



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Public Hearing

H.3.

10/22/2024

Subject:

Adoption of Amendments to Chapter 62, Article II, Division 3, "Planning and Zoning Board," Brevard County Code of Ordinances, Specifically Amending Section 62-182, "Membership; Appointment and Term of Members," Section 62-184, "Officers; Rules of Procedure; Quorum," and Section 62-185, "Records; Regular and Special Meetings," and Repealing and Reserving Section 62-183, "Alternate Members."

Fiscal Impact:

None

Dept/Office:

Planning and Development

Requested Action:

Board approval and adoption of amendments to Chapter 62, Article II, Division 3, "Planning and Zoning Board," Brevard County Code of Ordinances. Specifically, it is proposed to amend Section 62-182, "Membership; Appointment and Term of Members" to increase the number of regular Planning and Zoning Board members to fifteen (15), modify the voting privileges of specified members, and to modify certain terms of appointment; perform cleanup and clarification within Sections 62-184, "Officers; Rules of Procedure; Quorum," and 62-185, "Records; Regular and Special Meetings;" repealing and reserving Section 62-183, "Alternate Members."

Summary Explanation and Background:

Currently, under Sections 62-182 and 62-183, Brevard County Code of Ordinances, the makeup of the Planning and Zoning Board (and by extension the Local Planning Agency), consists of two regular members appointed by each District Commissioner, a voting member from the Brevard County School District, a non-voting member from Patrick Space Force Base, as well as an alternate member from each county commission district. The alternate members shall be entitled to vote in the following circumstances:

- (1) The regular member appointed to the same county commission district as the alternate is not in attendance.
- (2) The vote of an alternate member does not make the total vote on any matter exceed ten votes, regardless of the fact that both regular members appointed to the same county commission district as the alternate are in attendance. The chairman, or in his absence the vice-chairman, shall designate which alternate member or members may vote if such designation is necessary to maintain a maximum of ten votes on any one item.

For a variety of reasons, this membership structure has proven to be difficult to implement in practice,

particularly as it relates to alternate members. For instance, whether an alternate can or cannot vote sometimes changes depending on conflicts of other members. Additionally, this structure can lead to alternate members choosing not to attend meetings when they may have been able to vote on certain items during a meeting, because it is difficult to forecast the makeup of the board at any given meeting in advance, let alone any given agenda item. This leads to reduced input on items coming before the Board of County Commissioners, and a heightened risk of a lack of a quorum.

Therefore, it is proposed that Brevard County Ordinances be amended to allow for three full members to be appointed by each district commissioner (rather than two) and remove the alternate members entirely. The quorum requirement would remain the same as it stands currently (six). In essence, there would remain the same number of total members (15 Board-appointed members + two additional members), but all Board-appointed members would be permitted to vote at all times.

Additionally, it is current practice to allow members who have completed their term to remain on the Board until a reappointment or new appointment has been made. However, the Code currently only explicitly states this is the case for those members whose term has expired due to the expiration of the appointing commissioner's term. It is proposed to modify Section 62-182 to specify that "upon expiration of a term, a member may continue to serve until he or she is reappointed or until a new appointment is made."

On September 17th, 2024, the Board issued legislative intent and permission to advertise these amendments. As part of its motion, it further directed staff to "make the necessary changes to align the voting membership of the [planning and zoning] board with the minimum requirements found in Florida Statute Section 163.3174 and relevant interlocal agreements." Staff has identified one difference between the current voting membership and the minimum requirements found in Florida Statute and interlocal agreements. Under Sec. 163.3174, Fla. Stat., the "county shall include a representative of the school district appointed by the school board as a nonvoting member of the local planning agency or equivalent agency to attend those meetings at which the agency considers comprehensive plan amendments and rezonings that would, if approved, increase residential density on the property that is the subject of the application." Currently, Brevard County Code does not designate the School Board-appointed member as a non-voting member. Similarly, the relevant interlocal agreement with Brevard County Schools states that the County "will include a nonvoting representative appointed by the School Board on the local planning agencies, or equivalent agencies, to attend those meetings at which the agendas consider comprehensive plan amendments and rezonings that would, if approved, increase residential density on the property that is the subject of the application. The . . . County may at their discretion grant voting status to the appointed School Board member." As such, staff has included language in the proposed ordinance stating that the School Board representative "shall serve as a non-voting member."

Finally, it is proposed to perform non-substantive cleanup and clarifications to the various Sections of Chapter 62, Article II, Division 3, "Planning and Zoning Board."

Clerk to the Board Instructions:

Once ordinance is filed with the State, please return two copies to Planning & Development.



