

CITY OF SHAWNEE
ORDINANCE NO. 3421

**AN ORDINANCE AMENDING TITLE 5 OF THE SHAWNEE MUNICIPAL
CODE TO SET FORTH A NEW CHAPTER 5.70 REGULATING THE SALE
AND DISCHARGE OF FIREWORKS**

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

PARAGRAPH 1.

Title 5 of the Shawnee Municipal Code is hereby amended to add a new Chapter 5.70 regulating the sale and discharge of fireworks, which shall read as follows:

Chapter 5.70 FIREWORKS

Sections

5.70.010 Definitions.

Words and terms used in this Chapter shall have meanings as follow unless the context otherwise requires:

A. Fireworks means those items as defined by the rules and regulations of the Kansas state Fire Marshal, and shall include but not be limited to: firecrackers, torpedoes, sparklers, Roman candles, sky rockets, pin wheels, cap or toy pistols (except such pistols or any like device designed to discharge paper caps containing not more than .25 grains of explosive mixture), canes, bombs, cannons or other like devices and all classes of fireworks that may be shot into the air or propelled over the ground by explosive discharges or any device using blank cartridges.

5.70.020 Prohibited.

A. It shall be unlawful for any person to keep, store, sell, display for sale, fire, discharge, or explode any fireworks. No person shall allow or permit fireworks to be used or exploded on his or her premises or premises under his or her control.

B. Unless specifically permitted by the Community Development Department as part of a Fireworks Display Permit issued pursuant to SMC 17.67.040 (A), the following types of fireworks are prohibited from being sold or discharged at any time within the City of Shawnee:

1. Bottle rocket. Any bottle rocket as defined in K.S.A. 31-507.
2. Unmanned aerial luminary; sky lantern; sky candle; or fire balloon. A device resembling a small hot air balloon, constructed of lightweight material which is capable of traveling through the air when powered by fire or a fuel cell until such fire or fuel cell deteriorates, causing such device to fall to the ground at an unknown location.

C. Nothing in this Chapter shall be construed as applying to:

1. Toy paper caps containing not more than .25 of a grain of explosive composition per cap;
2. The manufacture, storage, sale or authorized use of signals necessary for the safe operation of railroads or other classes of public or private transportation;
3. The military or naval forces of the United States or of this state while in the performance of official duty;
4. Law enforcement officers while in the performance of official duty; or
5. The sale or use of blank cartridges for ceremonial, theatrical, or athletic events.

5.70.030 Allowable Firework Use.

A. The prohibition in SMC 5.70.020 Subsection (A) shall not apply to the keeping, storage, or discharge of fireworks, as authorized under Kansas state law, on the 3rd and 4th day of July of each year between the hours of 10:00 o'clock a.m. and 11:00 o'clock p.m. Notwithstanding the foregoing, it shall be unlawful for any person to discharge, fire off, or explode any bottle rocket, as defined in K.S.A. 31-507, within the city limits of the City of Shawnee, Kansas, at any time. The Mayor, after consultation with the City Manager, and such other persons as they deem appropriate, may, in their discretion, suspend the discharge of any fireworks when, in their opinion, the discharge poses an unreasonable risk to the safety of the public due to fire as a result of climate or other natural conditions. To the extent practical, such suspension of permitted discharge of fireworks shall be published on the city's website and all city social media channels prior to the suspension going into effect. The following prohibitions shall apply to the discharge of fireworks as permitted by this subsection:

1. Except if specifically authorized as a public fireworks display, no person shall throw, place, ignite, or discharge any fireworks within one thousand (1,000) feet of any medical building, elder care facility, public building, or school.
2. No person shall throw, place, ignite, or discharge any fireworks into, under, on, or from a car or vehicle, whether it is moving or standing still.
3. No person shall throw, place, ignite, or discharge any fireworks within one hundred fifty (150) feet of any retail stand, premises, or facility where fireworks are stored, or within one hundred fifty (150) feet of any gasoline pump or building in which gasoline or volatile liquids are sold in quantities in excess of one gallon.
4. No person shall throw, place, ignite, or discharge any fireworks into any assembly or gathering of persons.
5. No person shall throw, place, ignite, or discharge any fireworks on any public property, including, but not limited to, parks, sidewalks, streets, or alleys.
6. No person shall throw, place, ignite, or discharge any fireworks on any property used as a cemetery.
7. No person shall throw, place, ignite, or discharge any fireworks in any building or structure.

