



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Public Hearing

H.2.

12/10/2019

Subject:

Request approval for an amendment to Section 78, Article III, at Division 1., Section 78-82 and at Division 2., Section 78-108 of the Brevard County Code of Ordinances.

Fiscal Impact:

None

Dept/Office:

Parks and Recreation

Requested Action:

It is requested that the Board of County Commissioners approve an amendment to Section 78, Article III, Division 1., Section 78-82 and Division 2., Section 78-108.

Summary Explanation and Background:

The Board of County Commissioners on November 12, 2019 gave permission to advertise amendments to Section 78-82 and Section 78-108 of the Brevard County Code of Ordinances.

In the 2019 Legislative Session, the Florida Legislature amended Section 102.031 of the Florida Statutes to now provide as follows: "the owner, operator or lessee of the property on which a polling place or early voting site is located or an agent or employee thereof, may not prohibit the solicitation of voters outside of the no-solicitation zone during polling hours." This legislative change requires an amendment to the Chapter 78. Parks and Recreation, specifically Sections 78-82 and 78-108.

Parks and Recreation facilities throughout Brevard County are utilized as both polling places and early voting sites. Should permission be approved to advertise the legislative intent and should the legislative change be adopted, County staff would allow signs to be displayed at polling stations only during the hours the polling stations are open. Signs displayed before or after polling station hours will be removed from County owned facilities.

The notice of intent approved at the November 12, 2019 Board meeting originally applied to permit section regarding signs in parks. Subsequently, at the November 20, 2019 Audit Committee meeting, the Committee agreed with the recommendation to remove the condition that applicant provide current photo identification and indemnify and hold the County harmless to rent a facility at a County park. It is difficult to obtain both a photo ID and signed waiver when reservations are taken over the phone. The auditors recommended that steps be taken to consistently enforce the Ordinance or take proper steps to remove or revise this requirement from the Ordinance. The notice of intent was modified to address the Audit Committee's recommendation. Approval of this amendment will remove the ID and waiver requirements from the Ordinance.

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Clerk to the Board Instructions:



FLORIDA DEPARTMENT *of* STATE

RON DESANTIS
Governor

LAUREL M. LEE
Secretary of State

December 13, 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 corrected electronic copy of Brevard County Ordinance No. 2019-28, which was filed in this office on December 13, 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

December 11, 2019

M E M O R A N D U M

TO: Mary Ellen Donner, Parks and Recreation Director

RE: Item H.2., Approval for Amendment to Section 78, Article III, at Division 1., Section 78-82 and at Division 2., Section 78-108 of the Brevard County Code of Ordinances

The Board of County Commissioners, in regular session on December 10, 2019, adopted Ordinance No. 19-28, amending Section 78, Article III, Division 1., Section 78-82 and Division 2., Section 78-108, of the Brevard County Code of Ordinances. Enclosed is a fully-executed copy of the Ordinance.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

A handwritten signature in cursive script that reads "Tammy Rowe".

Tammy Rowe, Deputy Clerk

/kp

Encls. (1)

ORDINANCE NO. 2019-28

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, AMENDING CHAPTER 78 OF THE BREVARD COUNTY CODE OF ORDINANCES, "PARKS AND RECREATION" AT ARTICLE III, "USE OF PARKS", AT DIVISION 1. "GENERALLY", AT SECTION 78-82, "PERMITS." AND FURTHER AMENDING AT DIVISION 2. "PENALTIES, VIOLATIONS AND PROHIBITED CONDUCT", AT SECTION 78-108, "POSTING SIGNS" TO AMEND THE REQUIREMENT FOR PERMITS AS THEY RELATE TO SIGNAGE IN PARKS IN ORDER TO COMPLY WITH RECENT AMENDMENTS TO STATE LAW; AND TO REMOVE THE CONDITION THAT AN APPLICANT PROVIDE CURRENT PHOTO IDENTIFICATION AND INDEMNIFY AND HOLD THE COUNTY HARMLESS AS ESTABLISHED BY RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS; PROVIDING FOR AN EFFECTIVE DATE; PROVIDING FOR AN AREA ENCOMPASSED; PROVIDING FOR CONFLICTING PROVISIONS; PROVIDING FOR INCLUSION IN THE CODE OF ORDINANCES OF BREVARD COUNTY, FLORIDA; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, pursuant to Article VIII, Section (1)(g) of the Florida Constitution and Section 125.01, Florida Statutes, the Board of County Commissioners of Brevard County, Florida (hereinafter "Board"), has broad authority to enact ordinances not inconsistent with general law or with special laws approved by the vote of the electors; and

