

ORDINANCE NUMBER 18-10971

**AN ORDINANCE AMENDING SALINA CODE SECTION 42-59 PERTAINING TO
TEMPORARY USES AND REPEALING EXISTING SECTION 42-59.**

BE ORDAINED by the Governing Body of the City of Salina, Kansas:

Section 1. Section 42-59 of the Salina Code is amended to provide as follows:

“Sec. 42–59. Temporary Uses.

- (a) *Intent.* It is the intent of the following regulations to provide for and govern the operation of certain temporary or seasonal uses.
- (b) *Permits for temporary uses.* Applications for a temporary use permit shall be made to the zoning administrator at least three (3) days before the starting date of the temporary use and shall contain the following:
 - (1) The commonly known address of the property to be used, rented or leased for the temporary use, including all information necessary to accurately describe the subject property;
 - (2) A complete description of the proposed use, including dates and time schedules for operation of the use;
 - (3) The name, address and phone number of the applicant, the property owner and the person(s) responsible for the use if different than the applicant or property owner; and
 - (4) A statement describing provisions which will be made for sanitation facilities, utility services, parking, traffic control, security, fire safety, medical emergency and first aid, noise control and cleanup and restoration.
- (c) *General requirements.* Temporary use permits shall be issued by the zoning administrator, unless otherwise specified by these regulations. Said permit shall be issued only if all the following criteria are met in the opinion of the zoning administrator:
 - (1) Adequate off-street parking with an approved surface shall be provided for customer vehicles outside the roadway improvement area;
 - (2) Signs may not be larger than ten (10) square feet and must comply with the sign regulation provisions of these regulations;
 - (3) Structures or product displays shall not be placed inside the visual sight triangle at intersections;
 - (4) Adequate sight distances shall be available for vehicles entering and leaving the temporary use site;
 - (5) Noise, odor or light emissions from the site shall not present an interference with the enjoyment or use of the property or a hazard to adjoining properties or public ways. Artificial lighting shall not illuminate any nearby dwellings and sound from public address systems shall not exceed sixty (60) DBA at the property line of

residences;

- (6) Adequate provision for sanitary waste and trash disposal shall be provided by the applicant. Trash, rubbish and waste products shall be removed from the premises daily;
 - (7) Utility services provided shall comply with applicable building, electrical, plumbing, fire, safety, sanitation, public health and other codes, laws or regulations applicable to the use and shall be installed only under permits obtained as required by such codes; and
 - (8) The site shall be cleaned up and restored to its previous condition upon expiration of the temporary use permit.
- (d) *Specific uses and regulations.* The following are considered temporary uses and are subject to the following specific regulations and time limits in addition to the regulations of any zone in which they are located:
- (1) *Christmas tree sales.* A temporary use permit may be issued for the display and open-lot sale of Christmas trees in the C-3 through C-6 districts or in any industrial district for a period not to exceed forty-five (45) days. Display of Christmas trees need not comply with the yard and setback requirements of these regulations; provided, that no structures or trees shall be placed within the sight triangle. The site shall be cleaned and returned to its previous condition within two (2) weeks after Christmas.
 - (2) *Consumer Fireworks Facility.* A temporary use permit may be issued for a consumer fireworks facility for the display and sale of approved consumer fireworks to the public for personal use on a C-3, C-5, C-6, C-7 zoned property for the period beginning on June 27 and ending on July 4 in any calendar year provided that the following additional provisions are met:
 - a. Consumer fireworks facilities may operate from tents or canopies only, with a maximum size of fifty-eight hundred (5,800) square feet. Consumer fireworks may not be sold from trailers or any form of temporary building or structure. Tents or canopies must be inspected by the Fire Department prior to being stocked with merchandise and must comply with NFPA, Chapter 7.
 - b. Only one (1) consumer fireworks facility shall be permitted on a zoning lot.
 - c. The location of any tent or canopy used as a consumer fireworks facility must comply with the following setbacks:
 1. The tent or canopy shall be located at least twenty-five (25) feet from the right-of-way of any public street.
 2. The tent or canopy must be located at least three hundred (300) feet from any residentially zoned property.
 3. The tent or canopy must be located at least fifty (50) feet from any other structure on the zoning lot or adjoining zoning lot.
 4. The tent or canopy must be located at least twenty (20) feet from any adjoining nonresidential property line.

