

ORDINANCE NO. 8274

AN ORDINANCE AMENDING ARTICLE 12 OF CHAPTER VI OF THE CITY CODE REGARDING THE USE OF SIDEWALKS FOR SIDEWALK DINING AND HOSPITALITY.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LAWRENCE, KANSAS:

**Section 1.** Section 6-1201 of the Code of the City of Lawrence, 2008 Edition, and amendments thereto, is hereby amended to read as follows.

6-1201 **SIDEWALK DINING AND HOSPITALITY LICENSE, DEFINITIONS.**

- (A) "Licensee" shall mean the owner of a ~~food-service~~ hospitality establishment that obtains a ~~sidewalk-dining~~ license pursuant to this Article.
- (B) "~~Food service establishment~~" "Hospitality Establishment" shall mean a business ~~that~~ which ~~possesses a valid Kansas food service establishment license pursuant to K.S.A. 36-501 et seq.~~ sells food, beverages, or both for on-premises consumption and whose owner(s) seeks to use a portion of the City owned sidewalk for dining purposes the consumption of food or beverages by its patrons.
- (C) "Sidewalk" shall mean the City owned right-of-way or easement that adjoins the property line of the food service establishment.

**Section 2.** Section 6-1202 of the Code of the City of Lawrence, 2008 Edition, and amendments thereto, and its subsections, are hereby amended to read as follows.

6-1202 **LICENSE APPLICATION AND CONDITIONS.**

Upon application of the owner(s) of a ~~food-service~~ hospitality establishment to the City Clerk, the City Commission may grant a conditional waiver from the prohibition of the use of the sidewalk (Chapter 16, Article 8) for private purposes. Such license shall only be granted if the hospitality establishment is in compliance with all applicable zoning regulations including Section 20-509 of the City Code, and amendments thereto, the use regulations that apply to eating and drinking establishments. Each license shall expire annually on November 1<sup>st</sup>. Each license that is issued shall be subject pursuant to the following conditions and requirements:

- 6-1202.1 The proposed sidewalk dining hospitality use shall be pursuant to the written permission of the record and equitable property owner for the applicant ~~food service~~ hospitality establishment. Further, the applicant for any new or renewal license shall submit a written statement from each adjoining property owner, and any tenant of each adjoining property expressing a lack of objection to the proposed sidewalk hospitality use. In the event that an adjoining property owner or the tenant of an adjoining property fails or refuses to sign such a written statement, or upon the request of the City Commission, a public hearing will be held by the City Commission to determine whether to grant the license. At such hearing, the City Commission will hear such testimony and receive such evidence as is necessary for it to determine whether it is within the public's interest to approve such use and shall make findings of fact sufficient to support its decision. The applicant and all adjoining property owners shall be provided written notice of the date and time of such hearing at least ten days prior to its occurrence. Notice shall be provided by first class mail or delivered in another

manner that is reasonably calculated to cause such notice to come to the attention of its intended recipient. In the case of mailed notice, the notice shall be deemed to be effective at the time that it is mailed.

6-1202.2 The use of the sidewalk shall be in conformance with the zoning regulations for the ~~food-service~~ hospitality establishment. The use shall be limited to the sale, possession, and consumption of food and beverages as part of the business of the ~~food-service~~ hospitality establishment. The City and the licensee shall execute an agreement for the use of the sidewalk that shall include all conditions of this Article and such other conditions as the City Commission may require.

6-1202.3 ~~The licensee shall possess a valid Kansas Food Service Establishment License pursuant to K.S.A. 36-501 et seq. The City Manager or his designee shall have to power to enact reasonable administrative regulations that apply to a licensee's use of the sidewalk for the purpose of protecting the community's health, safety and welfare. These regulations shall be labeled with the date that they are enacted and shall be available for inspection by the public during regular business hours. The regulations may include:~~

- (A) Seating requirements for patrons in sidewalk hospitality areas.
- (B) The composition of any beverage containers, bowls, plates or other items used in outdoor food or beverage service.
- (C) The use or volume of sound amplification devices or other means of noise production in the sidewalk hospitality area.
- (D) The allowable hours of use of the sidewalk hospitality area.
- (E) Staffing requirements for the monitoring of a sidewalk hospitality use.
- (F) Any other reasonable condition that protects the community's health, safety, or welfare.

The licensee shall comply with all regulations related to sidewalk hospitality enacted by the City Manager or his designee pursuant to this section. The license regulations in effect at the time of the issuance or renewal of a license under this Article shall be considered conditions of the license, and the failure to abide by these conditions may lead to license revocation as provided for by this Article. The licensee shall be provided with a copy of the applicable regulations for the upcoming licensing term at the time that a license is issued.

6-1202.4 The City Commission may grant permission for the licensee to serve, and patrons of the licensee to possess and consume alcoholic liquor and/or cereal malt beverages on the sidewalk, pursuant to Chapter 4 of the City Code. The licensee shall pay for the publication costs of an ordinance granting exemption for the possession and consumption of alcoholic liquor on City right-of-way. The licensee shall comply with all state and City laws pertaining to the sale of alcoholic liquor and cereal malt beverages. If food is served by a licensee anywhere on its premises, then, as a condition of licensure, food service must also be available in the sidewalk hospitality area during the same times and at the same prices as food is available inside the establishment.

6-1202.5 ~~A minimum of seventy percent (70%) of all sales of the licensee from the public sidewalk and the food service establishment shall be from the sale of food and non-alcoholic beverages.~~ The licensee shall make available to the City copies of completed and filed State of Kansas sales and liquor tax forms of the food service establishment. The forms for the prior twelve (12) consecutive months shall be provided to the City Clerk at the time of initial application and one month prior to license renewal. Upon the request of the City Clerk, the licensee shall make available copies of the forms at any time for use by the City Commission in consideration of the revocation or suspension of the license.

- 6-1202.6 The licensee shall submit a site plan for the proposed use of the sidewalk pursuant to Chapter 20 of the City Code that shall include elevation drawings. The proposed use shall maintain a minimum of six (6) feet width of unobstructed sidewalk between the ~~food-service~~ hospitality establishment sidewalk use and the street curb or plantings, whichever is closer, for public use. The site plan shall state the square footage of sidewalk proposed for such use. The site plan shall require the composition of railings and barriers to be wrought iron and shall detail the style, design, and color of railings and barriers proposed for placement on the sidewalk. The site plan shall provide for the seating of the patrons of the ~~food-service~~ hospitality establishment in the sidewalk dining area. The site plan shall contain such other conditions and restrictions on the use of the sidewalk as the City Commission determines appropriate for the use.
- 6-1202.7 If required by law, review of the site plan shall be conducted by the Historic Resources Commission and the State Historic Preservation Officer. ~~if required by law.~~
- 6-1202.8 The City may require the removal of any fixtures placed on the sidewalk pursuant to this Article, including the immediate removal of any fixtures pursuant to City public works or utilities needs or the removal during certain seasonal time periods (e.g. winter months). The licensee shall be ~~solely~~ responsible for any costs incurred in the removal of fixtures, and shall return the sidewalk to City pavement standards. If the licensee is no longer a tenant of the property at the time removal is required, the owner of the property shall be responsible for any costs incurred in the removal of fixtures, and the return of the sidewalk to City pavement standards.
- Upon the expiration of a license granted pursuant to this Article, the licensee shall cease the use of the sidewalk for business purposes and shall have fourteen (14) days to remove any fixtures placed on the sidewalk.
- 6-1202.9 The applicant shall annually pay a fee for the use of the sidewalk which shall be \$3.50 per square foot per year. The fee shall be paid at the time of license issuance, and on the annual anniversary thereof. The fee shall be considered as a lease payment for the commercial use of the sidewalk.
- 6-1202.10 The license granted pursuant to this Article may be revoked or suspended by the City Commission, after written notification to the licensee of the intent to revoke or suspend and the conducting of a public hearing. Such notification shall be mailed to the licensee at least ten (10) days prior to a public hearing on the proposed revocation or suspension.
- Notwithstanding this provision, the City may immediately suspend the license for the use of the sidewalk for a period not to exceed fourteen (14) days, if either the City Commission or the City Manager determines that such emergency license suspension best protects the public health, safety and welfare. Immediately upon the emergency suspension, the licensee shall be notified in writing of the time and place of a City Commission hearing on a further suspension or revocation of the license.
- 6-1202.11 (A) Insurance. The licensee shall carry an insurance policy issued by a company licensed to issue insurance in the State of Kansas, insuring the licensee, and the City of Lawrence as an additionally named insured, in an amount not less than \$500,000 single incident, for any liability associated with the failure of the licensee, its employees, agents, servants, invitees, and patrons to exercise due care and diligence in the use of the sidewalk.

(B) Indemnification. The agreement between the City and the licensee shall provide that the licensee agrees to at all times save and hold harmless the City of Lawrence, Kansas from all liability, costs, damages, and expenses of any kind, for the payment of which the City may become liable to any person, firm or corporation by reason of any claim or damages arising from the failure of the licensee, its employees, agents, servants, invitees, and patrons to exercise due care and diligence in the use of the sidewalk.

6-1202.12 The license granted pursuant to this Article shall be non-assignable and non-transferable.

6-1202.13 No license shall be issued under this section to any hospitality establishment that does not derive at least 55% of its gross receipts from the sale of food and non-alcoholic beverages, unless the hospitality establishment has no reasonable alternative location for an outdoor hospitality area. A licensee has no reasonable alternative location for an outdoor hospitality area if there is no single outdoor area on the premises of the establishment that:

(A) Is at least 50 square feet in area, excluding from measurement any area that serves as the most direct path between a customer entrance to the interior of the hospitality establishment and the public right of way. In determining the dimensions of any area excluded from measurement under this section the width of the excluded area shall be no greater than the width of the customer entrance served by that area, or 6 feet, whichever is lesser.

(B) Is at least five feet wide, with width defined as its shortest dimension.

This provision shall not apply to any hospitality establishment that has a current sidewalk dining license when this provision becomes effective.

**Section 3. Severability.** If any section, clause, sentence, or phrase of this ordinance is found to be unconstitutional or is otherwise held invalid by any court of competent jurisdiction, it shall not affect the validity of any remaining parts of this ordinance.

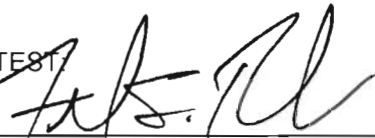
**Section 4.** This ordinance shall take effect and be in force effective upon its passage and publication once in the official city paper as provided by law.

**PASSED** by the Governing Body this 26<sup>th</sup> day of August 2008.

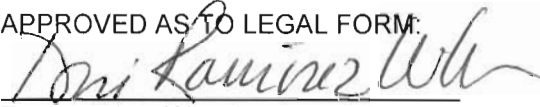
PASSED:

  
Michael Dever, Mayor

ATTEST:

  
Frank S. Reeb, City Clerk

APPROVED AS TO LEGAL FORM:

  
Toni Ramirez Wheeler  
Director of Legal Services