

ARTICLE 6. COMMERCIAL USE OF SIDEWALKS

5-601. Sidewalk dining license; definitions.

(a) "Licensee" shall mean the owner of a Hospitality Establishment that obtains a license pursuant to this Article.

(b) "Hospitality Establishment" shall mean a business that sells food, beverages, or both for on-premises consumption and whose owner(s) seeks to use a portion of the City owned sidewalk for 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 location of the Hospitality Establishment.

(Ord. 1286)

5-602. License application and conditions.

Upon application and receipt of an application fee of \$25.00 from the owner(s) or lessee(s) of a Hospitality Establishment to the City Clerk, the City Council may grant a conditional waiver from the prohibition of the use of the Sidewalk for private purposes. Such license shall only be granted if the Hospitality Establishment is in compliance with all applicable zoning regulations and the use regulations that apply to eating and drinking establishments. Each license shall expire annually on November 1st. Each license that is issued shall be subject to the following conditions and requirements:

(a) The proposed Sidewalk hospitality use shall be pursuant to the written permission of the record and equitable property owner for the applicant 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 Council, a public hearing will be held by the City Council to determine whether to grant the license. At such hearing, the City Council 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.

(b) The use of the Sidewalk shall be in conformance with the zoning regulations for the Hospitality Establishment. The use shall be limited to the sale, possession, and consumption of food and beverages as part of the business of the Hospitality Establishment; and may include, if approved by the City Council, the consumption and possession of alcoholic liquor or cereal malt beverages. The City and the Licensee shall execute an agreement for the use of the Sidewalk that shall include all conditions of this Article, a diagram showing the dimensions and location of the portion of the Sidewalk to be used, and such other information or conditions as the City Council may require. The agreement shall have provisions on how the Licensee intends to segregate the area to separate it from the Sidewalk area that is intended to remain in use for pedestrian traffic. The City Administrator, or his designee, shall determine the sufficiency of the Licensee's segregation of the area to be used for the purpose of protecting the community's health, safety and welfare.

(c) The City Administrator or his designee shall have the power to enact reasonable additional administrative regulations that apply to a Licensee's use of the Sidewalk for the purpose of protecting the community's health, safety and welfare.

(d) The applicant shall annually pay a fee for the use of the Sidewalk which shall be \$1 per square foot per year. The City shall determine from the diagrams submitted and the location of the fixtures what the square footage is for purposes of establishing the fee. 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. In addition, the Licensee shall pay all costs associated with 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 City Administrator shall have the power to determine whether the fixtures shall be removed for any reason and at any time. The Licensee shall be responsible for any costs incurred in the removal of fixtures, and shall return the Sidewalk to City pavement standards at the expiration of such license. 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 14 days to remove any fixtures placed on the Sidewalk.

(e) The license granted pursuant to this Article may be revoked or suspended by the City Administrator, after written notification to the Licensee of the intent to revoke or suspend and the conducting of a public hearing before the City Council. Such notification shall be mailed to the Licensee at least 10 days prior to a public hearing on the proposed revocation or suspension. If the license is suspended or revoked, the licensing fee shall not be returned to the Licensee. Notwithstanding this provision, the City may immediately suspend the license for the use of the Sidewalk for a period not to exceed 14 days, if either the City Council or the City Administrator 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 Council hearing on a further suspension or revocation of the license.

(f) Insurance and Indemnification.

(1) 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 Baldwin City 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.

(2) 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 Baldwin City, 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.

(g) The license granted pursuant to this Article shall be non-assignable and non-transferable.

(Ord. 1286)

5-603. Merchandise display license, definitions.

(a) "Licensee" shall mean the owner of a Retail Business that obtains a license pursuant to this Article.

(b) "Retail Business" shall mean a business in which goods are sold individually or in small quantities to consumers and whose owner(s) seeks to use a portion of the City owned sidewalk for the display of the businesses goods.

(c) "Sidewalk" shall mean the City owned right-of-way or easement that adjoins the property line of the location of the Retail Business.

(Ord. 1319)

5-604. Same; license application and conditions.

