

## **ORDINANCE NO. 2019-1428**

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF GOODYEAR, MARICOPA COUNTY, ARIZONA, REZONING APPROXIMATELY 56 ACRES OF LAND LOCATED ON THE WEST SIDE OF BULLARD AVENUE, APPROXIMATELY 3/8 MILE SOUTH OF VAN BUREN STREET, FROM THE AU (AGRICULTURAL URBAN) ZONING DISTRICT TO THE I-1 (LIGHT INDUSTRIAL PARK) ZONING DISTRICT WITH A PAD OVERLAY, AMENDING THE ZONING MAP OF THE CITY OF GOODYEAR; PROVIDING FOR NON-ABRIDGMENT; PROVIDING FOR CORRECTIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE; AND PROVIDING FOR PENALTIES.

WHEREAS, the subject property (the “Property”) consists of approximately 56 acres generally located on the west side of Bullard Avenue, approximately 3/8 of a mile south of Van Buren Street, legally described in that certain document titled “West Bullard North Legal Description”, which document was declared a public record by Resolution No. 2019-1940, three copies of which are on file with the City Clerk of the city of Goodyear, Arizona, and which is referred to and made a part hereof as if fully set forth in this Ordinance; and

WHEREAS, the Property is designated as ‘Business & Commerce’ on the General Plan Land Use and Transportation Plan, and this land use category encourages business parks, offices, warehouses, and data center uses; and

WHEREAS, the Property is currently zoned AU (Agricultural Urban); and

WHEREAS, the Property Owner (the “Owner”) is seeking a rezoning of the Property from the AU (Agricultural Urban) zoning district to the I-1 (Light Industrial Park) zoning district with a PAD Overlay; and

WHEREAS, the Owner intends to develop data center uses on the Property, in accordance with the requested I-1 (Light Industrial Park) Zoning District with a PAD Overlay; and

WHEREAS, the PAD Overlay includes modifications to city regulations pertaining to permitted uses, development standards, landscape requirements, screening requirements, and design guidelines, as identified in the PAD Overlay; and

WHEREAS, staff has determined that the proposed rezoning request is consistent with the General Plan and shall not adversely impact the surrounding area; and

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

WHEREAS, public notice that this rezone of the Property was to be considered and reviewed at a public hearing held before the Planning and Zoning Commission on March 13, 2019, appeared in the Arizona Republic Southwest Valley edition on February 22, 2019; and

WHEREAS, a public hearing was held before the Planning and Zoning Commission on March 13, 2019, to consider the rezone of the Property; and

WHEREAS, prior to the public hearing, the applicant requested that a stipulation that prohibited the use of air-cooled chillers be replaced with two other stipulations that imposed a 65dB limit at the residential property line and that prohibited the use of two types of air cooled chillers; and

WHEREAS, the Commission voted 5 to 0 to recommend approval of the proposed rezoning with the revised stipulations; and

WHEREAS, public notice that this rezone of the Property is to be considered and reviewed at a public hearing held before the City Council on March 25, 2019, appeared in the Arizona Republic Southwest Valley edition on February 22, 2019; and

WHEREAS, based on the foregoing Recitals and the other information presented, 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 health, safety, and welfare;

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. 2019-1428 applies to that parcel of land in Goodyear, Maricopa County, Arizona, generally located on the west side of Bullard Avenue, approximately 3/8 mile south of Van Buren Street, as shown on that certain document titled “Supplementary Zoning Map No. 18-13,” declared a public record by Resolution 2019-1940, three copies of which are on file with the City Clerk of the City of Goodyear, Arizona and which is referred to and made a part hereof as if fully set forth in this Ordinance, and as legally described in that certain document titled “West Bullard North Legal Description,” declared a public record by Resolution 2019-1940, three copies of which are on file with the City Clerk of the city of Goodyear, Arizona 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 hereby conditionally rezoned from AU (Agricultural Urban) to the I-1 (Light Industrial Park) Zoning District with a PAD Overlay by the adoption of that certain document titled “West Bullard PAD Overlay Development Regulations, dated February, 2019,” declared a public record by Resolution 2019-1940, three copies of which are on file with the City Clerk of the City of Goodyear, Arizona and which is referred to and made part hereof as if fully set forth in this Ordinance (hereinafter referred to as the “West Bullard PAD Overlay”).

### SECTION 3. STIPULATIONS

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

1. Development of the Property shall be in conformance with the I-1 (Light Industrial Park), Zoning District Criteria, except as modified by the West Bullard PAD Overlay, which is referred to and made a part hereof as if fully set forth in this Ordinance, and except as modified by the following stipulations and conditions;
2. The Property shall be developed in substantial conformance with one of the seven conceptual plans attached to the West Bullard PAD Overlay.
3. Owner shall channelize the portion of the Bullard Wash adjacent to the Property pursuant to an approved CLOMR/LOMR process to bring that portion of the Property that is currently in the floodplain out of the floodplain. The CLOMR/LOMR shall be approved pursuant to the Engineering Design Standards and Policies Manual in effect at the time of development;
4. Owner shall design and construct within the Bullard Wash Property dedicated pursuant to Stipulation 12 the Bullard Wash Improvements, which includes the channelization of the Bullard Wash pursuant to an approved CLOMR/LOMR and the Path Improvements adjacent to the western boundary of the Property consisting of a 10 to 12-foot compacted DG path, along with a landscaped buffer of 10 feet on each side of the compacted DG path, consistent with the Trail Section depicted in the West Bullard PAD Overlay. The 10 to 12-foot compacted DG path with a 10-foot wide landscape buffer on either side shall be located on a berm adjacent to the western boundary of the Property, unless it is determined by the City Engineer at the time of civil plan review that relocation of the path and buffers is required to meet City Engineering Standards. Except as otherwise provided in a written phasing plan approved by the City Engineer or designee in his/her sole discretion, the preliminary design of the Bullard Wash Improvements must be approved prior to or concurrent with the approval of the first site plan for any development within the Property. Except as otherwise provided in a written phasing plan approved by the City Engineer or designee in his/her sole discretion, the final design of the Bullard Wash Improvements shall be approved prior to or concurrent with the issuance of the first civil permit for work within the Property and the Bullard Wash Improvements shall be completed prior to the issuance of any certificate of occupancy within the Property;
5. The Property shall be developed in substantial conformance 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. 2019-1940 and three copies of

