



**ORDINANCE 2021-009**

**ADDING A NEW CHAPTER 5.34 TO THE SHERWOOD MUNICIPAL CODE REGARDING  
NON-RESIDENTIAL LEASES**

**WHEREAS**, the City of Sherwood ("City") has a compelling interest in requiring non-residential landlords to disclose information regarding potential property use restrictions to prospective tenants prior to leasing to avoid tenant responsibility for significant unforeseen fees and delays required to use the property as desired; and

**WHEREAS**, the City Council held two public hearings on this Ordinance on October 5 and 19, 2021; and

**WHEREAS**, it appears to the City Council that adoption of this ordinance is in the best interest of the City.

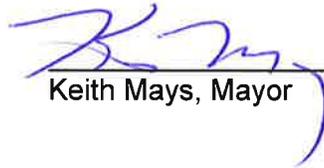
**NOW, THEREFORE, THE CITY OF SHERWOOD ORDAINS AS FOLLOWS:**

**Section 1.** Chapter 5.34 is hereby added to the Sherwood Municipal Code and shall read as set forth in Exhibit A, attached to this Ordinance.

**Section 2.** The City Recorder is hereby directed to enter a copy of this Ordinance in the record of the proceedings of this Council and to take such other actions necessary to effectuate this addition to the Municipal Code.

**Section 3.** This ordinance shall become effective the 30th day after its enactment by the City Council and approval by the Mayor.

**Duly passed by the City Council on this 19<sup>th</sup> day of October, 2021.**

  
\_\_\_\_\_  
Keith Mays, Mayor

10/19/2021  
\_\_\_\_\_  
Date

Attest:  
  
\_\_\_\_\_  
Sylvia Murphy, MMC, City Recorder

	<u>AYE</u>	<u>NAY</u>
Scott	<input checked="" type="checkbox"/>	_____
Griffin	<input checked="" type="checkbox"/>	_____
Brouse	<input checked="" type="checkbox"/>	_____
Young	<input checked="" type="checkbox"/>	_____
Garland	<input checked="" type="checkbox"/>	_____
Rosener	<input checked="" type="checkbox"/>	_____
Mays	<input checked="" type="checkbox"/>	_____

## Chapter 5.34 NON-RESIDENTIAL LANDLORD-TENANT CODE

### 5.34.010 General provisions.

- A. *Short title.* The provisions of this chapter may be referred to as the "Non-Residential Landlord-Tenant Code."
- B. *Purpose.* The purpose of this chapter is to provide for disclosure requirements in connection with non-residential leased properties in the City of Sherwood ("City") and enforcement of such requirements. This chapter is intended to improve tenant awareness of the allowed uses and potential costs and restrictions associated with different uses of non-residential properties tenants are considering leasing. This chapter shall be broadly construed to further this purpose.
- C. *Effective period.* These regulations apply to all lease agreements for non-residential properties entered into on or after December 1, 2021.
- D. *Legal preference.* Except as provided in this chapter, City non-residential property lease agreements are governed by state law. In the event of a conflict between this chapter and a non-residential property lease agreement, the provisions in this chapter shall control. In the event of a conflict between this chapter and any provision of state law, the provisions of state law shall control.

### 5.34.020 Non-residential lease disclosure requirements.

- A. *Prior to executing non-residential property lease agreement.* Prior to executing a new lease for a non-residential property, landlords shall obtain and provide to prospective tenants a disclosure and acknowledgement in a form specified by the City. A "new lease" is any lease other than the following: a renewal, amendment, or extension of an existing lease which is both (1) entered into with the same tenant as the existing lease, and (2) for the same purpose as the existing lease.
- B. *Form requirements.* The disclosure and acknowledgment must provide information regarding potential restrictions on use of non-residential properties, encourage prospective tenants to discuss those restrictions with City staff, and provide information regarding landlord and prospective tenant rights and responsibilities under this chapter. The form must be signed by both the landlord and the prospective tenant.
- C. *Entering a lease after providing disclosure.* The landlord shall provide prospective tenants until 5:00 p.m. local time on a day that is at least five (5) business days after the day the landlord and prospective tenant have both executed the disclosure and acknowledgement form to consult with City staff regarding potential restrictions on the use of the property intended to be leased. If the disclosure and acknowledgement form is signed by both the landlord and prospective tenant, then any lease executed by a landlord and prospective tenant after expiration of this five business day time period may not be voided under this chapter. If the landlord and prospective tenant execute a lease prior to expiration of this time period, the prospective tenant may rescind their acceptance and void the lease for any reason without penalty, provided the prospective tenant provides written notice, in the manner described in Section 5.34.030(A)(1)(a), to the landlord of the prospective tenant's election to rescind and void the lease prior to expiration of said time period. The landlord shall return to the prospective tenant any payments, including, but not limited to, down payments, made by the prospective tenant in regard to the voided lease within ten (10) calendar days of the date said notice is given. Upon providing said notice, the prospective tenant shall have the responsibilities set forth in Section 5.34.030(A)(1)(b), with the exception of any obligation to make payments to the landlord.

### 5.34.030 Enforcement of non-residential lease disclosure requirements.

- A. *Remedies available to tenant.* If a landlord fails to provide the required disclosure and acknowledgement form to a prospective tenant, and to obtain both the landlord's and prospective tenant's signatures thereon,

prior to entering into a new lease with the prospective tenant, the lease is entered into in violation of the laws of this Chapter and the tenant may seek either of the following remedies, in the tenant's sole discretion:

1. *Void lease.* The tenant may void the lease at any time during the term of the lease without penalty by providing written notice to the landlord.
    - a. *Notice requirements.* The notice may be delivered by tenant to landlord in any written form or by any means that can readily be converted to written form, including, but not limited to, facsimile, electronic mail, and regular mail. Notice given by the tenant need not take a particular form and is sufficient if it indicates by a form of written expression the intention of the tenant not to be bound by the lease. Notice, if given by mail, is deemed given when it is deposited in a mailbox properly addressed and postage prepaid.
    - b. *Tenant responsibilities.* The tenant shall return possession of the property to the landlord immediately upon providing said written notice and shall return any associated property, including, but not limited to, keys, to the landlord within ten (10) calendar days. The tenant shall pay all sums due the landlord under the terms of the lease up to the date the lease is voided.
  2. *Recover costs for bringing property into compliance.* The tenant shall have a cause of action in any court of competent jurisdiction against the landlord. The cause of action may seek from the landlord, and the landlord shall be liable for, the actual costs incurred by the tenant, up to a maximum of \$20,000.00, in connection with bringing the leased property into compliance with applicable regulations and obtaining necessary approvals for tenant's desired use of the property, including, but not limited to, costs for necessary permits, improvements, and system development charges.
- B. *Other remedies.* In any action for enforcement under this section, the court may award reasonable attorney fees to the prevailing party. The remedies in this section are in addition to, and not in lieu of, any other legal or equitable remedy available to the tenant.
- C. *Indemnity.* The City shall have no liability for either party's attorney fees and costs incurred in connection with enforcement under this section. Any tenant electing to pursue its rights under this section shall indemnify and hold the City harmless from any and all costs, damages, and liabilities incurred by the City arising as a result of the tenant's pursuit of an enforcement action.