

ORDINANCE NO. O2020-35

**AN ORDINANCE RE-AUTHORIZING AND EXTENDING
THE AUXILIARY OUTDOOR SEATING AREA PROGRAM**

WHEREAS, on June 1, 2020, the City Council adopted Ordinance No. O2020-24, authorizing the development and implementation of the Auxiliary Outdoor Seating Area Program, which allows businesses that offer food or beverages for on-premises consumption, including restaurants, bars, and similar business establishments ("**Food and Beverage Service Establishments**"), to expand their outdoor seating areas pursuant to certain conditions and restrictions (collectively the "**Program Rules**") during the COVID-19 pandemic; and

WHEREAS, pursuant to executive orders issued by the Governor and guidelines issued by the Department of Commerce and Economic Opportunity indoor service in Food and Beverage Service Establishments continues to be limited; and

WHEREAS, in order to allow the City's Food and Beverage Service Establishments to continue the use of expanded outdoor seating areas, the City proposes to: (i) re-reauthorize and extend the Auxiliary Outdoor Seating Area Program until June 1, 2021, and (ii) authorize City staff to develop and implement additional Program Rules regarding the use of temporary tents and heaters; and

WHEREAS, pursuant to the City's power under applicable law and the home rule powers of the City, the Mayor and City Council have determined it is in the best interest of the City and the public to re-authorize and extend the Auxiliary Outdoor Seating Area Program with additional Program Rules in accordance with 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: Administration of Program; Waiver of Certain Requirements.

A. The City Administrator, or his designee, is hereby authorized to modify as necessary, publicize, develop the necessary legal instruments, and administer the qualifications, rules, and procedures for Food and Beverage Service Establishments seeking to participate in the Auxiliary Outdoor Seating Area Program ("**Program Rules**") substantially in the form attached as **Exhibit A**, including rules addressing the use of temporary tents and outdoor heaters. Participation in the Auxiliary Outdoor Seating Area Program will be a privilege contingent on compliance with the Program Rules.

B. Food and Beverage Service Establishments that are eligible and desire to participate in the Auxiliary Outdoor Seating Area Program must obtain a Temporary Use Permit.

C. The Zoning Administrator is authorized to issue Temporary Use Permits, with appropriate conditions, to Food and Beverage Service Establishments that comply with the Program Rules.

D. City staff is authorized to not necessarily strictly enforce the requirements of the Zoning Ordinance, City Code, and Sign Ordinance applicable to Outdoor Service and Auxiliary Outdoor Seating so long as the Food and Beverage Service Establishment remains in compliance with the Program Rules and holds a valid Temporary Use Permit.

E. All normal and customary City fees shall be and are hereby waived for Temporary Use Permits, license agreements, signs and liquor license modifications issued and allowed under the Auxiliary Outdoor Seating Area Program.

SECTION 3: Temporary Licenses on Public Rights of Way. The City Administrator is authorized to enter into license agreements with owners of Food and Beverage Service Establishments that seek to establish temporary Auxiliary Outdoor Seating areas on public rights-of-way including on sidewalks and public parking areas in accordance with the Program Rules. The license agreements shall be in the form prepared by the City Attorney.

SECTION 4: Memorialization of Temporary Modifications to On-Premises Liquor Licenses. The Mayor, in his capacity as the Local Liquor Control Commissioner, has modified the on-premises liquor licenses issued to a Food and Beverage Service Establishment to allow such licensees to serve alcoholic beverages within the approved Auxiliary Outdoor Seating area on the condition that the Food and Beverage Service Establishment participates in the Auxiliary Outdoor Seating Area Program, obtains a Temporary Use Permit, and remains in compliance with the Program Rules.

SECTION 5: Effective Date; Term.

A. This Ordinance shall be in full force and effect from and after its passage and approval in the manner provided by law.

B. This Ordinance shall remain in effect until the earlier of (i) the termination of the state of emergency associated with the COVID-19 pandemic by rescission of Governor Pritzker's declaration of emergency or its lapsing without replacement; (ii) the repeal of this Ordinance and termination of the Auxiliary Outdoor Seating Area Program by duly adopted motion of City Council; or (iii) June 1, 2021.

[SIGNATURE PAGE FOLLOWS]

PASSED THIS ____ day of _____, 2020.

AYES:

NAYS:

ABSTAIN:

ABSENT:

APPROVED THIS ____ day of _____, 2020.

