

CITY OF GAINESVILLE
Office of the City Attorney

Memorandum

Phone: 334-5011/Fax 334-2229

TO: Community Development Committee

DATE: July 7, 2006

FROM: Office of the City Attorney

SUBJECT: Energy Efficiency Requirements as part of the City of Gainesville Minimum Housing Code. (Item Nos. 050761 related to 040177)

Issue Presented for Review

The Committee asked the City Attorney's Office to determine whether the City Commission can legally incorporate energy efficiency requirements into the Gainesville Minimum Housing Code? Additionally, may the city make a distinction, for the purpose of energy conservation, between rental units and owner-occupied units?

Brief Answer

The Minimum Housing Code may properly provide for the minimum standards for the human habitation of structures. Requiring greater energy efficiency, however, is more properly regulated through the Florida Building Code, or through voluntary incentive programs offered by GRU.

Scope of Analysis

I conducted legal research into reported cases in Florida, the Florida Statutes, Florida Administrative Code, Florida Building Code, and reviewed the Gainesville City Ordinances. I consulted and had several follow-up email communications with Mary Anne Helton, Attorney for the FL Public Service Commission, Doug Murdock¹, Gainesville Building Inspection Department, and Raymond Manasco, Utilities Attorney for Gainesville Regional Utility.

Analysis and Legal Authority

To properly analyze this questions we must first clarify what does the term "energy efficiency requirements" mean? The Florida Building Code defines energy as follows:

ENERGY. The capacity for doing work. It takes a number of forms that may be transformed from one into another such as thermal (heat), mechanical (work), electrical, and chemical. Customary measurement units are British thermal units (Btu).

¹ Doug Murdock was involved in the drafting of the 2004 FL Building Code.

Based on this definition, discussions, and meetings with city staff and officials, “energy efficiency requirements” can be defined to mean any requirements imposed with the purpose of maximizing the output per energy unit consumed. This would include insulation or structural elements of the structure such as ceilings, walls, and doors, as well as equipment such as, air conditioning/heating systems and water heaters among others.

Each of the following methods create blanket classifications which would apply new standards on new constructions, additions, or renovations², and new service agreements.³ To go further and limit the scope of stricter standards to apply to rental housing only would likely create an impermissible class distinction between rental properties and owner-occupied properties where there exists no rational basis for doing so within those contexts. For example, in terms of the Florida Building Code, the purpose of which is “to establish the minimum requirements to safeguard the public health, safety, and general welfare through structural strength, means of egress, stability, sanitation, adequate light and ventilation, energy conservation, and safety to life and property...”⁴ there is no rational basis for a distinction between single family rental or non-rental homes, or as between apartments and condominiums. That is to say that the means of ownership or occupancy is not pertinent to the intent of the Florida Building Code.

The Gainesville **Minimum Housing Code** is a means of implementing some of these measures through the city’s police powers if the Commission finds it necessary to protect the public health, welfare, and safety of its citizens. The Minimum Housing Code as it currently stands requires structurally sound homes, roofs without excessive leakage, an unobstructed means of egress, a bathroom, a kitchen, sanitary hot and cold running water, and other health related regulations.⁵ The intent of the Minimum Housing Code⁶ is to provide for minimum standards for human habitation of structures. This code applies equally to all housing in the city. In order to apply the code to rental units only, the city would need a rational basis for the distinction. Our research did not reveal any city in Florida that treats rental units different from any owner-occupied units for purposes of the Minimum Housing Code. For this reason, energy efficiency appears to fall outside of the scope of the Minimum Housing Code.

One city in another state does include some energy efficiency standards in its minimum housing code. The City of Burlington, Vermont regulates energy efficiency through its minimum housing code. However, section 18-502 of the Burlington, VT Minimum Housing Code exempts properties not rented from November 1st – March 31st, when the temperature averages 9.5°F.

It is also important to note that the Minimum Housing Code is concerned only with occupancy and habitability and it would appear that the intent is that the code applies both to owner-occupied dwellings and rental properties in the same way.

² In reference to regulation through the FL Building Code.

³ In reference to regulation as a term of GRU’s Service Agreement.

⁴ Florida Building Code, Section 13-101.3.

⁵ Gainesville Code of Ordinances, Chapter 13, Article 11.

⁶ Gainesville Code of Ordinances, Section 13-16 (3)

Next we examined the **Florida Building Code**, as this is where the State of Florida sets its uniform building requirements, including Energy Efficiency Standards,⁷ for new construction, additions, and renovations. That is to say that regulation requires these standards for new construction, additions, or renovations that require permitting and. The standards to not apply to existing structures which are not being in some way upgraded.⁸ Specifically, sub Chapter 13-6 sets forth the prescriptive energy efficiency requirements for residential units for single-family housing and multi-family housing structures of 3 stories or less which contain minimum requirements for the following:

1. Walls (R Ratings)
2. Doors
3. Ceilings (R Ratings)
4. Floors (R Ratings)
5. Air Infiltration (Allowable Air Infiltration Table)
6. Space Cooling Systems (Min Efficiency Requirements Table)
7. Space Heating Systems (Min Efficiency Requirements Table)
8. Ventilation Systems
9. Air Distribution Systems (R-Value Table)
10. Piping (Insulation Reqs)
11. Water Heating Systems (Minimum Performance Stds Table)

It is important to note that the Florida Building Code does not make a distinction between single-family homes and multi-family homes⁹ nor between rental and owner-occupied properties. The Florida Building Code instead distinguishes between residential buildings of 3 stories or less (Sub Chapter 13-6) and commercial buildings, and residential buildings over 3 stories (Sub Chapter 13-4).

