

ORDINANCE NO. 2022-1556

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF GOODYEAR, MARICOPA COUNTY, ARIZONA, CONDITIONALLY REZONING APPROXIMATELY 51.24 ACRES OF PROPERTY LOCATED AT THE SOUTHWEST CORNER OF ESTRELLA PARKWAY AND YUMA ROAD TO BE KNOWN VLUX AT BALLPARK VILLAGE; 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, the property subject to this Ordinance consists of approximately 51.24 acres and is located at the southwest corner of Estrella Parkway and Yuma and is known as VLUX at Ballpark Village as more particularly described in that certain document titled "Legal Description," which document was declared a public record by Resolution No. 2022-2257, and which is referred to and made a part hereof as if fully set forth in this Ordinance (the "Property"); and

WHEREAS, approximately 51.24 acres of the Property is currently zoned Planned Area Development with an underlying land use of Residential and Retail pursuant to Ordinance No. 08-1120 in which the Goodyear City Council conditionally approved the PAD zoning on June 22, 2008, adopting the Goodyear City Center Southwest District Final PAD; and

WHEREAS, the land use designation in the Goodyear 2025 General Plan for the Property was recently amended by Resolution No. 2021-2198 from 'City Center' to 'Neighborhood'; and,

WHEREAS, this request intends to replace the Residential and Retail uses on this property with MF-18 (Multi-Family) subject to modified Development Regulations as established with the "VLUX at Ballpark Village Development Regulations MF-18 with PAD Overlay (September 2022)" which document was declared a public record by Resolution No. 2022-2267; 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 stacked-flats, townhouse style and cottage style multi-family residential project; and

WHEREAS, a 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 July 12, 2022 and signs advertising the Neighborhood Meeting was posted to the site on July 11, 2022; and,

WHEREAS, the neighborhood meeting took place, in-person, on July 27, 2022 and no formal opposition was received; 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 September 14, 2022, appeared in the Arizona Republic Southwest Valley edition on August 26, 2022 and postcards were mailed to adjoining owners on August 27, 2022 and signs on the site were updated on August 29, 2022 to notify residents of the scheduled public hearing; and

WHEREAS, a public hearing was held before the Planning and Zoning Commission on September 14, 2022 and two residents spoke on the matter specifically regarding compatibility with the Village Center Overlay and compatibility with the adjacent Estrella Vista Community; and

WHEREAS, at that meeting the Commission voted (6-0) 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 September 26, 2022 appeared in the Arizona Republic Southwest Valley Edition August 26, 2022; postcards were mailed to adjoining owners on August 27, 2022; and signs on the site were updated on August 29, 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. 2022-1556 applies to approximately 51.24 acres located at the southwest corner of Estrella Parkway and Yuma Road and legally described in that certain document titled "Legal Description," which document was declared a public record by Resolution No. 2022-2267, and which is 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 the Planned Area Development (PAD) Zoning District with an underlying zoning district of MF-18 with a Planned Area Development Overlay by the adoption herein of that certain document titled "VLUX at Ballpark Village Development Regulations MF-18 with PAD Overlay (September 2022)" which document was declared a public record by Resolution No. 2022-2267, and which is referred to and made a part hereof as if fully set forth in this Ordinance.

SECTION 4. CONDITIONS OF REZONING

The rezoning of the Property is subject to the following conditions of approval ("Stipulations"):

1. 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 Multi-Family Residential Zoning District MF-18, except as modified by the "VLUX at Ballpark Village Development Regulations MF-18 with PAD Overlay (September 2022)", which document was declared

public record by Resolution No. 2022-2267, and which is hereby adopted, referred to and made a part hereof as if fully set forth in this Ordinance and except as modified the stipulations set forth herein; and

2. 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
3. All Public Sales Reports for the Property, all final plats and minor land divisions subdividing all or part of the Property, and all rental agreements for the rental of any unit within the Property shall include the following disclosures:
 - a. The Property is in close proximity to agricultural uses and may therefore be subject to noise, dust, and odors associated with such uses; and
 - b. 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 and or the Phoenix-Goodyear Airport; and
 - c. The Property is subject to noise, cheering, paddles or bats making contact with balls, bouncing balls, splashes, fireworks and other loud noises commonly associated with recreation centers, parks, ballpark/sports complexes and the like; and
 - d. The Property is subject to loud noises commonly associated with water campuses, well sites and other Public Facilities Districts and the like; and
 - e. The Property Owner/Developer/Lessor shall disclose that the Property is subject to road closures and community events on adjacent public rights-of-way and open spaces.

