

WHEN RECORDED, RETURN TO:

City of Bisbee
Attn: Ashlee Coronado, City Clerk
76 Erie Street
Bisbee, Arizona 85603

ORDINANCE O-22-20

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF BISBEE, COCHISE COUNTY, ARIZONA APPROVING A CHANGE OF ZONING AND AMENDMENT TO THE OFFICIAL ZONING MAP TO REZONE APN 103-60-123, FROM RESIDENTIAL (R-3) TO COMMERCIAL (C-1), LIMITED TO COMMERCIAL USES AS A GALLERY, MUSEUM, SPECIALTY RETAIL STORE AND EDUCATIONAL FACILITY

WHEREAS, by adoption of this Ordinance, the Mayor and Council of the City of Bisbee (the “City Council”) desire to amend the Official Zoning Map of the City of Bisbee (the “City”) to rezone certain real property located at 818 Tombstone Canyon, Bisbee, Arizona, Assessor Parcel Number 103-60-123, as more fully legally described in Exhibit A, attached hereto and incorporated herein by reference, from Residential (R-3) to Commercial (C-1), with certain use limitations; and,

WHEREAS, all required public notice was provided, and all required public meetings and hearings were held, in accordance with applicable state and local laws; and,

WHEREAS, on November 17, 2022, the City of Bisbee Planning and Zoning Commission held a public hearing to consider the Application by the City of Bisbee to rezone Assessor Parcel Number 103-60-123, located at 818 Tombstone Canyon, Bisbee, Arizona, 85603, from Residential (R-3) to Commercial (C-1), subject to use limitations that such commercial uses be limited to a gallery, museum, specialty retail store an educational facility; and

WHEREAS, during the public hearing, the public had an opportunity to be heard and planning staff offered a report to the Planning and Zoning Commission; and,

WHEREAS, the Planning and Zoning Commission voted unanimously to recommend the approval of the application with the rezoning conditions recommended in the staff report to Mayor and Council; and,

WHEREAS, on December 6, 2022 the Council held a duly noticed public hearing on the requested rezoning.

WHEREAS, in accordance with Article II, Sections 1 and 2 of the Constitution of Arizona, the City Council has considered the individual property rights and personal liberties of the residents of the City before adopting this Ordinance; and

WHEREAS, in accordance with A.R.S. § 462.01, the City Council has considered the probable impact of this Ordinance on the cost to construct housing for sale or rent.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council of the City of Bisbee,

County of Cochise, State of Arizona, that the zoning map for the City of Bisbee shall be amended as follows:

Section I: The recitals above are hereby incorporated as if fully set forth herein.

Section II: The Official Zoning Map of the City of Bisbee is hereby amended and the zoning classification of Assessor Parcel Number 103-60-123, located at 818 Tombstone Canyon, Bisbee, Arizona, 85603 (the "Property"), is hereby changed from Residential (R-3) to Commercial (C-1), with the following commercial use limitations:

- Gallery
- Museum
- Specialty Retail Store
- Educational Facility

Section III: All Property Owners/Developers of the subject Property shall execute a waiver of any claim for diminution of value under Proposition 207, in a form approved by the City Attorney. All present and future owners of the subject Property shall develop the Property in accordance with the requirements of the Commercial (C-1) established herein and the stated limited uses provided for herein together with all other applicable City of Bisbee City Code and Zoning Code requirements.

Section IV: The City Manager is directed, upon the effective date of this Ordinance, to cause the Official Zoning Map to reflect the amendment as applicable to the subject Property, indicating the zoning is subject to compliance with the stipulations and limitations provided herein.

Section V: The Mayor, the City Manager, the City Clerk, and the City Attorney are hereby authorized and directed to take all steps necessary to carry out the purpose and intent of this Ordinance.

PASSED, APPROVED AND ADOPTED by the Mayor and Council of the City of Bisbee on this 20th day of December, 2022.



Anna Cline, Mayor Pro Tempore

ATTEST:



Ashlee Coronado,
City Clerk

APPROVED AS TO FORM:



Joseph D. Estes, City Attorney
Gust Rosenfeld, P.L.C

Exhibit A to Ordinance No. O-22-20
(Legal Description of the Property)

Exhibit A

All of Lots 58, 59, 60 and 65, and a portion of Lots 52, 53, 54, 61, 62, 63 and 64, Block 29, BISBEE TOWNSITE, according to Book 1 of Maps, page 25 through 63 inclusive, records of Cochise County, Arizona, more particularly described as follows:

BEGINNING at the Southwest corner of Lot 65, Block 29;

thence North $00^{\circ}04'$ East, a distance of 94.45 feet to a corner of Lot 65;

thence North $26^{\circ}48'$ West, a distance of 64.00 feet to the Northwest corner of Lot 64;

thence South $64^{\circ}02'$ East, a distance of 150.00 feet to a corner;

thence North $35^{\circ}02'$ East, a distance of 22.00 feet to a corner;

thence South $75^{\circ}01'$ East, a distance of 88.00 feet to a corner of the East line of Lot 52;

thence South $23^{\circ}15'$ West, a distance of 166.18 feet to the Southeast corner of Lot 58;

thence North $65^{\circ}40'$ West, a distance of 145.68 feet to the POINT OF BEGINNING;

EXCEPTING HOWEVER, the portion thereof described as:

BEGINNING at the Northwest corner of said Lot 64;

thence South $35^{\circ}25'$ East, a distance of 100.00 feet;

thence South $11^{\circ}00'$ West, a distance of 50.00 feet;

thence South $18^{\circ}53'$ East, a distance of 47.23 feet to the Southeast corner of Lot 63;

thence North $65^{\circ}40'$ West, a distance of 32.68 feet to the Southwest corner of Lot 65;

thence North $00^{\circ}04'$ East, a distance of 94.45 feet to a corner of Lot 65;

thence North $26^{\circ}48'$ West, a distance of 75.45 feet to the POINT OF BEGINNING.

