

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MESA, ARIZONA, AMENDING MESA CITY CODE, TITLE 11, MESA ZONING ORDINANCE, CHAPTERS 56, 58, 59, AND 60 OF ARTICLE 6: FORM-BASED CODE BY ADOPTING BY REFERENCE THE PUBLIC RECORD KNOWN AS “FORM-BASED CODE AMENDMENTS”, AND AMENDING THE DEFINITION OF BY-PASSED PARCEL IN CHAPTER 87 OF ARTICLE 8” GENERAL TERMS; PROVIDING PENALTIES FOR THE VIOLATIONS THEREOF AND PRESERVING RIGHTS AND DUTIES THAT HAVE ALREADY MATURED AND PROCEEDINGS WHICH HAVE ALREADY BEGUN THEREUNDER.

**WHEREAS**, it has become apparent, and in the best interest of the City, to update Title 11, the Mesa Zoning Ordinance; and

**WHEREAS**, the changes encompass amendments to Chapters 56, 58, 59, 60 also referred to as the “Form-Based Code”, and Chapter 87 of the Mesa Zoning Ordinance; and

**WHEREAS**, the updates include clarifications and modifications, which may be generally classified into four different categories: (1) Adding an administrative modifications process to allow minor adjustments to certain standards of the FBC such as; the required lot depth, build-to-line, setbacks, front façade zones, and ground floor transparency; (2) Removing floor plate requirements for Mid-Rise and High-Rise building types, specified location of private open space, and the maximum lot depth and width for By-Passed Parcel; (3) Modifying the glazing and ground floor transparency requirements for areas outside the Downtown Pedestrian Area; and (4) Modifying the definition of By-Passed Parcel; all to aid in the usability, predictability, and understanding of the Zoning Ordinance; and

**WHEREAS**, the public document has been made available for review and inspection with the City Clerk.

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

**Section 1:** ADOPTION OF “FORM-BASED CODE AMENDMENTS”

The additions and deletions set forth in that certain document known as “Form-Based Code Amendments” three copies of which are on file with the City Clerk, which was made a public record by resolution No. 11371, by the Mesa City Council on July 1, 2019, is hereby adopted and incorporated into Chapters 56, 58, 59, and 60 of Title 11, the Zoning Ordinance, of the Mesa City Code.

**Section 2:** That the definition of By-Passed Parcel in Section 11-87 of the Mesa City Code, entitled Definitions, is hereby amended as follows (added text appears in **BOLD ALL CAPS**, deleted text appears as ~~strikethrough bold~~):

**By-Passed Parcel:** Any lot or parcel which meets all of the following:

1. Does not exceed 2.5 net acres, and has been in its current configuration for more than 10 years;  
or **DOES NOT**

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~~2.~~ **Does not** exceed 5 net acres and was created by the assembly of individual, contiguous parcels, each not more than 2.5 acres in area; and

**23.** Is served by, or has direct access to, existing utility distribution facilities; and

**34.** Is surrounded by properties within a 1,200-foot radius in which:

- a. The total developable land area is not more than 25% vacant; and
- b. Greater than 50% of the total number of lots or parcels have been developed 15 or more years ago.

**Section 3:** REPEAL OF CONFLICTING ORDINANCES

That all Ordinances or parts of Ordinances, and all sections of the Mesa Zoning Ordinance or parts of such sections in conflict herewith, are hereby repealed; provided that such repeal shall not:

- A. Affect suits pending, or rights and duties that matured or were existing, or penalties that were incurred and proceedings that were begun immediately prior to the effective date of this Ordinance;
- B. Impair, void or otherwise affect any grant or conveyance made, or any right acquired, or a cause of action now existing under such repealed sections.

**Section 4:** The recitals above are fully incorporated in this Ordinance by reference.

**Section 5:** The effective date of this Ordinance shall be thirty (30) days following adoption by the Mesa City Council.

**Section 6:** 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 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

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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 City Council of the City of Mesa, Maricopa County, Arizona, this 8th day of July, 2019.

APPROVED:

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Mayor

ATTEST:

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City Clerk

EFFECTIVE DATE:

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