

ORDINANCE NO. 2024-\_\_\_\_

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF PEORIA, MARICOPA COUNTY, ARIZONA AMENDING CHAPTER 25 OF THE PEORIA CITY CODE (1992) BY ADDING SECTIONS 25-15.01 THROUGH 25-15.05 PERTAINING TO LARGE WATER USERS; AND PROVIDING FOR SEVERABILITY AND FOR AN EFFECTIVE DATE.

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WHEREAS, the City of Peoria owns, operates, and maintains municipal water treatment and distribution systems for potable and non-potable water service to over 64,000 customers;

WHEREAS, the City of Peoria Council has determined that to best protect the rights, interests, safety, health, and welfare of the City and its residents, certain terms, conditions, limitations, and other requirements promoting conservation and efficient use of the City’s water resources should be established to ensure a sustainable water supply; and,

WHEREAS, the City of Peoria Council desires to fulfill the vision of the City set forth in the voter-approved General Plan with the shared, finite water resources available to it;

WHEREAS, the City of Peoria Council intends this ordinance to regulate new users and existing users that increase their water meter size or change their land use type;

NOW, THEREFORE BE IT ORDAINED by the Mayor and Council of the City of Peoria, Maricopa County, Arizona that:

SECTION 1. Chapter 25 of the Peoria City Code (1992) is amended by adding Sections 25-15.01 through 25-15.05 currently reserved which shall read as follows:

**Sec. 25-15.01 Purpose, Intent, and Applicability**

- (a) The City Council has determined that to best protect the rights, interests, safety, health, and welfare of the City and its residents, certain terms, conditions, limitations, and other requirements promoting conservation and efficient use of the City’s water resources should be established to ensure a sustainable water supply.
- (b) The following customers must comply with the requirements of Sections 25-15.01 through 25-15.05:
  - (1) Any customer initiating water service after the effective date of this ordinance that qualifies as either a Large Water User or Water-Intensive User upon the initiation of water service, or anytime thereafter; or,
  - (2) Any customer receiving water service at a facility on the effective date of this ordinance who thereafter requests water meter upsizing or revises a site plan at a facility that will allow for Water Use sufficient to meet the definition of a Large Water User or a Water Intensive User, regardless of the Customer’s Water Use prior to the effective date of this ordinance.

**Sect 25-15.02 Definitions**

In addition to the definitions set out in Sections 1-2 and 25-1 of this Code, for the purpose of Sections 25-15.01 through 25-15.05, the following words, terms, and phrases shall have the following meaning ascribed to them, except where the context clearly indicates a different meaning:

*Development permits:* all necessary City approvals and permits required in accordance with the Code for the development, construction, and/or installation of improvements on property located in the City.

*Economic Development Strategic Plan:* a public plan presented to the Council that communicates the City's economic development strategic priorities and rationale.

*Facility:* a site used for a particular purpose. A facility includes without limitation sites that are contiguous or proximately located and under common ownership or control that are used for a particular purpose or closely related purposes.

*Integrated Water Utilities Master Plan:* a periodically updated plan that assesses and plans for the disposition of the City's water resources in relation to current and projected water demands.

*Large Water User:* any water customer, or any person with lawful control over a current water customer, that controls a facility meeting any one of the following criteria as determined in the sole discretion of the City Manager:

- (i) Total current or projected water use averages 50,000 gallons per day or more over any consecutive 365-day period; or,
- (ii) Total current or projected water use equals or exceeds 100,000 gallons per day during any consecutive twenty-four (24) hour period. For the purpose of this Paragraph, the total or projected water use will be calculated based on the highest value of the following:
  - a. The actual metered water use;
  - b. The customer's projection of water use;
  - c. The actual amount of water use billed in one billing cycle divided by the number of days billed in that cycle; or
  - d. The average projected daily water use over any consecutive 365-day period multiplied by the appropriate maximum day peaking factor as set forth in the applicable Integrated Water Utilities Comprehensive Plan.

