

ORDINANCE NO. 1029

AN ORDINANCE OF THE CITY OF WESTWOOD, KANSAS AMENDING AND/OR ADOPTING THE FOLLOWING ARTICLES AND SECTIONS OF THE WESTWOOD CITY CODE: CHAPTER 5, ARTICLE 1, SECTIONS 5-101, 5-103, 5-105, 5-108, 5-110, 5-112, 5-117, 5-119, AND 5-120; AND CHAPTER 5, ARTICLE 11, SECTIONS 5-1101 – 5-1105.

WHEREAS, the Governing Body finds it in the City's best interest to make changes to its business regulations; and

WHEREAS, the Governing Body has held a work sessions to determine how best to regulate short-term rentals in the City;

NOW THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WESTWOOD, KANSAS:

SECTION 1: That Chapter 5, Article 1, Sections 5-101, 5-103, 5-105, 5-108, 5-110, 5-112, 5-117, 5-119, and 5-120 of the Westwood City Code are hereby amended to read as follows, all other Sections of Chapter 5, Article 1 remaining unamended except as amended:

5-101. DEFINITIONS.

Terms as used in this chapter shall be defined as follows:

(a) Person - means any individual, partnership, corporation, firm, or gas station, association, joint stock company or syndicate who or which is engaged in any business, trade, occupation or profession, or rendering or furnishing any service for profit or livelihood and subject to the provisions of this article. Provided, that any individual in the direct employ of any person licensed under the provisions of this article is not a person unless such individual operates as a subcontractor; but if such individual performs any service or practices his or her skill for compensation for any person other than his or her licensed employer, he or she is a person and must pay the fee and obtain a license if such be required by the terms of this article.

(b) Business - means and includes businesses, trades, occupations, and professions, and also the rendering or furnishing of a service; provided, that the name of a business, trade, occupation or profession may be used, and when so used, shall refer to the particular business, trade, occupation or profession. The term shall also mean and include the renting or leasing (or the offering for rent or lease) of property for residential or business use, whether for long-term or for short-term, as further set forth in Article 11 of this Chapter.

(c) Business Property - Any property subject to licensure herein or upon which any commercial, business or professional activity is conducted, except as may be exempt by state law or other authority.

(d) Home Business - Any business or activity operated out of the home, a material purpose for which is the conduct of commerce or some other business of commercial enterprise for profit or gain. Any declaration of income on any government tax form generated from a home-based enterprise is prima facie evidence of the establishment and operation of a business on the premises.

(e) Fee - means an occupation or license fee for city revenue without regulations upon and for the privilege of engaging in business as herein defined.

(f) License - means the documents issued by the city acknowledging payment of the required amount of license fee, and stating the name of the licensee, the kind of business and where located, the period which the license fee covers, such other matter as may be required and signed by the proper officer or officers.

(g) Dwelling – shall have the meaning given to such term in Article 11 of this Chapter V.

5-103. PURPOSE.

Except as otherwise provided in Article 11 of this Chapter V, the licenses provided for herein are solely for the purpose of providing revenue to defray a part of the expenses of the city, and not for the purpose of regulation.

5-105. OCCUPATION FEES LEVIED.

There are hereby levied occupation fees in the amounts and for the periods stated upon the business as hereinafter stated:

(a) Any occupation of a service character conducted in a residence which occupation is clearly secondary to the main use of the premises as a dwelling place and does not change the character thereof, and does not change the appearance with signs, material, equipment, noise, odor or other nuisance or unusual pedestrian by vehicular traffic pertinent to such home occupation which shall be carried on by members of a family residing in the dwelling, and in connection with which there is kept no stock in trade or commodity for sale upon the premises shall pay an occupational fee of \$25.00 per year.

(b) All indoor/outdoor recreational facilities shall pay an occupational fee of \$350.00 per location.

(c) All callings, trades, professions, occupations, manufacturers, stores, industries, processors, wholesalers and similar activities, the occupation fee of which is not set forth in subsections (a) or (b) of this section, shall pay an occupation fee computed on the basis of five cents (\$.05) per square foot of the floor which it occupies which has the greatest area without regard to use; five cents (\$.05) per square foot of other floor areas

when used for retail sales and five-tenths of one cent (\$.005) per square foot of outside display or drive-in service area occupied. When a business occupies multiple floors (except retail sales as provided herein above) the fee shall be calculated upon the floor which has the greatest area, the minimum occupation fee computed as herein provided shall not be less than \$50.00 per year.

(d) Cereal malt beverages; alcoholic liquor.

(1) Sales of cereal malt beverages in original containers for consumption off the premises shall pay an occupational fee of \$50.00 per year, which shall be in addition to any other occupation licenses required in connection with any other business of the applicant.

(2) Cereal malt beverages at retail for consumption on the premises shall pay an occupational fee of \$100.00 per year.

(3) Sale of alcoholic liquor by the package at retail or for consumption on the premises shall pay an occupational fee of \$300.00 per year.

(e) Rental/Leasing Businesses. - Persons engaged in the business of owning residential properties in the city for renting or leasing, whether as long-term rentals, short-term rentals, or otherwise, shall pay an annual occupational fee of \$30.00 per structure rented or leased, or offered for rent or for lease; provided, that as to any multi-tenant residential property, the annual occupational fee shall be paid as to each unit rented or leased, or offered for rent or for lease. Short-term rental and leasing businesses shall be further subject to the provisions of Article 11 of this Chapter V.

If any person fails or refuses to pay any fee or penalties as provided by this section, the city may collect the amount due in the same manner as a personal debt of the property owner to the city by bringing an action in the District Court of Johnson County. Such actions may be maintained, prosecuted, and all proceedings taken, including any award of post-judgment interest to the same effect and extent as for the enforcement of any action for debt. All provisional remedies available in such actions shall be and are hereby made available to the city in the enforcement of the payment of such obligations. In such actions, the city also shall be entitled to recover interest at the rate provided in K.S.A 79-2968, and amendments thereto from and after the date a delinquency occurs in the payment of the fee. The amount owing may be assessed against the property and the city clerk may at the time of certifying other taxes to the county clerk, certify the aforesaid fees and penalties owing by the proper owner; and the county clerk shall extend the same on the tax roll of the county against the lot or parcel of ground, and it shall be collected by the county treasurer and paid to the city as other city taxes are collected and paid. The city may pursue collection both by levying a special assessment and in the manner of a civil action as described herein, but only until the full cost and any applicable interest has been paid in full.

5-108. LICENSE APPLICATION: PROCEDURE.

Any person shall, before engaging in any business or before continuing such business after a license has expired, make application for a license and pay the proper fee.

Application shall be made to the city clerk giving the name of the person, the kind of business, location and such other information as may be necessary, or directed by the city clerk, to determine the amount to be paid. All such information furnished the city clerk shall be true, to the knowledge of the person making such application and any such false information as to the kind of business, location, use of the property and such other information as is required by the city clerk, shall subject such license to be declared void and subject such person to the penalty as set out in section 5-116 hereof. The city clerk may, in his or her discretion, cause an investigation to be made to determine the accuracy of such statements furnished the city clerk.

5-110. EXPIRATION OF LICENSE.

All annual licenses shall expire on January 15 of each year: Provided, that when a business begins operation on or after July 1 of any year, the amount charged shall be one-half of the annual amount.

5-112. LATE PAYMENT, PENALTY.

Any person who, under the provisions of this article, is required to pay a fee, and who does not pay the fee within thirty (30) days after it becomes due, shall pay, in addition to the fee, a penalty of ten percent (10%) of the amount of the fee; and 10% of the fee shall be added as a penalty for each additional thirty (30) days' delinquency.

5-117. PENALTY.

Any person, as defined by this article who shall conduct, pursue, carry on or operate within the corporate limits of the city any business as defined by this article, and any individual who shall assist directly or indirectly, in so doing in any manner or to any extent, either as owner, proprietor, manager, superintendent, partner, agent, servant, or employee of any person after a fee should have been paid and a license obtained to conduct, pursue, carry on or operate such business and the fee has not been paid and a license obtained, shall be deemed to do so unlawfully and upon conviction thereof in the municipal court shall be punished by a fine of not more than \$500.00, or by imprisonment in the city jail for a period not exceeding one hundred eighty (180) days, or by both such fine and imprisonment. A separate offense shall be deemed committed on each day during or at which a violation occurs or continues.

5-119. NEW GOODS PUBLIC AUCTION: LICENSE FEE.

The license fee for the conduct of a new goods public auction shall be \$25.00 per day as provided in K.S.A. 58-1019, as amended.

5-120. RIGHT TO INSPECT BUSINESS PROPERTY AND RENTAL PROPERTY.

(a) To the extent permitted by law, including but not limited to K.S.A. 12-16,138, as amended, the city shall have the right to enter upon any business property or rental property or dwelling to determine:

- (1) The use of the property is in compliance with the applicable zoning laws.
- (2) The property meets the requirements of the city's building and safety codes.
- (3) No condition exists in the structure or on the property upon which it is located constituting a violation of any other code or ordinance of the city.

Inspections shall be undertaken with the consent of the lawful occupant or other person exercising control of the business property or dwelling, or by issuance of an administrative search warrant. Any lawful occupant residing in a rental dwelling located within the corporate limits of the City may request an interior inspection of the property at any time by the City.

(b) Whenever the City building official or designated representative determines that any business property or dwelling fails to meet the requirements set forth in this Article or set forth in such laws, codes, or ordinances, he or she shall suspend the license previously issued and shall issue a notice that such failure must be corrected. This notice shall:

- (1) Be in writing;
- (2) Set forth the alleged violations;
- (3) Describe the business property or dwelling where the violation or violations are alleged to exist or have been committed;
- (4) Provide a reasonable time, not to exceed sixty (60) days, for the correction of any alleged violations;
- (5) Be served on the owner of the business or dwelling personally, or by certified mail, addressed to the last known place of residence of the business owner or property owner, or the address of the owner provided on the application for license. If upon a diligent effort to locate the owner, the owner cannot be found, notice may be posted on or near the business located on the property described in the notice.

(c) A license suspended pursuant to the provisions hereof shall be reinstated upon correction of the violation set forth in the notice within the time provided in the notice.

(d) Whenever an owner of a business or dwelling neglects or refuses to make repairs or take other corrective action called for by order or notice of violation issued by the City building official within the time allowed by the notice, the City building official shall revoke the license previously issued and shall post a notice on the business, dwelling, or other property stating the nature of the violation and that the license to operate the business is revoked.

(e) Notwithstanding the foregoing, nothing in this Article shall be deemed to prohibit or limit the ability of the City abate or remedy any nuisance, any unsafe, dangerous, or abandoned structure, or any immediate hazards under City Code or other applicable law, including but not limited to K.S.A. 12-1751 *et seq.*, K.S.A. 12-1671e, and/or K.S.A. 12-1617g, as amended.

SECTION 2: That Chapter 5, Article 11, of the Westwood City Code is hereby added and reads as follows,

ARTICLE 11. RENTAL PROPERTIES

5-1101. RENTAL HOUSING; PURPOSE.

The purpose of this article is to protect the public health, safety and general welfare of the people of the City with regard to short-term rental housing, including protecting the character and stability of residential areas, and preserving the value of land and buildings throughout the City.

5-1102. DEFINITIONS.

(a) Owner - means any person, partnership, company, trust, firm, corporation, or other entity who, alone, or jointly or severally with others, is the title holder of any property upon which a dwelling is located. For purposes of the article, owner shall include the titleholder, any employee or agent of the titleholder, a trustee serving for the benefit of any titleholder, a conservator of the estate of any titleholder, or an executor or administrator of the estate of any deceased titleholder.

