

**VILLAGE OF ANGEL FIRE**

**Angel Fire NM 87710**

**(575) 377-3232**

**PUBLIC NOTICE**

**Council Meeting**

**Tuesday, August 11<sup>th</sup> 2020 at 5:30pm**

**Please note that in an effort to continue to provide open meetings and to comply with the new rules governing open meetings, this meeting can be accessed by using GoToWebinar using the information at the bottom of the Agenda.**

**Call to Order**

**Pledge of Allegiance**

**Roll Call**

**Approval of Agenda**

**Approval of Consent Agenda**

- 1. Approval of the July 28<sup>th</sup> Regular Council Meeting Minutes**
- 2. Approval of the August 4<sup>th</sup> Special Council Meeting Minutes**

**Requests and Responses from the Audience (Limited to 3 minutes)**

**Announcements and Proclamations**

**Reports**

- 1. Governing Body Report**
- 2. Manager's Report**
- 3. Staff Report**
- 4. Committee Reports**

**Old Business:**

- A. Discussion/ Approval of an Ordinance Amending Ordinance 5-3A-2 , Animals Running at Large (2<sup>nd</sup> Reading) (Public Hearing )**
- B. Discussion/ Approval of an Ordinance Amending Ordinance 5-2D-3, Unlawful Possession of Marijuana (2<sup>nd</sup> Reading) (Public Hearing)**
- C. Discussion/ Approval of an Ordinance Amending Ordinance 5-2D-4 , Unlawful Possession of Drug Paraphernalia (2<sup>nd</sup> Reading) (Public Hearing )**

**New Business:**

- A. Discussion/ Approval of Resolution 2020-31 a Resolution Approving the Voluntary Collection Agreement Between the Village of Angel Fire and HomeAway**

**Terry Cordova, Village Clerk**  
**Post: 08/06/2020**

**Jo Mixon, Mayor**

**THE PUBLIC IS INVITED TO ATTEND**

**Subject to Change Until Friday August 7<sup>th</sup> 2020 at 5:30pm**

**Next Council Meeting August 25<sup>th</sup> , 2020**

**AGENDA MAY BE VIEWED AT OUR WEBSITE: ANGELFIRENM.GOV**

**IF YOU ARE AN INDIVIDUAL WHO IS IN NEED OF ANY AUXILIARY AID OR SERVICE TO ATTEND THE MEETING**

**PLEASE CONTACT THE VILLAGE CLERKS OFFICE 48 HOURS PRIOR TO THE MEETING.**

**Please register for Village of Angel Fire, Village Council Meeting 8-11-2020 on Aug 11, 2020 5:30 PM MDT at:**

**<https://attendee.gotowebinar.com/register/6196160748142705420>**

**After registering, you will receive a confirmation email containing information about joining the webinar.**

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**VILLAGE OF ANGEL FIRE**  
**Regular Council Meeting Minutes**  
Tuesday July 14<sup>th</sup>, 2020

**DRAFT**

**This meeting was conducted via GoToWebinar in compliance with the NM Open Meetings Act**

**Call to Order**

Mayor Mixon called the meeting to order at 5:30pm

**Pledge of Allegiance**

Mayor Mixon called for the Pledge of Allegiance.

**Roll Call**

Present were Mayor Mixon, Mayor Pro-tem Lanon, Councilor Billingsley, Councilor Trom, Councilor Peterson. Also, present were Manager Mitchell and Village Clerk Terry Cordova. A quorum was present.

**Approval of Agenda**

Mayor Pro-tem Lanon made the motion to approve the agenda with the following change, move item H to the beginning of new business A. Councilor Trom seconded. Motion carried 4-0

**Approval of Consent Agenda**

**1. Approval of the July 14<sup>th</sup> Regular Council Meeting Minutes**

Mayor Pro-tem Lanon made the motion to approve the consent agenda. Councilor Billingsley seconded. Motion carried 4-0

**Request and Responses from the Audience (Limited to 3 minutes)**

Jackie Boyd asked what the chances were that the Village could place geese crossing signs along the trail by the golf course. Manager Mitchell said he would check into it.

