

ADMINISTRATIVE ORDER NO. 56-23-01
of the
City Manager

**EXTENDING EMERGENCY AMENDMENT OF PRIVATE COMMERCE
ON PUBLIC PROPERTY ADMINISTRATIVE RULE R-3.336 THAT WAS
ADOPTED BY ADMINISTRATIVE ORDER NO. 56-17-02-F AND
ADOPTION OF AMENDMENT OF ADMINISTRATIVE ACTIONS
DESIGNATING CERTAIN RIGHT-OF-WAY FOR PARKING.**

The City Manager of the City of Eugene finds that:

A. Section 2.019 of the Eugene Code, 1971 (“EC”), authorizes the City Manager or designee to adopt rules for implementation of any provisions of the Eugene Code, 1971. EC 2.019(6) authorizes the City Manager to adopt emergency rules without prior notice or hearing.

B. Pursuant to the authority contained in EC 2.019 and EC 3.340, Private Commerce on Public Property Administrative Rule R-3.336 was adopted by Administrative Order No. 56-17-02-F on July 12, 2017.

C. On March 23, 2020, Governor Kate Brown issued Executive Order No. 20-12 (“Stay Home, Save Lives”), ordering Oregonians to stay at home, closing specified retail businesses, requiring social distancing measures for other public and private facilities, and imposing requirements for outdoor areas and licensed childcare facilities. On May 1, 2020, Governor Brown found that COVID-19 continued to threaten public health and safety, and remained a statewide emergency under ORS 401.025 and, therefore, she extended the statewide emergency that she had declared on March 8, 2020 (that was set to expire on May 7, 2020) for an additional 60 days, through July 6, 2020.

D. On May 14, 2020, Governor Kate Brown approved Lane County’s application to begin Phase 1 of her reopening plan for Oregon. Phase 1 includes the Governor’s guidance for restaurants, retail, personal services providers, malls and gyms. The Governor’s restaurant guidance requires, among other things, that restaurants ensure tables (both indoors and outdoors) are spaced at least six (6) feet apart so that at least six (6) feet between parties is maintained, including when customers approach or leave tables.

E. On June 5, 2020, Governor Kate Brown issued Executive Order No. 20-27 (A Safe and Strong Oregon) that established a framework for a statewide reopening process and guidelines that apply in Phase I and Phase II. The Executive Order requires that Food and Drink establishments implement physical distancing protocols consistent with guidance from the Oregon Health Authority. Lane County entered Phase 2 on June 5, 2020.

F. On December 3, 2020, Governor Kate Brown issued Executive Order 20-66 (Risk and Safety Framework) with new directives relating to the management of the ongoing COVID-19 emergency. Executive Order 20-66 set forth the framework for using data-driven indicators of disease spread to guide measures on a county-by-county basis.

G. To comply with the Governor’s spacing requirements, some restaurants wanted to place appropriately spaced tables and chairs on public property abutting the restaurant property. EC 3.344 authorizes the City to issue Outdoor Café Permits and Downtown Activity Zone (DAZ) Café Seating Permits to allow restaurants to utilize abutting public right of way for this activity. To facilitate and support the reopening of restaurants in compliance with the Governor’s executive orders, it was in the public interest to allow for the expeditious issuance of temporary Outdoor Café Permits and temporary DAZ Café Seating Permits that comply with the Eugene Code.

H. On May 22, 2020, I issued Administrative Order No. 56-20-02 adopting an emergency rule temporarily amending Private Commerce on Public Property Administrative Rule R-3.336 to eliminate all requirements for Outdoor Café Permits and DAZ Café Seating Permits except for those requirements that are explicitly required by the Eugene Code or needed to preserve public health and safety. The temporary Rule amendment was needed to allow for the expeditious issuance of temporary permits to restaurants seeking to provide seating within the public right of way to comply with Governor Brown’s executive orders and guidance issued in response to the COVID-19 pandemic. Failure to act promptly would have resulted in serious prejudice to the public interest. Administrative Order No. 56-20-02 expired on October 31, 2020.

I. After considering the criteria set forth in EC 5.055(a) – (n) and the Governor’s Executive Order establishing spacing requirements which remained in effect, subsequent extension Orders were adopted.

J. On June 25, 2021, Governor Brown issued Executive Order No. 21-15, which rescinded all remaining COVID-19 restrictions. In that Executive Order, the Governor stated that enhanced COVID-19 precautions will be necessary for an additional period of time, for some congregate settings, following federal guidance. The Executive Order stated that the economic recovery from the COVID-19 pandemic is fragile, and as a state, Oregon must do everything it can to ensure that it retains the flexibility to design and implement programs to rapidly respond to emerging needs to support businesses, workers, and the Oregon economy. Taking into consideration Executive Order No. 21-15, additional extension Orders were adopted, most recently by Administrative Order No. 56-22-05 which will expire on April 20, 2023.

