

**ORDINANCE NO. O2015.16**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, AMENDING THE CITY OF TEMPE ZONING MAP, PURSUANT TO THE PROVISIONS OF ZONING AND DEVELOPMENT CODE PART 2, CHAPTER 1, SECTION 2-106 AND 2-107, RELATING TO THE LOCATION AND BOUNDARIES OF DISTRICTS.**

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NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, as follows:

**Section 1.** That the City of Tempe Zoning Map is hereby amended, pursuant to the provisions of Zoning and Development Code, Part 2, Chapter 1, Sections 2-106 and 2-107, by amending the Planned Area Development Overlay to the existing CC (PAD), City Center with a Planned Area Development Overlay on 2.51 acres.

LEGAL DESCRIPTION

PARCEL NO. 1:

LOTS 1 TO 11, INCLUSIVE AND LOTS 14 AND 15, PLAT OF BLOCK 67 AND SUBDIVISION OF BLOCK 66, TEMPE, ACCORDING TO BOOK 8 OF MAPS, PAGE 1, RECORDS OF MARICOPA COUNTY, ARIZONA.

PARCEL NO. 2:

LOTS 12 AND 13, PLAT OF BLOCK 67 AND SUBDIVISION OF BLOCK 66, TEMPE, ACCORDING TO BOOK 8 OF MAPS, PAGE 1, RECORDS OF MARICOPA COUNTY, ARIZONA.

PARCEL NO. 3:

THE SOUTH 72 FEET OF THE EAST 137.5 FEET OF BLOCK 66, TEMPE, ACCORDING TO BOOK 2 OF MAPS, PAGE 26, RECORDS OF MARICOPA COUNTY, ARIZONA;

EXCEPT ALL OIL, GAS AND OTHER MINERAL RIGHTS IN OR UNDER SAID PROPERTY TOGETHER WITH THE EXCLUSIVE RIGHT TO USE SUCH PORTION OF SAID PROPERTY LYING MORE THAN 500 FEET BELOW THE SURFACE FOR THE EXTRACTION OF OIL, GAS AND MINERALS; HOWEVER, WITH NO RIGHTS OF SURFACE ENTRY WHATSOEVER AS RESERVED IN DEED RECORDED IN DOCKET 8063, PAGE 884, RECORDS OF MARICOPA COUNTY, ARIZONA.

PARCEL NO. 4:

THE NORTH 28 FEET OF THE SOUTH 100 FEET OF THE EAST 137.5 FEET OF BLOCK 66, TEMPE, ACCORDING TO BOOK 2 OF MAPS, PAGE 26, RECORDS OF MARICOPA COUNTY, ARIZONA;

EXCEPT ALL OIL, GAS AND OTHER MINERAL RIGHTS IN OR UNDER SAID PROPERTY TOGETHER WITH THE EXCLUSIVE RIGHT TO USE SUCH PORTION OF SAID PROPERTY LYING MORE THAN 500 FEET BELOW THE SURFACE FOR THE EXTRACTION OF OIL, GAS AND MINERALS; HOWEVER, WITH NO RIGHTS OF SURFACE ENTRY WHATSOEVER AS RESERVED IN DEED RECORDED IN DOCKET 8063, PAGE 884, RECORDS OF MARICOPA COUNTY, ARIZONA.

PARCEL NO. 5:

THOSE PORTIONS OF MAPLE AVENUE AND SECOND STREET ABANDONED BY ORDINANCE NO. 842 OF THE CITY OF TEMPE AND RECORDED IN DOCKET 13428, PAGE 487, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THAT PORTION OF MAPLE AVENUE LYING NORTH OF THE CENTERLINE OF SECOND STREET AND SOUTH OF THE SOUTH RIGHT-OF-WAY LINE OF FIRST STREET AS SHOWN ON MAP OF TEMPE, BOOK 2 OF MAPS, PAGE 26, RECORDS OF MARICOPA COUNTY, ARIZONA;

EXCEPT THE WEST HALF OF MAPLE AVENUE;

THAT PORTION OF SECOND STREET LYING WEST OF THE WEST RIGHT-OF-WAY LINE OF MILL AVENUE AND EAST OF THE CENTERLINE OF MAPLE AVENUE;

EXCEPT THE SOUTH HALF OF SECOND STREET.

PARCEL NO. 6:

THAT CERTAIN NORTH-SOUTH ALLEY IN BLOCK 66, TEMPE, ACCORDING TO BOOK 8 OF MAPS, PAGE 1, RECORDS OF MARICOPA COUNTY, ARIZONA, AS ABANDONED BY ORDINANCE NO. 95-09 OF THE CITY OF TEMPE AND RECORDED IN DOCUMENT NO. 95-163670;

