

IMPORTANT: Any citizen attending a commission meeting may speak on any item on the agenda. If you wish to speak, please fill out the Speaker Request form. The Chair will recognize you and inform you as to the amount of time allotted to you. The time granted will be dependent to some extent on the nature of the item under discussion, the number of people who wish to be heard, and the length of the agenda.



AGENDA FOR STUDY SESSION

ASHLAND PARKS & RECREATION COMMISSION
March 20, 2017
The Grove, Otte-Peterson Room
1195 E. Main Street

5:30 p.m.

- I. CALL TO ORDER
- II. PUBLIC INPUT
- III. TWO-YEAR BUDGET REVIEW (INFORMATION)
- IV. TWO-YEAR CIP REVIEW (INFORMATION)
- V. STAFF UPDATES
- VI. ADJOURNMENT

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the City Administrator's office at (541) 488-6002 (TTY phone number 1-800-735-2900). Notification 72 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to the meeting (28 CFR 35.102-35.104 ADA Title I).

ASHLAND PARKS & RECREATION COMMISSION

340 S PIONEER STREET • ASHLAND, OREGON 97520

COMMISSIONERS:

Mike Gardiner
Joel Heller
Rick Landt
Jim Lewis
Matt Miller



Michael A. Black, AICP
Director

541.488.5340
AshlandParksandRec.org
parksinfo@ashland.or.us

MEMORANDUM

Date: March 14, 2017

To: Ashland Parks and Recreation Commissioners

From: Michael Black

Subject: 2017-19 Budget Review

This is a preview of the budget for the next biennium as of the day the memo was written. I will have more detail in the meetings on the next two Mondays, March 20th and 27th. As work progresses on the budget, there will be some changes and I will update you as they happen. For instance, we are currently working on a specific issue with our revenues and could have an update on those for you on Monday the 20th – a positive update that is. This budget has not been presented to the Budget Committee and will not be until reviewed and approved by the Parks Commissioners.

Executive Summary

The coming biennium will be a challenge for the entire City for two personnel-related reasons. The budget has risen dramatically due to the increase in two major areas: 1) PERS; and 2) Employee Insurance. There are also PERS-related issues that are affecting the current budget. For instance, legislation being proposed at the State Capitol that will cut retirement benefits is forcing some long-term employees into retirement to ensure their benefits do not suffer. Since these long-term employees usually have a large bank of vacation and sick time, their payout at retirement is usually quite large. Unfortunately, these increases are affecting every department of the City and APRC. I will go into detail regarding all of the information in this section below.

The City has asked all departments and APRC to plan for a budget with no rise in materials and services so that they are better able to cover the expected increases in personnel costs. We are proposing a budget with a deficit of \$335,000 directly related to the personnel increases and we are asking the City to fund this deficit. The budget, detailed below, is broken down as follows:

1. Parks Fund Requirements: \$13,358,593
2. Parks Fund Revenues: \$13,023,800

Parks will be receiving the typical revenue sources, including the \$2.09/\$1,000 of assessed valuation. Even with the promise of these funds, and considering other revenue sources and the fact that the materials budget is flat, we are still unable to cover the entire increase in the budget. Again, we are requesting that the City dedicate other general funds to cover our deficit.

Other significant factors are the expenditures that were not planned for, including water line breaks, equipment malfunctions and breakage, legal fees and retirements.

The CIP will be larger this biennium due to some rather large projects that are proposed. The full list is attached and the general breakdown is as follows:

1. CIP Fund Requirements: \$7,997,500
2. CIP Fund Resources: \$8,112,190

Proposed Budget Expenditures:

The table below shows the planned expenditures for the upcoming biennium. There are a few things to keep in mind when reviewing the expenditures.

