

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MESA, ARIZONA, AMENDING TITLE 11, MESA ZONING ORDINANCE, SECTION 11-31-34 STANDARDS FOR SPECIFIC USES AND ACTIVITIES: MEDICAL MARIJUANA FACILITIES; PROVIDING PENALTIES FOR THE VIOLATION THEREOF; PRESERVING RIGHTS AND DUTIES THAT HAVE ALREADY MATURED AND PROCEEDINGS WHICH HAVE ALREADY BEGUN THEREUNDER.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MESA, ARIZONA, as follows:

Text written in **BOLD ALL CAPS** indicates new language.
~~Strikethrough~~ fonts indicate deletions.

SECTION 1: That Section 11-31-34 of the Mesa City Code is hereby amended as follows:

11-31-34: Medical Marijuana Facilities

Medical Marijuana Related Facilities, including Dispensaries, Cultivation Facilities and Infusion Facilities, each as defined in Section 11-86-5:

- A. Medical Marijuana Dispensaries are permitted only in the LI and GI Districts, provided that evidence has been demonstrated of compliance with all of the following:
1. ~~Registration of the location of the Dispensary and any associated Off-site Cultivation Facilities with the Planning Division. Such registration shall be valid for a period of one (1) year from the date of registration, and may be renewed only in the event the Arizona Department of Health Services (DHS) also renews the DHS dispensary Registry Certification.~~ Application for and subsequent issuance of an active Medical Marijuana Dispensaries registry certification from the Arizona Department of Health Services pursuant to A.R.S § 36-2804. If the Department of Health Services denies the issuance or renewal of a registry certification, the Planning Division registration of the location of the dispensary and associated facilities, specified in Sub-section E, below, shall expire immediately.
 2. The dispensary shall be located a minimum distance of 5,280-feet from the next nearest registered Medical Marijuana Dispensary, including dispensaries located in neighboring jurisdictions.
 3. The dispensary shall be located a minimum distance of 2,400-feet from the following land uses:
 - a. Residential Substance Abuse Facilities,
 - b. Alcohol Rehabilitation Facilities,
 - c. Correctional Transitional Housing Facility; and,
 - d. Off-site Medical Marijuana Cultivation Facilities (Except the dispensary specifically associated with the off-site cultivation facility).
 4. The dispensary shall be located a minimum distance of 1,200-feet from the following land uses, **UNLESS SEPARATED BY A CANAL OR RAILROAD TRACK AND STREET**

ACCESS BETWEEN THE DISPENSARY AND THE LAND USE EXCEEDS 1,200- FEET:

- a. Churches located in RS, RM, DR, T3N, T4N, or T5N Districts;
- b. Libraries;
- c. Schools; and,
- d. Public Parks located in the LI or GI districts.

5. The dispensary shall be located a minimum distance of 500-feet from ~~THE FOLLOWING LAND USES, UNLESS SEPARATED BY A CANAL OR RAILROAD TRACK AND STREET ACCESS BETWEEN THE DISPENSARY AND THE LAND USE EXCEEDS 500- FEET:~~

- a. Day Care Centers and Pre-schools;
 - b. Public parks in all zoning districts except LI or GI; and,
 - c. Privately owned designated open spaces and recreations areas maintained by Homeowner's Associations.
6. The Dispensary shall be no larger than 2,500 square feet, of which no more than 500 square feet shall be used for storage of product.
7. The Dispensary shall be housed in a permanent building.
8. A minimum of 25% of the gross floor area (GFA) of the Dispensary shall be set aside for use as an interior customer waiting area.
9. The Dispensary facility shall not include:
- a. A drive through window;
 - b. Outdoor seating;
 - c. Outdoor vending machines; and,
 - d. Temporary, portable, or self-powered mobile facilities.
10. The Dispensary ~~shall not~~ **MAY** offer direct or home delivery service **IN COMPLIANCE WITH ARIZONA DEPARTMENT OF HEALTH SERVICES REGULATIONS AND REQUIREMENTS.**
11. The time the Dispensary may be open to the public shall be limited to the hours between 8:00 am and 9:00 pm of the same calendar day.
12. The Dispensary shall remain in compliance with all requirements of the Arizona Department of Health Services and A.R.S § 36-2804.
- B. Medical Marijuana Cultivation Facilities ("Cultivation Facilities") and medical marijuana infusion facilities (Infusion Facility), as these terms are defined by this Ordinance, are permitted only in the LI and GI districts, subject to compliance with all of the following:
- 1. The Location of the Cultivation Facilities and/or the infusion facility shall be a minimum distance of 2,400 feet from the next nearest Medical Marijuana Dispensary, Off-site Cultivation Facilities or infusion facility. This separation distance does not apply to the

distance between the cultivation or infusion facility, and the specific dispensary served by the Cultivation or Infusion Facility.

