RESOLUTION NO. 2020-361

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF BROWARD COUNTY, FLORIDA, PROVIDING FOR A REFERENDUM ELECTION TO BE HELD ON NOVEMBER 3, 2020, THE DATE OF THE GENERAL ELECTION, TO DETERMINE WHETHER TO AMEND THE BROWARD COUNTY CHARTER TO PROVIDE THAT COUNTY ORDINANCES RELATING TO THE USE OF COUNTY PROPERTY TO DEVELOP SURTAX-FUNDED TRANSPORTATION IMPROVEMENTS SHALL PREVAIL OVER MUNICIPAL ORDINANCES; AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

(Sponsored by Commissioner Tim Ryan)

WHEREAS, in 2018, the electorate of Broward County ("County") approved a thirty-year Regional Transportation System Sales Surtax (the "Transportation Surtax") to fund planning, development, operation, and maintenance of roads and bridges, bus systems, fixed guideway rapid transit systems, and on-demand transportation services, designed to reduce traffic congestion and to increase and improve transportation options available countywide;

WHEREAS, the proceeds of the Transportation Surtax will be used to fund critical transportation projects and facilities, such as light rail and express transit equipment and facilities, park-and-ride lots, and other mass transit options for residents and visitors;

WHEREAS, in order to utilize the Transportation Surtax funding to provide maximum benefit in improving countywide transportation, a regional approach is necessary to ensure optimal available sites are utilized for critical transportation projects necessary to ensure countywide access;

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WHEREAS, many Transportation Surtax-funded projects will serve and benefit the residents of more than one municipality and therefore may be subject to overlapping jurisdictions and redundant or conflicting requirements for municipal zoning and permitting approvals;

WHEREAS, municipalities currently have the ability to effectively block the siting of critical regional facilities, such as park-and-ride lots, to be used in connection with emerging rail and express transit options;

WHEREAS, establishing a uniform regional approach to zoning and permitting requirements for projects funded in whole or in part with Transportation Surtax proceeds will expedite the development of such projects so improvements to the transportation system can be completed as quickly as possible, thereby benefiting residents without unnecessary delay and the inconvenience that results from unnecessarily prolonged construction projects;

WHEREAS, Section 2.06 of the Broward County Charter ("Charter") authorizes the Broward County Board of County Commissioners ("Board") to propose amendments and revisions to the Charter, subject to referendum of the general electorate; and

WHEREAS, the Board desires to place an amendment to the Charter before the voters at the November 3, 2020, General Election, NOW, THEREFORE,

BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF BROWARD COUNTY, FLORIDA:

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Section 1. Subject to an affirmative vote of the general electorate, Section 11.01 of the Charter, titled Conflict of County ordinances with Municipal ordinances, is hereby amended to read as follows:

Sec. 11.01. Conflict of County ordinances with Municipal ordinances

Any County ordinance in conflict with a Municipal ordinance shall not be effective within the Municipality to the extent that a conflict exists regardless of whether such Municipal ordinance was adopted or enacted before or after the County ordinance. A County ordinance shall prevail over Municipal ordinances whenever the County acts with respect to the following:

A. Sets minimum standards protecting the environment through the prohibition or regulation of air or water pollution, or the destruction of resources in the County belonging to the general public.

B. Land use planning.

C. Regulates the conduct of elected officials, appointed officials, and public employees through an enacted Code of Ethics.

D. The development of transportation improvements, funded in whole or in part with transportation surtax proceeds, on County-owned or County-leased property, including through County regulation of zoning, permitting, construction, operation, or administration. This provision shall not apply to any County transportation improvement project that is located in an area zoned residential as of June 16, 2020, unless (1) the construction thereof commenced on or before June 16, 2020, or (2) the municipality agrees to modify such zoning or takes such other action that would permit the intended County use. Prior to exercising its power under an ordinance enacted pursuant to this provision, the County: (1) shall conduct a public meeting during which it shall be available

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to discuss with the municipality(ies) in which the project is located the proposed transportation improvement and seek to achieve consensus on any disputed issue(s); and (2) shall determine by a vote of a majority plus one (1) of the total membership of the County Commission that (a) the County considered other potential sites for such transportation improvement, including all sites proposed to the County by affected municipality(ies), and selected the site that, on balance, provides the greatest regional benefit, and (b) if the transportation improvement is to be located in an area in which the exteriors of then-existing buildings display a consistent aesthetic theme, the exterior of the transportation improvement is consistent with that theme to the greatest extent practicable.

