

Council Business Meeting

January 5, 2021

Agenda Item	First Reading of the Food & Beverage Tax Allocation Ordinance	
From	Melanie Purcell	Finance Director
Contact	melanie.purcell@ashland.or.us	(541) 552-2003

SUMMARY

The Ashland City Council approved the supplemental budget on December 1, 2020 that provided for early repayment of the Wastewater Treatment Plant (WWTP) debt previously funded by Food & Beverage tax (F&B) receipts. Given that the F&B revenue will no longer be needed for that purpose, the allocation ordinance needs to be updated prior to the end of the 2021 fiscal year (FY) to ensure funds are allocated as desired by the City Council. The attached draft ordinance versions include the options to simply remove the allocation to the WWTP debt and leave the allocations as previously established or to include an allocation to repay the Wastewater Fund for the debt payment over a five-year period.

POLICIES, PLANS & GOALS SUPPORTED

Administrative/Governance goal:

“To ensure on-going fiscal ability to provide desired and required services at an acceptable level”

PREVIOUS COUNCIL ACTION

The ballot proposal adopting the food and beverage tax was approved by the voters in March 1993 to pay for “park land acquisition and sewage treatment which may include wetlands?” A subsequent election with initiatives to reduce and repeal the food and beverage tax were turned down by the voters in November 1993. In November 2009, the voters approved extending the tax through 2030 and included the explanation that “funds generated after 2022 not designated for parks will be used for wastewater treatment capital improvement projects.” The amendment to include direct any revenues not required for the wastewater debt to the Street Fund for a pavement management program was approved by voters in November 2016. The Ashland City Council approved the supplemental budget on December 1, 2020 that provided for early repayment of the Wastewater Treatment Plant (WWTP) debt previously funded by Food & Beverage tax (F&B) receipts.

BACKGROUND AND ADDITIONAL INFORMATION

There are two versions of the Food & Beverage Tax Allocation Ordinance included for City Council’s consideration. One removes the allocation for the WWTP debt and leaves the existing allocations: 25 percent to Parks acquisition, planning, development, repair and rehabilitation, 2 percent to cover costs of administration and collection, and the remainder to fund street maintenance and reconstruction. The other version includes repayment of the prepaid debt amount to the Wastewater Fund by transferring \$275,273 each year FY 2021 through FY2026 after allocations to Parks land and acquisition and City administrative costs, with the remainder to the Streets Fund. The Wastewater Fund had a retained earnings balance of \$10,085,824 as of June 30, 2020. With the payment of the debt, the balance was reduced to \$7,051,157 or approximately 70 percent of operating budget for FY2021. While the fund is intentionally building cash reserves toward capital needs, this also represents a healthy operating position and does not require repayment by the Food & Beverage Tax receipts for continued strength.

FISCAL IMPACTS

Both versions increase funds available for streets maintenance and reconstruction with the second version that includes repayment of the WWTP debt service to the Wastewater Fund providing less of an increase. All other aspects do not change from the last referendum results.

STAFF RECOMMENDATION

That the Council select and accept or modify one of the attached Food & Beverage Tax Allocation Ordinance versions.

ACTIONS, OPTIONS & POTENTIAL MOTIONS

I move to adopt the *identified* City of Ashland Food & Beverage Tax Allocation Ordinance for first reading.

REFERENCES & ATTACHMENTS

Attachment 1: Food & Beverage Tax Allocation Ordinance version without repayment of WWTP debt

Attachment 2: Food & Beverage Tax Allocation Ordinance version with repayment of WWTP debt

1 **ORDINANCE NO. 3188**

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

4 Annotated to show deletions and additions to the Ashland Municipal Code sections being
5 modified. Deletions are ~~bold-lined through~~, and additions are **bold underlined**.

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

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

8 **4.34.020 Tax Imposed.**

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

- 11 1. All food and beverages sold by restaurants located within the City to the public, except
12 for whole cakes, pies, and loaves of bread if purchased for consumption off premises, and
13 for alcoholic beverages;
- 14 2. All food and beverages sold by a caterer for an event located within the City, except
15 alcoholic beverages and exempt events as defined in AMC 4.34.030.K;
- 16 3. The following items sold by combination facilities:
 - 17 a. Salads from salad bars;
 - 18 b. Dispensed soft drinks and coffee;
 - 19 c. Sandwiches or hot prepared foods ready for immediate consumption;
 - 20 d. The following items, including toppings or additions, scooped or otherwise placed
21 into a cone, bowl or other container for immediate consumption whether or not they are
22 consumed within the confines of the premises where scooped or placed: any frozen
23 dessert regulated by the Oregon State Department of Agriculture under ORS 621.311
24 and any ice cream, ice milk, sherbet or frozen yogurt. No tax shall be imposed under
25 this subsection, however, on any item whose volume exceeds one-half (1/2) gallon or
26 more.
 - 27 e. Any other food mixed, cooked or processed on the premises in form or quantity for
28 immediate consumption whether or not it is consumed within the confines of the
29 premises where prepared; and
- 30 4. The following items sold by combination facilities that are bakeries:

