



2725 Malabar Road  
Malabar, Florida 32950-4427  
321-727-7764 X 13 – Telephone  
321-727-9997 – FAX

**FROM THE DESK OF DOUG HOYT, TOWN ADMINISTRATOR  
10/11/2016**

**Email received from Board of County Commissioners, Ms.  
Sally Lewis:**

There will be two Ordinances that will be heard under “Public Hearings” at the November 1, 2016 Board of County Commissioners Regular meeting @ 9:00AM.  
Please see attached the two Ordinances.

ORDINANCE NO. 2016-\_\_\_\_\_

**AN ORDINANCE OF BREVARD COUNTY RELATING TO BEAR MANAGEMENT; AMENDING THE BREVARD COUNTY CODE OF ORDINANCES TO INCLUDE A NEW CHAPTER; ESTABLISHING CHAPTER 126 TO ADDRESS CONTROL, DISPOSAL, AND COLLECTION OF ATTRACTANTS IN ORDER TO REDUCE THE INSTANCES OF HUMAN-BEAR ENCOUNTERS AND CONFLICTS; PROVIDING DEFINITIONS; CREATING STANDARDS FOR ATTRACTANT AND REFUSE MANAGEMENT WITHIN THE AREA(S) OF THE COUNTY WITH COMMON BEAR ACTIVITY; PROVIDING FOR ENFORCEMENT AND PENALTIES; PROVIDING FOR APPLICATION IN UNINCORPORATED AND INCORPORATED AREAS OF THE COUNTY UNLESS THERE IS A CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, pursuant to Article VIII, Section 1(g) of the Florida Constitution and Fla. Stat. § 125.01(1), Brevard County (hereinafter the “County”) is authorized to adopt local ordinances not inconsistent with general law or special law; and

**WHEREAS**, pursuant to Chapter 125, Florida Statutes, the County is authorized to adopt local ordinances to ensure the health, safety, and welfare of its residents; and

**WHEREAS**, the Florida Fish and Wildlife Conservation Commission (hereinafter “FWC”) has determined that more than 4,000 black bears live throughout Florida; and

**WHEREAS**, the FWC has determined that around 1,100 bears live within the Central Bear Management Unit (hereinafter “Central BMU”), which includes Brevard County; and,

**WHEREAS**, between 2000 and 2015, twenty-nine percent (29%) of the calls made to the FWC from individuals in the Central BMU were related to bears foraging in the garbage; and

**WHEREAS**, the FWC has identified parts of the County, particularly the northern part, as areas where bears are common; and

**WHEREAS**, parts of the County are suffering from an increase in human-bear encounters and conflicts caused by unsecured attractants, including garbage and refuse; and

**WHEREAS**, the FWC has issued the Florida Black Bear Management Plan, which identifies the need for communities to develop strategies to reduce the number of human-bear encounters and conflicts caused by unsecured attractants like refuse; and

**WHEREAS**, the Brevard County Board of County Commissioners (hereinafter “Board”) finds that bears foraging for food in unsecured garbage cans, refuse containers, and other sources pose a threat to the health, safety, and welfare of the people of this County.

**NOW, THEREFORE, BE IT ORDAINED BY THE BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS:**

**Section 1. Incorporation of Recitals.** The abovementioned recitals are hereby incorporated herein by reference.

**Section 2. Intent and Purpose.** The intent and purpose of this Ordinance is to reduce the number of encounters and conflicts between humans and bears caused by unsecured garbage cans, refuse containers, and other sources by establishing rules to address the control, disposal, and collection of such attractants within the County.

**Section 3. Creation.** Chapter 126, “Brevard County Bear Management Ordinance,” Brevard County Code, is hereby created to read as follows:

**Sec. 126-1. Authority.** This section is enacted under the authority of Article VIII, Section 1(g) and Chapter 125, Florida Statutes.

**Sec. 126-2. Purpose and intent.** It is hereby declared to be the intent of Chapter 126, “Brevard County Bear Management Ordinance,” Brevard County Code, to reduce the number of encounters and conflicts between humans and bears caused by unsecured garbage cans, refuse containers, and other sources by establishing rules to address the control, disposal, and collection of such attractants within the County.

