

IN THE CIRCUIT COURT, FOURTH
JUDICIAL CIRCUIT, IN AND FOR
DUVAL COUNTY, FLORIDA

CASE NO.:

DIVISION:

JOSEPH ANDREWS, CONNIE BENHAM,
Dr. JUAN P. GRAY, LYNNE PRICE and
Rev. LEVY WILCOX, as individuals and
qualified electors of Duval County, Florida,

Plaintiffs,

vs.

The CITY OF JACKSONVILLE, a consolidated
political subdivision of the State of Florida,
and MIKE HOGAN as Duval County Supervisor of
Elections

Defendants.

**COMPLAINT FOR DECLARATORY,
INJUNCTIVE AND OTHER RELIEF**

Plaintiffs, JOSEPH ANDREWS, CONNIE BENHAM, Dr. JUAN P. GRAY,
LYNNE PRICE and Rev. LEVY WILCOX, as individuals and qualified electors of
Duval County, Florida, sue Defendants MIKE HOGAN as Duval County
Supervisor of Elections and the CITY OF JACKSONVILLE, for declaratory,
injunctive and other relief, and in support thereof, allege as follows:

Preliminary Allegations

1. Joseph Andrews, Connie Benham, Dr. Juan P. Gray, Lynne Price and Rev. Levy Wilcox are all sui juris individuals resident in and registered to vote in Duval County, Florida.
2. Mike Hogan is the serving Supervisor of Elections for Duval County, Florida (hereinafter "SOE).
3. The City of Jacksonville is a political subdivision of the State of Florida which, pursuant to state law, is simultaneously geographically co-extensive with and performs the political functions of Duval County, Florida (hereinafter "COJ.")
4. In March 2016 the Florida Legislature passed Committee Substitute for House Bill No. 1297, and on or about March 25, 2016, Governor Rick Scott signed Chapter 2016-146 creating Fla. Stat. 212.055(9) as of July 1, 2016. A copy of Florida General Laws Chapter 2016-146 is attached hereto as Exhibit 1.
5. On May 10, 2016, the COJ's legislative branch, the City Council, adopted Ordinance 2016-300-E as an emergency at the request of the Mayor of Jacksonville. The Mayor signed Ordinance 2016-300-E in May, 2016. A copy of Ordinance 2016-300-E is attached hereto as Exhibit 2.
6. By virtue of Ordinance 2016-300-E, a ballot summary and referendum

regarding whether or not a new future half-cent sales tax should be adopted was directed by Defendant COJ to Defendant SOE to be placed on the Duval County primary election ballot for the August 30, 2016 election.

7. Plaintiffs have retained the services of the undersigned attorney and are obligated, in the event Plaintiffs' attorney fees are awarded from or otherwise are properly collectable from any Defendant, to pay same to their undersigned attorney.

COUNT ONE
ACTION FOR DECLARATORY JUDGMENT THAT COJ
ORDINANCE
2016-300-E IS VOID AB INITIO

8. Paragraphs 1 through 7, inclusive are realleged as though set forth in full.

9. This is an action for a declaratory judgment that COJ Ordinance 2016-300-E was void ab initio.

10. Ordinance 2016-300-E, adopted by COJ in May, 2016, referenced a "sales surtax authorized by Section 212.055(9)" [page 1, in 12-13] and "Section 212.055(9), Florida Statutes, authorizes the governing body of a county to impose a one-half cent discretionary pension liability surtax ... [page 2, lines 29-31]; the Ordinance refers again to F.S. §212.055(a) at page 3, line 2; page 4, line 3; and page 4, lines 29 and 31.

11. Ordinance 2016-300-E cites Florida Statutes 212.055(9) as its sole authorizing statutory authority, as of May 2016. Florida Statutes §212.055(9) was not then yet law nor would it become law until July 1, 2016.

12. There existed no lawful authority whatsoever in May 2016 by virtue of which COJ could adopt Ordinance 2016-300-E or any other ordinance to lawfully implement the requirement that the Supervisor of Elections for Duval County, Florida place a sales surtax referendum onto the August 30, 2016 ballot.

13. The actions of the COJ in adopting Ordinance 2016-300-E in May 2016 were therefore ultra vires and are therefore void ab initio, null and without effect.

