

ORDINANCE NO. O2021-45

AN ORDINANCE AMENDING SECTION 7-2-2 OF THE WARRENVILLE CITY CODE REGARDING OUTDOOR SEATING AREAS ON PUBLIC RIGHTS-OF-WAY

WHEREAS, the City is a home rule municipal corporation pursuant to Article VII, Section 6(a) of the Constitution of the State of Illinois of 1970; and

WHEREAS, Section 7-2-2 of the Warrenville City Code ("**City Code**") establishes regulations regarding encroachments on public rights-of-way; and

WHEREAS, the City desires to update and clarify Section 7-2-2 of the City Code to allow outdoor seating areas accessory to food or beverage service establishments to encroach on public rights-of-way subject to certain restrictions, conditions, and regulations; and

WHEREAS, the Mayor and the City Council have determined that it is in the best interest of the City and the public to amend the City Code pursuant to this Ordinance;

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF WARRENVILLE, DUPAGE COUNTY, ILLINOIS, AS FOLLOWS:

SECTION 1: Recitals. The recitals listed above are incorporated in this Ordinance as if fully set forth in this Ordinance.

SECTION 2: Encroachments on Public Rights-of-Way. Section 7-2-2, titled "Encroachments on Public Rights-of-Way," of Chapter 2, titled "Streets and Public Ways," of Title 7, titled "Public Ways and Property," is hereby amended to read as set forth on **Exhibit A** attached to and made a part of this Ordinance.

SECTION 3: EFFECTIVE DATE. This Ordinance shall be in full force and effect 10 days after its passage, approval, and publication in the manner provided by law.

[Signatures and Voting Record on Following Page]

[additions are **bold and double underlined**; deletions are ~~struck through~~]

PASSED THIS 20th day of December, 2021.

AYES: Aids: Barry, Goodman, Anderson, Weidner, Wilson, and Krischel

NAYS: None

ABSENT: Aids: Davolos and Aschauer

ABSTAIN: None

APPROVED THIS 20th day of December, 2021.



MAYOR

ATTEST:


CITY CLERK

[additions are **bold and double underlined**; deletions are ~~struck through~~]

EXHIBIT A

7-2-2: ENCROACHMENTS ON PUBLIC RIGHTS-OF-WAY:

A. Definitions:

ENCROACHMENT: Any building, parking pad, driveway, standard and ornamental mailbox structure, sidewalk, fence, sign, tree, landscape improvement, **outdoor seating area**, or any other structure or object of any kind (with the exception of utility improvement, sidewalk, streetlight, traffic control device, tree, landscape, retaining wall, or sign installed by a public body and all facilities covered by chapter 5 of this title), which is placed, located or maintained in, on, under or over any portion of the right-of-way.

OUTDOOR SEATING AREA: A seating area located outdoors that is accessory to a food and/or beverage service establishment and is a seating area for the consumption of food and/or beverages purchased at the establishment.

PARKLET: Non-permanent improvements constructed to allow an outdoor seating area to be located in the street, parking space, or parking lot, which improvements may include a platform, short walls, planters, and or ornamental fencing installed to separate outdoor seating area visitors from adjacent public sidewalks and automobile traffic.

PERMISSIBLE ENCROACHMENT: Permissible encroachments are encroachments that may be allowed subject to City approval and compliance with the regulations, conditions, and restrictions set forth in this section. The permissible encroachments are ~~A~~ all privately constructed and installed:

1. Permissible landscape improvements.
2. Permissible ornamental mailbox installations.
3. Permissible private parking encroachments.
4. Permissible private driveways.
5. Deck/patios or shed (in a public utility easement only which is located on private property provided that written permission from all affected public utilities is filed with the City).
- 6. Permissible outdoor seating area encroachments.**

PERMITTED ENCROACHMENT: Permitted encroachments are encroachments that are allowed, without special approval, as long as the encroachments comply with the regulations set forth in this section. The permitted encroachments are:

1. Standard private driveways and related culvert improvements constructed in accordance with the applicable City permit and design requirements in effect at the time of driveway construction or expansion.
2. Standard mailbox installations installed in accordance with subsection C2 of this section.
3. Permitted sign encroachments.

