SALINA CODE

CITY OF SALINA, KANSAS

Codified up to Ordinance No. 06-10339 – July 18, 2006

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OFFICIALS OF THE CITY OF SALINA, KANSAS

Mayor
Donnie D. Marrs

Commissioners
Deborah P. Divine
Alan E. Jilka
R. Abner Perney
John K. Vanier II

City Manager
Jason A. Gage

City Attorney
Greg Bengtson

City Clerk
Lieu Ann Elsey

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CHAPTER 1. GENERAL PROVISIONS

Sec. 1-1. How Code designated and cited.

The chapters, articles and sections herein shall constitute and be designated as the "Salina Code," and may be so cited or may be cited "S. C."

(Code 1966, § 1-1)
State law references: Compilation, revision and codification of ordinances, K.S.A. 12-3014--12-3016.

Sec. 1-2. Definitions and rules of construction.

In the construction of this Code and of all ordinances, the following definitions and rules of construction shall be observed, unless they are inconsistent with the manifest intent of the board of commissioners or the context clearly requires otherwise:

(1) *Board of commissioners; city commission; commission.* The phrases "board of commissioners," "city commission," or "commission" mean the Board of Commissioners of the City of Salina, Kansas.

(2) *Bond.* When a bond is required, an undertaking in writing shall be sufficient.

(3) *City.* The words "the city" mean the City of Salina, in the County of Saline, State of Kansas.

(4) *Computation of time.* The time within which an act is to be done shall be computed by excluding the first and including the last day; but if the last day is Sunday, that day shall be excluded.

(5) *County.* The words "the county" mean the County of Saline, State of Kansas.

(6) *Delegation of authority.* Whenever a provision appears requiring or authorizing the head of a department or other officer of the city to do some act or perform some duty, it shall be construed to authorize such department head or officer to designate, delegate and authorize subordinates to do the required act or perform the required duty unless the terms of the provision designates otherwise.

(7) *Gender.* Words importing the masculine gender include the feminine and neuter.

(8) *In the city.* The words "in the city" mean and include any territory within the corporate limits of the City of Salina, Kansas, and the police jurisdiction thereof, and any other territory over which regulatory power has been conferred on the city by law, except as otherwise specified.

(9) *Joint authority.* All words giving a joint authority to three (3) or more persons or officers shall be construed as giving such authority to a majority of such persons or officers.

(10) *K.S.A.* The abbreviation "K.S.A." shall mean the Kansas Statutes annotated, as amended.

(11) *Number.* Words used in the singular include the plural and words used in the plural include the singular.

(12) *Oath.* The word "oath" includes an affirmation in all cases in which, by law, an affirmation may be substituted for an oath, and in such cases the words "swear" and "sworn" are equivalent to the words "affirm" and "affirmed."

(13) *Officer, department, board, commission or other agency.* Reference to any officer, department, board, commission or other agency, shall be construed as if followed by the words "of the City of Salina, Kansas," unless otherwise provided. Such references shall also include any duly authorized representative.

(14) *Or, and.* The word "or" may be read as "and" and the word "and" as "or," where the sense requires it.

(15) *Owner.* The word "owner" applied to a building or land, shall include not only the owner of the whole, but any part owner, joint owner, tenant in common or joint tenant of the whole or a part of such building or land.

(16) *Person.* The word "person" includes a firm, partnership, association of persons, corporation, organization or any other group acting as a unit, as well as an individual.

(17) *Personal property.* The words "personal property" include every species of property, except real property.

(18) *Preceding, following.* The words "preceding" and "following" means next before and next after, respectively.

(19) *Property.* The word "property" includes real, personal and mixed property.

(20) *Real property.* The words "real property" include lands, tenements and hereditaments.

(21) *Sidewalk.* The word "sidewalk" means any portion of a street between the curb line and the adjacent property line intended for the use of pedestrians.

(22) *State.* The words "the state" mean the State of Kansas.

(23) *Street.* The word "street" means and includes public streets, avenues, boulevards, highways, roads, alleys, lanes, viaducts, bridges and the approaches thereto and all other public thoroughfares in the city.

(24) *Tenant, occupant.* The words "tenant" and "occupant" applied to a building or land, mean any person who occupies the whole or a part of such building or land, whether alone or with others.

(25) *Writing, written.* The words "writing" and "written" include typewriting, printing on paper and any other mode of representing words and letters.

(Code 1966, § 1-2)
State law references: Rules of statutory construction, K.S.A. 77-201.

Sec. 1-3. Parenthetical and reference matter.

The matter in parentheses at the ends of sections is for information only and is not a part of the Code. Citations to the 1966 Code (Code 1966) and to later ordinances indicate only the source and the text may or may not be changed by this Code. This Code is a new enactment under the provisions of K.S.A. 12-3014 and 12-3015. Reference matter not in parentheses is for information only and is not a part of this Code.

(Code 1966, § 1-3)

Sec. 1-4. Catchlines of sections.

The catchlines or headings of the sections of this Code printed in boldface type are intended as mere words to indicate the contents of the sections and shall not be deemed or taken to be titles of such sections, nor as any part of any section, nor, unless expressly so provided, shall they be so deemed when any section, including its catchline, is amended or reenacted.

(Code 1966, § 1-4)

Sec. 1-5. Certain provisions saved from repeal.

Nothing in this Code or the ordinance adopting this Code, shall repeal any of the following when not inconsistent with this Code:

(1) Any offense or act committed or done or any penalty or forfeiture incurred or any contract or right established or accruing before the effective date of this Code;

(2) Any ordinance promising or guaranteeing the payment of money by or for the city, or authorizing the issuance of any bonds, notes or other evidence of the city's indebtedness, or the cancellation of same;

(3) Any contract or obligation of the city;

(4) Any ordinance relating to the purchase, condemnation, acquisition or dedication of property for public use;

(5) Any ordinance dedicating, establishing, opening, reopening, naming, renaming, widening, narrowing or vacating any street, boulevard, avenue, alley, or other public way, including rights-of-way;

(6) Any ordinance establishing or changing the grade of any street, avenue, boulevard or other public way;

(7) Any ordinance authorizing, directing or otherwise relating to any public improvement;

(8) Any ordinance creating districts for public improvements of any kind or nature;

(9) Any ordinance establishing or changing the limits of the city or pertaining to annexations, additions or exclusions;

(10) Any appropriation ordinance or ordinance relating to the transfer of funds;

(11) Any ordinance levying general or special taxes or special assessments;

(12) Any ordinance granting any right, privilege, easement or franchise to any person;

(13) Ordinances prescribing traffic regulations for specific streets or areas, such as, but not limited to ordinances designating one-way streets, through streets, stop intersections or intersections where traffic is to be controlled by signals and ordinances prohibiting, restricting, limiting or otherwise regulating the stopping, standing or parking of vehicles on specific streets or in specific areas;

(14) Ordinances creating positions or offices and prescribing salaries;

(15) Charter ordinances;

(16) Any ordinance approving, dedicating, accepting, designating, redesignating or vacating any plat;

(17) Ordinances amending the zoning map or zoning or rezoning specific property;

(18) Any joint city-county resolution or ordinance;

and all such provisions shall remain in effect as if set out herein.

(Ord. No. 6944, § 3, 11-21-66)

Sec. 1-6. Amendments to Code; effect of new ordinances; amendatory language.

(a) All ordinances passed subsequent to this Code which amend, repeal or in any way affect this Code, may be numbered in accordance with the numbering system of this Code and printed for inclusion herein. In the case of repealed chapters, sections or subsections or any part thereof, by subsequent ordinances, such repealed portions may be excluded from the Code by omission from reprinted pages affected thereby. The subsequent ordinances as numbered and printed or omitted, in the case of repeal, shall be prima facie evidence of such subsequent ordinances until such time that this Code and subsequent ordinances numbered or omitted are readopted as a new Code of Ordinances.

(b) Amendments to any of the provisions of this Code shall be made by amending such provisions by specific reference to the section number of this Code in the following language: "That section _____ of the Salina Code, is hereby amended to read as follows: . . . " The new provisions shall then be set out in full.

(c) If a new section not heretofore existing in the code is to be added, the following language shall be used: "That the Salina Code is hereby amended by adding a section (or article or chapter) to be numbered _____, which section (or article or chapter) reads as follows: . . . " The new provisions shall then be set out in full.

(d) All sections, articles, chapters or provisions desired to be repealed must be specifically repealed by section, article or chapter number, as the case may be.

(Code 1966, § 1-5)

Sec. 1-7. Effect of repeal of ordinances.

(a) The repeal of an ordinance shall not revive any ordinances in force before or at the time the ordinance repealed took effect.

(b) The repeal of an ordinance shall not affect any punishment or penalty incurred before the repeal took effect, nor any suit, prosecution or proceeding pending at the time of the repeal, for an offense committed under the ordinance repealed.

(Code 1966, § 1-6)

Sec. 1-8. Conflict of ordinances.

In any case where a provision of this Code is found to be in conflict with a provision of any other provision of this Code, the provision which establishes the higher standard for the promotion and protection of the health and safety of the people shall prevail.

Sec. 1-9. Altering Code.

It shall be unlawful for any person to change or amend by additions or deletions, any part or portion of this Code, or to insert or delete pages, or portions thereof, or to alter or tamper with such Code in any manner whatsoever which will cause the law of the city to be misrepresented thereby.

(Code 1966, § 1-7)
State law references: Altering a legislative document, K.S.A. 21-3713.

Sec. 1-10. General penalty; continuing violations.

Wherever in this Code, any act is prohibited or is declared to be unlawful or a misdemeanor or the doing of any act is required, or the failure to do any act is declared to be unlawful, and no specific penalty is prescribed or no general penalty to an article or chapter is prescribed, the violation of any such provision of this Code shall be punished by a fine of not more than five hundred dollars ($500.00), or by imprisonment for a period of not exceeding six (6) months, or by both such fine and imprisonment, at the discretion of the court. Each day any violation of this Code continues shall constitute a separate offense.

(Code 1966, § 1-8)

Sec. 1-11. Severability.

If for any reason any chapter, article, section, subsection, sentence, clause or phrase of this Code or the application thereof to any person or circumstances, is declared to be unconstitutional or invalid or unenforceable, such decision shall not affect the validity of the remaining portions of this Code.

(Code 1966, § 1-9)

Sec. 1-12. Police power extended to city property.

The police power of the city is hereby extended to include all lands or property owned or leased by the city or any agency of the city, including the city-county building, library and the common area and parking area adjacent thereto, and the general ordinances of the city shall be applicable on such property.

(Code 1966, § 1-10; Ord. No. 82-8942, § 1, 10-25-82)

Sec. 1-13. Fee for permits when not obtained in time.

Where any permit is required by this Code as a condition precedent to doing any work or beginning any undertaking, and such work or undertaking is begun prior to obtaining the permit, the permit fee shall be doubled; provided, that the payment of such double fee shall not relieve any person from complying in full with the requirements of this Code, nor shall it bar criminal prosecution.

(Code 1966, § 1-11)

Sec. 1-14. Holidays.

The legal holidays to be observed by the city shall be those which have been designated by the State Legislature of Kansas in K.S.A. 35-107 as legal public holidays.

(Code 1966, § 2-58)

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CHAPTER 2. ADMINISTRATION[1]

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Art. IX. Salina Bicentennial Center, §§ 2-180--2-199
Art. X. Salina Business Improvement District Design Review Board, §§ 2-200--2-224
Art. XI. Accessibility Advisory Board, §§ 2-225--2-232
Art. XII. Public Improvement Procedures, §§ 2-233--2-239
Art. XIII. Finance, §§ 2-240, 2-241

ARTICLE I. IN GENERAL

Sec. 2-1. Seal described.

The seal of the city shall be as herein described: Two (2) centric circles between which are the words "Seal of the City of Salina, Kansas," and within the inner circle of which are the word "Organized" and the numeral "1870."

(Code 1966, § 2-1)
State law references: Authority to have, use and alter a seal, K.S.A. 12-101; city clerk is keeper of the corporate seal, K.S.A. 13-2106.

Sec. 2-2. License fees, permit fees and other user related fees.

(a) The board of commissioners shall determine, by resolution, all license fees, permit fees and other user related fees or charges established by the ordinances of the city. All fees and charges shall be in such amounts as will adequately reimburse the city for the services rendered by it in connection therewith.

(b) The city manager shall annually review all license fees, permit fees and other user related fees or charges so as to ensure that the fees charged adequately reimburse the city for the services rendered

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[1] **Cross references:** Ordinances creating positions or offices and prescribing salaries saved from repeal, § 1-5(14); airport authority, § 4-16 et seq.; airport zoning commission, § 4-31 et seq.; administration and enforcement of animal provisions, § 7-16 et seq.; building code advisory and appeals board, § 8-16 et seq.; administration and enforcement of electrical code, § 8-76 et seq.; city-county emergency preparedness board, § 10-16 et seq.; elections, Ch. 12; equal opportunity and affirmative action, Ch. 13; human relations commission, § 13-51 et seq.; firemen's relief association, § 14-17 et seq.; city-county board of health, § 17-16 et seq.; administration and enforcement of housing, § 18-21 et seq.; housing advisory and appeals board, § 18-41; library board, § 19-21 et seq.; licenses, Ch. 20; mobile home craftsman board of examiners, § 22-55; municipal court, Ch. 23; offenses affecting governmental functions, § 25-111 et seq.; planning, Ch. 29; city planning commission, § 29-16 et seq.; North Central Regional Planning Commission, § 29-36 et seq.; police, Ch. 30; public utilities, Ch. 31; heritage commission, § 42-471 et seq.; administrative provisions for zoning, § 42-596 et seq.; board of zoning appeals, § 42-597; Charter ordinances, App. A.

by it. In order to assure an equitable adjustment, the city manager is authorized and directed to increase or decrease such license fees, permit fees and other user related fees or charges in approximately the same proportion to any increase or decrease in the general fund for the ensuing year.

(Ord. No. 81-8881, §§ 1, 3, 10-19-81; Ord. No. 94-9648, § 1, 8-22-94)
Cross references: Fees to accompany application, § 20-4.

Sec. 2-3. Bonds and insurance of contractors, licensees, etc.

(a) All bonds or insurance for the use, benefit or protection of the city required to be taken by the statutes of the state and by the ordinances of the city or by resolution of the board of commissioners from any person to secure the faithful performance of any contract with the city, or to indemnify the city against loss, damage or liability growing out of any contract with the city, or out of the issuance of any license or permit by the city where a bond or insurance is required, shall be signed and executed by some company admitted to do business in the state.

(b) All bonds and insurance certificates provided for in subsection (a) shall be signed and executed by the party or parties from whom such bonds or insurance are required in addition to the sureties on the bonds and the insurers, and except where otherwise provided by law the bonds shall be made to the city.

(c) Except where otherwise expressly provided to the contrary, all bonds and certificates of insurance herein provided for shall be submitted to and approved by the city attorney.

(d) All bonds and insurance required by licensees shall expire on the date of expiration of the license.

(Code 1966, §§ 2-7--2-9)

Secs. 2-4--2-20. Reserved.

ARTICLE II. BOARD OF COMMISSIONERS[2]

Sec. 2-21. Salaries of members of the board of city commissioners.

Pursuant to Charter Ordinance Number 30, each member of the board of city commissioners shall receive compensation at a rate of three hundred dollars ($300) per month.

(Ord. No. 88-9299, § 1, 1-9-89; Ord. No. 05-10265, § 1, 4-18-05)

Secs. 2-22--2-35. Reserved.

[2] **State law references:** Governing board under commission manager plan, K.S.A. 12-1006 et seq.

ARTICLE III. CITY MANAGER[3]

Sec. 2-36. Adoption of city manager plan of government.

The electors of the city adopted the city manager plan of government on February 1, 1921.

Secs. 2-37--2-50. Reserved.

ARTICLE IV. OFFICERS AND EMPLOYEES GENERALLY

DIVISION 1. GENERALLY

Sec. 2-51. Classified service created.

There is hereby created the classified service of the city, and all persons employed by the city except elected officials, persons serving the city as independent contractors, persons retained by the city as consultants, part-time employees of part-time boards and commissions, the city attorney and assistant city attorneys, the municipal judge, the city manager and persons employed under established civil service systems, shall be appointed, employed and paid under the provisions of the rules and regulations which may be adopted as provided in section 2-52.

(Code 1966, § 2-61)

Sec. 2-52. Rules and regulations.

Rules and regulations governing appointment and employment to positions in the classified service together with salary ranges shall be adopted and amended by resolution of the board of commissioners and shall be on file in the office of the city manager and city clerk and open to inspection during regular business hours by any interested person.

(Code 1966, § 2-62)

Secs. 2-53--2-60. Reserved.

DIVISION 2. BONDS

Sec. 2-61. Required before taking office.

No person shall perform any of the duties of the office or employment to which he is appointed without first having given the bond as required and after its approval, and the giving of a bond, if a bond is required, shall be considered as one (1) of the qualifications necessary to be met in qualifying for office.

(Code 1966, § 2-48)

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[3] ***State law references:** City manager plan, K.S.A. 12-1001 et seq.

Sec. 2-62. Bonds to be conditioned as specified.

The bonds of officers, deputies, assistants and employees required to give bond shall be conditioned as required by statute or as otherwise required by ordinance and where no condition is specified by statute or by ordinance, the bond shall be conditioned for the faithful performance of duties.

(Code 1966, § 2-49)

Sec. 2-63. Amount of bonds; special conditions.

The following officers and employees shall give bond in the following amounts and conditioned as stated:

(1) City manager $5,000.00

(2) Director of utilities 5,000.00

(3) Where one (1) person is city manager and ex officio, director of utilities, one (1) bond in the sum of 5,000.00

(4) Director of finance.....5,000.00

(5) City clerk 5,000.00

(6) When one (1) person holds the offices of director of finance and city clerk, only one (1) bond shall be required in the sum of 5,000.00

(7) City treasurer, not less than fifty thousand dollars ($50,000.00). Such bond shall be conditioned for the faithful discharge of his duties; that he will safely keep all public moneys entrusted to his care, and save the city free and harmless from all loss caused by neglect of duty or malfeasance in office. The board of commissioners shall require the treasurer to give a new bond whenever, in its opinion, the existing bond is insufficient; and whenever such new bond is required, he shall perform no official act until such bond shall be given and approved in the manner aforesaid.

(8) Personnel of the city handling funds. Such bond will be conditioned for the faithful performance of their duties and for a true and faithful accounting for all moneys that may come into their hands by reason of their position.

(Code 1966, § 2-50)

Sec. 2-64. Type of bonds; approval, filing.

The bonds shall be surety company bonds unless otherwise provided by the statute or ordinance, shall be approved as to form by the city attorney and be approved by the board of commissioners and shall be filed with the city clerk, except that the city clerk's bond shall be filed with the city treasurer.

(Code 1966, § 2-51)

Sec. 2-65. Bonds to be kept in force.

No person shall continue to perform the duties of any office or employment for which a bond is required after the bond has expired or has been cancelled or for any other reason is not in effect.

(Code 1966, § 2-52)

Sec. 2-66. City to pay bond premiums.

The premium of any licensed company on the bond of any officer, deputy or employee shall be allowed and paid by the city.

(Code 1966, § 2-53)
State law references: City to pay bond premiums, K.S.A. 78-111.

Sec. 2-67. Affect of provisions on existing bonds.

The bond of any officer or employee in force at the time this Code shall take effect shall be affected; provided, that if a bond in a greater amount is required, the officer or employee is hereby ordered to increase the amount of bond to meet the amount required.

(Code 1966, § 2-54)

Secs. 2-68--2-75. Reserved.

DIVISION 3. INDEMNIFICATION FOR LIABILITY

Sec. 2-76. Authority.

The city, in the discretion of the board of commissioners, may post security, indemnify and pay on behalf of each person and the heirs and representatives of such person who is or was an elected official, officer, employee or lawfully appointed official of the city for any reasonable expense that may be incurred by such person in connection with or resulting from any claim, action, suit or proceeding, civil, criminal, administrative or investigative, or threat thereof, or in connection with an appeal relating thereto, in which such person may become involved as a party or otherwise, by reason of being or having been an officer, employee or official of the city. The payment of such expense shall be supplemental to any expense incurred by any insurance company under the company's contractual obligation to the city.

(Code 1966, § 2-54.1)

Sec. 2-77. Expense defined.

As used in this division, the term "expense" includes counsel fees, and other disbursements made or to be made in the defense of such person and the payment of judgements, fines, penalties or amounts paid in settlement by or on behalf of such person.

(Code 1966, § 2-54.1)
Cross references: Definitions and rules of construction generally, § 1-2.

Sec. 2-78. Investigation; findings of fact.

The board of commissioners, prior to obligating the city for such expense shall make or cause to be made, an investigation of the facts relating to the claim, action or proceeding against such person. Thereafter, the board of commissioners, by resolution, shall make findings of fact, a determination as to whether or not assistance will be provided, the type thereof and the estimated amount of expense.

(Code 1966, § 2-54.1)

Sec. 2-79. Requirements for payment of expense.

In making its findings of fact and determination the board of commissioners shall not authorize the payment of an expense unless it finds all of the following:

(1) The claim, action or proceedings arose out of and in the line of duty or employment of such person;

(2) The city has a direct interest in the matter as opposed to a collateral interest;

(3) The officer or employee acted in good faith and had reasonable cause to believe his conduct was lawful;

(4) That it would be in the interests of the city to authorize the payment of such expense.

(Code 1966, § 2-54.1)

Sec. 2-80. Revocation of authorization of expense.

The board of commissioners shall have the right to terminate and revoke by resolution at any time any previous resolution authorizing the payment of an expense without further liability or obligation to any such officer or employee, or third parties contracting with such officer or employee.

(Code 1966, § 2-54.1)

Sec. 2-81. Majority approval of board required.

All findings and determinations required by this division shall be made by a majority of all of the elected city commissioners.

(Code 1966, § 2-54.1)

Secs. 2-82--2-95. Reserved.

ARTICLE V. ADMINISTRATIVE DEPARTMENTS[4]

DIVISION 1. GENERALLY

Sec. 2-96. Creation.

The board of commissioners shall create such administrative departments as the public business may demand.

Secs. 2-97--2-105. Reserved.

[4] ***State law references:** Creation of administrative departments, K.S.A. 12-1015.

DIVISION 2. DEPARTMENT OF LAW

Sec. 2-106. Qualifications of city attorney and assistants.

No person shall be eligible to the office of city attorney or assistant city attorney who is not by profession an attorney at law admitted to practice before the Supreme Court of the State of Kansas.

(Code 1966, §§ 2-104, 2-106)

Sec. 2-107. Duties of city attorney.

The city attorney shall appear and prosecute or defend all cases wherein the city is a party in all courts; represent the city before state officers, boards, commissions and departments; shall draft all ordinances, contracts, agreements, etc.; attend all meetings of the board of commissioners; advise the city commissioners, the manager and officers of the city upon legal questions affecting the duties of their offices or the interest of the city as may be submitted to him, and perform other professional services incident to his office; provided, that business and court cases outside of the county and cases in the district court of the county except on appeal from the municipal court in which the city is the appellant, shall not be considered as duties herein insofar as regular salary is concerned but the compensation for such duties shall be on an hourly basis and approved by the city manager.

(Code 1966, § 2-105)
State law references: Duties of city attorney, K.S.A. 13-2105.

Sec. 2-108. Duties of assistants.

The assistant city attorneys shall assist the city attorney and as directed by him. In the absence of the city attorney from the city, an assistant city attorney shall perform the duties of the city attorney.

The city attorney shall assign the duties to the assistant city attorneys.

(Code 1966, §§ 2-107, 2-108)

Secs. 2-109--2-120. Reserved.

DIVISION 3. DEPARTMENT OF PUBLIC HEALTH[5]

Sec. 2-121. To be prescribed by joint resolution.

The City of Salina and the County of Saline having established a joint city-county board of health, the appointments of the board, officers and employees, their powers and duties shall be as prescribed by the joint resolution, bylaws and duties as prescribed by ordinance.

(Code 1966, § 2-125)
Cross reference: Resolution No. 04-6132.

Secs. 2-122--2-135. Reserved.

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[5] **Cross references:** Health and sanitation, Ch. 17.

ARTICLE VI. BOARDS AND COMMISSIONS

DIVISION 1. GENERALLY

Secs. 2-136--2-143. Reserved.

DIVISION 2. RESERVED[6]

Secs. 2-144--2-160. Reserved.

ARTICLE VII. SALINA ARTS AND HUMANITIES COMMISSION[7]

Sec. 2-161. Commission established.

There is hereby established a Salina Arts and Humanities Commission to identify, explore and develop this area's sense of community, heritage and vision through the use of artistic and cultural resources.

(Ord. No. 84-9051, § 1, 12-3-84)

Sec. 2-162. Membership; appointment, term.

The said commission shall consist of twelve (12) members, which shall be appointed by the mayor, with the approval of the board of commissioners. The initial appointments to the commission shall be for one, two (2) and three (3) year terms and thereafter all appointments shall be for a term of three (3) years and until a successor is qualified; provided no person shall be appointed for more than two (2) consecutive full terms.

(Ord. No. 84-9051, § 1, 12-3-84; Ord. No. 91-9442, § 1, 5-20-91; Ord. No. 94-9643, § 1, 8-15-94)

Sec. 2-163. Organization.

The commission shall annually organize and select the officers as specified in the bylaws. The commission shall adopt such bylaws as may be necessary to accomplish the purposes of their organization, which said bylaws shall be effective upon adoption by the commission and approval by the governing body of the city.

(Ord. No. 84-9051, § 1, 12-3-84)

Sec. 2-164. Duties and powers.

The commission shall have the following duties and powers:

(1) To hold regular public meetings and keep a written record of its proceedings which shall be public records.

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[6] **Editor's note:** Ord. No. 91-9442 repealed Art. VI, Div. 2. Former Div. 2 pertained to the arts commission.

[7] **Editor's note:** Ord. No. 84-9051 repealed Art. VII, §§ 2-161, 2-162. Former §§ 2-161, 2-162 pertained to investment of temporary idle funds.

(2) To annually review the financial needs of the programs for the development of the fine and performing arts and the humanities, and submit a proposed budget therefor to the city manager; to make expenditures in accordance with the annual budget adopted by the city.

(3) To make application and solicitation for and accept grants, gifts, and donations of money, property, or personal services from individuals, groups, organizations, and the like or from any agency of the city, county, state or federal government granted or given for a purpose consistent with the purposes of this commission and to expend all funds so received.

(4) To initiate, sponsor or conduct, alone or in cooperation with other public or private agencies, public programs to further the development and public awareness of, and interest in the fine and performing arts and the humanities.

(5) To advise and assist the city in connection with such other artistic and cultural activities as may be referred to it by the city.

(6) To utilize the services of the director of arts and its executive secretary and such other staff as may be made available to it.

(7) To serve as a clearinghouse for scheduling exhibits, concerts, recitals, lectures and other cultural events that may occur in the community.

(8) To generally stimulate, facilitate, coordinate and cooperate with existing organizations for the development of the arts and historical tradition of the city and to initiate programs and proposals of encouragement for promotion development of the arts, culture, heritage, beauty and tradition of the city.

(Ord. No. 84-9051, § 1, 12-3-84)

Sec. 2-165. Director of arts.

There is hereby created the position of director of arts of the City of Salina, to be appointed by and directly responsible to the city manager.

(Ord. No. 84-9051, § 1, 12-3-84)

Secs. 2-166--2-169. Reserved.

ARTICLE VIII. PUBLIC RECORDS

Sec. 2-170. Procedures regarding both inspection and copying of open public records.

The following procedures are hereby adopted and shall be applied by each official custodian and record custodian.

(1) Consistent with the policy, duties and procedures established by the State of Kansas in K.S.A. 1983 Supp. 45-205:214(L. 1983, Ch. 171) all city record custodians shall provide full access and assistance in a timely and efficient manner to persons who request access to open public records.

(2) The city manager shall be responsible for the administration and implementation of the city's open public records program. The city manager shall appoint record custodians in the various departments as necessary. The city manager shall be authorized to develop administrative

procedures to implement this article within the intent and spirit of this article. The term "record custodians," as used in this article shall include the city manager and any other record custodians. Record custodians shall adopt and apply open public record access and copy procedures consistent with the policies of the city and with the provisions of the Open Records Act. Specifically, such procedures will inform members of the public of the procedures to be followed in making a request for inspection or a copy of an open public record, including the hours during which record inspection or copy requests may be made; who a request is to be made to; the forms to be completed in making a request; and the schedule of fees charged.

(3) Record custodians shall adopt and apply procedures which will ensure the protection and preservation of public records with respect to the manner in which such records are inspected and copied.

(4) Record custodians shall take necessary measures, not inconsistent with their duties, to provide full public access to open public records, to ensure that the essential functions of the custodian's office, department or agency is not disrupted by requests for record inspection and copying.

(5) All inspection and copying of open public records shall be performed by, or under the supervision of, the record custodian responsible for such records.

(6) All persons requesting the inspection of or a copy of open public records shall make such request in writing prior to the request being honored, except that no form shall be required for requests made for records which have been reproduced for free public distribution.

(7) All record inspection and copying forms are to be completed by the person requesting the record. The record custodian may demand reasonable identification of any person requesting a record.

(8) Any fees for record inspection or for copies are due at the time the records, or copies thereof, are provided to the requester, unless the record custodian has demanded that prepayment of all or part of such fees be made. Fees are to be paid to the record custodian.

