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**RESOLUTION NO. 2020 – 09**

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**MANATEE COUNTY, FLORIDA**

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**FY2020 - 2021 Ratification of the Appointment of Membership of the Fire  
Prevention Code Board of Appeals**

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**ADOPTED: November 19, 2020**

## **RESOLUTION 2020 – 09**

### **SOUTHERN MANATEE FIRE & RESCUE DISTRICT**

**A RESOLUTION OF THE SOUTHERN MANATEE FIRE RESCUE DISTRICT OF MANATEE COUNTY, FLORIDA; RATIFYING THE APPOINTMENT OF MEMBERSHIP OF THE FIRE PREVENTION CODE BOARD OF APPEALS BY THE MANATEE COUNTY FIRE CHIEFS' ASSOCIATION; PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, on November 28, 2016 at a meeting of the Manatee County Fire Chiefs' Association, a Fire Prevention Code Board of Appeals was established for the purpose of resolving matters, which are unable to be resolved at the Fire District-level, related to that particular Fire District's Fire Code; and

**WHEREAS**, at their January 28, 2016 meeting, the Manatee County Fire Chiefs' Association also approved Rules of the Fire Prevention Code Board of Appeals, a copy of which is attached hereto as Exhibit 1; and

**WHEREAS**, the Rules of the Fire Prevention Code Board of Appeals set forth specific duties and responsibilities for the Fire District which include the ratification of the appointment of the members for the Fire Prevention Code Board of Appeals by the Manatee County Fire Chiefs' Association; and

**WHEREAS**, the Manatee County Fire Chiefs' Association appointed seven members of the Fire Prevention Code Board of Appeals at a publicly advertised meeting on October 29, 2020.

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Fire Commissioners of Southern Manatee Fire Rescue District, Manatee County, Florida, that:

1. The above stated recitals are true and correct and are hereby fully incorporated herein.
2. The appointment of the following members of the Fire Prevention Code Board of Appeals by the Manatee County Fire Chief's Association is hereby ratified by the Southern Manatee Fire Rescue District:
  - Raj Mathur, Certified General Contractor
  - Alan Breitwieser, Certified Fire Protection Contractor
  - Garry Roberts, Professional Architect
  - Philip Feikema, Fire Department Operations or Fire Code Enforcement
  - Chester Scott, Building Code Enforcement
  - Laland Taylor, Attorney
  - Norm Luppino, Member of the General Public
3. This Resolution shall take effect immediately upon its adoption.

Passed and duly adopted with a quorum present and voting this 19<sup>th</sup> day of November, 2020.


ATTEST:

  
Melanie A. Marken  
Secretary/Vice-Chair/Treasurer

**SOUTHERN MANATEE FIRE & RESCUE DISTRICT**

  
Dan Center, Chair

  
Jim Grote, Commissioner

  
Anthony C. Evans, Commissioner

  
Jim Cena, Commissioner

## **Exhibit 1**

### **Rules of the Fire Prevention Code Board of Appeals**

# **Rules of the Fire Prevention Code Board of Appeals**

**Manatee County Fire Chief's Association**

**Southern Manatee Fire Rescue District**

**11/19/20**

# RULES OF THE FIRE PREVENTION CODE BOARD OF APPEALS

## 1.1 Definitions.

**“Association”** shall mean the Manatee County Fire Chief’s Association.

**“Board of Appeals”** shall mean the Fire Prevention Code Board of Appeals.

**“Code”** shall mean the “Fire Prevention Code” adopted by a particular District in accordance with Sections 633.202 and 633.208, Florida Statutes, as may be amended, the “Florida Fire Prevention Code” adopted by the State Fire Marshal pursuant to Chapter 69A-60, Florida Administrative Code, as may be amended, including the Florida editions of NFPA 1 Fire Code and NFPA 101 Life Safety Code.

**“District”** shall mean the Sarasota Manatee Airport Authority or any one of the dependent or independent special fire districts located in Manatee County, Florida, who has adopted these Rules of the Fire Prevention Code Board of Appeals.

**“Rules”** shall mean these Rules of the Fire Prevention Code Board of Appeals.

## 1.2 Applicability.

The provisions of these Rules shall be in full force and effect in Manatee County within the jurisdiction of any District who has formally adopted these Rules by resolution of that District’s Board of Commissioners.

**1.3 Establishment of Fire Prevention Code Board of Appeals.** A Fire Prevention Code Board of Appeals, hereinafter referred to as the “Board of Appeals,” shall be established to rule on matters relating to the Code.

