



Legislation Text

File #: 210282, Version: 1

ORDINANCE NO. 210282

Amending Chapter 64, Code of Ordinances, by repealing Section 64-168, Sidewalk café permit, and Section 64-171, Street café permit, and enacting in lieu thereof the same sections of like number and subject matter to provide consistency with other Code provisions in Chapters 10 and 64 and by repealing Section 64-172, Temporary permits for sidewalk cafés, parklets and street cafés.

WHEREAS, in response to the declaration of a state of emergency due to the COVID-19 pandemic, on May 21, 2020, the City Council passed Committee Substitute for Ordinance No. 200376, As Amended, which enacted two new sections in Chapter 64, Code of Ordinances, entitled “Streets, Sidewalks and Public Places,” and Chapter 10, Code of Ordinances, entitled “Alcoholic Beverages,” that authorized the issuance of temporary sidewalk café, parklet and street café permits and the expansion of premises retail sales-by-drink licenses to allow certain existing public parking spaces to be used for temporary dining purposes through December 31, 2020; and

WHEREAS, in response to an extension of the state of emergency, on October 22, 2020, the City Council passed Ordinance No. 200892 which extended the temporary program until April 19, 2021; and

WHEREAS, the City Council desires that the measures passed during the state of emergency become permanent changes; NOW, THEREFORE:

BE IT ORDAINED BY THE COUNCIL OF KANSAS CITY:

Section 1. That Chapter 64, Code of Ordinances of the City of Kansas City, Missouri, is hereby amended by repealing 64-168, Sidewalk café permit, and enacting in lieu thereof one new section of like number and subject, to read as follows:

Sec. 64-168. Sidewalk café permit.

(a) *Permit authorized.* Unless otherwise authorized under the Code of Ordinances, no person shall place tables or chairs or any other device for the sale or consumption of food or beverage upon any public sidewalk or footway without first obtaining an annual sidewalk café permit. The director is authorized to issue annual sidewalk café permits for the limited purpose of temporarily placing tables and chairs for customers in connection with the sale and consumption of food and beverages in or upon any public sidewalk or footway only if all of the following conditions are met:

- (1) A sidewalk café permit can only be issued for areas in the city zoned for business and for sidewalks that will allow a clear unobstructed passage not less than five feet in width following the placement of the tables and chairs.
- (2) A sidewalk café permit may only be issued for a business that has a nonalcohol city business license or a conventions and tourism food certificate for the sale and consumption of food and beverages on the premises provided that the permit may be issued only if such business is located immediately in front of the sidewalk and the permit shall not be issued for another business, if any, located in the same building.
- (3) A sidewalk café permit issued under this article may not be assigned.
- (4) The sidewalk café permit shall specify the location of the permit area by address.
- (5) The applicant for a sidewalk café permit obtains approval from the board of parks and recreation commissioners if the sidewalk is on a parkway or boulevard under the jurisdiction of that board.
- (6) The applicant for a sidewalk café permit meets all of the other permit requirements contained in the Code of Ordinances, including but not limited to the requirements of chapter 10 of the Code, if applicable and as required.
- (7) The applicant shall properly supervise and maintain the sidewalk café in a clean, orderly, and safe condition and

in such a manner as to protect the public health and safety. The applicant shall prevent the accumulation, blowing and scattering of trash, garbage, or any other such debris caused by use of the sidewalk café and shall maintain its own trash containers upon the parklet for disposal of any debris. All tables, chairs, umbrellas, and any other furnishings utilized in the sidewalk café shall be maintained with a clean and attractive appearance and shall be in good repair at all times.

(8) Sidewalk cafés shall be subject to inspection once installed and at any reasonable time deemed necessary by the director.

(b) *Status of permit.* A sidewalk café permit is a privilege and not a right, and the city shall at all times have the right to restrict the scope, time and manner of the placement of tables and chairs on the sidewalk at any time and for any reason by ordinance or regulation of the director.

(c) *Application for sidewalk café permits.*

(1) All applications for a sidewalk café permit shall be filed with the director in a form approved by the director.

(2) As a condition for the issuance of a sidewalk café permit, the applicant shall furnish to the director an indemnity agreement in the form approved by the director binding the applicant to defend, indemnify, and hold harmless the city and any of its agencies, officials, officers, or employees from and against all claims, damages, liability, losses, costs, and expenses, including reasonable attorneys' fees, arising out of or resulting from any acts or omissions in connection with the operations of the applicant caused in whole or in part by the applicant, its employees, agents, or subcontractors, customers or caused by others for whom the applicant is liable, regardless of whether caused in part by any act or omission of city, its agencies, officials, officers, or employees.

