

(Published in the Topeka Metro News May 21, 2008)

**ORDINANCE NO. 19086**

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., amending City of Topeka Code §§ 130-71, 130-72, 130-73, and 130-74 concerning Sidewalk Cafes in Downtown Business Area, and specifically repealing said original sections.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF TOPEKA, KANSAS:

Section 1. That section 130-71, Definitions, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

**DEFINITIONS.**

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Downtown business area* means that area of the city as defined in section 42-36.

*Sidewalk* means any portion of a street between the curblineline and the adjacent property line intended for the use of pedestrians.

*Sidewalk cafe* means a temporary outdoor service area used for the serving and consumption of food and beverages which are dispensed from inside a restaurant to people seated at tables and chairs in the outdoor area.

*Sidewalk fence* means a temporary, non permanent fence which is attached to the sidewalk by means of a bracket or other device mounted flush with the pavement. The height of the fence shall not be less than 36 inches nor exceed 42 inches from grade to the highest point.

Section 2. That section 130-72, Permit Required, of The Code of the City of Topeka, Kansas, is amended to read as follows:

30                   **PERMIT REQUIRED.**

31                   (a)     Application for a sidewalk cafe permit may be made to the ~~office of the city~~  
32 ~~clerk~~development services director or his or her designee. The application shall contain  
33 the following information:

- 34                   (1)     The proposed location of the sidewalk cafe.
- 35                   (2)     Written consent of the building owner if different than the restaurant  
36 owner.
- 37                   (3)     A diagram illustrating the placement of tables and chairs and  
38 walkway area, location of entrances and exits to the restaurant with  
39 dimensions; the diagram should also include the location, size, and  
40 material or style of any trash receptacles for the area.
- 41                   (4)     ~~Indication~~Certificate of public liability insurance in the amount of  
42 \$500,000.00.
- 43                   (5)     Payment of the annual fee of \$56.00.
- 44                   ~~(6)     Approval by the city-county health agency.~~
- 45                   ~~(7)     Consent to enter into a hold-harmless~~Executed Sidewalk Cafe  
46 agreement with the city.

47                   (b)     Application for a sidewalk fence permit may be made to the development  
48 services director or his or her designee. The application shall contain the following  
49 information:

- 50                   (1)     The proposed location of the sidewalk fence.
- 51                   (2)     A plan or elevation drawing of the fence which shall include all  
52 dimensions and materials. The fence as designed and constructed  
53 shall not pose a threat to the safety of persons or animals.

(3) Written consent of the building owner if different than the restaurant owner.

(4) A diagram illustrating the placement of fence showing six feet of pedestrian walkway unobstructed by structures including but not limited to the following: the fence, signs, parking meters, planters, trees, utility poles, benches; and location of entrances and exits to the restaurant with dimensions.

(5) Certification of public liability insurance in the amount of \$500,000.00.

(6) Payment of the annual fee of \$56.00.

(7) Executed Sidewalk Fence agreement with the city.

(c) Upon receipt of the applications, the city clerk shall forward the application to the division of engineering, be reviewed by the city public works and planning departments for review. The division of engineering public works and planning departments shall forward it to other appropriate city departments for review if necessary. If the city engineer public works director or his or her designee and planning director or his or her designee finds from the information submitted that the applicant meets the necessary requirements and that operation of a sidewalk cafe or placement of sidewalk fence in the proposed location will not unreasonably interfere with public travel, he or she shall so indicate and the city clerk development services director or his or her designee shall issue the applicable permit to the applicant. Such permit shall be valid for one year from the date of issuance.

(d) All sidewalk fences and cafes shall conform with the sidewalk fence and cafe design criteria promulgated by the public works and planning directors.

(e) Appeals from the decision of the public works director and planning director, or their designees, shall be made in writing to the city manager within ten (10) business days of the denial of the sidewalk fence or sidewalk cafe application. The city manager shall have thirty (30) days to render a decision on the appeal.

Section 3. That section 130-73, Revocation of permit, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

**REVOCATION OF PERMIT.**

The city specifically retains the right to revoke a sidewalk café or sidewalk fence permit any time it deems such revocation to be in the best interest of the public safety or where the permittee has failed to comply with applicable city ordinances, rules and regulations or fails to comply with requirements set forth in the Sidewalk Café agreement or Sidewalk Fence agreement.

Section 4. That section 130-74, Operational requirements, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

**OPERATIONAL REQUIREMENTS.**

Restaurants located in the downtown business area may operate a sidewalk cafe or place a sidewalk fence provided the restaurant has received a permit therefor. Operation of a sidewalk cafe shall conform to the following requirements:

(1) The sidewalk cafe or fenced area must be adjacent to or directly in front of the building housing the restaurant. Further, there shall be a six-foot ~~unobstructed~~ contiguous walkway for use by pedestrians unobstructed by structures including but not limited to the following: the fence, signs, parking meters, planters, trees, utility poles, and benches.

(2) All tables and chairs shall be placed so as to not present a sight hazard to

vehicular traffic or present a hazard to pedestrians. Use of public amenities such as benches or seats is prohibited. ~~Further, tables and chairs used for sidewalk cafe operation shall be adequately anchored to protect the public safety.~~

(3) Tables, chairs and other items shall be removed at the end of each day's operation and the sidewalk area restored to its normal condition. No materials shall be stored on the public right-of-way. Provided however the holder of a sidewalk fence permit shall be allowed to leave tables and chairs in the fenced area. However no other materials shall be allowed to remain after normal operating hours.

(4) Amplified sound equipment shall not be permitted.

(5) The dispensing, serving, selling or consumption of alcoholic liquor or cereal malt beverage in the sidewalk cafe area or sidewalk fence area shall be in accordance with all applicable city and state laws, ordinances and regulations~~is prohibited pursuant to the provisions of section 10-2.~~

(6) The City of Topeka shall have the right to request the sidewalk fence to be immediately removed either temporarily or permanently to protect public health and safety.

(67) The operation of any sidewalk cafe shall be in conformity with all applicable state and local regulations concerning food preparation and sanitation.

Section 5. That Original City of Topeka Code §§ 130-71, 130-72, 130-73, and 130-74 are hereby specifically repealed.

Section 6. This ordinance shall take effect and be in force from and after its passage, approval and publication in the official City newspaper.

124 PASSED AND APPROVED by the City Council May 13, 2008.

125

126

CITY OF TOPEKA, KANSAS

127

128

129

130

131

\_\_\_\_\_  
William W. Bunten, Mayor

132

133 ATTEST:

134

135

136

137

138 \_\_\_\_\_  
Brenda Younger, City Clerk