

## ORDINANCE NO. 2807

AN ORDINANCE OF THE COMMON COUNCIL OF THE TOWN OF GILBERT, ARIZONA, AMENDING THE CODE OF GILBERT, ARIZONA, CHAPTER 66 UTILITIES, BY AMENDING ARTICLE VIII WATER CONSERVATION, BY AMENDING SECTION 66-351 DEFINITIONS RELATED TO THE DEFINITIONS OF "NON-PER CAPITA CONSERVATION PROGRAM OR NPCCP"; BY AMENDING SECTION 66-352 WATER CONSERVATION OFFICER RELATING TO SECTION IMPLEMENTATION; BY AMENDING SECTION 66-355 LIMITATIONS ON NEW WATER FEATURES RELATED TO CHILDREN'S RECREATION FEATURES; BY AMENDING SECTION 66-362 LANDSCAPING IN NEW SINGLE-FAMILY AND MULTI-FAMILY DEVELOPMENTS RELATED TO PERCENTAGE OF ALLOWABLE WATER INTENSIVE LANDSCAPED AREA FOR RECLAIMED WATER USING DEVELOPMENTS AND CERTAIN IRRIGATION SYSTEM REQUIREMENTS; BY AMENDING SECTION 66-363 MODEL HOMES IN NEW RESIDENTIAL DEVELOPMENTS RELATED TO CERTAIN IRRIGATION SYSTEM REQUIREMENTS; BY DELETING SECTION 66-371 WATER CONSERVATION PLANS; BY AMENDING SECTION 66-372 LANDSCAPING IN NON-RESIDENTIAL DEVELOPMENTS RELATED TO PERCENTAGE OF ALLOWABLE WATER INTENSIVE LANDSCAPED AREA FOR RECLAIMED WATER USING DEVELOPMENTS AND CERTAIN IRRIGATION SYSTEM REQUIREMENTS; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; AND PROVIDING FOR SEVERABILITY

NOW THEREFORE, BE IT ORDAINED by the Common Council of the Town of Gilbert, Arizona, as follows:

### Section I. In General.

The Town Code of Gilbert, Arizona is hereby amended by amending Chapter 66 Utilities by amending Article VIII Water Conservation, 66-351 Definitions, 66-352 Water conservation officer, 66-355 Limitations on new water features, 66-362 Landscaping in new single-family and multi-family developments, 66-363 Model homes in new residential developments, 66-371 Water conservation plans, and Section 66-372 Landscaping in non-residential developments, to read as follows (new language in CAPITALIZED and deleted language in ~~Strikeout~~):

### **Sec. 66-351. - Definitions.**

*Active recreational area* means turfed area designated for active recreation use and measuring a minimum of 10,000 square feet and at least 100 feet long by 100 feet wide.

*Cap water supply* means Central Arizona Project Water.

*Common area* means areas in a new development designated for common use.

*Development* includes residential subdivisions and nonresidential facilities and projects.

*Efficient irrigation system* means a system that delivers water in sufficient supply to meet the plants' water consumption requirements, directly to the plant material without causing loss of water due to surface runoff, excessive infiltration, or excessive evaporation.

*EPA* MEANS THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY.

*Landscapable area* means common areas in a new development capable of being landscaped, but does not include active recreational areas.

*Lawn overseeding* means the planting of winter grass on an established turf area.

*Low water use landscaping* means all landscaping that is not water-intensive landscaping.

*New development* shall mean a development that receives zoning approval after December 31, 2000, provided however, "new development" does not include a parcel that is included within the boundaries of a development that received zoning approval prior to December 31, 2000 if: (1) such parcel is subsequently rezoned to a different base zoning district; (2) such parcel constitutes 20 percent or less of the land area of the originally approved development; and (3) the director of public works determines in writing that the rezoning and subsequent use of such parcel will not result in a net increase in the quantity of water to be used on the parcel over the quantity of water to be used on the parcel that would have been used under the zoning originally approved.

~~*Non-per capita conservation program or NPCCP* means the non-per capita water conservation program for Gilbert approved by the department of water resources.~~

*Reclaimed water* means water that has received treatment in a facility that is regulated pursuant to A.R.S., tit. 49, ch. 2, and has not legally acquired the characteristics of groundwater or surface water.

*Turf* means a surface layer of earth containing regularly mowed grass, with its roots. Turf includes but is not limited to annual and perennial Rye grass, Fescue, all types of Bermuda, and Azoya.

*Turf-related facility* means a school, park, cemetery, golf course, industrial park or common area of a housing development that applies water from any source, including reclaimed water, to ten or more acres of water-intensive landscaped area.

