

ORDINANCE NO. 2019-

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, INCLUSION
12 IN THE CODE, AND AN EFFECTIVE DATE.

13 (Sponsored by the Board of County Commissioners)

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

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

23 BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF BROWARD
24 COUNTY, FLORIDA:

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

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underscored type are additions.

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

2 . . .

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

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

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

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

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

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

22 (6) One professional in the field of environmental science ~~– A person who holds a~~
23 professional degree and has practical experience in environmental science;

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

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

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

9 . . .

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

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

18 ~~(4)~~ (2) *Removal.* With the exception of the Director of the Broward College Office of
19 Supplier Relations and Diversity, A a member of the Oversight Board may be
20 removed for good cause determined by supermajority vote of the Appointing
21 Authority, and shall be removed by a majority vote of the Appointing Authority
22 if the member no longer meets the applicable categorical requirement or
23 qualifications for membership.

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1 ~~(2)~~ (3) ~~Process for filling vacancies.~~ Any member appointed to replace a member who
2 has been removed or who resigns shall serve for the balance of the term of
3 such member. The Appointing Authority shall meet as required to appoint or
4 remove members.

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

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

12 (g) *Staffing.* Broward County shall provide sufficient staff to enable the Oversight
13 Board to efficiently perform its functions, ~~and shall retain such consultants as the Oversight~~
14 ~~Board determines necessary to perform its responsibilities.~~ Upon request by the Oversight
15 Board, the County Administrator may designate additional staff and/or retain consultants to
16 assist the Oversight Board in the performance of its functions.

17 (h) ~~Applications for Funding.~~ Any municipality within Broward County or the
18 Broward MPO may submit an application for project funding to the Board of County
19 Commissioners of Broward County ("County Commission") for the County Commission's
20 initial consideration. ~~The applications will be on a form approved by the County Commission,~~
21 ~~will specify the amount of funding being sought and how such funding is intended to be~~
22 ~~expended, and will include, among other requirements, a statement that any recipient of such~~

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1 ~~proceeds assents to (i) having its use of the proceeds audited by an independent auditor~~
2 ~~retained by the Oversight Board; and (ii) continuing project review by the Oversight Board.~~

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

10 ~~Consistent with the process specified in paragraph (i) immediately below, the County~~
11 ~~Commission may determine to (a) submit the municipal or the Broward MPO application,~~
12 ~~without modification, to the Oversight Board; (b) notify the municipality or the Broward MPO~~
13 ~~that the application will not be submitted for Oversight Board consideration; or (c) return the~~
14 ~~application to the municipality or the Broward MPO with proposed revisions. If the County~~
15 ~~Commission returns the application with proposed revisions, and the municipality or the~~
16 ~~Broward MPO accepts in writing all of the proposed revisions, the County Commission shall~~
17 ~~thereafter forward the application to the Oversight Board for its consideration. If the~~
18 ~~municipality or the Broward MPO accepts some but not all of the County Commission's~~
19 ~~proposed revisions, the County Commission shall consider the revised application to~~
20 ~~determine whether it should be forwarded for Oversight Board consideration.~~

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

22 (h) Applications for Funding.

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

17 (2) Municipal rehabilitation and maintenance projects were included in the
18 Transportation Surtax Plan and are subject to evaluation, ranking, and
19 recommendation by County staff using a process that will be vetted with
20 municipal stakeholders and the municipality's County Commissioner(s) prior to
21 implementation. Rehabilitation and maintenance projects will be funded from
22 any excess Transportation Surtax proceeds that County staff identifies
23 annually, in writing, as being available for municipal projects, after Surtax-
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1 funded Broward MPO staff recommend municipal capital projects. New
2 municipal rehabilitation and maintenance projects (that are not included in the
3 Transportation Surtax Plan) may be considered for funding after February
4 2021, subject to surtax revenue availability as determined solely by the County
5 Commission.

6 (3) A five-year plan will be developed collaboratively by County staff and, with input
7 from Surtax-funded Broward MPO staff by, as requested by the County, July
8 1, 2020, inclusive of all projects proposed to be funded in whole or in any part
9 by Transportation Surtax proceeds. Once acted upon by both the Oversight
10 Board and County Commission, and subject to any further consideration by the
11 County Commission, this five-year plan will act as the basis for funding and
12 project delivery. New or amended projects may be added to the five-year plan
13 on an annual basis that coincides with the budget process and is further defined
14 in the Interlocal Agreement between the Broward MPO and Broward County
15 related to prioritization of municipal projects.

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

19 a. The municipality must maintain a separate account for Transportation
20 Surtax proceeds that can be audited;

21 b. Every municipal project is subject to performance review;

22 c. A thirty percent (30%) County Business Enterprise (CBE) commitment
23 must be included in agreements to the extent funded with

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1 Transportation Surtax proceeds, except that no CBE commitment shall
2 apply to agreements that are subject to other participation goals (e.g.,
3 federal DBE program or SBE reserves), agreements that are expressly
4 exempt from the County's Procurement Code, agreements that are
5 otherwise ineligible by state or federal law, and agreements to which
6 goals are not assigned by the County (e.g., sole source, sole brand, and
7 emergency agreements);

8 d. Waiver of all municipal permitting requirements in connection with
9 surtax-funded projects;

10 e. Project performance data, measures, and deliverables prescribed by
11 the Oversight Board and the County;

12 f. Branding and marketing prescribed by the County; and

13 g. Placement of sensors and other devices on municipal properties and
14 assets for County-approved applications for data collection purposes.

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

18 a. Indicate their approval of the project or application without modification;

19 b. Notify the municipality that staff will not consider the application and
20 state the reason therefor; or

21 c. Return the application to the municipality with proposed revisions.
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- 1. If the municipality accepts, in writing, all of the proposed revisions, Surtax-funded Broward MPO staff or County staff will include the application in the ranking and prioritization process.
- 2. If the municipality accepts some but not all of the proposed revisions, Surtax-funded Broward MPO or County staff will consider the revised application to determine whether it should be included in the ranking and prioritization process.

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

(7) Transportation Surtax-funded Broward MPO staff shall provide a prioritized list ranking the proposed municipal capital projects to County staff for their consideration consistent with the Interlocal Agreement between the 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 all
3 proposed projects and proposed expenditures that will be considered for
4 funding with Transportation Surtax proceeds, consistent with budgetary
5 recommendations, and present them to the Oversight Board for approval as to
6 statutory eligibility. Except with regard to appeals as referenced in section
7 (h)(6) above, the Oversight Board shall consider proposed projects and
8 proposed expenditures submitted by the County only for eligibility under
9 Section 212.055(1)(d), Florida Statutes, based upon the advice of the
10 Transportation Surtax General Counsel.

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

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

21 c. If the Oversight Board advises County staff that a proposed project or
22 proposed expenditures are not eligible, the Oversight Board shall, in
23 writing, specify the reasons. Such proposed projects and proposed
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1 expenditures may be modified and resubmitted to the County for its
2 consideration and, if applicable, for reconsideration by the Oversight
3 Board.

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

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

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

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

23 (k) *Annual Audits.*

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1 (1) The Oversight Board may retain a performance auditor to perform and
2 complete a performance audit of projects funded with Transportation Surtax
3 proceeds.

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

12 Section 2. Amendments.

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

18 Section 3. Severability.

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

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

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

8 Section 5. Effective Date.

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

12

13 ENACTED

14 FILED WITH THE DEPARTMENT OF STATE

15 EFFECTIVE

16

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

19

20 By /s/ Angela J. Wallace 00/00/19
21 Angela J. Wallace (date)
22 Deputy County Attorney

23 AJW/hb
2019 Transportation Surtax Ordinance Revisions.doc
09/19/19
24 #19-114.00

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