

Meeting Date
, 2017



VIII.A
Curt Smith
Report

AGENDA	
Section	Public Hearing
Item No.	

AGENDA REPORT
BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

SUBJECT:	Public Hearing, Re: Civility Ordinance Governing Board of County Commissioners Meetings.
DEPT/OFFICE:	District 4 Commission Office

Requested Action:
It is requested that advertising of the attached civility ordinance be approved for a public hearing to be held by the Board of County Commissioners.

Summary Explanation & Background:

The Board of County Commissioners has directed staff to develop an ordinance to supplement the existing rules of procedures that govern Board meetings. In order to conduct County business in an efficient and effective manner, members of the Board, as well as members of the general public, must be respectful and civil towards one another. In order to ensure civility, respect, and decorum are maintained during Board meetings, the Board has determined that adopting certain rules to govern Board meetings will promote open discourse and debate during Board meetings in a respectful manner. The Board finds that Commissioners should maintain respect for one another, County staff, and members of the public. Additionally, members of the public will be held to certain standards to ensure that County business is conducted in an orderly manner to promote the maximum participation of citizens. These rules shall make available certain enforcement and punishment mechanisms to maintain order when necessary.

LEGISLATIVE INTENT:
The Board of County Commissioners has a significant interest in ensuring that County business is conducted in an efficient and effective manner. Furthermore, the Board finds that adopting additional rules and regulations outlined in this ordinance will maximize citizen participation in the governmental decision-making process. In order to accomplish these goals and objectives, the Board has decided to adopt rules to govern Board members and members of the general public during Board meetings. It is the Board's intent that these rules provide for a respectful and orderly handling of County business.

Contact: Scott Knox, County Attorney
Phone/e-mail: (321) 633-2090

Clerk to the Board Instructions:

Exhibits Attached: Copy of Proposed Ordinance

Contract /Agreement (If attached):	Reviewed by County Attorney	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	PR	<input type="checkbox"/>
---	------------------------------------	------------	--------------------------	-----------	--------------------------	-----------	--------------------------

County Manager	Assistant County Manager	Department Director / Extension Curt Smith, District 4 Commissioner
Frank Abbate	Assistant County Manager	

ORDINANCE NO. 2017-___

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA AMENDING CHAPTER 2, ARTICLE II OF THE BREVARD COUNTY CODE OF ORDINANCES ENTITLED “BOARD OF COUNTY COMMISSIONERS”; CREATING A NEW SECTION, SECTION 2-30, ENTITLED “CIVILITY AND DECORUM DURING BOARD MEETINGS”; PROVIDING FOR FINDINGS AND INTENT; ESTABLISHING RULES OF CIVILITY AND DECORUM FOR BOARD MEETINGS; PROVIDING FOR ENFORCEMENT PROCEDURES; PROVIDING FOR PENALTIES; PROVIDING FOR CONFLICTING PROVISIONS; PROVIDING FOR INCLUSION IN THE BREVARD COUNTY CODE OF ORDINANCES; PROVIDING FOR SEVERABILITY; AND, PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, pursuant to Article VIII, Section 1 of the Florida Constitution and Chapter 125, Florida Statutes, the Board of County Commissioners of Brevard County, Florida (hereinafter referred to as the “Board”) is authorized to establish ordinances that are not inconsistent with general law; and

WHEREAS, Section 125.01(1)(a), Florida Statutes, provides that the Board has the authority to adopt its own rules of procedure; and

WHEREAS, the Board finds that any pre-established and adopted policies related to County Commission meetings shall remain in full force and effect unless there is a conflict with the provisions of this Ordinance, in which case the provisions of this Ordinance shall govern; and

WHEREAS, the Board has a significant interest in ensuring the efficient conduct of County business, as well as maximizing citizen participation in the governmental decision-making process; and

WHEREAS, the Board finds that there is a significant governmental interest in conducting meetings in an orderly and efficient manner; and

WHEREAS, the Board is committed to the principles of civility, honor, and dignity, and those who appear before the Board are requested to observe the same principles when addressing the Board; and

WHEREAS, the Board finds it has the authority to impose reasonable restrictions on the topics of discussion to preserve the civility and decorum necessary to further the forum’s purpose of conducting public business, as long as the restrictions do not discriminate on the basis of the speaker’s viewpoint.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, that:

Section 1. Findings and Intent. The foregoing recitals are incorporated into this Ordinance as findings of the Board.