**Announcements and Proclamations –None**

**Reports**

**1. Governing Body Report-None**

**2. Manager's Report**

Manager Mitchell reported that work continues on our road projects. The TAP project is going on with the sidewalks. They are doing the curb work first and then will circle back for the sidewalk. The well repairs are continue with the primary well being completed between the 14<sup>th</sup> and 17<sup>th</sup> of August. Last week I finished the interviews for the finance director's position. Made an offer and came to an agreement to hire Miss Mollie Grove. She is a professional accountant and has worked for Boing Company for over 15 years. She is the senior financial analysts specializing in estimating price spec for Boing. A managerial supervising account and has a bachelor's degree in accounting. She got her master's degree in MBA and is currently a doctoral candidate in business administration with an emphasizes on accounting and finance. She taught accounting and is currently an adjunct professor for the University of Laverne. She has owned a home here for a couple of years and have been coming up here regularly to Angel Fire. She will be starting with us full time August 17<sup>th</sup> and we are happy she is joining us.

**3. Staff Report-None**

**Committee Report-None**

**Old Business:**

**A. Discussion /Approval of an Ordinance Amending Section Eleven ,Chapter Three of Title Four of the Village Code (2nd Reading) (Public Hearing )**

Mayor Mixon opened the public hearing at 5:39pm. Manager Mitchell stated that there were no changes since the first hearing and that we have actually had no public comment. I did have a short meeting Michael Steele that does a lot of property management in the town , spoke with him on some of the changes that we are looking to put forward at the recycle park area and so I've gotten nothing but positive comments . With no further input, Mayor Mixon closed the public hearing at 5:40pm. Mayor Pro-tem Lanon made the motion to approve an ordinance amending section eleven, chapter three of title four of the Village code. Councilor Trom seconded . With no further discussion the motion carried 4-0 with

1 Mayor Pro-tem –ate, Councilor Billingsley –aye, Councilor Trom –aye, Councilor Peterson  
2 –aye.

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4 **New Business:**

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6 **A. Discussion / Approval of Resolution 2020-27 a Resolution Authorizing the Assignment of  
7 Authorized Officers and Agents and Accept the Grant Agreement With New Mexico  
8 Department of Environment Capital Appropriation Project**

9 Mayor Pro-tem Lanon made the motion to approve resolution 2020-27 a resolution  
10 authorizing the assignment of authorized officers and agents and accept the grant agreement  
11 with New Mexico Department of Environment Capital appropriation project. Councilor  
12 Peterson seconded. Sandy Garcia, Grants explained that the village applied for funding  
13 through the ICIP for the plan, design, construction, replacement of a water tank in the village.  
14 At the legislative session this year the Village of Angel Fire was awarded \$158,000. This is  
15 the agreement with required resolution to accept that funding. With no further discussion, the  
16 motion carried 4-0 with Mayor Pro-tem Lanon-aye, Councilor Billingsley-aye, Councilor  
17 Trom-aye, Councilor Peterson-aye.

18 **B. Discussion/ Approval of Resolution 2020-26 a Resolution Approving the Final Budget  
19 for Fiscal Year 2020-2021**

20 Mayor Pro-tem Lanon made the motion to approve resolution 2020-26 a resolution approving  
21 the final budget for fiscal year 2020-2021. Manager Mitchell explained that there is actually  
22 been very few changes since the interim budget. When it comes to grant match funds, as you  
23 know the streets department is back where it belongs in the general fund, as it is not an  
24 enterprise fund. Those grant funds are utilized in accordance with DFA as transfer operating  
25 funds and transfer out into those for capital projects. Therefore, that is the reason that there  
26 are no grant match funds within the streets department budget. Manager Mitchell continued to  
27 go through grants and capital projects in the budget. Also with a new finance director, we will  
28 be cleaning up the chart of accounts. Councilor Trom asked why the net revenue was 16  
29 million but the outgoing was 19 million which is roughly 2 million in the red. Manage  
30 Mitchell stated that is more like 1.668 million and the reason for that was due to the GO  
31 Bond. We collect the majority of those GO taxes in December and January, so our account  
32 balance right now is low on that. When you see the final quarterly report, it actually brings it  
33 back to the black. With no further discussion, the motion carried 4-0 with Mayor Pro-tem  
34 Lanon-aye, Councilor Billingsley-aye, Councilor Trom-aye, Councilor Peterson –aye.

