



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Public Hearing

G.2.

1/23/2024

Subject:

Ordinance providing for Housing Finance Authority TEFRA hearing notification and municipal participation requirements.

Fiscal Impact:

None.

Dept/Office:

County Attorney's Office

Requested Action:

It is requested that the Board of County Commissioners hold a public hearing and consider adopting an ordinance amending Chapter 2, Article VI, Division 3 of the Brevard County Code of Ordinances pertaining to the Housing Finance Authority to provide for additional TEFRA hearing notification and municipal participation requirements.

Summary Explanation and Background:

At the December 5, 2023 Board of County Commissioners meeting, the Board approved legislative intent and permission to advertise an ordinance amending Chapter 2, Article VI, Division 3 of the Brevard County Code of Ordinances pertaining to the Housing Finance Authority to provide for additional TEFRA hearing notification and municipal participation requirements.

Since the adoption of the Tax Equity and Fiscal Responsibility Act of 1982 ("TEFRA"), the Internal Revenue Code (the "Code") has afforded tax-exempt status to private activity bonds only if the "applicable elected representative" of a governmental unit having jurisdiction of the area containing the financed facility approves the issuance of the bond after a public hearing following reasonable public notice.

Because the governing boards of county housing finance authorities in Florida are appointed, these entities do not have an "applicable elected representative" under the Code. To satisfy this provision, the Board of County Commissioners is called upon to approve the Brevard County Housing Finance Authority's issuance of tax-exempt bonds.

The public hearing that the Code requires does not have to occur before the "applicable elected representative," but it must provide a "reasonable opportunity for interested individuals to express their views, orally or in writing, on the proposed issue of bonds and the nature of the proposed projects to be financed." Treas. Reg. sec. 1.147(f)-1(d)(1). In Brevard, these public hearings are held by the Housing Finance Authority, with the comments being reported to the Board.

Under Florida law, a county that creates a housing finance authority may, at its sole discretion, and at any time, alter or change the structure, organization, programs, or activities of the authority or may terminate the authority, subject to any limitation on the impairment of contracts entered into by the authority and subject to limitations set forth in the Housing Finance Authority Law. Section 159.604(3), Florida Statutes.

Currently, the Housing Finance Authority publishes notices of its TEFRA hearings only on its own website and on the meetings calendar on the public meetings calendar on the County's website. The Housing Finance Authority then holds the TEFRA hearing, typically at the Brevard County Agricultural Center in Cocoa. Unlike County zoning hearings, notice is not mailed to adjacent and nearby property owners and the subject property is not posted. So, for example, the residents near the proposed Venue at Heritage Oaks project in West Melbourne asserted that they were not aware of the TEFRA hearing held by the Housing Finance Authority in Cocoa on October 25.

To complicate matters, because of the Live Local Act recently adopted by the State, the project will not require a land use or zoning change from the City of West Melbourne. Rather, if the project meets certain affordability requirements, West Melbourne will be required to administratively approve the project. The neighbors will not have an opportunity to voice their concerns at a City Council meeting on the project. That is why many residents appeared at the Board of County Commissioners' November 14 meeting to express their views on the proposed project, rather than at the public hearing required by TEFRA.

The proposed ordinance is intended to avoid such situations in the future by providing for enhanced notification requirements for Housing Finance Authority TEFRA hearings. The following requirements are proposed for new construction projects when Board approval of private activity bond financing is requested, and the subject property is not already zoned for multifamily residential housing:

1. Notice of the TEFRA hearing held by the Housing Finance Authority should be equivalent to the notice provided for rezoning requests, including publication on the County's Legal Ads and Notices publicly accessible website, posting of the property, and mailed notice to properties within 500 feet, with the developer to pay the notification cost.
2. If the property is within a municipality, written notice of the TEFRA hearing must be provided to the municipality. The bond authorization request to the Board must be accompanied by written input from the governing body of the municipality in the form of a resolution or correspondence approved by the governing body and signed by the mayor or chief administrative officer.

As a courtesy, the County Attorney provided the proposed ordinance to the Housing Finance Authority's attorney for review. Attorney Abbott responded that the ordinance was well drafted and that she had no suggested changes.