*Waste of water* means to permit water supplied by the town to escape from any private property onto a street, sidewalk, gutter, alley, public utility easement, parking area, or another person's property. Water is not wasted if any of the following apply:

(1) The flow of water results from water supply system failures or malfunctions that are fixed within 72 hours of the date of notice of such failure or malfunction.

(2) The flow results from firefighting, inspection of fire hydrants by the fire department or from fire training activities.

(3) The flow is from water applied as a dust control measure as may be required by law.

(4) The flow is from water applied to abate spills of flammable or otherwise hazardous materials, where water is the appropriate methodology.

(5) The flow is from water applied to prevent or ~~abate~~ ABATE health, safety, or accident hazards when alternate methods are not available.

(6) The flow results from the inspection, operation or maintenance of the town water supply system.

(7) The flow results from inspection or maintenance of irrigation systems.

(8) The flow results from water used for construction or maintenance activities where the application of water is the appropriate methodology and where no other practical alternative exists.

(9) The flow results from maintenance of a swimming pool.

*Water feature* means pools, ponds, fountains, streams, waterfalls, swimming pools, artificial lakes, and other artificial water structures.

*Water-intensive landscaped area* means any area of land that is watered with a permanent water application system and landscaped primarily with water-intensive landscaping.

*Water-intensive landscaping* means:

(1) Any plants not listed in the most recent low water use plant list approved by the Arizona Department of Water Resources pursuant to the Phoenix Active Management Area Management Plan then in effect, including turf.

(2) The total surface area of all bodies of water filled or refilled with water from any source, including reclaimed water, that are an integral part of the landscaped area, but not including bodies of water used primarily for swimming purposes.

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**Sec. 66-352. - Water conservation officer.**

The ~~director of public works~~ TOWN MANAGER shall designate a water conservation officer whose duties it shall be to implement the ~~non-per capita conservation program~~ PROVISIONS OF THIS SECTION.

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**Sec. 66-355. - Limitations on new water features.**

~~(a) The spray from a water feature installed, erected or constructed by a new development, shall be limited to six feet in height from the base of the water column. This prohibition shall not apply to any water feature which injects or drops water into the air solely for the purpose of cooling a confined air space.~~

(bA) Water features shall comply with the following requirements:

(1) A permit to install, erect or construct the water feature shall be obtained from the building and code compliance officer. Such permit shall only be issued if the water feature complies with the requirements of this section.

(2) The water feature shall be designed with catch basins that will maximize the amount of water recycled and minimize make up water. Water features which over spray shall be equipped with wind shut-off valves.

(3) The water feature shall be designed to use water equipment that will minimize leakage throughout the life of the water feature.

(4) The water feature shall reuse filtered backwash in a manner beneficial to surrounding plant material and landscaped areas.

(5) The water feature shall be operational only during normal business hours and shall be equipped with an automatic timer and a recirculating pump.

(6) THE SPRAY FROM A WATER FEATURE INSTALLED, ERECTED OR CONSTRUCTED BY A NEW DEVELOPMENT, SHALL BE LIMITED TO SIX FEET IN HEIGHT FROM THE BASE OF THE WATER COLUMN. THIS PROHIBITION DOES NOT APPLY TO COMPONENTS OF

A RECREATIONAL WATER FEATURE DESIGNED FOR CHILDREN'S PLAY.

(B) THE LIMITATIONS CONTAINED IN THIS SECTION SHALL NOT APPLY TO ANY WATER FEATURE WHICH INJECTS OR DROPS WATER INTO THE AIR SOLELY FOR THE PURPOSE OF COOLING A CONFINED AIR SPACE.

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**Sec. 66-362. - Landscaping in new developments that are single family and multi-family developments.**

New developments shall be subject to the following stipulations:

(1) Except as provided in subsection (b), the amount of water-intensive landscaping in common areas of a new development that is a single family and multifamily development shall not exceed ten percent of the total landscapable area in the new development. If reclaimed water is used on such common areas, the town's reclaimed water ~~incentive~~ rate shall be charged.

(2) If only reclaimed water is used on common areas, the amount of water-intensive landscaping may increase to ~~50~~ 30 percent of the total landscapable area. The town's ~~standard~~ reclaimed water use rate shall be charged.

a. For the purpose of satisfying this subsection (2), cap water may be used as an interim water supply for water-intensive landscaping during the first 18 months after watering commences, if all the following apply:

1. The landowner has entered into a reclaimed water use agreement with the town.
2. The landowner or developer has constructed or has agreed to construct all the reclaimed water-related infrastructure or facilities necessary for the delivery of reclaimed water to the development.
3. The town is not physically able to directly deliver reclaimed water to the development during the period cap water is applied.
4. The landowner or developer has obtained an interim cap water supply at no cost to the town.

b. The town may extend the period cap water may be used in lieu of reclaimed water if all the conditions of subsection 2(a). continue to apply and the landowner has received the prior written approval of the director of the Arizona

Department of water resources to continue the interim use of cap water beyond 18 months.

