MEMORANDUM

To: Honorable Dean Trantalis, Mayor,
and Members, City of Fort Lauderdale Commission

From: John W. Scott, Inspector General

Date: August 27, 2019

Subject: **OIG Closing Memorandum Re:** ***Concerns of Fairness and Financial Prudence in the City of Fort Lauderdale's Building Code Enforcement and Assessment of After-the-Fact Permit Fees, Ref. OIG 15-017***

The purpose of this memorandum is to report that the Broward Office of the Inspector General (OIG) has concluded its investigation into a complaint from two City of Fort Lauderdale residents (the Neighbors), who alleged that the homeowner next door (the Homeowner) had made significant renovations to his home without permits, and that, when the Neighbors reported these violations to the city's Building Services Division (BSD), certain BSD officials not only failed to address the violations in accordance with the Florida Building Code (FBC or the Code), they also assisted the Homeowner in avoiding paying after-the-fact or ATF permit fees. The Neighbors specifically alleged that BSD staff falsified building permits, covered up Code violations, filed false reports, and exhibited unwarranted favoritism. During our investigation, we also became concerned about and looked into whether the city was equitably assessing after-the-fact permit fees on property owners generally. Finally, we conducted a statistical analysis of permits flagged as after-the-fact between 2014 and 2017. We estimated that the range of uncharged after-the-fact fees, per the city code, was between $62,763.99 and $335,108.59.

Although the OIG's investigation did not establish misconduct or gross mismanagement by any individual employees or officials, it did uncover several systemic failures in the administration and enforcement of the Code, specifically with respect to work commenced or completed without permits. Thus, we write this memorandum to enable the city to strengthen consistency, transparency, the appearance of fairness, and financial prudence in its Code enforcement process.

Background

In 2009, the Homeowner purchased a home in Fort Lauderdale and thereafter began renovating the property himself. Information obtained from the listing agent showed that, when they purchased the property in an "As Is" sale, it had two bedrooms, one bathroom, 875 square feet of living space, a

carport, and no central air conditioning. Construction drawings from BSD files show the home now has three bedrooms and two bathrooms, and the Broward County Property Appraiser's website shows the home now has 1,208 square feet of living space.

The intent of the FBC is to establish minimum building requirements to safeguard public health, safety, and general welfare. While it is the building official's responsibility under the FBC to faithfully enforce the permitting and inspection of building alterations within the city against the Code's minimum requirements, the city cannot be compelled to enforce specific aspects of the Code, which is essentially a discretionary function.[1] For this reason, although we found that the Neighbors were correct in several of their assertions that the city failed to strictly enforce the FBC against the Homeowner, we could not say that this was either misconduct or gross mismanagement.

Many local governments in the state enforce the FBC through the payment of fees for permits, which fund Code enforcement departments, such as the city's BSD, that are responsible for processing permit applications, reviewing construction plans for Code compliance, and inspecting permitted work to ensure that it meets the requirements of the Code. The city must apply fees collected from the BSD's 25,000 to 30,000 building permits each year exclusively to FBC enforcement.[2]

Local governments also assess additional fees against property owners and contractors when they find commenced or completed work without proper permits and, therefore, without government inspections meant to safeguard life and property.

The city adopted the FBC as part of its code of ordinances and also adopted a "general permits fees" ordinance. The city codified the fees it charges for "work without permit" in City Code § 9-47 of its ordinances, which calls for a fee of four times the usual permit fee if the current homeowner performed the work or of two times the usual fee if it cannot be determined that the current homeowner performed the work. The Code places the burden upon the property owner to provide evidence that he or she was not responsible for the unpermitted work.

The Broward County Charter at Article IX, Section 9.02, established the Board of Rules and Appeals (BORA). BORA "conduct[s] a program to monitor and oversee the inspection practices and procedures employed by the various governmental authorities charged with the responsibility of enforcing the Building Code," as state law authorizes it to do. BORA passes county-wide amendments to the FBC, and, at BORA Local Amendment § 109.3.3, it has its own provision for addressing work commenced or completed without a required permit. During the relevant timeframe, that provision stated that unpermitted work "shall be subject to a penalty of 100 percent of the usual permit fee in addition to the required permit fees."[3] A BORA chief structural code compliance officer we interviewed explained that, so long as the after-the-fact fees are used to fund Code enforcement, the FBC, at F.S. § 553.80(7), permits municipalities to set whatever fees they use to carry out that enforcement, despite BORA § 109.3.3. We found additional support for this position from the state law that requires municipalities to apply permit fees only to FBC

