

ORDINANCE NO. 3719

AN ORDINANCE ADDING TO CHAPTER III OF THE CODE OF THE CITY OF DODGE CITY A NEW ARTICLE 8, ESTABLISHING SIDEWALK CAFE LICENSES AND CONDITIONS PERTAINING THERETO WITHIN THE CITY LIMITS OF DODGE CITY, KANSAS.

**NOW THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF DODGE CITY, KANSAS:**

**Section 1 Repeal:** Any ordinances or parts of ordinances in conflict herewith are hereby repealed.

**Section 2 Amendment:** A new Chapter III, Article 8, Sidewalk Cafes, Section 3-801 through 3-812, inclusive, is hereby adopted to read as follows:

3-801 Definitions

As used in this article, unless the context clearly indicates otherwise, the following words and phrases shall have the meanings ascribed to them in this section:

(1) "Adjoining sidewalk" means the area of sidewalk located within the area defined by the projection of the angle of the exterior walls of a restaurant building. If a restaurant building has adjoining sidewalk on connecting sides, the area between the two resulting segments of adjoining sidewalk may be included in the "adjoining sidewalk" for purposes of determining the sidewalk dining area.

(2) "Applicant" means the owner of a restaurant who has filed with the City an application for a sidewalk café license agreement.

(3) "Application" means the completed city form and any accompanying documentation filed with the City by the Applicant for the purpose of obtaining a sidewalk café license agreement.

(4) "Heritage District" means the geographic area defined in the Diagrammatic Map found in Exhibit A of the Heritage District Overlay Guidelines.

(5) "Extended sidewalk" means the area of sidewalk connected to and uninterrupted extending from the adjoining sidewalk.

(6) "Licensee" means the owner of a restaurant authorized under this article to use adjoining sidewalk for sidewalk dining pursuant to a sidewalk café license agreement.

(7) "Restaurant" means a public eating establishment except drive-ins in which the primary function is the preparation and serving of food on the premises.

(8) “Sidewalk dining” means the consumption of food, beverages (including, but not limited to, alcoholic liquor or cereal malt beverage), or both, by patrons of a restaurant outdoors on a specific area of adjoining sidewalk set aside for that purpose.

(9) “Restaurant building” means the building in which a restaurant is located within the Heritage District.

(10) “Sidewalk café license agreement” means the agreement between the City and the Licensee stating the terms under which the Licensee may utilize the sidewalk dining area for sidewalk dining.

(11) “Sidewalk dining area” means that portion of the adjoining sidewalk and, if applicable, the extended sidewalk which has been approved by the City for sidewalk dining pursuant to a sidewalk café license agreement.

(12) “Unobstructed walkway” means the area of sidewalk to remain open for unobstructed pedestrian traffic between the sidewalk dining area and street curb, permanent plantings, permanent street lighting, or other permanent obstructions.

3-802 Sidewalk café license agreement required; sidewalk dining prohibited outside of the Heritage District.

No owner or manager of a restaurant shall permit sidewalk dining without first obtaining a sidewalk café license agreement. No sidewalk café license agreement shall be issued for an establishment that does not meet the definition of “Restaurant” or for a Restaurant located outside of the Heritage District.

3-803. Sidewalk café license agreement fees.

(1) Application fee. Each applicant seeking to obtain a new sidewalk café license agreement shall pay a non-refundable fee to the City Clerk in an amount determined pursuant to Appendix A. Such fee shall be paid regardless of whether an Applicant has obtained an executed sidewalk café license agreement in the past.

(2) Renewal fee. Following approval of a sidewalk café license agreement, a Licensee shall pay a non-refundable annual renewal fee to the City Clerk in an amount determined pursuant to the Appendix A prior to renewal of the sidewalk café license agreement.

3-804. Applications.

The Application for a sidewalk café license agreement shall contain, without limitation, the following information:

(1) Applicant's name and the names of any other persons or entities who own the restaurant for which applicant is submitting the application, as well as such persons' email address(es), business address(es), business telephone number(s) and mailing address(es).

(2) The name of the manager of the Restaurant for which the application is being submitted, his or her telephone number, mailing address, and email address.

(3) A copy of a certificate of insurance, in accordance with Section 8, establishing that the Applicant has procured appropriate liability insurance and that such insurance is current.

(4) A copy of the Applicant's current State liquor license, if applicable.