**Sec. 126-3. Definitions.** As used in this Chapter, the below terms are defined as follows:

*Area(s) of common bear activity:* the part(s) of the County that the FWC, or its successor agency, identifies as having common bear activity (*see, Exhibit A*).

*Attractant:* any substance that attracts bears or could reasonably be expected to attract bears, such as food products, pet food, compost, feed, etc. Growing plants and/or trees that produce items including, but not limited to, berries, fruit, nuts, and acorns are excluded from this definition.

*Bear resistant commercial refuse container:* a container with a reinforced lid and a latching mechanism, or other County-approved or State-approved method, that prevents bears from accessing the container's contents.

*Bear resistant refuse container:* a bear resistant commercial refuse container or bear resistant residential refuse container.

*Bear resistant residential refuse container:* a fully enclosed residential refuse container, of sturdy construction, that prevents bears from accessing the container's contents.

*Code enforcement officer:* employees or agents of Brevard County whose duty it is to enforce the County Code, or any law enforcement officer as defined in Fla. Stat. § 943.10(1), as amended.

*Commercial property:* all improved property that is used for nonresidential purposes and that utilize a commercial refuse container for the collection of refuse, including commercial, industrial, and multi-family developments.

*Commercial refuse container:* any detachable refuse container that is designed or intended for mechanical pickup, generally referred to as a "dumpster."

*Person:* any individual, partnership, firm, organization, corporation, association, or any other legal entity, whether singular or plural, masculine or feminine, as the context may require.

*Refuse:* any waste that could reasonably attract bears, including, but not limited to, kitchen organic waste, food, food packaging, toothpaste, deodorant, cosmetics, etc.

*Residential property:* all improved property that is used for residential purposes and that utilizes residential refuse containers for the collection of refuse.

*Residential refuse container:* any commonly available light gauge steel, plastic, or galvanized receptacle of a nonabsorbent material, closed at one end and open at the other furnished with a closely fitted top or lid and handle(s) and/or water proof plastic bags of heavy mill construction that can be safely and securely closed.

*Responsible party:* the record owner, tenant, or occupant of any property or business within the area(s) identified as having common bear activity. This definition also includes haulers providing refuse collection service to commercial properties.

*Secured structure:* a designated structure in which refuse is stored in such a manner so as to minimize the attraction of bears and to serve as a bear resistant barrier during the time between refuse discard, collection, and disposal.

*Special event:* a use or activity offered to the general public, such as a cultural, recreational, educational, or social event, that is not contemplated in the approved site plan or other developmental approval, and which is generally consistent with the applicable zoning district.

**Sec. 126-4. Residential refuse disposal within areas of common bear activity.**

(a) Individuals residing within areas identified as having common bear activity must secure all refuse from residential properties within: 1) a functioning bear resistant residential refuse container or 2) a house, garage, shed, or other secured structure at all times, with the exception of the placement of residential refuse containers at the designated collection location as permitted by this section.

(b) Residential refuse containers associated with residential curbside collection services may be placed at the designated collection location on the scheduled collection day no earlier than 5:00 a.m. Residential refuse containers must be removed from the collection location and secured as soon as practicable after collection service has been provided. The aforementioned time restrictions do not apply to bear resistant residential refuse containers.

(c) Recyclable materials stored outside until a scheduled collection day, and/or placed at a designated collection location on a scheduled collection day, must be sufficiently free from residue of food and other material(s) so that they are not an attractant to bears.

(d) Household items that cannot reasonably be considered refuse or an attractant are not required to be secured within a bear resistant residential refuse container or within a house, garage, shed, or other secured structure. If such waste is commingled with refuse or an attractant, it must be secured within a bear resistant residential refuse container or within a house, garage, shed, or other secured structure.

(e) Only bear resistant refuse containers chosen from either a County-approved list or State-approved list will be considered compliant with this Chapter.

(f) Responsible parties that choose to utilize bear resistant residential refuse containers as a means to comply with this section shall be responsible for all costs associated therewith, including the cost to purchase the bear resistant residential refuse container and any additional service fees imposed by the refuse hauler.

