

ORDINANCE 254-03

AN ORDINANCE OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF QUEEN CREEK, ARIZONA, ADOPTING PROCEDURES FOR THE IMPOSITION, CALCULATION, COLLECTION, EXPENDITURE AND ADMINISTRATION OF DEVELOPMENT FEES TO BE IMPOSED ON NEW DEVELOPMENT; PROVIDING FOR THE REPEAL OF THE TOWN CODE, CHAPTER 7, BUILDINGS AND BUILDING REGULATIONS, ARTICLE 7-7, FEES, SECTION B, DEVELOPMENT IMPACT FEES; PROVIDING A PURPOSE AND INTENT; PROVIDING DEFINITIONS; PROVIDING GENERAL PROVISIONS AND APPLICABILITY; PROVIDING FOR THE ESTABLISHMENT OF DEVELOPMENT FEE ACCOUNTS; PROVIDING FOR THE APPROPRIATION OF DEVELOPMENT FEE FUNDS AND FOR REFUNDS, WHEN APPROPRIATE; PROVIDING FOR APPEALS; PROVIDING FOR EXEMPTIONS AND WAIVERS; PROVIDING FOR CONFLICT; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Queen Creek is authorized pursuant to Ariz. Rev. Stat. § 9-463.05 to establish and impose development fees on new development to offset costs to the municipality associated with providing necessary public facilities and services, the demand for which is created by new development; and

WHEREAS, the Town has studied the necessity for and implications of the adoption of development fees for various public facilities; and

WHEREAS, the Town has adopted a new General Plan indicating the population, employment and land use projections for the Town over the next 20 years (to the Year 2020), which highlights the growth and associated public facility demands that the Town will have to respond to in the future, while maintaining the existing level of service (LOS) standards for existing residents as well as new residents; and

WHEREAS, the Town is projected to grow from a population of approximately 6,512 persons in 2003 to a population of more than 94,000 in the Year 2025 (with intermediate population projections of 28,796 in 2010; of 77,509 in 2015; and

WHEREAS, the number of housing units are projected to increase commensurately from approximately 1,970 in 2003 to approximately 28,450 in Year 2025; and

WHEREAS, retail, commercial, office and other non-residential building space which also increases demand on public facilities is also projected to increase substantially from approximately 1.2 million sq.ft. in 2003 to more than 14 million sq.ft. in the Year 2025; and

WHEREAS, the number of jobs in Queen Creek is projected to increase from approximately 2,396 in 2003 to almost 41,744 in the Year 2025; and

WHEREAS, the Town has developed a long-range Capital Improvements Program (CIP) in order to more definitively project the specific public facility demands that will be imposed upon the Town by this very high projected growth rate; and

WHEREAS, the CIP needs are estimated to cost up to \$155 million over the period from 2003 to 2025; and

WHEREAS, based on the population, housing unit and land use projections as well as the public facility needs associated with the projected level of growth, the Town has determined that development fees are an appropriate and necessary technique, to be used in conjunction with other available public facility financing techniques, to ensure that adequate public facilities are provided to new growth while the Town maintains the level of service (LOS) standards for existing Town residents; and

WHEREAS, the Town has determined that development fees will be necessary for multiple public facilities; and

WHEREAS, the Town has found and determined that development fees for different public facilities, but all enacted pursuant to the authority granted by Ariz. Rev. Stat. § 9-463.05 will have certain common characteristics and that the Town will, therefore, benefit from the adoption and use of a uniform procedure for the imposition, calculation, collection, expenditure and administration of all of the adopted development fees; and

WHEREAS, the use of uniform procedures, to the extent possible, will be more efficient and expedient for both the Town and applicants for development permits than separate procedures for each development fee; and

WHEREAS, the use of uniform procedures will simplify the implementation and administration of development fees; and

WHEREAS, the use of uniform procedures will best ensure that development fees are earmarked and expended for the public facilities for which they were imposed and collected; and

WHEREAS, all monies collected from development fees shall be deposited in interest-bearing accounts which clearly identify the category, account, fund and public facility for which such fee was imposed; and

WHEREAS, each such category, fund or account shall be accounted for separately; provided, however, that the determination as to whether the accounting requirement shall be by category, account or fund and whether by aggregate or individual development shall be within the discretion of the Town; and

WHEREAS, any interest or other income earned on monies deposited in said interest-bearing accounts shall be credited to the applicable account; and

WHEREAS, the Town has found and determined that development fees are an appropriate technique for funding public facilities;

WHEREAS, the Town has or will, for each public facility development fee, determine that the payment of the development fee and its expenditure for needed public facilities will result in a benefit to the development on which it is imposed; and

