



Office of
**INDIAN RIVER COUNTY
ATTORNEY**

Dylan Reingold, County Attorney
William K. DeBaal, Deputy County Attorney
Kate Pingolt Cotner, Assistant County Attorney

MEMORANDUM

TO: Board of County Commissioners
FROM: Dylan Reingold, County Attorney 
DATE: March 22, 2018
SUBJECT: City of Sebastian Fire Marshal Ordinance

BACKGROUND.

Pursuant to section 208.09 of the Indian River County Ordinance Code (the "Code"), the Indian River County Fire Marshal's Office is operated under the supervision of the Fire Chief of the Indian River County Fire Division, under the direction of the Director of the Indian River County Department of Emergency Services. Additionally, the fire chief is responsible for designating a fire marshal who is responsible for the administration and enforcement of applicable provisions of the Code, the State Fire Prevention and Control Chapter (Chapter 633, Florida Statutes) and Chapter 69A-60, Florida Administrative Code. The fire marshal, or his or her designee, is responsible for issuing permits, certificates, notices, approvals and/or orders pertaining to life safety, fire control and fire hazards.

Additionally, under section 208.11 of the Code, unless otherwise provided by law, annual fire safety inspections are required to be conducted by qualified inspectors of all buildings specified in the Florida Fire Prevention Code under the emergency services district jurisdiction.

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 that would have the same responsibilities as that of the Indian River County 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.

The City is part of the Indian River County Emergency Services District and Chapter 208 of the Code governs the Indian River County Emergency Services District. The City is attempting to keep one foot in the Indian River County Emergency Services District and receive the benefits of fire protection, rescue services, basic and advanced life support services and other emergency services, while at the same time seeking independence from the Indian River County Emergency Services District with respect to the Fire Marshal's Office administration and enforcement powers.

This appears to be inconsistent with Florida law. 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. Since the Indian River County Emergency Services District operates as an organized fire service provider within the City, the City does not have the authority to exercise such powers. The Indian River County Emergency Services District staff does not support this fracturing of the Indian River County Emergency Services District. The Indian River County Emergency Services District has a holistic view of emergencies, with both prevention and response critical aspects of the services provided.

Now that the Council has approved the ordinance, despite the Board's opposition, the County Attorney's Office seeks direction on how the Board wishes to proceed. One option would be to utilize the Florida Governmental Conflict Resolution Act (the "Act") in order to see if the Indian River County Emergency Services District and the City would be able to resolve the differences between the two entities before any litigation is filed.

In order to initiate the process set forth under the Act, the Board would need to adopt a resolution stating its intention to initiate the conflict resolution procedure. After the conflict resolution procedure has been initiated, a conflict assessment meeting is held. The County Administrator and the City Manager, or his designee, would attend the conflict assessment meeting. During the conflict assessment meeting, the governmental entities discuss the issues pertaining to the conflict and an assessment of the conflict from the perspective of each governmental entity involved. If the issues cannot be resolved during the conflict assessment meeting, the parties would conduct a joint public meeting and then mediation, if necessary. Per the Act, a facilitator may be utilized by the parties during the process.

FUNDING.

The costs of the conflict resolution process are to be split evenly between the parties. The funding for participating in the conflict resolution process will come from Account Number 114-120-033110. The County Attorney does not anticipate the conflict resolution process costing more than \$3,000.

RECOMMENDATION.

The County Attorney's Office recommends that the Indian River County Board of County Commissioners direct County staff to draft a resolution initiating the conflict resolution procedure under the Florida Governmental Conflict Resolution Act.