

ORDINANCE 2024-___

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, REGARDING THE HALF-CENT LOCAL GOVERNMENT INFRASTRUCTURE SURTAX KNOWN LOCALLY AS THE SAVE OUR INDIAN RIVER LAGOON SALES SURTAX; PROVIDING FOR THE EXTENSION OF THE LEVY OF THE SURTAX THROUGH DECEMBER 31, 2036, SUBJECT TO THE APPROVAL BY A MAJORITY VOTE OF THE ELECTORS OF THE COUNTY VOTING IN A REFERENDUM ON THE SURTAX, FOR THE PURPOSE OF FUNDING THE COUNTY'S SHARE OF THE COST FOR THE SAVE OUR INDIAN RIVER LAGOON PROGRAM; AMENDING CHAPTER 46, ARTICLE X, BREVARD COUNTY CODE; AMENDING SECTION 46-399. – SAVE OUR INDIAN RIVER LAGOON PROJECT TRUST FUND, BREVARD COUNTY CODE TO PROVIDE FOR THE DEPOSIT OF ALL SURTAX REVENUES IN A TRUST FUND AND RESTRICTION OF TRUST FUND EXPENDITURES; AMENDING SECTION 46-401. – EFFECTIVE DATE, BREVARD COUNTY CODE, TO PROVIDE FOR THE EXTENSION OF THE LEVY OF THE SURTAX THROUGH DECEMBER 31, 2036; PROVIDING FOR A REFERENDUM; PROVIDING FOR NOTICE OF THE REFERENDUM; PROVIDING FOR BALLOT LANGUAGE; PROVIDING CONDITIONS TO THE HOLDING OF SUCH REFERENDUM; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF LAWS IN CONFLICT; PROVIDING FOR INCLUSION IN THE BREVARD COUNTY CODE; PROVIDING FOR EFFECTIVE DATES, FILING AND NOTICES, AND REPEAL.

WHEREAS, in January through March 2016, Brevard County residents endured the most extensive and intensive algal bloom ever recorded in the Indian River system during winter to spring months; and

WHEREAS the collapse of this bloom in March resulted in one of the most extensive fish kills ever recorded in the county; and

WHEREAS the 2016 bloom and fish kill followed a 2011 algae super bloom, brown tides in 2012, 2013 and 2015, and unusual mortality events for dolphins, manatees and pelicans; and

WHEREAS, on August 9, 2016, the Board of County Commissioners heard extensive testimony on the need for and economic benefits anticipated from establishing a trust fund dedicated to restoring health to the Indian River Lagoon, considered multiple funding options, and voted unanimously to approve a Save Our Indian River Lagoon Project Plan, advertise an ordinance for a half-cent infrastructure sales tax for this purpose, approved ballot language, and authorized staff to negotiate an interlocal sales tax use and distribution agreement with cities representing a majority of the county's municipal population; and

WHEREAS, on August 23, 2016, the Board of County Commissioners adopted Ordinance No. 2016-15 (the "Original Save Our Indian River Lagoon Surtax Ordinance") for a half-cent

infrastructure sales tax to fund the implementation of the Save Our Indian River Lagoon Project Plan and to place a Referendum on the November 8, 2016, ballot for a half-cent infrastructure sales tax and authorized the Chair to execute an interlocal sales tax use and distribution agreement with cities representing a majority of the County's municipal population; and

WHEREAS, on November 8, 2016, the half-cent infrastructure sales tax was approved by a majority vote of the electors of Brevard County to be levied for the period of January 1, 2017, to December 31, 2026; and

WHEREAS an interlocal sales tax use and distribution agreement was executed between the County and every city and town in the County, thus representing the entire County population; and

WHEREAS the Save Our Indian River Lagoon Project Plan has been updated annually with changes recommended by a Citizen Oversight Committee and adopted by the County Commission to reduce sources of pollution, remove accumulations of pollution, restore naturally filtering ecosystems, and respond to new information and opportunities; and

WHEREAS, the current surtax expires December 31, 2026, and while progress is underway, extending dedicated funding into the future will continue to position the County to leverage state and federal cost-share to design and implement projects and programs that reduce and remove pollution, improve water quality, and restore fish and wildlife abundance and habitat in the Indian River Lagoon; and

