

**ORDINANCE NO. O-2023-18**

**AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF WHEATON CHAPTER 26 (BUSINESSES), ARTICLE II (LICENSING)**

**WHEREAS**, the City of Wheaton ("City") is an Illinois Home Rule Municipality pursuant to 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 desires to amend certain guidelines and restrictions pertaining to the permitting of outdoor cafes on the city right-of-way in order to provide for the safe passage of all pedestrians in accordance with all state and/or federal laws.

**NOW, THEREFORE, BE IT ORDAINED** by the Mayor and City Council of the City of Wheaton, Illinois by its home rule authority, that the Wheaton City Code, Chapter 26 (Businesses), Article II (Licensing) is hereby amended.

**SECTION 1.** That Chapter 26 (Businesses) Article II (Licensing) is hereby repealed in its entirety and replaced with the following:

**Sec. 26-54. Outdoor Cafe Permits.**

- (a) *Permit required.* It shall be unlawful for business to use the public sidewalk or amenity zone for the operation of an outdoor cafe whether offering direct service to the table or not, without obtaining an outdoor cafe 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, but the outdoor cafe may not begin operation prior to April 1; and 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 this Code.
- (b) *Definitions.* The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Amenity zone* means any area of brick pavers adjacent to the public sidewalk and continuing to the curb.

*Business* means any person, firm, corporation, organization, association or other entity.

*Outdoor cafe* means any area on the public sidewalk and/or amenity zone 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.

*Sidewalk* means any concrete area in the public right-of-way adjacent to a licensed food service business and continuing to the amenity zone.

*Public right-of-way* means the sidewalk and amenity zone together.

- (c) *Application.* All applicants for outdoor cafe 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. All applications shall include:
  - (1) A dimensioned drawing showing the public right-of-way adjacent to the business, any streetlights, 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 as an additional insured for the term of the permit and including a liability insurance policy of not less than \$2,000,000.00 per occurrence.
  - (3) A signed indemnification statement on a form provided by the city.
- (ci) *Placement.* The exact location of an outdoor cafe shall be determined by the director of engineering or his designee as an exercise of discretion weighing and applying all the factors the director of engineering or his designee deems relevant in determining the placement of the sidewalk cafe at a particular applicant's location.
- (cii) *Regulations.* All permit holders shall be subject to the following regulations:
  - (1) The public right-of-way shall be kept clean and free from food, refuse, garbage, litter or clutter at all times regardless of the source of such items. No cooking or food preparation shall be permitted on the public right-of-way.
  - (2) Umbrellas, approved for use as part of the outdoor cafe, shall be collapsed at the end of each business day. No umbrella shall contain any advertising, logo or message which promotes the sale of a specific brand of alcoholic liquor or generally promotes the sale of alcoholic liquor or the presence of a bar or lounge shall be permitted. No umbrella shall obstruct any street signs. The edge of the umbrella shall maintain a minimum vertical clearance of seven (7) feet from the sidewalk surface and shall be located so that a clear path of at least three (3) feet shall be provided for the passage of pedestrians and be no closer than one foot from the curb line. The amenity zone may be included as part of the required three (3) foot pedestrian passage as long as it meets the requirements of the Illinois Accessibility Code.
  - (3) All public improvements on the public right-of-way 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 outdoor cafe. 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 permittee can establish that the damage resulted from a cause not related to the operation or the use of the outdoor cafe.

- (4) Use of an outdoor cafe 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 outdoor cafe be placed in the street, unless otherwise approved by the city.
- (5) All tables and chairs shall be removed from the public right-of-way no later than November 1. 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 public right-of-way.
- (7) Pursuant to section 36-25 of the Wheaton City Code, it shall be unlawful to: smoke or vape in any outdoor cafe, for the owner, occupant or lessee, as the case may be, in control of an outdoor cafe to knowingly permit smoking or vaping in the area available for an outdoor cafe; or to smoke or vape within 25 feet of an outdoor cafe.
- (8) It shall be the permittee's responsibility to accommodate persons with disabilities at the outdoor cafe in conformance with applicable state and/or federal laws.