WHEREAS, the Town has developed and adopted a schedule of development fees for each public facility; and

WHEREAS, the Town has provided a credit (offset) mechanism in cases where the proposed development has been subject to the required dedication of public sites and/or public improvements for which development fees are also being imposed; and

WHEREAS, the Town has determined that the development fee amounts bear a reasonable relationship to the burden imposed upon the municipality to provide the additional public facilities to serve the new development at the adopted level of service (LOS) standard; and

WHEREAS, the Town has developed fee calculation methodologies which will be imposed in an equitable and non-discriminatory manner; and

WHEREAS, in cases where the Town may be imposing a development fee for public facilities on land in a community facilities district established pursuant to Ariz. Rev. Stat. Title 48, Chapter 4, Article 6, which will also be funded in whole or in part through district funding mechanisms, the Town should take into account all public infrastructure provided by the district and capital costs paid by the district for necessary public facilities and services also being funded by development fees, and provide appropriate credits in the development fee calculation to avoid double charging;

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council of the Town of Queen Creek, Arizona as follows:

SECTION 1: THE TOWN CODE, CHAPTER 7, BUILDINGS AND BUILDING REGULATIONS, ARTICLE 7-7, Development Impact Fees, as adopted by Ordinance No. 159-99 is hereby rescinded in its entirety as of the effective date of this Ordinance and a new Article 7-7 consisting of seven sections is hereby adopted.

SECTION 2: That as of the effective date of this Ordinance, Article 7-7 of Chapter 7 of the Town Code of the Town of Queen Creek shall read as follows:

Section 7-7-1. PURPOSE AND INTENT.

The purposes and intent of these development fee procedures are:

- A. To establish uniform procedures for the imposition, calculation, collection, expenditure and administration of development fees imposed on new development;
- B. To implement the goals, objectives and policies of the Queen Creek General Plan relating to assuring that new development contributes its fair share towards the costs of public facilities reasonably necessitated by such new development;
- C. To ensure that new development is reasonably benefited by the provision of the public facilities provided with the proceeds of development fees;
- D. To ensure that all applicable legal standards and criteria are properly incorporated in these procedures.
- E. To ensure that all applicable procedures and requirements of Ariz. Rev. Stat. §9-463.05 have been met.

Section 7-7-2. DEFINITIONS.

The words or phrases used herein shall have the meaning prescribed in the current Queen Creek Town Code except as otherwise indicated herein:

- A. Applicant - any person who files an application with the Town for a building permit.
- B. Appropriation or to appropriate - an action by the Town to identify specific public facilities for which development fee funds may be utilized. Appropriation shall include, but shall not necessarily be limited to: inclusion of a public facility in the adopted Town budget or capital improvements program; execution of a contract or other legal encumbrance for construction of a public facility using development fee funds in whole or in part; and/or actual expenditure of development fee funds through payments made from a development fee account.
- C. Commercial or industrial use - means any use or establishment not defined as a dwelling unit.
- D. Connection - means the physical tie-in of a developer's water, effluent or sewer service to the Town's water, effluent or sewer main.
- E. Director - the Community Development Director or his designee.
- F. Developer - means the individual, firm, corporation, partnership, association, syndication, trust or other legal entity that is responsible for creating a demand for Town facilities and services.

- G. Development Fee - a fee adopted pursuant to Ariz. Rev. Stat. § 9-463.05 which is imposed on new development on a pro rata basis in connection with and as a condition of the issuance of a building permit and which is calculated to defray all or a portion of the costs of the public facilities required to accommodate new development at Town-designated level of service (LOS) standards and which reasonably benefits the new development.
- H. Development Fee Adoption and Imposition - this Ordinance establishes procedures and requirements for all development fees which may be adopted by the Town; provided, however, that in order to impose a development fee for a particular public facility, the Town shall prepare a written report; notice, schedule and hold a public hearing; and otherwise comply with all applicable requirements of Ariz. Rev. Stat. § 9-463.05 and this Ordinance.
- I. Development Fee District Maps - the map(s) defining the geographical extent of the development fee districts, if any, for each adopted development fee, as may be necessary.
- J. District or Development Fee District - a defined geographic area or subarea of the Town and/or its Planning Area within which particular public facilities are provided and in which development fees will be collected, appropriated, and expended for public facilities serving new development within such area or subarea.
- K. Dwelling Unit - means a room or group of rooms within a building containing cooking accommodations and designed to be used for living purposes. Each apartment unit, mobile home or mobile home space, travel trailer or travel trailer space shall be considered a dwelling unit. Dwelling unit shall not include those units designed primarily for transient occupant purposes, nor shall they include rooms in hospitals or nursing homes.
1. Single-family Detached Dwelling Unit - means a dwelling unit designed and used only by one family and which unit is physically separated from any other dwelling unit.
 2. Mobile Homes Dwelling Unit – means a dwelling unit typically designed and used only by one family which may be pre-manufactured and delivered to a building site for connection to utilities. This dwelling unit may include travel trailer units as well.
 3. Multi-Family Dwelling Unit – means a dwelling unit typically attached to another dwelling unit, such as an apartment, duplex, townhouse or single-family attached dwelling unit.
 4. All Other Dwelling Units - means a dwelling unit not described in items 1-3 above.

