ORDINANCE NO. 2017-4153

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 14, "ENTITLED "BUILDING REGULATIONS," DIVISION 2, "PERMIT FEES," AT SECTIONS 14-61, 14-62 RELATING TO BUILDING PERMIT FEES GENERALLY; WAIVING FEES FOR PHOTOVOLTAIC BUILDING PERMIT FEES; AND MODIFYING THE FEE SCHEDULE CONTAINED IN APPENDIX A IN ORDER TO UPDATE CERTAIN BUILDING FEES AND TO PROVIDE A PERMIT FEE REDUCTION OF 40% FOR MINOR, IN-KIND, HURRICANE REPAIRS DUE TO HURRICANE IRMA, FOR A THREE MONTH PERIOD; PROVIDING FOR RETROACTIVE APPLICATION TO FIRST READING, REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, the City of Miami Beach amended its fee code and implemented the new fee schedule on June 2, 2014; and

WHEREAS, in implementation of the City's building permit software system, it was determined, that certain fees could not be entered into the system; and

WHEREAS, certain other fees were reviewed and modified to better reflect actual costs; and

WHEREAS, due to Hurricane Irma, the City would like to reduce permitting fees for a limited period of three months for property owners to seek permits for minor in-kind repairs not exceeding $20,000; and

WHEREAS, in applying an ordinance retroactively (1) there is clear evidence of legislative intent to apply the law retroactively, and (2) when allowed, the retroactive application is constitutionally permissible, in that the new law does not create new obligations, impose new penalties, or impair vested rights. *Jasinski v. City of Miami*, 269 F.Supp.2d 1341 (SD Fla. 2003); and

WHEREAS, for purposes of determining whether the retroactive application of a municipal ordinance impairs a vested right under Florida law, a vested right is defined as an immediate, fixed right of present enjoyment, *Id.*; and

WHEREAS, the reduction in permitting fees is not the retroactive application of a tax; and

WHEREAS, the City is not interfering with a vested right obtained as a result of a final order from a City Land Use Board, or permit already obtained under the Florida Building Code; and

WHEREAS, the amendments set forth below are necessary to accomplish the above objectives.

NOW THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA:

SECTION 1. Chapter 14, "Building Regulations," Article II, "Construction Fees," Division, "Permit Fees," is hereby amended as follows:

* * *

Sec. 14-61 Permit fees, generally.

(a) *Levied.* Permits, inspections and other fees of the building department of the city are hereby levied and imposed and shall apply to building, plumbing, electrical and mechanical permits and other activities undertaken by that department as specified in Appendix A. Permit fee line items include, but are not limited to: building, plumbing, electrical, and mechanical as well as those line items associated with planning, fire, and public works. In addition, all permits will include line items for outside agencies; State of Florida, Department of Business and Professional Regulation (DBPR), Building Code Administrators and Inspectors (BCAI), and Miami Dade County Building Code Compliance Office (BCCO). The Mayor and City Commission of the City of Miami Beach may direct the City Manager to waive building permit fees that include building, planning, public works, parking, fire, and environmental permits that are directly related to City projects.

* * *

(g) *Inspection fee ~~hourly rate~~.* The inspection fee ~~hourly rate~~, shall be as specified in Appendix A~~, is determined at the beginning of each fiscal year based on the building department's approved overhead and indirect costs and the resources assigned to the inspection program~~.

(h) *Plans re-review fee.* When extra plans reviews are due to the failure to correct ~~code violations~~ Florida Building Code discipline requirements specifically and continuously noted in each rejection, including, but not limited to, egress, fire protection, structural stability, energy, accessibility, lighting ventilation, electrical, mechanical, plumbing, and gas systems, or other requirements identified by the rule of the Florida Building Commission, in compliance with F.S. § 553.80(2)(b), each time after the third such review that plans are rejected for the same code ~~violation~~ requirement, a fee ~~four times the amount of the proportion of the permit fee shall be attributed to plans review.~~shall be charged, per discipline, as delineated in Appendix A.

