

ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, AMENDING ARTICLE 2, CHAPTERS 67, 76 AND 87 OF TITLE 11, THE ZONING ORDINANCE OF THE MESA CITY CODE TO MODIFY SITE PLAN REVIEW STANDARDS, TO CLARIFY MAJOR AND MINOR MODIFICATIONS TO APPROVED PLANS, TO ADD DEFINITIONS RELATED TO SITE PLAN REVIEW, AND TO MODIFY THE APPLICABILITY OF AMENDMENTS TO THE ZONING MAP; PROVIDING PENALTIES FOR THE VIOLATIONS THEREOF; 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 site plan review procedures of Title 11 Mesa Zoning Ordinance;

WHEREAS, such amendments include the addition of public notice requirements for initial site plan reviews and minor site plan modifications that are eligible for administrative review to Chapter 67 of Title 11 Mesa Zoning Ordinance;

WHEREAS, minor changes are being proposed to the site plan expiration standards and to the modification standards and review processes for approved plans in Chapter 67 of Title 11 Mesa Zoning Ordinance;

WHEREAS, clarifying language is being proposed to the applicability statement of Chapter 76: Amendments to the Zoning Map of Title 11 Mesa Zoning Ordinance; and

WHEREAS, the proposed changes include the addition of definitions for “site plan review”, “initial site plan”, and “new application” to Chapter 87 of Title 11 Mesa Zoning Ordinance.

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 new language. Strikethrough fonts indicates deletions.

Section 1: That Title 11, Chapter 67 Section 11-67-5 is hereby amended as follows:

11-67-5: - PUBLIC NOTICE

A. ~~Any applications to the City Council, Planning and Zoning Board or the Planning Hearing Officer shall:~~ **NOTICE OF PUBLIC HEARING.**

1. **CITY COUNCIL, PLANNING AND ZONING BOARD, AND PLANNING HEARING OFFICER. ANY APPLICATIONS TO THE CITY COUNCIL, PLANNING AND ZONING BOARD OR THE PLANNING HEARING OFFICER SHALL:**

- 4A . Provide the same notice of Public Hearing as required by A.R.S. § 9-462.04; and
- 2B. Post the subject property no less than 15 days prior to the first scheduled hearing; and
- 3C. Provide additional notice by first class mail a minimum of 15-days prior to the first scheduled hearing date to all owners of property located within 500-feet of the exterior boundary of the property that is the subject of the application, based on the last assessment.

B2. **BOARD OF ADJUSTMENT AND ZONING ADMINISTRATOR.** Any applications to the Board of Adjustment or Zoning Administrator acting as the Hearing Officer shall provide:

- 4A. The same notice of Public Hearing as required by A.R.S. § 9-462.06 (F); and
- 2B. Additional notice by first class mail a minimum of 15-days prior to the scheduled hearing date to all owners of property located within the following distances of the exterior boundary of the property that is the subject of the application, based on the last assessment:
 - aI. For any single residence, duplex, or single lot RV or manufactured home: 150-feet.
 - bII. For any other request: 500-feet.

G3. **DESIGN REVIEW BOARD.** Any application to the Design Review Board shall send notice by first class mail a minimum of 15-days prior to the scheduled meeting or work session date to all owners of property located within 500-feet of the exterior boundary of the property that is the subject of the application, based on the last assessment.

B. **ADMINISTRATIVE SITE PLAN. EACH INITIAL SITE PLAN OR MINOR SITE PLAN MODIFICATION THAT IS ELIGIBLE FOR ADMINISTRATIVE APPROVAL SHALL:**

- 1. **PROVIDE NOTICE BY FIRST CLASS MAIL, TO ALL OWNERS OF PROPERTY LOCATED WITHIN 500-FEET OF THE EXTERIOR BOUNDARY OF THE PROPERTY THAT IS THE SUBJECT OF THE APPLICATION, BASED ON THE LAST ASSESSMENT. NOTICE MUST BE WITHIN 15 DAYS AFTER THE DATE THE PLANNING DIVISION DETERMINES THE APPLICATION IS COMPLETE (I.E. ELIGIBLE FOR ADMINISTRATIVE APPROVAL).**

2. **THE PUBLIC HAS TEN (10) DAYS FROM THE POSTMARK ON THE NOTICE TO SUBMIT COMMENTS ON THE PROPOSED REQUEST TO THE PLANNING DIVISION.**

DC. Contents of Public Notice. Any public notice shall include the following information:

1. A general description of the proposed project or action and the location of the real property, if any, that is the subject of the application;
2. The date, time, location, and purpose of the public hearing or the date of action when no public hearing is required;
3. The identity of the hearing body or officer;
4. The names of the applicant or the owner of the property that is the subject of the application; and
5. In addition to the items listed above, mailed notice shall include the following:
 - a. A copy of the proposed plans;
 - b. A statement that any interested person or authorized agent may appear, and be heard **AT A PUBLIC HEARING, IF A PUBLIC HEARING IS REQUIRED**; and
 - c. A statement describing how to submit written comments.
6. It shall be the responsibility of the applicant to maintain the posting once erected until after the last hearing.

