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ORDINANCE NO. 51-738

AN ORDINANCE AMENDING SECTION 2.04.235 AND CREATING SECTION 2.04.237 OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO CITY COUNCIL.

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

SECTION 1. Section 2.04.235 of the Code of the City of Wichita is hereby amended to read as follows:

"Process for appeal of staff determinations.

Except as otherwise provided by in Section 2.04.237, where the City Council is hearing an appeal from staff recommendations regarding the denial, suspension or revocation of a license, or reviewing actions or decisions of city staff pursuant to appeal provisions set forth in city ordinances, the following procedures shall be used by the Council in conducting such hearing:

- (a) The usual rules of procedure regarding time limitations for speakers are set aside. Parties shall be allowed adequate time to present their evidence and statements as to the basis of the appeal, and to support staffs decision.
- (b) The Mayor, or Vice Mayor, will act as presiding officer. The presiding officer will rule on objections and will call parties to present evidence. Witnesses who testify will be sworn by the City Clerk.

- (c) The hearing should be conducted in the following order of presentation:
- (1) The parties will present a short opening statement regarding their position of the issues to be determined.
 - (2) Evidence in support of revocation, suspension or denial of a license or to support staffs decision is presented by the Assistant City Attorney or other city staff.
 - (3) City Council Members may ask questions of any witness and staff called by either party.
 - (4) Licensee, appellant or their attorney has the right to cross-examine each witness or city staff who testifies.
 - (5) Licensee or appellant or their attorney has the right to call witnesses on his or her behalf, including any city witnesses.
 - (6) The Assistant City Attorney representing staff may cross-examine each witness called on behalf of the licensee or appellant.
 - (7) City Council Members may ask questions of the licensee or appellant, even if he or she is not called as a witness.
 - (8) Opportunity for rebuttal by city staff or by the Assistant City Attorney may be granted at the discretion of the presiding officer.
 - (9) Unless granted additional time by the presiding officer, time for closing statements by the Assistant City Attorney and the licensee, appellant or their attorney is limited to 10 minutes each.
 - (10) Appeal hearings are to be informal in nature. The Administrative Procedure Act at K.S.A. 77-501, *et. seq.* shall be used as guidelines for the

hearing. Such rules, however, are not binding on the Council. The Council may hear and consider any relevant evidence or testimony and/or documents presented by either the City or the appellant.

- (11) Hearings are open to the public. The proceedings of each appeal hearing shall be recorded on audio equipment. The recording of each hearing shall be kept by the city clerk for a minimum of ninety (90) days.
- (12) The City Attorney shall serve as legal advisor for the Council. To ensure that all hearings are fair and impartial, information and communications between staff and the Assistant City Attorney representing staff who made the administrative or appeal decision shall not be shared or discussed with the City Attorney; however, non-substantive information may be shared to allow for scheduling. Likewise, the City Attorney shall not share or discuss information and communications to or from the City Council regarding the appeal to the Assistant City Attorney representing staff except substantive information to allow for scheduling.
- (13) Any witness may be allowed to testify by two-way telephonic, audio or electronic audio-visual communication. Law Enforcement officers who are testifying regarding actions taken while undercover are not required to appear in person or in a manner which would reveal their identities.
- (14) The City Council may discuss the testimony and arguments after evidence is presented. Upon a proper motion, the council may move to deliberate in executive session.

- (d) The City Attorney and/or opposing side may submit suggested findings of fact to the Council.
- (e) City Council decisions are to be made by motion. A majority vote of the members of the City Council is required to pass a motion. The Council should adopt findings of fact which establish a basis and provides support for its decision.
- (f) Decisions may be made at the conclusion of the hearing or may be taken under advisement for later action. The Council's decision shall be rendered no later than thirty days following the conclusion of the hearing. The City Attorney and appellant will have had the opportunity to submit their suggested findings to the City Council.
- (g) Prior to the hearing, upon request, the City Attorney shall provide to the Appellant, or his/her attorney, copies of all supporting documentation regarding staffs recommendations , as well as copies of all documents submitted to the City Council.
- (h) Unless otherwise provided for by specific appeal provisions set forth in the city's ordinances, any appeal of a staffs determination may be taken by filing with the City Clerk a written notice of appeal to the City Council within ten (10) business days of the staffs decision. The Notice of Appeal shall specify: the name and address of the appellant; the date of application; the date of the denial, suspension, modification, revocation or imposition of additional conditions of the license or application and the factual basis for the appeal.
 - (1) 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

