14-8.1 GENERAL PROVISIONS

(Ord. No. 2011-37 § 10)

(A) Purpose

The purposes of Article 14-8 are to:

(1) provide proper standards that ensure a high quality appearance of the Santa Fe area and promote good design while also allowing individuality, creativity and artistic expression;

(2) encourage the proper use of the land by promoting an appropriate balance between the built environment and the preservation of open space and natural environmental resources;

(3) protect private and public investment through preservation of open space, protection of natural resources, including the existing tree canopy; providing buffers between incompatible uses and along roadways; and encouraging the planting of appropriate vegetation;

(4) preserve and protect the identity and character of Santa Fe, and enhance the business economy; and

(5) promote water conservation and efficiency through preserving natural areas, encourage good soil management and encourage the use of native or drought tolerant plant materials.

(6) ensure compliance with the city's obligations to the U.S. Environmental Protection Agency (EPA) as a National Pollutant Discharge Elimination System (NPDES) Municipal Separate Storm Sewer System (MS4) Phase II permittee.

(B) Applicability

Unless otherwise noted, the requirements of this article apply to all land development activity covered under Chapter 14.

14-8.4 LANDSCAPE AND SITE DESIGN

(Ord. No. 2011-37 § 10)
14-8.13 DEVELOPMENT WATER BUDGETS

(Ord. No. 2011-37 § 11)

(A) Summary

Section 14-8.13 establishes:

(1) Procedures for the calculation of water budgets for development projects proposing new city water system demand that must be offset; and

(2) Thresholds that determine which city water budget program applies to a particular development project. The Water Conservation Credit Program, Section 25-11 SFCC 1987, administers water conservation credits created through conservation contracts or retrofit rebates at existing developed property within the city's water service area which credits may be used to offset new system demands of small development projects. The Water Rights Transfer Program, Section 25-12 SFCC 1987, administers water rights transfers required to offset new system demands of larger development projects.

(B) Development Water Budget

(1) The development water budget shall be reviewed and approved by the Engineering Section of the Water Division and shall contain the following information:

(a) A description of all proposed and existing structures on the subject parcel of land together with a complete description of all proposed and existing water fixtures and other water using devices and equipment to be installed or constructed on the subject parcel (not including water to be used during and for construction);

(b) A description of all proposed water uses proposed for the subject parcel of land, separating such uses by indoor and outdoor categories and including the total area of proposed and existing landscaping; and

(c) A quantification in gallons and acre-feet of the total proposed water usage on the subject parcel of land on an annual basis. In the case of phased development, the quantification shall also include the proposed water usage by each phase of development.

(2) Applicants may choose to:

(a) Allow the Water Division to calculate a development water budget based on standard formulas using historical water use data for similar type of development; or

(b) Develop a detailed alternative development water budget for the development project supported by reliable data that demonstrates that the anticipated annual water use will be less than if based on the Water Division's standard formulas.
(3) When a proposed new structure or use replaces an existing structure or use, the development water budget for the proposed new structure or use may be reduced by an amount equal to the average annual consumption in the twenty-four months that the highest water use was active during the preceding ten years or by the amount of water previously offset if the previously offset amount is higher. Consumption shall be determined through city utility billing system records. (Ord. No. 2012-23 § 1) (Pursuant to Section 2 of Ordinance No. 2012-23, this ordinance shall be reviewed one year from the date of adoption.)

(4) A development water budget may also be reduced by an amount equal to a specific approved annual water allocation made by the governing body for the development project as set forth in Section 25-9.6 SFCC 1987.

(5) The city shall allow reduction in the consumptive water rights required to be transferred in this subsection by the amount of consumptive water rights required for any Santa Fe Homes Program unit, a Housing Opportunity Program unit as per a valid Housing Opportunity Program Agreement or any dwelling unit meeting the definition of a low-priced dwelling unit as set forth in Section 26-2 SFCC 1987. The reduction is contingent upon the applicant entering into an agreement or other approved document with the city regarding the low-priced dwelling units. The document shall be recorded with the county clerk.

(6) A development water budget may be for a single phase of a multi-phase development project.