Clerk to the Board Instructions:

Upon approval by the Board, execution by the Chair, and attestation by the Clerk, file the ordinance with the Department of State as required by law within the 10-day deadline.



January 24, 2024

M E M O R A N D U M

TO: Morris Richardson, County Attorney

RE: Item G.2., Ordinance Providing for Housing Finance Authority TEFRA Hearing Notification and Municipal Participation Requirements

The Board of County Commissioners, in regular session on January 23, 2024, conducted the public hearing and adopted Ordinance No. 24-01, amending Chapter 2, Article VI, Division 3 of the Brevard County Code of Ordinances pertaining to the Housing Finance Authority to provide for additional TEFRA hearing notification and municipal participation requirements. Enclosed is a fully-executed Ordinance.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
RACHEL M. SADOFF, CLERK

Kimberly Powell
Kimberly Powell, Clerk to the Board

Encl. (1)

ORDINANCE NO. 2024-01

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, RELATING TO THE BREVARD COUNTY HOUSING FINANCE AUTHORITY; AMENDING CHAPTER 2 – ADMINISTRATION, ARTICLE VI. BOARDS, COMMISSIONS AND AUTHORITIES, DIVISION 3. – HOUSING FINANCE AUTHORITY, TO PROVIDE FOR PUBLIC HEARING NOTICE REQUIREMENTS; PROVIDING FOR PUBLIC HEARINGS TO BE HELD IN THE VICINITY OF CERTAIN PROPOSED PROJECTS; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Florida Housing Finance Authority Law (sections 159.601 to 159.623, Florida Statutes) was provided by statute to address a shortage of housing available at prices or rentals that many persons and families can afford and a shortage of capital for investment in such housing; and

WHEREAS, each county in Florida may create by ordinance a separate body known as the housing finance authority of the county for which it was created to carry out the powers granted in the Florida Housing Authority Law; and

WHEREAS, the Board of County Commissioners created the Brevard County Housing Finance Authority (the “Housing Finance Authority”) pursuant to the Florida Housing Finance Authority Law; and

WHEREAS, among the powers granted to the Brevard County Housing Finance Authority is the power to borrow money through the issuance of bonds for single-family housing and qualified housing developments; and

WHEREAS, under the Internal Revenue Code, private developers may finance qualified residential rental projects using the proceeds of tax-exempt private activity bonds if certain affordability requirements are satisfied; and

WHEREAS, private activity bonds must be issued by a state or local governmental entity to qualify for tax-exempt status; and

WHEREAS, pursuant to the Tax Equity and Fiscal Responsibility Act of 1982 (“TEFRA”), the Internal Revenue Code affords tax-exempt status to private activity bonds only if the “applicable elected representative” of a governmental unit having jurisdiction of the area containing the financed facility approves the issuance of the bond after a public hearing following reasonable public notice; and

WHEREAS, because the governing board of the Housing Finance Authority is appointed, it does not have an “applicable elected representative” under the Internal Revenue Code; and

WHEREAS, to satisfy the requirement that the “applicable elected representative” approves the issuance of tax-exempt private activity bonds, the Board of County Commissioners is called upon to approve the Housing Finance Authority’s issuance of tax-exempt bonds; and

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

WHEREAS, the public hearing that the Internal Revenue Code requires ("TEFRA hearing") does not have to occur before the "applicable elected representative," but it must provide a "reasonable opportunity for interested individuals to express their views, orally or in writing, on the proposed issue of bonds and the nature of the proposed projects to be financed"; and

WHEREAS, in Brevard County, TEFRA hearings are held by the Housing Finance Authority, with the comments being reported to the Board of County Commissioners; and

WHEREAS, currently, the Housing Finance Authority publishes notice of its TEFRA hearings only on its own website and on the meetings calendar on the Brevard County government website, and typically conducts the TEFRA hearings at the Brevard County Agricultural Center in Cocoa regardless of the project location; and

WHEREAS, under the Florida Housing Finance Authority Law, a county that creates a housing finance authority may, at its sole discretion, and at any time, alter or change the structure, organization, programs, or activities of the authority or may terminate the authority, subject to any limitation on the impairment of contracts entered into by the authority and subject to limitations set forth in the Housing Finance Authority Law; and

