

ORDINANCE NO. O-2019-14

AN ORDINANCE AMENDING SECTIONS 26-54, 58-31, 58-32, 58-33 AND B-4, ADMINISTRATIVE FEES OF APPENDIX B, FEE SCHEDULE OF THE WHEATON CITY CODE

“SIDEWALK CAFÉ PERMITS, DECORATIVE LANDSCAPE / FLORAL SIDEWALK CONTAINERS, OUTDOOR MERCHANDISE DISPLAYS AND PLACARD SIGNS”

BE IT ORDAINED by the Mayor and City Council of the City of Wheaton, Illinois, as follows:

SECTION 1: Section 26-54 of the Wheaton City Code, 2017, as amended, is hereby amended by amending by repealing and rescinding it in its entirety and replacing it 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 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:

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. 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 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) *Placement.* The exact location of a sidewalk café 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 café at a particular applicant's location.

(e) *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. No umbrella shall contain any advertising, logo or message. No umbrella shall obstruct any street signs. The umbrella shall maintain a minimum vertical clearance of seven feet from the sidewalk surface and shall be located so that a clear path of at least five feet shall be provided for the passage of pedestrians and be no closer than one foot from the curb line.
 - (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.
 - (5) All tables and chairs shall be removed from the public sidewalk no later than November 1. Tables and chairs may be reinstalled the following year no earlier than March 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.
 - (7) Pursuant to Section 36-25 of the Wheaton City Code, it shall be unlawful to: smoke or vape in any sidewalk café, for the owner, occupant or lessee, as the case may be in control of an sidewalk cafe to knowingly permit smoking or vaping in the area available for a sidewalk café; or to smoke or vape within 25 feet of a sidewalk cafe.
 - (8) It shall be the permittee's responsibility to accommodate persons with disabilities at the sidewalk café in conformance with applicable state law.
- (f) *Restrictions.* All tables and chairs 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;
 - (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;
 - (3) Placed so as not to obstruct normal ingress to and egress from the licensed business or any other businesses;

- (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; and
- (5) Designed to be used out-of-doors. No interior tables and chairs may be placed on the sidewalk.
- (g) *Fees.* The fee for a sidewalk 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 a sidewalk cafe permit.
- (i) *Sidewalk cafe standards with alcohol being served.* All procedures set forth for a standard sidewalk 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 sidewalk cafe. There shall be no carry-out or carry-in of alcoholic beverages to and from the sidewalk cafe.
 - (3) Patrons of the licensed establishment shall remain seated at the sidewalk cafe when consuming alcohol.
 - (4) The service of alcoholic liquor at the sidewalk cafe 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 cafe with an alcoholic beverage. Any person doing so shall be in violation of sections 6-128 and 42-20.
- (j) *Enforcement.* Failure to comply with the provisions of this section shall result in the revocation of the permit.
- (k) *Revocation.* The chief of police or fire chief of the city, 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.

(Code 1996, § 26-54; Ord. No. F-0487, § 1, 7-5-2000; Ord. No. F-1502, § 2, 6-21-2010; Ord. No. F-2003, § 1, 3-6-2017)”

SECTION 2: The Wheaton City Code, 2017, as amended, is hereby amended by adding a new Section entitled “Sec. 58-31 – Decorative Landscape / Floral Sidewalk Containers in the C-2 and C-4 Commercial Districts”.

Sec. 58-31 – Decorative Landscape / Floral Sidewalk Containers in the C-2 and C-4 Commercial Districts.

- (a) The placement of Decorative Landscape / Floral Containers upon the public sidewalk within the C-2 and C-4 Commercial Districts shall be subject to the following requirements:
- (b) *Definitions.* The following words, terms and phrase, when used in this article, shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning:

Decorative Landscape / Floral Container means any container or pot, that is used to hold living plants, flowers and/or decorative items.

- (c) *Application.* All applicants for Decorative Landscape / Floral container 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 or photograph 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 the Decorative Landscape / Floral Containers.
 - (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.
- (d) *Restrictions.* All Decorative Landscape / Floral Containers shall:
- (1) not exceed 2 in number,
 - (2) not exceed 24 inches in any dimension,
 - (3) be made of natural materials such as stone or clay,
 - (4) be placed immediately adjacent to the ground floor business's front door,
 - (5) be located so that a clear path of at least five feet shall be provided for the passage of pedestrians, and
 - (6) be placed so as not to obstruct normal ingress to and egress from the business.
- (e) The public sidewalk shall be maintained in the condition as they existed at the time of the placement of the Decorative Landscape / Floral Container. The entity placing the Decorative Landscape / Floral Container upon the public sidewalk 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 of the Decorative Landscape / Floral Container. Any damage to such public improvements shall be reported 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 entity placing the Decorative Landscape / Floral Container, unless the entity placing the Decorative Landscape / Floral Container can establish that the damage resulted from a cause not related to the Decorative Landscape / Floral Container.

