



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Consent

F.7.

8/8/2023

Subject:

Amendment to BCC-97, Board Meeting Rules and Procedures, Clarifying Notice Requirements when an Item is Continued to a Subsequent Meeting

Fiscal Impact:

None

Dept/Office:

County Attorney's Office

Requested Action:

It is requested that the Board amend Board policy BCC-97, Board Meeting Rules and Procedures, to clarify that when consideration of a proposed county ordinance, resolution, or other action is continued to a subsequent meeting, no further notice is required.

Summary Explanation and Background:

Earlier this year, in the case of *Testa v. Town of Jupiter Island*, 360 So. 3d 722 (Fla. 4th DCA 2023), the Fourth District Court of Appeal held that when a local government postpones a public hearing on the proposed enactment of an ordinance, the notice for the first meeting is not effective for the later meeting date. Rather, the subsequent hearing must be noticed in the same manner as the initial hearing.

This holding in the *Testa* case broke from other legal precedents and longstanding practice. Nonetheless, most local governments in Florida took a conservative approach and began advertising postponed or continued public hearings in the same manner that the initial hearing was advertised. On March 21, 2023, the Board amended subsection III.E.2 of BCC-97 to reflect this new practice.

Subsequently, the legislature adopted, and the governor approved, Senate Bill 170, which became Chapter 2023-309, Laws of Florida. Among other things, SB 170 legislatively addressed the *Testa* holding by amending section 125.66, Florida Statutes, to provide as follows:

(7) Consideration of the proposed county ordinance or county resolution at a properly noticed meeting may be continued to a subsequent meeting if, at the scheduled meeting, the date, time, and place of the subsequent meeting is publicly stated. No further publication, mailing, or posted notice as required under this section is required, except that the continued consideration must be listed in an agenda or similar communication produced for the subsequent meeting. This subsection is remedial in nature, is intended to clarify existing law, and shall apply retroactively.

The proposed amendment to BCC-97 aligns Board policy with the recently amended statute and restores the

Board's longstanding practice prior to March of 2023.

Clerk to the Board Instructions:

Please forward signed original to the County Manager's Office.



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Kimberly.Powell@brevardclerk.us

August 9, 2023

M E M O R A N D U M

TO: Frank Abbate, County Manager

RE: Item F.7., Amendment to BCC-97, Board Meeting Rules and Procedures Clarifying Notice Requirements when an Item is Continued to a Subsequent Meeting

The Board of County Commissioners, in regular session on August 8, 2023, approved amending Board Policy BCC-97, Board Meeting Rules and Procedures, to clarify that when consideration of a proposed County ordinance, resolution, or other action is continued to a subsequent meeting, no further notice is required.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
RACHEL M. SADOFF, CLERK

Kimberly Powell
Kimberly Powell, Clerk to the Board

/ns

Encl. (1)

cc: County Attorney



BOARD OF COUNTY COMMISSIONERS

POLICY

Number: BCC-97

Approved: March 21, 2023

Amended: ~~May 9~~August 8, 2023

Originator: County Attorney's Office

Review: March 21, 2026

TITLE: Board Meeting Rules and Procedures

I. Objective

Provide operating rules and procedures for the Board of County Commissioners to govern the meetings and authority of the Board and its members.

II. Authority

These rules are enacted and adopted under the authority of Section 125.01(1)(a), Florida Statutes. These rules shall be construed in a manner which is consistent with applicable state and federal law and to the extent of any conflict, applicable state or federal law shall prevail.

This BCC policy is intended to supersede Resolution 17-231 of the Board of County Commissioners. This policy shall control over any conflicting provision of BCC-55.

III. Rules and Procedures

A. *Robert's Rules of Order* and Quorum Requirements

1. The Board of County Commissioners hereby adopts The Scott, Foresman *Robert's Rules of Order*, Newly Revised, 1990 Edition and any future editions of the same, as a guideline for conducting its meetings.

