

## **ORDINANCE NO. 5863**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MESA, ARIZONA, REPEALING THE EXISTING TITLE 8, CHAPTER 10 AND ADOPTING TITLE 8, CHAPTER 10, SECTIONS 1 THROUGH 12 “MUNICIPAL WATER SYSTEM” REGARDING WATER USE IN THE CITY AND THE CITY’S WATER UTILITY SYSTEM.

WHEREAS, the City of Mesa owns, operates and maintains a municipal water treatment and distributions system which provides water service to over 100,000 customers within the City;

WHEREAS, the availability of water is critical to the health, safety and welfare of the City, its customers, and all persons living in, working in or visiting the City;

WHEREAS, it is in the best interests of the City to revise certain terms, conditions, limitations and other and requirements regarding City water utility service and water use within the City;

WHEREAS, it is desirable to promote water conservation, and to establish and provide for the implementation of certain measures and requirements that will provide for a sustainable water supply for existing and future customers and water uses across the City due to the finite availability of water resources and their susceptibility to drought and other limiting conditions;

WHEREAS, the City Council believes an ordinance as described above will be a benefit to the community of Mesa.

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

Section 1: That Mesa City Code Title 8, Chapter 10, Sections 1 through 11 is hereby repealed in its entirety and replaced with a new Mesa City Code Title 8, Chapter 10, Sections 1 through 12, titled “Municipal Water System” as follows:

### **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 requirements regarding City water utility service considering, among other factors, the City’s General Plan, Designation of Assured Water Supply (as recognized by the Arizona Department of Water Resources), water resource portfolio, current hydrologic conditions, Water Master Plan, and Zoning Ordinance.
- (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 amount of System water available in excess of the Demand Ceiling based on conveyance of Long Term Storage Credits to the City, compliance with an approved MLM Permit (or Sustainable Service Agreement), and all other requirements of this Chapter.

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

**BODY OF WATER:** Shall have the same meaning as set forth in A.R.S. § 45-131(1) (2022).

**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.

**DEMAND CEILING:** The maximum metered amount of water in acre feet (325800 gallons) available to Customers in a rolling twelve (12) month period pursuant to Section 8-10-9.

**DEPARTMENT:** The City of Mesa 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:** The Director of the Department or designee.

**DISTRIBUTION MAIN:** Potable water mains located within right of way, or a qualifying public utility easement acceptable to the Department, and suitable for customer connection, as determined by the Department and generally smaller than 16 inches in diameter.

**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.

**KGAL:** One thousand gallons.

**LAKE PERMIT:** A permit authorizing the filling of an artificial body of water or use of water at a Turf-Related Facility.

**LONG TERM STORAGE CREDITS:** Long Term Storage Credits as defined in A.R.S. § 45-802.01 created at a Storage Facility in the East Salt River Valley Subbasin of the Phoenix Active Management Area, as defined by the Arizona Department of Water Resources.

**MLM CUSTOMER:** Persons who have a valid MLM Permit or Sustainable Service Agreement or qualifying Legacy Customers.

**MLM PERMIT or PERMIT:** A required written authorization issued by the Department in accordance with Section 8-10-9.

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

**OVER-SEEDING:** Seeding a variety of cool weather grass such as ryegrass, bluegrass, or bentgrass into an existing perennial warm weather variety of grass such as bermudagrass.

**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.

**RATE SCHEDULE:** A schedule of rates, fees, charges, and customer classifications, adopted and made effective by Ordinance by the City.

**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 SERVICE AGREEMENT:** A written agreement between the City and an MLM Customer expressly setting forth provisions and

limitations regarding water demand and consumption, including a Demand Ceiling, applicable Allowance, and provisions regarding the transfer of Long Term Storage Credits to the City by the Customer.

**SYSTEM:** Municipal water transmission and distribution mains, pumps, treatment plants and other facilities used or useful in the provision of potable water utility service by City, (where available from City in its sole and absolute discretion).

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

**TRANSMISSION MAIN:** Potable water mains located within right of way not suitable for customer connection and generally larger than 12 inches in diameter.

**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.

**WATER MASTER PLAN:** The master plan report, as may be periodically updated, that provides the City's comprehensive plans regarding water demands, water resources, and water production and distribution infrastructure based on factors such as development goals, 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 Committees 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.

