

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0817**

In the Matter of the Petition of Valet Living for a Declaration that Interpretation Titled
Corridor Trash Collection Service in Group R-2
Issued by the Minnesota Fire Marshal is an Unadopted Rule.

**Filed March 1, 2021
Affirmed
Florey, Judge**

Office of Administrative Hearings
File No. 60-9018-36602

Bryan J. Huntington, Larkin Hoffman Daly & Lindgren Ltd., Minneapolis, Minnesota (for
petitioner Valet Living)

Keith Ellison, Attorney General, Stephen D. Melchionne, Assistant Attorney General,
St. Paul, Minnesota (for respondent Minnesota Fire Marshal)

Considered and decided by Reilly, Presiding Judge; Florey, Judge; and Frisch,
Judge.

NONPRECEDENTIAL OPINION

FLOREY, Judge

In this administrative appeal, petitioner challenges the determination that the state
fire marshal's construction of section 1030.3 of the Minnesota State Fire Code, Minn. R.
5711.1031, supb.2 (2019), is consistent with the plain language of the rule and therefore
does not constitute enforcement of an unadopted rule. We affirm.

FACTS

Petitioner Valet Living challenges the decision of an administrative-law judge (ALJ) dismissing its petition under Minn. Stat. § 14.381 (2020), following a dispute over a document interpreting section 1030.3 of the Minnesota State Fire Code (fire code or MSFC) by respondent Minnesota State Fire Marshal (fire marshal) and the Minnesota Department of Public Safety (DPS), which was posted on the fire marshal's website but never formally promulgated as a newly adopted rule.

During September 2018, the fire marshal posted a document (First Interpretation) on its website entitled "Valet Trash Collection Service in Group R-2" with the stated purpose of "clarify[ing] that 2015 Minnesota State Fire Code (MSFC) Section 1030.3 does not allow valet trash collection services in corridors of Group R-2 apartment and condominium buildings." This document further stated:

Background

Trash collection companies have proposed or are already conducting trash collection from dwelling units where the trash is left in the corridor outside the dwelling unit for scheduled pickup. The occupant trash is intended to be contained in one or more non-combustible or limited combustible containers with tight-fitting lids. These containers could be stored in the corridor for up to 18 hours.

There is a proposal moving its way through ICC code development process for the 2021 International Fire Code to add language for this service.

2015 MSFC Section 1030.3

0130.3 Obstructions. A means of egress shall be free from obstructions that would prevent its use, including the accumulation of snow and ice. Means of egress shall remain free of any material or matter where its presence would

obstruct or render the means of egress hazardous. No combustible storage is allowed in corridors or exit stairs.

Storage

M-W.com dictionary referenced in MSFC Chapter 2 defines the transitive verb “store” as “to place or leave in a location for preservation or later use or disposal.” This service requires storing the trash in the corridor for a period of time and is not allowed per Section 1030.3.

In most apartment buildings the egress corridor is the principle means of exiting the building. It is imperative that the fuel load in corridors be kept to a minimum so that fire growth is contained and this critical egress path remain tenable for the occupants and emergency responders.

Hazardous

Modern garbage and recycling contain a significant amount of plastic materials. These burn at high rates of heat release with significant generation of toxic fire gases including, but not limited, to [various toxic gases].

On May 20, 2019, Valet Living requested that the fire marshal grant the company a variance from MSFC § 1030.3. On July 17, the First Interpretation was removed from the fire marshal’s website, and further research on the applicable code provision was undertaken. In August, DPS conducted a statewide survey of local fire officials to gather input on the operation of section 1030.3.¹

In early October, Valet Living received a letter stating that the fire marshal had determined that “corridor refuse collection”—a service Valet Living provides—violates section 1030.3 of the fire code. An updated document interpreting section 1030.3 (Second

¹ In this online survey, 95 fire officials were polled on the question of whether “trash or recyclables in trash cans placed in a location for up to 18 hours meet[s] the definition of storage”—52 officials answered “yes” and 41 answered “no.”

Interpretation) was posted on the fire marshal's website. The Second Interpretation was nearly identical to the First Interpretation but used the terms "corridor trash collection" instead of "valet trash collection."

In December 2019, Valet Living initiated an Office of Administrative Hearings (OAH) proceeding under section 14.381 of the Minnesota Administrative Procedures Act (MAPA) to challenge the statement posted on the fire marshal's website providing the interpretation of MSFC § 1030.3. The specific statement at issue in the OAH hearing provides that the placement of trash cans in apartment or condominium hallways for waste collection violates language in MSFC § 1030.3 providing: "No combustible storage is allowed in corridors or exit stairs." See Minn. R. 7511.1031, subp. 2.

Following a hearing, the ALJ issued an order determining that the fire marshal's posted statement comports with the plain meaning of section 1030.3 and thus does not constitute an unadopted rule. The ALJ therefore dismissed Valet Living's petition. Valet Living filed a petition with this court seeking review of the ALJ's order.