5. The tent or canopy must maintain a ten (10) foot separation from any parked vehicles on the zoning lot or adjoining zoning lot.
 6. The tent or canopy must maintain a three-hundred (300) foot separation from any fueling facility.
 7. A single secure storage unit for consumer fireworks inventory meeting NFPA standards and not exceeding four hundred twenty-four (424) square feet in size may be located on the site of the consumer fireworks facility but must maintain a twenty (20) foot setback from the tent or canopy and any other structure on the zoning lot or adjoining zoning lot.
- d. The location of the consumer fireworks facility shall have access from a public street from an approved driveway curb cut. The location and entrance of the tent on the site shall not create any hazard relating to the movement or circulation of traffic or pedestrians either on the zoning lot it is located on or adjacent public streets.
 - e. Consumer fireworks facilities are only permitted on zoning lots that have surplus parking based on the City's off-street parking requirements. The location of the consumer fireworks facility may not occupy or displace areas utilized as required off-street parking or loading areas for another use on the zoning lot. Off-street parking shall be provided at a ratio of 1 space per 200 square feet of space occupied by the temporary tent, but in no instance shall there be less than 5 off-street paved parking spaces, including at least 1 van accessible handicap parking stall, at or near the location of the operation.
 - f. Advertising banners may be attached to the exterior of the sales tent. In addition, one (1) ground sign not exceeding thirty-two (32) square feet shall be permitted on the same zoning lot as the consumer fireworks facility. The sign may be illuminated but shall not be a flashing sign. No balloons or other inflatable attention getting devices or rotating searchlights shall be permitted on site. All off-premise advertising signs must comply with the requirements of the sign regulations in Chapter 42 and may not be placed in the public right-of-way. No person shall be allowed within any street right-of-way directing or flagging vehicles into the sales location.
 - g. Firework sales at consumer fireworks facilities shall be restricted to the hours of 8:00 a.m. to 10:00 p.m.
 - h. A person 18-years of age or older shall be present to supervise the operation of the stand at all times.
 - i. Each consumer fireworks facility shall have a portable restroom unless there are public restrooms on the site and the facility operator has obtained formal permission to use them.
 - j. The location of the consumer fireworks facility shall be maintained in a clean, clutter free environment and free of blowing trash. The applicant shall provide at the time of application their method for the proper disposal of waste.

- k. Upon closure of the consumer fireworks facility, all inventory must be removed from the site (tent and storage unit) by July 7. The tent and all trash and trash receptacles, portable restrooms, fences, barriers, tie-down materials and all other items associated with the temporary sale shall be removed from the site by July 17.

- l. The Police Department, Fire Department and / or Planning Department shall periodically inspect such consumer fireworks operations for compliance with the above listed standards. Upon a report and recommendation from a police officer, fire marshal or the zoning administrator, the city manager may revoke or suspend a consumer fireworks temporary use permit and shall have the authority to close any facility operating in violation of these provisions.

- m. Applications for consumer fireworks facility shall be filed with the city clerk and shall include the following:
 - 1. A site plan of the proposed facility site drawn to an accurate scale and showing all pertinent information, including:
 - i. The proposed location and size of the tent or canopy that would be erected for the display and sale of fireworks and the location and size of any storage unit to be placed on the site;
 - ii. The proposed location of any portable restrooms and/or waste containers;
 - iii. The distance from the tent to the nearest public street right-of-way.
 - iv. The distance from the tent to all abutting property lines;
 - v. The distance from the tent to all other structures on the site and adjoining property;
 - vi. The distance from the tent to any nearby fueling facilities;
 - vii. The number and location of fire extinguishers, water barrel and / or hoses as required by KAR 22-6-4 and amendments thereto;
 - viii. The number and location of off-street parking spaces at the facility, including handicap accessible spaces; and
 - ix. The location of the electrical power source serving the facility. If power will be furnished by a generator, the proposed location of the generator.