**1.3.1 General.** Whenever it is claimed that the provisions of the Code do not apply or have been misapplied by the District, or when it is claimed that the true intent and meaning of the Code or any of the regulations thereunder have been misconstrued or misapplied by the District, or when it is claimed that a



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decision of the District is unreasonable or arbitrary, the affected owner or owner's duly authorized agent may appeal the decision of the District to the Board of Appeals.

### **1.3.2 Membership.**

**1.3.2.1** Subject to the Association receiving appropriate authorization from each District, the Association shall appoint the members of the Board of Appeals. Final appointment of the members of the Board of Appeals is subject to ratification by each District.

**1.3.2.2** The Board of Appeals shall consist of seven (7) principal members who are qualified by their training, education, knowledge, and experience to vary the application of the provisions of the Code and act on related matters, and to perform such other duties as established herein.

**1.3.2.3** Each principal member shall be permitted to have an alternate with similar experience to serve in his or her stead when necessary. Alternate members shall also be appointed by the Association and are subject to the ratification by each District.

**1.3.2.4** All principal and alternate members of the Board of Appeals must reside within Manatee County at the time of appointment and while serving on the Board of Appeals and shall be qualified electors of Manatee County. Principal and alternate members of the Board of Appeals shall not be employees, agents, or officers of any District.

**1.3.2.5** Members of the Board of Appeals shall be governed by the applicable provisions of the State of Florida's Ethics Code and the Manatee County Code of Ethics.

**1.3.2.6 Composition of Board.** The composition of the Board of Appeals shall be as follows:

- a. One (1) certified general contractor.
- b. One (1) certified fire protection contractor.
- c. One (1) registered professional engineer or architect.

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- d. One (1) individual experienced in the field of fire department operations or fire code enforcement.
- e. One (1) individual experienced in the field of building code enforcement.
- f. One (1) licensed attorney.
- g. One (1) member of the general public.

Where a member is required to be “registered,” “licensed,” or “certified,” said registration, license, or certification shall be issued by the State of Florida unless otherwise specified.

**1.3.2.7 Term.** Principal and alternate members of the Board of Appeals shall be appointed to an initial three (3)-year term. Successive terms for members of the Board of Appeals will be at the discretion of the Association. The members of the Board of Appeals shall serve no more than three (3) consecutive three (3)-year terms. Any vacancy occurring during a term shall be filled for the unexpired portion of the term and shall not count towards the member’s term limits. The member’s terms shall begin on October 1 and end on September 30.

**1.3.2.8 Removal/Absences.** Members of the Board of Appeals shall be removed from office by the Association for failure to attend three (3) successive meetings or when a member's absences exceed twenty-five (25) percent of all scheduled meetings in a calendar year if the absence is not approved by the Board of Appeals for cause. Any member who fails to attend a meeting during at least seventy-five (75) percent of the time the meeting is in session shall be considered not to have attended the meeting.

**1.3.3 Administrative Duties.** The Association shall be responsible for overseeing the general administrative duties and responsibilities pertaining to the Board of Appeals and all related costs. Any appeal fee received by the Association, as provided for under Section 1.4.7, shall be used to offset costs associated with the administrative duties and responsibilities of the Board of Appeals. Administrative duties and responsibilities pertaining to a particular case shall be the responsibility of the District involved. In addition, administrative costs associated with individual cases shall be borne by the District involved in the subject case.



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**1.3.4 Rules and Procedures of the Board of Appeals.** The Board of Appeals shall have the authority to establish rules and regulations for conducting its business.

**1.3.4.1 Vote.** Each member of the Board of Appeals shall have one (1) full vote.

**1.3.4.2 Quorum.** A quorum for the Board of Appeals shall be not less than five (5) members of the Board of Appeals.

**1.3.4.3 Officers.** The Board of Appeals shall select one of its members to serve as Chair and one member to serve as Vice-Chair.

**1.3.4.4 Meetings.** The Board of Appeals shall meet at least once on an annual basis to conduct its Annual Meeting. Additional meetings of the Board of Appeals shall be scheduled, at the Annual Meeting, to be held quarterly, or may otherwise be held at the call of the Chair, at such other times as the Board of Appeals determines, or when otherwise necessitated due to the filing of an appeal where a special meeting has been requested by one of the parties. Other than the Annual Meeting, any meeting of the Board of Appeals may be cancelled by the Chair when there are no pending appeals to be heard by the Board of Appeals.

**1.3.4.4.1 Public Notice of all Board of Appeals meetings** shall be reasonably provided. All Board of Appeals meetings shall be open to the public and shall comply with the applicable requirements of the Florida “Government in the Sunshine” and “Public Records” laws. Minutes shall be taken at each meeting of the Board of Appeals. The Board of Appeals shall keep records of its examinations and other official actions. Minutes and records of the Board of Appeals shall be public records. Records associated with individual cases shall be maintained by the District involved with the subject case.

