

From: William Clague

Sent: Friday, June 15, 2018 3:36 PM

To: Jan Brewer <jan.brewer@mymanatee.org>

Cc: Mitchell Palmer <mitchell.palmer@mymanatee.org>; Alex Nicodemi <alex.nicodemi@mymanatee.org>; Ed Hunzeker <ed.hunzeker@mymanatee.org>; Dan Schlandt <dan.schlandt@mymanatee.org>; Cheri Coryea <cheri.coryea@mymanatee.org>; John Osborne <john.osborne@mymanatee.org>; Juliet Shepard <juliet.shepard@mymanatee.org>

Subject: Changes to Sales Tax Resolution No. R-16-128; RLS-18-0282

Jan:

Pursuant to the above request for legal services you have asked for the advice of this Office regarding proposed changes to Resolution No. R-16-128 (the "2016 Resolution") governing the expenditure of local option sales tax proceeds. I provide the following advice in response:

1. The RLS indicates that staff would like to amend the 2016 Resolution to allow certain changes to the projects approved for sales tax funding to take place through the budget amendment process. As I indicated to you in our recent phone conversation, we recommend that this be implemented through an amendment and restatement of the 2016 Resolution rather than a piecemeal amendment. With that in mind, attached is a draft resolution amending and restating the 2016 Resolution in its entirety.
2. The redlining reflects the changes to the 2016 Resolution, and is provided for your reference only. The Board should adopt a clean version of the resolution, though I have no objection to including the redline in the agenda materials as a reference tool for the Board.
3. In Section 2, I have made reference to Resolution No. R-16-179, which amended the 2016 Resolution. Please let me know if there are additional amending resolutions that should also be referenced here.
4. In Section 3, I have included your requested changes with some revisions on my part for clarity and consistency. I have not specified whether a public hearing is required for a budget amendment, as Florida Statutes do require such hearings in some cases but not in others. Therefore, I have made reference to "applicable law".
5. The most recent categories list and project list should be attached as exhibits A and B, respectively. I leave it to your judgment whether to include in the project list those projects that have been approved through the CIP, a separate process for approval of sales tax projects.

Please review the attached resolution and let me know if you have any suggested changes. Subject to any business or policy concerns raised by staff, I have no objection to the resolution being scheduled for consideration by the Board. I express no opinion as to the business or policy decisions regarding the changes proposed in the resolution.

This concludes my response to the RLS.

Bill Clague

Assistant County Attorney

Manatee County, Florida

ph. 941-745-3750

fx. 941-749-3089

william.clague@mymanatee.org

RESOLUTION NO. R-__-__

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF MANATEE COUNTY, FLORIDA, REGARDING PUBLIC FINANCE; AMENDING AND RESTATING RESOLUTION NO. R-16-128; ESTABLISHING GUIDELINES FOR EXPENDITURE OF PROCEEDS OF AN INFRASTRUCTURE SALES TAX; ESTABLISHING AN INFRASTRUCTURE SALES TAX CITIZENS OVERSIGHT COMMITTEE; PROVIDING FOR COMPOSITION, TERMS OF APPOINTMENT AND PROCEDURES OF THE CITIZENS OVERSIGHT COMMITTEE; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Section 212.055(2), Florida Statutes, authorizes local governments to levy a discretionary sales surtax; and

WHEREAS, the Board of County Commissioners of Manatee County (the “Board”) recognizes that it is in the best interest of Manatee County to finance, plan, construct, reconstruct, and improve public infrastructure facilities as authorized by law, and to levy and collect a half cent sales surtax to pay the cost thereof; and

WHEREAS, pursuant to Ordinance No. 16-35 (the “Sales Tax Ordinance”), the Board has authorized the levy of a local government infrastructure sales surtax (the “Sales Tax”), subject to the approval of the electors of Manatee County in a referendum to be held on November 8, 2016; and

WHEREAS, Sections 2 and 3 of the Sales Tax Ordinance provide that the Sales Tax proceeds shall be used to fund certain public infrastructure projects; and

WHEREAS, Section 7 of the Sales Tax Ordinance provides that the County shall establish a citizen oversight committee to provide for citizen review of its expenditures of Sales Tax proceeds, as soon as reasonably possible after the effective date of the Sales Tax, but not later than the date on which Sales Tax proceeds are first expended; and

WHEREAS, the Board adopted Resolution No. R-16-128 establishing guidelines for the expenditure of proceeds of an infrastructure sales tax; establishing an Infrastructure Sales Tax Citizens Oversight Committee; and providing for composition, terms of appointment and procedures of the Sales Tax Citizens Oversight Committee (as amended, the “2016 Resolution”); and

WHEREAS, it is in the best interest of Manatee County for the Board to adopt this Resolution to amend and restate the 2016 Resolution in its entirety (a) to implement the Sales Tax Ordinance by establishing guidelines for the expenditure of Sales Tax proceeds and (b) to establish a Citizen

Oversight Committee.

NOW, THEREFORE, BE IT RESOLVED, by the Board of County Commissioners of Manatee County, Florida:

Section 1. Findings. The recitals set forth above are hereby adopted as findings of the Board and incorporated herein by reference.

