

# Council Communication

## August 16, 2016, Business Meeting

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### **Second Reading of an Ordinance Amending AMC 4.34, Food and Beverage Tax, and Referring Said Ordinance to the Voters of Ashland in the November 8, 2016, General Election**

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**FROM:**

Dave Kanner, city administrator, dave.kanner@ashland.or.us

**SUMMARY**

This ordinance amends the Ashland Municipal Code to redirect a portion of the City's food and beverage (F&B) tax revenue to street maintenance and to increase the portion of F&B tax revenue that is directed to the Ashland Parks and Recreation Commission. Staff projects that enough revenue is being generated by the F&B tax to fully fund current wastewater treatment debt, a pavement management program to overlay or reconstruct all arterial and collector streets and to increase the share of F&B revenue for Parks from 20% to 25% of total collections. The ordinance does not change the current tax rate of 5% and does not change the tax's sunset date of December 31, 2030. The ordinance contains a referral clause, so it would not be enacted unless approved by Ashland voters in the November 8, 2016 election. This ordinance was approved on first reading at the August, 2, 2016, Council meeting.

**BACKGROUND AND POLICY IMPLICATIONS:**

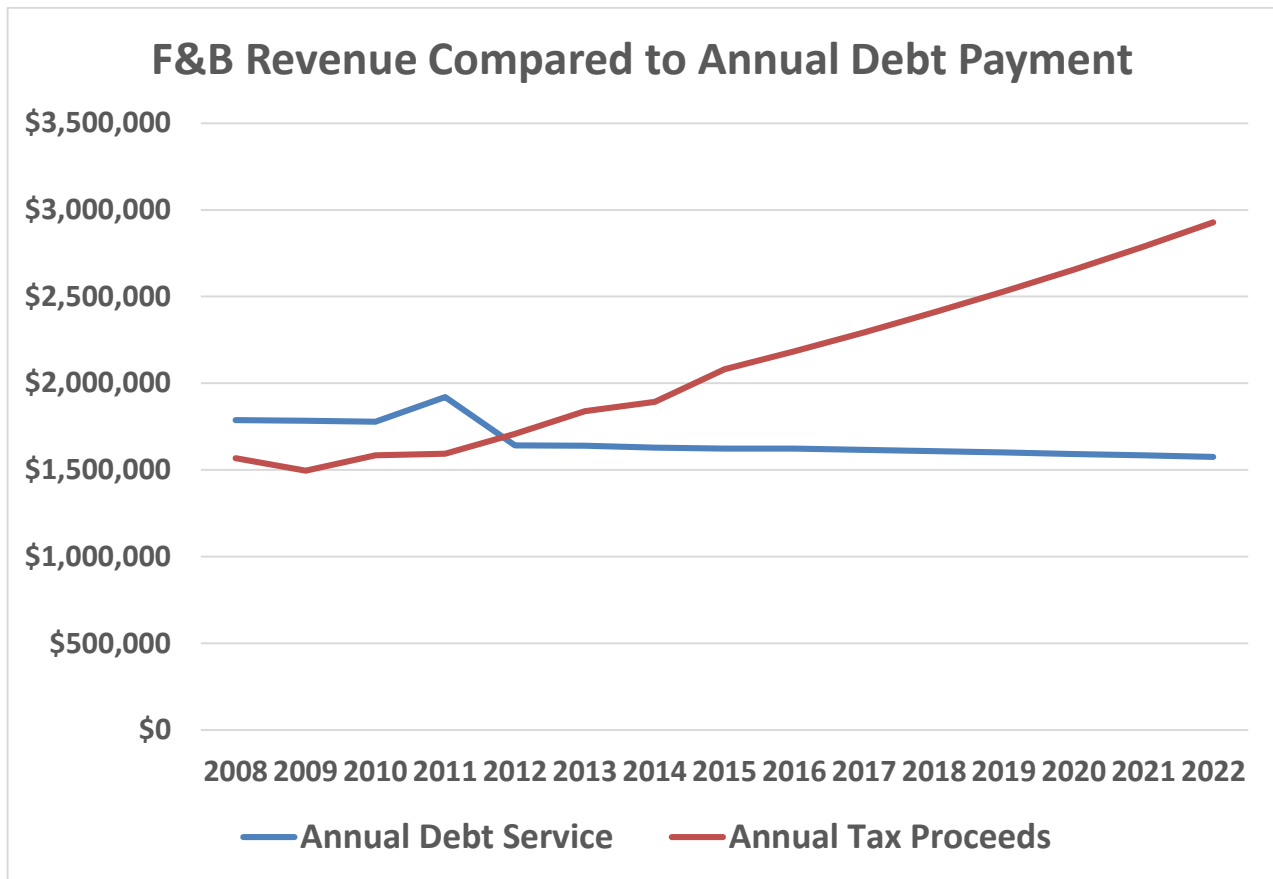
City staff initiated a discussion of the city's street maintenance needs at the study session of April 20, 2015. At that time, staff pointed out that virtually all of the city's arterial, collector and neighborhood collector streets are in need of major maintenance and that approximately three miles of those streets require complete reconstruction. At the conclusion of the study session, staff indicated that it would return to Council with a proposal to generate the revenues necessary to implement a pavement management program via the street utility fee. This discussion resumed at the February 29, 2016, study session, however, rather than proposing an increase in the street utility fee, staff proposed a plan to reallocate food and beverage tax revenues in order to cover debt service on a borrowing to implement the pavement management program.