---

[1] *Compare* F.S. § 468.604 *with Trianon Park Condominium Ass'n v. City of Hialeah*, 468 So. 2d 912 (Fla. 1985) and *Detournay v. City of Coral Gables*, 127 So. 2d 869 Fla. 3d DCA 2013).
[2] F.S. §§ 166.222, 553.80(1)(g).
[3] 5th Edition (2014) FBC— Building Broward County Administrative Provisions. BORA later amended this to reflect its interpretation that the after-the-fact penalty fee may be up to 100% of the regular fee.

administration and enforcement and further considered that the city code characterized the double and quadruple multipliers as "fees" and not penalties.

During the relevant time period, the city established, by policy, the process that its employees should have followed for treating unpermitted work in violation of the FBC. The Department of Sustainable Development - Building Services, Building Division Master Policies and Procedures (DSD Policy), at Phase 1: General Intake and Routing; Issuance of Permits, Section 2: Intake and Processing of Non-Regular Permit Applications, § 2D., Procedures for After-the-Fact Permits, prefaced, "Undertaking site work that requires building or related plan review and permits without the necessary approvals and permits constitutes a code violation. The violation applies whether the work has been only partially completed or fully completed. Projects of this type are discovered largely by chance (if a City inspector or other city employee spots it) or complaint (from a neighbor)." Of course, the property owner could also voluntarily seek after-the-fact permitting. DSD Policy Phase 4.5: Special Procedures, § B, Code Enforcement: Procedures for After-the-Fact Permits, goes on to state, "'After-the-fact' refers to work for which a City permit or permits are required that was nonetheless undertaken and possibly completed without the owner or contractor having obtained those permits. The majority of cases are relatively minor - installation of a Jacuzzi or fence, enclosure of a carport, and so on – but nonetheless the City must make sure its residents aren't putting themselves or others at risk." If a complaint of unpermitted work is filed, the process was essentially as follows:

- The property address was verified and entered into the BSD's database (C+ system) with a Code case number.
- An inspector visited the property to determine whether the complaint was valid.
- If the complaint did not represent a Code violation, the case was closed. But if it did, the inspector was required to tag it as such in the C+ system and place a hold on the property to alert staff that a violation had occurred there.
- BSD staff then used the Broward Property Appraiser's website to identify the owner(s) of record and their mailing address.
- The city then notified the owner(s) of the violations by way of a letter with instructions on how to achieve compliance with the Code. There was a 90-day permit application deadline from time of notification.
- When the owner or contractor made an application for a permit, the service clerk was to check the system to determine whether there was a hold on the property.
- If so, the clerk determined whether the permit application addressed each of the violations specified in the system. If the review was passed, the packet was put in the appropriate ATF bin for further review and permit approval. If the permit failed, the owner or contractor was notified of deficiencies and the process continued until passed.

- When the property passed the necessary inspection(s) or was cleared by an architect or engineering firm's letter, BSD closed the case and sent the Code case files to the Property Records department.

According to DSD Policy Phase 1, § 2D, there were additional details about how to route after-the-fact items for review and how to document, approve, and date this information in the C+ system, including:

- Entering "ATF" in the "Purpose" column in C+, followed by the purpose for the permit.

- Entering "ATF" in the "Plan Review Information/Review Stop" field on the "Plan Review" screen.

If the application was for an after-the-fact permit, "the processing fee doubles." DSD Policy § 1 B.6. But there was no discussion about who would assess after-the fact fees, the criteria by which they could be waived, or who could waive them.

Investigation

In the course of its investigation, the OIG reviewed numerous documents, including Broward County Property Appraiser records and photographs, Google Earth time stamped photographs, photographs and listing details from the real estate agent for the seller who sold the home to the Homeowner, wholesale and retail sales records for the air conditioning system the Homeowner purchased and arranged to install, the Neighbors' complaints to the city, court filings in the Neighbors' lawsuit against the Homeowner and petition on the city, the extensive permitting and inspection records for the Homeowner's property including plans and drawings filed with the Homeowner's permit applications, and extensive records obtained from the city's building permit database and hard copy building permit files. The OIG interviewed approximately 26 city employees, the Neighbors, the seller's listing real estate agent, an engineer the Homeowner hired, a BORA staff member, and others with information relevant to the investigation (the Homeowner declined the OIG's offer to interview). We also extracted and analyzed a random and stratified sample of all identified after-the-fact permit fees for calendar years 2014 through 2017.

