

HEALTH & SAFETY

Health & Safety: Codes & Enforcement

Galaxy Fireworks, Inc. v. City of Orlando, 842 So. 2d 160 (Fla. 5th Dist. App. 2003)

Fire codes do not constitute land-use regulations under Florida statutory law and are thereby not governed by Florida statutes controlling land-development regulations. Also, for a court to consider whether a regulation arises from an unlawfully delegated legislative authority, a party must establish whether the regulation sought to be imposed upon that party arose from the questionable amendment. Objectionable fire code provisions must be established with specificity and should be brought in an administrative proceeding.

FACTS

In June 2001, Galaxy Fireworks, Inc., approached the City of Orlando about selling fireworks from a retail store in a downtown shopping center. In response, City Fire Marshal Machen requested that Galaxy supply three items by which Machen could address related fire safety issues. Machen requested: (1) an evaluation by a competent professional regarding the adequacy of the sprinkler system in the proposed store; (2) a list of the proposed fireworks to be sold and a Material Safety Data Sheet (MSDS) for each; and (3) the total amount of proposed fireworks to be kept in the store as measured in pounds. Galaxy provided only the names of 505 proposed fireworks to be sold at the store, but failed to provide the other information Machen requested.

On June 20, 2001, Machen reminded Galaxy not to begin operations until Galaxy provided the additional information. However, on or about that same day, Galaxy began selling fireworks from the store. On July 9, 2001, Galaxy's contractor notified Machen that the sprinkler system in the store did not meet the City's fire code. On October 30, 2001, Galaxy provided Machen with a list of fireworks in the store, the approximate weight of all of the fireworks, and a MSDS for each. On December 17, 2001, Machen informed Galaxy that the store could sell fireworks if Galaxy met

certain conditions. Galaxy did not attempt to comply with Machen's conditions. Instead, Galaxy filed suit.

ANALYSIS

Galaxy made three arguments in its attempt to gain a temporary or permanent injunction to keep the City from enforcing its fire code, thereby preventing Galaxy from operating its business. Galaxy first argued that the fire code was a land-development regulation and was improperly adopted. Second, Galaxy argued that the fire code was invalid because it adopted National Fire Prevention Association (NFPA) standards before reviewing them. And third, Galaxy argued that the fire code was not objective, which could lead to arbitrary and capricious applications, and, therefore, should not be applied.

Under Florida Statutes Section 163.3194(2), a governing body must refer a land-development regulation to a local planning agency or separate land-development-regulation commission for review after a comprehensive plan has been adopted. In this case, Galaxy contended that the City's fire code amounted to a land-development regulation that was never referenced after adoption. In dealing with this argument, the Fifth District Court of Appeal first noted the key difference between a land-development regulation and the City's fire code. The court found that, although land-development regulations determined whether the store could be built, the fire code mandated only an acceptable structure for the building to protect the public from fire hazards. Because of this difference, the fire code is not a land-development code and therefore does not require review by the land-development-regulation commission after adoption. Additionally, even if it were a land-development regulation, land-development regulations should not require formal review unless they amount to a "substantial restriction" on the use of the land. *Galaxy Fireworks, Inc.*, 842 So. 2d at 166 (citing *3299 N. Fed. Hwy., Inc. v Bd. of County Commrs. of Broward County*, 646 So. 2d 215, 223–224 (Fla. 4th Dist. App. 1994)). The court found that the City's fire code did not fit into this category, because its primary purpose was not land-use regulation, but only prevention of harm to the public.

In its second argument, Galaxy intended to demonstrate that the fire code was invalid because the code provision adopted all NFPA amendments before reviewing them. Such automatic adoptions "may constitute an unlawful delegation of powers by a legis-

lative body.” *Id.* at 167. However, because Galaxy did not establish whether the provisions Machen sought to impose were from a prospective amendment, the court declined to address this issue.

Galaxy’s third argument was that the fire code did not contain specific, objective criteria. However, the Fifth District found that Galaxy neither specified particular objectionable provisions nor specified any arbitrary or capricious actions under the fire code. Without such specific allegations, the court assumed that Galaxy sought to strike down the fire code *en toto*, a feat that the court dismissed as “almost insurmountable” given the number of precise and objective criteria located within the fire code. *Id.* Accordingly, the court stated that Galaxy should challenge any specific provision of the fire code or action by Machen in an administrative proceeding.

SIGNIFICANCE

City fire codes do not constitute land-development regulations. Rather, fire codes mandate requirements for the structure of buildings, but do not substantially affect the use of the land. Therefore, city fire codes are not governed by Florida statutes controlling land-development regulations. Additionally, for a court to consider whether regulations arise from an unlawfully delegated legislative authority, a party must establish whether the regulation sought to be imposed upon that party arose from the questionable amendment. Third, objectionable fire code provisions and arbitrary or capricious actions of parties implementing fire code provisions must be established with specificity and should be brought in an administrative proceeding.

RESEARCH REFERENCES

- 2 Fla. Jur. 2d *Explosions and Fires* §§ 41–42 (1998 & Supp. 2003).
- 24A Fla. Jur. 2d *Administrative Law* § 402 (1998 & Supp. 2003).

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