

ORDINANCE NO. 22-08-48

AN ORDINANCE TO CONTINUE TO LEVY AND IMPOSE A ONE PERCENT SALES AND USE TAX, SUBJECT TO A REFERENDUM, WITHIN BERKELEY COUNTY PURSUANT TO SECTION 4-37-30 OF THE CODE OF LAWS OF SOUTH CAROLINA 1976, AS AMENDED; TO DEFINE THE SPECIFIC PURPOSES AND DESIGNATE THE PROJECTS FOR WHICH THE PROCEEDS OF THE TAX MAY BE USED; TO PROVIDE THE MAXIMUM TIME FOR WHICH SUCH TAX MAY CONTINUE TO BE IMPOSED; TO PROVIDE THE ESTIMATED COST OF THE PROJECTS FUNDED FROM THE PROCEEDS OF THE TAX; TO PROVIDE FOR A COUNTY-WIDE REFERENDUM ON THE CONTINUATION OF THE SALES AND USE TAX AND THE ISSUANCE OF GENERAL OBLIGATION BONDS AND TO PRESCRIBE THE CONTENTS OF THE BALLOT QUESTIONS IN THE REFERENDUM; TO PROVIDE FOR THE CONDUCT OF THE REFERENDUM BY THE BOARD OF ELECTIONS AND VOTER REGISTRATION OF BERKELEY COUNTY; TO PROVIDE FOR THE ADMINISTRATION OF THE TAX, IF APPROVED; TO PROVIDE FOR THE PAYMENT OF THE TAX, IF APPROVED; AND TO PROVIDE FOR OTHER MATTERS RELATING THERETO.

BE IT ENACTED BY THE COUNTY COUNCIL OF BERKELEY COUNTY, SOUTH CAROLINA, IN MEETING DULY ASSEMBLED:

Section 1. Recitals and Legislative Finds.

As an incident to the enactment of this Ordinance, the County Council of Berkeley County, South Carolina (the "County Council") has made the following findings:

- 1.1 The South Carolina General Assembly has enacted Section 4-37-30 of the Code of Laws of South Carolina 1976, as amended (the "Act"), pursuant to which the county governing body may impose by ordinance a sales and use tax in an amount not to exceed one percent, subject to the favorable results of a referendum, within the county area for a specific purpose or purposes and for a limited amount of time to collect a limited amount of money.
- 1.2 Pursuant to the terms of Section 4-37-10 of the Code of Laws of South Carolina 1976, as amended, the South Carolina General Assembly has authorized county government to finance the costs of acquiring, designing, constructing, equipping and operating highways, roads, streets, bridges and other transportation related projects either alone or in partnership with other governmental entities. As a means to furthering the powers granted to the County under the provisions of Section 4-9-30 and Sections 6-21-10, et seq. of the Code of Laws of South Carolina 1976, as amended, the County Council is authorized to form a transportation authority or to enter into a partnership, consortium, or other contractual arrangement with one or more other governmental entities pursuant to Title 4, Chapter 37 of the Code of Laws of South Carolina 1976, as amended. The County Council has decided to provide funding for roads, inter alia, without the complexity of a transportation authority or entering into a partnership, consortium, or other contractual arrangements with one or more other governmental entities at this time; providing that nothing herein shall preclude County Council from entering into partnerships, consortiums, or other contractual arrangements in the future. County

Council may utilize such provisions in the future as necessary or convenient to promote the public purposes served by funding roads as provided in this Ordinance.

- 1.3 Pursuant to referendums held on November 8, 2008 and November 11, 2014, a one percent sales and use tax has been levied and imposed within Berkeley County for financing the costs of highways, roads, streets, bridges and other transportation related project facilities, and drainage facilities related thereto, and a one percent sales tax has been levied, imposed and collected since May 1, 2009.
- 1.4 The County Council finds that the one percent sales and use tax should be continued, for the following projects and purposes:
 - 1.4.1 For continuing to finance the costs of highways, roads, streets, bridges, and other transportation-related project facilities, and drainage facilities related thereto.
 - 1.4.2 For the financing of greenbelt initiatives including, but not limited to, purchasing property for conservation, purchasing conservation easements, creating passive greenspace, creating active greenspace, protecting natural resources, protecting agricultural or heritage landscapes, and protecting scenic corridors(the above herein collectively referred to as the “projects”).

