

ORDINANCE NO. 1056

AN ORDINANCE CREATING CHAPTER 12.40 IN TITLE 12 OF THE CITY OF BELLEVILLE MUNICIPAL CODE FOR THE PURPOSE OF REGULATING TEMPORARY USE OF CITY SIDEWALKS

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF BELLEVILLE, KANSAS THAT THE FOLLOWING CHAPTER BE CREATED IN TITLE 12:

Chapter 12.40 TEMPORARY USE OF CITY SIDEWALK

12.40.110. Permit for temporary uses required.

It shall be unlawful for any person to use a city sidewalk as described in this chapter without the required permit.

- (a) *Sidewalk café permit.* It shall be unlawful for any person to conduct, permit or allow a sidewalk café on a city sidewalk without a valid temporary use permit. "Sidewalk café" includes, but is not limited to, the placement of any table, chair, vending station, food stand or other device or object relating to the sale of food or beverages or sidewalk dining, but does not include freestanding signs.

12.40.111. Temporary use permit application; fee; term.

- (a) *Permit application.*
 - (1) The owner of the establishment in front of which the sidewalk café will be located shall submit the temporary use permit application to the city clerk on the form provided by the city, along with the appropriate fee. If the applicant does not own the property, the permit application must include written permission from the property owner.
 - (2) The applicant shall submit a site plan for the temporary use. The site plan shall state the square footage of sidewalk proposed for such use, and shall detail the dimensions, size, location and type of the temporary use objects relating to the permit request.
- (b) *Permit fee.* The temporary use permit fee shall be the cost of publishing an ordinance pursuant to section 12.40.114 if needed.
- (c) *Permit term.* Each temporary use permit issued shall terminate December 31 of the year in which it is issued.

12.40.112. Temporary use permit requirements.

- (a) To obtain and maintain any temporary use permit, the following requirements must be met:
 - (1) The establishment for which the permit is issued must be sited adjacent to a public sidewalk
 - (2) The temporary use shall be located only in front of the adjoining establishment holding the permit, and shall not extend into abutting or adjacent properties.
 - (3) The temporary use objects shall not be placed in, or protrude into, any street or alley, and the temporary use objects shall be designed, constructed and securely placed to prevent danger to the public and to prevent being blown over or knocked over.
 - (4) The temporary use shall not create a fire hazard or interfere with ingress or egress from any building.
 - (5) The temporary use shall not interfere with the area's compliance with the American with Disabilities Act, as amended. The director of public works may impose additional requirements to ensure compliance with the Americans with Disabilities Act or to protect traffic safety or pedestrian safety or passage.
 - (6) The sidewalk café shall be limited to food, beverages, or merchandise that is sold, displayed, or provided inside the permit holder's adjoining establishment.
 - (7) Use of the permitted area must conform with applicable laws, city ordinances, and zoning regulations.
 - (8) The city and the permit holder shall execute a temporary use of city property agreement for the use of the sidewalk that shall include all conditions of this chapter and other conditions based upon the particular location and/or use. The agreement shall provide that the temporary use is subordinate to the city's use of the sidewalk. The agreement shall provide that the permit holder agrees to at all times save and hold harmless the city from all liability, costs, damages, and expenses of any kind, for the payment of which the city may become liable to any person, firm or corporation by reason of any claim or damages arising from the failure of the permit holder, its employees, agents, servants, invitees, and patrons to exercise due care and diligence in the use of the sidewalk.
 - (9) The permit shall apply to the permit holder only and is non-assignable and non-transferable.

12.40.113. Permit suspension, denial, and revocation.

- (a) Permits applied for, or issued, under this chapter may be denied, suspended or revoked by the city, at any time, for any of the following causes:
 - (1) Failure to comply with the permit requirements, this chapter or the temporary use of city property agreement with the city.
 - (2) Failure to maintain the temporary use objects in good repair, in a safe and neat condition.
 - (3) Any violation of city codes, state statutes pertaining to alcoholic liquor or cereal malt beverages, or the zoning regulations.
- (b) In addition to subsection (a), the director of public works may suspend a temporary use permit for a period not to exceed 14 days, if the public interest requires the use of the permitted area for a special event or construction or repair, or as otherwise necessary to protect the public health, safety, or welfare.

- (c) Written notice of a denial, suspension or revocation shall be made in writing, stating the cause(s) therefore, and shall be delivered to the applicant or permit holder personally, or mailed to the applicant or permit holder's address as provided in the permit application.
- (d) Any person whose permit has been denied, suspended or revoked, shall have the right to request a hearing before the city manager by filing a written request with the city clerk.
- (e) If a permit is revoked or expired, the permit holder shall remove the temporary use objects from city property, at the permit holder's expense, within 30 days of the date of expiration or the date of the notice of revocation.

12.40.114. Sidewalk café regulations.

The permit holder for a sidewalk café shall comply with the following regulations:

- (1) The sidewalk café area and adjoining sidewalk areas shall remain clear of litter, food scraps, grease, and soiled dishes.
- (2) The sidewalk café shall be continuously supervised by employees of the licensed establishment.
- (3) Alcohol or cereal malt beverages may not be served within the permitted area, unless the following conditions are met:
 - a. The governing body approves an ordinance granting an exemption for the possession and consumption of alcoholic liquor or cereal malt beverages on the specified city property upon which the sidewalk café will be located.
 - b. The permit holder possesses and maintains all required licenses relating to alcoholic liquor or cereal malt beverages, and the permit holder complies with all laws relating to the service of alcoholic liquor or cereal malt beverages within establishment and the permitted area. If the permit holder, or an employee therefor, fails to comply with any law relating to the service of alcoholic liquor or cereal malt beverages, the city may suspend or revoke the sidewalk café permit.
 - c. Upon making application for a sidewalk café permit, the applicant shall submit a site plan detailing the proposed permitted area. Such site plan shall include a dining area, where alcoholic liquor or cereal malt beverages may be served, sold, possessed and consumed, and may also include a service-only area, where alcoholic liquor or cereal malt beverages may be possessed only by employees of the permit holder to travel between the dining area and the interior premises. The dining area shall be designated with a permanent railing or barrier. The site plan must detail the type of the railing or barrier, which shall be at least 36 inches high. Openings in the railing or barrier may not exceed five feet in width. If the permitted area includes a service-only area, such area must be visually demarcated, such as by pavement markings. The city may require modification of the applicant's plan to increase safety, to improve passage, to prevent damage to the city's right-of-way, or to maintain a style consistent with the surrounding area.
 - d. Alcoholic liquor or cereal malt beverages may not be served, sold, or consumed within the service-only area, or anywhere outside of the dining area designated by the permanent railing or barrier.
 - e. Alcohol may not be served, sold or consumed within the permitted area after 11:00 p.m. or before 8:00 a.m.

- (4) The sidewalk café shall meet the requirements of the Republic County Health Department, and all other state and local laws pertaining to the service of food. The permit holder shall possess and maintain a valid license for food service as required by state and local laws.

12.40.115. Exceptions

- (a) This chapter shall not apply to ‘Mobile Food Vendors’ as defined in chapter 5.13, if they have been granted the appropriate city permit.

This Ordinance shall be effective from and after its passage and publication in the official City Newspaper.

Passed by the Governing Body and approved by the Mayor this 27th day of March, 2023.

Adam Robertson, Mayor

Attest:

Russell Piroutek, City Clerk