35 **C. Discussion/ Approval of an Ordinance Amending Ordinance 5-3A-2 , Animals Running  
36 at Large (1st Reading) (Public Hearing )**

37 Mayor Mixon opened the public hearing at 5:53pm. Brad McCaslin, Police Chief explained  
38 that what has changed about this ordinance is that it went from a strict liability crime to a  
39 crime of intent and that was added language. This is an update to our ordinance to be in line  
40 with state statutes. With no further input from the public, Mayor Mixon closed the public  
41 hearing at 5:55pm. Mayor Pro-tem Lanon made the motion to approve an ordinance  
42 amending ordinance 5-3A-2 animals running at large, 1st reading, public hearing. Councilor  
43 Trom seconded. With no further discussion, the motion carried 4-0 with Mayor Pro-tem  
44 Lanon –aye, Councilor Billingsley –aye, Councilor Trom-aye, Councilor Peterson-aye.

45 **D. Discussion/ Approval of an Ordinance Amending Ordinance 5-2D-3, Unlawful  
46 Possession of Marijuana (1st Reading) (Public Hearing)**

47 Mayor Mixon opened the public hearing at 5:56pm. Brad McCaslin , Police Chief explained  
48 that again this ordinance is to be in line with the new update state statutes ,the possession of  
49 marijuana statute changed in July of last year . What I am doing now is going though and  
50 making sure our ordinance are up to date. Some of the definition language changed and the  
51 actual class of crime. So the possession of up to a half an ounce of marijuana is comparable  
52 now to just receiving a speeding ticket where you can just admit your guilt right there and pay  
53 a \$50.00 fine. That is the biggest change. Mayor Pro-tem Lanon asked if the state approves

1 recreational marijuana are we going to have to change these again. Brad stated that yes we  
2 will make whatever amendments are appropriate at that time. With no further input from the  
3 public, Mayor Mixon closed the public hearing at 5:58pm. Mayor Pro-tem Lanon made the  
4 motion to approve an ordinance amending ordinance 5-2D-3 unlawful possession of  
5 marijuana 1<sup>st</sup> reading public hearing. Councilor Peterson seconded. With no further  
6 discussion the motion carried 4-0 with Mayor Pro-tem Lanon –aye, Councilor Billingsley-  
7 aye, Councilor Trom-aye, Councilor Peterson-aye.

8 **E. Discussion/ Approval of an Ordinance Amending Ordinance 5-2D-4 , Unlawful**  
9 **Possession of Drug Paraphernalia (1st Reading) (Public Hearing )**

10 Mayor Mixon opened the public hearing at 5:59pm. Brad McCaslin, Police Chief explained  
11 so the biggest change again is the class of crime and sentencing. Possession of drug  
12 paraphernalia, you can receive a ticket and can choose a penalty assessment which means you  
13 can pay the fine within 30 days. With no further input from the public, Mayor Mixon closed  
14 the public hearing at 6:00pm. Mayor Pro-tem Lanon made the motion to approve an  
15 ordinance amending ordinance 5-2D-4 unlawful possession of drug paraphernalia 1<sup>st</sup> reading  
16 public hearing. Councilor Trom seconded. With no further discussion the motion carries 4-0  
17 with Mayor Pro-tem Lanon –aye, Councilor Billingsley-aye, Councilor Trom-aye, Councilor  
18 Peterson-aye.

19 **F. Discussion/ Approval of an Intergovernmental Agreement for EMS**

20 Mayor Pro-tem Lanon made the motion to approve an intergovernmental agreement for EMS.  
21 Councilor Billingsley seconded. John Murtagh , Fire Chief explained starting August 1<sup>st</sup> the  
22 Village of Eagle Nest EMS service will not be in a position to effectively respond to 911  
23 emergency call in their area. Their director and one of their primary responders are retiring.  
24 So to help lessen the impact on the Village of Eagle Nest we are willing to provide a  
25 firefighter EMT on their ambulance Monday through Friday from 9 am to 5pm. This IGA has  
26 been reviewed by legal counsel from both villages and I was able to secure a grant from the  
27 Angel Fire Community Foundation to help fund this. It will not be a burden on the Village of  
28 Angel Fire, it will actually help us to be more effective in providing care to the Village of  
29 Eagle Nest. I think it is important to look out for our neighbors and our friends. I would urge  
30 you to approve this IGA. With no further Discussion, the motion carried 4-0

