



**BROWARD COUNTY BOARD OF RULES & APPEALS
SEPTEMBER 12, 2019
MEETING MINUTES**

Call to Order

Chairman Daniel Lavrich called a published meeting of the Broward County Board of Rules and Appeals to order at 7:00 p.m. The meeting was held in Room 422 of the Broward County Governmental Center East, 115 S. Andrews Avenue, Fort Lauderdale, Florida.

Present:

Daniel Lavrich, Chair
Stephen E. Bailey, Vice Chair
Jeffrey Lucas
Ron Burr
John Famularo
Robert A. Kamm
Abbas H. Zackria
Dennis A. Ulmer
Daniel Rourke
David Rice
James Terry
Jeff Falkanger

Approval of Minutes – June 13, 2019

Mr. Lucas made a motion and Mr. Bailey seconded the motion to approve the minutes as submitted. The motion carried by unanimous vote of 12-0.

AGENDA AMENDMENT

Mr. Lucas made a motion and Mr. Rice seconded the motion to approve a modification to the agenda, adding "Declaration of surplus property for outdated Building and Fire Code books and other code reference publications". The motion carried by unanimous vote of 12-0.

CONSENT AGENDA

1. Certifications - Staff Recommended.

BROWARD COUNTY (UNINCORPORATED)

FERNANDEZ, JOSE, MECHANICAL PLANS EXAMINER (TEMPORARY 120-DAY)

TEDIM, JOSE, MECHANICAL INSPECTOR (PROVISIONAL)

CITY OF DEERFIELD BEACH

GUENDJOIAN, ARMEN, CHIEF PLUMBING INSPECTOR

CITY OF FORT LAUDERDALE

FIGUEROA, ROY G., PLUMBING PLANS EXAMINER

PASQUARIELLO, JOSEPH, ASSISTANT BUILDING OFFICIAL

CITY OF MIRAMAR

HILTON, ADAM, PLUMBING INSPECTOR (TEMPORARY 120-DAY)

TOWN OF PEMBROKE PARK

BESU, JOHN, CHIEF MECHANICAL INSPECTOR

CITY OF PEMBROKE PINES

PALACIOS, OTONIEL M., CHIEF MECHANICAL INSPECTOR

CITY OF SUNRISE

CASTILLO, ALEJANDRO, FIRE INSPECTOR

CITY OF TAMARAC

GEIMER, REBECCA, FIRE PLANS EXAMINER

COUNTYWIDE

BARTLETT, EDWARD LIAM, MECHANICAL PLANS EXAMINER

BENITOA, ANTONIO, PLUMBING PLANS EXAMINER

CANFIELD, BRIAN SHAW, MECHANICAL PLANS EXAMINER

FARIS, JOSEPH A., JR., ELECTRICAL PLANS EXAMINER

KUNES, SCOTT, PLUMBING PLANS EXAMINER

REGER, TIMOTHY A., PLUMBING PLANS EXAMINER

SWITALSKI, JOSEPH D., MECHANICAL PLANS EXAMINER

A motion was made by Mr. Bailey and seconded by Mr. Zackria to approve all submitted certifications. The motion passed by unanimous vote of 12-0.

REGULAR AGENDA

1a Request of Mr. Reese Menard to be certified as a Plumbing Inspector for City of Deerfield Beach, FL

a. Staff Report

Mr. Otto Vinas, Chief Plumbing Code Compliance Officer, reviewed information in his memorandum to the Board, dated September 12, 2019, indicating the experience documentation is not specific and Mr. Menard does not possess a certificate of competency as a Journeyman Plumber from Broward or Miami-Dade counties. Mr. Menard does not possess any licenses from the State of Florida. Mr. Vinas inquired to Illinois about reciprocity and was advised that he would need to sit for the exam. There is no reciprocity by the state agencies.

