

Council Business Meeting

July 5, 2022

Agenda Item	Consideration of potential ballot referendum items for the November 8, 2022, General Election, including the following: <ul style="list-style-type: none">• Amendments to AMC Chapter 4.34, Food and Beverage Tax• City Charter amendment to Article VIII-A, City Manager	
From	Joseph Lessard Katrina Brown	City Manager City Attorney
Contact	joe.lessard@ashland.or.us katrina.brown@ashland.or.us	

SUMMARY

This item is for the City Council to consider referring items for the ballot for the November 8, 2022 General Election.

The City Recorder has received two proposed initiative petitions from the public for the November 8, 2022 General Election. Initiative petitions require signatures of not less than fifteen percent (15%) of the electors registered in the city at the time the prospective petition is filed to qualify for the ballot. (*See* ORS 250.305). The two proposed initiatives are as follows:

1. Amendments to AMC Chapter 4.34, Food & Beverage Tax, to authorize use of the tax for parks (98%) and tax administration (2%) and extending its expiration date to December 31, 2040.
2. Adoption of a requirement to develop a radiation (EMF) monitoring program for public and residential spaces.

At its June 21, 2022 Regular Business Meeting, the City Council requested that the first of the two above-listed initiatives (Item 1) be returned to them for consideration as a potential ballot referendum. Item 1 would require the City Council to approve the proposed amendments to AMC Chapter 3.44 that would then go to the voters for final adoption at the November 8, 2022 General Election. The City Council would also need to adopt a resolution to formally send the proposed amendments to the City's Election Officer (the City Recorder) for consideration at the November 8, 2022 General Election.

To begin approval of the proposed amendments to AMC Chapter 4.34 at the July 5, 2022 City Council Business Meeting, the Council will need to suspend Council rules to conduct first reading of the proposed ordinance during that meeting. Second reading of the proposed ordinance could then occur at the upcoming July 19, 2022 Business Meeting. The formal resolution referring the proposed ordinance to the City's Election Officer would also take place at the July 19th meeting. If the City Council does not wish to suspend the rules to conduct first reading at its July 5th meeting, it will need to wait until the July 19th meeting to conduct the First Reading, with Second Reading and adoption of the formal resolution occurring at the August 2, 2022 Business Meeting.

At the June 14, 2022 Special Business Meeting, the City Manager recommended two potential ballot referendum items be considered by the City Council for the November 8, 2022 General Election:

- An alternative ballot measure amending AMC Chapter 4.34, Food & Beverage Tax, to authorize its use for general government purposes (98%, with not less than 25% of revenues for parks), including public safety, wildfire prevention, city parks, open space and trails, recreation, senior services, and emergency event housing purposes. Tax administration would continue to be 2% of revenues.
- Amendment of Article VIII-A, City Manager, of the City Charter to require the City Manager to oversee and supervise all non-elected City employees, except those designated in the City Charter as directly appointed by the City Council.

City Council approval of the City Manager's recommended alternative amendments to AMC Chapter 4.34, Food and Beverage Tax, would also need to follow the same ordinance and resolution process, including the potential suspension of rules on July 5th, as outlined above for converting initiative Item 1 to a referendum item for the November 8, 2022, General Election.

FISCAL IMPACTS

The proposed alternative amendments to AMC Chapter 4.34 set forth in proposed Ordinance No. 3212 will not alter the tax rate or level of revenues collected from of the Food and Beverage Tax. The City Manager's proposed alternative differs in how the City may use/appropriate the revenues in the City budget.

STAFF RECOMMENDATION

City staff recommends referring the City Manager's recommended ballot measures to public vote at the November 8, 2022 General Election.

ACTIONS, OPTIONS & POTENTIAL MOTIONS

- I move to approve First Reading of Ordinance No. 3212 relating to the Food and Beverage Tax; Amending AMC 4.34.020 and AMC 4.34.160 and advance it to Second Reading for referral to a vote of the qualified voters of the City of Ashland at the November 8, 2022 General Election.
- I move to adopt Resolution No. 2022-21 referring an amendment to Article VIII-A, Section 4, of the City Charter related to the responsibilities of the City Manager, to the qualified voters of the City of Ashland for the November 8, 2022, General Election.

