****RESCHEDULED DATE****

Toledo City Hall
Council Chambers
206 N. Main St. Toledo OR
Thursday, February 18, 2021
7:00 pm

AGENDA

TOLEDO PLANNING COMMISSION

ELECTRONIC/VIRTUAL MEETING VIA ZOOM MEETING PLATFORM. The Planning Commission will hold the meeting through the Zoom video meeting platform. The public is invited to attend the meeting electronically. Email planning@cityoftoledo.org or call 541-336-2247 ext. 2130 to receive the meeting login information.

Public Comments: The Planning Commission may take limited verbal comments during the meeting. Written comments can be submitted by email to planning@cityoftoledo.org by 4:00 pm on February 18, 2021, to be included in the record. Comments received will be shared with the Planning Commission and included in the record.

1. CALL TO ORDER AND ROLL CALL

2. VISITORS: (A time set aside to speak with the Planning Commissioners about issues not on the agenda)

3. APPROVAL OF THE JANUARY 13, 2021 MINUTES as circulated and reviewed by the Planning Commission

4. RECOMMENDATION: Outdoor Seating and Food Carts Located in the City Right-of-Way

5. DISCUSSION ITEMS:
   a. Residential Code – Project Update
   b. Updates and Reports

6. STAFF COMMENTS

7. COMMISSIONER COMMENTS

8. ADJOURNMENT

* Comments submitted in advance are preferable. Comments may be submitted by phone at 541-336-2247 extension 2130 or by email to planning@cityoftoledo.org. The meeting is accessible to persons with disabilities. A request for an interpreter for the hearing impaired, or for other accommodation for persons with disabilities should be made at least 48 hours in advance of the meeting by calling the Toledo Planning Department at 541-336-2247.

Toledo City Hall
Council Chambers
January 13, 2021

TOLEDO PLANNING COMMISSION TRAINING

Toledo Planning Commission entered into a training session at 6:05 pm. Commissioners present: President Anne Learned-Ellis, Cora Warfield, Terri Neimann, Ruthanne Morris (arrived at 6:58 pm) and Robert Duprau (arrived at 7:00 pm).

Staff present: Contract Planner (CP) Justin Peterson, City Manager (CM) Judy Richter, City Attorney (CA) David Robinson, Public Works Director Bill Zuspan, Library Director Deborah Trusty, and Secretary Arlene Inukai.

VISITORS: Department of Land Conservation and Development (DLCD) North Coast Regional Representative Lisa Phipps

TRAINING: LAND USE BASICS, PRESENTED BY DLCD NORTH COAST REPRESENTATIVE LISA PHIPPS:
Ms. Phipps provided a PowerPoint presentation reviewing the history of land use, Statewide Planning Goals, land use planning process, comprehensive plans vs. development codes, types of decisions, hearings and findings, goal exceptions, conflict of interest/bias/ex parte contact disclosures, application completeness, criteria requirements, and appeal process.

The City's Comprehensive Land Use Plan was adopted in 2001 and is nearing the end of the planning period. The group discussed legislative updates and housekeeping ordinances necessary to stay up-to-date with State laws. Enforcement of conditions for past land use decisions was also reviewed.

A copy of the presentation and materials from the findings workshop will be sent to staff for Planning Commission distribution. DLCD can provide information and provide assistance with upcoming code updates or special topics. Commissioners thanked Ms. Phipps for the presentation.

TOLEDO PLANNING COMMISSION MINUTES

A regular meeting of the Toledo Planning Commission was then called to order at 7:15 pm by President Anne Learned-Ellis. Commissioners present: Cora Warfield, Terri Neimann, Ruthanne Morris, and Robert Duprau.

Staff present: Contract Planner (CP) Justin Peterson, City Manager (CM) Judy Richter, City Attorney (CA) David Robinson, Public Works Director Bill Zuspan, Library Director Deborah Trusty and Secretary Arlene Inukai.

VISITORS: DLCD North Coast Regional Representative Lisa Phipps

APPROVAL OF THE DECEMBER 9, 2020, MINUTES:
It was moved and seconded (Warfield/Learned-Ellis) to approve the December 9, 2020, minutes as circulated and reviewed by the Planning Commission. The **motion passed** unanimously.

DISCUSSION ITEMS: RESIDENTIAL CODE UPDATES – COMPREHENSIVE LAND USE PLAN UPDATE:

CP Peterson provided updates to the Comprehensive Land Use Plan, Articles 2 and 10, addressing the recent residential code discussions. The Lincoln County Housing Strategy Plan suggested certain amendments and a copy of the recommendations were provided for Commissioners. One item that was mentioned in the Lincoln County Housing Strategy Plan deals with short term rentals. At this time, Planning Commissioners have not discussed the topic or proposed standards, but this may be a good time to address short term rental homes. It was noted that the City does not have anyone reporting taxes on short term rentals, nor business license holders for the use. Commissioners generally agreed that it would be a good time to review and include some standards in the code. CP Peterson reported he can provide options to review at future meetings.