*Water-Intensive User:* any customer at whose facility any of the following occurs:

- (i) Auto or self-service vehicle washes that results in water use that exceeds 25,000 gallons per day averaged over any consecutive 365-day period;
- (ii) Cooling with any method that results in water use that exceeds 25,000 gallons per day averaged over any consecutive 365-day period;
- (iii) Operation of a short-term rental or lodging with 50 or more rooms or units, including, without limitation, motels, hotels, timeshares, resorts, and hostels;
- (iv) Providing long-term care services via multi-residential facility containing 50 or more rooms or units. Examples include but are not limited to assisted living centers, memory care centers, rehabilitation centers, and nursing homes; or
- (v) Filling or maintaining the water level in any water body with a water surface area exposed to the atmosphere of 10,890 square feet (one-quarter acre) or more.

*Water-Intensive User Guidance Document:* a City Manager-approved document with industry specific water conserving processes, techniques, and technologies.

*Water Meter Upsizing:* replacing an existing water meter or installing additional water meters at an existing facility in any way that allows for greater water use at the facility.

*Water Use:* the total combined potable and non-potable water demand of a facility as measured by the City's water meter(s).

### **Sec. 25-15.03 Large Water Users**

- (a) No Large Water User may connect to the City potable or non-potable public water systems or use City water unless authorized by a permit issued by the City in conformance with the terms of this Chapter. Once permitted, Large Water Users must fully comply with the terms and conditions of the Large Water User permit.
- (b) A Large Water User shall not exceed any water use limitation contained in a Large Water User permit. A Large Water User must apply for and receive an amended Large Water User permit before exceeding the water use limitations.
- (c) All Large Water Users must ensure that all techniques and technologies required by the Large Water User permit remain fully operational and functioning as designed at all times, and upon reasonable notice, allow the City to enter the facility and access all areas of the facility that the City deems necessary to confirm compliance with the Large Water User permit and this Chapter.
- (d) The City shall not issue a Large Water User permit unless and until the City Manager has determined that:
  - (1) The proposed water use is consistent with the Integrated Water Utilities Master Plan; and
  - (2) The customer, to the extent applicable, has:
    - (i) Timely submitted a Large Water User permit application as follows:
      - a. For new facilities or undeveloped property, not later than the submittal of the site plan; or
      - b. For existing facilities, not later than the request for Water Meter Upsizing or at the time of application for site plan modification.
    - (ii) Paid all applicable fees;
    - (iii) Provided the following information, to the extent applicable, in a form acceptable to the City:
      - a. Schedule for construction or development;
      - b. Approximate number and size of the structures to be served;
      - c. A description of the nature and type of Water Use proposed;
      - d. An estimate of the projected annual, monthly, and maximum-daily water use and sewer return flows reviewed and stamped by a professional engineer actively registered with the Arizona State Board of Technical Registration;
      - e. An inventory and description of the processes, techniques, and best available technologies that will be incorporated in a way to meaningfully:
        - 1. Reduce the consumption of water;
        - 2. Facilitate on-site water recycling;
        - 3. Reduce the loss or waste of water; and
        - 4. Improve the efficiency of Water Use.
      - f. Where practicable, establish the use of reclaimed water as defined in Section 25-1, by the Large Water User;
      - g. Describe any renewable water supplies the applicant will convey or assign to the City; and
      - h. Any additional information the City deems necessary or relevant.