(5) A sidewalk café license agreement signed by the Applicant.

(6) An approved City fencing permit.

(7) The Applicant's signature and the date of signature.

### 3-805. Application approval or denial.

(1) Review by City Clerk. An Application shall be referred to the City Clerk for review. The City Clerk shall review such Application within a reasonable time thereafter.

(2) Recommendation to City Commission; City Commission review. After reviewing an Application, the City Clerk shall submit a written recommendation to the City Commission, which may adopt, modify or reject the recommendation of the City Clerk, or may return the Application to the City Clerk for further consideration together with a statement specifying the basis therefor. If the City Commission chooses to approve an Application, subject to its modifications, if any, and to execute the Sidewalk Café License Agreement, the Application shall be incorporated into said agreement.

(3) Denial authority.

(a) The above notwithstanding, the City Clerk is authorized to deny an Application if one of the following conditions are satisfied by mailing a notice of denial to the Applicant at the Applicant's address provided in the Application, stating the reason for the denial and that the Applicant has the right to appeal such denial:

i. The Application is incomplete;

ii. The Applicant does not meet the definition of a Restaurant; or,

iii. The applicant has had a Sidewalk Café License Agreement terminated by the City for any reason within two (2) years prior to submission of the Application.

Provided, however, that if the sole basis for denial is an incomplete Application, the City Clerk will allow the Applicant additional time to complete the Application.

(b) If the City Clerk denies an Application, the Applicant may appeal the denial to the City Commission by filing a notice of appeal in the office of the City Clerk on a form provided by that office. The notice of appeal must be filed within fourteen (14) calendar days of the date of the City Clerk's decision and shall state the basis for the appeal. The City Commission shall review such denial within a reasonable time thereafter and may affirm or overrule the denial of the City Clerk, may approve the Sidewalk Café License Agreement with additional conditions, or may return the Application to the City Clerk for further consideration together with a statement specifying the basis therefor.

### 3-806. Sidewalk Café License Agreement; term.

(1) Content. Upon approval of an Application, a Sidewalk Café License Agreement shall be executed in a form provided by the City, which, without limitation, shall contain the name and mailing address of the Applicant, a statement of terms and conditions consistent with this article, and the term of the Sidewalk Café License Agreement.

(2) Term. A Sidewalk Café License Agreement will be effective on the date of execution and will expire at midnight on the subsequent December 31.

### 3-807. Sidewalk café license agreement renewal; denial.

#### (1) Renewals.

(a) Payment of fee and certificate of insurance. The City Clerk shall grant an annual renewal of a sidewalk café license agreement then in effect for an existing or reduced sidewalk dining area, upon submission by the Applicant to the City Clerk of a renewal application form, along with payment of the renewal fee and submission of a certificate of insurance establishing that the Applicant has procured appropriate liability insurance and that such insurance is current, in accordance with Section 8, unless as otherwise provided in subsection (b) below.

(b) Payment deadline. Payment of the renewal fee and submission of a certificate of insurance must be delivered to the City Clerk by January 1. If an Applicant fails to make the renewal payment and/or to provide an adequate certificate of insurance by January 1, the Applicant must pay a Fifty dollar (\$50.00) penalty prior to February 1 to be eligible for an annual renewal of a sidewalk café license agreement, in addition to satisfying other renewal requirements under this section.

#### (2) Denial authority.

(a) Grounds. The City Clerk shall not grant an annual renewal and shall mail a notice of denial to the Licensee at the Licensee's address shown on the renewal application, stating the reason for the non-renewal and that the Licensee has the right to appeal such non-renewal, if:

i. The Licensee has failed to pay the appropriate renewal fee and/or has failed to submit to the City Clerk the requisite certificate of insurance by the deadlines set forth above; or,

ii. The City Commission has directed that such renewal shall not be issued.

(b) Effect. If the City Clerk does not grant a renewal, the sidewalk café license agreement will terminate on May 1.

### (3) Appeals.

(a) City Commission hearing. If the City Clerk declines to renew a sidewalk café license agreement, the Licensee may appeal the decision of the City Clerk to the City Commission by filing a notice of appeal in the office of the City Clerk. The notice of appeal must be filed within fourteen (14) calendar days of the date of the City Clerk's decision and, and such written request shall state the basis for the appeal. The City Commission shall review the City Clerk's decision within a reasonable time thereafter and may affirm or overrule the decision of the City Clerk, may renew the sidewalk café license agreement with additional conditions, or may return the issue of renewal to the City Clerk for further consideration together with a statement specifying the basis therefor.