DECISION

The Minnesota Administrative Procedures Act (MAPA) allows a person to petition to have an ALJ "determin[e] that an agency is enforcing or attempting to enforce a policy, guideline, bulletin, criterion, manual standard, or similar pronouncement as though it were a duly adopted rule." Minn. Stat. § 14.381, subd. 1(a) (2018). Section 14.381 provides for an appeal to this court in a declaratory judgment action.

Generally, administrative rules must be adopted in accordance with specific notice and comment procedures established by MAPA, and failure to comply with these necessary

procedures results in invalidity of the rule. *White Bear Lake Care Ctr., Inc. v. Minnesota Dep't of Pub. Welfare*, 319 N.W.2d 7, 8 (Minn. 1982). An agency rule is “every agency statement of general applicability and future effect . . . adopted to implement or make specific the law enforced or administered by that agency.” Minn. Stat. § 14.02, subd. 4 (2020). However, when an agency “enforces a law or rule by applying the law or rule to specific facts on a case-by-case basis,” the “agency determination is not considered an unadopted rule[.]” Minn. Stat. § 14.381, subd. 1(b) (2020). Likewise, when an agency’s interpretation is in accordance with a statute’s or rule’s plain meaning, the agency is not deemed to have engaged in illegal rulemaking. *Cable Commc’ns Bd. v. Nor-West Cable Commc’ns P’ship*, 356 N.W.2d 658, 667 (Minn. 1984).

The applicability of this plain-meaning exception to the fire marshal’s posted interpretation of MSFC § 1030.3 is the central dispute here. That code section states:

Obstructions. A means of egress shall be free from obstructions that would prevent its use, including the accumulation of snow and ice. Means of egress shall remain free of any material or matter where its presence would obstruct or render the means of egress hazardous. ***No combustible storage is allowed in corridors or exit stairs.***

MSFC § 1030.3, codified as Minn. R. 7511.1030, subd. 2 (emphasis added). The parties disagree as to whether the phrase “combustible storage” has only one plain meaning—that which was articulated by the fire marshal in the Second Interpretation as encompassing leaving a trash container for pickup by a collection service in an apartment or condominium corridor—or whether either term is ambiguous and reasonably susceptible to multiple readings, thereby making the fire marshal’s construction an unadopted rule.

This court reviews de novo the application of a statute to undisputed facts. *Seagate Tech., LLC v. W. Digital Corp.*, 854 N.W.2d 750, 757 (Minn. 2014). To determine the plain meaning of a rule, we may utilize the statutory canons of construction and consider terms’ generally accepted usage, including dictionary definitions. See Minn. Stat. § 645.08, subd. 1 (2020); *Jaeger v. Palladium Holdings, LLC*, 884 N.W.2d 601, 605 (Minn. 2016) (“When a statute or a rule does not contain a definition of a word or phrase, we look to [dictionary definitions]”). Further, the fire code specifically provides that, “[w]hen terms are not defined, they shall have their ordinary accepted meanings within the context with which they are used. The Merriam-Webster Collegiate Dictionary, available on the Internet at www.merriam-webster.com, shall be considered as providing ordinarily accepted meanings.” Minn. R. 7511.0201 (2019) (MSFC § 201).

The ALJ’s order outlines why the judge determined that “combustible storage” can only be reasonably understood to encompass leaving trash containers in a corridor for later collection based on both terms’ dictionary definitions, which is in accordance with the Second Interpretation put forward by the fire marshal in its posted online document. As to the second term—“storage”—the ALJ reviewed the following applicable definitions:

Merriam-Webster Online supplies two relevant definitions of “storage”: “an amount stored”; and “the act of storing [or] the state of being stored.” Both “storing” and “stored” reference the definition of the transitive verb “store.” The dictionary defines that verb as meaning to “lay away” or “accumulate” (as in storing food for winter); to “furnish” or “supply” (as in to store a ship); to “provide storage room for” or “hold” (as in a grain storage elevator); or “to place or leave in a location (such as a warehouse, library, or computer memory) for preservation or later use or disposal.”

Based on the above definitions, the ALJ concluded that the term “storage” as used in section 1030.3 was not ambiguous and that the corridor refuse Valet Services collects for its customers clearly fits within the plain meaning of this term:

The fourth definition of “store” [to place or leave in a location for later use or disposal] clearly encompasses the corridor refuse. Indeed, it is an accurate and succinct description of [Valet Living’s] services to say that its customers place or leave refuse in a location for later disposal. This definition of “store” has no temporal component, so the fact that the refuse may only be in the corridor for a few hours is not relevant to the question of whether the refuse has been stored.

The question remains, however, whether the fact that “storage” can take on several dictionary meanings renders its use in the MSFC ambiguous. But crediting [Valet Living’s] argument would require interpreting MSFC’s language to hold that “storage” could apply solely to “long-term storage” Such an interpretation would mean that, for instance, a building supervisor who left a pile of oily rags, fireworks, or open canisters of flammable chemicals in the hallway for later retrieval had not violated this provision of the fire code—simply because the supervisor was not, for example, stowing those items away for winter. This would not be reasonable. It would be especially unreasonable to give weight to such “long-term storage” interpretations of the regulation because the plain words discuss “storage” in “corridors,” and corridors (unlike, for instance, grain elevators, ships’ bowels, warehouses, or even basements) are not ordinarily places where people place items in long-term storage.

