

**1. Requested Motion:** Motion to approve the Fire Control and Prevention Interlocal Agreement between the Town and the Fort Myers Beach Fire Control District.

**Meeting Date:** 12/5/13

**Why the action is necessary:** To provide for better code enforcement of fire code violations

**What the action accomplishes:** Approves the Interlocal Agreement.

**2. Agenda:**

Consent  
 Administrative

**3. Requirement/Purpose:**

Resolution  
 Ordinance  
 Other

**4. Submitter of Information:**

Council  
 Town Staff  
 Town Attorney

**5. Background:** The Fort Myers Beach Fire Control District is responsible for enforcing certain fire and life safety codes, but does not have an efficient means of obtaining compliance with the codes it is responsible for. The Interlocal Agreement will allow the Fire District and the Town to work jointly to provide effective enforcement of the applicable fire and life safety codes.

**6. Alternative Action:** Decline to approve the Agreement.

**7. Management Recommendations:** Approve the Agreement

**8. Recommended Approval:**

Town Manager	Town Attorney	Finance Director	Public Works Director	Community Development Director	Parks & Recreation Director	Town Clerk
						

**9. Council Action:**

Approved    Denied    Deferred    Other

## **FIRE CONTROL AND PREVENTION INTERLOCAL AGREEMENT**

THIS INTERLOCAL AGREEMENT is made and entered into effective on the date herein specified, by and between the FORT MYERS BEACH FIRE CONTROL DISTRICT a duly enacted independent special fire control district created pursuant to its enabling legislation and Chapters 189 and 191, Florida Statutes, with its principal office located at 100 VOORHIS STREET, FORT MYERS BEACH, FLORIDA 33931 (referred to herein as the "DISTRICT"), and the TOWN OF FORT MYERS BEACH, a duly chartered municipal corporation under Article VIII, Section 2 of the Florida Constitution, with its principal place of business located at 2535 ESTERO BLVD., FORT MYERS BEACH, FLORIDA 33931 (referred to herein as the "TOWN").

### W I T N E S S E T H:

WHEREAS, the Florida Interlocal Cooperation Act of 1969, codified at Chapter 163, Florida Statutes, authorizes the joint exercise of any power, privilege or authority which local governmental units might exercise separately; and,

WHEREAS, the TOWN and the DISTRICT are public agencies and local governmental units within the meaning of the Florida Interlocal Cooperation Act who desire the joint exercise of power which each might exercise separately to the extent described herein, for the purpose of enforcing the Florida Fire Prevention Code, Chapter 633, Florida Statutes and local ordinances relating to fire prevention, fire safety, fire inspection, and fire control (collectively referred to herein as the "Fire Code"); and,

WHEREAS, the TOWN does not employ a Fire Official, Fire Marshal or Fire Safety Inspector, and contracts with Lee County for certain building official and inspection services; and,

WHEREAS, it is in the best interest of the health, safety and welfare of the public and it is mutually advantageous for the parties to cooperate with each other in the form of an agreement to provide for the authorization of certain employees of the DISTRICT to act as Code Inspectors/Code Enforcement Officers of the TOWN relating to FIRE CODE regulations.

NOW, THEREFORE, in consideration of the mutual promises, covenants and duties hereinafter set forth, the TOWN and the DISTRICT formally covenant, agree and bind themselves as follows:

1. The TOWN and the DISTRICT acknowledge and agree that fire prevention, fire safety and fire control within the territory of the DISTRICT and located within the boundaries of the TOWN are the responsibility of the DISTRICT.
2. The TOWN and the DISTRICT agree that the Fire Chief of the DISTRICT, or his designee, shall act as the Fire Official for the TOWN. As described in s. 633.121, Florida Statutes, the Fire Chief, or his designee, is authorized to enforce Chapter 633, Florida Statutes, and the rules prescribed by the State Fire Marshal.

