

CITY OF PHOENIX, OREGON

ORDINANCE NO. 1035

**AN ORDINANCE OF THE CITY OF PHOENIX
TO AMEND CHAPTER 2.11 OF AND ADD CHAPTER 2.12 TO
THE LAND DEVELOPMENT CODE REGARDING THE HOLDING ZONE
AND AN EXCLUSIVE AGRICULTURE OVERLAY, AND APPLYING THE
EXCLUSIVE AGRICULTURE OVERLAY TO CERTAIN PROPERTIES
TO BE ANNEXED TO THE CITY THROUGH ORD. 1033**

WHEREAS, Oregon law requires that state, regional and local governments adopt and periodically update coordinated Comprehensive Plans and implementing ordinances; and

WHEREAS, the City of Phoenix implements its Comprehensive Plan through Ordinance No. 851, the Phoenix Land Development Code (LDC), which was adopted in 2005 and substantially modified through Ordinance No. 999, which was adopted in 2019; and

WHEREAS, periodic Development Code updates are warranted in response to identified issues where the existing language no longer serves the City's interests or may in fact be inconsistent with changes in State and/or case law; and

WHEREAS, the amendment to the City's Land Development Code (LDC) contained in Exhibit 1 will: 1) create an Exclusive Agriculture (E-A) Overlay (Chapter 2.12) to provide a land use classification that allows for the preservation of agriculture and agricultural uses on properties annexed to the City; and 2) amend the Holding Zone (Chapter 2.11) to allow for agricultural use (when the E-A Overlay is applied) and for the development of public and private infrastructure necessary to facilitate future urban development; and

WHEREAS, the owners of the following properties have requested the properties receive the E-A Overlay upon annexation: 381W03 TL 1600, 381W04 TLs 500, 381W09A TLs 100, 103 & 105 and 381W10 TLs 100, 101 & 103 •; and

WHEREAS, the properties were approved for annexation through Ord. 1033 contingent on the City creating an exclusive agricultural overlay; and

WHEREAS, on October 9, 2023, the Planning Commission conducted a duly noticed public hearing on the proposed amendment, affording all citizens an opportunity to be heard on the subject; and

• A property line adjustment has been completed in this area to match parcel boundaries with city limit boundaries following annexation through Ordinance 1033. The final tax lot assignments have not been completed. All properties zoned Exclusive Farm Use prior to annexation through Ord. 1033 are assigned the E-A Overlay in addition to being Zoned Holding-Zone.

WHEREAS, following receipt of staff testimony at the October 9, 2023 public hearing, the Planning Commission deliberated and forwarded a unanimous recommendation of approval to the City Council; and

WHEREAS, the City Council has fully reviewed the record and deems all notices and comments to the record as compliant with state law and the City of Phoenix Land Development Code, and that no further action is necessary before the Planning Commission; and

WHEREAS, the City Council has considered the Planning Commission's recommendation, the staff reports in this matter, and testimony and evidence of interested parties, and has evaluated the proposed amendments against Statewide Goals, state, county, and regional requirements, the Comprehensive Plan, and other applicable standards.

NOW, THEREFORE, THE CITY OF PHOENIX ORDAINS AS FOLLOWS:

SECTION 1. Findings. The City Council hereby adopts as findings and conclusions of the foregoing recitals.

SECTION 2. Order. The City Council hereby adopts the amendment to the City of Phoenix Land Development Code attached as Exhibit 1 and the City of Phoenix Land Use Districts map attached as Exhibit 2 incorporated as set forth fully herein.

SECTION 3. Limitation. Except as expressly amended in this amendment, all other sections and provisions of the original ordinance are still in full force and effect.

SECTION 4. Staff Directive. To reflect adoption of the ordinance, Staff is directed to make conforming changes to the City of Phoenix Land Development Code necessary to incorporate the amendment adopted herein.

SECTION 5. Severability. The sections, subsections, paragraphs and clauses of this ordinance are severable. The invalidity of one section, subsection, paragraph, or clause shall not affect the validity of the remaining sections, subsections, paragraphs and clauses.