(C) Applicability of Development Water Budgets

A development water budget shall be submitted with the following land use applications:

(1) Final subdivision plats except:

(a) Plats for the purpose of creating tracts of land according to an approved master plan where additional subdivision of land or a more detailed development plan within the various tracts is still necessary before permitting of dwelling units and other buildings according to that master plan; and

(b) Plats where the proposed development is included in and consistent with an already approved development water budget and has complied with the water rights transfer program set forth in Section 25-12 SFCC 1987 or the water conservation credit program set forth in Section 25-11 SFCC 1987;

(2) Development plans, except preliminary development plans;

(3) Development plans for each phase of a phased development, but each phase shall be subject to Section 25-12;

(4) Major project plans in the Business Capital District;
(5) **Building permits** (whether or not a meter for service has been previously installed) except the following:

(a) Where covered by and consistent with an already approved *development* water budget that has complied with the water rights transfer program set forth in Section 25-12 SFCC 1987 or water conservation credit program set forth in Section 25-11 SFCC 1987;

(b) Replacement of thirty-three percent or less of an existing *building*;

(c) Remodels;

(d) Additions:

   (i) Where there are no new fixture installations;

   (ii) Where there are up to three new water fixtures provided that the increased *building area* does not exceed five hundred (500) square feet; and

(e) Shell only *permits* which will later require *permits* for tenant improvements at which time the *development* water budget is required;

(6) Secondary plumbing *permits* (plumbing *permits* independent of a *building permit*) resulting in an increase of water use, unless multiple installations in either commercial or multi-*family residential* uses, except the following:

(a) A spa not exceeding five hundred gallons;

(b) An oversized tub not exceeding one hundred gallons;

(c) A swamp cooler;

(d) A recirculating fountain not exceeding one thousand gallons of containment area; and

(e) A garden pond not exceeding two thousand gallons;

(7) Changes in permitted land use resulting in an increase in water use;

(8) Projects located outside the *city* limits, prior to *application* for an agreement to construct and dedicate water lines; and

(9) City of Santa Fe, Santa Fe County, New Mexico, Federal, and any other governmental, or quasi-governmental *development* not subject to the *city's development review* or *building permit* processes which will require water service from the *city's* water system.

(D) **Monitoring, Violations, Penalties, Remedies, and Disclosure**
The following shall apply to alternative development water budgets, as set forth in Subsection 14-8.13(B)(2)(b) and to water conservation contracts as set forth in the water conservation credit program, Section 25-11.3(C)(1):

(1) Beginning the first year that a customer's water service is subject to usage restrictions from an alternative development water budget or a contract for water conservation the Water Division shall monitor water customer's water usage on an annual basis.

(2) If a water customer exceeds water usage allowable under the customer's alternative development water budget or conservation contract in any annual period measured from the commencement of the restriction, the Water Division shall monitor the customer's water usage on a monthly basis and compare current monthly use to the previous year's use in the same month to determine whether the customer has returned to compliance. The Water Division shall, at the same time, notify the customer that the alternative development water budget or conservation contract has been exceeded, that the customer's usage will be monitored monthly to determine whether the customer has reduced water usage to the amount permitted under the alternative development water budget or the conservation contract, and the consequences that will ensue if the customer does not return to compliance. Water customers shall be charged a fifty percent surcharge over the base rate of water on the excess water delivered over annual budgeted or contracted amount for that year.

(3) If, after four months of monitoring, the customer is in compliance with the alternative development water budget or conservation contract, the customer shall be so informed and shall then be monitored on an annual basis.

(4) If, after four months of monitoring, the customer's water usage still exceeds the alternative development water budget or conservation contract by ten percent or more on a monthly pro-rata basis, the Water Division shall immediately notify the customer that the customer has exceeded the alternative development water budget or conservation contract. The Water Division shall recalculate the alternative development water budget or the conservation contract for the customer based on actual consumption over the period of noncompliance and shall notify the customer of the additional water rights, water credits or conservation credits needed to meet the new budget or contract. If the customer does not transfer sufficient water rights, water credits or conservation credits to the city within ninety days to make up the difference, the Water Division shall transfer sufficient water conservation credits to the customer to offset the net difference and shall include in the customer's next billing the current cost of those water conservation credits. In addition, the city shall bill the customer the fifty percent surcharge for the water delivered during this second year over the budgeted or contracted amount. A customer may, at any time, transfer additional water rights, water credits or conservation credits to the city to increase the customer's alternative development water budget or conservation contract restriction in order to forestall the imposition of further surcharges for excess water usage.