In the event a County ordinance and a Municipal ordinance shall cover the same subject matter without conflict, both the Municipal ordinance and the County ordinance shall be effective.

Section 2. A referendum election is called for the General Election on November 3, 2020, and at such other times as permitted for voting under Chapter 101, Florida Statutes, to determine whether the Charter should be amended to allow County ordinances to prevail over Municipal ordinances related to the utilization of County-owned or County-leased property for surtax-funded transportation projects.

Section 3. In accordance with Section 100.342, Florida Statutes, at least thirty (30) days’ notice of the referendum election shall be published by the Broward County Administrator in a newspaper of general circulation in Broward County. The publication shall be made at least twice, including once in the fifth week and once in the

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third week prior to the week in which the referendum is to be held. The notice is hereby attached as Exhibit A and made a part hereof.

Section 4. Said referendum election shall be held between the hours of 7:00 a.m. and 7:00 p.m. on Tuesday, November 3, 2020, and at such other days and times as provided under applicable law, including early voting as provided by Section 101.657, Florida Statutes, at polling places established in Broward County. All registered and qualified electors in Broward County shall be eligible to vote in the referendum election. Vote-by-mail ballots and early voting access for the referendum shall be made available as provided by law.

Section 5. The election boards consisting of the clerks and inspectors appointed to serve for the General Election on November 3, 2020, are hereby appointed to serve in the referendum election in the manner provided by law.

Section 6. The Broward County Canvassing Board shall canvass the returns in said election and shall certify the results of the referendum election as provided by law.

Section 7. The County Administrator shall timely furnish a certified copy of this adopted Resolution to the Supervisor of Elections for Broward County.

Section 8. The title and summary of the referendum question to appear on the General Election ballot on November 3, 2020, as embodied in this enabling resolution, shall be as follows:

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COUNTY REGULATION OF THE DEVELOPMENT OF SURTAX-FUNDED TRANSPORTATION IMPROVEMENTS ON COUNTY PROPERTY

“To facilitate implementation of surtax-funded improvements to the countywide transportation system, shall the Broward County Charter be amended to provide that County ordinances regulating the development, including zoning, permitting, construction, operation, or administration, of transportation improvement projects that are (1) on County-owned or County-leased property and (2) funded in whole or in part with proceeds from the transportation surtax approved by the County’s voters in 2018, prevail over conflicting Municipal ordinances?”

YES _____________

NO _____________

FINANCIAL IMPACT STATEMENT:

It is estimated that this amendment will have no financial impact to Broward County.

Section 9. Severability.

If any portion of this Resolution is determined by any court to be invalid, the invalid portion will be stricken, and such striking will not affect the validity of the remainder of this Resolution. If any court determines that this Resolution, in whole or in part, cannot be legally applied to any individual, group, entity, property, or circumstance, such determination will not affect the applicability of this Resolution to any other individual, group, entity, property, or circumstance. If the County determines any part of the ballot statement, including the fiscal impact statement, is contrary to state law, the County Attorney is authorized to request that the Supervisor of Elections remove the applicable

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language from the proposed ballot proposal and the Supervisor of Elections is authorized
to remove such language.

Section 10. Effective Date.

This Resolution shall be in force and take effect immediately upon its adoption by
an affirmative vote of no fewer than six (6) members of the Broward County Board of
County Commissioners.