SECTION 3: The Wheaton City Code, 2017, as amended, is hereby amended by adding a new Section entitled "Sec. 58-32 – Outdoor Merchandise Displays in the C-2 and C-4 Commercial Districts".

Sec. 58-32 – Outdoor Merchandise Displays in the C-2 and C-4 Commercial Districts.

- (a) The placement of Outdoor Merchandise Displays upon the public sidewalk within the C-2 and C-4 Commercial Districts shall be subject to the following requirements:
- (b) *Definitions.* The following words, terms and phrases, when used in this article, shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning:

Outdoor Merchandise Displays means the temporary, outdoor display of items that are representative of merchandise sold or stocked by the subject business.

- (c) *Application.* All applicants for Outdoor Merchandise Display 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 or photograph 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 the temporary merchandise displays.
 - (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.
- (d) Outdoor Merchandise Displays shall be placed immediately adjacent to the ground floor business's front door.
- (e) Outdoor Merchandise Displays shall be placed indoors at the close of the business day.
- (f) Outdoor Merchandise Displays shall not be located within fifteen (15) feet of any fire hydrant, emergency facility, intersecting driveway, alley or street;
- (g) Outdoor Merchandise Displays shall not disrupt the flow of vehicular or pedestrian traffic.
- (h) No item shall be displayed at a location where the width of paved clear space for the passageway of pedestrians is reduced to less than five (5) feet.
- (i) The public sidewalk shall be maintained in the condition as it existed at the time of the placement of the Outdoor Merchandise Displays. The entity placing the Outdoor Merchandise Displays upon the public sidewalk 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 of the Outdoor Merchandise Displays. Any damage to such public improvements shall be reported 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 entity placing the Outdoor Merchandise Displays, unless the entity placing the Outdoor Merchandise Displays can establish that the damage resulted from a cause not related to the Outdoor Merchandise Displays.

SECTION 4: The Wheaton City Code, 2017, as amended, is hereby amended by is hereby amended by adding a new Section entitled "Sec. 58-33 – Placard Signs".

Sec. 58-33 – Placard Signs.

- (a) The placement of one (1) placard sign per ground floor business upon the public sidewalk within the C-1, C-2 and C-4 Commercial Districts shall be subject to the following requirements:

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

Placard Sign: A temporary sign made of metal, lightweight plastic, or similar material, mounted out-of-doors and intended to be used during a sale, promotion, or special event. A permanent sign with changeable copy such as a reader board with changeable letters, or a permanent framework designed to hold changeable panels so as to prevent their movement by the wind, shall not be considered a placard.

- (c) *Application.* All applicants for placard sign 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 or photograph 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 the placard sign.
 - (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.
- (d) The sign portion of the placard is no larger than six (6) square feet and stands no higher than four (4) vertical feet.
- (e) Placard signs shall be placed inside the principal structure before the close of the business day.
- (f) Placard signs placed on streets that contain the Downtown Streetscape Improvements shall be placed upon the "Amenity Zone" area. Amenity zone means the brick paved area between the curb and the walkway area which may contain trees, plantings, furnishings, and lighting.
- (g) Placard signs shall not be placed within fifteen (15) feet of any intersecting driveway, alley or street.
- (h) Placard signs shall not disrupt the flow of vehicular or pedestrian traffic.
- (i) Placard signs shall be not displayed at a location where the width of paved clear space for the passageway of pedestrians is reduced to less than five (5) feet.

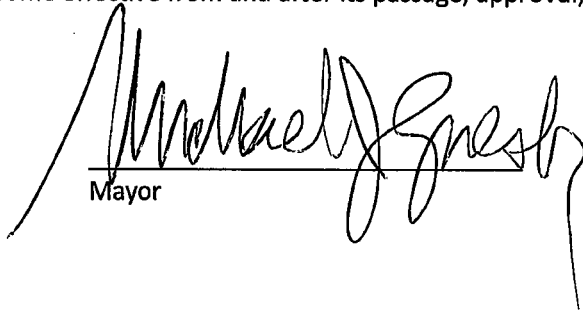
SECTION 5: That Section B-4, Administrative Fees of Appendix B, Fee Schedule, is hereby amended as follows. All other Sections of Appendix B are reaffirmed.

Appendix B – Fee Schedule

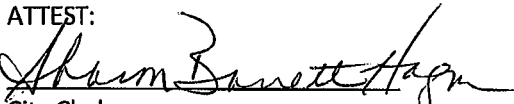
"B-4 Administrative Fees – Licenses and Permits		
Sidewalk café	\$50.00	Per table, per season"

SECTION 6: That all ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION 7: That this ordinance shall become effective from and after its passage, approval, and publication in a manner provided by law.



Mayor

ATTEST:


City Clerk

Roll Call Vote

Ayes: Councilwoman Fitch
Mayor Gresk
Councilman Rutledge
Councilman Scaizo
Councilman Sues
Councilman Barbier

Nays: None
Absent: Councilman Prendiville

Motion Carried Unanimously

Passed: April 15, 2019
Published: April 16, 2019

