

210961

RICHARD T. BRYANT & ASSOCIATES, P.C.

A T T O R N E Y S A T L A W

HARZFELD'S BUILDING
1111 MAIN STREET, SUITE 750
KANSAS CITY, MISSOURI 64105

PHONE (816) 221-9000
FACSIMILIE (816) 221-9010
E-MAIL: DICK2479@aol.com

November 24, 2021

Ms. Marilyn Sanders, City Clerk
City Hall, 22nd Floor
414 E. 12th Street
Kansas City, MO 64106

SENT VIA EMAIL AND USPS

Re: Committee Substitute for Ordinance 210961, Chapter 10 revisions

Dear Ms. Sanders:

I recently received from Councilwoman Andrea Bough a copy of the proposed Chapter 10 revisions proposed following a meeting to consider matters relating to sales of businesses and definitions of restaurants and places where there are substantial quantities of food. I appreciate the willingness of the Council to make doing business in Kansas City less cumbersome, without negative impact on communities where those businesses will be located. I do appreciate her willingness to consider matters of concern, as well as her sharing of the proposed language which could not be obtained from Regulated Industries.

While the unbridled and ambiguously applied discretion authority vested in the Manager of Regulated Industries remains in the Ordinance, which I believe is unconstitutional on its face and as it may be applied, that battle may have to be fought another day. Further, the idea of sending out notices to multiple "consenters" and then basing decisions on the number of negative or positive responses still raises concerns. A business might find that there are 20 eligible consenter responders, and that 2 of those responders raise objections, with 18 not responding. As the Ordinance is currently written, because over 50% of the persons responding have objected to the business, the entity must now rely on review of those concerns by the Manager of Regulated Industries who will decide whether to grant or deny the license without clearly articulated standards. The Manager has indicated that he will decide in "good faith." We will see.

A more real and present problem with the Ordinance is the provision found throughout the Ordinance which says:

"Before a license or permit is issued under the provisions of this chapter, the applicant shall furnish to the Director upon request, approval [the old language said certificate] from the director of city planning and development, fire, health, public works and neighborhoods stating that with respect to the application the applicant is in compliance with the respective codes and the zoning ordinance of the City." (among other places 10-162 (a)(13).

ANDREW S. TALGE
Licensed in Kansas, Missouri
andrewtalge@gmail.com

RICHARD T. BRYANT
Licensed in Iowa, Kansas,
Missouri, Washington, D.C.,
Superior Court of the U.S. Virgin Islands
DICK2479@aol.com

Jim Ready, Manager of Regulated Industries, has taken the position that the Code prohibits him from issuing a license unless Fire and Health officials tell him it's ok to proceed with his liquor control licensing independent of fire and health inspections--in other words he is not authorized to issue a liquor license without "approval" of fire and health. That is not what the Ordinance provides for. The Ordinance says "upon request" so it is clear that the Manager [Director] can merely waive, or not request, those approvals in certain circumstances.

Historically, Joe Williamson at Health has advised Regulated Industries that Health has received application from the applicant and that Regulated Industries may proceed and that approval has been accepted by Regulated Industries in lieu of an inspection certificate. The Fire Marshal Division also has in the past, told Regulated Industries to move ahead with their licensing when the Marshal has received a request for inspection and that fire will proceed independently. That policy of the Fire Marshal which worked well in the past has changed and the Fire Marshal will not inspect a business until the new operator is actually in possession, nor will they tell Regulated Industries they may proceed, which also creates a secondary problem: Health will not accept an application for inspection without a fire waiver or inspection attached.

This has most recently been the case of the sale of a convenience store in the northland at 4225 North Oak Trafficway. This convenience store has long been operated by Pour Boy Oil Company, which has decided to sell its business to a new entity Z H & Sons LLC. Contracts are signed, the state and county liquor licenses are issued, the closing on the transaction is scheduled for December 1, the inventory company is ready to inventory on December 1, the buyers are ready to take possession on December 1 and Regulated Industries has everything required for license issuance---except for the fire and health approvals (applications having been submitted to both those Departments) . Regulated Industries refuses to issue a liquor license which will allow the buyers of a convenience store take possession of a business on December 1 and sell liquor which is in their inventory. Instead, the Fire Marshal says they will only come out after the new owners are in possession on some unknown day and then Health will come out sometime after that (because Health requires the fire inspection report as part of its application)and finally weeks later Regulated Industries will finally issue their license sometime well after possession date. So, the new owner/operator is put in a position where they either sell liquor illegally or don't sell liquor or close their doors until these 3 departments get their act together. That really does not make much sense when the only thing changing at the location is the owner and trade name---the operation of the business will remain as it has been under current ownership.

It is this type of bureaucratic inflexibility that frustrates persons from investing in Kansas City. Remember, the Ordinance provides that this type of scrutiny by the Manger is "upon request". While advance approvals of the Fire Marshal and Health Department make sense with new construction, it just has no place in the case of the sale of an existing building and business. These 3 Departments just don't understand how transactions take place in the real business world. Can you imagine telling Capitol Grill or Loews Hotel they could not lawfully sell liquor for a couple of weeks if there were a change in ownership within their organizations---and no other changes?

I personally believe 10-162 gives Regulated Industries the ability to issue the license so long as the Manager knows applications to fire and health are in the works; (e.g.: If an application is complete in all respects except for approval from the directors of the city planning and development, , fire, health and neighborhoods departments, then the director may issue a letter notifying the applicant that the issuance of the license or permit will be approved contingent on providing the approvals to the director. The director may withdraw the letter if the director determines that the delay in obtaining the certificates is a direct result of the applicant's action or inaction.). Jim Ready disagrees. He also is unwilling to read the language of

Ms. Marilyn Sanders, City Clerk

November 24, 2021

Page | 3

the Code to allow for him to waive (or not request those approvals. Don't forget the Code provides: "Before a license or permit is issued under the provisions of this chapter, the applicant shall furnish to the Director upon request, approval....." Just don't request it in the case of the sale of an existing business with no change in structure or operation. Why not, we are already now going to rely on standardless discretion on the part of Regulated Industries!

The language could better be written to say "If an application is complete in all respects except for approval from the directors of the city planning and development, fire, health and neighborhood departments, then the director may issue the license or permit, approved contingent on providing the approvals to the director." The business could then present the fire and health permits within a commercially reasonable time.

I always hear Council Members say we should be making it easier to do business in Kansas City--not harder...The provision for approval from health and fire should be removed completely from Chapter 10--those departments can do their own thing---or Jim should issue his liquor licenses and get confirmation of approval of health and fire within a reasonable time after he issues his license. He has that discretion now in my opinion but refuses to exercise that sound discretion.

As always, I thank you for your review and hope you will feel free to contact me with any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Richard T. Bryant", with a long, sweeping flourish extending to the right.

Richard T. Bryant
For the Firm