



## CITY OF BELLE ISLE, FLORIDA CITY COUNCIL AGENDA ITEM COVER SHEET

**Meeting Date:** October 20, 2020

**To:** Honorable Mayor and City Council Members

**From:** B. Francis, City Manager

**Subject:** "After the Fact" (ATF) Permits

**Background:** One of the issues that continually surfaces is residents building without permits (docks, fences, walls, interior renovations, etc.). Permits are essential because they provide a permanent record of the work performed and inspections conducted on the project. It is important to meet code standards to ensure safety for current and future owners. Codes are not only written for safety reasons, but also for environmental and energy saving considerations. For the property owner, a home or business is an investment. If a construction project does not comply with the codes, the value of the investment could be reduced. Also, property insurers may not cover work or damages caused by work done without permits and inspections. Lastly, the City could make the owner take down the unpermitted work and therefore the project is more expensive.

At the October 6, 2020 Council Meeting, the Council acknowledged that the current section of the code dealing with ATF permits needs to be revised. Section 6-5 of the BIMC states: The penalty for failure to obtain a permit required by any code or ordinance adopted by this chapter shall be set at double the permit fee.

The Council also discussed the ATF fee increase proposed by the City Manager and passed a motion to set a fee in the amount of \$1,000 or ten (10) percent of the valuation of the non-permitted structure whichever is greater and that everything before January 1, 2021 would be considered after-the-fact.

The Council was concerned that many properties currently exist with improvements completed that have been done so without the issuance of a permit and the approval of inspections. Such improvements may affect property insurance, flood insurance, and attempts to transfer title or re-finance mortgages. Property improvements completed without the issuance of a permit, and the approval of inspections, are subject to enforcement and to current building code regulation. Based on this discussion, the Council also directed to add language that would provide for properties that fall into this category. However I would request that the Council consider passing a new motion to make that date March 1, 2010. The reason for this date is this is the approximate date that the City started its own permitting process and no longer permitted under Orange County. I am also concerned that if the date is set for January 2021, that it could tempt some residents to ignore getting a permit and just build with the intent of getting an after-the-fact permit later.

Based on the Council's direction, it might be better to separate both issues and handle them differently: "**After-The-Fact**" (ATF) and "**Working Without a Permit**" (WWP). Categorizing ATF permits separate from WWP is important for the permit applicant and the City staff to understand.

Work done without a permit prior to March 1, 2010 will be considered "**After-The-Fact**". Work done after March 1, 2010 will be considered "**Working Without a Permit**"

"**After-The-Fact**" is defined as "an improvement made to a property prior to March 1, 2010. The improvement has been existing, used, occupied, or otherwise known to the current owner as legal and is not shown, located or identified upon any property record within the permitting department of the city."

"**Working Without a Permit**" will be defined as "commencement of an improvement made or completed to a property after March 1, 2010 and prior to the issuance of a permit; the improvement of which may include building, electrical, gas, mechanical, plumbing, or roofing work."

## **A. After-The-Fact Permit**

The purpose of the ATF permit is not to verify compliance with the current code, but to observe if the current state of the building, structure, or any component is safe to utilize for its' intended use. Many un-permitted improvements were built years ago, and as such, they may not be in compliance with the current Florida Building Codes and the BIMC.

An ATF permit does not grant permission to make alterations, changes, renovations, or any remodeling improvement which is the function of a regular building permit. The ATF permit is intended to be a vehicle to document the existing improvement, legitimize existing improvements through inspections, insure the un-permitted work is safe, and inform any current and future interested parties the result of ATF inspections.

ATF permits can be considered as the grand-fathering of un-permitted improvements. The improvements of which have been existing, used, occupied, or otherwise known to the current owner as legal and not shown, located or identified upon any property record within the city.

To assist properties affected with un-permitted improvements the city establishes this policy to simplify the issuance of permits and the process of inspections for ATF work.

### **Permits:**

Obtaining an ATF permit is similar to the process to obtain a regular permit. Improvements made to existing un-permitted improvements are not considered as ATF, and require the issuance of additional permits and filing a Notice of Commencement.

The City will provide the applicant with an application marked "ATF" to effectively communicate to any interested party what type of permit was issued.

ATF permits may be obtained without a contract or direct contract as defined in Florida Statute 713.01 therefore, the filing of a Notice of Commencement is not required prior to the first inspection. The improvements are assumed to have been existing, used, occupied, or otherwise known to the current owner as legal and not requiring any further improvements.

### **Inspections:**

- Once the permit is issued the permit applicant must obtain their necessary approved final inspections.
- The City (UES) will schedule ATF final inspections once the ATF permit is issued. Additional inspections may require the issuance of separate permits.
- Alternative inspections (see below) may be granted as determined by the building official or City Manager.
- The building official is authorized to impose current applicable, technical code requirements if their inspection reveals the current state of the building, structure, or any component is not safe to utilize for its' intended use. Additional work may require the issuance of separate permits.
- Inspectors may require the removal of materials (at the applicant's cost) to verify internal components are sufficient for their intended use.
- At the inspectors' discretion, approval may be granted if the building, structure, or any component has withstood the test of time; there's no evidence of hazard, rot or decay; the building system components are sufficiently operating without interruption, and the building or structure is structurally sound.
- Appliances and equipment may be considered approved if they are installed in a code-like manner, meaning the installation meets the intent of the code for life safety and fire resistance.

### **Alternative Method of Inspection:**

- LICENSED PROFESSIONAL AFFIDAVIT - Once the ATF permit is issued the property owner may select to have an outside inspection service, architect, or professional engineer visit the site to conduct and provide third party inspections.
- THIRD PARTY INSPECTION - The third party inspector shall submit an affidavit to the building official including copies of inspection reports and a final certificate certifying the structure, electrical, gas, mechanical or plumbing system has been erected in accordance with the requirements of the technical codes.
- The building official will require verification that any person conducting inspections is qualified as an inspector under Part XII of Chapter 468, Florida Statutes.
- The third party inspection service, architect, or professional engineer shall assume full responsibility for compliance with all provisions of the technical codes and other pertinent laws or ordinances.

*The building official may consider granting variations of this policy/procedure yet, variation from this policy/procedure will not be interpreted as setting a precedence.*

## **B. Working Without a Permit**

Working without a permit (WWP) is defined as the commencement of an improvement made or completed to a property after March 1, 2010 and prior to the issuance of a permit; the improvement of which may include building, electrical, gas, mechanical, plumbing, or roofing work or work identified, observed, or revealed during the course of an investigation or inspection of a valid permit; the work of which was not specifically described on the original permit application for which the permit was issued. In this instance, the permit applicant will be required to stop their current improvement and obtain approval of their revisions from the building official prior to recommencing their project. This may also require the permit applicant to get another permit for any improvement not included with the original description of work.

*In all cases where work for which a permit is required is started, proceeded with, or completed before the permit is obtained, except where specific permission is granted to proceed by the City Manager or the City Manager's designee, the permit fee due the city shall be as follows:*

- a. *If the valuation of the non-permitted structure is \$5,000 or less, the fee shall be \$1,000 plus all costs incurred by the City in assessing the value of the non-permitted structure.*
- b. *If the valuation of the non-permitted structure is more than \$5,000 the fee shall be \$1,000 plus ten (10) percent of the valuation of the non-permitted structure and all costs incurred by the City in assessing the value of the non-permitted structure..*
- c. *Payment of the after-the-fact permit fee shall not be a defense in a prosecution for doing the work for which a permit was required without having first obtained the necessary permit.*

**General:**

Obtaining a permit for work started prior to the issuance of a permit is similar to the process to obtain a regular permit. The applicant is required to create 2-sets of construction documents which includes at a minimum a site plan, floor plan, exterior elevations, and structural connection details; this information will be required in order to obtain a permit.

Improvements made to buildings, structures, or properties must be in compliance with the Florida Building Code. The Florida Building Code (FBC) applies to the construction, erection, alteration, modification, repair, equipment, use and occupancy, location, maintenance, removal and demolition of every public and private building, structure or facility, or any appurtenances connected or attached to such buildings, structures or facilities. Additions, alterations, repairs and changes of use or occupancy in all buildings and structures must comply with the applicable provisions provided in the FBC.

**Properties Located Within Designated Flood Zones:**

Improvements located within a designated flood zone must be in compliance with the federal flood regulations, technical bulletins, and applicable Flood Damage Prevention ordinance found in Chapter 48, Article IV, of the City's Municipal Code. Said improvements are required to be brought into compliance during this process.

**Notice of Commencement:**

The building official has determined that permits for projects classified as WWP will not be issued without filing a Notice of Commencement.

**Permits:**

The following procedure must be followed to obtain permits and inspections for work begun and/or completed without first obtaining any required permits as indicated herein:

- If plans are required, they will be received and logged-in for plan review by UES. UES staff will determine if plans must be formally submitted or reviewed over the counter. The plans submitted will be required to meet requirements for new construction.
- UES will provide permit applicants a job placard marked "WWP" to effectively communicate to any interested party what type of permit was issued.

**Inspections:**

- Upon issuance of the permit(s), the permit applicant must schedule the most appropriate type of inspection(s), based on the scope of work, within 30 days from the issuance of a permit.

- The applicant will be responsible to open and expose areas for inspection. All affected areas must be readily accessible for inspections.
- WWP inspections may require the removal of materials to sufficiently conduct any inspection. The inspector may require removal of sufficient materials to expose the major elements.
- Any work found in noncompliance will be rejected and the applicant will be asked to complete or rework the deficiencies.
- The applicant will be responsible for the costs of the inspection.

*The building official may consider granting variations of this policy/procedure yet, variation from this policy/procedure will not be interpreted as setting a precedence.*

**Staff Recommendation:** Direct the staff to prepare the ordinance. If the Council feels the maximum fine is too excessive, then the Council should agree on what the maximum fine should be.

**Suggested Motion:** **I move that we accept the staff recommendation to increase the after the fact permit penalty and direct that the appropriate ordinance be drafted for a first reading.**

**Alternatives:** Do not change

**Fiscal Impact:** TBD

**Attachments:** None at this time.