

VILLAGE OF GILBERTS

ORDINANCE NO. 11-2020

**AN ORDINANCE AMENDING AND REPLACING IN THEIR ENTIRETY
ORDINANCE NOS. 06-2020, 07-2020 and 09-2020 APPROVING A TEMPORARY
POLICY AUTHORIZING AND REGULATING OUTDOOR DINING**

WHEREAS, the Village of Gilberts, is a municipal corporation organized and existing under the Illinois Municipal Code, 65 ILCS 5/1-1-1 *et seq.*; and

WHEREAS, the Village has the authority to adopt ordinances and to promulgate rules and regulations that pertain to its government and affairs and that protect the public health, safety, and welfare of its citizens; and

WHEREAS, the Village is authorized to generally regulate the sale of 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, on March 9, 2020, April 2, 2020, April 30, 2020, and May 29, 2020, Illinois Governor Pritzker declared all counties in the State of Illinois as 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 on March 16, 2020, Governor Pritzker suspended on-premises consumption of food and alcohol at restaurants in Illinois (Exec. Order 2020-07, 2020-33); and

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

WHEREAS, on May 20, 2020, Governor Pritzker announced that outdoor dining at bars and restaurants would be authorized to permit outdoor dining consistent with state guidance under the Restore Illinois plan, starting May 29, 2020, and encouraged local governments to assist 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 the terms of this Ordinance, in order to provide economic relief while protecting the health and safety of its residents; and

WHEREAS, the Village desires to ratify all actions taken by the Village President or Staff to-date in order to implement the necessary local authorizations with the state authorizations for outdoor dining at bars and restaurants beginning May 29, 2020; and

WHEREAS, on June 2, 2020, the Village Board of Trustees approved Ordinance No. 06-2020 to approve a temporary policy authorizing and regulating outdoor dining, which Ordinance was replaced in its entirety by Ordinance No. 07-2020 and then extended by Ordinance No. 09-2020; and

WHEREAS, the Village Board now desires to amend and replace in its entirety the previous Ordinances and to modify the provisions relating to outdoor music, as set forth in this Ordinance; and

NOW, THEREFORE, BE IT ORDAINED BY THE VILLAGE PRESIDENT VILLAGE BOARD OF THE VILLAGE OF GILBERTS, ILLINOIS, AS FOLLOWS:

Section 1. Recitals. The recitals set forth above are hereby incorporated into and made a part of this Resolution as though set forth in this Section 1.

Section 2. Approval. Notwithstanding any contrary provision of Village ordinance, regulation, or policy concerning outdoor dining and minimum parking, permits for outdoor dining areas may be approved for restaurants consistent with the terms of this Ordinance during the pandemic. This Ordinance will expire on December 7, 2020, unless extended, modified, or terminated by the Village Board.

Section 3. Authorization.

A. **Outdoor Dining Permit.** Any restaurant that desires to provide outdoor dining consistent with this Ordinance and state orders and regulations must submit to the Village for review and approval a plan for the use of outdoor space for food and beverage service, including amenities, barriers, tables, spacing, restroom use, and any other requirements deemed necessary by the Village. The applicant must also submit with its plan an executed copy of the Unconditional Agreement and Consent form attached to this Ordinance as **Exhibit A**. The request will be reviewed by the Village President, who has the authority to approve the plan, and impose any conditions on the approval.

B. **Use of Right of Way or Other Public Property for Outdoor Seating is Prohibited.** The use of the right of way or other public property for outdoor seating or outdoor dining is prohibited.

C. Use of Parking Lots for Outdoor Seating. Any restaurant 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.

D. Conditions on Approvals. Any approval granted by the Village President under this Ordinance is subject to the following conditions:

1. The applicant must comply with all conditions imposed by the Village for use of the outdoor dining area.
2. The applicant must comply with all plans approved by the Village governing the operation and maintenance of the outdoor dining area.
3. The applicant must comply with all laws governing the operation and maintenance of the outdoor dining area, including all applicable Executive Orders and state guidance.
4. The applicant must submit the signed unconditional agreement and consent substantially in the form attached as Exhibit A.

E. Outdoor Dining Roof Coverings. Notwithstanding any provision of the Village Code to the contrary, the applicant may install or use an outdoor covering over the outdoor dining area (i.e., awning, canopy, or other roof covering) provided it complies with the State guidelines for coverings. The applicant must submit a plan depicting the type of roof covering proposed to be installed or used and the location where it will be placed at the time it submits its application for the outdoor dining permit.

F. Outdoor Music. Outdoor music will be permitted as part of an outdoor dining use; provided, however, that live entertainment is restricted to Fridays and Saturdays only and must first be approved by the Village Administrator. All outdoor music must comply with the Village's sound regulations.

G. Village Discretion. The authority to grant the various approvals described above, and the imposition of conditions on those approvals, will be an exercise of the Village's sole discretion.

Section 4. Ratification. To the extent that the Village President made any outdoor dining area approvals between May 29, 2020 and the date of this Ordinance, the Village Board hereby affirms and ratifies those approvals.

Section 5. Severability. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions hereof.

Section 6. Conflict. All prior Ordinances and Resolutions in conflict or inconsistent herewith are hereby expressly repealed only to the extent of such conflict or inconsistency.

Section 7. Effective Date. This Ordinance shall be in full force and effect upon passage, approval and publication in pamphlet form as provided by law.

PASSED BY THE BOARD OF TRUSTEES of the Village of Gilberts, Kane County, Illinois, this 30th day of September, 2020.

	<u>Ayes</u>	<u>Nays</u>	<u>Absent</u>	<u>Abstain</u>
Trustee Jeanne Allen	_____	X	_____	_____
Trustee Dan Corbett	X	_____	_____	_____
Trustee Nancy Farrell	X	_____	_____	_____
Trustee Lou Hacker	X	_____	_____	_____
Trustee Kurt Kojzarek	X	_____	_____	_____
Trustee Guy Zambetti	X	_____	_____	_____
President Rick Zirk	X	_____	_____	_____

APPROVED THIS 30th DAY OF SEPTEMBER 2020



Village President, Rick Zirk



Phillip Versten
Village Clerk, Courtney Baker *by Deputy Village Clerk, Phillip Versten*

Published: _____

EXHIBIT A
Unconditional Agreement and Consent

WHEREAS, _____ (“*Applicant*”) sought approval of a temporary outdoor dining area (“*Temporary Use*”) located at _____, Gilberts, IL (“*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 in the Permit.

NOW THEREFORE, the Applicant agrees and covenants as follows:

1. The Applicant 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 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, (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 agrees 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.

Agreed this _____ day of _____, 2020.

APPLICANT
