

PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS  
AGENDA ITEM SUMMARY

Agenda Item #:

4A  
PT/PB 15-2

Meeting Date: May 17, 2016

Consent  Regular  
 Ordinance  Public Hearing

**REVISED**

Department: County Administration

SA / HV opposed  
Ord 2016-032

I. Executive Brief

**Motion and Title:** Staff recommends motion to adopt: AN ORDINANCE IMPOSING A COUNTYWIDE LOCAL GOVERNMENT INFRASTRUCTURE SURTAX OF ONE PERCENT (1.0%) ON ALL AUTHORIZED TAXABLE TRANSACTIONS OCCURRING WITHIN PALM BEACH COUNTY, AS AUTHORIZED BY SECTION 212.055(2), FLORIDA STATUTES, EFFECTIVE BEGINNING JANUARY 1, 2017, FOR A PERIOD OF TEN YEARS; PROVIDING THAT IMPOSITION OF THE SURTAX SHALL BE CONTINGENT ON APPROVAL AT A COUNTYWIDE REFERENDUM; PROVIDING FOR DISTRIBUTION OF SURTAX REVENUES AMONG THE COUNTY, THE MUNICIPALITIES IN THE COUNTY, AND THE SCHOOL BOARD OF PALM BEACH COUNTY, FLORIDA; PROVIDING FOR CITIZEN OVERSIGHT; PROVIDING BALLOT LANGUAGE AND DIRECTING THE SUPERVISOR OF ELECTIONS TO HOLD A COUNTYWIDE PRECINCT REFERENDUM ELECTION ON NOVEMBER 8, 2016.

**Summary:** On May 3, 2016, the Board approved on first reading an infrastructure surtax plan for one cent, maximum 10 years, creation of an oversight committee to audit spending for compliance with approved projects, and the following allocations: 50% to the School District, 30% to the County, and 20% to the Municipalities. The ordinance has also been amended to include an alternate sunset provision that the surtax will end earlier if \$2.7 billion is collected prior to September 1<sup>st</sup> of any year that the Board agrees to take all necessary action to repeal this Ordinance and notify the Florida Department of Revenue prior to the applicable deadline so that the surtax will not continue for the following calendar year. All funding must be expended as prescribed by Florida Statutes.

This Ordinance for a one-cent infrastructure surtax includes ballot language for a referendum scheduled for November 8, 2016. If approved by the voters, the surtax will begin on January 1, 2017 for ten years, ending on or before December 31, 2026. In addition to creating an oversight committee(s), a project manager will be hired or assigned to coordinate and monitor the program.

The local discretionary sales surtaxes apply to all transactions subject to the state tax imposed on sales, use, services, rentals, admissions, and other authorized transactions. The surtax applies to the first \$5,000 of any single taxable tangible personal property item. Items such as groceries, baby food, baby formula, and medicines are exempt from sales tax. Levying this surtax will partially shift the funding responsibility to visitors; about 25% of sales tax in Palm Beach County is paid by visitors, as opposed to funding infrastructure backlog through property taxes.

Florida's Department of Revenue (DOR) will distribute the surtax directly to the School District, each Municipality, and the County.

An interlocal agreement establishing a distribution formula that would be inclusive of all proposed partners has been approved by the County and the School Board. The Interlocal agreement will need to be approved by the governing bodies of the municipalities representing a majority of the County's population. Countywide (PFK)

**Attachments:**

1. Ordinance

Recommended by: N/A  
Department Director Date

Approved By: [Signature] 5-12-16  
County Administrator Date

**II. FISCAL IMPACT ANALYSIS**

**A. Five Year Summary of Fiscal Impact:**

Fiscal Years	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
<b>NET FISCAL IMPACT</b>	_____	_____	_____	_____	_____
No. ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included In Current Budget? Yes \_\_\_\_\_ No X \_\_\_\_\_ (Various Budgets)  
 Budget Account No.: Fund \_\_\_\_\_ Department \_\_\_\_\_ Unit \_\_\_\_\_  
 Object \_\_\_\_\_ Reporting Category \_\_\_\_\_

