

ORDINANCE NO. 2022-1552

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF GOODYEAR, MARICOPA COUNTY, ARIZONA, CONDITIONALLY REZONING APPROXIMATELY 10.71 ACRES OF PROPERTY LOCATED SOUTH OF MCDOWELL ROAD ALONG THE 183RD AVENUE ALIGNMENT TO BE KNOWN AS MCDOWELL AND 183RD; AMENDING THE ZONING MAP OF THE CITY OF GOODYEAR; PROVIDING FOR NON-ABRIDGEMENT; PROVIDING FOR CORRECTIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE; PROVIDING FOR PENALTIES; AND DIRECTING THE CITY CLERK TO RECORD A COPY OF THIS ORDINANCE.

WHEREAS, this property subject to this Ordinance consists of approximately 10.71 gross acres and is located south of McDowell Road along the 183rd Avenue alignment as more particularly described in that certain document titled "Legal Description," which document was declared public record by Resolution No. 2022-2263, and which is referred to and made a part hereof as if fully set forth in this Ordinance (the "Property"); and

WHEREAS, approximately 3.34 acres of the Property are currently zoned I-1 (Light Industrial) pursuant to Ordinance No. 17-1362; and

WHEREAS, approximately 6.63 acres of the Property are currently zoned I-2 (General Industrial) pursuant to Ordinance No. 17-1362; and

WHEREAS, the land use designation in the Goodyear 2025 General Plan for the Property is Designated as Business and Commerce; and,

WHEREAS, this request is to rezone the 10.71-acre Property to I-2 (General Industrial) to allow for the entire Property to develop as General Industrial; and,

WHEREAS, I-2 (General Industrial) is not a listed zoning district within Business and Commerce land use category for the Goodyear 2025 General Plan; and

WHEREAS, the areas to be zoned I-2 (General Industrial) zoning district is less than 19.9 acres and does not require a General Plan Amendment; and,

WHEREAS, city staff finds that the proposed rezoning will not adversely impact the surrounding area as the proposed land uses will allow for the orderly growth and development of a General Industrial development; and

WHEREAS, an in-person Neighborhood Meeting was conducted for this proposal and notice of the Neighborhood Meeting was provided to property owners within 500 feet of the property on June 2, 2022 and signs advertising the Neighborhood Meeting were posted to the site on June 9, 2022 and,

WHEREAS, the neighborhood meeting took place, in-person, on June 29, 2022. No residents were in attendance; and

WHEREAS, public notice that this rezoning was to be considered and reviewed at a public hearing held before the Planning and Zoning Commission on August 17, 2022, appeared in the Arizona Republic Southwest Valley edition on July 29, 2022; postcards were mailed to adjoining owners

on July 26, 2022 and signs on the site were updated on July 26, 2022 to notify residents of the scheduled public hearing; and

WHEREAS, a public hearing was held before the Planning and Zoning Commission on August 17, 2022, and at that meeting the Commission voted (7-0) to recommend approval of the proposed rezoning; and

WHEREAS, a public notice that this rezoning request would be considered and reviewed at a public hearing to be held before the City Council on August 29, 2022 appeared in the Arizona Republic Southwest Valley Edition July 29, 2022; postcards were mailed to adjoining owners on July 26, 2022; and signs on the site were updated on July 26, 2022 to notify residents of the scheduled public hearing; and

WHEREAS, the Mayor and Council of the City of Goodyear, Arizona find the adoption of this Ordinance to be in the best interests of the public interest, health, comfort, convenience, safety, and general welfare of the citizens of the City.

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

SECTION 1. DESCRIPTION OF PROPERTY BEING REZONED

This Ordinance No. 2022-1552 applies to approximately 10.71 acres located south of McDowell Road along the 183rd Avenue alignment, to be known as McDowell and 183, and legally described in that certain document titled "Legal Description," which document was declared public record by Resolution No. 2022-2263, and which is hereby adopted, referred to and made a part hereof as if fully set forth in this Ordinance (the "Property").

