

AN ORDINANCE ESTABLISHING A SIDEWALK DINING DISTRICT, PROVIDING FOR THE APPLICATION FOR AND GRANTING OF A SIDEWALK DINING LICENSE AND ESTABLISHING RULE AND REGULATIONS FOR THE SAME AND CREATING REGULATIONS FOR THE SAME AS ARTICLE 5 TO CHAPTER XIII OF THE CITY CODE FOR THE CITY OF RUSSELL, KANSAS

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

The code of the City of Russell is hereby amended by adding Article 5 to Chapter XIII which reads as follows:

Section 1. 13-501. PURPOSE.

The Governing Body finds that, because it encourages a pedestrian-oriented environment creates a vibrant and visually attractive streetscape, and because it promotes and stimulates commerce, it is in the best interest of the residents of the City of Russell, Kansas, to permit, subject to regulation, Sidewalk Dining.

Section 2. 13-502. DEFINITIONS.

The following words, terms, and phrases, when used in this Article, shall, except where the context clearly indicates otherwise, have the following meanings:

- a. "Applicant" shall refer to a Restaurant Establishment, or a person authorized to act in its behalf, that has filed with the City Clerk an application for a Sidewalk Dining License.
- b. "Restaurant Establishment" shall mean any business, however organized, that sells food, beverages, or both for consumption by patrons on the premises.
- c. "Licensee" shall mean any Restaurant Establishment licensed by the City under this Article to use a Sidewalk for Sidewalk Dining.
- d. "Sidewalk" shall mean the City-owned right of way or easement adjoining the property line of a Restaurant Establishment.
- e. "Sidewalk Dining" shall mean the consumption of food, beverages, or both by patrons of a Restaurant Establishment outdoors on a specific area of a Sidewalk set aside for that purpose.
- f. "Sidewalk Dining Area" shall mean the area on the sidewalk licensed for dining and shall be designated by the Applicant in his or her site plan.
- g. "Sidewalk Dining District" shall mean Main Street from Wisconsin Street north to Ninth Street.

Section 3. 13-503. SIDEWALK DINING LICENSE REQUIRED.

No Restaurant Establishment shall permit Sidewalk Dining without first obtaining a Sidewalk Dining License. A Sidewalk Dining License may only be issued to a Restaurant Establishment for a location within the Sidewalk Dining District.

Section 4. 13-504. SIDEWALK DINING LICENSE FEE. The fee for a Sidewalk Dining License shall be fifty dollars (\$50) per year. The fee shall be considered to be in the nature of a lease payment for the commercial use of the Sidewalk. The Sidewalk Dining License fee shall be pro-rated for the first partial year in which it is issued. The Sidewalk Dining License Fee shall not be prorated or refunded in the case of suspension or revocation of a Sidewalk Dining License.

Section 5. 13-505. SIDEWALK DINING LICENSE APPLICATION. Application for a Sidewalk Dining License shall be made to the City Clerk on a form provided by the City Clerk for that purpose. The Applicant shall complete the form in full and shall provide, at the least, the following:

- a. The name of the Restaurant Establishment to be licensed, including its email address, business address, business telephone, and mailing address.
- b. If the Restaurant Establishment to be licensed is a corporation, partnership, or other business organization, the names and addresses of all officers, directors, partners, or members.
- c. The name of the manager of the Restaurant Establishment, his or her telephone number, mailing address, and e-mail address.
- d. Written permission of all owners of record and all equitable owners, if any, of the real property upon which the Restaurant Establishment is located that would be offering Sidewalk Dining.
- e. Remittance of the Sidewalk Dining License Fee and a copy of a Certificate of Insurance, in accordance with Section 9c, establishing that the Applicant has procured appropriate liability insurance and that said insurance is current.
- f. A copy of the Applicant's Kansas Food Establishment License.
- g. An executed Right of Way Agreement between the City and the owner(s) of the real property upon which the Restaurant Establishment, seeking the Sidewalk Dining License, is located, and the Applicant if different than the owner(s) of the real property.
- h. A statement that the Applicant has submitted a Site Plan to the Russell City Building Official for approval.
- i. The Applicant's signature and the date.

The complete application shall be submitted to the City Clerk at least 15 days prior to when the application is to be submitted to the Governing Body for approval.