**B. Recommended Sources of Funds/Summary of Fiscal Impact:**

**C. Departmental Fiscal Review:** \_\_\_\_\_

**III. REVIEW COMMENTS**

**A. OFMB Fiscal and/or Contract Dev. and Control Comments:**

<p><i>[Signature]</i>                  5/10 Ak OFMB                  5/10.</p>	<p><i>[Signature]</i> 5/10/16                  Contract Dev. and Control                  5/10/16</p>
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**B. Legal Sufficiency:**

*[Signature]* 5/10/16  
 Assistant County Attorney

**C. Other Department Review:**

\_\_\_\_\_  
 Department Director

**Background and Policy Issues:** On July 28, 2015 and November 24, 2015, the Board discussed financing infrastructure needs and directed staff to review possible funding options and hire consultants to review projects and spending. On February 9, 2016, the Board of County Commissioners (BCC) directed staff to work with the Municipalities, School District and Cultural Council, representing cultural organizations, to develop a joint plan specific to an infrastructure surtax. Further, the Board directed staff to bring back project lists from the partners. On February 24, 2016, the League of Cities Executive Board voted to not oppose a slightly different proposal which reflected 46.5% School District, 28.5% County, 18.5% Municipalities and 6.5% Economic Development for Cultural Facilities. After further analysis and review, staff refined the proposal and the School District approved the proposal described in the motion with a deadline for approval by the BCC no later than April 15, 2016. On March 22, 2016, the Board approved an infrastructure surtax plan for one cent, maximum 10 years, creation of an oversight committee to audit spending for compliance with approved projects, and the following allocations: 48% to the School District, 27.5% to the County, 18.5% to the Municipalities, 4.5% for Economic Development through Cultural Facilities, and 1.5% for Economic Development Incentives. On May 3, 2016, the Board approved on first reading an infrastructure surtax plan for one cent, maximum 10 years, creation of an oversight committee to audit spending for compliance with approved projects, and the following allocations: 50% to the School District, 30% to the County, and 20% to the Municipalities. The proceeds of such tax would finance the renewal and replacement of existing capital investments including roadway surfaces, bridges, drainage improvements, canals, park amenities, and government buildings, all of which were deferred during the recent recession and remain outstanding, and projects to maintain levels of service. An independent oversight committee would be established to insure that spending is in line with the statutory requirements.

ORDINANCE NO. 2016- 032

**AN ORDINANCE IMPOSING A COUNTYWIDE LOCAL GOVERNMENT INFRASTRUCTURE SURTAX OF ONE PERCENT (1.0%) ON ALL AUTHORIZED TAXABLE TRANSACTIONS OCCURRING WITHIN PALM BEACH COUNTY, AS AUTHORIZED BY SECTION 212.055(2), FLORIDA STATUTES, EFFECTIVE BEGINNING JANUARY 1, 2017, FOR A PERIOD OF TEN YEARS; PROVIDING THAT IMPOSITION OF THE SURTAX SHALL BE CONTINGENT ON APPROVAL AT A COUNTYWIDE REFERENDUM; PROVIDING FOR DISTRIBUTION OF SURTAX REVENUES AMONG THE COUNTY, THE MUNICIPALITIES IN THE COUNTY, AND THE SCHOOL BOARD OF PALM BEACH COUNTY, FLORIDA; PROVIDING FOR CITIZEN OVERSIGHT; PROVIDING BALLOT LANGUAGE AND DIRECTING THE SUPERVISOR OF ELECTIONS TO HOLD A COUNTYWIDE PRECINCT REFERENDUM ELECTION ON NOVEMBER 8, 2016.**

**WHEREAS**, Section 212.055(2), Florida Statutes (2015), authorizes the Palm Beach County Board of County Commissioners ("Board") to impose a 0.5 percent (0.5%) or 1.0 percent (1%) local government infrastructure surtax ("Surtax") upon transactions occurring within Palm Beach County ("County") which are taxable under Chapter 212, Florida Statutes (2015); and

**WHEREAS**, a 1.0 percent (1%) Surtax would, under current State sales tax rates, result in a one cent (1¢) Surtax on each one dollar (\$1.00) sale as specifically provided by law; and

**WHEREAS**, the Surtax differs from the transactions subject to the State sales tax in that the local option sales tax base applies only to the first \$5,000 of the purchase price of an item of taxable personal property while the State sales tax applies to the entire purchase price regardless of amount, pursuant to section 212.054(b), Florida Statutes; and

