

ORDINANCE 470-10

AN ORDINANCE OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF QUEEN CREEK, ARIZONA, AMENDING CHAPTER 14 OF THE QUEEN CREEK TOWN CODE, "STREETS AND SIDEWALKS" BY ADDING NEW ARTICLE 14-3 TO PROVIDE FOR THE IMPROVEMENT OF SCALLOPED STREETS AND THE ASSESSMENT OF ADJACENT PROPERTIES FOR THE COST OF SUCH IMPROVEMENTS

WHEREAS, the Town Code of the Town of Queen Creek provides that the owner or developer of property within the Town is required, at the time of development of such property, to construct the streets within and adjacent to such property; and

WHEREAS, the Town Council has determined that in order to improve the flow of traffic through the Town, it is, on occasion, necessary to construct street improvements prior to the development or redevelopment of adjacent properties; and

WHEREAS, Arizona Revised Statutes § 9-243(B) authorizes the Town Council to order the construction of such improvements by the Town at its expense, and to assess the expense of the improvements against the adjacent property; and

WHEREAS, the Town Council wishes to provide a process to determine the necessity of street improvements and the assessment of the cost of such improvements against adjacent property.

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the Town of Queen Creek, Arizona, as follows:

Section 1. That the document titled "Scalloped Street Assessments" which is attached hereto as Exhibit "A" and which was made a public record by Resolution No. 821-10 is hereby adopted as new Article 14-3 of the Town Code.

Section 2. That the Town Clerk is hereby ordered to keep three (3) copies of Exhibit "A" to be available to members of the public at all times during normal Town business hours.

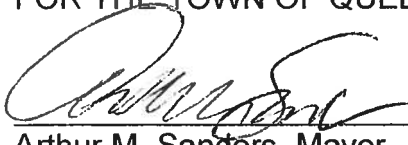
Section 3. Any person, firm or corporation violating any provision of this Ordinance and any amendments to it shall be guilty of a Class 1 misdemeanor, punishable by a fine not to exceed two thousand five hundred dollars (\$2,500) or by imprisonment for a period not to exceed six (6) months, or by both such fine and imprisonment; and each day of violation continued shall be a separate offense, punishable as described.

Section 4. If any section, subsection, clause phrase or portion of this Ordinance or any part of these amendments to the Town Code is for any reason held

invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

PASSED AND ADOPTED BY THE Mayor and Council of the Town of Queen Creek, Arizona, this 20th day of January, 2010.

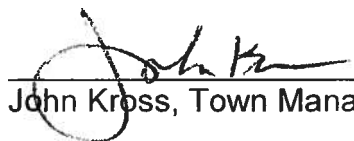
FOR THE TOWN OF QUEEN CREEK:


Arthur M. Sanders, Mayor

ATTEST TO:


Jennifer Robinson, Town Clerk

REVIEWED BY:


John Kross, Town Manager

APPROVED AS TO FORM:


Fredda J. Bisman
Mariscal, Weeks, McIntyre &
Friedlander, P.A., Town Attorneys

EXHIBIT "A"
TO ORDINANCE 470-10

SCALLOPED STREET ASSESSMENTS

ARTICLE 14-3 SCALLOPED STREET ASSESSMENTS

- 14-3-1 Definitions.
- 14-3-2 Exemptions
- 14-3-3 Required.
- 14-3-4 Approval of Owner's Plans.
- 14-3-5 Construction Prior to Development; Assessment Policy.
- 14-3-6 Assessment Procedure.
- 14-3-7 Right-of-way.
- 14-3-8 Collecting unpaid assessments at time of development.

Section 14-3-1 Definitions.

The following words, terms and phrases, when used in this section, shall have the following meanings ascribed to them:

"Cost" means the actual cost of:

- (1) Construction of the public street improvements as determined by the construction contract price.
- (2) Inspection and permit fees.
- (3) Engineering fees required for the preparation of plans and specifications.
- (4) Other incidental fees required to complete the improvements.

