

**EXHIBIT 2 – DRIVE-THRU TEXT AMENDMENT ORDINANCE.**

ORDINANCE NO. \_\_\_\_

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, AMENDING ZONING ORDINANCE, MESA CITY CODE TITLE 11, CHAPTERS 5, 6, 7, 8, 31, 58, 86, AND 87 PERTAINING TO DRIVE-THRU FACILITIES, PICK-UP WINDOW FACILITIES, AND DRIVE-UP ATM/TELLER WINDOWS. THE AMENDMENTS INCLUDE, BUT ARE NOT LIMITED TO: REPEALING IN ITS ENTIRETY SECTION 11-31-18 (DRIVE-THRU FACILITIES) AND REPLACING IT WITH A NEW SECTION 11-31-18 (DRIVE-THRU AND PICK-UP WINDOW FACILITIES); MODIFYING LAND USE TABLES PERTAINING TO DRIVE-THRU FACILITIES, PICK-UP WINDOW FACILITIES, AND DRIVE-UP ATM/TELLER WINDOWS; REMOVING DEFINITIONS OF DRIVE-THRU FACILITIES AND ADDING NEW DEFINITIONS FOR DRIVE-THRU FACILITIES, PICK-UP WINDOW FACILITIES, AND DRIVE-UP ATM/TELLER WINDOWS; PROVIDING PENALTIES FOR THE VIOLATIONS THEREOF; AND PRESERVING RIGHTS AND DUTIES THAT HAVE ALREADY MATURED AND PROCEEDINGS WHICH HAVE ALREADY BEGUN THEREUNDER.

**WHEREAS**, the City recognizes the inherent differences in the operation of and impacts created by different “drive-up” facilities and therefore is creating separate definitions, land use regulations, and development standards for: 1) Drive-thru Facilities, 2) Pick-up Window Facilities, and 3) Drive-up ATM/Teller Windows; and

**WHEREAS**, the City recognizes that Drive-thru Facilities cause unique impacts to the surrounding community including visual, lighting, traffic, odor and noise impacts, and that without appropriate siting and development standards, Drive-thru Facilities may be a nuisance; and

**WHEREAS**, to mitigate the impacts of Drive-thru Facilities on the community and to address common nuisance issues associated with Drive-thru Facilities, the City Council desires to update the requirements applicable to Drive-thru Facilities in the Mesa Zoning Ordinance, including the development standards, and to require an Onsite Circulation and Stacking Study with every proposed Drive-thru Facility; and

**WHEREAS**, per the Mesa 2040 General Plan, the City of Mesa is divided into character types, each with its own purpose and set of permitted zoning districts and land uses; and

**WHEREAS**, per the Mesa Zoning Ordinance, the City of Mesa is further divided into different zoning districts, each with its own purpose and set of permitted land uses; and

**WHEREAS**, the Employment character area as designated by the Mesa 2040 General Plan is intended for employment-type land uses such as manufacturing, warehousing, and business parks; and

**WHEREAS**, the Neighborhood Commercial zoning district as designated by the Mesa Zoning Ordinance is intended to provide areas for locally oriented retail and service uses; and

**WHEREAS**, the Planned Employment Park, Light Industrial, General Industrial, and Heavy Industrial zoning districts as designated by the Mesa Zoning Ordinance are intended for industrial, office, and research and development uses that provide a range of employment opportunities; and

**WHEREAS**, in order to better meet the primary intent of the Employment character type set forth in the Mesa 2040 General Plan, and of the Neighborhood Commercial, Planned Employment Park, Light Industrial, General Industrial, or Heavy Industrial zoning districts set forth in the Mesa Zoning Ordinance, special consideration should be given to Drive-thru Facilities, Pick-up Window Facilities, and Drive-up ATM/Teller Windows in these areas to ensure they are designed, located, and operated in a manner that will not interfere with surrounding properties and are appropriate for their location and configuration; and

**WHEREAS**, the use of development standards, including standards for traffic circulation and queuing, stacking, and screening, and requiring an Onsite Circulation and Stacking Study for Drive-thru Facilities will help ensure appropriate design and configuration of Drive-thru Facilities; and

**WHEREAS**, on September 20, 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 repeal and replace Section 11-31-18 of the Mesa Zoning Ordinance, and to amend corresponding land use tables and definitions found in other chapters of the Mesa Zoning Ordinance to, in part, adopt new development standards and approval processes for Drive-thru Facilities, Pick-up Window Facilities, and Drive-up ATM/Teller Windows to help ensure these facilities in Mesa are appropriately designed and located and to mitigate nuisances and adverse impacts of these facilities on the surrounding communities.

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

**Section 1:** ADOPTION BY REFERENCE

That additions and deletions set forth in that certain document known as “Exhibit 1 - 2023 Amendments to the Tables in Zoning Ordinance, Title 11, Chapters 5, 6, 7, 8, and 58 pertaining to Drive-Thru Facilities and Pick-Up Window Facilities,” which was made a public record on October 2, 2023, by Resolution No. \_\_\_\_\_, 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 Tables: 11-5-2: Residential Districts, 11-6-2: Commercial Districts, 11-7-2: Employment Districts, 11-8-3: Downtown Districts, and 11-58-3.A: Composite Use Table.

**Section 2:** That Mesa City Code Title 11, Chapter 31, Section 18 titled “Drive-thru Facilities” is hereby repealed in its entirety and replaced with a new Mesa City Code Title 11, Chapter 31, Section 18, titled “Drive-thru And Pick-Up Window Facilities” as follows:

## 11-31-18: - DRIVE-THRU AND PICK-UP WINDOW FACILITIES

Drive-thru Facilities, Pick-up Window Facilities, and Drive-up ATM/Teller Windows as described in Section 11-86-4, shall be located, developed, and operated in compliance with the land use regulations in Article 2 and the following standards.

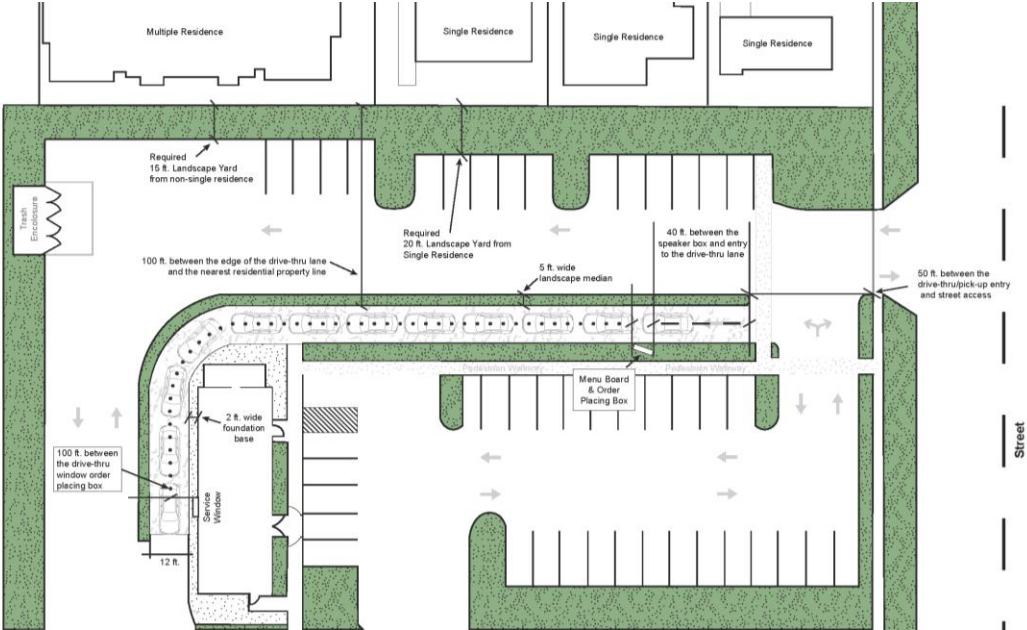
- A. **Purpose.** The purpose of this Section is to mitigate potential impacts of Drive-thru Facilities, Pick-up Window Facilities, and Drive-up ATM/Teller Windows, including but not limited to, visual, traffic, and noise impacts, and to ensure that these facilities are developed to enhance the city's urban form.
- B. **General Requirements.**
1. A drive-thru lane, pick-up lane, or drive lane serving a Drive-up ATM/Teller Window must be physically separated from non-drive-thru traffic areas or non-pick-up traffic areas with a minimum five (5) foot wide raised landscape median. See Figure 11-31-18.A.
  2. A minimum two (2) foot wide foundation base must be provided along any exterior building wall that is adjacent to a drive-thru lane, pick-up lane, or drive lane serving a Drive-up ATM/Teller Window. See Figure 11-31-18.A.
  3. Awnings or architecturally integrated weather protection structures must be provided over drive-thru windows and pick-up windows. Such awning or weather protection structure must be architecturally integrated in proportion, color, material, and texture to the building it serves.
- C. **Onsite Circulation and Stacking Study.** An onsite circulation and stacking study is required with every application for a new Drive-thru Facility. Pick-up Window Facilities and Drive-up ATM/Teller Windows are exempt from this requirement. The onsite circulation and stacking study shall include the following:
1. Description of onsite operations including:
    - a. Business hours of operation.
    - b. The method by which a customer order is placed and processed.
    - b. Peak demand hours.
    - c. The time required to serve a typical customer.
    - d. A description of how sound from external operations will be attenuated from neighboring properties.
  2. Description of onsite traffic activity, including:
    - a. Arrival rates of customers.
    - b. Anticipated vehicular stacking required.