The City of Ashland first enacted a food and beverage tax – a tax on prepared food and non-alcoholic beverages sold by restaurants and caterers -- in 1993. The tax was created to provide a reliable revenue stream for the acquisition of open space (park land). The original F&B ordinance established the tax at 1%, but authorized the Council to raise the tax to 5%, with the additional revenue dedicated to debt service for waste water treatment plant construction. That ordinance was referred to the voters who approved it in a contentious election by a margin of 55%-45%. Shortly after that election, the Council exercised its right to raise the tax to 5%, the level at which it has been ever since. The ordinance was subsequently amended five times, with the fifth amending ordinance (to allow tax collections to be



spent on park development as well as land acquisition and extending the ordinance sunset date to 2030) referred to the voters in 2009. Voters approved that ordinance by a margin of 59%-41%.

Within two years of that amendment, the city refinanced its wastewater debt, resulting in a savings of some \$300,000 annually; savings that continue to grow each year until the debt is retired in fiscal year 2022. At the same time, F&B tax collections since the end of the 2008–2009 recession have grown much faster than had been projected when the wastewater debt was first incurred. Since 2010, F&B tax collections have grown 5.7% annually and remain on pace for continued growth. This has created a large and growing gap between F&B revenues dedicated for wastewater debt and the amount actually needed for that debt. This gap, illustrated in the graph below, is projected to approach \$600,000 in FY 2016.



Meanwhile, the City faces a burgeoning crisis with regard to its street maintenance needs. The city’s two primary sources of street maintenance revenue – shared state gas tax revenue and the local street utility fee – have not kept pace with demand. The City faces a \$10.5 million bill to bring all of its arterial, collector and neighborhood collector streets up to excellent pavement condition, after which the streets can be maintained on a regular and much less costly schedule, thus avoiding the significantly higher cost of reconstruction. (It costs approximately \$285,000 to overlay a mile of road, but \$1.4 million to reconstruct that same mile of road.)

Given the growing gap between F&B tax revenue for wastewater debt and the actual cost of debt service, staff proposes to redirect F&B revenues to two other related purposes. One is to increase the



share of tax revenue that goes to the Ashland Parks and Recreation commission from 20% to 25%. The remainder of the revenue would be dedicated to debt service on a borrowing to fund a pavement management program for the City's arterial and collector streets. Current projections indicate that the pavement management program can be fully funded solely with these F&B tax revenues.

In addition, the current wastewater debt that is being funded by F&B taxes will be retired in fiscal year 2022. This ordinance stipulates that after FY 2022, if the Council wishes to use F&B tax revenues for purposes other than parks, waste water debt or street repair and rehabilitation, it may do so only by seeking voter approval of an ordinance for those purposes. Lastly, this ordinance contains a referral clause so that it is not enacted unless approved by the voters in the November 8, 2016, election.