Ms. Sheila Oliver, Building Official, City of Deerfield Beach, advised this is a request for Mr. Menard to be certified as a plumbing inspector for the City of Deerfield Beach. She advised that he has passed the State of Florida inspector test. Mr. Menard has been a plumbing contractor and certified inspector for the State of Illinois and City of Chicago for thirty years. She was instructed by the Board's staff to include his employment history on the contractor letterhead and the signature notarized. She felt this points to being a closed state. Although she understood a distinction being made for structural, plumbing, mechanical and electrical are very similar throughout the United States.

Chairman Lavrich asked if Mr. Menard meets the code requirements and Ms. Oliver advised the only requirement he does not meet is possession of a license from the Florida Construction Industry Licensing Board, but rather from the State of Illinois and the Department of Health for the City of Chicago. He does not have anything from the Broward Central Examining Board because he has it from the City of Chicago Department of Health and the State of Illinois Licensing Board. The same applies with the Board of Professional Engineers.

In response to Mr. Rourke, Ms. Oliver indicated that Mr. Menard just moved to Florida. Mr. Falkanger pointed out that Mr. Menard could take the local examining board tests.

Mr. Vinas advised that staff is not questioning experience but rather the qualifications. The State of Illinois has its own building code and it is not close to the International Code Council (ICC).

Mr. Menard was sworn in.

Mr. Menard advised that Illinois does not have a building code; it follows the ICC code. He confirmed for Mr. Zackria that he has the required seven years of experience. He also confirmed that he could take the test for the Broward County license.

Mr. Zackria asked about a provisional approval until Mr. Menard takes the Broward County test. Mr. Vinas advised that he could take the State of Florida contractor's examination and to Broward County for the Master or Journeyman Plumber's exam or in Miami-Dade County in the same fashion. He does not have any license as a plumbing contractor or as a Journeyman in the State of Florida.

After further discussion, Chairman Lavrich pointed out that it comes down to the code requirement for a license which he does not possess. In response to Mr. Lucas, Mr. Vinas explained that the Mr. Menard's submittal did not specify the times. Further, two different people signed the documentation yet only one license was used. Ms. Oliver confirmed for Mr. Famularo that Mr. Menard can provide the IRS W-2 support information. She asked if the Board will accept his seven years of experience outside of Broward County. Mr. Vinas advised yes and reiterated the issue is not experience, but rather qualifications. The notarized statement does not specify the number of employment years. Ms. Oliver was concerned of the potential for experience from out of Florida not being accepted.

Chairman Lavrich understood this matter will be presented to the Certification Standards Review Committee this coming Monday. He explained that this Board has to evaluate whether something complies with the code and cannot deviate. He did not see an option for this Board to certify someone without the requirements being fulfilled. In response to Ms. Oliver, Chairman Lavrich indicated the item could be tabled until the next Board of Rules and Appeals meeting.

- b. City Request
- c. Board Action

A motion was made by Mr. Lucas and seconded by Mr. Zackria to table this item. The motion passed by unanimous vote of 12-0.

- 1b. Request of Mr. Cesar Tellez, to be certified as a Plans Examiner for the City of Weston, FL
 - a. Staff Report

Mr. Michael Guerasio, Chief Structural Code Compliance Officer, advised that this item is similar to the previous item. He reviewed information in his memorandum to the Board, dated September 12, 2019, indicating Mr. Tellez lacks eleven months experience of practicing with his license to meet the minimum 5-year requirement. There is only one path for design professionals. Several proposals are currently being brought forward to the Certification Standards Review Committee that may work this out.

With respect to Item 1a, Mr. Jack Fisher, Assistant Building Official, City of Weston, commented briefly about the licensing examination process and options.

Mr. Fisher commented that Mr. Tellez has five years of experience as an architect. He asserted to his qualifications. Chairman Lavrich noted that one cannot practice as an architect without being licensed to do so.

In response to Chairman Lavrich, Mr. Guerasio indicated that regardless of the Certification Standards Review Committee deliberation, Mr. Tellez would still need two years as an inspector and he currently only has one year and five months. Nevertheless, this matter could be discussed by the Committee. The experience requirement would be fulfilled on April 10, 2020.

