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Delivered by email only: dreingold@ircgov.com

Mr. Dylan Reingold
County Attorney
Indian River County
1801 27th Street
Vero Beach, Florida 32960-3388

Re: Sebastian's Fire Marshal program

Dear Mr. Reingold:

Please accept this correspondence in response to the letter of Chairman Peter O'Bryan, dated April 9, 2018, sent on behalf of the County Commission, as well as the Commission discussion which took place on both March 6, 2018 and April 3, 2018, during your public meeting.

The County Commission presumably, but not expressly, acting in its dual role as the Board of Commissioners of the Emergency Services District, has expressed disapproval of the City of Sebastian's decision to create its own Fire Marshal pursuant to its home rule power. While acknowledging that the District has been plagued with operational problems for years which have negatively impacted the property owners, residents and business owners of the City of Sebastian, the Board nevertheless chose to give the City of Sebastian the ultimatum: accept the fire inspection services of the District, regardless of its insufficiency, or surrender the fire protection services and the emergency medical services of the District in its entirety.

The ultimatum expressed by several of your Commissioners is both factually insupportable and legally deficient; therefore, the City of Sebastian will continue with its own Fire Marshal's Office, while remaining with the Fire District for all other fire and rescue services, which the District is legally obligated to provide.

The property owners, business operators, residents, visitors, and all other individuals in the City of Sebastian are legally entitled to emergency services from the



• Labor & Employment Law

• City, County & Local Government Law

Indian River County Fire District. Specifically, the property owners are paying a tax levy for this service and to deny or withhold that service will place the County as directly liable for any harm which may result. The City will not only assist, it will most likely join any harmed individual in seeking every available judicial remedy for the County's nonfeasance.

Many of your Commissioners have made it clear that they see this matter as a money issue. There were repeated statements made during the meetings on March 6, 2018 and April 3, 2018, that the Commissioners were upset that the City was taking away revenue from the County while leaving it with only the work. There was little concern shown for public safety and no consideration shown for poor customer service, deficiencies which the property owners and contractors of Sebastian have been suffering through for many years. This is further evidenced by the repeated statements that if the City wants the revenue generating part of the job, it can take all of the work too.

As you are well aware, the property owners in Sebastian will continue to pay the Fire District tax levy and the only revenue reduction faced by the County will be loss of the permit fee - which will come with a corresponding reduction in the permitting workload. Accordingly, the City's Fire Marshal program will actually be saving the County money (unless, of course, the County has had permitting fees set too high, resulting in permits being a profit center for the Fire District). If the County sees the City's Fire Marshal as negatively impacting a profit center, please let me know because that position will result in another issue that the citizens will undoubtedly want to address.

Additionally, many of your Commissioners repeatedly said that the City wants to conduct the fire review of building plans, but leave the re-inspection and special events for the County to perform (once again, referencing that they are not "being paid" to do this important public safety work). The understanding of these Commissioners is wrong. The City's Fire Marshal has every intention to perform the annual re-inspections as needed or required. The City also intended to conduct the special event permitting; however, the County Administrator and the Fire Chief expressly asked the City to leave special events with the County - and the City agreed. You know this, as you were present at this meeting. The City's Ordinance was amended before final reading at the specific request of the County, leaving special events with the Fire District.

Other misinformation upon which your Commissioners based their decision was the testimony by the District's Fire Chief at the April 3, 2018, meeting, where the Chief said the City had "already asked for help" which he said he denied. Such is a blatant

falsehood. Since adopting the Fire Marshal Ordinance, the City has not, in any way, shape or form, sought assistance from the Fire District in any manner whatsoever. The City contracted with a vendor - the same vendor used by the City of Fellsmere - to use as a back-up, and the Fire District has not and will not be asked for any assistance.

You rely upon Section 633.118, Florida Statutes, to advise the Commission regarding its rights relative to the City of Sebastian's establishment of a Fire Marshal's Office. Specifically, you state that, because the City of Sebastian is protected by the Fire District, it does not have the authority, expressed in this Statute, to create a Fire Marshal. This Statute states:

The chiefs of county, municipal, and special-district fire service providers; other fire service provider personnel designated by their respective chiefs; and personnel designated by local governments having no organized fire service providers are authorized to enforce this chapter and all rules prescribed by the State Fire Marshal within their respective jurisdictions. Such personnel acting under the authority of this section shall be agents of their respective jurisdictions, not agents of the State Fire Marshal.

Section 633.118, Florida Statute (underscore added). The part of this Statute that is relevant in this dispute is the third of the three provisions, which states: "...personnel designated by local governments having no organized fire service providers..." as this is what the City of Sebastian has done.

It is your position that Sebastian does not qualify under this provision because the Fire District is its organized fire service provider. However, to render this interpretation, you need to render this sentence superfluous and of no effect whatsoever.