MAYOR

ATTEST:

CITY CLERK

EXHIBIT A

Auxiliary Outdoor Seating Area Program Rules

In conjunction with State orders prohibiting or restricting indoor food and beverage consumption, the City of Warrenville has created a temporary program to allow food and beverage establishments to install and operate temporary outdoor seating adjacent to their businesses to replace lost indoor seating (“Auxiliary Seating Area”). The intent of the program is to allow for greater physical distancing and safety for employees and patrons. This program could include expansion into designated outdoor areas such as adjacent parking lots, walkways, lawns and public street right’s of way. This temporary program will remain in effect until the earlier of (i) the termination of the state of emergency associated with the COVID-19 pandemic by rescission of Governor Pritzker’s declaration of emergency or its lapsing without replacement; (ii) the repeal of this Ordinance and termination of the Auxiliary Outdoor Seating Area Program by duly adopted motion of City Council; or (iii) 120 days. The City Council may reevaluate the program and extend or terminate it at any time.

During this time period applicable City regulations regarding parking, site plan, signage, use of the City right of way, and alcohol service may not be strictly enforced if the business is operating in accordance with State regulations, these Program Rules and the approved auxiliary outdoor seating plan, and holds a valid Temporary Use Permit.

Restaurants and Liquor Serving Establishments that wish to temporarily open new, or expand existing, outdoor seating shall abide by the following rules:

General Rules

1. Auxiliary Seating Area shall be auxiliary to the business conducted on premises.
2. Auxiliary Seating Area hours of operation shall not exceed normal hours of operation for the business.
3. The Auxiliary Seating Area must be functionally adjacent or contiguous to the business.
4. Outdoor trash receptacles shall be provided and maintained.
5. Auxiliary Seating Area shall not have a negative impact on neighbors.
6. Temporary tents over 120 square feet in area may be installed for Auxiliary Seating Areas only pursuant to a Building Permit issued by the City.
7. Permanent plumbing, electrical, and lighting fixtures shall not be installed.
8. All businesses wishing to operate an Auxiliary Seating Area must obtain a Temporary Use Permit from the City (see the temporary use permit requirements below).

Auxiliary Seating Area Location

1. Sidewalks may be utilized provided there is still sufficient sidewalk width for pedestrian, including wheelchair, traffic on the remaining portion of the sidewalk.

2. If off-street parking is used for the Auxiliary Seating Area, a sufficient number of parking spaces, including ADA spaces, shall be preserved for employee and customer use. A temporary physical barrier shall separate the Auxiliary Seating Area from the rest of the parking lot.
3. Temporary barriers delineating the Auxiliary Seating Area do not require additional permitting so long as the temporary barriers do not pose a safety hazard to occupants. No permanent barriers may be installed without proper City permits.
4. Ensure preserved parking stalls and access aisles/routes remain open and accessible.
5. Businesses that do not own their parking lot or other outdoor areas must secure written approval from the property owner or property manager to using the area as an Auxiliary Seating Area.
6. Businesses within a multi-tenant shopping building/plaza must secure approval from the property manager/owner prior to installing an Auxiliary Outdoor Area on common parking, pedestrian walkways, or lawn areas.
7. Public property, including public sidewalks, parking areas, or other City-owned right-of-way may not be used for Auxiliary Seating Areas unless and until the business owner (i) enters into a Temporary License Agreement, in a form provided by the City, and (ii) provides the City with certificate of insurance naming the City as an additional noncontributory primary insured with limits not less than \$1,000,000.

Temporary Use Permit Requirements

1. A Temporary Use Permit is required for all Auxiliary Seating Areas installed and operated under this program. Temporary Use Permits may be approved with conditions by the City Zoning Administrator. There is no fee for such permit.
2. A Site Plan illustrating the proposed location and layout with dimensions, and all temporary improvements (barriers, fencing, signs, etc), if any, shall be submitted with the Temporary Use Permit application.
3. The City's Zoning Administrator may impose additional conditions after the Temporary Use Permit is issued, if parking, noise, or other issues arise.
4. City Zoning Administrator reserves a right to revoke a Temporary Use Permit if the permit holder consistently violates conditions of an approved Temporary Use Permit or otherwise operates the Auxiliary Seating Area in violation of the Program Rules.
5. The approved Temporary Use Permit shall be displayed in a location visible from the exterior of the business.
6. Upon expiration of the existing State orders restricting indoor seating capacity or upon a State order allowing 100% indoor capacity, the Temporary Use Permit shall automatically terminate, the use of Auxiliary Seating Areas shall cease, barriers placed therein shall be removed, and all areas used for Auxiliary Seating Areas shall be returned to their original use.

