

ORDINANCE NO. 2023-1581

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF GOODYEAR, MARICOPA COUNTY, ARIZONA, CONDITIONALLY REZONING APPROXIMATELY 17 ACRES OF LAND LOCATED AT THE SOUTHEAST CORNER OF BULLARD AVENUE AND VAN BUREN STREET FROM C-2 (GENERAL COMMERCIAL) TO I-1 (LIGHT INDUSTRIAL); AMENDING THE ZONING MAP OF THE CITY OF GOODYEAR; PROVIDING FOR NON-ABRIDGMENT; 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 17 acres generally located at the southeast corner of Bullard Avenue and Van Buren Street, as more particularly described in that certain document titled "Legal Description – Vantage Data Center AZ14", which document was declared a public record by Resolution No. 2023-2334, and which is referred to and made a part hereof as if fully set forth in this Ordinance (the "Property"); and

WHEREAS, the Property is currently zoned C-2 (General Commercial) pursuant to Ordinance 04-884 in which the Goodyear City Council conditionally approved the rezoning of 107.27 acres of property at the southeast corner of Bullard Avenue and Van Buren Street from C-2 (General Commercial) and I-2 (General Industrial Park) to C-2 (General Commercial) and I-1 (Light Industrial Park); and

WHEREAS, the General Plan Land Use Plan designates the Property as Business & Commerce, which provides areas for the growth and development of Goodyear's economic base; and

WHEREAS, this request is to rezone the Property from C-2 (General Commercial) to I-1 (Light Industrial) for the development of the Vantage Data Center AZ14; and

WHEREAS, this rezoning request is consistent with the designation of the Property in the General Plan as Business & Commerce and will not adversely impact the surrounding area; and

WHEREAS, a rezoning request requires review by the Planning and Zoning Commission and final decision by the City Council through the public hearing process, and to be approved, a rezoning request 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, public notice that this rezoning request was to be considered and reviewed at a public hearing held before the Planning and Zoning Commission on August 16, 2023, appeared in the Arizona Republic Southwest Valley edition on July 28, 2023; and

WHEREAS, a public hearing was held before the Planning and Zoning Commission on August 16, 2023, to consider the rezoning of the Property, and the Commission voted (5-0) to recommend approval the proposed rezoning; and

WHEREAS, public notice that this rezoning request is to be considered and reviewed at a public hearing held before the City Council on August 28, 2023, appeared in the Arizona Republic Southwest Valley edition on July 28, 2023; 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 of Goodyear;

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. 2023-1581 applies to that parcel of land in Goodyear, Maricopa County, Arizona, generally located at the southeast corner of Bullard Avenue and Van Buren Street, as more particularly described in that certain document titled "Legal Description – Vantage Data Center AZ14", which document was declared a public record by Resolution No. 2023-2334, and which is referred to and made a part hereof as if fully set forth in this Ordinance (the "Property").

SECTION 2. REZONING

The Property is conditionally rezoned from the C-2 (General Commercial) Zoning District to the I-1 (Light Industrial) Zoning District.

SECTION 3. STIPULATIONS

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

1. Approval of the rezoning does not constitute approval of any site plan for development within the Property. 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
2. Owner shall convey to the City of Goodyear, lien free and free of all encumbrances unless expressly agreed to by the City of Goodyear, a portion of the Property at the corner of Van Buren Avenue and Bullard Avenue needed for a corner corridor entry feature as reflected in "Bullard Avenue Corridor Design Treatment Strategies November 2018", which document was declared a public record by Resolution No. 2018-1914, and which is referred to and made a part hereof as if fully set forth in this Ordinance (the "Monument Parcel"). The City of Goodyear shall reimburse Owner the fair market value of the Monument Parcel to be conveyed herein exclusive of the value of the landscape improvements installed within Monument Parcel pursuant to stipulations/conditions 3 and 4 below. Except as otherwise provided in a Development Agreement approved by the Goodyear City Council, the size of the Monument Parcel shall be no less than 100-feet by 100-feet and the Monument Parcel shall be conveyed to the City after the Bullard Avenue Landscape Buffer (defined below) and the Van Buren Avenue Landscape Buffer (defined below) have been completed; and

3. Except as otherwise provided in a Development Agreement approved by the Goodyear City Council, Owner, at Owner's sole cost and expense, shall develop a 50-foot wide landscape buffer along the frontage of the western boundary of the Property adjacent to Bullard Avenue that complies with the design strategies as established within that certain document titled "Bullard Avenue Corridor Design Treatment Strategies November 2018", which document was declared a public record by Resolution No. 2018-1914, and which is referred to and made a part hereof as if fully set forth in this Ordinance (the "Bullard Avenue Landscape Buffer"). No Final Certificate of Occupancy shall be issued for any structure on the Property until the Bullard Avenue Landscape Buffer has been completed; and
4. Owner, at Owner's sole cost and expense, shall develop a 50-foot wide landscape buffer along the frontage of the northern boundary of the Property adjacent to Van Buren Street (the "Van Buren Avenue Landscape Buffer"). Although the Bullard Avenue Corridor Design Treatment Strategies dated November, 2018 does not apply to Van Buren Street, the Van Buren Avenue Landscape Buffer shall comply with the design strategies as established within that certain document titled "Bullard Avenue Corridor Design Treatment Strategies November 2018", which document was declared a public record by Resolution No. 2018-1914, and which is referred to and made a part hereof as if fully set forth in this Ordinance. No Final Certificate of Occupancy shall be issued for any structure on the Property until the Van Buren Street Landscape Buffer improvements have been completed; and
5. Screening walls shall be constructed so that no generators shall be visible from Bullard and Van Buren; and
6. Screening walls made of metal, or if approved by the Zoning Administrator or designee, other materials, shall be constructed on the roofs of all structures on the Property as needed so that no generator exhaust stack, or any other mechanical equipment, is visible from Bullard or Van Buren extending above screening walls or parapet walls, which are expected to be 55-feet high pre-cast concrete; and
7. To foster continuity with the development to the south, if data centers are developed on the Property, the color selections and architectural features associated with AZ11,12&13 will be incorporated into the data centers developed on the Property, including a glazing curtain wall system, perforated metal screen walls, and a varying paint palette for the concrete tilt-up walls; and
8. Owner shall, at no cost to the City, convey, in fee, lien free, and free from all encumbrances other than those approved by the City Engineer or his/her designee, the following right-of-way:

