

TOWN OF PARADISE VALLEY

**Cost Recovery Ordinance
Town Council
December 5, 2019**



Key Questions

- Does the Council wish to adopt a cost recovery ordinance?



Arizona Statutes

- Arizona Revised Statute § 9-500.05 (the “DA Statute”) provides that the Town Council may 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
- The DA Statute supports the approach taken by many cities to provide that if the Council determines that certain public improvements (including streets, sidewalks, water lines, sewer lines, storm sewer lines and systems, curb, gutter, street lights, traffic signals and public landscaping) are necessary before the development of a “benefitted” property, the Council may either order these improvements to be constructed by the Town at its expense or by a developer (who enters into a repayment agreement) and to thereafter assess the expense against the benefitted property



Draft Ordinance Provisions

- Draft Ordinance 2019-13 creates a concept of a “Special public improvement,” that is, a 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 property in the Town
- The Ordinance also distinguishes between a property that is a “Benefited party,” that is, a 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; and a “Developer,” who will typically pay for the special public improvements and then enter into a repayment (development) agreement with the Town that sets the parameters of what the Developer will be repaid at a later time



Draft Ordinance Provisions

- The Ordinance provides that 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 benefited parties' parcels and indicating each benefited party's reimbursement share of the special public improvement 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:
 - (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 benefited parcels and lots. [*continued*]



Draft Ordinance Provisions

- [*Continued*] The map for the special public improvement shall contain:
 - (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, or other public funding sources and the portion which will be financed with repayments for special public improvements.
- The benefited parties shall receive notice in writing of the proposed charges for special public improvements.
- The map for the special public improvement (inclusive of parcel numbers) shall be recorded with the Maricopa County Recorder.



Draft Ordinance Provisions

A Benefitted Party shall be assessed a “Reimbursement share,” that is, 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.



Draft Ordinance Provisions

The “Costs” that are included in the benefitted parties’ reimbursement share include 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, 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.



Draft Ordinance Provisions

- The “Costs” to be assessed against a benefitted party for the special public improvements will be repaid either through a repayment agreement with the Developer who has fronted the costs;
- Or, if the Town paid for the special public improvements from its own funding sources, the Town may require the benefitted parties 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



Draft Ordinance Provisions

- The Ordinance makes it unlawful for any benefited 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
- Additionally, the repayment obligation for a reimbursement share will remain in effect during the term established in a repayment agreement, which can be for up to 20 years.
- The repayment obligation shall terminate upon the termination of the repayment agreement; or in the case of special public improvements constructed with Town funds, the obligation to pay the reimbursement share does not terminate until it is repaid.



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Questions/Comments?

