

BCC Mtg. Date: April 26, 2022

**ORDINANCE NO. 2022-14**

**AN ORDINANCE RELATING TO TAXATION IN ORANGE COUNTY, FLORIDA; PROVIDING A SHORT TITLE AND LEGISLATIVE FINDINGS; LEVYING ON ALL TAXABLE TRANSACTIONS A ONE PERCENT (1%) CHARTER COUNTY AND REGIONAL TRANSPORTATION SYSTEM SALES SURTAX (“TRANSPORTATION SURTAX”) FOR A PERIOD OF 20 YEARS PURSUANT TO SECTIONS 212.054 AND 212.055(1), FLORIDA STATUTES; CREATING A SEGREGATED TRUST FUND INTO WHICH ALL TRANSPORTATION SURTAX PROCEEDS SHALL BE DEPOSITED; PROVIDING THAT THE TRANSPORTATION SURTAX WILL TAKE EFFECT ONLY UPON APPROVAL BY THE ELECTORATE; CALLING A REFERENDUM; PROVIDING BALLOT LANGUAGE; REQUIRING PUBLIC NOTICE OF SUCH REFERENDUM; AND PROVIDING FOR AMENDMENTS, SEVERABILITY, CODIFICATION, AN EFFECTIVE DATE, AND EXPIRATION OR “SUNSET” DATES.**

**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 on the levying of such Transportation Surtax; and

**WHEREAS**, the Orange County Board of County Commissioners (the “Board”) finds that there is a need for a dedicated revenue source in order to adequately address the critical transportation and transit needs of Orange County, Florida (the “County”) and that such revenue source would be in the best interests of the public and would benefit present and future generations; and

**WHEREAS**, to obtain such dedicated revenue source to address the County’s critical transportation and transit needs, the Board desires that the question of a levy of a Transportation Surtax, as further described below, be considered by the countywide voters at the General Election on November 8, 2022; and

**WHEREAS**, to ensure that the revenue generated by a Transportation Surtax will be adequate to address the County’s critical transportation and transit needs, the Board desires for the levy of the Transportation Surtax to remain in effect for a period of 20 years ending on December 31, 2042, at which time the Transportation Surtax shall automatically sunset and expire; and

**WHEREAS**, if the Transportation Surtax is approved by referendum at the General Election on November 8, 2022, the proceeds of the Transportation Surtax shall be expended only for those purposes authorized in section 212.055(1), Florida Statutes.



**BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF ORANGE COUNTY, FLORIDA:**

**Section 1. Short Title.** This article shall be known and may be cited to as the “Orange County Charter County and Regional Transportation System Surtax Ordinance.”

**Section 2. Legislative Findings.** The Board of County Commissioners of Orange County, Florida (the “Board”), hereby makes the following legislative findings and declares them to be, in part, the legislative, legal, and public policy basis for the enactment of this Ordinance:

(a) It is necessary and desirable to promote and protect the health and safety of the traveling public in Orange County, Florida (the “County”) and to maintain and improve the quality of life and economic prosperity of the citizens of the County by providing safe and adequate road, transportation, and transit facilities.

(b) The need for adequate public transit, roadway improvements, public safety measures including lighting, pedestrian and cyclist safety measures, and road resurfacing in the County has continued to increase and is a matter of great public importance.

(c) Orange County Mayor, Jerry L. Demings, initiated a study of the County’s transportation needs based on an analysis of existing County revenues, projections of future county-wide transportation and transit obligations and needs, and community and citizen input.

(d) In order to solicit community input, starting in 2019, the County hosted and attended over 200 town hall and community meetings to gather an understanding of the transportation and transit needs of the County’s residents, and over 11,000 members of the public contributed their input regarding transportation and transit system needs and improvements for Orange County.

(e) At the direction of the Orange County Mayor, County staff conducted thorough assessments of transportation deficiencies and related funding needs from 2019 through 2040 including capital infrastructure, transit operations and maintenance and program-based improvements, cross-jurisdictional needs, maintenance, and capacity on roadways with a focus on those needs that will not be met through current funding sources.

(f) Due to the COVID-19 pandemic, Mayor Demings paused the County’s efforts related to the Transportation Surtax in April of 2020, as the County faced unprecedented economic and public health challenges.

(g) In December of 2021, with the County’s economic recovery trending upward and seeing a return of tourism to Orange County, Mayor Demings directed the County recommence its efforts to engage with the community regarding the Transportation Surtax, conducting six interactive open house meetings, one within each district of the County, where residents were

encouraged to interact with transportation and transit subject matter experts on their current transportation needs and priorities.

