

ORDINANCE NO. 2018-29

1 AN ORDINANCE OF THE BOARD OF COUNTY
 2 COMMISSIONERS OF BROWARD COUNTY, FLORIDA,
 3 RELATING TO THE CHARTER COUNTY AND REGIONAL
 4 TRANSPORTATION SYSTEM SALES SURTAX
 ("TRANSPORTATION SURTAX"); REPEALING AND
 5 REPLACING BROWARD COUNTY ORDINANCE
 NO. 2016-32 RELATING TO ARTICLE V OF CHAPTER 31½
 6 OF THE BROWARD COUNTY CODE OF ORDINANCES
 ("CODE"), FOR THE PURPOSE OF LEVYING, SUBJECT TO
 APPROVAL BY REFERENDUM, A ONE PERCENT (1%)
 7 TRANSPORTATION SURTAX FOR A PERIOD OF THIRTY
 (30) YEARS; CREATING A SEGREGATED TRUST FUND
 8 INTO WHICH ALL TRANSPORTATION SURTAX
 PROCEEDS SHALL BE DEPOSITED; PROVIDING FOR THE
 ESTABLISHMENT OF AN INDEPENDENT
 9 TRANSPORTATION SURTAX OVERSIGHT BOARD TO
 OVERSEE THE USE OF ALL TRANSPORTATION SURTAX
 10 PROCEEDS; AND PROVIDING FOR AMENDMENTS,
 SEVERABILITY, INCLUSION IN THE CODE, AND AN
 11 EFFECTIVE DATE.

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 13 (Sponsored by the Board of County Commissioners)

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 15 WHEREAS, Section 212.055(1), Florida Statutes, provides for the levy of a Charter
 16 County and Regional Transportation System Sales Surtax ("Transportation Surtax")
 17 through enactment of an ordinance, subject to approval by a majority of the countywide
 18 electors voting in a referendum election on the Transportation Surtax; and

19 WHEREAS, in 2016, the Board of County Commissioners of Broward County,
 20 Florida (the "Board"), enacted Ordinance No. 2016-32 to levy, subject to approval by
 21 countywide referendum, a Transportation Surtax at a rate of one-half percent (0.5%) for a
 22 period of thirty (30) years (the "2016 Transportation Surtax Ballot Question"); and

23 WHEREAS, the 2016 Transportation Surtax Ballot Question was approved by a
 24 majority of the voters casting a ballot thereon in the November 2016 general election; and

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1 WHEREAS, according to the ballot language, the 2016 Transportation Surtax Ballot
2 Question would not be effectuated unless both it and a separate infrastructure surtax ballot
3 measure received a majority vote of the participating electorate; and
4 WHEREAS, the infrastructure surtax ballot measure did not receive majority
5 support, and therefore no Transportation Surtax went into effect; and
6 WHEREAS, the Board desires to levy a Transportation Surtax, as further described
7 below, to be considered by the countywide voters at the General Election on November 6,
8 2018; and
9 WHEREAS, if the Transportation Surtax is approved by referendum at the General
10 Election on November 6, 2018, the proceeds of the Transportation Surtax shall be
11 expended for only those purposes authorized in Section 212.055(1)(d), Florida Statutes,
12 with oversight of expenditures by an independent oversight board; and
13 WHEREAS, to provide essential funding for critical transportation and transit needs
14 for the benefit of present and future generations, the Board desires for the levy of the
15 Transportation Surtax to remain in effect for a period of thirty (30) years ending on
16 December 31, 2048, at which time the Transportation Surtax shall automatically sunset
17 and expire,
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19 BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF
20 BROWARD COUNTY, FLORIDA:
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1 Section 1. Article V, including Sections 31½-71 through 31½-75 of
 2 Chapter 31½ of the Broward County Code of Ordinances, is hereby repealed and
 3 replaced to read as follows:

4 [Underlining omitted]

5 **ARTICLE V. BROWARD COUNTY TRANSPORTATION SURTAX**

6 **Sec. 31½-71. Short title.**

7 This article shall be known and may be cited as the "Broward County
 8 Transportation Surtax Ordinance."

9 **Sec. 31½-72. Levy of Transportation Surtax.**

10 Pursuant to Section 212.055(1), Florida Statutes, and subject to approval by a
 11 majority of the electors of Broward County voting in a referendum at the General
 12 Election on November 6, 2018, there is hereby levied, for a period of thirty (30) years,
 13 commencing at 12:01 a.m. on January 1, 2019, and expiring at 11:59 p.m. on
 14 December 31, 2048, a one percent (1%) Charter County and Regional Transportation
 15 System Sales Surtax ("Transportation Surtax") on all transactions taxable pursuant to
 16 Section 212.054(2), Florida Statutes, subject to certain exceptions as further provided by
 17 Florida law.

