

Condensed Title:

An Ordinance Of The Mayor And City Commission Of The City Of Miami Beach, Florida, Amending Chapter 14 Of The City Code. Entitled "Building Regulations," By Amending Article II, Entitled "Construction Standards," By Amending Division 1, Entitled "Generally," By Amending Section 14-403, Entitled "Penalty For Violation Of Article," To Provide For The Enforcement Of Non-Functioning ADA Lifts And Single Elevators By Citation; And Amending Section 14-444, Entitled "Schedule Of Violation Fines," By Adding a Citation And Fine Schedule For The Enforcement Of Non-Functioning ADA Lifts And Single Elevators In Multi-Story Buildings; Providing For Codification Repealer, Severability, And An Effective Date.

Key Intended Outcome Supported:

- Increase Resident Satisfaction With Level of Code Enforcement
- Ensure Compliance with Code Within Reasonable Time Frame

Supporting Data (Surveys, Environmental Scan, etc.):

Environmental Scan of 2008 Shows That the Number of Warnings for Property Maintenance Decreased by 39%; 2007 Community Survey Suggests that 61% of the City's residents are very satisfied or satisfied with the fairness and consistency of the enforcement of codes and ordinances in their neighborhoods.

Issue:

Shall the Mayor and the City Commission Approve The Amendments to the Ordinance?

Item Summary/Recommendation:

FIRST READING

At the Neighborhood/Community Affairs Meeting on Wednesday, March 26, 2008 a discussion was held concerning wheelchair lift maintenance and its impact on the public building and Group R buildings' accessibility for disabled and elderly residents. The Committee instructed the Administration to draft an ordinance, which will change the enforcement mechanism of the elevator section of the City Code pertaining to ADA lifts and single elevators, to be presented to full City Commission for approval. The Committee also approved a motion to refer this item to the City Commission.

ADA lifts and single elevators in multi-story buildings require special attention by both property owners and the City's regulatory agencies. They are used by disabled or elderly persons to gain access to public buildings and residential Group R buildings. In a situation where a building has only one elevator, it is crucial that service is not interrupted for any substantial period of time as certain individuals are not capable of negotiating the stairs and will be confined to their apartment or unit without elevator service.

The City receives an average of 2-3 calls per week from individuals who cannot buy groceries or go to their doctor because of a non-functioning elevator in their building. Fire Rescue has called the Chief Elevator inspector a number of times informing him that, in some instances, Fire Rescue has to provide daily or twice daily assistance to individuals who need to go to the doctor.

The proposed amendments are intended to increase compliance to the ADA lifts and single elevators requirements by providing for the implementation of the following schedule of violation fines:

1 st offense within a moving 12 month period:	Written warning with explanation of rule
2 nd offense within a moving 12 month period:	Citation of \$250.00
3 rd offense within a moving 12 month period:	Citation of \$500.00
4 th offense within a moving 12 month period:	Citation of \$1,000.00
5 th offense within a moving 12 month period:	Citation of \$2,000.00
6 th offense within a moving 12 month period:	Suspension of buildings occupational license pursuant to Chapter 102, City Code

The Administration recommends adopting the ordinance on the first reading.

Advisory Board Recommendation:

The Neighborhoods/Community Affairs Committee met on March 26, 2008, and recommended this item to the City Commission.

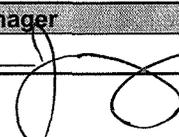
Financial Information:

Source of Funds:	Amount	Account	Approved
1	N/A	N/A	
OBPI	Total		

Financial Impact Summary:

City Clerk's Office Legislative Tracking:

Sign-Offs:

Department Director	City Manager
AR 	JMG 





MIAMI BEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, www.miamibeachfl.gov