(5) Customers that fail to provide sufficient water rights, water credits or conservation credits or to pay the cost of the water conservation credits and the imposed surcharges shall have water service disconnected in accordance with Rule No. 9, Exhibit A of Chapter 25 SFCC 1987.
Representatives of a development project that have adopted an alternative development water budget and property owners that have agreed to a conservation contract shall provide disclosure statements to prospective buyers which shall be included on all recorded plats and development plans. The statements shall include the amount of water to which each lot, unit or other portion of the project is limited under the alternative development water budget or conservation contract and shall include a description of the penalties set forth in this paragraph.

(E) Dedication of Water to Development

(1) A building permit application shall not be approved until the applicant has dedicated water to meet the approved development water budget for the development project plus a 9.8% contingency that covers water utility delivery requirements, as documented by the Water Division dedication form and complied with the conditions thereof. This contingency water is comprised of water used for community health and safety purposes, such as firefighting and fire hydrant testing, water used in production for flushing of water distribution and sewer lines, and also results from meter errors, line leaks, and losses from water main breaks.

(2) Based on the approved water budget for a development project, the applicant shall obtain water through either the water rights transfer program (Section 25-12 SFCC 1987) or the water conservation credits program (Section 25-11 SFCC 1987) to meet the development water budget according to the following criteria:

(a) Applications for residential uses which have a development water budget equal to or greater than ten acre-feet per year shall obtain water through the water rights transfer program;

(b) Applications for residential uses which have a development water budget less than ten acre-feet per year, designated as small development projects, shall obtain water through the water rights transfer program or the water conservation credit program or through a combination of both;

(c) Applications for non-residential uses which have a development water budget equal to or greater than five acre-feet per year shall obtain water through the water rights transfer program;

(d) Applications for non-residential uses which have a development water budget less than five acre-feet per year, designated as small development projects, shall obtain water through the water rights transfer program or the water conservation credit program or through a combination of both;

(e) Applications with both residential and non-residential uses each in substantial amounts which have a development water budget equal to or greater than seven and one half acre-feet per year shall obtain water through the water rights transfer program; and

(f) Applications with both residential and non-residential uses each in substantial amounts which have a development water budget less than seven and one half acre-feet per year shall either obtain water through the water rights transfer program or the water conservation credit program or through a combination of both.
(F) Variances

Variances to the requirements set forth in Section 14-8.13 shall be heard by the governing body according to the procedures set forth in Section 14-3.16.

(G) Appeals

Appeals of decisions of the city staff regarding Section 14-8.13 shall be heard as set forth in Section 14-3.17.

14-8.14 IMPACT FEES

(Ord. No. 2011-37 § 11)

(A) Short Title and Applicability

(1) This Section 14-8.14 may be known as the "Impact Fee Ordinance".

(2) The provisions of this Section 14-8.14 apply to all of the territory within the planning and platting jurisdiction of the city.

(B) Intent

To respond to the increasing demand for capital improvements that are related to the actual impact of new development, the governing body deems essential the imposition of impact fees on new development within Santa Fe. It is the intent of the governing body to:

(1) promote the health, safety and general welfare of the people of Santa Fe and accommodate orderly growth and development;

(2) provide for the imposition and collection of an impact fee upon new development within Santa Fe to serve the demand for capital facilities and public improvements; and

(3) ensure that new development contributes its proportionate share of the cost of capital expenditures necessary to provide public facilities and infrastructure that has a rational nexus to the proposed development.
25-9 CITY WATER BUDGET.

Editor's Note: This section is effective January 1, 2010.

25-9.1 Short Title.

Section 25-9 SFCC 1987 shall be referred to as the City Water Budget Ordinance. (Ord. #2009-38, §11)

25-9.2 Authority.

