

### **Statement in Support of Petitioner's Interpretation**

There are three primary reasons why this interpretation should be given to Section 110.8. First, there is no mention of private providers within Section 110.8 of the Florida Building Code. Interpreting this section to restrict or otherwise affect a fee owner's ability to contract with a private provider under Fla. Stat. § 553.791 when there is no reference to private providers would be arbitrary and contrary to the plain language of Section 110.8. An interpretation which is arbitrary and contrary to the plain language of Section 110.8 would alter the section's meaning. Any interpretation which alters the meaning of the plain language of the code is an amendment rather than an interpretation. Amendments to the Florida Building Code must be made pursuant to Fla. Stat. § 553.73(3) and cannot be made through interpretations under Fla. Stat. § 553.775.

Second, the Florida Statutes do not prevent private entities from performing private provider services and threshold inspection services on the same building. Fla. Stat. § 553.79(5)(a) mandates the enforcing agency to require a special inspector to perform structural inspections on a threshold building. Fla. Stat. § 553.791(2)(a) provides fee owners the option to contract with private providers for building code inspection services. Neither Fla. Stat. § 553.79, Fla. Stat. § 553.791, nor any other section of the Florida Statutes restricts a private entity's ability to perform private provider services and threshold inspection services on the same building. Any rule or interpretation of these Florida Statutes to the contrary by the Florida Building Commission or a local building official would constitute an invalid exercise of delegated authority under Fla. Stat. § 120.52(8)(c) which prohibits agencies from implementing rules that enlarge, modify, or contravene the specific provisions of the language of the enabling statute being carried out or interpreted through rulemaking.

Finally, the interpretation given by the City of Gainesville Building Department created a continuing violation of Fla. Stat. § 553.791(15) which states that a “local enforcement agency, local building official, or local government may not adopt or enforce any laws, rules, procedures, policies, qualifications, or standards more stringent than those prescribed by this section.” Fla. Stat. § 553.791 does not prevent private entities from performing private provider services on threshold buildings. Therefore, the City of Gainesville Building Department’s December 31, 2020 policy creating a more stringent standard for qualification as a private provider is in continuing violation of Florida Statute.

For the foregoing reasons, this commission should adopt an interpretation of Florida Building Code Section 110.8 which allows private entities to perform private provider services and threshold building inspections on the same threshold building.