

ORDINANCE _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, REPEALING IN ITS ENTIRETY MESA CITY CODE TITLE 3, CHAPTER 3 ENTITLED “UTILITIES DEPARTMENT” AND REPLACING IT WITH A NEW TITLE 3, CHAPTER 3 ENTITLED “WATER RESOURCES, ENERGY RESOURCES, AND ENVIRONMENTAL MANAGEMENT & SUSTAINABILITY DEPARTMENTS.”

WHEREAS, Title 3, Chapter 3 of the Mesa City Code entitled “Utilities Department” governs the organization of the City’s Utilities Department and sets forth requirements related to the appointment and duties of the City’s designated Utilities Department Directors.

WHEREAS, the provision of safe, clean, reliable, and affordable utility services to the City’s utility customers is of significant importance to the public health and welfare.

WHEREAS, in order to provide for the needs of those City utility customers who may have challenges in affording the cost of utility service, it is desirous for the City to have in place programs which will provide assistance.

WHEREAS, the City, in the operation of its utility services, desires to provide that revenues from the provision of utility service may be used to pay the expenses of such utility operations, including the costs of operations and maintenance, interdepartmental reimbursements, and payments for the use of public property, as well as for revenues to be transferred to the City’s general fund, primarily for the purpose of providing public safety services in Mesa, which is of critical importance to the public health and welfare of the citizens of Mesa.

WHEREAS, additionally revenues generated by the City from the provision of City utility service are to provide for the payment of principal and interest on outstanding, and future issuances of, municipal bonds and other indebtedness, including the establishment of reserve funds and other separate funds, to insure the payment at maturity of the principal and interest thereon.

WHEREAS, the uses of utility revenues are codified in this Ordinance to provide additional assurance to utility customers that utility revenues will be used in specified areas so that rates remain just and reasonable; accordingly, Council hereby finds and determines that if the revenues received from adopted utility rates, fees, and charges (and any increases thereto) are used in compliance with the requirements established in this Ordinance, then such rates, fees, and charges are just and reasonable.

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

SECTION 1. Mesa City Code Title 3, Chapter 3 entitled “Utilities Department” is repealed in its entirety, and replaced with a new Mesa City Code Title 3, Chapter 3 entitled “Water Resources, Energy Resources and Environmental Management & Sustainability Departments” as follows:

CHAPTER 3

WATER RESOURCES, ENERGY RESOURCES, AND ENVIRONMENTAL MANAGEMENT & SUSTAINABILITY DEPARTMENTS

SECTION:

- 3-3-1: DEFINITIONS**
- 3-3-2: ORGANIZATION**
- 3-3-3: DUTIES OF DIRECTORS**
- 3-3-4: RATES AND REVENUES**

3-3-1: DEFINITIONS:

THE BELOW WORDS AND PHRASES, WHEREVER USED IN THIS CHAPTER, SHALL BE CONSTRUED AS DEFINED IN THIS SECTION 3-3-1 UNLESS, CLEARLY FROM THE CONTEXT, A DIFFERENT MEANING IS INTENDED. WORDS USED IN THE PRESENT TENSE INCLUDE THE FUTURE TENSE, WORDS IN THE PLURAL NUMBER INCLUDE THE SINGULAR NUMBER, AND WORDS IN THE SINGULAR NUMBER INCLUDE THE PLURAL NUMBER. DEFINITIONS SET FORTH IN THIS SECTION 3-3-1 APPLY ONLY TO THIS CHAPTER AND DO NOT AFFECT OR ARE TO BE APPLIED TO ANY OTHER CITY CODES.