For a period not to exceed 7 years to fund the projects at an estimated cost of **FIVE HUNDRED EIGHTY SEVEN MILLION DOLLARS (\$587,000,000.00)** to be funded from the net proceeds of a sales and use tax continued to be imposed in Berkeley County pursuant to provisions of the Act, subject to approval of the qualified electors of Berkeley County in a referendum to be held on November 8, 2022. The continuation of the sales and use tax and the use of sales and use tax revenue, if approved in the referendum, shall be subject to the conditions precedent and conditions or restrictions on the use and expenditure of sales and use tax revenue established by the Act, the provisions of this Ordinance, and other applicable law. Subject to annual appropriations by County Council, sales and use tax revenues shall be used for the costs of the projects established in this Ordinance, as it may be amended from time to time, including, without limitation, payment of administrative costs of the projects, and such sums as may be required in connection with the issuance of bonds, the proceeds of which are applied to pay costs of the projects.

- 1.5 County Council finds that the continuation of the sales and use tax in Berkeley County for the projects and purposes defined in this Ordinance for a limited time not to exceed seven (7) years to collect a limited amount of money will serve a public purpose, providing funding for roads and transportation to facilitate economic development, promote public safety, provide needed infrastructure, promote desirable living conditions, enhance the quality of life in Berkeley County, and promote public health and safety in the event of fire, emergency, panic, and other dangers, and prepare Berkeley County to meet present and future needs of Berkeley County and its citizens.

Section 2. Approval of Sales and Use Tax Subject to Referendum

- 2.1 A continuation of the sales and use tax (the “Sales and Use Tax”), as authorized by the Act, is hereby imposed in Berkeley County, South Carolina, subject to a favorable vote of a majority of the qualified electors voting in a referendum on the imposition of the tax to be held in Berkeley County, South Carolina on November 8, 2022.
- 2.2 The extension of Sales and Use Tax shall continue for a period not to exceed seven (7) years from the date of the imposition.
- 2.3 The maximum cost of the projects to be funded from the proceeds of the Sales and Use Tax estimated to be, in the aggregate, the sum of **FIVE HUNDRED EIGHTY SEVEN MILLION DOLLARS (\$587,000,000.00)**, which includes administrative costs and debt

service on bonds issued to pay for the projects. The principal amount of the authorization of bonds to be issued to pay costs of the projects and to be paid by a portion of the Sales and Use Tax shall not exceed **EIGHTY NINE MILLION DOLLARS (\$89,000,000.00)**. The proceeds of these bonds shall be used for the following projects:

For financing the costs of highways, roads, streets, bridges, and other transportation-related projects facilities, and drainage facilities related thereto, including but not limited to:

Capacity Projects

1. US Highway 52 and US Highway 176
2. US Highway 176 Phase 2 Widening
3. Jedburg Road Improvements
4. North Cedar Street Extension
5. Old Mount Holly Road Improvements
6. Cypress Gardens Road Improvements
7. US Highway 52 Corridor Improvements

Intersection Improvements

1. Black Tom Road at Black Tom Road Extension
2. Cooper Store Road at Black Tom Road Extension
3. River Landing Drive at Seven Farms Drive
4. US Highway 52 at Old Highway 52 and Rembert C. Dennis Blvd.
5. US Highway 52 at southern terminus of Old Highway 52
6. Royle Road at Farmington Road and Treeland Drive
7. US Highway 52 at Stephanie Drive and Windsor Mill Road
8. Snake Road at NAD Road
9. Tanner Ford Blvd at Tanner Hall Blvd

Resurfacing

1. United Drive
2. Bushy Park Road
3. Gravel Hill Road
4. SC Highway 45
5. Harristown Road
6. Not less than 200 total miles of local street resurfacing in the Bonneau, Charleston, Goose Creek, Jamestown, Hanahan, Moncks Corner, St. Stephen, Summerville, and unincorporated areas of Berkeley County.

