

## 2023 Marijuana Ordinance Text Amendments

ORDINANCE NO. \_\_\_\_

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 SEPARATION 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 to help ensure that 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; 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 result in the marijuana facilities being appropriately buffered and insulated from streets and other land uses and have 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 encouraging an influx of marijuana facilities from outside 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 of the Mesa Zoning Ordinance to, in part, modify the separation requirements for existing marijuana facilities to encourage these existing marijuana facilities to be located or to relocate to large, industrial areas that are appropriately buffered from other land uses, which will result in less impact on residential and commercial communities, and by limiting the modification to existing marijuana facilities, dissuade marijuana facilities located outside the corporate boundaries of the City from relocating to the City.

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

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

Text written in <b>BOLD ALL CAPS</b> indicates new language. Text written in <del>striketrough</del> indicates deleted language.
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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 THE MAJOR ROADWAY BY AT LEAST 300 FEET; AND**
- 3. IS SEPARATED FROM THE NEAREST REGISTERED MEDICAL MARIJUANA DISPENSARY OR DUAL LICENSEE FACILITY BY A 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)(I):

**EXISTING MARIJUANA FACILITY:** A MEDICAL MARIJUANA DISPENSARY OR DUAL LICENSEE FACILITY THAT PRIOR TO THE EFFECTIVE DATE OF THIS ORDINANCE WAS 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:** 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:** 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.

**Section 2:** RECITALS. The recitals above 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. That any sections of the Mesa Zoning Ordinance or parts of such sections in conflict herewith, 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 shall be \_\_\_\_ 2023.

**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:** LEGAL CONFORMING USE. An Existing Marijuana Facility that meet 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 a legally established use that conforms with the minimum separation requirements from the nearest registered medical marijuana facilities or dual licensee facilities in the Zoning Ordinance without having to: update its current registration, apply for a new City registration or submit a new City registration application. A Qualified Marijuana Facility may expand at its current location in accordance with the Zoning Ordinance, which includes among other things, complying with Section 11-36 and registering with the City in accordance with Section 11-31-34. In all cases, a Qualified Marijuana Facility must maintain registration with the City.

**Section 7:**      LIMITATION ON EXPANSION. While a Qualified Marijuana Facility is a legal conforming use that conforms with the minimum separation requirements from the nearest registered medical marijuana facility or dual licensee facility in this Ordinance, in certain instances, the structure, lot, or site where the Qualified Marijuana Facility is located may be nonconforming, and in such case, can only expand in compliance with Section 11-31-34 and Section 11-36 of the Zoning Ordinance and if permitted to expand, must update its City registration in accordance with Section 11-31-34.

**Section 8:**      NEW OR ADDITIONAL MARIJUANA FACILITIES. The 1,000 foot separation in Section 1 of this Ordinance applies only to an Existing Marijuana Facility whose current location meets the criteria of Section 1 of this Ordinance or an Existing Marijuana Facility that relocates to a location meeting the criteria of Section 1. An Existing Marijuana Facility that desires to open a new or additional medical marijuana dispensary or dual licensee 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 medical marijuana dispensary or dual licensee facility in this Ordinance.

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

**Section 10.**      EXCEPTION APPLIES ONLY TO FACILITIES LOCATED IN THE CITY. To dissuade marijuana facilities located outside the corporate boundaries of the City from relocating to the City, the exception in Section 1 of this Ordinance applies only to medical marijuana dispensaries or dual licensee facilities that as of the Effective Date of this Ordinance are operating in the City (and are registered with the City as of the effective date of this Ordinance, i.e., an Existing Marijuana Facility) and are either located on, or intend to locate within, a Large Industrial Development that is appropriately buffered and insulated as set forth in this Ordinance.

**Section 11:**      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 12:**      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 \_\_\_\_ day of \_\_\_\_\_ 2023.

APPROVED:

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

EFFECTIVE DATE: \_\_\_\_\_, 2023.

DRAFT