

**FILED**

FEB 16 2016

Docketed by TMT



CHIEF FINANCIAL OFFICER  
JEFF ATWATER  
STATE OF FLORIDA

IN THE MATTER OF:

PHILLIP GREEN  
FIRE MARSHAL, ESTERO FIRE RESCUE

Case No.: 182625-15-DS

Petition for Declaratory Statement To The  
Florida Department of Financial Services

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DECLARATORY STATEMENT

THIS CAUSE came on for consideration upon receipt of a Petition for Declaratory Statement (Petition) from Phillip Green, Fire Marshal of Estero Fire Rescue (Petitioner). The Department of Financial Services, Division of State Fire Marshal (Department), received the Petition on November 18, 2015.

The Department finds as follows, upon consideration of the Petition and being duly advised:

1. The Chief Financial Officer, as State Fire Marshal, has jurisdiction over the subject matter in this cause.
2. This Declaratory Statement is premised upon the assertions of fact set forth in the Petition. Any modifications to those assertions of fact could alter the conclusions set forth in this Declaratory Statement. None of the assertions are admitted by the Department as being true. If any of the facts asserted in the Petition are untrue or materially incomplete, the conclusions or this Declaratory Statement could be significantly different.

3. Legal assertions, conclusions, and arguments contained in the Petition, if any, are not adopted by the Department, and are not used as legal premises or authority for the conclusions of this Petition.

#### BACKGROUND AND FACTS ASSERTED

4. Petitioner requested this Declaratory Statement pursuant to the provisions of section 120.565, Florida Statutes, chapter 28.105, Florida Statutes, and Rule 69A-60.007, *Florida Administrative Code*, which authorize an Authority Having Jurisdiction (AHJ) and a substantially affected person to seek a declaratory statement regarding an agency's opinion as to the applicability of a statute or rule provision as applied to a particular set of circumstances.

5. The subject of the Petition is whether a local ordinance requiring the installation of fire sprinkler systems in new one- and two-family dwellings as provided for in section 633.208(8) and (9) is required to go through the local amendment process of section 633.208(3), Florida Statutes.

6. The Petitioner is the AHJ.

7. Notice of receipt of the Petition herein was published in Volume 41, Number 227 of the *Florida Administrative Register*, on November 20, 2015.

#### QUESTION

8. The Petition poses the following question to the Department:

a. "Is it the intent of the process to require fire sprinklers in one-family and two-family dwellings as outlined in FS 633.208(8) and 633.208(9) to be independent and a separate process from the local amendment to the fire code process outlined in FS 633.208(3)?"

## DISCUSSION

9. The Department has authority pursuant to section 120.565, Florida Statutes, to issue Declaratory Statements. The State Fire Marshal is required by section 633.104(6), Florida Statutes, to issue Declaratory Statements when the Petition is filed by a local enforcement agency or a substantially affected person and it relates to the Florida Fire Prevention Code (“FFPC”), which adopted NFPA, including the *Fire Code* (“NFPA 1”) and *Life Safety Code* (“NFPA 101”).

10. Pursuant to section 633.208(3), Florida Statutes, the Florida Fire Prevention Code (code) “shall be a minimum code, and a municipality, county, or special district with firesafety responsibilities may adopt more stringent firesafety standards, subject to the requirements of this subsection.”

11. Pursuant to section 633.208(8), Florida Statutes, 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, fire sprinkler protection may be permitted by local government in lieu of other fire protection-related development requirements for such structures. After the effective date of this act, any local government that desires 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. The report must consider the tradeoffs and specific cost savings and benefits of fire sprinklers for future owners of property. The report must include an assessment of the cost savings from any reduced or eliminated impact fees if applicable, the reduction in special fire district tax, insurance fees, and other taxes or fees imposed, and the waiver of certain infrastructure requirements including the reduction of roadway widths, the reduction of water

line sizes, increased fire hydrant spacing, increased dead-end roadway length, and a reduction in cul-de-sac sizes relative to the costs from fire sprinkling. A failure to prepare an economic report shall result in the invalidation of the fire sprinkler requirement to any one- or two-family dwelling or any proposed subdivision. In addition, a local jurisdiction or utility may not charge any additional fee, above what is charged to a non-fire sprinklered dwelling, on the basis that a one- or two-family dwelling unit is protected by a fire sprinkler system.

12. Pursuant to section 633.208(9), Florida Statutes, “before imposing a fire sprinkler requirement on any one- and two-family dwelling, a local government must provide the owner of any one- and 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.”

NOW, THEREFORE, in accordance with the foregoing, and the statutes cited therein,

13. Petitioner is the AHJ and has standing to bring this Petition.

14. The answer to the posed question is as follows:

Yes, it is the intent of the statutory provisions that the process to require fire sprinklers in one-family and two-family dwellings as outlined in section 633.208(8) and 633.208(9), Florida Statutes, is independent and separate from the process for a local amendment to the fire code outlined in section 633.208(3), Florida Statutes.

Section 633.208(3), Florida Statutes, allows municipalities, counties, and special districts to adopt more stringent firesafety standards than the Florida Fire Prevention Code (Code) and sets forth the procedures for adopting such standards. However, section 633.208(8), Florida Statutes, specifically exempts newly constructed one-family and two-family dwellings from the

provisions of the Life Safety Code, as contained in the Florida Fire Prevention Code. Therefore, the amendment procedures set forth in section 633.208(3), Florida Statutes, do not govern the process for requiring the installation of fire sprinkler systems in one-family and two-family dwellings, since they are not subject to the Code. Consequently, an ordinance allowing or mandating fire sprinkler systems in one-family and two-family dwellings would not be considered an amendment to the Code, and would not be subject to section 633.208(3), Florida Statutes. However, such an ordinance would be subject to the procedures set forth in section 603.208(8)-(9), Florida Statutes.

In *Department of Revenue v. New Sea Escape Cruises, LTD*, 894 So. 2d (Fla. 2005), the court stated, “As this Court has consistently determined, ‘Legislative intent is the polestar by which a court must be guided in interpreting provisions of a law. In ascertaining the legislative intent, a court must give effect to all statutory provisions, and construe related provisions in harmony with one another.’ ” The court went on to state, “As this Court has often repeated, ‘[w]hen the language of the statute is clear and unambiguous and conveys a clear and definite meaning ... the statute must be given its plain and obvious meaning.’ ” (Internal citations omitted). When reconciling statutes that may appear to conflict, the rules of statutory construction provide that a specific statute will control over a general statute, and a more recently enacted statute will control over older statutes. *See State v. J.M.*, 824 So. 2d 105, 112 (Fla. 2002) and *Palm Bch. Cnty. Canvassing Bd. v. Harris*, 772 So. 2d 1273, 1287 (Fla. 2000). With regard to the latter rule, the Court has explained “[t]he more recently enacted provision may be viewed as the clearest and most recent expression of legislative intent.” *Harris*, 772 So. 2d at 1287.

Here, section 633.208(8), Florida Statutes, clearly and unambiguously provides that the code does not apply to newly constructed one- and two-family dwellings and therefore, they are

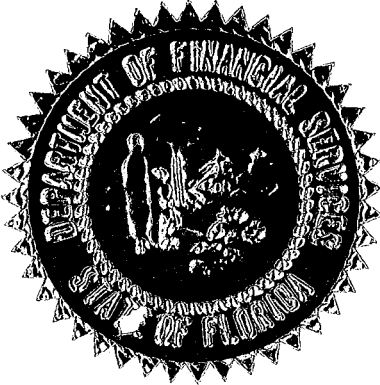
not subject to the provisions discussing amendments to the Code by local governments as set forth in section 633.208(3), Florida Statutes.

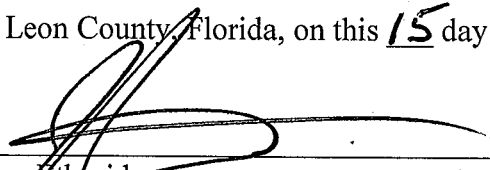
Further, applying the above-cited statutory construction principles, to wit, the specific governs over the general, and the more recently enacted, over older provisions of law on the same subject matter (here, minimum fire safety standards), it is clear that sections 633.208(8)-(9), Florida Statutes, take precedence over section 633.208(3) as regards one-family and two-family dwellings. The provisions of section 633.208(8)-(9), Florida Statutes, deal with a specific type of construction, a specific type of firesafety mechanism, and set forth specific procedures to be followed regarding same.

Moreover, the provisions of section 633.208, Florida Statutes, at issue here represent the most recent expressions of legislative intent regarding fire sprinkler protection for one-family and two-family dwellings. Section 633.208(3), Florida Statutes, was amended in 1991 and 1998 to include the provisions governing the process for amending the code by local governments. However, section 633.208(8), Florida Statutes, was not adopted until 2000, that provision consisted of only the first two sentences. (Then section 633.025.) In 2005, section 622.208, Florida Statutes, was amended to add subsection (8) and (9); in 2010, subsection (10) was adopted.

Based on the foregoing statutes and case law, section 633.208(8) and (9), Florida Statutes, is independent and separate from the process for a local amendment to the fire code outlined in section 633.208(3), Florida Statutes.

ENTERED in the City of Tallahassee, Leon County, Florida, on this 15 day of February, 2016.



  
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Jay Etheridge  
Deputy Chief Financial Officer

## NOTICE OF RIGHTS

Any party to these proceedings adversely affected by this Order is entitled to seek review within **30 days** of the rendition of this Order, pursuant to section 120.68, Florida Statutes, and Rule 9.190, *Florida Rules of Appellate Procedure*. Review proceedings must be instituted by filing a petition or notice of appeal with Julie Jones, the DFS Agency Clerk. Filing with the Agency Clerk may be accomplished via U.S. Mail, express overnight delivery, hand delivery, facsimile transmission, or electronic mail. The address for overnight delivery or hand delivery is Julie Jones, DFS Agency Clerk, Department of Financial Services, 612 Larson Building, 200 East Gaines Street, Tallahassee, Florida 32399-0390. The fax number is (850) 488-0697. The email address is [Julie.Jones@myfloridacfo.com](mailto:Julie.Jones@myfloridacfo.com).

A copy of the petition or notice of appeal must also be filed with the appropriate district court of appeal within 30 days of the rendition of this Order.

### Copies Furnished to:

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