Article 2 of the Comprehensive Land Use Plan provides updates based on the revised language to the Purpose Statements in the General Residential and Single-Family Residential Zones. The Comprehensive Land Use Plan needs to be consistent with the language in the zoning code.

Commissioners discussed removing language about traffic, noise, and disturbing activity from the RS Zone Purpose Statement. It was noted that the language is too subjective and hard to interpret and enforce. In response to questions, Ms. Phipps agreed that the language is subjective and State law requires codes be clear and objective. It is a good time to remove discretionary language or modify the term to state that uses are "intended to be low traffic and quiet." However, she did agree with the proposed change to remove the language. Commissioners discussed noise levels in the residential zones. The City can address noise within the nuisance code or the Police Department has discretion if there is disturbing activity coming from a residence. New uses may need a traffic study if it will generate a lot of traffic or significant impacts to streets.

Commissioners can submit comments or questions to staff. CP Peterson will provide language for vacation rental dwellings and submit it for review at a future meeting date. Commissioners thanked CP Peterson for the work on the project. Ms. Phipps stated DLCD can provide a preliminary review of the draft and can answer questions throughout the process.

DISCUSSION ITEM: OUTDOOR SEATING/FOOD CARTS:

CP Peterson explained that due to Covid-19, some businesses expressed interest in providing outdoor seating for customers. Currently, the City allows seating along the sidewalk, as long as it does not block the pedestrian area and it's temporary. However, two restaurants inquired if seating could be allowed in the adjacent parking spaces, located in the City's right-of-way. This topic was presented to the City Council and examples from other communities were included in the presentation. The second part of the conversation includes a recent request for food truck vendors to be allowed to use the public right-of-way to set-up for sales in an on-street parking space. Currently, vendors are allowed on private property and must be authorized by the City to sell merchandise from a vehicle on the street. This policy has never been expanded, therefore, the conversation began at the City Council. The City Council discussed the topics and referred the issue to the Planning Commission for a recommendation. Food vendors would need to obtain a City business license and Lincoln County food service license, but the City does not have established criteria or a process "to be authorized" to sell from a public street. As part of the food cart conversation, it was explained that there is one existing food vendor who sets up their cart on private property and is in compliance with City standards. There may also be consideration to

establish a food cart pod. Creating standards for a food cart pod would be a legislative code amendment, taking longer to process. However, temporary measures could be established for use of public parking spaces for a limited duration.

Commissioners discussed the existing language that sales must be "authorized". Staff does not have history on past practice of this section or how it has been interpreted or utilized, if ever allowed.

CA Robinson suggested a resolution that allows the temporary use of public parking spaces for a period of time, with a set expiration date. The resolution could establish the "authority" to allow the vendors. Commissioner Warfield, Neimann, and Duprau voiced that they liked the idea of this option. CA Robinson also offered an option to create a permit process, and upon review, the City could authorize.

CP Peterson reported that if there is general support from the Planning Commission, a recommendation could be presented to the City Council. CA Robinson stated a resolution may be a better option for outdoor seating in the street, because of potential safety concerns. President Learned-Ellis noted the conversation last month regarding the limited amount of parking on Main Street. Commissioners reviewed the City of Corvallis permit which limits the number of spaces business can use and liability considerations and could be used as a model. Commissioners discussed the potential time period to allow outdoor seating, how other communities have addressed the use, how to protect the customer from traffic, potential use of barricades, and fire code standards. Fire code regulations might make it very difficult for outdoor seating and the use of tents/canopies. Commissioner Duprau would like to see this use allowed so businesses can continue. Commissioner Morris agreed and asked if the Fire Department could also review if there are other impacts to the fire codes. CP Peterson agreed that this can be coordinated with the Fire Department. Commissioners discussed a potential time period, suggesting through the end of 2021.

In response to Commissioner questions, Ms. Phipps stated this is a common issue many communities are struggling with. The City's Transportation System Plan may provide some guidance. Food carts offer a lot of opportunities and it may be a good idea to encourage a food cart pod.

Based on the general support, this topic will be presented at the next meeting for the next steps to implement a process. CM Richter stressed the need for public safety and how to protect people from vehicles.

DISCUSSION ITEM: UPDATES AND REPORTS: None.

STAFF COMMENTS: None.

COMMISSIONER COMMENTS: None.

There being no further business before the Commission, the meeting was adjourned at 8:05 pm.

_____ _____

Secretary President

CITY OF TOLEDO

Architect rendering, 1938

To: Toledo Planning Commission

From: Justin Peterson, Contract Planner

Date: February 4, 2021

Re: Outdoor Seating and Food Carts Located in the City Right-of-Way

Background

The City Council discussed outdoor seating at their January 6, 2021 meeting and advised Planning Commission to review the topic. Staff added outdoor seating as a discussion item to the January 13, 2020 Planning Commission meeting. At that meeting Planning Commission members expressed support of the idea. At this meeting Staff wants to continue the conversation and Planning Commission may provide a formal recommendation to City Council.

The discussion on outdoor seating was created by interest from downtown restaurant owners. The State of Oregon has issued restrictions that restrict indoor seating at bars, restaurants and other eating establishments.

Other cities across Oregon and the US have expanded outdoor dining.

Currently Allowed

Food carts on private property are currently allowed on commercially zoned properties in the City of Toledo. Restaurants are outright permitted in the commercial zone. The City of Toledo code does not have specific standards for food carts. Food cart operators are required to obtain a city business license and any applicable County or State permits. Some cities have adopted standards for food carts which include safety, placement and other standards.

Temporary seating on the sidewalk is currently allowed with conditions. Staff wrote a letter on December 17, 2020 which outlines the standards for temporary sidewalk seating (Attachment 1).

Today's Discussion

Outdoor Seating in the Public Right-of Way

Staff has been approached by downtown business owners about using parking spaces within the Public Right-of-Way for outdoor seating and tents. Many downtown businesses do not have private parking lots and are not required to have private parking lots. The only option for outdoor seating is on the sidewalk, as discussed above, or in parking spaces located in the City right-of-way. Outdoor Seating provides an opportunity for restaurants to continue operation even when indoor dining is limited or prohibited. Things to consider when discussing outdoor seating within the public right-of-way include.

- Safety: The location of seating within parallel parking spaces places customers close to vehicle traffic. The City of Corvallis permit requires a perimeter barricade that is at least three (3) feet tall.
- Fire Standards: See the attached memo from the Oregon Fire Marshals Association on Tents.
- Liability: the City of Corvallis permit requires a signed liability statement. "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."
- Alcohol consumption: Restaurants would be required to have a valid liquor license and shall provide a copy of the Oregon Liquor Control Commission (OLCC) license to the City.
- Location and Use: ADA spaces may not be used for outdoor seating. A maximum of 4 spaces may be requested. The application requires the applicant to notify any neighboring businesses. If a parking space is in front of a neighboring business that business would be required to authorize the outdoor seating.

Staff recommends that if an outdoor seating program is implemented an application process similar to the City of Corvallis is adopted. City staff will present a draft resolution and application to City Council if Planning Commission makes a recommendation for approval to City Council. It is recommended that the outdoor seating program if approved is a free staff level approval.

Temporary Food Cart Parking in On-street parking spaces

Also, Staff has been approached about allowing food carts on public street parking for temporary periods of time. TMC 10.12.020(B)(4 and 5) state: "No operator shall park and no owner shall allow a vehicle to be parked upon a street for the principal purpose of: (4) Selling merchandise from the vehicle, except when authorized. (5) Storage for more than seventy-two (72) consecutive hours. Storage includes parking in excess of seventy-two (72) consecutive hours." Planning Commission may recommend to City Council that food carts may be permitted in on street parking spaces and parked on the street no longer than 72 hours (or a shorter period of time). A permit form would include review by City Departments including planning, fire, police

and public works. It is recommended that the food cart operator obtain authorization from the adjacent business owner and the approval is a staff level approval.

Ideas for the future

Food Carts are currently allowed on commercially zoned lots. The City of Toledo does not have any code standards for food carts. Many cities have adopted code standards to regulate food carts.

Food cart pods are a group of food carts around common open space. Food cart pods are gaining popularity in Oregon. The City of Albany opened their first food cart pod last year. Many cities have recognized this and adopted standards for food cart pods.

The update of the food cart standards and food cart pods standards would require a Legislative Amendment to the Zoning Code.

Options and Motions

The Planning Commission is presented with the following options.

1. Recommend City Council Approve Outdoor dining and authorize staff to draft outdoor seating standards based on the City of Corvallis permit. And Recommend that City Council Approve food carts in on-street parking spaces with a valid permit.
2. Request staff bring more information to the next Planning Commission meeting
3. Take no action

Attachments

1. Temporary Sidewalk Seating Letter
2. City of Corvallis Business Use of Right-of Way Permit Program and Application
3. Oregon Fire Marshals Association Tent Bulletin
4. Draft Resolution

December 17, 2020

Holy Toledo
155 N Main Street
Toledo, OR 97391

RE: Temporary Outdoor Seating
155 N Main Street, Toledo OR

This letter is to provide information regarding outdoor seating located in the public right-of-way (sidewalk).

The City of Toledo allows tables and chairs along the sidewalk, which are "temporary-in-nature" and are not located within the "pedestrian use zone". See the definitions below. If the seating area meets these definitions, they would be allowed outright and no special permits are necessary.