COMMISSION MEMORANDUM

TO: Mayor Matti Herrera Bower and Members of the City Commission

FROM: Jorge M. Gonzalez, City Manager

DATE: October 7, 2008

FIRST READING

SUBJECT: AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 14 OF THE CITY CODE, ENTITLED "BUILDING REGULATIONS," BY AMENDING ARTICLE II, ENTITLED "CONSTRUCTION STANDARDS," BY AMENDING DIVISION 1, ENTITLED "GENERALLY," BY AMENDING SECTION 14-403, ENTITLED "PENALTY FOR VIOLATION OF ARTICLE," TO PROVIDE FOR THE ENFORCEMENT OF NON-FUNCTIONING ADA LIFTS AND SINGLE ELEVATORS BY CITATION; AND AMENDING SECTION 14-444, ENTITLED "SCHEDULE OF VIOLATION FINES," BY ADDING A CITATION AND FINE SCHEDULE FOR THE ENFORCEMENT OF NON-FUNCTIONING ADA LIFTS AND SINGLE ELEVATORS IN MULTI-STORY BUILDINGS; PROVIDING FOR CODIFICATION, REPEALER, SEVERABILITY, AND AN EFFECTIVE DATE.

ADMINISTRATION RECOMMENDATION

Adopt the Ordinance.

BACKGROUND

At the Neighborhood/Community Affairs Meeting on Wednesday, March 26, 2008 a discussion was held concerning wheelchair lift maintenance and its impact on the public building and Group R buildings' accessibility for disabled and elderly residents. The Committee instructed the Administration to draft an ordinance, which will change the enforcement mechanism of the elevator section of the City Code pertaining to ADA lifts and single elevators, to be presented to full City Commission for approval. The Committee also approved a motion to refer this item to the City Commission.

Wheelchair lifts and single elevators in multi-story buildings require special attention by both property owners and the City's regulatory agencies. They are used by disabled or elderly persons to gain access to public buildings and residential Group R buildings. In a situation where a building has only one elevator, it is crucial that service is not interrupted for any substantial period of time as certain individuals are not capable of negotiating the stairs and will be confined to their apartment or unit without elevator service.

The City receives an average of 2-3 calls per week from individuals who cannot buy groceries or go to their doctor because of a non-functioning elevator in their building.

Fire Rescue has called the Chief Elevator inspector a number of times informing him that, in some instances, Fire Rescue has to provide daily or twice daily assistance to individuals who need to go to the doctor.

LEGAL REQUIREMENTS

The issue presented involves a request that the City Manager use his rule-making authority to adopt an administrative rule requiring maintenance of wheelchair lifts and single elevators by property owners. Elevators and wheelchair lifts are governed by Florida Statutes, the Florida Building Code and the Florida Fire Prevention Code. Fla. Stat. § 553.513 (Attached) is clear that the City is without authority to adopt its own rules regarding wheelchair lifts; those standards are preempted to the State and expressly supersedes any county or municipal ordinance on the subject. The Miami-Dade Building Code Compliance concurred that neither the City nor the County could establish different maintenance standards for wheelchair lifts or elevators. However, the Statute does permit municipalities and counties to provide their own enforcement.

PROPOSAL

The City Attorney's Office and Building Department agreed that an alternative means of enforcement would improve the maintenance of working wheelchair lifts. The process of issuing a regular notice of violation and then proceeding through the Special Master process takes too much time for the repair to be effected. Therefore, it is proposed that a citation system be created to achieve property owner compliance, as follows:

1 st offense within a moving 12 month period:	Written warning with explanation of rule
2 nd offense within a moving 12 month period:	Citation of \$250.00
3 rd offense within a moving 12 month period:	Citation of \$500.00
4 th offense within a moving 12 month period:	Citation of \$1,000.00
5 th offense within a moving 12 month period:	Citation of \$2,000.00
6 th offense within a moving 12 month period:	Suspension of buildings occupational license pursuant to Chapter 102, City Code

The enforcing agency would be the Building Department, Elevator Section. The implementation of the citation system requires a City Commission revision to the City Code, Chapter 14.

Additionally, since the NFPA 101, 2005 Ed., Sec. 7.2.13.10 requires that where an elevator lobby is served by only one elevator car, the elevator evacuation system shall have a program of scheduled maintenance during times of building shutdown or low building activity. It further requires that repairs shall be performed within 24 hours of breakdown. It is also suggested that this Code requirement would be enforced by the Elevator Section of the Building Department and fall within this proposed citation system. There would be some discretion allowed for repairs that could not be completed within 24 hours. In those instances, the property owner would be required to submit a letter of intent with a plan of corrective action to be approved by the Elevator Safety Section of the Building Department. Any grace period, given at the sole discretion of that Section would override the citation system. The certificate of corrective action would be required to be posted in the certificate frame near the elevator unit itself to better apprise the building residents, guests and invitees of the process of repair.

The Elevator Section will provide a standard notification letter to all relevant buildings informing them about the changes in the enforcement mechanism pertaining to proper maintenance of wheelchair lifts and single elevators.

CONCLUSION

The proposed amendments to the elevator section of the City Code pertaining to ADA lifts and single elevators addresses the concerns of public building and Group R buildings' accessibility for disabled and elderly residents. The proposed amendments are intended to increase compliance to ADA lifts and single elevators requirement through establishing a more effective enforcement mechanism. The Administration recommends that the Mayor and City Commission approve the ordinance on the first reading.

JMG/AR/VJ

AL

ORDINANCE NO: _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 14 OF THE CITY CODE, ENTITLED "BUILDING REGULATIONS," BY AMENDING ARTICLE II, ENTITLED "CONSTRUCTION STANDARDS," BY AMENDING DIVISION 1, ENTITLED "GENERALLY," BY AMENDING SECTION 14-403, ENTITLED "PENALTY FOR VIOLATION OF ARTICLE," TO PROVIDE FOR THE ENFORCEMENT OF NON-FUNCTIONING ADA LIFTS AND SINGLE ELEVATORS BY CITATION; AND AMENDING SECTION 14-444, ENTITLED "SCHEDULE OF VIOLATION FINES," BY ADDING A CITATION AND FINE SCHEDULE FOR THE ENFORCEMENT OF NON-FUNCTIONING ADA LIFTS AND SINGLE ELEVATORS IN MULTI-STORY BUILDINGS; PROVIDING FOR CODIFICATION, REPEALER, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, non-functioning ADA lifts and single elevators in multi-story buildings have been a topic of concern within the City of Miami Beach and have recently been the subject of discussion to address modified enforcement and legislative solutions; and

WHEREAS, in a situation where a building has only one elevator or an ADA lift, it is crucial that service is not interrupted for any substantial period of time, as certain individuals are not capable of negotiating a staircase and will be confined to their apartment or unit without elevator or ADA lift service; and

WHEREAS, the City's current means of enforcement include issuing a regular notice of violation and proceeding through the Special Master process to achieve compliance; and

WHEREAS, a citation and fine schedule will provide for a stronger means of enforcement, with the first offense triggering a moving 12-month cycle of enforcement; and

WHEREAS, the purpose of providing the citation and fine schedule is to obtain compliance with non-functioning ADA lifts and elevators in the City before imposing fines and other penalties.

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

SECTION 1.

Chapter 14, Article 2, Section 14-403 of the Miami Beach City Code is hereby amended as follows:

Sec. 14-403. PENALTY FOR VIOLATION OF ARTICLE.

(a) Any person who shall violate or fail to comply with any of the provisions of this article or with any of the requirements of this article, shall be brought before the special master of the city. The special master may assess a fine and impose a lien to the maximum allowed by city ordinance and state law; or, in the alternative, the violation may be brought to the county court. Each day such violation shall be permitted to exist shall constitute a separate offense. The owner of any building or premises, or part thereof, where anything in violation of this article shall be placed or shall exist, and any person employed in connection therewith and who has assisted in the commission of any such violation may be guilty of a separate offense and upon conviction fined as provided in this section.

(b) Any person who shall violate or fail to comply with any of the provisions of this article or with any of the requirements thereof shall be subject to a delinquency penalty as specified in appendix A.

(c) A special master, appointed as provided in article II of chapter 30 may either revoke or temporarily suspend the business license of any person in accordance with the procedures set forth in chapters 18 and 102 of this Code when it is determined that the licensee is conducting business from premises that do not possess a valid and current certificate of occupancy and/or certificate of use as may be required by city or county laws.

(Ord. No. 2002-3360, § 1, 4-10-02)

(d) For violations of Section 553.509, Florida Statutes, which pertains to the requirement to provide vertical accessibility under the "Florida Americans with Disabilities Act," in buildings without active elevator or ADA lift construction, a code compliance officer, inspector or official in building services department may issue a citation in the manner provided in Section 14-442 (b). The Schedule of violation fines shall be set forth in Section 14-444 hereof.