SECTION 2. ADOPTION OF FINDINGS

The clauses set forth above are hereby adopted and incorporated herein by this reference as if fully set forth herein.

SECTION 3. REZONING

The Property is conditionally rezoned to I-2 (General Industrial) District.

SECTION 4. CONDITIONS AND STIPULATIONS

The rezoning of the Property is subject to the following stipulations and conditions:

1. Except as modified by the stipulations set forth herein, the Property shall be developed in accordance with the requirements of the City of Goodyear Zoning Ordinance as it may be amended from time to time applicable to the Industrial Zoning District I-2; and

2. No cross-dock warehousing (i.e. warehouses with dock doors for loading and unloading of stored goods) and no cross-dock transfer facilities (i.e. facilities that provide for the transfer of goods from incoming vehicles to outbound vehicles with little or no storage) is permitted on the Property; and
3. The uses permitted within the portion of the Property located within the APZ Two Zone are limited to those uses set forth in A.R.S. § 28-8481 and all development within this portion of the Property shall comply with the rules and regulations applicable to the APZ Two Zone as set forth in A.R.S. § 28-8481. Owner shall notify all potential purchasers and potential lessees of all or part of the Property located within the APZ Two that the property is located within the APZ Two and is subject to the requirements of A.R.S. § 28-8481; and;
4. The used permitted within the portion of the Property located within the high noise zone are limited to those uses set forth in A.R.S. § 28-8481 for the Day-Night Sound level in Decibels High Noise Zone for 65-69 dB and all development within this portion of the Property shall comply with the rules and regulations applicable to Day-Night Sound level in Decibels High Noise Zone for 65-69 dB as set forth in A.R.S. § 28-8481. Owner shall notify all potential purchasers and potential lessees of all or part of the Property located within the High Noise Zone that the property is located within the High Noise Zone and is subject to the requirements of A.R.S. § 28-8481; and;
5. Except as provided herein, no more than four (4) roll-up doors and/or service and wash bay doors shall be permitted to face Interstate-10 (Papago Freeway) and no more than (4) roll-up doors and/or service and wash bay doors shall be permitted to face the McDowell Road. The number of roll-up doors and/or service and wash bay doors permitted herein may be increased if additional screening measures are to be implemented and the Zoning Administrator or his/her designee determines that the additional screening measures prevents or substantially limits the roll-up doors and/or service and wash bay doors from being seen from Interstate-10 (Papago Freeway) and McDowell Road; and
6. Approval of the rezoning does not constitute approval of the site plan. All future development will be subject to site plan review and approval by city staff, at which time all elements of site development will be reviewed, including, but not limited to, architecture, landscaping, grading and drainage, lighting, infrastructure, parking, access and circulation; and
7. All Public Sales Reports for the Property, all final plats subdividing all or part of the Property, and all rental agreements for the rental of any unit within the Property shall include disclosures that the Property is subject to attendant noise, vibrations, dust, and all

other effects that may be caused by overflight and by the operation of aircraft landing at, or taking off from, Luke Air Force Base. A note to this effect shall be included in all final plats subdividing all or part of the Property; and

