

**CHAPTER 10**  
**MUNICIPAL WATER SYSTEM**

**SECTION:**

<b>8-10-1:</b>	<b>PURPOSE AND INTENT</b>
<b>8-10-2:</b>	<b>DEFINITIONS</b>
<b>8-10-3:</b>	<b>GENERAL PROVISIONS</b>
<b>8-10-4:</b>	<b>MINIMUM REQUIREMENTS FOR POTABLE WATER SERVICE</b>
<b>8-10-5:</b>	<b>RATES</b>
<b>8-10-6:</b>	<b>SERVICE, DISRUPTIONS, AND LIMITATION OF LIABILITY</b>
<b>8-10-7:</b>	<b>LAKE RESTRICTIONS</b>
<b>8-10-8:</b>	<b>WATER SHORTAGE MANAGEMENT PLAN</b>
<b>8-10-9:</b>	<b>LARGE CUSTOMER SUSTAINABLE WATER ALLOWANCE</b>
<b>8-10-10:</b>	<b>PENALTY AND REMEDY CLAUSE</b>
<b>8-10-11:</b>	<b>CIVIL AND CRIMINAL ACTIONS: HABITUAL VIOLATIONS</b>

**8-10-1: PURPOSE AND INTENT:**

- (A) The City Council of the City of Mesa has determined that it is in the best interests of the City to establish certain terms, conditions, limitations and other and requirements regarding City water utility service.
- (B) The City Council also desires to promote water conservation and implement certain measures that will provide for a sustainable water supply for existing and future Customers and other water users across the City due to the finite availability of water resources and their susceptibility to drought and other limiting conditions.

**8-10-2: DEFINITIONS:**

For purposes of this Chapter:

**ALLOWANCE:** The City's act(s) of acknowledging the commitment of water resources to property for the purposes of and as permitted by A.R.S. § 9-463.03. Allowance of water under this Chapter does not convey any rights to the ownership of water or create a reservation of a specific quantity of water to any particular Customer being served or potentially served over other Customers of the City. The Allowance is used for determining compliance by MLM Customers with the requirements in Section 8-10-9.

**APPLICANT:** A Person that owns property and applies for Development Entitlements or otherwise requests water utility service.

**ARTIFICIAL LAKE:** A man-made lake, pond, lagoon, or other body of water that has a surface area greater than twelve thousand three hundred twenty (12,320) square feet and that is used wholly or partly for landscape, scenic, or recreational purposes. Two (2) or more lakes that are connected or that are designed to function as a unit shall be considered to be one (1) lake. Artificial Lake does not include a man-made lake used for groundwater recharge pursuant to Title 45, Chapter 2, Article 13, Arizona Revised Statutes.

**CITY:** The City of Mesa, an Arizona Municipal Corporation and political subdivision of the State of Arizona.

**CUSTOMER:** The Person that owns or controls property which is connected to and receives service from the System.

**DEPARTMENT:** The City Water Resources Department, or any successor identified by the City, which is responsible for enforcing the requirements of this Chapter.

**DEVELOPMENT ENTITLEMENTS:** Approvals by the City under applicable Mesa City Code provisions, including but not limited to Title 9 Chapters 6 and 8, for development, construction and/or installation of improvements on specified property.

**DIRECTOR:** means the Director of the Department or designee.

**FRONTAGE:** The entire length of that portion of a parcel of property that abuts a qualifying private street, public utility easement, or public right-of-way.

**DISTRIBUTION MAIN:** Potable water mains suitable for customer connection, as determined by the Department and generally smaller than 8 inches in diameter.

**KGAL:** One thousand gallons.

**MULTIPLE OR LARGE METER or MLM CUSTOMERS:** Water Customers with uses which meet or exceed any of the following criteria:

1. demand equal to or exceeding 500 KGal per day,
2. demand equal to or exceeding 550 acre-feet of water on an annual average basis, or
3. peak demand sufficient to require installation of an 8-inch or larger water meter or its equivalent in multiple meters.

**OUTSIDE USER:** Any Applicant desiring or Customer receiving service at property located outside the municipal boundaries of the City.

**PERSON:** Any individual, partnership, firm, company, corporation, association, limited liability company, joint stock company, trust, estate, governmental entity, or any other legal entity, or its legal representatives, agents or assigns. This definition includes all federal, state, and local governmental entities.

