

ORDINANCE NO. O-2021-13

AN ORDINANCE OF THE CITY OF WHEATON RATIFYING A MAYORAL EXECUTIVE ORDER SUSPENDING ENFORCEMENT OF PORTIONS OF THE CITY OF WHEATON ZONING ORDINANCE (ORDINANCE NO. F-0393) AND CHAPTER 6 "ALCOHOLIC BEVERAGES," SECTIONS 6-1 THROUGH 6-132 OF THE CODE OF ORDINANCES OF THE CITY OF WHEATON TO ALLOW OCCUPANCY OF A PORTION OF HALE STREET FOR DINING TENTS AND ASSOCIATED ACCOUTREMENTS

WHEREAS, the Mayor of the City of Wheaton declared several local states of emergency based upon the COVID-19 pandemic; and

WHEREAS, the declarations were entered by the Mayor in conformance with Illinois Municipal Code Section 5/11-1-6, the Illinois Emergency Management Agency Act Section 330/5/11, and Chapter 2, Article III, Section 2-127 of the Wheaton City Code; and

WHEREAS, the Wheaton downtown business district is a vital economic artery of the City and has suffered, and continues to suffer, negative business impacts as a consequence of the COVID-19 pandemic; and

WHEREAS, restaurants along Hale Street, between Front Street and Wesley Street, (hereinafter "Affected Area"), like other Wheaton restaurants, have suffered business interruptions as a consequence of the COVID-19 pandemic; and

WHEREAS, the Affected Area is amenable to temporary street closing for vehicular traffic to allow the installation of dining tents and associated accoutrements due to its limited length and the ability of other streets in the downtown business area to accommodate traffic movements both north, south, east and west of the Affected Area; and

WHEREAS, temporary street closure in the Affected Area will enhance pedestrian traffic in most areas of the downtown business district and, therefore, benefit all downtown business areas during a temporary street closure; and

WHEREAS, due to the Affected Area's dimensions, it will be easier to monitor and control social distancing, masking and other COVID-19 pandemic-related control methodologies as opposed to attempting to do the same throughout the entire Wheaton downtown business district; and

WHEREAS, the Affected Area is best suited in Wheaton's downtown business area to police and fire controls if the street in the Affected Area is temporarily closed; and

WHEREAS, the purpose of the temporary street closure of the Affected Area is to attempt to ameliorate some of the impacts of the COVID-19 pandemic both economically and socially in the downtown business district in the City of Wheaton while further attempting to control the spread of COVID-19.

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

SECTION 1: That for purposes of this Ordinance, a “Designated Business” is any business located in the Affected Area which provides food and beverage service to the public.

SECTION 2: The enforcement of any section of the Zoning Ordinance of the City of Wheaton (Ordinance No. F-0393), and Chapter 6, “Alcoholic Beverages,” Sections 6-1 through Section 6-132 of the Code of Ordinances of the City of Wheaton, which would prohibit or have the effect of prohibiting the deployment and use of dining tents in the street in the Affected Area by Designated Businesses including accoutrements are hereby suspended in conformance with the terms of the Ordinance, so long as a “Designated Business” is operated in full compliance: with the guidelines and the tool kits set forth in any “phase” guidelines established by the office of the Illinois Governor for the reopening of businesses and returning of people to work safely in the State of Illinois; this Ordinance; and non-suspended Ordinances of the City of Wheaton; and the enforcement of those laws, guidelines and tool kits by the City Manager as it relates to the Affected Area and Designated Businesses.