Paving Projects

1. Dirt roads throughout the County as determined by the County governing body and staff.

Other Transportation Projects

1. Oxford Road Bridge
2. Trinity Road Bridge
3. Bushy Park Dredging and Spoil Site
4. Yeamans Hall Road Improvements
5. Sangaree Parkway Improvements
6. Old Highway 52 at Orion Way
7. Old Highway 52 at Colony Post Loop and Cypress Plantation Road
8. Rivers Reach Drive
9. Clements Ferry Road Multi-Use Path
10. Pedestrian Facilities

Greenbelt Preservation Projects

1. For financing greenbelt initiatives including, but not limited to, purchasing property for conservation, purchasing conservation easements, creating passive greenspace, creating active greenspace, protecting natural resources, protecting agricultural or heritage landscapes, and protecting scenic corridors.
- 2.4 The Sales and Use Tax shall be expended for the costs of the following projects, including payment of any sums as may be required for the issuance of and debt service for bonds, the proceeds of which are applied to such projects, for the following purposes:
- 2.4.1 For financing the costs of highways, roads, streets, bridges, and other transportation-related project facilities, and drainage facilities related thereto. The amount of the maximum total funds to be collected which shall be expended for these projects and purposes is estimated to be **FIVE HUNDRED TWENTY-EIGHT MILLION THREE HUNDRED THOUSAND DOLLARS (\$528,300,000.00)**.
 - 2.4.2 For financing greenbelt initiatives including, but not limited to, purchasing property for conservation, purchasing conservation easements, creating passive greenspace, creating active greenspace, protecting natural resources, protecting agricultural or heritage landscapes, and protecting scenic corridors. The amount of the maximum total funds to be collected which shall be expended for these projects and purposes shall be no more than ten percent (10%) of the total amount of collections currently estimated to be **FIFTY-EIGHT MILLION SEVEN HUNDRED THOUSAND DOLLARS (\$58,700,000.00)**.

If the continuation of the Sales and Use Tax is approved by a majority of the qualified voters in a referendum to be held in Berkeley County on November 8, 2022, the tax is to be imposed on the first day following the expiration of the sales and use tax imposed pursuant to the referendum approved on November 11, 2014. Included in the certification must be the maximum cost of the projects to be funded in whole or in part from the proceeds of the tax, the maximum time specified for the imposition of the tax, and the principal amount of initial authorization of bonds, if any, to be supported by a portion of the tax.

- 2.5 The continued Sales and Use Tax, if approved in the referendum conducted on November 8, 2022 shall terminate on the earlier of:

- 2.5.1 On April 30, 2030; or
- 2.5.2 The end of the calendar month during which the Department of Revenue determines that the tax has raised revenues sufficient to provide the greater of either the costs of the projects as approved in the referendum or the cost to amortize all debts related to the approved projects.
- 2.6 Amounts of Sales and Use Tax collected in excess of the required proceeds must first be applied, if necessary, to complete each project for which the tax was imposed. Any additional revenue collected above the specified amount must be applied to the reduction of debt principal of Berkeley County on transportation infrastructure debts only.
- 2.7 The Sales and Use Tax must be administered and collected by the South Carolina Department of Revenue in the same manner that other sales and use taxes are collected. The Department may prescribe amounts that may be added to the sales price because of the tax.
- 2.8 The Sales and Use Tax is in addition to all other local sales and use taxes and applies to the gross proceeds of sales in the applicable area that is subject to the tax imposed by Chapter 36 of Title 12 of the Code of Laws of South Carolina, and the enforcement provisions of Chapter 54 of Title 12 of the Code of Laws of South Carolina. The gross proceeds of the sale of items subject to a maximum tax in Chapter 36 of Title 12 of the Code of Laws of South Carolina are exempt from the tax imposed by this Ordinance. The gross proceeds of the sale of food lawfully purchased with United States Department of Agriculture Food Stamps are exempt from the tax imposed by this Ordinance. The tax imposed by this Ordinance also applies to tangible property subject to the use tax in Article 13, Chapter 36 of Title 12 of the Code of Laws of South Carolina.
- 2.9 Taxpayers required to remit taxes under Article 13, Chapter 36 of Title 12 of the Code of Laws of South Carolina must identify the county in which the personal property purchased at retail is stored, used, or consumed in this State.
- 2.10 Utilities are required to report sales in the county in which the consumption of the tangible personal property occurs.
- 2.11 A taxpayer subject to the tax imposed by §12-36-920 of the Code of Laws of South Carolina 1976, as amended, who owns or manages rental units in more than one county must report separately in his sales tax return the total gross proceeds from business done in each county.
- 2.12 The gross proceeds of sales of tangible personal property delivered after the imposition date of the Sales and Use Tax, either under the terms of a construction contract executed before the imposition date, or written bid submitted before the imposition date, culminating in a construction contract entered into before or after the imposition date, are exempt from the sales and use tax provided in this ordinance if a verified copy of the contract is filed with the Department of Revenue within six months after the imposition date of the sales and use tax provided for in this Ordinance.
- 2.13 Notwithstanding the imposition date of the Sales and Use Tax with respect to services that are billed regularly on a monthly basis, the sales and use tax authorized pursuant to this ordinance is imposed beginning on the first day of the billing period beginning on or after the imposition date.

