



CITY OF APOPKA CITY COUNCIL

CONSENT AGENDA	MEETING OF:	April 1, 2015
X PUBLIC HEARING	FROM:	Community Development
SPECIAL REPORTS	EXHIBITS:	Ordinance No. 2415
X OTHER: Ordinance		

SUBJECT: ORDINANCE NO. 2415 – AMENDING THE CITY OF APOPKA, CODE OF ORDINANCES, TO CREATE SUBSECTION 2-123 OF SECTION 2, DIVISION 2, CHAPTER 2, TITLED– PASS-THROUGH FEES.

Request: FIRST READING OF ORDINANCE NO. 2415 - AMENDING THE CITY OF APOPKA, CODE OF ORDINANCES, TO CREATE A NEW SUBSECTION 2-123 OF SECTION 2, DIVISION 2, CHAPTER 2, TITLED– PASS-THROUGH FEES; AND HOLD IT OVER FOR SECOND READING AND ADOPTION ON APRIL 15, 2015.

SUMMARY:

The City Council of the City of Apopka recognizes that the City incurs significant costs to retain professional consultants for the review, inspection and regulation of development activities occurring within the City. Such consultants include attorneys, engineers, planners, environmental specialists, property appraisers and surveyors. Costs for such professional services exceed the application fee paid to the City. Thus, this cost places an unscheduled burden on the City budget. The City desires that applicants for certain development activities pay the costs of review, inspection and regulation of development activities relative to their application. The City of Apopka desires to amend its City Code to provide for pass-through of certain costs incurred by the City pertaining to the review, inspection and regulation of development activities.

PUBLIC HEARING SCHEDULE:

City Council, April 1, 2015 (1:30 pm) - 1st Reading
City Council, April 15, 2015 (7:00 pm) – 2nd Reading

DULY ADVERTISED:

March 20, 2015 – Public Hearing Notice
April 3, 2015 – Ordinance Heading

FISCAL IMPACT: The proposed amendment to the City’s development review fee schedule will primarily allow the City to pass certain costs for professional services, particularly legal services, to development applicants. Such fees typically are not scheduled within the standard development review application fee or the City’s budget. This occurs because the need for such professional services will differ from one development project to the next based on the scale and complexity of the proposed development. Most development applications will not warrant a need for the pass-through fee. Overall, the proposed ordinance represents a cost savings for the City of Apopka and its residents.

RECOMMENDATION ACTION:

CC recommended action – Accept the First Reading of Ordinance No. 2415, and Hold it Over for Second Reading and Adoption on April 15, 2015.

DISTRIBUTION:

Mayor Kilsheimer
Commissioners (4)
City Administrator Irby
Community Dev. Director

Finance Director
HR Director
IT Director
Police Chief

Fire Chief
Public Ser. Director
City Clerk

ORDINANCE NO. 2415

AN ORDINANCE OF THE CITY OF APOPKA, FLORIDA, AMENDING THE CODE OF ORDINANCES, PART II, CHAPTER 2, DIVISION 2, SECTION 2, BY ADDING SUBSECTION 2-123 ENTITLED “PASS-THROUGH FEES;” PROVIDING FOR PASS-THROUGH TO THE APPLICANT OF CERTAIN COSTS INCURRED BY THE CITY PERTAINING TO THE REVIEW, INSPECTION AND REGULATION OF DEVELOPMENT ACTIVITIES WITHIN THE CITY; PROVIDING FOR CONFLICTS AND SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Apopka recognizes that the City incurs significant costs in the review, inspection and regulation of development activities occurring within the City; and

WHEREAS, the City Council of the City of Apopka desires that applicants for certain development activities pay the costs of review, inspection and regulation of development activities relative to their application; and

WHEREAS, the City Council of the City of Apopka desires to amend its City Code to provide for pass-through of certain costs incurred by the City pertaining to the review, inspection and regulation of development activities,

NOW THEREFORE, BE IT ENACTED by the City Council of the City of Apopka, Florida as follows:

SECTION 1. The City of Apopka Code of Ordinances, Part II, Chapter 2, Division 2, Section 2, Subsection 2-123 Entitled “Pass-Through Fees” is hereby created as follows, and all other sections of the City Code shall be renumbered accordingly:

ARTICLE IV - FINANCE DIVISION II - FEES

2-123.1 Authority

The City is hereby authorized to assess and collect fees, deposits, costs and expenses relating or pertaining to the review, inspection, regulation and defense of development related activities pursuant to this Section.

2-123.-2 Definitions.

The following words, terms, and phrases, when used in this Section, shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning.

Applicant shall mean and refer to an owner or an owner’s authorized agent who submits an Application, proposal, petition or project to the City.