WHEREAS, pursuant to recent amendments by the Florida Legislature to Section 102.031, Florida Statutes, as of July 1, 2019, any owner, operator or lessee of property on which a polling place or an early voting site is located or an agent or employee thereof may not prohibit the solicitation of voters outside of the no-solicitation zone during poll hours; and

WHEREAS, numerous Brevard County Parks and Recreations parks, recreational facilities or department managed lands are utilized as both polling places or early voting sites throughout Brevard County; and

WHEREAS, Brevard County Code Sections 78-82 and 78-108 require a permit from the Parks and Recreation Department in order to post signs in any park, recreational facility or department managed lands which would cause a conflict to the intent and mandate of Section 102.031, Florida Statutes; and

Officially filed with the Secretary of State on December 13, 2019

WHEREAS, the Parks and Recreation Department staff has identified a need to streamline the permitting process in order to provide better access for all residents who desire to utilize Brevard County parks, recreational facilities or department managed lands; and

WHEREAS, the Board desires to update its code to comply with the recent changes to state law and to effect the changes as previously stated.

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

SECTION 1. Chapter 78, Article III, Division. 1., Section 78-82, entitled, "Permits," of the Code of Ordinances of Brevard County, Florida is hereby amended to revise subsections (a) (6), (7), and (8) to read as follows:

Section 78-82. – Permits.

(a) A permit is required when one or more of the following conditions apply:

(6) The proposed activity includes amplified music (section 78-110).

(7) The applicant desires to ride horseback after dark and/or before daylight (section 78-113).

(8) The applicant desires to carry, fire or discharge any weapon or fireworks.

(b) The department shall issue a permit when all of the following conditions are met:

(2) The applicant has provided fees as established by resolution of the board of county commissioners for the activity.

(3) The applicant is in full compliance with all laws, ordinances, rules and regulations, permitting and licensing requirements.

(4) The applicant has provided current proof of public and/or liquor liability insurance as required by the board of county commissioners.

(5) The applicant has provided a plan and payment for security as required in subsection (c).

(6) The proposed activity or activities will occur in an area designated for such activity or activities.

(7) If the proposed activity includes commercial activity and/or is open to the public; as defined in section 78-76 and the applicant is a nonprofit or a not-for-profit organization, then the applicant must show proof of the applicant or applicant's organization's a nonprofit or a not-for-profit status.

SECTION 2. Chapter 78, Article III, Division. 2., Section 78-108, entitled, "Posting signs," of the Code of Ordinances of Brevard County, Florida is hereby amended to read as follows:

Section 78-108. – Posting signs.

No person shall post or affix to any tree, shrub, plant, fence, building, structure, monument, wall, table, apparatus, bridge, post, bench, corral, gate or any other physical object any sign, poster or other printed or written matter in any park, recreational facility, or department managed lands except during elections as required under Chapter 102, Florida Statutes, as amended. During elections, signs shall be permitted outside of the designated no-solicitation zone during polling hours as long as the signs do not alter county property. Upon closure of the polling place each day, the owner shall remove all signs from park property. In the event any sign is left on park property after the daily closure of the polling place then such sign shall be deemed abandoned and shall be removed by county staff.

SECTION 3. 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 4. 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 5. 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 days of enactment.

SECTION 6. AREA ENCOMPASSED. This section shall apply throughout the incorporated and unincorporated areas of the County. A municipal ordinance shall prevail over this Section within the municipality's jurisdiction to the extent of any conflict with this Section.

SECTION 7. INCLUSION IN THE CODE. It is the intention of the Board of County Commissioners that the provisions of this ordinance be 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. In order 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 10 day of Dec., 2019.