October 23, 2024

MEMORANDUM

TO: Tad Calkins, Planning and Development Director

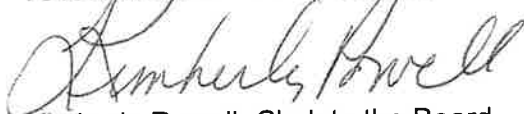
RE: Item H.3., Adoption of Amendments to Chapter 62, Article II, Division 3, "Planning and Zoning Board," Brevard County Code of Ordinances, Specifically Amending Section 62-182, "Membership; Appointment and Term of Members," Section 62-184, "Officers; Rules of Procedure; Quorum," and Section 62-185, "Records; Regular and Special Meetings," and Repealing and Reserving Section 62-183, "Alternate Members."

The Board of County Commissioners, in regular session on October 22, 2024, approved and adopted Ordinance No. 24-28, amending Chapter 62, Article II, Division 3, "Planning and Zoning Board," Brevard County Code of Ordinances, specifically amending Section 62-182, "Membership; Appointment and Term of Members," to increase the number of regular Planning and Zoning Board members to 15, modify the voting privileges of specified members, and to modify certain terms of appointment; perform cleanup and clarification within Sections 62-184, "Officers; Rules of Procedure; Quorum," and 62-185, "Records; Regular and Special Meetings," repealing and reserving Section 62-183, "Alternate Members." Enclosed are two copies of the fully-executed Ordinance.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
RACHEL M. SADOFF, CLERK


Kimberly Powell, Clerk to the Board

/sm

Encls. (2)



FLORIDA DEPARTMENT *of* STATE

RON DESANTIS
Governor

CORD BYRD
Secretary of State

October 24, 2024

Honorable Rachel M. Sadoff
County Clerk
Brevard County
Post Office Box 999
Titusville, FL 32781-0999

Dear Honorable Rachel Sadoff,

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your electronic copy of Brevard County Ordinance No. 2024-28, which was filed in this office on October 24, 2024.

Sincerely,

Alexandra Leijon
Administrative Code and Register Director

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ORDINANCE NO. 2024-28

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, AMENDING CHAPTER 62, ARTICLE II, DIVISION 3 OF THE BREVARD COUNTY CODE OF ORDINANCES, ENTITLED "PLANNING AND ZONING BOARD"; SPECIFICALLY AMENDING SECTION 62-182, BREVARD COUNTY CODE, ENTITLED "MEMBERSHIP; APPOINTMENT AND TERM OF MEMBERS" TO INCREASE THE NUMBER OF REGULAR PLANNING AND ZONING BOARD MEMBERS TO FIFTEEN, MODIFY VOTING RIGHTS OF CERTAIN MEMBERS, AND TO MODIFY THE TERMS OF APPOINTMENT; SPECIFICALLY AMENDING SECTION 62-182, BREVARD COUNTY CODE, TO REMOVE REFERENCES TO ALTERNATE MEMBERS; SPECIFICALLY REPEALING AND RESERVING SECTION 62-183, BREVARD COUNTY CODE, ENTITLED "ALTERNATE MEMBERS"; SPECIFICALLY AMENDING SECTION 62-184, BREVARD COUNTY CODE, TO CLARIFY PROCEDURES FOR SELECTING PLANNING AND ZONING BOARD OFFICERS; SPECIFICALLY AMENDING SECTION 62-185, BREVARD COUNTY CODE, TO CALIFY PROCEDURES FOR CALLING A SPECIAL MEETING OF THE PLANNING AND ZONING BOARD; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR CONFLICTING PROVISIONS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Board of County Commissioners of Brevard County, Florida, hereinafter the Board, has determined that members serving on the Local Planning Agency, hereinafter the L.P.A., and Planning and Zoning Board, hereinafter the P.Z. Board, have valuable knowledge and experience as it relates to land use and zoning items; and

WHEREAS, it is important to the Board's decision-making process that such perspectives be considered when items are brought forward to a vote; and

WHEREAS, in order to ensure such opinions and perspectives are considered, the Board determines that certain amendments are needed to modify the composition of the L.P.A. and P.Z. Board; and

WHEREAS, the Board finds it in the best public interest to adopt the following amendments to the Brevard County Code.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, as follows:

Officially filed with the Secretary of State on October 24, 2024.

Section 1. Chapter 62, Article II, Division 3, Section 62-182, Brevard County Code of Ordinances, is hereby amended as follows:

Sec. 62-182. Membership; appointment and term of members.