**WHEREAS**, the Surtax does not apply to certain groceries, medical products and supplies, and other specifically identified goods and services listed in section 212.08, Florida Statutes; and

**WHEREAS**, the funds derived from the imposition of the Surtax shall be distributed to the County and the municipalities of the County (the "Municipalities"), and will include a distribution to the School Board of Palm Beach County (the "School Board"), as provided in an interlocal agreement; and

**WHEREAS**, moneys received from the local government infrastructure Surtax authorized by section 212.055(2), Florida Statutes (2015), may be utilized by the County, the Municipalities, and the School Board to finance, plan, construct, reconstruct, renovate and improve needed infrastructure; and

**WHEREAS**, the County, the Municipalities, and the School Board are presently without sufficient fiscal and monetary resources to adequately fund their respective infrastructure needs; and

**WHEREAS**, adequate public infrastructure facilities of the types herein described promote the safe, efficient, and uninterrupted provision of numerous essential public services provided by the County, the Municipalities, and the School Board, including but not limited to district-owned school buildings, equipment, technology and security; school buses; roads, bridges, sidewalks, streetlights, signalization, parks, recreational and governmental facilities, drainage, and wastewater facilities; and public safety vehicles and equipment; and

**WHEREAS**, a brief description of the projects to be funded is set forth in the ballot language contained in this Ordinance; and

**WHEREAS**, the County, the Municipalities, and the School Board shall each establish a citizen oversight committee to provide for citizen review of their respective expenditure of infrastructure Surtax proceeds.

**NOW THEREFORE, BE IT ORDAINED** by the Board of County Commissioners of Palm Beach County, Florida, that:

**SECTION 1. INCORPORATION OF RECITALS.** The above recitals are true and correct and are hereby incorporated by reference.

**SECTION 2. IMPOSITION OF LOCAL GOVERNMENT INFRASTRUCTURE SURTAX.** There is hereby imposed a 1.0 percent (1%) local government infrastructure surtax ("Surtax") upon all authorized taxable transactions occurring within the County.

**SECTION 3. ADMINISTRATION, COLLECTION, AND DISTRIBUTION OF PROCEEDS.** The Surtax shall be administered, collected, and enforced in accordance with the provisions of section 212.054, Florida Statutes (2015), and the rules promulgated by the Florida Department of Revenue. The proceeds of the Surtax shall be distributed by the Department of Revenue directly to the County, the Municipalities, and the School Board, in accordance with an interlocal agreement.

**SECTION 4. REFERENDUM ELECTION.**

(a) The Surtax imposed in Section 2 hereof shall not take effect unless and until approved by a majority of the electors of the County voting in a countywide precinct referendum election on the Surtax.

(b) The Palm Beach County Supervisor of Elections is hereby directed to hold such countywide precinct referendum election on November 8, 2016.

(c) The Palm Beach County Supervisor of Elections shall cause the following proposition to be placed on the ballot:

**PALM BEACH COUNTY DISTRICT SCHOOLS, CITIES  
AND COUNTY GOVERNMENT INFRASTRUCTURE ONE-  
CENT SALES SURTAX**

To enhance education by improving district-owned school buildings, equipment, technology and security; purchase school buses, public safety vehicles and equipment; and equip, construct and repair roads, bridges, signals, streetlights, sidewalks, parks, drainage, shoreline and wastewater infrastructure, recreational and governmental facilities; shall the County levy a one-cent sales surtax beginning January 1, 2017 and automatically ending on or before December 31, 2026, with independent oversight by citizen committees?

\_\_\_\_\_ FOR THE ONE CENT SALES TAX

\_\_\_\_\_ AGAINST THE ONE CENT SALES TAX

**SECTION 5. ADVERTISEMENT.** The Palm Beach County Clerk of Court shall insure that notice of this referendum shall be advertised in accordance with the provisions of section 100.342, Florida Statutes (2015). Proof of publication shall be provided to the Chair of the Board.

