

## **ORDINANCE NO. 2022-1523**

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF GOODYEAR, MARICOPA COUNTY, ARIZONA, CONDITIONALLY REZONING APPROXIMATELY 6.5 ACRES OF PROPERTY LOCATED AT THE SOUTHWEST CORNER OF MCDOWELL ROAD AND CITRUS ROAD FROM THE C-2 (GENERAL COMMERCIAL) ZONING DISTRICT TO THE C-2 (GENERAL COMMERCIAL) ZONING DISTRICT WITH A PAD (PLANNED AREA DEVELOPMENT) OVERLAY; AMENDING THE ZONING MAP OF THE CITY OF GOODYEAR; PROVIDING FOR NON-ABRIDGEMENT; PROVIDING FOR CORRECTIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE; AND DIRECTING THE CITY CLERK TO RECORD A COPY OF THIS ORDINANCE.

WHEREAS, the property subject to this Ordinance consists of approximately 6.5 acres located at the southwest corner of McDowell Road and Citrus Road as more particularly described in that certain document titled "Legal Description", which document was declared a public record by Resolution No. 2022-2208, and which is referred to and made a part hereof as if fully set forth in this Ordinance (the "Property"); and

WHEREAS, the City of Goodyear General Plan Land Use Plan designates the Property as Neighborhoods. This land use category provides areas for the growth and development of neighborhoods that include a wide range of densities and housing products. The Neighborhoods category may also include public and community facilities that support and complement the neighborhood, such as schools, places of worship, and parks along with commercial uses at appropriate intensities and locations; and

WHEREAS, the Property is zoned C-2 (General Commercial). The Property was initially rezoned on June 22, 1998 with the adoption of Ordinance No. 98-610. A time extension for the zoning was then approved on October 10, 2000 with the adoption of Ordinance No. 2000-729; and

WHEREAS, to date, no development has occurred on the subject property; and

WHEREAS, the request is to rezone the Property from C-2 (General Commercial) to C-2 (General Commercial) with a PAD Overlay. The rezoning will facilitate the development of a mixed-use development to be known as Virtua Citrus; and

WHEREAS, the PAD Overlay is not requesting any deviations to the city's development standards. Development on the Property will be in conformance with the standards as established with the C-2 (General Commercial) zoning district and proposed stipulations; and

WHEREAS, a request to amend the boundaries of a zoning district requires review by the Planning and Zoning Commission and final decision by the City Council through the public hearing process, and to be approved, the rezoning amendment must be found in conformance with the General Plan and to not adversely impact the surrounding area as outlined in the Zoning Ordinance; and

WHEREAS, the proposed rezoning has been found to be in conformance with the General Plan and to not adversely impact the surrounding area; and

WHEREAS, a neighborhood meeting was held on August 31, 2021, in accordance with the City of Goodyear Citizen Review Process; and

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WHEREAS, there was no public opposition to the rezoning voiced at the neighborhood meeting; 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 February 16, 2022 , appeared in the Arizona Republic Southwest Valley edition on January 28, 2022; and

WHEREAS, a public hearing was held before the Planning and Zoning Commission on February 16, 2022, and at that meeting the Commission voted (x-x) to recommend \_\_\_\_\_ 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 February 28, 2022, appeared in the Arizona Republic Southwest Valley Edition January 28, 2022; 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 THE PROPERTY BEING REZONED

This Ordinance No. 2022-1523 applies to approximately 6.5 acres located at the southwest corner of McDowell Road and Citrus Road and legally described in that certain document titled "Legal Description," which document was declared public record by Resolution No. 2022-2208, 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 C-2 (General Commercial) with a PAD (Planned Area Development) Overlay by the adoption herein of that certain document titled "Virtua Citrus PAD Overlay (February 2022)" which document was declared public record by Resolution No. 2022-2208, and which is referred to and made a part hereof as if fully set forth in this Ordinance.

#### SECTION 4. STIPULATIONS

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

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 C-2 (General Commercial) zoning district, except as modified by the "Virtua Citrus PAD Overlay (February 2022)," which document was declared a public record by Resolution No. 2022-2208, and which is hereby referred to and made a part hereof as if fully set forth in this Ordinance and except as modified by 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. Prior to the recordation of the first final plat subdividing all or part of the Property or the issuance of any construction permits for work within the Property, whichever is earlier, the Property Owner ("Owner") shall apply to the Arizona Department of Water Resources (ADWR) for the extinguishment of the Type 1 Rights appurtenant to the Property 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 the first final plat subdividing all or part of the Property or the issuance of any construction permits for work within the Property, whichever is earlier; and
4. Owner shall, at Owner's sole cost and expense, install or cause the installation of enhanced streetscape improvements on-site and within the right-of-way adjacent to the intersection of McDowell Road and Citrus Road; enhanced and landscaping and/or enhanced paving improvements shall be installed over and above the minimum requirements in all applicable Development Regulations. Because of existing power lines, the nature of the enhancements will need to be determined at the time of the first site plan approval for development within the Property or the approval of the first final plat subdivision all or part of the Property, whichever is earlier, but the intent is that the enhancements create a visually pleasing focal point at this intersection corner as determined by the Zoning Administrator of his/her designee; and
5. Owner shall, at no cost to the city, convey, in fee and free from all encumbrances other than those approved by the City Engineer or his/her designee, an additional 10 feet of right-of-way for McDowell Road to provide the city with a full 65-foot of right-of-way for the south half of W. McDowell Road required in the Engineering Design Standards and Policies for a Major Arterial Street. The conveyance required herein 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