- b. City Request
- c. Board Action

A motion was made by Mr. Zackria and seconded by Mr. Rourke to table this item. The motion passed by unanimous vote of 12-0.

2. Code Amendment for 1st reading.

“The Board will consider adopting amendments to the Broward Local Fire Code Sections: Definitions (K to U), Modifications Fire Marshal Certification F-103.3.1, F-103.3.2, F-103.3.3, F103.3.4 and New F-103.3.6, Modification Fire Plans Examiner Certification F-103.4.3.1, F-103.4.3.2, F-103.4.3.4 and New F-103.4.3.5. New Uniform Generator Code F-124.”

a. Recommendation of the Fire Code Committee

Mr. Bryan Parks, Chief Fire Code Compliance Officer, advised that this originated from the Broward County Fire Marshals. These modifications have been approved by the Broward County Fire Chiefs. He went on to review information in his memorandum to the Board, dated September 12, 2019. These amendments will encourage more people to work in Broward County. He noted the large loss of life that occurred in a Hollywood assisted living facility due to power failure. Amendments made to the Florida Administrative Code were not clear in that the type of generator was not specified. The purpose of this amendment is to provide guidance on a uniform basis throughout the county.

b. Board Action

Mr. Parks responded to questions of the Board as follows:

He commented that there are other types of uses, such as group homes and kidney dialysis businesses. It was discovered that facilities were using portable generators with electrical cords running into back doors and yards with no re-wiring, for example. The level of generator was also not being followed. People are not getting a permit.

He addressed language that facilitates people being able to qualify to work in Broward County.

Mr. Kamm distributed copies of the Florida Statutes addressing nursing home emergency power (59A-4.1265) that the Agency for Healthcare Administration published this information (attached). Mr. Parks advised that nursing homes are not presenting the problem, but rather the assisted living facilities and group homes. In speaking with the State, they indicated that for facilities in a flood zone, those people would be moved away as part of the emergency plan. This is why a portable generator was allowed. Section 59A does not specify important particulars. Mr. Kamm was concerned about the length of time it takes for permit approval. He elaborated upon an example. He believed there is a conflict between the proposal and Section 59A. Mr. Parks did not believe there is a conflict but suggested the item could be tabled and the information be presented at the committee level for their review.

During discussion of referring the matter to the Electrical and Fire Code Committees, Mr. Rice emphasized that time is critical because there is confusion as to what should be done. Mr. Lucas pointed out the lack of enforcement. He emphasized this was more

about putting the codes and regulations together into something that could be enforced countywide.

The generator part of the item was withdrawn with direction to address the matter at a joint meeting of the Electrical and Fire Code Committees to be scheduled at the earliest possible time. Mr. Rice suggested two separate meeting dates be decided upon in order to expedite the process.

There was consensus to move forward with the certification amendments at the October Board meeting. This will allow the provisions relating to generators to be addressed separately. Items 1 F-101.2.2, Definitions and 6 F-124, Uniform Generator Code (New) are withdrawn.

A motion was made by Mr. Lucas and seconded by Mr. Kamm to pass Modifications Fire Marshal Certification F-103.3.1, F-103.3.2, F-103.3.3, F103.3.4, F103.3.5, and New F-103.3.6, Modification Fire Plans Examiner Certification F-103.4.3.1, F-103.4.3.2, F103.4.3.3, F-103.4.3.4 and New F-103.4.3.5 on first reading, The motion passed by unanimous vote of 12-0.

3. Code Amendment for 1st reading.

“The Board will consider adopting amendments to Sections 111.5 “Certificate of Completion” of the Broward County Administrative Provisions for the FBC 6th Edition (2017) code.”

a. Recommendation of the Structural Committee

Mr. Michael Guerasio, Chief Structural Code Compliance Officer, reviewed information in his memorandum to the Board, dated September 12, 2019.

b. Board Action

Mr. Burr was concerned about an additional potential consumer cost. Mr. Charles Kramer, Board Attorney, believed language could be added to Chapter 1 to address this.

