

COMPARED VERSION
NEW ORDINANCE TO CODE BOOKS

ORDINANCE NO. 200673

Amending Chapter 10, Code of Ordinances, by repealing Sections 10-106, Extended hours permits, and 10-261, Renewals, and enacting in lieu thereof new sections of like number and subject matter which allow the director to waive gross sales requirements for liquor license establishments impacted by a state of emergency.

WHEREAS, on March 12, 2020, a proclamation of a state of emergency was issued to allow the City of Kansas City to take measures to reduce the possibility of exposure to COVID-19 and promote the health and safety of Kansas City residents, along with an accompanying order; and

WHEREAS, many Kansas City liquor license establishments are experiencing reduced sales because of the COVID-19 pandemic; and

WHEREAS, Sections 10-106 and 10-261 of the Code of Ordinances include specific gross sales requirements for certain liquor license establishments; NOW, THEREFORE,

BE IT ORDAINED BY THE COUNCIL OF KANSAS CITY:

Section 1. That Chapter 10, Code of Ordinances of the City of Kansas City, Missouri, is hereby amended by repealing Section 10-106, Extended hours permits, and enacting a new section of like number and subject matter to read as follows:

Sec. 10-106. Extended hours permits.

(a) Convention trade area 3:00 a.m. closing permit—Eligibility.

(1) A convention trade area 3:00 a.m. closing permit, authorized by RSMo § 311.174, authorizes the licensee who holds a section 10-102, 10-103, 10-134 or 10-135 sales-by-drink license to remain open between 1:30 a.m. and 3:00 a.m., if they meet the consent requirement as outlined in section 10-214 with the exception that a minimum of 30 eligible property parcels within a radius of a minimum of 500 feet is required, and:

- a. The applicant's business is located within the convention trade area. Pursuant to RSMo § 311.174, the city's convention trade area is hereby designated as all that territory within the corporate limits of the city; and
- b. The applicant's business is a convention hotel or motel or the applicant's business is not a convention hotel or motel but is located not more than 1.5 drivable miles as measured from the outside walls

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of a hotel, defined as any structure, or building, under one management, which contains rooms furnished for the accommodation or lodging of guests, with or without meals being so provided, and kept, used, maintained, advertised or held out to the public as a place where sleeping accommodations are sought for pay or compensation by transient guests or permanent guests, and having more than 100 bedrooms furnished for the accommodation of such guests, and the applicant's annual gross sales at said business for the year immediately preceding the application for a 3:00 a.m. closing permit equals \$125,000.00 or more; provided, however, that the director may waive the foregoing gross sales requirement for a business located in the downtown economic entertainment district if requested by the applicant and the request is supported by documentation that the business should produce annual gross sales equal to \$125,000.00 or more. If this waiver is granted, the applicant, after 90 days of operation, shall produce proof that the gross sales for said 90 days of operation, when projected on an annualized basis by multiplying the gross sales for the 90 days of operation times four, will be satisfied, and, if not, the 3:00 a.m. closing permit will be canceled by the director without refund. The cancellation shall be appealable to the board in the manner set forth in section 10-62 of this chapter. Any convention hotel or motel or business that has a current convention trade area 3:00 a.m. closing permit that does not meet the requirement of having annual gross sales equal to or greater than \$125,000.00 at the time their 3:00 a.m. permit is up for renewal after the ordinance from which this section derives has passed will have one year thereafter to fulfill the \$125,000.00 annual gross sales requirement.

- c. A convention hotel or motel that has a current convention trade area 3:00 a.m. closing permit but has fewer than 100 transient guestrooms or a business that has a current convention trade area 3:00 a.m. closing permit which is located more than 1.5 drivable miles from a convention hotel or motel will be allowed to maintain its convention trade area 3:00 a.m. closing permit as long as all other requirements of this chapter have been met.
- (2) Package sales. No retail licensee holding a convention trade area 3:00 a.m. closing permit pursuant to this section, nor employee of the licensee, shall sell, give away, otherwise dispose of or allow the removal from the licensed premises any alcoholic beverages in the original package or suffer the same to be done on or about the licensed premises:
- a. Between the hours of 1:30 a.m. and 6:00 a.m. Tuesday through Saturday;
 - b. Between the hours of 12:00 midnight Sunday and 6:00 a.m. Monday.