31 **G. Discussion/Approval to Apply for a Grant From the Angel Fire Community Foundation**  
32 **to Assist Eagle Nest EMS With Staffing for 90 Days**

33 Mayor Pro-tem Lanon made the motion to approve to apply for a grant from the Angel Fire  
34 Community foundation to assist Eagle Nest EMS with staffing for 90 days, Councilor Trom  
35 seconded. John Murtagh, Fire Chief explained that the Angel Fire Community Foundation  
36 was gracious enough to offer a grant to us in the amount \$10,000 to help cover what  
37 essentially overtime for our personnel to staff the ambulance in Eagle Nest. The Village of  
38 Eagle Nest is contributing the remaining amount of what we calculated to be 90 days worth of  
39 staffing. With no further discussion, the motion carried 4-0.

40 **H. Discussion/Approval to Apply for the FY21 NM Fire Protection Grant**

41 Mayor Pro-tem Lanon made the motion to approve applying for the fiscal year 21 fire  
42 protection grant. Councilor Trom seconded. John Murtagh, Fire Chief explained that this is an  
43 annual grant that the New Mexico State Fire Marshal's office puts out. Last year, we were  
44 awarded a max award of \$200,000, and that was used to purchase fire station one, same grant,  
45 same timeline. I would have liked to apply for that \$200,000 max award again this year to  
46 start improvements on station 1. It does have a 20% match, but I can use fire funds for that  
47 match, so it is no cost to the Village. Unfortunately, this year the grant was reduced by \$4  
48 million, there are a lot of departments fighting for this money, but I know personally that the  
49 State Fire Marshal's office wants to see us succeed and continue building our station.  
50 Councilor Trom asked with the timing of this grant and the closing on the purchase of Fire  
51 Station, how do they align. John stated that they don't, they are about six months apart.  
52 Councilor Billingsley asked what item would be number one on your improvement list. John  
53 state it would probably be administrative offices, second would be a new bay for the ladder

1 truck, third would be to expand the station to the north. With no further discussion, the  
2 motion carried 4-0

3 **I. Discussion/ Approval of Task Order #2020-01 With Dennis Engineering for the Camino**  
4 **Grande Phase III Project**

5 Mayor Pro-tem Lanon made the motion to approve task order 2020-01 with Dennis  
6 Engineering for the Camino Grande phase 3 project. Councilor Billingsley seconded. Sandy  
7 Garcia, Grants explained the Village of Angel Fire was awarded funding through NMDOT  
8 for \$940,000 to complete phase three of Camino Grande. This task order is to allow Dennis  
9 Engineering to provide engineering services during the design and construction phase of the  
10 project. Motion carried 4-0

11 **J. Discussion/ Approval of Change Order #1 With Abraham Construction for the TAP**  
12 **Sidewalk Project**

13 Mayor Pro-tem Lanon made the motion to approve change order #1 with Abraham  
14 Construction for the TAP sidewalk project. Councilor Billingsley seconded. Sandy Garcia,  
15 Grants explained the village of Ancient Fire had entered into a contract with Abraham's  
16 Construction to do the construction of the sidewalks on Highway 434. The original contract  
17 was the amount of \$539,020 plus GRT. The project was scheduled to begin on June 15th but  
18 due to unforeseen issues, there were some delays which included utilities not being marked  
19 on time and requesting emergency locates that still took several days to get. So the contractor  
20 has asked for an additional three weeks total. There was also a delay with some projects with  
21 NMDOT. They were supposed to provide some services to us. They were unable to provide  
22 part of the testing for the project such as compaction and concrete. Due to project load and  
23 NMDOT could not come forward with helping us, as a result, Abraham's Construction had to  
24 hire a subcontractor to do that testing. This will increase the contract amount by \$36,103.22  
25 dollars which includes NMGR. We are currently working with an NMDOT and have gone  
26 to the district for engineer to help compensate some of that funding, since they were unable to  
27 actually provide the service. We're asking them to reduce our match, to help us be able to  
28 accommodate the services that they were unable to provide, we are still waiting for an answer  
29 on that. With no further discussion, the motion carried 4-0  
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32 Mayor Mixon adjourned the meeting at 6:16pm