- L. Governing Body - the Mayor and Common Council of the Town of Queen Creek, Arizona.
- M. Library Development Fee - a fee imposed only on new residential development to fund the proportionate share of the costs of: land acquisition for libraries; library facilities, including construction, furniture, fixtures, equipment and technology; and collection materials; including, but not limited to, books, reference materials, audio and visual materials, periodicals and others.
- N. Multiple Uses - a new development consisting of both residential and non-residential uses, or one (1) or more different types of non-residential use, on the same site or part of the same new development.
- O. Municipal Planning Area - an area outside of the present Queen Creek Town limits, but in which the Town may provide public facilities and services.
- P. New Development - any new construction, reconstruction, redevelopment, rehabilitation, structural alteration, structural enlargement, structural extension, or new use which requires a building permit, or a connection fee permit for hook-up to the Town wastewater system; any change in use of an existing non-residential building, structure or lot requiring any form of Town building permit or approval, and which increases the demand for one (1) or more public facilities or services as herein defined; or, any change in use of an existing residential or non-residential building or structure or change in the use of land, which requires an increase in water meter size or installation of a larger water meter, except as otherwise provided in Section 3.E, hereof.
- Q. Parks, Open Space and Recreation Facilities Development Fee - a fee imposed only on new residential development to fund the proportionate share of the costs of: community parks; open space, including, but not necessarily limited to, open space lands, agricultural land preservation, purchase of land, development rights and/or construction easements, desert mountain preserves and trails; and recreation facilities and improvements (but, expressly excluding neighborhood parks).
- R. Public Facility or Service - public improvements, facilities or services necessitated by new development, including, but not limited to, water resources, transportation, police facilities, public works, fire and emergency medical services, community facilities, municipal facilities, water facilities, sewer facilities, flood control and drainage, solid waste disposal, open space, parks, utilities and educational facilities.
- S. Public Facility Expenditures - include amounts appropriated in connection with the planning, design, engineering and construction of public facilities; planning, legal, appraisal and other costs related to the acquisition of land, financing and

development costs; the costs of compliance with purchasing procedures and applicable administrative and legal requirements; and all other costs necessarily incident to provision of the public facility.

- T. Public Safety Development Fee - a fee imposed on all new residential and non-residential development to fund the proportionate share of the costs of: public safety buildings and facilities, communication systems and vehicles and major capital equipment.
- U. Town Facilities Development Fee - a fee imposed on all new residential and non-residential development to fund the proportionate share of the costs of: municipal office space and town owned and operated vehicles and major capital equipment.
- V. Transportation Development Fee - a fee imposed on all new residential and non-residential development to fund the proportionate share of the costs of: transportation improvements and new roads designed to solve congestion-related problems that are anticipated from increased traffic demands resulting from new development, and including improvements to minor arterials and/or collectors needed for access and traffic mobility, but excluding project-specific traffic and transportation improvements such as turn lanes, individual traffic signals for the benefit of a specific development project and the like.
- W. Wastewater Development Fee - a fee imposed on all new residential and non-residential development to fund the proportionate share of the costs of: the wastewater collection and wastewater treatment system and necessary improvements, capital equipment and appurtenances thereto.