(h) The County has taken under advisement the input of its citizens and community partners, which, since 2019, has included approximately 250 meetings or “touch points” involving 10,000 participants; County Commissioner and staff involvement and input; 6,300 comments and recommendations; and over 16,000 completed surveys.

(i) Following this extensive community engagement process, the County has updated the projects and priorities in the County’s Transportation Initiative Report accordingly.

(j) Based on the various assessments, community and citizen input, and meetings with local municipalities and public transit leadership over the last three years, the Board finds that current funding sources are insufficient to meet the County’s transportation and transit needs and that a one-cent Transportation Surtax will provide a dedicated source of revenue to meet those unmet needs.

**Section 3. Levy of Transportation Surtax.** Pursuant to section 212.055(1), Florida Statutes, and subject to approval by a majority of the electors of Orange County, Florida voting in a referendum at the General Election on November 8, 2022, there is hereby levied, for a period of 20 years, commencing at 12:01 A.M. on January 1, 2023, and expiring at 11:59 P.M. on December 31, 2042, a one percent (1%) Charter County and Regional Transportation System Sales Surtax (“Transportation Surtax”) on all transactions taxable pursuant to section 212.054(2), Florida Statutes, subject to applicable exceptions as further provided by Florida law.

**Section 4. Transportation Improvement Trust Fund.** There is hereby created the Transportation Improvement Trust Fund (“Trust Fund”) into which all Transportation Surtax proceeds shall be deposited. The designation and establishment of the Trust Fund, and the establishment and maintenance of all accounts and subaccounts established within the Trust Fund, shall be consistent with generally accepted government accounting principles and Florida law. Cash and investments required to be accounted for in the Trust Fund may not be commingled with any other funds, including other transportation or transit funds.

**Section 5. Use of Transportation Surtax Proceeds.** Transportation Surtax proceeds shall be collected, applied, disbursed, and expended only for authorized transportation and transit purposes, as deemed appropriate by the Board in accordance with applicable law including, specifically, sections 212.054 and 212.055(1), Florida Statutes.

**Section 6. Orange County Transportation Initiative Report.**

(a) **Adoption of the Orange County Transportation Initiative Report.** The Orange County Transportation Initiative Report (the “Report”) shall be adopted by the Board by resolution on the same date of this Ordinance’s enactment.

(b) **Required Report Contents.** The Report shall, at all times, contain:

- (1) A list of projects separated into distinct funding categories;
- (2) A Transportation Surtax proceed allocation methodology for the funding of projects in each distinct funding category;
- (3) A requisite technical committee that shall: (i) review the status of projects submitted by each jurisdiction; (ii) review the approved projects and ensure they are compatible and coordinated amongst various jurisdictions; and (iii) identify opportunities for collaboration on joint projects;
- (4) A requisite citizens oversight board that shall: (i) ensure accountability and transparency in the expenditure of sales tax proceeds; (ii) ensure that the County, municipalities, LYNX, and other funding recipients are spending funds appropriately, timely, and in full compliance with all applicable laws; (iii) request and review audits of the transportation program by the Orange County Comptroller; and (iv) oversee the preparation of a nontechnical report or consolidated schedule of projects which shall be updated and posted prominently on the County's website at least annually; and
- (5) A Transportation Surtax management process that ensures that project prioritization and any proposed revisions to the project lists are completed in a manner that: (i) uses a data-driven and needs-based approach through the use of objective criteria in the prioritization of transportation improvement projects throughout the County; (ii) is flexible enough to address shifting and emerging needs over the 20-year period for which the Transportation Surtax will be levied; and (iii) is adaptive to new transportation and transit technologies and innovations as they are developed.

**Section 7. Transit and Municipal Interlocal Agreements.** To be valid, any transfer of Transportation Surtax proceeds to a participating municipality or transportation authority shall be pursuant to an interlocal agreement required in section 212.055(1)(d)4., Florida Statutes. Such interlocal agreements shall include:

- (1) A specific list of purposes for which the Board deems the participating municipality or transportation authority's use of the Transportation Surtax proceeds as appropriate;
- (2) A grant of authority to the County and the Orange County Comptroller to access and audit the participating municipality or transportation authority's transportation and/or transit expenditures including, but not limited to, expenditures of any Transportation Surtax proceeds provided to such municipality or transportation authority;
- (3) Detailed performance and financial reporting requirements for projects funded, in whole or in part, by Transportation Surtax proceeds, including any and all projects for which Transportation Surtax proceeds are used as matching funds;

(4) Detailed reporting requirements for all expenditures, including operating costs, which are funded, in whole or in part, by Transportation Surtax proceeds; and

(5) A commitment from any participating transportation authority that any Transportation Surtax funds being provided to such transportation authority be used for the benefit of Orange County, Florida, as is contemplated in section 212.055(1)(d)4., Florida Statutes.

