

Measure 17.75

BALLOT TITLE:

Caption:

An Ordinance Imposing a Tax on Selling Retail Recreational Marijuana

Question:

Shall the County impose a 3% tax on the retail sale of recreational marijuana and marijuana products?

Summary:

This measure establishes a tax of 3% on the retail sale of recreational marijuana and marijuana products. The tax would not apply to sales that occur within the city limits of Grants Pass and Cave Junction. Retail sellers of recreational marijuana would pay the tax directly to the County. The tax applies only to recreational marijuana. The tax would not apply to transactions that are authorized under the Oregon Medical Marijuana Program.

Marijuana has the definition found in state law. That definition includes all parts of the plant Cannabis family Moraceae, but does not include industrial hemp.

This tax applies only to retail sales. Retail sales include direct sales to marijuana consumers. Retail is different from wholesale. Wholesale involves sales to purchasers who will resell the marijuana to other sellers.

This tax would generate an unknown amount of revenue. The County could spend the revenue only on public health, education and treatment related to marijuana and marijuana products, and public safety.

EXPLANATORY STATEMENT:

Two years ago, Oregonians voted to legalize recreational marijuana. State law now allows counties to impose up to a 3% tax on retail sales of recreational marijuana and marijuana products. A county can impose the tax only upon approval by the voters. Retail sales include any transfer of marijuana and marijuana products, except for transactions that are authorized under the Oregon Medical Marijuana Program and transactions between licensed sellers. Retail is different from wholesale. Wholesale involves sales to purchasers who will resell the marijuana to other persons.

This ordinance provides for a 3% tax on the total amount of the gross taxable retail sales of recreational marijuana. This ordinance would apply to sales that occur only within the unincorporated areas of the County. The ordinance does not apply within the city limits of Grants Pass and Cave Junction. The owners of businesses that sell retail recreational marijuana would collect the tax from their customers at the time of sale. The business owners would then be responsible for paying the tax to the Josephine County Treasurer/Tax Collector.

This ordinance defines marijuana the same way that state law defines the substance. Under current law, Marijuana includes all parts of the plant Cannabis family Moraceae, whether growing or not; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its resin. Marijuana does not include industrial hemp. The definition of marijuana in the ordinance is found in state law. If the definition in state law changes then the definition in the ordinance would also change.

Owners of retail recreational marijuana businesses would file tax returns each quarter with the Tax Collector to demonstrate that they are complying with this ordinance. The owners would also pay the tax each quarter. Failure to comply with the records requirements could result in a \$1000.00 fine. Failure to pay the tax could result in a penalty of up to 40% of the unpaid portion of the tax. Failure to pay fines or penalties could result in a tax lien against the real and personal property of the business owner.

The ordinance would go into effect upon approval by a majority of voters in this election. The ordinance would not apply to sales that occurred before its effective date.

This tax would generate an unknown amount of revenue. The revenue from this tax could be used only for public health, education and treatment related to marijuana and marijuana products, and public safety.

ORDINANCE:

BEFORE THE BOARD OF COUNTY COMMISSIONERS FOR JOSEPHINE COUNTY

ORDINANCE NO. 2016-005

AN ORDINANCE IMPOSING A TAX ON THE RETAIL SALE OF RECREATIONAL MARIJUANA AND MARIJUANA PRODUCTS

WHEREAS, the Josephine County Charter provides that the County has all powers necessary for the conduct of its affairs, consistent with the Constitutions and laws of the United States and the State of Oregon; and

WHEREAS, Oregon's voters and Legislature have enacted laws relating to the taxation of retail sales of recreational marijuana and marijuana products; and

WHEREAS, counties are newly authorized by state law to enact a tax of up to three percent (3%) on the retail sale of recreational marijuana and marijuana products to consumers within their jurisdictions; and

WHEREAS, a county tax on retail sales of recreational marijuana and marijuana products shall go into effect only upon approval by the majority of a county's electors at a regularly scheduled general election; now, therefore,

The People of Josephine County ordain as follows:

SECTION 1.00 **TITLE**

This ordinance shall be known as the Josephine County Retail Sale of Recreational Marijuana Tax Ordinance.

SECTION 2.00 **PURPOSE AND INTENT**

The purpose of this Ordinance is to impose a tax on the retail sale of recreational marijuana and marijuana products within the unincorporated areas of Josephine County.