Section 7-7-3. GENERAL PROVISIONS; APPLICABILITY

- A. Term. This Ordinance and the procedures established herein shall remain in effect unless and until repealed, amended or modified by the Mayor and Common Council in accordance with applicable State law and the Town Code, ordinances and resolutions.
- B. Annual Review.
 - 1. At least once every year not later than the first Council meeting in July of each year, beginning July 16, 2003, the Town Manager or his designee shall coordinate the preparation and submission of an Annual Report to the Mayor and Common Council on the subject of development fees.
 - 2. The Annual Report may include any or all of the following:
 - a. recommendations for amendments, if appropriate, to these procedures or to specific ordinances adopting development fees for particular public facilities;

- b. proposed changes to the Queen Creek General Plan or plan elements and/or an applicable Capital Improvements Program, including the identification of additional public facility projects anticipated to be funded wholly or partially with development fees;
 - c. proposed changes to the boundaries of development fee districts, if applicable;
 - d. proposed changes to development fee schedules as set forth in the ordinances imposing and setting development fees for particular public facilities;
 - e. proposed changes to level of service standards for particular public facilities;
 - f. proposed changes to any development fee calculation methodology;
 - g. proposed changes to the population, housing, land use, persons per household or non-residential development projections included in the Development Fee Report and upon which the development fee amounts have been determined;
 - h. other data, analysis or recommendations as the Town Manager or appropriate designee may deem appropriate, or as may be requested by the Mayor and Common Council.
3. The Annual Report may additionally include any or all of the following on an annual basis:
- a. number of building permits issued by type of residential or non-residential development;
 - b. square footage (gross floor area) of non-residential development, by type;
 - c. total amount of development fees collected, by public facility and by land use type;
 - d. the amount of expenditures made from the development fee account or sub accounts and the purpose for which the expenditure was made, *i.e.*, the description, type and location of the public facility project;

e. when the public facility project was initiated and when it was (or will be) completed;

- f. whether additional development fee funds will be appropriated for the same project in the future;
- g. whether supplemental non-development fee funds have been used for the project and, if so, how much;
- h. the service area of the public facility project;
- i. the total estimated cost of the project and the portion funded with development fees;
- j. whether the public facility project is in the Town=s current Annual Budget or capital improvements program;
- k. the estimated useful life of the project;
- l. the extent to which the public facility project is needed to serve new/projected growth;
- m. the extent to which the public facility project is needed to maintain the existing level of service (LOS) standard and;
- n. such other facts as may be deemed relevant by the Common Council.

- 4. Submission of Development Fee Annual Report and Common Council Action. The Town Manager or appropriate designee shall submit the Development Fee Annual Report to the Mayor and Common Council, which shall receive the Annual Report and which may take such actions as it deems appropriate, including, but not limited to, requesting additional data or analyses and holding public workshops and/or public hearings.

C. Affected Area.

- 1. Development Fee District. Development fees shall be imposed on new development in Queen Creek which, for purposes hereof, may be divided into development fee districts by the Town.
- 2. Municipal Planning Areas. Development fees imposed by the Town may, if necessary and appropriate, be collected by other municipalities or by the County on new development within the Town's municipal planning area, but outside of the Queen Creek Town limits, only pursuant to an intergovernmental agreement which provides that the development

fees collected be transferred to the appropriate Town fund for expenditure in accordance with the terms of this Ordinance.

3. Identification. The affected area, including development fee districts, if applicable, shall be described and/or mapped in the particular public facility development fee ordinance.
 4. Change in Boundaries of Development Fee Districts. The Town may amend the boundaries of the Development Fee Districts at such times as may be deemed necessary to carry out the purposes and intent of this Ordinance and applicable legal requirements for use of development fees. In the event of annexation of unincorporated County land by the Town, the Mayor and Common Council shall consider whether such annexed area should be included in a particular development fee district.
- D. Type of Development Affected. This Ordinance shall apply to all new development as herein defined and as defined in the development fee ordinances for particular public facilities.
- E. Type of Development Not Affected. This Ordinance shall not apply to:
1. Previously-Issued Building Permits. No development fee shall be imposed on new development for which a building permit has been issued prior to the effective date of this Ordinance.
 2. Previous Payment of Development Fees. Subject to the requirements of Section 4 of this Ordinance, no development fees shall be due at a later stage of the development permit or approval process if development fees have been paid for such category of public facilities at an earlier stage in the development permit or approval process.
 3. No Net Increase in Dwelling Units. No development fee shall be imposed on any new residential development which does not add a new dwelling unit.
 4. No Net Increase in Non-Residential Square Footage. No development fee shall be imposed on any new non-residential development which does not add square footage, unless the new non-residential development increases the demand for public facilities for which development fees are being imposed.
 5. Other Uses. No development fee shall be imposed on a use, development, project, structure, building, fence, sign or other activity, whether or not a building permit is required, which does not result in an increase in the demand for public facilities.

6. Development projects which are the subject of a Development Agreement containing provisions in conflict with this Article, but only to the extent of the conflict or inconsistency.