**PUBLIC UTILITY FACILITIES EASEMENT OR PUBLIC UTILITY EASEMENT:** Land granted or dedicated to the City for utility related uses and improvements and associated appurtenances and facilities, as applicable.

**RIGHT-OF-WAY:** Land which by deed, conveyance, agreement, easement, dedication, usage or process of law is reserved for or dedicated to the City for street, highway, alley, public utility, or pedestrian walkway purposes.

**SUSTAINABLE WATER SERVICE APPLICATION:** The form to be completed by Applicants that desire to become MLM Customers of the City.

**WATER MASTER PLAN:** The master plan report, as may be periodically updated, that provides the City's development goals, types of land uses to be encouraged by the City's provision of water utility service, and the criteria to be considered by City staff, boards, and City Council related to Water and the System, particularly as they relate to MLM Customers.

**WATER SHORTAGE MANAGEMENT PLAN:** The conditions, limitations, restrictions and other measures taken by the City in the event of a reduction in the availability of water supplies or transmission, treatment or distribution capacity, as set forth in Section 8-10-6.

**STAGE ONE SHORTAGE:** The first stage of the Water Shortage Management Plan, consisting of voluntary measures to be taken when a prolonged reduction in surface water supplies or available capacity can be predicted in advance, with a goal reduction of approximately five percent of water demand.

**STAGE TWO SHORTAGE:** The second stage of the Water Shortage Management Plan, consisting of the Stage One voluntary measures, plus additional limitations, restrictions and reductions, to be taken when approximately twenty percent of the City's Central Arizona Project and exchange water supplies are affected, or when approximately fifty percent of SRP stored and developed supplies are affected, with a goal reduction of approximately ten percent of water demand.

**STAGE THREE SHORTAGE:** The third stage of the Water Shortage Management Plan, consisting of the Stage One and Two measures, plus additional limitations, restrictions and reductions, to be taken when approximately forty percent of the City's Central Arizona Project water and exchange supplies are affected, or when more than fifty percent of SRP stored and developed supplies are affected, with a goal reduction of approximately fifteen percent of water demand.

**STAGE FOUR SHORTAGE:** The fourth stage of the Water Shortage Management Plan, consisting of the measures from Stages One through Three, plus additional limitations, restrictions and reductions, to be taken when the City's available surface water and other supplies or capacity are anticipated to be insufficient to satisfy projected demand, with a goal reduction of twenty percent or more of water demand.

**SYSTEM:** Municipal water transmission and distribution mains, pumps, treatment plants and other facilities used or useful in the provision of water utility service by City.

**TERMS AND CONDITIONS:** The Terms and Conditions for the Sale of Utilities, as adopted and amended from time to time by Ordinance by the City.

**TURF-RELATED FACILITY:** A facility that applies water to ten (10) or more acres of landscaping. Turf related facility includes, but is not limited to, golf courses, parks and recreational facilities, school grounds, churches and cemeteries, unless all water used at the facility is effluent.

### **8-10-3: GENERAL PROVISIONS:**

- (A) All Applicants, Customers and Persons receiving or using City service from the System are subject to, must comply with, and are deemed to have consented to, this Chapter 10 of Title 8 of the Mesa City Code, as well as the Terms and Conditions and the provisions of applicable rate ordinances, as well as to such conditions of pressure and supply as the City may provide from time to time through the System and at the property and location served.

- (B) All Customers and Persons receiving and using water service further take and use such service subject to, and are deemed to agree to hold the City and the Department harmless from, any damages, losses or claims of any kind arising from low or high water pressure, fluctuations of pressure, interruptions of service, and shortage or insufficiency of supply.
- (C) All System connections must be made, and all meters must be set, by the City on the various Distribution Mains, except on approval of the Director. All repairs on mains, meters, service laterals to the meter, check valves and fire hydrants must also be made by the Department or as approved by the Director. Service must be obtained from Distribution Mains within the applicable pressure zone and is not available from transmission mains.
- (D) The drilling of new domestic exempt wells as defined in A.R.S. § 45-402 within the municipal boundaries of the City is prohibited without the express advance written permission of the Director. Existing wells, and replacement wells drilled in accordance with the Arizona Groundwater Management Act for such existing wells are exempt from the provisions of this Section.
- (E) The City has no obligation to provide service to Outside User Applicants.
- (F) The City may require written agreements as a condition precedent to service:
  1. Pursuant to the provisions of an adopted rate or this Chapter;
  2. In connection with System extension or installation of other System facilities; or
  3. When the Department, in its discretion, requires such an agreement due to special circumstances of service as determined by the Director.
- (G) No Person shall willfully or negligently permit or cause the escape or flow of water in such quantity as to cause flooding, impede vehicular or pedestrian traffic, create a hazardous condition to traffic, or cause damage to city rights-of-way through failure or neglect to properly operate or maintain any irrigation or landscape watering customer lines and equipment for any period of time after such escape of water should have been discovered and corrected through the exercise of reasonable diligence.