There shall be appointed to the planning and zoning board ~~two~~three members ~~per each county commission district appointed by the applicable~~by each county commissioner and ratified by the board of county commissioners. There shall also be appointed to the planning and zoning board a member to represent the county school district. The school district representative shall be appointed by the school board and shall serve as a non-voting member. There shall also be appointed to the planning and zoning board a representative of Patrick Air Space Force Base who shall act on behalf of all military installations within the jurisdiction of the county. This military representative shall be appointed by the commanding officer of Patrick Air Space Force Base and shall be considered an ex officio non-voting member. Each member shall reside in the county, but is not required to be a resident of the county commission district for which he is designated to serve. The term of appointment shall be for two years beginning on January 1 of the year of appointment, and expiring after the term of two years or with the term of the commissioner making the appointment, whichever occurs first. Upon expiration of a term, a member ~~A district commissioner's appointee may continue to serve after the expiration of the district commissioner's term until he or she is reappointed or until a new appointment is made.~~ Appointments to fill a vacancy shall be made by the county commissioner responsible for the initial appointment and ratified by the board of county commissioners, and the appointment shall be for the unexpired term. Members of the planning and zoning board shall serve at the pleasure of the board of county commissioners. The members shall be paid such compensation and actual expenses as provided by the board of county commissioners from time to time by resolution. No member of the planning and zoning board shall serve on the board of adjustment.

Term limits. ~~A regular member shall not be appointed for more than eight consecutive years, unless otherwise decided by the commissioner making the appointment. A member may be appointed as an alternate member after serving the maximum of eight successive years. A member may be reappointed as a regular member after serving for two consecutive years as an alternate. In addition, a former member may be appointed after two consecutive years of nonappointment.~~ A commissioner may request the board of county commissioners waive the aforementioned term limits should they have difficulty filling a member position.

Section 2. Chapter 62, Article II, Division 3, Section 62-183, Brevard County Code of Ordinances, is hereby amended as follows:

Sec. 62-183. RESERVED.~~Alternate members.~~

~~There shall be appointed to the planning and zoning board one alternate member per each county commission district, appointed by the applicable county commissioner and ratified by the board of county commissioners. The alternate members shall be appointed for a term of one year, and each member is not required to be a resident of the county commission district for which he is designated to serve. The term of appointment shall commence January 1 of the year of appointment, and each member shall serve until his successor is appointed. Appointments to fill a vacancy shall be made by the county commissioner responsible for the initial appointment and ratified by the board of county commissioners. The appointment shall be for the unexpired term. Alternate members of the planning and zoning board shall serve at the pleasure of the board of county commissioners. The alternate members shall be paid such compensation and actual expenses as provided by the board of county commissioners from time to time by resolution. The alternate members shall attend regularly scheduled meetings of the planning and zoning board at the request of the zoning director. The alternate members shall be entitled to vote on any matter coming before the planning and zoning board if:~~

- ~~(1) The regular member appointed to the same county commission district as the alternate is not in attendance.~~
- ~~(2) The vote of an alternate member does not make the total vote on any matter exceed ten votes, regardless of the fact that both regular members appointed to the same county commission district as the alternate are in attendance. The chairman, or in his absence the vice-chairman, shall designate which alternate member or members may vote if such designation is necessary to maintain a maximum of ten votes on any one item.~~

Section 3. Chapter 62, Article II, Division 3, Section 62-184, Subsection (a), Brevard County Code of Ordinances, is hereby amended as follows:

Sec. 62-184. Officers; rules of procedure; quorum.

- (a) At the first meeting held in January of each year, or as soon thereafter as possible, the members of the planning and zoning board shall elect, by majority vote ~~from of the voting~~ its members in attendance, a chairman, vice-chairman and such other officers as deemed necessary. Such officers shall serve a term of one year. The chairman shall serve as the presiding officer at all meetings of the planning and zoning board.

Section 4. Chapter 62, Article II, Division 3, Section 62-185, Subsection (b) Brevard County Code of Ordinances, is hereby amended as follows:

Sec. 62-185. Records; regular and special meetings.

- (b) The regular meeting dates shall be established from time to time by the board of county commissioners. Special meetings of the planning and zoning board may be called by the zoning official, by the chairman of the planning and zoning board, or by a majority vote of the members in attendance of the planning and zoning board. Notice of special meetings shall be given to each member of the planning and zoning board at least 24 hours prior to such special meeting.

Section 5. Inclusion in Code. It is the intention of the Board of County Commissioners that the provisions of this Ordinance shall become and be made a part of the Brevard County Code of Ordinances, and that the sections of this Ordinance may be renumbered or re-lettered and that the word "Ordinance" may be changed to "Chapter", "Section", "Article", or such other appropriate word or phrase in order to accomplish such intentions.

Section 6. Conflict. In the case of a direct conflict between any provision of this Ordinance and a provision of County law, rule, or regulation, the more restrictive shall apply.

Section 7. Severability. If any provision of this ordinance is held to be illegal or invalid, the other provisions shall remain in full force and effect.