which are on file with the City Clerk of the city of Goodyear, Arizona, and which is referred to and made a part hereof as if fully set forth in this Ordinance, and Owner shall dedicate to the city such property as reasonably necessary for the Property to be developed in substantial conformance with the Bullard Avenue Corridor Design Treatment Strategies November 2018;

6. Owner is responsible for a proportionate share of the costs for adjacent traffic signals. Owner shall either construct such signal(s) when warranted or pay to the city the proportionate share of the cost of such signal(s) (“in-lieu payment”) when requested by the City Engineer or designee. If Owner makes an in lieu payment, the 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. Owner’s traffic signal obligation is as follows:
  - a. 50% of the cost of the full traffic signal at the intersection of Bullard Avenue and Harrison Street;
7. Owner shall dedicate to the city, in fee, an additional 32-feet of right-of-way along the Property frontage of Bullard Avenue. Such dedication shall be made prior to the issuance of the first civil construction permit within the Property or when requested by the City Engineer or designee, whichever is earlier, except as otherwise approved in a written phasing plan approved by the City Engineer or designee in his/her sole discretion;
8. Owner shall dedicate to the city all necessary Public Utility Easements (PUE) along the Property frontage of Bullard Avenue prior to the issuance of the first civil construction permit within the Property or when requested by the City Engineer or designee, whichever is earlier, except as otherwise approved in a written phasing plan approved by the City Engineer or designee in his/her sole discretion;
9. Owner shall construct full half-street improvements for a Major Arterial for the section of Bullard Avenue fronting the entire length of the Property, which improvements shall include, but are not limited to, pavement, curb and gutter, sidewalks, street frontage landscape and landscape irrigation, and street lighting (the “Bullard Avenue Improvements”). Except as otherwise approved in a written phasing plan approved by the City Engineer or designee in his/her sole discretion, the Bullard Avenue Improvements shall be completed prior to the issuance of the first certificate of occupancy within the Property;
10. Except as otherwise provided in a Development Agreement approved by the City of 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 service 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 Designations 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 extinguishment credits or renewable supplies to offset the additional water demands;

11. Except as otherwise provided in a Development Agreement approved by the City of Goodyear City Council, Owner shall, at Owner's sole cost, design, install, and/or construct, all infrastructure, on-site and/or off-site, convey all land necessary for such infrastructure, and acquire all capital equipment necessary to allow the city to provide water and wastewater service to the Property at build out;
12. Owner shall dedicate to the City, in fee and by separate instrument, property for the Bullard Wash, which shall consist of a strip of land along the entire western boundary of the Property that is 300 feet wide. Said dedication shall take place prior to the recordation of the first final plat subdividing all or part the Property or the issuance of the first civil construction permit, whichever is earlier;
13. All outdoor storage areas for materials, trash, equipment, vehicles, or similar items shall be screened from view from residential properties including the western property line/Bullard Wash. Screening shall be a combination of trees and shrubs as approved by the Zoning Administrator and as depicted in Exhibit A - Screening Exhibit, attached to the West Bullard PAD Overlay;
14. Loading, delivery, roll-up/dock doors, and service and wash bays may not face any planned or existing residential use that is within 500 feet unless all of the following conditions are met:
  - a. Loading, delivery, roll-up/dock doors, and service and wash bays facing a single family residential use must be located 500-feet from a single family residential property line; and
  - b. The loading, delivery, roll-up/dock doors, and service and wash bays may only occupy 50% of the building facility facing the single family residential use; and
  - c. All loading, delivery, roll-up/dock doors, and service and wash bays that face any residential use or planned residential use shall be screened from view by a combination of trees and shrubs as approved by Zoning Administrator and as depicted in Exhibit A – Screening Exhibit, attached to the West Bullard PAD Overlay;

15. Decibel levels at the residential property line shall not exceed 65dB, as measured by the Zoning Administrator; and,
16. Trane 500 tons RTAC and RTAF air cooled chillers (or air cooled chillers with substantially similar size and technology that cause a high pitch noise) shall not be allowed for use on the Property. Information sheets for the TRANE 500 ton RTAC and RTAF air cooled chillers shall be provided to the Zoning Administrator to illustrate what is prohibited.

#### 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 "Supplementary Zoning Map No. 18-13," declared a public record by Resolution 2019-1940, three copies of which are on file with the City Clerk of the City of Goodyear, Arizona and which is referred to and made a part hereof as if fully set forth in this Ordinance, and "Supplementary Zoning Map 18-13," 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 provision of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such provision 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.