(b) Pendency of appeal. The term of the sidewalk café license agreement shall be extended during the pendency of any appeal to the City Commission under this section, provided that the basis for the City Clerk's decision is not based, in whole or in part, upon the Licensee's failure to submit to the City Clerk the requisite certificate of insurance.

### 3-808. Sidewalk dining conditions.

A Licensee shall, without limitation, comply with the following provisions:

#### (1) Compliance.

(a) Compliance with sidewalk café license agreement. The Licensee shall comply with all terms of the sidewalk café license agreement.

(b) Compliance with applicable law. The use of the sidewalk dining area for sidewalk dining shall be in conformance with zoning law governing the real property upon which the Licensee's Restaurant is located, laws governing service of food and beverages, laws governing alcoholic liquor and/or cereal malt beverages, the provisions of this article or administrative regulations adopted pursuant thereto, and any other law pertaining to sidewalk dining or a Licensee's use of sidewalk.

(c) Limited use. The use of the sidewalk dining area shall be limited to sidewalk dining as part of the business of the Licensee's Restaurant. Without limitation, food preparation, mixing alcoholic liquor or cereal malt beverages, and tending bar is not permitted in the sidewalk dining area.

(2) Alcoholic liquor and cereal malt beverages.

(a) Compliance with alcoholic liquor and cereal malt beverage laws and regulations. A Licensee may serve seated patrons and a Licensee's seated patrons may purchase, possess, and consume alcoholic liquor and/or cereal malt beverages within the sidewalk dining area in accordance with chapter III of this Code and other applicable law, including, but not limited to Kansas alcoholic beverage control regulations on serving alcoholic liquor and/or cereal malt beverages in the Sidewalk Dining Area.

(b) Limited hours of sale. A Licensee shall not serve alcoholic liquor nor cereal malt beverages or allow alcoholic liquor or cereal malt beverages to be consumed in the Sidewalk Dining Area after 10:00 p.m. or before 11:00 a.m. on any day. In no event shall this subsection be construed to expand the permitted hours for sale of alcoholic liquor or cereal malt beverages beyond what is otherwise permitted under chapter III of this Code and other applicable law.

(c) Fencing required. Licensees cannot serve alcoholic liquor and/or cereal malt beverages within the Sidewalk Dining Area unless the Sidewalk Dining Area is separated from the unobstructed walkway by a barrier that has been previously approved by the Director of Development Services.

(3) Maintenance costs. Licensees are responsible for all construction and maintenance costs associated with installing barriers or any other improvements that may be necessary to develop and maintain the Sidewalk Dining Area in accordance with the terms of this article or any administrative regulations adopted pursuant to this article.

(4) Liability and insurance.

(a) Insurance.

i. Type and amount of coverage. A Licensee shall carry an insurance policy that insures a Licensee in an amount not less than \$500,000 per single incident for any liability associated with the failure of a Licensee, its officers, employees, agents, servants, invitees, patrons or contractors, to exercise reasonable care and diligence in the use of the sidewalk during the term of its Sidewalk Café License Agreement and for as long as a Licensee continues to occupy the sidewalk following termination of its Sidewalk Café License Agreement. Failure of a Licensee to comply with these requirements shall not be construed as a waiver of these requirements or provisions and shall not relieve a Licensee of liability.

ii. Rating. All insurance policies shall be issued by insurance companies rated no less than A- VII in the most recent "A.M. Bests" insurance guide, and admitted in the state of Kansas. All such policies shall be in such form and contain such provisions as are generally considered standard for the type of insurance involved.

iii. Certificate of insurance. A Licensee shall provide the City with a certificate of insurance listing the City as the certificate holder and evidencing compliance with the insurance requirements in this article and in the Sidewalk Café License Agreement. The City has the

right to require complete certified copies of all insurance policies procured by a Licensee pursuant to this article and the Sidewalk Café License Agreement, including any and all endorsements affecting the coverage required hereunder. The certificate of insurance 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.

