



City Council Staff Report

Date: January 8, 2024
To: City Council
Through: Marc Heirshberg, Deputy City Manager
Nana Appiah, PhD, AICP, Development Services Director
Mary Kopaskie-Brown, AICP, OPPI, CIP, Planning Director
From: Rachel Nettles, Assistant Planning Director
Subject: Mesa Zoning Ordinance text amendment (**Marijuana Facilities**) - Proposed amendments to 31 of Title 11 of the Mesa City Code.

STAFF RECOMMENDATION:

Staff recommends that City Council adopt the Ordinance amending the Mesa Zoning Ordinance.

BACKGROUND:

At the August 21, 2023 City Council meeting, the City Council introduced an ordinance amending Section 11-31-34(A) of the Mesa Zoning Ordinance (MZO) regarding the minimum spacing requirement between two medical marijuana dispensaries or dual licensee facilities (i.e., Marijuana Facility(ies)). Prior to acting on that ordinance, however, a Marijuana Facility currently operating in Mesa (Nova Dispensary) contacted the City with proposed changes to the ordinance. While the changes proposed by Nova Dispensary were not acceptable to the City, the Planning Division and City Attorney's Office proposed an equitable alternative that meets the intent and goals of the MZO and the original proposed text amendments, and which Nova Dispensary agreed to. The proposed revisions to the ordinance were discussed with the City Council at the August 24, 2023 study session.

City Council agreed to postpone action on the ordinance, allowing staff time to draft the changes. These proposed text amendments incorporate the changes discussed with the City Council at the August 24, 2023 study session. These proposed text amendments, including the changes to the ordinance, were reviewed by the Planning & Zoning Board on December 13, 2023 and the Board recommended adoption (7-0).

PURPOSE:

The Planning Division regularly evaluates the MZO regulations to ensure their effectiveness in implementing the purpose, intent, and spirit of the Code, and from time to time, the Planning Division makes recommendations for amendments. The Planning Division is recommending certain text amendments to the MZO related to Marijuana Facilities.

The proposed text amendments would modify the spacing requirements in Section 11-31-34(A)(1) of the MZO for Marijuana Facilities. The proposed text amendments would provide two very limited exceptions to the minimum spacing requirement of 5,280 feet between Marijuana Facilities. Only Existing Marijuana Facilities (defined below) would be able to utilize either exception.

The intent of the first limited exception (unchanged from the prior version of the proposed text amendments) is to encourage Existing Marijuana Facilities to relocate to large industrial developments that are appropriately setback from streets and buffered from other uses. The intent of the second limited exception (new to this version of the proposed text amendments) is to address the unique situation of Marijuana Facilities, including Nova Dispensary, that are located within the 5,280 feet buffer of an Existing Marijuana Facility that is able to utilize the first exception.

Details of the proposed text amendments are attached to this report as Exhibit 1 (2023 Marijuana Ordinance Text Amendments) and are explained in more detail below.

DISCUSSION:

The MZO requires that Marijuana Facilities be located in Light Industrial (LI) or General Industrial (GI) zoning districts. Marijuana Facilities must adhere to specific spacing requirements from other land uses such as other Marijuana Facilities, schools, churches, etc. The spacing requirements are for the benefit of the public by helping ensure that Marijuana Facilities are in appropriate areas and that there is not an oversaturation of Marijuana Facilities in a specific area and also by protecting more sensitive land uses (such as schools and churches) and mitigating the impacts of Marijuana Facilities on those land uses and on residential communities and commercial developments.

Staff is recommending certain text amendments to Section 11-31-34(A)(1)(a) of the MZO, which would provide two limited exceptions to the minimum spacing requirements for Existing Marijuana Facilities. Only Existing Marijuana Facilities could use the exceptions in the proposed text amendment; the text amendment would not allow new or additional Marijuana Facilities to use the exception, in order to not incentivize Marijuana Facilities from other jurisdictions to relocate to the City. The zoning districts for Marijuana Facilities (LI and GI), the spacing requirements from other uses, and the City process for review and approval of Marijuana Facility applications will remain the same.

The Limited Exceptions to the Spacing Requirement Between Marijuana Facilities:

Currently, the MZO requires that all Marijuana Facilities be separated a minimum distance of 5,280 feet from one another.

Limited Exception #1: This limited exception was in the prior version of the proposed text amendments and has not changed.