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34 **Passed, Approved and Adopted on this 11<sup>th</sup> day in August, 2020**

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39 **Jo Mixon, Mayor**

40 **ATTEST:**

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42 **Terry Cordova, Village Clerk**  
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**VILLAGE OF ANGEL FIRE**  
**Special Council Meeting Minutes**  
Tuesday August 4<sup>th</sup> , 2020  
**DRAFT**

This meeting was conducted via GoToWebinar in compliance with the NM Open Meetings Act

**Call to Order**

Mayor Mixon called the meeting to order at 2:05pm

**Pledge of Allegiance**

Mayor Mixon called for the Pledge of Allegiance.

**Roll Call**

Present were Mayor Mixon, Mayor Pro-tem Lanon, Councilor Billingsley, Councilor Trom, Councilor Peterson. Also, present were Manager Mitchell and Village Clerk Terry Cordova. A quorum was present.

**Approval of Agenda**

Mayor Pro-tem Lanon made the motion to approve the agenda. Councilor Trom seconded. Motion carried 4-0

**New Business:**

**A. Discussion/ Approval of Resolution 2020-28 a Resolution Approving Budget Adjustments for Fiscal Year 2020**

Mayor Pro-tem Lanon made the motion to approve resolution 2020-28 a resolution approving budget adjustments for fiscal year 2020. Councilor Billingsley seconded. Manager Mitchell went over the adjustments. There was a correction to some of the transfer likely made in the September, October time frame .The others are just simple alignment to the Caselle system so we can have a clean fourth quarter report. With no further discussion, the motion carried 4-0 with Mayor Pro-tem –aye, Councilor Billingsley –aye, Councilor Trom –aye, Councilor Peterson –aye.

**B. Discussion/ Approval of Resolution 2020-29 a Resolution Approving the Final 4th Quarter Report for FY2020**

Mayor Pro-tem Lanon made the motion to approve resolution 2020-29 a resolution approving the final 4<sup>th</sup> quarter report for fiscal year 2020. Councilor Trom seconded. Manager Mitchell explained that Michael, Silvana and her staff worked on getting the fourth quarter done. This is a large packet and I'm not sure how much of it you had time to go through, the most important two pieces of paper are actually the last two page in the packet. The last two pages show everything. One ,all of our funds are positive and two gives the adjusted balance for the cash for the year end ,that will be adopted and put within the budget for fiscal year 21.Our bank reconciliations are caught up and our cash balances seem to be healthy in most areas. So going into the new year with some positive cash balances. With no further discussion, the motion carried 4-0 with Mayor Pro-tem Lanon-aye, Councilor Billingsley-aye, Councilor Trom-aye, Councilor Peterson-aye.

**C. Discussion / Approval of Resolution 2020-30 a Resolution Approving the Final Budget for FY20/21 and Rescinding All Others**

Mayor Pro-tem Lanon made the motion to approve resolution 2020-30 a resolution approving the final budget for fiscal year 20/21 and rescinding all others. Councilor Peterson seconded. Manager Mitchell went over debt service, transfers for the operating budget and for the enterprise fund. He also stated that the expected 3% hike in health care benefits was rescinded. He went on to show that the difference that made in the budget. Manager Mitchell also stated that he cleaned up the chart of accounts as we found some that were redundant and unnecessary. We are budgeting extremely conservative this year. Councilor Peterson asked we do not know where we are going to be with everything come this winter, do you anticipate still holding at 23%. If we keep going the way we are going, people will come in to ski but will have to quarantine and will not be able to ski. Manager Mitchell stated that he and the Mayor had that discussion earlier this week ,that many in the ski industry ,not only in New Mexico but throughout the entire Rocky's have been banding together trying to figure out what there are going to do this year. If something happens in the State of New Mexico that is going to prohibit or greatly limit skiing we will have to readjust GRT's. With no further discussion, the motion carried 4-0 with Mayor Pro-tem Lanon –aye, Councilor Billingsley –aye, Councilor Trom-aye, Councilor Peterson –aye.