WHEREAS, TEFRA expressly provides for approval of tax-exempt private activity bond issues by an elected representative, and by clear implication requires the elected representative to consider local priorities and housing needs, the wisdom of preferential financing for the project, and all manner of other relevant considerations to which elected representatives normally give weight; and

WHEREAS, the Board of County Commissioners desires to provide property owners and citizens near proposed projects meaningful notice and a reasonable opportunity to be heard; and

WHEREAS, because the Housing Finance Authority issues tax-exempt private activity bonds for projects located within the jurisdiction of municipalities, the Board of County Commissioners desires that notice be provided to, and input solicited from, a municipality prior to the Board's consideration of a bond approval request within such municipality's jurisdiction; and

WHEREAS, the Board of County Commissioners finds that the provisions of this ordinance are in the best interests of the public health, comfort, safety, welfare, and quality of life of the citizens of Brevard County, Florida.

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

Section 1. Legislative Findings and Intent. The foregoing Recitals are hereby ratified and incorporated as findings of the Board of County Commissioners and as the legislative intent of this ordinance.

Section 2. Amending Chapter 2 – Administration, Article VI. Boards, Commissions and Authorities, Division 3. – Housing Finance Authority, to create a new section 2-198. – Notice and public hearing requirements. Chapter 2, Article VI., Division 3., Brevard County Code of Ordinances, is hereby amended to create a new

section 2-198. – Notice and public hearing requirements, to read as follows:

Section 2-98. – Notice and public hearing requirements.

- (a) This section applies to any proposed multifamily or mixed-use residential development located on property that is zoned for commercial, industrial, or mixed use.
- (b) When approval by the board of county commissioners to issue bonds to finance a proposed development subject to this section is required by federal tax law, the authority shall ensure that the following notice and public hearing requirements are met prior to consideration by the board of county commissioners:
 - (1) *Courtesy notice.* The applicant shall cause a courtesy notice to be distributed to all neighboring property owners within 500 feet of the subject property at least ten days prior to the hearing. The written courtesy notice shall contain the following information, at a minimum:
 - a. A legal description of the subject property;
 - b. A general location description of the subject property;
 - c. The date of the courtesy notice;
 - d. The name, address, and email address of the individual at the authority to whom written comments may be sent; and
 - e. The date, time, and location of the public hearing at which the bond request will be heard by the authority.
 - (2) *Legal advertisement.* The public hearing required by federal tax law shall be advertised on the County's publicly accessible website at least ten days prior to the hearing.
 - (3) *Posting of property.* The applicant shall post the property with a notice of the public hearing required by federal tax law at least ten days prior to the hearing.
 - (4) *Municipal notification and input.* If the subject property is located within a municipality, written notice of the public hearing required by federal tax law shall be provided to the municipality's mayor and chief administrative officer at least ten days prior to the hearing. The notice shall seek written input from the municipality regarding the proposed issue of bonds and the nature of the proposed project, and any written input received from the municipality shall be submitted to the county along with the bond approval request.
 - (5) *Public hearing location – county.* If the subject property is located within the unincorporated area of the county, the authority shall hold the public hearing required by federal tax

law on the proposed issue of bonds and the nature of the proposed project to be financed within the postal ZIP code in which the subject property is located. If a suitable location cannot be reasonably secured within the same ZIP code, the public hearing shall be held at a location within ten miles of the subject property.

- (6) *Public hearing location – municipality.* If the subject property is located within a municipality, the authority shall hold the public hearing required by federal tax law on the proposed issue of bonds and the nature of the proposed project to be financed within the municipality in which the subject property is located. If a suitable location cannot be reasonably secured within the municipality, the public hearing shall be held at a location within ten miles of the subject property.

Section 3. Conflicts. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 4. Severability. The provisions of this ordinance are declared to be severable and if any section, sentence, clause or phrase of this ordinance shall for any reason be held by a court of competent jurisdiction to be invalid or unenforceable, such decision shall not affect the validity of the remaining terms, provisions, clauses, sentences, or sections of this ordinance but they shall remain in effect, it being the legislative intent that this ordinance shall stand notwithstanding the invalidity of any part.

