ORDINANCE NO. G-13-02

AN ORDINANCE AMENDING CHAPTER 25, ARTICLE II, OF THE CODE OF ORDINANCES OF THE CITY OF COFFEYVILLE, KANSAS, BY ADDING A NEW DIVISION 3, AND THEREBY ESTABLISHING SIDEWALK DINING LICENSES IN THE CITY OF COFFEYVILLE, KANSAS.

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

Section 1. That Chapter 25, Article II, of the Code of Ordinances of the City of Coffeyville, Kansas, be and is hereby amended by adding a new Division 3, as follows:

DIVISION 3. SIDEWALK DINING LICENSE

Sec. 25-72. Purpose. The Governing Body finds that, because it (a) encourages a pedestrian-oriented environment, (b) creates a vibrant and visually attractive streetscape, and (c) promotes and stimulates commerce, it is in the best interest of the residents of the City of Coffeyville, Kansas, to permit, subject to regulation, Sidewalk Dining.

Sec. 25-73. Definitions. The following words, terms, and phrases, when used in this Division 3, shall, except where the context clearly indicates otherwise, have the following meanings:

a. "Applicant" shall refer to a Hospitality 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. "Hospitality 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 Hospitality Establishment licensed by the City under this Ordinance to use a Sidewalk for Sidewalk Dining.
d. "Sidewalk" shall mean the public right-of-way or easement adjoining the property line of a Hospitality Establishment.
e. "Sidewalk Dining" shall mean the consumption of food, beverages, or both by patrons of a Hospitality Establishment outdoors on a specific area of a Sidewalk set aside for that purpose.

Sec. 25-74. Sidewalk Dining License Required; License Fee.

a. No Hospitality Establishment shall permit Sidewalk Dining without first obtaining a Sidewalk Dining License. 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. The Sidewalk Dining License shall be valid until December 31st at 12:00 midnight of the year it was issued.
b. The fee for a Sidewalk Dining License shall be $100.00 per calendar 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 not be pro-rated and shall not be refunded in the case of suspension or revocation of a Sidewalk Dining License.

Sec. 25-75. 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 Hospitality Establishment to be licensed, including its email address, business address, business telephone, and mailing address.
b. If the Hospitality Establishment to be licensed is a corporation, partnership, or other business organization, the names, addresses, and dates of birth of all officers, directors, partners, or members.
c. The name of the manager of the Hospitality Establishment, his or her telephone number, mailing address, and e-mail address.
d. Remittance of the Sidewalk Dining License Fee in the amount established at Section 25-74.
e. A copy of a Certificate of Insurance, in accordance with Section 25-77(c), 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. A copy of the Applicant's State of Kansas sales and liquor tax reports, if any, for the preceding twelve months.
h. A statement that the Applicant has submitted a Site Plan to the Coffeyville City Panning Office for approval.
i. The Applicant’s signature and the date.

Sec. 24-76. 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; or
    2. The Hospitality 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 Hospitality Establishment has had a Sidewalk Dining License revoked within the two (2) previous years under Section 25-80, 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.

Sec. 25-77. Sidewalk Dining License Conditions. Each Sidewalk Dining License issued by the Governing Body shall be subject to the following conditions and requirements:

a. 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. In conjunction with its application for a Sidewalk Dining License, the Applicant shall submit a Site Plan to the Coffeyville City Planning Office for approval. The Site Plan shall include the following:
    1. Architectural elevation drawings.
    2. The square footage of Sidewalk Dining area.
    3. A drawing or diagram showing (i) the seating configuration within the Sidewalk Dining area; (ii) a minimum of four feet (4') width of unobstructed Sidewalk reserved for pedestrian use within the Sidewalk Dining area; and (iii) any umbrellas proposed to be maintained within or overhanging the Sidewalk Dining area or the Sidewalk, which shall maintain a minimum distance of eighty inches (80") between the sidewalk surface and the lowest part of the umbrella's canopy.
c. 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. The City may require, at any time and for any reason, the removal of any fixtures placed on the Sidewalk pursuant to this Ordinance. The Licensee shall be responsible for any costs incurred in the removal of fixtures and shall return the Sidewalk to applicable sidewalk 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 applicable sidewalk standards.
e. 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. 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 beverages.
f. A Licensee shall retain the Sidewalk Dining License on the premises and shall make it readily accessible for viewing by City personnel.
g. 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.

Sec. 25-78. Sidewalk Dining License Restrictions. No Sidewalk Dining License will be issued under this Ordinance to any Hospitality Establishment that does not derive at least fifty percent (50%) of its gross receipts from the sale of food and non-alcoholic beverages.

Sec. 25-79. Notice of Violation. Any Licensee determined by the City to be in violation of any provision of this Ordinance shall be sent a Notice of Violation. The Notice of Violation shall be sent by certified mail, postage prepaid, and return receipt request to the Licensee, or personally served upon the manager of the Hospitality Establishment. 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.

Sec. 25-80. Suspension; Revocation. If the continued operation of the Sidewalk Dining is determined by the City to be injurious to the health, safety, and welfare of the residents of the City, or if the Licensee has failed to cure a violation of this Ordinance, the City shall send to the Licensee either a Notice of Suspension or a Notice of Revocation.

Sec. 25-81. 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 reverse the decision of City Staff only if it finds that the Notice of Violation, Notice

of Suspension, or Notice of Revocation was issued erroneously. 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.

Sec. 25-82. 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 Ordinance 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 is or her designee in accordance with this Ordinance. Failure to abide with any regulation shall be grounds for Notice of Violation, Notice of Suspension, or Notice of Revocation pursuant to this Ordinance.

Section 2. 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 3. PUBLICATION; EFFECTIVE DATE. This ordinance shall be published one time in the official city newspaper pursuant to K.S.A. 12-3007 and shall take effect and be in force from and after said publication.

PASSED AND APPROVED on this 28th day of May, 2013.

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David George, Mayor

ATTEST:

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Cindy Price, City Clerk

APPROVED AS TO FORM AND LEGALITY:

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Paul M. Kritz, City Attorney