

BEFORE THE COMMON COUNCIL OF CANNON BEACH

AN ORDINANCE AMENDING THE MUNICIPAL) ORDINANCE NO. 22-02
CODE CHAPTER 3.30 PREPARED FOOD SALES)
TAX)

WHEREAS, on November 2, 2021 Cannon Beach electors approved Ballot Measure 4-210, adding chapter 3.30 to the Cannon Beach Municipal Code and imposing a 5% tax on prepared foods sold within Cannon Beach;

WHEREAS, the tax will become effective on July 1, 2022;

WHEREAS, the Council desires to amend Chapter 3.30 to only impose the tax on individuals purchasing food from caterers at events located within the City;

WHEREAS, the Council desires to perform housekeeping edits prior to the effective date of the tax, such as updating internal citations and the initial deadline for operator registration, as well as clarify the requirements for submitting returns.

NOW, THEREFORE, THE COMMON COUNCIL OF THE CITY OF CANNON BEACH ORDAINS AS FOLLOWS:

1. The Cannon Beach City Council amends Chapter 3.30.020 of the Cannon Beach Municipal Code as described in Exhibit A, which is attached and incorporated by reference.
2. This ordinance is effective 30 days after adoption

ADOPTED by the Common Council of the City of Cannon Beach this 1st day of March 2022, by the following roll call vote:

YEAS:

NAYS:

EXCUSED:

Sam Steidel, Mayor

Attest:

Approved as to Form:

Bruce St. Denis, City Manager

Ashley Driscoll, City Attorney

Chapter 3.30 Prepared Food Sales Tax

3.30.010 Definitions.

For purposes of this chapter the following words shall have the meanings set forth below.

- A. "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.
- B. "Combination food service establishment" 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.
- C. "Consumer" means a person who purchases food within the City's incorporated limits.
- D. "Food" means all prepared food items provided by and/or served by a Restaurant including, without limitation, "takeout," "to go" and/or delivered orders. "Food" does not include groceries or liquid drinks, whether alcoholic or non-alcoholic, such as soda, coffee, teas, or cocktails. "Food" includes non-alcoholic smoothies and shakes (whether dairy or non-dairy) that otherwise meet the definition.
- E. "Immediate consumption" means the item is intended to be consumed without the need for additional preparation.
- F. "Operator" means the person who is proprietor of the Restaurant, whether in the capacity of owner, lessee, sub-lessee, mortgagee in possession, licensee or any other capacity. Where the operator is a corporation, the term "operator" shall also include each and every member of the Board of Directors of such corporation for the time involved.
- G. "Prepared" or "preparation" means altered, other than solely by washing or cooling, and includes mixing, combining, cooking, processing, heating, and/or serving for immediate consumption.
- H. "Restaurant" means any establishment required to be licensed as a restaurant, mobile unit and/or pushcart by the State of Oregon Health Division and includes, without limitation, any of the following: (a) any establishment where food is prepared and/or available for immediate consumption by a consumer including delis, coffee shops, and similar establishments; (b) any establishment including, without limitation, grocery store, market, convenience store and/or deli section of any store, where a consumer obtains food prepared on premises and/or off premises in form or quantity intended for immediate consumption, notwithstanding the location where the food is ultimately consumed; and (c) any establishment which prepares food for immediate consumption outside the establishment's premises. The term "Restaurant" does not include a restaurant licensed by the State of Oregon Health Division as a limited service restaurant.
- I. "Tax administrator" means the city manager or designee.

3.30.020 Tax Imposed.

A. Unless exempt as specified in CBMC 3.30.030, and in addition to all other taxes, fees and charges of every kind, the City imposes a prepared food tax at a rate of five percent (5%) of the total amount paid by the consumer on the following:

1. The purchase of food from Restaurants and/or combination food service establishments located within the City, including:
 - a. Salads from salad bars;
 - b. Items, including toppings or additions, scooped or otherwise placed into a cone, bowl or other container for immediate consumption whether or not consumed within the confines of the premises where scooped or placed, and

including any frozen dessert regulated by the Oregon State Department of Agriculture under ORS 621.311 and any ice cream, ice milk, sherbet or frozen yogurt. No tax shall be imposed under this subsection, however, on any item whose volume exceeds one-half (1/2) gallon or more.

c. All orders of bakery products, including “takeout” or “to go,” prepared on the premises except for: whole cakes, whole pies, or loaves of bread, even when sliced, and any order consisting of six or more bakery products.

d. Any other food prepared on the premises in form or quantity for immediate consumption whether or not it is consumed within the confines of the premises where prepared.