(9) The record custodian shall notify the record requester, prior to commencing search of the record or copies thereof, of his or her estimate of the fee which will be made for honoring the request whenever such estimate exceeds ten dollars ($10.00).

(10) The record custodian may demand full or partial prepayment of fees whenever his or her estimate for such fees exceeds ten dollars ($10.00). Prepayment may or may not be required of a requester who maintains an account in good standing with the city for purposes of payment of recent fees.

(11) The record custodian shall determine and assess a charge covering mailing and handling costs accrued in responding to requests through the mail service.

(12) The record custodian may exercise his or her discretion to reduce or waive any inspection or copying fees when such is in the public interest.

(13) No record inspection or copying charge shall be assessed against officers or employees of the city who make requests which are reasonably necessary to the performance of their official duties.

(14) Hours for making request for inspection or copying shall be the regular working hours maintained by that department; provided, however, that the regular hours shall not be greater than 8:00 a.m. to 5:00 p.m. Monday through Friday. This shall include all city departments.

(15) Removal of open public records from the office where kept and maintained, for purposes of inspection and/or the making of copies shall be permitted only with the written permission of the record custodian. It shall be unlawful for any person to fail to return such records at the time and place where such return has been promised. Upon conviction for violation of this subsection, a person shall be subject to penalties provided for in Salina Code, section 1-10.

(16) The above procedures, as well as any other inspection and copying procedures shall be posted in a conspicuous place in the office of the record custodian.

(Ord. No. 84-8996, § 1, 1-16-84)

Sec. 2-171. Procedures regarding inspection of open public records.

The following procedures are hereby adopted and shall be applied by every official custodian and record custodian:

(1) Record custodians shall handle all inspection requests in accordance with their duties to protect and preserve public records and to assist persons requesting inspection of open public records.

(2) All request forms must be completed by the party requesting the record. In all cases the party so requesting must be an individual person or persons. Written requests shall be made on the form provided by the record custodian and presented to the record custodian.

(3) A written request is sufficient if it reasonably describes the record sought. In instances where the requester cannot provide sufficient information to identify a record, the custodian shall assist in making such identification.

(4) It shall be the policy of the city to promptly reply to requests for public records and in no case shall any request be answered later than the end of the third business day following the date that the request is received. Business days shall be Monday through Friday, inclusive, except for city holidays.

(5) In cases where a request for a specific record gives the record custodian reason to believe that the record contains information of a personal nature which, if disclosed, would constitute an unwarranted invasion of personal privacy, the record custodian shall inform the requester that a seventy-two (72) hour waiting period must run before such record may be inspected. During that seventy-two (72) hour period, the record custodian shall make every reasonable effort to determine the identity of those persons whose privacy interest may be so affected by disclosure. The record custodian shall attempt to contact such persons and ascertain whether they, or any of them, will seek a court order challenging disclosure. If so, the record custodian shall deny inspection pending the outcome of litigation or an intervening court order.

(6) Inspection fee shall be established by resolution adopted by the board of commissioners.

(Ord. No. 84-8996, § 1, 1-16-84)

Sec. 2-172. Procedures regarding copies of open public records.

The following procedures are hereby adopted and shall be applied by each official custodian and record custodian:

(1) Record custodians shall handle all copy requests in accordance with their duties to protect and preserve public records and to assist persons requesting copies of open public records.

(2) All request forms must be completed by the party requesting the copies. In all cases the party so requesting must be an individual person or persons. Written requests shall be made on the form provided by the record custodian.

(3) Mechanical reproduction of a record shall not be undertaken when it is the judgment of the record custodian that any available means of mechanically reproducing the subject record is likely to cause damage to such records.

(4) No copy fee shall be assessed when multiple copies of the record requested have been prepared for free public distribution, or when the record custodian determines that the cost of charging and handling the fee exceeds the cost of providing a copy without charge.

(5) No copying fee will be assessed when a denial of a request is made. The record custodian shall, upon making a denial of a copying request, forward a copy of the denial to the city manager and the city attorney.

(Ord. No. 84-8996, § 1, 1-16-84)

Secs. 2-173--2-179. Reserved.

ARTICLE IX. SALINA BICENTENNIAL CENTER

Sec. 2-180. Rules and regulations for Salina Bicentennial Center.

(a) The bicentennial center manager is hereby authorized to adopt and amend such rules and regulations as may be necessary for the orderly and proper operation of the bicentennial center and for the safety and welfare of the general public. All rules and regulations and amendments thereof must be approved by the board of commissioners and filed in the office of the city clerk and the bicentennial center manager prior to implementation.

(b) Any person violating any rules and regulations adopted in accordance with subsection (a) shall be guilty of a misdemeanor and subject to the penalty provided for in section 1-10 of the Salina Code.

(Ord. No. 85-9099, § 1, 10-7-85)

Secs. 2-181--2-199. Reserved.

ARTICLE X. SALINA BUSINESS IMPROVEMENT DISTRICT DESIGN REVIEW BOARD

Sec. 2-200. Created.

By authority of the home rule powers granted to cities by the Kansas Constitution and consistent with the Kansas Business Improvement District Act, there is hereby created the Design Review Board of the Salina Business Improvement District Number 1.

(Ord. No. 86-9163, § 1, 10-20-86; Ord. No. 91-9471, § 1, 10-28-91)

Sec. 2-201. Membership.

The board shall consist of seven (7) members recommended by the board of directors of Business Improvement District Number 1 and appointed by the mayor with the consent of the governing body. Membership shall at all times include at least one (1) representative of the following categories:

(1) Representative of a business within the Business Improvement District.

(2) Property owner within the Business Improvement District.

(3) Design professional.

(Ord. No. 86-9163, § 1, 10-20-86)

Sec. 2-202. Appointment and term.

Those persons first appointed as members of the board shall be appointed for the following terms:

(1) Two (2) members for a term of one (1) year.

(2) Two (2) members for a term of two (2) years.

(3) Three (3) members for a term of three (3) years.

Upon the expiration of the term of each board member, subsequent terms shall be for a period of three (3) years. Any vacancy occurring among the membership of the board shall be filled by appointment of the mayor with the consent of the governing body.

(Ord. No. 86-9163, § 1, 10-20-86)

Sec. 2-203. Compensation.

The members of the board shall serve without compensation.

(Ord. No. 86-9163, § 1, 10-20-86)

Sec. 2-204. Officers.

The officers of the board shall be chair, vice-chair and secretary. The chair and vice-chair shall be elected at the annual meeting and shall serve for a term of one (1) year, or until their successors are elected. The chair shall appoint a secretary. The secretary need not be a member of the board, and shall serve at the pleasure of the chair. No person shall be eligible to hold the office of chair or vice-chair for more than two (2) full, consecutive one-year terms.

(Ord. No. 86-9163, § 1, 10-20-86; Ord. No. 91-9471, § 2, 10-28-91)

Sec. 2-205. Quorum.

A simple majority of the members of the board appointed and qualified at any given time shall constitute a quorum for the purpose of conducting the board's business.

(Ord. No. 86-9163, § 1, 10-20-86; Ord. No. 91-9471, § 3, 10-28-91)

Sec. 2-206. Purpose.

The purpose of the board shall be:

(1) To advise and make recommendations to the board of city commissioners or Business Improvement District Number 1 board of advisors on such matters as, from time to time, may be referred to the board.

(2) To protect and enhance the exterior appearance of property located within Business Improvement District Number 1 by regulating, according to proper architectural principles, the design, use of materials, finished grade lines, and orientation of new building construction and the alteration, improvement, repair, or demolition of existing buildings through the issuance of certificates of compatibility when proposed plans and specifications warrant.

(3) Issue notice of decision on signage and other matters referred by other duly constituted city boards, commissions, and committees.

(Ord. No. 86-9163, § 1, 10-20-86; Ord. No. 88-9298, § 1, 1-9-89; Ord. No. 91-9471, § 4, 10-28-91)

Sec. 2-207. Certificate of compatibility.

(a) No building, sign or demolition permit shall be issued for work to be performed on property included within Business Improvement District Number 1 without first obtaining a certificate of compatibility.

(b) An application for a certificate of compatibility must include the following submittals:

(1) A site plan depicting buildings, sidewalks and alleys, parking, landscaping and outside lighting.

(2) An elevation sketch of proposed new and/or altered exterior walls.

(3) A description of the type, color and texture of exterior finish materials and appropriate samples.

(4) Colored photographs of subject building exposures, including adjoining buildings.

(c) Projects having a dollar value of less than one thousand dollars ($1,000.00) and not involving the alteration of exterior structural elements shall be exempt from the requirement of a certificate of compatibility.

(d) In the event of an emergency situation, the chief building official may authorize emergency repairs to a property without the issuance of a certificate of compatibility.

(Ord. No. 86-9163, § 1, 10-20-86; Ord. No. 88-9298, § 2, 1-9-89)

Sec. 2-208. Authorization and findings.

Any application for a building permit which relates to property included within Business Improvement District Number 1 shall, in conjunction with the standard building permit review process, be referred by the city's chief building official to the board. The board is hereby authorized to grant any applicant a certificate of compatibility if, upon the vote of a majority of all members of the board, the following findings can be made:

(1) The general design, material and color of the proposed construction or change presents an aesthetically pleasing overall image.

(2) Environmentally harmful effects caused by the clash of contemporary materials with those of older origin, are avoided.

(3) The distinguishing original qualities or character of a building, structure or site and its environment are not to be destroyed and the removal or alteration of any historical material or distinctive architectural features is avoided where possible.

(4) The proposed use of banners, awnings, or canopies incorporates the use of appropriate materials, colors and graphics, and is compatible with the overall building design.

(5) Any proposed demolition includes appropriate grading and landscaping of the building site in a manner compatible with the adjoining buildings and streetscape.

(Ord. No. 86-9163, § 1, 10-20-86)

Sec. 2-209. Public hearing.

(a) The board shall hold a public hearing on each application at a reasonable time and place as determined by the board. It shall hold such hearing within fourteen (14) days from the date upon which the application is referred to the board by the city's chief building official. The applicant may waive the requirement that such hearing be held within fourteen (14) days.

(b) No less than seven (7) days prior to the public hearing, notice of the date, time and place of the hearing and a statement regarding the nature of the proposed application shall be posted on the subject property and mailed by first class mail to the local news media and the record owners of the property immediately adjacent to the subject property.

(c) The hearing on the application shall be conducted and a record of the proceedings shall be preserved in such a manner and according to such procedures as the board may prescribe by its own rule. Any interested person or party may appear and be heard at the hearing in person, by agent or by attorney. The board may request a report on any proposed application from any governmental official or agency, or any other person, firm or corporation. If such a report is made, a copy shall be made available to the applicant and any other interested person in the office of the city's chief building official.

(Ord. No. 86-9163, § 1, 10-20-86; Ord. No. 88-9298, § 3, 1-9-89)

Sec. 2-210. Appeal.

Any applicant may appeal a decision of the board to the board of city commissioners. Such appeal must be filed with the city clerk on a form provided by that office no later than thirty (30) days following the board's decision.

(Ord. No. 86-9163, § 1, 10-20-86)

Sec. 2-211. Hearing and notice on appeal.

Upon the filing of an appeal, the matter shall be set for consideration at the earliest regularly scheduled meeting of the board of city commissioners that will allow notice of such consideration in the same manner as set forth in section 2-209.

(Ord. No. 86-9163, § 1, 10-20-86)

Sec. 2-212. Decision on appeal.

Upon consideration of the appeal by the board of city commissioners, by a majority vote of all members, they may:

(1) Grant the certificate of compatibility;

(2) Affirm the board's denial of the certificate of compatibility; or

(3) Refer the matter to the board for further consideration with or without specific instruction.

(Ord. No. 86-9163, § 1, 10-20-86)

Secs. 2-213--2-224. Reserved.

ARTICLE XI. ACCESSIBILITY ADVISORY BOARD

Sec. 2-225. Creation of board.

There is hereby created the accessibility advisory board (hereafter referred to as "the board").

(Ord. No. 89-9361, § 1, 11-20-89)

Sec. 2-226. Membership.

The board shall consist of nine (9) members appointed by the mayor, with the consent of the governing body. Membership shall at all times include no less than five (5) members with a disability. Those with experience in working with the disabled and those with expertise in accessibility issues will be given preference for appointment.

(Ord. No. 89-9361, § 1, 11-20-89)

Sec. 2-227. Appointment and term.

Those persons first appointed as members of the board shall be appointed for the following terms:

(1) Three (3) members for a term of one (1) year.

(2) Three (3) members for a term of two (2) years.

(3) Three (3) members for a term of three (3) years.

Upon expiration of the term of each board member, subsequent terms shall be for a period of three (3) years. Any vacancy occurring among the membership of the board shall be filled by appointment of the mayor with the consent of the governing body, by resolution.

(Ord. No. 89-9361, § 1, 11-20-89)

Sec. 2-228. Compensation.

The members of the board shall serve without compensation.

(Ord. No. 89-9361, § 1, 11-20-89)

Sec. 2-229. Meetings.

The board shall meet at least quarterly and at other times when necessary.

(Ord. No. 89-9361, § 1, 11-20-89)

Sec. 2-230. Officers.

The board shall elect one (1) of its members as chairman for the term of one (1) year. The chairman shall preside at all meetings of the board. The board shall elect, in the same manner and for the same term, one (1) of its members as vice-chairman, who shall act as chairman in the absence of the chairman. The board shall elect, in the same manner and for the same term, one (1) of its members as recorder, who shall keep the official transactions of the board.

(Ord. No. 89-9361, § 1, 11-20-89)

Sec. 2-231. Quorum.

Five (5) members of the board shall constitute a quorum for the purpose of conducting the board's business.

(Ord. No. 89-9361, § 1, 11-20-89)

Sec. 2-232. Purpose.

The purpose of the board shall be:

(1) To advise and make recommendations to the board of commissioners on such matters related to accessibility as, from time to time, may be referred to the board.

(2) To evaluate projects and activities, both public and private, and to advise city staff on matters related to accessibility.

(3) To provide technical assistance to the city on matters related to the disabled population.

(4) To review city plans for projects prior to implementation.

(5) To serve as advocates for citizens with disabilities.

(6) To serve as resources on policy and/or procedure for members of the board of commissioners and for city staff.

(7) To review federal and state regulations and guidelines on accessibility and to report its findings to the appropriate city department, division or body.

(Ord. No. 89-9361, § 1, 11-20-89)

ARTICLE XII. PUBLIC IMPROVEMENT PROCEDURES

Sec. 2-233. Policy statement.

In order to provide greater flexibility and clarity in the city's procedures in contracting for services related to public improvements, the city has, by Charter Ordinance Number 27, exempted itself from K.S.A. 13-1017. In the interests of assuring quality workmanship at the least public cost and providing a system which promotes fair competition between qualified private contractors, the city wishes to adopt

this statement of its policies and procedures in contracting for services relating to construction, addition, substantial alteration, repair and maintenance of public improvements.

(Ord. No. 95-9699, § 1, 8-7-95)

Sec. 2-234. Definitions.

Whenever used in this article, the following terms shall be defined as follows:

(1) *Addition* shall mean a part added or joined to a main structure.

(2) *Competitive practices* shall mean the process whereby potential contractors are considered and a contract entered into upon the authority of the city manager on the basis of experience, expertise, cost proposals, availability, or any other relevant factors in the public interest.

(3) *Maintenance* shall mean to prevent a decline, lapse or cessation from an existing state or condition.

(4) *New construction* shall mean the creation of something new, as distinguished from the repair or improvement of something already existing.

(5) *Public emergency* shall mean any circumstance in which, in the opinion of the city manager, an imminent threat to the public health, safety, or welfare can be abated only by immediately contracting with a private contractor for either new construction, reconstruction, or repair of a public improvement.

(6) *Public improvement* shall mean any city-owned building, facility, grounds, park, sidewalk, curb, gutter, bridge, pavement, water or sanitary sewer system component, or storm drainage system component.

(7) *Repair* shall mean to restore to a sound or good state after decay, injury, dilapidation, or partial destruction.

(8) *Sealed bid process* shall mean the process whereby, under the authority of the governing body, (a) a detailed estimate of the cost of a public improvement project is made by the city engineer or his designee; (b) sealed proposals for the project are invited by advertisement published in the official city newspaper; and (c) the governing body lets the work for the project to the responsible bidder submitting the lowest and best bid, taking into consideration any factors relevant to furtherance of the public interest and reserving the right to reject any and all bids for any lawful reason.

(9) *Substantial alteration* shall mean a material change of a thing from one form or state to another, thus making it different from what it was without destroying its identity.

(Ord. No. 95-9699, § 1, 8-7-95)

Sec. 2-235. Process for new construction, addition or substantial alteration.

Alteration of a public improvement to satisfy requirements governing accessibility for persons with disabilities shall be accomplished by use of competitive practices. In the case of new construction, an addition, or other substantial alteration to a public improvement with an estimated cost:

(1) Of ten thousand dollars ($10,000.00) or less, the city shall utilize competitive practices in the awarding of a contract.

(2) In excess of ten thousand dollars ($10,000.00), the city shall utilize a sealed bid process in the awarding of a contract. If all bids exceed the engineer's estimate, the city manager shall provide a report to the governing body citing reasons why the bids exceed the engineer's estimate. The governing body may award the contract notwithstanding the fact it exceeds the engineer's estimate based upon a finding that such an award is in the public interest and that adequate funds are available to complete the project.

(Ord. No. 95-9699, § 1, 8-7-95)

Sec. 2-236. Process for maintenance and repairs.

In the case of repairs to and maintenance of public improvements, the city shall utilize competitive practices in the awarding of a contract within budget. If the proposed contract for repairs or maintenance exceeds budget, the city manager shall provide a report to the governing body citing the reasons why the proposed contracts exceeds budget. The governing body may award the contract based upon a finding that such an award is in the best public interest and that adequate funds are available. Nothing herein shall prevent the city from using a sealed bid process for significant repairs and maintenance projects.

(Ord. No. 95-9699, § 1, 8-7-95)

Sec. 2-237. Change orders.

(a) *Project contingency.* For each contract awarded by the governing body, the governing body shall establish, and may amend from time to time, a project contingency based upon the size and scope of the project. The city manager may authorize change orders within the amount of the contingency which are not prompted by a change in the size or scope of the project. The city manager shall make a monthly report to the governing body of any change orders authorized within any project contingency.

(b) *Change in size or overall scope.* Any proposed change orders which are prompted by a proposed change in size or overall scope of the project shall require advance approval of the governing body.

(Ord. No. 95-9699, § 1, 8-7-95)

Sec. 2-238. Public emergency.

In cases of public emergency, the city manager may enter into contracts for construction, reconstruction or repair to public improvements on an expedited basis necessary to protect the public health and safety. When emergency contract provisions are used, at the next regular meeting of the board of city commissioners, the city manager shall provide a preliminary report on the emergency, actions taken, and an estimated cost. A final report will be provided by the city manager once the emergency project is complete and all costs known.

(Ord. No. 95-699, § 1, 8-7-95)

Sec. 2-239. Reporting requirements.

The city manager shall make regular reports to the board of city commissioners outlining all maintenance, repair, accessibility, alterations, or other contracts in excess of ten thousand dollars ($10,000.00) entered into using competitive practices.

(Ord. No. 95-9699, § 1, 8-7-95)

ARTICLE XIII. FINANCE

Sec. 2-240. Petty cash funds.

That petty cash funds are authorized and established for use as follows:

DEPARTMENT	*AMOUNT*	*RESPONSIBLE PARTY*
Finance	$400.00	City Accountant
Recreation	150.00	Park & Recreation Director
Water Customer Accounting	600.00	Customer Accounting Supervisor
Police-Chiefs Officer	300.00	Police Chief
Police-Evidence Officer	500.00	Police Chief
Bicentennial Center	500.00	Bicentennial Center Manager
Fire Department	100.00	Fire Chief
Municipal Court	25.00	Court Supervisor

(Ord. No. 97-9791, § 1, 3-3-97; Ord. No. 97-9848, § 1, 12-22-97; Ord. No. 02-10074, § 1, 3-25-02; Ord. No. 03-10125, § 1, 1/13/2003; Ord. No. 05-10273, § 1, 5-2-05)

Sec. 2-241. Working Cash Funds.

That working cash funds are authorized and establihed for use as follows:

DEPARTMENT	AMOUNT	RESPONSIBLE PARTY
Finance	$ 50.00	City Account
Solid waste	300.00	General Services Director
Recreation	75.00	Park & Recreation Director
Golf Course	700.00	Parks & Recreation Director
Water Customer Accounting	350.00	Customer Accounting Supervisor
Police--Records bureau	100.00	Police Chief
Municipal court	600.00	Court Supervisor
Bicentennial Center	250.00	Bicentennial Center Manager

(Ord. No. 97-9791, § 1, 3-3-97; Ord. No. 03-10125, § 1, 1-13-03; Ord. No. 05-10273, § 1, 5-2-05)

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CHAPTER 3. ADVERTISING[1]

Sec. 3-1. Distributing matter in or attaching to motor vehicles.

It shall be unlawful for any person, as principal or agent, to place or cause to be placed, any handbills, circulars, cards, posters, leaflets, pamphlets, booklets, showbills or other advertising matter in, or attach the same upon any part of any motor vehicle, while such motor vehicle is in use upon the streets or standing parked upon the streets or public parking lots of the city; provided, that this section shall not be construed to prevent the officers or employees of the city from so doing for any municipal purpose; and provided further, that this section shall not be construed to include regular advertising done in public conveyances.

(Code 1966, § 3-1)
Cross references: Traffic and motor vehicles, Ch. 38.

Sec. 3-2. Throwing, scattering on private property.

It shall be unlawful for any person, as principal or agent, to throw or scatter any handbills, circulars, posters, cards, leaflets, pamphlets, booklets, or any other advertising matter upon any yard, stoop or porch; provided, this section shall not apply to newspapers, magazines, or periodicals for which the occupant of the premises has requested such delivery.

(Code 1966, § 3-2)

Sec. 3-3. Posting on utility poles, public or private property.

(a) *Offenses.* It shall be unlawful for any person to put up, attach or post any signs, bills, dodgers, advertisements or notices of any kind or character, of any material whatsoever, upon any telephone, telegraph, electric light pole, or upon any pole erected for the purpose of carrying the wires of any public utility, or upon any lamppost, hitching post, hydrant, drinking fountain, sidewalk, bridge or fence or building any of which may be located or situated in any street or alley or other public ground within the city; or upon any house, building, fence or structure of any kind upon any private ground within the city, except by the consent of the owner thereof.

(b) Removal. Any sign, bill, dodger, advertisement or notice posted or maintained in violation of this section shall be torn down and removed by the chief of police or by any policeman at his direction.

(c) Exceptions. This section shall not apply to notices posted by order of the city-county health department in the discharge of any official duty nor to the posting of legal advertisements at places required or designated by law or by ordinance.

(Code 1966, § 3-3)
Cross references: Public utilities, Ch. 31. **State law references:** Posting of political pictures and political advertisements, K.S.A. 21-3739.

Sec. 3-4. Damaging, defacing lawfully posted advertising.

It shall be unlawful for any person to tear down, deface, mutilate, obscure or otherwise injure any written or printed posted or handbill or other advertisement which shall have been lawfully posted, nailed or otherwise posted for a lawful purpose within the city.

(Code 1966, § 3-4)

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[1] **Cross references:** Sign code, § 8-381 et seq. **State law references:** Highway advertising control act, K.S.A. 68-2231 et seq.

Sec. 3-5. Loudspeakers and sound trucks--License required.

It shall be unlawful for any person to conduct, pursue, carry on or operate the calling, trade or occupation of advertising or announcing by means of any loudspeaker, radio or phonograph device, either in or attached to any automobile or other vehicle operated on the streets of the city or from any stationary location on private property by which the sound of such advertisement or announcements, either in the form of music, voice or otherwise by any of the means aforesaid, is projected into any public street, for the purpose of calling attention to persons in such public street or elsewhere the advertisement or announcement projected from or by means of any such device, without obtaining a license from the city clerk. The license fee shall be as prescribed in section 2-2.

(Code 1966, §§ 3-5, 3-6)
Cross references: Licenses generally, Ch. 20.

Sec. 3-6. Same--Prohibited hours.

It shall be unlawful for any person to use or operate any device as mentioned in section 3-5, within the city at any time after the hour of 9:00 p.m. and earlier than the hour of 8:00 a.m. in any day, and no license issued under the provisions of section 3-5 shall be deemed to permit the use thereof during any of the time when such use is prohibited by the provisions of this section.

(Code 1966, § 3-7)

CHAPTER 4. AIRPORT[1]

Art.	**I.**	**In General, §§ 4-1--4-15**
Art.	**II.**	**Airport Authority, §§ 4-16--4-30**
Art.	**III.**	**Airport Zoning Commission, §§ 4-31--4-33**

ARTICLE I. IN GENERAL

Sec. 4-1. Police power extended over airport.

(a) The police power of the city is hereby extended to include all territory of the municipal airport.

(b) The lands included in the municipal airport shall be deemed to be a part of the corporate limits of the city.

(c) All general ordinances of the city are hereby declared to be applicable to the airport.

(Code 1966, § 5-4)

Secs. 4-2--4-15. Reserved.

ARTICLE II. AIRPORT AUTHORITY[2]

Sec. 4-16. Created.

The city, pursuant to the authority granted by Kansas Statutes Annotated, Ch. 27, Art. 3, does hereby establish and create an authority to be known as the "Salina Airport Authority."

(Code 1966, § 5-1)

Sec. 4-17. Board of directors.

The airport authority hereby created shall be managed and controlled by a board of directors consisting of five (5) directors to be appointed by the board of commissioners.

(Code 1966, § 5-2)

Sec. 4-18. Authority subject to statutes.

The airport authority hereby created shall have all those powers enumerated and be subject to all provisions of Kansas Statutes Annotated, Ch. 27, Art. 3.

(Code 1966, § 5-3)

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[1] **Editor's note:** Ch. 4 contained provisions pertaining to airport zoning and was repealed by Ord. No. 92-9534 and replaced with § 42-815 et seq. **Cross references:** Airport zoning, § 42-815 et seq.; streets, sidewalks and other public places, Ch. 35**.** **State law references:** Aircraft and airfields, K.S.A. Ch. 3.

[2] **Cross references:** Administration, Ch. 2; boards and commissions generally, § 2-136 et seq. **State law references:** Surplus property and public airport authority act, K.S.A. 27-315 et seq.

Sec. 4-19. Rules and regulations.

(a) The airport authority is hereby authorized to adopt and amend such rules and regulations as may be necessary for the orderly operation of the Salina Municipal Airport, which rules and regulations and amendments thereof, after approval of the board of commissioners, shall be filed in the offices of the city clerk, airport manager and airport authority.

(b) Any person violating any of the rules and regulations adopted in accordance with subsection (a) shall be guilty of a misdemeanor.

(Code 1966, §§ 5-5, 5-6)

Secs. 4-20--4-30. Reserved.

ARTICLE III. AIRPORT ZONING COMMISSION[3]

Sec. 4-31. Created.

There is hereby created a commission to be known as the Salina Airport Zoning Commission.

(Code 1966, § 5-7)

Sec. 4-32. Membership.

The airport zoning commission shall consist of all of the members of the city planning commission as created in accordance with article II of chapter 29; and that appointment by the board of commissioners to the city planning commission shall automatically constitute appointment to the airport zoning commission for the same term as provided for in article II of chapter 29.

(Code 1966, § 5-8)

Sec. 4-33. Duties.

The airport zoning commission shall have such powers and duties as specified and provided for in the airport zoning act of the state the same being Article 7 of Chapter 3 of the Kansas Statutes Annotated and amendments thereto.

(Code 1966, § 5-9)
Note: See the editor's footnote to the chapter title.

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[3] **Cross references:** Administration, Ch. 2; boards and commissions generally, § 2-136 et seq. **State law references:** Authority for airport zoning commission, K.S.A 3-705(2).

CHAPTER 5. ALCOHOLIC BEVERAGES[1]

Art. I. In General, §§ 5-1--5-15
Art. II. Alcoholic Liquor, §§ 5-16--5-65
Div. 1. Generally, §§ 5-16--5-35
Div. 2. Retailer's License, §§ 5-36--5-50
Div. 3. Distributor's License, §§ 5-51--5-65
Art. III. Cereal Malt Beverages, §§ 5-66--5-115
Div. 1. Generally, §§ 5-66--5-90
Div. 2. Retailer's License, §§ 5-91--5-115
Art. IV. Private Clubs and Drinking Establishments, §§ 5-116--5-150
Div. 1. Generally, §§ 5-116--5-135
Div. 2. License, §§ 5-136--5-146
Div. 3. Drinking Establishments, §§ 5-147--5-150

ARTICLE I. IN GENERAL

Sec. 5-1. Purchase or consumption of alcoholic beverage by minor; penalty.

(a) Except with regard to serving of alcoholic liquor or cereal malt beverage as permitted by state law, no person under twenty-one (21) years of age shall possess, consume, obtain, purchase, or attempt to obtain or purchase alcoholic liquor or cereal malt beverage except as authorized by law.

(b) For a violation of this section by a person eighteen (18) or more years of age but less than twenty-one (21) years of age there shall be a minimum fine of two hundred dollars ($200.00).

(c) In addition to any other penalty provided for a violation of this section,

(1) The court may order the offender to do either or both of the following:

a. Perform forty (40) hours of public service; or

b. Attend and satisfactorily complete a suitable educational or training program dealing with the effects of alcohol or other chemical substance when ingested by humans; and

(2) The court shall order the division of vehicle to suspend the driving privilege of such offender for thirty (30) days. The court shall order that for any offender who has not been issued a driver's license by the division prior to sentencing of the offender for a violation of this section, the division shall not issue such offender a driver's license for thirty (30) days.