**SECTION 6. EXPIRATION DATE; SURVIVAL OF CERTAIN RESTRICTED USES.**

(a) *Sunset.* In all events, this Ordinance shall be in effect only through December 31, 2026. It shall "sunset" and expire thereafter, without further action by the Board, at which time it shall be deemed repealed and of no further force and effect, and the Surtax levied hereunder shall terminate. Alternatively, this Ordinance shall "sunset" in the event that the total aggregate distributions of Surtax proceeds equal or exceed the amount of \$2,700,000,000 on or before September 1 of any year during the term of this Ordinance, in which event the Board shall take all necessary action to repeal this Ordinance and notify the Florida Department of

Revenue prior to the applicable deadline so that the Surtax will not continue for the following calendar year.

(b) *Survival of restrictions on use of Surtax proceeds.* Notwithstanding the provisions of subsection (a) for the expiration and repeal of this Ordinance, so long as any Surtax proceeds shall remain unspent, the restrictions hereby imposed concerning the distribution and use of such Surtax proceeds as well as the proceeds of any borrowings payable from Surtax proceeds, and all interest and other investment earnings on either of them shall survive such expiration and repeal and shall be fully enforceable in a court of competent jurisdiction.

**SECTION 7. CITIZEN OVERSIGHT.**

(a) The County, the Municipalities, and the School Board shall each separately provide for the creation of citizen oversight committees ("Committee" or collectively "Committees") to provide for citizen review of their respective expenditure of Surtax Proceeds, as soon as possible after the Surtax becomes effective, but not later than the date on which Surtax funds are first expended. A Municipality may either participate in an oversight committee created by the Palm Beach League of Cities or create its own committee.

(b) The Committees shall serve as advisory and reporting bodies to the creating entities. Each creating entity shall establish specific duties and membership requirements governing Committee operations and participation.

(c) Each Committee shall have the responsibility to review the expenditure of Surtax proceeds by the entity which created it.

(d) The Committees shall meet monthly, or as otherwise needed to fulfill their duties and responsibilities. Each Committee shall provide an annual report to the governing board of the entity which created it.



(e) Committee members shall receive no compensation for the performance of their duties.

(f) The Committees, their members, and all their proceedings shall be governed by and comply with the provisions of the Florida Sunshine Law, Chapter 286, Florida Statutes, the Florida Public Records Law, Chapter 119, Florida Statutes, and the Florida Ethics Code, Chapter 112, Florida Statutes, and all other applicable local or state statutes, ordinances, or rules.

**SECTION 8. CODIFICATION.** It is the intention of the Board that the provisions of this Ordinance, including its preamble, shall become and be made a part of the County Code of Ordinances, and the word "ordinance" may be changed to "section," "article," or other appropriate word or phrase and the sections of this Ordinance may be renumbered or relettered to accomplish such intention; provided, however, that Sections 5 and 8 shall not be codified.

**SECTION 9. SEVERABILITY.** Should any section or provision of this Ordinance or any portion thereof, or any paragraph, sentence, or word be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remainder hereof other than the part declared to be invalid.

**SECTION 10. EFFECTIVE DATE.** This Ordinance shall become effective upon filing with the Department of State.

PASSED AND DULY ENACTED by the Board of County Commissioners of Palm Beach County, Florida in regular session, this 17th day of May, 2016.  
date set forth above.

PALM BEACH COUNTY, FLORIDA

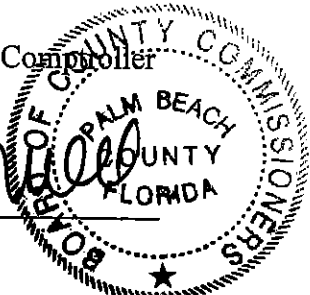
By: Mary Lou Berger  
Mary Lou Berger  
Mayor

(SEAL)

ATTEST:

Sharon R. Bock, Clerk & Comptroller  
Circuit Court

By: Nancy Powell  
Deputy Clerk



APPROVED AS TO FORM AND LEGAL SUFFICIENCY

By: Paul Feby  
County Attorney

Filed with the Department of State on the 19th day of May, 2016.

STATE OF FLORIDA, COUNTY OF PALM BEACH  
I, SHARON R. BOCK, Clerk & Comptroller  
certify this to be a true and correct copy of the original  
filed in my office on MAY 17 2016  
dated at West Palm Beach, FL 5:20 PM  
By: Nancy Powell  
Deputy Clerk