

# Council Business Meeting

June 16, 2020

<b>Agenda Item</b>	Draft Food and Beverage Ordinance Revision	
<b>From</b>	Adam Hanks Katrina Brown Bryn Morrison	Interim City Administrator Assistant City Attorney Interim Finance Director
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## **SUMMARY**

The Food and Beverage Tax ordinance contains specific allocation requirements for the revenues collected. The ordinance does not contain provisions to address situations where the total revenue collected is less than the required allocations to cover the fixed annual cost of debt service for the wastewater treatment plant. Staff has developed a draft ordinance for Council review that designates the wastewater fund as the source of revenue to cover any debt service shortfall.

## **POLICIES, PLANS & GOALS SUPPORTED**

Section 2:

D. Develop current and long-term budgetary resiliency.

## **PREVIOUS COUNCIL ACTION**

This draft ordinance is a component of the cost reduction plan that has been presented to Council in previous Council study sessions, in particular the May 18, 2020 study session.

## **BACKGROUND AND ADDITIONAL INFORMATION**

At the Study Session on May 18, 2020, Council was presented with a proposal for adjusting the use of the Food and Beverage Tax receipts per the Ashland Municipal Code based upon the revenue shortfall from the COVID pandemic. Council also requested further information regarding the possibility of refinancing the outstanding debt on the Wastewater Treatment Plant 2010 loan.

After consulting with Duncan Brown, Director, PFM Financial Advisors LLC, the City's financial advisor, the following opinion was presented. The City could refinance the Wastewater 2010 Debt service and defer the principal balance though it will cost more over time. PFM Financial Advisors reviewed all the City's debt and determined that the short remaining term of this specific note made this an unlikely candidate for refunding as there are only two more payments remaining. Currently in the Wastewater fund, the debt awarded and obligated is nearly 19 million dollars. In analyzing this fund with its cash flow and fund balance level, it seems the most "sound" way is to finish this debt obligation is best as it was intended by paying with the Food and Beverage tax and the rest coming from rates if necessary.

Staff has prepared two different options for changes to the current Municipal Code in recognition that the pandemic has caused a significant decrease in revenue, currently estimated at \$2.5 million dollars for the Biennium.

The current Ashland Municipal Code section 4.34 regarding Food and Beverage Tax allocates the following disbursement of the revenue:

1. Twenty-five percent (25%) shall be paid into a parks account for purposes of acquisition, planning, development, repair and rehabilitation of City parks per adopted plans of the Ashland Parks and Recreation Commission.
2. 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: \$1,608,600.00.
  - c. In fiscal year 2019: \$1,600,600.00.
  - d. In fiscal year 2020: \$1,600,000.00.
  - e. In fiscal year 2021: \$1,650,000.00.
  - 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.

In accordance with the existing code, the total revenue projection of \$2.2 million would be split with Parks receiving 25%, approximately \$555,000 of the allocation and the remainder allocated to the Wastewater Fund for the debt service payment.

Staff is proposing that the \$345,000 that had been allocated to the Street Fund, prior to the onset of the pandemic from received revenue, remain in the Street Fund to support the roadway rehabilitation program. The reduction in anticipated revenue for the Street fund will require the postponement of planned Street Capital Improvement projects programmed in the second year of the biennium. Public Works staff at a future meeting will bring forward to Council a CIP adjustment recommendation for the remainder of the biennium, that includes adjustments to the streets, water and wastewater capital program for approval.

	2020 Adopted	2020 Projection
Estimated Revenue:		\$ 2,223,923
Parks Fund	\$ 756,900	\$ 555,981
Wastewater Fund	1,600,000	1,322,942
Street Fund	698,000	345,000
Central Service Fund	60,550	-
	<b>\$ 3,115,450</b>	<b>\$ 2,223,923</b>
Wastewater Debt Payment		\$ 1,590,800
Amount from WW Ending Fund Balance		267,858

The Wastewater Fund ending fund balance will be used to cover the shortfall of the tax revenue for the debt service payment. The impact to the Wastewater Fund of \$267,858 will result in a change to the timed delivery of capital projects however will not affect our ability to meet regulatory requirements.

If Council direction is to reduce the amount previously allocated to the Street Fund (\$345,000) and retain the full amount of the tax in excess of the 25% allocated to Parks to the Wastewater Fund, internal roadway overlay projects within the Street Fund would cease along with the already planned postponement of rehabilitation projects planned in the biennium. The Street Department would continue to provide basic maintenance with limited staffing for the remainder of the biennium.