18 **Sec. 31½-73. Transportation Surtax Trust Fund.**

19 There is hereby created the Broward County Transportation Surtax Trust Fund
 20 ("Trust Fund") into which all Transportation Surtax proceeds shall be deposited. The
 21 designation and establishment of the Trust Fund, and the establishment and maintenance
 22 of all accounts and subaccounts established within the Trust Fund, shall be consistent with
 23 generally accepted governmental accounting principles. Cash and investments required
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1 to be accounted for in the Trust Fund may not be commingled with any other funds,
2 including other transportation or transit funds.

3 **Sec. 31½-74. Use of Transportation Surtax proceeds.**

4 Transportation Surtax proceeds shall be collected, applied, disbursed, and
5 expended only for authorized transportation and transit purposes, in accordance with
6 applicable law including, specifically, Sections 212.054 and 212.055(1), Florida Statutes.

7 **Sec. 31½-75. Independent Transportation Surtax Oversight Board.**

8 To ensure accountability and transparency in the expenditure of Transportation
9 Surtax proceeds, there is hereby established an Independent Transportation Surtax
10 Oversight Board ("Oversight Board"). The Oversight Board shall review and approve all
11 proposed expenditures of Transportation Surtax proceeds to ensure consistency with the
12 requirements of Section 212.055(1)(d), Florida Statutes. No expenditure of
13 Transportation Surtax proceeds may be made unless such expenditure has been
14 approved by the Oversight Board.

15 (a) Composition. The Oversight Board shall be comprised of the following
16 nine (9) members:

- 17 (1) One professional in the field of accounting;
- 18 (2) One professional in the field of finance;
- 19 (3) One professional in the field of land use or urban planning;
- 20 (4) One professional in the field of engineering or construction management;
- 21 (5) One professional in the field of architecture;
- 22 (6) One professional in the field of environmental science;
- 23 (7) One resident consumer of public transportation;
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- 1 (8) One former city or county manager; and
- 2 (9) The Director of the Broward College Office of Supplier Relations and
3 Diversity, or such person's designee.
- 4 (b) Other Qualifications. No member of the Oversight Board shall, at any time
5 during his or her term, (i) be an elected official; (ii) have an employment or contractual
6 relationship with, or be employed by any entity that has a contractual relationship with,
7 Broward County; or (iii) be employed by any recipient of Transportation Surtax proceeds
8 or any entity that has submitted or intends to submit an application for Transportation
9 Surtax proceeds funding during the current, prior, or next fiscal year (including, but not
10 limited to, any receipt of funding or application submitted by municipalities within
11 Broward County or by the Broward Metropolitan Planning Organization ("Broward
12 MPO")).
- 13 (c) Appointing Authority. The following seven (7) persons (collectively, the
14 "Appointing Authority"), none of whom may be a current elected official, shall, based on
15 procedures established by majority vote, make nominations for members of the
16 Oversight Board and shall, also by majority vote, appoint the nine (9) members of the
17 Oversight Board on or before January 1, 2019 (any designee may be removed and
18 replaced at any time by the designor):
- 19 (1) The designee of the Broward Workshop;
- 20 (2) The designee of the Broward County Council of Chambers (of
21 Commerce);
- 22 (3) The Broward County Administrator or the Administrator's designee;
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- 1 (4) The Director of the Florida Center for Environmental Studies at Florida
2 Atlantic University or such person's designee;
- 3 (5) The President/CEO of the Urban League of Broward County or such
4 person's designee;
- 5 (6) The President/CEO of Hispanic Unlty of Florida in Broward County or such
6 person's designee; and
- 7 (7) The designee of the Broward League of Cities.
- 8 (d) Term of Oversight Board Members. Oversight Board members shall serve
9 four-year terms and may be reappointed for successive terms.
- 10 (1) Removal. A member of the Oversight Board may be removed for good
11 cause determined by supermajority vote of the Appointing Authority, and
12 shall be removed by a majority vote of the Appointing Authority if the
13 member no longer meets the applicable categorical requirement or
14 qualifications for membership.
- 15 (2) Process for filling vacancies. Any member appointed to replace a member
16 who has been removed or who resigns shall serve for the balance of the
17 term of such member. The Appointing Authority shall meet as required to
18 appoint or remove members.
- 19 (e) Compensation. Members of the Oversight Board shall not receive any
20 compensation for their service on such board.
- 21 (f) Oversight Board Meetings. The Oversight Board shall meet at least
22 quarterly. The members shall elect a chairperson to preside over meetings. The
23 Oversight Board shall establish its own rules of procedure for conducting its meetings.
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1 (g) Staffing. Broward County shall provide sufficient staff to enable the
2 Oversight Board to efficiently perform its functions, and shall retain such consultants as
3 the Oversight Board determines necessary to perform its responsibilities.

4 (h) Applications for Funding. Any municipality within Broward County or the
5 Broward MPO may submit an application for project funding to the Board of County
6 Commissioners of Broward County ("County Commission") for the County
7 Commission's initial consideration. The applications will be on a form approved by the
8 County Commission, will specify the amount of funding being sought and how such
9 funding is intended to be expended, and will include, among other requirements, a
10 statement that any recipient of such proceeds assents to (i) having its use of the
11 proceeds audited by an independent auditor retained by the Oversight Board; and (ii)
12 continuing project review by the Oversight Board.

13 Prior to submitting an application for funding to the County Commission,
14 municipalities shall submit their proposed projects to the Broward MPO, which shall
15 review, rank, and prioritize the submitted projects based upon each project's ability to
16 alleviate traffic congestion and enhance connectivity. The Broward MPO shall provide a
17 list ranking the proposed municipal projects to the County Commission for its
18 consideration by February 1 of each year. If the MPO fails to timely do so,
19 municipalities may submit applications directly to the County Commission.

20 Consistent with the process specified in paragraph (i) immediately below, the
21 County Commission may determine to (a) submit the municipal or the Broward MPO
22 application, without modification, to the Oversight Board; (b) notify the municipality or
23 the Broward MPO that the application will not be submitted for Oversight Board
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1 consideration; or (c) return the application to the municipality or the Broward MPO with
2 proposed revisions. If the County Commission returns the application with proposed
3 revisions, and the municipality or the Broward MPO accepts in writing all of the
4 proposed revisions, the County Commission shall thereafter forward the application to
5 the Oversight Board for its consideration. If the municipality or the Broward MPO
6 accepts some but not all of the County Commission's proposed revisions, the County
7 Commission shall consider the revised application to determine whether it should be
8 forwarded for Oversight Board consideration.

9 (i) Approval of Projects and Expenditures. The County Commission, after
10 considering the recommendations of County staff and any project ranking provided by
11 the Broward MPO, will determine which proposed projects and expenditures of
12 Transportation Surtax proceeds, whether initiated by the County or by some other
13 governmental entity, will be submitted to the Oversight Board, and will further determine
14 the order of submittal and priority of proposed projects and expenditures. The
15 Oversight Board shall consider only proposed projects and expenditures submitted by
16 the County Commission. The Oversight Board shall determine whether the proposed
17 project or expenditure is permissible under Section 212.055(1)(d), Florida Statutes. If
18 the Oversight Board determines that it is permissible, the Oversight Board shall approve
19 the proposed project or expenditure and shall send written notice thereof to the Broward
20 County Administrator. If an approved project or expenditure is only partially fundable
21 with Transportation Surtax proceeds pursuant to Section 212.055(1)(d), Florida
22 Statutes, the Oversight Board's written approval shall identify those portions of the
23 project or expenditure fundable with Transportation Surtax proceeds and shall state the
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1 total dollar value of those portions. The written notice of approval may contain
2 recommendations made by the Oversight Board regarding best practices or other
3 methods that may be employed to improve a proposed project or expenditure. If the
4 Oversight Board determines that a proposed project or expenditure is not permissible
5 under Section 212.055(1)(d), Florida Statutes, the Oversight Board shall reject the
6 proposed project or expenditure and shall, in writing, specify the reasons for such
7 rejection. Rejected projects and expenditures may be modified and resubmitted by the
8 County Commission for subsequent consideration by the Oversight Board. The
9 Oversight Board shall issue its written notice of approval or rejection within one hundred
10 twenty (120) days after receipt of the proposed project or expenditure submitted by the
11 County Commission.

12 (j) Project Oversight. All approved projects and expenditures shall be
13 subject to the Oversight Board's review, critique, and analysis for the duration of the
14 project or expenditure. The Oversight Board shall issue annual reports on the
15 performance of ongoing projects and shall provide recommendations for any proposed
16 performance improvements.

17 (k) Annual Audits. The Oversight Board shall retain an independent certified
18 public accountant to perform and complete annual audits of all projects funded with
19 Transportation Surtax proceeds and of all Transportation Surtax proceeds received,
20 maintained, and expended. The audit results shall be submitted to the Oversight Board
21 and to the Broward County Administrator by no later than ninety (90) days after the end
22 of each calendar year during which any Transportation Surtax proceeds are expended.

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1 Section 2. AMENDMENTS.

2 No amendment, revision, or repeal of this Broward County Transportation Surtax
3 Ordinance, or reduction in the rate of the Transportation Surtax, may take effect if it
4 would materially impair the contract rights of the owners of any bonds, notes, or other
5 instruments of indebtedness payable, in whole or in part, directly or indirectly, from the
6 proceeds of the Transportation Surtax.

7 Section 3. CERTIFIED COPY OF THE ORDINANCE.

8 A certified copy of this Ordinance shall be furnished to the Florida Department of
9 Revenue within ten (10) days after approval.

10 Section 4. SEVERABILITY.

11 If any portion of this Ordinance is determined by any court to be invalid, the
12 invalid portion shall be stricken, and such striking shall not affect the validity of the
13 remainder of this Ordinance. If any court determines that this Ordinance, or any portion
14 hereof, cannot be legally applied to any individual(s), group(s), entity(ies), property(ies),
15 or circumstance(s), such determination shall not affect the applicability hereof to any
16 other individual, group, entity, property, or circumstance.

17 Section 5. INCLUSION IN CODE.

18 It is the intention of the Board that the provisions of this Ordinance shall become
19 and be made a part of the Broward County Code; and that the sections of this
20 Ordinance may be renumbered or relettered and the word "ordinance" may be changed
21 to "section," "article," or such other appropriate word or phrase in order to accomplish
22 such intentions.

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1 Section 6. EFFECTIVE DATE.

2 (a) This Ordinance shall become effective as provided by law.

3 (b) Repeal Upon Electorate Disapproval. If the levy of the Transportation
4 Surtax is not approved by a majority of the electors of Broward County voting thereon in
5 the referendum at the General Election on November 6, 2018, this Broward County
6 Transportation Surtax Ordinance shall expire and be deemed repealed in its entirety on
7 December 31, 2018, without further action by the County Commission.

8 (c) Sunset. Except as provided in Section 6(b) above, the Transportation
9 Surtax shall "sunset" and expire on December 31, 2048, at 11:59 p.m., without further
10 action by the County Commission, at which time the Transportation Surtax levied
11 hereunder shall be deemed repealed, terminated, and of no further force and effect,
12 except that the requirements of this Ordinance relating to the administration, use, or
13 oversight of Transportation Surtax proceeds shall survive the expiration of the
14 Transportation Surtax, and shall be fully enforceable in a court of competent jurisdiction.

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ENACTED June 5, 2018
FILED WITH THE DEPARTMENT OF STATE June 6, 2018
EFFECTIVE June 6, 2018

Approved as to form and legal sufficiency:
Andrew J. Meyers, County Attorney

By /s/ Angela J. Wallace 06/05/18
Angela J. Wallace (date)
Deputy County Attorney

AJW/hb
06/05/18
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