EXCEPT AS TO ALL PARCELS ANY PORTION OF THE PROPERTY CONVEYED TO THE CITY OF TEMPE IN RECORDING NO. 98-0649301 MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THOSE PORTIONS OF LOT 11, BLOCK 66, AS SHOWN ON THE PLAT OF TEMPE AS RECORDED IN BOOK 2 OF MAPS, PAGE 26 AND AMENDED IN BOOK 8 OF MAPS, PAGE 1, AND THE ADJACENT ABANDONED RIGHT-OF-WAY OF MAPLE AVENUE AS RECORDED IN DOCKET 13428, PAGE 487, RECORDS OF MARICOPA COUNTY, ARIZONA, LOCATED IN SECTION 15, TOWNSHIP 1 NORTH, RANGE 4 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHERLY RIGHT-OF-WAY LINE OF FIRST STREET AT THE NORTHEAST CORNER OF OFFICE PLAZA 222 AS RECORDED IN BOOK 236 OF MAPS, PAGE 48, RECORDS OF MARICOPA COUNTY, ARIZONA; THENCE NORTH 89° 50' 54" EAST, A DISTANCE OF 142.31 FEET ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE; THENCE SOUTH 83° 16' 56" WEST, A DISTANCE OF 131.76 FEET TO A TANGENT CURVE; THENCE SOUTHWESTERLY, A DISTANCE OF 11.46 FEET ALONG THE ARC OF SAID CURVE, BEING CONCAVE NORTHWESTERLY, HAVING A RADIUS OF 544.58 FEET, THROUGH A CENTRAL ANGLE OF 01° 12' 21" TO THE EAST LINE OF SAID OFFICE PLAZA 222; THENCE NORTH 00° 13' 59" WEST, A DISTANCE OF 16.26 FEET ALONG SAID WEST LINE TO THE POINT OF BEGINNING.

DESCRIBED PROPERTY BEING LOCATED IN THE SOUTHWEST QUARTER OF SECTION 15, TOWNSHIP 1 NORTH, RANGE 4 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA AND COMPRISING AN AREA OF 109,293 SQUARE FEET OR 2.5090 ACRES MORE OR LESS.

TOTAL AREA IS 2.51 GROSS ACRES.

**Section 2.** Further, those conditions of approval imposed by the City Council as part of **Case # PAD14012** are hereby expressly incorporated into and adopted as part of this ordinance as follows:

1. All conditions originally approved with the Planned Area Development PAD07021 are null and void, and shall be replaced by the conditions within this amended PAD14012.
2. All requirements of the Development Agreement (Ordinance No. O2014.71) shall be met in accordance with the schedule of performance within the agreement.
3. If a complete application for a building permit has not been submitted within two (2) years after the approval date by City Council (April 23, 2017), a meeting with the city council shall be held to determine the processing of a revocation for the PAD. The period of approval is extended upon the time review limitations set forth for building permit applications, pursuant to Tempe building safety administrative code, section 8-104.15. An expiration of the building permit application or failure to submit the building permit application will result in automatic scheduling of a meeting with city council. A reversion shall be processed in accordance with the public hearing procedures with the city council.
4. The north elevation of the hotel shall comply with all building code requirements for fire separation distance and percentage of allowable openings, based on proximity to the property lines or assumed property lines, the existing adjacent designated buildings and structures, and an approved design for future phase two. Phase two design shall be approved by the Historic Preservation Commission and City Council.
5. The owner shall not allow the Historic Property to fall into a state of disrepair, so as to result in the deterioration of any significant exterior feature, which would have a detrimental effect on the distinctive character of the property itself. The condition of the property at the time of its designation shall be the standard of reference for the evaluation of maintenance and future deterioration. The details of this condition shall comply with Tempe City Code, Historic Preservations Ordinance Section 14A-9.
6. Submit proposed Art in Private Development (AIPD) for the site to the Community Services Cultural Services Division prior to submittal of construction documents for building permit review. Coordinate the proposed artwork with construction documents to assure timely completion of the proposed project.
7. The property owner(s) shall sign a waiver of rights and remedies form. By signing the form, the Owner(s) voluntarily waive(s) any right to claim compensation for diminution of Property value under A.R.S. §12-1134 that may now or in the future exist, as a result of the City's approval of this Application, including any conditions, stipulations and/or modifications imposed as a condition of approval. The signed form shall be submitted to the Community Development Department no later than thirty days from the date of the final decision, or the PAD approval shall be null and void.
8. The applicant shall provide proof of Federal Aviation Administrative (Form 7160-1) clearance for the building height to the top of the highest structural element prior to issuance of Building Permits.
9. The applicant shall contact the Federal Aviation Administration (Form 7160-1) for clearance on construction equipment incidentals necessary for the construction of tall buildings within the flight path prior to issuance of Building Permits.
10. Phase II historic building to remain, no additional building structure above the roof of the historic L-shaped Sonoran row-house portion of the building located along Mill Avenue and Rio Salado Parkway (approximately 20' along each frontage).

