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ORDINANCE NO. _____

AN ORDINANCE CREATING SECTIONS 10.04.138, 10.04.230, 10.04.240, 10.04.250, 10.04.260, 10.04.270, 10.04.280, AND 10.04.290 OF THE CODE OF THE CITY OF WICHITA PERTAINING TO SIDEWALK CAFÉ PERMITS, AND OPEN AIR ICT TEMPORARY USE PERMITS

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

SECTION 1. Section 10.04.138 of the Code of the City of Wichita is hereby created to read as follows:

“Temporary Waiver of Sidewalk Café Permit Fees and Approval of Premises

Extensions.

- a. Unless otherwise directed by the City Council, the City Treasurer is directed to waive all fees for new applications or application renewals for sidewalk café permits for applications submitted to City Licensing from the date of adoption of this ordinance until August 1, 2021.
- b. The provisions of this section do not negate the responsibility of landowners to obtain sidewalk café permits when required or to comply with all applicable rules, regulations, and ordinances applicable to the permittees’ activities and business operations occurring on City of Wichita sidewalks and/or public rights-of-way.

- c. The City Engineer, may, in his discretion, with the concurrence of the Traffic Engineer, MABCD representative and Fire Department, agree to the extension of licensed sidewalk café areas into private off-street parking, public parking spaces, public streets and public right of ways, when consistent with the provisions and requirements set forth in Sections 10.04.230, *et seq.* The permittee is not required to submit an additional application for such extension, but must provide a diagram of the proposed extension, a traffic control plan and a detailed description of proposed business activities to occur within the extended area, including any times for requested street closures.
- d. Extensions of permitted premises must comply with all the administrative regulations contained in Section 10.04.270.
- e. From the date of the adoption of this ordinance until August 1, 2021, the limitations contained in Section 10.04.137 will not be applicable to businesses with a valid sidewalk café permit.”

SECTION 2. Section 10.04.230 of the Code of the City of Wichita is hereby created to read as follows:

“Open Air ICT Temporary Use Permit.

Whereas, the City of Wichita must remain flexible to account for the evolving nature and scope of the unprecedented public health emergency posed by COVID-19, while also simultaneously safely, strategically and incrementally reopening businesses and facilitating economic recovery and revitalization; and

Whereas, it is the goal of the City of Wichita to continue the reopening of businesses in a safe and prudent manner and to provide existing and new businesses additional opportunities to utilize City outdoor spaces to accommodate required social distancing.

Whereas, based on those considerations, the City seeks to implement an Open Air ICT Temporary Use Permit.”

SECTION 3. Section 10.04.240 of the Code of the City of Wichita is hereby created to read as follows:

“Application requirements.

- a. Before any Open Air ICT Temporary Use Permit is issued by the City Engineer, an application for such permit must be filed with the City Engineer’s office setting forth the following facts:
 1. The name, address and telephone number and/or email where the applicant may be reached.
 2. The location of the premises, which are requesting use of the City sidewalk, right-of-way, street, public parking spaces or private off-street parking spaces, including the legal description and/or dimensions of the area, sought to be utilized.
 3. A statement that the applicant is the owner of the premises or has a leasehold interest in the property of not less than six (6) months in duration. If the extension is requested into private off-street parking spaces, the owner as well as the lessee must sign and approve the application.
 4. A notarized statement that the permittee shall defend and hold the City harmless for any claims caused by the permittee or their employees.

