

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 7(K)
10-02-07

ORDINANCE NO. 07-147

**OFFICIAL FILE COPY
CLERK OF THE BOARD
OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA**

ORDINANCE AMENDING CHAPTER 8 OF THE CODE OF MIAMI-DADE COUNTY; AMENDING ARTICLE I REGARDING THE POWERS AND DUTIES OF THE BOARD OF RULES AND APPEALS CLARIFYING THE AUTHORITY TO RE-INSTATE OR ADMINISTRATIVELY CLOSE SUSPENDED BUILDING PERMITS; PROVIDE UNIFORM PROCEDURES FOR RESOLVING PERMITS OBTAINED FRAUDULENTLY OR ISSUED ERRONEOUSLY; PROVIDING SEVERABILITY, INCLUSION IN THE CODE OF MIAMI-DADE COUNTY, AND AN EFFECTIVE DATE

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA:

Section 1. Chapter 8 of the Code of Miami-Dade County is hereby amended to read as follows:¹

Sec. 8-4. BOARD OF RULES AND APPEALS.

* * *

(d) POWERS AND DUTIES OF THE BOARD:

(3) The Board of Rules and Appeals, upon direction of the Board of County Commissioners, or upon its own initiative, shall conduct investigation into the enforcement of the Building Code, and shall have the power to suspend or revoke any permits issued thereunder[[;]] >>and reinstate and/or administratively close suspended permits<<after a hearing at which interested persons may appear and be heard and evidence indicates that the best interests of the public are served by such action[[, ~~except in regard to the qualification of the applicant for permit~~]].

* * *

¹Words ~~stricken through~~ and/or [[double bracketed]] shall be deleted. Underscored words and/or >>double arrowed<< constitute the amendment proposed. Remaining provisions are now in effect and shall remain unchanged.

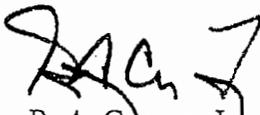


MEMORANDUM

(Revised)

TO: Honorable Chairman Bruno A. Barreiro
and Members, Board of County Commissioners

DATE: October 2, 2007

FROM: 
R. A. Cuevas, Jr.
County Attorney

SUBJECT: Agenda Item No. 7(K)

Please note any items checked.

_____ "4-Day Rule" ("3-Day Rule" for committees) applicable if raised

_____ 6 weeks required between first reading and public hearing

_____ 4 weeks notification to municipal officials required prior to public hearing

_____ Decreases revenues or increases expenditures without balancing budget

_____ Budget required

_____ Statement of fiscal impact required

_____ Bid waiver requiring County Manager's written recommendation

_____ Ordinance creating a new board requires detailed County Manager's report for public hearing

_____ Housekeeping item (no policy decision required)

_____ No committee review

Sec. 8-13. REVOCATION>>, SUSPENSION AND REINSTATEMENT<< OF PERMIT>>§<<.

(1) The Building Official may revoke a permit or approval issued under the provisions of this Code in case of any false statement or misrepresentation of fact in the application or on the plans on which the permit or approval was based.

>>(i) Once work has commenced on a permit obtained on the basis of a fraudulently obtained or erroneously issued certificate and the permit is revoked, becomes null and void or expires because of lack of progress, a new permit covering the proposed construction shall be obtained before proceeding with the work.

(ii) Permits granted in reliance on certificates which were fraudulently obtained or erroneously issued shall be administratively suspended by the Building Official or the Board of Rules and Appeals. Following any such suspension, the certificates may be reinstated and the work completed by a change of contractor, or , where authorized by law, by the assumption of the permit by an authorized owner, lessee or tenant, in accordance with the procedures provided in the law.

(iii) In addition, the Board of Rules and Appeals may reinstate other suspended permits provided that the Board of Rules and Appeals determines that the property owner has been the victim of fraud or a misrepresentation of fact by the permit applicant in the application or on the plans on which the permit or approval was based. To make that determination, the following procedure shall be followed:

(a) the owner shall bear the burden of proof to the Board of Appeals that the property owner has been the victim of fraud or misrepresentation;

(b) the Board of Rules and Appeals shall conduct a public hearing, after notice, at which interested persons may appear to consider evidence indicating whether the public interest is served by closing the permit, or to do so under certain conditions. The evidence to be considered may include the type of permit involved, the work performed, the degree of private or public safety involved in the work and the inspections or reinspections performed.

(c) Following such hearing, the Board of Rules and Appeals may determine that the affected permits may be revoked, assigned to an authorized owner, lessee or tenant, or closed out. The Board of Rules and Appeals may also determine that the final disposition of such permits shall be subject to certain conditions designed to protect the safety of the structure's inhabitants or the surrounding community, and may retain jurisdiction over those permits to ensure compliance with those conditions.<<

* * *

Section 2. If any section, subsection, sentence, clause or provision of this ordinance is held invalid the remainder of this ordinance shall not be affected by such invalidity.

