

ORDINANCE NO. _____

**AN ORDINANCE OF THE COUNCIL OF THE CITY OF
MESA ARIZONA, ADOPTING AMENDMENTS TO TITLE 8,
CHAPTER 1 SECTIONS 1 THROUGH 14 OF THE MESA
CITY CODE REGARDING BACK FLOW PROTECTION.**

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

Section 1: **ADOPTION OF AMENDMENTS TO TITLE 8, CHAPTER 1 OF THE MESA CITY CODE.** That certain document identified as Title 8, Chapter 1, Sections 1 through 14 of the Mesa City Code and entitled Back Flow Protection, which was declared to be a public record by Resolution adopted on May 16, 2016, three copies of which are on file and kept available for public use and inspection in the Office of the City Clerk, is hereby referred to, incorporated herein and adopted as amended Title 1 Chapter 8, Sections 1 through 14 of the Mesa City Code.

Section 2: **REPEAL OF CONFLICTING ORDINANCES.** That all Ordinances or parts of Ordinances, and all sections of the Mesa City Code or parts of such sections in conflict herewith, are hereby repealed; provided that such repeal shall not: i) Affect suits pending, or rights and duties that matured or were existing, or penalties that were incurred and proceedings that were begun immediately prior to the effective date of this Ordinance; ii) Impair, void or affect and grant or conveyance made, or any right acquired, or a cause of action now existing under such repealed portions.

Section 3: **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.

Section 4: **EFFECTIVE DATE.** The effective date of this Ordinance shall be 30 days following adoption by the Mesa City Council.

Section 5: **AUTHORIZATION.** The various City officers and employees are hereby authorized and directed to perform all other acts necessary to carry out the intent and purpose of this Ordinance.

Section 6: **PENALTY.** In accordance with A.R.S. § 9-803, the penalty clauses are hereby set forth in full:

8-1-13 LATE FEE, CIVIL SANCTIONS

(A) A Backflow Compliance Late Fee will be assessed against each connection when the customer fails to timely meet the requirements imposed by this Article 1 at Section 8-1-4. The Backflow Compliance Late Fee shall be as set forth in the schedule of Utility Service Fees and shall be in addition to all other applicable rates, fees and charges.

(B) The Department Director and inspectors within the Department, or such other persons as the City Manager may designate, are authorized to commence a civil code violation action under this Chapter as provided in Title 1, Chapter 27 of this Mesa City Code, and may also request that the Mesa City Prosecutor issue a complaint for criminal prosecution.

(C) Nothing in this Section shall preclude City employees from seeking voluntary compliance with the provisions of this Chapter or from enforcing this Chapter through notices of violation, warnings, or other informal devices designed to achieve compliance in the most efficient and effective manner under the circumstances.

(D) In addition to the Backflow Compliance Late Fee established above, a civil action for violations of this Chapter may be commenced by issuance of a complaint in the manner set forth in Section 1-27-2. The complaint shall direct the person to appear at the time and place stated before the Mesa City Court or a Hearing Officer appointed as provided in Section 1-27-8. The complaint shall be served and administered in accordance with Sections 1-27-3 and 1-27-7.

(E) All hearings before the Mesa City Court or a Civil Hearing Officer shall be in accordance with Section 1-27-7 and Title 1, Chapter 27 generally. Hearings shall be informal, except that testimony shall be given under oath or affirmation. The technical rules of evidence shall not apply, except for statutory provisions relating to privileged communications. The City shall have the burden of proving all violations charged by a preponderance of the evidence. No prehearing discovery shall be permitted except under extraordinary circumstances as determined by the Court or Civil Hearing Officer.

(F) Upon an admission of the allegations of the complaint or a finding of violation in favor of the City by the Mesa City Court or Civil Hearing Officer, the Court or Hearing Officer shall enter a finding of responsibility and judgment against the person for civil sanctions in an amount not less than one hundred dollars (\$100.00) or more than one thousand dollars (\$1,000.00) for each violation of this Chapter, and each day of violation continued shall be a separate offense. (3198)

(G) An appeal from a final judgment of the Court or Civil Hearing Officer may be taken in accordance with Title 1, Chapter 27 of this Mesa City Code and pursuant to the rules of procedure for special actions of the Arizona Supreme Court.

8-1-14 HABITUAL OFFENDER:

Any person who violates a provision in this Chapter after previously having been found responsible for committing three (3) or more civil violations, whether by admission, payment of a fine, default, or judgment after hearing, shall be guilty of a criminal misdemeanor. The Mesa City Prosecutor is authorized to file a criminal misdemeanor complaint in the Mesa City Court against habitual offenders who violate this Section.

Section 7: EFFECTIVE DATE. The effective date of this Ordinance shall be 30 days following adoption by the Mesa City Council.

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, this 6th day of June, 2016.

APPROVED:

Mayor

ATTEST:

City Clerk