



Brevard County Board of County Commissioners

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Legislation Text

File #: 5595, **Version:** 1

Subject:

Revisions to BCC-97 Providing for the Advertisement of Certain Postponed or Continued Public Hearings, and Amending the Board's Public Comment Procedures

Fiscal Impact:

The cost of re-advertisements required when public hearings on the proposed enactment of ordinances are continued or postponed. The majority of re-advertisements are expected to be published on the County's publicly accessible website at minimal cost.

Dept/Office:

County Attorney's Office

Requested Action:

It is requested that the Board approve the revised BCC-97 policy to provide for the advertisement of certain postponed or continued public hearings relating to the enactment of ordinances, and to amend the Board's public comment procedures.

Summary Explanation and Background:

In the recent case of *Testa v. Town of Jupiter Island*, No. 4D22-432, 2023 WL 1808293, (Fla. 4th DCA Feb. 8, 2023), the Fourth District Court of Appeal held that when a municipality postpones a public hearing on the proposed enactment of an ordinance, the subsequent hearing must be noticed in the same manner as the initial hearing. The court ruled that the notice of proposed enactment for the first meeting is not effective for the later meeting date.

The holding in the *Testa* case conflicts with other legal precedents and longstanding practice, and its application should be limited to its specific facts and the municipal ordinance enactment process. That said, until the *Testa* holding is addressed by legislation or clarifying case law, the conservative approach for counties is to advertise postponed or continued ordinance enactment hearings in the same manner that the initial hearing was advertised. It is requested that the Board amend subsection III.E.2. of BCC-97 accordingly.

Section 125.66, Florida Statutes, generally requires publication as provided in chapter 50, Florida Statutes, at least 10 days before the meeting to enact or amend a county ordinance. Going forward, most of the re-advertisements that will be required by this policy revision will be published on the County's publicly accessible website at minimal cost.

Additionally, based on the Chair's direction at the March 7, 2023 meeting, it is requested that the Board amend section III.G. of BCC-97 to remove the thirty-minute time limit from the public comment section which follows the consent agenda during each regular meeting, and to eliminate the second public comment section.

Clerk to the Board Instructions:

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