7. Development by Other Governmental Entities. Pursuant to Ariz. Rev. Stat. §9-500.18, no development fee shall be imposed on new development by the State of Arizona, school districts organized pursuant to Arizona State laws, or the Federal Government, or agencies thereof; provided, however, that the City may seek to negotiate the construction of public facilities or the provision of services, or to negotiate the payment of development fees, pursuant to a Development Agreement or Intergovernmental Agreement with such public governmental entities.

F. Effect of Payment of Development Fees on Other Applicable Town Land Use, Zoning, Platting, Subdivision or Development Regulations.

1. The payment of development fees shall not entitle the applicant to a building permit unless all other applicable land use, zoning, planning, platting, subdivision or other related requirements, standards and conditions have been met. Such other requirements, standards and conditions are independent of the requirement for payment of a development fee.

2. Neither this Ordinance nor the specific development fee ordinances for particular public facilities shall affect, in any manner, the permissible use of property, density/intensity of development, design and improvement standards or other applicable standards or requirements of the Town land development regulations, which shall be operative and remain in full force and effect without limitation.

G. Amendments. This Ordinance, and any ordinance adopting development fees for any particular public facility pursuant to this Ordinance, may be amended from time to time by the Mayor and Common Council; provided, however, that no such amendment shall be adopted without a written report detailing the reasons and need for the development fee revision nor without proper notice and public hearing as set forth herein and in Ariz. Rev. Stat. § 9-463.05C.

H. Effect of Imposition of Development Fees in a Community Facilities District. In calculating and imposing a development fee applicable to land in a community facilities district established under Ariz. Rev. Stat., Title 48, Chapter 4, Article 6, the Town shall take into account all public infrastructure provided by the district and capital costs paid by the district for necessary public services and facilities and shall not assess a portion of the development fee otherwise calculated to be due that would duplicate the infrastructure provided by the district or the costs imposed by the district on new development.

Section 7-7-4. PROCEDURES FOR IMPOSITION, CALCULATION AND COLLECTION OF DEVELOPMENT FEES.

- A. In General. An applicant shall be notified by the Town of the applicable development fee requirements at the time of application for a building permit via the issuance of a Development Fee Calculation Form to the applicant. Development fees shall be calculated by the Town at the time of application for a building permit and shall be paid by the applicant prior to the issuance of a building permit.
- B. Calculation.
1. Upon receipt of an application for a building permit, the Town shall determine (a) whether it is a residential or non-residential use, (b) the specific category (type) of residential or non-residential development, if applicable, (c) if residential, the number of new dwelling units, (d) if non-residential, the number of new or additional square feet of gross floor area (rounded up to the nearest square foot) and the proposed use, and (e) the development fee district in which the new development is located (if applicable).
 2. Upon receipt of an application for a building permit, the Town shall determine whether it is for a change in use. In such cases, the development fee due shall be based only on the incremental increase in the fee for the additional public facilities needed for the change in use.
 3. After making these determinations, the Town shall calculate the demand for the public facility added by the new development for each public facility category for which a development fee is being imposed and calculate the applicable development fee by multiplying the demand added by the new development by the amount of the applicable development fee per unit of development, incorporating any applicable offset if set forth in the particular development fee calculation methodology.
 4. If the type of land use proposed for new development is not expressly listed in the particular development fee ordinance and schedule, the Town shall:
 - a) identify the most similar land use type listed and calculate the development fee based on the development fee for that land use; or
 - b) identify the broader land use category within which the specified land use would apply and calculate the development fee based on the development fee for that land use category; or

- c) at the option of the applicant, or the Community Development Director, determine the basis used to calculate the fee pursuant to an independent impact analysis for development fee calculation. This option shall be available only for transportation development fees and shall be requested by the applicant on a form provided by the Town for such purpose. If this option is chosen, the following shall apply:
- 1) The applicant shall be responsible, at its sole expense, for preparing the independent impact analysis, which shall be reviewed for approval by the Community Development Director, and, if appropriate, the Director of Public Works or other Town staff or officials, prior to payment of the fee.
 - 2) The independent impact analysis shall measure the impact that the proposed development will have on the particular public facility at issue, and shall be based on the same methodologies used in the development fee calculation methodology report, and shall be supported by professionally acceptable data and assumptions.
 - 3) After review of the independent impact analysis submitted by the applicant, the Community Development Director shall accept or reject the analysis and provide written notice to the applicant of its decision on a form provided for such purpose within thirty (30) days. If the independent impact analysis is rejected, the written notice shall provide an explanation of the insufficiencies of the analysis.
 - 4) The final decision of the Community Development Director may be appealed pursuant to Section 6, herein.
5. An applicant may request a non-binding estimate of development fees due for a particular new development at any time by filing a request on a form provided for such purpose by the Community Development/Planning Department; provided, however, that such estimate may be subject to change when a formal application for a building permit for new development is made. Such non-binding estimate is solely for the benefit of the prospective applicant and shall in no way bind the Town nor preclude it from making amendments or revisions to any provisions of this Ordinance, the specific development fee implementing ordinances or the development fee schedules.

