

#6
MAY 28 2015

ORDINANCE NO. 4634

AN ORDINANCE OF THE CITY OF CHANDLER, ARIZONA,
AMENDING CHAPTER 52 OF THE CHANDLER CITY CODE
BY ADDING ARTICLE VI PROVIDING REGULATIONS FOR
PLANNING FOR CURRENT AND FUTURE POTABLE
WATER RESEOURCES

The Mayor and City Council hereby amend Chapter 52 of the Chandler City Code by adding Article VI, entitled Sustainable Water Allocation Regulations to Chapter 52 of the Chandler City Code (hereinafter the "Code"), as follows:

Article VI. Sustainable Water Allocation Regulations

52-43. Policy Established.

- A. Chandler has finite water resources.
- B. This water allocation policy implemented in this Article will assist the City in maintaining a sustainable water supply for existing and future water users.

52-44. Definitions

- A. "Allocate" or "Allocation" shall mean the City's act(s) of enumeration of Water it owns or may own in the future for delivery in its Water system for current and future water customers. Allocation of Water under this Article VI does not convey any rights to others for the use of, ownership, or reservation of such Water to any particular customer being served or potentially to be served by the City's Water system.
- B. "Applicant" shall mean the owner, or owner's agent, who applies for Development Entitlements pursuant to this Code, including, but not limited to, Chapters 35 and 48.
- C. "Development Entitlements" shall mean approvals by the City of Chandler to authorize applications, under applicable municipal code provisions, including, but not limited to, Chapters 35 and 48, for development, construction and/or installation of improvements on specified property.
- D. Multiple and Large Meter Users or "MLM Users" shall mean water uses, excluding water meters used solely for residential land use (as defined in Chandler City Code § 38-3), landscape water and reclaimed water meters, which:
 - 1. Use more water than the Tier I Water Use Allocation,
 - 2. Use water sufficient to require installation of a 3-inch or greater meter or its equivalent in multiple meters,
 - 3. Require multiple meters on a single parcel that will use more than 50,000 gallons per day (annual average), or
 - 4. Require one or more new meters on a parcel that already has water service and the water use on the parcel is more than 50,000 gallons per day (annual average).

- E. Tier I Water Use Allocation shall mean the most recently City Council accepted allocations of water usage assigned to various residential uses as gallons per day (gpd) per dwelling unit and gallons per day (gpd) per 1000 square feet of structures developed as non-residential uses. Tier I Water Use Allocations may be periodically updated by the City Council.
- F. Tier II Water shall mean Water that may be available for allocation based on the Water Resource Management Strategy to a MLM User.
- G. Tier III Water shall mean Water that may be available for purchase at a price determined by the City to a MLM User.
- H. "Water" shall mean potable water as defined by the federal Clean Water Act.
- I. Water Resource Management Strategy shall mean the periodic report accepted by the City Council which outlines the City's development goals, types of land uses to be encouraged by the City's provision of Tier II Water, and the criteria to be considered by City staff, commissions, and City Council in the potential allocation of Tier II Water to MLM Users who may meet the criteria.

52-45 Applicability

- A. The Water usage of all Water users, other than MLM Users who are approved in accordance with Subsection 52-45(B), are limited to the then-existing Tier I Water Allocation accepted by the City Council in accordance with Subsection 52-44(E).
- B. MLM Users may only exceed the Tier I Water Allocation then existing at the time of Development Entitlements becoming effective, if the City, in its sole discretion, specifically grants Tier II Water or Tier III Water Use Allocations in accordance with this Article and through a Sustainable Water Service Agreement approved by the City Council and executed by the applicant.

52-46 Sustainable Water Service Application

- A. All MLM Users shall submit a Sustainable Water Service Application at the same time as it submits its applications for any Development Entitlements.
- B. The Sustainable Water Service Application shall identify the type of Water use, the size of the structures in the development, annual and monthly Water use, and the phasing of development.

52-47 City Review of Sustainable Water Service Applications

- A. The Municipal Utilities Director shall review and may approve Sustainable Water Service Application.
- B. Tier II and Tier III Water Allocations Determination.
 - 1. The City will determine whether, based on the most recent Water Resource Management Strategy, the development is eligible for Tier II Water and how much it is willing to apply to the development.
 - 2. If the City determines that it will not make Tier II Water available for any particular MLM User, the MLM User must purchase Tier III Water, if available, in order to continue with the application for land use entitlements for its planned development.