Section 3. It is the intention of the Board of County Commissioners, and it is hereby ordained that the provisions of this ordinance including any Sunset provision, shall become and be made part of the Code of Miami-Dade County. The sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section", "article" or other appropriate word.

Section 4. This ordinance shall become effective upon enactment, unless vetoed by the Mayor within ten (10) days after its adoption, and if vetoed shall become effective only upon an override by this Board.

PASSED AND ADOPTED: October 2, 2007

Approved by County Attorney as
to form and legal sufficiency:



Prepared by:



Erica Zaron

Memorandum



Date: (Second Reading 10-02-07)
July 24, 2007

Agenda Item No. 7(K)

To: Honorable Chairman Bruno A. Barreiro
and Members, Board of County Commissioners

From: George J. Burgos
County Manager

Ordinance 07-147

Subject: Proposed Ordinance Amending Chapter 8 Regarding the Powers and Duties of the Board of Rules and Appeals and Clarifying the Authority to Administratively Reinstate Suspended Permits

RECOMMENDATION

It is recommended that the Miami-Dade County Board of County Commissioners adopt the attached proposed ordinance amending Chapter 8 of the Code of Miami-Dade County in order to clarify that the powers and duties of the Board of Rules and Appeals includes the authority to administratively reinstate or close suspended permits.

BACKGROUND

Presently, Section 8-4 (d), (3) of the Code of Miami-Dade County provides a means for permits to be suspended or revoked. While the Building Code is clear regarding curative action regarding revoked permits, it is silent with respect to suspended permits. Once suspended, and following any necessary remedial action, the establishment of an avenue for administrative reinstatement of permits is necessary.

The ability of the Board of Rules and Appeals to reinstate permits is implied but is not clearly written in Chapter 8 of the Miami-Dade Code. If permits may be suspended by the Board of Rules and Appeals according to the Code, it should follow that the Board of Rules and Appeals must have the ability to then restore and effectively close such permits. Inasmuch, the fact that permits may be suspended or revoked must carry with it the equity to authorize reinstatement or administrative closure after a case-by-case Board of Rules and Appeals assessment. The proposed ordinance will serve to establish a reinstatement process for any suspended permit and will allow the Board of Rules and Appeals to address the resolution of suspended permits related to illegally licensed contractor fraud.

A scheme to defraud the public through the unauthorized issuance of Miami-Dade County contractor licenses was uncovered by the Building Code Compliance Office (BCCO) in March 2006. Following a lengthy investigation, it was determined that 271 fraudulent contractors licenses were illegally purchased by unqualified individuals. Each Miami-Dade County Building Official was made aware that unqualified individuals had illegally obtained contractor licenses and that such licenses had not been issued by the Building Code Compliance Office or the Construction Trades Qualifying Board. It was established that permits obtained by the Illegally Licensed Contractors were not valid and must be suspended. The Building Departments completed a computer search and identified 5,677 affected permits that were in progress, finalized and expired. At this time, approximately 80% of the affected permits have been satisfactorily resolved. However, the continued resolution of permits to 100% could be accelerated through the implementation of this ordinance.

This proposal creates an administrative mechanism to close permits which will benefit the remaining property owners who have been unable, or otherwise have failed, to resolve the permits associated with construction work performed by the Illegally Licensed Contractors. Such administrative closure would introduce an element of flexibility regarding permit closures and eliminate the possibility of future financial inconvenience associated with an unresolved suspended permit record attached to their property.

The modification of Chapter 8 of the Miami-Dade Code is proposed with the welfare and safety of the community as the immediate focus. By allowing the closure of the permitted work which has been duly inspected by the certified building department inspector, the work is then officially recognized and the possible future re-victimization of the affected property owners when selling or refinancing their property is avoided.

Complimenting this section would be the establishment of comprehensive uniform procedures detailed in Section 8-13 of the Code of Miami-Dade County. Specifically, this section provides a mechanism for the administrative closure of eligible permits which have been inspected and finalized by a local enforcing agency.

The adoption of the proposed ordinance would result in the creation of a method to clearly address suspended or revoked permits. The procedures incorporated into Chapter 8 would provide an opportunity for an independent and thorough Board of Rules and Appeals assessment, grant a forum for affected parties to be heard, if they so desire, and finally allow for a legitimate administrative revalidation and administrative closure of permits and inspections to take place in those cases where other means to achieve resolution have not been successful.

FISCAL IMPACT

There is no fiscal impact to Miami-Dade County or the municipalities.



Alex Muñoz
Assistant County Manager