

AGENDA BILL**Beaverton City Council
Beaverton, Oregon****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 CTSite Dev. JUDevelopment CT**PROCEEDING:** PUBLIC HEARING**EXHIBITS:** 1. Ordinance**BUDGET IMPACT**

EXPENDITURE REQUIRED \$0	AMOUNT BUDGETED \$0	APPROPRIATION 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

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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.

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.

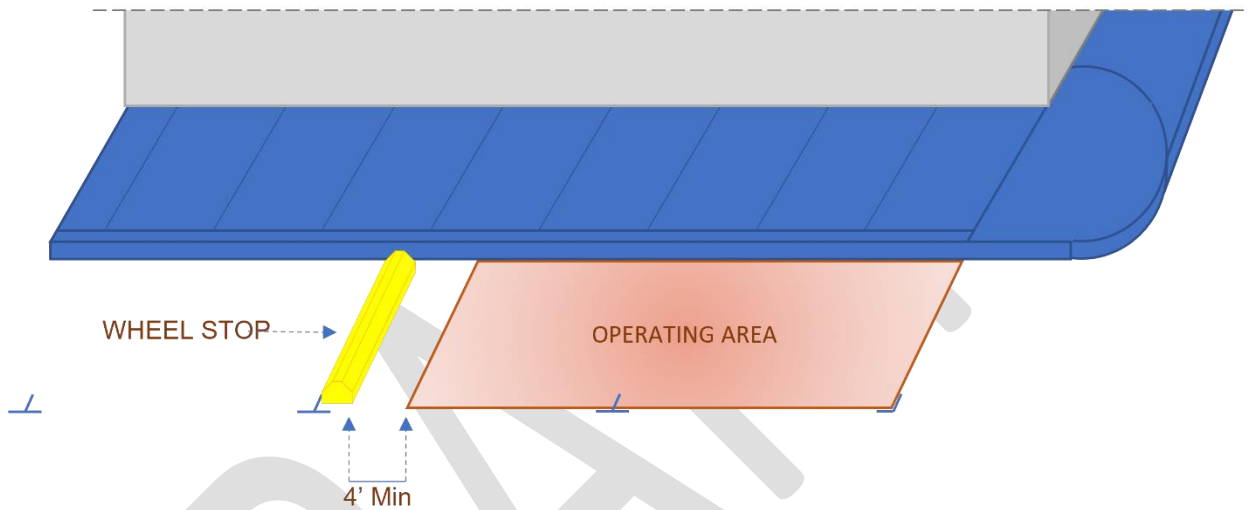
7.06.055 On-street permit standards.

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 ~~C~~chapter shall not act to relieve the person from the provisions of this ~~C~~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 ~~C~~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.