SECTION 3: In order for the Designated Businesses to be authorized to occupy the dining tents and install the associated accoutrements for retail sale of food and beverages in the street in the Affected Area, the Designated Business shall:

- A. Possess and maintain during the period of street occupancy all licenses and permits required to operate in the City of Wheaton; and
- B. Control and manage the street occupancy and installment of associated accoutrements in the Affected Area in conformance with this Ordinance during the period of street occupancy; and
- C. Comply with all applicable sections of the Wheaton City Code pertaining to alcoholic beverages; and
- D. Follow any orders or administrative conditions imposed on an emergent basis by the City Manager, Chief of the Police, Chief of the Wheaton Fire Department, or Wheaton’s Public Works Director or their designee, which are intended to protect the public health, safety and welfare; and
- E. Sign the Hold Harmless and Indemnification Agreement attached hereto and incorporated herein as if fully set forth as EXHIBIT 1; and
- F. Provide commercial liability coverage and umbrella coverage in the aggregate amounts of \$1,000,000 and \$2,000,000 naming the City, its officers, elected officials, employees, agents and volunteers as an additional insured; and

- G. Comply with all Illinois State statutes pertaining to the licensing and sale of alcoholic liquor, if the Designated Business sells alcoholic beverages; and
- H. Provide and maintain the access required under the Americans with Disabilities Act; and
- I. Not obstruct fire hydrants.

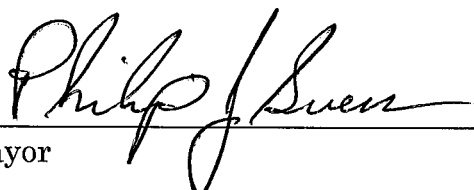
SECTION 4. That the City Manager of the City of Wheaton or his designees are hereby authorized to undertake any and all administrative acts reasonably necessary to effectuate the purpose of this order for the next seven (7) days.

SECTION 5. The temporary street occupancy and installation of associated accoutrements in the Affected Area by a Designated Business shall commence April 26, 2021 and terminate on the first to occur of the following:

- A. An Ordinance adopted by the Wheaton City Council repealing this Ordinance; or
- B. End of business on September 7, 2021; or
- C. Suspension or revocation of a temporary street occupancy by the Corporate Authorities of the City based on a violation of this Ordinance.

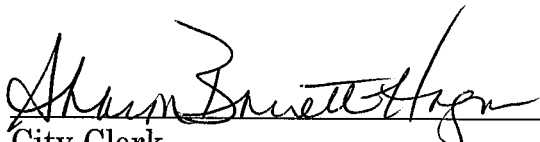
SECTION 6. Should any provision of this ordinance be declared invalid by a Court of competent jurisdiction, said declaration shall not affect the validity of the remainder of the order.

SECTION 7. This ordinance shall become effective upon its passage, execution and publication as provided by law.



Mayor

Attest:



City Clerk

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

Nays: None
Absent: None
 Motion Carried Unanimously

Passed: April 5, 2021
Published: April 6, 2021

2021-02

**EXECUTIVE ORDER OF THE MAYOR OF THE CITY OF WHEATON DECLARING
A STATE OF EMERGENCY AND SUSPENDING ENFORCEMENT OF PORTIONS OF
THE CITY OF WHEATON ZONING ORDINANCE (ORDINANCE NO. F-0393) AND
CHAPTER 6 "ALCOHOLIC BEVERAGES," SECTIONS 6-1 THROUGH 6-132 OF THE
CODE OF ORDINANCES OF THE CITY OF WHEATON TO ALLOW OCCUPANCY
OF A PORTION OF HALE STREET FOR DINING TENTS AND ASSOCIATED
ACCOUTREMENTS**

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 to enter executive orders "upon the declaration of a local state of emergency"; and

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

WHEREAS, Illinois is currently under a phased reopening plan which concludes that the COVID-19 pandemic remains active and constitutes a continuing threat to the health and safety of the citizens of Illinois, and

WHEREAS, medical progress has been made with vaccines and therapeutic modalities to mollify and treat COVID-19 which provide promise and hope that prevention and treatment strategies are moving towards Phase 5 status under the States phasing strategy; and

WHEREAS, medical experts caution that the progress being made in prevention and therapeutic treatment of COVID-19 should not lead to the premature withdrawal of COVID phasing strategy limitations and the issues resulting from new variants of COVID; and

WHEREAS, Section 2-127 of the Wheaton City Code contains the language "but not limited to" to provide flexibility in times of emergency, and I have concluded based on the foregoing recitals and other best practices information that there continues to be a state of emergency in the City of Wheaton in that the disease known as COVID-19 continues to exist and represents a real and significant natural disaster resulting in the injury and threat of injury to persons in Wheaton and that extraordinary measures must still be taken but modified consistent with Phase 4 strategies to promote protection of the public health, safety and welfare from such conditions while also promoting the public health benefits of educational and community opportunities; and

WHEREAS, this emergency declaration and corresponding order shall be effective for seven (7) days only, unless the Wheaton City Council adopts an ordinance extending the zoning relief set forth herein.

NOW, THEREFORE, BASED ON THE FOREGOING RECITALS, I, Philip J. Suess, as Mayor of the City of Wheaton, hereby order and declare instantler, pursuant to the powers

granted by law and this declaration of emergency, but only for such purpose as stated in this order and declaration of emergency, as follows:

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

SECTION 2. Pursuant to my authority set forth in Section 2-127 "Emergency Powers and Duties" of Chapter 2 "Administration" of the Wheaton City Code, I hereby declare a local state of emergency based upon the natural disaster of the COVID-19 pandemic and it being an efficient cause of serious illness, and based upon said declaration and consistent with Section 2-127 (b) (3), I hereby issue an order. The enforcement of any section of the Zoning Ordinance of the City of Wheaton (Ordinance No. F-0393), and Chapter 6, "Alcoholic Beverages," Sections 6-1 through Section 6-132 of the Code of Ordinances of the City of Wheaton, which would prohibit or have the effect of prohibiting the deployment and use of dining tents in the street in the Affected Area by Designated Businesses including accoutrements are hereby suspended in conformance with the terms of the Ordinance, so long as a "Designated Business" is operated in full compliance with the guidelines and the tool kits set forth in: any "phase" guidelines established by the office of the Illinois Governor for the reopening of businesses and returning of people to work safely in the State of Illinois; this Ordinance; and non-suspended Ordinances of the City of Wheaton; and the enforcement of those laws, guidelines and tool kits by the City Manager as it relates to the Affected Area and Designated Businesses.

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- B. Control and manage the street occupancy and installment of associated accoutrements in the Affected Area in conformance with this Ordinance during the period of street occupancy; and
- C. Comply with all applicable sections of the Wheaton City Code pertaining to alcoholic beverages; and
- D. Follow any orders or administrative conditions imposed on an emergent basis by the City Manager, Chief of the Police, Chief of the Wheaton Fire Department, or Wheaton's Public Works Director or their designee, which are intended to protect the public health, safety and welfare; and
- E. Sign the Hold Harmless and Indemnification Agreement attached hereto and incorporated herein as if fully set forth as EXHIBIT 1; and

- F. Provide commercial liability coverage and umbrella coverage in the aggregate amounts of \$1,000,000 and \$2,000,000 naming the City, its officers, elected officials, employees, agents and volunteers as an additional insured; and
- G. Comply with all Illinois State statutes pertaining to the licensing and sale of alcoholic liquor, if the Designated Business sells alcoholic beverages; and
- H. Provide and maintain the access required under the Americans with Disabilities Act; and
- I. Refrain from obstructing fire hydrants.

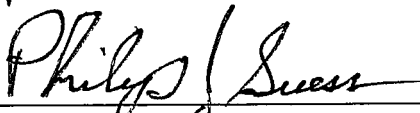
SECTION 4. That the City Manager of the City of Wheaton or his designees are hereby authorized to undertake any and all administrative acts reasonably necessary to effectuate the purpose of this order for the next seven (7) days.

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 April 5, 2021, for its consideration of the extension of its provisions.

SO ORDERED this 15th day of April, 2021.


Philip J. Sues, Mayor, City of Wheaton

ATTEST:


City Clerk

Date: 4/11/21

