

## COUNCIL MINUTES

March 18, 2021

The City Council of the City of Mesa met in a Study Session Meeting via a virtual format streamed into the lower-level meeting room of the Council Chambers, on March 18, 2021 at 7:30 a.m.

### COUNCIL PRESENT

John Giles\*  
Jennifer Duff\*  
Mark Freeman\*  
Francisco Heredia\*  
David Luna\*  
Julie Spilsbury\*  
Kevin Thompson\*

### COUNCIL ABSENT

None

### OFFICERS PRESENT

Christopher Brady  
Dee Ann Mickelsen  
Jim Smith

(\*Council participated in the meeting through the use of video conference equipment.)

Mayor Giles conducted a roll call.

1-a. Hear a presentation, discuss, and provide direction on proposed text amendments, including, but not limited to, Chapter 31 and 86 of Title 11 of the Mesa Zoning Ordinance relating to Recreational Marijuana establishments.

Planning Director Nana Appiah introduced Senior Planner Rachel Prelog, who displayed a PowerPoint Presentation. **(See Attachment 1)**

Mr. Appiah remarked that voters approved Proposition 207 in November 2020, which legalized recreational marijuana, and requires changes to the City of Mesa zoning ordinance. He stated that while Council adopted the police regulations in December 2020, this is a follow-up to that ordinance to make recommendations to the zoning ordinance that comply with state regulations. (See Page 3 of Attachment 1)

Ms. Prelog highlighted current zoning regulations and categories of separation requirements. (See Pages 4 and 5 of Attachment 1)

Ms. Prelog displayed a map of registered medical marijuana facilities. She stated Mesa has 14 dispensaries, three cultivation facilities, and one facility that is cultivation and infusion. (See Page 6 of Attachment 1)

Ms. Prelog presented the recommended changes to the zoning ordinance and reminded Council the police ordinance only allows dual license facilities. She highlighted the proposed definition for a dual license facility, zoning, hours of operation, size limits, separation requirements, and the next steps in the process. (See Pages 7 and 8 of Attachment 1)

In response to a question from Councilmember Spilsbury, Ms. Prelog stated there have been no new applications for facilities; however, many medical marijuana dispensaries have applied for a dual license facility.

In response to a question from Councilmember Luna, Ms. Prelog replied she is fielding a lot of inquiries about recreational marijuana but there has been no interest or discussion about separate facilities. She added most of the correspondence is with current operators that want larger facilities with more square footage and expanded hours of operation.

In response to a question from Councilmember Heredia, Ms. Prelog explained the gross floor area for a dispensary is 2500 square feet (sf) and of that, only 500 sf can be used to store products.

Mr. Appiah responded to a question from Mayor Giles, stating compared to surrounding communities the number of dispensaries Mesa has is adequate for the City. He commented when looking at the map of dispensaries, they are spread out over the City.

Ms. Prelog directed Council's attention to the map of dispensaries and pointed out the markers for dispensaries, cultivation or infusion; separation requirements with different distances depending on the uses; the LI and GI zoning districts which are the only zoning districts that dispensaries can be located; and the available locations where a new facility can be located.

In response to a question from Mayor Giles, Mr. Appiah clarified an amended ordinance will be created to allow for the creation of a dual license, maintain the 2500 sf requirement, and to allow the sale of recreational marijuana in existing medical marijuana facilities.

Mayor Giles stated it is the consensus of Council to proceed with the amendments and to forward to the Planning and Zoning Board for review.

Mayor Giles thanked staff for the presentation.

- 1-b. Hear a presentation, discuss, and provide direction on proposed text amendments, including, but not limited to, Chapters 4, 5, 6, 8, 32, 58, 64, 86, and 87 of Title 11 of the Mesa Zoning Ordinance relating to Community Residences (i.e., currently known as Group Homes or Group Homes for the Handicapped in the Zoning Ordinance).

Planning Director Nana Appiah introduced Assistant City Attorney II Charlotte McDermott and Senior Planner Rachel Prelog, who displayed a PowerPoint Presentation. **(See Attachment 2)**

Mr. Appiah commented that Council has requested staff look at ways to streamline the review process for community residences. He stated community residences were previously called group homes and since the State has made changes to other requirements, that triggered the need to make changes to current requirements.