Below are two options for Council to consider and direct staff on:

**Option 1:** Retain the 25% to the Parks account, retain the pre COVID allocation of \$345,000 to the Street Fund, and the remainder to the Wastewater Fund for debt service.

	2020 Adopted	2020 Projection	2021 Projection
Estimated Revenue:		\$ 2,223,923	\$ 1,534,398
Parks Fund	\$ 756,900	\$ 555,981	\$ 383,600
Wastewater Fund	1,600,000	1,322,942	805,799
Street Fund	698,000	345,000	345,000
Central Service Fund	60,550	-	-
	\$ 3,115,450	\$ 2,223,923	\$ 1,534,398
Wastewater Debt Payment		\$ 1,590,800	\$ 1,584,200
Amount from WW Ending Fund Balance		267,858	778,401

<b>Street Fund Forecast</b>			
	2019-20 Projection	2020-21 Projection	
<b>Revenues</b>	<b>\$3,875,220</b>	<b>\$4,721,246</b>	
Taxes	345,000	345,000	
Franchise	58,905	58,905	
Intergovernmental Revenue-Gas Tax	1,446,315	1,549,543	
Grants	75,000	968,148	
Charges for Service	1,883,000	1,732,000	
Assessments	1,000	1,000	
Miscellaneous Revenues	1,000	1,000	
Interest on Pooled Investments	65,000	65,650	
<b>Expenses</b>	<b>\$6,942,640</b>	<b>\$4,580,642</b>	
Personnel Services	926,623	775,842	
Material and Services	1,950,000	1,950,000	
Debt Services	123,905	127,555	
Capital Outlay	3,450,000	1,397,245	
Equipment	150,112	0	
SDC	342,000	330,000	
<b>Revenue Minus Expenses</b>	<b>(\$3,067,420)</b>	<b>\$140,604</b>	
<i>Beginning Fund Balance</i>	<i>4,815,937</i>	<i>1,748,517</i>	
<i>Ending Fund Balance</i>	<i>1,748,517</i>	<i>1,889,121</i>	
<i>Restricted and Committed Funds</i>	<i>2,019,068</i>	<i>1,789,068</i>	
<i>Operations EFB</i>	<i>(270,551)</i>	<i>100,053</i>	

**Option 2:** Retain the 25% to the Parks account and allocate all of the remainder to the Wastewater Fund for debt service (zero FY20 dollars to the Street Fund).

	2020 Adopted	2020 Projection	2021 Projection
Parks Fund	\$ 756,900	\$ 555,981	\$ 383,600
Wastewater Fund	1,600,000	1,590,800	1,150,799
Street Fund	698,000	77,142	-
Central Service Fund	60,550	-	-
	<b>\$ 3,115,450</b>	<b>\$ 2,223,923</b>	<b>\$ 1,534,398</b>
Wastewater Debt Payment		\$ 1,590,800	\$ 1,584,200
Amount from WW Ending Fund Balance		-	433,401

<b>Street Fund Forecast</b>		
	2019-20 Projection	2020-21 Projection
<b>Revenues</b>	<b>\$3,607,362</b>	<b>\$4,376,246</b>
Taxes	77,142	0
Franchise	58,905	58,905
Intergovernmental Revenue-Gas Tax	1,446,315	1,549,543
Grants	75,000	968,148
Charges for Service	1,883,000	1,732,000
Assessments	1,000	1,000
Miscellaneous Revenues	1,000	1,000
Interest on Pooled Investments	65,000	65,650
<b>Expenses</b>	<b>\$6,942,640</b>	<b>\$4,580,642</b>
Personnel Services	926,623	775,842
Material and Services	1,950,000	1,950,000
Debt Services	123,905	127,555
Capital Outlay	3,450,000	1,397,245
Equipment	150,112	0
SDC	342,000	330,000
<b>Revenue Minus Expenses</b>	<b>(\$3,335,278)</b>	<b>(\$204,396)</b>
<i>Beginning Fund Balance</i>	<i>4,815,937</i>	<i>1,480,659</i>
<i>Ending Fund Balance</i>	<i>1,480,659</i>	<i>1,276,263</i>
<i>Restricted and Committed Funds</i>	<i>2,019,068</i>	<i>1,789,068</i>
<i>Operations EFB</i>	<i>(538,409)</i>	<i>(512,805)</i>

## **FISCAL IMPACTS**

Approval of the draft ordinance will ensure that debt service payments can be fulfilled for the final two annual installments of the debt. The result to the wastewater fund will be a slight reprioritization of capital improvements in the current fiscal year and possibly FY22 depending on the recovery of the revenues from the Food and Beverage Tax.