**COUNCIL GOALS SUPPORTED:**

N/A

**FISCAL IMPLICATIONS:**

This ordinance does not increase or decrease the food and beverage tax rate of 5%, therefore it does not affect total appropriations in the current budget. The ordinance only re-directs the funding to other purposes. Increasing the Parks' share of F&B revenue to 25% would add between \$130,000 and \$140,000 to the Parks Fund in FY 2017. In addition, funds that would have gone into the Waste Water Fund will instead be directed to the Street Fund. Debt service on a \$10.5 million borrowing for street maintenance would be approximately \$711,000 annually. Current projections indicate that the F&B tax revenue available for street maintenance would not reach that level until fiscal year 2020, although by borrowing the funds in stages rather than all at once, the City can fund the pavement management program exclusively with F&B tax revenues. However, if this ordinance is not approved, the urgent need for street maintenance does not disappear and the City will have to identify a different source of revenue to pay for it.

**STAFF RECOMMENDATION AND REQUESTED ACTION:**

Staff recommends approval of this ordinance on second reading.

**SUGGESTED MOTION:**

I move approval on second reading by title only of an ordinance amending AMC 4.34 and referring said ordinance to the voters of Ashland in the November 8, 2016 general election.

**ATTACHMENTS:**

Ordinance  
Pavement Management Strategy Map  
Minutes of April 20, 2015 study session  
Minutes of February 29, 2016 study session



**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE AMENDING AMC CHAPTER 4.34, FOOD AND BEVERAGE TAX, AND REFERRING THE ORDINANCE TO THE VOTERS OF ASHLAND IN THE NOVEMBER 8, 2016 GENERAL ELECTION**

Annotated to show deletions and additions to the code sections being modified. Deletions are **~~lined through~~** and additions are **underlined**.

**WHEREAS**, Article 2, Section 1 of the Ashland City Charter provides:

Powers of the City. The City shall have all powers which the constitutions, statutes and common law of the United States and this State expressly or impliedly grant or allow municipalities, as fully as though this Charter specifically enumerated each of those powers, as well as all powers not inconsistent with the foregoing and, in addition thereto, shall possess all powers hereinafter specifically granted. All the authority thereof shall have perpetual succession.

**WHEREAS**, the City desires to re-direct a portion of the food and beverage tax to street maintenance activities and to increase the share of food and beverage tax that is directed to the Ashland Parks and Recreation Commission.

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

**SECTION 1.** Title 4 Revenue and Finance of the Ashland Municipal Code, "Food and Beverage Tax," is hereby amended as follows:

**SECTION 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 Oregon Administrative 333-150-0000(4)(i) which the State of Oregon Department of Agriculture licenses or inspects under Oregon Administrative Rule 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 2991, amended, 12/01/2009)

### **SECTION 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 4.34.030K;
  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 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 Section 4.34.020.A.3.a-d;
    - 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 cent or more shall be treated as one cent.
- ~~C. Twenty percent (20%) of all taxes collected by the city under this chapter shall be paid into a Parks Account for purposes of acquisition, planning, development and major rehabilitation of City parks per the City of Ashland's Capital Improvement Plan. Of the twenty percent (20%) allocated to the Parks Account, twenty percent (20%) of the amount collected must be used for Open Space acquisition.~~
- ~~D. Eighty percent (80%) of all taxes collected by the City shall be used for the purpose of paying for wastewater capital improvement projects, per the City of Ashland's Capital Improvement Plan, which includes, but is not limited to, the wastewater treatment plant debt. The council may decrease the rate of the tax or eliminate the tax described in subsection 4.34.020.A after a public hearing. Notice of the hearing shall be given by publication in a newspaper of general circulation in the City at least 10 days prior to the date of the public hearing.~~
- ~~E. The City may retain up to two percent (2%) of the tax collected for costs of administration and collection.~~

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

- 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: \$2,037,150**
  - b. In fiscal year 2018: \$1,608,600**
  - c. In fiscal year 2019: \$1,600,600**
  - d. In fiscal year 2020: \$1,600,000**
  - e. In fiscal year 2021: \$1,650,000**
  - f. In fiscal year 2022: \$1,650,000**
- 4. Any taxes collected by the City under this chapter and not used as described in subsections 4.34.020C.1-3 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 4.34.020.D, 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 subsection 4.34.020.A. and B. after a public hearing. Notice of the hearing shall be given by publication in a newspaper of general circulation in the City at least 10 days prior to the date of the public hearing.**

(Ord 2991, amended, 12/01/2009)

### **SECTION 4.34.030 Exemptions**

The tax levied by Section 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 non-profit 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 non-immediate consumption off the premises including but not limited to ice cream packed in a container of one-half 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 \$5000.00, in which case, the applicable food and beverage tax shall not be excused but shall be capped at two-hundred fifty dollars (\$250.00).