PUBLIC RIGHT-OF-WAY: Those areas existing or acquired by dedication, by easement or by fee simple by a public body for highway, pedestrian, bicyclist or public utility purposes. (Ord. 2741, 9-17-2012)

[additions are **bold and double underlined**; deletions are ~~struck through~~]

- B. Encroachment Prohibited: It shall be unlawful for any person to erect or cause to be erected, to retain or cause to be retained, any encroachment except a permitted encroachment or permissible encroachment within the limits of the public right-of-way.
- C. Permitted Encroachments: The following encroachments upon the public right-of-way shall be allowed as permitted encroachments:
1. Standard private driveways: Vehicular access driveway improvements constructed in the improved section of right-of-way to connect the driveway improvements on private property to the adjacent public road in accordance with all applicable City permit and design requirements in effect at the time of construction or expansion. (Ord. 2498, 4-6-2009)
 2. Standard mailboxes installed in accordance with the applicable design criteria established by the local United States Post Office and with the following safety standards. Standard mailbox installations shall: a) be constructed to promote breakaway, bending or otherwise yield in order to minimize damage and harm to motor vehicles and their occupants in the event of a collision or impact with the support and b) utilize one of the following support structures or such other similar structure as may be approved by the Director of Community and Economic Development or his designee as comparably safe: (Ord. 2498, 4-6-2009; amd. Ord. O2018-10, 3-19-2018)
 - a. Wooden post (minimum of 4 inches by 4 inches and a maximum of 6 inches by 6 inches).
 - b. Light gauge hollow cast iron, galvanized steel or painted steel pipe (maximum of 3 inch diameter).
 3. Any existing awning, marquee, advertising sign or similar overhanging structure supported from a building immediately adjacent to the limits of the platted street where there is a sidewalk extending to the building line and which does not impair the free and safe flow of traffic on the highway. The permissive retention of overhanging signs is not to be construed as being applicable to those signs supported from poles constructed outside the right-of-way line and not confined by adjacent buildings. The sign encroachment must be in existence as of March 31, 2009, to be treated as a permitted sign encroachment hereunder.
- D. General Requirements For All Permissible Encroachments: No permissible encroachment shall be installed or maintained in the public right-of-way unless the encroachment complies with the general requirements of this subsection and with the particular requirements of subsections E through MH of this section, as applicable to the specific encroachment type.
1. Revocable Right-Of-Way Permit And Covenant Agreements:
 - a. Requirements: A revocable right-of-way permit and covenant agreement shall be required for all permissible encroachments located in City of Warrentville right-of-way except permissible landscape improvements and permissible outdoor seating areas. Said revocable right-of-way permit and covenant agreement shall set forth the description of encroachment, location of encroachment, and owner/responsible party [additions are **bold and double underlined**; deletions are ~~struck through~~]

for encroachment. Revocable right-of-way permit and covenant agreements shall be in the form periodically approved by the Warrenville City Council. (Ord. 2498, 4-6-2009).

- b. Review And Processing: Revocable right-of-way permit and covenant agreement applications shall be submitted to and processed by the Community Development Department in conjunction with the input and authorization of the Public Works and Police Departments, as applicable. The Director of Community and Economic Development or his designee shall be responsible for the final approval, issuance and recording of all revocable right-of-way permits and covenant agreements that comply with all applicable City codes, ordinances and requirements. Approved and applicant executed revocable right-of-way permit and covenant agreements shall be recorded against the applicant's parcel of property in the Office of the Recorder of Deeds, DuPage County, as a permanent record of the hold harmless, insurance, and maintenance obligations that will be assumed by the current and future owner of the applicant's parcel. (Ord. 2498, 4-6-2009; amd. Ord. O2018-10, 3-19-2018)
- c. Fees: The review and processing fee for all revocable right-of-way permit and covenant agreement applications shall be thirty five dollars (\$35.00) and shall be in addition to any applicable building permit fees. The applicant shall also be responsible for reimbursing the City for all DuPage County fees associated with the recordation of an approved and executed revocable right-of-way permit and covenant agreement.