K. State mandates regarding spacing, capacity, and masking requirements ended in early 2022, but many people remain uncomfortable with being close to each other indoors because of concerns about exposure to COVID-19. The economic recovery from the COVID-19 pandemic is fragile for many Eugene businesses where people gather to socialize, including restaurants and bars. In recent months, restaurants in downtown and elsewhere in Eugene have closed. Continuing to allow restaurants and bars to place tables and chairs on abutting outdoor public property, such as sidewalks and parking spaces, provides people with dining options that would not otherwise be available. Therefore, it is in the public interest to extend the temporary rules eliminating all requirements for Outdoor Café Permits and DAZ Café Seating Permits except for those requirements that are explicitly required by the Eugene Code or needed to preserve public health and safety, including those needed to ensure that

there is no interference with the visibility or operation of traffic control devices until October 17, 2023

L. The public right of way abutting some restaurants has been designated as parking by a previous administrative action. At this time, such public right of way may be more appropriately used for the temporary placement of tables, chairs, and table/chair canopies smaller than 1,500 square feet to allow for social distancing in response to the COVID-19 pandemic. EC 5.050 authorizes the City Manager or Manager's designee to impose conditions upon which streets and other public property may be used for parking. EC 5.055 requires that actions taken pursuant to EC 5.050 be based on consideration of the criteria set forth in EC 5.055(a) – (n).

M. I have considered the criteria set forth in EC 5.055(a) – (n). The Governor's Executive Orders, and OHA guidance issued pursuant to the Executive Orders establishing spacing and capacity requirements remain in effect. Based on consideration of the criteria and consideration of Governor Brown's executive orders and guidance for restaurants, it is appropriate to extend the Emergency Rule temporarily prohibiting parking in any portion of the public right of way for which a temporary Outdoor Café Permit or a DAZ Café Seating Permit is issued.

NOW, THEREFORE, based upon the above findings which are adopted, and pursuant to the authority of EC 2.019(6), EC 3.340, and EC 5.040, I order that the Emergency Rule adopted by Administrative Order No. 56-20-02 (which has been amended and extended most recently by Administrative Order No. 56-22-05) amending Administrative Order No. 56-17-02-F by adding R-3.336-P to that Rule, and the corresponding administrative action to temporarily prohibit parking in Permit areas as authorized by EC 5.040, shall be extended effective April 20, 2023, and remain in effect until October 17, 2023 (180 days from April 20, 2023), unless replaced earlier by an emergency rule, temporary rule, or permanent rule adopted in accordance with the provisions of EC 2.019.

**PRIVATE COMMERCE ON PUBLIC PROPERTY
ADMINISTRATIVE RULE R-3.336**

R-3.336-P Temporary Permits for Outdoor Seating within Public Right of Way.

1. Notwithstanding any administrative rule, order, or other administrative action to the contrary, including but not limited to R-3.336-L, it is in the City's sole, unfettered discretion whether to approve, conditionally approve or deny a restaurant's application for a temporary Outdoor Café Permit so long as the restaurant demonstrates compliance with EC 3.344(3) and demonstrates that use of the requested public right of way for outdoor café purposes does not pose a danger to public health, safety or welfare, including but not limited to demonstration that the requested use will not interfere with the visibility or operation of traffic control devices.

2. Notwithstanding any administrative rule, order, or other administrative action to the contrary, including but not limited to R-3.336-L and R-3.336-N, it is in the City's sole, unfettered discretion whether to approve, conditionally approve or deny a restaurant's application

for a temporary Downtown Activity Zone Café Seating Permit so long as the restaurant demonstrates compliance with EC 3.344(3) and EC 3.341 and demonstrates that use of the requested public right of way for café seating purposes does not pose a danger to public health, safety or welfare, including but not limited to demonstration that the requested use will not interfere with the visibility or operation of traffic control devices.

3. Temporary Outdoor Café Permits and temporary Downtown Activity Zone Café Seating Permits may be issued for portions of right of way that have been designated by administrative action for parking (parking meter zone, hourly parking, etc.). Applicants requesting use of parking space right of way may be required to comply with the insurance coverage requirements set forth in Administrative Order No. 56-17-02-F, R-3.336-F and may be required to provide additional safety measures to protect seated patrons and/or vehicular traffic, including measures to ensure that there is no interference with the visibility or operation of traffic control devices. If a temporary Outdoor Café Permit or a temporary Downtown Activity Zone Café Seating Permit is issued for right of way that has been designated by administrative action for parking, the parking designation of the subject right of way is hereby removed for the duration of the temporary permit.

4. A temporary Outdoor Café Permit and a temporary Downtown Activity Zone Café Seating Permit may allow for the erection of a tent/canopy smaller than 400 square feet intended to shield the café seating authorized by the temporary permit from rain, so long as the restaurant demonstrates that use of the tent/canopy does not pose a danger to public health, safety or welfare, including but not limited to demonstration that the use of the tent/canopy will not interfere with the visibility or operation of traffic control devices. An applicant seeking to erect a temporary tent/canopy 400 square feet or larger must also obtain a Fire Safety Permit from the Eugene/Springfield Fire Marshal.

5. An applicant that submits a completed application seeking a temporary Outdoor Café Permit or temporary Downtown Activity Zone Café Seating Permit for use of abutting public right of way that is not currently designated for parking may, prior to permit issuance, request a preliminary application approval for purposes of applying to the Oregon Liquor Control Commission to extend the premises. If preliminary application approval is granted, the City retains sole, unfettered discretion to approve or deny the application.

6. The City may suspend or revoke a temporary Outdoor Café Permit or temporary Downtown Activity Zone Café Seating Permit for the failure of a temporary permit holder to comply with the Eugene Code or with the conditions of the permit.

Dated this 26th day of April, 2023.



Sarah Medary
City Manager