ORDINANCE NO. 2017-02

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 4 TO ADD SUBSECTION 4.6 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.

Arizona law, likewise, prohibits the possession, delivery, manufacture, cultivation and sale of marijuana, except defined medical uses.

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 Town Council of Guadalupe has previously enacted reasonable regulations concerning medical marijuana in Ordinance No. 2011-02 which amended the Town of Guadalupe Zoning Ordinance. Subsequently the Town Council of Guadalupe enacted Ordinance No. 2016-01 which made significant changes to the location requirements for marijuana related activities. The current Council of Guadalupe believes such changes were unwise and should be reversed however while Ordinance 2016-01 was in force certain property owners in reliance thereon obtained or are in the process of obtaining necessary permits from the Arizona Department of Health and the Town to operate medical marijuana dispensaries and may have expended considerable sums of money in reliance on said Ordinances and permits that were issued. It is not the intention of the Town Council to deprive such owners of any vested property rights by this Amendment.
NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF GUADALUPE, ARIZONA, as follows:

SECTION 1. Article 2, Part II Section 4 of the Zoning Ordinance is hereby amended to add Subsection 4.6 which adds the following conditional uses to be allowed only in the C-2 Zoning Districts as set forth hereafter:

4.6 The following uses in enclosed buildings shall be permitted as a conditional use only, in the C-2 districts in accordance with Article 2, Part II, Section 4 of this Ordinance:

   a. Medical Marijuana Dispensary owned and operated as a non-profit entity; or

   b. Medical Marijuana Cultivation or Infusion Facility owned and operated as a non-profit entity

SECTION 2. The Town of Guadalupe Zoning Ordinance is hereby amended by repealing Ordinance No. 2011-02 and Ordinance No. 2016-01 which added Article II, Part III to the Zoning Ordinance and by adding a revised Article 2, Part III as follows:

ARTICLE 2, 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 C-2 DISTRICTS AS A CONDITIONAL USE. A MEDICAL MARIJUANA CULTIVATION/INFUSION FACILITY IS ALLOWED IN THE C-2 ZONING DISTRICTS AS A CONDITIONAL USE. 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 STRAIGHTLINE 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 PHOTOCCELL 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, ISSUANCE OF AN 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

SECTION II. DEFINITIONS, LEGISLATIVE INTENT, AND PENALTIES

A. The following definitions shall apply to this Ordinance:

1. MEDICAL MARIJUANA. 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. Cultivation is 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. §362801(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 certain document known as the Zoning Ordinance of the Town of Guadalupe 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. Nothing herein shall be construed to allow or permit a person to engage in, nor does it prevent the imposition of any civil, criminal or other penalty for engaging in the following conduct prohibited by the Arizona Revised Statutes, A.R.S. §36-2802.

1. Undertaking any task under the influence of marijuana that would constitute negligence or professional malpractice.

2. Possessing or engaging in the medical use of marijuana:

   a. On a school bus
b. On the grounds of any preschool or primary or secondary school

c. In any correctional facility

3. Smoking marijuana:

a. On any form of public transportation

b. In any public place

4. Operating, navigating or being in actual physical control of any motor vehicle, aircraft or motorboat while under the influence of marijuana except the registered qualifying patient shall not be considered to be under the influence of marijuana solely because of the presence of metabolites or components of marijuana that appear in insufficient concentration to cause impairment.

5. Using marijuana except as authorized by law.

E. Final passage of this Ordinance by the Town Council of Guadalupe shall not be construed to rescind or revoke the authority of a marijuana dispensary or a marijuana infusion facility to continue its lawful operation providing it has been issued all of the following:

1. Town of Guadalupe business license and privilege tax license, zoning clearance letter, final occupancy permit; and

2. Arizona Department of Health Marijuana Dispensary Registration Certificate, and/or Arizona Department of Health Certificate for a Marijuana Infusion Facility, and Arizona Department of Health approval to operate a Marijuana Dispensary and/or approval to operate a Marijuana Infusion Facility, and/or amended Arizona Department of Health Dispensary Registration Certificate.

3. If at the time of passage of this Ordinance the holder of an Arizona Department of Health Medical Marijuana Registration Certificate, or an Amended Arizona Medical Marijuana Registration Certificate, Arizona Department of Health Certificate for a Medical Marijuana Infusion Facility has an application pending before the Arizona Department of Health requesting a permit to operate a Medical Marijuana Dispensary and/or a Medical Marijuana Infusion Facility and the holder has obtained from the Town of Guadalupe a zoning clearance letter, and/or a temporary or final occupancy permit, and in the opinion of the Zoning Administrator the Applicant has expended significant sums of money in reliance on the zoning clearance letter or other preliminary documents the Zoning Administrator may consider the Application as being “grandfathered” and upon receipt of final documents from the Arizona Department of Health approving the operation issue any final permits required by the Town of Guadalupe to operate the dispensary or the infusion facility.
4. Should the holder of any such Certificate disagree with the decision of the Zoning Administrator concerning "grandfathered" status, the Holder may file a notice of appeal to the Town of Guadalupe Town Council. Said Notice of Appeal shall be filed with the Town Clerk not later than ten (10) business days after receipt of the decision. The Council shall hear the appeal at a special or regular Council meeting not less than ten (10) nor more than thirty (30) days after receipt of the Notice of Appeal unless a different time period is mutually agreed upon.

F. Should any section, subsection, sentence, clause, 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.

G. 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.


ATTEST:

Robert Thaxton, Acting Town Clerk and Interim Town Manager

TOWN OF GUADALUPE,
Arizona Municipal Corporation

Valerie Molina, Mayor

APPROVED AS TO FORM:

David E. Ledyard, Esq.
Town Attorney