(i) *Expedited plans review and inspection fee.* Upon request from the applicant, the department may schedule an expedited plans review or inspection, on an overtime basis by city staff. When such service is provided, a fee as specified in appendix A shall be charged, in addition to the regular permit fee and other applicable fees. Expedited plan review service may be requested by the applicant ~~with a cost plus fee incurred~~ at a charge, per discipline, as delineated in appendix A, in addition to the ~~regular permit fee and other applicable fees.~~other applicable fees required for the work.

* * *

(m)*Electronic concurrent plan processing.* In order to create a more efficient permitting process, the building department ~~will~~ may be implementing procedures to process plans electronically via an automated workflow. Once implemented, the department ~~will~~ may request that applicants submit plans in an electronic format. If the applicant chooses to submit paper plans, the director, or his designee has the authority to invoice for reimbursement of the conversion of documents submitted to an electronic format

* * *

(o) Private provider fee. When a property owner uses the services of a licensed private company for plan review and inspections services (Private Provider), the fee will be assessed as a regular building permit with a discount of ~~25~~ 40 percent of the original building permit fee. If only the ~~plan review or the~~ inspections are done by the Private Provider, then the fee will be assessed as a regular building permit with a discount of ~~12.5~~ 25 percent of the original building permit fee.

(p) *Photovoltaic waiver.* All photovoltaic related building permit fees will be waived to promote the use of photovoltaic energy.

Sec. 14-62. Building permits.

* * *

(b) *Refunds, time limitations, cancellations, change of contractor.* The fees charged pursuant to the schedule in appendix A, provided the same are for a permit required by Section 105.1 of the Florida Building Code, may be refunded by the building official subject to the following:

(1) No refunds shall be made on requests involving:

a. ~~Permit fees of the m~~Minimum permit fee(s) and upfront fee(s) [14-62(a)] as specified in Appendix A ~~or less~~; or

b. Permits for which plans review has commenced or inspections performed; or

* * *

f. Permits under which work has commenced as evidenced by any recorded inspection having been made by the ~~department~~ city, unless the refund is due to an overcharge by the city.

* * *

(3) Permits under which no inspections were performed are entitled to a 50 percent refund of the building permit fee line item if requested within 90 days of permit issuance. No refund shall be provided after 90 days expires.

~~A full refund less the minimum up-front permit fee and any outside agency fees shall be granted to a permit applicant who requests a refund in writing within one year of payment, provided that no plan review has commenced.~~

~~A full refund less the minimum permit fee as specified in appendix A or the up-front permit fee, whichever amount is greater, rounded down to the nearest dollar, and any outside agency fees shall be granted to a permit applicant who requests a refund in writing within one year of payment, provided that a permit has not been issued.~~

~~A full refund less the minimum permit fee as specified in appendix A or the up-front permit fee, whichever amount is greater, rounded down to the nearest dollar, and any outside agency fees shall be granted to a permit holder (to whom a permit has been issued) who requests a refund in writing within one year of payment, provided:~~

~~a. That the permit holder makes a written request prior to the permit expiration date; and~~

~~b. That no work as evidenced by any recorded inspection has commenced under such permit~~

* * *

(7) Where the permit is revoked, or becomes null and void, or expires because of lack of work or abandonment, a new permit covering the proposed construction shall be obtained before proceeding with the work, pursuant to Section 105.4.1.1 of the Florida

Building Code. If no more than 180 days of the expiration date of the original permit has passed, and no refund has been made according to this section, the applicant may apply to renew the permit. The reapplication must be covering the same project and involving the same plans, and must be submitted with the plans and the applicant's validated copy of the original permit. A fee of 25 percent of the original permit fee, plus an additional processing fee equivalent to the minimum permit fee as specified in appendix A, shall be charged for a renewal under these circumstances. No additional fees for outside agency line items will be imposed.

For permits that have expired where the only missing component is one or more final inspections, the fee for reopening the permit, performing the final inspection(s), and providing a final approval on the permit shall be charged based on the minimum building permit fee.

* * *

SECTION 2.

Attached to this Ordinance is amended Appendix A, amending certain building permit fees.

SECTION 3. CODIFICATION.