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- (3) Notwithstanding the limitations contained in subsection (a)(1)b herein, a sales by drink establishment licensed under this chapter located in that area bounded by and including the block face frontage of the north side of 17th Street Terrace, the east side of Woodland Avenue, the south side of 19th Street and the west side of Paseo Boulevard that has annual gross sales of \$125,000.00 or more for the year immediately preceding the application for a 3:00 a.m. closing permit and meets all other requirements herein is eligible for such permit.
- (4) Notwithstanding the limitations contained in this section, the director may waive the gross sales requirement for an establishment that held a convention trade area 3:00 a.m. closing permit in the year immediately prior, if the applicant provides documentation that the licensed establishment was closed or had reduced sales in the year immediately prior because of an event or occurrence outside of the control of the applicant that resulted in a state of emergency lasting more than two weeks, as declared by the Mayor or governor of Missouri.

(b) *Temporary 3:00 a.m. closing permit—Eligibility.*

- (1) A temporary 3:00 a.m. closing permit, authorized by RSMo § 311.088, authorizes the licensee who holds a section 10-102, 10-103, 10-134 or 10-135 sales-by-drink license to remain open between 1:30 a.m. and 3:00 a.m. within one 24-hour period if they meet the consent requirement as outlined in section 10-214 with the exception that a minimum of 30 eligible property parcels within a radius of a minimum of 500 feet is required. Any licensee that is granted a temporary 3:00 a.m. closing permit shall only be authorized to receive up to six such special permits in a calendar year.
- (2) *Package sales.* No retail licensee holding a temporary 3:00 a.m. closing permit pursuant to this section, nor employee of the licensee, shall sell, give away, otherwise dispose of or allow the removal from the licensed premises any alcoholic beverages in the original package or suffer the same to be done on or about the licensed premises:
 - a. Between the hours of 1:30 a.m. and 6:00 a.m. Tuesday through Saturday;
 - b. Between the hours of 12:00 midnight Sunday and 6:00 a.m. Monday.

(c) *Nonprofit organization 6:00 a.m. closing permit—Eligibility.*

- (1) A nonprofit organization 6:00 a.m. closing permit authorized by RSMo § 311.174 authorizes a licensee who holds a section 10-102, 10-103, 10-134 or 10-135 sales-by-drink to remain open between 1:30 a.m. and 6:00 a.m., if they meet the consent requirement as outlined in section 10-214 with the

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exception that a minimum of 30 eligible property parcels within a radius of a minimum of 500 feet is required, and:

- a. The applicant is a nonprofit organization exempt from federal income taxes under section 501(C)(7) of the Internal Revenue Code of 1986 as amended; and
- b. The applicant is located in a building designated as a National Historic Landmark by the United States Department of Interior; and
- c. The applicant's business is located within the convention trade area. Pursuant to RSMo § 311.174, the city's convention trade area is hereby designated as all that territory within the corporate limits of the city.

Section 2. That Chapter 10, Code of Ordinances of the City of Kansas City, Missouri, is hereby amended by repealing Section 10-261, Renewals, and enacting a new section of like number and subject matter to read as follows:

Sec. 10-261. Renewals.

(a) *Renewal period, notification, filing dates and termination of license due to failure to renew.* The license period for retail or wholesale sale of alcoholic beverages and C.O.L. licenses and permits will be for a period of one year beginning and ending on dates determined by the director. Renewal notification will be sent to licensees 90 days prior to the date of expiration. The completed renewal application is due 30 days prior to the expiration date of the current license and no sales of alcoholic beverages shall be allowed on the premises after the expiration date of the license or permit. Failure to apply for a renewal of a liquor license or permit within 120 days of the expiration date shall render the expired license null and void. An application for renewal of a liquor license or permit received within 120 days of the license expiration date may be considered by the director for approval up to 180 days after the expiration of the license.