ATTEST:



Clerk

BOARD OF COUNTY COMMISSIONERS
BREVARD COUNTY, FLORIDA

BY: 

Bryan Lober, Chair

As approved by the Board on 12/10/19

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that the Board of County Commissioners of Brevard County, Florida, on December 10, 2019 at 5:00 p.m., in the Commission Room at 2725 Judge Fran Jamieson Way, Building C, First Floor, Viera, FL, 32940, will hold a public hearing on the following ordinance:

ORDINANCE NUMBER 2019-___

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, AMENDING CHAPTER 78 OF THE BREVARD COUNTY CODE OF ORDINANCES, "PARKS AND RECREATION" AT ARTICLE III, "USE OF PARKS", AT DIVISION 1. "GENERALLY", AT SECTION 78-82, "PERMITS." AND FURTHER AMENDING AT DIVISION 2. "PENALTIES, VIOLATIONS AND PROHIBITED CONDUCT", AT SECTION 78-108, "POSTING SIGNS" TO AMEND THE REQUIREMENT FOR PERMITS AS THEY RELATE TO SIGNAGE IN PARKS IN ORDER TO COMPLY WITH RECENT AMENDMENTS TO STATE LAW; AND TO REMOVE THE CONDITION THAT AN APPLICANT PROVIDE CURRENT PHOTO IDENTIFICATION AND INDEMNIFY AND HOLD THE COUNTY HARMLESS AS ESTABLISHED BY RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS; PROVIDING FOR AN EFFECTIVE DATE; PROVIDING FOR AN AREA ENCOMPASSED; PROVIDING FOR CONFLICTING PROVISIONS; PROVIDING FOR INCLUSION IN THE CODE OF ORDINANCES OF BREVARD COUNTY, FLORIDA; AND PROVIDING AN EFFECTIVE DATE.

Interested parties may appear at the December 10, 2019 meeting and be heard with respect to the proposed ordinance. A copy of the ordinance may be inspected at the following locations:

- Office of Clerk to the Board of County Commissioners, Titusville, Florida
- North Brevard Library, Titusville, Florida
- Central Brevard Library, Cocoa, Florida
- Melbourne Library, Melbourne, Florida
- South Mainland Library, Micco, Florida

A copy of the ordinance may also be viewed online at:

<http://www.brevardfl.gov/CountyManager/DraftOrdinances>. Pursuant to Section 286.0105 Florida Statutes, if a person decides to appeal any decision made by the board, agency, or commission with respect to any matter considered at such meeting or hearing, he or she will need a record of the proceedings, and that, for such purpose, he or she will need to ensure that a verbatim record of the proceedings is made, at his or her own expense, which record includes the testimony and evidence upon which any such appeal is to be based. Such person may provide a court reporter, stenographer, or a tape recorder for such verbatim record. In accordance with the Americans Disabilities Act, persons needing a special accommodation or an interpreter to participate in the proceedings, please notify the department sponsoring the meeting/hearing, or the County Manager's Office, (321) 633-2001, at least 48 hours in advance. TDD: 1-800-955-8771. Assisted Listening System receivers are available for the hearing impaired, & can be obtained from the Sound Technician at the meeting. This meeting will be broadcast live on Space Coast

Government Television (SCGTV) on Bright House Networks channel 499, Comcast Cable Communications channel 51 in North Brevard and channel 13 in South Brevard, and AT&T U-verse channel 99. SCGTV will also replay this meeting during the coming month. Check the SCGTV website for daily program updates <http://www.scgtv.org>.

102.031. Maintenance of good order at polls; authorities; persons..., FL ST § 102.031

KeyCite Yellow Flag - Negative Treatment
Unconstitutional or Preempted Prior Version Held Unconstitutional by CBS Broadcasting, Inc. v. Cobb, S.D.Fla., Oct. 24, 2006

West's Florida Statutes Annotated

Title IX. Electors and Elections (Chapters 97-109)

Chapter 102. Conducting Elections and Ascertaining the Results (Refs & Annos)

West's F.S.A. § 102.031

102.031. Maintenance of good order at polls; authorities; persons allowed in polling rooms and early voting areas; unlawful solicitation of voters

Effective: July 1, 2019

Currentness

(1) Each election board shall possess full authority to maintain order at the polls and enforce obedience to its lawful commands during an election and the canvass of the votes.

(2) The sheriff shall deputize a deputy sheriff for each polling place and each early voting site who shall be present during the time the polls or early voting sites are open and until the election is completed, who shall be subject to all lawful commands of the clerk or inspectors, and who shall maintain good order. The deputy may summon assistance from among bystanders to aid him or her when necessary to maintain peace and order at the polls or early voting sites.

