

# 8th Edition (2023) Florida Building Code

Proposed Code Modifications

## CODE ADMIN



This document created by the Florida Department of Business and Professional Regulation -

850-487-1824

# TAC: Code Administration

Total Mods for **Code Administration** in **Approved as Modified** : 1

Total Mods for report: 6

## Sub Code: Building

CA10348				1	
Date Submitted	02/14/2022	Section	107.6	Proponent	Conn Cole FDEM SFMO
Chapter	1	Affects HVHZ	No	Attachments	Yes
TAC Recommendation	Approved as Modified				
Commission Action	Pending Review				

### Comments

**General Comments Yes**

**Alternate Language Yes**

**Related Modifications**

### Summary of Modification

Clarify that local building officials must review for compliance with flood when affidavits are provided by private providers in accordance with sec. 553.791, FS, to satisfy FEMA expectation.

### Rationale

The 2010 FBC retained flood provisions in the International Codes. The Federal Emergency Management Agency contributed to the Commission appointed workgroup that tailored the I-Code language for Florida that was adopted as part of the Commission's development of the 2010 FBC. FEMA determined that language now in the exception to Sec. 105.14 and in Sec. 107.6.1 was necessary to comply with the requirements for community participation in the National Flood Insurance Program (see 44 CFR 60.3). The requirement is for the COMMUNITY (i.e., local official) to review for compliance with flood provisions, which means the responsibility must not be "delegated" to someone not with the community or not under contract to the community. In response to several inquiries in 2020, FEMA Region IV and the Florida Division of Emergency Management issued a memo citing the NFIP regs and explaining the rationale for the requirement that the community review applications for buildings in flood hazard areas for compliance with the flood load and flood-resistant construction requirements of the FBC. In Florida, the responsibility for administration and enforcement of the FBC rests with the building official or a duly authorized representative [implied that authorization flows from the jurisdiction, e.g., contracted building department services to serve in the capacity as the community's building official). See attached memo. The Florida Building Commission rendered Dec Statement 2021-050 despite concerns of FDEM, concluding Sec. 107.6.1 "does not apply to services performed by private providers." The Commission also stated the decision "does not absolve the community from complying with any requirements under" the NFIP. The proposal closes that loophole and clarifies FEMA's expectations and the NFIP regulatory requirement that a community official must review and approve elements of design and construction required in flood hazard areas.

### Fiscal Impact Statement

**Impact to local entity relative to enforcement of code**



Reduces confusion about the FEMA NFIP expectation that local officials review applications in SFHAs for compliance with the flood requirements.

**Impact to building and property owners relative to cost of compliance with code**

None, because owners can still use affidavits and private providers.

**Impact to industry relative to the cost of compliance with code**

Helps licensed professionals who offer private provider services.

**Impact to small business relative to the cost of compliance with code**

## Requirements

**Has a reasonable and substantial connection with the health, safety, and welfare of the general public**

Yes, by reducing confusion about the FEMA NFIP expectation that local officials review applications in SFHAs for compliance with the flood requirements.

**Strengthens or improves the code, and provides equivalent or better products, methods, or systems of construction**

The change does not affect the technical requirements of the code.

**Does not discriminate against materials, products, methods, or systems of construction of demonstrated capabilities**

The change does not affect the technical requirements of the code.

**Does not degrade the effectiveness of the code**

Reduces confusion about the FEMA NFIP expectation that local officials review applications in SFHAs for compliance with the flood requirements.

## Alternate Language

### 2nd Comment Period

CA10348-A1	<b>Proponent</b>	Rebecca Quinn obo FL	<b>Submitted</b>	8/9/2022 8:32:19 AM	<b>Attachments</b>	Yes
		Div Emerg Mgnt				
	Rationale:					
	Laying aside the original proposal, this alternative accomplishes the intent in a slightly different way. In Sec. 105.14, subsections are easier to interpret than exceptions and adding the title further clarifies it applies only in flood hazard areas. In 107.6, the alternative restores 107.6.1 to existing language, and strikes the original proposed 107.6.2 and replaces it with alternative language, on advice of Commission staff.					

### Fiscal Impact Statement

#### Impact to local entity relative to enforcement of code

Clarifies that affidavits per 553.791 submitted by private providers for buildings in flood hazard areas must be reviewed by the building official for the flood requirements, as required by FEMA (see original proposal).

#### Impact to building and property owners relative to cost of compliance with code

None, because owners can still use affidavits and private providers.

#### Impact to industry relative to the cost of compliance with code

Helps licensed professionals who offer private provider services.

#### Impact to small business relative to the cost of compliance with code

### Requirements

#### Has a reasonable and substantial connection with the health, safety, and welfare of the general public

Yes, by reducing confusion about the FEMA NFIP expectation that local officials review applications in SFHAs for compliance with the flood requirements.

#### Strengthens or improves the code, and provides equivalent or better products, methods, or systems of construction

The change does not affect the technical requirements of the code.

#### Does not discriminate against materials, products, methods, or systems of construction of demonstrated capabilities

The change does not affect the technical requirements of the code.

#### Does not degrade the effectiveness of the code

Reduces confusion about the FEMA NFIP expectation that local officials review applications in SFHAs for compliance with the flood requirements.

### 1st Comment Period History

CA10348-G1	Proponent	Rebecca Quinn obo FL	Submitted	4/15/2022 4:14:31 PM	Attachments	No
	Div Emerg Mgnt					
	Comment:					
On behalf of Conn Cole, FDEM State Floodplain Manager, I request that Mod# CA10348 be heard before Mod# CA9986 and Mod# CA9987. The three proposals address the same issue.						

CA 10348 A1

**105.14 Permit issued on basis of an affidavit.**

Whenever a permit is issued in reliance upon an affidavit or whenever the work to be covered by a permit involves installation under conditions which, in the opinion of the building official, are hazardous or complex, the building official shall require that the architect or engineer who signed the affidavit or prepared the drawings or computations shall supervise such work. In addition, they shall be responsible for conformity to the permit, provide copies of inspection reports as inspections are performed, and upon completion make and file with the building official written affidavit that the work has been done in conformity to the reviewed plans and with the structural provisions of the technical codes. In the event such architect or engineer is not available, the owner shall employ in his stead a competent person or agency whose qualifications are reviewed by the building official. The building official shall ensure that any person conducting plans review is qualified as a plans examiner under Part XII of Chapter 468, Florida Statutes, and that any person conducting inspections is qualified as a building inspector under Part XII of Chapter 468, Florida Statutes.

**Exception:** 105.14.1 Affidavits in flood hazard areas. Permit issued on basis of an affidavit shall not extend to the flood load and flood resistance requirements of the Florida Building Code and the building official shall review and inspect those requirements.

**107.6 Affidavits.**

The building official may accept a sworn affidavit from a registered architect or engineer stating that the plans submitted conform to the technical codes. For buildings and structures, the affidavit shall state that the plans conform to the laws as to egress, type of construction and general arrangement and, if accompanied by drawings, show the structural design and that the plans and design conform to the requirements of the technical codes as to strength, stresses, strains, loads and stability. The building official may without any examination or inspection accept such affidavit, provided the architect or engineer who made such affidavit agrees to submit to the building official copies of inspection reports as inspections are performed and upon completion of the structure, electrical, gas, mechanical or plumbing systems a certification that the structure, electrical, gas, mechanical or plumbing system has been erected in accordance with the requirements of the technical codes. Where the building official relies upon such affidavit, the architect or engineer shall assume full responsibility for compliance with all provisions of the technical codes and other pertinent laws or ordinances. The building official shall ensure that any person conducting plans review is qualified as a plans examiner under Part XII of Chapter 468, Florida Statutes, and that any person conducting inspections is qualified as a building inspector under Part XII of Chapter 468, Florida Statutes.

**107.6.1 Building permits issued in flood hazard areas on the basis of an affidavit.** Pursuant to the requirements of federal regulation for participation in the National Flood Insurance Program (44 C.F.R. Parts 59 and 60), the authority granted to the *building official* to issue permits, to rely on inspections, and to accept plans and construction documents on the basis of affidavits and plans submitted pursuant to Sections 105.14 and 107.6, shall not extend to the flood load and flood-resistance construction requirements of the *Florida Building Code*.

**107.6.2 Affidavits Provided Pursuant to Section 553.791, Florida Statutes.** For a building or structure in a flood hazard area, the building official shall review any affidavit certifying compliance with the flood load and flood-resistant construction requirements of the Florida Building Code.

**105.14 Permit issued on basis of an affidavit.**

Whenever a permit is issued in reliance upon an affidavit or whenever the work to be covered by a permit involves installation under conditions which, in the opinion of the building official, are hazardous or complex, the building official shall require that the architect or engineer who signed the affidavit or prepared the drawings or computations shall supervise such work. In addition, they shall be responsible for conformity to the permit, provide copies of inspection reports as inspections are performed, and upon completion make and file with the building official written affidavit that the work has been done in conformity to the reviewed plans and with the structural provisions of the technical codes. In the event such architect or engineer is not available, the owner shall employ in his stead a competent person or agency whose qualifications are reviewed by the building official. The building official shall ensure that any person conducting plans review is qualified as a plans examiner under Part XII of Chapter 468, Florida Statutes, and that any person conducting inspections is qualified as a building inspector under Part XII of Chapter 468, Florida Statutes.

**Exception:** **105.14.1 Affidavits in flood hazard areas.** Permit issued on basis of an affidavit shall not extend to the flood load and flood resistance requirements of the Florida Building Code and the building official shall review and inspect those requirements.

**107.6 Affidavits.**

The building official may accept a sworn affidavit from a registered architect or engineer stating that the plans submitted conform to the technical codes. For buildings and structures, the affidavit shall state that the plans conform to the laws as to egress, type of construction and general arrangement and, if accompanied by drawings, show the structural design and that the plans and design conform to the requirements of the technical codes as to strength, stresses, strains, loads and stability. The building official may without any examination or inspection accept such affidavit, provided the architect or engineer who made such affidavit agrees to submit to the building official copies of inspection reports as inspections are performed and upon completion of the structure, electrical, gas, mechanical or plumbing systems a certification that the structure, electrical, gas, mechanical or plumbing system has been erected in accordance with the requirements of the technical codes. Where the building official relies upon such affidavit, the architect or engineer shall assume full responsibility for compliance with all provisions of the technical codes and other pertinent laws or ordinances. The building official shall ensure that any person conducting plans review is qualified as a plans examiner under Part XII of Chapter 468, Florida Statutes, and that any person conducting inspections is qualified as a building inspector under Part XII of Chapter 468, Florida Statutes.

**107.6.1 Building permits issued flood hazard areas on the basis of an affidavit.** Pursuant to the requirements of federal regulation for participation in the National Flood Insurance Program (44 C.F.R. Parts 59 and 60), the authority granted to the *building official* to issue permits, to rely on inspections, and to accept plans and construction documents on the basis of affidavits and plans submitted pursuant to Sections 105.14 and 107.6, shall not extend to the flood load and flood-resistance construction requirements of the *Florida Building Code*.

**107.6.2 Affidavits Provided Pursuant to Section 553.791, Florida Statutes.** For a building or structure in a flood hazard area, the building official shall review any affidavit certifying compliance with the flood load and flood-resistant construction requirements of the Florida Building Code.



**105.14 Permit issued on basis of an affidavit.** Whenever a permit is issued in reliance upon an affidavit or whenever the work to be covered by a permit involves installation under conditions which, in the opinion of the building official, are hazardous or complex, the building official shall require that the architect or engineer who signed the affidavit or prepared the drawings or computations shall supervise such work. In addition, they shall be responsible for conformity to the permit, provide copies of inspection reports as inspections are performed, and upon completion make and file with the building official written affidavit that the work has been done in conformity to the reviewed plans and with the structural provisions of the technical codes. In the event such architect or engineer is not available, the owner shall employ in his stead a competent person or agency whose qualifications are reviewed by the building official. The building official shall ensure that any person conducting plans review is qualified as a plans examiner under Part XII of Chapter 468, *Florida Statutes*, and that any person conducting inspections is qualified as a building inspector under Part XII of Chapter 468, *Florida Statutes*.

**Exception:** Permit issued on basis of an affidavit shall not extend to the flood load and flood resistance requirements of the *Florida Building Code* and the building official shall review, approved, and inspect those requirements.

**107.6 Affidavits.** The building official may accept a sworn affidavit from a registered architect or engineer stating that the plans submitted conform to the technical codes. For buildings and structures, the affidavit shall state that the plans conform to the laws as to egress, type of construction and general arrangement and, if accompanied by drawings, show the structural design and that the plans and design conform to the requirements of the technical codes as to strength, stresses, strains, loads and stability. The building official may without any examination or inspection accept such affidavit, provided the architect or engineer who made such affidavit agrees to submit to the building official copies of inspection reports as inspections are performed and upon completion of the structure, electrical, gas, mechanical or plumbing systems a certification that the structure, electrical, gas, mechanical or plumbing system has been erected in accordance with the requirements of the technical codes. Where the building official relies upon such affidavit, the architect or engineer shall assume full responsibility for compliance with all provisions of the technical codes and other pertinent laws or ordinances. The building official shall ensure that any person conducting plans review is qualified as a plans examiner under Part XII of Chapter 468, *Florida Statutes*, and that any person conducting inspections is qualified as a building inspector under Part XII of Chapter 468, *Florida Statutes*.

**107.6.1 Building permits issued on the basis of an affidavit.** Pursuant to the requirements of federal regulation for participation in the National Flood Insurance Program (44 C.F.R. Parts 59 and 60), the authority granted to the *building official* to issue permits, to rely on inspections, and to accept plans and construction documents on the basis of affidavits and plans submitted pursuant to section 553.791, *Florida Statutes*, for plan review and inspection, and pursuant to Sections 105.14 and 107.6, shall not extend to the flood load and flood-resistance construction requirements of the *Florida Building Code* and the building official shall review, approved, and inspect those requirements.

**107.6.2** Where an affidavit for a building or structure in a flood hazard area is provided by a Private Provider in accordance with section 553.791, *Florida Statutes*, for plan review and inspection, or is provided by an architect or engineer in accordance with Section 107.6, the building official shall review and approve the plans for compliance with the flood load and flood-resistant construction requirements of the Florida Building Code and shall inspect the building or structure for compliance with those requirements.



STATE OF FLORIDA

# DIVISION OF EMERGENCY MANAGEMENT

Ron DeSantis  
Governor

Jared Moskowitz  
Director

November 2, 2020

## MEMORANDUM

TO: Florida Floodplain Administrators and Building Officials

FROM: Conn H. Cole, Interim State Floodplain Manager **Conn H. Cole**

CONCURRENCE: Jason O. Hunter, Chief, FEMA Region IV Floodplain Management & Insurance Branch *Jason O. Hunter*

Digitally signed by Conn H. Cole  
DN: c=US, o=State of Florida, ou=Department of  
Emergency Management, email=Conn.H.Cole@fla.gov, c=US  
Date: 2020.11.02 14:03:00 -0500

RE: Florida Building Code and Permits Issued on the Basis of Affidavits  
**NFIP Communities Must Review For Floodplain Compliance**

Over the past year the State Floodplain Management Office (SFMO) has received inquiries regarding changes enacted in the 2019 legislative session that affect the use and acceptance of private providers for building permits and inspections. The Florida Building Code (FBC) includes provisions for issuing permits based on affidavits signed by qualified architects or engineers, in the Building volume, sections 105.14 and 107.6. These sections are shown in the attachment.

This memorandum provides guidance to clarify the exception to Sections 105.14 and 107.6.1. FEMA Region IV concurs with this guidance. **In effect, the sections require local officials to review applications for compliance with the flood load and flood-resistant construction requirements of the FBC when buildings are proposed to be located in special flood hazard areas, and to inspect those aspects when permits are issued.**

The National Flood Insurance Program (NFIP) requires communities that participate in the program to agree to adopt and enforce regulations that meet or exceed the minimum requirement of the NFIP (44 Code of Federal Regulations Parts 59 and 60). FEMA deems the flood provisions of the FBC to meet or exceed the minimum NFIP requirements for buildings and structures.

**The NFIP regulations require communities to review proposed construction or development in special flood hazard areas.** Specifically, the NFIP regulations in Section 60.3 states: "Minimum standards for communities are as follows: (a) . . . the community shall: . . . (1) Require permits for all proposed construction or development . . . ; (2) Review proposed development to . . . ; (3) Review all applications to . . . ; (4) Review subdivision proposals and other new development . . ." <https://www.govinfo.gov/app/details/CFR-2011-title44-vol1/CFR-2011-title44-vol1-part60>

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In 2011-12, the SFMO worked with FEMA, the Florida Building Commission, the Building Officials Association of Florida, and the Florida Floodplain Managers Association to incorporate in the FBC the necessary requirements for buildings in flood hazard areas. As part of that effort, the SFMO examined the matter of permits issued based on affidavits. Prior to the inclusion of Section 107.6.1 and the exception to Section 105.14, many communities individually adopted local administrative amendments with the same limitation.

During the code development cycle for the 5<sup>th</sup> Edition FBC, FDEM submitted a proposal to incorporate Section 107.6.1 into the FBC (the exception to Section 105.14 was added by amendment to a proposal by others). FDEM's rationale statement is shown below and repeated here for clarity:

Both of these proposed new sections flow from consistency with the NFIP. They were developed by DEM as part of the Model Floodplain Management Ordinance and Code Amendments, reviewed by BOAF, and scrutinized by FEMA. Because FEMA deemed both of these are necessary, it is more efficient for the FBC to include them in Chapter 1, rather than expect every local government to adopt them as local administrative code amendments.

Despite the submission of an affidavit authorized by B107.6, the building official must review plans for compliance with the flood provisions and issue permits and perform inspections to ensure compliance with the flood provisions. Under the NFIP, the community is responsible for ensuring compliance.

\*The original proposal (SP5255) included both Section 107.6.1 and Section 117; the exception to Section 105.14 was added to proposal CA5082) by amendments for consistency.

Please contact us at (850) 815-4556 or [floods@em.myflorida.com](mailto:floods@em.myflorida.com) if you have questions about the flood provisions in the FBC or FBC-coordinated floodplain management regulations.

CC: Steve Martin, Roy McClure, Virgilio Chris Perez

Attachment: FBC, Building, Sections 105.14 and 107.6.1 and Proposal for the 5<sup>th</sup> Ed. FBC, submitted 7/22/2012

## ATTACHMENT

## FBC, Building Sections 105.14 and 107.6.1

**105.14 Permit issued on basis of an affidavit.** Whenever a permit is issued in reliance upon an affidavit or whenever the work to be covered by a permit involves installation under conditions which, in the opinion of the building official, are hazardous or complex, the building official shall require that the architect or engineer who signed the affidavit or prepared the drawings or computations shall supervise such work. In addition, they shall be responsible for conformity to the permit, provide copies of inspection reports as inspections are performed, and upon completion make and file with the building official written affidavit that the work has been done in conformity to the reviewed plans and with the structural provisions of the technical codes. In the event such architect or engineer is not available, the owner shall employ in his stead a competent person or agency whose qualifications are reviewed by the building official. The building official shall ensure that any person conducting plans review is qualified as a plans examiner under Part XII of Chapter 468, *Florida Statutes*, and that any person conducting inspections is qualified as a building inspector under Part XII of Chapter 468, *Florida Statutes*.

**Exception:** Permit issued on basis of an affidavit shall not extend to the flood load and flood resistance requirements of the *Florida Building Code*.

**107.6.1 [Affidavits] Building permits issued on the basis of an affidavit.** Pursuant to the requirements of federal regulation for participation in the National Flood Insurance Program (44 C.F.R. Parts 59 and 60), the authority granted to the building official to issue permits, to rely on inspections, and to accept plans and construction documents on the basis of affidavits and plans submitted pursuant to Sections 105.14 and 107.6, shall not extend to the flood load and flood-resistance construction requirements of the *Florida Building Code*.

## Mod SP 5255 (approved as submitted)

Mod CA 5082 (submitted by Joe Bigelow to add new Sec. 105.14; FDEM proposed amendment to recapture NFIP; approved as amended.

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<b>SP5255</b>		<b>Date Submitted</b> 7/22/2012		<b>Section</b> 107.6 and 117 (new)		<b>Proponent</b> Rebecca Quinn obo DEM	
<b>Chapter</b> 1		<b>Affects HVHZ</b> No		<b>Attachments</b> No			
<b>TAC Recommendation</b> Pending Review							
<b>Commission Action</b> Pending Review							
<b>Related Modifications</b>							
<b>Summary of Modification</b>							
Two administrative amendments that FEMA has deemed necessary to ensure that enforcement of the flood provisions of the FBC remain consistent with the NFIP.							
<b>Rationale</b>							
Both of these proposed new sections flow from consistency with the NFIP. They were developed by DEM as part of the Model Floodplain Management Ordinance and Code Amendments, reviewed by BOAF, and scrutinized by FEMA. Because FEMA has deemed both of these are necessary, it is more efficient for the FBC to include them in Chapter 1, rather than expect every local government to adopt them as local administrative code amendments.							
Despite the submission of an affidavit authorized by B107.6, the building official must review plans for compliance with the flood provisions and issue permits and perform inspections to ensure compliance with the flood provisions. Under the NFIP, the community is responsible for ensuring compliance.							
For consistency with the NFIP, section 553.73(5), F.S., authorizes adoption of procedures for variances; the specific procedures are in the FPM ordinance. Variances are official permission to undertake an activity that is otherwise prohibited or not approvable under the regulations or building code. As specified in section 553.73(5), F.S., the authority to grant variances to the flood provisions does not extend to any requirement in Section 3109, which applies seaward of the Coastal Construction Control Line.							



# TAC: Code Administration

Total Mods for **Code Administration** in **Approved as Submitted** : 2

Total Mods for report: 6

## Sub Code: Building

CA10035

2

Date Submitted	02/01/2022	Section	101.2	Proponent	T Stafford
Chapter	1	Affects HVHZ	No	Attachments	No
TAC Recommendation	Approved as Submitted				
Commission Action	Pending Review				

### Comments

General Comments No

Alternate Language No

Related Modifications

### Summary of Modification

This modification is one of a series of modifications that delete the seismic and snow requirements from the code. In accordance with Exception 2 to Section 101.2 of the FBCB, seismic and snow requirements are not to be utilized or enforced in the State of Florida.

### Rationale

This modification is the culmination of a project funded by the Florida Building Commission through Building a Safer Florida (BASF) that deletes the seismic and snow provisions from the Florida Building Codes. In accordance with Exception 2 to Section 101.2 of the Florida Building Code, Building, the seismic and snow provisions are exempted from the scope of the Florida Building Codes. Exception 2 to Section 101.2 states the following: "2. Code requirements that address snow loads and earthquake protection are pervasive; they are left in place but shall not be utilized or enforced because Florida has no snow load or earthquake threat." These modifications clarify and simplify the code by deleting requirements that do not apply in the State of Florida.

### Fiscal Impact Statement

#### Impact to local entity relative to enforcement of code

No impact to local entities relative to enforcement of the code.

#### Impact to building and property owners relative to cost of compliance with code

No impact to building and property owners relative to cost of compliance with the code.

#### Impact to industry relative to the cost of compliance with code

No impact to industry relative to the cost of compliance with the code.

#### Impact to small business relative to the cost of compliance with code

### Requirements

#### Has a reasonable and substantial connection with the health, safety, and welfare of the general public

Clarifies and simplifies the code by deleting requirements that do not apply in the State of Florida.

**Strengthens or improves the code, and provides equivalent or better products, methods, or systems of construction**

Improves the code by deleting requirements that do not apply in the State of Florida.

**Does not discriminate against materials, products, methods, or systems of construction of demonstrated capabilities**

This proposal does not discriminate against materials, products, methods, or systems of construction of demonstrated capabilities.

**Does not degrade the effectiveness of the code**

This proposal does not degrade the effectiveness of the code.

**Revise as follows:**

**101.2 Scope.** The provisions of this code shall apply to the construction, *alteration*, relocation, enlargement, replacement, *repair*, equipment, use and occupancy, location, maintenance, removal and demolition of every building or structure or any appurtenances connected or attached to such buildings or structures.

**Exceptions:**

1. Detached one- and two-family *dwelling*s and multiple single-family *dwelling*s (*townhouses*) not more than three *stories above grade plane* in height with a separate *means of egress*, and their accessory structures not more than three *stories above grade plane* in height, shall comply with the *Florida Building Code, Residential*.
2. Code requirements that address snow loads and earthquake protection ~~are pervasive; they are left in place but shall not be utilized or enforced because Florida has no snow load or earthquake threat.~~

**Revise as follows:**

**107.2.5 Exterior balcony and elevated walking surfaces.** Where balcony or other elevated walking surfaces are exposed to water from direct or blowing rain, ~~snow~~ or irrigation, and the structural framing is protected by an impervious moisture barrier, the construction documents shall include details for all elements of the impervious moisture barrier system. The construction documents shall include manufacturer's installation instructions.

**Revise as follows:**

**110.3.6 Weather-exposed balcony and walking surface waterproofing.** Where balcony or other elevated walking surfaces are exposed to water from direct or blowing rain, ~~snow~~ or irrigation, and the structural framing is protected by an impervious moisture barrier, all elements of the impervious-moisture-barrier system shall not be concealed until inspected and *approved*.

# TAC: Code Administration

Total Mods for **Code Administration** in **Approved as Submitted** : 2

Total Mods for report: 6

## Sub Code: Building

CA10265		3			
Date Submitted	02/12/2022	Section	110.3	Proponent	Conn Cole FDEM SFMO
Chapter	1	Affects HVHZ	No	Attachments	No
TAC Recommendation	Approved as Submitted				
Commission Action	Pending Review				

### Comments

**General Comments Yes**

**Alternate Language No**

**Related Modifications**

### Summary of Modification

Clarify the requirement to submit documentation of the elevation to which nonresidential buildings in flood hazard areas may be dry floodproofed.

### Rationale

Based on FEMA 2024 IBC proposal S125-22. Subject to 553.73(7)(a) as flood requirement for inclusion in 9th Edition. When nonresidential buildings in floodplains are dry floodproofed, several aspects of design are critical, including the strength of walls & flood shields designed to be watertight (addressed in 1612.5 #1.3) and the required elevation of the dry floodproofing specified in ASCE 24 Chapter 6. The proposed change follows the pattern established for documentation of lowest floor elevations prior to final inspection. Because dry floodproofed buildings do not have elevated "lowest floors," rather than survey floors, the change clarifies the elevation to which dry floodproofed buildings are protected is documented. Having this elevation documented helps local officials confirm compliance. NFIP regulations require communities to obtain the elevation to which structures are floodproofed [44 Code of Federal Regulations Sec. 60.3(b)(5)(ii)]. FEMA's Mitigation Assessment Team reports prepared after some significant flood events document failures of dry floodproofing systems. Some failures are caused by floodwater rising higher than the protective measures, which indicates the value of documenting that construction does comply. Many communities require permittees to use FEMA Floodproofing Certificate for Non-Residential Structures. That form is to certify designs as part of the documentation submitted with permit applications, as well as for use to certify the "floodproofed elevation." The form also is used when certification of as-built conditions is required, including the elevation to which the building is dry floodproofed. The NFIP requires as-built certification as part of qualifying for flood insurance policy coverage for dry floodproofed nonresidential buildings. Bibliography: FEMA Floodproofing Certificate for Non-Residential Structures: <https://www.fema.gov/medialibrary/assets/documents/2748>

### Fiscal Impact Statement

**Impact to local entity relative to enforcement of code**



Facilitates enforcement by specifying the elevation pertinent when buildings are dry floodproofed.

**Impact to building and property owners relative to cost of compliance with code**

No change; clarifies the elevation to which dry floodproofed buildings are protected is documented, rather than the “lowest floor” and cost to survey the elevation to which a building is dry floodproofed would be equal to the cost to survey a floor elevation relative to datum.

**Impact to industry relative to the cost of compliance with code**

No change because certification is still required.

**Impact to small business relative to the cost of compliance with code**

## Requirements

**Has a reasonable and substantial connection with the health, safety, and welfare of the general public**

Yes, because the survey confirms dry floodproofing constructed to elevation specified in the design.

**Strengthens or improves the code, and provides equivalent or better products, methods, or systems of construction**

Yes, because the survey confirms dry floodproofing constructed to elevation specified in the design.

**Does not discriminate against materials, products, methods, or systems of construction of demonstrated capabilities**

No change in materials and methods.

**Does not degrade the effectiveness of the code**

Does not degrade because the survey confirms dry floodproofing constructed to elevation specified in the design.

## 1st Comment Period History

CA10265-G1	Proponent	Rebecca Quinn obo FL Div Emerg Mgnt	Submitted	4/15/2022 4:17:24 PM	Attachments	No
	Comment:	I submit this comment on behalf of Conn Cole, FDEM State Floodplain Manager, to advise that this proposal was submitted by FEMA for the 2024 International Codes as S125-22 Part I and was Approved as Submitted at the Committee Action Hearing.				

**[A] 110.3 Required inspections.****Building**

6. Final inspection. To be made after the building is completed and ready for occupancy.

6.1 In flood hazard areas, as part of the final inspection, a final certification of the lowest floor elevation or the elevation to which a building is dry floodproofed, as applicable, shall be submitted to the authority having jurisdiction.

**1612.5 Flood hazard documentation.** The following documentation shall be prepared and sealed by a registered design professional and submitted to the building official:

1. For construction in flood hazard areas other than coastal high hazard areas or coastal A zones:

1.1. The elevation of the lowest floor, including the basement, as required by the lowest floor elevation inspection in Section 110.3, Building, 1.1 and for the final inspection in Section 110.3, Building, 5.1.

1.2. For fully enclosed areas below the design flood elevation where provisions to allow for the automatic entry and exit of floodwaters do not meet the minimum requirements in Section 2.7.2.1 of ASCE 24, construction documents shall include a statement that the design will provide for equalization of hydrostatic flood forces in accordance with Section 2.7.2.2 of ASCE 24.

1.3. For dry floodproofed nonresidential buildings, construction documents shall include a statement that the dry floodproofing is designed in accordance with ASCE 24 and shall include the flood emergency plan specified in Chapter 6 of ASCE 24.

1.4. For dry floodproofed nonresidential buildings, the elevation to which the building is dry floodproofed as required for the final inspection in Section 110.3, Building, 6.1.

2. For construction in coastal high hazard areas and coastal A zones:

2.1. The elevation of the bottom of the lowest horizontal structural member as required by the lowest floor elevation inspection in Section 110.3.3 and for the final inspection in Section 110.3.12.1.

2.2. Construction documents shall include a statement that the building is designed in accordance with ASCE 24, including that the pile or column foundation and building or structure to be attached thereto is designed to be anchored to resist flotation, collapse and lateral movement due to the effects of wind and flood loads acting simultaneously on all building components, and other load requirements of Chapter 16.

2.3. For breakaway walls designed to have a resistance of more than 20 psf (0.96 kN/m ) determined using allowable stress design, construction documents shall include a statement that the breakaway wall is designed in accordance with ASCE 24.

2.4 For breakaway walls where provisions to allow for the automatic entry and exit of floodwaters do not meet the minimum requirements in Section 2.7.2.1 of ASCE 24,

construction documents shall include a statement that the design will provide for equalization of hydrostatic flood forces in accordance with Section 2.7.2.2 of ASCE 24.

# TAC: Code Administration

Total Mods for **Code Administration** in **Denied** : 2

Total Mods for report: 6

## Sub Code: Building

CA9986		4			
Date Submitted	01/31/2022	Section	105.14	Proponent	Seijas Vince
Chapter	1	Affects HVHZ	No	Attachments	Yes
TAC Recommendation	Denied				
Commission Action	Pending Review				

### Comments

**General Comments Yes**

**Alternate Language No**

### Related Modifications

107.6 as it also relates to Permit by Affidavit

### Summary of Modification

The following code modification is presented to provide clarification regarding jurisdiction over the enforcement of the flood provisions of the Florida Building Code and a community's Floodplain management ordinance.

### Rationale

In accordance with the guidance of F.S. 553.73 (7)(a) and (d), Declaratory Statement DS2021-050, and the November 2, 2020 Memorandum from the Florida Department of Emergency Management and FEMA Region IV, the following code modification is presented to provide clarification regarding jurisdiction over the enforcement of the flood provisions of the Florida Building Code and a community's Floodplain management ordinance.

### Fiscal Impact Statement

#### Impact to local entity relative to enforcement of code

No financial Impact is expected, it will however preserve the relationship between FEMA and a local community in the enforcement of 44 CFR, insuring compliance with the NFIP, FEMA, HUD, and Federal Funding as required of F.S. 553.73(7)(a).

#### Impact to building and property owners relative to cost of compliance with code

It will preserve the relationship between FEMA and a local community in the enforcement of 44 CFR, insuring compliance with the NFIP, FEMA, HUD, and Federal Funding as required of F.S. 553.73(7)(a).

#### Impact to industry relative to the cost of compliance with code

No financial impact is expected with this code modification which is being presented to clarify jurisdiction over the enforcement and regulation of the flood provisions in the FBC and Local Floodplain Management Ordinance.

#### Impact to small business relative to the cost of compliance with code

### Requirements

**Has a reasonable and substantial connection with the health, safety, and welfare of the general public**

It will preserve the relationship between FEMA and a local community in the enforcement of 44 CFR, insuring compliance with the NFIP, FEMA, HUD, and Federal Funding as required of F.S. 553.73(7)(a).

**Strengthens or improves the code, and provides equivalent or better products, methods, or systems of construction**

The following code modification is presented to provide clarification regarding jurisdiction over the enforcement of the flood provisions of the Florida Building Code and a community's Floodplain management ordinance.

**Does not discriminate against materials, products, methods, or systems of construction of demonstrated capabilities**

The proposed modification does not discriminate against materials, products, methods, or systems of construction.

**Does not degrade the effectiveness of the code**

The proposed modification does not degrade the effectiveness of the code, it does buttress the Authority Having Jurisdiction's regulatory authority over the floodplain management provisions of the FBC.

## 1st Comment Period History

Proponent	Rebecca Quinn obo FL Div Emerg Mgnt	Submitted	4/15/2022 4:12:55 PM	Attachments	No
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**Comment:**

On behalf of Conn Cole, FDEM State Floodplain Manager, I request that Mod# CA9986 and Mod# CA9987 be heard after Mod# CA10348. The three proposals address the same issue.

**105.14 Permit issued on basis of an affidavit or Alternative Plan Review.** Whenever a permit is issued in reliance upon an affidavit or the fee simple owner opts to invoke the Alternative Plan Review provisions under the of Florida Statute 553.791, or whenever the work to be covered by a permit involves installation under conditions which, in the opinion of the building official, are hazardous or complex, the building official shall require that the architect or engineer who signed the affidavit or prepared the drawings or computations shall supervise such work. In addition, they shall be responsible for conformity to the permit, provide copies of inspection reports as inspections are performed, and upon completion make and file with the building official written affidavit that the work has been done in conformity to the reviewed plans and with the structural provisions of the technical codes. In the event such architect or engineer is not available, the owner shall employ in his stead a competent person or agency whose qualifications are reviewed by the building official. The building official shall ensure that any person conducting plans review is qualified as a plans examiner under Part XII of Chapter 468, *Florida Statutes*, and that any person conducting inspections is qualified as a building inspector under Part XII of Chapter 468, and Chapter 553.791 Florida Statutes.

**Exception:** Permit issued on basis of an affidavit or Alternative Plan Review shall not extend to the flood load and flood resistance requirements of the *Florida Building Code*.



STATE OF FLORIDA  
**DIVISION OF EMERGENCY MANAGEMENT**

Ron DeSantis  
 Governor

Jared Moskowitz  
 Director

November 2, 2020

**MEMORANDUM**

TO: Florida Floodplain Administrators and Building Officials

FROM: Conn H. Cole, Interim State Floodplain Manager **Conn H. Cole**

CONCURRENCE: Jason O. Hunter, Chief, FEMA Region IV Floodplain Management & Insurance Branch *Jason O. Hunter*

Digitally signed by Conn H. Cole  
 DN: cn=Conn H. Cole, o=Florida Department of  
 Emergency Management, ou=State Floodplain  
 Management Office,  
 email=Conn.H.Cole@fla.gov, c=US  
 Date: 2020.11.02 14:56:03 -0500

RE: Florida Building Code and Permits Issued on the Basis of Affidavits  
**NFIP Communities Must Review For Floodplain Compliance**

Over the past year the State Floodplain Management Office (SFMO) has received inquiries regarding changes enacted in the 2019 legislative session that affect the use and acceptance of private providers for building permits and inspections. The Florida Building Code (FBC) includes provisions for issuing permits based on affidavits signed by qualified architects or engineers, in the Building volume, sections 105.14 and 107.6. These sections are shown in the attachment.

This memorandum provides guidance to clarify the exception to Sections 105.14 and 107.6.1. FEMA Region IV concurs with this guidance. **In effect, the sections require local officials to review applications for compliance with the flood load and flood-resistant construction requirements of the FBC when buildings are proposed to be located in special flood hazard areas, and to inspect those aspects when permits are issued.**

The National Flood Insurance Program (NFIP) requires communities that participate in the program to agree to adopt and enforce regulations that meet or exceed the minimum requirement of the NFIP (44 Code of Federal Regulations Parts 59 and 60). FEMA deems the flood provisions of the FBC to meet or exceed the minimum NFIP requirements for buildings and structures.

**The NFIP regulations require communities to review proposed construction or development in special flood hazard areas.** Specifically, the NFIP regulations in Section 60.3 states: "Minimum standards for communities are as follows: (a) . . . the community shall: . . . (1) Require permits for all proposed construction or development . . . ; (2) Review proposed development to . . . ; (3) Review all applications to . . . ; (4) Review subdivision proposals and other new development . . ." <https://www.govinfo.gov/app/details/CFR-2011-title44-vol1/CFR-2011-title44-vol1-part60>

DIVISION HEADQUARTERS  
 2555 Shumard Oak Boulevard  
 Tallahassee, FL 32399-2100

Telephone: 850-815-4000  
[www.FloridaDisaster.org](http://www.FloridaDisaster.org)

STATE LOGISTICS RESPONSE CENTER  
 2702 Directors Row  
 Orlando, FL 32809-5631



Florida Floodplain Administrators and Building Officials  
November 2 , 2020  
Page 2

In 2011-12, the SFMO worked with FEMA, the Florida Building Commission, the Building Officials Association of Florida, and the Florida Floodplain Managers Association to incorporate in the FBC the necessary requirements for buildings in flood hazard areas. As part of that effort, the SFMO examined the matter of permits issued based on affidavits. Prior to the inclusion of Section 107.6.1 and the exception to Section 105.14, many communities individually adopted local administrative amendments with the same limitation.

During the code development cycle for the 5<sup>th</sup> Edition FBC, FDEM submitted a proposal to incorporate Section 107.6.1 into the FBC (the exception to Section 105.14 was added by amendment to a proposal by others). FDEM's rationale statement is shown below and repeated here for clarify:

Both of these proposed new sections flow from consistency with the NFIP. They were developed by DEM as part of the Model Floodplain Management Ordinance and Code Amendments, reviewed by BOAF, and scrutinized by FEMA. Because FEMA deemed both of these are necessary, it is more efficient for the FBC to include them in Chapter 1, rather than expect every local government to adopt them as local administrative code amendments.

Despite the submission of an affidavit authorized by B107.6, the building official must review plans for compliance with the flood provisions and issue permits and perform inspections to ensure compliance with the flood provisions. Under the NFIP, the community is responsible for ensuring compliance.

\*The original proposal (SP5255) included both Section 107.6.1 and Section 117; the exception to Section 105.14 was added to proposal CA5082) by amendments for consistency.

Please contact us at (850) 815-4556 or [floods@em.myflorida.com](mailto:floods@em.myflorida.com) if you have questions about the flood provisions in the FBC or FBC-coordinated floodplain management regulations.

CC: Steve Martin, Roy McClure, Virgilio Chris Perez

Attachment: FBC, Building, Sections 105.14 and 107.6.1 and Proposal for the 5<sup>th</sup> Ed. FBC, submitted 7/22/2012

## ATTACHMENT

## FBC, Building Sections 105.14 and 107.6.1

**105.14 Permit issued on basis of an affidavit.** Whenever a permit is issued in reliance upon an affidavit or whenever the work to be covered by a permit involves installation under conditions which, in the opinion of the building official, are hazardous or complex, the building official shall require that the architect or engineer who signed the affidavit or prepared the drawings or computations shall supervise such work. In addition, they shall be responsible for conformity to the permit, provide copies of inspection reports as inspections are performed, and upon completion make and file with the building official written affidavit that the work has been done in conformity to the reviewed plans and with the structural provisions of the technical codes. In the event such architect or engineer is not available, the owner shall employ in his stead a competent person or agency whose qualifications are reviewed by the building official. The building official shall ensure that any person conducting plans review is qualified as a plans examiner under Part XII of Chapter 468, *Florida Statutes*, and that any person conducting inspections is qualified as a building inspector under Part XII of Chapter 468, *Florida Statutes*.

**Exception:** Permit issued on basis of an affidavit shall not extend to the flood load and flood resistance requirements of the *Florida Building Code*.

**107.6.1 [Affidavits] Building permits issued on the basis of an affidavit.** Pursuant to the requirements of federal regulation for participation in the National Flood Insurance Program (44 C.F.R. Parts 59 and 60), the authority granted to the building official to issue permits, to rely on inspections, and to accept plans and construction documents on the basis of affidavits and plans submitted pursuant to Sections 105.14 and 107.6, shall not extend to the flood load and flood-resistance construction requirements of the *Florida Building Code*.

## Mod SP 5255 (approved as submitted)

Mod CA 5082 (submitted by Joe Bigelow to add new Sec. 105.14; FDEM proposed amendment to recapture NFIP; approved as amended.

<b>SP5255</b>		Page 6 of 427 2	
<b>Date Submitted</b>	7/22/2012	<b>Section</b>	107.6 and 117 (new)
<b>Chapter</b>	1	<b>Affects HVHZ</b>	No
<b>TAC Recommendation</b>	Pending Review	<b>Preponent</b>	Rebecca Quinn obo DEM
<b>Commission Action</b>	Pending Review	<b>Attachments</b>	No
<b>Related Modifications</b>			
<b>Summary of Modification</b>			
Two administrative amendments that FEMA has deemed necessary to ensure that enforcement of the flood provisions of the FBC remain consistent with the NFIP.			
<b>Rationale</b>			
Both of these proposed new sections flow from consistency with the NFIP. They were developed by DEM as part of the Model Floodplain Management Ordinance and Code Amendments, reviewed by BOAF, and scrutinized by FEMA. Because FEMA has deemed both of these are necessary, it is more efficient for the FBC to include them in Chapter 1, rather than expect every local government to adopt them as local administrative code amendments.			
Despite the submission of an affidavit authorized by § 107.6, the building official must review plans for compliance with the flood provisions and issue permits and perform inspections to ensure compliance with the flood provisions. Under the NFIP, the community is responsible for ensuring compliance.			
For consistency with the NFIP, section 553.73(5), F.S., authorizes adoption of procedures for variances; the specific procedures are in the FPM ordinance. Variances are official permission to undertake an activity that is otherwise prohibited or not approvable under the regulations or building code. As specified in section 553.73(5), F.S., the authority to grant variances to the flood provisions does not extend to any requirement in Section 3109, which applies seaward of the Coastal Construction Control Line.			

Select Year: 2021 ▼ Go

## The 2021 Florida Statutes

[Title XXXIII](#)  
REGULATION OF TRADE, COMMERCE, INVESTMENTS,  
AND SOLICITATIONS

[Chapter 553](#)  
BUILDING CONSTRUCTION  
STANDARDS

[View Entire  
Chapter](#)

### 553.73 Florida Building Code.—

(1)(a) The commission shall adopt, by rule pursuant to ss. [120.536\(1\)](#) and [120.54](#), the Florida Building Code which shall contain or incorporate by reference all laws and rules which pertain to and govern the design, construction, erection, alteration, modification, repair, and demolition of public and private buildings, structures, and facilities and enforcement of such laws and rules, except as otherwise provided in this section.

(b) The technical portions of the Florida Accessibility Code for Building Construction shall be contained in their entirety in the Florida Building Code. The civil rights portions and the technical portions of the accessibility laws of this state shall remain as currently provided by law. Any revision or amendments to the Florida Accessibility Code for Building Construction pursuant to part II shall be considered adopted by the commission as part of the Florida Building Code. Neither the commission nor any local government shall revise or amend any standard of the Florida Accessibility Code for Building Construction except as provided for in part II.

(c) The Florida Fire Prevention Code and the Life Safety Code shall be referenced in the Florida Building Code, but shall be adopted, modified, revised, or amended, interpreted, and maintained by the Department of Financial Services by rule adopted pursuant to ss. [120.536\(1\)](#) and [120.54](#). The Florida Building Commission may not adopt a fire prevention or lifesafety code, and nothing in the Florida Building Code shall affect the statutory powers, duties, and responsibilities of any fire official or the Department of Financial Services.

(d) Conflicting requirements between the Florida Building Code and the Florida Fire Prevention Code and Life Safety Code of the state established pursuant to ss. [633.206](#) and [633.208](#) shall be resolved by agreement between the commission and the State Fire Marshal in favor of the requirement that offers the greatest degree of lifesafety or alternatives that would provide an equivalent degree of lifesafety and an equivalent method of construction. If the commission and State Fire Marshal are unable to agree on a resolution, the question shall be referred to a mediator, mutually agreeable to both parties, to resolve the conflict in favor of the provision that offers the greatest lifesafety, or alternatives that would provide an equivalent degree of lifesafety and an equivalent method of construction.

(e) Subject to the provisions of this act, responsibility for enforcement, interpretation, and regulation of the Florida Building Code shall be vested in a specified local board or agency, and the words “local government” and “local governing body” as used in this part shall be construed to refer exclusively to such local board or agency.