B. The discharge of fireworks in accordance with the provisions of this Section shall not constitute a noise disturbance within the meaning of the prohibitions of SMC 9.70.030 when conducted during the times and under the terms and conditions of this Chapter.

5.70.040 Sale of Fireworks.

A. The prohibition on the sale or display of fireworks set forth in SMC 5.70.020 Subsection (A) shall not apply to five or less locations within the City designated and approved by the City for the temporary retail sale of fireworks during the hours of 8:00 o'clock a.m. and 10:00 o'clock p.m. on June 27th through July 5th of each year, with not more than one location in each Ward of the City and one at large location. The sale or display shall be in accordance with regulations promulgated by the Kansas State Fire Marshal and the following requirements:

1. On or before the second Friday of July, a written request for a temporary retail sale permit for the following July 4th holiday must be submitted to the Community Development Department.

2. On the 3rd Thursday of July, the Community Development Director, or their designee, shall, if necessary in the event more than 8 requests are submitted, randomly draw names to select eight requestors who will be eligible to make application for, and receive, a permit for sales of fireworks. The names of two alternate requestors will also be drawn to account for the possibility that an application for permit may not be approved by the Community Development Department.

3. An application for a permit for such sales (via the City's approved form) has been submitted to the Community Development Department, and all requirements of the permit have been met, no later than August 15th of each year.

4. If application is made by an individual, they must be a resident of the City and at least eighteen (18) years of age. If application is made by a business, the person or persons submitting the application must be at least eighteen (18) years of age and have at least a 50 percent ownership interest in an established business located within the City and have a valid City of Shawnee business license.

5. A permit must be obtained for each location where sales will occur.

6. Proposed locations for sale must be in a zoning district that permits retail sales and is in accordance with SMC 15.32.010 or any amendments thereto set forth in SMC 15.32.020.

7. Prior to the Community Development Department's consideration of an application pursuant to this Subsection, the City Building Inspector and Fire Marshall must review the application, inspect the proposed site and any structures to be used for the sales, to ensure compliance with all requirements stated in this Chapter, and any other requirements reasonably imposed by the Inspector and Fire Marshall to insure the health and safety of the public and any residents in, on, or around the premises. The Inspector and Fire Marshall shall forward a written recommendation on the application to the City.

8. No permit shall be valid or issued unless a satisfactory inspection is approved by the Inspector and Fire Marshall, and any permit shall be conditioned upon and subject to compliance with the recommendation of such inspection.

9. No permit shall be valid or issued until the applicant has first paid a permit fee, as set forth in the City's Comprehensive User Fee Schedule, to the City no later than June 1st.

10. An application shall not constitute a permit. No permit shall be valid or issued without the prior written approval of the Community Development Department and shall be subject to the terms and conditions set forth therein.

11. All permit holders shall conspicuously display at the location for sales the prohibited acts set forth in SMC 5.70.030.

12. If such sales will be made from a temporary structure or premises, the structure and any other temporary materials, debris, or litter remaining at the site shall be removed on or before July 7th. A bond, or check made payable to the City, in the amount of one thousand dollars (\$1,000) shall be submitted no later than June 1st, which bond or check shall serve as an assurance that the permit holder complies with this removal requirement. The check or bond will be returned if the permit holder complies with the removal requirement. If the permit holder fails to restore the area to a neat and presentable condition free of temporary materials, debris, or litter, the actual and reasonable cost of the removal and restoration shall be first deducted from the bond or check, prior to return of any balance remaining. No permit shall be valid, and approval shall be regarded as revoked, if an approved permit holder fails to comply with the provisions of this Subsection.