11. An Encroachment Permit must be obtained from the Engineering Department prior to submittal of construction documents for building permit. The limitations of this encroachment include;
  - a. a maximum projection of eight (8) feet for any upper level balconies or decorative architectural features of the building,
  - b. a minimum clear distance of twenty-four (24) feet between the sidewalk level and any overhead structure, and
  - c. any other requirements described by the encroachment permit or the building code.
12. The Planned Area Development Overlay for MILL & RIO SALADO (dated March 9, 2015) shall be put into proper engineered format with appropriate signature blanks and kept on file with the City of Tempe's Community Development Department prior to issuance of building permits.
13. An amended Subdivision Plat is required for this development and shall be recorded prior to issuance of building permits.
14. Any alteration or demolition of the existing building or new construction within the legally described boundaries of the History Overlay of the Hayden House shall require the review of and a decision by the Historic Preservation Commission prior to any other decision by staff, Development Review Commission or City Council. Pursuant to City Code Section 14A-8, the Historic Preservation Commission's decision may be appealed to the City Council.
15. The maximum building height shall include all mechanical, screening devices and other structures on the building.
16. The easternmost building adjacent to Mill Avenue, south of the Hayden House, shall maintain a 25 foot step back away from the eastern property line, for the portion of building taller than 40 feet, as indicated on the plans presented (dated March 9, 2015.).
17. Tempe Historic Preservation Office ("HPO") Historic Preservation Commission ("HPC") review and decision-making authority pertaining to the Mill & Rio Salado development site ("Overall Site") is limited to the historic 1873-1924 building courtyard ("Historic Property"), which is currently defined as a rectangular area measuring 76' 6" by 134' 6", more or less, located at the northeast corner of the overall development site. This 76' 6" by 134' 6" area is described in Historic Preservation Designation Report HPO- 99.76 and, more specifically, in the "Preliminary 1873-1924 C. T. Hayden House Building Courtyard Description" issued by HPO on December 19, 2014. A final legal description will be issued following a survey of the site, the results of which require approval of both applicant and the Community Development Department.
18. No excavation, demolition, new construction, alterations, modifications, or other development shall occur on the Overall Site until a protection plan, as detailed below, has been approved by the Community Development Department. The protection plan shall include:
  - a. prior to issuance of building permits, the Geotechnical Report , including an analysis of subsurface conditions for the Overall Site, shall be submitted documenting soil conditions of the property and construction methodologies for subterranean shoring to prevent erosion or structural damage to the portion of the Historic Property.
  - b. an analysis of said conditions by a structural engineer experienced with historic adobe buildings I structures ("Qualified Engineer"), along with a shoring and protection plan for preventing damage to, or structural failure of, the Historic Property resulting from any and all excavation construction dewatering activities on the Overall Site.
  - c. prior to issuance of building permits, the Structural Report shall document construction methods to prevent vibrational damage to the portion of the Historic Property during construction.

19. Phase one subsurface excavation on the Overall Site shall be held back a minimum of 7 (seven) feet from the Historic Property.
20. Dewatering shall not begin until the Qualified Engineer has reviewed and revised, as necessary, a plan for preventing damage to, or structural failure of, the Historic Property. Prior to issuance of building permits, a Hydrological Report shall be submitted documenting aquifer levels of the property and construction methodologies for dewatering and subsidence prevention for protection of the Historic Property.
21. Applicant's phase two proposal including a rehabilitation plan for work on the Historic Property will be submitted to the Community Development Department and in accordance with the Historic Preservation Ordinance. The rehabilitation plan may propose:
  - a. appropriate alterations and modifications to the Historic Property, including the construction of new and or additional support functions (i.e. kitchen and restrooms), circulation areas, and dining rooms areas;
  - b. the demolition of historic and or non-historic elements of the Historic Property;
  - c. the introduction of significant new elements, and;
  - d. additional subsurface excavation that may encroach upon the boundaries of the Historic Property.
22. The rehabilitation plan shall include the full description of the "Structure" and "Airspace" to be added to Exhibit 8 of Exhibits D ("Facade Conservation Easement") and E ("Airspace Conservation Easement"), respectively, of City of Tempe contract number C2014-226 ("226").
23. Any work involving the Historic Property, including investigative removal or other exploratory procedures necessary to gather information relating to the integrity and or significance of any element of the Historic Property prior to drafting a rehabilitation plan, must be reviewed and approved by the Community Development Department.
24. Applicant shall contract with a qualified firm for preparation of an outline format Historic American Buildings Survey ("HABS") report documenting the entirety of the Historic Property, which is to be completed prior to commencement of any excavation construction, etc., on the overall development site. A duplicate copy of all HABS material submitted to the National Park Service shall be deposited with the Community Development Department.
25. Onsite archaeological monitoring shall be provided during any demolition or excavation activities occurring on the Overall Site. Should said archaeological survey reveal the existence of any extraordinary prehistoric or historic artifacts not funerary in nature, the developer, in consultation with the Community Development Department, shall endeavor to salvage, or, at minimum, thoroughly document said artifacts.

**Section 3.** Pursuant to City Charter, Section 2.12, ordinances are effective thirty (30) days after adoption.

**PASSED AND ADOPTED** BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, this \_\_\_\_\_ day of \_\_\_\_\_ 2015.

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Mark W. Mitchell, Mayor

ATTEST:

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Brigitta M. Kuiper, City Clerk

APPROVED AS TO FORM:

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Judith R. Baumann, City Attorney