REFERENCES & ATTACHMENTS

Attachment 1. Proposed initiative ordinance amending AMC Chapter 4.34, Food and Beverage Tax (this amendment is based on the proposed initiative identified as Item 1 above in this Council Communication)

Attachment 2. Alternative proposed Ordinance No. 3212 Relating to the Food and Beverage Tax; Amending AMC 4.34.020 and 4.34.160 (the City Manager's recommended proposal for general government use)

Attachment 3. Resolution No. 2022-21 for a referendum on Article VIII-A City Manager of the City Charter at the November 8, 2022 General Election.

2022 PROPOSED AMENDMENT TO FOOD AND BEVERAGE TAX ORDINANCE

ASHLAND MUNICIPAL CODE CHAPTER 4.34 – TAX IMPOSED

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. Ashland Park Commission has the same meaning as set forth in Section 2 of Article XIX of the Ashland City Charter and the Ashland Recreation Commission has the same meaning as set forth in Article XXII of the Ashland City Charter.
- B. "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.
- C. "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.

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 by the City under this chapter shall be used as follows:

1. ~~Twenty-five percent (25%) shall be paid into the Ashland Park Commission Capital Improvement Program (CIP) Fund account for purposes of funding parks, trails and open space related a parks account for purposes of acquisition, planning, development, repair, maintenance and rehabilitation of Park, and Open Space lands, facilities and amenities of City parks per consistent with adopted plans of the Ashland Parks and Recreation Commission.~~

2. Seventy-three percent (73%) shall be paid into the Ashland Park Commission General Fund account for the purposes of funding parks, trails and open space related day-to-day operating expenses consistent with the adopted operating budget of the Ashland Park Commission.

3. The City may retain up to two percent (2%) of the tax collected for costs of administration and collection.

~~3. The following amounts for fiscal years 2017 through 2022 must be used to pay for wastewater treatment plant debt and wastewater capital improvement projects, per the City of Ashland's Capital Improvement Plan:~~

~~a. In fiscal year 2017: \$1,868,290.00.~~

~~b. In fiscal year 2018: \$1,600,600.00.~~

~~c. In fiscal year 2019: \$1,600,600.00.~~

~~d. In fiscal year 2020: \$1,600,600.00.~~

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

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.

- 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~~ 2040, unless extended by a vote of the electorate. (Ord. 3133, amended, 08/16/2016; Ord. 2991, amended, 12/01/2009)

1 **ORDINANCE NO. 3212**

2 **AN ORDINANCE RELATING TO THE FOOD AND BEVERAGE TAX; AMENDING**
3 **AMC 4.34.020 AND AMC 4.34.160**

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 for
13 whole cakes, pies, and loaves of bread if purchased for consumption off premises, and for
14 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 into
22 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 and
25 any ice cream, ice milk, sherbet or frozen yogurt. No tax shall be imposed under this
26 subsection, however, on any item whose volume exceeds one-half (1/2) gallon or more.
 - 27 e. Any other food mixed, cooked or processed on the premises in form or quantity for
28 immediate consumption whether or not it is consumed within the confines of the
29 premises where prepared; and

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- 1 4. The following items sold by combination facilities that are bakeries:
2 a. All those items listed in subsections A.3.a-d of this section;
3 b. All bakery products sold for consumption on the premises; and
4 c. All “takeout” or “to go” orders of bakery products prepared on the premises except for
5 whole cakes, pies, and loaves of bread and any order consisting of six or more bakery
6 products.

7 5. Use of a delivery service for any activity under this section, whether an independent
8 delivery service or operator provided delivery service, does not excuse the operator from the
9 requirement to collect and remit the tax on the food and beverages sold.

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

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

14 1. ~~Not less than twenty-five~~ **Twenty-five** percent (25%) shall be ~~paid into a parks account~~
15 **used** for purposes of acquisition, planning, development, **operation, maintenance,** repair
16 and rehabilitation of City parks, **open spaces, and trails and for recreation or senior**
17 **programs** per adopted plans of the Ashland Parks and Recreation Commission.

18 **2. Up to seventy-three percent (73%) may be used for general government purposes**
19 **including, but not limited to, public safety, wildfire prevention, and emergency event**
20 **housing.**

21 ~~3.2.~~ The City may retain up to two percent (2%) of the tax collected for costs of
22 administration and collection.

23 ~~3. The following amounts for fiscal years 2017 through 2022 must be used to pay for~~
24 ~~wastewater treatment plant debt and wastewater capital improvement projects, per the~~
25 ~~City of Ashland’s Capital Improvement Plan:~~

- 26 ~~a. In fiscal year 2017: \$1,868,290.00.~~
27 ~~b. In fiscal year 2018: \$1,608,600.00.~~
28 ~~c. In fiscal year 2019: \$1,600,600.00.~~
29 ~~d. In fiscal year 2020: \$1,600,000.00.~~
30 ~~e. In fiscal year 2021: \$1,650,000.00.~~

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~~f. In fiscal year 2022: \$1,650,000.00.~~

~~4. Any taxes collected by the City under this chapter and not used as described in subsections C.1-3 of this section shall be paid into the Street Fund and used for street maintenance and reconstruction.~~

~~5. Beginning in fiscal year 2023, the Council may, through the statutory budget process, appropriate taxes under this chapter as follows:~~

~~a. Not less than twenty-five percent (25%) for the acquisition, planning, development, repair and rehabilitation of City parks.~~

~~b. Not less than an amount necessary to pay for debt service on any borrowing for street repair and rehabilitation per the City of Ashland Pavement Management Program.~~

~~c. Up to two percent (2%) for the collection and administration of the tax.~~

~~d. Except as provided in subsection D of this section, any remaining amounts shall be appropriated 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 **(10)** days prior to the date of the public hearing. **Such notice may be published in the online or electronic version of such newspaper.**

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, **2040** ~~2030~~, unless extended by a vote of the electorate.

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

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

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

PASSED by the City Council this _____ day of _____, 2022.

ATTEST:

Melissa Huhtala, City Recorder

SIGNED and APPROVED this _____ day of _____, 2022.

Julie Akins, Mayor

Reviewed as to form:

Katrina L. Brown, City Attorney

1 **RESOLUTION NO. 2022-21**

2 A RESOLUTION OF THE CITY OF ASHLAND SUBMITTING TO THE VOTERS
3 AT THE NOVEMBER 8, 2022 GENERAL ELECTION A PROPOSED AMENDMENT TO
4 ARTICLE VIII-A OF THE ASHLAND CITY CHARTER

5 **NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ASHLAND, OREGON,**
6 **RESOLVES AS FOLLOWS:**

7 SECTION 1. The City Council submits to the qualified voters of the City of Ashland the
8 question of approving or rejecting an amendment to Article VIII-A, Section 4 of the Ashland
9 City Charter related to the appointment, supervision, and removal of employees and which shall
10 become effective only upon its passage by the electorate.

11 SECTION 2. The City Council hereby refers this question to the ballot of the November 8, 2022
12 General Election.

13 SECTION 3. The City Recorder shall cause to be delivered to the Elections Officer of Jackson
14 County, Oregon, the ballot title attached hereto as "Exhibit A" and fully incorporated herein by
15 this reference.

16 SECTION 4. The City Attorney is authorized to alter the text of the ballot title to comply with
17 any rules, procedures, or practices of the Elections Officer of Jackson County, Oregon, to
18 implement the requirement of Oregon law.

19 SECTION 5. This resolution is effective upon adoption.

20 ADOPTED by the City Council this _____ day of _____, 2022.

21 ATTEST:

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24 Melissa Huhtala, City Recorder

25 SIGNED and APPROVED this _____ day of _____, 2022.

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28 Julie Akins, Mayor
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Reviewed as to form:

Katrina L. Brown, City Attorney

EXHIBIT A

BALLOT TITLE FOR PROPOSED AMENDMENT TO ARTICLE VIII-A, SECTION 4 OF THE ASHLAND CITY CHARTER

CAPTION

Amend Ashland City Charter Article VIII-A

QUESTION

Shall Ashland amend its City Charter to delegate all authority to appoint, supervise, and remove employees to the City Manager?

SUMMARY

This measure would amend the City Charter to extend the responsibilities of the City Manager to include supervision of employees in all City departments.

The current Charter language exempts one department from City Manager supervision; it assigns responsibility to the Parks and Recreation Commission for supervising its employees. This measure would amend Subsection 4 of Article VIII-A, Section 4, with the following: “Appoint, supervise, and remove all non-elected city employees, except employees who report directly to the Mayor and City Council who shall be appointed, supervised, and removed by the Mayor and City Council and shall be termed appointive officers.”