"Development" includes construction of residential, commercial or industrial buildings or structures or major additions or alterations to existing structures and includes new buildings or structures on property having existing buildings or structures situated on such property. When such property is zoned for agricultural or single family residential use at the time of assessment, development shall also require a change of use or purpose.

"Major addition or alteration" means any addition or alteration to an existing building hereafter made where the addition or alteration increases total floor area of the building by twenty-five percent (25%).

"Owner" means the person or legal entity that owns property adjacent to the street right-of-way.

"Right-of-way" means land which by deed, conveyance, agreement, easement, dedication, usage or process of law is reserved or dedicated to the general public for street, highway, alley, public utility, pedestrian walkway, bikeway or drainage purposes.

"Street improvement" means, but is not limited to, asphaltic concrete surfacing, aggregate base, curb and gutters, sidewalks or valley gutters, storm drainage facilities, irrigation tiling, streetlights, traffic control devices and landscaping.

"Streets" means the full width of the right-of-way of any road, street, highway, alley, land or pedestrian walkway, whether or not such road, street, highway, alley, land or pedestrian right-of-way has been improved or accepted for maintenance by the Town.

Section 14-3-2 Exemptions.

Street improvements otherwise required by this article shall not be required where the construction, alteration or addition consists solely for installation or replacement of mechanical equipment.

Section 14-3-3 Required.

- (a) *Construction at time of development.* At the time of development of property within the Town, the proprietor or owner of the property shall construct street improvements within and adjacent to such property.
- (b) *Responsibility for costs.* The costs of all street improvements shall be the full responsibility of the proprietor or owner of the property.
- (c) *Temporary deferral.* If, in the opinion of the Town Engineer, the installation of off-site improvements would not be feasible from an engineering standpoint, the installation of improvements may be temporarily deferred, provided a cash bond, irrevocable letter of credit, or similar instrument approved by the Town Attorney, is filed with the Town for the cost of the improvements. Estimated costs of the improvements shall be established by the owner or proprietor's engineer and reviewed and approved by the Town Engineer.
- (d) *Construction prior to development.* If the Town Council determines that street improvements within or adjacent to the property are necessary prior to the development of the property, the Council may order street improvements to be constructed by the Town as provided in Section 14-3-5.

Section 14-3-4 Approval of Owner's Plans.

The owner or proprietor of property intended to be developed shall submit the street improvement plans to the Town for approval. No building permit shall be issued until the street improvement plans have been approved by the Town Engineer. Street improvements shall be constructed in accordance with the plans approved by the Town Engineer and in accordance with the Town's design principles and standards set forth in Chapter 7, Article 3 of the Town Code and the Town of Queen Creek Design Standards.

and Procedures Manual. No certificate of occupancy shall be issued until street improvements are constructed in accordance with the approved plan unless the certificate of occupancy is otherwise approved by the Town Engineer.

Section 14-3-5 Construction Prior to Development; Assessment Policy.

Where the Town Council has determined that certain streets within the Town shall be constructed or improved prior to development of the property adjacent to such streets, the Council may order such streets to be constructed or improved at the Town's expense. Such expense shall be assessed against the adjoining property subject to the following:

- (1) The assessment of property, if adjacent arterial streets are involved, shall not exceed the cost of improving more than one-half (1/2) of the width or more than one thousand (1,000) lineal feet of such adjacent arterial street, except that if any parcel of land is presently being used for single-family residential use and the width of such does not exceed two hundred (200) lineal feet, such property shall not be assessed greater than one-half (1/2) the cost of the average residential street within the Town.
- (2) The assessment of property shall not exceed the actual costs incurred by the Town at the time of construction.

Section 14-3-6 Assessment Procedure.

- (a) *Determination of improvement's necessity; notice of hearing; contents.* The Town Council, at a public hearing, shall determine the necessity of street improvements if the cost thereof is to be assessed against adjacent property. Prior to the public hearing, the Planning and Zoning Commission shall, at a duly noticed public meeting, review the necessity of the street improvements and provide a recommendation to the Council. Notice of the Council hearing shall be given to the owners, and other affected persons who would be assessed for the costs of improvements by certified mail no less than fifteen (15) days prior to the date of the hearing. The notice of hearing shall contain:
 - (1) A description of the proposed street improvements.
 - (2) The estimated cost of assessment for each affected parcel of property.
 - (3) The date, time and place that the Town Council shall consider the necessity of improvement and adoption of a resolution of intention.

Notice shall also be published in a weekly newspaper on (1) time each week for two (2) consecutive weeks, or in a daily newspaper four (4) consecutive times. In

addition, notice shall also be conspicuously posted along the line of the proposed improvement at least fifteen (15) days prior to the hearing on necessity of the improvements.

- (b) *Filing of objection.* The property owners and any other persons directly interested in the work or in the assessment may, prior to the time fixed for the hearing, file in the office of the Town Clerk a written objection, briefly specifying the grounds for objection.
- (c) *Hearing.* At the time of public hearing, the Town Council shall hear and pass upon any objections to the proposed improvements, and its decision shall be final and conclusive. It may modify the extent of the proposed improvements and proceed without the necessity for republishing, reposting and remailing new notices. At the conclusion of the hearing, the Town Council may pass its resolution of intention directing that plans, specifications and estimates of the cost and expenses of the proposed improvements be finalized by the Town Engineer, filed with the Clerk and filed in the official records of the county recorder, and order that a call for sealed bids be made.
- (d) *Completion of improvements; determination of costs; additional hearing; notice; contents of notice.* Upon completion of the improvements, the Council shall by resolution, at a public hearing, determine the cost of the improvements and assess against the properties adjacent to the street improvement, the total amount of the costs and expenses of the work in accordance with Section 14-3-5. Notice of this public hearing shall be given to the property owner, and other affected persons who would be assessed for the costs of improvements, by certified mail at least fifteen (15) days prior to the date of the hearing. This notice shall contain:
 - (1) A description of the street improvement; and
 - (2) The cost of assessment for each affected parcel of property.
- (e) *Objections to legality of assessment or other proceedings; filing; council action.* The property owners and any other persons directly interested in the street improvements or in the assessment who have any objection to the legality of the assessment or to any of the previous proceedings connected therewith or who claim that the work has not been performed according to the contract may, prior to the time fixed for the hearing, file in the office of the Town Clerk a written notice briefly specifying the grounds for objection. At the time fixed for the hearing, or at any time thereafter to which the hearing may be postponed, the Council shall hear and rule upon the objections. The decision of the Council shall be final and conclusive as to all errors, informalities and irregularities which the Council might have remedied or avoided at any time during the progress of the proceedings.

- (f) *Right to appeal.* The determination of necessity by the Council resulting in the assessing of property under this section may be appealed by any aggrieved party to the Superior Court.
- (g) *Unpaid assessments.* The Council's resolution shall provide that any assessments remaining unpaid shall be paid prior to or at the time of the development of the assessed property.
- (h) *Recording of assessment; lien.* A resolution declaring the assessment and describing the properties against which the assessments are imposed shall be recorded in the office of the county recorder. When so recorded, the amount so assessed shall be a lien upon the properties assessed for ten (10) years thereafter, or until such assessments are paid, whichever first occurs, and such recording shall be notice to all persons interested in the contents of the record.
- (i) *Abatement of assessment; conditions.* Any assessment made under this section shall abate if the property has not been developed within ten (10) years of the assessment.

Section 14-3-7 Right-of-way.

When it is necessary to improve a full street and sufficient right-of-way is not available, the Town Engineer may obtain the right-of-way upon terms that are just to the property owner and the Town. If the right-of-way is not dedicated at time of construction, the cost to the Town to purchase the right-of-way shall be considered an expense attributable to the street improvements and shall be assessed against the property at the time of development.

Section 14-3-8 Collecting unpaid assessments at time of development.

At the time of development of the property adjacent and abutting such improvements, the Town Council shall fix, levy and assess the amount to be repaid upon such property and collect the amounts of such improvements as county taxes are collected. All statutes providing for the levy and collection of State and County taxes, including collection of delinquent taxes and sale of property for nonpayment of taxes, are applicable to the assessments provided for in this article.