
**VILLAGE OF HARWOOD HEIGHTS
COOK COUNTY, ILLINOIS**

ORDINANCE NO. 20 - 12

**AN ORDINANCE APPROVING
A TEMPORARY OUTDOOR DINING AND DRINKING PERMIT PROGRAM DURING
PHASE 3 OF RESTORE ILLINOIS PLAN**

Passed by the Board of Trustees, May 28, 2020

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By Authority of the Village Board of Trustees

VILLAGE OF HARWOOD HEIGHTS
COOK COUNTY, ILLINOIS

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I hereby certify that this document was
properly published on the date stated above.


Village Clerk

ORDINANCE NO. 20-12

**AN ORDINANCE APPROVING
A TEMPORARY OUTDOOR DINING AND DRINKING PERMIT PROGRAM DURING
PHASE 3 OF RESTORE ILLINOIS PLAN**

WHEREAS, the Village of Harwood Heights (hereinafter, “the Village”) is a home rule unit of government pursuant to Section 6(a), Article VII of the 1970 Illinois Constitution; and

WHEREAS, the Village, as a home rule unit of government, may exercise any power and perform any function pertaining to its government affairs; and

WHEREAS, with limited exceptions, the Village is authorized to generally regulate the sale of all beverages and food for human consumption (65 ILCS 5/11-20-2); and

WHEREAS, the Village may regulate the use of streets and other municipal property (65 ILCS 5/11-80-2); and

WHEREAS, the Village is authorized to license retail sales of alcoholic liquor (235 ILCS 5/4-1, 4-2); and

WHEREAS, the Village is authorized to authorize the use of its public rights of way and to permit outdoor service and consumption of alcohol; and

WHEREAS, on March 9, April 2, and April 30, 2020, Governor JB Pritzker declared all counties in the State of Illinois to be a disaster area; and

WHEREAS, on March 11, 2020 the World Health Organization characterized the COVID-19 outbreak as a pandemic; and

WHEREAS, on March 13, 2020, President Donald J. Trump declared a national emergency concerning the novel COVID-19 pandemic; and

WHEREAS, beginning March 16, 2020 at 9 p.m., Governor JB Pritzker suspended on-premises consumption of food or alcohol at restaurants in the State of Illinois (Exec. Order Nos. 2020-07 and 2020-33); and

WHEREAS, on May 5, 2020, Governor JB Pritzker announced “Restore Illinois: A Public Health Approach to Safely Reopen Our State”; and

WHEREAS, on May 20, 2020, Governor JB Pritzker announced that outdoor dining at bars and restaurants would be authorized to permit outdoor dining consistent with forthcoming state guidance under Phase 3 of the Restore Illinois plan, expected to begin on May 29, 2020; and

WHEREAS, on May 20, 2020 Governor Pritzker encouraged local governments to help restaurants and bars to expand outdoor seating; and

WHEREAS, the COVID-19 pandemic and the necessary public health response has created an economic challenge to local businesses including bars and restaurants; and

WHEREAS, the Village desires to temporarily authorize outdoor dining at bars and restaurants consistent with state guidelines and terms of this Ordinance to provide economic relief while protecting the health and safety of its residents.

The new Village Zoning Code regulates outdoor dining areas. Under Section 17.20.030.1 of the new Village Zoning Code, in a B1 zoning district, a special use permit must be obtained in order to operate a “restaurant with outdoor dining.” A “restaurant” is defined in Section 17.04.050 of the Village Code as “an eating establishment which serves its food to be consumed only at seating areas so designated whether inside or outside the building, including serving its food in carry-out containers but not to be consumed in vehicles parked on the premises.”

Section 17.16.020(E) of the Village Code extensively regulates outdoor dining areas. Barrel House is required to adhere to all governing regulations set forth in the Village Code. Though it falls outside the Plan Commission’s jurisdiction, the Plan Commission nonetheless notes that the proposed outdoor dining area is located partially on the Village’s right-of-way and therefore Barrel House must enter into a lease agreement with the Village prior to commencing any outdoor dining improvements.

