



City of Apache Junction

Development Services Department



NOTICE OF VIOLATION ZONING

CODE CASE #: COD2018-00723

Date: October 31, 2018

Sent via Certified Mail, Return Receipt Requested,

U.S. Regular First Class Mail, email to: hitchingpostpizzapub@gmail.com

Mr. Mehmood Mohiuddin
c/o: Dash In and Mini Mart/Hitching Post/HP Steakhouse
2341 N. Apache Trail
Apache Junction, AZ 85119

Address of Property in Violation: 2341 N. Apache Trail & 2304 North Cortez Road

Parcel Number: 100-25-043C

Legal Description of Property:

100-25- 043C -- COMMENCING AT THE NORTHEAST CORNER OF THE NORTHWEST QUARTER OF SECTION 15, TOWNSHIP 01 NORTH, RANGE 08 EAST, THENCE W-40.00 FT TO THE POINT OF BEGINNING THENCE S-212.98 FT THENCE S70D W-203.75 FT THENCE S-61.12 FT THENCE W-37.52 FT THENCE N87D W-168.38 FT THENCE N87D W-170.78 FT THENCE N07D W-43.78 FT THENCE N49D E-436.27 FT THENCE E-242.25 FT TO THE POINT OF BEGINNING, AKA LOT 1 IN SURVEY W/FEE NO 2017-093526, 2.940 ACRES

Owner(s) of Record: Mehmood Mohiuddin

Tax Bill Mailing Address: 2304 N Cortez Rd., Apache Junction, AZ 85119

The City of Apache Junction has adopted a Zoning Ordinance to protect and promote the public health, safety and general welfare. The applicable ordinances can be found in the Apache Junction City Code, Volume II, Land Development Code, which can be read here-
http://www.amlegal.com/codes/client/apache-junction_az/.

You are in violation of Apache Junction Land Development Code; Chapter 1: Zoning Ordinance, Article 1-16: Administration, Section 1-16-13, Development Agreements (see attached Exhibit A). You have an Economic Development Agreement (including amendments) with the City of Apache Junction that limits the use of the property in accordance with said agreement to the uses and areas specified on the site plan, which is an exhibit to the Economic Development Agreement. You are violating the agreement by using the land east of the Hitching Post for parking. This is a clear violation of the economic development agreement and constitutes a violation of the city zoning code.

On November 17, 2016, you were previously notified that you were violating the development agreement by using the area to the east of the Hitching Post for parking (see attached letter as Exhibit B). Attached as Exhibit C are two (2), City of Apache Junction Police Department incident reports for incident number(s) 181002990 dated 10/25/2018, and 181003232 dated 10/27/2018, that validate the violation.

You were notified in that same letter dated November 17, 2016, that in order to use APN 100-25-001C (now 100-25-043C), for parking you would need an amendment to the development agreement. Using a portion of this to the east of the Hitching Post/Dash-In/HP Steakhouse constitutes a violation of the economic development agreement and therefore the adopted zoning code for the City of Apache Junction.

Statement of Violations and Corrections:

Violation(s) observed: A violation of the economic development agreement constitutes a violation of Article 1-16, Section 1-16-13.

(1) Parking on parcel 100-25-043C is not permitted by the economic development agreement.

CORRECTIVE ACTIONS TO BE TAKEN:

Cease and desist all violations. The City's repeated attempts to have the above issues corrected or abated have not been successful, therefore we are issuing this formal Notice of Violation and requiring that the conditions noted above be corrected and abated within **21 calendar days**. A City of Apache Junction code enforcement officer will perform a re-inspection to verify compliance on or about **November 22, 2018**. The city will be periodically checking this lot during business hours for compliance (this will include evenings and weekends).

***Please note the following** - Failure to comply- make requested corrections or abate the noted conditions may result in the filing of a civil or criminal misdemeanor case.

****And also** - Failure to comply, failure to make requested corrections or abate the noted conditions, may result in an administrative or court abatement action by the city, for which the owner or responsible person will be financially liable through a lien process which may include foreclosure of the property.

If you have any questions regarding this Notice and the action required please contact Senior Code Compliance Officer Kimberly Wilson at (480) 474-5109 or kwilson@ajcity.net.

Appeal Rights

You have the right to appeal this decision to the Board of Adjustment and Appeals ("BAS") within 30 calendar days of this letter. To exercise this right, you must request an application form and, submit a complete appeal application form with all necessary supporting documentation and information. A narrative specifying the grounds of the appeal should also be included. The complete application packet and the accompanying fees must be submitted with the zoning administrator at the development services department, 300 E. Superstition Blvd., Apache Junction,

Arizona, 85119. In most circumstances, an appeal to the board stays all proceedings in the matter appealed. However, the applicant is encouraged to review A.R.S. Section 9-462.06 for more information regarding the circumstances of any stay request. The board shall affix a reasonable time for hearing the appeal, and shall give notice of the hearing by publication in a newspaper of general circulation and by posting such notice pursuant to state law.

The board has the power to administer oaths and take evidence. The hearing is a quasi-judicial hearing, wherein the members act in the capacity as judges as well as fact-finders. The appellant may: 1) present evidence including any and all relevant documentation; 2) call upon witnesses to provide testimony on his or her behalf; 3) cross-examine all city witnesses; and 4) hire an attorney to represent his or her interests at the hearing. The board may reverse, affirm, wholly or partly, or modify the zoning administrator's decision, and make such requirement, decision, or determination as necessary.

To preserve his or her appellate rights, a person aggrieved by a decision of the Board must file within thirty (30) calendar days after the Board's decision, a complaint for special action in the Pinal County Superior Court challenging the Board's decision. This hearing will not be a new trial; rather it will consist of a written decision made by a superior court judge based on the evidence and testimony submitted at the BOA.

If you do retain an attorney, it is highly recommended that such person be licensed in the State of Arizona and be competent in the area of real property law.

The fee to appeal this zoning notice of violation before the BOA is \$750.00 with an additional deposit of \$500.00 due for advertising related expenses.

Respectfully,



Kimberly Wilson, Senior Code Compliance Officer

Attachments:

Exhibit A - Apache Junction Land Development Code; Chapter 1: Zoning Ordinance, Article 1-16: Administration, Section 1-16-13, Development Agreements.

Exhibit B- Development Agreement Non-compliance letter dated November 17, 2016

Exhibit C - Apache Junction Police Department Incident Reports, Incident Number(s) 181002990 and 18100323

EXHIBIT A

[X] AJCC Apache Junction Land Development Code; Chapter 1: Zoning Ordinance, Article 1-16: Administration, Section 1-16-13, Development Agreements.

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§ 1-16-13 DEVELOPMENT AGREEMENTS.

(A) *Intent and purpose.* A development agreement is a contract between a local jurisdiction and a person who has ownership or control of property within the jurisdiction. The purpose of the agreement is to specify the standards and conditions that will govern development of the property. The development agreement provides assurance to the developer that he/she may proceed to develop the project subject to the rules and regulations in effect at the time of approval and that the development will not be subject to subsequent changes in regulations. Development agreements must also benefit the local jurisdiction with sufficient legal consideration. The city may include conditions (mitigation measures) that must be met to assure that a project at a specific location does not have unacceptable impacts on neighboring properties or community infrastructure. The agreement may clarify how the project will be phased, the required timing of public improvements, the developer's contribution toward funding system-wide community improvements, economic incentives and other conditions. The agreement can also facilitate enforcement of requirements, since it is a contract that details the obligations of the developer and city.

(B) *Applicability.* The use of development agreements will be based on a case by case determination by city staff.

(C) *Administrative responsibility.* The city department responsible for administering development agreements will be assigned on a case by case basis. If the development agreement is focused on economic development incentives, the Economic Development Division will be responsible for administering the agreement. If, however, the development agreement is focused on land use, infrastructure and zoning requirements, the Development Services Department's Planning Division will be responsible for administering the agreement.

(D) *Legal review.* In all cases, the City Attorney shall be responsible for legal review and modification of the development agreement prior to City Council consideration.

(E) *City Council approval required.* The City Council has the final authority in approving or denying development agreements. Development agreements shall be presented to the Council for consideration at a public hearing.

AJCC § 1-16-16 VIOLATIONS, PENALTIES AND ENFORCEMENT.

(B) (6) *Criminal filings.* It is unlawful to erect, construct, reconstruct, maintain or use any land in any zoning district in violation of any regulation or any provisions of this Chapter. Any person, firm or corporation violating this Chapter or any part thereof, is guilty of a class one misdemeanor. Each and every day during which the illegal erection, construction, reconstruction, alteration, maintenance or use continues is a separate offense. The City Attorney shall have the sole authority to use his or her discretion in determining whether a criminal action should be filed. The penalty for a class one misdemeanor conviction can be up to 6-months jail time, up to \$2,500 fines or restitution, 3 years probation and other terms the court finds just.

EXHIBIT B

Development Agreement Non-compliance letter dated November 17, 2016

EXHIBIT C

**Apache Junction Police Department Incident Report(s),
Incident Number(s) 181002990 and 181003232**

Apache Junction Police Department

[CAD Calls Search](#)
[CAD Person Search](#)
[RMS Case Search](#)
[RMS Name Search](#)
[Quick Photo](#)
[ALL SEARCHES](#)
[Suggestion Box](#)

View Active Calls

Call Number	181003232	OCA:	Complaint	NOISE DISTUR
Date Received	10/27/2018 8:16 PM		How Received	Phone
Caller Name	[REDACTED]		Call Status	C
Phone Number	[REDACTED]		Priority	3
Actual Incid Location	2341 N APACHE TR APT: map		Actual Incid City	APACHE JUNCTION
Call Taker	shelal		First Unit	3r1
Call Ten Code			Call Class	G

[10/27/2018 23:45:54 : pos1 : shelal]
 Unit : 3R1
 NO NOISE ON CORTEZ FROM LD TO FOOTHILL. CLR

[10/27/2018 20:58:09 : pos2 : KGANZA]
 (Cloned from 181003240)
 NO PARKING ISSUES ON THE 88 SIDE OF THE HITCHING POST, HOWEVER THERE ARE 30 VEHs PARKED IN THE PL E OF THE BUILDING BETWEEN CORTEZ AND THE BUILDING

[10/27/2018 20:43:34 : pos3 : lcashatt]
 [Calls 181003232,181003240 are related.]

