

ADD ON

AGENDA

Section New Business

Item No. VI F 3

Meeting Date
November 21, 2017



AGENDA REPORT
BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

SUBJECT:	Ordinance regarding correspondence sent by Commissioners
DEPT/OFFICE:	District 1 Commission Office

Requested Action:

It is requested for permission to advertise the attached amendment to the Ethics Ordinance establishing a procedure whereby any official correspondence sent by a Commissioner purporting to represent the position of the Board of County Commissioners must be approved by majority vote of the County Commission and any Commissioner correspondence on County letterhead or email must include a disclaimer stating that the views expressed by the Commissioner in the letter, email, request, or other correspondence are his or her own personal views.

Summary Explanation & Background:

LEGISLATIVE INTENT

The purpose of this amendment is to provide constituents and municipalities throughout the County with a greater appreciation and understanding of issues important to the Board when the Board acts by majority vote to publish official letters, requests, and other forms of correspondence, which make a demand. In furtherance of the foregoing purpose, and in order to avoid confusion or misrepresentation whether intended or unintended by any Commissioner, the Board hereby establishes an amendment to the Ethics Ordinance requiring official correspondence making a demand sent by a commissioner state a position on governmental matters within the jurisdiction or authority of the Commission, to either be approved by a majority vote of the County Commission or include a disclaimer stating that the views expressed by the Commissioner in the letter, email, request, or other correspondence are his or her own personal views. The amendment will also provide progressive penalties for violations of the ordinance.

Clerk to the Board Instructions:

Exhibits Attached: Letter

Contract /Agreement (If attached): Reviewed by County Attorney Yes No PR

County Manager	Assistant County Manager	Department Director / Extension
Frank Abbate		Rita Pritchett, District 1 County Commission



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

November 22, 2017

M E M O R A N D U M

TO: Commissioner Rita Pritchett, District 1

RE: Item VI.F.3., Permission to Advertise Amendment to Ethics Ordinance Regarding Correspondence Sent by Commissioners

The Board of County Commissioners, in regular session on November 21, 2017, granted permission to advertise amendment to Ethics Ordinance establishing a procedure whereby any official correspondence sent by a Commissioner to governmental entities, or Facebook posts by a Commissioner, must include a disclaimer stating that the view expressed by the Commissioner in the letter, email, request, or other correspondence are his or her own personal views.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Rowe

Tammy Rowe, Deputy Clerk

cc: County Attorney

ORDINANCE _-____

AN ORDINANCE OF BREVARD COUNTY, FLORIDA, AMENDING CHAPTER 3, "CODE OF ETHICS," OF THE BREVARD COUNTY CODE OF ORDINANCES; SPECIFICALLY CREATING A NEW SECTION 3-8.1, "RESTRICTIONS ON CORRESPONDENCE"; PROVIDING FOR CERTAIN PROCEDURES RESTRICTING THE SENDING OF LETTERS, REQUESTS, EMAILS AND ANY OTHER FORM OF CORRESPONDENCE MAKING A DEMAND ON BEHALF OF THE BOARD OF COUNTY COMMISSIONERS WITHOUT A MAJORITY VOTE FROM THE BOARD; PROVIDING INTENT AND IMPLEMENTATION; PROVIDING THAT THREE OR MORE VIOLATIONS CONSTITUTES NEGLECT OF DUTY; PROVIDING FOR ENFORCEMENT AND PENALTIES INCLUDING REPRIMANDS, FINES AND POSSIBLE SUSPENSION FROM OFFICE; PROVIDING FOR COLLECTION AND DEPOSIT OF FINES AS MINISTERIAL DUTY OF THE CLERK TO THE BOARD; PROVIDING FOR CONFLICTING PROVISIONS; PROVIDING FOR INCLUSION IN THE BREVARD COUNTY CODE OF ORDINANCES; PROVIDING FOR SEVERABILITY; AND, PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Brevard County Board of County Commissioners (the "Board") finds that the citizens of Brevard County (the "County") are best served when the Board works with a unified voice; and

WHEREAS, constituents and municipalities throughout the County have a greater appreciation and understanding of issues important to the Board when the Board works in tandem to publish official letters, requests, and other forms of correspondence; and

WHEREAS, in order to avoid confusion or misrepresentation, the Board hereby establishes a procedure whereby any official correspondence making a demand sent by a commissioner must either be approved by a majority vote of the County Commission or include a disclaimer stating that the views expressed by the Commissioner in the letter, email, request, or other correspondence are his or her own personal views.