- (e) The City Manager or designee determines that the proposed Water Use is consistent with the Integrated Water Utilities Master Plan.
- (f) After the City has determined that a timely application meets all applicable requirements of this Chapter, it shall issue a Large Water User permit if:
  - (1) The City determines that the proposed water use does not exceed 100,000 gallons per day averaged over any 365-day period, and the proposed water use aligns with the Integrated Water Utilities Master Plan; or
  - (2) The City determines that the proposed Water Use is greater than or equal to 100,000 gallons per day averaged over any 365-day period, and issuing the Large Water User permit is in the best interest of the City after considering the following factors:
    - (i) The availability of water, not otherwise allocated, to which the City has legal right and the physical ability to deliver that are not needed to serve existing Customers, future Customers with existing development entitlements, and within projected demand as set out in the Integrated Water Utilities Master Plan;
    - (ii) Any studies conducted by a third party that estimate the impact of the proposed water use to the City's economy;
    - (iii) Whether the proposed water use will further the goals of the City's Economic Development Strategic Plan;
    - (iv) The impact of the proposed water use to the City's Designation of Assured Water Supply under A.R.S. § 45-576;
    - (v) Any conservation techniques and technologies proposed by the applicant that are likely to ensure efficient water use;
    - (vi) Whether the applicant will convey or assign to the City all legal rights to a physical water supply that will offset the applicant's projected water use in compliance with the requirements of A.R.S. § 45-576, the regulations adopted by the Arizona Department of Water Resources, and all other applicable laws and regulations;
    - (vii) Whether and to what extent the applicant will utilize recycled or reclaimed water to offset potable demand;
    - (viii) Whether and to what extent the applicant enters into an agreement with the City to offset the cost of any infrastructure improvements necessary to accommodate the proposed water use, necessary treatment, and associated sewer return flows; and
    - (ix) Any other information the City deems relevant.
- (g) In addition to the terms and conditions of water service as specified in this Chapter, the City may prescribe in any Large Water User permit any of the following terms and conditions in the City Manager's sole discretion:
  - (1) Maximum water use limitations;
  - (2) Water use monitoring to ensure compliance with this Chapter and the Large Water User permit;
  - (3) Additional fees for water use exceeding the water use limitations established in the Large Water User permit;
  - (4) Requirements to implement the use of recycled water or techniques, and technologies that the City determines will maximize the efficiency of the water use;
  - (5) An attestation affirming the Large Water User's consent and the City's unequivocal right to limit water supplied to the Large Water User as established in the Large Water User permit;

- (6) An attestation affirming all techniques and technologies required by the Large Water User permit remain fully operational, functioning as designed at all times; and
  - (7) Upon reasonable notice, allow the City to enter the facility and access all areas of the facility that the City deems necessary to confirm compliance with the Large Water User permit and this Chapter.
- (h) A Large Water User permit shall expire five years after the date it was issued unless, prior to that date, the Large Water User has submitted a complete application for renewal in a form acceptable to the City. Upon receiving a renewal application, the City will renew the Large Water User permit if the City determines that the Large Water User has no unresolved violations of this Chapter or any term of the Large Water User permit, and either:
- (1) The Large Water User has not materially modified the facility in a way that is inconsistent with this Chapter or their permit, nor increases the likelihood of a violation of this Chapter or the Large Water User permit, and the City may inspect the facility to ensure compliance with the Large Water User permit; or
  - (2) The renewal application includes processes, techniques, technologies, or other changes that will result in water use of substantially similar or greater efficiency and sewer return flows of a substantially similar or greater quantity and quality than the existing permit requires.

**Sec. 25-15.04 Water-Intensive Users**

- (a) No Water-Intensive User may connect to the City potable or non-potable public water systems or use City water unless the Water-Intensive User either:
  - (1) Submits a notice to the City, in a form acceptable to the City, describing how the Water-Intensive User will voluntarily implement and maintain all applicable industry specific water conserving processes, techniques, and technologies identified in the Water-Intensive User Guidance Document; or
  - (2) Obtains a Large Water User permit as provided in Section 25-15.03.
- (b) A Water-Intensive User shall attest that all techniques and technologies required by 25-15.04(a)(1) above remain fully operational, functioning as designed at all times, and upon reasonable notice, allow the City to enter the facility and access all areas of the facility that the City deems necessary to confirm compliance with this Section.

