

## MARANA ORDINANCE NO. 2020.018

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RELATING TO DEVELOPMENT; APPROVING A REZONING OF APPROXIMATELY 63.8 ACRES OF LAND LOCATED ON THE NORTH SIDE OF AVRA VALLEY ROAD, APPROXIMATELY 0.70 MILES EAST OF THE INTERSECTION OF AVRA VALLEY ROAD AND SANDARIO ROAD, FROM 'C' LARGE LOT AND 'AG' AGRICULTURAL TO 'HI' HEAVY INDUSTRY

WHEREAS the Town of Marana (the "Property Owner") owns 63.8 acres of land located on the north side of Avra Valley Road, approximately 0.70 miles east of the intersection of Avra Valley Road and Sandario Road, in Sections 3 and 10, Township 12 South, Range 11 East, described and depicted on Exhibit "A" attached to and incorporated in this ordinance by this reference (the "Rezoning Area"), which the Town intends to sell to interested parties (the "Future Property Owners") for future development; and

WHEREAS the Property Owner has submitted an application to rezone the Rezoning Area from 'C' Large Lot and 'AG' Agricultural to 'HI' Heavy Industry ("this Rezoning"); and

WHEREAS the Marana Planning Commission held a public hearing on this Rezoning on October 28, 2020, and voted 6 to 0 with one Commissioner absent to recommend that the Town Council approve this Rezoning, subject to the recommended conditions; and

WHEREAS the Marana Town Council held a public hearing on this Rezoning on November 17, 2020 and determined that the application for rezoning should be approved.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council of the Town of Marana, Arizona, as follows:

**Section 1.** The zoning of the Rezoning Area is hereby changed from 'C' Large Lot and 'AG' Agricultural to 'HI' Heavy Industry.

**Section 2.** This Rezoning is subject to the following conditions, the violation of which shall be treated in the same manner as a violation of the Town of Marana Land Development Code (but which shall not cause a reversion of this Rezoning), and which shall be binding on the Property Owners, and their successors in interest (all of whom are collectively included in the term "Property Owners" in the following conditions):

1. Compliance with all applicable provisions of the Town's codes and ordinances current at the time of any subsequent development including, but not limited to,

requirements for public improvements and payment of application fees and applicable development impact fees.

2. Any preliminary plat or development plan for any portion of the Rezoning Area shall be in general conformance with the tentative development plan presented to and approved by the Town Council as part of this Rezoning.
3. A master drainage study must be submitted by the Property Owner and accepted by the Town Engineer prior to Town approval of a preliminary plat or development plan for any portion of the Rezoning Area.
4. A detailed traffic impact analysis must be submitted by the Future Property Owners and accepted by Town staff prior to approval of a preliminary plat or development plan for any portion of the Rezoning Area.
5. A water infrastructure and phasing plan (WIP) must be submitted by the Future Property Owners and accepted by the Marana Water Department (the “water provider”) prior to approval of a preliminary plat for any portion of the Rezoning Area. The WIP shall identify all on-site and off-site water facilities needed to serve the proposed development. The WIP shall include all information required by the water provider, such as (but not limited to) analysis of water use and fire flow requirements, and well source, reservoir, and booster station infrastructure needed to serve the proposed development. If the water provider requires a water service agreement as a condition of service to the proposed development, the Future Property Owners must enter into a water service agreement with the water provider consistent with the accepted WIP.
6. A master sewer plan must be submitted by the Future Property Owners and accepted by the Marana Water Department (the “wastewater utility”) prior to the approval of any final plat or development plan for the Rezoning Area. The master sewer plan shall identify all on-site and off-site wastewater facilities needed to serve the proposed development, and shall include all information required by the wastewater utility. If the wastewater utility requires a sewer service agreement as a condition of service to the proposed development, the Future Property Owners must enter into a sewer service agreement with the wastewater utility consistent with the accepted master sewer plan.
7. The Future Property Owners must design and construct any roadway, drainage, water, and wastewater improvements, and dedicate or acquire any property rights associated with those improvements, that the Town requires based on the data and findings of the accepted traffic impact analysis, the accepted master drainage study, the accepted WIP, the accepted master sewer plan, and other studies approved in connection with the approval of a preliminary plat or development plan for any portion of the Rezoning Area.
8. The final design of all streets and circulation facilities, including gated access (if applicable) and emergency access, must be accepted by the Northwest Fire District

prior to Town Council consideration of a final plat for any portion of the Rezoning Area.

