

Council Business Meeting

April 18, 2023

Agenda Item	Second Reading of Ordinance 3220 Amending the City’s Food and Beverage Tax to correspond with the City’s referendum ballot language for the May 16, 2023, Special Election	
From	Doug McGeary Joseph Lessard	City Attorney City Manager
Contact	doug.mcgeary@ashland.or.us ; 541-488-5350 joe.lessard@ashland.or.us ; 541-522-2103	

SUMMARY

On February 7, 2023, the City Council approved a ballot measure (referendum) for the May 16, 2023, Special Election that would amend the City’s Food and Beverage Tax Ordinance (AMC 4.34). The ballot measure requests Ashland voters approve an ordinance adopted by the City Council that dedicates Food and Beverage Tax revenues to uses for city parks, open space, recreation, and senior service purposes (uses currently under the City’s Parks and Recreation Department) as follows:

- Not less than 25% of the tax revenues will be used for capital expenses, including acquisition, planning, development, repair, and rehabilitation;
- Up to 73% of tax revenues will be used for operations, maintenance, and capital expenses;
- Tax administration will continue to be 2% of revenues.

The ballot measure extends the tax expiration date from Dec. 31, 2030, to Dec. 31, 2040 with the current 5% tax rate unchanged. Any further change to the proposed uses of the tax revenues will require a future vote by Ashland voters. The ballot measure has been submitted to the Jackson County Elections Officer for inclusion on the Special Election ballot.

Council now must adopt the ordinance that corresponds with the ballot measure submitted for the May 16th Special Election. The proposed ordinance was provided to Council in the supporting documents for the February 7th approval of the ballot measure language and is attached here for approval consideration.

FISCAL IMPACTS

The draft proposed amendment to AMC Chapter 4.34.020 will not alter the tax rate or level of revenues collected from of the Food and Beverage Tax but will broaden its allocations to 98% for City uses currently under the Parks and Recreation Department, including for operations, maintenance, and capital expenses. The proposed amendment would not increase the tax amount but does change its expiration date from Dec. 31, 2030, to Dec. 31, 2040.

STAFF RECOMMENDATION

City staff recommend adoption of the proposed Food and Beverage Tax ordinance amendment to correspond with the related ballot language for the May 16, 2023, Special Election.

ACTIONS, OPTIONS & POTENTIAL MOTIONS

I move to approve on second reading, Ordinance 3220 that corresponds with the City’s Food and Beverage Tax referendum ballot measure for the May 16, 2023, Special Called Election.

REFERENCES & ATTACHMENTS

Attachments:

1. Ordinance 3220, AMC 4.34.020 and 4.34.160 Amendments
2. Notice of Measure Election – Proposed Amendment to Ashland’s Food and Beverage Tax Ordinance

1 **ORDINANCE NO.**
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

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

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

9 **4.34.020 Tax Imposed.**

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

- 12 1. All food and beverages sold by restaurants located within the City to the public, except
13 for whole cakes, pies, and loaves of bread if purchased for consumption off premises, and
14 for alcoholic beverages;
- 15 2. All food and beverages sold by a caterer for an event located within the City, except
16 alcoholic beverages and exempt events as defined in AMC 4.34.030.K;
- 17 3. The following items sold by combination facilities:
 - 18 a. Salads from salad bars;
 - 19 b. Dispensed soft drinks and coffee;
 - 20 c. Sandwiches or hot prepared foods ready for immediate consumption;
 - 21 d. The following items, including toppings or additions, scooped or otherwise placed
22 into a cone, bowl or other container for immediate consumption whether or not they are
23 consumed within the confines of the premises where scooped or placed: any frozen
24 dessert regulated by the Oregon State Department of Agriculture under ORS 621.311
25 and any ice cream, ice milk, sherbet or frozen yogurt. No tax shall be imposed under
26 this subsection, however, on any item whose volume exceeds one-half (1/2) gallon or
27 more.
 - 28 e. Any other food mixed, cooked or processed on the premises in form or quantity for
29 immediate consumption whether or not it is consumed within the confines of the
30 premises where prepared; and
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%) shall be paid into a parks account for purposes of~~
- 14 ~~acquisition, planning, development, repair and rehabilitation of City parks per~~
- 15 ~~adopted plans of the Ashland Parks and Recreation Commission.~~
- 16 ~~2. The City may retain up to two percent (2%) of the tax collected for costs of~~
- 17 ~~administration and collection.~~
- 18 ~~3. The following amounts for fiscal years 2017 through 2022 must be used to pay for~~
- 19 ~~wastewater treatment plant debt and wastewater capital improvement projects, per~~
- 20 ~~the City of Ashland’s Capital Improvement Plan:~~
 - 21 ~~a. In fiscal year 2017: \$1,868,290.00.~~
 - 22 ~~b. In fiscal year 2018: \$1,608,600.00.~~
 - 23 ~~c. In fiscal year 2019: \$1,600,600.00.~~
 - 24 ~~d. In fiscal year 2020: \$1,600,000.00.~~
 - 25 ~~e. In fiscal year 2021: \$1,650,000.00.~~
 - 26 ~~f. In fiscal year 2022: \$1,650,000.00.~~
- 27 ~~4. Any taxes collected by the City under this chapter and not used as described in~~
- 28 ~~subsections C.1-3 of this section shall be paid into the Street Fund and used for~~
- 29 ~~street maintenance and reconstruction.~~
- 30 ~~5. Beginning in fiscal year 2023, the Council may, through the statutory budget~~
- process, appropriate taxes under this chapter as follows:

- 1 ~~a. Not less than twenty-five percent (25%) for the acquisition, planning,~~
2 ~~development, repair and rehabilitation of City parks.~~
3 ~~b. Not less than an amount necessary to pay for debt service on any~~
4 ~~borrowing for street repair and rehabilitation per the City of Ashland~~
5 ~~Pavement Management Program.~~
6 ~~c. Up to two percent (2%) for the collection and administration of the tax.~~
7 ~~d. Except as provided in subsection D of this section, any remaining amounts~~
8 ~~shall be appropriated for purposes consistent with this chapter unless other~~
9 ~~purposes are approved by a Council-adopted ordinance enacted by a vote of~~
10 ~~the Ashland electorate.~~

11 **C. The taxes collected under this chapter shall be used for city parks, open space,**
12 **recreation, and senior services as follows subject to other Ashland Municipal Codes and**
13 **City financial and administrative policies:**

- 14 1. **Not less than twenty-five percent (25%) for capital expenses, including**
15 **acquisition, planning, development, repair and rehabilitation.**
16 2. **Up to seventy-three percent (73%) for operations and maintenance and the uses**
17 **of subsection 3.C.1 above.**
18 3. **The City will retain two percent (2%) of the tax collected for costs of tax**
19 **administration and collection.**
20 4. **Amounts shall be appropriated in the City's General Fund for purposes consistent**
21 **with this chapter unless other purposes are approved by a Council-adopted**
22 **ordinance enacted by a vote of the Ashland electorate.**
23

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

28 **SECTION 2.** Ashland Municipal Code 4.34.160 is hereby amended as follows:

29 **4.34.160 Termination of tax**

30 This chapter shall expire on December 31, ~~2030~~ **2040**, unless extended by a vote of the
electorate.

1 **SECTION 3. Codification.** In preparing this ordinance for publication and distribution, the
2 City Recorder shall not alter the sense, meaning, effect, or substance of the ordinance, but within
3 such limitations, may:

- 4 (a) Renumber sections and parts of sections of the ordinance;
- 5 (b) Rearrange sections;
- 6 (c) Change reference numbers to agree with renumbered chapters, sections or other parts;
- 7 (d) Delete references to repealed sections;
- 8 (e) Substitute the proper subsection, section, or chapter numbers;
- 9 (f) Change capitalization and spelling for the purpose of uniformity;
- 10 (g) Add headings for purposes of grouping like sections together for ease of reference; and
- 11 (h) Correct manifest clerical, grammatical, or typographical errors.

12 **SECTION 4. Severability.** Each section of this ordinance, and any part thereof, is severable,
13 and if any part of this ordinance is held invalid by a court of competent jurisdiction, the
14 remainder of this ordinance shall remain in full force and effect.

15 **SECTION 5. Referral.** This ordinance is referred to the electors of the City of Ashland for
16 approval at the next local special election on May 16, 2023.

17 **SECTION 6. Effective Date.** This ordinance takes effect and becomes operative thirty (30)
18 days after the day on which it is approved by a majority of the voters.

19 PASSED by the City Council this _____ day of _____, 2023.

20 PASSED by the City Council this _____ day of _____, 2023.

21 ATTEST:

22 _____
23 Melissa Huhtala, City Recorder

24 SIGNED and APPROVED this _____ day of _____, 2023.

25 _____
26 Tonya Graham, Mayor

27 Reviewed as to form:

28
29
30 Douglas M McGeary, Acting City Attorney

Notice of Measure Election

City

SEL 802

rev 01/18 ORS 250.035, 250.041,
250.275, 250.285, 254.095, 254.465

Notice		
Date of Notice March 16, 2023	Name of City or Cities City of Ashland	Date of Election May 16, 2023
Final Ballot Title The following is the final ballot title of the measure to be submitted to the city's voters. The ballot title notice has been published and the ballot title challenge process has been completed.		
Caption 10 words which reasonably identifies the subject of the measure.		
Proposed Amendments to Ashland's Food and Beverage Tax Ordinance		
Question 20 words which plainly phrases the chief purpose of the measure.		
Shall the ordinance be amended to dedicate revenues to city parks, open space, recreation, and senior service purposes?		
Summary 175 words which concisely and impartially summarizes the measure and its major effect.		
<p>A "Yes" vote for this measure authorizes the City of Ashland to use the Food and Beverage Tax for city parks, open spaces, recreation, and senior service purposes as follows, consistent with City policies and practices: twenty-five percent (25%) for capital expenses including acquisition, planning, development, repair, and rehabilitation; seventy-three percent (73%) for operations, maintenance, or capital expenses. Two percent (2%) of the tax will be used for administration of the tax.</p> <p>The tax rate will remain unchanged at 5%, and any increase to the tax rate or change of its use will require voter approval. The expiration date of the tax will be December 31, 2040.</p> <p>A "No" vote means the existing Food and Beverage Tax allocation will stay the same, with tax revenues going towards park capital expenses (not less than 25%), street repair debt or parks capital expenses (up to 73%), and tax administration (2%).</p>		
Explanatory Statement 500 words that impartially explains the measure and its effect.		
<p>If the county is producing a voters' pamphlet an explanatory statement must be drafted and attached to this form for:</p> <p>→ any measure referred by the city governing body; or</p> <p>→ any initiative or referendum, if required by local ordinance.</p> <p style="text-align: right;">Explanatory Statement Attached? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p>		
Authorized City Official Not required to be notarized.		
Name Douglas M McGeary	Title Acting City Attorney	
Mailing Address 20 East Main Street, Ashland, OR 97520	Contact Phone 541-552-2107	
<p><i>By signing this document:</i></p> <p>→ I hereby state that I am authorized by the city to submit this Notice of Measure Election; and</p> <p>→ I certify that notice of receipt of ballot title has been published and the ballot title challenge process for this measure completed.</p>		

Signature

03-06-2023

Date Signed

EXPLANATORY STATEMENT FOR COUNTY VOTERS' PAMPHLET

NAME OF PERSON RESPONSIBLE FOR CONTENT: Douglas M McGeary, Acting City Attorney

NAME OF ORGANIZATION PERSON REPRESENTS, IF ANY: City of Ashland

BALLOT TITLE CAPTION: Proposed Amendment to Ashland's Food and Beverage Tax Ordinance

MEASURE NUMBER: _____

(Explanatory Statement Shall Be Typed)

The Food & Beverage Tax has been authorized by a public vote of the City of Ashland ' s residents since 1995 to be used for major capital improvements, including to the city ' s wastewater system, streets, and City parks. The City's current Food and Beverage Tax Ordinance requires that not less than twenty-five percent (25%) of the tax collected be appropriated for the capital expenses of acquisition, planning, development, repair, and rehabilitation of City parks. Up to two percent (2%) may be appropriated for administration of the tax. The remaining amount, seventy-three percent (73%), may be appropriated for street repair or for City parks capital expenses.

This Measure authorizes the City to appropriate twenty-five percent (25%) of the tax collected exclusively for City parks capital expenses and two percent (2%) for administration of the tax. The remaining amount, seventy-three percent (73%), will be appropriated more broadly for parks, open space, recreation, and senior services purposes, including for these purposes ' operations, maintenance, and capital expenses.

This measure also extends the expiration date of the Food and Beverage Tax to December 31, 2040. The tax rate remains unchanged at 5%. If passed, this ordinance will become effective upon approval and any future changes to authorized uses, tax rate or expiration date will require Ashland voter approval.

Result of a "No" Vote

If this measure does not pass, the existing food and beverage tax ordinance will remain in place, with tax revenues directed to City parks capital expenses (at least 25%), street repair debt (up to 73%) and for tax administration (up to 2%), and the expiration date remains December 31, 2030.

WORD COUNT TOTAL: 267

THE TOTAL WORD COUNT CANNOT EXCEED 500 WORDS.



03/06/2023

SIGNATURE OF PERSON RESPONSIBLE FOR THE CONTENT OF THE EXPLANATORY STATEMENT

DATE