A. This Section 25-9 SFCC 1987 and related Sections 25-10, 25-11 and 25-12 SFCC 1987 are enacted pursuant to the express statutory authority conferred upon municipalities to enact ordinances pursuant to its police power (NMSA §3-17-1 B (1978)) and the power of municipalities to acquire and hold water rights in order to plan for reasonable development pursuant to NMSA §72-1-9 (2006).

B. Such articles are also adopted pursuant to the city of Santa Fe's powers under its municipal charter, adopted effective March 15, 1998, as amended effective May 5, 2008, pursuant to the Municipal Charter Act, sections 3-15-1 to 3-15-16 NMSA 1978, and Article 10, §6 of the Constitution of New Mexico.

C. A reasonable exercise of municipal authority includes planning for the operation and growth of the municipal water utility, and planning for orderly urban development in furtherance of the public health, safety and welfare. Such planning includes the regulation of the amount and types of uses of water from the city's system to ensure that a reliable source of water exists to meet water requirements of the existing customers and that any additional supplies of water in the system are allocated in a manner consistent with priorities established by the governing body.
25-9.3 Legislative Findings.

A. The city has the responsibility to consider the nature of its water supplies. Some of the city's water supplies are dependent on annual precipitation, and in times of shortage or drought, this dependence may create significant variability in the seasonal and annual water supply. The city's groundwater supplies are reliable if not overused.

B. The governing body recognizes that it is in the best interest of the health, safety and welfare of all citizens of Santa Fe that the city take the steps necessary to accurately determine the level of demand on the city's water system to ensure that the current and future water needs and priorities of the city and its citizens are met and that the legal obligations of the city in operating the city water system are being and will continue to be met.

25-9.4 Purpose.

The purpose of adopting Section 25-9 SFCC 1987 is to promote the following principles:

A. The city should not allow increased demand on the water system without adequate supply to meet this demand.

B. The city's water supplies should be used as efficiently as possible.

C. Anyone seeking new land use development should be responsible either for offsetting new demand through conservation measures or transferring to the city an equivalent amount of water rights that can be diverted through the city's infrastructure.
D. Water that is made available as a result of the city's water rights purchases, leases, offsetting conservation measures such as retrofitting high-use fixtures and appliances with low-use fixtures and appliances and increased water supply from city-related infrastructure projects allowing reuse of water or return flow credits should be allocated to uses and projects meeting the city's priorities including creation of a living Santa Fe River.

E. The city should use in its water planning accurate quantifications of the city's water supply and the demands upon the city's water supply.

F. The city should manage its water resources to maintain its ability to provide a stable, predictable, and adequate water supply.

G. The city shall make every reasonable effort to maintain a minimum flow in the Santa Fe River and to sustain a healthy riparian ecosystem.

(Ord. #2009-38, §14)

25-9.5 Annual Water Budget.

On an annual basis, the water division shall conduct an evaluation of the city's total water system supply and total water system demand, effective for the twelve (12) month period from January 1 to December 31. The water division shall summarize this evaluation in the water budget report and present the report to the public utility committee at the regularly scheduled April meeting and to the governing body at the regularly scheduled May meeting. The report shall include:

A. The city's current total water supplies, under the present water resource management policies, including:

(1) Water rights available to the city;
(2) Long-term sustainable yield from those water rights;

(3) Effect that a range of drought conditions would have on that sustainable yield; and

(4) Wet water available that year;

B. The total water demand including:

(1) Actual demands upon the city's water service itemized into amounts to serve current customers, city uses, line loss and other actual current demands;

(2) Utility reserve;

(3) Anticipated demands upon the city's water service from future customers with valid written agreements that will require water service within the twelve (12) month period;

(4) Special contractual demands (e.g. Las Campanas, county of Santa Fe); and

(5) Non-revenue water demands including total system losses set out by categories of loss;

C. Water system annual operating plan estimating water production from the city's various supplies to meet projected annual demand;
D. Water resource annual management plan describing the impacts on the city's water resources resulting from the annual operating plan, as well as any planned actions to mitigate those impacts;

E. Twenty (20)-year supply-demand projection, including near- and long-term anticipated demands upon the city's water service based on current growth projections and anticipated demands of future customers with valid written agreements;

F. The quantity of water, if any, by which the sustainable water supply exceeds committed demand;

G. Status of the city's water conservation credit and water rights transfer programs; and

H. Quantification of all water credits held in the city water bank, pursuant to Section 25-10 SFCC 1987, including water rights belonging to the city resulting from water rights purchases and leases, water conservation credits pursuant to Section 25-11 SFCC 1987, water held for affordable housing, and water held to meet the anticipated long-range surface water supply gap resulting from water right permit offset requirements.

(Ord. # 2009-38, §15; Ord. No. 2013-8)

25-9.6 Allocation of City's Available Water.

A. Upon review of the annual water budget, the governing body shall determine if water is available for allocation. Water available for allocation shall be derived only from the following sources:

(1) The portion of surplus sustainable water supply in excess of committed demand that the governing body has transferred to the city water bank;
(2) City's water rights purchases and leases deposited in the city water bank;

(3) Retrofit rebate conservation credits deposited in the city water bank under the water conservation credit program set forth in Article 25-11 SFCC 1987;

(4) Conservation credits donated to the city rebates under the water conservation credit program set forth in Section 25-11 SFCC 1987; and

(5) Infrastructure projects allowing reuse of water or return flow credits.

B. The water available for allocation shall be held in the city water bank established pursuant to Section 25-10 SFCC 1987.

C. The governing body may allocate by resolution some or all of the water available for allocation to both city and other uses and projects that meet the city's priorities.

D. In making allocations, the governing body shall give priority to the following uses:

   (1) Annual allocations of water to affordable housing shall be made for at least three (3) consecutive future years, and each year's allocation shall be set aside in a separate affordable housing account in the city water bank. When a specific development receives final approval, the water division shall debit the appropriate year's affordable housing account in the city water bank, as set forth in Section 25-10 SFCC 1987, for the water necessary to serve the affordable housing in the development and issue a water allocation approval form for that project. At the time of each annual allocation, the governing body shall adjust allocations made in previous years to account for changes that may have occurred in previously identified affordable housing projects in the intervening year and return to the city's pool of available water any water that is not being used as a result of proposed affordable housing project's being withdrawn or a reduction in its anticipated water demand.
(2) Water available from retrofit rebate conservation credits in the water bank shall be allocated for sale to developers of small development projects as set forth in Section 14-8.13(E)(2)(b) and (d). The city shall maintain in the water bank a reserve of 25 AFY from retrofit rebate conservation credits for sale to water customers to remedy violations of restrictions under alternative development water budgets or water conservation contracts pursuant to Section 14-8.13(D)(4).

(3) Water right permit offset requirements, accounted for in the long-range surface water supply gap account held in the city's water bank;

(4) City projects including, but not limited to, parks and open space, affordable housing, water for the Santa Fe River, city buildings and other city facilities;

(5) Other projects in which the city is a partner; and

(6) Private or non-city public uses and projects which recognize other city priorities such as economic development and stability, energy efficiency, job growth and community health.

E. After the governing body has approved an annual water allocation for a specific project, the water division shall debit the city's account in the city water bank and credit a special account for that specific project. When the specific project is ready to obtain building permits, the developer shall withdraw the water credits from the special account, dedicate them to meet all or part of the approved development water budget for the development, as documented by a dedication form from the Water Division, and provide that water dedication form to the land use department. That dedicated water shall become a permanent portion of total water system demand calculations unless it shall expire or be relinquished as provided in subsection 25-9.6(F)(3) SFCC 1987 below.

F. A water allocation by the Governing Body:
(1) Only satisfies a development water budget; it creates no other land use approvals or right to approval of the requested number of lots, units or commercial development, or commercial buildings, building permits or water meters for a proposed development project. The actual number of lots or units, or the amount and type of commercial development or the number of building permits or water meters that may be approved shall be determined by the appropriate development, permit or meter application review process.

(2) Is issued for specific developments, building permits or water hook-ups and specific geographic sites and they shall not be moved, sold, traded, transferred or exchanged in any way for different developments, building permits or water hookups.

