

When recorded, return to:
Paradise Valley Town Attorney
6041 E. Lincoln Drive
Paradise Valley, AZ 85253

ORDINANCE NUMBER 2019-13

AN ORDINANCE OF THE TOWN OF PARADISE VALLEY, ARIZONA; CREATING CHAPTER 5, BUILDING AND CONSTRUCTION, ARTICLE 5-10-10, ASSESSMENTS FOR STREETS, SIDEWALKS AND OTHER PUBLIC PLACES; CODIFYING THE AUTHORITY OF THE TOWN TO ISSUE ASSESSMENTS FOR TOWN-CONSTRUCTED OR DEVELOPER- CONSTRUCTED IMPROVEMENTS AND PROVIDING PROCEDURES FOR EXERCISING THAT AUTHORITY

WHEREAS, A.R.S. § 9-500.05, as amended, establishes the authority to adopt resolutions or ordinances providing for development agreements that incorporate conditions, terms, restrictions and requirements for public infrastructure and the financing of public infrastructure and subsequent reimbursements over time, including for the construction of streets and sidewalks;

WHEREAS, the Town Council desires to establish a procedure in Town Code to implement the authority granted to the Town by A.R.S. § 9-500.05; and

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF PARADISE VALLEY, ARIZONA AS FOLLOWS:

Section 1. Chapter 5, Building and Construction, is hereby amended by adding a new Article 5-10 “Assessments for Streets, Sidewalks and Other Public Places; with the text of said new section to be as follows (added text appears in **bold**):

ARTICLE 5-10 ASSESSMENTS FOR STREETS, SIDEWALKS AND OTHER PUBLIC PLACES

5-10-1 Definitions

The following words, terms and phrases, when used in sections 5-10-1 through 5-10-8, shall have the meanings set forth below, unless the context clearly indicates a different meaning:

“Assessment” means the amount that may be fixed, levied, and assessed by the Town, pursuant to A.R.S. § 9-500.05 and this chapter, against real property

abutting streets and sidewalks constructed by the Town, where the owner or its predecessors in interest did not construct or pay for any of the costs of construction. Assessment also means the amount of the recorded assessment notice that may be fixed, levied, and assessed by the Town for any special public improvement constructed by either Town or a Developer.

“Benefited party” means the person or entity creating a demand for or otherwise utilizing special public improvements resulting in a special benefit for which the benefited party has not specifically contributed to the costs in providing such special public improvements.

“Town” means Town of Paradise Valley, Arizona.

“Costs” means the actual cost of:

- (1) Right-of-way or easement acquisition.
- (2) Construction of the special public improvements as determined by the actual costs, such construction to include, but shall not be limited to construction and installation of water lines, reclaim water lines, sewer lines, storm sewer lines and systems, asphaltic and concrete paving, curb, gutter and sidewalks, street lights, traffic signals and public landscaping.
- (3) Inspection, testing and permit fees.
- (4) Engineering and design fees required for preparation of plans and specifications.
- (5) Incidental fees, expenses and charges, including but not limited to capitalized interest required to complete the improvements.
- (6) Financing costs to Town, where applicable.

“Developer” means the party that incurs the costs and installs the special public improvements.

“Development Agreement” means an agreement between one or more parties and the Town pursuant to A.R.S. § 9-500.05.

“General public benefit” means that portion of the special public improvement that benefits the property owner in the same way or amount as the public at large. This is in contrast to a special benefit that is necessary for development of the property being assessed.

“Public improvement” means the construction, enlargement, extension or other construction of a facility intended for dedication to the Town, including but not limited to any street, sidewalk, drainage, water, sewer improvement or facilities or any other improvements intended to be dedicated to public ownership and use, including the land upon which the improvement is constructed.

“Reimbursement amount” means the portion of the costs that must be paid to the Developer pursuant to a repayment agreement and imposed upon the benefited parties.

“Reimbursement share” means a benefited party's share of the reimbursement amount based on one of the following:

- (1) A cost apportioned by traffic volume generated as the result of the special public improvement;
- (2) The cost apportioned per frontage foot of the special public improvement;
- (3) The cost apportioned per acre of all properties that utilize a special public improvement;
- (4) The cost apportioned by demand of the special public improvements; or
- (5) The cost apportioned based on the assessed valuation of all properties that receive a special benefit from the special public improvement.

“Repayment agreement” means a Development Agreement between a Developer and the Town pursuant to A.R.S. § 9-500.05 that addresses the repayment of the reimbursement amount by the benefited parties.

“Special public improvement” means any public improvement within a specified assessment boundary that the Town Council has determined is eligible for repayment because the improvement is either: 1) in excess of those normal and customary improvements necessary to develop and support the project for which they are being constructed; or 2) deemed necessary by the Town for the orderly development of public improvements in the Town, including the construction and installation of water lines, reclaim water lines, sewer lines, storm sewer lines and systems, asphaltic and concrete paving, curb, gutter and sidewalks, street lights, traffic signals and public landscaping.

[State Law reference—A.R.S. § 9-500.05]

5-10-2 Policy

Sections 5-10-1 through 5-10-8 intend to provide for the completion and extension of special public improvements within developed areas and into undeveloped areas of the Town by encouraging the completion or extension of such improvements and providing for the reimbursement of the costs of such improvements other than those costs which are for general public benefit by the benefiting parties.

5-10-3 Construction of special public improvements

Before the Town will issue a permit for construction of special public improvements by a Developer for which repayment of a reimbursement amount is being requested or for which the Town Council determines to be necessary as a matter of convenience and for the orderly development of public improvements in the Town, the following requirements shall be met:

- (a) A diagram describing all property which will be benefited by any special public improvements to be installed shall be provided to the Town Engineer or designee.
- (b) The field engineering, plans and specifications required for the special public improvement may be prepared by the Developer or the Town. If prepared by the Developer, they must be approved by the Town Engineer or designee prior to

construction. The engineering costs for preparation of plans and staking of the special public improvements only, which are incurred by the Developer or the Town, may be included, as determined by the Town Engineer or his designee, in the agreed construction costs as provided in this section.

(c) Detailed plans and specifications for special public improvements which are extensions to existing public facilities must be approved by the Town Engineer prior to construction. The costs for the preparation of plans and specifications, diagrams and other information required by the Developer to comply with sections 5-10-1 through 5-10-8 shall be assumed by the Developer.

(d) The project shall be bid in accordance with the provisions pertaining to public works projects contained in A.R.S. title 34 and Town Code. The construction costs shall be determined prior to the commencement of construction and shall be approved by the Town. In the event that the agreed upon construction costs increase, the repayment agreement may be amended by the Town manager in an amount not exceeding \$50,000.00 individually or cumulatively with other amendments upon approval of the additional construction costs by the Town Engineer. Any other amendments increasing the agreed upon cost in an amount exceeding \$50,000.00 must be approved by Town Council.

(e) The Town will perform the review, approval of plans and inspections during the design and construction and shall, if applicable, charge the Developer for the plan review and inspections of the special public improvements.

(f) The ownership of all special public improvements upon completion, inspection, and acceptance by the Town shall be vested in the Town.

[State Law reference— A.R.S. §§ 9-500.05 and 34-201]

5-10-4 Authorization of repayment agreements

(a) Upon development of any property within the Town, or outside of the Town limits that may be subsequently annexed into the Town, for which a special public improvement will be constructed, the Developer of the special public improvement may request the Town Manager or his/her designee on behalf of the Town to enter into a repayment agreement to collect a reimbursement amount from the benefited parties located within the Town or outside the Town limits that may be subsequently annexed into the Town.

(b) Upon construction of special public improvements the cost of which were financed by bonds issued by the Town, including improvement or assessment bonds, the Town may impose upon and collect reimbursement amounts pursuant to the terms of Section 5-10-6.

(c) The Town Manager shall be authorized to enter into amendments to repayment agreements for the limited purposes set forth in Section 5-10-3. Such agreements shall be recorded in the office of the Maricopa County Recorder.

5-10-5 Repayment agreements; terms; collections; and costs

(a) The repayment agreement shall designate the parcels, the benefited parties, the reimbursement amount and the reimbursement share. The repayment agreement shall include a diagram of the benefited parties' parcels and the method for

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calculating reimbursement shares. In the event bonds of the Town, including improvement district or assessment bonds, have been issued to finance the construction of the special public improvements and related facilities, the Town shall receive all reimbursement amounts and apply such amounts to the debt service funds of the applicable bond issue.

(b) The repayment agreement shall set forth the total of the reimbursement amount which shall not exceed approved costs of the special public improvements, less Developer's share of the costs.

(c) The term of the repayment agreement will become effective upon signature of all parties and recordation of the agreement. The agreement will end twenty years after the first assessment paid on behalf of a benefited lot or property, or when the reimbursement amount has been repaid, whichever is earlier.

(d) Upon entry into a repayment agreement with the Town, the Developer shall have the right to connect into the special public improvement in consideration for their entry into the repayment agreement.

(e) The engineering costs for preparation of plans and siting of the special public improvements on the property which are incurred by the owner may be included as determined by the Town in the agreed construction costs as provided in this section.

(f) The Town shall have sole and exclusive control of connections to the special public improvement. Connections to the special public improvement may only be made upon issuance of a written permit from the Town. It shall be unlawful to make a connection to a special public improvement without a permit; and connections made without a permit may be removed by the Town and the costs of removal assessed to the party making the connection.

(g) Prior to allowing a benefited party to connect to or to use a special public improvement, or at an earlier time as identified in the repayment agreement (e.g., prior to approving a final plat), Town shall verify that the benefited party has paid its reimbursement share to the Developer.

(h) The Developer shall administer the repayment agreement and collect the reimbursement amount from the benefited parties. Developer shall also promptly notify the Town, in writing, each time a benefited party pays its reimbursement share.