3. The TOWN and the DISTRICT agree that the DISTRICT shall employ or contract with a "Fire Safety Inspector" as that term is defined in Chapter 633, Florida Statutes, who shall act as the Fire Safety Inspector for the TOWN. The Fire Chief of the DISTRICT shall designate the Fire Safety Inspector. Except as otherwise designated by the Fire Chief, the Fire Marshal of the DISTRICT shall be the Fire Safety Inspector for the TOWN. The Fire Safety Inspector may also be referred to as the Fire Marshal for the TOWN. In all instances, the individual designated as the Fire Safety Inspector by the Fire Chief shall meet all of the requirements of a Fire Safety Inspector as described in Chapter 633, Florida Statutes, especially s. 633.081, as said law may be amended in the future. Written notice of the designation of the Fire Safety Inspector by the Fire Chief of the DISTRICT shall be filed with the TOWN clerk, with a copy to the TOWN manager, within ten (10) calendar days of the date of the designation.
4. The TOWN and the DISTRICT agree that all of the duties of a Fire Official, Fire Marshal or Fire Safety Inspector may be exercised by anyone designated by the Fire Chief of the DISTRICT who meets the statutory qualifications for the designated position.
5. The TOWN recognizes the DISTRICT'S legislative ability to author and enact local fire code ordinances. All such local fire code ordinances shall be reviewed and approved by the State of Florida Fire Marshal, after which they shall become a part of the "Fire Code" referenced above. All local fire code ordinances shall be more stringent than any existing state fire code regulations in place at the time of enactment.
6. The Fire Chief, and the individuals designated by the Fire Chief, as set forth in the list attached as Exhibit A and incorporated herein, are hereby appointed as Code Inspectors/Code Enforcement Officers for the TOWN within the meaning of Chapters 162, 553 and 633, Florida Statutes, and the TOWN charter and ordinances. To the extent of their area of applicability and expertise, the individuals listed on Exhibit A may enforce state and local Fire Codes of the TOWN and of the DISTRICT as Code Inspector/Code Enforcement Officers for the TOWN. Written notice of any revisions to the list attached as Exhibit A shall be filed with the TOWN clerk, with a copy to the TOWN manager, within ten (10) calendar days of the date of the revision.
7. The DISTRICT agrees to provide assistance to the TOWN to properly interpret and enforce the Florida Fire Prevention Code, any rules promulgated thereunder, and any duly enacted ordinances, policies and regulations of the TOWN and the DISTRICT relating to fire prevention, fire safety, fire inspection and fire control. The DISTRICT will maintain an ongoing schedule of inspections of all existing structures that are subject to fire and life safety inspections under Florida law, the Florida Administrative Code, and local ordinances, rules and regulations, using an inspection schedule the Fire Official deems reasonable and appropriate. The purpose of the ongoing inspections of existing structures will be to insure compliance with the Florida Fire Prevention and Life Safety Code, together with

the rules promulgated thereunder, and local ordinances, rules and regulations related to fire prevention and life safety (see Chapter 633, Florida Statutes and Florida Administrative Code Section 69A).

8. The TOWN and the DISTRICT will coordinate their efforts to provide for a smooth, efficient and timely process for receiving and reviewing of applications and plans, and for inspections, and for permit issuance. A sample of the current permitting process is set out in Exhibit B, attached hereto and incorporated herein. The TOWN Manager and the Fire Chief, or their designees, will be responsible for further coordinating the permitting process and may make changes by mutual written agreement or memorandum as necessary. Nothing herein shall interfere with or affect the DISTRICT'S prior method of plans review activities that have been accomplished in part, through a separate Interlocal Agreement with Bonita Springs Fire Control and Rescue District under which the Bonita Springs Fire Control and Rescue District provides plans review services for the DISTRICT.
9. The DISTRICT shall ensure that the Fire Marshall, and all Fire Safety Inspectors, or his/her designee, has received training in Lee County Citation Procedure for Code Enforcement Officers as defined by Lee County Administrative Code 12-5.
10. The TOWN shall ensure that the Fire Marshall and all Fire Safety Inspectors receive any and all required citation training the TOWN requires of its code enforcement officials that differs in any way from the requirements set forth by LEE COUNTY Administrative Code 12-5.
11. As Code Inspectors/Code Enforcement Officers of the TOWN, the DISTRICT representatives designated in Exhibit A shall have and exercise the same civil enforcement authority and shall receive the same services of the TOWN that the TOWN provides to the TOWN'S Code Inspectors and Code Enforcement Officers under any of the following:
  - a. The TOWN'S code enforcement ordinances and corresponding state law,
  - b. The TOWN'S nuisance abatement procedures,
  - c. Any other civil enforcement method permitted by law.
12. As partial consideration to the DISTRICT under this Agreement, the DISTRICT will be entitled to any costs of enforcement that are specifically designated in favor of the DISTRICT together with one-half ( $\frac{1}{2}$ ) of any separate fine amounts that are not specifically designated as reimbursement of the TOWN'S enforcement costs. If an enforcement procedure involves extraordinary or complicated issues or processes, the TOWN and the DISTRICT will, in good faith, negotiate a fair process between the parties for coordinating their efforts in the Code Enforcement procedure.
13. Except for the compensation described in Article 12 above, the parties agree that the services of each party provided herein shall be provided without cost to the