It shall be unlawful for any person to place a display on a city sidewalk without first obtaining a permit therefore. "Display" includes, but is not limited to, the placement of any table, rack, machine, or other, device or object relating to

the storage, advertising, exhibition, or sale of merchandise or services, but not including signs, which shall be regulated by the zoning regulations. Upon application and receipt of an application fee of \$25.00 from the owner(s) or lessee(s) of a Retail Business to the City Clerk, the City Council may grant a conditional waiver from the prohibition of the use of the Sidewalk for private purposes. Such license shall only be granted if the Retail Business is in compliance with all applicable zoning regulations. Each license shall expire annually on November 1st. Each license that is issued shall be subject to the following conditions and requirements:

(a) The proposed sidewalk display use shall be pursuant to the written permission of the property owner of record for the applicant Retail Business. 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 objections to the proposed sidewalk display 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 Council, a public hearing will be held by the City Council to determine whether to grant the license. At such hearing, the City Council 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 facts 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.

(b) The use of the sidewalk shall be in conformance with the zoning regulations for the Retail Business. The City and the Licensee shall execute an agreement for the use of the Sidewalk that shall include all conditions of this Article, a diagram showing the dimensions and location of the portion of the Sidewalk to be used, and such other information or conditions as the City Council may require. Such permits shall only be issued to applicants whose establishment is sited adjacent to a public sidewalk located within the CP-3 Planned Central Business District. The use shall be located only in front of the adjoining establishment holding the permit and shall not extend into abutting or adjacent properties. The display objects shall not be placed in any street or alley, and shall be securely placed to avoid danger to the public, or to prevent fall or protrusion onto any street or alley. Display areas may not exceed 3 feet wide by 6 feet in length. The use shall not create a fire hazard or interfere with ingress or egress from any building. The use shall allow five (5) feet of clear and unobstructed passageway on the sidewalk between the outermost edge of the permitted displays and the curb, street lamps, lamp posts, sign posts, or other fixtures or obstructions. The Public Works Director may require more than five (5) feet if necessary to protect the public safety or ensure passage. The display may only be placed within the permit area during the normal business hours of the permit holder's establishment, but in no case shall such items be located in the permit area between 10:00 p.m. and 6:00 a.m. or during the dates of the annual Maple Leaf Festival. The display shall be limited to merchandise sold, displayed, or provided inside the permit holder's establishment. Use of the permitted area must conform with all applicable laws, city codes, and zoning regulations.

(c) The City Administrator or his designee shall have the power to enact reasonable additional administrative regulations that apply to a Licensee's use of the Sidewalk for the purpose of protecting the community's health, safety, and welfare.

(d) The applicant shall annually pay a fee for the use of the Sidewalk which shall be \$100. 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. The City Administrator shall have the power to determine whether the fixtures shall be removed for any reason and at any time. 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.

(e) The license granted pursuant to this Article may be revoked or suspended by the City Administrator, after written notification to the Licensee of the intent to revoke or suspend and the conducting of a public hearing before the City Council. Such notification shall be mailed to the Licensee at least 10 days prior to a public hearing on the proposed revocation or suspension. If the license is suspended or revoked, the licensing fee shall not be returned to the Licensee. Notwithstanding this provision, the City may immediately suspend the license for the use of the Sidewalk for a period not to exceed 14 days, if either the City Council or the City Administrator 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 Council hearing on a further suspension or revocation of the license.

- (1) 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 Baldwin City as an additionally named insured, in an amount not less than \$500,000 single incident, for any liability association with the failure of the Licensee, its employees, agents, invitees, and patrons to exercise due care and diligence in the use of the Sidewalk
- (2) 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 Baldwin City, 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, invitees, and patrons to exercise due care and diligence in the use of the Sidewalk.

(f) The license granted pursuant to this Article shall be non-assignable and nontransferable.

(g) If any section, clause, sentence, or phrase of this ordinance is found to be unconstitutional or is otherwise invalid by any court of competent jurisdictions, it shall not affect the validity of any remaining parts of this ordinance.

(Ord. 1319)