



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

Meeting Date: November 17, 2020

To: Honorable Mayor and City Council Members

From: B. Francis, City Manager

Subject: "After the Fact" (ATF) Permits

Background: As a result of the November 4, 2020 meeting on the above subject, the City Council directed that the City staff prepare a draft ordinance for "after-the-fact" (ATF) permits. The issue still remaining is the amount of fines to be levied for ATF permits as defined below and working without a permit (WWP) as defined below.

Currently Belle Isle is double the permit fee, but it is not much of a deterrent. However if the Council wants to continue with this fee, then there is no need to change the BIMC. For my reasons stated in my previous two memos, I believe that this could be an issue for property owners and staff at some time.

To reiterate, 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.

AFT or AFT/WWP

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."

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 would establish a policy to simplify the issuance of permits and simplify the process of inspections for ATF work.

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.

FEES

1. ATF fee would be the cost of a permit plus any inspection costs related to inspections.
2. WWP fee: \$500 and double the cost of the permit fee plus all costs related to the issuance of the permit and inspections.

Staff Recommendation: Direct the staff to prepare the ordinance for a first reading based on tonight's discussion and recommendations.

Suggested Motion: I move that we direct that Ordinance 20-13 be written in final form with changes approved this evening and read the ordinance for the first time at the December 1, 2020 Council Meeting.

Alternatives: Do not change the current code

Fiscal Impact: TBD

Attachments: Draft ordinance 20-13.

ORDINANCE 20-13

AN ORDINANCE OF THE CITY OF BELLE ISLE, FLORIDA, AMENDING THE BELLE ISLE LAND DEVELOPMENT CODE, CHAPTER 6, ARTICLE I, SECTION 6-3 – PENALTY FOR FAILURE TO OBTAIN PERMIT; PROVIDING FOR AN AFTER-THE-FACT (ATF) PERMIT AND WORKING WITHOUT A PERMIT (WWP) PROCEDURES; PROVIDING FOR FEES AND PENALTIES; PROVIDING CODIFICATION, SEVERABILITY, CONFLICTS, AND AN EFFECTIVE DATE.

WHEREAS, the City Council has found and determined that the adoption of this Ordinance is in the interests of the public health, safety and welfare, will aid in the harmonious, orderly and progressive development of the City, and serves a valid public purpose.

BE IT ORDAINED by the City Council of the City of Belle Isle, Florida as follows:

SECTION 1

Section. 6-5. - Failure to Obtain Permit.

~~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.~~

(a) Definitions:

(1) An After-The-Fact (“ATF”) Improvement is defined as an improvement made to a property prior to March 1, 2010, and which 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.

(2) Working Without a Permit (“WWP”) is 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.

(b) ATF Permit Procedure:

(1) ATF Purpose:

- i. 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 unpermitted 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 is not a substitute for a standard building permit and does not grant permission to make alterations, changes,

renovations, or any remodeling improvement. Rather, the ATF permit is intended to be a vehicle to document the existing improvement, legitimize existing improvements through inspections, ensure the unpermitted work is safe or otherwise unlikely to cause immediate harm, and inform any current and future interested parties of the result of ATF inspections.

- ii. The ATF permit program is intended to grandfather unpermitted improvements made prior to March 1, 2010, which improvements 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 by unpermitted improvements, the city establishes this policy to simplify the issuance of permits and simplify the process of inspections for ATF Improvements.

(2) ATF Permits:

- i. Obtaining an ATF permit is similar to the process to obtain a regular permit. Improvements made to existing unpermitted improvements do not qualify as ATF Improvements, and require the issuance of additional permits and filing of 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.
- ii. ATF permits may be obtained without a contract or direct contract as defined in § 713.01, Florida Statutes, and therefore, the filing of a Notice of Commencement is not required prior to the first inspection. Such improvements, where constructed prior to March 1, 2010, are assumed to have been existing, used, occupied, or otherwise known to the current owner as legal and not requiring any further improvements.

(3) ATF Inspections:

- i. Once the permit is issued, the permit applicant must obtain their necessary approved final inspections.
- ii. The City will schedule ATF final inspections once the ATF permit is issued. Additional inspections may require the issuance of separate permits.
- iii. Alternative inspections, as described in Section (5), may be granted as determined by the building official or City Manager.

