

An amendment to the City of Ashland's Food and Beverage Tax Ordinance as proposed by petitioners has been requested to be placed on the ballot for the November 8, 2022 General Election for Jackson County.

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

QUESTION: Shall the ordinance be amended to dedicate most revenues received for parks and open space 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 (25%) of the tax collected be appropriated for the acquisition, planning, development, repair, and rehabilitation of City of Ashland parks. Up to two percent (2%) may be appropriated for the collection and administration of the tax. The remaining amount may be appropriated for street repair and rehabilitation and for parks.

This measure would require that not less than ninety-eight percent (98%) of the tax be appropriated for City parks. 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 from December 31, 2030, 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.

Result of a "no" vote: Ashland's current ordinance language would remain in effect.

Any objections to the ballot title must be filed with circuit court within seven (7) business days pursuant to ORS 250.296.

Prospective Petition

Local Initiative and Referendum

SEL 370

rev. 01/22 ORS 250.045,
250.165, 250.265, 255.135

received
6/3/22
M.H.H.

Warning Supplying false information on this form may result in conviction of a felony with a fine of up to \$125,000 and/or prison for up to 5 years. Each chief petitioner is required to provide, on the same form, their name, residence address, contact phone number and signature attesting that the information on the form is true and correct. Changes to the information provided for a chief petitioner or to the circulator pay status must be reported to the filing officer no later than the 10th day after a chief petitioner first has knowledge or should have had knowledge of the change. At least one original chief petitioner must remain throughout the petition process or the petition is void.

Petition Information		Type	
This filing is an	<input type="checkbox"/> Original <input type="checkbox"/> Amendment	<input checked="" type="checkbox"/> Initiative	<input type="checkbox"/> Referendum

Jurisdiction		Some Circulators may be Paid	
<input type="checkbox"/> County	<input checked="" type="checkbox"/> City <input type="checkbox"/> District	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No

Title Subject or name you give your petition
Funding Ashland Parks, Trails and open space with Food and Beverage Tax Revenue

Petition Correspondence Select the method of receiving notices or other correspondence from the Filing Officer.

Correspondence Recipient Email Chief Petitioners Mail Chief Petitioners

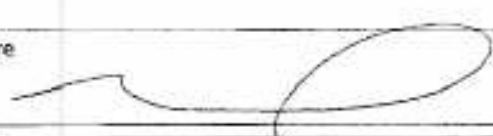
Recipient Information

Name	Email Address
<i>Mark Knox</i>	<i>knox@mind.net</i>

Chief Petitioner Information Only chief petitioner's residential city and state will appear on petition sheets.

→ By signing this document, I hereby state that all information on the form is true and correct and attest that no circulators will be compensated money or other valuable consideration on this petition based on the number of signatures obtained by the circulator.

Name	Contact Phone
<i>Michael A. Gardiner</i>	<i>541-840-2487</i>
Residence Address street, city, state, zip	
<i>349 Orange St., Ashland, OR, 97520</i>	
Mailing Address if different	Email Address
	<i>michaelgardiner52@gmail.com</i>
Signature	Date Signed
<i>MA Gardiner</i>	<i>5/25/22</i>

Name	Contact Phone
<i>MARK KNOX</i>	
Residence Address street, city, state, zip	
<i>670 NE PENTHA ROAD</i>	
Mailing Address if different	Email Address
	<i>KNOX@MIND.NET</i>
Signature	Date Signed
	<i>5/31/22</i>

Name	Contact Phone
Residence Address street, city, state, zip	
Mailing Address if different	Email Address
Signature	Date Signed

CAPTION: PROPOSED AMENDMENT TO THE FOOD AND BEVERAGE TAX ORDINANCE

QUESTION: SHALL THE ORDINANCE BE AMENDED TO DEDICATE FUNDS TO PARKS, TRAILS AND OPEN SPACE AND EXTEND THE SUNSET DATE?

SUMMARY: ASHLAND PARK COMMISSION (PARKS) CURRENTLY RECEIVES NO LESS THAN 25% OF THE TOTAL REVENUE FROM THE FOOD AND BEVERAGE TAX. THIS MEASURE PROPOSES AN AMENDMENT TO THE ORDINANCE TO DEDICATE NO LESS THAN 100% OF REVENUES RECEIVED (MINUS 2% FOR ADMINISTRATIVE COSTS) FROM THE TAX TO PARKS AND EXTENDS THE CURRENT EXPIRATION DATE FROM DECEMBER 31, 2030 TO DECEMBER 31, 2040. THE ORDINANCE WOULD BECOME EFFECTIVE UPON APPROVAL OF ASHLAND VOTERS.