The citation may be appealed by filing a written request for an administrative hearing with the clerk of the special master within ten (10) days after service of the notice of violation. Failure to do so shall constitute an admission of the violation and waiver of the right to a hearing, and unpaid fines will result in the imposition of liens which may be foreclosed by the city. The citation shall also inform the violator that repeat violations of this Section will result in the imposition of larger fines and may also result in revocation, suspension, or the imposition of restriction on an occupational license, and/or certificate of use, or accessory use, and/or injunctive proceedings as provided by law.

SECTION 2.

Chapter 14, Article 2, Section 14-444 of the Miami Beach City Code is hereby amended as follows:

The following fines shall apply to the citation of building violations as provided in Sections 14-403 and 14-442:

Miami-Dade County Code Violations

TABLE INSET:

Section	Violation	Fine
MC 2-103.21	Use of fire hydrant without permit	\$200.00
MC 2-103.21	Use of fire hydrant without meter	100.00
MC 10-3(a)	No certificate of competency as a master, contractor, subcontractor or qualifying agent	500.00
MC 10-3(a)	No certificate of competency as a journeyman, maintenance person, installer or other similar tradesman	200.00
MC 10-22(a)	Contracting for work outside the scope of certificate of competency	500.00
MC 10-22(b)	Abandonment of job	500.00
MC 10-22(g)	Failure to fulfill contractual obligations	500.00
MC 10-22(h)(1)	Aiding and abetting a person not holding a certificate	500.00
MC 10-22(h)(2)	Allowing a certificate to be used by an unauthorized person	500.00
MC 10-22(h)(3)	Failure of permit holder to supervise, direct and control a job	500.00
MC 10-22(h)(4)	Subcontracting work to a person not holding a certificate	500.00
MC 10-22(i)	Failure to supervise, direct and control all work	500.00
MC 10-22.1(a)	Working outside the scope of the certificate or acting as a contractor	500.00
MC 10-22.1(b)	Departure from or disregard of plans or specifications without consent of the qualifying agent	500.00

MC 10-22.1(d)(1)	Aiding or abetting any person not holding a certificate of competency	500.00
MC 14-58	Violation of standards adopted by this chapter	100.00
MC 14-62	Refusal to allow inspection	100.00
MC 24-11(1)	Prohibitions against water discharge. It shall be unlawful for any person to throw, drain, run or otherwise discharge into any of the waters of county, or to cause, permit or suffer to be thrown, run, drained or allowed to seep or otherwise be discharged into such water any organic or inorganic water	500.00
MC 24-11(3)	Discharges affecting water quality. It shall be unlawful for any person to discharge sewage, industrial wastes, cooling water and solid wastes or any other wastes into the waters of this county, including but not limited to surface water, tidal salt water estuaries or groundwater	500.00
MC 24-11(9)(a)(1)(2)	Sewer discharge limitations. It shall be unlawful for any person to throw, drain, run or otherwise discharge into a sewer designed to carry stormwater, or to cause, permit or suffer to be thrown, run, drained, allowed to seep or otherwise discharge into such sewer	500.00
	All other violations of chapter 10, Miami-Dade County Municipal Code	200.00

Florida Building Code Violations

TABLE INSET:

Section	Violation	Fine
Chapter 8 Miami-Dade County Municipal Code	Failure to maintain a building or structure in a safe condition; failure to maintain devices or safeguards in good working order	\$100.00
Chapter 8 Miami-Dade County Municipal Code	Failure to remove debris, equipment, sheds or materials	100.00
Chapter 8 Miami-Dade County Municipal Code	Failure to secure buildings and equipment	100.00
Chapter 8 Miami-Dade County Municipal Code	Failure to comply with lawful stop work order	500.00