Section 3. Remission of Sales and Use Tax; Segregation of Funds; Administration of Funds; and Distribution of Counties: Confidentially.

- 3.1 The revenues of the Sales and Use Tax collected under this Ordinance must be remitted to the State Treasurer and credited to a fund separate and distinct from the general fund of the State. After deducting the amount of any refunds made and costs to the Department

of Revenue of administrating the tax, not to exceed one percent of such revenues, the State Treasurer shall distribute the revenues quarterly to the Berkeley County Treasurer and the revenues must be used only for the purposes stated herein. The State Treasurer may correct misallocations by adjusting subsequent distributions, but these distributions must be made in the same fiscal year as the misallocation. However, allocations made as a result of city or county code errors must be corrected prospectively.

3.2 Any outside agencies, political subdivisions, or organizations designated to receive funding from the Sales and Use Tax must annually submit requests for funding in accordance with procedures and schedules established by the County Supervisor. The County Supervisor shall prepare the proposed budget for the Sales and Use Tax and submit it to the County Council at such time as the County Council determines. At the time of submitting the proposed budget, the County Supervisor shall submit to the County Council a statement describing the important features of the proposed budget.

3.2.1 County Council shall adopt annually and prior to the beginning of fiscal year a budget for expenditures of Sales and Use Tax revenues. County Council may make supplemental appropriations for the Sales and Use Tax following the same procedures prescribed for the enactment of other budget ordinances. The provisions of this section shall not be construed to prohibit the transfer of funds appropriated in the annual budget for the Sales and Use Tax for purposes other than as specified in the annual budget when County Council approves such transfers. In the preparation of the annual budget, County Council may require any reports, estimates, and statistics from any county agency or department as may be necessary to perform its duties as the responsible fiscal body of the County.

3.2.2 Except as specifically authorized by County Council, any outside agency or organization receiving an appropriation of the Sales and Use Tax must provide to County Council an independent annual audit of such agency's or organization's financial records and transactions and such other and more frequent financial information as required by County Council, all in form satisfactory to County Council.

3.3 The Department of Revenue shall furnish data to the State Treasurer and to the Berkeley County Treasurer for the purpose of calculating distributions and estimating revenues. The information, which must be supplied to the County upon request, includes, but is not limited to, gross receipts, net taxable sales, and tax liability by taxpayers. Information about a specific taxpayer is considered confidential and is governed by the provisions of S.C. Code Ann. §12-54-240. Any person violating the provisions of this section shall be subject to the penalties provided in S.C. Code Ann. §12-54-240.

Section 4. Sales and Use Tax Referendum: Ballot Question.

4.1 The Board of Elections and Voter Registration of Berkeley County shall conduct a referendum on the question of imposing the Sales and Use Tax in the area of Berkeley County on Tuesday, November 8, 2022, between the hours of 7 a.m. and 7 p.m. under the election laws of the State of South Carolina, mutatis mutandis. The Board of Elections and Voter Registration of Berkeley County shall publish in a newspaper of general circulation the question that is to appear on the ballot, with the list of projects and

purposes as set forth herein, and the cost of projects, and shall publish such election and other notices as are required by law.