Section 2. Creation. Section 2-30 of the Brevard County Code of Ordinances is hereby created to read as follows:

Section 2-30. Civility and Decorum during County Commission Meetings.

(a) Rules of Decorum for Board Members.

1. While a County Commission meeting is in session, Board members shall preserve order and decorum. Board members shall accord the utmost respect to each other, County staff, and members of the public, and shall refrain at all times from derogatory remarks, reflections as to integrity, abusive comments, or statements as to motives and personalities.
2. The Chair, or any other member of the Board so designated, is responsible for maintaining and enforcing strict order and decorum.
3. Enforcement and Penalties
 - A. First offense: when the Chair, or any other member of the Board so designated, determines that a fellow Board member is out of order, that Board member shall be called to order.
 - B. Second offense: if the Board member fails to come to order, the Board shall hold a contemporaneous vote as to whether a fine of \$250.00 should be levied against the Board member for his/her disruptive and/or disorderly conduct. This vote shall require four-fifths (4/5) vote of the Board.
 - C. Third offense: if the Board member continues in a disruptive and/or disorderly manner, the Board member shall be publicly reprimanded in a newspaper of general circulation within the County. The fine shall be used to cover the publication costs.
 - D. Fourth offense: if the Board member fails to come to order, a petition shall be sent to the Governor, in accordance with Art. IV, Sec. 7(a) of the Florida Constitution, requesting the Board member be suspended from office for malfeasance, misfeasance, or neglect of duty.

(b) Rules of Decorum for the General Public.

1. The Board declares that County Commission meetings shall be conducted in an orderly manner to promote the maximum participation

in County affairs by affected or interested citizens in accordance with the First Amendment protections guaranteed under the United States Constitution.

2. Once a meeting has been called to order, the Chair, or any other member of the Board so designated, shall be responsible for maintaining order and decorum during the meeting.
3. Each person that addresses the Board, staff, or the general public must avoid making impertinent, profane, or slanderous remarks that cause a disruption, disturbance, or otherwise impede in the orderly conduct of any County Commission meeting and the fair progress of County business.

4. Enforcement

A. The Chair, or designated individual, is responsible for addressing any actions that disrupt, disturb, or otherwise impede a County Commission meeting. When addressing actual disruptions, disturbances, or other impediments during a County Commission meeting, the following steps shall be followed:

1. Issue a warning to the person causing the disruption, disturbance, or impediment, identifying how/why that person is out of order.
2. If the offender persists, request the person return to his/her seat.
3. If the offender persists, order the person leave the meeting.
4. If the offender is ordered expelled, but refuses to immediately leave the meeting chambers, the Chair, or designated individual, shall declare a recess and order the offender be removed by a law enforcement officer.

5. Penalties

A. Any action that disrupts, disturbs, or otherwise interferes with the regular course of a Board meeting is prohibited. Pursuant to Section 871.01(1), Florida Statutes, whoever willfully disrupts, disturbs, or otherwise interferes with a Board meeting commits a misdemeanor of the second degree, punishable as provided in Sections 775.082 or 775.083, Florida Statutes.

Section 3. Authority. Pursuant to Article VIII, Section 1 of the Florida Constitution and Chapter 125, Florida Statutes, the Board is permitted to adopt rules and regulations not inconsistent with general law.

Section 4. Conflict. Unless preempted by State or Federal law, to the extent that the provisions of this Ordinance are more stringent than those of State law, this Ordinance shall apply. In the case of a direct conflict between any provision of this Ordinance and a provision of any Federal, State, or County law, rule, or regulation, the more restrictive shall apply.