- iv. The building official is authorized to impose current applicable, technical code requirements if his or her inspection reveals the current state of the building, structure, or any component thereof is not safe to utilize for its intended use. Additional work may require the issuance of separate permits.
- v. Inspectors may require the removal of materials (at the applicant's cost) to verify internal components are sufficient for their intended use.
- vi. 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.
- vii. Appliances and equipment may be considered approved if they are installed in a manner substantially consistent with the code, meaning that the installation of such appliances or equipment meets the intent of the code for life safety and fire resistance purposes.

(4) ATF Alternative Method of Inspection:

- i. 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.
- ii. 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 ATF improvement(s), including the structure, electrical, gas, mechanical, or plumbing system, has/have been erected in accordance with the requirements of the technical codes.
- iii. The building official must require verification that any person conducting inspections pursuant to this ordinance is qualified as a building code inspector licensed in the appropriate category pursuant to Part XII of Chapter 468, Florida Statutes.
- iv. The third party inspection service, architect, or professional engineer must assume full responsibility for compliance with all provisions of the technical codes and other pertinent laws or ordinances.

- v. The building official may consider granting administrative variations of this policy/procedure; however, any such variation from this policy or procedure will not be interpreted as setting precedent or waiving the city's rights pursuant to this ordinance.

(c) WWP Procedure.

(1) WWP Purpose and Definition. 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.

(2) WWP Permit Fee. 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:

- i. 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.
- ii. 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.
- iii. 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.

(3) WWP Generally:

- i. The process of obtaining a permit for work started prior to the issuance of a permit is the same process used 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. All such information is required in order to obtain a permit.

- ii. 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.
- iii. 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. Such improvements must be brought into compliance during this process.

(4) WWP Notice of Commencement: Permits for projects classified as WWP will not be issued without filing a Notice of Commencement.

(5) WWP Permits: The following procedures must be followed to obtain permits and inspections for work begun and/or completed without first obtaining any required permits as indicated herein:

- i. If plans are required, they will be received and logged-in for plan review by the city. City 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.
- ii. The City will provide permit applicants a job placard marked "WWP" to effectively communicate to any interested party what type of permit was issued.

(6) Inspections:

- i. 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.

- ii. The applicant will be responsible to open and expose areas for inspection. All affected areas must be readily accessible for inspections.
- iii. 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.
- iv. Any work found in noncompliance will be rejected and the applicant will be asked to complete or rework the deficiencies.
- v. The applicant will be responsible for the costs of the inspection.

(7) Authority of the Building Official. The building official may consider granting variations of this policy/procedure yet, variation from this policy/procedure will not be interpreted as setting a precedent or constituting a waiver of the requirements of this ordinance.

(d) ATF and WWP Permit Fees/Penalties:

- (1) The fee for an ATF permit is the cost of the permit plus any inspection costs related to inspections conducted by the city in accordance therewith.
- (2) The fee for a WWP permit is \$500 plus double the cost of the applicable permit fee plus all costs related to the city's issuance of the permit and inspections.

SECTION 2. Codification. This Ordinance shall be incorporated into and codified within the Municipal Code of the City of Belle Isle, Florida. Any section, paragraph number, letter and/or any heading may be changed or modified as necessary to effectuate the foregoing. Grammatical, typographical, and similar or like errors may be corrected, and additions, alterations, and omissions not affecting the construction or meaning of this ordinance or the Land Development Code may be freely made.

SECTION 3. Severability. If any section, subsection, sentence, clause, phrase, word or provision of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, whether for substantive, procedural, or any other reason, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions of this Ordinance.

SECTION 4. Conflicts. In the event of a conflict or conflicts between this Ordinance and any other ordinance or provision of law, this Ordinance will govern and control to the extent of the conflict, as allowable under the law.

SECTION 5. Effective Date. This Ordinance shall become effective immediately upon adoption by the City Council of the City of Belle Isle, Florida.

First Reading on _____, __, 2020.

Second Reading and Adoption this _____ day of _____, 2020.

	YES	NO	ABSENT
Ed Gold	_____	_____	_____
Anthony Carugno	_____	_____	_____
Karl Shuck	_____	_____	_____
Mike Sims	_____	_____	_____
Harvey Readey	_____	_____	_____
Jim Partin	_____	_____	_____
Sue Nielsen	_____	_____	_____

ATTEST:

Yolanda Quiceno, CMC
City Clerk

Nicholas Fouraker, Mayor

Approved as to form and legality
For use and reliance by the City
Kurt Ardaman, City Attorney