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CHIEF FINANCIAL OFFICER
JEFF ATWATER
STATE OF FLORIDA

IN THE MATTER OF:

PHILLIP GREEN
FIRE MARSHAL, ESTERO FIRE RESCUE

Case No.: 177916-15-DS

Petition for Declaratory Statement To The
Florida Department of Financial Services

DECLARATORY STATEMENT

THIS CAUSE came on for consideration upon receipt of a Petition for Declaratory Statement (the "Petition") from Phillip Green, Fire Marshal of Estero Fire Rescue (the "Petitioner"). The Department of Financial Services, Division of State Fire Marshal (the "Department"), received the Petition on August 12, 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 section 633.124(2)(a), Florida Statutes, applies to fire sprinkler systems installed in one and two family dwellings based on a local government requirement in accordance with section 633.208, Florida Statutes.

6. The Petitioner is the AHJ.

7. Notice of receipt of the Petition herein was published in Volume 41, Number 162 of the *Florida Administrative Register*, on August 20, 2015.

QUESTION

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

a. “Is it the intent of F.S. 633.124 (2) (a) to apply to fire sprinkler systems installed in One and Two Family Dwellings when such systems are installed under a local government requirement in accordance with F.S. 633.208(8) and 633.208(9)?”

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 633.124(2)(a), Florida Statutes, it is a misdemeanor of the first degree, punishable as provided in sections 775.082 or 775.083, to intentionally or willfully render a fire protection system, fire extinguisher, or preengineered system required by statute or by rule inoperative except while the fire protection system, fire extinguisher, or preengineered system is being serviced, hydrotested, tested, repaired, or recharged, except pursuant to court order.

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.

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

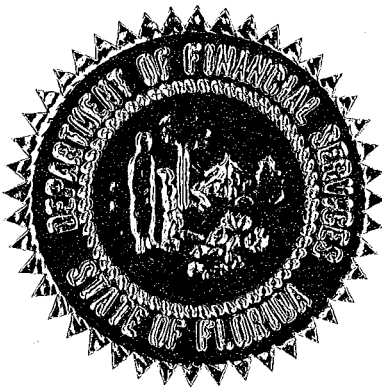
12. Petitioner is the AHJ and has standing to bring this Petition.

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

No, section 633.124(2)(a), Florida Statutes, does not apply to fire sprinkler systems installed or inspected in one-family and two-family dwellings. However, a local government may require fire sprinkler protection in one-family and two-family dwellings pursuant to sections 633.208(8) and (9), Florida Statutes. If a local government enacts such an ordinance, and the homeowner of a one-family or two-family dwelling disables the fire protection system, the homeowner could not be charged with a first degree misdemeanor pursuant to section 633.124(2)(a).

Because there are no statutes and rules requiring an operable fire sprinkler system be installed in one-family and two-family dwellings, section 633.124(2)(a), Florida Statutes, would not apply should the homeowner disable the fire protection system in their one- or two-family dwelling.

ENTERED in the City of Tallahassee, Leon County, Florida, on this 5th day of November, 2015.



M. Drew Parker for
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.

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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