(3) The amount of reclaimed water available to a new development shall be based on availability but in no event shall be greater than three times the amount of calculated sewage output of the new development at buildout, less 15 percent.

(4) Turf shall be prohibited in all rights-of-way, whether or not reclaimed water is used to irrigate such turf. As used in this subsection "right-of-way" does not include:

- a. Landscape easements on private lots; and
- b. Active recreational areas contiguous to rights-of-way.

(5) Only low water use landscaping shall be used in the remaining landscapable area of the common area.

(6) All irrigation systems shall be efficient irrigation systems.

(7) AN EPA WATERSENSE, OR EQUIVALENT PROGRAM, LABELED WEATHER BASED SMART IRRIGATION CONTROLLER SHALL BE INSTALLED AT THE TIME OF CONSTRUCTION TO OPERATE THE EFFICIENT IRRIGATION SYSTEM.

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**Sec. 66-363. - Model homes in new residential developments.**

(a) The combined water-intensive landscaping and water features of model homes in new single-family developments shall not exceed 20 percent of the landscapable area.

(b) Water-intensive landscaping shall be located only where it is functionally useful, such as in play areas or close to the house for energy efficiency.

(c) All other plant material shall be low water use plants listed in the most recent low water use plant list approved by the Arizona Department of Water Resources pursuant to the Phoenix Active Management Area Management Plan then in effect.

(d) All irrigation systems shall be efficient irrigation systems.

(e) Developers of new developments shall provide at the model homesite and to homebuyers an information package on low water use landscaping obtained from the town's water conservation officer. In addition, model homes shall have landscaping and irrigation plans approved by the planning department prior to issuance of building permits, for which no variance may be granted, and which meet the aforementioned requirements.

(f) AN EPA WATERSENSE, OR EQUIVALENT PROGRAM, LABELED WEATHER BASED SMART IRRIGATION CONTROLLER SHALL BE INSTALLED AT THE TIME OF CONSTRUCTION TO OPERATE THE EFFICIENT IRRIGATION SYSTEM.

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**Section. 66-371. LANDSCAPING IN NONRESIDENTIAL DEVELOPMENTS—~~Water conservation plans.~~**

NEW DEVELOPMENTS SHALL BE SUBJECT TO THE FOLLOWING STIPULATIONS:

- (1) FOR ALL NON-RESIDENTIAL DEVELOPMENTS, EXCEPT HOTELS AND MOTELS, THE WATER-INTENSIVE LANDSCAPED AREA SHALL NOT EXCEED AN AREA CALCULATED BY ADDING 10,000 SQUARE FEET PLUS 20 PERCENT OF THE FACILITY'S LANDSCAPABLE AREA IN EXCESS OF 10,000 SQUARE FEET (EXCLUDING ACTIVE RECREATIONAL AREAS). IF THE LANDSCAPABLE AREA OF THE LOT IS 10,000 SQUARE FEET OR LESS, THE WATER-INTENSIVE LANDSCAPING SHALL NOT EXCEED TEN PERCENT OF THE LANDSCAPABLE AREA.
- (2) FOR HOTELS AND MOTELS, THE WATER-INTENSIVE LANDSCAPED AREA WITHIN THE NEW DEVELOPMENT SHALL NOT EXCEED AN AREA CALCULATED BY ADDING 20,000 SQUARE FEET PLUS 20 PERCENT OF THE FACILITY'S LANDSCAPABLE AREA IN EXCESS OF 20,000 SQUARE FEET (EXCLUDING ACTIVE RECREATIONAL AREAS). IF THE LANDSCAPABLE AREA OF THE LOT IS 20,000 SQUARE FEET OR LESS, THE WATER-INTENSIVE LANDSCAPING SHALL NOT EXCEED TEN PERCENT OF THE LANDSCAPABLE AREA.
- (3) NEW DEVELOPMENTS THAT UTILIZE ONLY RECLAIMED WATER CAN INCREASE THE PERCENTAGE OF WATER-INTENSIVE

LANDSCAPING IN THE LANDSCAPABLE AREAS UP TO A MAXIMUM OF 30 PERCENT OF THE LANDSCAPABLE AREA AND SHALL PAY THE RECLAIMED WATER RATE.