2. No action taken by the Board of County Commissioners shall be deemed invalid or otherwise unlawful for failure to strictly comply with *Robert's Rules of Order*.

3. To the extent of any conflict between rules or policies adopted by the Board of County Commissioners and *Robert's Rules of Order*, the adopted rules or policies of the Board of County Commissioners shall govern.

4. These rules and *Robert's Rules of Order* are subordinate to and governed by any applicable state or federal laws governing quorums, voting, abstention, conflicts of interest, disclosure, public meetings or any other subject matter addressed in *Robert's Rules* or these rules.

5. For the purposes of meeting the requirements of *Robert's Rules of Order*, the Board of County Commissioners hereby establishes the presence of three members as a quorum for any meeting.

6. A motion to table takes priority over other pending motions.

B. Calling and Cancellation of Meetings

1. The time and place of regular meetings of the Board of County Commissioners shall be established by the Board under the authority of Section 125.01(1)(a), Florida Statutes, and Brevard County Code, Section 2-26 through 2-28 and, after January 1, 1995, Section 2.8 of the Brevard County Charter with the following exceptions

a) Zoning Board meetings shall commence no earlier than at 5:00 pm, unless altered by the Board.

b) Any regular or special meetings shall adjourn no later than 11:00 p.m., unless extended by the Board.

2. Special meetings may be called by the Chair or two or more Commissioners. Special meetings may also be called by the Chair or Vice Chair of the Board of County Commissioners in the event of a bona fide emergency or when necessary, upon advice of counsel, in order to comply with state or federal law.

3. Notice of any regular or special meeting of the Board of County Commissioners shall be provided in accordance with applicable state law and adopted county ordinances. In the event of emergency meetings, the Board shall provide as much notice as is reasonable under the circumstances which shall include, at a minimum, a posting of notice of the meeting as much in advance of the meeting as is possible under the circumstances.

4. Any regular or special meetings may be cancelled by majority vote of the Board of County Commissioners. A special or emergency meeting may be cancelled by the Chair of the Board only under extraordinary circumstances as follows:

a) In the case of an emergency meeting, when the emergency no longer exists as determined by the Chair and the County Manager;

b) When the purpose of the special meeting cannot be fulfilled as determined by the Chair and the County Manager;

c) When holding of the special or emergency meeting would violate state or federal law, as determined by the Chair upon advice from the County Attorney.

5. All meetings must comply with Section 286.011, Florida Statutes, and all other applicable open-government laws, unless otherwise exempt under those laws.

6. Action by the Board of County Commissioners at a special meeting shall be limited to the purpose for which the special meeting was called.

7. Action by the Board of County Commissioners at a Zoning board meeting shall be limited to those purposes related to land-use, unless the Board finds by a supermajority vote that delaying action until a regular meeting would be detrimental to the interests of the public.

C. Authority of the Chair and Vice-Chair

1. The Chair shall have the authority to conduct the meetings in the manner prescribed by *Robert's Rules of Order*, by this policy and by applicable state or federal law.

2. The Chair shall have the authority to execute such documents, agreements or ordinances as may be authorized by the Board or under applicable state or federal law.

3. The Chair shall have such other authority as may be prescribed by these rules and as may be incidental to the exercise of that authority.

4. The Vice-Chair, upon the out-of-county absence or incapacitation of the Chair, shall have and exercise the authority afforded the Chair. In the event both the Chair and Vice-Chair are absent from the County at a time when a meeting of the County Commission is necessary, due to emergency or otherwise, or in the event that it is necessary for someone to act in behalf of the absent Chair and Vice-Chair, the Chair Pro Tem is hereby declared to be the Commissioner with the lowest district number who is present in the County. In such circumstances, the temporary acting Chair shall have all authority that would otherwise have been vested in the Chair. A Chair Pro Tem can also be elected by the Commission for the purpose of exercising one or more specific functions that cannot be performed by the Chair or Vice-Chair.