NOW, THEREFORE, BE IT ORDAINED by the President and Board of Trustees of the Village of Harwood Heights, Cook County, Illinois, as follows:

SECTION 1. RECITALS. That the foregoing recitals shall be and are hereby incorporated into and made a part of this Ordinance as if fully set forth in this Section 1.

SECTION 2. TEMPORARY OUTDOOR DINING POLICY.

A. **Temporary Outdoor Dining Policy.** The Village President is hereby authorized and directed to develop, administer, and enforce a temporary outdoor dining policy and associated, rules, requirements, protocols, fees, agreements, and procedures (collectively, *“Temporary Outdoor Dining Policy”*) consistent with this Ordinance authorizing a restaurant or bar to submit a plan to use outdoor space or expand existing outdoor space for food and/or beverage service, including all amenities, barriers, tables, spacing, and such other requirements deemed necessary by the Village President, in her sole discretion. The Village President is authorized to execute on the Village’s behalf all documents necessary to implement, administer and enforce the Temporary Outdoor Dining Policy.

B. **Conditions on Approval.** Any approval granted by the Village under this Ordinance shall be subject, at a minimum, to the following conditions:

- i. Temporary outdoor dining areas must comply with the Temporary Outdoor Dining Policy;
- ii. Temporary outdoor dining areas must comply with all plans and protocols approved by the Village governing the operation and maintenance of the temporary outdoor dining area;

- iii. Temporary outdoor dining areas must comply with all laws, rules, and regulations governing the operation and maintenance of the temporary outdoor dining area, including, without limitation, Governor JB Pritzker's Executive Orders and state guidance;
- iv. Temporary outdoor dining areas serving or allowing for the consumption of alcohol must obtain written approval from the local liquor control commissioner to extend the licensed premises to the approved temporary outdoor dining area;
- v. Temporary outdoor dining areas serving or allowing for the consumption of alcohol must comply with all directives and orders issued by the local liquor control commissioner and state liquor control authorities;
- vi. Temporary outdoor dining areas must comply with all protocols and guidelines issued by the Illinois Department of Public Health, the Centers for Disease Control, and other official health authorities;
- vii. Applicants seeking approval of a temporary outdoor dining area or expansion to an existing outdoor dining area must submit a signed unconditional use and consent agreement, hold harmless agreement, and/or any other agreement deemed reasonably necessary by the Village President, in her sole discretion, in a form approved by the Village Attorney substantially conforming to Exhibit A and Exhibit B; and
- viii. Applicants shall comply with any additional conditions imposed by the Village President in her capacity as President and/or as Local Liquor Control Commissioner on the approval of any outdoor dining permit issued pursuant to the Temporary Outdoor Dining Policy or approval of expanded temporary authorizations under a liquor license, and all such conditions imposed shall be an exercise of her sole official discretion.

SECTION 3. USE OF RIGHT OF WAY OR OTHER PUBLIC PROPERTY FOR OUTDOOR SEATING. Any restaurant or bar that desires to use the right of way or other public property for outdoor dining as part of its outdoor dining permit must first request approval from the Village President and execute the hold harmless agreement attached to this Ordinance as Exhibit B. Use of the right of way or other public property for outdoor seating will be limited to 90 minutes (per customer). The Village President has the authority and discretion to determine which portions of the right of way may be used for outdoor seating and may impose conditions on the approval.

SECTION 4. USE OF PARKING LOTS FOR OUTDOOR SEATING. Any restaurant or bar that desires to use a parking lot for outdoor seating must request approval as part of its outdoor dining permit. No use will be allowed to block access or fire lanes. The request to use the parking lot for outdoor seating will be reviewed by the Village President, who has the authority to approve the request, and impose any conditions on the approval.

SECTION 5. LIQUOR COMMISSIONER AUTHORITY. The local liquor control commissioner may extend a licensed premises to include an approved outdoor dining area in writing to the applicant, on terms and conditions deemed reasonable to the local liquor control commissioner. When the local liquor commissioner so elects, the Village waives any prohibitions on the consumption and service of alcoholic liquor on any street, sidewalk, or other public way within the Village as to those portions of the right of way within an approved temporary outdoor dining area pursuant to this Ordinance.

