



AGENDA REPORT
May 30, 2019

**Approval, Re: Changes to Tourist Development Tax Budget Plan, Section
102-119**

SUBJECT:

Changes to Tourist Development Tax Budget Plan.

FISCAL IMPACT:

No impact to Tourism Development Tax Revenue

DEPT/OFFICE:

Tourism Development

REQUESTED ACTION:

It is requested that the Board approve changes to the County's Tourist Development Tax Budget Plan, Section 102-119, Brevard County Code by **super-majority vote**.

SUMMARY EXPLANATION and BACKGROUND:

Pursuant to Section 102-119, Brevard County Code, Tourist Development Tax funding, up to a million dollars, may be allocated to lagoon or estuary projects if projects over \$50,000.00 have a three to 1 (3:1) match from non-county sources. On April 24, 2019, the Tourist Development Council voted to recommend to the Brevard County Board of County Commissioners that the grant guidelines only require a two to 1 (2:1) match, and to drop the requirement that the matching funds be from a non-county source. Request the Board approve this change.

Additionally, the Tourist Development Office requests the Board amend Section 102-119 to list the percentages of tax allocation to the tourist development tax categories, without stating "estimated to be [insert dollar figure] for the 24 months following the passage of this section." Currently, the budgetary section becomes out of date every two years, as tourist development tax anticipated revenue changes. For example, the current codes states the anticipated net revenue from the tourist development tax to be derived by the County for the 24-month period beginning on the date of the levy is estimated to be approximately \$11,789,311.00. In fact, the 24 month projection for FY 2020 and FY 2021 is estimated to be \$31-\$32 million. Thus, the code section is out of date. Additionally, the annual revenue brought in by the tourist development tax is noticed to the public as part of the annual budget adoption process. Section 125.0104, Florida Statutes, does state that prior to enactment of the ordinance levying and imposing the tax, tourist development tax plans have to include the anticipated net revenue figures for the 24 months following the

levy of the tax. A review of other counties, such as Orange and Broward, indicate that this requirement is being met by leaving one line in the county code stating the anticipated net revenue figure for the 24 months following the initial approval to levy the tax. For Brevard County, this means including one line at section 102-119(2) of the code stating the 24 month anticipated net revenue from the tourist development tax as it was in Ordinance 1986-25, for the period from December 1, 1986 to December 1, 1988. The remainder of the County code references to anticipated net revenue amounts are not statutorily required.

By state law and county code, substantial amendments to Section 102-119 of the Brevard County Code require a **super-majority vote**.

CLERK TO THE BOARD INSTRUCTIONS:

File Ordinance with Secretary of State & Return signed/filed copy to County Attorney's Office.

ATTACHMENTS:

Description

- ▢ **Redline copy of Ordinance showing changes to the Code.**
- ▢ **Clean copy of Ordinance as it will look.**



FLORIDA DEPARTMENT *of* STATE

RON DESANTIS
Governor

LAUREL M. LEE
Secretary of State

June 3, 2019

Honorable Scott Ellis
Clerk
Board of County Commissioners
Brevard County
Post Office Box 999
Titusville, Florida 32781-0999

Attention: Deborah Thomas

Dear Mr. Ellis:

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your electronic copy of Brevard County Ordinance No. 2019-14, which was filed in this office on June 3, 2019.

Sincerely,

Ernest L. Reddick
Program Administrator

ELR/lb



Tammy Rowe, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001

Fax: (321) 264-6972

Tammy.Rowe@brevardclerk.us

May 31, 2019

M E M O R A N D U M

TO: Eden Bentley, County Attorney Attn: Christine Schverak

RE: Item H.11., Ordinance Changing the County's Tourist Development Tax Budget Plan, Section 102-119, Brevard County Code by a Super Majority Vote

The Board of County Commissioners, in regular session on May 30, 2019, adopted Ordinance No. 19-14, changing the County's Tourist Development Tax Budget Plan, Section 102-119, Brevard County Code by a Super Majority Vote, as follows:

- Changing the Code's authorizations for grants to Lagoon or estuary projects if projects are over \$50,000 to only require a ¾:1, 75 percent match prior to receiving tourist development tax revenue, and removed the limitation that the match come from non-County sources.
- Authorized the County to apply for Lagoon Grants, and authorized the changes to the Code to comply with the Statute while removing extraneous statement in the Code Section that list the percentages of tax allocation to the tourist development tax categories without stating an estimated dollar value for the 24 months following the passage of the Section.

