

# Council Business Meeting

August 17, 2021

<b>Agenda Item</b>	Second Reading of Ordinance No. 3201 Relating to Transient Occupancy Taxes; Repealing and Replacing AMC Chapter 4.24, Amending AMC 2.29.005, AMC 2.29.180, AMC 6.04.020, and AMC 13.03.060	
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## **SUMMARY**

This is the Second Reading of proposed Ordinance No. 3201 relating to the Transient Occupancy Tax and repealing and replacing Ashland Municipal Code (AMC) Chapter 4.24. First reading of the Ordinance took place on August 3, 2021, and the Council approved it for Second Reading with no amendments. Proposed Ordinance No. 3201 will update AMC Chapter 4.24 to reflect recent changes made to the ORS and to allow the Department of Revenue to collect transient occupancy taxes for the City of Ashland. The State of Oregon requirements for implementation of the intergovernmental agreement for administration of the tax with the State Department of Revenue were approved by City Council on April 16, 2021. Oregon has updated its standards for taxes on levied on short-term stays since the City of Ashland last amended its ordinance; this revision brings it current with all state requirements and retains the current rates.

## **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**

City Council adopted an intergovernmental agreement with the Oregon Department of Revenue to administer the occupancy tax on April 16, 2021. This agreement leverages the State’s ability to collect across local jurisdictions and negotiate greater compliance with multiple platforms. The cost to administer the tax through this agreement is significantly less than performing the tasks with City staff and should generate greater participation.

## **BACKGROUND AND ADDITIONAL INFORMATION**

In agreement with the Cost-Review Ad-Hoc Committee, City staff have sought opportunities for cost-effective outsourcing of City services and where the cost is lower for similar or better services, have recommended agreements to City Council for consideration. The adoption of the amended ordinance is required for implementation of the agreement and represents no fiscal changes for the City’s occupancy tax.

## **FISCAL IMPACTS**

The City will save \$7,650 for the audit and \$68,887 in staff costs for a total of \$76,537 per year. The administrative cost for the State is estimated to be \$19,950 per year for a total savings \$56,587 per year.

## **STAFF RECOMMENDATION**

That Council approved second reading of the amended Transient Lodging Tax.

## **ACTIONS, OPTIONS & POTENTIAL MOTIONS**

I move to approve second reading of Ordinance No. 3201 relating to Transient Occupancy Taxes; repealing and replacing AMC Chapter 4.24, amending AMC 2.29.005, AMC 2.29.180, AMC 6.04.020, and AMC 13.03.060.

## **REFERENCES & ATTACHMENTS**

Attachment 1: Ordinance No. 3201 relating to Transient Occupancy Taxes; repealing and replacing AMC Chapter 4.24, amending AMC 2.29.005, AMC 2.29.180, AMC 6.04.020, and AMC 13.03.060



1 **F. “Rent” means the consideration paid or payable by an occupant for the occupancy of**  
2 **space in transient lodging valued in money, goods, labor, credits, property, or other**  
3 **consideration. If a separate fee is charged for services, goods or commodities and the fee is**  
4 **optional, that fee is not included in rent.**

5 **G. “Short-Term Rental” means a house, duplex, multi-plex, apartment, condominium,**  
6 **houseboat, trailer, or other residential dwelling unit where a person rents a guest bedroom**  
7 **or the entire residential dwelling unit for transient lodging occupancy. Generally, a short-**  
8 **term rental is zoned residential or has a building occupancy that only allows for residential**  
9 **use.**

10 **H. “Short-Term Rental Hosting Platform” means a business or other person that**  
11 **facilitates the retail sale of transient lodging by connecting occupants with transient lodging**  
12 **providers, either online or in any other manner. Short-term rental hosting platforms are**  
13 **transient lodging intermediaries.**

14 **I. “Tax Administrator” means the Director of Finance or the Director’s designee.**

15 **J. “Transient lodging” means:**

16 **(a) Hotel, motel, and inn dwelling units that are used for temporary overnight human**  
17 **occupancy;**

18 **(b) Spaces used for parking recreational vehicles or erecting tents during periods of**  
19 **human occupancy; or**

20 **(c) Houses, cabins, condominiums, apartment units, or other dwelling units, or portions**  
21 **of any of these dwelling units, that are used for temporary human occupancy.**

22 **K. “Transient lodging intermediary” means a person other than a transient lodging**  
23 **provider that facilitates the retail sale of transient lodging and:**

24 **1. Charges for occupancy of the transient lodging;**

25 **2. Collects the consideration charged for occupancy of the transient lodging; or**

26 **3. Receives a fee or commission and requires the transient lodging provider to use a**  
27 **specified third-party entity to collect the consideration charged for occupancy of the**  
28 **transient lodging.**

29 **L. “Transient lodging provider” means a person that furnishes transient lodging.**

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1 M. “Transient lodging tax,” “TLT,” or “tax” means the tax imposed on the sale, service, or  
2 furnishing of transient lodging.

3 N. “Transient lodging tax collector” means a transient lodging provider or a transient  
4 lodging intermediary.

5 4.24.030 Tax Imposed

6 A. For the privilege of occupancy in any transient lodging, each occupant is subject to and  
7 must pay a transient lodging tax or “TLT” in the amount set by resolution of the City  
8 Council. Such TLT is to be paid with the rent to the transient lodging tax collector. TLT  
9 amounts shall be rounded down to the nearest cent. The transient lodging tax collector  
10 shall maintain accurate records of all rent charged and TLT payments received. If rent is  
11 paid in installments, a proportionate share of the TLT shall be paid by the occupant to the  
12 transient lodging tax collector with each installment unless the occupant pays the entire  
13 amount with the first payment.

14 B. Bills, receipts, or invoices provided to occupants shall list the TLT separately and must  
15 accurately state the amount of tax. All amounts listed as TLT on invoices, bills, or receipts  
16 must be reported as TLT and, after collection, must be turned over to the City, less the  
17 percent administrative charge.

18 4.24.040 Collection Of Tax By Transient Lodging Tax Collector

19 A. Every transient lodging tax collector shall collect the TLT at the time rent is paid,  
20 unless an exemption applies. If payment is by credit card, for purposes of this section,  
21 payment is made at the time credit card information is provided to the transient lodging  
22 tax collector, not when the transient lodging tax collector ultimately receives credit for the  
23 transaction. While holding the payment in trust for the City, a transient lodging tax  
24 collector may commingle the tax proceeds with the transient lodging tax collector’s funds,  
25 but the transient lodging tax collector is not the owner of tax proceeds, except that, when a  
26 return is filed, the transient lodging tax collector becomes the owner of the administrative  
27 fee authorized to be retained. Transient lodging tax collectors may choose to file returns  
28 and remit payment based on amounts accrued but not yet collected. The transient lodging  
29 tax collector is liable for any TLT that should have been collected from the occupant,  
30 except in cases of nonpayment of rent by the occupant.

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1 **B. Upon the request of the City, transient lodging tax collectors must provide all physical**  
2 **addresses of transient lodging facilities within the corporate limits of the City and the**  
3 **related contact information, including the name and mailing address of the general**  
4 **manager, agent, owner, host, or other responsible person for the location.**

5 **4.24.050 Short-Term Rental Hosting Platform Fees**

6 **A hosting platform for short-term rentals may collect a fee for booking services in**  
7 **connection with short-term rentals only when those short-term rentals are lawfully**  
8 **registered as operators with the City and possess a certificate of authority at the time the**  
9 **short-term rental is occupied.**

10 **4.24.060 Liability For Tax**

11 **Transient lodging providers who receive any portion of the rent for transient lodging and**  
12 **transient lodging intermediaries that provide booking services are both transient lodging**  
13 **tax collectors and are jointly and severally liable for the transient lodging tax.**

14 **4.24.070 Exemptions**

15 **No transient lodging tax shall be imposed upon:**

16 **A. A dwelling unit in a hospital, health care facility, long-term care facility, or any**  
17 **other residential facility that is licensed, registered, or certified by the Oregon**  
18 **Department of Human Services or the Oregon Health Authority;**

19 **B. A dwelling unit in a facility providing treatment for drug or alcohol abuse or**  
20 **providing mental health treatment;**

21 **C. A dwelling unit that is used by members of the general public for temporary human**  
22 **occupancy for fewer than thirty (30) days per calendar year;**

23 **D. A dwelling unit, the consideration for which is funded through a contract with a**  
24 **government agency and the purpose of which is to provide emergency or temporary**  
25 **shelter;**

26 **E. A dwelling unit at a nonprofit youth or church camp, nonprofit conference center,**  
27 **or other nonprofit facility; or**

28 **F. A dwelling unit that is leased or otherwise occupied by the same person for a period**  
29 **of thirty (30) consecutive days or more during the year. The requirements of this**

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1 subsection are satisfied even if the physical dwelling unit changes during the  
2 consecutive period, and if:

3 1. All dwelling units occupied are within the same facility; and

4 2. The person paying consideration for the transient lodging is the same person  
5 throughout the consecutive period.

6 G. Any amount of rent paid that is solely attributable to one (1) full breakfast per day  
7 for an occupant at a transient lodging. However, in no case shall the exemption exceed  
8 the greater of ten percent (10%) of the total amount charged per day for rent or \$20.00  
9 per day. This amount shall be adjusted on July 1 of each year based on the change in  
10 the Portland Consumer Price Index.

11 4.24.080 Registration Of Transient Lodging Provider – Form And Contents –  
12 Execution – Certification Of Authority

13 A. Every person engaging or about to engage in business as a transient lodging provider  
14 shall provide a completed registration form to the Tax Administrator within fifteen (15)  
15 calendar days after commencing business. The registration form shall require the  
16 transient lodging provider to provide the name of the business, any separate business  
17 address(es), and such other information as the Tax Administrator may require to  
18 implement this chapter. Transient lodging providers who own or operate transient lodging  
19 facilities in the City of Ashland shall provide the address of the transient lodging facility.  
20 The registration form shall be signed by the transient lodging provider. The Tax  
21 Administrator shall, within fifteen (15) days after registration, issue without charge a  
22 certificate of authority to collect the TLT. The transient lodging provider’s obligation to  
23 collect the TLT is imposed once rent for transient lodging is paid, even if the registration  
24 form has not been filed or if the certificate has not been issued. If the rent transaction is  
25 facilitated online, the certificate of authority must be able to be viewed by the occupant by  
26 clicking on a link to the certificate of authority at a reasonable place during the payment  
27 transaction.

28 B. Certificates shall be non-assignable and non-transferable and shall be surrendered to  
29 the Tax Administrator when the business is sold or transferred or when a transient lodging

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1 facility ceases to operate at the location specified in the registration form. Each certificate  
2 issued to a transient lodging provider for a specific lodging facility shall be prominently  
3 displayed at the lodging facility and shall include: (1) The name of the transient lodging  
4 provider; (2) The address of the transient lodging facility; (3) The date the certificate was  
5 issued; and (4) The certificate number as assigned by the Tax Administrator.

6 **4.24.090 Remittances And Returns**

7 A. Transient lodging tax collectors must submit a completed tax return form to the Tax  
8 Administrator on or before the last day of the month following the end of each calendar  
9 quarter, reporting the amount of tax due during the quarter and accompanied by  
10 remittance of all tax collected, less a five percent (5%) administration fee. The tax return  
11 shall be filed in such form as the Tax Administrator may prescribe. The Tax  
12 Administrator, if the Tax Administrator deems it necessary in order to ensure payment or  
13 facilitate collection of the amount of tax due in any individual case, may require the  
14 submission of tax returns and remittance of all tax collected and due on an other than a  
15 quarterly basis.

16 B. The transient lodging tax collector is entitled to the administration fee. If a transient  
17 lodging facility has multiple owners, they are not entitled to retain additional fees.

18 C. Remittances are delinquent if not made by the last day of the month in which they are  
19 due.

20 D. Returns shall show the gross rents collected, taxable rents, the total amount of TLT  
21 collected, and the amount of the administrative fee retained by the transient lodging tax  
22 collector. Returns shall also show the exempt and excluded rents and the basis for such  
23 exemptions and exclusions.

24 E. The person required to file the tax return shall deliver the return, together with  
25 payment of the amount of the tax due, to the Tax Administrator, at the appropriate office,  
26 either by personal delivery, by mail, or by electronic tax return filed through a reporting  
27 and payment portal furnished by the Tax Administrator or the Tax Administrator's  
28 designee. If the tax return is mailed, the postmark shall be considered the date of delivery.

29 F. The Tax Administrator may extend the time for submitting any tax return or

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1 remittance of the tax by up to thirty (30) calendar days. No further extension shall be  
2 granted. Any transient lodging tax collector to whom an extension is granted shall pay  
3 interest at the rate of one percent (1%) per month on the amount of the remittance due  
4 without proration for a fraction of a month. If a tax return is not filed, and the remittance  
5 and interest due is not paid by the end of the extension period granted, then the interest  
6 shall become a part of the tax for computation of penalties.

7 **4.24.100 PENALTIES AND INTEREST**

8 **A. Interest shall be added to the overall tax amount due at the same rate established under**  
9 **ORS 305.220 for each month, or fraction of a month, from the time the return to the Tax**  
10 **Administrator was originally required to be filed to the time of payment.**

11 **B. If a transient lodging tax collector fails to file a return or pay the tax as required, a**  
12 **penalty shall be imposed in the same manner and amount provided under ORS 314.400.**

13 **C. Every penalty imposed, and any interest that accrues, becomes a part of the financial**  
14 **obligation required to be paid and remitted to the Tax Administrator.**

15 **D. Taxes, interest, and penalties paid to the Tax Administrator under this section shall be**  
16 **distributed to the City's General Fund.**

17 **4.24.110 Deficiency Determination - Fraud, Evasion, Delay**

18 **A. Deficiency Determination. The Tax Administrator may review tax returns and adjust**  
19 **the amount due based on the information in the return, on information obtained during a**  
20 **review or audit of records, or on the basis of other evidence. In the event of a deficiency,**  
21 **the Tax Administrator shall provide written notice of the deficiency to the transient lodging**  
22 **tax collector, who shall remit deficiencies within ten (10) business days of the date of receipt**  
23 **of the written deficiency notice. Notice may be by personal delivery or certified or**  
24 **registered mail.**

25 **1. In reviewing and adjusting tax returns, the Tax Administrator shall offset any**  
26 **amount received in excess of the remittances due against any shortages in remittances.**

27 **2. Except in the case of fraud or intent to evade the TLT, notice of deficiency**  
28 **determinations shall be issued within three years of the period for which the deficiency**  
29 **determination is made.**

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1 3. The time to remit deficient payment amounts under this section shall be extended if  
2 the local tax trustee timely requests a redetermination.

3 B. Fraud – Refusal to Collect – Evasion. If any transient lodging tax collector fails to  
4 collect, report or remit the tax as required, submits a fraudulent return, or otherwise  
5 violates or attempts to violate this chapter, the tax administrator shall estimate the tax due,  
6 and calculate the amount owing from the transient lodging tax collector for tax remittance,  
7 interest and penalties and provide notice to the transient lodging tax collector of the  
8 assessment. The determination and notice shall be made and mailed within three years of  
9 the discovery by the tax administrator of the violation. The determination is due and  
10 payable upon receipt of notice and shall become final 10 business days after the date notice  
11 was delivered if no petition for redetermination is filed.

12 4.24.120 Redeterminations

13 A. Any person affected by a deficiency determination may file a petition for  
14 redetermination with the Tax Administrator within ten (10) business days of service of  
15 notice of the tax deficiency. A determination becomes final if a petition for  
16 redetermination is not timely filed.

17 B. If a petition for redetermination is filed within the allowable period, the Tax  
18 Administrator shall reconsider the determination and grant an oral hearing if requested.  
19 The petitioner shall be allowed at least twenty (20) business days to prepare for the  
20 hearing.

21 C. After considering the petition and all available information, the Tax Administrator  
22 shall issue a redetermination decision and mail the decision to the petitioner. During the  
23 redetermination process, the Tax Administrator may agree to a compromise of the amount  
24 due if there is a good faith dispute over the amount owing.

25 D. The decision of the Tax Administrator on redetermination becomes final and payment is  
26 due ten (10) business days after the decision is mailed unless the petitioner files an appeal  
27 to the City’s Hearings Officer within that time. The appeal shall be filed with the Tax  
28 Administrator. The Hearing Officers’s decision shall be final when reduced to writing and  
29 mailed to the petitioner, and all amounts due and payable must be paid within ten (10)

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1 business days of mailing of the Hearings Officer's decision.

2 4.24.130 Collections

3 A. The City or the Oregon Department of Revenue (DOR), if the DOR is the Tax  
4 Administrator, may bring a legal action to collect on any amounts owed to the City under  
5 this chapter. Such legal action shall be commenced within three (3) years after remittance  
6 is due to the City or within three (3) years after any determination becomes final.

7 B. The City or the DOR, if the DOR is the Tax Administrator, is entitled to collect  
8 reasonable attorneys' fee in any legal action brought to collect any amount owed to the City  
9 under this chapter.

10 4.24.140 Liens

11 The City may record a lien in the City's lien docket against any real property owned by a  
12 transient lodging provider who receives any portion of the rent from a transient lodging  
13 facility located within the City as to any delinquent remittances by the transient lodging  
14 provider.

15 4.24.150 Refunds

16 A. Refunds by the City to Transient Lodging Tax Collector. If the transient lodging tax  
17 collector remits more tax, penalties, or interest than is due, the transient lodging tax  
18 collector may file a claim in writing stating the facts relating to the claim, within three (3)  
19 years from the date of remittance. If the claim is approved by the Tax Administrator, the  
20 excess amount shall be either refunded or credited on any amount due from the transient  
21 lodging tax collector.

22 B. Refunds by the City to Occupant. A transient lodging tax collector may file a claim for  
23 a refund by filing a claim in writing within three (3) years of payment providing the facts  
24 relating to the claim for refund. If the Tax Administrator determines that the tax was  
25 collected and remitted to the City and the occupant was not required to pay the tax or  
26 overpaid, the City shall issue a refund to the occupant.

27 C. Refunds by Transient Lodging Tax Collector to Occupant. If an occupant has paid tax  
28 to a transient lodging tax collector but stays a total of thirty (30) or more consecutive days  
29 in the same transient lodging facility, the transient lodging tax collector shall refund to the

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1 occupant any tax collected for any portion of the continuous stay. The transient lodging  
2 tax collector shall account for the collection and refund to the Tax Administrator. If the  
3 transient lodging tax collector has remitted the tax prior to the refund or credit to the  
4 occupant, the transient lodging tax collector shall be entitled to a corresponding refund or  
5 offset if the claim for refund is filed within three (3) years from the date of collection.

6 D. Burden of Proof. The person claiming the refund shall have the burden of proving the  
7 facts that establish the basis for the refund.

8 4.24.150 Administration

9 A. Records Required from Local Tax Trustee. Every local tax trustee shall keep records  
10 of each transaction involving rent and/or collection of TLT. All records shall be retained  
11 for at least three (3) years and six (6) months.

12 B. Examination of Records – Investigations. The Tax Administrator or agent may examine  
13 all records of a local tax trustee relating to the receipt of rent and TLT and to the  
14 remittance of tax. Such records may be examined during normal business hours and the  
15 Tax Administrator or agent may obtain copies of the records to audit returns.

16 C. Authority of Tax Administrator. The Tax Administrator shall have the authority to  
17 adopt rules, regulations, and forms necessary to enforce this chapter and conduct audits.  
18 Rules and regulations of general application shall be mailed to all registered transient  
19 lodging providers.

20 E. Confidential Character of Information Obtained; Disclosure Unlawful.

21 The City shall maintain the confidentiality of information provided by a transient lodging  
22 tax collector. Nothing in this subsection shall be construed to prevent:

23 1. The disclosure to, or the examination of records and equipment by, another city  
24 official, employee or agent for collection of taxes for the purpose of administering or  
25 enforcing any provisions of this chapter or collecting city business license fees.

26 2. Disclosure of information to the transient lodging tax collector and the transient  
27 lodging tax collector's agents.

28 3. The disclosure of the names and addresses of any persons to whom certificates of  
29 authority have been issued.

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1 4. The disclosure of general statistics regarding taxes collected or business done in the  
2 City.

3 5. Disclosures required by ORS Chapter 192.

4 6. Disclosures required by ORS Chapter 297.

5 **4.24.160 Appeals**

6 If the Oregon Department of Revenue is the Tax Administrator, all appeals shall be filed in  
7 the Oregon Tax Court. [See ORS 305.620(6).] In all other cases, any person aggrieved by  
8 any decision of the Tax Administrator may appeal to the City's Hearings Officer by filing a  
9 written appeal with the Tax Administrator within ten (10) business days of the serving or  
10 mailing of the decision being appealed. The City Recorder shall schedule the hearing before  
11 the Hearings Officer and provide the appellant notice of the hearing not less than ten (10)  
12 business days before the hearing. The Hearings Officer may agree to a compromise of the  
13 amount of tax remittance if there is a good faith dispute over the amount owing.

14 **4.24.170 Violations, Penalties.**

15 **A. It shall be unlawful to for any transient lodging tax collector to:**

16 **1. Fail or refuse to comply with the requirements of this chapter;**

17 **2. Fail or refuse to register as required in this chapter;**

18 **3. Fail or refuse to furnish any tax return required to be made;**

19 **4. Fail or refuse to permit inspection of records;**

20 **5. Fail or refuse to furnish a supplemental return or other data required by the Tax**  
21 **Administrator;**

22 **6. Render a false or fraudulent return or claim; or**

23 **7. Fail, refuse or neglect to remit the tax to the City by the due date.**

24 **B. A violation of subsection A of this section is a Class I violation. Each day that a**  
25 **violation remains uncured is a separate infraction.**

26 **4.24.010 Definitions**

27 ~~**Except where the context otherwise requires, the definitions contained in this section shall**~~  
28 ~~**govern the construction of this chapter:**~~

29 ~~**A. Person means any individual, firm, partnership, joint venture, association, social club,**~~

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1 fraternal organization, joint stock company, corporation, estate trust, business trust,  
2 receiver, trustee, syndicate, or any other group or combination acting as a unit.

3 ~~B. Transient Lodging means property which is used or designed for occupancy by  
4 transients for dwelling, lodging or sleeping purposes and which is rented or intended for  
5 rent on a daily or weekly basis to transients for a charge or fee paid or to be paid for rental  
6 or use of facilities.~~

7 ~~C. Occupancy means the use or possession, or the right to the use or possession of any  
8 room or rooms or portion thereof, in any transient lodgings.~~

9 ~~D. Transient means any person who exercises occupancy or is entitled to occupancy in a  
10 transient lodging by reason of concession, permit, right of access, license or other  
11 agreement for a period of less than thirty (30) consecutive calendar days counting portions  
12 of calendar days as full days. Any such person so occupying space in a transient shall be  
13 deemed to be a transient until the period of thirty (30) consecutive days transpires unless  
14 there is an agreement in writing between the operator and the occupant providing for a  
15 longer period of occupancy.~~

16 ~~E. Rent means the total consideration valued in money paid by a transient for booking,  
17 reservations, and occupancy of space in a transient lodging, whether such consideration is  
18 received in money, goods, labor or otherwise, including all receipts, cash, credits and  
19 property and services of any kind or nature, without a deduction there from whatsoever  
20 and whether or not such consideration is received by the operator. In addition to the  
21 amount charged for booking, reservations and room lodging, rent includes charges by  
22 operator for meals, parking, telephone, and other items unless such charges by operator  
23 are separately incurred and specifically itemized on a duplicate customer pre-numbered  
24 receipt.~~

25 ~~F. Operator means the person who is proprietor of the transient lodging, whether in the  
26 capacity of owner, lessee, sub-lessee, and mortgagee in possession, licensee or any other  
27 capacity. If the operator performs any functions or charges or receives rent through an  
28 agent of any type or character other than an employee, the agent shall also be deemed an  
29 operator for the purposes of this chapter and shall have the same obligations and liabilities~~

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1 ~~as the principal. Where the operator is a corporation, the term operator also includes each~~  
2 ~~and every member of the Board of Directors of such corporation for the time involved.~~  
3 ~~Where the operator is a partnership or limited liability company, the term operator also~~  
4 ~~includes each and every member thereof for the time involved. Compliance with the~~  
5 ~~provisions of this chapter by either the principal or the agent shall, however, be considered~~  
6 ~~to be compliance by both.~~

7 ~~G. Tax Administrator means the Director of Finance of the City of Ashland, or designee.~~

8 ~~H. Recreational Vehicle/Camping Park means a development designed principally for the~~  
9 ~~transient housing of travel trailers, mobile homes, tent trailers, motor homes, and for tent~~  
10 ~~camping.~~

11 ~~I. Accrual Accounting. A system of accounting in which the operator enters the rent due~~  
12 ~~from a transient into the record when the rent is earned, whether or not it is paid.~~

13 ~~J. Cash Accounting. A system of accounting in which the operator records the rent due~~  
14 ~~from a transient when it is paid, regardless of when the person occupies the room.~~

15 ~~K. Full Breakfast. A complete meal served to occupant of the room consisting of a~~  
16 ~~minimum of three prepared items plus beverage. The full breakfast must be served on~~  
17 ~~dinnerware and presented in a common area furnished with table(s) and seating, not in a~~  
18 ~~restaurant open to the public.~~

19 ~~4.24.020 — Tax Imposed~~

20 ~~For the privilege of occupancy in any transient lodging, each transient is subject to and~~  
21 ~~must pay a tax in the amount set by separate City Council resolution. Said tax constitutes a~~  
22 ~~debt owed by the transient to the City which is extinguished only by payment to the~~  
23 ~~operator of the transient lodging at the time the rent is paid. The operator must collect and~~  
24 ~~record the tax into the record when rent is collected, if the operator keeps records on the~~  
25 ~~cash basis of accounting, and when earned if the operator keeps records on the accrual~~  
26 ~~accounting basis. If the rent is paid in installments, a proportionate share of the tax must~~  
27 ~~be paid with each installment. The unpaid tax is due upon the transient's ceasing to occupy~~  
28 ~~space in the transient lodging. If for any reason the tax due is not paid to the operator of~~  
29 ~~the transient lodging, the Tax Administrator may require that such tax be paid directly to~~

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1 ~~the Tax Administrator.~~

2 ~~4.24.030 — Exemptions~~

3 ~~No tax shall be imposed upon:~~

4 ~~A. Any person as to whom, or any occupancy as to which, it is beyond the power of the~~  
5 ~~City to impose the tax herein provided;~~

6 ~~B. Any occupant whose rent is of a value of \$15.00 or less per day. This amount will be~~  
7 ~~adjusted on July 1 of each year based on the change in the Portland Consumer Price Index.~~

8 ~~C. Any officer or employee of a foreign government who is exempt by reason of express~~  
9 ~~provision of federal law of international treaty.~~

10 ~~D. The amount attributable to one full breakfast per day for a transient at a Bed and~~  
11 ~~Breakfast establishment. However, in no case shall the exemption exceed the greater of~~  
12 ~~10% of the total amount charged per transient or \$10.00 per day. This amount shall be~~  
13 ~~adjusted on July 1 of each year based on the change in the Portland Consumer Price Index.~~

14 ~~E. Any room donated to a nonprofit organization claiming exemption under IRS code 501.~~

15 ~~F. Any room rented by the Ashland Interfaith Care Community, or such other~~  
16 ~~organization specifically recognized by the City Council for providing services to the~~  
17 ~~homeless, for occupancy by a homeless person or persons.~~

18 ~~G. Any hostel, as defined in AMC 18.08.315.~~

19 ~~H. Any home occasionally exchanged with a home outside the City without payment of~~  
20 ~~rent.~~

21 ~~No exemption shall be granted except upon written claim therefore made at the time rent is~~  
22 ~~collected and under penalty of perjury upon a form prescribed by the Tax Administrator.~~

23 ~~4.24.040 — Operator's Duties~~

24 ~~Each operator shall collect the tax imposed by this chapter, to the same extent and at the~~  
25 ~~same time as the rent is collected from every transient. The amount of tax shall be~~  
26 ~~separately stated from the amount of the rent charged, and each transient shall, upon~~  
27 ~~demand, receive a receipt for payment from the operator. No operator of a hotel shall~~  
28 ~~advertise or state in any manner, whether directly or indirectly, that the tax or any part~~  
29 ~~thereof will be assumed or absorbed by the operator, or that it will not be added to the~~

30 ~~///~~

1 ~~rent, or that, if added, any part will be refunded except in the manner hereafter provided.~~  
2 ~~Every operator required to collect the tax imposed herein shall be entitled to retain five~~  
3 ~~percent (5%) of all taxes collected to defray the costs of collections and remittance.~~

4 ~~4.24.050 — Registration~~

5 ~~Within thirty (30) days after the date of adoption of this chapter or within thirty (30) days~~  
6 ~~after commencing business, whichever is later, each operator of any transient lodging must~~  
7 ~~register said transient lodging with the Tax Administrator and obtain from him/her a~~  
8 ~~“Transient Occupancy Registration Certificate” to be at all times posted in a conspicuous~~  
9 ~~place on the premises. Said certificate shall, among other things, state the following:~~

- 10 ~~A. The name of the operator;~~
- 11 ~~B. The address of the transient lodging;~~
- 12 ~~C. The date upon which the certificate was issued; and~~
- 13 ~~D. The following statement:~~

14 ~~“This Transient Occupancy Registration Certificate signifies that the person named on~~  
15 ~~the face hereof has fulfilled the requirements of this part by registering with the Tax~~  
16 ~~Administrator for the purpose of collecting from transients the Transient Occupancy Tax~~  
17 ~~and remitting said tax to the Tax Administrator. This certificate does not authorize any~~  
18 ~~person to conduct any unlawful business or to conduct any lawful business in an unlawful~~  
19 ~~manner, nor to operate a transient lodging without strictly complying with all local~~  
20 ~~applicable laws, including but not limited to those requiring a permit from any board,~~  
21 ~~commission, department or office of this City. This certificate does not constitute a permit.”~~

22 ~~4.24.060 — Reporting and Remitting~~

23 ~~Each operator must, on or before the 25th day of the month following the end of each~~  
24 ~~calendar quarter (in the months of April, July, October and January), make a return to the~~  
25 ~~Tax Administrator, on forms provided by the City, of the total rents charged and received~~  
26 ~~and the amount of tax collected for transient occupancies. At the time the return is filed,~~  
27 ~~the full amount of the tax collected must be remitted to the Tax Administrator. The Tax~~  
28 ~~Administrator may establish shorter reporting periods for any certificate holder if he/she~~  
29 ~~deems it necessary in order to insure collection of the tax and the Administrator may~~

30 ~~///~~



1 ~~require further information in the return relevant to payment of the liability. Returns and~~  
2 ~~payments are due immediately upon cessation of business for any reason. All taxes~~  
3 ~~collected by operators pursuant to this chapter will be held in trust for the account of the~~  
4 ~~City until payment thereof is made to the Tax Administrator. (Ord. 3089, amended,~~  
5 ~~10/01/2013; Ord. 2632, amended, 1991; Ord. 1907, amended, 1977)~~

6 ~~4.24.070 — Penalties and Interest~~

7 ~~A. Original Delinquency. Any operator, who fails to remit any portion of any tax imposed~~  
8 ~~by this chapter within the time required, must pay a penalty of ten percent (10%) of the~~  
9 ~~amount of the tax, in addition to the amount of the tax.~~

10 ~~B. Continued Delinquency. Any operator who fails to remit any delinquent remittance on~~  
11 ~~or before a period of thirty (30) days following the date on which the remittance first~~  
12 ~~became delinquent, must pay a second delinquency penalty of ten (10%) percent of the~~  
13 ~~amount of the tax in addition to the amount of the tax and the ten (10%) percent penalty~~  
14 ~~first imposed.~~

15 ~~C. Fraud. If the Tax Administrator determines that the nonpayment of any remittance~~  
16 ~~due under this chapter is due to fraud, a penalty of twenty-five (25%) percent of the~~  
17 ~~amount of the tax will be added thereto in addition to the penalties stated in subparagraphs~~  
18 ~~A and B of this section.~~

19 ~~D. Interest. In addition to the penalties imposed, any operator who fails to remit any tax~~  
20 ~~imposed by this chapter must pay interest at the rate of one percent (1%) per month or~~  
21 ~~fraction thereof on the amount of the tax, exclusive of penalties, from the date on which the~~  
22 ~~remittance first became delinquent until paid.~~

23 ~~E. Penalties Merged with Tax. Every penalty imposed and such interest as accrues under~~  
24 ~~the provisions of this section shall become a part of the tax herein required to be paid.~~

25 ~~F. Waiver of Penalties. Penalties and interest for certain late tax payments may be waived~~  
26 ~~pursuant to AMC 2.28.045.D. (Ord. 3089, amended, 10/01/2013; Ord. 2983, amended,~~  
27 ~~05/05/2009)~~

28 ~~4.24.080 — Failure to Collect and Report Tax – Determination of Tax by Tax~~  
29 ~~Administrator~~

30 ~~///~~

1 ~~If any operator should fail to keep adequate records or refuse to collect said tax, or to~~  
2 ~~make, within the time provided in this chapter, any report and remittance of said tax or~~  
3 ~~any portion thereof required by this chapter, the Tax Administrator shall proceed in such~~  
4 ~~manner as deemed best to obtain facts and information on which to base the estimate of the~~  
5 ~~tax due. As soon as the Tax Administrator procures such facts and information as is able to~~  
6 ~~be obtained, upon which to base the assessment of any tax imposed by this chapter and~~  
7 ~~payable by any operator who has failed or refused to collect the same and to make such~~  
8 ~~report and remittance, the administrator shall proceed to determine and assess against~~  
9 ~~such operator the tax, interest and penalties provided for by this chapter. In case such~~  
10 ~~determination is made, the Tax Administrator shall give a notice of the amount so assessed~~  
11 ~~by having it served personally or by depositing it in the United States mail, postage~~  
12 ~~prepaid, addressed to the operator so assessed at the last known place of address. Such~~  
13 ~~operator may within ten (10) days after the serving or mailing of such notice make an~~  
14 ~~appeal of such determination as provided in Section 4.24.090 of this chapter. If no appeal is~~  
15 ~~filed, the Tax Administrator's determination is final and the amount thereby is~~  
16 ~~immediately due and payable. (Ord. 3089, amended, 10/01/2013; Ord. 2632, amended,~~  
17 ~~1991)~~

18 **4.24.090 — Appeal**

19 ~~Any operator aggrieved by any decision of the Tax Administrator with respect to the~~  
20 ~~amount of such tax, interest and penalties, if any, may appeal the decision pursuant to~~  
21 ~~AMC 2.30. The Findings of the Hearings Officer shall be final and conclusive, and shall be~~  
22 ~~served upon the appellant in the manner prescribed for service of notice of hearing. Any~~  
23 ~~amount found to be due shall be immediately due and payable upon the service of notice.~~

24 **4.24.100 — Records**

25 ~~It shall be the duty of every operator liable for the collection and payment to the City of~~  
26 ~~any tax imposed by this chapter to keep and preserve, for a period of three (3) years, all~~  
27 ~~such records as may be necessary to determine the amount of such tax. The Tax~~  
28 ~~Administrator shall have the right to inspect all records at all reasonable times. Every~~  
29 ~~operator must, at a minimum, maintain guest records of room rents, accounting books and~~

30 ///

1 records of income. The operators must, at a minimum, include n these records a daily room  
2 rental register, a cash receipts and deposit journal. These records and books must reconcile  
3 to the transient room tax reports and be auditable. They must also reconcile to the  
4 operator's income tax reports. If the Tax Administrator finds the books and records of the  
5 operator deficient, in that they do not provide adequate support for transient room tax  
6 reports filed, or the operator's accounting system is non-auditable, the operator must  
7 modify the transient lodging's accounting system to meet the requirements of the Tax  
8 Administrator.

