

**ORDINANCE NO. F-1519**

**AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF WHEATON CHAPTER 22, BUILDINGS AND BUILDING REGULATIONS, ARTICLE I, SECTION 8, SPRINKLING SYSTEMS WITHIN RIGHT OF WAY OR PARKWAY, PERMIT AND FEE**

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 owns unimproved property, including City owned rights of way; and

WHEREAS, the Corporate authorities of the City of Wheaton find that it is in the best interest of its residents and those who desire to place snowmelt and/or sprinkling systems within City owned rights of way to adhere to certain standards of construction and operation; and

WHEREAS, the City finds it necessary for those desiring to construct and operate a snowmelt and/or sprinkling system within city owned rights of way to enter into a certain Construction, Use and Indemnification Agreement.

NOW THEREFORE BE IT ORDAINED by the Mayor and City Council of the City of Wheaton, Illinois that the Wheaton City Code 1996 is hereby amended to provide as follows:

Section 1: That Chapter 22 Buildings and Building Regulations, Article I, Section 8, Sprinkling Systems within Right of Way or Parkway, Permit and Fee is hereby amended by deleting Article I, Section 8 in its entirety and replacing it with a new Article I, Section 8 as follows:

"Sec. 22-8. Lawn Irrigation or Snowmelt systems within right-of-way or parkway, permit and fee.

(a) No person shall install any lawn irrigation or snowmelt system within a right-of-way or parkway without having first secured a right of way permit and a construction, use and indemnification agreement from the City. By applying for and receiving a permit, personally or through a contractor, the owner of a lawn irrigation or snowmelt system, successors, heirs, and assigns shall be subject to the following terms and conditions:

(1) The sole responsibility for the maintenance and repairs to the lawn irrigation or snowmelt system, shall be and remain the obligation of the owner, successors, heirs, and assigns; and

(2) Any construction, use and indemnification agreement shall require approval by the Corporate Authorities of the City; and

(3) The owner of an irrigation system or snowmelt system, as a mandatory condition of a construction, use and indemnification agreement shall release the City, its elected and appointed officials, utilities company's and contractors from any and all claims, damages, injuries, or costs of any type whatsoever, which may occur to the system in the right of way or parkway, or where the portion of the system located in the right of way or parkway connects to any portion of the system located on private property regardless of cause. Furthermore, the owner shall defend, indemnify, and hold the City harmless from any and all claims, actions, costs, judgments, injuries, property damage, expenses (including reasonable attorney's and experts fees) which arise or may be caused by the negligence of the Owner, or Owner's agent, as a result of the design, construction, maintenance, use or abandonment of the lawn irrigation or snowmelt system. An additional condition of any construction, use and indemnification agreement shall be that the Owner agrees to pay the City the full costs of any damage to any City equipment or property caused by the presence of system regardless of cause and with a full waiver of comparative negligence or a defense of willful and wanton misconduct against the City, its employees and agents.

(b) Lawn Irrigation systems shall be designed, installed, and operated as not to spray water onto the sidewalk, curb, gutter or street. Snowmelt systems shall be designed, installed and operated so as not to cause any accumulation of ice on public sidewalks, curbs, gutters, and roadways.

(c) Every snowmelt system within the right of way or parkway shall be separately zoned from any portion of a connected snowmelt system on private property so that portion of the snowmelt system within the right-of-way or parkway can be turned off at the request of the City. Where any snowmelt system has or is creating a dangerous condition through the build-up of ice on any sidewalk or curb, gutter, street or alley or any neighboring sidewalk, curb gutter, street or alley, the City may, in its sole discretion, upon direction of any employee of the City Building or Police Department, require the owner or other person having control of the snowmelt system to turn off the snowmelt functions in one or more of the zones. Any person refusing at the request of an employee of the City Building Department or Police Department to turn a snowmelt system off shall be in violation of this ordinance and their construction, use and indemnification agreement.

(d) The boiler associated with the snowmelt system shall have a minimum efficiency of 85%. The snowmelt system shall have automatic controls capable of shutting off the system when the pavement temperature is above 50 degrees F and no precipitation

is falling and an automatic or manual control that will allow shutoff when the outdoor temperature is above 40 degrees F.

(e) Application fee

Irrigation system within right of way or parkway shall be \$100.

Snowmelt system within the right of way or parkway shall be \$150. The \$150 application fee shall be waived in its entirety when applicant installs a snowmelt system that off sets its energy use with a minimum of 25% on-site renewable energy sources.

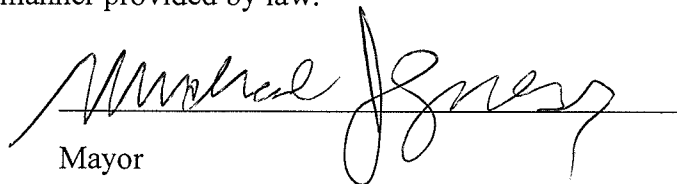
(f) Penalties

Any person violating any provision of this ordinance shall upon conviction pay a fine of not less than Two hundred dollars (\$200.00) nor more than One thousand dollars (\$1,000.00), for each day a violation exists.”

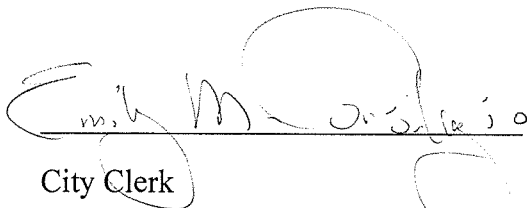
Section 2: All ordinances and parts of ordinances in conflict with or inconsistent with the provisions of this ordinance are hereby repealed to the extent of any such conflict or inconsistency.

Section 3: That if any part or portion of this ordinance shall be declared invalid by a court of competent jurisdiction, such invalidity shall not affect the remainder of this ordinance.

Section 4: This ordinance shall become effective from and after its passage, approval, and publication in pamphlet form in the manner provided by law.

  
\_\_\_\_\_  
Mayor

ATTEST:

  
\_\_\_\_\_  
City Clerk

Ayes:

Roll Call Vote:  
Councilman Sues

Councilwoman Corry  
Councilman Levine  
Councilman Mouhelis  
Mayor Gresk  
Councilman Prendiville  
Councilman Scalzo

Nays: None

Absent: None

Motion Carried Unanimously

Passed: October 18, 2010  
Published: October 19, 2010