

## **ORDINANCE NO. 2377**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF APOPKA, FLORIDA, AMENDING CHAPTER 42, "ENVIRONMENT", BY ADOPTING ARTICLE III, ENTITLED "NEIGHBORHOOD IMPROVEMENT SPECIAL ASSESSMENT" OF THE CODE OF ORDINANCES, RELATING TO THE ESTABLISHMENT OF PURPOSE OF NEIGHBORHOOD IMPROVEMENT SPECIAL ASSESSMENTS; ESTABLISHMENT OF NEIGHBORHOOD IMPROVEMENT SPECIAL ASSESSMENT TRUST FUND; AUTHORIZING SPECIAL ASSESSMENTS; COLLECTION OF SPECIAL ASSESSMENTS; LIENS ON PROPERTY; EXPENDITURE OF REVENUE, REIMBURSEMENT OF FUNDS FOR ADMINISTRATIVE ASSISTANCE BY CITY OFFICIALS; RIGHT FOR WITHDRAW, PROVIDING FOR CONFLICT, PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE**

**WHEREAS**, the City of Apopka has continued to experience growth over the last several decades which lead to multiple housing developments throughout the community; and

**WHEREAS**, the City, in an effort to allow for oversight of the housing development, encouraged the formation of Homeowners' Associations to oversee the common areas, retention areas, walls and recreational amenities; and

**WHEREAS**, the City is currently experiencing problems where the Homeowners' Associations have dissolved or are no longer in existence; and

**WHEREAS**, the City of Apopka Code Enforcement has made an attempt to locate any and all members of the Board of Directors for the Homeowners' Association through mailing of a notice to each parcel owner of record with the Orange County Property Appraiser and published legal notice in the local newspaper; and

**WHEREAS**, the City of Apopka Code Enforcement continues to experience code violations on properties and/or facilities that the Homeowners' Association would have a duty and responsibility for the maintenance and upkeep to ensure the safety and welfare of all property owners within the subdivision; and

**WHEREAS**, the City of Apopka finds that there is a direct relationship between the upkeep of properties and an enhancement in the value and desirability of real properties with the upkeep and maintenance of common properties and/or facilities within a subdivision; and

**WHEREAS**, were the City of Apopka not to take the necessary steps to mitigate these violations, these violations would continue to occur and pose potential risk to the health, safety and welfare of its citizens.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF APOPKA, FLORIDA, that:**

**SECTION 1:** The City Council of the City of Apopka, Florida, hereby ascertains, finds, determines and declares that:

- (1) Pursuant to Florida Constitution, Article VIII, Section 2(b), Section 166.021 and 166.041, Florida Statutes, the City Council has all powers of local self-government to perform municipal functions and to render municipal services in a manner not inconsistent with law. Such powers may be exercised by the enactment of City ordinances.
- (2) The City Council may exercise any governmental, corporate, or proprietary power for a municipal purpose when expressly prohibited by law. The City Council may legislate on any subject matter on which the Florida Legislature may act, except those subjects described in Section 166.021(3)(a), (b), and (c), Florida Statutes.
- (3) City Council intervention into the maintaining and upkeep of the common property is required to ensure the health, safety and welfare of the residents living within the subdivision and that these properties receive special services that extend beyond general municipal services and enforcement of municipal code.
- (4) The services by the City to eliminate the violations possess a logical relationship to the use and enjoyment of the benefited real property and provides a direct, special benefit to the real property by:
  - (a) Reducing or deferring property maintenance costs;
  - (b) Reducing or deferring property management costs;
  - (c) Eliminating unsanitary and unsightly conditions;
  - (d) Eliminating the invitation of on-site criminal activities;
  - (e) Protecting the health and safety of the occupants;
  - (f) Protecting the value of the developments real property; and
  - (g) Enhancing market perceptions.
- (5) The cost for said maintenance shall be entirely apportioned to the property owners within the subdivision receiving the benefited special services.
- (6) The cost of maintaining those common properties and/or facilities within the subdivision may be levied against real properties within the subdivision as a special assessment superior to all other

private rights, interests, liens, encumbrances, titles and claims upon the property and equal in rank and dignity with lien for ad valorem taxes.

- (7) The special assessments shall constitute a non-ad valorem assessment and be levied in accordance with Section 197.3632, Florida Statutes.
- (8) The special assessments to be levied using the procedures provided in this Ordinance are imposed by the City Council. The duties of the property appraiser and tax collector under the provisions of this Ordinance and Section 197.3632, Florida Statutes, are ministerial.

**SECTION 2:** The City Council of the City of Apopka, Florida, hereby establishes and amends Chapter 42 (Environment), Creating a New Article III) (Neighborhood Improvement Special Assessment), Sections 42-100 through 42-125, of the Code of Ordinances, which shall read as follows:

### **ARTICLE III - NEIGHBORHOOD IMPROVEMENT SPECIAL ASSESSMENT**

#### **Section 42-100 Established; area; governing body.**

There is hereby established pursuant to the authority of Section 166.021 and Section 170.01, Florida Statutes, the City Council establishing a Neighborhood Improvement Special Assessment, and shall encompass the same portion of the incorporated area of the City of Apopka, Florida, which is as follows:

1. Cimarron Hills Development
2. Mainline Village Development
3. Maine Avenue Villas Development
4. Martin Place (Phase I) Development
5. Martin Place (Phase II) Development

Legal Descriptions outlining the individual Neighborhood Improvement Special Assessment shall be found in the Resolution as adopted by the City Council and filed with the Orange County Property Appraiser and Tax Collector establishing said assessment. Individual developments may be added and/or removed as deemed necessary by the City Council.

#### **Sec. 42-101 Purpose of article.**

The Neighborhood Improvement Special Assessment is hereby established for the purpose of providing neighborhood improvements, storm water maintenance, street lighting, recreation facilities, common area property maintenance, landscape maintenance and other essential facilities and municipal services for the area described in Section 42-100, provided, however, that any services, facilities, or programs provided through the Neighborhood Improvement Special Assessment must provide a special benefit to assessed property.

#### **Section 42-102 Definitions.**

- (1) Development and/or Subdivision shall mean any and all properties and/or parcels of real property within the confines of the legal description as defined in Section 42-100.

**Section 42-103 Powers of the governing body of Neighborhood Improvement Special Assessment.**

The City Council of the City of Apopka, Florida, shall be the governing body of the Neighborhood Improvement Special Assessment areas and is empowered to:

- (1) Acquire in the name of the development by purchase, gift, or the exercise of right of eminent domain, such lands and rights and interest therein, including lands under water and riparian rights, and to acquire such personal property as it may deem necessary in connection with furnishing of services authorized by this article and to hold and dispose of all real and personal property under its control; provided, however, that nothing contained in this section shall authorize the power of eminent domain to be exercised beyond the limits of said development as outlined in Section 42-100.
- (2) Make and execute contracts and other instruments necessary or convenient to the exercise of its powers.
- (3) Employ and/or enter into contracts for services.
- (4) Authorize payment of per diem, travel and other reasonable expenses for meetings, hearings and other official business.
- (5) Contract for the services of engineers, attorneys, accountants, financial or other consultants and such other agents as the City Council may require or deem necessary.
- (6) Borrow money and accept gifts; to convey real or personal property; to apply for and use grants or loans of money or other property from the United States, the state, a local unit of government or any other person for any authorized purpose of the development and to enter into agreements required in connection therewith; and hold, use and dispose of such monies of property for any purpose in accordance with the terms of the gift or grant, loan or agreement relating thereto, subject to state law applicable to chartered City government.
- (7) Acquire, construct, operate, maintain, equip, improve, extend, enlarge or improve capital projects within or the development as outlined in Section 42.100 that perform the specialized public function provided in this article.
- (8) Make use of any public easement, dedications to public use or plat reservations for specific public purposes within the boundaries of the development for those purposes authorized in this article.
- (9) Issue revenue bonds, special assessments bonds or combinations thereof to finance the cost of capital improvement projects authorized by this article, as now in effect or hereafter amended. The procedure for issuing such revenue or assessment bonds or the levying of special assessments shall be in the manner as provided by law.

- (10) Levy and assess per lot, tract or acre, special assessments and service charges authorized by law to pay cost of such specialized public functions as are provided for in this article, as now and thereafter amended.
- (11) Contract with municipalities, cities, towns, counties, or other political subdivision, public corporations or persons, and to provide or receive such specialized public functions or services.

**Section 42-104 Establishment of a Neighborhood Improvement Special Assessment Trust Fund.**

There is hereby established an interest bearing public trust fund for the deposit, maintenance, and distribution of special assessment funds collected or expended as a result of this Ordinance. Any funds in the trust fund may be used to provide neighborhood improvements, storm water maintenance, street lighting, recreation facilities, common area property maintenance, landscape maintenance and other essential facilities and municipal services, as appropriate.

