



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Public Hearing

H.2.

11/15/2022

Subject:

Proposed Ordinance Amending Chapter 102, Article III, Section 102-119 of the Brevard County Code, Pertaining to the Tourist Development Plan.

Fiscal Impact:

None.

Dept/Office:

District 5

Requested Action:

It is requested that the Board of County Commissioners hold a public hearing and adopt an ordinance amending Chapter 102, Article III, Section 102-119 of the Brevard County Code of Ordinances, pertaining to the tourist development plan.

Summary Explanation and Background:

State law allows tourist development tax revenues to be used for a number of purposes and projects outlined in section 125.0104, Florida Statutes, also known as the Local Option Tourist Development Act (the "Act"). In 2018, the Florida Legislature amended the Act to authorize the use of tourist development tax revenues for certain public facilities if the public facilities are needed to increase tourist-related business activities in the county, and if other statutory requirements set forth in section 125.0104(5)(a)6. of the Act are met. The Board of County Commissioners has expressed interest in using unallocated tourist development tax revenues to support Brevard County's tourism and hospitality workers through workforce housing initiatives. The Board could reasonably conclude that a future public facilities project to provide or support workforce housing is needed to increase tourist-related business activities in the county.

Presently, Brevard County's adopted tourist development plan does not include the authority to use tourist development tax revenues for public facilities pursuant to section 125.0104(5)(a)6., Florida Statutes. The proposed amendment would authorize this use within Brevard County Code Section 102-119(3)(c), which allocates up to 35 percent of the first two pennies of the county's tourist development tax revenues. The proposed amendment will also correct existing scrivener's errors and facilitate access to individuals with disabilities by spelling out abbreviations and acronyms, such as changing "\$" to "section."

Pursuant to section 125.0104(4)(d), Florida Statutes, and Brevard County Code Section 102-119(3)(f), adoption of an ordinance amending the tourist development plan requires the affirmative vote of a majority plus one additional member of the Board.

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.



Kimberly Powell, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

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Kimberly.Powell@brevardclerk.us

November 16, 2022

MEMORANDUM

TO: Kristine Zonka, Brevard County Commissioner, District 5

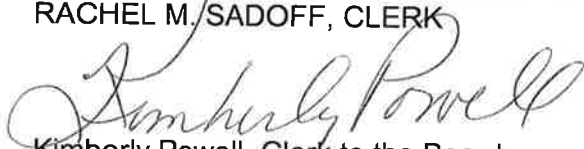
RE: Item H.2., Proposed Ordinance Amending Chapter 102, Article III, Section 102-119 of the Brevard County Code, Pertaining to the Tourist Development Plan

The Board of County Commissioners, in regular session on November 15, 2022, adopted Ordinance No. 22-34, amending Chapter 102, Article III, Section 119, "Budget Plan", of the Brevard County Code of Ordinances; amending Brevard County's Plan for Tourist Development to authorize the use of Tourist Development Tax revenues to acquire, construct, extend, enlarge, remodel, repair, improve, maintain, operate, or finance certain public facilities; amending the section to correct scrivener's errors and enhance accessibility; providing for severability; providing for an area encompassed; providing an effective date; and providing for inclusion in the Code of Ordinances of Brevard County, Florida. Enclosed is a fully-executed Ordinance.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
RACHEL M. SADOFF, CLERK


Kimberly Powell, Clerk to the Board

/sm

Encl. (1)

cc: County Attorney
County Manager
Tourism Development

ORDINANCE NO. 2022-34

AN ORDINANCE OF THE BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING CHAPTER 102, ARTICLE III, SECTION 119, "BUDGET PLAN", OF THE BREVARD COUNTY CODE OF ORDINANCES; AMENDING BREVARD COUNTY'S PLAN FOR TOURIST DEVELOPMENT TO AUTHORIZE THE USE OF TOURIST DEVELOPMENT TAX REVENUES TO ACQUIRE, CONSTRUCT, EXTEND, ENLARGE, REMODEL, REPAIR, IMPROVE, MAINTAIN, OPERATE, OR FINANCE CERTAIN PUBLIC FACILITIES; AMENDING THE SECTION TO CORRECT SCRIVENER'S ERRORS AND ENHANCE ACCESSIBILITY; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN AREA ENCOMPASSED; PROVIDING AN EFFECTIVE DATE; AND PROVIDING FOR INCLUSION IN THE CODE OF ORDINANCES OF BREVARD COUNTY, FLORIDA.

RECITALS

WHEREAS, section 125.0104, Florida Statutes, requires the tourist development tax to be levied and imposed pursuant to an ordinance containing the Brevard County Tourist Development Plan, enacted by the Board of County Commissioners; and

WHEREAS, Section 125.0104(5)(a)6, Florida Statutes, authorizes the use of tourist development tax revenues to acquire, construct, extend, enlarge, remodel, repair, improve, maintain, operate, or finance certain public facilities within Brevard County, if the public facilities are necessary to increase tourist-related business activities in Brevard County and if other statutory prerequisites are met; and

WHEREAS, the current Brevard County Tourist Development Plan does not contemplate the use of tourist development tax revenues for public facilities as authorized by Section 125.0104(5)(a)(6), Florida Statutes; and

WHEREAS, the Board of County Commissioners desires to update the Tourist Development Plan to include the use of tourist development tax revenues for such public facilities as authorized by section 125.0104(5)(a)(6), Florida Statutes; and

WHEREAS, the Board of County Commissioners further desires to amend the Code of Ordinances to correct scrivener's errors and to facilitate access to individuals with disabilities by spelling out abbreviations and acronyms such as "§" to section and "F.S." to Florida Statutes.

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

Underline indicates additions.

~~Strike through indicates deletions.~~

SECTION 1. RECITALS. The foregoing recitals are true and correct and are incorporated by reference into this Ordinance.

SECTION 2. Chapter 102, Article III, Section 102-119, Brevard County Code of Ordinances, is hereby amended as follows:

Sec. 102-119. Budget plan.

The board of county commissioners hereby adopts the following plan of the advisory tourist development council for tourist development:

- (1) Under the provisions of, and pursuant to, the Act, a two-percent tax is levied and imposed throughout the county beginning on the first day of the month following elector approval of this article and its tourist development tax by referendum as provided by this article.
- (2) The anticipated net revenue from the tourist development tax to be derived by the county for the 24-month period beginning on the date of levy, December 1, 1986 to December 1, 1988, is estimated to be approximately \$2,200,000.00. The county budget, adopted annually at a public hearing, includes the anticipated net tourist development tax revenue.
- (3) The proposed uses of the tax revenue, generated pursuant to ~~F.S. § 125.0104(3)(c)~~ section 125.0104(3)(c), Florida Statutes, in order of priority, by special use category, shall be allocated as follows:
 - a. At least 25 percent of the net revenue would be budgeted and disbursed to promote and advertise county tourism in the state, nationally and internationally; however, if tax revenues are expended for an activity, service, venue, or event, the activity, service, venue, or event must have as one of its main purposes the attraction of tourists as evidenced by the promotion of the activity, service, venue, or event to tourists.
 - b. Thirty percent of the net revenue would be budgeted and disbursed to finance beach park facilities or beach improvement, maintenance, renourishment and erosion control.
 - c. Up to 35 percent of the net revenue in accordance with ~~F.S. § 125.0104(5)(a)1, and (5)(b)~~ sections 125.0104(5)(a)(1), (a)(2), (a)(6), and (5)(b), Florida Statutes, would be budgeted and disbursed generally to:
 - (1) acquire, construct, extend, enlarge, remodel, repair, improve, maintain, operate or promote one or more publicly owned and operated convention centers, sports stadiums, sports arenas, coliseums, or auditoriums within the county; and further including museums, zoological parks, aquariums, fishing piers or nature centers which are publicly owned and operated or owned and operated by not-for-profit organizations and open to the public within the county; and to further include auditoriums that are publicly owned but are

operated by organizations that are exempt from federal taxation pursuant to 26 United States Code section 501(c)(3) and open to the public within the county; or

(2) acquire, construct, extend, enlarge, remodel, repair, improve, maintain, operate, or finance public facilities within the county if the public facilities are needed to increase tourist-related business activities in the county, pursuant to and subject to the requirements of section 125.0104(5)(a)6, Florida Statutes.

- d. Up to ten percent of the net revenue be budgeted and disbursed to promote county tourism by funding tourist-oriented cultural and special events such as visual and performing arts including theater, concerts, recitals, opera, dance, art exhibitions, festivals and other tourist-related activities.
 - e. There shall be an annual amount established by the board of county commissioners for administrative and overhead expenses of the board and council which shall be expended in order to properly coordinate and implement the tourist development plan.
 - f. Pursuant to ~~F.S. § 125.0104(4)(d)~~ section 125.0104(4)(d), Florida Statutes, the above-stated plan may not be substantially amended except by ordinance enacted by an affirmative vote of a majority plus one additional member of the board. The council shall, from time to time, make recommendations to the board for the effective operation of the special projects or for uses of the tax revenue.
 - g. The setting forth of the anticipated net revenues to be derived from levying the tax during the first 24 months following levy, as required by the Act, shall in no way be interpreted as indicating an intent by the board, through this article, to in any way limit the plan or the tax to said period and the plan and tax shall continue, once duly enacted, until amended or repealed, according to this article and the Act or until it automatically expires pursuant to ~~F.S. § 125.0104(7)~~ section 125.0104(7), Florida Statutes, if applicable.
- (4) Under the provisions of, and pursuant to ~~F.S. §§ 125.0104(3)(d)~~ section 125.0104(3)(d), Florida Statutes and section 102-117(b), Brevard County Code of Ordinances, an additional one-percent tourist tax is hereby levied and imposed throughout the county as provided by this article. The proposed uses of tax revenue from this additional one percent tourist development tax, in order of priority, by special use category, shall be allocated as follows:
- a. Sixty-five percent of the net revenue would be utilized as provided in ~~F.S. § 125.0104(5)(a)(5)~~ section 125.0104(5)(a)(5), Florida Statutes, to finance beach park facilities or beach, estuary, or lagoon improvement, maintenance, renourishment, estoration and erosion control, including shoreline protection, enhancement, cleanup or restoration of inland lakes and rivers to which there is

public access as those uses relate to the physical preservation of the beach, shoreline, estuary, lagoon, or river. However, any funds identified by the county as the local matching source for beach renourishment, restoration, or erosion control projects included in the long-range budget plan for the state's beach management plan, pursuant to ~~F.S. § 161.091~~section 161.091, Florida Statutes, or funds contractually obligated by the county in the financial plan for federally authorized shore protection project may not be used or loaned for any other purpose. Beach improvement and maintenance projects are to receive full funding as the top priority. As the second priority, lagoon- and estuary-related projects shall only receive up to \$1,000,000.00 per year starting in fiscal year 2019, and any such project with a total expected cost that exceeds \$50,000.00 must obtain matching funds from one or more source(s) at a minimum ratio of 3/4:1, 75 percent match prior to receiving tourist development tax revenue. The County may apply for the lagoon grants. Subject to the limitations provided for in this subsection, the remaining amount of the net revenue shall be used for acceptable purposes identified in ~~F.S. § 125.0104(5)(a)~~section 125.0104(5)(a)(5), Florida Statutes.

- b. Twenty-five percent of the net revenue would be used in accordance with ~~F.S. § 125.0104(5)(b)~~section 125.0104(5)(b), Florida Statutes to acquire, construct, extend, enlarge, remodel, repair, improve, maintain, operate or promote a zoological park. These revenues are specifically designated to finance the design and construction of capital projects at the Brevard Zoo.
 - c. Ten percent of the net revenue would be budgeted and disbursed generally, in accordance with ~~F.S. § 125.0104(5)(a)4~~section 125.0104(5)(a)(4), Florida Statutes, to fund convention bureaus, tourist bureaus, tourist information centers, and news bureaus as county agencies or by contract with the chambers of commerce or similar associations in the county, which may include any indirect administrative costs for services performed by the county on behalf of the promotion agency.
 - d. There shall be an annual amount established by the board for administrative and overhead expenses of the board and council which tourist development plan for the additional one-percent tourist development tax shall be expended in order to properly coordinate and implement the additional one-percent tourist development tax.
- (5) Under the provisions of, and pursuant to, ~~F.S. §§ 125.0104(3)(1)~~section 125.0104(3)(l), Florida Statutes and section 102-117(c), Brevard County Code of Ordinances, an additional one-percent tourist tax is hereby levied and imposed throughout the county as provided by this article. The proposed uses of the net revenue from this additional one-percent tourist development tax, in order of priority, by special use category, shall be allocated as follows:

- a. At least \$350,000.00 of the net revenue per year and up to the entire remaining amount of the net revenue, minus the planned renovations, improvements, and maintenance budgeted in the annual plan for capital maintenance and renovation, shall be budgeted and disbursed to promote and advertise tourism in the state and nationally and internationally. In addition, if tax revenues are expended for an activity, service, venue, or event, the activity, service, venue, or event shall have as one of its main purposes the attraction of tourists as evidenced by the promotion of the activity, service, venue, or event to tourists.
 - b. Up to \$500,000.00 of the net revenue per year shall be allocated for capital renovations, improvements, and maintenance of the Space Coast Stadium Complex or other professional sports facility, in accordance with an annual plan for the capital maintenance and renovation approved by the board of county commissioners. In order to receive such funds, the Space Coast Stadium Complex or other professional sports facility shall have as one of its main purposes the attraction of tourists as evidenced by the promotion of the venue to tourists.
- (6) Under the provisions of, and pursuant to, ~~F.S. §§ 125.0104(3)(n)~~section 125.0104(3)(n), Florida Statutes and section 102-117(d), Brevard County Code of Ordinances, an additional one-percent tourist tax is hereby levied and imposed throughout the county as provided by this article. The proposed uses of the tax revenue from this additional one-percent tourist development tax, in order of priority, by special use category, shall be allocated as follows:
 - a. One hundred percent of the net revenue per year would be budgeted and disbursed to promote and advertise tourism in the state and nationally and internationally; however if the tax revenues are expended for an activity, service, venue, or event, the activity, service, venue, or event shall have as one of its main purposes the attraction of tourists as evidenced by the promotion of the activity, service, venue, or event to tourists.
 - b. There shall be an annual amount established by the board for administrative and overhead expenses of the board and council which tourist development plan for the additional one-percent tourist development tax shall be expended in order to properly coordinate and implement the additional one-percent tourist development tax.
- (7) Such anticipated revenue shall be administered by the board of county commissioners through established county government administration, county agencies, existing or hereafter created, or by contract with chambers of commerce or similar nonprofit associations within the county in a manner prescribed by subsequent ordinance or resolution.

- (8) The clerk to the board of county commissioners is hereby directed to establish a county tourist development trust fund. All collections received by the tax collector from the tax imposed and levied by this article shall be placed in such trust fund.

SECTION 3. Conflicting Provisions. In the case of a direct conflict between any provision of this ordinance and a portion or provision of any other appropriate federal, state or county law, rule, code or regulation, the more restrictive shall apply.

SECTION 4. Severability. If any section, subsection, clause, phrase, word or provision of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such invalid unconstitutional portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions of this ordinance, provided the remaining portions effectuate the purpose and intent of this ordinance.

SECTION 5. Area Encompassed. The area encompassed by the tourist development tax is unchanged, including both the incorporated and unincorporated areas of Brevard County, Florida.

SECTION 6. Effective Date. 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. Unless specified otherwise, this ordinance shall take effect immediately upon adoption and filing as provided by law.

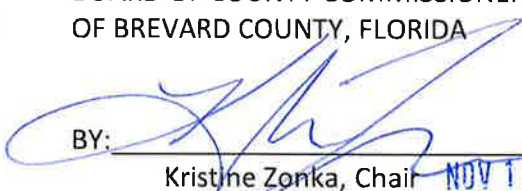
SECTION 7. Inclusion in the Code. It is the intention of the Board of County Commissioners that the provisions of this ordinance shall become and be made a part of the Brevard County Code of Ordinances; and that the sections of this ordinance may be renumbered or re-lettered and that the word "ordinance" may be changed to "section," "article," or such other appropriate word or phrase in order to accomplish such intentions.

DONE, ORDERED AND ADOPTED, in regular session, this 15 day of Nov. 2022.

Attest:

BY: 
Rachel Sadoff, Clerk
(SEAL)

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA

BY: 
Kristine Zonka, Chair NOV 15 2022
(as approved by the Board on _____)