A. FOR THE PURPOSE OF SATISFYING THIS SUBSECTION (3), CAP WATER MAY BE USED AS AN INTERIM WATER SUPPLY FOR WATER-INTENSIVE LANDSCAPING DURING THE FIRST 18 MONTHS AFTER WATERING COMMENCES, IF ALL THE FOLLOWING APPLY:

1. THE LANDOWNER HAS ENTERED INTO A RECLAIMED WATER USE AGREEMENT WITH THE TOWN.

2. THE LANDOWNER OR DEVELOPER HAS CONSTRUCTED OR HAS AGREED TO CONSTRUCT ALL THE RECLAIMED WATER-RELATED INFRASTRUCTURE OR FACILITIES NECESSARY FOR THE DELIVERY OF RECLAIMED WATER TO THE DEVELOPMENT.

3. THE TOWN IS NOT PHYSICALLY ABLE TO DIRECTLY DELIVER RECLAIMED WATER TO THE DEVELOPMENT DURING THE PERIOD CAP WATER IS APPLIED.

4. THE LANDOWNER OR DEVELOPER HAS OBTAINED AN INTERIM CAP WATER SUPPLY AT NO COST TO THE TOWN.

B. THE TOWN MAY EXTEND THE PERIOD CAP WATER MAY BE USED IN LIEU OF RECLAIMED WATER IF ALL THE CONDITIONS OF SUBSECTION 4(A) CONTINUE TO APPLY, AND THE LANDOWNER HAS RECEIVED THE PRIOR WRITTEN APPROVAL OF THE DIRECTOR OF THE ARIZONA DEPARTMENT OF WATER RESOURCES TO CONTINUE THE INTERIM USE OF CAP WATER BEYOND 18 MONTHS.

(4) ONLY LOW WATER USE LANDSCAPING SHALL BE USED IN THE REMAINING LANDSCAPABLE AREA.

(5) SCHOOLS, PARKS, CEMETERIES, GOLF COURSES, COMMON AREAS OF HOUSING DEVELOPMENTS, AND PUBLIC RECREATIONAL FACILITIES ARE EXEMPT FROM THIS PROVISION. SUCH NONRESIDENTIAL DEVELOPMENTS WITH A TOTAL WATER-INTENSIVE LANDSCAPED AREA OF TEN ACRES OR MORE SHALL



BE GOVERNED BY THE STATE REGULATED PROGRAM FOR "TURF-RELATED FACILITIES".

(6) ALL IRRIGATION SYSTEMS SHALL BE EFFICIENT IRRIGATION SYSTEMS.

(7) AN EPA WATERSENSE, OR EQUIVALENT PROGRAM, LABELED WEATHER BASED SMART IRRIGATION CONTROLLER SHALL BE INSTALLED AT THE TIME OF CONSTRUCTION TO OPERATE THE EFFICIENT IRRIGATION SYSTEM

~~(a) New developments that are nonresidential developments, that have an estimated annual water use that averages 9,000 gallons per day or more, except turf related facilities, shall submit a "water conservation plan" as a condition to issuance of a building permit. The water conservation plan shall identify all water uses anticipated by the user and the water conservation measures to be utilized and shall contain at least the following:~~

~~——— (1) A description of any available water conservation training programs offered to employees;~~

~~——— (2) Whether alternative water sources will be used. Alternative water sources include reclaimed water, poor quality groundwater or other nongroundwater sources;~~

~~——— (3) Operating levels of total dissolved solids (TDS) or conductivity for cooling towers and total cooling capacity, as well as blow down frequencies;~~

~~——— (4) How the development will use the best available conservation technologies in accordance with existing process uses. Examples include recirculating systems for process water, alternative dust control methods, automatic shut down devices to eliminate continuous running water;~~

~~——— (5) Any plans for the reuse of wastewater or process water at the development; and~~

~~——— (6) Description of landscaping and irrigation system for the development.~~

~~(b) If a new nonresidential customer is supplied water that did not have an estimated annual water demand of ten acre-feet (3,258,500 gallons) or more at the time the town commenced service of water to the customer, and that did not submit a conservation plan at that time, registers an annual water use of ten acre-feet or more of water supplied by the town after the first full calendar year of operation or in a subsequent calendar year, the town shall notify the customer in writing that the customer shall, before July 1 of the following calendar year, submit to the town a water conservation plan as described above.~~

~~(c) The town shall terminate water service to the nonresidential customer unless the customer submits, within 120 days after receiving the written notification, a water conservation plan demonstrating the use of the latest commercially~~

~~available conservation technologies for both interior and exterior water use consistent with reasonable economic return.~~

