

ORDINANCE NO. _____

AN ORDINANCE AMENDING SECTION 11-3-2, OFFICIAL ZONING DISTRICT MAP AND DISTRICT BOUNDARIES, OF THE MESA CITY CODE, CHANGING THE ZONING OF CERTAIN PROPERTY DESCRIBED IN ZONING CASE ZON18-00775 WITHIN THE 4900 TO 5200 BLOCKS OF SOUTH POWER ROAD (EAST SIDE). LOCATED SOUTH OF 202 SAN TAN FREEWAY ON THE EAST SIDE OF POWER ROAD AND NORTH OF RAY ROAD. (58± ACRES). REZONE FROM AG TO LC-AF-PAD; COUNCIL USE PERMIT TO ALLOW MULTI-RESIDENTIAL, COMMERCIAL ENTERTAINMENT, HOTEL, AND COLLEGE AND COMMERCIAL TRADE SCHOOL USES IN THE AOA 1 AND AOA 2 OVERFLIGHT AREAS IN THE LC DISTRICT AND PROVIDING PENALTIES FOR THE VIOLATION THEREOF.

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

Section 1: That Section 11-3-2 Official Zoning District Map and District Boundaries, of the Mesa Zoning Ordinance is hereby amended by adopting the Official Supplementary Zoning Map for Zoning Case (ZON18-00775), signed by the Mayor and City Clerk, which accompanies and is annexed to this ordinance and declared a part hereof.

Section 2: The Official Supplementary Zoning Map attached hereto is adopted subject to compliance with the following conditions:

1. Compliance with the final site plan and preliminary plan submitted.
2. Compliance with all requirements of the Subdivision Regulations.
3. Compliance with all City development codes and regulations, except for the PAD modifications identified in Table 1 of the City's staff report. The Gallery Park Narrative is for informational purposes only and shall have no force or effect.
4. Except for the PAD modifications identified in Table 1 of the City's staff report, the PAD does not modify, amend or change any Mesa City Code, requirements, regulations, or processes.
5. Dedicate the right-of-way and easements required under the Mesa City Code at the time of application for a building permit or at the time of the City's request for dedication, whichever comes first.
6. Compliance with all requirements of Chapter 19 of the Zoning Ordinance including:
 - a. Owner granting an Avigation Easement and Release to the City, pertaining to Phoenix-Mesa Gateway Airport which will be prepared and recorded by the City (concurrently with the recordation of the final subdivision map or prior to the issuance of a building permit, whichever occurs first).
 - b. Written notice shall be provided to future property owners that the project is within 1 mile of Phoenix-Mesa Gateway Airport.
 - c. Due to the proximity of the site to Phoenix-Mesa Gateway Airport, all proposed structures require an FAA filing for review in conformance with CFR Title 14 Part 77.9, (form 7460), to determine any effect to navigable airspace, air navigation facilities. A completed form with response by the FAA shall be required for the submittal of a building permit to construct a structure(s) on the property.
 - d. Prior to the issuance of a building permit, provide documentation by a registered Professional Engineer or registered Professional Architect has certified that Noise attenuation measures have been incorporated into the design and construction of

the buildings to achieve a noise level reduction to 45 db as specified in Section 11-19-5 of the Zoning Ordinance.

7. Compliance with the Gallery Park Design Guidelines. The Planning Director may refer an application for design review to the Design Review Board.
8. All phases of the development shall comply with the City's requirements for solid waste collection.
9. All off-site improvements and street frontage landscaping to be installed in the first phase of construction.
10. Prior to the submittal of a building permit, either record with Maricopa County an access easement to travel across the property along Ray Road owned by the Roosevelt Water Conservation District (RWCD) or obtain ownership of the RWCD property.
11. The maximum height allowed on lots 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26 and 27, as indicated on the final site plan, is 75 feet.
12. The maximum height allowed on lots 1, 2, 5, 6, and 13 as indicated on the final site plan, is 40 feet.
13. The maximum height allowed on lots 3, 4, 7, 8, 9, 10, 11, 12, and 14, as indicated on the final site plan, is 35 feet.

Section 3: 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 Ordinance 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 Ordinance 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 described above 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 three (3) or more civil violations of this Ordinance within a twenty-four (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 class 1 criminal misdemeanor complaint in the Mesa City Court against habitual offenders. For purposes of calculating the twenty-four (24) month period under this Subsection, the dates of the commission of the offenses are the determining factor.

- B. Upon conviction of a violation of this Section, the Court may impose a sentence of incarceration not to exceed six (6) months in jail; or a fine not to exceed two thousand five hundred dollars (\$2,500.00), exclusive of penalty assessments prescribed by law; or both such fine and imprisonment. The Court shall order a person who has been convicted of a violation of this Section to pay a fine of not less than five hundred dollars (\$500.00) 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 this Subsection except on the condition that the person pay the mandatory minimum fines as provided in this paragraph.

- 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 20th day of May, 2019.

APPROVED:

Mayor

ATTEST:

City Clerk