**8-10-4: MINIMUM REQUIREMENTS FOR POTABLE WATER SERVICE:**

- (A) In addition to any other applicable requirements of the Mesa City Code and the Terms and Conditions, all Applicants and property for which service is desired shall, as a minimum requirement of receiving service, provide as a portion of the System a minimum of an eight inch Distribution Main (or such size as is determined by the Director) for the entire Frontage of the parcel (if not existing), along all Frontages of the property if multiple Frontages occur. In addition, Applicants must extend and loop the transmission mains as necessary under the Water Master Plan. All transmission and Distribution Main extensions must comply with applicable Engineering standards. The Director may modify or reduce the requirement that a Distribution Main be extended for the entire Frontage of a parcel if such extension is not needed to provide service to customers beyond the property.
- (B) All extensions of the System, however provided for, shall become the property of the City under control of the City. Title to any System facilities constructed by others shall be tendered to the

City prior to City providing service through such facilities. The City's approval and acceptance of any extension facilities shall be within the City's sole discretion, and subject to demonstration of construction in accordance with applicable Engineering standards.

- (C) The Customer will provide at no cost to the City Right of Way, a Public Utility Facilities Easement, or a Public Utility Easement, all in a form acceptable to the City, and as needed for the purpose of constructing, maintaining and operating the System, and for the service laterals and other facilities required on the Customer's property up to the point of delivery, which is generally the outlet side of metering equipment.
- (D) As a condition of receiving service, all Customers grant a license to the City for the purposes of meter reading, connection and disconnection of service as well as operating, maintaining and replacing the System up to the point of delivery.
- (E) The City may require that a Customer provide, at the Customer's own expense, suitable equipment (including on-site storage) as necessary to reasonably limit fluctuations in flow and pressure caused by the Customer's equipment or operations where, in the sole judgment of the City, such intermittent or fluctuating use of water may result in either impairment of service to other Customers or damage to the System.

#### **8-10-5: RATES:**

The rates, fees and charges for water service are those approved and adopted by ordinance of the City. For service where there are multiple available optional rates or provisions, the Applicant shall designate the schedule or provisions, or City may designate until the Applicant makes such designation. The City is not required to notify existing Customers of available optional rates or provisions. Should a Customer elect to change to another available optional rate or provision, the change will become effective for the billing cycle commencing after the customer has requested the change. Where optional rates or provisions are available, only one change requested by the Customer will be allowed in any twelve (12) month period unless approved by the Director.

#### **8-10-6: SERVICE, DISRUPTIONS, AND LIMITATION OF LIABILITY:**

- (A) The City will, considering the existing circumstances and conditions and without undue preference or obligation to any Customer, make reasonable efforts to provide satisfactory service and to avoid unreasonable interruptions of service. It cannot, and does not, however, warrant or guarantee a continuous or sufficient supply or freedom from fluctuation, intermittency or interruption. Service may at any time be suspended or interrupted due to emergencies or for the purpose of performing maintenance, making repairs, extending or replacing the System, or other necessary work, and also pursuant to the Water Shortage Management Plan and the provisions of this Chapter. The Department will endeavor to provide notice of outages where reasonable and practicable.
- (B) The City does not warrant nor guarantee its ability to provide continuous or uninterrupted utility service; nor does the City warrant or guarantee any level of supply sufficiency. If service is delayed, interrupted, suspended, discontinued, irregular, fluctuating, intermittent, reduced or otherwise limited or defective the City shall not be liable for damages, losses or claims of any kind arising therefrom.
- (C) Customers who have any machinery, material, process or plant which requires a constant supply or flow or pressure of water shall at the Customer's own expense install upon their property such

water storage pumps, tanks and other facilities as will prevent any damage in case service may, for any reason, be interrupted, fluctuating, intermittent or discontinued.