(2) The Florida Building Code shall contain provisions or requirements for public and private buildings, structures, and facilities relative to structural, mechanical, electrical, plumbing, energy, and gas systems, existing buildings, historical buildings, manufactured buildings, elevators, coastal construction, lodging facilities, food sales and food service facilities, health care facilities, including assisted living facilities, adult day care facilities, hospice residential and inpatient facilities and units, and facilities for the control of radiation hazards, public or private educational facilities, swimming pools, and correctional facilities and enforcement of and compliance with such provisions or requirements. Further, the Florida Building Code must provide for uniform implementation of ss. [515.25](#), [515.27](#), and [515.29](#) by including standards and criteria for residential swimming pool barriers, pool covers, latching devices, door and window exit alarms, and other equipment required therein, which are consistent with the intent of s. [515.23](#). Technical provisions to be contained within the Florida Building Code are restricted to



requirements related to the types of materials used and construction methods and standards employed in order to meet criteria specified in the Florida Building Code. Provisions relating to the personnel, supervision or training of personnel, or any other professional qualification requirements relating to contractors or their workforce may not be included within the Florida Building Code, and subsections (4), (6), (7), (8), and (9) are not to be construed to allow the inclusion of such provisions within the Florida Building Code by amendment. This restriction applies to both initial development and amendment of the Florida Building Code.

(3) The commission shall use the International Codes published by the International Code Council, the National Electric Code (NFPA 70), or other nationally adopted model codes and standards for updates to the Florida Building Code. The commission may approve technical amendments to the code as provided in subsections (8) and (9), subject to all of the following conditions:

(a) The proposed amendment must have been published on the commission's website for a minimum of 45 days and all the associated documentation must have been made available to any interested party before consideration by a technical advisory committee.

(b) In order for a technical advisory committee to make a favorable recommendation to the commission, the proposal must receive a two-thirds vote of the members present at the meeting. At least half of the regular members must be present in order to conduct a meeting.

(c) After the technical advisory committee has considered and recommended approval of any proposed amendment, the proposal must be published on the commission's website for at least 45 days before consideration by the commission.

(d) A proposal may be modified by the commission based on public testimony and evidence from a public hearing held in accordance with chapter 120.

The commission shall incorporate within the Florida Building Code provisions that address regional and local concerns and variations. The commission shall make every effort to minimize conflicts between the Florida Building Code, the Florida Fire Prevention Code, and the Life Safety Code.

(4)(a) All entities authorized to enforce the Florida Building Code under s. 553.80 shall comply with applicable standards for issuance of mandatory certificates of occupancy, minimum types of inspections, and procedures for plans review and inspections as established by the commission by rule. Local governments may adopt amendments to the administrative provisions of the Florida Building Code, subject to the limitations in this subsection. Local amendments must be more stringent than the minimum standards described in this section and must be transmitted to the commission within 30 days after enactment. The local government shall make such amendments available to the general public in a usable format. The State Fire Marshal is responsible for establishing the standards and procedures required in this subsection for governmental entities with respect to applying the Florida Fire Prevention Code and the Life Safety Code.

(b) Local governments may, subject to the limitations in this section and not more than once every 6 months, adopt amendments to the technical provisions of the Florida Building Code that apply solely within the jurisdiction of such government and that provide for more stringent requirements than those specified in the Florida Building Code. A local government may adopt technical amendments that address local needs if:

1. The local governing body determines, following a public hearing which has been advertised in a newspaper of general circulation at least 10 days before the hearing, that there is a need to strengthen the requirements of the Florida Building Code. The determination must be based upon a review of local conditions by the local governing body, which review demonstrates by evidence or data that the geographical jurisdiction governed by the local governing body exhibits a local need to strengthen the Florida Building Code beyond the needs or regional variation addressed by the Florida Building Code, that the local need is addressed by the proposed local amendment, and that the amendment is no more stringent than necessary to address the local need.

2. Such additional requirements are not discriminatory against materials, products, or construction techniques of demonstrated capabilities.

3. Such additional requirements may not introduce a new subject not addressed in the Florida Building Code.

(c) The enforcing agency shall make readily available, in a usable format, all amendments adopted under this section.

(d) Any amendment to the Florida Building Code shall be transmitted within 30 days after adoption by the local government to the commission. The commission shall maintain copies of all such amendments in a format that is usable and obtainable by the public. Local technical amendments are not effective until 30 days after the amendment has been received and published by the commission.

(e) An amendment to the Florida Building Code adopted by a local government under this subsection is effective only until the adoption of the new edition of the Florida Building Code by the commission every third year. At such time, the commission shall review such amendment for consistency with the criteria in paragraph (9)(a) and adopt such amendment as part of the Florida Building Code or rescind the amendment. The commission shall immediately notify the respective local government of the rescission of any amendment. After receiving such notice, the respective local government may readopt the rescinded amendment under the provisions of this subsection.

(f) Each county and municipality desiring to make local technical amendments to the Florida Building Code shall establish by interlocal agreement a countywide compliance review board to review any amendment to the Florida Building Code that is adopted by a local government within the county under this subsection and that is challenged by a substantially affected party for purposes of determining the amendment's compliance with this subsection. If challenged, the local technical amendments are not effective until the time for filing an appeal under paragraph (g) has expired or, if there is an appeal, until the commission issues its final order determining if the adopted amendment is in compliance with this subsection.

(g) If the compliance review board determines such amendment is not in compliance with this subsection, the compliance review board shall notify such local government of the noncompliance and that the amendment is invalid and unenforceable until the local government corrects the amendment to bring it into compliance. The local government may appeal the decision of the compliance review board to the commission. If the compliance review board determines that such amendment is in compliance with this subsection, any substantially affected party may appeal such determination to the commission. Any such appeal must be filed with the commission within 14 days after the board's written determination. The commission shall promptly refer the appeal to the Division of Administrative Hearings by electronic means through the division's website for the assignment of an administrative law judge. The administrative law judge shall conduct the required hearing within 30 days after being assigned to the appeal, and shall enter a recommended order within 30 days after the conclusion of such hearing. The commission shall enter a final order within 30 days after an order is rendered. Chapter 120 and the uniform rules of procedure shall apply to such proceedings. The local government adopting the amendment that is subject to challenge has the burden of proving that the amendment complies with this subsection in proceedings before the compliance review board and the commission, as applicable. Actions of the commission are subject to judicial review under s. 120.68. The compliance review board shall determine whether its decisions apply to a respective local jurisdiction or apply countywide.

(h) An amendment adopted under this subsection must include a fiscal impact statement that documents the costs and benefits of the proposed amendment. Criteria for the fiscal impact statement shall include the impact to local government relative to enforcement and the impact to property and building owners and industry relative to the cost of compliance. The fiscal impact statement may not be used as a basis for challenging the amendment for compliance.

(i) In addition to <sup>1</sup>paragraphs (f) and (g), the commission may review any amendments adopted under this subsection and make nonbinding recommendations related to compliance of such amendments with this subsection.

(j) Any amendment adopted by a local enforcing agency under this subsection may not apply to state or school district owned buildings, manufactured buildings or factory-built school buildings approved by the commission, or prototype buildings approved under s. 553.77(3). The respective responsible entities shall consider the physical performance parameters substantiating such amendments when designing, specifying, and constructing such exempt buildings.

(k) A technical amendment to the Florida Building Code related to water conservation practices or design criteria adopted by a local government under this subsection is not void when the code is updated if the technical amendment is necessary to protect or provide for more efficient use of water resources as provided in s. [373.621](#). However, any such technical amendment carried forward into the next edition of the code under this paragraph is subject to review or modification as provided in this part.

(l) If a local government adopts a regulation, law, ordinance, policy, amendment, or land use or zoning provision without using the process established in this subsection, and a substantially affected person considers such regulation, law, ordinance, policy, amendment, or land use or zoning provision to be a technical amendment to the Florida Building Code, then the substantially affected person may submit a petition to the commission for a nonbinding advisory opinion. If a substantially affected person submits a request in accordance with this paragraph, the commission shall issue a nonbinding advisory opinion stating whether or not the commission interprets the regulation, law, ordinance, policy, amendment, or land use or zoning provision as a technical amendment to the Florida Building Code. As used in this paragraph, the term "local government" means a county, municipality, special district, or political subdivision of the state.

1. Requests to review a local government regulation, law, ordinance, policy, amendment, or land use or zoning provision may be initiated by any substantially affected person. A substantially affected person includes an owner or builder subject to the regulation, law, ordinance, policy, amendment, or land use or zoning provision, or an association of owners or builders having members who are subject to the regulation, law, ordinance, policy, amendment, or land use or zoning provision.

2. In order to initiate a review, a substantially affected person must file a petition with the commission. The commission shall adopt a form for the petition and directions for filing, which shall be published on the Building Code Information System. The form shall, at a minimum, require the following:

a. The name of the local government that enacted the regulation, law, ordinance, policy, amendment, or land use or zoning provision.

b. The name and address of the local government's general counsel or administrator.

c. The name, address, and telephone number of the petitioner; the name, address, and telephone number of the petitioner's representative, if any; and an explanation of how the petitioner's substantial interests are being affected by the regulation, law, ordinance, policy, amendment, or land use or zoning provision.

d. A statement explaining why the regulation, law, ordinance, policy, amendment, or land use or zoning provision is a technical amendment to the Florida Building Code, and which provisions of the Florida Building Code, if any, are being amended by the regulation, law, ordinance, policy, amendment, or land use or zoning provision.

3. The petitioner shall serve the petition on the local government's general counsel or administrator by certified mail, return receipt requested, and send a copy of the petition to the commission, in accordance with the commission's published directions. The local government shall respond to the petition in accordance with the form by certified mail, return receipt requested, and send a copy of its response to the commission, within 14 days after receipt of the petition, including Saturdays, Sundays, and legal holidays.

4. Upon receipt of a petition that meets the requirements of this paragraph, the commission shall publish the petition, including any response submitted by the local government, on the Building Code Information System in a manner that allows interested persons to address the issues by posting comments.

5. Before issuing an advisory opinion, the commission shall consider the petition, the response, and any comments posted on the Building Code Information System. The commission may also provide the petition, the response, and any comments posted on the Building Code Information System to a technical advisory committee, and may consider any recommendation provided by the technical advisory committee. The commission shall issue an advisory opinion stating whether the regulation, law, ordinance, policy, amendment, or land use or zoning provision is a technical amendment to the Florida Building Code within 30 days after the filing of the petition, including Saturdays, Sundays, and legal holidays. The commission shall publish its advisory opinion on the Building Code Information System and in the Florida Administrative Register. The commission's advisory opinion is nonbinding and is not a declaratory statement under s. [120.565](#).

(5) Notwithstanding subsection (4), counties and municipalities may adopt by ordinance an administrative or technical amendment to the Florida Building Code relating to flood resistance in order to implement the National Flood Insurance Program or incentives. Specifically, an administrative amendment may assign the duty to enforce all or portions of flood-related code provisions to the appropriate agencies of the local government and adopt procedures for variances and exceptions from flood-related code provisions other than provisions for structures seaward of the coastal construction control line consistent with the requirements in 44 C.F.R. s. 60.6. A technical amendment is authorized to the extent it is more stringent than the code. A technical amendment is not subject to the requirements of subsection (4) and may not be rendered void when the code is updated if the amendment is adopted for the purpose of participating in the Community Rating System promulgated pursuant to 42 U.S.C. s. 4022, the amendment had already been adopted by local ordinance prior to July 1, 2010, or the amendment requires a design flood elevation above the base flood elevation. Any amendment adopted under this subsection shall be transmitted to the commission within 30 days after being adopted. A municipality, county, or special district may not use preliminary maps issued by the Federal Emergency Management Agency for any law, ordinance, rule, or other measure that has the effect of imposing land use changes or permits.

(6) The initial adoption of, and any subsequent update or amendment to, the Florida Building Code by the commission is deemed adopted for use statewide without adoptions by local government. For a building permit for which an application is submitted prior to the effective date of the Florida Building Code, the state minimum building code in effect in the permitting jurisdiction on the date of the application governs the permitted work for the life of the permit and any extension granted to the permit.

(7)(a) The commission shall adopt an updated Florida Building Code every 3 years through review of the most current updates of the International Building Code, the International Fuel Gas Code, the International Existing Building Code, the International Mechanical Code, the International Plumbing Code, and the International Residential Code, all of which are copyrighted and published by the International Code Council, and the National Electrical Code, which is copyrighted and published by the National Fire Protection Association. **At a minimum, the commission shall adopt any updates to such codes or any other code necessary to maintain eligibility for federal funding and discounts from the National Flood Insurance Program, the Federal Emergency Management Agency, and the United States Department of Housing and Urban Development.** The commission shall also review and adopt updates based on the International Energy Conservation Code (IECC); however, the commission shall maintain the efficiencies of the Florida Energy Efficiency Code for Building Construction adopted and amended pursuant to s. 553.901. Every 3 years, the commission may approve updates to the Florida Building Code without a finding that the updates are needed in order to accommodate the specific needs of this state. The commission shall adopt updated codes by rule.

(b) Codes regarding noise contour lines shall be reviewed annually, and the most current federal guidelines shall be adopted.

(c) The commission may also adopt as a technical amendment to the Florida Building Code any portion of the codes identified in paragraph (a), but only as needed to accommodate the specific needs of this state. Standards or criteria adopted from these codes shall be incorporated by reference to the specific provisions adopted. If a referenced standard or criterion requires amplification or modification to be appropriate for use in this state, only the amplification or modification shall be set forth in the Florida Building Code. The commission may approve technical amendments to the updated Florida Building Code after the amendments have been subject to the conditions set forth in paragraphs (3)(a)-(d). Amendments that are adopted in accordance with this subsection shall be clearly marked in printed versions of the Florida Building Code so that the fact that the provisions are amendments is readily apparent.

(d) **The commission shall further consider the commission's own interpretations, declaratory statements, appellate decisions, and approved statewide and local technical amendments and shall incorporate such interpretations, statements, decisions, and amendments into the updated Florida Building Code only to the extent that they are needed to accommodate the specific needs of the state.** A change made by an institute or standards organization to any standard or criterion that is adopted by reference in the Florida Building Code does not become effective statewide until it has been adopted by the commission. Furthermore, the edition of the Florida Building



Code which is in effect on the date of application for any permit authorized by the code governs the permitted work for the life of the permit and any extension granted to the permit.

(e) A rule updating the Florida Building Code in accordance with this subsection shall take effect no sooner than 6 months after publication of the updated code. Any amendment to the Florida Building Code which is adopted upon a finding by the commission that the amendment is necessary to protect the public from immediate threat of harm takes effect immediately.

(f) Provisions of the Florida Building Code, including those contained in referenced standards and criteria, relating to wind resistance or the prevention of water intrusion may not be modified to diminish those construction requirements; however, the commission may, subject to conditions in this subsection, modify the provisions to enhance those construction requirements.

(8) Notwithstanding subsection (3) or subsection (7), the commission may address issues identified in this subsection by amending the code under the rule adoption procedures in chapter 120. Updates to the Florida Building Code, including provisions contained in referenced standards and criteria which relate to wind resistance or the prevention of water intrusion, may not be amended under this subsection to diminish those standards; however, the commission may amend the Florida Building Code to enhance such standards. Following the approval of any amendments to the Florida Building Code by the commission and publication of the amendments on the commission's website, authorities having jurisdiction to enforce the Florida Building Code may enforce the amendments.

(a) The commission may approve amendments that are needed to address:

1. Conflicts within the updated code;
2. Conflicts between the updated code and the Florida Fire Prevention Code adopted under chapter 633;
3. Unintended results from the integration of previously adopted amendments with the model code;
4. Equivalency of standards;
5. Changes to or inconsistencies with federal or state law; or
6. Adoption of an updated edition of the National Electrical Code if the commission finds that delay of implementing the updated edition causes undue hardship to stakeholders or otherwise threatens the public health, safety, and welfare.

(b) The commission may issue errata to the code pursuant to the rule adoption procedures in chapter 120 to list demonstrated errors in provisions contained within the Florida Building Code. The determination of such errors and the issuance of errata to the code must be approved by a 75-percent supermajority vote of the commission. For purposes of this paragraph, "errata to the code" means a list of errors on current and previous editions of the Florida Building Code.

(9)(a) The commission may approve technical amendments to the Florida Building Code once each year for statewide or regional application upon a finding that the amendment:

1. Is needed in order to accommodate the specific needs of this state.
2. Has a reasonable and substantial connection with the health, safety, and welfare of the general public.
3. Strengthens or improves the Florida Building Code, or in the case of innovation or new technology, will provide equivalent or better products or methods or systems of construction.
4. Does not discriminate against materials, products, methods, or systems of construction of demonstrated capabilities.
5. Does not degrade the effectiveness of the Florida Building Code.

The Florida Building Commission may approve technical amendments to the code once each year to incorporate into the Florida Building Code its own interpretations of the code which are embodied in its opinions, final orders, declaratory statements, and interpretations of hearing officer panels under s. 553.775(3)(c), but only to the extent that the incorporation of interpretations is needed to modify the code to accommodate the specific needs of this state. Amendments approved under this paragraph shall be adopted by rule after the amendments have been subjected to subsection (3).

(b) A proposed amendment must include a fiscal impact statement that documents the costs and benefits of the proposed amendment. Criteria for the fiscal impact statement shall be established by rule by the commission and shall include the impact to local government relative to enforcement, the impact to property and building owners, and the impact to industry, relative to the cost of compliance. The amendment must demonstrate by evidence or data that the state's geographical jurisdiction exhibits a need to strengthen the code beyond the needs or regional variations addressed by the code and why the proposed amendment applies to this state.

(c) The commission may not approve any proposed amendment that does not accurately and completely address all requirements for amendment which are set forth in this section. The commission shall require all proposed amendments and information submitted with proposed amendments to be reviewed by commission staff prior to consideration by any technical advisory committee. These reviews shall be for sufficiency only and are not intended to be qualitative in nature. Staff members shall reject any proposed amendment that fails to include a fiscal impact statement. Proposed amendments rejected by members of the staff may not be considered by the commission or any technical advisory committee.

(d) Provisions of the Florida Building Code, including those contained in referenced standards and criteria, relating to wind resistance or the prevention of water intrusion may not be amended pursuant to this subsection to diminish those construction requirements; however, the commission may, subject to conditions in this subsection, amend the provisions to enhance those construction requirements.

(10) The following buildings, structures, and facilities are exempt from the Florida Building Code as provided by law, and any further exemptions shall be as determined by the Legislature and provided by law:

- (a) Buildings and structures specifically regulated and preempted by the Federal Government.
- (b) Railroads and ancillary facilities associated with the railroad.
- (c) Nonresidential farm buildings on farms.
- (d) Temporary buildings or sheds used exclusively for construction purposes.
- (e) Mobile or modular structures used as temporary offices, except that the provisions of part II relating to accessibility by persons with disabilities apply to such mobile or modular structures.
- (f) Those structures or facilities of electric utilities, as defined in s. 366.02, which are directly involved in the generation, transmission, or distribution of electricity.
- (g) Temporary sets, assemblies, or structures used in commercial motion picture or television production, or any sound-recording equipment used in such production, on or off the premises.
- (h) Storage sheds that are not designed for human habitation and that have a floor area of 720 square feet or less are not required to comply with the mandatory wind-borne-debris-impact standards of the Florida Building Code. In addition, such buildings that are 400 square feet or less and that are intended for use in conjunction with one- and two-family residences are not subject to the door height and width requirements of the Florida Building Code.
- (i) Chickees constructed by the Miccosukee Tribe of Indians of Florida or the Seminole Tribe of Florida. As used in this paragraph, the term "chickee" means an open-sided wooden hut that has a thatched roof of palm or palmetto or other traditional materials, and that does not incorporate any electrical, plumbing, or other nonwood features.
- (j) Family mausoleums not exceeding 250 square feet in area which are prefabricated and assembled on site or preassembled and delivered on site and have walls, roofs, and a floor constructed of granite, marble, or reinforced concrete.
- (k) A building or structure having less than 1,000 square feet which is constructed and owned by a natural person for hunting and which is repaired or reconstructed to the same dimension and condition as existed on January 1, 2011, if the building or structure:
  - 1. Is not rented or leased or used as a principal residence;
  - 2. Is not located within the 100-year floodplain according to the Federal Emergency Management Agency's current Flood Insurance Rate Map; and
  - 3. Is not connected to an offsite electric power or water supply.

With the exception of paragraphs (a), (b), (c), and (f), in order to preserve the health, safety, and welfare of the public, the Florida Building Commission may, by rule adopted pursuant to chapter 120, provide for exceptions to the broad categories of buildings exempted in this section, including exceptions for application of specific sections of the code or standards adopted therein. The Department of Agriculture and Consumer Services shall have exclusive authority to adopt by rule, pursuant to chapter 120, exceptions to nonresidential farm buildings exempted in paragraph (c) when reasonably necessary to preserve public health, safety, and welfare. The exceptions must be based upon specific criteria, such as under-roof floor area, aggregate electrical service capacity, HVAC system capacity, or other building requirements. Further, the commission may recommend to the Legislature additional categories of buildings, structures, or facilities which should be exempted from the Florida Building Code, to be provided by law. The Florida Building Code does not apply to temporary housing provided by the Department of Corrections to any prisoner in the state correctional system.

(11)(a) In the event of a conflict between the Florida Building Code and the Florida Fire Prevention Code and the Life Safety Code as applied to a specific project, the conflict shall be resolved by agreement between the local building code enforcement official and the local fire code enforcement official in favor of the requirement of the code which offers the greatest degree of lifesafety or alternatives which would provide an equivalent degree of lifesafety and an equivalent method of construction. Local boards created to address issues arising under the Florida Building Code or the Florida Fire Prevention Code may combine the appeals boards to create a single, local board having jurisdiction over matters arising under either code or both codes. The combined local appeals board may grant alternatives or modifications through procedures outlined in NFPA 1, Section 1.4, but may not waive the requirements of the Florida Fire Prevention Code. To meet the quorum requirement for convening the combined local appeals board, at least one member of the board who is a fire protection contractor, a fire protection design professional, a fire department operations professional, or a fire code enforcement professional must be present.

(b) Any decision made by the local fire official regarding application, interpretation, or enforcement of the Florida Fire Prevention Code or by the local building official regarding application, interpretation, or enforcement of the Florida Building Code, or the appropriate application of either code or both codes in the case of a conflict between the codes, may be appealed to a local administrative board designated by the municipality, county, or special district having firesafety responsibilities. If the decision of the local fire official and the local building official is to apply the provisions of either the Florida Building Code or the Florida Fire Prevention Code and the Life Safety Code, the board may not alter the decision unless the board determines that the application of such code is not reasonable. If the decision of the local fire official and the local building official is to adopt an alternative to the codes, the local administrative board shall give due regard to the decision rendered by the local officials and may modify that decision if the administrative board adopts a better alternative, taking into consideration all relevant circumstances. In any case in which the local administrative board adopts alternatives to the decision rendered by the local fire official and the local building official, such alternatives shall provide an equivalent degree of lifesafety and an equivalent method of construction as the decision rendered by the local officials.

(c) If the local building official and the local fire official are unable to agree on a resolution of the conflict between the Florida Building Code and the Florida Fire Prevention Code and the Life Safety Code, the local administrative board shall resolve the conflict in favor of the code which offers the greatest degree of lifesafety or alternatives which would provide an equivalent degree of lifesafety and an equivalent method of construction.

(d) All decisions of the local administrative board or, if none exists, the local building official and the local fire official in regard to the application, enforcement, or interpretation of the Florida Fire Prevention Code, or conflicts between the Florida Fire Prevention Code and the Florida Building Code, are subject to review by a joint committee composed of members of the Florida Building Commission and the Fire Code Advisory Council. If the joint committee is unable to resolve conflicts between the codes as applied to a specific project, the matter shall be resolved pursuant to paragraph (1)(d). Decisions of the local administrative board related solely to the Florida Building Code are subject to review as set forth in s. 553.775.

(e) The local administrative board shall, to the greatest extent possible, be composed of members with expertise in building construction and firesafety standards.

(f) All decisions of the local building official and local fire official and all decisions of the administrative board shall be in writing and shall be binding upon a person but do not limit the authority of the State Fire Marshal or the Florida Building Commission pursuant to paragraph (1)(d) and ss. [633.104](#) and [633.228](#). Decisions of general application shall be indexed by building and fire code sections and shall be available for inspection during normal business hours.

(12) Except within coastal building zones as defined in s. [161.54](#), specification standards developed by nationally recognized code promulgation organizations to determine compliance with engineering criteria of the Florida Building Code for wind load design shall not apply to one or two family dwellings which are two stories or less in height unless approved by the commission for use or unless expressly made subject to said standards and criteria by local ordinance adopted in accordance with the provisions of subsection (4).

(13) The Florida Building Code does not apply to, and no code enforcement action shall be brought with respect to, zoning requirements, land use requirements, and owner specifications or programmatic requirements which do not pertain to and govern the design, construction, erection, alteration, modification, repair, or demolition of public or private buildings, structures, or facilities or to programmatic requirements that do not pertain to enforcement of the Florida Building Code. Additionally, a local code enforcement agency may not administer or enforce the Florida Building Code to prevent the siting of any publicly owned facility, including, but not limited to, correctional facilities, juvenile justice facilities, or state universities, community colleges, or public education facilities, as provided by law.

(14) The general provisions of the Florida Building Code for buildings and other structures shall not apply to commercial wireless communication towers when such general provisions are inconsistent with the provisions of the code controlling radio and television towers. This subsection is intended to be remedial in nature and to clarify existing law.

(15) An agency or local government may not require that existing mechanical equipment located on or above the surface of a roof be installed in compliance with the requirements of the Florida Building Code except during reroofing when the equipment is being replaced or moved and is not in compliance with the provisions of the Florida Building Code relating to roof-mounted mechanical units.

(16) The Florida Building Code must require that the illumination in classroom units be designed to provide and maintain an average of 40 foot-candles of light at each desktop. Public educational facilities must consider using light-emitting diode lighting before considering other lighting sources.

(17) A provision of the International Residential Code relating to mandated fire sprinklers may not be incorporated into the Florida Building Code as adopted by the Florida Building Commission and may not be adopted as a local amendment to the Florida Building Code. This subsection does not prohibit the application of cost-saving incentives for residential fire sprinklers that are authorized in the International Residential Code upon a mutual agreement between the builder and the code official. This subsection does not apply to a local government that has a lawfully adopted ordinance relating to fire sprinklers which has been in effect since January 1, 2010.

(18) In a single-family dwelling, makeup air is not required for range hood exhaust systems capable of exhausting:

- (a) Four hundred cubic feet per minute or less; or
- (b) More than 400 cubic feet per minute but no more than 800 cubic feet per minute if there are no gravity vent appliances within the conditioned living space of the structure.

(19) The Florida Building Code shall require two fire service access elevators in all buildings with a height greater than 120 feet measured from the elevation of street-level access to the level of the highest occupiable floor. All remaining elevators, if any, shall be provided with Phase I and II emergency operations. Where a fire service access elevator is required, a 1-hour fire-rated fire service access elevator lobby with direct access from the fire service access elevator is not required if the fire service access elevator opens into an exit access corridor that is no less than 6 feet wide for its entire length and is at least 150 square feet with the exception of door openings, and has a minimum 1-hour fire rating with three-quarter hour fire and smoke rated openings; and during a fire event the fire service access elevator is pressurized and floor-to-floor smoke control is provided. However, where transient residential occupancies occur at floor levels more than 420 feet above the level of fire service

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Statutes &amp; Constitution : View Statutes : Online Sunshine

access, a 1-hour fire-rated service access elevator lobby with direct access from the fire service access elevator is required. Standpipes in high-rise buildings of Florida Building Code—Building Occupancy Group R1 or R2 must be located in stairwells and are subject only to the requirements of the Florida Fire Prevention Code and NFPA 14, Standard for the Installation of Standpipes and Hose Systems, adopted by the State Fire Marshal.

(20) The Florida Building Commission may not:

(a) Adopt the 2016 version of the American Society of Heating, Refrigerating and Air-Conditioning Engineers Standard 9.4.1.1(g).

(b) Adopt any provision that requires a door located in the opening between a garage and a single-family residence to be equipped with a self-closing device.

**History.**—s. 4, ch. 74-167; s. 3, ch. 75-85; s. 1, ch. 77-365; s. 225, ch. 79-400; s. 1, ch. 80-106; s. 6, ch. 82-197; s. 2, ch. 84-273; s. 1, ch. 85-97; s. 33, ch. 86-191; s. 1, ch. 87-287; s. 1, ch. 88-142; s. 1, ch. 89-369; s. 2, ch. 91-172; s. 41, ch. 91-220; s. 49, ch. 95-144; s. 1, ch. 97-177; ss. 39, 40, 65, ch. 98-287; s. 61, ch. 98-419; ss. 73, 74, 75, ch. 2000-141; s. 62, ch. 2000-154; ss. 25, 34, 35, 36, ch. 2001-186; ss. 2, 3, 4, 5, ch. 2001-372; s. 86, ch. 2002-1; ss. 1, 14, ch. 2002-293; s. 66, ch. 2003-1; s. 663, ch. 2003-261; s. 7, ch. 2005-147; s. 1, ch. 2005-191; s. 4, ch. 2006-65; s. 7, ch. 2007-1; s. 4, ch. 2007-187; s. 140, ch. 2008-4; s. 10, ch. 2008-191; s. 108, ch. 2008-227; s. 1, ch. 2010-99; s. 32, ch. 2010-176; s. 14, ch. 2011-208; s. 30, ch. 2011-222; s. 14, ch. 2012-13; s. 148, ch. 2013-183; s. 14, ch. 2013-193; s. 18, ch. 2014-154; s. 17, ch. 2016-129; s. 11, ch. 2017-149; s. 6, ch. 2019-75; s. 2, ch. 2021-201.

<sup>1</sup>**Note.**—The amendment by s. 2, ch. 2021-201, changed the reference from "subparagraphs 7. and 9." to "paragraphs (f) and (g)" to conform to the redesignation of subunits in subsection (4) by that law. Subparagraph (b)7. was redesignated as paragraph (f), and subparagraph (b)9. was redesignated as paragraph (h).

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<b>FILED</b>	
Department of Business and Professional Regulation	
Senior Deputy Agency Clerk	
CLERK	Brandon Nichols
Date	11/9/2021
File #	2021-08370

**STATE OF FLORIDA  
BUILDING COMMISSION**

In the Matter of

CLASSIC FLORIDA DREAM HOMES, LLC

**DS 2021-050**

Petitioner.

**DECLARATORY STATEMENT**

The following proceeding came before the Florida Building Commission (Commission) by a Petition from Thomas E. Smith, for Classic Florida Dream Homes, LLC (Petitioner) that was received September 2, 2021. Based on the statements in the petition, the material subsequently submitted and the subsequent request by the Petitioner, the Commission states the following:

**Findings of Fact**

1. The petition is filed pursuant to, and must conform with the requirements of rule 28-105.002, Florida Administrative Code.
2. Petitioner's representative in this matter is Thomas E. Smith, 424 Harbor Drive North, Indian Rocks Beach, FL 33785.
3. Petitioner is a contractor planning the construction of a two-story, single family home located in a flood zone with an "AE" designation under the National Flood Insurance Program. Petitioner states that it wishes to have the option to utilize the services of private providers for plans review and/or building inspections on the project.
4. Petitioner seeks clarification of section 107.6.1, Florida Building Code, Building, 7th Edition (2020), as it pertains to building permits issued on the basis of affidavit, and the services provided by private providers pursuant to section 553.791, Florida Statutes (2021).



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5. Specifically, the Petitioner requests an answer to the following question based upon the project described within the petition for declaratory statement:

Per the 2020 Florida Building Code, does section 107.6.1 Building Permits issued on the basis of an affidavit apply to Private Providers per F.S. 553.791?

#### Conclusions of Law

6. The Commission has the specific statutory authority pursuant to section 553.775(3)(a), Florida Statutes (2021) to interpret the provisions of the Florida Building Code by issuing a declaratory statement.

7. Section 105.14, Florida Building Code, Building, 7th Edition (2020), states:

**Permit issued on basis of an affidavit.**

Whenever a permit is issued in reliance upon an affidavit or whenever the work to be covered by a permit involves installation under conditions which, in the opinion of the building official, are hazardous or complex, the building official shall require that the architect or engineer who signed the affidavit or prepared the drawings or computations shall supervise such work. In addition, they shall be responsible for conformity to the permit, provide copies of inspection reports as inspections are performed, and upon completion make and file with the building official written affidavit that the work has been done in conformity to the reviewed plans and with the structural provisions of the technical codes. In the event such architect or engineer is not available, the owner shall employ in his stead a competent person or agency whose qualifications are reviewed by the building official. The building official shall ensure that any person conducting plans review is qualified as a plans examiner under Part XII of Chapter 468, Florida Statutes, and that any person conducting inspections is qualified as a building inspector under Part XII of Chapter 468, Florida Statutes.

**Exception:** Permit issued on basis of an affidavit shall not extend to the flood load and flood resistance requirements of the Florida Building Code.



8. Section 107.6, Florida Building Code, Building, 7th Edition (2020), states:

**Affidavits.**

The building official may accept a sworn affidavit from a registered architect or engineer stating that the plans submitted conform to the technical codes. For buildings and structures, the affidavit shall state that the plans conform to the laws as to egress, type of construction and general arrangement and, if accompanied by drawings, show the structural design and that the plans and design conform to the requirements of the technical codes as to strength, stresses, strains, loads and stability. The building official may without any examination or inspection accept such affidavit, provided the architect or engineer who made such affidavit agrees to submit to the building official copies of inspection reports as inspections are performed and upon completion of the structure, electrical, gas, mechanical or plumbing systems a certification that the structure, electrical, gas, mechanical or plumbing system has been erected in accordance with the requirements of the technical codes. Where the building official relies upon such affidavit, the architect or engineer shall assume full responsibility for compliance with all provisions of the technical codes and other pertinent laws or ordinances. The building official shall ensure that any person conducting plans review is qualified as a plans examiner under Part XII of Chapter 468, Florida Statutes, and that any person conducting inspections is qualified as a building inspector under Part XII of Chapter 468, Florida Statutes.

9. Section 107.6.1, Florida Building Code, Building, 7th Edition (2020), states:

**Building permits issued on the basis of an affidavit.**

Pursuant to the requirements of federal regulation for participation in the National Flood Insurance Program (44 C.F.R. Parts 59 and 60), the authority granted to the *building official* to issue permits, to rely on inspections, and to accept plans and construction documents on the basis of affidavits and plans submitted pursuant to Sections 105.14 and 107.6, shall not extend to the flood load and flood-resistance construction requirements of the Florida Building Code.

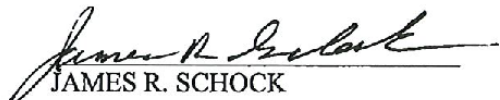
10. In response to Petitioner's question, the answer is **no**. Section 107.6.1, Florida Building Code, Building, 7th Edition (2020), is limited in scope to affidavits issued pursuant to sections 105.14 and 107.6, Florida Building Code, Building, 7th Edition (2020), and therefore section 107.6.1 does not apply to services performed by private providers as authorized by

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section 553.791, Florida Statutes (2021). This does not absolve the community from complying with any requirements under the National Flood Insurance Program.

DONE AND ORDERED this 20<sup>th</sup> day of OCTOBER, 2021, in St. Augustine, St. Johns County, State of Florida.

  
JAMES R. SCHOCK  
Chairman, Florida Building Commission

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NOTICE OF RIGHT TO APPEAL

Petitioner and all other interested parties are hereby advised of their right to seek judicial review of this Order in accordance with section 120.68(2)(a), Florida Statutes (2021), and Florida Rules of Appellate Procedure 9.110(a) and 9.030(b)(1)(C). To initiate an appeal, a Notice of Appeal must be filed with the Agency Clerk, Department of Business and Professional Regulation, 2601 Blair Stone Road, Tallahassee, Florida 32399-2203 and with the appropriate District Court of Appeal not later than thirty (30) days after this Order is filed with the Clerk of the Department of Business and Professional Regulation. A Notice of Appeal filed with the District Court of Appeal shall be accompanied by the filing fee specified by section 35.22(3), Florida Statutes (2021).

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Page 6 of 6

CERTIFICATE OF FILING AND SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing order has been filed with the undersigned and furnished by U. S. Mail to the persons listed below this 9<sup>th</sup> day of November, 2021.



Agency Clerk's Office  
Department of Business and Professional Regulation  
& Florida Building Commission  
2601 Blair Stone Road  
Tallahassee, Florida 32399-2203

Via U.S. Mail

Classic Florida Dream Homes, LLC  
Attn: Thomas E. Smith  
424 Harbor Drive North  
Indian Rocks Beach, FL 33785

Via Inter-Office or Email Delivery

Mo Madani, Planning Manager  
Codes and Standards Section  
Department of Business and Professional  
Regulation  
2601 Blair Stone Road  
Tallahassee, Florida 32399  
Mo.Madani@myfloridalicense.com

Marjorie Holladay  
Joint Administrative Procedures Committee  
Pepper Building, Room 680  
Tallahassee, Florida 32399-1300



STATE OF FLORIDA  
**DIVISION OF EMERGENCY MANAGEMENT**

Ron DeSantis  
Governor

Jared Moskowitz  
Director

November 2, 2020

**MEMORANDUM**

TO: Florida Floodplain Administrators and Building Officials

FROM: Conn H. Cole, Interim State Floodplain Manager **Conn H. Cole**

CONCURRENCE: Jason O. Hunter, Chief, FEMA Region IV Floodplain Management & Insurance Branch *Jason O. Hunter*

Digitally signed by Conn H. Cole  
DN: cn=Conn H. Cole, ou=Florida Department of  
Emergency Management, ou=State Floodplain  
Management Office,  
email=Conn.H.Cole@floridadom.com, c=US  
Date: 2020.11.02 14:56:03 -0500

RE: Florida Building Code and Permits Issued on the Basis of Affidavits  
**NFIP Communities Must Review For Floodplain Compliance**

Over the past year the State Floodplain Management Office (SFMO) has received inquiries regarding changes enacted in the 2019 legislative session that affect the use and acceptance of private providers for building permits and inspections. The Florida Building Code (FBC) includes provisions for issuing permits based on affidavits signed by qualified architects or engineers, in the Building volume, sections 105.14 and 107.6. These sections are shown in the attachment.

This memorandum provides guidance to clarify the exception to Sections 105.14 and 107.6.1. FEMA Region IV concurs with this guidance. **In effect, the sections require local officials to review applications for compliance with the flood load and flood-resistant construction requirements of the FBC when buildings are proposed to be located in special flood hazard areas, and to inspect those aspects when permits are issued.**

The National Flood Insurance Program (NFIP) requires communities that participate in the program to agree to adopt and enforce regulations that meet or exceed the minimum requirement of the NFIP (44 Code of Federal Regulations Parts 59 and 60). FEMA deems the flood provisions of the FBC to meet or exceed the minimum NFIP requirements for buildings and structures.

**The NFIP regulations require communities to review proposed construction or development in special flood hazard areas.** Specifically, the NFIP regulations in Section 60.3 states: "Minimum standards for communities are as follows: (a) . . . the community shall: . . . (1) Require permits for all proposed construction or development . . . ; (2) Review proposed development to . . . ; (3) Review all applications to . . . ; (4) Review subdivision proposals and other new development . . ." <https://www.govinfo.gov/app/details/CFR-2011-title44-vol1/CFR-2011-title44-vol1-part60>

**DIVISION HEADQUARTERS**  
2555 Shumard Oak Boulevard  
Tallahassee, FL 32399-2100

Telephone: 850-815-4000  
[www.FloridaDisaster.org](http://www.FloridaDisaster.org)

**STATE LOGISTICS RESPONSE CENTER**  
2702 Directors Row  
Orlando, FL 32809-5631



Florida Floodplain Administrators and Building Officials  
November 2 , 2020  
Page 2

In 2011-12, the SFMO worked with FEMA, the Florida Building Commission, the Building Officials Association of Florida, and the Florida Floodplain Managers Association to incorporate in the FBC the necessary requirements for buildings in flood hazard areas. As part of that effort, the SFMO examined the matter of permits issued based on affidavits. Prior to the inclusion of Section 107.6.1 and the exception to Section 105.14, many communities individually adopted local administrative amendments with the same limitation.

During the code development cycle for the 5<sup>th</sup> Edition FBC, FDEM submitted a proposal to incorporate Section 107.6.1 into the FBC (the exception to Section 105.14 was added by amendment to a proposal by others). FDEM's rationale statement is shown below and repeated here for clarify:

Both of these proposed new sections flow from consistency with the NFIP. They were developed by DEM as part of the Model Floodplain Management Ordinance and Code Amendments, reviewed by BOAF, and scrutinized by FEMA. Because FEMA deemed both of these are necessary, it is more efficient for the FBC to include them in Chapter 1, rather than expect every local government to adopt them as local administrative code amendments.

Despite the submission of an affidavit authorized by B107.6, the building official must review plans for compliance with the flood provisions and issue permits and perform inspections to ensure compliance with the flood provisions. Under the NFIP, the community is responsible for ensuring compliance.

\*The original proposal (SP5255) included both Section 107.6.1 and Section 117; the exception to Section 105.14 was added to proposal CA5082) by amendments for consistency.

Please contact us at (850) 815-4556 or [floods@em.myflorida.com](mailto:floods@em.myflorida.com) if you have questions about the flood provisions in the FBC or FBC-coordinated floodplain management regulations.

CC: Steve Martin, Roy McClure, Virgilio Chris Perez

Attachment: FBC, Building, Sections 105.14 and 107.6.1 and Proposal for the 5<sup>th</sup> Ed. FBC, submitted 7/22/2012

## ATTACHMENT

## FBC, Building Sections 105.14 and 107.6.1

**105.14 Permit issued on basis of an affidavit.** Whenever a permit is issued in reliance upon an affidavit or whenever the work to be covered by a permit involves installation under conditions which, in the opinion of the building official, are hazardous or complex, the building official shall require that the architect or engineer who signed the affidavit or prepared the drawings or computations shall supervise such work. In addition, they shall be responsible for conformity to the permit, provide copies of inspection reports as inspections are performed, and upon completion make and file with the building official written affidavit that the work has been done in conformity to the reviewed plans and with the structural provisions of the technical codes. In the event such architect or engineer is not available, the owner shall employ in his stead a competent person or agency whose qualifications are reviewed by the building official. The building official shall ensure that any person conducting plans review is qualified as a plans examiner under Part XII of Chapter 468, *Florida Statutes*, and that any person conducting inspections is qualified as a building inspector under Part XII of Chapter 468, *Florida Statutes*.

**Exception:** Permit issued on basis of an affidavit shall not extend to the flood load and flood resistance requirements of the *Florida Building Code*.

**107.6.1 [Affidavits] Building permits issued on the basis of an affidavit.** Pursuant to the requirements of federal regulation for participation in the National Flood Insurance Program (44 C.F.R. Parts 59 and 60), the authority granted to the building official to issue permits, to rely on inspections, and to accept plans and construction documents on the basis of affidavits and plans submitted pursuant to Sections 105.14 and 107.6, shall not extend to the flood load and flood-resistance construction requirements of the *Florida Building Code*.

## Mod SP 5255 (approved as submitted)

Mod CA 5082 (submitted by Joe Bigelow to add new Sec. 105.14; FDEM proposed amendment to recapture NFIP; approved as amended.

<b>SP5255</b>		Page 6 of 427 2	
<b>Date Submitted</b>	7/22/2012	<b>Section</b>	107.6 and 117 (new)
<b>Chapter</b>	1	<b>Affects HVHZ</b>	No
<b>TAC Recommendation</b>	Pending Review	<b>Preponent</b>	Rebecca Quinn aka DEM
<b>Commission Action</b>	Pending Review	<b>Attachments</b>	No
<b>Related Modifications</b>			
<b>Summary of Modification</b>			
Two administrative amendments that FEMA has deemed necessary to ensure that enforcement of the flood provisions of the FBC remain consistent with the NFIP.			
<b>Rationale</b>			
Both of these proposed new sections flow from consistency with the NFIP. They were developed by DEM as part of the Model Floodplain Management Ordinance and Code Amendments, reviewed by BOAF, and scrutinized by FEMA. Because FEMA has deemed both of these are necessary, it is more efficient for the FBC to include them in Chapter 1, rather than expect every local government to adopt them as local administrative code amendments.			
Despite the submission of an affidavit authorized by 8107.6, the building official must review plans for compliance with the flood provisions and issue permits and perform inspections to ensure compliance with the flood provisions. Under the NFIP, the community is responsible for ensuring compliance.			
For consistency with the NFIP, section 553.73(5), F.S., authorizes adoption of procedures for variances; the specific procedures are in the FPM ordinance. Variances are official permission to undertake an activity that is otherwise prohibited or not approvable under the regulations or building code. As specified in section 553.73(5), F.S., the authority to grant variances to the flood provisions does not extend to any requirement in Section 3109, which applies seaward of the Coastal Construction Control Line.			



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## The 2021 Florida Statutes

[Title XXXIII](#)  
REGULATION OF TRADE, COMMERCE, INVESTMENTS,  
AND SOLICITATIONS

[Chapter 553](#)  
BUILDING CONSTRUCTION  
STANDARDS

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Chapter](#)

### 553.73 Florida Building Code.—

(1)(a) The commission shall adopt, by rule pursuant to ss. [120.536\(1\)](#) and [120.54](#), the Florida Building Code which shall contain or incorporate by reference all laws and rules which pertain to and govern the design, construction, erection, alteration, modification, repair, and demolition of public and private buildings, structures, and facilities and enforcement of such laws and rules, except as otherwise provided in this section.

(b) The technical portions of the Florida Accessibility Code for Building Construction shall be contained in their entirety in the Florida Building Code. The civil rights portions and the technical portions of the accessibility laws of this state shall remain as currently provided by law. Any revision or amendments to the Florida Accessibility Code for Building Construction pursuant to part II shall be considered adopted by the commission as part of the Florida Building Code. Neither the commission nor any local government shall revise or amend any standard of the Florida Accessibility Code for Building Construction except as provided for in part II.

(c) The Florida Fire Prevention Code and the Life Safety Code shall be referenced in the Florida Building Code, but shall be adopted, modified, revised, or amended, interpreted, and maintained by the Department of Financial Services by rule adopted pursuant to ss. [120.536\(1\)](#) and [120.54](#). The Florida Building Commission may not adopt a fire prevention or lifesafety code, and nothing in the Florida Building Code shall affect the statutory powers, duties, and responsibilities of any fire official or the Department of Financial Services.