9 **4.24.110 — Refunds**

10 ~~A. Whenever the amount of any tax, interest or penalty has been overpaid or paid more~~  
11 ~~than once, or has been erroneously or illegally collected or received by the City under this~~  
12 ~~chapter, it may be refunded as provided in subparagraphs B and C of this section,~~  
13 ~~provided a claim in writing therefore, stating under penalty of perjury the specific grounds~~  
14 ~~upon which the claim is founded, is filed with the Tax Administrator within three (3) years~~  
15 ~~of the date of payment. The claim must be on forms furnished by the Tax Administrator.~~

16 ~~B. An operator may claim a refund, or take as credit against taxes collected and remitted,~~  
17 ~~the amount overpaid, paid more than once or erroneously or illegally collected or received~~  
18 ~~when it is established in a manner prescribed by the Tax Administrator that the person~~  
19 ~~from whom the tax has been collected was not a transient; provided, however, that neither~~  
20 ~~a refund nor a credit shall be allowed unless the amount of the tax so collected has either~~  
21 ~~been refunded to the transient or credited to rent subsequently payable by the transient to~~  
22 ~~the operator.~~

23 ~~C. A transient may obtain a refund of taxes overpaid or paid more than once, or~~  
24 ~~erroneously or illegally collected or received by the City, by filing a claim in the manner~~  
25 ~~provided in subparagraph (A) of this section, but only when the tax was paid by the~~  
26 ~~transient directly to the Tax Administrator, or when the transient having paid the tax to~~  
27 ~~the operator, established to the satisfaction of the Tax Administrator that the transient has~~  
28 ~~been unable to obtain a refund from the operator who collected the tax.~~

29 ~~D. No refund shall be paid under the provisions of this section unless the claimant~~

30 ///

1 establishes that right hereto by written records showing entitlement thereto.

2 **4.24.120 — Actions to Collect**

3 ~~Any tax required to be paid by any transient under the provisions of this chapter shall be~~  
4 ~~deemed a debt owed by the transient to the City. Any such tax collected by an operator~~  
5 ~~which has not been paid to the City shall be deemed a debt owed by the operator to the~~  
6 ~~City. Any person owing money to the City under the provisions of this ordinance shall be~~  
7 ~~liable to an action brought in the name of the City of Ashland for the recovery of such~~  
8 ~~amount. In lieu of filing an action for the recovery, the City of Ashland, when taxes due are~~  
9 ~~more than 30 days delinquent, can submit any outstanding tax to a collection agency. So~~  
10 ~~long as the City of Ashland has complied with the provisions set forth in ORS 697.105, in~~  
11 ~~the event the City turns over a delinquent tax account to a collection agency, it may add to~~  
12 ~~the amount owing an amount equal to the collection agency fees, not to exceed the greater~~  
13 ~~of fifty dollars or fifty percent of the outstanding tax, penalties and interest owing. (Ord.~~  
14 ~~3089, amended, 10/01/2013; Ord. 2931, amended, 09/19/2006)~~

15 **4.24.130 — Violations**

16 ~~Violations of this chapter are punishable as set forth in AMC 1.08.020. It is a violation of~~  
17 ~~this chapter for any operator or other person to:~~

18 ~~A. Fail or refuse to comply as required herein;~~

19 ~~B. Fail or refuse to register as required herein;~~

20 ~~C. Fail or refuse to furnish any return required to be made;~~

21 ~~D. Fail or refuse to permit inspection of records;~~

22 ~~E. Fail or refuse to furnish a supplemental return or other data required by the Tax~~  
23 ~~Administrator;~~

24 ~~F. Render a false or fraudulent return or claim;~~

25 ~~G. Fail, refuse or neglect to remit the tax to the City by the due date.~~

26 ~~Violation of subsections A-E and G above shall be considered a Class I violation. Filing a~~  
27 ~~false or fraudulent return shall be considered a Class C misdemeanor, subject to AMC~~  
28 ~~1.08. The remedies provided by this section are not exclusive and shall not prevent the City~~  
29 ~~from exercising any other remedy available under the law, nor shall the provisions of this~~

30 ///

1 ~~ordinance prohibit or restrict the City or other appropriate prosecutor from pursuing~~  
2 ~~criminal charges under state law or City ordinance. (Ord. 3089, amended, 10/01/2013; Ord.~~  
3 ~~3023, amended, 08/03/2010)~~

4 ~~4.24.140~~ — Confidentiality

5 ~~Except as otherwise required by law, it shall be unlawful for the City, any officer, employee~~  
6 ~~or agent to divulge, release or make known in any manner any financial information~~  
7 ~~submitted or disclosed to the City under the terms of this Ordinance. Nothing in this~~  
8 ~~section shall prohibit:~~

9 ~~A. The disclosure of the names and addresses of any person who are operating a transient~~  
10 ~~lodging; or~~

11 ~~B. The disclosure of general statistics in a form which would prevent the identification of~~  
12 ~~financial information regarding an individual operator; or~~

13 ~~C. Presentation of evidence to the court, or other tribunal having jurisdiction in the~~  
14 ~~prosecution of any criminal or civil claim for amount due the City under this chapter; or~~

15 ~~D. The disclosure of information when such disclosure of conditionally exempt~~  
16 ~~information is ordered under public records law procedures; or~~

17 ~~E. The disclosure of records related to a business's failure to report and remit the tax~~  
18 ~~when the report or tax is in arrears for over six months or the tax arrearage exceeds~~  
19 ~~\$5,000.00. The City Council expressly finds and determines that the public interest in~~  
20 ~~disclosure of such records clearly outweighs the interest in confidentiality under ORS~~  
21 ~~192.501(5).~~

22 ~~4.24.150~~ — Examining Books, Records or Persons

23 ~~The City, for the purpose of determining the correctness of any transient occupancy tax~~  
24 ~~return, or for the purpose of an estimate of taxes due, may examine or may cause to be~~  
25 ~~examined by an agent or representative designed by it for that purpose, any books, papers,~~  
26 ~~records, or memoranda, including copies of operator's state and federal income tax~~  
27 ~~returns, bearing upon the matter of the transient occupancy tax return.~~