**Section 42-105 Authorizing special assessments.**

The City Council by resolution in accordance with Section 197.3632, Florida Statute, may place a special assessment on all real property within the aforementioned developments and deposit funds into a trust fund specifically expended for providing neighborhood improvements, storm water maintenance, street lighting, recreation facilities, common area property maintenance, landscape maintenance and other essential facilities and municipal services, as appropriate.

Assessments rendered upon those parcels within the development as outlined by resolution of the City Council shall be a flat fee for the services based on the number of dwelling units on the parcel of real property (i.e., should the parcel contain a duplex or multi-family dwelling on the parcel, the parcel shall be assessed a proportionate share for each living unit on said real parcel).

**Section 42-106 Collection of special assessments.**

The Orange County Property Appraiser shall furnish the City Council a roll covering all properties within the territorial limits of the Neighborhood Improvement Special Assessment upon which the Council may place the levy for each specially assessed parcel. A property owner in such special district shall have the right to file a written protest of the proposed special assessment, the amount and rate thereof and to appear before the Council in support of such protest. The Council shall hold a meeting to consider and act upon any such protest. The Council shall fix the rate of assessments and shall return the roll to the county property appraisers having first noted hereon the levy against each parcel of property described in this article for which a special assessment is made. The county property appraiser shall then include in the county tax roll on all required notices the special assessment thus made by the Council, and the special assessment shall be collected in the manner and form as provided for the collection of ad valorem taxes and paid over by the Orange County Tax Collector to the City.

**Section 42-107 Liens on property.**

Special assessments imposed pursuant to this article shall be a lien upon the parcel so assessed of equal rank and dignity to the lien of county and municipal property taxes until same have been paid, and if the same becomes delinquent, shall be considered a part of the county and municipal tax, subject to the same

penalties, charges, fees and remedies for enforcement and collection, and shall be enforced and collected as provided by laws of the state for the collection of such taxes.

**Section 42-108 Expenditures of revenue.**

No funds of the Neighborhood Improvement Special Assessment shall be used for any purpose other than the administration of the affairs of business of the development, as appropriate, for the providing of neighborhood improvements, storm water maintenance, street lighting, recreation facilities, common area property maintenance, landscape maintenance and other essential facilities and municipal services, as appropriate.

**Section 42-109 Reimbursement of funds for administrative assistance by City officials.**

All costs and expenses incurred by the City or any of its employees, performing any of the provisions of this article, shall be reimbursed by the Neighborhood Improvement Special Assessment Funds to the City.

**Section 42-110 Right of Termination.**

The City Council reserves the right to terminate this article upon notification and confirmation that the parcel owners of record as provided in Section 42-100 have taken the provisions to re-established a Homeowners' Association in accordance with Florida law and have filed same with the United States Internal Revenue Service, Florida Department of Economic Opportunity, Florida Department of State, Division of Corporations and Department of Business and Professional Regulations, Division of Florida Condominiums, Timeshares and Mobile Homes. If at such time that the parcel owners should elect to re-establish a homeowners' association, any remaining monies owed to the City for the issuance of revenue bonds, loans or other financial instruments on behalf of the development shall remain in full force and effect until such time as the revenue bonds, loans or other financial instruments have been paid in full. The City however, may adjust the assessments accordingly for those expenses not directly related to the issuance of revenue bonds, loans or other financial instruments. The cancellation of the special assessments shall be in accordance with the provision of Section 197, Florida Statutes.

**Sections 42-111– 42-124 Reserved.**

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**SECTION 3.** It is the intention of the City Council that the provisions of this ordinance shall become and be made a part of the Code of Ordinances of the City of Apopka; and the City Clerk is directed to take the necessary steps to effect codification into the Code, and Sections of this ordinance may be numbered or renumbered or lettered or re-lettered and the word "ordinance" may be changed to "chapter", "section", "article", or such other appropriate word or phrase in order to accomplish such codification. Typographical errors which do not affect the intent may be authorized by the Mayor, without need of public hearing, by filing a corrected or re-codified copy of same with the City Clerk.

**SECTION 4.** That nothing in this ordinance shall be construed to affect any suit or proceeding impending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing, under any act or ordinance; nor shall any just or legal right or remedy of any character be lost, impaired or affected by this ordinance.



August 8, 2014  
August 24, 2014