SECTION 6. Codification. Provisions of this Ordinance shall be incorporated in the City Code and the word "ordinance" may be changed to "code", "article", "section", "chapter" or another word, and the sections of this Ordinance may be renumbered, or re-lettered, provided however that any Whereas clauses and boilerplate provisions (i.e. Sections 2-4) need not be codified and the City Recorder is authorized to correct any cross-references and any typographical errors.

SECTION 7. Emergency/Effective Date. This Ordinance being necessary for the immediate preservation of the public peace, health, and safety, an emergency is declared to exist, and this Ordinance takes effect on its passage.

PASSED AND ADOPTED by the City Council and signed by me in authentication of thereof on this 06th day of November, 2023.



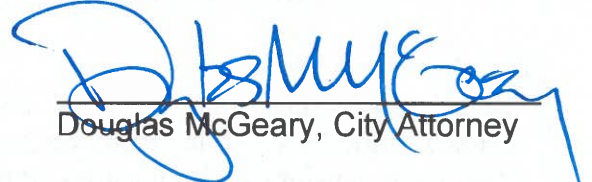
Terry Baker, Mayor

ATTEST:



Bonnie Pickett, City Recorder

Approved as to form:



Douglas McGeary, City Attorney

**ORDINANCE NO. 1035
TO AMEND CHAPTER 2.11 OF AND ADD CHAPTER 2.12 TO
THE LAND DEVELOPMENT CODE
"EXHIBIT 1"**

Chapter 2.11 – Holding Zone (H-Z)

Sections

2.11.1 – Purpose.....	103
2.11.2 – Permitted Land Uses.....	103
2.11.3 – Land Division Prohibited.....	103

2.11.1 – Purpose

The primary purpose of this zoning district is to provide a zoning designation for properties annexed to the City that have not yet been tested for facility adequacy to allow development of urban level densities and intensities. Properties will receive the City zoning designation which most closely matches existing Jackson County zoning upon annexation. Where no generally equivalent zoning exists (e.g., Exclusive Farm Use (EFU) properties), properties will be assigned the Holding Zone designation upon annexation unless a concurrent application for Land Use District Map Amendment (zone change), meeting the standards of Chapter 4.7, is submitted and approved.

2.11.2 – Permitted Uses

Development and improvements within an H-Z zoning district shall be restricted to:

- New construction or remodeling of one single-family dwelling and accessory dwelling unit per existing parcel.
- The construction/installation of public and private facilities (including municipal water, sanitary sewer, public roads, and franchise utilities) necessary to facilitate future urban development.
- Agricultural buildings and other improvements directly related to farming when the Exclusive Agricultural (E-A) Overlay is also applied.

2.11.3 – Land Division Prohibited

Except for portions of existing lots or parcels that have received zoning by meeting the standards of Chapter 4.7, no new parcels or lots may be created in the Holding Zone. This section does not preclude the adjustment of existing property lines.

2.12 – Exclusive Agriculture (E-A) Overlay

Sections

2.12.1 – Purpose.....	104
2.12.2 – Criterion for Application of E-A.....	104
2.12.3 – Criterion for Removal of E-A.....	104

2.12.1 – Purpose

The E-A overlay district is intended to provide a land use classification within an urban area that allows for the preservation of agriculture and agricultural uses through zoning.

2.12.2 – Criterion for Application of E-A

At the request of the property owner, the City may apply the E-A overlay to a parcel(s) if the use on the parcel(s) is agriculture, as defined herein.

2.12.3 – Criterion for Removal of E-A

The E-A overlay may be removed utilizing the Land Use District Map Amendment (zone change) procedures of Chapter 4.7. For removal of the E-A overlay, the property owner must certify that all agriculture and agriculture-related uses not otherwise permitted by the underlying zoning district have been terminated by the date of application for removal of the E-A overlay, and shall not be considered legal nonconformities.

2.12.4 – Permitted Uses and Development, E-A

Development and improvements within an E-A overlay district shall be restricted to:

- Agricultural buildings and other improvements directly related to farming.
- Property line adjustments.
- New construction or remodeling of one single-family dwelling and accessory dwelling unit per existing parcel.
- The construction/installation of public and private facilities (including municipal water, sanitary sewer, public roads, and franchise utilities) necessary to facilitate future urban development.



