

# **TOWN OF DAVIE TOWN COUNCIL AGENDA REPORT**

**TO:** Mayor and Councilmembers

**FROM/PHONE:** Mark Kutney, AICP, Development Services Director/(954) 797-1101

**SUBJECT:** Ordinance 1st Reading/Quasi-judicial  
ZB(TXT) 1-1-02, Town of Davie Cost Recovery Ordinance

**AFFECTED DISTRICT:** Townwide

**TITLE OF AGENDA ITEM:** AN ORDINANCE OF THE TOWN OF DAVIE, FLORIDA PROVIDING FOR COST RECOVERY TO REIMBURSE THE TOWN OF DAVIE FOR SPECIAL COSTS INCURRED BY THE TOWN IN THE PROCESSING OF APPLICATIONS FOR DEVELOPMENT PERMITS, CONTAINING PROVISIONS FOR COST RECOVERY ACCOUNTS; PROVIDING FOR IMPLEMENTATION OF THE COST RECOVERY PROGRAM; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR INCLUSION IN THE TOWN CODE; PROVIDING FOR AN EFFECTIVE DATE.

**REPORT IN BRIEF:** Pursuant to Town Council direction the Town Attorney has prepared a cost recovery ordinance. The purpose of the ordinance is to assure that developers are fairly assessed for the cost of providing special services necessary to issue development permits. Furthermore, it authorizes staff to request special services, including the retaining of outside consultants, when reasonably necessary.

The ordinance definition section establishes the "Cost Recovery Account", and describes the services that staff is authorized to request that are in excess of those services normally required to review an application for a development permit. The second section is about the recovery of costs of administrative review and processing. It establishes a policy of charging a fee equal to the amount charged to the Town, and that the applicant provide a deposit for the services in advance. Also indicated is when the applicant is required to make supplemental deposits and when refunds are to be issued.

The ordinance also requires the maintenance of records of the time and costs involved in the provision of special services for a project and provides for a fee for administering the project account. The amount of the deposit for different types of services is to be determined by Town Council by resolution, and may vary 10% based upon the judgment of staff without Town Council approval. The ordinance allows applicants who contend the fees being charged pursuant to the cost recovery ordinance are excessive to appeal to Town Council.

Staff finds that the ordinance will be beneficial to both taxpayers and developers and recommends approval.

**PREVIOUS ACTIONS:** None

**CONCURRENCES:** At the January 23, 2002 Local Planning Agency meeting, Ms. Turin made a motion, seconded by Mr. Waitkus, to recommend approval of the ordinance with the following suggestions for Town Council's review: 1) That there be some language

included better defining that it would be optional for the applicant to either go through cost recovery or to provide the special services that were needed at their own expense if the applicant was able to provide the requested service by a licensed, qualified, certified provider. 2) That any vague terms such as “fringe benefits” be better defined. 3) That the 10% provision in paragraph “g,” be reviewed for better guidelines. 4) That in paragraph “f,” the language regarding the “10% administrative fee” be reviewed for determination as to whether that was “actual” or “proposed” cost. 5) That in Section 5, review the language a little bit to take effect to include that there needs to be an “RFP” procedure and fee schedule (Motion carried 3-1 with Ms. Moore being opposed and Vice-Chair Bender was absent).

**FISCAL IMPACT:** None

**RECOMMENDATION(S):** Motion to approve

**Attachment(s):** Ordinance

ORDINANCE NO.

AN ORDINANCE OF THE TOWN OF DAVIE, FLORIDA PROVIDING FOR COST RECOVERY TO REIMBURSE THE TOWN OF DAVIE FOR SPECIAL COSTS INCURRED BY THE TOWN IN THE PROCESSING OF APPLICATIONS FOR DEVELOPMENT PERMITS, CONTAINING PROVISIONS FOR COST RECOVERY ACCOUNTS; PROVIDING FOR IMPLEMENTATION OF THE COST RECOVERY PROGRAM; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR INCLUSION IN THE TOWN CODE; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, The Town Council of the Town of Davie wishes to assure that the Town fairly assesses Developers for the cost of providing the services necessary to issue development permits; and

WHEREAS, special services in connection with the process of issuing development permits are sometimes reasonably required by Staff, including the retaining of outside consultants; and

WHEREAS, the current system of fees and the development permitting process unfairly subsidizes the cost involved in the issuance of development permits with taxpayer revenues; and

WHEREAS, this Cost Recovery Ordinance fairly redistributes the cost involved to the Town in issuing development permits; and

WHEREAS, this Cost Recovery Ordinance is believed to be fair and equitable to both taxpayers and developers relative to the cost of development permits; and

WHEREAS, the Cost Recovery System for Special Services as set forth in this Ordinance, is deemed desirable to the Town relative to the special cost associated with development permits;

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA, THAT:

SECTION 1. Definitions:

"Cost Recovery Account". An account with the Town of Davie, funded by an applicant for a development permit, to pay for the costs of special services.

"Project Account". An individual account under the general Cost Recovery account in the Town's accounting records relating to an application for Development Permit. A Project Account is the financial account associated with each application for Development Permit in the Cost Recovery Program.

"Special Services. A deemed necessary service requested by an Applicant and/or the Town Administrator or his/her designee for the proper processing of any development application including but not limited to drafting Development Agreements reviewing or drafting Deed Restrictions, drafting or Reviewing of Special documents including Agreements, Deeds, Deed Restrictions, Conveyances, Security Instruments, Restrictive Covenants or special conditions; The conduct of Traffic Studies, Environmental Studies and similar assignments and any action necessary for completion of the Development Application. This term shall also include any service provided by other Town Departments or Town Administrator or outside Consultant in excess of those services normally required to review an application for a Development permit.