WHEREFORE the Plaintiffs demand:

a) that the Court declare Ordinance 2016-300-E null and void due to its adoption prior to the effective date of the legislation authorizing a referendum on a discretionary sales surtax;

b) that the Court direct the removal of all reference to the referendum regarding any sales tax from all ballots not yet mailed, provided for early voting, or to be used on August 30, 2016

c) that the Court, using, as necessary, its injunctive, all writs, and other judicial powers, declare that any votes either yes or no on any ballots which have

been or which are hereafter provided by the SOE to the electorate shall not be counted and the results of any marked ballots shall be disregarded;

- d) awarding Plaintiffs their costs as in equity actions, including attorney fees; and
- e) such further relief as the Court deems appropriate.

COUNT TWO
FAILURE OF REFERENDUM SUMMARY LANGUAGE TO
CLEARLY AND UNAMBIGUOUSLY STATE THE PURPOSE OF
THE BALLOT ISSUE

14. Paragraphs 1 through 7, inclusive are realleged as though set forth in full.

15. Pursuant to Florida Public Law 2016-146, effective July 1, 2016, a referendum of the voters of Duval County, Florida is required to determine if a majority of that electorate wish to implement the provisions of Florida Statute §212.055(9) [effective July 1, 2016] permitting the governing body of Duval County to impose a one-half cent discretionary pension liability surtax at a future date following fulfillment of a number of preconditions.

16. If in fact Exhibit 2, Jacksonville City Ordinance 2016-300-E (passed May 10, 2016) was, despite the fact that the state law authorizing it was not then yet in effect, a lawful ordinance, then the ballot initiative therein described and

authorized for placement on the August 30, 2016 primary ballot, is subject to the Florida Statute §101.161(1) requirement that an explanatory statement of the chief purpose of the measure (a “ballot summary”) of 75 words or less “be printed in clear and unambiguous language on the ballot”

17. The ballot summary forwarded to the SOE for inclusion on the August 30, 2016 primary ballot reads as follows:

**PENSION LIABILITY
1/2 -CENT SALES TAX PLAN**

Permanently closing up to three of the City’s underfunded defined benefit retirement plans, increasing the employee contribution for those plans to a minimum of 10%, and ending the Better Jacksonville ½-cent sales tax are all required to adopt a ½-cent sales tax solely dedicated to reducing the City’s unfunded pension liability. Shall such pension liability sales tax, which ends upon elimination of the unfunded pension liability or in 30 years maximum, be adopted?

_____ YES
_____ NO

18. The ballot summary exceeds 75 words. “10%” is at least two words: “ten percent.” “1/2-cent” is, as written, actually three words; “one half cent.” The ballot summary is therefore 78 words long, in direct violation of Fla. Stat. §101.161(1).

19. Even assuming, per arguendo, that the ballot summary is no more than 75 words long, it is neither clear nor unambiguous in stating the chief purpose of

the measure of the ballot. The first sentence, over 50 words long, does not even state the subject of the sentence. What is stating the preconditions for the adoption of a sales tax, and by whom? The City government, the unstated subject of the first sentence (and arguably also the second sentence), is never explicitly stated. The ballot summary cannot be said to be either clear or unambiguous when it fails to even identify who or what seeks to adopt the sales tax.

20. Clarity of purpose requires the summary to tell the voters who, what, when, where, and why. Absent a subject in the explanatory sentence of the summary, it fails the “who” element.

21. The ballot summary contains misstatements of fact which prevent it from complying with F.S. §101.161(1). For example, the summary refers to “increasing” certain contributions to ten percent when a number of recently hired City employees are already contributing ten percent of their salaries toward their pensions. The summary also states the pension liability sales tax will end “in 30 years maximum” when it is, in fact, authorized by the State for potential collection until December 31, 2060 (over 44 years after the August 30, 2016 primary election). Thus the summary also fails to correctly explain the “when” as well as the “who.”

22. Several clauses of the first sentence of the summary are misleading to

the prospective voter, in violation of the linguistic requirements of F.S.

§101.161(1). For example, the summary refers to “[p]ermanently closing” retirement plans without explaining that the plans will only be closed to new participants (meaning existing employees and their survivors in those plans will continue to accrue and receive benefits from those “[p]ermanently closed” plans for many decades to come). It also does not explain that new retirement plans will be negotiated with unions for future new city hires potentially leading to the creation of new defined benefit plans.