The evidence established that, between January 7, 2014, and December 8, 2015, the city issued twelve permits to the Homeowner for work that had already been completed before the Homeowner applied for the permits. The Homeowner applied for these permits in conjunction with the Neighbors' lawsuit and five comprehensive complaints to the city about the Homeowner's unpermitted work. The unpermitted work included installing a central air conditioning system; raising a concrete floor; installing shutters; installing an electrical panel; enclosing the carport and constructing a master bedroom, bathroom, and walk-in closet where the carport existed; installing windows; installing a garage door and creating a storage area; installing a circular asphalt driveway; significantly enlarging the concrete backyard patio; hanging a large canvas awning over the enlarged patio; converting the laundry room into a bathroom; installing fencing; and building a two-foot concrete block or CBS wall on top of the existing seawall.

After the Neighbors filed their Code complaints and city staff began inspecting the Homeowner's property, BSD officials came to know or should have come to know that the renovations were completed without permits at the time the work commenced. Yet, all twelve permits the city issued for this previous work were regular permits, for which the city charged the Homeowner standard permit fees totaling $2,538.62.[4]

The city did not charge the Homeowner, and he did not pay, after-the-fact fees on any of the twelve permits the city issued to him for previously unpermitted work.

Concerned that the situation represented systemic problems, the OIG expanded its investigation into how the BSD generally handles its after-the-fact permitting process.[5] Our investigation found there were systemic issues in how BSD did so.

A summary of the investigation is provided below:

The City Did Not Assess After-the-Fact Fees for Improvements the Homeowner Completed Before He Applied for Building Permits

On or about September 18, 2013, the Neighbors sued the Homeowner and three co-owners for installing a noisy central air conditioner without a permit, among other claims.

On January 6, 2014, the Homeowner submitted a permit application "for replacement of A/C units," and, on the following day, the BSD issued him a permit for that purpose. We corroborated that, when the Homeowner bought the house, it did not have an air conditioning system. When he applied for the permit, he included a December 10, 2013, certified survey of his property that showed one. When applying for a different permit in 2015 (after the air conditioner would have been replaced in January 2014), the Homeowner's wife attested that "no additions or changes to the property have been made since the date shown on the attached survey," referring to the same survey.[6] We did not impute that the city knew, until this point, that the Homeowner was installing a new system, although when a homeowner sought a permit to replace an air conditioning system at that time, BSD required the homeowner to complete and submit two "air conditioning data sheets" that identified the old equipment to be replaced and the new equipment to be installed. The Homeowner submitted one air conditioning data sheet only for what he said was the new equipment.

---

[4] BSD staff initially coded the central air conditioning permit as a regular permit to replace an air conditioner. It was later coded as after-the-fact.

[5] The OIG found that the BSD issued a total of 17 permits to the Homeowner between October 4, 2013 and December 23, 2015; of which twelve met the criteria for being after-the-fact permits.

[6] In a filing titled Answer, Affirmative Defenses, and Demand for Jury Trial, dated October 18, 2013, the Homeowner's wife was quoted as saying, "We installed the new AC unit which was purchased just a few years ago from my husband's family's AC company." This statement indicates the air conditioning system had been installed before October 18, 2013—three months before the Homeowner applied for the air conditioning permit. The OIG searched the air conditioner supplier's website using the air conditioning unit's serial number and found the unit was manufactured on November 14, 2009. A receipt of sale shows the Homeowner purchased it in March 2010. The OIG found no evidence that the BSD knew, or should have known, of this information.

Sometime after the city issued the permit, someone entered the following note into the BSD's permit information database: "ATF [after-the-fact] – install 3.5 ton AC system, 9.6. KW heater." [7]

On January 9, 2014, a BSD code inspector went to the house, performed a mechanical inspection of the air conditioning installation, and passed it. That inspection was supposed to be the final one.

However, on January 15, 2014, the Neighbors filed their first complaint with the BSD, alleging the Homeowner's "A/C Unit Making Too Much Noise." [8] On January 17, 2014, a mechanical code inspector attempted to conduct a second inspection, but no one was home; therefore, he failed the inspection. The same day, he wrote into the inspection notes: "Per Chief Mechanical Inspector [A.H.] . . . A/C installation requires new permit & plans for A/C installation, and electrical permit . . . "

A.H. and two mechanical plans reviewers told the OIG that installation of a new air conditioning system requires a set of plans with ductwork review and approval, an electrical permit, and all required inspections. In other words, requiring "new permit & plans for A/C installation and an electrical permit" was a requirement for installing a new air conditioning system but not for the replacement of an old one, making it advantageous for the Homeowner to claim it was a replacement. This also made clear that A.H. knew, certainly by January 17, 2014, that this was not a replacement air conditioning system.

