

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, AMENDING CHAPTERS 7, 31, 86, AND 87 OF TITLE 11, THE ZONING ORDINANCE OF THE MESA CITY CODE BY REPEALING MEDICAL MARIJUANA FACILITIES DEVELOPMENT STANDARDS AND REPLACING THEM WITH MARIJUANA FACILITIES DEVELOPMENT STANDARDS; MODIFYING DEFINITIONS INCLUDING MEDICAL MARIJUANA CULTIVATION FACILITY, MEDICAL MARIJUANA DISPENSARY, MEDICAL MARIJUANA INFUSION FACILITY; REMOVING DEFINITIONS INCLUDING MEDICAL MARIJUANA CULTIVATION, MEDICAL MARIJUANA DESIGNATED CAREGIVER, AND MEDICAL MARIJUANA QUALIFYING PATIENT; AND ADDING DEFINITIONS INCLUDING DUAL LICENSEE FACILITY, MARIJUANA, MARIJUANA CONCENTRATE, MARIJUANA CULTIVATION, MARIJUANA ESTABLISHMENT, MARIJUANA MANUFACTURING, MARIJUANA PROCESSING, MARIJUANA PRODUCTS AND MODIFYING VARIOUS LAND USE CHARTS; PROVIDING PENALTIES FOR THE VIOLATIONS THEREOF; AND PRESERVING RIGHTS AND DUTIES THAT HAVE ALREADY MATURED AND PROCEEDINGS WHICH HAVE ALREADY BEGUN THEREUNDER.

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

WHEREAS, on December 8, 2020, City Council, to protect public health, safety, and welfare of the public, adopted Mesa City Code Title 6, Chapter 25, entitled Marijuana Prohibition, which, to the extent permitted by law, prohibits: 1) recreational marijuana retail sales and marijuana testing facilities in the City, and (2) delivery of recreational marijuana and marijuana products within the City.

WHEREAS, the prohibition on retail recreational marijuana sales in Mesa City Code Title 6, Chapter 25 do not apply to establishments permitted by the State of Arizona as a dual licensee to operate as both a nonprofit medical marijuana dispensary and a recreational marijuana retail establishment at a shared location.

WHEREAS, the City desires to include certain provisions from Mesa City Code Title 6, Chapter 25, in the Zoning Ordinance such as the prohibition of recreational marijuana retail sales and marijuana testing facilities.

WHEREAS, the proposed text amendments to the Zoning Ordinance will: 1) allow only dual licensee facilities, which will be subject to the same development standards as medical marijuana facilities; 2) clarify the City’s registration process; and 3) add a revocation process.

WHEREAS, the Mesa Planning and Zoning Board reviewed the proposed text amendment at a public hearing held on May 12, 2021, and voted 7-0 to recommend that the City Council adopt the proposed text amendments.

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

Section 1: The additions and deletions set forth in that certain document known as “2021 – Amendments to Chapters 7, 86, and 87 and Repeal and Replace Chapter 31, Section 34, Title 11 Zoning Ordinance, Pertaining to Marijuana Facilities,” which was made a public record on July 1, 2021, by Resolution No. 11706, of the City of Mesa, Maricopa County, Arizona, three copies of which are on file with the City Clerk, are hereby referred to, adopted and incorporated as amendments in Table 11-7-2: Employment Districts, and the definitions in 11-86-2 and 11-87.

Section 2: That the existing Title 11 (Zoning Ordinance), Chapter 31 (Standards for Specific Uses and Activities), Section 34 (Medical Marijuana Facilities) of the Mesa City Code is hereby repealed in its entirety and replaced with a new Title 11, Chapter 31, Section 34 titled “Marijuana Facilities” of the Mesa City Code as set forth in that certain document known as “2021 – Amendments to Chapters 7, 86, and 87 and Repeal and Replace Chapter 31, Section 34, Title 11 Zoning Ordinance, Pertaining to Marijuana Facilities,” which was made a public record on July 1, 2021, by Resolution No. 11706, of the City of Mesa, Maricopa County, Arizona, three copies of which are on file with the City Clerk, which is hereby adopted by reference.

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: The effective date of this Ordinance shall be August 9, 2021.

Section 5: 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: Marijuana testing facilities and retail recreational marijuana facilities are prohibited in the current Zoning Ordinance (the Zoning Ordinance adopted prior to the effective date of this Ordinance) and will continue to be prohibited in this Ordinance. The only retail recreational marijuana facilities permitted are dual licensee facilities (as that term is defined in this Ordinance).

Section 7: 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 8th day of July, 2021.

APPROVED:

Mayor

ATTEST:

City Clerk

EFFECTIVE DATE: August 9, 2021.