Ms. Prelog outlined the purposes and goals of the project, which include strengthening the registration process for group homes for the handicapped, now called group homes for residents. (See Page 3 of Attachment 2)

City Attorney Jim Smith emphasized this area of law under the Fair Housing Act prohibits discrimination against certain protected classes which includes disabled individuals, but also includes people that suffer from drug and alcohol addiction. He cautioned Council and staff on

the need to be thoughtful on how comments are presented regarding this issue. He explained there are a number of cases where well-intentioned legislation by cities gets overturned because members of the community speak out against the legislation to preclude, prevent, and eliminate group homes for the handicapped. He expanded by saying the Fair Housing Act prohibits discriminatory actions that affect the availability of group homes, which includes legislation enacted with the intention of preventing or eliminating group homes. He stated the purpose of the ordinance being considered today seeks to protect residents of these group homes from unscrupulous operators by providing protections for their health and safety by including annual registrations that will require these homes to be licensed by the State or to obtain certification from a nationally recognized organization. He added the ordinance also seeks to prevent clustering or overconcentration of group homes that may result in a de facto social service district. He advised as the ordinance progresses to the Planning and Zoning Board, the community be thoughtful regarding statements made and emails sent to the Committee and to Council.

Ms. Prelog reviewed the current definition of a group home and various uses that are not included in the definition. (See Page 4 of Attachment 2)

Ms. Prelog highlighted the three categories of current requirements: Less than five residents; 5-10 residents, which has certain separation requirements; and more than 10 residents, which are also subject to separation requirements, require a Special Use Permit (SUP), and are only permitted in certain zoning districts. (See Page 5 of Attachment 2)

Ms. Prelog outlined the proposed changes and identified definitions that will be removed, replaced, added, or modified to streamline uses. She commented one of the biggest changes is the definition of a family and changing the classification from group home to community residence which better aligns with State requirements. She explained these requirements allow for various land use processes. (See Pages 6 through 8 of Attachment 2)

Ms. Prelog provided an overview of the changes to development standards, reasonable accommodation, and the next steps in the process. (See Pages 9 through 11 of Attachment 2)

In response to a question from Mayor Giles, Mr. Smith explained a couple of years ago the legislature passed a bill that pre-empted the field and took over the area as far as licensing. He commented the bill regulates structured sober living facilities and, unfortunately, some operators are circumventing legislation to provide fewer services and structures and avoid obtaining a license. He stated as a result, staff has looked at how to improve the quality of care at residences.

In response to additional questions from Mayor Giles, Ms. McDermott explained one of the changes being proposed is for sober living homes that are not structured and are not currently required to be licensed by the State, be required to obtain certification from the Arizona Recovery Housing Association or show they have an Oxford House Charter certification. She added many other group home facilities have a licensing provision at the State level, and those facilities that might not be required to be licensed by the State would have to go through a reasonable accommodation process to show they are operating similar to a licensed facility.

In response to questions from Councilmember Spilsbury, Mr. Appiah commented the plan is to require registration six months after passing the ordinance. He stated letters will be sent to existing facilities to determine the operation and a set date will be determined for all registrations, then one year from that date all facilities will be required to renew.

Discussion ensued relative to identifying group homes; that staff would work with code enforcement to notify group homes to register or renew; that annual inspections will probably not be part of the process; that staff will respond to complaints to complete more in-depth inquiries into the operation of those facilities; and that if the group home meets the definition of family, the registration process is not required.

In response to a question from Councilmember Heredia, Mr. Appiah explained the City will not have sf requirements but believes the Arizona Department of Health Services (ADHS) has requirements and will determine the space.

Ms. McDermott clarified structured sober living homes under State licensing requirements have space requirements and restrictions for the number of occupants in a home. She indicated one person to a room requires 50 sf and two people to a room requires 60 sf.

In response to a question from Councilmember Freeman, Mr. Smith explained the reason for the definition of family including four unrelated individuals is that it is a common number within State requirements. He commented one city defines a family as three unrelated individuals; however, they do not enforce that number. He clarified enforcing a number becomes difficult since this definition also applies to college students renting a house and to all community residences and group homes. He stated the Council Use Permit (CUP) and Special Use Permit (SUP) is relevant when it comes to the difference between family community residence and transitional community residence. He commented staff is recommending the use of the SUP as that is reviewed by the Board of Adjustment (BOA) using objective criteria by a quasi judicial board.