- (D) The City will make reasonable efforts to reestablish service when service interruptions occur, considering in all cases the customer's needs and capacity required, the existing circumstances and conditions, and its obligations to other customers. The restoration of service will be performed by the Department in the manner which, in the opinion of the Department, will result in the greatest public benefit.
- (E) The City, without notice or liability, may suspend or interrupt service to any Customer or Customers in the event of an emergency or disaster threatening the integrity or operation of its System if, in its sole judgment, such action will prevent or alleviate the emergency condition. In such a case, the Department may apportion its available supply of water among its Customers in the manner that appears equitable and of the greatest public benefit under conditions then prevailing and with due consideration for public health, safety, and welfare.
- (F) The City will also make reasonable efforts to complete the installation of new System mains and facilities within a reasonable time period, also considering the Customer's needs and capacity required, the existing circumstances and conditions, and its obligations to other Customers, but shall not be liable for any delays in completion of such installation.

**8-10-7: LAKE RESTRICTIONS:**

- (A) It shall be unlawful for any Person or entity to fill an Artificial Lake or to apply water for landscaping watering purposes on a Turf-related facility without first obtaining a permit from the City as required by this Section.
  - 1. Any Person or entity desiring to fill an Artificial Lake and any Person or entity desiring to apply water for landscape watering purposes on a Turf-related Facility within the water service area of the City as defined in Arizona Revised Statutes 45-402(26) shall, before filling the Lake or before applying the water, make application to the City through the Department for a permit.
  - 2. The City Council may schedule a hearing on the application for a permit for filling of an Artificial Lake or for applying water for landscape watering purposes on a Turf-related Facility at any regular or special meeting of the City Council. The City Council may issue a permit for the filling of an Artificial Lake or for applying water for landscape watering purposes on a Turf-related Facility if it is satisfied that all of the following conditions are met:
    - a. The Lake or Turf-related Facility is to be filled exclusively with any one (1), or a combination of, the following:
      - (i) Effluent;
      - (ii) Storm water runoff that is not subject to appropriation under 45-131, Arizona Revised Statutes;
      - (iii) Water withdrawn pursuant to a poor-quality permit issued pursuant to 45-516, Arizona Revised Statutes;

- (iv) Groundwater withdrawn pursuant to a Type 1 or Type 2 Non-Irrigation Certificate of Grandfathered Right issued by the Arizona Department of Water Resources; or
    - (v) Interim C.A.P. subcontract water.
  - b. Measures will be taken to minimize evaporation loss of water from the Lake by minimizing the surface area or from a Turf-related Facility by utilizing low-water-consuming turf and plants.
  - c. The Lake, when full, shall contain no less than five (5) acre feet of water per acre of surface area with an average depth of five feet (5').
  - d. The development or facility in which the Lake or the Turf-related Facility is located will implement an effective indoor and outdoor water conservation program.
3. The Department may issue a permit to fill an Artificial Lake with any water described in subparagraph 8-10-7(B)(2)(a)(iv) of this Section or allow the application of water described in subparagraphs 8-10-7(B)(2)(a)(iv) and (v) of this Section, for the period of no longer than three (3) years, and only if it is satisfied that sufficient water described in subparagraphs 8-10-7(B)(2)(i), (ii), or (iii) above is not available to fill the Lake or to apply at a Turf-related Facility, but will be available no later than three (3) years from the date the permit is issued. The Department shall determine the duration of the permit on the basis of the estimated time until sufficient water described in subparagraphs 8-10-7(B)(2)(i), (ii) or (iii) above will be available.
  4. The City shall monitor the use of water by appropriate metering, pursuant to any permit issued under this Section, and the Department shall terminate the permit upon making a finding that any of the conditions for issuance of the permit no longer applies.
- (B) Where an existing Artificial Lake is filled with water from the City's water supply or an existing Turf-related Facility is supplied with water from the City water supply or other water source, the City may supply effluent. The quality of the effluent must meet current health standards for full-body contact from the City wastewater treatment plant by a special contract for filling said Lake or for use on said Turf-related Facility.
  - (C) The City Council may, in its sole and absolute discretion, grant a variance from the permit requirements of this Section whenever, in its judgment, compliance with such requirement or regulation for a permit is not in the best interest of the City.
  - (D) If the City has reason to believe that a Person is violating or has violated any provision of this Section or a permit issued hereunder, the City may, in addition to terminating service and referring suspected violations of this Section to the Arizona Department of Water Resources, commence a civil action and apply for a temporary restraining order or preliminary or permanent injunction from the Superior Court according to the Arizona Rules of Civil Procedure. A decision to seek injunctive relief shall not preclude other forms of relief or enforcement against the violator.