(3) As a condition for the issuance of a sidewalk café permit, the applicant shall furnish the city a certificate of insurance from a company approved by the director of finance evidencing that the applicant has a comprehensive general liability and property damage policy meeting the following conditions:

a. Liability insurance with either a combined single-limit policy of not less than \$2,000,000.00, or a split-limit policy of \$300,000.00/\$300,000.00 bodily injury and \$100,000.00 property damage.

b. The city shall be added as an additional insured to such policy by separate endorsement.

c. The policy shall contain a separate endorsement requiring the insurance company to notify the city in writing of any change in or cancellation of the policy at least ten days prior thereto.

The applicant's failure to obtain or maintain the required insurance in effect for the duration of the permit shall immediately render the permit void. Notwithstanding the foregoing, the applicant shall remain obligated to indemnify and hold harmless the city and any of its agencies, officials, officers, or employees to the full extent required by the indemnity agreement required by this section.

(4) Applicant shall follow design guidelines provided by the director.

(d) *Conduct of sidewalk café permit holder.* A person holding a sidewalk café permit (permittee) shall comply with all of the following conditions in connection with the placement of tables and chairs on a sidewalk:

(1) Sidewalk café permits shall be conspicuously displayed at all times at the business for the permit area and shall be available for inspection by the director, other city employees, and the public.

(2) No street or alley shall be blocked by tables and chairs placed pursuant to a sidewalk café permit issued under this section.

(3) The permittee shall comply with all applicable laws, including the Americans with Disabilities Act ("ADA"). Access to sidewalk cafés, including existing parking spaces, shall be accessible to all and shall comply with ADA requirements per the 2010 US Department of Justice ADA standards and PROWAG guidelines including access up, down and within the area.

(4) Tables and chairs shall be securely placed so that they will not endanger the public, or fall or protrude into any street or alley.

(5) Tables and chairs shall not be placed in a manner that creates or causes a nuisance, a fire hazard, or interferes with ingress to or from any building.

(6) Only tables and chairs for customer use may be placed and allowed to remain within the permit area. The permit area may not be used for the storage of other items.

(7) Tables and chairs shall only be placed in front of the business holding a sidewalk café permit and shall not extend to sidewalks abutting and adjacent to other properties. Notwithstanding the foregoing, the tables and chairs may be placed in front of a property immediately abutting and immediately adjacent to the business holding the sidewalk café permit if the owner of record of the affected property consents in writing in a form approved by the director; a property shall not be deemed to be immediately abutting and immediately adjacent if separated from the business holding the sidewalk café permit by a street or alley.

(8) The tables and chairs shall not be placed in the street.

(9) Tables and chairs for customers shall be placed no less than five feet back from the front of the curb of the abutting street, or other appurtenances.

(e) *Renewal.* Sidewalk café permits shall be granted on an annual basis. All sidewalk café permits may be renewed upon request by the permittee and upon approval by the director 30 days prior to the expiration of the permit. The term for the renewal shall also be one year. Upon a request for renewal, the permittee shall demonstrate that they have adhered to the provisions of this section. The director may inspect the sidewalk café at any time.

(f) *Fees.* The director shall have the authority to set fees to defray the various costs incurred by the city in establishing and regulating sidewalk cafes. Those fees shall include an application fee and an annual license fee. The fees shall be determined annually by the director, and shall be made available to any permittee seeking to establish a sidewalk café.

(g) *Revocation.* Any permit issued hereunder may be suspended or revoked for any reason that would justify a refusal to issue the permit originally or by reason of any failure by the permittee to comply with the provisions of this code, or any condition imposed by the director upon the issuance of the permit. The sidewalk cafe permit may also be suspended if the location of the sidewalk is necessary for city use, including for use by a utility with the right to access the city's right-of-way. Unless there is an emergency as defined by city ordinance or need for access from a utility utilizing city right-of-way, the permittee is entitled to a minimum of one week's advance notice of the city's intent to temporarily suspend, or a minimum of 30 days' advance notice to revoke a sidewalk café permit. The cost of removing the sidewalk café will be borne solely by the permittee. Should the permittee fail to remove the sidewalk café, the director may remove the sidewalk café and assess cost of the removal to the permittee.

(h) *Penalties.* A permittee operating a sidewalk café who violates or fails to comply with any of the provisions of this section shall be subject to a fine of triple the amount of the application fee for every day of non-compliance. Section 2. That Chapter 64, Code of Ordinances of the City of Kansas City, Missouri, is hereby amended by repealing 64-171, Street café permit, and enacting in lieu thereof one new section of like number and subject, to read as follows:

Sec. 64-171. Street café permit.

(a) *Definition.* A street café is defined as an outdoor dining facility located within areas used for on-street parking which is permitted by the city to be utilized by the immediately adjacent property owner or tenant for outdoor dining as an extension of the owner's or tenant's operations.

(b) *Street café permit established.* The director of public works is authorized to issue annual street café permits for the limited purpose of placing tables and chairs for customers in connection with the sale and consumption of food and beverages in or upon any on-street parking spaces. The director shall have the authority to establish reasonable regulations for the issuance, use, revocation, and denial of street café permits. Upon issuance of a street café permit, permittees shall perform all obligations, duties and responsibilities as set forth by the director. Issuance of a street café permit is a privilege and not a right, and the director shall have the right to modify the scope, time and manner of the street café permit for any reason.

When the applicant for a street café permit requests a street café permit adjacent to a parkway or boulevard, the applicant must obtain approval from the board of parks and recreation commissioners. In such circumstances, any authority delegated within this section to the director of public works shall instead be delegated to the director of parks and recreation.

(c) *Permit conditions.* A street café permit may be issued only if all of the following conditions are met:

(1) A street café permit may be issued to any individual, business or organization within on-street parking areas or other unutilized spaces within the public right-of-way immediately adjacent to property owned or leased by the

individual, business or organization.

(2) A street café permit may be issued adjacent to streets or roadways which have a posted speed limit not in excess of 30 miles per hour.

(3) A street café permit can only be issued for areas in the city zoned for business and which allow a clear unobstructed passage not less than five feet in width within the street café following the placement of the tables and chairs in the street café.

(4) A street café permit may only be issued for a business that has a nonalcohol city business license or a conventions and tourism food certificate for the sale and consumption of food and beverages on the premises provided that the permit may be issued only if such business is located immediately in front of the business and the permit shall not be issued for another business, if any, located in the same building.

(5) A street café permit may not be located within parking spaces designated for the exclusive use of vehicles which display a distinguishing license plate or placard issued to physically disabled or handicapped persons.

(6) The applicant for a street café permit must meet all other permit requirements contained in the Code of Ordinances, including but not limited to the requirements of chapter 10 of the Code, if applicable. As a condition for the issuance of a street café permit, the director of neighborhoods and housing services shall attest that the permittee has met any requirements of permits which the permittee holds under chapter 10, if applicable and as required.

(d) *Application for street café permits.*

(1) All applications for a street café permit shall be filed with the director of public works in a form approved by the director. Street café permits may not be transferred or assigned. All applications for a street café permit shall include the following:

a. An indemnity agreement in the form approved by the director binding the applicant to defend, indemnify, and hold harmless the city and any of its agencies, officials, officers, or employees from and against all claims, damages, liability, losses, costs, and expenses, including reasonable attorneys' fees, arising out of or resulting from any acts or omissions in connection with the operations of the applicant caused in whole or in part by the applicant, its employees, agents, or subcontractors, customers or caused by others for whom the applicant is liable, regardless of whether caused in part by any act or omission of city, its agencies, officials, officers, or employees. The permittee shall specifically indemnify and hold harmless the city and any of its agencies, officials, officers, or employees from and against all claims, damages, liability, losses, costs, and expenses, including reasonable attorney's fees, arising out of or resulting from the city's snow removal operations.

b. A certificate of insurance from a company approved by the director of finance evidencing that the applicant has a comprehensive general liability and property damage policy meeting the following conditions:

1. Liability insurance with either a combined single-limit policy of not less than \$2,000,000.00, or a split-limit policy of \$300,000.00/\$300,000.00 bodily injury and \$100,000.00 property damage.

2. The city shall be added as an additional insured to such policy by separate endorsement.

3. The policy shall contain a separate endorsement requiring the insurance company to notify the city in writing of any change in or cancellation of the policy at least ten days prior thereto.

The applicant's failure to obtain or maintain the required insurance in effect for the duration of the permit shall immediately render the permit void. Notwithstanding the foregoing, the applicant shall remain obligated to indemnify and hold harmless the city and any of its agencies, officials, officers, or employees to the full extent required by the indemnity agreement required by this section.

c. A design of the street café which adheres to design guidelines provided by the director of public works which shall be available to any permittee seeking to establish a street café. The applicant shall include a layout, drawn to scale, which accurately depicts the dimensions of the existing area to be utilized as a street café and adjacent private property, the proposed location of the street café, size and number of tables, chairs, steps, planters, and umbrellas, location of doorways, trees, existing parking meters, sidewalk benches, trash receptacles, light poles, and any other sidewalk obstructions, either existing or proposed, within the pedestrian area. This layout shall be submitted on eight and one-half-inch by eleven-inch paper, suitable for reproduction. Also, photographs, drawings, or manufacturer's brochures fully describing the appearance and dimensions of all proposed tables, chairs, weighted umbrellas, free-standing barriers or other objects to be used in the street café.

