

## **ORDINANCE NO. 2022-1559**

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF GOODYEAR, MARICOPA COUNTY, ARIZONA, CONDITIONALLY REZONING APPROXIMATELY 284.5 GROSS ACRES LOCATED ON THE EAST SIDE OF ESTRELLA PARKWAY TO ADD APPROXIMATELY 16 ACRES TO THE EXISTING 268.5-ACRE 2<sup>ND</sup> RESTATED & AMENDED FINAL PLANNED AREA DEVELOPMENT (PAD) FOR THE BALLPARK VILLAGE & BALLPACK VILLAGE – SOUTH; TO REZONE THE APPROXIMATELY 16 ACRES TO THE EXISTING PAD UNDERLYING RES/MXD ZONING DESIGNATION; AMENDING THE ZONING MAP OF THE CITY OF GOODYEAR, PROVIDING FOR NON-ABRIDGMENT, CORRECTIONS, SEVERABILITY, AN EFFECTIVE DATE, AND PENALTIES. (AND DIRECTING THE CITY CLERK TO RECORD A COPY OF THIS ORDINANCE).

WHEREAS, on May 8, 2017, the City Council of the City of Goodyear adopted Ordinance No.17-1347 conditionally rezoning approximately 254.5 acres (gross) to amend the zoning categories, permitted uses, development standards, and design guidelines under the existing PAD zoning by adopting the Ballpark Village & Ballpark Village – South Restated & Amended Final PAD dated April 28, 2017; and

WHEREAS, on March 1, 2021, the City Council of the City of Goodyear, adopted Ordinance No. 2021-1494 conditionally rezoning approximately 254.5 acres of property to amend certain of the residential development standards under the existing PAD zoning by adopting the Restated & Amended Final Planned Area Development for Ballpark Village & Ballpark Village - South, dated November 23, 2020;

WHEREAS, on July 19, 2021, the City Council of the City of Goodyear, adopted Ordinance No. 2021-1513 conditionally rezoning approximately 268.5 acres of property by incorporating and rezoning approximately 14 acres to the Restated & Amended Final Planned Area Development for Ballpark Village & Ballpark Village – South and designating it as the RES/MXD zoning designation; and to modify certain development standards and to modify certain definitions and existing residential permitted use matrix to distinguish product types from categories of residential uses (for instance apartments would be a type of multi-family residential use); and

WHEREAS, the purpose of this staff-initiated amendment is to rezone approximately 16 acres of property, as legally described in that certain document titled Added Property, which document was declared a public record by Resolution 2022-2273 and which are referred to and incorporated herein by this reference (the “Added Property”) currently zoned Final PAD designated as I-1 (Light Industrial) to Final PAD by amending the existing Restated & Amended Final Planned Area Development for Ballpark Village & Ballpark Village - South, dated July 2021 to include the approximately 16 acres and designating it as the RES/MXD zoning designation; and

WHEREAS, under the 2nd Restated and Amended Final Planned Area Development for Ballpark Village & Ballpark Village-South dated August 2022, the approximately 16 acres being incorporated into the Final PAD the zoning designation for the 16 acres will be the RES/MXD zoning designation, which will allow the 16 acres to be developed as the types of permitted residential uses, the types of permitted commercial uses or a combination thereof; and

WHEREAS, City staff finds that the proposed amendment will not adversely impact the surrounding area as multi-family and commercial uses are currently allowed within the existing PAD; and

WHEREAS, the 2nd Restated & Amended Final Planned Area Development for Ballpark Village & Ballpark Village – South, dated August 2022, which was declared a public record by Resolution 2022-2273 and which is referred to and incorporated herein by this reference, is a restatement of the Restated & Amended Final Planned Area Development for Ballpark Village & Ballpark Village – South dated July 2021 adopted by Ordinance 2021-1513 as modified; and

WHEREAS, a request to rezone property requires public review by the Planning and Zoning Commission and public review and approval by the City Council; and

WHEREAS, public notice that an amendment to the 2nd Restated & Amended Final Planned Area Development for Ballpark Village & Ballpark Village – South, dated August 2022 was to be considered and reviewed at a public hearing held before the Planning and Zoning Commission on October 12, 2022, appeared in the Arizona Republic Southwest Valley edition on September 23, 2022; and