SECTION 3.00 **DEFINITIONS**

The following are definitions for the purpose of this ordinance and for the purpose of any agreement entered into pursuant hereto and for any actions taken as authorized pursuant to this ordinance and otherwise:

- A. "Consideration" means anything of value that is given or received either directly or indirectly, whether through sales, barter, trade, fees, charges, dues, contributions, donations, or reimbursements, whether financial or otherwise.
- B. "Consumer" means a person who purchases, acquires, owns, holds or uses recreational marijuana or marijuana products other than for the purposes of resale to a Business Owner.
- C. "Distribute" means to deliver, convey, transfer, sell, consign or otherwise give to another, recreational marijuana or marijuana products. Outright gifts are excluded from the meaning of "distribute," "distributed" or "distribution." Any transfer for financial consideration, however received, is a distribution. Distribution also includes, but is not limited to, any transfer that is accompanied by or results in a reciprocal gift, donation, reimbursement, trade, or any other form or transfer for financial consideration.
- D. "Gross taxable sales" means the total amount received in money, credits, property or any other consideration from the sale of recreational marijuana or marijuana products.
- E. "Marijuana" has the definition found in ORS 475.005(16). Marijuana does not include industrial hemp, as defined in ORS 571.300.
- F. "Marijuana product" means any and all products of whatever type that contain any element, salt, compound, derivative, mixture, resin, or other preparation of marijuana and that is intended for use or consumption by any means.
- G. "Owner of Business" or "Business Owner" means that person or entity holding the license from the Oregon Liquor Control Commission (OLCC) to sell recreational marijuana or marijuana products.
- H. "Person" includes any natural person, any corporation, professional corporation, nonprofit corporation, cooperative corporation, any profit or nonprofit unincorporated association, business trust, limited liability company, general or limited partnership, joint venture, any legal entity, and any unincorporated group acting in common.

- I. "Retail" and "Retail sale" includes any distribution of recreational marijuana or marijuana products, and does not include transactions that are authorized under the Oregon Medical Marijuana Program.
- J. "Sale" or "sell" means the transfer of recreational marijuana or marijuana products from one person to another for consideration. A transfer of recreational marijuana or marijuana products is a sale if the person transferring the marijuana received any type of consideration as described herein, whether directly or indirectly, whether at the time of the transfer or at some other time.
- K. "Tax" means the tax imposed by this ordinance on the sale or transfer of recreational marijuana or marijuana products.

SECTION 4.00 **AUTHORITY**

- 4.01 The Board of County Commissioners of Josephine County recognizes, declares and establishes the authority of the Board of Commissioners to tax the sale of recreational marijuana and marijuana products within Josephine County, and to assess, calculate, collect and enforce a tax on all such activities.
- 4.02 This ordinance does not apply to premises located within the city limits of incorporated cities within Josephine County, nor to activities conducted solely within such city limits.

SECTION 5.00 **TAXATION**

- 5.01 There is hereby levied and shall be paid by every Business Owner a tax on the privilege of retail distribution or sales of recreational marijuana and marijuana products to consumers as defined in this ordinance.
- 5.02 The tax shall be in the amount of three percent (3%) of the total amount of the gross taxable sales of recreational marijuana and marijuana products to consumers per calendar quarter. Every Business Owner shall be responsible for the collection of the tax from the consumer at the time of the sale, and shall be responsible for the payment of the tax to the Josephine County Tax Collector. Any tax owing to Josephine County through the office of its Tax Collector shall be a debt owed to the County by the Business Owner. The County may undertake any action permitted by law to collect the debt.
- 5.03 Every Business Owner shall be entitled to a deduction against the tax of the amount in the form of refunds actually returned to the purchaser.
- 5.04 Every Business Owner shall file a Notice of Operation with the Josephine County Tax Collector within 30 days of passage of this ordinance, or upon establishment of the business, whichever is sooner.
- 5.05 Every Business Owner shall make a return to the Josephine County Tax Collector on the fifteenth day of January, April, July, and October, reporting the total amount of gross sales for the immediately preceding three-month period. The return on January fifteenth shall report the gross sales for the preceding months of October, November and December; the return on April fifteenth shall report the gross sales for the preceding months of January, February and March; the return on July fifteenth shall report the gross sales for the preceding months of April, May and June; and the return on October fifteenth shall report the gross sales for the preceding months of July, August, and September.
- 5.06 Every return listed in Section 5.05 shall be accompanied by payment of the total amount of the tax for that quarter. Payment of the tax is due at the time the return is filed. The return is filed when the Josephine County Tax Collector actually receives it.
- 5.07 A Business Owner aggrieved by any action or decision of the Board of County Commissioners may appeal the decision by filing a writ for judicial review with the Circuit Court of the State of Oregon for Josephine County.

- 5.08 Every person engaged in the retail sale of recreational marijuana and marijuana products shall keep accurate records detailing the revenue and expenses incurred. Such records shall specify the time period for which they apply, which shall be not less than one week and not more than one month. Such records shall be kept and maintained upon the premises where the activity is conducted, and such records shall be available for inspection by County authorities during business hours upon twenty-four (24) hours' notice.

SECTION 6.00 **ENFORCEMENT**

- 6.01 Enforcement of the provisions of this ordinance is the joint responsibility of the Josephine County Sheriff and the Josephine County Tax Collector. Each of those officers is authorized by the adoption of this ordinance to take any and all actions necessary to enforce the provisions of this ordinance, consistent with the provisions of the Constitutions, statutes, and rules of the State of Oregon and the United States.
- 6.02 Notice of Noncompliance with this ordinance shall be by written notice, delivered by certified mail to the occupant or person in charge of the premises where the violation occurred, by certified mail to the Owner of the Business, and by posting of the written notice in a prominent place at or on the front door of the premises.
- 6.03 The Owner of the Business may contest the Notice of Noncompliance by delivering a written statement to the Board of County Commissioners no more than twenty-one (21) calendar days after the date of the Notice of Noncompliance. The Board of County Commissioners shall then schedule a public hearing regarding the violation as soon as practicable, and shall provide the Business Owner with an opportunity to be heard and to present relevant evidence.
- 6.04 After the Tax Collector notifies noncompliant persons pursuant to the process set forth in this ordinance, the Board of County Commissioners may impose penalties through a written Order consistent with Section 7 of this ordinance. Such an order may be approved no fewer than twenty-one (21) calendar days after the Tax Collector provides a Notice of Noncompliance to all persons that the Tax Collector finds to be in violation, or after a public hearing to contest the Notice of Noncompliance, whichever is later.
- 6.05 An aggrieved Business Owner may appeal the imposition of any penalty imposed under this ordinance by filing a writ for judicial review with the Circuit Court of the State of Oregon for Josephine County.

SECTION 7.00 **PENALTIES**

- 7.01 Failure to pay the tax in the full amount at the time it is due is a violation of the provisions of this ordinance. Any Business Owner who fails to pay the total amount of the tax at the time it is due shall pay a penalty of ten percent (10%) of the unpaid portion of the tax. If the balance due is not paid within thirty (30) days of the due date, the Business Owner shall pay an additional penalty of thirty percent (30%) of the unpaid balance.
- 7.02 If a Business Owner fails to make the return required by Section 5.05 when due, the Josephine County Tax Collector shall estimate the tax due. Within forty-five (45) days after the due date of the tax, the Tax Collector shall assess against the Business Owner the estimated tax and notify the Business Owner in writing of the assessment pursuant to Section 6. The Tax Collector shall also notify in writing the Sheriff, the Board of County Commissioners and the Oregon Liquor Control Commission of the noncompliance. If the Business Owner fails to file the return and pay either the estimated tax and associated penalties or the actual tax based upon the return and the associated penalties, the Sheriff, the Tax Collector, and the Board of County Commissioners shall take any action permitted by law to collect the tax and to secure the cessation of the Business Owner's activities until payment is made.

- 7.03 Failure to maintain the records required by this ordinance or failure to make such records available for inspection is a violation of this ordinance and shall subject the violator to a penalty of \$1,000.00.
- 7.04 All fines, penalties and unpaid taxes imposed or assessed under the provisions of this ordinance shall become liens against the real and personal property of the Owner of the Business. Josephine County may use any legal means to facilitate the collection of all such fines and penalties, as well as the taxes imposed by this ordinance.

SECTION 8.00 **EFFECT OF ADOPTION**

- 8.01 Upon its effective date, this ordinance imposes a tax upon the privilege of engaging in the retail sale of recreational marijuana or marijuana products within the unincorporated areas of Josephine County, and imposes restrictions and regulations upon persons engaging in such activities.
- 8.02 This ordinance is not retroactive. Transactions conducted prior to the effective date of the ordinance are not affected and are not subject to the tax. All transactions conducted on or after the effective date of this ordinance are subject to the tax.
- 8.03 The revenue from this tax shall be used for public health, education and treatment related to marijuana and marijuana products, and public safety.

SECTION 9.00 **SEVERABILITY**

In the event that any part of this ordinance shall be held by a court to be invalid or unenforceable, the remaining sections shall be unaffected and shall remain in full force and effect.

SECTION 10.00 **EFFECTIVE DATE**

First reading by the Board of County Commissioners this 27 day of July, 2016.

Second reading and adoption by the Board of County Commissioners at least thirteen (13) days from the first reading this 10 day of August, 2016. This ordinance shall take effect upon approval by the voters of an authorizing measure at the election of November 8, 2016.

JOSEPHINE COUNTY
BOARD OF COMMISSIONERS

/s/ Cheryl Walker
Cheryl Walker, Chair

/s/ K.O. Heck
K.O. Heck, Vice Chair

/s/ Simon G. Hare
Simon G. Hare, Commissioner

ATTEST:

/s/ Wendy Watkins
Recording Secretary

APPROVED AS TO FORM:

/s/ M. Wally Hicks
Wally Hicks, Legal Counsel