6. The calculation of development fees due from a multiple-use new development shall be based upon the aggregated demand for each public facility generated by each land use type in the new development.

7. The calculation of development fees due from a phased new development shall be based upon the demand generated by each specific land use within the phase of development for which a separate building permit is requested.

8. Development fees shall be calculated based on the development fee amount in effect at the time of application for a building permit.

C. Offsets.

1. Offsets against the amount of a development fee due from a new development shall be provided for, among other things, contributions made or to be made in the future in cash, or by dedication of land or by actual construction of all or part of a public facility by the affected property owner for public facilities meeting or exceeding the demand generated by the new development and the contribution is determined by the Town to be a reasonable substitute for the cost of public facilities which are included in the particular development fee calculation methodology.

2. The amount of the excess contribution shall be determined by the Town upon receipt of an application form requesting an offset; provided, however, that (a) the Town will make no reimbursement for excess contributions unless and until the particular public facility fund has sufficient revenue to make the reimbursement without jeopardizing the continuity of the Town's capital improvements program and (b) the excess contribution may not be transferred or credited to any other type of development fees calculated to be due from that development for other type of public facilities. The determination of the eligibility for and the amount of the credit shall be made by the Town on a form provided for such purposes. If the applicant contends that any aspect of the Town's decision constitutes an abuse of discretion, the applicant shall be entitled to appeal pursuant to Section 6.

3. No offset shall be allowed unless the Town has approved the contribution or expenditure before it is made.

4. Offsets for dedication of land or provision of public facilities shall be applicable only as to development fees imposed for the same types of public facilities which are proposed to be dedicated or provided. Even if the value of the dedication of land or provision of a public facility exceeds the development fee due for the type of public facility, the

excess value may not be transferred to development fees calculated to be due from the applicant for other types of public facilities for which development fees may be imposed. Offsets may, however, be transferred to the same applicant or to other applicants for new development which are proposed within the final approved platted area of the same development and for the same type of public facility.

D. Collection.

1. The Town shall collect all applicable development fees at the time of issuance of a building permit and shall issue a receipt to the applicant for such payment unless:
 - a) the applicant is determined to be entitled to a full offset; or
 - b) the applicant has been determined to be not subject to the payment of a development fee; or
 - c) the applicant has filed an appeal and a bond or other surety in the amount of the development fee, as calculated by the Town and approved by the Town Attorney and Finance Director, has been posted with the Town.
2. The Town shall collect a development fee at the time of issuance of a building permit even if development fees were paid by the applicant at an earlier time in the development permit or approval process if the amount of the development fees have increased since such prior approval. Except as provided for in Section 3.F, the applicant shall only be liable for the difference between the development fees paid earlier and those in effect at the time of issuance of the subsequent building permit.

Section 7-7-5. ESTABLISHMENT OF DEVELOPMENT FEE ACCOUNTS; APPROPRIATION OF DEVELOPMENT FEE FUNDS; AND REFUNDS

- A. Development Fee Accounts. A development fee account shall be established by the Town for each category of public facilities for which development fees are imposed. Such account shall clearly identify the category, account, or fund for which the development fee has been imposed. Sub accounts may be established for individual development fee districts. All development fees collected by the Town shall be deposited into the appropriate development fee account or sub account, which shall be interest bearing. All interest earned on monies deposited to such account shall be credited to and shall be considered funds of the account. The funds of each such account shall be capable of being accounted for separately from all other Town funds, over time. The Town shall establish and implement necessary accounting controls to ensure that the development fee funds are properly deposited, accounted for and appropriated in accordance with

this Ordinance, Ariz. Rev. Stat. §9.463.05 and any other applicable legal requirements.