Unconditional Agreement and Consent

1. Each business must execute a City of Warrenville an Unconditional Agreement and Consent before installing and operating Auxiliary Seating Areas authorized under a City approved Temporary Use Permit.

Liquor License

The City's Liquor Commissioner has temporarily modified all liquor licenses for the duration of the Auxiliary Seating Area Program to allow the service of alcohol in Auxiliary Outdoor Seating Areas provided such Auxiliary Seating Areas are installed and operated pursuant to a valid Temporary Use Permit and in compliance with the Program Rules, the conditions of the Temporary Use Permit, and following additional conditions:

- a. Follow all liquor service laws and best practices.
- b. Ensure that there is adequate control of the outdoor service area including any existing outdoor service area and the Auxiliary Seating Area so that customers are not leaving the designated premises with open containers. Post signage indicating "No Alcohol Beyond this Point". Barriers need not be physical if they provide adequate information to the customer that it is the end point of the service area.

Fire Safety

1. Fire Hydrants and Fire Lanes (20 feet in width) cannot be blocked. Existing Fire Lanes shall be protected utilizing cones or tape so as to not obstruct emergency access.
2. Propane fueled patio heaters shall not be closer than 10' to any entrance / exit of any structure.
3. All tent structures must have adequate ventilation to allow for air circulation.
4. Open flame or other devices emitting flame, fire or heater with any flammable or combustible liquid, gas, charcoal or cooking device shall not be permitted inside or located within 20 feet of a tent.
5. Natural gas heaters or devices fueled with propane are allowed only in open, uncovered areas.
6. Portable fuel gas heating units are not permitted inside a tent.
7. Heating equipment shall be shut down and disconnected from the fuel or electrical power source at the close of business daily.
8. If electrical installations are required for the heating of the tent, such installations shall require a building permit and be installed by an electrician registered with the City of Warrenville.
9. It is the responsibility of the business owner to assure employees are trained in proper connection and disconnect of the fuel supply where natural gas or propane is used for heating.
10. Smoking is prohibited in all Auxiliary Seating Areas.
11. Extension cords must be removed each night.

Cold and Inclement Weather Safety

1. It is the responsibility of the business owner to assure employees are trained in procedures to prevent any injuries in storms, snow, or other unsafe winter conditions as they relate to the occupancy and egress of the tent.
2. The Code Official may deem use of a tent unsafe during a major wind, ice, or snow event at which time the tent shall be vacated until such wind ice, or snow event has ended and the tent is secure and free of and ice or snow loading.
3. Snow shall not be piled or allowed to accumulate in the path of any egress from the tent.
4. A clear pathway shall be maintained for access to customer toilet facilities.

Signage

1. Up to two temporary signs shall be allowed in conjunction with and for the duration of a valid Temporary Use Permit for an Auxiliary Seating Area, provided such signs comply with the maximum parameters for temporary signs established in the Sign Ordinance, and directly support operation of the business utilizing the Auxiliary Seating Area.
2. Parking lot regulation signs (i.e., advertising curbside pickup, delivery, now open) up to nine square feet shall be allowed without a permit.
3. Temporary signs shall not interfere with traffic, must be properly secured and well maintained (not tattered or flapping).

Public health and social distancing

1. Comply with protocols and guidelines issued by the Illinois Department of Public Health, Centers for Disease Control, DuPage County Health Department or other official authority. Follow updated guidance as it is released.
2. Adequate safeguards shall be in place for safety, security, crowd control, lighting control and the protection of minors.
3. Restrooms shall to be provided as required by the State of Illinois Plumbing Code.

Resources

Temporary Use Permit for Auxiliary Outdoor Seating

Temporary License Agreement

Unconditional Agreement And Consent

Apply for City Building Permit to install a Tent:

<https://www.warrenville.il.us/FormCenter/Community-Development-Building-6/Building-Permit-Application-47>

City of Warrenville Liquor License Questions: Diana Herrera 630-836-3050 or dherrera@warrenville.il.us



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3S258 Manning Avenue (630) 393 1531 fax
Warrenville, IL 60555 www.warrenville.il.us

Illinois Department of Commerce & Economic Opportunity:
<https://dceocovid19resources.com/for-businesses>

Illinois Department of Public Health: www.dph.illinois.gov

DuPage County Health Department: www.dupagehealth.org