1. We were asked to keep the Material and Services expenses as low as possible, in fact, “keep them flat” was our direction.
 - a. Because there are inherent rises in utilities and contracts, we had to reduce in other areas to keep the bottom line flat.
 - b. Since the Food and Beverage Tax was amended to allow for basic rehabilitation and maintenance of existing parks and facilities, we have proposed to transfer \$130,000 each year from the CIP over the next biennium to cover items that are too small to qualify as fixed assets, such as trails work and grounds care.
2. All of the increases you are seeing in the budget are in the personal services category.
 - a. This means that there was an increase of \$1,205,000 just in personnel costs.
3. Fringe benefits, mainly PERS and Insurance, increased \$684,000 and salaries and wages are increasing by \$521,000.
4. The explanation for the increase in PERS and Insurance is:
 - a. The PERS board held rates flat for 2015-17, but there was still an increase in costs so we are working to make that up, along with whatever other shortfall there is currently, with a 22% increase this biennium.
 - b. The City is self-insured and during the current biennium we incurred some very large draws on the insurance fund. It is possible that these large draws will not repeat themselves; however, the fund has been depleted and the City is proposing a 10% increase in insurance to build the fund back to a suitable reserve and to ensure all current needs are met.
5. We are aware that we are proposing a budget with a deficit; however, we are requesting that the City fund this deficit with the general fund since we have done everything in our power to reduce this amount and because the reasons for the deficit are general, not specific to APRC.
6. We are not requesting any new employees in the budget but we will attempt to get a new Park Tech I for trails if the City still has any funds remaining after the PERS and insurance increases.

The following is the proposed budget expenditures over all of APRC:

EXPENSES SUMMARY				
Proposed Biennium 2017-19				
	BN 2015-17	BN 2017-19	BN 2017-19	BN 2017-19
Description	Budget	Year 1	Year 2	Total
Personal Services				
510 Salaries and Wages	\$ 4,591,980	\$ 2,511,590	\$ 2,601,420	\$ 5,113,010
520 Fringe Benefits	2,936,340	1,735,454	1,884,872	\$ 3,620,326
Total Personal Services	7,528,320	4,247,044	4,486,292	\$ 8,733,336
Materials and Services				
601 Supplies	269,109	123,361	124,861	248,222
602 Rental, Repair, Maintenance	2,156,548	899,527	909,505	1,809,032
603 Communications	77,000	42,455	39,375	81,830
604 Contractual Services	719,600	349,331	354,484	703,815
605 Misc. Charges and Fees	917,600	711,246	711,246	1,422,492
606 Other Purchased Services	320,350	158,043	158,823	316,866
607 Insurance	-	11,500	11,500	23,000
Total Materials and Services	4,460,207	2,295,463	2,309,794	4,605,257
Capital Outlay				
703 Equipment	-			
704 Improvements Other Than Bldgs.	86,000	10,000	10,000	20,000
Total Capital Outlay	86,000	10,000	10,000	20,000
Total Budget	12,074,527	6,552,507	6,806,086	13,358,593

Parks and Recreation Fund Revenues

This fund covers the expenditures of the budget proposed above. There are two other funds that APRC has control of - CIP and Equipment. Those funds will be addressed below.

This coming biennium, we are starting out with a lower working capital carryover than usual of \$200,000. This amount is the dollars that we, as an administration, were able to save during the previous biennium. There were a few factors that lowered our carryover from what was preferred; those are:

1. Increases in water usage due to pump breakage and broken water lines: ¹
2. Increases in legal fees²
3. Unexpected retirement payouts³

Although we have attempted to save throughout the last two years, these three uncontrollable factors have increased our expenditures for the biennium by more than \$300,000 over what was budgeted. Regardless of any unexpected requirements in our budget, we expect to come in under budget and with

