

Sponsor: Councilman Michael Opinker
Petitioner: Hammond Plan Commission

ORDINANCE NO. 9250

AN ORDINANCE AMENDING ORDINANCE NO. 8514, BEING: AN ORDINANCE ESTABLISHING A ZONING PLAN FOR THE CITY OF HAMMOND IN ORDER TO PROVIDE FOR ORDERLY GROWTH AND DEVELOPMENT WITHIN THE CITY, ALL IN ACCORDANCE WITH THE COMPREHENSIVE/LAND USE PLAN; FOR PURPOSES OF AMENDING VARIOUS TITLES TO INCORPORATE PROVISIONS FOR THE REGULATION OF RESTAURANT OPEN AIR SEATING AND RESTAURANT OUTDOOR SEATING

Whereas, the City of Hammond established its zoning regulations by and through the passage of Ordinance 8514, being effective in October 2003 and as has been amended from time to time; and

Whereas, the City of Hammond has requests from restaurateurs who seek to provide for seating in an open air environment or outdoor setting; and

Whereas, the City of Hammond seeks to provide for the opportunity for a restaurant to establish open air seating or outdoor seating under certain circumstances that would minimize any concerns or conflicts with adjacent property owners and uses with special consideration of concerns or conflicts for adjacent residential uses; and

Whereas, also, the City Planning Department has prepared appropriate regulations in which open air or outdoor seating may be permissible and has reviewed the 2003 Zoning Ordinance determining Title XVIII Special Provisions should be amended to include appropriate regulations for restaurant open air or outdoor seating; and

Whereas, the amended language is intended to allow for restaurants to have open air or outdoor seating in a manner that protects public safety, health, and welfare of the residents, businesses, and community at large; and

NOW, THEREFORE, BE IT ORDAINED by the Common Council of the City of Hammond, Indiana, that Ordinance 8514 shall be amended as follows:

Section 1

Amend Title XVIII Special Provisions by adding a new Section 18.71 Restaurant Open Air or Outdoor Seating as an accessory use, as follows:

Section 18.71 Restaurant Open Air or Outdoor Seating as an accessory use.

18.71.01 Intended purpose

The purpose of this section is to provide for the circumstances and provisions upon which restaurant seating that would otherwise occur in a total enclosed structure may occur and protect the health, safety, and general welfare of the community at large and residential areas in particular.

18.71.02 Definitions

For the purpose of this section, the following definitions are applicable:

Restaurant Open Air seating is defined as a seating area that is otherwise classified as interior space under the Building Code in which the walls are partially or fully openable by means of a retractable mechanism with the intent of creating an open-air environment on a seasonal basis.

Restaurant Outdoor Seating area is defined as a seating area that is classified as exterior space under the Building Code which is uncovered or covered by means of an umbrella, awning (retractable or unretractable), canopy (retractable or unretractable), or similar with the intent of creating an outdoor environment on a seasonal basis.

18.71.03 Permitted or Conditional use

Restaurant Open air seating and Restaurant Limited Outdoor Seating areas may be permitted as an accessory use to a restaurant with indoor seating in C-2, C-3, or C-4 zoning districts, subject to the provisions herein.

Restaurant General Outdoor Seating requires a conditional use permit in C-2, C-3, or C-4 districts.

Outdoor seating is prohibited for mobile food carts or similar.

18.71.04 Notice to interested parties for conditional use

For purposes of this section only, notice to adjacent property owners is limited to owners within 150 feet from the subject property boundaries.

18.71.05 Restaurant Open air seating

Restaurant Open air seating shall comply with all applicable Building Codes for interior seating, all applicable noise ordinances, and all setbacks for the zoning district in which it is located.

For purposes of calculations for required parking, the restaurant open air seating area shall be included in the basis for determining parking for the primary restaurant type as defined in Title XX.