**Sec. 25-15.05 Enforcement**

- (a) In addition to any other penalties provided in this Chapter, any person who violates any provision of Sections 25-15.01 through 25-15.05, any provision of a permit issued pursuant to Section 25-15.03, or any provision of a compliance order issued pursuant to Section 25-15.05(b) is guilty of a class 1 misdemeanor, with each day a violation continues constituting a separate offense.
- (b) If the City determines that any person is not in compliance with any provision of Section 25-15.01 through 25-15.04 or any provision of a permit issued pursuant to this Section 25-15.01-25 through 15.05, the City Manager may issue an order requiring immediate compliance or compliance within a specified time period. A compliance order shall state with reasonable specificity the nature of the violation, a time for compliance if applicable and the right to a hearing pursuant to Section 25-15.05(j).
- (c) If the City Manager determines that any person has violated any provision of Section 25-15.01-25 through 15-.03 or any provision of a permit issued pursuant to this Chapter, or any provision of a compliance order issued pursuant to this Chapter, the City Manager may issue a penalty order imposing an administrative penalty of up to \$1,000 per day per violation.
- (d) The City shall send written notice of an order issued pursuant to this Section by certified mail, return receipt requested, or by hand delivery to the person and any other individual on the utility account requesting notice.
- (e) The City Manager, at their sole discretion, may order the penalty described in Subsection 25-15.05(c) after considering the following:
  - (1) The amount of water use;
  - (2) Any good faith efforts by the violator to maintain compliance;
  - (3) The seriousness of the violation;
  - (4) The number of violations;
  - (5) Any history of similar violations by the person;
  - (6) Any history of recalcitrance by the violator;
  - (7) Any economic benefit to the violator resulting from the violation, as an aggravating factor only; and
  - (8) Any other relevant factor.
- (f) A compliance order or penalty order becomes final and enforceable in Peoria Municipal Court unless within thirty days after the receipt of the order the alleged violator requests a hearing pursuant to Subsection 25-15.05(j). If the alleged violator requests a hearing, the order does not become final until a final decision is issued by the City Council upholding, modifying, or rejecting the hearing officer's recommendation on the appeal.
- (g) In addition to any other sanction, the City may limit or suspend water service to any customer the City Manager determines to be out of compliance with this Subsection, any provision of a permit issued pursuant to Section 25-15.03, or a compliance order issued pursuant to Subsection 25-15.05(b). The City shall send written notice of the limitation or suspension by certified mail, return receipt requested, or by hand delivery to the customer and any other individual on the utility account requesting notice. If water service is suspended under this Subsection, the City will not provide any water service to the customer until the City Manager is satisfied that the customer has returned to compliance.
- (h) If the City Manager determines that a Water-Intensive User has failed to timely submit the notice required in Subsection 25-15.04(a) or timely fails to meet an applicable requirement of the Water-

Intensive User Document, the City Manager may issue a compliance order pursuant to Section 25-15.05(b) requiring the Water-intensive User to obtain a Large Water User permit.

- (i) If, as a result of a violation of state law, this Chapter, or a permit or order issued pursuant to this Chapter, the City is assessed any type of penalty or is ordered to take remedial action by the Arizona Department of Water Resources, the person the City Manager determines to be responsible for the violation must pay to the City the amount of any penalty, along with all costs and expenses incurred by the City as a result of the violation.
- (j) A compliance order issued under Subsection 25-15.05(b), a penalty order issued under Section 25-15.05(c), or a limitation or suspension under Subsection 25.15.05(f), may be appealed pursuant to Section 2-20 of this Code. The hearing shall be held before a hearing officer appointed by the City for such purpose. At the hearing, the appellant and the City shall have the opportunity to present evidence. The formal rules of evidence shall not apply, and the hearing officer may admit any evidence it deems relevant. The burden of proof in the appeal is on the City to prove by a preponderance of the evidence that the violation(s) occurred as alleged. The hearing officer shall issue a written decision within ten (10) days after the hearing. Said decision shall be forwarded to the City Council for a vote of affirmation or reversal.
- (k) Any amount owed to the City under this Subsection is recoverable through any legal means.