Accordingly, the ALJ concluded:

The only reasonable way to interpret the meaning of “storage” in section 1030.3 of the MSFC is that it encompasses placing or leaving combustible items in a corridor for later use or disposal. And this definition encompasses [Valet Living’s] refuse collection services.

Valet Living argues that “[t]o reach its conclusion that the phrase ‘combustible storage’ was not ambiguous, the ALJ disregarded concrete evidence in the record reflecting different understandings of the meaning of that phrase, disregarded conflicting dictionary definitions, and improperly and needlessly construed the phrase in an effort to prohibit purely hypothetical conduct unrelated to Valet Living that was already prohibited by multiple other fire code provisions.”

First, Valet Living asserts that the August 2019 survey of fire professionals problematically played “no role” in the ALJ’s decision and that its results contradict the determination that “[t]he only reasonable way to interpret the meaning of ‘storage’ in . . . the MSFC is that it encompasses placing or leaving combustible items in a corridor for later use or disposal” since “[n]early half of the members of the local fire community disagree with that interpretation.” Yet, the survey responses are certainly not dispositive on the ambiguity of the terms “combustible storage.” As respondent notes, “Petitioner’s argument is essentially that because some people may disagree about the meaning of the rule, the rule is legally ambiguous. This is simply not the case.” Indeed, a statute is ambiguous “only when the statutory language is subject to more than one *reasonable* interpretation.” *State v. Overweg*, 922 N.W.2d 179, 183 (Minn. 2019) (emphasis added). And the fact that some individuals disagree on how a phrase might be understood and applied to a specific context does not necessarily make any of those terms legally ambiguous, and the ALJ was certainly not required to make such a finding. Further, we note that Valet Living was unable to offer an alternate reasonable definition at oral argument.

Valet Living contends that the ALJ erroneously used a definition for the verb “store” and failed to properly qualify the application of this definition based on the specific examples that were listed after that term within its description—warehouse, library, and computer memory—all of which necessarily require a longer-term temporal component be part of the act of storing. Valet Living maintains that, by operation of *ejusdem generis*,² these specific examples should have limited the preceding general term (“store”) when construing its definition. This canon-of-construction argument is unconvincing. The listed examples in the applicable definition do not necessarily qualify the time an item must be stored; rather they are more reasonably understood in the context here as examples of the types of locations in which items are typically stored. *See State v. Henderson*, 907 N.W.2d 623, 626 (Minn. 2018) (“The meaning of a word depends on how it is being used in the context of the statute.”).

Valet Living also argues that the ALJ impermissibly rejected parts of the selected definition of “storage” from Meriam-Webster, namely “the safekeeping of goods in a depository (such as a warehouse).” This alternative-definition argument is also unavailing. The safekeeping-of-goods definition put forward by Valet Living does not make sense in the context of the placement of a trash receptacle in an apartment corridor and results in absurd outcomes when applied to the fire code. *See Bd. of Regents of Univ. of Minnesota v. Royal Ins. Co. of Am.*, 517 N.W.2d 888, 892 (Minn. 1994) (“Because a word has more

² “*Ejusdem generis*, as codified in Minn. Stat. § 645.08, subd. 3 . . . requires that “[g]eneral words are construed to be restricted in their meaning by preceding particular words.” *Lefto v. Hogsbreath Enterprises, Inc.*, 581 N.W.2d 855, 856 (Minn. 1998).

than one meaning does not mean it is ambiguous. The sense of a word depends on how it is being used; only if more than one meaning applies within that context does ambiguity arise.”); *see also* Minn. Stat. § 645.17 (2020) (stating that we presume drafters of a law do not intend results that are “absurd” or “unreasonable”).

Finally, as to the first term—combustible—Valet Living suggests that ordinary household trash does not necessarily fall within the dictionary definition of this term. The thrust of this argument is that “[t]he level of flammability that is required before an item qualifies as ‘combustible’ is ambiguous.”

In response to this contention, the ALJ concluded that, “contrary to [Valet Living’s] arguments, there is nothing in the MSFC to suggest that ‘combustible’ in this context means a higher level of flammability than is typical of household refuse.” Again, the ALJ’s reasoning is supported by the dictionary definition of the term. Combustible is defined as “capable of combustion,” and in turn, “combustion” is defined as “an act or instance of burning.” *See* Merriam-Webster Online, “Combustible,” <https://www.merriam-webster.com/dictionary/combustible>. It is common knowledge that garbage typically contains paper, plastic, or other materials, all of which can be burned, or in other words, are “capable of combustion.” Respondent observes that “there is no reasonable definition of the term ‘combustible’ that does not include common household trash.” We agree.

In sum, we conclude that the ALJ did not err as a matter of law in determining that the phrase “combustible storage” as used in MSFC § 1030.3 was not ambiguous and that

the fire marshall was not enforcing an unadopted rule. Therefore, the ALJ appropriately dismissed Valet Living's petition.

Affirmed.