

ORDINANCE NO. 5803

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, AMENDING MESA CITY CODE TITLE 11, CHAPTER 31, SUBSECTION 11-31-34(A) PERTAINING TO MARIJUANA FACILITIES. THE AMENDMENTS INCLUDE, BUT ARE NOT LIMITED TO, MODIFYING THE SPACING REQUIREMENTS BETWEEN MARIJUANA FACILITIES; PROVIDING PENALTIES FOR THE VIOLATIONS THEREOF; AND PRESERVING RIGHTS AND DUTIES THAT HAVE ALREADY MATURED AND PROCEEDINGS WHICH HAVE ALREADY BEGUN THEREUNDER.

WHEREAS, at the November 3, 2020, General Election, Arizona voters passed the statewide ballot initiative I-23-2020, known as the “Smart and Safe Arizona Act,” certified as Proposition 207; and

WHEREAS, on December 8, 2020, the Mayor and City Council, by Ordinance No. 5601, to protect public health, safety, and welfare, adopted Mesa City Code Title 6, Chapter 25, entitled Marijuana Prohibition, which, to the extent permitted by law, prohibited: (1) recreational marijuana retail sales and marijuana testing facilities in the City; and (2) delivery of recreational marijuana and marijuana products within the City; and

WHEREAS, on July 8, 2021, the Mayor and City Council, by Ordinance No. 5633, amended the Mesa Zoning Ordinance regarding marijuana facilities including to: (1) incorporate into the Mesa Zoning Ordinance the prohibition on recreational marijuana retail sales and marijuana testing facilities found in Mesa City Code Title 6, Chapter 25; (2) allow only dual licensee facilities, subject to the same development standards as medical marijuana facilities; (3) clarify the City’s registration process; and (4) add a revocation process; and

WHEREAS, the Mesa Zoning Ordinance regulates the location of marijuana facilities for the benefit of the public and to conserve and promote public health, safety, and welfare, by, in part, helping ensure marijuana facilities are located in appropriate and compatible areas of Mesa, including by requiring marijuana facilities to be located on industrial-zoned properties and be separated from certain land uses such as other marijuana facilities, schools, and churches by a specified distance, to help mitigate the impacts of marijuana facilities on sensitive land uses, residential communities, and commercial development; and

WHEREAS, it has become apparent that one of the most appropriate and compatible locations for marijuana facilities in Mesa is within large industrial areas that are located along wide arterial streets; location of marijuana facilities in these areas often results in the marijuana facilities being appropriately buffered and insulated from other land uses and having less impact on residential communities and commercial developments due to the location within a large industrial development; and

WHEREAS, creating an exception to the minimum distance requirement for existing marijuana facilities will encourage these existing marijuana facilities to be located or to relocate within a large industrial development, which are appropriately buffered and insulated, while not providing an incentive for marijuana facilities located outside of the City to relocate to the City; and

WHEREAS, on May 24, 2023, the Planning and Zoning Board recommended that the City Council adopt the proposed amendments; and

WHEREAS, to conserve and promote the public health, safety, and welfare, the Mayor and City Council desire to amend Section 11-31-34(A) of the Mesa Zoning Ordinance to, in part, modify the spacing requirements for existing marijuana facilities to encourage these existing marijuana facilities to be located or to relocate within large industrial areas that are appropriately buffered from other land uses, which will result in less impact on sensitive land uses, residential communities, and commercial development, and by limiting the modification to existing marijuana facilities, the modification will not provide an incentive for marijuana facilities located outside of the City to relocate to the City.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, AS FOLLOWS:

Text written in **BOLD ALL CAPS** indicates new language.
Text written in ~~strikethrough~~ indicates deleted language.

Section 1: Mesa City Code Subsection 11-31-34(A) is hereby amended as follows:

A. **General Requirements.** A medical marijuana dispensary, dual licensee facility, marijuana cultivation facility, and marijuana infusion facility is permitted only in the LI and GI districts, provided that evidence has been demonstrated of compliance with all of the following:

1. Spacing requirements for medical marijuana dispensaries and dual licensee facilities. Each medical marijuana dispensary and each dual licensee facility shall be separated from the following uses as follows:

(a) A minimum distance of 5,280 feet from the nearest registered medical marijuana dispensary or dual licensee facility, including any medical marijuana dispensary, dual licensee facility or marijuana establishment located in neighboring jurisdictions, **EXCEPT AS PROVIDED IN SUBSECTION 11-31-34(A)(1)(A)(I).**

