

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC19-1250

ROBERT EMERSON, *et al.*,

Appellants/Cross-Appellees,

vs.

HILLSBOROUGH COUNTY,
FLORIDA, *et al.*,

Appellees/Cross-Appellants.

L. T. Case No.:

2019-CA-001382-A001-HC

ON MANDATORY REVIEW OF A FINAL ORDER
OF THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN A BOND VALIDATION PROCEEDING

**INTERVENOR-APPELLEES' APPENDIX TO
ANSWER BRIEF ON APPEAL
AND INITIAL BRIEF ON CROSS-APPEAL**

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CERTIFICATE OF SERVICE

I **CERTIFY** that a copy of the foregoing has been filed through Florida's e-Filing Portal and a copy was served by electronic transmission on this 10th day of October, 2019 to:

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By: s/ Raoul G. Cantero
Raoul G. Cantero

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TAB 1

ORDINANCE

19-20

ORDINANCE NO. 19- 20

AN ORDINANCE OF HILLSBOROUGH COUNTY, FLORIDA, RELATING TO THE ONE PERCENT TRANSPORTATION SALES SURTAX LEVIED PURSUANT TO ARTICLE 11 OF THE HILLSBOROUGH COUNTY CHARTER; PROVIDING FOR THE USE, ALLOCATION AND DISTRIBUTION OF THE PROCEEDS OF SUCH SURTAX; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF LAWS IN CONFLICT; PROVIDING FOR INCLUSION IN THE HILLSBOROUGH COUNTY CODE; PROVIDING AN EFFECTIVE DATE.

Upon motion by Commissioner Miller, seconded by Commissioner Overman, the following ordinance was enacted by a vote of 6 to 1, with Commissioner(s) White voting "No", Commissioner(s) _____ being absent.

WHEREAS, on November 6, 2018, the electorate of Hillsborough County approved a ballot measure providing for an amendment to the Hillsborough County Charter (the "Original Charter Amendment") which levies a one percent (1%) transportation sales surtax (the "Transportation Surtax") in accordance with Sections 212.054 and 212.055(1), Florida Statutes (2018) (the "State Surtax Law"); and

WHEREAS, pursuant to that certain Amended Final Judgement issued on July 9, 2019, by the Circuit Court of the Thirteenth Judicial Circuit in and for Hillsborough County, Florida (the "Circuit Court"), upon the Complaint for Bond Validation filed in Case No. 2019-CA-001382 (the "Bond Validation Judgement"), the Circuit Court, among other things, ruled the Transportation Surtax lawful and valid, but also held that certain of the provisions of the Original Charter Amendment providing for the use, allocation and distribution of the Transportation Surtax are unconstitutional and, therefore, severed and struck such provisions from the Original Charter Amendment (the Original Charter Amendment as modified by the Bond Validation Judgement is hereinafter referred to as the "Charter Amendment"); and

WHEREAS, in so holding, the Circuit Court determined that the State Surtax Law provides that the Board of County Commissioners of Hillsborough County (the "Board") be exclusively responsible for determining which uses the Transportation Surtax proceeds should be allocated to as well as the amount to be distributed to each use; and

WHEREAS, in accordance with the foregoing, the Board desires to provide for the use, allocation and distribution of the proceeds of the Transportation Surtax in a manner consistent with the will of the electorate of Hillsborough County as expressed by the approval of the ballot measure on November 6, 2018, providing for the Original Charter Amendment; and

WHEREAS, such action is in the best interest of Hillsborough County and serves both a county purpose and a public purpose;

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF HILLSBOROUGH COUNTY, FLORIDA, THAT:

SECTION 1. DEFINITIONS.

All terms used in this Ordinance in capitalized form, unless otherwise defined in this Ordinance, shall have the same meanings as ascribed to them in the Charter Amendment.

SECTION 2. USE, ALLOCATION AND DISTRIBUTION OF TRANSPORTATION SURTAX PROCEEDS.

Section 2.01. Duties of the Clerk. The Clerk shall receive the Surtax Proceeds from the Florida Department of Revenue and act as trustee thereof and shall retain all Surtax Proceeds in a separate account until disbursed in accordance with the Charter Amendment and this Section 2.01 and the distribution allocations provided for in Section 2.02 of this Ordinance. Disbursements of the Surtax Proceeds in accordance with the distribution allocations provided in Section 2.02 of this Ordinance shall be made to the Agencies by the Clerk within five (5) business days of the Clerk's receipt of Surtax Proceeds from the Florida Department of Revenue. The Clerk shall engage an independent accounting firm to conduct an annual, independent audit of the distribution and expenditure of all Surtax Proceeds, which shall be completed within six (6) months after the end of the fiscal year being audited, for the purpose of determining the Clerk's and each Agency's compliance with the provisions of the Charter Amendment and this Ordinance relating to the distribution and expenditure of Surtax Proceeds during such fiscal year. For the duration of the period in which the Transportation Surtax is in effect, the Board shall appropriate County funds to the Clerk on an annual basis to permit the Clerk to carry out the annual audit of Surtax Proceeds described in this Section 2.01.

Section 2.02. Distribution of Surtax Proceeds. The Surtax Proceeds shall be deposited in the Trust Fund maintained by the Clerk and distributed in accordance with the following formula:

(1) General Purpose Portion. Fifty-four percent (54%) of the Surtax Proceeds (the "General Purpose Portion") shall be distributed to the County and to each Municipality in accordance with their relative populations as calculated utilizing the statutory formula provided in F.S. § 218.62 (the "Distribution Formula") and be expended by the County and each Municipality in accordance with the Charter Amendment and Section 2.04 of this Ordinance. The County and each Municipality may elect to bond or otherwise encumber their respective distribution of the Surtax Proceeds allocated pursuant to this Section 2.02(1), and shall provide notice of such election to the other recipients of the General Purpose Portion at least ninety (90) days prior to issuing bonds.

(2) Transit Restricted Portion. Forty-five percent (45%) of the Surtax Proceeds (the "Transit Restricted Portion") shall be distributed to HART and be expended by HART in accordance with the Charter Amendment and Section 2.05 of this Ordinance. Subject to compliance with applicable law and the charter of HART, HART may elect to directly, or through the County, bond or otherwise encumber the Transit Restricted Portion.

(3) Planning and Development Portion. One percent (1%) of the Surtax Proceeds (the “Planning and Development Portion”) shall be distributed to the MPO. The Planning and Development Portion shall be expended by the MPO on planning and development purposes, including data collection, analysis, planning, and grant funding to assist the Agencies and the Independent Oversight Committee in carrying out the purpose set forth in Section 11.01 of the Charter Amendment.

Section 2.03. Agency Project Plans. No later than September 30th of each year, each Agency shall deliver to the Independent Oversight Committee a plan (a “Project Plan”) setting forth the projects, including reasonable detail for each, on which such Agency will expend their distribution of the Surtax Proceeds for the following calendar year in accordance with the uses mandated by Sections 2.04 and 2.05 of this Ordinance. Each Project Plan must be approved by the governing body of the applicable Agency. No Agency may expend Surtax Proceeds for any purpose other than implementation of each of the projects set forth in such Agency’s Project Plan, and each Agency shall diligently and prudently pursue implementation of each of the projects set forth in such Agency’s Project Plan.

Section 2.04. Uses of General Purpose Portion. For any Agency that the Clerk reasonably estimates will receive five percent (5%) or more of the Surtax Proceeds in a given calendar year, such Agency’s share of the General Purpose Portion shall be expended by the Agencies for the planning, development, construction, operation, and maintenance of roads, bridges, sidewalks, intersections, and public transportation (which, for purposes of this Section, may include any technological innovations such as autonomous vehicles and related infrastructure), to the extent permitted by F.S. § 212.055(1), and include expenditures in the following categories:

(1) Maintenance and Vulnerability Reduction. At least twenty percent (20%) of the General Purpose Portion shall be expended on projects that: (i) improve, repair and maintain existing streets, roads, and bridges, including fixing potholes, or (ii) reduce congestion and transportation vulnerabilities.

(2) Congestion Reduction. At least twenty-six (26%) of the General Purpose Portion shall be expended to relieve rush hour bottlenecks and improve the flow of traffic on existing roads and streets and through intersections. Expenditures in the category described in this Section 2.04(2) may include projects that improve intersection capacity through the use of technology, the construction of new intersections, the redevelopment of existing intersections, and may include related infrastructure such as roundabouts and turn lanes. Projects described in the foregoing sentence do not constitute New Automobile Lane Capacity, as defined in Section 2.04(8) of this Ordinance.

(3) Transportation Safety Improvements. At least twenty-seven (27%) of the General Purpose Portion shall be expended to promote transportation safety improvements on existing streets, roads and bridges.

(4) Transportation Network Improvements. At least twelve (12%) of the General Purpose Portion shall be expended on bicycle or pedestrian infrastructure and related improvements that make walking and biking safer, to the extent the foregoing is or is planned to become a part of the transportation network within any Agency’s jurisdiction, and to the extent permitted by F.S. § 212.055(1).

(5) Remaining Funds. Any remaining portions of the General Purpose Portion shall be expended on any project to improve transportation in the applicable Agency's jurisdiction to the extent permitted by F.S. § 212.055(1), the Charter Amendment and this Ordinance.