> TOLEDO MUNICIPAL CODE 12.10 – SIDEWALK REGULATION
> TMC 12.10.010 - Definitions
> "Pedestrian use zone" means a path where the surface of a public sidewalk for pedestrian use is located, which is six foot in width on sidewalks that are ten (10) feet wide or less, or alternatively, five feet wide on sidewalks that are eight feet wide or less.
>
> "Temporary-in-nature" means signs, bicycle parking, banners, flags, temporary seating, sales displays, and other objects similar in nature, that are located on sidewalks, provided they are removed each and every night from the sidewalk and as long as they are not located within the pedestrian use zone. Items that meet this definition are allowed outright without a permit.
>
> TMC 12.10.050 - Objects temporary-in-nature; pedestrian use zone.
> A. If an object is temporary-in-nature, it is allowed outright on the sidewalk provided it is outside the pedestrian use zone as identified by the city planner. A permit for an encroachment under Section 12.10.060 may be issued and is required if an object is not temporary-in-nature. Violation of this section may also be considered a public nuisance and is subject to the abatement provisions of this chapter and those set forth in other city ordinances relating to nuisances.

B. The pedestrian use zone extends from the edge of sidewalk, opposite the curb, but does not include the sidewalk landscape area unless objects with permit or temporary-in-nature require the path to deviate from the edge of the sidewalk into the sidewalk landscape area. If objects in the sidewalk landscape area do not allow a pedestrian use zone that is as wide as required for the width of that sidewalk, then objects may not receive a permit and those temporary-in-nature may not be placed on the sidewalk. No temporary or permitted objects may be placed on the sidewalks, except where a path can remain unobstructed. At street corners, the pedestrian use zone encompasses the entire area bounded by the extended edge of sidewalk and the streets.

If the seating does not meet the "temporary in nature" definition and are considered long-term fixtures, you can apply for a Sidewalk Encroachment Permit for long-term placement of the tables. There is no application fee for the permit.

The Toledo Fire Department provided the following fire code regulations for the outdoor activities within a tent or canopy:

- Exit aisles shall be a minimum of 44 inches in width.
- Provide exits signs at exits. If the tent/canopy exceeds 750 square feet, the exit signs shall be internally illuminated.
- The tent/canopy shall be constructed with flame resistant material in accordance with NFPA 701. Documentation/labeling shall be provided.
- Provide a fire extinguisher in an accessible and visible location with a minimum rating of 2A-10BC.
- No Smoking signs shall be posted.
- Open flame devices such as barbeques shall be located a minimum of 20 feet from the tent/canopy

Feel free to call or email if you have any questions or to discuss the sidewalk regulations. I can be reached at City Hall at 541-336-2247 extension 2103 or email planning@cityoftoledo.org

Sincerely,

Justin Peterson
Contract Planner

Business Use of Right-of Way Permit Program and Application

To All Applicants:

This program to permit business use of right-of-way (ROW) has been established in response to the COVID-19 crisis. This program provides the opportunity for restaurants and retail businesses to use the public parking spaces adjacent to structures in which they are located for the purpose of providing outdoor seating, queuing or shopping areas. Such use shall be in conformance with this program and all applicable provisions of the City of Corvallis 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. This program is intended to apply to parking spaces located in City parking lots and City-managed on-street parking in the right-of-way. This program is not intended to apply to State Highways (including 3rd and 4th Streets). Permits under this program are valid from the date of issuance until September 30, 2020. Additional forms and information regarding this program may be accessed online at https://www.corvallisoregon.gov/ or by calling the Public Works Department at (541) 766-6916.

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

1. **Locations and Use:**
    - Restaurants and retail businesses may request to use parking spaces along the frontage of their existing business location; not including ADA spaces.
    - Right-of-way used under this permit may be used for restaurant or retail use in support of the permittee's existing business.
    - Permits issued under this program may not conflict with existing permits held by other parties to use the proposed section of right-of-way.
    - A maximum of four (4) spaces may be requested under this program.
2. **General Use Requirements:**
    - 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 are not permitted to be used in the right-of-way.

- 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.
- Barricades may be left outside overnight.
- 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.
- This permit does not authorize the placement of furniture or fixtures on the public sidewalk. Additionally, the business operations servicing the outdoor business shall not queue personnel or stage materials within the sidewalk area.
- 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.
- Trash containers must be provided in the outdoor business area and shall be emptied at the end of each day.
- No signs shall be attached to any furniture or any other structure related to the operation of the restaurant or retail use except as required by these or other use regulations.
- Sandwich board signs shall be located outside of required sidewalk access areas (allowed in CB, CBF, and RF zone); see LDC 4.7.90.04.c "portable signs" for additional information.
- Permittee is responsible for ensuring that the public right-of-way (ROW) is returned to its condition prior to the permitted activity. The Applicant shall not chalk, paint, embed or affix structures or objects into the ROW, or otherwise mark the surface of bike paths, streets or sidewalk.
- There must be a six (6) foot wide unobstructed pathway from the driving lane to all fire hydrants and Fire Department Connections for fire sprinklers or standpipes on buildings.

- The permittee shall comply with all requirements listed in the signed agreement prepared by the City of Corvallis; a draft of which is provided in Section 3 of this packet. 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. **Alcohol:**

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

- 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).
- Permittee shall comply with all applicable OLCC requirements. Only alcohol sold by the business may be consumed within the area subject to this permit.
- 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.
- The permit area is required to be supervised by employees of the license business, as required by the Oregon Liquor Control Commission liquor license.
- 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.
- 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 sidewalk café area.

4. **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.

5. **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.

6. **Fees:** There are no application fees under this program.

7. **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.

8. **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 publicworks@corvallisoregon.gov. If you have questions, please contact the Public Works Department at (541) 766-6916.

9. **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 restaurant and retail businesses in a manner that is safe and harmonious with neighborhood uses. Unless the City notifies the permittee that this permit is cancelled, this permit will be valid for the duration of this program.

10. **Complaints.**

Complaints concerning this program may be directed to the Economic Development Office by emailing Economic.Development@corvallisoregon.gov or by calling (541) 766-6339.

Section 2. Business Use of Right-of Way Permit Application

Site & Applicant Information

Application is hereby made for a revocable permit to operate a business in the City of Corvallis right-of-way in accordance with provisions of this program and the City of Corvallis Municipal Code.

Business Name_____Phone_____

Business Address _____

Applicant Name (print)_____Email _____

Business Owner Name (print)_____Email _____

I acknowledge that if approved, the use of the right-of-way shall be subject to the program requirements listed in Section 1 of this application packet and all requirements of the Corvallis Municipal Code. If approved, a Temporary Right-of-Way Use Agreement will be prepared by the City, and must be signed prior to use of the right-of-way. The Agreement may contain site-specific use requirements intended to ensure public safety at a particular location.

I shall hold the City of Corvallis, its officers, agents, and employees free and harmless from any claims for damages to persons or property including legal fees and costs of defending any actions or suits thereon, including appeals therefrom, which may result from granting this permit.

Applicant Signature_____ Date: _____

Business Owner Signature_____ Date: _____

STAFF USE ONLY

City signature _____Date _____

Application Submittal Date _____ ☐ approved ☐ denied

Notes:

Application Requirements check list:

A complete application must include all of the following:

☐ **Completed Application Form**

☐ **Scaled site plan** Plans shall include the following information:

- Parking spaces proposed for restaurant or retail use
- ADA clearances into and throughout business area;
- Location and type of barricades proposed for delineating the business location.
- Location and type of furniture and fixtures that would be placed in the right-of-way

☐ **Will alcohol be served?**

☐ Yes ☐ No

If yes, **Current** copy of Oregon Liquor Control Commission (OLCC) License is required.

☐ **Neighboring businesses on both sides of the business have been notified of this application.**

Name of Neighboring Business 1: _____

Date notified: _____

Name of Neighboring Business 2: _____

Date notified: _____

Please submit a completed application packet to the Public Works Department at publicworks@corvallisoregon.gov. If you have questions, please contact the Public Works Department at (541) 766-6916.

Section 3. Example Temporary Right-of-Way Use Permit Agreement

City staff will prepare a final copy of this agreement, with blank fields populated if a permit can be issued. This agreement does not need to be signed at the time of permit application.

THIS AGREEMENT is entered into this _____ of _____, 2020, by and between the CITY OF CORVALLIS, an Oregon municipal corporation, hereinafter referred to as "City", and (***business name***) hereinafter referred to as "Permittee", the promises of each being given in consideration of the promises of the other.

WHEREAS, the City of Corvallis has declared a State of Emergency due to the COVID-19 Crisis. This emergency has created a demand by some businesses to use public right-of-way in order to safely serve their customers, and

WHEREAS, Permittee desires to occupy the public right-of-way for the purpose of operating a restaurant or retail business.

NOW, THEREFORE, the parties agree as follows:

1. Term. This temporary permit shall be in effect from the date of last signature through September 30, 2020.

2. Right-of-Way Use. City hereby grants to Permittee a non-assignable right to occupy the following described right-of-way, subject to all of the terms and conditions of this Permit and all applicable requirements of the Corvallis Municipal Code, as currently enacted or as subsequently modified, for the purpose of operating a restaurant or retail business at the following location: **(** ***business address***) and manner as shown on the attached site plan, Exhibit A, which by this reference is incorporated into and made a part of this permit and reference in this document as "permit area."

