

ORDINANCE NO. 2023-508

AN ORDINANCE OF THE CITY OF GUADALUPE, CALIFORNIA AMENDING VARIOUS SECTIONS OF CHAPTER 9.22 TO TITLE 9 OF THE GUADALUPE MUNICIPAL CODE RELATING TO COMMERCIAL CANNABIS BUSINESSES AND AMENDING VARIOUS SECTIONS OF TITLE 12 (ZONING) OF THE GUADALUPE MUNICIPAL CODE TO DESIGNATE ZONING DISTRICTS FOR COMMERCIAL CANNABIS BUSINESSES

WHEREAS, the City Council finds that the provisions of the Medicinal and Adult Use Cannabis Regulation and Safety Act (“MAUCRSA”) accommodates the needs of medically-ill persons in need of cannabis for medicinal purposes as recommended by their health care provider(s), and to provide access to same; and

WHEREAS, the MAUCRSA also provide access to adult-use cannabis for persons aged 21 and over as authorized by the Control, Tax & Regulate the Adult Use Cannabis Act (“AUMA” or “Proposition 64” approved by California voters in 2016); and

WHEREAS, commercial cannabis is a source of much needed revenue for the City of Guadalupe; and

WHEREAS, the City Council understands that sensible regulations on the use of land to protect the City’s residents, neighborhoods, and businesses are necessary to mitigate possible negative impacts that might arise from the legalization of commercial uses of cannabis in the City of Guadalupe, and the City Council intends to regulate the commercial cultivation, processing, manufacturing, testing, sale, delivery, and distribution of cannabis and cannabis products in a responsible manner to protect the health, safety, and welfare of the residents of the City and to enforce rules and regulations consistent with state law; and

WHEREAS, in consideration of the foregoing, the City Council adopted Ordinance No. 2021-494 on May 25, 2021, (effective on June 24, 2021), adding new Chapter 9.22 to the Guadalupe Municipal Code and amending various sections of Title 12 of the Guadalupe Municipal Code (Zoning) to permit the establishment of retail and other types of commercial cannabis businesses; and

WHEREAS, since the adoption of Ordinance No. 2021-494, the City Council adopted Application Procedure and Guidelines for commercial cannabis business permits, and opened an application period for such businesses, eventually selecting two (2) retail commercial cannabis business permit applications to move forward with the process of obtaining a commercial cannabis business permit (as well approving one cannabis cultivation-processing applicant); and

WHEREAS, City staff has identified several provisions of Ordinance No. 2021-494 that require corrections and/or amendments for the purpose of clarification; and

WHEREAS, it is in the interest of the City to establish reasonable timeframes for selected applicants to begin retail cannabis operation in order to ensure that consumers are provided access to legal cannabis goods; and

WHEREAS, one of the main reasons for legalizing cannabis businesses in the City is for the purpose of increasing needed revenue for the City; and

WHEREAS, Ordinance No. 2021-494 did not include any provisions concerning how much time would be afforded to the selected applicants to complete the conditional use permit application process as well as obtaining a commercial cannabis business permit, and the City Council wishes to amend Chapter 9.22 of Title 9 of the Guadalupe Municipal Code to include required timelines for completion of the process of obtaining a commercial cannabis business permit.

NOW, THEREFORE, the City Council of the City of Guadalupe, State of California, does hereby ordain as follows:

SECTION 1. Section 9.22.110 of Chapter 9.22 of Title 9 of the Guadalupe Municipal Code is hereby amended as follows:

9.22.110 Community Benefits.

A. The application procedure process shall include a component on community benefits.

B. Any community benefits that a cannabis business agrees to provide shall be incorporated into the terms and conditions under which the cannabis business will operate with the City's approval, if and when a Cannabis Business Permit is issued. Such terms and conditions shall be in addition to the requirements of this Chapter.

C. Community benefits may include but are not limited to: in-kind donations; sponsorship of community events; financial support or otherwise for special community events such as fairs, afterschool programs, youth centers, Boys and Girls Clubs, local schools whether public or private; school athletic programs; school clubs; community centers, homeless shelters, senior centers and/or senior living facilities, parks and recreation programs.

D. The prevailing candidates selected by the City Council pursuant to Section 9.22.140, shall be required to complete negotiations with the City and submit a signed agreement to the City Administrator within six (6) months after being selected as a prevailing candidate. For any prevailing candidates selected before the effective date of this subdivision D, such candidate shall have six (6) months from the effective date to comply with this subdivision.