Section 5. Inclusion in Code. It is the intention of the Board of County Commissioners that the provisions of this ordinance shall be made a part of the Brevard County Code of Ordinances, and that the sections of this ordinance may be renumbered to accomplish such intention.

Section 6. Effective Date. This ordinance shall take effect immediately upon its adoption.

DONE, ORDERED, AND ADOPTED by the Board of County Commissioners of Brevard County, Florida, in regular session, this 23 day of January, 2024.

Attest:

BY:

Rachel Sadoff, Clerk

(SEAL)

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA

BY:

Jason Steele, Chair
(as approved by the Board on JAN 23 2024)



FLORIDA DEPARTMENT *of* STATE

RON DESANTIS
Governor

CORD BYRD
Secretary of State

January 26, 2024

Honorable Rachel M. Sadoff
Board of County Commissioners
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. 2024-01, which was filed in this office on January 24, 2024.

Sincerely,

Matthew Hargreaves
Administrative Code and Register Director

MJH/wlh

Donna Scott

From: Donna Scott
Sent: Wednesday, January 24, 2024 4:16 PM
To: CountyOrdinances@dos.myflorida.com
Cc: Clerk to the Board
Subject: BRE20240123_ORDINANCE_01
Attachments: BRE20240123_ORDINANCE_01.pdf

Attached is Ordinance No. 24-01, to be filed with the Secretary of State.

Thank you,
Donna Scott
Clerk to the Board
(321) 637-2001

Business Impact Estimate

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, RELATING TO THE BREVARD COUNTY HOUSING FINANCE AUTHORITY; AMENDING CHAPTER 2 – ADMINISTRATION, ARTICLE VI. BOARDS, COMMISSIONS AND AUTHORITIES, DIVISION 3. – HOUSING FINANCE AUTHORITY, TO PROVIDE FOR PUBLIC HEARING NOTICE REQUIREMENTS; PROVIDING FOR PUBLIC HEARINGS TO BE HELD IN THE VICINITY OF CERTAIN PROPOSED PROJECTS; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

In accordance with the provisions of controlling law, even notwithstanding the fact that an exemption may apply, Brevard County hereby publishes the following information:

1. Summary of the proposed ordinance: The proposed ordinance provides for notice and public hearing requirements to ensure that affected property owners and municipalities may meaningfully participate in the hearing process required by the Tax Equity and Fiscal Responsibility Act of 1982 ("TEFRA") prior to the Board of County Commissioners approving the Housing Finance Authority's issuance of tax-exempt private activity bonds to finance affordable housing developments.

2. An estimate of the direct economic impact of the proposed ordinance on private, for-profit businesses in the County, if any:

(a) An estimate of direct compliance costs that businesses may reasonably incur: A developer applying for financing in the form of a tax-exempt bond issue through the Housing Finance Authority may incur additional costs associated with the notice and hearing requirements of this ordinance. When County staff provides similar notice, the average cost is approximately \$22 (\$21 for first-class postage for courtesy notices based on an average of 32 notices at 66 cents per piece; less than \$ for the cost of a stake to post the on-site notice). In addition to these costs, developers may incur additional labor costs estimated at two to four hours of administrative time (\$15 - \$20 per hour) to prepare, mail, and post the required notice, and to arrange for a suitable venue at which to hold the TEFRA hearing. In total, it is estimated that compliance may cost between \$62 and \$102.

(b) Any new charge or fee imposed by the proposed ordinance or for which businesses will be financially responsible: None.

(c) An estimate of the County's regulatory costs, including estimated revenues from any new charges or fees to cover such costs: None.

3. Good faith estimate of the number of businesses likely to be impacted by the proposed ordinance: Based on the number of tax-exempt bond requests considered by the Board of County Commissioners in recent years, it is estimated that up to 5 developers may be impacted by the proposed ordinance annually.

4. Additional information the governing body deems useful (if any): The proposed ordinance is a generally applicable ordinance that applies to all parties seeking tax-exempt bond financing through the Housing Finance Authority for specified projects and, therefore, the proposed ordinance does not affect only for-profit businesses.