



AGENDA REPORT
August 20, 2019

Public Hearing, Re: Code Amendment to Chapter 62, Article VI, Section 62-2131, Temporary Use Agreements.

SUBJECT:

Public Hearing, Re: Code Amendment to Chapter 62, Article VI, Section 62-2131, Temporary Use Agreements.

FISCAL IMPACT:

\$200,000 annual savings.

DEPT/OFFICE:

Planning and Development

REQUESTED ACTION:

It is requested that the Board of County Commissioners conduct a public hearing to amend Chapter 62, Article VI, Section 62-2131, entitled Temporary Use Agreements, to allow the timeframe for County and publicly managed lagoon restoration projects to coincide with the anticipated project duration, up to five years.

SUMMARY EXPLANATION and BACKGROUND:

On July 9, 2019, the Board granted legislative intent and permission to advertise amendments to Section 62-2131, Temporary Use Agreements (TUA). The proposed amendment only affects the timeline for publicly managed lagoon restoration projects by allowing the Board to approve a TUA for the anticipated duration of the project, up to five years. As opposed to the current one-year limit. This change will benefit the Natural Resources Department and other public entities' muck removal and navigational dredging projects, where the availability of upland processing areas for the temporary treatment and handling of dredge spoils has become increasingly limited.

Staff presently works within the existing temporary use code to seek formal TUA's when required. Temporary Use Agreements for these County-maintained, public interest projects are presently limited to one year, however, the projects require multi-year timelines. This amendment will streamline these multi-year projects, and avoid repetitive review by the County Commission, and additionally, it will allow the project to overcome the following hurdles:

- Dredging projects are large and complicated with project timelines that can be influenced by multiple factors. Permit related requirements and restrictions,

particularly related to state and federally mandated manatee closures, can require full or partial project shutdowns lasting 3 to 6 months or more each year.

- Project commencement, including surveying, land clearing, grading, site layout, and water quality equipment preparation, with required inspections, can take up to 6 months.
- Site closeout, which may include site re-grading and the installation of a restorative landscape plan, watered and planted at the appropriate time of year, may add an additional 2 to 4 months to the project timeline.
- Permit modifications based on unforeseen site conditions or project improvement opportunities may also extend the planned scope of work and associated timeline.
- Approved material management area, laid out in the project design and established for the duration of the project provides a level of security at the time of project bidding that reduces the risk to the contractor and potentially lowers project cost.

CLERK TO THE BOARD INSTRUCTIONS:

If adopted, please return a certified copy of the ordinance to Planning and Development.

ATTACHMENTS:

Description

- **Legislative Intent BCC Memo**
- **Strike Through and Underlined Copy**
- **Clean Copy**



FLORIDA DEPARTMENT *of* STATE

RON DESANTIS
Governor

LAUREL M. LEE
Secretary of State

August 21, 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. 2019-19, which was filed in this office on August 21, 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

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Tammy.Rowe@brevardclerk.us

August 21, 2019

MEMORANDUM

TO: Tad Calkins, Planning and Development Director

RE: Item H.6., Ordinance for Code Amendment to Chapter 62, Article VI, Section 62-2131, Temporary Use Agreements

The Board of County Commissioners, in regular session on August 20, 2019, adopted Ordinance No. 19-19, amending Chapter 62, Article VI, Section 62-2131, entitled Temporary Use Agreements, allowing the timeframe for the County and publicly managed lagoon restoration projects to coincide with the anticipated project duration, up to five years. Enclosed is certified copy of the Ordinance.

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Rowe

Tammy Rowe, Deputy Clerk

/ds

Encl. (1)

ORDINANCE NO. 2019-19

AN ORDINANCE AMENDING CHAPTER 62, "LAND DEVELOPMENT REGULATIONS", CODE OF ORDINANCES OF BREVARD COUNTY, FLORIDA; AMENDING ARTICLE VI, ZONING REGULATIONS, DIVISION 6, SUPPLEMENTAL REGULATIONS, SUBDIVISION 1, GENERAL PROVISIONS; SPECIFICALLY AMENDING SECTION 62-2131, TEMPORARY USE AGREEMENTS, TO PROVIDE UP TO A FIVE (5) YEAR DURATION; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE; AND PROVIDING FOR INCLUSION IN THE CODE OF ORDINANCES OF BREVARD COUNTY, FLORIDA.

