

ORDINANCE NO. F-0266

**AN ORDINANCE AUTHORIZING THE SIGNING OF AN
INTERGOVERNMENTAL AGREEMENT BETWEEN
THE CITY OF WHEATON, ILLINOIS, AND THE WHEATON PARK DISTRICT**

WHEREAS, the City of Wheaton ("City") and the Wheaton Park District ("Park District") are units of local government within the meaning of Section 10, Article VII, of the Illinois Constitution, 1970; and

WHEREAS, by law the Park District has the power, authority and responsibility to determine and provide for the park and recreational needs of the residents of the Park District and, in furtherance thereof to, among other things, acquire by gift, legacy, grant, purchase, condemnation or by lease any and all real estate or rights therein, and to build, lay out, adorn, extend, improve and maintain such real estate; to manage and control all property of the Park District; and to play, establish and maintain recreational programs and facilities; and

WHEREAS, by law the City has the power, authority and responsibility to promote and protect the health, safety, comfort, morals, and welfare of residents of the City and, in furtherance thereof to, among other things, regulate through its zoning and other powers, various land use and real estate development activities in the City; and

WHEREAS, in acknowledgment of and in order to give effect to the respective rights and responsibilities of the Parties, and to establish a vehicle to reconcile the sometimes competing or conflicting interests of the Parties with respect to land use and other matters in the best interests of the residents of each Party, the Parties desire to enter into an intergovernmental agreement dated July 20, 1998; and

NOW, THEREFORE, BE IT ORDAINED by the Mayor and City Council of the City of Wheaton, Illinois, pursuant to its home rule powers, as follows:

Section 1: The Mayor is authorized to sign the intergovernmental agreement between the City and Park District, dated July 20, 1998, and the City Clerk is authorized to attest to the signature of the Mayor; a copy of the intergovernmental agreement is on file in the office of the City Clerk and is incorporated into this ordinance by this reference as though fully set forth herein.

Section 2: All ordinances or parts of ordinances in conflict with these provisions are repealed.

Section 3: This ordinance shall become effective from and after its passage, approval, and publication in pamphlet form in the manner prescribed by law.

INTERGOVERNMENTAL COOPERATION AGREEMENT

BETWEEN

THE CITY OF WHEATON AND THE WHEATON PARK DISTRICT

This Intergovernmental Agreement ("Agreement") is entered into as of this 20th day of July, 1998, by and between the **City of Wheaton**, an Illinois municipal corporation, DuPage County, Illinois (the "City") and the **Wheaton Park District**, an Illinois park district, DuPage County, Illinois (the "Park District"). The City and the Park District are sometimes hereinafter referred to individually as a "Party" and jointly as the "Parties".

WITNESSETH:

WHEREAS, by law the Park District has the power, authority and responsibility to determine and provide for the park and recreational needs of the residents of the Park District and, in furtherance thereof to, among other things, acquire by gift, legacy, grant, purchase, condemnation or by lease any and all real estate or rights therein, and to build, lay out, adorn, extend, improve and maintain such real estate; to manage and control all property of the Park District; and to plan, establish and maintain recreational programs and facilities; and

WHEREAS, by law the City has the power, authority and responsibility to promote and protect the health, safety, comfort, morals, and welfare of residents of the City and, in furtherance thereof to, among other things, regulate through its zoning and other powers, various land use and real estate development activities in the City; and

WHEREAS, in acknowledgment of and in order to give effect to the respective rights and responsibilities of the Parties, and to establish a vehicle to reconcile the sometimes competing or conflicting interests of the Parties with respect to land use and other matters in the best interests of the residents of each Party, the Parties desire to enter into an intergovernmental cooperation agreement; and

WHEREAS, intergovernmental cooperation agreements are authorized and encouraged by Article VII of the Illinois Constitution and the Illinois Intergovernmental Cooperation Act.