Mr. George Kropp, Building Official, City of Pembroke Pines, advised that Pembroke Pines charges for a certificate of completion if a certificate of occupancy is required. Otherwise the website will indicate “permit complete”. He predicted opposition from municipalities if a code amendment would prohibit charging such a fee to cover labor costs.

Both Chairman Lavrich and Mr. Rice expressed the viewpoint that the Board of Rules and Appeals does not get involved with dictating to municipalities what their fees should be. Mr. Zackria thought a code amendment to require issuance of a certificate of completion would essentially mandate a charge. Mr. Rice saw fees as a political issue whereas the Board is interested in code issues. Chairman Lavrich pointed out that the

language allows for an electronic proof. Mr. James DiPietro commented that some cities might have a high revenue balance and, consequently, there would be no need to impose an additional fee. Mr. Kramer pointed out that the cities may have a point as to compensation for additional work. Mr. Burr pointed out that the information can be obtained online as to status of the permit, therefore he was opposed to imposing any fee.

Ms. Debra Mink, Alliance Permitting Action Team Chair, elaborated upon some of the challenges associated with not having a certificate of completion. For example, in leases, the tenant cannot be reimbursed without a certificate of completion. Some insurance companies look for this document. She felt this amendment would help the general public. Mr. Burr felt the contractor can obtain proof of permit completion. Mr. Famularo indicated as a roofing contractor; he simply provides a copy of the permit to the customer. Mr. Ulmer highlighted the permit cost for a shed in Fort Lauderdale was \$400. He would not support adding more cost to the consumer.

Mr. Zackria made a motion and Mr. Burr seconded the motion to not approve the item. The motion not to approve passed by a vote of 9-3, with Messrs. Rice and Falkanger and Chairman Lavrich voting no.

4. Formal Interpretation to the Florida Building Code, 6th Edition (2017)
“Replacement of Air Conditioning (A/C) systems and filter hazard areas”

- a. Staff Report

Mr. Rolando Soto, Chief Mechanical Code Compliance Officer, reviewed information in his memorandum to the Board, dated September 12, 2019. It will clarify to the building officials that an A/C replacement is not a substantial improvement to the property. He also made a typographical correction, should be “air conditioning (A/C) systems in flood hazard areas”.

- b. Board Action

A motion was made by Mr. Terry to approve the item as recommended and seconded by Mr. Lucas. The motion passed by unanimous vote of 12-0.

5. Formal Interpretation to the Florida Building Code, 6th Edition (2017) “Storm drainage pipe sizing conversion charts from gallon per minute to square footage”

- a. Recommendation of Plumbing Committee

Mr. Otto Vinas, Chief Plumbing Code Compliance Officer, reviewed information in his memorandum to the Board, dated September 12, 2019.

- b. Board Action

Mr. Zackria noticed scupper sizing which was previously in the code is missing. He asked staff to follow up. Mr. Bailey believed that the last column in the Storm Drain Pipe Sizing Table should be titled, ½ inch. With respect to the scupper sizing, there was consensus for this item to be presented to the Plumbing Committee at their upcoming joint meeting with the Electrical Committee.

A motion was made by Mr. Terry and seconded by Mr. Bailey to approve the item as recommended along with the Storm Drain Pipe Sizing Table title correction noted above. The motion passed by unanimous vote of 12-0.

6. Agreement with Johnson Structural Group to provide cursory random plan review at building departments throughout Broward County for a 2-year period, not to exceed a total cost of \$34,800
 - a. Recommendation of Administrative Director

Mr. James DiPietro, Administrative Director, reviewed information in his memorandum to the Board, dated September 12, 2019, including some historical background. Thirty-five thousand dollars cannot be exceeded without it requiring a formal bid procedure. With the Board having worked with Johnson Structural, Mr. Zackria asked if there is any written report in terms of compliance findings.

Mr. Mark Johnson of Johnson Structural Group indicated a summary was written after the first year, noting some of the deficiencies that were discovered.

Mr. Zackria recommended that a 6-month or 1-year recurring findings report to the Board. He went on to comment that potentially some findings should be referred to the engineering licensing board. Mr. DiPietro advised that with this organized approach and the results objective of at least two plan reviews in every department. He provided additional background information of what is done in Miami-Dade and throughout the state. In response to Mr. DiPietro, Mr. Johnson agreed to provide reports. He went on to say that the intention is to create a live spreadsheet. Discussion followed as to the scope of the plan review and deficiencies that have been discovered in the past.

- b. Board Action

A motion was made by Mr. Lucas and seconded by Mr. Terry to approve the item as recommended. The motion passed by unanimous vote of 12-0.

7. Request for ratification of Administrative Director's appointment of Chief Code Compliance Officer - Structural
 - a. Recommendation of Administrative Director

Mr. James DiPietro, Administrative Director, reviewed information in his memorandum to the Board, dated September 12, 2019.

- b. Board Action

A motion was made by Mr. Famularo and seconded by Mr. Lucas to approve appointment of Theodore Fowler as Chief Structural Code Compliance Officer pursuant to the terms and conditions in a letter provided in the agenda backup. The motion passed by unanimous vote of 11-0. Chairman Lavrich recused himself from discussion as he was a member of the screening committee for this position.

Mr. Fowler thanked the Board for their expression of confidence and support.

8. Choosing from three options for selecting the Chief Code Compliance Officer – Energy position

a. Report of Administrative Director

Mr. James DiPietro, Administrative Director, reviewed information in his memorandum to the Board, dated September 12, 2019.

Mr. Bailey wanted to see the resume of the recommended individual in that he did not see the connection between structural candidates and this position. Mr. DiPietro explained that it would be available at a later date; the position is not official until the County Commission adopts the budget next week. Mr. Zackria agreed with Mr. Bailey. He recommended Option 2: Director chooses from existing list of candidates recently interviewed for chief structural code compliance officer and provides a recommended name at the Board's October meeting for ratification. Mr. Lucas questioned selecting from structural individuals. He leaned toward Option 1: advertise and interview for the position; director selects a candidate subject to the Board's ratification. Mr. DiPietro expanded on his reasoning and due diligence in selecting an individual from the structural candidate list.

Mr. Rolando Soto, Chief Mechanical Code Compliance Officer, provided insight into the scope of work for an energy position, indicating it is generally handled by the individual with mechanical expertise. He went on to comment why a structural individual would be well qualified in the field of energy.

Further discussion ensued as to the options including the composition of the screening committee for the chief structural code compliance officer position.

b. Board Action

A motion was made by Mr. Zackria and seconded by Mr. Bailey to approve Option 2 detailed above and in the Administrative Director's memorandum of September 12, 2019 the item as recommended. The motion passed by a vote of 8-3 with Messrs. Falkanger, Terry, Lucas voting no. Chairman Lavrich recused himself from discussion as he was a member of the screening committee noted in this option.

9. Rule change clarifying the authority of the administrative director to amend the Board of Rules and Appeals pay plan consistent with the actions of the Broward County Commission to amend the County pay plan.

a. Recommendation of Administrative Director

Mr. James DiPietro, Administrative Director, reviewed information in his memorandum to the Board, dated September 12, 2019.

b. Board Action

A motion was made by Mr. Kamm and seconded by Mr. Terry to approve the item as recommended. The motion passed by unanimous vote of 12-0.

10. Disposition of incomplete certification application records

a. Recommendation of Administrative Director

Mr. James DiPietro, Administrative Director, reviewed information in his memorandum to the Board, dated September 12, 2019, recommending a six-month retention schedule.

b. Board Action

A motion was made by Mr. Zackria and seconded by Mr. Lucas to approve the item as recommended. The motion passed by unanimous vote of 12-0.

11. Disposition of employment applications and selection records

a. Recommendation of Administrative Director

Mr. James DiPietro, Administrative Director, reviewed information in his memorandum to the Board, dated September 12, 2019, recommending a four year retention schedule provided any litigation is resolved.

b. Board Action

A motion was made by Mr. Lucas and seconded by Mr. Falkanger to approve the item as recommended. The motion passed by unanimous vote of 12-0.

ADDED TO AGENDA

Declaration of surplus property for outdated Building and Fire Code books and other code reference publications per the schedule provided

Mr. James DiPietro, Administrative Director, reviewed information in his memorandum to the Board, dated September 12, 2019.

A motion was made by Mr. Zackria and seconded by Mr. Rice to approve the item as recommended. The motion passed by unanimous vote of 12-0.

12. Director's Report

Mr. James DiPietro, Administrative Director, advised that the reserve is now over \$8 million.

Mr. DiPietro went on to recommend a representative from the County Attorney's Office provide ethics training at the beginning of the Board's October 10, 2019 meeting.

13. Attorney's Report

Requirement for owner certification on permit application - Mr. Charles Kramer, Board Attorney, provided a brief overview concerning an advisory opinion as to requirement for owner certification on permit application provided with the agenda backup. He spoke with the Florida Building Commission staff and received concurrence. Essentially an owner affidavit would not be required, and it could provide uniform interpretation of the code countywide.

Mr. DiPietro, Administrative Director, indicated that in order to implement this advisory opinion staff would present a formal interpretation at the October 10, 2019 Board meeting.

Ms. Debra Mink, Alliance Permitting Action Team Chair, commented that a tenant could potentially hire a contractor without the owner's knowledge. Mr. Kramer indicated that there is no confirmation that the owner's signature is provided in the first place. Further discussion ensued on this point wherein Mr. Kramer explained that the language specifies owner or agent including contractor.

Mr. George Kropp, Building Official, City of Pembroke Pines, believed there is a potential for fraud to be committed. Property owners will not be required to sign a permit application for work that is being performed on their property. He indicated that building department staff make the verification for commercial properties. Mr. Kramer explained that he is simply interpreting the statute and not imparting a meaning that does not exist.

Mr. Zackria inquired about referring this to a committee so that a solution would be available along with the interpretation at the October meeting. Mr. DiPietro advised that would be possible. He went on to indicate perhaps the GC/Architect Committee in conjunction with another committee would be appropriate or an ad hoc committee could be established by the Chairman. Chairman Lavrich asked the Administrative Director to work through it with staff. If a committee is needed, it could be considered at that time.

Service on multiple boards by BORA staff – Mr. Kramer provided a brief overview concerning an advisory opinion as to whether staff could serve on more than one board, including licensing boards of the state, county or local municipality without creating a conflict of interest. Essentially it would be permissible for BORA employees to do so.

General counsel to BORA & Fort Lauderdale Building Officials – Mr. Kramer advised that five questions were presented to BORA by the Fort Lauderdale Building

Official. He provided a brief overview relating to permitting and emergencies such as ZIKA; auditing; fees and auditing when private provider is used; and retrofit fire sprinkler systems.

Electronic signatures and electronic records retention – Mr. Kramer provided a brief overview relating to this issue by the Administrative Director. An electronic signature is as good as a physical signature. Mr. DiPietro advised that the intention is to move toward electronic certification applications for new applicants.

John Madden vs. Broward County Board of Rules and Appeals - Mr. Kramer noted that Mr. Madden's reply brief to BORA's response was struck by the Appellate Review Board because it exceeded the page limit. They had to refile. He has not heard from the court but understood that the information has not been furnished to that board by their clerk.

14. Committee Reports

BDA (Bi-Directional Amplifiers) Committee - Mr. Rice announced that another meeting is being held on September 17th. He explained the goals of the Committee, being uniform code interpretation. Information was sent out nationwide.

15. General Board Member Discussion

Wind-driven Water Intrusion from Hurricane Irma - Mr. Ulmer recalled the topic of wind-driven water intrusion after Hurricane Irma raised by the Chairman that was referred to a committee. He asked if the Board could be furnished with a report on it. Chairman Lavrich advised that the Florida Building Commission appointed a wind-driven rainwater intrusion work group. The work group recommended further study as to why it occurs. It seems self-evident in that the building code only requires that windows and doors be tested to only fifteen percent of their design pressures. The University of Florida has developed protocols and recommendations for testing purposes. A structural technical advisory committee webinar conference call will take place at the end of the month to discuss three proposed research projects and one has to do with this topic.

BORA Quarterly Newsletter

Mr. Falkanger complimented staff on the newsletter. In response to his question, Mr. DiPietro elaborated upon the distribution. Mr. Falkanger thought the mailing list could be expanded.

Agenda Item 2 - Generators

Mr. Kamm asked about informally approaching the building official before bringing a generator issue before the Board of Rules and Appeals. Mr. DiPietro noted that the appeal process is available. Mr. Rice explained how he approaches conflict issues, utilizing the chief code compliance officers.

16. Public Comment (3-minute limit per person) and written communications.- none

17. Adjournment.

Having no further business to go before the Board, the meeting adjourned at 9:52 p.m.

A handwritten signature in cursive script, appearing to read "D. Lavrich".

Daniel Lavrich, P.E. - Chair

59A-4.1265 Emergency Environmental Control for Nursing Homes.

(1) DETAILED NURSING HOME EMERGENCY POWER PLAN. Each nursing home shall prepare a detailed plan (“plan”), to serve as a supplement to its Comprehensive Emergency Management Plan, to address emergency power in the event of the loss of primary electrical power in that nursing home, which includes the following information:

(a) The acquisition of a sufficient alternate power source such as a generator(s), maintained at the nursing home, to ensure that current licensees of nursing homes will be equipped to ensure the protection of resident health, safety, welfare, and comfort for a minimum of ninety-six (96) hours in the event of the loss of primary electrical power. Safe indoor air temperatures in resident occupied areas shall be determined by the licensee to meet the clinical needs of residents, but shall not exceed eighty-one (81) degrees Fahrenheit.

1. The required temperature must be maintained in an area or areas determined by the nursing home of sufficient size to maintain all residents safely at all times and is appropriate for the care needs and life safety requirements. For planning purposes, no less than thirty (30) net square feet per resident must be provided. This may include areas that are less than the entire nursing home if the nursing home’s comprehensive emergency management plan includes relocating residents to portions of the building where the health, safety, welfare, and comfort of the residents will be maintained as required by this rule. The plan shall include information regarding the area(s) within the nursing home where the required temperature will be maintained.

2. The alternate power source for the equipment necessary to maintain the safe indoor air temperature required by this rule may be provided by the essential electrical system required by the Florida Building Code for Nursing Home design and construction or onsite optional standby system as defined by NFPA 70 National Electrical Code supplying normal power to the nursing home maintained onsite at all times when the building is occupied. If an optional standby system is used, it must be connected and maintained in accordance with the manufacturer’s recommendations. The alternate power source and fuel supply shall be located in an area(s) in accordance with local zoning and the Florida Building Code.

3. Each nursing home is unique in size; the types of care provided; the physical and mental capabilities and needs of residents; the type, frequency, and amount of services and care offered; and staffing characteristics. Accordingly, this rule does not limit the types of systems or equipment that may be used to maintain the safe indoor air temperature required by this rule for a minimum of ninety-six (96) hours in the event of the loss of primary electrical power. The plan shall include information regarding the systems and equipment that will be used by the nursing home required to operate the systems and equipment.

a. A nursing home in an evacuation zone pursuant to Chapter 252, F.S., must maintain an alternative power source and fuel as required by this subsection at all times when the facility is occupied but is permitted to utilize a mobile generator(s) to enable portability if evacuation is necessary.

b. Facilities located on a single campus with other facilities licensed by the Agency under common ownership, may share fuel, alternative power resources, and resident space available on the campus if such resources are sufficient to support the requirements of each facility’s residents, as specified in this rule. Details regarding how resources will be shared and any necessary movement of residents must be clearly described in the emergency power plan.

c. A multistory facility, whose comprehensive emergency management plan is to move residents to a higher floor during a flood or surge event, must place its alternative power source and all necessary additional equipment so it can safely operate in a location protected from flooding or storm surge damage.