13. Any approved permit will be conditioned on the applicant filing with the Community Development Department a certificate of liability insurance covering such sales approved by the City Attorney stating that the applicant has a liability insurance policy in the minimum amount of \$100,000 for one person and \$500,000 for injury to or death of more than one person, and \$100,000 coverage for damage to property. The certificate of insurance shall name the city as an additional named insured. Evidence of the certificate and any required additional insured endorsement shall be submitted no later than June 1st. No permit shall be valid, and approval shall be regarded as revoked, if an approved permit holder fails to comply with the provisions of this Subsection.

14. All retailers are forbidden to expose fireworks where the sun shines through glass. Sales of any bottle rocket, as defined in K.S.A. 31-507, are prohibited at any time.

15. Fire extinguishers required.

a. Two functioning and approved fire extinguishers must be provided and kept in close proximity to the stock of fireworks in all permanent buildings where fireworks are stored, sold or displayed for sale.

b. Small stands, temporarily erected to be used as a place for storing and selling fireworks only, shall have one such fire extinguisher, or in lieu of the fire extinguisher, a pressurized water hose with nozzle end within five feet of the fireworks stand.

5.70.050 Penalties.

Any person, firm or corporation, violating any of the provisions of this Chapter, or any adult permitting a minor to violate any provisions of this Chapter, shall severally for each and every such violation, be punished for the first conviction by a fine of not more than one hundred dollars (\$100.00) and/or up to six (6) months in jail; for a second conviction based on a violation that occurs within two (2) years of the date of the first

conviction such person shall be punished by a fine of not more than one thousand dollars (\$1,000.00) and/or up to six (6) months in jail; and upon a third or subsequent conviction based on a violation that occurs within two (2) years of the date of the first conviction such person shall be punished by a fine of not more than one thousand five hundred dollars (\$1,500.00) and/or up to six (6) months in jail.

The imposition of a penalty for any violation or noncompliance shall not excuse any violation, permit a violation to continue, or excuse any obligation to remedy any violation.

The imposition of a penalty shall not prohibit any action by the Public Officer to enforce compliance, prevent a violation, or remedy a violation, nor shall it prohibit the Public Officer from imposing liens or assessments necessary to remedy a violation of this Title.

Each day that a violation occurs or is permitted to continue, shall constitute a separate offense.

PARAGRAPH 2.

If any part or parts of this Ordinance shall be held to be invalid, such invalidity shall not affect the validity of the remaining parts of this Ordinance. The Governing Body hereby declares that it would have passed the remaining parts of this Ordinance if it would have known that such part or parts thereof would be declared invalid.

PARAGRAPH 3.

This Ordinance shall take effect and be in force from and after its passage and publication as required by law.

This portion is intentionally blank.

PASSED by the Governing Body this 9 day of May, 2022.

APPROVED AND SIGNED by the Mayor this 9 day of May, 2022.



CITY OF SHAWNEE, KANSAS

By: _____

Michelle Distler, Mayor

ATTEST:

By: _____

Stephanie Zaldivar, City Clerk

APPROVED AS TO FORM:

By: _____

Ellis Rainey, City Attorney

The Legal Record

1701 E. Cedar St., Ste. 111
Olathe, KS 66062-1775
(913) 780-5790

CITY OF SHAWNEE - CITY CLERK
11110 JOHNSON DR
SHAWNEE KS 66203-2750

Proof of Publication

STATE OF KANSAS, JOHNSON COUNTY, SS;
Maureen Gillespie, of lawful age, being first duly sworn, deposes and says that she is Legal Notices Clerk for The Legal Record which is a newspaper printed in the State of Kansas, published in and of general paid circulation on a weekly, monthly or yearly basis in Johnson County, Kansas, is not a trade, religious or fraternal publication, is published at least weekly fifty (50) times a year, has been so published continuously and uninterrupted in said County and State for a period of more than one year prior to the first publication of the notice attached, and has been entered at the post office as Periodicals Class mail matter. That a notice was published in all editions of the regular and entire issue for the following subject matter (also identified by the following case number, if any) for 1 consecutive week(s), as follows:

