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OFFICE OF THE MAYOR

CITY OF CHICAGO

LORI E. LIGHTFOOT

MAYOR

September 21, 2022

TO THE HONORABLE, THE CITY COUNCIL OF THE
CITY OF CHICAGO

Ladies and Gentlemen:

At the request of the Commissioner of Transportation, I transmit herewith an ordinance-amending the Municipal Code to codify the Expanded Outdoor Dining Program.

Your favorable consideration of this ordinance will be appreciated.

Very truly yours.

ORDINANCE

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHICAGO:

SECTION 1. Section 2-25-050 of the Municipal Code of Chicago is hereby amended by adding the language underscored, and by deleting the language struck through, as follows:

2-25-050 Powers and duties of the department.

a) General powers and duties. The Commissioner and department shall have powers and duties related to business affairs and consumer protection as set forth in this section and elsewhere in this chapter and Code.

b) Powers and duties of the Commissioner and the Department. The powers and duties of the Commissioner and Department shall be as follows:

(Omitted text is unaffected by this ordinance)

(6) To exercise all rights, powers, duties, obligations and responsibilities that relate to:

i) the issuance of denial, rescission, or revocation of licenses and public way use permits; and

ii) the enforcement of license, permit and business taxation requirements formerly administered by the department of business affairs and licensing. Provided, however, that nothing in this item (6) shall be construed to limit the powers of the Department of Finance provided for in Chapter 2-32 of this Code;

(Omitted text is unaffected by this ordinance)

SECTION 2. Section 9-8-010 of the Municipal Code of Chicago is hereby amended by adding the language underscored, and by deleting the language struck through, as follows:

9-8-010 Authorized - Compliance required.

(a) (1) Subject to subsection (a)(2), the ~~commissioner~~ Commissioner of transportation Transportation and the ~~executive director~~ Executive Director of emergency management Emergency Management and ~~communications~~ Communications are hereby authorized to cause the placement, erection, maintenance, and removal of traffic-control devices as provided in the traffic code and Article X of Chapter 10-28, as required to make effective the traffic ordinance of the city City, and as necessary to guide and warn traffic. Provided, however, that if city-council City Council approval is required to install any traffic control device, city-council City Council approval shall also be required to remove such device. The ~~commissioner~~ Commissioner of transportation Transportation and the ~~executive director~~ Executive Director of emergency management Emergency Management and ~~communications~~ Communications are also authorized to place and maintain temporary traffic-control devices as needed in connection with construction or special events or experimental devices for the purposes of an engineering study; provided, however, that such devices shall not be maintained for longer than 180 days without city-council City Council approval. Upon the authorization of the ~~commissioner~~ Commissioner of transportation Transportation or the ~~executive director~~ Executive Director of emergency management Emergency Management and ~~communications~~ Communications, the actual erection, placement, maintenance^ and removal of any traffic-

control device shall be performed by the appropriate city City department or bureau. All traffic-control devices placed and maintained pursuant to the traffic code shall conform to the manual and specifications approved by the State of Illinois Department of Transportation and shall so far as practicable be uniform as to type and location throughout the city-City. All traffic-control devices so erected and not inconsistent with the provisions of state law or this Code shall be official traffic-control devices.

2) Subject to Section 9-64-200, the ~~comptroller~~ Comptroller shall have the sole authority to cause or direct the placement, erection, and maintenance of parking meters.

3) In order to promote pedestrian safety, the ~~commissioner~~ Commissioner of transportation Transportation is authorized to place or maintain temporary pedestrian safety awareness signs on the public ways of the city; provided, however, no such sign shall be placed or maintained on any traffic-control device or any traffic-control device pole. In determining the design, size, location^A and other features of such signs, the ~~commissioner~~ Commissioner of transportation Transportation shall consider the effect that such signs may have on traffic safety and aesthetics.

(Omitted text is unaffected by this ordinance)

(d) No provision of any traffic ordinance for which traffic-control devices are required shall be enforced against an alleged violator if at the time and place of the alleged violation an official device is not in proper position and sufficiently legible to be seen by an ordinary observant person. Whenever a particular section does not state that signs or other devices are required, such section shall be effective even though no signs or other devices are erected or in place.