8. Except as otherwise provided herein, Owner shall design and construct full half-street improvements for south-half of the section of W. McDowell Road along or adjacent to the frontage of the Property (the "McDowell Road Improvements") and dedicate, in fee and lien free, all right-of-way located within the Property needed for the construction of such improvements. If an easement is needed from the State for the construction of all or part of the McDowell Road Improvements, Owner shall be responsible for obtaining the required easement at Owner's sole cost and expense. The improvements and dedications required herein depend upon the jurisdiction in which the McDowell Road Improvements are to be constructed, which are as follows:
 - a. If the McDowell Road Improvements will be constructed within Maricopa County (the "County"):
 - i. Owner shall dedicate, to the County, right-of-way needed for the County to have a full 65' of right-of-way south of the centerline of the McDowell Road alignment for the section of the McDowell Road alignment that is along the frontage of the Property and any additional right-of-way needed to support access to the Property such as turn lanes and the like; and
 - ii. Owner shall, at no cost to the County, construct the McDowell Road Improvements which will be the improvements required for an arterial roadway as set forth in the County's design standards and policies in effect at the time of construction.
 - b. If the McDowell Road Improvements will be constructed within the City:
 - i. Owner shall dedicate, to the City, right-of-way needed for the County to have a full 65' of right-of-way south of the centerline of the McDowell Road alignment for the section of the McDowell Road alignment that is along the frontage of the Property and any additional right-of-way needed to support access to the Property such as turn lanes and the like; and
 - ii. Owner shall, at no cost to the City, construct the McDowell Road Improvements, which will be the improvements required for full-half street improvements for a Major Arterial as set forth in the Engineering Design Standards in effect when the improvements are constructed, except for $\frac{1}{2}$ of a median and $\frac{1}{2}$ of median landscaping. The required improvements, include, but are not limited to, pavement, curb and gutter, sidewalks, street frontage

landscape and landscape irrigation, and street lighting. Tapering of pavement from the section of McDowell Road at the eastern and western boundaries of the Property to accommodate lane transitions shall be coordinated with the properties to the east and west of the Property, and any modification to the Major Arterial Street section for pavement tapers shall be approved by the City Engineer or his/her designee in the exercise of his/her reasonable discretion. Additionally, pavement tapers shall be coordinated with the existing Arizona Water Company Well Site parcel and the parcel adjacent to the Arizona Water company well site.' and

- iii. Owner shall remit to the city an in-lieu payment for one-half the cost of a full median and one-half the cost of full-median landscaping for the median that is to be installed within the section of W. McDowell Road along or adjacent to the frontage of the Property. The in-lieu payment for the median and landscaping shall be based on the actual cost of the improvements if previously completed by others or based on the estimated cost of the improvements as determined by the City Engineer or designee. The in-lieu payments referred to herein shall be made prior to or concurrent with recordation of the first final plat subdividing all or part of the Property or prior to the issuance of any permits for construction work within the Property, whichever is earlier; and

The dedications of the right-of-way discussed in this Stipulation 8 shall be at no cost to the City or County, and shall be in fee, lien free and free of all encumbrances except as otherwise agreed to by the jurisdiction to whom the dedication is being made. Unless the McDowell Road Improvements are to be undertaken by the city as discussed in Stipulation 7 below, no temporary certificates of occupancy or certificates of occupancy for any structure within the Property shall be issued until the McDowell Road Improvements have been completed and accepted by the jurisdiction within which the improvements are located subject to the completion of any applicable warranty period; and

9. If the city, in its sole discretion, decides to undertake a CIP project that includes the McDowell Road, Owner's obligations are as follows. Owner shall dedicate the right of way needed for the construction of the McDowell Road Improvements as described above. The dedications shall be If the McDowell Road Improvements have been completed by the city as part of a CIP project, Owner shall, remit a payment to the city for the costs the city incurred in the design and construction of the McDowell Road Improvements (the "McDowell Road Cost Recovery Payment"). If owed, the McDowell Road Cost Recovery Payment shall be paid

prior to or concurrent with the recordation of the first final plat subdividing all or part of the Property or the issuance of any construction permits for any work on the Property, whichever is earlier; and