(i) Any Developer may assign the benefits arising out of any repayment agreement with the Town. Such assignment shall be limited to the proportional amount of benefits associated with a sale of the fee interest of all or a portion of the benefited land. Such assignments shall not relieve the Developer from their duties and obligations under the agreement unless the new property owner executes a written acceptance of the rights and duties of Developer under the repayment agreement for the newly purchased property. Any assignment shall require written approval of the Town.

5-10-6 Reimbursement amounts

(a) When a special public improvement is constructed by the Town or its contractors, using funds from the general fund or any special fund or other

funding source of the Town, the Town may require the benefitted parcels to reimburse the Town prior to the benefitted party connecting to the special public improvement and/or prior to the Town Council approval of a rezoning, special use permit, or a major or intermediate amendment to a special use permit, or a final plat.

(b) It shall be unlawful for any benefitted party to extend service from a special public improvement to its property without first paying its reimbursement share and obtaining a permit issued by the engineering division or final plat approval by the Town.

(c) The repayment obligation will remain in effect during the term established above in Section 5-10-5(c). The repayment obligation shall terminate upon the termination of the repayment agreement.

(d) The Town shall collect a reimbursement amount for any special public improvements financed by improvement district or assessment district bonds, sewer utility funds, development fee funds and general obligation bond funds which were specifically designated as subject to reimbursement from special public improvement repayments. Any owner who has paid all or part of the debt service upon any bonds, the proceeds of which were used to finance special public improvements shall have no claim to the reimbursement amounts repaid to the Town under this chapter.

(e) Those portions of public improvements that are for the specific benefit of a Developer, or the development in question, shall not be subject to repayment under the provisions of this chapter.

5-10-7 Notice of intention to approve special public improvements

(a) Upon the determination of the Town Engineer or designee that the public health, safety, welfare and/or convenience requires the construction of special public improvements prior to the development of the adjacent property but for which the adjacent property will receive a benefit, a map establishing the boundaries of the benefitted parties' parcels and indicating each benefitted party's reimbursement share of the special public improvement shall be prepared by the Town Engineer or designee and filed in the office of the Town Clerk. The map for the special public improvement shall contain:

- (1) A description of the special public improvement.
- (2) A general description of the estimated total cost and cost per frontage foot or cost per acre of the proposed special public improvement.
- (3) A description of the special public improvement project area and a map and list of the benefitted parcels and lots.
- (4) A determination of that portion of the costs of the special public improvement that shall be allocated to the general public benefit, if any.
- (5) A preliminary estimate of the portion of the special public improvement which will be financed with general obligation bonds, development fees, special assessments, improvement district assessments or other public funding sources and the portion which will be financed with repayments for special public improvements.

(b) The benefited parties shall receive notice in writing of the proposed charges for special public improvements.

(c) The map for the special public improvement (inclusive of parcel numbers) shall be recorded with the Maricopa County Recorder.

Sec. 5-10-8 Assessment districts, improvement districts; general obligation bond projects; cost apportionment

(a) Upon collection of a reimbursement share such funds shall be deposited with the finance department. The funds shall be applied against the outstanding indebtedness for which bonds or assessments were issued.

(b) Reimbursements for special public improvements pursuant to Section 5-10-6 may be used in combination with a general obligation bond issue, provided that the general obligation bond issue question submitted to the qualified electors indicates that such reimbursements may be required of benefited parties. All amounts collected from such reimbursements shall be deposited in the general obligation bond fund from which the special public improvement project is financed.

[State Law reference— A.R.S. § 48-571]

Section 2. Pursuit to Section 1-9-2 of the Town Code, any person found guilty of violating any of the provisions of this ordinance shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not to exceed \$2,500, or imprisonment not to exceed six months, or by both such fine and imprisonment. Each day that a violation continues shall be a separate offense punishable as described. Pursuant to Section 1-9-3 of the Town Code, a violation of the provisions of this Code or amendments thereto may also constitute a civil offense, and any person who is served with a citation charging such violation and who admits or is found responsible for such offense shall be liable to pay to the Town a civil sanction in an amount not to exceed seven hundred fifty dollars. Each day that a violation continues shall be a separate offense punishable as described.

Section 3. If any section, subsection, sentence, clause, phrase or portion of this ordinance or any part of these amendments to the Town 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.

Section 4. In accordance with Article II, Sections 1 and 2, constitution of Arizona, the Town Council has considered the individual property rights and personal liberties of the residents of the Town before adopting this ordinance.

Section 5. This Ordinance shall become effective in 30 days.

PASSED AND ADOPTED by the Mayor and Council of the TOWN OF PARADISE VALLEY, Arizona, this ____ day of _____ 2019.

Jerry Bien-Willner, Mayor

SIGNED AND ATTESTED THIS _____ DAY OF _____ 2019

ATTEST:

APPROVED AS TO FORM:

Duncan Miller, Town Clerk

Andrew Miller, Town Attorney