2. Landscape License And Covenant Agreements:

- a. Requirements: Landscape license and covenant agreements shall be required for all private permissible landscape improvements located in City of Warrenville right-of-way. Landscape license and covenant agreements shall set forth the description of encroachment, location of encroachment, and owner/responsible party for encroachment. Landscape license and covenant agreements shall be in the form periodically approved by the Warrenville City Council. (Ord. 2498, 4-6-2009)
- b. Review And Processing: Landscape license and covenant agreement applications shall be submitted to and processed by the Community Development Department in conjunction with the input and authorization of the Public Works Department. All work authorized pursuant to an approved landscape license and covenant agreement shall be performed in compliance with all applicable City of Warrenville codes, ordinances and policies including, but not limited to, the zoning ordinance, Plumbing Code and the "Arboriculture and Open Space Manual". The Director of Community and Economic Development or his designee shall be responsible for the final approval, issuance and recording of all landscape license and covenant agreements that comply with said requirements. All approved and applicant executed landscape license and covenant agreements shall be recorded against the applicant's parcel of property in the Office of the Recorder of Deeds, DuPage County, as a permanent record of the hold harmless, insurance, and maintenance obligations that will be assumed by the current and future owner of the applicant's parcel. (Ord. 2498, 4-6-2009; amd. Ord. O2018-10, 3-19-2018)
- c. Fees: The review and processing fee for all landscape license and covenant agreement applications shall be thirty five dollars (\$35.00) and shall be in addition to [additions are **bold and double underlined**; deletions are ~~struck through~~]

any applicable building permit fees. The applicant shall also be responsible for reimbursing the City for all DuPage County fees associated with the recordation of an approved and executed landscape license and covenant agreement.

E. Permissible Ornamental Mailbox Installations: Nonstandard mailbox installations placed or constructed in the public right-of-way by a private individual after applying for a permit and complying with all applicable City approval requirements shall be allowable as permissible ornamental mailbox installations.

1. Permit Requirements: No new ornamental mailbox installations shall be constructed in the right-of-way after March 31, 2009, until the required revocable right-of-way permit and covenant agreement and a building permit has been applied for by the adjacent property owner and issued by the City of Warrenville Community Development Department.
2. Design And Construction Requirements: The design of any ornamental mailbox installation permitted and constructed in the right-of-way after March 31, 2009, shall comply with the following restrictions and requirements:
 - a. The maximum width of any face of the ornamental mailbox installation shall be twenty eight inches (28").
 - b. The maximum height of the ornamental mailbox installation shall be five feet (5') measured from the adjacent road surface.
 - c. No electrical lighting shall be incorporated into any ornamental mailbox installation.
 - d. Reflectors shall be securely affixed to ornamental mailbox installations as required by the City building inspector and Public Works Department.
 - e. All applicable design/installation criteria established by the local United States Post Office.

F. Permissible Private Parking Encroachment: A privately constructed and maintained parking pad adjacent to the roadway pavement in the City of Warrenville right-of-way shall be allowable as a permissible private parking encroachment, provided that the parking pad shall not be:

1. Adjacent to a curbed street, or
2. Adjacent to a roadway that is designated as a major arterial, minor arterial or collector street in the Warrenville Land Use Plan, or
3. Adjacent to a roadway with a pavement width of twenty four feet (24') wide or more, or
4. Surfaces that are not paved (in accordance with City requirements), or
5. Which may, in the opinion of the Chief of Police or Public Works Superintendent, create a safety problem on existing improved areas in the right-of-way, unreasonably impact drainage in the immediate vicinity, or interfere with the maintenance of existing or planned utilities in the immediate vicinity, or

[additions are **bold and double underlined**; deletions are ~~struck through~~]