(b) Indemnification. To the fullest extent permitted by law, a Licensee shall defend, indemnify and hold harmless the City, its agents, representatives, officers, officials and employees from and against all claims, damages, losses and expenses (including but not limited to attorney fees and court costs) attributable to bodily injury, sickness, disease, death, or injury to, impairment, or destruction of property, including loss of use resulting therefrom, to the extent that such claims, damages, losses, and expenses relate to, arise out of, or are alleged to have resulted from the acts, errors, or omissions of a Licensee, its officers, employees, agents, servants, invitees, patrons, and contractors to construct, maintain, or use the Sidewalk Dining Area, and for as long as a Licensee continues to occupy the sidewalk following termination of its Sidewalk Café License Agreement.

(5) No representation by the City. The City makes no representations with respect to the Sidewalk Dining Area or its condition. A Sidewalk Café License Agreement grants a Licensee a contractual license to use the sidewalk in the Sidewalk Dining Area in its present condition, "as is," without any warranties, representations, or assurances from the City.

(6) Removal of fixtures. The City may require, at any time and for any reason, the temporary removal of any fixtures or objects placed on the sidewalk for a reasonable period of time. Licensees shall be responsible for any costs incurred in the removal of fixtures and shall, at the City's option, return the sidewalk to City pavement standards. If, at the time that removal is required, the Licensee is no longer the tenant of the real property on which the restaurant that used the Sidewalk Dining Area was located, then the owner(s) of record of the real property on which the Restaurant that used the Sidewalk Dining Area was located shall be responsible for any costs incurred in removing the fixtures and in returning the sidewalk to City pavement standards.

(7) Sidewalk café license agreement maintained at the restaurant. A Licensee shall retain a copy of the executed Sidewalk Café License agreement on the real property upon which the Licensee's Restaurant is located.

(8) Sidewalk café license agreement non-assignable. Licensees shall not attempt to transfer, assign, sublet or convey any rights in the Sidewalk Dining Area that are given to a Licensee pursuant to a Sidewalk Café License Agreement. Sidewalk Café License Agreements may not be assigned in any form.

(9) Sidewalk café license agreement confers no real property rights on Licensees. While a Licensee may control the Sidewalk Dining Area to the extent necessary to conduct activities authorized by this article or a Sidewalk Café License Agreement, a Licensee shall not be considered to be a real property tenant or lessee. Nothing in this article and regulations

adopted pursuant thereto, or a sidewalk Café License Agreement, shall be construed to convey any interest in the real property comprising the Sidewalk Dining Area except a contractual license.

### 3-809. Violations and termination of sidewalk café license agreement.

#### (1) Violations and cure period.

(a) Violation notice. Whenever it appears that there has been a violation of this article, administrative regulations adopted pursuant to this article, or the sidewalk café license agreement, a written notice of violation and order to cure (“Notice and Order”) may be served upon the Licensee according to subsection (d).

(b) Cure period. The notice and order shall provide information sufficient to reasonably allow the Licensee to determine the nature of the actions required to cure the violation and shall specify a reasonable time period to cure the violation.

(2) Continued operation contrary to public interest. If continued sidewalk dining on a Sidewalk Dining Area is contrary to the health, safety, and welfare of the public, a written notice of this determination shall be issued to the Licensee (“Termination Notice”), which shall provide the date upon which the sidewalk café license agreement will be terminated. A sidewalk café license agreement that is terminated under this subsection shall not terminate less than thirty (30) days from the date of the Termination Notice.

(3) Form. The Notice and Order or the Termination Notice, as applicable, shall:

(a) Identification. Include a description of the subject Sidewalk Dining Area sufficient for identification.

(b) Basis.

i. In the case of a Notice and Order, include a statement of the nature of the violation and references to relevant laws, ordinances, regulations, and/or sidewalk café license agreement provisions with sufficient information that would reasonably allow the Licensee to determine the nature of the violation to allow a Licensee to cure the violation; or

ii. In the case of a Termination Notice, include a detailed explanation as to why continued sidewalk dining on the subject Sidewalk Dining Area is contrary to the health, safety, and welfare of the public.

(c) Timing.

i. In the case of a Notice and Order, include a deadline for a Licensee to cure a violation that allows a reasonable time to take the actions required, and include a statement that failure to comply may result in the City terminating the Sidewalk Café License Agreement; or



ii. In the case of a Termination Notice, include a statement of when the sidewalk café license agreement will be terminated, which shall not be less than thirty (30) days from the date of the Termination Notice.

(d) Right to appeal hearing. Inform the Licensee of the right to an appeal hearing before the City Commission if the Licensee files a written request for hearing within fourteen (14) days from the date of issuance listed on the Notice and Order or the Termination Notice.

