

COMPARED VERSION
NEW ORDINANCE TO CODE BOOKS

ORDINANCE NO. 220514

Amending Chapter 10, Code of Ordinances, by repealing Sections 10-62, Required hearings and review of director's action, and section 10-212, Location, and enacting in lieu thereof a new section of like number and subject matter to make necessary revisions to update a discrepancy within the ordinance, and, to make changes to the hearing process to align it with other like sections of the ordinance.

WHEREAS, the change to section 10-62(a) supports what is written in sections 10-212(b)(6)&(7) which states that a proposed license shall *only* be presumed that is likely to interfere with or be detrimental to the rights or interests of the neighboring community where 50% or more of the eligible neighbors who filed a written response with the director opposed the granting of a license or permit; and

WHEREAS, prior to January 14, 2022, when the City Council passed Ordinance No. 210961 which made many changes and updates to Chapter 10, the former process of asking for a hearing largely restricted an eligible consenter to seek one only if the director did not follow the ordinance as written; and

WHEREAS, the ordinance changes adopted in January now allow the manager to determine whether a liquor license or permit can be issued which allows for an eligible neighbor who voted on a proposed license or permit to ask for a hearing to challenge the manager's decision for any reason; and

WHEREAS, the Liquor Control Board of Review consists of eight taxpaying residents of the city, appointed by the mayor, who typically have other jobs and are accustomed to two or fewer cases coming before them annually and the changes that were made to Chapter 10 in January could dramatically increase the number of hearings before the Board; and

WHEREAS, in Section 10-214 it states that it shall be presumed that a proposed license is likely to interfere with or be detrimental to the rights or interests of the neighboring community if 50% or more of the eligible neighbors who filed a written response with the director opposed the granting of a license at the premises, and based on this, these proposed changes would only allow eligible neighbors to ask for a hearing if the director issues a license in a case where 50% or more of the eligible neighbors who filed a written response with the director opposed the granting of a license at the premises; and

WHEREAS, the language needs to be clear that any appeal to the Liquor Control Board of Review is based on the director issuing a liquor license and not based on whether or not the director approved the application as any appeal of the application could slow down the process substantially leaving the applicant and/or property owner in limbo of getting a liquor license; NOW, THEREFORE,

BE IT ORDAINED BY THE COUNCIL OF KANSAS CITY:

Section 1. That Chapter 10, Code of Ordinances of Kansas City, Missouri, is hereby amended by repealing Sections 10-62, Required hearings and review of director's action, and section 10-212, Location, and replacing them with new sections of like number and subject matter to read as follows:

Sec. 10-62. Required hearings and review of director's actions.

(a) If an application for an original license or permit, or the renewal or transfer of location of an existing license, or for change of ownership, or change in management or control of a business under this chapter is disapproved by the director, or if an eligible neighbor who filed a response pursuant to section 10-212 where 50% or more of the eligible neighbors who filed a written response with the director opposed the issuance of a license or permit, or, a church or school located within 300 feet of the proposed premises disputes the approval-issuance of a license or permit, then the applicant, eligible neighbor, or applicable church or school, as the case may be, may file with the board a written request for a hearing before the board on the denial or decision issuance of a license or permit regarding the location. ~~¶~~The request shall be made within 10 days after notice of the director's final decision. A copy of the request shall also be served on the director.

(b) In the case of action by the director seeking to suspend or revoke a license or permit issued under this chapter, the director shall:

- (1) File with the board, a written complaint setting forth the reasons for suspension or revocation of the license or permit and requesting a hearing before the board to consider the action.
- (2) Serve a copy of said request on the licensee or permittee personally or by leaving a copy at the licensed premises or by mailing a copy of the request to the licensee or permittee at their last known address.

(c) Upon the filing of a written complaint or request for a hearing before the board as provided in this chapter, made within the time specified in this article, the board shall, within 20 days after the receipt of the request, notify the director and all other parties of the date, time and place for the hearing. The date of the hearing shall not be less than 20 days from the date the request was filed.

(d) Hearing procedures shall include but not be limited to the following:

- (1) The applicant, licensee, permittee, eligible neighbor, or applicable church or school shall have full right to have counsel, to produce witnesses and to cross examine all witnesses who may appear. All proceedings in the hearings shall be taken down stenographically, or recorded mechanically or electronically, or by a combination thereof, and shall be transcribed whenever required by law. Subpoenas shall be

issued by the director or board for any witness whose presence is desired at any hearing or proceeding before the board to suspend or revoke a license or permit, or to issue or refuse a license or permit or renewal thereof, and the subpoena may be served by any person designated by the director or board, or by any member of the city police department. The subpoenas shall be served and return thereon shall be made in the same manner as is provided by law in civil suits in the circuit court of this state.

- (2) Witnesses may also appear voluntarily at the hearings and testify. Before testifying in any hearing or proceeding before the board, all witnesses shall be sworn to tell the truth and nothing but the truth.
- (3) With respect to a hearing before the board in connection with the directors action on an application for an original license or permit or the renewal or transfer of location of an existing license, or application for change of ownership or change in management or control of the business under this chapter or a hearing before the board in connection with the directors action to seek suspension or revocation of a license or permit issued under this chapter, the board shall issue its decision in writing within 30 days following the conclusion of the hearing unless the parties agree to an extension which shall not exceed an additional 30 days.
- (4) The decision of the board shall include findings of facts and conclusions of law, wherein the board may dismiss the complaint, or suspend or revoke a license or permit previously issued, place permanent or temporary conditions on the license, permit or licensee, or affirm or reverse the director's issuance or denial of an application for an original license, or renewal or transfer of an existing license or permit or remand the matter to the director for further administrative review or action. The board's decision shall be served upon all the parties in person or by registered or certified mail to the party's last known address. If the board is not able to serve the decision notice upon a party in person or if any notice sent by mail is returned by the U.S. Postal service, then the board shall cause the notice to be posted at the principal entrance of the business or facility, and the posting shall constitute valid service. No suspension, revocation, or denial shall become effective until 10 days after the decision has been issued by the board. The board may stay enforcement of its decision for a period of time not to exceed 30 days to allow for the filing of an appeal of the decision.

10-212. Location.

(a) No liquor license, expansion of premises, change in license type, change in location, extended hours permit, or amended license to allow live entertainment shall be issued for any location where the license is likely to interfere with or be detrimental to the rights or interests of the neighboring community.

(b) For purposes of this section, it shall be presumed that a proposed license is likely to interfere with or be detrimental to the rights or interests of the neighboring community if:

- (1) The applicable premises is or will be a sales-by-drink tavern or C.O.L license and is within 300 feet of a church or school, unless it is located within an exception area;
- (2) The applicable premises has or will have a sales-by-package license and is within 300 feet of a church or school, unless the proposed license is a grocery store or located within an exception area;
- (3) The applicable premises is or will be a sales-by-drink tavern or C.O.L. license and is within 300 feet of an area that is zoned residential unless it is located within an exception area;
- (4) The applicable premises has or will have a sales-by-package license and is within 300 feet of an area that is zoned residential, unless the proposed premises is a grocery store or it is located within an exception area;
- (5) The applicable premises is seeking an extended hours permit, pursuant to section 10-106 and is located within 1,500 feet of an area that is zoned residential;
- (6) The applicable premises has or will have a sales-by-drink license or C.O.L license and is not located within an exception area and 50% or more of the eligible neighbors who filed a written response with the director opposed the granting of a license or permit at the premises; or
- (7) The applicable premises has or will have a sales-by-package license that is not located within an exception area and 50% or more of the eligible neighbors who filed a written response with the director opposed the granting of a license or permit at the premises

(c) Distance shall be measured from the nearest point of the enclosing wall of the licensed premises or proposed license premises to the nearest enclosing wall of a church or school or to the nearest point of a parcel zoned residential.

(d) Any applicant seeking to rebut the presumption that their proposed license is likely to interfere with or be detrimental to the rights or interests of the neighboring community shall make a written request to the director describing why the applicant believes a waiver is appropriate. The director may permit waiver of one or more of the presumptions listed in subsection (b) if the director finds that the proposed license is not likely to interfere with or be detrimental to the rights and interests of the neighboring community. In considering a waiver the director may consider:

- (1) The physical characteristics of the proposed premises; relevant geography and character of both the premises and the surrounding neighborhood;
- (2) The proximity of the premises to other uses and use types and the effect of the exterior lighting, noise, traffic and parking associated with the operation of the

premises, with its patrons or with other persons frequenting the premises on the surrounding area;

- (3) The type of activity or entertainment to be conducted at the establishment and the days and times during which such activity would take place;
- (4) Whether any applicable church or school within 300 feet of the proposed premises supports the requested waiver;
- (5) The history of past use at the proposed premises; and
- (6) The measures the applicant proposes to implement to maintain quiet and security in conjunction with the establishment.

(e) The director shall review any request to rebut a presumption in subsection (b), along with any additional information submitted by an eligible neighbor, city department, the Kansas City Police Department, and any other information that the director deems relevant. The director shall not make a decision until ~~forty-five days after notice is provided to all~~ the eligible neighbors ~~response period has ended~~ as ~~required—outlined~~ by section 10-214. The director shall issue the decision in writing to the applicant and all responding eligible neighbors and provide the reasons for their decision.

(f) The director may grant a conditional license to any applicant whose proposed license is in conflict with subsection (b) in order to avoid the proposed premises interfering with or being a detriment to the rights and interests of the neighboring community.

(g) If a license or permit is not renewed or ceases to fulfill all other requirements of this chapter and expires, then an application for a new license or permit for the previously licensed premises shall be required to fulfill all conditions of this chapter for an original license or permit.

(h) If a license or permit issued under this chapter has been revoked, then an eligible applicant may apply for a new license or permit for the premises where a license or permit has been revoked and shall be required to fulfill all conditions of this chapter for an original license or permit.

Approved as to form and legality:

Chivonne Scott
Assistant City Attorney