6. Owner shall, at no cost to the city, convey, in fee and free from all encumbrances other than those approved by the City Engineer or his/her designee, any additional right-of-way needed for the construction of traffic signal improvements at the intersection of W. McDowell Road and N. Citrus Road required in the Engineering Design Standards and Policies. The conveyance required herein 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
7. Owner shall, at no cost to the City, dedicate to the city an 8-foot sewer easement adjacent to the eastern boundary of an existing 12-foot sewer easement previously dedicated to the city by an easement recorded in the Official Records of the Maricopa County Recorder's Office at Instrument No. 2000-0287738. The easement shall be lien free and free of all encumbrances except those specifically approved by the City Engineer or his/her designee and shall be dedicated prior to or concurrently with the recordation of the first final plat subdividing all or part of the Property or the issuance of any construction permit for any work within the Property, whichever is earlier; and
8. Owner shall, at no cost to the city, 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 required for a Major Arterial as set forth in the Engineering Design Standards in effect when the improvements are constructed, except for the construction of  $\frac{1}{2}$  the median and  $\frac{1}{2}$  median landscaping, including, but not limited to, pavement, curb and gutter, sidewalks, street frontage landscape and landscape irrigation, and street lighting (the "McDowell Road Improvements"). Tapering of pavement from the western boundary of the Property to accommodate lane transitions shall be coordinated with the property to the west of the Property (Canada Village), 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. 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. Otherwise, the McDowell Road Improvements shall be completed prior to the issuance of any Certificate of Completion, Temporary Certificate of Completion or Certificate of Completion for any structure within the Property; and
9. 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

10. Owner shall, at no cost to the city, design and construct full half-street improvements for west-half of the section of N. Citrus Road along or adjacent to the frontage of the Property required for a Minor Arterial as set forth in the Engineering Design Standards in effect when the improvements are constructed, except for the construction of  $\frac{1}{2}$  the median and  $\frac{1}{2}$  median landscaping, including, but not limited to, pavement, curb and gutter, sidewalks, street frontage landscape and landscape irrigation, and street lighting (the "Citrus Road Improvements"). If the Citrus 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 Citrus Road Improvements (the "Citrus Road Cost Recovery Payment"). If owed, the Citrus 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. Otherwise, the Citrus Road Improvements shall be completed prior to the issuance of any Certificate of Completion, Temporary Certificate of Completion or Certificate of Completion for any structure within the Property; and
11. 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 N. Citrus 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
12. Owner is responsible for a proportionate share of the costs of traffic signals at the intersection identified below. Owner shall make an in-lieu payment for the cost of traffic signal adjacent to the Property. The in-lieu payment shall be made prior to the recordation of the first final plat subdividing all or part of the Property or prior to the issuance of any construction permits for 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. The Property Owner's traffic signal obligations include, but may not be limited to:

- a. 25% of the cost of the full traffic signal (all four legs) at W. McDowell and N. Citrus Road; and
13. In addition to being responsible for a proportionate share of the cost of a full traffic signal (all four legs) at the intersection at N Citrus Road and W. McDowell Road, 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 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 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 Property. For example, if a traffic signal is required at an intersection where 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
14. In addition to constructing the infrastructure improvements specifically identified herein, Owner shall construct, at no cost to the City, all infrastructure improvements identified by the City as being needed to provide water and sewer services to the Property and all infrastructure improvements required by the City of Goodyear subdivision regulations and Engineering Design Standards and Policy Manual in effect at the time of construction; and
15. 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, 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; and

16. 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, and all other federal, state and locals laws, ordinances, rules, regulations, standards, and policies applicable to the development of the Property; and
17. Owner, at no cost to the city, shall, prior to the issuance of any Certificate of Completion, 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 and N. Citrus Road.

#### SECTION 5. 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. 20-06," declared a public record by Resolution 2022-2208, 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 6. ABRIDGEMENT 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 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.

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:

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Darcie McCracken, City Clerk

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Roric Massey, City Attorney