

ORDINANCE 16-\_\_\_\_\_

**AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AMENDING SECTION 3-30 OF THE TOWN CODE OF ORDINANCES RELATING TO GENERAL REQUIREMENTS FOR APPLICATIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the Town of Cutler Bay (the “Town”) has adopted land development regulations to facilitate safe and orderly growth which forms an integral part of the community; and

**WHEREAS**, the Town Council desires to amend the standards in the land development regulations regarding cost recovery; and

**WHEREAS**, the Town Council, sitting as the Local Planning Agency, has reviewed the ordinance and recommended approval; and

**WHEREAS**, the Town Council finds that this Ordinance is in the best interest and welfare of the residents of the Town.

**NOW THEREFORE, BE IT ORDAINED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AS FOLLOWS<sup>1</sup>:**

**Section 1.** **Recitals.** The above recitals are true and correct and are incorporated herein by this reference.

**Section 2.** **Section 3-30 Amended.** The Town Council hereby amends Section 3-30 of the Town Code of Ordinances as follows:

**Sec. 3-30** General Requirements for Applications

\*\*\*

- I. Cost Recovery. To the extent that any application for review by the Town under the Town’s Land Development Regulations or, except as otherwise specified below, other Town Code provisions which require review by Town staff, Town contractors, agents or consultants, the actual full costs for such review shall be passed on to the applicant. Costs for the Town Attorney, Town Staff and/or any outside contractors, agents or consultants of the Town shall be charged to the applicant in an amount equal to the actual cost charged to the Town. Fees charged to

---

<sup>1</sup>Additions to existing code text are shown by underline; deletions from existing code text are shown by ~~strike through~~. Changes between first and second reading are indicated with **highlight**.

process building permits and other development applications on behalf of the Town shall not be affected by this section.

(1) Initial Deposit. The applicant shall, at the time a submittal is made, provide an initial preliminary deposit which shall be credited toward the fee charged for application review and processing, and shall pay additional deposits as may be required from time to time.

(2) Amount Deposit. The amount of the initial deposit for the different types of review requests shall be established, and from time to time amended, by resolution of the Town. It is the express intent of the Town in enacting this cost recovery program that the Town's costs of administrative and outside fee consultant review and processing of review requests, as required or necessitated now or in the future by the Town's ordinances, resolutions, policies, or procedures, shall be borne by the applicant.

(3) Project Accounts. When the applicant pays the initial deposit, a financial account for said applicant's review request (the "project account") will be opened and maintained throughout the entire review process until the person receives a certificate of occupancy, the Community Development Department determines that no further action is necessary for the review and processing of the review request, or the applicant voluntarily withdraws. At any of these times the project account will be closed and any remaining funds therein shall be refunded to the applicant depositing same no later than two months after the project account's closing date. The project account will be monitored on a periodic basis. Whenever the account balance is zero or negative, a supplemental deposit will be required before any further review or processing continues. Additionally, no project shall be scheduled for Town Council review unless there are funds in the account. The applicant making the initial deposit will be notified when a supplemental deposit will be required. The amount of the supplemental deposit will be 50% of the initial deposit. Several supplemental deposits may be necessary depending on the complexity of the review request.

(4) Records of Administrative Work Performed. The staff of the various departments of the Town and the Town's outside consultants who are involved in the review and processing of review requests shall maintain records of the time expended and tasks conducted regarding each such request. A debit based upon the time expended and the applicable hourly rate shall be charged against the project account. The applicable hourly rate for review and processing by the Town's outside fee consultants shall equal their actual hourly charge for such review and processing. A debit against the project account shall also be made

which shall reflect the costs of administering this program, which charge shall be based upon the actual effort involved for such administration.

- ~~1. Fees charged to process building permits and other development applications on behalf of the Town shall not be affected by this section.~~
- ~~2. Unless prohibited by law, in circumstances in which the Town prepares closing papers, deeds, or other documents in conjunction with Town programs such as in-fill lot housing or other housing measures, or for other matters in which the Town holds a lien and is requested to subordinate its position; and, in cases where the Town prepares loan documents, liens, mortgage papers, subordination documents and other such documents in conjunction with or resulting from Town loan and economic development programs, the Town shall charge the applicant a reasonable fee as determined by the Town Manager in an amount equal to the actual full costs to the Town for the preparation of such documents.~~

\*\*\*

L. **Withdrawal of Development Applications and Refund of Fees.**

An application for development review may be withdrawn at any time. For applications filed in accordance with this Chapter and subsequently withdrawn, the applicant may request a fee refund. The refund request must be made on a form provided by the Town. ~~The amount of refund will be based on the point in time of the review process when the application withdrawal is initiated by the applicant. The refund schedule is as follows:~~

- ~~1. 75 percent prior to staff review or legal advertisement (whichever comes first).~~
- ~~2. 25 percent prior to drafting of the staff report.~~
- ~~3. 15 percent ten (10) business days prior to the Town Council hearing on the application.~~
- ~~4. No refund shall be granted if an applicant withdraws the application at the Town Council meeting in which the application is scheduled to be heard.~~

The amount of the refund shall be the funds remaining in the project account after all charges have been paid.

\*\*\*

**Section 3. Severability.** That the provisions of this Ordinance are declared to be severable, and, if any section, sentence, clause and/or phrase of this Ordinance is, for any reason, held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining

sections, sentences, clauses, and phrases of this Ordinance, which shall remain in effect, it being the legislative intent that this Ordinance shall stand despite the invalidity of any part.

**Section 4.** **Conflicts.** All Sections or parts of Sections of the Code of Ordinances, all ordinances or parts of ordinances, and all Resolutions, or parts of Resolutions, in conflict with this Ordinance are repealed to the extent of such conflict.

**Section 5.** **Codification.** That it is the intention of the Town Council, and hereby ordained, that the provisions of the Ordinance shall become and be made a part of the Code of the Town of Cutler Bay; that the sections of this Ordinance may be re-numbered and/or re-lettered to accomplish such intentions; and that the word, "Ordinance," shall be changed to "Section" or such other appropriate word.

**Section 6.** **Effective Date.** That this Ordinance shall be effective immediately upon adoption on second reading.

PASSED on first reading this 20<sup>th</sup> day of January, 2016.

PASSED AND ADOPTED on second reading this \_\_\_\_ day of \_\_\_\_\_, 2016.

Attest:

\_\_\_\_\_  
PEGGY R. BELL  
Mayor

\_\_\_\_\_  
JACQUELINE N. WILSON  
Town Clerk

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY FOR THE SOLE  
USE OF THE TOWN OF CUTLER BAY:

\_\_\_\_\_  
WEISS SEROTA HELFMAN  
COLE & BIERMAN, P.L.  
Town Attorney

Moved By: \_\_\_\_\_  
Seconded By: \_\_\_\_\_

FINAL VOTE AT ADOPTION:

Mayor Peggy R. Bell \_\_\_\_\_

Vice Mayor Ernest N. Sochin \_\_\_\_\_

Council Member Roger Coriat \_\_\_\_\_

Council Member Sue Ellen Loyzelle \_\_\_\_\_

Council Member Mary Ann Mixon \_\_\_\_\_