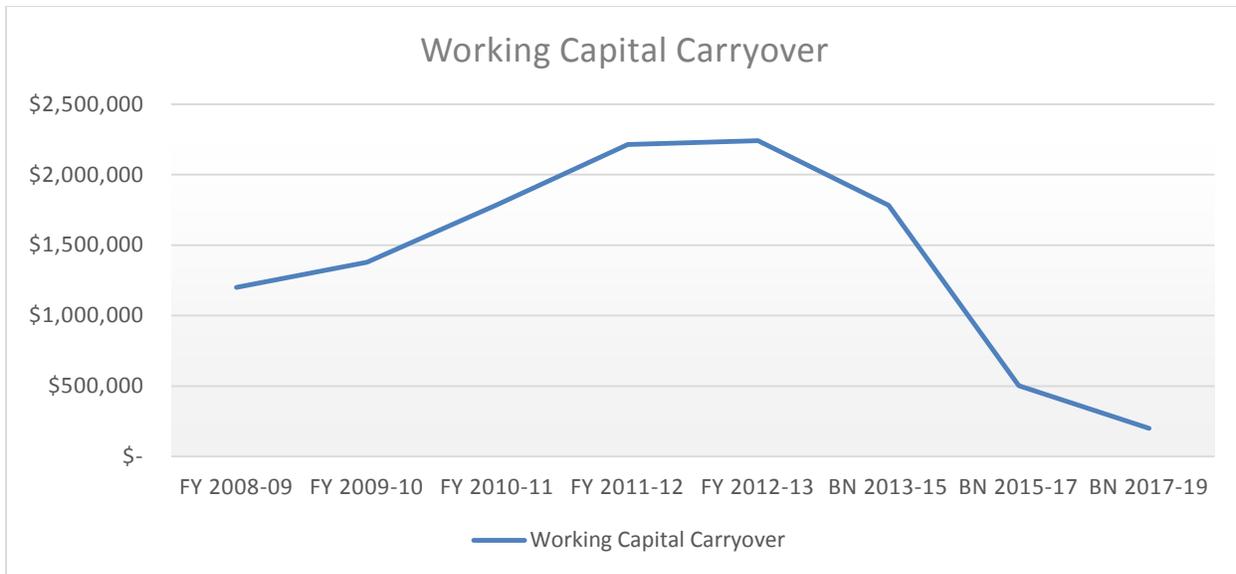
¹ We have addressed these overages by increasing the water budget by a significant amount and by purchasing a backup pump in case the North Mountain Park pump fails again as well as planning to check and replace all flow meters to guard against unknown water breakages.

² This was an increase due to a settlement that came from one of our funds. This should not repeat and any further legal expenses should be covered by insurance.

³ We continue to work to identify retirees, but most of the Tier One long-term employees have recently retired.

a savings too. In future years, however, it may be prudent to plan a larger contingency than has been planned for in the past. The previous year's contingency, which was not used, was \$100,000 or 1/3 of what could have been considered qualified contingency related expenditures. Even though I am suggesting this now, this coming biennium most likely will not support a larger contingency.

For your information, working capital carryover has decreased drastically since 2012-13 – at the highest, the carryover was \$2,242,228 (2012-13). The following graph shows the decrease in working capital carryover from the last 9+ years.



Revenue Sources

ARPC receives funding for the budget mainly from the residents of Ashland through property tax. The proposed funding amount for the biennium is \$2.09/\$1,000 of assessed value, which is the historic amount. Other funding sources include charges for services, field maintenance fees, recreation programs and interest.

The following is the breakdown of the funding for the coming biennium.