Enclosed is a certified copy of the Ordinance.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Rowe

Tammy Rowe, Deputy Clerk

Encl. (1)

cc: Tourism Development Director

ORDINANCE NO. 2019- 14

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, AMENDING CHAPTER 102, ARTICLE III, SECTION 102-119, CODE OF ORDINANCES OF BREVARD COUNTY, FLORIDA, AMENDING THE REQUIRED MATCH FOR LAGOON AND ESTUARY PROJECTS AND REMOVING 24 MONTH ANTICIPATED NET REVENUE LANGUAGE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR THE REPEAL OF CONFLICTS; PROVIDING AN EFFECTIVE DATE; PROVIDING FOR AREA ENCOMPASSED; AND PROVIDING FOR INCLUSION IN THE CODE OF ORDINANCES OF BREVARD COUNTY, FLORIDA.

WHEREAS, section 125.0104, Florida Statutes requires the tourist development tax to be levied and imposed pursuant to an ordinance containing the county tourist development plan, enacted by the Board of County Commissioners; and

WHEREAS, Brevard County met all the requirements to authorize the levy and imposition of the tax when the Board of County Commissioners approved the local option tourist development tax by Ordinance 86-25 on August 18, 1986, and the voters approved the tourist development tax by a referendum vote on November 4, 1986; and

WHEREAS, the tourist development tax plan is required to set forth the anticipated net tourist development tax revenue to be derived by the county for the 24 months following the levy of the tax; the tax district in which the tourist development tax is proposed; and a list, in the order of priority, of the proposed uses of the tax revenue by specific project or special use, with the approximate cost or expense allocation for each specific project or special use; and

WHEREAS, Ordinance 86-25 properly listed the anticipated net revenue for the twenty-four month period from the date of the initial two percent levy as \$2,200,000.00; and

WHEREAS, Brevard County adequately approximates the cost or expense allocation for each specific tourist development plan project by specifying a percentage or an amount of the applicable tourist development plan revenue that may be allocated to specific uses; and

WHEREAS, it goes beyond the requirements at section 125.0104, Florida Statutes, to list the anticipated net revenue for successive twenty-four month periods of time in the County ordinance for each project; and

WHEREAS, the County's budget is adopted annually after a public hearing and the annual adopted budget includes anticipated revenue from the tourist development tax; and Officially filed with the Secretary of State of June 3, 2019.

WHEREAS, the Tourist Development Council has recommended to the Board of County Commissioners that the requirements to receive funding for an lagoon- or estuary-related project be broadened to bring in more applications.

NOW, THEREFORE, BE IT ORDAINED by the Board of County Commissioners of Brevard County, Florida as follows:

SECTION 1. Chapter 102, Article III, Section 102-119 – Budget Plan, Code of Ordinances of Brevard County, Florida is amended, as follows:

The board of county commissioners hereby adopts the following plan of the advisory tourist development council for tourist development:

- (1) Under the provisions of, and pursuant to, the Act, a two-percent tax is levied and imposed throughout the county beginning on the first day of the month following elector approval of this article and its tourist development tax by referendum as provided by this article.
- (2) The anticipated net revenue from the tourist development tax to be derived by the county for the 24-month period beginning on the date of levy, December 1, 1986 to December 1, 1988, is estimated to be approximately \$2,200,000.00. The County budget, adopted annually at a public hearing, includes the anticipated net tourist development tax revenue.
- (3) The proposed uses of the tax revenue, generated pursuant to F.S. § 125.0104(3)(c), in order of priority, by special use category, shall be allocated as follows:
 - a. At least 25 percent of the net revenue would be budgeted and disbursed to promote and advertise county tourism in the state, nationally and internationally; however, if tax revenues are expended for an activity, service, venue, or event, the activity, service, venue, or event must have as one of its main purposes the attraction of tourists as evidenced by the promotion of the activity, service, venue, or event to tourists.
 - b. Thirty percent of the net revenue would be budgeted and disbursed to finance beach park facilities or beach improvement, maintenance, renourishment and erosion control.
 - c. Up to 35 percent of the net revenue in accordance with F.S. § 125.0104(5)(a)1. and (5)(b), would be budgeted and disbursed generally to acquire, construct, extend, enlarge, remodel, repair, improve, maintain, operate or promote one or more publicly owned and operated convention centers, sports stadiums, sports arenas, coliseums, or auditoriums within the county; and further including museums, zoological parks, aquariums, fishing piers or nature centers which are publicly owned and operated or owned and operated by not-for-profit organizations and open to the public within the county.