D. Agenda

1. The rules governing the preparation, addition to and omissions from the agenda for any regular or special meeting shall be those established by Board of County Commissioners, Agenda Report Procedure Administrative Order Number AO-23, which is incorporated herein by reference.

2. The Chair of the Board shall have the authority to move agenda items in order to expedite the progression of a meeting, or to schedule items for a time certain.

3. The Board may approve, by single motion and a majority vote, all items included on a consent agenda. Any item removed from the consent agenda must be approved by separate motion and majority vote. Items may be removed from the consent agenda for full discussion. Removal of a consent agenda item may be requested at the Board meeting by any Board member, the County Manager, the County Attorney, or an individual filling a card seeking to speak on a specific matter at any time prior to the approval of the entire consent agenda. County Commissioners, the County Manager, and the County Attorney should make an effort, if possible, to communicate the intent to remove an item from the consent agenda before 12:00 noon on the Friday before the meeting at which the item is to be considered. Those items removed from the consent agenda shall be addressed after approval of the consent agenda.

4. Board action on matters requested by a Commissioner, individuals, groups and organizations shall be placed under New Business and identified by the specific action being requested. Citizen requests are items presented by individuals, groups or organizations, and sponsored by a county commissioner or items placed on the agenda after Public Comment and a vote by the Board to place the item on the agenda.

5. Special presentations to the Board by other governmental officials can be scheduled under New Business, or brief presentations not requiring lengthy discussion can be scheduled as a Guest Appearance under Resolutions and Awards.

6. Board meetings may begin with a moment of silence.

E. Public Meetings

1. The procedure and content for conducting all public meetings shall be governed by applicable provisions of state or federal law.

2. Consideration of a proposed ordinance, resolution, or other action at a properly noticed meeting may be continued by the Board to a subsequent meeting if, at the scheduled meeting, the date, time, and place of the

subsequent meeting is publicly stated. No further publication, mailing, or posted notice is required, except that the continued consideration must be listed in the agenda produced for the subsequent meeting.~~Public hearings on items which required advertisement prior to the public meeting may be continued to a date and time certain upon majority vote approving a motion to that effect. For public hearings related to the enactment of a proposed ordinance, including, but not limited to, code amendments, comprehensive plan amendments, and rezoning ordinances, the continued hearing shall be advertised in the same manner that was required of the initial hearing.~~

3. All persons wishing to address the Board of County Commissioners regarding an agenda item or public comment at a public meeting shall address the commission by abiding by the following requirements:

- a) Each person shall fill out a card indicating his/her desire to appear on a specified agenda item or public comment and present the card to the person designated by the Board to collect those cards, prior to the discussion of the item.
- b) Every person addressing the Board shall have three minutes to complete his/her remarks on public comment or each agenda item for which he/she has filled out a card. The Chair has the discretion to determine or alter time limits on any item which is not a quasi-judicial public hearing. The Board may vote to amend time limits on public meeting items which are legislative in nature and not quasi-judicial zoning procedures. The time limit shall include any time allocated for video, Power Point or other electronic presentation as described in the section entitled Video, Power Point and other Electronic Presentations.
- c) No person may share or transfer his/her allotted time period on any agenda item to any other person.
- d) All remarks shall be made to the Board as a body. Any questions raised shall be addressed to the Chair and no speaker shall address any individual Commissioner without obtaining the permission of the Chair. All questions directed to members of the Board shall be addressed through the chair, unless the speaker has been asked a direct question by a particular Commissioner.
- e) Personal, obscene or slanderous remarks shall not be permitted.

f) Any speaker may supplement his/her presentation by presenting written comments to the Board.

g) All new evidence or documentation which is not presented to the Planning & Zoning Board shall be submitted to the County staff at least two weeks prior to the date of the public hearing at which the Board of County Commissioners will consider the matter. In the event new materials are submitted at the public hearing, the new materials shall constitute grounds for the Board of County Commissioners to continue the item to the next zoning meeting or for a minimum of thirty (30) days to consider the new evidence submitted.

h) In cases of appeals of administrative interpretations and vested rights determinations and zoning cases, as determined by the Board, where it is apparent that a particular issue is controversial and subject to objections or opposing evidence, or is denied, the Board of County Commissioners may adopt a resolution stating its determination. The resolution shall be drafted upon the vote of the Board of County Commissioners after the close of the public hearing and returned to the Board of County Commissioners for final adoption at a publicly advertised meeting as a consent item. Any party affected by the Board of County Commissioners decision on an appeal of an administrative interpretation, vested rights determination, or zoning case shall have 30 days from the date the resolution is executed to file an appeal in the circuit court.

4. Quasi-judicial Hearings, or public hearings at which applications for rezoning, site-specific land use amendments or other site-specific development orders are considered shall be governed by the procedures set forth above under Public meetings and as supplemented by the following procedures. The time limits provided for quasi-judicial hearings are in lieu of the time limits provided under Section E (3) (b) above. Video, Power Point and electronic presentations shall be included within the time limits provided below.

a) The administrative staff shall present a summary of the application.

b) The applicant shall have a choice of being given a total of 15 minutes to present its application or dividing the 15 minutes between multiple persons. If the applicant chooses the 15 minutes option, the applicant may, in any manner it deems appropriate, divide the 15 minutes between its initial application and any rebuttal it may wish to present. The applicant shall be allowed to cross examine other speakers at the end of the speaker's presentation on material and relevant issues. The time required for the cross examination shall be deducted from the

total amount of time allotted to the applicant. If the applicant chooses to use the entire 15 minutes for the initial presentation, the applicant will be deemed to have waived any right or opportunity for cross examination of other speakers. In addition to, or in lieu of cross examination, the applicant may request an additional seven (7) days beyond the date of the hearing to submit evidence in rebuttal of testimony presented by persons presenting evidence in opposition to the applicants and tabling of the item to allow consideration of the submission. The Board has the discretion to allow additional time for cross examination or tabling.

c) Any person who has filled out a card, as provided for above, and who is interested in addressing the Board of County Commissioners on the matter under consideration, shall be given five minutes within which to make his/her presentation.

d) At the conclusion of the five-minute presentations by all persons filling out cards, the applicant shall be given whatever time period has been reserved within which to rebut any arguments, facts or positions presented during the public hearing.

e) At the conclusion of the presentations made by the staff, the applicant and any speakers, the Board of County Commissioners shall submit the matter under consideration to discussion among the Board members. Any Board member may ask any question of the applicant or staff or any other person. At the conclusion of the discussion of the matter, the applicant shall be given an additional two minutes to rebut any facts, positions or information presented in response to questions posed during the discussion.

f) Any documentary or physical evidence presented to the Board of County Commissioners in support of, or in opposition to, an application shall be offered into the record by submitting a copy of the same to the Clerk to the Board, who shall keep such documentary and physical evidence as part of the record of the proceeding. It shall be the responsibility of the party offering the evidence to make sure that it is received by the Clerk to the Board as part of the record. The staff report presented on any application and all applicable Brevard County codes and ordinances shall be deemed part of the record in all applications considered by the Board.

g) In cases of appeals of administrative interpretations and vested rights determinations and zoning cases as determined by the Board, the Board of County Commissioners may adopt a resolution stating its determination. The resolution shall be drafted upon the vote of the

Board of County Commissioners after the close of the public hearing and returned to the Board of County Commissioners for final adoption at a continuation of the public hearing. Any party affected by the Board of County Commissioners decision on an appeal of an administrative interpretation shall have 30 days from the date the resolution is executed to file an appeal in the circuit court.

h) It shall be the responsibility of any person deciding to appeal any decision made by the Board of County Commissioners with respect to any matter considered at a public hearing under this section, to ensure that a verbatim record of the proceedings is made, which record shall include the testimony and evidence upon which any such appeal is to be based. It shall further be the responsibility of any such person to ensure that the Clerk to the Board receives copies of any such transcript or evidence.

5. Any person, not otherwise prohibited by statute, Charter provision, or ordinance, may discuss, with any Board member, any matter on which action may be taken by the Board of County Commissioners whether the matter is quasi-judicial in nature or not. If the matter is quasi-judicial (rezoning, site specific plan amendment, development of regional impact or appeal of administrative interpretation) the following procedures must be complied with in order to remove any presumption of prejudice which may arise from the ex parte communication with the County Commission member. In addition, as to appeals of administrative interpretations, staff conferences shall be disclosed as described below.

a) the subject of the communication and the identity of the person, group, or entity with whom the communication took place, must be disclosed and made a part of the record before the final action on the matter.

b) written communications must be made a part of the record before final action on the matter;

c) the existence of investigations, site visits, or expert opinions obtained on a particular matter must be made a part of the record before final action on the matter;

d) the law requires the disclosures made pursuant to paragraphs (a), (b), and (c) to be made before or during the public meeting at which the vote is taken on such matters so that persons who have opinions contrary to those expressed in the ex parte communications are given reasonable opportunity to refute or respond to the communication. The

Board chooses to use a uniform system for reporting and disclosing such contacts. Prior to the meeting, all commissioners shall provide a written summary of any ex parte contact with any applicants or citizens on any item on the agenda. The summary shall contain the names of the people who met with the commissioner, the location of the meeting and the topics discussed in the meetings. The written summary shall be sent to the Zoning Director to be placed in the official zoning file. In the event such disclosure is not provided prior to the meeting, the disclosure may be made at the public hearing immediately before the item is heard by the Board of County Commissioners.

F. Resolutions, Awards and Presentations

1. Requests for presentation of resolutions and/or awards must be made with a Commission Office or the County Manager and scheduled as part of the agenda under the heading of Resolutions, Awards and Presentations. Requests should be directed to a Commission Office or County Manager. A written summary, with appropriate supporting or background material, is required to be included.
2. A Guest Appearance may be scheduled for an individual to make a brief presentation under Resolutions, Awards and Presentations by a Commissioner, County Manager or County Attorney.

G. Public Comments

1. The agenda shall provide a section for public comment at the end of each regular County Commission meeting following Board reports. The purpose of public comment is to allow individuals to comment on any topic relating to County business which is not on the meeting agenda. Individuals delivering public comment shall be restricted to a three-minute time limit on their presentation. Speakers will be heard in the order in which they turned in a pink card asking to be heard. With the exception of emergency items, the Board will take no action under the Public Comment section, but can refer the matter to another meeting agenda or request a staff report.

H. Rules of Decorum for Members of the Public Addressing the Board.

1. **Addressing the Board/Subject Matter.** Speakers who wish to address the Board, whether on an agenda item or under public comment, shall fill out a card specifying the agenda item or subject they wish to address.

a) Any person addressing the Board on an agenda item shall limit his or her comments to the agenda item that has been specified in the card filled out by the speaker.

b) A speaker shall limit comments made during public comment to matters that are within the control, authority and jurisdiction of the County Commission and to those items where the Board has traditionally expressed a position for the betterment of the community interest.

2. Rules of Decorum

a) The County Commission declares it to be Board policy 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. However, it is also the Board policy, to the fullest extent possible, to protect individuals from comments that assault their character. In furtherance of that policy, no person who addresses the County Commission shall make slanderous, profane or other remarks that are not protected by the First Amendment, with full recognition that public figures are not subject to the same degree of protection from critical comments as other individuals.

b) In the event serious allegations of misconduct or incompetence are alleged against any County employee, the Board may abate the matter and request the County Manager to investigate the allegations. The Board shall also offer the employee, at the employee's discretion, the opportunity to be present during the proceeding in order to address the allegations. The County Manager may offer the County employee administrative leave to allow the employee the opportunity to investigate the allegation and appear at a subsequent meeting to address such allegations.

c) Persons speaking under the public comment portion of the agenda may address topics or issues under the jurisdiction or control of the County Commission or that are relevant to business of the County Commission.

d) It is the policy of the Board of County Commissioners to respect minority views as well as differing opinions conclusions backgrounds and beliefs. The Board finds that input from differing perspectives enriches public discussion and helps to build a better consensus. It is therefore the objective of the Board to conduct business in a manner that facilitates and encourages the presentation of diverse views while maintaining civility during all Board proceedings.

e) Since the County Commission has no jurisdiction or authority over the charging of prosecution of criminal violations any allegation of criminal behavior against a person or organization should be presented to the State Attorney, Sheriff or other law enforcement agency with jurisdiction. The foregoing sentence shall not be construed to restrict, prohibit or affect the ability of any person to bring to the attention of the County Commission possible violations of the Code of Ethics for Public Officers and Employees, the Florida Sunshine Law, the Florida Public Records Law, other laws relating to county business, or violations of other laws over which the Commission has jurisdiction or authority to take corrective action.

I. Video, Power Point and other Electronic Presentations

Video, Power Point and other electronic presentations are to be limited to no longer than three minutes, and must be reviewed by County production staff, the Chair and the County Manager no less than twenty-four (24) hours prior to the meeting to ensure that the Board, live and broadcast audiences are not subjected to unsuitable videos which could contain material considered in conflict with accepted community standards regarding obscenity and pornography.

1. Only a separately stored video, Power Point or electronic presentation, of no more than three (3) minutes in length, will be accepted. Lengthy presentations for more than one presenter that require stopping and starting the same tape will not be accepted.
2. A person presenting a video, Power Point or other electronic presentation must state so on the speaker's card. The presenter must be familiar with the content of the presentation or video and be able to address any questions relating to the presentation or video that may be raised by the Board, staff, or other citizens.
3. Any video, Power Point or other presentation that contains news footage, broadcast or organization/ agency/ commercial programming will not be shown unless presenter provides a written waiver for re-broadcast use from the entity holding the copyright.
4. No video, Power Point, or other electronic presentation promoting a commercial enterprise will be shown unless related to relevant agenda items.

J. Ordinances and Resolutions

1. All ordinances and resolutions shall be adopted in the manner prescribed by law.
2. All notices required to be published for re-zonings or site-specific land use amendments shall state the specific action being requested of the Board. Such notice shall also indicate that the Board may grant "such other less intense zoning or land use classification as may be deemed appropriate."

K. Suspension of Rules

1. Any provision of these rules, including the provisions of Robert's Rules of Order as incorporated by these rules, may be suspended by majority vote of the Board of County Commissioners to the extent that such a suspension would not be inconsistent with applicable law.

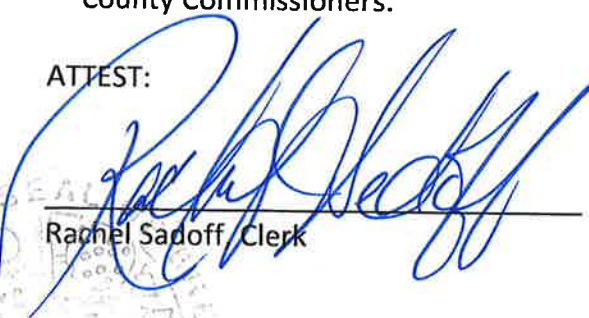
L. By-Laws

These procedures shall be considered by-laws for the purposes of Robert's Rules of Order.

M. Reservation of Authority

The authority to issue and/or to revise or waive this policy is reserved to the Board of County Commissioners.

ATTEST:



Rachel Sadoff, Clerk



Rita Pritchett, Chair
BOARD OF COUNTY COMMISSIONERS
BREVARD COUNTY, FLORIDA

As approved by the Board on: AUG 08 2023