

ORDINANCE F-1308

AN ORDINANCE PROHIBITING THE IMPOSITION OF ANTI COMPETITIVE NEGATIVE USE RESTRICTIONS IN CITY OF WHEATON

WHEREAS, the City of Wheaton, Illinois ("City") is an Illinois home Rule Municipality pursuant to the provisions of Article VII Section 6 of the Illinois Constitution, 1970 and may therefore exercise any power and perform any function that pertains to its government and affairs; and

WHEREAS, the subject matter of this Ordinance pertains to the government and affairs of the City and its residents; and

WHEREAS, the City has from time to time adopted various Ordinances establishing and amending zoning districts and uses within those districts; and

WHEREAS, one of the purposes of the City Zoning Ordinance is to provide for a range of compatible uses to promote the public health, safety, and welfare; and

WHEREAS, an element of the public health safety and welfare is the promotion of a vital business community to provide employment opportunities and a solid tax base for the residents of the City; and

WHEREAS, the commercial and industrial uses allowed by City's Zoning Ordinance in the C-1,C-2,C-3,C-4, C-5 and M-1 zoning districts are keystones in providing employment opportunities and tax revenues taxes for the City; and

WHEREAS, the City finds that the public purposes described above are furthered when property owners, residents and developers have the opportunity to pursue those uses allowed under the City's Zoning Ordinance; and

WHEREAS, the City Council finds that private parties should not be free to enter into and/or impose restrictions against the use of real property if such restrictions are contrary to and against the public purposes and policies expressed in this Ordinance; and

WHEREAS, the common law of the State of Illinois disfavors restrictive covenants which interfere with the reasonable use and otherwise lawful use of real property; and

WHEREAS, the City Council finds that the policy behind Illinois common law disfavoring restrictive covenants interfering with the reasonable use of real property also supports the public policies underlying this Ordinance; and

WHEREAS, the City Council finds that the purposes of the City of Wheaton Zoning Ordinance are frustrated and compromised when the benefits of competition in the market place are lost by the imposition of restrictive use covenants and restrictions upon real property in commercial and industrial zoning districts which prohibit or have the economic or practical effect of inhibiting the use of real property which would otherwise be allowed under the City's Zoning Ordinance.

WHEREAS, the Corporate Authorities for the City of Wheaton find that negative use restrictions are separate and distinct from commercially reasonable non-compete clauses, sometimes included in leases at multi tenant buildings, wherein a landlord agrees with a tenant to prohibit or restrict the use of space in a building which already has a use similar to that operated by the existing tenant and the City does not intend by this ordinance to regulate such non compete clauses; and

WHEREAS, the Corporate Authorities of the City of Wheaton find in contrast, however, that negative use restrictions, which enable an owner or operator of a business after terminating operations at a property to prevent any competitor from operating an otherwise lawful use at the same premise serves no valid public purpose but instead limits competition and unreasonably creates conditions for blighting and unoccupied commercial buildings; and

WHEREAS, pursuant to notice, the Corporate Authorities conducted a public hearing on October 22, 2007 to consider this Ordinance.

NOW, THEREFORE, BE IT ORDAINED by the Corporate Authorities of the City of Wheaton, Du Page County, Illinois, pursuant to its home rule powers, as follows:

SECTION 1: The recitals and findings of the Corporate Authorities of the City recited and contained in this Ordinance are specifically incorporated into this Ordinance

SECTION 2: The Wheaton Zoning Ordinance is amended by the addition of a new Article XXIX which shall state as follows:

ARTICLE XXIX
PROHIBITION AGAINST ANTI COMPETITIVE NEGATIVE USE
RESTRICTIONS

Section 29.1 Purpose

The purpose of this Ordinance is to prohibit establishment of negative use restrictions on property within the C-1, C-2, C-3, C-4, C-5 and M-1 Zoning Districts. This Ordinance is intended to encourage commercial competition, promote the marketability of property, reduce the probability of blight and unoccupied commercial space, and promote the health, safety and welfare of the residents of the City. It is not intended to regulate restrictions on residential properties within these zoning districts that

promote attainable housing or conservation easements as provided for by 765 ILCS 120/1 et seq.

Section 29.2 Definition

Negative Use Restriction shall mean: any private agreement, deed or other document, whether recorded or not recorded, which purports to impose any restriction prohibiting, inhibiting, or which has the economic or practical effect of prohibiting or inhibiting, the permitted or special uses identified in the City Zoning Ordinance for property located in the C-1, C-2, C-3, C-4, C-5 or M-1 Zoning Districts. Negative Use Restriction shall not be interpreted to include: provisions in a lease for a multi-tenant building in which a landlord or owner agrees with a tenant to not lease other space in the same multi tenant building to a different tenant to operate a business of the same type as an existing business in that building; restrictions imposed on residential properties within the identified zoning districts that are intended to promote attainable housing; or qualified conservation easements as provided for by 765 ILCS 120/1 et seq.