2. The purchase of food from a caterer for an event located within the City.

B. 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 consumer from paying the tax on the food purchased.

C. In the computation of this tax any fraction of one-half (1/2) cent or more shall be treated as one (1) cent.

3.30.030 Exemption.

The tax levied by CBMC 3.30.020 shall not be imposed on a consumer purchasing the following foods:

- A. Purchased from public or private schools or colleges except that food purchased from independent contractor operators at such schools or colleges shall be subject to the tax imposed by this chapter unless another exemption applies;
- B. Purchased by public or private schools or colleges to provide to students or faculty;
- C. Purchased from hospitals;
- D. Provided by motels, hotels, and bed and breakfast establishments to their guests if the food is provided as part of the cost of sleeping accommodations and if the establishment is taxed through the City’s transient room tax pursuant to Chapter 3.12;
- E. Purchased from vending machines;
- F. Purchased from nonprofit organizations or service clubs at temporary Restaurants including food stands, booths, street concessions and similar type operations.
- G. Provided by overnight or residential facilities including, without limitation, convalescent homes, nursing homes, and retirement homes, if the food is provided as part of the cost of sleeping accommodations;
- H. Purchased from nonprofit tax-exempt organizations to citizens over sixty (60) years of age as a part of a recognized senior citizen nutritional program;
- I. Purchased for resale to the public;
- J. Purchased in bulk for non-immediate consumption off the premises including but not limited to ice cream packed in a container of one-half (1/2) gallon or more; and
- K. Which are candy, popcorn, factory prepackaged nuts, chips, gum or other confections except that ice cream, frozen yogurt, cakes, pies or other desserts are taxed according to the provisions in this Chapter.

3.30.040 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 is collected from every purchaser. The amount of tax need not be

separately stated from the amount of the food. Every operator required to collect the tax imposed in this chapter shall be entitled to retain five percent (5%) of all taxes collected to defray the costs of collections and remittance.

3.30.050 Operator registration form.

A. An operator of a Restaurant or combination food service establishment shall register with the tax administrator, on a form provided by the administrator by July 1, 2022_or within fifteen days after beginning business.

B. The registration shall include:

1. The name under which the operator transacts or intends to transact business if different than the name of the operator;
2. The location of the Restaurant or combination food service establishment;
3. The signature of the operator; and
4. The name and mailing address of the agent, owner, host or other responsible person for the location if that person is not the operator.

C. Failure to register does not relieve the operator from collecting the tax or a person from paying the tax.

3.30.060 Certificate of authority.

A. The tax administrator shall issue a certificate of authority to the registrant within ten days after registration.

B. Certificates are nonassignable and nontransferable.

C. Each certificate shall state the place of business to which it applies and shall be prominently displayed in the office area, or other location in view of the general public.

D. The certificate shall state:

1. The name of the operator;
2. The address of the Restaurant or combination food service establishment, or name of the Restaurant or food service establishment, if applicable;
3. The date when the certificate was issued; and
4. "This Prepared Food Tax Registration certificate signifies that the person named on the certificate has fulfilled the requirements of the Prepared Food Tax Ordinance of the City of Cannon Beach by registering with the Tax Administrator for the purpose of collecting the prepared food tax imposed by the City and remitting the tax to the City of Cannon Beach."

3.30.070 Collections, returns and payments.

A. The taxes collected by the operator are payable to the city on a quarterly basis on the fifteenth day of the following month for the preceding three months and are delinquent on the last day of the month in which they are due. The initial return may be for less than the three months preceding the due date. The quarters are:

1. First Quarter: January, February, March;
2. Second Quarter: April, May, June;
3. Third Quarter: July, August, September;
4. Fourth Quarter: October, November, December.