WHEREAS, a public hearing was held before the Planning and Zoning Commission on October 12, 2022, and at that meeting the Commission voted XXX to XXX to recommend approval of the proposed amendment; and

WHEREAS, public notice that an amendment to the 2nd Restated & Amended Final Planned Area Development for Ballpark Village & Ballpark Village – South, dated August 2022 is to be considered and reviewed at a public hearing held before the City Council on October 24, 2022 appeared in the Arizona Republic Southwest Valley edition on September 23, 2022; and

WHEREAS, the Mayor and Council of the City of Goodyear 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 THE PROPERTY BEING REZONED**

This Ordinance No. 2022-1559 applies to approximately 284.5 acres of land in Goodyear, Maricopa County, Arizona, generally located east of Estrella Parkway between Elwood/S. Bullard Avenue on the south and slightly north of W. Goodyear Blvd on the north as depicted on that certain document titled Official Supplementary Zoning Map No. 22-15, and as legally described in that certain document titled Exhibit B Legal Description, which documents were declared a public record by Resolution 2022-2273 and which are referred to and incorporated herein by this reference (the “Property”).

**SECTION 2. REZONING**

The Property is conditionally rezoned to Final Planned Area Development (PAD) District (Restated & Amended Final Planned Area Development for Ballpark Village & Ballpark Village - South, dated July 2021) to Final Planned Area Development (PAD) District by the adoption of the 2nd Restated & Amended Final Planned Area Development for Ballpark Village & Ballpark Village – South

dated August 2022, which document was declared a public record by Resolution 2022-2273 and which is referred to, adopted and made a part hereof as if fully set forth in this Ordinance.

### SECTION 3. STIPULATIONS

That the rezoning provided for herein is subject to all of the following stipulations and conditions:

1. Development of the Property shall be in substantial conformance with the 2nd Restated & Amended Final Planned Area Development for Ballpark Village & Ballpark Village – South, dated August 2022, which document was declared a public record by Resolution 2022-2273 and which is referred to and incorporated herein by this reference, including the concept plans, development standards and design guidelines contained therein except as otherwise provided by any stipulations herein; and
2. The provisions of the City of Goodyear Zoning Ordinance shall apply except as modified by 2nd Restated & Amended Final Planned Area Development for Ballpark Village & Ballpark Village – South, dated August 2022 and except as otherwise modified by the stipulations herein; and
3. Except for the terms in Section 5.1 of the Amended and Restated Development Agreement Ballpark Village (North Parcel) recorded in the official records of Maricopa County as instrument 2012 0724688 (“Section 5.1”), which requires the development of parking facilities for private development in accordance with the parking requirements of the Zoning Ordinance, nothing in the rezoning provided herein shall be construed or considered to amend or affect the terms and conditions of the Settlement Agreement and Release dated July 6, 2011 and the exhibits thereto by and between M&I Marshall & Ilsley Bank, M&I Regional Properties, LLC, and the City, as amended on August 1, 2012, by Amendment No. 1 to Settlement Agreement and Release by and between BMO Harris Bank, Successor by Merger to M&I Marshall & Ilsley Bank, M&I Regional Properties, LLC, and the City, and the Settlement Agreement dated March 5, 2012, by and between MPK Enterprises, Inc., Wood Family Enterprises Ltd., Swansea Properties, LLC, Eagletail Bighorn, LLC, Margaret M. and Shelby A. Carl, Sharon M. and Ken R. Wood, Clarence Wood, M&I Regional Properties, LLC, BMO Harris Bank, Successor by Merger to M&I Marshall & Ilsley Bank and the City or any terms of any conveyance document or agreement to which the City is a party related to parking to support the Ballpark and the Ballpark Development Complex. Section 5.1 no longer has any effect because the parking requirements for Ballpark Village have been amended by Restated & Amended Final Planned Area Development for Ballpark Village & Ballpark Village – South, dated July 2021; and
4. Notwithstanding anything to the contrary in the 2nd Restated & Amended Final Planned Area Development for Ballpark Village & Ballpark Village – South, dated August 2022 or the stipulations herein, City parking

standards for residential development shall apply within the RES category unless the Mayor and Council of the City of Goodyear approves a zoning amendment to amend such standards pursuant to a third party parking consultant's data based study and letter of recommendation supporting lower parking/dwelling unit ratios and/or parking related design standards that has been approved by the Zoning Administrator; and

5. Notwithstanding anything to the contrary in the 2nd Restated & Amended Final Planned Area Development for Ballpark Village & Ballpark Village – South, dated August 2022, a drive-through may be considered through a use permit subject to the following conditions
  - a. The drive-through is limited to a business that has coffee, tea, or other beverages as its primary product.
  - b. The drive-through may only be considered on lots 28 – 30 north of Lower Buckeye Parkway, on the east side of Estrella Parkway.
  - c. No curb cuts are allowed onto Estrella Parkway.
  - d. A patio that is scaled to the size of the building must be a prominent feature toward Estrella Parkway or the Ballpark.
  - e. The drive-through window and ordering menu board may not face Estrella Parkway.
  - f. The drive-through drive aisle may not be located between the building and Estrella Parkway; it must be located to the rear of the building; and it must not be substantially visible from Estrella Parkway.
  - g. Enhanced architectural design and landscaping must be provided on the site, as determined by the Zoning Administrator during the use permit review.
  - h. Enhanced pedestrian connections shall be provided to connect the Ballpark site and nearby residential property, as determined by the Zoning Administrator during the use permit review; and
6. The following stipulations apply to the approximately 16 acres of property, as legally described in that certain document titled Added Property, which document was declared a public record by Resolution 2022-2273 and which is referred to and incorporated herein by this reference (the “Added Property”):
  - a. Owner/developer shall provide documentation to the City of Goodyear prior to final site plan approval that Form 7460-1 has been filed for the development and that the development received a “No Hazard Determination” from the FAA. If temporary equipment used during construction exceeds the height of the permanent structure a separate Form 7460-1 shall be submitted to the FAA and a “No Hazard Determination” obtained prior to the construction start date; and
  - b. Except as provided below, Owner shall complete the construction of any improvements needed for the full half-street improvements for the south-half of W. Lower Buckeye Parkway required for a Minor Arterial as set forth in the Engineering

Design Standards in effect at the time of construction for the section of W. Lower Parkway along the northern boundary of the Property, including by way of example, but not limitation, pavement, bike lane, curb and gutter, sidewalks, street frontage landscape and landscape irrigation, and street lighting (the "Lower Buckeye Improvements"). Except as otherwise provided in a written development agreement approved by Council or a written phasing plan approved by the City Engineer or his designee, the Lower Buckeye Improvements shall be completed prior to the issuance of any certificate of occupancy within the Added Property; and

- c. Owner shall either fully construct the full median or 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. Lower Buckeye Parkway along or adjacent to the frontage of the Added Property as directed by the City Engineer at the time of development. 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. If Owner constructs the full median and full median landscaping, Owner shall be reimbursed the in-lieu payment the city received from the property owner to the north for one-half (1/2) the cost of a full median and full median landscaping. 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 Added Property, whichever is earlier; and
- d. Owner shall complete the construction of any improvements needed for full west half-street improvements for S. Bullard Avenue required for a modified Minor Arterial as set forth in the Engineering Design Standards in effect at the time of construction for the section of S. Bullard Avenue along the eastern boundary of the Added Property, including, by way of example but not limitation, a bus bay, sidewalk, street frontage landscape and landscape irrigation, and street lighting (the "Bullard Avenue Improvements"). Except as otherwise provided in a written development agreement approved by Council or a written phasing plan approved by the City Engineer or his designee, the Bullard Avenue Improvements shall be completed prior to the issuance of any certificate of occupancy within the Added Property; and
- e. Owner shall complete the construction of any improvements needed for the full half-street improvements for the east half of S. Wood Boulevard required for a modified Minor Collector as set forth in the Engineering Design Standards in effect at the time of construction for the section of S. Wood Boulevard along

the western boundary of the Property, including by way of example, but not limitation, bike lane, sidewalks, street frontage landscape and landscape irrigation, and street lighting (the "Wood Boulevard Improvements"). Except as otherwise provided in a written development agreement approved by Council or a written phasing plan approved by the City Engineer or his designee, the Wood Boulevard Improvements shall be completed prior to the issuance of any certificate of occupancy within the Added Property; and

- f. Owner is responsible for a proportionate share of the costs of full traffic signals at the intersections identified below. Owner shall make an in-lieu payment for the cost of traffic signal infrastructure at intersections adjacent to the Added Property. 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 payment shall be made prior to the recordation of the first final plat subdividing all or part of the Added Property or prior to the issuance of any construction permits for work within the Added 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. The traffic signal obligations for the Added Property include, but may not be limited to:
- One-third (1/3) of the cost of the full traffic signal (three legs) at W. Lower Buckeye Parkway and South Bullard Avenue; and
  - Twenty-five percent (25%) of a full traffic signal (four legs) at W. Lower Buckeye Parkway and South Wood Boulevard

In addition to being responsible for a proportionate share of the cost of full traffic signals (all four legs) identified herein, Owner is also responsible for a proportionate share of the costs of additional traffic signals identified in an approved Traffic Impact Analysis/Study as being needed. If an updated Traffic Impact Analysis/Study reflects the need for any additional traffic signal at any intersection adjacent to the Added Property, Owner shall, at no cost to the City, convey, in fee, lien free, and free of any easements or encumbrances unless specifically agreed to by the City, any additional right-of-way needed for the construction of the portion of the traffic signal that will be located on the Added Property. In addition, Owner shall make an in-lieu payment to the City towards the cost of the signal. Except as provided herein, the in-lieu payment will be 25% of the cost of a full traffic signal for each corner of the intersection adjacent to the Added Property. For example, if a traffic signal is required at an

intersection were two of the four corners of the intersection are adjacent to the Property, Owner would be responsible for 50% 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. The dedication(s) and in-lieu payment(s) required herein shall be made at the earlier of the following: (i) before the issuance of any engineering permit for any of the work reflected in a site plan, Minor Land Division ("MLD"), or final plat that includes, is adjacent to, or requires connection to the intersection where the traffic signal is needed; or (ii) before the recordation of any final plat or MLD that includes, is adjacent, or requires connection to the intersection where the traffic signal is needed; and

- g. In addition to constructing the infrastructure improvements specifically 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 Engineering Design Standards and Policy Manual in effect at the time of construction; and
- h. Owner shall dedicate, at no cost to the city, all rights-of-way and/or easements within the boundaries of the Added Property that are: (i) needed for the construction of infrastructure improvements required for the City to provide water and wastewater services to the Added Property; (ii) required to be dedicated under any applicable law, code, ordinance, rule, regulations, standards, guidelines governing the development of the Added 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 Added 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 Added 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 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; and

- i. Notwithstanding anything to the contrary in this Ordinance, Owner shall convey the right-of-way and/or easements that are to be conveyed pursuant to the terms of this Ordinance prior to the deadlines for conveyance set forth herein or in a written phasing plan or development upon the written request by the City Engineer or his/her designee if such right-of-way and/or easement(s) are required for the construction of public infrastructure improvements by the city or others; and
- j. If any of the infrastructure improvements Owner is required to design and construct pursuant to the terms of this Ordinance have been constructed or is to be constructed by others, Owner shall remit a payment to the city in the amount of the actual costs incurred in the design and construction such infrastructure improvements if completed or, if not completed, the payment shall be in the amount of an engineer's estimate of the costs as approved by the Goodyear City Engineer or his/her designee. The payment requirement herein shall be paid prior to or concurrent with the recordation of a final plat triggering Owner's obligation to design and construct the infrastructure improvements; and
- k. Owner shall submit to the City for review and approval and subsequently to FEMA for review and approval, a Conditional Letter of Map Revision (CLOMR) study prior to issuance of the first construction permit for the development of any part of the Added Property within the Flood Plain. A CLOMR shall be submitted to and approved by the City Engineer or his/her designee prior to issuance of any construction permits within the floodplain, unless a CLOMR is not required as determined by the City Engineer or his/her designee.

#### SECTION 4. AMENDMENT TO ZONING MAP

The Zoning Map of the City of Goodyear is hereby amended to reflect the rezoning set forth in Section 2 of this Ordinance by the adoption of that certain document titled Supplementary Zoning Map 22-15, which document was declared a public record by Resolution 2022-2273 and which is referred to and incorporated herein by this reference, 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 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.     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 7.     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 8.     EFFECTIVE DATE

This Ordinance shall become effective as prescribed by law. The provisions of the City of Goodyear Zoning Ordinance being amended by this ordinance shall remain in full force and effect until the effective date of this ordinance.

SECTION 9.     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.

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