Yet, on January 28, 2014, A.H. approved the new air conditioning system plans, and two days later it passed the final mechanical inspection, even though the city never did issue the required electrical permit and neither noted the work was unpermitted nor assessed an after-the-fact fee.[9]

According to the city code, the fee for an after-the-fact permit for work performed by the current homeowner should have been four times the cost for a regular permit. But the Homeowner never incurred or paid such fees. In addition, although after-the-fact permits are supposed to address all Code violations, to this day, the city has not issued an electrical permit for the air conditioning system and, therefore, the city has not reviewed or approved plans or performed any inspections for the Homeowner's air conditioning electrical supply.

On March 17, 2014, BSD issued the Homeowner a permit for "Interior Alteration Raise Concrete Floor & Replace 9 Windows Doors." On the same day, BSD issued the

---

[7] The C+ system did not capture who made the entry.

[8] The Neighbors filed five complaints with BSD regarding the Homeowner's renovations. The first was filed on January 15, 2014, alleging that the air conditioning was making too much noise; the second was filed on February 7, 2014, alleging that the permit issued for the air conditioning was "falsified," the third was filed on August 11, 2014, alleging that the permits BSD issued for many of the Homeowner's renovations were done with "falsified documents"; the fourth was filed on January 15, 2015, alleging a raw sewage problem; and the fifth was filed on February 26, 2015, alleging that the Homeowner had a water faucet attached to electrical box and a new, two-foot wall built on top of sea wall without permits.

[9] The fact that an electrical permit was not issued, and thus required electrical inspections were not performed, may constitute a failure to enforce the FBC. BORA Local Amendment § 105.3.1.A.5.

Homeowner four other permits—one for "Electric to BP (building permit),"[10] another for "Shutters to BP, the third for "Concrete slab to BP," and the fourth for "Asphalt Driveway 1200 SF to BP ..."[11] The OIG's review of photos from the Broward County Property Appraiser and Google Earth websites showed that most of the work covered by the master and sub-permits was complete prior to the Homeowner's permit applications.[12]

On August 11, 2014, BSD received a complaint from the Neighbors alleging that the permits for "raised floor, enclosed carport converted to bedroom, new windows & sliding door, enclosed Florida room (back) and driveway ..." were done with "falsified documents." By this time, the Neighbors had begun complaining to Broward County, specifically to a county environmental engineer, who emailed BSD. Someone then entered into the permit information system the following comment from the county engineer: "I attached an aerial view from property appraisers 2010 and 2014 and you can tell a lot has been done, but that does not mean it was not done with permits or already having enforcement proceedings."

In addition to the complaints and emails that the Neighbors submitted to BSD regarding the Homeowner's unpermitted work, there was also an email from the Homeowner to the then-code compliance officer, who later became the chief code compliance officer, dated August 12, 2014, in which the Homeowner wrote that the permits he needed to obtain were for work that had already been completed. The email read, in part:

> When I went to permit back in March, I spoke to [name omitted], Permit Services Coordinator she explained although the work I wanted to get permitted was already done since I had not "gotten caught" I had to submit the paperwork as NEW . . .[13]

Thus, by at least August 12, 2014, the now chief code compliance officer knew that the Homeowner had completed the work for which BSD had issued the five March 17, 2014, permits. Although he could have taken steps to correct the improperly issued March permits and issued after-the-fact permits, assessing the correct fees, he did not.

Instead, after August 2014, BSD issued the Homeowner six more regular permits for work already completed, based on photo documentation and admissions by BSD staff who witnessed such work.

As noted above, when the Homeowner applied for the air conditioning permit in January 2014, he attached a December 10, 2013, certified survey of his property. In addition to the air conditioning system, it showed the existence of a circular asphalt driveway, two concrete

---

[10] The OIG determined this was for electrical supply to outlets, television cameras, and a monitor, not the air conditioning unit.

[11] BSD permits designated permit #14030340 the "master" permit for eleven "sub-permits" issued to the Homeowner, including the four "sub-permits" issued on March 17, 2014.