(e) *Conduct of street café permit holder.* Street café permittees shall comply with all of the following conditions:

- (1) Street cafés must at all times adhere the city's parklet and street café design standards which shall be provided by the director upon request.
 - (2) The permittee shall properly supervise and maintain the street café in a clean, orderly, and safe condition and in such a manner as to protect the public health and safety. The permittee shall prevent the accumulation, blowing, and scattering, of trash, garbage, or any other such debris caused by use of the street café and shall maintain its own trash containers upon the street café for disposal of any debris. All tables, chairs, umbrellas, and any other objects utilized in the street café shall be maintained with a clean and attractive appearance and shall be in good repair at all times.
 - (3) Street café permits shall be conspicuously displayed at all times at the business for the permit area and shall be available for inspection by the director of public works, other city employees, and the public.
 - (4) The permittee shall designate with signage the hours during which the street café is to be operated. At all other times, the street café shall be made available for public use.
 - (5) Permittee shall ensure the street café and its furnishings in no way interfere with pedestrian, bicycle, or automobile traffic within the sidewalk, street, or bicycle facilities including the parking of vehicles in adjacent parking spaces.
 - (6) No smoking shall be allowed in the street café. Alcohol or liquor shall not be consumed within the street café without proper licensure. The hours of outdoor liquor sales shall be allowed as authorized in chapter 10 of the Code.
 - (7) Permittee shall not erect, attach, or affix any permanent fixture upon the public right-of-way, even within the street café.
 - (8) No furnishings or any parts of the street café shall be attached, chained, or in any manner affixed to any tree, post, signs, sidewalk, streetlight, fire hydrant, or other public fixture within or near the street café.
 - (9) The permittee shall not be permitted to use or operate any public address system, or amplified music before 9:00 a.m. and after 10:00 p.m.
 - (10) The permittee shall comply with all applicable laws, including the Americans with Disabilities Act.
 - (11) The permit area may not be used for the storage of any items other than seating, landscaping, signs, or lighting.
 - (12) The street café and any furnishings shall only be placed in front of the business holding a street café permit and shall not extend to public right-of-way abutting and adjacent to other properties. Notwithstanding the foregoing, the street café and its furnishings may be placed in front of a property immediately abutting and immediately adjacent to the business holding the street café permit if the owner of record of the affected property consents in writing in a form approved by the director of public works; a property shall not be deemed to be immediately abutting and immediately adjacent if separated from the business holding the street café permit by a street or alley.
- (f) *Renewal.* Street café permits shall be granted on an annual basis. All street café permits may be renewed upon request by the permittee and upon approval by the director 30 days prior to the expiration of the permit. The term for the renewal shall also be one year. Upon a request for renewal, the permittee shall demonstrate that they have adhered to the provisions of this section as well as the city's parklet and street café design standards. The director may inspect the street café at any time.
- (g) *Fees.* The director shall have the authority to set fees to defray the various costs incurred by the city in establishing and regulating street cafes, including loss of value to the city in utilizing such spaces for no-street parking. Those fees shall include an application fee and an annual license fee. The fees shall be determined annually by the director, and shall be made available to any permittee seeking to establish a street café.
- (h) *Revocation.* Any permit issued hereunder may be suspended or revoked for any reason that would justify a refusal to issue the permit originally or by reason of any failure by the permittee to comply with the provisions of this code, or any condition imposed by the director upon the issuance of the permit. The street café permit may also be suspended if the location of the street café is necessary for city use, including for use by a utility with the right to access the city's right-of-way. Unless there is an emergency which threatens the health and safety of city residents and visitors, or a need for access from a utility utilizing city right-of-way, the permittee is entitled to a minimum of one week's advance notice of the city's intent to temporarily suspend, or a minimum of 30 days' advance notice to revoke a street café permit. The cost of removing the street café will be borne solely by the permittee. No advance warning is required in the case of an emergency which threatens the health and safety of city residents and visitors

or a need for access from a utility. Should the permittee fail to remove the street café, the director of public works may remove the street café and assess cost of the removal to the permittee.

(i) *Penalties.* A permittee operating a street café who violates or fails to comply with any of the provisions of this section shall be subject to a fine of triple the amount of the application fee for every day of non-compliance.

Section 3. That Chapter 64, Code of Ordinances of the City of Kansas City, Missouri, is hereby amended by repealing Section 64-172, Temporary permits for sidewalk cafés, parklets and street cafés.

Approved as to form and legality:

Nicole Rowlette
Assistant City Attorney