It is the intention of the Mayor and City Commission of the City of Miami Beach, and it is hereby ordained that the provisions of this ordinance shall become and be made part of the Code of the City of Miami Beach, Florida. The sections of this ordinance may be renumbered or re-lettered to accomplish such intention, and, the word "ordinance" may be changed to "section", "article", or other appropriate word.

SECTION 4. REPEALER.

All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed.

SECTION 5. SEVERABILITY.

If any section, subsection, clause or provision of this Ordinance is held invalid, the remainder shall not be affected by such invalidity.

SECTION 6. RETROACTIVE APPLICATION - EFFECTIVE DATE.

This ordinance shall take effect immediately upon adoption of this ordinance, RETROACTIVE to First Reading, September 25, 2017, due to Hurricane Irma recovery efforts.

SECTION 7.

This Ordinance shall be reviewed by the City Commission in two years.

PASSED AND ADOPTED this 13 day of December, 2017.

ATTEST:

12/20/17

Rafael E. Granado, City Clerk

Dan Gelber, Mayor

First Reading: October 18, 2017
Second Reading: December 13, 2017
Underline = new language
~~Strikethrough~~ = deleted language

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

City Attorney

12/19/17
Date

APPENDIX A - FEE SCHEDULE

FEE SCHEDULE

This appendix includes all fees and charges established by the City Commission that are referred to in the indicated sections of the Code of Ordinances:

~~Section this Code~~ Code Section	Description	Amount
	Subpart a. General Ordinances	
	Chapter 14. Building Regulations Part I	
	Division 2. Permit Fees	
14-61(b)	Double fees for starting work prior to issuance of permit, plus the following penalty:	
	First offense	~~100.00~~500.00
	Second offense	~~250.00~~1,000.00
	Subsequent offenses	~~1,000.00~~2,000.00
14-61(c)(1)	Reinspection fee:	200.00
	In compliance with F.S § 553.80(2)(c), any subsequent reinspection after the first reinspection shall be charged ~~four times the cost of first inspection or first reinspection, whichever is greater. The cost of inspections is calculated based on the actual time spent by the inspector multiplied by the inspection fee hourly rate, as specified in subsection 14-61(g). The actual time of inspection is rounded up to the hour~~	
	~~First Inspection~~	~~0.00~~
	Second and subsequent reinspection(s): ~~Based on four times the cost of first inspection or first reinspection, whichever is greater at a rate pursuant to 14-61 (g)~~	200.00
	~~Reinspection of existing building to determine compliance with the applicable Building Code: Based on four times the cost of first inspection or first reinspection, whichever is greater. The cost of inspections is calculated based on the actual time spent by the inspector multiplied by the inspection fee hourly rate, as specified in subsection 14-61(g). The actual time of inspection is rounded up to the hour.~~	
14-61(e)	Commercial ~~major-~~ minor revisions ~~6 to 30 pages or more~~ up to 35 pages	500.00
	Commercial major revisions over 35 pages	$20.00 per page
	Commercial total revision ~~31 + pages~~ When determined by the Building Official	50% of Original Permit Fee
	Residential ~~major-~~ minor revision ~~6 to 15 or more~~ up to 15 pages	200.00
	Residential major revisions over 15 pages	$20.00 per page
	Residential total revision ~~16 + pages~~ When determined by the Building Official	50% of Original Permit Fee