10. Owner shall construct, at no cost to the City, all infrastructure improvements identified by the City as being needed to provide wastewater/sewer services to the Property. Prior to construction of the required sewer infrastructure improvements, Owner shall demonstrate to the City Engineer that the improvements are to be constructed within property owned by Owner the City of Goodyear, or Maricopa County or that there is an easement in place that would allow for the construction, maintenance, repair and replacement of the wastewater/sewer infrastructure improvements. If the wastewater/sewer infrastructure improvements are not going to be located within property owned by Owner, the City of Goodyear or Maricopa County and there is no easement allowing for the construction of such improvements, Owner shall obtain, at Owner's sole cost and expense, easement(s) allowing for the construction of the sewer/wastewater infrastructure improvements and the city's operation, maintenance, repair and replacement of the sewer/wastewater infrastructure improvements once they are constructed. The easements required herein shall be in a form approved by the City Attorney or his designee and shall be recorded in the official records of the Maricopa County Recorder prior to the issuance of any construction permits for work within the Property; and
11. Owner shall dedicate a 10-foot public utility and sidewalk easement (PUE) adjacent to the southside of the right-of-way needed for McDowell Road improvements. The dedication of the easement shall be lien free and free of all encumbrances unless expressly agreed to by the city and shall be made at the earlier of the following: prior to or concurrently with the recordation of the first final plat subdividing all or part of the Property; the issuance of any construction permit for work within the Property; or when requested by the City Engineer or his/her designee; and
12. Any modifications to existing irrigation facilities required because of the development of the Property shall be coordinated with the appropriate Irrigation District/private owner. Construction plans that involve the relocation or modification of existing irrigation facilities unless signed off by the affected irrigation district; and
13. In addition to the infrastructure improvements identified herein, Owner shall construct, at no cost to the City, all infrastructure improvements required by the City of Goodyear subdivision regulations, all Building Codes and Regulations adopted by city, and the Engineering Design Standards and Policy Manual in effect at the time of construction; and

14. Except as otherwise provided herein, Owner shall dedicate, at no cost to the city, all rights-of-way and/or easements within the boundaries of the Property that are: (i) needed for the construction of infrastructure improvements required for the City to provide wastewater services to the Property; (ii) required to be dedicated under any applicable law, code, ordinance, rule, regulations, standards, guidelines governing the development of the Property including, but not limited to the City of Goodyear subdivision regulations, Building Codes and Regulations, and the City of Goodyear's Engineering Design Standards and Policies; (iii) required for the construction of improvements for which Owner is responsible for making in-lieu payments; (iv) required to be dedicated pursuant to any development agreement with the City regarding the development of the Property; (v) required for the construction of the infrastructure improvements to be constructed pursuant to the stipulations herein, and/or (vi) required public infrastructure improvements Owner is required to construct pursuant to any applicable law, code, ordinance, rule, regulations, standards, guidelines governing the development of the Property including, but not limited to the City of Goodyear subdivision regulations, Building Codes and Regulations, and the City of Goodyear's Engineering Design Standards and Policies. The rights-of-way to be dedicated shall be dedicated in fee and all rights-of-ways and easements shall be dedicated lien free and, unless otherwise agreed to by the City, free of all other easements or other encumbrances. Unless the timing of the required dedications is modified by any stipulation in this ordinance, the terms of a written development agreement approved by the Council or a written phasing plan approved by the City Engineer or his designee, all dedications shall be made prior to or concurrent with recordation of a final plat that includes the area in which the dedicated property is located as required by the City Engineer or his designee or the issuance of any construction permits for work within the Property, whichever is earlier; and
15. In addition to compliance with the stipulations and conditions of approval set forth herein, the development of the Property shall comply with the Goodyear Zoning Ordinance, the City of Goodyear subdivision regulations, the City of Goodyear's Engineering Design Standards and Policies, except as modified by the City Engineer, the Maricopa County Association of Governments standards for public works construction, all Building Codes and Regulations adopted by the City of Goodyear, and all other federal, state and locals laws, ordinances, rules, regulations, standards, and policies applicable to the development of the Property; and
16. Owner, at no cost to the city, shall, prior to the issuance of any Temporary Certificate of Occupancy and/or Certificate of Occupancy for any structure located within the boundaries of the

Property: (i) place all existing utility lines, excluding power lines 69 kV or larger, located within or adjacent to the Property underground; install all new utility lines, excluding power lines 69 kV or larger, that are required to be installed within or adjacent to the Property as a condition of development; and relocate all existing power lines 69kV or larger as necessary to accommodate the required full half-street improvements to W. McDowell Road.

