



AGUA CALIENTE BAND OF CAHUILLA INDIANS  
TRIBAL COUNCIL

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JEFF L. GRUBBE CHAIRMAN • LARRY N. OLINGER VICE CHAIRMAN • VINCENT GONZALES III SECRETARY/TREASURER  
REID D. MILANOVICH MEMBER • ANTHONY W. PURNEL MEMBER  
ORDINANCE NO. 50

**COMMERCIAL CANNABIS PROHIBITION ORDINANCE**

**I. GENERAL PROVISIONS**

- A. Title.** This Ordinance shall be officially known and cited as the “**Commercial Cannabis Prohibition Ordinance**,” an ordinance of the Agua Caliente Band of Cahuilla Indians (the “**Tribe**”), and any amendments thereto. References herein to this Ordinance shall be interpreted as referring to the Commercial Cannabis Prohibition Ordinance.
- B. Authority.** The Tribal Council of the Agua Caliente Band of Cahuilla Indians is the legally recognized elected governing body of the Agua Caliente Band of Cahuilla Indians, a federally recognized Indian tribe with jurisdiction over the Agua Caliente Indian Reservation (the “**Reservation**”). This Ordinance is enacted under the inherent sovereign authority of the Tribe and pursuant to sections (a), (b) (f), and (k) of Article V of the Tribal Constitution, as well as pursuant to any applicable delegations of federal authority to the Tribe for treatment as a state, or otherwise, under federal law.
- C. Purpose.** This Ordinance prohibits Commercial Cannabis Activity, as defined herein, on the Trust Lands of the Tribe and its members. The purpose of this Ordinance is to promote the health, safety, and welfare of the Tribe and its members and to prevent undesirable impacts associated with Commercial Cannabis Activity. Prohibition of Commercial Cannabis Activity is proper and necessary to avoid the risks of criminal activity, degradation of the natural environment, malodorous smells, and indoor electrical fire hazards that may result from cannabis cultivation. Furthermore, the purpose of this Ordinance is to prevent any Person from acquiring any manner of license or authorization from the State of California or any local jurisdiction to engage in Commercial Cannabis Activity on Trust Lands.
- D. Scope.** The Tribe has the civil regulatory authority to tax, control, and regulate commercial activity related to the possession, use, purchase, cultivation, distribution, transport, storage, manufacturing, processing, advertising, marketing, and sale of all Cannabis and Cannabis Products on the Trust Lands of the Tribe and its members and does not cede or delegate this authority to the State or any local jurisdiction. The Tribe also reserves the authority, under *Montana v. United States*, 450 U.S. 544 (1981), to prohibit Commercial Cannabis Activity on On-Reservation Fee Lands, on a case by case basis, where a Person has entered into a consensual relationship with the Tribe or its members through commercial dealing, contracts, leases or other arrangements, and/or where a



**Ordinance No. 50**

**Page No. 2 of 7**

Person's conduct threatens or has some direct effect on the political integrity, economic security or health or welfare of the Tribe.

#### **E. Definitions.**

**Advertising.** The publication, dissemination, solicitation, or circulation of any material, visual, oral, or written, to induce directly or indirectly any Person to purchase Cannabis or a Cannabis Product.

**Cannabis.** All parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. Cannabis also means the separated resin, whether crude or purified, obtained from cannabis. Cannabis does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. Cannabis does not include Industrial Hemp.

**Cannabis Product.** Any product that contains Cannabis that is intended to be consumed orally, including but not limited to, any type of food, drink, pill, baked goods, or other consumable products, or used topically such as tinctures.

**Commercial Cannabis Activity.** The commercial cultivation, manufacture, processing, storing, laboratory testing, packaging, labeling, transportation, advertising, sale, purchase, possession, distribution, or delivery of Cannabis or Cannabis Product.

**Cultivation.** Any activity involving the planting, growing, harvesting, drying, curing, grading, processing, trimming, or storage of Cannabis, indoor or outdoor, including from within a fully enclosed and secure building.

**Delivery.** The commercial transfer of Cannabis or Cannabis Products to a customer. Delivery also includes the use by a retailer of any technology platform owned and controlled by the retailer.



**Ordinance No. 50**

**Page No. 3 of 7**

***Distribution.*** The procurement, sale, and transport of Cannabis and Cannabis Products.

***Industrial Hemp.*** A fiber or oilseed crop, or both, that is limited to types of the plant *Cannabis sativa* Linnaeus having no more than three-tenths of one percent tetrahydrocannabinol (THC) contained in the dried flowering tops, whether growing or not; the seeds of the plant; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin produced therefrom.

***Labeling.*** Any label or other written, printed, or graphic matter upon Cannabis or a Cannabis Product, upon its container or wrapper, or that accompanies any Cannabis or Cannabis Product.

***Laboratory Testing.*** Testing of Cannabis or Cannabis Product conducted under controlled scientific conditions in a laboratory or similar setting.

***Manufacture.*** To compound, blend, extract, infuse, or otherwise make or prepare a Cannabis Product.

***Marijuana.*** Cannabis, as defined in this section.

***On-Reservation Fee Lands.*** Real Property not held in trust by the United States owned by members, or by non-members who have entered into consensual relationships with the Tribe or who undertake activities that affect the political integrity, the economic security, or the health or welfare of the Tribe.

