

ORDINANCE NO. 5968

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, REPEALING IN ITS ENTIRETY CHAPTER 36 OF TITLE 11 OF THE MESA CITY CODE, ZONING ORDINANCE, TITLED “NONCONFORMING USES, STRUCTURES, AND LOTS” AND REPLACING IT WITH A NEW CHAPTER 36 TITLED “NONCONFORMING AND PROCEDURALLY CONFORMING”; PROVIDING PENALTIES FOR THE VIOLATIONS THEREOF; AND PRESERVING RIGHTS AND DUTIES THAT HAVE ALREADY MATURED AND PROCEEDINGS WHICH HAVE ALREADY BEGUN THEREUNDER.

WHEREAS, Mesa City Code Title 11 (the “Zoning Ordinance”) Chapter 36, regarding legal nonconforming uses, structures, and lots, in mostly the same form as it exists today, was adopted on July 7, 2011, via Ordinance No. 5051.

WHEREAS, the City desires to repeal Chapter 36 of the Zoning Ordinance in its entirety and to adopt a new Chapter 36 titled “Nonconforming and Procedurally Conforming” in order to modernize, simplify, and clarify the Zoning Ordinance regulations related to legal nonconforming uses, lots or parcels, structures, and sites, and to add definitions and regulations for legal procedurally conforming uses and legal procedurally conforming structures.

WHEREAS, the City finds that adding definitions and regulations for legal procedurally conforming uses and structures is necessary in order to allow those certain uses and structures for which a building permit was issued prior to the issuance of a Zoning Administrator interpretation that would otherwise make those certain uses or structures legal nonconforming to be maintained, repaired, reconstructed, and restored to their current or previous condition, as set forth in this Ordinance.

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

Section 1: That Mesa City Code Title 11, Chapter 36 titled “Nonconforming Uses, Structures, and Lots” is hereby repealed in its entirety and replaced and a new Mesa City Code Title 11, Chapter 36 titled “Nonconforming and Procedurally Conforming” as follows:

CHAPTER 36 – NONCONFORMING AND PROCEDURALLY CONFORMING

11-36-1: - PURPOSE AND APPLICABILITY

- A. **Purpose.** This Chapter establishes provisions for the regulation of land uses, lots or parcels, structures, and sites that were lawfully established prior to the adoption or amendment of the Zoning Ordinance, or annexation into the City, but which would now be prohibited, restricted, or regulated differently under the requirements of the Zoning Ordinance or the

Zoning Map and therefore do not comply with some or all of the requirements of the Zoning Ordinance.

B. Applicability.

1. ***Approved Modifications.*** Where a variance or modification has been granted that results in a development standard or feature that does not conform to the requirements of the Zoning Ordinance, the development standard or feature shall be deemed conforming, and this Chapter shall not apply.
2. ***Illegal Nonconformities.*** Land uses, lots or parcels, structures, and sites that were not lawfully established in compliance with the Zoning Ordinance or requirements of the applicable county or municipality, if established prior to annexation, are illegal nonconformities and are ineligible for the nonconforming provisions of this Chapter. Illegal nonconformities are subject to enforcement actions, up to and including removal and termination.

11-36-2: - DEFINITIONS

- A. **Legal Nonconforming Use.** A land use that prior to the effective date of the Zoning Ordinance, subsequent amendment to the Zoning Ordinance, or annexation, was lawfully established—meaning it complied with all applicable requirements of the Zoning Ordinance, or requirements of the county or municipality in which it was located, in effect at the time it was approved—but does not comply with all current applicable Zoning Ordinance requirements. *Legal Nonconforming Use does not include Legal Procedurally Conforming Use.*
- B. **Legal Procedurally Conforming Use.** A land use for which a building permit was issued prior to the issuance of a written interpretation by the Zoning Administrator in which the land use was determined to not be within any classification or use in the Zoning Ordinance and therefore prohibited in every zoning district.
- C. **Legal Nonconforming Lot or Parcel.** A lot or parcel recorded prior to the effective date of the Zoning Ordinance, subsequent amendment to the Zoning Ordinance, or annexation, that was lawfully established—meaning it complied with all applicable dimensional standards in the Zoning Ordinance, or requirements of the county or municipality in which it was located, in effect at the time it was recorded—but does not comply with all current applicable dimensional standards in the Zoning Ordinance.
- D. **Legal Nonconforming Structure.** A structure that prior to the effective date of the Zoning Ordinance, subsequent amendment to the Zoning Ordinance, or annexation, was lawfully constructed—meaning it complied with all requirements of the Zoning Ordinance, or requirements of the county or municipality in which it was located, in effect at the time it was constructed—but does not comply with all current applicable development standards

in the Zoning Ordinance. *Legal Nonconforming Structure does not include Legal Procedurally Conforming Structure.*

- E. **Legal Procedurally Conforming Structure.** A structure for which a building permit was issued prior to the issuance of a written interpretation by the Zoning Administrator in which the land use that the structure is occupied by or devoted to was determined to not be within any classification or use in the Zoning Ordinance and therefore prohibited in every zoning district.
- F. **Legal Nonconforming Site.** A lot or parcel containing site improvements (such as but not limited to landscaping, parking, drive aisles, fencing, or screening) that prior to the effective date of the Zoning Ordinance, subsequent amendment to the Zoning Ordinance, or annexation, were lawfully constructed—meaning the site improvements complied with all requirements of the Zoning Ordinance, or requirements of the county or municipality in which the lot or parcel was located, in effect at the time the site improvements on the lot or parcel were constructed—but the site improvements do not comply with all current applicable development standards in the Zoning Ordinance.