In response to a question from Vice Mayor Duff regarding an annual registration fee, Mr. Appiah remarked staff is still reviewing the cost of the process for registration which would be presented to Council at a later date.

In response to an additional question from Vice Mayor Duff regarding a public or internal database, Mr. Smith explained the State recognizes the sensitivity of the location of community residences and the addresses are not a public record.

Mr. Appiah clarified the recommendation is to define a family as four or less unrelated people, reasonable accommodation will require a SUP process, and a facility with 5-10 residents is classified as a community residence.

Councilmember Freeman expressed concern on how to identify smaller group homes, since they are prevalent in his district. He indicated he is comfortable with the current recommendations and, if necessary, the ordinance can be modified in the future.

Mayor Giles indicated it was the consensus of Council to proceed with staff recommendations.

Mayor Giles thanked staff for the presentation.

#### 1-c. Appointment to the Historic Preservation Board.

It was moved by Councilmember Freeman, seconded by Vice Mayor Duff, that the Council concur with the Mayor's recommendation and the appointment be confirmed, with the clarification that the term will expire in 2024. **(Attachment 3)**

Upon tabulation of votes, it showed:

AYES – Giles-Duff-Freeman-Heredia-Luna-Spilsbury-Thompson

NAYS – None

Carried unanimously.

4. Current events summary including meetings and conferences attended.

Mayor Giles –	Border Control - impact to social service and faith-based organizations
Vice Mayor Duff –	Interview with ABC 15 about Downtown Re-Emergence Interview with ASU student for Women’s History Month
Councilmember Freeman –	Spring Training Games
Councilmember Luna –	NAMMO Tally Defense System - Tour
Councilmember Thompson –	Interview with ASU student about Economic Development - PMGA East Valley Tribune interview about Economic Development – Ray Road Interview - Community Leaders of America

5. Scheduling of meetings.

City Manager Christopher Brady stated that the schedule of meetings is as follows:

Thursday, March 25, 2021, 7:30 a.m. – Study Session

6. Adjournment.

Without objection, the Study Session adjourned at 8:31 a.m.

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JOHN GILES, MAYOR

ATTEST:

\_\_\_\_\_  
DEE ANN MICKELSEN, CITY CLERK

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the Study Session of the City Council of Mesa, Arizona, held on the 18<sup>th</sup> day of March 2021. I further certify that the meeting was duly called and held and that a quorum was present.

\_\_\_\_\_  
DEE ANN MICKELSEN, CITY CLERK

jg/dm  
(Attachment – 3)

# Recreational Marijuana

Nana Appiah, Planning Director

Rachel Prelog, Senior Planner

March 18, 2021

# Proposition 207

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## *Smart and Safe Arizona Act*

- Passed by voters on November 3, 2020
- Signed by Governor Ducey on November 30, 2020
- Effective December 1, 2020
- Department of Health Services (DHS) accepting early applicants January 21 – March 9

# Police Ordinance

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*Adopted December 8, 2020*

- Limited recreational marijuana establishments to dual license facilities
- Prohibited home delivery of recreational marijuana
- Prohibited marijuana testing facilities
- Prohibited the consumption of marijuana on city properties
- Prohibited the consumption of marijuana while driving, operating or riding in a vehicle used for transportation



# Current Zoning Regulations

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Regulates medical marijuana dispensaries, cultivation, and infusion facilities



Permitted in Light Industrial (LI) and General Industrial (GI) zoning districts



Permissible hours of operation - 8:00 a.m. to 9:00 p.m.