- (A) DEPARTMENT: THE WATER RESOURCES DEPARTMENT, ENERGY RESOURCES DEPARTMENT, AND/OR ENVIRONMENTAL MANAGEMENT & SUSTAINABILITY DEPARTMENT OF THE CITY.**
- (B) DEPARTMENT DIRECTOR: THE HEAD OF THE WATER RESOURCES DEPARTMENT, ENERGY RESOURCES DEPARTMENT, AND/OR ENVIRONMENTAL MANAGEMENT & SUSTAINABILITY DEPARTMENT.**
- (C) IMPROVEMENT: THE DESIGN, CONSTRUCTION, EXTENSION, IMPROVEMENT, ACQUISITION, RECONSTRUCTION, RETIREMENT, REPLACEMENT, EQUIPPING, ENLARGEMENT OR BETTERMENT OF THE UTILITY SYSTEM.**
- (D) FISCAL YEAR: THE PERIOD OF TIME COMMENCING ON JULY 1ST AND ENDING ON JUNE 30TH OF THE FOLLOWING YEAR.**
- (E) RATES: RATES, RATE COMPONENTS, FEES, CHARGES, AND SURCHARGES ESTABLISHED FOR THE UTILITY SERVICES PROVIDED BY THE CITY.**
- (F) UTILITY ASSISTANCE PROGRAM: CITY PROGRAM TO PROVIDE METHODS OF ASSISTANCE TO CERTAIN UTILITY SERVICES ACCOUNT HOLDERS INCLUDING, BY WAY OF EXAMPLE, DEFERMENTS, PAYMENT PLANS, REDUCTIONS, AND DELAYED DISCONNECTS.**
- (G) UTILITY FUND: ONE OR MORE ENTERPRISE FUNDS AND ACCOUNTS, WHICH ARE SEPARATE FROM OTHER FUNDS AND ACCOUNTS, INTO**

WHICH THE REVENUES FROM THE UTILITY SYSTEM SHALL BE CREDITED, AND AS FURTHER DESCRIBED IN SECTION 3-3-4(C) HEREIN.

- (H) UTILITY SERVICES: THE PROVISION OF UTILITY SERVICES BY THE CITY, INCLUDING ELECTRIC, GAS, DISTRICT COOLING, WATER, WASTEWATER, SOLID WASTE, AND RECYCLING; AND PROGRAMS RELATED TO THESE SERVICES.**
- (I) UTILITY SYSTEM: CITY ASSETS AND IMPROVEMENTS OF EVERY NATURE NOW AND HEREAFTER OWNED BY THE CITY AND USED OR USEFUL IN CONNECTION WITH THE PROVISION OF THE UTILITY SERVICES AS MAY BE EXTENDED, IMPROVED, RECONSTRUCTED, RETIRED, ENLARGED, OR BETTERED, INCLUDING ALL REAL AND PERSONAL PROPERTY OF EVERY NATURE COMPRISING PART OF, OR USED OR USEFUL IN CONNECTION WITH, THE CITY'S PROVISION OF THE UTILITY SERVICES, AND INCLUDING ALL APPURTENANCES, CONTRACTS, LEASES, FRANCHISES, WORKING CAPITAL, AND OTHER INTANGIBLES.**

3-3-2: ORGANIZATION OF DEPARTMENTS:

THERE SHALL BE A WATER RESOURCES DEPARTMENT, AN ENERGY RESOURCES DEPARTMENT, AND AN ENVIRONMENTAL MANAGEMENT & SUSTAINABILITY DEPARTMENT, WHICH WILL EACH BE HEADED BY A DEPARTMENT DIRECTOR, AND EACH DEPARTMENT SHALL HAVE SUCH ADDITIONAL EMPLOYEES AS NEEDS OF THE DEPARTMENT MAY DEMAND. THE CITY MANAGER SHALL APPOINT EACH DEPARTMENT DIRECTOR.

3-3-3: DUTIES OF DIRECTORS:

THE DEPARTMENT DIRECTORS SHALL: (I) SUPERVISE THE PROVISION OF UTILITY SERVICES AS TO THEIR RESPECTIVE DEPARTMENTS; (II) HAVE THE AUTHORITY TO MAKE CONSERVATION, RESOURCE, AND PLANNING DECISIONS AND INVESTIGATIONS FOR THE PURPOSE OF MEETING THE NEEDS OF THE CITY; AND (III) PERFORM SUCH OTHER DUTIES AND FUNCTIONS AS MAY, FROM TIME TO TIME, BE DELEGATED OR ASSIGNED BY THE CITY MANAGER.