O'CONNOR LAW | LLC

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October 6, 2023

Via Email Submittal

Joe Slaughter
Deputy City Manager
City of Phoenix
220 N. Main Street
Phoenix, OR 97535

RE: DC23-02 / ORDINANCE NO. 1034: AN ORDINANCE OF THE CITY OF PHOENIX TO AMEND CHAPTER 2.11 AND ADD CHAPTER 2.12 TO THE LAND DEVELOPMENT CODE REGARDING THE HOLDING ZONE AND CREATION OF EXCLUSIVE AGRICULTURAL OVERLAY AND APPLYING THE EXCLUSIVE AGRICULTURAL OVERLAY TO CERTAIN PROPERTIES TO BE ANNEXED THROUGH ORDINANCE 1033

Mr. Slaughter:

This firm represents Arrowhead Ranch Holding Company, LLC, an Oregon limited liability company ("Arrowhead Ranch"). Arrowhead Ranch is the owner of certain real property located in Jackson County, Oregon, and commonly known as Township 38 South, Range 1 West, Section 03, Tax Lot 1600; Township 38 South, Range 1 West, Section 04, Tax Lot 500; Township 38 South, Range 1 West, Section 09A, Tax Lots 100, 103 and 105; Township 38 South, Range 1 West, Section 10, Tax Lots 100, 101 and 103 (collectively, "the Arrowhead Ranch Property"). The purpose of this correspondence is to emphasize Arrowhead Ranch's support of proposed Ordinance No. 1034.

Your attention to this matter is greatly appreciated.

Yours truly,
O'CONNOR LAW, LLC



DANIEL B. O'CONNOR



DEVELOPMENT CODE AMENDMENT – DC23-02 STAFF REPORT

File: DA23-02 - Creation of an Exclusive Agriculture Overlay - Chapter 2.12 and Modification of Holding Zone – Chapter 2.11 (Type IV Text Amendment)

Location: N/A

Land Use District: N/A

Date Notice of Application Published: September 15, 2023

Date of Hearing: October 9, 2023 (1st evidentiary hearing)

I. OWNER INFORMATION

N/A

II. APPLICANT

City of Phoenix

Joe Slaughter, Community & Economic Development Director

PO Box 330

Phoenix, OR 97535

III. SUMMARY OF PROPOSED AMENDMENTS

The proposed amendments to the Phoenix Land Development Code will create an Exclusive Agriculture (E-A) Overlay to provide a land use classification that allows for the preservation of agriculture and agricultural uses on properties annexed to the City. The overlay may only be applied upon the request of the property owner, and only if the use on the parcel(s) is agriculture. The overlay can be removed utilizing the Land Use District Map Amendment (zone change) procedures of Chapter 4.7. For removal of the E-A overlay, the property owner must certify that all agriculture and agriculture-related uses not otherwise permitted by the underlying zoning district have been terminated by the date of application for removal of the E-A overlay, and shall not be considered legal nonconformities. The proposed amendments will also amend the Holding Zone (Chapter 2.11) to allow for agricultural use (when the E-A Overlay is applied) and for the development of public and private infrastructure necessary to facilitate future urban development.

The City of Phoenix was allocated \$4,500,000 in the 2023 legislative session (see Section 248, SB 5506 attached) for infrastructure development in the South Valley Employment Center, which is the employment portions of PH-5. Much of this area will be annexed to the City under file number AN23-02 to help facilitate the development of infrastructure into the area. As described in the annexation ordinance (ORD. 1033), the PH-5 properties¹ will be assigned the Holding Zone designation upon annexation as the land will not be available for urban development until Urbanization Element Policies 2.1 – 2.3, along with all applicable provisions of Phoenix Land Development Code Chapter 4.7 have been addressed. The owners of the land have requested that the E-A Overlay be assigned to the properties to allow

¹ Also referred to Arrowhead properties concerning ownership or EFU properties concerning zoning.



Community & Economic Development Department
220 N. Main Street / P.O. Box 330
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for the continuation of existing agricultural uses until the property is made available for urban development.