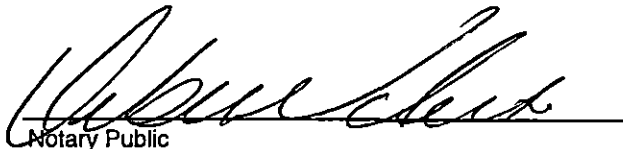
ORDINANCE NO. 3421
5/17/22



Maureen Gillespie, Legal Notices Billing Clerk

Subscribed and sworn to before me on this date:

May 17, 2022


Notary Public

DEBRA VALENTI
Notary Public-State of Kansas
My Appt. Expires Aug. 21, 2023

L96779
Publication Fees: \$121.36

**CITY OF SHAWNEE
ORDINANCE NO. 3421**

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NEW CHAPTER 5.70 REGULATING THE SALE AND DISCHARGE OF FIREWORKS
NOW THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF SHAWNEE,**

KANSAS:

PARAGRAPH 1.

Title 5 of the Shawnee Municipal Code is hereby amended to add a new Chapter 5.70 regulating the sale and discharge of fireworks, which shall read as follows:

**Chapter 5.70 FIREWORKS
Sections**

5.70.010 Definitions.

Words and terms used in this Chapter shall have meanings as follow unless the context otherwise requires:

A. Fireworks means those items as defined by the rules and regulations of the Kansas state Fire Marshal, and shall include but not be limited to: firecrackers, torpedoes, sparklers, Roman candles, sky rockets, pin wheels, cap or toy pistols (except such pistols or any like device designed to discharge paper caps containing not more than .25 grains of explosive mixture), canes, bombs, cannons or other like devices and all classes of fireworks that may be shot into the air or propelled over the ground by explosive discharges or any device using blank cartridges.

5.70.020 Prohibited.

A. It shall be unlawful for any person to keep, store, sell, display for sale, fire, discharge, or explode any fireworks. No person shall allow or permit fireworks to be used or exploded on his or her premises or premises under his or her control.

B. Unless specifically permitted by the Community Development Department as part of a Fireworks Display Permit issued pursuant to SMC 17.67.040 (A), the following types of fireworks are prohibited from being sold or discharged at any time within the City of Shawnee:

1. Bottle rocket. Any bottle rocket as defined in K.S.A. 31-507.
2. Unmanned aerial luminary; sky lantern; sky candle; or fire balloon. A device resembling a small hot air balloon, constructed of lightweight material which is capable of traveling through the air when powered by fire or a fuel cell until such fire or fuel cell deteriorates, causing such device to fall to the ground at an unknown location.

C. Nothing in this Chapter shall be construed as applying to:

1. Toy paper caps containing not more than .25 of a grain of explosive composition per cap;
2. The manufacture, storage, sale or authorized use of signals necessary for the safe operation of railroads or other classes of public or private transportation;
3. The military or naval forces of the United States or of this state while in the performance of official duty;
4. Law enforcement officers while in the performance of official duty; or
5. The sale or use of blank cartridges for ceremonial, theatrical, or athletic events.