18.71.06 Restaurant Outdoor seating area General provisions

All Outdoor seating areas, subject to the following provisions:

1. Seating areas shall be shown on a seating plan, identifying the number of tables and chairs and their approximate location. The seating area shall be limited to 33% of the number of seats in the indoor restaurant space as approved by building code and the Building Commissioner. The number of seats shall not be increased without prior authorization and shall not exceed the 33% limitation.
2. Seating areas shall be located on private property and shall not encroach into any required yard setbacks. No outdoor seating areas are allowed in the public right-of-way, public sidewalk, or in any required off-street parking areas.
3. Seating areas shall not obstruct required accesses, entrances, or exits.
4. An accessible path of travel shall be provided between tables.
5. No food or beverages shall be served outside of the outdoor seating area. Signage shall be posted that prohibits the consumption of alcohol outside of the designated areas.
6. Cooking and preparation of food and beverages shall be prohibited from the outdoor seating area.
7. Lighting shall only illuminate the seating area. Lighting levels shall not exceed zero foot-candles at the abutting property line.
8. All tables and chairs shall be kept in a clean and sanitary manner. Tables and chairs shall be maintenance free furniture that enhances the appearance of the business. Outdoor trash receptacles shall be provided.
9. Any canopies, umbrellas, roofs, etc. shall be free of signs unless otherwise required in this section.
10. The hours of operation of the outdoor seating shall not exceed the hours of operation for the indoor restaurant hours, but shall be no later than 10:00 p.m.
11. If the principal use abuts a residential zoning district, outdoor electronic speaker devices shall not be operated between 9:00 p.m. and 7:00 a.m. For all other zoning districts, outdoor electronic speaker devices shall not be operated between 10:00 p.m. and 7:00 a.m. Compliance with applicable noise ordinance provisions shall be required.

18.71.07 Limited outdoor seating areas

Limited outdoor seating areas contain 8 seats or less and shall also meet the following:

1. No tables, chairs or other furnishings shall remain in the seating area when the business is closed.

2. No additional parking spaces shall be required.

18.71.08 General outdoor seating areas

General outdoor seating areas contain 9 seats or more and shall also meet the following:

1. The seating area shall be enclosed by approved landscaping and fencing.
2. The outdoor seating area shall be entered only through the principal building. There shall be no exit gates from the outdoor seating area unless required by the Building Code.
3. In addition to the required number of parking spaces pursuant to the principal use, additional parking shall be required at a ratio of 1 parking space for every 4 seats in the outdoor seating area.

Section 2

Severability

- A. If any Court of competent jurisdiction shall adjudge any section, subsection, paragraph, sentence, clause, or phrase of this Ordinance, or amendment thereto, to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining portions of this Ordinance, or amendment thereto, not specifically included in said judgment. It is expressly declared that this Ordinance and each section, subsection, paragraph, sentence, clause and phrase would have been adopted regardless of the fact that any one or more sections, subsections, paragraphs, sentences, clauses, or phrases might be declared invalid or unconstitutional.
- B. If any Court of competent jurisdiction shall adjudge invalid the application of any provision of this Ordinance, or amendment thereto, to a particular property, building, or other structure, such judgment shall not affect the application of said provision to any other property, building, or structure not specifically included in said judgment.
- C. If any Court of competent jurisdiction shall determine that any word, clause, phrase, sentence, paragraph, or subsection of the Ordinance, or amendment thereto, is unconstitutional as worded, the court shall first attempt to construe or interpret such unconstitutional provision so as to enable the same to be constitutional as so narrowed or construed. If the court cannot so limit or construe such word or provision narrowly so as to render the same constitutional, it shall strike or modify only the minimum number of words, phrases, clauses, sentences, or paragraphs as will be absolutely necessary to render the remainder constitutional. In no case shall a subordinate clause, phrase, or word render the attached major section or provision unconstitutional, but instead such subordinate clause, phrase, or word shall be severed there from, unless such severance renders the remainder wholly meaningless or unconstitutional.

BE IT FURTHER RESOLVED by the Common Council of the City of Hammond that this Ordinance shall be in full force and effect from and after its passage by the Common Council, signing by the President thereof, and approval by the Mayor.

Michael Opinker, President /s/

Attest:

Robert J. Golec, City Clerk /s/

PRESENTED BY ME, the undersigned City Clerk of the City of Hammond to the Mayor of said City, for his approval on the 29th day of April, 2014.

Robert J. Golec, City Clerk /s/

The foregoing Ordinance No. 9250, consisting of five (5) pages, including this page was approved by the Mayor on the 30th day of April, 2014.

Thomas M. McDermott, Jr., Mayor /s/
City of Hammond, Indiana

PASSED by the Common Council on the 28th day of April, 2014 and approved by the Mayor on the 30th day of April, 2014.

Robert J. Golec, City Clerk /s/