REVENUE SUMMARY				
Proposed Biennium 2017-19				
	BN 2015-17	BN 2017-19	BN 2017-19	BN 2017-19
Description	Budget	Year 1	Year 2	Total
Working Capital Carryover	392,641	200,000		200,000
Intergovernmental Revenues				
Sports Field Maint - Schools Contribution		15,000	15,000	30,000
Grants/other				-
Total Intergovernmental	-	15,000	15,000	30,000
Charges for Service				
Facility Rentals	175,000	100,000	100,000	200,000
Contracted Services	415,000	240,000	240,000	480,000
Charges for Service - General Fund	9,560,000	5,154,700	5,335,100	10,489,800
Golf Course Fees	605,000	260,000	280,000	540,000
Recreation Programs	610,000	375,000	375,000	750,000
Total Charges for Services	11,365,000	6,129,700	6,330,100	12,459,800
Interest on Investments				
Interest on Pooled Investments	14,000	7,000	7,000	14,000
Total Interest on Investments	14,000	7,000	7,000	14,000
Miscellaneous				
Donations	20,000	-	-	-
Miscellaneous Income	80,000	30,000	30,000	60,000
Bad Debt Recovered	-	-	-	-
Total Miscellaneous Income	100,000	30,000	30,000	60,000
Other Financing Sources				
Operating Transfers In:				
From CIP (PM and Rehab)		130,000	130,000	260,000
From General Fund	321,000			-
From Insurance Fund	52,500			-
From Parks YAL	-			-
Total Other Financing Sources	373,500	130,000	130,000	260,000
Total Parks & Recreation	12,245,141	6,511,700	6,512,100	13,023,800

As you can see by the planned revenues and expenditures, we are proposing a budget with a \$335,000 deficit. Not unlike departments in the City, APRC is experiencing a major increase in requirements related to PERS and insurance. We expect that most of those City departments are proposing similar deficits and I have been in contact with the Finance Department to talk about this. We are requesting that the City fund this deficiency after all that we could do to reduce proposed expenditures.

Proposed CIP Expenditures

This year we are planning a larger than usual CIP budget at \$7,997,500 for a couple of main reasons. APRC has a few multi-million dollar projects that we are proposing for the next biennium: 1) Land acquisition (\$1,805,000); and, Daniel Meyer Pool rebuild (est. \$3,250,000). The land acquisition dedication is typically close to that level in most biennia; however, the pool is a larger-than-usual amount which, and, if approved, will be attained through a general obligation bond of the City. Due to the change in the Food and Beverage Tax language which passed a vote of the public in

November of 2016, we are now receiving a 20% more (from 20% of the total to 25% of the total) from that fund than we had previously. In fact, the increase equals 25% of the total F&B Tax collected within the City which nets APRC an estimated \$727,000 in year one and \$756,000 in year two. Previous years of the F&B Tax netted APRC between \$560,000 and \$600,000 – FY 2015/16 actual collection was \$564,947 and FY 16/17 has not fully run its course. The F&B Tax is subject to fluctuations from year to year; however, for the last two years the tax has been strong and this is anticipated to continue for at least two years.

The CIP will show a transfer of \$130,000 per year to the Parks fund. This is for two reasons: First, we will continue to subsidize the project manager position with the CIP – the project manager controls all projects in-house and prevents APRC from having to contract for this service. Second would be for the maintenance of grounds and trails. The new language, found below, allows APRC to use F&B for general repair and rehab of existing parks. Previously the tax language restricted F&B to being used for “major rehabilitation” of parks.

- “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.”*

The full list of proposed CIP projects is below:

1. Continuing Projects (some scopes may have been modified):

- a. Repair Butler-Perozzi Fountain @ Lithia Park
- b. Lithia Park Asphalt
- c. Oak Knoll Cart Path - Pavement
- d. Hunter Park Asphalt Overlay
- e. Calle Guanajuato Improvements (Bond Repayment)
- f. Ashland Creek Park Development Phase II
- g. Garfield Park Water Play and Park Upgrade (bond repayment)
- h. Lithia Park Master Plan
- i. Second Dog Park Construction
- j. Project Manager
- k. Land Acquisition**
- l. ACP Public Works Requirement
- m. The Grove - Admin Office Remodel
- n. Winburn Way Sidewalk
- o. Oak Knoll Playground
- p. Trails and Open Space Comp Plan Update

2. New Projects (proposed):

- a. Daniel Meyer Pool - Rebuild and Cover
- b. Transfer to Parks GF for Maintenance
- c. North Mountain Park Nature Play Area
- d. Master plan for Park Shop/Yard Areas; Dog Parks; Skateboard Park

- e. Neighborhood Park Development (replacement of YMCA)
- f. Oak Knoll Improvements (Irrigation, Fairways and Greens)
- g. Resurface/Reclaim Tennis and Pickleball Courts
- h. Restoration of Beach Creek below Pedestrian Bridge

This is the proposed list of projects and includes projects that have been prioritized or previously approved by the Commissioners. This list may change based on upcoming prioritization of the APRC goals – the full CIP list with estimates of project budgets is attached.