[12] The city's chief building official and several code compliance officers told the OIG that they routinely used photos from the same websites to help determine whether work had been done prior to issuance of a permit.

[13] The OIG interviewed the permit services coordinator, who denied telling the Homeowner that he should apply for regular permits instead of after-the-fact permits.

slabs and walkway, as well as large lanai located in the rear of the home. All of those items were included in permits issued after the certified survey date. In fact, the OIG found that eight of the permit applications included a copy of the certified survey.[14] The survey was found in the permit documents for the air conditioning system, concrete slabs, asphalt driveway work, rear awning, lanai slab, and retaining wall atop the seawall. In five out of the eight instances in which the Homeowner submitted a certified survey with a permit application, the survey showed the work had been completed.

In a letter dated September 9, 2014, a local engineering firm vouched for some of the unpermitted work, and the Homeowner filed the letter with the city to show that the work was completed in compliance with the Code, a method the city accepted as an alternative to inspecting latent work. The city's chief building official explained, "The city cannot accept liability for something they did not inspect before it was concealed. Therefore, the testing performed by such a [architectural or engineering] firm is often forensic, x-ray or destructive testing to verify that concealed components meet code requirements."

Unlike the BSD, the OIG spoke to the engineer in question. He explained that he did not actually observe or inspect the work. Rather, he visited the Homeowner, whom he called a friend, and wrote the letter as a favor, basing it on items the Homeowner requested, including the construction of a two-by-six wood framed wall just inside the garage door, a patio slab installed at the rear of the home, and the installation of nine windows and a door. He advised that the Homeowner was a competent builder and may have performed all the construction himself. The engineer explained that, although he did not observe the window installation, he asked the Homeowner to remove a concrete anchor to ensure that it was the size required on the plans they reviewed together, and it did. The engineer did not observe any other work for the Homeowner.

On January 15, 2015, the now chief code compliance officer, and the former chief plumbing inspector went to the Homeowner's residence to look into a complaint from the Neighbors via the county (1) that oily water was draining into the canal from a utility sink drain line the Homeowner installed, and (2) that raw sewage was leaking into the ground from a water line coming out of the Homeowner's house. They did not find evidence of leaking wastewater, but they did observe a water line coming out of the Homeowner's wall.

The former chief plumbing inspector told the Homeowner that the BSD would waive after-the-fact fees if he would allow them into his home to inspect the water line to ensure it was properly tied to the sewer line. While in the home, the men saw that an unpermitted water line had been installed in a new bathroom and that there was an adjacent master bedroom and walk-in closet that had been completed in what used to be a carport. The code compliance chief told the OIG that he knew the master bathroom was not part of the permits issued in March 2014. He also told the OIG that the rear awning was not permitted, that there were no records for the carport conversion under the applicable permit number, and that he asked the Homeowner to apply for after-the-fact permits for the unpermitted work he saw.

[14] The Zoning Administrator told the OIG that the primary reason the BSD requires valid surveys and an accompanying affidavit for projects like fences, driveways, site walls, patios, decks, seawalls, docks, sheds and public sidewalks is that Zoning needs to ensure projects meet zoning requirements and do not encroach on setbacks.

Although the Homeowner did apply for eight permits between February and December 2015, including for work that the two officials did not observe on January 15, 2015, in every case, BSD issued regular permits, not after-the-fact ones, and even after learning that the work had been unpermitted when done, BSD staff and officials did not correct the record or assess the correct fees.

In summary, having reason to know that the Homeowner had completed renovation work prior to applying for permits, BSD never collected after-the-fact fees from the Homeowner. At the time the renovations in question were completed, the Homeowner was the owner of the property, and therefore, at least according to City Code § 9-47, he should have paid four times the cost of a regular permit fee for each of the twelve permits. Instead, the BSD charged him the standard permit fee for the permits.

In total, the Homeowner paid $2,538.62 in permit fees before technical fees and taxes. Had the BSD charged the Homeowner in accordance with City Code § 9-47, it would have charged him $10,154.48 before technical fees and taxes.

The City Did Not Consistently Assess and Collect After-the-Fact Permit Fees on Homeowners Generally

Given the state law prohibiting discrimination in the application of building permit fees,[15] the OIG endeavored to determine whether the Homeowner's situation was isolated or part of a broader pattern.