3. Use Regulations.

a. The permit is specifically limited to the area described in paragraph 2 above.

b. 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 are not permitted to be used in the right-of-way. Only those things authorized by the permit and shown on the site plan may be stored in the public right-of-way when the restaurant or retail use is not in operation**.** The operation of a restaurant or retail business requires that trash containers be provided on site.

c. No signs shall be attached to any furniture or any other structure related to the operation of the restaurant or retail use except as required by these or other use regulations.

d. If the Permittee serves alcohol in the permit area, then the following are requirements of this permit:

i. Permittee shall hold a valid Oregon Liquor Control Commission (OLCC) liquor license and comply with all applicable OLCC requirements if alcohol is served to restaurant patrons. Only alcohol sold by the business may be consumed within the area subject to this permit.

ii. 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.

iii. The permit area is required to be supervised by employees of the license business, as required by the Oregon Liquor Control Commission liquor license.

iv. All service and consumption of alcoholic beverages in the restaurant 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.

v. 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 area.

e. In the event that the permit allows for a street closure, Permittee will maintain a 20-foot wide emergency vehicle access aisle in the street for the duration of the closure.

f. Permittee shall be responsible to mitigate and provide accessible parking spaces if impacted, as required by ADA National Network (adata.org).

g. Permittee shall complete the "ROW Notification to Impacted Properties" form, if applicable.

h. Permittee shall not use private parking spaces.

i. If parking is to be restricted, the provided "No Parking" signs need to be placed 48 hours in advance of the event.

j. Permittee shall coordinate with Republic Services: 541-754-0444 and United States Postal Service: 541-752-4358 if the proposed use of right-of-way would impact these services.

k. Permittee shall protect the existing structures and other improvements. Damage to any of existing structures shall be repaired and replaced by the Applicant at the Applicant's expense.

l. Permittee is responsible for insuring that the public right-of-way (ROW) is returned to its condition prior to the permitted activity. The Applicant shall not chalk, paint, embed

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

4. Applicable Laws. Permittee agrees to comply with all applicable local, state and federal laws, rules and regulations related to the operation of their restaurant or retail use.

5. Assignability. This permit is for the exclusive benefit of the parties hereto. It shall not be assigned, transferred, or pledged by either party without the prior, written consent of the other party.

6. Temporary Suspension by City. City shall have the right to temporarily suspend this permit if the public interest requires use of the right-of-way for a public event, construction, repair or any other purpose.

7. Hold Harmless. Permittee shall indemnify, protect, defend, and hold the City, its officers, agents and employees, harmless against any claim for injury or damage and all loss, liability, cost, or expense, including court costs and attorney's fees, growing out of or resulting directly or indirectly from a right-of-way use permit issued by the City of Corvallis during the term of this agreement except that resulting solely from the negligence of the City.

8. Non-discrimination. The parties agree not to discriminate on the basis of race, religion, color, sex, marital status, family status, national origin, age, mental or physical disability, sexual orientation or source of income in the performance of this agreement.

9. Headings. The paragraph headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provision of these regulations or permit.

10. Termination.

a. The City may terminate or modify all restaurant or retail use of the public right-of-way authorized under this permit at any time at its sole discretion. Permittee shall not obtain any property right in the continued private commercial use of the public sidewalk.

b. The City may deny, revoke, or suspend the permit upon finding that any provision of this ordinance or condition of approval will be or has been violated.

IN WITNESS WHEREOF, the City and Permittee have herewith executed their signatures.

CITY OF CORVALLIS, OREGON	PERMITTEE
By:_____	_____
City Representative	Business Owner
Date:_____	Date:_____

OREGON FIRE CODE

Joint Policy Bulletin

A collaborative service to provide
consistent and concise application of Oregon's
fire prevention and life safety regulations.

Date: January11th, 2021

Initiating: Joint Policy Bulletin No. 0006

Subject: Tent Use During Declared Emergencies

Code References: 2019 Oregon Fire Code (OFC) Sections 101.3 104.8, 305, 308, 315, 1201, 1203 and Chapters 31 and 61.

Background: The intent of this document is provide guidance and consistency to local fire officials while working with business owners, or those offering shelter, to ensure fire and life-safety. In 2020, the State of Oregon endured unprecedented wildfires, resulting in the displacement of thousands of homeowners, in addition to the spread of a worldwide pandemic that impacted all aspects of life for every person in the state. The extent and magnitude of both disasters was swift and unpredictable, leaving homeowners and business owners alike with the need to use some form of shelter, most commonly tents.

It was found that the influx of tent structures erected in response to an emergency may outpace the ability of local fire jursdictions to administer operational permits or provide an adequate level of guidance prior to their construction and use. In addition, it was noted that there may be challenges with heating these spaces while providing Oregon Fire Code consistency among all fire agencies.

As identified in Oregon statute and the Oregon Fire Code (OFC), there are times when strict adherence to the OFC may not be in the best interest of the public. When those rare occasions are indentified, local officials have the ability to use their judgement to implement like measures that provide an equivalent level of fire and life safety protection.

It will take the cooperation of business owners and local fire authorites to work together to make sure these temporary adjustments and variances are carried out responsibly and safely.