Section 2. Amendment and Restatement of 2016 Resolution. This Resolution amends and restates the 2016 Resolution and all amendments thereto (including without limitation Resolution No. R-16-179) in their entirety. Upon the adoption of this Resolution, the matters addressed herein shall be governed solely by this Resolution and any subsequent amendments hereto.

Section 32. Expenditure of Sales Tax Proceeds. The Board hereby establishes the following guidelines for expenditure of Sales Tax proceeds (inclusive of interest and investment earnings thereon):

A. Sales Tax proceeds shall be spent in accordance with the Sales Tax Ordinance and the “Infrastructure Sales Tax Funding Categories List” attached hereto as Exhibit “A”, and the subcategories and corresponding percentages listed therein. Any change to said subcategories or percentages shall require approval by the Board as an amendment to this Resolution adopted in a Public Hearing.

B. The “Infrastructure Sales Tax Project and Equipment List” attached hereto as Exhibit “B” is hereby established as the master list for planned projects and equipment to be funded with Sales Tax proceeds. Sales Tax proceeds shall be spent to fund only such projects and equipment as are described therein.

C. Any addition or removal of a project, and any change to a project scope or project equipment, shall require approval by the Board as either (1) an amendment to this Resolution adopted in a Public Hearing or (2) authorization in the County’s Five Year Capital Improvement Plan.

D. Projects may be amended by the Board for cost changes (increase or decrease), and may be closed by the Board, through the budget amendment process in accordance with applicable law.

~~B. The “Infrastructure Sales Tax Project and Equipment List” attached hereto as Exhibit “B” is hereby established as the master list for planned projects and equipment to be funded with Sales Tax proceeds. Sales Tax proceeds shall be spent to fund only such projects and equipment as are described therein. Any change to said projects or equipment shall require approval by the Board as either (1) an amendment to this Resolution adopted in a Public Hearing or (2) authorization in the County’s Five Year Capital Improvement Plan.~~

Section 43. Establishment of Citizens Oversight Committee. The County hereby

establishes an “Infrastructure Sales Tax Citizen Oversight Committee” (the “Committee”) to provide for citizen review of expenditures of Sales Tax proceeds. The Committee shall have only the following powers and duties:

- A. The Committee shall act solely in an oversight capacity to prepare an annual report to the Board of County Commissioners to consider the following:
 - i. Whether actual or planned expenditures are consistent with the subcategories and percentages provided in the Infrastructure Sales Tax Funding Categories List. Such determination of consistency with subcategories and percentages shall be based on actual sales tax collections and expenditures, as well as estimated collections and planned expenditures for the five years designated in the County’s Adopted Five Year Capital Improvement Plan.
 - ii. Whether any changes to the Infrastructure Sales Tax Funding Categories List were approved by the Board in accordance with this Resolution;
 - iii. Whether project and equipment expenditures, or debt service costs for same, utilizing infrastructure sales tax revenues for the previous year were identified on the Infrastructure Sales Tax Project and Equipment List; and
 - iv. Whether any changes to the Infrastructure Sales Tax Project and Equipment List were made in accordance with this Resolution.

- B. The Committee, its members and all its proceedings shall be governed by and comply with all applicable laws, including without limitation (1) the Florida Government in the Sunshine Law, Chapter 286, Florida Statutes, (2) the Florida Public Records Law, Chapter 119, Florida Statutes, and (3) the Florida Public Ethics Code, Chapter 112, Florida Statutes.

Section 54. Composition, Term and Procedures. The Committee shall be subject to the following requirements for composition, term and procedures:

- A. The Committee shall be composed of five members appointed by majority vote of the Board, and shall be removable for cause by the Board. Committee members shall be individuals residing in the unincorporated areas of Manatee County.

- B. Four of the initial members shall have initial terms of three years, and three of the initial members shall have initial terms of two years. Thereafter, all members shall serve for terms of two years.

- C. The Committee shall, by majority vote, select a Chairperson and Vice-Chairperson from among its members. The Committee shall determine the time and places for meetings, and shall meet not less than once per calendar year. The County’s Financial Management Department shall provide staff support to the Committee

- D. The Committee shall sunset on December 31, 2032.

Section 65. Severability. If any section, sentence, clause, or other provision of this Resolution shall be held to be invalid or unconstitutional by a court of competent jurisdiction, such section, sentence, clause, or other provision shall be deemed severable, and such invalidity or unconstitutionality shall not be construed as to render invalid or unconstitutional the remaining sections, sentences, clauses, or provisions of this Resolution.

Section 76. Effective Date. This Resolution shall become effective immediately upon adoption by the Board of County Commissioners.

PASSED AND DULY ADOPTED with a quorum present and voting this ___ day of _____, 2018.

**BOARD OF COUNTY COMMISSIONERS
OF MANATEE COUNTY, FLORIDA**

By: _____
Chairperson

ATTEST: ANGELINA COLONNESO
CLERK OF THE CIRCUIT
COURT AND COMPTROLLER

By: _____
Deputy Clerk