**Sec. 126-5.** *Commercial refuse disposal within areas of common bear activity.* All commercial properties located within the area(s) identified as having common bear activity are required to place refuse within a bear resistant commercial refuse container. Bear resistant commercial refuse containers must remain secured at all times, except when loading or unloading the refuse, and the area around the container must be kept clean of attractants or debris. If the container is damaged in a manner that would allow a bear to access its contents, the damage must be reported to the company responsible for maintenance of the container and repaired within 48 hours after the damage is discovered. Commercial property collection service customers will be responsible for any cost associated with compliance with this requirement.

**Sec. 126-6.** *Special event refuse disposal within areas of common bear activity.* Any special event held outdoors within an area identified as having common bear activity must be kept free from the accumulation of refuse. Refuse must be collected from the grounds and must be secured within the appropriate bear resistant refuse container or a secured structure, or removed from the area to an appropriate disposal site at the close of each day's activities.

**Sec. 126-7.** *Construction site refuse disposal within areas of common bear activity.* All construction sites located within area(s) identified as having common bear activity must have a designated secure container to receive refuse. The designated container must be an appropriate bear resistant refuse container or secured structure. The designated containers are to remain secured at all times, except when loading or unloading refuse. If the container is damaged in a manner that would allow a bear to access its contents, the damage must be reported to the company responsible for maintenance of the container and repaired within 48 hours after the damage is discovered. Construction site collection service customers will be responsible for any cost associated with compliance with this requirement.

**Sec. 126-8. Compactors within areas of common bear activity.** Any outdoor trash compactor receiving refuse must be kept inaccessible to bears. Compactor doors must be kept closed and latched at all times, except when loading or unloading refuse, to prevent access by bears. The area around the compactor must be kept clean of attractants or debris. If the container is damaged in a manner that would permit a bear to access its contents, the damage must be reported to the company responsible for maintenance of the container and repaired within 48 hours after the damage is discovered. Commercial property collection service customers will be responsible for any cost associated with compliance with this requirement.

**Sec. 126-9. Feeding bears prohibited.**

(a) No person shall intentionally or unintentionally feed or provide food to bears within Brevard County. Any person who leaves or stores any attractant in a manner that creates, or would reasonably be expected to create, a lure or enticement for bears will be considered in violation of this Chapter.

(b) Within area(s) identified as having common bear activity, responsible parties are required to comply with the following best management practices when the failure to do so creates, or would reasonably be expected to create, a lure or enticement for bears:

- (1) Bird feeders: Bird and hummingbird feeders are allowed; however feeders must be suspended on a cable or other device so that they are inaccessible to bears; the area below the feeders must be kept free from the accumulation of seed debris.
- (2) Fruit trees: Fruit, with the exception of citrus fruits, must be picked when it becomes ripe, and all fallen fruit must be promptly removed from the ground.
- (3) Compost: Meat, fish, oil, dairy, large amounts of fruit, or other odorous attractants are not permitted to be used for composting. Compost must be aerated and turned regularly to reduce odor and hasten the composting process, and shall be pursued consistent with guidelines for bear-resistant composting issued by the Florida Fish and Wildlife Conservation Commission.
- (4) Barbecue grills: Grease traps must be emptied, excess food must be burned off, and grills must be cleaned after each use.
- (5) Pet food: Pet food or food bowls may not be left out overnight or unattended, unless kept in a secured enclosed

kennel with a roof. If possible, pets are to be fed indoors. Pet food must be stored in a secured structure or in a bear resistant refuse container.

- (6) Vehicles: Odorous items, such as trash, groceries, pet food, coolers, etc., may not be stored in vehicles overnight.

**Sec. 126-10.** *Application of Bear Management Ordinance to parts of the County.* The Board, relying on the FWC's Central Bear Management Unit Bear Range Map (*see, Exhibit A*), recognizes that northern parts of the County are considered common areas for bears. In general, while the County has not experienced a great prevalence of human-bear encounters and/or conflicts, the Board finds that bears present increasing threats to public health, safety, and welfare that require certain measures be taken, including, but not limited to, the development of standards to manage attractants and refuse. Throughout the entire County, application of the rules and regulations enumerated in Chapter 126, "Brevard County Bear Management Ordinance," Brevard County Code, will be subject to the following criteria and conditions:

(a) Application of Sections 126-4 through 126-8 and Section 126-9(b) shall not occur in any particular area of the County until one of the following events occurs:

- (1) A significant human-bear conflict occurs within a certain geographic location;
- (2) The FWC, or its successor agency, advises the County of an appreciable increase in human-bear encounters and/or conflicts within a certain geographic location; or
- (3) Conditions are such that there is an imminent threat of a harmful human-bear conflict within a certain geographic location.