(3) If not dedicated to an approved development plan or building permit within two (2) years of the allocation approval, or by some other date approved by the governing body, shall revert back the city's credit in the water bank. An applicant may reapply for the previously allocated water credits when the previously designated development project is ready to proceed to the appropriate stage in the development permitting process. An applicant may relinquish allocated water credits at any time and the water credits shall revert back the city's credit held in the city's water bank.

(Ord. #2009-38, §16)

25-10 CITY WATER BANK.

Editor's Note: This section is effective January 1, 2010.

25-10.1 Short Title.

Section 25-10 SFCC 1987 shall be referred to as the City Water Bank Ordinance. (Ord. #2009-38, §18)
25-10.2  Purpose; Creation of City Water Bank.

A. The purpose of the City Water Bank Ordinance is to establish a city water bank consisting of various accounts holding water rights, water credits and water conservation credits.

B. In the city's account shall be placed consumptive use water rights purchased by the city or leased by the city, water conservation credits obtained by the city under the water conservation credit program pursuant to Section 25-11 SFCC 1987, and consumptive use water rights obtained through infrastructure projects allowing reuse of water or return flow credits.

C. In separate accounts in the name of the person or entity transferring water to the city shall be placed consumptive use water rights transferred to the city pursuant to Section 25-12 SFCC 1987 the water rights transfer program and office of the state engineer policies, guidelines and procedures, and water conservation credits transferred to the bank by customers pursuant to Section 25-11 SFCC 1987.

(Ord. #2009-38, §19)

25-10.3  Water Bank Transactions.

A. Consumptive use water rights, water credits and water conservation credits may be transferred to the city water bank by any of the following entities:

(1) The city to hold consumptive use water rights derived from water rights purchases, leases and water conservation credits obtained from retrofit rebates and from donation from customers signing conservation contracts; and infrastructure projects allowing reuse of water and return flow credits;

(2) Water customers to hold water conservation credits transferable within the city of Santa Fe’s water system obtained through water conservation contracts as set forth in the water conservation credit program pursuant to Section 25-11 SFCC 1987; and
Water rights transfer program transferors to hold water credits consisting of consumptive use water rights transferred to the city as set forth in Section 25-12 SFCC 1987 and pursuant to the office of the state engineer policies, guidelines and procedures which credits may be applied to new development projects requesting service from the city's water system.

B. All water rights, water credits and water conservation credits held in the city water bank shall be accounted for in units of acre feet per year.

C. Upon request of an entity in whose name water rights, water credits or water conservation water credits are on deposit in the city water bank, the city water bank shall:

   (1) Transfer the water rights, water credits or water conservation credits to another entity as directed;

   (2) Issue a water dedication form that applies those water rights, water credits or water conservation credits to a specific development water budget, or

   (3) Issue a water dedication form that applies the water rights, water credits or water conservation credits to the public purpose as directed.

D. Water rights or water conservation credits in the city's account may be designated for specific purposes pursuant to resolution of the governing body adopted under the city water budget process set forth in subsection 25-9.5(B)(1) SFCC 1987 and applied to that purpose by a water dedication form.

E. Banked water credits or water conservation credits may be sold or assigned at any time by the owner, providing the owner notifies the city in writing of such a change in ownership. If the owner's assign does not have a water bank account established, the city shall establish a water bank account in the assign's name for the purpose of water credit or water conservation credit assignment.
F. If, in the event the city no longer requires developers to offset the anticipated demand of their development project, water credits held by water rights transfer program transferor and water conservation credits held by water customers under the water conservation credit program in the city water bank can be sold to the city at current market value.

(Ord. #2009-38, §20)

25-10.4 Water Bank Public Posting.

The water division shall post on the city's website a public listing of the identity of each person or entity that holds water rights on deposit in the water bank that requests listing and the amount of water rights held by that person or entity. (Ord. #2009-38, §21)

25-11 WATER CONSERVATION CREDIT PROGRAM.

Editor's Note: This section is effective January 1, 2010.

25-11.1 Short Title.

