

ORDINANCE NO. 1316

AN ORDINANCE AUTHORIZING SIDEWALK CAFÉS, ESTABLISHING A POLICY FOR PERMITS AND USES OF SIDEWALK CAFÉS, REPEALING SECTION 12.12.035 OF THE CANBY MUNICIPAL CODE, AMENDING SECTION 9.24.060 OF THE CANBY MUNICIPAL CODE AND DECLARING AN EMERGENCY.

WHEREAS, the City of Canby currently does not allow alcohol to be possessed or served, among other places, on the public right-of-way, including public sidewalks; and

WHEREAS, the City of Canby has been approached by local restaurants with liquor licenses asking the City to allow the service of alcohol at tables on public sidewalks in front of their food service businesses; and

WHEREAS, the Canby City Council wants to establish a procedure to license and regulate sidewalk cafés that desire to serve alcohol at sidewalk tables, now, therefore

THE CITY OF CANBY ORDAINS AS FOLLOWS:

SECTION 1: Canby Municipal Code Section 12.13 is added to read as follows:

Chapter 12.13

Sidewalk Cafés

Sections:

- 12.13.010 Purpose.**
- 12.13.020 Permit required.**
- 12.13.030 Definitions.**
- 12.13.040 Permit fee.**
- 12.13.050 Permit application.**
- 12.13.060 Notice required**
- 12.13.070 Location rules and review criteria.**
- 12.13.080 Liability and insurance**
- 12.13.090 Forms and conditions of permit.**
- 12.13.100 Denial, revocation or suspension of permit.**
- 12.13.110 Consumption of alcoholic beverages.**
- 12.13.120 Penalties.**

Section 12.13.010 Purpose.

The purpose hereof is to permit and encourage sidewalk vending that is

compatible with other uses of the City of Canby public sidewalks. The City finds that sidewalk cafés encourage a pedestrian-oriented environment, help to create a visually attractive atmosphere and streetscape, and promote overall commerce.

Section 12.13.020 Permit required.

Private commercial use of public sidewalks for the purpose of operating a sidewalk café in the City is prohibited unless a permit is obtained from the City Administrator or Designee as provided herein.

Section 12.13.030 Definitions.

- A. Abutting property owners and occupants – Any owner or occupant of property which abuts the subject sidewalk café site excluding public right-of-way.
- B. Accessible Route – A continuous unobstructed path of travel connecting all publicly accessible elements and spaces of a building or facility.
- C. Adjacent sidewalk area – That portion of the public sidewalk between the curb line and the property line demarcated by extending the side building lines of the premises until they intersect the curb.
- D. Clearances – Clearances as referenced in this section are measured horizontally from the outside edge of the sidewalk café delineation to any obstruction on the ground greater than one-half inch in height, or to an adjacent projection such as tree limbs, tree wells, banners, signs, bike racks, lamp posts, or any other fixtures. Accessible route clearances shall be no less than four (4) feet in width and no less than seven (7) feet in height for the entire length of the accessible route. Radiuses along an accessible route shall be no less than four (4) feet in width.
- E. Operate a sidewalk café – Serving food or beverage from a restaurant to patrons seated at tables located within the adjacent sidewalk area, including, in the case of a permittee in possession of a valid license for the sale of alcohol beverages covering such sidewalk area, the service of such beverages, or providing seating for patrons in the adjacent sidewalk area.
- F. Substantiated – Witnessed and recorded by City staff.
- G. Tree Well – A defined area adjacent to a required street tree which provides a buffer for protection of the tree. The grade level surface of the tree well may contain movable tree pavers, steel grates, wood, dirt or other materials. With respect to measuring clearances, the area and surface materials within the tree well shall not be included. Any clearance shall be measured horizontally from the outside edge of the tree well, and/or projecting tree limbs.
- H. Vision clearance triangle – A vision clearance triangle is that area which abuts streets, alleys or driveway intersections whether on the subject property or the abutting property. The vision clearance triangle is determined by measuring the appropriate distance in both directions from the intersecting curb lines along the edge of the right-of-way and/or the edge of driveways and alleyways as determined by the zoning district and type of intersecting roadways as indicated within the Land Development and Planning Ordinance.

Section 12.13.040 Permit fee.

- A. Applicants for a sidewalk café shall pay a permit fee and a rental fee for the use of the public right-of-way.
- B. The fee for the permit and the rental fee as described in Section 12.13.020 shall be as specified in a resolution adopted by the Canby City Council. Fees are annual and shall be payable upon renewal date. An initial non-refundable permit fee is payable upon application. The initial right-of-way rental fee is payable upon permit issuance.

Section 12.13.050 Permit application.

