

RESOLUTION NO. 02-02-29

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, AUTHORIZING THE CITY TO ENTER INTO AN INTERLOCAL AGREEMENT WITH MONROE COUNTY, FLORIDA, AND THE MUNICIPALITIES OF ISLAMORADA, KEY COLONY BEACH AND LAYTON IN ORDER TO ESTABLISH A COUNTYWIDE COMPLIANCE REVIEW BOARD TO REVIEW LOCAL TECHNICAL AMENDMENTS TO THE FLORIDA BUILDING CODE; AUTHORIZING THE CITY MANAGER AND CITY ATTORNEY TO FINALIZE THE TERMS AND CONDITIONS OF SAID AGREEMENT; AUTHORIZING THE MAYOR TO EXECUTE SAID AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Marathon ("City") desires to enter into an Interlocal Agreement between Monroe County, Florida, and the Municipalities of Islamorada, Key Colony Beach, Layton, and Marathon, Florida, in order to establish a countywide compliance review board to review local technical amendments to the Florida Building Code; and

WHEREAS, the Florida Building Code Act of 1998, as amended, created a building code to be uniformly in effect throughout the State of Florida, beginning March 1, 2002; and

WHEREAS, the parties to said Agreement, constituting local governments within Monroe County, Florida, desire to preserve their respective abilities to make local technical amendments to the Florida Building Code, and thereby wish to establish a countywide compliance review board with the power, jurisdiction and authority to review local technical amendments to the Florida Building Code, pursuant to Section 553.73, Florida *Statutes*.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, AS FOLLOWS:

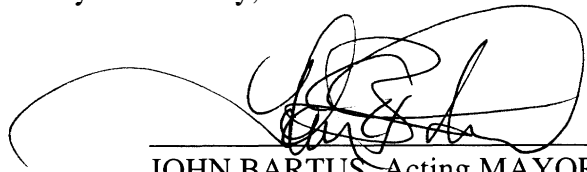
Section 1. Recitals. The above recitals are true and correct and are incorporated herein by this reference.

Section 2. Term. Said Agreement shall commence as of the date of last signing. Any party under this Interlocal Agreement may withdraw from said Agreement and membership on the Board upon providing thirty (30) days written notice to the Board.

Section 3. Agreement. The Interlocal Agreement, in substantially the form and substance that is attached hereto as Exhibit "A", is hereby approved. The City Manager and the City Attorney are authorized to finalize the terms and conditions of said Agreement, if necessary, and the Mayor is authorized to execute said Agreement on behalf of the City.

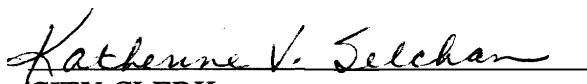
Section 3. Effective Date. This resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED this 20th day of February, 2002.




JOHN BARTUS, Acting MAYOR

ATTEST:



KATHERINE V. SELCHAN
CITY CLERK

APPROVED AS TO LEGAL SUFFICIENCY!



CITY ATTORNEY

#5000v1.ks

MEMORANDUM

city of Marathon

TO: Mayor, City Council and City Manager

FROM: Alexander L. Palenzuela, City Attorney

DATE: February 11, 2002

MEETING DATE: February 20, 2002 Council Meeting

SUBJECT: Interlocal Agreement on Countywide Compliance Review Board

ITEM: Interlocal Agreement on Countywide Compliance Review Board

STATEMENT OF PURPOSE:

Section 553.73, Florida Statutes requires that the City participate in a Countywide Compliance Review Board (the "Board") if the City desires to make technical revisions to the Florida Building Code which takes effect on March 1, 2002. The purpose of the Interlocal Agreement is to establish the Board and the rules under which it will operate. The purpose of the Board is solely to hear challenges brought by substantially affected parties to any technical amendment adopted by any participating local government to determine whether the technical amendment complies with the requirements of the statute authorizing amendments to the Florida Building Code. If the Board finds that a technical amendment is not in compliance with the statute, it shall notify the City that the amendment is unenforceable until it is brought into compliance. Either party may appeal the determination of the Board to the Florida Building Commission.

The Board may only meet if a challenge is filed. By statute, the Board shall determine whether its decision will apply to the respective local government or countywide. This does not mean that the Board may impose a technical amendment on a local government that has not adopted said amendment.

All local governments in the County may participate in the agreement. Those governments that do not participate may not make technical amendments to the Florida Building Code. To date, Key West indicates that it will not participate in the agreement. With one exception, all other local governments in Monroe County, including the County itself, have indicated their intent to participate. Only one local government has not yet indicated whether it will participate. The City may choose to participate regardless of the participation of any other local government.

RECOMMENDATION

The City should approve the attached agreement if it desires to make technical amendments to the Florida Building Code.

BUDGET IMPACT:

The costs of running the Board will be borne equally by all of the participating local governments and should only have a minimal impact on the budget.