- d. Up to ten percent of the net revenue be budgeted and disbursed to promote county tourism by funding tourist-oriented cultural and special events such as visual and performing arts including theater, concerts, recitals, opera, dance, art exhibitions, festivals and other tourist-related activities.
 - e. There shall be an annual amount established by the board of county commissioners for administrative and overhead expenses of the board and council which shall be expended in order to properly coordinate and implement the tourist development plan.
 - f. Pursuant to F.S. § 125.0104(4)(d), the above-stated plan may not be substantially amended except by ordinance enacted by an affirmative vote of a majority plus one additional member of the board. The council shall, from time to time, make recommendations to the board for the effective operation of the special projects or for uses of the tax revenue.
 - g. The setting forth of the anticipated net revenues to be derived from levying the tax during the first 24 months following levy, as required by the Act, shall in no way be interpreted as indicating an intent by the board, through this article, to in any way limit the plan or the tax to said period and the plan and tax shall continue, once duly enacted, until amended or repealed, according to this article and the Act or until it automatically expires pursuant to F.S. § 125.0104(7), if applicable.
- (4) Under the provisions of, and pursuant to F.S. § 125.0104(3)(d) and subsection 102-117(b), an additional one-percent tourist tax is hereby levied and imposed throughout the county as provided by this article. The proposed uses of tax revenue from this additional one percent tourist development tax, in order of priority, by special use category, shall be allocated as follows:
- (a) Sixty-five percent of the net revenue would be utilized as provided in F.S. § 125.0104(5)(a)(5), to finance beach park facilities or beach, estuary, or lagoon improvement, maintenance, renourishment, restoration and erosion control, including shoreline protection, enhancement, cleanup or restoration of inland lakes and rivers to which there is public access as those uses relate to the physical preservation of the beach, shoreline, estuary, lagoon, or river. However, any funds identified by the county as the local matching source for beach renourishment, restoration, or erosion control projects included in the long-range budget plan for the state's beach management plan, pursuant to F.S. § 161.091, or funds contractually obligated by the county in the financial plan for federally authorized shore protection project may not be used or loaned for any other purpose. Beach improvement and maintenance projects are to receive full funding as the top priority. As the second priority, lagoon- and estuary-related projects shall only receive up to \$1,000,000.00 per year starting in fiscal year 2019, and any such

project with a total expected cost that exceeds \$50,000.00 must obtain matching funds from one or more source(s) at a minimum ratio of 3/4:1, 75 percent match prior to receiving tourist development tax revenue. The County may apply for the lagoon grants. Subject to the limitations provided for in this subsection, the remaining amount of the net revenue shall be used for acceptable purposes identified in F.S. § 125.0104(5)(a)5.

- b. Twenty-five percent of the net revenue would be used in accordance with F.S. § 125.0104(5)(b) to acquire, construct, extend, enlarge, remodel, repair, improve, maintain, operate or promote a zoological park. These revenues are specifically designated to finance the design and construction of capital projects at the Brevard Zoo.
 - c. Ten percent of the net revenue would be budgeted and disbursed generally, in accordance with F.S. § 125.0104(5)(a)4, to fund convention bureaus, tourist bureaus, tourist information centers, and news bureaus as county agencies or by contract with the chambers of commerce or similar associations in the county, which may include any indirect administrative costs for services performed by the county on behalf of the promotion agency.
 - d. There shall be an annual amount established by the board for administrative and overhead expenses of the board and council which tourist development plan for the additional one-percent tourist development tax shall be expended in order to properly coordinate and implement the additional one-percent tourist development tax.
- (5) Under the provisions of, and pursuant to, F.S. § 125.0104(3)(1) and subsection 102-117(c), an additional one-percent tourist tax is hereby levied and imposed throughout the county as provided by this article. The proposed uses of the net revenue from this additional one-percent tourist development tax, in order of priority, by special use category, shall be allocated as follows:
- a. At least \$350,000.00 of the net revenue per year and up to the entire remaining amount of the net revenue, minus the planned renovations, improvements, and maintenance budgeted in the annual plan for capital maintenance and renovation, shall be budgeted and disbursed to promote and advertise tourism in the state and nationally and internationally. In addition, if tax revenues are expended for an activity, service, venue, or event, the activity, service, venue, or event shall have as one of its main purposes the attraction of tourists as evidenced by the promotion of the activity, service, venue, or event to tourists.
 - b. Up to \$500,000.00 of the net revenue per year shall be allocated for capital renovations, improvements, and maintenance of the Space Coast Stadium Complex or other professional sports facility, in accordance with an annual plan for the capital maintenance and renovation approved by the board of county commissioners. In order to receive such funds, the Space Coast Stadium Complex

or other professional sports facility shall have as one of its main purposes the attraction of tourists as evidenced by the promotion of the venue to tourists.