### **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 Schedules, 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. 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 located within right of way or a public utility easement acceptable to the Department within the applicable pressure zone. Service 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 new service to Outside User Applicants, nor to provide a larger meter to existing Outside Users.
- (F) The City may require a written agreement as a condition precedent to service:
  - 1. Pursuant to the provisions of an adopted Rate Schedule 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, unusual or exceptional 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, extend as a portion of the System a minimum of an eight inch Distribution Main (or such size as is determined by the Director) adjacent to and along the entire Frontage of the parcel (if not existing), and 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, 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 over Customer's property for the purposes of meter reading, connection and disconnection of service as well as operating, maintaining and replacing the System.
- (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 Rate Schedules for water service are those approved and adopted by ordinance of the City. If there are multiple available optional Rate Schedules or provisions therein, 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 Schedule or provision, the change will become effective for the billing cycle commencing after the customer has requested the change. Where optional Rate Schedules 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 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, the existing facts, circumstances and conditions including but not limited to System condition and physical availability of water supplies, and considering impacts 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 AND TURF RESTRICTIONS**

- (A) It shall be unlawful for any Person or entity to fill a Body of Water or to apply water for landscaping watering purposes on a Turf-related Facility without first obtaining a Lake Permit from the City, the Arizona Department of Water Resources as required by A.R.S. § 45-132, and this Section.
  - 1. Any Person or entity desiring to fill a Body of Water 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 A.R.S. § 45-402(31) shall, before filling the Lake or before applying the water, make application to the City through the Department for a Lake Permit.
  - 2. The City Council may schedule a hearing on the application for a Lake Permit for filling of a Body of Water 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 Lake Permit for the filling of a Body of Water 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 A.R.S. § 45-141;
    - (iii) Water withdrawn pursuant to a poor-quality permit issued under A.R.S. § 45-516; and
    - (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.
  - 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.
  - e. The development or facility with which the Lake or the Turf-related Facility is associated will generate an economic impact for the City sufficient to justify the water used.
3. The City shall monitor the use of water by appropriate metering, pursuant to any Lake Permit issued under this Section, and the Department shall terminate the Lake Permit upon making a finding that any of the conditions for issuance no longer apply.
- (B) Where an existing Body of Water is filled with water from the City's water supply or an existing Turf-related Facility is supplied with water from the City, the City may, in its sole and absolute discretion, supply effluent.

- (C) If the City has reason to believe that a Person is violating or has violated any provision of this Section or a Lake 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.
- (D) This Section shall not apply to a Body of Water 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 a Body of Water or Turf-related Facility 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.
- (E) All Bodies of Water and Turf-related Facilities shall be subject to any restrictions, reductions, prohibitions, limitations and other measures adopted by resolution of the City Council (or emergency declaration of the Mayor under A.R.S. Title 26, Chapter 2 Article 1 Section 311, or Mesa City Code Title 1 Chapter 14) as part of a stage two, three or four shortage.

#### **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 source.
    - b. Use of water 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 p.m.—5:00 p.m.
    - 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 4" or larger (or the equivalent in multiple meters), 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.
  - h. Over-Seeding prohibited.
- 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. Landscape watering is further restricted to every other week, on a schedule determined by the Department.
  - 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 7 KGAL / 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 65 KGAL / 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. § 9-463.06 (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. Additional restrictions, reductions, prohibitions, limitations, and other measures as approved by the City Council.
  - n. Moratorium under A.R.S. § 9-463.06 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 one-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 or 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: DEMAND CEILING COMPLIANCE AND MULTIPLE OR LARGE METER CUSTOMER WATER PERMITS**

- (A) Water Demand Ceiling. Except as otherwise provided in this Section, Customers are subject to an annual limit of 330 acre-feet of water in a rolling

twelve (12) month period on metered deliveries. Meters used solely for residential use and hospitals (NAICS Code 622) are excluded from this requirement except the Demand Ceiling applies to and includes all landscaping meters.

(B) Demand Ceiling Applicability.

1. All Customers (including Legacy Customers and Established Legacy Customers) shall limit their metered water use to the applicable Demand Ceiling.
2. All Customers with an MLM Permit shall remain in compliance with all Permit conditions at all times.
3. All Customers with a Sustainable Service Agreement shall remain in compliance with all Agreement terms at all times.

(C) MLM Permit

1. In order to exceed the Demand Ceiling limits, Applicants and Customers must request and obtain a Multiple or Large Meter Permit (“MLM Permit”) which is a written authorization issued by the Department for the permitted Customer to exceed the Demand Ceiling.
2. Applicants and existing Customers that request a meter four (4) inches or larger or the equivalent in multiple meters must also obtain an MLM Permit. Meters used solely for residential use and hospitals (NAICS Code 622) are excluded from this requirement except that this requirement applies to all landscape meters.
3. Any Customer requesting service with special, unusual or exceptional characteristics, including but not limited to peak momentary, hourly, daily or monthly demand, all as determined by the Department, must also obtain an MLM Permit.

(D) Sustainable Water Service Application.

1. Customers shall apply for an MLM Permit by submitting a completed Sustainable Water Service Application on the Department approved form, stamped by a Registered Professional Engineer, to the Department.
  - a. For undeveloped property, Applicants must submit a Sustainable Water Service Application at the time the Applicant submits for any Development Entitlements.