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

SECTION 1. Chapter 3, Section 3-8.1, Brevard County Code of Ordinances, is hereby created to read as follows:

Sec. 3-8.1. Restrictions on Correspondence.

- (a) Without prior authorization by a majority vote of the Board of County Commissioners, no Commissioner acting in his or her official capacity shall send a letter, email, request, demand or any other form of correspondence that makes a demand either directly or implicitly represents that he or she is acting on behalf of the County Commission.
- (b) Any such letter, email, request, demand or any other form of correspondence making a demand sent under a Commissioner's signature or sent from a Commissioner's email address while that Commissioner was acting in his or her official capacity must either:
 - 1. Be sent upon authorization by a majority vote of the County Commission; or
 - 2. Include the following disclaimer in 14 point bold Times New Roman or Arial font immediately prior to the body or content of the correspondence:

DISCLAIMER

This correspondence is NOT being sent on behalf of the Brevard County Board of County Commissioners. Any views, opinions or other matters expressed or represented in this correspondence are my own.

- (c) **Intent and Implementation.** These rules are intended to ensure clarity for, and fair dealings with, constituents, municipalities, State agencies, Federal agencies, and all other individuals, entities, and organizations as it pertains to official County business. To that end, each Commission office shall be responsible for ordering County letterhead with the required disclaimer for use when necessitated by the provisions of this ordinance. In addition, each Commission office shall configure the District Commissioner's email to contain the required disclaimer when correspondence is sent or represented as having been sent by a Commissioner in his or her official capacity from that Commissioner's email address.
- (d) **Neglect of Duty.** Compliance with this section, 3-8.1. of the Code of Ordinances of Brevard County, Florida ("the Code"), shall be deemed to be a duty of every County Commissioner and violation of this section more than three times shall be deemed neglect of that duty.
- (e) **Enforcement and Penalties:** The following sanctions and penalties shall be applied to any Commissioner violating this section 3-8.1 of the Code:
 - 1. First offense: when, by majority vote, the County Commission determines that there is cause to believe section 3-8.1 of the Code has been violated by a County Commissioner, the Board may bring the matter up on

the agenda at any public meeting of the County Commission. The Commissioner who is alleged to have violated section 3-8.1 of the Code shall be given the opportunity to be heard on the agenda item. After hearing from the Commissioner, if a majority of the County Commission determines that a violation has occurred, the County Commission may adopt a resolution issuing a formal public reprimand to that Commissioner at a public meeting.

2. **Second offense:** Upon the alleged occurrence of a second violation of this section, an agenda item shall be scheduled for a County Commission meeting and the agenda item shall include the correspondence alleged to have violated the ordinance. The Commissioner who sent the correspondence shall have the opportunity to be heard on the allegation. If a majority vote of the remaining Board members determines that a violation of the ordinance has been committed, the Board may, by a duly adopted Board resolution, assess a fine of up to \$250.00 against the Commissioner for violating the ordinance.

3. **Third offense:** If, after a hearing and Commission vote provided for in subsection 2. above, a Commissioner is found to have violated this section for a third time, the County Commission may, by a duly adopted Board resolution, levy another fine against the Commissioner in an amount not to exceed \$250.00 and publish notice of the violation and fine in a newspaper of general circulation within the County. The fine proceeds shall be used to cover the publication costs.

4. **Additional offenses:** If a Commissioner, after a hearing and majority vote provided for in subsection 2. above, is deemed to have violated this section more than three times, upon a majority vote of the County Commission a duly adopted Board resolution attaching a report on the cumulative actions taken against the offending Commissioner under this section shall be sent to the Governor for a determination, in accordance with Art. IV, Sec. 7(a) of the Florida Constitution, as to whether the Commissioner should be suspended from office for malfeasance, misfeasance, neglect of duty or incompetence.

5. **Collection.** Unless paid in full to the Clerk to the Board by a Commissioner within ten (10) days after being found in violation of section 3-8.1 of the Code and absent a stay or injunction entered by a court with jurisdiction, the County Manager shall notify the Clerk to the Board Finance division of any fine levied by resolution upon a Commissioner in accordance with this section. Upon approval of such a resolution, the County Manager shall provide written notice to the Clerk to the Board, finance office that the amount of the fine must be deducted from the Commissioner's next pay check. Upon receipt of such a notice, the Clerk to the Board shall have the ministerial duty to deduct the noticed fine amount from the Commissioner's county pay check.

6. **Deposit.** The amount of any fine paid or deducted from a Commissioner in accordance with this ordinance shall be deposited into or remain in the County General fund, unless otherwise provided by law.

SECTION 2. Conflicting Provisions. 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 3. Inclusion in Code. It is the intention of the Board that the provisions of this Ordinance amending Chapter 3, "Code of Ethics," Brevard County Code of Ordinances, 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 4. 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 of 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 5. Effective Date. This Ordinance shall become effective upon filing as provided by law. A certified copy of the Ordinance shall be filed with the Office of the Secretary of State, State of Florida, within ten (10) days of enactment.

DONE, ORDERED, AND ADOPTED in Regular Session, this ____ day of _____, 201__.

ATTEST:

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA

Scott Ellis, Clerk of Court

By: Rita Pritchett, Chair
(as approved by the Board on _____)

City of Titusville

"Gateway to Nature and Space"

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

November 6, 2017



OFFICE OF THE MAYOR
(321)-567-3702
Fax (321)-383-5704
www.titusville.com

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: Second Letter received from Commissioner Tobia

Dear Chairman Smith:

I am writing this letter on behalf of the Titusville City Council once again in response to a second letter sent by County Commissioner Tobia to me as Mayor and the City Council, dated October 30, 2017, a copy of which is attached.

As you are aware, Commissioner Tobia placed the issue of Titusville CRA expenditures on the October 24, 2017, Brevard County Commission agenda and at that meeting made a motion to have the Titusville CRA audited. The motion failed. Despite the fact that his request for an audit failed and knowing that he does not have the support of the Board of County Commissioners, Commissioner Tobia has now sent yet another letter to the City of Titusville asking that the Titusville CRA submit to an audit at the County's expense and wanting a response prior to the next Commission meeting. The letter further seems to suggest that compliance with his requested audit is necessary to building a good relationship with the County.

Our Council firmly believes that we do have an excellent relationship with the County and we find it extremely disturbing that despite the fact that the County Commission deliberated and voted against Commissioner Tobia's requested audit of the Titusville CRA, that he has again chosen to engage the City Council in an effort to pressure the Council to comply with his personal agenda, without justification or the Commission's knowledge and support. Our Council feels that this Commissioner is operating independent of the Commission and in direct opposition to the Commission's direction; possibly undermining the credibility of your board.

Mr. Curt Smith, D4 County Commissioner/Chairman
November 2, 2017
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The Titusville City Council does not believe that it is appropriate, nor productive, to continue to receive such correspondence from a single Commissioner forcing the Council to expend City time and resources to address issues that are not supported by the Board of County Commissioners.

Our City Council looks forward to continue shared interest in working together to help Titusville and Brevard County prosper.

Respectfully yours,

A handwritten signature in cursive script that reads "Walt Johnson".

Walt Johnson, Mayor

WJ/vb

Encl: Letter dated October 30, 2017 from John Tobia, Brevard County Commissioner, District 3

c: Rita Pritchett, Brevard County Commissioner, District 1

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

Received
NOV 1 2017
City Manager's Office

COMMISSIONER JOHN TOBIA, DISTRICT 3
2539 Palm Bay Rd. NE
Suite 4
Palm Bay, Florida 32905
John.Tobia@Brevardfl.gov

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 "John Tobia".

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