## **STAFF RECOMMENDATION**

Staff recommends retaining the portion of the tax in the Street Fund prior to the onset of the pandemic of \$345,000 for FY 2020 and using this as the baseline for FY 2021. Staff recommends for FY 21, retaining the 25% allocation to the Parks Fund and the remainder to the Wastewater Fund toward debt service after the \$345,000 is allocated to the Street Fund. If the impact of the pandemic is not as severe as our initial projection, the amount in excess of this will be allocated to the Street Fund. This same method will be used for FY 2022 as this is the last year of the debt service for the Wastewater Plant.

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

- 1) I move approval of first reading of an ordinance titled “An Ordinance Relating to the Food and Beverage Tax: Amending AMC 4.34.020
- 2) I move approval of first reading of an ordinance titled “An Ordinance Relating to the Food and Beverage Tax; Amending AMC 4.34.020 with the following amendments....”
- 3) I move to direct staff to modify the proposed ordinance and re-submit to Council for consideration of first reading at a future Council business meeting.

## **REFERENCES & ATTACHMENT**

Draft Food & Beverage Tax Ordinance

1 **ORDINANCE NO. 3188**

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

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

8 **4.34.020 Tax Imposed.**

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

- 11 1. All food and beverages sold by restaurants located within the City to the public, except  
12 for whole cakes, pies, and loaves of bread if purchased for consumption off premises, and  
13 for alcoholic beverages;
- 14 2. All food and beverages sold by a caterer for an event located within the City, except  
15 alcoholic beverages and exempt events as defined in AMC 4.34.030.K;
- 16 3. The following items sold by combination facilities:
  - 17 a. Salads from salad bars;
  - 18 b. Dispensed soft drinks and coffee;
  - 19 c. Sandwiches or hot prepared foods ready for immediate consumption;
  - 20 d. The following items, including toppings or additions, scooped or otherwise placed  
21 into a cone, bowl or other container for immediate consumption whether or not they are  
22 consumed within the confines of the premises where scooped or placed: any frozen  
23 dessert regulated by the Oregon State Department of Agriculture under ORS 621.311  
24 and any ice cream, ice milk, sherbet or frozen yogurt. No tax shall be imposed under  
25 this subsection, however, on any item whose volume exceeds one-half (1/2) gallon or  
26 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
- 30 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%) **of the total taxes collected** shall be paid into a parks account
- 14           for purposes of acquisition, planning, development, repair and rehabilitation of City parks
- 15           per adopted plans of the Ashland Parks and Recreation Commission.
- 16           2. The City may retain up to two percent (2%) of the **total** 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, **pursuant to**
- 20           ~~per~~ 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 street
- 29           maintenance and reconstruction.
- 30           5. Beginning in fiscal year 2023, the Council may, through the statutory budget process,

1 appropriate taxes **collected** under this chapter as follows:

- 2 a. Not less than twenty-five percent (25%) for the acquisition, planning, development,  
3 repair and rehabilitation of City parks.
- 4 b. Not less than an amount necessary to pay for debt service on any borrowing for  
5 street repair and rehabilitation per the City of Ashland 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 shall be  
8 appropriated for purposes consistent with this chapter unless other purposes are  
9 approved by a Council-adopted ordinance enacted by a vote of the Ashland electorate.

10 **6. To the extent that seventy-three percent (73%) of the taxes collected under this**  
11 **chapter amounts to less than the \$1,650,000.00 specified in subsections C.3.e and C.3.f**  
12 **of this section for payment of wastewater treatment plant debt and wastewater capital**  
13 **improvement projects pursuant to the City of Ashland’s Capital Improvement Plan in**  
14 **fiscal year 2021 or in fiscal year 2022, the difference, if any, in each respective fiscal**  
15 **year shall be paid from the City Wastewater Fund.**

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

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

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

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**SECTION 3. 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.

The foregoing ordinance was first read by title only in accordance with Article X, Section 2(C) of the City Charter on the \_\_\_\_ day of \_\_\_\_\_, 2020, and duly PASSED and ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2020.

ATTEST:

\_\_\_\_\_  
\_\_\_\_\_

Melissa Huhtala, City Recorder

SIGNED and APPROVED this \_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
John Stromberg, Mayor

Reviewed as to form:

\_\_\_\_\_  
\_\_\_\_\_

David H. Lohman, City Attorney