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**PETITION FOR DECLARATORY STATEMENT  
BEFORE THE FLORIDA BUILDING COMMISSION**

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**Petitioner:**

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**DS 2018-025**

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Petitioner, G.B. Collins Engineering, P.A. ("Petitioner"), by and through its undersigned legal counsel, hereby requests a declaratory statement from the Florida Building Commission (the "Commission") and as grounds therefore states the following:

**I. CODE PROVISION IN QUESTION**

**Florida Building Code, 6th Edition (2017)**

**Chapter 4 – Special Detailed Requirements based on Use and Occupancy  
Section 454 – Swimming Pools and Bathing places (Public and Private)**

**454.1 Public swimming pools and bathing places.**

**454.1.6 Plumbing systems.**

**454.1.6.1 Sanitary facilities.**

Swimming pools with a bathing load of 20 persons or less may utilize a unisex restroom. Pools with bathing loads of 40 persons or less may utilize two unisex restrooms or meet the requirements of Table 454.1.6.1. Unisex restrooms shall meet all the requirements for materials, drainage and signage as indicated in Sections 454.1.6.1.1 through 454.1.6.1.4. Each shall include a water closet, a diaper change table, a urinal and a lavatory. Pools with a bathing load larger than 40 persons shall provide separate sanitary facilities labeled for each sex. The entry doors of all restrooms shall be located within a 200-foot (60 960 mm) walking distance of the nearest water's edge of each pool served by the facilities.

**Exception:** Where a swimming pool serves only a designated group of residential dwelling units and not the general public, poolside sanitary facilities

are not required if all living units are within a 200-foot (60 960 mm) horizontal radius of the nearest water's edge, are not over three stories in height unless serviced by an elevator, and are each equipped with private sanitary facilities.

## II. BACKGROUND

Petitioner is a professional design engineer ("P.E.") who has been in business for over 45 years and has been responsible for the design of hundreds of commercial swimming pools throughout the State of Florida. Accordingly, Petitioner is considering a project that involves the construction of a public pool at a Florida hotel. All living units within the hotel would be within a 200-foot horizontal radius of the nearest water's edge of the pool. Some living units are more than three stories in height but are all accessible by elevator. Each living unit is equipped with private sanitary facilities. Moreover, the pool would be for only those individuals who are currently residing at the hotel or who are otherwise guests of those residing at the hotel. The pool would *not* be for use by the general public.

## III. QUESTION

Whether the *exception* to the requirement for poolside sanitary facilities in Section 454.1.6.1 of the Florida Building Code ("FBC" or "Code") applies to the hotel described above.

## IV. PETITIONER'S ANALYSIS

Petitioner respectfully believes that the answer to the question outlined above is "Yes."

Pursuant to Section 454.1.6.1 of the FBC, public swimming pools of specified bathing loads require that poolside sanitary facilities (i.e., restrooms) be built within 200 feet walking distance of the nearest water's edge. However, within the same section, an exception is carved out for public swimming pools that serve a "designated group of residential dwelling units and not the general public . . . if all living units are within a 200-foot (60 960 mm) horizontal radius of the nearest water's edge, are not over three stories in height unless serviced by an elevator, and are each equipped with private sanitary facilities."<sup>i</sup> In other words, when the exception applies, poolside restrooms are not needed because as with most, if not all hotels, only those individuals who are currently residing at the facility (or guests of same) are permitted to use the facility's swimming pool (as opposed to the general public), and therefore, every authorized individual would be provided with what the Code considers sufficient and adequate access to a sanitary facility.

Petitioner is seeking a declaratory statement as to the above-described pool because the language provided for in the subject exception has the potential to be misleading or confusing; specifically, the undefined phrase "residential dwelling units." The phrase "residential dwelling units," as it is used in the exception, is nothing more than surplus language. Because Section 454.1 governs only the requirements pertaining to public pools, the *sub*-Section 454.1.6.1, and the exception contained therein, can only apply to public pools.<sup>ii</sup> In contrast, Section 454.2 applies

specifically to private/residential<sup>iii</sup> pools.<sup>iv</sup> In fact, the definition of “public pool” itself not only disavows the placement of such a pool on “the grounds of a private residence,” but explicitly includes pools operated by hotels and motels.<sup>v</sup> Therefore, the phrase “residential dwelling units” is superfluous language that, if it were to be applied literally, would render the exception null and void as it could never be applied to a public pool. This would clearly undermine the intent of the exception altogether.

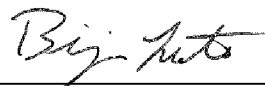
For reference: When the ambiguity of a statute is in question, the first step in determining the Legislature’s intent is to look to the plain language employed.<sup>vi</sup> However, if language in a statute is unclear, then the rules of statutory construction govern.<sup>vii</sup> Therefore, superfluous language may be interpreted as such by employing the statutory canon that provides that “literal interpretation need not be given the language used when to do so would lead to an unreasonable conclusion or defeat legislative intent or result in a manifest incongruity.”<sup>viii</sup> “Once the intent is determined, the statute may then be read as a whole to properly construe its effect.”<sup>ix</sup>