- A. Application for a permit to operate a sidewalk café shall be made to the City of Canby on a form provided by the City Administrator or Designee. Application for a permit will minimally contain:
 - 1. A completed application;
 - 2. A scaled plan of the proposed public sidewalk area for sidewalk café use, with dimensions shown to include at a minimum:
 - a. total square foot area of outside café area,
 - b. café entrance location and size,
 - c. ADA clearances into and throughout the café,
 - d. all clearances to fixtures, lights, tree wells, signs, news racks, bike racks, planters and any other obstructions,
 - e. size and location of tables and chairs,
 - f. location of outdoor café waste receptacles,
 - 3. If requested by the applicant any delineation must meet City Standards and application must also contain:
 - a. location and type of café delineation,
 - b. cross section of any fence or other delineation showing the construction materials and heights,
 - c. if applicable, details reflecting approved method of semi-permanent fence anchoring to the sidewalk or building; and
 - 4. A certificate of insurance and endorsement form;
 - 5. A copy of the alcohol control plan filed with the OLCC.
- B. Information shall be provided as required by the City Administrator or Designee to carry out the purpose hereof.

Section 12.13.070 Location rules and review criteria.

- A. The City Administrator or Designee shall review the application for compliance with the following criteria:
 - 1. The operation of a sidewalk café shall be located such that there is at least a minimum of four (4) feet of clear and unobstructed accessible route to a height of seven (7) feet measured vertically from grade between the sidewalk café delineation and tree wells, tree limbs, bike racks, lamp posts, sign posts and any other fixtures or obstructions. Radiuses along an accessible route shall be no less than four (4) feet in width.
 - 2. Additional restroom facilities may be required if the additional seating capacity created by a sidewalk café causes an increase in the required fixtures under Chapter 29 of the Oregon Structural Specialty Code.
 - 3. The location of the sidewalk café operation shall be approved by the City

Administrator or Designee.

4. Accessible routes into, throughout, and adjacent to a sidewalk café shall be maintained in accordance with Chapter 11 of the Oregon Structural Specialty Code.
 5. The operation of a sidewalk café requires that trash containers be provided on site.
- B. The City Administrator or Designee will forward all applications for review by the Planning Director, Public Works Director and Police Chief or their designees for any business who holds a valid liquor license, or in which alcoholic beverages are intended to be served.
1. The Planning Director, Public Works Director and the Police Chief or their designees upon review of the application will sign the application for concurrence with granting the license, or,
 2. Submit a memorandum of concerns to be forwarded to City Council for consideration, signing the application in a location that acknowledges review of application.

Section 12.13.080 Liability and insurance.

A signed statement that the permittee shall hold harmless the City, its officers and employees, and shall indemnify the City, its officers and employees for any claims for damages to property or injury to persons which may occur in connection with an activity carried on under the terms of the permit. Permittee shall furnish and maintain such public liability, liquor liability, food products liability, and property damages insurance as will protect permittee and City from all claims for damage to property or bodily injury, including death, which may arise from operations under the permit or in connection therewith. Such insurance shall provide coverage of not less than the amount of municipal tort liability under the Oregon Tort Claims Act. The permittee shall name the City of Canby as an additional insured by attaching an endorsement to the certificate of insurance (provided by the City). Such insurance shall be without prejudice to coverage otherwise existing therein, and shall name as additional insured the City, its officers, and employees, and shall further provide that the policy shall not terminate or be canceled prior to the expiration of the permit without 30 days written notice to the city.

Section 12.13.090 Forms and conditions of permit.

The permit issued shall be in a form deemed suitable by the City Administrator or Designee. In addition to naming the permittee and other information deemed appropriate, the permit shall contain the following minimum conditions.

- A. Requirements for all sidewalk cafés:

1. Each permit issued shall terminate one year after the anniversary date.
 2. The permit issued shall be personal to the permittee only and is not transferable in any manner without first obtaining permission from the City Administrator or Designee. The permittee will be responsible for compliance with all conditions of approval.
 3. The permit may be temporarily suspended by the City Administrator or Designee if the public interest requires use of the right-of-way for a public event, construction, repair, or any other purpose.
 4. The permit is specifically limited to the area approved or as modified by the City Administrator or Designee, and will include a site plan as required by Section 12.13.050 indicating the area approved for the sidewalk café and the location of the tables and materials permitted to be in the right-of-way. If requested by applicant, each business operating a sidewalk café shall utilize an approved method in accordance with City Standards, to clearly delineate the café.
 5. The operation of a sidewalk café shall be located such that there is at least a minimum of four (4) feet of clear and unobstructed accessible route between the café delineation and tree wells, tree limbs, bike racks, lamp posts, sign posts and any other fixtures or obstructions, to a height of seven (7) feet measured vertically from grade. Radiuses along an accessible route shall be no less than four (4) feet in width.
 6. The sidewalk and all things placed thereon shall at all time be maintained in a clean and orderly condition. Only those things authorized by the permit and shown on the site plan may be stored in the public right-of-way when the sidewalk café is not in operation. The operation of a sidewalk café requires that trash containers be provided on site.
 7. All required building modifications or parking improvements shall be completed prior to the commencement of the operation of the sidewalk café.
 8. No signs shall be attached to any furniture or any other structure related to the operation of the sidewalk café.
 9. The permittee shall notify the City Administrator or Designee in writing when operation of the sidewalk café commences.
 10. No use of City fixtures will be allowed.
 11. Sidewalk cafés shall not occupy or obstruct the Visual Clearance Triangle.
 12. Council has the right to repeal or amend this Chapter and thereby terminate or modify all sidewalk café operations. No permittee shall obtain any property right in the continued private commercial use of the public sidewalk.
 13. Sidewalk café hours of operation will discontinue by 11:00 PM nightly.
- A. Businesses which intend to serve alcoholic beverages at the sidewalk café must additionally meet the following requirements:
1. The business shall provide verification that they hold a valid Oregon Liquor Control Commission liquor license.
 2. Except for bottles, pitchers, and carafes that are being served to customers of the café, storage of all other containers must be kept inside the business.

No taps, kegs, coolers, or other alcoholic beverage storage devices are allowed outside on the sidewalk.

3. Sidewalk cafés where alcoholic beverages are served and consumed require supervision by employees of the licensed business, as required by the Oregon Liquor Control Commission liquor license.
4. If requested by the applicant, each business serving alcoholic beverages at the sidewalk café shall utilize an approved method in accordance with City Standards, to clearly delineate the café.
5. All service and consumption of alcoholic beverages at sidewalk cafés will discontinue by 11:00 PM nightly.
6. All alcoholic beverage service providers must also provide food service in the licensed area.
7. Sidewalk cafés shall designate one access/exit point for the exterior service area and this point shall be located near a business entrance; and shall post signage at the access/exit point prohibiting the removal of alcoholic beverages from the licensed sidewalk café area.

Section 12.13.100 Denial, revocation or suspension of permit.

- A. The City Administrator or Designee may deny, revoke, or suspend the permit upon finding that any provision herein or condition of approval will be or has been violated.
- B. Upon denial, revocation, or suspension, the City Administrator or Designee shall give notice of such action to the applicant or permittee in writing stating the action which has been taken and the reason therefor. The action shall be effective immediately, but the applicant or permittee may make written request, within 10 calendar days after the notice is issued, for a hearing by the City Administrator or Designee. Upon hearing the matter, the City Administrator or Designee shall render a final decision concerning the permit.

Section 12.13.110 Consumption of alcoholic beverages.

The provisions of Section 9.24.060 of the CMC notwithstanding, patrons, while seated at a sidewalk café licensed to sell alcoholic beverages, may possess and consume such beverages.

Section 12.13.120 Penalties.

In addition to the remedies set out below, violations of the provisions of this section may be subject to other appropriate legal or equitable actions to restrain, correct, or abate the violations. These remedies are intended to be cumulative and not exclusive. The following violations are infractions punishable by a penalty in accordance with this section. Any violation of this section may be prosecuted as a Class A infraction under the procedures of ORS Chapter 153 and Canby Municipal Code Section 1.08.010. The City Administrator or Designee is authorized to issue a citation or written notice of violation to any person violating the provisions herein. In addition:

- A. Any sidewalk café operating without a valid permit for the year shall be notified by the City that it is in violation of this section, and will be allowed up to ten business days to file an application. If no application is filed within

10-days, the operator of the café shall be notified and a civil penalty of \$500 per day shall be levied.

- B. Any sidewalk café operating with a valid license, but found by the City to have a substantiated instance of failing to be in compliance with the other provision of this section of the Canby Municipal Code shall be given up to two written notices per year, warning that it is operating out of compliance and in violation of this section. On the third investigated and substantiated instance of non-compliance, notice of the non-compliance may be delivered and penalties may be levied as follows:
 - 1. first levy (third substantiated violation) \$500;
 - 2. second levy (fourth substantiated violation) \$1,000;
 - 3. third levy (fifth substantiated violation) \$1,500.
 - 4. Penalties shall continue to accrue in \$500 increments for each additional substantiated violation.
- C. In accordance with Section 12.13.100, the City Administrator or Designee may deny, revoke, or suspend the permit upon finding more than three separate instances of substantiated violations that result in fines.
- D. Levies of civil penalties and revocations of permits may be appealed to the municipal court judge within ten days of date written notice of the levy of penalty or revocation is deposited in the United State Mail with first class postage addressed to the café or delivered to an employee of the café or posted at the café. If no appeal is filed within ten days of the notice, the levy of penalty shall be final and failure to pay the levy shall be a separate violation of this section.
- E. Any appeal must be in writing, signed by the owner or operator of the café, and must state the grounds for the appeal. The appeal must be accompanied by a deposit in the amount of the levy and an appeal fee of \$50. The appeal must be filed with the municipal court. The appeal must be served upon the City Attorney. Failure to comply with any of these requirements within ten days of the date of notice shall result in a dismissal of the appeal, a forfeiture of the appeal fee, and entry of judgment in the amount of the levy by the municipal court in its register.
- F. Rules of conduct for hearing and final order. The Municipal Judge shall develop any rules, procedures or regulations that may be necessary for the proper conduct of the appeal. The only issue to be decided by the Municipal Judge is a determination of whether or not the café was in violation of CMC 12.13.120(1) or (2) as alleged in the notice of penalty. If the municipal Judge finds that it is more likely than not that the café was in violation as specified in the notice of penalty, the Municipal Judge shall issue an order affirming the levy of penalty and enter a judgment for the amount of the levy of penalty into the register of the Municipal Court. The order and judgment shall contain a provision for court costs to be paid by the violator in the amount of \$250. If the Judge finds that it is more likely than not that the café was in compliance and not in violation as specified in the notice of penalty, the Judge shall void the notice of penalty. The Judge's order is final and is not subject to appeal. It shall not be a defense that the café owner or operator did not receive notice

of the penalty if mailed to the address of the café or delivered to an employee of the café. It shall not be a defense that the café owner or operator was not aware of the permit requirements.

- G. Failure to pay levy penalty. Unless the full amount of the levy of penalty is paid within ten days after notice of penalty or the order becomes final by operation of law, or after appeal, each day that the penalty is not paid shall constitute a further violation.

SECTION 2: CMC section 12.12.035 is hereby repealed.

SECTION 3: CMC section 9.24.060 is hereby amended to read as follows:

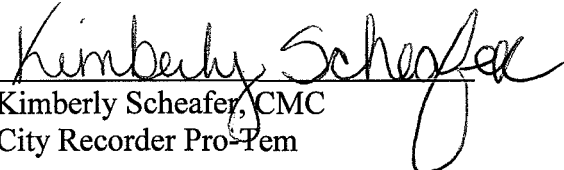
“Section 9.24.060 Drinking in public places.”

“No person shall drink or consume alcoholic liquor in or on a street, alley, sidewalk, mall, public or private parking lot or parking structure, motor vehicles, public grounds or other public places unless the place has been licensed for that purpose by the Oregon Liquor Control Commission and the owner of the OLCC licensed premises has obtained a permit from the City of Canby to operate a sidewalk café.”

SECTION 4: Emergency Declared.

In order to best serve the citizens of the City of Canby by authorizing sidewalk cafés to serve alcoholic beverages, an emergency is hereby declared to exist and this ordinance shall take effect immediately upon its enactment after final reading.

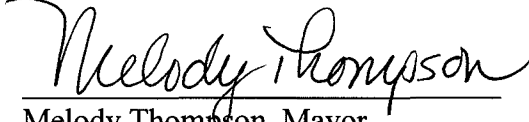
SUBMITTED to the Canby City Council and read the first time at a regular meeting therefore on Wednesday, August 5, 2009, and ordered posted in three (3) public and conspicuous places in the City of Canby as specified in the Canby City Charter and scheduled for second reading before the City Council for final reading and action at a regular meeting thereof on Wednesday, August 19, 2009, commencing at the hour of 7:30 pm at the Council Meeting Chambers located at 155 N.W. 2nd Avenue, Canby, Oregon.


Kimberly Scheafer, CMC
City Recorder Pro-Tem

PASSED on second and final reading by the Canby City Council at a regular meeting thereof on the 19th of August, 2009, by the following vote:

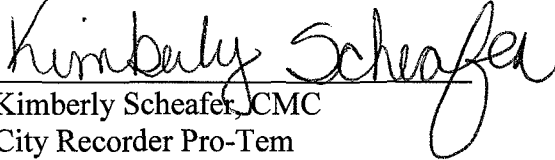
YEAS 5

NAYS 0



Melody Thompson, Mayor

ATTEST:



Kimberly Scheafer, CMC
City Recorder Pro-Tem