



Office of the
**INDIAN RIVER COUNTY
ADMINISTRATOR**

Jason E. Brown, County Administrator
Michael C. Zito, Assistant County Administrator

MEMORANDUM

TO: Members of the Board of County Commissioners

FROM: Jason E. Brown
County Administrator

DATE: February 26, 2019

SUBJECT: City of Sebastian Fire Marshal

On March 6, 2018, the County Attorney's Office presented an agenda item to the Indian River County Board of County Commissioners (the "Board") concerning an ordinance being considered by the City of Sebastian (the "City") City Council (the "Council"), that would establish an independent City Fire Marshal's Office. The Board voted to oppose the ordinance. On March 14, 2018, after taking comments from the public, including testimony from the County Administrator, the Council voted to approve the ordinance.

On April 3, 2018, the County Attorney's Office presented an agenda item to the Board asking for guidance on how to proceed, and provided the steps needed in order to see if the Indian River County Emergency Services District (the "ESD") and the City would be able to resolve the differences between the two entities before any litigation is filed. The Board directed staff to draft a letter to the Council and to Mayor Hill providing the option of whether to stay with the ESD including the Fire Marshal's Office, or exit from the ESD and provide their own fire protection within the City limits, with an additional paragraph concerning an interest in obtaining a conflict resolution.

On June 12, 2018, the County Administrator presented an agenda item to the Board including the letter of response from the City which indicates they would proceed with their plans to establish an independent Fire Marshal for the City. The Board directed staff to utilize the dispute resolution process under the Florida Governmental Conflict Resolution Act, and directed the County Attorney's Office to draft a resolution to initiate the process.

County staff worked with City staff to see if a compromise could be made prior to initiating the conflict resolution process under the Act. Unfortunately, this was unsuccessful. On February 5, 2019, the County Attorney's Office presented an agenda item to the Board including a draft

resolution declaring the intent of the Board to initiate the conflict resolution procedures set forth in Chapter 164, Florida Statutes, the Florida Governmental Conflict Resolution Act (“Act”). The Board approved Resolution 2019-010, declaring the intent of the Board to initiate the conflict resolution procedures, and finding that a conflict exists with the City with respect to the City’s Fire Marshal’s Office. On February 7, 2019, staff notified the City of the Board’s decision to formally initiate the conflict resolution process, and scheduled a conflict assessment meeting.

On February 26, 2019, a conflict assessment meeting was held. The County Administrator presented specific information related to the conflict from the County’s perspective. A summary of the County’s perspective presented at the meeting follows:

- The City established an independent City Fire Marshall’s Office with all of the responsibilities as that of the Indian River County Fire Marshal’s Office. Section 633.118, Florida Statutes, limits the types of entities that are authorized to enforce Chapter 633, Florida Statutes and the rules promulgated by the State Fire Marshal. Those include: 1) the chiefs of county, municipal, and special-district fire service providers; 2) other fire service provider personnel designated by their respective chiefs; and 3) personnel designated by local governments having no organized fire service providers. The City is part of the ESD. Since the ESD operates as an organized fire service provider within the City, the City does not have the authority to exercise such powers. Chapter 208 of the Indian River County Code governs the ESD.
- The City desires the benefits of fire protection, rescue services, and basic and advanced life support services, but wants independence from the ESD with respect to the Fire Marshal’s Office administration and enforcement powers. The County does not support fracturing of the ESD. In 1991, the voters of Sebastian, as well as Vero, Fellsmere, Orchid and the unincorporated area of the county approved a referendum to provide a consolidated fire rescue system throughout the four municipalities as well as the unincorporated area. This arrangement has been beneficial to all areas within the ESD. The County supports a holistic view of fire rescue, with both prevention and response critical aspects of the services provided. Fire protection is not just about extinguishing fires. Fire prevention is a key component to the overall fire protection delivery system to a community. This starts with ensuring compliance with the Fire Code. This is a life safety issue that impacts County and City residents and taxpayers, but has a particular impact on the County’s Fire Rescue employees as well.
- The City has stated concerns about the County overriding the City’s home rule authority. This is a mischaracterization of the County’s position. Our position is that the City can remain a part of the ESD, or establish its own Fire Rescue system. The City has framed this as a level of service and customer service issue. While service is an important component of the Fire Marshal’s Office, it is, most importantly, a life safety matter.

Staff fully recognizes and shares the Board’s concerns as stated above. I believe that the dispute resolution process is about attempting to resolve our issues amicably. It would be beneficial for all involved to reach an agreement on this important topic. Staff stated that the County and the City should take all steps available to avoid litigation between local governments. While, sometimes litigation may be necessary, it is and should be a last resort. In an effort to resolve this dispute, I offered a possible resolution to the City at the conflict assessment meeting.

County staff would recommend to the Board approval of an interlocal agreement between the County and the City. The interlocal agreement would authorize the City to establish its own Fire Marshal's Office. The agreement would be similar to the agreement that the County worked on with the City of Fellsmere ("Fellsmere") a number of years ago (copy attached). While the Fellsmere agreement was never finalized, it is believed that there were only one or two items in dispute.

The draft agreement between the County and Fellsmere contained certain parameters including:

- Require certifications and experience for fire safety plan reviewers and inspectors
- Require a second person to review initial staffs' work per intent of the Fire Code
- Provide insurance and indemnification from the City for the actions of the City's Fire Marshal

Additionally, modifications to the Fellsmere draft agreement are proposed, notably:

- Rather than the County providing subsequent annual fire safety inspections within the City, the City would maintain that responsibility as well as handling special events within the City. (This would not pre-empt the County from undertaking inspections for life safety issues, but would rather assign routine/annual inspections and special events to the City)
- The City will provide a report to the Fire Chief, on a quarterly basis, of the annual fire safety inspections performed in order to satisfy Section 208.09(a) of the Indian River County Code
- The County would retain jurisdiction of fire safety issues for County owned or occupied property within the City (North County Library, Fire Rescue Stations, Sebastian Crossings North County Offices).

City and County staff agreed to recommend approval of an Interlocal Agreement, including these parameters, to the Council and Board, respectively.

Staff is presenting the interlocal agreement as a proposed solution to fully resolve the conflict. Please note this recommendation is not a dismissal of the County's position or the concerns the County has identified. If the Board rejects the interlocal agreement proposed, the parties would proceed to the next step of the Act which is to schedule a joint public meeting prior to April 4, 2019 (the joint meeting must occur within 50 days of the receipt of the first letter to the City initiating the conflict resolution process).

RECOMMENDATION:

Staff recommends the Board authorize an interlocal agreement with the City of Sebastian, and direct negotiation of the final terms of an agreement in which the City manages all Fire Marshal Services in the City within the parameters presented. Staff also recommends the Board authorize termination of the dispute resolution process under the Act upon the City's approval to negotiate an interlocal agreement within the parameters presented. The negotiated interlocal agreement will be brought back to the Board of County Commissioners for final review and approval.

Attachment: City of Fellsmere Draft Interlocal Agreement