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Title:	Sponsor: Councilmember Andrea Bough Amending Chapter 10 and Chapter 64, Code of Ordinances, by repealing Sections 10-130, Sidewalk café, parklet, street café, or parking lot alcohol license expansion, 10-161, Application fee, 10-212, Location, 10-214, Eligible neighbor notification, and 64-171, Street café permit, and enacting in lieu thereof new sections of like number and subject matter which enact that sidewalk café, parklet, street café, or parking lot permits are only issued by those departments accepting applications in order to eliminate additional bureaucracy to the application process and confusion to the applicant.				
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10/20/2022	1	Council	Passed	Pass
10/19/2022	1	Transportation, Infrastructure and Operations Committee	Adv and Do Pass, Debate	Pass
10/13/2022	1	Council		

ORDINANCE NO. 220914

Sponsor: Councilmember Andrea Bough

Amending Chapter 10 and Chapter 64, Code of Ordinances, by repealing Sections 10-130, Sidewalk café, parklet, street café, or parking lot alcohol license expansion, 10-161, Application fee, 10-212, Location, 10-214, Eligible neighbor notification, and 64-171, Street café permit, and enacting in lieu thereof new sections of like number and subject matter which enact that sidewalk café, parklet, street café, or parking lot permits are only issued by those departments accepting applications in order to eliminate additional bureaucracy to the application process and confusion to the applicant.

WHEREAS, since Regulated Industries Division no longer issues permits for sidewalk cafes and there is not a need for them to be a part of this application process; and

WHEREAS, requiring an applicant to submit an application for a sidewalk café, parklet, street café, or parking lot permits through either the Public Works Department or Parks Department as well as Regulated Industries Division is overbearing and unnecessary; and

WHEREAS, anyone that would like to sell alcoholic beverages in Kansas City, Missouri, is already required to go through the application process with Regulated Industries Division and meet all the requirements of Chapter 10 in order to get a license; and

WHEREAS, any person that would like to have a sidewalk café, parklet, street café, or parking lot alcohol license will be required to follow all of the rules and requirements of Chapter 10 that pertain to alcoholic beverages which include but are not limited to refusing the sale of alcoholic beverages to minors or intoxicated persons and to not allow individuals to leave any portion of the licensed premises with alcoholic beverages that are sold for immediate consumption; NOW, THEREFORE,

BE IT ORDAINED BY THE COUNCIL OF KANSAS CITY:

Section 1. That Chapter 10 and Chapter 64, Code of Ordinances of Kansas City, Missouri, is hereby amended by repealing Sections 10-130, Sidewalk café, parklet, street café, or parking lot alcohol license expansion, 10-161, Application fee, 10-212, Location, 10-214, Eligible neighbor notification, and 64-171, Street café permit, and replacing them with new sections of like number and subject matter to read as follows:

Sec. 10-130. Sidewalk café, parklet, street café, or parking lot alcohol license expansion.

(a) Any sales-by-drink licensee may apply for an expansion of premises. An expansion of premises will not include adding or expanding a sidewalk café, parklet, street café, outdoor open space, or parking lot dining area that is located on public or park property, as further outlined in sections 64-170 and 64-171.

(b) Any person licensed under this chapter that has a sidewalk café permit, parklet permit, street café permit, or parking lot dining permit, shall not allow employees or agents thereof, or any other person, to remove any alcoholic beverage provided for consumption on the permitted premises unless stated otherwise in this chapter.

Sec. 10-161. Application fee.

An application fee of $250.00 shall accompany each application tor an original license issued under this chapter. An application fee of $50.00 shall accompany each application for a Sunday license issued under this chapter. An application fee of $150.00 shall accompany each application for a 3:00 a.m. closing permit issued under this chapter. An application fee of $150.00 shall accompany each application for an expansion of premise issued under this chapter. The application fee is to cover the various costs incurred by the city in investigating and processing the applications. The application fee is not refundable.

Sec. 10-212. Location.

(a) No liquor license, 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. With the exception of an addition or expansion of a sidewalk cafe, parklet, street cafe, or parking lot dining area, that is located on public or park property, no expansion of premises shall be allowed 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, change in license type, change in location, extended hours permit, amended license to allow live entertainment, or expansion of premises excluding the addition or expansion of a sidewalk cafe, parklet, street cafe, or parking lot dining area that is located on public or park property, 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 percent 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 percent 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 the eligible neighbor response period has ended as outlined by section 10-214 <https://library.municode.com/mo/kansas_city/codes/code_of_ordinances?nodeId=PTIICOOR_CH10ALBE_ARTVQU_DIV2LO_S10-214ELNENO>. 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.

Sec. 10-214. Eligible neighbor notification.