SECTION 6. APPROVAL, TERM, AND CONFLICT RESOLUTION. Notwithstanding any contrary provision of a Village code, ordinance, rule, regulation, or policy

concerning minimum parking spaces, use of the public right-of-way, outdoor alcohol consumption, zoning restrictions, or other provision influencing the viability of temporary outdoor dining as authorized by the Temporary Outdoor Dining Policy, as amended (collectively, the “*Rules*”), permits for temporary outdoor dining areas may be approved for restaurants and bars consistent with the terms of this Ordinance and the Temporary Outdoor Dining Policy, as amended, for the period of time beginning on the date the Illinois’ Northeast Region enters Phase 3, as defined in the Restore Illinois Plan, and concluding when the State of Illinois authorizes indoor on-premises consumption of food and beverages at restaurants with the Village of Harwood Heights or upon the Village Board rescinding this Ordinance, whichever occurs first. Conflicts between the Rules and the Temporary Outdoor Dining Policy shall be resolved in favor of the Temporary Outdoor Dining Policy.

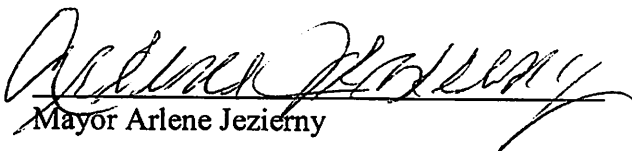
SECTION 7. AMENDMENT. RESOLUTION OF CONFLICTS. All

ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

SECTION 8. SAVING CLAUSE. If any section, paragraph, clause, or provision of this Ordinance shall be held invalid, the invalidity thereof shall not affect any of the other provisions of this Ordinance, which are hereby declared to be separable.

SECTION 9. EFFECTIVE DATE. This Ordinance shall be in full force and effect upon passage, approval and publication in pamphlet form as provided by law.

Passed and Approved as amended this 28th day of May, 2020.


Mayor Arlene Jezierny

ATTEST:



Marcia L. Polowy, Village Clerk

VOTES

AYES: Trustee Schuepfer, Steiner, Brzezniak-Volpe, Brzozowski-Wegrecki, Zerillo, Lewandowski

NAYS:

ABSENT:

ABSTAIN:

EXHIBIT A
Unconditional Agreement and Consent

[Attached]

Unconditional Agreement and Consent

TO: The Village of Harwood Heights, Illinois ("*Village*")

WHEREAS, _____ ("*Applicant*") sought approval of a temporary outdoor dining area ("*Temporary Use*") located at _____, Harwood Heights, Illinois ("*Property*");

WHEREAS, the permit dated _____, 2020, grants approval of such Temporary Use, subject to certain conditions ("*Permit*"); and

WHEREAS, the Applicant desires to evidence to the Village its unconditional agreement and consent to accept and abide by each of the terms, conditions, and limitations set forth in the Permit.

NOW THEREFORE, the Applicant does hereby agree and covenant as follows:

1. the Applicant hereby unconditionally agrees to accept, consent to and abide by all terms, conditions, restrictions, and provisions of the Permit;
2. the Applicant acknowledges and agrees that the Village will not be, in any way, liable for any damages or injuries that may be sustained as a result of the Village's approval of the Permit by the Applicant, and that the Village's approval of any such request does not, and will not, in any way, be deemed to insure the Applicant against any damage or injury of any kind and at any time;
3. the Applicant acknowledges and has considered the possibility of penalties provided for noncompliance with Permit conditions, and agrees not to challenge any such penalties on the grounds of any procedural infirmity or any denial of any procedural right;
4. the Applicant agrees to and does hereby hold harmless and indemnify the Village, the Village's corporate authorities, and all Village elected and appointed officials, officers, employees, agents, representatives, and attorneys, from any and all claims that may, at any time, be asserted against any of such parties in connection with (a) the Village's approval of the Permit, including all conditions of approval, (b) the procedures followed in connection with the approval of the Permit, and (c) the performance of the Applicant of its obligations under this Unconditional Agreement and Consent;
5. the Applicant does hereby, agree to pay all expenses incurred by the Village in defending itself with regard to any and all claims mentioned in this Unconditional Agreement and Consent. These expenses will include all out of pocket expenses, such as attorneys' and experts' fees, and will also include the reasonable value of any services rendered by any employee of the Village.