(b) Subsequent to the occurrence of any one of the foregoing events, the Board may initiate the application of Sections 126-4 through 126-8 and Section 126-9(b) of Chapter 126, "Brevard County Bear Management Ordinance," Brevard County Code, in whole or in part, within an area of the County requiring the implementation of Chapter 126, "Brevard County Bear Management Ordinance," Brevard County Code, to ensure the public health, safety, and/or welfare of the citizens of and visitors to the County. This shall be done through the adoption of a resolution at a noticed public meeting. Unless protection of the public health, safety, and/or welfare dictates otherwise, affected municipalities and refuse haulers will be given thirty (30) days' notice before the Board considers the resolution.

(c) In cases of an immediate public threat to the public health, safety, and/or welfare, the County Manager, or designee, shall have the authority to initiate application of Sections 126-4 through 126-8 and Section 126-9(b) of Chapter 126, "Brevard County Bear Management Ordinance," Brevard County Code, by administrative order. Such an administrative order must be as limited in scope as possible to accomplish the necessary public safety measures, and must be ratified by the Board at the earliest possible opportunity. The County Manager, or designee, must consult with the FWC, or its successor agency, prior to issuing the administrative order and should consult with affected municipalities to coordinate efforts.

(d) For purposes of this section, *certain geographic location* means the area designated by the FWC, or its successor agency, or the Board of County Commissioners as requiring the implementation of Chapter 126, "Brevard County Bear Management Ordinance," Brevard County Code, to ensure the public health, safety, and/or welfare of the citizens of and visitors to the County.

**Sec. 126-11. *Enforcement and Penalties.***

(a) Any responsible party found to be in violation of this Chapter may be subject to any applicable enforcement mechanisms available to the County, including Fla. Stat. § 125.69 and Brev. Ord. Sec. 1-7.

(b) Each violation of this Chapter will be deemed a separate offense and a separate offense will be deemed committed on each day during or on which a violation occurs or continues.

(c) Violations of this Chapter shall be punishable by a fine not to exceed \$500.00 and may be prosecuted before the County's special magistrate in accordance with the rules set forth in Chapter 2, Article VI, Division 2 of the Brevard County Code.

(d) The imposition of a penalty for a violation does not excuse the violation nor does it imply permission for the violation to continue. All persons found to be in violation will be required to correct or remedy such violation or defects within a reasonable time.

(e) Code enforcement officers must consult with the FWC, or its successor agency, prior to engaging in enforcement activities related to Section 126-9 of this Chapter to determine if the activity in question creates, or would reasonably be expected to create, a lure or enticement for bears as evidenced by previous reports received by the FWC indicating that human-bear conflicts associated with attractants have occurred in that area in the past.

(f) The County Manager, or designee, is hereby authorized to establish operating procedures and guidelines for the implementation of enforcement activities under this Chapter.

**Sec. 126-12. *Applicability.*** This Chapter will apply in both the unincorporated and incorporated areas of the County, provided that any provision of this Chapter in conflict with a municipal ordinance will not be effective.

**Sec. 126-13. *Time period for compliance.***

- (a) Residential properties within an area of common bear activity must comply with the refuse disposal requirements outlined above within thirty (30) days of the date of adoption of this Chapter.
- (b) Commercial properties within an area of common bear activity must comply with the refuse disposal requirements outlined above within sixty (60) days of the date of adoption of this Chapter.
- (c) All construction sites within an area of common bear activity must comply with the refuse disposal requirements outlined above within thirty (30) days of the date of adoption of this Chapter.
- (d) Haulers providing refuse collection service to commercial properties shall make bear resistant refuse containers available within sixty (60) days of the date of adoption of this Chapter.
- (e) All other provisions of this Chapter shall become operative upon the effective date of the Ordinance enacting this Chapter or identifying an area of common bear activity.