(d) Conflicting requirements between the Florida Building Code and the Florida Fire Prevention Code and Life Safety Code of the state established pursuant to ss. [633.206](#) and [633.208](#) shall be resolved by agreement between the commission and the State Fire Marshal in favor of the requirement that offers the greatest degree of lifesafety or alternatives that would provide an equivalent degree of lifesafety and an equivalent method of construction. If the commission and State Fire Marshal are unable to agree on a resolution, the question shall be referred to a mediator, mutually agreeable to both parties, to resolve the conflict in favor of the provision that offers the greatest lifesafety, or alternatives that would provide an equivalent degree of lifesafety and an equivalent method of construction.

(e) Subject to the provisions of this act, responsibility for enforcement, interpretation, and regulation of the Florida Building Code shall be vested in a specified local board or agency, and the words “local government” and “local governing body” as used in this part shall be construed to refer exclusively to such local board or agency.

(2) The Florida Building Code shall contain provisions or requirements for public and private buildings, structures, and facilities relative to structural, mechanical, electrical, plumbing, energy, and gas systems, existing buildings, historical buildings, manufactured buildings, elevators, coastal construction, lodging facilities, food sales and food service facilities, health care facilities, including assisted living facilities, adult day care facilities, hospice residential and inpatient facilities and units, and facilities for the control of radiation hazards, public or private educational facilities, swimming pools, and correctional facilities and enforcement of and compliance with such provisions or requirements. Further, the Florida Building Code must provide for uniform implementation of ss. [515.25](#), [515.27](#), and [515.29](#) by including standards and criteria for residential swimming pool barriers, pool covers, latching devices, door and window exit alarms, and other equipment required therein, which are consistent with the intent of s. [515.23](#). Technical provisions to be contained within the Florida Building Code are restricted to

requirements related to the types of materials used and construction methods and standards employed in order to meet criteria specified in the Florida Building Code. Provisions relating to the personnel, supervision or training of personnel, or any other professional qualification requirements relating to contractors or their workforce may not be included within the Florida Building Code, and subsections (4), (6), (7), (8), and (9) are not to be construed to allow the inclusion of such provisions within the Florida Building Code by amendment. This restriction applies to both initial development and amendment of the Florida Building Code.

(3) The commission shall use the International Codes published by the International Code Council, the National Electric Code (NFPA 70), or other nationally adopted model codes and standards for updates to the Florida Building Code. The commission may approve technical amendments to the code as provided in subsections (8) and (9), subject to all of the following conditions:

(a) The proposed amendment must have been published on the commission's website for a minimum of 45 days and all the associated documentation must have been made available to any interested party before consideration by a technical advisory committee.

(b) In order for a technical advisory committee to make a favorable recommendation to the commission, the proposal must receive a two-thirds vote of the members present at the meeting. At least half of the regular members must be present in order to conduct a meeting.

(c) After the technical advisory committee has considered and recommended approval of any proposed amendment, the proposal must be published on the commission's website for at least 45 days before consideration by the commission.

(d) A proposal may be modified by the commission based on public testimony and evidence from a public hearing held in accordance with chapter 120.

The commission shall incorporate within the Florida Building Code provisions that address regional and local concerns and variations. The commission shall make every effort to minimize conflicts between the Florida Building Code, the Florida Fire Prevention Code, and the Life Safety Code.

(4)(a) All entities authorized to enforce the Florida Building Code under s. 553.80 shall comply with applicable standards for issuance of mandatory certificates of occupancy, minimum types of inspections, and procedures for plans review and inspections as established by the commission by rule. Local governments may adopt amendments to the administrative provisions of the Florida Building Code, subject to the limitations in this subsection. Local amendments must be more stringent than the minimum standards described in this section and must be transmitted to the commission within 30 days after enactment. The local government shall make such amendments available to the general public in a usable format. The State Fire Marshal is responsible for establishing the standards and procedures required in this subsection for governmental entities with respect to applying the Florida Fire Prevention Code and the Life Safety Code.

(b) Local governments may, subject to the limitations in this section and not more than once every 6 months, adopt amendments to the technical provisions of the Florida Building Code that apply solely within the jurisdiction of such government and that provide for more stringent requirements than those specified in the Florida Building Code. A local government may adopt technical amendments that address local needs if:

1. The local governing body determines, following a public hearing which has been advertised in a newspaper of general circulation at least 10 days before the hearing, that there is a need to strengthen the requirements of the Florida Building Code. The determination must be based upon a review of local conditions by the local governing body, which review demonstrates by evidence or data that the geographical jurisdiction governed by the local governing body exhibits a local need to strengthen the Florida Building Code beyond the needs or regional variation addressed by the Florida Building Code, that the local need is addressed by the proposed local amendment, and that the amendment is no more stringent than necessary to address the local need.

2. Such additional requirements are not discriminatory against materials, products, or construction techniques of demonstrated capabilities.

3. Such additional requirements may not introduce a new subject not addressed in the Florida Building Code.

(c) The enforcing agency shall make readily available, in a usable format, all amendments adopted under this section.

(d) Any amendment to the Florida Building Code shall be transmitted within 30 days after adoption by the local government to the commission. The commission shall maintain copies of all such amendments in a format that is usable and obtainable by the public. Local technical amendments are not effective until 30 days after the amendment has been received and published by the commission.

(e) An amendment to the Florida Building Code adopted by a local government under this subsection is effective only until the adoption of the new edition of the Florida Building Code by the commission every third year. At such time, the commission shall review such amendment for consistency with the criteria in paragraph (9)(a) and adopt such amendment as part of the Florida Building Code or rescind the amendment. The commission shall immediately notify the respective local government of the rescission of any amendment. After receiving such notice, the respective local government may readopt the rescinded amendment under the provisions of this subsection.

(f) Each county and municipality desiring to make local technical amendments to the Florida Building Code shall establish by interlocal agreement a countywide compliance review board to review any amendment to the Florida Building Code that is adopted by a local government within the county under this subsection and that is challenged by a substantially affected party for purposes of determining the amendment's compliance with this subsection. If challenged, the local technical amendments are not effective until the time for filing an appeal under paragraph (g) has expired or, if there is an appeal, until the commission issues its final order determining if the adopted amendment is in compliance with this subsection.

(g) If the compliance review board determines such amendment is not in compliance with this subsection, the compliance review board shall notify such local government of the noncompliance and that the amendment is invalid and unenforceable until the local government corrects the amendment to bring it into compliance. The local government may appeal the decision of the compliance review board to the commission. If the compliance review board determines that such amendment is in compliance with this subsection, any substantially affected party may appeal such determination to the commission. Any such appeal must be filed with the commission within 14 days after the board's written determination. The commission shall promptly refer the appeal to the Division of Administrative Hearings by electronic means through the division's website for the assignment of an administrative law judge. The administrative law judge shall conduct the required hearing within 30 days after being assigned to the appeal, and shall enter a recommended order within 30 days after the conclusion of such hearing. The commission shall enter a final order within 30 days after an order is rendered. Chapter 120 and the uniform rules of procedure shall apply to such proceedings. The local government adopting the amendment that is subject to challenge has the burden of proving that the amendment complies with this subsection in proceedings before the compliance review board and the commission, as applicable. Actions of the commission are subject to judicial review under s. 120.68. The compliance review board shall determine whether its decisions apply to a respective local jurisdiction or apply countywide.

(h) An amendment adopted under this subsection must include a fiscal impact statement that documents the costs and benefits of the proposed amendment. Criteria for the fiscal impact statement shall include the impact to local government relative to enforcement and the impact to property and building owners and industry relative to the cost of compliance. The fiscal impact statement may not be used as a basis for challenging the amendment for compliance.

(i) In addition to <sup>1</sup>paragraphs (f) and (g), the commission may review any amendments adopted under this subsection and make nonbinding recommendations related to compliance of such amendments with this subsection.

(j) Any amendment adopted by a local enforcing agency under this subsection may not apply to state or school district owned buildings, manufactured buildings or factory-built school buildings approved by the commission, or prototype buildings approved under s. 553.77(3). The respective responsible entities shall consider the physical performance parameters substantiating such amendments when designing, specifying, and constructing such exempt buildings.

(k) A technical amendment to the Florida Building Code related to water conservation practices or design criteria adopted by a local government under this subsection is not void when the code is updated if the technical amendment is necessary to protect or provide for more efficient use of water resources as provided in s. [373.621](#). However, any such technical amendment carried forward into the next edition of the code under this paragraph is subject to review or modification as provided in this part.

(l) If a local government adopts a regulation, law, ordinance, policy, amendment, or land use or zoning provision without using the process established in this subsection, and a substantially affected person considers such regulation, law, ordinance, policy, amendment, or land use or zoning provision to be a technical amendment to the Florida Building Code, then the substantially affected person may submit a petition to the commission for a nonbinding advisory opinion. If a substantially affected person submits a request in accordance with this paragraph, the commission shall issue a nonbinding advisory opinion stating whether or not the commission interprets the regulation, law, ordinance, policy, amendment, or land use or zoning provision as a technical amendment to the Florida Building Code. As used in this paragraph, the term "local government" means a county, municipality, special district, or political subdivision of the state.

1. Requests to review a local government regulation, law, ordinance, policy, amendment, or land use or zoning provision may be initiated by any substantially affected person. A substantially affected person includes an owner or builder subject to the regulation, law, ordinance, policy, amendment, or land use or zoning provision, or an association of owners or builders having members who are subject to the regulation, law, ordinance, policy, amendment, or land use or zoning provision.

2. In order to initiate a review, a substantially affected person must file a petition with the commission. The commission shall adopt a form for the petition and directions for filing, which shall be published on the Building Code Information System. The form shall, at a minimum, require the following:

a. The name of the local government that enacted the regulation, law, ordinance, policy, amendment, or land use or zoning provision.

b. The name and address of the local government's general counsel or administrator.

c. The name, address, and telephone number of the petitioner; the name, address, and telephone number of the petitioner's representative, if any; and an explanation of how the petitioner's substantial interests are being affected by the regulation, law, ordinance, policy, amendment, or land use or zoning provision.

d. A statement explaining why the regulation, law, ordinance, policy, amendment, or land use or zoning provision is a technical amendment to the Florida Building Code, and which provisions of the Florida Building Code, if any, are being amended by the regulation, law, ordinance, policy, amendment, or land use or zoning provision.

3. The petitioner shall serve the petition on the local government's general counsel or administrator by certified mail, return receipt requested, and send a copy of the petition to the commission, in accordance with the commission's published directions. The local government shall respond to the petition in accordance with the form by certified mail, return receipt requested, and send a copy of its response to the commission, within 14 days after receipt of the petition, including Saturdays, Sundays, and legal holidays.

4. Upon receipt of a petition that meets the requirements of this paragraph, the commission shall publish the petition, including any response submitted by the local government, on the Building Code Information System in a manner that allows interested persons to address the issues by posting comments.

5. Before issuing an advisory opinion, the commission shall consider the petition, the response, and any comments posted on the Building Code Information System. The commission may also provide the petition, the response, and any comments posted on the Building Code Information System to a technical advisory committee, and may consider any recommendation provided by the technical advisory committee. The commission shall issue an advisory opinion stating whether the regulation, law, ordinance, policy, amendment, or land use or zoning provision is a technical amendment to the Florida Building Code within 30 days after the filing of the petition, including Saturdays, Sundays, and legal holidays. The commission shall publish its advisory opinion on the Building Code Information System and in the Florida Administrative Register. The commission's advisory opinion is nonbinding and is not a declaratory statement under s. [120.565](#).

(5) Notwithstanding subsection (4), counties and municipalities may adopt by ordinance an administrative or technical amendment to the Florida Building Code relating to flood resistance in order to implement the National Flood Insurance Program or incentives. Specifically, an administrative amendment may assign the duty to enforce all or portions of flood-related code provisions to the appropriate agencies of the local government and adopt procedures for variances and exceptions from flood-related code provisions other than provisions for structures seaward of the coastal construction control line consistent with the requirements in 44 C.F.R. s. 60.6. A technical amendment is authorized to the extent it is more stringent than the code. A technical amendment is not subject to the requirements of subsection (4) and may not be rendered void when the code is updated if the amendment is adopted for the purpose of participating in the Community Rating System promulgated pursuant to 42 U.S.C. s. 4022, the amendment had already been adopted by local ordinance prior to July 1, 2010, or the amendment requires a design flood elevation above the base flood elevation. Any amendment adopted under this subsection shall be transmitted to the commission within 30 days after being adopted. A municipality, county, or special district may not use preliminary maps issued by the Federal Emergency Management Agency for any law, ordinance, rule, or other measure that has the effect of imposing land use changes or permits.

(6) The initial adoption of, and any subsequent update or amendment to, the Florida Building Code by the commission is deemed adopted for use statewide without adoptions by local government. For a building permit for which an application is submitted prior to the effective date of the Florida Building Code, the state minimum building code in effect in the permitting jurisdiction on the date of the application governs the permitted work for the life of the permit and any extension granted to the permit.

(7)(a) The commission shall adopt an updated Florida Building Code every 3 years through review of the most current updates of the International Building Code, the International Fuel Gas Code, the International Existing Building Code, the International Mechanical Code, the International Plumbing Code, and the International Residential Code, all of which are copyrighted and published by the International Code Council, and the National Electrical Code, which is copyrighted and published by the National Fire Protection Association. **At a minimum, the commission shall adopt any updates to such codes or any other code necessary to maintain eligibility for federal funding and discounts from the National Flood Insurance Program, the Federal Emergency Management Agency, and the United States Department of Housing and Urban Development.** The commission shall also review and adopt updates based on the International Energy Conservation Code (IECC); however, the commission shall maintain the efficiencies of the Florida Energy Efficiency Code for Building Construction adopted and amended pursuant to s. 553.901. Every 3 years, the commission may approve updates to the Florida Building Code without a finding that the updates are needed in order to accommodate the specific needs of this state. The commission shall adopt updated codes by rule.

(b) Codes regarding noise contour lines shall be reviewed annually, and the most current federal guidelines shall be adopted.

(c) The commission may also adopt as a technical amendment to the Florida Building Code any portion of the codes identified in paragraph (a), but only as needed to accommodate the specific needs of this state. Standards or criteria adopted from these codes shall be incorporated by reference to the specific provisions adopted. If a referenced standard or criterion requires amplification or modification to be appropriate for use in this state, only the amplification or modification shall be set forth in the Florida Building Code. The commission may approve technical amendments to the updated Florida Building Code after the amendments have been subject to the conditions set forth in paragraphs (3)(a)-(d). Amendments that are adopted in accordance with this subsection shall be clearly marked in printed versions of the Florida Building Code so that the fact that the provisions are amendments is readily apparent.

(d) **The commission shall further consider the commission's own interpretations, declaratory statements, appellate decisions, and approved statewide and local technical amendments and shall incorporate such interpretations, statements, decisions, and amendments into the updated Florida Building Code only to the extent that they are needed to accommodate the specific needs of the state.** A change made by an institute or standards organization to any standard or criterion that is adopted by reference in the Florida Building Code does not become effective statewide until it has been adopted by the commission. Furthermore, the edition of the Florida Building



Code which is in effect on the date of application for any permit authorized by the code governs the permitted work for the life of the permit and any extension granted to the permit.

(e) A rule updating the Florida Building Code in accordance with this subsection shall take effect no sooner than 6 months after publication of the updated code. Any amendment to the Florida Building Code which is adopted upon a finding by the commission that the amendment is necessary to protect the public from immediate threat of harm takes effect immediately.

(f) Provisions of the Florida Building Code, including those contained in referenced standards and criteria, relating to wind resistance or the prevention of water intrusion may not be modified to diminish those construction requirements; however, the commission may, subject to conditions in this subsection, modify the provisions to enhance those construction requirements.

(8) Notwithstanding subsection (3) or subsection (7), the commission may address issues identified in this subsection by amending the code under the rule adoption procedures in chapter 120. Updates to the Florida Building Code, including provisions contained in referenced standards and criteria which relate to wind resistance or the prevention of water intrusion, may not be amended under this subsection to diminish those standards; however, the commission may amend the Florida Building Code to enhance such standards. Following the approval of any amendments to the Florida Building Code by the commission and publication of the amendments on the commission's website, authorities having jurisdiction to enforce the Florida Building Code may enforce the amendments.

(a) The commission may approve amendments that are needed to address:

1. Conflicts within the updated code;
2. Conflicts between the updated code and the Florida Fire Prevention Code adopted under chapter 633;
3. Unintended results from the integration of previously adopted amendments with the model code;
4. Equivalency of standards;
5. Changes to or inconsistencies with federal or state law; or
6. Adoption of an updated edition of the National Electrical Code if the commission finds that delay of implementing the updated edition causes undue hardship to stakeholders or otherwise threatens the public health, safety, and welfare.

(b) The commission may issue errata to the code pursuant to the rule adoption procedures in chapter 120 to list demonstrated errors in provisions contained within the Florida Building Code. The determination of such errors and the issuance of errata to the code must be approved by a 75-percent supermajority vote of the commission. For purposes of this paragraph, "errata to the code" means a list of errors on current and previous editions of the Florida Building Code.

(9)(a) The commission may approve technical amendments to the Florida Building Code once each year for statewide or regional application upon a finding that the amendment:

1. Is needed in order to accommodate the specific needs of this state.
2. Has a reasonable and substantial connection with the health, safety, and welfare of the general public.
3. Strengthens or improves the Florida Building Code, or in the case of innovation or new technology, will provide equivalent or better products or methods or systems of construction.
4. Does not discriminate against materials, products, methods, or systems of construction of demonstrated capabilities.
5. Does not degrade the effectiveness of the Florida Building Code.

The Florida Building Commission may approve technical amendments to the code once each year to incorporate into the Florida Building Code its own interpretations of the code which are embodied in its opinions, final orders, declaratory statements, and interpretations of hearing officer panels under s. 553.775(3)(c), but only to the extent that the incorporation of interpretations is needed to modify the code to accommodate the specific needs of this state. Amendments approved under this paragraph shall be adopted by rule after the amendments have been subjected to subsection (3).

(b) A proposed amendment must include a fiscal impact statement that documents the costs and benefits of the proposed amendment. Criteria for the fiscal impact statement shall be established by rule by the commission and shall include the impact to local government relative to enforcement, the impact to property and building owners, and the impact to industry, relative to the cost of compliance. The amendment must demonstrate by evidence or data that the state's geographical jurisdiction exhibits a need to strengthen the code beyond the needs or regional variations addressed by the code and why the proposed amendment applies to this state.

(c) The commission may not approve any proposed amendment that does not accurately and completely address all requirements for amendment which are set forth in this section. The commission shall require all proposed amendments and information submitted with proposed amendments to be reviewed by commission staff prior to consideration by any technical advisory committee. These reviews shall be for sufficiency only and are not intended to be qualitative in nature. Staff members shall reject any proposed amendment that fails to include a fiscal impact statement. Proposed amendments rejected by members of the staff may not be considered by the commission or any technical advisory committee.

(d) Provisions of the Florida Building Code, including those contained in referenced standards and criteria, relating to wind resistance or the prevention of water intrusion may not be amended pursuant to this subsection to diminish those construction requirements; however, the commission may, subject to conditions in this subsection, amend the provisions to enhance those construction requirements.

(10) The following buildings, structures, and facilities are exempt from the Florida Building Code as provided by law, and any further exemptions shall be as determined by the Legislature and provided by law:

- (a) Buildings and structures specifically regulated and preempted by the Federal Government.
- (b) Railroads and ancillary facilities associated with the railroad.
- (c) Nonresidential farm buildings on farms.
- (d) Temporary buildings or sheds used exclusively for construction purposes.
- (e) Mobile or modular structures used as temporary offices, except that the provisions of part II relating to accessibility by persons with disabilities apply to such mobile or modular structures.
- (f) Those structures or facilities of electric utilities, as defined in s. 366.02, which are directly involved in the generation, transmission, or distribution of electricity.
- (g) Temporary sets, assemblies, or structures used in commercial motion picture or television production, or any sound-recording equipment used in such production, on or off the premises.
- (h) Storage sheds that are not designed for human habitation and that have a floor area of 720 square feet or less are not required to comply with the mandatory wind-borne-debris-impact standards of the Florida Building Code. In addition, such buildings that are 400 square feet or less and that are intended for use in conjunction with one- and two-family residences are not subject to the door height and width requirements of the Florida Building Code.
- (i) Chickees constructed by the Miccosukee Tribe of Indians of Florida or the Seminole Tribe of Florida. As used in this paragraph, the term "chickee" means an open-sided wooden hut that has a thatched roof of palm or palmetto or other traditional materials, and that does not incorporate any electrical, plumbing, or other nonwood features.
- (j) Family mausoleums not exceeding 250 square feet in area which are prefabricated and assembled on site or preassembled and delivered on site and have walls, roofs, and a floor constructed of granite, marble, or reinforced concrete.
- (k) A building or structure having less than 1,000 square feet which is constructed and owned by a natural person for hunting and which is repaired or reconstructed to the same dimension and condition as existed on January 1, 2011, if the building or structure:
  - 1. Is not rented or leased or used as a principal residence;
  - 2. Is not located within the 100-year floodplain according to the Federal Emergency Management Agency's current Flood Insurance Rate Map; and
  - 3. Is not connected to an offsite electric power or water supply.

With the exception of paragraphs (a), (b), (c), and (f), in order to preserve the health, safety, and welfare of the public, the Florida Building Commission may, by rule adopted pursuant to chapter 120, provide for exceptions to the broad categories of buildings exempted in this section, including exceptions for application of specific sections of the code or standards adopted therein. The Department of Agriculture and Consumer Services shall have exclusive authority to adopt by rule, pursuant to chapter 120, exceptions to nonresidential farm buildings exempted in paragraph (c) when reasonably necessary to preserve public health, safety, and welfare. The exceptions must be based upon specific criteria, such as under-roof floor area, aggregate electrical service capacity, HVAC system capacity, or other building requirements. Further, the commission may recommend to the Legislature additional categories of buildings, structures, or facilities which should be exempted from the Florida Building Code, to be provided by law. The Florida Building Code does not apply to temporary housing provided by the Department of Corrections to any prisoner in the state correctional system.

(11)(a) In the event of a conflict between the Florida Building Code and the Florida Fire Prevention Code and the Life Safety Code as applied to a specific project, the conflict shall be resolved by agreement between the local building code enforcement official and the local fire code enforcement official in favor of the requirement of the code which offers the greatest degree of lifesafety or alternatives which would provide an equivalent degree of lifesafety and an equivalent method of construction. Local boards created to address issues arising under the Florida Building Code or the Florida Fire Prevention Code may combine the appeals boards to create a single, local board having jurisdiction over matters arising under either code or both codes. The combined local appeals board may grant alternatives or modifications through procedures outlined in NFPA 1, Section 1.4, but may not waive the requirements of the Florida Fire Prevention Code. To meet the quorum requirement for convening the combined local appeals board, at least one member of the board who is a fire protection contractor, a fire protection design professional, a fire department operations professional, or a fire code enforcement professional must be present.

(b) Any decision made by the local fire official regarding application, interpretation, or enforcement of the Florida Fire Prevention Code or by the local building official regarding application, interpretation, or enforcement of the Florida Building Code, or the appropriate application of either code or both codes in the case of a conflict between the codes, may be appealed to a local administrative board designated by the municipality, county, or special district having firesafety responsibilities. If the decision of the local fire official and the local building official is to apply the provisions of either the Florida Building Code or the Florida Fire Prevention Code and the Life Safety Code, the board may not alter the decision unless the board determines that the application of such code is not reasonable. If the decision of the local fire official and the local building official is to adopt an alternative to the codes, the local administrative board shall give due regard to the decision rendered by the local officials and may modify that decision if the administrative board adopts a better alternative, taking into consideration all relevant circumstances. In any case in which the local administrative board adopts alternatives to the decision rendered by the local fire official and the local building official, such alternatives shall provide an equivalent degree of lifesafety and an equivalent method of construction as the decision rendered by the local officials.

(c) If the local building official and the local fire official are unable to agree on a resolution of the conflict between the Florida Building Code and the Florida Fire Prevention Code and the Life Safety Code, the local administrative board shall resolve the conflict in favor of the code which offers the greatest degree of lifesafety or alternatives which would provide an equivalent degree of lifesafety and an equivalent method of construction.

(d) All decisions of the local administrative board or, if none exists, the local building official and the local fire official in regard to the application, enforcement, or interpretation of the Florida Fire Prevention Code, or conflicts between the Florida Fire Prevention Code and the Florida Building Code, are subject to review by a joint committee composed of members of the Florida Building Commission and the Fire Code Advisory Council. If the joint committee is unable to resolve conflicts between the codes as applied to a specific project, the matter shall be resolved pursuant to paragraph (1)(d). Decisions of the local administrative board related solely to the Florida Building Code are subject to review as set forth in s. 553.775.

(e) The local administrative board shall, to the greatest extent possible, be composed of members with expertise in building construction and firesafety standards.



(f) All decisions of the local building official and local fire official and all decisions of the administrative board shall be in writing and shall be binding upon a person but do not limit the authority of the State Fire Marshal or the Florida Building Commission pursuant to paragraph (1)(d) and ss. 633.104 and 633.228. Decisions of general application shall be indexed by building and fire code sections and shall be available for inspection during normal business hours.

(12) Except within coastal building zones as defined in s. 161.54, specification standards developed by nationally recognized code promulgation organizations to determine compliance with engineering criteria of the Florida Building Code for wind load design shall not apply to one or two family dwellings which are two stories or less in height unless approved by the commission for use or unless expressly made subject to said standards and criteria by local ordinance adopted in accordance with the provisions of subsection (4).

(13) The Florida Building Code does not apply to, and no code enforcement action shall be brought with respect to, zoning requirements, land use requirements, and owner specifications or programmatic requirements which do not pertain to and govern the design, construction, erection, alteration, modification, repair, or demolition of public or private buildings, structures, or facilities or to programmatic requirements that do not pertain to enforcement of the Florida Building Code. Additionally, a local code enforcement agency may not administer or enforce the Florida Building Code to prevent the siting of any publicly owned facility, including, but not limited to, correctional facilities, juvenile justice facilities, or state universities, community colleges, or public education facilities, as provided by law.

(14) The general provisions of the Florida Building Code for buildings and other structures shall not apply to commercial wireless communication towers when such general provisions are inconsistent with the provisions of the code controlling radio and television towers. This subsection is intended to be remedial in nature and to clarify existing law.

(15) An agency or local government may not require that existing mechanical equipment located on or above the surface of a roof be installed in compliance with the requirements of the Florida Building Code except during reroofing when the equipment is being replaced or moved and is not in compliance with the provisions of the Florida Building Code relating to roof-mounted mechanical units.

(16) The Florida Building Code must require that the illumination in classroom units be designed to provide and maintain an average of 40 foot-candles of light at each desktop. Public educational facilities must consider using light-emitting diode lighting before considering other lighting sources.

(17) A provision of the International Residential Code relating to mandated fire sprinklers may not be incorporated into the Florida Building Code as adopted by the Florida Building Commission and may not be adopted as a local amendment to the Florida Building Code. This subsection does not prohibit the application of cost-saving incentives for residential fire sprinklers that are authorized in the International Residential Code upon a mutual agreement between the builder and the code official. This subsection does not apply to a local government that has a lawfully adopted ordinance relating to fire sprinklers which has been in effect since January 1, 2010.

(18) In a single-family dwelling, makeup air is not required for range hood exhaust systems capable of exhausting:

- (a) Four hundred cubic feet per minute or less; or
- (b) More than 400 cubic feet per minute but no more than 800 cubic feet per minute if there are no gravity vent appliances within the conditioned living space of the structure.

(19) The Florida Building Code shall require two fire service access elevators in all buildings with a height greater than 120 feet measured from the elevation of street-level access to the level of the highest occupiable floor. All remaining elevators, if any, shall be provided with Phase I and II emergency operations. Where a fire service access elevator is required, a 1-hour fire-rated fire service access elevator lobby with direct access from the fire service access elevator is not required if the fire service access elevator opens into an exit access corridor that is no less than 6 feet wide for its entire length and is at least 150 square feet with the exception of door openings, and has a minimum 1-hour fire rating with three-quarter hour fire and smoke rated openings; and during a fire event the fire service access elevator is pressurized and floor-to-floor smoke control is provided. However, where transient residential occupancies occur at floor levels more than 420 feet above the level of fire service

11/22/21, 12:52 PM

Statutes &amp; Constitution : View Statutes : Online Sunshine

access, a 1-hour fire-rated service access elevator lobby with direct access from the fire service access elevator is required. Standpipes in high-rise buildings of Florida Building Code—Building Occupancy Group R1 or R2 must be located in stairwells and are subject only to the requirements of the Florida Fire Prevention Code and NFPA 14, Standard for the Installation of Standpipes and Hose Systems, adopted by the State Fire Marshal.

(20) The Florida Building Commission may not:

(a) Adopt the 2016 version of the American Society of Heating, Refrigerating and Air-Conditioning Engineers Standard 9.4.1.1(g).

(b) Adopt any provision that requires a door located in the opening between a garage and a single-family residence to be equipped with a self-closing device.

**History.**—s. 4, ch. 74-167; s. 3, ch. 75-85; s. 1, ch. 77-365; s. 225, ch. 79-400; s. 1, ch. 80-106; s. 6, ch. 82-197; s. 2, ch. 84-273; s. 1, ch. 85-97; s. 33, ch. 86-191; s. 1, ch. 87-287; s. 1, ch. 88-142; s. 1, ch. 89-369; s. 2, ch. 91-172; s. 41, ch. 91-220; s. 49, ch. 95-144; s. 1, ch. 97-177; ss. 39, 40, 65, ch. 98-287; s. 61, ch. 98-419; ss. 73, 74, 75, ch. 2000-141; s. 62, ch. 2000-154; ss. 25, 34, 35, 36, ch. 2001-186; ss. 2, 3, 4, 5, ch. 2001-372; s. 86, ch. 2002-1; ss. 1, 14, ch. 2002-293; s. 66, ch. 2003-1; s. 663, ch. 2003-261; s. 7, ch. 2005-147; s. 1, ch. 2005-191; s. 4, ch. 2006-65; s. 7, ch. 2007-1; s. 4, ch. 2007-187; s. 140, ch. 2008-4; s. 10, ch. 2008-191; s. 108, ch. 2008-227; s. 1, ch. 2010-99; s. 32, ch. 2010-176; s. 14, ch. 2011-208; s. 30, ch. 2011-222; s. 14, ch. 2012-13; s. 148, ch. 2013-183; s. 14, ch. 2013-193; s. 18, ch. 2014-154; s. 17, ch. 2016-129; s. 11, ch. 2017-149; s. 6, ch. 2019-75; s. 2, ch. 2021-201.

<sup>1</sup>**Note.**—The amendment by s. 2, ch. 2021-201, changed the reference from "subparagraphs 7. and 9." to "paragraphs (f) and (g)" to conform to the redesignation of subunits in subsection (4) by that law. Subparagraph (b)7. was redesignated as paragraph (f), and subparagraph (b)9. was redesignated as paragraph (h).

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<b>FILED</b>	
Department of Business and Professional Regulation	
Senior Deputy Agency Clerk	
CLERK	Brandon Nichols
Date	11/9/2021
File #	2021-08370

**STATE OF FLORIDA  
BUILDING COMMISSION**

In the Matter of

CLASSIC FLORIDA DREAM HOMES, LLC

**DS 2021-050**

Petitioner.

**DECLARATORY STATEMENT**

The following proceeding came before the Florida Building Commission (Commission) by a Petition from Thomas E. Smith, for Classic Florida Dream Homes, LLC (Petitioner) that was received September 2, 2021. Based on the statements in the petition, the material subsequently submitted and the subsequent request by the Petitioner, the Commission states the following:

**Findings of Fact**

1. The petition is filed pursuant to, and must conform with the requirements of rule 28-105.002, Florida Administrative Code.
2. Petitioner's representative in this matter is Thomas E. Smith, 424 Harbor Drive North, Indian Rocks Beach, FL 33785.
3. Petitioner is a contractor planning the construction of a two-story, single family home located in a flood zone with an "AE" designation under the National Flood Insurance Program. Petitioner states that it wishes to have the option to utilize the services of private providers for plans review and/or building inspections on the project.
4. Petitioner seeks clarification of section 107.6.1, Florida Building Code, Building, 7th Edition (2020), as it pertains to building permits issued on the basis of affidavit, and the services provided by private providers pursuant to section 553.791, Florida Statutes (2021).

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5. Specifically, the Petitioner requests an answer to the following question based upon the project described within the petition for declaratory statement:

Per the 2020 Florida Building Code, does section 107.6.1 Building Permits issued on the basis of an affidavit apply to Private Providers per F.S. 553.791?

#### Conclusions of Law

6. The Commission has the specific statutory authority pursuant to section 553.775(3)(a), Florida Statutes (2021) to interpret the provisions of the Florida Building Code by issuing a declaratory statement.

7. Section 105.14, Florida Building Code, Building, 7th Edition (2020), states:

**Permit issued on basis of an affidavit.**

Whenever a permit is issued in reliance upon an affidavit or whenever the work to be covered by a permit involves installation under conditions which, in the opinion of the building official, are hazardous or complex, the building official shall require that the architect or engineer who signed the affidavit or prepared the drawings or computations shall supervise such work. In addition, they shall be responsible for conformity to the permit, provide copies of inspection reports as inspections are performed, and upon completion make and file with the building official written affidavit that the work has been done in conformity to the reviewed plans and with the structural provisions of the technical codes. In the event such architect or engineer is not available, the owner shall employ in his stead a competent person or agency whose qualifications are reviewed by the building official. The building official shall ensure that any person conducting plans review is qualified as a plans examiner under Part XII of Chapter 468, Florida Statutes, and that any person conducting inspections is qualified as a building inspector under Part XII of Chapter 468, Florida Statutes.

**Exception:** Permit issued on basis of an affidavit shall not extend to the flood load and flood resistance requirements of the Florida Building Code.



8. Section 107.6, Florida Building Code, Building, 7th Edition (2020), states:

**Affidavits.**

The building official may accept a sworn affidavit from a registered architect or engineer stating that the plans submitted conform to the technical codes. For buildings and structures, the affidavit shall state that the plans conform to the laws as to egress, type of construction and general arrangement and, if accompanied by drawings, show the structural design and that the plans and design conform to the requirements of the technical codes as to strength, stresses, strains, loads and stability. The building official may without any examination or inspection accept such affidavit, provided the architect or engineer who made such affidavit agrees to submit to the building official copies of inspection reports as inspections are performed and upon completion of the structure, electrical, gas, mechanical or plumbing systems a certification that the structure, electrical, gas, mechanical or plumbing system has been erected in accordance with the requirements of the technical codes. Where the building official relies upon such affidavit, the architect or engineer shall assume full responsibility for compliance with all provisions of the technical codes and other pertinent laws or ordinances. The building official shall ensure that any person conducting plans review is qualified as a plans examiner under Part XII of Chapter 468, Florida Statutes, and that any person conducting inspections is qualified as a building inspector under Part XII of Chapter 468, Florida Statutes.

9. Section 107.6.1, Florida Building Code, Building, 7th Edition (2020), states:

**Building permits issued on the basis of an affidavit.**

Pursuant to the requirements of federal regulation for participation in the National Flood Insurance Program (44 C.F.R. Parts 59 and 60), the authority granted to the *building official* to issue permits, to rely on inspections, and to accept plans and construction documents on the basis of affidavits and plans submitted pursuant to Sections 105.14 and 107.6, shall not extend to the flood load and flood-resistance construction requirements of the Florida Building Code.


10. In response to Petitioner's question, the answer is **no**. Section 107.6.1, Florida Building Code, Building, 7th Edition (2020), is limited in scope to affidavits issued pursuant to sections 105.14 and 107.6, Florida Building Code, Building, 7th Edition (2020), and therefore section 107.6.1 does not apply to services performed by private providers as authorized by



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Page 4 of 6

section 553.791, Florida Statutes (2021). This does not absolve the community from complying with any requirements under the National Flood Insurance Program.

DONE AND ORDERED this 20<sup>th</sup> day of OCTOBER, 2021, in St. Augustine, St.  
Johns County, State of Florida.

  
JAMES R. SCHOCK  
Chairman, Florida Building Commission

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NOTICE OF RIGHT TO APPEAL

Petitioner and all other interested parties are hereby advised of their right to seek judicial review of this Order in accordance with section 120.68(2)(a), Florida Statutes (2021), and Florida Rules of Appellate Procedure 9.110(a) and 9.030(b)(1)(C). To initiate an appeal, a Notice of Appeal must be filed with the Agency Clerk, Department of Business and Professional Regulation, 2601 Blair Stone Road, Tallahassee, Florida 32399-2203 and with the appropriate District Court of Appeal not later than thirty (30) days after this Order is filed with the Clerk of the Department of Business and Professional Regulation. A Notice of Appeal filed with the District Court of Appeal shall be accompanied by the filing fee specified by section 35.22(3), Florida Statutes (2021).

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Page 6 of 6

CERTIFICATE OF FILING AND SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing order has been filed with the undersigned and furnished by U. S. Mail to the persons listed below this 9<sup>th</sup> day of November, 2021.

*Brandon M. Nichols*

Agency Clerk's Office  
Department of Business and Professional Regulation  
& Florida Building Commission  
2601 Blair Stone Road  
Tallahassee, Florida 32399-2203

Via U.S. Mail

Classic Florida Dream Homes, LLC  
Attn: Thomas E. Smith  
424 Harbor Drive North  
Indian Rocks Beach, FL 33785

Via Inter-Office or Email Delivery

Mo Madani, Planning Manager  
Codes and Standards Section  
Department of Business and Professional  
Regulation  
2601 Blair Stone Road  
Tallahassee, Florida 32399  
Mo.Madani@myfloridalicense.com

Marjorie Holladay  
Joint Administrative Procedures Committee  
Pepper Building, Room 680  
Tallahassee, Florida 32399-1300



STATE OF FLORIDA  
**DIVISION OF EMERGENCY MANAGEMENT**

Ron DeSantis  
Governor

Jared Moskowitz  
Director

November 2, 2020

**MEMORANDUM**

TO: Florida Floodplain Administrators and Building Officials

FROM: Conn H. Cole, Interim State Floodplain Manager **Conn H. Cole**

CONCURRENCE: Jason O. Hunter, Chief, FEMA Region IV Floodplain Management & Insurance Branch *Jason O. Hunter*

Digitally signed by Conn H. Cole  
DN: cn=Conn H. Cole, o=Florida Department of  
Emergency Management, ou=State Floodplain  
Management Office,  
email=Conn.H.Cole@floridadom.com, c=US  
Date: 2020.11.02 14:56:03 -0500

RE: Florida Building Code and Permits Issued on the Basis of Affidavits  
**NFIP Communities Must Review For Floodplain Compliance**

Over the past year the State Floodplain Management Office (SFMO) has received inquiries regarding changes enacted in the 2019 legislative session that affect the use and acceptance of private providers for building permits and inspections. The Florida Building Code (FBC) includes provisions for issuing permits based on affidavits signed by qualified architects or engineers, in the Building volume, sections 105.14 and 107.6. These sections are shown in the attachment.

This memorandum provides guidance to clarify the exception to Sections 105.14 and 107.6.1. FEMA Region IV concurs with this guidance. **In effect, the sections require local officials to review applications for compliance with the flood load and flood-resistant construction requirements of the FBC when buildings are proposed to be located in special flood hazard areas, and to inspect those aspects when permits are issued.**

The National Flood Insurance Program (NFIP) requires communities that participate in the program to agree to adopt and enforce regulations that meet or exceed the minimum requirement of the NFIP (44 Code of Federal Regulations Parts 59 and 60). FEMA deems the flood provisions of the FBC to meet or exceed the minimum NFIP requirements for buildings and structures.

**The NFIP regulations require communities to review proposed construction or development in special flood hazard areas.** Specifically, the NFIP regulations in Section 60.3 states: "Minimum standards for communities are as follows: (a) . . . the community shall: . . . (1) Require permits for all proposed construction or development . . . ; (2) Review proposed development to . . . ; (3) Review all applications to . . . ; (4) Review subdivision proposals and other new development . . ." <https://www.govinfo.gov/app/details/CFR-2011-title44-vol1/CFR-2011-title44-vol1-part60>

**DIVISION HEADQUARTERS**  
2555 Shumard Oak Boulevard  
Tallahassee, FL 32399-2100

Telephone: 850-815-4000  
[www.FloridaDisaster.org](http://www.FloridaDisaster.org)

**STATE LOGISTICS RESPONSE CENTER**  
2702 Directors Row  
Orlando, FL 32809-5631

Florida Floodplain Administrators and Building Officials  
November 2 , 2020  
Page 2

In 2011-12, the SFMO worked with FEMA, the Florida Building Commission, the Building Officials Association of Florida, and the Florida Floodplain Managers Association to incorporate in the FBC the necessary requirements for buildings in flood hazard areas. As part of that effort, the SFMO examined the matter of permits issued based on affidavits. Prior to the inclusion of Section 107.6.1 and the exception to Section 105.14, many communities individually adopted local administrative amendments with the same limitation.

During the code development cycle for the 5<sup>th</sup> Edition FBC, FDEM submitted a proposal to incorporate Section 107.6.1 into the FBC (the exception to Section 105.14 was added by amendment to a proposal by others). FDEM's rationale statement is shown below and repeated here for clarify:

Both of these proposed new sections flow from consistency with the NFIP. They were developed by DEM as part of the Model Floodplain Management Ordinance and Code Amendments, reviewed by BOAF, and scrutinized by FEMA. Because FEMA deemed both of these are necessary, it is more efficient for the FBC to include them in Chapter 1, rather than expect every local government to adopt them as local administrative code amendments.

Despite the submission of an affidavit authorized by B107.6, the building official must review plans for compliance with the flood provisions and issue permits and perform inspections to ensure compliance with the flood provisions. Under the NFIP, the community is responsible for ensuring compliance.

\*The original proposal (SP5255) included both Section 107.6.1 and Section 117; the exception to Section 105.14 was added to proposal CA5082) by amendments for consistency.

Please contact us at (850) 815-4556 or [floods@em.myflorida.com](mailto:floods@em.myflorida.com) if you have questions about the flood provisions in the FBC or FBC-coordinated floodplain management regulations.

CC: Steve Martin, Roy McClure, Virgilio Chris Perez

Attachment: FBC, Building, Sections 105.14 and 107.6.1 and Proposal for the 5<sup>th</sup> Ed. FBC, submitted 7/22/2012



## ATTACHMENT

## FBC, Building Sections 105.14 and 107.6.1

**105.14 Permit issued on basis of an affidavit.** Whenever a permit is issued in reliance upon an affidavit or whenever the work to be covered by a permit involves installation under conditions which, in the opinion of the building official, are hazardous or complex, the building official shall require that the architect or engineer who signed the affidavit or prepared the drawings or computations shall supervise such work. In addition, they shall be responsible for conformity to the permit, provide copies of inspection reports as inspections are performed, and upon completion make and file with the building official written affidavit that the work has been done in conformity to the reviewed plans and with the structural provisions of the technical codes. In the event such architect or engineer is not available, the owner shall employ in his stead a competent person or agency whose qualifications are reviewed by the building official. The building official shall ensure that any person conducting plans review is qualified as a plans examiner under Part XII of Chapter 468, *Florida Statutes*, and that any person conducting inspections is qualified as a building inspector under Part XII of Chapter 468, *Florida Statutes*.

**Exception:** Permit issued on basis of an affidavit shall not extend to the flood load and flood resistance requirements of the *Florida Building Code*.

**107.6.1 [Affidavits] Building permits issued on the basis of an affidavit.** Pursuant to the requirements of federal regulation for participation in the National Flood Insurance Program (44 C.F.R. Parts 59 and 60), the authority granted to the building official to issue permits, to rely on inspections, and to accept plans and construction documents on the basis of affidavits and plans submitted pursuant to Sections 105.14 and 107.6, shall not extend to the flood load and flood-resistance construction requirements of the *Florida Building Code*.

## Mod SP 5255 (approved as submitted)

Mod CA 5082 (submitted by Joe Bigelow to add new Sec. 105.14; FDEM proposed amendment to recapture NFIP; approved as amended.

<b>SP5255</b>		Page 6 of 427 2	
<b>Date Submitted</b>	7/22/2012	<b>Section</b>	107.6 and 117 (new)
<b>Chapter</b>	1	<b>Affects HVHZ</b>	No
<b>TAC Recommendation</b>	Pending Review	<b>Preponent</b>	Rebecca Quinn obo DEM
<b>Commission Action</b>	Pending Review	<b>Attachments</b>	No
<b>Related Modifications</b>			
<b>Summary of Modification</b>			
Two administrative amendments that FEMA has deemed necessary to ensure that enforcement of the flood provisions of the FBC remain consistent with the NFIP.			
<b>Rationale</b>			
Both of these proposed new sections flow from consistency with the NFIP. They were developed by DEM as part of the Model Floodplain Management Ordinance and Code Amendments, reviewed by BOAF, and scrutinized by FEMA. Because FEMA has deemed both of these are necessary, it is more efficient for the FBC to include them in Chapter 1, rather than expect every local government to adopt them as local administrative code amendments.			
Despite the submission of an affidavit authorized by 8107.6, the building official must review plans for compliance with the flood provisions and issue permits and perform inspections to ensure compliance with the flood provisions. Under the NFIP, the community is responsible for ensuring compliance.			
For consistency with the NFIP, section 553.73(5), F.S., authorizes adoption of procedures for variances; the specific procedures are in the FPM ordinance. Variances are official permission to undertake an activity that is otherwise prohibited or not approvable under the regulations or building code. As specified in section 553.73(5), F.S., the authority to grant variances to the flood provisions does not extend to any requirement in Section 3109, which applies seaward of the Coastal Construction Control Line.			

Select Year: 2021 ▼ Go

## The 2021 Florida Statutes

[Title XXXIII](#)  
REGULATION OF TRADE, COMMERCE, INVESTMENTS,  
AND SOLICITATIONS

[Chapter 553](#)  
BUILDING CONSTRUCTION  
STANDARDS

[View Entire  
Chapter](#)

### 553.73 Florida Building Code.—

(1)(a) The commission shall adopt, by rule pursuant to ss. [120.536\(1\)](#) and [120.54](#), the Florida Building Code which shall contain or incorporate by reference all laws and rules which pertain to and govern the design, construction, erection, alteration, modification, repair, and demolition of public and private buildings, structures, and facilities and enforcement of such laws and rules, except as otherwise provided in this section.