14-61(h)	Plans re-review fee:	
	First and second re-review	0.00
	Plans re-review fee. Pursuant to the Florida Building Commission, and in compliance with F.S. § 553.80(2) (b), when extra plans reviews are due to the failure to correct code ~~violations~~ rejections specifically and continuously noted in each rejection, each time after the third such review that plans are rejected for the same code ~~violations~~ rejections, a fee ~~of four times the amount of the proportion of the permit fee~~ $250 per discipline shall be attributed to plans review.	
14-61(i)	Expedited plan review and inspection fee: upon request from the applicant, the department may schedule an expedited plans review ~~or inspection on an overtime basis~~ by department staff. Fee for each review ~~or inspection~~ category requested.	250.00
14-61(n)	Phase permits:	
	Commercial new construction	~~2,000.00~~5,000.00
	Commercial alteration	~~1,500.00~~4,000.00
	Residential new construction Single Family Residence	~~1,000.00~~2,000.00
14-61(p)	Photovoltaic fees	$0
14-62(a)	Up-front processing fee: Percent of estimated permit fee or the minimum processing fee, whichever is greater.	
	Percent of estimated permit fee rounded up to the nearest $5.00 increment	20%
	Minimum up-front fee	50.00
14-62(b)(4)	Change of contractor	100.00
14-62(b)(5)	Change of architect or engineer	100.00
14-62(b)(6)	One time request for building permit extension (permit must not be expired)	100.00
14-62(b)(6)	Additional request for building permit extension (permit must not be expired): Percent of building permit fee line item only	~~100~~50%
14-62(c)	Building permit fees:	
	÷	
	Commercial Permit Fees for Building Permits:	
	New Construction Minimum permit fee	140.00
	Alterations Minimum permit fee	100.00
	Permit fee for a building whose estimated construction cost is equal to or less than $~~30~~ 35 million is ~~2.0~~ 1.9% of the cost of construction as approved by the Building Official or his or her designee, plus 1.0% of the construction cost for any amount over $~~30~~ 35 million but less than or equal to $100 million; and 0.25% of costs exceeding $100 million as approved by the Building Official or his or her designee.	
	Due to hurricane events ~~Hurricane Irma~~, fees for minor repairs under a total value of $20,000, the above fee [14-	

	62(c)] shall be reduced by 40 percent for the following period: three (3) months from ~~enactment~~ the hurricane event to pull permit. This does not apply to any permits needed for railing repairs and all repairs must be of a substantially similar, design, quality and appearance.	
	Residential Permit Fees for Building Permits:	
	New Construction Minimum permit fee	120.00
	Alterations Minimum permit fee	90.00
	Residential: Single-family, Duplex: Permit fee for a building whose estimated construction cost is equal to or less than ~~$1~~ 1.5 million is ~~1.8~~ 1.7% of the cost of construction as approved by the Building Official or his or her designee, plus 1.0% of the construction cost for any amount over ~~$1~~ 1.5 million as approved by the Building Official or his or her designee	
	Due to hurricane events ~~Hurricane Irma~~, fees for minor repairs under a total value of $20,000, the above fee [14-62(c)] shall be reduced by 40 percent for the following period: three (3) months from ~~enactment~~ the hurricane event to pull permit. This does not apply to any permits needed for railing repairs and all repairs must be of a substantially similar, design, quality and appearance.	
	Temporary and Special Event Fees	
	Temporary platforms for public assembly, first approval	~~104.00~~ 150.00
	Temporary bleachers for public assembly, first approval	~~95.00~~150.00
	Temporary platforms or bleachers for public assembly, re-approval	~~20.00~~100.00
	Tents excluding electric and plumbing, per tent	
	• Up to 1,000 square feet	~~104.00~~150.00
	• Each additional 1,000 square feet over 1,000	~~28.00~~50.00
	Temporary structure/trusses/statues (no electrical or plumbing included)	~~104.00~~150.00
	Temporary chiller	~~462.00~~500.00
	Temporary generator	~~237.00~~500.00
	Construction trailer, per trailer	~~568.00~~500.00
	Office trailer, per trailer	~~686.00~~500.00
	Temporary power for construction	~~225.00~~300.00
	Temporary power for test	~~189.00~~200.00
	Temporary multi-seat toilet trailer, per trailer	~~80.00~~100.00
	Temporary individual toilet, per event	~~17.00~~50.00
	~~Amusement Rides~~	~~60.00~~
	~~Temporary electric work on circuses, carnivals, per show~~	~~312.00~~
14-66(1)	Certificate of occupancy fees:	
	Residential units R-1, R-2, and R-3, per unit	~~110.00~~150.00
	All commercial occupancies except R-1 and R-2, per square foot	~~0.05~~0.07
14-66(1)	Temporary certificate of occupancy or completion fees:	
	100 percent of final certificate of occupancy or	200.00