**Sec. 126-14. *Severability.*** If any provision of this Chapter or the application thereof is held invalid or otherwise unenforceable, said provision shall not affect other portions or applications of this Chapter which can be given effect without the invalid provision or application, and to this end the provisions of this Chapter are declared severable.

**Sec. 126-15. *Conflicting provisions.*** In the case of a direct conflict between any provision of this ordinance and a portion or provision of any other Federal, State, or County law, rule, or regulation, the more restrictive shall apply.

**Sec. 126-16. *Inclusion in code.*** It is the intention of the Board of County Commissioners that the provisions of this Chapter shall become and be made part of the Brevard County Code of Ordinances; and that the sections of this Chapter may be renumbered or re-lettered and that the word "Ordinance" may be changed to "Chapter," "Section," "Article," or such other appropriate word or phrase in order to accomplish such intentions.

**Sec. 126-17. Effective date.** A certified copy of this ordinance shall be filed with the Office of the Secretary of State, State of Florida within ten (10) days of its enactment.

**DONE, ORDERED, AND ADOPTED** by the Brevard County Board of County Commissioners, this \_\_\_\_\_ day of November, 2016.

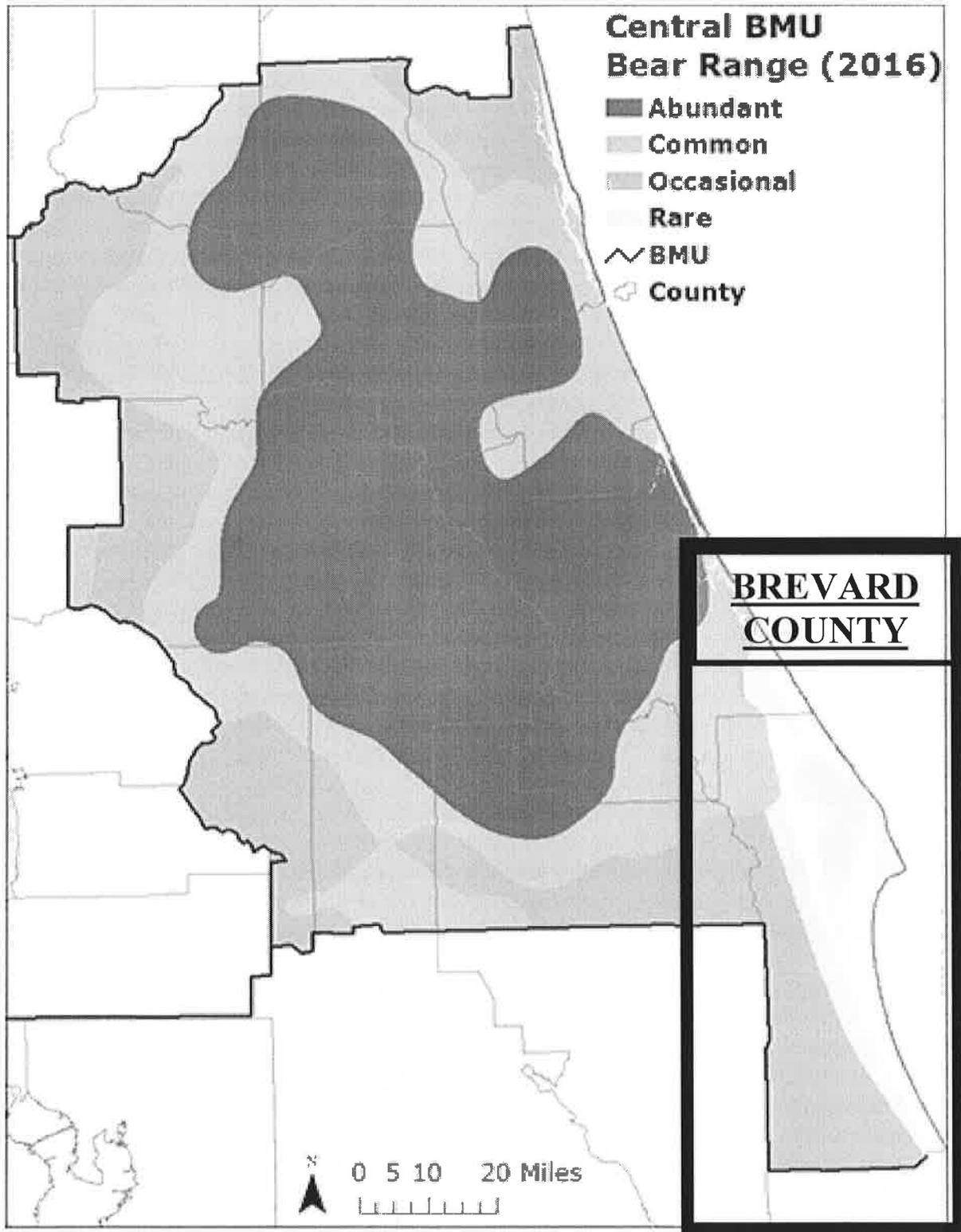
ATTEST:

