



ALEX SINK
CHIEF FINANCIAL OFFICER
STATE OF FLORIDA

In The Matter Of:

SONIA MACHEN

Case No.: 89161-07-FM

Petition for Declaratory Statement to the
Florida Department of Financial Services.

AMENDED
DECLARATORY STATEMENT

THIS CAUSE came on for consideration upon the Petition for Declaratory Statement (hereinafter "Petition") from Sonia Machen (hereinafter "Petitioner"), received by the Department of Financial Services, Division of State Fire Marshal (hereinafter the "Department"), on January 19, 2007. 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 party 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 as purely hypothetical. 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 is the Fire Marshal for the Miami Beach Fire Department, charged with enforcement of Rule 69A-60, *Florida Administrative Code*, the “Florida Fire Prevention Code” (hereinafter the “Code”).

5. The Declaratory Statement was requested pursuant to the provisions of Sections 120.565 and 633.01(6), *Florida Statutes*, and Chapter 28.105 and Rule 69A-60.007, *Florida Administrative Code*, which authorize a substantially affected person to seek a declaratory statement regarding an agency’s opinion as to the applicability of a statutory or rule provision as it applies to the Petitioner’s particular set of circumstances.

6. The subject of the Petition is the applicability of National Fire Protection Association (hereinafter “NFPA”) 13, Section 4.1, as adopted in the Code, to the Petitioner’s set of circumstances. In furtherance of its request, the Petitioner asserts that:

A. Many buildings are designed with a terrace with walls on three sides. The terrace is a space recessed inside the footprint of the building with living space on the other side of the three walls.

B. The exception for noncombustible construction under NFPA 13, Paragraph 8.14.7.2 would not apply since the space is not an open balcony.

C. The terrace with living space on three sides forms a compartment that would provide enough heat collection for activation of a sprinkler head as opposed to an open balcony where a sprinkler head would not activate due to the open three sides.

D. The terrace would likely contain combustible furniture and a grill found in a typical apartment unit.

E. The walls surrounding the terrace may be noncombustible but not fire rated, as one wall is normally glass sliding doors.

F. In order to minimize the burden on the contractor, a minimum size of terrace is required to be protected by the local policy, a copy of which is attached hereto as Exhibit 1. Small compartments (less than 150 sq. ft.) are not required to be protected because the amount of combustible contents is unlikely to be substantial.

7. Notice of receipt of the Petition herein was published in Volume 33, Number 9 of the *Florida Administrative Weekly*, on March 2, 2007.

QUESTIONS

8. The Petition poses the following questions:

A. Does the design of the described terrace require sprinkler protection in order to provide full coverage as required in NFPA 13, Section 4.1?

B. Does the answer change if there is a living space above the terrace?

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 by a substantially affected person or a local enforcing agency.

10. The Code adopts by reference NFPA 13, (2002 edition) entitled, “Standards for the Installation of Sprinkler Systems”.¹

11. The scope of NFPA 13 is the minimum requirements for the design and installation of automatic fire sprinkler systems and exposure protection sprinkler systems covered within the standard. Its purpose is to provide a reasonable degree of protection for life and property from fire through standardization of design, installation, and testing requirements for sprinkler systems, including private fire service mains, based on sound engineering principles, test data, and field experience.

12. The State Fire Marshal rendered a Declaratory Statement in 2003 in the matter of Alfonso Fernandez-Fraga, Petition for Declaratory Statement, Case Number 64418-02-SP, which answered the question, “[i]s it the intent of National Fire Protection Association Publication 13 to require fire sprinkler protection in residential condominium high-rise apartment balconies?” The Declaratory Statement concluded that sprinklers were not required.² Subsequently, the 2002 edition of NFPA 13 was adopted in the Code.

13. NFPA 13, Section 4.1 states that “[a] building, where protected by an automatic sprinkler system installation, shall be provided with sprinklers in all areas except where specific sections of this standard permit the omission of sprinklers. NFPA 13, Paragraph 8.14.7.1, provides that “[u]nless the requirements of 8.14.7.2 or 8.14.7.3 are met, sprinklers shall be installed under exterior roofs or canopies exceeding 4 ft (1.2 m) in width. The comments to Paragraph 8.14.7.2 in Annex A of the 2002 edition explain that “balconies, decks, and similar projections from the building should be treated as exterior roofs and canopies when applying the criteria of 8.14.7.1.”

¹ Fla. Admin. Code R. 69A-60.005.

² Paragraph 5-13.8.1, NFPA 13 (1999 edition), provides, “[s]prinklers shall be installed under exterior roofs or canopies exceeding 4 ft. (1.2 M) in width. *Exception: Sprinklers are permitted to be omitted where the canopy or roof is of noncombustible or limited combustible construction.*

14. The terrace described in the Petition is a projection from the building, and differs from a balcony, if at all, only in that there are walls on two sides of the projection. The provisions are clear that sprinklers are required under exterior roofs and canopies only if the exterior roofs and canopies exceed four feet in width. Conversely, if the exterior roof or canopy is less than four feet in width, sprinklers are not required. In the instant case, the width of the overhanging roof or canopy is not provided. If the width is less than four feet, sprinklers are not required; if four feet or greater, sprinklers must be provided unless the exceptions provided in either Paragraph 8.14.7.2. or 8.14.7.3 are met.

15. NFPA 13, Paragraph 8.14.7.2, provides that, “[s]prinklers shall be permitted to be omitted where the canopy or roof is of noncombustible or limited combustible construction.” Although the word “shall” is used, it is modified by the phrase “be permitted to be omitted,” indicating that the requirement is optional. NFPA 13, Subsection 8.14.4 indicates that “[s]prinklers shall be installed under roofs or canopies over areas where combustibles are stored and handled.” Comments to this Subsection in Annex A indicate that “[s]hort term transient, such as that for delivered packages, and the presence of planters, papermachines, and so forth, should not be considered storage or handling of combustibles.”

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 entitled to the issuance of this Declaratory Statement.
2. Question A. The answer to the question necessarily depends on variables relating to the roof or canopy size and construction.

i. If the roof over the described terrace is less than four feet in width, the answer is “no,” sprinklers are not required in order to provide full coverage as required in NFPA 13, Section 4.1.

ii. If the roof over the described terrace is greater than four feet, and combustible materials of a permanent nature are stored or handled in the area, then the answer is “yes,” sprinklers are required in order to provide full coverage as required in NFPA 13, Section 4.1.

iii. If the roof over the described terrace is greater than four feet in width, sprinklers may be required at the option of the Fire Marshal as determined on a case by case basis where the overhang is of noncombustible or limited combustible construction.

3. Question B. The answer is the same as the answer to Question A.

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 _____, 2007.

Eric Miller
Deputy Chief Financial Officer

Copies furnished to:

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