23. Another example of a misleading clause in the summary is “ending the Better Jacksonville ½-cent sales tax ...” being “required to adopt a ½-cent sales tax” Again, the lack of a stated subject to the sentence creates ambiguity of meaning. The summary can be read as stating the “end of the Better Jacksonville tax” as requiring the adoption of another sales tax, following standard subject-verb-predicate sentence structure. Since that is not how the sentence, which omits the subject, is in fact structured, F.S. §101.161(1) is violated by this language as well. Thus both the “what” and the “why” of the referendum are not clear, beyond the fact that a sales tax is involved. Even the “where,” Duval County, of the sales tax is not explicit.

24. Even the title of the ballot measure is deceptive. “PENSION

LIABILITY 1/2 -CENT SALES TAX PLAN” includes the word “plan” when the measure is for a discretionary local sales surtax, and nothing more.

25. Voters presented with this ballot summary on the August 30, 2016 ballot are readily able to conclude a multitude of different potential meanings, which leads to the conclusion the summary is neither clear nor unambiguous.

26. As an objective measure of the clarity of the ballot summary, it was subjected to the Flesch Reading Ease test and the Flesch-Kincaid Grade Level test in Microsoft Word. Both tests are standard for comparison of comprehension and ease of understanding written material. For example, Fla. Stat. §627.4145 requires every insurance policy in Florida to be “readable,” which it defines as having a Flesch reading ease test score of 45 or higher.

27. The Flesch reading ease score for the ballot summary is 8.6. The Flesch reading ease score for the first sentence of the ballot summary is 0. The Flesch reading ease score for the second sentence of the ballot summary is 15.3.

28. The Flesch-Kincaid Grade Level computed for the entire ballot summary is 21.1, or the equivalent of more than five years of post-college graduate education. The Flesch-Kincaid Grade level computed for the first sentence of the ballot summary is 26.2, or the equivalent of more than ten years of post-college graduate education.

29. The ballot summary for County Referendum No. 1 on the August 30, 2016 primary election ballot is unreadable by the standards of Fla. Stat. §627.4145.

30. By comparison, the Gettysburg Address has a Flesch Reading Ease score of 63.4 at a Flesch-Kincaid Grade Level of 11.0, and Shakespeare's "To be or not to be" soliloquy by Hamlet has a Flesch Reading Ease score of 52.2 at a Flesch-Kincaid Grade Level of 16.7 (and was written by 1602).

31. Plaintiffs urge the Court to adopt an objective standard of readability for every ballot summary in accord with the standards of Fla. Stat. §627.4145, to wit, a Flesch reading ease test score of 45 or higher.

WHEREFORE it is prayed

a) that the Court declare the ballot summary to the pension liability surtax measure on the August 30, 2016 Duval County primary ballot to be in violation of the F.S. §101.161(1) mandate that it 1) contain no more than 75 words and 2) is written in clear and unambiguous language explaining the chief purpose of the ballot measure; and

b) that the Court direct the SOE to remove all reference to the referendum and the ballot summary from all ballots not yet mailed or otherwise distributed for any purpose, including but not limited to voting by mail, early voting, and election day voting on August 30, 2016, using, as necessary, its injunctive, all writs, and

other judicial powers;

c) that any votes either yes or no on any ballots which have been or which are ultimately received by the SOE where the referendum appears shall not be tabulated and that any results be disregarded;

d) awarding Plaintiffs their costs as in equity actions, including attorney fees; and

e) that the Court grant such other and further relief as it shall deem just and appropriate, including and supplemental injunctive or alternative relief.

Respectfully submitted,

JOHN S. WINKLER, P.A.

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CHAPTER 2016-146

Committee Substitute for House Bill No. 1297

An act relating to discretionary sales surtaxes; amending s. 112.64, F.S.; authorizing a county to apply proceeds of a pension liability surtax toward reducing the unfunded liability of a defined benefit retirement plan or system; specifying the method of determining the amortization schedule if a surtax is approved; amending s. 212.055, F.S.; authorizing a county to levy a pension liability surtax by ordinance if certain conditions are met; prescribing the form of the ballot statement; requiring the Department of Revenue to distribute the surtax proceeds, less administrative fees; specifying the manner in which a local government may use the surtax proceeds; prescribing requirements for the ordinance that provides for the imposition of the surtax; specifying conditions under which the surtax terminates; limiting the combined rate of specified discretionary sales surtaxes; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (6) of section 112.64, Florida Statutes, is renumbered as subsection (7), and a new subsection (6) is added to that section, to read:

112.64 Administration of funds; amortization of unfunded liability.—

(6)(a) Notwithstanding any other provision of this part, the proceeds of a pension liability surtax imposed by a county pursuant to s. 212.055, which is levied for the purpose of funding or amortizing the unfunded liability of a defined benefit retirement plan or system, excluding the Florida Retirement System, shall be actuarially recognized, and the county shall apply the present value of the total projected proceeds of the surtax to reduce the unfunded liability or to amortize it as part of the county's annual required contribution, beginning with the fiscal year immediately following approval of the pension liability surtax. The unfunded liability amortization schedule must be adjusted beginning with the fiscal year immediately following approval of the pension liability surtax and amortized over a period of 30 years.

(b) The payroll of all employees in classifications covered by a closed retirement plan or system that receives funds from the pension liability surtax must be included in determining the unfunded liability amortization schedule for the closed plan, regardless of the plan in which the employees currently participate, and the payroll growth assumption must be adjusted to reflect the payroll of those employees when calculating the amortization of the unfunded liability.

Section 2. Subsection (9) is added to section 212.055, Florida Statutes, to read:

212.055 Discretionary sales surtaxes; legislative intent; authorization and use of proceeds.—It is the legislative intent that any authorization for imposition of a discretionary sales surtax shall be published in the Florida Statutes as a subsection of this section, irrespective of the duration of the levy. Each enactment shall specify the types of counties authorized to levy; the rate or rates which may be imposed; the maximum length of time the surtax may be imposed, if any; the procedure which must be followed to secure voter approval, if required; the purpose for which the proceeds may be expended; and such other requirements as the Legislature may provide. Taxable transactions and administrative procedures shall be as provided in s. 212.054.

(9) PENSION LIABILITY SURTAX.—

(a) The governing body of a county may levy a pension liability surtax to fund an underfunded defined benefit retirement plan or system, pursuant to an ordinance conditioned to take effect upon approval by a majority vote of the electors of the county voting in a referendum, at a rate that may not exceed 0.5 percent. The county may not impose a pension liability surtax unless the underfunded defined benefit retirement plan or system is below 80 percent of actuarial funding at the time the ordinance or referendum is passed. The most recent actuarial report submitted to the Department of Management Services pursuant to s. 112.63 must be used to establish the level of actuarial funding for purposes of determining eligibility to impose the surtax. The governing body of a county may only impose the surtax if:

1. An employee, including a police officer or firefighter, who enters employment on or after the date when the local government certifies that the defined benefit retirement plan or system formerly available to such an employee has been closed may not enroll in a defined benefit retirement plan or system that will receive surtax proceeds.

2. The local government and the collective bargaining representative for the members of the underfunded defined benefit retirement plan or system or, if there is no representative, a majority of the members of the plan or system, mutually consent to requiring each member to make an employee retirement contribution of at least 10 percent of each member's salary for each pay period beginning with the first pay period after the plan or system is closed.

3. The pension board of trustees for the underfunded defined benefit retirement plan or system, if such board exists, is prohibited from participating in the collective bargaining process and engaging in the determination of pension benefits.

4. The county currently levies a local government infrastructure surtax pursuant to subsection (2) which is scheduled to terminate and is not subject to renewal.

5. The pension liability surtax does not take effect until the local government infrastructure surtax described in subparagraph 4. is terminated.

(b) A referendum to adopt a pension liability surtax must meet the requirements of s. 101.161 and must include a brief and general description of the purposes for which the surtax proceeds will be used.

(c) Pursuant to s. 212.054(4), the proceeds of the surtax collected under this subsection, less an administrative fee that may be retained by the department, shall be distributed by the department to the local government.

(d) The local government may use the pension liability surtax proceeds in the following manner:

1. If the proceeds of the pension liability surtax have been actuarially recognized as provided in s. 112.64(6), the local government must distribute the proceeds to an eligible defined benefit retirement plan or system, not including the Florida Retirement System.

