

Council Communication

December 16, 2014, Business Meeting

Direction to staff on how to enforce the Food and Beverage Tax Ordinance

FROM:

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

SUMMARY

Responding to a complaint received this past summer, City staff initiated enforcement action against vendors of prepared food and beverage at the Tuesday Growers Market for non-payment of food and beverage tax. The vendors who were contacted by the City have not complied with our request that they remit taxes owed. Until recently, the Growers Market did not comply with the City's request for a list of prepared food vendors who have worked at the market this year. The Growers Market has requested that the City not enforce the F&B Tax Ordinance against its vendors until next year. When briefed on this situation at the November 3rd study session, the Council was split evenly between those who want to see the ordinance enforced and those who would wait until 2015 to begin enforcement. Pursuant to AMC 2.04.030.A(3), the Mayor placed this on the Council's December 2, 2014, agenda for a vote on direction to staff regarding how to enforce the F&B ordinance. However, after taking public testimony at that meeting, Council continued deliberation to this meeting.

BACKGROUND AND POLICY IMPLICATIONS:

In August of this year, City staff received a complaint that prepared food vendors at the Tuesday Growers Market on East Main Street were not paying food and beverage tax as required by Ashland Municipal Code, Chapter 4.34. In response to this complaint, staff sent "secret shoppers" to the Market on two separate occasions to purchase prepared food. Two of the vendors from whom we purchased food identified themselves, either through an address on a receipt or by giving one of our shoppers a business card. None of the vendors from whom food was purchased charged food and beverage tax. However, it is the operator who is responsible for paying the tax, not the purchaser, and AMC 4.34.040 states, "The amount of tax need not be separately stated from the amount of the food or beverage." By comparing the names of the businesses to our tax collection records, we determined that these vendors had failed to pay F&B tax, in violation of the ordinance.

(Failure to pay tax, unfortunately, is not an uncommon code violation. In the past five years, we have pursued code enforcement action against 20 operators who have failed to pay F&B tax.)

The City notified the vendors of their duty to pay food and beverage tax. Neither of them appealed that determination as allowed by the Code, although one of them did contact us to inform us that we were misinterpreting our code. Neither of them has paid the taxes owed or made any effort to contact the City to establish a payment plan. On September 22nd, the managers of the Growers Market contacted Finance Director Lee Tuneberg to get more information about the Food & Beverage Tax. At that time, he explained that the vendors are not exempt from paying F&B tax by virtue of working under the Market's business license and he requested from them a list of all operators who had sold



prepared food at the Market in 2014. The Market did not respond to this request, but instead sent a letter to me dated October 11 (received October 16) requesting that the City defer enforcement of the F&B ordinance until 2015. I responded on October 23rd that I would not consider their request until the Market complied with the City's request for information. Subsequent to that letter, City Attorney Dave Lohman sent the Market a request for their list of prepared food operators. The Market responded with that list on November 12th and again asked that the City defer enforcement of the ordinance until 2015.

Meanwhile, I presented this situation to the Council in a study session on November 3rd, at which time the Council was evenly split between enforcing the ordinance immediately or deferring enforcement until 2015. Given the lack of clear direction, the Mayor has placed this on the agenda for a vote on how to enforce the F&B Ordinance in this situation. Each of the basic options is discussed below.

Proceed with enforcement

If this path is pursued, staff will contact each of the nine operators who sold prepared food and beverage at the Tuesday Growers Market this summer to demand payment of taxes from September 5th forward. (September 5th is the date of the enforcement letter sent to two of the operators who sold food to our secret shoppers.) These operators will be asked to estimate their gross receipts from prepared food and beverage sales from that point through the end of the Market's season and remit to us 5% of that amount (less the 5% they are entitled to keep for administration costs at their end). The Finance Director can then make a determination as to whether their estimate is reasonable. This procedure is consistent with AMC 4.34.070, "Failure to Collect and Report Tax." We would not seek penalties or interest from those operators who respond promptly to demand for payment.