(b) *Proper parties to file application.* In the case of a business owned by an individual, the renewal application shall be filed by the actual owner. In the case of a partnership, separate applications shall be filed by each member of the partnership. In the case of a limited liability company, the renewal application shall be filed by either the managing officer of the business or any member of the limited liability company. In the case of a corporation, the renewal application shall be filed by either the managing officer of the business or a corporate officer of the corporation.

(c) *Contents of application.* A renewal application shall disclose by affidavit, on a form provided by the director, the following information, along with any other information the director deems necessary:

- (1) The name and address of the owners of the business at the date of filing. If the business is owned by a partnership, then the application shall include

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the names and addresses of all partners. If the business is owned in whole or in part by a limited liability company then the application shall include the names and addresses of all members of the company. If the business is owned in whole or in part by a corporation, the application shall include the names and addresses of the corporate officers and directors, and all stockholders if the total number of stockholders is less than 15, or, if there are more than 15 stockholders in the corporation, then the applicant shall furnish the names and addresses of all stockholders who hold 10 percent or more of the capital stock and the percentage of stock held by each such stockholder.

- (2) The financial status of the business, including all loans, notes, chattels, mortgages and any and all other outstanding obligations, and the balance due thereon, except current alcoholic beverage bills, or other current bills, for merchandise incidental to the operation of the business for which the license is sought.
- (3) The banks with which the licensee is doing any business, and the signed consent by the licensee for the director or his authorized representatives to examine any and all business bank accounts, records and other data pertaining to the licensed business.
- (4) The names and addresses of any persons who have contributed any money to, have loaned any money to, or have had any investments in the licensed business during the preceding year. The applicant shall further state the amounts received from those persons, the purpose for which the money was used, and any outstanding obligations and the balance due thereon.
- (5) Whether the applicant has borrowed or accepted money and a statement that the applicant will not to borrow or accept money in the future from any wholesale supplier of alcoholic beverages or any supplier of coin-operated commercial, manual or mechanical amusement devices, or the employees, officers or agents thereof, or from any owner of coin-operated commercial, manual or mechanical amusement devices on or about the licensed premises, or from any felon or person who is not of good moral character.
- (6) The names and addresses of any and all persons who may be engaged, either directly or indirectly, in any part of the management and control of the licensed business.
- (7) Whether the applicant has complied with, during the past year, and will continue to comply with, the provisions of the fair public accommodation sections of chapter 38.

(d) *Documentation filed with application.* The following documents shall be filed with applications for renewals:

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- (1) If the application is for renewal of a restaurant-bar license, the applicant shall furnish to the director, copies of all city convention and tourism tax returns, showing that at least 50 percent of the gross income of the restaurant-bar for the one year preceding the date of the application was derived from the sale of prepared meals or food consumed on the premises
- (2) If a license has been issued to an applicant who represents at the time of the original application that the licensee has control of parking facilities by ownership, lease or otherwise, and the license was issued relying in part upon that representation, then any renewal application shall include the same or similar representations and proof of control as the director shall require. Loss of parking facilities through no fault of the license holder shall not be cause for denial of renewal.