**1.3.4.4.2 All Board of Appeals meetings** shall be governed by Robert’s Rules of Order.

**1.4 Appellate Authority of the Fire Prevention Code Board of Appeals.**

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1.4.1 The Board of Appeals shall provide for the reasonable interpretation of the provisions of the Code and issue rulings on appeals of the decisions of the District.

1.4.2 The rulings of the Board of Appeals shall be consistent with the letter of the Code or, when involving issues of clarity, ensuring that the intent of the Code is met with due consideration for public safety and fire fighter safety.

1.4.3 The Board of Appeals shall have the authority to grant alternatives or modifications through procedures outlined in Section 1.4.12.

1.4.4 The Board of Appeals shall not have the authority to waive the requirements of the Code.

1.4.5 The Board of Appeals decisions shall not be precedent setting.

1.4.6 Procedures on Appeal.

1.4.6.1 Any person or entity with standing shall be permitted to appeal a decision of the District when it is claimed that any one or more of the following conditions exist:

- (1) The true intent of the Code has been incorrectly interpreted.
- (2) The provisions of the Code do not fully apply.
- (3) A decision of the District is unreasonable or arbitrary as it applies to alternatives or new materials.

1.4.6.2 An appeal shall be submitted to the District having jurisdiction in writing within thirty (30) calendar days of notification of a decision by the District. The appeal shall outline all of the following:

- (1) The Code provisions from which relief is sought.
- (2) A statement indicating which provisions of Section 1.4.6.1 apply.
- (3) Justification as to the applicability of the provisions cited in Section 1.4.6.1.
- (4) A requested remedy.

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- (5) Justification for the requested remedy stating specifically how the Code is complied with, public safety is secured, and fire fighter safety is secured.

**1.4.6.3** Documentation supporting an appeal shall be submitted by the appellant to the District at least ten (10) calendar days prior to the Board of Appeals hearing.

**1.4.7 Hearing.** Upon receipt of the appeal and supporting documentation by the District, a hearing shall be held at the next regularly scheduled meeting of the Board of Appeals, with notice to the appellant, the District, and the members of the Board of Appeals, allowing for at least five (5) working days prior to said hearing. The Board of Appeals may also call special meetings provided that five (5) working days notice is given to both parties. If the applicant requires a special meeting to be called, the appeal fee shall be two thousand five hundred dollars (\$2,500.00). Both the appellant and the District, and/or their representatives, shall attend the hearing and may present evidence at the hearing. The Board of Appeals shall consider each appeal on its own merits and shall base its decision only on the evidence presented at said hearing.

**1.4.7.1 Conflict.** No member of the Board of Appeals shall sit in judgment on any case in which the member holds a direct or indirect property or financial interest in the case.

**1.4.7.2 Board Decisions.** The Board of Appeals, upon an affirmative vote of a majority of the votes present, shall (1) affirm the decision of the District; (2) modify the decision of the District; or (3) reverse the decision of the District and affirm the appellant's position. The Board of Appeals' decision, with the reasons therefore and justification linked to specific sections of the Code, shall be transcribed in writing and a copy shall be mailed, by certified mail, to the appellant and the District, within fourteen (14) days after the hearing.

**1.4.7.2.1** The Board of Appeals shall provide for reasonable interpretation of the provisions of the Code and rule on appeals from decisions of the District.

**1.4.7.2.2** The Board of Appeals shall, in every case, reach a decision without unreasonable or unnecessary delay. If a decision of the Board of Appeals



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reverses or modifies a refusal, order, or disallowance of the District, the District shall immediately take action in accordance with such decision.

1.4.7.2.3 Every decision of the Board of Appeals shall be entered in the minutes of the Board of Appeals meeting.

1.4.7.2.4 Every decision of the Board of Appeals shall be promptly filed with the District and shall be open for public inspection.

1.4.7.2.5 All decisions of the Board of Appeals shall be final, subject to judicial review as provided by law.

1.4.7.2.6 **Fire Marshal Order Stayed, Exception.** Pending the disposition of an appeal scheduled for hearing, the order or decision of the District sought to be appealed shall be stayed unless the District certifies under oath, based upon available data and information, that an extreme danger to life or property exists, warranting immediate compliance under the Code. Said certification must be included in the order and be filed with the Board of Appeals within ten (10) days after the notice of appeal is filed.

