

Council Business Meeting

August 2, 2022

Agenda Item	Consideration of ballot referendum item for the November 8, 2022, General Election: <ul style="list-style-type: none">• Second reading of Ordinance 3212 amending AMC Chapter 4.34, Food and Beverage Tax• Approve of Resolution 2022-23 referring Ordinance 3212 to City Elections Officer	
From	Joseph Lessard Doug McGeary	City Manager City Attorney
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SUMMARY

At the City Council's Business Meeting of July 19, 2022, the City Council approved first reading of an ordinance to be referred to a public vote of the citizens of Ashland that would accomplish the following:

Amend AMC Chapter 4.34, Food & Beverage Tax, to authorize its use as follows:

- Not less than 25% of revenues for parks, open spaces and trails, and recreation purposes
- Up to 73% of revenues for general government purposes, including public safety, wildfire prevention, city parks, open space and trails, recreation, senior services, and emergency event housing purposes.
- Tax administration to continue to be 2% of revenues
- The tax would also be extended until Dec. 31, 2040

The above ballot item was put forward as the City Manager's recommended proposal for the future use of the Food and Beverage Tax at the City Council's June 14, 2022, Special Called Business Meeting.

To approve the above item for consideration by the citizens of Ashland, the City Council will need to take the following steps:

- Conduct second reading of the proposed ordinance at either the Aug. 2 or Aug. 16 City Council Business Meeting
- With second reading of the ordinance, adopt a formal resolution submitting the corresponding ballot measure to the City of Ashland's Elections Officer (the City Recorder) for submittal to the Jackson County Elections Officer no later than August 19, 2022, for inclusion as a referendum item on the Nov. 8, 2022, General Election ballot.

FISCAL IMPACTS

The proposed alternative amendments to AMC Chapter 4.34 set forth in proposed Ordinance No. 3212 will not alter the tax rate or level of revenues collected from of the Food and Beverage Tax but will broaden its possible uses beyond city park capital improvements to the General Fund uses, including those referenced above and in the attached Ordinance 3212.

STAFF RECOMMENDATION

City staff recommends referring Ordinance 3212 on the Food and Beverage Tax to be included as a ballot measure for public vote at the November 8, 2022, General Election.

ACTIONS, OPTIONS & POTENTIAL MOTIONS

The following two actions by the City Council are necessary to advance Ordinance 3212 to a public vote:

- I move to approve Second Reading of Ordinance No. 3212 relating to the Food and Beverage Tax

- I move to adopt Resolution No. 2022-23 referring Ordinance No. 3212 to the City's Elections Officer for a vote of the qualified voters of the City of Ashland at the November 8, 2022, General Election.

REFERENCES & ATTACHMENTS

Attachment 1. Proposed Ordinance No. 3212 Relating to the Food and Beverage Tax; Amending AMC 4.34.020 and 4.34.160 (the City Manager's recommended proposal for general government use)

Attachment 2. Draft referring resolution (to be completed or finalize depending on which ordinance is referred to the Nov. 8th General Election)

1 **ORDINANCE NO. 3212**

2 **AN ORDINANCE RELATING TO THE FOOD AND BEVERAGE TAX; AMENDING**
3 **AMC 4.34.020 AND AMC 4.34.160**

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**.

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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 for
13 whole cakes, pies, and loaves of bread if purchased for consumption off premises, and for
14 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 into
22 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 and
25 any ice cream, ice milk, sherbet or frozen yogurt. No tax shall be imposed under this
26 subsection, however, on any item whose volume exceeds one-half (1/2) gallon or 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

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- 1 4. The following items sold by combination facilities that are bakeries:
2 a. All those items listed in subsections A.3.a-d of this section;
3 b. All bakery products sold for consumption on the premises; and
4 c. All “takeout” or “to go” orders of bakery products prepared on the premises except for
5 whole cakes, pies, and loaves of bread and any order consisting of six or more bakery
6 products.

7 5. Use of a delivery service for any activity under this section, whether an independent
8 delivery service or operator provided delivery service, does not excuse the operator from the
9 requirement to collect and remit the tax on the food and beverages sold.

10 B. Such tax shall be imposed at a rate of five percent (5%) on the total amount charged by the
11 seller for the food and beverages, or for the meal. In the computation of this tax any fraction of
12 one-half (1/2) cent or more shall be treated as one cent.

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

14 1. ~~Not less than twenty-five~~ **Twenty-five** percent (25%) shall be ~~paid into a parks account~~
15 **used** for purposes of acquisition, planning, development, **operation, maintenance,** repair
16 and rehabilitation of City parks, **open spaces, and trails and for recreation or senior**
17 **programs** per adopted plans of the Ashland Parks and Recreation Commission.

18 **2. Up to seventy-three percent (73%) may be used for general government purposes**
19 **including, but not limited to, public safety, wildfire prevention, and emergency event**
20 **housing.**

21 ~~3.2.~~ The City may retain up to two percent (2%) of the tax collected for costs of
22 administration and collection.

