




MEMORANDUM

TO: Trustee Anthony Puccio, Chairperson
Economic and Community Development Committee

FROM: Jennifer Ganser, AICP, Assistant Director 

MEETING DATE: October 14, 2019

SUBJECT: **Text Amendments to Village Code: Outdoor Cafés**

Staff has reviewed Section 119 of Village Code regarding Outdoor Cafes. Section 119 is for outdoor cafes in downtown Lombard, zoning districts B5. Outdoor cafes are a permitted use on the Village owned rights-of-way and Section 119 establishes rules and regulations. The section was added to Code to make it easier for downtown restaurants to have outdoor seating. In the review, staff found the need for certain text amendments for clarity purposes.

Separately, but related, staff is bringing a zoning text amendment to the Plan Commission in the fall to allow outdoor seating on private property to be a permitted use in the Business Districts. Currently, it is a conditional use in the Business Districts. In the zoning text amendment staff is proposing zoning regulations for outside seating, many similar Section 119.

ACTION REQUESTED

Staff requests the ECDC review the proposed changes and make a recommendation vote to the Village Board.

ARTICLE III. - OUTDOOR CAFES AND OUTDOOR SEATING ON THE PUBLIC RIGHT-OF-WAY

§ 119.20 - Permit required.

Notwithstanding any other provision in this Code it is unlawful for any person, firm, corporation, organization or association to operate an outdoor cafe in compliance with § 155.418

of this Code or to use the public right-of-way for outdoor seating, as an extension of the establishment, or to provide entertainment in conjunction with such outdoor cafes or outdoor seating without obtaining a permit. Permits will be issued for outdoor cafes and/or outdoor seating on public right-of-way only to business establishments subject to the places for eating tax, as set forth in § 98.111 of this Code. Such permits may be purchased at any time during a calendar year, but all permits shall expire on December 31 of the same calendar year. No permit shall be issued to any business establishment which is not in compliance with all provisions of the Lombard Village Code.

§ 119.21 - Application and fee.

All applicants for outdoor cafe permits and/or outdoor seating on the public right-of-way permits must complete an application in a form approved by the village which must be submitted to the village's Department of Community Development with a non-refundable fee of \$150.00 or a non-refundable renewal fee of \$50.00 for those renewing a permit from the previous year where no substantial changes have been made to the site plan. Applicants applying for both permits simultaneously may pay one \$150.00 fee. All applications shall include the following information:

- (A) Name of the proprietor and the business establishment for which the outdoor cafe permit and/or the outdoor seating on the public right-of-way permit is sought.
- (B) The address and phone number of the proprietor and the business establishment.
- (C) A detailed site plan showing all existing objects on the property and on the public right-of-way adjacent to the business establishment including a depiction of on-street parking adjacent to the business establishment, and the proposed location of each chair and table. When music or other entertainment is provided outdoors on the private property of the petitioner requesting the permit, the site plan shall include the area and placement of said music or entertainment.
- (D) Permit applications for outdoor seating on the public right-of-way must include Certificates of Insurance in the following amounts: 1) ~~Comprehensive-Commercial~~ General Liability Insurance—\$1,000,000, showing the village and its officers, employees, agents and volunteers as additional insureds, and containing a statement that said policies shall not be changed or canceled without 30 days written notice to the Village of Lombard; 2) ~~w~~Workers' ~~e~~Compensation—statutory amount; and 3) if alcoholic beverages will be ~~served~~consumed or sold, dram shop insurance, as required by ~~subs~~Section 112.18(A)(17) of this Code, shall be required.
- (E) Permit applications for outdoor seating on the public right-of-way must include a signed indemnification statement on the form provided by the village. An inspection of the property to document existing conditions of public improvements shall be performed by the village prior to issuance of an outdoor cafe permit and/or an outdoor seating on the public right-of-way seating permit. Applications should be filed at least two weeks prior to scheduled use to allow sufficient time for such inspection.
- ~~(F) Permit applications applied for relative to the 2012 calendar year shall be exempted from the associated permit fee requirement, as set forth above, for the 2012 season.~~

(Ord. 6713, passed 5/3/12)

§ 119.22 - Regulations

All permit holders shall be subject to the following regulations:

- (A) The outdoor cafe area and the outdoor seating on the public right-of-way area shall be maintained clean and free from refuse or clutter at all times regardless of the source of such refuse and clutter. Refuse from the outdoor seating area shall not be disposed of in public waste receptacles.
- (B) Outdoor seating elements (as defined in § 119.23 below) shall not be permanently attached and shall be removed when not in use during cold weather months (generally October through March). Any outdoor seating elements owned by the business establishment, that are intended to be placed within the public right-of-way outside of established business hours, shall be identified within the annual permit application, and shall be subject to review by the Director of Community Development, or their designee. If approved, the village reserves the right to require the establishment to remove or modify the outdoor seating elements, if deemed necessary by the village at any time.
- (C) For outdoor seating on the public right-of-way, all public improvements shown on the site plan, including, but not limited to, pavers, benches, light poles and trees shall be maintained in the condition in which they existed immediately prior to the issuance of the permit, excluding normal wear and tear. The permit holder shall immediately report any damage to such public improvements to the Community Development Department. The village shall repair or replace such public improvement at its discretion and shall charge the cost of repair or replacement to the permit holder unless the damage can be clearly shown to have resulted from a cause not related to the issuance of the outdoor seating on the public right-of-way permit.
- (D) Activities involving the outdoor seating on the public right-of-way shall be conducted in a manner that does not interfere with pedestrians, parking or traffic.
- (E) Outdoor cafe permits and/or outdoor seating on the public right-of-way permits shall be posted in a conspicuous place inside the business establishment.
- (F) The source of music or other entertainment provided outdoors in conjunction with an outdoor café or outdoor seating in the public right-of-way permit, shall be located only on the private property of the permit holder and shall be provided, with noise levels maintained in strict compliance with the provision of Title 9, Chapter 93 of this Code or any other codes which may be established with regard to noise or public nuisances. Furthermore, all outdoor music or entertainment shall cease by 10:30 p.m. on Sunday through Thursday, and by 11:30 p.m. on Friday and Saturday.
- (G) Outdoor seating areas on private property shall be permitted for establishments in which the designated seating area is on the same lot of record as the business establishment and located within the buildable area of the property. For outdoor seating within public rights-of-way, the outdoor seating area shall be limited to the areas designated on the permit, and shall not be located in front of any other business establishment or use unless the permit holder provides authorization to the village, from the adjacent business owner or occupant stating that he/she/it consents to the sidewalk seating elements being placed in front of his/her/its business establishment or use.
- (H) Business establishments must meet all provisions as set forth within the Smoke Free Illinois Act.
- (I) Business establishments must provide public restrooms for patrons, as required by this Code.
- (J) Business establishments shall be entitled to remove or exclude persons from the outdoor seating on the public right-of-way area during the hours of business operation, and are authorized to give notice to any such persons to prevent such entry, in the same manner as applicable to the non-public right-of-way portion of the business establishment.

§ 119.23 - Restrictions.

- (A) Tables, chairs, temporary fencing, decorations and umbrellas (the "outdoor seating elements"):