(d) This section shall not apply to the possession and consumption of cereal malt beverage by a person under the legal age for consumption of cereal malt beverage when such possession and consumption is permitted and supervised, and such beverage is furnished, by the person's parent or legal guardian.

Purchase or consumption of alcoholic beverage by minor is a Class C Violation.

(Ord. No. 94-9641, § 1, 8-1-94; Ord. No. 02-10097, § 1, 8-19-02)

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[1] **Cross references:** Alcoholic offenses affecting children, § 25-81 et seq. **State law references:** Intoxicating liquors and beverages generally, K.S.A. Ch. 41.

Secs. 5-2--5-15. Reserved.

ARTICLE II. ALCOHOLIC LIQUOR[2]

DIVISION 1. GENERALLY

Sec. 5-16. Definitions.

As used in this article, unless the context clearly requires otherwise, the following words and phrases shall have the meanings ascribed to them in this section:

(1) *Alcohol* means the product of distillation of any fermented liquor, whether rectified or diluted, whatever the origin thereof, and includes synthetic ethyl alcohol, but does not include denatured alcohol or wood alcohol.

(2) *Alcoholic liquor* means alcohol, spirits, wine, beer, and every liquid or solid, patented or not, containing alcohol, spirits, wine or beer, and capable of being consumed as a beverage by a human being, but shall not include any beer or cereal malt beverage containing not more than three and two-tenths (3.2) percent alcohol by weight.

(3) *Beer*, when its meaning is not enlarged, modified or limited by other words, means a beverage, containing more than three and two-tenths (3.2) percent alcohol by weight, obtained by alcoholic fermentation of an infusion or concoction of barley, or other grain, malt and hops in water and includes beer, ale, stout, lager beer, porter and similar beverages having such alcoholic content.

(4) *Distributor* means the person importing or causing to be imported into the state, or purchasing or causing to be purchased within the state, alcoholic liquor for sale or resale to retailers under the provisions of the Kansas Liquor Control Act, being K.S.A. Chapter 41, Articles 1 through 11.

(5) *Manufacture* means to distill, rectify, ferment, brew, make, mix, concoct, process, blend, bottle or fill an original package with any alcoholic liquor, or with beer regardless of its alcoholic content and includes blending.

(6) *Manufacturer* means every brewer, fermenter, distiller, rectifier, wine maker, blender, processor, bottler or person who fills or refills an original package and others engaged in brewing, fermenting, distilling, rectifying or bottling alcoholic liquors as above defined or beer regardless of its alcoholic content.

(7) *Minor* means any person under twenty-one (21) years of age.

(8) *Nonbeverage user* means every manufacturer of any of the products set forth and described in K.S.A. 41-501, when the same contains alcohol or wine, and all laboratories using alcohol for nonbeverage purposes.

(9) *Original package* means any bottle, flask, jug, can, cask, barrel, keg, hogshead or other receptacle or container whatsoever, used, corked or capped, sealed and labeled by the manufacturer of alcoholic liquor, to contain and to convey any alcoholic liquor.

(10) *Retailer* means a person who sells at retail, or offers for sale at retail, alcoholic liquors.

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[2] **Cross references:** Consumption of alcoholic liquor in public places, App. A, Charter ord. No. 14.

(11) *Sale* means any transfer, exchange or barter in any manner or by any means whatsoever for a consideration nd includes all sales made by any person, whether principal, proprietor, agent, servant or employee.

(12) *Sell at retail* and *sale at retail* refer to and mean sales for use or consumption and not for resale in any form and sales to clubs licensed pursuant to article 26 of chapter 41 of the Kansas Statutes Annotated. "Sell at retail" and "sale at retail" do not refer to or mean sales by a club licensed pursuant to article 26 of chapter 41 of the Kansas Statutes Annotated.

(13) *Spirits* means any beverage which contains alcohol obtained by distillation, mixed with water or other substance in solution, and includes brandy, rum, whiskey, gin or other spirituous liquors, and such liquors when rectified, blended or otherwise mixed with alcohol or other substances.

(14) *To sell* includes to solicit or receive an order for, to keep or expose for sale and to keep with intent to sell.

(15) *Wine* means any alcoholic beverage obtained by the normal alcoholic fermentation of the juice of sound, ripe grapes, fruits or berries, or other agricultural products, including such beverages containing added alcohol or spirits or containing sugar added for the purpose of correcting natural deficiencies.

(Code 1966, § 6-1)
Cross references: Definitions and rules of construction generally, § 1-2. **State law references:** Similar definitions, K.S.A. 41-102.

Sec. 5-17. General prohibition; exceptions.

(a) No person shall manufacture, bottle, blend, sell, barter, transport, deliver, furnish or possess any alcoholic liquor for beverage purposes, except as specifically provided in this article and the Kansas Liquor Control Act, except that nothing contained therein shall prevent:

(1) The possession and transportation of alcoholic liquor for the personal use of the possessor, his or her family and guests except that the provisions of K.S.A. 41-1103 relating to transportation and the provisions of K.S.A. 41-407 shall be applicable to all persons;

(2) The making of wine, cider, or beer by a person from fruits, vegetables or grains, or the product thereof, by simple fermentation and without distillation, if it is made solely for the use of the maker and his or her family;

(3) Any duly licensed practicing physician or dentist from possessing or using alcoholic liquor in the strict practice of his or her profession;

(4) Any hospital or other institution caring for the sick and diseased persons, from possessing and using alcoholic liquor for the treatment of bona fide patients of such hospital or institution;

(5) Any drugstore employing a licensed pharmacist from possessing and using alcoholic liquor in the compounding of prescriptions of duly licensed physicians;

(6) The possession and dispension of wine by an authorized representative of any church for the purpose of conducting any bona fide rite or religious ceremony conducted by such church; or

(7) The purchase, possession or sale of alcoholic liquor by a club licensed pursuant to K.S.A. article 26 of chapter 41.

(b) None of the provisions of this article shall apply:

(1) To flavoring extracts, syrups, or medicinal, mechanical, scientific, culinary or toilet preparations, or food products unfit for beverage purposes, but the provisions of this article shall not be construed to exclude or not apply to alcoholic liquor used in the manufacture, preparation or compounding of such preparations and products;

(2) The wine intended for use and used by any church or religious organization for sacramental purposes;

(3) To the manufacture of denatured alcohol produced in accordance with acts of congress and regulations promulgated thereunder.

(Code 1966, §§ 6-2, 6-24)
State law references: Similar provisions, K.S.A. 41-104, 41-105.

Sec. 5-18. Days, hours when retail sale prohibited.

No person shall sell at retail any alcoholic liquor within the corporate limits of the city:

(1) On the first day of the week, commonly called Sunday;

(2) On Decoration or Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day;

(3) Before 9:00 a.m. or after 10:00 p.m. on any day when sale is permitted.

(Code 1966, § 6-4; Ord. No. 94-9661, § 1, 10-24-94)
State law references: Similar provisions, K.S.A. 41-712.

Sec. 5-19. Mixing drinks on retailer's premises prohibited.

It shall be unlawful for a retailer of alcoholic liquor to permit any person to mix drinks on or in the licensed premises.

(Code 1966, § 6-8)
State law references: Similar provisions, K.S.A. 41-713.

Sec. 5-20. Employment of certain persons by retailers prohibited.

(a) It shall be unlawful for a retailer of alcoholic liquor to employ any person under age of twenty-one (21) years in connection with the operation of such retail establishment.

(b) It shall be unlawful for a retailer of alcoholic liquor to employ any person in connection with the operation of such retail establishment who has been adjudged guilty of a felony.

(Code 1966, §§ 6-9, 6-10)
Cross references: Minors generally, Ch. 21. **State law references:** Similar provisions, K.S.A. 41-713.

Sec. 5-21. Sale of liquor to incapacitated or intoxicated person; penalties.

(a) No person shall knowingly sell, give away, dispose of, exchange or deliver, or permit the sale, gift or procuring of any alcoholic liquor to or for any person who is an incapacitated person, or any person who is physically or mentally incapacitated by the consumption of such liquor.

(b) Violation of this section is a misdemeanor punishable by a fine of not less than one hundred dollars ($100.00) and not exceeding two hundred fifty dollars ($250.00) or imprisonment not exceeding thirty (30) days, or both.

(Code 1966, §§ 6-12--6-16; Ord. No. 94-9641, § 2, 8-1-94)

Sec. 5-22. Sale to be only in original packages.

No person, except a manufacturer, distributor or wholesaler shall fill or refill, in whole or in part, any original package of alcoholic liquor with the same or any other kind or quality of alcoholic liquor; and it shall be unlawful for any person to have in his possession for sale at retail any bottles, cask or other containers containing alcoholic liquor, except in original packages.

(Code 1966, § 6-17)
State law references: Similar provisions, K.S.A. 41-718.

Sec. 5-23. Possession, transportation regulated.

Subject to the limitations hereinafter provided, the possession and transportation of alcoholic liquor for personal use only shall be legal:

(1) *Transporting.* It shall be unlawful for any person to transport in any vehicle upon a public highway, street or alley, within the corporate limits of the city, any alcoholic liquor, except in the original package or container which shall not have been opened and the seal upon which shall not have been broken and from which the original cap or cork shall not have been removed, unless the opened package or container is in the locked rear trunk or rear compartment, or any locked outside compartment which is not accessible to the driver or any other person in said vehicle while it is in motion. Any person violating this section shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not more than two hundred dollars ($200.00), or by imprisonment for not more than six (6) months or by both such fine and imprisonment.

(2) *Possessing.* It shall be unlawful for any person to have in his possession any cask or package of alcoholic liquor without having thereon each mark and stamp required by the Kansas Liquor Control Act, being K.S.A. Chapter 41, Articles 1 through 11; provided, that nothing herein contained shall apply to the possession and transportation of alcoholic liquors by any manufacturer, wholesaler, distributor, retailer, non-beverage user or common carrier operating pursuant to the provisions of the Kansas Liquor Control Act, being K.S.A. Chapter 41, Articles 1 through 11, or to the possession and transportation of wine imported solely for use by any church or religious organization for sacramental purposes and uses.

(Code 1966, § 6-21)
Cross references: Traffic and motor vehicles, Ch. 38. **State law references:** Similar provisions, K.S.A. 41-407, 41-804.

Sec. 5-24. Consumption in public places.

The offense of consuming alcoholic liquor in public places is covered in Charter ordinance no. 14.

(Code 1966, § 6-22)
Cross references: Consumption of cereal malt beverages in public streets, § 5-68; streets, sidewalks and other public places, Ch. 35; Charter ordinance No. 14, App. A. **State law references:** Similar provisions K.S.A. 41-719.

Sec. 5-25. Consumption in the Salina Bicentennial Center, the Salina Community Theatre, the Smoky Hill Museum and Memorial Hall.

It shall be lawful to drink, or consume alcoholic liquor within the confines of the Salina Bicentennial Center, located in Kenwood Park, the Salina Community Theatre, located at 303 East Iron Avenue, the Smoky Hill Museum, located at 211 West Iron Avenue, and the portion of Memorial Hall leased to Community Access Television of Salina, located at 410 W. Ash, at such times and in such places as approved by the rules and regulations adopted for the operation of the Salina Bicentennial Center, the Salina Community Theatre, the Smoky Hill Museum and that portion of Memorial Hall leased to Community Access Television of Salina, respectively.

(Code 1966, § 6-25; Ord. No. 88-9259, § 1, 6-27-88; Ord. No. 95-9706, § 1, 9-25-95; Ord. No. 96-9767, § 1, 11-18-96)

Sec. 5-26. Open saloons prohibited.

It shall be unlawful for any person to own, maintain, operate or conduct either directly or indirectly, an open saloon, within the corporate limits of the city. For the purposes of this section the words "open saloon" means any place, public or private, where alcoholic liquor is sold or offered for sale or kept for sale by the drink or in any quantity of less than two hundred (200) milliliters (6.8 fluid ounces) or sold or offered or kept for sale for consumption on the premises where sold, but does not include any club licensed pursuant to K.S.A. article 26 of chapter 41. Any person violating the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not more than five hundred dollars ($500.00) and by imprisonment for not more than ninety (90) days.

(Code 1966, § 6-23)
State law references: Similar provisions, K.S.A. 41-803.

Secs. 5-27--5-35. Reserved.

DIVISION 2. RETAILER'S LICENSE[3]

Sec. 5-36. State retailer's license required.

No alcoholic liquor shall be sold at retail by any person within the corporate limits of the city unless such persons shall be licensed therefor under the provisions of the Kansas Liquor Control Act, being K.S.A. Chapter 41, Articles 1 through 11.

(Code 1966, § 6-4)

Sec. 5-37. State retailer's license prerequisite to city license.

A holder of a license for the retail sale of alcoholic liquors by the package in the city, issued by the state director of alcoholic beverage control, shall present such license when applying to pay the license tax levied in section 5-38 and the tax shall be received and receipt issued for the period covered by the state license by the city clerk.

(Code 1966, § 6-5)

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[3] **Cross references:** Licenses generally, Ch. 20. **State law references:** Licensing of alcoholic liquor, K.S.A.

Sec. 5-38. Retailer's license tax levied.

There is hereby levied an annual occupation or license tax on each retailer of alcoholic liquor (including beer containing more than three and two-tenths (3.2) percent of alcohol by weight) for consumption off the premises (sales in the original package only) in the sum of three hundred dollars ($300.00) in the city, who has a retailer's license issued by the state director of alcoholic beverage control, which tax shall be paid before business is begun under an original state license and within ten (10) days after any renewal of a state license.

(Code 1966, § 6-3)
State law references: Authority to levy retailer's license tax, K.S.A. 41-310.

Sec. 5-39. Penalty for failure to have city retailer's license.

Any person having a state license to retail alcoholic liquor by the package who shall fail to pay the license tax levied by section 5-38 and within the time prescribed shall, upon conviction thereof, be fined not more than one hundred dollars ($100.00) for each day's violation; provided, that nothing herein shall be construed to prohibit the city from collecting the occupation tax by any procedure authorized by law.

(Code 1966, § 6-6)

Secs. 5-40--5-50. Reserved.

DIVISION 3. DISTRIBUTOR'S LICENSE[4]

Sec. 5-51. State distributor's license prerequisite to city license.

The holder of a license as an alcoholic liquor distributor issued by the state director of alcoholic beverage control shall present such license when applying to pay the license tax levied in section 5-52 and the tax shall be received and a receipt issued for the period covered by the state license.

(Code 1966, § 6-19)

Sec. 5-52. Distributor's license tax levied.

There is hereby levied an annual occupation or license tax on each alcoholic liquor distributor in the amount of one thousand two hundred fifty dollars ($1,250.00), with premises situated within the corporate limits of the city, which distributor has a distributor's license issued by the state director of alcoholic beverage control, and the tax shall be paid within ten (10) days after the issuance of any license unto any such distributor, or any renewal of a license issued unto such distributor by the state director of alcoholic beverage control.

(Code 1966, § 6-18)

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[4] **Cross references:** Licenses generally, Ch. 20. **State law references:** Licensing of alcoholic liquor, K.S.A. 41-301 et seq.

Sec. 5-53. Penalty for violations by distributors.

Any firm, copartnership, association or corporation having a state license as an alcoholic liquor distributor which shall fail to pay a license tax herein levied and within the time prescribed hereunder, or who shall violate any other provision of this article shall, upon conviction thereof, be fined not more than one hundred dollars ($100.00) for each day's violation; provided, that nothing herein shall be construed to prohibit the city from collecting the license tax by any procedure authorized by law.

(Code 1966, § 6-20)

Secs. 5-54--5-65. Reserved.

ARTICLE III. CEREAL MALT BEVERAGES[5]

DIVISION 1. GENERALLY

Sec. 5-66. Definitions.

As used in this article, the words and phrases herein defined shall have the following meanings unless the context otherwise requires:

(1) *Cereal malt beverages* means any fermented but undistilled liquor brewed or made from malt or from a mixture of malt/or malt substitute, but does not include any such liquor which is more than three and two-tenths (3.2) percent alcohol by weight.

(2) *Licensee* is a person who has a license as herein required.

(3) *Place of business* shall mean any place at which cereal malt beverages are sold.

(4) *Retailer* means any person who sells or offers for sale any cereal malt beverage for use or consumption and not for resale in any form.

(5) *Wholesaler* or *Distributor* shall mean individuals, firms, copartnerships, corporations and associations which well or offer for sale any beverage referred to in this article, to persons, copartnerships, corporations and associations authorized by this article to sell cereal malt beverages at retail.

(6) *Legal age* for consumption of cereal malt beverage shall be nineteen (19) for any person born before July 1, 1966 and twenty-one (21) for any person born after July 1, 1966.

(Code 1966, § 6-35; Ord. No. 85-9087, § 1, 8-12-85)
Cross references: Definitions and rules of construction generally, § 1-2. **State law references:** Similar definitions, K.S.A. 41-2701.

Sec. 5-67. Hours, days, sales and consumption prohibited.

No cereal malt beverages may be sold, or may be consumed in any licensed premises open to the public, between the hours of 12:00 midnight and 6:00 a.m. or on Sunday.

(Code 1966, § 6-48; Ord. No. 94-9661, § 2, 10-24-94)
State law references: Similar provisions, K.S.A. 41-2704.

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[5] **Cross references:** Cereal malt beverage licenses, App. A, Charter ord. no. 10. **State law references:** Cereal malt beverages, K.S.A. 41-2701 et seq.

Sec. 5-68. Consuming in public streets.

Within the corporate limits of the city, it shall be unlawful to drink or consume cereal malt beverages upon the public streets, alleys, roadways or highways, or inside any vehicle while upon the public streets, alleys, roads or highways.

(Code 1966, § 6-49)
Cross references: Consumption of alcoholic liquor in public places, § 5-24; streets, sidewalks and other public places, Ch. 35.

Sec. 5-69. Place of business to be open to public and police.

A place of business in which cereal malt beverages are sold shall be open to the public and to the police at all times during business hours; provided that a premises licensed as a club under a license issued by the state director of alcoholic beverage control need only be open to the police.

(Code 1966, § 6-51)
State law references: Similar provisions, K.S.A. 41-2704.

Sec. 5-70. Possessing alcoholic liquor in premises.

No person shall have any alcoholic liquor in his possession while in a place of business where cereal malt beverages are sold unless the premises are currently licensed as a club.

(Code 1966, § 6-52)
State law references: Similar provisions, K.S.A. 41-2704.

Sec. 5-71. Furnishing to persons under legal age.

No person shall, knowingly or unknowingly, sell, give away, dispose of, exchange and/or deliver, or permit the sale, giving away, or procuring of any cereal malt beverage for or to any person under the legal age for consumption of cereal malt beverages.

(Code 1966, § 6-53; Ord. No. 85-9087, § 2, 8-12-85; Ord. No. 85-9098, § 1, 9-23-85)
Cross references: Minors generally, Ch. 21. **State law references:** Similar provisions, K.S.A. 41-2074.

Sec. 5-72. Misrepresenting age.

No person under the legal age for consumption of cereal malt beverage shall represent that he or she is of said age for the purpose of asking for, purchasing or obtaining by any means any cereal malt beverage from any person.

(Code 1966, § 6-54; Ord. No. 85-9087, § 3, 8-12-85)
Cross references: Minors generally, Ch. 21. **State law references:** Similar provisions, K.S.A. 41-2704.

Sec. 5-72.1. Reserved.

Editor's note: Ord. No. 94-9641, § 3, adopted Aug. 1, 1994, repealed § 5-72.1, pertaining to possession of a cereal malt beverage by a person under legal age for consumption as derived from Ord. No. 85-9098, § 2, adopted Sept. 23, 1985.

Sec. 5-73. Loitering by persons under legal age.

No person under the legal age for consumption of cereal malt beverage shall enter into or loiter about any place of business selling cereal malt beverages; such restrictions shall not apply to the premises of a retailer who sells cereal malt beverages for consumption off his premises only, or to places where the

major income is from the sale of food for consumption on the premises, or a premise for which a bowling alley license has been issued by the city for the current year, or the Salina Bicentennial Center.

(Code 1966, § 6-53; Ord. No. 85-9087, § 4, 8-12-85)
Cross references: Minors generally, Ch. 21.

Sec. 5-74. Committing act that is grounds for revocation prohibited.

It is hereby made unlawful for any person to commit any act which is made a cause for the revocation of any license under this article.

(Code 1966, § 6-57)

Sec. 5-75. Intoxication and disorderly conduct.

No licensee shall sell or use or give away or permit the sale or use or giving away within or upon such licensed premises by any person, of any intoxicating liquor of any kind, nor shall such licensee permit any intoxicated person to be or remain upon any such licensed premises, or permit any disorderly conduct in such premises, at any time, and the presence of any intoxicated person in or upon any such licensed premises, or the existence of any disorderly conduct by any persons in or upon the premises, at any time, shall be deemed to be conclusive evidence that such intoxicated person is there, or that such disorderly conduct exists, with the permission of such licensee.

(Code 1966, § 6-63)

Sec. 5-76. Licensee responsible for acts of employees.

Every person to whom any license is issued under this article shall be responsible for the acts and conduct of all persons engaged in managing, conducting or carrying on such licensed business and for the acts and conduct of all employees engaged in carrying on such business and the violation by any such persons shall be deemed the act of the licensee for all of the purposes of this article.

(Code 1966, § 6-65)

Sec. 5-77. General cleanliness and sanitation.

Every place of business licensed under this article and all equipment used in connection with the sale of cereal malt beverages and all persons employed in such places of business shall be kept in a clean and sanitary condition and no person shall be employed in or about such business place who is not in good health or who is afflicted with or suffering from any infectious or contagious disease.

(Code 1966, § 6-66)

Sec. 5-78. Inspection of premises.

All premises where any business is conducted under any license issued pursuant to this article shall be open for inspection by police officers of the city at all times, and every person to whom any such license is issued and every employee of such person shall disclose to any officer of the city, upon demand, all information relating to the source of supply of the beverage sold by him or in his possession, when and from whom the same was purchased and any other information pertaining to the same which may be required by any such officer.

(Code 1966, § 6-62)

Sec. 5-79. Samples for analysis.

Every licensee shall, upon demand of any police officer or any other officer of the city, furnish to any such officer without compensation at least two (2) samples of each and every kind of character of beverage which is in the possession of any such licensee in any such place of business for the purpose of examining and testing the same.

(Code 1966, § 6-60)

Sec. 5-80. Wholesalers, distributors to be licensed by state.

It shall be unlawful for any wholesaler or distributor, his or its agents or employees, to sell or deliver cereal malt beverages within this city to persons authorized under this article to sell the same within the city unless such wholesaler or distributor has first secured a license from the director of revenue of the state authorizing such sales.

(Code 1966, § 6-68)

Sec. 5-81. Restrictions as to brewers, manufacturers, distributors, agents and wholesalers.

(a) It shall be unlawful for any brewer or brewers to sell, deliver or distribute cereal malt beverages or malt products in the state except to a licensed wholesaler of such.

(b) (1) Except as provided in paragraph (2) of this subsection (b), no manufacturer, distributor, agent or wholesaler shall:

a. Directly or indirectly sell, supply, furnish, give, pay for, loan or lease any furnishings, fixture or equipment on the premises of a place of business of a retailer;

b. Directly or indirectly pay for any retailer's license or advance, furnish, lend or give money for payment of such license;

c. Purchase or become the owner of any note, mortgage or other evidence of indebtedness of a retailer or any form of security therefor;

d. Directly or indirectly be interested in the ownership, conduct or operation of the business of any retailers; or

e. Be directly or indirectly interested in or owner, part owner, lessee or lessor of any premises upon which cereal malt beverages are sold at retail.

(2) A distributor, agent or wholesaler may sell tapping and dispensing equipment, as defined by rules and regulations adopted by the secretary of revenue, at not less than the cost paid for such equipment by the distributor, agent or wholesaler. The terms of any such sale shall comply with the provisions of K.S.A. 41-2706. Such sales shall not be subject to any repurchase agreement.

(c) No manufacturer, distributor or wholesaler shall, directly or indirectly or through a subsidiary or affiliate, or by any officer, director or firm of such manufacturer, distributor or wholesaler, furnish, give, lend or rent any interior decorations other than signs, costing in the aggregate more than one hundred dollars ($100.00) in any one (1) calendar year for use in or about or in connection with any one (1) establishment on which products of the manufacturer, distributor or wholesaler are sold.

(d) No person engaged in the business of manufacturing, distributing or wholesaling cereal malt beverages shall, directly or indirectly, pay for or advance, furnish or lend money for the payment of any license for another.

(e) Any licensee who shall permit or assent, or be a party in any way to any violation or infringement of the provisions of this section, shall be deemed guilty of a violation of this act, and any money loaned contrary to a provision of this article shall not be recovered back, or any note, mortgage or other evidence of indebtedness, or security, or any lease or contract obtained or made contrary to this article shall be unenforceable and void.

(f) No wholesaler or distributor shall sell any cereal malt beverage to any person who has not secured a license as provided for in this article and no wholesaler or distributor shall sell any cereal malt beverage to any retailer located outside the geographic area designated in the wholesaler's or distributor's application for a license pursuant to K.S.A. 79-3837, and any amendments thereto, except that if any wholesaler or distributor shall refuse to sell any cereal malt beverage or provide service in connection therewith to any retailer located within such wholesaler's or distributor's geographic territory, it shall be lawful for any other wholesaler or distributor to sell any such cereal malt beverage to such retailer.

(g) (1) Except as provided in paragraph (2) of this subsection (g), no brewer or breweries shall directly or indirectly or through a subsidiary or affiliate, or by any officer, director or firm of such brewer or breweries:

a. Furnish, give or lend money for the payment of any license for any wholesaler for the payment of any license for any wholesaler in the state;

b. Have or own any financial interest directly or indirectly in the ownership, conduct or operation of the business of any wholesaler in the state;

c. Be directly or indirectly interested in or owner, part owner, lessee or lessor of any premises upon which cereal malt beverages are sold at wholesale; or

d. Engage in the wholesale distribution of cereal malt beverages or malt products in the state.

(2) Nothing herein shall be construed to prohibit brewers from making sale and deliveries of cereal malt beverages or malt products to licensed wholesalers in the state or to a branch, subsidiary or affiliate located in the state, from which, on or before January 14, 1947, it had been dispensing at wholesale cereal malt beverage or malt products and for which it holds, directly or indirectly, a license and pays a license tax as provided for in K.S.A. 79-3837 and any amendments thereto.

(h) Nothing contained in this section shall make it unlawful for any person to be a member of a club licensed as such by the director of alcoholic beverage control nor shall membership in such a club by any person constitute a disqualification of any person for any license under this article.

(Code 1966, § 6-67)
State law references: Similar provisions, K.S.A. 41-2705.

Secs. 5-82--5-90. Reserved.

DIVISION 2. RETAILER'S LICENSE[6]

Sec. 5-91. Required.

No person shall sell any cereal malt beverage at retail without first having secured a license for each place of business which such person desires to operate within the corporate limits of the city, as herein provided and a person having only a license to sell at retail cereal malt beverages as a retailer for consumption off the premises as designated in this article shall not sell any such beverage in any other manner, and a person having only a license to sell cereal malt beverages as a general retailer shall not sell any such beverage in any other manner than that covered by such license; provided, that a general retailer may also secure a license as a retailer for consumption off the premises on complying with the requirements of this article and securing an additional license as a retailer for consumption off the premises.

(Code 1966, § 6-36)

Sec. 5-92. Application.

(a) Any person desiring a retail license shall make application to the board of commissioners and accompany the application with the required license fee for each place of business for which the person desires the license. The application shall be verified, and upon a form prepared by the attorney general of the state and shall contain such information as the board of commissioners may require which shall include the following:

(1) The name and residence of the applicant and how long he has resided within the state;

(2) The particular place for which a license is desired;

(3) The name of the owner of the premises upon which the place of business is located;

(4) A statement that the applicant is a citizen of the United States and not less than twenty-one (21) years of age and that he has not within two (2) years immediately preceding the date of making application been convicted of a felony or any crime involving moral turpitude, drunkenness, driving a motor vehicle while under the influence of intoxicating liquor or the violation of any other intoxicating liquor law of any state or of the United States.

(b) Each application, in case the applicant is a corporation, shall be accompanied by affidavits executed by each officer, director and stockholder owning in the aggregate more than twenty-five (25) percent of the corporation's stock, and of the manager of such business, containing the same information as hereinabove required of an individual applicant, and in case the applicant is a partnership, firm or association, the application shall be accompanied by affidavits duly executed by each member of such firm, copartnership or association, and of the manager of such business, containing the same information.

(Code 1966, § 6-39)
State law references: Similar provisions, K.S.A. 41-2702.

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[6] ***Cross references:** Licenses generally, Ch. 20. **State law references:** Retailers' licenses, K.S.A. 41-2702.

Sec. 5-93. Fees.

(a) License fees under this division shall be prescribed in section 2-2.

(b) The full amount of the retail license fee shall be required regardless of the time of the year in which the application for a license hereunder is made and the licensee shall only be authorized to operate under the license for the remainder of the calendar year in which the license is issued.

(Code 1966, §§ 6-37, 6-38)
Cross references: Authority to establish license fees, App. A, Charter ord. no. 10. **State law references:** Authority for license fees, K.S.A. 41-2702.

Sec. 5-94. Persons not entitled to retail license.