WHEREAS, the Board of County Commissioners desires to revise the duration allowed for a temporary use agreement; and

WHEREAS, the Board of County Commissioners, on July 9, 2019, directed staff to prepare an ordinance and ratify duration of temporary use agreements; and

WHEREAS, the Building Construction Advisory Committee, on July 10, 2019, reviewed the proposed ordinance and made recommendations; and

WHEREAS, the Local Planning Agency, on July 22, 2019, reviewed the proposed ordinance and made recommendations; and

WHEREAS, the Board of County Commissioners has reviewed the recommendations of the Local Planning Agency and the Building Construction Advisory Committee and has considered the comments of interested citizens in public hearing; and

WHEREAS, the Board of County Commissioners has determined that the proposed amendment serves the public health, safety, and welfare of the citizens of Brevard County.

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

Underline indicates additions

~~Strikethrough indicates deletions~~

SECTION 1. Section 62-2131, Code of Ordinances of Brevard County, Florida, are hereby amended as follows:

Section 62-2131, Temporary Use Agreements

The Board of County Commissioners may consider a temporary use agreement for the temporary use of property, regardless of the zoning of the property, where such temporary use results in direct public benefit. The purpose of the temporary use agreement is to acknowledge the need and public advantage to locate temporary uses, such as equipment storage, materials storage, portable asphalt plants, et cetera, in

Officially filed with the Secretary of State on August 21, 2019.

locations that are convenient to public improvement projects in such a manner that the temporary location would result in a savings to the public, but which would not necessarily be appropriate as a permanent use according to the comprehensive plan designation and zoning of the property. Temporary use agreements shall meet the following conditions:

- (1) Such temporary use agreement shall be approved only in those situations where the request is necessary to fulfill the obligations of a federal, state, or local government agency contract to construct, maintain, or improve a public facility.
- (2) Such temporary use agreement shall specify the duration of the use, which shall not exceed one year; except lagoon restoration projects managed by the County or a public entity in partnership with the County may be approved for the anticipated project duration, up to five years. Any extension shall be processed as a new agreement.
- (3) Such temporary use agreement shall contain a hold harmless stipulation indemnifying the County against liability.
- (4) No building permits shall be issued for any permanent structure. All equipment shall be portable and easily moveable.
- (5) All temporary equipment, supplies, et cetera, shall be removed from the property prior to the expiration of the temporary use agreement.
- (6) The temporary use agreement shall specify the location of all equipment storage areas and material storage areas, relative to the property lines.
- (7) The temporary use agreement shall locate all storage areas such that adjacent developed properties are best protected from the impacts of the temporary use.
- (8) The County shall provide written, individual notice to each property owner within 1,000 feet of the site of the proposed temporary use.
- (9) The temporary use agreement shall be considered by the Board of County Commissioners in public meeting.

SECTION 2, Conflicting Provisions. In the case of a direct conflict between any provision of this ordinance and a portion or provision of any appropriate federal, state, or county law, rule, code, or regulation, the more restrictive shall apply.

SECTION 3, Severability. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared severable.

SECTION 4, Area Encompassed. This ordinance shall take effect only in the unincorporated area of Brevard County, Florida.

SECTION 5, Effective Date. 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. This ordinance shall take effect upon adoption and filing as required by law.

SECTION 6, Inclusion in Code. It is the intention of the Board of County Commissioners that the provisions of this ordinance shall become and be made 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 word "ordinance" may be changed to "section", "article", or such other appropriate word or phrase in order to accomplish such intentions.

DONE, ORDERED, AND ADOPTED, in regular session, this 20 day of AUG., 2019.

Attest:

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA



Scott Ellis, Clerk

Kristine Isnardi, Chair

(as approved by the Board on Aug. 20, 2019)

(SEAL)

Reviewed for legal form and content by: _____



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July 10, 2019

M E M O R A N D U M

TO: Tad Calkins, Planning and Development Director

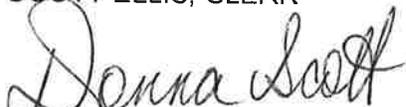
RE: Item J.1., Legislative Intent and Permission to Advertise for Section 62-2131, Temporary Use Agreements

The Board of County Commissioners, in regular session on July 9, 2019, granted legislative intent and permission to advertise amendments to Chapter 62, Article VI, Section 62-2131 entitled Temporary Use Agreements, to allow a multiple-year timeframe for County-managed Lagoon restoration projects.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

for 
Tammy Rowe, Deputy Clerk

/kp

cc: Natural Resources Management Director