IV. APPLICABLE CRITERIA

PLDC, Chapter 4.1.6 – Type IV Procedure (Legislative)
PLDC, Chapter 4.7.2 – Legislative Amendments

V. AGENCY COMMENTS

N/A

VI. PUBLIC COMMENTS

None

VII. RECOMMENDATION

Based on the findings for the text amendment, staff recommends **APPROVAL** of the amendments as outlined in the Proposed Final Order and that the amendments be forwarded to the City Council for consideration.

VIII. PROPOSED MOTION

"I move to recommend City Council approve the text amendment to add Chapter 2.12 and amend Chapter 2.11 in the Phoenix Land Development Code as outlined in the Planning Commission Final Order."

IX. EXHIBITS

- A. Specific Text to be Amended
- B. PC Proposed Final Order
- C. Section 248, SB 5506

Respectfully Submitted,

Joe Slaughter
Community & Economic Development Director

Exhibit "A"

Text to be added/amended in the Phoenix Development Code:

New Text = **Bold**

Deleted Text = ~~Strikethrough~~

Chapter 2.11 – Holding Zone (H-Z)

Sections

2.11.1 – Purpose.....	103
2.11.2 – Permitted and Conditionally Permitted Land Uses.....	103
2.11.3 – Land Division Prohibited.....	103

2.11.1 – Purpose

Purpose. The primary purpose of this zoning district is to provide a zoning designation for properties annexed to the City that have not yet been tested for facility adequacy to allow development of urban level densities and intensities. Properties will receive the City zoning designation which most closely matches existing Jackson County zoning upon annexation. Where no generally equivalent zoning exists (e.g., Exclusive Farm Use (EFU) properties), properties will be assigned the Holding Zone designation upon annexation unless a concurrent application for Land Use District Map Amendment (zone change), meeting the standards of Chapter 4.7, is submitted and approved.

2.11.2 – Permitted Uses

~~Properties in this zoning district are allowed one dwelling unit meeting the development standards of the R-1 zone and one accessory dwelling.~~

Development and improvements within an H-Z zoning district shall be restricted to:

- **New construction or remodeling of one single-family dwelling and accessory dwelling unit per existing parcel.**
- **The construction/installation of public and private facilities (including municipal water, sanitary sewer, public roads, and franchise utilities) necessary to facilitate future urban development.**
- **Agricultural buildings and other improvements directly related to farming when the Exclusive Agricultural (E-A) Overlay is also applied.**

2.11.3 – Land Division Prohibited

Except for portions of existing lots or parcels that have received zoning by meeting the standards of Chapter 4.7, no new parcels or lots may be created in the Holding Zone. This section does not preclude the adjustment of existing property lines.

2.12 – Exclusive Agriculture (E-A) Overlay

Sections

2.12.1 – Purpose..... 104
2.12.2 – Criterion for Application of E-A..... 104
2.12.3 – Criterion for Removal of E-A..... 104

2.12.1 – Purpose

The E-A overlay district is intended to provide a land use classification within an urban area that allows for the preservation of agriculture and agricultural uses through zoning.

2.12.2 – Criterion for Application of E-A

At the request of the property owner, the City may apply the E-A overlay to a parcel(s) if the use on the parcel(s) is agriculture, as defined herein.

2.12.3 – Criterion for Removal of E-A

The E-A overlay may be removed utilizing the Land Use District Map Amendment (zone change) procedures of Chapter 4.7. For removal of the E-A overlay, the property owner must certify that all agriculture and agriculture-related uses not otherwise permitted by the underlying zoning district have been terminated by the date of application for removal of the E-A overlay, and shall not be considered legal nonconformities.

2.12.4 – Permitted Uses and Development, E-A

Development and improvements within an E-A overlay district shall be restricted to:

- Agricultural buildings and other improvements directly related to farming.
- Property line adjustments.
- New construction or remodeling of one single-family dwelling and accessory dwelling unit per existing parcel.
- The construction/installation of public and private facilities (including municipal water, sanitary sewer, public roads, and franchise utilities) necessary to facilitate future urban development.