B. Appropriation of Development Fee Funds.

1. **In General.** Development fee funds may be appropriated for public facilities, for public facility expenditures as defined in Section 2.S, hereof and for the payment of principal, interest and other financing costs on contracts, bonds, notes or other obligations issued by or on behalf of the Town or other applicable local governmental entities to finance such public facilities and public facility expenditures. All appropriations from development fee accounts shall be detailed on a form provided for such purposes and filed within the Finance Department.
2. **Restrictions on Appropriations.** Development fees shall be appropriated only (a) for the particular public facility for which they were imposed, calculated and collected; (b) within the development fee district where collected unless the development fee funds will be appropriated for a public facility necessitated by or serving the new development as provided herein; and (c) within six (6) years of the beginning of the Fiscal Year immediately succeeding the date of collection, unless such time period is extended as provided herein. Development fees shall not be appropriated for funding maintenance or repair of public facilities nor for operational or personnel expenses associated with the provision of the public facility.
3. **Appropriation of Development Fee Funds Outside of District Where Collected.** Development fee funds may be appropriated for a public facility located outside of the district where collected only if the demand for the public facility is generated in whole or in part by the new development or if the public facility will actually serve the new development.
4. **Appropriation of Development Fee Funds Beyond Six (6) Years of Collection.** Notwithstanding Section 5.B.2., development fee funds may be appropriated beyond six (6) years from the beginning of the Fiscal Year immediately succeeding the date of collection if the appropriation is for a public facility which requires more than six (6) years to plan, design and construct, and the demand for the public facility is generated in whole or in part by the new development, or if the public facility will actually serve the new development. Such appropriations shall be documented by the Town.

C. Procedure for Appropriation of Development Fee Funds.

1. The Town shall each year identify public facility projects anticipated to be funded in whole or in part with development fees. The public facility recommendations shall be based upon the development fee annual review set forth in Section 3.B. herein and such other information as may be relevant, and may be part of the Town's annual budget and capital improvements programming process.
2. The recommendations shall be consistent with the provisions of this Ordinance, the particular public facility development fee ordinances, Ariz. Rev. Stat. § 463.05, or other applicable legal requirements and any guidelines adopted by the Mayor and Common Council.
3. The Mayor and Common Council may include development fee-funded public facilities in the Town's annual budget and capital improvements program. If included, the description of the public facility shall specify the nature of the facility, the location of the public facility, the capacity to be added by the public facility the service area of the public facility, the need/demand for the public facility and the anticipated timing of completion of the public facility.
4. The Mayor and Common Council may authorize development fee-funded public facilities at such other times as may be deemed necessary and appropriate by a majority vote of the Common Council.
5. The Mayor and Common Council shall verify that adequate development fee funds are or will be available from the appropriate development fee account for the particular public facility.

D. Refunds.

1. Eligibility for Refund.
 - a. Expiration or Revocation of Building Permit. An applicant who has paid a development fee for a new development for which the necessary building permit has expired or for which the building permit has been revoked prior to construction shall be eligible to apply for a refund of development fees paid on a form provided by the Town for such purposes.
 - b. Failure of Town to appropriate Development Fee Funds Within Time Limit. The current property owner may apply for a refund of development fees paid by an applicant if the Town has failed to appropriate the development fees collected from the applicant within the time limit established in Sections 5.B.2. and 5.B.4. The

refund application shall be made on a form provided by the Town for such purposes.

- c. **Abandonment of Development After Initiation of Construction.** An applicant who has paid a development fee for a new development for which a building permit has been issued and pursuant to which construction has been initiated, but which construction is abandoned prior to completion and issuance of a certificate of occupancy, shall not be eligible for a refund unless the uncompleted building is completely demolished.
 - d. A 5% administrative fee, but not to exceed \$200.00, shall be deducted from the amount of any refund granted and shall be retained by the Town in the appropriate development fee account to defray the administrative expenses associated with the processing of a refund application.
2. Except as provided in Sections 5.D.1.a. and c. and Section 5.D.6. hereof, refunds shall be made only to the current owner of property on which the new development was proposed or occurred.
3. **Processing of Applications for a Refund.** Applications for a refund shall be made on a form provided by the Town for such purposes and shall include all information required in Sections 5.D.5. or Section 5.D.6. hereof, as appropriate. Upon receipt of a complete application for a refund, the Town shall review the application and documentary evidence submitted by the applicant as well as such other information and evidence as may be deemed relevant, and make a determination as to whether a refund is due. Refunds by direct payment shall be made following an affirmative determination by the Town.
4. Applications for refunds due to abandonment of a new development prior to completion shall be made on forms provided by the Town and shall be made within sixty (60) days following expiration or revocation of the building permit. The applicant shall submit (a) evidence that the applicant is the property owner or the duly designated agent of the property owner, (b) the amount of the development fees paid by public facilities category and receipts evidencing such payments, and (c) documentation evidencing the expiration or revocation of the building permit or approval of demolition of the structure pursuant to a valid Town-issued demolition permit. Failure to apply for a refund within sixty (60) days following expiration or revocation of the building permit or demolition of the structure shall constitute a waiver of entitlement to a refund. No interest shall be paid by the Town in calculating the amount of the refunds.