- 1 a. All those items listed in subsections A.3.a-d of this section;
- 2 b. All bakery products sold for consumption on the premises; and
- 3 c. All “takeout” or “to go” orders of bakery products prepared on the premises except
- 4 for whole cakes, pies, and loaves of bread and any order consisting of six or more
- 5 bakery products.
- 6 5. Use of a delivery service for any activity under this section, whether an independent
- 7 delivery service or operator provided delivery service, does not excuse the operator from the
- 8 requirement to collect and remit the tax on the food and beverages sold.
- 9 B. Such tax shall be imposed at a rate of five percent (5%) on the total amount charged by the
- 10 seller for the food and beverages, or for the meal. In the computation of this tax any fraction of
- 11 one-half (1/2) cent or more shall be treated as one cent.
- 12 C. The taxes collected by the City under this chapter shall be used as follows:
- 13 1. Twenty-five percent (25%) **of the total taxes collected** shall be paid into a parks account
- 14 for purposes of acquisition, planning, development, repair and rehabilitation of City parks
- 15 per adopted plans of the Ashland Parks and Recreation Commission.
- 16 2. The City may retain up to two percent (2%) of the **total** tax collected for costs of
- 17 administration and collection.
- 18 3. Any taxes collected by the City under this chapter and not used as described in
- 19 subsections C.1-3 of this section shall be paid into the Street Fund and used for street
- 20 maintenance and reconstruction.
- 21 4. Beginning in fiscal year 2023, the Council may, through the statutory budget process,
- 22 appropriate taxes **collected** under this chapter as follows:
- 23 a. Not less than twenty-five percent (25%) for the acquisition, planning, development,
- 24 repair and rehabilitation of City parks.
- 25 b. Not less than an amount necessary to pay for debt service on any borrowing for
- 26 street repair and rehabilitation per the City of Ashland Pavement Management Program.
- 27 c. Up to two percent (2%) for the collection and administration of the tax.
- 28 d. Except as provided in subsection D of this section, any remaining amounts shall be
- 29 appropriated for purposes consistent with this chapter unless other purposes are
- 30 approved by a Council-adopted ordinance enacted by a vote of the Ashland electorate.

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

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

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

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

22 **SECTION 3. Severability.** Each section of this ordinance, and any part thereof, is severable,
23 and if any part of this ordinance is held invalid by a court of competent jurisdiction, the
24 remainder of this ordinance shall remain in full force and effect.

25 PASSED by the City Council this _____ day of _____, 2021.

26 ATTEST:

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29 Melissa Huhtala, City Recorder
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SIGNED and APPROVED this _____ day of _____, 2021.

Julie Akins, Mayor

Reviewed as to form:

David H. Lohman, City Attorney

- 1 a. All those items listed in subsections A.3.a-d of this section;
- 2 b. All bakery products sold for consumption on the premises; and
- 3 c. All “takeout” or “to go” orders of bakery products prepared on the premises except
- 4 for whole cakes, pies, and loaves of bread and any order consisting of six or more
- 5 bakery products.
- 6 5. Use of a delivery service for any activity under this section, whether an independent
- 7 delivery service or operator provided delivery service, does not excuse the operator from the
- 8 requirement to collect and remit the tax on the food and beverages sold.
- 9 B. Such tax shall be imposed at a rate of five percent (5%) on the total amount charged by the
- 10 seller for the food and beverages, or for the meal. In the computation of this tax any fraction of
- 11 one-half (1/2) cent or more shall be treated as one cent.
- 12 C. The taxes collected by the City under this chapter shall be used as follows:
- 13 1. Twenty-five percent (25%) **of the total taxes collected** shall be paid into a parks account
- 14 for purposes of acquisition, planning, development, repair and rehabilitation of City parks
- 15 per adopted plans of the Ashland Parks and Recreation Commission.
- 16 2. The City may retain up to two percent (2%) of the **total** tax collected for costs of
- 17 administration and collection.
- 18 3. For fiscal year FY2022 through FY2026, **\$275,273** of tax collected will be paid into the
- 19 Wastewater Fund to reimburse it for early payment of the wastewater treatment plant debt.
- 20 4. Any taxes collected by the City under this chapter and not used as described in
- 21 subsections C.1-3 of this section shall be paid into the Street Fund and used for street
- 22 maintenance and reconstruction.
- 23 5. Beginning in fiscal year 2026, the Council may, through the statutory budget process,
- 24 appropriate taxes **collected** under this chapter as follows:
- 25 a. Not less than twenty-five percent (25%) for the acquisition, planning, development,
- 26 repair and rehabilitation of City parks.
- 27 b. Not less than an amount necessary to pay for debt service on any borrowing for
- 28 street repair and rehabilitation per the City of Ashland Pavement Management Program.
- 29 c. Up to two percent (2%) for the collection and administration of the tax.
- 30

1 d. Except as provided in subsection D of this section, any remaining amounts shall be
2 appropriated for purposes consistent with this chapter unless other purposes are
3 approved by a Council-adopted ordinance enacted by a vote of the Ashland electorate.

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

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12 in a newspaper of general circulation in the City at least ten days prior to the date of the public
13 hearing.

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- 21 (e) Substitute the proper subsection, section, or chapter numbers;
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- 23 (g) Add headings for purposes of grouping like sections together for ease of reference; and
- 24 (h) Correct manifest clerical, grammatical, or typographical errors.

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26 and if any part of this ordinance is held invalid by a court of competent jurisdiction, the
27 remainder of this ordinance shall remain in full force and effect.

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PASSED by the City Council this _____ day of _____, 2021.

ATTEST:

Melissa Huhtala, City Recorder

SIGNED and APPROVED this _____ day of _____, 2021.

Julie Akins, Mayor

Reviewed as to form:

David H. Lohman, City Attorney