(6) Inter-Agency Distributions. Notwithstanding anything to the contrary set forth in this Section 2.04, the County and each Municipality may distribute any amount of its share of General Purpose Portion to any Agency (an "Agency Distribution"). For purposes of this Section, any Agency's share of the General Purpose Portion shall be reduced, or increased, by the amount of the Agency Distribution distributed, or received, as the case may be.

(7) Small Agency Distributions. Notwithstanding anything to the contrary set forth in this Section 2.04, any Agency that receives five percent (5%) or less of the Surtax Proceeds in any given calendar year, on an annualized basis, is not required to expend its share of General Purpose Portion on the categories set forth in Section 2.04(1) through (5) above, and shall instead expend its distribution of the Surtax Proceeds on any purpose consistent with Section 11.01 of the Charter Amendment and permitted by F.S. § 212.055(1).

(8) Limits on New Automobile Lane Capacity. Agencies are prohibited from expending any funds from the categories mandated by Section 2.04(1), (2) and (3) above on New Automobile Lane Capacity. For purposes of this Section 2.04(8), "New Automobile Lane Capacity" means projects that consist of (i) adding additional lanes for automobile traffic to existing roads or streets that are not related to intersection capacity improvement, or (ii) constructing new roads or streets.

(9) Reallocation of Expenditure Categories. Upon request by an Agency, which request must be approved by a supermajority of the Board, the General Purpose Portion expenditure allocations mandated in Sections 2.04(1) through (3) above may instead be expended on any project to improve transportation within such Agency's jurisdiction to the extent permitted by F.S. § 212.055(1), the Charter Amendment and this Ordinance if, in the opinion of the requesting Agency, any of the percentages set forth in Sections 2.04(1) through (3) exceed the amounts required to fulfill the purpose set forth therein.

Section 2.05. Uses of Transit Restricted Portion. The Transit Restricted Portion, and any Agency Distribution received by HART, shall be spent by HART for the planning, development, construction, operation, and maintenance of public transportation projects located solely in Hillsborough County, which are consistent with the HART Transit Development Plan, as adopted and amended from time to time by the HART board of directors, to the extent permitted by F.S. § 212.055(1), and include expenditures in the following categories:

(1) Enhancing Bus Services. No less than forty-five percent (45%) of the Transit Restricted Portion shall be spent on bus services, including express, neighborhood, circulator, paratransit, and all other types of transit now or hereafter operated by HART. HART shall consider the following factors in determining the projects included in its Project Plan for this purpose: existing transit ridership; increasing existing service; expanding service to more residents; existing and future land use; and the availability and feasibility of obtaining third party funding sources to fund any portions of the Project Plan.

(2) Expanding Public Transit Options. No less than thirty-five percent (35%) of the Transit Restricted Portion shall be spent on transit services that utilize exclusive transit right-of-way for

at least seventy-five percent (75%) of the length of the applicable service. HART shall consider the following factors in determining the projects included in its Project Plan for this purpose: existing transit ridership; utilizing or extending existing fixed guideways and rights-of-way; increasing existing service; expanding service to more residents; existing and future land use; and the availability and feasibility of obtaining third party funding sources to fund any portions of the Project Plan.

(3) Remaining Funds. Any remaining portions of the Transit Restricted Portion shall be spent on any project to improve public transportation permitted by F.S. § 212.055(1), the Charter Amendment or this Ordinance.

Section 2.06. Prohibited Uses. No Surtax Proceeds may be used for any of the following uses: (i) expansion of right of way or width of the interstate highway system; (ii) construction of a sports facility or any other facility not related to transportation; or (iii) any other use expressly prohibited by law.

