

ORDINANCE NO. 415  
AN ORDINANCE ADDING TO THE CITY OF CRESWELL MUNICIPAL CODE  
REGULATING SIDEWALK CAFES

THE CITY OF CRESWELL ORDAINS AS FOLLOWS:

SIDEWALK CAFES

Sections:

1. Declaration of necessity and intent.
2. Definitions.
3. Permit required.
4. Sidewalk café permit and fee.
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7. Liability and insurance.
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**Section 1. Declaration of necessity and intent.** It is hereby found and declared:

A. That there exists a need for outdoor eating establishments (sidewalk cafes) in the downtown area of the City of Creswell to provide a unique environment for relaxation and food consumption.

B. That the existence of sidewalk cafes encourages additional pedestrian traffic to these areas and encourages more downtown activity and redevelopment.

C. That the presence of sidewalk cafes may impede the flow of pedestrian and wheelchair traffic.

D. That there is a need for regulations and standards for the existence and operation of sidewalk cafes to facilitate and ensure a safe environment in these areas.

E. That the establishment of sidewalk cafe, permit conditions and safety standards is necessary to protect and promote the general health, safety, and welfare of the residents of the City of Creswell.

F. That the issuance of a sidewalk cafe permit shall not constitute nor shall it be construed to constitute a vacation or abandonment by the City of its interest in the right-of-way or any easements contained therein.

**Section 2. Definitions.** For the purposes of this Chapter, the following words and phrases shall have the meanings respectively ascribed to them:

A. Permittee means the holder of a valid sidewalk cafe permit under the terms and provisions of this article.

B. Sidewalk means that portion of the street right-of-way between the curb lines or the lateral line of a road way and the adjacent property lines intended for use by pedestrians.

C. Sidewalk cafe means a use located on a sidewalk which is associated with a business establishment which serves and/or sells food including beverage products and is located in the abutting building. Sidewalk cafes are characterized by tables and chairs and may be shaded by awnings, canopies or umbrellas.

D. For purposes of Creswell Code 4-2.104, the permit approved for a sidewalk café is defined as a license to use the sidewalk for commercial purposes.

**Section 3. Permit required.** It shall be unlawful for any person to operate a sidewalk cafe on any sidewalk or public right-of-way without a permit as provided by this article. Sidewalk cafes shall be permitted only within downtown Creswell fronting on Oregon Avenue between the west boundary of Front Street to the east boundary of 3d Street. A sidewalk cafe permit shall be a license to use the sidewalk pursuant to said permit and shall not grant nor shall it be construed or considered to grant any person any property right or interest in the sidewalk.

**Section 4. Sidewalk cafe permit and fee.**

A. Each permit shall be effective for one year from May 1 until April 30, and must be annually renewed with the approval of the City.

B. The annual permit fee for establishing or maintaining a sidewalk cafe shall be established by City Council Resolution.

C. The permit fee shall be paid on or before May 1 and shall cover the time period from May 1 through April 30 of the following calendar year. For a permit issued after May 1 and before April 30, the permit fee will be prorated on a per month basis. Any portion of a month shall be considered a full month for the purposes of calculating the prorated permit fee.

**Section 5. Sidewalk cafe permit application.**

A. Application for a sidewalk cafe permit shall be made to the City Administrator. Such application shall include, but not be limited to, the following information:

1. Name, address and telephone number of the applicant;
2. If the building is not owned by the applicant, written approval from the owner of the building abutting the proposed sidewalk cafe;
3. A copy of current certificate of insurance in the amounts and categories required by this article;
4. A drawing (drawn to scale) showing the layout and dimensions of the sidewalk, sidewalk cafe area, adjacent private property, proposed location, size and number of tables, chairs, steps, umbrellas, awnings, canopies, location of doorways, trees, sidewalk benches, trash receptacles, bicycle racks, any other fixture, structure or obstruction either existing or proposed within the sidewalk café, and the clearance width for pedestrian and wheelchair accessibility on the sidewalk;
5. Photographs, drawings or manufacturers' brochures fully describing the appearance of all proposed tables, chairs; umbrellas, awnings, canopies or other fixtures related to the sidewalk cafe.

**Section 6. Standards and criteria for application review and approval.** The following standards and criteria shall be used in reviewing the application;

- A. Permits shall be issued only to persons who operate a restaurant and who wish to provide tables and chairs on the sidewalk(s) abutting such establishment for use by the general public.
- B. Sidewalk cafes are restricted to the sidewalk frontage of the abutting business establishment to which a permit has been issued or such other area as approved by the City Administrator.
- C. In the event the sidewalk cafe area of the permit extends to a sidewalk in front of an adjacent property, the permittee must obtain written permission from the owners and tenants (if any) of any building abutting any additional sidewalk frontage.
- D. Sidewalk cafes shall be located in a manner that promotes efficient and direct pedestrian movement. A minimum of one unobstructed pedestrian path at least thirty-

nine (39) inches wide shall be maintained at all times. Variances to this requirement may not be granted.

E. The perimeter around the sidewalk cafe area may be delineated using nonpermanent fixtures such as railings, potted plants, decorative chains, partitions, or other approved fixtures. The permanent anchoring of tables, chairs, umbrellas, awnings, canopies, railings or other fixtures is not allowed.

F. Tables, chairs, umbrellas, canopies, awnings and any other fixtures shall be of uniform design and shall be made of quality materials and workmanship to ensure the safety and convenience of users and to enhance the visual quality of the urban environment.

G. No tables or chairs will be permitted beyond the building edge or property line at a street intersection.

H. The permit applies only to the sidewalk cafe area; related uses on private property are governed by other regulations.

**Section 7. Liability and insurance.** Prior to the issuance of permit, Permittee shall:

A. Furnish a signed statement, with the application, that the permittee shall defend, indemnify and hold harmless the City, its officers and employees, from any claims for damages to property or injury to persons which may occur in connection with an activity carried on under the terms of the permit.

B. Furnish and maintain such public liability, food products liability, liquor liability and property damages insurance as will protect permittee and City from all claims for damage to property or bodily injury, including death, which may arise from operations under the permit or in connection therewith. Such insurance shall provide coverage of not less than the amount of municipal tort liability under the Oregon Tort Claims Act. Such insurance shall be without prejudice to coverage otherwise existing, and shall name the City, its officers and employees, as additional insureds, and shall further provide that the policy shall not terminate or be canceled prior to the expiration of the permit without 30 days written notice to the City.

**Section 8. Conditions of sidewalk cafe permit.** Sidewalk cafes permitted under this article shall be subject to the following conditions:

A. The permit issued shall be personal to the permittee and shall be transferable only with the prior written approval of the City Administrator.

B. The City Administrator may require the temporary removal of sidewalk cafes by the permittee when street, sidewalk, or utility repairs necessitate such action or when it is

necessary to clear sidewalks for any other reason. The permittee shall be responsible for removing all sidewalk cafe fixtures at least two days prior to the date identified in writing by the City. The City shall not be responsible for any costs or damages associated with the removal or the return and installation of any sidewalk cafe fixtures.

C. The City may cause the immediate removal or relocation of all or any part of the sidewalk cafe or its fixtures in emergency situations. The City, its officers, agents and employees shall not be responsible for any damages or loss of sidewalk cafe fixtures relocated during emergency situations and shall not be responsible for any costs or damages associated with the removal or the return and installation of any sidewalk cafe fixtures.

D. The sidewalk cafe shall be specifically limited to the sidewalk cafe area shown in the permit.

E. The permittee shall insure that the sidewalk cafe does not interfere with or limit the free unobstructed passage of sidewalk users in the approved pedestrian and wheelchair path.

F. The sidewalk cafe shall be open for use by the general public and such use may be restricted to patrons of the permittee.

G. Tables, chairs, umbrellas, canopies, awnings and any other fixtures used in connection with a sidewalk cafe shall be maintained with a clean and attractive appearance and shall be in good repair at all times.

H. No tables, chairs or any other fixtures used in connection with a sidewalk cafe shall be attached, chained, or in any manner affixed to any tree, post, sign or other fixture.

I. The sidewalk cafe area including the area extending from the sidewalk cafe area to the street and five feet beyond either end shall be maintained in a neat and orderly appearance at all times and shall be cleared of all debris on a periodic basis during the day and at the close of each business day.

J. No additional outdoor seating authorized herein shall be used for calculating seating requirements pertaining to the location of, applications for, or issuance of a liquor license for any establishment nor shall the additional seats be used to claim any exemption from any other requirements of any city, county or state codes, ordinances and/or laws.

K. The opening and closing hours of sidewalk cafes shall not extend beyond the hours of operation for the abutting business establishment holding the sidewalk café permit.

The City may further restrict the hours of operation for sidewalk cafes abutting residential uses.

L. No food preparation shall be allowed on the sidewalk. There shall be no cooking, storage, cooling or refrigeration or other equipment located in the sidewalk cafe area.

M. The permittee is responsible for repair of any damage to the sidewalk caused by the sidewalk cafe.

N. Tables, chairs, umbrellas, canopies, plants, fencing or any other fixtures associated with the sidewalk café shall not be placed within four feet of fire hydrants or within two feet of any building entrances and/or exits.

O. No signs shall be permitted outside the sidewalk cafe area.

P. Not more than one menuboard shall be allowed for each sidewalk cafe. The menuboard shall not exceed four square feet. The menuboard shall be attached to the abutting building or other location approved by the City Administrator and must be in compliance with City Codes. All signage, including the menuboard and signage on awnings, canopies and umbrellas and other fixtures, must be in compliance with City codes regulating signage, including obtaining any required sign permit.

Q. Permittee shall meet all other City, county, state and federal rules, regulations, laws, and ordinances.

R. Businesses which intend to serve alcoholic beverages at the sidewalk cafe must meet the following additional requirements:

1. The business shall hold a valid Oregon Liquor Control Commission liquor license.
2. No taps, kegs, coolers, or other alcoholic beverage storage devices are allowed outside on the sidewalk.
3. Sidewalk cafes where alcoholic beverages are served and consumed require supervision by employees of the license business, as required by the Oregon Liquor Control Commission liquor license.
4. All service and consumption of alcoholic beverages at sidewalk cafes shall discontinue by 11 p.m.
5. All alcoholic beverage service providers must also provide food service in the licensed area.

**Section 9. Denial, revocation or suspension of permit; removal and storage fees; penalties.**

- A. The City Administrator may deny, revoke or suspend a permit for any sidewalk cafe for any reason and without penalty upon the giving of 30 days written notice.
- B. The City Administrator may also deny, revoke or suspend a permit if it is found that:
1. Any required business or health permit or occupational license for the sidewalk cafe or the abutting business establishment has expired or been suspended, revoked, or canceled.
  2. The permittee does not have insurance in effect which complies with the minimum amounts and requirements described in this article.
  3. Changing conditions of pedestrian or vehicular traffic cause congestion. Such decision shall be based upon findings of the City Administrator that the minimum thirty-nine (39) inch path is insufficient under existing circumstances and represents a danger to the health, safety, or general welfare of pedestrians or vehicular traffic.
  4. The permittee has failed to correct violations of the Creswell City Code or ordinances or conditions of the permit or other applicable laws or regulations within three days of receipt of the City's notice of same delivered in writing to the permittee.
- C. Upon denial suspension or revocation of the permit, the City Administrator shall give notice of such action to the permittee in writing. In the event the denial, suspension or revocation is based upon (b)(2) or (3) of this section, the action shall be effective immediately upon receipt of such notice by the permittee, which is defined as either upon personal delivery of the notice or two days after notice is sent by regular mail. Otherwise, such notice shall become effective 15 days from the date of such notice. If the denial, revocation or suspension of the permit is caused by any reason set forth in section (b), the permittee shall not be entitled to a refund of the annual permit fee or any other fees paid to the City of Creswell for operation of a sidewalk cafe. Any other revocation or suspension shall entitle the permittee to a refund of the annual permit fee prorated on a per month basis from the date of the notice of such action.
- D. In the event the permittee fails to remove any tables, chairs, canopies, awnings or other fixtures or objects related to the sidewalk cafe before the date set forth in the City's notice of denial, revocation or suspension, the City Administrator may remove such

fixtures or objects. The permittee shall be responsible for all expenses incurred by the City for the removal and storage of such fixtures or objects.

E. Penalties.

1. A person violating a provision of this Ordinance shall, upon conviction, be punished by a fine of not more than \$500.00. A violation of this Ordinance shall be considered a separate offense for each day the violation continues.
2. Abatement of Violation Required. A finding of a violation of this Code shall not relieve the responsible party of the duty to abate the violation. The penalties imposed by this Section are in addition to and not in lieu of any remedies available to the City.
3. Responsible Party. If a provision of this Code is violated by a firm or corporation, the officer or officers, or person or persons responsible for the violation shall be jointly and severably subject to the penalties imposed by this Section.

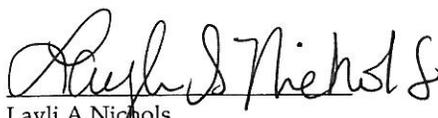
**Section 10. Appeals.** The decision of the City Administrator to grant, deny, revoke or suspend a permit is final.

**Section 11. Emergency clause.** In as much as it is necessary for the peace, health, and safety of the citizens of Creswell, an emergency is hereby declared and this ordinance is put in full force and effect immediately upon its passage by the Council and approval by the Mayor.

PASSED BY THE COMMON COUNCIL AND APPROVED BY THE MAYOR THIS 10<sup>TH</sup> DAY OF MAY, 2004.

  
\_\_\_\_\_  
Ron Petitti  
Mayor

ATTEST:

  
\_\_\_\_\_  
Layli A Nichols  
City Recorder

## APPLICATION FOR SIDEWALK CAFÉ PERMIT

Pursuant to Chapter 7-5, Sections 1 through 10, of the City of Creswell City Code, a permit shall be obtained for a sidewalk cafe to operate within the City of Creswell. The permit shall be valid for one year from the date of issuance. Please provide the following information in order to receive approval:

Restaurant/Business Name: \_\_\_\_\_

Restaurant/Business Address: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Telephone: \_\_\_\_\_

Number of outdoor tables \_\_\_\_\_ and chairs \_\_\_\_\_, requested.

Please attach the following documents:

1. Two copies of scaled site plan (suggest 1/4" or " = 1') showing:
  - a. Relationship of sidewalk café to adjacent existing building and their uses and entrance location.
  - b. Relationship of sidewalk café to any public improvements, including but not limited to, benches, fire hydrants, fire connections on building, existing exits to building, light standards and landscaping, curbs, parking meters, etc.
  - c. Location of any utilities that might affect or be affected by the proposal.
  - d. Existing and proposed pedestrian circulation pattern. (Minimum acceptable is 39 inches unobstructed path along the sidewalk and a 24 Inch clearance on either side of the doorway.)
  - e. Address and legal description of the building where the restaurant operating the proposed outdoor café is located.
  - f. Proposed tables, chairs, umbrellas, and other objects to be part of the sidewalk café. (photograph, drawings or catalog cut)
2. Property owner's written consent to applicant's application (if applicable).

3. Payment of Sidewalk Café permit fee of \$75 (\$50 annual renewal).

5. Executed Hold Harmless Agreement.

6. Certificate of Insurance as per Section 7 of the Sidewalk Café Code.

\_\_\_\_\_ Approved

\_\_\_\_\_ Denied

\_\_\_\_\_  
City Administrator

\_\_\_\_\_  
Date

**SIDEWALK CAFÉ  
HOLD HARMLESS AGREEMENT**

I am the applicant or authorized agent of an applicant for a sidewalk café permit pursuant to the City of Creswell Municipal Code.

I know and understand the risks inherent in establishing a sidewalk café including, but not limited to: obstruction to traffic, slip and fall injuries, and collision with obstructions. I understand that in granting to me the aforementioned permit, the City may become liable to others because of the risks, including but not limited to, those risks mentioned herein.

In consideration for granting the aforementioned permits, I agree to forever defend, indemnify and hold harmless the City of Creswell, its elected and appointed officials, employees, volunteers, and agents from any and all claims, actions or damages of every kind and description which may accrue to, or be suffered by any persons by reason of or related to the operation of such sidewalk café.

In addition, I agree that the permit is wholly of a temporary nature and that it vests no permanent right whatsoever to use the sidewalk for café or any other purpose.

I hereby assume any and all risks associated with the use of City right-of-way as a sidewalk café.

\_\_\_\_\_  
(Applicant's signature)

\_\_\_\_\_  
(Date)