Any act involving a traffic-control device that would be a violation of this Code if the device had been authorized or caused to be erected by the ~~commissioner~~ Commissioner of transportation Transportation shall also be a violation of this Code if the act involved: (1) a traffic-control device authorized or caused to be erected by the ~~executive director~~ Executive Director of emergency-management Emergency Management and ~~communications~~ Communications; or (2) a parking meter installed and maintained: (i) by the ~~comptroller~~ Comptroller, or (ii) by a person (or such person's designee) acting pursuant to a concession agreement approved by the ~~city council~~ City Council for the operation, maintenance, improvement, installation^A and removal of, and the collection of fees from, certain designated parking meters.

Any person violating subsections (b) or (c) of this section shall be fined no less than \$90.00 and no more than \$300.00 and may be required to perform reasonable public service.

SECTION 3. Chapter 10-28 of the Municipal Code of Chicago is hereby amended by adding a new Article X, as follows:

ARTICLE X. OUTDOOR DINING STREET

10-28-590 Outdoor Dining Program with street closure.

(a) Wherever used in this article, unless the context clearly indicates otherwise:

1) "Com m issioner" m eans the Com m issioner of Transportation.

2) "Outdoor Dining Street" means a street that has been blocked off, whether the curb lane or in full, from motor vehicle traffic in order to use the space for the outdoor consumption of food and beverage.

3) "Outdoor Dining Street Permit" means "Outdoor Dining Street Full-Closure Permits" and "Outdoor Dining Street Curb Lane Permits".

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(4) "Permittee" means a business that has received an Outdoor Dining Street Permit.

b) A permit shall be required to operate an Outdoor Dining Street.

c) Outdoor Dining Street Full-Closure Permit. Three or more licensees who hold valid retail food establishment licenses or liquor licenses may apply to the Commissioner of Transportation to close the street on a block between two intersections to obtain an Outdoor Dining Street Full-Closure Permit for the purpose of serving the food and beverage provided by their licensed establishments on the public way. This permit shall be subject to all of the following requirements:

1) At least fifty percent of the licensees shall be retail food establishments.

2) The licensed premises of participating establishments shall be located directly adjacent to the Outdoor Dining Street.

3) At least one retail food establishment shall be open for outdoor business when a business with only a liquor license is open for outdoor business on the Outdoor Dining Street. A business with only a liquor license may not operate on the Outdoor Dining Street if there is no retail food establishment operating on the Outdoor Dining Street.

4) At least two retail food establishments shall be open for outdoor business each day of the week. Retail food establishments shall be open for at least four consecutive hours. At least two retail food establishments shall be open between 5:00 p.m. and 7:00 p.m. However, no penalty for violation of this subsection shall apply to a business that has to shorten or discontinue its hours on a particular day as a result of inclement weather.

5) Hours of operation for the street portion shall be posted by each retail food establishment.

6) All licensees on the permit must operate on the street portion at least two days a week at all times during the permitted operating hours.

7) Only licensees which are named in the permit may operate on an Outdoor Dining Street.

d) Outdoor Dining Street Curb Lane Permit. A licensee who holds a valid retail food establishment license and is not eligible for a sidewalk cafe permit because of the width of the sidewalk and has a licensed premises directly adjacent to the portion of the street sought to be temporarily modified may apply to the Commissioner to close a portion of a curb lane in front of the licensed premises to obtain an Outdoor Dining Street Curb Lane Permit for the purpose of serving the food and beverage provided by their licensed establishment on the public way.

e) No smoking shall be allowed in the area designated for the Outdoor Dining Street.

f) An Outdoor Dining Street Permit shall be valid from May 1st to and including October 31st of the year of its issuance. The fee for an Outdoor Dining Street Permit shall be determined by the Commissioner, taking into account land values, and shall be set by rule.

10-28-591 Permit application procedure.

Application for any Outdoor Dining Street Permit shall be submitted to the Commissioner, who shall make available forms for this purpose. The applicant shall provide such information on the application as the Commissioner may require by rule, including, but not limited to:

a) Proof that the applicant holds a valid retail food establishment license issued to the establishment that will provide food for the outdoor dining.

b) Proof of insurance as required by this article.

c) A plan for the outdoor dining space, complying with applicable rules, and demonstrating that the outdoor dining shall not unreasonably interfere with: (1) adequate pedestrian and bicycle flow, (2) access to building entrances; (3) pedestrian and traffic safety; and (4) the aesthetic quality of the surrounding area.

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10-28-592 Insurance required.

