

ORDINANCE NO. 2409

AN ORDINANCE AMENDING BEND CODE CHAPTER 7.20

Recital

- A. The City of Bend adopted Ordinance No. 2158 on March 16, 2011, and Ordinance No. 2323 on February 20, 2019, both reorganizing and updating the City's program licensing codes including chapter 7.20.
- B. Oregon Governor Kate Brown declared a state of emergency due to the COVID-19 outbreak in Oregon on March 8, 2020, and has issued a number of executive orders since then, limiting capacity at restaurants and other businesses, among other restrictions ("Statewide Emergency Orders"). The City Manager of the City of Bend first signed an emergency order on March 16, 2020, declaring a local state of emergency in the City of Bend as a result of the COVID-19 pandemic ("City Emergency Order"). This order has been ratified by City Council and extended six times, most recently through June 30, 2021.
- C. In addition to the direct health effects of COVID-19, the steps taken to respond to and fight the virus's spread have resulted in short and long term impacts to global, national, state, and local economies. The economic downturn is being felt in numerous ways—high unemployment, decreased investment and consumer spending, disruption of supply chains, market disruption, etc. Many households and businesses have or will undergo an economic crisis of unprecedented speed and force. The previously strong Oregon economy is in a state of flux and uncertainty. In Bend, with the reliance on tourism and the service and recreation sectors, there is a potential for an extended negative local economic impact on individuals and businesses.
- D. To respond to the COVID-19 crisis, the City Emergency Order allowed the City to adjust, suspend, or modify enforcement of provisions of the Bend Code (BC) and/or Development Code to allow additional space on sidewalks, public or private parking areas, and streets for eligible business operations to meet COVID-19 public health guidelines, provide a safer environment for customers and employees during the public health emergency, and to stimulate the recovery and support of local businesses. Under this temporary policy, additional space for outdoor dining and display of goods was allowed through the City's existing sidewalk vendor, cafes, and furnishings program in BC 7.20.
- E. Under these emergency provisions, 12 restaurants operated 8 additional spaces ("commercial parklets") for dining and circulation on public sidewalks or streets in the Downtown District. Each commercial parklet added between 20 and 1,800 square feet of additional space and businesses reported these commercial parklet spaces accounted for 20% of business revenue while operating.
- F. The commercial parklets begun during the COVID-19 emergency have contributed to the commercial vitality of the Downtown District and continuing them will

help with the economic recovery of businesses in the Downtown District, by allowing for additional space for retail and restaurants as capacity is continued to be restricted under the Statewide Emergency Orders. When the Statewide Emergency Orders are lifted, these commercial parklets may help spur needed economic development, by allowing more people to shop and dine outside, contributing to an atmosphere of vitality and attracting people to the Downtown District.

G. The proposed code creates a licensing program and allows for commercial parklets to operate in curbside parking spaces and other areas of the right-of-way in the Downtown District, through an annual licensing application and compliance with standards set out in the code.

H. The proposed code allows for commercial parklets in the Downtown District, where the most constraints on availability of outdoor space for retail and restaurants exist. The program will be reviewed and monitored by staff for future consideration of expansion into other areas of town.

I. On second reading, the phrase "available parking" in 7.20.015.C.4. is changed to "on-street parking," consistent with the original intent and understanding of the code.

Based on these findings, the City of Bend ordains as follows:

Section 1. The Bend Code Chapter 7.20 is amended as shown on Exhibit A, attached.

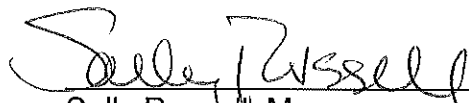
Section 2. All other provisions of the Bend Code remain unchanged and in full effect.