C. Prior to installing any water meters for a MLM User, City and water user shall enter into a Sustainable Water Service Agreement. Concepts in the Sustainable Water Agreement include:

1. Valid for 100-years from the date of issuance.
2. Determine the approved MLM User's Water Use Allocation that will be permitted for the property subject to the Sustainable Water Service Agreement.
3. Transferrable to subsequent owners of the real property underlying the development with equivalent water use upon City approval.
4. Terms and conditions for the purchase of Water resources necessary for delivery to the development.
5. Other terms and conditions deemed necessary for City to agree to the allocation of Tier II or Tier III Water to the development.

52-48 Penalties for exceeding the Annual Sustainable Water Use allotment

- A. Annual compliance shall be based a rolling 3-year average water use.
1. First exceedance – Pay for volume of water used. City will purchase water credits at market rate and charge back to water meter owner.
 2. Second exceedance – Water user must develop a water reduction plan.
 3. Third exceedance – Court action.

INTRODUCED AND TENTATIVELY APPROVED by the City Council this ____ day of _____, 2015.

ATTEST:

CITY CLERK

MAYOR

PASSED AND ADOPTED by the City Council this ____ day of _____, 2015.

ATTEST:

CITY CLERK

MAYOR

CERTIFICATION

I, HEREBY CERTIFY, that the above and foregoing Ordinance No 4634 was duly passed and adopted by the City Council of the City of Chandler, Arizona, at a regular meeting held on the ____ day of _____, 2015, and that a quorum was present thereat.

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY (*leb*)

PUBLISHED:

When recorded, return to:

SUSTAINABLE WATER SERVICE AGREEMENT

This Sustainable Water Service Agreement ("Agreement") is entered into by and between the CITY OF CHANDLER, Arizona, an Arizona municipal corporation ("City"), _____, a _____ (fill in type of entity, ("Owner). The City and Owner are collectively, the "Parties".

RECITALS

A. Owner holds fee simple title to approximately _____ gross acres of land ("Property"), which is located in Maricopa County, Arizona, legally described in the attached **Exhibit A**, and depicted in attached **Exhibit B**. The Property is generally located at the _____ corner of _____ and _____ Roads within the city limits of City.

B. Owner previously requested, and received from the City, land use entitlements as set forth in Chandler Ordinance # _____ and _____ ("Entitlement").

C. Chandler Municipal Code Chapter 52, Article VI and/or Chandler Ordinance # _____ limits land uses to those that will not exceed the Tier I Water Use Rate as set forth in the then existing City-accepted Water Use Rates table, which was _____ gallons per day (gpd).

D. Owner now desires to develop land uses that exceed the Tier I Water Use Rate(s) that was approved as a condition of the City's grant of approval for the Entitlement for the Property.

E. Pursuant to Article VI of Chapter 52 of the Chandler Municipal Code, Owner, as a MLM User, has filed a Sustainable Water application and the City has deemed the Property eligible for the Tier II/III Water Use Rate set forth herein subject to the terms and conditions of this Agreement.

F. The Parties desire to enter into this Agreement for the purpose of outlining and setting forth certain obligations and commitments of the Parties relative to the contemplated development of the Property and are entering into this Agreement pursuant to the provisions in A.R.S. §9-500.05 and Article VI of Chapter 52 of the Chandler Municipal Code .

G. The Parties neither desire nor intend that this Agreement shall in any way affect, hinder or interfere with the ability of City's governing body (the "City Council") (i) to approve or deny the other Entitlements, compliance with any other regulatory matters related to development of real property, other exactions (including System Development Fees); and/or (ii) to impose conditions of approval in connection with the approval of Entitlements except as specifically provided herein.