A long-standing and basic rule of statutory construction is that when interpreting a statute, the interpretation cannot render part of the statute ineffective. The Florida Supreme Court stated:

As a fundamental rule of statutory interpretation, courts should avoid readings that would render part of a statute meaningless. Furthermore, whenever possible courts must give full effect to all statutory provisions and construe related statutory provisions in harmony with one another. This follows the general rule that the legislature does not intend to enact purposeless and therefore useless legislation.

Unruh v. State, 669 So.2d 242, 245 (Fla. 1996)(emphasis added); see also, *American Home Assur. Co. v. Plaza Materials Corp.*, 908 So.2d 360, 367-68 (Fla. 2005).

To accept your interpretation, the third provision of the Statute would only apply to a community with absolutely no fire protection service of any type - not its own fire department, not a regional fire district, not covered by the Florida Forest Service, not a contracted private fire protection provider, and not a participant in an Interlocal agreement with a neighboring community. The local government relying upon the third prong of this statute (under your interpretation) needs to be completely and unequivocally unprotected by any form of fire protection whatsoever in order to appoint its own Fire Marshal. Because no such community exists, your interpretation renders an entire provision contained in Section 633.118, Florida Statute, as meaningless and superfluous because the first two provisions - "[1] chiefs of county, municipal, and special-district fire service providers; [2] other fire service provider personnel designated by their respective chiefs" would always usurp and invalidate the third provision. Yours is an unsustainable position.

Additionally, your Commissioners are attempting to deny a right to the City of Sebastian that they have already conceded to the City of Fellsmere. Recent statements made by your Commissioners indicate that the difference is that, (1) the City of Sebastian is a larger City; and (2) the City of Sebastian plans to use a City employee for fire inspections rather than outsourcing the function as Fellsmere has done. This further undermines your reliance on Section 633.118, Florida Statutes, as your interpretation does not provide for such exceptions. A local Fire Marshal is either allowed or its not - the County cannot discriminate against Sebastian because of its size or because of its personnel choices.

As you are well aware, the County's Ordinance and resulting Referendum which established the Fire Services District did not include an express preemption of Sebastian's home rule authority on any issue. In addition, no preemption can be implied by any of the language in the Ordinance.¹ With no preemption in place, the City is not prohibited from duplicating or superseding any service included in the County's Fire Service Ordinance.

¹ "Implied preemption should be found to exist only in cases where the legislative scheme is so pervasive as to evidence an intent to preempt the particular area, and where strong public policy reasons exist for finding such an area to be preempted by the Legislature." *Tallahassee Memorial Regional Medical Center, Inc. v. Tallahassee Medical Center, Inc.*, 681 So.2d 826 (Fla. 1 st DCA 1996); citing *Tribune Co. v. Cannella*, 458 So.2d 1075 (Fla.1984); and *Hillsborough County v. Florida Restaurant Ass'n, Inc.*, 603 So.2d 587 (Fla. 2d DCA 1992).

Mr. Dylan Reingold, County Attorney
Re: Sebastian's Fire Marshal Program
10 May 2018
Page 5 of 5

Along with all the other statements made by your Commissioners, the specific statements made by Chairman O'Bryan on April 3, 2018, that "a lot of the local builders would like to have the City run the Fire Marshal so that so that they can put more political influence to interpret the code differently..." and that he's opposed to the City's Fire Marshal program because "the County follows the code" (implying that the City will not enforce the Code) are both offensive and defamatory. If any further defamatory statements are made about City staff or our elected officials, I will recommend appropriate steps to stop this defamation judicially. I can assure you, the electors of the City of Sebastian expect more professionalism and decorum from their County Commissioners than has been shown to date.

Although your Commissioners like ultimatums, the City will not return-in-kind. However, should the County pursue its threat to withdraw the Fire District from the City of Sebastian, it will be required to immediately cease the tax levy of Sebastian property owners; reinstate the North County Fire District which was previously abolished and return it to status-quo; and reimburse the North County Fire District for tax money unlawfully received. In addition, the Fire District will have to reduce its overall millage authority which was based upon the merger of all three previous Fire Districts.

I would hope that you revisit this issue with your Commissioners and impress upon them that, notwithstanding the statutory authority for a local Fire Marshal, having allowed the City of Fellsmere to proceed with its Fire Marshall program, there is no viable means to stop the City of Sebastian's Fire Marshal program and continuing to object is a wasted effort.

Thank you for your attention to this important public safety and customer service matter.

Very Truly Yours,



James D. Stokes, B.C.S.

City Attorney

Board Certified Specialist:

- *Labor & Employment Law*
- *City, County & Local Government Law*

cc: Mayor & Council Members
City Manager