Application, for purposes of this Section, shall mean and refer to an application, petition or proposal submitted to the City pertaining to development for which City approval is required, and shall be limited to the following, except as the provisions of Section 2-123.3 shall apply:

- (i) Comprehensive plan amendment
- (ii) Concurrency determination
- (iii) Development agreement, formulation and review
- (iv) Development of regional impact
- (v) Final subdivision plat, including any revisions to a previously approved or existing subdivision or plat
- (vi) Special Exception
- (vii) Planned unit development
- (viii) Preliminary development plan
- (ix) Final development plan
- (x) Rezoning (with or without a comprehensive plan amendment)
- (xi) Variance Request
- (xii) Vesting Determination
- (xiii) Impact fee agreements
- (xiv) Utility plans and agreements
- (xv) Any other development application or development order not listed above
- (xvi) Substantial change in any of the above

City shall mean and refer to the City of Apopka, Florida.

City consultant shall mean and refer to those companies, private consultants, governments, individuals or other entities under contract with the City to provide services to or for the City or who provide services to or for the City or who provide technical or legal expertise to or for the City, including but not limited to, attorneys, engineers, planners, environmental specialists, property appraisers and surveyors.

City staff shall mean and refer to City employees.

Total development review amount shall mean and refer to the total amount of the review deposit to be paid by an Applicant pursuant to Section 2-123.3 and any fees authorized to be collected by the City pursuant to its Code of Ordinances.

Owner shall mean and refer to an owner or group of owners of fee simple title to a particular lot, tract, or parcel of real property.

Owner's authorized agent shall mean and refer to an agent of the owner duly authorized to submit and process an Application. If the Applicant is not the property owner, a proper authorization must accompany the Application. Such authorization shall be evidenced by a power of attorney signed by the owner and notarized specifically authorizing the agent to represent the owner in connection with the Application and as to the owner's real property which is the subject of the Application. The authorization shall include an agreement of the owner to be bound by the actions of the owner's authorized agent and the provisions of this Section.

Review deposit shall mean and refer to a deposit of money, as established by this Section, to be paid by an Applicant at the time of the filing of an Application as defined above or, upon good cause shown, such other development-related Application as determined by the City Administrator or his/her designee as required in Section 2-123.3.

2-123.3 Review deposits.

(a) *Required review deposits.* A \$5,000 review deposit, payable to the City of Apopka by money order, personal or company check or cashier's check drawn on a

financial institution authorized to do business in Orange County, Florida, shall be delivered to and collected by the City at the time of submission of each Application as defined in Section 2-123.-2. Said review deposit shall be utilized by the City to reimburse the City for the actual costs paid by the City incurred as a result of the review of the development activity.

(b) *Other types of development-related applications.* Upon good cause shown, a review deposit, in an amount determined by the City Administrator not to exceed \$5000, paid as set forth above in subsection (a), shall be delivered to and collected by the City at the time of submission of such other types of development-related application as may be determined by the City Administrator or at such other time as the City Administrator may designate. The following factors, by way of example, not limitation, may be considered to support a finding of good cause for the imposition of a review deposit during the review and approval of a development-related Application other than as described in Section 2-123.-2 and for establishing the appropriate review deposit amount: information provided by the City staff and Applicant about the complexity and scope of the proposed development-related Application and the development project, the payment history of the Applicant as it pertains to past dealings with the City, and the expected involvement of City consultants.

(c) *Waiver of review deposits.* In all cases, the City Administrator may waive the requirement of a review deposit if, based upon information from City staff and the Applicant, the amount of the fees, costs and expenses relating to the review, processing, inspection and regulation of such, as estimated by the City Administrator, will not exceed the Application fee. Similarly, should the City Administrator determine, at any time thereafter, in his sole discretion, that requiring a review deposit is in the City's best interest, he may require one at that time. No review of an Application pertaining or relating to subdivision plats, development agreements, planned unit developments, a development of regional impact or such other development-related Application as determined by the City Administrator, shall commence until the Application fee and review deposit, if applicable, is paid. The total development review amount shall be forwarded to the City Administrator prior to the end of the second business day following the submittal of said Application for review or approval. The balance of the review deposit, if any, shall be returned to the Applicant as provided for in section 2-123.1-4. No interest shall be paid to Applicant on any review deposit on account with the City.

(d) *Administrative Fee for review deposits.* To mitigate City's cost to administer and process a Pass-Through Fee review deposit, an administrative fee equal to three percent (3%) of the actual costs of the review by the City Consultant shall be paid to the City. This administrative fee shall be deducted from the review deposit.

2-123.4 Project account.

