



CITY OF BEAVERTON
Planning Division
Community Development Department
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STAFF REPORT

Report date: October 27, 2021

Application/project name: Open Air Beaverton Text Amendment

Application Number: TA2021-0005

Proposal: The City of Beaverton proposes to amend the Beaverton Development Code (BDC) by adding a definition for the Open Air Beaverton program, and exempting the program from certain land use applications and development standards. The proposal affects BDC Chapters 20, 40, 60, 70, and 90.

Proposal location: Citywide

Applicant: City of Beaverton

Recommendation: Staff recommend the Planning Commission review the proposal, take public testimony, deliberate on the proposal, and make a recommendation to City Council.

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Background

On October 5, 2021, City Council approved the creation of the Open Air Beaverton program, which is a new permit program to allow businesses to expand into public on-street parking spaces, sidewalks, and private parking lots. This new program will replace the temporary Open Air Beaverton Recovery program that was created in response to the City of Beaverton's State of Emergency related to the COVID-19 pandemic and was designed to support business continuity and outdoor business expansion by temporarily lifting enforcement of certain regulations.

Staff proposes this text amendment in order to create a definition of the Open Air Beaverton program in the Development Code, and to exempt uses, activities, and structures that are located on a private parking lot and approved pursuant to the Open Air Beaverton program from certain land use applications and development standards. This proposal affects BDC Chapters 20, 40, 60, 70, and 90.

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Exhibits

Exhibit A: Analysis Table of Proposed Amendments to Development Code

Exhibit B: Proposed Development Code

Exhibit C: Agenda Bill No. 21249 – An Ordinance Adding Beaverton Code Chapter 7.06, Business Expansion into Sidewalks, Streets, and Parking Lots, and Amending Section 5.02.083 Relating to the Consumption of Alcohol in Public Places

Exhibit D: Ordinance No. 4812 – An Ordinance Adding Beaverton Code Chapter 7.06, Business Expansion into Sidewalks, Streets, and Parking Lots, and Amending Section 5.02.083 Relating to the Consumption of Alcohol in Public Places

TA2021-0005 ANALYSIS AND FINDINGS FOR TEXT AMENDMENT

Recommendation: Based on the facts and findings presented below, staff recommends the Planning Commission review the proposal, take public testimony, deliberate on the proposal, and make a recommendation to City Council.

Section 40.85.05 Purpose

The purpose of a text amendment application is to provide a mechanism for legislative amendments to the Development Code. It is recognized that such amendments may be necessary from time to time to reflect changing community conditions, needs, and desires, to fulfill regional obligations, and to address changes in the law. This Section is carried out by the approval criteria listed herein.

Section 40.85.15.1.C Approval Criteria:

Section 40.85.15.1.C of the Development Code specifies that in order to approve a text amendment application, the decision-making authority shall make findings of fact, based on evidence provided by the applicant, that all the criteria specified in Section 40.85.15.1.C.1-7 are satisfied. The following are the findings of fact for TA2021-0005 Open Air Beaverton Text Amendment:

Section 40.85.15.1.C.1

Approval Criterion: *The proposal satisfies the threshold requirements for a Text Amendment application.*

FINDING:

Section 40.85.15.1.A specifies that an application for a text amendment shall be required when there is a proposed change to the BDC, excluding changes to the zoning map. TA2021-0005 proposes to make changes to BDC Chapters 20, 40, 60, 70, and 90 in order to create a definition of the Open Air Beaverton program in the BDC and to exempt uses, activities, and structures that are located on a private parking lot and approved pursuant to the Open Air Beaverton program from certain land use applications and development standards, as shown in Exhibit A.

Conclusion: Therefore, staff finds the amendment meets the criterion for approval.

Section 40.85.15.1.C.2

Approval Criterion: *All City application fees related to the application under consideration by the decision-making authority have been submitted.*

FINDING:

Policy Number 470.001 of the city's Administrative Policies and Procedures manual states that fees for a city-initiated application are not required where the application fee would be paid from the city's General Fund. The Planning Division, which is a General Fund program, initiated the application. Therefore, the payment of an application fee is not required.

Conclusion: Therefore, staff finds the criterion is not applicable to the amendment.

Section 40.85.15.1.C.3

Approval Criterion: *The proposed text amendment is consistent with the provisions of the Metro Urban Growth Management Functional Plan.*

FINDING:

Metro's Urban Growth Management Functional Plan (UGMFP) is the document that defines how local governments are to implement the Metro Regional Goals and Objectives. The UGMFP is made of 11 titles. The applicable titles are addressed below:

Title 1: Housing Capacity

This title addresses how cities and counties maintain or increase housing capacity. The proposed amendment involves the Open Air Beaverton program, and program participants are restricted to businesses (physical establishments that sell or offer for sale goods or services), and do not include residential uses. Accordingly, the proposed amendment does not affect density requirements or modify any standards for housing and will therefore not impact housing capacity or compliance with this title.

Title 3: Water Quality and Flood Management

This title addresses water uses and resources within water quality and flood management areas. The proposed amendment would allow businesses to expand their use outside of the building, onto existing parking lots. The proposal does not include those uses which increase impervious surface area. The amendment does not affect water quality and floodplain management as the proposed BDC text amendment would not alter the requirements for adding impervious surface areas or grading.

Title 4: Industrial and Other Employment Areas

The goal of this title is to provide and protect a supply of sites for employment by limiting types and scale of non-industrial uses in regionally significant industrial areas, industrial and employment areas, and by "clustering" those industries that operate more productively and efficiently in proximity to one another than in dispersed locations. BDC Section 20.15 identifies the Office Industrial (OI), Office Industrial – Nike Campus (OI-NC), and Industrial (IND) zones as Employment/Industrial Land Use Districts. The Open Air Beaverton program will be allowed in the OI and OI-NC zones, but will be prohibited in the IND zone, which helps limit the expansion of non-industrial uses in the city's industrial areas and meets the goal of this title. Additionally, the proposed text amendment does not include changes to zones, or the uses permitted within the zones. The proposal will allow businesses to expand their activities outdoors on their sites. However, outside of Regional Center Parking District 1, the expansion of uses is limited to two off-street parking spaces, or up to one off-street parking space per 1,000 square feet of interior floor area occupied by the business, whichever is greater. By limiting the scale of these expansions, the goal of this title is met.

Title 7: Housing Choice

This title addresses establishment of affordable housing and methods to encourage affordable housing. The proposed amendment is to allow businesses to expand onto private parking lots. The amendment does not affect housing opportunities and will not impact this title.

Title 8: Compliance Procedures

Title 8 establishes a process for determining whether city or county comprehensive plans and land use regulations substantially comply with requirements of the UGMFP and requires cities to submit proposed comprehensive plan amendments to Metro for their review. Metro requires the city to submit notice of the proposed amendment to Metro at least 35 days before the first evidentiary hearing, which is the Planning Commission hearing. The city provided the notice on September 29, 2021, 35 days before the Planning Commission hearing on November 3, 2021. The city has not received any comments from Metro. The proposed amendment complies with this title.

Title 12: Protection of Residential Neighborhoods

This title protects existing neighborhoods and provides adequate levels of public services. The proposed amendment is to allow businesses to expand onto private parking lots on a limited scale. Non-residential uses are limited in residential zoning district and require a conditional use. New conditional uses or modifications to existing conditional uses are subject to additional review and public noticing to assess impacts on residential neighborhoods. The proposed amendment will not impact compliance with this title.

Title 13: Nature in Neighborhoods

This title addresses conservation of streamside corridor systems. The proposed amendment is to allow businesses to expand onto private parking lots. The proposal does not affect protection of viable stream corridors and will not impact compliance with this title.

Conclusion: Staff finds that the proposed text amendment is consistent with the applicable provisions of the UGMFP. Therefore, staff finds the amendment meets the criterion for approval.

Section 40.85.15.1.C.4

Approval Criterion: *The proposed text amendment is consistent with the City's Comprehensive Plan.*

FINDING:

Beaverton's Comprehensive Plan provides policy direction on matters related to future growth and physical development of the city including land use, economy, transportation, housing, natural resources, and other relevant topics. Oregon state law requires all cities and counties to prepare and adopt comprehensive plans that are consistent with Statewide Planning Goals. The proposed text amendment is to create a definition of the Open Air Beaverton program in the Development Code, and to exempt uses, activities, and structures that are located on a private parking lot and approved pursuant to the Open Air Beaverton program from certain land use applications and development standards. The applicable goals of Comprehensive Plan are addressed below, and the following are staff's findings in response to the applicable goals:

Chapter 2: Community Involvement Element

Goal 1: The Planning Commission, City Council, and other decision making bodies shall use their best efforts to involve the community in the planning process.

The Beaverton Development Code establishes the noticing requirements as part of the text amendment process, which are outlined in Section 50.50. City staff provided notice of the proposed amendment 35 days prior to the public hearing before Planning Commission to all NAC Chairs, all Chairs of Washington County's Community Participation Organizations, the Chair of the Beaverton Committee for Community Involvement, the Department of Land Conservation and Development, Metro, and the Washington County Department of Land Use and Transportation. Public notice was also published in a local newspaper, and posted at City Hall, the City Library, and on the city's website. The goals of Chapter 2 Community Involvement are met.

Chapter Three: Land Use

Goal 3.1.1 Encourage development and land use patterns that support a variety of transportation options.

The text amendment does not propose changes to any transportation related standards. The proposed text amendment creates a definition for Open Air Beaverton and exempts uses, activities, and structures approved by the Open Air Beaverton program from certain land use applications and development standards. The Open Air Beaverton permit requires that the operating area not be located in, or obstruct in any way, any accessible parking spaces or travel paths, driveway approaches and drive aisles, fire lanes, bike parking, pedestrian walkways, and connections. Additionally, Open Air Beaverton permits will be reviewed by the Community Development Director to ensure that on-site circulation and safety will be maintained, and that the city's existing transportation system will not be negatively impacted.

Goal 3.2.1 Provide for thoughtful and strategic infill and redevelopment.

The proposed text amendment does not affect residential infill guidelines or standards. The proposed text amendment creates a definition for Open Air Beaverton and exempts uses, activities, and structures that are located on a private parking lot and approved pursuant to the Open Air Beaverton program from certain land use applications and development standards.

Goal 3.6.2 Downtown Regional Center: Create and strengthen a vibrant downtown and central area for Beaverton.

The proposed text amendment would enable businesses throughout the city, including those located within the Downtown Regional Center, to expand onto private parking lots. Uses and activities that occur outside add to the interest and vibrancy of the area and will provide spaces for people to gather and linger outdoors. Accordingly, the proposed text amendment will meet this goal by contributing to an interesting, enjoyable, and engaging Downtown Regional Center for residents and visitors.

Goal 3.6.3 Town Centers: Provide for a compact, integrated mix of uses that creates a complete community and supports walking and biking.

The proposed text amendment would enable businesses throughout the city, including those located within Town Centers, to expand their business onto private parking lots. This provides flexibility for businesses and offers more options to operators and customers to help meet their needs while also limiting the scale of expansion. Outdoor business activities will also strengthen urban vitality in the city's Town Centers, which will encourage residents and visitors to walk and bike to their destinations.

Goal 3.7.2 Regional Commercial: Provide suitable locations for commercial uses that serve the broader region and require large sites, significant access and visibility.

The proposed text amendment would allow businesses to expand onto private parking lots, including those businesses located on large sites and are auto-oriented. Although the expansion of the business would be limited to two off-street parking spaces or up to

one off-street parking space per 1,000 square feet of interior floor area, the outdoor space could encourage more compact and pedestrian-friendly development over time.

Goal 3.7.3 Community Commercial: Provide for commercial services that serve the surrounding community, with limited auto-oriented uses.

The proposed text amendment would support commercial uses at a range of scales, as the Open Air Beaverton program is open to all qualifying businesses. Additionally, allowing businesses to expand their activities outdoors onto private parking lots contributes to urban vitality and encourages residents and visitors to walk or bike to their destinations, thereby reducing a community's dependence on automobiles.

Goal 3.7.4 Neighborhood Center: Provide opportunities for small-scale commercial development that serves adjacent neighborhoods.

Most non-residential uses are prohibited within the implementing residential zones of the Neighborhood Centers land use designation. Some uses are conditionally permitted, such as Residential Care Facilities and Animal Care. Neighborhood Service also implements the Neighborhood Centers land use designation and allows for a greater variety of commercial uses. The Open Air Beaverton program limits the expansion to two off-street parking spaces or up to one off-street parking space per 1,000 square feet of interior floor area; therefore, these uses will remain small-scale.

Goal 3.9.1 Successful employment lands.

Goal 3.9.2 Employment Areas: Provide desirable locations for mix of office and flexible employment space and complementary uses.

Goal 3.9.3 Industrial Areas: Accommodate industrial and manufacturing uses that may conflict with housing and uses that draw the general public.

BDC Section 20.15 identifies the OI, OI-NC, and IND zones as Employment/Industrial Land Use Districts. The Open Air Beaverton program will be allowed in the OI and OI-NC zones, but will be prohibited in the IND zone, which helps limit the expansion of non-industrial uses in the city's industrial areas and meets the goals outlined above. The proposal will allow businesses to expand their activities outdoors on their sites. However, outside of Regional Center Parking District 1, the expansion of uses is limited to two off-street parking spaces, or up to one off-street parking space per 1,000 square feet of interior floor area occupied by the business, whichever is greater. Limiting the scale of these expansions helps support existing employment areas, while preserving existing industrial areas for industrial and manufacturing uses.

Chapter 4: Housing

The proposed text amendment includes adding a definition of Open Air Beaverton in the Beaverton Development Code, a new permit program adopted by the Beaverton City

Council in October of 2021. The ordinance amends the Beaverton Code to allow business expansion into sidewalk, streets and private parking lots. The proposed text amendment also exempts uses, activities, and structures that are located on a private parking lot and approved pursuant to the Open Air Beaverton program from certain land use applications and development standards. The proposed amendment would be applicable city-wide (except in the Industrial zoning district) and to all businesses. The proposal does not alter the potential for any property to be developed with housing, and it will not impact the city's existing housing supply or future housing goals.

Chapter 5: Public Facilities and Services

Chapter 5 generally address provision of public services, and adequacy of services as it relates to growth and development. The proposed amendment is to permit the expansion of businesses onto private parking lots that were approved through the Open Air Beaverton program. In areas outside of Downtown District 1, expansion will be limited. The amendment is not expected to impact the City's goals to provide adequate public facilities and services.

