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Paradise Valley Town Attorney  
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## 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:

**“Benefited party”** means the owner of property creating a demand for or otherwise utilizing special public improvements resulting in a special benefit for which the owner of such property has not specifically contributed to the Costs in providing such special public improvements.

**“Costs”** means the actual Town approved cost of:

- (1) Right-of-way or easement acquisition.
- (2) Construction of the special public improvements as determined by the actual costs.
- (3) Inspection, testing and permit fees.
- (4) Engineering and design fees, including any staking 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 any water line, reclaim water line, sewer line, storm sewer line and system, drainage facility, asphaltic and concrete paving, curb, gutter and sidewalks, street lights, traffic signals, landscaping, or any other improvement intended to be dedicated to the Town for public use, including the land upon which the public improvement is constructed.

**“Reimbursement amount”** means the portion of the Costs that may be fixed, levied, and assessed by the Town, pursuant to A.R.S. § 9-500.05 and this chapter, against real property where the benefited party or its predecessors in interest did not construct or pay for any of the Costs of a special public improvements providing benefit to such property.

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

- (1) Costs apportioned by traffic volume generated as the result of the special public improvement;
- (2) Costs apportioned per frontage foot of the special public improvement;
- (3) Costs apportioned per acre of all properties that utilize a special public improvement;

- (4) Costs apportioned by demand of the special public improvements; or
- (5) Costs 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 benefiting area that the Town Council has determined is eligible for repayment because the public improvement is either: 1) in excess of those normal and customary public 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.

**“Town”** means Town of Paradise Valley, Arizona.

#### **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 special public improvements and providing for the reimbursement of the Costs other than those costs which are for general public benefit by the benefiting parties.

#### **5-10-3 Construction of special public improvements**

(a) Before the Town will issue a permit to construct a special public improvement 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:

(1) A diagram describing all property which will be benefited by the special public improvement shall be provided to the Town Engineer or designee.

(2) The engineering plans and specifications required for the special public improvement shall 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 beginning construction.

(b) The construction of a special public improvement 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 portion of the Costs shall be determined prior to the commencement of construction and shall be approved by the Town. In the event the approved construction portion of the Costs increase, the repayment agreement may be amended by the Town manager, provided the amount of the increase does not

exceed \$50,000.00 individually or cumulatively with other previous amendments, and the increase has been approved by the Town Engineer. Any request to increase the construction portion of the Costs in an amount exceeding \$50,000.00 must be approved by Town Council.

(c) 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.

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

#### **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) The Town Manager shall be authorized to enter into amendments to repayment agreements for the limited purposes set forth in Section 5-10-3.

(c) Repayment 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 calculating reimbursement shares.

(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 repayment agreement will become effective upon signature of all parties and recordation of the agreement. The term of the repayment agreement shall be twenty years from the date the first reimbursement share is paid by a benefited party, or when the reimbursement amount has been repaid, whichever is earlier.

(d) The Town shall have sole and exclusive control of connections to the special public improvement. Connections to or use of 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 or use a special public improvement without a permit. A connection to a special public improvement made without a permit may be removed

by the Town and the costs of removal may be assessed to the party making the connection.

(e) Prior to allowing a benefited party to connect to or use of 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.

(f) 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.

(g) The Developer may assign the benefits arising out of a repayment agreement with the Town to a person or entity that has purchased some or all of Developer's property. An assignment shall not relieve the Developer from its duties and obligations under the repayment agreement unless the assignor executes a written acceptance of the rights and duties of Developer under the repayment agreement. Any assignment shall require written approval of the Town.

(h) Those portions of special public improvements that are for the benefit of a Developer shall not be subject to repayment under the provisions of this chapter.

#### **5-10-6 Town Reimbursement**

(a) When the Costs of a special public improvement are paid for by the Town, using general funds, special funds or any other funding source of the Town, the Town may require the benefited party to reimburse the Town such benefited party's reimbursement share prior to (i) such benefited party connecting to or using the special public improvement, or (ii) prior to the Town Council approval of a rezoning, special use permit, major or intermediate amendment to a special use permit, or final plat within such benefited party's property.

(b) It shall be unlawful for any benefited party to utilize or extend service from a special public improvement without first paying its reimbursement share and obtaining a permit issued by the Town Engineer.

(c) The repayment obligation will remain in effect for a period of twenty years from the date the first reimbursement share is paid by a benefited party, or when the reimbursement amount has been repaid, whichever is earlier.

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

(a) Upon the determination of the Town Engineer that the public health, safety, welfare and/or convenience requires the construction of a special public improvement, a map depicting the boundaries of the benefited parties' properties and indicating each benefited party's reimbursement share of the Costs shall be prepared by the Town Engineer and filed in the office of the Town Clerk. The map for the special public improvement shall contain:

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- (1) A description of the special public improvement.
  - (2) A general description of the estimated Costs and the Reimbursement Amount.
  - (3) A description of the special public improvement project area and a map and list of the benefited properties.
  - (4) A determination of that a portion of the Costs shall be allocated to the general public benefit, if any.
  - (5) A preliminary estimate of the portion, if any, 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) Each benefited party shall receive notice in writing of the proposed reimbursement amount and benefited party's reimbursement share of the Costs for a special public improvement.
- (c) The map described in 5-10-7(a)(3) 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 by the Town 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.
- (c) In the event the Town uses improvement district bonds, assessment district bonds, or general obligation bonds to fund the Costs of a special public improvement, an owner who has paid all or part of the debt service upon any such bonds shall have no claim to the reimbursement amounts repaid to the Town under this chapter.

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 PARASDISE 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