(Ord 2991, amended, 12/01/2009)

### **SECTION 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 2991, amended, 12/01/2009)

**SECTION 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. Non-designated 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 2991, amended, 12/01/2009; Ord 2903, Amended, 01/06/2004; Ord 2885, Amended, 08/06/2002)

**SECTION 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 subparagraphs 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 subsection 4.34.020.C, all sums collected pursuant to the penalty provisions in paragraphs 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 2991, amended, 12/01/2009; Ord 2983, Amended, 06/05/2009)

#### **SECTION 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 section 4.34.080. If no appeal is filed, the director's determination is final and the amount thereby is immediately due and payable.

(Ord 2991, amended, 12/01/2009; Ord 2885, Amended, 08/06/2002)

#### **SECTION 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 makes 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 2991, amended, 12/01/2009; Ord 2885, Amended, 08/06/2002)

#### **SECTION 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 2991, amended, 12/01/2009)

#### **SECTION 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 subparagraph 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 2991, amended, 12/01/2009; Ord 2903, Amended, 01/06/2004)

**SECTION 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 fifty dollars or fifty percent of the outstanding tax, penalties and interest owing.

(Ord 2991, amended, 12/01/2009; Ord 2931, Amended, 09/19/2006; Ord 2885, Amended, 08/06/2002)

**SECTION 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 refuses 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 ordinance prohibit or restrict the City or other appropriate prosecutor from pursuing criminal charges under state law or city ordinance.

(Ord 3023, amended, 08/03/2010; Ord 2991, amended, 12/01/2009; Ord 2885, Amended, 08/06/2002)

#### **SECTION 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 are 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.
- D. The disclosure of information when such disclosure of conditionally exempt information is ordered under public records law procedures.
- 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 2991, amended, 12/01/2009; Ord 2885, Amended, 08/06/2002)

#### **SECTION 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 2991, amended, 12/01/2009; Ord 2885, Amended, 08/06/2002)

#### **SECTION 4.34.160 Termination of tax**

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

(Ord 2991, amended, 12/01/2009)

**SECTION 2. Severability.** The sections, subsections, paragraphs and clauses of this ordinance are severable. The invalidity of one section, subsection, paragraph, or clause shall not affect the validity of the remaining sections, subsections, paragraphs and clauses.

**SECTION 3. Savings.** Notwithstanding any amendment/repeal, the City ordinances in existence at the time any criminal or civil enforcement actions were commenced, shall remain valid and in

full force and effect for purposes of all cases filed or commenced during the times said ordinance(s) or portions thereof were operative. This section simply clarifies the existing situation that nothing in this Ordinance affects the validity of prosecutions commenced and continued under the laws in effect at the time the matters were originally filed.

**SECTION 4. Codification.** Provisions of this Ordinance shall be incorporated in the City Code and the word "ordinance" may be changed to "code", "article", "section", "chapter" or another word, and the sections of this Ordinance may be renumbered, or re-lettered, provided however that any Whereas clauses and boilerplate provisions (i.e. Sections 2-4) need not be codified and the City Recorder is authorized to correct any cross-references and any typographical errors.

**SECTION 5.** Pursuant to Resolution No. 2016-\_\_\_\_, the Ashland City Council has referred this ordinance to the voters for approval at the general election of November 8, 2016. Accordingly this ordinance shall not be effective unless and until approved by the voters of the City of Ashland and following the official acceptance of the canvas of votes.

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 \_\_\_\_\_, 2016, and duly PASSED and ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Barbara M. Christensen, City Recorder

SIGNED and APPROVED this \_\_\_\_ day of \_\_\_\_\_, 2016.

