

ORDINANCE NO. 5909

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MESA, ARIZONA, REPEALING MESA CITY CODE TITLE 8, CHAPTER 1 IN ITS ENTIRETY AND ADOPTING BY REFERENCE A NEW MESA CITY CODE TITLE 8, CHAPTER 1 BACKFLOW PREVENTION AND CROSS-CONNECTION CONTROL, SECTIONS 1 THROUGH 17 REGARDING PROTECTION OF THE CITY'S POTABLE WATER SERVICE AND PROVIDING PENALTIES FOR VIOLATIONS THEROF.

WHEREAS, the City of Mesa (the "City") owns, operates and maintains a municipal water treatment and distribution system which provides water service to over 100,000 customers.

WHEREAS, water quality 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, federal and state laws require the City to implement certain system protections to maintain water quality by preventing backflow and cross-contamination.

WHEREAS, it is in the best interests of the City to establish, revise, and clarify certain terms, conditions, limitations and other requirements regarding the prevention of backflow and cross-contamination.

WHEREAS, the public document setting forth the new Mesa City Code Chapter 8, Title 1 is available for public use and inspection at the Office of the City Clerk.

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Mesa City Code Title 8, Chapter 1 titled "Back Flow Protection" and all Subsections 1 through 14 thereunder is hereby repealed in its entirety.

Section 2: Mesa City Code Title 8: Health, Sanitation and Environment, Chapter 1: Backflow Protection and Cross-Connection Control, Sections 1 through 17 that was made a public record on November 18, 2024, by Resolution No. 12309, of the City of Mesa, Maricopa County, Arizona, three copies of which are on file at the Office of the City Clerk and available for public use and inspection, are made a part hereof as if fully set out in this Ordinance and hereby adopted and incorporated as Mesa City Code Title 8, Chapter 1.

Section 3: The penalty provisions in Section 16 "Late Fee, Civil Sanctions" and Section 17 "Habitual Offender" of the public record titled "MESA CITY CODE TITLE 8: HEALTH, SANITATION AND ENVIRONMENT, CHAPTER 1: BACKFLOW PREVENTION AND CROSS-CONNECTION CONTROL" that was made a public record by Resolution No. 12309, are hereby set forth in full and hereby adopted in accordance with A.R.S. § 9-803:

8-1-16: LATE FEE, CIVIL SANCTIONS

(A) A Backflow Compliance Late Fee will be assessed against each service connection for which a customer fails to timely meet the requirements imposed by Section 8-1-11 (I).

The Backflow Compliance Late Fee shall be set forth in the schedule of Utility Service Fees and shall be in addition to all other applicable rates, fees and charges.

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

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

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

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

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

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

8-1-17: HABITUAL OFFENDER

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

Section 4: The recitals above are incorporated in this Ordinance by reference as if fully set forth herein.

Section 5: This Ordinance is effective thirty (30) days following adoption by the Mesa City Council.

Section 6: This Ordinance does 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 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 who shall codify in Mesa City Code Title 8, Chapter 1, “Backflow Protection and Cross-Connection Control,” Sections 1 through 17 that was made a public record on November 18, 2024 by Resolution No. _____.

Section 8: Resolution No. 12309 and attached exhibits are on file at the Office of the City Clerk, 20 E. Main Street, Suite 150, Mesa, Arizona.

PASSED AND ADOPTED by the City Council of the City of Mesa, Maricopa County, Arizona, this 9th day of December, 2024.

APPROVED:

Mayor

ATTEST:

City Clerk