No retail license required by this division shall be issued to:

(1) *Residency.* A person who is not a resident of the county and who has not been a resident in good faith of the State of Kansas for at least one (1) year prior to the application and a resident of the county for at least six (6) months prior to the application.

(2) *Good character and reputation.* A person who is not of good character and reputation in the community in which he resides;

(3) *Citizenship.* A person who is not a citizen of the United States;

(4) *Criminal record.* A person who within two (2) years immediately preceding the date of making application has been convicted of a felony, any crime involving moral turpitude, drunkenness, driving a motor vehicle while under the influence of intoxicating liquor, or violation of any other intoxicating liquor law of any state or of the United States;

(5) *Partnership.* A partnership, unless one of the partners is a resident of the county, and unless all the members of such partnership shall otherwise be qualified to obtain a license;

(6) *Corporation.* A corporation, if any manager, officer or director thereof or any stockholder owning in the aggregate more than twenty-five (25) percent of the stock of such corporation, would be ineligible to receive a license hereunder for any reason other than citizenship and residency requirements;

(7) *Manager or agent.* A person whose place of business is conducted by a manager or agent unless the manager or agent possesses the same qualifications required by the licensee.

(Code 1966, § 6-42)
State law references: Similar provisions, K.S.A. 41-2703.

Sec. 5-95. Prohibited in prohibited zone.

No retail license shall be issued for a place of business located or to be located in a zone where such place of business is prohibited under the zoning ordinance.

(Code 1966, § 6-43)

Sec. 5-96. Examination; investigation; issuance.

If the application for a retail license is in the proper form and is accompanied by cash in the amount of the license fee, the approval of the zoning official, the health department and the chief of police, the city clerk shall approve the license and issue a retail license to the applicant. After approving the application the city clerk shall advise the board of commissioners of the action taken on the application.

(Code 1966, §§ 6-40, 6-41; Ord. No. 83-8981, § 1, 11-14-83)
State law references: Similar provisions, K.S.A. 41-2703.

Sec. 5-97. Journal to show action on retail license application.

The journal of the board of commissioners shall show the action taken on an application for a retail license hereunder.

(Code 1966, § 6-44)

Sec. 5-98. Application constitutes acceptance of regulations.

Every person shall by his application for a license under this division and by the acceptance thereof when issued, be deemed to have specifically agreed to abide by and to be bound by all of the rules, regulations and provisions set forth in this article and by all other ordinances relating to and regulating any such business and the manner of sale of any such beverages.

(Code 1966, § 6-64)

Sec. 5-99. Transferability.

(a) The retail license required by this division shall not be transferable under any circumstances from one person to another or from or to any firm, copartnership, corporation or association.

(b) The retail license required by this division shall apply only to the premises described in the application and in the license issued thereon, and only one location shall be so described in each license. After such retail license has been granted for a particular premises, the license may not be transferred by the same licensee from one location to another until the city clerk shall upon being authorized by the board of commissioners endorse upon the license permission to transfer the same to another location, but in order to obtain such permission the retail licensee shall file an application for retail license, which shall be subject to examination and investigation the same as if it were a new application and a statement under oath which shall show that the premises to which removal is to be made comply in all respects with the requirements of this act. No such removal shall be made by any licensee until his license has been endorsed to that effect by the city clerk.

(c) A retail license to sell cereal malt beverages shall be purely a personal privilege, expiring on the thirty-first day of December in the year issued, unless sooner suspended or revoked, as in this act provided, and shall not constitute property, nor shall it be subject to attachment, garnishment, or execution, nor shall it be alienable or transferable, voluntarily or involuntarily, except as stated in subsections (a) and (b) above, or subject to being encumbered or hypothecated. Such license shall not descend by the laws of testate or interstate succession, but it shall cease or expire upon the death of the licensee.

(d) Whenever an application is made for a retail license to be issued to a particular premise upon which there is a current valid license, the current retail license shall be delivered to the city clerk and the city clerk shall cancel the same upon the records of the city as of the date of issuance of the new license.

(Code 1966, § 6-45)

Sec. 5-100. Posting.

The retail license required by this division shall be kept posted in a conspicuous place in the place of business.

(Code 1966, § 6-46)

Sec. 5-101. Contents of retail license.

The license shall state the name of the licensee, the location of the place of business for which the license is issued and the calendar year for which it is issued, and that it is subject to revocation in the manner provided by law and by this division.

(Code 1966, § 6-47)

Sec. 5-102. Revocation; notice; grounds.

The board of commissioners, upon five (5) days' notice to persons holding any such license, shall revoke such licenses for any one of the following reasons:

(1) If a licensee has fraudulently obtained the license by giving false information in the application therefor;

(2) If the licensee has violated any of the provisions of K.S.A. Chapter 41, Article 27, or of this article or any other ordinance of the city prescribing rules or regulations relating to cereal malt beverages as herein defined;

(3) If the licensee has become ineligible to obtain a license;

(4) Drunkenness of the person holding such license or permitting an intoxicated person to remain in such place;

(5) The sale of cereal malt beverages to persons under the legal age for consumption of cereal malt beverages.

(6) The nonpayment of any license fees;

(7) For permitting any gambling in or upon such premises;

(8) For permitting any person to mix drinks with materials purchased in such place of business or brought in for this purpose, provided that this provision shall not apply if such place of business or premises are also currently licensed as a club;

(9) For the employment of any person below the legal age for consumption of cereal malt beverages, except that a person eighteen (18) years or older may be employed in a capacity in which said employee may dispense and sell cereal malt beverages if:

a. The place of business is licensed only to sell cereal malt beverages in original and unopened containers and not for consumption on the premises; or

b. The place of business is a licensed food service establishment, as defined by Kansas Statutes Annotated 36-501 and amendments thereto, and not less than fifty (50) percent of the gross receipts from the licensee's place of business is derived from the sale of food for consumption on the premises.

(10) For the employment of persons who have been adjudged guilty of felony or of any violation of the intoxicating liquor law;

(11) For purchasing or displaying a federal retail liquor tax stamp, expiring after June 30, 1937, issued by the United States Treasury Department, except where issued for industrial, mechanical, scientific and medicinal purposes;

(12) If any licensee whose principal business is the sale of cereal malt beverage or "tap beer" shall permit persons under the legal age for consuming cereal malt beverage to loiter in his place of business;

(13) For the licensee to fail to display in a prominent place at or near the entrances to his place of business signs stating that no person under the legal age for consumption of cereal malt beverage shall be permitted on the premises.

(14) For the sale or possession of or for permitting any person to use or consume upon or in the premises alcoholic liquor as defined by the laws of the state relating thereto, provided that this provision shall not apply if such place of business or premises are also currently licensed as a club.

(Code 1966, § 6-56; Ord. No. 85-9087, § 5, 8-12-85)

State law references: Similar provisions, K.S.A. 41-2708.

Sec. 5-103. Appeal from revocation.

Within twenty (20) days after the order of the board of commissioners revoking or suspending any license, the licensee may appeal to the district court of the county, and the district court shall proceed to hear such appeal as though such court had original jurisdiction of the matter. Any appeal taken from an order revoking or suspending any such license shall not suspend the order of revocation or suspension during the pendency of the appeal.

(Code 1966, § 6-58)
State law references: Similar provisions, K.S.A. 41-2708.

Sec. 5-104. Relicensing after revocation.

In case of the revocation of the license of any licensee, no new license shall be issued to such person or person acting for or on his behalf, for a period of six (6) months thereafter, unless the order of revocation shall be set aside by the district court of the county on appeal.

(Code 1966, § 6-59)
State law references: Similar provisions, K.S.A. 41-2708.

Secs. 5-105--5-115. Reserved.

ARTICLE IV. PRIVATE CLUBS AND DRINKING ESTABLISHMENTS[7]

DIVISION 1. GENERALLY

Sec. 5-116. Definitions.

The following words and phrases, when used in this article, shall have the meanings respectively ascribed to them:

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[7] ***State law references:** Licensing and regulation of clubs, K.S.A. 41-2601 et seq.

(1) *Alcoholic liquor* means alcohol, spirits, wine, beer, and every liquid or solid, patented or not, containing alcohol, spirits, wine or beer, and capable of being consumed as a beverage by a human being, but shall not include any beer or cereal malt beverage containing not more than three and two-tenths (3.2) percent of alcohol by weight.

(2) *Beneficial interest* shall not include any interest a person may have as owner, operator, lessee or franchise holder of a licensed hotel or motel on which the club premises are located.

(3) *Club* means an organization licensed under this article to which the club members shall be permitted to resort for the purpose of consuming alcoholic liquor.

(4) *Food* means any raw, cooked or processed edible substance or ingredient, other than alcoholic liquor or cereal malt beverage, used or intended for use or for sale, in whole or in part, for human consumption.

(5) *Minor* means any person under twenty-one (21) years of age.

(6) *Original package* means any bottle, flask, jug, can, cask, barrel, keg, hogshead or other receptacle or container whatsoever used, corked or capped, sealed and labeled by the manufacturer of alcoholic liquor, to contain and to convey any alcoholic liquor.

(7) *Restaurant* means a licensed food service establishment, as defined by K.S.A. 36-501 and amendments thereto, which, as determined by the director, derives not less than fifty (50) percent of its gross receipts in each calendar year from the sale of food for consumption on the club premises.

(8) *Sale* means any transfer, exchange or barter in any manner or by any means whatsoever for a consideration, and includes and means all sales made by any person, whether principal, proprietor, agent, servant or employee.

(9) *To sell* includes to solicit or receive an order for, to keep or expose for sale and to keep with intent to sell.

Cross references: Definitions and rules of construction generally, § 1-2. **State law references:** Similar definitions, K.S.A. 41-2601.

Sec. 5-117. Class "A" club.

A class "A" club shall be a premises owned or leased and operated by a corporation, partnership, business trust, or association for the exclusive use of the corporate stockholders, partners, trust beneficiaries or associates (hereinafter referred to as members), their families and invited and accompanied guests, and which is not operated for a profit other than such as would accrue to the entire membership. A corporation, partnership, business, trust, or association not operated for a profit, for the purposes of the definition of a class "A" club shall only include such a corporation, partnership, business trust, or association which has been determined by the state director of alcoholic beverage control to be a bona fide nonprofit social, fraternal or war veterans club.

State law references: Similar provisions, K.S.A. 41-2601.

Sec. 5-118. Class "B" club.

A class "B" club shall consist of a premises operated for profit by a corporation, partnership or individual, known as the management, to which premises the management allows persons, known as members, to resort for the consumption of food or alcoholic beverages and for entertainment. As a

prerequisite for attaining membership the management must screen the applicants for good moral character. No membership may be granted within ten (10) days of the application therefor. Each membership must be renewable annually upon payment of the annual dues of at least ten dollars ($10.00); provided, however, any class "B" club located on the premises of a hotel as defined in K.S.A. 36-501 may establish rules whereby guests registered at the hotel, who are not residents of the county in which the club is located, may file application for temporary membership in the club, which membership, if granted, shall only be valid for the period of time they are a bona fide registered guest at the hotel. Such temporary membership shall not be subject to the waiting period or dues requirement contained in this section.

State law references: Similar provisions, K.S.A. 41-2601.

Sec. 5-119. Consumption of alcoholic liquor authorized.

(a) The consumption of alcoholic liquor by any person twenty-one (21) years of age or over shall be authorized in this city:

(1) Upon private property by those occupying such private property as an owner or as the lessee of an owner and by the guests of the owner or lessee provided that no charge is made by the owner or lessee for the serving or mixing of any drink or drinks of alcoholic liquor or for any substance comixed with any alcoholic liquor; and if no sale of alcoholic liquor in violation of K.S.A. 41-803 takes place on such private property;

(2) At a club licensed by the state alcoholic beverage control board;

(3) In a lodging room of any hotel, motel or boarding house by the occupant of the lodging room or the occupant's guests provided the occupant is not engaged in a sale of liquor in violation of K.S.A. 41-803; and if the occupant makes no charge for serving or mixing any drink or drinks of alcoholic liquor, or for any substance comixed with any alcoholic liquor;

(4) In a private dining room of a hotel, motel or restaurant when the dining room is rented or made available on a special occasion to an individual or organization for a private party and if no sale or alcoholic liquor in violation of K.S.A. 41-803 takes place at the private party.

(b) The consumption of alcoholic liquor at any place other than that provided in this section shall be deemed to be the consumption of alcoholic liquor in a place in which the general public has access.

State law references: Similar provisions, K.S.A. 41-2602, 41-2603.

Sec. 5-120. Responsibility for violations on property; abatement.

(a) Any person allowing consumption of alcoholic liquor in violation of this article on any property owned, leased or otherwise under his control shall, upon conviction, be deemed guilty of a misdemeanor.

(b) The property on which the violation takes place is declared to be a common nuisance and as such is subject to abatement as provided for any other liquor nuisance in K.S.A. 41-805.

State law references: Similar provisions, K.S.A. 41-2604.

Sec. 5-121. Regulations governing licensee.

It shall be unlawful for a club licensee:

(1) To employ any person under the age of twenty-one (21) years in connection with the dispensing or serving of alcoholic liquor or the mixing of drinks containing alcoholic liquor;

(2) To employ knowingly or continue in employment any person in connection with the dispensing or serving of alcoholic liquor or the mixing of drinks containing alcoholic liquor who has been adjudged guilty of a felony or of any crime involving a morals charge in this or any other state, or of the United States. For the purposes of this subsection, the term "morals charge" shall include those charges involving prostitution, procuring any person, soliciting of a child under eighteen (18) for any immoral act involving sex, possession or sale of narcotics, marijuana, amphetamines or barbiturates, rape, incest, gambling, illegal cohabitation, adultery, bigamy, or crimes against nature;

(3) To employ knowingly or to continue in employment any person in connection with the dispensing or serving of alcoholic liquor or the mixing of drinks containing alcoholic liquor who has been adjudged guilty of a violation of any intoxicating liquor law of this or any other state, or of the United States, during the two (2) year period immediately following such adjudging;

(4) To fail to maintain at the licensed premises a current list of all club members and their residence addresses;

(5) To refuse to allow the city attorney or any authorized agents or any police or peace officer to inspect the current list of the members of the club;

(6) To purchase alcoholic liquor from any person except from a person holding a valid license to sell alcoholic liquor at retail.

State law references: Similar provisions, K.S.A. 41-2610.

Sec. 5-122. Right of inspection by city.

The right of immediate entry and inspection at any time on any premises licensed as a club under this article or of any premises subject to the control of any club licensed under this article by any duly authorized officer or agent of the city or by any peace officer shall be a condition on which every club license shall be issued and the application for and acceptance of any club license hereunder shall conclusively be deemed to be the consent of the applicant and licensee to such immediate entry and inspection. Upon the refusal of any club licensee to permit immediately entry and inspection, the city attorney shall immediately report such refusal to the state director of alcoholic beverage control.

State law references: Similar provisions, K.S.A. 41-2613.

Sec. 5-123. Hours of operation.

(a) No club or drinking establishment shall allow the serving, mixing or consumption of alcoholic liquor on its premises between the hours of 2:00 a.m. and 9:00 a.m. on any day.

(b) No caterer shall allow the serving, mixing or consumption of alcoholic liquor between the hours of 2:00 a.m. and 6:00 a.m. on any day at an event catered by such caterer.

(Ord. No. 91-9476, § 1, 11-18-91)
State law references: Similar provisions, K.S.A. 41-2614.

Sec. 5-124. Consumption by minors prohibited.

No club shall knowingly or unknowingly permit the consumption of alcoholic liquor or cereal malt beverages on his premises by a minor and no minor shall consume or attempt to consume any alcoholic liquor or cereal malt beverage while in or upon the premises of a club licensed hereunder or as prohibited by K.S.A. 41-715 and any amendment thereto. The owner of any club, any officer or any employee thereof, who shall permit the consumption of alcoholic liquor or cereal malt beverages on the premises of the club by a minor shall be deemed guilty of a misdemeanor.

Cross references: Minors generally, Ch. 21. **State law references:** Similar provisions, K.S.A. 41-2615.

Sec. 5-125. Search of nonlicensed clubs.

The existence of any establishment, room or place purporting to be a club or being held out to the public or any person by the proprietors of the establishment, room or place or their agents or employees to be a club unless a club license has been issued by the city for such establishment, room or place shall be deemed to be sufficient probable cause for any judge of the district court to issue a search warrant to any peace officer for the purpose of searching the establishment, room or place for alcoholic liquor being sold, possessed or consumed in violation of this article, any other law of the state, or any ordinance of the city.

State law references: Similar provisions, K.S.A. 41-2619.

Secs. 5-126--5-135. Reserved.

DIVISION 2. LICENSE[8]

Sec. 5-136. License required.

It shall be unlawful for any individual, firm, copartnership, corporation or association, either as principal, officer, agent, servant or employee, to conduct, pursue, carry on and operate in the city a club without having first paid to the city clerk the license fee hereinafter provided and having procured a license from the city.

(Code 1966, § 6-79; Ord. No. 88-9277, § 1, 8-22-88)
State law references: Club license required, K.S.A. 41-2620.

Sec. 5-137. Application.

Any person desiring a license under this division shall make application to the city clerk and accompany the application with the required license fee for each place of business for which the person desires the license. The application shall be on such form and contain such information as required by the city.

Sec. 5-138. Applicant to have state license.

A holder of a license for a club in the city issued by the state director of alcoholic beverage control shall present such license when applying to pay the license tax levied in section 5-139 and the tax shall be received and receipt issued for the period covered by the state license by the city clerk.

(Code 1966, § 6-81; Ord. No. 88-9277, § 2, 8-22-88)

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[8] **Cross references:** Licenses generally, Ch. 20.

Sec. 5-139. License tax levied.

There is hereby levied an annual occupation or license tax on each operator of a club in the amount of two hundred fifty dollars ($250.00), who has a club license issued by the state director of alcoholic beverage control, which tax shall be paid before business is begun under an original state license and within ten (10) days after any renewal of the state license.

(Code 1966, § 6-80; Ord. No. 88-9277, § 3, 8-22-88)
State law references: Authority for levy of license fee, K.S.A. 41-2622.

Sec. 5-140. Restrictions barring issuance.

No club license shall be issued under the provisions of this division to:

(1) *Citizenship.* A person who has not been a citizen of the United States for at least ten (10) years;

(2) *Felon.* A person who has been convicted of or has pleaded guilty to a felony under the laws of this state or any other state or of the United States;

(3) *Keeper of house of ill fame.* A person who has been convicted of or has pleaded guilty to being the keeper or is keeping a house of ill fame or shall have forfeited bond to appear in court to answer charges for any such violation;

(4) *Proprietor of gambling house or other misdemeanor opposed to decency and morality.* A person who has been convicted of or has pleaded guilty to being a proprietor of a gambling house or of pandering or other crimes or misdemeanors opposed to decency and morality or shall have forfeited bond to appear in court to answer charges for any such violation;

(5) *Minor.* A person who is not at least twenty-one (21) years of age;

(6) *Enforcement official.* A person who appoints or is a law enforcement official or who is an employee of the director of the state alcoholic beverage control board or the alcoholic beverage control board; except that the provisions of this subsection shall not apply to or prohibit the issuance of any license to any class "A" club officer of a post home of a congressionally chartered service or fraternal organization, or a benevolent association or society thereof;

(7) *Agent.* A person who intends to carry on the business authorized by the license as agent of another;

(8) *Renewal.* A person who at the time of application for renewal of any license issued hereunder would not be eligible for such license upon a first application;

(9) *Nonownership of premises.* A person who does not own the premises for which a license is sought or does not have a written lease thereon for at least three-fourths of the period for which the license is to be issued;

(10) *Spouse.* Any person if the spouse of such person would be ineligible to receive such a license hereunder for any reason other than citizenship and residence requirements or age;

(11) *County residency.* A person who is not a resident of the county;

(12) *State residency.* A person who has not been a resident of the county for at least one year immediately preceding the date of application or a person who has not been a resident of the state for a total of at least five (5) years preceding the date of application;

(13) *Beneficial interest in manufacture, preparation or sale.* A person who has a beneficial interest in the manufacture, preparation or wholesaling or the retail sale of alcoholic liquor or a beneficial interest in any other club licensed under this division, except that:

a. A license for premises located in a hotel, as defined in K.S.A. 36-501, may be granted to a person who has a beneficial interest in another club or clubs licensed hereunder if the other club or clubs are located in a hotel as defined herein.

b. A license for a club located in a licensed food service establishment, as defined in K.S.A. 36-501, may be issued to a person who has a beneficial interest in other clubs located in licensed food service establishments, if not less than fifty (50) percent of the gross receipts on each such club and food service establishment are derived from the sale of food and consumption on the premises of such club and food service establishment.

(14) *Eligibility of copartners.* A copartnership unless all of the copartners are entitled to obtain a license;

(15) *Eligibility of officers, managers, directors and stockholders.* A corporation, if any officer, manager or director thereof, or any stockholder owning in the aggregate more than five (5) percent of the common or preferred stock of such corporation would be ineligible to receive a club license hereunder for any reason other than citizenship and resident requirements;

(16) *Foreign corporation.* A corporation organized under the laws of any state other than this state;

(17) Any person who has had a license revoked for cause under this article or state law.

State law references: Similar provisions, K.S.A. 41-2623.

Sec. 5-141. Reserved.

Sec. 5-142. Application to one premises.

The license provided in this division shall be issued for one (1) particular premises which shall be stated in the application and in the license.

State law references: Similar provisions, K.S.A. 41-2627.

Sec. 5-143. Transferability.

A club or drinking establishment license issued under this chapter shall be transferable only if the following conditions are met:

(1) *Ownership.* The ownership must not have transferred from one (1) person to another or to any firm, partnership or corporation, containing members not included in the membership of the original applicant; and

(2) *Name.* The name of the business must remain the same, with no additions or deletions; and

(3) *Location.* The new location meets current zoning requirements.

If one (1) or more of the conditions are not met, the applicant must apply for a new license and pay the applicable fee.

(Code 1966, § 6-84; Ord. No. 94-9640, § 1, 7-18-94)

Sec. 5-144. Posting.

A license issued under this division shall be kept posted in a conspicuous place in the place of business.

(Code 1966, § 6-85)
State law references: State license to be framed and hung, K.S.A. 41-2612.

Sec. 5-145. Contents of license.

The license issued under this division shall state the name of the licensee, the location of the place of business for which the license is issued, the period for which it is issued, and that it is subject to revocation in the manner provided by law and by this division.

(Code 1966, § 6-86)

Sec. 5-146. Suspension or revocation.

The board of commissioners, upon five (5) days' notice to persons holding any license under this division, may revoke or suspend the license of any club licensee for any one (1) or more of the following reasons.

(1) The licensee has fraudulently obtained the license by giving false information in the application therefor or any hearing thereon;

(2) The licensee has violated any of the provisions of K.S.A. chapter 41, article 26, or any ordinance of the city prescribing rules or regulations relating to the operation of clubs;

(3) The licensee has become ineligible to obtain a license;

(4) Drunkenness of the licensee club's manager or employee while on duty, or the licensee club, its manager or employee has permitted any disorderly person to remain in the licensed premises;

(5) Violation on the club premises of any provision of the laws of this state, or of the United States, pertaining to the sale of intoxicating or alcoholic liquors or beverages or any crime involving a "morals charge" as defined in subsection (b) of K.S.A. 41-2610 and amendments thereto;

(6) The purchase and display in the licensed premises by the licensee club, its managing officers or any employee of a federal wagering occupational stamp issued by the United States Treasury Department;

(7) The purchase and display in the licensed premises by the licensee club, its managing officers or any employee, of a federal coin operated gambling device stamp for the club premises issued by the Untied States Treasury Department;

(8) The licensee holding a club license has been found guilty of a violation of article 10 of chapter 44 of the Kansas Statutes Annotated under a decision or order of the civil rights commission which has become final or such licensee has been found guilty of a violation.

(Code 1966, § 6-87; Ord. No. 88-9277, § 4, 8-22-88)
State law references: Similar provisions, K.S.A. 41-2611.

DIVISION 3. DRINKING ESTABLISHMENTS

Sec. 5-147. License required.

It shall be unlawful for any person granted a drinking establishment license by the state of Kansas to sell or serve any alcoholic liquor authorized by such license within the city without first obtaining a city license from the city clerk.

(Ord. No. 87-9228, § 1, 12-28-87)

Sec. 5-148. License fee.

(a) There is hereby levied an annual license fee in the amount of two hundred fifty dollars ($250.00) on each drinking establishment located in the city which has a drinking establishment license issued by the state director of alcoholic beverage control, which fee shall be paid upon enactment of this division for existing drinking establishments with state licenses, before business is begun under an original state license and within five (5) days after any renewal of a state license.

(b) All applications for new or renewal city licenses shall be submitted to the city clerk. Upon presentation of a state license, payment of the city license fee and the license application, the city clerk shall issue a city license for the period covered by the state license, if there are no conflicts with any zoning or alcoholic beverage ordinances of the city.

(c) The license period shall extend for the period covered by the state license. No license fee shall be refunded for any reason.

(d) Every licensee shall cause the city drinking establishment license to be placed in plain view next to or below the state license in a conspicuous place on the licensed premises

(Ord. No. 87-9228, § 1, 12-28-87)

Sec. 5-149. Business regulations.

(a) No drinking establishment licensed hereunder shall allow the serving, mixing or consumption of alcoholic liquor on its premises between the hours of 2:00 a.m. and 9:00 a.m. on any day.

(b) Cereal malt beverages may be sold on premises licensed for the retail sale of cereal malt beverages for on-premises consumption at any time when alcoholic liquor is allowed by law to be served on the premises.

(c) No alcoholic beverages or cereal malt beverages shall be given, sold or traded to any person under twenty-one (21) years of age.

(Ord. No. 87-9228, § 1, 12-28-87)

Sec. 5-150. Penalty.

If the licensee has violated any of the provisions of this article, the governing body of the city, upon five (5) days' written notice to the person holding such license to sell alcoholic liquor, may permanently revoke or cause to be suspended for a period of not more than thirty (30) days such license and the individual holding the license may be charged in municipal court with a violation of the alcoholic liquor laws of the city and upon conviction shall be punished by:

(1) A fine of not more than four hundred ninety-nine dollars ($499.00); or

(2) Imprisonment in jail for not more than one hundred seventy-nine (179) days; or

(3) Both such fine and imprisonment not to exceed subsections (1) and (2) of this section.

(Ord. No. 87-9228, § 1, 12-28-87)

CHAPTER 6. AMUSEMENTS AND ENTERTAINMENT

Art. I. In General, §§ 6-1--6-15
Art. II. Carnivals, Circuses and Tent Shows, §§ 6-16--6-45
Div. 1. Generally, §§ 6-16--6-30
Div. 2. License, §§ 6-31--6-45
Art. III. Adult-Oriented Businesses, §§ 6-46--6-79
Div. 1. Generally, §§ 6-46--6-53
Div. 2. Licenses, §§ 6-54--6-64
Div. 3. Operating Regulations, §§ 6-65--6-72
Div. 4. Suspension, Revocation, Non-renewal, Appeal, §§ 6-73--6-78
Div. 5. Penalty, § 6-79

ARTICLE I. IN GENERAL

Sec. 6-1. Reserved.

Editor's note: Section 1 of Ord. No. 91-9436, adopted April 15, 1991, repealed § 6-1 in its entirety. Formerly, § 6-1 pertained to licensing of amusements and derived from the Code of 1966, §§ 7-69, 20-42, 20-48, 20-58, 20-65 and 20-68.

Secs. 6-2--6-15. Reserved.

ARTICLE II. CARNIVALS, CIRCUSES AND TENT SHOWS

DIVISION 1. GENERALLY

Sec. 6-16. Definitions.

The following words and phrases, when used in this article, shall have the meanings respectively ascribed to them:

(1) *Carnivals* shall be deemed to include attractions or amusements in which merry-go-rounds, ferris wheels, riding devices and other amusement devices of a similar nature are used and shall also include, whether operated in connection therewith or separately, other forms of amusements or attractions such as side shows, singing and dancing acts and other exhibitions, attractions, shows or devices of various kinds for the amusement of the public, commonly operated and known as carnivals, or as parts thereof, whether advertised as such or otherwise.

(2) *Circus* shall be deemed to mean that kind of a show or exhibition ordinarily known and advertised as a circus, including the exhibition of wild animals, trained animal acts, and performances by acrobats, aerial performers trained animals, clowns, etc., and including side shows and exhibitions ordinarily shown in connection with and as a part of circuses, and the term "circus" shall also include menageries, wildwest shows, dog and pony shows and other similar exhibitions, whether operated alone or in connection with circuses having the other features hereinabove mentioned, or similar thereto, and the term "circus" shall also include any

street parade shown or operated in the city and the unloading and/or moving of circus equipment, exhibits and paraphernalia in the city and along or over the streets thereof, in connection with a circus which is shown outside the city.

(3) *Tent shows* shall be deemed to include theatrical, dramatic or operative performances, or entertainments, or concerts, whether operated in a tent or in the open, or in any temporary or permanent building or structure unless the same is in a regularly licensed opera house, theater or motion picture theater; provided, that this article shall not apply to entertainments, concerts or musical exhibitions given by any church, school, lodge or other society or organization of the city when the proceeds thereof are exclusively for the benefit of charity or for the benefit of such church, school, lodge or organization, and where no part of such proceeds goes to any private individual or corporation, except in payment of labor actually performed or for property or materials actually furnished for use in connection with such performance, concert or entertainment.

(Code 1966, § 7-18)
Cross references: Definitions and rules of construction generally, § 1-2.