- 4.2 The referendum question to be on the ballot of the referendum to be held in Berkeley County on November 8, 2022, must read substantially as follows:

BERKELELY COUNTY SPECIAL SALES AND USE TAX FOR TRANSPORTATION AND GREENBELT PROJECTS

QUESTION 1

I approve the continuation of a special sales and use tax in the amount of one percent to be imposed in Berkeley County for not more than 7 years, or until all projects are funded, currently estimated to cost a total of FIVE HUNDRED EIGHTY SEVEN MILLION DOLLARS (\$587,000,000.00), whichever occurs first. The sales tax proceeds will be used for the following existing projects and the following new projects:

Project (1): Using ninety percent (90%) of the referenced tax for financing the costs of highways, roads, streets, bridges, and other transportation- related projects, facilities, and drainage facilities related thereto, including but not limited to:

Capacity Projects

1. US Highway 52 and US Highway 176 (existing)
2. US Highway 176 Phase 2 Widening (new)
3. Jedburg Road Improvements (new)
4. North Cedar Street Extension (new)
5. Old Mount Holly Road Improvements (new)
6. Cypress Gardens Road Improvements (new)
7. US Highway 52 Corridor Improvements (new)

Intersection Improvements

1. Black Tom Road at Black Tom Road Extension (new)
2. Cooper Store Road at Black Tom Road Extension (new)
3. River Landing Drive at Seven Farms Drive (new)
4. US Highway 52 at Old Highway 52 and Rembert C. Dennis Blvd. (new)
5. US Highway 52 at southern terminus of Old Highway 52 (new)
6. Royle Road at Farmington Road and Treeland Drive (new)
7. US Highway 52 at Stephanie Drive and Windsor Mill Road (new)
8. Snake Road at NAD Road (new)
9. Tanner Ford Blvd at Tanner Hall Blvd (new)

Resurfacing

1. United Drive (new)
2. Bushy Park Road (new)
3. Gravel Hill Road (new)

4. SC Highway 45 (new)
5. Harristown Road (new)
6. Not less than 200 total miles of local street resurfacing in the Bonneau, Charleston, Goose Creek, Jamestown, Hanahan, Moncks Corner, St. Stephen, Summerville, and unincorporated areas of Berkeley County.

Paving Projects

1. Dirt roads throughout the County as determined by the County governing body and staff.

Other Transportation Projects

1. Oxford Road Bridge (new)
2. Trinity Road Bridge (new)
3. Bushy Park Dredging and Spoil Site (existing and new)
4. Yeamans Hall Road Improvements (new)
5. Sangaree Parkway Improvements (new)
6. Old Highway 52 at Orion Way (new)
7. Old Highway 52 at Colony Post Loop and Cypress Plantation Road (new)
8. Rivers Reach Drive (new)
9. Clements Ferry Road Multi-Use Path (existing)
10. Pedestrian Facilities (new)

Project (2): Using ten percent (10%) of the referenced tax for financing greenbelt initiatives (including, but not limited to, purchasing property for conservation, purchasing conservation easements, creating passive greenspace, creating active greenspace, protecting natural resources, protecting agricultural or heritage landscapes, and protecting scenic corridors).

YES

NO

Instructions to Voters: All qualified electors desiring to vote in favor of continuing the special sales and use tax shall vote "YES;" and

All qualified electors opposed to continuing the special sales and use tax shall vote "NO."

QUESTION 2

I approve the issuance of not exceeding EIGHTY NINE MILLION DOLLARS (\$89,000,000.00) of general obligation bonds of Berkeley County, payable from the special sales and use tax described in Question 1 above, maturing over a period not to exceed 7 years, to fund completion of projects from among the categories described in Question I above.

YES

NO

Instructions to Voters: All qualified electors desiring to vote in favor of the issuance of bonds for the stated purposes shall vote "YES;" and

All qualified electors opposed to the issuance of bonds for the stated purposes shall vote "NO."