- c. An onsite circulation plan showing points of entry to the site, stacking locations and distances, and anticipated patterns of onsite circulation.
  - d. A mitigation plan describing how backup stacking will be addressed so that vehicles are not blocking internal drives or backing up onto roadways.
  - e. An evaluation of uses within 12,000 feet of the proposed development identifying cumulative traffic impacts and mitigation efforts to ensure that vehicles are not blocking internal drives or backing up onto roadways.
3. Other information deemed necessary by the Planning Director or their designee to review the proposal including additional information to determine whether the proposal has appropriate traffic circulation, and stacking.

D. **Stacking Requirements.**

- 1. **Drive-thru Facilities and Pick-Up Window Facilities.** Drive-thru Facilities and Pick-up Window Facilities must conform to the following stacking requirements: A minimum 50-foot-long distance must be provided between the entrance of a drive-thru lane or pick-up lane and a street access driveway or cross access drive aisle. Distance measured from the entrance of the drive-thru lane or pick-up lane to the right-of-way, property line or edge of street access driveway or cross access drive aisle. See Figure 11-31-18.A.
- 2. **Additional Drive-thru Facility Requirements.** In addition to the stacking requirement in Subsection (1) above, Drive-thru Facilities must conform to the following stacking requirements:
  - a. A minimum 100-foot-long stacking distance must be provided between the drive-thru window and order-placing speaker. Distance measured from the leading edge of the drive-thru window along the centerline of the drive-thru lane to the far edge of the order placing speaker. See Figure 11-31-18.A
  - b. A minimum 40-foot-long stacking distance must be provided between the order-placing box and the entry to a drive-thru lane. Distance measured from the leading edge of the order-placing box along the centerline of the drive-thru lane to the entrance of the drive-thru lane. See Figure 11-31-18.A.
- 3. **Additional Pick-up Window Facility Requirements.** In addition to the stacking requirements in Subsection (1) above, Pick-up Window Facilities must conform to the following stacking requirements: A minimum 100-foot-long stacking distance must be provided between the pick-up window and the entrance of the pick-up lane. Distance measured from the leading edge of the pick-up window along the centerline of the pick-up lane to the entrance of the pick-up lane.
- 4. **Drive-Up ATM/Teller Window Requirements.** A minimum 40-foot-long stacking distance must be provided for each Drive-up ATM/Teller Window. Distance measured from the leading edge of the ATM/Teller window along the centerline of the stacking lane to the entry of the stacking area.
- 5. **Modifications to Stacking Requirements.** Modifications to the stacking requirements found in this Section may be approved through the site plan review process if the

Planning Director or their designee determines, based on the onsite circulation and stacking study, that the proposed modifications to the stacking requirements are sufficient to meet the demands of the development, including the traffic circulation, and stacking demands.



**Figure 11-31-18.A Drive-thru and Pick-up Facilities**

**E. Screening/Buffering Requirements.** Drive-thru Facilities, Pick-up Window Facilities, and Drive-up ATM/Teller Windows shall conform to the following screening requirements:

1. A drive-thru lane or pick-up lane is not permitted to be located parallel to arterial roadways. Where physical site conditions prevent a non-parallel configuration, the drive-thru lane or pick up lane must conform to the required landscaping per Table 11-33-3.A.4 and provide either:
  - a. A 40-inch-high screen wall adjacent to the arterial roadway that extends the entire length of the drive-thru lane or pick-up lane, along with two (2) additional trees per 25 feet of linear street frontage, and two (2) additional shrubs per 25 feet of linear street frontage; or
  - b. An architecturally integrated awning, canopy, or trellis system that covers and screens the entire drive-thru lane or pick-up lane from the street, one (1) additional tree per 25 feet of linear street frontage, and two (2) additional shrubs per 25 feet of linear street frontage.
2. A 100-foot distance must be provided between the drive-thru lane or pick-up lane and any residential use or residentially zoned property, except that the Planning Director or their designee may approve a distance less than 100 feet if a sound study submitted by the applicant demonstrates that noise will be sufficiently mitigated through other means, as determined by the Planning Director or their designee. Distance measured from the far

edge of the drive-thru lane or pick-up lane to the property line containing the residential use or residentially zoned property.

- F. **Employee Protection Requirements.** Drive-thru Facilities whose operations include employees who take orders outside of the eating establishment must provide a raised two (2) foot wide pedestrian path and an architecturally compatible shade structure along the area in which employees are staged and take orders.

**Section 3:**

Text written in **BOLD ALL CAPS** indicates additional or new language.  
Text written in ~~strikethrough~~ indicates deletions.

That Title 11, Chapter 86, Section 11-86-4 Commercial Use Classifications is hereby amended by removing and adding the following definitions which are arranged in alphabetical order and include subcategories or related definitions classifications which are also arranged in alphabetical order. All the other definitions in Chapter 86 shall remain the same.

**DRIVE-UP ATM/TELLER WINDOW. BANKING AND FINANCIAL INSTITUTIONS THAT PROVIDE A DRIVEWAY APPROACH FOR AUTOMOBILES TO SERVE PATRONS REMINING IN AN AUTOMOBILE, INCLUDING STAND-ALONE AUTOMATED TELLER MACHINES, AUTOMATED TELLER MACHINES ATTACHED TO A BUILDING OR STRUCTURE, AND SERVICE WINDOWS ON A BUILDING OR STRUCTURE.**

**DRIVE-THRU FACILITIES. ESTABLISHMENTS PROVIDING, GOODS, FOOD, OR BEVERAGE THROUGH A WINDOW TO PATRONS REMAINING IN AN AUTOMOBILE, WHERE AN ORDER MENU BOARD IS PRESENT, AND ORDERS ARE PLACED ON SITE VIA AN ORDER MENU BOX OR VIA AN EMPLOYEE TAKING ORDERS FROM PATRONS REMAINING IN AN AUTOMOBILE.**

Eating and Drinking Establishments. Businesses primarily engaged in serving prepared food and/or beverages for consumption on or off the premises.

Bars/Clubs/Lounges. Businesses serving beverages for consumption on the premises as a primary use including on-sale service of alcohol including beer, wine, or mixed drinks, and businesses that do not meet the definition of Full Service or Limited Service Restaurants.

Coffee Shops/Cafes. Establishments that primarily serve nonalcoholic beverages, such as coffee, juices, or sodas for consumption on or near the premises, or a specialty snack, such as ice cream, frozen yogurt, cookies or popcorn.

Restaurants, Bar and Grill. Restaurants providing food and beverage services to patrons who order and are served while seated and pay after eating. Takeout service may be provided, but a minimum of 30 percent of gross sales revenue must be from serving food to be classified as a Bar and Grill Restaurant.

Restaurants, Full Service. Restaurants providing food and beverage services to patrons who order and are served while seated and pay after eating. Takeout service may be provided, but a minimum of 40 percent of gross sales revenue must be from serving food to be classified as a Full Service Restaurant.

Restaurants, Limited Service. Establishments where food and beverages may be consumed on the premises, taken out, or delivered, but where no table service is provided. This classification includes cafeterias, fast-food restaurants, carryout sandwich shops, limited service pizza parlors and delivery shops, self-service restaurants, snack bars and takeout restaurants. A minimum of 40 percent of gross sales revenue must be from serving food to be classified as a Limited Service Restaurant.

~~With Drive Through Facilities. Establishments providing food and beverage services to patrons remaining in automobiles.~~

With Outdoor Eating Areas. Provision of outdoor dining facilities on the same property or in the adjacent right-of-way.