5.70.030 Allowable Firework Use.

A. The prohibition in SMC 5.70.020 Subsection (A) shall not apply to the keeping, storage, or discharge of fireworks, as authorized under Kansas state law, on the 3rd and 4th day of July of each year between the hours of 10:00 o'clock a.m. and 11:00 o'clock p.m. Notwithstanding the foregoing, it shall be unlawful for any person to discharge, fire off, or explode any bottle rocket, as defined in K.S.A. 31-507, within the city limits of the City of Shawnee, Kansas, at any time. The Mayor, after consultation with the City Manager, and such other persons as they deem appropriate, may, in their discretion, suspend the discharge of any fireworks when, in their opinion, the discharge poses an unreasonable risk to the safety of the public due to fire as a result of climate or other natural conditions. To the extent practical, such suspension of permitted discharge of fireworks shall be published on the city's website and all city social media channels prior to the suspension going into effect. The following prohibitions shall apply to the discharge of fireworks as permitted by this subsection:

1. Except if specifically authorized as a public fireworks display, no person shall throw, place, ignite, or discharge any fireworks within one thousand (1,000) feet of any medical building, elder care facility, public building, or school.
2. No person shall throw, place, ignite, or discharge any fireworks into, under, on, or from a car or vehicle, whether it is moving or standing still.
3. No person shall throw, place, ignite, or discharge any fireworks within one hundred fifty (150) feet of any retail stand, premises, or facility where fireworks are stored, or within one hundred fifty (150) feet of any gasoline pump or building in which gasoline or volatile liquids are sold in quantities in excess of one gallon.
4. No person shall throw, place, ignite, or discharge any fireworks into any assembly or gathering of persons.
5. No person shall throw, place, ignite, or discharge any fireworks on any public property, including, but not limited to, parks, sidewalks, streets, or alleys.
6. No person shall throw, place, ignite, or discharge any fireworks on any property used as a cemetery.
7. No person shall throw, place, ignite, or discharge any fireworks in any building or structure.

B. The discharge of fireworks in accordance with the provisions of this Section shall not constitute a noise disturbance within the meaning of the prohibitions of SMC 9.70.030 when conducted during the times and under the terms and conditions of this Chapter.

5.70.040 Sale of Fireworks.

A. The prohibition on the sale or display of fireworks set forth in SMC 5.70.020 Subsection (A) shall not apply to five or less locations within the City designated and approved by the City for the temporary retail sale of fireworks during the hours of 8:00 o'clock a.m. and 10:00 o'clock p.m. on June 27th through July 5th of each year, with not more than one location in each Ward of the City and one at large location. The sale or display shall be in accordance with regulations promulgated by the Kansas State Fire Marshal and the following requirements:

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2. On the 3rd Thursday of July, the Community Development Director, or their designee, shall, if necessary in the event more than 8 requests are submitted, randomly draw names to select eight requestors who will be eligible to make application for, and receive, a permit for sales of fireworks. The names of two alternate requestors will also be drawn to account for the possibility that an application for permit may not be approved by the Community Development Department.
3. An application for a permit for such sales (via the City's approved form) has been submitted to the Community Development Department, and all requirements of the permit have been met, no later than August 15th of each year.
4. If application is made by an individual, they must be a resident of the City and at least eighteen (18) years of age. If application is made by a business, the person or persons submitting the application must be at least eighteen (18) years of age and have at least a 50 percent ownership interest in an established business located within the City and have a valid City of Shawnee business license.
5. A permit must be obtained for each location where sales will occur.

6. Proposed locations for sale must be in a zoning district that permits retail sales and is in accordance with SMC 15.32.010 or any amendments thereto set forth in SMC 15.32.020.

7. Prior to the Community Development Department's consideration of an application pursuant to this Subsection, the City Building Inspector and Fire Marshall must review the application, inspect the proposed site and any structures to be used for the sales, to ensure compliance with all requirements stated in this Chapter, and any other requirements reasonably imposed by the Inspector and Fire Marshall to insure the health and safety of the public and any residents in, on, or around the premises. The Inspector and Fire Marshall shall forward a written recommendation on the application to the City.

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10. An application shall not constitute a permit. No permit shall be valid or issued without the prior written approval of the Community Development Department and shall be subject to the terms and conditions set forth therein.

11. All permit holders shall conspicuously display at the location for sales the prohibited acts set forth in SMC 5.70.030.