Once an application pertaining or relating to an Application or, upon good cause shown, such other development-related Application as determined by the City Administrator, has been submitted to the City and the applicable total development Application fee has been collected, the City Administrator or his/her designee shall establish an individual project account through which all fees, expenses and costs incurred by the City which are associated with the applicable Application will be monitored. The project account will be maintained throughout the entire review, processing, inspection, and regulation process until the latter of:

- (i) Final action (after all appeal periods have run) by the City Council has occurred with respect to the Application;
- (ii) No further significant involvement of the City staff or City consultants is expected to occur;
- (iii) The City has been paid all of the amounts due under this Section and the City Code; or
- (iv) The expiration of any warranty period associated with the conveyance or dedication of improvements to the City.

Fees, costs and expenses for any City consultant time directly related to the review, processing, inspection or regulation of any Application or development pursuant to this Section, the City Code and/or State Statutes, and all other directly related expenses, including, but not limited to, advertising, legal, inspection and engineering costs are to be charged to the project account.

2-123.5 City invoices.

(a) *Payment.* The City Administrator or his/her designee may periodically calculate the costs, expenses and fees incurred by the City for each Application for which a review deposit is required and send an invoice to the Applicant for payment. The Applicant shall have ten (10) days from the date of the invoice to pay to the City the invoiced amount. Thereafter, if payment is not received in the required time, the City Administrator or his/her designee shall apply the review deposit toward payment for the invoiced amounts. If the total of the costs, expenses, and fees incurred by the City for an Application for which a review deposit is required exceeds the review deposit, and payment is not received in the required time after invoicing, then the City Administrator or his/her designee shall apply the review deposit to the unpaid portion of the invoice and send a notice of nonpayment to the Applicant for the remaining amount of the invoice. The City Administrator or designee shall also send a notice to the Applicant and to all City staff and City consultants associated with the subject Application or project, instructing them to cease all work relating to such Application or project unless and until further notified by the City Administrator or his/her designee. A copy of such notice shall be sent to the Applicant.

Upon receipt of the notice, work by the City staff and City consultants on the Application or project shall cease, and neither building permits, certificates of completion, temporary certificates of occupancy, nor certificates of occupancy will be issued with respect to such real property. Continuation of the review of the Application or project with respect to the real property for which payment was not made will not be undertaken by the City until such time as all outstanding fees, costs and expenses due under this Section are paid in full and a new review deposit paid to the City.

Unless otherwise provided for in this Section, if an Applicant receives or is granted approval on an Application or project or is issued a building permit, certificate of completion, temporary certificate of occupancy, certificate of occupancy, occupational license or other development order by the City, and additional fees, costs, expenses or such other obligations attributable to the Application are thereafter posted to the project account for work that is associated with said approval or issuance, the Applicant or his/her successor in interest shall pay said costs, fees and expenses incurred by the City for such Application. The City shall send an invoice to the

Applicant or successor for such fees or expenses, and the Applicant or successor shall reimburse the City for such fees or expenses within ten (10) days.

(b) *Deficiency and liens.* Failure to pay an invoiced amount within the requested time shall constitute a violation of this section. Any deficiency owed to the City, whether incurred before or after project approval, shall bear interest from the date of the aforementioned notice of non-payment at the rate of 18 percent simple interest per annum or otherwise at the highest rate permitted by law until paid. The amount of any such deficiency owed to the City shall, together with interest and the costs of collection as hereinafter provided, shall be the personal obligation of the Applicant and shall be a continuing lien on the real property related to the Application or project under review. Any subsequent or new owner of the real property related to the Application or project shall take title subject to the obligations of the Applicant under the terms of this Section and shall be jointly and severally liable for such obligations. An Applicant may not escape liability for the deficiency by abandonment of the Application or project, withdrawal of such Application or sale of the real property with respect to which such Application has been submitted. If the initial or subsequent invoices are not paid in a timely fashion, and the invoiced amount exceeds the amount of the review deposit, the City may take whatever legal means it deems appropriate to collect the deficiency, including, but not limited to, retaining the services of a collection agency or attorney, initiating legal proceedings for the collection thereof, recording a notice of lien as hereinafter provided, and foreclosing same in the same manner as mortgage liens are foreclosed.

If the project is subject to the provisions of a development agreement, and the Applicant is found to be in default of such development agreement, then it would be considered a default of that agreement and whatever remunerative such development agreement calls for would be applied, as opposed to the provisions called for in this ordinance.

2-123.6 Required payments.

Payment for costs, expenses and fees incurred by the City under this Section is a requirement for the City's final approval of the Application and project.

2-123.7 Assessable costs, expenses, and fees.