(a) For purposes of this section, eligible neighbors shall include the owners of a minimum of 15 eligible property parcels as defined by geographic information systems maps based on the North American Datum 1983 Missouri West State Plane Coordinate System, maintained by the public works department of the city, wholly within or intersected by a radius of 250 feet from the proposed premises, as measured from the center of the door for the main entrance to the premises. For any premises that does not either intersect or include the boundaries of a minimum of 15 eligible property parcels within a radius of 250 feet, the radius will be increased by segments of 100 feet not to exceed 1,500 feet until the premises is intersected by or within the boundaries of a minimum of 15 eligible property parcels. The center of the door for the main entrance to the premises shall be determined by the entrance most used by the public frequenting the establishment. Regardless of how many parcels an individual may control or own, any individual real person may only submit one written response to the director and only one parcel owned or controlled by an individual shall be considered eligible for purposes of this section, For parcels that are condominiums, the director shall only be required to notify the homeowners association which may submit a written response on behalf of the building and all its owners. In lieu of a written response from an eligible property owner under this section, the director shall accept a response in proper form from a tenant if the tenancy is for a term not less than one year.

(b) The neighbor notification requirement provided in this section shall apply to:

(1) Any new premises;

(2) The expansion of any licensed premises excluding the addition or expansion of a sidewalk cafe,

parklet, street cafe, or parking lot dining area that is located on public or park property;

(3) Notwithstanding any other section of this chapter, any previously licensed or permitted premise where the license or permit was revoked;

(4) Any licensed premises, including but not limited to a bar-restaurant, tavern, hotel, bowling alley, grocery store or convenience store that changes the type of business that was originally approved by the director;

(5) Any applicant or licensee intending to provide live entertainment, provide an additional type of live entertainment not identified on their last application or application for renewal, or to increase the frequency of live entertainment, as further outlined in sections 10-270 and 10-332 of this chapter;

(6) Any change in ownership of a licensed premises unless not required in section 10-266 of this chapter; and

(7) Any application for extended hours permit.

(c) An applicant shall furnish with the application two coordinates, expressed in feet, based on the North American Datum 1983 Missouri West State Plane Coordinate System, identifying the center of the door for the main entrance to the premises.

(d) The director shall mail written notification of the filing an application for a license under this section to all eligible neighbors as determined by subsection (a), along with a response form that the eligible neighbor can complete, within 14 business days of the applicant submitting their completed application. An eligible neighbor may submit the response form indicating whether they support or oppose the issuance of the license, along with their reason for supporting or opposing the license, within 30 days of the issuance of the notice by the director. Reponses shall be in writing on a form provided by the director and shall contain a statement that the person signing is a bona fide eligible neighbor under the provisions of this section. An eligible neighbor may change or withdraw their response during the 30-day period by notifying the director in writing stating their desire to change or withdraw their response.

(e) The applicant must provide a notarized statement that no eligible neighbor or tenant of an eligible neighbor has received, either directly or indirectly, anything of value which may include but is not limited to any gift, compensation, loan, favor, privilege, service, courtesy or otherwise, in exchange for their response or not filing a response.

(f) The director shall also mail written notification of the filing of an application for a license under this section to all neighborhood associations registered with the city in the same zip code as the proposed premises.

(g) The director shall not accept an application for a sales-by-drink, C.O.L. or sales-by-package licensed premise not within an exception area where 50 percent or more of the eligible neighbors who filed a written response with the director opposed the granting of a license two times within a 12-month period unless 12 months have passed from the date of the most recent denial by the director or withdrawal by an applicant of an application.

(h) Neighbor notification shall not be required or considered for a licensed premise that will only be used as a storage space where alcoholic beverages are stored, not sold or served, and the general public will not

be permitted to enter at any time.

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. In situations where building capacity is decreased due to a city proclamation of emergency, or if it is otherwise in the best interests of the city, the director is authorized to issue temporary street café permits and may waive any fees or other requirements otherwise necessary to receive a street café permit.

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 individual or business applying for a street café permit shall mail written notification of an application for a license under this section to either the registered property owner or tenant of a

property wholly within or intersected by a radius of 250 feet from the property owner or business requesting the street café permit. The notification shall be in a form prescribed by the director, include a 30- day feedback period, and shall invite objections from recipients of the notification. Any objections must be submitted in writing to the director within 30 calendar days of the permit applicant's notification being sent out. The director shall take any such objections into account when determining whether to issue a street café permit. The individual or business must provide certified mail receipts of the notification via the city's permitting system prior to receiving a street café permit.

(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:

i. 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.

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

iii. 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.

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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, freestanding 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 to the city's parklet and street café design standards which shall be provided by the director upon request. If the city's design standards are amended, the director shall have discretion to decide whether an existing street café must be updated to conform with the new standards.

(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. Street cafés may only be open during the times that the business operating the street café is open.

(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.

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(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. At all times, the permittee shall operate the street café in a manner consistent with the indoor noise decibel restrictions of Section 46-4 of the Code of Ordinances unless the permittee obtains a permit which otherwise allows for higher decibel levels.

(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 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 cafés, including loss of value to the city in utilizing such spaces for on-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. The fees shall be based on the costs of administering street cat permits. In situations where building capacity is decreased due to a city proclamation of emergency, or if it is otherwise in the best interests of the city, the director is authorized to issue temporary street café permits and may waive any fees or other requirements otherwise necessary to receive a street café permit.

(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

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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 noncompliance.

Approved as to form and legality:

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Chivonne Scott
Assistant City Attorney