	completion and letter of final completion fee plus the cost of any additional required inspections. Additional required inspections will be charge based on actual time spent on inspection multiplied ~~by the hourly rate, as specified in section 14-61(h).~~	
~~14-66(1)~~	~~Certificate of completion fees:~~	
	~~Certificate of completion fees for residential~~	~~100.00~~
	~~Certificate of completion fees for commercial~~	~~250.00~~
	Forty year recertification program fee:	
14-67(a)	Per building	600.00
	Building official approval of 6 month extension for building recertifications	600.00
~~14-67(b)~~	~~Late compliance fee, regular fee, plus~~	~~260.00~~
14-67(c)	New inspection report fee if recertification not completed within 90 days of building's being declared unsafe	~~312.00~~300.00
14-69	Employee training, education, safety, and technology procurement and implementation for service enhancement surcharge is 6 percent of each and every Building permit fee	
	Chapter 66. Marine Structures, Facilities and Vehicles	
	Article III. Piers, Docks and Boat Ramps	
66-114(a)	Plans review fee shall be consistent with 14-61(h)~~98-93(a),(b).~~ Up-front processing fee shall be consistent with 14-62(a),	

MIAMIBEACH

COMMISSION MEMORANDUM

TO: Honorable Mayor and Members of the City Commission
FROM: Jimmy L. Morales, City Manager
DATE: December 13, 2017

10:10 a.m. Second Reading Public Hearing

SUBJECT: AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 14, "ENTITLED "BUILDING REGULATIONS," DIVISION 2, "PERMIT FEES," AT SECTIONS 14-61, 14-62 RELATING TO BUILDING PERMIT FEES GENERALLY; WAIVING FEES FOR PHOTOVOLTAIC BUILDING PERMIT FEES; AND MODIFYING THE FEE SCHEDULE CONTAINED IN APPENDIX A IN ORDER TO UPDATE CERTAIN BUILDING FEES AND TO PROVIDE A PERMIT FEE REDUCTION OF 40% FOR MINOR, IN-KIND, HURRICANE REPAIRS DUE TO HURRICANE IRMA, FOR A THREE MONTH PERIOD; PROVIDING FOR RETROACTIVE APPLICATION TO FIRST READING, REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

RECOMMENDATION

The Administration recommends that the City Commission adopt the Ordinance.

ANALYSIS

CONCLUSION

KEY INTENDED OUTCOMES SUPPORTED

Improve Building/Development-Related Processes From Single Family Residences To The Large Development Projects

FINANCIAL INFORMATION

Legislative Tracking

Building/Office of the City Attorney

Sponsor

Commissioner Ricky Arriola

ATTACHMENTS:

Description

- Memo
- Ordinance

MIAMIBEACH

Building Department, 1700 Convention Center Drive, Miami Beach, Florida 33139

COMMISSION MEMORANDUM

TO: Mayor Dan Gelber and Members of the City Commission

FROM: Jimmy L. Morales, City Manager

DATE: December 13, 2017

SUBJECT: **AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 14, "ENTITLED "BUILDING REGULATIONS," DIVISION 2, "PERMIT FEES," AT SECTIONS 14-61, 14-62 RELATING TO BUILDING PERMIT FEES GENERALLY; WAIVING FEES FOR PHOTOVOLTAIC BUILDING PERMIT FEES; AND MODIFYING THE FEE SCHEDULE CONTAINED IN APPENDIX A IN ORDER TO UPDATE CERTAIN BUILDING FEES AND TO PROVIDE A PERMIT FEE REDUCTION OF 40% FOR MINOR, IN-KIND, HURRICANE REPAIRS, FOR A THREE MONTH PERIOD; PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.**

Background:
On June 2, 2014, the City of Miami Beach amended its fee code and implemented a new fee schedule, to coincide with the City's new building permit software system, and modified certain fees to better reflect actual costs.

UPDATE:
The City Commission approved the subject Ordinance at First Reading on September 25, 2017, pursuant to eliminating the specification of Hurricane Irma. The revised ordinance for Second Reading has been updated, deleting hurricane repairs due to Hurricane Irma.