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

Reviewed as to form:

\_\_\_\_\_  
David H. Lohman, City Attorney










City of Ashland  
Public Works  
Asset Management Data

Legend

Segments

Recommendations

-  Mill 1.0", Overlay 2.0"
-  Mill 2.0", Overlay 2.0"
-  Mill 2.0", Overlay 2.5"
-  Mill 2.0", Overlay 3.0"
-  Mill 4.0", Overlay 5.0"
-  Reconstruct
-  Surface Treatment

Mileage By Treatment Type	
<b>Miles Of Reconstruct</b>	<b>2.85</b>
<b>Miles Of Mill 4.0", Overlay 5.0"</b>	<b>4.17</b>
<b>Miles Of Mill 2.0", Overlay 3.0"</b>	<b>2.39</b>
<b>Miles Of Mill 2.0", Overlay 2.5"</b>	<b>5.74</b>
<b>Miles Of Mill 2.0", Overlay 2.0"</b>	<b>1.38</b>
<b>Miles Of Mill 1.0", Overlay 2.0"</b>	<b>6.30</b>
<b>Miles Of Surface Treatment</b>	<b>5.22</b>

20150408 Network Level Street Recommendations

**MINUTES FOR THE STUDY SESSION  
ASHLAND CITY COUNCIL  
Monday, April 20, 2015  
Siskiyou Room, 51 Winburn Way**

Mayor Stromberg called the meeting to order at 5:30 p.m. in the Siskiyou Room.

Councilor Morris, Marsh, Rosenthal, Voisin, Seffinger, and Lemhouse were present.

**1. Public Input (15 minutes maximum)**

**Huelz Gutcheon/2253 Highway 99**/Spoke on the transportation safety index. He divided transportation into five sections, transportation, recreation, and exercise, socialize, and spiritualize, and described the first four. Traveling in Ashland without a safety container presented 1.3 million likelihood of incurring body mutilation of some degree compared to a safety container person traveling at 25 miles per hour. However, fossil fuel carbons were killing the planet. This presented the fifth category of spiritual transportation also known as “do no harm.” People could drive electric cars instead, learn about climate repair, attain jobs that repair the climate, and have a life. This was not an easy task.

**2. Look Ahead review**

City Administrator Dave Kanner reviewed items on the Look Ahead.

**3. Pavement management strategy**

Public Works Director Mike Faught explained funding for street maintenance was a problem nationwide. A 2007 Council Communication indicated the City was \$2,000,000 short regarding street funds annually. In 2009, staff recommended a pavement management strategy that focused on slurry seals and overlays versus expensive reconstructs. Pavement life cycle was 20 years. If no maintenance occurred, the street would require a reconstruct year 25. An overlay every 15 years extended road life and kept costs down. Slurry seal was a treatment that substantially extended residential roads if done every 25 years. Crack sealing and base repair prevented water from getting into the sub grade. Slurry seal provided a new riding surface and added time to the life of residential roads. The Street Department did not have sufficient staff and needed four temporary employees for six months to prepare roads for slurry seal.

The cost per mile for slurry seal was \$28,000, or \$3 per square yard. Slurry seal did not provide structure. Overlays brought structure and extended road life. Staff usually relied on visual to determine the pavement condition index (PCI). This year they hired a company to measure movement and take core samples on arterials and collectors. Utility Technician Steve Burkhalter passed around core samples and explained the damage incurred from water seeping through asphalt cracks.

Cost to maintain the system with overlays every 15 years was \$128,000,000. Reconstructing was \$285,000,000 and entailed tearing the streets down to the base and fixing possible structural issues. The goal was rebuild on the value of the PCI.

Mr. Faught had not received many complaints on the utility cuts and repairs. The slurry seal should not create settling. Staff prioritized overlays first to effectively use available funds. They would look at other funding options for roads on the reconstruct list. Staff would bring funding strategies to Council in October. Siskiyou Boulevard and Ashland Street were eligible to receive possible grant money and subsequently not on the list.

The City currently had a street user fee methodology not based on trip generation. Hansford Economic Consulting recommended implementing trip generation rates using customer classes indentified in the Institute of Transportation Engineers (ITE) Manual.

Staff confirmed the City did not maintain unpaved roads. Paving gravel roads required neighbors forming a Local Improvement District (LID).

Mr. Faught would research and bring back information regarding a Council suggestion for a fee structure based on geography that charged people who lived further away from the downtown core a higher rate. The Public Works Department updated their budget to include the four temporary employees and increased the slurry seal fund from \$100,000 to \$200,000.

#### **4. Downtown parking and multi-modal transportation ad-hoc committee update**

Public Works Director Mike Faught explained that staff had hired a new parking consultant, Rick Williams, to complete the plan and help the Downtown Parking and Multi-Modal Transportation ad-hoc Committee with the final stages. The Street Fund would pay the \$35,000 to cover consultant costs. It would cost \$32,000 for architectural renderings of the downtown study area.