Section 8. Effective Date. This ordinance shall become effective upon filing as provided by law. A certified copy of the ordinance shall be filed with the Office of the Secretary of State, State of Florida, within ten (10) days of enactment.

DONE, ORDERED, AND ADOPTED in Regular Session, this 22nd day of October, 2024.

ATTEST:

By:

Rachel Sadoff, Clerk of Court

**BOARD OF COUNTY
COMMISSIONERS OF BREVARD
COUNTY, FLORIDA**

By:

Jason Steele, Chair

As approved by the Board 10/22/2024.

Sec. 62-182. Membership; appointment and term of members.

There shall be appointed to the planning and zoning board three members by each county commissioner and ratified by the board of county commissioners. There shall also be appointed to the planning and zoning board a member to represent the county school district. The school district representative shall be appointed by the school board and shall serve as a non-voting member. There shall also be appointed to the planning and zoning board a representative of Patrick Space Force Base who shall act on behalf of all military installations within the jurisdiction of the county. This military representative shall be appointed by the commanding officer of Patrick Space Force Base and shall be considered an ex officio non-voting member. Each member shall reside in the county, but is not required to be a resident of the county commission district for which he is designated to serve. The term of appointment shall be for two years beginning on January 1 of the year of appointment, and expiring after the term of two years or with the term of the commissioner making the appointment, whichever occurs first. Upon expiration of a term, a member may continue to serve until he or she is reappointed or until a new appointment is made. Appointments to fill a vacancy shall be made by the county commissioner responsible for the initial appointment and ratified by the board of county commissioners, and the appointment shall be for the unexpired term. Members of the planning and zoning board shall serve at the pleasure of the board of county commissioners. The members shall be paid such compensation and actual expenses as provided by the board of county commissioners from time to time by resolution. No member of the planning and zoning board shall serve on the board of adjustment.

Term limits. A member shall not be appointed for more than eight consecutive years, unless otherwise decided by the commissioner making the appointment. A commissioner may request the board of county commissioners waive the aforementioned term limits should they have difficulty filling a member position.

Sec. 62-183. RESERVED.

Sec. 62-184. Officers; rules of procedure; quorum.

- (a) At the first meeting held in January of each year, or as soon thereafter as possible, the members of the planning and zoning board shall elect, by majority vote of the voting members in attendance, a chairman, vice-chairman and such other officers as deemed necessary. Such officers shall serve a term of one year. The chairman shall serve as the presiding officer at all meetings of the planning and zoning board.
- (b) The planning and zoning board shall have the power to adopt from time to time its own rules of procedure. Such rules of procedure and any amendment thereto shall

be effective only upon approval of the board of county commissioners. Upon such approval, a copy of such rules of procedure and any amendment shall be filed with the clerk of the board of county commissioners.

- (c) Six members of the planning and zoning board shall constitute a quorum, and no action may be taken if less than six members are present and voting. A majority of such quorum shall be sufficient for formal action by the planning and zoning board.
- (d) (1) If the county attorney or designee, the county manager or designee, or any member of the planning and zoning board determines that a zoning or CUP criteria or factual matter presented on a particular application warrants further staff evaluation or the need for additional information, the planning and zoning board may continue the hearing to a time certain to allow staff to assemble the requested information. All such requested information shall be prepared in report or written summary form and delivered to the applicant at least ten days prior to the date set for the continuation of the hearing. This rule shall apply in the same manner to the local planning agency under section 62-152(c), when the agency is considering any application for a comprehensive plan amendment, hearing appeals of administrative decisions or interpretation of the county comprehensive plan, or presentation of claims of regulatory taking or abrogation of vested rights.
(2) The applicant must submit any new evidence, not presented to the planning and zoning board, at least two weeks prior to the board of county commissioners meeting. Failure to do so may result in a continuation of the public hearing.

Sec. 62-185. Records; regular and special meetings.

- (a) The zoning official shall serve as secretary to the planning and zoning board and shall be the custodian of all records of the planning and zoning board. The minutes and all records of the planning and zoning board are hereby declared to constitute public records.
- (b) The regular meeting dates shall be established from time to time by the board of county commissioners. Special meetings of the planning and zoning board may be called by the zoning official, by the chairman of the planning and zoning board, or by a majority vote of the members in attendance of the planning and zoning board. Notice of special meetings shall be given to each member of the planning and zoning board at least 24 hours prior to such special meeting.
- (c) Any owner of real property in the county may request a special public hearing where unusual or peculiar hardship exists. The discretion on whether or not to call a special public hearing shall be made by the zoning official or the board of county commissioners. The owner of real property requesting such special public hearing shall accompany his application with a minimum fee established by resolution of the board.

Notice of these special meetings shall be given to each member of the planning and zoning board at least 24 hours prior to such special meeting.