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants and agreements herein contained, the Parties agree as follows:

- A. For the purpose of enhancing communication between the Parties, identifying areas of possible cooperative efforts, and addressing potential conflicts:**
1. Each Party will provide to the other Party a complete copy of the agenda and any accompanying materials regarding matters that may have an effect on the operations or land use activities of the other Party and which such Party is providing to the members of its own governing body prior to any regular or special meeting of such body. The

materials shall be provided to the other Party at the same time as such materials are provided to its own governing body.

2. Appropriate Park District staff will meet not less than monthly with the designated commander of the City Police Department to discuss any public safety issues associated with proposed Park District activities within the City of Wheaton. The Park District will advise the City's Police Department sufficiently in advance of large public events planned by the Park District to enable the Police Department and Park District to address any safety issues.
3. Appropriate Park District staff and City staff shall meet not less than monthly to discuss issues of common concern, areas of possible cooperative efforts, and to advise each other of proposed activities that might affect each other's operations or land use activities.
4. The City shall promptly notify the Park District of any citizen complaints received by the City relative to Park District activities and, if such complaints were made in writing, shall provide the Park District with copies of any such correspondence. The Park District will provide the City with copies of any written response to such communications.
5. The Park District will be entitled to have a representative on the City's Plan Commission, or in the event the Plan Commission is abolished, such other body as may be created by the City serving a similar function.
6. The City shall provide reasonable advance notice to the Park District of the following activities:
 - a. Adopted Five-Year Improvement Program. A list of road construction to be completed annually by the City
 - b. Widening or closure of roads that may affect access to park sites or increase the amount of traffic to or around a park site.
 - c. Modification of vehicular traffic patterns or speed limits adjacent to park sites.
 - d. Imposition, removal or change in exiting parking restrictions near park sites.
 - e. Drainage, stormwater detention or other improvements that affect park sites.
 - f. Grants of permission to groups for use of public streets or sidewalks for special events, parades, demonstrations or other activities in the vicinity of a park site that might result in use of the park site by such groups or affect access to the park site by other users.
7. The Park District shall provide reasonable advance notice to the City of the following activities:

- a. Conducting, scheduling or permitting large scale events at park sites.
- b. Copy of Capital Improvement Program, as amended, and a list of capital improvements to be completed by the Park District in any given year.

B. For the purpose of assisting each other in the provision and delivery of services and reducing costs to Wheaton taxpayers:

1. The Park District shall waive fees and charges for services and assistance rendered by it on behalf of the City or for the City's permitted use of Park District property for community special events, with the exception of necessary and reasonable fees charged to the Park District by third parties with respect to such services or use.
2. The City shall:
 - a. Waive all application fees on behalf of the Park District in connection with the Park District's governmental land use activities within the City with the exception of necessary and reasonable fees charged to the City by third parties such as architects, engineers or other consultants, for performing required contractual services in connection with required review of the specific governmental land use activity.
 - b. Waive building and engineering permit and license fees under \$500, with the exception of necessary and reasonable fees charged to the City by third parties such as architects, engineers or other consultants, for performing required contractual services in connection with required contractual services in connection with the review of permits or licenses.
 - c. Waive bond, letter of credit, escrow or other security required for Park District projects, when such projects are conducted by the Park District with its own workforce. When such projects are conducted by private contractors and involve the construction of improvements on City property, streets or rights-of-way, the letter of credit or bond provisions of the City Code shall be applicable.
 - d. Promptly advise the Park District of residential subdivision and planned unit development applications filed with the City and with respect to which land or cash donations for public park purposes will be required under the City's developer impact fee ordinance.
 - e. Provide to the Park District copies of plats of annexation of property to the City promptly following the recording of same with the County.

C. For the purpose of cooperating in resolving storm water management problems which exist in the Wheaton area and construction of public improvements within the City:

1. Each Party shall give reasonable advance notice to the other Party of any proposed storm water management activity or other land use activity or project which it intends

to conduct or in which it intends to participate that might affect the current or proposed land use or storm water management activities of the other Party.