Sec. 6-17. Permits required; compliance with regulations.

It shall be unlawful for any person to operate or conduct any circus, carnival or tent show in the city without first having made application and securing a permit from the city clerk and without first having complied with all the rules and regulations of the city.

(Code 1966, § 7-19)

Sec. 6-18. Gambling prohibited.

It shall be unlawful for any person to operate or conduct or to permit any other person to operate or conduct, or for any person to have in his possession, upon the premises occupied by any circus, carnival or tent show within the city, any gambling device or game of chance.

(Code 1966, § 7-24)

Sec. 6-19. Reserved.

Editor's note: Ord. No. 88-9249, § 1, adopted May 9, 1988, repealed § 6-19 in its entirety. Former § 6-19, concerning lewd, indecent or obscene performances, derived from the Code of 1966, § 7-25.

Secs. 6-20--6-30. Reserved.

DIVISION 2. LICENSE[1]

Sec. 6-31. Required.

No person shall engage in, pursue, conduct or carry on in the city the calling, trade or occupation of conducting or operating a circus, carnival or tent show without first having secured from the city clerk a license to conduct or operate the same as provided in this division.

(Code 1966, § 7-20)

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[1] ***Cross references:** Licenses generally, Ch. 20.

Sec. 6-32. Application.

Before any license shall be issued under this division, the person desiring to secure the same shall file with the city clerk an application in writing setting forth the nature and character of the circus, carnival or tent show for which a license is desired; the name of the owner thereof; the name under which the same is operated, conducted or shown; the permanent address or residence of such owner; the location of the place where the same is to be shown or operated and the date or dates upon which the same is to be shown or operated; together with a statement that the applicant will abide by and perform all of the provisions of this article and of all other ordinances of the city relating thereto. Such application shall be accompanied by the original or duplicate of the permit issued to such applicant.

(Code 1966, § 7-21)

Sec. 6-33. Fees.

(a) Fees for licenses under this division shall be as prescribed in section 2-2.

(b) Every license tax herein provided for shall be paid by the person actually operating the circus, carnival or tent show to which such license fee is applicable, and the payment of any other license fee of any kind paid by any other person shall not be deemed to cover or take the place of any license fee provided for by this division.

(Code 1966, §§ 7-22, 7-23)

Secs. 6-34--6-45. Reserved.

ARTICLE III. ADULT-ORIENTED BUSINESSES

DIVISION 1. GENERALLY

Sec. 6-46. Deleterious secondary effects.

In conjunction with its consideration of this article, the governing body has reviewed studies regarding the deleterious secondary effects of adult-oriented businesses from the following communities: Amarillo, Texas; Austin, Texas; Beaumont, Texas; Cleveland, Ohio; Indianapolis, Indiana; Los Angeles, California; Minneapolis, Minnesota; Oklahoma City, Oklahoma; Phoenix, Arizona; and Whittier, California.

After carefully considering the results of those studies, the governing body makes the following findings:

(1) That areas containing adult-oriented businesses experience a substantially greater incidence of crime than other similar areas without such businesses.

(2) That areas containing adult-oriented businesses experience a substantially greater depreciation of property values than other similar areas without such businesses.

(3) That the concentration of adult-oriented businesses in the same neighborhood attracts an undesirable transient population, causes an increase in crime, encourages businesses and residents to relocate, and adversely affects property value.

(4) That based on such studies, it is reasonable to conclude that said deleterious secondary effects would occur within the City of Salina absent appropriate regulation of adult-oriented businesses.

(5) That the primary purpose of the regulations contained herein is to mitigate, and possibly avoid the deleterious secondary effects of adult-oriented businesses and is unrelated to restricting access to the products and services offered by such businesses.

(Ord. No. 99-9964, § 1, 1-3-00)

Sec. 6-47. Definitions.

As used in this article, unless the context clearly requires otherwise, the following words and phrases shall have the meanings ascribed to them in this section:

1. *Adult-oriented business* means any business:

   (1) That has as a substantial or significant purpose the sale or rental of merchandise that is intended for use in connection with specified sexual activities, or that emphasizes matters depicting, describing or relating to specified sexual activities or specified anatomical areas; or

   (2) That has as one of its regular and substantial business purposes:

      a. The providing of entertainment where the emphasis is on performances, live or otherwise, that depict, portray, exhibit or display specified anatomical areas or specified sexual activities; or

      b. The providing of services that are intended to provide sexual arousal or excitement or that allow observation of specified sexual activities or specified anatomical areas ancillary to other pursuits, or allow participation in specified sexual activities ancillary to other pursuits.

The definition of *"adult-oriented business"* also includes but is not limited to any and all of the following specific adult-oriented businesses, as defined herein:

a. Businesses that offer merchandise for sale or rent.

   1. *"Adult media or merchandise outlet"* means a commercial establishment which as one of its substantial or significant business purposes offers for sale or rental for any form of consideration any one or more of the following:

      (a) Books; magazines; periodicals; other printed matter; pictures; slides; videotapes; video reproductions; compact discs; motion pictures; films; or other media; containing visual representations distinguished or characterized by an emphasis on matter depicting, describing, or relating to sexual activities or specified anatomical areas; or

      (b) Instruments; devices; gifts or paraphernalia; which are designed or marketed for use in connection with specified sexual activities.

   2. *"Substantial or significant."* For the purposes of this Article it shall be presumed that a commercial establishment has as one of its substantial or significant business purposes the sale or rental of the materials described herein if one or more of the following criteria are satisfied:

      (a) The establishment makes use of a sign visible from any public street, whether located on or off the property of the establishment, advertising the availability at the establishment of any material described in subsection 1 of this definition;

(b) Thirty (30) percent or more of the floor area of the business (not including storerooms, stock areas, bathrooms, basements or any portion of the business not open to the public) is devoted to such items at any time;

(c) Thirty (30) percent or more of all inventory at any time consists of such items;

(d) Thirty (30) percent or more of the merchandise displayed for sale at any time consists of such items;

(e) Thirty (30) percent or more of the sales, measured in dollars over any consecutive ninety-day period, is derived from such items;

(f) Thirty (30) percent or more of the number of sales transactions, measured over any consecutive ninety-day period, is of such items;

(g) Thirty (30) percent or more of the dollar value of all merchandise displayed at any time is attributable to such items;

(h) Thirty (30) percent of the stock in trade at any time consists of such items;

This presumption shall be rebuttable.

3. *"Designed or Marketed for Use"*. In determining whether an item is designed or marketed for use in connection with specified sexual activities, the following guidelines may be considered:

(a) Expert testimony as to the principle use of the items;

(b) Evidence concerning the total business of a person or business establishment and the type of merchandise involved in the business;

(c) National and local advertising concerning use of the item;

(d) Evidence of advertising concerning the nature of the business establishment;

(e) Instructions, graphics or other material contained on the item itself or on the packaging materials for the item;

(f) The physical or structural characteristics of the item;

(g) The manner in which the item is displayed, including its proximity to other regulated merchandise or signage relating to items in a display area;

Any person may request an interpretive ruling from the city manager, or his or her designee, as to whether a particular item is considered by the city to be designed or marketed for use in connection with specified sexual activities. An application for an interpretive ruling shall be made in writing on a form provided by the city manager, and shall be accompanied by such other information as may be reasonable be requested under the circumstances pertaining to the specific item about which a ruling is requested. The city manager shall issue a written interpretive ruling within ten business days following submission of a completed application. The decision of the city manager may be appealed to the governing body within fifteen days following the interpretive ruling by submitting a written notice of appeal to the city clerk.

4. *"Adult newsrack"* means any coin or card-operated device that offers for sale by dispensing printed material which is distinguished or characterized by its emphasis on

matter depicting, describing or relating to specified sexual activities or specified anatomical areas.

b. Businesses that provide entertainment.

1. *"Adult entertainment business"* means any business to which the public, patrons or members are invited or admitted, and where providing adult entertainment, as defined herein, is a regular and substantial portion of its business.

2. The definition of *"adult entertainment business"* also includes, but is not limited to, any and all of the following specific adult entertainment businesses, as defined herein:

(a) *"Adult arcade"* means any place to which the adult public is invited wherein coin-operated or token operated or electronically, electrically or mechanically controlled still or motion picture machines, projectors or other image-producing devices are maintained to show images to five (5) or fewer persons per machine at any one (1) time and where the images so displayed are distinguished or characterized by an emphasis on matters depicting, describing or relating to specified sexual activities or specified anatomical areas.

(b) *"Adult motion picture theater"* means an establishment with screen or projection areas, where a regular and substantial portion of its business is the exhibition to patrons of films, videotapes or motion pictures which are intended to provide sexual arousal or sexual excitement to the patrons and which are distinguished by or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas.

(c) *"Adult theater"* means an establishment where a regular and substantial portion of its business is providing the live performance of activities relating to specified sexual activities or exhibition of specified anatomical areas of live performers, for observation by patrons.

(d) *"Adult entertainment cabaret"* means an establishment where a regular and substantial portion of its business is providing adult entertainment which features strippers, male or female impersonators, or live performances, or material which depict, portray, exhibit or display specified anatomical areas of specified sexual activities or are intended to arouse or excite the sexual desires of the entertainer, other entertainer or patron.

(e) *"Adult entertainment studio"* (includes the terms "rap studio", "exotic dance studio", "sensitivity studio" or "encounter studio") means an establishment whose premises are physically arranged so as to provide booths, cubicles, rooms, compartments or stalls separate from the common areas of the premises, and where a regular and substantial portion of its business is providing entertainment which features materials or live performances characterized by an emphasis on or features materials relating to specified sexual activities or the exhibition of specified anatomical areas.

(f) *"Adult encounter parlor"* means an establishment where a regular and substantial portion of its business is the provision of premises where patrons congregate, associate, or consort with employees, performers, and/or other patrons or private contractors who display specified anatomical areas in the presence of such patrons, with the intent of providing sexual arousal or excitement to such patrons.

3. *"Adult entertainment"* means any exhibition, performance, display or dance of any type, including, but not limited to, talking, singing, reading, listening, posing, serving food or beverages, soliciting for the sale of food, beverages or entertainment, pantomiming, modeling, removal of clothing, or any service offered on a premises where such exhibition, performance, display or dance is intended to arouse or excite the sexual desires of the entertainer, other entertainers or patrons, or if the entertainment depicts, portrays, exhibits or displays specified anatomical areas or specified sexual activities.

4. *Contagious and communicable diseases"* means those diseases which are set out in Kansas Department of Health and Environment Regulations, K.A.R. 28-1-6, as amended.

5. *"Employee"* means any and all persons, including managers, entertainers and independent contractors, who work in or at or render any services directly related to the operation of an adult-oriented business.

6. *"Entertainer"* means any person who provides adult entertainment within an adult business, whether or not a fee is charged or accepted for entertainment.

7. *"Manager"* means any person who manages, directs, administers, or is in charge of the affairs and/or conduct of any portion of any activity at any adult business.

8. *"Minor"* means any person less than eighteen (18) years of age.

9. *"Nude"* or *"Nudity"* means the appearance of the human bare buttocks, anus, human genitals, or a state of dress which fails to opaquely or fully cover the anus or human genitals.

10. *"Operate"* means to own, conduct or maintain the affairs of an adult-oriented business.

11. *"Operator"* means any person owning, operating, conducting or maintaining an adult-oriented business.

12. *"Patron"* means any person who enters an adult-oriented business without regard to whether a purchase is made from the adult-oriented business or compensation is paid to the adult-oriented business or any employee of the adult-oriented business for merchandise, entertainment or service, provided that the term patron shall not include persons who enter an adult-oriented business for the sole purpose of providing service or merchandise to the adult-oriented business and who do not remain in the adult-oriented business after the purpose has been accomplished including, but not limited to, persons performing construction, repair or maintenance on the premises or delivering goods or merchandise to the adult-oriented business and any such similar activity.

13. *"Person"* means any individual, partnership, corporation, trust, incorporated or unincorporated association, joint venture, governmental entity, or other entity or group of persons, however organized.

14. *"Server"* means any person who serves food or drink at an adult entertainment business.

15. *"Specified anatomical areas"* mean:

    (1) Uncovered or exposed human genitals, pubic region or pubic hair, buttocks, female breast or breasts below a point immediately above the top of the areola encircling the nipple, or any combination of the foregoing; or

(2) Human male genitals in a discernibly erect state, even if completely and opaquely covered.

16. *"Specified sexual activities"* mean any of the following acts of intended sexual arousal or excitement:

(1) Sexual conduct including, but not limited to, actual or simulated acts of sexual intercourse, masturbation, oral copulation or sodomy;

(2) Fondling or other intentional touching of a person's clothed or unclothed genitals, pubic area, buttocks, or the breasts of a female;

(3) Sadomasochistic acts; or

(4) Acts involving animals or latent objects.

(Ord. No. 99-9964, § 1, 1-3-00)

Secs. 6-48--6-53. Reserved.

DIVISION 2. LICENSES

Sec. 6-54. License required.

(a) It shall be unlawful for any person to operate or maintain an adult-oriented business in the city unless the owner, operator or lessee thereof has obtained an adult-oriented business license from the city, or to operate such business after such license has been revoked or suspended by the city.

(b) It shall be unlawful for any entertainer, server, employee, manager, operator or owner to knowingly perform any work, service or entertainment directly related to the operation of an unlicensed adult-oriented business.

(c) The failure to post an adult-oriented business license in the manner required herein shall be prima facie evidence that an adult-oriented business has not obtained such a license. In addition, it shall be prima facie evidence that any entertainer, employee, manager or owner who performs any business, service or entertainment in an adult-oriented business in which an adult-oriented business license is not posted in the manner required herein had knowledge that such business is not licensed.

(d) Any business that engages in the barter, rental, or sale of items consisting of printed matter, pictures, slides, records, audiotapes, videotapes, compact discs, motion pictures, films or other media, if such business is not open to the public in general but only to one or more classes of the public, excluding any minor by reason of age, or if a substantial or significant portion of such items are distinguished or characterized by an emphasis on the depiction or description of specified sexual activities or specified anatomical areas shall be deemed to have consented to periodic entry into and inspection of the business premises by appropriate city officials and inspection by those officials of only those business records necessary for the limited purpose of determining whether such business enterprise is an adult-oriented business as defined herein. This entry and inspection shall take place during hours when such business is open to the public, unless otherwise requested by the business, and shall not unreasonably interfere with the conduct of such business.

(Ord. No. 99-9964, § 1, 1-3-00)

Sec. 6-55. License required for managers, servers and entertainers.

It is unlawful for any person to work as an entertainer, server or manager at an adult-oriented business without first obtaining a license to do so from the city, or to work as an entertainer, server or manager at an adult-oriented business after such person's license to do so has been revoked or suspended.

(Ord. No. 99-9964, § 1, 1-3-00)

Sec. 6-56. License, classification and fees.

(a) The license year for all fees required herein shall be from January 1 through December 31. The application for a license shall be accompanied by payment in full of the fee stated herein by cash, certified or cashier's check, or money order, and no application shall be considered complete until such fee is paid.

(b) All licenses shall be issued for a specific location and shall be nontransferable, and license fees shall be nonrefundable.

(c) The classification of licenses and fees for each shall be established pursuant to section 2-2.

(Ord. No. 99-9964, § 1, 1-3-00)

Sec. 6-57. License limited to one identifiable type of adult use.

All adult-oriented business licenses shall be issued only for the one adult-oriented business use listed on the application. Any change in the type of adult use shall invalidate the adult-oriented business license and require the licensee to obtain a new license for the change in use. A separate license is required for each adult use.

(Ord. No. 99-9964, § 1, 1-3-00)

Sec. 6-58. License applications.

(a) *Adult-oriented business license.* All persons desiring to secure a license to operate an adult-oriented business as required herein shall make a verified application with the city clerk. All applications shall be submitted in the name of the person who owns the adult-oriented business. The application shall be signed by the applicant. If the applicant is a corporation, the application shall be signed by its president. If the applicant is a partnership, the application shall be signed by a partner. In all other instances where the owner is not an individual, where applicable, the application shall be signed by an authorized representative of the owner. The city clerk may require proof of authorization before accepting an application. All applications shall be submitted on a form supplied by the city clerk, and shall require the following information:

(1) The name, residence address, home telephone number, occupation, date, place of birth, and social security number of the applicant.

(2) The tax identification number and registered agent if the owner is required to have a tax identification number or registered agent.

(3) The name of the adult-oriented business, a description of the type of adult-oriented business to be performed on the licensed premises, and the name of the owner of the premises where the adult-oriented business will be located.

(4) The names, residence addresses, social security numbers and dates of birth of all partners, if the applicant is a partnership or limited liability partnership; and if the applicant is a corporation or limited liability company, the same information for all corporate officers and directors and

stockholders or members who own more than twenty-five (25) percent interest in the corporation.

(5) A statement from the applicant whether the applicant, or any corporate officer or director, or stockholder, partner or member who owns more than twenty-five (25) percent interest in such entity in previously operating in this or another city, county or state, has had an adult-oriented business license of any type revoked or suspended, and if so, the reason for the suspension or revocation and the business activity subjected to the suspension or revocation.

(6) A statement from the applicant, all partners or each corporate officer and director that each such person has not been convicted of, or released from confinement for conviction of, or diverted from prosecution on, any felony, whichever event is later, within five (5) years immediately preceding the application, or has not been convicted of, or diverted from prosecution on, a misdemeanor, or released from confinement for conviction of a misdemeanor, whichever event is later, within two (2) years immediately preceding the application, where such felony or misdemeanor involved sexual offenses, prostitution, indecent exposure, sexual abuse of a child, pornography or related offenses, or controlled substances, illegal drugs or narcotics offenses as defined in the Kansas Statutes or municipal ordinances.

The statement shall also indicate that the applicant, each partner or each corporate officer and director has not been convicted of a municipal ordinance violation or diverted from prosecution on a municipal ordinance violation within two (2) years immediately preceding the application where such municipal ordinance violation involved sexual offenses, indecent exposure, prostitution, sale of controlled substances, illegal drugs or narcotics

(7) If the applicant is a corporation or limited liability company, a current certificate of registration issued by the Kansas Secretary of State.

(8) A statement signed under oath that the applicant has personal knowledge of the information contained in the application and that the information contained therein is true and correct and that the applicant has read the provisions of this article regulating adult oriented businesses.

Failure to provide the information and documentation required herein shall constitute an incomplete application. The city clerk shall notify the applicant whether or not the application is complete within ten (10) working days of the date the application is received by the city clerk.

(b) *Manager, server or entertainer license.* All persons desiring to secure a license to be a manager, server or entertainer shall make a verified application with the city clerk. All applications shall be submitted in the name of the person proposing to be a manager, server or entertainer. All applications shall be submitted on a form supplied by the city clerk and shall require all of the following information:

(1) The applicant's name, home address, home telephone number, date and place of birth, social security number, and any stage names or nicknames used in entertaining.

(2) If applicable, the name and address of each adult business where the applicant intends to work as a manager, server or entertainer.

(3) A statement from the applicant that the applicant has not been convicted of, or released from confinement for conviction of, or diverted from prosecution on, any felony, whichever event is later, within five (5) years immediately preceding the application, or has not been convicted of, or diverted from prosecution on a misdemeanor, or released from confinement for conviction of a misdemeanor, whichever event is later, within two (2) years immediately preceding the

application, where such felony or misdemeanor involved sexual offenses, prostitution, indecent exposure, sexual abuse of a child or pornography and related offenses, or controlled substances or illegal drugs or narcotics offenses as defined in the Kansas Statutes or municipal ordinances.

The statement shall also indicate that the applicant has not been convicted of a municipal ordinance violation or diverted from prosecution on a municipal ordinance violation within two (2) years immediately preceding the application where such municipal ordinance violation involved sexual offenses, indecent exposure, prostitution or sale of controlled substances or illegal drugs or narcotics.

(4) The applicant shall present to the city clerk, who shall copy, documentation that the applicant has attained the age of eighteen (18) years at the time the application is submitted. Any of the following shall be accepted as documentation of age:

(a) A motor vehicle operator's license issued by any state, bearing the applicant's photograph and date of birth;

(b) A state-issued identification card bearing the applicant's photograph and date of birth;

(c) An official and valid passport issued by the United States of America;

(d) An immigration card issued by the United States of America;

(e) Any other form of picture identification issued by a governmental entity that is deemed reliable by the city clerk; or

(f) Any other form of identification deemed reliable by the city clerk.

Failure to provide the information required herein shall constitute an incomplete application. The city clerk shall notify the applicant whether or not the application is complete within ten (10) working days of the date the application was received by the city clerk.

(Ord. No. 99-9964, § 1, 1-3-00)

Sec. 6-59. Application processing.

Upon receipt of an application for an adult-oriented business license, or a manager, server or entertainer license, the city clerk shall immediately transmit one copy of the application to the chief of police for investigation of the application. In the case of an adult-oriented business license application, the city clerk shall also transmit a copy of the application to the director of planning and community development and the building official. It shall be the duty of the chief of police to investigate such application to determine whether the information contained in the application is accurate and whether the application meets the requirements herein for issuance. The chief of police shall report the results of the investigation to the city clerk not later than ten (10) working days from the date the application is received by the city clerk. It shall be the duty of the director of planning and community development and the building official to determine whether the structure where the adult-oriented business will be conducted complies with the requirements and meets the standards of the applicable zoning code, building code, fire and property maintenance ordinances, and health regulations. The director of planning and community development and the building official shall report the results of their investigation to the city clerk not later than ten (10) working days from the date the application is received by the city clerk. Upon receipt of the reports from the chief of police, the director of planning and community development and the building official, the city clerk shall forward the application for consideration by the city manager, who shall approve or disapprove the license.

(Ord. No. 99-9964, § 1, 1-3-00)

Sec. 6-60. Examination of application, issuance of license, disapproval.

(a) The city manager shall examine an application for an adult-oriented business license, or a manager, server, or entertainer license, within thirty (30) days of the date such application was received by the city clerk. After such examination, the city manager shall approve the issuance of a license only if the appropriate license fee has been paid, the applicant is qualified, and all the applicable requirements set forth herein are met. No license shall be approved for any person ineligible pursuant to the provisions herein. All incomplete applications shall be denied.

(b) The city manager's report on license examination shall be in writing and show the action taken on the application. If the license is granted, the city manager shall direct the city clerk to issue the proper license.

(c) If an application for a license is disapproved, the applicant shall be immediately notified by certified mail, and the notification shall state the basis for such disapproval. Any applicant aggrieved by the disapproval of a license application may appeal the denial to the governing body by submitting a request for the appeal, in writing, to the city clerk. An appeal shall be considered by the governing body at a regular or special meeting to be held within fifteen (15) days of receipt of the appeal. Any applicant aggrieved by the governing body's disapproval of a license application may seek judicial review in a manner provided by law.

(Ord. No. 99-9964, § 1, 1-3-00)

Sec. 6-61. Renewal.

(a) A license may be renewed by making application to the city clerk on application forms provided for that purpose. Licenses shall expire on December 31 of each calendar year, and renewal applications for such licenses shall be submitted between November 1 and December 10.

(b) Upon timely application and review as provided for a new license, a license issued under the provisions of this article shall be renewed by issuance of a new license in the manner provided herein.

(c) If the application for renewal of a license is not made during the time provided herein, the expiration of such license shall not be affected and a new application shall be required.

(Ord. No. 99-9964, § 1, 1-3-00)

Sec. 6-62. License--Ineligibility and disqualification.

No person is eligible nor shall a license be issued to:

1. An applicant for an adult-oriented business license if one or more of the following conditions exist:

    a. The operation of an adult-oriented business is not permitted within the zoning district in which the business is located.

    b. The proposed adult-oriented business is to be located within one thousand (1,000) feet of any of the following within the corporate limits of the city:

        (1) A boundary of a residential district;

        (2) A church or synagogue;

        (3) A school (grades K through 12);

(4) A group day care center or kindergarten; or,

(5) A public park or playground, if any portion of the park or playground or a street abutting any portion of the park or playground is within or abuts a residential district.

For the purpose of this subsection, measurement shall be made in a straight line, without regard to intervening structures or objects, from the nearest portion of the building or structure used as part of the premises where an adult-oriented business is conducted, to the nearest property line of the premises of a church or rectory, school, group day care center or kindergarten or to the nearest boundary of an affected public park or playground or residential district.

c. The proposed adult-oriented business is to be located within five hundred (500) feet of another adult-oriented business. The distance between two (2) adult-oriented businesses shall be measured in a straight line, without regard to intervening structures or objects, from the closest exterior walls of the structures in which the businesses are located.

d. The proposed adult-oriented business is to be located in the same building, structure or portion thereof in which an existing adult-oriented business is located;

e. The applicant knowingly failed to supply all of the information requested on the application;

f. The applicant knowingly gave materially false, fraudulent or untruthful information on the application;

g. The applicant's proposed business premises does not comply with or meet the requirements of the applicable health, zoning, building code, fire and property maintenance ordinances of the city, provided, that upon a showing that the premises meets said requirements and that the applicant is otherwise qualified, the application shall be eligible for reconsideration by the governing body;

h. The applicant has been convicted, released from incarceration for conviction or diverted on any of the crimes set forth herein during the time period set forth herein;

i. The applicant has had an adult-oriented business license or comparable license revoked or suspended in this or any other city during the past five (5) years; or

2. An applicant for a manager, server or entertainer license if one or more of the following conditions exist:

a. The applicant has been convicted, released from incarceration for conviction or diverted on any of the crimes set forth herein during the time period set forth herein;

b. The applicant knowingly failed to provide all of the information required on the application;

c. The applicant knowingly gave materially false, fraudulent or untruthful information on the application;

d. The applicant has had a manager, server or entertainer license revoked or suspended in this or any other city during the past five (5) years; or

e. The applicant is applying for a license for a manager, server or entertainer in a bath house or body painting studio and has not produced a health certificate as required herein.

(Ord. No. 99-9964, § 1, 1-3-00)

Secs. 6-63--6-64. Reserved.

DIVISION 3. OPERATING REGULATIONS

Sec. 6-65. Standards of operation.

The following standards of operation shall be adhered to by all adult-oriented businesses, their employees and all managers, servers and entertainers and patrons of adult-oriented businesses, while on or about the premises of the business:

1. *Identification cards.* All or any manager, server or entertainer issued a license under the provisions contained herein shall, at all times when working in an adult-oriented business, have in their possession a valid identification card issued by the city, bearing the permit number, the employee's physical description and a photograph of such employee. Such identification cards shall be laminated to prevent alteration.

2. Age restriction. Only persons eighteen (18) years of age or older shall be permitted on the premises of any adult-oriented entertainment business.

3. Exterior observation. The premises of all adult-oriented businesses will be so constructed as to insure that the interior of the premises is not observable from the exterior of the building. In addition, all windows will be covered to prevent viewing of the interior of the building from the outside and all doorways not constructed with an anteroom or foyer will be covered so as to prevent observation of the interior of the premises from the exterior of the building.

4. Exterior display. No adult-oriented business will be conducted in any manner that permits the observation of live performers engaged in an erotic depiction or dance or any material or persons depicting, describing or relating to specific sexual activities or specified anatomical areas, as defined herein, from any exterior source by display, decoration, sign, show window or other opening.

5. Nudity prohibited. No manager, employee, server, entertainer or patron in an adult-oriented business shall be nude, or clothed in less than opaque attire.

6. Certain acts prohibited.

    a. No manager, employee, server, entertainer or patron shall perform any specified sexual activities as defined herein, wear or use any device or covering exposed to view which stimulates any specified anatomical area, use artificial devices or inanimate objects to perform or depict any of the specified sexual activities or participate in any act of prostitution as prohibited by state law or municipal ordinance while on the premises of an adult-oriented business.

    b. All dancing or other live entertainment on the licensed premises that is intended to provide sexual stimulation or to appeal to, arouse or excite the sexual desire or interests of the patrons shall occur and be performed solely on a platform or stage which is raised at least two (2) feet above the primary level of the customer floor area. In order to insure the performance area of the stage or performance platform is not within the reach of patrons and to further insure patrons are unable to touch the performers during their performances, the licensee, owner, operator or manager shall either erect a physical barrier between the performers and the patrons that effectively eliminates the touching of the performers by

the patrons or they shall paint a clearly discernable boundary line on the stage surface beyond which the performers shall not perform and which is sufficiently distant from the forward edge of the stage or performance platform to insure the patrons cannot touch the performers. Further, it shall be unlawful for any person to be upon any portion of the stage during a performance or for an owner, operator or manager to permit a patron to be upon any portion of the stage during the performance.

c. No employee, server, entertainer or patron of an adult-oriented business while on the premises of an adult-oriented business shall knowingly touch, fondle or caress any specified anatomical area of another person, or knowingly permit another person to touch, fondle or caress any specified anatomical area of such employee, server, entertainer or patron, whether such specified anatomical areas are clothed, unclothed, covered or exposed.

d. No entertainer shall solicit, demand or receive any payment or gratuity from any patron for any act prohibited herein and while on the premises of an adult-oriented business and no entertainer shall receive any payment or gratuity from any patron for any entertainment except as follows:

1. While such entertainer is on the stage a patron may place such payment or gratuity into a container affixed to the stage; or

2. While such entertainer is not on the stage but while on the premises of an adult-oriented business and is clothed so as to not expose to view any specified anatomical area, a patron may either place such payment or gratuity into the entertainer's hand, or under a leg garter worn by such entertainer at least four (4) inches below the bottom of the pubic region.

e. No owner, operator, manager or other person in charge of the premises of an adult-oriented business shall:

1. Knowingly permit alcoholic liquor or cereal malt beverages to be bought upon the premises unless authorized to do so by a properly issued and current drinking establishment or cereal malt beverage license;

2. Knowingly allow or permit the sale, distribution, delivery or consumption of any controlled substance or illegal drug or narcotic on the premises;

3. Knowingly allow or permit any person under the age of eighteen (18) to be in or upon the premises of an adult-oriented entertainment business;

4. Knowingly allow or permit any act of prostitution or patronizing prostitution on the premises, as prohibited by state law or municipal ordinance; or

5. Knowingly allow or permit a violation of this article or any other city ordinance provision or state law.

7. Signs Required. All adult-oriented entertainment businesses that provide live entertainment shall conspicuously display in the common area at the principal entrance to the premises, a sign, on which uppercase letters shall be at least two (2) inches high, and lowercase letters at least one (1) inch high, which shall read as follows:

"THIS ADULT ENTERTAINMENT BUSINESS IS REGULATED AND LICENSED BY THE CITY OF SALINA ENTERTAINERS ARE:

* Not permitted to engage in any type of sexual conduct or prostitution on the premises or to fondle, caress or touch the breasts, pubic region, buttocks or genitals of any employee, patron or other entertainer or to permit any employee, patron or other entertainer to fondle, caress or touch the breasts, pubic region, buttocks or genitals of said entertainer.

