



Office of
**INDIAN RIVER COUNTY
ATTORNEY**

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MEMORANDUM

TO: Board of County Commissioners
FROM: Dylan Reingold, County Attorney
DATE: September 16, 2022
SUBJECT: Website Publication of Legal Notices

BACKGROUND.

In 2022, the Florida Legislature enacted HB 7049, which made changes to the legal notices and official advertisements provisions of the Florida Statutes. This memo outlines the new statutory requirements that impact Indian River County. This law takes effect on January 1, 2023. The sections referenced below are in the statutory format that will go into effect on January 2023.

Publication of Advertisements on Publicly Accessible Websites

Per section 50.011, Florida Statutes, Florida statutory official or legal advertisements in some instances can be on a publicly accessible website as set forth in section 50.0311, Florida Statutes. Per section 50.0311(2), Florida Statutes, the term “publicly accessible website” means a county’s official website or other private website designated by the county for the publication of legal notices and advertisements that is accessible via the Internet. All advertisements and public notices published on a website as provided in this chapter must be in searchable form and indicate the date on which the advertisement or public notice was first published on the website.

It is important to check specific publishing requirements when determining whether the county website can be used for publication purposes. For instance, per section 125.66(2)(a), Florida Statutes, standard ordinance notices need to meet the publication requirements as provided in chapter 50, Florida Statutes. Thus, the County website would satisfy this requirement. However, per section 125.66(4)(b), when a proposed ordinance changes the actual list of permitted, conditional, or prohibited uses within a zoning category, or changes the actual zoning map designation of a parcel or parcels of land involving 10 contiguous acres or more, the notice must be “published in the print edition of a newspaper” or mailed to property owners. In this instance, it appears that publication by website is not an option.

Requirements of a Publicly Accessible County Website

Per section 50.0311(3), Florida Statutes, a governmental agency may use the publicly accessible website of the county in which it lies to publish legally required advertisements and public notices if the cost of publishing advertisements and public notices on such website is less than the cost of publishing

advertisements and public notices in a newspaper. There does not appear to be any mandatory language compelling the counties to provide this service. Thus, it can be argued that although a local government may have the option to post notices on a county website, the statute does not appear to require a county to do so.

If the County chooses to do so, the County can charge to use the county website for the publishing of notices. Please note that per section 50.0311(4), Florida Statutes, a governmental agency with at least 75 percent of its population located within a county with a population of fewer than 160,000 may use a publicly accessible website to publish legally required advertisements and public notices only if the governing body of the governmental agency, at a public hearing that has been noticed in a newspaper as provided in Chapter 50, determines that the residents of the governmental agency have sufficient access to the Internet by broadband service, as defined in section 364.02, Florida Statutes, or by any other means, such that publishing advertisements and public notices on a publicly accessible website will not unreasonably restrict public access. Broadband service is defined as any service that consists of or includes the offering of the capability to transmit or receive information at a rate that is not less than 200 kilobits per second and either (a) is used to provide access to the Internet; or (b) provides computer processing, information storage, information content, or protocol conversion in combination with the service. The definition of broadband service does not include any intrastate telecommunications services that have been tariffed with the commission on or before January 1, 2005.

Per section 50.0311(6), Florida Statutes, a governmental agency that uses a publicly accessible website to publish legally required advertisements and public notices shall provide notice at least once per year in a newspaper of general circulation or another publication that is mailed or delivered to all residents and property owners throughout the government's jurisdiction, indicating that property owners and residents may receive legally required advertisements and public notices from the governmental agency by first-class mail or e-mail upon registering their name and address or e-mail address with the governmental agency. The governmental agency shall maintain a registry of names, addresses, and e-mail addresses of property owners and residents who have requested in writing that they receive legally required advertisements and public notices from the governmental agency by first-class mail or e-mail.

Links on a Publicly Accessible Websites

Per section 50.0311(7), Florida Statutes, a link to advertisements and public notices published on a publicly accessible website shall be conspicuously placed: (a) on the website's homepage or on a page accessible through a direct link from the homepage; or (b) on the homepage of the website of each governmental agency publishing notices on the publicly accessible website or on a page accessible through a direct link from the homepage.

Proof of Publication

Per section 50.051, Florida Statutes, affidavits establishing proof of publication are required to be in a form substantially as follows:

INDIAN RIVER COUNTY

STATE OF FLORIDA

COUNTY OF INDIAN RIVER:

Before the undersigned authority personally appeared [name], who on oath says that he or she is of Indian River County, Florida; that the attached copy of advertisement, being a [_____] in the matter of [_____] in the [_____] Court, was published on the publicly accessible website of Indian River County, Florida, or in a newspaper by print in the issues of [_] on (date).

Affiant further says that the website or newspaper complies with all legal requirements for publication in chapter 50, Florida Statutes.

Sworn to and subscribed before me, by means of physical presence or online notarization, this ____ day of [month], 202__ by [affiant], who is personally known or produced identification in the form of _____.

(Signature of Notary Public)

(Print, Type, or Stamp Commissioned Name of Notary Public)

(Notary Public)

Per section 50.041, Florida Statutes, the affidavit must be printed upon white paper and shall be 8 1/2 inches in width and of convenient length, not less than 5 1/2 inches. A white margin of not less than 2 1/2 inches shall be left at the right side of each affidavit form and upon or in this space shall be substantially pasted a clipping which shall be a true copy of the public notice or legal advertisement for which proof is executed. Alternatively, the affidavit may be provided in electronic rather than paper form, provided the notarization of the affidavit complies with the requirements of section 117.021, Florida Statutes. There may be a charge not to exceed \$2 levied for the preparation and execution of each such proof of publication or affidavit.

The County Attorney's Office is seeking guidance from the Indian River County Board of County Commissioners ("Board") as to whether the Board is interested in directing County staff to further explore the possibility of the County and other jurisdictions using the County website for publication of notices. The County often uses the County website already to post notices of upcoming public hearings, but such notices are in addition to the notices published in the newspaper. Such website notices are not currently designed to meet the new statutory requirements.

FUNDING.

There is no funding at this time. If the Board directs County staff to development a process for publication on the County website, County staff will provide funding information when the matter is brought back to the Board for consideration.

RECOMMENDATION.

The County Attorney's Office recommends that the Indian River County Board of County Commissioners provide direction on the use of the County website for publication of notices for the County and other jurisdictions.