**Section 8. Auditing.** The Orange County Comptroller shall complete routine audits of any and all expenditures of the Transportation Surtax proceeds.

**Section 9. Referendum Called.** A referendum election is hereby called and ordered to be held in Orange County at the time of the next general election to be held on November 8, 2022, to determine whether the Board should levy a one percent (1%) Transportation Surtax to be collected, applied, disbursed, and expended only for authorized transportation and transit purposes, in accordance with applicable law including, specifically, sections 212.054 and 212.055(1), Florida Statutes.

**Section 10. Notice of Referendum.** Pursuant to section 100.342, Florida Statutes, a Notice of Referendum shall be published twice in the *Orlando Sentinel*, a newspaper of general circulation in the County. The publications shall occur once in the fifth week and once in the third week prior to the week which includes November 8, 2022.

**Section 11. Official Ballot.** Ballots to be used in the referendum shall contain a statement of the description of the proposed issue in substantially the following form:

<p><b>BALLOT</b> Orange County, Florida</p> <p><b>Charter County and Regional Transportation System Surtax</b></p> <p>Shall a Charter County and Regional Transportation System Surtax at the rate of one percent (1%) be levied in Orange County, Florida for a period of 20 years with revenue deposited into a trust fund dedicated exclusively to transportation and transit improvement uses authorized by law, with oversight and accountability for the revenue provided by a citizen oversight board and the elected comptroller, as approved by the Board of County Commissioners?</p> <p>___ FOR the one-cent sales tax</p> <p>___ AGAINST the one-cent sales tax</p>
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**Section 12. Spanish Translation.** The above ballot question shall additionally appear on the ballot in Spanish and the County Attorney and Supervisor of Elections are requested to authorize, and directed to prepare, an accurate Spanish translation to be included on the ballot.

**Section 13. Payment of Referendum Expenses.** The Board authorizes the payment of lawful expenses associated with conducting the referendum, as well as the cost of communicating factual information regarding the referendum to the public to the extent permitted by section 106.133, Florida Statutes. The Orange County Comptroller is hereby authorized and directed to disburse the funds necessary to pay such expenses.

**Section 14. Repeal Upon Electorate Disapproval.** If the levy of the Transportation Surtax is not approved by a majority of the electors of Orange County voting thereon in the referendum at the General Election on November 8, 2022, this Transportation Surtax Ordinance shall expire and be deemed repealed in its entirety on December 31, 2022, without further action by the Board.

**Section 15. Sunset.** The Transportation Surtax shall sunset and expire at 11:59 P.M. on December 31, 2042, without further action by the Board, at which time the Transportation Surtax levied hereunder shall be deemed repealed, terminated, and of no further force and effect, except that the requirements of this Ordinance relating to the administration, use, or oversight of Transportation Surtax proceeds shall survive the expiration of the Transportation Surtax, and shall be fully enforceable in a court of competent jurisdiction.

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

**Section 17. Severability.** If any portion of this Ordinance is determined by any court to be invalid, the invalid portion shall be stricken, and such striking shall not affect the validity of the remainder of this Ordinance.

**Section 18. Codification.** The publisher of the Orange County Code is directed to codify only sections 1 through 8 and section 15 of this Ordinance. The remaining sections shall not be codified, but shall be in full force and effect as provided by law. Further, the publisher is authorized and directed to renumber and re-letter the several sections, subsections, and paragraphs, and subparagraphs, and to substitute words such as “chapter,” “article,” “division,” for such words as “ordinance,” all as may be necessary or useful to ensure proper codification.

**Section 19. Effective date.** This Ordinance shall become effective as provided by law.

**ADOPTED THIS 26<sup>TH</sup> DAY OF APRIL, 2022.**



**ORANGE COUNTY, FLORIDA**  
By: Board of County Commissioners

By: *Jerry L. Demings*  
for Jerry L. Demings  
Orange County Mayor

ATTEST: Phil Diamond, CPA, County Comptroller  
As Clerk of the Board of County Commissioners

By: *Phil Diamond*  
Deputy Clerk