SECTION 2. Section 9.22.120 of Chapter 9.22 of Title 9 of the Guadalupe Municipal Code is hereby amended as follows:

9.22.120 City's Reservation of Rights.

A. The City reserves the right to reject any or all applications for a Cannabis Business Permit. Prior to such permit issuance, the City may modify, postpone, or cancel any request for applications, at any time without liability, obligation, or commitment to any party, firm, or organization, to the extent permitted under California law. Persons submitting applications assume the risk that all or any part of the program, or any particular category of permit potentially authorized under this Chapter, may be cancelled at any time prior to permit issuance. The City further reserves the right to request and obtain additional information from any candidate submitting an application. In addition to a failure to comply with other requirements in this Chapter, an application may be rejected for any of the following reasons:

1. The application was received after the designated time and date of the deadline.
2. The application did not contain the required elements, exhibits, or was not organized in the required format.
3. The application was considered not fully responsive to the request for a permit application, i.e., was substantially incomplete.

B. Once a prevailing candidate has been selected, the City reserves its rights to reject such selected candidate if the candidate fails to diligently pursue the required conditional use permit application and Cannabis Business Permit. Prior to rejecting a selected candidate, the City Council will hold a hearing where the candidate may present evidence as to why the City Council should not reject the selected candidate from completing the process. The City Council will base its decision to reject only upon substantial evidence and will not act in an arbitrary or capricious manner. The City Council's decision will be final and is subject to the time limits set forth in California Code of Civil Procedure Section 1094.6 for judicial review.

SECTION 3. Section 9.22.140 of Chapter 9.22 of Title 9 of the Guadalupe Municipal Code is hereby amended as follows:

9.22.140 Permittee Selection Process

A. Applications will be reviewed per the Procedure Guidelines and Review Criteria and will be either denied or approved.

B. Once the proposed locations of approved applications have been identified, the Planning Director or the Planning Director's designee(s) shall verify it is properly zoned for the type of license(s) in which the applicant has applied. If permitted, a zoning verification letter shall be issued.

C. Only approved applications meeting guidelines set by Council Resolution as to cut off score will be eligible to participate in the interview process or any further process.

D. Upon the completion of the selection process, a public meeting shall be set in which concerns of residents, businesses, and community organizations alike may be brought before the City.

E. The Planning Director, or the Planning Director's designee(s), shall conduct the public meeting to solicit community feedback.

F. Public Notice shall be mailed at least ten (10) days prior to the public meeting to the following:

1. All property owners of record within a minimum 300-foot radius of the subject property as shown on the latest available assessment role or a larger radius if deemed necessary by the Planning Director in order to provide adequate public notification; and

2. Any person or group who has filed a written request for notice regarding the specific application.

G. Failure to Notify Individual Properties. The validity of the proceedings shall not be affected by the failure of any property owner, resident or neighborhood or community organization to receive a mailed notice.

H. Applications shall be vetted by the City Administrator and a team selected by the City Administrator consistent with Section 9.22.13(c). At the conclusion of the vetting process, the City Administrator shall prepare a report with findings and recommendations for consideration by the City Council. The recommendations shall include a summary of any concerns voiced by the community at the public meeting.

I. The City Council shall either deny or approve the final candidates and shall select the top candidates in each category of the cannabis businesses pursuant to Section 9.22.13(a). The City Council's decision as to the selection of the prevailing candidates shall be final, pending an appeal, in the event an appeal is filed as provided for under Section 9.22.24.

J. The City will issue notice to the prevailing candidates that the City will issue an official Cannabis Business Permit(s) upon the prevailing applicant(s) obtaining all required land use approvals. Once all required land use approvals are secured, the City will issue an Official Cannabis Business Permit to any prevailing applicant(s). The City Council's decision concerning which applicant(s) will be issued an official Cannabis Business Permit(s) is final and is subject to the time limits set forth in California Code of Civil Procedure Section 1094.6 for judicial review.

K. The Council may establish an eligibility list and place the unsuccessful candidates not selected as a prevailing candidate on this list in the event one or more of the prevailing candidates is unable to complete the process of obtaining a Cannabis Business Permit. Only candidates that were interviewed by the Council will be able to be placed on the eligibility

list. The Council may select any of the candidates on the eligibility list in place of one or more of the prevailing candidates that fails to complete the process of obtaining Cannabis Business Permit.

L. Once the prevailing candidates are selected, each such candidate will have three (3) months from the date of selection to file an application for a conditional use permit for the proposed location of the commercial cannabis business and must obtain issuance of a conditional use permit within nine (9) months from the date of selection. This timeframe may be extended by the City Administrator should it be determined that the City unreasonably delayed processing the conditional use permit application. For any candidates previously selected before the effective date of this ordinance, these timelines shall commence upon the effective date of this Section. Failure to comply with these timelines may result in a finding that the candidate is not diligently pursuing the conditional use permit.

SECTION 4. Section 9.22.150 of Chapter 9.22 of Title 9 of the Guadalupe Municipal Code is hereby amended as follows:

9.22.150 Exercise of a Cannabis Business Permit.

A. Each Cannabis Business Permit issued pursuant to this Chapter shall expire twelve (12) months after the date of issuance. Cannabis Business Permits may be renewed as provided in Section 9.22.180.

B. A Cannabis Business Permit shall be exercised within twelve (12) months of issuance. Exercised shall be when any of the following occur:

1. A Certificate of Occupancy has been issued, or
2. The permitted use(s) has commenced on the site.

C. The expiration of a Cannabis Business Permit shall automatically result in a rejection of the selected candidate as authorized by Section 9.22.120.B. unless renewed as provided in Section 9.22.180, and unless renewed, the candidate shall not be able to obtain issuance of a Cannabis Business Permit unless the City opens up a new application process.

SECTION 5. Section 9.22.310 of Chapter 9.22 of Title 9 of the Guadalupe Municipal Code is hereby amended as follows:

9.22.310 Authorization from the Planning Director.

Prior to commencing operations at a new location pursuant to Section 9.22.270, a Cannabis Business must obtain a zoning clearance from the Planning Director or the Planning Director's designee(s) certifying that the business is located on a site that meets all of the requirements of Sections 9.22.300, 9.22.320, and 9.22.330 of this Chapter.

SECTION 6. Section 9.22.370 of Chapter 9.22 of Title 9 of the Guadalupe Municipal Code is hereby amended as follows:

9.22.370 Fees and Charges.

A. No person may commence or continue any cannabis activity in the City without timely paying in full all fees and charges required for the operation of a cannabis activity. Fees and charges associated with the operation of a cannabis activity shall be established by resolution of the City Council which may be amended from time to time.

B. All cannabis businesses authorized to operate under this Chapter shall pay all sales, use, business and other applicable taxes, and all license, registration, and other fees required under federal, state, and local law. Each cannabis business shall cooperate with City with respect to any reasonable request to audit the cannabis business' books and records for the purpose of verifying compliance with this section, including but not limited to a verification of the amount of taxes or fees required to be paid during any period.

C. Prior to operating in the City and as a condition of issuance of a Cannabis Business Permit, the operator of each cannabis facility shall enter into an operational or community benefit agreement with the City setting forth the terms and conditions under which the cannabis facility will operate that are in addition to the requirements of this chapter, including, but not limited to, public outreach and education, community service, payment of fees and other charges as mutually agreed, and such other terms and conditions that will protect and promote the public health, safety and welfare. Such community benefit agreement will include a provision to pay the fees authorized by a Council resolution approving cost recovery for the City's costs related to negotiating and obtaining the community benefit agreements, the annual regulatory fee, and the cost of pre-license site inspections.

SECTION 7. Severance. If any section, subsection, phrase, or clause of this ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of this Ordinance.

SECTION 8. Environmental determination. In accordance with the requirements of the California Environmental Quality Act (Public Resources Code §21000, et seq. ("CEQA")), a review of the potential environmental impacts was conducted by the Planning Department for Ordinance No. 2021-494. Based on this review, the Planning Department has determined that the proposed ordinance is exempt from review under the California Environmental Quality Act (CEQA) pursuant to Business and Professions Code Section 26055(h). This provision in the Business and Professions Code exempts from CEQA review the adoption of an ordinance, rule, or regulation by a local jurisdiction that requires discretionary review and approval of permits, licenses, or other authorizations to engage in commercial cannabis activity. As approved by City Council, Ordinance No. 2023-508 requires discretionary review is required by the City Council for

each cannabis business seeking to operate in the City, and any applicable/project specific CEQA analysis will be done prior to the approval of these discretionary entitlements in accordance with Section 15070 or 15081 of CEQA. Given this, a CEQA Statutory Exemption pursuant to Business and Professions Code Section 26055(h) applies.

SECTION 9. The City Clerk is hereby authorized to make minor changes herein to address clerical errors, so long as substantial conformance of the intent of this document is maintained. In doing so, the City Clerk shall consult with the City Administrator and City Attorney concerning any changes deemed necessary.

INTRODUCED at a regular meeting of the City Council held on the 14th day of February 2023, by the following roll call vote:

MOTION: EUGENE COSTA JR. / GILBERT ROBLES

AYES: 4 Councilmembers: Costa Jr., Hernandez, Julian, Robles
NOES: 0
ABSENT: 1 Councilmember: Lizalde
ABSTAINED: 0

PASSED AND APPROVED as the regular meeting of the City Council on the 28th day of February 2023, by the following roll call vote:

MOTION: EUGENE COSTA JR. / MEGAN LIZALDE

AYES: 5 Councilmembers: Costa Jr., Hernandez, Julian, Lizalde, Robles
NOES: 0
ABSENT: 0
ABSTAINED: 0

ATTEST:




Todd Bodem, Deputy City Clerk



Ariston Julian, Mayor

APPROVED AS TO FORM:



Philip F. Sinco, City Attorney