(b) The technical portions of the Florida Accessibility Code for Building Construction shall be contained in their entirety in the Florida Building Code. The civil rights portions and the technical portions of the accessibility laws of this state shall remain as currently provided by law. Any revision or amendments to the Florida Accessibility Code for Building Construction pursuant to part II shall be considered adopted by the commission as part of the Florida Building Code. Neither the commission nor any local government shall revise or amend any standard of the Florida Accessibility Code for Building Construction except as provided for in part II.

(c) The Florida Fire Prevention Code and the Life Safety Code shall be referenced in the Florida Building Code, but shall be adopted, modified, revised, or amended, interpreted, and maintained by the Department of Financial Services by rule adopted pursuant to ss. [120.536\(1\)](#) and [120.54](#). The Florida Building Commission may not adopt a fire prevention or lifesafety code, and nothing in the Florida Building Code shall affect the statutory powers, duties, and responsibilities of any fire official or the Department of Financial Services.

(d) Conflicting requirements between the Florida Building Code and the Florida Fire Prevention Code and Life Safety Code of the state established pursuant to ss. [633.206](#) and [633.208](#) shall be resolved by agreement between the commission and the State Fire Marshal in favor of the requirement that offers the greatest degree of lifesafety or alternatives that would provide an equivalent degree of lifesafety and an equivalent method of construction. If the commission and State Fire Marshal are unable to agree on a resolution, the question shall be referred to a mediator, mutually agreeable to both parties, to resolve the conflict in favor of the provision that offers the greatest lifesafety, or alternatives that would provide an equivalent degree of lifesafety and an equivalent method of construction.

(e) Subject to the provisions of this act, responsibility for enforcement, interpretation, and regulation of the Florida Building Code shall be vested in a specified local board or agency, and the words “local government” and “local governing body” as used in this part shall be construed to refer exclusively to such local board or agency.

(2) The Florida Building Code shall contain provisions or requirements for public and private buildings, structures, and facilities relative to structural, mechanical, electrical, plumbing, energy, and gas systems, existing buildings, historical buildings, manufactured buildings, elevators, coastal construction, lodging facilities, food sales and food service facilities, health care facilities, including assisted living facilities, adult day care facilities, hospice residential and inpatient facilities and units, and facilities for the control of radiation hazards, public or private educational facilities, swimming pools, and correctional facilities and enforcement of and compliance with such provisions or requirements. Further, the Florida Building Code must provide for uniform implementation of ss. [515.25](#), [515.27](#), and [515.29](#) by including standards and criteria for residential swimming pool barriers, pool covers, latching devices, door and window exit alarms, and other equipment required therein, which are consistent with the intent of s. [515.23](#). Technical provisions to be contained within the Florida Building Code are restricted to

requirements related to the types of materials used and construction methods and standards employed in order to meet criteria specified in the Florida Building Code. Provisions relating to the personnel, supervision or training of personnel, or any other professional qualification requirements relating to contractors or their workforce may not be included within the Florida Building Code, and subsections (4), (6), (7), (8), and (9) are not to be construed to allow the inclusion of such provisions within the Florida Building Code by amendment. This restriction applies to both initial development and amendment of the Florida Building Code.

(3) The commission shall use the International Codes published by the International Code Council, the National Electric Code (NFPA 70), or other nationally adopted model codes and standards for updates to the Florida Building Code. The commission may approve technical amendments to the code as provided in subsections (8) and (9), subject to all of the following conditions:

(a) The proposed amendment must have been published on the commission's website for a minimum of 45 days and all the associated documentation must have been made available to any interested party before consideration by a technical advisory committee.

(b) In order for a technical advisory committee to make a favorable recommendation to the commission, the proposal must receive a two-thirds vote of the members present at the meeting. At least half of the regular members must be present in order to conduct a meeting.

(c) After the technical advisory committee has considered and recommended approval of any proposed amendment, the proposal must be published on the commission's website for at least 45 days before consideration by the commission.

(d) A proposal may be modified by the commission based on public testimony and evidence from a public hearing held in accordance with chapter 120.

The commission shall incorporate within the Florida Building Code provisions that address regional and local concerns and variations. The commission shall make every effort to minimize conflicts between the Florida Building Code, the Florida Fire Prevention Code, and the Life Safety Code.

(4)(a) All entities authorized to enforce the Florida Building Code under s. 553.80 shall comply with applicable standards for issuance of mandatory certificates of occupancy, minimum types of inspections, and procedures for plans review and inspections as established by the commission by rule. Local governments may adopt amendments to the administrative provisions of the Florida Building Code, subject to the limitations in this subsection. Local amendments must be more stringent than the minimum standards described in this section and must be transmitted to the commission within 30 days after enactment. The local government shall make such amendments available to the general public in a usable format. The State Fire Marshal is responsible for establishing the standards and procedures required in this subsection for governmental entities with respect to applying the Florida Fire Prevention Code and the Life Safety Code.

(b) Local governments may, subject to the limitations in this section and not more than once every 6 months, adopt amendments to the technical provisions of the Florida Building Code that apply solely within the jurisdiction of such government and that provide for more stringent requirements than those specified in the Florida Building Code. A local government may adopt technical amendments that address local needs if:

1. The local governing body determines, following a public hearing which has been advertised in a newspaper of general circulation at least 10 days before the hearing, that there is a need to strengthen the requirements of the Florida Building Code. The determination must be based upon a review of local conditions by the local governing body, which review demonstrates by evidence or data that the geographical jurisdiction governed by the local governing body exhibits a local need to strengthen the Florida Building Code beyond the needs or regional variation addressed by the Florida Building Code, that the local need is addressed by the proposed local amendment, and that the amendment is no more stringent than necessary to address the local need.

2. Such additional requirements are not discriminatory against materials, products, or construction techniques of demonstrated capabilities.

3. Such additional requirements may not introduce a new subject not addressed in the Florida Building Code.



(c) The enforcing agency shall make readily available, in a usable format, all amendments adopted under this section.

(d) Any amendment to the Florida Building Code shall be transmitted within 30 days after adoption by the local government to the commission. The commission shall maintain copies of all such amendments in a format that is usable and obtainable by the public. Local technical amendments are not effective until 30 days after the amendment has been received and published by the commission.

(e) An amendment to the Florida Building Code adopted by a local government under this subsection is effective only until the adoption of the new edition of the Florida Building Code by the commission every third year. At such time, the commission shall review such amendment for consistency with the criteria in paragraph (9)(a) and adopt such amendment as part of the Florida Building Code or rescind the amendment. The commission shall immediately notify the respective local government of the rescission of any amendment. After receiving such notice, the respective local government may readopt the rescinded amendment under the provisions of this subsection.

(f) Each county and municipality desiring to make local technical amendments to the Florida Building Code shall establish by interlocal agreement a countywide compliance review board to review any amendment to the Florida Building Code that is adopted by a local government within the county under this subsection and that is challenged by a substantially affected party for purposes of determining the amendment's compliance with this subsection. If challenged, the local technical amendments are not effective until the time for filing an appeal under paragraph (g) has expired or, if there is an appeal, until the commission issues its final order determining if the adopted amendment is in compliance with this subsection.

(g) If the compliance review board determines such amendment is not in compliance with this subsection, the compliance review board shall notify such local government of the noncompliance and that the amendment is invalid and unenforceable until the local government corrects the amendment to bring it into compliance. The local government may appeal the decision of the compliance review board to the commission. If the compliance review board determines that such amendment is in compliance with this subsection, any substantially affected party may appeal such determination to the commission. Any such appeal must be filed with the commission within 14 days after the board's written determination. The commission shall promptly refer the appeal to the Division of Administrative Hearings by electronic means through the division's website for the assignment of an administrative law judge. The administrative law judge shall conduct the required hearing within 30 days after being assigned to the appeal, and shall enter a recommended order within 30 days after the conclusion of such hearing. The commission shall enter a final order within 30 days after an order is rendered. Chapter 120 and the uniform rules of procedure shall apply to such proceedings. The local government adopting the amendment that is subject to challenge has the burden of proving that the amendment complies with this subsection in proceedings before the compliance review board and the commission, as applicable. Actions of the commission are subject to judicial review under s. 120.68. The compliance review board shall determine whether its decisions apply to a respective local jurisdiction or apply countywide.

(h) An amendment adopted under this subsection must include a fiscal impact statement that documents the costs and benefits of the proposed amendment. Criteria for the fiscal impact statement shall include the impact to local government relative to enforcement and the impact to property and building owners and industry relative to the cost of compliance. The fiscal impact statement may not be used as a basis for challenging the amendment for compliance.

(i) In addition to <sup>1</sup>paragraphs (f) and (g), the commission may review any amendments adopted under this subsection and make nonbinding recommendations related to compliance of such amendments with this subsection.

(j) Any amendment adopted by a local enforcing agency under this subsection may not apply to state or school district owned buildings, manufactured buildings or factory-built school buildings approved by the commission, or prototype buildings approved under s. 553.77(3). The respective responsible entities shall consider the physical performance parameters substantiating such amendments when designing, specifying, and constructing such exempt buildings.

(k) A technical amendment to the Florida Building Code related to water conservation practices or design criteria adopted by a local government under this subsection is not void when the code is updated if the technical amendment is necessary to protect or provide for more efficient use of water resources as provided in s. [373.621](#). However, any such technical amendment carried forward into the next edition of the code under this paragraph is subject to review or modification as provided in this part.

(l) If a local government adopts a regulation, law, ordinance, policy, amendment, or land use or zoning provision without using the process established in this subsection, and a substantially affected person considers such regulation, law, ordinance, policy, amendment, or land use or zoning provision to be a technical amendment to the Florida Building Code, then the substantially affected person may submit a petition to the commission for a nonbinding advisory opinion. If a substantially affected person submits a request in accordance with this paragraph, the commission shall issue a nonbinding advisory opinion stating whether or not the commission interprets the regulation, law, ordinance, policy, amendment, or land use or zoning provision as a technical amendment to the Florida Building Code. As used in this paragraph, the term "local government" means a county, municipality, special district, or political subdivision of the state.

1. Requests to review a local government regulation, law, ordinance, policy, amendment, or land use or zoning provision may be initiated by any substantially affected person. A substantially affected person includes an owner or builder subject to the regulation, law, ordinance, policy, amendment, or land use or zoning provision, or an association of owners or builders having members who are subject to the regulation, law, ordinance, policy, amendment, or land use or zoning provision.

2. In order to initiate a review, a substantially affected person must file a petition with the commission. The commission shall adopt a form for the petition and directions for filing, which shall be published on the Building Code Information System. The form shall, at a minimum, require the following:

a. The name of the local government that enacted the regulation, law, ordinance, policy, amendment, or land use or zoning provision.

b. The name and address of the local government's general counsel or administrator.

c. The name, address, and telephone number of the petitioner; the name, address, and telephone number of the petitioner's representative, if any; and an explanation of how the petitioner's substantial interests are being affected by the regulation, law, ordinance, policy, amendment, or land use or zoning provision.

d. A statement explaining why the regulation, law, ordinance, policy, amendment, or land use or zoning provision is a technical amendment to the Florida Building Code, and which provisions of the Florida Building Code, if any, are being amended by the regulation, law, ordinance, policy, amendment, or land use or zoning provision.

3. The petitioner shall serve the petition on the local government's general counsel or administrator by certified mail, return receipt requested, and send a copy of the petition to the commission, in accordance with the commission's published directions. The local government shall respond to the petition in accordance with the form by certified mail, return receipt requested, and send a copy of its response to the commission, within 14 days after receipt of the petition, including Saturdays, Sundays, and legal holidays.

4. Upon receipt of a petition that meets the requirements of this paragraph, the commission shall publish the petition, including any response submitted by the local government, on the Building Code Information System in a manner that allows interested persons to address the issues by posting comments.

5. Before issuing an advisory opinion, the commission shall consider the petition, the response, and any comments posted on the Building Code Information System. The commission may also provide the petition, the response, and any comments posted on the Building Code Information System to a technical advisory committee, and may consider any recommendation provided by the technical advisory committee. The commission shall issue an advisory opinion stating whether the regulation, law, ordinance, policy, amendment, or land use or zoning provision is a technical amendment to the Florida Building Code within 30 days after the filing of the petition, including Saturdays, Sundays, and legal holidays. The commission shall publish its advisory opinion on the Building Code Information System and in the Florida Administrative Register. The commission's advisory opinion is nonbinding and is not a declaratory statement under s. [120.565](#).



(5) Notwithstanding subsection (4), counties and municipalities may adopt by ordinance an administrative or technical amendment to the Florida Building Code relating to flood resistance in order to implement the National Flood Insurance Program or incentives. Specifically, an administrative amendment may assign the duty to enforce all or portions of flood-related code provisions to the appropriate agencies of the local government and adopt procedures for variances and exceptions from flood-related code provisions other than provisions for structures seaward of the coastal construction control line consistent with the requirements in 44 C.F.R. s. 60.6. A technical amendment is authorized to the extent it is more stringent than the code. A technical amendment is not subject to the requirements of subsection (4) and may not be rendered void when the code is updated if the amendment is adopted for the purpose of participating in the Community Rating System promulgated pursuant to 42 U.S.C. s. 4022, the amendment had already been adopted by local ordinance prior to July 1, 2010, or the amendment requires a design flood elevation above the base flood elevation. Any amendment adopted under this subsection shall be transmitted to the commission within 30 days after being adopted. A municipality, county, or special district may not use preliminary maps issued by the Federal Emergency Management Agency for any law, ordinance, rule, or other measure that has the effect of imposing land use changes or permits.

(6) The initial adoption of, and any subsequent update or amendment to, the Florida Building Code by the commission is deemed adopted for use statewide without adoptions by local government. For a building permit for which an application is submitted prior to the effective date of the Florida Building Code, the state minimum building code in effect in the permitting jurisdiction on the date of the application governs the permitted work for the life of the permit and any extension granted to the permit.

(7)(a) The commission shall adopt an updated Florida Building Code every 3 years through review of the most current updates of the International Building Code, the International Fuel Gas Code, the International Existing Building Code, the International Mechanical Code, the International Plumbing Code, and the International Residential Code, all of which are copyrighted and published by the International Code Council, and the National Electrical Code, which is copyrighted and published by the National Fire Protection Association. **At a minimum, the commission shall adopt any updates to such codes or any other code necessary to maintain eligibility for federal funding and discounts from the National Flood Insurance Program, the Federal Emergency Management Agency, and the United States Department of Housing and Urban Development.** The commission shall also review and adopt updates based on the International Energy Conservation Code (IECC); however, the commission shall maintain the efficiencies of the Florida Energy Efficiency Code for Building Construction adopted and amended pursuant to s. 553.901. Every 3 years, the commission may approve updates to the Florida Building Code without a finding that the updates are needed in order to accommodate the specific needs of this state. The commission shall adopt updated codes by rule.

(b) Codes regarding noise contour lines shall be reviewed annually, and the most current federal guidelines shall be adopted.

(c) The commission may also adopt as a technical amendment to the Florida Building Code any portion of the codes identified in paragraph (a), but only as needed to accommodate the specific needs of this state. Standards or criteria adopted from these codes shall be incorporated by reference to the specific provisions adopted. If a referenced standard or criterion requires amplification or modification to be appropriate for use in this state, only the amplification or modification shall be set forth in the Florida Building Code. The commission may approve technical amendments to the updated Florida Building Code after the amendments have been subject to the conditions set forth in paragraphs (3)(a)-(d). Amendments that are adopted in accordance with this subsection shall be clearly marked in printed versions of the Florida Building Code so that the fact that the provisions are amendments is readily apparent.

(d) **The commission shall further consider the commission's own interpretations, declaratory statements, appellate decisions, and approved statewide and local technical amendments and shall incorporate such interpretations, statements, decisions, and amendments into the updated Florida Building Code only to the extent that they are needed to accommodate the specific needs of the state.** A change made by an institute or standards organization to any standard or criterion that is adopted by reference in the Florida Building Code does not become effective statewide until it has been adopted by the commission. Furthermore, the edition of the Florida Building

Code which is in effect on the date of application for any permit authorized by the code governs the permitted work for the life of the permit and any extension granted to the permit.

(e) A rule updating the Florida Building Code in accordance with this subsection shall take effect no sooner than 6 months after publication of the updated code. Any amendment to the Florida Building Code which is adopted upon a finding by the commission that the amendment is necessary to protect the public from immediate threat of harm takes effect immediately.

(f) Provisions of the Florida Building Code, including those contained in referenced standards and criteria, relating to wind resistance or the prevention of water intrusion may not be modified to diminish those construction requirements; however, the commission may, subject to conditions in this subsection, modify the provisions to enhance those construction requirements.

(8) Notwithstanding subsection (3) or subsection (7), the commission may address issues identified in this subsection by amending the code under the rule adoption procedures in chapter 120. Updates to the Florida Building Code, including provisions contained in referenced standards and criteria which relate to wind resistance or the prevention of water intrusion, may not be amended under this subsection to diminish those standards; however, the commission may amend the Florida Building Code to enhance such standards. Following the approval of any amendments to the Florida Building Code by the commission and publication of the amendments on the commission's website, authorities having jurisdiction to enforce the Florida Building Code may enforce the amendments.

(a) The commission may approve amendments that are needed to address:

1. Conflicts within the updated code;
2. Conflicts between the updated code and the Florida Fire Prevention Code adopted under chapter 633;
3. Unintended results from the integration of previously adopted amendments with the model code;
4. Equivalency of standards;
5. Changes to or inconsistencies with federal or state law; or
6. Adoption of an updated edition of the National Electrical Code if the commission finds that delay of implementing the updated edition causes undue hardship to stakeholders or otherwise threatens the public health, safety, and welfare.

(b) The commission may issue errata to the code pursuant to the rule adoption procedures in chapter 120 to list demonstrated errors in provisions contained within the Florida Building Code. The determination of such errors and the issuance of errata to the code must be approved by a 75-percent supermajority vote of the commission. For purposes of this paragraph, "errata to the code" means a list of errors on current and previous editions of the Florida Building Code.

(9)(a) The commission may approve technical amendments to the Florida Building Code once each year for statewide or regional application upon a finding that the amendment:

1. Is needed in order to accommodate the specific needs of this state.
2. Has a reasonable and substantial connection with the health, safety, and welfare of the general public.
3. Strengthens or improves the Florida Building Code, or in the case of innovation or new technology, will provide equivalent or better products or methods or systems of construction.
4. Does not discriminate against materials, products, methods, or systems of construction of demonstrated capabilities.
5. Does not degrade the effectiveness of the Florida Building Code.

The Florida Building Commission may approve technical amendments to the code once each year to incorporate into the Florida Building Code its own interpretations of the code which are embodied in its opinions, final orders, declaratory statements, and interpretations of hearing officer panels under s. 553.775(3)(c), but only to the extent that the incorporation of interpretations is needed to modify the code to accommodate the specific needs of this state. Amendments approved under this paragraph shall be adopted by rule after the amendments have been subjected to subsection (3).

(b) A proposed amendment must include a fiscal impact statement that documents the costs and benefits of the proposed amendment. Criteria for the fiscal impact statement shall be established by rule by the commission and shall include the impact to local government relative to enforcement, the impact to property and building owners, and the impact to industry, relative to the cost of compliance. The amendment must demonstrate by evidence or data that the state's geographical jurisdiction exhibits a need to strengthen the code beyond the needs or regional variations addressed by the code and why the proposed amendment applies to this state.

(c) The commission may not approve any proposed amendment that does not accurately and completely address all requirements for amendment which are set forth in this section. The commission shall require all proposed amendments and information submitted with proposed amendments to be reviewed by commission staff prior to consideration by any technical advisory committee. These reviews shall be for sufficiency only and are not intended to be qualitative in nature. Staff members shall reject any proposed amendment that fails to include a fiscal impact statement. Proposed amendments rejected by members of the staff may not be considered by the commission or any technical advisory committee.

(d) Provisions of the Florida Building Code, including those contained in referenced standards and criteria, relating to wind resistance or the prevention of water intrusion may not be amended pursuant to this subsection to diminish those construction requirements; however, the commission may, subject to conditions in this subsection, amend the provisions to enhance those construction requirements.

(10) The following buildings, structures, and facilities are exempt from the Florida Building Code as provided by law, and any further exemptions shall be as determined by the Legislature and provided by law:

- (a) Buildings and structures specifically regulated and preempted by the Federal Government.
- (b) Railroads and ancillary facilities associated with the railroad.
- (c) Nonresidential farm buildings on farms.
- (d) Temporary buildings or sheds used exclusively for construction purposes.
- (e) Mobile or modular structures used as temporary offices, except that the provisions of part II relating to accessibility by persons with disabilities apply to such mobile or modular structures.
- (f) Those structures or facilities of electric utilities, as defined in s. 366.02, which are directly involved in the generation, transmission, or distribution of electricity.
- (g) Temporary sets, assemblies, or structures used in commercial motion picture or television production, or any sound-recording equipment used in such production, on or off the premises.
- (h) Storage sheds that are not designed for human habitation and that have a floor area of 720 square feet or less are not required to comply with the mandatory wind-borne-debris-impact standards of the Florida Building Code. In addition, such buildings that are 400 square feet or less and that are intended for use in conjunction with one- and two-family residences are not subject to the door height and width requirements of the Florida Building Code.
- (i) Chickees constructed by the Miccosukee Tribe of Indians of Florida or the Seminole Tribe of Florida. As used in this paragraph, the term "chickee" means an open-sided wooden hut that has a thatched roof of palm or palmetto or other traditional materials, and that does not incorporate any electrical, plumbing, or other nonwood features.
- (j) Family mausoleums not exceeding 250 square feet in area which are prefabricated and assembled on site or preassembled and delivered on site and have walls, roofs, and a floor constructed of granite, marble, or reinforced concrete.
- (k) A building or structure having less than 1,000 square feet which is constructed and owned by a natural person for hunting and which is repaired or reconstructed to the same dimension and condition as existed on January 1, 2011, if the building or structure:
  - 1. Is not rented or leased or used as a principal residence;
  - 2. Is not located within the 100-year floodplain according to the Federal Emergency Management Agency's current Flood Insurance Rate Map; and
  - 3. Is not connected to an offsite electric power or water supply.

With the exception of paragraphs (a), (b), (c), and (f), in order to preserve the health, safety, and welfare of the public, the Florida Building Commission may, by rule adopted pursuant to chapter 120, provide for exceptions to the broad categories of buildings exempted in this section, including exceptions for application of specific sections of the code or standards adopted therein. The Department of Agriculture and Consumer Services shall have exclusive authority to adopt by rule, pursuant to chapter 120, exceptions to nonresidential farm buildings exempted in paragraph (c) when reasonably necessary to preserve public health, safety, and welfare. The exceptions must be based upon specific criteria, such as under-roof floor area, aggregate electrical service capacity, HVAC system capacity, or other building requirements. Further, the commission may recommend to the Legislature additional categories of buildings, structures, or facilities which should be exempted from the Florida Building Code, to be provided by law. The Florida Building Code does not apply to temporary housing provided by the Department of Corrections to any prisoner in the state correctional system.

(11)(a) In the event of a conflict between the Florida Building Code and the Florida Fire Prevention Code and the Life Safety Code as applied to a specific project, the conflict shall be resolved by agreement between the local building code enforcement official and the local fire code enforcement official in favor of the requirement of the code which offers the greatest degree of lifesafety or alternatives which would provide an equivalent degree of lifesafety and an equivalent method of construction. Local boards created to address issues arising under the Florida Building Code or the Florida Fire Prevention Code may combine the appeals boards to create a single, local board having jurisdiction over matters arising under either code or both codes. The combined local appeals board may grant alternatives or modifications through procedures outlined in NFPA 1, Section 1.4, but may not waive the requirements of the Florida Fire Prevention Code. To meet the quorum requirement for convening the combined local appeals board, at least one member of the board who is a fire protection contractor, a fire protection design professional, a fire department operations professional, or a fire code enforcement professional must be present.

(b) Any decision made by the local fire official regarding application, interpretation, or enforcement of the Florida Fire Prevention Code or by the local building official regarding application, interpretation, or enforcement of the Florida Building Code, or the appropriate application of either code or both codes in the case of a conflict between the codes, may be appealed to a local administrative board designated by the municipality, county, or special district having firesafety responsibilities. If the decision of the local fire official and the local building official is to apply the provisions of either the Florida Building Code or the Florida Fire Prevention Code and the Life Safety Code, the board may not alter the decision unless the board determines that the application of such code is not reasonable. If the decision of the local fire official and the local building official is to adopt an alternative to the codes, the local administrative board shall give due regard to the decision rendered by the local officials and may modify that decision if the administrative board adopts a better alternative, taking into consideration all relevant circumstances. In any case in which the local administrative board adopts alternatives to the decision rendered by the local fire official and the local building official, such alternatives shall provide an equivalent degree of lifesafety and an equivalent method of construction as the decision rendered by the local officials.

(c) If the local building official and the local fire official are unable to agree on a resolution of the conflict between the Florida Building Code and the Florida Fire Prevention Code and the Life Safety Code, the local administrative board shall resolve the conflict in favor of the code which offers the greatest degree of lifesafety or alternatives which would provide an equivalent degree of lifesafety and an equivalent method of construction.

(d) All decisions of the local administrative board or, if none exists, the local building official and the local fire official in regard to the application, enforcement, or interpretation of the Florida Fire Prevention Code, or conflicts between the Florida Fire Prevention Code and the Florida Building Code, are subject to review by a joint committee composed of members of the Florida Building Commission and the Fire Code Advisory Council. If the joint committee is unable to resolve conflicts between the codes as applied to a specific project, the matter shall be resolved pursuant to paragraph (1)(d). Decisions of the local administrative board related solely to the Florida Building Code are subject to review as set forth in s. 553.775.

(e) The local administrative board shall, to the greatest extent possible, be composed of members with expertise in building construction and firesafety standards.



(f) All decisions of the local building official and local fire official and all decisions of the administrative board shall be in writing and shall be binding upon a person but do not limit the authority of the State Fire Marshal or the Florida Building Commission pursuant to paragraph (1)(d) and ss. [633.104](#) and [633.228](#). Decisions of general application shall be indexed by building and fire code sections and shall be available for inspection during normal business hours.

(12) Except within coastal building zones as defined in s. [161.54](#), specification standards developed by nationally recognized code promulgation organizations to determine compliance with engineering criteria of the Florida Building Code for wind load design shall not apply to one or two family dwellings which are two stories or less in height unless approved by the commission for use or unless expressly made subject to said standards and criteria by local ordinance adopted in accordance with the provisions of subsection (4).

(13) The Florida Building Code does not apply to, and no code enforcement action shall be brought with respect to, zoning requirements, land use requirements, and owner specifications or programmatic requirements which do not pertain to and govern the design, construction, erection, alteration, modification, repair, or demolition of public or private buildings, structures, or facilities or to programmatic requirements that do not pertain to enforcement of the Florida Building Code. Additionally, a local code enforcement agency may not administer or enforce the Florida Building Code to prevent the siting of any publicly owned facility, including, but not limited to, correctional facilities, juvenile justice facilities, or state universities, community colleges, or public education facilities, as provided by law.

(14) The general provisions of the Florida Building Code for buildings and other structures shall not apply to commercial wireless communication towers when such general provisions are inconsistent with the provisions of the code controlling radio and television towers. This subsection is intended to be remedial in nature and to clarify existing law.

(15) An agency or local government may not require that existing mechanical equipment located on or above the surface of a roof be installed in compliance with the requirements of the Florida Building Code except during reroofing when the equipment is being replaced or moved and is not in compliance with the provisions of the Florida Building Code relating to roof-mounted mechanical units.

(16) The Florida Building Code must require that the illumination in classroom units be designed to provide and maintain an average of 40 foot-candles of light at each desktop. Public educational facilities must consider using light-emitting diode lighting before considering other lighting sources.

(17) A provision of the International Residential Code relating to mandated fire sprinklers may not be incorporated into the Florida Building Code as adopted by the Florida Building Commission and may not be adopted as a local amendment to the Florida Building Code. This subsection does not prohibit the application of cost-saving incentives for residential fire sprinklers that are authorized in the International Residential Code upon a mutual agreement between the builder and the code official. This subsection does not apply to a local government that has a lawfully adopted ordinance relating to fire sprinklers which has been in effect since January 1, 2010.

(18) In a single-family dwelling, makeup air is not required for range hood exhaust systems capable of exhausting:

- (a) Four hundred cubic feet per minute or less; or
- (b) More than 400 cubic feet per minute but no more than 800 cubic feet per minute if there are no gravity vent appliances within the conditioned living space of the structure.

(19) The Florida Building Code shall require two fire service access elevators in all buildings with a height greater than 120 feet measured from the elevation of street-level access to the level of the highest occupiable floor. All remaining elevators, if any, shall be provided with Phase I and II emergency operations. Where a fire service access elevator is required, a 1-hour fire-rated fire service access elevator lobby with direct access from the fire service access elevator is not required if the fire service access elevator opens into an exit access corridor that is no less than 6 feet wide for its entire length and is at least 150 square feet with the exception of door openings, and has a minimum 1-hour fire rating with three-quarter hour fire and smoke rated openings; and during a fire event the fire service access elevator is pressurized and floor-to-floor smoke control is provided. However, where transient residential occupancies occur at floor levels more than 420 feet above the level of fire service



access, a 1-hour fire-rated service access elevator lobby with direct access from the fire service access elevator is required. Standpipes in high-rise buildings of Florida Building Code—Building Occupancy Group R1 or R2 must be located in stairwells and are subject only to the requirements of the Florida Fire Prevention Code and NFPA 14, Standard for the Installation of Standpipes and Hose Systems, adopted by the State Fire Marshal.

(20) The Florida Building Commission may not:

(a) Adopt the 2016 version of the American Society of Heating, Refrigerating and Air-Conditioning Engineers Standard 9.4.1.1(g).

(b) Adopt any provision that requires a door located in the opening between a garage and a single-family residence to be equipped with a self-closing device.

**History.**—s. 4, ch. 74-167; s. 3, ch. 75-85; s. 1, ch. 77-365; s. 225, ch. 79-400; s. 1, ch. 80-106; s. 6, ch. 82-197; s. 2, ch. 84-273; s. 1, ch. 85-97; s. 33, ch. 86-191; s. 1, ch. 87-287; s. 1, ch. 88-142; s. 1, ch. 89-369; s. 2, ch. 91-172; s. 41, ch. 91-220; s. 49, ch. 95-144; s. 1, ch. 97-177; ss. 39, 40, 65, ch. 98-287; s. 61, ch. 98-419; ss. 73, 74, 75, ch. 2000-141; s. 62, ch. 2000-154; ss. 25, 34, 35, 36, ch. 2001-186; ss. 2, 3, 4, 5, ch. 2001-372; s. 86, ch. 2002-1; ss. 1, 14, ch. 2002-293; s. 66, ch. 2003-1; s. 663, ch. 2003-261; s. 7, ch. 2005-147; s. 1, ch. 2005-191; s. 4, ch. 2006-65; s. 7, ch. 2007-1; s. 4, ch. 2007-187; s. 140, ch. 2008-4; s. 10, ch. 2008-191; s. 108, ch. 2008-227; s. 1, ch. 2010-99; s. 32, ch. 2010-176; s. 14, ch. 2011-208; s. 30, ch. 2011-222; s. 14, ch. 2012-13; s. 148, ch. 2013-183; s. 14, ch. 2013-193; s. 18, ch. 2014-154; s. 17, ch. 2016-129; s. 11, ch. 2017-149; s. 6, ch. 2019-75; s. 2, ch. 2021-201.

<sup>1</sup>**Note.**—The amendment by s. 2, ch. 2021-201, changed the reference from "subparagraphs 7. and 9." to "paragraphs (f) and (g)" to conform to the redesignation of subunits in subsection (4) by that law. Subparagraph (b)7. was redesignated as paragraph (f), and subparagraph (b)9. was redesignated as paragraph (h).

<b>FILED</b>	
Department of Business and Professional Regulation	
Senior Deputy Agency Clerk	
CLERK	Brandon Nichols
Date	11/9/2021
File #	2021-08370

**STATE OF FLORIDA  
BUILDING COMMISSION**

In the Matter of

CLASSIC FLORIDA DREAM HOMES, LLC

**DS 2021-050**

Petitioner.

**DECLARATORY STATEMENT**

The following proceeding came before the Florida Building Commission (Commission) by a Petition from Thomas E. Smith, for Classic Florida Dream Homes, LLC (Petitioner) that was received September 2, 2021. Based on the statements in the petition, the material subsequently submitted and the subsequent request by the Petitioner, the Commission states the following:

**Findings of Fact**

1. The petition is filed pursuant to, and must conform with the requirements of rule 28-105.002, Florida Administrative Code.
2. Petitioner's representative in this matter is Thomas E. Smith, 424 Harbor Drive North, Indian Rocks Beach, FL 33785.
3. Petitioner is a contractor planning the construction of a two-story, single family home located in a flood zone with an "AE" designation under the National Flood Insurance Program. Petitioner states that it wishes to have the option to utilize the services of private providers for plans review and/or building inspections on the project.
4. Petitioner seeks clarification of section 107.6.1, Florida Building Code, Building, 7th Edition (2020), as it pertains to building permits issued on the basis of affidavit, and the services provided by private providers pursuant to section 553.791, Florida Statutes (2021).

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5. Specifically, the Petitioner requests an answer to the following question based upon the project described within the petition for declaratory statement:

Per the 2020 Florida Building Code, does section 107.6.1 Building Permits issued on the basis of an affidavit apply to Private Providers per F.S. 553.791?

#### Conclusions of Law

6. The Commission has the specific statutory authority pursuant to section 553.775(3)(a), Florida Statutes (2021) to interpret the provisions of the Florida Building Code by issuing a declaratory statement.

7. Section 105.14, Florida Building Code, Building, 7th Edition (2020), states:

**Permit issued on basis of an affidavit.**

Whenever a permit is issued in reliance upon an affidavit or whenever the work to be covered by a permit involves installation under conditions which, in the opinion of the building official, are hazardous or complex, the building official shall require that the architect or engineer who signed the affidavit or prepared the drawings or computations shall supervise such work. In addition, they shall be responsible for conformity to the permit, provide copies of inspection reports as inspections are performed, and upon completion make and file with the building official written affidavit that the work has been done in conformity to the reviewed plans and with the structural provisions of the technical codes. In the event such architect or engineer is not available, the owner shall employ in his stead a competent person or agency whose qualifications are reviewed by the building official. The building official shall ensure that any person conducting plans review is qualified as a plans examiner under Part XII of Chapter 468, Florida Statutes, and that any person conducting inspections is qualified as a building inspector under Part XII of Chapter 468, Florida Statutes.

**Exception:** Permit issued on basis of an affidavit shall not extend to the flood load and flood resistance requirements of the Florida Building Code.

8. Section 107.6, Florida Building Code, Building, 7th Edition (2020), states:

**Affidavits.**

The building official may accept a sworn affidavit from a registered architect or engineer stating that the plans submitted conform to the technical codes. For buildings and structures, the affidavit shall state that the plans conform to the laws as to egress, type of construction and general arrangement and, if accompanied by drawings, show the structural design and that the plans and design conform to the requirements of the technical codes as to strength, stresses, strains, loads and stability. The building official may without any examination or inspection accept such affidavit, provided the architect or engineer who made such affidavit agrees to submit to the building official copies of inspection reports as inspections are performed and upon completion of the structure, electrical, gas, mechanical or plumbing systems a certification that the structure, electrical, gas, mechanical or plumbing system has been erected in accordance with the requirements of the technical codes. Where the building official relies upon such affidavit, the architect or engineer shall assume full responsibility for compliance with all provisions of the technical codes and other pertinent laws or ordinances. The building official shall ensure that any person conducting plans review is qualified as a plans examiner under Part XII of Chapter 468, Florida Statutes, and that any person conducting inspections is qualified as a building inspector under Part XII of Chapter 468, Florida Statutes.

9. Section 107.6.1, Florida Building Code, Building, 7th Edition (2020), states:

**Building permits issued on the basis of an affidavit.**

Pursuant to the requirements of federal regulation for participation in the National Flood Insurance Program (44 C.F.R. Parts 59 and 60), the authority granted to the *building official* to issue permits, to rely on inspections, and to accept plans and construction documents on the basis of affidavits and plans submitted pursuant to Sections 105.14 and 107.6, shall not extend to the flood load and flood-resistance construction requirements of the Florida Building Code.


10. In response to Petitioner's question, the answer is **no**. Section 107.6.1, Florida Building Code, Building, 7th Edition (2020), is limited in scope to affidavits issued pursuant to sections 105.14 and 107.6, Florida Building Code, Building, 7th Edition (2020), and therefore section 107.6.1 does not apply to services performed by private providers as authorized by

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section 553.791, Florida Statutes (2021). This does not absolve the community from complying with any requirements under the National Flood Insurance Program.

DONE AND ORDERED this 20<sup>th</sup> day of OCTOBER, 2021, in St. Augustine, St. Johns County, State of Florida.

  
JAMES R. SCHOCK  
Chairman, Florida Building Commission



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NOTICE OF RIGHT TO APPEAL

Petitioner and all other interested parties are hereby advised of their right to seek judicial review of this Order in accordance with section 120.68(2)(a), Florida Statutes (2021), and Florida Rules of Appellate Procedure 9.110(a) and 9.030(b)(1)(C). To initiate an appeal, a Notice of Appeal must be filed with the Agency Clerk, Department of Business and Professional Regulation, 2601 Blair Stone Road, Tallahassee, Florida 32399-2203 and with the appropriate District Court of Appeal not later than thirty (30) days after this Order is filed with the Clerk of the Department of Business and Professional Regulation. A Notice of Appeal filed with the District Court of Appeal shall be accompanied by the filing fee specified by section 35.22(3), Florida Statutes (2021).

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Page 6 of 6

CERTIFICATE OF FILING AND SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing order has been filed with the undersigned and furnished by U. S. Mail to the persons listed below this 9<sup>th</sup> day of November, 2021.

*Brandon M. Nichols*

Agency Clerk's Office  
Department of Business and Professional Regulation  
& Florida Building Commission  
2601 Blair Stone Road  
Tallahassee, Florida 32399-2203

Via U.S. Mail

Classic Florida Dream Homes, LLC  
Attn: Thomas E. Smith  
424 Harbor Drive North  
Indian Rocks Beach, FL 33785

Via Inter-Office or Email Delivery

Mo Madani, Planning Manager  
Codes and Standards Section  
Department of Business and Professional  
Regulation  
2601 Blair Stone Road  
Tallahassee, Florida 32399  
Mo.Madani@myfloridalicense.com

Marjorie Holladay  
Joint Administrative Procedures Committee  
Pepper Building, Room 680  
Tallahassee, Florida 32399-1300

# TAC: Code Administration

Total Mods for **Code Administration** in **Denied** : 2

Total Mods for report: 6

## Sub Code: Building

CA9987

5

Date Submitted	01/31/2022	Section	107.6	Proponent	Seijas Vince
Chapter	1	Affects HVHZ	No	Attachments	Yes
TAC Recommendation	Denied				
Commission Action	Pending Review				

### Comments

**General Comments Yes**

**Alternate Language No**

### Related Modifications

105.14 as it also relates to Permit by Affidavit

### Summary of Modification

The following code modification is presented to provide clarification regarding jurisdiction over the enforcement of the flood provisions of the Florida Building Code and a community's Floodplain management ordinance.

### Rationale

In accordance with the guidance of F.S. 553.73 (7)(a) and (d), Declaratory Statement DS2021-050, and the November 2, 2020 Memorandum from the Florida Department of Emergency Management and FEMA Region IV, the following code modification is presented to provide clarification regarding jurisdiction over the enforcement of the flood provisions of the Florida Building Code and a community's Floodplain management ordinance.

### Fiscal Impact Statement

#### Impact to local entity relative to enforcement of code

No financial Impact is expected, it will however preserve the relationship between FEMA and a local community in the enforcement of 44 CFR, insuring compliance with the NFIP, FEMA, HUD, and Federal Funding as required of F.S. 553.73(7)(a).

#### Impact to building and property owners relative to cost of compliance with code

It will preserve the relationship between FEMA and a local community in the enforcement of 44 CFR, insuring compliance with the NFIP, FEMA, HUD, and Federal Funding as required of F.S. 553.73(7)(a).

#### Impact to industry relative to the cost of compliance with code

No financial impact is expected with this code modification which is being presented to clarify jurisdiction over the enforcement and regulation of the flood provisions in the FBC and Local Floodplain Management Ordinance.

#### Impact to small business relative to the cost of compliance with code

### Requirements

**Has a reasonable and substantial connection with the health, safety, and welfare of the general public**

It will preserve the relationship between FEMA and a local community in the enforcement of 44 CFR, insuring compliance with the NFIP, FEMA, HUD, and Federal Funding as required of F.S. 553.73(7)(a).

**Strengthens or improves the code, and provides equivalent or better products, methods, or systems of construction**

The following code modification is presented to provide clarification regarding jurisdiction over the enforcement of the flood provisions of the Florida Building Code and a community's Floodplain management ordinance.

**Does not discriminate against materials, products, methods, or systems of construction of demonstrated capabilities**

The proposed modification does not discriminate against materials, products, methods, or systems of construction.

**Does not degrade the effectiveness of the code**

The proposed modification does not degrade the effectiveness of the code, it does buttress the Authority Having Jurisdiction's regulatory authority over the floodplain management provisions of the FBC.

## 1st Comment Period History

Proponent	Rebecca Quinn obo FL	Submitted	4/15/2022 4:13:28 PM	Attachments	No
	Div Emerg Mgnt				

**Comment:**

On behalf of Conn Cole, FDEM State Floodplain Manager, I request that Mod# CA9986 and Mod# CA9987 be heard after Mod# CA10348. The three proposals address the same issue.

**107.6 Affidavits and Alternative Plan Review.** The building official may accept a sworn affidavit from a registered architect or engineer stating that the plans submitted conform to the technical codes. A fee owner of a Building or structure can also choose to follow the procedure provided in F.S. 553.791 for Alternative Plan Review. For buildings and structures, the affidavit shall state that the plans conform to the laws as to egress, type of construction and general arrangement and, if accompanied by drawings, show the structural design and that the plans and design conform to the requirements of the technical codes as to strength, stresses, strains, loads and stability. The building official may without any examination or inspection accept such affidavit, provided the architect or engineer who made such affidavit agrees to submit to the building official copies of inspection reports as inspections are performed and upon completion of the structure, electrical, gas, mechanical or plumbing systems a certification that the structure, electrical, gas, mechanical or plumbing system has been erected in accordance with the requirements of the technical codes. Where the building official relies upon such affidavit, the architect or engineer shall assume full responsibility for compliance with all provisions of the technical codes and other pertinent laws or ordinances. The building official shall ensure that any person conducting plans review is qualified as a plans examiner under Part XII of Chapter 468, *Florida Statutes*, and that any person conducting inspections is qualified as a building inspector under Part XII of Chapter 468, and Chapter 553.791 Florida Statutes.





STATE OF FLORIDA  
**DIVISION OF EMERGENCY MANAGEMENT**

Ron DeSantis  
Governor

Jared Moskowitz  
Director

November 2, 2020

**MEMORANDUM**

TO: Florida Floodplain Administrators and Building Officials

FROM: Conn H. Cole, Interim State Floodplain Manager **Conn H. Cole**

CONCURRENCE: Jason O. Hunter, Chief, FEMA Region IV Floodplain Management & Insurance Branch *Jason O. Hunter*

Digitally signed by Conn H. Cole  
DN: cn=Conn H. Cole, o=Florida Department of  
Emergency Management, ou=State Floodplain  
Management Office,  
email=Conn.H.Cole@fla.gov, c=US  
Date: 2020.11.02 14:56:03 -0500

RE: Florida Building Code and Permits Issued on the Basis of Affidavits  
**NFIP Communities Must Review For Floodplain Compliance**

Over the past year the State Floodplain Management Office (SFMO) has received inquiries regarding changes enacted in the 2019 legislative session that affect the use and acceptance of private providers for building permits and inspections. The Florida Building Code (FBC) includes provisions for issuing permits based on affidavits signed by qualified architects or engineers, in the Building volume, sections 105.14 and 107.6. These sections are shown in the attachment.

This memorandum provides guidance to clarify the exception to Sections 105.14 and 107.6.1. FEMA Region IV concurs with this guidance. **In effect, the sections require local officials to review applications for compliance with the flood load and flood-resistant construction requirements of the FBC when buildings are proposed to be located in special flood hazard areas, and to inspect those aspects when permits are issued.**

The National Flood Insurance Program (NFIP) requires communities that participate in the program to agree to adopt and enforce regulations that meet or exceed the minimum requirement of the NFIP (44 Code of Federal Regulations Parts 59 and 60). FEMA deems the flood provisions of the FBC to meet or exceed the minimum NFIP requirements for buildings and structures.

**The NFIP regulations require communities to review proposed construction or development in special flood hazard areas.** Specifically, the NFIP regulations in Section 60.3 states: "Minimum standards for communities are as follows: (a) . . . the community shall: . . . (1) Require permits for all proposed construction or development . . . ; (2) Review proposed development to . . . ; (3) Review all applications to . . . ; (4) Review subdivision proposals and other new development . . ." <https://www.govinfo.gov/app/details/CFR-2011-title44-vol1/CFR-2011-title44-vol1-part60>

**DIVISION HEADQUARTERS**  
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Florida Floodplain Administrators and Building Officials  
November 2 , 2020  
Page 2

In 2011-12, the SFMO worked with FEMA, the Florida Building Commission, the Building Officials Association of Florida, and the Florida Floodplain Managers Association to incorporate in the FBC the necessary requirements for buildings in flood hazard areas. As part of that effort, the SFMO examined the matter of permits issued based on affidavits. Prior to the inclusion of Section 107.6.1 and the exception to Section 105.14, many communities individually adopted local administrative amendments with the same limitation.