(3)(a) No person may enter any polling room or polling place where the polling place is also a polling room, or any early voting area during voting hours except the following:

1. Official poll watchers;
2. Inspectors;
3. Election clerks;
4. The supervisor of elections or his or her deputy;

5. Persons there to vote, persons in the care of a voter, or persons caring for such voter;

6. Law enforcement officers or emergency service personnel there with permission of the clerk or a majority of the inspectors; or

7. A person, whether or not a registered voter, who is assisting with or participating in a simulated election for minors, as approved by the supervisor of elections.

(b) The restriction in this subsection does not apply where the polling room is in an area commonly traversed by the public in order to gain access to businesses or homes or in an area traditionally utilized as a public area for discussion.

(4)(a) No person, political committee, or other group or organization may solicit voters inside the polling place or within 150 feet of the entrance to any polling place, a polling room where the polling place is also a polling room, an early voting site, or an office of the supervisor where vote-by-mail ballots are requested and printed on demand for the convenience of electors who appear in person to request them. Before the opening of the polling place or early voting site, the clerk or supervisor shall designate the no-solicitation zone and mark the boundaries.

(b) For the purpose of this subsection, the terms "solicit" or "solicitation" shall include, but not be limited to, seeking or attempting to seek any vote, fact, opinion, or contribution; distributing or attempting to distribute any political or campaign material, leaflet, or handout; conducting a poll except as specified in this paragraph; seeking or attempting to seek a signature on any petition; and selling or attempting to sell any item. The terms "solicit" or "solicitation" may not be construed to prohibit exit polling.

(c) Each supervisor of elections shall inform the clerk of the area within which soliciting is unlawful, based on the particular characteristics of that polling place. The supervisor or the clerk may take any reasonable action necessary to ensure order at the polling places, including, but not limited to, having disruptive and unruly persons removed by law enforcement officers from the polling room or place or from the 150-foot zone surrounding the polling place.

(d) Except as provided in paragraph (a), the supervisor may not designate a no-solicitation zone or otherwise restrict access to any person, political committee, candidate, or other group or organization for the purposes of soliciting voters. This paragraph applies to any public or private property used as a polling place or early voting site.

(e) The owner, operator, or lessee of the property on which a polling place or an early voting site is located, or an agent or employee thereof, may not prohibit the solicitation of voters outside of the no-solicitation zone during polling hours.

(5) No photography is permitted in the polling room or early voting area, except an elector may photograph his or her own ballot.

102.031. Maintenance of good order at polls; authorities; persons..., FL ST § 102.031

Credits

Laws 1895, c. 4328, § 58; Gen.St.1906, § 237; Rev.Gen.St.1920, § 282; Comp.Gen.Laws 1927, § 338; Fla.St.1949, § 99.38; Laws 1951, c. 26870, § 6; Laws 1959, c. 59-212, § 1; Laws 1977, c. 77-175, § 25. Amended by Laws 1985, c. 85-205, § 2, eff. Jan. 1, 1986; Laws 1987, c. 87-184, § 4, eff. Jan. 1, 1988; Laws 1987, c. 87-363, § 15, eff. Oct. 1, 1987; Laws 1989, c. 89-338, § 29, eff. Jan. 1, 1990; Laws 1992, c. 92-134, § 2, eff. April 8, 1992; Laws 1995, c. 95-147, § 598, eff. July 10, 1995; Laws 2000, c. 2000-249, § 5, eff. July 1, 2000; Laws 2005, c. 2005-277, § 54, eff. Jan. 1, 2006; Laws 2008, c. 2008-95, § 25, eff. July 1, 2008; Laws 2013, c. 2013-37, § 18, eff. Nov. 1, 2013; Laws 2013, c. 2013-57, § 18, eff. Jan. 1, 2014; Laws 2016, c. 2016-37, § 33, eff. July 1, 2016; Laws 2017, c. 2017-3, § 1, eff. July 7, 2017; Laws 2019, c. 2019-162, §§ 11, 35, eff. July 1, 2019.

Notes of Decisions (13)

West's F. S. A. § 102.031, FL ST § 102.031

Current through the 2019 First Regular Session of the 26th Legislature.

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