

DS 2021-044 – Roslyn J. Chancey

Petitioner states that the City of Kissimmee has adopted a local ordinance, # 13-1-14(L)(3)(e), which prohibits sleeping in a "kitchen," and that the City enforced this ordinance against her, resulting in the removal of beds from the room that the City determined to be a "kitchen." Petitioner maintains that only half of the room is used for the preparation of food, and wishes to know if the entire room should be considered a "kitchen." Petitioner states that her interests will be substantially affected if the local ordinance continues to be enforced against her, since fewer tenants will be able to occupy her rental property.

Rule 28-105.001, F.A.C., states “[a] declaratory statement is a means for resolving a controversy or answering questions or doubts concerning the applicability of statutory provisions, rules, or orders over which the agency has authority.”

Florida courts have stated that “a petition for a declaratory statement which seeks approval or disapproval of conduct which has already occurred is properly denied.” *See Novick v. Dep’t of Health*, 816 So. 2d 1237, 1240 (Fla 5th DCA 2002) (*citing Chiles v. Dep’t of State, Div. of Elections*, 711 So 2d 151 (Fla. 1st DCA 1998)).

Petitioner’s query involves an already completed kitchen and structure; there is nothing prospective about it, and there is no work being done which implicates the Florida Building Code. Furthermore, Petitioner’s actual interest is in how the City of Kissimmee defines and interprets the term “kitchen” through its local ordinance, not in how the term may be defined in the Code.

Staff recommends that this petition be denied, since the Commission has no jurisdiction to interpret a local ordinance, and it addresses past conduct.