During the code development cycle for the 5<sup>th</sup> Edition FBC, FDEM submitted a proposal to incorporate Section 107.6.1 into the FBC (the exception to Section 105.14 was added by amendment to a proposal by others). FDEM's rationale statement is shown below and repeated here for clarify:

Both of these proposed new sections flow from consistency with the NFIP. They were developed by DEM as part of the Model Floodplain Management Ordinance and Code Amendments, reviewed by BOAF, and scrutinized by FEMA. Because FEMA deemed both of these are necessary, it is more efficient for the FBC to include them in Chapter 1, rather than expect every local government to adopt them as local administrative code amendments.

Despite the submission of an affidavit authorized by B107.6, the building official must review plans for compliance with the flood provisions and issue permits and perform inspections to ensure compliance with the flood provisions. Under the NFIP, the community is responsible for ensuring compliance.

\*The original proposal (SP5255) included both Section 107.6.1 and Section 117; the exception to Section 105.14 was added to proposal CA5082) by amendments for consistency.

Please contact us at (850) 815-4556 or [floods@em.myflorida.com](mailto:floods@em.myflorida.com) if you have questions about the flood provisions in the FBC or FBC-coordinated floodplain management regulations.

CC: Steve Martin, Roy McClure, Virgilio Chris Perez

Attachment: FBC, Building, Sections 105.14 and 107.6.1 and Proposal for the 5<sup>th</sup> Ed. FBC, submitted 7/22/2012



## ATTACHMENT

## FBC, Building Sections 105.14 and 107.6.1

**105.14 Permit issued on basis of an affidavit.** Whenever a permit is issued in reliance upon an affidavit or whenever the work to be covered by a permit involves installation under conditions which, in the opinion of the building official, are hazardous or complex, the building official shall require that the architect or engineer who signed the affidavit or prepared the drawings or computations shall supervise such work. In addition, they shall be responsible for conformity to the permit, provide copies of inspection reports as inspections are performed, and upon completion make and file with the building official written affidavit that the work has been done in conformity to the reviewed plans and with the structural provisions of the technical codes. In the event such architect or engineer is not available, the owner shall employ in his stead a competent person or agency whose qualifications are reviewed by the building official. The building official shall ensure that any person conducting plans review is qualified as a plans examiner under Part XII of Chapter 468, *Florida Statutes*, and that any person conducting inspections is qualified as a building inspector under Part XII of Chapter 468, *Florida Statutes*.

**Exception:** Permit issued on basis of an affidavit shall not extend to the flood load and flood resistance requirements of the *Florida Building Code*.

**107.6.1 [Affidavits] Building permits issued on the basis of an affidavit.** Pursuant to the requirements of federal regulation for participation in the National Flood Insurance Program (44 C.F.R. Parts 59 and 60), the authority granted to the building official to issue permits, to rely on inspections, and to accept plans and construction documents on the basis of affidavits and plans submitted pursuant to Sections 105.14 and 107.6, shall not extend to the flood load and flood-resistance construction requirements of the *Florida Building Code*.

## Mod SP 5255 (approved as submitted)

Mod CA 5082 (submitted by Joe Bigelow to add new Sec. 105.14; FDEM proposed amendment to recapture NFIP; approved as amended.

<b>SP5255</b>		Page 6 of 427 2	
<b>Date Submitted</b>	7/22/2012	<b>Section</b>	107.6 and 117 (new)
<b>Chapter</b>	1	<b>Affects HVHZ</b>	No
<b>TAC Recommendation</b>	Pending Review	<b>Preponent</b>	Rebecca Quinn obo DEM
<b>Commission Action</b>	Pending Review	<b>Attachments</b>	No
<b>Related Modifications</b>			
<b>Summary of Modification</b>			
Two administrative amendments that FEMA has deemed necessary to ensure that enforcement of the flood provisions of the FBC remain consistent with the NFIP.			
<b>Rationale</b>			
Both of these proposed new sections flow from consistency with the NFIP. They were developed by DEM as part of the Model Floodplain Management Ordinance and Code Amendments, reviewed by BOAF, and scrutinized by FEMA. Because FEMA has deemed both of these are necessary, it is more efficient for the FBC to include them in Chapter 1, rather than expect every local government to adopt them as local administrative code amendments.			
Despite the submission of an affidavit authorized by 8107.6, the building official must review plans for compliance with the flood provisions and issue permits and perform inspections to ensure compliance with the flood provisions. Under the NFIP, the community is responsible for ensuring compliance.			
For consistency with the NFIP, section 553.73(5), F.S., authorizes adoption of procedures for variances; the specific procedures are in the FPM ordinance. Variances are official permission to undertake an activity that is otherwise prohibited or not approvable under the regulations or building code. As specified in section 553.73(5), F.S., the authority to grant variances to the flood provisions does not extend to any requirement in Section 3109, which applies seaward of the Coastal Construction Control Line.			

Select Year: 2021 ▼ Go

## The 2021 Florida Statutes

[Title XXXIII](#)  
REGULATION OF TRADE, COMMERCE, INVESTMENTS,  
AND SOLICITATIONS

[Chapter 553](#)  
BUILDING CONSTRUCTION  
STANDARDS

[View Entire  
Chapter](#)

### 553.73 Florida Building Code.—

(1)(a) The commission shall adopt, by rule pursuant to ss. [120.536\(1\)](#) and [120.54](#), the Florida Building Code which shall contain or incorporate by reference all laws and rules which pertain to and govern the design, construction, erection, alteration, modification, repair, and demolition of public and private buildings, structures, and facilities and enforcement of such laws and rules, except as otherwise provided in this section.

(b) The technical portions of the Florida Accessibility Code for Building Construction shall be contained in their entirety in the Florida Building Code. The civil rights portions and the technical portions of the accessibility laws of this state shall remain as currently provided by law. Any revision or amendments to the Florida Accessibility Code for Building Construction pursuant to part II shall be considered adopted by the commission as part of the Florida Building Code. Neither the commission nor any local government shall revise or amend any standard of the Florida Accessibility Code for Building Construction except as provided for in part II.

(c) The Florida Fire Prevention Code and the Life Safety Code shall be referenced in the Florida Building Code, but shall be adopted, modified, revised, or amended, interpreted, and maintained by the Department of Financial Services by rule adopted pursuant to ss. [120.536\(1\)](#) and [120.54](#). The Florida Building Commission may not adopt a fire prevention or lifesafety code, and nothing in the Florida Building Code shall affect the statutory powers, duties, and responsibilities of any fire official or the Department of Financial Services.

(d) Conflicting requirements between the Florida Building Code and the Florida Fire Prevention Code and Life Safety Code of the state established pursuant to ss. [633.206](#) and [633.208](#) shall be resolved by agreement between the commission and the State Fire Marshal in favor of the requirement that offers the greatest degree of lifesafety or alternatives that would provide an equivalent degree of lifesafety and an equivalent method of construction. If the commission and State Fire Marshal are unable to agree on a resolution, the question shall be referred to a mediator, mutually agreeable to both parties, to resolve the conflict in favor of the provision that offers the greatest lifesafety, or alternatives that would provide an equivalent degree of lifesafety and an equivalent method of construction.

(e) Subject to the provisions of this act, responsibility for enforcement, interpretation, and regulation of the Florida Building Code shall be vested in a specified local board or agency, and the words “local government” and “local governing body” as used in this part shall be construed to refer exclusively to such local board or agency.

(2) The Florida Building Code shall contain provisions or requirements for public and private buildings, structures, and facilities relative to structural, mechanical, electrical, plumbing, energy, and gas systems, existing buildings, historical buildings, manufactured buildings, elevators, coastal construction, lodging facilities, food sales and food service facilities, health care facilities, including assisted living facilities, adult day care facilities, hospice residential and inpatient facilities and units, and facilities for the control of radiation hazards, public or private educational facilities, swimming pools, and correctional facilities and enforcement of and compliance with such provisions or requirements. Further, the Florida Building Code must provide for uniform implementation of ss. [515.25](#), [515.27](#), and [515.29](#) by including standards and criteria for residential swimming pool barriers, pool covers, latching devices, door and window exit alarms, and other equipment required therein, which are consistent with the intent of s. [515.23](#). Technical provisions to be contained within the Florida Building Code are restricted to

requirements related to the types of materials used and construction methods and standards employed in order to meet criteria specified in the Florida Building Code. Provisions relating to the personnel, supervision or training of personnel, or any other professional qualification requirements relating to contractors or their workforce may not be included within the Florida Building Code, and subsections (4), (6), (7), (8), and (9) are not to be construed to allow the inclusion of such provisions within the Florida Building Code by amendment. This restriction applies to both initial development and amendment of the Florida Building Code.

(3) The commission shall use the International Codes published by the International Code Council, the National Electric Code (NFPA 70), or other nationally adopted model codes and standards for updates to the Florida Building Code. The commission may approve technical amendments to the code as provided in subsections (8) and (9), subject to all of the following conditions:

(a) The proposed amendment must have been published on the commission's website for a minimum of 45 days and all the associated documentation must have been made available to any interested party before consideration by a technical advisory committee.

(b) In order for a technical advisory committee to make a favorable recommendation to the commission, the proposal must receive a two-thirds vote of the members present at the meeting. At least half of the regular members must be present in order to conduct a meeting.

(c) After the technical advisory committee has considered and recommended approval of any proposed amendment, the proposal must be published on the commission's website for at least 45 days before consideration by the commission.

(d) A proposal may be modified by the commission based on public testimony and evidence from a public hearing held in accordance with chapter 120.

The commission shall incorporate within the Florida Building Code provisions that address regional and local concerns and variations. The commission shall make every effort to minimize conflicts between the Florida Building Code, the Florida Fire Prevention Code, and the Life Safety Code.

(4)(a) All entities authorized to enforce the Florida Building Code under s. 553.80 shall comply with applicable standards for issuance of mandatory certificates of occupancy, minimum types of inspections, and procedures for plans review and inspections as established by the commission by rule. Local governments may adopt amendments to the administrative provisions of the Florida Building Code, subject to the limitations in this subsection. Local amendments must be more stringent than the minimum standards described in this section and must be transmitted to the commission within 30 days after enactment. The local government shall make such amendments available to the general public in a usable format. The State Fire Marshal is responsible for establishing the standards and procedures required in this subsection for governmental entities with respect to applying the Florida Fire Prevention Code and the Life Safety Code.

(b) Local governments may, subject to the limitations in this section and not more than once every 6 months, adopt amendments to the technical provisions of the Florida Building Code that apply solely within the jurisdiction of such government and that provide for more stringent requirements than those specified in the Florida Building Code. A local government may adopt technical amendments that address local needs if:

1. The local governing body determines, following a public hearing which has been advertised in a newspaper of general circulation at least 10 days before the hearing, that there is a need to strengthen the requirements of the Florida Building Code. The determination must be based upon a review of local conditions by the local governing body, which review demonstrates by evidence or data that the geographical jurisdiction governed by the local governing body exhibits a local need to strengthen the Florida Building Code beyond the needs or regional variation addressed by the Florida Building Code, that the local need is addressed by the proposed local amendment, and that the amendment is no more stringent than necessary to address the local need.

2. Such additional requirements are not discriminatory against materials, products, or construction techniques of demonstrated capabilities.

3. Such additional requirements may not introduce a new subject not addressed in the Florida Building Code.



(c) The enforcing agency shall make readily available, in a usable format, all amendments adopted under this section.

(d) Any amendment to the Florida Building Code shall be transmitted within 30 days after adoption by the local government to the commission. The commission shall maintain copies of all such amendments in a format that is usable and obtainable by the public. Local technical amendments are not effective until 30 days after the amendment has been received and published by the commission.

(e) An amendment to the Florida Building Code adopted by a local government under this subsection is effective only until the adoption of the new edition of the Florida Building Code by the commission every third year. At such time, the commission shall review such amendment for consistency with the criteria in paragraph (9)(a) and adopt such amendment as part of the Florida Building Code or rescind the amendment. The commission shall immediately notify the respective local government of the rescission of any amendment. After receiving such notice, the respective local government may readopt the rescinded amendment under the provisions of this subsection.

(f) Each county and municipality desiring to make local technical amendments to the Florida Building Code shall establish by interlocal agreement a countywide compliance review board to review any amendment to the Florida Building Code that is adopted by a local government within the county under this subsection and that is challenged by a substantially affected party for purposes of determining the amendment's compliance with this subsection. If challenged, the local technical amendments are not effective until the time for filing an appeal under paragraph (g) has expired or, if there is an appeal, until the commission issues its final order determining if the adopted amendment is in compliance with this subsection.

(g) If the compliance review board determines such amendment is not in compliance with this subsection, the compliance review board shall notify such local government of the noncompliance and that the amendment is invalid and unenforceable until the local government corrects the amendment to bring it into compliance. The local government may appeal the decision of the compliance review board to the commission. If the compliance review board determines that such amendment is in compliance with this subsection, any substantially affected party may appeal such determination to the commission. Any such appeal must be filed with the commission within 14 days after the board's written determination. The commission shall promptly refer the appeal to the Division of Administrative Hearings by electronic means through the division's website for the assignment of an administrative law judge. The administrative law judge shall conduct the required hearing within 30 days after being assigned to the appeal, and shall enter a recommended order within 30 days after the conclusion of such hearing. The commission shall enter a final order within 30 days after an order is rendered. Chapter 120 and the uniform rules of procedure shall apply to such proceedings. The local government adopting the amendment that is subject to challenge has the burden of proving that the amendment complies with this subsection in proceedings before the compliance review board and the commission, as applicable. Actions of the commission are subject to judicial review under s. 120.68. The compliance review board shall determine whether its decisions apply to a respective local jurisdiction or apply countywide.

(h) An amendment adopted under this subsection must include a fiscal impact statement that documents the costs and benefits of the proposed amendment. Criteria for the fiscal impact statement shall include the impact to local government relative to enforcement and the impact to property and building owners and industry relative to the cost of compliance. The fiscal impact statement may not be used as a basis for challenging the amendment for compliance.

(i) In addition to <sup>1</sup>paragraphs (f) and (g), the commission may review any amendments adopted under this subsection and make nonbinding recommendations related to compliance of such amendments with this subsection.

(j) Any amendment adopted by a local enforcing agency under this subsection may not apply to state or school district owned buildings, manufactured buildings or factory-built school buildings approved by the commission, or prototype buildings approved under s. 553.77(3). The respective responsible entities shall consider the physical performance parameters substantiating such amendments when designing, specifying, and constructing such exempt buildings.

(k) A technical amendment to the Florida Building Code related to water conservation practices or design criteria adopted by a local government under this subsection is not void when the code is updated if the technical amendment is necessary to protect or provide for more efficient use of water resources as provided in s. 373.621. However, any such technical amendment carried forward into the next edition of the code under this paragraph is subject to review or modification as provided in this part.

(l) If a local government adopts a regulation, law, ordinance, policy, amendment, or land use or zoning provision without using the process established in this subsection, and a substantially affected person considers such regulation, law, ordinance, policy, amendment, or land use or zoning provision to be a technical amendment to the Florida Building Code, then the substantially affected person may submit a petition to the commission for a nonbinding advisory opinion. If a substantially affected person submits a request in accordance with this paragraph, the commission shall issue a nonbinding advisory opinion stating whether or not the commission interprets the regulation, law, ordinance, policy, amendment, or land use or zoning provision as a technical amendment to the Florida Building Code. As used in this paragraph, the term "local government" means a county, municipality, special district, or political subdivision of the state.

1. Requests to review a local government regulation, law, ordinance, policy, amendment, or land use or zoning provision may be initiated by any substantially affected person. A substantially affected person includes an owner or builder subject to the regulation, law, ordinance, policy, amendment, or land use or zoning provision, or an association of owners or builders having members who are subject to the regulation, law, ordinance, policy, amendment, or land use or zoning provision.

2. In order to initiate a review, a substantially affected person must file a petition with the commission. The commission shall adopt a form for the petition and directions for filing, which shall be published on the Building Code Information System. The form shall, at a minimum, require the following:

a. The name of the local government that enacted the regulation, law, ordinance, policy, amendment, or land use or zoning provision.

b. The name and address of the local government's general counsel or administrator.

c. The name, address, and telephone number of the petitioner; the name, address, and telephone number of the petitioner's representative, if any; and an explanation of how the petitioner's substantial interests are being affected by the regulation, law, ordinance, policy, amendment, or land use or zoning provision.

d. A statement explaining why the regulation, law, ordinance, policy, amendment, or land use or zoning provision is a technical amendment to the Florida Building Code, and which provisions of the Florida Building Code, if any, are being amended by the regulation, law, ordinance, policy, amendment, or land use or zoning provision.

3. The petitioner shall serve the petition on the local government's general counsel or administrator by certified mail, return receipt requested, and send a copy of the petition to the commission, in accordance with the commission's published directions. The local government shall respond to the petition in accordance with the form by certified mail, return receipt requested, and send a copy of its response to the commission, within 14 days after receipt of the petition, including Saturdays, Sundays, and legal holidays.

4. Upon receipt of a petition that meets the requirements of this paragraph, the commission shall publish the petition, including any response submitted by the local government, on the Building Code Information System in a manner that allows interested persons to address the issues by posting comments.

5. Before issuing an advisory opinion, the commission shall consider the petition, the response, and any comments posted on the Building Code Information System. The commission may also provide the petition, the response, and any comments posted on the Building Code Information System to a technical advisory committee, and may consider any recommendation provided by the technical advisory committee. The commission shall issue an advisory opinion stating whether the regulation, law, ordinance, policy, amendment, or land use or zoning provision is a technical amendment to the Florida Building Code within 30 days after the filing of the petition, including Saturdays, Sundays, and legal holidays. The commission shall publish its advisory opinion on the Building Code Information System and in the Florida Administrative Register. The commission's advisory opinion is nonbinding and is not a declaratory statement under s. 120.565.

(5) Notwithstanding subsection (4), counties and municipalities may adopt by ordinance an administrative or technical amendment to the Florida Building Code relating to flood resistance in order to implement the National Flood Insurance Program or incentives. Specifically, an administrative amendment may assign the duty to enforce all or portions of flood-related code provisions to the appropriate agencies of the local government and adopt procedures for variances and exceptions from flood-related code provisions other than provisions for structures seaward of the coastal construction control line consistent with the requirements in 44 C.F.R. s. 60.6. A technical amendment is authorized to the extent it is more stringent than the code. A technical amendment is not subject to the requirements of subsection (4) and may not be rendered void when the code is updated if the amendment is adopted for the purpose of participating in the Community Rating System promulgated pursuant to 42 U.S.C. s. 4022, the amendment had already been adopted by local ordinance prior to July 1, 2010, or the amendment requires a design flood elevation above the base flood elevation. Any amendment adopted under this subsection shall be transmitted to the commission within 30 days after being adopted. A municipality, county, or special district may not use preliminary maps issued by the Federal Emergency Management Agency for any law, ordinance, rule, or other measure that has the effect of imposing land use changes or permits.

(6) The initial adoption of, and any subsequent update or amendment to, the Florida Building Code by the commission is deemed adopted for use statewide without adoptions by local government. For a building permit for which an application is submitted prior to the effective date of the Florida Building Code, the state minimum building code in effect in the permitting jurisdiction on the date of the application governs the permitted work for the life of the permit and any extension granted to the permit.

(7)(a) The commission shall adopt an updated Florida Building Code every 3 years through review of the most current updates of the International Building Code, the International Fuel Gas Code, the International Existing Building Code, the International Mechanical Code, the International Plumbing Code, and the International Residential Code, all of which are copyrighted and published by the International Code Council, and the National Electrical Code, which is copyrighted and published by the National Fire Protection Association. **At a minimum, the commission shall adopt any updates to such codes or any other code necessary to maintain eligibility for federal funding and discounts from the National Flood Insurance Program, the Federal Emergency Management Agency, and the United States Department of Housing and Urban Development.** The commission shall also review and adopt updates based on the International Energy Conservation Code (IECC); however, the commission shall maintain the efficiencies of the Florida Energy Efficiency Code for Building Construction adopted and amended pursuant to s. 553.901. Every 3 years, the commission may approve updates to the Florida Building Code without a finding that the updates are needed in order to accommodate the specific needs of this state. The commission shall adopt updated codes by rule.

(b) Codes regarding noise contour lines shall be reviewed annually, and the most current federal guidelines shall be adopted.

(c) The commission may also adopt as a technical amendment to the Florida Building Code any portion of the codes identified in paragraph (a), but only as needed to accommodate the specific needs of this state. Standards or criteria adopted from these codes shall be incorporated by reference to the specific provisions adopted. If a referenced standard or criterion requires amplification or modification to be appropriate for use in this state, only the amplification or modification shall be set forth in the Florida Building Code. The commission may approve technical amendments to the updated Florida Building Code after the amendments have been subject to the conditions set forth in paragraphs (3)(a)-(d). Amendments that are adopted in accordance with this subsection shall be clearly marked in printed versions of the Florida Building Code so that the fact that the provisions are amendments is readily apparent.

(d) **The commission shall further consider the commission's own interpretations, declaratory statements, appellate decisions, and approved statewide and local technical amendments and shall incorporate such interpretations, statements, decisions, and amendments into the updated Florida Building Code only to the extent that they are needed to accommodate the specific needs of the state.** A change made by an institute or standards organization to any standard or criterion that is adopted by reference in the Florida Building Code does not become effective statewide until it has been adopted by the commission. Furthermore, the edition of the Florida Building

Code which is in effect on the date of application for any permit authorized by the code governs the permitted work for the life of the permit and any extension granted to the permit.

(e) A rule updating the Florida Building Code in accordance with this subsection shall take effect no sooner than 6 months after publication of the updated code. Any amendment to the Florida Building Code which is adopted upon a finding by the commission that the amendment is necessary to protect the public from immediate threat of harm takes effect immediately.

(f) Provisions of the Florida Building Code, including those contained in referenced standards and criteria, relating to wind resistance or the prevention of water intrusion may not be modified to diminish those construction requirements; however, the commission may, subject to conditions in this subsection, modify the provisions to enhance those construction requirements.

(8) Notwithstanding subsection (3) or subsection (7), the commission may address issues identified in this subsection by amending the code under the rule adoption procedures in chapter 120. Updates to the Florida Building Code, including provisions contained in referenced standards and criteria which relate to wind resistance or the prevention of water intrusion, may not be amended under this subsection to diminish those standards; however, the commission may amend the Florida Building Code to enhance such standards. Following the approval of any amendments to the Florida Building Code by the commission and publication of the amendments on the commission's website, authorities having jurisdiction to enforce the Florida Building Code may enforce the amendments.

(a) The commission may approve amendments that are needed to address:

1. Conflicts within the updated code;
2. Conflicts between the updated code and the Florida Fire Prevention Code adopted under chapter 633;
3. Unintended results from the integration of previously adopted amendments with the model code;
4. Equivalency of standards;
5. Changes to or inconsistencies with federal or state law; or
6. Adoption of an updated edition of the National Electrical Code if the commission finds that delay of implementing the updated edition causes undue hardship to stakeholders or otherwise threatens the public health, safety, and welfare.

(b) The commission may issue errata to the code pursuant to the rule adoption procedures in chapter 120 to list demonstrated errors in provisions contained within the Florida Building Code. The determination of such errors and the issuance of errata to the code must be approved by a 75-percent supermajority vote of the commission. For purposes of this paragraph, "errata to the code" means a list of errors on current and previous editions of the Florida Building Code.

(9)(a) The commission may approve technical amendments to the Florida Building Code once each year for statewide or regional application upon a finding that the amendment:

1. Is needed in order to accommodate the specific needs of this state.
2. Has a reasonable and substantial connection with the health, safety, and welfare of the general public.
3. Strengthens or improves the Florida Building Code, or in the case of innovation or new technology, will provide equivalent or better products or methods or systems of construction.
4. Does not discriminate against materials, products, methods, or systems of construction of demonstrated capabilities.
5. Does not degrade the effectiveness of the Florida Building Code.

The Florida Building Commission may approve technical amendments to the code once each year to incorporate into the Florida Building Code its own interpretations of the code which are embodied in its opinions, final orders, declaratory statements, and interpretations of hearing officer panels under s. 553.775(3)(c), but only to the extent that the incorporation of interpretations is needed to modify the code to accommodate the specific needs of this state. Amendments approved under this paragraph shall be adopted by rule after the amendments have been subjected to subsection (3).

(b) A proposed amendment must include a fiscal impact statement that documents the costs and benefits of the proposed amendment. Criteria for the fiscal impact statement shall be established by rule by the commission and shall include the impact to local government relative to enforcement, the impact to property and building owners, and the impact to industry, relative to the cost of compliance. The amendment must demonstrate by evidence or data that the state's geographical jurisdiction exhibits a need to strengthen the code beyond the needs or regional variations addressed by the code and why the proposed amendment applies to this state.

(c) The commission may not approve any proposed amendment that does not accurately and completely address all requirements for amendment which are set forth in this section. The commission shall require all proposed amendments and information submitted with proposed amendments to be reviewed by commission staff prior to consideration by any technical advisory committee. These reviews shall be for sufficiency only and are not intended to be qualitative in nature. Staff members shall reject any proposed amendment that fails to include a fiscal impact statement. Proposed amendments rejected by members of the staff may not be considered by the commission or any technical advisory committee.

(d) Provisions of the Florida Building Code, including those contained in referenced standards and criteria, relating to wind resistance or the prevention of water intrusion may not be amended pursuant to this subsection to diminish those construction requirements; however, the commission may, subject to conditions in this subsection, amend the provisions to enhance those construction requirements.

(10) The following buildings, structures, and facilities are exempt from the Florida Building Code as provided by law, and any further exemptions shall be as determined by the Legislature and provided by law:

- (a) Buildings and structures specifically regulated and preempted by the Federal Government.
- (b) Railroads and ancillary facilities associated with the railroad.
- (c) Nonresidential farm buildings on farms.
- (d) Temporary buildings or sheds used exclusively for construction purposes.
- (e) Mobile or modular structures used as temporary offices, except that the provisions of part II relating to accessibility by persons with disabilities apply to such mobile or modular structures.
- (f) Those structures or facilities of electric utilities, as defined in s. 366.02, which are directly involved in the generation, transmission, or distribution of electricity.
- (g) Temporary sets, assemblies, or structures used in commercial motion picture or television production, or any sound-recording equipment used in such production, on or off the premises.
- (h) Storage sheds that are not designed for human habitation and that have a floor area of 720 square feet or less are not required to comply with the mandatory wind-borne-debris-impact standards of the Florida Building Code. In addition, such buildings that are 400 square feet or less and that are intended for use in conjunction with one- and two-family residences are not subject to the door height and width requirements of the Florida Building Code.
- (i) Chickees constructed by the Miccosukee Tribe of Indians of Florida or the Seminole Tribe of Florida. As used in this paragraph, the term "chickee" means an open-sided wooden hut that has a thatched roof of palm or palmetto or other traditional materials, and that does not incorporate any electrical, plumbing, or other nonwood features.
- (j) Family mausoleums not exceeding 250 square feet in area which are prefabricated and assembled on site or preassembled and delivered on site and have walls, roofs, and a floor constructed of granite, marble, or reinforced concrete.
- (k) A building or structure having less than 1,000 square feet which is constructed and owned by a natural person for hunting and which is repaired or reconstructed to the same dimension and condition as existed on January 1, 2011, if the building or structure:
  - 1. Is not rented or leased or used as a principal residence;
  - 2. Is not located within the 100-year floodplain according to the Federal Emergency Management Agency's current Flood Insurance Rate Map; and
  - 3. Is not connected to an offsite electric power or water supply.



With the exception of paragraphs (a), (b), (c), and (f), in order to preserve the health, safety, and welfare of the public, the Florida Building Commission may, by rule adopted pursuant to chapter 120, provide for exceptions to the broad categories of buildings exempted in this section, including exceptions for application of specific sections of the code or standards adopted therein. The Department of Agriculture and Consumer Services shall have exclusive authority to adopt by rule, pursuant to chapter 120, exceptions to nonresidential farm buildings exempted in paragraph (c) when reasonably necessary to preserve public health, safety, and welfare. The exceptions must be based upon specific criteria, such as under-roof floor area, aggregate electrical service capacity, HVAC system capacity, or other building requirements. Further, the commission may recommend to the Legislature additional categories of buildings, structures, or facilities which should be exempted from the Florida Building Code, to be provided by law. The Florida Building Code does not apply to temporary housing provided by the Department of Corrections to any prisoner in the state correctional system.

(11)(a) In the event of a conflict between the Florida Building Code and the Florida Fire Prevention Code and the Life Safety Code as applied to a specific project, the conflict shall be resolved by agreement between the local building code enforcement official and the local fire code enforcement official in favor of the requirement of the code which offers the greatest degree of lifesafety or alternatives which would provide an equivalent degree of lifesafety and an equivalent method of construction. Local boards created to address issues arising under the Florida Building Code or the Florida Fire Prevention Code may combine the appeals boards to create a single, local board having jurisdiction over matters arising under either code or both codes. The combined local appeals board may grant alternatives or modifications through procedures outlined in NFPA 1, Section 1.4, but may not waive the requirements of the Florida Fire Prevention Code. To meet the quorum requirement for convening the combined local appeals board, at least one member of the board who is a fire protection contractor, a fire protection design professional, a fire department operations professional, or a fire code enforcement professional must be present.

(b) Any decision made by the local fire official regarding application, interpretation, or enforcement of the Florida Fire Prevention Code or by the local building official regarding application, interpretation, or enforcement of the Florida Building Code, or the appropriate application of either code or both codes in the case of a conflict between the codes, may be appealed to a local administrative board designated by the municipality, county, or special district having firesafety responsibilities. If the decision of the local fire official and the local building official is to apply the provisions of either the Florida Building Code or the Florida Fire Prevention Code and the Life Safety Code, the board may not alter the decision unless the board determines that the application of such code is not reasonable. If the decision of the local fire official and the local building official is to adopt an alternative to the codes, the local administrative board shall give due regard to the decision rendered by the local officials and may modify that decision if the administrative board adopts a better alternative, taking into consideration all relevant circumstances. In any case in which the local administrative board adopts alternatives to the decision rendered by the local fire official and the local building official, such alternatives shall provide an equivalent degree of lifesafety and an equivalent method of construction as the decision rendered by the local officials.

(c) If the local building official and the local fire official are unable to agree on a resolution of the conflict between the Florida Building Code and the Florida Fire Prevention Code and the Life Safety Code, the local administrative board shall resolve the conflict in favor of the code which offers the greatest degree of lifesafety or alternatives which would provide an equivalent degree of lifesafety and an equivalent method of construction.

(d) All decisions of the local administrative board or, if none exists, the local building official and the local fire official in regard to the application, enforcement, or interpretation of the Florida Fire Prevention Code, or conflicts between the Florida Fire Prevention Code and the Florida Building Code, are subject to review by a joint committee composed of members of the Florida Building Commission and the Fire Code Advisory Council. If the joint committee is unable to resolve conflicts between the codes as applied to a specific project, the matter shall be resolved pursuant to paragraph (1)(d). Decisions of the local administrative board related solely to the Florida Building Code are subject to review as set forth in s. 553.775.

(e) The local administrative board shall, to the greatest extent possible, be composed of members with expertise in building construction and firesafety standards.

(f) All decisions of the local building official and local fire official and all decisions of the administrative board shall be in writing and shall be binding upon a person but do not limit the authority of the State Fire Marshal or the Florida Building Commission pursuant to paragraph (1)(d) and ss. [633.104](#) and [633.228](#). Decisions of general application shall be indexed by building and fire code sections and shall be available for inspection during normal business hours.

(12) Except within coastal building zones as defined in s. [161.54](#), specification standards developed by nationally recognized code promulgation organizations to determine compliance with engineering criteria of the Florida Building Code for wind load design shall not apply to one or two family dwellings which are two stories or less in height unless approved by the commission for use or unless expressly made subject to said standards and criteria by local ordinance adopted in accordance with the provisions of subsection (4).

(13) The Florida Building Code does not apply to, and no code enforcement action shall be brought with respect to, zoning requirements, land use requirements, and owner specifications or programmatic requirements which do not pertain to and govern the design, construction, erection, alteration, modification, repair, or demolition of public or private buildings, structures, or facilities or to programmatic requirements that do not pertain to enforcement of the Florida Building Code. Additionally, a local code enforcement agency may not administer or enforce the Florida Building Code to prevent the siting of any publicly owned facility, including, but not limited to, correctional facilities, juvenile justice facilities, or state universities, community colleges, or public education facilities, as provided by law.

(14) The general provisions of the Florida Building Code for buildings and other structures shall not apply to commercial wireless communication towers when such general provisions are inconsistent with the provisions of the code controlling radio and television towers. This subsection is intended to be remedial in nature and to clarify existing law.

(15) An agency or local government may not require that existing mechanical equipment located on or above the surface of a roof be installed in compliance with the requirements of the Florida Building Code except during reroofing when the equipment is being replaced or moved and is not in compliance with the provisions of the Florida Building Code relating to roof-mounted mechanical units.

(16) The Florida Building Code must require that the illumination in classroom units be designed to provide and maintain an average of 40 foot-candles of light at each desktop. Public educational facilities must consider using light-emitting diode lighting before considering other lighting sources.

(17) A provision of the International Residential Code relating to mandated fire sprinklers may not be incorporated into the Florida Building Code as adopted by the Florida Building Commission and may not be adopted as a local amendment to the Florida Building Code. This subsection does not prohibit the application of cost-saving incentives for residential fire sprinklers that are authorized in the International Residential Code upon a mutual agreement between the builder and the code official. This subsection does not apply to a local government that has a lawfully adopted ordinance relating to fire sprinklers which has been in effect since January 1, 2010.

(18) In a single-family dwelling, makeup air is not required for range hood exhaust systems capable of exhausting:

- (a) Four hundred cubic feet per minute or less; or
- (b) More than 400 cubic feet per minute but no more than 800 cubic feet per minute if there are no gravity vent appliances within the conditioned living space of the structure.

(19) The Florida Building Code shall require two fire service access elevators in all buildings with a height greater than 120 feet measured from the elevation of street-level access to the level of the highest occupiable floor. All remaining elevators, if any, shall be provided with Phase I and II emergency operations. Where a fire service access elevator is required, a 1-hour fire-rated fire service access elevator lobby with direct access from the fire service access elevator is not required if the fire service access elevator opens into an exit access corridor that is no less than 6 feet wide for its entire length and is at least 150 square feet with the exception of door openings, and has a minimum 1-hour fire rating with three-quarter hour fire and smoke rated openings; and during a fire event the fire service access elevator is pressurized and floor-to-floor smoke control is provided. However, where transient residential occupancies occur at floor levels more than 420 feet above the level of fire service

access, a 1-hour fire-rated service access elevator lobby with direct access from the fire service access elevator is required. Standpipes in high-rise buildings of Florida Building Code—Building Occupancy Group R1 or R2 must be located in stairwells and are subject only to the requirements of the Florida Fire Prevention Code and NFPA 14, Standard for the Installation of Standpipes and Hose Systems, adopted by the State Fire Marshal.

(20) The Florida Building Commission may not:

(a) Adopt the 2016 version of the American Society of Heating, Refrigerating and Air-Conditioning Engineers Standard 9.4.1.1(g).

(b) Adopt any provision that requires a door located in the opening between a garage and a single-family residence to be equipped with a self-closing device.

**History.**—s. 4, ch. 74-167; s. 3, ch. 75-85; s. 1, ch. 77-365; s. 225, ch. 79-400; s. 1, ch. 80-106; s. 6, ch. 82-197; s. 2, ch. 84-273; s. 1, ch. 85-97; s. 33, ch. 86-191; s. 1, ch. 87-287; s. 1, ch. 88-142; s. 1, ch. 89-369; s. 2, ch. 91-172; s. 41, ch. 91-220; s. 49, ch. 95-144; s. 1, ch. 97-177; ss. 39, 40, 65, ch. 98-287; s. 61, ch. 98-419; ss. 73, 74, 75, ch. 2000-141; s. 62, ch. 2000-154; ss. 25, 34, 35, 36, ch. 2001-186; ss. 2, 3, 4, 5, ch. 2001-372; s. 86, ch. 2002-1; ss. 1, 14, ch. 2002-293; s. 66, ch. 2003-1; s. 663, ch. 2003-261; s. 7, ch. 2005-147; s. 1, ch. 2005-191; s. 4, ch. 2006-65; s. 7, ch. 2007-1; s. 4, ch. 2007-187; s. 140, ch. 2008-4; s. 10, ch. 2008-191; s. 108, ch. 2008-227; s. 1, ch. 2010-99; s. 32, ch. 2010-176; s. 14, ch. 2011-208; s. 30, ch. 2011-222; s. 14, ch. 2012-13; s. 148, ch. 2013-183; s. 14, ch. 2013-193; s. 18, ch. 2014-154; s. 17, ch. 2016-129; s. 11, ch. 2017-149; s. 6, ch. 2019-75; s. 2, ch. 2021-201.

<sup>1</sup>**Note.**—The amendment by s. 2, ch. 2021-201, changed the reference from "subparagraphs 7. and 9." to "paragraphs (f) and (g)" to conform to the redesignation of subunits in subsection (4) by that law. Subparagraph (b)7. was redesignated as paragraph (f), and subparagraph (b)9. was redesignated as paragraph (h).

<b>FILED</b>	
Department of Business and Professional Regulation	
Senior Deputy Agency Clerk	
CLERK	Brandon Nichols
Date	11/9/2021
File #	2021-08370

**STATE OF FLORIDA  
BUILDING COMMISSION**

In the Matter of

CLASSIC FLORIDA DREAM HOMES, LLC

**DS 2021-050**

Petitioner.

\_\_\_\_\_ /

**DECLARATORY STATEMENT**

The following proceeding came before the Florida Building Commission (Commission) by a Petition from Thomas E. Smith, for Classic Florida Dream Homes, LLC (Petitioner) that was received September 2, 2021. Based on the statements in the petition, the material subsequently submitted and the subsequent request by the Petitioner, the Commission states the following:

**Findings of Fact**

1. The petition is filed pursuant to, and must conform with the requirements of rule 28-105.002, Florida Administrative Code.
2. Petitioner's representative in this matter is Thomas E. Smith, 424 Harbor Drive North, Indian Rocks Beach, FL 33785.
3. Petitioner is a contractor planning the construction of a two-story, single family home located in a flood zone with an "AE" designation under the National Flood Insurance Program. Petitioner states that it wishes to have the option to utilize the services of private providers for plans review and/or building inspections on the project.
4. Petitioner seeks clarification of section 107.6.1, Florida Building Code, Building, 7th Edition (2020), as it pertains to building permits issued on the basis of affidavit, and the services provided by private providers pursuant to section 553.791, Florida Statutes (2021).

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5. Specifically, the Petitioner requests an answer to the following question based upon the project described within the petition for declaratory statement:

Per the 2020 Florida Building Code, does section 107.6.1 Building Permits issued on the basis of an affidavit apply to Private Providers per F.S. 553.791?

#### Conclusions of Law

6. The Commission has the specific statutory authority pursuant to section 553.775(3)(a), Florida Statutes (2021) to interpret the provisions of the Florida Building Code by issuing a declaratory statement.

7. Section 105.14, Florida Building Code, Building, 7th Edition (2020), states:

**Permit issued on basis of an affidavit.**

Whenever a permit is issued in reliance upon an affidavit or whenever the work to be covered by a permit involves installation under conditions which, in the opinion of the building official, are hazardous or complex, the building official shall require that the architect or engineer who signed the affidavit or prepared the drawings or computations shall supervise such work. In addition, they shall be responsible for conformity to the permit, provide copies of inspection reports as inspections are performed, and upon completion make and file with the building official written affidavit that the work has been done in conformity to the reviewed plans and with the structural provisions of the technical codes. In the event such architect or engineer is not available, the owner shall employ in his stead a competent person or agency whose qualifications are reviewed by the building official. The building official shall ensure that any person conducting plans review is qualified as a plans examiner under Part XII of Chapter 468, Florida Statutes, and that any person conducting inspections is qualified as a building inspector under Part XII of Chapter 468, Florida Statutes.

**Exception:** Permit issued on basis of an affidavit shall not extend to the flood load and flood resistance requirements of the Florida Building Code.



8. Section 107.6, Florida Building Code, Building, 7th Edition (2020), states:

**Affidavits.**

The building official may accept a sworn affidavit from a registered architect or engineer stating that the plans submitted conform to the technical codes. For buildings and structures, the affidavit shall state that the plans conform to the laws as to egress, type of construction and general arrangement and, if accompanied by drawings, show the structural design and that the plans and design conform to the requirements of the technical codes as to strength, stresses, strains, loads and stability. The building official may without any examination or inspection accept such affidavit, provided the architect or engineer who made such affidavit agrees to submit to the building official copies of inspection reports as inspections are performed and upon completion of the structure, electrical, gas, mechanical or plumbing systems a certification that the structure, electrical, gas, mechanical or plumbing system has been erected in accordance with the requirements of the technical codes. Where the building official relies upon such affidavit, the architect or engineer shall assume full responsibility for compliance with all provisions of the technical codes and other pertinent laws or ordinances. The building official shall ensure that any person conducting plans review is qualified as a plans examiner under Part XII of Chapter 468, Florida Statutes, and that any person conducting inspections is qualified as a building inspector under Part XII of Chapter 468, Florida Statutes.

9. Section 107.6.1, Florida Building Code, Building, 7th Edition (2020), states:

**Building permits issued on the basis of an affidavit.**

Pursuant to the requirements of federal regulation for participation in the National Flood Insurance Program (44 C.F.R. Parts 59 and 60), the authority granted to the *building official* to issue permits, to rely on inspections, and to accept plans and construction documents on the basis of affidavits and plans submitted pursuant to Sections 105.14 and 107.6, shall not extend to the flood load and flood-resistance construction requirements of the Florida Building Code.

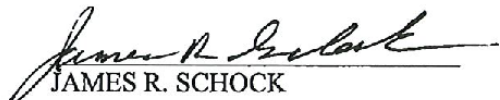
10. In response to Petitioner's question, the answer is **no**. Section 107.6.1, Florida Building Code, Building, 7th Edition (2020), is limited in scope to affidavits issued pursuant to sections 105.14 and 107.6, Florida Building Code, Building, 7th Edition (2020), and therefore section 107.6.1 does not apply to services performed by private providers as authorized by

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section 553.791, Florida Statutes (2021). This does not absolve the community from complying with any requirements under the National Flood Insurance Program.

DONE AND ORDERED this 20<sup>th</sup> day of OCTOBER, 2021, in St. Augustine, St.  
Johns County, State of Florida.

  
JAMES R. SCHOCK  
Chairman, Florida Building Commission

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NOTICE OF RIGHT TO APPEAL

Petitioner and all other interested parties are hereby advised of their right to seek judicial review of this Order in accordance with section 120.68(2)(a), Florida Statutes (2021), and Florida Rules of Appellate Procedure 9.110(a) and 9.030(b)(1)(C). To initiate an appeal, a Notice of Appeal must be filed with the Agency Clerk, Department of Business and Professional Regulation, 2601 Blair Stone Road, Tallahassee, Florida 32399-2203 and with the appropriate District Court of Appeal not later than thirty (30) days after this Order is filed with the Clerk of the Department of Business and Professional Regulation. A Notice of Appeal filed with the District Court of Appeal shall be accompanied by the filing fee specified by section 35.22(3), Florida Statutes (2021).

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CERTIFICATE OF FILING AND SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing order has been filed with the undersigned and furnished by U. S. Mail to the persons listed below this 9<sup>th</sup> day of November, 2021.



Agency Clerk's Office  
Department of Business and Professional Regulation  
& Florida Building Commission  
2601 Blair Stone Road  
Tallahassee, Florida 32399-2203

Via U.S. Mail

Classic Florida Dream Homes, LLC  
Attn: Thomas E. Smith  
424 Harbor Drive North  
Indian Rocks Beach, FL 33785

Via Inter-Office or Email Delivery

Mo Madani, Planning Manager  
Codes and Standards Section  
Department of Business and Professional  
Regulation  
2601 Blair Stone Road  
Tallahassee, Florida 32399  
Mo.Madani@myfloridalicense.com

Marjorie Holladay  
Joint Administrative Procedures Committee  
Pepper Building, Room 680  
Tallahassee, Florida 32399-1300



STATE OF FLORIDA  
**DIVISION OF EMERGENCY MANAGEMENT**

Ron DeSantis  
Governor

Jared Moskowitz  
Director

November 2, 2020

**MEMORANDUM**

TO: Florida Floodplain Administrators and Building Officials

FROM: Conn H. Cole, Interim State Floodplain Manager **Conn H. Cole**

CONCURRENCE: Jason O. Hunter, Chief, FEMA Region IV Floodplain Management & Insurance Branch *Jason O. Hunter*

Digitally signed by Conn H. Cole  
DN: cn=Conn H. Cole, o=Florida Department of  
Emergency Management, ou=State Floodplain  
Management Office,  
email=Conn.H.Cole@floridastate.gov, c=US  
Date: 2020.11.02 14:54:03 -0500

RE: Florida Building Code and Permits Issued on the Basis of Affidavits  
**NFIP Communities Must Review For Floodplain Compliance**

Over the past year the State Floodplain Management Office (SFMO) has received inquiries regarding changes enacted in the 2019 legislative session that affect the use and acceptance of private providers for building permits and inspections. The Florida Building Code (FBC) includes provisions for issuing permits based on affidavits signed by qualified architects or engineers, in the Building volume, sections 105.14 and 107.6. These sections are shown in the attachment.

This memorandum provides guidance to clarify the exception to Sections 105.14 and 107.6.1. FEMA Region IV concurs with this guidance. **In effect, the sections require local officials to review applications for compliance with the flood load and flood-resistant construction requirements of the FBC when buildings are proposed to be located in special flood hazard areas, and to inspect those aspects when permits are issued.**

The National Flood Insurance Program (NFIP) requires communities that participate in the program to agree to adopt and enforce regulations that meet or exceed the minimum requirement of the NFIP (44 Code of Federal Regulations Parts 59 and 60). FEMA deems the flood provisions of the FBC to meet or exceed the minimum NFIP requirements for buildings and structures.

