

Summary of Issue:

Petitioner states that the City of Pompano Beach Building Division is requiring Petitioner to install an automatic sprinkler system at the facility where it has manufactured custom cabinetry for a number of years without any such sprinkler system in place, based upon the Division's interpretation of various Florida Building Code provisions. Petitioner also states that the Division has asserted that the addition and replacement of shop equipment at the facility must comply with the Florida Building Code, and requires a permit. Petitioner seeks a declaratory statement from the Florida Building Commission on a number of code interpretations made by the local enforcement authority which Petitioner disputes.

Relevant Provisions:

553.775(3)(c): "The commission shall review decisions of local building officials and local enforcement agencies regarding interpretations of the Florida Building Code or the Florida Accessibility Code for Building Construction after the local board of appeals has considered the decision, if such board exists, and if such appeals process is concluded within 25 business days."

553.775(3)(c)1.: "The commission shall coordinate with the Building Officials Association of Florida, Inc., to designate a panel composed of seven members to hear requests to review decisions of local building officials."

553.775(3)(c)9.: "This paragraph provides the exclusive remedy for addressing requests to review local interpretations of the Florida Building Code or the Florida Accessibility Code for Building Construction and appeals from review proceedings."

Petitioner's Questions:

Petitioner presents the following questions:

- 1) Is a prefabricated steel storage rack that is not part of the building structure regulated by Chapter 22 of the Florida Building Code, Building?
- 2) FBC 1001.2.2 states that: Where the occupancy classification of a building changes, the provisions of Sections 1002 through 1012 shall apply. This includes a change of occupancy classification and a change to another group within an occupancy classification. FBC 1001.3 states that: A certificate of occupancy shall be issued where a change of occupancy occurs that results in a different occupancy classification as determined by the Florida Building Code, Building. To determine whether there is a change of the occupancy group as shown in the building's original certificate of occupancy ("CO"), which version of the FBC, Building applies, the version in effect on the date of the change in use or the version in effect when the CO was issued?
- 3) FBC Section 903.2.4.1 states that: "An automatic sprinkler system shall be provided throughout all Group F-1 occupancy fire areas that contain woodworking operations in excess of 2,500 square

feet in area which generate finely divided combustible waste or use finely divided combustible materials. Is an automatic sprinkler system required where the woodworking area noted above comprises 2,500 square feet or less of the overall F-1 fire area?

4) Is shop equipment like saws, drill presses, air compressors or similar equipment installed within a building regulated under the Florida Building Code, Building or Florida Building Code, Mechanical?

5) Is the replacement or repair of shop equipment regulated under the Florida Building Code?

Staff's Suggested Answer:

Petitioner is requesting that the Florida Building Commission review, and potentially overrule, interpretations of Florida Building Code provisions made by the City of Pompano Beach Building Division.

Section 553.775(3)(c), Florida Statutes (2023), provides a specific means and process for the review of local enforcement authority interpretations of the Florida Building Code: "The commission shall review decisions of local building officials and local enforcement agencies regarding interpretations of the Florida Building Code or the Florida Accessibility Code for Building Construction after the local board of appeals has considered the decision, if such board exists, and if such appeals process is concluded within 25 business days."

After any local appeal process has been exhausted, section 553.775(3)(c)1., Florida Statutes (2023), provides that "the commission shall coordinate with the Building Officials Association of Florida, Inc., to designate a panel composed of seven members to hear requests to review decisions of local building officials."

The interpretation issued by that panel may subsequently be appealed to the Florida Building Commission. *See* section 553.775(3)(c)7., Florida Statutes (2023). Pursuant to section 553.775(3)(c)9., Florida Statutes, this process "provides the exclusive remedy for addressing requests to review local interpretations of the Florida Building Code or the Florida Accessibility Code for Building Construction and appeals from review proceedings." Accordingly, it would be improper for the Commission to issue a declaratory statement on these disputed matters.

Furthermore, Petitioner's inquiry is not prospective in nature, but rather involves a dispute that has recently arisen over actions that occurred in the past. The courts have stated that "a petition for a declaratory statement which seeks approval or disapproval of conduct which has already occurred is properly denied." *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)).

Because Petitioner asks the Commission to review interpretations of the Florida Building Code by a local enforcement authority, and because this Petition is not prospective in nature and involves conduct which has already occurred, the Commission declines to answer.