



TOM GALLAGHER
CHIEF FINANCIAL OFFICER
STATE FIRE MARSHAL
STATE OF FLORIDA

In The Matter Of:

CORAL GABLES FIRE DEPARTMENT
FIRE PREVENTION DIVISION.

Case No.: 86193-06-FM

Petition for Declaratory Statement to the
Florida Department of Financial Services

DECLARATORY STATEMENT

THIS CAUSE came on for consideration upon the Petition for Declaratory Statement (hereinafter “Petition”) from the Coral Gables Fire Department, Fire Prevention Division, (hereinafter “Petitioner”), received by the Department of Financial Services (hereinafter the “Department”), on May 18, 2006. Upon consideration thereof, and being duly advised, the Chief Financial Officer, as State Fire Marshal, finds as follows:

1. The Chief Financial Officer, as State Fire Marshal, has jurisdiction over the subject matter and the parties to this matter.
2. This Declaratory Statement is premised upon the assertions of fact set forth in the Petition. Any modification to those assertions of fact could alter the conclusions set forth in this Declaratory Statement. None of the assertions of fact are admitted by the Department as being true and Petitioner’s questions are being answered purely as hypothetical ones. If any of the

facts asserted by the Petitioner are untrue or materially incomplete, the conclusions of this Declaratory Statement could be significantly different.

3. If the Petition contains various legal assertions, conclusions, and arguments, those assertions, conclusions, and arguments are not adopted by the Department and are not used as legal premises or authority for the conclusions of this Declaratory Statement. Legal assertions, conclusions, and arguments are considered only to illustrate the manner in which Petitioner may be an affected person entitled to have the Department issue this Declaratory Statement.

Background and Facts Asserted

4. The Petitioner, located at 2815 Salzedo Street, Coral Gables, Florida 33134, is responsible for lifesafety inspections in accordance with, and enforcement of, the Florida Fire Prevention Code and the Life Safety Code (hereinafter referred to as the “Code”).

5. A Declaratory Statement is requested pursuant to the provisions of Section 120.565, *Florida Statutes*, and Fla. Admin. Code Chapter 28.105, which authorize a substantially affected person to seek a declaratory statement regarding an agency’s opinion as to the applicability of a statutory provision as it applies to the Petitioner’s particular set of circumstances. The term “person” includes “any unit of government.”¹

6. The subject of the Petition is the applicability of Sections 718.103(23) and 112, *Florida Statutes*, and the Code, to the Petitioner’s set of circumstances. In furtherance of its request, the Petitioner asserts that:

A. The Petitioner must determine the extent the current legislation permits mixed use and/or condominium high rise buildings the ability to forego retrofitting of fire sprinkler

¹ Section 120.52(13), *Florida Statutes*.

protection in order to apply a uniform policy for all high rise buildings in the City of Coral Gables.

B. The building affected by the Petition, the David Williams Hotel and Condominium (hereinafter “Williams building”), 700 Biltmore Way, Coral Gables, Florida, 33132 is an existing twelve story mixed use occupancy over 75 feet in height, consisting of residential condominium units, hotel units, and a restaurant with an occupant load of 104 people (assembly occupancy).

C. The Williams building currently has only partial sprinkler coverage in the hotel rooms, underground parking garage, and condominium units.

D. The restaurant has full fire sprinkler coverage.

E. The local authority having jurisdiction has taken the position that since the building is a mixed use high rise occupancy, the exemption permitted under Section 718.112, *Florida Statutes*, foregoing retrofitting of full fire sprinkler protection for condominium high rise units, is not an option.

F. The Williams building condominium association maintains that under Section 718.112, *Florida Statutes*, the entire condominium is a mixed use condominium for the purposes of the application of Section 718.404, *Florida Statutes*, and that if Section 718.103(23), *Florida Statutes*, were applied, it does not appear to be the intention of the statute to mean that the presence of commercial units and residential units in a condominium renders the condominium a “mixed use condominium” for the purposes of the “opt out” provision.

G. Additionally, if read to require that conclusion, the sentence would render meaningless the prior “with respect to those units” language.

H. Therefore, the condominium association believes that based on this premise, fire sprinklers should only be required in the hotel units and restaurant, and not in the residential units.

7. Notice of receipt of the Petition herein was published in Volume 32, Number 23 of the Florida Administrative Weekly, on June 9, 2006.

Questions

8. The Petition poses the following questions:

A. Does Section 718.112, *Florida Statutes*, provide that only high rise *condominium buildings* have the option of foregoing retrofitting of full fire sprinkler protection in accordance with Chapter 633, *Florida Statutes*?

B. If a high rise building is a mixed use occupancy, as in the case of the Williams building, what are the requirements of Chapter 633, *Florida Statutes*, and is the option of foregoing retrofitting for the condominium units only and requiring all other occupancy classifications to install fire sprinkler protection an option under Section 718.112, *Florida Statutes*?

C. Section 718.112(2)(1), *Florida Statutes*, states that “the term common areas means any enclosed hallway, corridor, lobby, stairwell, or entryway.” Does the Fire Department have the authority to classify the underground parking garage of a high rise building as a “common area” for the purpose of requiring fire sprinkler coverage in that area?

Discussion

9. The Department of Financial Services, Division of State Fire Marshal, has authority pursuant to Section 120.565, *Florida Statutes*, to issue Declaratory Statements, and is

required by the provisions of Section 633.01(6), *Florida Statutes*, to issue Declaratory Statements relating to the Code, when requested.

10. The Code was adopted by reference in Fla. Admin. Code 69A-60, pursuant to the provisions of Section 633.021, *Florida Statutes*. The Code applies to all buildings and structures throughout the state, unless otherwise specifically provided. In adopting the Code, the State Fire Marshal is directed to “balance and temper the need of the State fire Marshal to protect all Floridians from fire hazards with the social and economic inconveniences that may be caused or created by the rules.”²

11. Chapter 718, *Florida Statutes*, the “Condominium Act,” is administered and enforced by the Division of Florida Land Sales, Condominiums and Mobile Homes of the Department of Business and Professional Regulation. The purposes of the Chapter are to “give statutory recognition to the condominium form of ownership of real property . . .” and to “establish procedures for the creation, sale and operation of condominiums.”

12. The Florida State Fire Marshal cannot issue a Declaratory Statement relating to the application of Chapter 718, *Florida Statutes*, which is under the jurisdiction of the Department of Business and Professional Regulations. However, the Florida State Fire Marshall is directed to issue Declaratory Statements relating to the Code.

13. Chapter 633, *Florida Statutes*, in conjunction with the Code, require the retrofit of full fire sprinklers in high-rise buildings. The standards of the National Fire Protection Association, NFPA 101, adopted by reference in the Code, address the construction, protection, and occupancy features necessary to minimize danger to life from fire, including smoke, fumes,

² Section 633.01, *Florida Statutes*.

or panic.³ Two general safeguards are set forth in the Code. First, the safeguards must be appropriate to the individual building or structure; and second, when multiple or mixed occupancies are in use, the most restrictive standard shall apply.⁴

14. Occupancy classification is subject to the ruling of the authority having jurisdiction where there is a question of proper classification in any individual case.⁵ The Code does not contain an occupancy classification of “condominium” or “condominium high rise.” The lack of a definition is logical because fire safety hazards do not discriminate based on form of ownership. The Williams building is asserted to be a high rise building. The standards for high rise buildings are found in Chapter 11 of the Code. The high rise building contains residential units, hotel units, and a restaurant, according to the Petition. Those occupancy terms are described in the Code.⁶ Being composed of more than one occupancy classification, the Williams building also fits the description of “multiple” and “mixed” occupancies” defined in the Code.⁷

15. Chapter 11 of the Code sets forth the following regarding extinguishing requirements in high rise buildings. “High-rise buildings shall be protected throughout by an approved, supervised, automatic sprinkler system . . . [a] sprinkler control valve and a water flow device shall be provided for each floor.”⁸ (Emphasis added)

16. Residential occupancies, including existing apartment buildings and existing hotels, must be protected throughout by an approved automatic sprinkler system.⁹ In individual

³ NFPA 101-1.1.2.

⁴ NFPA 101-4.5.2 and 6.1.14.3.2.

⁵ NFPA 101-6.1.1.1.

⁶ NFPA 101-6.1.8, 6.1.8.1, 6.1.8.1.3, and 6.1.8.1.5.

⁷ NFPA 101- 6.1.14.2.1 and 6.1.14.2.2.

⁸ NFPA 101-11.8.2.1.

⁹ NFPA 101-31.1.1 and 29.3.5.1.

dwelling units¹⁰, “sprinkler installation shall not be required in closets not exceeding 2.2 m2 (24 ft2) and in bathrooms not exceeding 5.1 m2 (55 ft2). Closets that contain equipment such as washers, dryers, furnaces, or water heaters shall be sprinklered regardless of size.”¹¹

17. Because the Williams building also meets the definition of “multiple” and “mixed” occupancies,¹² it must meet the most restrictive standards of the included occupancies. Both high rise and residential occupancies (including hotels and apartments) require protection throughout by an approved, supervised automatic sprinkler system.

NOW, THEREFORE, in accordance with the foregoing, and the statutes and rules cited therein, it is hereby declared that:

1. The Petitioner is a substantially affected person within the meaning of Section 20.565, *Florida Statutes*.

2. The Code provides that a high rise building with residential occupancies, such as the Williams building, must be retrofitted with an approved, supervised automatic sprinkler system throughout for the protection of property and inhabitants. The underground garage is classified the same as the building occupancies. Multiple, mixed occupancy buildings must meet the strictest standards of the included occupancies; however, in this case, all relevant occupancy classifications, and the underground parking garage, require the same standard. Because the Code is concerned with the protection of life and property from fire hazards, it addresses the nature of occupancy of the building or structure and not the form of ownership. Whether a residential building is owned cooperatively, through the establishment of a condominium

¹⁰ Defined as “One or more rooms arranged for the use of one or more individuals living together, providing complete, independent living facilities, including permanent provisions for living, sleeping, eating, cooking, and sanitation.” FNFP 101-3.3.50.

¹¹ NFPA 101-31.3.5.4.

¹² NFPA 101- 6.1.14.2.1 and 6.1.14.2.2.

association, or individually, is irrelevant when it comes to protecting people and property from fire hazards.

3. The Department is without jurisdiction to issue a Declaratory Statement regarding question 8A, and those portions of questions 8B and 8C which seek guidance on the requirements of Chapter 718, *Florida Statutes*. It is therefore ORDERED that such portions of the questions relating to Chapter 718, *Florida Statutes*, be, and the same are, dismissed.

NOTICE OF RIGHTS

Any party to these proceedings adversely affected by this Declaratory Statement is entitled to seek review of this Declaratory Statement pursuant to Rule 9.110, Florida Rules of Appellate Procedure, because pursuant to Section 120.565, *Florida Statutes*, a Declaratory Statement constitutes final agency action and is therefore subject to judicial review pursuant to Section 120.68, *Florida Statutes*. Review proceedings must be instituted by filing a petition or notice of appeal with the General Counsel, acting as the agency clerk, at 612 Larson Building, Tallahassee, Florida, and a copy of the same with the appropriate district court of appeal, within thirty days of rendition of this Declaratory Statement.

ENTERED in the City of Tallahassee, Leon County, Florida, this ____ day of _____, 2006.

Karen Chandler
Deputy Chief Financial Officer

Copies furnished to:

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