



ORDINANCE 2020-002

AMENDING TITLE 5 OF THE SHERWOOD MUNICIPAL CODE REGARDING BUSINESS LICENSES AND REGULATIONS

WHEREAS, Title 5 of the Sherwood Municipal Code (SMC) relates to business licenses and regulations, and contains multiple chapters; and

WHEREAS, a number of the provisions currently found in Title 5 are outdated, unclear, or otherwise in need of updating; and

WHEREAS, staff has recommended making certain changes and clarifications to Chapter 5.04 relating to Business Licenses, separating the provisions relating to Business Recycling into a separate chapter (to be titled Chapter 5.08), and repealing several existing chapters (5.08 Amusement Games, 5.12 Bingo, Lotto and Raffle Games, 5.20 Liquor Establishments, and 5.24 Taxicabs); and

WHEREAS, City Council reviewed and discussed the proposed changes in a public work session on November 5, 2019; and

WHEREAS, City Council held a public hearing on this Ordinance on January 7, 2020 and January 21, 2020; and

WHEREAS, it appears to City Council that adoption of this Ordinance is necessary and appropriate.

NOW, THEREFORE, THE CITY OF SHERWOOD ORDAINS AS FOLLOWS:

Section 1. Findings. After full and due consideration, the City Council finds that Title 5 of the Sherwood Municipal Code should be amended to read as set forth in Exhibit 1, attached hereto.

Section 2. Approval. The proposed amendment to Title 5 of the Sherwood Municipal Code identified in Exhibit 1 is hereby **APPROVED**.

Section 3. Manager Authorized. The City Manager is hereby directed and authorized to adopt rules and to take such other actions as may be necessary to implement this Ordinance, including necessary updates to the Municipal Code.

Section 4. Effective Date. This Ordinance shall take effect 30 days from the date of its enactment by the City Council and approval by the Mayor.

Duly passed by the City Council this 21st day of January, 2020.



Tim Rosener, Council President

1-21-2020

Date

Attest:



Sylvia Murphy, MMC, City Recorder

	<u>AYE</u>	<u>NAY</u>
Scott	<u>✓</u>	_____
Griffin	<u>✓</u>	_____
Brouse	<u>✓</u>	_____
Young	<u>✓</u>	_____
Garland	<u>✓</u>	_____
Rosener	<u>✓</u>	_____
Mays	<u>Absent</u>	_____

Title 5 - BUSINESS LICENSES AND REGULATIONS

Chapter 5.04 - BUSINESS LICENSES

5.04.010 - Definitions.

As used in this chapter:

"Business" means an activity carried on by a person predominately for economic profit or livelihood in the city.

"Employee" means a natural person working for or on behalf of a business in exchange for compensation.

"Full-time employees" means the total number of hours worked in a calendar year by all of a business's employees working within the city, divided by 2080 hours.

"Person" means and includes individuals, corporations, unincorporated associations, partnerships and societies, whether or not for profit.

5.04.020 - Purpose.

- A. The business license program established herein is purely for the provision of tax revenue only and is non-regulatory.
- B. The business license authorized by this chapter is independent of and separate from other tax, license, or permit fee(s) authorized and imposed by the city or any other public entity. Any person or entity engaged in an activity or conduct subject to the regulatory provisions of the city shall be liable for the payment of any taxes, fees, or costs provided for under the provisions of those regulations.

5.04.030 - License required.

- A. Unless otherwise exempt under the provisions of this Chapter, it is unlawful for a person to conduct any business within the city without first having obtained a license pursuant to this chapter. Any person who advertises or otherwise represents themselves to the public as engaged in business is presumed to be so engaged.
- B. If a person operates a business in the city in more than one location, each location is considered a separate business for purposes of this chapter.
- C. A business or service operated under concession or leased on the same premises, when the business is owned in whole or in part by a different person(s), shall be considered a separate business for purposes of this chapter.
- D. If a business changes its name, the business shall notify the city of the name change.
- E. A business license must be posted in a conspicuous location at each place of business in the city. A business license does not indicate city approval or endorsement of the business or its location, or a city determination of compliance with any other applicable laws.

5.04.040 Exemptions.

The provisions of this chapter shall not apply to:

- A. Any organization licensed under Oregon's Charitable Trust and Corporation Act (ORS 128.610 et seq.) conducting a business in the city as a means to raise funds for said organization's charitable purposes.
- B. Producers of farm products raised in Oregon, produced by themselves or their immediate families and sold in the city by themselves or their immediate families.
- C. A contractor or landscape contractor which possesses a regional contractor's business license issued by the Metropolitan Service District and:
 1. Whose place of business is not located in the city; and
 2. Who earns less than two hundred fifty thousand dollars (\$250,000.00) in gross revenues from business conducted in the city.