The Committee proposed going from three lanes to two lanes on East Main Street, adding a bike lane and truck loading zones. The proposal included a state recommendation to remove the traffic light at Helman Street. It would also eliminate 21 parking spaces including those in front of Brothers Restaurant. The plan placed new traffic lights at Oak Street and Main Street as well as Oak Street and Lithia Way for pedestrian traffic. The signals would synchronize with other lights on each street. The proposal would establish truck-loading zones, one per block on both sides of the road until 4:00 p.m. when the area became parking. This would increase sidewalk area up to three feet in certain areas. Trucks could also use side streets as loading zones if needed.

The Public Works Department hired Traffic Engineer Kim Parducci to review downtown transportation. The Committee struggled with additional parking structures versus distribution. Mr. Williams would help resolve those issues. Next steps included the Oregon Department of Transportation (ODOT) State Transportation Program (STP) process. The City hired Al Densmore of John Watt Associates to assist with funding and lobbying that would cost \$2,500 a month.

Meeting adjourned at 6:40 p.m.

Respectfully submitted,  
Dana Smith  
Assistant to the City Recorder

**MINUTES FOR THE STUDY SESSION  
ASHLAND CITY COUNCIL  
Monday, February 29, 2016  
Siskiyou Room, 51 Winburn Way**

Mayor Stromberg called the meeting to order at 5:32 p.m. in the Siskiyou Room.

Councilor Rosenthal, Morris, Marsh, Voisin, Lemhouse, and Seffinger were present.

**1. Public Input**

**Zach Brombacher/1370 Tolman Creek Road/Lived on Tolman Creek Road for 40-50 years and reported on two issues. The first involved the intersection at the Bellview Elementary School. The intersection was dangerous. He suggested the City put in a stop light. The other issue was storm water drainage on Hamilton Creek. Infill in that area was increasing the amount storm water that drained onto his property and his neighbors. They could no longer use 75-feet of land on either side of the creek. This was not fair to local landowners. Now a developer was planning an eight-house subdivision that would result in even more drainage onto his property. He asked the City to look into the situation and consider adding a drainage pipe to alleviate the issue.**

**Huelz Gutcheon/2253 Hwy 99/Congratulated Council on the Climate Energy Action Plan. He addressed the recent Greenhouse Gas Inventory report and noted inconsistencies and that his document on the subject was not included in the request for proposal.**

**2. Look Ahead review**

City Administrator Dave Kanner reviewed items on the Look Ahead.

**3. Continued discussion of street maintenance and funding needs**

Public Works Director Mike Faught introduced Utility Technician Steve Burkhalter from the Streets Division, and Public Works Superintendent Mike Morrison. Mr. Morrison provided a video showing various road conditions, the use of the pavement condition index (PCI) to grade city streets, a falling weight deflectometer to determine conditions below the surface, and repair recommendations for specific streets.

Mr. Burkhalter explained the Streets Division milled a street down to its structural integrity then would overlay the road accordingly. They based repair on the age of a road, traffic load, and traffic flow design. The Streets Division prioritized roads by traffic loads. Arterials were first, and then collectors based on traffic volumes. The goal was preventing them from falling into reconstruction that was very expensive. Mr. Faught noted asphalt had a 20-year life and they tried to overlay at year 15 for general arterials and collectors. They could extend residential streets with slurry seal. The Street Division performed structural testing on the arterials and collectors and only visual rating for residential roads.

Staff explained there was \$10,500,000 for arterial collector and collector streets. There was \$3,000,000 for the East Nevada project and \$3,000,000 for Capital Improvement Projects (CIP). Additionally, there was \$19,700,000 for unfunded roads. City Administrator Dave Kanner added the initial \$10,500,000 pavement project needed to occur within the next five years to prevent more of the arterial and collector streets from falling into the failure category. Residential overlays could extend over a longer period. The City needed to raise \$19,700,000 over a period of decades.

Mr. Burkhalter clarified deflection testing was random and did not include the full length of a road. There was also a difference with the type of testing. Project level testing tested every 100 feet for design. On the collectors, they tested every 300 feet.