11-36-3: - LEGAL NONCONFORMING USES AND LEGAL PROCEDURALLY CONFORMING USES

- A. **Right to Continue a Legal Nonconforming Use or Legal Procedurally Conforming Use.**
 - 1. ***Right to Continue.*** A Legal Nonconforming Use or Legal Procedurally Conforming Use may continue to operate within the structure(s), area(s), or spaces(s) which it occupied when lawfully established, subject to the provisions of this Section.
 - 2. ***Change of Ownership, Tenancy, or Management.*** Changes of ownership, tenancy, or management of a lot, parcel, or structure occupied by or devoted to an existing Legal Nonconforming Use or Legal Procedurally Conforming Use shall not affect its right to continue.
 - 3. ***Discontinued Legal Nonconforming Use or Legal Procedurally Conforming Use.*** If a Legal Nonconforming Use or Legal Procedurally Conforming use is discontinued for a period of one (1) year or more, the right to operate such use shall terminate. Any subsequent use of the lot, parcel, or structure shall comply with all applicable requirements of the Zoning Ordinance.
 - a. ***Determination of Discontinued Use.*** The Zoning Administrator shall determine whether the use was discontinued for a period of one (1) year or more resulting in the termination of the right to operate such use.

- b. *Burden of Proof.* It shall be the burden of the owner/operator of the use to provide evidence of continual operation of the use, such as a valid business license, monthly business receipts, or tax returns showing business activity during the time period in question.

B. Limitations on Legal Nonconforming Uses and Legal Procedurally Conforming Uses.

1. *Expansion to Other Structures, Areas, Lots or Parcels.* A Legal Nonconforming Use or Legal Procedurally Conforming Use shall not be expanded to any other structure, area, lot, or parcel that it did not occupy when lawfully established; except an existing Single Residence use may construct an Accessory Dwelling Unit to the extent allowed by, and in compliance with Section 11-31-3 of the Zoning Ordinance.
2. *Expansion Within a Conforming Structure.* A Legal Nonconforming Use or Legal Procedurally Conforming Use may expand within the conforming structure it occupied when lawfully established, subject to the land use regulations in Article 2 for the base zoning district in which it is located.
3. *Expansion Within a Legal Nonconforming Structure.* A Legal Nonconforming Use or Legal Procedurally Conforming Use shall not be expanded within a Legal Nonconforming Structure; except an existing Single Residence use may construct an Accessory Dwelling Unit to the extent allowed by, and in compliance with Section 11-31-3 of the Zoning Ordinance.

11-36-4: - LEGAL NONCONFORMING STRUCTURES AND LEGAL PROCEDURALLY CONFORMING STRUCTURES

- A. **Right to Maintain a Legal Nonconforming Structure or Legal Procedurally Conforming Structure.** Maintenance of Legal Nonconforming Structures or Legal Procedurally Conforming Structures is permitted provided that the maintenance does not enlarge or extend, the structure, except as allowed by Section 11-36-4(B)(3).

B. Limitations on Legal Nonconforming Structures and Legal Procedurally Conforming Structures.

1. *Structural Repairs or Alterations to Legal Nonconforming Structures.* Structural repairs or alterations to a Legal Nonconforming Structure are only permitted when the Building Official determines:
 - a. The structural repair or alteration is immediately necessary to protect public health and safety of the occupants of the structure, or occupants of adjacent property; and

- b. The cost of the structural repair or alteration does not exceed 50% of the cost to reconstruct the entire structure, exclusive of the foundation.
- 2. ***Structural Repairs or Alterations to Legal Procedurally Conforming Structures.*** Structural repairs or alterations to a Legal Procedurally Conforming Structure are only permitted if the structural repair or alteration does not enlarge or extend the structure, except as allowed by Section 11-36-4(B)(3).
- 3. ***Expansions or Enlargements of Legal Nonconforming Structures and Legal Procedurally Conforming Structures.*** A Legal Nonconforming Structure or Legal Procedurally Conforming Structure shall not be expanded or enlarged except as follows:
 - a. *Expansions or Enlargements Required to Meet Law.* Legal Nonconforming Structures or Legal Procedurally Conforming Structures may be expanded or enlarged when necessary to meet federal, state, or City requirements, including development standards for the zoning district in which the structure is located.
 - b. *Expansions or Enlargements into Nonconforming Yards.* Legal Nonconforming Structures or Legal Procedurally Conforming Structures that are located within required yards may be expanded or enlarged only if the expansion or enlargement does not:
 - i. Further reduce an existing nonconforming yard;
 - ii. Further reduce a nonconforming lot coverage or floor area ratio requirement; or
 - iii. Increase the required number of off-street parking spaces, unless additional parking is provided per current parking standards.
 - c. *Expansions or Enlargements of Legal Nonconforming Structures or Legal Procedurally Conforming Structures Containing a Single Residence or Duplex Use.* Expansions or enlargements of a Legal Nonconforming Structure or Legal Procedurally Conforming Structure that contain a Single Residence or Duplex Use may be permitted only if the expansion or enlargement:
 - i. Does not increase the gross floor area by more than 75%;
 - ii. Does not increase the number of dwelling units on the lot or parcel; and
 - iii. Conforms to all applicable requirements of the Zoning Ordinance.