(The application material shall provide sufficient information, as determined by the zoning administrator, to allow a complete review of the proposal. The application material shall also include sufficient detail to indicate compliance with all performance standards. Failure to provide adequate information may result in the rejection of the application.);

- 2. The name and phone number of the individual responsible for overseeing the operation of the consumer fireworks facility and a copy of the lease or other written agreement between the facility operator and the owner of the property if applicable;

3. A copy of the written permission obtained from the business or property owner to allow the facility's employees and customers to utilize the public restrooms on site, if applicable;
 4. A copy of a sales tax certificate obtained from the State of Kansas;
 5. A copy of the certificate of flame retardant treatment for the tent; and
 6. Proof of general liability insurance coverage for the facility.
- n. *Contractor's office.* A temporary use permit may be issued for a contractor's temporary office and equipment sheds incidental to a construction project. The office or shed shall not contain sleeping or cooking accommodations. The permit shall be valid for no more than one (1) year, but may be renewed while construction work is in progress. The office or shed shall be removed upon completion of the construction project.
- o. *Temporary living quarters for emergency service providers.* A temporary use permit may be issued for temporary living quarters in a temporary structure for emergency service providers and responders, including but not limited to Fire Department personnel, ambulance service personnel and law enforcement agencies who provide services to the general public, if it is incidental to a construction project. The permit shall be valid for no more than one (1) year but may be renewed while construction work is in progress. The temporary structure shall be removed from the site within 30 days after the issuance of a Certificate of Occupancy for the construction project.
- p. *Real estate project sales office.* A temporary use permit may be issued for a temporary real estate sales office in any new subdivision which has been approved by the planning commission. The permit shall be valid for no more than one (1) year, but is renewable. The office shall be closed upon sale or lease of all dwelling units in the development. The office shall contain no sleeping or cooking accommodations unless located in a model home.
- q. *Festivals.* A temporary use permit may be issued for tents or other temporary structures and related facilities to house and serve public celebrations, special observances, religious meetings, cultural events or entertainment programs sponsored by a local civic, religious, governmental or recognized duly chartered fraternal organization for a period of no more than fourteen (14) days, unless otherwise approved by the zoning administrator.
- r. *Carnivals, circuses and tent shows.* A temporary use permit may be issued for a carnival, circus or tent show, as defined in section 6-16 of this Code, for a period that does not exceed fourteen (14) days. However, the permit may be renewed or extended upon application to the zoning administrator.
- s. *Open air markets.* A special use permit may be issued by the Planning Commission for the operation of open air markets, including outdoor flea markets, farmer's markets or roadside produce stands after the Commission has held a public hearing in accordance with the procedures established in Section 42-24 of the Salina Code, subject to the following provisions:
1. An outdoor flea market may operate in a C-3 or higher district and is defined as any place where the owner or operator thereof allows more than one (1)

person to sell merchandise from outdoor stalls, booths, stands, etc., which are not open for business on a daily basis. The permit shall be valid for a calendar year and may be renewed administratively on an annual basis by the Zoning Administrator following initial approval by the Planning Commission.

2. A farmer's market may operate in a C-3 or higher district and is defined as any place, with or without permanent buildings or structures, where fruit, vegetables, produce, handmade crafts, etc., are sold from more than one (1) produce stand operated by different persons. The permit shall be valid for a calendar year and may be renewed administratively on an annual basis by the Zoning Administrator following initial approval by the Planning Commission.
3. A roadside stand may be located in an A-1 or C-3 or higher district and is defined as a temporary structure used by one (1) operator for the sale of farm produce. The permit shall be valid for no more than six (6) continuous months in a calendar year. No produce sales shall be made within thirty (30) feet of the roadway improvement. Area for a roadside stand operating more than one (1) month per year, an off-street parking area shall be provided.