Mr. Faught further explained the five-year CIP plan. The East Nevada Street was \$3,000,000, the new Independence Road was \$1,200,000, and the rest were sidewalk projects. The \$10,500,000 pavement project would bring the roads indicated up to an adequate level and prevent the potential of reconstructs.

Mr. Kanner addressed funding and possibly using the Food and Beverage (F&B) tax to pay for street improvements. Currently F&B tax went towards the Wastewater Treatment Plant debt until 2022. The City refinanced the Wastewater Treatment Plant debt and it would slowly decline until paid off in 2022. While this was happening, the F&B tax revenue was increasing creating a gap no longer needed for the treatment plant debt. Based on the past, staff was comfortable forecasting this was the trajectory. Mr. Kanner proposed applying the gap no longer needed for wastewater debt to street maintenance primarily the \$10,500,000 pavement maintenance program. The amount for 2017 would be approximately \$679,000. The City would incur new debt for other wastewater treatment projects, but the cost of the debt service for those projects was built into wastewater rates anticipated in the Wastewater Master Plan. By 2022, the gap in F&B tax would be \$1,350,000. Mr. Kanner proposed amending the ordinance to increase the Parks and Recreation Department's portion of F&B tax to 25% to help their equipment replacement fund. He thought the City could fund the \$10,500,000 pavement program using F&B tax and possibly a slight increase over time to the transportation utility fee. In 2023, the debt service for the Wastewater Treatment Plan would end. There was an opportunity at that point to start banking F&B tax for the other \$19,700,000 projects. If Council agreed, he would bring an ordinance back that reallocated F&B tax dollars. Staff was still factoring details. He talked to focus groups and people in general supported using those dollars for street repair. This did not require deferring changes to the F&B tax to voters.

Staff would look into the percentage of traffic volume tourists added to wear on the streets. Mr. Kanner clarified the City could not defuse debt until the last two years due to the recent refinance. The debt at this point was \$9,000,000 to \$10,000,000 on the treatment plant. The F&B tax would sunset 2030.

Mr. Kanner had some hesitation funding capital improvement projects with F&B tax and wanted to see if the City received a grant for the East Nevada project before committing to borrowing money. The one thing that needed to happen right away was borrowing the \$10,500,000 to do the pavement maintenance project. The rest did not need to happen immediately. Mr. Faught noted they had the internal capacity to manage the project but it would be a challenge.

Mr. Kanner clarified the financial projections indicated the City could cover the debt service on wastewater treatment projects or upgrades with operating cash. Financial projections noted substantial growth in the Waste Water Fund Balance even with new debt service. The fund balance was larger than needed.

Mr. Burkhalter explained with the exception of three overlays in 2009, the Streets Division had not done any overlays for 15-20 years. Currently 65% of the entire street network was 20 years or older. Within the next five years, it would increase to 75%. Mr. Faught clarified the East Nevada project and new Independent Way Street were high priorities regarding connectivity. Council could bump the projects and use those funds for street repair if they wanted.

Hansford Consulting advised the City to bond in phases, possibly every 2-3 years.

Mr. Kanner proposed moving away from a fixed percentage of allocating this money for wastewater debt and street maintenance and go to a "cost plus" model. The City could allocate the dollar amount needed from F&B tax for wastewater debt, add a small percentage to continue building the reserve and the wastewater fund, and put the remaining balance towards street improvements.

Council discussed concerns reallocating funds to street maintenance, and having a public discussion during a regular Council meeting about putting it out to the voters.

Mayor Stromberg spoke to someone at the Visitor Convention Bureau (VCB) who stated that Ashland received 300,000 visitors a year.

Council directed staff to bring the matter back to a regular Council meeting and explain the rationale for raising the Parks and Recreation Department percentage to 25%.

**4. Discussion of Citizen Planning Advisory Committee**

Councilor Voisin wanted Council to consider reactivating the Citizen Planning Advisory Committee (CPAC) for a trial period of two years and explained why.

**Councilor Rosenthal left the meeting at 6:43 p.m.**

Council did not support reactivating CPAC and directed staff to bring an ordinance to a future Council meeting to repeal Ashland Municipal Code Chapter 2.27 and transfer Committee Citizen Involvement (CCI) responsibilities to the Planning Commission.

Meeting adjourned at 6:58 p.m.

Respectfully submitted,  
Dana Smith  
Assistant to the City Recorder