* Not permitted to be nude.

* Not permitted to demand or collect any payment or gratuity from any customer for entertainment, except as follows:

While such entertainer is on the stage, by placing such payment of gratuity into a box affixed to the stage; or

While such entertainer is not on the stage, by either placing such payment or gratuity into the entertainer's hand, or under the entertainer's leg garter.

CUSTOMERS ARE:

* Not permitted to be upon the stage at any time.

* Not permitted to touch, caress or fondle the breasts, pubic region, buttocks or genitals of any employee, server, entertainer or patron or engage in solicitation for prostitution.

8. Lighting Required. The premises of all adult-oriented business shall be equipped with overhead lighting of every place to which customers are permitted access, at an illumination of not less than one (1) footcandle, as measured at the floor level, and such illumination must be maintained at all times that any customer or patron is present in or on the premises.

9. Closed booths or rooms prohibited. The premises of all adult-oriented businesses shall be physically arranged in such a manner that the entire interior portion of any booths, cubicles, rooms or stalls is visible from a common area of the premises. Visibility shall not be blocked or obscured by doors, curtains, drapes or any other obstruction whatsoever.

10. Ventilation and sanitation requirements. The premises of all adult-oriented businesses shall be kept in a sanitary condition. Except as otherwise provided herein, separate dressing rooms and rest rooms for men and women shall at all times be maintained and kept in a sanitary condition.

11. Hours of operation. No adult-oriented business may be open or in use between the hours of 2:00 a.m. and 9:00 a.m. on any day other than a Sunday when the business may not be open between the hours of 2:00 a.m. and 12:00 noon.

(Ord. No. 99-9964, § 1, 1-3-00)

Sec. 6-66. License posting or display.

(a) Every person licensed as an adult-oriented business shall post such license in a conspicuous place and manner on the adult-oriented business premises.

(b) Every person holding a server, manager or entertainer license shall post his or her license in his or her work area on the adult-oriented business premises so it shall be readily available for inspection by city authorities responsible for enforcement of this article.

(Ord. No. 99-9964, § 1, 1-3-00)

Sec. 6-67. Manager on premises.

(a) A manager shall be on duty at all adult-oriented businesses at all times the premises are open for business. The name of the manager on duty shall be prominently posted during business hours.

(b) It shall be the responsibility of the manager to verify that any person who provides adult entertainment or works as a server within the premises possesses a current and valid entertainer or server's license and that such licenses are prominently posted. It shall also be the responsibility of the manager to insure minors do not enter upon the premises of an adult-oriented entertainment business.

(Ord. No. 99-9964, § 1, 1-3-00)

Sec. 6-68. Inspectors and inspections.

All adult-oriented businesses shall permit representatives of the police department or any other city official acting in their official capacity to inspect the premises as necessary to insure the business is complying with all applicable regulations and laws.

(Ord. No. 99-9964, § 1, 1-3-00)

Sec. 6-69. Regulations.

The city manager shall have the power to promulgate regulations as may be necessary and feasible for the carrying out of the duties of his/her office and which are not inconsistent with the provisions of this article.

(Ord. No. 99-9964, § 1, 1-3-00)

Secs. 6-70--6-72. Reserved.

DIVISION 4. SUSPENSION, REVOCATION, NON-RENEWAL, APPEAL

Sec. 6-73. Suspension, revocation, non-renewal or appeal.

Whenever the city manager has information that:

(1) The owner or operator of an adult-oriented business has violated, or knowingly allowed or permitted the violation of any of the provisions of this article; or

(2) There have been recurrent violations of provisions of this article which have occurred under such circumstances that the owner or operator of an adult-oriented business knew or should have known that such violations were committed; or

(3) The license was knowingly obtained through false statements in the application for such license or renewal thereof; or

(4) The licensee knowingly failed to make a complete disclosure of all information in the application for such license, or renewal thereof; or

(5) The owner, operator or any partner, or any corporate officer or director holding an adult-oriented business license has become disqualified from having a license by a conviction as provided herein; then the city manager shall, upon five (5) days written notice to the licensee,

conduct a hearing to determine whether the license should be suspended or revoked. Based on the evidence produced at the hearing, the city manager may take any of the following actions:

(a) Suspend the license for up to ninety (90) days;

(b) Revoke the license for the remainder of the license year; or

(c) Place the license holder on administrative probation for a period of up to one (1) year, on the condition that no further violations of the ordinance occur during the period of probation. If a violation does occur, and after a hearing the violation is determined to have actually occurred, the license will be revoked for the remainder of the license year.

A license holder may appeal a suspension or revocation to the Governing Body in the same manner as a license application disapproval.

(Ord. No. 99-9964, § 1, 1-3-00)

Secs. 6-74--6-78. Reserved.

DIVISION 5. PENALTY

Sec. 6-79. Penalty.

It shall be unlawful for any person to violate any of the provisions of this article. Upon conviction thereof, the general penalty and continuing violations section set forth in Salina Code Section 1-10 shall apply.

(Ord. No. 99-9964, § 1, 1-3-00)

Next page number is 97.

CHAPTER 7. ANIMALS[1]

Art.	**I.**	**In General, §§ 7-1--7-15**
Art.	**II.**	**Administration and Enforcement, §§ 7-16--7-30**
Art.	**III.**	**Restriction on Owning Animals, §§ 7-31--7-44**
Art.	**IV.**	**Responsibilities of Persons Owning Animals, §§ 7-45--7-70**
Art.	**V.**	**Animal Protection Responsibility of All Persons, §§ 7-71--7-90**
Art.	**VI.**	**Standard Registration of Cats and Dogs, §§ 7-91--7-115**
Art.	**VII.**	**Special Permit and Licensing Requirements, §§ 7-116--7-135**
Art.	**VIII.**	**Impoundment, Recovery & Adoption of Animals at Animal Shelter, §§ 7-136--7-140**

ARTICLE I. IN GENERAL

Sec. 7-1. Definitions.

The following words and phrases, when used in this chapter, shall have the meanings respectively ascribed to them:

(1) *Animal* means any live vertebrate creature, domestic or wild, other than humans, and including all fowl.

(2) *Animal hospital* means any facility which has the primary function of providing medical and surgical care for animals and is operated by a currently licensed veterinarian.

(3) *Animal shelter* means the facility or facilities operated by the city or its authorized agents for the purpose of impounding or caring for animals under the authority of this chapter or state law.

(4) *Attack* means violent or aggressive physical contact with a person or domestic animal or violent or aggressive behavior that confines the movement of a person.

(5) *Bite* means any penetration of the skin by teeth.

(6) *Cat* means any member of the Felis Catus Family, male or female, regardless of age.

(7) *Commercial animal establishment* means any pet shop, grooming shop, auction riding stable, guard dog service, kennel, animal breeder, catterie, animal shelter (other than that operated by the city animal hospital), business keeping animals in stock or retail or wholesale trade, or any establishment performing one or more of the principal activities of the aforementioned establishments.

(8) *Dog* means any member of the Canis Familiaris, male or female, regardless of age.

(9) *Enforcement Authority* means the city manager, chief of police, animal control supervisor and their respective designees.

(10) *Exotic animal* means:

(a) Any mammal not generally accustomed to live in or near human populations.

(b) Poisonous reptiles of any length. Non-poisonous reptiles over 8 feet in length.

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[1] **Cross references:** Animals prohibited in parks, § 27-17.

(c) Poisonous arthropods (i.e., poisonous scorpions, poisonous spiders, etc.).

(d) All non-human primates.

(e) All animals protected from hunting and capture by federal and state law.

(f) The definition of exotic animal shall also include, but is not limited to: antelope, badgers, bears, bison, any member of the large cat family (lion, cheetah, etc.), crocodilians, coyotes, deer, elephant, elk, game cock and other fighting birds, hippopotami, hyenas, llama, moose, ostriches, pot-bellied pigs, raccoons, rhinoceroses, skunks and wolves.

(11) *Fowl* means any animal that is included in the zoological class Aves.

(12) *Harboring* means any person who shall allow any animal to habitually remain or lodge or be fed within his home, yard, enclosure, place of business or any other premises where he resides or which he controls.

(13) *Health officer* means the city-county health officer, or his authorized representatives, including any employee of the city-county health department.

(14) *Hobby breeder* means any person who owns five or more dogs kept on a premises within the city limits, and the total number of litters born of the dogs exceeds two (2) in any twelve month period, with the offspring offered for sale.

(15) *Humane live animal trap* means any cage trap that upon activation encloses an animal without placing any physical restraint upon any part of the body of such animal.

(16) *Humanely euthanize* means the proper injection of a substance that quickly and painlessly terminates the life of an animal, or any method approved by the American Veterinary Medical Association.

(17) *Inhumane or cruel treatment or manner* means any treatment to any animal which deprives the animal of necessary sustenance, including sufficient and wholesome food, potable water and protection from weather, or any treatment of any animal such as overloading, overworking tormenting, eating, mutilating or teasing, or other abnormal treatment that causes suffering to such animal.

(18) *Large animal* means any swine, bovine, goat, sheep, beast of burden or any other domestic or wild animal of similar or larger size.

(19) *Microchip* means a small electronic device inserted beneath the skin, between the shoulder blades, of an animal which can be scanned for identification purposes.

(20) *Neutered* means any male or female cat or dog that has been permanently rendered sterile.

(21) *Owner* means the person owning, keeping, possessing or harboring any animal; or any person who feeds or shelters any stray animal for seventy-two (72) or more consecutive hours without reporting such animal to the animal shelter or who professes ownership of such animal. If a juvenile owns an animal, then any household head of which such juvenile is a member shall be deemed the owner of such animal under this chapter and shall be responsible as the owner. If not a member of a household, such juvenile shall be directly subject to the provisions of this chapter.

(22) *Premises* means any parcel of land and any structure thereon in which any animal regulated by this chapter is housed and/or confined.

(23) *Registration tag* means any system or animal identification approved by the city which does not involve alteration or permanent marking of any animal.

(24) *Small animal* means any animal not within the definition of large animal, but including all dogs without reference to size.

(25) *Supervisor* means the supervisor of animal control and his or her designees.

(26) *To permit* means to allow, consent, let, to acquiesce by failure to prevent or to expressly assent or agree to the doing of an act.

(27) *Wild animal* means any animal which is predominately free-roaming as opposed to domesticated, and includes those animals defined as exotic animals and any rabies carrying species for which no antirabies vaccine has been approved by the Centers for Disease Control.

(Ord. No. 80-8794, § 1(8-1), 4-28-80; Ord. No. 80-8801, § 1, 7-21-80; Ord. No. 90-9371, §§ 1, 14, 2-12-90; Ord. No. 96-9747, § 1, 6-17-96; Ord. No. 99-9938, § 1, 8-2-99; Ord. No. 04-10223, § 1, 8-9-04)
Cross references: Definitions and rules of construction generally, § 1-2.

Sec. 7-2. Removal and disposal of dead animals.

(a) The supervisor shall be responsible for the removal of any dead animal found within the city, except as otherwise provided in this section. In this section the term "dead animal" shall exclude any animal lawfully and humanely killed for food.

(b) No person having in his possession any dead animal shall permit the same to remain in or upon any private or public place without at once, upon the death or the discovery of the animal, giving notice to the supervisor.

(c) At large, dead animals shall be removed and appropriately disposed of by the owner or proprietor of the premises promptly after the death or discovery of such animal. If not so removed or properly disposed of, such animal shall be removed by the supervisor at actual cost to the property owner or proprietor.

(d) Except as prescribed in subsection (e), any small, dead animal upon private property shall be removed by the supervisor as soon as possible after notice is given. For the occasional removal of small animals from private premises, there shall be no charge.

(e) For the removal of small, dead animals from animal hospitals, the animals shall be reported to the supervisor and held under conditions satisfactory to the supervisor pending pickup. The charge for such removal shall be established by resolution.

(Ord. No. 80-8794, § 1(8-136), 4-28-80)

Sec. 7-3. Emergency treatment of sick or injured cats and dogs.

(a) Any sick or injured cat or dog found at large in the city and wearing a current city registration tag, identification tag or rabies vaccination tag or having a proper tattoo marking or microchip shall be taken at once to a veterinarian for examination and treatment, and the owner of such animal shall be promptly notified. All charges for veterinary services shall be borne by such owner.

(b) Any sick or injured cat or dog found at large in the city without such identifying tag, tattoo or microchip shall be examined at once by the supervisor and held at the animal shelter as prescribed in section 7-138.

(Ord. No. 80-8794, § 1(8-137), 4-28-80; Ord. No. 99-9938, § 1, 8-2-99)

Sec. 7-4. Penalties.

Wherever in this chapter any act is prohibited or declared to be unlawful or the performance of any act is required, or the failure to do any act is declared to be unlawful, the violation of any provision of this chapter shall be punished by a fine of not more than two-thousand five hundred dollars ($2,500.00), or by imprisonment for a period not exceeding one (1) year, or by both such fine and imprisonment, at the discretion of the Municipal Court Judge. Each day any violation of this chapter continues shall constitute a separate offense.

(Ord. No. 80-8794, § 1(8-148), 4-28-80; Ord. No. 90-9371, §§ 2, 14, 2-12-90; Ord. No. 02-10101, § 1, 8-26-02; Ord. No. 04-10223, § 2, 8-9-04)

Sec. 7-5. Animal attack or bite.

It is unlawful for any owner, as defined in this chapter, to permit or fail to prevent an animal they own from the following, which are declared to be public safety nuisances and prohibited:

(1) Attacking or biting any person or animal which is not on the premises of the owner.

(2) Attacking or biting any person on the premises of such owner. It shall be an affirmative defense to this subparagraph that the use of such animal to attack or bite any person was necessary to prevent or apprehend a person engaged in committing an act of violence, robbery or theft upon the property.

(Ord. No. 96-9747, § 2, 6-17-96; Ord. No. 99-9938, § 1, 8-2-99; Ord. No. 02-10102, § 1, 8-26-02; Ord. No. 04-10223, § 3, 8-9-04)

Sec. 7-6. Public nuisance dogs.

Any dog which has engaged in animal nuisance activity as defined in Section 7-49 of this chapter may be determined to be a Public Nuisance Dog, and the owner required to obtain a special permit in accordance with Section 7-121 of this chapter in order to keep the dog within the city limits.

(a) Judicial determination. The judge of the Municipal Court may, as part of a court proceeding on a city ordinance violation or as a separate proceeding, determine a dog is a Public Nuisance Dog. The court may require the dog to remain designated as a Public Nuisance Dog for a specified period of time, or alternatively, until such time as the supervisor of animal control finds the designation is no longer needed to protect the public health, safety and welfare.

(b) Administrative determination. The enforcement authority, through the supervisor of animal control may, by administrative action, determine a dog is a Public Nuisance Dog. This administrative determination may be appealed to the Animal Control Advisory and Appeals Board. Any appeal shall be in writing and must be received by the supervisor within five (5) days of the owner's receipt of the administrative determination. Appeals shall be considered by a three (3) member panel made up of members of the Animal Control Advisory and Appeals Board. Any person dissatisfied with the decision of the appeal panel may bring an action in district court to determine the reasonableness of the decision or determination.

(Ord. No. 04-10223, § 4, 8-9-04)

Sec. 7-7. Dangerous dogs.

Any dog which has attacked or bitten a person or domestic animal may be determined to be a Dangerous Dog, and the owner required to obtain a special permit in accordance with Section 7-122 of this chapter in order to keep the dog within the city limits. The determination may be made by the Judge of the Municipal Court as part of a court proceeding on a city ordinance violation or as a separate proceeding. In considering this determination, the judge shall take into consideration the severity of the injury and circumstances of the incident. The judge shall take into consideration whether the public heath, safety and welfare can be adequately protected by the permitting, security and confinement standards for Dangerous Dogs, as an alternative to a determination that the dog is a Vicious Dog under Section 7-8, with euthanasia required.

No Dangerous Dog shall be offered for adoption by the Animal Shelter.

(Ord. No. 04-10223, § 5, 8-9-04)

Sec. 7-8. Vicious dogs.

Any dog which has attacked or bitten and inflicted severe injury or death to a person or domestic animal may be determined to be a vicious dog. A severe injury is a physical injury which results in broken bones, lacerations requiring multiple sutures or cosmetic surgery. Any dog trained or harbored for the purpose of animal fighting may be determined a vicious dog.

(a) Judicial determination. The Judge of Municipal Court may, as part of a court proceeding on a city ordinance violation or as a separate proceeding, determine a dog is a vicious dog.

(b) Destruction of animal. When any dog is determined to be a vicious dog by the Court, the Municipal Court Judge shall order the animal humanely euthanized.

(Ord. No. 04-10223, § 6, 8-9-04)

Sec. 7-9. Law enforcement and military dog exception.

The provisions of Sections 7-5; 7-6; 7-7; 7-8; 7-49; shall not apply to dogs when used for authorized law enforcement or military purposes by a government agency or military unit.

(Ord. No. 04-10223, § 7, 8-9-04)

Section 7-10. Future special permit required of certain owners.

Any owner who has failed to meet the owner responsibilities in Section 7-5 or 7-49(a) of this chapter related to animal attacks or animal nuisance activities, and who owns a dog determined to be a Public Nuisance Dog, Dangerous Dog, or Vicious Dog under Sections 7-6, 7-7 or 7-8 of this chapter, shall be required to obtain a special permit for Public Nuisance Dog for any subsequent dog or dogs owned and kept in the city limits. This requirement of the owner shall be in place for a five (5) year period from the date of the judicial or administrative determination in Section 7-6, 7-7 or 7-8.

(Ord. No. 04-10223, § 8, 8-9-04)

Secs. 7-11 -- 7-15. Reserved.

ARTICLE II. ADMINISTRATION AND ENFORCEMENT[2]

Section 7-16. Animal Control Advisory and Appeals Board.

The Board of City Commissioners shall establish by resolution a citizen board to be known as the Animal Control Advisory and Appeals Board. The Board shall have specific duties as referenced in this chapter, as well as duties described by resolution. In addition, the Board shall provide general advice and recommendations to the Governing Body, City-County Board of Health and the Enforcement Authority related to animal control issues.

(Ord. No. 80-8794, § 1(8-12), 4-28-80; Ord. No. 04-10223, § 9, 8-9-04)
Editor's Notes: Ord. No. 04-10223 adopted § 7-16 establishing the Animal Control Advisory and Appeals Board. Former § 7-16 pertained to duties of the city manager was replaced with § 7-17.

Sec. 7-17. Duties of the enforcement authority.

The city manager, chief of police and animal control supervisor shall be the enforcement authority with the duty to administer and enforce all provisions of this chapter. The city manager shall have authority to establish reasonable administrative regulations, policies and procedures as needed to effectively carry out the spirit and intent of this chapter.

(Ord. No. 80-8794, § 1(8-13), 4-28-80; Ord. No. 04-10223, § 10, 8-9-04)
Editor's Notes: Ord. No. 04-10223 adopted § 7-17, formerly §§ 7-16 and 7-17 pertaining to the duties of the city manager and police department.

Sec. 7-18. Duties of the health officer.

It shall be the duty of the health officer to administer and enforce the public health provisions of this chapter directly or through staff assigned to be supervised by the health officer. The health officer shall issue standing and/or emergency regulations for rabies control; zoonosis control; the control or elimination of animal pests; and animal bite procedures that the officer finds necessary to protect the public health, which regulations shall be filed with the city clerk, the supervisor and the chief of police.

(Ord. No. 80-8794, § 1(8-14), 4-28-80)

Sec. 7-19. Enforcement procedures.

(a) The enforcement authority and other employees assigned to them are authorized to issue citations, summons, notices to appear or other methods required in law and Municipal Court procedures to owners and other persons in violation of this chapter.

(b) The enforcement authority is hereby authorized to seize, impound and confine any animal kept in violation of provisions of this chapter and at any time when deemed necessary to protect the public health, safety and welfare. Such animal shall be confined at the animal shelter or other suitable facility in a humane manner. Such animal may be released to the owner when compliance with provisions of this chapter is achieved, under procedures established for animal recovery and when said release is consistent with protection of public health and safety. Any reasonable costs incurred by the enforcement authority in seizing, impounding and confining of any animal pursuant to this chapter shall be charged against the owner of such animal and shall be subject to collection by any lawful means.

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[2] **Cross references:** Administration, Ch. 2.

(c) The enforcement authority is hereby authorized to use humane live animal traps to capture any animal whose presence on private or public property constitutes a public nuisance or a threat to public safety, health and welfare.

(d) Law enforcement officers and other persons designated by the enforcement authority are authorized to use such force, including deadly force, as deemed necessary against dangerous or vicious animals and animals presenting an immediate threat to public health and safety.

(e) It is unlawful for any person to interfere with a law enforcement officer or any person designated by the enforcement authority in the carrying out of their enforcement duties prescribed by this chapter.

(Ord. No. 80-8794, § 1(8-15), 4-28-80; Ord. No. 04-10223, § 11, 8-9-04)

Secs. 7-20--7-30. Reserved.

ARTICLE III. RESTRICTIONS ON OWNING ANIMALS

Sec. 7-31. Prohibited owning; exemptions.

(a) The owning, harboring, keeping, possessing or selling of any wild, exotic, poisonous or vicious animal within the city limits is hereby prohibited.

This prohibition shall not apply to:

(1) Those wild or exotic animals kept under a rehabilitation or scientific and exhibition permit of the Kansas Wildlife and Parks Department.

(2) Zoos, circuses, carnivals, veterinarian clinics in possession of such animals during treatment, educational institutions or medical institutions.

(3) Persons temporarily transporting such animals through the city.

(b) The owning of any fowl within the city limits is hereby prohibited, except:

(1) Caged birds kept as pets within a residence structure; or

(2) Ducks and geese with a minimum of four hundred (400) square feet of water per duck or goose. Each location is limited to a maximum of fifteen (15) water fowl; or

(3) The owning of chickens shall be limited to a maximum of fifteen (15) per residence, kept in accordance with section 7-33;

(4) Pigeons, kept in accordance with section 7-33;

(5) Other domestic fowl, kept in accordance with section 7-31(c)(2).

(c) No livestock, including but not limited to horses, mules, cattle, sheep, goats, and swine, shall be owned, or maintained within the city limits, except:

(1) Horses which are used for riding purposes may be stabled within the city limits only in designated areas which have been given a special permit for the purpose by the City-County Health Department. Such designated areas, for the purpose of health and sanitation, shall be under the supervision of the health officer. If at any time such designated areas shall become a nuisance or a fly-breeding or rat-infested area, the health officer shall have the authority to revoke such special permit within ten (10) days after notifying the board of commissioners.

(2) Livestock in conjunction with livestock auctions, livestock shows and rodeos given a permit by the City-County Health Department.

(d) It shall be unlawful for any veterinarian within the city to fail to report to the supervisor the examination or treatment of any animal that is owned or maintained in violation of this chapter.

(Ord. No. 80-8794, § 1(8-26), 4-28-80; Ord. No. 87-9178, § 1, 4-6-87; Ord. No. 90-9371, §§ 3, 14, 2-12-90; Ord. No. 96-9747, § 3, 6-17-96; Ord. No. 96-9773, § 1, 12-2-96; Ord. No. 99-9938, § 1, 8-2-99)
State law references: Permitting dangerous animal to be at large, K.S.A. 21-3418.

Sec. 7-32. Limitation on numbers of animals owned; impoundment authorized.

When animals in excess of any limits established in this chapter or under any permit or license authorized in this chapter are found at any premises, all of the animals found at the premises may be removed by the supervisor and impounded, except that the person in charge of the premises may designate and retain up to those limits established by law, regulation or under the license or permit."

(Ord. No. 80-8794, § 1(8-27), 4-28-80; Ord. No. 00-9938, § 1, 8-2-99; Ord. No. 04-10223, § 12, 8-9-04)

Sec. 7-33. Location of yard housing for animals.

(a) It shall be unlawful for any person to maintain any chicken coop, pigeon cote, or rabbit hutch closer than fifty (50) feet to the nearest portion of any building occupied by or in any way used by any person, other than the dwelling occupied by the owner of the animals. Any yard housing for the animals shall be subject to the maintenance requirements prescribed in section 7-58, and any yard enclosure shall be so construction and maintained that any animal kept therein is securely confined and prevented from escaping therefrom.

(b) No chickens, pigeons, ducks or geese shall reside within the living area of the owner's residence.

(Ord. No. 80-8794, § 1(8-28), 4-28-80; Ord. No. 00-9938, § 1, 8-2-99)

Sec. 7-34. Keeping bees.

It shall be unlawful for any person, either as owner or as agent, representative, employee or bailee of any owner, to keep or harbor any bees within the limits of the city without having first obtained a special permit therefor from the board of commissioners. Any person desiring to obtain a permit to keep bees within the city limits shall file an application with the city clerk who shall refer the same to the health officer. The health officer shall investigate the proposed premises and file his written report and recommendations with the board of commissioners. After reviewing the report from the health officer, the board of commissioners may grant the applicant permission to keep bees upon his premises within the city limits upon such terms and conditions as it may specify. Any permit granted by the board of commissioners hereunder shall be subject to revocation in the event said applicant shall fail to comply with the terms and conditions of the special permit or if the keeping of the bees becomes a nuisance, health hazard or detrimental to the general welfare of the residents the city.

(Code 1966, § 23-166)

Secs. 7-35--7-44. Reserved.

ARTICLE IV. RESPONSIBILITIES OF PERSONS OWNING ANIMALS

Sec. 7-45. Duty of all animal owners to be responsible owners.

It shall be the positive duty of every owner of any animal or anyone having an animal in possession or custody, to exercise reasonable care and to take all necessary steps and precautions to protect other people, property and animals from injury or damage which might result from their animal's behavior. In the event that the owner or keeper of any animal is a juvenile, the parent or guardian of such juvenile shall be responsible to ensure compliance with all provisions of this chapter.

(Ord. No. 02-10101, § 2, 8-26-02)

Sec. 7-46. Animal care requirements and prohibition of animal cruelty.

(a) It shall be unlawful cruelty to animals for any person to own any animal and:

(1) Fail to provide such sufficient and wholesome food; potable water; shade and protection from the weather, which shall include a structurally sound, weatherproof enclosure large enough to accommodate the animal, but not so large that it would not retain body heat adequately; opportunity for exercise, veterinary care when needed to treat injury or illness, unless the animal is instead humanely euthanized; or other care as is needed for the health or well-being of such kind of animal; or

(2) Abandon or leave any animal in any place. For the purpose of this provision, "abandon" means for the owner or keeper to leave any animal without demonstrated or apparent intent to recover or to resume custody; leave any animal for more than twelve (12) hours without providing for adequate food, potable water, and shelter for the duration of the absence; or turn or release any animal for the purpose of causing it to be impounded; or

(3) Leave any animal unattended in a vehicle when such vehicle does not have adequate ventilation and temperature to prevent suffering, disability or death to such animal.

(b) Any animal impounded for being kept in violation of this section or section 7-71 may be humanely euthanized by the supervisor if he deems it necessary to relieve suffering. The owner of any animal that is not euthanized shall be entitled to regain custody of such animal only after such custody is authorized by the court. All expenses accrued for the treatment or care of such animal shall be paid by the owner, whether or not he seeks to regain custody of such animal.

(Ord. No. 80-8794, § 1(8-39), 4-28-80; Ord. No. 90-9371, §§ 2, 14, 2-12-90; Ord. No. 99-9938, § 1, 8-2-99)

Sec. 7-47. Proper identification of cats and dogs required.

It shall be unlawful for any person owning any cat or dog to permit such animal to be outside the residence structure of such owner without a current city registration tag and a current rabies vaccination tag attached to the collar or harness of such animal. It shall be unlawful for any person to permit a city registration or rabies vaccination tag to be worn by any animal other than the animal for which such tag is issued.

(Ord. No. 80-8794, § 1(8-40), 4-28-80; Ord. No. 90-9371, §§ 5, 14, 2-12-90)

Sec. 7-48. Duty to keep animal from running at large.

Every owner shall ensure that the animal is kept under restraint and that reasonable care and precautions are taken to prevent the animal from leaving, while unattended, the premises of its owner. It shall be unlawful for any owner to fail to prevent such animal from running at large within the city at any time. Any animal shall be deemed running at large when such animal is not:

(1) Inside a resident structure, secure fence or pen; or

(2) On a leash held by a person controlling such animal; or

(3) Tethered in such a manner as to prevent its crossing outside the premises of the owner onto public property, public right-of-way, or private property owned by any person other than the owner.

This provision shall not apply to pigeons or to cats, which shall, however, be kept under reasonable restraint to prevent nuisance activities as are prohibited by this article.

(Ord. No. 80-8794, § 1(8-41), 4-28-80; Ord. No. 99-9938, § 1, 8-2-99; Ord. No. 02-10101, § 3, 8-26-02)

Sec. 7-49. Animal nuisance activities prohibited.

(a) The owner of any animal shall take all reasonable measures to keep such animal from becoming a nuisance. It shall be unlawful for the owner of any animal to cause, permit or fail to exercise proper care and control to prevent such animal from performing, creating or engaging in an animal nuisance activity. For the purpose of this provision, "animal nuisance activity" is defined as any animal which:

(1) When unprovoked, chases or approaches a person or domestic animal in a menacing fashion or apparent attitude of attack upon public property, public rights-of-way, or private property owned by any person other than the owner, or on the owner's property if the person is lawfully on the property in the performance of public duties, including public utility, mail delivery, or law enforcement purposes. Menacing shall mean the display by an animal of a disposition, determination or intent to attack or inflict injury or harm to a human being or other domestic animal, including displays of growling, charging, lunging, snapping or biting;

(2) When unprovoked, engages in a menacing behavior causing a person lawfully on abutting or adjoining private or public property or rights of way to reasonably believe the safety of the person is threatened. Particular attention shall be paid to threatened safety of children. Such menacing behavior may include displays of growling, snapping or biting, or behaviors such as charging or lunging at or against a fence or other barrier separating the owner's premises from other public or private property. Attempts by an animal to cross outside the owners premises through, over or under a fence or barrier may constitute menacing behavior;

(3) Attacks or injures a person or other domestic animal;

(4) Damages public or private property by its activities;

(5) Scatters refuse that is bagged or otherwise contained; or

(6) Causes any condition which threatens or endangers the health or well- being of a person or other animal;

(7) Is repeatedly running at large.

(b) If a summons is issued charging violation of this section, a subpoena may also be issued to a complainant, witness or other person to testify under oath as to the animal nuisance activity."

(Ord. No. 80-8794, § 1(8-42) 4-28-80; Ord. No. 02-10101, § 4, 8-26-02; Ord. No. 04-10223, § 13, 8-9-04)

Sec. 7-50. Excessive animal noise prohibited.

It shall be unlawful for the owner of any animal to permit such animal to make noise which is so loud or continuous that is disturbs a person of normal sensibilities. If a summons is issued charging violation of this section, a subpoena shall also be issued to the person who has been disturbed to testify to the disturbance under oath.

(Ord. No. 80-8794, § 1(8-43), 4-28-80; Ord. No. 90-9371, §§ 6, 14, 2-12-90)

Sec. 7-51. Proper confinement of cats and dogs in heat required.

The owner of any female cat or dog shall, during the period that such animal is in heat, keep it securely confined and enclosed within a building except when out upon such person's premises briefly for toilet purposes.

(Ord. No. 80-8794, § 1(8-44), 4-28-80)

Sec. 7-52. Special registration of guard dogs and posting of premises required.

(a) Any person owning a trained guard dog (for the purpose of this section, meaning a dog used to guard public or private property) in the city shall register such dog with the supervisor, who shall verify that such animal is controllable by its keeper and is confined in a manner that will not endanger persons not on the premises guarded.

(b) A conspicuous notice shall be posted on the premises where any guard dog is kept to warn persons of the nature of the dog therein confined.

(c) Any person operating a guard dog service in the city shall register such business with the supervisor and shall list all premises to be guarded with the supervisor before such service begins.

(Ord. No. 80-8794, § 1(8-45), 4-28-80)

Sec. 7-53. Annual registration of cats and dogs required; exception.

Any person owning any cat or dog over one hundred twenty (120) days of age shall register such cat or dog as prescribed in Article VI of this chapter, except for persons who shall be required to license as a commercial animal establishment under the control and provisions of Article VII of this chapter.

(Ord. No. 80-8794, § 1(8-46), 4-28-80; Ord. No. 94-9633, § 1, 5-16-94)

Sec. 7-54. Rabies vaccination of cats and dogs required.

Any person owning any cat or dog over one hundred twenty (120) days of age shall be required to have such animal currently immunized against rabies. For the purpose of this chapter, currently immunized or vaccinated against rabies shall mean that such cat or dog has been inoculated against rabies by a licensed veterinarian. Written evidence of vaccination shall be provided by the veterinarian, with such verification including both the date of the inoculation, and the expiration date of the inoculation. When no expiration date is provided by the issuing veterinarian, the expiration date shall be considered to be thirty-six (36) months from the date of inoculation.

(Ord. No. 80-8794, § 1(8-47), 4-28-80; Ord. No. 83-8964, § 1, 6-6-83; Ord. No. 88-9260, § 1, 7-11-88; Ord. No. 04-10223, § 14, 8-9-04)

Sec. 7-55. Animals in public buildings prohibited; exemptions.

No animal shall be allowed to enter any theatre, store, or other public building in the city, whether accompanied by its owner or person in charge or otherwise, except with the approval of the building's owner or manager. Dogs trained to assist the blind or deaf are exempt from this provision.

(Ord. No. 80-8794, § 1(8-48), 4-28-80)

Sec. 7-56. Removal of animal feces required.

The owner of any animal, when such animal is off the owner's property, shall be responsible for the removal of any feces deposited by such animal on public walks, streets, recreation areas, or private property and it shall be a violation of this section for such owner to fail to remove or provide for the removal of such feces before taking such animal from the immediate area where such defecation occurred.

(Ord. No. 80-8794, § 1(8-49), 4-28-80)

Sec. 7-57. Duty to report dog bites.

The owner, as defined in this chapter, of any dog, cat or ferret shall immediately report to the animal shelter, health department or police department any incident in which the animal has actually bitten any person or domestic animal, regardless of circumstances, and shall cause the animal to be confined in a secure enclosure or building until an investigation is conducted by the proper authority.

(Ord. No. 80-8794, § 1(8-54), 4-28-80; Ord. No. 96-9747, § 4, 6-17-96; Ord. No. 99-9938, § 1, 8-2-99)

Sec. 7-58. Proper maintenance of animal yard structures and pens required.

(a) It shall be unlawful for any person to keep or maintain any animal in any yard structure or area that is not clean, dry, and sanitary; free from debris and offensive odors that annoy any neighbor; and devoid of rodents and vermin.

(b) Excrement shall be removed daily from any pen or yard area where animals are kept and, if stored on the premises of any animal owner, shall be stored in adequate containers with fly-tight lids.

(c) All animal pens and yard shall be so located that adequate drainage is obtained, normal drying occurs, and standing water is not present.

(d) All earthen yards or runways wherein chickens are kept shall be spaded, then limed once every three (3) months from the month of April through the month of December. All structures or pens wherein chickens are kept shall be sprayed to control flies and other insects.

(e) All premises on which animals are kept shall be subject to inspection by the health officer. If the health officer determines from such inspection that the premises are not being maintained in a clean and sanitary manner, he shall notify the owner of the animals in writing to correct the sanitation deficiencies within twenty-four (24) hours after notice is served on him. Upon the second such notice within a twelve-month period, the owner shall be issued a summons for violation of this section. Any animal kept under any condition which could endanger the public or animal health or create a health nuisance may be impounded. Animals shall be released after fees are paid and cause for impoundment has been corrected.

(Ord. No. 80-8794, § 1(8-51), 4-28-80; Ord. No. 90-9371, § 7, 2-12-90)

Secs. 7-59--7-70. Reserved.

ARTICLE V. ANIMAL PROTECTION RESPONSIBILITY OF ALL PERSONS[3]

Sec. 7-71. Cruelty generally.

No person shall willfully and wantonly kill, beat, cruelly ill-treat, torment, overload, overwork, or otherwise abuse any animal, or cause, instigate or permit any dog fight, cock fight, or other combat between animals or between animals and humans, nor shall any person attend such unlawful exhibition or be umpire or judge at such.

(Ord. No. 80-8794, § 1(8-62), 4-28-80)

Sec. 7-72. Report of motor vehicles striking animals.

The operator of a motor vehicle which strikes any animal shall, as soon as possible, report the accident to the supervisor or the police department.

(Ord. No. 80-8794, § 1(8-62), 4-28-80)

Sec. 7-73. Offering animals as prizes or business inducements prohibited.

No person shall offer to give any live animal as a prize or as a business inducement.

(Ord. No. 80-8794, § 1(8-62), 4-28-80)

Sec. 7-74. Selling of certain animals prohibited.

(a) It shall be unlawful for any person to sell or display within the city any animal or fowl that has been artificially dyed or colored. Fowl or rabbits younger than eight (8) weeks of age may not be sold or offered for sale in quantities of fewer than five (5) to an individual purchaser.

(b) No wild, exotic, poisonous or vicious animal may be sold within the city limits, except as allowed under section 7-31(a).

(Ord. No. 80-8794, § 1(8-62), 4-28-80; Ord. No. 99-9938, § 1, 8-2-99)

Sec. 7-75. Exposing poison to animals.

No person shall expose any known poisonous substance whether mixed with food or not, so that the same shall be liable to be eaten by any animal, provided that it shall not be unlawful for a person to expose, on his own property, poison mixed with only vegetable substances.

(Ord. No. 80-8794, § 1(8-62), 4-28-80)

Sec. 7-76. Spring steel traps restricted.

It shall be unlawful for any person to use a spring steel trap in the city limits except rat, mice, gopher and mole traps.

(Ord. No. 80-8794, § 1(8-62), 4-28-80; Ord. No. 90-9371, §§ 8, 14, 2-12-90)

Sec. 7-77. Killing or molesting birds.

It shall be unlawful for any person to willfully kill any songbird or to molest the nest of such birds.

(Ord. No. 80-8794, § 1(8-62), 4-28-80)

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[3] **State law references:** Injury to a domestic animal, K.S.A. 21-3727.

Sec. 7-78. Retention of animals unlawfully.

No person shall, without the knowledge of consent of the owner, hold or retain possession of any animal of which he is not the owner for more than twenty-four (24) hours without first reporting the possession of such animal to the animal shelter; nor shall any person feed or shelter any unowned animal for seventy-two (72) or more consecutive hours without reporting such animal to the animal shelter.

(Ord. No. 80-8794, § 1(8-62), 4-28-80; Ord. No. 90-9371, §§ 9, 14, 2-12-90)

Secs. 7-79--7-90. Reserved.

ARTICLE VI. STANDARD REGISTRATION OF CATS AND DOGS

Sec. 7-91. Registration required.

It shall be the duty of any owner of a dog or cat over one hundred twenty (120) days of age to register such cat or dog with the Salina-Saline County Health Department Animal Shelter Division, and to renew such registration upon expiration. The registration period shall begin on the date the rabies vaccination is given, or on the date the dog or cat was first brought into the city, whichever is later. The registration period shall extend to the expiration date of the rabies inoculation.

(Ord. No. 80-8794, § 1(8-73), 4-28-80; Ord. No. 94-9633, § 2, 5-16-94; Ord. No. 94-9638, § 1, 7-27-94)

Sec. 7-92. Exemptions.

Any other section of this chapter notwithstanding, the registration provision of this chapter, shall not apply to any nonresident owner of any cat or dog while such person is passing through the city, provided such cat or dog shall remain on a leash or otherwise effectively restrained while within the city.

(Ord. No. 80-8794, § 1(8-74), 4-28-80)

Sec. 7-93. Fees; exemptions.

(a) The registration fees for cats and dogs shall be determined by resolution.

(b) As proof of neutering and/or permanent identification such as tattooing, microchip or other types of approved identification, the applicant shall present to the animal shelter personnel a validation signed by a licensed veterinarian.

(c) No registration fee shall be charged to any owner of a dog trained and being used as a guide or hearing dog.

(Ord. No. 80-8794, § 1(8-75), 4-28-80; Ord. No. 94-9633, § 2, 5-16-94; Ord. No. 96-9747, § 5, 6-17-96; Ord. 05-10266, § 1, 4-18-05)

Sec. 7-94. Procedure.

Registration shall be accomplished at the Salina Animal Shelter, or such other location as administratively prescribed, at any time during the year that a cat or dog reaches the age of required registration; at any time during the year an owner acquires a cat or dog of required registration age; or within thirty (30) days after a person owning a cat or dog moves into the city.

(Ord. No. 80-8794, § 1(8-76), 4-28-80; Ord. No. 04-10223, § 17, 8-9-04)

Sec. 7-95. Issuance of standard license and registration.

The supervisor shall issue a license to the dog or cat owner upon presentation of a certificate of rabies vaccination under as required Sec. 7-54 of this chapter, and payment of the prescribed registration fees.

(Ord. No. 80-8794, § 1(8-77), 4-28-80; Ord. No. 04-10223, § 18, 8-9-04)

Sec. 7-96. Receipt constitutes certificate of registry.

The receipt issued for the registration shall constitute a certificate of registry and evidence of authorization for the keeping of such cat or dog within the city and shall be valid for the period of the registration.

(Ord. No. 80-8794, § 1(8-78), 4-28-80; Ord. No. 94-9633, § 2, 5-16-94)

Sec. 7-97. Registered in name of household head.

All cats and dogs so owned in any household shall be registered in the name of the same household head.

(Ord. No. 80-8794, § 1(8-79), 4-28-80)

Sec. 7-98. Tags.

(a) At the time of issuance of a certificate of standard registry for a cat or dog not currently registered within the city, the supervisor shall deliver a registration tag bearing the registration number of the certificate. The tag shall be kept on the animal as required in Section 7-47 of this chapter.

(b) A replacement for a lost, stolen or damaged tag during the registration period shall be furnished for a fee as established by resolution.

(c) Upon change of animal ownership, any person acquiring any dog or cat currently registered in Salina shall apply to the supervisor and may transfer such registration with no additional fee charged.

(d) A new registration tag shall not be issued with each renewal, unless the previous tag is lost, stolen, damaged or becomes unreadable.

(Ord. No. 80-8794, § 1(8-80), 4-28-80; Ord. No. 94-9633, § 2, 5-16-94; Ord. No. 04-10223, § 19, 8-9-04)

Sec. 7-99. Registration assistance by veterinarians and registration records.

Any veterinarian practicing within the city, upon the examination or treatment of any cat or dog that is required by this article to be registered but whose owner cannot validate current registration, shall issue to the owner of such animal a registration application and instructions for accomplishing such registration by mail. The clerk shall provide to all veterinarians the aforementioned registration forms. Additionally, any such veterinarian shall forward monthly to the health officer a copy of the rabies vaccination certificate or any cat or dog owned by a Salina resident which has been vaccinated within the prior month, or substantially the same information in an alternative format deemed suitable by the health officer.

(Ord. No. 80-8794, § 1(8-81), 4-28-80; Ord. No. 90-9371, §§ 10, 14, 2-12-90)

Sec. 7-100. City clerk to maintain file of registry certificates.

The animal control supervisor shall keep on file a copy of all certificates of registry issued within the preceding thirty-six (36) months. Such certificates shall include, but not be limited to, the following information: The owner's name, address, and telephone number; an alternate telephone number; a

description of the cat or dog, including name, breed, color, age, weight, sex and neutered or unuttered status; notation of proper tatoo marking, if applicable; the number of the registration certificate and tag issued; and the expiration date of the registration.

(Ord. No. 80-8794, § 1(8-82), 4-28-80; Ord. No. 05-10266, § 2, 4-18-05)

Sec. 7-101. Reserved.

Editor's Note: (Ord. No. 05-10266 repealed Sec. 7-101. Former Sec. 7-101 pertained to city clerk to provide duplicate records to supervisor.)

Sec. 7-102. Hobby breeders license.

All hobby breeders shall obtain an annual city license and pay the fee established by resolution of the board of commissioners. No license shall be issued until the applicant shall have furnished satisfactory proof that he meets all the requirements of a hobby breeder as specified in section 7-1(11) and a written consent to the issuance of the license, signed by the adjacent property owners is filed with the city clerk. For the purpose of this section, adjacent property owner shall mean the owner of land of which any part thereof lies within fifty (50) feet of any portion of the hobby breeders property, and provided that the fifty (50) feet shall exclude public streets and alleys; provided however, that this provision shall not apply to hobby breeders holding a valid hobby breeders license as of July 1, 1980. Any license issued hereunder may be revoked at any time for just cause at the discretion of the city manager.

(Ord. No. 80-8801, § 2(8-84), 7-21-80)

Sec. 7-103. Denial, revocation and reinstatement.

(a) Withholding or falsifying information on a license or registration application shall be grounds for denial or revocation of such license or registration.

(b) Any person having been denied a license or registration may not reapply for a period of thirty (30) days. Each reapplication shall be accompanied by a fee established by resolution.

(c) No person who has been convicted of cruelty to animals shall be issued a registration or a license.

(d) It shall be a condition of the issuance of any license or registration that the health officer shall be permitted to inspect all animals and all premises where animals are kept at any time and shall, if permission for such inspection is refused, revoke the license or registration.

(e) Any license or registration issued shall be subject to revocation in the event such licensee or registrant shall fail to comply with the terms and conditions of such license or registration, or if the activity licensed becomes a nuisance, health hazard, or detriment to the safety and welfare of residents of the city.

(f) Any person whose license or registration is revoked shall, within ten (10) days thereafter surrender any animal owned or kept to the supervisor, who shall determine its disposition, and no part of the license or registration fee shall be refunded.

(g) Any person aggrieved by the denial or revocation of a license or registration may appeal to the board of commissioners, which body may either issue, reinstate, or affirm the denial of such license or registration.

(Ord. No. 80-8794, § 1(8-110), 4-28-80)

Secs. 7-104--7-115. Reserved.

ARTICLE VII. SPECIAL PERMIT AND LICENSING REQUIREMENTS[4]

Sec. 7-116. Hobby breeders license.

(a) It shall be unlawful for any person to operate as a hobby breeder, as defined in this chapter without being licensed for that activity. Application shall be made at the Office of the City Clerk.

(b) The City Manager shall establish application procedures and administrative requirements for hobby breeder licensing.

(c) Hobby breeders must be in full compliance with state laws and regulations regarding hobby breeding and the Pet Animal Act.

(d) The criteria used in evaluation of a hobby breeder license application shall be the same as for a Special Multiple Pet Permit, along with the additional requirements of notice to adjacent property owners with an opportunity to comment prior to license issuance, and full compliance with the City's zoning code.

(e) Hobby breeder licenses shall be non-transferable. The license is specific to the premises and applicant.

(f) Hobby breeder licenses shall be annual licenses, expiring December 31 of each year.

(g) The license fee for a hobby breeder shall be established by resolution.

(Ord. No. 80-8794, § 1(8-94), 4-28-80; Ord. No. 04-10223, § 20, 8-9-04)
Editor's Notes: Ord. No. 01-10223 adopted § 7-116, combining former §§ 7-116, 7-117, 7-119, 7-120, and 7-121.

Sec. 7-117. Commercial animal establishment license.

(a) It shall be unlawful for any person, as owner or agent, to operate a commercial animal establishment, as defined in this Chapter, without being licensed for that activity as provided in this article. Application shall be made at the Office of the City Clerk.

(b) The City Manager shall establish application procedures and administrative requirements for commercial animal establishment licensing.

(c) The license fee for a commercial animal establishment shall be established by resolution. No license fee shall be required of the public animal shelter, nor shall any fee be required of any animal hospital.

(d) Commercial animal establishment licenses shall be non-transferable. The license is specific to the premises and the applicant.

(e) Commercial animal establishment licenses shall be annual licenses expiring December 31 of each year.

(Ord. No. 80-8794, § 1(8-94), 4-28-80; Ord. No. 04-10223, § 20, 8-9-04)
Editor's Notes: Ord. No. 04-10223 adopted § 7-117, combining former § 7-116, 7-117, 7-119, 7-120, and 7-121.

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[4] **Cross references:** Licenses generally, Ch. 20.

Sec. 7-118. Conditions; approval or disapproval of applications.

(a) The City Clerk may issue any special permit or license under Sections 7-116 or 7-117 of this chapter with or without conditions. An applicant disagreeing with the conditions of a permit or license may appeal to the City Manager.

(b) An application denial may be recommended by the City Clerk or other authorized official. The official shall make a report to the City Manager outlining reasons for denial, including without limitation:

(1) The application contained false information, or the applicant withheld substantive information.

(2) The applicant had been convicted of an offense involving cruelty to animals.

(3) The applicant had been convicted of violation of federal, state or local laws or regulations related to animals.

(4) For other reasons related to protection of the public health, safety and welfare.

(c) The City Manager may deny an application for cause, or may approve conditions, based on findings related to the above. Any decision by the City Manager for an application for a license or permit required under Sections 7-116 or 7-117 may be appealed to the Board of Commissioners, by filing a notice of appeal with the City Clerk, which appeal shall be heard by the Board of Commissioners within fourteen (14) days. The Board of Commissioners decision shall be final.

(Ord. No. 80-8794, § 1(8-110), 4-28-80; Ord. No. 04-10223, § 20, 8-9-04)
Editor's Notes: Ord. No. 04-10223 adopted § 7-118, formerly § 7-122. Former § 7-118 was replaced with §§ 7-116 and 7-117.

Sec. 7-119. Revocation or suspension.

Any license or permit issued under Sections 7-116 or 117 of this chapter may be revoked or suspended by the City Manager for violation of federal, state or city law or regulation related to the premises or animals involved, or for failure to comply with the terms or conditions of such license or permit. Any person aggrieved by the decision of the City Manager regarding license or permit revocation or suspension may appeal the decision to the Board of Commissioners by filing a notice of appeal with the City Clerk, which appeal shall be heard by the Board of Commissioners within fourteen (14) days. The Board of Commissioner's decision shall be final.

(Ord. No. 80-8794, § 1(8-110), 4-28-80)
Editor's Notes: Ord. No. 04-10223 adopted § 7-119, formerly § 7-122. Former § 7-119 pertaining to license procedure was combined with §§ 7-116 and 7-117.

Sec. 7-120. Special multiple pet permit.

(a) It shall be unlawful for any person to own, keep or harbor more than four (4) dogs at the same address or on the same premises without first obtaining a special multiple pet permit. Hobby breeders and commercial animal establishments licensed under this chapter shall not be required to obtain a separate special multiple pet permit.

(b) Any person who desires to own, keep or harbor more than four (4) dogs shall apply for a Special Multiple Pet Permit through the Salina Animal Shelter, on forms provided by the supervisor.

(c) Upon receipt of an application, the supervisor shall inspect the applicant's property to determine if the size, condition and facilities are adequate for keeping more than four dogs. The criteria to be

evaluated shall include, without being limited to, the following:

(1) Whether the keeping of more than four dogs will likely create a general public nuisance, animal nuisance, create excessive noise, or otherwise disturb the peace, quiet and well-being of the surrounding neighborhood.

(2) Whether the keeping of such dogs will likely cause offensive odors which would create or cause unreasonable annoyance or discomfort to neighbors or others in close proximity.

(3) Whether the applicant, or any person who will share in the care, custody or control of the dogs has previously violated any city or state laws, codes or regulations pertaining to the care and control of dogs or the maintenance of property.

(4) Whether any conditions are likely to occur which threaten or endanger the health or well being of persons, the dogs kept onsite, or other animals.

(5) Whether the premises and facilities where the dogs are to be kept are suitable for the keeping of more than four (4) dogs, and are adequately lighted and ventilated and are so constructed and maintained so they can be kept in a clean and sanitary condition.

(d) The supervisor may issue a special multiple pet permit with or without conditions, based on the result of his/her application review and site inspections. All conditions in a special multiple pet permit are binding.

(e) As a condition of a multiple pet permit, the permit holder shall notify the animal shelter within ten (10) days when any of the permitted dogs gives birth.

(f) A special multiple pet permit is non-transferable. The permit is specific to the subject property and to the applicant.

(g) A special multiple pet permit shall expire on December 31 of the current year. The annual fee for a special pet permit shall be established by resolution.

(Ord. No. 04-10223, § 20, 8-9-04)
Editor's Note: Ord. No. 04-10223 adopted § 7-120. Former § 7-120 pertaining to license transferability was combined with §§ 7-116 and 7-117.

Sec. 7-121. Public nuisance dog permit.

The keeping of a dog which has been determined to be a Public Nuisance Dog under procedures established in this Chapter shall be subject to the following mandatory requirements:

1. Special Permit Required. In addition to standard registration and licensing, a special annual permit shall be required for keeping any Public Nuisance Dog. No permit shall be granted except with such conditions attached as shall, in the opinion of the enforcement authority, reasonably protect the public health, safety and welfare. Permits shall only be issued to adults. A temporary permit may be issued pending final disposition of the application. Final permits shall expire twelve months after issuance, with renewal required at that time.

2. Application for Permit. An application for a Public Nuisance Dog permit shall be made no later than five (5) days following the determination that a dog is a Public Nuisance Dog pursuant to this Chapter. The application shall be on forms provided by the city, with its form, content and submittal requirements to be determined by the City Manager.

3. Transfer of a Permit. A Public Nuisance Dog special permit may be transferred to a new owner within the city limits. A transfer application must be completed by both the current

and prospective new owner, with a fee paid at the time of application.

4. Permit Fee. The fee for an initial permit, a renewal permit, or transfer of a permit shall be as established by resolution.

5. Standards and Requirements. The keeping of any specially permitted Public Nuisance Dog in the city limits shall be subject to the following mandatory requirements, in addition to compliance with all other state and local laws and regulations:

   (a) Microchipping. All Public Nuisance Dogs shall have an identification microchip implanted in the dog. Such microchipping shall be accomplished by a licensed veterinarian or by the Salina-Saline County Animal Shelter as part of the special permitting process.

   (b) Identification Photographs. All owners of Public Nuisance Dogs shall make available the dog during the special permit process in order to allow the city to obtain digital photographs of the registered animal for identification purposes.

   (c) Confinement. All Public Nuisance Dogs shall be securely confined indoors, in a securely fenced yard, or secure pen or kennel. Confinement conditions shall be included in the permit to address the specific nuisance problems caused by that animal (e.g. menacing behavior; repeated running at large, damage to property).

   (d) Special Collar. All Public Nuisance Dogs shall be required to wear a special designated color collar at all times when not confined indoors. The collar shall either be one issued by the city during the special permit process, or one provided by the owner and approved by the city. The Enforcement Authority shall designate the specific color required.

   (e) Reporting Requirements. All owners of specially permitted Public Nuisance Dogs shall, within ten (10) days of the occurrence, report the following in writing to the city:

      (1) The removal of the dog from the city limits.

      (2) The death of the dog.

      (3) The new address of the premises where the dog is kept if the owner moves within the city limits.

(Ord. No. 04-10223, § 20, 8-9-04)
Editor's Notes: Ord. No. 04-10223 adopted § 7-121. Former § 7-121 pertaining to license expiration and renewal was combined with §§ 7-116 and 7-117.

Sec. 7-122. Dangerous dog permit.

The keeping of a dog which has been determined to be a Dangerous Dog under procedures established in this Chapter shall be subject to the following mandatory requirements:

(1) Special Permit Required. In addition to standard registration and licensing, a special annual permit shall be required for keeping a Dangerous Dog. No permit shall be granted except with such conditions attached as shall, in the opinion of the enforcement authority, reasonably protect the public health, safety and welfare. Permits shall only be issued to adults. A temporary permit may be issued pending final disposition of the application.

(2) Application for Permit. An application for a Dangerous Dog permit shall be made no later than

five (5) days following the determination that a dog is a Dangerous Dog pursuant to this Chapter. The application shall be on forms provided by the city, with its form, content and submittal requirements to be determined by the City Manager.

(3) Transfer of a Permit. A Dangerous Dog special permit may be transferred to a new owner within the city limits. A transfer application must be completed by both the current and prospective new owner, with a fee paid at the time of application.

(4) Permit Fee. The fee for an initial permit, renewal permit or transfer of a permit shall be as established by resolution.

(5) Standards and Requirements. The keeping of a specially permitted Dangerous Dog in the city limits shall be subject to the following mandatory requirements, in addition to compliance with all other state and local laws and regulations:

(a) Leash Requirement Outside of Pen. No person shall permit a Dangerous Dog to go outside the owner's residential structure or the dog's kennel or pen unless such dog is securely leashed with a leash no longer than four (4) feet in length and an adult is in physical control of the leash; provided however, that a Dangerous Dog may be in the rear yard of the owner's premises without a leash when the rear yard is securely fenced and an adult is physically present in the rear yard with the dog. No person shall permit a Dangerous Dog to be kept on a chain or rope outside its kennel or pen and no Dangerous Dog may be leashed or tethered to inanimate objects such as trees, posts or buildings.

(b) Confinement. All Dangerous Dogs shall be securely confined indoors or in a securely enclosed and locked pen or kennel. Such pen or kennel must meet administrative regulations for construction and location standards established by the City Manager. All structures used to confine specially permitted Dangerous Dogs must be locked by a key or combination lock when such animals are within the structure.

(c) Confinement Indoors. No Dangerous Dog may be kept on a porch, patio or in any part of a house or structure that would allow the dog to exit such building on its own volition.

(d) Microchipping. All Dangerous Dogs shall have an identification microchip implanted in the dog. Such microchipping shall be accomplished by a licensed veterinarian or by the Salina-Saline County Animal Shelter as part of the special permitting process. The applicant for a special permit under this ordinance shall file proof of microchipping if it has already taken place or is to be accomplished outside the permitting process.