### 1.4.8 Conflict Resolution.

1.4.8.1 Any conflict between the Florida Building Code and the Florida Fire Prevention Code and Life Safety Code as applied to a specific project shall be resolved in accordance with Section 553.73(11), Florida Statutes.

1.4.8.2 The Board of Appeals is hereby designated and authorized to perform the local administrative board functions set forth in Section 553.73(11), Florida Statutes. In accordance with Section 553.73(11), Florida Statutes, the duties and functions of the Board of Appeals shall include the following:

- a. To hear and render decisions in appeals of conflict decisions made jointly by the District and the local building official, in accordance with Section 553.73(11), Florida Statutes.
- b. To resolve conflicts between the building code and the Code, in accordance with Section 553.73(11), Florida Statutes, in those instances where the District having jurisdiction and the local building official are unable to agree on a resolution of said conflict.

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**1.4.9 Additional Powers and Functions.** The Board of Appeals is hereby authorized and empowered to hear and rule upon appeals from orders of the District in challenges brought pursuant to Section 633.208(3)(d), Florida Statutes, to amendments to the District's Code, and appeals from decisions of the District relating to false alarms.

**1.4.10** Any decision of the Board shall be final and reviewable in the manner and within the time provided by the Florida Rules of Appellate Procedure only by a petition for writ of certiorari filed with the Circuit Court in Manatee County.

### **1.4.11 Permits and Approvals.**

**1.4.11.1** Any permit or approval authorized to be issued by the District pursuant to the Code shall be subject to immediate suspension, revocation, or denial by the District upon the District's determination that conditions exist which make the permitted activity imminently dangerous to life or property. The District's order immediately suspending or revoking a permit shall cite with particularity the facts supporting the suspension or revocation. The suspension or revocation shall be effective immediately upon notice to the permittee at the location indicated on the permittee's application. Upon such immediate suspension or revocation of a permit, the permittee shall be entitled to appeal the decision of the District at a subsequent hearing of the Board of Appeals. Upon the Board of Appeal's receipt of a written notice requesting a special meeting for a hearing with respect to an immediate permit suspension or revocation, the Board of Appeals shall set such a hearing for a date no later than five (5) working days from the Board of Appeal's receipt of the written notice unless the parties stipulate to a later date. The Board of Appeal's written decision shall be mailed by certified mail to the permittee within two (2) working days after the hearing. In all other respects, the procedures of Section 1.4.6 and 1.4.7 shall apply.

### **1.4.12 Equivalencies, Alternatives, and Modifications.**

**1.4.12.1 Equivalencies.** In recognition that it is not the intent of the Code to prevent the use of systems, methods, or devices of equivalent or superior quality, strength, fire resistance, effectiveness, durability, and safety to those



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prescribed by the Code, provided technical documentation is submitted to the District to demonstrate equivalency and the system, method, or device is approved for the intended purpose.

**1.4.12.2 Alternatives.** The specific requirements of the Code shall be permitted to be altered by the District to allow alternative methods that will secure equivalent fire safety, but in no case shall the alternative afford less fire safety than, in the judgment of the District, that which would be provided by compliance with the provisions contained in the Code.

**1.4.12.3 Modifications.** The District is authorized to modify any of the provisions of the Code upon application in writing by the owner, a lessee, or a duly authorized representative where there are practical difficulties in the way of carrying out the provisions of the Code, provided that the intent of the Code shall be complied with, public safety secured, and substantial justice done.

**1.4.12.4 Buildings with equivalency, alternatives, or modifications approved by the District shall be considered as conforming with the Code.**

**1.4.12.5** Each application for an alternative fire protection feature shall be filed with the District and shall be accompanied by such evidence, letters, statements, results of tests, or other supporting information as required to justify the request. The District shall keep a record of actions on such applications, and a signed copy of the District's decision shall be provided for the applicant.

**1.4.12.6 Approval.** The District shall approve such alternative construction systems, materials, or methods of design when it is substantiated that the standards of the Code are at least equaled. If, in the opinion of the District, the standards of the Code shall not be equaled by the alternative requested, approval for permanent work shall be refused. Consideration shall be given to test or prototype installations.

### **1.4.13 Tests.**

**1.4.13.1** Whenever evidence of compliance with the requirements of the Code is insufficient or evidence that any material or method of construction does not conform to the requirements of the Code, or to substantiate claims for alternative construction systems, materials, or methods of construction, the

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District shall be permitted to require tests for proof of compliance to be made by an approved agency at the expense of the owner.

**1.4.13.2** Test methods shall be as specified by the Code for the material in question. If appropriate test methods are not specified in the Code, the District is authorized to accept an applicable test procedure from another recognized source.

**1.4.13.3** The District shall retain copies of the results of all such tests.