2. The Location of the Cultivation and/or Infusion Facility shall be a minimum distance of 1,200-feet from any of the following: **LAND USES, UNLESS SEPARATED BY A CANAL OR RAILROAD TRACK AND STREET ACCESS BETWEEN THE CULTIVATION AND/OR INFUSION FACILITY AND THE LAND USE EXCEEDS 1,200-FEET:**
 - a. Churches located in RS, RM, DR, T3N, T4N, or T5N Districts;
 - b. Libraries;
 - c. Schools; and,
 - d. Public parks in the LI or GI districts.
 3. The location of the Cultivation and/or Infusion Facility shall be a minimum distance of 500-feet from: **ANY OF THE FOLLOWING LAND USES, UNLESS SEPARATED BY A CANAL OR RAILROAD TRACK AND STREET ACCESS BETWEEN THE CULTIVATION AND/OR INFUSION FACILITY AND THE LAND USE EXCEEDS 500-FEET:**
 - a. Day Care Centers and Pre-schools;
 - b. Public parks in all zoning districts except LI or GI; and,
 - c. Privately owned designated open spaces and recreations areas maintained by Homeowner's Associations as designated on the applicable plan of development approved by the City.
 4. The maximum floor area of an Off-site Cultivation Facilities shall be limited to 25,000 square feet.
 5. On and Off-site Cultivation Facilities shall be housed in Permanent Buildings.
 6. The maximum floor area of an Infusion Facility shall be limited to 10,000 square feet, of which no more than 2,500 square feet shall be used for storage of marijuana related finished product or marijuana related materials used in the production of product.
 7. The Cultivation and/or Infusion Facility shall remain in compliance with requirements of the Arizona Department of Health Services and A.R.S § 36-2804.
- C. Medical Marijuana Caregiver Cultivation Facilities are permitted as an accessory use in all residence districts, subject to compliance with all of the following:
1. The Accessory Cultivation Facilities shall be located a minimum distance of 25-miles from the next closest Medical Marijuana Dispensary. This 25-mile separation distance includes those dispensaries that are located in neighboring jurisdictions.
 2. The Cultivation Facility shall be housed in a permanent building.
 3. The Cultivation Facility shall be limited to a maximum floor area of 250 square feet, including storage areas.
 4. The location (including the correct address) of Cultivation Facility shall be registered with the Planning Division.

5. The Caregiver shall be in possession of a Caregiver Card, and be in compliance with all rules and requirements of the Arizona Department of Health Services and A.R.S § 36-2804 of the Arizona Medical Marijuana Act with regard to cultivating marijuana as a caregiver to a qualified patient.
- D. Medical Marijuana Qualified Patient Cultivation Facilities are permitted as an accessory use in all residence districts, subject to compliance with all of the following:
1. The Accessory Cultivation Facilities shall be located a minimum distance of 25-miles from the next closest Medical Marijuana Dispensary. This 25-mile separation distance includes those dispensaries that are located in neighboring jurisdictions.
 2. The Cultivation Facility shall be limited to a maximum floor area of 250 square feet, including storage areas.
 3. The location (address) of the Cultivation Facility shall be registered with the Planning Division.
 4. At least one resident of the property shall be in possession of a Qualified Patient Card, and be in compliance with all requirements of Department of Health Services and A.R.S § 36-2804 of the Arizona Medical Marijuana Act with regard to cultivating marijuana as a qualified patient.
- E. All medical marijuana dispensaries, cultivation facilities and infusion facilities, including all accessory cultivation facilities, shall register the location of the facility (and associated off-site Cultivation Facilities, if applicable) with the Planning Division. Such registration shall be valid for a period of one (1) year from the date of registration, and may be renewed only in the event the Arizona Department of Health Services (DHS) also renews the DHS dispensary Registry Certification. Such registration with the Planning Division shall provide the following information:
1. Name, mailing address, telephone number and e-mail address of the individual or Non-profit organization operating the facility. If a non-profit organization registers the facility location, information pertaining to contacting the individual responsible for managing the facility shall also be provided.
 2. A written narrative describing how the location and improvements associated with the registered facility comply with the requirements of this ordinance.
 3. If applicable, the submittal of the name(s) and location(s) of the offsite medical marijuana cultivation facility associated with the dispensary operation.
 4. Applicable only to Dispensaries, ~~a copy of the operating procedures adopted~~ **WRITTEN ACKNOWLEDGEMENT THE DISPENSARY HAS FILED A SECURITY PLAN WITH THE STATE AND WILL OPERATE** in compliance with A.R.S § 36-2804(B)(1)(c), including record keeping and security measures.
- F. Any combination of medical marijuana dispensary, cultivation facility and/or infusion facility may occur at a single location, provided:
1. The combined facility complies with all requirements of this subsection F.
 2. The maximum floor area associated with the combined activity shall not exceed in aggregate the maximums specified by items A6, B3 and B4 for the specific individual uses being combined,

- 3 The floor area specifically assigned to individual dispensary, cultivation and/or infusion activities within the combined facility does not exceed the maximums specified by items A6, B3 and B4 of this subsection for each individual land use.

SECTION 2: REPEAL OF CONFLICTING ORDINANCES

That all Ordinances or parts of Ordinances, and all sections of the Mesa City Code or parts of such sections in conflict herewith, are hereby repealed; provided that such repeal shall not:

- A. Affect suits pending, or rights and duties that matured or were existing, or penalties that were incurred and proceedings that were begun immediately prior to the effective date of this Ordinance;
- B. Impair, void or affect and grant or conveyance made, or any right acquired, or a cause of action now existing under such repealed portions.

SECTION 3: The effective date of this Ordinance shall be thirty (30) days following adoption by Mesa City Council.

SECTION 4: SEVERABILITY

If any section, subsection, sentence clause, phrase or portion of this Ordinance or any part of the material adopted herein by reference is for any reason held to be invalid or unconstitutional by the decision of a Court of competent jurisdiction such decision shall not affect the validity of the remaining portions thereof.

SECTION 5: PENALTY

CIVIL PENALTIES:

- A. Any owner, occupant or responsible party who is found responsible for a civil violation of this Ordinance, whether by admission, default, or after a hearing, shall pay a civil sanction of not less than \$150 or more than \$1,500, per citation. A second finding of responsibility within 24 months of the commission of a prior violation of this Chapter shall result in a civil sanction of not less than \$250 or more than \$2,500. A third finding of responsibility within 36 months of the commission of a prior violation of this Chapter shall result in a civil sanction of not less than \$500 or more than \$2,500. In addition to the civil sanction, the responsible party shall pay the applicable fees and charges set forth in the City's Development and Sustainability Department (Code Compliance) Schedule of Fees and Charges, and may be ordered to pay any other applicable fees and charges.
- B. The 36-month provision of subsection (A) of this Section shall be calculated by the dates the violations were committed. The owner, occupant, or responsible party shall receive the enhanced sanction upon a finding of responsibility for any violation of this Chapter that was committed within 36 months of the commission of another violation for which the owner or responsible party was convicted or was otherwise found responsible, irrespective of the order in which the violations occurred or whether the prior violation was civil or criminal.
- C. Each day in which a violation of this Ordinance continues, or the failure to perform any act or duty required by this Ordinance or by the Civil Hearing Officer continues, shall constitute a separate civil offense.

HABITUAL OFFENDER:

- A. A person who commits a violation of this Ordinance after previously having been found responsible for committing 3 or more civil violations of this Ordinance within a 24-month period — whether by admission, by payment of the fine, by default, or by judgment after hearing — shall be guilty of a class 1 criminal misdemeanor. The Mesa City Prosecutor is authorized to file a criminal class 1 complaint in the Mesa City Court against habitual offenders. For purposes of calculating the 24-month period under this paragraph, the dates of the commission of the offenses are the determining factor.
- B. Upon conviction of a violation of this Subsection, the Court may impose a sentence or incarceration not to exceed 6 months in jail; or a fine not to exceed \$2,500, exclusive of penalty assessments prescribed by law; or both. The Court shall order a person who has been convicted of a violation of this Section to pay a fine of not less than \$500 for each count upon which a conviction has been obtained. A judge shall not grant probation to or suspend any part or all of the imposition or execution of a sentence required by this Subsection except on the condition that the person pay the mandatory minimum fines as provided in this Subsection.
- C. Every action or proceeding under this Section shall be commenced and prosecuted in accordance with the laws of the State of Arizona relating to criminal misdemeanors and the Arizona Rules of Criminal Procedure.

PASSED AND ADOPTED by the City Council of the City of Mesa, Maricopa County, Arizona, this 7th day of May, 2018.

APPROVED:

Mayor

ATTEST:

City Clerk