Planned CIP Revenues

The CIP usually consists of four revenue sources:

- 1. Food and Beverage Tax
- 2. Systems Development Charges
- 3. Critical Maintenance
- 4. Bonds/Grants

As stated above, F&B has been very strong in the current biennium and SDCs have been steady. The following shows the expected revenue sources for the next biennium with the expected values:

SOURCE	EFB16	NEW18	NEW19	
F&B	483,000	727,790	756,900	<u>1,967,690</u>
SDC	293,000	50,000	51,500	<u>394,500</u>
Critical Maintenance	100,000			<u>100,000</u>
Bonds		4,600,000	1,050,000	<u>5,650,000</u>
Total Anticipated Resources				<u>8,112,190</u>

The total requirement for the biennium is \$7,997,500 and the expected resources are \$8,112,190. There is a small buffer in the difference between the requirements and resources of \$114,690 that can be allocated as approved by the Commissioner based upon the results of the goals voting, or it could be kept in reserve to address future needs.

Equipment Fund

APRC has three funds where all of our resources are kept. Those funds are:

- 1. Parks and Recreation Fund
- 2. Parks CIP Fund
- 3. Park Equipment Fund

Items 1. and 2. were addressed above. The remaining fund is the equipment fund. This fund covers expenditures for vehicles and major equipment like large mowers, golf carts and construction equipment. The fund was set up new in the last biennium at our request. Prior to last year, expenditures for vehicles and equipment came from CIP. The proposed equipment replacement budget for the biennium is \$474,800. This will provide for the vehicles and equipment that are scheduled to be replaced this biennium.

In the last biennium, the City Administrator proposed a loan of \$439,000 to get our fund started. It was proposed that we would borrow the money from the City's equipment fund and pay it back over several years. Although this was the plan that was approved by the Council, we never received the loan and our equipment has been funded by the equipment replacement fees that we pay into the fund each year for each vehicle to be replaced at a certain point in time.

ARPC was able to cover the cost of equipment by using equipment replacement fees, and did it without borrowing any money. Due to this fact, however, our equipment fund will grow very slowly over the years. The loan was intended to get us started with some capital, but Accounting determined that we should try to spend our own funds before we borrow money from the City. My recommendation is that we follow the recommended action of the Accounting Division and continue to use our own equipment fees to pay for current equipment. This will allow us to purchase the needed equipment in the biennium and also grow the fund's working capital by about \$75,000 per biennium.

<i>Fund #731</i>		Biennial Budget 2015-2017	Biennial 2017-2019
#	Description	BN 2015-17 Estimate	Total 2017-19
	Working Capital Carryover	\$ -	\$ 117,150
	Charges for Services		
	440160 Equipment Replacement Fees	455,000	425,000
440	Total Charges for Services	455,000	\$ 425,000
	Interest on Investments		
	4700010 Interest on Pooled Investments	1,100	-
470	Total Interest on Investments	1,100	-
	Other Financing Sources		
	Interfund Loan	-	-
	Operating Transfers In	80,000	-
	Total Other Financing Sources	80,000	
	Total Parks Equipment Replacement Fund	\$ 536,100	\$ 542,150

