

ORDINANCE NO. O-2020-23

**AN ORDINANCE APPROVING THE EXTENSION OF THE
EMERGENCY ORDER OF THE MAYOR OF THE CITY OF WHEATON
SUSPENDING ENFORCEMENT OF PORTIONS OF THE CITY'S ZONING ORDINANCE AND LIQUOR
CONTROL ORDINANCE BASED UPON THE ECONOMIC IMPACTS OF THE COVID-19 PANDEMIC**

WHEREAS, Section 2-127 "Emergency Powers and Duties" of Chapter 2 "Administration" of the Wheaton City Code grants authorization to the Mayor of the City of Wheaton to enter executive orders "upon the declaration of a local state of emergency;" and

WHEREAS, the authority to declare a state of emergency and to issue local executive orders under Section 2-127 is exclusive to the Mayor; and

WHEREAS, the authority set forth in Section 2-127 of Chapter 2 of the Wheaton City Code stands independent of any prior declarations of emergency and local executive orders issued thereunder; and

WHEREAS, on May 24, 2020, the Wheaton City Council voted not to renew the March 23, 2020 executive order declaring a local emergency, except as it related to the conduct of public meetings by electronic means; and

WHEREAS, Ordinance 2-127 contains the language "but not limited to" to provide flexibility in times of emergency, and the Wheaton City Council has concluded that severe economic damages related to a pandemic are analogous to the "destruction of property" as set forth in Ordinance 2-127, providing the underlying legal authority for this ordinance; and

WHEREAS, effective May 24, 2020, Governor Pritzker has amended his emergency declaration and established Phase 3 guidelines for Restore Illinois for the reopening of some businesses and returning people to work safely; and

WHEREAS, the areas that the Governor has provided Phase 3 guidelines for reopening are described as "manufacturing, health and fitness centers, offices, personal care centers, retail, outdoor recreation, service counters, day camps, youth sports, restaurants and bars" (hereinafter "Designated Businesses").

NOW, THEREFORE, BE IT ORDAINED by the Mayor and City Council of the City of Wheaton, DuPage County, Illinois, pursuant to its home rule authority, as follows:

SECTION 1: That the emergency order suspending enforcement of certain portions of the City's Zoning Ordinance and Liquor Control Ordinance entered by Mayor Philip J. Suess on May 27, 2020, pursuant to a declaration of emergency of the same date, is hereby adopted as an ordinance of the City of Wheaton. The order is attached hereto and incorporated herein as EXHIBIT 1.

SECTION 2: This ordinance shall remain effective until the Governor of the State of Illinois removes the restrictions on the Designated Businesses and allows them to return to the operations of those businesses as they existed prior to the Governor's emergency declaration on March 23, 2020, or upon repeal of this Ordinance, whichever occurs first.

SECTION 3: 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 the Ordinance.

SECTION 4: That this ordinance shall become effective upon its approval, execution and posting in conformance with the law.


Philip J. Suess

Mayor

ATTEST:


Anna Bennett Fagan
City Clerk

Roll Call Vote:
Ayes: Councilwoman Fitch
Mayor Suess
Councilwoman Robbins
Councilman Rutledge
Councilman Zaruba
Councilman Barbier
Councilwoman Bray-Parker

Nays: None
Absent: None

Passed: June 1, 2020
Published: June 2, 2020

2020-008

**DECLARATION OF EMERGENCY AND EXECUTIVE ORDER OF THE MAYOR
OF THE CITY OF WHEATON, ILLINOIS:
SUSPENDING ENFORCEMENT OF PORTIONS OF THE CITY'S ZONING
ORDINANCE AND LIQUOR CONTROL ORDINANCE BASED UPON THE
ECONOMIC IMPACTS OF THE COVID-19 PANDEMIC**

WHEREAS, Section 2-127 "Emergency Powers and Duties" of Chapter 2 "Administration" of the Wheaton City Code grants authorization to the Mayor of the City of Wheaton to enter executive orders "upon the declaration of a local state of emergency"; and

WHEREAS, the authority to declare a state of emergency and to issue local executive orders under Section 2-127 is exclusive to the Mayor; and

WHEREAS, the authority set forth in Section 2-127 of Chapter 2 of the Wheaton City Code stands independent of any prior declarations of emergency and local executive orders issued thereunder; and

