

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 ZON21-00278 WITHIN THE 1300 TO 1500 BLOCKS OF NORTH POWER ROAD (EAST SIDE), WITHIN THE 6800 BLOCK OF EAST HOBART STREET (SOUTH SIDE), AND WITHIN THE 6800 BLOCK OF EAST HALIFAX DRIVE (BOTH SIDES). LOCATED NORTH OF BROWN ROAD ON THE EAST SIDE OF POWER ROAD. (6.13± ACRES). REZONE FROM OFFICE COMMERCIAL (OC) AND SINGLE RESIDENCE 35 (RS-35) TO NEIGHBORHOOD COMMERCIAL WITH A PLANNED AREA DEVELOPMENT OVERLAY (NC-PAD) AND SITE PLAN REVIEW AND PROVIDING PENALTIES FOR THE VIOLATION THEREOF.

WHEREAS, the purpose of Title 11 of the Mesa City Code ("Mesa Zoning Ordinance") is to "implement the City's General Plan and to protect and promote the public health, safety, peace, comfort, convenience, prosperity and general welfare." Mesa City Code § 11-1-2.

WHEREAS, the subject property is located in the Neighborhoods character type and, pursuant to the Mesa 2040 General Plan, the primary focus of the Neighborhoods character type "is to provide safe places for people to live where they can feel secure and enjoy their surrounding community." Mesa 2040 General Plan page 7-8.

WHEREAS, pursuant to Arizona Revised Statutes (A.R.S.) § 9-462.01, a city by ordinance, in order to conserve and promote the public health, safety and general welfare, may, among the other powers granted by A.R.S. § 9-462.01, regulate the use of buildings, structures and land as between agriculture, residence, industry, business and other purposes.

WHEREAS, A.R.S. § 9-485.01 recognized the importance of limiting the activity of mobile food units in certain types of areas by providing, in part, that a city by ordinance may "prohibit or restrict a mobile food vendor from operating...in an area zoned for residential use or within two hundred fifty feet of an area zoned for residential use."

WHEREAS, the subject property and mobile food vendors and mobile food units operating on the subject property are within two hundred fifty feet of areas zoned for residential use.

WHEREAS, the Mesa City Council, in order to conserve and promote the public health, safety and general welfare, by this Ordinance and in accordance with the restrictions permitted under A.R.S. § 9-485.01, restricts mobile food units operating on the subject property within two hundred fifty feet of an area zoned for residential use to operating only within the area identified on the final site plan as the "food truck area" in order to mitigate adverse impacts of the subject development on surrounding properties.

WHEREAS, the Mesa City Council finds and determines that compliance with the conditions listed in Section 2 of this Ordinance is required in order to conserve and promote the public health, safety and general welfare because the conditions are designed to mitigate adverse impacts of the subject development on surrounding properties and to ensure adequate parking and efficient traffic circulation for the proposed development on the subject property.

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 Map and District Boundaries, of the Mesa Zoning Ordinance is hereby amended by adopting the Official Supplementary Zoning Map for Zoning Case ZON21-00278 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.
2. Compliance with the final wall location plan.
3. Compliance with all requirements of Design Review.
4. Property owner shall create a Good Neighbor Policy to address the concerns of the neighbors.
5. The subject site shall have a minimum of 30,000 square feet of outdoor seating area.
6. The minimum parking spaces required for the subject site to have sufficient parking capacity is:
 - a. One parking space for every 200 square feet of outdoor seating area; and
 - b. An additional two parking spaces for each mobile food unit.
7. Of the minimum required parking spaces required by Condition of Approval No. 6, at least 170 parking spaces shall be located on the subject site (the subject site is only the property depicted on the final site plan).
8. Mobile food units on the subject site shall operate only in the area identified on the final site plan as the "food truck area" so that mobile food units operating within 250 feet of any lot or parcel that is zoned for residential use in a residential zoning district (Mesa Zoning Ordinance, Title 11, Article 2, Chapter 5) are restricted to operating only in the area identified on the final site plan as the "food truck area". The distance from the mobile food unit to the residential lot or parcel will be measured in a straight line from all points along the property line of the subject lot or parcel to the nearest point of the mobile food unit.
9. In addition to the "food truck area" restrictions in Condition of Approval No. 8, as mobile food units arrive on the subject site, mobile food units will generally locate in the northern portion of the "food truck area" and thereafter generally proceed to locate in a manner moving south in the "food truck area"; provided however, mobile food units that are part of a private or special occasion on the subject site may locate in any order and location in the "food truck area".
10. Submit a photometric plan to the City that complies with all City development standards.
11. Construct an 8-foot tall CMU perimeter wall along the following perimeters of the subject site (as shown on the final site plan):
 - a. Eastern perimeter of Assessor Parcel Number 218-04-003A;
 - b. Southern perimeter of Assessor Parcel Number 218-04-003A;
 - c. Eastern perimeter of Assessor Parcel Number 218-04-005F; and
 - d. Eastern perimeter of Assessor Parcel Number 218-04-007C.
12. Apply for all required permits, including building permits, to construct the 8-foot tall CMU perimeter wall described in Condition of Approval No. 11 within five days of the date this Ordinance is adopted by the Mesa City Council.
13. Commence construction of the 8-foot tall CMU perimeter wall described in Condition of Approval No. 11 within 30 days of issuance of the required permits.
14. Complete construction of the 8-foot tall CMU perimeter wall described in Condition of Approval No. 11 within 45 days of issuance of the required permits.
15. Execute and comply with the Development Agreement. The deadlines contained in Conditions of Approval Nos. 12 through 14 may be modified by the Development Agreement.

16. 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.
17. Compliance with all City codes and regulations, except the modifications to the development standards in the Mesa Zoning Ordinance approved with the PAD overlay and shown in the following table:

MZO Development Standards	Approved
<u><i>On-site parking, loading and circulation standards</i></u> <i>MZO Section 11-32-3</i>	The parking spaces in the parking areas identified as alternative surface material on the final site plan are not required to be permanently marked.
<u><i>Interior parking lot landscaping</i></u> <i>MZO Section 11-33-4</i>	The parking areas identified as alternative surface material on the final site plan are not required to have landscape islands.
<u><i>Maximum Fence Height –</i></u> <i>MZO Section 11-30-4(B)(1)(a)</i>	A six-foot (6') tall fence shall be installed the entire length of the front yard of the subject site along Power Road.

Section 3: RECITALS. The recitals above are fully incorporated into this Ordinance by reference.

Section 4: 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.

Section 5: SEVERABILITY. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance, including any section, subsection, sentence, clause, phrase, or portion of any condition listed in Section 2 of this Ordinance, or any part of the material adopted herein by reference is for any reason held to be void, invalid, unconstitutional, or unenforceable, whether in whole or in part, by the decision of a court of competent jurisdiction, such decision shall not affect the validity or the enforceability of the remaining portions thereof, and all sections, subsections, sentences, clauses, phrases, and portions of this Ordinance not held to be void, invalid, unconstitutional, or unenforceable shall remain valid and enforceable.

PASSED AND ADOPTED by the City Council of the City of Mesa, Maricopa County, Arizona, this 7th day of February, 2022.

APPROVED:

Mayor

ATTEST:

City Clerk