

PROPOSED

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"); REPEALING AND
 6 REPLACING BROWARD COUNTY ORDINANCE NO. 2016-
 7 32 RELATING TO ARTICLE V OF CHAPTER 31½ OF THE
 8 BROWARD COUNTY CODE OF ORDINANCES ("CODE"),
 9 FOR THE PURPOSE OF LEVYING, SUBJECT TO
 10 APPROVAL BY 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 AN INDEPENDENT
 16 TRANSPORTATION SURTAX OVERSIGHT BOARD TO
 17 OVERSEE THE USE OF ALL TRANSPORTATION SURTAX
 18 PROCEEDS; AND PROVIDING FOR AMENDMENTS,
 19 SEVERABILITY, INCLUSION IN THE CODE, AND AN
 20 EFFECTIVE DATE.

21 (Sponsored by the Board of County Commissioners)

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

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

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

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underscored type are additions.

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
12 Section 212.055(1)(d), Florida Statutes, with oversight of expenditures by an independent
13 oversight board; and

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

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20 BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF
21 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 comingled 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), Florida Statutes. No expenditure of Transportation
13 Surtax proceeds may be made unless such expenditure has been approved by the
14 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 of 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 (including, but not limited to, the receipt of such proceeds by municipalities within
9 Broward County and the Broward Metropolitan Planning Organization ("Broward
10 MPO")).

11 (c) Appointing Authority. The following seven (7) persons (collectively, the
12 "Appointing Authority"), none of whom may be a current elected official, shall, based on
13 procedures established by majority vote, make nominations for members of the
14 Oversight Board and shall, also by majority vote, appoint the nine (9) members of the
15 Oversight Board on or before January 1, 2019 (any designee may be removed and
16 replaced at any time by the designor):

17 (1) The designee of the Broward Workshop;

18 (2) The designee of the Broward County Council of Chambers (of
19 Commerce);

20 (3) The Broward County Administrator or the Administrator's designee;

21 (4) The Director of the Florida Atlantic University Center for Environmental
22 Studies or such person's designee;

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1 (5) The President/CEO of the Urban League of Broward County or such
2 person's designee; and

3 (6) The President/CEO of Hispanic Unity Florida in Broward County or such
4 person's designee.

5 (d) Term of Oversight Board Members. Oversight Board members shall serve
6 four-year terms and may be reappointed for successive terms.

7 (1) Removal. A member of the Oversight Board may be removed
8 for good cause determined by supermajority vote of the Appointing
9 Authority, and shall be removed by a majority vote of the Appointing
10 Authority if the member no longer meets the applicable categorical
11 requirement or qualifications for membership.

12 (2) Process for filling vacancies. Any member appointed to replace a
13 member who has been removed or who resigns shall serve for the
14 balance of the term of such member. The Appointing Authority
15 shall meet as required to appoint or remove members.

16 (e) Compensation. Members of the Oversight Board shall not receive any
17 compensation for their service on such board.

18 (f) Oversight Board Meetings. The Oversight Board shall meet at least
19 quarterly. The members shall elect a chairperson to preside over meetings. The
20 Oversight Board shall establish its own rules of procedure for conducting its meetings.

21 (g) Staffing. Broward County shall provide sufficient staff to enable the
22 Oversight Board to efficiently perform its functions, and shall retain such consultants as
23 the Oversight Board determines necessary to perform its responsibilities.

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

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

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

18 (k) Annual Audits. The Oversight Board shall retain an independent certified
19 public accountant to perform and complete annual audits of all projects approved by the
20 Oversight Board and of all Transportation Surtax proceeds received, maintained, and
21 expended. The audit results shall be submitted to the Oversight Board and to the
22 Broward County Administrator by no later than ninety (90) days after the end of each
23 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 Transportation Surtax Ordinance, or
3 reduction in the rate of the Transportation Surtax, may take effect if it would materially
4 impair the contract rights of the owners of any bonds, notes, or other instruments of
5 indebtedness payable, in whole or in part, directly or indirectly, from the proceeds of the
6 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 of this Ordinance.

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 of County Commissioners that the provisions of
19 this Ordinance shall become and be made a part of the Broward County Code; and that
20 the sections of this Ordinance may be renumbered or relettered and the word
21 "ordinance" may be changed to "section," "article," or such other appropriate word or
22 phrase in order to accomplish 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 in the
5 referendum at the General Election on November 6, 2018, this Transportation Surtax
6 Ordinance shall expire and be deemed repealed in its entirety on December 31, 2018,
7 without further action by the Board.

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 Board, at which time the Transportation Surtax levied hereunder shall be
11 deemed repealed, terminated, and of no further force and effect, except that the
12 requirements of this Ordinance relating to the administration, use, or oversight of
13 Transportation Surtax proceeds shall survive the expiration of the Transportation
14 Surtax, and shall be fully enforceable in a court of competent jurisdiction.

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16 ENACTED

17 FILED WITH THE DEPARTMENT OF STATE

18 EFFECTIVE

PROPOSED

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

21 By /s/ Angela J. Wallace 05/04/18
22 Angela J. Wallace (date)
23 Deputy County Attorney

24 AJW/hb
05/04/18
2018 Transportation Surtax Ordinance
#285472

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