



City of Vero Beach Appeal

TO: Indian River County Board of County Commissioners, c/o Jeffrey R. Smith,
Clerk of the Circuit Court

FROM: City Council, City of Vero Beach

Re: Appeal pursuant to § 100.06 – Appeal of Tourist Development Council May 11,
2022, action to exclude City of Vero Beach proposal from consideration for
Tourist Development Tax Dollars.

DATE: June 7, 2022

Pursuant to Section 100.06 of the Code of Ordinances of Indian River County (“IRC” or “County”), the City Council of the City of Vero Beach (“Vero Beach”) respectfully submits this Appeal to the Board of County Commissioners. Vero Beach seeks to reverse or modify the decision and/or recommendation from the Tourist Development Council (“TDC”) on May 11, 2022, to exclude Vero Beach from receiving funds generated under the tourist development tax collected in the subcounty special tax district of Vero Beach.

On April 29, 2022, Vero Beach submitted a Tourist Tax Funding Request to the County, seeking funding for improvement of the Humiston Beach Lifeguard Tower and Pavilion, a popular beach park with over 100,000 visitors each year. On May 11, 2022, the TDC removed the application from consideration and recommended against funding for Vero Beach. Vero Beach submits that this decision by the TDC was in error, and in support of this appeal to reverse or modify the wrongful decision of the TDC, Vero Beach hereby states as follows:

Background:

1. Section 125.0104, Florida Statutes, (also known as the “Local Option Tourist Development Act” or the “Act”) authorizes counties in Florida to enact and levy local option taxes on transient rental charges (“Tourist Development Tax” or “tourist tax”) to be used in various ways to promote tourism within the county or within the subcounty special taxing district where it is collected. Section 125.0104 prescribes the authorized uses of tourist tax revenues, which includes tourism marketing, water or beach-oriented projects, and construction of tourist-related facilities.
2. The County was able to enact the tourist tax in IRC only via consent of the voters in the two subcounty taxing districts it created in 1987, by Ordinance 87-11. In that ordinance, IRC developed a County plan for tourist development as required by the statute, created

the TDC, established authorized uses for the tax, and called for referendum approval of the collection of tourist tax in two subcounty taxing districts, with one subcounty taxing district encompassing the City of Vero Beach (District 1), and the other encompassing the remainder of the County (District 2).

3. The statutorily-required County plan that was approved via a referendum of voters of Vero Beach demonstrates that voters approved District 1's (Vero Beach) priorities of beach cleaning, dune restoration, revegetation, and maintenance, Chamber of Commerce Tourist Information, and Beach Park Maintenance, which would be granted \$276,900.00.¹ Thus, the County plan adopted by enabling ordinance and approved by the voters of Vero Beach specifically provided for beach park maintenance within the Vero Beach tax district. The approval by voters was also explicit that the tax was to be levied consistent with § 125.0104, stating that "In all matters the Indian River County Tourist Development Council shall be governed by compliance with Section 125.0104, Florida Statutes, 1985, as amended by Chapter 86-4, Laws of Florida, and as may be hereafter amended." IRC Ordinance No. 87-11.
4. Since that time, the Florida Legislature has amended § 125.0104 to expand the authorized uses of funds generated by the tourist tax. In 2016, the Legislature broadened the authorized additional uses for the tax for certain coastal communities, explicitly allowing a county or municipality in some circumstances to use the tax to reimburse expenses incurred in providing public safety services and law enforcement services, which are needed to address impacts related to increased tourism and visitors to an area. § 125.0104(5)(c). Then in 2018, the Act was amended to authorize a county to use tourist tax revenues to develop and operate public facilities within the boundaries of the county or subcounty special taxing district in which the tax is levied, where the public facilities are needed and are recommended by the tourist development council. See Chapter 2018-118, L.O.F. (CS/HB 7087).
5. The County also passed several ordinances since the referendum, purporting to amend the implementation of the tourist tax. Currently the tourist tax is divided into three funds – Fund 119, Tourist Development Fund (controlled by TDC); Fund 128 – Beach Restoration, and Fund 308 – Jackie Robinson Training Complex (Dodgertown Capital Reserve). Despite amending the ordinance to add additional tax, the County has not expanded the authorized uses of the tax in accordance with § 125.0104.
6. The tourist tax revenue continues to grow each year. Both districts – Vero Beach and the remainder of the County – have enjoyed a 39.6% increase, year to date, in collection of the tourist tax. The County reports that revenue from the tax are above budgeted projections by 40.5% for the month of April '22 and above budgeted projections by \$991,427, or 61.1%, for the year. The County now enjoys a "Reserve for Contingency" and "Cash Forward" fund of \$1,898,971.00. It bears repeating that roughly half of the tourist tax is generated and collected within the special subcounty tax district of Vero Beach.

¹ According to the Bureau of Labor Statistics, \$276,900.00 in November 1987 has the same buying power as \$693,711.00 in April 2022.

7. The consistent increase in tourist tax collection correlates with the increase in tourists to Indian River County and Vero Beach. Through the first three months of 2022, Humiston Beach Park had approximately 26,500 visitors to the guarded beach area, and in 2021, approximately 123,000 people enjoyed Humiston Beach Park in the guarded lifeguard area.
8. This steady influx and increase in tourism has precipitated this application for improvement of the Humiston Beach Lifeguard Tower and Pavilion. Vero Beach began its application process on March 1, 2022, as soon as it received the application from the County. Vero Beach successfully submitted its application on April 29, 2022, to request funding for Humiston Beach Lifeguard Tower and Pavilion improvements.
9. After the application process had begun, but before submission, the County changed its Outside Agency Funding Policy related to the TDC. The revision dated March 15, 2022, states: "The TDC will not accept or fund grant applications from other governmental agencies or municipalities."
10. At its May 11, 2022, meeting, County staff advised the TDC of the newly-adopted policy excluding municipalities and other government agencies from submitting or receiving funds from the tourist tax, and removed Vero Beach's application from consideration. The TDC's recommendation to the Board of County Commissioners excludes Vero Beach's request for tourist tax funds to finance beach park facilities within Humiston Beach Park.
11. Financing beach park facilities fits squarely within the authorized uses of § 125.0104, which states that tourist tax revenue is authorized to be used "to finance beach park facilities, or beach, channel, estuary, or lagoon improvement, maintenance, renourishment, [and] restoration." § 125.0104(5)(a)5. The statutorily-required County plan, approved by the voters by referendum, also specifically appropriated funding to beach park maintenance within Vero Beach. Moreover, under the statute, tourist tax is authorized for projects that directly impact the quality of the Indian River Lagoon, which would greatly benefit all residents of the County and its visitors to our waterways. Unfortunately, under the County's current policies, the TDC and the County would not even consider such a project for funding.
12. The action of the TDC to exclude Vero Beach from consideration of receiving tourist tax dollars is contrary to the plain language and intent of § 125.0104. IRC's enabling ordinance levying the tax was clear that: "In all matters the Indian River County Tourist Development Council shall be governed by compliance with Section 125.0104, Florida Statutes, 1985, as amended by Chapter 86-4, Laws of Florida, and as may be hereafter amended." By excluding Vero Beach and any other municipalities from receiving tourist tax funds, the TDC is not acting in compliance with § 125.0104, which does authorize municipalities to directly receive tourist tax funds when the use is authorized by the statute.
13. The action of the TDC to exclude Vero Beach from consideration for receiving tourist tax dollars is also contrary to the referendum approved by the voters in the subcounty tax district of Vero Beach. As noted above, the TDC is governed by compliance with § 125.0104, as amended, which usurps any conflicting County policies. The policy decision

to exclude municipalities from receiving tourist tax funds is also contradicted by the County plan that specifically dedicated funds directly to beach park maintenance within Vero Beach. Arbitrarily excluding municipalities from receiving tourist tax grants for authorized projects deprives residents and tourists from receiving the intended benefit of the tourist tax.

Request and Recommendation by City of Vero Beach:

Vero Beach respectfully requests that the Board of County Commissioners of Indian River County overturn the recommendation of the TDC to exclude Vero Beach from funds generated by the tourist tax. Specifically, in this instance the TDC recommended that Vero Beach receive no funds for improvement of the Humiston Beach Lifeguard Tower and Pavilion. Vero Beach submits that its suggested use of funds should have been considered by the TDC because the use of the funds would be an authorized use under § 125.0104, and because the Florida Legislature and legal precedent explicitly states that tourist tax funds may be granted to municipalities. Alternatively, the Board could consider funds from Fund 128 to reimburse expenditures for this important public project to ensure tourist-ready beaches.

Vero Beach also requests the County to reconsider its recently changed policy to exclude all municipalities outright from tourist tax funds. The intent of § 125.0104 was never to exclude municipalities from receiving tourist tax funds; instead, the language of § 125.0104 and clear legal precedent demonstrates that a municipality may be and often is a direct recipient of the funds to finance important public projects. Many counties throughout Florida have partnered directly with other municipalities in order to reimburse public projects that greatly enhance the entire region. Depriving municipalities of tourist tax funds also deprives residents of Indian River County and its visitors from enjoying public projects that the Florida Legislature and the voters of Vero Beach intended to be financed by the tourist tax.

Conclusion:

For the foregoing reasons, the Board of County Commissioners should consider Vero Beach's proposal to receive funds for improvement of the Humiston Beach Lifeguard Tower and Pavilion, and should grant tourist tax funds to the City of Vero Beach to complete this important public project to ensure our beaches are friendly and safe for increased tourist beach activity. Additionally, in the best interest of Indian River County and the municipalities therein, Vero Beach requests for the County to abandon its outside agency funding policy barring municipalities from receiving tourist tax funds, and allow for all uses authorized under Florida law, which will greatly benefit Indian River County and its visitors.

Attachments:

- Indian River County Tourist Tax Funding Request
- May 11, 2022 Minutes – TDC (Not yet posted)

cc: Board of County Commissioners, Indian River County
Monte K. Falls, P.E., City Manager, City of Vero Beach
John S. Turner, City Attorney, City of Vero Beach
Jason Brown, County Administrator
Dylan Reingold, County Attorney