**The NFIP regulations require communities to review proposed construction or development in special flood hazard areas.** Specifically, the NFIP regulations in Section 60.3 states: "Minimum standards for communities are as follows: (a) . . . the community shall: . . . (1) Require permits for all proposed construction or development . . . ; (2) Review proposed development to . . . ; (3) Review all applications to . . . ; (4) Review subdivision proposals and other new development . . ." <https://www.govinfo.gov/app/details/CFR-2011-title44-vol1/CFR-2011-title44-vol1-part60>

**DIVISION HEADQUARTERS**  
2555 Shumard Oak Boulevard  
Tallahassee, FL 32399-2100

Telephone: 850-815-4000  
[www.FloridaDisaster.org](http://www.FloridaDisaster.org)

**STATE LOGISTICS RESPONSE CENTER**  
2702 Directors Row  
Orlando, FL 32809-5631



Florida Floodplain Administrators and Building Officials  
November 2 , 2020  
Page 2

In 2011-12, the SFMO worked with FEMA, the Florida Building Commission, the Building Officials Association of Florida, and the Florida Floodplain Managers Association to incorporate in the FBC the necessary requirements for buildings in flood hazard areas. As part of that effort, the SFMO examined the matter of permits issued based on affidavits. Prior to the inclusion of Section 107.6.1 and the exception to Section 105.14, many communities individually adopted local administrative amendments with the same limitation.

During the code development cycle for the 5<sup>th</sup> Edition FBC, FDEM submitted a proposal to incorporate Section 107.6.1 into the FBC (the exception to Section 105.14 was added by amendment to a proposal by others). FDEM's rationale statement is shown below and repeated here for clarify:

Both of these proposed new sections flow from consistency with the NFIP. They were developed by DEM as part of the Model Floodplain Management Ordinance and Code Amendments, reviewed by BOAF, and scrutinized by FEMA. Because FEMA deemed both of these are necessary, it is more efficient for the FBC to include them in Chapter 1, rather than expect every local government to adopt them as local administrative code amendments.

Despite the submission of an affidavit authorized by B107.6, the building official must review plans for compliance with the flood provisions and issue permits and perform inspections to ensure compliance with the flood provisions. Under the NFIP, the community is responsible for ensuring compliance.

\*The original proposal (SP5255) included both Section 107.6.1 and Section 117; the exception to Section 105.14 was added to proposal CA5082) by amendments for consistency.

Please contact us at (850) 815-4556 or [floods@em.myflorida.com](mailto:floods@em.myflorida.com) if you have questions about the flood provisions in the FBC or FBC-coordinated floodplain management regulations.

CC: Steve Martin, Roy McClure, Virgilio Chris Perez

Attachment: FBC, Building, Sections 105.14 and 107.6.1 and Proposal for the 5<sup>th</sup> Ed. FBC, submitted 7/22/2012

## ATTACHMENT

## FBC, Building Sections 105.14 and 107.6.1

**105.14 Permit issued on basis of an affidavit.** Whenever a permit is issued in reliance upon an affidavit or whenever the work to be covered by a permit involves installation under conditions which, in the opinion of the building official, are hazardous or complex, the building official shall require that the architect or engineer who signed the affidavit or prepared the drawings or computations shall supervise such work. In addition, they shall be responsible for conformity to the permit, provide copies of inspection reports as inspections are performed, and upon completion make and file with the building official written affidavit that the work has been done in conformity to the reviewed plans and with the structural provisions of the technical codes. In the event such architect or engineer is not available, the owner shall employ in his stead a competent person or agency whose qualifications are reviewed by the building official. The building official shall ensure that any person conducting plans review is qualified as a plans examiner under Part XII of Chapter 468, *Florida Statutes*, and that any person conducting inspections is qualified as a building inspector under Part XII of Chapter 468, *Florida Statutes*.

**Exception:** Permit issued on basis of an affidavit shall not extend to the flood load and flood resistance requirements of the *Florida Building Code*.

**107.6.1 [Affidavits] Building permits issued on the basis of an affidavit.** Pursuant to the requirements of federal regulation for participation in the National Flood Insurance Program (44 C.F.R. Parts 59 and 60), the authority granted to the building official to issue permits, to rely on inspections, and to accept plans and construction documents on the basis of affidavits and plans submitted pursuant to Sections 105.14 and 107.6, shall not extend to the flood load and flood-resistance construction requirements of the *Florida Building Code*.

## Mod SP 5255 (approved as submitted)

Mod CA 5082 (submitted by Joe Bigelow to add new Sec. 105.14; FDEM proposed amendment to recapture NFIP; approved as amended.

<b>SP5255</b>		Page 6 of 427 2	
<b>Date Submitted</b>	7/22/2012	<b>Section</b>	107.6 and 117 (new)
<b>Chapter</b>	1	<b>Affects HVHZ</b>	No
<b>TAC Recommendation</b>	Pending Review	<b>Preponent</b>	Rebecca Quinn obo DEM
<b>Commission Action</b>	Pending Review	<b>Attachments</b>	No
<b>Related Modifications</b>			
<b>Summary of Modification</b>			
Two administrative amendments that FEMA has deemed necessary to ensure that enforcement of the flood provisions of the FBC remain consistent with the NFIP.			
<b>Rationale</b>			
Both of these proposed new sections flow from consistency with the NFIP. They were developed by DEM as part of the Model Floodplain Management Ordinance and Code Amendments, reviewed by BOAF, and scrutinized by FEMA. Because FEMA has deemed both of these are necessary, it is more efficient for the FBC to include them in Chapter 1, rather than expect every local government to adopt them as local administrative code amendments.			
Despite the submission of an affidavit authorized by 8107.6, the building official must review plans for compliance with the flood provisions and issue permits and perform inspections to ensure compliance with the flood provisions. Under the NFIP, the community is responsible for ensuring compliance.			
For consistency with the NFIP, section 553.73(5), F.S., authorizes adoption of procedures for variances; the specific procedures are in the FPM ordinance. Variances are official permission to undertake an activity that is otherwise prohibited or not approvable under the regulations or building code. As specified in section 553.73(5), F.S., the authority to grant variances to the flood provisions does not extend to any requirement in Section 3109, which applies seaward of the Coastal Construction Control Line.			

Select Year: 2021 ▼ Go

## The 2021 Florida Statutes

[Title XXXIII](#)                      [Chapter 553](#)                      [View Entire Chapter](#)  
 REGULATION OF TRADE, COMMERCE, INVESTMENTS,      BUILDING CONSTRUCTION      STANDARDS  
 AND SOLICITATIONS

### 553.73 Florida Building Code.—

(1)(a) The commission shall adopt, by rule pursuant to ss. [120.536\(1\)](#) and [120.54](#), the Florida Building Code which shall contain or incorporate by reference all laws and rules which pertain to and govern the design, construction, erection, alteration, modification, repair, and demolition of public and private buildings, structures, and facilities and enforcement of such laws and rules, except as otherwise provided in this section.

(b) The technical portions of the Florida Accessibility Code for Building Construction shall be contained in their entirety in the Florida Building Code. The civil rights portions and the technical portions of the accessibility laws of this state shall remain as currently provided by law. Any revision or amendments to the Florida Accessibility Code for Building Construction pursuant to part II shall be considered adopted by the commission as part of the Florida Building Code. Neither the commission nor any local government shall revise or amend any standard of the Florida Accessibility Code for Building Construction except as provided for in part II.

(c) The Florida Fire Prevention Code and the Life Safety Code shall be referenced in the Florida Building Code, but shall be adopted, modified, revised, or amended, interpreted, and maintained by the Department of Financial Services by rule adopted pursuant to ss. [120.536\(1\)](#) and [120.54](#). The Florida Building Commission may not adopt a fire prevention or lifesafety code, and nothing in the Florida Building Code shall affect the statutory powers, duties, and responsibilities of any fire official or the Department of Financial Services.

(d) Conflicting requirements between the Florida Building Code and the Florida Fire Prevention Code and Life Safety Code of the state established pursuant to ss. [633.206](#) and [633.208](#) shall be resolved by agreement between the commission and the State Fire Marshal in favor of the requirement that offers the greatest degree of lifesafety or alternatives that would provide an equivalent degree of lifesafety and an equivalent method of construction. If the commission and State Fire Marshal are unable to agree on a resolution, the question shall be referred to a mediator, mutually agreeable to both parties, to resolve the conflict in favor of the provision that offers the greatest lifesafety, or alternatives that would provide an equivalent degree of lifesafety and an equivalent method of construction.

(e) Subject to the provisions of this act, responsibility for enforcement, interpretation, and regulation of the Florida Building Code shall be vested in a specified local board or agency, and the words “local government” and “local governing body” as used in this part shall be construed to refer exclusively to such local board or agency.

(2) The Florida Building Code shall contain provisions or requirements for public and private buildings, structures, and facilities relative to structural, mechanical, electrical, plumbing, energy, and gas systems, existing buildings, historical buildings, manufactured buildings, elevators, coastal construction, lodging facilities, food sales and food service facilities, health care facilities, including assisted living facilities, adult day care facilities, hospice residential and inpatient facilities and units, and facilities for the control of radiation hazards, public or private educational facilities, swimming pools, and correctional facilities and enforcement of and compliance with such provisions or requirements. Further, the Florida Building Code must provide for uniform implementation of ss. [515.25](#), [515.27](#), and [515.29](#) by including standards and criteria for residential swimming pool barriers, pool covers, latching devices, door and window exit alarms, and other equipment required therein, which are consistent with the intent of s. [515.23](#). Technical provisions to be contained within the Florida Building Code are restricted to



requirements related to the types of materials used and construction methods and standards employed in order to meet criteria specified in the Florida Building Code. Provisions relating to the personnel, supervision or training of personnel, or any other professional qualification requirements relating to contractors or their workforce may not be included within the Florida Building Code, and subsections (4), (6), (7), (8), and (9) are not to be construed to allow the inclusion of such provisions within the Florida Building Code by amendment. This restriction applies to both initial development and amendment of the Florida Building Code.

(3) The commission shall use the International Codes published by the International Code Council, the National Electric Code (NFPA 70), or other nationally adopted model codes and standards for updates to the Florida Building Code. The commission may approve technical amendments to the code as provided in subsections (8) and (9), subject to all of the following conditions:

(a) The proposed amendment must have been published on the commission's website for a minimum of 45 days and all the associated documentation must have been made available to any interested party before consideration by a technical advisory committee.

(b) In order for a technical advisory committee to make a favorable recommendation to the commission, the proposal must receive a two-thirds vote of the members present at the meeting. At least half of the regular members must be present in order to conduct a meeting.

(c) After the technical advisory committee has considered and recommended approval of any proposed amendment, the proposal must be published on the commission's website for at least 45 days before consideration by the commission.

(d) A proposal may be modified by the commission based on public testimony and evidence from a public hearing held in accordance with chapter 120.

The commission shall incorporate within the Florida Building Code provisions that address regional and local concerns and variations. The commission shall make every effort to minimize conflicts between the Florida Building Code, the Florida Fire Prevention Code, and the Life Safety Code.

(4)(a) All entities authorized to enforce the Florida Building Code under s. 553.80 shall comply with applicable standards for issuance of mandatory certificates of occupancy, minimum types of inspections, and procedures for plans review and inspections as established by the commission by rule. Local governments may adopt amendments to the administrative provisions of the Florida Building Code, subject to the limitations in this subsection. Local amendments must be more stringent than the minimum standards described in this section and must be transmitted to the commission within 30 days after enactment. The local government shall make such amendments available to the general public in a usable format. The State Fire Marshal is responsible for establishing the standards and procedures required in this subsection for governmental entities with respect to applying the Florida Fire Prevention Code and the Life Safety Code.

(b) Local governments may, subject to the limitations in this section and not more than once every 6 months, adopt amendments to the technical provisions of the Florida Building Code that apply solely within the jurisdiction of such government and that provide for more stringent requirements than those specified in the Florida Building Code. A local government may adopt technical amendments that address local needs if:

1. The local governing body determines, following a public hearing which has been advertised in a newspaper of general circulation at least 10 days before the hearing, that there is a need to strengthen the requirements of the Florida Building Code. The determination must be based upon a review of local conditions by the local governing body, which review demonstrates by evidence or data that the geographical jurisdiction governed by the local governing body exhibits a local need to strengthen the Florida Building Code beyond the needs or regional variation addressed by the Florida Building Code, that the local need is addressed by the proposed local amendment, and that the amendment is no more stringent than necessary to address the local need.

2. Such additional requirements are not discriminatory against materials, products, or construction techniques of demonstrated capabilities.

3. Such additional requirements may not introduce a new subject not addressed in the Florida Building Code.

(c) The enforcing agency shall make readily available, in a usable format, all amendments adopted under this section.

(d) Any amendment to the Florida Building Code shall be transmitted within 30 days after adoption by the local government to the commission. The commission shall maintain copies of all such amendments in a format that is usable and obtainable by the public. Local technical amendments are not effective until 30 days after the amendment has been received and published by the commission.

(e) An amendment to the Florida Building Code adopted by a local government under this subsection is effective only until the adoption of the new edition of the Florida Building Code by the commission every third year. At such time, the commission shall review such amendment for consistency with the criteria in paragraph (9)(a) and adopt such amendment as part of the Florida Building Code or rescind the amendment. The commission shall immediately notify the respective local government of the rescission of any amendment. After receiving such notice, the respective local government may readopt the rescinded amendment under the provisions of this subsection.

(f) Each county and municipality desiring to make local technical amendments to the Florida Building Code shall establish by interlocal agreement a countywide compliance review board to review any amendment to the Florida Building Code that is adopted by a local government within the county under this subsection and that is challenged by a substantially affected party for purposes of determining the amendment's compliance with this subsection. If challenged, the local technical amendments are not effective until the time for filing an appeal under paragraph (g) has expired or, if there is an appeal, until the commission issues its final order determining if the adopted amendment is in compliance with this subsection.

(g) If the compliance review board determines such amendment is not in compliance with this subsection, the compliance review board shall notify such local government of the noncompliance and that the amendment is invalid and unenforceable until the local government corrects the amendment to bring it into compliance. The local government may appeal the decision of the compliance review board to the commission. If the compliance review board determines that such amendment is in compliance with this subsection, any substantially affected party may appeal such determination to the commission. Any such appeal must be filed with the commission within 14 days after the board's written determination. The commission shall promptly refer the appeal to the Division of Administrative Hearings by electronic means through the division's website for the assignment of an administrative law judge. The administrative law judge shall conduct the required hearing within 30 days after being assigned to the appeal, and shall enter a recommended order within 30 days after the conclusion of such hearing. The commission shall enter a final order within 30 days after an order is rendered. Chapter 120 and the uniform rules of procedure shall apply to such proceedings. The local government adopting the amendment that is subject to challenge has the burden of proving that the amendment complies with this subsection in proceedings before the compliance review board and the commission, as applicable. Actions of the commission are subject to judicial review under s. 120.68. The compliance review board shall determine whether its decisions apply to a respective local jurisdiction or apply countywide.

(h) An amendment adopted under this subsection must include a fiscal impact statement that documents the costs and benefits of the proposed amendment. Criteria for the fiscal impact statement shall include the impact to local government relative to enforcement and the impact to property and building owners and industry relative to the cost of compliance. The fiscal impact statement may not be used as a basis for challenging the amendment for compliance.

(i) In addition to <sup>1</sup>paragraphs (f) and (g), the commission may review any amendments adopted under this subsection and make nonbinding recommendations related to compliance of such amendments with this subsection.

(j) Any amendment adopted by a local enforcing agency under this subsection may not apply to state or school district owned buildings, manufactured buildings or factory-built school buildings approved by the commission, or prototype buildings approved under s. 553.77(3). The respective responsible entities shall consider the physical performance parameters substantiating such amendments when designing, specifying, and constructing such exempt buildings.



(k) A technical amendment to the Florida Building Code related to water conservation practices or design criteria adopted by a local government under this subsection is not void when the code is updated if the technical amendment is necessary to protect or provide for more efficient use of water resources as provided in s. [373.621](#). However, any such technical amendment carried forward into the next edition of the code under this paragraph is subject to review or modification as provided in this part.

(l) If a local government adopts a regulation, law, ordinance, policy, amendment, or land use or zoning provision without using the process established in this subsection, and a substantially affected person considers such regulation, law, ordinance, policy, amendment, or land use or zoning provision to be a technical amendment to the Florida Building Code, then the substantially affected person may submit a petition to the commission for a nonbinding advisory opinion. If a substantially affected person submits a request in accordance with this paragraph, the commission shall issue a nonbinding advisory opinion stating whether or not the commission interprets the regulation, law, ordinance, policy, amendment, or land use or zoning provision as a technical amendment to the Florida Building Code. As used in this paragraph, the term "local government" means a county, municipality, special district, or political subdivision of the state.

1. Requests to review a local government regulation, law, ordinance, policy, amendment, or land use or zoning provision may be initiated by any substantially affected person. A substantially affected person includes an owner or builder subject to the regulation, law, ordinance, policy, amendment, or land use or zoning provision, or an association of owners or builders having members who are subject to the regulation, law, ordinance, policy, amendment, or land use or zoning provision.

2. In order to initiate a review, a substantially affected person must file a petition with the commission. The commission shall adopt a form for the petition and directions for filing, which shall be published on the Building Code Information System. The form shall, at a minimum, require the following:

a. The name of the local government that enacted the regulation, law, ordinance, policy, amendment, or land use or zoning provision.

b. The name and address of the local government's general counsel or administrator.

c. The name, address, and telephone number of the petitioner; the name, address, and telephone number of the petitioner's representative, if any; and an explanation of how the petitioner's substantial interests are being affected by the regulation, law, ordinance, policy, amendment, or land use or zoning provision.

d. A statement explaining why the regulation, law, ordinance, policy, amendment, or land use or zoning provision is a technical amendment to the Florida Building Code, and which provisions of the Florida Building Code, if any, are being amended by the regulation, law, ordinance, policy, amendment, or land use or zoning provision.

3. The petitioner shall serve the petition on the local government's general counsel or administrator by certified mail, return receipt requested, and send a copy of the petition to the commission, in accordance with the commission's published directions. The local government shall respond to the petition in accordance with the form by certified mail, return receipt requested, and send a copy of its response to the commission, within 14 days after receipt of the petition, including Saturdays, Sundays, and legal holidays.

4. Upon receipt of a petition that meets the requirements of this paragraph, the commission shall publish the petition, including any response submitted by the local government, on the Building Code Information System in a manner that allows interested persons to address the issues by posting comments.

5. Before issuing an advisory opinion, the commission shall consider the petition, the response, and any comments posted on the Building Code Information System. The commission may also provide the petition, the response, and any comments posted on the Building Code Information System to a technical advisory committee, and may consider any recommendation provided by the technical advisory committee. The commission shall issue an advisory opinion stating whether the regulation, law, ordinance, policy, amendment, or land use or zoning provision is a technical amendment to the Florida Building Code within 30 days after the filing of the petition, including Saturdays, Sundays, and legal holidays. The commission shall publish its advisory opinion on the Building Code Information System and in the Florida Administrative Register. The commission's advisory opinion is nonbinding and is not a declaratory statement under s. [120.565](#).

(5) Notwithstanding subsection (4), counties and municipalities may adopt by ordinance an administrative or technical amendment to the Florida Building Code relating to flood resistance in order to implement the National Flood Insurance Program or incentives. Specifically, an administrative amendment may assign the duty to enforce all or portions of flood-related code provisions to the appropriate agencies of the local government and adopt procedures for variances and exceptions from flood-related code provisions other than provisions for structures seaward of the coastal construction control line consistent with the requirements in 44 C.F.R. s. 60.6. A technical amendment is authorized to the extent it is more stringent than the code. A technical amendment is not subject to the requirements of subsection (4) and may not be rendered void when the code is updated if the amendment is adopted for the purpose of participating in the Community Rating System promulgated pursuant to 42 U.S.C. s. 4022, the amendment had already been adopted by local ordinance prior to July 1, 2010, or the amendment requires a design flood elevation above the base flood elevation. Any amendment adopted under this subsection shall be transmitted to the commission within 30 days after being adopted. A municipality, county, or special district may not use preliminary maps issued by the Federal Emergency Management Agency for any law, ordinance, rule, or other measure that has the effect of imposing land use changes or permits.

(6) The initial adoption of, and any subsequent update or amendment to, the Florida Building Code by the commission is deemed adopted for use statewide without adoptions by local government. For a building permit for which an application is submitted prior to the effective date of the Florida Building Code, the state minimum building code in effect in the permitting jurisdiction on the date of the application governs the permitted work for the life of the permit and any extension granted to the permit.

(7)(a) The commission shall adopt an updated Florida Building Code every 3 years through review of the most current updates of the International Building Code, the International Fuel Gas Code, the International Existing Building Code, the International Mechanical Code, the International Plumbing Code, and the International Residential Code, all of which are copyrighted and published by the International Code Council, and the National Electrical Code, which is copyrighted and published by the National Fire Protection Association. **At a minimum, the commission shall adopt any updates to such codes or any other code necessary to maintain eligibility for federal funding and discounts from the National Flood Insurance Program, the Federal Emergency Management Agency, and the United States Department of Housing and Urban Development.** The commission shall also review and adopt updates based on the International Energy Conservation Code (IECC); however, the commission shall maintain the efficiencies of the Florida Energy Efficiency Code for Building Construction adopted and amended pursuant to s. 553.901. Every 3 years, the commission may approve updates to the Florida Building Code without a finding that the updates are needed in order to accommodate the specific needs of this state. The commission shall adopt updated codes by rule.

(b) Codes regarding noise contour lines shall be reviewed annually, and the most current federal guidelines shall be adopted.

(c) The commission may also adopt as a technical amendment to the Florida Building Code any portion of the codes identified in paragraph (a), but only as needed to accommodate the specific needs of this state. Standards or criteria adopted from these codes shall be incorporated by reference to the specific provisions adopted. If a referenced standard or criterion requires amplification or modification to be appropriate for use in this state, only the amplification or modification shall be set forth in the Florida Building Code. The commission may approve technical amendments to the updated Florida Building Code after the amendments have been subject to the conditions set forth in paragraphs (3)(a)-(d). Amendments that are adopted in accordance with this subsection shall be clearly marked in printed versions of the Florida Building Code so that the fact that the provisions are amendments is readily apparent.

(d) **The commission shall further consider the commission's own interpretations, declaratory statements, appellate decisions, and approved statewide and local technical amendments and shall incorporate such interpretations, statements, decisions, and amendments into the updated Florida Building Code only to the extent that they are needed to accommodate the specific needs of the state.** A change made by an institute or standards organization to any standard or criterion that is adopted by reference in the Florida Building Code does not become effective statewide until it has been adopted by the commission. Furthermore, the edition of the Florida Building

Code which is in effect on the date of application for any permit authorized by the code governs the permitted work for the life of the permit and any extension granted to the permit.

(e) A rule updating the Florida Building Code in accordance with this subsection shall take effect no sooner than 6 months after publication of the updated code. Any amendment to the Florida Building Code which is adopted upon a finding by the commission that the amendment is necessary to protect the public from immediate threat of harm takes effect immediately.

(f) Provisions of the Florida Building Code, including those contained in referenced standards and criteria, relating to wind resistance or the prevention of water intrusion may not be modified to diminish those construction requirements; however, the commission may, subject to conditions in this subsection, modify the provisions to enhance those construction requirements.

(8) Notwithstanding subsection (3) or subsection (7), the commission may address issues identified in this subsection by amending the code under the rule adoption procedures in chapter 120. Updates to the Florida Building Code, including provisions contained in referenced standards and criteria which relate to wind resistance or the prevention of water intrusion, may not be amended under this subsection to diminish those standards; however, the commission may amend the Florida Building Code to enhance such standards. Following the approval of any amendments to the Florida Building Code by the commission and publication of the amendments on the commission's website, authorities having jurisdiction to enforce the Florida Building Code may enforce the amendments.

(a) The commission may approve amendments that are needed to address:

1. Conflicts within the updated code;
2. Conflicts between the updated code and the Florida Fire Prevention Code adopted under chapter 633;
3. Unintended results from the integration of previously adopted amendments with the model code;
4. Equivalency of standards;
5. Changes to or inconsistencies with federal or state law; or
6. Adoption of an updated edition of the National Electrical Code if the commission finds that delay of implementing the updated edition causes undue hardship to stakeholders or otherwise threatens the public health, safety, and welfare.

(b) The commission may issue errata to the code pursuant to the rule adoption procedures in chapter 120 to list demonstrated errors in provisions contained within the Florida Building Code. The determination of such errors and the issuance of errata to the code must be approved by a 75-percent supermajority vote of the commission. For purposes of this paragraph, "errata to the code" means a list of errors on current and previous editions of the Florida Building Code.

(9)(a) The commission may approve technical amendments to the Florida Building Code once each year for statewide or regional application upon a finding that the amendment:

1. Is needed in order to accommodate the specific needs of this state.
2. Has a reasonable and substantial connection with the health, safety, and welfare of the general public.
3. Strengthens or improves the Florida Building Code, or in the case of innovation or new technology, will provide equivalent or better products or methods or systems of construction.
4. Does not discriminate against materials, products, methods, or systems of construction of demonstrated capabilities.
5. Does not degrade the effectiveness of the Florida Building Code.

The Florida Building Commission may approve technical amendments to the code once each year to incorporate into the Florida Building Code its own interpretations of the code which are embodied in its opinions, final orders, declaratory statements, and interpretations of hearing officer panels under s. 553.775(3)(c), but only to the extent that the incorporation of interpretations is needed to modify the code to accommodate the specific needs of this state. Amendments approved under this paragraph shall be adopted by rule after the amendments have been subjected to subsection (3).

(b) A proposed amendment must include a fiscal impact statement that documents the costs and benefits of the proposed amendment. Criteria for the fiscal impact statement shall be established by rule by the commission and shall include the impact to local government relative to enforcement, the impact to property and building owners, and the impact to industry, relative to the cost of compliance. The amendment must demonstrate by evidence or data that the state's geographical jurisdiction exhibits a need to strengthen the code beyond the needs or regional variations addressed by the code and why the proposed amendment applies to this state.

(c) The commission may not approve any proposed amendment that does not accurately and completely address all requirements for amendment which are set forth in this section. The commission shall require all proposed amendments and information submitted with proposed amendments to be reviewed by commission staff prior to consideration by any technical advisory committee. These reviews shall be for sufficiency only and are not intended to be qualitative in nature. Staff members shall reject any proposed amendment that fails to include a fiscal impact statement. Proposed amendments rejected by members of the staff may not be considered by the commission or any technical advisory committee.

(d) Provisions of the Florida Building Code, including those contained in referenced standards and criteria, relating to wind resistance or the prevention of water intrusion may not be amended pursuant to this subsection to diminish those construction requirements; however, the commission may, subject to conditions in this subsection, amend the provisions to enhance those construction requirements.

(10) The following buildings, structures, and facilities are exempt from the Florida Building Code as provided by law, and any further exemptions shall be as determined by the Legislature and provided by law:

- (a) Buildings and structures specifically regulated and preempted by the Federal Government.
- (b) Railroads and ancillary facilities associated with the railroad.
- (c) Nonresidential farm buildings on farms.
- (d) Temporary buildings or sheds used exclusively for construction purposes.
- (e) Mobile or modular structures used as temporary offices, except that the provisions of part II relating to accessibility by persons with disabilities apply to such mobile or modular structures.
- (f) Those structures or facilities of electric utilities, as defined in s. 366.02, which are directly involved in the generation, transmission, or distribution of electricity.
- (g) Temporary sets, assemblies, or structures used in commercial motion picture or television production, or any sound-recording equipment used in such production, on or off the premises.
- (h) Storage sheds that are not designed for human habitation and that have a floor area of 720 square feet or less are not required to comply with the mandatory wind-borne-debris-impact standards of the Florida Building Code. In addition, such buildings that are 400 square feet or less and that are intended for use in conjunction with one- and two-family residences are not subject to the door height and width requirements of the Florida Building Code.
- (i) Chickees constructed by the Miccosukee Tribe of Indians of Florida or the Seminole Tribe of Florida. As used in this paragraph, the term "chickee" means an open-sided wooden hut that has a thatched roof of palm or palmetto or other traditional materials, and that does not incorporate any electrical, plumbing, or other nonwood features.
- (j) Family mausoleums not exceeding 250 square feet in area which are prefabricated and assembled on site or preassembled and delivered on site and have walls, roofs, and a floor constructed of granite, marble, or reinforced concrete.
- (k) A building or structure having less than 1,000 square feet which is constructed and owned by a natural person for hunting and which is repaired or reconstructed to the same dimension and condition as existed on January 1, 2011, if the building or structure:
  - 1. Is not rented or leased or used as a principal residence;
  - 2. Is not located within the 100-year floodplain according to the Federal Emergency Management Agency's current Flood Insurance Rate Map; and
  - 3. Is not connected to an offsite electric power or water supply.

With the exception of paragraphs (a), (b), (c), and (f), in order to preserve the health, safety, and welfare of the public, the Florida Building Commission may, by rule adopted pursuant to chapter 120, provide for exceptions to the broad categories of buildings exempted in this section, including exceptions for application of specific sections of the code or standards adopted therein. The Department of Agriculture and Consumer Services shall have exclusive authority to adopt by rule, pursuant to chapter 120, exceptions to nonresidential farm buildings exempted in paragraph (c) when reasonably necessary to preserve public health, safety, and welfare. The exceptions must be based upon specific criteria, such as under-roof floor area, aggregate electrical service capacity, HVAC system capacity, or other building requirements. Further, the commission may recommend to the Legislature additional categories of buildings, structures, or facilities which should be exempted from the Florida Building Code, to be provided by law. The Florida Building Code does not apply to temporary housing provided by the Department of Corrections to any prisoner in the state correctional system.

(11)(a) In the event of a conflict between the Florida Building Code and the Florida Fire Prevention Code and the Life Safety Code as applied to a specific project, the conflict shall be resolved by agreement between the local building code enforcement official and the local fire code enforcement official in favor of the requirement of the code which offers the greatest degree of lifesafety or alternatives which would provide an equivalent degree of lifesafety and an equivalent method of construction. Local boards created to address issues arising under the Florida Building Code or the Florida Fire Prevention Code may combine the appeals boards to create a single, local board having jurisdiction over matters arising under either code or both codes. The combined local appeals board may grant alternatives or modifications through procedures outlined in NFPA 1, Section 1.4, but may not waive the requirements of the Florida Fire Prevention Code. To meet the quorum requirement for convening the combined local appeals board, at least one member of the board who is a fire protection contractor, a fire protection design professional, a fire department operations professional, or a fire code enforcement professional must be present.

(b) Any decision made by the local fire official regarding application, interpretation, or enforcement of the Florida Fire Prevention Code or by the local building official regarding application, interpretation, or enforcement of the Florida Building Code, or the appropriate application of either code or both codes in the case of a conflict between the codes, may be appealed to a local administrative board designated by the municipality, county, or special district having firesafety responsibilities. If the decision of the local fire official and the local building official is to apply the provisions of either the Florida Building Code or the Florida Fire Prevention Code and the Life Safety Code, the board may not alter the decision unless the board determines that the application of such code is not reasonable. If the decision of the local fire official and the local building official is to adopt an alternative to the codes, the local administrative board shall give due regard to the decision rendered by the local officials and may modify that decision if the administrative board adopts a better alternative, taking into consideration all relevant circumstances. In any case in which the local administrative board adopts alternatives to the decision rendered by the local fire official and the local building official, such alternatives shall provide an equivalent degree of lifesafety and an equivalent method of construction as the decision rendered by the local officials.

(c) If the local building official and the local fire official are unable to agree on a resolution of the conflict between the Florida Building Code and the Florida Fire Prevention Code and the Life Safety Code, the local administrative board shall resolve the conflict in favor of the code which offers the greatest degree of lifesafety or alternatives which would provide an equivalent degree of lifesafety and an equivalent method of construction.

(d) All decisions of the local administrative board or, if none exists, the local building official and the local fire official in regard to the application, enforcement, or interpretation of the Florida Fire Prevention Code, or conflicts between the Florida Fire Prevention Code and the Florida Building Code, are subject to review by a joint committee composed of members of the Florida Building Commission and the Fire Code Advisory Council. If the joint committee is unable to resolve conflicts between the codes as applied to a specific project, the matter shall be resolved pursuant to paragraph (1)(d). Decisions of the local administrative board related solely to the Florida Building Code are subject to review as set forth in s. 553.775.

(e) The local administrative board shall, to the greatest extent possible, be composed of members with expertise in building construction and firesafety standards.



(f) All decisions of the local building official and local fire official and all decisions of the administrative board shall be in writing and shall be binding upon a person but do not limit the authority of the State Fire Marshal or the Florida Building Commission pursuant to paragraph (1)(d) and ss. [633.104](#) and [633.228](#). Decisions of general application shall be indexed by building and fire code sections and shall be available for inspection during normal business hours.

(12) Except within coastal building zones as defined in s. [161.54](#), specification standards developed by nationally recognized code promulgation organizations to determine compliance with engineering criteria of the Florida Building Code for wind load design shall not apply to one or two family dwellings which are two stories or less in height unless approved by the commission for use or unless expressly made subject to said standards and criteria by local ordinance adopted in accordance with the provisions of subsection (4).

(13) The Florida Building Code does not apply to, and no code enforcement action shall be brought with respect to, zoning requirements, land use requirements, and owner specifications or programmatic requirements which do not pertain to and govern the design, construction, erection, alteration, modification, repair, or demolition of public or private buildings, structures, or facilities or to programmatic requirements that do not pertain to enforcement of the Florida Building Code. Additionally, a local code enforcement agency may not administer or enforce the Florida Building Code to prevent the siting of any publicly owned facility, including, but not limited to, correctional facilities, juvenile justice facilities, or state universities, community colleges, or public education facilities, as provided by law.

(14) The general provisions of the Florida Building Code for buildings and other structures shall not apply to commercial wireless communication towers when such general provisions are inconsistent with the provisions of the code controlling radio and television towers. This subsection is intended to be remedial in nature and to clarify existing law.

(15) An agency or local government may not require that existing mechanical equipment located on or above the surface of a roof be installed in compliance with the requirements of the Florida Building Code except during reroofing when the equipment is being replaced or moved and is not in compliance with the provisions of the Florida Building Code relating to roof-mounted mechanical units.

(16) The Florida Building Code must require that the illumination in classroom units be designed to provide and maintain an average of 40 foot-candles of light at each desktop. Public educational facilities must consider using light-emitting diode lighting before considering other lighting sources.

(17) A provision of the International Residential Code relating to mandated fire sprinklers may not be incorporated into the Florida Building Code as adopted by the Florida Building Commission and may not be adopted as a local amendment to the Florida Building Code. This subsection does not prohibit the application of cost-saving incentives for residential fire sprinklers that are authorized in the International Residential Code upon a mutual agreement between the builder and the code official. This subsection does not apply to a local government that has a lawfully adopted ordinance relating to fire sprinklers which has been in effect since January 1, 2010.

(18) In a single-family dwelling, makeup air is not required for range hood exhaust systems capable of exhausting:

- (a) Four hundred cubic feet per minute or less; or
- (b) More than 400 cubic feet per minute but no more than 800 cubic feet per minute if there are no gravity vent appliances within the conditioned living space of the structure.

(19) The Florida Building Code shall require two fire service access elevators in all buildings with a height greater than 120 feet measured from the elevation of street-level access to the level of the highest occupiable floor. All remaining elevators, if any, shall be provided with Phase I and II emergency operations. Where a fire service access elevator is required, a 1-hour fire-rated fire service access elevator lobby with direct access from the fire service access elevator is not required if the fire service access elevator opens into an exit access corridor that is no less than 6 feet wide for its entire length and is at least 150 square feet with the exception of door openings, and has a minimum 1-hour fire rating with three-quarter hour fire and smoke rated openings; and during a fire event the fire service access elevator is pressurized and floor-to-floor smoke control is provided. However, where transient residential occupancies occur at floor levels more than 420 feet above the level of fire service

access, a 1-hour fire-rated service access elevator lobby with direct access from the fire service access elevator is required. Standpipes in high-rise buildings of Florida Building Code—Building Occupancy Group R1 or R2 must be located in stairwells and are subject only to the requirements of the Florida Fire Prevention Code and NFPA 14, Standard for the Installation of Standpipes and Hose Systems, adopted by the State Fire Marshal.

(20) The Florida Building Commission may not:

(a) Adopt the 2016 version of the American Society of Heating, Refrigerating and Air-Conditioning Engineers Standard 9.4.1.1(g).

(b) Adopt any provision that requires a door located in the opening between a garage and a single-family residence to be equipped with a self-closing device.

**History.**—s. 4, ch. 74-167; s. 3, ch. 75-85; s. 1, ch. 77-365; s. 225, ch. 79-400; s. 1, ch. 80-106; s. 6, ch. 82-197; s. 2, ch. 84-273; s. 1, ch. 85-97; s. 33, ch. 86-191; s. 1, ch. 87-287; s. 1, ch. 88-142; s. 1, ch. 89-369; s. 2, ch. 91-172; s. 41, ch. 91-220; s. 49, ch. 95-144; s. 1, ch. 97-177; ss. 39, 40, 65, ch. 98-287; s. 61, ch. 98-419; ss. 73, 74, 75, ch. 2000-141; s. 62, ch. 2000-154; ss. 25, 34, 35, 36, ch. 2001-186; ss. 2, 3, 4, 5, ch. 2001-372; s. 86, ch. 2002-1; ss. 1, 14, ch. 2002-293; s. 66, ch. 2003-1; s. 663, ch. 2003-261; s. 7, ch. 2005-147; s. 1, ch. 2005-191; s. 4, ch. 2006-65; s. 7, ch. 2007-1; s. 4, ch. 2007-187; s. 140, ch. 2008-4; s. 10, ch. 2008-191; s. 108, ch. 2008-227; s. 1, ch. 2010-99; s. 32, ch. 2010-176; s. 14, ch. 2011-208; s. 30, ch. 2011-222; s. 14, ch. 2012-13; s. 148, ch. 2013-183; s. 14, ch. 2013-193; s. 18, ch. 2014-154; s. 17, ch. 2016-129; s. 11, ch. 2017-149; s. 6, ch. 2019-75; s. 2, ch. 2021-201.

<sup>1</sup>**Note.**—The amendment by s. 2, ch. 2021-201, changed the reference from "subparagraphs 7. and 9." to "paragraphs (f) and (g)" to conform to the redesignation of subunits in subsection (4) by that law. Subparagraph (b)7. was redesignated as paragraph (f), and subparagraph (b)9. was redesignated as paragraph (h).

<b>FILED</b>	
Department of Business and Professional Regulation	
Senior Deputy Agency Clerk	
CLERK	Brandon Nichols
Date	11/9/2021
File #	2021-08370

**STATE OF FLORIDA  
BUILDING COMMISSION**

In the Matter of

CLASSIC FLORIDA DREAM HOMES, LLC

**DS 2021-050**

Petitioner.

**DECLARATORY STATEMENT**

The following proceeding came before the Florida Building Commission (Commission) by a Petition from Thomas E. Smith, for Classic Florida Dream Homes, LLC (Petitioner) that was received September 2, 2021. Based on the statements in the petition, the material subsequently submitted and the subsequent request by the Petitioner, the Commission states the following:

**Findings of Fact**

1. The petition is filed pursuant to, and must conform with the requirements of rule 28-105.002, Florida Administrative Code.
2. Petitioner's representative in this matter is Thomas E. Smith, 424 Harbor Drive North, Indian Rocks Beach, FL 33785.
3. Petitioner is a contractor planning the construction of a two-story, single family home located in a flood zone with an "AE" designation under the National Flood Insurance Program. Petitioner states that it wishes to have the option to utilize the services of private providers for plans review and/or building inspections on the project.
4. Petitioner seeks clarification of section 107.6.1, Florida Building Code, Building, 7th Edition (2020), as it pertains to building permits issued on the basis of affidavit, and the services provided by private providers pursuant to section 553.791, Florida Statutes (2021).

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5. Specifically, the Petitioner requests an answer to the following question based upon the project described within the petition for declaratory statement:

Per the 2020 Florida Building Code, does section 107.6.1 Building Permits issued on the basis of an affidavit apply to Private Providers per F.S. 553.791?

#### Conclusions of Law

6. The Commission has the specific statutory authority pursuant to section 553.775(3)(a), Florida Statutes (2021) to interpret the provisions of the Florida Building Code by issuing a declaratory statement.

7. Section 105.14, Florida Building Code, Building, 7th Edition (2020), states:

**Permit issued on basis of an affidavit.**

Whenever a permit is issued in reliance upon an affidavit or whenever the work to be covered by a permit involves installation under conditions which, in the opinion of the building official, are hazardous or complex, the building official shall require that the architect or engineer who signed the affidavit or prepared the drawings or computations shall supervise such work. In addition, they shall be responsible for conformity to the permit, provide copies of inspection reports as inspections are performed, and upon completion make and file with the building official written affidavit that the work has been done in conformity to the reviewed plans and with the structural provisions of the technical codes. In the event such architect or engineer is not available, the owner shall employ in his stead a competent person or agency whose qualifications are reviewed by the building official. The building official shall ensure that any person conducting plans review is qualified as a plans examiner under Part XII of Chapter 468, Florida Statutes, and that any person conducting inspections is qualified as a building inspector under Part XII of Chapter 468, Florida Statutes.

**Exception:** Permit issued on basis of an affidavit shall not extend to the flood load and flood resistance requirements of the Florida Building Code.



8. Section 107.6, Florida Building Code, Building, 7th Edition (2020), states:

**Affidavits.**

The building official may accept a sworn affidavit from a registered architect or engineer stating that the plans submitted conform to the technical codes. For buildings and structures, the affidavit shall state that the plans conform to the laws as to egress, type of construction and general arrangement and, if accompanied by drawings, show the structural design and that the plans and design conform to the requirements of the technical codes as to strength, stresses, strains, loads and stability. The building official may without any examination or inspection accept such affidavit, provided the architect or engineer who made such affidavit agrees to submit to the building official copies of inspection reports as inspections are performed and upon completion of the structure, electrical, gas, mechanical or plumbing systems a certification that the structure, electrical, gas, mechanical or plumbing system has been erected in accordance with the requirements of the technical codes. Where the building official relies upon such affidavit, the architect or engineer shall assume full responsibility for compliance with all provisions of the technical codes and other pertinent laws or ordinances. The building official shall ensure that any person conducting plans review is qualified as a plans examiner under Part XII of Chapter 468, Florida Statutes, and that any person conducting inspections is qualified as a building inspector under Part XII of Chapter 468, Florida Statutes.

9. Section 107.6.1, Florida Building Code, Building, 7th Edition (2020), states:

**Building permits issued on the basis of an affidavit.**

Pursuant to the requirements of federal regulation for participation in the National Flood Insurance Program (44 C.F.R. Parts 59 and 60), the authority granted to the *building official* to issue permits, to rely on inspections, and to accept plans and construction documents on the basis of affidavits and plans submitted pursuant to Sections 105.14 and 107.6, shall not extend to the flood load and flood-resistance construction requirements of the Florida Building Code.


10. In response to Petitioner's question, the answer is **no**. Section 107.6.1, Florida Building Code, Building, 7th Edition (2020), is limited in scope to affidavits issued pursuant to sections 105.14 and 107.6, Florida Building Code, Building, 7th Edition (2020), and therefore section 107.6.1 does not apply to services performed by private providers as authorized by



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section 553.791, Florida Statutes (2021). This does not absolve the community from complying with any requirements under the National Flood Insurance Program.

DONE AND ORDERED this 20<sup>th</sup> day of OCTOBER, 2021, in St. Augustine, St.  
Johns County, State of Florida.

  
JAMES R. SCHOCK  
Chairman, Florida Building Commission

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NOTICE OF RIGHT TO APPEAL

Petitioner and all other interested parties are hereby advised of their right to seek judicial review of this Order in accordance with section 120.68(2)(a), Florida Statutes (2021), and Florida Rules of Appellate Procedure 9.110(a) and 9.030(b)(1)(C). To initiate an appeal, a Notice of Appeal must be filed with the Agency Clerk, Department of Business and Professional Regulation, 2601 Blair Stone Road, Tallahassee, Florida 32399-2203 and with the appropriate District Court of Appeal not later than thirty (30) days after this Order is filed with the Clerk of the Department of Business and Professional Regulation. A Notice of Appeal filed with the District Court of Appeal shall be accompanied by the filing fee specified by section 35.22(3), Florida Statutes (2021).

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Page 6 of 6

CERTIFICATE OF FILING AND SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing order has been filed with the undersigned and furnished by U. S. Mail to the persons listed below this 9<sup>th</sup> day of November, 2021.

*Brandon M. Nichols*

Agency Clerk's Office  
Department of Business and Professional Regulation  
& Florida Building Commission  
2601 Blair Stone Road  
Tallahassee, Florida 32399-2203

Via U.S. Mail

Classic Florida Dream Homes, LLC  
Attn: Thomas E. Smith  
424 Harbor Drive North  
Indian Rocks Beach, FL 33785

Via Inter-Office or Email Delivery

Mo Madani, Planning Manager  
Codes and Standards Section  
Department of Business and Professional  
Regulation  
2601 Blair Stone Road  
Tallahassee, Florida 32399  
Mo.Madani@myfloridalicense.com

Marjorie Holladay  
Joint Administrative Procedures Committee  
Pepper Building, Room 680  
Tallahassee, Florida 32399-1300



STATE OF FLORIDA  
**DIVISION OF EMERGENCY MANAGEMENT**

Ron DeSantis  
 Governor

Jared Moskowitz  
 Director

November 2, 2020

**MEMORANDUM**

TO: Florida Floodplain Administrators and Building Officials

FROM: Conn H. Cole, Interim State Floodplain Manager **Conn H. Cole**

CONCURRENCE: Jason O. Hunter, Chief, FEMA Region IV Floodplain Management & Insurance Branch *Jason O. Hunter*

Digitally signed by Conn H. Cole  
 DN: cn=Conn H. Cole, o=Florida Department of  
 Emergency Management, ou=State Floodplain  
 Management Office,  
 email=Conn.H.Cole@floridadem.com, c=US  
 Date: 2020.11.02 14:56:03 -0500

RE: Florida Building Code and Permits Issued on the Basis of Affidavits  
**NFIP Communities Must Review For Floodplain Compliance**

Over the past year the State Floodplain Management Office (SFMO) has received inquiries regarding changes enacted in the 2019 legislative session that affect the use and acceptance of private providers for building permits and inspections. The Florida Building Code (FBC) includes provisions for issuing permits based on affidavits signed by qualified architects or engineers, in the Building volume, sections 105.14 and 107.6. These sections are shown in the attachment.