First Reading: April 21, 2021

Second reading and adoption by roll call vote: May 5, 2021


YES: Mayor Sally Russell
Mayor Pro Tem Gena Goodman Campbell
Councilor Barb Campbell
Councilor Melanie Kebler
Councilor Anthony Broadman
Councilor Megan Perkins
Councilor Rita Schenkelberg

NO: none


Sally Russell, Mayor

ATTEST:

Robyn Christie, City Recorder

Approved as to form:

Mary A. Winters, City Attorney

Chapter 7.20

SIDEWALK VENDORS, SIDEWALK CAFES, COMMERCIAL PARKLETS, AND FURNISHINGS

Sections:

- 7.20.005 Sidewalk License. Revised 5/19
- 7.20.010 Exceptions to License Requirements. Revised 5/19
- 7.20.015 Sidewalk Cafes and Commercial Parklets. Revised 5/19
- 7.20.020 Sidewalk Vendors. Revised 5/19
- 7.20.025 Standards for Sidewalk Vendors and Cafes and Commercial Parklets. Revised 5/19

7.20.005 Sidewalk License.

A. In addition to the requirements of BC Chapter 7.10, an application for a sidewalk vendor ~~or~~, sidewalk café, or commercial parklet license must:

1. Contain a provision that the applicant holds the City harmless;
2. Be accompanied by evidence of liability insurance at least equal to the City's tort liability limits;
3. Be accompanied by a damage deposit in an amount established by Council resolution.

B. City approval is required prior to any changes in operations inconsistent with the license. [Ord. NS-2323, 2019; Ord. NS-2157, 2011]

7.20.010 Exceptions to License Requirements.

The actions authorized by this section do not require a sidewalk vendor, ~~or~~ sidewalk café, or commercial parklet license.

A. In the Downtown District, businesses may place planters and merchandise displays on sidewalks adjacent to their businesses; provided, that an accessible sidewalk passageway of six feet is provided.

B. Businesses in the Downtown District that do not sell food or beverages may place chairs and tables adjacent to their businesses; provided, that an accessible passageway of six feet is provided. [Ord. NS-2323, 2019; Ord. NS-2157, 2011]

7.20.015 Sidewalk Cafes and Commercial Parklets.

A. Sidewalks, rights-of-way, and other public property cannot be used for the sale of food or beverages to be consumed at tables or other retail uses ~~on the public property or right-of-way~~

unless the seller has obtained a sidewalk café or commercial parklet license. Licenses must be renewed annually and are nontransferable.

B. A sidewalk café license is required for businesses to serve food or beverages to be consumed at tables on the sidewalk adjacent to the business use. Sidewalk cafe licenses may be issued if:

1. The applicant lawfully operates a restaurant adjacent to the right-of-way for which the applicant seeks a license;
2. The owner of the restaurant property consents to issuance of the license; and
3. ~~Seating will be limited to no more than 20 persons must maintain an accessible~~ passageway of five feet on the sidewalk and must be ADA accessible. [Ord. NS-2323, 2019; Ord. NS-2157, 2011]

C. A commercial parklet license is required for businesses in the Downtown District to provide a small outdoor seating area in on-street parking spaces, a loading zone, or alley space, as applicable, adjacent to the restaurant, bar, or retail business, for use for longer than one week. For uses of less than one week, parking spaces may be reserved through the City's parking permit system.

1. In addition to the generally applicable application requirements of BC Chapter 7.10, an application for a commercial parklet license must:

a. Identify the restaurant, bar, or other retail business(es) the applicant lawfully operates adjacent to the right-of-way for which the applicant seeks a license;

b. Include the consent of the owner(s) of the business property(ies) to the issuance of the license;

c. Include a site map of the intended layout and use of the space proposed for the commercial parklet, including the location & type of barriers between the parklet area and right-of-way, all proposed propane or other heating elements, proposed electrical cord crossings of public sidewalks, and all other information required in the application provided by the City;

d. Include an emergency protection plan that includes the location of all emergency access points, water supply (e.g. fire hydrants), tents, canopies, heat sources, and temporary structures; and

e. Identify the periods during the year the commercial parklet will be in use and the proposed hours of daily use.

2. Business operations in areas approved under a commercial parklet license are subject to all the terms and conditions of the associated restaurant or bar's food service permits and alcohol licenses, or business license.

3. In addition to the application requirements, the requirements of BC 7.20.025, and the requirements of BC Chapter 7.10, the following general requirements apply to commercial parklets:

a. Adjoining or adjacent businesses may submit joint applications for commercial parklets. Parklets shall only be operated in parking spaces adjacent to the applicant's business frontage.

b. Tables/displays must not block entrances, exits, fire lanes, hydrants, sprinkler connection points, drive aisles and back-up areas that continue to be used by vehicles, or pedestrian or ADA access.

c. Building and fire access requirements must be maintained.

d. Routes and dedicated parking required for compliance with the Americans with Disabilities Act and associated federal laws (ADA) must be maintained. Commercial parklets are not allowed to be located within parking spaces marked for ADA accessibility.

e. Applicants must continue to comply with all other City codes and regulations (e.g, noise code).

f. No permanent structures or modifications to or use of the right-of-way that could result in permanent damage to public infrastructure are allowed.

g. Commercial parklets may operate year-round and must maintain snow removal requirements as determined by the City.

h. Commercial parklets are not allowed on streets with speed limits exceeding 25 mph.

i. The commercial parklet and all associated furnishings, structures, and equipment in the parklet area must be removed at the licensee's expense when the approval or license ends or is revoked, and upon the request of the City Manager or designee. If the licensee does not clear the area, the City may clear the area with the licensee liable to the City for the cost of such work.

4. Commercial parklet licenses will be issued to take up no more than 5% of the available on-street parking in the Downtown District. Licenses will be issued on a first-come, first-served basis.

(Not part of code text) Note: changed from "available" parking to "on-street" parking to clarify intent.

7.20.020 Sidewalk Vendors.

A. A sidewalk vendor license is required to sell food, beverages, wares or goods from a public sidewalk or other public property not associated with an adjacent permanent restaurant or retail facility.

B. In addition to the generally applicable application requirements, an application for a sidewalk vendor license shall:

1. Include a drawing or photo of the proposed unit.
2. Provide a complete list of all items the vendor proposes to offer for sale.

C. A sidewalk vendor license may be issued if the following criteria are met in addition to the criteria in BC Chapter 7.10:

1. The use of the right-of-way or public property will not interfere with existing utilities or pedestrian use, or pose a hazard to vehicular traffic. There will be an accessible pedestrian passageway of at least five feet. The use will be in compliance with applicable vision clearance requirements.
2. The proposed use of City-owned property is not inconsistent with the use for which the property was dedicated.
3. Sales shall be from a self-contained unit no larger than 25 square feet unless specified on the license. Only the self-contained unit and a single chair for the use of the vendor may be placed in the public property or right-of-way unless specifically authorized by the license. Licensee may only operate at the location specified on the license.

D. The City will create a list or map of locations where sidewalk vendors may operate. The City may change the locations. Licensees may operate at only one of the locations designated by the City Manager. The City shall annually conduct a lottery to assign locations among applicants. Any licensee who has not applied for a sidewalk vendor license by the time of the lottery shall be allowed to operate at any remaining location on a first-come, first-served basis. Locations assigned to a sidewalk vendor are nontransferable.

E. A sidewalk vendor may not sell merchandise within one-half block of a permanent retailer that sells the same type of item. A license will not be revoked during a calendar year if a permanent retailer moves into the permanent building after a license has been issued for that calendar year.

F. A sidewalk vendor may not provide customer seating without written City approval.

G. No cooking systems may be used unless approved by the Bend Fire Department.

H. No sidewalk vendor may operate within the area of any permitted special event without permission of the event organizer. [Ord. NS-2323, 2019; Ord. NS-2157, 2011]

7.20.025 Standards for Sidewalk Vendors and, Sidewalk Cafes, and Commercial Parklets.

- A. Licensee shall maintain the area within 10 feet of the activity free from litter and debris at all times. All litter and debris shall be disposed of in the licensee's trash receptacles.
- B. Licensee is required to clean all surfaces soiled by licensee's use of the public property.
- C. Any portion of a damage deposit not needed for cleanup or repair will be returned by the City after expiration of the license. If it is necessary for the City to use all or part of the damage deposit before the license expires, the City Manager may either revoke the license or require the deposit of additional money as a condition of continued operation. If the deposit is insufficient to cover cost of damage or cleanup, the licensee will be responsible for all additional costs.
- D. Licensees may not use the City's storm drainage system to dispose of anything.
- E. Licensees may not drive motorized vehicles onto City's sidewalks.
- F. No electrical cords or electrical generators are allowed for sidewalk vendors or sidewalk cafes.
- G. No licensee may block any public facilities, such as kiosks, ~~disabled~~ required ADA access, bike racks, entrances to buildings, or sidewalks.
- H. Licensees may not place anything, including barricade or signs, on public property or rights-of-way without written City approval. [Ord. NS-2323, 2019; Ord. NS-2157, 2011]

