

**PROPOSED**

## ORDINANCE NO. 2018-

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

(Sponsored by the Board of County Commissioners)

WHEREAS, Section 212.055(1), Florida Statutes, provides for the levy of a Charter County and Regional Transportation System Sales Surtax ("Transportation Surtax") 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

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,

18  
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 (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 six (6) 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 Center for Environmental Studies at Florida  
22 Atlantic University 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 of 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 for good  
8 cause determined by supermajority vote of the Appointing Authority, and  
9 shall be removed by a majority vote of the Appointing Authority if the  
10 member no longer meets the applicable categorical requirement or  
11 qualifications for membership.

12 (2) Process for filling vacancies. Any member appointed to replace a member  
13 who has been removed or who resigns shall serve for the balance of the  
14 term of such member. The Appointing Authority shall meet as required to  
15 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 Consistent with the process specified in paragraph (i) immediately below, the  
12 County Commission may determine to (a) submit the municipal or the Broward MPO  
13 application, without modification, to the Oversight Board; (b) notify the municipality or  
14 the Broward MPO that the application will not be submitted for Oversight Board  
15 consideration; or (c) return the application to the municipality or the Broward MPO with  
16 proposed revisions. If the County Commission returns the application with proposed  
17 revisions, and the municipality or the Broward MPO accepts in writing all of the  
18 proposed revisions, the County Commission shall thereafter forward the application to  
19 the Oversight Board for its consideration. If the municipality or the Broward MPO  
20 accepts some but not all of the County Commission's proposed revisions, the County  
21 Commission shall consider the revised application to determine whether it should be  
22 forwarded for Oversight Board consideration.

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

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

8 (k) Annual Audits. The Oversight Board shall retain an independent certified  
9 public accountant to perform and complete annual audits of all projects approved by the  
10 Oversight Board and of all Transportation Surtax proceeds received, maintained, and  
11 expended. The audit results shall be submitted to the Oversight Board and to the  
12 Broward County Administrator by no later than ninety (90) days after the end of each  
13 calendar year during which any Transportation Surtax proceeds are expended.

14 Section 2. AMENDMENTS.

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

20 Section 3. CERTIFIED COPY OF THE ORDINANCE.

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

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1           Section 4.   SEVERABILITY.

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

8           Section 5.   INCLUSION IN CODE.

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

14          Section 6.   EFFECTIVE DATE.

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

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

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

5  
6 ENACTED

7 FILED WITH THE DEPARTMENT OF STATE

8 EFFECTIVE

**PROPOSED**

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

12 By /s/ Angela J. Wallace 05/24/18  
13 Angela J. Wallace (date)  
14 Deputy County Attorney

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