5. Applications for refunds due to the failure of the Town to appropriate development fees collected from the applicant within the time limits established in Section 5.B.2. hereof shall be made on forms provided by the Town and shall be made within one (1) year following the expiration of such time limit. The applicant shall submit (a) evidence that the applicant is the property owner or the duly designated agent of the property owner, (b) the amount of the development fees paid by public facility category and receipts evidencing such payments, and (c) description and documentation of the Town's failure to appropriate development fee funds for relevant public facilities.
6. The Town may, at its option, make refunds of development fees by direct payment, by offsetting such refunds against other development fees due for the same category of public facilities for new development on the same property, or by other means subject to agreement with the property owner.

Section 7-7-6. APPEALS.

- A. An appeal from any decision of a Town official pursuant to this Ordinance shall be made to the Mayor and Common Council by filing a written appeal pursuant to the appropriate Town form with the Town Clerk within thirty (30) days following the decision which is being appealed; provided, however, that if the notice of appeal is accompanied by a cash bond or letter of credit in a form satisfactory to the Town Attorney and the Finance Director in an amount equal to the development fee calculated to be due, a building permit may be issued to the new development. The filing of an appeal shall not stay the imposition or the collection of the development fee as calculated by the Town unless a cash bond or other sufficient surety has been provided.
- B. The burden of proof shall be on the appellant to demonstrate that the decision of the Town is erroneous.
- C. All appeals shall detail the specific grounds therefor and all other relevant information and shall be filed on a form provided by the Town for such purposes.

Section 7-7-7. EXEMPTIONS/WAIVERS.

- A. Filing of Application. Petitions for exemptions to the application of the provisions of this Ordinance or waivers from specific development fees shall be filed with the Mayor and Common Council on forms provided by the Town.
- B. Effect of Grant of Exemption/Waiver. If the Mayor and Common Council grants an exemption or waiver in whole or in part of development fees otherwise due, the amount of the development fees exempted or waived shall be provided by the Town from non-development fee funds, as may be provided in the particular development fee ordinances establishing development fees for particular public

facilities, and such funds shall be deposited to the appropriate development fee account within a reasonable period of time consistent with the applicable Town capital improvements program.

- C. Development Agreements. Nothing herein shall be deemed to limit the Town's authority or ability to enter into Development Agreements pursuant to Ariz. Rev. Stat. 9-500.05 with applicants for new development who may provide for dedication of land, payments in lieu of development fees, or actual infrastructure improvements. Such development agreements may allow offsets against development fees for contributions made or to be made in the future in cash, or by taxes or assessments or dedication of land or by actual construction of all or part of a public facility by the affected property owner.

SECTION 3. CONFLICT.

To the extent of any conflict between other Town ordinances and this Ordinance, this Ordinance shall be deemed to be controlling; provided, however, that this Ordinance is not intended to amend or repeal any existing Town ordinance, resolution or regulation.

SECTION 4. SEPARABILITY.

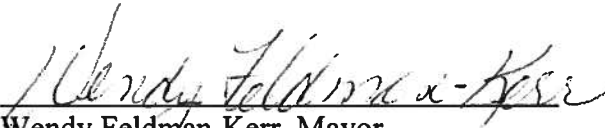
If any section, subsection, sentence, clause, phrase or portion of this Ordinance is, for any reason, held to be invalid or unconstitutional by the decisions of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

SECTION 5. EFFECTIVE DATE.

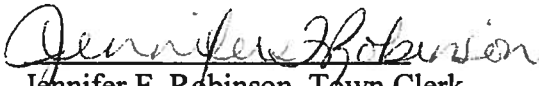
This Ordinance shall be effective at 12:01 a.m. on January 1, 2004 following its adoption by the Mayor and Common Council, with publication, as required by State law.

PASSED AND ADOPTED by the Mayor and Common Council of the Town of Queen Creek, Arizona this 1st day of October 2003.

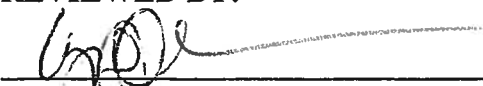
FOR THE TOWN OF QUEEN CREEK


Wendy Feldman-Kerr, Mayor

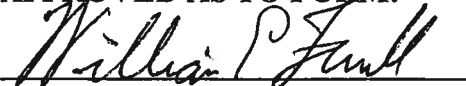
ATTESTED TO:


Jennifer F. Robinson, Town Clerk

REVIEWED BY:


Cynthia Seelhammer, Town Manager

APPROVED AS TO FORM:


William E. Farrell, Town Attorney