NOW, THEREFORE, in consideration of the foregoing premises and agreements herein, the Parties hereto state, confirm and agree as follows:

AGREEMENT

1. **Incorporation of Recitals.** The foregoing recitals are hereby incorporated into this Agreement as though fully restated.
2. **Definitions.** Capitalized words or phrases used in this Agreement shall mean as defined below or as defined in Article VI of Chapter 52 of the Chandler Municipal Code.
 - a. **A.R.S.”** shall mean the Arizona Revised Statutes.
 - b. **“Code”** shall mean the codified laws of the City published by Municode as the Chandler Municipal Code.
 - c. **“Effective Date”** shall mean the date on which the representative for the last party executes this Agreement.
 - d. **“Entitlement”** shall mean those permissions or approvals given for the development of real property within the City limits including, but not limited to, those set forth in Chapter 35, Chapter 48, and Chapter 52 of the Code.
 - e. **“Surface Water”** shall mean _____
 - f. **“Water”** shall mean potable water unless otherwise described in the text of this Agreement.
3. **Obligations of Parties.** In order to develop the land use category(ies) set forth in the Owner’s -approved Sustainable Water application, this Agreement sets forth the terms and conditions for approval of the application.
 - a. Concurrent to approval of this agreement and conditioned on the Owner’s compliance with this Agreement, the Property is approved for Tier II/III land use category(ies) of _____ (hereinafter referred to as “Approved Land Use”).
 - b. The Property will be limited to no more than _____ gpd of Potable Water (Maximum Water Use) for its Approved Land Use which is comprised of _____ gpd of Tier I Water and _____ gpd of Tier II/III Water for the Approved Land Use.
 - c. Upon Owner’s payment of the Water System Development Fees and the regular monthly charges for water charged to all similar water users, City will provide _____ gpd of Tier I [Tier II] Potable Water through City’s regular water treatment and distribution system to the Property under the same terms and conditions it provides such water to its other similarly situated customers.
 - d. Additionally, upon Owner’s compliance with this Agreement and upon Owner’s payment of the Water System Development Fees minus any portion of the Water System Development Fees specifically identified for the capital purchase of water resources which is equal to or less than that which Owner paid to purchase Phoenix Active Management Area Long Term Storage Credits (“Credits”), City will provide _____ gpd of Tier III potable water through City’s regular water treatment and distribution system to the Property under the same terms and conditions it provides such water to its other similarly situated customers.
 - e. Owner will pay for the cost of the City’s purchase of _____ acre feet of Credits or Surface Water approved by the City in writing prior to its purchase.

4. City will assist Owner in the negotiation of the purchase of the Credits and/or Surface Water but all costs of Credits' purchase shall be borne by Owner.

5. Prior to the initiation of the process to negotiate the purchase of the Credits, Owner shall post [50%] of the estimated cost of the Credits or Surface Water in a City account to be held in beneficial trust by the City for its purchase of the Credits or Surface Water for the Property.

6. If Owner sells, transfers property, or abandons the property and the Owner agrees to modify the Entitlements to condition the approval of a modified Entitlement to a Tier I Water Use Rate, the City may, at its sole discretion:

a. Transfer the projected unused Credits to the Owner; or

b. Reimburse the Owner the purchase price of the unused Credits. The City's reimbursement amount shall be the lesser of the then existing market price or the purchase price increased by the annual consumer price index. City may reimburse the Owner in five equal annual payments due 365 days after the date of the City's written decision to reimburse the Owners and annually on the same date thereafter.

i. If reimbursement is made for the Credits in five annual payments, City shall pay interest in the amount of the prime rate plus 0.5% on the balance from the date on which City's written decision to reimburse was mailed to Owner.

7. All documents and agreements to permanently decrease the Maximum Water Use to Tier I Water Use Rate must be duly executed and/or amended prior to the Credit transfer or reimbursement.

8. Economic Development Triggers and Obligations

9. **Penalties for over use of Maximum Water Use.** Maximum Water Use shall be measured annually from the installation of the meter as a running average for the immediately preceding three (3) years.

a. If the Owner has exceeded the Maximum Water Use for any annual period within that three year period, the City has the option of the following:

b. Upon the first violation, the City may issue a cease and desist order to Owner to immediately mitigate its usage amount to be equal to or less than the Maximum Water Use rate. If Owner does not mitigate its usage amount to be equal to or less than the Maximum Water Use rate, it is deemed a subsequent occurrence of the Owner exceeding the Maximum Water Use rate.

c. Upon a second occurrence of the Owner exceeding the Maximum Water Use rate, the City may impose a fine of \$__ per _____ in addition to legal costs and other such costs incurred by the City to impose and enforce the fine.

d. Upon a third or subsequent occurrence of the Owner exceeding the Maximum Water Use rate, the City may terminate this Agreement which among other consequence will automatically modify the Entitlements and Water Use Rate to those which were approved as a Tier I Water Use Rate. The City may remove or lock meters on the Property within 60 days of its written determination to terminate this Agreement for Owner's third or subsequent exceedance of the Maximum Water Use rate so that the Property may only obtain Potable Water at the Tier I Water Use Rate.

e. Nothing in this agreement shall alter the penalties for violation of the any other City regulations relating to water usage nor shall it alter penalties for nonpayment of the regular water rates charged to all water customers of City water system.

f.