STAFF IMPACT:

None



BOARD OF COUNTY COMMISSIONERS
MAYOR Charles "Sonny" McCoy, District 3
Mayor Pro tem Dixie Spehar, District 1
Murray Nelson, District 5
George Neugent, District 2
Bert Jimenez, District 4

Office of the County Attorney
PO Box 1026
Key West, FL 33041-1026
305/292-3470 - Phone
305/292-3516 - Fax



July 8, 2002



Katherine V. Selchan, City Clerk
City of Marathon
210 North University Drive, #702
Coral Springs, FL 33071

RE: Compliance Review Board Interlocal Agreement

Dear Katey:

Enclosed is your municipality's duplicate original of the above referenced agreement. Please contact the appropriate person in your government to initiate the appointment process whereby your municipality appoints its member to the Building Code Compliance Review Board. At such time as an appointment is made, I would appreciate your notifying me of that appointment.

Thank you for your attention to this matter and for your cooperation in getting this agreement executed.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Suzanne A. Hutton'.

Suzanne A. Hutton
Assistant County Attorney

SAH:dct

Enclosure

cc: Joe Paskalik
James L. Roberts

**COMPLIANCE REVIEW BOARD
INTERLOCAL AGREEMENT**

This Interlocal Agreement is entered between Monroe County, Florida, and the Municipalities of Islamorada, Key Colony Beach, Layton, and Marathon, Florida, as of the date last signed below, establishing a countywide Compliance Review Board to review local technical amendments to the Florida Building Code.

WHEREAS, the Florida Building Code Act of 1998, as amended, created a building code to be uniformly in effect throughout the State of Florida, beginning March 1, 2002; and

WHEREAS, Section 553.73(4)(b)(7), Florida Statutes, requires each county and municipality desiring to make local technical amendments to the Florida Building Code to establish, by interlocal agreement, a countywide compliance review board to review any amendment to the Florida Building Code, adopted by a local government, that is challenged by any substantially affected party for purposes of determining the amendment's compliance with Section 555.73, Florida Statutes; and

WHEREAS, the parties to this agreement, constituting local governments within Monroe County, Florida, desire to preserve their respective abilities to make local technical amendments to the Florida Building Code, and thereby wish to establish a countywide compliance review board with the power, jurisdiction and authority to review local technical amendments to the Florida Building Code, pursuant to Section 553.73, Florida Statutes;

NOW THEREFORE, in consideration of the foregoing premises, the parties hereto agree to the following:

Section 1. Incorporation by Reference.

The foregoing preambles are incorporated in and made a part of this Interlocal Agreement.

Section 2. Creation of Board Composition.

A. There is hereby created and established a countywide compliance review board to be known and designated as the Building Code Compliance Review Board, hereinafter referred to as the Board.

B. The Board shall consist of one (1) member appointed from and by each local government that is a party to this Interlocal Agreement. Each participating local government shall determine the method by which it will appoint or remove its member. Membership upon the Board shall be expanded to include one (1) member from and by each local government which hereafter enters into this Interlocal Agreement, subject to the provisions hereof. The local government that appoints a member of the Board may remove or replace its appointed member with or without cause at any time.

C. Each member's term shall be for a period of three (3) years.

D. Each participating local government shall appoint a member who is the Building Official or other public employee, including a private party under contract to perform a public function for the local government, and has knowledge and expertise in building construction, fire safety standards and construction codes.

E. The Board shall elect a chair who shall preside at all meetings, and a vice-chair, who shall serve in the absence of the chair. The chair and vice-chair shall be voting members of the Board.

F. Members of the Board shall serve without compensation. Travel reimbursement to meetings, if out of area of residency, is the responsibility of the appointing local government and shall be pursuant to that government's rules.

Section 3. Adoption of Rules and Procedures Minutes.

A. The Board shall be entitled to adopt such rules and procedures as from time to time it shall deem appropriate for the proper conduct of its duties.

B. The Board shall keep minutes of its proceedings, showing the vote of each member upon each question or, if absent or failing to vote, indicating such fact and shall keep records of its hearings and other official actions, all of which shall be of public record.

Section 4. Secretary of the Board and Administrative Costs.

A. The records of the Board shall be kept, and all administrative duties necessary to the proper functioning of the Board shall be performed, by the Secretary of the Board who shall be appointed and removed by an absolute majority vote of the Board.

B. The Secretary shall be an employee of a participating local government. The local government that employs the Secretary shall be reimbursed on a pro-rata basis by the participating local governments for the actual costs for the services of the Secretary and the administrative costs of the Board.

C. Meetings shall be conducted in a location near the geographic center of Monroe County.

Section 5. Quorum.

A majority of the members of the Board shall constitute a quorum. The affirmative vote of a majority of the members present shall be required for any action to be taken; but a smaller number may adjourn from time to time until a quorum is present.

All Board members in attendance shall vote on all board actions, decisions and recommendations except when, with respect to any such member, there is a conflict of interest, as prohibited by Florida Statutes. In such case, such member shall abstain from voting and shall not be included for purposes of calculating a quorum as to that specific matter.

Section 6. Powers of Board.

