

Petition for Declaratory Statement Before the Florida Building Commission

Company: Superior Fence & Rail, Inc.
Address: 510 Superior Commerce Point, Oviedo, FL 32765

Name: Christopher L. Johnson, Esq.
Title: President and Chief Legal Counsel
407-971-7804
Email: Chris@superiorfenceandrail.com

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Code Section on which the Declaratory Statement is sought:

**2017 Florida Building Code
Chapter 45.1.17.1.8**

Background:

Superior Fence & Rail is one of the largest fence companies in the State of Florida, where it has 14 operating locations. As one of the highest volume fence companies in Florida, Superior Fence & Rail is seeking clarification on Section 45.1.17.1.8 in order to eliminate confusion within that section and to ensure that the section is being applied in a consistent manner.

The relevant code section reads as follows:

Access gates, when provided, shall be self-closing and shall comply with the requirements of Sections R4501.17.1.1 through R4501.17.1.7 and shall be equipped with a self-latching locking device located on the pool side of the gate. Where the device release is located no less than 54 inches (1372 mm) from the bottom of the gate, the device release mechanism may be located on either side of the gate and so placed that it cannot be reached by a young child over the top or through any opening or gap from the outside. Gates that provide access to the swimming pool must open outward away from the pool. The gates and barrier shall have no opening greater than 1/2 inch (12.7 mm) within 18 inches (457 mm) of the release mechanism.

Specifically, there are two areas within the relevant code section that Petitioner seeks clarification on.

Issue 1:

Superior Fence & Rail has an upcoming job where the scope of work is to install an aluminum fence around an open pool. The customer's architect desires to have the gate latch installed at least 54" from the bottom of the gate and located on the outside of the gate. The Code allows for this by virtue of the second sentence of the relevant section where it states in pertinent part "Where the device is located no less than 54 inches (1372 mm) from the bottom of the gate, the device release mechanism may be located on either side of the gate..."

The last sentence of the relevant code section states "The gates and barrier shall have no opening greater than 1/2 inch (12.77 mm) within 18 inches (457 mm) of the release mechanism." Presumably, this requirement of eliminating any large gaps near the release mechanism is to prevent a child from being able to reach his or her hand inside the fence and open the gate by accessing the release mechanism. The customer's architect, however, does not want us to install expanded metal or perforated metal or any other barrier that would satisfy the last sentence of the relevant code section.

Because the latch is able to be located on the outside of the gate, it stands to reason that the requirement of including a barrier with less than a half inch gap to prevent a child from reaching *inside the gate* is not applicable; after all, the release mechanism is able to be located on the outside of the gate so a barrier preventing a child's hand from getting *inside the gate* seems unnecessary.

Question: When the gate latch is located at least 54" from the bottom of the gate, is a barrier that has no opening greater than 1/2 inch (12.7 mm) within 18 inches (457 mm) of the release mechanism, still required?

Issue 2:

In the same upcoming job, the customer's architect has called out for a magnetic top pull latch to be installed at least 54" from the bottom of the gate and located on the outside of the gate. The second sentence of the relevant section indicates that where the latch is located at least 54" from the bottom of the gate, the release mechanism may be located on the outside of the gate. This sentence does not speak to the location of the *latching mechanism*, only the release mechanism; however some officials have interpreted this to mean that when the release mechanism is located at least 54" from the bottom of the gate, it is able to be installed on the outside of the gate, but the self latching locking device still must be located on the pool side of the gate (inferred from the first sentence that says "Access gates, when provided, shall be self-closing and shall comply with the requirements of Sections R4501.17.1.1 through R4501.17.1.7 and shall be equipped with a self-latching locking device located on the pool side of the gate")

Practically speaking, the vast majority of the latches that exist do not have a release that is separate from the latch. Consequently, an interpretation that the release mechanism is able to

be located on the outside of the gate but the latch mechanism is not, would render useless the intent of the second sentence of the section in the majority of circumstances. In a situation where the locking device has a release mechanism that is distinct from the latch (such as a top pull magnetic latch) it is impractical to have the release mechanism on the outside of the gate and the latch mechanism on the inside of the gate because the devices are not manufactured in a way that allows for that type of installation. .

Question: If a magnetic top pull latch is installed at least 54" from the bottom of the gate, can the release mechanism and the self-latching locking device both be located on the outside of the gate?

Summary:

With respect to the two areas covered under this petition, petitioner firmly believes that based on other sections of the code, it is the legislators intent that if the gate latch is installed at least 54" from the bottom of the gate, then it is placed high enough that the risk of a child gaining access to a pool is sufficiently mitigated. For this reason the section allows the release mechanism to be on the outside of the gate. To require fence contractors to include a barrier to prevent a child's hand from reaching inside the gate when the latch release mechanism is on the outside is requiring fence contractors to perform unnecessary work that does not benefit anyone and costs the consumer additional money. Similarly, the fact that code section expressly allows a release mechanism that is installed 54" from the bottom of the gate to be on the outside of the gate but is silent as to where self-latching, locking device is to be located means that fence contractors have to significantly modify gate latches or place them in a manner that the manufacturer did not intend and that customers do not appreciate, in order to comply with current reading of the code. More than likely, it seems like the drafters intended the terms "release mechanism" and "self latching locking device" to be used interchangeably.

We appreciate all the work of the Florida Building Commission and respectfully request your assistance in clarifying the identified areas of this section so that the law can be enforced in a uniform and consistent manner.

Best Regards,

/s/Christopher L. Johnson
Christopher L. Johnson

November 1, 2019