

ORDINANCE NO. O-2022 / ____

AN ORDINANCE TO LEVY AND IMPOSE A ONE-HALF OF ONE (1) PERCENT SALES AND USE TAX, SUBJECT TO A REFERENDUM, WITHIN JASPER COUNTY PURSUANT TO SECTION 4-10-1010 ET SEQ. OF THE CODE OF LAWS OF SOUTH CAROLINA, 1976, AS AMENDED; TO DEFINE THE SPECIFIC PURPOSES AND DESIGNATE PROJECTS FOR WHICH THE PROCEEDS OF THE TAX MAY BE USED; TO PROVIDE THE MAXIMUM TIME FOR WHICH SUCH TAX MAY 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 IMPOSITION 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 ADMINISTRATION OF THE TAX, IF APPROVED; TO PROVIDE FOR THE PAYMENT OF THE TAX, IF APPROVED; AND TO PROVIDE FOR OTHER MATTERS RELATING THERETO.

WHEREAS, South Carolina is the tenth-fastest-growing State in the nation, and Jasper County is the sixth-fastest growing county in the State and has a 21.8% increase in population during the last decade;

WHEREAS, the City of Hardeeville in southern Jasper County in 2000 consisted of approximately two square miles; today, the town's footprint exceeds 60 square miles with the vast majority of the area under PUD zoning with Development Agreements, and in the past decade its population increased by 156 percent; and

WHEREAS, the population of the City of Hardeeville in southern Jasper and Beaufort counties has increased by 212 percent in the past decade, and the city has recently approved a 2,200-acre tract at the headwaters of the New River known as Karrh Tract; and

WHEREAS, Jasper and Beaufort counties and their municipalities contain many legacy planned-unit developments (PUDs) dating back to the early 2000s in which significant development densities were vested, and many of these PUDs remain substantially unbuilt, and new PUDs and/or large-tract rezonings are approved on a regular basis;

WHEREAS, this rapid growth puts environmentally unsustainable pressures on our lands and waters, in that the development and the accompanying infrastructure result in the destruction of natural wetlands, marshes, headwaters, and other waterways, thereby hampering the functioning of these systems and eliminating valuable and effective natural storm protection and flood abatement, and fish and wildlife habitat; and

WHEREAS, this growth increases the amount of impervious surfaces throughout the low-lying portions of Jasper and Beaufort counties, which in turn carries pollutants into our waterways; e.g., a study completed in 2019 found that development in the Town of Bluffton had increased levels of fecal coliform in the May River by 3,150 percent in the previous decade; and

WHEREAS, development patterns within the low-lying topography of Jasper and Beaufort counties makes our communities highly vulnerable to flooding, and over the past six years, major

flooding and storm events have caused over one billion dollars in total damages to residential and commercial properties and have imposed substantial burdens on taxpayers; and

WHEREAS, in recognition of the negative consequences associated with environmentally unsustainable levels of development, the South Carolina General Assembly passed on May 12, 2022, and South Carolina Governor Henry McMaster signed on May 16, 2022, a bill (S. 152, Section 4-10-1010, et seq/ of the Code of Laws of South Carolina 1976, as amended; herein, the “County Green Space Sales Tax Act,” or the “Act”) to empower counties to undertake land preservation efforts supportive of, respectful to, and consistent with the principle of private property rights, as opposed to limiting them to the use of traditional land use regulations, which, to attain meaningful relief, could give rise to inverse condemnation claims; and

WHEREAS, the Jasper County Council recognizes the need to preserve land that has scenic, natural, recreational, rural, and open space character which is deemed essential to the County’s quality of life and is desirous of exercising the new preservation alternative provided to it by the Green Space Sales Tax

NOW, THEREFORE, BE IT ORDAINED BY THE COUNTY COUNCIL OF JASPER COUNTY AS FOLLOWS:

Section 1. Recitals and Legislative Findings. As an incident to the enactment of this Ordinance, the County Council of Jasper County, South Carolina (“County Council”) has made the following findings:

(a) The South Carolina General Assembly has enacted the County Green Space Sales Tax Act pursuant to which the county governing body may impose a sales and use tax by ordinance, subject to a referendum, in an amount not to exceed one percent, within the county area for a specific purpose or purposes and for a limited amount of time to collect a limited amount of money.

(b) Pursuant to the terms of Section 4-10-1010(B)(2) of the County Green Space Sales Tax Act (“Act”), revenues collected under this authorization may be used to defray debt service on bonds issued for the specific purposes described herein.

(c) The County Council finds that a one-half of one percent sales and use tax should be levied and imposed within Jasper County, for the following projects and purposes:

(1) For ‘preservation procurements,’ as defined herein this ordinance to mean procuring open lands or green space for preservation, by and through the acquisition of interests in real property, including:

- (i) the acquisition of fee simple titles;
- (ii) conservation easements;
- (iii) development rights;
- (iv) rights of first refusal;
- (v) options;
- (vi) leases with options to purchase; and

(vii) any other interests in real property.

(2) Preservation procurements may pertain to real property situated outside of the boundaries of the taxing jurisdiction.

(All of the above are referred to herein collectively as the “projects.”)

For a period not to exceed ten (10) years from the date of imposition of such tax, to fund the projects at a maximum cost not to exceed \$17,500,000 to be funded from the net proceeds of a sales and use tax imposed in Jasper County pursuant to provisions of the Act, subject to approval of the qualified electors of Jasper County in referendum to be held on November 8, 2022. The imposition 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. All spending shall be subject to an annual independent audit to be made available to the public.

(d) County Council finds the imposition of a sales and use tax in Jasper County for the projects and purposes defined in this Ordinance for a limited time not to exceed 10 years to collect a limited amount of money will serve a public purpose, to provide for and protect natural areas and open space in the watersheds of Jasper and Beaufort counties, to protect water quality, to preserve land for recreational activities, to preserve farm and forest land, to preserve contiguous landscapes and habitat corridors, and to protect other environmentally sensitive areas such as wetlands, marsh lands and headwater areas, all of which enhance quality of life in Jasper County, promote public health and safety, and prepare Jasper County to meet its citizens’ present and future needs.

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

(a) A sales and use tax (the “Sales and Use Tax”), as authorized by the Act, is hereby imposed in Jasper 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 Jasper County, South Carolina on November 8, 2022.

(b) The Sales and Use Tax shall be imposed for a period not to exceed 10 years from the date of imposition.

(c) The maximum cost of the projects to be funded from the proceeds of the Sales and Use Tax shall not exceed, in the aggregate, the sum of \$17,500,000 and the maximum amount of net proceeds to be raised by the tax shall not exceed \$17,500,000, which includes administrative costs and debt service on bonds issued to pay for the projects. The estimated principal amount of initial 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 is \$17,500,000.

(d) 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:

(1) For preservation procurements, to mean procuring for preservation open lands or green space located within or without, or both within and without, the boundaries of the local governmental entities, including the county, municipalities, and special purpose districts located in the county area, by and through the acquisition of interests in real property, including:

- (i) the acquisition of fee simple titles;
- (ii) conservation easements;
- (iii) development rights;
- (iv) rights of first refusal;
- (v) options;
- (vi) leases with options to purchase; and
- (vii) any other interests in real property.

(2) Preservation procurements may pertain to real property situated outside of the boundaries of the taxing jurisdiction.

The amount of the maximum total funds to be collected which shall be expended for these projects and purposes shall be no more than \$17,500,000.

(e) If the Sales and Use Tax is approved in a referendum, then the tax shall be imposed on the first of May following the date of the referendum. If the reimposition of an existing sales and use tax imposed pursuant to this article is approved in a referendum, then the new tax is imposed immediately following the termination of the earlier imposed tax, and the reimposed tax terminates on the applicable thirtieth of April, not to exceed seven years from the date of reimposition. If the certification is not timely made to the Department of Revenue, then the imposition is postponed for twelve months.

(f) The Sales and Use Tax, if approved in a referendum, terminates the final day of the maximum time period specified for the imposition.

(g) Amounts collected in excess of the required net proceeds must first be applied, if applicable, to complete the preservation procurements for which the Sales and Use Tax was imposed.

(h) If the sales and use tax is approved in a referendum, then the Department of Revenue must make available to the public, upon request, all information regarding the amount of the tax that is collected, expenditures, and any remaining funds at the time of the information request to ensure transparency and accountability.

Section 3. Administration of the Funds.

(a) The tax levied pursuant to this article must be administered and collected by the Department of Revenue in the same manner that other sales and use taxes are collected. The Department of Revenue may prescribe amounts that may be added to sales prices because of the tax.

(b) The county in which a referendum is passed shall assemble an advisory committee to assist the Department of Revenue with directing the distribution of the taxes collected to ensure a transparent and equal distribution within the county. The advisory committee shall include seven members:

- (1) one member who is a member of the county council;
- (2) one member who is a member of the legislative delegation;
- (3) one member who is knowledgeable about the geography and condition of the county's land; and
- (4) four citizen members, each representing the northern, southern, eastern, and western portions of the county.

(c) The Sales and Use Tax authorized herein, subject to a referendum, 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, Title 12 and the enforcement provisions of Chapter 54, Title 12. The gross proceeds of the sale of items subject to a maximum tax in Chapter 36, Title 12 are exempt from the tax imposed by this article. Unprepared food items eligible for purchase with United States Department of Agriculture food coupons are exempt from the tax imposed pursuant to this article. The tax imposed by this article also applies to tangible personal property subject to the use tax in Article 13, Chapter 36, Title 12.

(d) A taxpayer required to remit taxes under Article 13, Chapter 36, Title 12 must identify the county in which the personal property purchased at retail is stored, used, or consumed in this State.

(e) A utility is required to report sales in the county in which the consumption of the tangible personal property occurs.

(f) A taxpayer subject to the tax imposed by Section 12-36-920, who owns or manages rental units in more than one county, must separately report in his sales tax return the total gross proceeds from business done in each county.

(g) The gross proceeds of sales of tangible personal property delivered after the imposition date of the tax levied under this article in a county, either under the terms of a construction contract executed before the imposition date, or a 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 article 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 article.

(h) Notwithstanding the imposition date of the sales and use tax authorized pursuant to this chapter, with respect to services that are billed regularly on a monthly basis, the sales and use tax authorized

pursuant to this article is imposed beginning on the first day of the billing period beginning on or after the imposition date.

(i) The Department of Revenue shall furnish data to the State Treasurer and to the county treasurers receiving revenues for the purpose of calculating distributions and estimating revenues. The information that must be supplied to counties and municipalities 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 Section 12-54-240. A person violating this section is subject to the penalties provided in Section 12-54-240.

(j) Annually, and only in the month of June, funds collected by the Department of Revenue from the county green space sales tax, which are not identified as to the governmental unit due the tax, must be transferred, after reasonable effort by the Department of Revenue to determine the appropriate governmental unit, to the State Treasurer's Office. The State Treasurer shall distribute these funds to the county treasurer in the county area in which the tax is imposed, and the revenues must be only used for the purposes stated in the enacting ordinance. The State Treasurer shall calculate this supplemental distribution on a proportional basis based on the current fiscal year's county area revenue collections.

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

(a)(1) Upon receipt of an ordinance, a county's election commission must conduct a referendum on the question of imposing the sales and use tax in the area of the county that is to be subject to the tax. A referendum for imposition or reimposition of the tax must be held at the time of the next general election in an even-numbered year. Two weeks before a referendum, a county's election commission must publish in a newspaper of general circulation the question that is to appear on the ballot, with a description of the methods by which the county's governing body intends to procure open lands and green space for preservation. If the proposed question includes the use of sales taxes to defray debt service on bonds issued to pay the costs of any preservation procurements, then the notice must include a statement indicating the principal amount of the bonds proposed to be issued for the purpose and, if the issuance of the bonds is to be approved as part of the referendum, stating that the referendum includes the authorization of the issuance of bonds in that amount. This notice is in lieu of any other notice otherwise required by law.

(2) The Board of Voter Registration and Elections of Jasper County shall conduct a referendum on the question of imposing a Sales and Use Tax in the area of Jasper 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 Voter Registration and Elections of Jasper 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 required by law.

(b) The referendum question to be on the ballot of the referendum to be held in Jasper County on November 8, 2022, must read substantially as follows:

OFFICIAL BALLOT, REFERENDUM
SPECIAL SALES AND USE TAX TO PROTECT OPEN LAND AND GREEN SPACES
NOVEMBER 8, 2022

‘Shall a special one-half of one cent sales and use tax be imposed in Jasper County for not more than 10 years to raise up to \$17,500,000 for preservation procurements for the purpose of procuring open lands and green space by and through the acquisition of interests in real property, located within or outside the boundaries of Jasper County, such interests to include:

- (a) the acquisition of fee simple titles;
- (b) conservation easements;
- (c) development rights;
- (d) rights of first refusal;
- (e) options;
- (f) leases with options to purchase; or
- (g) any other interests in real property?’

YES In favor of the question []

NO Opposed to the question []

If the referendum includes the issuance of bonds, then the question must be revised to include the principal amount of bonds proposed to be authorized by the referendum and the sources of payment of the bonds if the sales tax approved in the referendum is inadequate for the payment of the bonds.

(c) 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 votes cast are in favor of imposing the tax, then the tax is imposed as provided in this article and the enacting ordinance. Any subsequent referendum on this question must be held on the date prescribed in subsection (a)(1). The election commission shall conduct the referendum under the election laws of this State, *mutatis mutandis*, and shall certify the result no later than November thirtieth to the county governing body and to the Department of Revenue. Expenses of the referendum must be paid by the governmental entities that would receive the proceeds of the tax in the same proportion as those entities would receive the net proceeds of the tax.

(d) Upon receipt of the returns of a referendum, a county’s governing body must, by resolution, declare the results thereof. In such event, the results of the referendum, as declared by resolution of the county’s governing body, are not open to question except by a suit or proceeding instituted within thirty days from the date such resolution is adopted.

IT IS SO ORDAINED.

Adopted this ____ day of _____, 2022.

COUNTY COUNCIL OF JASPER COUNTY

BY: _____
Barbara B. Clark, Chairman

APPROVED AS TO FORM:

David L. Tedder, Esq.,
Jasper County Attorney

ATTEST:

Wanda Simmons, Clerk to Council

First Reading,
Second Reading:
Public Hearing:
Third and Final Reading: