

Sherwood Special Committee – Regulation of Camping Ordinance – First Draft

(Note: yellow highlighted areas indicate provisions where Committee guidance is needed before Ordinance is finalized)

The City of Sherwood ordains as follows:

Section 1. Chapter 9.54 – Regulation of Camping – is hereby added to the Sherwood Municipal Code as follows:

9.54.010 - Purpose.

This Chapter is adopted in order to promote and protected the health, safety, welfare of the City's inhabitants as well as property within the City through the regulation of overnight parking, congregating, sleeping, standing and/or camping on an near areas open to the public and vacant lots. It is hereby found and declared that some of the adverse impacts caused by such activities include: littering, public urination, public defecation, and/or intoxication; theft of water and electricity, verbal and physical assaults, trespass onto adjacent public and private properties; vandalism; and harassment or intimidation of occupants, employees, and/or customers.

9.54.020 – Definitions

For the purpose of this chapter, the following definitions shall apply:

A. "Area open to the public" shall mean all outdoor areas on private property within the City of Sherwood to which the public has access and includes but is not limited to private streets, alleyways and pedestrian ways, vacant or uninhabited lots or parcels of land, and the common areas such as parking lots and picnic areas of schools, hospitals, apartment houses, office buildings, service stations, churches, and retail shopping centers.

B. "Camp" or "Camping" shall mean a period of time in excess of four (4) consecutive hours wherein an individual uses an area open to the public as temporary quarters for the purposes of living, sleeping or residing. Such activities may include, but need not be limited to: (1) sleeping or making preparations to sleep, including the laying down of bedding for the purpose of sleeping; and (2) the parking of any motor vehicle, including a motor home, recreational vehicle or trailer, for the apparent purpose of overnight occupancy.

9.54.030 – Regulation of Camping

Except as otherwise provided in this Chapter, no person shall camp in any area open to the public within the City of Sherwood. Nothing in this Chapter shall prohibit a person from camping in a campground or recreational vehicle park created and designated for camping purposes.

9.54.040 - Enforcement responsibility and authority.

The Sherwood police department and the city manager's designee shall jointly enforce this chapter.

9.54.050 - Variances.

A. Generally, any person may apply for:

1. A Class A variance to camp in an area open to the public for up to fourteen (14) days in duration; or
2. A Class B variance to camp in an area open to the public for fifteen (15) or more days in duration.

B. Notwithstanding any other provision of this Chapter, the Chief of Police or the City Manager may permit a person to camp in an area open to the public during the time period in which an application for a variance under subsection A is pending, provided that: (1) an emergency situation exists that necessitates the immediate need to camp in an area open to the public; (2) the use of the area open to the public for camping purposes will not be unreasonably detrimental to the public welfare; and (3) the owner or person or entity legally entitled to control the area open to the public has consented to such camping.

9.54.060 - Variance application.

A. An applicant for a variance shall submit in writing:

1. A reference to the provision from which the variance is sought;
2. The reason or reasons why the variance is necessary;
3. A description of the physical characteristics of the area open to the public for which a variance is sought;
4. The time period for which the variance is sought;
5. A signed statement of consent from the owner or the person or entity legally entitled to control the area open to the public for which the variance is sought;
6. Any other supporting information which the city manager or council may reasonably require to allow consideration of the conditions set forth in Section 9.52.100

B. The applicant for a Class A variance shall submit the application to the city manager's designee. The applicant for a Class B variance shall submit the application to the city recorder, who shall place the matter on the agenda for the forthcoming council meeting.

9.54.070 - Public notification for Class B variance.

The applicant for a Class B variance shall post notice along the nearest public road at the boundaries of the property containing the area open to the public for which the variance is sought so that the notice is visible from the public road, and publish notice in a newspaper of general circulation in the city. Notice shall be posted on the property at least seven days before the public hearing, and notice shall be published at least four days before the public hearing. Notice under this section shall state the date the council will consider the application, the nature and substance of the variance to be considered, and that recipients of the notification may file written comments on the application with the city recorder before the council meeting at which the application will be considered.

9.54.080 - Variance review.

The city manager or the city manager's designee or council may grant a variance, after considering the written application for variance and any written comments submitted by persons specified in Section 9.54.070, when it appears that the following conditions exist:

- A. There are unnecessary or unreasonable hardships or practical difficulties which can be most effectively relieved by granting the variance, and;
- B. That granting the application will not be unreasonably detrimental to the public welfare.

9.54.090 - Variance decision.

- A. The city manager or the city manager's designee shall grant or deny a Class A variance within three days of receipt of a complete variance application, excluding Saturdays, Sundays, and holidays.
- B. The council shall grant or deny a Class B variance within thirty (30) days of receipt of the application, and may, on its own motion, hold a public hearing on the application before deciding to grant or deny the variance.
- C. The city manager or council may impose such limitations, conditions, and safeguards as deemed appropriate, so that the spirit of the chapter will be observed, and the public safety and welfare secured. A violation of any such condition or limitation shall constitute a violation of this chapter.
- D. A decision to grant or deny the variance shall be in writing and shall state the reasons for such decision. The council or city manager shall notify the applicant of the decision and shall make it available to any person who has submitted written comments on the application.

9.54.100 - Review.

The decision of the city manager or the council to grant or deny a variance is final. Such decisions may be reviewed pursuant to writ filed under ORS Chapter 34.

9.54.110 - Penalties.

A person who violates any provision of this chapter shall be punishable by a fine of not more than one hundred dollars (\$100.00).

Sherwood Special Committee – Regulation of Business Hours – First Draft

The City of Sherwood ordains as follows:

Section 1. Chapter 5.04 of the Sherwood Municipal Code is hereby amended by adding section 5.04.100 to read as follows:

5.04.100 Retail Sales and Personal Services Business Hours

A. Purpose and Findings

1. This section regulating the business hours of retail sales and service businesses in the City of Sherwood is designed to:
 - a. Improve the quality of life for residents of the City particularly during the late night/early morning hours;
 - b. Decrease the incidence of arrests, criminal activity and/or nuisance complaints associated with retail sales and personal service businesses during the late night/early morning hours, which the City believes has individually and collectively an adverse impact on the public health, welfare and safety;
 - c. Discourage activities compromising the public safety of City residents during the late night/early morning hours; and
 - d. Provide for efficient, effective and economical provision of scarce government resources in addressing each of the aforementioned purposes.
2. From input provided by City residents and the Sherwood Police Department, the people of Sherwood find uniform closing times for retail sales and personal services businesses located within the City will:
 - a. Permit the City's limited police force on duty during the late night/early morning hours to focus its resources on providing protection to residential neighborhoods rather than responding to shoplifting and other police related calls associated with and that often occur at retail sales and personal service businesses;
 - b. Reduce the incidence of loitering, public drinking, disorderly conduct and related criminal activities including littering, drug dealing, and noise disturbances that occur when retail sales and personal service businesses are permitted to remain open during the late night/early morning hours, leading to a concomitant reduction in the need for police presence at retail sales and personal service businesses;
 - c. Discourage crowds from congregating not only on the main streets and thoroughfares but on adjoining residential streets, lots and parking areas which prevents neighborhood residents from sleeping, safely walking their streets, and enjoying the peace and quiet of their homes.

July 24, 2013
Date

New Business
Agenda Item

Special Committee
Gov. Body 1

B
Exhibit #

B. Definitions. For purposes of this section, the following definitions apply:

1. "Gasoline Filling Station" means establishments primarily engaged in the sale of gasoline, diesel fuel, propane gas or kerosene where the retail sale of other goods or merchandise comprises less than twenty percent (20%) of the establishment's overall annual sales, provided that a gasoline filling station affiliated with a retail sales business may be deemed a separate entity for the purposes of this section.
2. "Personal Services" means establishments primarily engaged in providing services involving the care of a person or his or her goods or apparel including but not limited to laundering, shoe repair, hair and body care, tailoring, travel agents, spas, tanning salons and nutrition/weight loss centers.
3. "Restaurant" means an establishment where food and beverages are prepared and sold for consumption on or off premises and at which customer tables or counters are typically available. Such an establishment may take phone orders for food and may deliver food to customers off-premises.
4. "Retail Sales" means establishments engaged in selling merchandise to the general public for personal or household use or consumption and rendering services incidental to the sale of such merchandise including but not limited to specialty shops and boutiques.

C. All retail sales and personal services businesses located within the City may not operate between 1:00 a.m. and 5:30 a.m. daily.

D. Notwithstanding any other provision of this section, the time limitations in this section do not apply to the following:

1. Restaurants;
2. Gasoline Filling Stations; or
3. The sale of prescription or non-prescription (over the counter) medications in drugstores and pharmacies.

E. Enforcement responsibility and authority. The Sherwood police department and the city manager's designee shall jointly enforce this chapter.

F. Penalties.

1. Civil Penalties.
 - a. Unless specifically limited elsewhere in the Sherwood Municipal Code, the city manager is authorized to seek civil penalties for a violation of this section in amount(s) of up to one thousand dollars (\$1,000.00) for each day a violation of this section occurs in either the municipal court or another court of competent jurisdiction. In the event the city manager seeks enforcement in a court other than the municipal court, the manager may seek recovery of the City's reasonable attorneys' fees.

- b. If the enforcement action is brought in the municipal court, the determination of the municipal court is final and reviewable only as provided by the terms of ORS Chapter 34.010 to 34.100 (writ of review).
- c. When determining the amount of any civil penalty the municipal court or any other court of competent jurisdiction shall consider, at a minimum, the following factors and set out in its determination those believed to apply:
 - i. Prior violations and whether those violations were remedied in a timely manner;
 - ii. The magnitude of the violation;
 - iii. Whether the violation was repeated or continuous; and
 - iv. Whether the violation was intentional.
- 2. Injunctive Relief. The City may seek equitable relief against retail sales or personal services businesses that have failed to comply with this section or violated any provision thereof.
- 3. Remedies Not Exclusive. The remedies provided by this subsection are cumulative and not exclusive and are in addition to other rights, remedies, and penalties available to the City under other provisions of law.

Sherwood Special Committee – Hazardous Substances Regulations – First Draft

The City of Sherwood ordains as follows:

Section 1. Title 8 of the Sherwood Municipal Code is amended by adding section 8.16.210 as follows:

8.16.210 – Hazardous Substance Discharge and Removal

- A. Definitions. For purposes of this section and notwithstanding any contrary definitions contained in the Sherwood Municipal Code, the following definitions apply:
1. “City manager” means the city manager or designee.
 2. “Environment” means waters in the city, including drinking water and its supply, land surface, subsurface strata and ambient air.
 3. “Facility” means any site or area where a hazardous substance has been deposited, stored, disposed of, placed, or otherwise come to be located and where a release has occurred or where there is a threat of a release, but does not include any consumer product in consumer use or any vessel.
 4. “Hazardous substance” means:
 - a. any hazardous waste as defined in ORS 466.005;
 - b. any substance defined as a hazardous substance pursuant to Section 101(14) of the federal Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 – 9675 (P.L. 96-510, as amended, and P.L. 99-499); and
 - c. oil, including gasoline, crude oil, fuel oil, diesel oil, lubricating oil, oil sludge or refuse of any other petroleum-related product or waste or fraction thereof that is liquid at a temperature of 60 degrees Fahrenheit and pressure of 14.7 pounds per square inch absolute.
 5. “Owner or operator” means any person who owns or owned, leases or leased, operates or operated, controls or exercises or controlled or exercised significant control over the operation of a facility. “Owner or operator” does not include a person, who, without participating in the management of a facility, holds indicia of ownership primarily to protect a security interest in the facility.
 6. “Release” means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into the environment including the abandonment or discarding of barrels, containers, underground storage tanks and other closed receptacles containing any hazardous substance, or threat thereof, but excludes:
 - a. Any release that results in exposure to a person solely within a work place, with respect to a claim that the person may assert against the person's employer under ORS chapter 656;
 - b. Emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel or pipeline pumping station engine;
 - c. Any release of source, by-product or special nuclear material from a nuclear incident as these terms are defined in the Atomic Energy Act of 1954, as amended, if such release is subject to requirements with respect to financial protection established by the Nuclear Regulatory Commission under section 170 of the Atomic Energy Act of 1954, as amended, or, for the purposes of any removal or remedial action, any release of source by-product or special nuclear material from any processing site designated under section 102(a)(1) or 302(a) of the Uranium Mill

Tailings Radiation Control Act of 1978;

- d. A discharge in accordance with federal, state or local governing regulations, with a National Pollutant Discharge Elimination System Permit, with waste discharge requirements established by the Oregon Department of Environmental Quality or with the sewer pretreatment requirements of the city's sewer system;
 - e. The routine application of fertilizer in accordance with a manufacturer's directions for its application and in accordance with applicable state and federal laws;
 - f. Application of pesticides as defined by ORS Chapter 634, when such application is made within the provision of applicable state and federal laws;
 - g. Application of agricultural lime, gypsum and other agricultural/horticultural soil amendments when applied for agricultural/horticultural purposes in accordance with a manufacturer's directions and in accordance with applicable state and federal laws; and
 - h. Any release from a residential heating oil tank serving an owner-occupied single-family dwelling.
7. "Removal" means the removal or cleanup of a hazardous substance released into the environment; actions as may be necessary in the event of the threat of release of a hazardous substance into the environment; actions as may be necessary to monitor, assess and evaluate the release or threat of release of a hazardous substance; the disposal of removed material or the taking of such other actions as may be necessary to prevent, minimize or mitigate damage to the public health, safety or welfare which may otherwise result from a release or threat of release. "Removal" also includes but is not limited to security fencing or other measures to limit access, provision of alternative drinking and household water supplies, temporary evacuation and housing of threatened individuals and action taken under ORS 465.260.
8. "Removal action costs" means reasonable costs attributable to or associated with a removal action at a facility, including but not limited to the costs of administration, investigation, legal or enforcement activities, contracts and health studies.
9. "Responsible party" means the current owner or operator; any owner or operator at or during the time of the acts or omissions that resulted in the release: any owner or operator who became the owner or operator after the time of the acts or omissions that resulted in the release, and who knew or reasonably should have known of the release when the person first became the owner or operator; any owner or operator who obtained actual knowledge of the release at the facility during the time the person was the owner or operator of the facility and then subsequently transferred ownership or operation of the facility to another person without disclosing such knowledge; any person who unlawfully hinders or delays entry to, investigation of or removal action at a facility; and any person who, by any acts or omissions, caused, contributed to, or exacerbated the release, unless the acts or omissions were in material compliance with applicable laws, standards, regulations, licenses or permits.
10. "Underground storage tank" means any one or more tanks and underground pipes connected to the tank, used to contain an accumulation of a regulated substance, and the volume of which, including the volume of the underground pipes connected to the tank, is ten percent or more beneath the surface of the ground.
11. "Waters" means all lakes, ponds, impounding reservoirs, springs, wells, rivers, streams; creeks; estuaries, canals; and all other bodies of surface or underground waters, natural or artificial, public or private, that are wholly or partially within the city or within its jurisdiction.

- B. Purpose. The release of hazardous substances into the environment may present imminent and substantial threats to the public health, safety and welfare. In many such instances, the United States Environmental Protection Agency (“EPA”) or the Oregon Department of Environmental Quality (“DEQ”) will act to ensure removal of contamination. It is not the intent of section 8.16.210 of this code for the city to act if EPA and/or DEQ will act. However, due to the limited resources of the EPA and DEQ, those agencies do not always have the ability to respond immediately to the release of hazardous substances that threaten the public health, safety and welfare. The purpose of section 8.16.210 is to minimize those threats by ensuring:
1. Prompt identification of discharges or threats of discharges into the environment of hazardous substances which present imminent risks to the public health, safety and welfare; and
 2. Implementation of removal actions.
 3. The authorizations contained in section 8.16.210 are in addition to any other authority the city manager or the city may have under other provisions of this code or applicable federal or state laws or regulations.
- C. City Manager Authority. After forming a reasonable belief that hazardous substances pose imminent threats to the public health, safety or welfare, the city manager may:
1. Undertake independently, in cooperation with others or by contract, investigations, studies, sampling, monitoring, assessments, surveying, testing, analyzing, planning, inspecting, training, engineering, design, construction, operation, maintenance and any other activity necessary to remove hazardous substances and to carry out the provisions of section 8.16.210;
 2. Undertake independently, in cooperation with others or by contract a removal of hazardous substances; and
 3. Recover the city’s removal action costs.
 4. Nothing in section 8.16.210 authorizes the city manager to order any action related to property that is subject to an EPA or DEQ order if the order requires investigation or remediation of suspected or known contamination.
- D. Joint and Several Liability. Each responsible party is jointly, severally and strictly liable for those removal action costs incurred by the city that are attributable to or associated with a facility.
- E. Release Prohibited. Unless authorized by state or federal law, no person may release, or cause to be released, any hazardous substance into the environment, or into waters upstream of the boundaries of the city when such release results in detectable levels of contamination in the waters that subsequently enter the city's jurisdiction.
- F. Duty to Report. Any person who releases or who causes or discovers a release of a hazardous substance into the environment must immediately report the release to the city if state or federal law imposes an obligation on such person to report the release to a state or federal agency.
- G. Assessment, Evaluation and Investigation.
1. The city manager, when he or she has reason to believe that hazardous substances pose imminent threats to the public health, safety or welfare may order a responsible party to conduct an assessment, evaluation or investigation that the city manager determines is

necessary to protect the public health, safety and welfare. An order of the city manager is appealable only as provided by subsection 8.16.210(G)(2).

2. Any person who receives and complies with the terms of an order issued pursuant to subsection 8.16.210(G)(1) may, within 60 days after completion of the required action, petition the city manager for reimbursement for the reasonable costs of such action. If the city manager denies reimbursement, the person may appeal the city manager's denial to the municipal court within 15 days of the city manager's written denial. To obtain reimbursement, the person must establish by a preponderance of the evidence that the person is not a responsible party and that the costs for which the person seeks reimbursement are reasonable in light of the action required by the relevant order.
3. If any responsible party fails to conduct an assessment, evaluation or investigation as required by an order of the city manager, and the responsible party does not have sufficient cause justifying the failure, the responsible party will be liable to the city for the city's removal action costs and for punitive damages not to exceed three times the amount of the city's removal action costs.

H. Removal Action.

1. The city manager, when he or she has reason to believe that hazardous substances pose imminent threats to the public health, safety or welfare may order a responsible party to conduct a removal action to protect the public health, safety and welfare. An order of the city manager is appealable only as provided by subsection 8.16.210(H)(2).
2. Any person who receives and complies with the terms of an order issued pursuant to subsection 8.16.210(H)(1) may, within 60 days after completion of the required action, petition the city manager for reimbursement for the reasonable costs of such action. If the city manager denies reimbursement, the person may appeal the city manager's denial to the municipal court within 15 days of the city manager's written denial. To obtain reimbursement, the person must establish by a preponderance of the evidence that the person is not a responsible party and that the costs for which the person seeks reimbursement are reasonable in light of the action required by the relevant order.
3. If any responsible party fails to remove hazardous substances as required by an order of the city manager, and the responsible party does not have sufficient cause justifying the failure, the responsible party will be liable to the city for the city's removal action costs and for punitive damages not to exceed three times the amount of the city's removal action costs.

I. Construction Limitations. If the city manager has reason to believe that a proposed building site is contaminated by a release of hazardous substances, and that such contamination poses an imminent threat to the public health, safety and welfare, the city manager may refuse to issue a building permit, or where a permit has been issued, stop work on the permit, until such time as a removal action is implemented. If the responsible party can demonstrate that construction and the removal action can occur simultaneously, and satisfies the city manager that the removal action will continue even if construction is allowed to proceed, the city manager may authorize construction to continue or may issue permits prior to completion of the removal action. In order to ensure completion of the removal action, the city manager may require a bond in an amount sufficient to cover the costs of the removal action.

J. Violations. In addition to any other penalties that the code establishes, a violation of section 8.16.210 is a Class A violation. If the violation continues, the city may deem each calendar day that passes to be a separate violation.