Defer enforcement to 2015

If this path is pursued, staff will not seek any F&B taxes from Market vendors for 2014 but will, presumably with the assistance of Growers Market management, strictly enforce the F&B ordinance when the Market reopens in 2015.

Arguments for immediate enforcement vs. deferred enforcement

For immediate enforcement :

- A matter of fairness to fixed-location food and beverage operators who pay their F&B tax. Postponing enforcement against only these businesses may be viewed by other operators as "playing favorites."
- Demonstrates that the City will enforce its ordinances when it learns of violations.
- Businesses operating in the City are responsible for knowing the rules that apply to those businesses. The City cannot be expected to notify every business of every code provision that applies to it.
- Lack of awareness of a code provision does not excuse non-compliance when it is brought to a violator's attention. More specifically, lack of awareness is generally not accepted as a reasonable excuse for non-payment by tax-collection agencies.
- The Growers Market acknowledged (in writing) to the City that their food vendors are subject to F&B Tax when the ordinance first went into effect in 1993.
- Postponing enforcement perpetuates the corrosive notions that citizens only have to comply with code provisions after violations have been brought to their attention or that uneven past enforcement precludes current enforcement.



For deferred enforcement:

- These operators have likely not kept records of gross receipts from the Growers Market in 2014. Because these businesses may not have records of gross receipts, the amount of tax owed will be difficult to determine and, in any event, a minimal amount.
- Penalizes business owners who may not have been aware of the requirement that they pay F&B tax, thus making the code compliance effort punitive rather than corrective.
- Only two of nine vendors received notice of non-compliance. It is not fair to seek compliance from only two vendors.
- The particular 2014 food vendors at the Growers Market may not now have financial capability to pay the tax as a result of not having been aware until recently of their food and beverage tax obligations.
- Although Growers Market food and beverage operators have not been paying taxes, the City has, for some indeterminate period of time, not been enforcing its F&B ordinance with them. The City therefore bears some culpability for the current state of affairs.
- Citizens may view the City as cold-hearted and intransigent.

COUNCIL GOALS SUPPORTED:

N/A

FISCAL IMPLICATIONS:

Either option is likely to result in a very small increase in F&B tax collections. Staff does not have an estimate of what that amount might be.

STAFF RECOMMENDATION AND REQUESTED ACTION:

Staff feels that unless there is Council direction to the contrary, it must enforce the City's Food and Beverage Tax Ordinance beginning from the date on which notice was served. Council is asked to specify the course of action it wishes staff to take in this matter

SUGGESTED MOTION:

1. I move to proceed with enforcement of the Food & Beverage Tax Ordinance against prepared food operators at the Tuesday Growers Market as detailed by the City Administrator in his Council Communication dated December 2, 2014.

-or-

2. I move to defer enforcement of the Food & Beverage Tax Ordinance against prepared food operators at the Tuesday Growers Market until 2015.

ATTACHMENTS:

[AMC 4.34, Food and Beverage Tax](#)

Letters to Rosa & Maria Mexican Restaurant and to Sultan's Delight, September 5, 2014

Letter from Lee Tuneberg to Growers Market, September 23, 2014

Letter from Growers Market to Dave Kanner, October 11, 2014

Letter from Dave Kanner to Growers Market, October 23, 2014

Letter from Growers Market to Dave Kanner, November 12, 2014

Letter from Growers Market to City of Ashland, June 2, 1993



4.34 Food and Beverage Tax

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. 2716, S1, 1993; Ord 2991, 2009)

4.34.020 Tax imposed

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

1. All food and beverages sold by restaurants located within the city to the public, except for whole cakes, pies, and loaves of bread if purchased for consumption off premises, and for alcoholic beverages;
2. All food and beverages sold by a caterer for an event located within the city, except alcoholic beverages and exempt events as defined in AMC 4.34.030K;
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 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.

(Ord 2716, 1993;Ord 2720, 1993; Ord 2991, 2009)

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. 2716 S5, 1993; Ord 2991, 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. 2716 S6, 1993;Ord 2991, 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. 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. 2716, 1993; ORD 2885, 2002; ORD 2903, 2004; Ord 2991, 2009)

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.

