

August 27, 2020

James DiPietro, Administrative Director  
The Broward County Board of Rules & Appeals  
1 N. University Drive, Suite #3500-B  
Plantation, FL 33324

**ADVISORY OPINION ON ELEVATORS REQUIRED IN BUILDINGS OVER ONE STORY**

Jim,

**ISSUE:**

You have asked your attorney to review the prospect of creating a zoning regulation which establishes a requirement for installation of an elevator on buildings which are above one (1) story.

We have examined this matter and reviewed it from the building aspect, the accessibility aspect and the safety aspect. *See Krueger v. Quest Diagnostics, Inc.* 280 So.3d 518 (Fla. 2d DCA 2019), Fla. Accessibility Code 61G20-4.002, F.S. Sec 201 and 553 et.al. \* *We note that the Florida Accessibility Code is incorporated by reference in Chapter 11 of the Florida Building Code.*

**RULE:**

After review of case law and statute we first note that the purposes of zoning regulations and the Florida Building Code are fundamentally different.

The basic purpose and function of zoning laws is to regulate, systematize, and stabilize the growth of cities and towns by districts and thus promote general order, convenience, health, and beauty, the latter consideration often dominates in the enactment of such ordinances. *See Aiken v. E.B. Davis, Inc.*, 106 Fla. 675 (Supreme Court of Florida, 1932). Subsequent rulings have included broader definitions but all essentially include the division of a municipality into residential, commercial, and industrial or zones, that are for the most part separate from one another, with the use of property within each district being reasonably uniform. The process helps to ensure many things including; 1) privacy and safety for residential properties, 2) the protection of property values, 3) restrictions on encroachments by commercial enterprise, and 4) the smooth, regulated flow of traffic and transportation of goods and materials. *See Brevard County v. Woodham*, 223 So.2d 344 (Fla. 4<sup>th</sup> DCA 1969); *Alvey v. City of North Miami Beach*, 206 So.3d 67 (Fla. 3d DCA

2016) and; *Ellis v. City of Winter Haven*, 60 So. 2d 620 (Supreme Court of Florida, Special Division B. September 23, 1952).

The basic purpose and function of the Florida Building Code is set forth in the Code itself wherein is stated:

**101.3 Intent.** The purpose of this code is to establish the minimum requirements to safeguard the public health, safety and general welfare through structural strength, means of egress facilities, stability, sanitation, adequate light and ventilation, energy conservation, and safety to life and property from fire and other hazards attributed to the built environment and to provide safety to fire fighters and emergency responders during emergency operations.

See Fla. Building Code, Section 101.3

#### **ANALYSIS:**

The modification or imposition of any code or regulation which ultimately requires structural changes to existing code requirements, or modifications of ingress or egress, is necessarily subsumed by the Florida Building Code. It is axiomatic that there can only be one (1) version of the Florida Building Code and changes at a municipal level are forbidden pursuant to Section 9.02 (A)(2) of the Broward County Charter (*infra*). We cannot agree that calling something by a certain name changes its ultimate application or impact on the statutorily regulated matters set forth in the Florida Building Code. As noted in Miami Dade Co v. Valdes, 9 So 23d, 17, 22 (Fla. 3rd DCA 2009) "legal consequences are "determined not by what something is called, but by what it does" and is.

We would further note Section 9.02 (A)(2) of the Broward County Charter wherein is stated:

The provisions of the Florida Building Code shall be amended only by the Board of Rules and Appeals and only to the extent and in the manner specified in the Building Code. The County Commission or a Municipality shall not enact any ordinance in conflict with Chapter 98-287 and Chapter 2000-141, Laws of Florida, as may be amended from time to time.

See Broward County Charter at 9.02.

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**CONCLUSION:**

We state that a municipality is forbidden from designating requirements for accessibility - specifically installation of an elevator - as a zoning regulation in order to avoid the prohibition against modifications to the Florida Building Code.

If you have any questions please contact us.

Highest regards,

Charles M. Kramer  
Board Certified by the Florida Bar  
General Counsel, Board of Rules and Appeals