other party unless consented to by formal action of the said party's governing body; however, nothing herein shall prohibit a party from making a claim and recovering costs from any third parties, including other government agencies, where allowed by law.

14. The TOWN and the DISTRICT agree that any disputes between the DISTRICT'S representatives and the TOWN'S representatives, or any disputes between an aggrieved party and either the DISTRICT'S representatives or the TOWN'S representatives, shall be resolved, if at all possible, between the disputing parties. If a resolution is not attained between the disputing parties, a dispute may be appealed in the same manner as an appeal of a Town Code Enforcement Order.
15. It is anticipated that if any legislation is required to implement any provision of this agreement, the TOWN and the DISTRICT will cooperate to provide accurate data and recommendations for the assistance of the other. Nothing in the Agreement shall be interpreted to require or encourage either party to bargain away its own sovereignty.
16. This Agreement shall terminate five (5) years from the effective date. It may be renewed for an additional five (5) year period by mutual written consent of the parties. Notwithstanding the above, either party can unilaterally cancel this Agreement upon providing thirty (30) days' advance written notice to the other party.
17. The authority and obligations of the parties described by this Interlocal Agreement shall be supplemental to the powers of the parties given by other general, special or local law.
18. If any provision of this Interlocal Agreement is held invalid by a court of competent jurisdiction, the remainder of the Interlocal Agreement shall not be affected thereby and all other parts of this Interlocal Agreement shall remain in full force and effect.
19. The parties agree that each party shall be wholly responsible for its own personnel, equipment and any other materials or items used and/or operated in the performance of this Interlocal Agreement, including any expenses for loss or damage to such personnel, equipment or materials.
20. Except for the authority and powers granted herein to the employees of the DISTRICT to act as Fire Officials and Fire Safety Inspectors of the TOWN, the parties agree that all other acts and omissions of each party's employees are performed exclusively as agents and employees of the employing party. Nothing described herein shall create an employment relationship between the TOWN and the DISTRICT'S employees or the DISTRICT and the TOWN'S employees.
21. The parties agree that nothing in this Interlocal Agreement shall waive the sovereign immunity of either of the parties under Florida law, including Section

768.28, Florida Statutes, or any other law, as said law may be amended from time to time.

- 22. Nothing herein shall constitute or be construed to obviate, set aside, interfere with, or negate any insurance coverages that either of the parties maintain that are applicable to their own employees or to the performance of their functions on behalf of the parties.
- 23. Any amendment to this Interlocal Agreement, in order to be effective, must be in writing and duly executed by the TOWN and the DISTRICT.
- 24. THIS AGREEMENT SHALL BECOME EFFECTIVE UPON THE DATE OF ADOPTION AND LAST EXECUTION BY THE AUTHORIZED REPRESENTATIVES OF BOTH THE TOWN AND THE DISTRICT.

ATTEST:

TOWN OF FORT MYERS BEACH  
LEE COUNTY, FLORIDA

By: \_\_\_\_\_  
TOWN Clerk

By: \_\_\_\_\_  
Mayor

Date signed: \_\_\_\_\_

FORT MYERS BEACH FIRE CONTROL  
DISTRICT

By: \_\_\_\_\_

By: \_\_\_\_\_  
Chair

Date signed: \_\_\_\_\_

**EXHIBIT A**  
**Code Inspectors/Code Enforcement Officers**

The following individuals are hereby designated by the Fire Chief of the DISTRICT as Code Inspectors/Code Enforcement Officers for the TOWN for the purpose of enforcing State and local fire codes of the TOWN and of the DISTRICT. This list of Code Inspectors/Code Enforcement Officers may be revised by the Fire Chief of the DISTRICT upon written notification by the Fire Chief to the TOWN Clerk, with a copy to the TOWN Manager, said written notification to be provided by the Fire Chief to the TOWN Clerk and the TOWN Manager within ten (10) calendar days of the date of the revision of the following list.

