

**ORDINANCE NO. F-1502**

**AN ORDINANCE AMENDING CHAPTERS 6, 26 AND 42 OF THE WHEATON CITY CODE – OUTDOOR CONSUMPTION OF ALCOHOL AT SIDEWALK CAFES**

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, 1970, and as such the City may exercise any power or perform any function pertaining to its government and affairs; and

WHEREAS, the City has determined it to be in the best interests of the City and its residents to consider certain amendments to the Wheaton Liquor Control Ordinance.

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

Section 1: That Sec. 6-128 of the Wheaton City Code is hereby deleted in its entirety and replaced with the following:

**“Sec. 6-128. Outdoor consumption.**

Except at a Sidewalk Café approved pursuant to Sec. 26-54 of this Code, it shall be unlawful for any person, and for any licensee under this chapter to allow any person, to consume alcoholic liquor outside of the improvement located on any licensed premises.”

Section 2: That Sec. 26-54 of the Wheaton City Code is hereby deleted in its entirety and replaced with the following:

**“Sec. 26-54. Sidewalk cafe permits.**

(a) Permit required. It shall be unlawful for any persons, firm, corporation, organization or association to use the public sidewalk for the operation of a sidewalk cafe whether offering direct service to the table or not, without obtaining a sidewalk 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; however, 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 the Wheaton City Code.

(b) Definitions. The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning.

Sidewalk cafe means any area on the public sidewalk 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.

(c) Application. All applicants for sidewalk 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. Applications should be filed at least two weeks prior to scheduled use to allow sufficient time for such inspection. All applications shall include:

(1) A dimensioned drawing showing the sidewalk adjacent to the business, any street lights, 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 of Wheaton 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.

(d) Regulations. All permit holders shall be subject to the following regulations:

(1) The sidewalk shall be kept clean and free from food, refuse or clutter at all times regardless of the source of such food refuse and clutter. No cooking or food preparation shall be permitted on the public right-of-way.

(2) Umbrellas, approved for use as part of the approved permit, shall be removed from the public sidewalk at the end of each business day.

(3) All public improvements on the public sidewalk 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 sidewalk 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 licensee can establish that the damage resulted from a cause not related to the operation or the use of the sidewalk cafe.

(4) Use of a sidewalk 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 sidewalk cafe be placed in the street. All tables, chairs and other items associated with the sidewalk café shall remain within the designated boundaries of the sidewalk café. All staff responsible for the set-up of the sidewalk café shall arrange it according to the original application and do so consistently.

(5) All tables and chairs shall be removed from the public sidewalk no later than November 1 or at the time of the first measurable snowfall after September 30, whichever occurs first. 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 city right-of-way.

(e) Restrictions. All items placed on the sidewalk by a permit holder for the operation of a sidewalk cafe shall be:

(1) Located in accordance with the approved drawing; and

(2) Located so that a clear path of at least five 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. For the purpose of minimum clear path, trees, plantings, benches, mail boxes or any of the like shall be considered obstructions; and

(3) Placed so as not to obstruct normal ingress to and egress from the licensed business or any other businesses; and

(4) Placed so as not to create hazards. Incidental items placed in the public sidewalk during the day for the operation of the sidewalk cafe shall be properly weighted to prevent a wind-blown hazard and shall be removed at the end of the business day.

(5) Designed to be used out-of-doors. No interior tables and chairs may be placed on the sidewalk.

(f) Fees. The fee for a sidewalk cafe permit shall be \$25.00 per table per season if alcohol is not served and \$50 per table if alcohol is served .

(g) 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 a sidewalk cafe permit.

(h) Sidewalk Café Standards with Alcohol Being Served. All procedures set forth for a standard sidewalk café 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 sidewalk café. There shall be no carry-out or carry-in of alcoholic beverages to and from the sidewalk café.

(3) Patrons of the licensed establishment shall remain seated at the sidewalk café when consuming alcohol.

(4) The service of alcoholic liquor at the sidewalk café shall be incidental to the service of meals and only during a period of time when patrons of the licensee are offered a complete meal.

(5) No person shall leave the sidewalk café with an alcoholic beverage. Any person doing so shall be in violation of Sections 6-128 and 42-20 of the Wheaton City Code.

(i) Enforcement. Failure to comply with the provisions of this section shall result in a fine of up to \$1,000 per day per violation and/or the revocation of the permit.

(j) Revocation. The Chief of Police or Fire Chief of the City of Wheaton upon determining that the method or manner of use of the sidewalk 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 recommend to the city manager the revoking of the sidewalk cafe permit.”

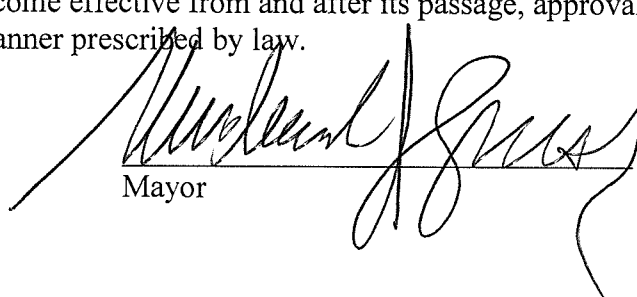
Section 3: That Sec. 42-20 of the Wheaton City Code is hereby deleted in its entirety and replaced with the following:

**“Sec. 42-20. Consumption, possession of alcoholic beverages in public places.**

Except at a Sidewalk Café approved pursuant to Sec. 26-54 of this Code, it shall be unlawful for any person to consume any alcoholic beverage upon any public property, including but not limited to parks, streets, sidewalks, alleys and public buildings or grounds of public buildings, or to possess any alcoholic beverage in any such place except in the original package with the seal unbroken.”

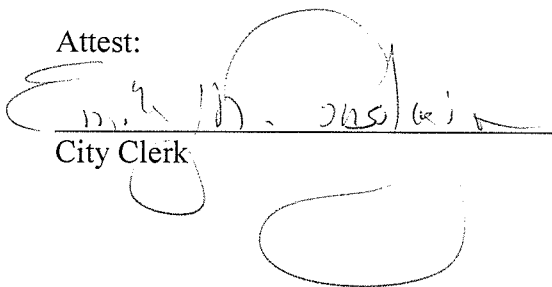
Section 4: All ordinances, or parts of ordinances, in conflict with these provisions are hereby repealed.

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



Mayor

Attest:



City Clerk

Roll Call Vote:

- Ayes:
- Councilman Prendiville
  - Councilman Scalzo
  - Councilman Sues
  - Councilwoman Corry
  - Councilman Levine
  - Councilman Mouhelis
  - Mayor Gresk

Nays: None

Absent: None

Motion Carried Unanimously

Passed: June 21, 2010  
Published: June 22, 2010