6. On roadway rights-of-way where the City Council has adopted restrictions which prohibit private parking encroachments in such areas.
- G. Permissible Driveway Encroachment: Driveways constructed by a private party on unimproved sections of public right-of-way (e.g., Townline Road right-of-way between Glen Drive South and Mignin Drive, etc.) shall be allowable as permissible driveway encroachments after applying for and complying with all applicable City approval requirements.
- H. Permissible Landscape Improvements: Any underground lawn sprinkler, tree, shrub, annual, perennial, ornamental/native grass, related landscape planting bed improvements, other than standard turf grass, planted or installed in the right-of-way by a private individual shall be allowable as permissible landscape improvements after applying for and complying with all applicable City approval requirements.
- I. Outdoor Seating Areas: Outdoor seating areas installed on public right-of-way shall be allowable as permissible outdoor seating areas only in accordance with and pursuant to the following regulations, conditions, and restrictions:**
- 1. License Required. No outdoor seating area may be installed on public right-of-way or other city-owned property without the operator first entering into an outdoor seating area license agreement with the City in a form approved by the City. The license agreement must be in a form approved by the City Attorney and the Director of Community and Economic Development; provided, however, that the terms of the license agreement may not vary or modify the regulations, conditions, and restrictions set forth in this section or the Outdoor Seating Area Rules.**
- a. Terms and Conditions. The outdoor seating area license agreement shall require the applicant to, among other things, hold harmless and indemnify the City against claims resulting from the installation and use of the outdoor seating area and provide specific insurance coverages as set forth in the Outdoor Seating Area Rules.**
- b. Term. Outdoor seating area license agreements shall expire on the December 31 following the commencement date of the outdoor seating area license agreement.**
- c. Approval of Initial License Agreement: All initial license applications for outdoor seating areas shall be reviewed by the Director of Community and Economic Development; provided, however, that the following license applications shall be reviewed by the City Council: (i) applications for outdoor seating areas proposed to be located within parking spaces; (ii) applications for outdoor seating areas that will include parklet improvements, (iii) applications for outdoor seating areas that will include the service of alcohol; and (iv) applications for outdoor seating areas with hours of operation that deviate from the requirements of this section or request approval to play amplified music or other sounds. Initial license applications for outdoor seating areas previously approved by the City Council, by resolution or ordinance, prior to the adoption date of this ordinance, shall only require review and approval by the Director of Community and Economic Development.**

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- d. Approval of License Renewals: All applications for the renewal of an outdoor seating area license agreement shall be reviewed by the Director of Community and Economic Development; provided, however, that the City Council shall review applications for renewal of license agreements that were initially approved by the City Council and consist of a material change to the outdoor seating area.
- e. Non-transferable: License agreements are not transferrable to a person other than the applicant or to a location other than the one described in the agreement.
- f. Additional conditions: The Director of Community and Economic Development and the City Council, as applicable, may impose additional conditions regarding the outdoor seating area to address operational or public safety concerns.
- g. Fees: The review and processing fee for all outdoor seating area license agreement applications that only require the review of the Director of Community and Economic Development shall be \$50.00. The review and processing fee for outdoor seating area license agreement applications reviewed by the City Council review shall be \$100.00. Review and processing fees shall be in addition to any applicable building permit fees. The applicant shall also be responsible for reimbursing the City for all DuPage County fees associated with the recordation of an approved and executed license agreement.

2. Location.

- a. Outdoor seating areas must be located on an impermeable surface.
- b. Outdoor seating areas must not obstruct or limit accessibility of the sidewalk or building for people with disabilities.

3. Hours of operation. Outdoor seating areas may be used and occupied between the hours of 7:30 am and 10:00pm, unless otherwise approved by the City Council.

4. Outdoor Seating Area Rules. Outdoor seating areas must comply with the Outdoor Seating Area Rules approved by the City Council and maintained by the Department of Community and Economic Development.

5. Amplified music or other sound. No amplified music or other sound may be played outdoors in an outdoor seating area unless approved by the City Council.

6. The outdoor seating area license applicant must obtain necessary building permits and have all necessary City and state licenses in good standing.

J. City Reimbursement For Mailbox Damage: The City will reimburse the owner of a mailbox damaged by a City snowplow or from any other City utility or road work up to a maximum of one hundred dollars (\$100.00) upon receipt of a sales receipt or invoice showing the actual costs incurred by the mailbox owner for repair or replacement of a City damaged mailbox.

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KJ. Additional Provisions: This section is intended to and shall be in addition to all other ordinances, rules and regulations concerning encroachments and shall not be construed as repealing or rescinding any other ordinance or part of any ordinance unless in direct conflict therewith.

IK. Labor Dispute Exemption: Notwithstanding anything to the contrary set forth in this section, signs, tents or temporary shelters used by picketers in conjunction with a labor dispute, pursuant to the terms and conditions of 820 Illinois Compiled Statutes 5/1.4, shall be permitted to the extent provided by said statute.

ML. Violations: Any person violating this section shall be fined not less than seventy five dollars (\$75.00) nor more than seven hundred fifty dollars (\$750.00) for each offense, and a separate offense shall be deemed committed for each and every day during which a violation continues or exists. (Ord. 2498, 4-6-2009)

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