EXHIBIT "B"



BEFORE THE PHOENIX PLANNING COMMISSION

STATE OF OREGON, CITY OF PHOENIX

IN THE MATTER OF PLANNING FILE NO. DC23-02 ADDING)
CHAPTER 2.12 - EXCLUSIVE AGRICULTURE (E-A) OVERLAY,) ORDER
AND AMENDING CHAPTER 2.11 - HOLDING ZONE (H-Z) IN)
THE PHOENIX LAND DEVELOPMENT CODE, THE PHOENIX)
PLANNING COMMISSION FINDS

1. The Planning Commission held a properly noticed public hearing on this matter on October 9, 2023;
2. The Planning Commission asked the Community & Economic Development Director to present a Staff report and a final order with findings and recommendations at the public hearing;
3. At the public hearing evidence was presented and the public was given an opportunity to comment;
4. The Planning Commission finds that the proposed text amendment is consistent with the Phoenix Comprehensive Plan and the Phoenix Land Development Code.

IT IS HEREBY ORDERED THAT based on the information presented in the staff report and the following findings of fact, the Phoenix Planning Commission recommends approval of the proposed text amendment to the Phoenix Land Development Code, adding Chapter 2.12 – Exclusive Agriculture (E-A) Overlay and amending Chapter 2.11 – Holding Zone (H-Z).

In the following, any text quoted directly from City codes appears in italics; Planning Commission findings appear in regular typeface.

PHOENIX LAND DEVELOPMENT CODE

4.7.1 Purpose

The purpose of this Chapter is to provide standards and procedures for legislative and quasi-judicial amendments to this Code and the land-use district map. These will be referred to as "map and text amendments." Amendments may be necessary from time to time to reflect changing community conditions, needs, and desires, to correct mistakes, or to address changes in the law.

4.7.2 Legislative Amendments

A. Legislative Amendments. *Legislative amendments are policy decisions made by City Council. They are reviewed using the Type IV Procedure in Chapter 4.1.6 – Type IV Procedure (Legislative) and shall conform to the criteria listed in 4.7.2.B and to Chapter 4.7.6 – Transportation Planning Rule Compliance, as applicable.*

FINDING: As a legislative amendment and consistent with the Type IV procedures in Chapter 4.1.6, the Planning Commission shall make a recommendation to the City Council on this amendment pursuant to the criteria in Chapter 4.7.2 (B) and Chapter 4.7.6 below. As part of this requirement, the Planning Commission held a properly noticed public hearing on the matter on October 9, 2023. **The standard is met.**

B. Criteria for Legislative Amendments.

The text of this Development Code may be recommended for amendment and amended provided that all the following criteria are met:

- 1. The proposed amendment is consistent with the purpose of the subject section and article.*
- 2. The proposed amendment is consistent with other Provisions of this Code.*
- 3. The proposed amendment is consistent with the goals and policies of the Comprehensive Plan, and most effectively carries out those goals and policies of all alternatives considered.*

FINDING: The text amendment as proposed will create Chapter 2.12 of the Land Development Code. There is no existing “purpose” for this Chapter in the Code. The “purpose” will be adopted along with the creation of the other details of the Chapter. The timing of the creation of this Chapter, and the “exclusive agriculture overlay” it accomplishes, is based on the need to annex large tracts of land, currently zoned EFU in the County, to facilitate the development of infrastructure into these areas. The land will not be available for urban levels of development until Urbanization Element Policies 2.1 – 2.3, along with all applicable provisions of Phoenix Land Development Code Chapter 4.7 have been addressed. The assignment of the proposed Exclusive Agriculture Overlay will allow for the continued use of the property for agriculture upon annexation. The purpose of Chapter 2.11 is to provide a zoning designation for properties annexed to the City that have not yet been tested for facility adequacy to allow for development of urban level densities and intensities. The proposed changes to this chapter are consistent with the purpose of the chapter as they, along with the E-A Overlay, allow for the continuation of agricultural uses and the construction of urban infrastructure, while still restricting urban development.