Chapter 6: Transportation

The proposed BDC definition of the Open Air Beaverton program will restrict the operating area to private parking lots, and participants will be required to comply with the program regulations established by Council ordinance. These regulations specify that operating areas within private parking lots must continue to provide off-street parking for vehicles, and must maintain safe circulation and access to rights-of-way for vehicles and pedestrians. Additionally, Open Air Beaverton permits will be reviewed by the Community Development Director to ensure that on-site circulation and safety will be maintained, and that the city's existing transportation system will not be negatively impacted.

Chapter 9 Economy Element

Goal 9.1.1 Maximize efficient use of the city's employment land.

The proposed amendment is to permit the expansion of businesses onto private parking lots that were approved through the Open Air Beaverton program. The scale of expansion is limited to two parking spaces of up to one parking space per 1,000 square feet of interior floor area occupied by the business, whichever is greater. Although the expansion is limited, the amendment could result in minor intensification of properties and provide some flexibility for how the sites are used.

Goal 9.2.1 Provide Programs and Services that Support Existing Businesses and Attract New Businesses.

The proposed amendment is to permit the expansion of businesses onto private parking lots that were approved through the Open Air Beaverton program. This amendment supports innovative programs, such as the Open Air Beaverton program, and allows for

the creation of creative spaces that serve the community in various ways. The historical perspective provided in Agenda Bill No. 21249 (Exhibit C) states that staff conducted a community survey focusing mostly on parking in downtown Beaverton, and it included questions regarding what the public thought about the Open Air Beaverton Recovery permit (the temporary permit program that the Open Air Beaverton program replaced) and whether they thought it should continue. Out of the 1,100 responses, 74 percent thought the program should continue.

Goal 9.3.1: Identify and Support Existing and Future Targeted Industries.

Permitting the expansion of businesses onto private parking lots would support the City's goals of economic and employment growth by providing more flexibility to business owners for how and where on their site they operate their business to best accommodate their needs and their customer's needs and preferences.

Goal 9.4.1: Position Downtown Beaverton and Surrounding Areas as a Major Employment Center and an Attractive Urban Lifestyle Center.

Allowing businesses to expand onto private parking lots could be an incentive to some business types such as eating and drinking establishments that have customers that enjoy dining outside or feel more comfortable being outside.

Chapter 10: Community Health

The proposed amendment would allow businesses to expand their uses and activities onto private parking lots as part of the Open Air Beaverton program. This program will replace Open Air Beaverton Recovery Program, which was intended to be a temporary permit program in response to the COVID-19 pandemic during which indoor seating and capacity was severely limited in an effort to manage the spread of the virus. Although indoor restrictions have been lifted, at the time of this report, COVID-19 and Delta variant, are still a concern for many people. The proposed text amendment would allow businesses to expand their services to private parking lots, providing an option for those who feel safer outdoors.

Conclusion: Staff finds that the proposed text amendment is consistent with the goals of the Comprehensive Plan. Therefore, staff finds the amendment meets the criterion for approval.

Section 40.85.15.1.C.5

Approval Criterion: *The proposed text amendment is consistent with other provisions within the City's Development Code.*

FINDING:

Staff proposes this text amendment in order to create a definition of the Open Air Beaverton program in the Development Code, and to exempt uses, activities, and structures that are located on a private parking lot and approved pursuant to the Open Air Beaverton program from certain land use applications and development standards. The proposed BDC definition specifies that eligible program participants must obtain an approved Open Air Beaverton permit and comply with the program regulations established by Council ordinance. For example, the regulations specify that a program participant's operating area may not obstruct any driveway approaches and drive aisles, pedestrian walkways and connections, or existing landscaped areas. Accordingly, the regulations established by Council ensure that program participants will comply with BDC standards. The proposed BDC definition also limits the scope of the Open Air Beaverton program to uses, activities, and structures located on a private parking lot. Limiting the program to private parking lot areas in the BDC helps further ensure compliance with other provisions in the Development Code.

Conclusion: Therefore, staff finds the amendment meets the criterion for approval.

Section 40.85.15.1.C.6

Approval Criterion: *The proposed amendment is consistent with all applicable City ordinance requirements and regulations.*

FINDING:

On October 5, 2021, City Council approved the creation of the Open Air Beaverton program, which is a new permit program to allow businesses to expand into public on-street parking spaces, sidewalks, and private parking lots. Staff proposes this text amendment in order to codify and define the Open Air Beaverton program in the Development Code, and to exempt uses, activities, and structures that are located on a private parking lot and approved pursuant to the Open Air Beaverton program from certain land use applications and development standards. The proposed amendment is consistent with all applicable City ordinance requirements and regulations.

Conclusion: Therefore, staff finds the amendment meets the criterion for approval.

Section 40.85.15.1.C.7

Approval Criterion: *Applications and documents related to the request, which will require further City approval, shall be submitted to the City in the proper sequence.*

FINDING:

This application is for a Type 4 Text Amendment that affects BDC Chapters 20, 40, 60, 70, and 90. Staff finds that no other applications or documents related to this request are required.

Conclusion: Therefore, staff finds the amendment meets the criterion for approval.

Other applicable approval criteria

As a post-acknowledgement amendment to the City's Code, the proposed text amendment is subject to ORS 197.175(1), which requires that the City demonstrate that the proposed text amendment be consistent with the relevant Statewide Planning Goals. Staff have determined that the following goals apply.

FINDING:

Goal 1 Citizen Involvement: *To develop a citizen involvement program that ensures the opportunity for citizens to be involved in all phases of the planning process.*

This application is for a Type 4 Text Amendment, and staff followed the required public noticing procedures in BDC Section 50.50. City staff provided notice of the proposed amendment 35 days prior to the public hearing before Planning Commission to all NAC Chairs, all Chairs of Washington County's Community Participation Organizations, the Chair of the Beaverton Committee for Community Involvement, the Department of Land Conservation and Development, Metro, and the Washington County Department of Land Use and Transportation. Public notice was also published in a local newspaper, and posted at City Hall, the City Library, and on the city's website. Staff finds that the city has provided adequate notice and opportunity for public involvement.

Goal 2 Land Use Planning: *To establish a land use planning process and policy framework as a basis for all decisions and actions related to use of land and to assure an adequate actual basis for such decisions and actions.*

Changes to the BDC require a Type 4 review process, which includes noticing and a public comment period, prior to a hearing before the Planning Commission. The hearing is open to the public and includes an opportunity to receive public testimony. At the conclusion of the hearing, the Planning Commission can continue the hearing to a later date, keep the record open for more information or make a recommendation to the City Council, the ultimate decision-making authority. Prior to adoption of any text amendments, the City Council will consider all the evidence in the record, including any testimony provided at the Planning Commission hearing and any recommended changes to the proposal.

Staff finds that the proposed text amendment fits within the established process and framework. Furthermore, the findings contained within this report establish an adequate factual basis for the proposal.

Goal 9 Economic Development: *To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens.*

Staff proposes this text amendment in order to codify and define the Open Air Beaverton program, which was established by City Council to support business continuity and outdoor business expansion during the COVID-19 pandemic. The proposed amendment will help strengthen economic activities that are vital to Beaverton's health, welfare, and prosperity by allowing local businesses to expand their activities outdoors and onto private parking lots, and by providing businesses with additional opportunities to offer goods and services to customers while complying with statewide health restrictions related to the COVID-19 pandemic. Staff finds the proposed text amendment will contribute to a stable and healthy economy, and will support economic growth within the City of Beaverton.

Goal 10 Housing: *To provide for the housing needs of the citizens of the state.*

Beaverton's Housing Needs Analysis (HNA) was published in October 2015. It demonstrated a need for all housing types in the 20-year period ending in 2035. This was true both for the current Beaverton city limits as well as the city limits plus the assumed urban service area, which is an area where it is assumed Beaverton will provide governance in the future. The state Department of Land Conservation and Development (DLCD) found it to be consistent with the requirements of Statewide Planning Goal 10.

Based on the findings in Beaverton's Housing Strategies Report in Volume II of the Comprehensive Plan, which includes the city's Buildable Lands Inventory and Housing Needs Analysis, Beaverton updated its Comprehensive Plan's Housing Element and Land Use Element to address the identified housing needs. DLCD also found these Comprehensive Plan changes consistent with the Statewide Planning Goals.

Staff proposes this text amendment in order to create a definition of the Open Air Beaverton program in the Development Code, and to exempt uses, activities, and structures that are located on a private parking lot and approved pursuant to the Open Air Beaverton program from certain land use applications and development standards. The proposal does not alter the potential for any property to be developed with housing, nor does it alter regulations governing design and construction of housing.

Staff finds the proposal will not have a negative impact to housing as it does not affect development opportunities for housing. Additionally, the proposal will not negatively impact the opportunity for needed housing to be developed in the city.

Goal 11 Public Facilities and Services: *To plan and develop a timely, orderly, and efficient arrangement of public facilities and service to serve as a framework for urban and rural development.*

Goal 11 requires cities to establish policies and regulations to ensure adequate public facilities are provided as part of development. The proposed BDC definition of the Open Air Beaverton program specifies that eligible program participants must obtain an

approved Open Air Beaverton permit and comply with the program regulations established by Council ordinance. The regulations specify that a program participant's operating area may not obstruct any utility boxes, storm drains, manholes, catch basins, or other similar infrastructure improvements, which will help ensure that existing public facilities and services will not be adversely impacted by this proposal. Therefore, staff finds that the timely, orderly, and efficient arrangement of public facilities and services will be maintained.

Goal 12 Transportation: *To provide and encourage a safe, convenient and economic transportation system.*

The proposed BDC definition of the Open Air Beaverton program will restrict the operating area to private parking lots, and participants will be required to comply with the program regulations established by Council ordinance. These regulations specify that operating areas within private parking lots must continue to provide off-street parking for vehicles, and must maintain safe circulation and access to rights-of-way for vehicles and pedestrians. Additionally, Open Air Beaverton permits will be reviewed by the Community Development Director to ensure that on-site circulation and safety will be maintained, and that the city's existing transportation system will not be negatively impacted.

State Land Use Goal Compliance Summary: Therefore, staff finds that the proposed text amendment complies with all the applicable Statewide Planning Goals.

Conclusion: Therefore, staff finds the amendment meets the criterion for approval.

Conclusion and Recommendation

Based on the facts and findings presented, staff offers the following recommendation for the conduct of the November 3, 2021, public hearing for TA2021-0005 Open Air Beaverton Text Amendment:

- A. Conduct the public hearing and receive all public testimony relating to the proposal.
- B. Consider the public testimony and the facts and findings presented in the staff report, deliberate on policy issues and other issues identified by the Commission or the public.
- C. Recommend **APPROVAL** of text amendment application TA2021-0005 Open Air Beaverton Text Amendment to City Council.



EXHIBIT A

**ANALYSIS OF THE PROPOSED
AMENDMENTS TO THE BEAVERTON DEVELOPMENT CODE
OPEN AIR BEAVERTON TEXT AMENDMENT (TA2021-0005)**

Proposed Text Amendment	Staff Comments
Chapter 10 – General Provisions	
	No revisions proposed.
Chapter 20 – Land Use	
<p>20.10.30. Other NS Zoning Requirements</p> <p>Uses shall be subject to the following (excludes food cart pods, parks, recreational facilities, playgrounds, <u>Open Air Beaverton</u>, and vehicle camping) [ORD 4779; March 2020] [ORD 4782; April 2020]:</p> <ol style="list-style-type: none"> 1. Activity is conducted wholly within an enclosed structure, except for outside play areas for child care and educational facilities and as allowed in item 2, below. 2. Accessory open air sales / display / storage shall constitute no more than 5% of the gross building floor area of any individual establishment. 3. Excluding food stores, individual establishments shall not exceed 15,000 square feet gross floor area. 	<p>The Open Air Beaverton program is designed to allow businesses to expand outdoors and onto private parking lots. The proposed amendment in this section would exempt approved Open Air Beaverton participants from the requirement that all activity is conducted wholly within an enclosed structure and from the floor area restrictions in Items 2 and 3.</p>
<p>20.10.35. Other CS Zoning Requirements</p> <p>Uses shall be subject to the following (excludes food cart pods, parks, recreational facilities, playgrounds, <u>Open Air Beaverton</u>, and vehicle camping) [ORD 4779; March 2020] [ORD 4782; April 2020]:</p> <ol style="list-style-type: none"> 1. Activity is conducted wholly within an enclosed structure, except for outside play areas for child care and educational facilities and as allowed in item 2, below. 2. Accessory open air sales / display / storage shall constitute no more than 5% of the gross building floor area of any individual establishment. 	<p>The Open Air Beaverton program is designed to allow businesses to expand outdoors and onto private parking lots. The proposed amendment in this section would exempt approved Open Air Beaverton participants from the requirement that all activity is conducted wholly within an enclosed structure and from the floor area restriction in Item 2.</p>
<p>20.10.40. Other CC Zoning Requirements</p> <p>Uses shall be subject to the following (excludes food cart pods, parks, recreational facilities, playgrounds, <u>Open Air Beaverton</u>, and vehicle camping) [ORD 4779; March 2020] [ORD 4782; April 2020]:</p> <ol style="list-style-type: none"> 1. Activity is conducted wholly within an enclosed structure, except for outside play areas for child care and educational facilities, transit centers and as allowed in items 2 and 3 below. 2. Accessory open air sales / display / storage shall be Permitted for horticultural and food merchandise only and shall constitute no more than 5% of the gross building floor 	<p>The Open Air Beaverton program is designed to allow businesses to expand outdoors and onto private parking lots. The proposed amendment in this section would exempt approved Open Air Beaverton participants from the requirement that all activity is conducted wholly within an enclosed structure and from the floor area restriction in Item 2.</p>

area of any individual establishment.	
Chapter 30 – Nonconforming Uses	
	No revisions proposed.
Chapter 40 – Applications	
<p>40.20.10. Applicability. 3. Design Review approval shall not be required for the following: <u>H. Uses, activities, and structures located on a private parking lot and approved pursuant to the Open Air Beaverton program.</u></p>	Open Air Beaverton participants will be required to obtain an approved Open Air Beaverton permit and comply with the regulations established by Council ordinance. Staff proposes to exempt qualifying program uses, activities, and structures from Design Review, so that a land use application is not required in addition to the Open Air Beaverton permit. The goal of this amendment is to streamline the regulatory process for Open Air Beaverton participants.
<p>40.23.10. Applicability 4. Downtown Design Review approval shall not be required for the following: <u>E. Uses, activities, and structures located on a private parking lot and approved pursuant to the Open Air Beaverton program.</u></p>	Open Air Beaverton participants will be required to obtain an approved Open Air Beaverton permit and comply with the regulations established by Council ordinance. Staff proposes to exempt qualifying program uses, activities, and structures from Downtown Design Review, so that a land use application is not required in addition to the Open Air Beaverton permit. The goal of this amendment is to streamline the regulatory process for Open Air Beaverton participants.
Chapter 50 – Procedures	
	No revisions proposed.
Chapter 60 – Special Requirements	
<p>60.30.05. Off-Street Parking Requirements. Parking spaces shall be provided and satisfactorily maintained by the owner of the property for each building or use which is erected, enlarged, altered, or maintained in accordance with the requirements of Sections 60.30.05. to 60.30.20.</p> <p>1. Availability. Required parking spaces shall be available for parking operable passenger automobiles and bicycles of residents, customers, patrons and employees and shall not be used for storage of vehicles or materials or for parking of trucks used in conducting the business</p>	This section codifies parking regulations for the Open Air Beaverton program that were approved by Council ordinance.