ED. Notwithstanding the notice requirements of this Section, the failure of any person or entity to receive notice shall not constitute grounds for any court to invalidate the actions of the City of Mesa for which the notice was given.

Section 2: That Title 11, Chapter 67 Section 11-67-9(A)(3) is hereby amended as follows:

3. ~~Approved site plan review and design review may be declared expired and of no further force and~~ **AN APPROVED INITIAL SITE PLAN, MAJOR SITE PLAN MODIFICATION, OR DESIGN REVIEW EXPIRES AND IS NO LONGER IN** effect if it is not exercised or extended within **TWO (2)** years of the date of approval. A **MINOR SITE PLAN MODIFICATION IS EFFECTIVE FOR A PERIOD OF TWO (2) YEARS FROM THE DATE THE INITIAL SITE PLAN ASSOCIATED WITH THE MINOR SITE PLAN MODIFICATION WAS APPROVED.** ~~The site plan review or~~ **AN APPROVED INITIAL SITE PLAN, SITE PLAN MODIFICATION OR** design review is considered exercised by completion of one of the following:

- a. A valid city business license, if required, is issued, and the permitted use has commenced on the property.
- b. A valid city building permit, if required, is issued, and construction has lawfully commenced.

Section 3: That Title 11, Chapter 67, Section 11-67-10 is hereby amended as follows:

11-67-10: - MODIFICATIONS TO APPROVED PLANS

FOR THOSE SECTIONS OF THIS ORDINANCE THAT PROVIDE A MODIFICATION OR AMENDMENT PROCESS, SUCH AS CHAPTER 69: SITE PLAN REVIEW AND CHAPTER 76: AMENDMENTS TO ZONING MAP, THIS SECTION DOES NOT APPLY. THIS SECTION ONLY APPLIES IF THIS ORDINANCE DOES NOT PROVIDE A MODIFICATION OR AMENDMENT PROCESS. THIS SECTION SETS FORTH THE CRITERIA FOR MINOR AND MAJOR MODIFICATIONS. IT ALSO PROVIDES THE REVIEW AND APPROVAL PROCESS FOR MINOR MODIFICATIONS.

A. ~~MINOR Modifications of Approvals. The Planning Director may approve minor modifications to approved plans that are consistent with the original findings and conditions approved by the Board of Adjustments, Design Review Board, Planning Hearing Officer, Planning & Zoning Board or the City Council that would not intensify any potentially detrimental effects of the project.~~ **A MODIFICATION IS CONSIDERED MINOR IF IT DOES NOT MATERIALLY ALTER THE APPROVED PLAN OR OTHER APPROVAL, WILL NOT INTENSIFY ANY POTENTIALLY DETRIMENTAL EFFECTS OF THE PROJECT AND IS CONSISTENT WITH THE ORIGINAL FINDINGS AND ALL CONDITIONS OF APPROVAL APPROVED BY THE PLANNING DIRECTOR OR DESIGNEE, THE BOARD OF ADJUSTMENT, DESIGN REVIEW BOARD, PLANNING HEARING OFFICER, PLANNING & ZONING BOARD, OR CITY COUNCIL. THE PLANNING DIRECTOR, IN THE PLANNING DIRECTOR'S DISCRETION, DETERMINES IF A MODIFICATION IS MINOR. A MODIFICATION THAT IS NOT DETERMINED MINOR BY THE PLANNING DIRECTOR IS A MAJOR MODIFICATION SUBJECT TO SUBSECTION B BELOW.**

1. **REVIEW PROCESS FOR MINOR MODIFICATIONS. MINOR MODIFICATIONS ARE REVIEWED ADMINISTRATIVELY BY THE PLANNING DIRECTOR OR THE PLANNING DIRECTOR'S DESIGNEE. THE PLANNING DIRECTOR OR DESIGNEE MAY TAKE ACTION ON, OR IMPOSE CONDITIONS UPON, THE MODIFICATION TO PROTECT ADJACENT PROPERTIES, PRESERVE NEIGHBORHOOD CHARACTER, MITIGATE ADVERSE ENVIRONMENTAL IMPACTS OR OTHER PUBLIC HEALTH AND SAFETY REASONS. THE PLANNING DIRECTOR, IN THE PLANNING DIRECTOR'S DISCRETION, MAY REQUIRE A MINOR MODIFICATION GO THROUGH THE PUBLIC HEARING PROCESS FOR REVIEW AND CONSIDERATION BY THE APPROPRIATE DECISION-MAKING BODY AS REQUIRED BY THIS ORDINANCE.**