- a. Right-of-way for the Bullard Avenue improvements constructed along the frontage of the Property, including sidewalks, that has not previously been conveyed to the City; and
 - b. Right-of-way for the intersection improvements constructed at the southeast corner of Van Buren Avenue and Bullard Avenue adjacent to the Property, including sidewalks, that has not previously been conveyed to the City; and
 - c. Right-of-way needed for the completion of the improvements to 145th Avenue Owner is required to construct; and
- 9. Owner shall, at no cost to the City, convey, lien free, and free from all encumbrances other than those approved by the City Engineer or his designee, the following easements:
 - a. A 10-foot public utility and sidewalk easement ("PUSE") located along the the eastern boundary of the Bullard Avenue Right-of-Way, which includes sidewalks, (the western frontage of the Property) unless the City Engineer or designees approves an alternative location for the PUSE required herein; and
 - b. A public utility and sidewalk easement ("PUSE") along the back of the sidewalk and around the bus bay constructed within the Bullard Avenue right-of-way along the northern boundary of the Property per Standard Detal G-3243-1 of the City of Goodyear Engineering Standards and Policies; and
 - c. An 8-foot public utility and sidewalk easement ("PUSE") along the western boundary of the North 145th Avenue right-of-way (the eastern frontage of the Property); and
- 10. Owner shall, at no cost to the city, design and construct all improvements required for the completion of the full half-street improvements for the west-half of the section of 145th Avenue along or adjacent to the frontage of the Property required for a local street as set forth in the Engineering Design Standards and Policies in effect when the improvements are constructed, including, by way of example, buit not limitations, sidewalks, landscaping, landscape irrigation and street lights (the "145th Avenue Improvements"). The 145th Avenue Improvements shall be completed prior to the issuance of any final Certificate of Certificate of Occupancy for any structure within the Property; and
- 11. Except as otherwise provided in a Development Agreement approved by the Goodyear City Council, Owner shall, at Owner's sole cost, provide the city with a physically and legally available water supply sufficient to provide the water needed to serve the Property in excess of 1,500 gallons per acre per day that satisfies the Arizona Department of Water Resources' ("ADWR") standards for modifications of the City of Goodyear's Designation of Assured Water Supply to increase the Designation water portfolio by an amount equivalent to the amount of the additional water needed to serve the Property and that provides for sufficient renewable supplies to offset the additional water demand. Notwithstanding this requirement, no part of this stipulation shall be construed as a promise of availability of up to 1,500 gallons per

acre per day of City water to serve the Property, which availability shall be determined by the City in the City's sole discretion and pursuant to the limitations of the City's latest Designation of Assured Water Supply order, committed demand changes, ordinances and policies in effect at the time Owner submits Owner's final plat or site plan for uses within the property; and

12. 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
13. 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 local laws, ordinances, rules, regulations, standards, and policies applicable to the development of the Property; and
14. 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 the Engineering Design Standards and Policy Manual in effect at the time of construction; and
15. The references to specific obligations that are addressed in the City's Development Regulations, which include but is not limited to, the requirements in the City of Goodyear Engineering Design Standards and Policies Manual, the City of Goodyear Subdivision Regulations, the City of Goodyear Zoning Ordinance, and the Building Codes and Regulations adopted by the City of Goodyear, does not relieve Owner of complying with all applicable Development Regulations, and
16. 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 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

17. All existing above ground utilities, except for electric lines that are 69kV or larger, located within and adjacent to the Property, including but not limited to, cable and electrical utilities, shall be placed underground at no cost to the city. Unless modified by a written phasing plan approved by the City Engineer or his/her designee or by a development agreement approved by the Goodyear City Council, the undergrounding of the utilities required herein shall be completed prior to the issuance of the first Certificate of Completion, Temporary Certificate of Occupancy or Certificate of Occupancy for any structure within the Property; and
18. No final plat shall be recorded, and/or no certificate of occupancy shall be issued until Owner has provided the City with all approvals and/or easements from jurisdictions or parties whose property interests will be impacted by the development contemplated by such final plat, and/or construction document. All required approvals and easements shall be in a form acceptable to the City Engineer or his/her designee; and
19. Any modifications to existing private irrigation facilities as a result of the development of the Property shall be coordinated with the appropriate Irrigation District/private owner; and
20. 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

21. 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.

SECTION 4. AMENDMENT OF ZONING MAP

The Zoning Map of the City of Goodyear is hereby amended to reflect the rezoning of the Property provided for herein by the adoption of that certain document titled "Official Supplementary Zoning Map No. 23-01", declared a public record by Resolution No. 2023-2334 and which is referred to and made a part hereof as if fully set forth in this Ordinance.

SECTION 5. 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 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 provision 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.

SECTION 9. PENALTIES

Any person who violates any 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 10. 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