



Office of the Town Manager

Rafael G. Casals  
Town Manager

## MEMORANDUM

To: Honorable Mayor and Town Council

From: Rafael G. Casals, Town Manager

Date: January 20, 2016

Re: Amending Section 3-30 General Requirements for Applications I. Cost Recovery of the Town Land Development Regulations (*First Reading*)

### REQUEST

**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.**

### GOAL

As previously presented to Town Council at the September 30, 2015 Town Council Workshop, Town staff has reviewed and prepared recommendations to update the Town's existing General Requirements for Applications.

The goal of this ordinance is to amend subsection 3-30 General Requirements for Applications of Article III "Application Review and Approval Requirements" to provide clear and balanced regulations that reflect the vision of the Town while meeting the needs of the residential and commercial developments within the Town of Cutler Bay.

### BACKGROUND AND ANALYSIS

On May 4, 2006, the Town Council enacted Ordinance 06-07 which created a cost recovery administrative program. The Town staff at the time conducted a review of costs incurred by the Town for review of development approvals and found that the existing fee schedules at the time did not fully cover the Town's costs in administrations and review of land development applications, etc. The Town Council found it to be in the Town's best interest to recover the costs for services relating to the review of applications for development approvals from those persons deriving the benefit of the review.





The purpose of this analysis is to identify where the application of the Town's Land Development Regulations has raised concerns regarding Sec. 3-30 General Requirements for Applications.

### **SUMMARY OF RECOMMEND CHANGES**

Staff has found applying this section of Article III to be deficient. Currently the process does not require an applicant to pay until after the project has been reviewed. Unfortunately, the Town has encountered situations where the applicant refuses to reimburse the Town due to either economic reasons, or because the application was denied. Town Staff has determined that the process needs to be amended. An initial deposit will now be required prior to the review of any application. Funds will be withdrawn from the project account. Funds that are not used will be reimbursed to the applicant at project completion. The analysis included an in-depth review of the Town's Land Development Regulations; meetings with staff from the Town's planning consultant firm Calvin Giordano; and review and evaluation of other ordinances and literature.

Staff is recommending Section 3-30 General Requirements for Applications be changed<sup>1</sup> to:

#### **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.

(A) Initial Deposit. At the time a submittal is made, an initial preliminary deposit which shall be credited toward the fee charged for such review and processing, and shall pay additional deposits as may be required from time to time.

(B) 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

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





in the future by the Town's ordinances, resolutions, policies, or procedures, shall be borne by the person initiating the review request.

(C) 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 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.

(D) 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.

**RECOMMENDATION**

Staff is recommending approval of the attached Ordinance with amendments to Section 3-30 of the Town Code of Ordinances relating to general requirements for applications.

**ATTACHMENTS**

- Attachment “A” – Cost Recovery Schedule