PURSUANT TO A 2016 ORDINANCE AMENDMENT, 75% OF FUNDS FROM CURRENT FOOD AND BEVERAGE TAX REVENUE MAY BE SPLIT BETWEEN PARKS AND STREETS AT THE DISCRETION OF THE CITY COUNCIL. THIS MEASURE WILL COMMIT THE CITY COUNCIL TO DIRECT 100% OF FOOD AND BEVERAGE TAX REVENUE TO ASHLAND PARK COMMISSION FOR PARKS, TRAILS AND OPEN SPACE ACQUISITION, DEVELOPMENT, REPAIR AND MAINTENANCE.

THE ORDINANCE DOES NOT CHANGE THE CURRENT TAX RATE OF 5% AND PROVIDES THAT THE TAX RATE AND USE OF TAX REVENUE CANNOT CHANGE WITHOUT VOTER APPROVAL.

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THE ORDINANCE DOES NOT CHANGE THE CURRENT TAX RATE OF 5% AND PROVIDES THAT THE TAX RATE AND USE OF TAX REVENUE CANNOT CHANGE WITHOUT VOTER APPROVAL.

EXPLANATORY STATEMENT: THE CITY OF ASHLAND FIRST ENACTED A FOOD AND BEVERAGE (F&B) TAX—A TAX ON PREPARED FOOD AND NON-ALCOHOLIC BEVERAGES SOLD BY RESTAURANTS AND CATERERS—IN 1993. THE TAX WAS CREATED TO PROVIDE A REVENUE STREAM FOR THE ACQUISITION OF OPEN SPACE AND PARK LAND. 100% (MINUS 2% FOR ADMINISTRATIVE COSTS) OF ALL COLLECTED REVENUE WAS DEDICATED TO PARKS.

THE CITY COUNCIL SUBSEQUENTLY AMENDED THE F&B TAX RATE TO INCREASE REVENUES TO PAY FOR THE CITY'S WASTEWATER TREATMENT PLANT UPGRADES. UNDER THE CURRENT ORDINANCE VERSION, NO LESS THAN 25% GOES TO PARKS AND 75% GOES TO WASTEWATER DEBT. THE WASTEWATER DEBT IS NOW PAID., SO NOW THE CITY COUNCIL HAS DISCRETION TO DISTRIBUTE ITS SHARE OF FUNDING (75%) TO EITHER THE PARKS FUND OR THE CITY STREETS FUND.

PASSAGE OF THIS BALLOT MEASURE WILL ENACT AN ORDINANCE THAT AMENDS THE CURRENT F&B TAX ORDINANCE AND COMMITS THE CITY COUNCIL TO DIRECT 100% OF F&B TAX REVENUE TO ASHLAND PARK COMMISSION FOR PARKS, TRAILS AND OPEN SPACE ACQUISITION, DEVELOPMENT, REPAIR AND MAINTENANCE. THIS MEASURE DOES NOT INCREASE THE TAX RATE. UNDER THE PROPOSED AMENDED ORDINANCE, ANY CHANGES TO THE F&B TAX RATE OR TO THE DISTRIBUTION OF FUNDING MUST BE APPROVED BY ASHLAND VOTERS.

PARKS HAS BEEN FUNDED FOR MORE THAN 100 YEARS THROUGH THE CITY'S GENERAL FUND. SINCE 1993, PARKS HAS RECEIVED UP TO 25% OF THE F&B TAX REVENUE FOR PROPERTY ACQUISITION AND MAJOR MAINTENANCE PROJECTS. COMMITTING 100% OF THE F&B TAX REVENUE TO PARKS WILL PROVIDE A DEDICATED FUNDING SOURCE FOR PARKS, TRAILS AND OPEN SPACE AND WILL REDUCE PARK'S DEPENDENCY ON THE CITY'S GENERAL FUND REVENUE (PROPERTY TAXES).

REVENUE FROM THIS TAX WOULD BE LIMITED TO PARKS, TRAILS AND OPEN SPACE RELATED ACQUISITION, PLANNING, DEVELOPMENT, REPAIR, MAJOR MAINTENANCE, REHABILITATION OF PARKS

2022 PROPOSED AMENDMENT TO FOOD AND BEVERAGE TAX ORDINANCE

ASHLAND MUNICIPAL CODE CHAPTER 4.34 – TAX IMPOSED

SECTIONS:

- 4.34.010 Definitions
- 4.34.020 Tax Imposed
- 4.34.030 Exemptions
- 4.34.040 Operator's Duties
- 4.34.050 Reporting and Remitting
- 4.34.060 Penalties and Interest
- 4.34.070 Failure to Collect and Report Tax – Determination of Tax by Director
- 4.34.080 Appeal
- 4.34.090 Records
- 4.34.100 Refunds
- 4.34.110 Actions to Collect
- 4.34.120 Violations
- 4.34.130 Confidentiality
- 4.34.140 Examining Books, Records, or Persons
- 4.34.160 TERMINATION OF TAX