I. AN EXISTING MARIJUANA FACILITY MAY BE LOCATED A MINIMUM DISTANCE OF 1,000 FEET FROM THE NEAREST REGISTERED MEDICAL MARIJUANA DISPENSARY OR DUAL LICENSEE FACILITY IF THE EXISTING MARIJUANA FACILITY:

1. IS LOCATED ON OR RELOCATES TO A LARGE INDUSTRIAL DEVELOPMENT; AND

2. IS SETBACK FROM A MAJOR ROADWAY BY AT LEAST 300 FEET; AND

3. IS SEPARATED FROM THE NEAREST REGISTERED MEDICAL MARIJUANA DISPENSARY OR DUAL LICENSEE FACILITY BY THE MAJOR ROADWAY.

II. THE DISTANCE IN SUBSECTION 11-31-34(A)(1)(A)(I) IS MEASURED FROM THE SUPPORT WALL, POST OR COLUMN

OF THE EXISTING MARIJUANA FACILITY ALONG THE STREET TO THE SUPPORT WALL, POST OR COLUMN OF THE NEAREST REGISTERED MEDICAL MARIJUANA DISPENSARY OR DUAL LICENSEE FACILITY.

III. THE FOLLOWING DEFINITIONS APPLY TO SUBSECTION 11-31-34(A)(1)(A):

“EXISTING MARIJUANA FACILITY” MEANS A MEDICAL MARIJUANA DISPENSARY OR DUAL LICENSEE FACILITY THAT PRIOR TO THE EFFECTIVE DATE OF ORDINANCE NO. 5803 HAD REGISTERED WITH THE CITY AND WAS OPERATING WITHIN THE CORPORATE BOUNDARIES OF THE CITY AS EVIDENCED BY A CERTIFICATE OF OCCUPANCY ISSUED BY THE CITY.

“LARGE INDUSTRIAL DEVELOPMENT” MEANS A SINGLE PARCEL OF LAND ZONED LI OR GI THAT IS AT LEAST 80-ACRES IN SIZE, OR A PARCEL OF LAND ZONED LI OR GI THAT IN COMBINATION WITH ADJOINING PARCELS OF LAND ZONED LI OR GI THAT ARE NOT SEPARATED BY A RIGHT-OF-WAY DEDICATED TO THE CITY ARE COLLECTIVELY AT LEAST 80-ACRES IN SIZE.

“MAJOR ROADWAY” MEANS A HIGHWAY, SIX LANE ARTERIAL ROADWAY, OR A ROADWAY IDENTIFIED AS A FUTURE SIX LANE ARTERIAL IN THE MESA 2040 TRANSPORTATION PLAN, AS MAY BE AMENDED FROM TIME TO TIME.

“REGISTERED MEDICAL MARIJUANA DISPENSARY OR DUAL LICENSEE FACILITY” MEANS AND INCLUDES BOTH: (1) A MEDICAL MARIJUANA DISPENSARY OR DUAL LICENSEE FACILITY THAT IS REGISTERED OR HAD REGISTERED WITH THE CITY AND IS CURRENTLY OPERATING WITHIN THE CORPORATE BOUNDARIES OF THE CITY AS EVIDENCED BY A CERTIFICATE OF OCCUPANCY ISSUED BY THE CITY, AND (2) A MEDICAL MARIJUANA DISPENSARY, DUAL LICENSEE FACILITY, OR MARIJUANA ESTABLISHMENT THAT IS CURRENTLY OPERATING IN A NEIGHBORING JURISDICTION.

Section 2: RECITALS. The recitals in this Ordinance (i.e., Ordinance No. 5803) are fully incorporated in this Ordinance by reference, and each recital represents a finding of fact and determination made by the City Council.

Section 3: REPEAL OF CONFLICTING ORDINANCES AND PRESERVATION OF RIGHTS AND DUTIES. Any sections of the Mesa Zoning Ordinance or parts of such sections in conflict with this Ordinance are hereby repealed; provided that such repeal shall not affect suits pending, rights and duties

that matured or were existing, penalties that were incurred, or proceedings that were initiated prior to the effective date of this Ordinance.

Section 4: EFFECTIVE DATE. The effective date of this Ordinance is thirty (30) days after the adoption of this Ordinance.

Section 5: SEVERABILITY. If any term, provision, 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, unenforceable, or unconstitutional by the decision of a court of competent jurisdiction, the remaining provisions of this Ordinance shall remain in effect.

Section 6: SPACING REQUIREMENTS AND ENFORCEMENT DISCRETION. The spacing requirements for medical marijuana dispensaries and dual licensee facilities in this Ordinance and prior Ordinances, including Ordinance Nos. 5388, 5437, 5601, and 5633 (collectively, “Spacing Requirements”), are for the benefit of the public and to conserve and promote public health, safety, and welfare. The Spacing Requirements benefit the public by, in part, helping ensure marijuana facilities are located in appropriate and compatible areas of Mesa and are separated from certain land uses, such as churches and schools, to mitigate the impacts of marijuana facilities on those land uses and on residential communities and commercial development. The Spacing Requirements are not intended to create a private cause of action, or be used as an anticompetitive tool, by a medical marijuana dispensary or dual licensee facility against another medical marijuana dispensary or dual licensee facility. Additionally, the City has discretion to enforce its Zoning Ordinance, including this Ordinance and the Spacing Requirements. The City is not required to enforce the Spacing Requirements, or any other section of this Ordinance or the Zoning Ordinance, at the request or complaint of a medical marijuana dispensary or dual licensee facility. The City may consider the possible effect of equitable estoppel, including of *Pingitore v. Town of Cave Creek*, 194 Ariz. 261 (Ariz. App. Div. 1 1998), when exercising its discretion to enforce, and to what extent to enforce, the Spacing Requirements or any other section of this Ordinance or the Zoning Ordinance.

Section 7: LEGAL CONFORMING USE – QUALIFIED MARIJUANA FACILITY. An Existing Marijuana Facility that meets the requirements for the exception to the minimum distance in Section 1 of this Ordinance (as determined by the Zoning Administrator) (each, a “Qualified Marijuana Facility” and collectively, “Qualified Marijuana Facilities”) is, and is deemed to have been, a legally established use that conforms with the minimum spacing requirements from the nearest registered medical marijuana facility or dual licensee facility in the Zoning Ordinance without needing to take any action including, but not limited to updating, renewing, or refiling its City registration or submitting a new City registration application. Although a Qualified Marijuana Facility is a legally established use without taking any action, each Qualified Marijuana Facility must still comply with the City’s registration requirements going forward.

Section 8: RETROACTIVE APPLICATION. This Ordinance, including the exception to the minimum distance in Section 1, is retroactively applicable to Qualified Marijuana Facilities as of the date the Qualified Marijuana Facility initially registered with the City, such that the Qualified Marijuana Facility is, and is deemed to have been as of the date of its initial registration with the City, a legally established use that conforms with the minimum spacing requirements from the nearest registered medical marijuana facility or dual licensee facility in the Zoning Ordinance.

Section 9: ANNUAL REGISTRATION. A medical marijuana dispensary or dual licensee facility (including both an Existing Marijuana Facility and a Qualified Marijuana Facility) is required to annually renew its City registration and otherwise maintain its compliance with the Zoning Ordinance.

Section 10: NO NEW OR ADDITIONAL FACILITIES. This Ordinance does not allow new or additional medical marijuana dispensaries or dual licensee facilities to utilize the 1,000 feet separation in Section 1 of this Ordinance. More specifically, the 1,000 feet separation in Section 1 of this Ordinance applies only to an Existing Marijuana Facility whose location, as of the effective date of this Ordinance, meets the criteria of Section 1 or an Existing Marijuana Facility that relocates to a location meeting the criteria of Section 1. A new or additional medical marijuana dispensary or dual licensee facility opened by an Existing Marijuana Facility after the effective date of this Ordinance is not considered an Existing Marijuana Facility and does not qualify for the 1,000 feet separation from the nearest registered medical marijuana dispensary or dual licensee facility in Section 1 of this Ordinance.

Section 11: EXCEPTION APPLIES ONLY TO FACILITIES LOCATED IN THE CITY. The exception in Section 1 of this Ordinance may only be utilized by Existing Marijuana Facilities that are either located on, or relocate to, a Large Industrial Development that is appropriately buffered and insulated as set forth in this Ordinance. By limiting the applicability of the exception in Section 1 of this Ordinance to only Existing Marijuana Facilities, the exception in Section 1 of this Ordinance will not provide an incentive for marijuana facilities located outside of the City to relocate to the City.

Section 12: CITY CLERK AUTHORIZATION. The City Clerk is authorized and directed to replace “the Effective Date of this Ordinance” in the definition of Existing Marijuana Facility with the effective date of this Ordinance.

Section 13: 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 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 COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, this 28th day of August 2023.

APPROVED:

Mayor

ATTEST:

City Clerk