

STATE OF FLORIDA
BUILDING COMMISSION

In the Matter of

CITY OF ALTAMONTE SPRINGS,
FLORIDA,

Case #: DCA08-DEC-207

Petitioner.

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DECLARATORY STATEMENT

The foregoing proceeding came before the Florida Building Commission (the Commission) by a Petition from Anthony C. Apfelbeck of the City of Altamonte Springs, Florida, which was received on July 18, 2008, and subsequently amended on July 24, 2008. Based on the statements in the petition, the material subsequently submitted and the subsequent request by the Petitioner, it is hereby ORDERED:

Findings of Fact

1. The petition is filed pursuant to, and must conform to the requirements of Rule 28-105.002, Florida Administrative Code.
2. Petitioner is the Building Official of Altamonte Springs, Florida, responsible for enforcing the Florida Building Code and Rule 9B-3.0472, Florida Administrative Code.
3. Petitioner's department is reviewing plans submitted for permitting of additions, alterations and repairs to, and applications for change of occupancy of, existing buildings within Altamonte Springs, Florida.
4. The Petition asks several questions that can be summarized as whether the requirement for installation of carbon monoxide detectors applies only to new buildings,

and if not, the extent of the application of the requirement to additions, alterations, repairs and change of occupancy and the means of compliance available under those circumstances?

Conclusions of Law

1. The Florida Building Commission has the specific statutory authority to interpret the provisions of Rule 9B-3.0472, Florida Administrative Code, by entering a declaratory statement.

2. Section 553.885, Florida Statutes (2007), requires:

(1) Every building for which a building permit is issued for new construction on or after July 1, 2008, and having a fossil-fuel-burning heater or appliance, a fireplace, or an attached garage shall have an approved operational carbon monoxide alarm installed within 10 feet of each room used for sleeping purposes.

(2) The Florida Building Commission shall adopt rules to administer this section and shall incorporate such requirements into its next revision of the Florida Building Code.

(3) As used in this section, the term:

(a) "Carbon monoxide alarm" means a device that is meant for the purpose of detecting carbon monoxide, that produces a distinct audible alarm, and that meets the requirements of and is approved by the Florida Building Commission.

(b) "Fossil fuel" means coal, kerosene, oil, fuel gases, or other petroleum or hydrocarbon product that emits carbon monoxide as a by-product of combustion.

3. As directed by the above cited statute, the Commission adopted Rule 9B-3.0472, Florida Administrative Code, that provides:

(1) Definitions: For purposes of this rule, the following definitions shall apply:

(a) CARBON MONOXIDE ALARM. A device for the purpose of detecting carbon monoxide, that produces a distinct audible alarm, and is listed or labeled with the appropriate standard, either ANSI/UL 2034 - 96, Standard

for Single and Multiple Station CO Alarms, or UL 2075 - 04, Gas and Vapor Detector Sensor, in accordance with its application.

(b) FOSSIL FUEL. Coal, kerosene, oil, fuel gases, or other petroleum or hydrocarbon product that emits carbon monoxide as a by-product of combustion.

(2) Every building for which a permit for new construction is issued on or after 7/1/08 and having a fossil-fuel-burning heater or appliance, a fireplace, or an attached garage shall have an operational carbon monoxide alarm installed within 10 feet of each room used for sleeping purposes.

(3) In new construction, alarms shall receive their primary power from the building wiring when such wiring is served from the local power utility. Such alarms shall have battery back up.

(4) Combination smoke/carbon monoxide alarms shall be listed or labeled by a Nationally Recognized Testing Laboratory.

4. The statute specifically refers to buildings for which a permit for new construction is issued, a phrase mirrored in the rule, and there are conflicting interpretations of what that phrase was intended to mean. In the context of the Building Code, new construction is regularly undertaken in relation to existing buildings so the Commission cannot conclude that the provision's effect is limited to new buildings, however, nor can it conclude that the requirements are to be imposed on any construction activity taking place.

5. The Commission concludes that a reasonable construction of the term "new construction" excludes repairs to existing buildings, as well as Level 1 and Level 2 Alterations to existing buildings as defined in the Code's Existing Building Volume, as those activities relate primarily to replacement of existing building element and/or renewal or reshaping existing building space.

6. The Commission further concludes that Level 3 alterations, where the work area encompassed exceeds 50 percent of the aggregate area of the building and made

within any 12-month period; additions; and changes in occupancy, which have traditionally subjected existing structures to additional requirements must be included within a reasonable construction of the term new construction in the context of Section 553.885, Florida Statutes (2007).

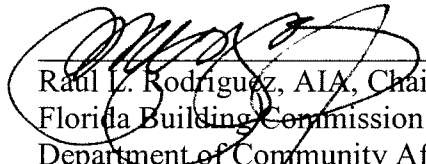
7. In response to the Petitioner's first question, the requirement for carbon monoxide detectors applies to new buildings and new construction to the extent that the building or activity that qualifies as new construction includes a fossil-fuel-burning heater or appliance, a fireplace, or an attached garage.

8. The rule explicitly establishes that alarms in areas comprising new construction are required to be hard-wired with battery back-up, however, as to retrofit of existing elements of the building, the rule is silent beyond defining carbon monoxide alarm and, if combination units are used, requiring that they be listed by a nationally recognized testing laboratory. Where application of the rule requires retrofit of existing elements of a building not otherwise subject to new construction, battery powered carbon monoxide alarms that are listed and labeled in accordance with ANSI/UL 2034 - 96, Standard for Single and Multiple Station CO Alarms, or UL 2075 - 04, Gas and Vapor Detector Sensor, are acceptable.

Petitioner and all other interested parties are hereby advised of their right to seek judicial review of this Order in accordance with Section 120.68(2)(a), Florida Statutes, and with Fla. R. App. 9.030(b)(1)(C) and 9.110(a). To initiate an appeal, a Notice of Appeal must be filed with Paula P. Ford, Clerk of the Commission, Sadowski Building, 2555 Shumard Oak Boulevard, Tallahassee, FL 32399-2100, and with the appropriate District Court of Appeal no later than thirty days after this Order is filed with the Clerk of

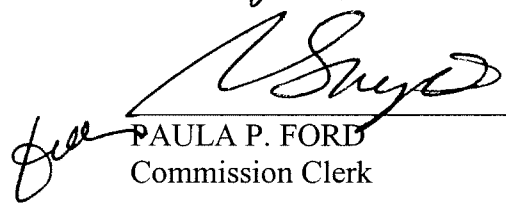
the Commission. A Notice of Appeal filed with the District Court of Appeal shall be accompanied by the filing fee specified by section 35.22(3), Florida Statutes.

DONE AND ORDERED this 9th of July, 2008, in Coral Gables, Miami-Dade County, State of Florida.


Raul L. Rodriguez, AIA, Chair
Florida Building Commission
Department of Community Affairs
Sadowski Building
2555 Shumard Oak Blvd.
Tallahassee, FL 32399-2100

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was sent to the following by the method indicated on this 13 day of July, 2008.


PAULA P. FORD
Commission Clerk

Via U.S. Mail

Anthony C. Apfelbeck
225 Newburyport Avenue
Altamonte Springs, Florida 32701

Mary Sneed, Esq.
Fowler & O'Quinn
28 West Central Boulevard
Orlando, Florida 32801

Via Hand Delivery

Mo Madani, C.B.O. Manager
Codes and Standards Section
Department of Community Affairs
2555 Shumard Oak Blvd.
Tallahassee, FL 32399-2100