

ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, AMENDING MESA CITY CODE TITLE 6, CHAPTER 25 AND TITLE 11, CHAPTER 31 PERTAINING TO MARIJUANA SALES AND FACILITIES; INCLUDING PERMITTING RECREATIONAL MARIJUANA DELIVERY; INCREASING THE PERMITTED FLOOR AREA FOR MEDICAL MARIJUANA DISPENSARIES AND DUAL LICENSE FACILITIES; PROVIDING PENALTIES FOR THE VIOLATIONS THEREOF; AND PRESERVING RIGHTS AND DUTIES THAT HAVE ALREADY MATURED AND PROCEEDINGS WHICH HAVE ALREADY BEGUN THEREUNDER.

WHEREAS, on February 7, 2011, the Mayor and City Council, by Ordinance No. 5025 amended several sections of the City of Mesa Zoning Ordinance following the passage of the “Arizona Medical Marijuana Act”: a statewide initiative which permitted the sale and use of medical marijuana in Arizona. Ordinance No. 5025 added Medical Marijuana Dispensaries as a permitted land use, but prohibited delivery of medical marijuana in the City; and

WHEREAS, on May 7, 2018, the Mayor and City Council, by Ordinance No. 5437, amended Title 11, Section 34 of the Zoning Ordinance to permit delivery of medical marijuana and medical marijuana products within the City; and

WHEREAS, in the November 2020 General Election, Arizona voters passed the statewide ballot known as the “Smart and Safe Arizona Act,” certified as Proposition 207, which authorized in part the sale, possession, and use of non-medicinal, recreational marijuana by adults who are at least 21 years of age; and

WHEREAS, Proposition 207 authorized cities to enact regulations relating to marijuana including limitations on delivery of marijuana and prohibited the delivery of recreational marijuana until such a time that the Arizona Department of Health Services adopted rules controlling the delivery of recreational marijuana; 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 delivery of recreational marijuana and marijuana products within the City; and

WHEREAS, July 1, 2021, the Mayor and City Council, by Ordinance No. 5633, to protect public health, safety, and welfare, repealed the City’s Medical Marijuana Facilities development standards and replaced them with the Marijuana Facilities development standards, reflecting the change in the law following Proposition 207, which permitted facilities operating a nonprofit Medical Marijuana Dispensary and a recreational marijuana retail establishment at a shared location. The new development standards adopted the same size requirements that had previously applied only to Medical Marijuana Dispensaries and applied the same size requirements to Dual Licensee Facilities - a maximum floor area of 2,500 square feet with specific limitations on the floor area for space used for storage of product and customer waiting areas; and

WHEREAS, on November 1, 2024, Arizona Department of Health Services’ rules to allow and regulate the delivery of recreational marijuana became effective; and

WHEREAS, Proposition 207 contains a limitation on municipalities' authority to regulate recreational marijuana; stating a locality may not enact any ordinance, regulation, or rule for recreational marijuana dispensaries that are more restrictive than a comparable ordinance, regulation, or rule that applies to nonprofit medical marijuana dispensaries. With Arizona Department of Health Services' adoption of rules allowing and regulating the delivery of recreational marijuana, the Mesa City Code's prohibition on delivery of recreational marijuana may be viewed as more restrictive than delivery by Nonprofit Medical Marijuana Dispensaries; and

WHEREAS, it has become apparent that permitting delivery of recreational marijuana and marijuana products by Nonprofit Medical Marijuana Dispensaries and Dual Licensee Facilities will conserve and promote the public health, safety, and welfare of the City, and will expand the permissible delivery of marijuana to that allowed by the Arizona Department of Health Services. Such delivery will achieve these goals by: providing safe and regulated access to marijuana products, ensuring that consumers can obtain such products in a manner that adheres to legal guidelines, reduces the risk of unregulated street sales, and promotes responsible consumption; contributing to the overall public safety by fostering a regulated marketplace that minimizes the impact of illicit sales, ensuring that marijuana products are tested, labeled, and compliant with state and local laws; and providing controlled and accessible avenue for consumers, supporting local businesses, reducing the strain on law enforcement and emergency services by mitigating the potential for illegal activity, and promoting lawful behavior in the community; and

WHEREAS, the current regulations limit the floor area Medical Marijuana Dispensaries and Dual Licensee Facilities may utilize. To balance public safety, regulatory compliance, and economic development, while also addressing the challenges faced by Medical Marijuana Dispensaries and Dual Licensee Facilities in meeting customer demand and maintaining appropriate security measure, an increase in allowable floor area for Medical Marijuana Dispensaries and Dual Licensee Facilities will allow for better service delivery, improved product access for consumers, while ensuring that all operations remain consistent with the public health and safety standards required by the City; and

WHEREAS, on _____, the Planning and Zoning Board recommended that the City Council _____ the proposed amendments to Chapter 31 of the Zoning Ordinance; and

WHEREAS, to conserve and promote the public health, safety, and welfare, the Mayor and City Council desire to amend Subsections 6-25-2, 6-25-6, and 11-31-34(B) of the Mesa City Code to permit Nonprofit Medical Marijuana Dispensaries and Dual Licensee Facilities the ability to deliver recreational marijuana and marijuana products in the City and to increase the allowable floor area permitted for Medical Marijuana Dispensaries and Dual Licensee Facilities.

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

<p>Text written in BOLD ALL CAPS indicates additional or new language. Text written in strikethrough indicates deletions.</p>

Section 1: Mesa City Code Title 6, Chapter 25, Section 2, Definitions, is hereby amended as follows. The remainder of 6-25-2 remains the same.

- (1) “ARIZONA MEDICAL MARIJUANA PROGRAM AND ADULT-USE MARIJUANA PROGRAM ACT” means **THE RULES AND REGULATIONS ESTABLISHED BY THE ARIZONA DEPARTMENT OF HEALTH SERVICES PURSUANT TO Arizona Revised Statutes, Title 36, Chapter S 28.1 AND 28.2.**

Section 2: Mesa City Code Title 6, Chapter 25, Section 6, Marijuana Delivery Prohibited; Exception, is hereby amended to prohibit delivery of marijuana, except for Nonprofit Medical Marijuana Dispensaries and Dual Licensee Facilities in compliance with ADHS regulations and requirements as follows:

6-25-6: - MARIJUANA DELIVERY PROHIBITED; EXCEPTION

It is unlawful to facilitate or accept orders for delivery, or to deliver marijuana or marijuana products in the City. The prohibition in this Section 6-25-6 does not apply ~~when delivery is done by~~ **TO a Nonprofit Medical Marijuana Dispensary OR DUAL LICENSEE FACILITY** in compliance with Arizona Department of Health Services codified rules and requirements governing the Arizona Medical Marijuana Program **AND ADULT-USE MARIJUANA PROGRAM.**

Section 3: Mesa City Code Title 11, Chapter 31, Section 34(B), Marijuana Facilities, Development Standards is hereby amended as follows.

(b) B. Development Standards. Each ~~Medical Marijuana Dispensary, Dual Licensee Facility, Marijuana Cultivation Facility, and Marijuana Infusion Facility~~ shall be housed in a permanent building and shall comply with the following development standards:

1. *Facility Size.*

- (a). *Medical Marijuana Dispensaries and Dual Licensee Facilities.* The maximum floor area of an individual ~~Medical Marijuana Dispensary~~ or an individual ~~Dual Licensee Facility~~ is ~~2,500~~ **5,000** square feet, ~~of which, no more than 500 square feet shall be used for storage of product. a minimum of 25% of the floor area shall be set aside as an interior customer waiting area.~~
- (b). *Marijuana Cultivation Facilities.* The maximum floor area of an individual cultivation facility is 25,000 square feet.
- (c). *Marijuana Infusion Facilities.* The maximum floor area of an individual infusion facility is 10,000 square feet, of which no more than 2,500 square feet shall be used for storage of marijuana related product or marijuana related materials used in the production of product.
- (d). **COMBINED FACILITIES.** A ~~Medical Marijuana Dispensary~~ and a ~~Dual Licensee Facility~~ may operate a ~~Marijuana Cultivation Facility, Marijuana Infusion Facility~~, or both, at a single location, provided the maximum floor area for each facility does not exceed the maximum floor area specified for each individual facility above.

2. *Marijuana Facility Use Restrictions.* Marijuana facilities may not include:

- (a). A drive-through window;
- (b). Outdoor seating;
- (c). Outdoor vending machines; or
- (d). Temporary, portable, or self-powered mobile facilities.

~~3. — Delivery. A medical marijuana dispensary may offer direct or home delivery service to only medical marijuana qualifying patients in compliance with ADHS regulations and requirements.~~

4.3. *Hours of Operation.* A ~~m~~**M**edical ~~m~~**M**arijuana ~~d~~**D**ispensary and a ~~d~~**D**ual ~~H~~**L**icensee ~~f~~**F**acility shall only be open to the public between 8:00 a.m. and 9:00 p.m. of the same calendar day.

5.4. Medical ~~m~~**M**arijuana ~~d~~**D**ispensaries and ~~d~~**D**ual ~~H~~**L**icensee ~~f~~**F**acilities shall remain in compliance with all applicable state laws and regulations.

Section 4: RECITALS. The recitals in this Ordinance (i.e., Ordinance No. _____) are fully incorporated in this Ordinance by reference, and each recital represents a finding of fact and determination made by the City Council.

Section 5: AMENDED LANGUAGE. In the sections of this Ordinance that modify the current language of the Mesa City Code (i.e., Sections 1, 2 and 3), new language is shown in **BOLD ALL CAPS** and deleted language is shown in ~~strikethrough~~.

Section 6: PRESERVATION OF RIGHTS AND DUTIES. This Ordinance does not affect the rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this Ordinance.

Section 7: EFFECTIVE DATE. The effective date of this Ordinance is thirty (30) days after the adoption of this Ordinance.

Section 8: SEVERABILITY. If any term, provision, section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held to be invalid, unenforceable, or unconstitutional by the decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance and the remaining portions of this Ordinance shall remain in effect.

Section 9: 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 party responsible 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 Section, 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 ___ day of _____, 2025.

APPROVED:

Mayor

ATTEST:

City Clerk