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Mayor Mixon adjourned the meeting at 2:29pm

**Passed, Approved and Adopted on this 11<sup>th</sup> day in August, 2020**

\_\_\_\_\_  
**Jo Mixon, Mayor**

**ATTEST:**

\_\_\_\_\_  
**Terry Cordova, Village Clerk**

**ORDINANCE NO 2020-3**

**AN ORDINANCE AMENDING 5-3A-2: RUNNING AT LARGE; TETHERING OR HERDING ANIMALS OF THE VILLAGE CODE**

**WHEREAS** SB349 took effect in 2017 changing the law of running at large to a crime of intent. and

**WHEREAS** the Chief of Police has reviewed this amendment and recommends that Council approve it. and

**NOW THEREFORE BE IT ORDAINED** by the Angel Fire Village Council that the following amendments be adopted.

**5-3A-2: RUNNING AT LARGE; TETHERING OR HERDING ANIMALS:**

**A. Prohibitions:**

1. It is unlawful for any domestic livestock, including, but not limited to, meat cattle, horses, mules, donkeys, burros, swine, goats, sheep, fowl, cats, dogs or other animals, to be turned loose, abandoned or to willfully be allowed to run at large within the village limits or to trespass upon cultivated fields and gardens of any person or for any such animal to be tethered that it may roam across or into any street or public place in the village limits; and it is unlawful for any person to herd or detain such animals in any street, avenue, alley or other public place in the village limits. The owner of any livestock willfully allowing the livestock to run at large within the limits of the village or to trespass upon the property of another is guilty of a misdemeanor and shall be sentenced in accordance with the provisions of section 1-4-1 the village code and may be liable for the damage occasioned by the trespass. (amd, 77-14-7 NMSA 1978)
2. No owners of any property trespassed upon as mentioned in this section shall be liable for the injury, death or loss of any livestock resulting during the expulsion from or impounding upon his property of the livestock actually trespassing.

**B. Nuisance Declared:** Any animal found running at large in violation of this section is declared to be a nuisance and a menace to the public health and safety and, if observed by the village animal control officer or police officer, may be impounded. (Ord. 2004-08, 11-4-2004)

**PASSED, APPROVED AND ADOPTED** this 11<sup>th</sup> Day of August , 2020

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Mayor Jo Mixon

Attest:

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Terry Cordova, Village Clerk

Approved as to form:

COPPLER LAW FIRM, P.C.

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Frank R. Coppler

## ORDINANCE NO 2020-4

### AN ORDINANCE AMENDING 5-2D-3 UNLAWFUL POSSESSION OF MARIJUANA; AMENDING DEFINITIONS; DECREASING PENALTIES FOR POSSESSION OF MARIJUANA; CREATING A PENALTY ASSESSMENT FOR THE VILLAGE CRIMINAL CODE.

WHEREAS SB-323 took effect July 1<sup>st</sup>, 2019 decreasing penalties for possession of marijuana, and created a non-criminal penalty assessment for this offense. and

WHEREAS the Chief of Police has reviewed this amendment and recommends that Council approve it.

NOW THEREFORE BE IT ORDAINED by the Angel Fire Village Council that the following amendments be adopted.

#### 5-2D-3 Unlawful Possession of Marijuana:

A. Definition: For the purposes of this section, the following words shall have the meanings ascribed to them in this section:

MARIJUANA: All parts of the plant cannabis, including any and all varieties, species and subspecies of the genus Cannabis, whether growing or not, the seeds thereof and every compound, manufacture, salt, derivative, mixture or preparation of the plant or its seeds. It does not include the mature stalks of the plant, hashish, tetrahydrocannabinols extracted or isolated from marijuana, 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, fiber, oil or cake, or the sterilized seed of the plant that is incapable of germination; or the plant Cannabis sativa L. and any part of the plant, whether growing or not, containing a delta-9-tetrahydrocannabinol concentration of no more than three-tenths percent on a dry weight basis.

PRACTITIONER: A physician, certified advance practice chiropractic physician, doctor of oriental medicine, dentist, physician assistant, certified nurse practitioner, clinical nurse specialist, certified nurse-midwife, prescribing psychologist, veterinarian, euthanasia technician, pharmacist, pharmacist clinician or other person licensed or certified to prescribe and administer drugs that are subject to the controlled substances act.