Section 6. 13-506. SIDEWALK DINING LICENSE ISSUANCE; DENIAL

- a. The City Clerk shall review each application for a Sidewalk Dining License. Within a reasonable time thereafter, the City Clerk shall submit the application to the Governing Body for approval unless:
  - (1) The application is incomplete.
  - (2) The Restaurant Establishment has had a Sidewalk Dining License revoked by the City for any reason within the preceding two (2) years.
- b. If the application is incomplete, then the City Clerk shall notify the Applicant and shall allow the Applicant additional time to complete the application. Within a reasonable time after its completion, the City Clerk shall submit the completed application to the Governing Body for approval.
- c. If the Establishment has had a Sidewalk Dining License revoked within the two (2) previous years, then the City Clerk shall deny the application by giving Notice of Denial to the Applicant. Notice of Denial shall be in writing, shall be mailed to the Applicant at his or her given address, shall inform the Applicant of the reason for denial, and shall inform the Applicant that he or she has fourteen (14) days from the date of the Notice of Denial within which to submit to the City Clerk, in writing, a request for a public hearing before the Governing Body.

Section 7. 13-507. SIDEWALK DINING LICENSE APPEARANCE; DURATION.

- a. The Sidewalk Dining License shall contain the seal of the City, the name and mailing address of the Licensee, and the expiration date of the license.

- b. The Sidewalk Dining License shall be valid for a period not to exceed one year and shall expire at midnight on the subsequent December 31st.

Section 8. 13-508. SIDEWALK DINING LICENSE RENEWAL; DENIAL

- a. Not less than sixty (60) days prior to the expiration date of a Sidewalk Dining License, the City Clerk shall mail to the Licensee a renewal application form. The Licensee shall complete the renewal application form and shall return the same to the City Clerk by no later than December 1 of that year, providing, at the least, the following:
  - 1. The name of the Licensee, including its e-mail address, business address, business telephone, and mailing address.
  - 2. If the Licensee is a corporation, partnership, or other business organization, the names and addresses of all officers, directors, partners, or members.
  - 3. The name of the manager of the Licensee, his or her telephone number, mailing address, and e-mail address.
  - 4. Remittance of the Sidewalk Dining License Fee
  - 5. A copy of a Certificate of Insurance, in accordance with Section 9c, establishing that the Licensee has procured appropriate liability insurance and that said insurance is current.
  - 6. A copy of the Licensee's Kansas Food Establishment License.
  - 7. The Licensee's signature and the date.
- b. For any Sidewalk Dining License Fee and renewal application form received by the City Clerk after December 1, the City Clerk shall assess to the Licensee, as a late fee, a penalty of 10% of the Licensee's Sidewalk Dining License Fee.
- c. If the renewal application form is submitted to the City Clerk, is complete (including remittance of the Sidewalk Dining License Fee), then the City Clerk shall submit the renewal application to the Governing Body for approval.
- d. If the renewal application form is incomplete the City Clerk shall notify the Applicant and shall allow the Applicant a reasonable time to complete the same. If it is not completed in a reasonable time then the City Clerk shall deny the renewal application by giving Notice of Denial to the Licensee. Notice of Denial shall be in writing, shall be mailed to the Licensee at his or her given address, shall inform the Licensee of the reason for denial, and shall inform the Licensee that he or she has fourteen (14) days from the date of the Notice of Denial within which to submit to the City Clerk, in writing, a request for a public hearing before the Governing Body.

Section 9. 13-509. SIDEWALK DINING LICENSE CONDITIONS. Each Sidewalk Dining License issued by the Governing Body shall be subject to the following conditions and requirements:

- a. **COMPLIANCE WITH ZONING REQUIREMENTS.** The use of the Sidewalk shall be in conformance with the zoning regulations governing the real property upon which the Licensee is located. The use shall be limited to the sale, possession, and consumption of food, beverages, or both as part of the business of the Licensee.
- b. **SITE PLAN.** In conjunction with its application for a Sidewalk Dining License, the Applicant shall submit a Site Plan to the City Building Official for approval. The Site Plan shall include the following:
  - 1) Elevation drawings.
  - 2) A note setting forth the square footage of Sidewalk Dining area.
  - 3) A drawing or diagram showing the seating configuration within the Sidewalk Dining area.