Dispensaries limited to 2,500 sq ft, no more than 500 sq ft of which can be used for storage

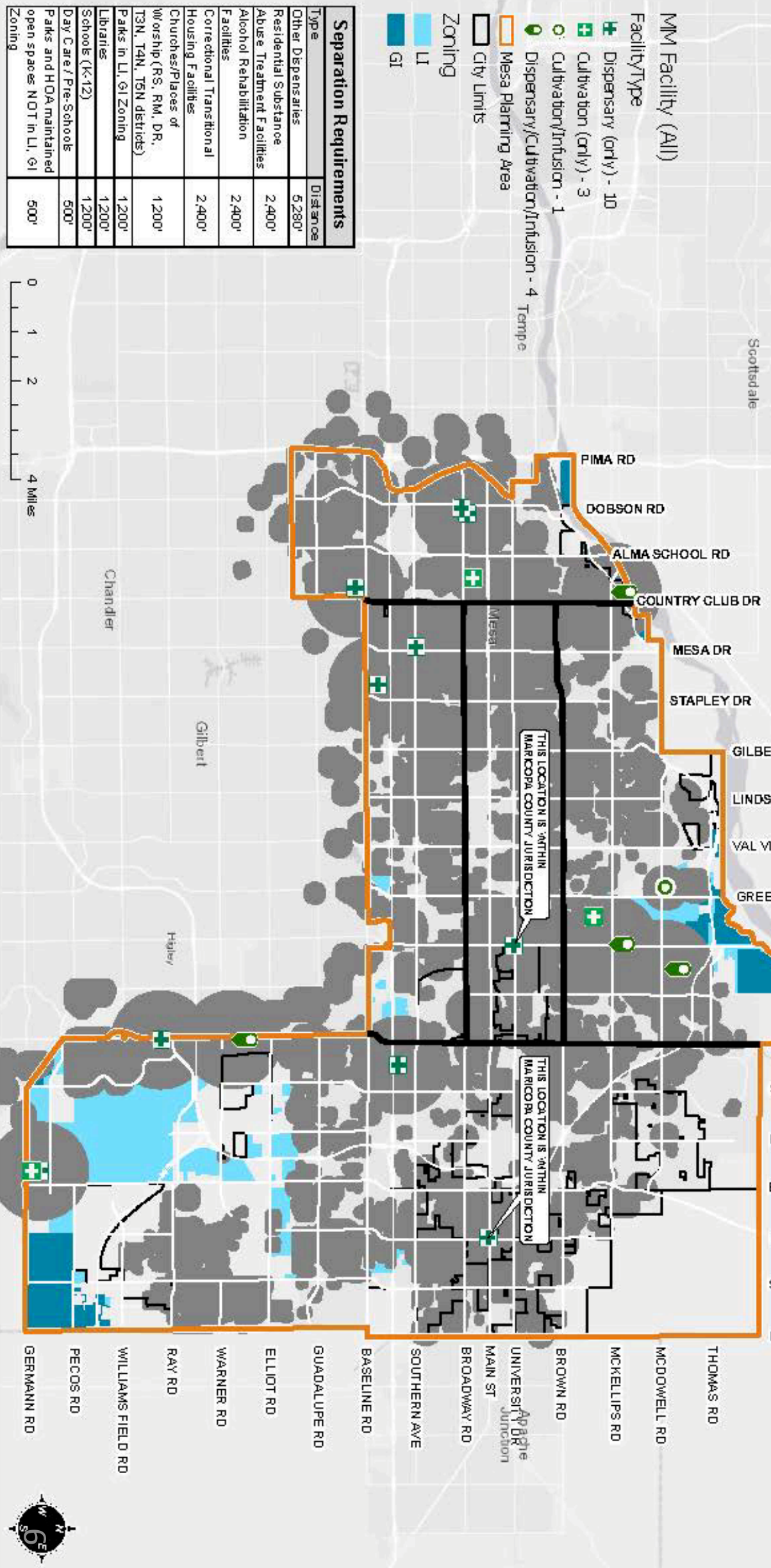
# Current Zoning Regulations

## Separation Requirements:



- 500 ft from day cares, preschools, public parks (other than *L/I* or *G/I*), HOA owned open space
- 1,200 ft from churches, libraries, schools, and public parks (*L/I* or *G/I*)
- 2,400 ft from residential substance abuse facilities, alcohol rehabilitation facilities, correctional transitional housing facilities, and off-site medical marijuana cultivation facilities
- 5,280 ft from another medical marijuana dispensary