According to the witnesses we interviewed, in a complaint situation, the after-the-fact process began when code enforcement officers identified and verified Code violations. If the code enforcement officer placed a hold on the property record, this triggered a letter that required the property owner to apply for a permit at BSD. The building official told the OIG that it was BSD's obligation to definitively determine whether probable cause existed to believe there was a Code violation on unpermitted work and, if so, to require property owners to apply for after-the-fact permits to achieve compliance. Despite this and the written procedure outlined in the Background section above, A.H. and a code enforcement chief told us that the city, which fostered a culture of friendliness with its residents, was lenient on homeowners who performed unpermitted work. The city typically gave them 30 days to get a regular permit and thereafter imposed after-the-fact fees. Or, many times the inspector or BSD and homeowner verbally agreed on a resolution that did not include after-the-fact fees. Staff sometimes extended the 30 days, for example, when the homeowner was looking for a contractor.

The code enforcement officers' hold, if it was in the system as per the written procedure, alerted staff to the pending Code violations based on unpermitted work, triggering the requirement to process a permit application as an after-the fact permit and review the record to determine whether a double or quadruple fee applied. But staff did not consistently locate the after-the-fact notation and often ignored or missed the fact that a permit should have been processed as an after-the-fact permit. If the notation was in the proper place and the service

[15] "Fees charged shall be consistently applied." F.S. § 553.80(7).

clerk followed the correct process, the plans examiner was supposed to calculate and assess the after-the-fact fee(s).[16]

There was confusion within BSD regarding the interpretation and application of City Code § 9-47 and whether it ever required a double or quadruple fee. BSD officials and the former city manager cited to the conflict between the FBC and BORA amendment, which allowed for a penalty of up to another 100% of the regular fee (that is, up to double the regular fee), and the city code, which provided for a double or quadruple fee. Although the building official opined that the BORA amendment gave the city the authority to decide whether to impose a double fee, other officials including the former city manager said they did not know whether BORA preempted the city code. One structural plans examiner believed that quadruple fees were only for mechanical after-the-fact permits. The permit services coordinator who supervised and trained the service clerks who processed permit applications thought that the quadruple fee only applied on tree and landscaping permits. Some staff did not even know that the city code provided for a quadruple fee or that it was ever an option.

Most of the BSD staff and officials we spoke to understood that the practice was not to charge after-the-fact fees at all unless the offender was a contractor or a homeowner who was a repeat violator and that, if an after-the-fact fee was assessed, it was a double fee.

There was no consensus within BSD about who, other than the building official, had the authority to waive after-the-fact fees, but we know that many were waived, removed, or never assessed. Chief inspectors may have waived the fees themselves or only with the building official's approval, but we were unable to confirm either. It did become clear that certain omissions by code enforcement officers, in-office permit processors, plans examiners, and site inspectors and, in some cases, direction from chiefs resulted in after-the-fact fees not being assessed in the first place. Citing the lack of policy, the code compliance chief described the assessment decision as one that relied on the "human factor" and that he weighed the effects of deterrence, punishment, and compliance when deciding whether a fee ought to be waived. He also said that he received 10 to 15 requests per day to void after-the-fact permit records, although he rarely approved after-the-fact fee refunds.

We were particularly disturbed to learn that BSD officials and staff said there were no criteria or guidelines for determining when after-the-fact fees could be waived. No one in BSD could explain under what facts and circumstances this purported discretion could or should be used in the enforcement of City Code § 9-47.

In any event, City Code § 9-47 appears to have required the mandatory imposition of double and quadruple after-the-fact fees, and the former city manager denied authorizing the building official to waive them. These may be the reasons why there was no written authority granting anyone either the discretion not to assess them or the discretion to waive them after assessment.

[16] In mid-2017, after our investigation was well under way, the city employed a part-time code compliance officer to pre-review after-the-fact permit applications and note whether to assess a double fee.

BSD personnel whom we interviewed said that the C+ permit database system, which the city has scheduled in October 2019 to be replaced by a more robust program called Accela, did not have a dedicated location for capturing whether a past or the current property owner did work without permits. They further stated that the two modules for Code violations and permits did not interface with each other. Staff and officials blamed these reasons for the inconsistencies in documentation that we found. Witnesses who used the C+ system told the OIG that the audit trail problems had manifested years earlier because of a lack of system memory, and that they could not identify who entered much information, and, for this reason, we were unable to apportion responsibility for many of the records and omissions we found in the system during our investigation.

But the system was not solely to blame. If no one placed a hold in the system on the front end, there was no after-the-fact designation or fees on the back end. The OIG investigation noted that inadequate training on procedures, a generalized understanding that management disfavored punishing homeowners who tried to come into compliance, undocumented verbal agreements with property owners in the field, inadvertent omissions by inspectors, and the inconsistent use of the notes section all contributed to the lack of documentation concerning unpermitted work.

Statistical Analysis of After-the-Fact Permits and Fees

To determine whether the BSD assessed permit fees accurately, uniformly, and properly, the OIG set out to review a representative sample of closed after-the-fact permits. To do so, we requested a listing of all permits in the city's system from fiscal years 2014 through 2017. We then extracted all closed after-the-fact permits in that period. The OIG found that the total number of closed after-the-fact permits during this period was 2,421. Using a 95% confidence level and a 5% margin of error, our staff selected a random, stratified sample of 333 permits.[17] The OIG then reviewed and analyzed fee amounts in permit documentation available online in the city's public portal.

Our analysis uncovered inconsistency in how BSD charged for after-the-fact permits. The OIG found that, in approximately 60 percent of the cases in which the city processed after-the-fact permits, the BSD charged the permit applicant twice the regular permit fee. In approximately 38 percent of the cases, BSD charged the applicant the standard permit fee, that is, it did not charge an additional fee for commencing or completing unpermitted work. In the remaining approximately two percent of cases (involving seven occurrences), the BSD charged four times the regular permit fee, and all seven of those occasions were in 2016. The city charged one triple after-the-fact fee, also in 2016.[18]

[17] The OIG stratified the sample based on the number of after-the-fact permits that were closed per year. For example, 514 after-the-fact permits were closed in fiscal year 2014, which is approximately 21% of the population of 2,421. The OIG selected one additional 2014 permit for review. Therefore, 21% of the OIG's sample was from fiscal year 2014.
[18] The BSD instituted a new policy in September 2015 that stated, "If the application involves an after-the-fact permit, the processing fee doubles." Department of Sustainable Development – Building Services Building Division Master Policies and Procedures - Phase 1.B.1.6.

Even though City Code § 9-47 sets forth criteria for determining the amount of the after-the-fact fee—quadruple fee if the current homeowner is at fault and double fee if a prior homeowner is at fault—there was no field in the building permits or Code complaint documents to capture this information. In fact, the OIG found that the BSD did not generate or keep any records regarding whether the current homeowner was responsible for unpermitted work. Consequently, there was no way for the OIG to establish when the city should have assessed double or quadruple fees.[19] Moreover, without this information, we could only estimate a range of penalty fees that should have been charged.

The OIG estimated the range of uncharged fees in the sample to be between $62,763.99 (double fees) and $335,108.59 (quadruple fees). To calculate a range of uncharged fees, the OIG reviewed each of the 333 sampled permits and determined whether the city charged relevant after-the-fact fees at the rate of two times or four times. If the fee was charged one time, the OIG calculated an additional charge, as the minimum after-the-fact fee per the city's ordinance was two times the regular fee. The OIG also calculated three additional charges, for a total of four charges, as the maximum charge for after-the-fact permits was four times the fee. For example, the total fees collected for permit 14051320 was $458.15. Of this, $410.62 was related to the header permit type code[20] and should have at least been doubled as an after-the-fact fee. Since the city did not at least double the amount due, the OIG concluded that there were potential uncharged fees of $410.62 (one additional charge for a total of twice the fee) to $1,231.86 (three additional charges for a total of four times the fee). Furthermore, when the fee was already charged as two times the relevant after-the-fact fee, the OIG only calculated an additional two charges for a total of four times the after-the-fact permit fee because the minimum fee was already charged by the city.[21]

The OIG's sample analysis of closed after-the-fact permits did not include the Homeowner's twelve permits. This was because BSD did not require the Homeowner to obtain after-the-fact permits. This raised the question of why the city required some contractors and homeowners to obtain after-the-fact permits but not others, thereby allowing some to avoid after-the-fact fees. However, there was no way to quantify how often this occurred, because the BSD did not document when it granted a regular permit for previously unpermitted work.

Conclusions and Recommendations

The city did not follow its own procedures in processing the Homeowner's permits for work that had been commenced or completed. While the OIG found several of the Neighbors' assertions to be

---

[19] The OIG identified instances in which code enforcement inspectors recommended charging four times the normal permit fees, but the BSD did not consistently follow those recommendations.