- 4.3 In the referendum on the imposition of a special sales and use tax in Berkeley County, all qualified electors desiring to vote in favor of imposing the tax for the stated purposes shall vote "yes" and all qualified electors opposed to levying the tax shall vote "no". If a majority of the electors voting in the referendum shall vote in favor of imposing the tax, then the tax is imposed as provided in the Act and this Ordinance. Expenses of the referendum must be paid by Berkeley County Government.
- 4.4 In the referendum on the issuance of bonds, all qualified electors desiring to vote in favor of the issuance of bonds for the stated purpose shall vote "yes" and all qualified electors opposed to the issuance of bonds shall vote "no". If a majority of the electors voting in the referendum shall vote in favor of the issuance of bonds, and then the issuance of bonds shall be authorized in accordance with S.C. Constitution Article X, Section 14, Paragraph (6). Expenses of the referendum must be paid by Berkeley County government.

Section 5. Imposition of Tax Subject to Referendum

The continuation of the Sales and Use Tax in Berkeley County is subject in all respects to the favorable vote of a majority of qualified electors casting votes in a referendum on the question of imposing a sales and use tax in the area of Berkeley County in a referendum to be conducted by the Board of Elections and Voter Registration of Berkeley County on November 8, 2022, and the favorable vote of a majority of the qualified electors voting in such referendum shall be a condition precedent to the extension of the sales and use tax pursuant to the provisions of this Ordinance.

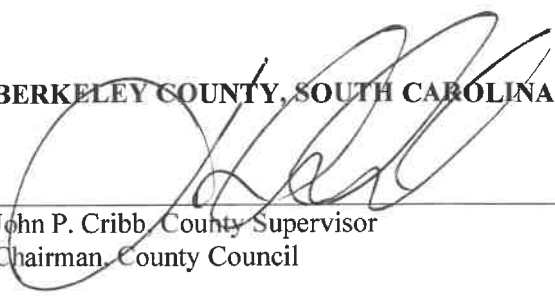
Section 6. Miscellaneous

- 6.1 If any one or more of the provisions or portions hereof are determined by a court of competent jurisdiction to be contrary to law, then that provision or portion shall be deemed severable from the remaining terms or portions hereof and the invalidity thereof shall in no way affect the validity of the other provisions of this Ordinance; if any provisions of this Ordinance shall be held or deemed to be or shall, in fact, be inoperative or unenforceable or invalid as applied to any particular case in any jurisdiction or in all cases because it conflicts with any constitution or statute or rule of public policy, or for any other reason, those circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable or invalid in any other case or circumstance, or of rendering any other provision or provisions herein contained inoperative or unenforceable or invalid to any extent whatever; provided, however, that the Sales and Use Tax may not be continued without the favorable results of the referendum to be held on November 8, 2022.

- 6.2 This Ordinance shall be construed and interpreted in accordance with the laws of the State of South Carolina.
- 6.3 The headings or titles of the several sections hereof shall be solely for convenience of reference and shall not affect the meaning, construction, interpretation, or effect of this ordinance.
- 6.4 This Ordinance shall take effect immediately upon approval at third reading.
- 6.5 All previous ordinances in conflict with this ordinance are hereby repealed.

ENACTED this 8th day of August, 2022.

BERKELEY COUNTY, SOUTH CAROLINA



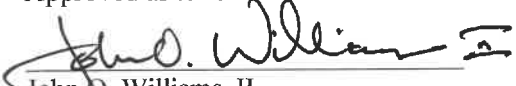
John P. Cribb, County Supervisor
Chairman, County Council

ATTEST:



Amanda D. Turner
Clerk to Council

Approved as to form:








John D. Williams, II
County Attorney

First Reading: June 27, 2022
Second Reading: July 11, 2022
Public Hearing: August 8, 2022
Third Reading: August 8, 2022

MEMBERS OF COUNTY COUNCIL

BILL NO. 22-55

Impose One-Cent Sales Tax
Subject to Referendum

 THOMAS D. OWENS	Voting <u>Aye</u>	 BRANDON COX	Voting <u>Aye</u>
 JOSHUA S. WHITLEY	Voting <u>Aye</u>	<u>Excused</u>	Voting <u>N/A</u>
 PHILLIP OBIE, II	Voting <u>Aye</u>	<u>Excused</u>	Voting <u>N/A</u>
 JOE T. NEWELL	Voting <u>Aye</u>	<u>Absent</u>	Voting <u>N/A</u>
		STEVE C. DAVIS	Voting <u>N/A</u>