Advice: Assist local jurisdictions to make both objective and subjective decisions regarding the use of tents, and other similar structures, during times of emergency, both within the established temporary use of 180 days, and when that time frame is necessarily extended in consideration of an executive order or other locally declared emergencies as defined by guidelines of the Oregon Office of Emergency Management.

Consideration shall be given in the creation and implementation of this policy so that any modifications to the Oregon Fire Code are reasonable and demonstrate that the intent of the code is satisfied in accordance with ORS 476.035 and OFC 104.8.

Authority: During times of unusual hardship or when unique difficulties necessitate, such as during a global pandemic, ORS 476.035 empowers the State Fire Marshal with the ability to apply adjustments to the Oregon Fire Code if such changes meet the intent and purpose of the code, support the publics general welfare, and help ensure their health and safety.

ORS 401.168 gives the Governor the complete authority to direct the Oregon Office of the State Fire Marshal to prevent or alleviate damage during a state of emergency and to provide assistance in order to restore services, including the availability of food, that provide for the health and safety of the citizens.

Process: This policy is reserved exclusively for use only after the declaration of a State or Local emergency and only when it is determined that the continued strict enforcement of applicable sections of the Oregon Fire Code would create a greater risk than is reasonable due to that emergency. This risk could be the result of health factors, socio-economic impacts or others.

Compliance:

General: The requirements of the Oregon Fire Code shall prevail unless specifically amended below. No amendment shall conflict with an Executive Order issued by the Governer. Chapter 31 provides requirements specific to the protection of temporary tents. Chapter 61 and NFPA 58 provide requirements for the safe handling and use of LP-Gas including propane and butane. All equipment, including tents, heaters and appliances, shall be listed for their intended use, including their owners manual or use and care instructions. Tents used for cooking need to follow the provisions of the Oregon Fire Code. No amendments or changes will be allowed to the Oregon Fire Code or National Electrical Code for requirements related to electrical wiring requiring permit. There may be attachments that are relevant and to be used in conjunction with this bulletin.

- **Approval and Permits:** All tents, regardless of size, utilizing any of the alternatives contained herein, are required to have fire department approval, preferably through use of an Operational Permit.

  Enclosed tents 400 square feet or less are still required to meet the minimum OFC requirements, but larger tents also need fire department approval in accordance with OFC Section 3103.2. Tents with all sides open shall also meet the requirements of Section 3103.2.

  The local fire code official may allow an alternate tent material to NFPA 701 to be utilized meeting the requirements for flame propagation criteria. The most common standards in the U.S. are the California State Fire Marshal (CSFM) Title 19 and ASTM E84.

- **Plans and Inspections:** The use of this JPB is conditional upon the submission of plans and approval of the site after an inspection as required by the fire code official. Use of the tent or similar structure beyond 180 days may be approved for the duration of the declared emergency when approved and inspected as determined by the local fire code official. The approved plan shall be kept available by the owner and any significant changes to the plan will require additional approval by the fire code official.

  Plans must include the approved care, quanity and security of any flammable and combustible liquid storage fuel containers, including LP-gas cylinders, and indicate their approved location while awaiting use or removal from the premises.

- **Designated Staff Training:** The awareness of these amendments to staff is crucial for the safety of themselves and to the pubic. All designated staff shall be familiar with all approved plans and be trained in the location and use of portable fire extinguishers, the proper use of heaters, fuel storage plan, and electrical panel location.

- **Location and Access:** Through coordination with the local fire department, tents requiring a 20 foot setback from buildings may be approved closer after the owner has checked with other affected businesses, local authorities, and ensured there are no land use and zoning restrictions.

The fire department may then approve the closer location if the tent does not unduly impair fire department access, impede fire ground operations, and does not diminish egress from either the tent or any nearby building, and meets all other requirements of this Joint Policy Bulletin and the Oregon Fire Code.

Tent separation to combustible vegetation and waste material shall be at the discretion of the fire code official and shall be documented on the approved plans.

- **Exits, Lighting and Aisles:** Exit openings shall be clearly marked with signs and tents shall be adequately illuminated to see all egress components. Occupant loads shall be per the fire code, or as restricted by the emergency orders. Aisle width shall be maintained and exits shall be kept clear of obstructions such as electrical equipment and cords, heaters, and chairs. Walking surfaces shall be maintained both inside and outside of the tent. LED lights rated for outdoor use are preferred. Generator use shall be as required in the fire code.

- **Portable Fire Extinguishers:** Approved portable fire extinguishers complying with section 906 shall be provided in locations approved by the fire code official.

- **Heat Producing Equipment:** In accordance with OFC Section 3107.4 the following alternative means of heating may be approved as a best practice by the local fire code official. Note that such heaters must still meet all the applicable requirements of OFC Sections 305 and 315 and their manufactures instructions. Fuel sources shall be removed and safely stored, and electric heaters shall be unplugged when not in use.