Section 5. Inclusion in Code. It is the intention of the Board that the provisions of this Ordinance shall become and be made 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. Severability. If any provision of this Ordinance or application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this 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 7. Effective Date. This Ordinance shall be effective immediately upon adoption. 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.

DONE AND ADOPTED in Regular Session, this ____ day of _____, 2017.

ATTEST:

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA

By: Scott Ellis, Clerk of Court

By: Curt Smith, Chairman
(as approved by the Board on _____)

COMMISSIONER JOHN TOBIA, DISTRICT 3

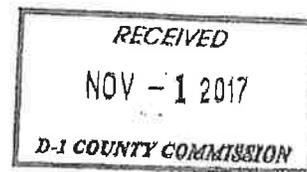
2539 Palm Bay Rd. NE

Suite 4

Palm Bay, Florida 32905

John.Tobia@Brevardfl.gov

Mayor Walt Johnson
P.O. Box 2806, (32781-2806)
555 S. Washington Ave.
Titusville, FL 32796



October 30, 2017

Thank you for responding to my letter dated Sept. 29, 2017. I am delighted that the City of Titusville and its Community Redevelopment Agency is actively engaging on this issue. I was ecstatic that the discussion at the Board of County Commissioners' Meeting held on Oct. 24 was very productive and instructive. Through your letter and vigorous representation on the County Commission by Vice-Chair Rita Pritchett, I am convinced that the Downtown Titusville CRA is absolutely pure in their intention to serve the wonderful community of Downtown Titusville.

You have made the very sensible argument that funding festivals such as Food Truck Wars were the use of CRA funds most beneficial to taxpayers. Given your unassailable conclusions that all expenditures by the Titusville CRA were proper, I have no doubt you will volunteer to be subject to a compliance audit at the County's expense. As Vice-Chair Pritchett herself reviewed these expenditures while serving as a Councilwoman at the City of Titusville, there can be no other outcome than a showing of no improprieties. Additionally, I am sure that it will show that no County funds were used for these expenditures, in any case, as it is unquestionably logical to keep revenue segregated when using funds in such a perfectly reasonable manner.

I was delighted to hear that Titusville agrees that 'sunshine' is a foundational element of good governance in this Great State. I am also very happy that your Commissioner believes, as I do, that the County's excellent relationship with the City and its CRA is critical, and that building this relationship is of paramount importance over all other considerations

I look forward to working with you and your able representative, Vice-Chair Rita Pritchett, to this end. I trust, then, that you will voluntarily submit to a compliance audit, at the County's expense. Your formal acceptance of this audit would be appreciated

prior the next regular Board Meeting of the Board of County Commissioners on Nov. 7, 2017.

Sincerely,

A handwritten signature in black ink, appearing to read 'jtpL'.

John Tobia
County Commissioner, District 3

CC:

✓Vice-Chair Rita Pritchett
Vice-Mayor Matt Barringer
Councilman Dan Diesel
Councilwoman Sarah Stoeckel
Councilwoman Jo Lynn Nelson
Timothy Ford

City of Titusville

555 SOUTH WASHINGTON AVENUE
TITUSVILLE, FLORIDA 32796-3584
POST OFFICE BOX 2806 (32781-2806)



OFFICE OF THE MAYOR
(321) 567-3702
FAX (321) 383-5704

"Gateway to Nature and Space"
www.titusville.com

October 23, 2017

Sent Via Email: D4.Commissioner@BrevardFL.gov

Honorable Curt Smith, Chairman
Brevard County Commission
2725 Judge Fran Jamieson Way
Building C, Suite 214
Viera, FL 32940

Re: **Letter received from Commissioner Tobia regarding Titusville CRA**

Dear Chairman Smith:

I am writing this letter on behalf of the Titusville City Council in response to a letter sent by Commissioner Tobia to me as Mayor and the City Council, dated September 29, 2017, wherein he has personally chosen to malign the integrity of the Titusville Community Redevelopment Board and make demands of the City Council without justification and, it appears, without the knowledge or support of the Board of County Commissioners. It is our understanding that Commissioner Tobia now has included a last minute "add-on" to the County Commission agenda regarding expenditures by the Titusville CRA and we would like the Commission to consider the following information during your discussion.

