

PROPOSED

ORDINANCE NO. 2020-

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; AMENDING
5 SECTION 31½-75 OF THE BROWARD COUNTY CODE OF
6 ORDINANCES ("CODE") TO CONFORM IT TO VARIOUS
7 SUBSTANTIVE PROVISIONS AND PROCESSES
8 ESTABLISHED PURSUANT TO LATER-DEVELOPED
9 AGREEMENTS WITH THE BROWARD METROPOLITAN
10 PLANNING ORGANIZATION AND MUNICIPALITIES; AND
11 PROVIDING FOR AMENDMENTS, SEVERABILITY,
12 INCLUSION IN THE CODE, AND AN EFFECTIVE DATE.

(Sponsored by the Board of County Commissioners)

10 WHEREAS, the Board of County Commissioners of Broward County, Florida
11 ("Board"), enacted Ordinance No. 2018-29, the Broward County Transportation Surtax
12 Ordinance, codified in Section 31½-71, et seq., of the Broward County Code of Ordinances,
13 which levied a thirty (30) year one percent (1%) Transportation Surtax that was approved
14 by referendum at the General Election on November 6, 2018; and

15 WHEREAS, the Board has determined that amending the Transportation Surtax
16 Ordinance, to conform it to various substantive provisions and processes established
17 pursuant to later-developed agreements with various entities and to relocate procedural
18 provisions from the Transportation Surtax Ordinance to the Broward County Administrative
19 Code, is appropriate at this time,

21 BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF
22 BROWARD COUNTY, FLORIDA:

1 Section 1. Section 31½-75 of the Broward County Code of Ordinances is
2 hereby amended to read as follows:

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

4 . . .

5 (a) *Composition.* The Oversight Board shall be comprised of the following nine
6 (9) members:

7 (1) One professional in the field of accounting – A person who holds a license
8 in the State of Florida to practice public accounting or a person who is
9 practicing public accounting in this state pursuant to the practice privilege
10 granted in Section 473.3141, Florida Statutes;

11 (2) One professional in the field of finance – A person who holds a professional
12 degree and has practical experience in finance or banking;

13 (3) One professional in the field of land use or urban planning – A person who
14 holds a professional degree and has practical experience in land use or
15 urban planning;

16 (4) One professional in the field of engineering or construction management –
17 A person who is licensed to engage in the practice of engineering as defined
18 in Section 471.005, Florida Statutes, or a construction management
19 professional who is a licensed general contractor or a licensed building
20 contractor as defined in Section 489.105, Florida Statutes;

21 (5) One professional in the field of architecture – A person who is licensed to
22 engage in the practice of architecture pursuant to Section 481.213, Florida
23 Statutes;

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1 (6) One professional in the field of environmental science – A person who holds
2 a professional degree and has practical experience in environmental
3 science;

4 (7) One resident consumer of public transportation – A person who resides in
5 Broward County and is a user of the multimodal transportation system;

6 (8) One former city or county manager – A person who holds a professional
7 degree, has professional experience as a city manager or a county
8 manager, and is not currently employed as a city manager or a county
9 manager in the state; and

10 (9) The Director of the Broward College Office of Supplier Relations and
11 Diversity, or such person's designee.

12 . . .

13 (d) *Term of Oversight Board Members.* The Director of the Broward College
14 Office of Supplier Relations and Diversity shall serve for as long as he or she is employed
15 in that position. All other Oversight Board members shall serve four-year terms and may
16 be reappointed for successive terms. Any Oversight Board member who is appointed to
17 replace an Oversight Board member who has been removed or has resigned shall serve
18 for the balance of the term of such member.

19 (1) *Process for filling vacancies.* The Appointing Authority shall determine the
20 documentation required for applications to the Oversight Board.

21 ~~(1)~~ (2) *Removal.*

22 a. With the exception of the Director of the Broward College Office of
23 Supplier Relations and Diversity, A a member of the Oversight Board

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1 may be removed for good cause determined by supermajority vote
2 of the Appointing Authority, and shall be removed by a majority vote
3 of the Appointing Authority if the member no longer meets the
4 applicable categorical requirement or qualifications for membership.

5 b. The effective date of removal from the Oversight Board shall be the
6 earliest of the following, to the extent applicable:

7 1. The date provided in the member's resignation; or

8 2. The date provided in the written notice of removal of a
9 member by the Appointing Authority.

10 ~~(2) (3) *Process for filling vacancies.* Any member appointed to replace a member~~
11 ~~who has been removed or who resigns shall serve for the balance of the~~
12 ~~term of such member.~~ The Appointing Authority shall meet as required to
13 appoint or remove members.

14 (e) *Compensation.* Members of the Oversight Board shall not receive any
15 compensation for their service on such board. Reimbursement for travel and other
16 reasonable expenses directly related to service on the Oversight Board is permissible
17 and does not constitute compensation.

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.~~ Upon request
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1 by the Oversight Board, the County Administrator may designate additional staff and/or
2 retain consultants to assist the Oversight Board in the performance of its functions.

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

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

19 ~~Consistent with the process specified in paragraph (i) immediately below, the~~
20 ~~County Commission may determine to (a) submit the municipal or the Broward MPO~~
21 ~~application, without modification, to the Oversight Board; (b) notify the municipality or the~~
22 ~~Broward MPO that the application will not be submitted for Oversight Board consideration;~~
23 ~~or (c) return the application to the municipality or the Broward MPO with proposed~~

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1 ~~revisions. If the County Commission returns the application with proposed revisions, and~~
2 ~~the municipality or the Broward MPO accepts in writing all of the proposed revisions, the~~
3 ~~County Commission shall thereafter forward the application to the Oversight Board for its~~
4 ~~consideration. If the municipality or the Broward MPO accepts some but not all of the~~
5 ~~County Commission's proposed revisions, the County Commission shall consider the~~
6 ~~revised application to determine whether it should be forwarded for Oversight Board~~
7 ~~consideration.~~

8 ~~(i) *Approval of Projects and Expenditures.* The County Commission, after~~
9 ~~considering the recommendations of County staff and any project ranking provided by the~~
10 ~~Broward MPO, will determine which proposed projects and expenditures of~~
11 ~~Transportation Surtax proceeds, whether initiated by the County or by some other~~
12 ~~governmental entity, will be submitted to the Oversight Board, and will further determine~~
13 ~~the order of submittal and priority of proposed projects and expenditures. The Oversight~~
14 ~~Board shall consider only proposed projects and expenditures submitted by the County~~
15 ~~Commission. The Oversight Board shall determine whether the proposed project or~~
16 ~~expenditure is permissible under Section 212.055(1)(d), Florida Statutes. If the Oversight~~
17 ~~Board determines that it is permissible, the Oversight Board shall approve the proposed~~
18 ~~project or expenditure and shall send written notice thereof to the Broward County~~
19 ~~Administrator. If an approved project or expenditure is only partially fundable with~~
20 ~~Transportation Surtax proceeds pursuant to Section 212.055(1)(d), Florida Statutes, the~~
21 ~~Oversight Board's written approval shall identify those portions of the project or~~
22 ~~expenditure fundable with Transportation Surtax proceeds and shall state the total dollar~~
23 ~~value of those portions. The written notice of approval may contain recommendations~~

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1 ~~made by the Oversight Board regarding best practices or other methods that may be~~
2 ~~employed to improve a proposed project or expenditure. If the Oversight Board~~
3 ~~determines that a proposed project or expenditure is not permissible under~~
4 ~~Section 212.055(1)(d), Florida Statutes, the Oversight Board shall reject the proposed~~
5 ~~project or expenditure and shall, in writing, specify the reasons for such rejection.~~
6 ~~Rejected projects and expenditures may be modified and resubmitted by the County~~
7 ~~Commission for subsequent consideration by the Oversight Board. The Oversight Board~~
8 ~~shall issue its written notice of approval or rejection within one hundred twenty (120) days~~
9 ~~after receipt of the proposed project or expenditure submitted by the County Commission.~~

10 (h) Applications for Funding.

11 (1) Municipalities in Broward County may submit written applications to the
12 Broward MPO for Transportation Surtax proceeds to fund statutorily eligible
13 capital projects that do not involve rehabilitation or maintenance of roads,
14 including but not limited to projects for new roads, widening existing roads,
15 traffic calming improvements, transportation-related ADA accommodations,
16 sidewalks, bike paths, and bridges. The application must specify the
17 amount of funds requested, how funds are intended to be expended, and
18 any other data requested by staff to evaluate the project. Municipal capital
19 projects included in the Regional Mobility & Transportation Enhancements
20 Surtax Initiative ("Transportation Surtax Plan"), approved by the Board of
21 County Commissioners of Broward County ("County Commission") on
22 September 13, 2018, will be the first to be evaluated and ranked.
23 Applications for new municipal capital projects will be accepted by the
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1 Broward MPO beginning in February 2021. Surtax-funded Broward MPO
2 staff and consultants will evaluate only municipal capital projects that
3 demonstrate adequate operations and maintenance support from non-
4 surtax municipal funds.

5 (2) Municipal rehabilitation and maintenance projects were included in the
6 Transportation Surtax Plan and are subject to evaluation, ranking, and
7 recommendation by County staff using a process that will be vetted prior to
8 implementation with municipal stakeholders and the County
9 Commissioner(s) representing residents of that municipality. Rehabilitation
10 and maintenance projects will be funded from any excess Transportation
11 Surtax proceeds that County staff identifies annually, in writing, as being
12 available for municipal projects, after Surtax-funded Broward MPO staff
13 recommend municipal capital projects. New municipal rehabilitation and
14 maintenance projects (those not included in the Transportation Surtax Plan)
15 may be considered for funding after February 2021, subject to surtax
16 revenue availability as determined solely by the County Commission.

17 (3) By July 1, 2020, a five-year plan will be developed by County staff, with
18 input from Surtax-funded Broward MPO staff, and shall include all projects
19 proposed to be funded in whole or in any part by Transportation Surtax
20 proceeds. Once acted upon by both the Oversight Board and the County
21 Commission, and subject to any further consideration by the County
22 Commission, this five-year plan will act as the basis for funding and project
23 delivery. New or amended projects may be added to the five-year plan on
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1 an annual basis that coincides with the budget process and is further
2 defined in the Interlocal Agreement between the Broward MPO and
3 Broward County related to prioritization of municipal projects. The
4 prioritized list of projects, the five-year plan, and the annual updates to the
5 five-year plan will be considered by the Oversight Board as outlined in
6 section (i)(1) below.

7 (4) In order to access Transportation Surtax proceeds for a permissible project,
8 the municipality must execute an Interlocal Agreement with the County that
9 includes, but is not limited to, the following requirements:

- 10 a. The municipality must maintain a separate account for
11 Transportation Surtax proceeds that can be audited;
- 12 b. Every Transportation Surtax-funded municipal project is subject to
13 performance review and audit;
- 14 c. A thirty percent (30%) County Business Enterprise (CBE)
15 commitment must be included in agreements to the extent funded
16 with Transportation Surtax proceeds, except that no CBE
17 commitment shall apply to agreements that are subject to other
18 participation goals (e.g., federal DBE program or SBE reserves),
19 agreements that are expressly exempt from the County's
20 Procurement Code, agreements that are otherwise ineligible by state
21 or federal law, and agreements to which goals are not assigned by
22 the County (e.g., sole source, sole brand, and emergency
23 agreements);

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- d. Waiver of all municipal permitting requirements in connection with surtax-funded projects;
- e. Project performance data, measures, and deliverables prescribed by the Oversight Board and the County;
- f. Branding and marketing prescribed by the County;
- g. Placement of sensors and other devices on municipal properties and assets for County-approved applications for data collection purposes; and
- h. The municipality must provide to the County all data regarding municipal roads that are closed for any reason, including but not limited to construction and flooding, in a format prescribed by the County.

(5) Surtax-funded Broward MPO staff and County staff will separately review proposed municipal capital projects and municipal applications for funding with Transportation Surtax proceeds and may:

- a. Indicate their approval of the project or application without modification;
- b. Notify the municipality that staff will not consider the application and state the reason therefor; or
- c. Return the application to the municipality with proposed revisions.
 - 1. If the municipality accepts, in writing, all of the proposed revisions, Surtax-funded Broward MPO staff or County staff

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1 will include the application in the ranking and prioritization
2 process.

3 2. If the municipality accepts some but not all of the proposed
4 revisions, Surtax-funded Broward MPO or County staff will
5 consider the revised application to determine whether it
6 should be included in the ranking and prioritization process.

7 (6) Any determination by Surtax-funded Broward MPO staff or County staff that
8 a proposed project does not meet the statutory requirements may be
9 appealed, in writing, to the Oversight Board no later than fifteen (15) days
10 after the staff decision is issued. The Oversight Board shall review the
11 written appeal, afford the appellant an opportunity to be heard during an
12 Oversight Board meeting, and submit a recommendation to the County
13 Commission no later than thirty (30) days after the meeting during which the
14 appeal was considered. Thereafter, the County Commission, in
15 consultation with the Office of the County Attorney, will determine whether
16 the proposed project meets the statutory requirements. In the event of a
17 dispute regarding eligibility, the Office of the County Attorney may request
18 an opinion from the Florida Department of Revenue or the Florida Attorney
19 General, as applicable.

20 (7) Transportation Surtax-funded Broward MPO staff shall provide a prioritized
21 list ranking the proposed municipal capital projects to County staff for their
22 consideration consistent with the Interlocal Agreement between the
23 Broward MPO and the County related to municipal prioritization.

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1 (i) Approval of Proposed Projects and Proposed Expenditures.

2 (1) County staff assigned to support the Oversight Board shall annually compile
3 all County and municipal proposed projects and proposed expenditures that
4 will be considered for funding with Transportation Surtax proceeds,
5 consistent with budgetary recommendations, and present them to the
6 Oversight Board for approval as to statutory eligibility. Except with regard
7 to appeals as referenced in section (h)(6) above, the Oversight Board shall
8 consider proposed projects and proposed expenditures submitted by the
9 County only for eligibility under Section 212.055(1)(d), Florida Statutes, in
10 consultation with and based upon the advice of the Transportation Surtax
11 General Counsel.

12 a. If the Oversight Board concurs with County staff that the proposed
13 projects and proposed expenditures are statutorily eligible, the
14 Oversight Board shall send written notice thereof to the Broward
15 County Administrator.

16 b. If the Oversight Board determines that a proposed project and
17 proposed expenditures are only partially fundable with
18 Transportation Surtax proceeds, the Oversight Board's written notice
19 to the County Administrator shall identify those portions of the
20 proposed project and proposed expenditures the Oversight Board
21 determines are fundable with Transportation Surtax proceeds.

22 c. If the Oversight Board advises County staff that a proposed project
23 or proposed expenditures are not eligible, the Oversight Board shall,

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1 in writing, specify the reasons. Such proposed projects and
2 proposed expenditures may be modified and resubmitted to the
3 County for its consideration and, if applicable, for reconsideration by
4 the Oversight Board.

5 d. The Oversight Board shall issue its written notice regarding statutory
6 eligibility of proposed projects and expenditures no later than thirty
7 (30) days after the meeting during which the proposed project and
8 proposed expenditures were considered.

9 (2) After the Broward County Administrator receives the Oversight Board's
10 written notice regarding eligibility, the proposed projects and proposed
11 expenditures may be presented by the County Administrator to the County
12 Commission for consideration.

13 (3) The County Commission, after considering the recommendations of County
14 staff and Surtax-funded Broward MPO staff, will determine which proposed
15 projects and proposed expenditures of Transportation Surtax proceeds it
16 approves, and those projects and expenditures will be included in the
17 County's annual budget.

18 (j) *Project Oversight.* All ~~approved~~ projects and expenditures funded with
19 Transportation Surtax proceeds shall be subject to the Oversight Board's review, critique,
20 and ~~analysis~~ assessment for the duration of the projects or expenditures. The Oversight
21 Board shall issue annual reports on the performance of ongoing projects and shall provide
22 recommendations to the County Administrator and the County Commission for any
23 proposed performance improvements.

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1 (k) *Annual Audits.*

2 (1) The Oversight Board may retain a performance auditor to perform and
3 complete a performance audit of projects funded with Transportation Surtax
4 proceeds as provided in section (g) above.

5 (2) The County shall retain an independent certified public accountant to
6 perform and complete an annual financial audits of ~~all projects funded with~~
7 ~~the~~ Transportation Surtax ~~proceeds and of all Transportation Surtax~~
8 ~~proceeds received, maintained, and expended~~ program and related
9 projects. The audit results shall be submitted to the Oversight Board and
10 ~~to the Broward County Administrator by no later than ninety (90) one~~
11 hundred eighty (180) days after the end of each ~~calendar~~ fiscal year during
12 which any Transportation Surtax proceeds are expended.

13 Section 2. Amendments.

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

19 Section 3. Severability.

20 If any portion of this Ordinance is determined by any court to be invalid, the invalid
21 portion will be stricken, and such striking will not affect the validity of the remainder of this
22 Ordinance. If any court determines that this Ordinance, in whole or in part, cannot be
23 legally applied to any individual, group, entity, property, or circumstance, such
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1 determination will not affect the applicability of this Ordinance to any other individual,
2 group, entity, property, or circumstance.

3 Section 4. Inclusion in the Broward County Code of Ordinances.

4 It is the intention of the Board of County Commissioners that the provisions of this
5 Ordinance become part of the Broward County Code of Ordinances as of the effective
6 date. The sections of this Ordinance may be renumbered or relettered and the word
7 "ordinance" may be changed to "section," "article," or such other appropriate word or
8 phrase to the extent necessary in order to accomplish such intention.

9 Section 5. Effective Date.

10 This Ordinance is effective as of the date provided by law. This Ordinance shall
11 apply prospectively and shall not apply to any action by the County prior to the effective
12 date of this Ordinance.

13 **PROPOSED**

14 ENACTED

15 FILED WITH THE DEPARTMENT OF STATE

16 EFFECTIVE

17
18 Approved as to form and legal sufficiency:
Andrew J. Meyers, County Attorney

19
20 By /s/ Angela J. Wallace 10/23/19
21 Angela J. Wallace (date)
22 Deputy County Attorney

23 AJW/hb
2019 Transportation Surtax Ordinance Revisions.doc
10/23/19
24 #19-114.00

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