3-3-4: RATES AND REVENUES:

- (A) RATES. RATES FOR THE PROVISION BY THE CITY OF UTILITY SERVICES SHALL BE FIXED AND ESTABLISHED BY THE CITY COUNCIL, COMPLY WITH THE REQUIREMENTS OF THE CITY'S OUTSTANDING INDEBTEDNESS OR OBLIGATIONS SECURED BY UTILITY SYSTEM REVENUES, AND MAY INCLUDE COLLECTION OF FUNDS TO BE EXPENDED FOR UTILITY SERVICES IN ACCORDANCE WITH THIS SECTION 3-3-4. ALL RATES ESTABLISHED IN COMPLIANCE WITH THE PROVISIONS OF THIS SECTION ARE AND SHALL BE CONSIDERED JUST AND REASONABLE, AND SUCH RATES SHALL BE ALLOWED AND LAWFULLY COLLECTED BY THE CITY.**
- (B) UTILITY ASSISTANCE PROGRAMS. IN ORDER TO ASSIST CITY RESIDENTS WHO REQUIRE FINANCIAL ASSISTANCE IN PAYING THEIR UTILITY SERVICE BILLS AND LIMIT UTILITY SERVICE SHUT-OFFS, THE**

DEPARTMENTS ARE AUTHORIZED TO ESTABLISH A UTILITY ASSISTANCE PROGRAM, INCLUDING THE PROGRAMS SET FORTH IN THIS SUBSECTION (B). THE DEPARTMENTS MAY ESTABLISH AND ADOPT REASONABLE CRITERIA FOR THE AVAILABILITY OF SUCH PROGRAMS, INCLUDING INCOME QUALIFICATIONS FOR PARTICIPANTS, AND MAY PARTNER WITH NONPROFIT OR OTHER, THIRD-PARTY ORGANIZATIONS TO FACILITATE AND MANAGE SUCH PROGRAMS.

- (1) LOW INCOME, SENIOR DISCOUNT. IN ESTABLISHING RATES, THE CITY COUNCIL MAY ESTABLISH REDUCED, FIXED CHARGE RATE COMPONENT DISCOUNTS FOR QUALIFYING, LOW-INCOME, SENIOR RESIDENTIAL CUSTOMERS.
 - (2) SHUTOFF LIMITATION. THE DEPARTMENTS MAY INSTITUTE A LIMITATION ON THE DISCONNECTION OF UTILITY SERVICES FOR CITY RESIDENTIAL UTILITY SERVICE CUSTOMERS DUE TO ACCOUNT DELINQUENCY DURING HEAT ADVISORY PERIODS OR SUCH OTHER PERIODS AS MAY BE DIRECTED BY THE CITY COUNCIL, AUTHORIZED BY THE CITY MANAGER, OR AS MAY BE REQUIRED BY LAW.
 - (3) ADDITIONAL ASSISTANCE. THE DEPARTMENTS ARE AUTHORIZED TO INSTITUTE ADDITIONAL ASSISTANCE PROGRAMS FOR UTILITY SERVICE CUSTOMERS WHICH MAY INCLUDE, BY WAY OF EXAMPLE BUT NOT LIMITATION OR OBLIGATION, UTILITY BILL REBATES, A PAYMENT VOUCHER PROGRAM, OR REPAIRS TO RESIDENTIAL UTILITIES.
- (C) UTILITY FUND. REVENUE COLLECTED BY THE CITY IN CONNECTION WITH ITS PROVISION OF UTILITY SERVICES AND ITS POSSESSION, MANAGEMENT AND CONTROL OF THE UTILITY SYSTEM SHALL BE CREDITED TO THE UTILITY FUND IN COMPLIANCE WITH THE CITY'S BOND OBLIGATIONS, AND THE UTILITY FUND SHALL BE HELD SEPARATELY FROM THE CITY'S GENERAL FUND. THE CITY MAY, AT ANY TIME, ESTABLISH ONE OR MORE SPECIAL FUNDS, ACCOUNTS OR SUBACCOUNTS FOR THE RECEIPT AND DISBURSEMENT OF UTILITY SYSTEM REVENUES, OR ANY PORTION THEREOF, WHICH ARE COLLECTIVELY REFERRED TO FOR CONVENIENCE IN THIS CHAPTER AS THE "UTILITY FUND."
- (D) USE OF UTILITY SYSTEM REVENUES. THE MONEY IN THE UTILITY FUND MAY BE COLLECTED, APPROPRIATED, TRANSFERRED AND EXPENDED FOR ANY OR ALL OF THE FOLLOWING PURPOSES:
- (1) EXPENSES FOR THE PROVISION OF UTILITY SERVICES.
 - (A) OPERATION AND MAINTENANCE. FOR THE COSTS AND EXPENSES OF OPERATING AND MAINTAINING THE UTILITY SYSTEM AND AS OTHERWISE NECESSARY FOR PROVIDING UTILITY SERVICES.

