 of this code.
- D. Violations of this Subchapter are in addition to any other violation enumerated within the Town ordinances or the Town Code and in no way limits the penalties, actions, or abatement procedures which may be taken by the Town for any violation of this Subchapter, which is also a violation of any other ordinance or Code provision of the Town, or Federal or State law. Conviction and punishment or judgment and civil sanction against any other person shall not relieve such person from the responsibility of correcting prohibited conditions, or removing prohibited structures or improvements, and shall not prevent the enforced correction or removal thereof.
- E. The remedies provided herein shall be cumulative and in addition to any other federal, state or local remedy which may be available. Nothing contained herein shall be construed to preclude prosecution under any other applicable statute, ordinance, rule, order or regulation.

**Section II.** **Providing for Repeal of Conflicting Ordinances.**

All ordinances and parts of ordinances in conflict with the provisions of this Ordinance or any part of the Code adopted herein by reference, are hereby repealed.

**Section III.** **Recitals.**

The recitals above are fully incorporated in this Ordinance by reference.

Section IV. Effective Date.

This Ordinance shall be effective 30 days after its passage by the Town Council of Guadalupe.

Section V. Zoning Considerations.

In accordance with the Arizona Constitution, the Town Council of Guadalupe has considered the property rights and liberties of the residents and property owners of the Town of Guadalupe.

Section VI. Preservation of Rights and Duties.

This Ordinance does not affect the rights and duties that matured, penalties incurred, or proceedings that were begun before the effective date of this Ordinance.

Section VII. Providing for Severability.

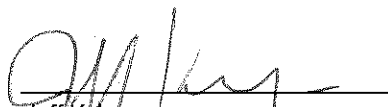
If any part of this Ordinance or any part of the Code adopted herein by reference is held to be invalid or unconstitutional by any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions thereof.

PASSED and ADOPTED by the Common Council of the Town of Guadalupe, Arizona, this 25th day of February, 2021, by a vote of 6 AYES and 0 NAYES.

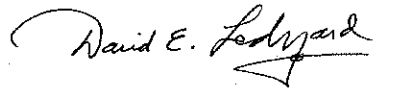
APPROVED this 25th day of February, 2021.

  
Valerie Molina, Mayor


Attest:

  
Jeff Kulaga  
Town Manager / Clerk

Approved as to Form:

  
FAITH, LEDYARD & FAITH, PLC  
Town Attorney  
By David E. Ledyard

I, Jeff Kulaga, Town Manager / Clerk, do hereby certify that a true and correct copy of Ordinance No. O2021.01 was adopted by the Town Council of Guadalupe on the 25th day of February, 2021, and thereof was posted in four places on the 26th day of February, 2021.

  
Jeff Kulaga, Town Manager / Clerk