ADOPTED this 20th day of August, 2020. (Item 1B)

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

By /s/ Joseph K. Jarone 07/20/2020
   Joseph K. Jarone (date)
   Assistant County Attorney

By /s/ Benjamin R. Salzillo 07/20/2020
   Benjamin R. Salzillo (date)
   Assistant County Attorney

By /s/ René D. Harrod 07/20/2020
   René D. Harrod (date)
   Deputy County Attorney

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Exhibit A

NOTICE OF REFERENDUM ELECTION TO BE HELD ON TUESDAY, NOVEMBER 3, 2020, AND AT SUCH OTHER TIMES AS PROVIDED FOR EARLY VOTING BY SECTION 101.657, FLORIDA STATUTES, TO DETERMINE WHETHER TO AMEND THE BROWARD COUNTY CHARTER TO PROVIDE THAT COUNTY ORDINANCES RELATING TO THE USE OF COUNTY PROPERTY TO DEVELOP SURTAX-FUNDED TRANSPORTATION IMPROVEMENTS SHALL PREVAIL OVER MUNICIPAL ORDINANCES.

A countywide referendum election will be held on Tuesday, November 3, 2020, and at such other times as provided for by Chapter 101, Florida Statutes, for the purpose of determining whether to amend the Broward County Charter to provide that County ordinances relating to the utilization of County-owned or County-leased property for surtax-funded transportation improvements shall prevail over Municipal ordinances.

As set forth in enabling Resolution No. 2020-361, adopted on August 20, 2020, by the Board of County Commissioners of Broward County, Florida, the title and summary to appear on the referendum ballot shall be as follows:

COUNTY REGULATION OF THE DEVELOPMENT OF SURTAX-FUNDED TRANSPORTATION IMPROVEMENTS ON COUNTY PROPERTY

To facilitate implementation of surtax-funded improvements to the countywide transportation system, shall the Broward County Charter be amended to provide that County ordinances regulating the development, including zoning, permitting, construction, operation, or administration, of transportation improvement projects that are (1) on County-owned or County-leased property and (2) funded in whole or in part with proceeds from the transportation surtax approved by the County’s voters in 2018, prevail over conflicting Municipal ordinances?

YES ______________

NO ______________
FINANCIAL IMPACT STATEMENT:

It is estimated that this amendment will have no financial impact to Broward County.

A complete copy of the proposed amendment is available at Broward.org/Charter.

The referendum shall be held on November 3, 2020, between the hours of 7:00 a.m. and 7:00 p.m., and at such other days and times as provided under applicable law, including for early voting as provided by Section 101.657, Florida Statutes, at the polling places established in Broward County. All registered and qualified electors of Broward County shall be eligible to vote in said referendum election. Vote-by-mail ballots for the referendum election shall be prepared and made available as provided by law.

The Broward County Canvassing Board shall canvass the returns and certify the results of the referendum election to the Board of County Commissioners of Broward County, Florida, the Broward County Administrator, and the Florida Department of State, to be recorded and filed in appropriate public records.

Instructions:

A. Publish two (2) times:
   Once on: September 29, 2020
   Once on: October 13, 2020

B. Furnish two (2) proofs of publication and invoice to:

   Mary Ann Darby, Deputy Clerk
   Records, Taxes and Treasury Division
   Broward County Governmental Center
   115 S. Andrews Avenue, Room 336-U
   Fort Lauderdale, Florida 33301

C. Furnish one (1) proof of publication and invoice to:

   Broward County Attorney’s Office
   Broward County Governmental Center
   115 S. Andrews Avenue, Room 423
   Fort Lauderdale, Florida 33301
I, Bertha Henry, County Administrator, in and for Broward County, Florida, and Ex-Officio Clerk of the Board of County Commissioners of said County, DO HEREBY CERTIFY that the above and foregoing is a true and correct copy of Resolution 2020-361 the same appears in the minutes of said Board of County Commissioners meeting held on the 20th day of August, 2020. (Item1B)

IN WITNESS WHEREOF, I have hereunto set my hand and official seal dated this 31st day of August, 2020.