- b. Existing Customers must submit a Sustainable Water Service Application prior to exceeding the applicable Demand Ceiling Limits or upon request of the Department.
- 2. The Customer or Applicant will provide on the Sustainable Water Service Application, the name and address of the facility including the name of the operator, owner, and SIC/NAICS codes, phasing of development and construction, water demand growth, the approximate number and size of the structures to be served, a reasonable description of the nature and type of water uses proposed on the property to include types of equipment and processes, a list of any environmental control permits held by or for the facility, a reasonable estimate of the projected average and peak hourly, daily, monthly, and annual water demand, and other information as requested by the Department. The Application will include an acknowledgment by the Applicant that the property is subject to the Demand Ceiling Limits and compliance with this Chapter.

(E) MLM Permit Issuance and Terms

- 1. If after reviewing the Sustainable Service Application, the Department determines the System, in combination with any improvements to be provided by the Applicant or Customer, is sufficient for the projected demands, the Department may provide a Permit authorizing MLM Customer status and where applicable setting forth an Allowance.
- 2. All Sustainable Service Applications not resulting in issuance of an MLM Permit within sixty (60) days shall be deemed denied, unless the Applicant requests and the Department grants a reasonable extension based on the totality of the circumstances as determined by the Department.
- 3. The MLM Permit may contain or authorize:
  - a. The Demand Ceiling.
  - c. An Allowance amount.
  - d. Placement of multiple or large meters (4 inches or larger or the equivalent in multiple meters).
  - e. A statement that compliance with the Permit does not relieve the MLM Permittee of responsibility for compliance with all applicable federal and state requirements.
  - e. Other conditions as the Department deems appropriate to ensure compliance with this Chapter, and state and federal laws rules, and regulations.

4. MLM Customers with a permitted Allowance must, at the Customer's sole cost and expense, secure and transfer a sufficient amount of Long-Term Storage Credits to the City through the Arizona Department of Water Resources to meet all metered Allowance amounts in excess of the applicable Demand Ceiling. MLM Customers must complete the transfer of Long-Term Storage Credits to the City within ninety (90) calendar days of the issuance of an MLM Permit by the Department. The amount of the transferred Long-Term Storage Credits must be sufficient to cover the full amount of the authorized Allowance for a period of not less than three (3) years. After the initial transfer upon Permit issuance, MLM Customers must thereafter maintain a balance with the City of at least three (3) years of Long Term Storage Credits, or the Allowance shall be recalculated in each year by dividing the remaining available Long Term Storage Credits by three.

(F) Sustainable Service Agreement

Customers with an Allowance may at the discretion of the Department be required to enter into a Sustainable Service Agreement.

(G) Legacy Customers

1. A Legacy Customer is a Customer existing as of the Effective Date of Ordinance No. 5863 with a historic demand above (or within ten percent of) 330 acre feet of water annually, but less than or equal to 550 acre-feet of water annually, and without a Sustainable Service Agreement.
2. The Demand Ceiling for Legacy Customers is 550 acre-feet. Legacy Customers are further limited to their existing meter size.
3. Legacy Customers shall limit metered deliveries to the Legacy Customer's Demand Ceiling and may be issued a MLM Permit by the Department.
4. Legacy Customers must submit a Sustainable Water Service Application and obtain and comply with an MLM Permit with an Allowance prior to exceeding the Legacy Customer's Demand Ceiling. Legacy Customers must also submit a Sustainable Water Service Application upon the request of the Department.

(H) Established Legacy Customers

1. An Established Legacy Customer is a Customer existing as of the Effective Date of Ordinance No. 5863 with a historic demand above 550 acre-feet of water annually and with at least one year during the last five



of historic consumption in excess of that amount, and without a Sustainable Service Agreement.

2. The Demand Ceiling for Established Legacy Customers is up to 850 acre-feet. For an Established Legacy Customer with a historic demand above 900 acre-feet of water annually for the year prior to the Effective Date of Ordinance No. 5863 the Demand Ceiling is 950 acre-feet. The Department shall issue an MLM Permit setting forth the applicable Demand Ceiling for each Established Legacy Customer. Established Legacy Customers are further limited to their existing meter sizes in the absence of a Permit or Sustainable Service Agreement.
3. Established Legacy Customers shall limit metered deliveries to the Established Legacy Customer's Demand Ceiling.
4. Established Legacy Customers must submit a Sustainable Water Service Application and obtain and comply with an MLM Permit with an Allowance prior to exceeding the Established Legacy Customer's Demand Ceiling. Established Legacy Customers must also submit a Sustainable Water Service Application upon the request of the Department.