<p>or use.</p> <p><u>A. Businesses that are approved pursuant to the Open Air Beaverton program and are located outside of Regional Center Parking District 1 may utilize a minimum of two off-street parking spaces, or up to one off-street parking space per 1,000 square feet of interior floor area occupied by the business, whichever is greater, for the program. In calculating the number of parking spaces, fractions equal or more than 0.5 shall be rounded up to the nearest whole number. Fractions less than 0.5 shall be rounded down to the nearest whole number.</u></p> <p><u>B. Businesses that are approved pursuant to the Open Air Beaverton program and are located inside of Regional Center Parking District 1 may utilize an unlimited number of off-street parking spaces for the program, with the parking lot owner's permission.</u></p>	
<p>60.30.10. Number of Required Parking Spaces.</p> <p>11. Reductions and Exceptions. [ORD 3358; March 1984] Reductions and exceptions to the required vehicle and bicycle parking standards as listed in Sections 60.30.10.5. and 60.30.10.6. may be granted in the specific cases listed below. Sites within the Downtown Design District that apply for one or more of the vehicle parking reductions listed below cannot exceed a combined 15% reduction from the required parking standards in the table found in Section 60.30.10.6.[ORD 4471; February 2008] [ORD 4584; June 2012]</p> <p><u>K. Open Air Beaverton.</u></p> <p><u>1. Businesses that are approved pursuant to the Open Air Beaverton program and are located outside of Regional Center Parking District 1 may utilize a minimum of two off-street parking spaces, or up to one off-street parking space per 1,000 square feet of interior floor area occupied by the business, whichever is greater, for the program. In calculating the number of parking spaces, fractions equal or more than 0.5 shall be rounded up to the nearest whole number. Fractions less than 0.5 shall be rounded down to the nearest whole number.</u></p> <p><u>2. Businesses that are approved pursuant to the Open Air Beaverton program and are located inside of Regional Center Parking District 1 may utilize an unlimited number of off-street parking spaces for the program, with the parking lot owner's permission.</u></p>	<p>This section codifies parking regulations for the Open Air Beaverton program that were approved by Council ordinance.</p>
<p>60.40.10. Signs Exempt from Permits and</p>	<p>The Open Air Beaverton regulations</p>

<p>Regulation. The following signs are exempt from regulation and do not require permits: <u>9. Signs approved pursuant to the Open Air Beaverton program.</u></p>	<p>approved by Council ordinance include standards for signage, which will be reviewed as part of the Open Air Beaverton permit. Any signage not addressed under the Open Air Beaverton regulations will be subject to Section 60.40 Sign Regulations in the Development Code.</p>
<p>Chapter 70 – Downtown Design District</p>	
	<p>No revisions proposed.</p>
<p>Chapter 90 – Definitions</p>	
<p><u>Open Air Beaverton. A program established by Council ordinance and administered by the City to allow approved businesses to expand into private parking lots. Open Air Beaverton is comprised of uses, activities, signs, and structures that are located on a private parking lot, have obtained an approved Open Air Beaverton permit, and meet the standards established by Council ordinance.</u></p>	<p>On October 5, 2021, City Council approved the creation of the Open Air Beaverton program, which is a new permit program to allow businesses to expand onto private parking lots. This amendment creates a definition of the Open Air Beaverton program in the Development Code.</p>

DEVELOPMENT CODE OF THE CITY OF BEAVERTON

CHAPTER 20 - LAND USES

20.10. Commercial Land Use Districts

20.10.30. Other NS Zoning Requirements

Uses shall be subject to the following (excludes food cart pods, parks, recreational facilities, playgrounds, Open Air Beaverton and vehicle camping) [ORD 4779; March 2020] [ORD 4782; April 2020]:

1. Activity is conducted wholly within an enclosed structure, except for outside play areas for child care and educational facilities and as allowed in item 2, below.
2. Accessory open air sales / display / storage shall constitute no more than 5% of the gross building floor area of any individual establishment.
3. Excluding food stores, individual establishments shall not exceed 15,000 square feet gross floor area.

20.10.35. Other CS Zoning Requirements

Uses shall be subject to the following (excludes food cart pods, parks, recreational facilities, playgrounds, Open Air Beaverton and vehicle camping) [ORD 4779; March 2020] [ORD 4782; April 2020]:

1. Activity is conducted wholly within an enclosed structure, except for outside play areas for child care and educational facilities and as allowed in item 2, below.
2. Accessory open air sales / display / storage shall constitute no more than 5% of the gross building floor area of any individual establishment.

20.10.40. Other CC Zoning Requirements

Uses shall be subject to the following (excludes food cart pods, parks, recreational facilities, playgrounds, Open Air Beaverton and vehicle camping) [ORD 4779; March 2020] [ORD 4782; April 2020]:

1. Activity is conducted wholly within an enclosed structure, except for outside play areas for child care and educational facilities, transit centers and as allowed in items 2 and 3 below.
2. Accessory open air sales / display / storage shall be Permitted for horticultural and food merchandise only and shall constitute no more than 5% of the gross building floor area of any individual establishment.

DEVELOPMENT CODE OF THE CITY OF BEAVERTON

CHAPTER 40 - APPLICATIONS

[ORD 4224; September 2002]

40.20. Design Review [ORD 4332; January 2005]

40.20.10. Applicability.

1. The scope of Design Review shall be limited to the exterior of buildings, structures, and other development and to the site on which the buildings, structures, and other development are located. [ORD 4584; June 2012]
2. Considering the thresholds for the Design Review Compliance Letter, Design Review Two, or Design Review Three applications and unless exempted by Section 40.20.10.3. (Design Review) approval shall be required for the following: [ORD 4584; June 2012]
 - A. All uses listed as Conditional Uses in the R10, R7, and R5 zoning districts. [ORD 4584; June 2012]
 - B. All uses listed as Permitted and Conditional Uses in the R4, R2, and R1 Residential zoning districts. [ORD 4584; June 2012]
 - C. All uses listed as Permitted and Conditional Uses in all Commercial, Industrial, and Multiple Use zoning districts.
 - D. Site grading.
3. Design Review approval shall not be required for the following:
 - A. All uses listed as Permitted Uses in the R10, R7 and R5 Residential zoning districts. [ORD 4584; June 2012]
 - B. Detached dwellings and related residential accessory structures in any Residential or Commercial zoning district. [ORD 4542; June 2010]
 - C. Existing detached dwellings in Industrial and Multiple-Use zoning district. [ORD 4782; April 2020]
 - D. Maintenance of a building, structure, or site in a manner that is consistent with previous approvals.
 - E. Painting of any building in any zoning district.
 - F. Wireless communication facilities.
 - G. Food Cart Pods. [ORD 4662; September 2015]
 - G.H. Uses, activities, and structures located on a private parking lot and approved pursuant to the Open Air Beaverton program.
4. Design review approval through one of the procedures noted in Section 40.20.15. will be required for all new development where applicable. The applicable design standards or guidelines will serve as approval criteria depending on the procedure. Existing developments, and proposed additions, demolitions and redevelopments associated with them, will be treated according to the following principles:

DEVELOPMENT CODE OF THE CITY OF BEAVERTON

CHAPTER 40 - APPLICATIONS

[ORD 4224; September 2002]

40.23. Downtown Design Review

40.23.10. Applicability

1. Sites within the Downtown Design District shall be subject to Downtown Design Review. For sites outside of the Downtown Design District, refer to Section 40.20 (Design Review)
2. The scope of Downtown Design Review shall be limited to the exterior of buildings, structures, and other development and to the site on which the buildings, structures, and other development are located.
3. Considering the thresholds for the Downtown Design Review Compliance Letter, Downtown Design Review Two, or Downtown Design Review Three applications, and unless exempted by Section 40.23.10.4. (Downtown Design Review), approval shall be required for the following:
 - A. All uses listed as Permitted and Conditional Uses in the RC-BC, RC-OT, RC-MU, and RC-DT zoning districts.
 - B. Site grading.
4. Downtown Design Review approval shall not be required for the following:
 - A. Maintenance of a building, structure, or site in a manner that is consistent with previous approvals.
 - B. Painting of any building in any zoning district.
 - C. Wireless communication facilities.
 - D. Food Cart Pods.
 - ~~D;E.~~ Uses, activities, and structures located on a private parking lot and approved pursuant to the Open Air Beaverton program.
5. Downtown Design Review approval through one of the procedures noted in Section 40.23.15. will be required for all new development where applicable. The applicable design standards or guidelines will serve as approval criteria depending on the procedure. Existing developments, and proposed additions, demolitions and redevelopments associated with them, will be treated according to the following principles:

DEVELOPMENT CODE OF THE CITY OF BEAVERTON

CHAPTER 60 - SPECIAL REQUIREMENTS

60.30. Off-Street Parking

60.30.05. Off-Street Parking Requirements

Parking spaces shall be provided and satisfactorily maintained by the owner of the property for each building or use which is erected, enlarged, altered, or maintained in accordance with the requirements of Sections 60.30.05. to 60.30.20.

1. **Availability.** Required parking spaces shall be available for parking operable passenger automobiles and bicycles of residents, customers, patrons and employees and shall not be used for storage of vehicles or materials or for parking of trucks used in conducting the business or use.

A. Businesses that are approved pursuant to the Open Air Beaverton program and are located outside of Regional Center Parking District 1 may utilize a minimum of two off-street parking spaces, or up to one off-street parking space per 1,000 square feet of interior floor area occupied by the business, whichever is greater, for the program. In calculating the number of parking spaces, fractions equal or more than 0.5 shall be rounded up to the nearest whole number. Fractions less than 0.5 shall be rounded down to the nearest whole number.

B. Businesses that are approved pursuant to the Open Air Beaverton program and are located inside of Regional Center Parking District 1 may utilize an unlimited number of off-street parking spaces for the program, with the parking lot owner's permission.

2. **Vehicle Parking.** Vehicle parking shall be required for all development proposed for approval after November 6, 1996 unless otherwise exempted by this ordinance. The number of required vehicle parking spaces shall be provided according to Section 60.30.10.5.
3. **Bicycle Parking.** [ORD 3965; November 1996] Bicycle parking shall be required for all multi-family residential developments of four units or more, all retail, office and institution developments, and at all transit stations and park and ride lots which are proposed for approval after November 6, 1996. The number of required bicycle parking spaces shall be provided according to Section 60.30.10.5. All bike parking facilities shall meet the specifications, design and locational criteria as delineated in this section and the Engineering Design Manual. [ORD 4397; August 2006]

[ORD 4107; May 2000]

DEVELOPMENT CODE OF THE CITY OF BEAVERTON

CHAPTER 60 - SPECIAL REQUIREMENTS

60.30. Off-Street Parking

60.30.10. Number of Required Parking Spaces.

Except as otherwise provided under Section 60.30.10.11., off-street vehicle, bicycle, or both parking spaces shall be provided as follows:

11. **Reductions and Exceptions.** [ORD 3358; March 1984] Reductions and exceptions to the required vehicle and bicycle parking standards as listed in Sections 60.30.10.5. and 60.30.10.6. may be granted in the specific cases listed below. Sites within the Downtown Design District that apply for one or more of the vehicle parking reductions listed below cannot exceed a combined 15% reduction from the required parking standards in the table found in Section 60.30.10.6.[ORD 4471; February 2008] [ORD 4584; June 2012]

- K. Open Air Beaverton Temporary uses authorized by this Code are exempt from bicycle parking requirements. [ORD 4584; June 2012]
1. Businesses that are approved pursuant to the Open Air Beaverton program and are located outside of Regional Center Parking District 1 may utilize a minimum of two off-street parking spaces, or up to one off-street parking space per 1,000 square feet of interior floor area occupied by the business, whichever is greater, for the program. In calculating the number of parking spaces, fractions equal or more than 0.5 shall be rounded up to the nearest whole number. Fractions less than 0.5 shall be rounded down to the nearest whole number.
 2. Businesses that are approved pursuant to the Open Air Beaverton program and are located inside of Regional Center Parking District 1 may utilize an unlimited number of off-street parking spaces for the program, with the parking lot owner's permission.

DEVELOPMENT CODE OF THE CITY OF BEAVERTON

CHAPTER 60 - SPECIAL REQUIREMENTS

60.40. Sign Regulations

60.40.10. Signs Exempt from Permits and Regulation.

The following signs are exempt from regulation and do not require permits:

1. Signs constructed or placed in a public right-of-way by or with the approval of a governmental agency having legal control of that right-of-way for the purpose of traffic control, transit, public safety and wayfinding. [ORD 4708; May 2017]
2. Signs constructed or placed by public utility companies for the general purpose of providing information concerning a pole, line, pipe or other facility belonging to the public utility as an aid to public safety. [ORD 4708; May 2017]
3. Signs that are placed outside and are not visible from public right-of-ways. [ORD 4708; May 2017]
4. Public Art as defined in Section 2.03.245.A of the Beaverton City Code. [ORD 4482; April 2008]
5. Street address identifiers (numbers or letters) of buildings. [ORD 4708; May 2017]
6. Plaques, markers or banners placed by the city or city recognized agency or organization for the general purpose of recognizing historic significance or military service. [ORD 4708; May 2017]
7. Signs allowed as part of a Special Event Permit, subject to separate regulation under Chapter 7, Section 7.05 of the Beaverton City Code. [ORD 4708; May 2017]
8. No sign is exempt from the provisions of Section 60.40.25 (Prohibited Signs) and Section 60.40.55. (Nonconforming and Illegal Signs). [ORD 4708; May 2017]
- ~~8.9.~~ Signs approved pursuant to the Open Air Beaverton program.

DEVELOPMENT CODE OF THE CITY OF BEAVERTON

CHAPTER 90 - DEFINITIONS

The following words and phrases shall be construed to have the specific meanings assigned to them by definition.