10. Termination of Agreement.

a. If Owner does not deposit money with City in accordance with Section 5 within six (6) months of the Effective Date of this Agreement.

b.

11. Prop. 207 Waivers.

a. On or before the Sustainable Water application or this Agreement is approved, Owner shall provide to City a completed "Proposition 207 Waiver" substantially in the form set forth in Exhibit B for receipt of the approvals. The Parties acknowledge and agree that City will record the waiver form with the office of the Maricopa County Recorder.

b. Owner shall also provide to City a separate completed Proposition 207 Waiver form acceptable to City's legal counsel in connection with any modification of the Entitlements in accordance with Section 6. The Parties acknowledge and agree the City will, record the waiver form.

12. General Provisions

a.

b. Good Standing: Authority. Each of the Parties represents and warrants to the other that it is duly formed and validly existing under the laws of Arizona and that the individual(s) executing this Agreement on behalf of their respective Party is authorized and empowered to bind the Party on whose behalf each such individual is signing.

c. Default and Remedies. In the event City is in default hereunder, Owner and/or Owner shall have all remedies available at law or in equity (including expedited equitable relief); whether under this Agreement or otherwise.

d. Governing Law. This Agreement shall be governed by and construed under the laws of the State of Arizona. This Agreement shall be deemed made and entered into in Maricopa County, Arizona.

e. Waiver. No waiver by any Party of a breach of any of the terms or conditions of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term or condition contained herein.

f. Severability. In the event that any phrase, clause, sentence, paragraph, or other portion of the Agreement shall be illegal, null or void or against public policy, for any reason, or shall be held by any court of competent jurisdiction to be illegal, null or void or against public policy, the remaining portions of this Agreement shall not be affected thereby and shall remain in full force and effect to the fullest extent permissible by law and the Parties will negotiate diligently in good faith for such amendments of this Agreement as may be necessary to achieve its intent, notwithstanding such invalidity or unenforceability.

g. Attorneys' Fees. If any judicial proceeding is initiated by any Party hereto with respect to this Agreement, the prevailing Party shall be entitled to recover, in addition to any other relief to which it is entitled, its costs and expenses incurred in connection with such legal proceeding, including, without limitation, its reasonable attorneys' fees.

h. Notices. All notices, demands or other communications given hereunder shall be in writing and shall be deemed to have been fully delivered upon personal delivery or as of the second business day after mailing by United States Mail, postage prepaid, by Certified Mail, return receipt requested, addressed as follows:

To City: Municipal Utilities Director City of
Chandler
Post Office Box 4008, Mailstop 6__
Chandler, Arizona 85__-4008

Copy to: City Attorney
City of Chandler
Post Office Box 4008, Mailstop 602
Chandler, Arizona 85__-4008

To Owner:
Copy to:

Notice of address may be changed by any Party by giving notice to the other Parties in writing of a change of address. Such change shall be deemed to have been effectively noticed five days after mailed by the Party changing address.

i. Time of Essence. Time is of the essence of this Agreement.

j. Recordation. No later than ten (10) days after the effective date, the City will record this Agreement in the Official Records of Maricopa County.

k. Entire Agreement. This Agreement constitutes the entire Agreement between the Parties hereto pertaining to the subject matter hereof and all prior and contemporaneous agreements, representations, negotiations and understandings of the Parties hereto, oral or written, are hereby superseded and merged herein.

Amendments. This Agreement may be amended only by a written agreement fully executed by the Parties.

[Signatures appear on following pages]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the dates written above.

**CITY OF CHANDLER,
an Arizona municipal corporation**

By: _____
Mayor

Date: _____

ATTESTED TO:

City Clerk

APPROVED BY:

City Attorney

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this _____ day of _____, 2015, by _____, in his capacity as Mayor of the City of Chandler, Arizona.

Notary Public

My Commission Expires:

OWNER

By: _____
 [NAME]
 [TITLE]

Date: _____

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this _____ day of _____, 2015, on behalf of _____, by _____, its _____.

Notary Public

My Commission Expires:
Drafts: