

ORDINANCE NO. 5815

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, AMENDING ZONING ORDINANCE, MESA CITY CODE TITLE 11, CHAPTER 69 PERTAINING TO SITE PLAN REVIEW. THE AMENDMENTS INCLUDE BUT ARE NOT LIMITED TO AMENDING THE SITE PLAN MODIFICATION PROCESS SET FORTH IN SECTION 11-69-7; AND PRESERVING RIGHTS AND DUTIES THAT HAVE ALREADY MATURED AND PROCEEDINGS WHICH HAVE ALREADY BEGUN THEREUNDER.

WHEREAS, it has become apparent that it is in the best interest of the City, to update the site plan review procedures of the Zoning Ordinance (Mesa City Code Title 11); and

WHEREAS, Chapter 69 of the Zoning Ordinance sets forth the review and approval process for Initial Site Plans and Site Plan Modifications, including which Initial Site Plans and Site Plan Modifications are reviewed and approved by the Planning Director or designee, the Planning and Zoning Board, or the City Council; and

WHEREAS, the City has found that it is appropriate for the Planning Director or designee to review and have the ability to approve certain Minor Site Plan Modifications, when the minor modification is to a site plan that was originally administratively approved by the Planning Director or designee; and

WHEREAS, the City has found that other amendments and minor revisions to Chapter 69 of the Zoning Ordinance are needed in order to clarify the review and approval process for Site Plan Modifications; 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 amend Section 11-69-7 of the Mesa Zoning Ordinance to, in part, grant the Planning Director or designee the ability to review and approve certain Minor Site Plan Modifications, when the minor modification is to a site plan that was originally approved by the Planning Director or designee, in order to simplify and streamline the review and approval process for said Minor Site Plan Modifications, and to make various minor amendments to clarify the review and approval process for Site Plan Modifications for the benefit of the public.

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

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

Section 1: That Title 11, Chapter 69, Section 11-69-7 is hereby amended as follows:

11-69-7: - MODIFICATIONS TO APPROVED SITE PLANS

A change to a previously approved site plan or a site plan that is not considered an Initial Site Plan by the Zoning Administrator is a Site Plan Modification. Depending on the degree and type of change, the modification will be classified as minor or major and reviewed by the applicable governing body as provided in this Section. ~~The Zoning Administrator shall determine if the proposed modification is minor or major by using the criteria AS~~ set forth in this Section 11-69-7.

A. Minor Modifications to an Approved Site Plan and Eligibility for Administrative Review. In ~~certain~~ **THE FOLLOWING** circumstances, a Site Plan Modification **IS MINOR AND** may be administratively approved **BY THE PLANNING DIRECTOR OR THE PLANNING DIRECTOR'S DESIGNEE.** ~~A Site Plan Modification is not entitled to the administrative review and approval process but may qualify if the Zoning Administrator determines the modification is minor. A modification to an approved site plan will be considered minor if the Zoning Administrator determines the modification involves:~~

1. **A MODIFICATION TO A SITE PLAN THAT WAS ADMINISTRATIVELY APPROVED BY THE PLANNING DIRECTOR OR THE PLANNING DIRECTOR'S DESIGNEE AND THAT IS NOT A MODIFICATION LISTED IN SECTION 11-69-7(D)(1).**

2. **A MODIFICATION TO AN APPROVED SITE PLAN IF THE ZONING ADMINISTRATOR DETERMINES THE MODIFICATION IS MINOR. A MODIFICATION TO AN APPROVED SITE PLAN WILL BE CONSIDERED MINOR IF THE ZONING ADMINISTRATOR DETERMINES THE MODIFICATION MEETS THE CRITERIA IN BOTH SUBSECTIONS (A) AND (B) BELOW.**

A. **THE MODIFICATION MEETS AT LEAST ONE OF THE FOLLOWING FOUR CRITERIA:**

~~1~~**i.** A change to the design that does not deviate from any applicable design review requirements or adopted design guidelines; or

~~2~~**ii.** A change in landscape area or open space area that is less than 10% and not greater than 2.5 acres; or

~~3~~**iii.** A change in the total building footprint (floor area, height, or dimensions) that is 10% or less and no more than 5,000 square feet; or

~~4~~**iv.** A minimal adjustment to: i) the building footprint, location, or orientation; ii) the pad location; ~~iii~~**ii)** the configuration of a parking lot or drive aisles; iv) project amenities such as, but not limited to, recreational facilities, pedestrian amenities, fencing or other screening material; v) residential density; or vi) the approved phasing plan; ~~and.~~

~~5B.~~ ~~The change satisfies~~ **IN ADDITION TO MEETING ONE OF THE FOUR CRITERIA LISTED IN SUBSECTION (A) ABOVE, THE MODIFICATION MUST ALSO MEET** all of the following criteria:

- ~~ai.~~ Complies with all applicable requirements in this Ordinance and any adopted sub-area plans; **AND**
- ~~bii.~~ Complies with all conditions of approval or stipulations on the property (regardless of whether the condition of approval was approved by ordinance, resolution, or otherwise); **AND**
- ~~ciii.~~ Is consistent with the purpose and intent of the approved site plan; **AND**
- ~~dii.~~ The proposed development does not require a Rezone, Planned Area Development Overlay (PAD), Council Use Permit (CUP), Bonus Intensity Overlay Zone (BIZ), or Special Use Permit (SUP); **AND**
- ~~ev.~~ The change will not have an adverse impact on adjacent properties; and
- ~~fvi.~~ The change has not previously been determined to be a major ~~sSite pPlan m~~**Modification**.

B. ~~Administrative Review Procedures for Minor Site Plan Modifications. Modifications to a previously approved site plan that are determined minor by the Zoning Administrator can be reviewed administratively by the Planning Director or the Planning Director's designee. The Planning Director or~~ **THE PLANNING DIRECTOR'S** designee shall use the review criteria set forth in Section 11-69-5 to evaluate the Site Plan Modification and may take action on, or impose conditions upon, the Site Plan Modification, as set forth in Section 11-69-6. The Planning Director, in the Planning Director's sole discretion, may require a minor Site Plan Modification go through the public hearing process as set forth in Section 11-69-7(D).

C. Major Modifications to an Approved Site Plan. If ~~the Zoning Administrator determines~~ a Site Plan Modification is not minor and therefore not eligible for administrative approval under Section 11-69-7(A), the modification is considered major and must go through the public hearing review ~~and approval~~ process set forth in Section 11-69-7(D).

D. Public Hearing Review ~~Process~~ **PROCEDURES** for Major Site Plan Modifications. The Site Plan Modifications identified in this Section are considered major. ~~The pPlanning and zZoning bBoard and the eCity eCouncil shall use the review criteria set forth in Section 11-69-5 to evaluate the sSite pPlan mModification and may take action on, or impose conditions upon, the sSite pPlan mModification, as set forth in Section 11-69-6. Major modifications to an approved site plan must go through the public hearing~~ **REVIEW** process as set forth below:

1. Site Plan Modifications Reviewed by the Planning & Zoning Board and Approved by City Council. The following Site Plan Modifications are subject to recommendation by the Planning & Zoning Board and review and approval by the City Council:

- a. A Site Plan Modification for a project that requires a Rezone, Planned Area Development Overlay (PAD), Council Use Permit (CUP), Bonus Intensity Overlay Zone (BIZ), or other City Council action.

- b. A modification to a site plan approved by City Council and the requested modification does not meet the criteria in Section 11-69-7(A).
 - c. A Site Plan Modification that does not comply with or eliminates a condition of approval of the zoning ordinance authorizing the zoning on the property requires a rezoning to amend, modify or remove the condition of approval. The rezoning must be approved by City Council prior to, or concurrently with, City Council's review of the Site Plan Modification.
 - d. A modification to an approved site plan and the requested modification was previously submitted to the City and determined by the City to require a rezoning. The rezoning must be approved by City Council prior to, or concurrently with, City Council's review of the Site Plan Modification.
 - e. A modification that is substantially similar (as determined by the Planning Director) to a modification the City previously reviewed and determined required a rezoning will also require a rezoning. The rezoning must be approved by City Council prior to, or concurrently with, City Council's review of the Site Plan Modification.
2. Site Plan Modifications Reviewed and Approved by the Planning & Zoning Board. **THE FOLLOWING SITE PLAN MODIFICATIONS ARE SUBJECT TO REVIEW AND APPROVAL BY THE PLANNING & ZONING BOARD:**
- A. A minor Site Plan Modification that is eligible for administrative review but referred to the Planning & Zoning Board by the Planning Director. ~~and all major modifications not listed in Section 11-69-7(D)(1) are reviewed and approved by the Planning & Zoning Board. The Planning & Zoning Board shall use the review criteria set forth in Section 11-69-5 to evaluate the Site Plan Modification and may take action on, or impose conditions upon, the Site Plan Modification as set forth in Section 11-69-6.~~
 - B. **ALL MAJOR MODIFICATIONS NOT LISTED IN SECTION 11-69-7(D)(1).**

Section 2: RECITALS. The recitals above are fully incorporated in this ordinance by reference, and each recital represents a finding of fact and determination made by the City Council.

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: EFFECTIVE DATE. The effective date of this Ordinance is thirty (30) days after the adoption of this Ordinance.

Section 5: 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 6: 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:

Mayor

ATTEST:

City Clerk