WHEREAS, the Board of County Commissioners of Brevard County finds that a referendum on whether to extend the surtax is prudent, best serves the public interest, and serves both a county purpose and a public purpose;

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, as follows:

SECTION 1. AMENDMENTS TO SECTION 46-399. – SAVE OUR INDIAN RIVER LAGOON PROJECT TRUST FUND, BREVARD COUNTY CODE. Effective January 1, 2027, Chapter 46, Article X. – Save Our Indian River Lagoon Sales Surtax, Section 46-399 of the Brevard County Code, is hereby amended to read as follows (additions are indicated by underline text; deletions are indicated by ~~strikethrough~~ text):

Sec. 46-399. - Save Our Indian River Lagoon Project Trust Fund.

~~If the county electorate approves the ½ cent infrastructure sales surtax provided for in this article, the county manager, or his designee in cooperation with the~~

~~board finance division of the office of the clerk of the circuit court, shall create a trust fund reserved solely for the deposit of revenues derived from the approved tax and any other funds received for purposes of implementing the Save Our Indian River Lagoon Project Plan. Thereafter, all~~ All revenues collected from the ~~tax~~ ½-cent infrastructure sales surtax provided for in this article and any other funds received for purposes of implementing the Save Our Indian River Lagoon Project Plan shall be deposited into the trust fund created and reserved solely for such purpose, and shall be distributed in the manner provided for in the interlocal agreement required under ~~F.S. §~~ section 212.055(2)(c)1., Florida Statutes. Trust fund expenditures shall be restricted to:

(1) Reasonable and necessary capital improvement, capital maintenance and other projects and programs implementing the Save Our Indian River Lagoon Project Plan, as adopted by the board of county commissioners and amended from time to time. Reasonable and necessary expenses may include lagoon restoration project permitting costs and the costs of experts used in obtaining or consulting on the acquisition of such permits;

~~a. The Save Our Indian River Lagoon Project Plan, as adopted hereunder or as amended from time to time;~~

~~b. The Indian River Lagoon Conservation and Management plan, as amended from time to time and incorporated into the Save Our Indian River Lagoon Project Plan; and/or~~

~~c. With the approval of the board of county commissioners, the costs of any lagoon restoration project or program identified and pursued in accordance with any future plan, as amended from time to time and incorporated into the Save Our Indian River Lagoon Project Plan enacted by the Indian River Lagoon council created pursuant to the Indian River Lagoon National Estuary Program Interlocal Agreement dated February 19, 2015. Such reasonable and necessary expenses may include lagoon restoration project permitting costs and the costs experts used in obtaining or consulting on the acquisition of such permits;~~

(2) Costs of issuing bonds, including financial advisor fees; bond counsel fees; and bond validation attorneys and expert witness fees, if any are utilized;

(3) Lagoon restoration project related costs, if any, contemplated by the interlocal agreement required by ~~F.S. §~~ section 212.055(2), Florida Statutes;

(4) Any reasonable lagoon restoration related project or expense approved by the board of county commissioners, at its discretion, upon recommendation by the Save Our Indian River Lagoon oversight committee established hereunder;

(5) Save Our Indian River Lagoon Project Plan restoration project related operation and maintenance expenses;

(6) Save Our Lagoon Project Plan education and community awareness initiatives or programs;

(7) Any membership dues payable to the Indian River Lagoon council.

Such expenditures shall be made in accordance with established county contract, bidding and authorized administrative expense limitations, as set forth in board policies and county manager administrative orders.

Such expenditures may include use for grant matching funds for federal, state or private contributions pledged for paying expenses or costs related to lagoon restoration projects, or repayment of bonds, if any, issued for financing the cost of capital improvement or capital maintenance projects related to the restoration of the Indian River Lagoon.

SECTION 2. AMENDMENTS TO SECTION 46-401. – EFFECTIVE DATE, BREVARD COUNTY CODE. Effective January 1, 2027, Chapter 46, Article X. – Save Our Indian River Lagoon Sales Surtax, Section 46-401 of the Brevard County Code, is hereby amended to read as follows (additions are indicated by underline text; deletions are indicated by ~~striktthrough~~ text):

Sec. 46-401. - Effective date and duration of infrastructure surtax.