Words used in present tense include the future tense, and the singular includes the plural, unless the context clearly indicates the contrary.

The term “shall” is always mandatory and the words “may” and “should” are permissive.

The masculine gender includes the feminine and neuter. [ORD 4224; September 2002] [ORD 4659; June 2015]

Open Access Street. A Street which allows direct access to each abutting property. [ORD 3494; March 1986]

Open Air Beaverton. A program established by Council ordinance and administered by the City to allow approved businesses to expand into private parking lots. Open Air Beaverton is comprised of uses, activities, signs, and structures that are located on a private parking lot, have obtained an approved Open Air Beaverton permit, and meet the standards established by Council ordinance.

AGENDA BILL

Beaverton City Council
 Beaverton, Oregon

EXHIBIT C

SUBJECT: An Ordinance Adding Beaverton Code Chapter 7.06, Business Expansion into Sidewalks, Streets, and Parking Lots, and Amending Section 5.02.083 Relating to the Consumption of Alcohol in Public Places

FOR AGENDA OF: 10-05-21 **BILL NO:** 21249

CITY MANAGER APPROVAL: Jenny Haruyama

DEPARTMENT OF ORIGIN: CDD CT

DATE SUBMITTED: 09-27-21

CLEARANCES: City Attorney ~~PTD~~

CDD CT

Site Dev. JU

Development CT

PROCEEDING: PUBLIC HEARING

EXHIBITS: 1. Ordinance

BUDGET IMPACT

EXPENDITURE	AMOUNT	APPROPRIATION
REQUIRED \$0	BUDGETED \$0	REQUIRED \$0

RECOMMENDED ACTION:

The City Council conducts a public hearing regarding the possible adoption of an ordinance (set forth in Exhibit 1), adding Beaverton Code Chapter 7.06, Business Expansion into Sidewalks, Streets, and Parking Lots, and Amending Section 5.02.083 Relating to the Consumption of Alcohol in Public Places. At the close of the public hearing, the City Council either: (1) moves to adopt the proposed ordinance, or (2) specifies future actions to be taken regarding the proposed ordinance.

ISSUE STATEMENT SUMMARY:

The City of Beaverton (City) is creating a new permit program to allow businesses to expand into public on-street parking spaces, sidewalks, and private parking lots. The new permit program (Open Air Beaverton Program) will replace a current temporary permit program (Open Air Beaverton Recovery Program) that was created in response to the state of emergency related to the COVID-19 pandemic. The goal of the initial emergency program was to support business continuity and allow business expansion in a fast and inexpensive manner. With this goal in mind, the emergency program was created by temporarily lifting enforcement of certain regulations. The emergency program was such a success that the city is interested in creating a permanent permit program.

The proposed ordinance will add a new chapter (Chapter 7.06) to the Beaverton Code (BC) creating this new permit program, as well as amend another section (BC 5.02.083) to allow consumption of alcohol at 1st Street Dining Commons.

HISTORICAL PERSPECTIVE:

In 2019, recognizing the vibrancy outdoor dining within the right-of-way was bringing to other jurisdictions, the City created the Street Seat pilot project that installed one structure within an on-street parking space on Angel Avenue/Farmington Road, adjacent to MILK+T. The lessons learned from that project lead staff

Agenda Bill No: 21249

to draft a program meant to roll out in 2020 that would allow restaurants to use on-street parking for their own private use. The pandemic hit before the roll-out of the program, and in its place, a much less restrictive temporary program was needed to give restaurants additional outdoor seating options, as interior seating was limited by the state. In response to the pandemic, in June 2020 the City of Beaverton approved the Open Air Beaverton Recovery Program, which suspended enforcement of several codes and requirements in order to allow businesses to temporarily expand into the public right-of-way or private parking lots. After a year with this unexpected second pilot program, the City has a lot of lessons learned under its belt.

Partially due to City efforts during the pandemic, such as the temporary permit program, downtown Beaverton is one of the few commercial districts in the region that can boast more restaurant openings than closings during the pandemic, and there is more interest than ever from establishments wanting to be part of what is happening in Beaverton. During the pandemic downtown Beaverton had 12 restaurants open, with 11 additional restaurants now in planning stages or under construction, plus a food cart pod, and only six restaurants have closed.

Staff recently conducted a community survey focusing mostly on parking in downtown Beaverton, and it included questions regarding what the public thought about the Open Air Beaverton Recovery permit program and whether they thought it should continue. Of the over 1,100 responses, 74 percent thought the program should continue, which included business owners, employees, and customers.

In July 2021 draft program guidelines were released to the public for comments. At the August 17, 2021 City Council meeting, Council provided feedback on the same guidelines. This feedback shaped the final code being reviewed this evening.

The process to create this permit program will include three processes:

- A) To create a new permit program, the Beaverton Code will need to be amended by Ordinance (this agenda bill).
- B) To allow Open Air Beaverton permits within private parking lots, a change to the Development Code is needed, particularly related to minimum parking standards and design guidelines. Staff feel this change needs a longer process to confirm whether a Development Code amendment of this nature is desired. Therefore, Planning Commission and then City Council will be asked to approve a term-limited amendment that will defer to the Open Air Beaverton permit program for one year while research is conducted. At the end of that term, staff will bring necessary recommendations to both bodies to make permanent amendments to the Development Code or present other options as appropriate. In the meantime, current users of private parking lot spaces will have an avenue to apply for an Open Air Beaverton permit that will not require a parallel land use process.
- C) Before the new permit program takes effect, which is 30 days after adoption, the fee structure will need to be created. A separate resolution will come to City Council within the next month to set these fees.

Another aspect of the City's response to the pandemic occurred in June 2020 when the City closed off one block of 1st Street between SW Watson and SW Washington Avenues to vehicles, eliminating access to eleven on-street parking spaces, and installing tables, chairs and tents, creating the 1st Street Dining Commons (Commons), a place for residents to bring take-out from any of the area restaurants and enjoy outdoor socially distanced dining. The location near Restaurant Row was within an area that both the City and the Beaverton Urban Redevelopment Agency had been working very hard to cultivate as a dining destination. While the Commons was not a project the City had previously been considering, the pilot closure of SW 1st Street has proven to be quite popular, and it is expected to continue for the next year or two and possibly beyond the pandemic.

The current Beaverton code limits consumption of alcohol on public property to spaces that have Oregon Liquor Control Commission (OLCC) permits, such as the Open Air Beaverton Recovery permit holders that extended their interior OLCC licenses outside to these new spaces, and to Tualatin Hills Parks and Recreation District properties. The consumption of alcohol is currently allowed at the Commons as part

of the temporary Open Air Beaverton Recovery Program, and as that program ultimately sunsets, that practice is desired to be continued. For this to occur, a series of steps are needed:

- 1) The Beaverton Code needs to be amended to allow consumption of alcohol also in places that are approved by City Council by resolution. (This amendment is included in tonight's ordinance.)
- 2) At a future City Council meeting, a resolution will need to be adopted that defines the geographic area of 1st Street Dining Commons and approving it for alcohol consumption.

Given all of the above activities, the schedule is as follows:

Aug 17, 2021	City Council – Review draft Program Guidelines Public Comments Due on draft Program Guidelines
Sept 14, 2021	City Council – 1st Reading of Ordinance
Oct 5, 2021	City Council: <ul style="list-style-type: none">- Public Hearing of Ordinance- Possible Adoption of Program- Possible Amendment re: Alcohol Consumption
Nov 3, 2021	Planning Commission – Public Hearing for Development Code Amendment
Nov 4, 2021	New Permit Program Effective Date Temporary Permit Program Ends
Nov 7, 2021	City Council – 1st Reading of Development Code Amendment
Nov 14, 2021	City Council – Public Hearing and Adoption of Development Code Amendment
Dec 10, 2021	City's State of Emergency may end
Apr 1, 2022	Draft date for businesses to be in compliance with new guidelines

COMMUNITY VISION/COUNCIL GOALS/MASTER PLANS:

Beaverton Community Vision:

- Goal Area: Build Community, Target: Enhance and diversify the city's dining, shopping and entertainment portfolio
- Goal Area: Vibrant Downtown, Target: Create a recognizable, vibrant, walkable mixed-use downtown
- Goal Area: Enhance Livability, Target: Foster a diverse and vibrant economy

FOR MORE INFORMATION:

Contact Megan Braunsten at mbraunsten@beavertonoregon.gov.

EXHIBIT 1ORDINANCE NO. TBD

**AN ORDINANCE ADDING BEAVERTON CODE CHAPTER 7.06,
BUSINESS EXPANSION INTO SIDEWALKS, STREETS, AND PARKING LOTS,
AND AMENDING SECTION 5.02.083 RELATING TO THE CONSUMPTION OF
ALCOHOL IN PUBLIC PLACES.**

Additions are shown in **bold underlining**,
and deletions are shown in ~~**bold**~~ ~~**strikeout**~~.

WHEREAS, the city desires to allow businesses to expand outside into certain public rights-of-way and private parking lots to encourage the vibrancy that outdoor dining provides; and

WHEREAS, the city also wishes to provide a public outdoor space for residents to enjoy outdoor socially distanced dining that allows the consumption of alcohol; and

WHEREAS, in 2019 the city created the Street Seat pilot project and found that outdoor dining opportunities resulted in an activation of the downtown; and

WHEREAS, the Covid-19 pandemic caused the city to implement the Open Air Beaverton Recovery Program, which operated as an additional pilot program for business expansion into the rights of way and private parking lots that is helping to cultivate the downtown into a dining destination; and

WHEREAS, the Covid-19 pandemic also resulted in the opening of the First Street Dining Commons, which proved to be a successful use of public space for outdoor dining; and

WHEREAS, the city wishes to adopt permanent regulations to allow businesses to expand into certain public rights-of-way and private parking lots and to allow consumption of alcohol at the First Street Dining Commons;

Now, therefore,

THE CITY OF BEAVERTON ORDAINS AS FOLLOWS:

Section 1. New chapter. A new chapter of the Beaverton Code, Chapter 7.06 Business Expansion into Sidewalks, Streets, and Parking Lots, is added as set forth in Exhibit A, which is attached and incorporated by this reference.

Section 2. Amendment. Beaverton Code 5.02.083 is amended as follows:

5.02.083 Consumption of alcoholic liquor in public places prohibited.

A. No person shall consume alcoholic liquor or possess an open container of an alcoholic beverage while in or upon any public place unless

authorized: **1) by council resolution for a specific public place, 2)** by the commission, or **3)** by subsection B of this section.

B. Alcoholic liquor may be consumed and an open container of an alcoholic beverage may be possessed within a park under the jurisdiction of the Tualatin Hills park and recreation district, provided such consumption or possession takes place only as duly authorized by written permit issued by the park district and, if required by state law, the activity has been licensed, in advance, for drinking or consumption purposes by the commission.

C. For purposes of this section, a park is under the jurisdiction of the Tualatin Hills park and recreation district, if the park is owned, managed or otherwise controlled by the park district.

Section 3. Severability. The sections and subsections of this ordinance are severable. If any part of this ordinance is held unconstitutional or otherwise invalid by a court of competent jurisdiction, the remaining parts shall remain in full force and effect unless:

A. The remaining parts are so essentially and inseparably connected with and dependent upon the unconstitutional or invalid part that it is apparent that the remaining parts would not have been enacted without the unconstitutional or invalid part; or

B. The remaining parts, standing alone, are incomplete and incapable of being executed according to the legislative intent.

Section 4. Effective Date. This ordinance takes effect thirty days after its passage.

First reading this _____ day of _____, 2021.

Public hearing this _____ day of _____, 2021.

Duly passed by the City Council this _____ day of _____, 2021.

ATTESTED:

SIGNED:

CATHERINE JANSEN, City Recorder

LACEY BEATY, Mayor

EXHIBIT A

Chapter 7.06, Business Expansion into Sidewalks, Streets, and Parking Lots

7.06.005 Short Title.

BC 7.06.005 through 7.06.075 may be referred to as the “Open Air Beaverton Regulations” or “these regulations.”

7.06.010 Definitions.

- A. Business. A physical establishment that sells or offers for sale goods or services for immediate delivery to customers on the premises, excluding any establishment that limits its customers to members only.
- B. Clear Pedestrian Zone. The Clear Pedestrian Zone is the area reserved for travel that is free of all obstructions from back of curb to the face of the building for a minimum width of a continuous five (5) feet along a block face, or a minimum of 200 feet for large blocks, and in good repair pursuant to BC 3.06.
- C. Director. The person designated by the city manager as Community Development Director and authorized to issue the parking lot permits, and the city engineer who is authorized to issue sidewalk permits and on-street permits.
- D. Conduct Business. Selling, or offering for sale, goods or services of any type for immediate delivery to customers.
- E. On-street parking. The portion of the right-of-way between the curb and vehicle travel lane that is intended for parked vehicles.
- F. On-street Permit. A permit authorizing use of on-street parking spaces for the permittee to conduct business.
- G. Operating Area. The portion of sidewalk, on-street parking, or parking lot established by the director and demarcated according to the specifications of the director, that the permittee is allowed to use to conduct business under a permit.
- H. Parking Lot Permit. A permit authorizing use of a portion of a private parking lot for the permittee to conduct business.
- I. Permit. An on-street permit, sidewalk permit, or parking lot permit issued under the Open Air Beaverton Regulations to allow business expansion into the designated operating area.
- J. Permittee. The individual who applied for the permit, and to whom the permit is issued, that bears ultimate responsibility for the operating area.
- K. Responsible Party. An individual who works on-site at the business and is designated as responsible for overseeing the business, such as the restaurant manager or other person with similar responsibility.
- L. Right-of-way. The space in, upon, above, below, along, across, or over the public streets, roads, highways, lanes, courts, ways, alleys, and boulevards, including on-street parking, bicycle lanes and sidewalks.
- M. Sidewalk. The portion of the right-of-way between the curb lines, or the lateral lines of a roadway, and the adjacent property line that is intended for pedestrian use.
- N. Sidewalk Permit. A permit authorizing use of a portion of the sidewalk for permittee to conduct business.

7.06.015 Permit required.

No person shall conduct business on any sidewalk, on-street parking space, or private parking lot pursuant to this Chapter without first obtaining a permit from the director and paying the appropriate fee to the city.

7.06.020 Application for permit.

A person must apply for an Open Air Beaverton permit by submitting a completed application on the city's approved application form and providing all required information and documents, including, but not limited to, a certificate of insurance. As part of the application, the applicant must also:

- A. Provide written notice that it is applying for a permit to all businesses and residents on the same block face. For large blocks the notice area shall not be required to exceed 250 feet in either lineal direction of the proposed operating area identified in the application.
- B. Obtain the signature of the property owner, if different than the applicant.
- C. If the proposed operating area is located in front of another business, the applicant must obtain the signature of the affected business and the property owner, if different than the applicant.