The Board shall have the power to:

A. Adopt rules for the conduct of its hearings, which rules shall require, at a minimum that:

- (i) Petitions for hearings shall include identification of the petitioner, a statement of the local technical amendment challenged, notice to the county or city attorney of the filing of the petition, an explanation of how the petitioner's substantial interests are or will be affected by the amendment, and a statement of the relief sought.

- (ii) Hearings shall be recorded and may be transcribed at the expense of the party requesting the transcript.
- (iii) The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if the Board finds it competent and reliable. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence.
- (iv) Each party - the petitioner and the building official (or designee) of the government whose amendment is challenged - shall have these rights: to call and examine witnesses; to introduce exhibits; and to cross-examine witnesses on any matter relevant to the issues even though that matter was not covered in direct examination.
- (v) Decision of the compliance review board shall be recorded in a written document and a copy transmitted to the petitioner and to the affected local government building official and City or Village Manager and County Administrator.

B. Review any local technical amendment to the Florida Building Code, adopted by a local government within Monroe County pursuant to Section 553.73, Florida Statutes, that is challenged by any substantially affected party for the purpose of determining the amendment's compliance with Section 553.73(4), Florida Statutes. A substantially affected party must establish (1) a real and sufficiently immediate injury in fact; and (2) that the alleged interest is arguably within the zone of interest to be protected or regulated. The Board's review shall be limited to the following:

- (i) that local conditions justify more stringent requirements than those specified in the Florida Building Code for the protection of life and property;
- (ii) that the additional requirements are not discriminatory against materials, products or instruction techniques of demonstrated capabilities;
- (iii) that the additional requirements may not introduce a new subject not addressed in the Florida Building Code.

C. Meet only when a petition for hearing is filed with the Secretary of the Board, who shall prepare and mail to the petitioners and clerks of the participating local governments a notice of hearing and shall set the hearing for a date within 30 days of receipt of the petition for hearing.

Section 7. Appeals.

If the Board determines an amendment is not in compliance, the local government may appeal the decision of the Board to the Florida Building Commission. If the Board determines such amendment to be in compliance, any substantially affected party may appeal such determination to the Florida Building Commission.

Section 8. Withdrawal from Participation on Board.

Any party under this Interlocal Agreement may withdraw from this Agreement and membership

on the Board upon providing thirty (30) days written notice to the Board.

Section 9. Additional Parties to Interlocal Agreement.

Any other local government within Monroe County, Florida, may become a party to this Interlocal Agreement by executing a counterpart of this Interlocal Agreement, and shall thereafter be entitled to membership on the Board with the same rights, privileges, obligations and duties as if an original party to this Interlocal Agreement.

Section 10. Miscellaneous.

A. This Interlocal Agreement may be executed in counterparts. Each copy shall be deemed an original, but all of them together shall constitute one and the same instrument. A facsimile copy of the Agreement and any signatures thereon shall be considered for all purposes as an original.

B. This Interlocal Agreement shall be binding upon and inure to the benefit of the respective parties.

C. This Interlocal Agreement shall be governed by and in accordance with the laws of the State of Florida. Venue for any litigation with respect to this agreement or action taken pursuant hereto shall be in Monroe County, Florida.

D. This Interlocal Agreement constitutes the entire agreement between the parties with respect to the specific matters contained herein and supersedes all previous discussion, understandings, and agreements. The parties to this Interlocal Agreement may only make amendments to the provisions of this Interlocal Agreement by a written instrument executed by a majority of the participating local governments.

IN WITNESS WHEREOF, each party to this Agreement has caused it to be executed on the date indicated below.

(SEAL)
ATTEST: DANNY L. KOLHAGE, CLERK

By *Jamie Hancock*
Deputy Clerk

Approved as to form and legal sufficiency

By *James Heath 7/1/02*

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

By _____
Mayor/Chairman

Date *February 13, 2002*

(SEAL)
ATTEST:

By *Kathleen V. &*, <...>*
City Clerk

Approved as to form and legal sufficiency

By *[Signature]*

CITY COUNCIL OF MARATHON,
FLORIDA

By *[Signature]*
Mayor

Date *May 31, 2002*

(SEAL)
ATTEST: VILLAGE CLERK

By Beverly Neuloh
Clerk

Approved as to form and legal sufficiency

By [Signature]

(SEAL)
ATTEST: CITY CLERK

By Leticia Hernandez
Clerk

Approved as to form and legal sufficiency

By [Signature]

(SEAL)
ATTEST: CITY CLERK

By Paul L. Meland
Clerk

Approved as to form and legal sufficiency

By [Signature]

VILLAGE COUNCIL OF ISLAMORADA,
VILLAGE OF ISLANDS, FLORIDA

By Walter Lopez
Mayor

Date 6/25/02

CITY COMMISSION OF KEY COLONY
BEACH, FLORIDA

By Clyde Burnett
Mayor

Date 6-17-02

CITY COUNCIL OF LAYTON, FLORIDA

By Paul MacFarlane
Mayor

Date 6-28-02