The ½ cent infrastructure sales surtax authorized in section 46-398 shall be effective commencing January 1, 2017, and continuing through December 31, 2036. ~~The ordinance from which this article is derived shall take effect upon November 5, 2016 if the ½ cent sales tax is approved by a majority of the electors of the county voting in the referendum on that date. However, the ordinance from which this article is derived shall not be implemented until such time as:~~

- ~~(1) The supervisor of elections has consented to obtaining and making registration books available in accordance with F.S. § 100.151;~~
- ~~(2) Election results demonstrate an affirmative vote of the majority of the electors has approved the Save Our Indian River Lagoon ½ cent sales tax; and~~
- ~~(3) Prior to November 8, 2016, the governing bodies representing at least 50 percent of the municipal population in the county have approved an interlocal agreement consistent with the distribution of all proceeds to the trust fund created by the ordinance from which this article is derived, provided the levy of the ½ cent surtax provided for in section 46-398 will commence on January 1, 2017.~~

SECTION 3. REFERENDUM. A referendum election is hereby called and ordered to be held in Brevard County at the time of the next general election to be held on November 5, 2024 to determine whether the Board of County Commissioners should continue to levy a ½ cent sales tax for financing the County's share of the cost for the Save Our Indian River Lagoon Program to implement the project plan.

SECTION 4. NOTICE OF REFERENDUM. Notice of the referendum shall be published in a newspaper of general circulation in the County or on the County's website as provided in section 50.0311, Florida Statutes, at least twice, once in the fifth week and once in the third week prior to the week in which the referendum is held, the date of first publication in said newspaper to be at least thirty (30) days before said referendum, in the manner provided in section 100.342, Florida Statutes.

SECTION 5. NOTICE TO SUPERVISOR OF ELECTIONS. Upon adoption of this ordinance, notice of the calling of the referendum election provided for in this Ordinance shall be delivered to the Supervisor of Elections. This Ordinance shall not be implemented unless the Supervisor of Elections provides his consent to a date when the registration books can be available pursuant to Section 100.151, Florida Statutes.

SECTION 6. PLACES OF VOTING, INSPECTORS, CLERKS. The polls will be open at the voting places on the date of the referendum during the times prescribed by law. All qualified electors residing within the County shall be entitled and permitted to vote at the referendum on the proposition set forth below. The places of voting and the inspectors and clerk for the referendum shall be those designated by the Supervisor or Elections of Brevard County.

SECTION 7. OFFICIAL BALLOT. Ballots to be used in the referendum shall contain a statement of the description of the proposed Save Our Indian River Lagoon ½ Cent Sales Tax Referendum and shall be in substantially the following form:

BALLOT

Brevard County, Florida

Title: EXTENSION OF THE SAVE OUR INDIAN RIVER LAGOON HALF-CENT SALES TAX THROUGH DECEMBER 31, 2036

To restore the Indian River Lagoon through infrastructure, capital improvements, and capital maintenance projects and programs designed to reduce pollution, remove muck, and improve water quality and marine habitat for fish and wildlife, shall Brevard County extend the ½ cent Save Our Indian River Lagoon sales tax for ten years beginning January 1, 2027 and require deposit of all revenue in a trust fund for such purposes, with citizen committee oversight and annual independent audits?

FOR the ½ cent sales tax

AGAINST the ½ cent sales tax

SECTION 8. ABSENTEE VOTING. The form of ballots to be used in such referendum for absentee voters shall be the same as used at the polling places for said referendum or such other form as may be prescribed by law.

SECTION 9. PRINTING OF BALLOTS. The Supervisor of Elections for Brevard County is hereby authorized and requested to (a) have sample ballots printed and to deliver such sample ballots to the inspectors and clerks on or before the date and time for opening of the polls for such referendum and (b) have official ballots for use in such referendum printed and delivered in accordance with law.

SECTION 10. PAYMENT OF REFERENDUM EXPENSES. The County Manager is hereby authorized and directed to approve the payment of lawful expenses associated with conducting the referendum election and the Clerk of the Board of County Commissioners is hereby authorized and directed to disburse the funds necessary to pay such expenses.

SECTION 11. VOTER REGISTRATION BOOKS. The Supervisor of Elections for Brevard County is hereby authorized and requested to furnish the poll workers, inspectors and clerks

required at each place where the votes are to be cast in such referendum, as well as applicable portions of the registration books or certified copies thereof showing the names of the qualified electors residing in the County.