9. No approval, permit or authorization by the Town of Marana authorizes violation of any federal or state law or regulation or relieves the Future Property Owners from responsibility to ensure compliance with all applicable federal and state laws and regulations, including the Endangered Species Act and the Clean Water Act. The Future Property Owners should retain appropriate experts and consult appropriate federal and state agencies to determine any action necessary to assure compliance with applicable laws and regulations.
10. Prior to the issuance of any grading permits, the Future Property Owners shall submit evidence to the Town that all federal permit requirements have been met through the Corps of Engineers and the State Historic Preservation Office, if federal permits are required for the development of the Rezoning Area.
11. A 100% desert tortoise survey shall be completed by a qualified biologist at the Property Owner's expense and approved by the Town prior to the issuance of any grading permits in the Rezoning Area. Any Sonoran Desert tortoises found on the Rezoning Area shall be relocated at the Property Owner's expense.
12. The Property Owner shall not cause any lot split of any kind without the written consent of the Town of Marana.
13. Notwithstanding uses listed as permitted or conditional in the Heavy Industry (HI) zone (Land Development Code (LDC) Section 5.12.03), the following uses are prohibited in the Rezoning Area:
  - a. All residential uses
  - b. All uses listed in LDC Section 5.11.04. RC, Regional Commercial
  - c. Elementary and secondary schools, preschools, day care centers, and similar uses
  - d. Colleges, universities, and trade schools
  - e. Manufacturing/processing and warehouse/storage of hazardous substances. For purposes of this subparagraph, "hazardous substance" is defined as any substance meeting the definition of "hazardous substance" found in the comprehensive environmental response, compensation, and liability act (CERCLA) § 101(14) (42 U.S.C. § 9601(14)) including but not limited to, those substances listed at 40 CFR § 300.5.
  - f. Hotels, motels and other transient lodging establishments
  - g. Theaters, playhouses, concert halls, performing arts centers
  - h. Outdoor sports events, entertainment and public assembly, amphitheaters
  - i. Hospitals, nursing and convalescent homes, outpatient surgery centers

- j. Religious facilities, libraries, museums, galleries, clubs and lodges
14. Notwithstanding uses listed as permitted or conditional in the HI zone, the following uses are conditional in the Rezoning Area:
- a. Movie, television, and radio studios or broadcasting facilities
15. Land uses that create columns of dust, steam, water vapor, or smoke dense enough to impair pilot or air traffic controller vision and compromise flight safety are prohibited in the Rezoning Area. If the FAA reviews the proposed land use through the 14 CFR Part 77 obstruction evaluation/airport airspace analysis (OE/AAA) process and issues a determination indicating no objections to the proposed land use due to dust, steam, water vapor, or smoke, that determination will be considered adequate evidence that the land use can proceed without creating this hazard.
16. Land uses that produce thermal plumes (such as power plants or other land uses that employ smoke stacks, cooling towers, or that create thermal exhaust), with the potential to interfere with the safe control of aircraft by causing air turbulence, are prohibited in the Rezoning Area. If the FAA reviews the proposed land use through the 14 CFR Part 77 OE/AAA process and issues a determination indicating no objections to the proposed land use due to the potential thermal plume effects, that determination will be considered adequate evidence that the land use can proceed without creating this hazard.
17. Land uses which have the potential to attract birds are prohibited in the Rezoning Area, including the following:
- a. Waste disposal operations, including municipal and commercial solid waste landfills, trash transfer stations that handle waste that are not fully enclosed or lack ventilation and air filtration systems adequate to control odors escaping to the outdoors, and commercial or institutional composting operations that accept food waste
  - b. Water management facilities, including stormwater management facilities and artificial ponds, including water detention, retention, or recharge ponds, wastewater treatment facilities and associated settling ponds, and wetlands mitigation projects
18. Notwithstanding the building height restrictions listed in the HI zone, for proposed projects within the Rezoning Area, Future Property Owners and project developers will be required to comply with FAA notice requirements for proposed construction or alteration of objects by filing Form 7460-1, "Notice of Proposed Construction or Alteration," with the FAA, when the need for filing is indicated by FAA regulations. In general:
- a. Objects that penetrate a critical airspace surface, as defined by FAA regulations, and objects that the FAA determines are hazards are prohibited.

- b. Objects that do not penetrate a critical airspace surface and that the FAA issues a Determination of No Hazard (DNH) for, are permitted subject to the FAA's DNH conditions.
19. Future Property Owners will be required to incorporate features into the design and construction of buildings in the Rezoning Area where people work or are otherwise present to achieve an outdoor-to indoor noise level reduction of 25 decibels.
  20. Future Property Owners shall inform potential buyers that property located within the Rezoning Area falls within the airport influence area as delineated in the Make Marana 2040 General Plan and is subject to frequent overflight by general aviation aircraft.
  21. An avigation easement will be recorded concurrently with or prior to issuance of a building permit for any building in the Rezoning Area holding the Town of Marana harmless from any damages caused by noise, vibration, fumes, dust, fuel, fuel particles, or any other effects that may be caused by aircraft landing, departing or operating at or near the airport, not including the physical impact of aircraft or parts thereof.
  22. The following lighting systems are prohibited in the Rezoning Area if they are directed toward the final approach paths of aircraft:
    - a. Search lights (including temporary searchlights for special events, etc.)
    - b. Stroboscopic lights
    - c. Laser lights
    - d. A linear array of sequenced flashing lights
    - e. Any lighting systems that produce effects mimicking airport identification lighting, runway end identification lighting, or runway approach lighting
  23. Building materials that may produce glint and glare causing visual after-images or flash blindness in pilots and air traffic controllers are prohibited in the Rezoning Area. If the FAA reviews the proposed project through the 14 CFR Part 77 OE/AAA process and issues a final Notice of Determination indicating no objections to the potential glint and glare effects of the proposed building materials, the building materials may be used..

**Section 3.** All ordinances, resolutions and motions and parts of ordinances, resolutions, and motions of the Marana Town Council in conflict with the provisions of this ordinance are hereby repealed, effective as of the effective date of this ordinance.

**Section 4.** If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

PASSED AND ADOPTED by the Mayor and Council of the Town of Marana, Arizona, this 17<sup>th</sup> day of November, 2020.

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Mayor Ed Honea

ATTEST:

APPROVED AS TO FORM:

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Cherry L. Lawson, Town Clerk

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Jane Fairall, Interim Town Attorney