The proposed E-A Overlay will be used in tandem with the Holding Zone designation to allow for the continuation of agricultural uses on properties annexed to the City prior to that land being available for urban development. This is an interim step

in the zoning process that will simplify the development of urban infrastructure while also preserving the current use. The changes to the holding zone will also allow for the continuation of agriculture use and the development of urban infrastructure. These efforts support portions of the Land Use and Urbanization Elements in providing a coordinated process for the urbanization of the lands recently added to the City's UGB. Prior to developing lands added to the UGB from urban reserve area PH-5, the owners/developers must first submit an application for a Comprehensive Plan amendment to adopt specific area or neighborhood plans consistent with Policy 2.1. of the Urbanization Element and the City must adopt applicable standards per Policies 2.2 and 2.3, which safeguard against parcelization and establish an industrial employment zone for the area. This is one of several steps to be taken in amending the Comprehensive Plan and Development Code to facilitate the development of these areas recently added to the UGB. **The criteria are met.**

4.7.4 – Conditions of Approval

A quasi-judicial decision may be for denial, approval, or approval with conditions. A legislative decision may be approved, modified, or denied.

FINDING: As a legislative amendment, no conditions of approval are warranted or proposed. **The standard is met.**

4.7.6 – Transportation Planning Rule Compliance

A. When a development application includes a proposed comprehensive plan amendment or land use district change, the proposal shall be reviewed to determine whether it significantly affects a transportation facility, in accordance with Oregon Administrative Rule (OAR) 660-012-0060. Significant means the proposal would:

- 1. Change the functional classification of an existing or planned transportation facility. This would occur, for example, when a proposal causes future traffic to exceed the capacity of collector street classification, requiring a change in the classification to an arterial street, as identified by the Comprehensive Plan and the Transportation System Plan; or*
- 2. Change the standards implementing a functional classification system; or*
- 3. Allow types or levels of land use that would result in levels of travel or access what are inconsistent with the functional classification of a transportation facility; or*
- 4. Reduce the level of service of the facility below the minimum acceptable level identified in the Comprehensive Plan and the Transportation System Plan.*

FINDING: The proposed amendments have no direct impact on the functional classification of existing or planned transportation facilities, nor are there any changes to standards that implement a functional classification. Reduced levels

of service of transportation facilities are not anticipated as part of these amendments. **The criteria are met.**

B. Amendments to the comprehensive plan and land use standards which significantly affect a transportation facility shall assure that allowed land uses are consistent with the function, capacity, and level of service of the facility identified in the Transportation System Plan. This shall be accomplished by one of the following:

1. *Limiting allowed land uses to be consistent with the planned function of the transportation facility; or*
2. *Amending the Transportation System Plan to ensure that existing, improved, or new transportation facilities are adequate to support the proposed land uses consistent with the requirement of the Transportation Planning Rule; or,*
3. *Altering land use designations, densities, or design requirements to reduce demand for automobile travel and meet travel needs through other modes of transportation.*

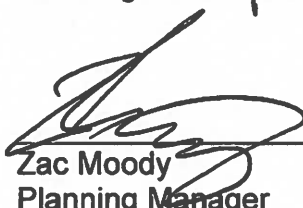
FINDING: The proposed amendments do not significantly affect the city's transportation facilities. **The criteria are not applicable.**



Terry Helfrich
Planning Commission Vice Chair

10-9-23

Date



Zac Moody
Planning Manager

10/9/23

Date

Exhibit "C"

Section 248 from 2023 Oregon Senate Bill 5506

SECTION 248. Notwithstanding any other law limiting expenditures, the limitation on expenditures established by section 4 (3), chapter ___, Oregon Laws 2023 (Enrolled Senate Bill 5524), for the biennium beginning July 1, 2023, as the maximum limit for payment of expenses from fees, moneys or other revenues, including Miscellaneous Receipts, but excluding lottery funds and federal funds, collected or received by the Oregon Business Development Department, for infrastructure, is increased by the following amounts, for the issuance of grants from proceeds of lottery revenue bonds, for the following projects:

- (1) Umatilla Electrical Cooperative Association Industrial Site Utility Expansion: \$5,000,000.
- (2) City of Phoenix Industrial Improvements, South Valley Employment Center: \$4,500,000.
- (3) City of Aumsville Wastewater System Improvements: \$5,000,000.
- (4) City of Molalla New Wastewater Treatment Plant: \$5,000,000.
- (5) City of Newport Wastewater Treatment and Conveyance System Improvements: \$3,825,000.
- (6) Port of Coos Bay Channel Modification: \$20,000,000.