B. The operator shall deliver the tax due and the return showing tax collections for the preceding quarter in a form prescribed by the city to City Hall, Attn: Tax Administrator, 163 E Gower, Cannon Beach, 97110, before the sixteenth day of the month following each collection

quarter. If the return is mailed, the postmark shall be considered the date of delivery for determining delinquencies.

D. Returns shall show the total sales subject to this chapter and the amount of tax collected under this chapter for the related period. Returns shall also show the exempt sales and the basis for exemptions and a detailed explanation for each.

E. For good cause, the tax administrator may extend the time for filing a return or paying the tax for not more than one month. Further extension may be granted only by the city council. An operator to whom an extension is granted shall pay interest at the rate of one and one-half percent per month on the amount of tax due, without proration for a fraction of a month. If a return is not filed and if the tax and interest due are not paid by the end of the extension granted, the interest shall become a part of the tax for computation of penalties prescribed in Section 3.30.080.

F. The city may require returns and payment of the taxes for other than quarterly periods in individual cases to ensure payment or to facilitate collection.

G. Failure to File a Return. The operator shall deliver the return by the due date. The filing of a return is required even if there is no taxable activity during the quarter. If the return is not delivered by the last day of the month following the quarter end, a penalty of one hundred dollars plus ten percent of the tax owed will be assessed for each return not filed by the due date.

3.30.080 Delinquency penalties.

A. Any operator who has not been granted an extension of time for remittance of tax due and who fails to remit the tax prior to delinquency shall pay a penalty of ten percent (10%) of the tax due in addition to the tax.

B. Any operator who has not been granted an extension of time for remittance of tax due and who fails to pay a delinquent remittance before the expiration of thirty-one (31) days following the date on which the remittance became delinquent shall pay a second delinquency penalty of fifteen percent (15%) of the tax due, the amount of the tax, and the ten percent (10%) penalty first imposed.

C. If the tax administrator determines that nonpayment of a remittance due under this chapter is due to fraud or intent to evade the tax, a penalty of twenty-five percent (25%) of the tax shall be added to the penalties stated in subsections A and B.

D. In addition to the penalties imposed by this section, any operator who fails to remit the required tax shall pay interest at the rate of one and one-half percent (1½%) per month, without proration for portions of a month, on the tax due, exclusive of penalties, from the date on which the tax first became delinquent until paid.

E. Each penalty imposed and the interest accrued under provisions of this section shall be merged with and become part of the tax required to be paid.

F. Any operator who fails to remit the tax within the required time may petition the tax administrator for waiver and refund of the penalty or a portion of it. The tax administrator may, if good cause is shown, direct a refund of the penalty or a portion of it.

3.30.090 Deficiency determinations.

A. In making a determination that the returns are incorrect, the tax administrator may determine the amount required to be paid on the basis of the facts contained in the return or on the basis of any other information.

B. Deficiency determination may be made on the amount due for one or more than one period. The determined amount shall be payable immediately on service of notice, after which the determined amount is delinquent. Penalties on deficiencies shall be applied as provided in Section 3.30.080.

C. In making a determination, the tax administrator may offset overpayments that have been made against a deficiency for a subsequent period or against penalties and interest on the deficiency. The interest on the deficiency shall be computed as provided in Section 3.30.080.

3.30.100 Redemption Petition.

A determination becomes due and payable immediately on receipt of notice and becomes final within twenty days after the city has given notice. However, after payment has been made, the operator may petition for redemption and refund of the determination if the petition is filed before the determination becomes final. If no petition is filed, the tax administrator's determination is final and the amount thereby is immediately due and payable.

3.30.110 Fraud, refusal to collect and evasion.

A. If an operator fails or refuses to collect the tax, make the report or remit the tax, or makes a fraudulent return or otherwise willfully attempts to evade the tax payment, the tax administrator shall obtain facts and information on which to base an estimate of the tax due. After determining the tax due and the interest and penalties, the tax administrator shall give notice of the total amount due. The city may also proceed to revoke the operator's business license on the grounds that the licensee has violated this section.