5.04.050 Business license fees.

- A. Upon application for a license under this chapter, a business license fee shall be paid to the city. The amount of, and methodology for calculating, the business license fee required to be paid shall be set by the City Council by resolution, and may be based on type of business, length of time the business has been operating, and other

factors the City Council deems appropriate, and may be composed of two parts: a basic amount and an additional increment based on the number of full-time employee(s) of the business, which increment may include a cap.

- B. A license is valid from January 1 to December 31 of each calendar year. Fees for new businesses established mid-year may be prorated based on Council resolution.

5.04.060 – Application requirements.

- A. Each business shall complete and submit an application to the city on forms provided by the city for that purpose.
- B. Business license applications shall be accompanied by payment of the business license fee.
- C. The application for licensure shall contain all information required by the application form provided by the city.
- D. An application missing required information or submitted without concurrent payment of the business license fee shall be deemed to be incomplete and shall not be accepted.
- E. Application for the initial issuance of a license shall be made prior to engaging in business in the city.
- F. Application for license renewal shall be made prior to a license's expiration. Persons filing late applications for license renewal shall pay, in addition to the application fee, a late fee in an amount set by City Council by resolution.

5.04.070 - Temporary business license.

Any person conducting business within the city, which business is not domiciled nor otherwise permanently located in the city and which is conducting business within the city for a period of thirty (30) days or less in a calendar year, shall apply for and receive a temporary business license, using the forms supplied by the city for that purpose, and shall pay the license fee for such temporary businesses as may be established by City Council by resolution.

5.04.080 – Violations.

Violations of this chapter shall be classified as a Class C violation.

CHAPTER 5.08 – BUSINESS RECYCLING

5.08.010 - Business Recycling Required.

- A. All businesses required to have a City of Sherwood Business License shall recycle as follows:
 - 1. Businesses shall source separate from the waste stream all recyclable paper, cardboard, glass and plastic bottles and jars, and aluminum and tin cans;
 - 2. Businesses and business recycling service customers shall provide recycling containers for internal maintenance or work areas where recyclable materials may be collected, stored, or both; and
 - 3. Businesses and business recycling service customers shall post accurate signs where recyclable materials are collected, stored, or both that identify the materials that the business must source separate and that provide recycling instructions.
- B. A business may seek an exemption from the requirements in subsection A if:
 - 1. The business provides access to the City or designated agent for a site visit; and
 - 2. The city or designated agent determines during the site visit that the business cannot comply with the business recycling requirement because of space or economic restrictions or other extenuating circumstances.
- C. To assist businesses in compliance with this section, the city or designated agent shall:
 - 1. Notify businesses of the business recycling requirement at the time application is made for a business license;
 - 2. Provide businesses with education and technical assistance to assist with meeting the requirements of this section; and
 - 3. The city's business license procedures shall include provisions requiring that the business shall certify that they have complied with the requirements of this section upon signing the business license application and the business shall also certify upon renewal of the business license that they have complied with the requirements of this section.

- D. A business that does not comply with the business recycling requirement may receive a written notice of noncompliance. The notice shall describe:
 - 1. The violation.
 - 2. How the business or business recycling service customer can cure the violation within the time specified in the notice, and
 - 3. An offer of assistance with compliance.
- E. A business or business recycling service customer that does not cure the violation within the time specified in the notice of noncompliance may receive a written citation. The citation shall provide:
 - 1. An additional opportunity to cure the violation within the time specified on the citation, and
 - 2. Notification to the business or business recycling service customer that it may be subject to a fine.
- F. A business or business recycling service customer that does not cure the violation within the time specified in the notice of noncompliance may be subject to a fine.
- G. Enforcement and remedies.
 - 1. Purpose. This chapter is to ensure all business recycling activity taking place in the city conforms to the applicable provisions of the Sherwood Municipal Code (SMC) as well as rules and regulations of METRO. It does this by providing the city manager (or their designate) with authority to impose civil penalties and take such remedial action(s) as are deemed reasonable and necessary by the city manager to effect compliance with the SMC or METRO rule or regulation.
 - 2. Responsible officer. The city manager or their designate are authorized to enforce the provisions of this chapter. That person(s) has authority to investigate complaints and conduct inspection(s) deemed necessary to ensure compliance with the terms of the SMC, METRO rules and regulations.
 - 3. Violation. No person shall allow, suffer or permit any activity associated with the business recycling program located in the city to occur without said activity conforming to the requirements imposed by the SMC and/or METRO rules and regulations on that activity and consistent with the terms of the business license lawfully issued by an appropriate authority for said activity.
 - 4. Non-exclusivity. This chapter is in addition to any other right or remedy afforded the city as may be provided elsewhere in the city code or as allowed under state or federal law to enforce the terms of its code and other regulation(s) including right(s) or remedy to summarily abate condition(s) on property within or without the city which threaten to or cause an imminent public health hazard in the city.
 - 5. Separate violations. Each violation of a separate provision of the SMC, METRO rule or regulation or business license term or condition over which the city has jurisdiction may be treated as a separate violation and each day a violation is committed, is allowed or suffered to continue may also be deemed a separate violation.
 - 6. Notice of violation—Service.
 - a. If a violation is determined to exist, the city manager will deliver or cause to be delivered notice of the violation to the owner(s) of the business and/or such other person(s) as the city manager reasonably believes is "a person in charge" of the business and/or violation. A "person in charge of the business" is one who has access to and/or control over the business.
 - b. Notice shall be accomplished by either personal service or by certified first class mail, return receipt requested. Notice may also be posted on the property or in any manner or combination of manners which under all the circumstances is most reasonably calculated to apprise the person(s) of the existence of the violation and pendency of the notice.
 - c. The notice shall contain, at a minimum, the following:
 - i. Location and nature of the violation;
 - ii. The provision or provision(s) of this code or other regulation(s) or permit term(s) over which the city has jurisdiction that have been violated;
 - iii. Whether the manager is seeking imposition of civil penalties and if so, the amount and the reasons supporting imposition thereof consistent with the reasons set out in SMC Section 5.08.010(G)(8);
 - iv. The effective date of the notice;
 - v. The existence of a right to appeal the notice of violation and, if applicable, the imposition and/or amount of any civil penalty or other cost sought by the city manager consistent with SMC Section 5.08.010(G)(7); and

- vi. That failure to appeal any civil penalty or other cost sought by the city may result in the revocation of the business license until said civil penalty or cost is paid.
 - d. A defect in the notice neither affects the validity thereof nor its enforceability.
7. Appeals.
- a. Any person entitled to notice under Section 5.08.010(G)(6) may appeal the notice by filing an appeal with the municipal court. Any appeal must be filed not later than ten working days after the effective date of the notice or order. The appeal must be in writing and contain, at a minimum information on the following:
 - i. A heading entitled: "Before the Municipal Court for the City of Sherwood, Oregon."
 - ii. A listing of the names of all appellants participating in the appeal along with a brief statement setting forth the legal interest of each appellant in the property involved in the notice.
 - iii. A brief statement concerning the basis for the appeal together with any material fact(s) claimed to support those contentions and why the protested notice or action should be reversed, modified or otherwise set aside.
 - iv. The signatures of all parties named as appellants and their official mailing addresses and telephone numbers.
 - b. The municipal court shall schedule a hearing on the appeal as soon as is reasonably possible, but in no event later than thirty (30) days after receipt of the appeal, unless otherwise agreed to by the city and appellants. At the time of the hearing on the appeal, the court shall allow city and appellant to present evidence with the burden thereof supporting a fact or position resting on the proponent of the fact or position. Irrelevant, immaterial or unduly repetitious evidence shall be excluded. All evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs shall be admissible. The municipal court shall give effect to the rules of privilege recognized by law.
 - c. After the close of the hearing, the court shall issue a written order setting out the basis for its determination and may affirm, modify or reverse the decision of the city manager and may also take or order such other action(s) as are deemed appropriate to effect the court's determination, including the payment of any costs.
 - d. The order of the municipal court is final and judicially reviewable only as provided by the terms of ORS 34.010 to ORS 34.100.
8. Penalties.
- a. Unless specifically limited elsewhere in the Sherwood Municipal Code, the city manager is authorized to seek a civil penalty from any violator in an amount of up to two hundred fifty dollars (\$250.00) for violation of any of the provision(s) of the SMC, METRO rules and regulations or a lawfully issued business license.
 - b. When determining the amount of a civil penalty, the city manager and, if appealed, the municipal court shall consider, at a minimum, the following factors and set out in the notice or determination those believed to apply to a situation:
 - i. Prior violations and whether those violations were remedied in a timely manner;
 - ii. The magnitude of the violation;
 - iii. Whether the violation was repeated or continuous; and
 - iv. Whether the violation was intentional or otherwise.

Chapter 5.28 - PROCESS AND FEES FOR LIQUOR LICENSES

5.28.010 - Purpose.

Oregon statute authorizes the Oregon Liquor Control Commission (OLCC) to take into consideration the written recommendation of the city concerning approval or denial of initial or renewal licenses and/or imposition of restrictions on license privileges and the conduct of operations at licensed premises in the city. This chapter sets forth the process for review of liquor license applications, and establishes the standards and criteria to be considered by the city manager in addressing such applications.

5.28.015 - Application.

An application shall consist of a legible copy of the OLCC "Liquor License Application." When the application is for a new outlet, the applicant shall provide legible copies of the "Individual History" form and "Business Information" form or other forms required by OLCC to be submitted with the application.

5.28.020 - Application review.

The city manager shall refer each application to the police department and to such other departments deemed by him/her as appropriate. Any department receiving an application shall, if appropriate, conduct an investigation and shall report findings and recommendations, if any, to the city manager.

5.28.025 - Information from applicant.

A department designated to review an application or to review a renewal of an existing license, may require the applicant to supply additional information necessary to determine the qualifications of the applicant for the proposed application or renewal. If the applicant fails to supply the information required or submits false or misleading information, the city manager may recommend denial of the application.

5.28.030 - Time frames for response.

- A. License Actions. The city manager shall provide a recommendation, if any, to OLCC within forty-five (45) days of receipt of an application. Notwithstanding the foregoing, the city manager may within that forty-five-(45) day period, file a written request meeting the requirements of subsection C of this section seeking an additional forty-five (45) days within which to render a recommendation.
- B. Renewal Applications. The city manager shall provide a recommendation, if any, to OLCC within sixty (60) days of notification by OLCC that an existing licensee is eligible for renewal. The city manager may, within that sixty-(60) day period, file with OLCC a written request meeting the requirements of subsection C of this rule and seeking an additional forty-five (45) days within which to render its recommendation.
- C. Extension Requests. City manager requests for additional time to provide a recommendation shall: 1) set forth the reason additional time is needed; 2) state that the city manager is considering making an unfavorable recommendation; and 3) state the specific grounds being considered toward an unfavorable recommendation.

5.28.035 - Standards and criteria.

The criteria for issuance and maintenance of licenses contained in OAR 845-005-0308(2004) are adopted by this reference as the standards and criteria to be considered by the city manager in recommending approval or denial of an application.

5.28.040 - Fees.

In lieu of the application fee set forth in ORS 471.166(7), the city of Sherwood shall charge the following fees in connection with review and processing of liquor license applications:

A.	\$100.00	Original new outlet application.
B.	\$ 75.00	Change in ownership or licensee, change in location or change in privilege application.
C.	\$ 35.00	Renewal or temporary application.

These fees may be changed by further resolution of the council.

5.28.045 - Effective date.

The ordinance codified in this chapter shall become effective the thirtieth (30th) day after its enactment by the city council and approval by the mayor.

Chapter 5.30 - RECREATIONAL MARIJUANA BUSINESSES

5.30.010 - Definitions.

As used in this chapter, unless the context requires otherwise:

- (1) "Marijuana" means the plant Cannabis family Cannabaceae, any part of the plant Cannabis family Cannabaceae and the seeds of the plant Cannabis family Cannabaceae.
- (2) "Recreational marijuana processor" means an entity licensed by the Oregon Liquor Control Commission to process marijuana.
- (3) "Recreational marijuana producer" means an entity licensed by the Oregon Liquor Control Commission to manufacture, plant, cultivate, grow or harvest marijuana.
- (4) "Recreational marijuana retailer" means an entity licensed by the Oregon Liquor Control Commission to sell marijuana items to a consumer in this state.
- (5) "Recreational marijuana wholesaler" means an entity licensed by the Oregon Liquor Control Commission to purchase marijuana items in this state for resale to a person other than a consumer.

5.30.020 - Ban declared.

As described in section 134 of House Bill 3400 (2015), the City of Sherwood hereby prohibits the establishment and operation of the following in the area subject to the jurisdiction of the City:

- (1) Recreational marijuana producers;
- (2) Recreational marijuana processors;
- (3) Recreational marijuana wholesalers;
- (4) Recreational marijuana retailers.