Florida Building Code, Building 104.6.2	Failure to obtain a permit	100.00
Florida Building Code, Building 105.5	Failure to display a permit card	50.00
Florida Building Code, Building 105.6	Failure to obtain mandatory inspection	250.00
Florida Building Code, Building 106.3	Unlawfully connecting utility service	500.00
Florida Building Code, Building, Chapter 11	Failure to provide required accessibility in compliance with the Florida Americans with Disabilities Accessibility Implementation Act	50.00
Florida Building Code, Building 3303.2	Exceeding allowable obstruction of the public right-of-way with construction and/or demolition	50.00
Florida Building Code, Building 3302	Allowing materials to obstruct fire hydrant, fire alarm box, manhole, catchbasin and restriction of water flow to gutters	50.00
Florida Building Code, Building 3305.3	Failure to provide temporary sidewalk which is properly guarded and not less than four feet wide	50.00
Florida Building Code, Building 3301.2	Illegal obstruction of an alley or portion thereof in connection with construction or demolition	50.00
Florida Building Code, Building 3301.2	Failure to protect sidewalks and pavements from damage incidental to construction work	50.00
Florida Building Code, Building 3304.1	Failure to provide sidewalk and shed	50.00
Florida Building Code, Building 3305.1	Failure to provide construction fence	50.00
Florida Building Code, Building 3301.2	Failure to prevent the falling of paint or debris over public sidewalks or other places of public use	50.00

Florida Building Code, Building 105.3	Failure to obtain boiler inspections	100.00
Florida Building Code, Plumbing	Unlawful discharge of rainwater or other liquid wastes or allowing same to be disposed onto or across public property or sidewalk	50.00
	All other violations of the Florida Building Code and Miami-Dade County Municipal Code	100.00

Florida Building Code, Building, Fire Protection Code Life Safety Code Violations

TABLE INSET:

Section	Violation	Fine
NFPA 101	Any violation of the Life Safety Code	\$200.00

Florida Statutes Violations

TABLE INSET:

<u>Chapter</u>	<u>Violation</u>	<u>Fine</u>
<u>553.513</u>	<u>Failure to maintain a functioning ADA lift or single elevator - 1st Offense within a moving 12 month period</u>	<u>Written warning with explanation of rule</u>
<u>553.513</u>	<u>Failure to maintain a functioning ADA lift or single elevator - 2nd Offense within a moving 12 month period</u>	<u>\$250.00</u>
<u>553.513</u>	<u>Failure to maintain a functioning ADA lift or single elevator - 3rd Offense within a moving 12 month period</u>	<u>\$500.00</u>
<u>553.513</u>	<u>Failure to maintain a functioning ADA lift or single elevator - 4th Offense within a moving 12 month period</u>	<u>\$1,000.00</u>
<u>553.513</u>	<u>Failure to maintain a functioning ADA lift or single elevator - 5th Offense within a moving 12 month period</u>	<u>\$2,000.00</u>
<u>553.513</u>	<u>Failure to maintain a functioning ADA lift or single elevator - 6th Offense within a moving 12 month period</u>	<u>Suspension of business occupational license pursuant to Chapter 102, City code</u>
<u>553</u>	<u>Any other violation of accessibility requirements under Chapter 553 not listed in this section</u>	<u>\$500.00</u>

(Ord. No. 2002-3360, § 1, 4-10-02)

SECTION 3. REPEALER

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

SECTION 4. SEVERABILITY

If any section, sentence, clause or phrase of this ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this ordinance.

SECTION 5. CODIFICATION

It is the intention of the City Commission, 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 as amended; that the sections of this Ordinance may be re-numbered or re-lettered to accomplish such intention; and that the word "ordinance" may be changed to "section", "article," or other appropriate word.

SECTION 6 EFFECTIVE DATE

This Ordinance shall take effect on the _____ day of _____, 2008.

PASSED and ADOPTED this _____ day of _____, 2008

ATTEST:

CITY CLERK

MAYOR

**APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION**



City Attorney *DMM* 9/26/08
Date

Select Year:

The 2008 Florida Statutes

Title XXXIII
REGULATION OF TRADE, COMMERCE,
INVESTMENTS, AND SOLICITATIONS

Chapter 553
BUILDING CONSTRUCTION
STANDARDS

View Entire
Chapter

553.513 Enforcement.--It shall be the responsibility of each local government and each code enforcement agency established pursuant to s. [553.80](#) to enforce the provisions of this part. This act expressly preempts the establishment of handicapped accessibility standards to the state and supersedes any county or municipal ordinance on the subject. However, nothing in this section shall prohibit municipalities and counties from enforcing the provisions of this act.

History.--s. 6, ch. 89-97; s. 2, ch. 93-183.

Note.--Former s. 553.495.

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