4. *Application Requirements.*

- a. Pre-Application Conference. Prior to the acceptance of a special use permit application, applicants shall participate in a pre-application conference with the Planning Department for the purposes of discussing application requirements, specifics of the site and plans for parking, traffic control, pedestrian safety, the need for utilities and/restroom facilities, trash disposal and site clean up.
- b. Applications for a special use permit for an open air market shall be filed with the Planning Department and shall include the following:
 - i. A plot plan of the site drawn to an accurate scale and showing all pertinent information, including proposed parking areas. (The application material shall provide sufficient information, as determined by the zoning administrator, to allow a complete review of the proposal.); The application material shall also include sufficient detail to indicate compliance with all performance standards. Failure to provide adequate information may result in the rejection of the application.
 - ii. The name and phone number of the individual responsible for overseeing the operation of the open air market and a copy of the lease between the operator and the owner of the property if applicable;
 - iii. A statement indicating the number of vendors that will be setting up booths, stands or tables at the market;
 - iv. A statement describing any temporary structures that will be erected on the site;
 - v. A statement describing the provisions made for off-street parking and

pedestrian access to the site; and

- vi. A statement indicating proposed measures designed to minimize potentially adverse effects, including trespassing, on adjacent properties.

5. *Conditions.*

In granting a special use permit, the Planning Commission may impose appropriate conditions and safeguards including but not limited to commencement and termination dates, dates and hours of operation, improved traffic circulation, pedestrian safety requirements, parking requirements, or any other requirements which the Commission deems appropriate upon a finding that they are necessary to fulfill the purpose and intent of this chapter.

6. *Denial of special use permit.*

Any decision to deny a special use permit under this section shall be made in writing and shall state the specific reasons for the denial. Any denial made by the Planning Commission may be appealed to the Board of City Commissioners. Any denial by the Board of City Commissioners shall be deemed a final administrative decision, subject to judicial review and appeal. In the event that a special use permit application is denied by the Planning Commission or Board of City Commissioners for a particular location, no new request for the same or substantially similar special use permit shall be accepted or processed for that location during the same calendar year.

7. *Protests.*

The notification and protest area for special use permit applications shall be two hundred fifty (250) feet from the proposed open air market. If a special use permit is approved by the Planning Commission, affected property owners shall have the same right to present a protest petition to the Board of City Commissioners and appeal that decision as property owners in rezoning cases. The protest procedure shall be as provided in K.S.A. 12-708 and section 42-26(b) of this chapter.

8. If an operator of an open air market fails to comply with the conditions upon which a permit was approved by the Planning Commission, or the Board of City Commissioners, the City Manager may revoke the special use permit and direct the open air market to cease operation. Revocation of a special use permit may be appealed to the Board of City Commissioners.

t. *Moveable structures.*

1. A temporary use permit may be issued for the sale of merchandise, food, or services from a motor vehicle, recreational vehicle, trailer, mobile home or tent on a lot or portions thereof that are vacant or used for parking, provided the following conditions are met:
 - i. Such sales are conducted by the owner or lessee of the property on which

it is conducted.