12. If such sales will be made from a temporary structure or premises, the structure and other temporary materials, debris, or litter remaining at the site shall be removed on or before July 7th. A bond, or check made payable to the City, in the amount of one thousand dollars (\$1,000) shall be submitted no later than June 1st, which bond or check shall serve as an assurance that the permit holder complies with this removal requirement. The check or bond will be returned if the permit holder complies with the removal requirement. If the permit holder fails to restore the area to a neat and presentable condition free of temporary materials, debris, or litter, the actual and reasonable cost of the removal and restoration shall be first deducted from the bond or check, prior to return of any balance remaining. No permit shall be valid, and approval shall be regarded as revoked, if an approved permit holder fails to comply with the provisions of this Subsection.

13. Any approved permit will be conditioned on the applicant filing with the Community Development Department a certificate of liability insurance covering such sales approved by the City Attorney stating that the applicant has a liability insurance policy in the minimum amount of \$100,000 for one person and \$500,000 for injury to or death of more than one person, and \$100,000 coverage for damage to property. The certificate of insurance shall name the city as an additional named insured. Evidence of the certificate and any required additional insured endorsement shall be submitted no later than June 1st. No permit shall be valid, and approval shall be regarded as revoked, if an approved permit holder fails to comply with the provisions of this Subsection.

14. All retailers are forbidden to expose fireworks where the sun shines through glass. Sales of any bottle rocket, as defined in K.S.A. 31-507, are prohibited at any time.

15. Fire extinguishers required.

a. Two functioning and approved fire extinguishers must be provided and kept in close proximity to the stock of fireworks in all permanent buildings where fireworks are stored, sold or displayed for sale.

b. Small stands, temporarily erected to be used as a place for storing and selling fireworks only, shall have one such fire extinguisher, or in lieu of the fire extinguisher, a pressurized water hose with nozzle end within five feet of the fireworks stand.

5.70.050 Penalties.

Any person, firm or corporation, violating any of the provisions of this Chapter, or any adult permitting a minor to violate any provisions of this Chapter, shall severally for each and every such violation, be punished for the first conviction by a fine of not more than one hundred dollars (\$100.00) and/or up to six (6) months in jail; for a second conviction based on a violation that occurs within two (2) years of the date of the first conviction such person shall be punished by a fine of not more than one thousand dollars (\$1,000.00) and/or up to six (6) months in jail; and upon a third or subsequent conviction based on a violation that occurs within two (2) years of the date of the first conviction such person shall be punished by a fine of not more than one thousand five hundred dollars (\$1,500.00) and/or up to six (6) months in jail.

The imposition of a penalty for any violation or noncompliance shall not excuse any violation, permit a violation to continue, or excuse any obligation to remedy any violation.

The imposition of a penalty shall not prohibit any action by the Public Officer to enforce compliance, prevent a violation, or remedy a violation, nor shall it prohibit the Public Officer from imposing liens or assessments necessary to remedy a violation of this Title.

Each day that a violation occurs or is permitted to continue, shall constitute a separate offense.

PARAGRAPH 2.

If any part or parts of this Ordinance shall be held to be invalid, such invalidity shall not affect the validity of the remaining parts of this Ordinance. The Governing Body hereby declares that it would have passed the remaining parts of this Ordinance if it would have known that such part or parts thereof would be declared invalid.

PARAGRAPH 3.

This Ordinance shall take effect and be in force from and after its passage and publication as required by law.

This portion is intentionally blank.

PASSED by the Governing Body this 9 day of May, 2022.

APPROVED AND SIGNED by the Mayor this 9 day of May, 2022.

CITY OF SHAWNEE, KANSAS

By: _____
Michelle Distler, Mayor

(Seal)

ATTEST:

By: _____
Stephanie Zaldivar, City Clerk

APPROVED AS TO FORM:

By: _____
Ellis Rainey, City Attorney

5/17