28 SECTION 2. Ashland Municipal Code 2.29.005 is hereby renumbered and amended as follows:

29 2.29.020 005 Definitions

30 ///

- 1 A. “Acquisition” means the inclusion of an artwork in the Ashland Public Art Collection by any  
2 means including direct purchase, commission or acceptance of a gift.
- 3 B. “Artwork” means visual works of public art as defined herein.
- 4 C. “Ashland Public Art Collection” means all public art acquired by the City by any means.
- 5 D. “Capital improvement program (CIP)” means the City’s program for advance planning of  
6 capital improvements.
- 7 E. “City project” or “project” means any capital improvement project in an amount over  
8 \$25,000 paid for wholly or in part by the City of Ashland to purchase or construct any public  
9 building, decorative or commemorative public structure, sidewalk, or multi-use pathway  
10 construction, park facility construction, or any portion thereof, within the limits of the City of  
11 Ashland. “City project” or “project” does not include public utility improvements, (e.g. electric,  
12 water, sewer, or storm water), LID improvements, including but not limited to streets, sidewalks  
13 and associated improvements, property acquisition, earth work, emergency work, minor  
14 alterations, rehabilitation, minor or partial replacement, remodeling or ordinary repair or  
15 maintenance necessary to preserve a facility. Notwithstanding the above limitation, the Council  
16 or responsible contracting officer may include any new city street or utility project (limited to  
17 water, sewer and storm water projects) in an amount over \$25,000 as a city project under this  
18 article, by either vote of the Council or inclusion in the contract solicitation documents prepared  
19 by the responsible contracting officer.
- 20 F. **“Commercial Development Fee” means funds deposited by a commercial developer into**  
21 **the Public Art account when the developer prefers not to incorporate public art into the**  
22 **project and follow the public art process for art acquisition and approval.**
- 23 G. “Commission” means the Ashland Public Arts Commission created by AMC 2.17.010,  
24 consisting of seven members appointed by the mayor and confirmed by the Council.
- 25 H. G. “Eligible funds” means a source of funds for projects from which art is not precluded as  
26 an object of expenditure.
- 27 I. H. “Participating department” means the department that is subject to this article by its  
28 sponsorship of a city project.
- 29 J. I. “Percent for art” means the program established by this article to set aside a percentage of  
30 ///

1 the total cost of city projects for public art.

2 **K. J.** “Public art” means all forms of original works of art in any media that has been planned  
3 and executed with the specified intention of being sited or staged on City Property or on property  
4 owned or controlled by the City of Ashland, usually outside and accessible to the public.

5 **L. K.** “Public art account” means the City of Ashland public art account in the City budget  
6 established by this article into which all moneys donated, appropriated or derived pursuant to the  
7 percent for art program shall be deposited. Funds within the public art account shall be utilized  
8 for the purposes outlined in this article.

9 **M. L.** “Removal” means the exclusion of an artwork from the Ashland public art collection by  
10 the removal and disposal through any available means, such as relinquishing title through sale,  
11 gift or destruction.

12 **N. M.** “Selection Panel” means a group of individuals selected by the Commission that will  
13 evaluate the proposals associated with a particular project in a public meeting.

14 **O. N.** “~~TLT TOT~~ Funds” means the portion of transient **lodging occupancy** tax funds  
15 allocated for public art.

16 **P. O.** “Commercial Development Fee” means funds deposited by a commercial developer into  
17 the Public Art account when the developer prefers not to incorporate public art into the project  
18 and follow the public art process for art acquisition and approval.

19 **Q. P.** “Total cost” means the entire amount of the City’s financial contribution toward  
20 construction and maintenance of a project.

21 **SECTION 3.** Ashland Municipal Code 6.04.020 is hereby amended as follows:

22 **6.04.020 Definitions**

23 A. “Business activity” **means** ~~Conducting~~ **conducting** any occupation, calling, trade,  
24 profession, rental activity, or other transactional activities, including rental of two (2) or more  
25 dwelling units and rental of any transient lodgings, with the intent of receiving payment or other  
26 valuable consideration.

27 B. **“Dwelling Unit” means one (1) or more rooms designed for occupancy by one (1) family**  
28 **and not having more than one (1) kitchen or cooking facility.**

29 **C. “Employee” means any individual who performs service for another individual or**

30 ///

1 organization having the right to control the employee as to the services to be performed  
2 and as to the manner of performance. For purposes of this chapter employee also means a  
3 licensed real estate sales person or associate real estate broker who engages in professional  
4 real estate activities only as an agent of a real estate broker or organization.

5 D. “Owner” means ~~A~~ a person who has a financial interest in a business activity, or a person  
6 who actively engages in the operation of a business activity.

7 E. “Person” means a person, partner, partnership, limited liability company, or  
8 corporation.

9 F. “Rental activity” means the acceptance of payment or other valuable consideration in  
10 exchange for occupancy of two (2) or more dwelling units of any kind for any length of time  
11 or in exchange for occupancy of one (1) or more transient lodgings.

12 G. “Transient lodging” means ~~Property~~ property which is used or designed for occupancy by  
13 transients for dwelling, lodging, or sleeping purposes and which is rented or intended for rent on  
14 a daily or weekly basis ~~to transients~~ for a charge or fee paid or to be paid for rental or use of  
15 facilities. Hotels, motels, inns, traveler’s accommodations ~~as defined in AMC 18.08.795,~~  
16 mobile homes, ~~or~~ house trailers at recreational vehicle/camping parks or other fixed locations, or  
17 other similar structures or portions thereof which meet the above criteria are transient lodgings  
18 for purposes of this chapter ~~6 and Chapter 4.~~

19 ~~C. Rental activity. The acceptance of payment or other valuable consideration in exchange~~  
20 ~~for occupancy of two or more dwelling units of any kind for any length of time or in~~  
21 ~~exchange for occupancy of one or more transient lodgings, as defined in AMC 4.24.010.B~~  
22 ~~for a period of less than thirty (30) days.~~

23 ~~D. Person. Includes a person, partner, partnership, limited liability company, or~~  
24 ~~corporation.~~

25 ~~E. Owner. A person who has a financial interest in a business activity, or who actively~~  
26 ~~engages in the operation of a business activity.~~

27 ~~F. Employee. Any individual who performs service for another individual or organization~~  
28 ~~having the right to control the employee as to the services to be performed and as to the~~  
29 ~~manner of performance. For purposes of this ordinance employee also means a licensed~~

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1 ~~real estate sales person or associate real estate broker who engages in professional real~~  
2 ~~estate activities only as an agent of a real estate broker or organization.~~

3 ~~G. Dwelling Unit. One or more rooms designed for occupancy by one (1) family and not~~  
4 ~~having more than one (1) kitchen or cooking facility.~~

5 **SECTION 4.** Ashland Municipal Code 13.03.060 is hereby amended as follows:

6 **13.03.060 Criteria**

7 A. The Director of Public Works ~~Director or the Director's designee~~ shall review the  
8 application for its strict compliance with the mandatory criteria listed below. There are no  
9 variances or exceptions to the criteria listed in this chapter of this ordinance.

10 1. *Location Within a Permitted Zone.* Permits and agreements for occupancy or use of the  
11 sidewalk permit area are available only if the property is located in one of the following  
12 zoning districts: C-1-D (Commercial Downtown), C-1 (Commercial), or E-1 (Employment).