2. If the proceeds of the pension liability surtax have not been actuarially recognized, the local government is authorized to distribute the proceeds to an eligible defined benefit retirement plan or system, not including the Florida Retirement System, to pledge the proceeds of the surtax to repay debts incurred for the purpose of making advanced payments toward the unfunded liability of an underfunded defined benefit retirement plan or system, and to reimburse itself from the proceeds of the surtax for any borrowing costs associated with such debts.

(e) The ordinance providing for the imposition of the pension liability surtax must specify how the proceeds will be used:

1. The ordinance must specify the method of determining the percentage of the proceeds, and the frequency of such payments, distributed to each eligible defined benefit retirement plan or system if the proceeds of the pension liability surtax are actuarially recognized as provided in s. 112.64(6).

2. The ordinance must specify the local government's intention to incur debt for the purpose of making advanced payments toward the unfunded liability of an underfunded defined benefit retirement plan or system if the proceeds of the pension liability surtax are not actuarially recognized as provided in s. 112.64(6).

(f) A pension liability surtax imposed pursuant to this subsection shall terminate on December 31 of the year in which the actuarial funding level is expected to reach or exceed 100 percent for the defined benefit retirement plan or system for which the surtax was levied or December 31, 2060, whichever occurs first. The most recent actuarial report submitted to the Department of Management Services pursuant to s. 112.63 must be used to establish the level of actuarial funding.

(g) Notwithstanding any other provision of this section, a county may not levy local option sales surtaxes authorized in this subsection and subsections (2), (3), (4), and (5) in excess of a combined rate of 1 percent.

Section 3. This act shall take effect July 1, 2016.

Approved by the Governor March 25, 2016.

Filed in Office Secretary of State March 25, 2016.

1 Introduced by the Council President at the request of the Mayor &
2 Co-Sponsored by Council Members Crescimbeni, Bowman, Anderson,
3 Becton, Boyer, Lopez Brosche, K. Brown, R. Brown, Carter, Dennis,
4 Ferraro, Gaffney, Gulliford, Hazouri, Love, Morgan, Newby,
5 Schellenberg, and Wilson and amended by the Finance Committee:



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ORDINANCE 2016-300-E

8 AN ORDINANCE ESTABLISHING THE PENSION
9 LIABILITY DISCRETIONARY SALES SURTAX TO FUND
10 UP TO THREE OF THE CITY'S UNDERFUNDED DEFINED
11 BENEFIT RETIREMENT PLANS BY ADOPTING A 1/2-
12 CENT DISCRETIONARY SALES SURTAX AUTHORIZED BY
13 SECTION 212.055(9), FLORIDA STATUTES, ON ALL
14 TAXABLE TRANSACTIONS DESCRIBED IN CHAPTER 212,
15 FLORIDA STATUTES, OCCURRING IN DUVAL COUNTY,
16 FLORIDA; ESTABLISHING DURATION OF THE PENSION
17 LIABILITY SURTAX; PROVIDING FOR AND CALLING A
18 REFERENDUM OF THE QUALIFIED ELECTORS RESIDING
19 IN DUVAL COUNTY TO BE HELD ON AUGUST 30, 2016,
20 ON THE QUESTION OF ADOPTING THE PENSION
21 LIABILITY SURTAX; DIRECTING THE COUNCIL
22 SECRETARY TO PROVIDE NOTICES TO STATE
23 GOVERNMENT; PROVIDING FOR SUBSEQUENT
24 LEGISLATIVE ACTION BY THE CITY COUNCIL
25 IMPLEMENTING THE ADOPTION OF THE PENSION
26 LIABILITY SURTAX; PROVIDING FOR CONDITIONS
27 THAT MUST BE MET BEFORE COLLECTION OF THE TAX
28 BEGINS; PROVIDING FOR OVERSIGHT BY THE
29 DIRECTOR OF FINANCE AND ADMINISTRATION;
30 REQUESTING ONE CYCLE EMERGENCY PASSAGE;
31 PROVIDING AN EFFECTIVE DATE.