- (6) Under the provisions of, and pursuant to, F.S. § 125.0104(3)(n) and subsection 102-117(d), an additional one-percent tourist tax is hereby levied and imposed throughout the county as provided by this article. The proposed uses of the tax revenue from this additional one-percent tourist development tax, in order of priority, by special use category, shall be allocated as follows:
 - a. One hundred percent of the net revenue per year would be budgeted and disbursed to promote and advertise tourism in the state and nationally and internationally; however if the tax revenues are expended for an activity, service, venue, or event, the activity, service, venue, or event shall have as one of its main purposes the attraction of tourists as evidenced by the promotion of the activity, service, venue, or event to tourists.
 - b. There shall be an annual amount established by the board for administrative and overhead expenses of the board and council which tourist development plan for the additional one-percent tourist development tax shall be expended in order to properly coordinate and implement the additional one-percent tourist development tax.
- (7) Such anticipated revenue shall be administered by the board of county commissioners through established county government administration, county agencies, existing or hereafter created, or by contract with chambers of commerce or similar nonprofit associations within the county in a manner prescribed by subsequent ordinance or resolution.
- (8) The clerk to the board of county commissioners is hereby directed to establish a county tourist development trust fund. All collections received by the tax collector from the tax imposed and levied by this article shall be placed in such trust fund.

SECTION 2. SEVERABILITY. If any section, subsection, clause, phrase, word or provision of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such invalid unconstitutional portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions of this ordinance, provided the remaining portions effectuate purpose and intent of this ordinance.

SECTION 3. CONFLICTING PROVISIONS. In the case of a direct conflict between any provision of this Ordinance and a portion or provision of any other applicable federal, state, or county law, rule, code or regulation, the more restrictive shall apply, unless preempted by law.

SECTION 4. EFFECTIVE DATE. This ordinance shall take effect immediately upon its adoption and filing as provided by law. A certified copy of this ordinance shall be filed with the Office of the Secretary of State, State of Florida, within ten (10) days of enactment.

SECTION 5. AREA ENCOMPASSED. The area encompassed by the local option tourist development tax is unchanged, including both the incorporated and unincorporated areas of Brevard County, Florida.

SECTION 6. INCLUSION IN THE CODE. It is the intention of the Board of County Commissioners that the provisions of this ordinance is part of the Code of Ordinances of Brevard County, Florida; and that the sections of this ordinance may be renumbered or re-lettered and that the work "ordinance" may be changed to "section," "article," or such other appropriate word or phrase in order to accomplish such intentions. To facilitate access to individuals with disabilities, the sections of the code will be amended to spell out abbreviations and acronyms such as "§" to section and "Fla. Stat." to Florida Statutes.

Adopted by the Brevard County Board of County Commissioners during regular session on the 30 day of May, 2019.

ATTEST:


Clerk

BOARD OF COUNTY COMMISSIONERS
BREVARD COUNTY, FLORIDA

BY: 

Kristine Isnardi, Chair

As approved by the Board on 5/30/19

Deborah Thomas

From: Schverak, Christine <Christine.Schverak@brevardfl.gov>
Sent: Friday, May 31, 2019 4:37 PM
To: Deborah Thomas
Subject: Item H11
Attachments: Ordinance re Tourism CLEAN 05312019FINAL BOCC Approved.docx

ON Scott
DESK

Deborah,

Clean copy for signature attached with changes made.

Regarding item H11, the Board approved changes to the County's Tourist Development Tax Budget Plan, Section 102-119, Brevard County Code by a super-majority vote. They changed the code's authorizations for grants to lagoon or estuary projects if projects are over \$50,000 to only require a 3/4:1, 75 percent match prior to receiving tourist development tax revenue, and removed the limitation that the match come from non-county sources. They authorized the county to apply for the lagoon grants, and they authorized the changes to the code to comply with the statute while removing extraneous statement in the code section that list the percentages of tax allocation to the tourist development tax categories without stating an estimated dollar value for the 24 months following the passage of the section.

Let me know if you need anything else on H11.

Sincerely,

Christi

Christine S.
Stu Winkley
on H.12
which may
or may not
change.

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Assistant County Attorney
Brevard County Attorney's Office
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