B. It is unlawful for a person intentionally to possess a controlled substance unless the substance was obtained pursuant to a valid prescription or order of a practitioner while acting in the course of professional practice or except as otherwise authorized by the Controlled Substances Act. It is unlawful for a person intentionally to possess a controlled substance analog.

C. A person who violates this section with respect to:

- (1) Possession of up to one-half ounce of marijuana shall be issued a penalty assessment, and is subject to a fine of fifty dollars (\$50.00);
- (2) Possession of more than one-half ounce but up to and including one ounce of marijuana is, for the first offense, guilty of a petty misdemeanor and shall be punished by a fine of not less than fifty dollars (\$50.00) or more than one hundred dollars (\$100.00) and by imprisonment for not more than fifteen (15) days.
- (3) For a second or subsequent offense, is guilty of a misdemeanor and shall be punished by a fine of not less than one hundred dollars (\$100.00) or more than five hundred dollars (\$500.00) or by imprisonment for a definite term of less than ninety (90) days, or both.

(Ord. 1992-02, 6-22-1992; amd. 2003 Code; SB-323 2019; amd. 30-31-23 NMSA 1978)

**PASSED, APPROVED AND ADOPTED** this 11<sup>th</sup> Day of August, 2020

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Mayor Jo Mixon

Attest:

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Terry Cordova, Village Clerk

Approved as to form:

COPPLER LAW FIRM, P.C.

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Frank R. Coppler

**ORDINANCE NO 2020-5**

**AN ORDINANCE AMENDING 5-2D-4 UNLAWFUL POSSESSION OF DRUG PARAPHERNALIA; DEFINING TERMS; DECREASING PENALTIES FOR POSSESSION OF DRUG PARAPHERNALIA; CREATING A PENALTY ASSESSMENT FOR THE CRIMINAL CODE.**

**WHEREAS** SB-323 took effect July 1<sup>st</sup>, 2019 decreasing penalties for possession of drug paraphernalia, and created a non-criminal penalty assessment for this offense. and

**WHEREAS** the Chief of Police has reviewed this amendment and recommends that Council approve it.

**NOW THEREFORE BE IT ORDAINED** by the Angel Fire Village Council that following amendments be adopted.

**5-2D-4 POSSESSION, DELIVERY OR MANUFACTURE OF DRUG PARAPHERNALIA PROHIBITED -- EXCEPTIONS:**

A. Definitions:

**CONTROLLED SUBSTANCE ANALOG:**

Controlled substance analog means a substance, other than a controlled substance, that has a chemical structure substantially similar to that of a controlled substance in schedule I, II, III, IV or V or that was specifically designed to produce effects substantially similar to that of controlled substances in schedule I, II, III, IV or V. Examples of chemical classes in which controlled substance analogs are found include the following:

1. Phenethylamines;
2. N-substituted piperidines;
3. Morphinans;
4. Ecgonines;
5. Quinazolinones;
6. Substituted indoles; and
7. Arylcycloalkylamines.

Specifically excluded from the definition of "controlled substance analog" are those substances that are generally recognized as safe and effective within the meaning of the federal food, drug and cosmetic act or have been manufactured, distributed or possessed in conformance with the provisions of an approved new drug application or an exemption for investigational use within the meaning of section 505 of the federal food, drug and cosmetic act.

**DRUG PARAPHERNALIA:**

1. All equipment, products and materials of any kind which are used, intended for use, or designed for use, in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packing, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of this chapter and the state controlled substances act, New Mexico Statutes Annotated section 30-31-2 et seq. It includes, but is not limited to:
  - a. Kits used, intended for use, or designed for use in planting, propagating, cultivating, growing or harvesting of any species of plant which is a controlled substance for which a controlled substance or controlled substance analog can be derived;
  - b. Kits used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing, or preparing a controlled substance or controlled substance analog;
  - c. Isomerization devices used, intended for use, or designed for use in increasing the potency of any species of plant which is a controlled substance or controlled substance analog;
  - d. Testing equipment used, intended for use, or designed for use in identifying or in analyzing the strength, effectiveness or purity of a controlled substance or controlled substance analog;
  - e. Scales and balances used, intended for use, or designed for use in weighing or measuring controlled substances or controlled substance analogs;
  - f. Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite dextrose and lactose, used, intended for use, or designed for use in cutting controlled substances or controlled substance analogs;
  - g. Separation gins and sifters used, intended for use, or designed for use in removing seeds from or in otherwise cleaning or refining marijuana;
  - h. Blenders, bowls, containers, spoons, mixing devices and screens or sifting devices used, intended for use, or designed for use in compounding a controlled substance or controlled substance analog;
  - i. Capsules, balloons, envelopes, plastic bags, and other containers used, intended for use, or designed for use in packaging small quantities of controlled substances or controlled substance analogs;