days from the date of the filing of the Notice of Appeal with the City Clerk. If the appeal is from a staff decision regarding the denial, suspension, or addition of conditions regarding a license issued pursuant to Titles 3 or 4 of the Code of the City of Wichita, the City Clerk shall place the appeal on the agenda of the next regular meeting of the City Council to establish the Council Appeal Panel to hear the appeal as set forth in Section 2.04.237. Such item shall be placed on the City Council Member Agenda. Any appeal shall stay the suspension, modification or revocation of the license until the matter is heard by the City Council or Council Appeal Panel.

- (2) The City Council may approve the denial, suspension, modification, revocation, or imposition of additional conditions, overrule the denial, suspension, modification, revocation or imposition of additional conditions or modify the decision of staff.
- (3) 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 license by the City Council."

SECTION 2. Section 2.04.237 of the Code of the City of Wichita is hereby created to read as follows:

"Council Appeal Panel - Titles 3 and 4 License Denial or Suspension Appeals.

- (a) If an appeal is filed pursuant to Section 2.04.235, from a staff decision regarding the denial, suspension, or addition of conditions of a license issued pursuant to Titles 3 or 4 of the Code of the City of Wichita, the appeal shall be heard by a panel of three City Council Members appointed by the City Council. Revocation of licenses issued pursuant to Titles 3 or 4 of the Code of the City of Wichita shall be heard by the entire Council.
- (b) Selection of Appeal Panel:
 - (1) At the first regular City Council Meeting following the filing of a notice of appeal, with the City Clerk, the Council will select three members to serve as the appeal panel.
 - (2) The selection of the Appeal Panel shall be placed as an item on the City Council Member Agenda.
 - (3) The City Council Member representing the District where the business is located may volunteer to set on the Council Appeal Panel. A total of no more than three City Council Members will be chosen to set on the Appeal Panel.
 - (4) The panel of three City Council members shall be chosen on a rotating basis by District Numbers 1-6 with the Mayor being number 7. Each panel will be chosen by numeric order. No member, with the exception of a City Council Member representing the District of the location of the business license who otherwise volunteers to serve on consecutive panels, may serve on consecutive panels.

- (5) If a Council Member is chosen, but is unable to serve, the Council Member for the next District shall be chosen.
- (6) The City Council will approve a hearing date for such appeal no later than thirty (30) days from when the appeal panel is chosen.

(c) Appeal Panel Procedure.

With the exception of the provisions set forth below, the Council Appeal Panel shall comply with the provisions of Section 2.03.235.

- (1) The panel will select a presiding officer who will perform the Mayor's functions for the appeal hearing.
- (2) The appeal panel shall convene at a time other than a regular council business meeting and shall be open to the public.
- (3) The City Attorney shall serve as legal advisor for the Council. To ensure that all hearings are fair and impartial, information and communications between staff and the Assistant City Attorney representing staff who made the administrative or appeal decision shall not be shared or discussed with the City Attorney; however, non-substantive information may be shared to allow for scheduling. Likewise, the City Attorney shall not share or discuss information and communications to or from the City Council regarding the appeal to the Assistant City Attorney representing staff except substantive information to allow for scheduling.
- (4) The City Clerk shall provide clerical support for the appeal panel and will ensure that an audio record of the proceedings is made and maintained in compliance with Section 2.03.235.

- (d) The Council Appeal Panel shall have all the duties, responsibilities and authority of the full City Council in hearing the appeal.
- (e) Any appeal of a decision of the Council Appeal Panel, shall be appealable as set forth in Section 2.03.235(h)(3)."

SECTION 3. The original of Section 2.04.235 is hereby repealed.

SECTION 4. 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 19th day of April, 2022.

Brandon J. Whipple, Mayor

ATTEST:

Karen Sublett, City Clerk

Approved as to Form:



Jennifer Magafia
City Attorney and Director of Law