(e) *Disapproval of application to renew.* The director shall disapprove an application for renewal of any license or permit on the following grounds:

- (1) If any renewal application contains information which does not justify renewal;
- (2) If the director has other information that the applicant has not met all the other requirements of this chapter;
- (3) If the licensee or any employee of the licensee or a permit holder under this chapter is convicted within the current license year in the municipal court of the city or any other court in this state, of 3 or more violations of this chapter; or
- (4) If the director has any other information which does not justify renewal. An applicant whose application for renewal of a license or permit has been disapproved may file a written request for a hearing before the board in the manner provided in section 10-62(a) of this chapter. An applicant whose application for renewal of a license or permit has been disapproved may not sell or distribute alcoholic beverages on the premises during the renewal year unless and until
 - (i) the applicant thereafter files a written request for a hearing in the manner provided in section 10-62(a) of this chapter, in which case the disapproval shall be stayed until final adjudication of the matter, except that if one of the reasons for disapproval is the nonpayment of the required license fee set forth in section 10-127 of this chapter or nonpayment of any taxes set forth in section 10-186 of this chapter, then the disapproval shall not be stayed, or
 - (ii) the disapproval has been reversed or set aside by the director, the board or court order.

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(f) *Considerations for renewal.* In determining whether a renewal application shall be disapproved, the director, or the board, upon appeal, shall consider the following factors:

- (1) Whether the licensee has failed to report a change in ownership in the business or change in management or control of the business that has occurred in the current license year.
- (2) Whether the licensed premises are within 1,000 feet of any residentially zoned district, whether the licensed or permitted operation has caused a nuisance to or change in character of that residential area. In this context, the director or board shall consider exterior lighting, noise, traffic and parking associated with the operation of the premises, with its patrons or with other persons frequenting the premises.
- (3) Whether lewd and indecent conduct, including but not limited to public urination, exhibited by persons frequenting the licensed premises or by the licensee or his employees, servants or agents, has occurred on the licensed premises or in the immediate vicinity thereof.
- (4) Whether crimes or city ordinance violations have been committed upon or in the immediate vicinity of the licensed premises by persons frequenting the premises or by the licensee or his employees, servants or agents.
- (5) The frequency of disturbances or other incidents upon or in the immediate vicinity of the licensed premises by persons frequenting the premises that have required police presence, response, investigation or other action.
- (6) Whether the licensee has allowed or permitted any type of entertainment on or about the licensed premises without application to and written approval by the director.
- (7) Whether the type of entertainment approved by the licensed premises has been detrimental to the locality involved, and, if any renewal application proposes to change the type of entertainment for the premises, whether the proposed entertainment would be compatible with or detrimental to the locality involved, considering those other factors delineated in section 10-241.
- (8) Whether the sale of illegal drugs or controlled substances or illegal gambling has occurred upon or in the immediate vicinity of the licensed premises by persons frequenting the premises or by the licensee or his employees, servants or agents.
- (9) Other factors which, due to the character of the locality or of the licensed premises, would be relevant to the determination of whether renewal of a license or permit would be detrimental to the locality in which the licensed premises are located.

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- (10) Whether the licensee or permittee has received prior notice of violations of this chapter or of other factors which may not justify renewal.
- (11) Whether the licensee or permittee has timely complied with all requirements for and completed the process for renewal of the license.
- (12) Whether the licensee's premises has changed in size, either through expansion or reduction of square footage, or whether the primary entrance to the establishment has been altered or changed in such a manner as to affect the original radius measurement required for consents.

(g) If a license is not renewed or ceases to fulfill all other requirements of this chapter and is thereafter terminated or canceled or expires, then an application for a new license for the previously licensed premises shall be required to fulfill all conditions of this chapter for an original license, including but not limited to the consent requirements in section 10-214(a) and the provisions of section 10-211 limiting the number of licenses shall apply.

(h) Notwithstanding any other provision of this chapter, the director may renew a restaurant-bar license for an establishment that did not derive 50 percent or more of its annual gross sales from the sale of prepared meals and food made and consumed on the premises or have annual gross sales of at least \$200,000.00 from the sale of prepared meals and food consumed on the premises, if the establishment held a restaurant-bar license in the year immediately prior and the applicant provides documentation that the licensed establishment was closed or had reduced sales in the year immediately prior because of an event or occurrence outside of the control of the applicant that resulted in a state of emergency lasting more than two weeks, as declared by the mayor or governor of Missouri.

Approved as to form and legality:

Emalea Black
Assistant City Attorney