

ORDINANCE NO. F-1079

AN ORDINANCE AMENDING CHAPTER 58 OF THE WHEATON CITY CODE

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

Section 1: The Wheaton City Code is hereby amended by adding a new paragraph to Chapter 58 (Streets, Sidewalks and Other Public Places), Section 71 (Driveway approaches—Construction generally.), as follows:

“(d) *Drive approaches.* Drive approaches consisting of decorative materials or finishes may be constructed for residential lots only. Decorative drive approaches shall consist of clay or concrete brick pavers, dyed and stamped Portland cement concrete or bituminous concrete, or other such materials or finishes as may be approved by the Director of Engineering. Decorative drive approaches shall be subject to the following conditions:

(1) **Permit.** No person shall install a decorative drive approach without having secured a permit from the City.

(2) **Maintenance by property owner.** The owner of the property which is served by the decorative drive approach shall be solely responsible for all maintenance and repair of the decorative drive approach within the city right-of-way. Specifically, the owner shall maintain the decorative drive approach within the right-of-way so that the materials remain securely in place and generally level. The city shall not be liable for the costs of any maintenance or repairs to the decorative drive approach regardless of the reason(s) requiring the maintenance or repair.

(3) **No maintenance or repair obligation by the city.** The city shall have no obligation or responsibility to maintain or repair the decorative drive approach within the city right-of-way. Provided, however, in the event the owner fails to maintain and repair the decorative drive approach within the city right-of-way, the city may, but need not, perform the necessary maintenance and repair to the decorative drive approach, at the expense of the owner. The city shall not perform any discretionary maintenance or repair to the decorative drive approach within the city right-of-way without first providing fourteen (14) days written notice to the owner.

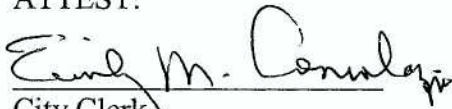
(4) **Restoration obligations.** In the event it becomes necessary for the City or its contractors to perform any maintenance or repairs within the city right-of-way, the owner agrees that by taking out a permit, the city or its contractors may remove or dig up the decorative drive approach within the right-of-way without notice to the owner. In this event, neither the city nor its contractors shall have any obligation to replace, repair, or otherwise reconstruct the decorative drive approach; the responsibility and the cost thereof shall be the obligation of the owner. The Director of Public Works or the Director of Engineering may, however, authorize a partial cost reimbursement which would reflect the city’s cost to repair the disturbed portion of the decorative drive approach with asphalt.

(5) **Release, hold harmless, and indemnification.** The owner, the applicant taking out a permit on behalf of the owner, and the owner's heirs, successors and assigns hereby releases and forever discharges the city, its officers, employees, assigns, successors and/or agents from any and all claims, demands, damages, costs, expenses (including reasonable attorneys fees and expert witness costs), loss of services, actions, and causes of action on account of death or injury to any person or damage to any property resulting from any condition of the decorative drive approach being located within the city right-of-way. The owner, the applicant taking out such permit further agrees on behalf of the owner, and the owners' heirs, successors, and assigns to defend and indemnify the city, its officers, employees, assigns, successors and/or agents for any and all claims, demands, damages, costs, expenses (including reasonable attorneys fees and expert witness costs), loss of services, actions, and causes of action on account of death or injury to any person or damage to any property resulting from any condition of the decorative drive approach. This release and indemnification shall be applicable to all successor owners or lessees of any property which is serviced by a decorative drive approach.

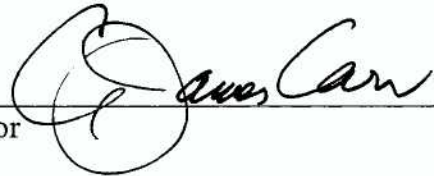
Section 2: All ordinances or parts of ordinances in conflict with these provisions are hereby repealed.

Section 3: This ordinance shall become effective from and after its passage, approval, and publication in pamphlet form in the manner prescribed by law.

ATTEST:



City Clerk



Mayor

Ayes:

Roll Call Vote:

Councilman Sues
Councilman Bolds
Councilwoman Corry
Councilman Johnson
Mayor Carr
Councilman Levine
Councilman Mouhelis

Nays:

None

Absent:

None

Motion Carried Unanimously

Passed: September 6, 2005
Published: September 7, 2005