5. A general description of the type of business seeking to be conducted in the City's right-of-way such as: restaurant, drinking establishment, microbrewery or retail sales.
6. A general site plan, which provides the following:
 - A. Entrances to the business and other building entrances.
 - B. Property lines, sidewalk width and all surface obstructions within 15 feet of the occupied area, i.e., fire hydrants, streetlights, parking meters, water meters and sewer manholes.
 - C. Dimensions of the occupied area, approximate location of tables and chairs, merchandise tables, cash registers and other items including portable heaters, specialty lighting, planters, sound systems and their relative proximity to the 6-foot pedestrian clearance.
 - D. Depicting open pedestrian bypass and ingress and egress areas as required by the Americans with Disabilities Act (ADA).
 - E. Location of diverters, fences, planters or other temporary structures, which will be utilized to demark the public space to be utilized by the business.
 - F. If any public parking area or street lanes are included within the application area, such application must include a traffic control plan, and a detailed description of the proposed activities to be conducted in the extended area, including times for any requested street closures. No request to utilize traffic lanes for an Open Air

Temporary Use Permit will be approved for any street, highway or thoroughfare with a posted speed limit in excess of 35 mph.

7. No fee shall be required for a temporary permit.
8. If the business is licensed as a drinking establishment, drinking establishment/restaurant or entertainment establishment, a copy of the business's applicable license shall be attached to the application.
9. Proof of liability insurance for a minimum of \$500,000, naming the City of Wichita as an additional insured. The insurance coverage must be in force for the duration of the permit."

SECTION 4. Section 10.04.250 of the Code of the City of Wichita is hereby created to read as follows:

"Permitted activities.

An Open Air ICT Temporary Use Permit will allow for the location of diverters, plantings, stands, tables, lighting, seating, devices for the protection of patrons from the elements, racks and other temporary structures to display merchandise, goods and wares and/or the sale, service and consumption of prepared meals and beverages, including alcoholic beverages. Consumption of alcoholic beverages shall not be allowed on any portion of an Open Air ICT Temporary Use Permit that includes a public street except as set forth in Section 10.04.270(b)(2) herein, and amendments thereto."

SECTION 5. Section 10.04.260 of the Code of the City of Wichita is hereby created to read as follows:

"Permit Issuance.

- a. The application and all accompanying documents shall be reviewed by the City Engineer, MABCD, Traffic Engineer, Zoning Administrator and the Fire Department for a determination that the application is complete, that all necessary licenses have been provided and that the business activities will not endanger or unduly inconvenience the public. If the requirements of this Chapter have been met, the permit shall be issued. This permit is in addition to any other license or permit required for the intended business.
- b. The denial of any permit may be appealed to the City Council by filing a notice of appeal with the City Clerk within thirty (30) days of the decision by the City Engineer.”

SECTION 6. Section 10.04.270 of the Code of the City of Wichita is hereby created to read as follows:

“Administrative Procedures.

- a. The City Engineer is hereby directed to implement all necessary administrative regulations as may be necessary to ensure the health and safety of the public.
- b. In addition to any administrative regulations adopted by the City Engineer, any permittee shall be required to comply with the following regulations:
 - 1. Any permittee who allows the sale, service or consumption of alcoholic liquor shall comply with all legal and statutory requirements as set forth in K.S.A. 12-406(a) and K.S.A. 41-719(d).
 - 2. No alcoholic liquor or cereal malt beverage shall be consumed on the public streets unless such consumption is authorized by a common consumption permit issued pursuant to Chapter 4.08 of the Code of the City of Wichita. The public street must be closed with the proper

authorization of the City Council to allow consumption of alcohol or cereal malt beverages in the street.

3. The permittee shall defend and hold the City, and its employees and agents harmless of any claim or action of any type or kind caused by the permittee or its employees or agents.
4. The permittee shall provide evidence of liability insurance in a minimum coverage amount of \$500,000, naming the City of Wichita as an additional insured. The insurance coverage must be in force for the duration of the permit, and provide coverage for all potential losses that could be incurred under the aforementioned defend and hold harmless obligation.
5. The permit issued pursuant to this Chapter shall not be transferred or assigned.
6. Permittee shall comply with all ordinances of the City of Wichita and the laws of the State of Kansas regarding the health, safety and welfare of patrons and staff.
7. If permittee allows the sale, service or consumption of alcoholic liquor or cereal malt beverage, such permittee shall comply with all applicable City ordinances and state statutes regulating the sale, service and consumption of alcoholic liquor or cereal malt beverages, with the exception of Sections 4.12.215 (c) and (d) and Section 4.16.070(d) and amendments thereto.
8. Permittee's activities at all times shall comply with the City's noise ordinances set forth in the Chapter 7.41 of the Code of the City of Wichita.