- 4) A drawing or diagram of the Sidewalk Dining Area and showing that there is a minimum of five (5) feet width of unobstructed Sidewalk reserved for pedestrian use between the proposed Sidewalk Dining Area and the street curb or plantings, whichever is closer.
  - 5) A drawing or diagram outlining the area to be used for Sidewalk Dining (the length of which may not extend beyond the adjoining boundary line of the Restaurant Establishment premises), and if railings or barriers are to be installed showing the location of railings or barriers that will separate it from that portion of the Sidewalk reserved for pedestrian use. The railings or barriers shall be constructed of wrought iron, ornamental metal, or other compatible materials that reflect and conform to the character of the area. The Site Plan shall also note the style, design, and color of the railings or barriers.
  - 6) A drawing or diagram showing any umbrellas proposed to be maintained within or overhanging the Sidewalk Dining area or the Sidewalk. Any umbrellas associated with the Sidewalk Dining use shall maintain a minimum distance of eighty (80) inches between the sidewalk surface and the lowest part of the umbrella's canopy.
- c. **INSURANCE.** The Licensee shall carry an insurance policy issued by a reputable insurance company licensed to do business in the State of Kansas. The policy shall insure the Licensee in an amount not less than \$500,000 per single incident for any liability associated with the failure of the Licensee, its employees, agents, servants, invitees, or patrons, to exercise reasonable care and diligence in the use of the Sidewalk. Proof of insurance shall be submitted to the City Clerk on a standard ACORD form, or substantially similar form as approved by the City Clerk, and shall establish that the Licensee maintains the requisite insurance and that it is current. The certificate shall also require the insurance carrier to notify the City at least thirty (30) days in advance of any change in terms and conditions of the policy, including cancellation for any reason, and in advance of any expiration of the policy term.
- d. **INDEMNIFICATION.** The Licensee must comply with all terms of the executed Right of Way Agreement. Among other things, the Right of Way Agreement shall provide that the Licensee agrees, at all times, to save and to hold harmless the City, its officials, officers, employees, and agents, 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 related to or arising out of the Licensee's use of the Sidewalk for Sidewalk Dining.
- e. **REMOVAL OF FIXTURES.** The City may require, at any time and for any reason, the removal of any fixtures placed on the Sidewalk pursuant to this Article. The Licensee shall be responsible for any costs incurred in the removal of fixtures and shall return the Sidewalk to City standards. If the Licensee is no longer the tenant of the real property at the time that removal is required, then the owner(s) of record of the real property shall be responsible for any costs incurred in removing the fixtures and in returning the sidewalk to City pavement standards.
- f. **ALCOHOLIC LIQUOR; CEREAL MALT BEVERAGES.** The Governing Body may permit the Licensee to serve and the Licensee's patrons to purchase, possess, and consume alcoholic liquor and/or cereal malt beverages within the Licensee's Sidewalk Dining Area in accordance with the City Code. To serve alcoholic liquor and/or cereal malt beverages within the Sidewalk Dining Area that area must be separated from the

unobstructed walkway of the sidewalk by a railing or other barrier as provided in Section 9b(5). The Licensee shall also comply with all State and City laws and ordinances governing the sale, possession, and consumption of alcoholic liquor and cereal malt A Licensee shall retain the Sidewalk Dining License on the premises and shall make it readily accessible for viewing by City personnel.

- g. LIMITED USE. The use made of the Sidewalk Dining Area shall be limited to sidewalk dining as part of the licensee's restaurant. Without limitation, food preparation, mixing alcoholic liquor beverages or cereal malt beverages, and tending bar is not permitted in the Sidewalk Dining area.
- h. AMPLIFIED MUSIC OR SOUND. Amplified music or sound will not be used in conjunction with the Sidewalk Dining use except in the case of an approved special use permit.
- i. SIDEWALK DINING LICENSE NON-TRANSFERABLE. No Sidewalk Dining License issued in accordance with the provisions of this Article shall be used by any person other than the Licensee to whom it was issued.