(Revised June 1993; ORD 2885, 2002; ORD 2903 2004; Ord 2983 2009; Ord 2991, 2009)

4.34.070 Failure to Collect and Report Tax

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. 2716 S8, 1993; ORD 2885, 2002; Ord 2991, 2009)

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 2885, 2002; Ord 2991, 2009)

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, 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 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 2903 2004; Ord 2991, 2009)

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 2885, 2002; Ord 2931, 2006; Ord 2991, 2009)

4.34.120 Violations - Infractions

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 2885, 2002; Ord 2991, 2009; Ord 3023, 2010)

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 2885, 2002; Ord 2991, 2009)

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 2885, 2002; Ord 2991, 2009)

4.34.160 Termination of tax

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

(Ord. 2707-E, 1993; Ord. 2716, 1993; Ord. 2720, 1993; Ord 2991, 2009)

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CITY OF ASHLAND

September 5, 2014

Rosa & Maria Mexican Restaurant
774 SW6th Street
Grants Pass, Oregon 97526

Dear Operator:

It has come to the City's attention that you are selling items at the Tuesday Market that may qualify as prepared food or beverages per the City of Ashland's Municipal Code Section 4.34 Food & Beverage Tax. The code requires operators selling or catering such items within the city limits to collect a 5% tax, report and remit amounts due.

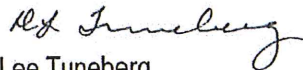
You may not be aware of this requirement or under the belief it does not apply to you. The city staff has determined it is applicable and provides you this opportunity to resolve the issue. Section 4.34 of the AMC and blank forms are enclosed.

Please review the enclosure and take steps to comply with all elements extending back to the date you began selling applicable items. You have 15 days from the date of this letter to report and pay your tax obligation or to contact this office and make arrangements. Without prompt attention, additional fees and interest will be added to the total due once they are identified by you or estimated by me. Please note that catering services within Ashland city limits are also subject to tax collections and remittance. Take this opportunity to address any such activity.

If you believe AMC 4.34 does not apply to you or the products you sell please state the reason in writing. My review of your documentation will also be reviewed by the city administrator. You will be informed of our decision. A further appeal would require you to pay a fee for a hearing.

If you need assistance with forms or have questions regarding the code come to the City Hall Customer Service counter at 20 East Main or call 541-488-6004.

Your prompt attention to this matter is appreciated. Thank you,



Lee Tuneberg
Administrative Services and Finance Director

CC:
City Administrator
City Attorney
Customer Service Division



CITY OF ASHLAND

September 5, 2014

Sultan's Delight
2007 Talent Avenue
Talent, Oregon 97540

Dear Operator:

It has come to the City's attention that you are selling items at the Tuesday Market that may qualify as prepared food or beverages per the City of Ashland's Municipal Code Section 4.34 Food & Beverage Tax. The code requires operators selling or catering such items within the city limits to collect a 5% tax, report and remit amounts due.

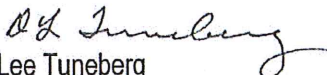
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Lee Tuneberg
Administrative Services and Finance Director

CC:
City Administrator
City Attorney
Customer Service Division



CITY OF ASHLAND

September 23 2014

Rogue Valley Growers & Crafters Market
Monica Rey & Mary Ellen Deluca
PO Box 4041
Medford OR 97501

Dear Monica & Mary Ellen:

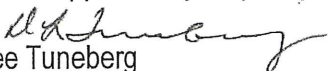
I enjoyed chatting with you yesterday regarding food & beverage tax applicability for those serving prepared food at the Tuesday Growers Market. As we discussed, the city's perspective is that all prepared food purveyors are subject to AMC 4.34 and they are to report and remit the taxes due per the code. Membership in a non-profit organization for business licensing purposes is not the same as them being a non-profit organization. This profit motive is a key concept when considering comparability to other operators in the city. All operators have the choice of charging the amount on top of their prices or the tax can be included in the stated price. Either way is acceptable to the city and existing purveyors have done it both ways.