The proposed text amendments would allow an Existing Marijuana Facility to be separated a minimum of 1,000 feet from the nearest Medical Marijuana Dispensary and Dual Licensee Facility if the Existing Marijuana Facility meets all of the following criteria in Subsection 11-31-34(A)(1)(a)(i):

- a. The Existing Marijuana Facility is located on or relocates to a Large Industrial Development; and
- b. The Existing Marijuana Facility is setback from a Major Roadway by at least 300 feet; and
- c. The Existing Marijuana Facility is separated from the nearest registered Medical Marijuana Dispensary or Dual Licensee Facility by the Major Roadway.

The minimum 1,000-foot 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 nearest support wall, post or column of the nearest registered Medical Marijuana Dispensary or Dual Licensee Facility. An Existing Marijuana Facility that meets the three requirements for the 1,000 foot separation is referred to as a “Qualified Marijuana Facility.”

Limited Exception #2: This limited exception is new to the proposed text amendments and is the only substantive change.

The proposed text amendments would also allow a one-time relocation for any Existing Marijuana Facility that is located less than 5,280 feet from the nearest Qualified Marijuana Facility on the effective date of the proposed ordinance (referred to as a “Relocation Eligible Marijuana Facility”) if the new location compared to the existing location results in greater separation/an increased distance between: (1) the Relocation Eligible Marijuana Facility and the nearest Qualified Marijuana Facility, (2) the Relocation Eligible Marijuana Facility and the nearest right-of-way, and (3) the Relocation Eligible Marijuana Facility and the nearest intersection of public streets. The Relocation Eligible Marijuana Facility must comply with all other requirements of the MZO (including the spacing requirements from other uses).

A Relocation Eligible Marijuana Facility is uniquely affected by the proposed text amendments because of its location within the 5,280 feet buffer of a Qualified Marijuana Facility. A Qualified Marijuana Facility is able to utilize the lesser, 1,000 feet separation because it is located on a large industrial property and meets the other setback requirements for the 1,000 feet exception. Meaning, a Qualified Marijuana Facility can stay put. Without this new, one-time relocation included in the proposed text amendments, a Relocation Eligible Marijuana Facility that is currently operating within the 5,280 feet buffer of a Qualified Marijuana Facility would be stuck and not able to move, even if the move resulted in it being further from the Qualified Marijuana Dispensary and further set back. That result would not serve the goals of the proposed text amendments. By allowing a one-time relocation, not only is the result equitable for a Relocation Eligible Marijuana Facility that is in this unique position, but the planning goals of the proposed text amendments are met. With the relocation, the Relocation Eligible Marijuana Facility would be located further from the nearest Qualified Marijuana Facility and would be further set back from intersections and public streets. Section 10 of the ordinance explains how to interpret and apply this new section, including rules for measurement and definitions.

Definitions:

The following definitions are included in the proposed text amendments and apply to Subsection 11-31-34 (A)(1)(a) of the MZO:

“Existing Marijuana Facility” means a Medical Marijuana Dispensary or Dual Licensee Facility that prior to the effective date of Ordinance No. 5845 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.

“Qualified Marijuana Facility” means an Existing Marijuana Facility that meets the requirements for the exception to the minimum distance in Subsection 11-31-34(A)(1)(a)(i).

“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.

“Relocation Eligible Marijuana Facility” means an Existing Marijuana Facility that, on the effective date of Ordinance No. 5845, is located less than 5,280 feet from the nearest Qualified Marijuana Facility.

SUMMARY:

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. The location of Marijuana Facilities in these areas often result in the Marijuana Facilities being appropriately setback from streets and buffered and insulated from other land uses and having less impact on residential communities and commercial developments. The proposed text amendments will encourage Existing Marijuana Facilities to relocate to these more appropriate locations, without encouraging Marijuana Facilities located outside of the City to come into the City.

Additionally, the proposed text amendments will allow Relocation Eligible Marijuana Facilities that are uniquely impacted by the adoption of the proposed text amendments, because of their location within 5,280 feet of the nearest registered Qualified Marijuana Facility, to relocate one time provided the relocation meets the requirements above. Allowing a one-time relocation meets the intent of the proposed text amendments by requiring the new location to be farther than the current location is from the nearest Qualified Marijuana Facility, right-of-way, and intersection of public streets.