    - Portable electric heaters using an extension cord. Heaters shall be UL 1278 listed. Extension cords shall be a minimum of #14 AWG, grounded, rated for outdoor use, and plugged into a GFCI protected outlet. Physical protection of the cord shall be considered with the use of commercially available guards. Cords shall not extended through exit openings or be located so as to be tripping hazards.

    - Portable electric heater heater plugged into a UL 1363 listed relocatable power tap with a fuse or other overcurrent protection (this is not a “surge protector”) listed for outdoor use and plugged directly into an approved receptacle. This option allows the owner to also supply needed low wattage devices such LED strings of lights.

      “RPT’s can be found up to 25 feet in length. Note: many circuits will be 20 amp service and most heaters are 13 to 16 amps, meaning very few other accessory uses will be possible. Also note that multiplug cube adapters and power strips without fuses are not allowed. See OFC Section 604.4 commentary for more on RPT’s.

    - Portable propane heaters listed for emergency use indoors, or in tents, connected to a 20 lb. (BBQ grill type) container located at least 5 feet outside the tent and installed per manufacures instructions, may be approved. Both the heater and the supply hose to it must be CSA certified.

      The heater, which normally runs off a 1 lb. container, may require a conversion kit and a fuel filter, both would be available from the manufacurer. The heater must have a tip over switch, an oxygen depletion sensor and be used per the manufactures instructions. Flammable gas alarms and carbon monoxide alarms are highly encouraged as well as the practice of leaving a minimum 6 inch gap between the ground and the tent side walls.

Other heaters that produce an open flame, including LP-gas catalytic heaters, may be approved if in the opinion of the fire code official they are determined to pose a minimal fire hazard, meet the applicable portions of OFC Section 308, are used properly, and are located safely away from tent walls, combustible materials and exits.

- Construction type heaters (also known as "Bullet" or "Salamander" heaters) may be approved for pre-heating and drying purposes when the public is NOT occupying the tent and when they are otherwise used in accordance with their owners manual, paying particularly attention to the fuel container location. The unit must be completely removed from the tent when not in use and anytime the public occupies tent.

Conclusion: As identified in Oregon statute and the Oregon Fire Code, there are times when strict adherence to the OFC may not be in the best interest of the public. When those rare occasions are rightly indentified, the law gives the State Fire Marshal and local fire officials the ability to use their judgement to implement like measures that provide an equivalent level of safety.

It will take the cooperation of business owners and local fire authorites to work together to make sure these temporary adjustments and variances are carried out responsibly and safely.

Contacts: If you have questions or are in need of further information email osfm.flss@state.or.us or call 503-934-8256.

References:

Oregon Revised Statute: 476.035. Adjustments and variances in application of statutes and regulations

Oregon Administrative Rule: 837-039-0006. Minimum Fire Code Requirements

ICC Considerations for Converting Outdoor Spaces into Temporary Seating Spaces: 20-19250_GR_Outdoor_Seating_Code_RPT_FINAL_HIRES.pdf

Oregon Office of Emergency Management: *Emergency Declarations Guidelines For Local Elected And Appointed Officials;* May 2018.

Oregon Office of the State Fire Marshal: *Technical Advisory 14-12 "Temporary Shelters"*

CITY OF TOLEDO
RESOLUTION NO.

A RESOLUTION OF THE TOLEDO CITY COUNCIL ALLOWING OUTDOOR DINING AND VENDING IN THE PUBLIC RIGHT-OF-WAY AND ON PUBLIC STREETS

WHEREAS, the City, under its home rule authority, can regulate the conduct of its citizens; and

WHEREAS, the City, its businesses and its citizens have been adversely affected by covid-19, and

WHEREAS, the City has in its municipal code sections that may present barriers to businesses as they adjust to a changing covid economy; and

WHEREAS, the City Council has and recommends adopting a temporary resolution relaxing enforcement of municipal code restrictions on vending in the right-of-way and on public streets, subject to state and local law, and pursuant to permitting, and

WHEREAS, this resolution will expire at midnight on December 31, 2021 unless otherwise extended.

NOW, THEREFORE, THE CITY OF TOLEDO RESOLVES AS FOLLOWS:

Section 1. That the City Council directs staff to draft a permit application to be used by businesses to vend merchandise, retail goods, and food. licensed to do business by in Toledo.

Section 2. The permit may be issued only to business licensed by the City of Toledo to engage in business within the territorial limits of the City of Toledo according to Toledo Municipal Code Chapter 5

Section 3. The permit must be approved by Toledo Planning, Public Safety, Public Works, and Toledo Fire

Section 4. The permit may not supersede any state law wherein the Oregon Legislature has pre-empted local law.

Section x. This resolution will expire at midnight on December 31, 2021 unless otherwise extended

This Resolution shall be effective upon passage by the City Council this __ day of __, 2021.

APPROVED:

_____
Mayor Rod Cross

ATTEST:

_____
City Recorder Lisa Figueroa

DRAFT