

PETITION FOR DECLARATORY STATEMENT
BEFORE THE FLORIDA DEPARTMENT OF FINANCIAL SERVICES

IN THE MATTER OF:

Phillip W. Green
(NAME OF PETITIONER)

Case No.: 142246

FILED
Department of Financial Services
Date: 9/27/13

IMPORTANT: BEFORE FILING, PLEASE READ STATUTE AND RULES
ATTACHED TO THIS DOCUMENT

Petitioner, Phillip W. Green, pursuant to Sections 120.565 and/or 633.001(6), Florida
(Name of Petitioner)

Statutes, Rule Chapter 28-105 and/or Rule 69A-60.007, Florida Administrative Code, hereby requests a
declaratory statement from the Florida Department of Financial Services and as grounds therefore states the
following (IN ALL CASES, ATTACH ADDITIONAL PAGES IF NEEDED, USING THE CORRESPONDING NUMBER FOR EACH
SECTION ADDRESSED).

1. Petitioner's Name and Address:^{1*}

Name

Phillip W. Green

Address

21500 Three Oaks Pkwy, Estero, FL 33928

Telephone Number

239-390-8000

Facsimile Number

239-390-8000

e-mail address (if any)

green@esterofire.org

2. Name and Address of Petitioner's Attorney or Qualified Representative, if any:

Name, (Attorney/Qualified Representative)

Address

Telephone Number

Facsimile Number

e-mail address (if any)

3. Statute(s), Agency Rule(s), Agency Order(s) and/or Code Section(s) on Which the Declaratory
Statement is Sought (Please Include Specific Subsections, if any):

^{1*} **NOTICE:** if this request is made and this form is completed by an authority having jurisdiction for a county,
municipality, or special firesafety district, and the request concerns an interpretation of the Florida Fire
Prevention Code, the Petition must be signed by the senior administrative firesafety official of the authority
having jurisdiction, such as the fire marshal or a similarly situated or designated person or a fire chief. Only the
senior administrative firesafety official or a fire chief has standing to petition for a declaratory statement
regarding the Florida Fire Prevention Code on behalf of an authority having jurisdiction.

4. Description of How the Statute(s), Agency Rule(s), Agency Order(s), and/or Code Section(s) May Substantially Affect the Petitioner in the Petitioner's Particular Set of Circumstances:

a. Facts: Estero Fire Rescue, an independent special taxing district is exploring the adoption of a requirement to install residential fire sprinklers in one and two family dwellings.
Statutory clarification is needed prior to completing the required economic benefit report

b. Arguments: 633.208 (9) Requires that before imposing a fire sprinkler requirement on any one or two family dwelling a local government must provide the owner of one or two family dwelling a letter documenting the specific infrastructure or other tax or fee allowances listed in but not limited to those described in sub sections (8) for the dwelling

5. Address of the Subject, Structure, or Proposed Structure, Affected by this Petition, if Applicable:

N/a

6. If this Petition Involves a Ruling of an Authority Having Jurisdiction, the Name, Address and Phone Number of the Authority Having Jurisdiction:

Phillip W. Green Fire Marshal
21500 Three Oaks Pkwy
Estero, Florida, 33928

7. Please Check the Box Indicating Whether You Filed an Appeal of a Ruling of the Authority Having Jurisdiction, if applicable:

PLEASE NOTE: Rule 69A-60.007(5), Florida Administrative Code, on the last page of this document, requires that a person having a dispute with a local fire official regarding the Florida Fire Prevention Code, must complete the local appeal process PRIOR to filing a petition for declaratory statement. Therefore, if your circumstances involve a dispute with a local fire official and you have not appealed the decision of the local fire official, this petition will be dismissed until the local appeal process has been completed and you have received an adverse ruling by the local appeals board, commission, or council.

Yes, Appeal Filed No, Appeal Not Filed Not Applicable

8. If an Appeal was Filed, Please State the Response or Outcome of the Appeals Board and Attach a Copy of All Official Orders or Notices:

9. Have You Filed or Do You Plan to File this or a Similar Question with any Other State or Local Agency?

Yes • No

10. If Yes, Please State the Name of Each State or Local Agency:

N/A

11. Are you involved in any litigation related to the question(s) presented in this case? Yes • No

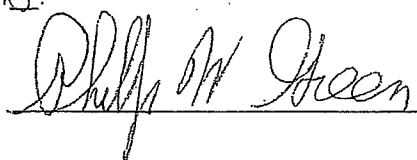
12. If yes, please describe briefly

13. QUESTION(S) (Please be Specific):

Is it the intent of 633.208 (9) that ever residential property owner located within a political sub division be notified by a letter that a fire sprinkler requirement is being contemplating?

Is it the intent of 633.208 (9) that a copy of the economic cost and benefit report required in 633.208 (8) be presented to the owner of a one or two family dwelling prior to issuance of a building permit and that this notice constitutes notice of a sprinkler requirement

Respectfully submitted this 25 day of September, 2013.



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Petitioner (or Attorney or Qualified Representative for Petitioner)

Mail original to:

Agency Clerk
Division of Legal Services
Florida Department of Financial Services
200 East Gaines Street
Tallahassee, Florida 32399-0390

Or file electronically at: Julie.Jones@myfloridacfo.com

(Send the preceding three page form only. You need not send the accompanying rules or statutes on the next page which are provided for your information and convenience.)

Please note that the use of this form containing the information in it is neither solicited nor required; however, if used and filled out completely, it complies in all respects with the requirements of the law and all rules pertaining to declaratory statements, and will assist the division in expediting the proceeding.

Declaratory Statements: FLORIDA STATUTES

120.565 Declaratory statement by agencies.—

(1) Any substantially affected person may seek a declaratory statement regarding an agency's opinion as to the applicability of a statutory provision, or of any rule or order of the agency, as it applies to the petitioner's particular set or circumstances.

(2) The petition seeking a declaratory statement shall state with particularity the petitioner's set of circumstances and shall specify the statutory provision, rule, or order that the petitioner believes may apply to the set of circumstances.

(3) The agency shall give notice of the filing of each petition in the next available issue of the Florida Administrative Weekly and transmit copies of each petition to the committee. The agency shall issue a

^{2*} Please see footnote 1 relating to the authorized signature for an authority having jurisdiction.

FILED

DEC 13 2013



CHIEF FINANCIAL OFFICER
JEFF ATWATER
STATE OF FLORIDA

Docketed by JK

In The Matter Of:

Phillip W. Green, Fire Marshal
Estero Fire Rescue

Case No.: 142246-13-FM

Petition for Declaratory Statement to the
Florida Department of Financial Services

DECLARATORY STATEMENT

THIS CAUSE came on for consideration upon the filing of a Petition for Declaratory Statement (Petition) by Phillip W. Green, Fire Marshal, Estero Fire Rescue, (Petitioner), received by the Department of Financial Services (Department), Division of Legal Services, on September 27, 2013. 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 of the Petition.

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.

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.

BACKGROUND AND FACTS ASSERTED

4. A Declaratory Statement was requested pursuant to the provisions of Sections 120.565 and 633.104(6), Florida Statutes, Chapter 28-105, Florida Administrative Code, and/or Rule 69A-60.007, Florida Administrative Code.

5. The Petition states that Estero Fire Rescue, an independent special taxing district, is exploring the adoption of a requirement that residential fire sprinklers be installed in one- and two-family dwellings.

6. The subject of the Petition is compliance with the property owner notification requirements of Section 633.208(9), Florida Statutes, when a political subdivision is contemplating a fire sprinkler requirement for one- and two-family dwellings.

7. Receipt of the Petition herein was published in Volume 39, Number 207 of the Florida Administrative Register, on October 23, 2013.

QUESTIONS PRESENTED

8. Is it the intent of Section 633.208(9), Florida Statutes, that every residential property owner located within a political subdivision be notified by a letter that a fire sprinkler requirement is being contemplated by the political subdivision? (Question edited for clarity).

9. Is it the intent of Section 633.208(9), Florida Statutes, that a copy of the economic cost and benefit report required by this subsection be presented to the owner of every one-and two-family dwelling prior to issuance of a building permit? (Question edited for clarity).

10. Is it the intent of Section 633.208(9), Florida Statutes, that presentation of a copy of the economic cost and benefit report to the owner of every one-and two-family dwelling constitutes notice of the sprinkler requirement? (Question edited for clarity).

DISCUSSION

11. The Department has authority pursuant to Sections 120.565 and 633.104(6), Florida Statutes, and Chapter 28-105, Florida Administrative Code, to issue Declaratory Statements when requested in writing by a substantially affected person or an Authority Having Jurisdiction regarding the Department's opinion as to the applicability of a statutory provision over which the agency has authority to the Petitioner's particular set of circumstances.

12. Section 633.208, Florida Statutes, is entitled "Minimum firesafety standards." It generally requires that the Florida Fire Prevention Code, adopted by the State Fire Marshal, shall be deemed adopted by each municipality, county, and special district with firesafety responsibilities. This section requires each municipality, county, and special district with firesafety responsibilities to enforce the Florida Fire Prevention Code as the minimum firesafety code. In addition, it provides that a municipality, county, and special district may adopt more stringent firesafety standards, subject to the requirements of this section.

13. Subsection (8) of Section 633.208, Florida Statutes, provides that the provisions of the Life Safety Code, as contained in the Florida Fire Prevention Code, do

not apply to newly constructed one-family and two-family dwellings. However, local governments may adopt fire sprinkler requirements for one- and two-family dwellings under this subsection. This section also contains various other provisions related to the implementation of a fire sprinkler requirement on one- or two-family dwellings by any local government, including a requirement that any local government desiring to adopt a fire sprinkler requirement on one- or two-family dwellings must prepare an economic cost and benefit report that analyzes the application of fire sprinklers to one- or two-family dwellings or any proposed residential subdivision.

14. Subsection (9) of Section 633.208, Florida Statutes, specifically states: "Before imposing a fire sprinkler requirement on any one- or two-family dwelling, a local government must provide the owner of any one- or two-family dwelling a letter documenting specific infrastructure or other tax or fee allowances and waivers that are listed in but not limited to those described in subsection (8) for the dwelling. The documentation must show that the cost savings reasonably approximate the cost of the purchase and installation of a fire protection system."

CONCLUSION

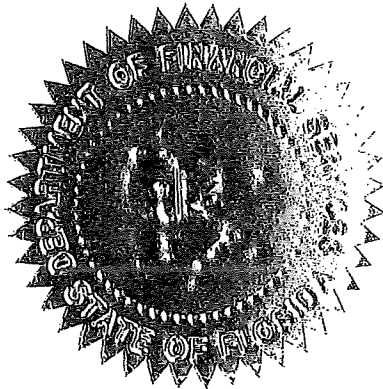
NOW, THEREFORE, in accordance with the foregoing, and the statutes and rules cited therein, it is hereby declared that the Petitioner is a substantially affected person and is entitled to the issuance of this Declaratory Statement.

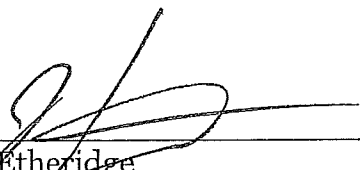
QUESTION 1. Yes. The Department finds that by requiring the local government to provide owners of one- or two-family dwellings a letter documenting specific infrastructure or other tax or fee allowances and waivers before imposing a fire sprinkler requirement, the statute requires the local government to provide the letter prior to initiation of legal proceedings necessary to consider adoption of the requirement.

QUESTION 2. No, neither Section 633.208(8) nor Section 633.208(9), Florida Statutes, require that a copy of the economic cost and benefit report required by subsection (9) be presented to owners of one-and two-family dwellings.

QUESTION 3. No, presentation of a copy of the economic cost and benefit report to the owner of every one- and two-family dwelling does not constitute compliance with the notice requirement in Section 633.208(9), Florida Statutes, unless the report documents specific infrastructure or other tax or fee allowances and waivers that are listed in but not limited to those described in subsection (8).

DONE and ORDERED this 12 day of DECEMBER, 2013.




Jay Etheridge
Deputy Chief Financial Officer
Department of Financial Services

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 Julie Jones, Agency Clerk, ~~Division of Legal Services, 612 Larson Building, Tallahassee, Florida 32399-0333,~~ and a copy of the same with the appropriate district court of appeal within 30 days of rendition of this Declaratory Statement.

Copies furnished to:

Phillip W. Green, Fire Marshal
Esteros Fire Rescue
21500 Three Oaks Pkwy
Esteros, FL 33928

R. Terry Butler, Esq.
Assistant General Counsel
Department of Financial Services
Room 612A, Larson Building
Tallahassee, FL 32399-0333