- (1) Shall be located so that a four foot wide unobstructed walkway, as measured from the outdoor seating element to any other obstructions on the opposite side of the unobstructed walkway, is maintained at all times;
 - (2) Shall be located in accordance with the approved site plan, shall generally be immediately adjacent to the building and in no instance less than 42 inches from the back of curb, except that outdoor seating elements can be located closer than 42 inches from the back of curb when there is no parallel parking adjacent to them (said modification to these requirements may be varied by the Director of Community Development, or their designee, if granting such approval provides for a better design and layout of the seating area);
 - (3) Shall not obstruct normal ingress and egress from the businesses establishment.
 - (4) Shall not be of a design and/or weight that will create a wind-blown hazard, and,
 - (5) Shall meet all provisions of the ~~Americans with Disabilities Act~~ current Federal American with Disabilities Act (ADA) Standard and the Illinois Accessibility Code.
- (B) The following items or actions are prohibited in the outdoor seating on the public right-of-way area:
- (1) Outdoor seating elements in locations not approved by the Department of Community Development, and
 - (2) Electrical appliances.
- (C) The following provisions are required for business establishments where the service or consumption of alcoholic beverages will take place in the outdoor cafe or outdoor seating on the public right-of-way:
- (1) The business establishment shall have a valid liquor license issued by the village, that allows for the service of the type of alcoholic beverages being served.
 - (2) Alcoholic beverage consumption shall only be permitted within the designated outdoor seating area, or any other portion of the business establishment to which the liquor license relates. The permit holder shall not allow or permit any customer, employee or other person to remove alcoholic beverages from the area designated in the outdoor cafe or outdoor seating area in the right-of-way permit, other than to another location within the business establishment to which the liquor license relates.
 - (3) To ensure that consumption of alcoholic beverages is limited to the designated outdoor seating areas and operated in compliance with this Code, outdoor cafes and outdoor seating areas on the public right-of-way shall be regularly monitored and bussed by an employee or contractor of the business establishment.
 - (4) The hours during which patrons may occupy the outdoor café or outdoor seating on the public right-of-way shall not extend beyond the hours of operation of the other portions of the business establishment. Notwithstanding the foregoing, the outdoor café or outdoor seating on the right-of-way shall not be occupied during the following times:

Between 12:30 a.m. and 6:00 a.m. on Monday, Tuesday, Wednesday, Thursday and Friday;
between the hours of 1:30 a.m. and 6:00 a.m. on Saturday; and between the hours of 1:30 a.m. and 12:00 p.m. (noon) on Sunday, except for Class "M" liquor ~~licensees~~ licenses, whose hours of operation shall be controlled by subsection 112.36(B) of this Code.
 - (5) Outside seating areas on private property, not in conjunction with outdoor seating on the public right of way, shall be fenced or screened in a manner that prevents patrons from congregating outside of the designated seating area. Fencing shall be of a wood or metal design, and may be permanently secured to the ground or removable during the period in which outdoor seating is not open. Said fencing shall also meet the design and ingress/egress provisions as required by this Code. Modification to these requirements may be varied by the Director of Community Development, or their designee, if granting such approval provides for a better design and layout of the outdoor seating area.

(Ord. 6713, passed 5/3/12)

§ 119.24 - Enforcement; revocation.

- (A) Any person, firm or corporation who violates the provisions of §§ 119.20, 119.21, 119.22 or 119.23 of this Code shall be fined not less than \$50.00 nor more than \$750.00 for each day on which the violation occurs or continues to occur. In addition, the outdoor cafe permit and/or the outdoor seating on the public right-of-way permit may be revoked as a result of any such violation.
- (B) The Chief of Police, the Fire Chief or the Community Development Director, or their designees, of the vVillage, upon determining that the method or manner of use of the outdoor café or the outdoor seating or the conduct of persons serving within or using same pose an immediate threat to the public health, safety or welfare shall have the power and authority to cause the outdoor dining elements to be removed immediately and to revoke the permit issued pursuant to §§ 119.20 and 119.21 of this Code.

(Ord. 3733, passed 7/22/93, Ord. 4331, passed 6/19/97; Ord. 6713, passed 5/3/12)

§ 119.99 - Penalty.

- (A) Penalty for violation of §§ 119.01 through 119.04 shall be not less than \$50.00 or more than \$750.00. Revocation or termination of DuPage County Board of Health permit shall result in a concurrent termination of the license granted under this Chapter.
- (B) Any person, firm, or corporation violating any provision of §§ 119.10—119.13 shall be fined not less than \$50.00 nor more than \$750.00 for each offense; and a separate offense shall be deemed committed on each day during or on which a violation occurs or continues.

('70 Code, § 5.60.060) ('70 Code, § 5.12.050) (Ord. 1736, passed 4-2-73) (Ord. 527, passed 4-4-49, Ord. 4104, passed 12/7/95, Ord. 4186, passed 7/18/96)