
**FLORIDA DEPARTMENT OF COMMUNITY AFFAIRS
OFFICE OF THE GENERAL COUNSEL
GENERAL GOVERNMENT SECTION
2555 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-2100
(850) 488-0410 SUNCOM 278-0410
FAX (850) 922-2679**

M E M O R A N D U M

TO: Members of the Code Enforcement/Administration TAC
and Mo Madani

FROM: Alfred O. Bragg
Suzanne H. Schmith

SUBJECT: Proposed Administration Appendix J

DATE: April 8, 1999

We have completed a legal sufficiency review of Administration Appendix J as proposed jointly by Broward and Miami-Dade Counties. The proposal has many deficiencies which should be addressed by the proponents prior to any action being taken by the TAC. The following is a general summary of the categories of deficiencies with specific examples taken from the text of the proposal. Mr. Bragg will attend the April TAC meeting to discuss these issues with TAC members.

Internal cross-references: The proposed appendix contains numerous cross-references to code sections, tables and other appendices. It is unclear whether some of the documents referenced exist wholly within the South Florida Building Code, or may be found in the Standard Building Code (1997 Edition) as the base code for the Florida Building Code. An additional concern is, if the referenced tables or appendices are within the base code, whether the TAC has previously modified the referenced standards. Examples include J104.1.2 (reference to Appendix F for construction in Fire Zones); J104.9.1.1 (reference to table JIA); and J104.9.3 (reference to Table 1003.1). All internal references should be checked against the base code for accuracy.

Requirements conflicting with or duplicative of other chapters: The proposed appendix contains some requirements which are addressed by technical provisions currently being incorporated into the first draft Florida Building Code. The appendix cannot contain provisions which conflict with another section of the code, and may only contain more stringent provisions than those in the administrative chapter, not the technical chapters. Examples to be addressed include: J104.10 Historic Buildings;

J105.2 relating to debris removal; and J202.6 (c)(5) relating to safety barriers for swimming pools.

It is appropriate for the Special Occupancy TAC to review these provisions for conflict with similar provisions currently proposed for inclusion in the Florida Building Code. Furthermore, if these are technical, rather than administrative requirements, they should be removed from an administrative appendix.

Provisions outside of the Commission's authority: The proposed appendix contains several sections which are beyond the authority of the Florida Building Commission to adopt by rule. Chapter 98-287, Fla. Laws, directs that the code contain all provisions for enforcement of and compliance with the technical codes (*see* s. 553.73 (1) and (2), F.S.), and specifically requires that the administrative component establish the standards for issuance of mandatory certificates of occupancy, minimum types of inspections, and procedures for plans review (*see* s. 553.73(4)(a), F.S.). As discussed in Ms. Schmith's memorandum to the TAC dated February 7, 1999, the intent was for a local jurisdiction to retain the authority to govern the "business practices" of its building department.

The following provisions are outside of the authority of the commission:

J201 provisions, except those styled "Appointment of . . ." and "Powers and Duties of . . ." the various building officials. Such provisions properly belong in the civil service rules of the local jurisdiction and are within the "business practices" of the building department. Further, J201.47 through J201.52 belong in the Florida Fire Prevention Code rather than the Florida Building Code – the Building Commission does not have the authority to address Fire Code Official qualifications.

J202 and J203 provisions – While the commission has the authority to adopt standards and criteria for demolition of buildings, structures and facilities, it is unclear whether the commission has the authority to require demolition of buildings for "illegal" or "improper" use; to mandate the creation of administrative boards (e.g., Unsafe Structures Board and Board of Rules and Appeals), provide for their composition, provide for judicial review of their actions, require the swearing and subpoenaing of witnesses and provide for the duties of the local jurisdiction's legal counsel relative thereto.

J204 Alternative Materials and Types of Construction – The TAC has before it for consideration a memorandum from Ms. Schmith relating to the revision of the Standard Building Code provision (section 103.7) on this same issue. Please refer

to that memorandum for a discussion of the pertinent product approval issues.

J205 Violations and Penalties – This is superceded by the chapter 98-287, Fla. Laws.

J307.2 Approval of Construction Products and Assemblies – This section is superceded by the Product Evaluation and Approval Process to be adopted by the commission by rule. Such requirements will not be located within the rule adopting the Florida Building Code.

Additionally, the proposal contains undefined terms and terminology which is different from that used in the base code. Definitions should be provided for undefined terms and terms which are intended to have a different meaning. Otherwise, the terms should be revised to conform to the base code language.