- (B) INTERDEPARTMENTAL REIMBURSEMENTS. FOR REIMBURSEMENT FROM A DEPARTMENT TO ANY OTHER DEPARTMENT OR OFFICE OF THE CITY FOR COSTS OR EXPENSES RELATED TO THE PROVISION OF UTILITY SERVICES, INCLUDING THE REASONABLE VALUE OF SUPPORT, PERSONNEL, MATERIALS, SUPPLIES, OR EQUIPMENT.
- (C) USE OF PUBLIC STREETS, ALLEYS, AND OTHER PUBLIC GROUNDS OR WAYS. IN CONSIDERATION OF THE USE OF THE PUBLIC STREETS, ALLEYS, AND OTHER PUBLIC GROUNDS AND WAYS FOR THE UTILITY SYSTEM, AN AMOUNT EACH FISCAL YEAR TO BE TRANSFERRED TO THE CITY'S GENERAL FUND EQUAL TO THREE PERCENT (3%) OF THE GAS AND ELECTRIC AND FIVE PERCENT (5%) OF THE WATER AND WASTEWATER GROSS REVENUES FROM THE CITY'S PROVISION OF UTILITY SERVICES DURING THE FISCAL YEAR WITHIN THE PRESENT AND ANY FUTURE CORPORATE LIMITS OF THE CITY.
- (D) UTILITY SERVICE PROMOTION AND EDUCATION. FOR THE PROMOTION OF OR EDUCATION RELATED TO ANY OF THE UTILITY SERVICES INCLUDING, BUT NOT LIMITED TO, INFORMATION REGARDING THE CITY'S UTILITY RATE STRUCTURE, WAYS TO REDUCE A CUSTOMER'S UTILITY BILL, OR HOW TO REQUEST UTILITY SERVICE.
- (E) PROMOTION OF CONSERVATION. FOR THE DEVELOPMENT, PROMOTION, EDUCATION OR USE OF CONSERVATION AND RECYCLING METHODS, SYSTEMS, EQUIPMENT, SERVICES, OR DEVICES BY THE CITY OR UTILITY SERVICE CUSTOMERS.
- (F) EMPLOYEE BENEFITS. FOR DEFRAYING THE EXPENSES OF ANY PENSION OR RETIREMENT SYSTEM AND HEALTH OR OTHER BENEFITS APPLICABLE TO PERSONNEL.
- (G) UTILITY ASSISTANCE PROGRAMS. FOR THE CREATION, MAINTENANCE, AND FUNDING OF THE UTILITY ASSISTANCE PROGRAMS DESCRIBED IN SUBSECTION (B) ABOVE.
- (2) CAPITAL INVESTMENT AND RETIREMENT OF INDEBTEDNESS.
 - (A) DEVELOPMENT OF THE UTILITY SYSTEM. FOR THE COSTS AND EXPENSES OF UTILITY SYSTEM IMPROVEMENTS INCLUDING, BUT NOT LIMITED TO, THE DESIGN, CONSTRUCTION, EXTENSION, IMPROVEMENT, ACQUISITION, RECONSTRUCTION, RETIREMENT, REPLACEMENT, EQUIPPING, ENLARGEMENT, OR BETTERMENT OF THE UTILITY SYSTEM AND THE ACQUISITION, PURCHASE OR CONDEMNATION OF PROPERTY AND IMPROVEMENTS FOR UTILITY SERVICES, RIGHTS TO WATER AND ENERGY, FRANCHISES OR OTHER RIGHTS TO SERVE, FOR THE