As further evidence that the word “residential,” as it appears in the exception, is nothing more than superfluous language, it should be noted that the term “residential dwelling unit” does not appear elsewhere within Chapter 4 of the FBC (nor has the Petitioner discovered it elsewhere in the Code), and the standalone word “residential” is only defined in Section 454.2, which applies specifically to residential/private pools. The standalone term “residential” does not even appear in the FBC’s general “Definitions” chapter - Section 202. Additionally, the fact that the subsection immediately following Section 454.1.6.1 only refers to “dwelling units,” with absolutely no mention of “*residential* dwelling units,” further demonstrates that the use of “residential” in the exception is nothing more than surplus verbiage. *See* Section 454.1.6.1.1, FBC (providing the requirements for sanitary facility fixtures at public swimming pools).<sup>x</sup>

Last, a nearby subsection of the Code governing public pools explicitly provides that “dwelling units” can include both hotel rooms and motel rooms. *See* Section 454.1.3.1.9 (governing the minimum requirements for the barrier for a public pool).<sup>xi</sup> Under the canons of statutory interpretation, the meaning of terms within the same statute should be interpreted similarly unless legislative history, intent, or purpose suggests otherwise.<sup>xii</sup>

For the foregoing reasons, the Petitioner contends that the exception outlined in Section 454.1.6.1 should apply to the subject pool in question.

Respectfully submitted,



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On Behalf of:

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<sup>i</sup> *Id.*

<sup>ii</sup> Section 454.1.1, FBC, provides the following:

A “**public swimming pool**” or “**public pool**” means a watertight structure of concrete, masonry, or other approved materials which is located either indoors or outdoors, used for bathing or swimming by humans, and filled with a filtered and disinfected water supply, together with buildings, appurtenances, and equipment used in connection therewith. A public swimming pool or public pool shall mean a conventional pool, spa-type pool, wading pool, special purpose pool, interactive water feature or water recreation attraction, **to which admission may be gained with or without payment of a fee** and includes, but is not limited to, pools operated by or serving camps, churches, cities, counties, day care centers, group home facilities for eight or more clients, health spas, institutions, parks, state agencies, schools, subdivisions, or the cooperative living-type projects of five or more living units, such as apartments, boardinghouses, **hotels**, mobile home parks, **motels**, recreational vehicle parks, and townhouses. **The term does not include a swimming pool located on the grounds of a private residence.**

(Emphasis added).

<sup>iii</sup> Note that Section 454.2.2 considers private swimming pools and residential swimming pools synonymous.

<sup>iv</sup> Section 454.2.2, FBC, provides the following, in pertinent part:

Any structure, located in a residential area, that is intended for swimming or recreational bathing and contains water over 24 inches (610 mm) deep including but not limited to inground, aboveground, and onground swimming pools, hot tubs, and nonportable spas.

<sup>v</sup> *Supra*, n.1.

<sup>vi</sup> *Jones v. State*, 966 So. 2d 319, 326 (Fla. 2007) (citing *Koile v. State*, 934 So. 2d 1226, 1230 (Fla. 2006) (stating that “[b]efore resorting to the rules of statutory interpretation, courts must first look to the actual language of the statute itself”) (citing *Joshua v. City of Gainesville*, 768 So. 2d 432, 435 (Fla. 2000)).

<sup>vii</sup> *Joshua*, 768 So. 2d at 435 (citing *Holly v. Auld*, 450 So. 2d 217 (Fla. 1984)).

<sup>viii</sup> *Id.* (quoting *Las Olas Tower Co. v. City of Fort Lauderdale*, 742 So. 2d 308, 312 (Fla. 4th DCA 1999), *review granted*, No. SC95674, 761 So. 2d 330 (Fla. Mar. 20, 2000)).

<sup>ix</sup> *Id.* (underline added for emphasis).

<sup>x</sup> Section 454.1.6.1.1 provides that the required number of sanitary facility fixtures at a public swimming pool be supplanted with the building’s own requirement for such fixtures “[w]hen a public swimming pool meets all of the following conditions:

1. The pool serves only a designated group of dwelling units,

2. The pool is not for the use of the general public, and
3. A building provides sanitary facilities[.]” *Id.*

<sup>xi</sup> Section 454.1.3.1.9, FBC, provides the following:

All **public pools** shall be surrounded by a minimum 48 inch (1219 mm) high fence or other approved substantial barrier. The fence shall be continuous around the perimeter of the pool area that is not otherwise blocked or obstructed by adjacent buildings or structures and shall adjoin with itself or abut to the adjacent members. **Access through the barrier or fence from dwelling units, such as homes, apartments, motel rooms and hotel rooms,** shall be through self-closing, self-latching lockable gates of 48 inch (1219 mm) minimal height from the floor or ground with the latch located a minimum of 54 inches (1372 mm) from the bottom of the gate or at least 3 inches (76 mm) below the top of the gate on the pool side.

(Emphasis added).

<sup>xii</sup> *Ratzlaf v. United States*, 510 U.S. 135, 143 (1994) (“A term appearing in several places in a statutory text is generally read the same way each time it appears.”). *See also* *FCC v. AT & T Inc.*, 562 U.S. 397, 408 (2011) (“[I]dential words and phrases within the same statute should normally be given the same meaning.”) (quoting *Powerex Corp. v. Reliant Energy Services, Inc.*, 551 U.S. 224, 232 (2007)).