In the meeting you presented a response from Sultan's Delight and the operator indicated he felt exempt from the code and thought we were picking on his business alone. I responded that we also sent a letter to Rosa & Maria's Mexican Restaurant. These are the only addresses we were able to garner when visiting your event. Sultan's indicated there are over 20 such operators. In order to be fair to all in your association as well as those prepared food purveyors outside of it, I am requesting a list of those businesses and individuals in your association that provide the same service.

As soon as I get the list I will send similar letters to all those that we did not see or get information from when we made our tours in July and August. You have the AMC and I am enclosing a form to share if needed.

You indicated you are going to take this issue forward, with one concept being to not enforce the code retroactively. I said I would not aggressively pursue payments awaiting your next steps but I also need to notice all involved so that current records are maintained and/or estimates can be made. Please forward the list immediately.

At this point we are considering retroactivity to be this year's operations, at least back to July 1, 2014. Further delays in notifying purveyors could be even more problematic for them to review their records and report/remit taxes due. I appreciate your prompt attention to this matter. Thank you,


Lee Tuneberg
Administrative Services and Finance Director

CC:
City Administrator
City Attorney
Customer Service Division





October 11, 2014

Mr. Dave Kanner
Ashland City Administrator
20 East Main
Ashland, OR 97520

RECEIVED
OCT 16 2014

Re: Food & Beverage Tax

Dear Mr. Kanner:

One of our vendors recently received a letter from Ashland informing him that he is currently and retroactively liable for the F&B tax. Since this was a new issue and never addressed in any CUP or Business License dealings our organization has had with the City of Ashland, none of our vendors have been charging the tax or keeping any specific records on what is actually taxable. It would be a great hardship on these small businesses to have to pay unexpected taxes estimated on income that did not assess the extra costs.

We realize that this tax needs clarification for us, but we are asking if it would be possible to start at the beginning of 2015 so that the vendors have a chance to adjust their prices and record keeping and get set up to correctly collect and deposit the tax. Our season is waning rapidly as the weather changes and the markets flux weekly as vendors stop participating.

Please consider this and let us know if this would be a possibility.

Thank you,

RVGCM
Monica Rey, President

Market Locations & Times

	TUESDAYS	THURSDAYS	SATURDAYS	SATURDAYS
Rogue Valley Growers & Crafters Market	8:30a - 1:30p	8:30a - 1:30p	8:30a - 1:30p	9:00a - 1:00p
P.O. Box 4041	Ashland	Medford Armory	Ashland	Medford
Medford, OR 97501	National Guard Armory	1701 S. Pacific HWY	Oak Street	The Commons
(541) 261-5045	1420 E. Main St.	3/13 - 11/25	5/3 - 10/25	6th & Bartlett
	3/13 - 11/25			5/3 - 10/25

**CITY OF
ASHLAND**

Dave Kanner
City Administrator

October 23, 2014

Ms. Monica Rey
Rogue Valley Growers and Crafters Market
P.O. Box 4041
Medford, OR 97501

Dear Ms. Rey:

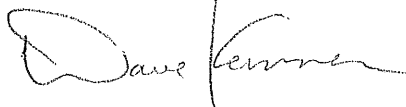
Thank you for your letter of October 11. While I appreciate that this is a new issue for you, Ashland's food and beverage tax law has been in place for 20 years. Payment of the tax is the responsibility of the food vendor, not the Growers Market. The food and beverage tax ordinance is completely independent of your CUP or the City's business license ordinance.

Be that as it may, we have requested from you a list of all of the vendors of prepared food who worked at the Tuesday Growers Market in 2014. We have also requested your concurrence with notifying all food vendors in the future that they are responsible for payment of the tax. We have requested the list of 2014 vendors for the purpose of educating them that they are responsible for payment of food and beverage tax.