Attachments: CIP Table; Ordinance 3133 Food and Beverage Tax Amendment

2015-17 CIP Estimates - Updated 5.11.2015

Description	2015/17 Budget Proposal	FY 2015-16					FY 2016-17					2015-17 Grand Total
		F&B	SDC	Parks CIP EFB	Other (grant/loan)	2015-16 Totals	F&B	SDC	Parks CIP EFB	Other (grant/loan)	2016-17 Totals	
Repair Perozzi Fountain @ Lithia Park	70,000					-	70,000				70,000	70,000
Lithia Park Asphalt	30,000					-	30,000				30,000	30,000
Oak Knoll Driving Range Netting						-					-	-
Daniel Meyer Pool Solar Panel Replacement						-					-	-
Oak Knoll Cart Path - Pavement	300,000	300,000				300,000					-	300,000
Park Restroom Auto Lock Doors						-					-	-
Garfield Park Sand Volleyball Relocation						-					-	-
Hunter Park Playground						-					-	-
Hunter Park Asphalt Overlay	30,000					-	30,000				30,000	30,000
Calle Guanajuato Improvements (Bond Repayment)	160,000	80,000				80,000	80,000				80,000	160,000
Ashland Creek Park Development Phase II	50,000					-	50,000				50,000	50,000
340 S. Pioneer, Parks Office Upgrades-						-					-	-
Garfield Park Water Play and Park Upgrade (bond repayment)	200,000	100,000				100,000	100,000				100,000	200,000
Sign Replacement Plan						-					-	-
Lower Clay Street Purchase						-					-	-
Lithia Park Master Plan	230,000	230,000				230,000					-	230,000
Lithia Park Rehabilitation Project (Sand, etc)						-					-	-
Daniel Meyer Pool Bathhouse						-					-	-
Second Dog Park Construction	265,000	265,000				265,000					-	265,000
Project Manager	120,000	60,000				60,000	60,000				60,000	120,000
Land Acquisition**	1,805,000		305,000		600,000	905,000			900,000	900,000	900,000	1,805,000
YMCA Park Improvements						-					-	-
ACP Public Works Requirement	35,000					-	35,000				35,000	35,000
Park Building Maintenance and Upgrades (Paint)						-					-	-
The Grove - Admin Office Remodel	100,000			100,000		100,000					-	100,000
Winburn Sidewalk	25,000	25,000				25,000					-	25,000
Bicycle Skills Park and Track						-					-	-
Pool Study						-					-	-
Oak Knoll Playground	40,000					-	40,000.00				40,000	40,000
Trails and Open Space Comp Plan Update	30,000	30,000				30,000					-	30,000
Performance Audit						-					-	-
Sub-total New Projects	3,490,000	1,090,000	305,000	100,000	600,000	2,095,000	495,000	-	-	900,000	1,395,000	3,490,000
Daniel Meyer Pool - Rebuild and Cover	3,250,000				3,250,000	3,250,000					-	3,250,000
Transfer to Parks GF for Maintenance	140,000	70,000				70,000	70,000				70,000	140,000
North Mountain Park Nature Play Area	150,000					-			150,000	150,000	150,000	150,000
Master plan for Park Shop/Yard Areas; Dog Parks; Skateboard Park	75,000					-	75,000				75,000	75,000
Neighborhood Park Development (replacement of YMCA)	750,000				750,000	750,000					-	750,000
Oak Knoll Improvements (Irrigation, Fairways and Greens)	50,000	25,000				25,000	25,000				25,000	50,000
Resurface/Reclaim Tennis and Pickleball Courts	42,500	20,000				20,000	22,500				22,500	42,500
Restoration of Beach Creek below Pedestrian Bridge	50,000	50,000				50,000					-	50,000
Sub-total New Projects	4,507,500	165,000	-	-	4,000,000	4,165,000	192,500	-	-	150,000	342,500	4,507,500
Total	7,997,500	1,255,000	305,000	100,000	4,600,000	6,260,000	687,500	-	-	1,050,000	1,737,500	7,997,500.00

ORDINANCE NO. 3133

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 **bold lined through** and additions are **bold 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: \$1,868,290**
 - 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 2 day of August, 2016, and duly PASSED and ADOPTED this 14 day of August, 2016.



Barbara M. Christensen, City Recorder

SIGNED and APPROVED this 17 day of August, 2016.



John Stromberg, Mayor

Reviewed as to form:



David H. Lohman, City Attorney