All direct costs, expenses and fees incurred by the City that relate directly to the review, processing, inspection, regulation or defense of an Application, including, but not limited to, expenses incurred by City consultants who review or defend the Application at the direction of the City, as well as other expenses related directly to advertising, surveying, legal review and/or engineering review for an Application or project shall be assessed to the Applicant and reimbursed to the City. Assessable expenses shall not include the cost of City employee time in reviewing such Application, as such time shall be deemed to have been reimbursed by the Application fee.

City consultants shall submit records of their time, fees, costs, and expenses to the City Administrator or his/her designee and such fees, costs and expenses shall be invoiced to the Applicant on a dollar-for-dollar basis for services provided under the

direction of the City to review. The rates charged to the Applicant for said services shall not exceed those charged to the City.

2-123.8 Objections/appeal.

Any objection to any invoice or to any matter set forth in this Section must be set forth in writing and addressed and delivered to the City Administrator on or before the tenth day after the date of the relevant invoice. In the event the City Administrator denies the objection, the Applicant shall have ten (10) days after the date of the City Administrator's written decision to file an appeal of such decision with the City Clerk or his/her designee, which appeal shall be heard by the City Council. All objections and appeals shall set forth in detail the reasons and evidence upon which the objection and appeal are based. Failure of the Applicant to establish beyond a preponderance of the evidence that an invoice is not appropriate and is not based upon competent substantial evidence, shall result in a denial of the objection and appeal.

2-123.9 Attorney's fees in the event of failure to pay review costs.

In the event the City is required to enforce this Section, then the City shall be entitled to recover from the Applicant all costs and expenses incurred, including but not limited to its reasonable attorneys' fees, paralegal fees and other costs and expenses, whether incurred prior to, during or subsequent to court proceedings or on appeal, and/or in any bankruptcy proceedings involving the Applicant, the real property and/or the project being reviewed.

2-123.10 Change of ownership.

An Applicant shall provide prompt written notice to the City Administrator in the event of a change in ownership of all or a portion of a lot, tract, or parcel of real property with respect to which an Application, or project is pending before the City. Such notice shall be on a form approved by the City and shall include the name, address and phone number of the new owner and a legal description of the lot, tract or parcel of real property now owned by the new owner. Any such new owner (i) shall not be entitled to utilize or draw upon any review deposit previously paid to the City by the original Applicant, (ii) shall be liable to the City for all fees, costs and expenses related to the lot, tract or parcel of real property which arise subsequent to the date the new owner acquires title to such real property, and (iii) may be required by the City to pay a separate review deposit in the same manner as a new Application, in which case a separate project account will be opened in the name of the new owner or the new owner's authorized agent. If a separate review deposit is required, no work shall be undertaken by the City or its consultants with respect to the lot, tract or parcel of real property under control of the new owner until a separate review deposit is paid to the City. Until such time as the City receives such written notice of a change in ownership, the original Applicant shall be jointly and severally liable to the City for all fees, costs and expenses associated with the Application or project; provided, however, that upon receipt by the City of a notification of change of ownership, the original Applicant shall no longer be liable to the City for fees, costs and expenses incurred by the City which arise after receipt of the notification of change of ownership, and the new owner shall be solely liable to the City for all such fees, costs and expenses associated with the Application or project activities subsequent to the date of receipt by the City of such notification. Additionally, the Applicant shall be entitled to a refund of any review

deposit balance as of the date said change of ownership notice is received by the City, provided all assessable costs, expenses and fees hereunder and incurred to that date are paid in full.

2-123.11 Agreement to be bound by this Section.

Submission of an Application shall constitute the consent and agreement for the Applicant and the owner, if the Application is being executed by the owner's authorized agent, to be bound by the provisions of this Section.

2-123.12-19 Reserved.

SECTION 2. Ordinances and Resolutions in Conflict. All ordinances or resolutions or parts thereof, which may be determined to be in conflict herewith, are hereby repealed.

SECTION 3. Severability. It is the intent of the City Council of the City of Apopka, and is hereby provided, that if any section, subsection, sentence, clause, phrase or provision of this Ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not be construed as to render invalid or unconstitutional the remaining provisions of this Ordinance.

SECTION 4. Effective Date. This ordinance shall become effective immediately upon adoption.

APPROVED AND ADOPTED by the City Council of the City of Apopka, Florida this ____ day of _____, 2015.

READ FIRST TIME: April 1, 2015

READ SECOND TIME
AND ADOPTED: April 15, 2015

Joseph E. Kilsheimer, Mayor

ATTEST:

Linda Goff, City Clerk

DULY ADVERTISED: March 13, 2015
 April 3, 2015