

DeYoung Visit

Monday Aug. 15 22

Subject: Sales Tax Ordinance

Ordinance No. 2022-005, or the Seasonal Sales Tax Ordinance, is six pages long, yet the most obvious thing about it is it lacks specificity. This Ordinance would go into effect from April 15-October 15 of 2023 if approved by voters in November.

Democrats had questions for Commissioner Dan DeYoung about the ordinance and visited him in his Courthouse office Aug. 15. There is no doubt about DeYoung's sincerity in trying to find permanent funding for the Josephine County Sheriff's Department and his belief that imposing another levy on property owners would not pass. Although the Ordinance has no expiration date when it can be reassessed, DeYoung says voters can do that anytime through the initiative process, which means gathering enough signatures to put it on the ballot again.

He believes City of Grants Pass voters wouldn't vote for a sheriff's levy since they already pay a \$1.79 levy for the police. He said cutting out the city would require a higher levy, in the \$1.89 range, and county property owners wouldn't vote for that. Democrats countered that city voters are also concerned about law enforcement in the county for four reasons: crime doesn't stop at borders, city residents do not stay in the city, they have friends and family in the county they are concerned about and levies are tax deductible while sales taxes are not.

Nevertheless, DeYoung said because this ballot measure is do or die for the sheriff's department, the BOC had to come up with something that had a chance to pass and they had no confidence a levy would pass based on their interactions with voters. Democrats asked him what he would say to people who feel "blackmailed" into voting for a sales tax ordinance they really don't like. He said he hopes the people of Josephine County realize how desperate the Sheriff's Department financial situation is and this is its best chance to survive.

Ordinance No. 2022-005 is set up like most ordinances with the first section explaining the Purpose and Intent. It doesn't say it targets tourists but Commissioners have emphasized visitors, instead of property owners, will help fund Josephine County law enforcement. That's why the Ordinance says the purpose is to impose a tax on retail activities between April 15 and October 15 of every year, that it will be used exclusively for law enforcement services including the Sheriff's Office, the Juvenile Department, the District Attorney, the Grants Pass Police Department and the City of Cave Junction for law enforcement.

Distributions will be based on population. It also allows for a 7 percent contingency fund. This is based on a superficial analysis of sales in Josephine County that concluded a seasonal sales tax would bring in \$18 million. DeYoung said Commissioner Herman Baertschiger asked someone he knew in Salem to give an estimate and this is what he came up with. DeYoung said he actually has no idea how much revenue a seasonal sales tax would bring in.

DeYoung said it was important that the Grants Pass City Council voted to reduce the law enforcement levy by a dollar if the sales tax passes. This seems like a big risk to the City until

you read the fine print. The City Council kept open the ability to “make adjustments” in that amount depending on the actual funding received. This means if Council members don’t feel their allotment from the sales tax is enough to support their law enforcement needs, they may adjust that amount. They can’t raise the city law enforcement levy beyond what voters passed, but city voters have no guarantee that levy will be reduced by a dollar if the sales tax is approved.

The Ordinance has a long list of definitions, among them what constitutes “retail activity” and what is exempt from the tax. Retail activity means goods and services paid for by a consumer. It includes internet sales. Exemptions include groceries, prescriptions, rental income, internet access, telephone services, gasoline and diesel fuel, transient lodging, new light-duty vehicles (it wasn’t clear what defines a new light-duty vehicle. ATV? Motorcycle? Golf Cart?), tobacco products, lottery tickets, liquor, psilocybin, marijuana, investment holdings including precious metals, gifts from one person to another, public utilities and anything excluded from taxation by state or federal law. The Ordinance also exempts government entities from paying the tax and offers reimbursement for those that pay the tax in the process of buying supplies.

Democrats asked DeYoung if Growers Market vendors, garage sales and other parts of our informal economy would be taxed. DeYoung said if the county can’t collect every dollar owed it, according to the Ordinance, but the money will eventually get taxed anyway because money made by vendors, garage sales or through back room cash business will get spent at businesses that do tax.

The Ordinance specifies a 3 percent tax with all businesses participating entitled to keep 5 percent of their tax receipts for administering the tax collection. The Ordinance says how and when businesses should pay the tax, with payment made annually to the county Tax Collector by March 1. The rough estimate of \$18 million in tax receipts didn’t factor in all the exceptions to the tax and the 5 percent businesses are allowed to keep. The county hasn’t put out a more accurate estimate at this time. The Ordinance itself is not based on a specific amount of sales tax revenue.

Enforcement is where the Ordinance gets sketchy. Enforcement will be done through an annual audit and there is an appeal process. The Ordinance says a violation will be declared a “public nuisance” and is prosecuted as such. Penalties for those who fail to pay the total amount of the tax when it’s due “shall pay a penalty of 10 percent of the unpaid portion of the tax within 30 days of the due date. If not paid by then the penalty goes up to 30 percent of the unpaid portion.

The administration of the sales tax in the county is also sketchy. DeYoung said the county Tax Collector currently has a position that has gone unfilled. He will fill that position with someone who’s sole duty will be to administer the sales tax. That way the administration won’t cost anything, he said, since the position is already budgeted. It wasn’t clear if the county’s Finance Office would also have to employ additional staff to handle tax-related revenue matters.

Under Enforcement the Ordinance also sets up a three-member Retail Tax Board which will have the power to make adjustments to the tax, according to DeYoung. The Ordinance says the Board can also waive penalties for “good cause.” DeYoung said this Tax Board, consisting of

representatives from Cave Junction, Grants Pass and Josephine County, will take the tax issue out of Commissioners hands so if Commission members change the tax board can stay consistent. He didn't indicate whether or not a new set of Commissioners could replace the tax board members. The Ordinance does say Commissioners can remove tax board members "if it finds the member has failed to disclose a conflict of interest." Democrats advised DeYoung to get this clarified because it isn't clear how much power the Retail Tax Board would have, who qualifies other than being 18 or older and a Josephine County resident and how long their terms would be. The Ordinance does say they would be paid \$200 a month and be required to fill out an ethics form by April 15 of each year.

Democrats asked if the Tax Board would have the power to increase the sales tax rate. DeYoung said no because tax increases have to be approved by the voters. However, he wasn't certain they couldn't remove exemptions from the list, which would result in an increase of what people pay in sales tax. Democrats asked for that to be clarified for voters to make sure once appointed, the Tax Board won't decide to remove groceries from the list of exemptions if the sales tax revenues aren't as much as expected. Groceries were included in the items to be taxed in the Ordinance until Sheriff Dave Daniel objected, saying they have been telling voters at forums groceries would not be taxed and including groceries could spell doom for the ballot measure. During a Commissioners' Workshop before the second reading of the Ordinance Commissioners referred to a study showing if groceries aren't taxed the sales tax has to be higher in order to compensate.

Will the 3 percent be enough to support law enforcement throughout Josephine County with all the exemptions: 5 percent share to businesses, Tax Board members' compensation, administrative costs, reimbursements to governmental entities for taxes paid, possibility shoppers will take their business to neighboring communities, have internet purchases shipped to relatives or post office boxes in neighboring communities, the possibility that tourists don't spend as much as was thought in Josephine County and the possibility taxes could take a hit during a recession? So far, proponents of the seasonal sales tax are willing to take a chance on all those questions because of the desperate situation in the Sheriff's Department. It will remain to be seen if the voters will too.

Anticipating this Ordinance may be challenged in court, the last portion of it deals with severance. If a portion of the ordinance is found invalid, the Ordinance says, that decision will not affect the validity of the Ordinance as a whole. That too is open for clarification.

Is there a Plan B if this doesn't pass? A special election for a levy? More belt-tightening? DeYoung says not from him. He's done. If it doesn't pass the Josephine County Sheriff's Department will be gutted.