- j. Containers and other objects used, intended for use, or designed for use in storing or concealing controlled substances or controlled substance analogs;
  - k. Hypodermic syringes, needles and other objects used or intended for use in parenterally injecting controlled substances or controlled substance analogs into the human body.
2. Objects used, intended for use or designed for use in ingesting, inhaling or otherwise introducing marijuana, cocaine, hashish or hashish oil into the human body, such as:
- a. Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls.
  - b. Water pipes.
  - c. Carburetion tubes and devices.
  - d. Smoking and carburetion masks.
  - e. Roach clips, meaning objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand.
  - f. Miniature cocaine spoons and cocaine vials.
  - g. Chamber pipes.
  - h. Carburetor pipes.
  - i. Electric pipes.
  - j. Air-driven pipes.
  - k. Chillums.
  - l. Bongs.
  - m. Ice pipes or chillers.
- B. Relevant Factors In Determining Drug Paraphernalia: In determining whether an object is drug paraphernalia, a court or other authority should consider, in addition to all other logically relevant factors, the following:

1. Statements by an owner or by anyone in control of the object concerning its use.
  2. The proximity of the object, in time and space, to a direct violation of this section or the state controlled substances act.
  3. The proximity of the object to controlled substances or controlled substance analogs.
  4. The existence of any residue of controlled substance or controlled substance analog on the object.
  5. Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons who he knows, or should reasonably know, intend to use the object to facilitate a violation of this section or the state controlled substances act; the innocence of an owner, or of anyone in control of the objects, and to a direct violation of this section or the state controlled substances act should not prevent a finding that the object is intended for use, or designed for use as a drug paraphernalia.
  6. Instructions, oral or written, provided with the object concerning its use.
  7. Descriptive materials accompanying the object which explain or depict its use.
  8. National and local advertising concerning its use.
  9. The manner in which the object is displayed for sale.
  10. Whether the owner, or anyone else in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products.
  11. Direct or circumstantial evidence of the ratio of sales of the objects to the total sales of the business enterprise.
  12. The existence and scope of legitimate uses for the object in the community.
  13. Expert testimony concerning its use.
- C. It is unlawful for a person to use or possess with intent to use drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance in violation of the Controlled Substances Act. The provisions of this

subsection do not apply to a person who is in possession of hypodermic syringes or needles at the time the person is directly and immediately engaged in a harm reduction program, as provided in the Harm Reduction Act.

D. It is unlawful for a person to deliver, possess with intent to deliver or manufacture with the intent to deliver drug paraphernalia with knowledge, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance in violation of the Controlled Substances Act. The provisions of this subsection do not apply to:

(1) department of health employees or their designees while they are directly and immediately engaged in activities related to the harm reduction program authorized by the Harm Reduction Act; or

(2) the sale or distribution of hypodermic syringes and needles by pharmacists licensed pursuant to the Pharmacy Act.

E. A person who violates the provisions of Subsection C of this section shall be issued a penalty assessment and is subject to a fine of fifty dollars (\$50.00). A person who violates the provisions of Subsection D of this section is guilty of a misdemeanor and, upon conviction, may be punishable as provided in section 5-2A-5 of this chapter. (Ord. 1992-02, 6-22-1992; amd. 2003 Code) (Ord. 1992-02, 6-22-1992; amd. 2003 Code; SB-323 2019; amd. 30-31-25.1 NMSA 1978)

**PASSED, APPROVED AND ADOPTED** this 11<sup>th</sup> Day of August , 2020

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Mayor Jo Nixon

Attest:

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Terry Cordova, Village Clerk

Approved as to form:

COPPLER LAW FIRM, P.C.

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Frank R. Coppler