WHEREAS, on May 24, 2020, the Wheaton City Council voted not to renew the March 23, 2020 executive order declaring a local emergency, except as it related to the conduct of public meetings by electronic means; and

WHEREAS, Ordinance 2-127 contains the language "but not limited to" to provide flexibility in times of emergency, and I have concluded that severe economic damages related to a pandemic are analogous to the "destruction of property" as set forth in Ordinance 2-127: providing the underlying legal authority for this order; and

WHEREAS, effective May 24, 2020, Governor Pritzker has amended his emergency declaration and establish Phase 3 guidelines for Restore Illinois for the reopening of businesses and returning people to work safely; and

WHEREAS, the areas that the Governor has provided Phase 3 guidelines for reopening are described in those guidelines as manufacturing, health and fitness centers, offices, personal care centers, retail, outdoor recreation, service counters, day camps, youth sports, restaurants and bars (hereinafter "Designated Businesses"); and

WHEREAS, there is insufficient time prior to May 29, 2020, based upon staff obligations under this order, and the timing of the issuance Governor's guideline and tool box to bring this matter before the Wheaton City Council, to consider affirmation of this order's terms and to allow Designated Businesses to make the preparations necessary to go forward with those reopening options.

NOW, THEREFORE, BASED ON THE FOREGOING RECITALS, I, Philip J. Suess, as Mayor of the City of Wheaton, hereby order instanter, pursuant to my executive powers granted by law and the declaration of emergency, that:

SECTION 1. The foregoing recitals are incorporated herein as if fully set forth as substantive provisions.

SECTION 2. Pursuant to my authority under Section 2-127 "Emergency Powers and Duties" of Chapter 2 "Administration" of the Wheaton City Code, I hereby declare a local state of emergency for a period of seven (7) days based upon the economic calamity resulting from the severe and devastating economic impacts of the state's COVID-19 declaration of emergency, being the eminent threat of the loss of, economic and business assets and employee livelihoods; and

SECTION 3. Based upon the declaration of emergency contained herein, I hereby suspend enforcement of any zoning ordinance of the City of Wheaton (Wheaton Zoning Ordinance F-0393); and "Alcoholic Beverages" Chapter 6, Section 6 – 1 through Section 6 – 132 of the Wheaton City Code and Ordinances which would prohibit, or have the effect of prohibiting, the operation of the Designated Businesses on private property or in City right-of-way which is adjacent or approximately adjacent to any Designated Business; so long as the designated businesses are operated in full compliance with the guidelines and tool kits set forth in Governor J.B. Pritzker's "Restore Illinois" Phase 3 guidelines for reopening of businesses and returning people to work safely in the state of Illinois and the approval of the City Manager as it related to City Right of way. Said guidelines and tool kits are incorporated herein as if fully set forth as GROUP EXHIBIT 1. To be qualified for the benefits of this order a designated business must possess all Wheaton licenses required to operate in Wheaton.

SECTION 4. That the City Manager of the City of Wheaton or his designees are hereby authorized to undertake any and all administrative acts reasonably necessary to effectuate the purpose of this order for the next seven (7) days.

SECTION 5. Should any provision of this order be declared invalid by a Court of competent jurisdiction, said declaration shall not affect the validity of the remainder of the order.

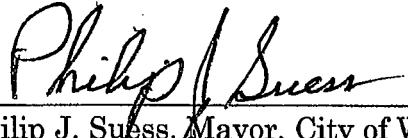
SECTION 6. This order shall become effective immediately, and be in effect for seven (7) days, upon its signing and attestation by the City Clerk.

SECTION 7. That this order shall be presented to the Wheaton City Council on June 1, 2020, for its consideration of the extension of its provisions.

SECTION 8. Other than suspensions of the City of Wheaton Zoning Ordinance and City of Wheaton Alcoholic Beverage Ordinance as described above, all ordinances, including those un-affected portions of the Zoning Ordinance and Alcoholic Beverage Ordinance, of the City of Wheaton shall remain in full force and effect except as they may have been qualified to any degree by my prior executive orders.

SECTION 9. I further authorize the Wheaton Police Chief, or designee, to impose any conditions upon the operation of a specific Designated Business in the public right-of-way which he deems necessary and appropriate for the public health, safety and welfare.

SO ORDERED this 27th day of May 2020.


Philip J. Suess, Mayor, City of Wheaton

ATTEST:


Sharon Bennett Hogan
City Clerk

Date: May 27, 2020

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