

ORDINANCE NO. 2013-01

AN ORDINANCE OF THE CITY OF EDGEWOOD, FLORIDA, AMENDING SUBPART B “LAND DEVELOPMENT REGULATIONS”, CHAPTER 101, “GENERAL AND ADMINISTRATIVE PROVISIONS”, CREATING ARTICLE I, ENTITLED “PASS-THROUGH FEES”, IN THE CODE OF ORDINANCES; 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 Edgewood 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 Edgewood desires that applicants for certain development activities pay the reasonable costs of review, inspection and permitting of development activities related to such applicants; and

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

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

SECTION 1. The City of Edgewood Code of Ordinances Subpart B, Chapter 101, Article I, “Pass-Through Fees”, is hereby created as follows:

ARTICLE XVI

101-1 Authority

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

101-2 Definitions.

The following words, terms, and phrases, when used in this Article, 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 shall mean and refer to an application, petition or proposal, including amendments to previously approved applications, submitted to the City pertaining to development for which City approval is required, and shall be limited to the following:

- (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) Planned unit development
- (vii) Preliminary subdivision plat
- (viii) Rezoning (with or without a comprehensive plan amendment)
- (ix) Variance Application
- (x) Site plan review
- (xi) Special Exception Application
- (xii) Boat dock applications

City shall mean and refer to the City of Edgewood, 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 technical or legal expertise to or for the City, including but not limited to, attorneys, engineers, planners and surveyors.

City staff shall mean and refer to City employees.

Total development review estimate shall mean and refer to the City's estimated fees, expenses and costs to process an Application as provided in Section 101-7.-

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 Article and an acknowledgement that a lien may be placed on the property as provided herein.

Review deposit shall mean and refer to a deposit of money, as established by this Article, to be paid by an Applicant at the time of the filing of an Application as defined above.

101-3 Review deposits.

(a) Required review deposits. A \$1,000 review deposit, payable to the City of Edgewood 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. Said review deposit shall be utilized by the City to reimburse the City for the actual costs associated with the Application incurred by the City. Any remaining balance of the review deposit shall be returned to the Applicant as provided for in Section 101-4. No interest shall be paid to Applicant on any review deposit on account with the City.

(b) Waiver of review deposits. The total development review estimate shall be forwarded to the Mayor or his or her designee prior to the end of the fifth business day following the submittal of an Application for review or approval. In all cases, the Mayor or his or her designee shall waive the requirement of a review deposit if the total development review estimate does not exceed the application fee to be paid by the Applicant. Subsequently, the Mayor or his or her designee may require a review deposit at any time if it appears that the actual costs incurred by the City as a result of the review of the Application shall exceed the application fee.

101-4 Project account.

Whenever a review deposit is required, the Mayor or his/her designee shall establish an individual project account through which all fees, expenses and costs incurred by the City associated with the Application will be monitored. The project account will be maintained throughout the entire review, processing and inspection process until the latter of:

- (i) Final action (after all appeal periods have run) by the City has occurred with respect to the Application;
- (ii) No further significant involvement of the City staff or City consultants is expected to occur; or
- (iii) The City has been paid all of the amounts due under this Article and the City Code.

Fees, costs and expenses for any City consultant time directly related to the review, processing and inspection of any Application and all other directly related expenses, including, but not limited to, advertising, legal, inspection, planning and engineering costs are to be charged to the project account.

101-5 City invoices.

(a) Payment. The Mayor or his/her designee shall, on a timely basis, 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, the Mayor 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 exceeds the review deposit and payment is not received in the required time after invoicing, the Mayor 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 Mayor or his/her designee shall copy the notice of non-payment to all City staff and City consultants associated with the subject Application. Upon receipt of such 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 will not be undertaken by the City until such time as all outstanding fees, costs and expenses due under this Article are paid in full and a new review deposit paid to the City.

Unless otherwise provided for in this Article, if an Applicant receives or is granted approval on an Application 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 shall pay said costs, fees and expenses incurred by the City for such Application. The City shall send an invoice to the Applicant for such fees or expenses, and the Applicant shall pay such invoice within ten (10) days.

(b) *Deficiency and liens.* Failure to pay an invoiced amount within the requested time shall constitute a violation of this Article. 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. 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 Article 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 and foreclosing same in the same manner as mortgage liens are foreclosed. To give notice of the deficiency, the City shall record or cause to be recorded a Notice of Lien in the Public Records of Orange County, Florida, stating the description for the real property related to the application or project, the name of the owner of the real property and the amount then due and owing to the City.

If the project is subject to the provisions of a development agreement, and the Applicant is found in default of such development agreement, the remedies provided for in the development agreement shall control over any conflicting provisions of this Article.

101-6 Required payments.

Payment of costs, expenses and fees incurred by the City pursuant to this Article is a requirement for the City's final approval of the Application.

101-7 Assessable costs, expenses, and fees.

All direct costs, expenses and fees incurred by the City that relate directly to the review, processing, inspection, permitting 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 Mayor or his/her designee and such fees, costs and expenses shall be invoiced to the Applicant in the same amount invoiced to City

101-8 Objections/appeal.

Any objection to any invoice or to any matter set forth in this Article must be set forth in writing and addressed and delivered to the Mayor or his or her designee on or before the tenth day after the date of mailing of the relevant invoice. In the event the Mayor or his or her designee denies the objection, the Applicant shall have ten (10) days after the date of mailing of the Mayor or designee'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 by a preponderance of the competent evidence that an invoice is not appropriate shall result in a denial of the objection and appeal.

101-9 Attorney's fees in the event of failure to pay review costs.

In the event the City is required to enforce this Article, 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.

101-10 Change of ownership.

An Applicant shall provide prompt written notice to the Mayor or his or her designee 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 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 shall not be entitled to utilize or draw upon any review deposit previously paid to the City by the original Applicant and shall 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. No work shall be undertaken by the City or its consultants with respect to the Application 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 liable to the City for all fees, costs and expenses associated with the Application. The original 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.

101-11 Agreement to be bound by this Article.

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 Article.

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.

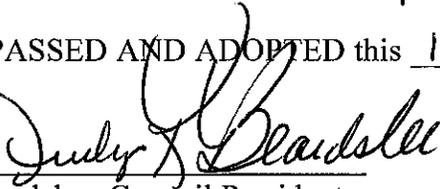
SECTION 3. Severability. It is the intent of the City Council of the City of Edgewood, and is hereby provided, that if any section, subsection, sentence, clause, phrase or provision of this Ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality 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.

FIRST READING: February 19, 2013

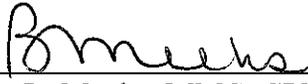
SECOND READING: April 16, 2013

PASSED AND ADOPTED this 16th day of April, 2013.



Judy Beardslee, Council President

ATTEST:



Bea L. Meeks, MMC, CPM
City Clerk