PURPOSE OF OR RELATED TO PROVIDING CITY UTILITY SERVICES OR THE UTILITY SYSTEM OR EXPANSION THERETO.

- (B) **PRINCIPAL AND INTEREST.** FOR THE PAYMENT OF THE PRINCIPAL AND INTEREST ON THE CITY'S BONDS, NOTES, AGREEMENTS OR INDEBTEDNESS: (I) SECURED BY OR PAYABLE FROM UTILITY SYSTEM REVENUES OR THE UTILITY SYSTEM; OR (II) SECURED BY SECONDARY PROPERTY TAXES, EXCISE TAXES OR OTHER PLEDGED OR SPECIAL FUNDS OF THE CITY, PROVIDED SUCH BONDS OR OBLIGATIONS WERE ISSUED OR INCURRED FOR IMPROVEMENT OF THE UTILITY SYSTEM.
- (C) **BOND RESERVE FUNDS.** FOR ESTABLISHING AND MAINTAINING RESERVE FUNDS TO INSURE THE PAYMENT AT MATURITY OF THE PRINCIPAL AND INTEREST ON ALL BONDS NOW OUTSTANDING OR HEREAFTER ISSUED, THAT ARE ISSUED AGAINST AND PAYABLE FROM THE REVENUES OF THE APPLICABLE UTILITY SYSTEM, AS WELL AS BONDS ISSUED FOR THE DESIGN, CONSTRUCTION, ACQUISITION, EXTENSION, IMPROVEMENT, RECONSTRUCTION, RETIREMENT, REPLACEMENT, ENLARGEMENT, EQUIPPING OR BETTERMENT OF THE UTILITY SYSTEM. ADDITIONALLY, FOR ESTABLISHING AND MAINTAINING RESERVE FUNDS FOR CONTINGENCIES AND EMERGENCIES FOR THE UTILITY SYSTEM AND FOR MAINTAINING RESERVES TO FACILITATE A BOND RATING THAT LOWERS INTEREST ON BOND ISSUANCES. THE MONEY SET ASIDE AND PLACED IN SUCH RESERVE FUNDS SHALL REMAIN THEREIN UNTIL EXPENDED AND SHALL NOT BE TRANSFERRED TO THE GENERAL FUND OF THE CITY, AND SHALL OTHERWISE BE HELD IN SUCH RESERVE FUNDS IN ACCORDANCE WITH THE RESOLUTIONS, ORDINANCES, AGREEMENTS OR INDENTURES OF THE CITY PERTAINING TO THE CITY'S BONDS OR OBLIGATIONS SECURED BY OR PAYABLE FROM UTILITY SYSTEM REVENUES. NOTWITHSTANDING THE FOREGOING, THE CITY MAY UTILIZE UTILITY SYSTEM REVENUES TO PURCHASE RESERVE FUND GUARANTEES, SURETY BONDS, INSURANCE POLICIES, LETTERS OF CREDIT OR LINES OF CREDIT IN ORDER TO FULFILL THE RESERVE FUND REQUIREMENTS IN EFFECT FROM TIME TO TIME.
- (D) **ADDITIONAL FUNDS.** FOR THE ESTABLISHMENT AND FUNDING OF OTHER FUNDS AND ACCOUNTS AS MAY BE NECESSARY IN CONNECTION WITH THE CITY'S UTILITY SYSTEM AND THE CITY'S BONDS OR OBLIGATIONS INCLUDING, WITHOUT LIMITATION: (I) A REBATE FUND FOR PAYMENTS TO THE UNITED STATES TREASURY; (II) A REPLACEMENT FUND FOR MAINTENANCE, REPAIR, REPLACEMENT, CONSTRUCTION OR ACQUISITION OF UTILITY SYSTEM; AND (III) CONSTRUCTION, PROJECT OR