**PICK-UP WINDOW FACILITIES. ESTABLISHMENTS PROVIDING GOODS, FOOD, OR BEVERAGE THROUGH A WINDOW TO PATRONS REMAINING IN AN AUTOMOBILE, WHERE ORDERS ARE PLACED BY PATRONS BEFORE REACHING THE ESTABLISHMENT, AND WHERE NO ORDER MENU BOARD, ORDER MENU BOX, OR EMPLOYEE TAKING ORDERS FROM PATRONS REMAINING IN AN AUTOMOBILE ARE PRESENT. AN ESTABLISHMENT WHICH USES PARKING SPACES DESIGNATED FOR PICK UP ORDERS RATHER THAN A WINDOW ARE NOT INCLUDED IN THIS DEFINITION.**

**Section 4:** RECITALS. The recitals in this Ordinance (i.e., Ordinance No. [REDACTED]) are fully incorporated in this Ordinance by reference, and each recital represents a finding of fact and determination made by the City Council.

**Section 5:** 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 with this Ordinance, 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 6:** EFFECTIVE DATE. This Ordinance is effective, and shall apply, thirty (30) days after the adoption of this Ordinance.

**Section 7:** 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 8:** MULTIPLE ORDINANCES AMENDING THE SAME LAND USE TABLES. On the same date the City Council considered this Ordinance, it also considered a separate ordinance amending different portions of some of the land use tables amended by Section 1 of this Ordinance. If both ordinances are adopted by the City Council, the amendments to the land use tables shown in Section 1 of this Ordinance

and the amendments to the land use tables shown in the other ordinance shall both be effective, as of their respective effective dates, and shall both be codified in the Mesa City Code.

**Section 9:** BINDING WAIVER OF ENFORCEMENT. As permitted by Arizona Revised Statutes (“A.R.S.”) § 12-1134 and set forth in this Section 9, if an owner of real property claims that the owner’s rights to use, divide, sell, or possess, and that the fair market value of, the real property (“specific parcel”) was reduced by the enactment or applicability of the newly enacted land use laws applicable to drive-thru facilities contained in Section 1 of this Ordinance (“Drive-thru Laws”), the owner may request a binding waiver of enforcement as to the Drive-thru Laws for the specific parcel. Only an owner who owned a specific parcel on the effective date of this Ordinance, and the specific parcel was zoned Neighborhood Commercial (NC), Planned Employment Park (PEP), Light Industrial (LI), General Industrial (GI), or Heavy Industrial (HI) on the effective date of this Ordinance, may request a waiver. No prior or subsequent owner may request a waiver.

To request a waiver, an owner must submit a written demand to the City of Mesa Planning Division within three years of the effective date of this Ordinance that includes: (1) the specific amount of just compensation; (2) a statement that the rights to use, divide, sell, or possess, and that the fair market value of, the owner’s specific parcel were reduced by the enactment or applicability of the Drive-thru Laws; and (3) evidence that the owner submitting the waiver request owned the specific parcel on the effective date of this Ordinance.

If the waiver request meets all the requirements of this Section 9, as determined by the Planning Director or their designee, the City of Mesa Planning Division may issue to the owner a waiver of the Drive-thru Laws on the owner’s specific parcel (“Waiver”). A Waiver grants the owner only the right to use the specific parcel in compliance with the Mesa Zoning Ordinance as if the Drive-thru Laws were not adopted. By way of example, an owner of a specific parcel zoned Neighborhood Commercial (NC) or Heavy Industrial (HI) on the effective date of this Ordinance would be required to obtain a Special Use Permit (SUP) as set forth in the Mesa Zoning Ordinance as it existed immediately prior to the effective date of this Ordinance, but would not be required to obtain a Council Use Permit (CUP) as set forth in the Drive-thru Laws. A Waiver does not waive or modify any other land use laws in this Ordinance or in the Mesa City Code. A Waiver is only applicable to the specific parcel for which it is granted. A Waiver automatically terminates when the specific parcel is rezoned. A Waiver does not limit or prevent, with a rezoning, a development agreement, and does not alter or effect an existing development agreement, that restricts or prohibits certain land uses including drive-thru facilities. The Planning Director and City Attorney are authorized to draft the Waiver form to be used pursuant to the terms, conditions, and limitations of this Section 9.

For purposes of this Section 9, the meaning of the terms “fair market value,” “just compensation,” “land use law,” and “owner” are as defined in A.R.S. § 12-1136.

**Section 10:** 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 16th day of October 2023.

APPROVED:

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Mayor

ATTEST:

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City Clerk

DRAFT