- (E) This Section shall not apply to an Artificial Lake filled or a Turf-related Facility in existence (or for which on-site physical construction commenced or for which extensive design was prepared) prior to September 18, 2004, unless the size of such Lake or Facility was subsequently increased. This Section also shall not apply to Artificial Lakes or Turf-related Facilities located in recreational facilities that are open to the public and owned or operated by the United States, the State, the City, or a flood control district or multi-county water conservation district.

**8-10-8: WATER SHORTAGE MANAGEMENT PLAN:**

- (A) In the event of a reduction or limitation in the availability of water supplies or transmission, treatment, distribution capacity, or other System issue that requires a reduction in demand for water, City water service shall be subject to the restrictions, reductions, prohibitions, limitations and other measures set forth in this Section, regardless of where located. Shortages may be declared in four stages, depending on the severity of localized and/or regional reductions and other limitations in water resource availability or System capacity due to conditions such as but not limited to, reductions in the supply of Central Arizona Project and Salt/Verde water, limitations on the availability of suitable groundwater, and loss or closure of transmission capacity by either the Salt River Project or Central Arizona Water Conservation District. The City may also adopt by resolution supplements which set forth the considerations for declaration of each Stage, and additional plans of action to be taken by the City consistent with this Section.
- (B) The City intends to subject similarly situated customers to the restriction and reduction of use of water in a substantially equitable, reasonable and effective manner given the existing circumstances, unless otherwise expressly provided herein. The City may give priority to customers located within the City's municipal boundaries over Outside Users.
- (C) **Stage One Shortage.** The City Manager has the authority to declare a Stage One shortage, when limitations in the available supplies, capacity, or System require a reduction of up to five percent in demand. Upon such a declaration the informational conservation measures set forth in the supplemental Water Shortage Management Plan adopted by resolution shall be implemented, and voluntary water conservation measures shall be encouraged.
- (D) **Stage Two, Three and Four Shortages.** Stages Two, Three and Four shortages will be adopted by resolution of the City Council, or by emergency declaration by the Mayor under A.R.S. Title 26, Chapter 2 Article 1 Section 311, or Mesa City Code Title 1 Chapter 14. If a Stage Two, Three or Four Shortage is adopted or declared, the following cumulative water use restrictions, reductions, prohibitions, limitations, and other measures shall apply to all Customers and Persons for as long as the shortage remains in effect:
1. Stage Two shortage (targeted demand reduction of ten percent) requirements are:
    - a. All landscape watering limited to between the hours of 9:00 p.m.—5:00 a.m. when water from the System is used as the irrigation source.
    - b. Use of water from the System in decorative outdoor water features and outdoor misting systems is prohibited.
    - c. Vehicle washing is allowed only at commercial facilities or with pail and hose with a shut off nozzle.