- B. ~~Changed Plan.~~ **MAJOR MODIFICATIONS.** ~~A request for changes in conditions of approval of a discretionary permit or a change in an approved site plan or building plan that would affect a condition of approval shall be treated as a new application, except that such changes determined to be minor, in the opinion of the Zoning Administrator, may be approved by the Administrator.~~ **A MODIFICATION IS CONSIDERED MAJOR IF IT CHANGES, ELIMINATES OR AFFECTS A CONDITION OF APPROVAL (WHETHER ADOPTED BY RESOLUTION, ORDINANCE OR OTHERWISE) SUCH AS A CHANGE TO A DISCRETIONARY PERMIT, APPROVED PLAN, OR BUILDING PLAN OR MATERIALLY ALTERS A PREVIOUS APPROVAL OR PLAN. ADDITIONALLY, ANY MODIFICATION NOT DETERMINED MINOR BY THE PLANNING DIRECTOR IS A MAJOR MODIFICATION. THIS SECTION DOES NOT PROVIDE THE REVIEW AND APPROVAL PROCESS FOR MAJOR MODIFICATIONS. A MODIFICATION THAT IS DETERMINED MAJOR WILL REQUIRE THE SUBMISSION OF A NEW APPLICATION TO START THE PROCESS FROM THE BEGINNING AND MUST FOLLOW THE APPLICABLE REVIEW AND APPROVAL PROCESS SET FORTH IN THIS ORDINANCE AND HAVE THE REQUEST APPROVED BY THE APPROPRIATE DECISION-MAKING BODY.**

Section 4: That Title 11, Chapter 76, Section 11-76-1 is hereby amended as follows:

11-76-1: - PURPOSE AND APPLICABILITY

Any amendment to this Zoning Ordinance which changes any property from one zone to another, which imposes any regulation or which removes or modifies any regulation **OR CONDITION OF APPROVAL** previously imposed in the City's zoning authority, **IS A REZONING AND** shall be adopted in the manner set forth in this Chapter. In addition to the requirements of this Chapter, amendments to the Zoning Map shall conform to the requirements of section 9-462.03 et. seq. of Arizona Revised Statutes (Zoning Ordinance Amendment Procedure).

Section 5: That Title 11, Chapter 87 Definitions, is hereby amended by adding the following definitions which are arranged in alphabetical order and includes subcategories or related definitions classifications which are also arranged in alphabetical order. All the other definitions in Chapter 87 shall remain the same.

INITIAL SITE PLAN: A SITE PLAN FOR A PROPERTY, OR A PORTION THEREOF, THAT DOES NOT HAVE A PREVIOUSLY APPROVED SITE PLAN, OR THE APPROVED SITE PLAN HAS EXPIRED.

NEW APPLICATION: A "NEW APPLICATION" OR THE PHRASE "SUBJECT TO A NEW APPLICATION" MEANS THE PROPOSED DEVELOPMENT, MODIFICATION TO AN APPROVED PERMIT, PLAN OR APPROVAL, OR OTHER REQUEST OR APPROVAL SOUGHT REQUIRES THE APPLICANT TO START THE PROCESS FROM THE BEGINNING IN ACCORDANCE WITH THE APPLICABLE REVIEW AND APPROVAL PROCESSES, AND SUBJECT TO APPROVAL BY THE APPROPRIATE DECISION-MAKING BODY, AS REQUIRED BY THIS ORDINANCE. BY WAY OF EXAMPLE, A REQUEST TO MODIFY AN APPROVED VARIANCE WOULD REQUIRE AN APPLICATION FOR A NEW VARIANCE FOR REVIEW AND APPROVAL BY THE BOARD OF ADJUSTMENT.

SITE PLAN REVIEW: THE PROCESS IN WHICH THE CITY REVIEWS A SITE PLAN WHICH INCLUDES BOTH AN INITIAL SITE PLAN AND A SITE PLAN MODIFICATION. IN CERTAIN CONTEXTS, THE TERM CLEARLY APPLIES ONLY TO INITIAL SITE PLAN REVIEWS AND IN OTHER CONTEXT ONLY TO SITE PLAN MODIFICATIONS.

Section 6: REPEAL OF CONFLICTING ORDINANCES.

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:

- A. Affect suits pending, or rights and duties that matured or were existing, or penalties that were incurred and proceedings that were begun immediately prior to the effective date of this Ordinance;
- B. Impair, void or otherwise affect any grant or conveyance made, or any right acquired, or a cause of action now existing under such repealed sections.

Section 7: The effective date of this Ordinance shall be thirty (30) days following adoption by the Mesa City Council.

Section 8: 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 9: 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 1st day of December, 2020.

APPROVED:

Mayor

ATTEST:

City Clerk

EFFECTIVE DATE: January 1, 2021

DRAFT