

Seawall Revocable Permit

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 82, OF THE CITY CODE, ENTITLED "PUBLIC PROPERTY;" AMENDING DIVISION 2, ENTITLED "REVOCABLE PERMIT;" CREATING A NEW SECTION 82-97, ENTITLED "APPLICATION REQUIREMENTS FOR SEAWALLS ENCROACHING ON CITY SUBMERGED LANDS;" AND FURTHER AMENDING DIVISION 2 TO ENSURE CONSISTENCY AND CLEAN UP OF THE LANGUAGE OF THE CODE; PROVIDING CODIFICATION; REPEALER; SEVERABILITY; AND AN EFFECTIVE DATE.

WHEREAS, certain canals, which were constructed by the City, are the property of the City of Miami Beach; and

WHEREAS, property owners that front City-owned canals often seek to fix or upgrade their seawalls; and

WHEREAS, to replace an existing seawall can be an incredibly expensive process for the property owner; and

WHEREAS, alternatively, placing a new seawall, in front of the existing seawall, and backfilling between the existing and the new seawall extends the length of the subject property, but encroaches into the City's canal; and

WHEREAS, the alternative method can be more cost effective for the property owner; and

WHEREAS, in order to assist property owners with a cost effective alternative to replacing seawalls, the City administration recommends creating a revocable permit process so that property owners adjacent to City owned canals, can reconstruct, in a cost efficient manner, seawalls that are resilient to sea level rise; and

WHEREAS, the Administration also recommends additional amendments to the revocable permit procedures outlined in the City Code, in order to streamline such process and make it more efficient and user friendly.

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

SECTION 1. Chapter 82 of the City Code, entitled "Public Property," at Division 2, entitled "Revocable Permits," is hereby amended to, amongst other things, create Section 82-97, entitled "Application requirements for seawalls encroaching on city submerged lands." Chapter 82, Division 2, is further amended, as set forth herein, to streamline and make the City's Revocable Permit process more efficient.

CHAPTER 82

PUBLIC PROPERTY

DIVISION 2. - REVOCABLE PERMIT

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Sec. 82-91. - Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Property or City Property means any land, water (including, without limitation, the city's submerged lands), or air rights owned or maintained by the city, or in which the city holds an interest.

Revocable permit means permission granted₁ in writing₁ for any use of ~~real~~ property owned or maintained by the city, or in which the city holds an interest, by a person or entity₁; establishing conditions for such use₁; providing for revocation by the city₁; and establishing requirements for return of the property upon termination/revocation.

Sec. 82-92. - Application requirements.

Applicants for revocable permits shall submit the following application requirements prior to city commission consideration of the request:

(1) A completed application obtained from the city's public works department ~~and approved by the city attorney's office.~~

(2) A title binder or title commitment or attorney's title opinion regarding title to the ~~subject~~ city property and to the applicant's property abutting the ~~subject~~ city property₁ as required by the city attorney.

(3) A statement explaining the reason for the applicant's request and showing the need for a revocable permit in connection with use of the applicant's property ~~and/or for purposes of preservation or protection of life, limb or property.~~

(4) A topographic survey by a registered surveyor showing existing conditions and a drawing done to scale depicting the ~~public city~~ property ~~that is the subject of the request~~ and the improvements proposed by the applicant, and indicating the exact dimensions of the improvements and materials from which the improvements will be constructed.

(5) A map of the subject area showing the ~~subject city~~ property highlighted and indicating all properties within a 375-foot radius of the ~~subject~~ property.

(6) A list (on gummed labels suitable for mailing) of names and addresses of all ~~property~~ owners of land located within 375 feet of the exterior boundary of the ~~subject city~~ property, and a list containing the legal description of land owned by each property owner of land within the 375-foot radius.

(7) A certified letter stating that the ownership list map and mailing labels are a complete and accurate representation of the real property and owners of land within a 375-foot radius of the ~~subject~~ city property and stating the source of the information.

(8) A topographic survey of the applicant's property by a registered surveyor.

(9) A nonrefundable application fee and a mailing fee, in the amount specified in appendix A. Additionally, the applicant shall pay all costs of advertising connected with the request. For applications involving uses of city property that have occurred or are on-going at the time of application the application fee shall be as specified in appendix A.

Sec. 82-93. - Procedures for city commission consideration of the request.

(a) Upon receipt of a completed application for a revocable permit under the provisions of Section 82-92 or Section 82-97 (for permit applications for seawalls that encroach into the city's submerged lands by more than four (4) feet), the city's public works department shall ~~transmit the application to the city attorney's office. The city attorney's office shall prepare a resolution setting~~ set a date for a public hearing on the request ~~and shall submit the resolution for commission consideration.~~

(b) For public hearings on applications subject to Section 82-92 and Section 82-97(a)(5), the city shall provide mail notice of the public hearing, at least 15 days prior to the hearing to owners of land lying within 375 feet of the ~~subject~~ applicant's property. The notice shall indicate the date, time and place of the hearing and the nature of the request and shall invite written comments and/or participation at the hearing.

(c) ~~The city attorney's office~~ public works department shall prepare the ~~proposed revocable permit and an~~ appropriate resolution granting the revocable permit for consideration by the city commission and, if the permit is approved, shall thereafter prepare and issue the proposed revocable permit.

(d) The city administration shall review the request and prepare a recommendation based upon the factors set forth in section 82-94, which report shall be transmitted to the city commission prior to the public hearing on the matter.

(e) At the close of the public hearing, the city commission may grant or deny the request. In so doing the commission may modify the proposed revocable permit.

(f) If the request is denied, no application may be made based upon the same request for a period of six (6) months from the date of the denial.

(g) The applicant may withdraw the request at any time prior to the public hearing. If the request is withdrawn prior to expenditure of costs for advertising and mail notice, the mailing fee and advertising costs specified in section 82-92 or section 82-97, as applicable, shall be refunded to the applicant. If a request is withdrawn or deferred at the applicant's request after the expenditure of costs for the advertising and mailed notices, these costs will not be refunded and an additional mailing fee and advertising fee shall be assessed prior to rescheduling of the hearing. When a request is deferred at the city's request, no additional fee shall be assessed.

Sec. 82-94. - Criteria for granting/denying revocable permits.

(a) Revocable permits shall be granted or denied based upon existence of the following criteria:

- (1) That the applicant's need is substantial.
- (2) That the applicant holds title to an the abutting property.
- (3) That the proposed improvements comply with applicable codes, ordinances, regulations, neighborhood plans and laws.
- (4) That the grant of such application permit will have no adverse effect on governmental/utility easements and uses on the city property.
- (5) Alternatively:

~~a. That an unnecessary hardship exists that deprives the applicant of a reasonable use of the land, structure or building for which the revocable permit is sought arising out of special circumstances and conditions that exist and were not self-created and are peculiar to the land, structures or building involved and are not generally applicable to other lands, structures or buildings in the same zoning district and the grant of the application is the minimum that will allow reasonable use of the land, structures or building; or~~

~~b. That the grant of the revocable permit will enhance the neighborhood and/or community by with such amenities as, for example, but without limiting the foregoing, enhanced landscaping, improved drainage, improved lighting, and improved security, and/or public benefits proffered by the applicant;:-~~

(6) That granting the revocable permit requested will not confer on the applicant any special privilege that is denied by this article to other owner of land, structures or buildings subject to similar conditions located in the same zoning district.

(7) That granting the revocable permit will be in harmony with the general intent and purpose of this article, and that such revocable permit will not be injurious to surrounding properties, the neighborhood, or otherwise detrimental to the public welfare.

In order to grant a revocable permit, the city commission must make an affirmative finding with respect to each of the criteria set forth above. These findings may be made by one motion addressed to all findings or, at the request of any member of the commission, a finding or findings shall be considered separately. ~~The findings shall be made prior to the vote on the application.~~ The revocable permit application shall be considered as a whole unless any member of the city commission shall request that the application be considered in parts, in which event the application shall be considered in such parts as requested. In light of the particular circumstances involved with each separate revocable permit request, the grant of any revocable permit shall not constitute or be deemed a precedent for the grant of any other revocable permit.

(b) In addition, to the criteria, in section 82-94(a), above, revocable permits for seawalls under Section 82-97, shall require compliance with the following additional criteria:

(1) The seawall location may not, in any circumstance, be built at a location that would interfere with navigability. Should the proposed seawall interfere with navigability of the city's property (i.e., in this case, of the canal), then the applicant will be required, at its sole cost and expense, to dredge and replace the existing seawall.

(2) The city shall execute a perpetual easement in favor of the applicant, in a form reasonably acceptable to the city attorney, for as long as there is an encroachment into the city's submerged land. The easement will allow the applicant to use the city's land by filling in the submerged lands, and obtaining access to the canal.

(3) The applicant shall be solely responsible for maintaining the seawall.

(4) General liability coverage of not less than \$1,000,000, is required by the applicant. It shall include the City of Miami Beach as an additional insured, and shall contain a waiver of subrogation endorsement. All of the applicant/permittee's certificates shall contain endorsements providing that written notice shall be given to the city at least 30 days prior to termination, cancellation or reduction in coverage in the policy.

(5) The applicant shall indemnify and hold the city harmless for applicant's use of the city property covered by the revocable permit.

Sec. 82-95. - Conditions, termination/revocation of revocable permits.

(a) Each revocable permit shall state conditions for its issuance, including, but not limited to:

(1) Use the permittee shall be permitted to make of the city property premises;

(2) The nature of the improvements permitted on the city property premises;

(3) Requirements for maintenance of the city property premises by the permittee;

(4) Requirements for indemnification of the city by the permittee and insurance as approved by the city's risk manager, including submission annually of proof of such insurance;

(5) Requirements for condition of the city property premises when it is returned to the city upon termination or revocation of the revocable permit;

(6) Nonassignability of the permit, ~~as evidenced by submission of an affidavit of ownership; and~~

(7) City and or its authorized representatives' right of entry on the city property to repair utilities within any city easement, to inspect the property to assure that it is being used and maintained in accordance with the permit, or to remove unauthorized improvements.

(b) As a further condition of holding a revocable permit, the permittee shall pay an annual permit fee, as specified in appendix A. The fee shall be due on October 1 of each year and shall be prorated on a monthly basis for permits granted at other times during a permit year. The fee shall be collected by the public works department or by such other department as may be designated by the city manager. Notice of the amount due and instructions for payment shall be provided to permittees at least 60 days prior to October 1 of each year. The permit fee shall be applicable to existing and future permits. If the permit is revoked or otherwise terminated prior to expiration of the year for which the annual permit fee was paid, a prorated portion of the fee will be refunded to the permittee.

(c) Unless otherwise stated in the revocable permit, the permit shall terminate after the expiration of 20 years, unless surrendered or revoked at an earlier date.

(d) All revocable permits shall be revocable at the sole discretion of the city commission, which revocation may be without cause and for convenience, upon ten (10) days' prior written notice to the permittee.

(e) The public works department, or other department as may be designated by the city manager, shall notify permittee of any violations of the permit conditions. Any violations remaining uncorrected after ten (10) days from receipt of such notice shall be reported to the city manager and the city commission.

(f) Revocation shall be by resolution of the city commission. No public hearing shall be required; however, the permittee or his representative shall be heard upon request prior to a commission vote on the resolution.

(g) When a revocable permit is granted, the grantee permittee shall be responsible solely for recording the permit in the public records of the Miami-Dade County ~~county~~ and shall provide a copy of the recorded permit to the city clerk and the City's public works department within 30 days of the city commission's decision to grant the permit. Failure of the permittee to record a permit shall be cause for immediate revocation of the permit.

Sec. 82-97. Application requirements for revocable permits for seawalls encroaching on city submerged lands.

(a) Applicants for revocable permits adjacent to the city's submerged lands may be required to build or re-build seawalls, and which seawalls cannot be located within the city's submerged lands, at more than four feet (4') from the property line, at its most distant location, without a revocable permit from the city. Property along canals owned by the city that encroach into the city's submerged lands shall submit the following application requirements to the city's public works department prior to any consideration of the request for revocable permit:

(1) A completed application obtained from the city's public works department.

(2) A title binder or title commitment or attorney's title opinion regarding title to the city property and to the applicant's property abutting the city property, as required by the city attorney.

(3) A statement explaining the reason for the applicant's request and showing the need for a revocable permit in connection with use of the applicant's property.

(4) A topographic survey by a registered surveyor showing existing conditions and a drawing done to scale depicting the city property that is the subject of the request and the improvements proposed by the applicant, and indicating the exact dimensions of the improvements and materials from which the improvements will be constructed.

(5) For a revocable permit application for a seawall that encroaches into the city's submerged lands by more than four (4) feet:

(i) a map of the subject area showing the city property highlighted and indicating the owners of land on either side of the applicant's property.

(ii) a list (on gummed labels suitable for mailing) of the names and addresses of the owners of land on either side of the applicant's property.

(iii) A certified letter to the city stating that the ownership list map and mailing labels are a complete and accurate representation of the owners of land on either side of the applicant's property and stating the source of the information.

(6) A topographic survey of the applicant's property by a registered surveyor.

(7) A non-refundable application fee and a mailing fee, in the amount specified in appendix "A," entitled "Fee schedule." Additionally, the applicant shall pay all costs of advertising connected with the request.

(8) Applications for revocable permits for a seawall that encroaches into the city's submerged lands by less than four (4) feet: (i) shall be reviewed, considered, and approved administratively by the city's public works department, which shall consider the criteria in section 82-94; (ii) shall not require a public hearing under section 82-93 but, alternatively, shall require a building permit.

Secs. 82-98—82-125. - Reserved.

SECTION 2. 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 3. REPEALER.

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

SECTION 4. SEVERABILITY.

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

SECTION 5. EFFECTIVE DATE.

This Ordinance shall take effect 10 days following adoption.

PASSED and ADOPTED this _____ day of _____, 2018.

ATTEST:

Dan Gelber, Mayor

Rafael E. Granado, City Clerk

First Reading: September 12, 2018

Second Reading:

(Sponsor: Commissioner John Elizabeth Aléman)

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION



City Attorney

9-4-18

Date

Underscore denotes new language

~~Strikethrough~~ denotes removed language