B. Determination and notice shall be made and mailed within three years after discovery of fraud, intent to evade, failure or refusal to collect the taxes, or failure to file a return. The determination becomes payable immediately on receipt of notice and becomes final twenty days after the tax administrator has given notice.

C. The operator may petition for redemption and refund if the petition is filed before the determination becomes final.

3.30.120 Notice of Determination.

A. The tax administrator shall give the operator a written notice of the determination. If notice is mailed, it shall be addressed to the operator at the address that appears on the records of the tax administrator, and service is complete when the notice is deposited in the post office.

B. Except in the case of fraud or intent to evade the tax, a deficiency determination shall be made and notice mailed within three years after the last day of the month following the close of the quarterly period for which the determination has been made or within three years after the return is filed, whichever is later.

3.30.130 Operator delay.

If the tax administrator believes that collection of the tax will be jeopardized by delay, or if a determination will be jeopardized by delay, the tax administrator shall determine the tax to be collected and note facts concerning the delay on the determination. The determined amount is payable immediately after service of notice. After payment has been made, the operator may petition for redemption and refund of the determination if the petition is filed within ten days from the date of service of notice by the tax administrator.

3.30.140 Redetermination.

A. An operator against whom a determination is made under Sections 3.30.060 through 3.30.110, or a person directly interested, may appeal for a redetermination, redemption and refund of the amount of the tax, interest, and penalties, if any, and reinstatement of the business license within the time required in Section 3.30.110.

B. If a petition for redetermination and refund is filed within the allowable period, the city council shall reconsider the determination and, if the operator requested a hearing in the appeal, shall grant the hearing and give the operator ten days' notice of the time and place of the hearing.

C. The city council may change the amount of the determination as a result of the hearing. If an increase is determined, the increase is payable immediately after the hearing. The city council may also reinstate the business license.

D. The decision of the city council on a petition for redetermination becomes final ten days after service of notice on the petitioner.

E. A petition for redetermination or an appeal is not effective unless the operator has complied with the payment provisions.

3.30.150 Security for collection of tax.

A. The tax administrator, whenever it is deemed necessary to insure compliance with this chapter, may require an operator to deposit security in the form of cash, bond or other security. The amount of security shall be fixed by the tax administrator and shall be no greater than twice the operator's estimated average quarterly liability for the period for which the operator files returns or five thousand dollars, whichever amount is less.

B. Within three years after the tax becomes payable or within three years after a determination becomes final, the city may bring an action in the courts of this state, another state, or the United States to collect the amount delinquent and penalties and interest.

3.30.160 Liens.

A. The tax, interest, penalty and filing fees paid to the city and any advertising costs incurred when the tax becomes delinquent shall be a lien from the date of its recording with the county clerk until the tax is paid. The lien shall be superior to all subsequently recorded liens on all tangible personal property in the operator's Restaurant. The lien may be foreclosed and the necessary property may be sold to discharge the lien.

B. Notice of the lien shall be issued by the city when the operator has defaulted in payment of the tax, interest and penalty. A copy of the notice shall be sent by certified mail to the operator.

C. Personal property subject to the lien may be sold at public auction after ten days' notice published in a newspaper of general circulation in the city.

D. A lien for the tax, interest and penalty shall be released by the city when the full amount has been paid to the city. The operator or person making the payment shall receive a receipt stating that the full amount of the tax, interest and penalty has been paid, that the lien is released and that the record of the lien is satisfied.

3.30.170 Refunds by city to operator.

When the tax, penalty or interest has been paid more than once or has been erroneously or illegally collected or received by the city, it may be refunded if a written verified claim stating the specific reason for the claim is filed within three years from the date of payment. The claim

shall be submitted on forms provided by the tax administrator. If the claim is approved, the excess amount may be refunded to the operator or it may be credited to an amount payable by the operator and any balance refunded.

3.30.180 Refunds by city to customer.

If the tax has been collected by the operator and deposited with the city and it is later determined that the tax was erroneously or illegally collected or received by the tax administrator, it may be refunded to the customer if a written verified claim stating the specific reason for the claim is filed with the city within three years from the date of payment.

3.30.190 Records required from operators.

Every operator shall keep all records as may be necessary to determine the amount of the tax imposed by this Chapter for a period of three years and six months.

3.30.200 Examination of records.

During normal business hours and after notifying the operator, the city auditor, at the direction of the tax administrator, may examine books, papers and accounting records related to the sale of prepared foods to verify the accuracy of a return or, if no return is made, to determine the amount to be paid. The auditor may initiate audits regarding the imposition and administration of the prepared food sales tax.

Failure of an operator to allow the auditor to examine requested records is a violation of this provision and may constitute grounds for the tax administrator to revoke the operator's business license.

3.30.210 Confidentiality.

The tax administrator or a person having an administrative or clerical duty under the provisions of this chapter shall not make known in any manner the business affairs, operations or information obtained by an investigation of records and equipment of a person required to file a return or pay a prepared food sales tax or a person visited or examined in the discharge of official duty; or the amount or source of income, profits, losses or expenditures contained in a statement or application; or permit a statement or application, or a copy of either, or a book containing an abstract or particulars to be seen or examined by any person. However, nothing in this section shall be construed to prevent:

A. Disclosure to or examination of records and equipment by a city official, employee or agent for collecting taxes for the purpose of administering or enforcing the provisions or collecting the taxes imposed by this chapter.

B. Disclosure, after filing a written request, to the taxpayer, receivers, trustees, executors, administrators, assignees and guarantors, if directly interested, of information concerning tax paid, unpaid tax, amount of tax required to be collected or interest and penalties. However, the city attorney shall approve each disclosure, and the tax administrator or city manager may refuse to make a disclosure referred to in this subsection when, in their opinion, the public interest would suffer.

C. Disclosure of names and addresses of persons making returns.

D. Disclosure of general statistics regarding taxes collected or business done in the city.

3.30.220 Disposition and use of tax funds.

Revenues received from the prepared food sales tax shall be appropriated annually as recommended by the city budget committee and adopted by the city council in accordance with Oregon Budget Law. Any reserve fund shall be accounted for in a prepared food sales tax reserve fund.

3.30.230 Duties of tax administrator.

The tax administrator:

- A. Shall enforce this chapter and may propose rules and regulations necessary for enforcement.
- B. May affirm or modify or deny a petition. In this process, he or she may take evidence and make investigations.
- C. May examine during normal business hours the books, papers and accounting records relating to prepared food sales of any operator, after notification to the operator liable for the tax; and may investigate the business of the operator in order to verify the accuracy of any return made; or if no return is made by the operator, to ascertain and determine the amount required to be paid.
- D. May grant extension of time for filing a return or paying the tax of not more than one month.
- E. Shall give notice of its determination and shall file a certified copy of each determination with the city. Determinations become final after ten days and tax becomes due, subject to interest and penalties.
- F. May assess penalties when he or she determines that nonpayment of a remittance is due to fraud or an intent to evade the tax.
- G. Shall consider petitions for waiver/refund of penalties.
- H. May, for good cause, grant extensions of time in excess of fifteen days for filing a return or paying the tax.
- I. Makes investigations and initiates audits to be performed by the city auditor regarding imposition and administration of the tax; recommends to the city the adoption, amendment or repeal of legislation pertaining to the tax.

3.30.240 Appeals to city council.

A person aggrieved by a decision of the tax administrator may appeal to the city council by filing a notice of appeal with the city within twenty days of service or mailing of the notice of a decision. The council shall fix a time and place for hearing the appeal and shall give the appellant twenty days' written notice of the time and place of the hearing.

3.30.250 General penalty.

In addition to any other remedy available under the local, state or federal law, any person violating any of the provisions of this chapter may be punished by a fine of not to exceed five hundred dollars, in the discretion of the city manager, for each violation. Such fine may be adjudicated in the Cannon Beach Municipal Court

3.30.260 Effective Date

Having been referred by Council resolution to city's electors at the statewide election held on November 2, 2021 and the measure having passed, the tax shall be levied and imposed and this Chapter shall become effective on July 1, 2022.