This memorandum provides guidance to clarify the exception to Sections 105.14 and 107.6.1. FEMA Region IV concurs with this guidance. **In effect, the sections require local officials to review applications for compliance with the flood load and flood-resistant construction requirements of the FBC when buildings are proposed to be located in special flood hazard areas, and to inspect those aspects when permits are issued.**

The National Flood Insurance Program (NFIP) requires communities that participate in the program to agree to adopt and enforce regulations that meet or exceed the minimum requirement of the NFIP (44 Code of Federal Regulations Parts 59 and 60). FEMA deems the flood provisions of the FBC to meet or exceed the minimum NFIP requirements for buildings and structures.

**The NFIP regulations require communities to review proposed construction or development in special flood hazard areas.** Specifically, the NFIP regulations in Section 60.3 states: "Minimum standards for communities are as follows: (a) . . . the community shall: . . . (1) Require permits for all proposed construction or development . . . ; (2) Review proposed development to . . . ; (3) Review all applications to . . . ; (4) Review subdivision proposals and other new development . . ." <https://www.govinfo.gov/app/details/CFR-2011-title44-vol1/CFR-2011-title44-vol1-part60>

DIVISION HEADQUARTERS  
 2555 Shumard Oak Boulevard  
 Tallahassee, FL 32399-2100

Telephone: 850-815-4000  
[www.FloridaDisaster.org](http://www.FloridaDisaster.org)

STATE LOGISTICS RESPONSE CENTER  
 2702 Directors Row  
 Orlando, FL 32809-5631

Florida Floodplain Administrators and Building Officials  
November 2 , 2020  
Page 2

In 2011-12, the SFMO worked with FEMA, the Florida Building Commission, the Building Officials Association of Florida, and the Florida Floodplain Managers Association to incorporate in the FBC the necessary requirements for buildings in flood hazard areas. As part of that effort, the SFMO examined the matter of permits issued based on affidavits. Prior to the inclusion of Section 107.6.1 and the exception to Section 105.14, many communities individually adopted local administrative amendments with the same limitation.

During the code development cycle for the 5<sup>th</sup> Edition FBC, FDEM submitted a proposal to incorporate Section 107.6.1 into the FBC (the exception to Section 105.14 was added by amendment to a proposal by others). FDEM's rationale statement is shown below and repeated here for clarify:

Both of these proposed new sections flow from consistency with the NFIP. They were developed by DEM as part of the Model Floodplain Management Ordinance and Code Amendments, reviewed by BOAF, and scrutinized by FEMA. Because FEMA deemed both of these are necessary, it is more efficient for the FBC to include them in Chapter 1, rather than expect every local government to adopt them as local administrative code amendments.

Despite the submission of an affidavit authorized by B107.6, the building official must review plans for compliance with the flood provisions and issue permits and perform inspections to ensure compliance with the flood provisions. Under the NFIP, the community is responsible for ensuring compliance.

\*The original proposal (SP5255) included both Section 107.6.1 and Section 117; the exception to Section 105.14 was added to proposal CA5082) by amendments for consistency.

Please contact us at (850) 815-4556 or [floods@em.myflorida.com](mailto:floods@em.myflorida.com) if you have questions about the flood provisions in the FBC or FBC-coordinated floodplain management regulations.

CC: Steve Martin, Roy McClure, Virgilio Chris Perez

Attachment: FBC, Building, Sections 105.14 and 107.6.1 and Proposal for the 5<sup>th</sup> Ed. FBC, submitted 7/22/2012



## ATTACHMENT

## FBC, Building Sections 105.14 and 107.6.1

**105.14 Permit issued on basis of an affidavit.** Whenever a permit is issued in reliance upon an affidavit or whenever the work to be covered by a permit involves installation under conditions which, in the opinion of the building official, are hazardous or complex, the building official shall require that the architect or engineer who signed the affidavit or prepared the drawings or computations shall supervise such work. In addition, they shall be responsible for conformity to the permit, provide copies of inspection reports as inspections are performed, and upon completion make and file with the building official written affidavit that the work has been done in conformity to the reviewed plans and with the structural provisions of the technical codes. In the event such architect or engineer is not available, the owner shall employ in his stead a competent person or agency whose qualifications are reviewed by the building official. The building official shall ensure that any person conducting plans review is qualified as a plans examiner under Part XII of Chapter 468, *Florida Statutes*, and that any person conducting inspections is qualified as a building inspector under Part XII of Chapter 468, *Florida Statutes*.

**Exception:** Permit issued on basis of an affidavit shall not extend to the flood load and flood resistance requirements of the *Florida Building Code*.

**107.6.1 [Affidavits] Building permits issued on the basis of an affidavit.** Pursuant to the requirements of federal regulation for participation in the National Flood Insurance Program (44 C.F.R. Parts 59 and 60), the authority granted to the building official to issue permits, to rely on inspections, and to accept plans and construction documents on the basis of affidavits and plans submitted pursuant to Sections 105.14 and 107.6, shall not extend to the flood load and flood-resistance construction requirements of the *Florida Building Code*.

## Mod SP 5255 (approved as submitted)

Mod CA 5082 (submitted by Joe Bigelow to add new Sec. 105.14; FDEM proposed amendment to recapture NFIP; approved as amended.

<b>SP5255</b>		Page 6 of 427 2	
<b>Date Submitted</b>	7/22/2012	<b>Section</b>	107.6 and 117 (new)
<b>Chapter</b>	1	<b>Affects HVHZ</b>	No
<b>TAC Recommendation</b>	Pending Review	<b>Preponent</b>	Rebecca Quinn obo DEM
<b>Commission Action</b>	Pending Review	<b>Attachments</b>	No
<b>Related Modifications</b>			
<b>Summary of Modification</b>			
Two administrative amendments that FEMA has deemed necessary to ensure that enforcement of the flood provisions of the FBC remain consistent with the NFIP.			
<b>Rationale</b>			
Both of these proposed new sections flow from consistency with the NFIP. They were developed by DEM as part of the Model Floodplain Management Ordinance and Code Amendments, reviewed by BOAF, and scrutinized by FEMA. Because FEMA has deemed both of these are necessary, it is more efficient for the FBC to include them in Chapter 1, rather than expect every local government to adopt them as local administrative code amendments.			
Despite the submission of an affidavit authorized by 8107.6, the building official must review plans for compliance with the flood provisions and issue permits and perform inspections to ensure compliance with the flood provisions. Under the NFIP, the community is responsible for ensuring compliance.			
For consistency with the NFIP, section 553.73(5), F.S., authorizes adoption of procedures for variances; the specific procedures are in the FPM ordinance. Variances are official permission to undertake an activity that is otherwise prohibited or not approvable under the regulations or building code. As specified in section 553.73(5), F.S., the authority to grant variances to the flood provisions does not extend to any requirement in Section 3109, which applies seaward of the Coastal Construction Control Line.			

Select Year: 2021 ▼ Go

## The 2021 Florida Statutes

[Title XXXIII](#)  
REGULATION OF TRADE, COMMERCE, INVESTMENTS,  
AND SOLICITATIONS

[Chapter 553](#)  
BUILDING CONSTRUCTION  
STANDARDS

[View Entire  
Chapter](#)

### 553.73 Florida Building Code.—

(1)(a) The commission shall adopt, by rule pursuant to ss. [120.536\(1\)](#) and [120.54](#), the Florida Building Code which shall contain or incorporate by reference all laws and rules which pertain to and govern the design, construction, erection, alteration, modification, repair, and demolition of public and private buildings, structures, and facilities and enforcement of such laws and rules, except as otherwise provided in this section.

(b) The technical portions of the Florida Accessibility Code for Building Construction shall be contained in their entirety in the Florida Building Code. The civil rights portions and the technical portions of the accessibility laws of this state shall remain as currently provided by law. Any revision or amendments to the Florida Accessibility Code for Building Construction pursuant to part II shall be considered adopted by the commission as part of the Florida Building Code. Neither the commission nor any local government shall revise or amend any standard of the Florida Accessibility Code for Building Construction except as provided for in part II.

(c) The Florida Fire Prevention Code and the Life Safety Code shall be referenced in the Florida Building Code, but shall be adopted, modified, revised, or amended, interpreted, and maintained by the Department of Financial Services by rule adopted pursuant to ss. [120.536\(1\)](#) and [120.54](#). The Florida Building Commission may not adopt a fire prevention or lifesafety code, and nothing in the Florida Building Code shall affect the statutory powers, duties, and responsibilities of any fire official or the Department of Financial Services.

(d) Conflicting requirements between the Florida Building Code and the Florida Fire Prevention Code and Life Safety Code of the state established pursuant to ss. [633.206](#) and [633.208](#) shall be resolved by agreement between the commission and the State Fire Marshal in favor of the requirement that offers the greatest degree of lifesafety or alternatives that would provide an equivalent degree of lifesafety and an equivalent method of construction. If the commission and State Fire Marshal are unable to agree on a resolution, the question shall be referred to a mediator, mutually agreeable to both parties, to resolve the conflict in favor of the provision that offers the greatest lifesafety, or alternatives that would provide an equivalent degree of lifesafety and an equivalent method of construction.

(e) Subject to the provisions of this act, responsibility for enforcement, interpretation, and regulation of the Florida Building Code shall be vested in a specified local board or agency, and the words “local government” and “local governing body” as used in this part shall be construed to refer exclusively to such local board or agency.

(2) The Florida Building Code shall contain provisions or requirements for public and private buildings, structures, and facilities relative to structural, mechanical, electrical, plumbing, energy, and gas systems, existing buildings, historical buildings, manufactured buildings, elevators, coastal construction, lodging facilities, food sales and food service facilities, health care facilities, including assisted living facilities, adult day care facilities, hospice residential and inpatient facilities and units, and facilities for the control of radiation hazards, public or private educational facilities, swimming pools, and correctional facilities and enforcement of and compliance with such provisions or requirements. Further, the Florida Building Code must provide for uniform implementation of ss. [515.25](#), [515.27](#), and [515.29](#) by including standards and criteria for residential swimming pool barriers, pool covers, latching devices, door and window exit alarms, and other equipment required therein, which are consistent with the intent of s. [515.23](#). Technical provisions to be contained within the Florida Building Code are restricted to

requirements related to the types of materials used and construction methods and standards employed in order to meet criteria specified in the Florida Building Code. Provisions relating to the personnel, supervision or training of personnel, or any other professional qualification requirements relating to contractors or their workforce may not be included within the Florida Building Code, and subsections (4), (6), (7), (8), and (9) are not to be construed to allow the inclusion of such provisions within the Florida Building Code by amendment. This restriction applies to both initial development and amendment of the Florida Building Code.

(3) The commission shall use the International Codes published by the International Code Council, the National Electric Code (NFPA 70), or other nationally adopted model codes and standards for updates to the Florida Building Code. The commission may approve technical amendments to the code as provided in subsections (8) and (9), subject to all of the following conditions:

(a) The proposed amendment must have been published on the commission's website for a minimum of 45 days and all the associated documentation must have been made available to any interested party before consideration by a technical advisory committee.

(b) In order for a technical advisory committee to make a favorable recommendation to the commission, the proposal must receive a two-thirds vote of the members present at the meeting. At least half of the regular members must be present in order to conduct a meeting.

(c) After the technical advisory committee has considered and recommended approval of any proposed amendment, the proposal must be published on the commission's website for at least 45 days before consideration by the commission.

(d) A proposal may be modified by the commission based on public testimony and evidence from a public hearing held in accordance with chapter 120.

The commission shall incorporate within the Florida Building Code provisions that address regional and local concerns and variations. The commission shall make every effort to minimize conflicts between the Florida Building Code, the Florida Fire Prevention Code, and the Life Safety Code.

(4)(a) All entities authorized to enforce the Florida Building Code under s. 553.80 shall comply with applicable standards for issuance of mandatory certificates of occupancy, minimum types of inspections, and procedures for plans review and inspections as established by the commission by rule. Local governments may adopt amendments to the administrative provisions of the Florida Building Code, subject to the limitations in this subsection. Local amendments must be more stringent than the minimum standards described in this section and must be transmitted to the commission within 30 days after enactment. The local government shall make such amendments available to the general public in a usable format. The State Fire Marshal is responsible for establishing the standards and procedures required in this subsection for governmental entities with respect to applying the Florida Fire Prevention Code and the Life Safety Code.

(b) Local governments may, subject to the limitations in this section and not more than once every 6 months, adopt amendments to the technical provisions of the Florida Building Code that apply solely within the jurisdiction of such government and that provide for more stringent requirements than those specified in the Florida Building Code. A local government may adopt technical amendments that address local needs if:

1. The local governing body determines, following a public hearing which has been advertised in a newspaper of general circulation at least 10 days before the hearing, that there is a need to strengthen the requirements of the Florida Building Code. The determination must be based upon a review of local conditions by the local governing body, which review demonstrates by evidence or data that the geographical jurisdiction governed by the local governing body exhibits a local need to strengthen the Florida Building Code beyond the needs or regional variation addressed by the Florida Building Code, that the local need is addressed by the proposed local amendment, and that the amendment is no more stringent than necessary to address the local need.

2. Such additional requirements are not discriminatory against materials, products, or construction techniques of demonstrated capabilities.

3. Such additional requirements may not introduce a new subject not addressed in the Florida Building Code.



(c) The enforcing agency shall make readily available, in a usable format, all amendments adopted under this section.

(d) Any amendment to the Florida Building Code shall be transmitted within 30 days after adoption by the local government to the commission. The commission shall maintain copies of all such amendments in a format that is usable and obtainable by the public. Local technical amendments are not effective until 30 days after the amendment has been received and published by the commission.

(e) An amendment to the Florida Building Code adopted by a local government under this subsection is effective only until the adoption of the new edition of the Florida Building Code by the commission every third year. At such time, the commission shall review such amendment for consistency with the criteria in paragraph (9)(a) and adopt such amendment as part of the Florida Building Code or rescind the amendment. The commission shall immediately notify the respective local government of the rescission of any amendment. After receiving such notice, the respective local government may readopt the rescinded amendment under the provisions of this subsection.

(f) Each county and municipality desiring to make local technical amendments to the Florida Building Code shall establish by interlocal agreement a countywide compliance review board to review any amendment to the Florida Building Code that is adopted by a local government within the county under this subsection and that is challenged by a substantially affected party for purposes of determining the amendment's compliance with this subsection. If challenged, the local technical amendments are not effective until the time for filing an appeal under paragraph (g) has expired or, if there is an appeal, until the commission issues its final order determining if the adopted amendment is in compliance with this subsection.

(g) If the compliance review board determines such amendment is not in compliance with this subsection, the compliance review board shall notify such local government of the noncompliance and that the amendment is invalid and unenforceable until the local government corrects the amendment to bring it into compliance. The local government may appeal the decision of the compliance review board to the commission. If the compliance review board determines that such amendment is in compliance with this subsection, any substantially affected party may appeal such determination to the commission. Any such appeal must be filed with the commission within 14 days after the board's written determination. The commission shall promptly refer the appeal to the Division of Administrative Hearings by electronic means through the division's website for the assignment of an administrative law judge. The administrative law judge shall conduct the required hearing within 30 days after being assigned to the appeal, and shall enter a recommended order within 30 days after the conclusion of such hearing. The commission shall enter a final order within 30 days after an order is rendered. Chapter 120 and the uniform rules of procedure shall apply to such proceedings. The local government adopting the amendment that is subject to challenge has the burden of proving that the amendment complies with this subsection in proceedings before the compliance review board and the commission, as applicable. Actions of the commission are subject to judicial review under s. 120.68. The compliance review board shall determine whether its decisions apply to a respective local jurisdiction or apply countywide.

(h) An amendment adopted under this subsection must include a fiscal impact statement that documents the costs and benefits of the proposed amendment. Criteria for the fiscal impact statement shall include the impact to local government relative to enforcement and the impact to property and building owners and industry relative to the cost of compliance. The fiscal impact statement may not be used as a basis for challenging the amendment for compliance.

(i) In addition to <sup>1</sup>paragraphs (f) and (g), the commission may review any amendments adopted under this subsection and make nonbinding recommendations related to compliance of such amendments with this subsection.

(j) Any amendment adopted by a local enforcing agency under this subsection may not apply to state or school district owned buildings, manufactured buildings or factory-built school buildings approved by the commission, or prototype buildings approved under s. 553.77(3). The respective responsible entities shall consider the physical performance parameters substantiating such amendments when designing, specifying, and constructing such exempt buildings.

(k) A technical amendment to the Florida Building Code related to water conservation practices or design criteria adopted by a local government under this subsection is not void when the code is updated if the technical amendment is necessary to protect or provide for more efficient use of water resources as provided in s. [373.621](#). However, any such technical amendment carried forward into the next edition of the code under this paragraph is subject to review or modification as provided in this part.

(l) If a local government adopts a regulation, law, ordinance, policy, amendment, or land use or zoning provision without using the process established in this subsection, and a substantially affected person considers such regulation, law, ordinance, policy, amendment, or land use or zoning provision to be a technical amendment to the Florida Building Code, then the substantially affected person may submit a petition to the commission for a nonbinding advisory opinion. If a substantially affected person submits a request in accordance with this paragraph, the commission shall issue a nonbinding advisory opinion stating whether or not the commission interprets the regulation, law, ordinance, policy, amendment, or land use or zoning provision as a technical amendment to the Florida Building Code. As used in this paragraph, the term "local government" means a county, municipality, special district, or political subdivision of the state.

1. Requests to review a local government regulation, law, ordinance, policy, amendment, or land use or zoning provision may be initiated by any substantially affected person. A substantially affected person includes an owner or builder subject to the regulation, law, ordinance, policy, amendment, or land use or zoning provision, or an association of owners or builders having members who are subject to the regulation, law, ordinance, policy, amendment, or land use or zoning provision.

2. In order to initiate a review, a substantially affected person must file a petition with the commission. The commission shall adopt a form for the petition and directions for filing, which shall be published on the Building Code Information System. The form shall, at a minimum, require the following:

a. The name of the local government that enacted the regulation, law, ordinance, policy, amendment, or land use or zoning provision.

b. The name and address of the local government's general counsel or administrator.

c. The name, address, and telephone number of the petitioner; the name, address, and telephone number of the petitioner's representative, if any; and an explanation of how the petitioner's substantial interests are being affected by the regulation, law, ordinance, policy, amendment, or land use or zoning provision.

d. A statement explaining why the regulation, law, ordinance, policy, amendment, or land use or zoning provision is a technical amendment to the Florida Building Code, and which provisions of the Florida Building Code, if any, are being amended by the regulation, law, ordinance, policy, amendment, or land use or zoning provision.

3. The petitioner shall serve the petition on the local government's general counsel or administrator by certified mail, return receipt requested, and send a copy of the petition to the commission, in accordance with the commission's published directions. The local government shall respond to the petition in accordance with the form by certified mail, return receipt requested, and send a copy of its response to the commission, within 14 days after receipt of the petition, including Saturdays, Sundays, and legal holidays.

4. Upon receipt of a petition that meets the requirements of this paragraph, the commission shall publish the petition, including any response submitted by the local government, on the Building Code Information System in a manner that allows interested persons to address the issues by posting comments.

5. Before issuing an advisory opinion, the commission shall consider the petition, the response, and any comments posted on the Building Code Information System. The commission may also provide the petition, the response, and any comments posted on the Building Code Information System to a technical advisory committee, and may consider any recommendation provided by the technical advisory committee. The commission shall issue an advisory opinion stating whether the regulation, law, ordinance, policy, amendment, or land use or zoning provision is a technical amendment to the Florida Building Code within 30 days after the filing of the petition, including Saturdays, Sundays, and legal holidays. The commission shall publish its advisory opinion on the Building Code Information System and in the Florida Administrative Register. The commission's advisory opinion is nonbinding and is not a declaratory statement under s. [120.565](#).



(5) Notwithstanding subsection (4), counties and municipalities may adopt by ordinance an administrative or technical amendment to the Florida Building Code relating to flood resistance in order to implement the National Flood Insurance Program or incentives. Specifically, an administrative amendment may assign the duty to enforce all or portions of flood-related code provisions to the appropriate agencies of the local government and adopt procedures for variances and exceptions from flood-related code provisions other than provisions for structures seaward of the coastal construction control line consistent with the requirements in 44 C.F.R. s. 60.6. A technical amendment is authorized to the extent it is more stringent than the code. A technical amendment is not subject to the requirements of subsection (4) and may not be rendered void when the code is updated if the amendment is adopted for the purpose of participating in the Community Rating System promulgated pursuant to 42 U.S.C. s. 4022, the amendment had already been adopted by local ordinance prior to July 1, 2010, or the amendment requires a design flood elevation above the base flood elevation. Any amendment adopted under this subsection shall be transmitted to the commission within 30 days after being adopted. A municipality, county, or special district may not use preliminary maps issued by the Federal Emergency Management Agency for any law, ordinance, rule, or other measure that has the effect of imposing land use changes or permits.

(6) The initial adoption of, and any subsequent update or amendment to, the Florida Building Code by the commission is deemed adopted for use statewide without adoptions by local government. For a building permit for which an application is submitted prior to the effective date of the Florida Building Code, the state minimum building code in effect in the permitting jurisdiction on the date of the application governs the permitted work for the life of the permit and any extension granted to the permit.

(7)(a) The commission shall adopt an updated Florida Building Code every 3 years through review of the most current updates of the International Building Code, the International Fuel Gas Code, the International Existing Building Code, the International Mechanical Code, the International Plumbing Code, and the International Residential Code, all of which are copyrighted and published by the International Code Council, and the National Electrical Code, which is copyrighted and published by the National Fire Protection Association. **At a minimum, the commission shall adopt any updates to such codes or any other code necessary to maintain eligibility for federal funding and discounts from the National Flood Insurance Program, the Federal Emergency Management Agency, and the United States Department of Housing and Urban Development.** The commission shall also review and adopt updates based on the International Energy Conservation Code (IECC); however, the commission shall maintain the efficiencies of the Florida Energy Efficiency Code for Building Construction adopted and amended pursuant to s. 553.901. Every 3 years, the commission may approve updates to the Florida Building Code without a finding that the updates are needed in order to accommodate the specific needs of this state. The commission shall adopt updated codes by rule.

(b) Codes regarding noise contour lines shall be reviewed annually, and the most current federal guidelines shall be adopted.

(c) The commission may also adopt as a technical amendment to the Florida Building Code any portion of the codes identified in paragraph (a), but only as needed to accommodate the specific needs of this state. Standards or criteria adopted from these codes shall be incorporated by reference to the specific provisions adopted. If a referenced standard or criterion requires amplification or modification to be appropriate for use in this state, only the amplification or modification shall be set forth in the Florida Building Code. The commission may approve technical amendments to the updated Florida Building Code after the amendments have been subject to the conditions set forth in paragraphs (3)(a)-(d). Amendments that are adopted in accordance with this subsection shall be clearly marked in printed versions of the Florida Building Code so that the fact that the provisions are amendments is readily apparent.

(d) **The commission shall further consider the commission's own interpretations, declaratory statements, appellate decisions, and approved statewide and local technical amendments and shall incorporate such interpretations, statements, decisions, and amendments into the updated Florida Building Code only to the extent that they are needed to accommodate the specific needs of the state.** A change made by an institute or standards organization to any standard or criterion that is adopted by reference in the Florida Building Code does not become effective statewide until it has been adopted by the commission. Furthermore, the edition of the Florida Building

Code which is in effect on the date of application for any permit authorized by the code governs the permitted work for the life of the permit and any extension granted to the permit.

(e) A rule updating the Florida Building Code in accordance with this subsection shall take effect no sooner than 6 months after publication of the updated code. Any amendment to the Florida Building Code which is adopted upon a finding by the commission that the amendment is necessary to protect the public from immediate threat of harm takes effect immediately.

(f) Provisions of the Florida Building Code, including those contained in referenced standards and criteria, relating to wind resistance or the prevention of water intrusion may not be modified to diminish those construction requirements; however, the commission may, subject to conditions in this subsection, modify the provisions to enhance those construction requirements.

(8) Notwithstanding subsection (3) or subsection (7), the commission may address issues identified in this subsection by amending the code under the rule adoption procedures in chapter 120. Updates to the Florida Building Code, including provisions contained in referenced standards and criteria which relate to wind resistance or the prevention of water intrusion, may not be amended under this subsection to diminish those standards; however, the commission may amend the Florida Building Code to enhance such standards. Following the approval of any amendments to the Florida Building Code by the commission and publication of the amendments on the commission's website, authorities having jurisdiction to enforce the Florida Building Code may enforce the amendments.

(a) The commission may approve amendments that are needed to address:

1. Conflicts within the updated code;
2. Conflicts between the updated code and the Florida Fire Prevention Code adopted under chapter 633;
3. Unintended results from the integration of previously adopted amendments with the model code;
4. Equivalency of standards;
5. Changes to or inconsistencies with federal or state law; or
6. Adoption of an updated edition of the National Electrical Code if the commission finds that delay of implementing the updated edition causes undue hardship to stakeholders or otherwise threatens the public health, safety, and welfare.

(b) The commission may issue errata to the code pursuant to the rule adoption procedures in chapter 120 to list demonstrated errors in provisions contained within the Florida Building Code. The determination of such errors and the issuance of errata to the code must be approved by a 75-percent supermajority vote of the commission. For purposes of this paragraph, "errata to the code" means a list of errors on current and previous editions of the Florida Building Code.

(9)(a) The commission may approve technical amendments to the Florida Building Code once each year for statewide or regional application upon a finding that the amendment:

1. Is needed in order to accommodate the specific needs of this state.
2. Has a reasonable and substantial connection with the health, safety, and welfare of the general public.
3. Strengthens or improves the Florida Building Code, or in the case of innovation or new technology, will provide equivalent or better products or methods or systems of construction.
4. Does not discriminate against materials, products, methods, or systems of construction of demonstrated capabilities.
5. Does not degrade the effectiveness of the Florida Building Code.

The Florida Building Commission may approve technical amendments to the code once each year to incorporate into the Florida Building Code its own interpretations of the code which are embodied in its opinions, final orders, declaratory statements, and interpretations of hearing officer panels under s. 553.775(3)(c), but only to the extent that the incorporation of interpretations is needed to modify the code to accommodate the specific needs of this state. Amendments approved under this paragraph shall be adopted by rule after the amendments have been subjected to subsection (3).

(b) A proposed amendment must include a fiscal impact statement that documents the costs and benefits of the proposed amendment. Criteria for the fiscal impact statement shall be established by rule by the commission and shall include the impact to local government relative to enforcement, the impact to property and building owners, and the impact to industry, relative to the cost of compliance. The amendment must demonstrate by evidence or data that the state's geographical jurisdiction exhibits a need to strengthen the code beyond the needs or regional variations addressed by the code and why the proposed amendment applies to this state.

(c) The commission may not approve any proposed amendment that does not accurately and completely address all requirements for amendment which are set forth in this section. The commission shall require all proposed amendments and information submitted with proposed amendments to be reviewed by commission staff prior to consideration by any technical advisory committee. These reviews shall be for sufficiency only and are not intended to be qualitative in nature. Staff members shall reject any proposed amendment that fails to include a fiscal impact statement. Proposed amendments rejected by members of the staff may not be considered by the commission or any technical advisory committee.

(d) Provisions of the Florida Building Code, including those contained in referenced standards and criteria, relating to wind resistance or the prevention of water intrusion may not be amended pursuant to this subsection to diminish those construction requirements; however, the commission may, subject to conditions in this subsection, amend the provisions to enhance those construction requirements.

(10) The following buildings, structures, and facilities are exempt from the Florida Building Code as provided by law, and any further exemptions shall be as determined by the Legislature and provided by law:

- (a) Buildings and structures specifically regulated and preempted by the Federal Government.
- (b) Railroads and ancillary facilities associated with the railroad.
- (c) Nonresidential farm buildings on farms.
- (d) Temporary buildings or sheds used exclusively for construction purposes.
- (e) Mobile or modular structures used as temporary offices, except that the provisions of part II relating to accessibility by persons with disabilities apply to such mobile or modular structures.
- (f) Those structures or facilities of electric utilities, as defined in s. 366.02, which are directly involved in the generation, transmission, or distribution of electricity.
- (g) Temporary sets, assemblies, or structures used in commercial motion picture or television production, or any sound-recording equipment used in such production, on or off the premises.
- (h) Storage sheds that are not designed for human habitation and that have a floor area of 720 square feet or less are not required to comply with the mandatory wind-borne-debris-impact standards of the Florida Building Code. In addition, such buildings that are 400 square feet or less and that are intended for use in conjunction with one- and two-family residences are not subject to the door height and width requirements of the Florida Building Code.
- (i) Chickees constructed by the Miccosukee Tribe of Indians of Florida or the Seminole Tribe of Florida. As used in this paragraph, the term "chickee" means an open-sided wooden hut that has a thatched roof of palm or palmetto or other traditional materials, and that does not incorporate any electrical, plumbing, or other nonwood features.
- (j) Family mausoleums not exceeding 250 square feet in area which are prefabricated and assembled on site or preassembled and delivered on site and have walls, roofs, and a floor constructed of granite, marble, or reinforced concrete.
- (k) A building or structure having less than 1,000 square feet which is constructed and owned by a natural person for hunting and which is repaired or reconstructed to the same dimension and condition as existed on January 1, 2011, if the building or structure:
  - 1. Is not rented or leased or used as a principal residence;
  - 2. Is not located within the 100-year floodplain according to the Federal Emergency Management Agency's current Flood Insurance Rate Map; and
  - 3. Is not connected to an offsite electric power or water supply.

With the exception of paragraphs (a), (b), (c), and (f), in order to preserve the health, safety, and welfare of the public, the Florida Building Commission may, by rule adopted pursuant to chapter 120, provide for exceptions to the broad categories of buildings exempted in this section, including exceptions for application of specific sections of the code or standards adopted therein. The Department of Agriculture and Consumer Services shall have exclusive authority to adopt by rule, pursuant to chapter 120, exceptions to nonresidential farm buildings exempted in paragraph (c) when reasonably necessary to preserve public health, safety, and welfare. The exceptions must be based upon specific criteria, such as under-roof floor area, aggregate electrical service capacity, HVAC system capacity, or other building requirements. Further, the commission may recommend to the Legislature additional categories of buildings, structures, or facilities which should be exempted from the Florida Building Code, to be provided by law. The Florida Building Code does not apply to temporary housing provided by the Department of Corrections to any prisoner in the state correctional system.

(11)(a) In the event of a conflict between the Florida Building Code and the Florida Fire Prevention Code and the Life Safety Code as applied to a specific project, the conflict shall be resolved by agreement between the local building code enforcement official and the local fire code enforcement official in favor of the requirement of the code which offers the greatest degree of lifesafety or alternatives which would provide an equivalent degree of lifesafety and an equivalent method of construction. Local boards created to address issues arising under the Florida Building Code or the Florida Fire Prevention Code may combine the appeals boards to create a single, local board having jurisdiction over matters arising under either code or both codes. The combined local appeals board may grant alternatives or modifications through procedures outlined in NFPA 1, Section 1.4, but may not waive the requirements of the Florida Fire Prevention Code. To meet the quorum requirement for convening the combined local appeals board, at least one member of the board who is a fire protection contractor, a fire protection design professional, a fire department operations professional, or a fire code enforcement professional must be present.

(b) Any decision made by the local fire official regarding application, interpretation, or enforcement of the Florida Fire Prevention Code or by the local building official regarding application, interpretation, or enforcement of the Florida Building Code, or the appropriate application of either code or both codes in the case of a conflict between the codes, may be appealed to a local administrative board designated by the municipality, county, or special district having firesafety responsibilities. If the decision of the local fire official and the local building official is to apply the provisions of either the Florida Building Code or the Florida Fire Prevention Code and the Life Safety Code, the board may not alter the decision unless the board determines that the application of such code is not reasonable. If the decision of the local fire official and the local building official is to adopt an alternative to the codes, the local administrative board shall give due regard to the decision rendered by the local officials and may modify that decision if the administrative board adopts a better alternative, taking into consideration all relevant circumstances. In any case in which the local administrative board adopts alternatives to the decision rendered by the local fire official and the local building official, such alternatives shall provide an equivalent degree of lifesafety and an equivalent method of construction as the decision rendered by the local officials.

(c) If the local building official and the local fire official are unable to agree on a resolution of the conflict between the Florida Building Code and the Florida Fire Prevention Code and the Life Safety Code, the local administrative board shall resolve the conflict in favor of the code which offers the greatest degree of lifesafety or alternatives which would provide an equivalent degree of lifesafety and an equivalent method of construction.

(d) All decisions of the local administrative board or, if none exists, the local building official and the local fire official in regard to the application, enforcement, or interpretation of the Florida Fire Prevention Code, or conflicts between the Florida Fire Prevention Code and the Florida Building Code, are subject to review by a joint committee composed of members of the Florida Building Commission and the Fire Code Advisory Council. If the joint committee is unable to resolve conflicts between the codes as applied to a specific project, the matter shall be resolved pursuant to paragraph (1)(d). Decisions of the local administrative board related solely to the Florida Building Code are subject to review as set forth in s. 553.775.

(e) The local administrative board shall, to the greatest extent possible, be composed of members with expertise in building construction and firesafety standards.



(f) All decisions of the local building official and local fire official and all decisions of the administrative board shall be in writing and shall be binding upon a person but do not limit the authority of the State Fire Marshal or the Florida Building Commission pursuant to paragraph (1)(d) and ss. [633.104](#) and [633.228](#). Decisions of general application shall be indexed by building and fire code sections and shall be available for inspection during normal business hours.

(12) Except within coastal building zones as defined in s. [161.54](#), specification standards developed by nationally recognized code promulgation organizations to determine compliance with engineering criteria of the Florida Building Code for wind load design shall not apply to one or two family dwellings which are two stories or less in height unless approved by the commission for use or unless expressly made subject to said standards and criteria by local ordinance adopted in accordance with the provisions of subsection (4).

(13) The Florida Building Code does not apply to, and no code enforcement action shall be brought with respect to, zoning requirements, land use requirements, and owner specifications or programmatic requirements which do not pertain to and govern the design, construction, erection, alteration, modification, repair, or demolition of public or private buildings, structures, or facilities or to programmatic requirements that do not pertain to enforcement of the Florida Building Code. Additionally, a local code enforcement agency may not administer or enforce the Florida Building Code to prevent the siting of any publicly owned facility, including, but not limited to, correctional facilities, juvenile justice facilities, or state universities, community colleges, or public education facilities, as provided by law.

(14) The general provisions of the Florida Building Code for buildings and other structures shall not apply to commercial wireless communication towers when such general provisions are inconsistent with the provisions of the code controlling radio and television towers. This subsection is intended to be remedial in nature and to clarify existing law.

(15) An agency or local government may not require that existing mechanical equipment located on or above the surface of a roof be installed in compliance with the requirements of the Florida Building Code except during reroofing when the equipment is being replaced or moved and is not in compliance with the provisions of the Florida Building Code relating to roof-mounted mechanical units.

(16) The Florida Building Code must require that the illumination in classroom units be designed to provide and maintain an average of 40 foot-candles of light at each desktop. Public educational facilities must consider using light-emitting diode lighting before considering other lighting sources.

(17) A provision of the International Residential Code relating to mandated fire sprinklers may not be incorporated into the Florida Building Code as adopted by the Florida Building Commission and may not be adopted as a local amendment to the Florida Building Code. This subsection does not prohibit the application of cost-saving incentives for residential fire sprinklers that are authorized in the International Residential Code upon a mutual agreement between the builder and the code official. This subsection does not apply to a local government that has a lawfully adopted ordinance relating to fire sprinklers which has been in effect since January 1, 2010.

(18) In a single-family dwelling, makeup air is not required for range hood exhaust systems capable of exhausting:

- (a) Four hundred cubic feet per minute or less; or
- (b) More than 400 cubic feet per minute but no more than 800 cubic feet per minute if there are no gravity vent appliances within the conditioned living space of the structure.

(19) The Florida Building Code shall require two fire service access elevators in all buildings with a height greater than 120 feet measured from the elevation of street-level access to the level of the highest occupiable floor. All remaining elevators, if any, shall be provided with Phase I and II emergency operations. Where a fire service access elevator is required, a 1-hour fire-rated fire service access elevator lobby with direct access from the fire service access elevator is not required if the fire service access elevator opens into an exit access corridor that is no less than 6 feet wide for its entire length and is at least 150 square feet with the exception of door openings, and has a minimum 1-hour fire rating with three-quarter hour fire and smoke rated openings; and during a fire event the fire service access elevator is pressurized and floor-to-floor smoke control is provided. However, where transient residential occupancies occur at floor levels more than 420 feet above the level of fire service



access, a 1-hour fire-rated service access elevator lobby with direct access from the fire service access elevator is required. Standpipes in high-rise buildings of Florida Building Code—Building Occupancy Group R1 or R2 must be located in stairwells and are subject only to the requirements of the Florida Fire Prevention Code and NFPA 14, Standard for the Installation of Standpipes and Hose Systems, adopted by the State Fire Marshal.

(20) The Florida Building Commission may not:

(a) Adopt the 2016 version of the American Society of Heating, Refrigerating and Air-Conditioning Engineers Standard 9.4.1.1(g).

(b) Adopt any provision that requires a door located in the opening between a garage and a single-family residence to be equipped with a self-closing device.

**History.**—s. 4, ch. 74-167; s. 3, ch. 75-85; s. 1, ch. 77-365; s. 225, ch. 79-400; s. 1, ch. 80-106; s. 6, ch. 82-197; s. 2, ch. 84-273; s. 1, ch. 85-97; s. 33, ch. 86-191; s. 1, ch. 87-287; s. 1, ch. 88-142; s. 1, ch. 89-369; s. 2, ch. 91-172; s. 41, ch. 91-220; s. 49, ch. 95-144; s. 1, ch. 97-177; ss. 39, 40, 65, ch. 98-287; s. 61, ch. 98-419; ss. 73, 74, 75, ch. 2000-141; s. 62, ch. 2000-154; ss. 25, 34, 35, 36, ch. 2001-186; ss. 2, 3, 4, 5, ch. 2001-372; s. 86, ch. 2002-1; ss. 1, 14, ch. 2002-293; s. 66, ch. 2003-1; s. 663, ch. 2003-261; s. 7, ch. 2005-147; s. 1, ch. 2005-191; s. 4, ch. 2006-65; s. 7, ch. 2007-1; s. 4, ch. 2007-187; s. 140, ch. 2008-4; s. 10, ch. 2008-191; s. 108, ch. 2008-227; s. 1, ch. 2010-99; s. 32, ch. 2010-176; s. 14, ch. 2011-208; s. 30, ch. 2011-222; s. 14, ch. 2012-13; s. 148, ch. 2013-183; s. 14, ch. 2013-193; s. 18, ch. 2014-154; s. 17, ch. 2016-129; s. 11, ch. 2017-149; s. 6, ch. 2019-75; s. 2, ch. 2021-201.

<sup>1</sup>**Note.**—The amendment by s. 2, ch. 2021-201, changed the reference from "subparagraphs 7. and 9." to "paragraphs (f) and (g)" to conform to the redesignation of subunits in subsection (4) by that law. Subparagraph (b)7. was redesignated as paragraph (f), and subparagraph (b)9. was redesignated as paragraph (h).

<b>FILED</b>	
Department of Business and Professional Regulation	
Senior Deputy Agency Clerk	
CLERK	Brandon Nichols
Date	11/9/2021
File #	2021-08370

**STATE OF FLORIDA  
BUILDING COMMISSION**

In the Matter of

CLASSIC FLORIDA DREAM HOMES, LLC

**DS 2021-050**

Petitioner.

**DECLARATORY STATEMENT**

The following proceeding came before the Florida Building Commission (Commission) by a Petition from Thomas E. Smith, for Classic Florida Dream Homes, LLC (Petitioner) that was received September 2, 2021. Based on the statements in the petition, the material subsequently submitted and the subsequent request by the Petitioner, the Commission states the following:

**Findings of Fact**

1. The petition is filed pursuant to, and must conform with the requirements of rule 28-105.002, Florida Administrative Code.
2. Petitioner's representative in this matter is Thomas E. Smith, 424 Harbor Drive North, Indian Rocks Beach, FL 33785.
3. Petitioner is a contractor planning the construction of a two-story, single family home located in a flood zone with an "AE" designation under the National Flood Insurance Program. Petitioner states that it wishes to have the option to utilize the services of private providers for plans review and/or building inspections on the project.
4. Petitioner seeks clarification of section 107.6.1, Florida Building Code, Building, 7th Edition (2020), as it pertains to building permits issued on the basis of affidavit, and the services provided by private providers pursuant to section 553.791, Florida Statutes (2021).

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5. Specifically, the Petitioner requests an answer to the following question based upon the project described within the petition for declaratory statement:

Per the 2020 Florida Building Code, does section 107.6.1 Building Permits issued on the basis of an affidavit apply to Private Providers per F.S. 553.791?

#### Conclusions of Law

6. The Commission has the specific statutory authority pursuant to section 553.775(3)(a), Florida Statutes (2021) to interpret the provisions of the Florida Building Code by issuing a declaratory statement.

7. Section 105.14, Florida Building Code, Building, 7th Edition (2020), states:

**Permit issued on basis of an affidavit.**

Whenever a permit is issued in reliance upon an affidavit or whenever the work to be covered by a permit involves installation under conditions which, in the opinion of the building official, are hazardous or complex, the building official shall require that the architect or engineer who signed the affidavit or prepared the drawings or computations shall supervise such work. In addition, they shall be responsible for conformity to the permit, provide copies of inspection reports as inspections are performed, and upon completion make and file with the building official written affidavit that the work has been done in conformity to the reviewed plans and with the structural provisions of the technical codes. In the event such architect or engineer is not available, the owner shall employ in his stead a competent person or agency whose qualifications are reviewed by the building official. The building official shall ensure that any person conducting plans review is qualified as a plans examiner under Part XII of Chapter 468, Florida Statutes, and that any person conducting inspections is qualified as a building inspector under Part XII of Chapter 468, Florida Statutes.

**Exception:** Permit issued on basis of an affidavit shall not extend to the flood load and flood resistance requirements of the Florida Building Code.

8. Section 107.6, Florida Building Code, Building, 7th Edition (2020), states:

**Affidavits.**

The building official may accept a sworn affidavit from a registered architect or engineer stating that the plans submitted conform to the technical codes. For buildings and structures, the affidavit shall state that the plans conform to the laws as to egress, type of construction and general arrangement and, if accompanied by drawings, show the structural design and that the plans and design conform to the requirements of the technical codes as to strength, stresses, strains, loads and stability. The building official may without any examination or inspection accept such affidavit, provided the architect or engineer who made such affidavit agrees to submit to the building official copies of inspection reports as inspections are performed and upon completion of the structure, electrical, gas, mechanical or plumbing systems a certification that the structure, electrical, gas, mechanical or plumbing system has been erected in accordance with the requirements of the technical codes. Where the building official relies upon such affidavit, the architect or engineer shall assume full responsibility for compliance with all provisions of the technical codes and other pertinent laws or ordinances. The building official shall ensure that any person conducting plans review is qualified as a plans examiner under Part XII of Chapter 468, Florida Statutes, and that any person conducting inspections is qualified as a building inspector under Part XII of Chapter 468, Florida Statutes.

9. Section 107.6.1, Florida Building Code, Building, 7th Edition (2020), states:

**Building permits issued on the basis of an affidavit.**

Pursuant to the requirements of federal regulation for participation in the National Flood Insurance Program (44 C.F.R. Parts 59 and 60), the authority granted to the *building official* to issue permits, to rely on inspections, and to accept plans and construction documents on the basis of affidavits and plans submitted pursuant to Sections 105.14 and 107.6, shall not extend to the flood load and flood-resistance construction requirements of the Florida Building Code.

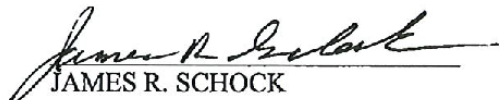
10. In response to Petitioner's question, the answer is **no**. Section 107.6.1, Florida Building Code, Building, 7th Edition (2020), is limited in scope to affidavits issued pursuant to sections 105.14 and 107.6, Florida Building Code, Building, 7th Edition (2020), and therefore section 107.6.1 does not apply to services performed by private providers as authorized by

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section 553.791, Florida Statutes (2021). This does not absolve the community from complying with any requirements under the National Flood Insurance Program.

DONE AND ORDERED this 20<sup>th</sup> day of OCTOBER, 2021, in St. Augustine, St.  
Johns County, State of Florida.

  
JAMES R. SCHOCK  
Chairman, Florida Building Commission



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NOTICE OF RIGHT TO APPEAL

Petitioner and all other interested parties are hereby advised of their right to seek judicial review of this Order in accordance with section 120.68(2)(a), Florida Statutes (2021), and Florida Rules of Appellate Procedure 9.110(a) and 9.030(b)(1)(C). To initiate an appeal, a Notice of Appeal must be filed with the Agency Clerk, Department of Business and Professional Regulation, 2601 Blair Stone Road, Tallahassee, Florida 32399-2203 and with the appropriate District Court of Appeal not later than thirty (30) days after this Order is filed with the Clerk of the Department of Business and Professional Regulation. A Notice of Appeal filed with the District Court of Appeal shall be accompanied by the filing fee specified by section 35.22(3), Florida Statutes (2021).

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CERTIFICATE OF FILING AND SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing order has been filed with the undersigned and furnished by U. S. Mail to the persons listed below this 9<sup>th</sup> day of November, 2021.