All final plats and minor land divisions subdividing all or part of the Property and all site plans for development within the Property shall include notes setting forth the foregoing requirements; and

4. Signage shall be posted within all sales and rental office offices identifying the location of the Luke Air Force Base: Accident Potential Zones (APZs), 65 Ldn and higher noise contours, departure corridors, and vicinity boundary. This display shall include a 24-inch x 36-inch map at the main entrance of such sales and rental offices and shall include the approximate locations of the Luke Air Force Base: Accident Potential Zones (APZs), 65 Ldn and higher noise contours, departure corridors, and vicinity boundary and all of the buildings on the Property; and
5. Except as otherwise provided herein, Owner shall, at no cost to the city, design and construct full half-street improvements,

except for the construction of $\frac{1}{2}$ the median and $\frac{1}{2}$ median landscaping, for the south-half of the section of W. Yuma Road along or adjacent to the frontage of the Property required for a Scenic Arterial as set forth in the City of Goodyear Engineering Design Standards in effect when the improvements are constructed, which may include but are not limited to, pavement, curb and gutter, sidewalks, street frontage landscape and landscape irrigation, and street lighting (the "Yuma Road Improvements"). Unless modified by a written phasing plan approved by the City Engineer or his/her designee or by a development agreement approved by the City Council, the Yuma Road Improvements shall be completed and accepted by the City Engineer or his/her designee subject to completion of the two-year warranty period, prior to the issuance of any Certificate of Completion, Temporary Certificate of Occupancy or any Permanent Certificate of for any structure within the Property; and

6. Except as otherwise provided herein, Owner shall, at no cost to the city, design and construct full half-street improvements, except for the construction of $\frac{1}{2}$ the median and $\frac{1}{2}$ median landscaping, for the west-half of the section of S. Estrella Parkway along or adjacent to the frontage of the Property required for a Scenic Arterial as set forth in the City of Goodyear Engineering Design Standards in effect when the improvements are constructed, which may include but are not limited to, pavement, curb and gutter, sidewalks, street frontage landscape and landscape irrigation, and street lighting (the "Estrella Parkway Improvements"). Unless modified by a written phasing plan approved by the City Engineer or his/her designee or by a development agreement approved by the City Council, the Estrella Parkway Improvements shall be completed and accepted by the City Engineer or his/her designee subject to completion of the two-year warranty period, prior to the issuance of any Certificate of Completion, Temporary Certificate of Occupancy or any Permanent Certificate of for any structure within the Property; and
7. Except as otherwise provided herein, Owner shall, at no cost to the city, design and construct full half-street improvements, except for the construction of $\frac{1}{2}$ the median and $\frac{1}{2}$ median landscaping, for east-half and north-half of the section of Goodyear Boulevard West and Goodyear Boulevard South along or adjacent to the frontage of the Property required for a Major Collector as set forth in the City of Goodyear Engineering Design Standards in effect when the improvements are constructed, which may include, but are not limited to, pavement, curb and gutter, sidewalks, street frontage landscape and landscape irrigation, and street lighting (the "Goodyear Blvd Improvements"). Unless modified by a written phasing plan approved by the City Engineer or his/her designee or by a development agreement approved by the City Council, the Goodyear Blvd Improvements

shall be completed and accepted by the City Engineer or his/her designee subject to completion of the two-year warranty period, prior to the issuance of any Certificate of Completion, Temporary Certificate of Occupancy or any Permanent Certificate of for any structure within the Property; and; and

8. Owner shall remit to the city an in-lieu payments for one-half the cost of a full median and one-half the cost of full-median landscaping for the medians that are required under the City of Goodyear Engineering Design Standards to be installed within the sections of Goodyear Boulevard West and Goodyear Boulevard South located along or adjacent to the frontage of the Property. The in-lieu payments required 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. Unless modified by a written phasing plan approved by the City Engineer or his/her designee or by a development agreement approved by the City Council, the in-lieu payments required herein shall be made prior to the recordation of the first final plat or minor land division subdividing all or part of the Property, the approval of the first site plan for development within the Property, or the issuance of any permits for construction work within the Property, whichever is earlier; and
9. Owner has requested that the city abandon excess right-of-way owned by the city located adjacent to the Property that would not be needed for the construction of the half-street improvements of that currently owned by the City. The Goodyear City Council will entertain this request subject to all of the following:
 - a. Owner, at Owner's sole costs and expense for relocating any existing utilities located within the area to be abandoned unless the utilities are located within an area subject to a recorded easement granted to the owner of the utilities and submits an application with all supporting documents, including required utility clearance letters, asking the city to abandon any right-of-way the city owns adjacent to the western boundary of the Property that is not needed for the construction of the Goodyear Blvd Improvements; and
10. Unless the City abandons the Goodyear Blvd Abandonment Area, setbacks shall be measured from the existing western boundary of the Property. No walls and no structures shall be constructed within the Property that violate this setback requirement and no building permits shall be issued for such structures; and
11. If the construction of the Yuma Road Improvements or the Estrella Parkway Improvements requires cutting into the existing median, Owner shall, at Owner's sole cost and expense, salvage all median trees and all other plant material removed from the

median and transplant the salvaged trees and plant material to city right-of-way or other city property as directed by city staff; and

12. Owner is responsible for a proportionate share of the costs of traffic signal at the intersection identified below. Owner shall make an in-lieu payment for the percentage of the full cost of such traffic signal (all four legs) as set forth below:
 - a. 25% of the cost of the full traffic signal (all four legs) at W. Yuma Road and S. Goodyear Boulevard West

