Subject of Interpretation:
Requirements for Medical Marijuana Dispensaries in ID Districts

Zoning Ordinance Section Number:
11-12-3(A) & (B); 11-7-2; 11-31-34.A; 11-12-2

Title of Section:
Land Use Regulations (for ID-1 & ID-2 Districts); Land Use Regulations; Medical Marijuana Facilities; Applicability

Cause for Interpretation:
The applicant wants to determine if a medical marijuana dispensary is eligible to be placed at a location within either ID-1 or ID-2 zoning districts

Interpretation:
The short answer is that medical marijuana dispensaries may be allowed in the ID-1 zoning district under a very limited and specific set of circumstances. A medical marijuana dispensary is not a permitted land use in the ID-2 zoning district. The question and its answer are based on the language that describes the permitted land uses in the Infill Districts, found in Section 11-12-3 of the Mesa Zoning Ordinance (MZO). That section reads as follows:

11-12-3: Land Use Regulations (for ID districts)

A. ID-1 Districts. Land use regulations will be established for a given ID-1 district by referencing a base zoning district established in this Ordinance in the Infill Incentive Plan (IIP) and in the ordinance adopting the zoning designation. The uses allowed in that referenced district will be allowed on the property following approval of the rezoning. Example, the adopting ordinance would state that the uses permitted would be the same as the LC, Limited Commercial District.

B. ID-2 Districts. The land uses permitted in a given ID-2 district will be established uniquely for that district based on the Infill Incentive Plan (IIP) approved by City Council with the adoption of the ID district. The requirements for the IIP are described in Section 11-12-5.

Further, medical marijuana dispensaries are listed in Section 11-7-2 as a permitted land use in the LI-Light Industrial and GI-General Industrial zoning districts, subject to additional standards. Those additional requirements are listed in Section 11-31-34.A, which states: "Medical Marijuana Dispensaries are permitted only in the LI and GI Districts, provided....", and then lists additional sets of locational criteria which affect the eligibility of a specific site.

Initially, the language in Section 11-31-34.A has been interpreted as strictly limiting medical marijuana dispensaries to locations within the LI and GI districts. However, the language related to permitted land uses in the ID-1 district authorizes the permitted land uses of a referenced zoning district, and then
provides a clarifying example that the “adopting ordinance would state that uses permitted would be the same as....” As such, it also appears that the specific intent of the ID-1 district is that it becomes, both in purpose and in function, the same district to which it is linked by reference in the adopting ordinance, despite the difference in the nomenclature used to identify the district on the zoning map. In the case of the adopting ordinance for an ID-1 district referencing an LI district, then the land uses for that base district in that case become, for all intents and purposes, the exact same as a LI district, which in turn allows medical marijuana dispensaries subject to compliance with the additional criteria.

In addition, ID-1 districts are specifically adopted by the City Council through a rezoning process. As such, the Council is required to decide on the matter directly for each request made. ID-1 districts cannot be completed or approved in an administrative manner, nor can changes be made to the list of permitted land uses for the referenced zoning district unless such changes are also adopted by City Council. ID-2 districts, on the other hand, do not make use of a specific referenced zoning district to determine permitted land uses. Section 11-12-3.B requires permitted uses to be based entirely on a written plan (called an 'Infill Incentive Plan'). As such, the link to a specific list of permitted uses of a particular zoning district is not directly present. Therefore, the list of permitted land uses in the ID-2 district is open to whatever range and variety of land uses are written into the adopted Infill Incentive Plan, and by extension, are not the LI or GI districts. Without a direct link to a specific district, then ID-2 cannot function directly as a specific LI or GI district, and the limitation banning medical marijuana dispensaries from zoning districts other than LI or GI is invoked.

Although not a part of the specific interpretation, it should be noted that both the ID-1 and ID-2 districts require findings to be made relative to the eligibility of the site to be zoned as ID-1 or ID-2. Both districts are based on ARS 9-499.10, in which a city or town is authorized to designate an infill incentive district when three of six criteria are found to be present. The criteria listed in ARS 9-499.10 are replicated in the Mesa Zoning Ordinance, Section 11-12-2, which reads as follows:

11-12-2: Applicability
An ID District may be established for any area where the City Council finds that the property meets the definition of “by-passed parcel” as defined in this Ordinance, without regard to lot size. The Council must also find that the area within the district meets at least 3 of the following requirements:
A. There is a high percentage of vacant older or dilapidated buildings or structures;
B. There is a high percentage of vacant or underused parcels of property, obsolete or inappropriate lot or parcel sizes, buildings designed for obsolete land uses, or environmentally contaminated sites;
C. There is a high percentage of buildings or other places where nuisances exist or occur;
D. There is an absence of development and investment activity compared to other areas in the City;
E. There is a high occurrence of crime; or,
F. There is a continuing decline in population.

A finding by City Council of the presence of at least three of the six criteria is then mandatory for the site to be considered eligible for rezoning to the ID-1 or ID-2 districts. In addition, the Mesa Zoning Ordinance adds a requirement regarding the size of the property for ID-1 districts (less than 5-acres, Section 11-12-1.B). The Infill Districts may, therefore, only be used to rezone properties when selected circumstances are present, and every site will not be eligible because the selected circumstances are not always present. Finally, as a practical matter, the site selected for rezoning to the ID-1 district should be appropriate for the base zoning being requested; i.e. if your application is to be for an ID-1 district that references a LI district list of permitted uses, then that site would also need to be a suitable location for industrial zoning.