SECTION 2. Recovery of costs of administrative review and processing.

- (a) The provisions contained herein are in addition to any presently existing or subsequently enacted permit or development review fees.
- (b) There is hereby imposed a charge for special services related to the processing and review of applications, submissions, or requests concerning proposed development matters within the Town of Davie or concerning development, utilization, or improvement of Real Estate in the Town of Davie. Such charges are to be equal in an amount to the Town's actual costs, in terms of time expended by outside consultants or staff in such review, including fringe benefits, directly related charges and the cost of administering this ordinance.
- (c) Persons who file any application which in the sole discretion of the Town

Administrator or his/her designee necessitates special services shall pay prior to or at the time the application is made, an initial preliminary deposit which shall be credited toward the future amount charged for such special services and shall pay additional deposits as may be required from time to time.

(d) When the person is required to make the initial deposit, a financial account for said person's application (the "project account") will be opened and maintained throughout the entire review process. The "cost recovery account" and resulting "project accounts" set up pursuant to this ordinance refer to separate accounts in the accounting records of the Town and shall not be construed to require the establishment of a separate bank account. Monies received will be deposited in a single, non-exclusive bank account and adequate accounting records will be maintained to reflect and control the restricted allocation of these funds.

(e) Upon any of the following actions occurring, the project account will be closed after all outstanding charges are paid: The person receives a Certificate of Occupancy; the Development Services Department determines that no further action is necessary; and/or the applicant voluntarily withdraws the application. When a project account is closed, any remaining funds shall be refunded to the person depositing same, no later than two (2) months after the project account closing date. If any amounts are due to the Town when the project account is closed, the Town will charge the person for the balance due, and the person shall pay the balance (or contest it as set forth in this ordinance) before any further action is taken by the Town on the application. The project account will be monitored on a periodic basis. Whenever the account balance falls below 50% of the initial deposit, a supplemental deposit will be required before any further review or processing continues. The person making the initial deposit will be notified when a supplemental deposit will be required. The amount of any and all other future supplemental deposit will be forty (40%) percent of the initial deposit. Several supplemental deposits may be necessary, depending on the complexity of

the application.

(f) The Town's staff and outside consultants who are involved in the provision of special services shall maintain records of the time expended and tasks conducted regarding each such request. The total costs established based upon the time expended and the applicable hourly rate, fringe benefits, and directly related charges, shall be charged against the project account. The project account shall also be charged a 10% fee to reflect the costs of administering this program. All records of time expended, together with the corresponding costs shall be provided to the Town Administrator or his/her designee on a monthly basis.

(g) When the Town Administrator or his/her designee determines that special services will be required for an application, the amount of the initial deposit for the different types of special services shall be established, and from to time, amended by resolution of the Town Council, but the Town Administrator or his/her designee may be permitted to increase or decrease said established initial deposit by up to 10% based upon the judgment of the Town Administrator or his/her designee without Council approval as to the amount of special services which will be required. It is the expressed intent of the Davie Town Council, in enacting this cost recovery program that the Town's costs of excess staff services, outside consultant services, and administration, as required or necessitated now or in the future of the Town's ordinances, resolutions, policies, or procedures shall be borne by the person initiating the application.

(h) Any applicant who contends that the funds being charged pursuant to this cost recovery system are excessive, may appeal the decision of the Town Administrator or his/her designee, to the Town Council. The Town Council will hear said appeal within forty-five (45) days of said appeal. The decision of the Town Council on said appeal shall be final. During the time of such appeal, no development permit shall be processed or issued except in such cases where the developer pays to the Town the funds required in the cost recovery system,

noting on said payment that they have been paid under protest subject to the appeal being undertaken by the applicant for a development permit.

(i) This program shall not apply to applications which are originally initiated by or on behalf of the Town of Davie or another governmental entity acting in its governmental capacity; such as, but not limited to, Department of Transportation highway proposals review, review of Broward County transportation improvements, review of proposed amendments to the Broward County or other local land use plan, and review of developments of regional impact; provided however, that the initiating governmental entity does not charge the Town of Davie for its review, processing, and comment upon the Town of Davie's review requests of a similar type or nature.

(j) Except as provided herein, any notification provided in this section for supplemental deposits from the Town of Davie to a person initiating an application shall be deemed sufficient, if made by a telephone call to such person or his or her agent with a confirming certified letter to follow. It shall be the duty of persons initiating an application to provide in the file for the application a continuously updated address and telephone number where said persons or their agents can be reached for purposes of such notification. If an attempt to notify a person initiating an application or his or her agent is frustrated because such furnished phone numbers or addresses were not correct or up to date when the notification attempt was made, such frustrated attempt shall be deemed sufficient notice for purposes of this section.

SECTION 3. Should any part of this Ordinance be declared unenforceable by a court of law, that shall not affect the remainder hereof which shall still remain in full force and effect.

SECTION 4. This Ordinance shall be made a part of the Town of Davie Code and the provisions herein may be renumbered for such purpose.

SECTION 5. This Ordinance shall take effect upon its passage and adoption.

PASSED ON FIRST READING THIS \_\_\_\_\_ day of \_\_\_\_\_, 2002

PASSED ON SECOND READING THIS \_\_\_\_\_ day of \_\_\_\_\_, 2002

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MAYOR/COUNCILMEMBER

ATTEST:

\_\_\_\_\_  
TOWN CLERK

APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2002