[10/27/2018 20:37:40 : pos1 : shelal]
 3P10 WAS ADVISED

[10/27/2018 20:22:43 : pos3 : lcashatt]
 [REDACTED], COMPLAINING MOST ABOUT THE PARKING / SCREAMING AND HOLLARING// 6057597577 AND UPSET ABOUT PEOPLE RIDING THEIR HORSES ON CORTEZ

[10/27/2018 20:22:38 : pos1 : shelal]
 [REDACTED]
 YELLING, SCREAMING
 PARKING IN N RV STORAGE LOT

[10/27/2018 20:18:42 : pos1 : shelal]
 [REDACTED]
 PA ANNOUNCER, CROWD NOISE
 E STORAGE LOT BEING USED FOR PARKING

[10/27/2018 20:18:35 : pos3 : lcashatt]
 ANOTHER CALLER DROPPED
 COMPLAINING ABOUT THE PA/PEOPLE SCREAMING AND MORE IMPORTANTLY THE ILLEGAL PARKING

[10/27/2018 20:17:27 : pos1 : shelal]
 Cross streets: FOOTHILL ST//LOST DUTCHMAN BLVD
 Landmark: HITCHING POST
 Landmark Comment: ALARM PERMIT ON FILE

LOUD SPEAKER, SCREAMING, YELLING

Time Received	10/27/2018 8:16 PM	Time Transmitted	10/27/2018 8:17 PM
Time Dispatched	10/27/2018 8:41 PM	Time Depart	
Time Enroute	10/27/2018 8:41 PM	Time Onscene	10/27/2018 11:43 PM
Time Destination		Time Complete	10/27/2018 11:46 PM
Alarm Code		Answer Pos	1
Location Comment	Landmark Comment: ALARM PERMIT ON FILE	Quadrant	

Cancel

Call Log

Total Records: 5

Unit	Ten Status	Officer Name	Date Time	Comments	Operator	Patrol
3r1	ENR	GEARHART,TIMOTHY	10/27/2018 8:41 PM	2341 N APACHE TR, APACHE JUNCTION	SWITCH	ALL
3R1	REM	GEARHART,TIMOTHY	10/27/2018 8:43 PM	REM	lcashatt	ALL

3r1	ENR	GEARHART,TIMOTHY	10/27/2018 11:22 PM	2341 N APACHE TR, APACHE JUNCTION	SWITCH	ALL
3r1	ONS	GEARHART,TIMOTHY	10/27/2018 11:43 PM	2341 N APACHE TR, APACHE JUNCTION	SWITCH	ALL
3r1	COM	GEARHART,TIMOTHY	10/27/2018 11:46 PM	COM	shelal	ALL

Call Persons

Total Records: 0

Category	DOB	Name	Name First	Name Middle	Name Last	Name Suffix	Age Min	Age Max	Sex
No records									

List of Vehicles linked to this Call

Vehicle Make	Vehicle Model	Vehicle Year	Vehicle VIN	Vehicle Color	Vehicle Owner	Vehicle Tag	Vehicle Tag Year	Vehicle State	Towed	Comments
No records										

List of Wrecker Tows

Service Area	Officer Name	Date Towed	Tow Reason	Wrecker Company	Towed To Location	Vehicle Owner	Vehicle Driver	Owner Driving	Vehicle Tag	Vehicle Make	Vehicle Model	Vehicle State	Vehicle Year	Vehicle VIN	Comments
No records															
Per page: <input type="text"/> To page: <input type="text"/> <input type="button" value="Go"/>															

<u>Category</u>	<u>DOB</u>	<u>Name</u>	<u>Name First</u>	<u>Name Middle</u>	<u>Name Last</u>	<u>Name Suffix</u>	<u>Age Min</u>	<u>Age Max</u>	<u>Sex</u>
No records									

List of Vehicles linked to this Call

<u>Vehicle Make</u>	<u>Vehicle Model</u>	<u>Vehicle Year</u>	<u>Vehicle VIN</u>	<u>Vehicle Color</u>	<u>Vehicle Owner</u>	<u>Vehicle Tag</u>	<u>Vehicle Tag Year</u>	<u>Vehicle</u>	<u>Towed</u>	<u>Comments</u>
No records										

List of Wrecker Tows

<u>Service Area</u>	<u>Officer Name</u>	<u>Date Towed</u>	<u>Tow Reason</u>	<u>Wrecker Company</u>	<u>Towed To Location</u>	<u>Vehicle Owner</u>	<u>Vehicle Driver</u>	<u>Owner Driving</u>	<u>Vehicle Tag</u>	<u>Vehicle Make</u>	<u>Vehicle Model</u>	<u>Vehicle State</u>	<u>Vehicle Year</u>	<u>Vehicle VIN</u>	<u>Comments</u>
No records															
Per page: <input type="button" value="v"/>		To page: <input type="text"/>		<input type="button" value="Go"/>											