The City of Titusville is extremely proud of the redevelopment work undertaken by the CRA Board and its efforts to rehabilitate and revitalize Titusville's downtown redevelopment area. As you are probably well aware, North Brevard was hit particularly hard as a result of the decline of the Space industry and the need for rehabilitation and redevelopment of the City's downtown area was imperative. The ability to promote and draw people to the downtown area was critical to its revitalization and, quite frankly, its survival. To that end, Titusville's community redevelopment funds have been spent in accordance with the Community Redevelopment Plan, the Community Redevelopment Act of 1969, Part II, Chapter 163, *Florida Statutes*, and the opinions issued by the Florida Attorney General's Office.

Section 163.387, *Florida Statutes*, provides that funds allocated to and deposited into the redevelopment fund shall be used by a community redevelopment agency to finance any community redevelopment it undertakes pursuant to the approved redevelopment plan. The City of Titusville Community Redevelopment Plan clearly states an intent to support special events within the downtown area and these events were specifically intended to help redevelop and revitalize the area.

In 2008, the Community Redevelopment Agency amended its community redevelopment plan to include the ability to support events that would specifically promote the use of the downtown area. This amendment to the Plan was implemented through the statutorily prescribed process, and Brevard County was provided notice of this amendment together with a copy of the Plan by certified mail several times over the past years. In addition to providing the County Commission with a copy of the CRA Plan expressly stating the CRA Board's intent to revitalize the community redevelopment area through promotional events, the County was provided a copy of the CRA budget detailing those expenditures. At no time did the Board of County

Mr. Curt Smith, D4 County Commissioner/Chairman
October 23, 2017
Page 2

Commissioners, County Staff, County Manager, or the County Attorney's Office ever question the contents of the Plan, nor the manner in which the CRA funds were spent pursuant to that Plan.

The Titusville CRA has been very transparent in its operations and has been careful to comply with the procedures and processes as mandated by the Redevelopment Act. Each budgeted item has been evaluated by the CRA Board to determine its consistency with the Redevelopment Plan and compliance with the law as verified by opinions issued by the Florida Attorney General's office, which clearly supports the use of CRA funds to promote a redevelopment area. The Board and CRA staff is in constant dialogue with the Florida Redevelopment Agency which includes CRA plan reviews, training seminars, and on-site visits to ensure that its operations and expenditures are appropriate.

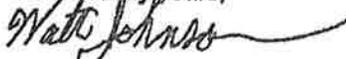
The Florida Attorney General's Office has consistently found that promoting the use of a redevelopment area is within the purposes of the Community Redevelopment Act of 1969, stating, "...to read the statute as precluding the promotion of a redevelopment area once the infrastructure has been completed would be narrowly viewing community redevelopment as a statue process." (AGO 2010-40). In confirming the opinion issued to the City of Sanford in AGO 2010-40, the Florida Attorney General issued an opinion to Senator Joseph Abruzzo stating "This office continues to consider promoting the use of a redevelopment area to be within the purposes of the Community Redevelopment Act of 1969."

The Titusville Downtown CRA has only utilized a very small percentage of tax increment funds to promote the CRA area. The total amount of funds spent by the CRA in any given year was only approximately 5% of the City's total portion of the tax increment revenues. The City's portion of the total tax increment greatly exceeds that of the County on an annual basis and therefore it would be incorrect to assume that any County tax increment was ever utilized to fund promotional events. As stated by the County Attorney in his Memorandum dated October 3, 2017, "...the County would arguably not be "injured" if City tax increment was used to fund special events. The County would not likely be deemed to have standing to challenge those expenditures for that reason and for the reason that the Titusville CRA was created prior to the legislative change vesting the County Commission in charter counties with the authority to delegate and rescind CRA powers granted to the City."

Accordingly, the Titusville City Council does not agree with Commissioner Tobia's demand for repayment and has no intention to cease the operations or dissolve the Titusville CRA.

I would like to emphasize that the City of Titusville has enjoyed a very good and productive relationship with the County over many years, and the Titusville City Council looks forward to continue working together to help the City of Titusville, North Brevard and Brevard County thrive.

Respectfully yours,



Walt Johnson, Mayor

C: Rita Pritchett, County Commissioner, District 1
Frank Abbate, Brevard County Manager
Scott Knox, Brevard County Attorney

Enclosure: John Tobias Brevard County Commissioner, District 3, Letter dated September 29, 2017

COMMISSIONER JOHN TOBIA, DISTRICT 3

2539 Palm Bay Rd. NE

Suite 4

Palm Bay, Florida 32905

John.Tobia@Brevardfl.gov

Mayor Walt Johnson
P.O. Box 2806, (32781-2806)
555 S. Washington Avenue
Titusville, FL 32796

Received
OCT 10 2017
COUNTY CLERK'S OFFICE

September 29, 2017

My office has compiled information, through public records, that approximately \$120,123 was misappropriated by the Titusville Community Redevelopment Agency ("CRA") between 2013 and 2016. The CRA used TIF revenue to fund festivals such as the Rotary Chili Cook-Off, Food Truck Wars, and Friday Nite Live. Of this \$120,123, approximately \$54,055 was derived from County TIF revenue, based on the proportion of revenues the CRA receives from various sources.

These expenditures are extraordinarily egregious. According to the Brevard County Attorney, Scott Knox, who issued a formal opinion on this matter (attached), Chapter 163, Part III, of Florida Statutes makes plain what expenditures are proper. Not surprisingly, he "find[s] nothing among those listed elements that remotely suggest that special events such as festivals, cook-outs, Veteran's parades or other special events are an authorized element of a redevelopment plan."

There are two possible explanations for these appropriations. Either the CRA Board has intentionally misappropriated funds, or it has been careless with precious resources. Regardless, I demand that the County be made whole; \$54,055, as well as any other unlawful expenditures that are identified after a thorough review, shall immediately be returned to the County with revenues derived from municipal TIF revenue or other lawful municipal sources. To be clear, the County must not be repaid with its own portion of TIF revenue.

Upon repayment for the unlawful use of County revenue, I insist that the Titusville CRA immediately cease operations and dissolve.

I trust that you will agree with these requirements, as there is no excuse for the recklessness, at minimum, which has led to the aforementioned expenditures that were

so glaringly improper. In light of the budgetary constraints that the County is facing, It is the only course of action that will put us on the path to regain the public trust that has been repeatedly violated by this agency.

Sincerely,



John Tobia

County Commissioner, District 3

CC:

Timothy Ford

Vice-Mayor Matt Barringer

Councilwoman Sarah Stoeckel

Councilman Dan Diesel

Councilwoman Jo Lynn Nelson ✓

COMMISSIONER JOHN TOBIA, DISTRICT 3

2539 Palm Bay Rd. NE
Suite 4
Palm Bay, Florida 32905
John.Tobia@Brevardfl.gov

Mayor Walt Johnson
P.O. Box 2806, (32781-2806)
555 S. Washington Avenue
Titusville, FL 32796

September 29, 2017

My office has compiled information, through public records, that approximately \$120,123 was misappropriated by the Titusville Community Redevelopment Agency ("CRA") between 2013 and 2016. The CRA used TIF revenue to fund festivals such as the Rotary Chili Cook-Off, Food Truck Wars, and Friday Nite Live. Of this \$120,123, approximately \$54,055 was derived from County TIF revenue, based on the proportion of revenues the CRA receives from various sources.

These expenditures are extraordinarily egregious. According to the Brevard County Attorney, Scott Knox, who issued a formal opinion on this matter (attached), Chapter 163, Part III, of Florida Statutes makes plain what expenditures are proper. Not surprisingly, he "find[s] nothing among those listed elements that remotely suggest that special events such as festivals, cook-outs, Veteran's parades or other special events are an authorized element of a redevelopment plan."

There are two possible explanations for these appropriations. Either the CRA Board has intentionally misappropriated funds, or it has been careless with precious resources. Regardless, I demand that the County be made whole; \$54,055, as well as any other unlawful expenditures that are identified after a thorough review, shall immediately be returned to the County with revenues derived from municipal TIF revenue or other lawful municipal sources. To be clear, the County must not be repaid with its own portion of TIF revenue.

Upon repayment for the unlawful use of County revenue, I insist that the Titusville CRA immediately cease operations and dissolve.

I trust that you will agree with these requirements, as there is no excuse for the recklessness, at minimum, which has led to the aforementioned expenditures that were

so glaringly improper. In light of the budgetary constraints that the County is facing, it is the only course of action that will put us on the path to regain the public trust that has been repeatedly violated by this agency.

Sincerely,

John Tobia
County Commissioner, District 3

CC:
Timothy Ford
Vice-Mayor Matt Barringer
Councilwoman Sarah Stoeckel
Councilman Dan Diesel
Councilwoman Jo Lynn Nelson

COMMISSIONER JOHN TOBIA, DISTRICT 3

2539 Palm Bay Rd. NE

Suite 4

Palm Bay, Florida 32905

John.Tobia@Brevardfl.gov

RECEIVED

OCT 30 2017

OFFICE OF CITY CLERK

Melbourne, Florida

COPY TO T. THOMAS & M/C

CM DCM

C. DITTMER

Michael McNees

900 E. Strawbridge Ave.

Melbourne, FL 32907

October 26, 2017

(D. THOMAS REC'D IND. COPY; MAYOR REC'D COPY AT HOME)

My office has compiled information, through public records, that at least \$409,500 was misappropriated by the Melbourne Downtown Community Redevelopment Agency between 2013 and 2017. A grant was provided by the CRA to Melbourne Main Street, which expended CRA funds in an unlawful manner, including appropriating such funds to be used for festivals and other promotional activities. Of this \$409,500, approximately \$186,000 was derived from County TIF revenue.

These expenditures are astonishing. According to the Brevard County Attorney, Scott Knox, who issued a formal opinion on this matter (attached), Chapter 163, Part III, of Florida Statutes makes plain what expenditures are proper. Rather than implement the "safeguards" mandated under Florida Statute § 163.362(5)(c), the agency has repeatedly, over a period of years, appropriated funds for festivals. Festivals and other promotional activities are, unsurprisingly, not included in permitted uses.

As AGO 2010-40 makes clear, it is especially problematic that the CRA provided grants to a non-profit organization to contribute to festivals designed to further tourism or economic development. Furthermore, the CRA has not yet completed its infrastructure projects.

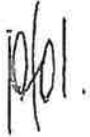
There are two possible explanations for these appropriations. Either the CRA Board has intentionally misappropriated funds, or it has been careless with public resources. Regardless, I demand that the Melbourne Downtown CRA immediately cease operations.

Additionally, the County must be made whole. Therefore, \$186,000, as well as any other unlawful expenditures that are identified after a thorough review, shall immediately be returned to the County with revenues derived from municipal TIF revenue or other lawful municipal sources; the County must not be repaid with its own portion of TIF revenue.

I am aware that the Melbourne Downtown CRA has outstanding debt. However, with operations ceased, such debt will be repaid in short order through budgeted TIF revenue. Immediately proceeding the satisfaction of the debt, the CRA must dissolve.

I trust that you will agree with these requirements, as there is no excuse for the decisions which have led to the aforementioned expenditures that were so glaringly abusive of County resources. In light of the budgetary constraints that the County is facing, it is the only course of action that will put us on the path to regain the public trust that has been repeatedly violated by this agency.

Sincerely,



John Tobia
County Commissioner, District 3

CC:

Mayor Kathy Meehan
Vice Mayor Debbie Thomas
✓ Council Member Tim Thomas
Council Member Betty Moore
Council Member Yvonne Minus
Council Member Paul Alfrey
Council Member Teresa Lopez
Alison Dawley, City Attorney
Kelly Hyvonen