

ORDINANCE NO. O-2019-23

**AN ORDINANCE REPEALING AND RESCINDING SECTION 42-8 "HINDERING,  
OBSTRUCTING, DELAYING PERSONS USING PUBLIC WAYS," OF ARTICLE I "IN GENERAL,"  
OF CHAPTER 42 OF THE WHEATON CITY CODE AND ADOPTING A NEW SECTION 42-8  
TO BE ENTITLED "BLOCKING PASSAGE," OF ARTICLE I, "IN GENERAL," CHAPTER 42  
"OFFENSES AND MISCELLANEOUS PROVISIONS"**

**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, and as such the City may exercise any power and perform any function pertaining 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 of Wheaton regulates the hindering, obstruction and delaying of persons using public ways in Article I, "In General" of the Wheaton City Code; and

**WHEREAS**, it is not the City of Wheaton's intent to newly criminalize any behavior but rather to update and clarify the existing provision on "[h]indering, obstructing, [and] delaying persons using public ways" in light of the recent court decision rendered by the United States Court of Appeals for the District of Columbia in *Agnew v. Gov't of the Dist. of Columbia*, 2019 U.S. App. LEXIS 10060 (D.C. 2019); and

**WHEREAS**, the City of Wheaton has a significant interest in promoting the safety and order of its citizens on public streets and sidewalks, and in protecting the property rights of all of its citizens. *Madsen v Women's Health Center*, 512 U.S. 753, 768 (1994); and

**WHEREAS**, the City of Wheaton has a significant interest in controlling pedestrian congestion. *Ayres v. City of Chicago*, 125 F. 3d. 1010, 1015 (7<sup>th</sup> Dist. 1997); and

**WHEREAS**, the City of Wheaton has the duty and responsibility to keep its public ways open and available for movement. *Cox v. Louisiana*, 379 U.S. 536, 554-55 (1965); *Jones v. Watson*, 106 F.3d 774, 779 (7<sup>th</sup> Cir. 1997); and

**WHEREAS**, the City of Wheaton has a significant interest in keeping order on school property. *Grayned v. City of Rockford*, 408 U.S. 104 (1972); and

**WHEREAS**, the Corporate Authorities of the City of Wheaton find that it is in the best interest of public health, safety, and general welfare that the following amendments be adopted.

**NOW, THEREFORE, BE IT ORDAINED**, by the Corporate Authorities of the City of Wheaton, Wheaton, Illinois, pursuant to its home rule authority, as follows:

Section 1: That Section 42-8 "Hindering, obstructing, delaying persons using public ways," of Article I "In General," of Chapter 42 "Offenses and Miscellaneous Provisions" of the Wheaton City Code is hereby repealed and rescinded in its entirety and replaced with a new Section 42-8 to be entitled "Blocking passage" which shall read as follows:

**"42-8: Blocking Passage**

(a) It shall be unlawful for a person, alone or in concert with others:

(1) To crowd, obstruct, or disrupt:

(A) The use of any street, sidewalk, or public way;

(B) The entrance of any public or private building or enclosure;

(C) The use or passage through any public building or public conveyance; or

(D) The passage through or within any park; and

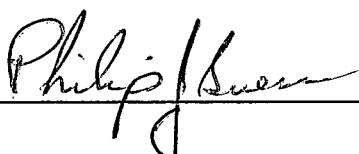
(2) To continue or resume the crowding, obstructing, or disrupting after being instructed by a law enforcement officer to cease such activities. Ceasing shall include relocating to an immediately adjacent area where such activities do not have the foregoing effect.

(b) A person who violates any provision of this section shall be guilty of a petty offense and, upon conviction, shall be fined in accordance with Chapter 1, Section 1-8 of the Wheaton City Code."

Section 2: If a court of competent jurisdiction sets aside any portion of this Ordinance as unconstitutional or unlawful, it shall not affect the validity of the remainder of this Ordinance.

Section 3: Any ordinance which is inconsistent with this Ordinance is repealed to the extent of such inconsistency.

Section 4: This Ordinance shall become effective upon passage, execution by the Mayor and publication as required by law.

  
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Philip J. Kuehn  
Mayor

ATTEST:

  
Sharon Bennett Hagan  
City Clerk

Roll Call Vote:

Ayes: Councilman Rutledge  
Councilman Scalzo  
Councilman Barbier  
Councilwoman Bray-Parker  
Councilwoman Fitch  
Mayor Suess

Nays: None

Absent: None

Motion Carried Unanimously

Passed: June 3, 2019

Published: June 4, 2019

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