

ORDINANCE NO. 353

AN ORDINANCE OF THE TOWN OF IGNACIO, COLORADO, IMPOSING A TEMPORARY SUSPENSION AND PROHIBITION ON THE SALE OF KRATOM, AND UPON THE SUBMISSION, ACCEPTANCE AND ISSUANCE OF LICENSES AND PERMITS APPLICABLE TO KRATOM SALES PENDING THE SURVEY FOR DEVELOPMENT AND ADOPTION OF POTENTIAL REGULATIONS

WHEREAS, C.R.S. § 31-15-501 provides that a municipality's governing body has powers to regulate businesses including the power to license and regulate any business place and lawful occupation, to fix the amount, terms and manner of issuing and revoking licenses issued therefor, and to prohibit within the limits of the municipality any offensive or unwholesome business or to prohibit the carrying on of any business or establishment in an offensive and unwholesome manner within the limits of the municipality; and

WHEREAS, in 2016, the U.S Food and Drug Administration ("FDA") banned the import of kratom labelled for human consumption in the form of dietary supplements; and

WHEREAS, in 2016, the Drug Enforcement Agency ("DEA") referred to kratom as an imminent hazard to public safety, initially planning to classify kratom as a Schedule I Controlled Substance, postponing any action until further scientific study by the FDA; and

WHEREAS, in 2018, the FDA released a statement providing evidence of kratom compounds' opioid properties, also raising concerns about kratom's potential for abuse, addiction, and serious health consequences, including death; and

WHEREAS, in 2018, the Centers for Disease Control ("CDC") concluded an investigation regarding an unknown source *Solmonella* kratom contamination that resulted in 199 people infected, including 4 cases in Colorado, further warning that kratom could be contaminated with *Salmonella* and could make people sick; and

WHEREAS, in 2018 the FDA issued warning letters to three marketers and distributors of kratom products, including one in Colorado, for deceptive medical claims for which there is no reliable scientific proof to support their use; and

WHEREAS, in 2018 the FDA released a statement providing evidence of kratom supplements containing heavy metals, raising concerns about their safety for human consumption; and

WHEREAS, On May 26, 2022, the Governor signed Senate Bill 22-120 into law, which is the first Colorado state law to address kratom. The bill requires the state to consult with stakeholders, including local governments, and submit a report to the General Assembly in January 2023, analyzing the feasibility of regulating kratom products, processors, and retailers; and

WHEREAS, Senate Bill 22-120's minimum requirements for the distribution, labeling, advertisement, and sale of kratom products do not go into effect July 1, 2024; and

WHEREAS, Senate Bill 22-120 clarifies that nothing prohibits local governments from imposing stricter regulations on kratom, and it is unclear if or when federal agencies will develop any formal regulations on kratom, leaving it entirely open to states and local governments to regulate—at least for now; and

WHEREAS, the sale of kratom and the establishment of kratom sales (whether operated by an individual, cooperatively, or in a business or corporate form sanctioned under Colorado law) within the Town of Ignacio without certain constraints and restrictions may have an adverse impact on the health, safety and welfare of the community; and

WHEREAS, comprehensive regulations and safeguards for all aspects of kratom sales undertaken within the Town (“Kratom Regulations”) should be considered and, if necessary, enacted, as later may be deemed appropriate, as expeditiously as is reasonably feasible in order to protect the public health, safety and welfare; and

WHEREAS, in order to prevent the sale of kratom and the establishment of additional kratom sales prior to the consideration and potential adoption of Kratom Regulations, it is necessary and advisable to enact a temporary suspension on the sale of kratom, and the accepting, processing, and/or otherwise approving any application for a Town business license or a Town sales tax license, sign permit application and any other Town approval, license, or permit currently required for or applicable to kratom sales under current Code provisions and Town regulations; and

WHEREAS, this temporary moratorium will give Town staff sufficient time to complete an assessment and recommendation on appropriate and potentially necessary Kratom Regulations to ensure that the sale of Kratom within the Town will not occur until regulations are developed, and that no additional kratom retailer is established in the Town of Ignacio before such time as the Town Board of Trustees is able to consider and potentially enact Kratom Regulations or take other action regarding kratom sales; and

WHEREAS, the imposition of this temporary moratorium is necessary for the immediate preservation and protection of the public health, safety and welfare of the citizens and visitors of the Town of Ignacio.

NOW, THEREFORE, BE IT ORDAINED by the Board of Trustees of the Town of Ignacio, Colorado:

Section 1. Findings and Intent. The recitals to this ordinance are incorporated by reference and adopted as findings and determinations of the Town Board of Trustees.

Section 2. Suspension of Administrative Action. Commencing at 11:59 PM on the date this ordinance is in effect and continuing for a period of 365 consecutive days thereafter, all departments and officers of the Town of Ignacio are prohibited from conducting preapplication conferences, accepting, processing, and/or otherwise approving or acting upon any application for building permits, Town business license or sales tax license, sign permit and any other Town approval, license or permit currently required for or applicable to kratom sales under current Code provisions and Town regulations (“Suspension”). This Suspension includes, but is not limited to, the enterprise commonly known and referred to as a kratom bar and retail establishments selling kratom for human consumption.

Section 3. Preparation of Proposed Regulations. Town Staff shall both survey and conduct outreach with proponents of the kratom industry and other key stakeholders, including regulatory agencies, to contemplate and recommend Kratom Regulations for consideration by the Town Board of Trustees. The results of the survey and any proposed Kratom Regulations shall be presented in a timely manner such that the Kratom Regulations adopted by Town Board of Trustees may take effect prior to expiration of the Suspension.

Section 4. Administration. The Town Manager shall have overall responsibility and administration of this ordinance with respect to Section 2 and Section 3 above (licensing and proposed regulations), provided that the Town Manager may designate other Town officers with specific duties and authority, as the Town Manager deems appropriate, and the Town police department shall have overall responsibility with respect to enforcement of Section 5 of this Ordinance.

Section 5. Sale of Kratom Prohibited. Commencing at 11:59 PM on the date this ordinance is in effect and continuing for a period of 365 consecutive days thereafter, no person or business shall sell or offer to sell within the Town of Ignacio any kratom. Kratom includes any product, material, compound, mixture or preparation derived from the plant *Mitragyna speciosa*, or containing any quantity of the following substances: 7-Hydroxymitragynine, Mitragynine and Epicatechin or any derivatives thereof. Kratom includes without limitation any form thereof intended to be ingested, absorbed, inhaled, chewed, or applied to the skin of an individual. Any person violating this provision shall, upon conviction, be punished as set forth in Ordinance 83, Amended by Ordinance 284, Penalties, of the Town of Ignacio Municipal Code now in affect or as may be amended from time to time, for each offense.

Section 6. Severability. If any clause, sentence, paragraph, or part of this ordinance or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction invalid, such judgment shall not affect the remaining provisions of this ordinance.

Section 7. Safety Clause. The Town Board of Trustees finds and declares that this Ordinance is promulgated and adopted for the public health, safety and welfare, and this Ordinance bears a rational relation to the legislative object sought to be obtained.

Section 8. Effective Date. This Ordinance shall take effect 30 days after publication.

PASSED, APPROVED, ADOPTED AND ORDERED PUBLISHED this 14th day November, 2022.

TOWN OF IGNACIO, COLORADO

Clark Craig, Mayor

ATTEST:

Tuggy Dunton, Town Clerk