***Packaging.*** The enclosing of Cannabis or Cannabis Product in a container or covering.

***Person.*** Includes any individual, firm, co-partnership, cooperation, club, collective, society, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit, and the plural as well as the singular. Person shall include any owner, manager, proprietor, employee, vendor, volunteer, or salesperson. Person shall include members of the Tribe and non-members.



**Ordinance No. 50**

**Page No. 4 of 7**

**Possession.** The act of having, owning or otherwise taking into control, Cannabis or Cannabis Product.

**Processing.** A series of actions or operations in the manufacture of Cannabis or Cannabis Product.

**Purchase.** To obtain or acquire Cannabis or Cannabis Product by paying money or its equivalent.

**Real Property.** The land, that which is affixed to the land, that which is incidental or appurtenant to the land, and that which is immovable by applicable law, within the exterior boundaries of the Reservation.

**Responsible Party.** Each Person committing the violation or causing a condition on Trust Lands, which violates this Ordinance.

**Sell, sale, to sell.** Any transaction whereby, for any consideration, title to Cannabis and/or Cannabis Products is transferred from one Person to another, and includes the delivery of Cannabis or Cannabis Products pursuant to an order placed for the purchase of the same and soliciting or receiving an order for the same.

**Storing.** Placing, leaving, keeping or accumulating Cannabis or Cannabis Product in a location.

**Transportation.** The transfer of Cannabis or Cannabis Product from one location to another for the purpose of conducting Commercial Activity.

**Trust Lands.** Real Property owned by the Tribe or any member of the Tribe that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or Real Property owned by a member of any other federally recognized Indian tribe that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States.

## **II. COMMERCIAL CANNABIS ACTIVITY PROHIBITED**

**A. Federal Law.** The Federal Controlled Substances Act, 21 U.S.C. Sections 801 et seq., classifies marijuana as a Schedule I Drug, and makes it unlawful for any



**Ordinance No. 50**

**Page No. 5 of 7**

person to cultivate, manufacture, distribute or dispense, or possess with intent to manufacture, distribute or dispense, marijuana.

- B. Tribal Law.** All Commercial Cannabis Activity, by any Person, is prohibited on Trust Lands.

### **III. COMPLIANCE**

- A. Eviction Penalty.** A Responsible Party who violates any provision of this Ordinance and who lacks any possessory interest in the Trust Lands on which the violation occurred, or is occurring, may be immediately escorted outside the boundary of Trust Lands and banned from re-entrance.
- B. Civil Fines.** The Responsible Party who violates any provision of this Ordinance shall be required to pay the civil fine designated for such violation as is established from time to time on a schedule of civil fines promulgated by Tribal Council by duly adopted Resolution. The fine for a single violation of this Ordinance shall not exceed \$500.00 per day per violation.
- C. Additional Penalties.** If the civil fine is not timely paid additional costs may be assessed by the Tribal Council, including, but not limited to, costs of collection activities, reasonable attorneys' fees, or other costs incurred to recover the civil fines.
- D. Violation.** Acts, omissions, or conditions in violation of this Ordinance that continue, exist, or occur on more than one day constitute separate violations on each day.
- E. Due Process Hearing.** The Responsible Party charged with a civil fine or banned from Trust Lands pursuant to any violation of this Ordinance may make written request for a hearing, to the Tribal Council, within ten (10) calendar days after receipt of notice of the violation. Upon receipt of such a request, the Tribal Council shall designate a day and time for the hearing, either before the Tribal Council or before a designee of the Tribal Council designated to hear such matters.



**Ordinance No. 50**

**Page No. 6 of 7**

#### **IV. SEVERABILITY**

If any clause, sentence, paragraph, section, or part of this Ordinance shall, for any reason be adjudicated by any court of competent jurisdiction, to be invalid or unconstitutional, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section, or part thereof directly involved in the controversy in which the judgment shall have been rendered.

#### **V. SOVEREIGN IMMUNITY**

Nothing contained in this Ordinance shall be construed as a waiver by the Tribe of sovereign immunity from unconsented lawsuits or as consent by the Tribe to the bringing of any action against the Tribe, its officers, agents, employees, departments or business entities or enterprises. In no instance shall any enforcement of any kind whatsoever be allowed against any assets of the Tribe.

#### **VI. EFFECTIVE DATE**

This Ordinance shall become effective September 26, 2017.



**Ordinance No. 50**

**Page No. 7 of 7**

Ordinance Number 50 was enacted by the Tribal Council of the Agua Caliente Band of Cahuilla Indians at its Tribal Council Meeting held on Tuesday, September 26, 2017.

  
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Jeff L. Grubbe, Chairman


  
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Larry N. Olinger, Vice Chairman

  
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Vincent Gonzales III, Secretary/Treasurer

  
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Reid D. Milanovich, Member

  
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Anthony W. Purnel, Member

I, the undersigned, the Secretary-Treasurer of the Agua Caliente Band of Cahuilla Indians, hereby certify that the Tribal Council is composed of five members of whom 5, constituting a quorum, were present at a meeting whereof, duly called, noticed, convened and held on this 26<sup>th</sup> day of September; that the foregoing ordinance was duly adopted at such meeting by the affirmative roll call vote of 4-0-0 and that said ordinance has not been rescinded or amended in any way.

  
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Vincent Gonzales III, Secretary-Treasurer