*Brandon M. Nichols*

Agency Clerk's Office  
Department of Business and Professional Regulation  
& Florida Building Commission  
2601 Blair Stone Road  
Tallahassee, Florida 32399-2203

Via U.S. Mail

Classic Florida Dream Homes, LLC  
Attn: Thomas E. Smith  
424 Harbor Drive North  
Indian Rocks Beach, FL 33785

Via Inter-Office or Email Delivery

Mo Madani, Planning Manager  
Codes and Standards Section  
Department of Business and Professional  
Regulation  
2601 Blair Stone Road  
Tallahassee, Florida 32399  
Mo.Madani@myfloridalicense.com

Marjorie Holladay  
Joint Administrative Procedures Committee  
Pepper Building, Room 680  
Tallahassee, Florida 32399-1300



STATE OF FLORIDA  
**DIVISION OF EMERGENCY MANAGEMENT**

Ron DeSantis  
 Governor

Jared Moskowitz  
 Director

November 2, 2020

**MEMORANDUM**

TO: Florida Floodplain Administrators and Building Officials

FROM: Conn H. Cole, Interim State Floodplain Manager **Conn H. Cole**

CONCURRENCE: Jason O. Hunter, Chief, FEMA Region IV Floodplain Management & Insurance Branch *Jason O. Hunter*

Digitally signed by Conn H. Cole  
 DN: cn=Conn H. Cole, o=Florida Department of  
 Emergency Management, ou=State Floodplain  
 Management Office,  
 email=Conn.H.Cole@fla.gov, c=US  
 Date: 2020.11.02 14:54:03 -0500

RE: Florida Building Code and Permits Issued on the Basis of Affidavits  
**NFIP Communities Must Review For Floodplain Compliance**

Over the past year the State Floodplain Management Office (SFMO) has received inquiries regarding changes enacted in the 2019 legislative session that affect the use and acceptance of private providers for building permits and inspections. The Florida Building Code (FBC) includes provisions for issuing permits based on affidavits signed by qualified architects or engineers, in the Building volume, sections 105.14 and 107.6. These sections are shown in the attachment.

This memorandum provides guidance to clarify the exception to Sections 105.14 and 107.6.1. FEMA Region IV concurs with this guidance. **In effect, the sections require local officials to review applications for compliance with the flood load and flood-resistant construction requirements of the FBC when buildings are proposed to be located in special flood hazard areas, and to inspect those aspects when permits are issued.**

The National Flood Insurance Program (NFIP) requires communities that participate in the program to agree to adopt and enforce regulations that meet or exceed the minimum requirement of the NFIP (44 Code of Federal Regulations Parts 59 and 60). FEMA deems the flood provisions of the FBC to meet or exceed the minimum NFIP requirements for buildings and structures.

**The NFIP regulations require communities to review proposed construction or development in special flood hazard areas.** Specifically, the NFIP regulations in Section 60.3 states: "Minimum standards for communities are as follows: (a) . . . the community shall: . . . (1) Require permits for all proposed construction or development . . . ; (2) Review proposed development to . . . ; (3) Review all applications to . . . ; (4) Review subdivision proposals and other new development . . ." <https://www.govinfo.gov/app/details/CFR-2011-title44-vol1/CFR-2011-title44-vol1-part60>

DIVISION HEADQUARTERS  
 2555 Shumard Oak Boulevard  
 Tallahassee, FL 32399-2100

Telephone: 850-815-4000  
[www.FloridaDisaster.org](http://www.FloridaDisaster.org)

STATE LOGISTICS RESPONSE CENTER  
 2702 Directors Row  
 Orlando, FL 32809-5831

Florida Floodplain Administrators and Building Officials  
November 2 , 2020  
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In 2011-12, the SFMO worked with FEMA, the Florida Building Commission, the Building Officials Association of Florida, and the Florida Floodplain Managers Association to incorporate in the FBC the necessary requirements for buildings in flood hazard areas. As part of that effort, the SFMO examined the matter of permits issued based on affidavits. Prior to the inclusion of Section 107.6.1 and the exception to Section 105.14, many communities individually adopted local administrative amendments with the same limitation.

During the code development cycle for the 5<sup>th</sup> Edition FBC, FDEM submitted a proposal to incorporate Section 107.6.1 into the FBC (the exception to Section 105.14 was added by amendment to a proposal by others). FDEM's rationale statement is shown below and repeated here for clarify:

Both of these proposed new sections flow from consistency with the NFIP. They were developed by DEM as part of the Model Floodplain Management Ordinance and Code Amendments, reviewed by BOAF, and scrutinized by FEMA. Because FEMA deemed both of these are necessary, it is more efficient for the FBC to include them in Chapter 1, rather than expect every local government to adopt them as local administrative code amendments.

Despite the submission of an affidavit authorized by B107.6, the building official must review plans for compliance with the flood provisions and issue permits and perform inspections to ensure compliance with the flood provisions. Under the NFIP, the community is responsible for ensuring compliance.

\*The original proposal (SP5255) included both Section 107.6.1 and Section 117; the exception to Section 105.14 was added to proposal CA5082) by amendments for consistency.

Please contact us at (850) 815-4556 or [floods@em.myflorida.com](mailto:floods@em.myflorida.com) if you have questions about the flood provisions in the FBC or FBC-coordinated floodplain management regulations.

CC: Steve Martin, Roy McClure, Virgilio Chris Perez

Attachment: FBC, Building, Sections 105.14 and 107.6.1 and Proposal for the 5<sup>th</sup> Ed. FBC, submitted 7/22/2012



## ATTACHMENT

## FBC, Building Sections 105.14 and 107.6.1

**105.14 Permit issued on basis of an affidavit.** Whenever a permit is issued in reliance upon an affidavit or whenever the work to be covered by a permit involves installation under conditions which, in the opinion of the building official, are hazardous or complex, the building official shall require that the architect or engineer who signed the affidavit or prepared the drawings or computations shall supervise such work. In addition, they shall be responsible for conformity to the permit, provide copies of inspection reports as inspections are performed, and upon completion make and file with the building official written affidavit that the work has been done in conformity to the reviewed plans and with the structural provisions of the technical codes. In the event such architect or engineer is not available, the owner shall employ in his stead a competent person or agency whose qualifications are reviewed by the building official. The building official shall ensure that any person conducting plans review is qualified as a plans examiner under Part XII of Chapter 468, *Florida Statutes*, and that any person conducting inspections is qualified as a building inspector under Part XII of Chapter 468, *Florida Statutes*.

**Exception:** Permit issued on basis of an affidavit shall not extend to the flood load and flood resistance requirements of the *Florida Building Code*.

**107.6.1 [Affidavits] Building permits issued on the basis of an affidavit.** Pursuant to the requirements of federal regulation for participation in the National Flood Insurance Program (44 C.F.R. Parts 59 and 60), the authority granted to the building official to issue permits, to rely on inspections, and to accept plans and construction documents on the basis of affidavits and plans submitted pursuant to Sections 105.14 and 107.6, shall not extend to the flood load and flood-resistance construction requirements of the *Florida Building Code*.

## Mod SP 5255 (approved as submitted)

Mod CA 5082 (submitted by Joe Bigelow to add new Sec. 105.14; FDEM proposed amendment to recapture NFIP; approved as amended.

<b>SP5255</b>		Page 6 of 427 2	
<b>Date Submitted</b>	7/22/2012	<b>Section</b>	107.6 and 117 (new)
<b>Chapter</b>	1	<b>Affects HVHZ</b>	No
<b>TAC Recommendation</b>	Pending Review	<b>Preponent</b>	Rebecca Quinn obo DEM
<b>Commission Action</b>	Pending Review	<b>Attachments</b>	No
<b>Related Modifications</b>			
<b>Summary of Modification</b>			
Two administrative amendments that FEMA has deemed necessary to ensure that enforcement of the flood provisions of the FBC remain consistent with the NFIP.			
<b>Rationale</b>			
Both of these proposed new sections flow from consistency with the NFIP. They were developed by DEM as part of the Model Floodplain Management Ordinance and Code Amendments, reviewed by BOAF, and scrutinized by FEMA. Because FEMA has deemed both of these are necessary, it is more efficient for the FBC to include them in Chapter 1, rather than expect every local government to adopt them as local administrative code amendments.			
Despite the submission of an affidavit authorized by 8107.6, the building official must review plans for compliance with the flood provisions and issue permits and perform inspections to ensure compliance with the flood provisions. Under the NFIP, the community is responsible for ensuring compliance.			
For consistency with the NFIP, section 553.73(5), F.S., authorizes adoption of procedures for variances; the specific procedures are in the FPM ordinance. Variances are official permission to undertake an activity that is otherwise prohibited or not approvable under the regulations or building code. As specified in section 553.73(5), F.S., the authority to grant variances to the flood provisions does not extend to any requirement in Section 3109, which applies seaward of the Coastal Construction Control Line.			



Select Year:

## The 2021 Florida Statutes

[Title XXXIII](#)  
REGULATION OF TRADE, COMMERCE, INVESTMENTS,  
AND SOLICITATIONS

[Chapter 553](#)  
BUILDING CONSTRUCTION  
STANDARDS

[View Entire  
Chapter](#)

### 553.73 Florida Building Code.—

(1)(a) The commission shall adopt, by rule pursuant to ss. [120.536\(1\)](#) and [120.54](#), the Florida Building Code which shall contain or incorporate by reference all laws and rules which pertain to and govern the design, construction, erection, alteration, modification, repair, and demolition of public and private buildings, structures, and facilities and enforcement of such laws and rules, except as otherwise provided in this section.

(b) The technical portions of the Florida Accessibility Code for Building Construction shall be contained in their entirety in the Florida Building Code. The civil rights portions and the technical portions of the accessibility laws of this state shall remain as currently provided by law. Any revision or amendments to the Florida Accessibility Code for Building Construction pursuant to part II shall be considered adopted by the commission as part of the Florida Building Code. Neither the commission nor any local government shall revise or amend any standard of the Florida Accessibility Code for Building Construction except as provided for in part II.

(c) The Florida Fire Prevention Code and the Life Safety Code shall be referenced in the Florida Building Code, but shall be adopted, modified, revised, or amended, interpreted, and maintained by the Department of Financial Services by rule adopted pursuant to ss. [120.536\(1\)](#) and [120.54](#). The Florida Building Commission may not adopt a fire prevention or lifesafety code, and nothing in the Florida Building Code shall affect the statutory powers, duties, and responsibilities of any fire official or the Department of Financial Services.

(d) Conflicting requirements between the Florida Building Code and the Florida Fire Prevention Code and Life Safety Code of the state established pursuant to ss. [633.206](#) and [633.208](#) shall be resolved by agreement between the commission and the State Fire Marshal in favor of the requirement that offers the greatest degree of lifesafety or alternatives that would provide an equivalent degree of lifesafety and an equivalent method of construction. If the commission and State Fire Marshal are unable to agree on a resolution, the question shall be referred to a mediator, mutually agreeable to both parties, to resolve the conflict in favor of the provision that offers the greatest lifesafety, or alternatives that would provide an equivalent degree of lifesafety and an equivalent method of construction.

(e) Subject to the provisions of this act, responsibility for enforcement, interpretation, and regulation of the Florida Building Code shall be vested in a specified local board or agency, and the words “local government” and “local governing body” as used in this part shall be construed to refer exclusively to such local board or agency.

(2) The Florida Building Code shall contain provisions or requirements for public and private buildings, structures, and facilities relative to structural, mechanical, electrical, plumbing, energy, and gas systems, existing buildings, historical buildings, manufactured buildings, elevators, coastal construction, lodging facilities, food sales and food service facilities, health care facilities, including assisted living facilities, adult day care facilities, hospice residential and inpatient facilities and units, and facilities for the control of radiation hazards, public or private educational facilities, swimming pools, and correctional facilities and enforcement of and compliance with such provisions or requirements. Further, the Florida Building Code must provide for uniform implementation of ss. [515.25](#), [515.27](#), and [515.29](#) by including standards and criteria for residential swimming pool barriers, pool covers, latching devices, door and window exit alarms, and other equipment required therein, which are consistent with the intent of s. [515.23](#). Technical provisions to be contained within the Florida Building Code are restricted to

requirements related to the types of materials used and construction methods and standards employed in order to meet criteria specified in the Florida Building Code. Provisions relating to the personnel, supervision or training of personnel, or any other professional qualification requirements relating to contractors or their workforce may not be included within the Florida Building Code, and subsections (4), (6), (7), (8), and (9) are not to be construed to allow the inclusion of such provisions within the Florida Building Code by amendment. This restriction applies to both initial development and amendment of the Florida Building Code.

(3) The commission shall use the International Codes published by the International Code Council, the National Electric Code (NFPA 70), or other nationally adopted model codes and standards for updates to the Florida Building Code. The commission may approve technical amendments to the code as provided in subsections (8) and (9), subject to all of the following conditions:

(a) The proposed amendment must have been published on the commission's website for a minimum of 45 days and all the associated documentation must have been made available to any interested party before consideration by a technical advisory committee.

(b) In order for a technical advisory committee to make a favorable recommendation to the commission, the proposal must receive a two-thirds vote of the members present at the meeting. At least half of the regular members must be present in order to conduct a meeting.

(c) After the technical advisory committee has considered and recommended approval of any proposed amendment, the proposal must be published on the commission's website for at least 45 days before consideration by the commission.

(d) A proposal may be modified by the commission based on public testimony and evidence from a public hearing held in accordance with chapter 120.

The commission shall incorporate within the Florida Building Code provisions that address regional and local concerns and variations. The commission shall make every effort to minimize conflicts between the Florida Building Code, the Florida Fire Prevention Code, and the Life Safety Code.

(4)(a) All entities authorized to enforce the Florida Building Code under s. 553.80 shall comply with applicable standards for issuance of mandatory certificates of occupancy, minimum types of inspections, and procedures for plans review and inspections as established by the commission by rule. Local governments may adopt amendments to the administrative provisions of the Florida Building Code, subject to the limitations in this subsection. Local amendments must be more stringent than the minimum standards described in this section and must be transmitted to the commission within 30 days after enactment. The local government shall make such amendments available to the general public in a usable format. The State Fire Marshal is responsible for establishing the standards and procedures required in this subsection for governmental entities with respect to applying the Florida Fire Prevention Code and the Life Safety Code.

(b) Local governments may, subject to the limitations in this section and not more than once every 6 months, adopt amendments to the technical provisions of the Florida Building Code that apply solely within the jurisdiction of such government and that provide for more stringent requirements than those specified in the Florida Building Code. A local government may adopt technical amendments that address local needs if:

1. The local governing body determines, following a public hearing which has been advertised in a newspaper of general circulation at least 10 days before the hearing, that there is a need to strengthen the requirements of the Florida Building Code. The determination must be based upon a review of local conditions by the local governing body, which review demonstrates by evidence or data that the geographical jurisdiction governed by the local governing body exhibits a local need to strengthen the Florida Building Code beyond the needs or regional variation addressed by the Florida Building Code, that the local need is addressed by the proposed local amendment, and that the amendment is no more stringent than necessary to address the local need.

2. Such additional requirements are not discriminatory against materials, products, or construction techniques of demonstrated capabilities.

3. Such additional requirements may not introduce a new subject not addressed in the Florida Building Code.

(c) The enforcing agency shall make readily available, in a usable format, all amendments adopted under this section.

(d) Any amendment to the Florida Building Code shall be transmitted within 30 days after adoption by the local government to the commission. The commission shall maintain copies of all such amendments in a format that is usable and obtainable by the public. Local technical amendments are not effective until 30 days after the amendment has been received and published by the commission.

(e) An amendment to the Florida Building Code adopted by a local government under this subsection is effective only until the adoption of the new edition of the Florida Building Code by the commission every third year. At such time, the commission shall review such amendment for consistency with the criteria in paragraph (9)(a) and adopt such amendment as part of the Florida Building Code or rescind the amendment. The commission shall immediately notify the respective local government of the rescission of any amendment. After receiving such notice, the respective local government may readopt the rescinded amendment under the provisions of this subsection.

(f) Each county and municipality desiring to make local technical amendments to the Florida Building Code shall establish by interlocal agreement a countywide compliance review board to review any amendment to the Florida Building Code that is adopted by a local government within the county under this subsection and that is challenged by a substantially affected party for purposes of determining the amendment's compliance with this subsection. If challenged, the local technical amendments are not effective until the time for filing an appeal under paragraph (g) has expired or, if there is an appeal, until the commission issues its final order determining if the adopted amendment is in compliance with this subsection.

(g) If the compliance review board determines such amendment is not in compliance with this subsection, the compliance review board shall notify such local government of the noncompliance and that the amendment is invalid and unenforceable until the local government corrects the amendment to bring it into compliance. The local government may appeal the decision of the compliance review board to the commission. If the compliance review board determines that such amendment is in compliance with this subsection, any substantially affected party may appeal such determination to the commission. Any such appeal must be filed with the commission within 14 days after the board's written determination. The commission shall promptly refer the appeal to the Division of Administrative Hearings by electronic means through the division's website for the assignment of an administrative law judge. The administrative law judge shall conduct the required hearing within 30 days after being assigned to the appeal, and shall enter a recommended order within 30 days after the conclusion of such hearing. The commission shall enter a final order within 30 days after an order is rendered. Chapter 120 and the uniform rules of procedure shall apply to such proceedings. The local government adopting the amendment that is subject to challenge has the burden of proving that the amendment complies with this subsection in proceedings before the compliance review board and the commission, as applicable. Actions of the commission are subject to judicial review under s. 120.68. The compliance review board shall determine whether its decisions apply to a respective local jurisdiction or apply countywide.

(h) An amendment adopted under this subsection must include a fiscal impact statement that documents the costs and benefits of the proposed amendment. Criteria for the fiscal impact statement shall include the impact to local government relative to enforcement and the impact to property and building owners and industry relative to the cost of compliance. The fiscal impact statement may not be used as a basis for challenging the amendment for compliance.

(i) In addition to <sup>1</sup>paragraphs (f) and (g), the commission may review any amendments adopted under this subsection and make nonbinding recommendations related to compliance of such amendments with this subsection.

(j) Any amendment adopted by a local enforcing agency under this subsection may not apply to state or school district owned buildings, manufactured buildings or factory-built school buildings approved by the commission, or prototype buildings approved under s. 553.77(3). The respective responsible entities shall consider the physical performance parameters substantiating such amendments when designing, specifying, and constructing such exempt buildings.

(k) A technical amendment to the Florida Building Code related to water conservation practices or design criteria adopted by a local government under this subsection is not void when the code is updated if the technical amendment is necessary to protect or provide for more efficient use of water resources as provided in s. [373.621](#). However, any such technical amendment carried forward into the next edition of the code under this paragraph is subject to review or modification as provided in this part.

(l) If a local government adopts a regulation, law, ordinance, policy, amendment, or land use or zoning provision without using the process established in this subsection, and a substantially affected person considers such regulation, law, ordinance, policy, amendment, or land use or zoning provision to be a technical amendment to the Florida Building Code, then the substantially affected person may submit a petition to the commission for a nonbinding advisory opinion. If a substantially affected person submits a request in accordance with this paragraph, the commission shall issue a nonbinding advisory opinion stating whether or not the commission interprets the regulation, law, ordinance, policy, amendment, or land use or zoning provision as a technical amendment to the Florida Building Code. As used in this paragraph, the term "local government" means a county, municipality, special district, or political subdivision of the state.

1. Requests to review a local government regulation, law, ordinance, policy, amendment, or land use or zoning provision may be initiated by any substantially affected person. A substantially affected person includes an owner or builder subject to the regulation, law, ordinance, policy, amendment, or land use or zoning provision, or an association of owners or builders having members who are subject to the regulation, law, ordinance, policy, amendment, or land use or zoning provision.

2. In order to initiate a review, a substantially affected person must file a petition with the commission. The commission shall adopt a form for the petition and directions for filing, which shall be published on the Building Code Information System. The form shall, at a minimum, require the following:

a. The name of the local government that enacted the regulation, law, ordinance, policy, amendment, or land use or zoning provision.

b. The name and address of the local government's general counsel or administrator.

c. The name, address, and telephone number of the petitioner; the name, address, and telephone number of the petitioner's representative, if any; and an explanation of how the petitioner's substantial interests are being affected by the regulation, law, ordinance, policy, amendment, or land use or zoning provision.

d. A statement explaining why the regulation, law, ordinance, policy, amendment, or land use or zoning provision is a technical amendment to the Florida Building Code, and which provisions of the Florida Building Code, if any, are being amended by the regulation, law, ordinance, policy, amendment, or land use or zoning provision.

3. The petitioner shall serve the petition on the local government's general counsel or administrator by certified mail, return receipt requested, and send a copy of the petition to the commission, in accordance with the commission's published directions. The local government shall respond to the petition in accordance with the form by certified mail, return receipt requested, and send a copy of its response to the commission, within 14 days after receipt of the petition, including Saturdays, Sundays, and legal holidays.

4. Upon receipt of a petition that meets the requirements of this paragraph, the commission shall publish the petition, including any response submitted by the local government, on the Building Code Information System in a manner that allows interested persons to address the issues by posting comments.

5. Before issuing an advisory opinion, the commission shall consider the petition, the response, and any comments posted on the Building Code Information System. The commission may also provide the petition, the response, and any comments posted on the Building Code Information System to a technical advisory committee, and may consider any recommendation provided by the technical advisory committee. The commission shall issue an advisory opinion stating whether the regulation, law, ordinance, policy, amendment, or land use or zoning provision is a technical amendment to the Florida Building Code within 30 days after the filing of the petition, including Saturdays, Sundays, and legal holidays. The commission shall publish its advisory opinion on the Building Code Information System and in the Florida Administrative Register. The commission's advisory opinion is nonbinding and is not a declaratory statement under s. [120.565](#).

(5) Notwithstanding subsection (4), counties and municipalities may adopt by ordinance an administrative or technical amendment to the Florida Building Code relating to flood resistance in order to implement the National Flood Insurance Program or incentives. Specifically, an administrative amendment may assign the duty to enforce all or portions of flood-related code provisions to the appropriate agencies of the local government and adopt procedures for variances and exceptions from flood-related code provisions other than provisions for structures seaward of the coastal construction control line consistent with the requirements in 44 C.F.R. s. 60.6. A technical amendment is authorized to the extent it is more stringent than the code. A technical amendment is not subject to the requirements of subsection (4) and may not be rendered void when the code is updated if the amendment is adopted for the purpose of participating in the Community Rating System promulgated pursuant to 42 U.S.C. s. 4022, the amendment had already been adopted by local ordinance prior to July 1, 2010, or the amendment requires a design flood elevation above the base flood elevation. Any amendment adopted under this subsection shall be transmitted to the commission within 30 days after being adopted. A municipality, county, or special district may not use preliminary maps issued by the Federal Emergency Management Agency for any law, ordinance, rule, or other measure that has the effect of imposing land use changes or permits.

(6) The initial adoption of, and any subsequent update or amendment to, the Florida Building Code by the commission is deemed adopted for use statewide without adoptions by local government. For a building permit for which an application is submitted prior to the effective date of the Florida Building Code, the state minimum building code in effect in the permitting jurisdiction on the date of the application governs the permitted work for the life of the permit and any extension granted to the permit.

(7)(a) The commission shall adopt an updated Florida Building Code every 3 years through review of the most current updates of the International Building Code, the International Fuel Gas Code, the International Existing Building Code, the International Mechanical Code, the International Plumbing Code, and the International Residential Code, all of which are copyrighted and published by the International Code Council, and the National Electrical Code, which is copyrighted and published by the National Fire Protection Association. **At a minimum, the commission shall adopt any updates to such codes or any other code necessary to maintain eligibility for federal funding and discounts from the National Flood Insurance Program, the Federal Emergency Management Agency, and the United States Department of Housing and Urban Development.** The commission shall also review and adopt updates based on the International Energy Conservation Code (IECC); however, the commission shall maintain the efficiencies of the Florida Energy Efficiency Code for Building Construction adopted and amended pursuant to s. 553.901. Every 3 years, the commission may approve updates to the Florida Building Code without a finding that the updates are needed in order to accommodate the specific needs of this state. The commission shall adopt updated codes by rule.

(b) Codes regarding noise contour lines shall be reviewed annually, and the most current federal guidelines shall be adopted.

(c) The commission may also adopt as a technical amendment to the Florida Building Code any portion of the codes identified in paragraph (a), but only as needed to accommodate the specific needs of this state. Standards or criteria adopted from these codes shall be incorporated by reference to the specific provisions adopted. If a referenced standard or criterion requires amplification or modification to be appropriate for use in this state, only the amplification or modification shall be set forth in the Florida Building Code. The commission may approve technical amendments to the updated Florida Building Code after the amendments have been subject to the conditions set forth in paragraphs (3)(a)-(d). Amendments that are adopted in accordance with this subsection shall be clearly marked in printed versions of the Florida Building Code so that the fact that the provisions are amendments is readily apparent.

(d) **The commission shall further consider the commission's own interpretations, declaratory statements, appellate decisions, and approved statewide and local technical amendments and shall incorporate such interpretations, statements, decisions, and amendments into the updated Florida Building Code only to the extent that they are needed to accommodate the specific needs of the state.** A change made by an institute or standards organization to any standard or criterion that is adopted by reference in the Florida Building Code does not become effective statewide until it has been adopted by the commission. Furthermore, the edition of the Florida Building



Code which is in effect on the date of application for any permit authorized by the code governs the permitted work for the life of the permit and any extension granted to the permit.

(e) A rule updating the Florida Building Code in accordance with this subsection shall take effect no sooner than 6 months after publication of the updated code. Any amendment to the Florida Building Code which is adopted upon a finding by the commission that the amendment is necessary to protect the public from immediate threat of harm takes effect immediately.

(f) Provisions of the Florida Building Code, including those contained in referenced standards and criteria, relating to wind resistance or the prevention of water intrusion may not be modified to diminish those construction requirements; however, the commission may, subject to conditions in this subsection, modify the provisions to enhance those construction requirements.

(8) Notwithstanding subsection (3) or subsection (7), the commission may address issues identified in this subsection by amending the code under the rule adoption procedures in chapter 120. Updates to the Florida Building Code, including provisions contained in referenced standards and criteria which relate to wind resistance or the prevention of water intrusion, may not be amended under this subsection to diminish those standards; however, the commission may amend the Florida Building Code to enhance such standards. Following the approval of any amendments to the Florida Building Code by the commission and publication of the amendments on the commission's website, authorities having jurisdiction to enforce the Florida Building Code may enforce the amendments.

(a) The commission may approve amendments that are needed to address:

1. Conflicts within the updated code;
2. Conflicts between the updated code and the Florida Fire Prevention Code adopted under chapter 633;
3. Unintended results from the integration of previously adopted amendments with the model code;
4. Equivalency of standards;
5. Changes to or inconsistencies with federal or state law; or
6. Adoption of an updated edition of the National Electrical Code if the commission finds that delay of implementing the updated edition causes undue hardship to stakeholders or otherwise threatens the public health, safety, and welfare.

(b) The commission may issue errata to the code pursuant to the rule adoption procedures in chapter 120 to list demonstrated errors in provisions contained within the Florida Building Code. The determination of such errors and the issuance of errata to the code must be approved by a 75-percent supermajority vote of the commission. For purposes of this paragraph, "errata to the code" means a list of errors on current and previous editions of the Florida Building Code.

(9)(a) The commission may approve technical amendments to the Florida Building Code once each year for statewide or regional application upon a finding that the amendment:

1. Is needed in order to accommodate the specific needs of this state.
2. Has a reasonable and substantial connection with the health, safety, and welfare of the general public.
3. Strengthens or improves the Florida Building Code, or in the case of innovation or new technology, will provide equivalent or better products or methods or systems of construction.
4. Does not discriminate against materials, products, methods, or systems of construction of demonstrated capabilities.
5. Does not degrade the effectiveness of the Florida Building Code.

The Florida Building Commission may approve technical amendments to the code once each year to incorporate into the Florida Building Code its own interpretations of the code which are embodied in its opinions, final orders, declaratory statements, and interpretations of hearing officer panels under s. 553.775(3)(c), but only to the extent that the incorporation of interpretations is needed to modify the code to accommodate the specific needs of this state. Amendments approved under this paragraph shall be adopted by rule after the amendments have been subjected to subsection (3).

(b) A proposed amendment must include a fiscal impact statement that documents the costs and benefits of the proposed amendment. Criteria for the fiscal impact statement shall be established by rule by the commission and shall include the impact to local government relative to enforcement, the impact to property and building owners, and the impact to industry, relative to the cost of compliance. The amendment must demonstrate by evidence or data that the state's geographical jurisdiction exhibits a need to strengthen the code beyond the needs or regional variations addressed by the code and why the proposed amendment applies to this state.

(c) The commission may not approve any proposed amendment that does not accurately and completely address all requirements for amendment which are set forth in this section. The commission shall require all proposed amendments and information submitted with proposed amendments to be reviewed by commission staff prior to consideration by any technical advisory committee. These reviews shall be for sufficiency only and are not intended to be qualitative in nature. Staff members shall reject any proposed amendment that fails to include a fiscal impact statement. Proposed amendments rejected by members of the staff may not be considered by the commission or any technical advisory committee.

(d) Provisions of the Florida Building Code, including those contained in referenced standards and criteria, relating to wind resistance or the prevention of water intrusion may not be amended pursuant to this subsection to diminish those construction requirements; however, the commission may, subject to conditions in this subsection, amend the provisions to enhance those construction requirements.

(10) The following buildings, structures, and facilities are exempt from the Florida Building Code as provided by law, and any further exemptions shall be as determined by the Legislature and provided by law:

- (a) Buildings and structures specifically regulated and preempted by the Federal Government.
- (b) Railroads and ancillary facilities associated with the railroad.
- (c) Nonresidential farm buildings on farms.
- (d) Temporary buildings or sheds used exclusively for construction purposes.
- (e) Mobile or modular structures used as temporary offices, except that the provisions of part II relating to accessibility by persons with disabilities apply to such mobile or modular structures.
- (f) Those structures or facilities of electric utilities, as defined in s. 366.02, which are directly involved in the generation, transmission, or distribution of electricity.
- (g) Temporary sets, assemblies, or structures used in commercial motion picture or television production, or any sound-recording equipment used in such production, on or off the premises.
- (h) Storage sheds that are not designed for human habitation and that have a floor area of 720 square feet or less are not required to comply with the mandatory wind-borne-debris-impact standards of the Florida Building Code. In addition, such buildings that are 400 square feet or less and that are intended for use in conjunction with one- and two-family residences are not subject to the door height and width requirements of the Florida Building Code.
- (i) Chickees constructed by the Miccosukee Tribe of Indians of Florida or the Seminole Tribe of Florida. As used in this paragraph, the term "chickee" means an open-sided wooden hut that has a thatched roof of palm or palmetto or other traditional materials, and that does not incorporate any electrical, plumbing, or other nonwood features.
- (j) Family mausoleums not exceeding 250 square feet in area which are prefabricated and assembled on site or preassembled and delivered on site and have walls, roofs, and a floor constructed of granite, marble, or reinforced concrete.
- (k) A building or structure having less than 1,000 square feet which is constructed and owned by a natural person for hunting and which is repaired or reconstructed to the same dimension and condition as existed on January 1, 2011, if the building or structure:
  - 1. Is not rented or leased or used as a principal residence;
  - 2. Is not located within the 100-year floodplain according to the Federal Emergency Management Agency's current Flood Insurance Rate Map; and
  - 3. Is not connected to an offsite electric power or water supply.

With the exception of paragraphs (a), (b), (c), and (f), in order to preserve the health, safety, and welfare of the public, the Florida Building Commission may, by rule adopted pursuant to chapter 120, provide for exceptions to the broad categories of buildings exempted in this section, including exceptions for application of specific sections of the code or standards adopted therein. The Department of Agriculture and Consumer Services shall have exclusive authority to adopt by rule, pursuant to chapter 120, exceptions to nonresidential farm buildings exempted in paragraph (c) when reasonably necessary to preserve public health, safety, and welfare. The exceptions must be based upon specific criteria, such as under-roof floor area, aggregate electrical service capacity, HVAC system capacity, or other building requirements. Further, the commission may recommend to the Legislature additional categories of buildings, structures, or facilities which should be exempted from the Florida Building Code, to be provided by law. The Florida Building Code does not apply to temporary housing provided by the Department of Corrections to any prisoner in the state correctional system.

(11)(a) In the event of a conflict between the Florida Building Code and the Florida Fire Prevention Code and the Life Safety Code as applied to a specific project, the conflict shall be resolved by agreement between the local building code enforcement official and the local fire code enforcement official in favor of the requirement of the code which offers the greatest degree of lifesafety or alternatives which would provide an equivalent degree of lifesafety and an equivalent method of construction. Local boards created to address issues arising under the Florida Building Code or the Florida Fire Prevention Code may combine the appeals boards to create a single, local board having jurisdiction over matters arising under either code or both codes. The combined local appeals board may grant alternatives or modifications through procedures outlined in NFPA 1, Section 1.4, but may not waive the requirements of the Florida Fire Prevention Code. To meet the quorum requirement for convening the combined local appeals board, at least one member of the board who is a fire protection contractor, a fire protection design professional, a fire department operations professional, or a fire code enforcement professional must be present.

(b) Any decision made by the local fire official regarding application, interpretation, or enforcement of the Florida Fire Prevention Code or by the local building official regarding application, interpretation, or enforcement of the Florida Building Code, or the appropriate application of either code or both codes in the case of a conflict between the codes, may be appealed to a local administrative board designated by the municipality, county, or special district having firesafety responsibilities. If the decision of the local fire official and the local building official is to apply the provisions of either the Florida Building Code or the Florida Fire Prevention Code and the Life Safety Code, the board may not alter the decision unless the board determines that the application of such code is not reasonable. If the decision of the local fire official and the local building official is to adopt an alternative to the codes, the local administrative board shall give due regard to the decision rendered by the local officials and may modify that decision if the administrative board adopts a better alternative, taking into consideration all relevant circumstances. In any case in which the local administrative board adopts alternatives to the decision rendered by the local fire official and the local building official, such alternatives shall provide an equivalent degree of lifesafety and an equivalent method of construction as the decision rendered by the local officials.

(c) If the local building official and the local fire official are unable to agree on a resolution of the conflict between the Florida Building Code and the Florida Fire Prevention Code and the Life Safety Code, the local administrative board shall resolve the conflict in favor of the code which offers the greatest degree of lifesafety or alternatives which would provide an equivalent degree of lifesafety and an equivalent method of construction.

(d) All decisions of the local administrative board or, if none exists, the local building official and the local fire official in regard to the application, enforcement, or interpretation of the Florida Fire Prevention Code, or conflicts between the Florida Fire Prevention Code and the Florida Building Code, are subject to review by a joint committee composed of members of the Florida Building Commission and the Fire Code Advisory Council. If the joint committee is unable to resolve conflicts between the codes as applied to a specific project, the matter shall be resolved pursuant to paragraph (1)(d). Decisions of the local administrative board related solely to the Florida Building Code are subject to review as set forth in s. 553.775.

(e) The local administrative board shall, to the greatest extent possible, be composed of members with expertise in building construction and firesafety standards.

(f) All decisions of the local building official and local fire official and all decisions of the administrative board shall be in writing and shall be binding upon a person but do not limit the authority of the State Fire Marshal or the Florida Building Commission pursuant to paragraph (1)(d) and ss. [633.104](#) and [633.228](#). Decisions of general application shall be indexed by building and fire code sections and shall be available for inspection during normal business hours.

(12) Except within coastal building zones as defined in s. [161.54](#), specification standards developed by nationally recognized code promulgation organizations to determine compliance with engineering criteria of the Florida Building Code for wind load design shall not apply to one or two family dwellings which are two stories or less in height unless approved by the commission for use or unless expressly made subject to said standards and criteria by local ordinance adopted in accordance with the provisions of subsection (4).

(13) The Florida Building Code does not apply to, and no code enforcement action shall be brought with respect to, zoning requirements, land use requirements, and owner specifications or programmatic requirements which do not pertain to and govern the design, construction, erection, alteration, modification, repair, or demolition of public or private buildings, structures, or facilities or to programmatic requirements that do not pertain to enforcement of the Florida Building Code. Additionally, a local code enforcement agency may not administer or enforce the Florida Building Code to prevent the siting of any publicly owned facility, including, but not limited to, correctional facilities, juvenile justice facilities, or state universities, community colleges, or public education facilities, as provided by law.

(14) The general provisions of the Florida Building Code for buildings and other structures shall not apply to commercial wireless communication towers when such general provisions are inconsistent with the provisions of the code controlling radio and television towers. This subsection is intended to be remedial in nature and to clarify existing law.

(15) An agency or local government may not require that existing mechanical equipment located on or above the surface of a roof be installed in compliance with the requirements of the Florida Building Code except during reroofing when the equipment is being replaced or moved and is not in compliance with the provisions of the Florida Building Code relating to roof-mounted mechanical units.

(16) The Florida Building Code must require that the illumination in classroom units be designed to provide and maintain an average of 40 foot-candles of light at each desktop. Public educational facilities must consider using light-emitting diode lighting before considering other lighting sources.

(17) A provision of the International Residential Code relating to mandated fire sprinklers may not be incorporated into the Florida Building Code as adopted by the Florida Building Commission and may not be adopted as a local amendment to the Florida Building Code. This subsection does not prohibit the application of cost-saving incentives for residential fire sprinklers that are authorized in the International Residential Code upon a mutual agreement between the builder and the code official. This subsection does not apply to a local government that has a lawfully adopted ordinance relating to fire sprinklers which has been in effect since January 1, 2010.

(18) In a single-family dwelling, makeup air is not required for range hood exhaust systems capable of exhausting:

- (a) Four hundred cubic feet per minute or less; or
- (b) More than 400 cubic feet per minute but no more than 800 cubic feet per minute if there are no gravity vent appliances within the conditioned living space of the structure.

(19) The Florida Building Code shall require two fire service access elevators in all buildings with a height greater than 120 feet measured from the elevation of street-level access to the level of the highest occupiable floor. All remaining elevators, if any, shall be provided with Phase I and II emergency operations. Where a fire service access elevator is required, a 1-hour fire-rated fire service access elevator lobby with direct access from the fire service access elevator is not required if the fire service access elevator opens into an exit access corridor that is no less than 6 feet wide for its entire length and is at least 150 square feet with the exception of door openings, and has a minimum 1-hour fire rating with three-quarter hour fire and smoke rated openings; and during a fire event the fire service access elevator is pressurized and floor-to-floor smoke control is provided. However, where transient residential occupancies occur at floor levels more than 420 feet above the level of fire service

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access, a 1-hour fire-rated service access elevator lobby with direct access from the fire service access elevator is required. Standpipes in high-rise buildings of Florida Building Code—Building Occupancy Group R1 or R2 must be located in stairwells and are subject only to the requirements of the Florida Fire Prevention Code and NFPA 14, Standard for the Installation of Standpipes and Hose Systems, adopted by the State Fire Marshal.

(20) The Florida Building Commission may not:

(a) Adopt the 2016 version of the American Society of Heating, Refrigerating and Air-Conditioning Engineers Standard 9.4.1.1(g).

(b) Adopt any provision that requires a door located in the opening between a garage and a single-family residence to be equipped with a self-closing device.

**History.**—s. 4, ch. 74-167; s. 3, ch. 75-85; s. 1, ch. 77-365; s. 225, ch. 79-400; s. 1, ch. 80-106; s. 6, ch. 82-197; s. 2, ch. 84-273; s. 1, ch. 85-97; s. 33, ch. 86-191; s. 1, ch. 87-287; s. 1, ch. 88-142; s. 1, ch. 89-369; s. 2, ch. 91-172; s. 41, ch. 91-220; s. 49, ch. 95-144; s. 1, ch. 97-177; ss. 39, 40, 65, ch. 98-287; s. 61, ch. 98-419; ss. 73, 74, 75, ch. 2000-141; s. 62, ch. 2000-154; ss. 25, 34, 35, 36, ch. 2001-186; ss. 2, 3, 4, 5, ch. 2001-372; s. 86, ch. 2002-1; ss. 1, 14, ch. 2002-293; s. 66, ch. 2003-1; s. 663, ch. 2003-261; s. 7, ch. 2005-147; s. 1, ch. 2005-191; s. 4, ch. 2006-65; s. 7, ch. 2007-1; s. 4, ch. 2007-187; s. 140, ch. 2008-4; s. 10, ch. 2008-191; s. 108, ch. 2008-227; s. 1, ch. 2010-99; s. 32, ch. 2010-176; s. 14, ch. 2011-208; s. 30, ch. 2011-222; s. 14, ch. 2012-13; s. 148, ch. 2013-183; s. 14, ch. 2013-193; s. 18, ch. 2014-154; s. 17, ch. 2016-129; s. 11, ch. 2017-149; s. 6, ch. 2019-75; s. 2, ch. 2021-201.

<sup>1</sup>**Note.**—The amendment by s. 2, ch. 2021-201, changed the reference from "subparagraphs 7. and 9." to "paragraphs (f) and (g)" to conform to the redesignation of subunits in subsection (4) by that law. Subparagraph (b)7. was redesignated as paragraph (f), and subparagraph (b)9. was redesignated as paragraph (h).

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# TAC: Code Administration

Total Mods for **Code Administration** in **Pulled off Consent by Interested Entity** : 1

Total Mods for report: 6

## Sub Code: Building

CA10334

6

Date Submitted	02/13/2022	Section	110	Proponent	Greg Johnson
Chapter	1	Affects HVHZ	No	Attachments	Yes
TAC Recommendation	Pulled off Consent by Interested Entity				
Commission Action	Pending Review				

### Comments

**General Comments Yes**

**Alternate Language No**

### Related Modifications

Type IV mass timber package of changes; Mods# 10098, 10099, 10161, 10162, 10163, 10167, 10169, 10174, 10248, 10254, 10255, 10328, and 10331. Pulled off consent by Greg Johnson TAC's Final action: TAC - Code Admin TAC - "D"

### Summary of Modification

Adds inspection requirements for fire resistance cover protection of mass timber connectors

### Rationale

see uploaded rationale

### Fiscal Impact Statement

#### Impact to local entity relative to enforcement of code

Minimal; inspection done concurrently with other framing or sheathing inspections.

#### Impact to building and property owners relative to cost of compliance with code

None; inspection done concurrently with other framing or sheathing inspections.

#### Impact to industry relative to the cost of compliance with code

None; inspection done concurrently with other framing or sheathing inspections.

#### Impact to small business relative to the cost of compliance with code

### Requirements

#### Has a reasonable and substantial connection with the health, safety, and welfare of the general public

This is a fire resistive construction provision

#### Strengthens or improves the code, and provides equivalent or better products, methods, or systems of construction

Improves the code by providing a fire resistive construction provision for mass timber connectors.

**Does not discriminate against materials, products, methods, or systems of construction of demonstrated capabilities**

No material is required or prohibited by this modification.

**Does not degrade the effectiveness of the code**

Improves the code by providing a fire resistive construction provision for mass timber connectors.

## 2nd Comment Period

CA10334-G1

Proponent Greg Johnson Submitted 8/17/2022 3:49:56 PM Attachments No  
Comment:

Nothing in the FL Building code prohibits mass timber construction. In fact, Sec. 602.4 provides requirements for mass timber elements, including Sec. 602.4.2 which addresses cross-laminated timber, a form of mass timber. Also, Sec. 104.11, Alternative materials, design and methods of construction and equipment permits AHJs to accept mass timber construction types as an alternate method of construction. Modification 10334 provides requirements for inspection of fire resistive elements. These provisions should already be available in the FL Building Code for already permissible buildings and those that may be accepted under Sec. 104.11.

## 2nd Comment Period

CA10334-G2

Proponent ashley ong Submitted 8/26/2022 4:04:10 PM Attachments No  
Comment:

Building Officials Association of Florida (BOAF) supports this modification.

## 2nd Comment Period

CA10334-G3

Proponent Sam Francis Submitted 8/26/2022 10:18:43 PM Attachments No  
Comment:

I urge the adoption of the original modification

- 
- 1.
- **[A]110.3 Required inspections.**

The building official upon notification from the permit holder or his or her agent shall make the following inspections, and shall either release that portion of the construction or shall notify the permit holder or his or her agent of any violations which must be corrected in order to comply with the technical codes. The building official shall determine the timing and sequencing of when inspections occur and what elements are inspected at each inspection.

- **Building**

1. 1.Foundation inspection. To be made after trenches are excavated and forms erected and shall at a minimum include the following building components:
  - •Stem-wall
  - •Monolithic slab-on-grade
  - •Piling/pile caps
  - •Footers/grade beams
1. 1.1.In flood hazard areas, upon placement of the lowest floor, including basement, and prior to further vertical construction, the elevation certification shall be submitted to the authority having jurisdiction.
2. 2.Framing inspection. To be made after the roof, all framing, fireblocking and bracing is in place, all concealing wiring, all pipes, chimneys, ducts and vents are complete and shall at a minimum include the following building components:
  - •Window/door framing
  - •Vertical cells/columns
  - •Lintel/tie beams
  - •Framing/trusses/bracing/connectors
  - •Draft stopping/fire blocking
  - •Curtain wall framing
  - •Energy insulation
  - •Accessibility
  - •Verify rough opening dimensions are within tolerances.

2.1 In buildings of Types IV-A, IV-B, and IV-C construction, where connection fire-resistance ratings are provided by wood cover calculated to meet the requirements of Section 2304.10.1, inspection of the wood cover shall be made after the cover is installed, but before any other coverings or finishes are installed.

**ADM35-19 Type IV-A, IV-B, and IV-C connection protection inspection**

ICC Ad Hoc Committee on Tall Wood Buildings (TWB) determined that the proper construction of the fire resistance rating of mass timber structural elements was important enough, as demonstrated in a series of TWB proposals including this one, to warrant a specific requirement to inspect mass timber connections. The proposal complements the other code change submissions (e.g. Chapters, 7 “Fire and Smoke Protection Features”, 17 “Special Inspections and Tests”, and 23 “Wood”), and recognizes that building officials have the ability to inspect the protection of connections as part of the normal permit inspection process (e.g. footing and foundations, slabs, framing, etc.). The TWB, following input by code officials, did not feel this provision warranted being incorporated into Chapter 17 “Special Inspections and Tests” as this field inspection process did not require any special expertise for inspection nor tools for testing that were outside the capabilities of building officials today. However, the TWB did believe that some form of inspection should take place since the connections of the structural members, and their protection to achieve a fire resistance rating, represent a significant component to the entire design of mass timber buildings.

The Ad Hoc Committee for Tall Wood Buildings (AHC-TWB) was created by the ICC Board of Directors to explore the building science of tall wood buildings with the scope to investigate the feasibility of and take action on developing code changes for these buildings. Members of the AHC-TWB were appointed by the ICC Board of Directors. Since its creation in January, 2016, the AHC-TWB has held multiple open meetings and numerous Work Group conference calls. Related documentation and reports of the TWB are posted on the AHC-TWB website at <https://www.iccsafe.org/codes-tech-support/cs/icc-ad-hoc-committee-on-tall-wood-buildings/> (accessed 02-12-2022)