7.06.025 Fee.

Every applicant for a permit must pay a fee in an amount established by council resolution.

7.06.030 Issuance and renewal of permit.

A. *Issuance.* The director shall issue the permit if the director finds that:

- 1. The application meets the requirements of this chapter, or can be conditioned to meet the requirements of this chapter, and
- 2. the proposed operating area does not pose any safety concerns for the city or any other reviewing agency.

If the permit is approved, the director may include any conditions necessary to ensure the operating area is safe and compatible with the public use of the area located adjacent to the operating area.

B. *Renewal.*

- 1. A permittee seeking to renew a permit must submit an annual permit renewal application on a form provided by the city, on or before December 1 of each year, and pay the permit renewal application fee in the amount established by council resolution.
- 2. The director may deny issuance of a permit renewal pursuant to BC 7.06.035.

7.06.035 Denial, revocation, or suspension of permit.

- A. The director may deny, revoke, or suspend any permit authorized under these regulations if the director finds that:
 - 1. Any provision of this Chapter is not met, or has been violated,
 - 2. The permittee does not have insurance coverage that satisfies the minimum requirements, or
 - 3. The permittee violated any of the conditions of the permit.
- B. If the permit is denied, suspended or revoked, the director shall give notice of the denial or revocation to the permittee in writing stating the reason for the denial or revocation. The action

shall be effective upon giving notice to the permittee. Any denial or revocation may be appealed to the city manager by filing the appeal in accordance with Section 7.06.075. The permittee shall remove all improvements and property from the operating area no later than fourteen days after the date of the issued notice for revocation.

7.06.040 Allowed locations.

A. Except in the Industrial Zone, as defined in the Development Code, a permit is available citywide to allow businesses to utilize:

1. on-street parking,
2. sidewalks, and
3. private parking lots.

7.06.045 Permit conditions.

Permits issued shall be in a form prescribed by the city and shall contain the following conditions:

- A. The permit shall be in effect for one calendar year and expire on December 31 of each year, unless renewed pursuant to BC 7.06.030.
- B. The operating area must be used to conduct business.
- C. The permit issued shall be personal only to the person that applies pursuant to Section 7.06.020, and not transferable in any manner.
- D. The permit is valid only when used at the operating area designated on the permit.
- E. The permit is subject to the conditions and restrictions of this chapter.
- F. The permit as it applies to a given location may be suspended by the director for a period up to seven (7) consecutive days when a special event is permitted pursuant to BC 7.05. If the permit is suspended, the permittee must comply with all requirements in the director's suspension notice, which may include restrictions on use of the operating area, removing property and structures from the operating area, or other specified measures.
- G. A permit utilizing on-street parking or the sidewalk shall temporarily remove all structures and furnishings if the operating area will not be actively used for more than thirty (30) days. The structures and furnishings may be replaced once active use of the operating area resumes.
- H. The permit must be plainly displayed in a weatherproof container at the operating area.
- I. The permit is only valid when used within the operating area.
- J. The permit shall be subject to the insurance and indemnification requirements in BC 7.06.050.
- K. The director may add any other conditions necessary to ensure compliance with this Chapter and the safety of the operating area.
- L. The permit is subject to all conditions of the Development Code, or a permit issued under the Development Code, and requirements of the Engineering Design Manual (EDM) that are not directly in conflict with these regulations.
- M. The permit does not authorize storage of materials in the operating area. Storage of materials includes any arrangement of furniture, goods, and materials that limits or precludes conducting business.

7.06.050 Insurance and Indemnification.

A. *Insurance.* The permittee shall obtain a comprehensive commercial general liability insurance policy, with a certificate of insurance naming the city, its officers, directors, agents and employees as additional insureds, in the minimum amounts of one million dollars (\$1,000,000)-million per occurrence, and two million dollars (\$2,000,000)-million combined.

B. *Indemnification.* To the fullest extent permitted by law, each permittee shall defend, indemnify and hold harmless the City and its officers, employees, agents and representatives from and against any and all liability, causes of action, claims, damages, losses, judgments and other costs and expenses, including attorney fees and costs of suit or defense (at both the trial and appeal level, whether or not a trial or appeal ever takes place) that may be asserted by any person or entity in any way arising out of, resulting from, or alleged to arise out of or result from the negligent, careless or wrongful acts, omissions, failure to act or other misconduct of the permittee or its affiliates, officers, employees, agents, contractors, or subcontractors related to permittee's use of the operating area.

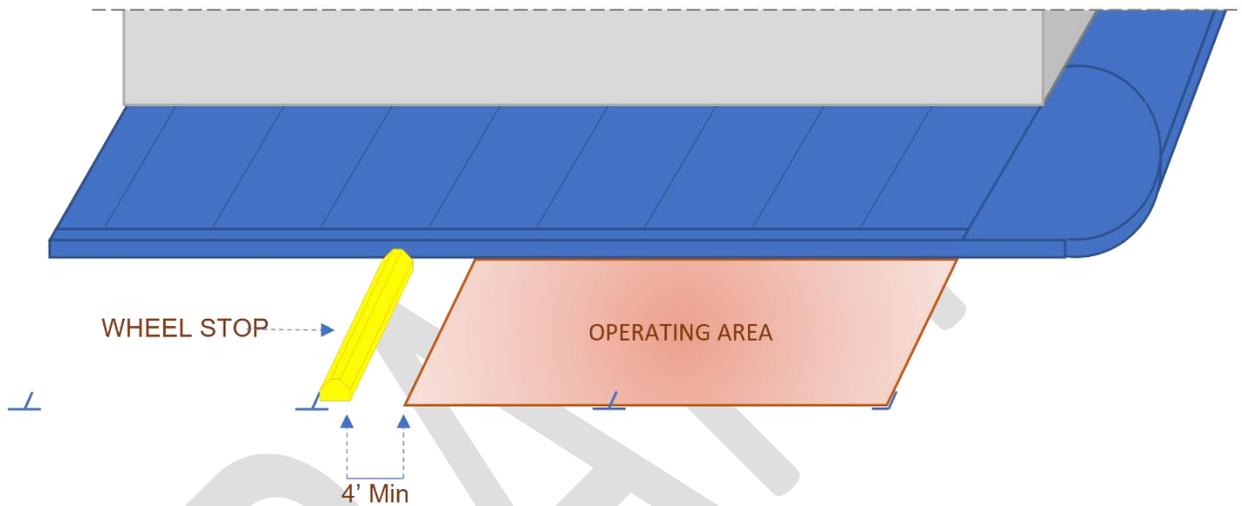
7.06.055 On-street permit standards.

The following standards apply to permits issued for operating areas utilizing on-street parking.

A. Location.

1. On-street permits may utilize a maximum of two on-street parking spaces directly in front of the applicant's business. The applicant must obtain permission from the adjacent business if any portion of one, or both, of the parking spaces are in front of the adjacent business.
2. The operating area for an on-street permit must be located:
 - a. To allow access to all utility vaults; structures cannot be placed over a utility vault,
 - b. A minimum of ten (10) feet from a fire hydrant,
 - c. A minimum of twenty (20) feet from a crosswalk, and
 - d. A minimum of thirty (30) feet from a stop sign and a transit stop. On-street permits with overhead structures may require additional distance from a stop sign pursuant to BC 7.06.055(C)(2).
3. The operating area for an on-street permit may not be located in, or obstruct, any:
 - a. Americans with Disability Act (ADA) parking spaces or travel pathways,
 - b. Driveway approaches,
 - c. Fire lanes,
 - d. Fire hydrants,
 - e. Pedestrian connections,
 - f. Storm drains, or water and gas valves in the street, unless the director approves the cover or obstruction in writing,
 - g. Arterial streets, except for the following locations:
 - i. The west side of SW Watson Avenue between SW Farmington Road and SW 5th Street where a bike lane is present to act as an additional buffer between the operating area and the travel lane, and

- ii. The east side of SW Hall Blvd between SW Farmington Road and SW 5th Street where a bike lane is present to act as an additional buffer between the operating area and the travel lane.
 - h. Truck routes as defined in BC 6.10.015.
4. The operating area for an on-street permit must not require removal of any landscaping.
 5. When the operating area is placed adjacent to additional on-street parking, a wheel stop must be installed between the parking space and the operating area, followed by a 4 foot open space before any structure or property, as shown in the figure below.



- B. *ADA Access.* Operating areas in the right-of-way must meet ADA access requirements by either constructing:
 1. An ADA ramp that complies with all landing requirements for ADA ramps, including, but not limited to, the length, angle, top and bottom landing requirements, or
 2. A level platform equal in height to the sidewalk with ADA access. Platforms must meet the following requirements:
 - a. Platforms must not be constructed in a way that requires modification, destruction, or disturbance of the right-of-way. Pouring foundations, adding in-ground concrete footings, and similar construction methods are prohibited. All structural systems for both the platform and the overhead structure must rest above-ground.
 - b. Platforms must have a railing that is a minimum of 36 inches high and no higher than 42 inches. Railings may be constructed of steel; steel cable; aluminum; glass; plexiglass; finished wood; wood veneers; wood siding; factory or naturally finished flat, profiled, fluted, or ribbed metal panels; fiber reinforced cement siding and panels; concrete (poured in place or precast); or standing seam metal. The director may limit materials for safety considerations.

- c. Platforms must allow for proper drainage on the surface as well as underneath the platform, including at the curb face.
 - d. Applicants are required to obtain stamped drawings of all structural components from a structural engineer, registered in the State of Oregon, before permit issuance, including the platform, decking and railing details.
- C. *Overhead structures.* Overhead structures in the operating area must meet the following requirements:
- 1. Overhead structures must not be constructed in a way that requires modification, destruction, or disturbance of the right-of-way. Pouring foundations, adding in-ground concrete footings, and similar construction methods are prohibited. All structural systems for both the platform and the overhead structure must rest above-ground.
 - 2. Overhead structures are prohibited within the first on-street parking space next to a stop sign.
 - 3. Overhead structures that obstruct street signs are prohibited unless the director determines that obstruction of the sign by the overhead structure does not pose a safety risk to vehicles or pedestrians.
 - 4. Overhead structures may be constructed of wood, steel, outdoor-grade fabric, metal panels, or corrugated plastic. Tents, canopies, and umbrellas are also allowed that:
 - a. Are properly secured and weighted, and
 - b. Comply with all applicable Tualatin Valley Fire and Rescue (TVF&R) regulations.
 - 5. Platforms with overhead structures must fit completely within the operating area; however, the roof may extend over the sidewalk a maximum of two (2) feet from the back of the curb.
 - 6. Overhead structures must have a minimum of eight (8) feet of clearance between their lowest point and the platform to allow for safe pedestrian circulation. Overhead structures must not project more than twelve (12) feet above the right-of-way at their highest point.
 - 7. Overhead structures with side panels between the top of the required railing and the lowest point of the overhead structure must be transparent to preserve visibility for vehicular traffic.
 - 8. Overhead structures, whether fixed or retractable, must remain in place even when they are not in use. However, soft coverings on the overhead structure, such as fabric on a canopy or tent, may be removed as long as the frame for the overhead structure remains in place. Umbrellas are exempt from this subsection and may be removed in their entirety at the discretion of the permittee.
 - 9. Seating and other elements within an overhead structure must not prevent access to entries and exits of the overhead structure. In addition, seating and other elements must be arranged to allow for appropriate pedestrian circulation.
 - 10. Applicants are required to obtain stamped drawings of all structural components from a structural engineer, registered in the State of Oregon, before permit issuance, including platform, decking, railing and overhead structure details.

D. *Electrical.* Electrical facilities in the operating area must meet the following requirements:

1. All lighting and electrical systems must comply with applicable electrical and energy codes.
2. All overhead structures must include overhead lighting oriented downwards into the operating area.
3. White steady string lighting, ceiling fan lighting, and can lighting are permitted. Alternate types of light fixtures may be approved by the director if it does not pose a safety risk. String or decorative lighting may be affixed to the platform or overhead structures~~solid exterior walls~~, but it may not extend into the sidewalk or ~~operating area and~~ impede pedestrian circulation.
4. Overhead lighting must have a minimum of seven (7) feet of clearance between its lowest point and the platform or ground to allow for safe pedestrian circulation.
5. All cords crossing the sidewalk must have a minimum of seven (7) feet of clearance between its lowest point and the sidewalk. Lighting must be plugged into GFCI outlet made for outdoor use.
6. Electrical cords for any heater must: be grounded, not constitute a trip hazard, and comply with ADA requirements.

E. *Heating.* Heaters in the operating area must meet the following requirements:

1. Except for catalytic heaters, the use of heaters, including outdoor wood burning heaters, must be approved by TVF&R.
2. Use of catalytic heaters is only allowed when all of the following requirements are met:
 - a. The catalytic heater is used according to manufacturer's combustion clearance and all other safety instructions.
 - b. The catalytic heater is designated for outdoor use.
 - c. The catalytic heater is placed in a dry location.
 - d. If it is a gas catalytic heater being used under an overhead structure, it must be CSA 4.89 certified.
 - e. The permittee has a fire extinguisher in the platform-operating area at all times if the heater is being used under an overhead structure.

F. *Signage.*

1. On-street permits are required to post signage that specifies the rules for use of the operating area, such as when the operating area is open and who may use the operating area.
2. At the option of the applicant, one (1) additional sign may be mounted or printed on the exterior wall of the overhead structure if it meets all of the following requirements:
 - a. If the overhead structure includes a fabric covering, signage may be mounted or printed on the covering that faces the street.

- b. Signage may not exceed twelve (12) square feet in area, as measured by the smallest rectangle that fits around the extent of the words or pictorial devices that make up the sign.
 - c. Signage must be affixed to the wall of the structure and may not project out from the plane of the wall more than six (6) inches, and under no circumstance shall it project outside the boundary of the operating area.
 - d. Signage on overhead structures must not have electrical components or lighting of any kind, and it must not resemble a traffic control device.
- G. *Maintenance.* The permittee and responsible party shall maintain the operating area, and all areas immediately adjacent to the operating area, in a good, clean and safe condition. The responsible party will remove food, debris, litter, grime, or graffiti from the operating area daily. On a weekly basis, the responsible party will rinse the operating area and remove any debris that impedes drainage flow along the curb and gutter of the operating area. Food and litter shall be kept out of the public storm drain. At the end of the term, which includes the initial calendar year after permit issuance and any renewal terms pursuant to this chapter, the permittee shall remove all personal property from the operating area.
- H. *Access.* Permittees within the right-of-way are required to provide access, as needed, to utilities in the right-of-way. Unless there is an emergency, the city or a utility operator, as defined in BC 4.15.050(N) will provide 48 hours' notice to permittee if property or structures in the operating area must be moved to allow access to utilities. If property or structures are not moved within the stated timeframe, the city or the utility operator reserves the right to move the property or structures, and the city can charge the permittee a moving fee in the amount established by resolution. The city or a utility operator will not be responsible for damages due to utility locates or removal of property or structures from the operating area. In case of an emergency, the city and utility operators may move property or structures without notice.