(4) Service. A Notice and Order and/or Termination Notice may be served by regular mail to the address indicated in the sidewalk café license agreement.

(5) Termination by City. In addition to any provisions in the sidewalk café license agreement, if the Licensee fails to cure a violation in the period of time designated in the Notice and Order, or the date designated within the Termination Notice has passed, then the Sidewalk Café License Agreement then in effect shall be terminated, unless a request for an appeal hearing has been filed with the City Commission, in which case the Sidewalk Café License Agreement shall terminate according to the order of the City Commission.

(6) Termination by Licensee. If a Licensee discontinues use of the Sidewalk Dining Area or provides written notification of the same, the Licensee's Sidewalk Café License Agreement shall terminate immediately.

(7) Responsibilities upon termination.

(a) Removal of obstructions. If a Sidewalk Café License Agreement is terminated for any reason, a Licensee shall remove all objects, including but not limited to fencing and furniture, that occupy the Sidewalk Dining Area under the Sidewalk Café License Agreement, and shall restore the sidewalk in and surrounding the Sidewalk Dining Area to city pavement standards. Such removal and/or restoration shall occur prior to termination of the sidewalk café license agreement.

(b) Failure to remove or restore. If the Licensee fails to remove objects or fails to restore the sidewalk according to subsection (i) above, then the City may remove such objects and restore the sidewalk in addition to any other applicable remedies. In the event that the City removes such objects or restores the sidewalk following termination, the City shall be able to assess all costs associated with such action, including, but not limited to reasonable costs associated with repairing sidewalk that may be damaged in such removal, according to the provisions of chapter XIII, and all amendments thereto, except that it shall be sufficient for the City to serve notice of costs by regular mail to the address indicated on the sidewalk café license agreement.

(8) Appeals.

(a) City Commission hearing. A Licensee may appeal a Notice and Order or a Termination Notice by filing a notice of appeal in the office of the City Clerk on a form provided by that office. The notice of appeal must be filed within fourteen (14) calendar days from the date of issuance listed on the Notice and Order or the Termination Notice and shall state the

basis for the appeal. The City Commission shall review the findings within a reasonable time thereafter and may affirm (with or without modification) or overrule the determinations.

(b) Pendency of appeal. The term of the sidewalk café license agreement shall be extended during the pendency of any appeal to the City Commission under this section, provided that the findings are not based, in whole or in part, upon the Licensee's failure to maintain requisite insurance coverage.

(c) Time extension. Should the City Commission issue a ruling adverse to the Licensee, the City Commission shall afford the Licensee a reasonable period of time to cure the violation in the case of a Notice and Order appeal, or to make necessary arrangements prior to termination of the sidewalk café license agreement, in the case of a Termination Notice appeal. In the case of a Notice and Order appeal, if the licensee fails to cure the violation within the time specified by the City Commission, the sidewalk café license agreement shall terminate.

(9) Additional and alternative remedies. In addition to or as an alternative to remedies provided in this article or the Sidewalk Café License Agreement, the City may cause to be instituted any appropriate proceeding at law or in equity to restrain, correct or abate any violation of the provisions of this article or of any order or direction made pursuant thereto.

### 3-810. Policy and regulations.

The City Manager is authorized to propose administrative regulations regarding sidewalk café license agreements and sidewalk dining as the City Manager deems necessary for public safety and welfare for adoption by resolution of the City Commission. All Licensees shall comply with all regulations adopted pursuant to this article. Failure to comply with such regulations shall be grounds for the issuance of a Notice and Order pursuant to Section 3-809, and possible termination of the sidewalk café license agreement.

### 3-811. City's rights to execute other license agreements unaffected.

Nothing in this article shall be construed to limit the City's right to execute license agreements outside the Heritage District or to execute license agreements not relating to sidewalk dining in the Heritage District.

### 3-812. Severability.

If any section, clause, sentence, or phrase of this article is found to be unconstitutional or is otherwise held invalid by any court of competent jurisdiction, such finding shall not affect the validity of any remaining provisions of this article.

This Ordinance shall take effect and be in full force from and after its publication in the official city newspaper.

Passed by the Governing Body and Approved by the Mayor on this \_\_\_ day of \_\_\_\_\_, 2019.

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Brian Delzeit, Mayor

ATTEST:

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Connie Marquez  
City Clerk