While Chapter 13 of the Florida Building Code sets uniform statewide standards for energy efficiency, §553.73 of the FL Statutes provides a mechanism for local amendments, delineating the procedure and requirements for compliance when a local government decides to deviate from the Florida Building Code as adopted. The City of Gainesville could seek to require greater efficiency standards than as prescribed in the statewide building code. Local technical amendments applicable solely to Gainesville may be adopted after the City Commission determines at a public hearing which has been advertised for at least ten (10) days in a newspaper of general circulation, that there is a need to strengthen the Florida Building Code. The adopted amendment must be transmitted to the Florida Building Commission with a fiscal impact statement within 30 days of passage and does not become effective until 30 days after it has been received and published by the Florida Building Commission. Further, the adoption of any local amendments is valid only until the adoption of the new code every 3 years, at which point the Florida Building Commission will either adopt or deny the amendment. If the amendment is adopted, it becomes part of the Florida Building Code, if the amendment is denied; the city may readopt the amendment again. Additionally the city by interlocal agreement must establish a compliance review board to review challenges by substantially affected parties.

⁷ Florida Building Code, Chapter 13

⁸ FL Building Code, Section 13-101

⁹ Sub Chapter 13-6 regulates the Energy Efficiency standards for single-family homes, and multi-family homes under 3 stories.

Of course these standards would apply to all new construction, additions or renovations and would not apply to existing structures unless a permit is required.

Gainesville Regional Utility as an electrical service provider may require certain improvements as a condition of service, and does make a distinction between commercial and residential properties but there is no distinction between residential owner-occupied properties and residential rental properties. Gainesville Regional Utility at the moment may require upgrades to proper voltages for new construction and renovations before establishing service and must approve the premises prior to establishing service¹⁰. There does not appear to be a means by which the utility can require a land owner to upgrade their equipment for the purpose of energy efficiency unless it is directly related to public safety (see below PSC regulation 25-6.105).¹¹

The Public Service Commission which regulates privately held utilities also has a section regulating some activities of public utilities. Under FL Statute §366.05 the PSC has the power to prescribe “fair and reasonable rates and charges, classifications, standards of quality and measurements, and service rules and regulations to be observed by each public utility; to require repairs, improvements, additions, and extensions to the plant and equipment of any public utility when reasonably necessary to promote the convenience and welfare of the public and secure adequate service or facilities for those reasonably entitled thereto”.

However, in my discussion with Ms. Helton from the Public Service Commission, she informed me that the main purpose of the Public Service Commission is to provide for the safety and reliability of service, not energy efficiency regulation. We specifically discussed provision 25-6.105 (2) allowing for Refusal or Discontinuance of Service by Utilities; Ms. Helton noted that it is highly unlikely that the Commission would uphold a refusal of service for failure to comply with energy efficiency standards. The PSC does have a section on conservation¹², though the focus of that section is to set goals for utilities to be more energy efficient, but makes no mention of consumers other than in terms of data collection. The State of Florida currently seeks to regulate energy conservation only in the Florida Building Code.

GRU is owned by the City of Gainesville pursuant to the Charter and home rule powers. City Commission may set forth rules and regulations in the Gainesville City Code of Ordinances for the operation of GRU’s facilities.¹³ As the Chapter currently stands, the focus appears to be on ensuring availability of service to customers and prospective customers. Section 27-34 states that the city will supply electric service to any prospective customer within the corporate limits of the City of Gainesville and in the unincorporated areas of Alachua County, subject to certain conditions for extensions, modifications, or improvements of facilities where needed.

¹⁰ Gainesville Code of Ordinances, Section 27-23

¹¹ There is a requirement for backflow preventors, however, that requirement falls under a public safety requirement by the FL Dept. of Environmental Protection to prevent the backflow of pesticides and other chemicals into the water supply.

¹² Florida Administrative Code, Chapter 25-17

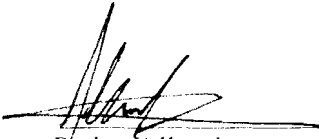
¹³ Gainesville Code of Ordinances, Chapter 27

GRU may also, by Gainesville ordinance¹⁴ use incentive programs to encourage customers upgrade their homes and equipment to more energy efficient standards. Currently GRU offers rebates for equipment purchases such as, heat recovery units, solar water heaters, as well as repairs such as, duct leak repairs. Rebates are issued as a credit on customers' GRU bill.


Conclusion

The City Commission may adopt greater energy efficiency for residential buildings. However, such standards would apply to all housing unless there is a rational basis to distinguish between, for example, rental housing and owner-occupied housing. The Minimum Housing code can be amended to enhance energy efficiency requirements relating to human habitation. The Florida Building Code may be amended to require greater energy efficiency standards for new construction subject to approval by the Florida Building Commission. Finally, GRU may offer voluntary incentive programs to encourage customers to acquire greater energy efficiency equipment.

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¹⁴ Gainesville Code of Ordinances, Section 27-5 (c)