

Ordinance No. 9.20

**AN ORDINANCE ADOPTING CHAPTER 910 TO THE VILLAGE OF PLAIN CITY MUNICIPAL CODE – OUTDOOR SEATING AND NON-PERMANENT AMENITIES.**

**WHEREAS**, the Village has received requests to utilize portions of public sidewalks and other areas located with the Village's rights-of-way for outdoor seating and other private use; and

**WHEREAS**, the Village desires to establish a uniform set of regulations governing the future and continued utilization of Village rights-of-way by private third parties under certain circumstances; and

**WHEREAS**, Village Council has reviewed proposed uniform regulations concerning said subject and desires to move forward with adoption of official rules and regulations; and

**NOW THEREFORE BE IT ORDAINED** by the Council of the Village of Plain City, Ohio, a majority of the members elected or appointed thereto concurring, as follows:

**Section 1.** Village Council hereby adopts Chapter 910 of the Village of Plain City Municipal Code, as set forth and attached hereto as Exhibit A.

**Section 2.** It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of Council, and that all deliberations of this Council and any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements of the laws of the State of Ohio.

**Section 3.** This Ordinance shall take effect at the earliest time allowed by law.

Passed: July 27, 2020.

Attest: Renee Smnett  
Village Fiscal Officer

Warren Lane  
Mayor

First reading: June 22, 2020. Vote: \_\_\_ yea \_\_\_ nay \_\_\_ abstain

Second reading: July 13, 2020. Vote: \_\_\_ yea \_\_\_ nay \_\_\_ abstain

Third reading: July 27, 2020. Vote: 4 yea 2 nay \_\_\_ abstain

**Certificate of Publication**

The undersigned, being Village Fiscal Officer of the Village of Plain City, hereby certifies that the foregoing was published by posting for 15 days as required by law and in accordance with Section 123.01 of the Codified Ordinances. The posting was done from \_\_\_\_\_, 2020 to \_\_\_\_\_, 2020 at the Office of the Fiscal Officer located at 213 South Chillicothe Street; the Plain City Public Library located at 305 W. Main Street; the Security National Bank located at 105 W. Main Street; the Richwood Banking Co. located at 601 W. Main Street; all being in the Village of Plain City, Ohio and the Village of Plain City Website at [www.plain-city.com](http://www.plain-city.com).

Date: \_\_\_\_\_, 2020

\_\_\_\_\_  
Village Fiscal Officer

## **EXHIBIT A**

### **Chapter 910 – OUTDOOR SEATING AND NON-PERMANENT AMENITIES INSTALLED WITHIN PUBLIC RIGHT-OF-WAY**

- **910.0 - Right to enforce.**

The Village Administrator or his/her designee shall have the authority to enforce applicable sections of the Ohio Revised Code and this chapter of Village Plain City Municipal Code.

- **910.01 – Purpose and Scope.**

The purpose of this chapter is to provide for the regulation of privately owned amenities to, or the limited use and occupation of sidewalk or other real property within the public right-of-way in the Village of Plain City and to set forth the policies of the Village related thereto. Nothing in this chapter shall relieve the applicant from the responsibility to obtain those additional permits required by the Village of Plain City Municipal Code that might be relative to the installation proposed by the applicant.

- **910.02 – Village Administrator and/or their designee's consent required.**

- A. Any company, corporation, persons or individuals wishing to use or occupy public right-of-way or other real property within the public right-of-way for placement of private amenities including sidewalk or shared-use path seating and/or dining, placement of removable railing or other barricades in conjunction with said seating and/or dining, installation of removable awnings in conjunction with said seating and/or dining, installation of bike racks, flower boxes, movable planters, benches, placement of temporary signage and any other uses authorized in the rules and regulations associated with this chapter must apply for and obtain written consent from the Village Administrator and/or their designee. Such consent shall be given in the form of a lease for use of public sidewalk or shared-use path or other real property within the public right-of-way, which shall be executed by the Village Administrator. The Village shall review any lease for commercial uses entered into pursuant to this chapter on an annual basis and based upon such review shall determine the suitability of any request for renewal.
- B. The Village Administrator shall promulgate reasonable rules and regulations to carry out the provisions of this chapter.

- **910.03 - Application procedure.**

Applications for use of the public sidewalk or shared-use path or other real property within the public right-of-way shall be submitted in such form and in such manner as the rules and regulations developed pursuant to Section 910.02 of this chapter shall require. All applications will be reviewed, and if approved, leases or agreements shall be issued within thirty (30) business days of submission.

- **910.04 - Criteria for granting a lease or executing an agreement.**

The Village shall grant a lease for the use of public sidewalk or shared-use path or other real property within the public right-of-way upon determination that:

The public health, safety or welfare will not be negatively impacted upon the granting or renewal of such a lease;

The granting of the lease will be consistent with the policy of the Village as set forth in Section 910.01. The applicant is not delinquent on any taxes or other obligations to the Village, county, or State of Ohio;

For any proposed location within the boundaries of the Uptown zoning district, as established in Village of Plain City Municipal Code Chapter 1327, the applicant has received a certificate of appropriateness from the appropriate review body.

Issuance of such a lease will not be in conflict with any other applicable ordinances or regulations of the Village.

- **910.05 - Fees.**

Fees shall be as follows:

For uses deemed by the Village to be private amenities to the public right-of-way including but not limited to flower boxes, planters, and benches a one-time fee of two hundred fifty dollars (\$250.00) per application will be required;

For uses deemed by the Village to be commercial in nature including but not limited to sidewalk or shared-use path dining, kiosks, and other similar uses an initial fee of five hundred dollars (\$500.00), due at the time the original application is submitted and a fee of fifty dollars (\$50.00) for any subsequent annual renewal will be required. Any material change in the scope or purpose for which the original lease was issued will require a five hundred dollars (\$500.00) fee to process the modification;

Fees shall be submitted to the Village Administrator and/or their designee for deposit into the general fund.

Fees shall remain reasonable and nondiscriminatory

Total revenues generated by such fees shall represent a reasonable allocation of public right-of-way related costs as determined by the Village.

E.

The Village must receive all fees before any placement of privately owned amenities to or limited use and occupation of sidewalk or other real property within the public right-of-way of the Village of Plain City will be permitted;

F.

Fees shall not be refundable in the event of any revocation or village required removal of facilities as specified in Section 910.08 and 910.09 of this chapter.

- **910.06 - Special obligations for those seeking leases.**

For those companies, corporations, persons or individuals wishing to lease the public right-of-way for installation of private amenities as described in Section 910.02(A) of this chapter the following obligations shall apply:

The lessee shall restrict use of the leased premises to the patrons, customers and guests of the lessee's establishment when said premises are used for outdoor seating and dining purposes;

The lessee shall not erect or permit any obstructions of a permanent nature to be located within the leased premises;

The lessee shall not erect or permit obstructions of a permanent or temporary nature to be located within the non-leased portion of the public sidewalk or shared-use path or other real property within the public right-of-way;

The lessee shall restrain and prevent its employees, patrons, customers, business invitees, and guests from blocking, obstructing or hindering the flow of pedestrian traffic upon the non-leased portion of the public sidewalk, or pedestrian and bicycle traffic upon the shared-use path or other real property within the public right-of-way;

The lessee shall keep the premises and any adjacent non-leased public sidewalk or shared-use path or other real property within the public right-of-way clean and free of debris;

Lessee shall acknowledge acceptance of the premises in "as is" condition with absolutely no warranties, implied or expressed, by the Village as to the condition or suitability of the premises for the intended use;

Lessee shall apply for and receive approval for all building, zoning and any other permits required as a result of the proposed use of public sidewalk or shared-use path or other real property within the public right-of-way before any occupation of the public sidewalk or shared-use path or other real property within the public right-of-way may occur;

Lessee shall not assign any lease without the written consent of the director of public service and/or their designee. Such consent shall not be unreasonably withheld.

- **910.07 - Indemnification and insurance.**

Anyone having a lease or an agreement with the Village for the purpose of installing private amenities, banners or flags within the sidewalk or shared-use path or other real property within the public right-of-way shall forever indemnify and hold harmless the Village and all of its agents, employees and representatives from and against all claims, damages, losses, suits and actions, including attorney's fees, arising or resulting from said use of the public sidewalk or shared-use path or other real property within the public right-of-way by them, their agents, representatives, employees, patrons, customers, business invitees and guests or any other person or persons who may use said public sidewalk or shared-use path or other real property within the public right-of-way. In addition, they shall obtain liability insurance in the amount of one million five hundred thousand dollars (\$1,500,000.00) and shall name the Village as an additional insured on said policy. A copy of the certificate of insurance shall be provided to the Village and shall become a part of any lease or agreement executed by the Village.

- **910.08 - Revocation—Termination.**

Either party shall have the right to terminate a lease or agreement entered into pursuant to this chapter fifteen (15) days after written notice of such termination has been given to the other party. The Village shall have the right to revoke any lease entered into pursuant to this chapter in the event of a breach by lessee under Section 910.06 of this chapter.

- **910.09 - Removal of property.**

The Village shall have the right to require removal of any facilities installed pursuant to this chapter fifteen (15) days after written notice of revocation or termination of such a lease or agreement has been given to the appropriate party should said premises be required for any public purpose or should there be a material change in the use of the public sidewalk or shared-use path or other real property within the public right-of-way which would render the premises unsuitable or inappropriate for the uses for which the lease or agreement was given. Additionally the Village retains the right to require immediate removal of any facilities located within the public sidewalk or shared-use path or other real property within the public right-of-way in the event any public agency or private utility company or corporation must make emergency repairs to any utility located in, over, across, under or through said premises. Failure to remove facilities upon receipt of the notification to remove such facilities may result in the Village removing the facilities with the cost of such Village removal being assessed to the appropriate party and may result in the revocation or termination of the lease or agreement.

- **910.10 – Appeal.**

- Council shall hear and decide appeals by any person aggrieved by any decision of the Village Administrator and/or their designee where it is alleged that there is error in any final determination made by the Village Administrator and/or their designee in approving or denying an application under this chapter or in any decision of the Administrator and/or their designee on the provisions of this chapter provided that such appeal must be made within fourteen (14) days after receipt of notice of such final determination or decision. Notice of such appeal shall be filed with the Administrator who will then forward the matter to Council for determination.
- Council shall hear and decide an appeal within thirty (30) days of receipt and shall consider the decision of the Administrator and/or their designee in making its determination. A majority vote of the members of Council shall be required to overturn a decision of the Administrator and/or their designee.

- **910.11 – Fees for appeal.**

- A fee in such amount as may be established by the Council acting by ordinance or resolution shall be paid to the Village for each application for appeal to cover the necessary administrative and advertising costs.

- **910.99 - Penalties.**

Whoever violates any provision of this chapter shall be deemed guilty of a misdemeanor of the third degree and fined not more than five hundred dollars (\$500.00), or imprisoned for not more than sixty (60) days or both. Any such violation shall constitute a separate offense on each successive day continued.