

RESOLUTION NO. 1016

**A RESOLUTION ESTABLISHING A TEMPORARY POLICY REGARDING
THE USE OF STREET RIGHTS OF WAY DURING THE PUBLIC HEALTH
EMERGENCY ASSOCIATED WITH THE COVID-19 PANDEMIC**

WHEREAS, the worldwide spread of SARS Coronavirus-2 and the resultant pandemic of COVID-19 has resulted in declarations of emergencies by the federal, state, and local government and orders from the State of Oregon limiting seating in restaurants, bars, and other eating and drinking establishments;

WHEREAS, across the nation and within Oregon, municipalities have assisted the affected business establishments by opening public spaces for use by those businesses;

WHEREAS, currently, restaurants, bars, and other eating and drinking establishments are prohibited from seating customers indoors by order of the State of Oregon; and

WHEREAS, restaurants, bars and other eating and drinking establishments are an important component of the social fabric of a community;

NOW THEREFORE, BE IT RESOLVED that;

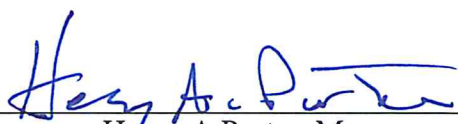
- Section 1. The City Council does hereby adopt the Temporary Policy Regarding Use of Rights of Way, as attached to hereto and made a part hereof.
- Section 2. The Temporary Policy Regarding Use of Rights of Way shall be in effect during such time that the State of Oregon has restricted seating or occupancy of restaurant, bars, and other eating and drinking establishments.
- Section 3. The City will give 30-days' notice of termination of the Policy to any business that has received a permit for temporary use of a right of way.

This Resolution shall become effective upon the adoption by the Stayton City Council.


ADOPTED BY THE STAYTON CITY COUNCIL THIS 1st DAY OF FEBRUARY, 2021.

CITY OF STAYTON

Date: 2/2, 2021

By: 
Henry A Porter, Mayor

Date: 2/2, 2021

Attest: 
Keith D. Campbell, City Manager

City of Stayton Temporary Policy Regarding Use of Right of Way Permits

This program to permit business use of rights-of-way (ROW) has been established in response to the COVID-19 crisis. This program provides the opportunity for restaurants, bars, and other eating and drinking establishments to use public parking spaces for the purpose of providing outdoor seating, queuing, or service areas. Such use shall be in conformance with this program and all applicable provisions of the City of Stayton Municipal Code. An approved permit from the Public Works Department is required prior to business use of parking spaces located in the City right-of-way or parking lots. This program applies to City-managed on-street parking in the street right-of-way. This program is not intended to apply to Marion County-maintained streets (including First Ave). Permits under this program are valid from the date of issuance until further notice. The City shall provide 30-days' notice of termination of the program, upon removal of the restrictions on indoor seating at restaurants, bars, and other eating and drinking establishments by the State of Oregon. Additional forms and information regarding this program may be accessed by contacting the Public Works Department at (503) 769-2919 or mschmidt@ci.stayton.or.us.

Section 1. Overview of Requirements for Business Use of Right-of-Way

1. Locations and Use:

- a. Restaurants, bars, and other eating and drinking establishments may request to use parking spaces along the frontage of their existing business location; not including ADA spaces. Applicants may request to also use parking spaces along the frontage of neighboring businesses with the written consent of those businesses.
- b. Right-of-way and parking spaces used under this permit may be used for restaurant, bar, and other eating and drinking establishment service use in support of the permittee's existing business.

2. General Use Requirements:

- a. The right-of-way and all things placed thereon shall at all times be maintained in a clean, safe, and orderly condition. Table umbrellas may be used and shall be placed and adequately weighted in compliance with all applicable local rules and to ensure that they remain safely in place. Tents and canopies may only be used as permitted under Subsection 3; Tents, Canopies, and Heaters.
- b. The permittee is responsible for delineating the perimeter of the permitted section of right-of-way used for business use with a barricade that is at least three (3) feet tall.

The barricade may be made of wood, metal, planter pots, rope, or other similar materials. All access into the space shall be taken from the sidewalk and not the travel lane. The barricade shall be placed at the edge of the permitted area and shall not project into or otherwise inhibit an adjoining travel lane.

- c. Barricades may be left outside overnight.
- d. Fixtures and furniture reviewed during the application process may be left outside overnight. The City will not be responsible for losses resulting from theft or damage. If furniture is left outside overnight it shall be secured to ensure it will not blow or fall into the travel lane.
- e. Permittees that do not plan to use the permit during fall, winter, and/or spring months, must remove all items from the parking spaces until such time as the permittee is ready to use the space again. If the parking spaces remain occupied under this program, the area must be kept tidy, including clear of leaves and other debris, and the business must intend to use the parking spaces on at least a weekly basis. A permittee that removes their business items from their permitted parking spaces may re-occupy the permitted space under the requirements of their permit with courtesy notification to the Public Works Department at 503-769-2919 or mschmidt@ci.stayton.or.us.
- f. Leaf Removal. As a condition of continuing to use the program during fall, winter and/or spring months; permittees will need to work with City staff to establish leaf removal requirements. In some instances, leaf removal from the street for the entire block face on which the business is operating may be required, as it may be inaccessible to normal leaf removal equipment. Leaf removal frequency will be as needed to prevent blockage of storm drains and localized flooding. Permittees will be responsible for conducting leaf removal as required, and failure to do so will result in the immediate termination of the permit.
- g. This permit does not authorize the placement of furniture or fixtures on the public sidewalk. (Use of the sidewalk for furniture or fixtures may be permit under SMC 5.52.) Additionally, the business operations servicing the outdoor business shall not queue personnel or stage materials within the sidewalk area.
- h. ADA access to existing businesses and sidewalk areas shall be maintained and shall not be impacted by use of the right-of-way under this program.
- i. Trash containers must be provided in the outdoor business area and shall be emptied at the end of each day.
- j. No signs shall be attached to any furniture or any other structure related to the operation of the restaurant, bar, or other eating and drinking establishment use except as required by these or other use regulations.
- k. Sandwich board signs shall be located outside of required sidewalk access areas; see SMC 17.20.140.9-B. "portable signs" for additional information.
- l. The permittee is responsible for ensuring that the public right-of-way (ROW) is returned to its condition prior to the permitted activity. The permittee shall not chalk, paint,

embed or affix structures or objects into the ROW, or otherwise mark the surface of bike paths, streets or sidewalk.

- m. There must be a six (6) foot wide unobstructed pathway from the driving lane to all fire hydrants.
 - n. The permittee shall comply with all requirements listed in the signed agreement prepared by the City of Stayton; a draft of which is to be provided by the City. Permittee shall comply with any site-specific conditions required by City staff during permit review. Specific conditions may be required to ensure safety at a particular location and may vary by location.
3. **Tents, Canopies, and Heaters.** The following requirements shall apply to the use of tents, canopies or other temporary membrane structures (collectively called “tent” or “tents”), within public rights of way:
- a. Tents
 - i. Tents must be approved by the Stayton Fire District and Public Works Department prior to use under this program.
 - ii. Tents are subject to all applicable sections of the Oregon Fire Code; including, but not limited to:
 - 1. Tents shall have a minimum of a 12 foot fire break on all sides, unless multiple tents are arranged or set side by side. (OFC 3103.8.6)
 - 2. Tents may not be erected for longer than 180 days in a 365-day rolling calendar on a single address. (OFC 3103.5)
 - 3. Flame resistance. The sidewalls, awnings, drops, and tops of booths, membrane structures, tents shall be composed of flame resistant material or shall be treated with an approved flame retardant. The use of nontreated tarpaulins is prohibited during the hours the event is open to the public. All tents shall have a permanently affixed label indicating the type of tent, size, fabric, or material type, a manufacturer’s certificate, or a fabric sample (OFC 3104.2).
 - iii. Tents shall maintain at least seventy-five percent of the square footage of its sides open for airflow per Oregon Health Authority guidelines.
 - iv. The locations where tents may be placed may be limited based on Oregon Fire Code and the need to maintain access for emergency response vehicles and safe vehicular travel.
 - v. For tents near intersections, the City will evaluate the sight distance at the intersection to ensure that tents do not interfere with the drivers’ view prior to granting approval.
 - vi. Tents will be inspected by the Stayton Fire District after set-up to ensure compliance with all applicable fire code safety requirements and regulations.

- vii. **Fire Extinguishers.** At least (1) 2A:10B:C rated fire extinguisher must be provided for each 1,500 square feet of tent. Additional fire extinguishers may be required to ensure that no employee has to travel more than 75 feet to obtain a fire extinguisher (OFC 3107.9).
 - viii. Minor encroachments by tents into travel lanes may be permitted on a case-by-case basis at the discretion of the City in those instances where reasonable additional space is needed to accommodate required building setbacks under Fire Code, tent weighting, and other unique circumstances.
- b. Heaters
- i. Open flame or other heating devices emitting flame, fire or heat or any flammable or combustible liquids, gas, charcoal, or other cooking device or any other unapproved devices shall not be permitted inside or located within 20 feet of the tent or membrane structures (OFC 3107.4).
 - ii. Electric heaters that are UL listed, for outdoor use, with tip-over protection are allowed to be used in the tent;
 - iii. During permit review, heaters may be subject to additional requirements for safety by the City.
- c. Tent Document Submittal. The following information must be provided for those applications that seek to use tents under this program.
- i. Top view plan of tent location (i.e. drawn on aerial map from a mapping app like Google Maps). Address of business and north arrow should also be included.
 - ii. All dimensions of tent, including distance from adjacent buildings and structures, and tent height and distance between ground and tent.
 - iii. Photo or illustration of type of tent (i.e. taken from a web site), including type of tenting legs.
 - iv. Description of how tent will be tied down and weighted.
 - v. If tent is to be heated, indicate what kind of heater, number of heaters, where heaters will be located.
 - vi. Applicants shall submit this tent information to the Public Works Department at mschmidt@ci.stayton.or.us. Public Works will conduct a first review and then connect the applicant with the Stayton Fire District to obtain the needed tent permit. The application form for a tent permit and specific tent requirements in Fire Code will be provided with the application under this program for those businesses requesting to use a tent. For tent permit questions, please contact the Fire District at 503-769-2601 or jay.alley@staytonfire.org for more information.
 - vii. The City and Fire District may need to request additional information from the applicant in order to ensure compliance will all applicable local and State codes.

4. Alcohol:

The following requirements apply to establishments requesting to serve alcohol in the right-of-way:

- a. Restaurants must hold a valid liquor license and shall provide the City a signed copy of the license issued to them by the Oregon Liquor Control Commission (OLCC).
- b. Permittee shall comply with all applicable OLCC requirements. Only alcohol sold by the business may be consumed within the area subject to this permit.
- c. Storage of containers commonly used for dispensing alcoholic beverages to customers including but not limited to bottles, pitchers, and carafes must be kept inside the business unless an employee is stationed in the outside area at all times. No taps, kegs, coolers or other alcoholic beverage storage devices are allowed outside on the sidewalk or right-of-way.
- d. The permit area is required to be supervised by employees of the license business, as required by the Oregon Liquor Control Commission liquor license.
- e. All service and consumption of alcoholic beverages in the permit area will discontinue by the time required under the State of Oregon's phased reopening, but no later than 11:00 PM on Sunday through Thursday and 1:00 AM on Saturday and Sunday.
- f. The permittee must also provide food service in the permit area. The permittee shall designate one access/exit point for the exterior service area and this point shall be located near a business entrance; and the permittee shall post signage at the access/exit point and enclosed area prohibiting the removal of alcoholic beverages from the licensed service area.

5. Liability.

The permittee shall sign a statement, prepared by the City, affirming that they shall hold harmless the City, its officers and employees, and shall indemnify the City, its officers and employees for 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.

6. Application and Notification.

The business must submit a completed application form, signed by the business owner, and provide all requested information required in the application.

Prior to submitting an application, the business must notify neighboring businesses on both sides of their location that an application will be submitted to use parking spaces for business use under this program. The purpose of this notification is to inform, but not require the approval of, neighboring businesses.

If the business requests to use parking spaces that extend beyond the frontage of their business, the applicant shall gain the written consent on the application form from all neighboring businesses that front the proposed parking closure.

7. Fees:

There are no application fees under this program.

8. Agreement.

Upon preliminary permit approval, the applicant must sign an agreement that specifies the requirements of the permit. A draft agreement is provided under Section 3. City staff will prepare the final agreement for signature by both the City and business owner.

9. Permitting Process

City staff will review all permits as quickly as possible. The review period will take approximately one business day once a completed application is accepted. Review times may take longer if an application is incomplete, the location has complicating factors, or if the City receives a high volume of applications.

Please submit a completed application packet to the Public Works Department at mschmidt@ci.stayton.or.us. If you have questions, please contact the Public Works Department at (503) 769-2919.

10. Program Review.

This program will be reviewed after the first two weeks of operation, and periodically thereafter. The program may be changed as needed in order to ensure that it provides needed space for restaurants, bars, and other eating and drinking establishments in a manner that is safe and harmonious with neighborhood uses. Unless the City notifies the permittee that this permit is cancelled, the permit will be valid for the duration of this program.

11. Complaints.

Complaints concerning this program may be directed to the Planning & Development Office by emailing dfleishman@ci.stayton.or.us or by calling (503) 769- 2998.