(b) Property - means the lot, tract, or parcel of real estate upon which a dwelling is located.

(c) Single family dwelling – means any dwelling located on property which has been zoned as R-1 Single Family Residential District pursuant to the zoning laws of the City.

(d) Dwelling – means any building or portion thereof, which is designed or used for residential dwelling purposes.

(e) Duplex, Two-Family House - means a dwelling having quarters with separate entrances for two families, the design of which may have two stories, with a separate dwelling on each floor, or adjacent accommodations on the same level(s).

(f) Multi-family dwelling – means a dwelling in which more than two (2) families or households live independently of each other and cook within their own living quarters.

(g) Short-term rental - means any dwelling, dwelling unit, rooming unit, room or portion of any dwelling unit, rooming unit or room rented or leased for valuable consideration for periods of time less than thirty (30) days and where the rental may only

serve as an accessory use; provided, that the term shall not include a "group home" as defined under K.S.A. 12-736(b)(1), as amended.

5-1103. LICENSE REQUIRED.

It shall be unlawful for the owner of a single-family dwelling, duplex, or multi-family dwelling to lease or rent such dwelling, or offer to rent or lease such dwelling, whether as a long-term rental, short-term rental, or otherwise, without first obtaining a license as provided in Article 1 of this Chapter V. If the rental property is offered for lease by a leasing agent of the owner, then the fee required shall be made and paid by the leasing agent, unless paid by the owner. If any rental property is offered for lease by the owner of a property who is not a resident of Johnson County, Kansas, the owner must designate a resident agent who resides in Johnson County. The agent shall be responsible for the payment of all fees and penalties as provided herein and in Article 1 of this Chapter V.

5-1104 SHORT-TERM RENTAL REQUIREMENTS.

Properties rented or leased, or offered for rental or lease, on a short-term rental basis, and the owners thereof, shall comply with the following requirements:

(a) Any owner hosting short-term rentals must provide written courtesy notices to the owners of all properties sharing an adjacent border or corner with the property upon which the short-term rental is or will be located, and to the owners of property across the street (or streets, if located on a corner lot). Evidence of this notification must be provided to the City prior to approval of a license under Article 1 of this Chapter V.

(b) Any short-term rental operating within the City must include the City license number on marketing materials and online platforms the owner or its agents are using to advertise the short-term rental. No exterior evidence that the property is being used as a short-term rental shall be allowed, including signs.

(c) Owners shall post prominently in the short-term rental dwelling the City's rules and regulations regarding noise limits and on-street parking, limitations on numbers of pets and animals, the days and times of trash service/pick-up for the short-term rental property, and such other applicable regulations as the City may require.

(d) No more than two (2) persons per each bedroom being rented, plus one additional person per dwelling, not to exceed six (6) guests per dwelling, may occupy the dwelling.

(e) The dwelling may not be rented or offered for use as reception space, party space, meeting space, or for other similar events open to non-resident guests. No food service (e.g., bed and breakfast) may be provided by the host.

5-1105. RIGHT TO INSPECT RENTAL PROPERTY.

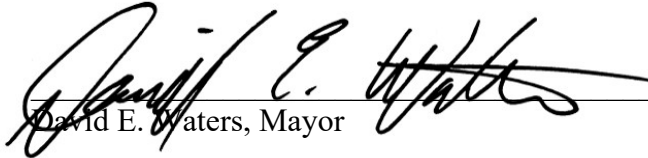
The City shall have the right to enter upon any rental property or dwelling in accordance with the provisions of Section 5-120 of this City Code.

SECTION 3: Any ordinances previously adopted which are inconsistent with the provisions of this Ordinance are hereby repealed.

SECTION 4: This Ordinance shall take effect and be in force from and after its passage, approval, and publication in the official city newspaper.

PASSED by the Governing Body this 12th day of May, 2022.

APPROVED by the Mayor this 12th day of May, 2022.


David E. Waters, Mayor

ATTEST:


Leslie Herring, City Clerk

Approved as to form:


Ryan B. Denk, City Attorney