Section 2.07. Independent Oversight Committee. To ensure that the Transportation Surtax is successfully implemented, independent oversight of the distribution and expenditure of the Surtax Proceeds shall be provided by an Independent Oversight Committee, which shall be composed of Hillsborough County residents appointed by the following bodies: (i) four (4) individuals appointed by the Board, and of which two are Experts (as defined below) in either transportation, planning, sustainability, engineering, or construction; (ii) one (1) from each Municipality, appointed by the mayor thereof; (iii) one (1) additional member from each Municipality for each 200,000 residents in such Municipality, appointed by the legislative body of that Municipality, based on population estimates published annually by the State of Florida; (iv) two (2) from HART, appointed by the HART board of directors; (v) one (1) attorney, who is a member by the Florida Bar, appointed by the Clerk; (vi) one (1) land use or real estate Expert appointed by the Hillsborough County Property Appraiser; and (vii) one (1) certified public accountant appointed by the Hillsborough County Tax Collector. No person then currently serving as an elected or appointed city, county, special district, state, or federal public office holder shall be eligible to serve as a member of the Independent Oversight Committee. Additionally, no member of the Independent Oversight Committee may be an employee of, independent contractor of, or otherwise be materially engaged for remuneration by any public or private recipient of Surtax Proceeds. Independent Oversight Committee members shall serve terms of three (3) years, without compensation, and each shall serve at the pleasure of the appointing body. The Independent Oversight Committee may make and adopt such by-laws, rules and regulations for its own guidance and for the oversight of the Transportation Surtax as it may deem expedient and not inconsistent with the Hillsborough County Charter and this Ordinance. The Independent Oversight Committee shall have only those powers and duties specifically vested in it by Section 11.10 of the Charter Amendment and this Ordinance. A majority of the members of the Independent Oversight Committee shall constitute a quorum, and the Independent Oversight Committee may conduct business only when a quorum is present. For the duration of the period in which the Transportation Surtax is in effect, the Board shall appropriate County funds on an annual basis for the administrative expenses of the Independent Oversight Committee in an amount sufficient for the Independent Oversight Committee to fulfill its duties under the Charter Amendment and this Ordinance. For purposes of this Section 2.07, "Expert" means an individual who has at least seven years of experience in their respective subject matter area, and possesses professional accreditations or degrees that are typical of an expert in their respective subject matter area. The Independent Oversight Committee shall have the powers and duties set forth below:

(1) Review the results of the annual audit described in Section 2.01 of this Ordinance and make findings as to whether the Clerk and each Agency has complied with the terms of the Charter Amendment and this Ordinance. Such findings shall include a determination as to whether Surtax Proceeds have been distributed as provided in the Charter Amendment and this Ordinance and whether the Surtax Proceeds have been expended in compliance with applicable state law, the Charter Amendment, this Ordinance, and any additional requirements that an Agency may have lawfully adopted.

(2) Certify as to whether the projects in each Agency Project Plan comply with the Charter Amendment and this Ordinance.

(3) Prepare an annual report to the Clerk and each Agency presenting the results of the annual audit process and any findings made. The Independent Oversight Committee shall cause a summary of the annual report to be published in a local newspaper and ensure that the report and annual audit are available online and are delivered to every library located within the County for public review. The Independent Oversight Committee shall hold a public hearing on each audit and annual report and shall report the comments of the public to each Agency.

(4) Review any projects proposed by citizens for inclusion in an Agency's Project Plan, and forward them to the appropriate Agency for consideration.

SECTION 3. SEVERABILITY.

If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provisions or applications. To this end, the provisions of this Ordinance are declared severable.

SECTION 4. CONFLICTS.

All ordinances or parts of ordinances in conflict herewith are hereby superseded or repealed to the extent of such conflict.

SECTION 5. INCLUSION IN THE HILLSBOROUGH COUNTY CODE.

The provisions of this Ordinance shall be included and incorporated in the Hillsborough County Code as an addition or amendment thereto, and shall be appropriately renumbered to conform to the uniform numbering system of the Hillsborough County Code.

SECTION 6. EFFECTIVE DATE.

This Ordinance shall be effective upon filing with the Florida Department of State.

SECTION 7. FILING.

The Clerk is directed to file a certified copy of this Ordinance with the Florida Department of State within ten (10) days after enactment.

STATE OF FLORIDA)
COUNTY OF HILLSBOROUGH)

I, Pat Frank, Clerk of the Circuit Court and Ex Officio Clerk of the Board of County Commissioners of Hillsborough County, Florida, do hereby certify that the above and foregoing is a true and correct copy of an ordinance adopted by the Board at its regular meeting of September 18, 2019, as the same appears of record in Minute Book 520 of the Public Records of Hillsborough County, Florida.

WITNESS my hand and official seal this 19th day of September, 2019.

PAT FRANK,
CLERK OF CIRCUIT COURT

By: *M. Siedewitz*
Deputy Clerk

APPROVED BY COUNTY ATTORNEY
AS TO FORM AND LEGAL SUFFICIENCY:

By: *[Signature]*
Chief Assistant County Attorney





FLORIDA DEPARTMENT *of* STATE

RON DESANTIS
Governor

LAUREL M. LEE
Secretary of State

September 19, 2019

Honorable Pat Frank
Clerk of the Circuit Court
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419 Pierce Street, Room 140
Tampa, Florida 33601

Attention: Midge Dixon

Dear Mrs. Frank:

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your electronic copy of Hillsborough County Ordinance No. 19-20, which was filed in this office on September 19, 2019.

Sincerely,

Ernest L. Reddick
Program Administrator

ELR/lb