Section 10. 13-510. NOTICE OF VIOLATION. Any Licensee determined by the City to be in violation of any provision of this Article shall be served with a Notice of Violation. The Notice of Violation shall be made by personal service to the Applicant or sent by certified mail, postage prepaid, and return receipt request to the Licensee. The Notice of Violation shall state:

- a. The condition that has caused the violation;
- b. The time within which the Licensee must cure the violation; and
- c. That the Licensee shall have fourteen (14) days from the date of the Notice of Violation to request, in writing, a public hearing before the Governing Body.

Section 11. 13-511. SUSPENSION; REVOCATION. If the continued operation of the Sidewalk Dining is determined by the City to be injurious to the health, safety, or welfare of the residents of the City, or if the Licensee has failed to cure a violation of this Article, the City shall send to the Licensee either a Notice of Suspension or a Notice of Revocation.

Section 12. 13-512. PUBLIC HEARING.

- a. Any Applicant or Licensee, aggrieved by the action of the City in denying an application for a Sidewalk Dining License, in issuing a Notice of Violation, in suspending a Sidewalk Dining License, or in revoking a Sidewalk Dining License, shall have the right to a public hearing before the Governing Body by requesting such a hearing within fourteen (14) days of the date of the Notice of Denial, Notice of Violation, Notice of Suspension, or Notice of Revocation. The Request for Hearing must be in writing, must be delivered to the City Clerk, and must set forth why the Applicant or Licensee believes that the Notice of Denial, Notice of Violation, Notice of Suspension, or Notice of Revocation is in error. After the Request for Hearing is filed, the Governing Body shall set a time and place for the hearing. Notice of the hearing shall be given to the Owner in the same manner as the Notice of Denial, Notice of Violation, Notice of Suspension, or Notice of Revocation.
- b. If the hearing involves a Notice of Denial, the Governing Body shall not grant a Sidewalk License unless the Applicant establishes
  - 1. that the Notice of Denial was issued in error or

2. that it is within the public's interest to approve the application for a Sidewalk Dining License. The Governing Body shall base its decision on the credible evidence adduced at the public hearing and shall make findings of fact sufficient to support its determination.
- c. If the hearing involves a Notice of Violation, Notice of Suspension, or Notice of Revocation, the Governing Body shall affirm, reverse, or modify the Notice of Violation, Notice of Suspension, or Notice of Revocation. The Governing Body shall base its decision on the credible evidence adduced at the public hearing and shall make findings of fact sufficient to support its determination.
- d. In the event of a public hearing, the decision of the Governing Body shall be the final decision of the City. If no hearing is requested, then the Notice of Denial, Notice of Violation, Notice of Suspension, or Notice of Revocation shall be the final decision of the City.

Section 13. 13-513. ADMINISTRATIVE REGULATIONS.

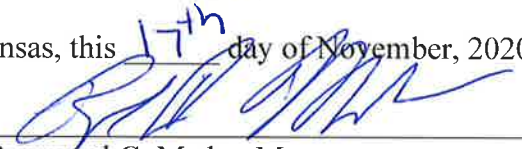
- a. In order to protect the health, safety, and welfare of the community, the City Manager or his or her designee shall have the power to promulgate reasonable administrative regulations governing a Licensee's use of the Sidewalk for Sidewalk Dining. Any regulations promulgated in accordance with this Article shall be dated and shall be available for inspection by the public during reasonable business hours. A Licensee shall receive a copy of any regulations at the time of the issuance of any Sidewalk Dining License or the renewal of a Sidewalk Dining License.
- b. The Licensee shall comply with all regulations promulgated by the City Manager or his or her designee in accordance with this Article. Failure to abide with any regulation shall be grounds for Notice of Violation, Notice of Suspension, or Notice of Revocation.

Section 14. 13-514. 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 15. Effective Date. This Ordinance shall take effect and be in force from and after publication of a summary of the ordinance in the official city newspaper and posting of the full text of the ordinance on the city's website as provided in K.S.A. 12-3007(b).

PASSED by the Governing Body of the City of Russell, Kansas, this 17<sup>th</sup> day of November, 2020.

APPROVED by the Mayor of the City of Russell, Kansas, this 17<sup>th</sup> day of November, 2020.

  
Raymond C. Mader, Mayor

ATTEST:

  
Katrina Woelk, City Clerk