7.06.060 Sidewalk permit standards.

- A. *Location.*
- 1. The operating area for a sidewalk permit may only be located within the width of the applicant's storefront adjacent to the sidewalk.
 - 2. Seating and other elements within the operating area must not prevent access to entries and exits of businesses. In addition, seating and other elements must be arranged to allow for appropriate pedestrian circulation.
- B. *ADA Access.* All operating areas must meet ADA accessibility requirements. Sidewalk operating areas must not obstruct the Clear Pedestrian Zone.
- C. *Structures.* Except for outdoor-grade fabric umbrellas, all overhead structures are prohibited. Umbrella stands must not require modification, destruction, or disturbance of the sidewalk. Pouring foundations, adding in-ground concrete footings, and similar construction methods are prohibited. The entire umbrella stand must rest above-ground.
- D. *Electrical.*

1. All lighting and electrical systems must comply with applicable electrical and energy codes.
 2. Lighting allowed with a sidewalk permit is limited to battery-operated tabletop lighting, such as battery-operated candles or solar-powered built-in umbrella lights. String or decorative lighting may be affixed to solid exterior walls, but it may not extend into the sidewalk or operating area.
 3. Electrical cords for any heater must: be grounded, run along the wall of the building, and comply with ADA requirements.
- E. *Heating.* Heaters in the operating area must meet the following requirements:
1. Except for catalytic heaters, the use of heaters, including outdoor wood burning heaters, must be approved by TVF&R.
 2. Use of catalytic heaters is only allowed when all of the following requirements are met:
 - a. The catalytic heater is used according to manufacturer's combustion clearance and all other safety instructions.
 - b. The catalytic heater is designated for outdoor use.
 - c. The catalytic heater is placed in a dry location.
 - d. If it is gas catalytic heater being used under an overhead structure, it must be CSA 4.89 certified.
 - e. The permittee has a fire extinguisher in the operating area platform at all times if the heater is being used under an overhead structure.
- F. *Signage.* Only signage permitted pursuant to the Development Code is allowed in the operating area. Menu cards, or other similar materials, placed on tables for the benefit of patrons are allowed in the operating area.
- G. *Maintenance.* The permittee and responsible party shall maintain the operating area, and all areas immediately adjacent to the operating area, in a good, clean and safe condition. The responsible party will remove food, debris, litter, grime, or graffiti from the operating area daily. On a weekly basis, the responsible party will rinse the operating area and remove any debris that impedes drainage flow along the curb and gutter of the operating area. Food and litter shall be kept out of the public storm drain. At the end of the term, which includes the initial calendar year after permit issuance and any renewal terms pursuant to this chapter, the permittee shall remove all personal property from the operating area.
- H. *Access.* Permittees within the right-of-way are required to provide access, as needed, to utilities in the right-of-way. Unless there is an emergency, the city or a utility operator, as defined in BC 4.15.050(N) will provide 48 hours' notice to permittee if property or structures in the operating area must be moved to allow access to utilities. If property or structures are not moved within the stated timeframe, the city or the utility operator reserves the right to move the property or structures, and the city can charge the permittee a moving fee in the amount established by resolution. The city or a utility operator will not be responsible for damages due to utility locates or

removal of property or structures from the operating area. In case of an emergency, the city and utility operators may move property or structures without notice.

7.06.065 Parking lot permit standards.

A. Location.

1. An applicant may apply for a parking lot permit to designate an operating area that utilizes:
 - a. In areas outside of Downtown Parking District 1, as identified in figure 60.30.10 (Regional Center Parking Districts Map) of the Development Code, a minimum of two off-street parking spaces, or up to one off-street parking space per 1,000 square feet of interior floor area occupied by the business, whichever is greater; or
 - b. For areas within Downtown Parking District 1, as identified in figure 60.30.10 (Regional Center Parking Districts Map) of the Development Code, with the parking lot owner's permission, an unlimited number of off-street parking spaces.
2. The operating area for a parking lot permit must be located:
 - a. Within the boundaries of the private parking lot immediately adjacent to the applicant's business, and
 - b. A minimum of ten (10) feet from a fire hydrant.
3. The operating area for a parking lot permit may not be located in, or obstruct in any way, any:
 - a. ADA parking spaces or travel pathways,
 - b. Driveway approaches and drive aisles,
 - c. Fire lanes,
 - d. Bicycle Parking,
 - e. Designated pedestrian walkways and connections,
 - f. Utility boxes, or
 - g. Storm drains, manholes, catch basins, or other similar infrastructure improvements.
4. The operating area for a parking lot permit must not include any landscaped area or require removal of any landscaping.
5. The operating area may not alter an existing access, or add a new access from the private parking lot to the right-of-way.
6. Areas within the parking lot that will continue to provide off-street parking for vehicles, must maintain safe circulation and access to rights-of-way for vehicles and pedestrians. On-site circulation must be reviewed and approved by the director to ensure that it preserves necessary Clear Pedestrian Zones and does not pose a safety risk. The on-site circulation must include clearly marked Clear Pedestrian Zones, connecting the operating area with adjacent sidewalks and primary business entrances, if applicable.

- B. *Overhead structures.* Overhead structures in the operating area must meet the following requirements:
1. Overhead structures that obstruct street signs are prohibited unless the director determines that obstruction of the sign by the overhead structure does not pose a safety risk to vehicles or pedestrians.
 2. If overhead structures are constructed in a way that requires modification, destruction, or disturbance of the parking lot surface, reconstruction of the parking lot surface is required once the structures are removed.
 3. Overhead structures and decking may be constructed of wood, steel, outdoor-grade fabric, metal panels, or corrugated plastic. All rigid structures require a separate building permit.
 4. Tents, canopies, and umbrellas consisting of outdoor-grade fabric are permitted that:
 - a. Are properly secured and weighted, and
 - b. Comply with all applicable TVF&R regulations.
 5. Overhead structures, including tents, canopies, and umbrellas, must have a minimum of eight (8) feet of clearance between their lowest point and the ground to allow for safe pedestrian circulation. Overhead structures must not project more than twelve (12) feet above the ground at their highest point.
 6. Overhead structures, whether fixed or retractable, must remain in place even when it is not in use. However, soft coverings on the overhead structure, such as fabric on a canopy or tent, may be removed as long as the frame for the overhead structure remains in place. Umbrellas are exempt from this subsection and may be removed in their entirety at the discretion of the permittee.
 7. Seating and other elements within overhead structures must not prevent access to entries and exits of the overhead structure. In addition, seating and other elements must be arranged to allow for appropriate pedestrian circulation.
 8. Applicants are required to obtain stamped drawings of all structural components from a structural engineer, registered in the State of Oregon, before permit issuance, including platform, decking, railing and overhead structure details.
- C. *Electrical.* Electrical facilities in the operating area must meet the following requirements:
1. All lighting and electrical systems must comply with applicable electrical and energy codes.
 2. All overhead structures must include overhead lighting oriented downwards into the operating area.
 3. White steady string lighting, ceiling fan lighting, and can lighting are permitted. Alternate types of light fixtures may be approved by the Building Official if it does not pose a safety risk. String or decorative lighting may be affixed to ~~solid exterior wall~~the structure, but it may not extend into the sidewalk or ~~operating area and~~ impede pedestrian circulation.

4. Overhead lighting must have a minimum of seven (7) feet of clearance between its lowest point and the ground to allow for safe pedestrian circulation.
 5. All cords crossing the parking lot must have a minimum of seven (7) feet of clearance between its lowest point and the parking lot. Lighting must be plugged into GFCI outlet made for outdoor use.
 6. Electrical cords for any heater must: be grounded, not constitute a trip hazard, and comply with ADA requirements.
- D. *Heating.* Heaters in the operating area must meet the following requirements:
1. Except for catalytic heaters, the use of heaters, including outdoor wood burning heaters, must be approved by TVF&R.
 2. Use of catalytic heaters is only allowed when all of the following requirements are met:
 - a. The catalytic heater is used according to manufacturer's combustion clearance and all other safety instructions.
 - b. The catalytic heater is designated for outdoor use.
 - c. The catalytic heater is placed in a dry location.
 - d. If it is gas catalytic heater being used under an overhead structure, it must be CSA 4.89 certified.
 - e. The permittee has a fire extinguisher in the [platform operating area](#) at all times if the heater is being used under an overhead structure.
- E. *Maintenance.* The responsible party shall maintain the operating area, and all areas immediately adjacent to the operating area, in a good, clean and safe condition. The responsible party will remove food, debris, litter, and grime from the operating area daily.
- F. *Access.* Permittees are required to provide access, as needed, to utilities in public utility easements. Unless there is an emergency, the city will provide 48 hours' notice to permittee if property or structures in the operating area must be moved to allow access to utilities. If property or structures are not moved within the stated timeframe, the city reserves the right to move the property or structures, and the city can charge the permittee a moving fee in the amount established by council resolution. The city will not be responsible for damages due to utility locates or removal of property or structures from any portion of the operating area located in a public utility easement. In case of an emergency, the city may move property or structures without notice.

7.06.070 Enforcement and penalties.

- A. The city manager, director, city engineer, and peace officers have the authority to inspect and enforce permit compliance related to the Open Air Beaverton regulations.

A violation of any provision of this chapter that constitutes a safety risk is a Class 1 civil infraction. A violation of any other provision of this chapter constitutes a Class 2 civil infraction. All civil infractions are to be processed in accordance with the provisions of BC [2.10.010](#) through [2.10.050](#).

B. Violation of a provision of this chapter ~~by~~ shall constitute a public nuisance subject to abatement in accordance with the provisions of BC [5.05.200](#) through [5.05.230](#).

C. A finding that a permittee has committed a violation of this ~~Chapter~~ shall not act to relieve the person from the provisions of this ~~Chapter~~.

D. The penalties imposed by this section for violation of this chapter are in addition to, and not in limitation of, any other action or claim available to the ~~City~~ or any other governmental jurisdiction.

7.06.075 Appeal.

- A. Any person aggrieved by the decision of the director under this Chapter may appeal such action to the city manager. At the city manager's sole discretion, the city manager may select a hearings officer to hear the appeal.
- B. *Filing Deadline.* A person appealing a decision of a director shall file a written notice of appeal with the City Recorder within 10 days from the date of notice of the final decision.
- C. *Notice of appeal contents.* The written notice of appeal must include:
 - 1. The name and address of the appellant;
 - 2. A statement of the appellant's standing or right to be heard;
 - 3. The nature of the decision being appealed;
 - 4. A copy of the decision being appealed;
 - 5. A short and plain narrative statement including the reason(s) the original decision is alleged to be incorrect, with reference to the particular sections of the Beaverton Code;
 - 6. The result the appellant desires on appeal;
 - 7. The applicable appeal fee, in the amount established by council resolution.
- D. *Jurisdictional Defect.* Failure to strictly comply with the applicable appeal requirements, including, but not limited to, the required elements for the written notice of appeal, time for filing of the notice of appeal, and payment of the applicable appeal fee, shall constitute jurisdictional defects resulting in the summary dismissal of the appeal. All requirements shall be fully met prior to the appeal filing deadline.

ORDINANCE NO. 4812

**AN ORDINANCE ADDING BEAVERTON CODE CHAPTER 7.06,
BUSINESS EXPANSION INTO SIDEWALKS, STREETS, AND PARKING LOTS,
AND AMENDING SECTION 5.02.083 RELATING TO THE CONSUMPTION OF
ALCOHOL IN PUBLIC PLACES.**

<p>Additions are shown in <u>bold underlining</u>, and deletions are shown in bold strikeout.</p>
--

WHEREAS, the city desires to allow businesses to expand outside into certain public rights-of-way and private parking lots to encourage the vibrancy that outdoor dining provides; and

WHEREAS, the city also wishes to provide a public outdoor space for residents to enjoy outdoor socially distanced dining that allows the consumption of alcohol; and

WHEREAS, in 2019 the city created the Street Seat pilot project and found that outdoor dining opportunities resulted in an activation of the downtown; and

WHEREAS, the Covid-19 pandemic caused the city to implement the Open Air Beaverton Recovery Program, which operated as an additional pilot program for business expansion into the rights of way and private parking lots that is helping to cultivate the downtown into a dining destination; and

WHEREAS, the Covid-19 pandemic also resulted in the opening of the First Street Dining Commons, which proved to be a successful use of public space for outdoor dining; and

WHEREAS, the city wishes to adopt permanent regulations to allow businesses to expand into certain public rights-of-way and private parking lots and to allow consumption of alcohol at the First Street Dining Commons;

Now, therefore,

THE CITY OF BEAVERTON ORDAINS AS FOLLOWS:

Section 1. New chapter. A new chapter of the Beaverton Code, Chapter 7.06 Business Expansion into Sidewalks, Streets, and Parking Lots, is added as set forth in Exhibit A, which is attached and incorporated by this reference.

Section 2. Amendment. Beaverton Code 5.02.083 is amended as follows:

5.02.083 Consumption of alcoholic liquor in public places prohibited.

A. No person shall consume alcoholic liquor or possess an open container of an alcoholic beverage while in or upon any public place unless

authorized: **1) by council resolution for a specific public place, 2)** by the commission, or **3)** by subsection B of this section.

B. Alcoholic liquor may be consumed and an open container of an alcoholic beverage may be possessed within a park under the jurisdiction of the Tualatin Hills park and recreation district, provided such consumption or possession takes place only as duly authorized by written permit issued by the park district and, if required by state law, the activity has been licensed, in advance, for drinking or consumption purposes by the commission.

C. For purposes of this section, a park is under the jurisdiction of the Tualatin Hills park and recreation district, if the park is owned, managed or otherwise controlled by the park district.

Section 3. Severability. The sections and subsections of this ordinance are severable. If any part of this ordinance is held unconstitutional or otherwise invalid by a court of competent jurisdiction, the remaining parts shall remain in full force and effect unless:

A. The remaining parts are so essentially and inseparably connected with and dependent upon the unconstitutional or invalid part that it is apparent that the remaining parts would not have been enacted without the unconstitutional or invalid part; or

B. The remaining parts, standing alone, are incomplete and incapable of being executed according to the legislative intent.