WHEN RECORDED, RETURN TO:

City of Bisbee
Attn: Ashlee Coronado, City Clerk
76 Erie Street
Bisbee, Arizona 85603

**WAIVER OF CLAIMS FOR DIMINUTION OF VALUE
UNDER ARIZ. REV. STAT. §§ 12-1134 – 1136
BETWEEN THE CITY OF BISBEE
AND
T. SLOANE WILSON BOOCHEVER**

THIS WAIVER OF CLAIMS FOR DIMINUTION OF VALUE under ARIZ. REV. STAT. §§ 12-1134 - 1136 (this “Waiver”) is made this 6th day of December, 2022, between T. Sloane Wilson Boochever (the “Owner”) and the City of Bisbee, an Arizona municipal corporation (the “City”), regarding the parcel of real property located at 818 Tombstone Canyon, Bisbee, Arizona, Assessor Parcel Number 103-60-123, as more particularly described on Exhibit A attached hereto and incorporated as if fully set forth herein (the “Property”). Owner and City may hereinafter be referred to individually as a “Party” or collectively as the “Parties.” Owner intends to encumber the Property with the following agreements and waivers.

1. Waiver of Claims Related to the Rezoning and Use Limitations. The Owner agrees and understands that the City is entering into this Waiver in conjunction with that certain approval for modifications to the existing zoning of the Property from Residential (R-3) to Commercial (C-1), with certain use limitations (the “Rezoning”); in good faith and with the understanding that, if the City approves the Rezoning, it will not be subject to a claim for diminished value of the Property from the Owner or other parties having an interest in the Property. Owner agrees and consents to all the conditions imposed as part of the ordinance rezoning the Property, Ordinance No. O-22-20 (the “Ordinance”), which is incorporated by reference as if fully set forth herein, including all stipulations adopted by the City Council of the City of Bisbee (the “City Council”) and, by signing this Waiver, hereby waives any and all claims, suits, damages, compensation, and causes of action the Owner may have now or in the future under the provisions of ARIZ. REV. STAT. §§ 12-1134 through and including § 12-1136 (but specifically excluding any provisions included therein relating to eminent domain) and resulting solely from actions relating to the Rezoning. Owner acknowledges and agrees that any stipulations imposed by the City Council as part of the Ordinance will not result in a reduction of the fair market value of the Property as defined in ARIZ. REV. STAT. § 12-1136. The Owner acknowledges that additional stipulations may be imposed by the City Council, in its sole discretion, prior to approval of the Rezoning. Owner agrees and understands that its waiver of claims as set forth in this Waiver shall be deemed to extend to cover any changes to the Ordinance and all stipulations to the Ordinance approved by the City Council unless, not later than three business days following such City Council approval, Owner notifies the City, in writing, of its disagreement with such stipulations. In the event that Owner timely notifies the City of such disagreement, Owner shall not be deemed to have waived claims with respect to only the stipulations imposed or revised by the City Council prior to approval of the Ordinance; provided, however, that if Owner does not submit a separate waiver of such claims, in a form acceptable to the City, prior to close of business on the fifth business day following approval

of the Ordinance, then the City may, after proper notice and hearing, rescind the Ordinance, and if rescinded by the City Council acting in its sole discretion, this Waiver shall act as a bar to a claim for diminished value based upon the rescinded Ordinance. The foregoing waiver of claims shall be of no further force and effect with respect to the Rezoning in the event the City Council disapproves the Ordinance, except that it shall serve as a bar to a claim for diminished value based upon denial of the Ordinance.

2. Entire Agreement; Modification. This Waiver constitutes the entire understanding and agreement of the Owner and the City and shall supersede all prior agreements or understandings between the Owner and City regarding waiver of claims pursuant to ARIZ. REV. STAT. §§ 12-1134 et seq. relating to the Rezoning. This Waiver may not be modified or amended except by written agreement by the Owner and City.

3. Applicable Law; Venue. This Waiver is entered into in Arizona and will be construed and interpreted under the laws of the State of Arizona. Any suit pertaining to this Waiver may be brought only in courts in Cochise County, Arizona.

4. Conflict of Interest. This Waiver is subject to the cancellation provisions of ARIZ. REV. STAT. § 38-511.

5. Recording; Waiver Runs With Land. Within 10 days after the execution of this Waiver, the City Clerk shall file the Waiver in the Official Records of the County Recorder's Office, Cochise County, Arizona, but a failure to timely do so shall not invalidate this Waiver. This Waiver runs with the land and is binding upon all present and future owners of the above-referenced Property.

6. Owner Authority. The Owner warrants and represents that he owns all right, title, and interest to the Property, and that no other person has an ownership interest in the Property. The persons who sign on behalf of Owner personally warrant and guarantee to the City they have the legal power to bind the Owner to this Waiver.

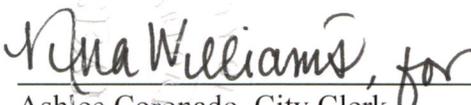
[SIGNATURES ON FOLLOWING PAGES]

“CITY”

CITY OF BISBEE, an Arizona
municipal corporation

By: 
Ken Budge, Mayor

ATTEST:


, for
Ashlee Coronado, City Clerk

APPROVED AS TO FORM:

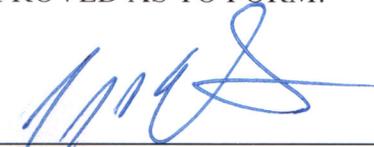

Joseph D. Estes, City Attorney

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