# Medical Marijuana Dispensary Locations



THIS LOCATION IS WITHIN MARICOPA COUNTY JURISDICTION

THIS LOCATION IS WITHIN MARICOPA COUNTY JURISDICTION

# Recommendation

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- Dual licensed facilities only
  - **Dual Licensee Facility.** An entity licensed by the Arizona Department of Health Services (ADHS) to operate both a Medical Marijuana Dispensary and a Marijuana Establishment. The retail of recreational marijuana and medical marijuana must occur at the same location. Recreational marijuana sales may only occur in conjunction with medical marijuana sales regardless of the licensed held
- Permissible zoning (LI and GI districts)
- Permissible hours of operation (8 am - 9 pm)
- Size limits remain the same:
  - Dispensaries 2,500 sq. ft.
  - Cultivation Facility 25,000 sq. ft
  - Infusion Facility 10,000 sq. ft.
- Separation requirements remain the same

# Next Steps

Projected P&Z Hearing.....April-May  
Projected CC Hearing.....Before Council Break



# Discussion



Study Session  
March 18, 2022  
Attachment 1  
Page 10 of 10

Dual Licensee cipallity		Separation		Facility Size		Zoning Districts		Land Use Process		Hours of Operation	
Only											
Mesa	x	Dispensary Daycare Schools, Park in LI&GI Other schools & parks Residential Zoning Library Hospital Place of worship	5,280 500 1,200 500 N/A 1,200 N/A 1,200	2,500 Dispensary 500 Storage	LI, GI	Administrative Permit	8 am – 9 pm				
		Dispensary Daycare, park, school Residential Zoning Library Hospital Place of worship	5,280 1,000 1,000 N/A 1,320 1,000	3,000 Dispensary & Cultivation 1,000 offsite cultivation	LI, GI	Conditional Use Permit	8 am – 8 pm				
		Dispensary Daycare, park, school Residential Zoning Library Hospital Place of worship	5,280 1,500 1,320 N/A N/A 1,320								
		Dispensary Daycare, park, school Residential Zoning Library Hospital Place of worship	5,280 1,500 1,320 N/A N/A 1,320								
Gilbert	x	Dispensary Daycare, park, school Residential Zoning Library Hospital Place of worship	5,280 1,500 1,320 N/A N/A 1,320	5,000 Dispensary	CSS, CC, PCC-1, PCC-2, RCC, LID (Dispensary)	Administrative Permit	8 am – 10 pm				
		Dispensary Daycare, park, school Residential Zoning Library Hospital Place of worship	5,280 1,500 1,320 N/A N/A 1,320								
		Dispensary Daycare, park, school Residential Zoning Library Hospital Place of worship	5,280 1,500 1,320 N/A N/A 1,320								
		Dispensary Daycare, park, school Residential Zoning Library Hospital Place of worship	5,280 1,500 1,320 N/A N/A 1,320								
Tempe	?	Dispensary Daycare, park, school Residential Zoning Library Hospital Place of worship	5,280 1,320 500 N/A N/A 1,320	5,000 Dispensary	S1, S2, C2, A1	Use Permit	N/A				
		Dispensary Daycare, park, school Residential Zoning Library Hospital Place of worship	5,280 1,320 500 N/A N/A 1,320								
		Dispensary Daycare, park, school Residential Zoning Library Hospital Place of worship	5,280 1,320 500 N/A N/A 1,320								
		Dispensary Daycare, park, school Residential Zoning Library Hospital Place of worship	5,280 1,320 500 N/A N/A 1,320								
Phoenix	?	Dispensary Daycare, park, school Residential Zoning Library Hospital Place of worship	5,280 1,320 1,320 1,320 1,320 1,320	2,500 Dispensary 500 Storage 3,000 Cultivation 1,000 storage	C3, C3 (Dispensary) I1, I2 (Cultivation & infusion)	Zoning Clearance	9 am – 10 pm				
		Dispensary Daycare, park, school Residential Zoning Library Hospital Place of worship	5,280 1,320 1,320 1,320 1,320 1,320								
		Dispensary Daycare, park, school Residential Zoning Library Hospital Place of worship	5,280 1,320 1,320 1,320 1,320 1,320								
		Dispensary Daycare, park, school Residential Zoning Library Hospital Place of worship	5,280 1,320 1,320 1,320 1,320 1,320								
Chandler	x	Dispensary Daycare, park, school Residential Zoning Library Hospital Place of worship	2,640 1,500 1,500 N/A N/A N/A		CO, LI, SC	Conditional Use Permit	6 am – 7 pm				
		Dispensary Daycare, park, school Residential Zoning Library Hospital Place of worship	2,640 1,500 1,500 N/A N/A N/A								
		Dispensary Daycare, park, school Residential Zoning Library Hospital Place of worship	2,640 1,500 1,500 N/A N/A N/A								
		Dispensary Daycare, park, school Residential Zoning Library Hospital Place of worship	2,640 1,500 1,500 N/A N/A N/A								
Scottsdale	x	Dispensary Daycare, park, school Residential Zoning Library Hospital Place of worship	1,500	N/A	CO, LI, SC	Conditional Use Permit	6 am – 7 pm				

