

BEFORE THE BOARD OF COUNTY COMMISSIONERS FOR JOSEPHINE COUNTY

ORDINANCE NO. 2022-005

**AN ORDINANCE AMENDING THE COUNTY CODE (ORDINANCE NO. 2018-004) BY
ADDING CHAPTER 5.50; IMPOSING A SEASONAL TAX ON RETAIL ACTIVITIES**

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 allows local governments to tax most retail activities; and

WHEREAS, a seasonal tax on most retail activities shall go into effect only upon approval by the majority of the county's electors at a regularly scheduled general election; now, therefore,

The People of Josephine County ordain as follows:

Section 1.00 Chapter 5.50, Law Enforcement Retail Activities Tax, is added to read as follows:

Section 2.00 SECTIONS:

5.50.010	Title
5.50.020	Purpose and Intent
5.50.030	Definitions
5.50.040	Authority
5.50.050	Taxation
5.50.060	Enforcement
5.50.070	Penalties
5.50.080	Effect of Adoption
5.50.090	Severance

5.50.010	Title
-----------------	--------------

This chapter shall be known as the Law Enforcement Retail Activities Tax (LERAT).

5.50.020 Purpose and Intent

- A. The purpose of this Ordinance is to impose a tax on retail activities that occur within Josephine County between April 15 and October 15 of every year.
- B. The revenue from this tax shall be used exclusively for the provision of law enforcement services, including related administrative expenses, in Josephine County, including the Sheriff's Office, the Juvenile Department, the District Attorney's Office, the City of Grants Pass Police Department, and by the City of Cave Junction for law enforcement purposes. Distributions to incorporated cities will be based on population.
- C. Expenditures of funds raised by this tax shall be subject to annual, independent audits to ensure compliance with the requirements of this ordinance.
- D. At least five percent of the revenue gleaned from this tax shall be deposited annually into a contingency fund which may be accessed to cover law enforcement expenses when revenue projections, as calculated by Retail Activities Tax Board, have exceeded

revenue received.

5.50.030 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. "Activity" means the conversion of products or services from a Participant to a Consumer.
- B. "Consumer" means a Participant who purchases, acquires, owns, holds or uses products or services other than for the purpose of resale to another Participant.
- C. "Conversion" means the transfer of property or the provision of services in exchange for payment. A conversion is complete when the Participant becomes due any type of payment as described herein, whether directly or indirectly.
- D. "Gross taxable payment" means the total amount of payment received as part of a single conversion. The maximum taxable amount of payment attributable to any single conversion is Two Thousand Dollars (\$2,000.00), subject to annual adjustment according to the Consumer Price Index.
- E. "Payment" means the performance of an obligation by the delivery of money or some other valuable thing accepted in partial or full discharge of the obligation.
- F. "Participant" includes any natural person, any corporation, professional corporation, nonprofit corporation, cooperative corporation, any for-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.
- G. "Retail activity" includes every conversion involving a Participant and a Consumer, but does not include transactions that are exempted by this ordinance. Retail activity includes conversions that are delivered to a Consumer or a location in Josephine County, regardless of the shipping source. Retail activity does not include the provision or transfer of:
 - 1. Unprepared food;
 - 2. Prescription medicine;
 - 3. Any interest, including a fee estate, in real property;
 - 4. Internet access;
 - 5. Telephone exchange access or other telephone services;
 - 6. Motor vehicle fuel;
 - 7. Transient lodging;
 - 8. New light-duty motor vehicles;
 - 9. Cigarettes and tobacco products other than cigarettes;
 - 10. Lottery tickets or shares of the Oregon State Lottery;
 - 11. Alcoholic liquor;
 - 12. Psilocybin products or services;
 - 13. Marijuana items addressed by Josephine County Code Chapter 3.25;
 - 14. Investment holdings which include, but are not limited to, precious metals, stocks and commodities;

15. Outright gifts, meaning the voluntary transfer of products or provision of services to another Participant without compensation.
16. Conversions that are excluded from taxation by state or federal law.

5.50.040 Authority

- A. The Board of County Commissioners of Josephine County recognizes, declares and establishes the authority of the Board of Commissioners to tax retail activity within Josephine County and to assess, calculate, collect and enforce a tax on all such activities.
- B. This ordinance will apply to all retail activities that occur in Josephine County, including those that occur within the limits of incorporated cities.

5.50.050 Taxation

- A. There is hereby levied and shall be paid by every Participant a tax on retail activity as defined by this ordinance.
- B. The retail activity tax shall be in the amount of three percent (3%) of the total amount of gross taxable payments that occur between April 15 and October 15 of every year. Every Participant shall be responsible for the collection of the tax from the Consumer at the time of the payment, and shall be responsible for remitting the tax to the Josephine County Retail Activities Tax Board. Any tax owing to the Retail Activities Tax Board shall be a debt owed to Josephine County by the Participant. The Retail Activities Tax Board may, on behalf of Josephine County, undertake any action permitted by law to collect the debt.
- C. Every Participant, except Consumers, shall be entitled to retain a five percent (5%) deduction against the retail activities tax for the purpose of administering the tax collection.
- D. Every Participant, except Consumers, shall file a Notice of Operation with the Josephine County Retail Activities Tax Board within thirty (30) days of the effective date of this ordinance, or upon establishment of the business, whichever is sooner.
- E. Every Participant, except Consumers, engaged in retail activity shall annually file Oregon tax returns. Pursuant to ORS 314.840(2)(d)(B), Josephine County and the Josephine County Tax Collector, following authorization from the Josephine County Retail Activities Tax Board, is authorized to obtain from the Oregon Department of Revenue any Participant's tax return, and any documents that are connected with that Participant's tax return, for the purpose of administration, compliance and enforcement of this Ordinance. The Josephine County Retail Activities Tax Board, on behalf of Josephine County, is also authorized to apply for, obtain and enforce court orders requiring the state or any Participant to provide information and documents relevant to the enforcement of this ordinance. The Retail Activities Tax Board and County personnel shall follow all laws regarding the confidentiality of tax information and documents.
- F. Each calendar year, every Participant, except Consumers, that has engaged in retail activity during the prior calendar year shall make payment in full to the Josephine County Tax Collector on or before the first day of March.

- G. A Participant aggrieved by any action or decision of the Retail Activities Tax Board may appeal the decision by filing a writ for judicial review with the Circuit Court of the State of Oregon for Josephine County.
- H. The Board of County Commissioners is authorized to pass ordinances and create rules for the purpose of clarifying and enforcing this tax. Through a Board Order, the Board of County Commissioners may reduce the rate of the tax to below three percent (3%) for periods of up to three hundred sixty five (365) days, but the Board of County Commissioners may not increase the tax rate without voter approval.
- I. The Josephine County Tax Collector shall assist the Retail Activities Tax Board by collecting and processing tax payments, and by providing routine public reports.

5.50.060 Enforcement

- A. Violation of this ordinance is declared to be a private and public nuisance, and is prosecutable as such.
- B. There is hereby created a Retail Activities Tax Board consisting of three members, the term of office for each member being four years with no more than two terms served consecutively. The Board of Josephine County Commissioners shall appoint one (1) member, the City of Grants Pass shall appoint one (1) member, and the City of Cave Junction shall appoint one (1) member. The qualifications for serving as a member are to have attained the age of eighteen (18) years and to be a resident of Josephine County at the time of the appointment. The compensation for each member shall be two hundred (\$200.00) dollars per month, subject to annual adjustment according to the Consumer Price Index. By April 15 of each year, members must provide an accurate Statement of Economic Interest on a form provided by the Oregon Government Ethics Commission to the Board of Josephine County Commissioners. The Board of County Commissioners is authorized to remove any member of the Retail Activities Tax Board if it finds the member has failed to disclose a conflict of interest.
- C. Enforcement of the provisions of this ordinance, including the annual audit, is the responsibility of the Retail Activities Tax Board. The Retail Activities Tax Board 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. The Retail Activities Tax Board may apply on behalf of Josephine County to the Circuit Court for Writs of Assistance and for other measures that the Retail Activities Tax Board deems necessary for the enforcement of this Ordinance.
- D. Notice of Noncompliance with this ordinance shall be by written notice, delivered to the occupant or Participant in charge of the premises where the violation occurred, by Certified and First Class mail to the Participant if practicable, and by posting the written notice in a prominent place at or on the entrance to the premises where the violation occurred.
- E. After the Retail Activities Tax Board notifies noncompliant participants pursuant to the process set forth in this ordinance, the Retail Activities Tax Board may impose penalties through a written Order consistent with Section 5.50.070 of this ordinance. Such an order may be approved no fewer than twenty-one (21) calendar days after the Retail Activities Tax Board provides a Notice of Noncompliance to all Participants that the Retail Activities Tax Board finds to be in violation, or after a public hearing to contest the

Notice of Noncompliance, whichever is later.

- F. The Participant may contest the Notice of Noncompliance by delivering a written statement to the Retail Activities Tax Board no more than twenty-one (21) calendar days after the date of the Notice of Noncompliance. The Retail Activities Tax Board shall then conduct a public hearing regarding the violation as soon as practicable, and shall provide the Participant with an opportunity to be heard and to present relevant evidence.
- G. An aggrieved Participant 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. The Retail Activities Tax Board is authorized to represent Josephine County in said proceeding.

5.50.070 Penalties

- A. 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 Participant 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 Participant shall pay an additional penalty of thirty percent (30%) of the unpaid portion of the tax. The Retail Activities Tax Board is authorized to waive said penalties upon finding good cause.
- B. 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 Participant. 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.

5.50.080 Effect of Adoption

- A. Upon its effective date, this ordinance imposes a tax upon retail activity throughout all parts of Josephine County, and imposes restrictions and regulations upon Participants engaging in such activities.
- B. This ordinance is not retroactive. Transactions conducted prior to the effective date of the ordinance are not affected and are not subject to this tax. All transactions conducted on or after the effective date of this ordinance are subject to this tax.

5.50.090 Severance

Should any section or provision of this ordinance be declared by a court or tribunal of competent jurisdiction to be invalid, that decision shall not affect the validity of the ordinance as a whole or any part thereof, other than the part so declared to be invalid.

SECTION 3.00 CODIFICATION

This ordinance shall be codified in JCC Title 5.00.

SECTION 4.00 AFFIRMATION

Except as specifically amended by the provisions of this ordinance, the Josephine County Code, as previously adopted and amended, is hereby affirmed.

SECTION 5.00 EFFECTIVE DATE

First reading by the Board of County Commissioners this ___ day of _____, 2022.

Second reading and adoption by the Board of County Commissioners at least thirteen days after the first reading this ___ day of _____ 2022. This Ordinance shall take effect on March 15, 2023, if an authorizing measure is approved by the voters at the election of November 8, 2022.

JOSEPHINE COUNTY
BOARD OF COMMISSIONERS

Herman E. Baertschiger, Chair

Darin J. Fowler, Vice Chair

Daniel E. DeYoung, Commissioner

ATTEST:

Recording Secretary

APPROVED AS TO FORM:

Wally Hicks, Legal Counsel