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**Sec. 66-372—66-379. – RESERVED.**~~Landscaping in nonresidential developments.~~

~~New developments shall be subject to the following stipulations:~~

~~(1) — For all non-residential developments, except hotels and motels, the water-intensive landscaped area shall not exceed an area calculated by adding 10,000 square feet plus 20 percent of the facility's landscapable area in excess of 10,000 square feet (excluding active recreational areas). If the landscapable area of the lot is 10,000 square feet or less, the water-intensive landscaping shall not exceed ten percent of the landscapable area.~~

~~(2) — For hotels and motels, the water-intensive landscaped area within the new development shall not exceed an area calculated by adding 20,000 square feet plus 20 percent of the facility's landscapable area in excess of 20,000 square feet (excluding active recreational areas). If the landscapable area of the lot is 20,000 square feet or less, the water-intensive landscaping shall not exceed ten percent of the landscapable area.~~

~~(3) — New developments that do not exceed the maximum percent of total landscapable area in water-intensive landscaping set forth in subsections (1) and (2) and which make use of reclaimed water, will be charged the reclaimed water incentive rate.~~

~~(4) — New developments that utilize only reclaimed water can increase the percentage of water-intensive landscaping in the landscapable areas up to a maximum of 50 percent of the landscapable area and shall pay the standard reclaimed water rate.~~

~~——— a. For the purpose of satisfying this subsection (4), cap water may be used as an interim water supply for water-intensive landscaping during the first 18 months after watering commences, if all the following apply:~~

~~————— 1. The landowner has entered into a reclaimed water use agreement with the town.~~

~~————— 2. The landowner or developer has constructed or has agreed to construct all the reclaimed water-related infrastructure or facilities necessary for the delivery of reclaimed water to the development.~~~~3. The town is not physically~~

~~able to directly deliver reclaimed water to the development during the period cap water is applied. 4. The landowner or developer has obtained an interim cap water supply at no cost to the town.~~

~~—— b. The town may extend the period cap water may be used in lieu of reclaimed water if all the conditions of subsection (4)a. Continue to apply and the landowner has received the prior written approval of the Director of the Arizona Department of Water Resources to continue the interim use of cap water beyond 18 months.~~

~~(5) —— Only low water use landscaping shall be used in the remaining landscapable area.~~

~~(6) —— Schools, parks, cemeteries, golf courses, common areas of housing developments, and public recreational facilities are exempt from this provision. Such nonresidential developments with a total water-intensive landscaped area of ten acres or more shall be governed by the state-regulated program for "turf-related facilities".~~

~~(7) —— All irrigation systems shall be efficient irrigation systems.~~

**~~Sec. 66-373. -- Reserved.~~**

**~~Sec. 66-374 -- 66-379. -- Reserved.~~**

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Section II. Providing for Repeal of Conflicting Ordinances.

All ordinances and parts of ordinances in conflict with the provisions of this Ordinance, or any part of the Code adopted herein by reference, are hereby repealed.

Section III. Providing for Severability.

If any section, subsection, sentence, clause, phrase or portion of this Ordinance or any part of the Code adopted herein by reference, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.


PASSED AND ADOPTED by the Common Council of the Town of Gilbert, Arizona, this 3rd day of August, 2021, by the following vote:

AYES: Anderson, Hendrix, Koprowski, Peterson, September, Tilque, Yentes

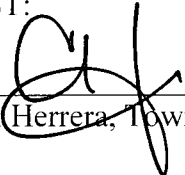
NAYES: \_\_\_\_\_ ABSENT: \_\_\_\_\_

EXCUSED: \_\_\_\_\_ ABSTAINED: \_\_\_\_\_

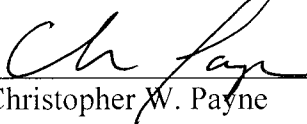
APPROVED this 3rd day of August, 2021.

  
\_\_\_\_\_  
Brigitte Peterson, Mayor

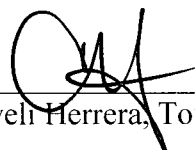
ATTEST:

  
\_\_\_\_\_  
Chaveli Herrera, Town Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Christopher W. Payne  
Town Attorney

I, CHAVELI HERRERA, TOWN CLERK, DO HEREBY CERTIFY THAT A TRUE AND CORRECT COPY OF THE ORDINANCE NO. 2807 ADOPTED BY THE COMMON COUNCIL OF THE TOWN OF GILBERT ON THE 3RD DAY OF AUGUST, 2021, WAS POSTED IN THREE PLACES ON THE 4TH DAY OF AUGUST, 2021.

  
\_\_\_\_\_  
Chaveli Herrera, Town Clerk