SECTION 12. ELECTION PROCEDURE. The referendum shall be held and conducted in the manner prescribed by law and shall, as soon as practicable, be returned and canvassed in the manner prescribed by law. The result shall show the number of qualified electors who voted at such referendum and the number of votes cast respectively for and against approval of the proposition. Upon certification in the manner prescribed by law, the results shall be recorded in the minutes of the Board of County Commissioners.

SECTION 13. LEVY OF ONE-HALF CENT SALES TAX FOR INDIAN RIVER LAGOON RESTORATION. As authorized under section 212.055(2), Florida Statutes, and subject to section 19(b) below, beginning January 1, 2027, the levy of the one-half cent Save Our Indian River Lagoon Sales Surtax is hereby extended for a period of ten years, as specified in this Ordinance.

SECTION 14. SAVINGS CLAUSE. In the event the referendum provided for in Section 3 of this Ordinance is not approved by a majority vote of those voting on the question posed by the referendum, the levy of the Save Our Indian River Lagoon Sales Surtax pursuant to the Original Save Our Indian River Lagoon Surtax Ordinance shall remain in effect as originally provided in the Original Save Our Indian River Lagoon Surtax Ordinance, the proceeds of the Save Our Indian River Lagoon Sales Surtax shall continue to be used for the purposes provided in the Original Save Our Indian River Lagoon Surtax Ordinance and shall continue to be distributed as provided in the Original Save Our Indian River Lagoon Surtax Ordinance.

SECTION 15. SEVERABILITY. If any section, subsection, sentence, clause or provision of this Ordinance or the application thereof to any person or circumstance is held invalid or unconstitutional by a court of competent jurisdiction, such invalid or unconstitutional portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the other portions of this ordinance, provided the remaining portions effectuate the purpose and intent of this ordinance.

SECTION 16. INCLUSION IN BREVARD COUNTY CODE. It is intention of the Board of County Commissioners that the provisions of this ordinance shall become and be made a part of the Code of Ordinances of Brevard County, Florida, and that the sections of this ordinances may be renumbered or re-lettered and that the word "ordinance" may be changed to "section," "article," or such other appropriate word or phrase in order to accomplish such intentions.

SECTION 17. CONFLICTING PROVISIONS. In the case of a direct conflict between any provisions of this ordinance and a portion or provision of any other appropriate federal, state, or county law, rule, code or regulation, the more restrictive shall apply.

SECTION 18. REPEALING CLAUSE. All ordinances or other actions of the County which are in conflict herewith are hereby repealed to the extent of such conflict or inconsistency.

SECTION 19. EFFECTIVE DATES; FILING AND NOTICES; REPEAL.

(a) This Ordinance shall be effective upon filing with the Florida Department of State. Immediately upon passage, the Clerk is directed to so file this Ordinance and to provide copies to the Florida Department of Revenue, the Supervisor of Elections, and the Florida Office of Program Policy Analysis and Government Accountability in accordance with applicable law. Subject to section 19(b) below, for purposes of authorizing the extension of the levy of the Save Our Indian River Lagoon Sales Surtax, this Ordinance shall take effect on January 1, 2027.

(b) The extension of the levy of the Save Our Indian River Lagoon Sales Surtax proposed by this Ordinance shall commence on January 1, 2027, only if approved by a "FOR" vote by a majority of those voting on the question posed at the November 5, 2024 referendum. If a majority of those voting on the question posed do not vote "FOR", the proposed renewal of the levy of the Save Our Indian River Lagoon Sales Surtax shall not be authorized and this Ordinance shall be of no further force and effect.

(c) The extension of the levy of the Save Our Indian River Lagoon Sales Surtax proposed by this Ordinance shall commence on January 1, 2027, only if each of the governing boards of Brevard County and the governing bodies of the municipalities representing a majority of the county's municipal population enter into an interlocal agreement providing for the distribution of the proceeds of the Save Our Indian River Lagoon Sales Surtax in accordance with section 212.055, Florida Statutes prior to January 1, 2027.

ENACTED this _____ day of August, 2024

ATTEST:

BOARD OF COUNTY COMMISSIONERS
BREVARD COUNTY, FLORIDA

Rachel M. Sadoff, Clerk

By: _____
Jason Steele, Chair

As approved by the Board on August __, 2024