EXHIBIT 2

1 **WHEREAS**, each of the City of Jacksonville's three defined
2 benefit pension funds are substantially underfunded; and

3 **WHEREAS**, the City of Jacksonville Police and Fire Pension Fund
4 is currently funded at a rate of approximately 46%, meaning that
5 such Fund has less than half the money necessary to fully fund the
6 pension, with an unfunded liability of approximately \$1.6 billion;
7 and

8 **WHEREAS**, the City of Jacksonville Corrections Officers Pension
9 Fund is currently funded at a rate of approximately 48%, meaning
10 that such Fund has less than half the money necessary to fully fund
11 the pension, with an unfunded liability of approximately \$150
12 million; and

13 **WHEREAS**, the City of Jacksonville General Employee Pension
14 Fund is currently funded at an approximate 66% rate, with an
15 unfunded liability of approximately \$0.9 billion; and

16 **WHEREAS**, the City's total unfunded liability of over \$2.6
17 billion equates to approximately 25% of the total unfunded
18 liability of all the counties and municipalities in the State of
19 Florida combined who are not a part of the Florida Retirement
20 System; and

21 **WHEREAS**, if the unfunded liability is not reduced then the
22 City of Jacksonville will be forced to contribute more than 20% of
23 its operating budget toward pensions, an amount that currently
24 equates to approximately \$260 million per year; and

25 **WHEREAS**, the City of Jacksonville seeks a solution that does
26 not increase taxes, that keeps the current sales tax at the
27 existing 7% rate, and that does not require raising ad valorem
28 taxes; and

29 **WHEREAS**, Section 212.055(9), Florida Statutes, authorizes the
30 governing body of a county to impose a 1/2-cent discretionary
31 pension liability surtax ("Pension Liability Surtax") to fund

underfunded defined benefit retirement plans subject to conditions set for in Section 212.055(9), Florida Statutes; now, therefore

BE IT ORDAINED by the Council of the City of Jacksonville:

Section 1. Findings. The Council finds as follows

(a) The above recitals are true and correct and incorporated herein by reference.

(b) The City's three underfunded defined benefit retirement plans will each be below 80 percent of actuarial funding as of the date on which the implementing ordinance is passed.

(c) Subject to adoption of the Pension Liability Surtax by the voters and successful collective bargaining to close one or more of the three existing defined benefit retirement plans, an employee who enters employment on or after the date the defined benefit plan formerly available to such employee has been closed, shall not enroll in a defined benefit retirement plan that will receive surtax proceeds.

(d) The pension boards of trustees are prohibited from participating in the collective bargaining process and engaging in the determination of pension benefits of the defined benefit plans receiving surtax proceeds.

(e) The City currently levies an infrastructure surtax pursuant to section 212.055(2), Florida Statutes, which is scheduled to terminate and is not subject to renewal.

Section 2. Adoption of Pension Liability Surtax.

(a) Upon approval by a majority vote of the electors of Duval County, the approval by City Council of separate legislative action implementing the Pension Liability Surtax as described in Section 8 of this Ordinance, and the satisfaction of all applicable state law, there is hereby adopted throughout Duval County a Pension Liability Surtax at the rate of 0.5 percent per dollar on all transactions within Duval County subject to the State sales and use

1 tax imposed by Chapter 212, Florida Statutes. This Pension
2 Liability Surtax is subject to the limitations imposed thereon by
3 Sections 212.054 and 212.055(9), Florida Statutes.

4 (b) The Pension Liability Surtax shall take effect on January
5 1 of the year immediately following termination of the Better
6 Jacksonville 1/2-Cent Sales Surtax.

7 (c) The Pension Liability Surtax shall not take effect until:
8 (1) one or more of the existing plans is closed to new employees
9 and (2) each member of a closed plan make an employee retirement
10 contribution of at least 10 percent of each member's salary for
11 each pay period beginning with the first pay period after the
12 applicable defined benefit plan is closed. The conditions set forth
13 herein shall not be imposed until the City and the appropriate
14 collective bargaining representative mutually consent to, and
15 legislative action by the City Council implements, the conditions
16 set forth herein for one or more of the three underfunded defined
17 benefits retirement plans.

18 (d) The Pension Liability Surtax shall remain in effect no
19 longer than December 31, 2060, subject to earlier termination,
20 which must occur on December 31 of the year in which the actuarial
21 funding level of each of the City's three defined benefit
22 retirement plans which are funded by the surtax is expected to
23 reach or exceed 100 per cent according to the most recent actuarial
24 reports submitted to the Department of Management Services.

25 (e) The Pension Liability Surtax shall be collected and
26 administered as set forth in Section 212.054, Florida Statutes.

