

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.**

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 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.

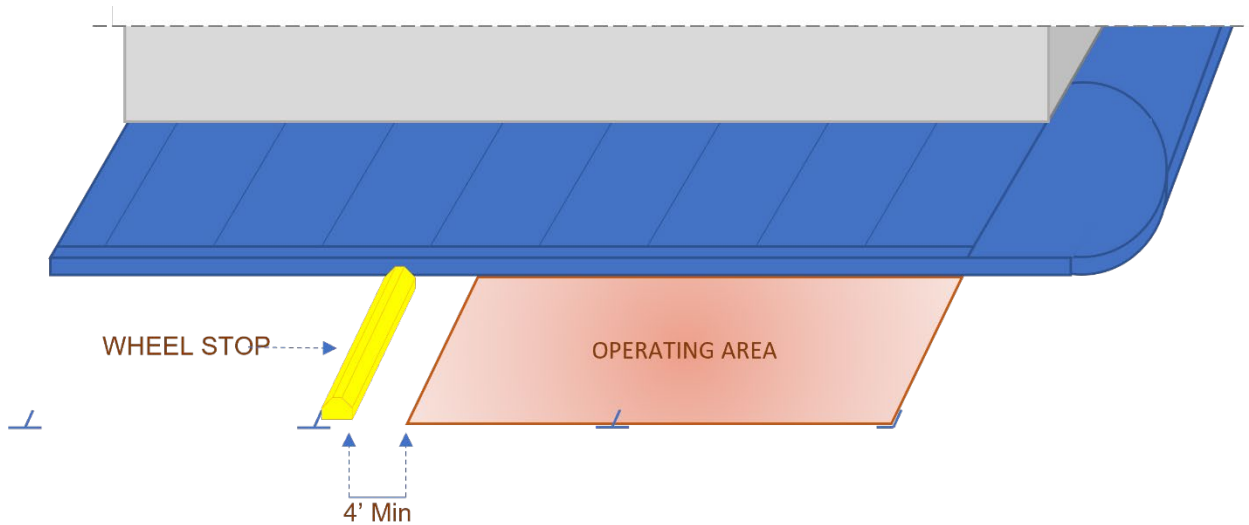
7.06.055 On-street permit standards.

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.