



## ORDINANCE 2023-003

### AMENDING TITLE 12 OF THE SHERWOOD MUNICIPAL CODE AND ADOPTING STANDARDS AND PROCEDURES FOR A PERMANENT OUTDOOR SEATING PROGRAM

**WHEREAS**, The City facilitated a pilot Outdoor Seating Program to provide additional opportunity for restaurant and business seating in Sherwood; and

**WHEREAS**, Outdoor seating refers to use of City right-of-way for service of prepared food and beverages or seating for patrons of a business licensed to provide such services; and

**WHEREAS**, City Council has reviewed the results of the pilot program and wishes to make the program permanent; and

**WHEREAS**, the proposed amendments were subject to full and proper notice and review as required by the municipal code and state law; and

**WHEREAS**, the Sherwood City Council held two public hearings on March 21, 2023, and April 4, 2023, to take public testimony and deliberate; and

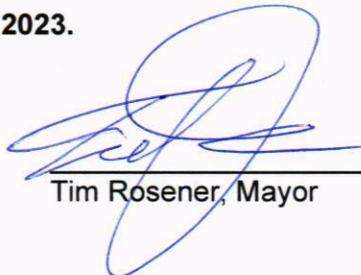
### NOW, THEREFORE, THE CITY OF SHERWOOD ORDAINS AS FOLLOWS:

**Section 1.** Title 12 of the Sherwood Municipal Code is amended to include a new chapter 12.03 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 30<sup>th</sup> day after its enactment by the City Council and approval by the Mayor.

**Duly passed by the City Council this April 4, 2023.**

  
\_\_\_\_\_  
Tim Rosener, Mayor

4-4-23  
\_\_\_\_\_  
Date

Attest:

  
Sylvia Murphy, MMC, City Recorder

	<u>AYE</u>	<u>NAY</u>
Standke	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Giles	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Scott	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Young	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Brouse	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Mays	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Rosener	<input checked="" type="checkbox"/>	<input type="checkbox"/>

## Chapter 12.03 OUTDOOR SEATING PERMIT

### 12.03.010 Applicability.

An Outdoor Seating Permit is required for businesses seeking authorization for long term and on-going seating in City right-of-way (i.e. sidewalks and on-street parking spaces). "Outdoor seating" refers to use of City right-of-way for service of prepared food or beverages, as well as seating for patrons of a business by a business licensed to provide such services.

### 12.03.20 Application Requirements and Duration of Permit.

- A. Form  
A request for an Outdoor Seating Permit shall be made on forms prescribed and provided by the City and shall be prepared and submitted in compliance with this Code. An application shall be reviewed against the standards and criteria effective at the time of application submittal. Signature from the abutting property owner and business owner or their legal representatives must be on the application form.
- B. Fee  
Designated fee for permit based on the City of Sherwood Fee Schedule.
- C. Submittal Requirements
  - 1. Application Form
  - 2. Certificate of Liability Insurance, with limits of liability as determined by the City's Risk Manager
  - 3. Copy of Oregon Liquor Control Commission (OLCC) permits (If alcohol use is planned in the public right-of-way)
  - 4. Copy of any required Tualatin Valley Fire and Rescue (TVF&R) permit for tents
  - 5. A detailed site plan, drawn to scale, showing the following information:
    - a. Business frontage width along street
    - b. Sidewalk width
    - c. On-street parking location and width
    - d. If proposing to use on-street parking spaces, proposed location and style of barriers
    - e. Street name/address of business
    - f. Existing public infrastructure including trash cans, benches, signs, hydrants, storm drains, etc
    - g. Location of ADA parking and ADA ramps
    - h. Proposed location of tables, chairs, and related items
    - i. Location of any proposed tents or structures with sufficient detail to confirm the tent standards are met
    - j. Other related components not listed above (e.g. special equipment etc.)
- D. Duration of Permit and Annual Renewal
  - 1. Permits are valid for a period of 12-months from the date of issuance, based on the seasonal restrictions described below
    - a. A permit issued for use of the sidewalk is valid year-round and must be renewed annually
    - b. A permit issued for use of the street is valid between March 1 and October 31 of each year and must be renewed annually from the date of issuance

### 12.03.30 Design and Placement Standards

#### A. General Rules

1. **Materials** - The permit holder is solely responsible for the costs all equipment, materials, barricades, and signage as is required for compliance to this program.
2. **Maintenance** - Permittee shall maintain the permitted area, and all areas immediately adjacent to the permitted area, in a good, clean and safe condition. Upon the expiration of the permit, Permittee shall remove all personal property from the permitted area.
3. **Inspection** - The City may inspect all permitted areas for compliance with permit requirements and for safety at any time.
4. **Right-of-Way** - This program only allows use of City of Sherwood right-of-way; right-of-way owned by other jurisdictions is not eligible for use under this program. Only sidewalks and on-street parking spaces may be used; no other portions of City right-of-way (e.g. vehicular travel lanes) may be used.

**B. Sidewalk Use Standards**

1. **Placement** – A permit may only allow use of sidewalk space within the width of the applicant’s sidewalk-facing storefront. The sidewalk shall be maintained in accordance with ADA standards and shall provide a minimum 5 ft. wide clear zone for pedestrian circulation. This means a straight 5 ft. path is required down an entire sidewalk block and no seating or other obstructions is allowed in this area. If the sidewalk abutting the storefront cannot provide seating while meeting this standard, an outdoor seating permit will not be issued.
2. **Structures** - Sidewalk space may not have any fixtures that disturb the sidewalk material and all components must be above-ground. No overhead structures or canopies, aside from outdoor-grade fabric umbrellas, are permitted.
3. **Heating and Electrical** - The only lighting permitted to be used in sidewalk areas is battery-operated, tabletop lighting such as tea lights or similar used atop dining tables. Heaters may be allowed if approved by Tualatin Valley Fire & Rescue (TVF&R).

**C. On-street Parking Use Standards**

1. **Placement**
  - a. **Outdoor Seating Permits** allow for use of a maximum of two parking spaces directly in front of the applicant business. If one or both of the two parking spaces are in front of an adjacent business, written permission from the adjacent business owner must be obtained and included with the application.
  - b. **All outdoor dining materials** must be placed:
    - 1) A minimum of 20 feet from a crosswalk or a stop sign.  
(Note: Overhead structures will need to be located further from a stop sign. See Overhead Structures below.)
    - 2) A minimum of 10 feet from a fire hydrant
    - 3) Without blocking drive aisles or fire lanes
    - 4) Without covering storm drains or water and gas valves in the street. In circumstances where this is impractical, the City Engineer will review and may approve on a case-by-case basis if the applicant can show that the placement will not pose a safety risk and will not unreasonably limit access.
2. **Platforms**  
All on-street parking spaces that abut a curb and will be used for outdoor dining must include a deck that meets the following requirements:
  - a. Must bring the floor height level with the height of the public sidewalk
  - b. Must be constructed in a way that does not disturb the public right-of-way and must rest above-ground
  - c. Must have a railing
  - d. Must be designed to allow for proper draining

- e. Applicants are required to obtain stamped drawings of all structural components from a structural engineer, including decking and railing details.
3. **Overhead Structures**  
Overhead structures will be allowed if they meet the following requirements:
- a. Overhead structures must be constructed of wood, steel, outdoor-grade fabric, umbrellas, metal panels, corrugated plastic, or be properly weighted temporary weather protection such as tents or canopies.
  - b. Any side panels between the required railing and the bottom of the overhead structure must be clear.
  - c. Applicants are required to obtain stamped drawings of all structural components from a structural engineer, including decking and railing details.
  - d. Overhead structures are not permitted within the first permissible space next to a stop sign.
  - e. In circumstances where the structure will block a street sign, the City Engineer will review the design and may approve based on a case-by- case basis if the applicant can show that the placement will not pose a safety risk.
  - f. Overhead structures may not be permanently affixed to the ground and shall not cause damage to any portion of the right-of-way including the roadway or sidewalk.
4. **Heating and Electrical**  
Use of heaters are permitted, with approval from Tualatin Valley Fire & Rescue (TVF&R). Electricity, if used must be that of the business and not utilize the outlets in the City Right of Way
5. **Seasonal Removal**  
The applicant is responsible for removing the on-street seating by October 31 of each year. If the seating is not removed, the City may take action to remove the seating and associated improvements in accordance with section 12.03.040 below.

**D. Tent Standards**

- 1. For tents near intersections, the tent must be placed so as not to interfere with driver sight distance.
- 2. The maximum combined tent coverage area is 700 square feet.
- 3. All tents must be fire retardant and fire rated.
- 4. All tents must have a minimum of 8' clearance between the lowest point of the tent roof and the ground.
- 5. No staking of tents is permitted in public right-of-way.
- 6. All tent legs must be weighted as below or as otherwise recommended by manufacturer/installer:
  - a. Each leg must have a minimum of 40lbs of weight.
  - b. Ropes and straps must be in good repair and of sufficient strength rating.
  - c. Bungee and rubber straps are prohibited.
  - d. Weights must be on the ground and not dangling.
  - e. Weights and lines must not pose a hazard and must be clearly visible.
  - f. Items that make acceptable weights:
    - 1) 5 gallon bucket full of water, sand, or concrete
    - 2) 4" PVC pipe at least 36" long filled with concrete
    - 3) Large commercially available tent weights
    - 4) Sandbags or salt bags 40lbs or heavier
- 7. Tents shall be secured as soon as they are put up and brought down as soon as weight is removed. Unsecured tents shall not be left in place at any time.
- 8. Smoking is prohibited under tents.
- 9. The tent shall not block fire hydrants, storm drains, manholes, catch basins, or other similar infrastructure improvements.
- 10. No connection of the tent to any water, sanitary, or storm sewer utility shall be allowed.

11. Tents shall not obstruct pedestrian connections.
12. During permit review, tents may be subject to additional requirements for public safety by the City and TVF&R.

#### **12.03.040 Removal of private facilities within ROW.**

- A. No less than 30 days after written notice from the city, the owner of any private facilities located in the ROW (including private facilities attached to public facilities) shall, at its own expense, temporarily or permanently disconnect, remove, relocate, change, or alter the position of, any private facilities located within the ROW whenever the city has determined that such is reasonably necessary for the construction, repair, maintenance, or installation of any public improvement (regardless of whether the city or another entity is constructing said improvement) located in, or the operations of the city in, the ROW.
- B. The city retains the right and privilege to temporarily or permanently disconnect, remove, relocate, change, or alter the position of any private facilities located within the ROW (including private facilities attached to public facilities) in the event of an emergency, as the city may determine to be necessary, appropriate, or useful in response to any imminent danger to public health, safety, or property.
- C. The city retains the right and privilege to temporarily or permanently disconnect, remove, relocate, change, or alter the position of any private facilities located within the ROW (including private facilities attached to public facilities) in the event the outdoor seating remains in the street between November 1 and February 28.
- D. If the owner of any private facilities located in the ROW (including private facilities attached to public facilities) ceases to use such private facilities for a period of 30 days, the owner shall immediately remove such facilities from the ROW and restore the ROW and any other facilities located in the ROW which may be impacted by such removal. The 30-day period set forth in this subsection may be extended by written approval of the city engineer for good cause.
- E. If the owner of any private facilities located within the ROW fails to meet any of the obligations set forth in this section, in addition to any other available remedies, the city may take the actions that were the obligation of the facility owner. If the city elects to do so, the city will provide written notice to the facility owner of the action taken and the costs incurred by the city in so doing, and the facility owner will reimburse the city in full within 30 days.

#### **12.03.050 Revocation.**

The City Engineer or designee may revoke an Outdoor Seating Permit at any time for a failure to maintain liability insurance or for a violation of any standard or provision of this Chapter.

#### **12.03.060 Violations.**

- A. The city engineer, or designee, is authorized to revoke an Outdoor Seating Permit upon determining that the permit holder has violated this chapter, permit conditions, or any applicable construction or other standards.
- B. Seating or use of the ROW as described in this chapter without a valid permit, and any other violation of this chapter, permit conditions, or any applicable construction or other standards, is a class B violation. Each day on which a violation occurs shall constitute a separate violation.
- C. The municipal court may order a person responsible for a violation of this chapter to restore the property, damaged area, or street surface to the standards described in the Engineering Design and Standard Details Manual. The court may include in the order such other conditions the court deems necessary to ensure adequate and appropriate restoration. Alternatively, the municipal court may direct the city to perform, either directly or indirectly, the restoration with the costs of such restoration assessed against the person responsible for the violation.
- D. Violations of this chapter may also constitute violations of other provisions of the Sherwood Municipal Code, including but not limited to SMC 10.12.190 (Obstructing Streets).