(b) The acquisition of sufficient fuel, and safe maintenance of that fuel onsite at the facility, to ensure that in the event of the loss of primary electrical power there is sufficient fuel available for the alternate power source required in paragraph (1)(a), to power life safety systems, critical systems, and equipment necessary to maintain safe indoor air temperatures as described in this rule for ninety-six (96) hours after the loss of electrical power during a declared state of emergency. The plan shall include information regarding fuel source and fuel storage.

1. A nursing home located in an area in a declared state of emergency area pursuant to Section 252.36, F.S., that may impact primary power delivery must secure ninety-six (96) hours of fuel. The nursing home may utilize portable fuel storage containers for the remaining fuel necessary for ninety-six (96) hours during the period of a declared state of emergency.

2. A nursing home must store a minimum of seventy-two (72) hours of fuel onsite.

3. Piped natural gas is an allowable fuel source and meets the onsite fuel requirement under this rule.

4. If local ordinances or other regulations that limit the amount of onsite fuel storage for the nursing home’s location and the nursing home does not have access to piped natural gas, then the nursing home must develop a plan that includes maximum onsite fuel storage allowable by the ordinance or regulation and a reliable method to obtain the maximum additional fuel at least 24 hours

Provided by Board member Robert Kamm, P.E. at September 12, 2019 meeting

that require modification of the systems or equipment affecting the nursing home's compliance with this rule shall implement its amended plan subsequent with the completion of construction.

(f) The Agency may request cooperation from the State Fire Marshal to conduct inspections to ensure implementation of the plan in compliance with this rule.

(6) POLICIES AND PROCEDURES.

(a) Each nursing home shall develop and implement written policies and procedures to ensure that each nursing home can effectively and immediately activate, operate and maintain the alternate power source and any fuel required for the operation of the alternate power source. The procedures shall be resident-focused to ensure that residents do not experience complications from heat exposure, and shall include a contingency plan to transport residents to a safe facility if the current nursing home's plan to keep the residents in a safe and comfortable location within the nursing home at or below the indoor air temperature required by this rule becomes compromised.

(b) Each nursing home shall maintain its written policies and procedures in a manner that makes them readily available at the licensee's physical address for review by the authority having jurisdiction. If the policies and procedures are maintained in an electronic format, nursing home staff must be readily available to access the policies and procedures and produce the requested information.

(c) The written policies and procedures must be readily available for inspection by each resident; each resident's legal representative, designee, surrogate, guardian, attorney in fact, or case manager; each resident's estate; and all parties authorized in writing or by law.

(7) REVOCATION OF LICENSE, FINES OR SANCTIONS. For a violation of any part of this rule, the Agency may seek any remedy authorized by Chapter 400, Part II, or Chapter 408, Part II, F.S., including but not limited to, license revocation, license suspension, and the imposition of administrative fines.

(8) COMPREHENSIVE EMERGENCY MANAGEMENT PLAN.

(a) Nursing homes whose comprehensive emergency management plan is to evacuate must comply with this rule.

(b) Once the plan has been approved, the nursing home shall submit the plan as an addendum with any future submissions for approval of its Comprehensive Emergency Management Plan.

(9) NOTIFICATION.

(a) Within three (3) business days, each nursing home must notify in writing, unless permission for electronic communication has been granted, each resident and the resident's legal representative:

1. Upon submission of the plan to the local emergency management agency that the plan has been submitted for review and approval;

2. Upon final implementation of the plan by the nursing home following review by the State Fire Marshal or the Agency's Office of Plans and Construction.

(b) The nursing home shall keep a copy of each written or electronic notification sent by the nursing home to the resident and resident's representative on file.