

**ADOPTION OF LOCAL
AMENDMENTS TO THE FLORIDA FIRE PREVENTION CODE**

With the adoption of the Florida Fire Prevention Code, Chapter 69A-60, Florida Administrative Code, local governments were severely restricted in their ability to adopt local amendments and variations. The legislative intent was to adopt a statewide unified Building Code and Fire Prevention Code, and to minimize the number of local variations to them.ⁱ

The legislature did provide three methods for local governments to amend the Florida Fire Prevention Code.ⁱⁱ In all cases the local amendment must be more stringent than, that is, it must provide a higher degree of life safety than, the Florida Fire Prevention Code.

**METHOD I: §633.0215(3)
Submission to State Fire Marshal, Rejection by State Fire Marshal,
Adoption by Local Government**

Every three years the State Fire Marshal must adopt the most current edition of NFPA 1 and NFPA 101 in the Florida Fire Prevention Code.ⁱⁱⁱ In doing so, the State Fire Marshal is directed to consider local and regional amendments to the Florida Fire Prevention Code proposed to it which can be adopted as local and regional amendments if in the best interest of the state as a whole.^{iv} One of the methods for a local government to adopt an amendment is for the local government to

- a. submit the proposed amendment to the State Fire Marshal, and
- b. have the State Fire Marshal accept or reject it.

If the State Fire Marshal accepts it, it becomes part of the Florida Fire Prevention Code but only applicable to the local city, county, or region which proposed it.

If the State Fire Marshal rejects the local amendment, the local government may proceed to adopt it as its own local variation of the Florida Fire Prevention Code. Since the law^v does not prescribe any particular process for the local government to adopt the local ordinance, the local government may adopt it as it would any other local ordinance. Note that this method may only be used during each triennial review. The next triennial review is scheduled to occur in 2007.

**METHOD II: §633.0215(10)
Amendment Must Meet
1 of 3 Statutory Requirements**

Another way for a local government to adopt an amendment to the Florida Fire Prevention Code is for it to proceed under §633.0215(10), F.S. If it adopts a local amendment under this subsection, its local amendment is not reviewable by the State Fire Marshal, nor does it sunset every three years. It continues in force until the local government repeals it.^{vi}

However, to adopt a local amendment under this subsection, the local ordinance must meet one or more of the following criteria:

- (a) The local authority has adopted, by ordinance, a fire service facilities and operation plan that outlines goals and objectives for related equipment, personnel, and capital improvement needs of the local authority related to the specific amendment for the next 5 years;
- (b) The local authority has adopted, by ordinance, a provision requiring proportionate reduction in, or rebate or waivers of, impact or other fees or assessments levied on buildings that are built or modified in compliance with the more stringent firesafety standards required by the local amendment; or
- (c) The local authority has adopted, by ordinance, a growth management plan that requires buildings and structures to be equipped with more stringent firesafety requirements required by the local amendment when these firesafety requirements are used as the basis for planning infrastructure development, uses, or housing densities.

If the local ordinance meets at least one of those criteria and provides a higher degree of life safety than the Florida Fire Prevention Code, the local government may adopt as a local ordinance and transmit it to the State Fire Marshal. The State Fire Marshal simply “publishes it to” the Florida Fire Prevention Code,^{vii} but such publication does not indicate approval by the State Fire Marshal. Again, the local government’s normal ordinance adoption processes may be used.

METHOD III: §633.025(4)

Specific Statutory Procedures & Appeals

Finally, a local government may adopt a local amendment in accordance with §633.025(4), F.S. If the local government chooses this method, the following procedures apply:

(a) The local governing body shall determine, following a public hearing which has been advertised in a newspaper of general circulation at least 10 days before the hearing, if there is a need to strengthen the requirements of the minimum firesafety code adopted by such governing body. The determination must be based upon a review of local conditions by the local governing body, which review demonstrates that local conditions justify more stringent requirements than those specified in the minimum firesafety code for the protection of life and property or justify requirements that meet special situations arising from historic, geographic, or unusual conditions.

(b) Such additional requirements shall not be discriminatory as to materials, products, or construction techniques of demonstrated capabilities.

(c) Paragraphs (a) and (b) apply solely to the local enforcing agency's adoption of requirements more stringent than those specified in the Florida Fire Prevention Code and the Life Safety Code that have the effect of amending building construction standards. Upon request, the enforcing agency shall provide a person making application for a building permit, or any state agency or board with construction-related regulation responsibilities, a listing of all such requirements and codes.

(d) A local government which adopts amendments to the minimum firesafety code must provide a procedure by which the validity of such amendments may be challenged by any substantially affected party to test the amendment's compliance with the provisions of this section.

1. Unless the local government agrees to stay enforcement of the amendment, or other good cause is shown, the challenging party shall be entitled to a hearing on the challenge within 45 days.

2. For purposes of such challenge, the burden of proof shall be on the challenging party, but the amendment shall not be presumed to be valid or invalid.

This subsection gives local government the authority to establish firesafety codes that exceed the minimum firesafety codes and standards adopted by the State Fire Marshal. The Legislature intends that local government give proper public notice and hold public hearings before adopting more stringent firesafety codes and standards. A substantially affected person may appeal, to the department [the Department of Financial Services], the local government's resolution of the challenge, and the department shall determine if the amendment complies with this section. Actions of the department are subject to judicial review pursuant to s. 120.68. The department shall consider reports of the Florida Building Commission, pursuant to part VII of chapter 553, when evaluating building code enforcement.

If those procedures are followed, the local government can successfully vary the terms of the Florida Fire Prevention Code PROVIDED, again, that the local ordinance is more stringent than the Florida Fire Prevention Code. An ordinance adopted under this method sunsets every three years, when the new editions of NFPA 1 and NFPA 101 are adopted.

Because the legislature saw fit to adopt a unified building and fire prevention code, it provided a means for local governments to vary it, but made the process relatively more difficult than prior to the adoption of the Florida Fire Prevention Code. The State Fire Marshal discourages adoption of local amendments, as does the Florida Fire Prevention Code, unless they are truly needed because of a unique feature of a local area. The wishes of the legislature in this respect should be honored to as great a degree as possible.

ⁱ Section 58, Chapter 98-287, Laws of Florida.

ⁱⁱ Sections 633.0215(3) & (10), and 633.025(4), F.S.

ⁱⁱⁱ Section 633.0215(1).

^{iv} Section 633.0215(3)(a) through (c), F.S.

^v Section 633.0215(3), F.S.

^{vi} Section 633.0215(10), F.S.

^{vii} Section 633.0215(10), F.S.