Analysis:
The Building Department continues to review the fee schedule on an annual basis and the Building Official has determined that a more efficient, effective and transparent way to assess fees is necessary. As such, the Building Official recommends the following amendments to the City Code:

- Reduce fees for owners hiring private provider as required by the State Legislature, as codified at amended section 553.791, F.S., by reducing the building permit fee by the estimated cost savings to the department. The reduction for owners/contractors hiring private providers for both Review & Inspection services will be 40% off of the calculated

building permit fee; and the reduction for owners/contractors hiring private providers for only Inspection services will be 25% off of the calculated building permit fee. *The fiscal impact of these reductions to City revenue is estimated at $1.1 million.*

- Modifying the fee structure and percentages charged for Commercial and Residential building permits. Currently, Commercial permits are charged 2% of the job value up to $30 million and 1% on job values over $30 million. This modification would increase the first tier range to $35 million and reduce the fee to 1.9% of the job value; the second tier would have a range of $35 million to $100 million and the fee remains at 1%; and the addition of a third tier for job values over $100 million with a fee of 0.25% of the job value. Residential permits are currently billed 1.8% up to $ 1 million in job value and 1% over $1 million in job value. This modification would increase the range to $1.5 million and reduce the fee to 1.7% of the job value for the first tier; and the second tier range would increase to $1.5 million and the fee remains at 1% of the job value. This will continue to be a tiered cumulative fee structure. The code change would reduce the fees the Building Department would receive. As building fees are considered an enterprise fund to be used to finance the actual cost of expenditures of the department, the modification to the code would better reflect the actual reimbursable costs to the department, and be consistent with the state guidelines for enterprise funds. *The estimated fiscal impact to the City would be an estimated reduction in revenue of approximately $415,000.*

- Authorizing the Mayor and City Commission to direct the City Manager to be able to waive building fees for City projects. Waiving of fees for City projects will allow more projects to be completed without internal transfer of funds from other accounts into the Building Department. *There is no financial impact since the costs associated with the permit would remain in the City budget.*

- Waiving building fees for photovoltaic installations in order to encourage residents and industry to use photovoltaic energy. This is in support of the City's efforts to increase resilience and sustainability. *Fiscal impact will be less than $2,000.00 per year.*

- Increasing Phased permit fee. A Phased Permit is an authorization from the Building Official to start construction before all plans are approved as defined in the Florida Statutes and Florida Building Code. Ordinarily a phased permit is authorized for larger sized projects (i.e.: to allow the foundation to proceed, while other phases of the large project goes through permitting). Under the existing fee structure, and because of its minimal cost, the phased permit process is being abused by applicants, often resulting in the process being utilized by small-scale projects. The proposed fee increase is intended to limit the abuse of the phased permit process. *It is estimated that Fiscal impact will result in an increase in revenues of $25,000.*

14-61(n)	Phase permits:	
	Commercial new construction	~~2,000.00~~**5,000.00**
	Commercial alteration	~~1,500.00~~**4,000.00**

	Residential new construction Single Family Residence	~~1,000.00~~**2,000.00**

- Modifying and clarifying various fees to adjust fee amounts in a more efficient way such as rounding, eliminating redundancy, etc. and to clarify descriptions of the fees. *No fiscal impact is anticipated by these minimal adjustments.*

- Allowing for a three (3) month period a building permit fee reduction of 40% for minor, in-kind, hurricane repairs due to hurricane events. Originally, the ordinance was drafted to relate to Hurricane Irma. The language was expanded to include all hurricane events going forward.

This item was first introduced at the April 26, 2017 City Commission meeting. The Commission deferred the item to the May 17, 2017 meeting, and then again to September 13, 2017. First reading was held on September 13, 2017, and the item was scheduled for the December 13, City Commission meeting and the Building Department was directed to discuss with the Chamber of Commerce any concerns they had with the building permit fee schedule. The modifications contained in this second reading ordinance are the culmination of discussions with the Chamber of Commerce. Second reading, public hearing is scheduled for December 13, 2017.

Fiscal Impact:
Overall the proposed Ordinance is expected to reduce revenues and require use of available fund balance.

Recommendation:
The Administration recommends that the City Commission adopt the attached Ordinance.

AMS/ND