Unless modified by a written phasing plan approved by the City Engineer or his/her designee or by a development agreement approved by the City Council, the in-lieu payments required herein shall be made prior to the recordation of the first final plat or minor land division subdividing all or part of the Property, the approval of the first site plan for development within the Property, or the issuance of any permits for construction work within the Property, whichever is earlier. The in-lieu payment shall be based on the actual cost of the traffic signal if it has been constructed or if the payment is required before the signal is constructed it shall be based on the estimated cost of the traffic signal as determined by the City Engineer or designee. No Certificates of Completion, Temporary Certificates of Completion or Certificates of Occupancy shall be issued for structures within the Property until the payment(s) required herein have been made; and

13. Owner shall, at no cost to the city, relocate, remove and replace, or modify existing improvements at intersection of S. Estrella Parkway and W. Goodyear Boulevard South to as needed to accommodate the completion of the Yuma Road Improvements and the Estrella Parkway Improvements, including but not limited relocating, removing and replacing, or modifying: existing poles, mast arms, pedestrian push button poles, and ADA ramps; and
14. Owner shall, at no cost to the city, relocate, remove and replace, or modify existing improvements at intersection of S. Estrella Parkway and W. Yuma Road (the existing pole and mast arm) to as needed to accommodate the completion of the Yuma Road Improvements and the Estrella Parkway Improvements, including but not limited relocating, removing and replacing, or modifying: existing poles, mast arms, pedestrian push button poles, and ADA ramps; and
15. Except as otherwise provided herein, Owner shall be responsible for designing and constructing, at Owner's sole costs and expense, all additional infrastructure improvements, including additional traffic signals, identified in any approved Traffic Impact Analysis/Study ("TIA") for the Property as being needed to support the development and occupancy of the Property as rezoned. If an updated TIA reflects the need for any additional traffic signals located within or directly at any intersection

adjacent to the Property, Owner shall make an in-lieu payment to the City towards the cost of the signal. The in-lieu payment will be percentage of the cost of a full traffic signal for each corner of the intersection adjacent to the Property. For example, if a three-way traffic signal is required were two of the corners of the intersection are adjacent to the Property, Owner would be responsible for 66.67% of the cost of a full traffic signal. The in-lieu payment shall be calculated based on the actual cost of the traffic signal if it has been constructed or, if the payment is made before the traffic signal has been completed, upon an engineer's estimate of the probable cost of the signal approved by the City Engineer or his designee traffic signal. Unless modified by a written phasing plan approved by the City Engineer or his/her designee or by a development agreement approved by the City Council, the additional improvements to be designed and constructed as discussed herein and the in-lieu payment for additional traffic signals shall be made prior to the recordation of the first final plat or minor land division subdividing all or part of the Property, the approval of the first site plan for development within the Property, or the issuance of any permits for construction work within the Property, whichever is earlier; and

16. If any of the traffic signals identified in an approved TIA for the Property as being needed to support the development of the Property are warranted at the time of development, then, upon the request of the City Engineer or his/her designee, Owner shall, rather than make an in-lieu contribution for a proportionate share of the cost of a full traffic signal(s), construct such full traffic signal(s) subject to reimbursement by the city for the proportionate share of the cost of the signal for which others are responsible. The reimbursements provided for herein are subject to compliance with the requirements of title 34 of the Arizona Revised Statutes governing the use of public funds for the construction or payment of public infrastructure; and
17. Owner, if owned, shall apply to the Arizona Department of Water Resources (ADWR) for the extinguishment of the Type 1 Rights appurtenant to all of the property rezoned by Ordinance 2022-1538 and request that any assured water supply credits issued by ADWR as a result of any such extinguishment be credited to the City of Goodyear. Said extinguishment shall occur prior to recordation of any Final Plat or the issuance of any construction permits for work within the Property, whichever is earlier; and
18. Any modifications to existing private irrigation facilities as a result of this development shall be coordinated with the appropriate Irrigation District/private owner; and
19. If any of the infrastructure improvements Owner is required to design and construct pursuant to the terms of this Ordinance, including but not limited to the Yuma Road Improvements, the

Estrella Parkway Improvements, or the Goodyear Blvd Improvements, have been constructed or are being constructed by others when development on the Property occurs, Owner shall remit payment(s) to the city for the costs of such improvements. The payment required herein shall be based on the actual cost of the improvement(s) if they have been constructed or if the payment is required before the improvement(s) are completed, the payment shall be based on the estimated cost of the improvement(s) as determined by the City Engineer or designee. Unless modified by a written phasing plan approved by the City Engineer or his/her designee or by a development agreement approved by the City Council, the payment required herein shall be made prior to the issuance of construction permits for work on the Property. No Certificates of Completion, Temporary Certificates of Completion or Certificates of Occupancy shall be issued for structures within the Property until the payment(s) required herein have been made; and

20. 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
21. 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 water and 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, including but not limited to the Yuma Road Improvements, the Estrella Parkway Improvements, and the Goodyear Blvd Improvements; and/or (vi) required for 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, at no cost to the City, 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 or approval of a site plan that includes the area in which the dedicated property is located or when requested by the City Engineer or his/her designee, whichever is earlier.

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. 22-03," declared a public record by Resolution 2022-2267, 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