1. Darren White, Fire Chief/Fire Official
2. Tom May, Assistant Chief/Fire Official
3. Ronald Martin, Fire Marshal
4. William Genevrino, Fire Safety Inspector
5. Regan Bauman, Fire Safety Inspector

**EXHIBIT B  
INSPECTION PROCEDURES**

**(Subject to Amendment by Agreement of the TOWN Manager and the Fire Chief)**

The DISTRICT will conduct reviews with respect to the Florida Fire Prevention Code, and the Florida Building Code as they relate to fire safety and fire prevention, and the TOWN Building and Fire Code as they relate to fire safety and fire prevention, for the following: All rezoning applications, development site plans, DCI cases and building plans submitted for building permits (excluding one and two-family dwellings) in the manner described below.

- A. Rezoning, Development Site Plans, Development Orders (DOs), Limited Development Orders (LDOs), Subdivision Plat Approvals

Upon receipt of applications for Rezoning, Development Orders, Limited Development Orders, and Subdivision Plat Approvals, the TOWN staff review will take place. A copy of the site plan and staff comments shall be sent to the District. The District may submit written comments with respect to the proposed development to the TOWN. The comments of the TOWN staff and the DISTRICT will be submitted to the TOWN LPA at the zoning hearing. The District may appear at the LPA hearing and the Town Council hearing and will be considered a part of the TOWN staff for review and presentation purposes.

- B. Building Permits and Certificates of Occupancy

Upon receipt of an application for a building permit, the staff review will take place, including review by the TOWN Building Official in regard to the applicable Building Codes. A copy of the plans shall be forwarded to the DISTRICT within five (5) working days of the final review by the TOWN Building Official. The DISTRICT shall complete its review and provide its written comments to the TOWN within sixteen (16) working days of receipt of the approved plans, except that should the review require additional time due to the size of the project, a reasonable extension of time may be granted by the TOWN Building Official upon request of the DISTRICT Fire Official. As indicated in Article 8 of the Agreement, the DISTRICT has entered into an Interlocal Agreement with Bonita Springs Fire and Rescue District (Bonita Fire) for Bonita Fire to provide plans review services for the DISTRICT; therefore, all plans review activities by the DISTRICT will be performed by Bonita Fire as the DISTRICT'S designee until further notice. If the DISTRICT disputes that the plans comply with the applicable Fire Code or if there is a question as to interpretation of the Fire Code, the procedures set out in Article 14 of the TOWN/DISTRICT Interlocal Agreement apply. A copy of any amendments to the building plans shall be sent to the DISTRICT who shall have eight (8) working days to review them and provide written comment to the TOWN. The DISTRICT shall not approve amendments to plans unless said plans have been processed through the TOWN and reviewed in the same manner as the original plans. Permits and certificates will be issued only upon review and approval of the respective parties.

C. Final Inspection

Prior to issuance of a Certificate of Occupancy, a final inspection shall be conducted by the DISTRICT. The inspection shall be conducted by the DISTRICT within five (5) working days of the receipt of the application for Certificate of Occupancy forwarded by the TOWN to the DISTRICT. The Certificate of Occupancy shall not be issued until a final decision is rendered by the DISTRICT that the project is in compliance with the applicable Fire Code or other code as it relates to fire safety or fire control.

Once a Certificate of Occupancy has been issued and approved by the DISTRICT and the TOWN, upon written notice to the TOWN of the DISTRICT'S Fire Official or Fire Marshal, the DISTRICT can suspend its approval for an issued Certificate of Occupancy that was previously approved by the DISTRICT. This enforcement option shall be utilized after demonstrated non-compliance by the occupant or building owner with the Fire Code.