(f) *Restrictions.* All tables and chairs placed on the public right-of-way by a permit holder for the operation of an outdoor cafe shall be:

- (1) Located in accordance with the approved drawing;
- (2) Located so that a clear path of at least three (3) 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. The amenity zone may be included as part of the required three (3) foot pedestrian passage as long as it meets the requirements of the Illinois Accessibility Code;
- (3) Placed so as not to obstruct normal ingress to and egress from the licensed business or any other business;
- (4) Placed so as not to create hazards. Incidental items placed in the public sidewalk during the day for the operation of the outdoor cafe shall be properly weighted to prevent a wind-blown hazard and shall be removed at the end of the business day; and
- (5) Designed to be used out-of-doors. No interior tables and chairs may be placed on the public right-of-way.

(g) *Fees.* The fee for an outdoor cafe permit shall be as established in appendix B of this Code.

(h) *Outdoor cafes on private property.* Outdoor cafes on a private sidewalk abutting a public sidewalk shall be separate from the public sidewalk and shall not encroach on the public sidewalk without an outdoor cafe permit.

(i) *Outdoor cafe standards with alcohol being served.* All procedures set forth for a standard outdoor cafe permit shall apply in addition to the following:

- (1) The service and consumption of alcohol shall be limited to the hours of operation of the licensed business and in all cases shall cease at 11:00 p.m.
- (2) Alcoholic beverages shall only be served to patrons of the establishment by a server in the outdoor cafe. There shall be no carry-out or carry-in of alcoholic beverages to and from the outdoor cafe.
- (3) Patrons of the licensed establishment shall remain seated at the outdoor cafe when consuming alcohol.
- (4) The service of alcoholic liquor at the outdoor cafe shall be incidental to the service of meals and only during a period of time when patrons of the permittee are offered a complete meal or other food in accordance with the type of restaurant.
- (5) No person shall leave the outdoor cafe with an alcoholic beverage. Any person doing so shall be in violation of sections 6-128 and 42-20 of the Wheaton City Code.

(j) *Enforcement.* Failure to comply with the provisions of this section may result in the revocation of the permit.

(k) *Revocation.* The planning and economic development director or designee of the city, upon determining that the permit holder has failed to comply with this section or any other applicable provision of the Wheaton City Code or that the method or manner of use of the outdoor cafe 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 revoke the outdoor cafe permit if the permit holder does not rectify the violation within twenty-four (24) hours after receipt of notice of the violation, at which time the permit holder must cease the operation of the outdoor cafe.

(l) *Appeals.*

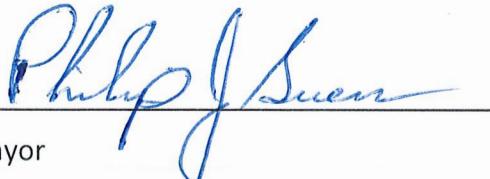
- (1) In the event the planning and economic development director revokes the outdoor café permit, the permit holder may file a written appeal with the city manager within ten (10) days after the date of the revocation. The written appeal shall set forth the reasons why the permit holder believes the decision to revoke the outdoor cafe permit should be reversed. The city manager shall respond to the appeal within fourteen (14) days either affirming or reversing the decision to revoke the permit.
- (2) The decision of the city manager as provided in subsection (1) above shall be the final administrative action of the city with respect to the revocation of the outdoor café permit.
- (3) The city manager may delegate any duty or power set forth in this section, including but not limited to, the issuance of any final decision, to such city official as the city manager may designate.

**SECTION 2.** In all other respects, the terms and provisions of the Wheaton City Code are ratified and remain in full force and effect.

**SECTION 3.** All ordinances or parts of ordinances in conflict with these provisions are hereby repealed.

**SECTION 4.** In the event that any section, clause, provision, or part of this ordinance shall be found and determined to be invalid by a court of competent jurisdiction, all valid parts that are severable from the invalid parts shall remain in full force and effect.

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



Philip J. Suess  
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Mayor

ATTEST:



Andrea Rosedale

City Clerk

Ayes:

Roll Call Vote:

Councilwoman Bray-Parker  
Councilman Brown  
Mayor Suess  
Councilman Clousing  
Councilwoman Robbins  
Councilman Weller

Nays:  
Absent:

Councilman Barbier  
None  
Motion Carried

Passed: June 5, 2023

Published: June 6, 2023

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