APPLICANT

SUBSCRIBED and SWORN to

Before me this ____ day of

_____, 2020

Notary Public

EXHIBIT B
Hold Harmless Agreement

[Attached]

USE OF PROPERTY
AND HOLD HARMLESS AGREEMENT

Whereas, the _____ (“Applicant”) desires to use the Village of Harwood Heights’s (“Village”) property located at _____ (“Premises”) for a temporary outdoor dining area (“Temporary Use”).

Whereas, the Village agrees to allow the Applicant to use the Premises for the Temporary Use in consideration of the Applicant agreeing to assume all risk and liability pertaining to the Temporary Use.

Now therefore, the Applicant agrees as follows:

To the fullest extent permitted by law, the Applicant hereby indemnifies, defends, and holds harmless the Village and its officials, employees, agents and volunteers from and against any and all liability or claim of liability, loss or expense, including defense costs and legal fees and claims for damages of whatsoever character, nature and kind, whether directly or indirectly arising from the Temporary Use or connected with an act or omission of the Applicant, or an agent, invitee, guest, employee, or anyone in, on or about the Premises invited by and/or with the permission and consent of the Applicant, with respect to the Premises or the operations, activities or services, of any nature whatsoever, of the Temporary Use, including, but not limited to, liability expense and claims for: bodily injury, death, personal injury, or property damage caused by the negligence, creation or maintenance of a dangerous condition of property, or intentional infliction of harm or violation of state and federal laws.

Nothing set forth in this Agreement shall be deemed a waiver by the Village of any defenses or immunities that are or would be otherwise available to the Village or its officials, employees, agents or volunteers under the provisions of the Illinois Local Government and Governmental Employees Tort Immunity Act, or that are otherwise available to local governments and their corporate authorities, officers, employees, agents and volunteers under the common law of the State of Illinois or the United States of America. The provisions of this Section shall survive the expiration or earlier termination of this Agreement or renewal thereof.

Without limiting the Applicant’s indemnification of the Village as provided above, the Applicant shall provide and maintain at its own expense for the Temporary Use the below listed policies of insurance or liability coverage covering the activities, services or operations relating to the Temporary Use. All such insurance of the Applicant and the insurance of the owners/operators shall be secured through a carrier(s) satisfactory to the Village. Satisfactory evidence of such insurance and any required endorsements, including the insurance required of the owners/operators, will be delivered to the Village Clerk prior to commencement of the Temporary Use. The Village’s insurance or liability coverage shall always be deemed excess over any other insurance or liability coverage whether primary, excess, pro rata, contingent or any other basis.

a. Commercial General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, property damage and personal injury with a general aggregate of \$1,000,000 limit. The Village, its officials, employees, agents and volunteers shall be named as an additional insured on

a primary and non-contributory basis under the policy or coverage by original endorsement signed by a person authorized to bind coverage.

b. Liquor Liability: \$1,000,000 per occurrence for its sale of alcoholic beverages and require that any other party selling or serving alcoholic beverages during the Temporary Use shall provide Liquor Liability insurance in the same amount with the Village, its officials, employees, agents and volunteers named as additional insured on a primary and non-contributory basis by original endorsement signed by a person authorized to bind coverage.

All policies of insurance or liability coverage shall contain a waiver of subrogation as against the Village, its official, employees, agents and volunteers except with respect to the sole negligence of the Village.

The invalidity or unenforceability of any of the provisions hereof shall not affect the validity or enforceability of the remainder of this Agreement.

The undersigned represents it has full authority to execute this Use of Property and Hold Harmless Agreement on behalf of the Applicant.

Agreed this _____ day of _____, 2020.

(Name of Applicant)

Signature of Authorized Person

Title