- c. If the applicant is requesting to use existing private off-street parking spaces to extend their business premises, the provisions of Art. IV, Section IV-A(7) of the Unified Zoning Code shall not apply to the requested premises. The Zoning Administrator, in their discretion, may grant a temporary reduction of not more than fifty (50) percent of the private off-street parking provided by an existing business which seeks to utilize these outdoor spaces to display merchandise, goods and wares and/or the sale, service and consumption of prepared meals and beverages, including alcoholic beverages. Such reduction shall only be in effect until August 1, 2021.
- d. During the length of the temporary permit, the limitations on isolated sales contained in Section 10.04.137 shall not be applicable to Open Air ICT Temporary Use Permit permittees.
- e. Unless otherwise extended by the City Council, all such permits shall expire on August 1, 2021 and are not renewable.”

SECTION 7. Section 10.04.280 of the Code of the City of Wichita is hereby created to read as follows:

“Revocation of permit.

- a. Permits granted under this Chapter are personal privileges which may be revoked by the City Engineer for violation of the ordinances in this Chapter, violations of City ordinances and state statutes regarding alcoholic liquor or cereal malt beverages, violations of any regulations promulgated by the City Engineer for the uniform administration of the permitting and renewal process, or for the health, welfare or safety of the public.

- b. The City Engineer shall provide written notice of the intent to revoke, suspend or deny an Open Air ICT Temporary Use Permit by personal service or by certified mail, return receipt requested. The notice shall be sent to the mailing address of the permittee on file with the City Treasurer. The notice shall provide the effective date of the revocation or suspension of the permit. Such notice shall detail the reasons or basis for the revocation, denial, or suspension of the permit. No revocation or suspension shall be imposed on less than five (5) business days' notice to the permittee, and shall specify the rights of the permittee to appeal any such denial, revocation or suspension.”

SECTION 8. Section 10.04.290 of the Code of the City of Wichita is hereby created to read as follows:

“Appeal of Denial or Revocation.

- a. Unless otherwise specified by this Chapter, any applicant or permittee aggrieved by the denial, suspension, or revocation may file with the City Clerk a written notice of appeal to the City Council within ten (10) business days of the decision by the City Engineer or his/her designee. The Notice of Appeal shall specify:
 - 1. The name and address of the appellant;
 - 2. The date of application;
 - 3. The date of the denial, suspension, or revocation of additional conditions of the permit or application; and
 - 4. The factual basis for the appeal.
- b. Upon receipt of a complete and timely filed Notice of Appeal, the City Clerk shall schedule a hearing before the City Council, no later than thirty (30) days from the

date of the filing of the Notice of Appeal with the City Clerk. Any appeal shall stay the suspension, modification or revocation of the permit until the matter is heard by the City Council.

- c. The City Council may approve the denial, suspension, revocation, overrule the denial, suspension or revocation or imposition of additional conditions or modify the decision of the City Engineer.
- d. In any hearing before the City Council pursuant to this section, a certified copy of a conviction from any local, state, or federal court for any violation is *prima facie* evidence of such violation of the provisions of the Code of the City of Wichita.
- e. The Council's decision may be appealed to the Eighteenth Judicial District Court of the State of Kansas pursuant to K.S.A. 60-2101 and any amendments thereto. Any such appeal to the District Court shall not stay the denial, revocation, modification or suspension of the permit by the City Council.”

SECTION 9. This ordinance shall be included in the Code of the City of Wichita, Kansas, and shall be effective upon its passage and publication once in the official city paper.

PASSED by the governing body of the City of Wichita, Kansas, this ____ day of _____, 2020.

Brandon Whipple, Mayor

ATTEST:

Karen Sublett, City Clerk

Approved as to Form:

Jennifer L. Magaña
City Attorney and Director of Law