[20] BSD staff explained that the division's practice was to only double or quadruple the fees associated with the header permit code. For example, if the header permit code was for building alterations and the improvements included structural, mechanical, electrical, and plumbing work, BSD only assessed the penalty fee on the building alteration code.

[21] The OIG notes that the potential amount of uncharged quadruple fees appears considerably higher than uncharged double fees. This is because the city did double the after-the-fact permit fees in 60% of our sample, therefore, the OIG only calculated potential additional uncharged work in approximately 38% of our sample. Contrastingly, the city only quadrupled after-the-fact permit fees approximately 2% of the time in our sample. Therefore, almost every permit sampled included potentially uncharged quadruple fees.

correct, our investigation did not substantiate that any city employee or official engaged in misconduct or gross mismanagement.

We understand and appreciate the city's priority of coaxing property owners into compliance with the FBC—especially where life-safety issues are concerned—without being overly strident or punitive and without discouraging property owners from seeking help in coming up to code.

But in order for the city to carry out the essential function of enforcing the FBC, it must have the trust of the public that it serves. In this matter, the Neighbors became so frustrated with BSD's lack of response to their complaints and apparent favoritism toward the Homeowner that they alleged that BSD officials had "falsified" records to avoid charging the Homeowner after-the-fact fees and avoid failing inspections where, for example, drywall had been installed and therefore concealed work underneath. Although the OIG did not substantiate that any BSD employee falsified any record or improperly favored the Homeowner, it did find that employees omitted entering information or taking action that may have either (1) resulted in staff issuing after-the-fact permits to the Homeowner or (2) assured the Neighbors that staff consistently, transparently, and even-handedly followed city policies and procedures.

We are particularly concerned that there were no criteria to guide the decisions of whether after-the-fact fees should be assessed, how much they should be, or whether they should be waived after assessment. It is patently impossible for the city to ascertain that it is applying after-the-fact fees uniformly and fairly without basing these decisions on approved criteria and then documenting what criteria were used in each case.

If the city were to more consistently charge and collect after-the-fact fees, it could then assess whether the fees were more than sufficient to cover the additional cost of after-the-fact enforcement; if so, the city could then adjust regular fees downward, accordingly.[22]

To strengthen consistency, transparency, the appearance of fairness, and financial prudence in the city's Code enforcement process, the OIG recommends the following:

- Conduct the electrical inspection related to supplying power to the Homeowner's central air conditioning system, a life-safety concern, and follow up on any Code violation as appropriate;

- Obtain a legal opinion on whether the city should conform its code (City Code § 9-47) to BORA's after-the-fact fee limit of up to double the regular fee (BORA Local Amendment § 109.3.3), amend the city code if necessary, and adopt a policy and direct staff in conformance with the decision;

- Ensure that Accela captures the criteria required by the city code (today, whether the work was done by the current homeowner or a prior homeowner) and provides for a calculation of fees thereon;

[22] The 2019 Florida legislature passed, and the governor signed into law, an amendment to F.S. § 553.80(7), which now requires political subdivisions within the state to gather and post online the information necessary to enable the city to make such an assessment. Chapter 2019-121, Florida Laws (effective July 1, 2019).

- Develop and publish to employees and the public the procedures necessary to resolve a Code violation where unpermitted work was commenced or completed. Consider codifying the procedures. Include that, once a Code violation is verified in the field, that the notification letter must be issued and the after-the-fact permitting process must ensue, with exceptions justified upon predetermined criteria, approved, and documented by authorized personnel. Include that after-the-fact fees must be assessed for every after-the-fact permit issued, who is to make the calculation, how such fees must be calculated, who must approve or waive them, the recognized criteria and factual basis upon which any waiver is granted, and the requirement to document and make transparent all of these decisions;

- Include in the protocol a prohibition against avoiding processing a permit as an after-the-fact permit if the record indicates there is a pending Code violation for previously unpermitted work or to avoid calculating after-the-fact fees; and

- Include in the waiver criteria such factors as whether the property owner is a new owner (defining new owner), whether the property owner or contractor is a repeat violator, whether the violation was intentional, whether the violation involves life-safety, the property owner's financial hardship and the basis for concluding financial hardship, and whether the property owner voluntarily applied for an after-the-fact permit.

The OIG appreciates the cooperation of the city and its staff during this review. OIG staff are available to discuss our observations and to continue to work with city management as they address the concerns raised here.

cc: Chris Lagerbloom, City Manager
Alain Boileau, City Attorney