C. **Reconstruction and Restoration of Legal Nonconforming Structures and Legal Procedurally Conforming Structures.**

1. ***Reconstruction and Restoration of Legal Nonconforming Structures.*** A Legal Nonconforming Structure that is damaged or partially destroyed may be reconstructed and restored as follows:
 - a. ***Reconstructed and Restored to its Previous Condition.*** A Legal Nonconforming Structure may be reconstructed and restored to its previous condition, without needing to comply with the Zoning Ordinance, only if:
 - i. The reconstructed and restored portions of the structure do not exceed the size, extent, or configuration that existed immediately prior to the damage or destruction;
 - ii. The cost of reconstruction and restoration does not exceed 50% of the cost to reconstruct the entire structure, exclusive of the foundation; and
 - iii. The use that occupied the structure immediately prior to the damage or destruction is reestablished in the reconstructed or restored structure.
 - b. ***Limits to Reconstruction and Restoration of Legal Nonconforming Structures.*** If the cost of reconstruction and restoration of a Legal Nonconforming Structure exceeds 50% of the cost to reconstruct the entire structure, exclusive of the foundation, the following shall apply:
 - i. The reconstruction and restoration of the structure shall comply with all requirements of the Zoning Ordinance, unless the Zoning Administrator approves an Administrative Use Permit that:
 - (1) Permits the structure to be reconstructed or restored to a lesser size, extent, or configuration than existed immediately prior to the damage or destruction; and
 - (2) Requires the use that occupied the structure immediately prior to the damage or destruction to be reestablished in the reconstructed or restored structure.
 - ii. In no instance may the structure be reconstructed or restored if the cost to reconstruct or restore the structure exceeds 75% of the cost to reconstruct the entire structure, exclusive of the foundation.
2. ***Reconstruction and Restoration of Legal Procedurally Conforming Structures.*** A Legal Procedurally Conforming Structure that is damaged or destroyed (whether wholly

or partially) may be reconstructed and restored to its previous condition, without needing to comply with the Zoning Ordinance, only if:

- a. The reconstructed and restored portions of the structure do not exceed the size, extent, and configuration that existed immediately prior to the damage or destruction; and
- b. The use that occupied the structure immediately prior to the damage or destruction is reestablished in the reconstructed or restored structure.

11-36-5: - LEGAL NONCONFORMING SITES

- A. **Right to Maintain.** Maintenance of Legal Nonconforming Sites is permitted provided that the maintenance does not enlarge, extend, or reconfigure the site, except as allowed in Subsection B below.
- B. **Alterations and Enlargements to Legal Nonconforming Sites.** Alterations or enlargements to a Legal Nonconforming Site may be permitted only if they do not expand a Legal Nonconforming Use or Legal Procedurally Conforming Use, except as allowed by Section 11-36-3(B), and they meet at least one (1) of the below:
 1. The alterations or enlargements comply with all applicable requirements of the Zoning Ordinance; or
 2. The alterations or enlargements are necessary to meet federal, state, or City requirements.

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: REPLACEMENT ALLOWED; EXPANSION OR ENLARGEMENT PROHIBITED. Replacing degraded or outdated modules of a battery energy storage system that is Legal Procedurally Conforming Use or Legal Procedurally Conforming Structure with new or updated, advanced-technology modules is not prohibited by Chapter 36 of the Zoning Ordinance, provided that the replacement does not result in any expansion or enlargement in violation of Chapter 36 of the Zoning Ordinance. A person proposing to replace battery energy storage system modules may request an interpretation from the Zoning Administrator, who will determine whether the proposal is an allowed replacement of modules or a prohibited expansion or enlargement, and such determination may be appealed as set forth in, and is governed by the appeal rights of, Chapter 77 and Section 11-67-12 of the Zoning Ordinance. Replacement of battery energy storage system modules must always comply with the City of Mesa Building Regulations and Fire Regulations.

Section 4: PRESERVATION OF RIGHTS AND DUTIES. This Ordinance does not affect the rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this Ordinance.

Section 5: EFFECTIVE DATE. The effective date of this Ordinance is thirty (30) days after the adoption of this Ordinance.

Section 6: 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 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 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 20th day of October 2025.

APPROVED:

Mayor

ATTEST:

City Clerk