Section 4. Effective Date. This ordinance takes effect thirty days after its passage.

First reading this 14th day of September, 2021.

Public hearing this 5th day of October, 2021.

Duly passed by the City Council this 5th day of October, 2021.

ATTESTED:

SIGNED:

Catherine Jansen
CATHERINE JANSEN, City Recorder

LACEY BEATY
LACEY BEATY, Mayor

EXHIBIT A**Chapter 7.06, Business Expansion into Sidewalks, Streets, and Parking Lots****7.06.005 Short Title.**

BC 7.06.005 through 7.06.075 may be referred to as the “Open Air Beaverton Regulations” or “these regulations.”

7.06.010 Definitions.

- A. **Business.** A physical establishment that sells or offers for sale goods or services for immediate delivery to customers on the premises, excluding any establishment that limits its customers to members only.
- B. **Clear Pedestrian Zone.** The Clear Pedestrian Zone is the area reserved for travel that is free of all obstructions from back of curb to the face of the building for a minimum width of a continuous five (5) feet along a block face, or a minimum of 200 feet for large blocks, and in good repair pursuant to BC 3.06.
- C. **Director.** The person designated by the city manager as Community Development Director and authorized to issue the parking lot permits, and the city engineer who is authorized to issue sidewalk permits and on-street permits.
- D. **Conduct Business.** Selling, or offering for sale, goods or services of any type for immediate delivery to customers.
- E. **On-street parking.** The portion of the right-of-way between the curb and vehicle travel lane that is intended for parked vehicles.
- F. **On-street Permit.** A permit authorizing use of on-street parking spaces for the permittee to conduct business.
- G. **Operating Area.** The portion of sidewalk, on-street parking, or parking lot established by the director and demarcated according to the specifications of the director, that the permittee is allowed to use to conduct business under a permit.
- H. **Parking Lot Permit.** A permit authorizing use of a portion of a private parking lot for the permittee to conduct business.
- I. **Permit.** An on-street permit, sidewalk permit, or parking lot permit issued under the Open Air Beaverton Regulations to allow business expansion into the designated operating area.
- J. **Permittee.** The individual who applied for the permit, and to whom the permit is issued, that bears ultimate responsibility for the operating area.
- K. **Responsible Party.** An individual who works on-site at the business and is designated as responsible for overseeing the business, such as the restaurant manager or other person with similar responsibility.
- L. **Right-of-way.** The space in, upon, above, below, along, across, or over the public streets, roads, highways, lanes, courts, ways, alleys, and boulevards, including on-street parking, bicycle lanes and sidewalks.
- M. **Sidewalk.** The portion of the right-of-way between the curb lines, or the lateral lines of a roadway, and the adjacent property line that is intended for pedestrian use.
- N. **Sidewalk Permit.** A permit authorizing use of a portion of the sidewalk for permittee to conduct business.

7.06.015 Permit required.

No person shall conduct business on any sidewalk, on-street parking space, or private parking lot pursuant to this Chapter without first obtaining a permit from the director and paying the appropriate fee to the city.

7.06.020 Application for permit.

A person must apply for an Open Air Beaverton permit by submitting a completed application on the city's approved application form and providing all required information and documents, including, but not limited to, a certificate of insurance. As part of the application, the applicant must also:

- A. Provide written notice that it is applying for a permit to all businesses and residents on the same block face. For large blocks the notice area shall not be required to exceed 250 feet in either lineal direction of the proposed operating area identified in the application.
- B. Obtain the signature of the property owner, if different than the applicant.
- C. If the proposed operating area is located in front of another business, the applicant must obtain the signature of the affected business and the property owner, if different than the applicant.

7.06.025 Fee.

Every applicant for a permit must pay a fee in an amount established by council resolution.

7.06.030 Issuance and renewal of permit.

A. *Issuance.* The director shall issue the permit if the director finds that:

- 1. The application meets the requirements of this chapter, or can be conditioned to meet the requirements of this chapter, and
- 2. the proposed operating area does not pose any safety concerns for the city or any other reviewing agency.

If the permit is approved, the director may include any conditions necessary to ensure the operating area is safe and compatible with the public use of the area located adjacent to the operating area.

B. *Renewal.*

- 1. A permittee seeking to renew a permit must submit an annual permit renewal application on a form provided by the city, on or before December 1 of each year, and pay the permit renewal application fee in the amount established by council resolution.
- 2. The director may deny issuance of a permit renewal pursuant to BC 7.06.035.

7.06.035 Denial, revocation, or suspension of permit.

- A. The director may deny, revoke, or suspend any permit authorized under these regulations if the director finds that:
 - 1. Any provision of this Chapter is not met, or has been violated,
 - 2. The permittee does not have insurance coverage that satisfies the minimum requirements, or
 - 3. The permittee violated any of the conditions of the permit.
- B. If the permit is denied, suspended or revoked, the director shall give notice of the denial or revocation to the permittee in writing stating the reason for the denial or revocation. The action

shall be effective upon giving notice to the permittee. Any denial or revocation may be appealed to the city manager by filing the appeal in accordance with Section 7.06.075. The permittee shall remove all improvements and property from the operating area no later than fourteen days after the date of the issued notice for revocation.

7.06.040 Allowed locations.

A. Except in the Industrial Zone, as defined in the Development Code, a permit is available citywide to allow businesses to utilize:

1. on-street parking,
2. sidewalks, and
3. private parking lots.

7.06.045 Permit conditions.

Permits issued shall be in a form prescribed by the city and shall contain the following conditions:

- A. The permit shall be in effect for one calendar year and expire on December 31 of each year, unless renewed pursuant to BC 7.06.030.
- B. The operating area must be used to conduct business.
- C. The permit issued shall be personal only to the person that applies pursuant to Section 7.06.020, and not transferable in any manner.
- D. The permit is valid only when used at the operating area designated on the permit.
- E. The permit is subject to the conditions and restrictions of this chapter.
- F. The permit as it applies to a given location may be suspended by the director for a period up to seven (7) consecutive days when a special event is permitted pursuant to BC 7.05. If the permit is suspended, the permittee must comply with all requirements in the director's suspension notice, which may include restrictions on use of the operating area, removing property and structures from the operating area, or other specified measures.
- G. A permit utilizing on-street parking or the sidewalk shall temporarily remove all structures and furnishings if the operating area will not be actively used for more than thirty (30) days. The structures and furnishings may be replaced once active use of the operating area resumes.
- H. The permit must be plainly displayed in a weatherproof container at the operating area.
- I. The permit is only valid when used within the operating area.
- J. The permit shall be subject to the insurance and indemnification requirements in BC 7.06.050.
- K. The director may add any other conditions necessary to ensure compliance with this Chapter and the safety of the operating area.
- L. The permit is subject to all conditions of the Development Code, or a permit issued under the Development Code, and requirements of the Engineering Design Manual (EDM) that are not directly in conflict with these regulations.
- M. The permit does not authorize storage of materials in the operating area. Storage of materials includes any arrangement of furniture, goods, and materials that limits or precludes conducting business.

7.06.050 Insurance and Indemnification.

A. *Insurance.* The permittee shall obtain a comprehensive commercial general liability insurance policy, with a certificate of insurance naming the city, its officers, directors, agents and employees as additional insureds, in the minimum amounts of one million dollars (\$1,000,000) per occurrence, and two million dollars (\$2,000,000) combined.

B. *Indemnification.* To the fullest extent permitted by law, each permittee shall defend, indemnify and hold harmless the City and its officers, employees, agents and representatives from and against any and all liability, causes of action, claims, damages, losses, judgments and other costs and expenses, including attorney fees and costs of suit or defense (at both the trial and appeal level, whether or not a trial or appeal ever takes place) that may be asserted by any person or entity in any way arising out of, resulting from, or alleged to arise out of or result from the negligent, careless or wrongful acts, omissions, failure to act or other misconduct of the permittee or its affiliates, officers, employees, agents, contractors, or subcontractors related to permittee's use of the operating area.

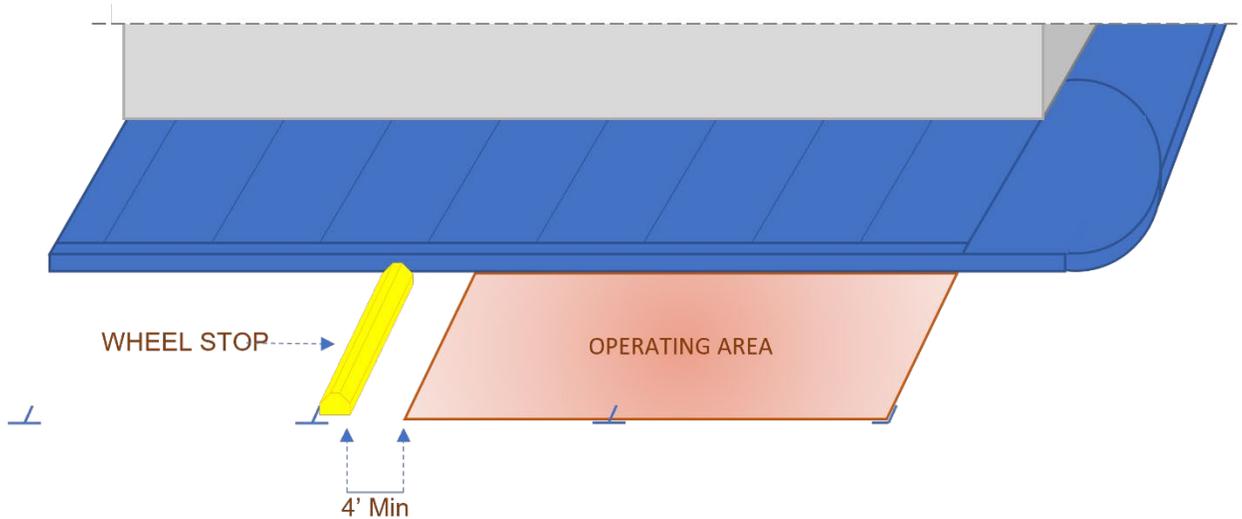
7.06.055 On-street permit standards.

The following standards apply to permits issued for operating areas utilizing on-street parking.

A. *Location.*

1. On-street permits may utilize a maximum of two on-street parking spaces directly in front of the applicant's business. The applicant must obtain permission from the adjacent business if any portion of one, or both, of the parking spaces are in front of the adjacent business.
2. The operating area for an on-street permit must be located:
 - a. To allow access to all utility vaults; structures cannot be placed over a utility vault,
 - b. A minimum of ten (10) feet from a fire hydrant,
 - c. A minimum of twenty (20) feet from a crosswalk, and
 - d. A minimum of thirty (30) feet from a stop sign and a transit stop. On-street permits with overhead structures may require additional distance from a stop sign pursuant to BC 7.06.055(C)(2).
3. The operating area for an on-street permit may not be located in, or obstruct, any:
 - a. Americans with Disability Act (ADA) parking spaces or travel pathways,
 - b. Driveway approaches,
 - c. Fire lanes,
 - d. Fire hydrants,
 - e. Pedestrian connections,
 - f. Storm drains, or water and gas valves in the street, unless the director approves the cover or obstruction in writing,
 - g. Arterial streets, except for the following locations:
 - i. The west side of SW Watson Avenue between SW Farmington Road and SW 5th Street where a bike lane is present to act as an additional buffer between the operating area and the travel lane, and

- ii. The east side of SW Hall Blvd between SW Farmington Road and SW 5th Street where a bike lane is present to act as an additional buffer between the operating area and the travel lane.
 - h. Truck routes as defined in BC 6.10.015.
4. The operating area for an on-street permit must not require removal of any landscaping.



- B. **ADA Access.** Operating areas in the right-of-way must meet ADA access requirements by either constructing:
1. An ADA ramp that complies with all landing requirements for ADA ramps, including, but not limited to, the length, angle, top and bottom landing requirements, or
 2. A level platform equal in height to the sidewalk with ADA access. Platforms must meet the following requirements:
 - a. Platforms must not be constructed in a way that requires modification, destruction, or disturbance of the right-of-way. Pouring foundations, adding in-ground concrete footings, and similar construction methods are prohibited. All structural systems for both the platform and the overhead structure must rest above-ground.
 - b. Platforms must have a railing that is a minimum of 36 inches high and no higher than 42 inches. Railings may be constructed of steel; steel cable; aluminum; glass; plexiglass; finished wood; wood veneers; wood siding; factory or naturally finished flat, profiled, fluted, or ribbed metal panels; fiber reinforced cement siding and panels; concrete (poured in place or precast); or standing seam metal. The director may limit materials for safety considerations.

- c. Platforms must allow for proper drainage on the surface as well as underneath the platform, including at the curb face.
 - d. Applicants are required to obtain stamped drawings of all structural components from a structural engineer, registered in the State of Oregon, before permit issuance, including the platform, decking and railing details.
- C. *Overhead structures.* Overhead structures in the operating area must meet the following requirements:
1. Overhead structures must not be constructed in a way that requires modification, destruction, or disturbance of the right-of-way. Pouring foundations, adding in-ground concrete footings, and similar construction methods are prohibited. All structural systems for both the platform and the overhead structure must rest above-ground.
 2. Overhead structures are prohibited within the first on-street parking space next to a stop sign.
 3. Overhead structures that obstruct street signs are prohibited unless the director determines that obstruction of the sign by the overhead structure does not pose a safety risk to vehicles or pedestrians.
 4. Overhead structures may be constructed of wood, steel, outdoor-grade fabric, metal panels, or corrugated plastic. Tents, canopies, and umbrellas are also allowed that:
 - a. Are properly secured and weighted, and
 - b. Comply with all applicable Tualatin Valley Fire and Rescue (TVF&R) regulations.
 5. Platforms with overhead structures must fit completely within the operating area; however, the roof may extend over the sidewalk a maximum of two (2) feet from the back of the curb.
 6. Overhead structures must have a minimum of eight (8) feet of clearance between their lowest point and the platform to allow for safe pedestrian circulation. Overhead structures must not project more than twelve (12) feet above the right-of-way at their highest point.
 7. Overhead structures with side panels between the top of the required railing and the lowest point of the overhead structure must be transparent to preserve visibility for vehicular traffic.
 8. Overhead structures, whether fixed or retractable, must remain in place even when they are not in use. However, soft coverings on the overhead structure, such as fabric on a canopy or tent, may be removed as long as the frame for the overhead structure remains in place. Umbrellas are exempt from this subsection and may be removed in their entirety at the discretion of the permittee.
 9. Seating and other elements within an overhead structure must not prevent access to entries and exits of the overhead structure. In addition, seating and other elements must be arranged to allow for appropriate pedestrian circulation.
 10. Applicants are required to obtain stamped drawings of all structural components from a structural engineer, registered in the State of Oregon, before permit issuance, including platform, decking, railing and overhead structure details.

D. *Electrical.* Electrical facilities in the operating area must meet the following requirements:

1. All lighting and electrical systems must comply with applicable electrical and energy codes.
2. All overhead structures must include overhead lighting oriented downwards into the operating area.
3. White steady string lighting, ceiling fan lighting, and can lighting are permitted. Alternate types of light fixtures may be approved by the director if it does not pose a safety risk. String or decorative lighting may be affixed to the platform or overhead structure, but it may not extend into the sidewalk or impede pedestrian circulation.
4. Overhead lighting must have a minimum of seven (7) feet of clearance between its lowest point and the platform or ground to allow for safe pedestrian circulation.
5. All cords crossing the sidewalk must have a minimum of seven (7) feet of clearance between its lowest point and the sidewalk. Lighting must be plugged into GFCI outlet made for outdoor use.
6. Electrical cords for any heater must: be grounded, not constitute a trip hazard, and comply with ADA requirements.

E. *Heating.* Heaters in the operating area must meet the following requirements:

1. Except for catalytic heaters, the use of heaters, including outdoor wood burning heaters, must be approved by TVF&R.
2. Use of catalytic heaters is only allowed when all of the following requirements are met:
 - a. The catalytic heater is used according to manufacturer's combustion clearance and all other safety instructions.
 - b. The catalytic heater is designated for outdoor use.
 - c. The catalytic heater is placed in a dry location.
 - d. If it is a gas catalytic heater being used under an overhead structure, it must be CSA 4.89 certified.
 - e. The permittee has a fire extinguisher in the operating area at all times if the heater is being used under an overhead structure.

F. *Signage.*

1. On-street permits are required to post signage that specifies the rules for use of the operating area, such as when the operating area is open and who may use the operating area.
2. At the option of the applicant, one (1) additional sign may be mounted or printed on the exterior wall of the overhead structure if it meets all of the following requirements:
 - a. If the overhead structure includes a fabric covering, signage may be mounted or printed on the covering that faces the street.

- b. Signage may not exceed twelve (12) square feet in area, as measured by the smallest rectangle that fits around the extent of the words or pictorial devices that make up the sign.
 - c. Signage must be affixed to the wall of the structure and may not project out from the plane of the wall more than six (6) inches, and under no circumstance shall it project outside the boundary of the operating area.
 - d. Signage on overhead structures must not have electrical components or lighting of any kind, and it must not resemble a traffic control device.
- G. *Maintenance.* The permittee and responsible party shall maintain the operating area, and all areas immediately adjacent to the operating area, in a good, clean and safe condition. The responsible party will remove food, debris, litter, grime, or graffiti from the operating area daily. On a weekly basis, the responsible party will rinse the operating area and remove any debris that impedes drainage flow along the curb and gutter of the operating area. Food and litter shall be kept out of the public storm drain. At the end of the term, which includes the initial calendar year after permit issuance and any renewal terms pursuant to this chapter, the permittee shall remove all personal property from the operating area.
- H. *Access.* Permittees within the right-of-way are required to provide access, as needed, to utilities in the right-of-way. Unless there is an emergency, the city or a utility operator, as defined in BC 4.15.050(N) will provide 48 hours' notice to permittee if property or structures in the operating area must be moved to allow access to utilities. If property or structures are not moved within the stated timeframe, the city or the utility operator reserves the right to move the property or structures, and the city can charge the permittee a moving fee in the amount established by resolution. The city or a utility operator will not be responsible for damages due to utility locates or removal of property or structures from the operating area. In case of an emergency, the city and utility operators may move property or structures without notice.

7.06.060 Sidewalk permit standards.

A. *Location.*

- 1. The operating area for a sidewalk permit may only be located within the width of the applicant's storefront adjacent to the sidewalk.
- 2. Seating and other elements within the operating area must not prevent access to entries and exits of businesses. In addition, seating and other elements must be arranged to allow for appropriate pedestrian circulation.

B. *ADA Access.* All operating areas must meet ADA accessibility requirements. Sidewalk operating areas must not obstruct the Clear Pedestrian Zone.

C. *Structures.* Except for outdoor-grade fabric umbrellas, all overhead structures are prohibited. Umbrella stands must not require modification, destruction, or disturbance of the sidewalk. Pouring foundations, adding in-ground concrete footings, and similar construction methods are prohibited. The entire umbrella stand must rest above-ground.

D. *Electrical.*

1. All lighting and electrical systems must comply with applicable electrical and energy codes.
 2. Lighting allowed with a sidewalk permit is limited to battery-operated tabletop lighting, such as battery-operated candles or solar-powered built-in umbrella lights. String or decorative lighting may be affixed to solid exterior walls, but it may not extend into the sidewalk or operating area.
 3. Electrical cords for any heater must: be grounded, run along the wall of the building, and comply with ADA requirements.
- E. *Heating.* Heaters in the operating area must meet the following requirements:
1. Except for catalytic heaters, the use of heaters, including outdoor wood burning heaters, must be approved by TVF&R.
 2. Use of catalytic heaters is only allowed when all of the following requirements are met:
 - a. The catalytic heater is used according to manufacturer's combustion clearance and all other safety instructions.
 - b. The catalytic heater is designated for outdoor use.
 - c. The catalytic heater is placed in a dry location.
 - d. If it is gas catalytic heater being used under an overhead structure, it must be CSA 4.89 certified.
 - e. The permittee has a fire extinguisher in the operating area at all times if the heater is being used under an overhead structure.
- F. *Signage.* Only signage permitted pursuant to the Development Code is allowed in the operating area. Menu cards, or other similar materials, placed on tables for the benefit of patrons are allowed in the operating area.
- G. *Maintenance.* The permittee and responsible party shall maintain the operating area, and all areas immediately adjacent to the operating area, in a good, clean and safe condition. The responsible party will remove food, debris, litter, grime, or graffiti from the operating area daily. On a weekly basis, the responsible party will rinse the operating area and remove any debris that impedes drainage flow along the curb and gutter of the operating area. Food and litter shall be kept out of the public storm drain. At the end of the term, which includes the initial calendar year after permit issuance and any renewal terms pursuant to this chapter, the permittee shall remove all personal property from the operating area.
- H. *Access.* Permittees within the right-of-way are required to provide access, as needed, to utilities in the right-of-way. Unless there is an emergency, the city or a utility operator, as defined in BC 4.15.050(N) will provide 48 hours' notice to permittee if property or structures in the operating area must be moved to allow access to utilities. If property or structures are not moved within the stated timeframe, the city or the utility operator reserves the right to move the property or structures, and the city can charge the permittee a moving fee in the amount established by resolution. The city or a utility operator will not be responsible for damages due to utility locates or

removal of property or structures from the operating area. In case of an emergency, the city and utility operators may move property or structures without notice.

7.06.065 Parking lot permit standards.

A. Location.

1. An applicant may apply for a parking lot permit to designate an operating area that utilizes:
 - a. In areas outside of Downtown Parking District 1, as identified in figure 60.30.10 (Regional Center Parking Districts Map) of the Development Code, a minimum of two off-street parking spaces, or up to one off-street parking space per 1,000 square feet of interior floor area occupied by the business, whichever is greater; or
 - b. For areas within Downtown Parking District 1, as identified in figure 60.30.10 (Regional Center Parking Districts Map) of the Development Code, with the parking lot owner's permission, an unlimited number of off-street parking spaces.
2. The operating area for a parking lot permit must be located:
 - a. Within the boundaries of the private parking lot immediately adjacent to the applicant's business, and
 - b. A minimum of ten (10) feet from a fire hydrant.
3. The operating area for a parking lot permit may not be located in, or obstruct in any way, any:
 - a. ADA parking spaces or travel pathways,
 - b. Driveway approaches and drive aisles,
 - c. Fire lanes,
 - d. Bicycle Parking,
 - e. Designated pedestrian walkways and connections,
 - f. Utility boxes, or
 - g. Storm drains, manholes, catch basins, or other similar infrastructure improvements.
4. The operating area for a parking lot permit must not include any landscaped area or require removal of any landscaping.
5. The operating area may not alter an existing access, or add a new access from the private parking lot to the right-of-way.
6. Areas within the parking lot that will continue to provide off-street parking for vehicles, must maintain safe circulation and access to rights-of-way for vehicles and pedestrians. On-site circulation must be reviewed and approved by the director to ensure that it preserves necessary Clear Pedestrian Zones and does not pose a safety risk. The on-site circulation must include clearly marked Clear Pedestrian Zones, connecting the operating area with adjacent sidewalks and primary business entrances, if applicable.

- B. *Overhead structures.* Overhead structures in the operating area must meet the following requirements:
1. Overhead structures that obstruct street signs are prohibited unless the director determines that obstruction of the sign by the overhead structure does not pose a safety risk to vehicles or pedestrians.
 2. If overhead structures are constructed in a way that requires modification, destruction, or disturbance of the parking lot surface, reconstruction of the parking lot surface is required once the structures are removed.
 3. Overhead structures and decking may be constructed of wood, steel, outdoor-grade fabric, metal panels, or corrugated plastic. All rigid structures require a separate building permit.
 4. Tents, canopies, and umbrellas consisting of outdoor-grade fabric are permitted that:
 - a. Are properly secured and weighted, and
 - b. Comply with all applicable TVF&R regulations.
 5. Overhead structures, including tents, canopies, and umbrellas, must have a minimum of eight (8) feet of clearance between their lowest point and the ground to allow for safe pedestrian circulation. Overhead structures must not project more than twelve (12) feet above the ground at their highest point.
 6. Overhead structures, whether fixed or retractable, must remain in place even when it is not in use. However, soft coverings on the overhead structure, such as fabric on a canopy or tent, may be removed as long as the frame for the overhead structure remains in place. Umbrellas are exempt from this subsection and may be removed in their entirety at the discretion of the permittee.
 7. Seating and other elements within overhead structures must not prevent access to entries and exits of the overhead structure. In addition, seating and other elements must be arranged to allow for appropriate pedestrian circulation.
 8. Applicants are required to obtain stamped drawings of all structural components from a structural engineer, registered in the State of Oregon, before permit issuance, including platform, decking, railing and overhead structure details.
- C. *Electrical.* Electrical facilities in the operating area must meet the following requirements:
1. All lighting and electrical systems must comply with applicable electrical and energy codes.
 2. All overhead structures must include overhead lighting oriented downwards into the operating area.
 3. White steady string lighting, ceiling fan lighting, and can lighting are permitted. Alternate types of light fixtures may be approved by the Building Official if it does not pose a safety risk. String or decorative lighting may be affixed to the structure, but it may not extend into the sidewalk or impede pedestrian circulation.

4. Overhead lighting must have a minimum of seven (7) feet of clearance between its lowest point and the ground to allow for safe pedestrian circulation.
5. All cords crossing the parking lot must have a minimum of seven (7) feet of clearance between its lowest point and the parking lot. Lighting must be plugged into GFCI outlet made for outdoor use.
6. Electrical cords for any heater must: be grounded, not constitute a trip hazard, and comply with ADA requirements.

D. *Heating*. Heaters in the operating area must meet the following requirements:

1. Except for catalytic heaters, the use of heaters, including outdoor wood burning heaters, must be approved by TVF&R.
2. Use of catalytic heaters is only allowed when all of the following requirements are met:
 - a. The catalytic heater is used according to manufacturer's combustion clearance and all other safety instructions.
 - b. The catalytic heater is designated for outdoor use.
 - c. The catalytic heater is placed in a dry location.
 - d. If it is gas catalytic heater being used under an overhead structure, it must be CSA 4.89 certified.
 - e. The permittee has a fire extinguisher in the operating area at all times if the heater is being used under an overhead structure.

E. *Maintenance*. The responsible party shall maintain the operating area, and all areas immediately adjacent to the operating area, in a good, clean and safe condition. The responsible party will remove food, debris, litter, and grime from the operating area daily.

F. *Access*. Permittees are required to provide access, as needed, to utilities in public utility easements. Unless there is an emergency, the city will provide 48 hours' notice to permittee if property or structures in the operating area must be moved to allow access to utilities. If property or structures are not moved within the stated timeframe, the city reserves the right to move the property or structures, and the city can charge the permittee a moving fee in the amount established by council resolution. The city will not be responsible for damages due to utility locates or removal of property or structures from any portion of the operating area located in a public utility easement. In case of an emergency, the city may move property or structures without notice.

7.06.070 Enforcement and penalties.

A. The city manager, director, city engineer, and peace officers have the authority to inspect and enforce permit compliance related to the Open Air Beaverton regulations.

A violation of any provision of this chapter that constitutes a safety risk is a Class 1 civil infraction. A violation of any other provision of this chapter constitutes a Class 2 civil infraction. All civil infractions are to be processed in accordance with the provisions of BC [2.10.010](#) through [2.10.050](#).

B. Violation of a provision of this chapter shall constitute a public nuisance subject to abatement in accordance with the provisions of BC [5.05.200](#) through [5.05.230](#).

C. A finding that a permittee has committed a violation of this chapter shall not act to relieve the person from the provisions of this chapter.

D. The penalties imposed by this section for violation of this chapter are in addition to, and not in limitation of, any other action or claim available to the city or any other governmental jurisdiction.

7.06.075 Appeal.

A. Any person aggrieved by the decision of the director under this Chapter may appeal such action to the city manager. At the city manager's sole discretion, the city manager may select a hearings officer to hear the appeal.

B. *Filing Deadline.* A person appealing a decision of a director shall file a written notice of appeal with the City Recorder within 10 days from the date of notice of the final decision.

C. *Notice of appeal contents.* The written notice of appeal must include:

1. The name and address of the appellant;
2. A statement of the appellant's standing or right to be heard;
3. The nature of the decision being appealed;
4. A copy of the decision being appealed;
5. A short and plain narrative statement including the reason(s) the original decision is alleged to be incorrect, with reference to the particular sections of the Beaverton Code;
6. The result the appellant desires on appeal;
7. The applicable appeal fee, in the amount established by council resolution.

D. *Jurisdictional Defect.* Failure to strictly comply with the applicable appeal requirements, including, but not limited to, the required elements for the written notice of appeal, time for filing of the notice of appeal, and payment of the applicable appeal fee, shall constitute jurisdictional defects resulting in the summary dismissal of the appeal. All requirements shall be fully met prior to the appeal filing deadline.