**ACQUISITION FUNDS FOR THE DEPOSIT OF BOND OR
OBLIGATION PROCEEDS PRIOR TO EXPENDITURE ON UTILITY
SYSTEM.**

- (3) **GENERAL FUND TRANSFERS.** FOR EACH FISCAL YEAR, FUND DEPOSITS OR TRANSFERS MAY BE MADE FROM THE UTILITY FUND IN ANY OR ALL OF THE FOLLOWING MANNERS:
- (A) **MESA PUBLIC SAFETY.** THE CITY COUNCIL MAY, IN ITS DISCRETION, DEPOSIT OR TRANSFER UTILITY FUND MONIES TO THE CITY'S GENERAL FUND FOR THE PURPOSE OF FUNDING PUBLIC SAFETY, INCLUDING PUBLIC SAFETY COSTS AND EXPENSES RELATED TO PERSONNEL, TRAINING, BENEFITS, AND EQUIPMENT, AS WELL AS PAYING FOR CONSTRUCTION, CAPITAL EXPENSES, AND ACQUISITION OF REAL PROPERTY, AND OTHER COSTS AND EXPENSES RELATED TO THE PROVISION OF PUBLIC SAFETY SERVICES BY THE CITY, IN AN AMOUNT NOT TO EXCEED TWENTY-FIVE PERCENT (25%) OF THE GROSS REVENUES FROM THE CITY'S PROVISION OF UTILITY SERVICES DURING THE FISCAL YEAR.
- (B) **GENERAL USE.** THE CITY COUNCIL MAY, IN ITS DISCRETION, DEPOSIT OR TRANSFER TO THE CITY'S GENERAL FUND, AN ADDITIONAL AMOUNT ABOVE THAT SET FORTH IN SUBSECTION (D)(3)(A) OF UP TO FIVE PERCENT (5%) OF THE GROSS REVENUES FROM THE CITY'S PROVISION OF UTILITY SERVICES DURING THE FISCAL YEAR.
- (4) **BOND OR SECURED INDEBTEDNESS; PRIORITY.** THIS CHAPTER SHALL NOT AFFECT, LIMIT, OR ALTER PAYMENT OBLIGATIONS FOR OR PAYMENT PRIORITIES OF BONDS OR OTHER INDEBTEDNESS OR OBLIGATIONS SECURED BY OR PAYABLE FROM UTILITY SYSTEM REVENUES. ACCORDINGLY, THE CITY SHALL DISBURSE UTILITY SYSTEM REVENUES FROM THE UTILITY FUND IN THE ORDER OF PRIORITIES AS HAS BEEN, OR MAY BE, ESTABLISHED FROM TIME TO TIME IN THE RESOLUTIONS, ORDINANCES, INDENTURES, AND AGREEMENTS OF THE CITY RELATED TO INDEBTEDNESS OR OBLIGATIONS SECURED BY OR PAYABLE FROM UTILITY SYSTEM REVENUES.

SECTION 2. AMENDED LANGUAGE. In the sections of this Ordinance that are intended to amend the Mesa City Code by adding new language, the additions to the City Code are written in text that is in **BOLD AND ALL CAPS**.

SECTION 3. RECITALS. The recitals above are fully incorporated in this Ordinance by this reference.

SECTION 4. EFFECTIVE DATE. The effective date of this Ordinance will be thirty (30) days following adoption by the Mesa City Council.

SECTION 5. DATE OF APPLICABILITY. The requirements set forth in this Ordinance shall apply beginning with the 2020/2021 fiscal year, which begins on July 1, 2020, except for the authority provided pursuant to Subsection 3-3-4(B) (Utility Assistance Programs), which shall begin as of the effective date.

SECTION 6. 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 will not affect the validity of the remaining portions thereof.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, this 16th day of March, 2020.

APPROVED:

Mayor

ATTEST:

City Clerk