- ii. Such sales are temporary and limited to one (1) event comprising a maximum of two (2) consecutive weeks in any six-month period.
 - iii. Applicants for sales from moveable structures shall submit a site plan, including, without limitation, the location, setback from property line, screening, sign and fence locations, if applicable and electric meter locations or power source.
 - iv. Applicants for sales shall obtain the appropriate sales tax license and, if applicable, a food service license.
 - v. Such sales may not be located within any area utilized as the required parking or loading area for another use or on public right-of-way.
 - vi. Upon termination of the sale, the lot or parcel shall be returned substantially to its original condition. All litter, fences, borders, tie-down materials, and other items associated with the temporary sale shall be removed from the site.
 - vii. Mobile food vendors who operate for fourteen (14) days or less on a vacant lot, parking lot or at a special event shall be considered temporary food establishments. A permit shall not be required for mobile food vendors accessory to a permitted use or approved conditional use which operate for eight (8) hours or less at a given location.
2. Any person or persons who operates or sells food from a stationary cart or trailer mounted on a chassis, but without an engine, at a location for a period of 15 days or greater shall be considered a mobile food vendor. Mobile food vendors are permitted as an accessory use to a permitted or approved conditional use in the H-M, C-3, C-4, C-5, C-6, and C-7 districts and all industrial districts provided the following conditions are met:
- i. Mobile food vendors shall be located on private property where an existing, permanent business operates in a building with a certificate of occupancy.
 - ii. Mobile food vendors shall provide the City with a copy of written permission from the property owner on an annual basis to allow the operation of a mobile vendor and to allow the mobile vendor and their customers access to a commercially plumbed public restroom on site.
 - iii. A mobile food vendor shall submit a site plan depicting the location of the mobile food vendor on the property, and shall secure a food service establishment license from the Salina – Saline County Health Department prior to the operation of such use in any location.
 - iv. Temporary connections to potable water are prohibited. Water shall be from an internal tank, and electricity shall be from a generator or an electrical outlet via a portable cord that is in conformance with the Electrical Code as adopted by the City of Salina.

- v. Mobile food vendors shall be located within 50 feet of an entrance of a primary building that holds the Certificate of Occupancy.
 - vi. Mobile food vendors may operate only during the business hours of the primary business on the property.
 - vii. The operator shall possess a sales tax certificate number from the state of Kansas.
 - viii. Mobile food vendors shall not operate in parking spaces, driveways, fire lanes or public roads.
 - ix. A drive through is not permitted in conjunction with the mobile food vendor.
 - x. Sales of food from a stationary vehicle shall exclude motorized catering trucks.
 - xi. Mobile food vendors may not operate from a temporary building.
- u. *Promotional activities.* No permit is required for promotional activities of retail merchants involving the display only of goods and merchandise, which are for sale within the principal structure conducted outside of such structure for a period of no more than two (2) consecutive weeks in any three-month period; provided, that:
- 1. No portion of the display shall be on publicly owned property unless the applicant shall first have obtained approval for such use from the city.
 - 2. No required off-street parking or loading area will be utilized for such display, storage or dispensing.
 - 3. No food or drink shall be displayed outside the building except in accordance with standards and prior written approval of the health department.
 - 4. These provisions shall in no way be deemed to authorize the outdoor display of automobiles, trailers and equipment rental or the sale of used furniture, appliances, plumbing, housewares, building materials or similar displays or sales in any business district except as otherwise permitted by this chapter.
- v. *Garage sales.* No permit is required for a garage sale, as defined, in any residential district which is limited to one (1) event comprising a maximum of three (3) consecutive days in any six-month period. Where such sale is conducted on premises exterior to any structure, all sale items shall be removed from such exterior premises within one (1) day following the day the sale is concluded.
- (e) *Appeals.* Any applicant who is denied a temporary use permit may appeal the zoning administrator's decision to the board of zoning appeals in accordance with section 42-597 of these regulations.”

Section 2. Repealer. Existing Salina Code Section 42-59 is repealed.

Section 3. Summary of ordinance for publication – effective date. This ordinance shall be published by summary once in the official city newspaper, but shall not be in full force and effect until January 1, 2019.

Ordinance No. 18-10971 Summary

On September 17, 2018, the City of Salina, Kansas, passed Ordinance No. 18-10971. The ordinance amends Section 42-59(d)(2) of the Zoning Ordinance effective January 1, 2019 to increase the allowable size of an on-site secure storage unit for consumer fireworks inventory at a consumer fireworks stand from one hundred twenty (120) square feet to four hundred twenty-four (424) square feet. A complete copy of the ordinance is available at www.salina-ks.gov or in the office of the city clerk, 300 W. Ash, free of charge. This summary is certified by the city attorney.

Introduced: September 10, 2018
Passed: September 17, 2018

Karl F. Ryan, Mayor

[SEAL]
ATTEST:

Allison Strait, Deputy City Clerk

The publication summary set forth above is certified this ____ day of September, 2018.

Greg Bengtson, City Attorney