There are two vendors from whom City staff made purchases this summer, from among the four who were selling prepared food on the days we visited, thus providing us with evidence that they are "operators" as defined by the food and beverage tax ordinance. The operators were advised of their right to appeal under the Municipal Code and they have not done so. I believe they are now past the appeal window allowed in the Code.

I am not prepared to consider any other waiver of retroactivity until the Growers Market agrees to comply with our request as described above. I am also willing to discuss it with the City Council to get their feedback. I hope and expect that this can be resolved amicably, but it must begin with your cooperation regarding the requests above.

Sincerely,



Dave Kanner, city administrator





RECEIVED

NOV 13 2014

November 12, 2014

Mr. Dave Kanner
Ashland City Administrator
20 East Main
Ashland, OR 97520

Re: Rogue Valley Growers & Crafters Market and collection of the City of Ashland Food & Beverage Tax

Dear Mr. Kanner,

Pursuant to our previous discussion with Mr. Tuneberg, as well as our previous correspondence with you, we are attaching a list of our members who may be subject to the City of Ashland Food and Beverage Tax. It is our intention to fully comply with your requirements and, towards that aim, we are encouraging our membership to follow through with the city individually where applicable. It is our hope that we open the 2015 season in full compliance and with complete understanding of the city's municipal code.

Furthermore, we will be updating our market policy documents to ensure that our vendors selling goods for immediate consumption are informed of the required taxes. This will be done to allow collection when making sales, as well as to engage in the necessary and accurate recordkeeping associated with such assessment.

We respectfully ask that you consider beginning this assessment in 2015. Unfortunately, our vendors were unaware of the obligation and have not incorporated the food and beverage tax into their pricing structures (either through embedding them in the pricing of their goods or through explicitly charging the tax to their customers). Additionally, this means that our vendors did not keep records of which sales were, in fact, taxable products.

Please understand that our Board meets just once per month to discuss market business matters. Due to this, our time of response may be delayed. However, we reiterate our intention to comply with the wishes and policies of the city of Ashland.

Sincerely,
RVGCM

Monica Rey, President

	Market Locations & Times			
	TUESDAYS	THURSDAYS	SATURDAYS	SATURDAYS
Rogue Valley Growers & Crafters Market P.O. Box 4041 Medford, OR 97501 (541) 261-5045	8:30a - 1:30p Ashland National Guard Armory 1420 E. Main St. 3/13 - 11/25	8:30a - 1:30p Medford Armory 1701 S. Pacific HWY 3/13 - 11/25	8:30a - 1:30p Ashland Oak Street 5/3 - 10/25	9:00a - 1:00p Medford The Commons 6th & Bartlett 5/3 - 10/25

ROGUE VALLEY

**GROWERS & CRAFTERS
MARKET**

P.O. Box 4041, Medford, Oregon 97501 • (503) 855-1326

June 2, 1993

City of Ashland Finance Department
Attn: Karen Huckins
City Hall
Ashland, OR 97520

Dear Karen,

Following are the names and addresses of our vendors who have sold items this year that fall under Ashland's food and beverage tax ordinance. If additional vendors who fall under the ordinance join the Ashland growers market, I'll advise them of the ordinance and provide you with their names as well.

Blue Bunny Bakery (Karrie Sunitsch) 488-0654
642 Liberty Street, Ashland

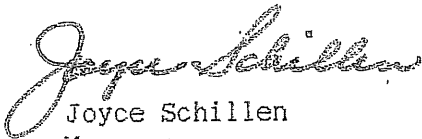
Carolyn's Kitchen (Carolyn Morris) 482-5334
129 Orchard Lane, Ashland

Four & Twenty Blackbirds (Martha Dust) 488-0825
258 A Street, #9A, Ashland

Lithia Sourdough Co. (David & Spirit Light) 482-4561
258 A Street, #3B, Ashland

When you have a final ordinance, could you provide me with about ten copies of that and your reporting form? I'll give information to each appropriate vendor.

Sincerely,


Joyce Schillen
Manager

cc: Vendors
Board