2. Stage Three shortage (targeted demand reduction of fifteen percent) requirements are:
  - a. All use restrictions, reductions, prohibitions, limitations, and other measures under Stage Two.
  - b. Landscape watering is further restricted to once per week, on a schedule determined by the Department.
  - c. No Person shall allow the waste of water for any period of time after such waste of water should have been discovered and corrected.
  - d. Use of Water for construction or other dust control measures prohibited between the hours of 2:00 pm – 5:00 pm.
  - e. Vehicle washing is allowed only at commercial facilities.
  - f. Restaurants to serve water only upon request of customer.
  - g. Large commercial and industrial customers, and all customers with a meter sized larger than 6”, shall develop and implement (if not already in practice) a conservation and compliance plan considering measures such as the incorporation and use of the latest commercially available conservation technology consistent with reasonable economic return, and provide annual reports to the Department on the implementation thereof.
3. Stage Four shortage (targeted demand reduction of twenty percent or more) requirements are:
  - a. All use restrictions, reductions, prohibitions, limitations, and other measures under Stages Two and Three.
  - b. Over-seeding winter grass prohibited.
  - c. Residential swimming pools must be covered during day when not in use or drained.
  - d. Sale of sod prohibited within municipal limits.
  - e. Sale of all construction water by the Department prohibited.
  - f. Hotel linen washing once per guest stay, towel replacement on request.
  - g. Dealership vehicle washing one day per week, schedule determined by the City.
  - h. All residential customer uses over 7kgal/monthly billing cycle subject to 20% billing surcharge.

- i. Water hauling station subject to 20% billing surcharge.
  - j. All commercial, industrial and multi-unit customer uses over 65kgal/monthly billing cycle subject to 25% billing surcharge.
  - k. All dedicated landscape service subject to a 30% billing surcharge.
  - l. Water shall be available to all Customers based on the average of the previous three years water usage. For Customers with less than three years of consumption history, availability will be based on existing City water use averages for the customer class. Customers eligible for a waiver under A.R.S. § 9-463.03 (whether such moratorium has been declared or not) pursuant to an existing written development agreement with the City shall be permitted to develop the project and establish three years of reasonable water usage history consistent with such development agreement. Limitations under this Section may be enforced by the City through the use of water flow restrictors, service shutoff, meter sizing, or other means as determined by the Department.
  - m. Moratorium under ARS § 9-463.03 may be declared.
- (E) When the availability of service is so restricted under a Stage Four shortage that reduction on a proportionate basis for customer classes based on prior usage will not maintain the integrity of the System or service, the Department, in coordination with an emergency declaration of the Mayor, shall develop procedures to curtail service to different customer classes, giving service priority based on the public convenience and necessity and where health, safety and welfare would be adversely affected. Curtailment of service shall start with dedicated landscaping uses.
- (F) The City will provide six months-notice prior to the declaration of a Stage 3 shortage, and 1-year notice prior to the declaration of a Stage 4 shortage, unless made by emergency declaration of the Mayor, in which case as much notice as practicable under the circumstances will be provided. Notice of Stage 3 and 4 shortages shall be provided to all customers in their monthly utility bills and posted on the City's web site. Upon declaration of a Stage 1 or Stage 2 shortage, the City Manager or designee will determine how the public will be notified as detailed in the supplemental Water Shortage Management Plan adopted by Resolution.
- (G) Limited exceptions to the water use restrictions, reductions and limitations under this Section may be granted after application in writing provided to the Department and heard by the City Council Committee designated to hear such requests. Exceptions must be based upon a showing of good cause and special circumstances such as health, safety and welfare needs or other undue hardship.

**8-10-9: LARGE CUSTOMER SUSTAINABLE WATER ALLOWANCE:**

- (A) Applicability.
- 1. All Applicant's that will, based on projected usage, become MLM Customers, and any existing Customers that will, due to increased usage, become MLM Customers, must submit a Sustainable Water Service Application to the Department.

2. For undeveloped property, the application must be submitted at the time the Applicant submits for any Development Entitlements. Existing Customers or Applicants for MLM Customer service on previously developed property must submit prior to exceeding the MLM Customer requirements.
3. The Sustainable Water Service Application shall identify the phasing of construction or development, the approximate number and size of the structures to be served, a reasonable description of the nature and type of water use proposed on the property, and a reasonable estimate of the projected annual and monthly water demand.

(B) City review of Sustainable Water Service Applications and Sustainable Service Agreements.

1. The Director will review properly completed Sustainable Water Service Applications and determine whether and to what extent the Applicant is eligible to be an MLM Customer, and if so, the associated Allowance for the Applicant based on the most recent Water Master Plan and an analysis of the City's Designation of Assured Water Supply.
2. If the City/Department determines that water supplies are not available for the property for MLM Customer uses, the Applicant must purchase, at its sole cost and expense, water supplies from third parties, in a legal and physical form acceptable to the City in its sole discretion, in order to continue with the Application process.
3. City and each approved MLM Customer must enter into a Sustainable Service Agreement which will include the following:
  - a. Valid for up to 30 years from the date of issuance.
  - b. Determination of the approved MLM Customer's water use Allowance for the property.
  - c. The terms and conditions regarding the transfer of the Allowance, as determined by City.
  - d. Terms and conditions for the approved MLM Customers purchase and transfer of water resources to City.
  - e. Penalties and remedies for violation of the Allowance.
  - f. Other terms and conditions the City deems necessary.
4. The Sustainable Service Agreement shall become effective upon approval by the City Council and signature of the Director.

