

ORDINANCE NO. 2024-__

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Attest:

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA

BY: _____
Rachel Sadoff, Clerk

BY: _____
Jason Steele, Chair
(as approved by the Board on _____)

(SEAL)