Section 29.3 Negative use restrictions prohibited against public policy.

Any Negative Use Restriction imposed on real property within the C-1, C-2, C-3, C-4, C-5 or M-1 Zoning Districts shall be void and unenforceable unless the City Zoning Administrator determines that the following factors are present and undertakes the following action:

- A. The person or entity proposing a negative use restriction is substituting a use substantially similar or identical to the use which is or was on the property for which the negative use restriction is proposed and the proposed substitute use is within the geographic area bounded by the zoning district in which the property proposed for the negative use restriction is located or an area substantially contiguous to that geographic area which is zoned to allow the substitute use; and
- B. The owner has submitted plans required by the City's Zoning Administrator, subdivision regulations, and building ordinances for the construction of the substitute use; and
- C. It is reasonable to conclude that the substitute use shall commence operations within eighteen (18) months of the discontinuance of the use on the existing property for which the negative use restriction is proposed; and
- D. Issues a written certificate certifying that the owner or operator has established the conditions to permit the document containing the negative use restriction which shall be recorded by the City Clerk at the Recorder of Deeds at the owner or operator's expense.

Section 29.4 Appeal of Denial of Written Certificate

Any denial by the Zoning Administrator of a written certificate authorizing a negative use restriction may be appealed to the Corporate Authorities of the City who may grant the certificate upon a finding that the applicant has satisfied the requirements of subsections A-C of Section 29.3 of this Ordinance.

Section 29.5 Failure to complete the substitute use

If the owner/operator of the substitute use has not secured an occupancy permit within eighteen (18) months of the date of issuance by the Zoning Administrator or Corporate Authorities of a certificate authorizing a negative use restriction the Zoning Administrator shall withdraw the certificate allowing the negative use and record the withdrawal with the Recorder of Deeds. The eighteen months time period may be extended for up to twenty-four (24) months by the Corporate Authorities of the City upon good cause shown.

Section 29.6 Maximum Length of authorized negative use restriction

No negative use restriction authorized pursuant to section 29.3 of this Ordinance shall be valid for a period longer than 10 years from the date of issuance of the certificate of the City Zoning Administrator or Corporate Authorities authorizing the negative use.

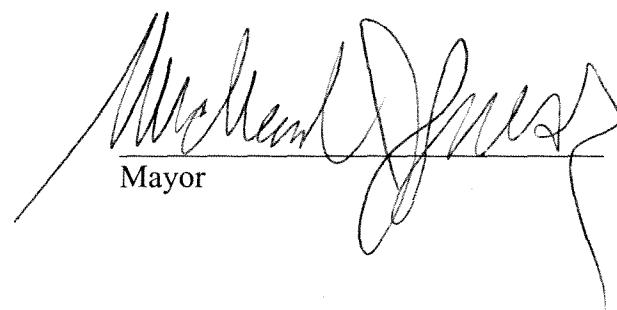
Section 29.6 Penalties

Each day, starting from the date of any agreement, deed or other document establishing a negative use restriction, prohibited by this Ordinance, whether recorded or not recorded, shall constitute a separate offense subject to the imposition of a fine not less than \$250.00 nor more than \$1,000.00 per day for each day the violation continues to exist. For recorded negative use restrictions in violation of this Ordinance, a violation shall only abate upon the recording of a document fully abrogating the negative use restriction. For non-recorded use restrictions the violation shall abate on the date that the owner/operator files with the City's Zoning Administrator a document fully abrogating the negative use restriction.

SECTION 3: All ordinances and parts of ordinances in conflict with or inconsistent with the provisions of this ordinance are hereby repealed to the extent of any such conflict or inconsistency.

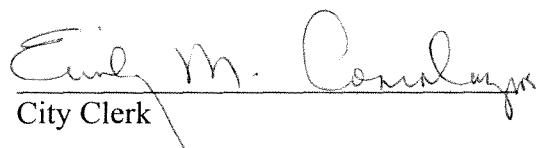
SECTION 4: If any part of part or portion of this ordinance shall be declared invalid by a court of competent jurisdiction, such partial invalidity shall not affect the remainder of this ordinance.

SECTION 5: This ordinance shall become effective from and after its passage, approval, and publication in pamphlet form in the manner prescribed by law.



Michael Gresk
Mayor

ATTEST:



Emily M. Connally
City Clerk

Roll Call Vote

Ayes: Councilman Mouhelis
Councilman Prendiville
Councilman Suess
Councilwoman Corry
Councilman Johnson
Councilman Levine
Mayor Gresk

Nays: None

Absent: None

Motion Carried Unanimously

Passed: November 5, 2007
Published: November 6, 2007