2. Both Parties shall comply with the DuPage County Countywide Storm Water and Flood Plain Ordinance and City ordinances pertaining to storm water management issues.
3. Construction projects of both Parties shall conform with applicable City building codes.
4. When conveying developer donated property to the Park District in previous years, the City reserved unto itself and for use by third parties certain utility and other easement rights. Additionally, the City has certain rights over parkways and rights of way adjacent to Park District property. The City shall consult with the Park District reasonably in advance of the exercise of any such easement or other right.

D. For the purpose of defining when City review of Park District land use activities is required and the manner in which such review will be conducted:

1. Because the Park District, as a unit of local government operating, and with jurisdiction predominantly within the City of Wheaton, is governed by a board of commissioners elected in large part by the residents of the City of Wheaton, and the uses it owns and operates are unique, the City has determined that special rules and standards shall apply to the uses and structures owned and occupied by the Park District. These special rules and standards shall not apply to a use or structure that is occupied or operated by a tenant of the Park District, unless the tenant itself is a unit of local government or is an entity whose use or occupancy is for the purpose of providing a public program which the Park District is authorized to provide under the Park District Code.
2. Uses of Park District land existing on the date of this Intergovernmental Agreement shall be deemed to be permitted uses under the City's Zoning Ordinance in each of the zoning districts in which they are located. The creation of new or the expansion of existing uses of Park District property from and after the date of this Agreement may require special use approval under the City's Zoning Ordinance as modified by this Intergovernmental Agreement in accordance with paragraph 6 below. Notwithstanding the foregoing, if a new or expanded use proposed by the Park District within a specific zoning district is substantially similar to a permitted use identified within that zoning district, then the Park District's proposed use will be considered as a permitted use in that zoning district and not require special use approval. Park District land uses shall not be prohibited in any zoning district, but may require special use approval as provided in this paragraph.
3. The bulk regulations and standards set forth in each of the zoning districts listed in the City's Zoning Ordinance shall be applicable to the Park District's land use in that zoning district. Notwithstanding the foregoing where more favorable bulk regulations and standards are specifically established for a listed use within a given zoning district that is substantially similar to the Park District's use, then the more favorable bulk regulations and standards attributable to that listed use will also apply as the bulk regulations and standards for the substantially similar Park District use.

4. The provisions of the City's Zoning Ordinance relating to non-conforming uses, non-conforming buildings and non-conforming use of land shall not apply to Park District land uses in effect prior to the date of this Intergovernmental Agreement. Furthermore, in recognition of the unique nature of Park District land uses, if a Park District use of land is discontinued for a period of six consecutive months or more, it does not need to be renewed or conform to the regulations of the zoning district in which the land is located provided that the resumed use is substantially similar to the previous use. When an addition to or expansion of a Park District land use requires special use approval as provided for in paragraph 6 below the Park District uses and buildings existing prior to such proposed addition or expansion will be reviewed only with respect to the effect of such addition or expansion or conformity of such addition or expansion with the applicable bulk regulations as provided in subparagraph D.3., above.

5. Section 24.2 of the City's Zoning Ordinance provides that no accessory use shall be established or erected prior to the establishment or erection of the principal use to which it is accessory. Because of the unique nature and variety of activities, amenities and facilities provided to the public by the Park District, this requirement shall not apply to the land use activities of the Park District.

6. a. Review of a proposed Park District land use activity by the City pursuant to its Zoning Ordinance will not be required except where the Park District proposes:
 - (1) to expand an existing operation or program or establish a new operation or program at a location; or
 - (2) to increase the number or increase the sizes of buildings at a location; or
 - (3) to make any other expansion in the physical facilities at the location; and
 - (4) the addition or expansion will on a long-term and sustained basis substantially increase motor vehicle traffic to the location or the hours during which the location is used by the public, or substantially increase the amount of artificial illumination in the neighborhood of the location, or create a level of noise not generally associated with the normal and intended use of recreational facilities within public parks.

- b. Without limiting the uses which might not require review under the standards set forth in subparagraph 6.a., above, review of a Park District land use activity will not be required with respect to:
 - (1) customary and ordinary maintenance, repair or restoration of existing buildings, structures or equipment; or

- (2) remodeling of an existing building that does not result in a significant change in the type of use or in a long-term sustained increase in the intensity of use of the building; or
 - (3) the resurfacing, resealing or patching of existing tennis courts, parking lots or similar permanent surfaces, or the expansion of same by not more than 20% beyond the area of permanent surface existing as of the date of this Agreement and which does not reduce the set-back required under the City's Zoning Ordinance; or
 - (4) the installation of new, or rearrangement or replacement of existing playgrounds, playfields, fencing, signage, recreational equipment or landscaping at an existing location; or
 - (5) any other additions or changes that are not likely to result in a substantial increase in the long-term, sustained use of the location which would create actual public health, safety or general welfare concerns.
7. a. Where a proposed Park District land use might require City review under the guidelines set forth in paragraph 6, above, the appropriate Park District staff will meet with the City Planner and other appropriate City staff to review the proposed land use activity and to identify and address any possible public, health, safety or welfare concerns and determine whether the Park District needs to apply for a special use permit and/or any variations from the requirements of the City's Zoning Ordinance in connection with such use.
- b. If the City proposes a land use activity which might affect Park District property, or activities conducted on Park District property, the City will give the Park District reasonable advance notice of the nature of the proposed land use activity and invite its representatives to attend a review session of such proposed City use with the City Planner and City staff.
- c. If after City and Park District staff review of a proposed Park District land use the Park District and City staff agree that the proposed land use requires a special use permit or any variations from the requirements of the City's Zoning Ordinance, the Park District will apply for same in accordance with the applicable procedures provided for in the City's Zoning Ordinance as interpreted, applied and modified by this Agreement.
- d. If after City and Park District staff review the proposed Park District land use and they cannot reach agreement on the necessity for a special use permit and/or variations from the requirements of the City's Zoning Ordinance, the City Planner shall promptly provide the Park District with a detailed written explanation of his determination and identify the specific issues creating the need for special use review by the City relating to the proposed use. The Park District will have the option to:

- (1) Appeal the City Planner's determination to the City Council within forty five (45) days from the Park District's receipt of the City Planner's written determination. The hearing shall be scheduled on an expedited basis as reasonably necessary under the particular circumstances presented by the Park District in its appeal, and in no event later than thirty (30) days following the filing of such appeal. The City Council shall select a reasonable time and place for the hearing of the appeal. The City shall give due notice of the hearing date, place and time to the Park District and all interested parties. The City Council shall render a written decision on the appeal without unreasonable delay under the circumstances and in no event later than thirty (30) days of closing of the hearing. The City Council may affirm or may, upon the concurring vote of four (4) of the seven (7) members of the City Council, reverse, wholly or in part, or modify, the order, requirement, decision or determination, as in its opinion ought to be done, and to that end shall have all the powers of the officer from whom the appeal is taken. In the event the City Council concurs with the City Planner's determination, in whole or in part, and the Park District reasonably determines that the City's administration or application of its Zoning Ordinance to the Park District's proposed land use activity is unreasonable, arbitrary, or discriminatory or otherwise constitutes an abuse by the City of its zoning power to thwart or frustrate the Park District's statutory duties, the Park District may institute legal proceedings seeking to obtain appropriate relief from the City's administration or application of the City's Zoning Ordinance to the proposed Park District land use activity.
- (2) Apply for a special use permit and/or variations for the proposed land use activity in accordance with the applicable procedures and standards of the City's Zoning Ordinance as interpreted, applied and modified by this Agreement, and if such special use permit and/or variations are not granted or is/are granted with conditions not acceptable to the Park District, institute any and all legal proceedings it deems appropriate.

8. The Park District's application for special use or variation shall be filed with the City Planner. The application shall contain such information as the City Planner shall reasonably require. The City Planner shall submit the application to the City Council for a public hearing.

The City Council shall act as the Hearing Body for the Park District's proposed special uses and variation. Notice of the hearing shall be given in accordance with Section 5.7 of the City's Zoning Ordinance. The hearing shall be conducted and a record of the proceedings shall be preserved in such manner as the City Council may determine.

9. Within thirty (30) days of closing of the Public Hearing, the City Council shall make findings of fact and either grant, with or without conditions, or deny by ordinance the special use or variation requested by the Park District. Grant of the special use/variations under all circumstances shall require the affirmative vote of four (4) of

the seven (7) members of the City Council, unless the affirmative vote of a lesser number of members is required to approve the grant of a special use permit or variations to any other person, in which event the lesser vote requirement shall also apply to the Park District. Denial of the special use/variations shall require the affirmative vote of four (4) of the seven (7) members of the City Council.

10. Where an application for approval of a special use is filed by the Park District, the standards set forth in Section 5.9.4 relating to the granting of special use permits shall be modified as follows, provided that such modifications shall not apply unless the Park District prior to reaching its decision to proceed with the proposed special use has given at least fifteen (15) days prior written notice (by first class mail) of the date, time, place, and purpose of a public meeting at which the proposed use will be considered to all owners of property located within 250 feet of the subject property and has posted an appropriate sign or signs on the property:
 - a. Under Section 5.9.4.A, it shall be presumed, provided that reasonably sufficient evidence was introduced at the public meeting by appropriate witnesses and unless the contrary is demonstrated by the preponderance of evidence, that the establishment, maintenance, or operation of the special use shall not be detrimental to or endanger the public health, morals, comfort, convenience, or general welfare
 - b. Under Section 5.9.4.F., it shall be presumed, unless the contrary is demonstrated by the preponderance of evidence, that the special use shall comply with the objectives of the Wheaton Comprehensive Plan.

The testimony at the public meeting shall be reported and transcribed by a certified shorthand reporter and the Park District shall provide the City with a copy of the transcript.

11. Where an application for a variation is filed by the Park District, the standards set forth in Section 5.6.A. relating to the granting of variation from the requirements of the City's Zoning Ordinance shall be modified as follows, provided that such modifications shall not apply unless the Park District prior to reaching its decision to proceed with the proposed use for which the variation is requested has given at least fifteen (15) days prior written notice (by first class mail) of the date, time, place and purpose of a public meeting at which the proposed use and variation will be considered to all owners of property located within 250 feet of the subject property:
 - a. Under Section 5.6.A1, it shall be presumed, unless the contrary is demonstrated by the preponderance of the evidence, that the property in question cannot yield a reasonable return if permitted to be used only under the conditions allowed by the regulations in that zoning district; and
 - b. Under Section 5.6.A2, it shall be presumed, unless the contrary is demonstrated by the preponderance of the evidence, that the plight of the owner is due to unique physical characteristics which create a hardship as

distinguished from a mere inconvenience, if the strict letter of the Zoning Ordinance were carried out.

12. The zoning and permit review process at every stage shall be expedited for Park District projects.
13. The landscaping and screening requirements specified in the City's Zoning Ordinance shall not be applicable to parks and/or open space owned or leased and operated on a long-term basis by the Park District as lessee, except that any parking lot or building when located adjacent to a right-of-way or a residential use shall comply with the requirements of Section 6.6, 6.7 or 6.8, as applicable, of the City's Zoning Ordinance. All parks and/or open space shall comply with the requirements of Section 6.5 of the Zoning Ordinance.
14. Land use review guidelines, procedures, standards and regulations set forth in City codes and ordinances, as modified by this Agreement, shall be applied by the City reasonably, uniformly, consistently and in a non-discriminatory manner with respect to Park District land use activities. The City shall not apply its codes and ordinances more restrictively to Park District land use activities than it would to similar or comparable activities conducted by other units of local government or by private persons. The City shall be reasonably flexible in the application of its codes and ordinances to Park District land use activities for the benefit of the public where to do so does not create genuine health, safety or welfare issues.
15. For land use activities proposed within a park which is larger than 2.5 acres, the term "subject property" for purposes of the notice requirements under the City's Zoning Ordinance shall mean the entire site of the proposed land use activity or project within the park as reasonably determined by the City's Director of Planning, rather than the entire park.
16. Each of the Parties is responsible for its own review, planning and compliance in connection with the Americans with Disabilities Act.

E. Term

This Agreement shall be in full force and effect for a term of three (3) years from the date of this Agreement, and shall automatically be renewed thereafter for successive terms of three (3) years unless either Party gives written notice of non-renewal to the other Party no less than ninety (90) days prior to the end of any such three (3) year term.

F. Notice

Notice or other writings which either Party is required to, or may wish to, serve upon the other Party in connection with this Agreement, other than submittals by a Party in accordance with the requirements of the City's codes and ordinances, shall be in writing and shall be delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

If to the City:

City Manager
City of Wheaton
303 West Wesley Street
Wheaton, Illinois 60189-0727

If to the Park District:

Executive Director
Wheaton Park District
666 South Main Street
Wheaton, Illinois 60187

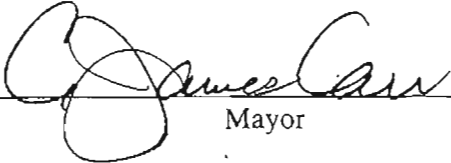
or to such other address, or additional persons, as either Party may from time to time designate in a written notice to the other Party.

G. Miscellaneous.

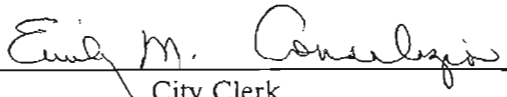
1. This Agreement may be executed simultaneously in two (2) counterparts, each of which shall be deemed an original but both of which shall constitute one and the same Agreement.
2. Except for the separate agreements listed in *Exhibit A* attached to and incorporated by reference in this Agreement, or as otherwise specifically provided in this Agreement, this Agreement contains the entire understanding between the Parties and supersedes any prior understanding or written or oral agreements between them respecting the within subject matter and there are no representations, agreements, arrangements or understandings, oral or written, between the Parties relating to the subject matter of this Agreement which are not fully expressed herein. Except as specifically provided in this Agreement, nothing contained in this Agreement shall be interpreted as eliminating or modifying the requirement of the Park District, its employees, agents and contractors to comply with the provisions of the City Code legally applicable to Park District activities; provided, however, nothing contained in this Agreement shall impair the Park District's authority over Park District activities as set forth in applicable statutory and common law. To the extent that any ordinance, rule, regulation or code now or hereafter enacted, issued or approved by either Party conflicts with any provision of this Agreement, the provision of this Agreement shall be applicable and control.
3. The Parties shall cooperate and negotiate in good faith to resolve any disputes concerning the interpretation or enforcement of this Agreement. Accordingly, in the event either Party initiates any legal action or proceeding, whether at law or in equity, regarding the interpretation or enforcement of this Agreement, the prevailing Party in such proceedings shall be entitled to recover its reasonable costs and expenses associated with said action or proceeding, including but not limited to reasonable expert witness and attorney fees, as shall be determined by the court.

IN WITNESS WHEREOF, the City, pursuant to authority granted by the adoption of an ordinance by its City Council, has caused this Agreement to be executed by its Mayor and attested by its City Clerk, and the Park District, pursuant to authority granted by the adoption of an ordinance by its Board of Park Commissioners, has caused this Agreement to be executed by its President and attested by its Secretary.


CITY OF WHEATON

By: 
Mayor

[SEAL]

Attest: 
City Clerk

WHEATON PARK DISTRICT

By: 
President, Board of Park Commissioners

[SEAL]

Attest: 
Secretary, Board of Park Commissioners

EXHIBIT A

Agreements between the Parties unaffected by this Intergovernmental Agreement:

1. Lease dated May 1, 1978 for property commonly referred to as Lake A.
2. 1976 Intergovernmental Cooperation Agreement for Police Protection.
3. Leases for the following properties if not conveyed to the Park District.
4. Lease dated January 3, 1972 for property commonly referred to as Hawthorn Junction Tot Lot
5. Lease dated July 1, 1970 for property commonly referred to as Triangle Park.
6. Leased dated July 1, 1970 for property commonly known as WW Steven's Tot Lot.