(C) Approval of an MLM Customer Sustainable Water Service Application and approval and entry of a Sustainable Service Agreement by City shall not constitute a guarantee by City of either service and supply at the Allowance amount. All service remains subject to the provisions of this Title 8 Chapter 10 and other Sections of the City Code, the Terms and Conditions, and payment of applicable rates, fees and charges, all as amended and in effect from time to time.

(D) Each MLM Customer must comply with the Allowance established under this Section and the Sustainable Service Agreement for the property. Water deliveries in any year in excess of 5% over the Allowance amount shall constitute a violation of the Allowance and this Section. Penalties for violation of the Allowance shall be as follows:

1. First exceedance: written notice and penalty as provided in Section 8-10-10(A).
2. Second exceedance within five years: written notice and penalty as provided in Section 8-10-10(B), and the MLM Customer must develop a water reduction plan. In addition, the City may take measures to limit or reduce demand for service, including, but not limited to, elimination of redundant metering, reduction in meter size, reduction in meter count, and implementation of valving or other measures which limit flow.
3. Third exceedance within five years: Penalties as provided in Section 8-10-10(C), and the City may initiate action in Superior Court for an injunction or other similar relief as well as recovery of damages, which may include but are not limited to the then current cost of securing an acre-foot by acre-foot replacement supply of Phoenix Active Management Area Long Term Storage Credits equaling the exceedance.

**8-10-10: PENALTY AND REMEDY CLAUSE:**

Any person who violates any of the provisions of this Chapter of the Mesa City Code as amended shall, in addition to any other penalties set forth in this Chapter, be subject to penalties and fines as follows:

- (A) For a first violation of any provision of this Chapter, the Department shall issue a written notice of first violation delivered by certified mail, along with educational materials on water conservation, including a copy of the relevant provisions of this Chapter. The Department may also impose a fine of up to five hundred dollars (\$500.00). The fine shall be added to the Customer's account. If ongoing, the City may give a Person in violation a reasonable time period to correct the violation, not to exceed sixty (60) days.
- (B) For a second violation of any provision of this Chapter, the City shall issue a written notice of second violation delivered by certified mail or any other method authorized by the Arizona Rules of Civil Procedure to the Person requiring correction of the violation within thirty (30) days and imposing a fine of up to seven hundred fifty dollars (\$750.00). The fine shall be added to the customer's account. Failure to pay any portion of a customer account, including any fines imposed pursuant to this section, shall subject said account to termination of service in accordance with the provisions of the Terms and Conditions.
- (C) For a third or subsequent violation of this Chapter, the City shall issue a civil code violation and impose a fine as authorized and pursuant to and in accordance with Title 1 Chapter 27 of the Mesa City Code. A civil action 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.
- (D) 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. 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.

- (E) 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 addition to the enforcement of fines imposed under Section 8-10-10(A) and (B)) 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. Failure to pay any portion of a fine imposed shall subject the customer account to termination of service.
- (F) 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.
- (G) In addition to civil sanctions and any fine imposed, the City may also terminate service for a third or subsequent admission or finding of violation of this Chapter. The City shall not restore service until the Director has determined that the water user has provided reasonable assurances that future violations of this Chapter by such user will not occur. In addition, the Director may require a security deposit.
- (H) Violations of this Chapter and penalties and remedies as set forth herein are in addition to any other violation or remedy established by law, and this Chapter shall not be interpreted as limiting the penalties, actions, or abatement procedures that may be taken by the City or other Persons under the laws, ordinances, or rules.

**8-10-11: CIVIL AND CRIMINAL ACTIONS: HABITUAL VIOLATIONS:**

- (A) The City Manager may request that the City Attorney commence civil action against any Person violating any requirement of this Chapter.
- (B) 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 Chapter.