Section 25-11 SFCC 1987 shall be referred to as the Water Conservation Credit Program Ordinance. (Ord. #2009-38, §23)

25-11.2 Purpose.
The purpose of the city water conservation program is to increase system-wide water conservation, to facilitate offsetting impacts on the city’s water supply system from new development and to supply water for other municipal uses. (Ord. #2009-38, §24)

25-11.3 Water Conservation Credits.

A. A water conservation credit represents a fixed quantity of water expressed in acre feet per year (AFY) that is transferable within the city of Santa Fe for annual usage.

B. Upon the request of a water customer, the city may schedule and conduct an on-site water conservation audit to determine ways that the customer may reduce water usage and provide an estimate of the quantity of water that can be conserved.

C. Water conservation credits may be created through either of the following two (2) methods:

   (1) Water Conservation Contract. Water customers with a minimum current uninterrupted five (5) year history of water usage and water customers subject to an alternative development water budget may agree to a water conservation contract with the city water division to reduce the customer’s annual water usage at a property the customer owns from the past five (5) year average or from the amount permitted under the alternative development water budget by a fixed quantity in AFY, with a minimum reduction of two one-hundredths (.02) of an AFY or six thousand five hundred seventeen (6,517) gallons per year. Conservation measures shall be shown to consist of: for commercial customers, a change in the nature of the business, a change in commercial process, retrofit of older commercial appliances or fixtures with newer, more water-efficient units, or installation of new water conservation technology; and for residential customers, retrofit of older appliances of fixtures with newer, more water-efficient units or installation of new water conservation technology. Changes from residential uses to commercial uses shall not be eligible for a water conservation contract.

   (a) Upon execution of the contract, the city’s water division shall:
(i) Track that customer’s usage annually to ensure that the promised water conservation savings are achieved and maintained; and

(ii) Issue to the customer, water conservation credits reflecting the volume of city-transferable water that the customer has committed to conserve.

(b) These credits shall be deposited in the city water bank in the customer’s name.

(2) **Water Conservation Retrofit Rebate.** The city may obtain water conservation credits through direct payment to residential and commercial customers of a rebate upon the customers' replacement (retrofit) of a high-water-usage appliance, fixture or landscaping with a qualifying water-saving appliance, fixture or landscaping, including a rebate for the installation of rain barrels, or through the city's direct installation of water saving devices provided that the following are met:

(a) The city shall require satisfactory proof to confirm the retrofit of the high water usage appliance, fixture or landscaping with the qualifying appliance, fixture or landscaping; and

(b) Participating customers shall allow the city to conduct an inspection prior to, during, and after the installation of any retrofits and to provide for collection and disposition of old appliances to ensure that the old appliances do not return to service.

(c) Upon payment by the city of the retrofit rebate to a customer, the city shall deposit in city water bank in the city's name the appropriate amount of water conservation credits.

D. Water conservation credits shall be placed in the city's water bank.
Water conservation credits realized through a water conservation contract may be held in the customer's name for use by the customer to offset the impact on the city's water system of new development projects as set forth in Section 14-8.13(E)(2) SFCC 1987, donated to the city for a specified public purpose, transferred to the city or, if the city chooses not to purchase the conservation credit, be transferred to another individual.

Water conservation credits realized through a retrofit rebate shall be held in the city's name for resale to water customers who exceed their allowed water usage under an alternative development water budget or a water conservation contract as set forth in Section 14-8.13(D)(4) SFCC 1987, for purchase from the bank to offset the impact on the city's water system of certain small development projects as set forth in Section 14-8.13(E)(2)(b) and (d) SFCC 1987, or for any other public purpose.

Certified retrofit credits generated from the previous retrofit program, and held in the name of various persons or entities, shall be deposited in the water bank in the holder's name and may be sold from there by the holder to fulfill an applicant's approved development water budget.

(Ord. #2009-38, §25)

25-11.4 Administrative Procedures.

A. The city shall establish administratively minimum standards of water-use efficiency for qualifying retrofit rebate fixtures, appliances and landscaping, including but not limited to toilets, waterless urinals, faucets, showerheads, clothes washers, dishwashers, and weather-based irrigation controllers.

B. The city shall also establish administratively the quantity of water conserved by each retrofit and the price that it will pay for each water conservation retrofit rebate credit.

(Ord. #2009-38, §26)

25-11.5 Monitoring, Violations, Penalties, and Remedies.
Conservation contract water budgets shall be monitored and violations dealt with pursuant to the provisions of Section 14-8.13(D) SFCC 1987. (Ord. #2009-38, §27)

25-12 WATER RIGHTS TRANSFER PROGRAM.

Editor's Note: This section is effective January 1, 2009.

25-12.1 Short Title.

Section 25-12 SFCC 1987 shall be referred to as the Water Rights Transfer Ordinance. (Ord. #2009-38, §29)

25-12.2 Purpose.

The purpose of the city's water rights transfer program is to administer water right transfers designated for development projects as required by Section 14-8.13 SFCC 1987 and water rights transfers designated for the city water bank as provided for in Section 25-10 SFCC 1987. (Ord. #2009-38, §30)

25-12.3 Designating Water Right Transfers.

A. The applicant shall notify the city, in writing, at the time of the initial tender of water rights for city review and possible acceptance, whether the water rights are to be dedicated to a development water budget or whether the water right is designated for the city water bank.
At any time after their tender, water rights initially designated for the water bank can be dedicated to a development by written notification provided by the applicant to the city.

B. Section 25-12 SFCC 1987 shall not apply to development for which an annexation agreement has been approved by the governing body prior to July 27, 2005, which specifically addresses water demand offset and the transfer of water rights to meet such water demand.

(Ord. #2009-38, §31)

25-12.4 Tender of Water Rights.

A. Water rights proposed to be transferred to the city's water system for dedication to a development shall be tendered to the city attorney at whichever review stage is applicable and occurs first in the review of a particular development, according to the following requirements:

  (1) Not later than sixty (60) days after the final approval by the land use department, the planning commission or the governing body of the final subdivision plat, except for parcels within a commercial subdivision for which actual use with attendant water budget has yet to be determined;

  (2) Not later than sixty (60) days after the final land use approval of the final development plan by the land use department, the planning commission or the governing body; or

  (3) For developments located outside the city limits, prior to execution of an agreement with the city to construct and dedicate water lines.

B. In the case of phased development, water rights tendered for the first development phase shall adhere to subsection 25-12.4(A) SFCC 1987 above, and water rights for a subsequent phase of the development shall be tendered to the city attorney at the time that the infrastructure financial guarantee is posted for that phase of development.
C. Water rights designated for the city's water bank may be tendered at any time.

D. The information contained in the tender shall include:

   (1) The name and address of the current owner(s) and/or seller(s) of the water rights;

   (2) A description of the development project(s) for which the water rights are designated, or direction that the water rights are designated for the city's water bank;

   (3) Proof of ownership of the water rights in the form of: a declaration of water rights; the most recent change of ownership form for the water rights; and any deeds regarding the water rights in the county where the water rights are located;

   (4) A title search or title report for the property to which the water rights are appurtenant;

   (5) Any permits, licenses, or court orders for the water rights, together with a description of the place and purpose of use and point of diversion for the water rights;

   (6) A copy of the agreement between the seller(s) and applicant under which the applicant intends to acquire the water rights; a copy that redacts the price may be acceptable; however, if the applicant uses a letter of credit or escrow pending application approval, however, the city may require an unredacted copy;

   (7) An affidavit from the seller(s) to the effect that the water rights are free and clear of all encumbrances and liens, or that encumbrances shall be released before or at closing and
furthermore an affidavit to the effect that no part of the water rights has not been lost through abandonment or forfeiture; and

(8) Such other documentation as the city may reasonably require related to the water rights.

E. Upon tender of water rights for the city's review, the applicant, and not the applicant's representative, shall sign an agreement prepared by the city attorney acknowledging that the applicant shall abide with the conditions of this Section 25-12 SFCC 1987.

F. Upon tender of water rights to the city for review, the applicant shall pay a deposit of one thousand ($1,000.00) dollars to be applied against the hydrologic due diligence review of the tendered water rights.

(Ord. #2009-38, §32)