(I) Compliance

1. All Customers must comply with the applicable Demand Ceiling, Allowance, or Sustainable Service Agreement, as applicable. Water deliveries of five percent (5%) or more over the applicable Demand Ceiling, Allowance, or Sustainable Service Agreement amounts shall constitute a violation. Penalties for violation shall be as follows:
  - a. First exceedance (one or more days in any month): written notice and penalty as provided in Section 8-10-10(A).
  - b. Second exceedance (one or more days in a second month within three years of a first exceedance): penalty as provided in Section 8-10-10(B).
  - c. Third and subsequent exceedances (one day in a third month within three years of a second exceedance): penalty as provided in Section 8-10-10(C), and each day of exceedance constitutes a separate violation of this Section 8-10-9(I)(1)(c).
2. In addition to all other remedies under this Chapter, water deliveries to an MLM Customer in any period that exceed the Demand Ceiling, Allowance, or Sustainable Service Agreement amounts as applicable over the same period shall be billed under the applicable General Commercial Water Service rate Schedule.

3. In addition to all other remedies under this Chapter and the MLM Permit, the Department may also revoke a Permit for good cause shown including, but not limited to, the following reasons:
- (i) Failure to provide prior notification of significant changes to water demands;
  - (ii) Misrepresentation of or failure to fully disclose all relevant facts in the Sustainable Service Application;
  - (iii) Falsifying any required reports;
  - (iv) Tampering with metering equipment;
  - (v) Refusing to allow the Department timely access to the facility premises and records;
  - (vi) Violations of any effluent limitation, pretreatment standards or requirements or any terms of the wastewater discharge permit or this article;
  - (vii) Failure to pay fines; or
  - (viii) Failure to timely pay water and wastewater rates, fees and charges.

#### **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 to the Customer's billing address, 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. 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 to the Customer's billing address 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 the

account to termination of service in accordance with the provisions of the Terms and Conditions. In addition, for a violation of the Demand Ceiling or Water Allowance, 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.

- (C) For a third or subsequent violation of this Chapter, the City shall issue a civil code violation and impose a fine pursuant to 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) On behalf of the City and with the concurrence of the City Attorney and City Manager, the Department may enter into negotiated settlements, assurances of compliance, or other similar documents establishing an agreement with any person responsible for noncompliance. Such documents shall include specific action to be taken by the person to correct the noncompliance within a time period specified by the document and may include recovery of penalties. The City may bring an action in superior court to enforce any breach of a negotiated settlement agreement, which may include but is not limited to, recovery of 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.
- (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. 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 the amount of two thousand and five hundred dollars (\$2,500.00) 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.

- (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 Arizona Rules of Procedure for Special Actions.
- (H) In addition to civil sanctions and any fine imposed, the City may also terminate service for a second or subsequent 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.
- (I) 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.

#### **8-10-12: LIMITATION**

Nothing in this Chapter, including the authorization of an Allowance by Permit or a Sustainable Service Agreement, guarantees a particular level of water delivery or service, conveys any rights to the ownership of water, or creates a reservation of a specific quantity of water to any Permittee, Customer, or Person. The Allowance is used for determining compliance by MLM Customers with MLM Permit requirements. 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.

Section 2: Development agreements that specifically include the City's commitment to the development of the property and project of water resources as permitted by and set forth in ARS § 9-463.06(B)(1) approved by the City Council on or before the Effective Date of this ordinance shall constitute a "Sustainable Service Agreement" and such commitment shall constitute the Demand Ceiling for the purposes of Title 8, Chapter 10 during the term of each such agreement, provided the property owner remains in compliance with all provisions thereof at all times, including but not limited to, returning wastewater volumes to the City in proportion to and as a

percent of water demands as contemplated therein. No other development agreements shall constitute a sustainable Service Agreement under Title 8, Chapter 10.

Section 3: Sustainable Service Agreements existing as of the Effective Date are not intended to be amended, nor the obligations of the Parties thereunder otherwise affected, by this Ordinance.

Section 4: The recitals in this Ordinance (i.e., Ordinance No. 5863) are fully incorporated in this Ordinance by reference, and each recital represents a finding of fact and determination made by the City Council.

Section 5: That any sections of the Mesa City Code or parts of such sections in conflict with this Ordinance, are hereby repealed; provided such repeal shall not affect suits pending, rights and duties that matured or were existing, penalties that were incurred or proceedings that were initiated prior to the effective date of this Ordinance.

Section 6: This Ordinance is effective, and shall apply, thirty (30) days after the adoption of this Ordinance.

Section 7: The various City officers and employees are hereby authorized and directed to perform all acts necessary to give effect to this Ordinance, including the City Clerk shall codify into the City Code Title 8, Chapter 10, Sections 1 through 12 of the Mesa City Code entitled “Municipal Water System”.

PASSED AND ADOPTED by the City Council of the City of Mesa, Maricopa County, Arizona, this 8<sup>th</sup> day of July, 2024.

APPROVED:

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk