

# Council Business Meeting

February 7, 2023

<b>Agenda Item</b>	Food and Tax Ordinance Amendment Ballot Measure Language for the May 16, 2023, Special Called Election	
<b>From</b>	Doug McGeary Joseph Lessard	City Attorney City Manager
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## SUMMARY

Council has requested information regarding a potential item for the May 16<sup>th</sup> Special Called Election ballot to request voter approval of an amendment to the City’s Food and Beverage Tax ordinance (AMC 4.34). The proposed amendment would dedicate 98% of Food and beverage tax revenues to uses currently under the City’s Parks and Recreation Department. The amendment would also continue the use of 2% of revenues to tax cover tax administration costs. A vote by the citizens of Ashland is required to adopt changes to the use of Food and Beverage Tax revenues.

The current Food and Beverage Tax ordinance, adopted by Ashland votes, authorizes the tax revenues to be used for the following:

- Not less than 25% of the tax revenues will be used for parks acquisition, planning, development, repair, and rehabilitation expenses
- Up to 73% for street repair and rehabilitation debt
- Up to 2% for tax administration costs

For purposes of the City Council’s discussion, the City Attorney has prepared draft ballot language that could be put forward for a vote of Ashland citizens that would dedicate 98% of Food and Beverage Tax revenues to uses currently under the City’s Parks and Recreation Department (see attached Notice of Measure Election – Proposed Amendment to Ashland’s Food and Beverage Tax Ordinance). The City Attorney has also prepared a corresponding draft Food and Beverage Tax ordinance amendment (see attached Draft AMC 4.34.020 Amendment) that would need to be adopted by the City Council prior to the May 16<sup>th</sup> Special Called Election.

The draft ballot language and AMC 4.34.020 ordinance amendment dedicate food and beverage tax revenues for uses for city parks, open space, recreation, and senior service purposes as follows:

- Not less than 25% of the tax revenues will be used for capital expenses, including acquisition, planning, development, repair, and rehabilitation
- Up to 73% of tax revenues will be used for operations, maintenance, and capital expenses
- Tax administration will continue to be 2% of revenues

The draft ordinance amendment does not change the current 5% rate or change the tax expiration date of Dec. 31, 2030.

To include a Food and Beverage Tax amendment on the May 16<sup>th</sup> Special Called Election ballot, the City Council will need to take the following steps:

1. Approve ballot measure language for a Food and Beverage Tax amendment and adopt a formal resolution submitting the ballot measure to the City of Ashland's Elections Officer (the City Recorder) for submittal to the Jackson County Elections Officer no later than Feb. 24<sup>th</sup>. Another item on the Feb. 7<sup>th</sup> Council agenda is a resolution to submit the ballot measure to the City Elections Offices. (Ballot measures may be challenged by Ashland citizens which may require an updated/final measure be submitted to the Jackson County Elections Official by March 16<sup>th</sup>. Also, ballot measures may be withdrawn by the City Council until March 16<sup>th</sup>.) Ballot language must be reviewed and approved for submittal by the City Attorney.
2. Adopt an ordinance that comports with the ballot measure submitted to the Jackson County Elections Officer. The usual ordinance adoption process for the AMC 4.34.020 amendment would be scheduled as follows:
  - o Conduct a first reading of the proposed ordinance at the Feb. 21<sup>st</sup> City Council Business Meeting; and
  - o Conduct a second reading of the proposed ordinance at the Feb. 22<sup>nd</sup> at the Special Called Business Meeting or on Mar. 7<sup>th</sup> at the regularly scheduled City Council Business Meeting.

### **FISCAL IMPACTS**

The draft proposed amendment to AMC Chapter 4.34.020 will not alter the tax rate or level of revenues collected from of the Food and Beverage Tax but will broaden its allocations to 98% for uses currently under the Parks and Recreation Department, including for operations, maintenance, and capital expenses. The proposed amendment would not increase the tax amount or change its expiration date of Dec. 31, 2030.

The City Recorder has been in contact with the Jackson County requesting a cost estimate for Ashland's share of Jackson County's Special Called Election should the City wish to add an Ashland ballot item. The County Clerk has indicated it is not possible to estimate the cost for Ashland but has informed the City Recorder that it will be a countywide election with several jurisdictions sharing the cost. Ashland will not be required to cover the full cost of an election. The best estimate of Ashland's share of election costs is \$5,000-\$15,000. The cost will be covered by expected Administration budget ending balances (City Council, City Manager, HR, Legal, Courts, etc.). Once the actual election cost is known, the actual cost amount will be transferred to the City Recorder's budget for expensing from Administration budgets.

### **STAFF RECOMMENDATION**

City staff recommends adopting ballot language for an amendment to the Food and Beverage Tax to be included as a referendum measure on the May 16, 2023, Special Called Election ballot.

### **ACTIONS, OPTIONS & POTENTIAL MOTIONS**

I move to approve the Food and Beverage Tax referendum ballot language dedicating 98% of Food and beverage tax revenues to uses currently under the City's Parks and Recreation Department for the May 16, 2023, Special Called Election and that it be referred to the City Elections Officer for submittal to the Jackson County Election Officer no later than Feb. 24<sup>th</sup>.

### **REFERENCES & ATTACHMENTS**

Attachments:

1. Notice of Measure Election – Proposed Amendment to Ashland's Food and Beverage Tax Ordinance
2. Draft AMC 4.34.020 Amendment
3. PET 01 (Parks Commission Submitted Ballot Language)

# Notice of Measure Election

City

**SEL 802**

rev 01/18 ORS 250.035, 250.041,  
250.275, 250.285, 254.095, 254.465

## Notice

Date of Notice

Name of City or Cities

Date of Election

**Final Ballot Title** The following is the final ballot title of the measure to be submitted to the city's voters. The ballot title notice has been published and the ballot title challenge process has been completed.

**Caption** 10 words which reasonably identifies the subject of the measure.

**Question** 20 words which plainly phrases the chief purpose of the measure.

**Summary** 175 words which concisely and impartially summarizes the measure and its major effect.

**Explanatory Statement** 500 words that impartially explains the measure and its effect.

If the county is producing a voters' pamphlet an explanatory statement must be drafted and attached to this form for:

→ any measure referred by the city governing body; **or**

→ any initiative or referendum, if required by local ordinance.

**Explanatory Statement Attached?**

Yes

No

**Authorized City Official** Not required to be notarized.

Name

Title

Mailing Address

Contact Phone

*By signing this document:*

→ I hereby state that I am authorized by the city to submit this Notice of Measure Election; **and**

→ I certify that notice of receipt of ballot title has been published and the ballot title challenge process for this measure completed.

Signature

Date Signed

1 **ORDINANCE NO. 3220**

2 **AN ORDINANCE RELATING TO THE FOOD AND BEVERAGE TAX; AMENDING**  
3 **AMC 4.34.020**

4 Annotated to show deletions and additions to the Ashland Municipal Code sections being  
5 modified. Deletions are ~~bold lined through~~, and additions are bold underlined.

6  
7 **THE PEOPLE OF THE CITY OF ASHLAND DO ORDAIN AS FOLLOWS:**

8 **SECTION 1.** Ashland Municipal Code 4.34.020 is hereby amended as follows:

9 **4.34.020 Tax Imposed.**

10 A. Except for exempt or tax-capped activities specified in AMC 4.34.030, the City imposes and  
11 levies, in addition to all other taxes, fees, and charges of every kind, a tax upon:

- 12 1. All food and beverages sold by restaurants located within the City to the public, except  
13 for whole cakes, pies, and loaves of bread if purchased for consumption off premises, and  
14 for alcoholic beverages;
- 15 2. All food and beverages sold by a caterer for an event located within the City, except  
16 alcoholic beverages and exempt events as defined in AMC 4.34.030.K;
- 17 3. The following items sold by combination facilities:
  - 18 a. Salads from salad bars;
  - 19 b. Dispensed soft drinks and coffee;
  - 20 c. Sandwiches or hot prepared foods ready for immediate consumption;
  - 21 d. The following items, including toppings or additions, scooped or otherwise placed  
22 into a cone, bowl or other container for immediate consumption whether or not they are  
23 consumed within the confines of the premises where scooped or placed: any frozen  
24 dessert regulated by the Oregon State Department of Agriculture under ORS 621.311  
25 and any ice cream, ice milk, sherbet or frozen yogurt. No tax shall be imposed under  
26 this subsection, however, on any item whose volume exceeds one-half (1/2) gallon or  
27 more.
  - 28 e. Any other food mixed, cooked or processed on the premises in form or quantity for  
29 immediate consumption whether or not it is consumed within the confines of the  
30 premises where prepared; and
4. The following items sold by combination facilities that are bakeries:

- 1 a. All those items listed in subsections A.3.a-d of this section;  
2 b. All bakery products sold for consumption on the premises; and  
3 c. All “takeout” or “to go” orders of bakery products prepared on the premises except  
4 for whole cakes, pies, and loaves of bread and any order consisting of six or more  
5 bakery products.  
6 5. Use of a delivery service for any activity under this section, whether an independent  
7 delivery service or operator provided delivery service, does not excuse the operator from the  
8 requirement to collect and remit the tax on the food and beverages sold.

9 B. Such tax shall be imposed at a rate of five percent (5%) on the total amount charged by the  
10 seller for the food and beverages, or for the meal. In the computation of this tax any fraction of  
11 one-half (1/2) cent or more shall be treated as one cent.

12 ~~C. The taxes collected by the City under this chapter shall be used as follows:~~

- 13 ~~1. Twenty five percent (25%) shall be paid into a parks account for purposes of~~  
14 ~~acquisition, planning, development, repair and rehabilitation of City parks per~~  
15 ~~adopted plans of the Ashland Parks and Recreation Commission.~~  
16 ~~2. The City may retain up to two percent (2%) of the tax collected for costs of~~  
17 ~~administration and collection.~~  
18 ~~3. The following amounts for fiscal years 2017 through 2022 must be used to pay for~~  
19 ~~wastewater treatment plant debt and wastewater capital improvement projects, per~~  
20 ~~the City of Ashland’s Capital Improvement Plan:~~  
21 ~~a. In fiscal year 2017: \$1,868,290.00.~~  
22 ~~b. In fiscal year 2018: \$1,608,600.00.~~  
23 ~~c. In fiscal year 2019: \$1,600,600.00.~~  
24 ~~d. In fiscal year 2020: \$1,600,000.00.~~  
25 ~~e. In fiscal year 2021: \$1,650,000.00.~~  
26 ~~f. In fiscal year 2022: \$1,650,000.00.~~  
27 ~~4. Any taxes collected by the City under this chapter and not used as described in~~  
28 ~~subsections C.1-3 of this section shall be paid into the Street Fund and used for~~  
29 ~~street maintenance and reconstruction.~~  
30 ~~5. Beginning in fiscal year 2023, the Council may, through the statutory budget~~  
~~process, appropriate taxes under this chapter as follows:~~

- 1 ~~a. Not less than twenty-five percent (25%) for the acquisition, planning,~~  
2 ~~development, repair and rehabilitation of City parks.~~  
3 ~~b. Not less than an amount necessary to pay for debt service on any~~  
4 ~~borrowing for street repair and rehabilitation per the City of Ashland~~  
5 ~~Pavement Management Program.~~  
6 ~~c. Up to two percent (2%) for the collection and administration of the tax.~~  
7 ~~d. Except as provided in subsection D of this section, any remaining amounts~~  
8 ~~shall be appropriated for purposes consistent with this chapter unless other~~  
9 ~~purposes are approved by a Council-adopted ordinance enacted by a vote of~~  
10 ~~the Ashland electorate.~~

11 C. The taxes collected under this chapter shall be used for city parks, open space,  
12 recreation, and senior services as follows subject to other Ashland Municipal Codes and  
13 City financial and administrative policies:

- 14 1. Not less than twenty-five percent (25%) for capital expenses, including  
15 acquisition, planning, development, repair and rehabilitation.  
16  
17 2. Up to seventy-three percent (73%) for operations and maintenance and the uses  
18 of subsection 3.C.1 above.  
19  
20 3. The City will retain two percent (2%) of the tax collected for costs of tax  
21 administration and collection.  
22  
23 4. Amounts shall be appropriated in the City's General Fund for purposes consistent  
24 with this chapter unless other purposes are approved by a Council-adopted  
25 ordinance enacted by a vote of the Ashland electorate.

26 D. The Council may decrease the rate of the tax or eliminate the tax described in subsections A  
27 and B of this section after a public hearing. Notice of the hearing shall be given by publication  
28 in a newspaper of general circulation in the City at least ten days prior to the date of the public  
29 hearing.

30 **SECTION 2.** Ashland Municipal Code 4.34.160 is hereby amended as follows:

**4.34.160 Termination of tax**

This chapter shall expire on December 31, ~~2030~~ 2040, unless extended by a vote of the electorate.

1 **SECTION 3. Codification.** In preparing this ordinance for publication and distribution, the  
2 City Recorder shall not alter the sense, meaning, effect, or substance of the ordinance, but within  
3 such limitations, may:

- 4 (a) Renumber sections and parts of sections of the ordinance;
- 5 (b) Rearrange sections;
- 6 (c) Change reference numbers to agree with renumbered chapters, sections or other parts;
- 7 (d) Delete references to repealed sections;
- 8 (e) Substitute the proper subsection, section, or chapter numbers;
- 9 (f) Change capitalization and spelling for the purpose of uniformity;
- 10 (g) Add headings for purposes of grouping like sections together for ease of reference; and
- 11 (h) Correct manifest clerical, grammatical, or typographical errors.

12 **SECTION 4. Severability.** Each section of this ordinance, and any part thereof, is severable,  
13 and if any part of this ordinance is held invalid by a court of competent jurisdiction, the  
14 remainder of this ordinance shall remain in full force and effect.

15 **SECTION 5. Referral.** This ordinance is referred to the electors of the City of Ashland for  
16 approval at the next local special election on May 16, 2023.

17 **SECTION 6. Effective Date.** This ordinance takes effect and becomes operative thirty (30)  
18 days after the day on which it is approved by a majority of the voters.

19 PASSED by the City Council this 4<sup>th</sup> day of April, 2023.

20 PASSED by the City Council this 18<sup>th</sup> day of April, 2023.

21 ATTEST: DocuSigned by:  
22 Melissa Huhtala  
23 A02A82A0E5F2482...  
Melissa Huhtala, City Recorder

24 SIGNED and APPROVED this 18<sup>th</sup> day of April, 2023.

25  
26 Tonya Graham  
27 Tonya Graham, Mayor

28 Reviewed as to form:  
29 Douglas M McGeary  
30 Douglas M McGeary, Acting City Attorney

## **Chapter 4.34**

### **FOOD AND BEVERAGE TAX**

Sections:

- 4.34.010 Definitions**
- 4.34.020 Tax Imposed**
- 4.34.030 Exemptions**
- 4.34.040 Operator's Duties**
- 4.34.050 Reporting and Remitting**
- 4.34.060 Penalties and Interest**
- 4.34.070 Failure to Collect and Report Tax - Determination of Tax by Director**
- 4.34.080 Appeal**
- 4.34.090 Records**
- 4.34.100 Refunds**
- 4.34.110 Actions to Collect**
- 4.34.120 Violations**
- 4.34.130 Confidentiality**
- 4.34.140 Examining Books, Records, or Persons**
- 4.34.160 Termination of tax**

Referred to voters by Resolution No. 2009-22 for 11/02/2009 election - Approved by the voters YES 4130; NO 2894 - Effective December 1, 2009

Referred to voters by Resolution No. 93-02 for 3/23/93 election - Approved by the voters YES 3658; NO 2980 - Effective July 1, 1993

#### **4.34.010 Definitions**

The following words and phrases whenever used in this chapter shall be construed as defined in this section unless from the context a different meaning is intended:

- A. "Caterer" means a person who prepares food at a business site, for compensation, for consumption on or off the business premises but within the corporate limits of the City.



- B. "Combination facility" has the same meaning as defined in OAR [333-150-0000\(4\)\(i\)](#) which the State of Oregon Department of Agriculture licenses or inspects under OAR [333-158-0000](#).
- C. "Director" means the Director of Finance of the City of Ashland, or his/her designee.
- D. "Food" includes all prepared food items and beverages, excluding alcoholic beverages, served in a restaurant including "takeout," "to go" or delivered orders.
- E. "Open Space Park Program" and "Open Space lands or easements" have the same meaning as used in Article XIX A of the Ashland City Charter.
- F. "Operator" means the person who is proprietor of the restaurant, whether in the capacity of owner, lessee, sub-lessee, mortgagee in possession, licensee or any other capacity. Where the operator is a corporation, the term "operator" shall also include each and every member of the Board of Directors of such corporation for the time involved.
- G. "Restaurant" means any establishment required to be licensed as a restaurant, mobile unit or pushcart by the State of Oregon Health Division and includes any establishment where food or beverage is prepared for consumption by the public or any establishment where the public obtains food or beverage so prepared in form or quantity consumable then and there, whether or not it is consumed within the confines of the premises where prepared, and also includes establishments which prepare food or beverage in consumable form for service outside the premises where prepared. The term "restaurant" includes, but is not limited to, grocery store delis, coffee shops, and caterers; it also includes establishments where such food or beverage is prepared in a combination facility. The term "restaurant" does not include a restaurant licensed by the State of Oregon Health Division as a limited service restaurant. (Ord. 3133, amended, 08/16/2016; Ord. 2991, amended, 12/01/2009)

#### **4.34.020 Tax Imposed**

- A. Except for exempt or tax-capped activities specified in AMC [4.34.030](#), the City imposes and levies, in addition to all other taxes, fees and charges of every kind, a tax upon:
1. All food and beverages sold by restaurants located within the City to the public, except for whole cakes, pies, and loaves of bread if purchased for consumption off premises, and for alcoholic beverages;

2. All food and beverages sold by a caterer for an event located within the City, except alcoholic beverages and exempt events as defined in AMC [4.34.030.K](#);
  3. The following items sold by combination facilities:
    - a. Salads from salad bars;
    - b. Dispensed soft drinks and coffee;
    - c. Sandwiches or hot prepared foods ready for immediate consumption;
    - d. The following items, including toppings or additions, scooped or otherwise placed into a cone, bowl or other container for immediate consumption whether or not they are consumed within the confines of the premises where scooped or placed: any frozen dessert regulated by the Oregon State Department of Agriculture under ORS [621.311](#) and any ice cream, ice milk, sherbet or frozen yogurt. No tax shall be imposed under this subsection, however, on any item whose volume exceeds one-half (1/2) gallon or more.
    - e. Any other food mixed, cooked or processed on the premises in form or quantity for immediate consumption whether or not it is consumed within the confines of the premises where prepared; and
  4. The following items sold by combination facilities that are bakeries:
    - a. All those items listed in subsections A.3.a-d of this section;
    - b. All bakery products sold for consumption on the premises; and
    - c. All "takeout" or "to go" orders of bakery products prepared on the premises except for whole cakes, pies, and loaves of bread and any order consisting of six or more bakery products.
  5. Use of a delivery service for any activity under this section, whether an independent delivery service or operator provided delivery service, does not excuse the operator from the requirement to collect and remit the tax on the food and beverages sold.
- B. Such tax shall be imposed at a rate of five percent (5%) on the total amount charged by the seller for the food and beverages, or for the meal. In the computation of this tax any fraction of one-half (1/2) cent or more shall be treated as one cent.

C. The taxes collected under this chapter shall be used for city parks, open space, recreation, and senior services as follows subject to other Ashland Municipal Codes and City financial and administrative policies:

1. Not less than twenty-five percent (25%) for capital expenses, including acquisition, planning, development, repair, and rehabilitation.
2. Up to seventy-three percent (73%) for operations and maintenance and the uses of subsection 3.C.1 above.
3. The City will retain two percent (2%) of the tax collected for costs of tax administration and collection.
4. Amounts shall be appropriated in the City's General Fund for purposes consistent with this chapter unless other purposes are approved by a Council-adopted ordinance enacted by a vote of the Ashland electorate.

D. The Council may decrease the rate of the tax or eliminate the tax described in subsections [A](#) and [B](#) of this section after a public hearing. Notice of the hearing shall be given by publication in a newspaper of general circulation in the City at least ten days prior to the date of the public hearing. (Ord. 3133, amended, 08/16/2016; Ord. 2991, amended, 12/01/2009)

### **4.34.030 Exemptions**

The tax levied by AMC [4.34.020](#) shall be capped, at the amount specified, or shall not be collected or assessed on food or beverages:

- A. Sold by public or private schools or colleges except that food sold by independent contractor operators at such schools or colleges shall be subject to the tax imposed by this chapter;
- B. Sold on hospital grounds;
- C. Provided by bed and breakfast establishments to their guests;
- D. Sold in vending machines;

- E. Sold in temporary restaurants including food stands, booths, street concessions and similar type operations, operated by nonprofit organizations or service clubs;
- F. Served in connection with overnight or residential facilities – including, but not limited to, convalescent homes, nursing homes, retirement homes and motels – if the food and beverage are provided as part of the cost of sleeping accommodations;
- G. Provided by nonprofit tax-exempt organizations to citizens over 60 years of age as a part of a recognized senior citizen nutritional program;
- H. Sold for resale to the public;
- I. Sold in bulk to the public for nonimmediate consumption off the premises including but not limited to ice cream packed in a container of one-half (1/2) gallon or more;
- J. Which are candy, popcorn, nuts, chips, gum or other confections but not including ice cream, frozen yogurt, cakes, pies or other desserts;
- K. Sold by an operator at a single food service event located within the City in which restaurant or catering services (exclusive of alcohol) exceed \$5,000.00, in which case, the applicable food and beverage tax shall not be excused but shall be capped at \$250.00. (Ord. 3133, amended, 08/16/2016; Ord. 2991, amended, 12/01/2009)

#### **4.34.040 Operator's Duties**

Each operator shall collect the tax imposed by this chapter, to the same extent and at the same time as the amount for the food or beverage is collected from every purchaser. The amount of tax need not be separately stated from the amount of the food or beverage. Every operator required to collect the tax imposed in this chapter shall be entitled to retain five percent of all taxes collected to defray the costs of collections and remittance. (Ord. 3133, amended, 08/16/2016; Ord. 2991, amended, 12/01/2009)

### **4.34.050 Reporting and Remitting**

A. *Reporting.* Every operator shall, on or before the last day of the month following the end of each calendar quarter (in the months of April, July, October and January), make a return to the Director, on forms provided by the City, specifying the total sales subject to this chapter and the amount of tax collected under this chapter. The operator may request or the Director may establish shorter reporting periods for any operator if the operator or director deems it necessary in order to insure collection of the tax and the Director may require further information in the return relevant to payment of the liability. A return shall not be considered filed until it is actually received by the Director.

B. *Remitting.* At the time the return is filed, the full amount of the tax collected shall be remitted to the Director. Payments received by the Director for application against existing liabilities will be credited toward the period designated by the taxpayer under conditions which are not prejudicial to the interest of the City. A condition which is considered prejudicial is the imminent expiration of the statute of limitations for a period or periods.

C. *Order of Payments.* Nondesignated payments shall be applied in the order of the oldest liability first, with the payment credited first toward any accrued penalty, then to interest, then to the underlying tax until the payment is exhausted. Crediting of a payment toward a specific reporting period will be first applied against any accrued penalty, then to interest, then to the underlying tax. The Director, when in the Director's discretion determines that it will be in the best interest of the City, may specify that a different order of payment credit should be followed with regard to a particular tax or factual situation. The Director may establish shorter reporting periods for any operator if the Director deems it necessary in order to insure collection of the tax and the Director may require further information in the return relevant to payment of the liability. When a shorter return period is required, penalties and interest shall be computed according to the shorter return period. Returns and payments are due immediately upon cessation of business for any reason. All taxes collected by operators pursuant to this chapter shall be held in trust for the account of the City until payment is made to the Director. A separate trust bank account is not required in order to comply with this provision. (Ord. 3133, amended, 08/16/2016; Ord. 2991, amended, 12/01/2009; Ord. 2903, amended, 01/06/2004; Ord. 2885, amended, 08/06/2002)

### **4.34.060 Penalties and Interest**

- A. Any operator, who fails to remit any portion of any tax imposed by this chapter within the time required, shall pay a penalty of ten percent of the amount of the tax, in addition to the amount of the tax.
- B. Any operator who fails to remit any delinquent remittance on or before a period of 60 days following the date on which the remittance first became delinquent shall pay a second delinquency penalty of ten percent of the amount of the tax in addition to the amount of the tax and the penalty first imposed.
- C. If the Director determines that the nonpayment of any remittance due under this chapter is due to fraud, a penalty of 25 percent of the amount of the tax shall be added thereto in addition to the penalties stated in subsections [A](#) and [B](#) of this section.
- D. In addition to the penalties imposed, any operator who fails to remit any tax imposed by this chapter shall pay interest at the rate of one percent per month or fraction thereof on the amount of the tax, exclusive of penalties, from the date on which the remittance first became delinquent until paid.
- E. Every penalty imposed and such interest as accrues under the provisions of this section shall become a part of the tax required to be paid.
- F. Notwithstanding [AMC 4.34.020.C](#), all sums collected pursuant to the penalty provisions in subsections [A](#), [B](#) and [C](#) of this section shall be distributed to the City of Ashland Central Service Fund to offset the costs of auditing and enforcement of this tax.
- G. *Waiver of Penalties.* Penalties and interest for certain late tax payments may be waived pursuant to [AMC 2.28.045.D](#). (Ord. 3133, amended, 08/16/2016; Ord. 2991, amended, 12/01/2009; Ord. 2983, amended, 05/05/2009)

### **4.34.070 Failure to Collect and Report Tax – Determination of Tax by Director**

If any operator should fail to make, within the time provided in this chapter, any report of the tax required by this chapter, the Director shall proceed in such manner as deemed best to

obtain facts and information on which to base the estimate of tax due. As soon as the Director shall procure such facts and information as is able to be obtained, upon which to base the assessment of any tax imposed by this chapter and payable by any operator, the Director shall proceed to determine and assess against such operator the tax, interest and penalties provided for by this chapter. In case such determination is made, the Director shall give a notice of the amount so assessed by having it served personally or by depositing it in the United States mail, postage prepaid, addressed to the operator so assessed at the last known place of address. Such operator may make an appeal of such determination as provided in AMC [4.34.080](#). If no appeal is filed, the Director's determination is final and the amount thereby is immediately due and payable. (Ord. 3133, amended, 08/16/2016; Ord. 2991, amended, 12/01/2009; Ord. 2885, amended, 08/06/2002)

#### **4.34.080 Appeal**

Any operator aggrieved by any decision of the Director with respect to the amount of such tax, interest and penalties, if any, may appeal pursuant to the administrative appeals process in AMC [2.30.020](#), except that the appeal shall be filed within 30 days of the serving or mailing of the determination of tax due. The hearings officer shall hear and consider any records and evidence presented bearing upon the Director's determination of amount due, and make findings affirming, reversing or modifying the determination. The findings of the hearings officer shall be final and conclusive, and shall be served upon the appellant in the manner prescribed above for service of notice of hearing. Any amount found to be due shall be immediately due and payable upon the service of notice. (Ord. 3133, amended, 08/16/2016; Ord. 2991, amended, 12/01/2009; Ord. 2885, amended, 08/06/2002)

#### **4.34.090 Records**

It shall be the duty of every operator liable for the collection and payment to the City of any tax imposed by this chapter to keep and preserve, for a period of three years, all such records as may be necessary to determine the amount of such tax. The Director shall have the right to inspect all records at all reasonable times. (Ord. 3133, amended, 08/16/2016; Ord. 2991, amended, 12/01/2009)

### **4.34.100 Refunds**

A. Whenever the amount of any tax, interest or penalty has been overpaid or paid more than once, or has been erroneously or illegally collected or received by the City under this chapter, it may be refunded as provided in subsection [B](#) of this section, provided a claim in writing, stating under penalty of perjury the specific grounds upon which the claim is founded, is filed with the Director within one year of the date of payment. The claim shall be on forms furnished by the Director.

B. The Director shall have 20 calendar days from the date of receipt of a claim to review the claim and make a determination in writing as to the validity of the claim. The Director shall notify the claimant in writing of the Director's determination. Such notice shall be mailed to the address provided by claimant on the claim form. In the event a claim is determined by the Director to be a valid claim, an operator may claim a refund, or take as credit against taxes collected and remitted, the amount overpaid, paid more than once or erroneously or illegally collected or received in a manner prescribed by the Director. The operator shall notify Director of claimant's choice no later than 15 days following the date director mailed the determination. In the event claimant has not notified the Director of claimant's choice within the 15-day period and the operator is still in business, a credit will be granted against the tax liability for the next reporting period. If the operator is no longer in business, a refund check will be mailed to claimant at the address provided in the claim form.

C. No refund shall be paid under the provisions of this section unless the claimant established the right by written records showing entitlement to such refund and the Director acknowledged the validity of the claim. (Ord. 3133, amended, 08/16/2016; Ord. 2991, amended, 12/01/2009; Ord. 2903, amended, 01/06/2004)

### **4.34.110 Actions to Collect**

Any tax required to be paid by any operator under the provisions of this chapter shall be deemed a debt owed by the operator to the City. Any such tax collected by an operator which has not been paid to the City shall be deemed a debt owed by the operator to the City. Any person owing money to the City under the provisions of this chapter shall be liable to an action brought in the name of the City of Ashland for the recovery of such amount. In lieu of filing an



action for the recovery, the City of Ashland, when taxes due are more than 30 days delinquent, can submit any outstanding tax to a collection agency. So long as the City of Ashland has complied with the provisions set forth in ORS [697.105](#), in the event the City turns over a delinquent tax account to a collection agency, it may add to the amount owing an amount equal to the collection agency fees, not to exceed the greater of \$50.00 or 50 percent of the outstanding tax, penalties and interest owing. (Ord. 3133, amended, 08/16/2016; Ord. 2991, amended, 12/01/2009; Ord. 2931, amended, 09/19/2006; Ord. 2885, amended, 08/06/2002)

### **4.34.120 Violations**

All violations of this chapter are punishable as set forth in AMC [1.08.020](#). It is a violation of this chapter for any operator or other person to:

- A. Fail or refuse to comply as required herein;
- B. Fail or refuse to furnish any return required to be made;
- C. Fail or refuse to permit inspection of records;
- D. Fail or refuse to furnish a supplemental return or other data required by the Director;
- E. Render a false or fraudulent return or claim;
- F. Fail, refuse or neglect to remit the tax to the City by the due date.

Violation of subsections A-D and F above shall be considered a Class I violation. Filing a false or fraudulent return shall be considered a Class C misdemeanor, subject to AMC [1.08](#). The remedies provided by this section are not exclusive and shall not prevent the City from exercising any other remedy available under the law, nor shall the provisions of this chapter prohibit or restrict the City or other appropriate prosecutor from pursuing criminal charges under state law or City ordinance. (Ord. 3133, amended, 08/16/2016; Ord. 3023, amended, 08/03/2010; Ord. 2991, amended, 12/01/2009; Ord. 2885, amended, 08/06/2002)

### **4.34.130 Confidentiality**

Except as otherwise required by law, it shall be unlawful for the City, any officer, employee or agent to divulge, release or make known in any manner any financial information submitted or disclosed to the City under the terms of this chapter. Nothing in this section shall prohibit:

- A. The disclosure of the names and addresses of any person who is operating a restaurant; or
- B. The disclosure of general statistics in a form which would prevent the identification of financial information regarding an individual operator; or
- C. Presentation of evidence to the court, or other tribunal having jurisdiction in the prosecution of any criminal or civil claim or an appeal for amount due the City under this chapter; or
- D. The disclosure of information when such disclosure of conditionally exempt information is ordered under public records law procedures; or
- E. The disclosure of records related to a business's failure to report and remit the tax when the report or tax is in arrears for over six months or the tax exceeds \$5,000.00. The City Council expressly finds and determines that the public interest in disclosure of such records clearly outweighs the interest in confidentiality under ORS [192.501\(5\)](#). (Ord. 3133, amended, 08/16/2016; Ord. 2991, amended, 12/01/2009; Ord. 2885, amended, 08/06/2002)

### **4.34.140 Examining Books, Records, or Persons**

The City, for the purpose of determining the correctness of any tax return, or for the purpose of an estimate of taxes due, may examine or may cause to be examined by an agent or representative designated by it for that purpose any books, papers, records, or memoranda, including copies of operator's state and federal income tax return, bearing upon the matter of the operator's tax return. (Ord. 3133, amended, 08/16/2016; Ord. 2991, amended, 12/01/2009; Ord. 2885, amended, 08/06/2002)

### **4.34.160 Termination of tax**

This chapter shall expire on **December 31, 2030**, unless extended by a vote of the electorate.  
(Ord. 3133, amended, 08/16/2016; Ord. 2991, amended, 12/01/2009)

**The Ashland Municipal Code is current through Ordinance 3203, passed November 2, 2021.**

Disclaimer: The City Recorder's office has the official version of the Ashland Municipal Code. Users should contact the City Recorder's office for ordinances passed subsequent to the ordinance cited above.

[City Website: www.ashland.or.us](http://www.ashland.or.us)

City Telephone: (541) 488-5307

[Code Publishing Company](#)

## **PET-01**

**CAPTION: PROPOSED AMENDMENT TO ASHLAND'S FOOD AND BEVERAGE TAX ORDINANCE**

**QUESTION: SHALL THE ORDINANCE BE AMENDED TO DEDICATE MOST REVENUES RECEIVED FOR PARKS AND OPEN SPACE AND EXTEND THE SUNSET DATE?**

**SUMMARY: THE CITY OF ASHLAND'S CURRENT FOOD AND BEVERAGE TAX ORDINANCE REQUIRES THAT NOT LESS THAN TWENTY-FIVE PERCENT (25%) OF THE TAX COLLECTED BE APPROPRIATED FOR THE ACQUISITION, PLANNING, DEVELOPMENT, REPAIR AND REHABILITATION OF CITY PARKS. UP TO TWO PERCENT (2%) MAY BE APPROPRIATED FOR THE COLLECTION AND ADMINISTRATION OF THE TAX. THE REMAINING AMOUNT MAY BE APPROPRIATED FOR STREET REPAIR AND REHABILITATION AND FOR PARKS.**

**THIS MEASURE WOULD REQUIRE THAT NOT LESS THAN NINETY-EIGHT PERCENT OF THE TAX (98%) BE APPROPRIATED FOR CITY PARKS. THIS MEASURE WOULD ALLOW THE TAX TO BE USED FOR PARKS OPERATIONS AND MAINTENANCE IN ADDITION TO ACQUISITION, PLANNING, DEVELOPMENT, REPAIR AND REHABILITATION. IT WOULD EXTEND THE EXPIRATION DATE OF THE TAX FROM DECEMBER 31, 2030, TO DECEMBER 31, 2040. IT WOULD BECOME EFFECTIVE UPON APPROVAL OF ASHLAND VOTERS.**

**THIS MEASURE WOULD NOT CHANGE THE CURRENT TAX RATE OF FIVE PERCENT (5%) AND PROVIDES THAT THE TAX RATE AND USE OF TAX COULD NOT CHANGE WITHOUT VOTER APPROVAL.**