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October 2, 2019

John W. Scott, Inspector General
Office of the Inspector General
One North University Drive, Suite 111
Plantation, FL 33324

RE: Response to OIG Closing Memorandum 15-017

Dear Inspector General Scott:

This letter is in response to the findings of your investigation of the City of Fort Lauderdale's building code enforcement and assessment of after-the-fact permit fees as stated in your Closing Memo 15-017, dated August 27, 2019.

The following are responses from City staff to the six areas of improvement identified in your memo:

1. *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;*

Response: Disagree - Work performed on the air conditioner was determined to be a replacement of an existing unit as evidenced by previous permit history on the property and as determined by the Chief Electrical Inspector. As per Section 489.105(f), Florida Statutes, a Class A air conditioning contractor may disconnect or reconnect power wiring on the load side of the dedicated existing electrical disconnect switch. Additionally, an electrical permit (15011916) was issued, that included adding a power supply to support A/C replacement. As such, we disagree with the OIG recommendation that an electrical permit or inspection is required.

2. *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;*

Response: Agree - We are in the process of amending Section 9-47 to conform with Section 109.4 of the Broward Edition of the Florida Building Code.

Office of the City Manager

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Section 109.4 of the Florida Building Code, Sixth Edition, Broward County Amendments, authorizes the Building Official to impose a "penalty not to exceed 100 percent of the usual permit fee that shall be in addition to the required permit fees."

Section 9-47 of the Code of Ordinances of the City of Fort Lauderdale states:

Where it can be determined that the current owner is responsible, four (4) times the amount(s) shown in the regular schedules in this division.

Where it cannot be established that current owner is responsible, double the amount(s) shown on the schedules in this division.

Section 9-47 was last amended on December 16, 1986, however the schedule for fees has been amended numerous times since 1986. An amendment to this section of the Code of Ordinances is being drafted and will be forthcoming. In this case, the City cannot impose fines that are more restrictive than those established by state statute. Therefore, the draft language will follow the guidelines established in Section 109.4 of the Florida Building Code, Broward Edition.

3. *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;*

Response: Agree - The Department is in the final phase of replacing the existing CommunityPlus (commonly called C+) land management software with LauderBuild, commonly referred to as Accela. The issue identified by the OIG was recently brought to the attention of department management and will be addressed with additional customization after system Go-Live. Until the new system is up and running, these calculations will be made manually at the discretion of the Building Official for fees pertaining to after-the-fact work performed by a homeowner or a prior homeowner.

4. *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;*

Response: Agree - To be consistent with the Broward Edition of the Florida Building Code and the anticipated amendment to Section 9-47(1) and (2) of the City's Code of Ordinances, the existing after-the-fact permitting policy and procedure document will be amended, formalized and made accessible for all staff in the Building Services Division. Additionally, an after-the-fact permitting policy and procedure will be made accessible to the public via a link on the City's website.

5. *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;*

Response: Agree - This will be incorporated into the updated policy and procedure document mentioned in an earlier response. The new protocol will also align with the workflow path developed in LauderBuild.

6. *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.*

Response: Updating the existing policy and procedure will include specifically outlining the discretionary authority of the Building Official to examine each suspected violation on a case-by-case basis and apply fees and fines in a fair and appropriate manner including up to maximum penalties for repeat offenders. While staff generally agrees with the OIG recommendation, staff also believes that no established criteria exists to address every situation and a certain level of flexibility should be provided within the updated policy.

We appreciate the time and effort spent investigating this matter and, where applicable, we will be implementing changes found in your findings.

Sincerely,



Chris Lagerbloom, ICMA-CM
City Manager