

ORDINANCE NO. 2018-

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  
 5 ("TRANSPORTATION SURTAX"); REPLACING BROWARD  
 6 COUNTY ORDINANCE NO. 2016-32 RELATING TO  
 7 ARTICLE V OF CHAPTER 31½ OF THE BROWARD  
 8 COUNTY CODE OF ORDINANCES ("CODE"), FOR THE  
 9 PURPOSE OF LEVYING, SUBJECT TO APPROVAL BY  
 10 REFERENDUM, A ONE PERCENT (1%)  
 11 TRANSPORTATION SURTAX FOR A PERIOD OF THIRTY  
 12 (30) YEARS; CREATING A SEGREGATED TRUST FUND  
 13 INTO WHICH ALL TRANSPORTATION SURTAX  
 14 PROCEEDS SHALL BE DEPOSITED; PROVIDING FOR THE  
 15 ESTABLISHMENT OF A TRANSPORTATION SURTAX  
 16 OVERSIGHT BOARD TO OVERSEE THE USE OF  
 17 TRANSPORTATION SURTAX PROCEEDS FOR  
 18 AUTHORIZED TRANSPORTATION AND TRANSIT  
 19 PURPOSES; AND PROVIDING FOR AMENDMENTS,  
 20 SEVERABILITY, INCLUSION IN THE CODE, AND AN  
 21 EFFECTIVE DATE.

(Sponsored by the Board of County Commissioners)

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 twenty (20) 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

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5 support, and therefore Ordinance No. 2016-32 was repealed by operation of law and no  
6 Transportation Surtax went into effect; and

7           WHEREAS, the Board desires to levy a Transportation Surtax, as further described  
8 below, to be considered by the countywide voters at the General Election on November 6,  
9 2018; and

10           WHEREAS, if the Transportation Surtax is approved by referendum at the General  
11 Election on November 6, 2018, the proceeds of the Transportation Surtax shall be  
12 expended for transportation and transit purposes authorized in  
13 Section 212.055(1)(d), Florida Statutes, including: (1) for the planning, development,  
14 operation, and maintenance of roads and bridges, bus systems, fixed guideway rapid  
15 transit systems, and on-demand transportation services; (2) for the payment of principal  
16 and interest on bonds issued for authorized transportation and transit projects; and (3) as  
17 a pledge for bonds issued for such authorized transportation and transit projects, with  
18 oversight of expenditures by an independent Transportation Surtax Oversight Board; and

19           WHEREAS, to provide essential funding for critical transportation and transit needs  
20 for the benefit of present and future generations, the Board desires for the levy of the  
21 Transportation Surtax to remain in effect for a period of thirty (30) years ending on  
22 December 31, 2048, at which time the Transportation Surtax shall automatically sunset  
23 and expire,

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1 BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF  
2 BROWARD COUNTY, FLORIDA:

3  
4 Section 1. Article V, including Sections 31½-71 through 31½-75, of  
5 Chapter 31½ of the Broward County Code of Ordinances is hereby replaced to read as  
6 follows:

7 [Underlining omitted]

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

9 **Sec. 31½-71. Short title.**

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

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

13 Pursuant to Section 212.055(1), Florida Statutes, and subject to approval by a  
14 majority of the qualified electors of Broward County voting in a referendum at the  
15 General Election on November 6, 2018 ("Ballot Measure"), there is hereby levied, for a  
16 period of thirty (30) years, commencing at 12:01 a.m. on January 1, 2019, and expiring at  
17 11:59 p.m. on December 31, 2048, a one percent (1%) Charter County and Regional  
18 Transportation System Sales Surtax ("Transportation Surtax") on all transactions taxable  
19 pursuant to Section 212.054(2) Florida Statutes, including the first Five Thousand Dollars  
20 (\$5,000) of the sales amount of any items of tangible personal property, subject to certain  
21 exceptions as further provided by Florida law.

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

2           There is hereby created the Broward County Transportation Surtax Trust Fund  
3 ("Trust Fund") into which all Transportation Surtax proceeds shall be deposited. Broward  
4 County is authorized to establish accounts and subaccounts within the Trust Fund as may  
5 be necessary or useful for administering the Transportation Surtax proceeds in compliance  
6 with all legal requirements. Broward County is authorized and directed to take such  
7 additional steps as necessary or useful under generally accepted governmental  
8 accounting principles to ensure that balances in the accounts and subaccounts of the  
9 Trust Fund at the end of each fiscal year carry forward to the subsequent fiscal year. The  
10 designation and establishment of the Trust Fund, and the various accounts and  
11 subaccounts therein, shall be in keeping with generally accepted governmental accounting  
12 principles. Cash and investments required to be accounted for in the Trust Fund may not  
13 be comingled with any other funds, including other transportation or transit funds.

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

15           Transportation Surtax proceeds shall be collected, allocated, disbursed, and  
16 expended for authorized transportation and transit purposes, in accordance with  
17 Sections 212.054 and 212.055(1), Florida Statutes.

18           **Sec. 31½-75. Transportation Surtax Oversight Board.**

19           To ensure accountability, objectivity, and transparency in the expenditure of  
20 Transportation Surtax proceeds, there is hereby established an independent  
21 Transportation Surtax Oversight Board (the "Oversight Board"). The Oversight Board  
22 shall review and approve proposed transportation projects funded, in whole or part, with  
23 Transportation Surtax proceeds, for consistency with the requirements of  
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1 Section 212.055(1), Florida Statutes. Transportation projects shall be funded with  
2 Transportation Surtax proceeds as approved by the Oversight Board.

3 (a) Composition. The Oversight Board shall be comprised of the following  
4 nine (9) members: one (1) professional in each of the following fields: accounting,  
5 finance, land use or urban planning, law, engineering or construction management,  
6 architecture, and environmental science; one (1) former elected official; and one (1)  
7 former city or county manager. None of the members shall, at any time during their  
8 term, be an elected official or have an employment or contractual relationship with, or  
9 be employed by any entity that has a contractual relationship with, Broward County.  
10 The following five (5) persons (collectively, the "Appointing Authority"), none of whom  
11 may be a current elected official, shall, based on procedures established by majority  
12 vote, make nominations for members and shall, also by majority vote, appoint members  
13 on or before May 1, 2019 (any designee may be removed and replaced at any time by  
14 the designor):

- 15 1. The Secretary of the Florida Department of Transportation, District 4, or  
16 an employee of District 4 designated by the Secretary;
- 17 2. The designee of the Broward Workshop;
- 18 3. The designee of the Broward County Council of Chambers (of  
19 Commerce);
- 20 4. The Broward County Auditor or the Auditor's designee; and
- 21 5. The Director of the Florida Atlantic University Center for Environmental  
22 Studies or such person's designee.

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1 (b) Term of Oversight Board Members. Oversight Board members shall serve  
2 four-year terms and may be reappointed for successive terms. Members may be  
3 removed for good cause determined by supermajority vote of the Appointing Authority,  
4 and may be removed by a majority vote of the Appointing Authority if the members no  
5 longer meet the qualifications for membership. Any member appointed to replace a  
6 member who has been removed or who resigns shall serve for the balance of the term  
7 of such member. The Appointing Authority shall meet as required to appoint or remove  
8 members.

9 (c) Oversight Board Meetings. The Oversight Board shall meet quarterly.  
10 The members shall elect a chairperson to preside over meetings. The Oversight Board  
11 shall establish its own rules of procedure for conducting its meetings.

12 (d) Staffing. Broward County shall provide sufficient staff to enable the  
13 Oversight Board to efficiently perform its functions, and shall retain such consultants as  
14 the Oversight Board determines necessary to perform its responsibilities.

15 (e) Approval of Projects. All applications for projects funded by  
16 Transportation Surtax proceeds shall be submitted to the Oversight Board, which shall  
17 determine whether the project, as described in the project application, is permissible  
18 under Section 212.055(1)(d)(4), Florida Statutes. If the Oversight Board determines  
19 that it is permissible, the Oversight Board shall approve the project and shall send  
20 written notice thereof to the Broward County Administrator. If an approved project is  
21 only partially fundable with Transportation Surtax proceeds pursuant to  
22 Section 212.055(1)(d)(4), Florida Statutes, the Oversight Board's written approval shall  
23 identify those portions of the project fundable with Transportation Surtax proceeds and  
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1 shall state the total dollar value of those portions. The written notice of approval may  
2 contain recommendations made by the Oversight Board regarding best practices or  
3 other methods that may be employed to improve the project. If the Oversight Board  
4 determines that a proposed project is not permissible under Section 212.055(1)(d)(4),  
5 Florida Statutes, the Oversight Board shall reject the project and shall, in writing, specify  
6 the reasons why the project was rejected. Rejected projects may be modified and  
7 resubmitted for subsequent consideration by the Oversight Board. The Oversight Board  
8 shall issue its written notice of project approval or rejection within one hundred twenty  
9 (120) days after receipt of a completed project application.

10 (f) Project Oversight. All approved projects shall be subject to the Oversight  
11 Board's review, critique, and analysis for the duration of the project. The Oversight  
12 Board shall issue annual reports on the performance of ongoing projects and shall  
13 provide recommendations for any proposed performance improvements.

14 (g) Annual Audits. Broward County shall retain an independent certified  
15 public accountant to perform and complete annual audits of all projects approved by the  
16 Oversight Board and of all Transportation Surtax proceeds received, maintained, and  
17 expended.

18 Section 2. AMENDMENTS.

19 The Board may amend, revise, or repeal this Transportation Surtax Ordinance in  
20 the manner provided by law. However, no repeal, amendment, or revision of this  
21 Transportation Surtax Ordinance, or reduction in the rate of the Transportation Surtax,  
22 may take effect if it would materially impair the contract rights of the owners of any  
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1 bonds, notes, or other instruments of indebtedness payable in whole or in part, directly  
2 or indirectly, from the proceeds of the Transportation Surtax.

3 Section 3. SEVERABILITY.

4 If any portion of this Ordinance is determined by any Court to be invalid, the  
5 invalid portion shall be stricken, and such striking shall not affect the validity of the  
6 remainder of this Ordinance. If any Court determines that this Ordinance, or any portion  
7 hereof, cannot be legally applied to any individual(s), group(s), entity(ies), property(ies),  
8 or circumstance(s), such determination shall not affect the applicability hereof to any  
9 other individual, group, entity, property, or circumstance.

10 Section 4. INCLUSION IN CODE.

11 It is the intention of the Board of County Commissioners that the provisions of  
12 this Ordinance shall become and be made a part of the Broward County Code; and that  
13 the sections of this Ordinance may be renumbered or relettered and the word  
14 "ordinance" may be changed to "section," "article," or such other appropriate word or  
15 phrase in order to accomplish such intentions.

16 Section 5. EFFECTIVE DATE.

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

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

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1 (c) Sunset. Except as provided in Section 5(b) above, the Transportation  
2 Surtax shall "sunset" and expire on December 31, 2048, at 11:59 p.m., without further  
3 action by the Board, at which time the Transportation Surtax levied hereunder shall be  
4 deemed repealed, terminated, and of no further force and effect, except that the  
5 requirements of this Ordinance relating to the administration, use, or oversight of  
6 Transportation Surtax proceeds shall survive the expiration of the Transportation  
7 Surtax, and shall be fully enforceable in a court of competent jurisdiction.

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10 ENACTED

11 FILED WITH THE DEPARTMENT OF STATE

12 EFFECTIVE

13  
14 Approved as to form and legal sufficiency:  
15 Andrew J. Meyers, County Attorney

16 By /s/ Angela J. Wallace 03/23/18  
17 Angela J. Wallace (date)  
18 Deputy County Attorney

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21  
22 AJW/hb  
23 03/23/18  
24 2018 Transportation Surtax Ordinance  
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