BOARD OF COUNTY COMMISSIONERS  
BREVARD COUNTY, FLORIDA

\_\_\_\_\_  
Scott Ellis, Clerk

\_\_\_\_\_  
Jim Barfield, Chairman  
(As approved by the Board on \_\_/\_\_/\_\_)

Exhibit A: FWC Central Bear Management Unit Map (2016)



**ORDINANCE NO. 2016-\_\_**

**AN ORDINANCE AMENDING ORDINANCE 2016-15 OF BREVARD COUNTY, FLORIDA, RELATING TO THE LEVYING OF A PUBLIC INFRASTRUCTURE SURTAX FOR THE PURPOSES OF FUNDING THE SAVE OUR INDIAN RIVER LAGOON PROJECT PLAN; CLARIFYING THE COMMENCEMENT DATE OF LEVY; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN CODE; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the Florida Department of Revenue, having reviewed Ordinance 2016-15, and informed the county that the ordinance comports with section 212.055, Florida Statutes, but r requesting a clarification regarding the commencement date for the levy of the proposed ½ surtax contemplated therein; and

**WHEREAS**, the Board of County Commissioners of Brevard County finds that such clarification is prudent and best serves the public interest;

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

**Section 1. Amendment to Ordinance 2016-15, Sections 15 and 20.**

A. Section 15 of Ordinance 2016-15 is hereby amended to read as follows:

**SECTION 15. LEVY OF ½ SALES TAX FOR INDIAN RIVER LAGOON RESTORATION**

As authorized under section 212.055(2), Florida Statutes, there is hereby levied a ½ cent infrastructure sales surtax to be collected, deposited and expended for Indian River Lagoon improvements, projects and programs, after the levy commencement date specified in section 20 of this ordinance.

B. Section 20 of Ordinance 2016-15 of the Code of Ordinances of Brevard County, Florida, is hereby amended to read as follows:

SECTION 20. EFFECTIVE DATE. This Ordinance shall take effect upon November 8, 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 shall not be implemented until such time as a) the Supervisor of Elections has consented to obtaining and making registration books available in accordance with Section 100.151, Florida Statutes; b) 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 c) prior to November 8, 2016 the governing bodies representing at least 50% of the municipal population in Brevard County have approved an interlocal agreement consistent with the distribution of all proceeds to the trust fund created by this ordinance, provided the levy of the ½ cent surtax provided for in section 15 will commence on January 1, 2017.

**Section 2.**     **Severability.** If any provisions of this ordinance or the application thereof to any person or circumstances is held invalid or unconstitutional, 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 3.**     **Inclusion in 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 4.**     **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 5.**     **Effective Date.** This ordinance shall take effect upon filing a copy of this ordinance with the Department of State by the Clerk of the Board of County Commissioners.

**ENACTED** this \_\_\_ day of October, 2016.

ATTEST:

BOARD OF COUNTY COMMISSIONERS  
BREVARD COUNTY, FLORIDA

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Scott Ellis, Clerk

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Jim Barfield, Chair

As approved by the Board on October \_\_, 2016