# COMMUNITY RESIDENCE AMENDMENTS

Nana Appiah, Planning Director  
Charlotte McDermott, Assistant City Attorney  
Rachel Prelog, Senior Planner

March 18, 2021



# OUTLINE

- Purpose & Goals
- Current Standards
- Proposed Changes
- Next Steps

# PURPOSE & GOALS

- Strengthen the City's registration process
- Review current City requirements for compliance with State and Federal law
- Provide residents with disabilities the opportunity to live in a family-like setting and integrate into the surrounding community
- Prevent the overconcentration of facilities that may result in a de facto social service district

# CURRENT DEFINITION

Group Home for the Handicapped: A dwelling shared as a primary residence by handicapped persons living together as a single housekeeping unit in which staff persons may provide on-site care, training, or support.

Does not include:

- Correctional Transitional Housing
- Social Service Facilities
- Nursing and Convalescent Homes
- Assisted Living Facilities

# URGENT REQUIREMENTS

## <5 residents

- Not required to register with City
- No separation requirements

## 5-10 residents

- Required to register with the City
- 1,200 ft. from another group home for the handicapped
- 1,200 ft. from assisted living facilities
- Permitted in the AG, RS, RSL, RM, MX, DR-1, DR-2, DR-3, and DB-1

## >10 residents

- Required to register with the City
- 1,200 ft. from another group home for the handicapped
- 1,200 ft. from assisted living facilities
- Requires a Special Use Permit
- Permitted in the RM, NC, OC, MX, DR-2, and DR-3

# PROPOSED CHANGES

- Strengthen the registration process
  - Require annual renewal
  - Provide a revocation process
- Define “family” and update definitions
- Update development standards
- Strengthen reasonable accommodation process

# DEFINITIONS

 REMOVE

 REPLACE

 ADD

 MODIFY

- 
- |   |   |   |  |
|---|---|---|--|
| <ul style="list-style-type: none"><li>• Group Residential</li><li>• Group Home for the Handicapped</li><li>• Group Housing</li><li>• Handicapped Person</li></ul> | <ul style="list-style-type: none"><li>• Community Residence (Family &amp; Transitional)</li><li>• Recovery Community</li><li>• Disability</li></ul> | <ul style="list-style-type: none"><li>• Family</li><li>• Single Housekeeping Unit</li><li>• Group Foster Home</li></ul> | <ul style="list-style-type: none"><li>• Boarding House</li><li>• Social Service Facility</li></ul> |
|---|---|---|--|

# DEFINITIONS



Family: no more than **4** unrelated individuals...



Community Residence: **5** to **10** unrelated individuals with **disabilities**...

Family Community Residence: **Long-term**, generally a year or more

Transitional Community Residence:  
**Limited tenancy**, generally less than a year

# DEVELOPMENT STANDARDS



Strengthen the registration process to require annual renewal and provide revocation procedure



New definition changes the occupancy limit and registration requirement from 6-10 residents to 5-10 residents



1,200 ft. from another Community Residence, Recovery Community, Assisted Living Center, or Correctional Transitional Housing Facility



# REASONABLE ACCOMMODATION

- May request reasonable accommodation to:
  - Spacing requirements;
  - Occupancy limits; and
  - Licensing requirements
- Require a Special Use Permit
- Specific approval criteria for each scenario

# NEXT STEPS

## UPCOMING HEARINGS (*tentative*)

Planning & Zoning Board Study Session	4/14/2021
Planning & Zoning Board	4/28/2021
City Council	Before Council Break