13 2. *Use of Building Occupant.* A sidewalk permit area may be approved only for use of the  
14 adjacent occupant, with the consent of the property owner, if different.

15 3. *Minimum Six Foot Clearance.* Except as specified on the Downtown Sidewalk Usage  
16 Map, when the sidewalk is eleven (**11**) feet or more in width, there shall be at least eight (8)  
17 feet clear and unobstructed passageway between the sidewalk permit area boundary and any  
18 City owned or controlled fixtures or structures; when the sidewalk is less than eleven feet in  
19 width, there shall be at least six (6) feet clear and unobstructed passageway between the  
20 sidewalk permit area boundary and any City owned or controlled fixtures or structures.

21 Fixtures or structures includes but not limited to fire hydrants, benches, barriers, street trees,  
22 bike racks, lamp posts, sign posts, or the curb edge, whichever is closest. The Public Works  
23 Director may require more clearance if necessary to accommodate pedestrian movement and  
24 ADA access.

25 4. *Other Placement Standards.* Except as specified on the Downtown Sidewalk Usage  
26 Map, neither the sidewalk permit area itself, nor any object located therein shall be placed,  
27 installed, used or maintained:

28 a. Within six feet (6') of the outer edge of any roadway;

29 b. Within ten feet (10') of any crosswal;

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- c. Within six feet (6') of any fire hydrant or other emergency facility;
- d. Within ten feet (10') of any driveway or alley entrance/exit; or
- e. In the public right-of-way within any un-authorized zoning district, including all residential zoning districts
- f. Within 3 feet (3') from either end of approved bicycle parking U-racks
- g. Within the footprint of any bus stop areas.
- h. Within fifteen feet of an intersection.

Notwithstanding the above, certain functional items [e.g., publication boxes] may be located within 24 inches of the roadway edge/ curb face.

5. *Materials and construction standards.* All temporary structures or object (including furnishings such as tables and chairs), placed in the sidewalk permit area shall be of a weatherproof and sturdy construction, (i.e. solid wood, iron, noncorrosive metal, cement, or similar material). Except when otherwise specified in a resolution of the City Council ~~Resolution~~, plastic is prohibited as suitable material for structures and furnishings; similarly, materials which stain or damage the sidewalk are prohibited. Said items shall comply fully with all applicable regulations, including building codes, ~~land-use~~ ordinances, and resolutions ~~Resolutions~~ of the City. The City Council may adopt ~~by Resolution~~ material and construction standards [including typicals], for public furnishings placed in the sidewalk permit area.

6. *Maintenance and installation standards.* Any item placed, installed or maintained within the sidewalk permit area shall be subject to the following maintenance standards:

- a. No object shall be chained, bolted, or otherwise attached to any fixture, tree or city functional item located in the public right-of-way, nor shall any object be attached to the surface of the right-of-way.
- b. Objects shall be designed and constructed to be movable by one person and where practical, wheels shall be attached or attachable to allow for ease of movement.
- c. Objects placed in a sidewalk permit area shall not be used to violate any other applicable code, including provisions and limitations on signage.
- d. Objects, such as furnishings, placed in the sidewalk permit area shall have

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1 information affixed to the exterior of the object including the name and address of the  
2 owner and the name of the establishment with which the object is associated including  
3 an emergency contact number.

4 e. Objects occupying the sidewalk permit area shall be maintained in a clean and  
5 orderly condition and in good repair at all times. This includes but is not limited to  
6 maintaining a condition which is reasonably free of dirt, rust and grease. The item is  
7 reasonably free of chipped, faded, peeling or cracked paint. All structural and/or moving  
8 parts are in working order and pose no safety hazard to the public. Any glass or plastic  
9 (such as display windows) are unbroken and reasonably free of cracks, dents, blemishes  
10 and discoloration.

11 f. Objects must maintain a weather proof or weather resistant quality.

12 g. Objects shall be designed to be stable and self supporting under a wind load of at  
13 least twenty (20) pounds per square foot without attachment to the pavement or any  
14 other object.

15 7. *Illegal structures or usage.* No sidewalk permit area will be approved if the permit area  
16 or six (6) foot clearance area adjacent to the permit area contains structures, fixtures,  
17 obstructions or materials which have been illegally placed or affixed to or in the City right-  
18 of-way. For purposes of this ordinance Illegal structure or usage includes not only items  
19 placed or activities conducted without a permit but also items or activities which were  
20 initially placed or conducted lawfully but for which the owner/operator has failed to  
21 maintain current payment to the City.

22 8. *Minimum Square Footage.* Except for functional objects, the sidewalk permit area is a  
23 minimum of fifty (50) square feet or as otherwise designated on the Downtown Sidewalk  
24 Usage Map. This provision does not apply to interim regulations for publication boxes.

25 9. *Minimum Duration.* The minimum duration of the permit is yearly (twelve months,  
26 whether or not the entire year is available for use). This provision does not apply to interim  
27 regulations for publication boxes.

28 10. *Arrearages to the City or Pending City Violations.* No sidewalk permit area will be  
29 approved for one year after a person or entity applying for the permit has been found in  
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1 violation or is currently subject to an active violation proceedings for violation of the City of  
2 Ashland Municipal Code concerning or relating to the activity to be conducted in the permit  
3 area. This includes but is not limited to actions for failure to maintain business license,  
4 arrearages of other delinquency in food and beverage tax receipts, transient **lodging**  
5 ~~occupancy~~ taxes or unpaid balances under the prior sidewalk dining ordinance.

6 11. *Alcoholic beverages.* The Public Works Director shall forward all applications for  
7 review by the City Recorder for any proposed use which involves alcoholic beverages.  
8 Written approval of the designated City official in accordance with City ordinances is  
9 required for any such proposed use, in addition to state regulatory requirements.

10 12. *Liability Release, Indemnity, Hold Harmless, and Insurance.* No sidewalk permit area will  
11 be approved without an executed release agreement and insurance certificates as required by  
12 AMC 13.03.070.

13 **SECTION 5. Codification.** In preparing this ordinance for publication and distribution, the  
14 City Recorder shall not alter the sense, meaning, effect, or substance of the ordinance, but within  
15 such limitations, may:

- 16 (a) Renumber sections and parts of sections of the ordinance;
- 17 (b) Rearrange sections;
- 18 (c) Change reference numbers to agree with renumbered chapters, sections or other parts;
- 19 (d) Delete references to repealed sections;
- 20 (e) Substitute the proper subsection, section, or chapter numbers;
- 21 (f) Change capitalization and spelling for the purpose of uniformity;
- 22 (g) Add headings for purposes of grouping like sections together for ease of reference; and
- 23 (h) Correct manifest clerical, grammatical, or typographical errors.
- 24 (i) Substitute “TLT” for “TOT” where appropriate, including in Title 18, the Ashland Land  
25 Use Ordinance.

26 **SECTION 6. Severability.** Each section of this ordinance, and any part thereof, is severable,  
27 and if any part of this ordinance is held invalid by a court of competent jurisdiction, the  
28 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:

\_\_\_\_\_  
Katrina L. Brown, Interim City Attorney