



TOM GALLAGHER
CHIEF FINANCIAL OFFICER
STATE FIRE MARSHAL
STATE OF FLORIDA

In re the Matter of

Indian River County Fire Rescue,
Petitioner.

Case No.: 77097-04-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 received on July 14, 2004, by the Department of Financial Services, hereinafter referred to as the Department, from the Indian River County Fire Rescue, hereinafter referred to as Petitioner. 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 for Declaratory Statement. 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 question is being answered purely as a hypothetical one. 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 for Declaratory Statement 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. Petitioner asserts that:

A. Petitioner is an authority having jurisdiction with a “large” Adult Living Facility built before 1996 that is not sprinklered.

B. The facility has five separate buildings, each with 4 bedrooms.

C. This property was originally 5 duplexes.

D. The cooking appliances have been removed for each living unit.

E. One kitchen has been set up to be utilized for the whole facility with an automatic extinguishing system.

F. Each living unit has an exit directly to the outside and each sleeping room has a rescue window that meets the Fire Code Requirements.

G. It is understood that a facility with five separate buildings under one license does not get an exemption from large facility requirements.

H. In the past, this office had the facility sheathe all the structural members to meet the construction type for a large facility.

I. In reviewing the 101A documentation, the facility is rated slow.

J. Section 400.441(2)(c), Florida Statutes, states that an existing small facility must sprinkler if they are impractical.

K. Section I states if a facility is required to sprinkler and it is rated "slow" that it has 48 months to comply.

L. Any new facility must install sprinklers per section 2B.

M. "Large" facilities are not addressed.

N. NFPA 101, the Life Safety Code, only requires large existing facilities to install sprinklers if they are impractical.

O. I believe the intent of the Code is for a "large" facility to install sprinklers; however, Section 400.441, Florida Statutes, does not state that a "large" existing facility must sprinkler.

QUESTIONS

5. Petitioner's questions are:

A. Is it a requirement for a facility that is considered "large" to install a sprinkler system?

B. If so, which code section would be used to require this.

DISCUSSION

6. Section 400.402(6), Florida Statutes, states:

"Assisted living facility" means any building or buildings, section or distinct part of a building, private home, boarding home, home for the aged, or other residential facility, whether operated for profit or not, which undertakes through its ownership or management to provide housing, meals, and one or more personal services for a period exceeding 24 hours to one or more adults who are not relatives of the owner or administrator.

7. Section 400.441(1)(a), Florida Statutes, states:

2. Firesafety requirements.--

a. Except for the special applications provided herein, effective January 1, 1996, the provisions of the National Fire Protection Association, Life Safety Code, NFPA 101, 1994 edition, Chapter 22 for new facilities and Chapter 23 for existing facilities shall be the uniform fire code applied by the State Fire Marshal for assisted living facilities, pursuant to s. [633.022](#).

b. **Any new facility, regardless of size**, that applies for a license on or after January 1, 1996, must be equipped with an automatic fire sprinkler system. **The exceptions as provided in section 22-2.3.5.1, NFPA 101, 1994 edition, as adopted herein, apply to any new facility housing eight or fewer residents.** On July 1, 1995, local governmental entities responsible for the issuance of permits for construction shall inform, without liability, any facility whose permit for construction is obtained prior to January 1, 1996, of this automatic fire sprinkler requirement. As used in this part, the term "a new facility" does not mean an existing facility that has undergone change of ownership.

c. Notwithstanding any provision of s. [633.022](#) or of the National Fire Protection Association, NFPA 101A, Chapter 5, 1995 edition, to the contrary, **any existing facility housing eight or fewer residents is not required to install an automatic fire sprinkler system, nor to comply with any other requirement in Chapter 23, NFPA 101, 1994 edition, that exceeds the firesafety requirements of NFPA 101, 1988 edition, that applies to this size facility, unless the facility has been classified as impractical** to evacuate. Any existing facility housing eight or fewer residents that is classified as impractical to evacuate must install an automatic fire sprinkler system within the timeframes granted in this section.

d. Any existing facility that is required to install an automatic fire sprinkler system under this paragraph need not meet other firesafety requirements of Chapter 23, NFPA 101, 1994 edition, which exceed the provisions of NFPA 101, 1988 edition. The mandate contained in this paragraph which requires certain facilities to install an automatic fire sprinkler system supersedes any other requirement.

e. This paragraph does not supersede the exceptions granted in NFPA 101, 1988 edition or 1994 edition.

i. Any facility licensed before January 1, 1996, that is required to install an automatic fire sprinkler system shall ensure that the installation is completed within the following timeframes based upon evacuation capability of the facility as determined under subparagraph 1.:

(I) Impractical evacuation capability, 24 months.

(II) Slow evacuation capability, 48 months.

(III) Prompt evacuation capability, 60 months.

The beginning date from which the deadline for the automatic fire sprinkler installation requirement must be calculated is upon receipt of written notice from the local fire official that an automatic fire sprinkler system must be installed. The local fire official shall send a copy of the document indicating the requirement of a fire sprinkler system to the Agency for Health Care Administration.

j. It is recognized that the installation of an automatic fire sprinkler system may create financial hardship for some facilities. The appropriate local fire official shall, without liability, grant two 1-year extensions to the timeframes for installation established herein, if an automatic fire sprinkler installation cost estimate and proof of denial from two financial institutions for a

construction loan to install the automatic fire sprinkler system are submitted. However, for any facility with a class I or class II, or a history of uncorrected class III, firesafety deficiencies, an extension must not be granted. The local fire official shall send a copy of the document granting the time extension to the Agency for Health Care Administration.

k. A facility owner whose facility is required to be equipped with an automatic fire sprinkler system under Chapter 23, NFPA 101, 1994 edition, as adopted herein, must disclose to any potential buyer of the facility that an installation of an automatic fire sprinkler requirement exists. The sale of the facility does not alter the timeframe for the installation of the automatic fire sprinkler system.

l. Existing facilities required to install an automatic fire sprinkler system as a result of construction-type restrictions in Chapter 23, NFPA 101, 1994 edition, as adopted herein, or evacuation capability requirements shall be notified by the local fire official in writing of the automatic fire sprinkler requirement, as well as the appropriate date for final compliance as provided in this subparagraph. The local fire official shall send a copy of the document to the Agency for Health Care Administration.

m. Except in cases of life-threatening fire hazards, if an existing facility experiences a change in the evacuation capability, or if the local authority having jurisdiction identifies a construction-type restriction, such that an automatic fire sprinkler system is required, it shall be afforded time for installation as provided in this subparagraph.

Facilities that are fully sprinkled and in compliance with other firesafety standards are not required to conduct more than one of the required fire drills between the hours of 11 p.m. and 7 a.m., per year. In lieu of the remaining drills, staff responsible for residents during such hours may be required to participate in a mock drill that includes a review of evacuation procedures. Such standards must be included or referenced in the rules adopted by the State Fire Marshal. Pursuant to s. [633.022\(1\)\(b\)](#), the State Fire Marshal is the final administrative authority for firesafety standards established and enforced pursuant to this section. All licensed facilities must have an annual fire inspection conducted by the local fire marshal or authority having jurisdiction. **(Emphases supplied)**.

8. The responses to your questions are found in the emphasized portions of the above quoted statute.

9. Accordingly, the responses to your questions are:

A. QUESTION: Is it a requirement for a facility that is considered “large” to install a sprinkler system? RESPONSE: Yes. The word “large” does not appear in Section 400.441, Florida Statutes; however, if a facility of more than eight residents is to be considered “large,” as opposed to a facility of eight or fewer residents, then the answer is yes, all facilities with more than eight residents are required to install a sprinkler system.

B. QUESTION: If so, which code section would be used to require this? RESPONSE: The requirement is not found in the firesafety codes or standards, but rather in the above quoted portion of Section 400.441, Florida Statutes.

10. The above responses are subject to all of the other terms and conditions found in Section 400.411, Florida Statutes.

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 at Tallahassee, Leon County, Florida, this ____ day of _____, 2004.

Karen Chandler
Deputy Chief Financial Officer

Copies furnished to:

Indian River County Fire Rescue
c/o Sandra Seeley, Fire Inspector
1500 Old Dixie Hwy
Vero Beach, Florida 32960

Gabriel Mazzeo, Attorney
Division of State Fire Marshal
200 East Gaines Street
Tallahassee, Florida 32399-0340