27 (f) The proceeds of the Pension Liability Surtax shall be
28 remitted to the City, in its capacity as a local government
29 pursuant to Section 212.055(9)(c), Florida Statutes, and shall be
30 implemented in accordance with the requirements of Section
31 212.055(9)(d), Florida Statute, as directed by the City Council

1 through separate legislative action.

2 **Section 3. Referendum.**

3 (a) A referendum of the qualified electors residing in Duval
4 County, Florida is hereby called to be held on August 30, 2016, to
5 determine whether or not to adopt the Pension Liability Surtax as
6 described herein.

7 (b) The referendum shall be held and conducted in the manner
8 prescribed by law for holding referenda.

9 (c) All qualified electors in Duval County shall be entitled
10 and permitted to vote in the referendum.

11 (d) The Supervisor of Elections is authorized and directed,
12 when printing the mail-in ballots and ballot strips for use in the
13 voting machines for the referendum called for in Section 3(a)
14 hereinabove, to print the referendum question set forth in Section
15 4 hereof on said mail-in ballots and ballot strips at the
16 appropriate place therefor. Immediately after said question shall
17 be provided a space for the voter to indicate whether the vote is
18 "yes" or "no" on the question.

19 **Section 4. Notice of Referendum.** Notice of the
20 referendum shall be given according to law in the form identified
21 on **Exhibit 1** and in the manner provided in Section 100.342, Florida
22 Statutes. **Exhibit 1** is attached hereto and, by this reference, is
23 made a part hereof.

24 **Section 5. Referendum Question.** The form of the title
25 and question for the Pension Liability Surtax referendum shall be
26 substantially as follows:

27 **PENSION LIABILITY**
28 **1/2-CENT SALES TAX PLAN**
29 **AUGUST 30, 2016**

30 Permanently closing up to three of the City's
31 underfunded defined benefit retirement plans, increasing

1 the employee contribution for those plans to a minimum of
2 10%, and ending the Better Jacksonville ½-cent sales tax
3 are all required to adopt a ½-cent sales tax solely
4 dedicated to reducing the City's unfunded pension
5 liability. Shall such pension liability sales tax, which
6 ends upon elimination of the unfunded pension liability
7 or in 30 years maximum, be adopted?

8 _____ YES

9 _____ NO

10 **Section 6. Referendum Results.** If a majority of the
11 votes cast in the referendum shall be for the Pension Liability
12 1/2-Cent Sales Tax, the Pension Liability Surtax shall be adopted,
13 and shall take effect as provided in this Ordinance and separate
14 implementing legislative action taken by the City Council. If less
15 than a majority of the votes cast at the referendum shall be for
16 the Pension Liability 1/2-Cent Sales Tax, the Pension Liability
17 Surtax shall be defeated, and shall not take effect.

18 **Section 7. Notices to State.** The Council Secretary or
19 her authorized representative shall provide, on behalf of the
20 Council, the notices to the Florida Department of Revenue required
21 in Section 212.054(7)(a) and (b), Florida Statutes.

22 **Section 8. Separate Legislative Action.** If a majority of
23 the votes cast in the referendum shall be for the Pension Liability
24 1/2-Cent Sales Tax, the City Council, by separate legislative
25 action, shall, subject to collective bargaining, close at least one
26 of the City's three underfunded defined benefit plans, implement
27 the Pension Liability Surtax, and specify how the proceeds of the
28 Pension Liability Surtax shall be used to reduce the underfunded
29 liability.

30 **Section 9. Oversight.** The Director of Finance and
31 Administration or the Director's designee shall have oversight over

1 the distribution of the Pension Liability Surtax to the City's
2 three underfunded defined benefit retirement plans and its
3 application to reducing the underfunded actuarial accrued liability
4 of the plans.

5 **Section 10. Requesting One Cycle Emergency Passage**
6 **Pursuant to Council Rule 4.901 Emergency.** One cycle emergency
7 passage of this legislation is requested. The nature of the
8 emergency is that the Council would like to enact the legislation
9 by May 10, 2016, in order to give the public as much time as
10 possible to become educated on the referendum.

11 **Section 11. Effective Date.** This Ordinance shall become
12 effective upon signature by the Mayor or upon becoming effective
13 without his signature.

14
15 Form Approved:

16
17 /s/ Margaret M. Sidman

18 Office of General Counsel

19 Legislation Prepared By: Sandra Stockwell & Stephen Durden

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