ORDINANCE NO. 5405

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, AMENDING MESA CITY CODE TITLE 11, CHAPTER 67 SECTION 4 (E) CONDITIONS REQUIRING MANDATORY SUPERMAJORITY VOTE BY CITY COUNCIL AND PROVIDING PENALTIES FOR THE VIOLATION THEREOF.

Text written in **BOLD ALL CAPS** indicates new language. ~~Strikethrough~~ fonts indicate proposed language to be deleted.

WHEREAS, Title 11, Chapter 67 Section 4 of the Mesa City Code entitled "Review of Applications" governs conditions requiring a supermajority vote by City Council; and

WHEREAS, the Arizona state legislature recently adopted changes to A.R.S. 9-462.04 modifying the eligibility, voting, and filing requirements for written protests; and

WHEREAS, Mesa City Code Section 11-67-4 (E) regulates the conditions when a vote of the supermajority of City Council is required; and

WHEREAS, section 11-67-4 (E) of the Mesa City Code is being amended to reflect the changes in state law.

THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, AS FOLLOWS:

Section 1: Mesa City Code section 11-67-4 (E) is hereby amended as follows:

E. Conditions Requiring Mandatory Supermajority Vote by City Council. In the event the City Council is asked to decide upon any proposed Rezoning Amendment, Council Use Permit, Development Unit Plan, Site Plan Review or Site Plan Modification, amendments to such proposals, or appeals of any such proposals, and upon evidence that all conditions described in ~~one (1), through 3,~~ **AND 2** below, have been satisfied, then the proposal shall become effective only by favorable vote of three-fourths (3/4) of all members of the City Council. If any members of the City Council are unable to vote on such a question because of a conflict of interest, then the required number of votes for passage of the question shall be three-fourths (3/4) of the remaining membership of the City Council, provided that such required number of votes shall in no event be less than a majority of the full membership of the Council. **FOR THE PURPOSES OF THIS SECTION, THE REQUIRED NUMBER OF VOTES SHALL BE ROUNDED TO THE NEAREST WHOLE NUMBER.** ~~Notwithstanding the foregoing, in all cases, a motion shall pass only if a minimum of 4 Council members vote in favor of the motion.~~

1. A **WRITTEN** protest, **SIGNED BY THE PROPERTY OWNERS OPPOSING THE** ~~in writing against such a~~ proposal, is filed by the owners of 20-percent or more of the area **AND NUMBER** of lots, **TRACTS, AND**

CONDOMINIUM UNITS WITHIN THE ZONING AREA, AS DEFIND IN A.R.S. § 9-462.04. ~~described by conditions in Section 2, below.~~

~~2. Conditions:~~

a. ~~All lots included in the proposal, or~~

b. ~~Within 150 feet and immediately adjacent to the rear or any side of the proposal site, or~~

~~c. Extending 150 feet from the street frontage of the lots opposite the lots included in the proposal.~~

~~3~~2. ~~Such~~ **SIGNED** written protests **MUST** ~~shall~~ be filed in the office of the **CITY CLERK** ~~Planning Director~~ by no later than 12:00 noon the Monday of the week prior to the City Council meeting at which the proposal is scheduled to be considered, unless City offices are closed on that Monday because of a local, State or national holiday, then the protest must be filed by 12:00 noon the next business day.

Section 2: PENALTY.

CIVIL PENALTIES:

A. Any owner, occupant or responsible party who is found responsible for a civil violation of this Ordinance, whether by admission, default, or after a hearing, shall pay a civil sanction of not less than $150 or more than $1,500, per citation. A second finding of responsibility within 24 months of the commission of a prior violation of this Chapter shall result in a civil sanction of not less than $250 or more than $2,500. A third finding of responsibility within 36 months of the commission of a prior violation of this Chapter shall result in a civil sanction of not less than $500 or more than $2,500. In addition to the civil sanction, the responsible party shall pay the applicable fees and charges set forth in the City's Development and Sustainability Department (Code Compliance) Schedule of Fees and Charges, and may be ordered to pay any other applicable fees and charges.

B. The 36-month provision of subsection (A) of this Section shall be calculated by the dates the violations were committed. The owner, occupant, or responsible party shall receive the enhanced sanction upon a finding of responsibility for any violation of this Chapter that was committed within 36 months of the commission of another violation for which the owner or responsible party was convicted or was otherwise found responsible, irrespective of the order in which the violations occurred or whether the prior violation was civil or criminal.

C. Each day in which a violation of this Ordinance continues, or the failure to perform any act or duty required by this Ordinance or by the Civil Hearing Officer continues, shall constitute a separate civil offense.

HABITUAL OFFENDER:

A. A person who commits a violation of this Ordinance after previously having been found responsible for committing 3 or more civil violations of this Ordinance within a 24-month period — whether by admission, by payment of the fine, by default, or by judgment after

hearing — shall be guilty of a class 1 criminal misdemeanor. The Mesa City Prosecutor is authorized to file a criminal class 1 complaint in the Mesa City Court against habitual offenders. For purposes of calculating the 24-month period under this paragraph, the dates of the commission of the offenses are the determining factor.

B. Upon conviction of a violation of this Subsection, the Court may impose a sentence or incarceration not to exceed 6 months in jail; or a fine not to exceed $2,500, exclusive of penalty assessments prescribed by law; or both. The Court shall order a person who has been convicted of a violation of this Section to pay a fine of not less than $500 for each count upon which a conviction has been obtained. A judge shall not grant probation to or suspend any part or all of the imposition or execution of a sentence required by this Subsection except on the condition that the person pay the mandatory minimum fines as provided in this Subsection.

C. Every action or proceeding under this Section shall be commenced and prosecuted in accordance with the laws of the State of Arizona relating to criminal misdemeanors and the Arizona Rules of Criminal Procedure.

Section 3: For the purposes of Section 11-67-4 (E), if the required number of votes ends in a half (.5), the number shall be rounded up to the nearest whole number.

Section 4: RECITIALS. The recitals above are fully incorporated in this Ordinance by reference.

Section 5: EFFECTIVE DATE. The effective date of this Ordinance shall be thirty (30) days following adoption by the Mesa City Council.

Section 6: SEVERABILITY. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance or any part of the material adopted herein by reference is for any reason held to be invalid or unconstitutional by the decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, this 28th day of August, 2017.

APPROVED:

Mayor

ATTEST:

City Clerk

CITY OF MESA CORPORATE SEAL MARICOPA COUNTY, AZ