

ORDINANCE NO. F-0487**AN ORDINANCE AMENDING CHAPTER 26 (BUSINESSES)****ARTICLE I (IN GENERAL)****USE OF THE SIDEWALK FOR CAFÉS**

WHEREAS, the City of Wheaton, as an Illinois home rule municipality having the legal authority to adopt those ordinances which are not in conflict with State law and which the corporate authorities of the City of Wheaton deem in the best interest of the public health, safety, and welfare; and

WHEREAS, the Mayor and City Council of the City of Wheaton deem it necessary and appropriate in the interest of the public health, safety, and welfare to regulate sidewalk cafés so as to minimize conflicts between outdoor cafés and the public's use of public sidewalks.

BE IT ORDAINED by the Mayor and City Council of the City of Wheaton, Illinois, pursuant to home rule powers, as follows:

Section 1: That Chapter 26 (Licenses), Article 2, of the Wheaton City Code, is hereby amended by the addition of a new Section 26-54 entitled "Sidewalk Café Permits", which shall read as follows: "26-54 Sidewalk Café Permits

(a) **PERMIT REQUIRED**

It shall be unlawful for any persons, firm, corporation, organization or association to use the public sidewalk for the operation of a sidewalk café whether offering direct service to the table or not, without obtaining a sidewalk café permit. Permits will be issued only to businesses owning or leasing property immediately adjacent to an improved sidewalk within a public right-of-way. Permits may be obtained at any time during a calendar year; however, all permits shall expire on November 1 of the same calendar year. No permit shall be issued to any business which is not in compliance with all provisions of the Wheaton City Code.

(b) **DEFINITIONS**

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meanings.

Sidewalk Café means any area on the public sidewalk adjacent to a licensed food service business where food and/or beverages may be consumed at tables and chairs whether the food and/or beverages are purchased at the table or inside the adjacent licensed food service business.

(c) **APPLICATION**

All applicants for sidewalk café permits shall complete an application on a form provided by the City. An inspection of the property to document existing conditions of public improvements shall be performed by the City prior to issuance of a permit. Applications should be filed at least two weeks prior to scheduled use to allow sufficient time for such inspection. All applications shall include:

- (1) A dimensioned drawing showing the sidewalk adjacent to the business, any street lights, signs, planters, trees, tree grates, the curb, on street parking or any other public appurtenances, and the proposed location of any tables or chairs.
- (2) Certificates of Insurance, subject to the reasonable approval of the City Attorney, naming the City of Wheaton as an additional insured for the term of the permit and including a liability insurance policy of not less than \$2,000,000 per occurrence.
- (3) A signed indemnification statement on a form provided by the City.

(d) **REGULATIONS**

All permit holders shall be subject to the following regulations:

- (1) The sidewalk shall be kept clean and free from food, refuse or clutter at all times regardless of the source of such food refuse and clutter. No cooking or food preparation shall be permitted on the public right-of-way.
- (2) Umbrellas, approved for use as part of the approved permit, shall be removed from the public sidewalk at the end of each business day.
- (3) All public improvements on the public sidewalk shall be maintained in the condition as they existed at the time that the permit was issued. The permit holder shall be responsible to the City for any damage occurring to such public improvements where such damage arises from or occurs in consequence of the presence and/or operation of the sidewalk café. The permit holder shall immediately report any damage to such public improvements to the City Economic Development Director. The City may repair or replace such improvement in its discretion and shall charge the cost of such repair or replacement to the permit holder, unless the licensee can establish that the damage resulted from a cause not related to the operation or the use of the sidewalk café.
- (4) Use of a sidewalk café shall be conducted in a manner that does not interfere with pedestrian use of the sidewalk. At no time shall any chair, table or other item associated with the sidewalk café be placed in the street.
- (5) All tables and chairs shall be removed from the public sidewalk no later than November 1 or at the time of the first measurable snowfall after September 30, whichever occurs first. Tables and chairs may be reinstalled the following year no earlier than April 1, after a permit has been issued by the City for that year.
- (6) Permits issued pursuant to this Section shall not be transferable or assignable and shall not confer any property rights in the underlying City right-of-way.

(e) **RESTRICTIONS**

All items placed on the sidewalk by a permit holder for the operation of a sidewalk café shall be:

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- (1) located in accordance with the approved drawing; and
- (2) located so that a clear path of at least five feet shall be provided for the passage of pedestrians. The clear path shall be maintained when any chair is pulled out from a table, particularly where chair backs face the street or pedestrian walkway; and
- (3) placed so as not to obstruct normal ingress to and egress from the licensed business or any other businesses; and
- (4) placed so as not to create hazards. Incidental items placed in the public sidewalk during the day for the operation of the sidewalk café shall be properly weighted to prevent a wind-blown hazard and shall be removed at the end of the business day.
- (5) designed to be used out-of-doors. No interior tables and chairs may be placed on the sidewalk.

(f) FEES

The fee for a sidewalk café permit shall be \$25.00 per table per season.

(g) OUTDOOR CAFÉS ON PRIVATE PROPERTY

Outdoor cafés on a private sidewalk abutting a public sidewalk shall be separate from the public sidewalk and shall not encroach on the public sidewalk without a sidewalk café permit.

(h) ENFORCEMENT

Failure to comply with the provisions of this Section shall result in a fine of \$25.00 per day per violation and/or the revocation of the permit.

(i) REVOCATION

The Chief of Police or Fire Chief of the City of Wheaton upon determining that the method or manner of use of the sidewalk café or the conduct of persons serving or using such facilities pose a threat to the public health, safety or welfare shall have the power and authority to cause the items to be removed immediately and to recommend to the City Manager the revoking of the sidewalk café permit."

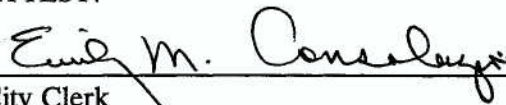
Section 2: That all ordinances and parts of ordinances in conflict with these provisions are repealed.

Section 3: This ordinance shall become effective six months after its passage, approval, and publication in pamphlet form in the manner prescribed by law.

Mayor



ATTEST:



City Clerk

Roll Call Vote:

Ayes:

Councilwoman Davenport
Councilman Gresk
Mayor Pro Tem Eckhoff
Councilman Johnson
Councilwoman Johnson
Councilman Mork

Nays:

None

Absent:

Mayor Carr

Motion Carried Unanimously

Passed: July 5, 2000
Published: July 6, 2000