SECTION 5. ABRIDGMENT OF OTHER LAWS

Except where expressly provided, nothing contained herein shall be construed to be an abridgement of any other ordinance, regulation, or requirement of the City of Goodyear.

SECTION 6. AMENDMENT TO ZONING MAP

The Zoning Map of the City of Goodyear is hereby amended to reflect the rezoning set forth in Section 3 of this Ordinance by the adoption of that certain document titled, "Official Supplementary Zoning Map No. 22-04," declared a public record by Resolution 2022-2263, and which is referred to and made a part hereof as if fully set forth in this Ordinance, and such amendment to the Zoning Map shall be filed with the City Clerk in the same manner as the Zoning Map of the City of Goodyear.

SECTION 7. CORRECTIONS

The Zoning Administrator, City Clerk, and the codifiers of this Ordinance are authorized to make necessary clerical corrections to this Ordinance, including, but not limited to, the correction of scrivener's/clerical errors, references, ordinance numbering, section/subsection numbers and any references thereto.

SECTION 8. SEVERABILITY

If any section, subdivision, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining provisions of the ordinance or parts thereof.

SECTION 9. EFFECTIVE DATE

This Ordinance shall become effective as prescribed by law.

SECTION 10. PENALTIES

Any person who violates and provision of this ordinance shall be subject to penalties set forth in Section 1-2-3 of the City of Goodyear Zoning Ordinance as it may be amended from time to time and which currently provides:

Section 1-2-3 Violations and Penalties

- A. It is unlawful to construct, erect, install, alter, change, maintain, use or to permit the construction, erection, installation, alteration, change, maintenance, or use of any house, **building, structure**, sign, landscaped area, **parking lot** or fence, or to permit the use of any **lot** or land contrary to, or in violation of any provisions of this **Ordinance**, or of any conditions, stipulations or requirements included as a condition of any applicable approval. Any land use that is specifically prohibited by this **Ordinance** or is unspecified and not classified by the **Zoning Administrator** is prohibited in any **district**.
- B. Responsible Party. The responsible party for any violations hereunder is the owner of personal property improvements or real property and/or person in possession or control of any personal property improvements or real property (**Person**). The responsible party shall be responsible for any violations hereunder whether or not the responsible party or its agent committed the prohibited act(s) or neglected to prevent the commission of the prohibited act(s) by another.
- C. Every Responsible Party shall be deemed responsible or guilty of a separate offense for each and every day during which any violation is committed or continued.
- D. Penalty. Any **Person** who violates any of the provisions of this **Ordinance** and any **amendments** there to and/or any conditions, stipulations or requirements included as a condition of any applicable approval shall be:
 - 1. Subject to civil sanctions of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) per offense; or
 - 2. Guilty of a class 1 misdemeanor, punishable by a fine not exceeding two thousand five hundred dollars (\$2,500), or by a term of probation not exceeding three (3) years, or imprisonment for a term not exceeding six (6) months, or punishable by a combination of fine, probation or imprisonment. The City Prosecutor is authorized to file a criminal misdemeanor complaint in the City of Goodyear Municipal Court for violations hereunder

SECTION 11. RECORDATION

This Ordinance shall be recorded with the Maricopa County Recorder's Office.

PASSED AND ADOPTED by the Mayor and Council of the City of Goodyear, Maricopa County, Arizona, by a _____ vote, this _____ day of _____, 20_____.

Joe Pizzillo, Mayor

Date: _____

ATTEST:

APPROVED AS TO FORM:

Darcie McCracken, City Clerk

Roric Massey, City Attorney