Each Outdoor Dining Street Permit participant shall furnish proof of insurance evidencing commercial general liability insurance with limits of not less than \$500,000.00 per occurrence, \$1,000,000.00 in the aggregate, for bodily injury, personal injury and property damage liability. The insurance shall provide for 30 days' prior written notice to be given to the Commissioner if coverage is substantially changed, canceled or non-renewed.

The City of Chicago shall be named as an additional insured on a primary, noncontributory basis for any liability arising directly or indirectly from the operations of an Outdoor Dining Street. Apart from and separate from any insurance requirement under this section, the permittee shall indemnify, defend and hold the City harmless from any loss that results directly or indirectly from the permit issuance.

In addition, if alcoholic beverages will be served at the Outdoor Dining Street, each Outdoor Dining Street Permit participant that serves alcoholic beverages shall provide proof of liquor liability (dramshop) insurance for the Outdoor Dining Street as required in Section 4-60-040(c)(2) of this Code.

Each permittee shall maintain the insurance coverage required under this section for the duration of the Outdoor Dining Street Permit. Proof of insurance shall be presented to the Commissioner prior to the issuance of a permit under this article. Proof of liquor liability (dramshop) insurance shall be presented to the Department of Business Affairs and Consumer Protection. Failure of the permittee to maintain the insurance required by this section shall result in the revocation of the Outdoor Dining Street Permit.

10-28-593 Review of application.

The Department of Transportation shall review an Outdoor Dining Street Permit application for compliance with this article and applicable rules.

a) The Commissioner shall solicit input from departments, including, but not limited to, the Department of Business Affairs and Consumer Protection, the Department of Police, the Department of Fire, and the Office of Emergency Management and Communications, and may consult with the Chicago Park District, and may also solicit input from stakeholders, including neighboring businesses, as to the factors the Commissioner considers in determining whether to grant the permit.

b) Except with regard to renewal applications governed by subsection (c), if the Commissioner finds that the permit application is complete, the Commissioner shall provide the application to the alderman of the affected ward. The alderman shall provide a recommendation to the Commissioner regarding the application within 30 days of receiving it, unless the Commissioner determines that good cause exists for a reasonable extension, not to exceed 30 days. The recommendation regarding the application shall be based upon the alderman's analysis of the requirements of this article and the rules promulgated in furtherance of the article. Such recommendation shall not be unreasonably withheld. The Commissioner shall issue the Outdoor Dining Street Permit to the applicant if the Commissioner finds that the applicant meets the applicable requirements and the alderman's recommendation is that the permit application should be approved. If the Commissioner finds that the applicant meets the applicable requirements, but the alderman recommends that the permit application should be denied, the applicant, with the assistance of the Department of Transportation, may submit for City Council consideration an applicant-sponsored ordinance granting approval of an Outdoor Dining Street Permit.

c) For purposes of this section, "renewal application" means an application for the operation of an Outdoor Dining Street at the same location and by the same applicant that was approved within the previous 12 months.

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If the Commissioner finds that a renewal application meets the requirements of this article and the rules promulgated hereunder, the Commissioner shall issue the Outdoor Dining Street Permit to the applicant.

(d) Denial.

1) If the Commissioner finds that the applicant fails to meet the requirements of this article or the rules promulgated hereunder, the Commissioner shall deny the application or renewal application. The Commissioner shall notify the unsuccessful applicant in writing of the denial and the reasons therefor within ten business days after the denial. An applicant for renewal that was subjected to, or eligible for, temporary closure as a result of violations pursuant to Section 10-28-610(d) during the prior permit period, if those violations have been finally adjudicated and sustained, shall be subject to: (i) denial of the renewal or (ii) having the renewal conditioned upon a written plan of operation or other set of conditions that the Commissioner determines is necessary to ensure compliance with this Article. An applicant for a permit that was found liable of violating Section 10-28-610(c) twice during the prior permit period shall be subject to denial of the permit for the permit period applied for.

2) Upon denial by the Commissioner of a permit application made under this section, the Commissioner shall notify the applicant, in writing, of such fact and of the basis for the denial. If no appeal is filed within ten calendar days of the date of notice of the Commissioner's decision, that decision shall be deemed final. Within ten days after such notice is mailed, the applicant may make a written request to the Commissioner for a hearing on the disapproved application or renewal application. Within ten days after such written request for a hearing is made, a public hearing shall be authorized before a hearing officer appointed by the Commissioner of Business Affairs and Consumer Protection. Such public hearing shall be commenced

within thirty days after such hearing is authorized. Within fourteen days after completion of such hearing, the hearing officer shall report the hearing officer's findings to the Commissioner of Business Affairs and Consumer Protection. If the Commissioner of Business Affairs and Consumer Protection determines after such hearing that the application or renewal application should be denied, the Commissioner of Business Affairs and Consumer Protection shall, within sixty days after such hearing has been concluded, state the reasons for the Commissioner's determination in a written finding and shall serve a copy of such written finding upon the applicant. The Commissioner's determination shall be final and may be appealed in the manner provided by law.

10-28-594 Compliance with plan and other components of application.

- a) All permittees operating on an Outdoor Dining Street shall comply in all respects with the specifications set out in the plan submitted to the Commissioner, with the other components of the application, and with any additional requirements set by the Commissioner.
- b) In the event that the application, including the plan, becomes inaccurate or incomplete in any respect as a result of circumstances or events outside the control of the permittee, the permittee shall notify the Commissioner within three business days of such circumstances or events.
- c) Before taking any action that would result in the application, including the plan, becoming inaccurate or incomplete in any respect, the permittee shall seek the prior approval of the Commissioner.
- d) Upon being notified of an actual or contemplated change pursuant to either subsection (b) or (c) of this section, the Commissioner shall review the change to determine whether such change is insubstantial or substantial, using the same criteria as relevant to the Commissioner's consideration of an initial application. If such change is insubstantial and if the application, as so changed, meets the criteria for an initial application, the Commissioner shall approve the change. If such change is insubstantial and if the application, as so changed, does

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not meet the criteria for an initial application, the Commissioner shall disapprove the change. If such change is substantial, a new permit application shall be required.

10-28-595 Permit - Assignment or transfer prohibited.

No permittee shall assign or transfer an Outdoor Dining Street Permit.

10-28-596 Permit for food and alcoholic beverage service only.

No activity other than food and alcoholic beverage service shall be permitted at the Outdoor Dining Street. An Outdoor Dining Street Permit does not authorize food or alcoholic beverage service other than that which participant businesses have licenses to conduct.

10-28-597 Operational conditions.

- a) Holders of an Outdoor Dining Street Permit shall not
 - 1) operate earlier than 7:00 a.m. nor later than 11:00 p.m.
 - 2) play music, whether live or recorded, nor allow music to be played at the Outdoor Dining Street, other than through headphones.
- b) The holder of an Outdoor Dining Street Permit shall install and maintain a physical boundary separating the permitted outdoor seating from the remainder of the public way. For Outdoor Dining Street Full-Closure Permits, the operator shall leave six feet of public way unobstructed for pedestrian passage. The construction, configuration, and other characteristics of the boundary, including landscaping, shall be set forth by rule.
- c) Permittees shall follow Commissioner directives, including, but not limited to, modification or suspension of operations in order to make room for construction.

10-28-598 Alcoholic beverage service - Requirements.

If a permittee serves alcoholic liquor at the Outdoor Dining Street, the permittee shall be licensed under this Code for such sales. Neither BYOB, as defined in Section 4-58-010, nor any other system for alcoholic beverages supplied by the customer or by any person other than the permittee shall be allowed at Outdoor Dining Streets.

10-28-599 Promulgation of rules; force and effect.

a) The Commissioner, in consultation with the Commissioner of Business Affairs and Consumer Protection, is authorized to promulgate rules to carry out the purposes of this article, including without limitation rules governing:

- 1) The location, arrangement, and design of Outdoor Dining Streets to ensure the flow of pedestrian traffic, the safety of pedestrians and auto traffic, the access to buildings and transportation facilities, the prevention of an excessive number of Outdoor Dining Streets, and the best service to the public;
- 2) The size, design, and other specifications for tables and serving equipment to be used by operators, and the design of enclosures or partial enclosures;
- 3) The types of food and beverages that may be served at Outdoor Dining Streets;
- 4) The time periods during which application can be made for an Outdoor Dining Street permit;
- 5) Landscaping and other aesthetic components of Outdoor Dining Streets;
- 6) Any other matter pertaining to the enforcement and implementation of this article.

b) A permittee shall comply with the rules promulgated pursuant to this article, which shall have the force and effect of law.

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10-28-610 Enforcement.

a) The Commissioners of Business Affairs and Consumer Protection and of Transportation, through their designees, are authorized to take such action as necessary to enforce this article, including conducting on-site inspections of retail food and liquor establishments associated with Outdoor Dining Streets to determine compliance with permitting and other requirements of this article, rules promulgated hereunder, and other applicable Code provisions.

b) Upon request by the Commissioner of Business Affairs and Consumer Protection or by the Commissioner of Transportation, or by their designees, any operator of an Outdoor Dining Street shall provide for inspection the documents required by this article to operate an Outdoor Dining Street, including the Outdoor Dining Street Permit, the plan for the Outdoor Dining Street, and proof of insurance.

c) Any Outdoor Dining Street for which a permit is required by this article, and which has failed to obtain such permit, or whose permit has been revoked, may be closed by the Commissioner of Business Affairs and Consumer Protection, or by the Commissioner of Transportation, or by their designees until such permit is obtained. Upon being notified of closure, all Outdoor Dining Street activity shall cease, and all obstructions in the public way, including barriers, tables, and chairs, shall be removed.

d) Any Outdoor Dining Street for which a permit is in effect under this article may be temporarily closed by the Commissioner or the Commissioner's designee, if (1) the Outdoor Dining Street contains a significant danger to public safety, including, but not limited to, (i) the footprint or Outdoor Dining Street-related objects or equipment on property beyond plan specifications, (ii) a missing, insufficient, or incomplete barrier, or (iii) obstruction of a fire lane; (2) a permittee has been issued notices of violation for conduct occurring on the Outdoor Dining Street on three different days during the permit period; or (3) a permittee has been issued at least one notice of noise violation for conduct occurring on the Outdoor Dining Street. Such temporary closure may include the cessation of outdoor business or the removal of all furniture and other appurtenances from the street and the reopening of the street to traffic. Upon being subjected to a temporary closure, the permittee may provide to the Commissioner evidence that the objectionable conditions have been fully

remedied. Such temporary closure shall remain in effect until the Commissioner is satisfied that the violations have been properly remedied and will not reoccur.

e) In addition to fines and other penalties as provided for herein, a violation of any provision of this article or rules promulgated hereunder within a permit period shall subject a permittee to revocation of the Outdoor Dining Street Permit by the Commissioner.

f) If the number of businesses actively participating on a street drops below the minimum required number of businesses required for an Outdoor Dining Street Full-Closure Permit, the permit shall be subject to revocation. The Commissioner of Transportation shall (1) notify the permittees, in writing, of the proposed revocation; (2) set a date and time for the permittees to appear before the Commissioner of Business Affairs and Consumer Protection to contest the proposed revocation, said date and time being no sooner than ten calendar days after notice is issued; and (3) inform the permittees that they are entitled to present evidence at the hearing in opposition to the proposed revocation. Following the hearing, the Commissioner of Business Affairs and Consumer Protection shall affirm or reverse the decision to revoke the license. If no permittee appears at such hearing, the Outdoor Dining Street Permit shall be revoked. The findings, decision, and order shall be mailed to the permittee at least five days before the effective date of the revocation. The decision shall be final and may be appealed as provided by law.

10-28-611 Violation - Penalties.

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a) Any person who violates this article or rules promulgated hereunder shall be subject to a fine of not less than \$200.00 nor more than \$500.00 for each offense, and each day such a violation continues shall be deemed a separate and distinct offense.

b) In addition to the above fine, any person who knowingly interferes with or impedes members of the Department of Transportation or the Department of Business Affairs and Consumer Protection in the enforcement of this article shall be subject to arrest by a duly authorized peace officer and imprisonment for a term not to exceed six months under the procedures set forth in Section 1-2-1.1 of the Illinois Municipal Code (65 ILCS 5/1-2-1.1) and under the provisions of the Illinois Code of Criminal Procedure.

c) Any Outdoor Dining Street in operation without a valid Outdoor Dining Street Permit or subject to Section 10-28-610(d) is subject to removal from the public way by the Commissioner or the Commissioner's designee. Section 10-28-010(i) of this Code shall apply to the removal of any portion of an Outdoor Dining Street, from the public way, whether for unpermitted operation or for obstruction of the public way; provided, however, that the amount of the fine for a violation shall be as set forth in this section.

SECTION 4. After passage and approval, this ordinance shall be in full force and effect on January 1, 2023.