23 ~~3. The following amounts for fiscal years 2017 through 2022 must be used to pay for~~
24 ~~wastewater treatment plant debt and wastewater capital improvement projects, per the~~
25 ~~City of Ashland’s Capital Improvement Plan:~~

- 26 ~~a. In fiscal year 2017: \$1,868,290.00.~~
27 ~~b. In fiscal year 2018: \$1,608,600.00.~~
28 ~~c. In fiscal year 2019: \$1,600,600.00.~~
29 ~~d. In fiscal year 2020: \$1,600,000.00.~~
30 ~~e. In fiscal year 2021: \$1,650,000.00.~~

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- ~~f. In fiscal year 2022: \$1,650,000.00.~~
- ~~4. Any taxes collected by the City under this chapter and not used as described in subsections C.1-3 of this section 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 D of this section, 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 subsections A and B of this section after a public hearing. Notice of the hearing shall be given by publication in a newspaper of general circulation in the City at least ten **(10)** days prior to the date of the public hearing. **Such notice may be published in the online or electronic version of such newspaper.**

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

4.34.160 Termination of Tax

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

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

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

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

12 **SECTION 5. Referral.** This ordinance is referred to the electors of the City of Ashland for
13 approval at the next statewide general election on November 8, 2022.

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

16 PASSED by the City Council this _____ day of _____, 2022.

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18 ATTEST:

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21 _____
22 Melissa Huhtala, City Recorder

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24 SIGNED and APPROVED this _____ day of _____, 2022.

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27 _____
28 Julie Akins, Mayor

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1 Reviewed as to form:

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Katrina L. Brown, City Attorney

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1 **RESOLUTION NO. 2022-22**

2 A RESOLUTION OF THE CITY OF ASHLAND SUBMITTING TO THE VOTERS
3 AT THE NOVEMBER 8, 2022 GENERAL ELECTION PROPOSED AMENDMENTS TO
4 CHAPTER 4.34 OF THE ASHLAND MUNICIPAL CODE RELATED TO
5 THE FOOD AND BEVERAGE TAX

6 **NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ASHLAND, OREGON,
7 RESOLVES AS FOLLOWS:**

8 SECTION 1. The City Council submits to the qualified voters of the City of Ashland the
9 question of approving or rejecting amendments to Chapter 4.34 of the Ashland Municipal Code
10 related to the City’s food and beverage tax and which shall become effective only upon its
11 passage by the electorate.

12 SECTION 2. The City Council hereby refers this question to the ballot of the November 8, 2022
13 General Election.

14 SECTION 3. The City Recorder shall cause to be delivered to the Elections Officer of Jackson
15 County, Oregon, the ballot title attached hereto as “Exhibit A” and fully incorporated herein by
16 this reference.

17 SECTION 4. The City Attorney is hereby authorized to alter the text of the ballot title to comply
18 with any rules, procedures, or practices of the Elections Officer of Jackson County, Oregon, to
19 implement the requirement of Oregon law.

20 SECTION 5. This resolution is effective upon adoption.

21 ADOPTED by the City Council this _____ day of _____, 2022.

22 ATTEST:

23 _____
24 Melissa Huhtala, City Recorder

25 SIGNED and APPROVED this _____ day of _____, 2022.

26 _____
27 Julie Akins, Mayor

1 Reviewed as to form:

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Katrina L. Brown, City Attorney

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EXHIBIT A (CITY MANAGER)

BALLOT TITLE

CAPTION: PROPOSED AMENDMENTS TO ASHLAND'S FOOD AND BEVERAGE TAX ORDINANCE

QUESTION: SHALL THE ORDINANCE BE AMENDED TO DEDICATE A PORTION OF REVENUES TO GENERAL GOVERNMENT SERVICES AND EXTEND THE SUNSET DATE?

SUMMARY: THE CITY OF ASHLAND'S CURRENT FOOD AND BEVERAGE TAX ORDINANCE REQUIRES THAT NOT LESS THAN TWENTY-FIVE PERCENT OF THE TAX COLLECTED BE APPROPRIATED FOR THE ACQUISITION, PLANNING, DEVELOPMENT, REPAIR AND REHABILITATION OF CITY PARKS. UP TO TWO PERCENT MAY BE APPROPRIATED FOR THE COLLECTION AND ADMINISTRATION OF THE TAX. THE REMAINING AMOUNT MAY BE APPROPRIATED FOR STREET REPAIR AND FOR PARKS.

THIS MEASURE WOULD REQUIRE THAT NOT LESS THAN TWENTY-FIVE PERCENT OF THE TAX BE APPROPRIATED FOR PARKS AND WOULD ALLOW UP TO SEVENTY-THREE PERCENT TO BE USED FOR GENERAL GOVERNMENT PURPOSES INCLUDING PUBLIC SAFETY, WILDFIRE PREVENTION, AND EMERGENCY EVENT HOUSING. THIS MEASURE WOULD ALLOW THE TAX TO BE USED FOR PARKS OPERATIONS AND MAINTENANCE IN ADDITION TO ACQUISITION, PLANNING, DEVELOPMENT, REPAIR AND REHABILITATION. IT WOULD EXTEND THE EXPIRATION DATE OF THE TAX TO DECEMBER 31, 2040. IT WOULD BECOME EFFECTIVE UPON APPROVAL OF ASHLAND VOTERS.

THIS MEASURE WOULD NOT CHANGE THE CURRENT TAX RATE OF FIVE PERCENT (5%) AND PROVIDES THAT THE TAX RATE AND USE OF TAX COULD NOT CHANGE WITHOUT VOTER APPROVAL.