Referred to voters by Resolution No. 2009-22 for 11/02/2009 election - Approved by the voters YES 4130; NO 2894 - Effective December 1, 2009

Referred to voters by Resolution No. 93-02 for 3/23/93 election - Approved by the voters YES 3658; NO 2980 - Effective July 1, 1993

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. Ashland Park Commission has the same meaning as set forth in Section 2 of Article XIX of the Ashland City Charter and the Ashland Recreation Commission has the same meaning as set forth in Article XXII of the Ashland City Charter.
- B. "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.
- C. "Combination facility" has the same meaning as defined in OAR 333-150-0000(4)(i) which the State of Oregon Department of Agriculture licenses or inspects under OAR 333-158-0000.

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 subsections A.3.a-d of this section;

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 (1/2) cent or more shall be treated as one cent.

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

1. Twenty-five percent (25%) shall be paid into the Ashland Park Commission Capital Improvement Program (CIP) Fund account for purposes of funding parks, trails and open space related ~~a parks account for purposes of acquisition, planning, development, repair, maintenance and rehabilitation of Park, and Open Space lands, facilities and amenities of City parks per consistent with~~ adopted plans of the Ashland Parks and Recreation Commission.

2. Seventy-three percent (73%) shall be paid into the Ashland Park Commission General Fund account for the purposes of funding parks, trails and open space related day-to-day operating expenses consistent with the adopted operating budget of the Ashland Park Commission.

3. 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: \$1,868,290.00.~~

~~b. In fiscal year 2018: \$1,608,600.00.~~

~~c. In fiscal year 2019: \$1,600,600.00.~~

~~d. In fiscal year 2020: \$1,600,000.00.~~

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 nonimmediate consumption off the premises including but not limited to ice cream packed in a container of one-half (1/2) 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 \$5,000.00, in which case, the applicable food and beverage tax shall not be excused but shall be capped at \$250.00. (Ord. 3133, amended, 08/16/2016; Ord. 2991, amended, 12/01/2009)

4.34.040 OPERATOR'S DUTIES

Each operator shall collect the tax imposed by this chapter, to the same extent and at the same time as the amount for the food or beverage is collected from every purchaser. The amount of tax need not be separately stated from the amount of the food or beverage. Every operator required to collect the tax imposed in this chapter shall be entitled to retain five percent of all taxes collected to defray the costs of collections and remittance. (Ord. 3133, amended, 08/16/2016; Ord. 2991, amended, 12/01/2009)

4.34.050 REPORTING AND REMITTING

A. Reporting. Every operator shall, on or before the last day of the month following the end of each calendar quarter (in the months of April, July, October and January), make a return to the Director, on forms provided by the City, specifying the total sales subject to this chapter and the amount of tax collected under this chapter. The operator may request or the Director may establish shorter reporting periods for any operator if the operator or director deems it necessary in order to insure collection of the tax and the Director may require further information in the return relevant to payment of the liability. A return shall not be considered filed until it is actually received by the Director.

B. Remitting. At the time the return is filed, the full amount of the tax collected shall be remitted to the Director. Payments received by the Director for application against existing liabilities will be credited toward the period designated by the taxpayer under conditions which are not prejudicial to the interest of the City. A condition which is considered prejudicial is the imminent expiration of the statute of limitations for a period or periods.

C. Order of Payments. Nondesignated 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

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 AMC 4.34.080. If no appeal is filed, the Director's determination is final and the amount thereby is immediately due and payable. (Ord. 3133, amended, 08/16/2016; Ord. 2991, amended, 12/01/2009; Ord. 2885, amended, 08/06/2002)

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 make 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. 3133, amended, 08/16/2016; Ord. 2991, amended, 12/01/2009; Ord. 2885, amended, 08/06/2002)

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. 3133, amended, 08/16/2016; Ord. 2991, amended, 12/01/2009)

4.34.100 REFUNDS

A. Whenever the amount of any tax, interest or penalty has been overpaid or paid more than once, or has been erroneously or illegally collected or received by the City under this chapter, it may be refunded as provided in subsection 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.

- A. The disclosure of the names and addresses of any person who is 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; or
- D. The disclosure of information when such disclosure of conditionally exempt information is ordered under public records law procedures; or
- 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. 3133, amended, 08/16/2016; Ord. 2991, amended, 12/01/2009; Ord. 2885, amended, 08/06/2002)

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. 3133, amended, 08/16/2016; Ord. 2991, amended, 12/01/2009; Ord. 2885, amended, 08/06/2002)

4.34.160 TERMINATION OF TAX

This chapter shall expire on December 31, ~~2030~~ 2040, unless extended by a vote of the electorate. (Ord. 3133, amended, 08/16/2016; Ord. 2991, amended, 12/01/2009)