(e) Neutering. All Dangerous Dogs must be neutered, with documentation provided from a veterinarian.

(f) Signs. All owners of Dangerous Dogs shall display in a prominent place on their premises a sign easily readable by the public using the words "Beware of Dog." In addition, a similar sign is required to be posted on the kennel or pen of such animal.

(g) Special Collar. All Dangerous Dogs shall be required to wear a special designated color collar at all times when not confined indoors. The collar shall be visibly on the dog when it is in the kennel or pen, or on a leash. The collar shall be either one issued by the city during the special permit process, or one provided by the owner and approved by the city. The Enforcement Authority shall designate the specific color required.

(h) Insurance. All owners of Dangerous Dogs shall have in effect public liability insurance in a single incident amount of $100,000 for bodily injury to or death of any person or persons or

for damage to property owned by any person which may results from the ownership, keeping or maintenance of such Dangerous Dog. At the time of initial application for a special permit, the owner, keeper or harborer must present proof of the required insurance. At the time of subsequent registration renewal, the owner, keeper or harborer shall show proof of the required insurance for the present registration period and proof that there was continuous insurance coverage throughout the period of the prior special permit year. In the event the required insurance is canceled, lapsed or for any other reason becomes non-enforceable, the owner, keeper or harborer shall be in violation of the provisions of this ordinance. The owner, harborer or keeper shall notify the city within ten (10) days of any cancellation, lapse or non-enforceability of this insurance, and provide proof substitute coverage has been obtained. The insurance may be in the form of a special liability policy or a standard homeowner's or renter's insurance policy from a Kansas licensed insurer which includes liability coverage.

(i) Identification Photographs. All owners of Dangerous Dogs shall make available the dog during the special permit process in order to allow the city to obtain digital photographs of the registered animal for identification purposes.

(j) Reporting Requirements. All owners of specially permitted Dangerous Dogs shall, within ten (10) days of the occurrence, report the following information in writing to the city.

(1) The removal from the city limits or death of a specially permitted Dangerous Dog.

(2) The death of a specially permitted Dangerous Dog.

(3) The new address where the Dangerous Dog is kept or harbored, should the owner move within the city limits.

(Ord. No. 04-10223, § 20, 8-9-04)
Editor's Notes: Ord. No. 04-10223 adopted § 7-122. Former § 7-122 pertaining to denial, revocation and reinstatement of license was replaced with § 7-118 and 7-119.

Sec. 7-123. Permit denial, revocation and reinstatement.

Special permits under Sections 7-119, 7-120 and 7-121 of this chapter shall be subject to the following:

(a) Withholding or falsifying information on an application shall be grounds for denial or revocation of such permit by the Enforcement Authority.

(b) Any permit issued shall be subject to revocation in the event such permittee fails to comply with the terms and conditions of the permit or related requirements in this chapter.

(c) Any person whose license is revoked shall, within five (5) days thereafter surrender the permitted animal to the supervisor, who shall determine its disposition. No part of the permit fee shall be refunded.

(d) The enforcement authority may reinstate a permit when deemed to be in the public interest.

(Ord. No. 04-10223, § 20, 8-9-04)

Sec. 7-124. Removal of special permit requirement.

Unless the court has directed otherwise annually at the time of renewal consideration for a permit issued under Section 7-120, an owner may request a review and determination as to whether the dog should no longer be classified as a Public Nuisance Dog and subject to special permit requirements. A request for determination review and decision shall be in writing, on forms and including information established by administrative regulation. A determination review fee shall be charged, as established by resolution.

Sec. 7-125. Appeal of permit action.

Administrative actions, determinations and decisions of the Enforcement Authority related to issuance, denial or revocation of a special permit under Sections 7-120, 7-121 and 7-122 of this chapter may be appealed to a three member panel of the Animal Control Advisory and Appeals Board. Appeals shall be in writing and received by the supervisor no later than five (5) days following notice of the action or determination. An appeal fee shall be charged as established by resolution. Any person aggrieved by the decision of the appeal panel may bring an action in district court to determine the reasonableness of any such action or determination.

(Ord. No. 04-10223), § 20, 8-9-04)

Secs. 7-126 – 7-135. Reserved.

ARTICLE VIII. IMPOUNDMENT, RECOVERY AND ADOPTION OF ANIMALS AT ANIMAL SHELTER

Sec. 7-136. Notification of capture and impoundment.

Upon the taking and impoundment of any cat or dog wearing a current city registration or rabies vaccination tag or having a proper tattoo marking, the supervisor shall notify the owner of such animal of its impoundment and conditions under which the animal can be recovered. Such notice shall be given by telephone or in writing within forty-eight (48) hours of the impoundment of such animal. Any owner so notified who fails to reclaim such animal within twenty-four (24) hours of such notice shall be issued a summons for failure to reclaim.

(Ord. No. 80-8794, § 1(8-121), 4-28-80; Ord. No. 90-9371, §§ 11, 14, 2-12-90)

Sec. 7-137. Owner of impounded animal may be processed against for violation of any applicable section or sections.

The owner of any impounded animal who does not recover such animal may still be processed against for violation of any applicable section or sections of this chapter.

(Ord. No. 80-8794, § 1(8-122), 4-28-90)

Sec. 7-138. Impoundment; notification of owner; holding period.

(a) Animal control personnel shall make reasonable efforts to identify the owner of any impounded animal, and to notify the owner of its impoundment and the conditions under which the animal can be recovered.

(b) Any impounded animal not recovered by its owner within a holding period of three (3) days shall become the property of the city and may be offered for adoption or humanely euthanized, subject to the following exceptions:

    (1) When any animal is voluntarily given to the city by its owner to be offered for adoption or humanely euthanized;

    (2) When any animal not having proper identification arrives at the shelter in such a condition that, in the judgement of the supervisor, compassion requires that such animal be promptly and humanely euthanized.

(Ord. No. 80-8794, § 1(8-123), 4-28-80; Ord. No. 90-9371, § 12, 2-12-9; Ord. No. 04-10223, § 21, 8-9-04)

Sec. 7-139. Procedure and fees for recovery of animals.

Any owner of an impounded animal shall be entitled to recover such animal if, within the prescribed holding period, the owner appears to claim the animal and makes payment of required fees and any veterinary expenses. Fees shall be established by action of the City-County Board of Health. No animal may be released to the owner if such release would be inconsistent with protection of public health and safety.

(Ord. No. 80-8794, § 1(8-124), 4-28-80; Ord. No. 90-9371, §§ 13, 14, 2-12-90; Ord. No. 91-9478, § 1, 11-25-91; Ord. No. 04-10223, § 22, 8-9-04)

Sec. 7-140. Reserved.

Editor's Note: Ord. No. 04-10223 repealed § 7-140 pertaining to procedure and fees for adopting animals.

ARTICLE IX. BREED SPECIFIC REGULATIONS

DIVISION 1. PIT BULL DOGS

Sec. 7-141. Definitions.

For purposed of this ordinance, the definitions set forth in Section 7.1 of Chapter 7 of the Salina Code are incorporated by reference. The following words and phrases when used in this ordinance, shall have the meanings respectively, ascribed to them:

Enforcement Authority means the city manager, chief of police, animal control supervisor and their respective designees.

Pit Bull Dog is defined to mean any and all of the following dogs:

The Staffordshire Bull Terrier breed of dogs;

The American Staffordshire Terrier breed of dogs;

The American Pit Bull Terrier breed of dog;

Any other breed commonly known as Pit Bull, Pit Bull Dog, or Pit Bull Terrier;

Dogs which have the appearance and characteristics of being predominantly of the breed of dogs known as Staffordshire Bull Terrier, American Pit Bull Terrier or American Staffordshire Terrier.

The registration of a dog with a dog association or in any governmental jurisdiction as a pit bull or any of the dogs listed above shall constitute prima facie evidence the animal is prohibited by this ordinance.

(Ord. No. 05-10271, § 1, 4-18-05)

Sec. 7-142. Prohibition

No resident shall own, keep, harbor, or in any way possess a pit bull dog within the city limits of Salina, Kansas. The City Manager shall implement administrative regulations related to standards and requirements to protect the public safety governing non-resident possession of a pit bull dog within the city limits on a temporary basis.

(Ord. No. 05-10271, § 1, 4-18-05)

Sec. 7-143. Exception.

Pit bull dogs located within the city limits and lawfully registered with the City of Salina on the effective date of this ordinance may be kept within the city limits upon strict compliance with the standards and requirements set forth in Section 4.

(Ord. No. 05-10271, § 1, 4-18-05)

Sec. 7-144. Standards and Requirements

The keeping of a pit bull dog eligible for the exception under Section 3 shall be subject to the following mandatory requirements:

(1) *Special Permit Required*

A special annual permit shall be required for keeping of any pit bull dog eligible for the exception under Section 3. No permit shall be granted except with such conditions attached as shall, in the opinion of the enforcement authority, reasonably protect the public health, safety and welfare. A temporary permit may be issued following application and pending final disposition of the application. Permits shall only be issued to adults.

(2) *Application for Permit*

An application for a pit bull dog permit pursuant to this ordinance shall be made no later than 30 days following the effective date of this ordinance. The application shall be on forms provided by the city, with its form, content and submittal requirements to be determined by the city manager.

(3) *Permit Fee*

An initial application fee for an annual permit shall be $50.00 for each pit bull dog. Annual renewal fees shall be $25.00 for one pit bull dog plus an additional $10.00 for each additional pit bull dog owned by the same individual and kept or harbored on the same premises.

(4) *Standards and Requirements*

The keeping of a specially permitted pit bull dog in the city limits shall be subject to the following mandatory requirements, in addition to compliance with all other state and local laws and regulations:

(a) Leash Requirement Outside of Pen. No person shall permit a pit bull dog to go outside the owner's residential structure or the dog's kennel or pen unless such dog is securely leashed with a leash no longer than four (4) feet in length and an adult is in physical control of the leash; provided however, that a pit bull dog may be in the rear yard of the owner's premises without a leash when the rear yard is securely fenced and an adult is physically present in the rear yard with the dog. No person shall permit a pit bull dog to be kept on a chain or rope outside its kennel or pen and no pit bull dog may be leashed or tethered to inanimate objects such as trees, posts or buildings.

(b) Confinement. All pit bull dogs shall be securely confined indoors or in a securely enclosed and locked pen or kennel. Such pen or kennel must meet administrative regulations for construction and location standards established by the city manager. All structures used to confine specially permitted pit bull dogs must be locked by a key or combination lock when such animals are within the structure.

(c) Confinement Indoors. No pit bull dog may be kept on a porch, patio or in any part of a house or structure that would allow the dog to exit such building on its own volition.

(d) Microchipping. All pit bull dogs shall have an identification microchip implanted in the dog. Such microchipping shall be accomplished by a licensed veterinarian or by the Salina-Saline County Animal Shelter as part of the special permitting process. The applicant for a special permit under this ordinance shall file proof of microchipping if it has already taken place or is to be accomplished outside the permitting process.

(e) Signs. All owners of pit bull dogs shall within 30 days of the effective date of this ordinance display in a prominent place on their premises a sign easily readable by the public using the words "Beware of Dog". In addition, a similar sign is required to be posted on the kennel or pen of such animal.

(f) Special Collar. All pit bull dogs shall be required to wear a special designated color collar at all times when not confined indoors. The collar shall be visibly on the dog when it is in a kennel or pen, or on a leash. The collar shall be either one issued by the City during the special permit process, or one provided by the owner and approved by the City. The Enforcement Authority shall designate the specific color required.

(g) Insurance. All owners of pit bull dogs shall, within thirty (30) days of the effective date of this ordinance obtain and have in effect public liability insurance in a single incident amount of $100,000 for bodily injury to or death of any person or persons or for damage to property owned by any persons which may result from the ownership, keeping or maintenance of such pit bull dog. At the time of initial application for a special permit, the owner, keeper or harborer must present proof of the required insurance. At the time of subsequent registration renewal, the owner, keeper or harborer shall show proof of insurance for the present registration period and proof that there was continuous insurance coverage throughout the period of the prior special permit year. In the event said liability insurance is canceled, lapsed or for any other reason becomes non-enforceable, said owner, keeper or harborer shall be in violation of the provisions of this ordinance. The owner, harborer or keeper shall notify the City within ten (10) days of any cancellation, lapse or non-enforceability of this insurance, and provide proof substitute coverage has been obtained. The insurance may be in the form of a special liability policy or a standard homeowners or renters insurance policy from a Kansas licensed insurer which does not have a policy of limiting or excluding coverage due to pit bull dog ownership.

(h) Identification Photographs. All owners of pit bull dogs shall make available the dog during the special permit process in order to allow the City to obtain digital photographs of the registered animal for identification purposes.

(i) Reporting Requirements. All owners of specially permitted pit bull dogs shall, within ten (10) days of the occurrence, report the following information in writing to the City.

(1) The removal from the city limits or death of a specially permitted pit bull dog.

(2) The birth of offspring of the specially permitted pit bull dog.

(3) The new address of the premises where the pit bull dog is kept or harbored should the owner move within the city limits.

(j) Animals Born to Specially Permitted Dogs. All offspring born of pit bull dogs specially permitted with the City must be removed from the city limits within six (6) weeks of their birth.

(Ord. No. 05-10271, § 1, 4-18-05)

Sec. 7-145. Sale or Transfer of Ownership Prohibited.

No person shall sell, barter or in any other way transfer ownership of a pit bull dog to any person within the city limits unless the recipient person is an adult permanently residing in the same household and on the same premises as the owner issued the special permit.

(Ord. No. 05-10271, § 1, 4-18-05)

Sec. 7-146. Duty of Owners: Failure to Comply.

The purpose of the requirements in this ordinance governing pit bull dogs is to prevent attacks, injuries or deaths by mandating use of control methods. It is the positive duty of any owner of a pit bull dog to take all necessary steps to comply with this ordinance. It is unlawful for the owner of a pit bull dog within the city limits of Salina to fail to comply with the provisions of this ordinance.

Any dog found to be the subject of a violation of this ordinance shall be subject to immediate seizure and impoundment. Failure to comply shall also be considered good cause for the revocation of any license or special permit issued allowing for the keeping of the subject dog, resulting in the immediate removal of the animal from the City.

(Ord. No. 05-10271, § 1, 4-18-05)

Sec. 7-147. Costs to be paid by responsible persons.

Any reasonable costs incurred by the City in seizing, impounding, confining or disposing of any pit bull dog pursuant to the provisions of this ordinance shall be charged against the owner of such animal and shall be subject to collection by any lawful means.

(Ord. No. 05-10271, § 1, 4-18-05)

Sec. 7-148. Administration and Enforcement.

It shall be the duty of the city manager, through the enforcement authority to administer and enforce the provisions of this ordinance. The city manager shall have authority to establish reasonable administrative regulations, policies and procedures as needed to effectively carry out the spirit and intent of this ordinance.

(Ord. No. 05-10271, § 1, 4-18-05)

Sec. 7-149. Penalties.

Wherever in this ordinance any act is prohibited or is declared to be unlawful or the performance of any act is required or the failure to do any act is declared to be unlawful, the violation of any provision of this ordinance shall be punished by a fine of not more than two thousand five hundred dollars ($2,500), or by imprisonment for a period not exceeding one (1) year, or by both fine and imprisonment, at the discretion of the court. Each day any violation of this ordinance continues shall constitute a separate offense.

CHAPTER 8. BUILDINGS AND STRUCTURAL APPURTENANCES[1]

Art. I. Adoption of Codes, §§ 8-1 – 8-160
Div. 1. Adoption of the International Building Code, §§ 8-1 – 8-30
Div. 2. Adoption of Residential Building Code with Amendments, §§ 8-31 – 8-70
Div. 3. Adoption of Plumbing Code with Amendments, §§ 8-71 – 8-120.
Div. 4. Adoption of Mechanical Code with Amendments, §§ 8-121 – 8-145.
Div. 5. Adoption of Electrical Code with Amendments, §§ 8-146 – 8-160.
Art. II. Building Advisory Board, §§ 8-161 -- 8-170
Art. III. License and Registration Requirements, §§ 8-171 – 8-200
Div. 1. License or Registration Required, §§ 8-171 – 8-177
Div. 2. General License and Registration Requirements, §§ 8-178 – 8-200.
Art. IV. Code for Abatement of Dangerous Buildings, §§ 8-201 – 8-220
Art. V. Structures Damaged by Fire, Explosion, or Windstorm §§ 8-221 – 8-235
Art. VI. Sign Code, §§ 8-236 – 8-245
Art. VII. Reserved, §§ 8-246--8-280
Art. VIII. Reserved, §§ 8-281 – 8-330
Art. IX. Reserved, §§ 8-331 – 8-350
Art. X. Demolition, Removal or Relocation of Buildings, §§ 8-351--8-380
Div. 1. Generally, §§ 8-351--8-360
Div. 2. Permit, §§ 8-361--8-380
Art. XI. Reserved.
Art. XII. Fences, Wall and Hedges, §§ 8-401--8-425
Art. XIII. Reserved, §§ 8-426--8-460
Art. XIV. Private Swimming Pools, §§ 8-461--8-475
Art. XV. Reserved, §§ 8-476--8-499

ARTICLE I. ADOPTION OF CODES

DIVISION 1. ADOPTION OF THE INTERNATIONAL BUILDING CODE[2]

Sec. 8-1. International Building Code adopted.

There is hereby adopted, by reference, by the city for the purpose of providing minimum standards to safeguard life or limb, health, property, and public welfare by regulating and controlling the design, construction, quality of materials, location, operation, alteration, repair, maintenance, use and occupancy of all buildings and structures within the city and certain equipment specifically regulated therein, that certain building code known as the International Building Code, promulgated and published by the International Code Council, being particularly the 2003 edition including Appendix H *but* not including any other appendices thereto and except as further amended in this article of the Salina Code not fewer than three (3) copies have been, and are now filed in the office of the city clerk and the same are hereby incorporated as fully as if set out at length herein and the provisions thereof shall be controlling in the construction of all buildings and structures therein contained within the corporate limits of the city.

(Ord. No. 98-9852, § 1, 2-2-98; Ord. No. 01-10025, § 1, 3-5-01; Ord. No. 04-10208; § 1, 10-11-04)
State law references: Authority to incorporate standard codes by reference, K.S.A. 12-3009 et seq. **Editor's Note:** Ord. No. adopted § 8-1, formerly § 8-36. Former § 8-1 pertained to payment of permit fees was repealed by Ord. No. 04-10208.

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[1] **Cross references:** Fire prevention and protection, Ch. 14; flood prevention and control, Ch. 15; housing, Ch. 18; mobile homes and trailers, Ch. 22; planning, Ch. 29; public utilities, Ch. 31; solid waste, Ch. 34; streets, sidewalks and other public places; Ch. 35; subdivision regulations, Ch. 36; water and sewers, Ch. 41; zoning regulations. Ch. 42.

[2] **Editor's Note:** Division 1 created by Ord. No. 04-10206.

Sec. 8-2. Amendment to Section 101.2 of the International Building Code.

[Section 101.2 and all of its subsections of the International Building Code are hereby amended to read as follows:]

101.2 Scope. The provisions of this code shall apply to the construction, alteration, movement, enlargement, replacement, repair, equipment, use and occupancy, location, maintenance, removal and demolition of every building or structure, or any appurtenances connected or attached to such buildings or structures.

Exceptions:

1. Detached one- and two-family dwellings and multiple single-family dwellings (town houses) not more than three stories above grade plane in height with a separate means of egress and their accessory structures shall comply with the *International Residential Cod*e.

Exception 2 is hereby deleted.

101.2.1 Appendices. Provisions in the appendices shall not apply unless specifically adopted.

(Ord. No. 04-10208, § 1, 10-11-04)
Editor's Note: Ord. No. 04-10208 adopted § 8-2, formerly §§ 8-36.1 – 8-50. Former § 8-2 pertaining to license suspension if inspection fees not paid was replaced with § 8-182.

Sec. 8-3. Amendment of Section 101.4 of the International Building Code.

[Section 104.1 and all of its subsections of the International Building Code are hereby amended to read as follows:]

101.4 Referenced codes. The other codes listed in Sections 101.4.1 through 101.4.7 and referenced elsewhere in this code shall be considered part of the requirements of this code to the prescribed extent of each such reference.

101.4.1 Electrical. Each reference to the International Electric Code shall mean the National Electric Code.

101.4.2 Gas. Each reference to the International Fuel Gas Code shall mean the Uniform Plumbing Code.

101.4.3 Mechanical. Each reference to the International Mechanical Code shall mean the Uniform Mechanical Code.

101.4.4 Plumbing. Each reference to the International Plumbing Code shall mean the Uniform Plumbing Code Each reference to the International Private Sewage Disposal Code shall mean the Uniform Plumbing Code.

101.4.5 Deleted

101.4.6 Fire prevention. The provisions of the International Fire Code shall apply to matters affecting or relating to structures, processes and premises from the hazard of fire and explosion arising from the storage, handling or use of structures, materials or devices; from conditions hazardous to life, property or public welfare in the occupancy of structures or premises; and from the construction, extension, repair, alteration or removal of fire suppression and alarm systems or fire hazards in the structure or on the premises from occupancy or operation.

101.4.7 Deleted

(Ord. No. 04-10208, § 1, 10-11-04)
Editor's Note: Ord. No. 04-10208 adopted § 8-3, formerly §§ 8-36.1 – 8-50. Former § 8-3 pertaining to notices of violations was repealed by Ord. No. 04-10208.

Sec. 8-4. Amendment of Section 102.6 of the International Building Code.

[Section 102.6 of the International Building Code is hereby amended to read as follows:]

102.6 Existing structures. The legal occupancy of any structure existing on the date of adoption of this code shall be permitted to continue without change, except as is specifically covered in this code, Chapter 18 of the Salina Municipal Code or the International Fire Code, or as is deemed necessary by the building official for the general safety and welfare of the occupants and the public.

(Ord. No. 04-10208, § 1, 10-11-04)

Sec. 8-5. Amendment of Section 103.1 of the International Building Code.

[Section 103.1 of the International Building Code is hereby amended to read as follows:]

103.1 Designation of enforcement agency. The Department of Development Services Division of Building Services is hereby designated as the enforcement agency of this code and the official in charge thereof shall be known as the Building Official.

(Ord. No. 04-10208, § 1, 10-11-04)

Sec. 8-6. Amendment of Section 103.3 of the International Building Code.

[Section 103.3 of the International Building Code is hereby amended to read as follows:]

103.3 Deputies. In accordance with the prescribed procedures of this jurisdiction and with the concurrence of the appointing authority, the building official shall have the authority to appoint a deputy building official, the related technical officers, inspectors, plan examiners and other employees. Such employees shall have powers as delegated by the building official.

(Ord. No. 04-10208, § 1, 10-11-04)

Sec. 8-7. Amendment of Section 105.1 of the International Building Code.

[Section 105.1 and all of its subsections of the International Building Code are hereby amended to read as follows:]

105.1 Required. Any owner or authorized agent who intends to construct, enlarge, alter, repair, move, demolish, or change the occupancy of a building or structure which is regulated by this code, or to cause any such work to be done, shall first make application to the building official and obtain the required permit.

105.1.1 Deleted

105.1.2 Deleted

(Ord. No. 04-10208; § 1, 10-11-04)

Sec. 8-8. Amendment of Section 105.2 of the International Building Code.

[Section 105.2 of the International Building Code is hereby amended to read as follows:]

*105.2 Work exempt from permit***.** Exemptions from permit requirements of this code shall not be deemed to grant authorization for any work to be done in any manner in violation of the provisions of this code or any other laws or ordinances of this jurisdiction. Permits shall not be required for the following:

- *Building:*

    1. One-story detached accessory structures used as tool and storage sheds, playhouses and similar uses, provided the floor area does not exceed 120 square feet (11.15 m2).

2. Fences not over 6 feet (1829 mm) high.
3. Oil derricks.
4. Retaining walls which are not over 4 feet (1219 mm) in height measured from the bottom of the footing to the top of the wall, unless supporting a surcharge or impounding Class I, II or III-A liquids.
5. Water tanks supported directly on grade if the capacity does not exceed 5,000 gallons (18 925 L) and the ratio of height to diameter or width does not exceed 2 to 1.
6. Sidewalks and driveways, platforms and uncovered decks not more than 30 inches (762 mm) above grade and not over any basement or story below.
7. Painting, papering, tiling, carpeting, cabinets, counter tops and similar finish work.
8. Temporary motion picture, television and theater stage sets and scenery.
9. Prefabricated swimming pools accessory to a Group R-3 occupancy, as applicable in Section 101.2, which are less than 24 inches (610 mm) deep, do not exceed 5,000 gallons (18 925 L) and are installed entirely above ground.
10. Shade cloth structures constructed for nursery or agricultural purposes and not including service systems.
11. Swings and other playground equipment accessory to detached one- and two-family dwellings.
12. Window awnings supported by an exterior wall which do not project more than 54 inches (1372 mm) from the exterior wall and do not require additional support of Group R-3, as applicable in Section 101.2, and Group U occupancies.
13. Movable cases, counters and partitions not over 5 feet 9 inches (1753 mm) in height.
14. Roof coverings not involving structural components.
15. Installation of replacement windows not requiring wall or structural changes, however the lack of a requirement for a permit does not allow the installation of windows smaller than required for light, ventilation or egress.
16. Installation of exterior siding.

(Ord. No. 04-10208, § 1, 10-11-04)

Sec. 8-9. Amendment of Section 108.2 of the International Building Code.

[Section 108.2 of the International Building Code is hereby amended to read as follows:]

*108.2 Schedule of permit fees***.** On buildings, structures, electrical, gas, mechanical, and plumbing systems or alterations requiring a permit, a fee for each permit shall be paid as required, in accordance with the schedule as established by the applicable governing authority. The fee for each permit shall be as set forth in the fee schedule adopted pursuant to section 2-2 of the Salina Code of Ordinances.

(Ord. No. 04-10208, § 1, 10-11-04)

Sec. 8-10. Amendment of Section 108.3 of the International Building Code.

[Section 108.3 of the International Building Code is hereby amended to read as follows:]

108.3 Building permit valuations. The applicant for a permit for alterations or renovations shall provide an estimated permit value at time of application. Permit valuations shall include total value of work, including materials and labor, for which the permit is being issued, such as electrical, gas, mechanical, plumbing equipment and permanent systems. If, in the opinion of the building official, the valuation is underestimated on the application, the permit shall be denied, unless the applicant can show detailed estimates to meet the approval of the building official. Final building permit valuation shall be set by the building official.

- *Additional fees will not be charged for electrical, plumbing, mechanical and concrete permits issued in conjunction with a building permit.*
- *Additional plan review fees will not be charged.*
- *All fees owed will be rounded down to the nearest dollar.*

(Ord. No. 04-10208, § 1, 10-11-04)

Sec. 8-11. Amendment of Section 109.3.7 of the International Building Code.

Section 109.3.7 of the International Building Code is hereby deleted in its entirety

(Ord. No. 04-10208, § 1, 10-11-04)

Sec. 8-12. Amendment of Section 112 of the International Building Code.

[Section 112 and all of its subsections of the International Building Code are hereby amended to read as follows:]

112.1 General. *The Building Advisory Board* shall hear and decide appeals of orders, decisions or determinations made by the building official relative to the application and interpretation of this code. *See Article II, Chapter 8 of Salina Municipal Code*

112.2 Limitations on authority. *Deleted*

112.3 Qualifications. *Deleted*

(Ord. No. 04-10208, § 1, 10-11-04)

Sec. 8-13. Amendment of Chapter 11 of the International Building Code.

[The entire text of Chapter 11 of the International Building Code is hereby deleted and amended to read as follows:]

Buildings or portions of buildings shall be accessible to persons with disabilities as required by the Americans with Disabilities Act Accessibility Guidelines (ADAAG) and K.S.A. 58-1304.

(Ord. No. 04-10208, § 1, 10-11-04)

Sec. 8-14. Amendment of Section 1203.1 of the International Building Code.

[Section 1203.1 of the International Building Code is hereby amended to read as follows:]

1203.1 General. Buildings shall be provided with natural ventilation in accordance with Section 1202.4, or mechanical ventilation in accordance with Division I of Appendix Chapter 12 of the 1997 Uniform Building Code as published by the International Conference of Building Officials, which is hereby adopted by reference.

1203.1.1 Alternate Ventilation. ASHRAE 62-2001, Ventilation for Acceptable Indoor Air Quality, is a recognized standard for mechanical ventilation design.

(Ord. No. 04-10208, § 1, 10-11-04)

Sec. 8-15. Chapter 13 of the International Building Code.

Chapter 13 is hereby deleted in its entirety.

(Ord. No. 04-10208, § 1, 10-11-04)

Sec. 8-16. Amendment of Section 1805.2 of the International Building Code.

[Section 1805.2 of the International Building Code is hereby amended to read as follows:]

1805.2 Depth of footings. The minimum depth of footings below the undisturbed ground surface shall be 12 inches (305 mm) unless designed and approved by a licensed structural or civil engineer or by administrative interpretation. Where applicable, the depth of footings shall also conform to Sections 1805.2.1 through 1805.2.3.

Exception: A one-story wood or metal frame building not used for human occupancy and not over 200 square feet may be constructed with walls supported on wood foundation plates laid directly on the ground when approved by the building official.

(Ord. No. 04-10208, § 1, 10-11-04)
Editor's Note: Ord. No. 04-10208 adopted § 8-16. Former § 8-16 pertaining to the creation of the Building Advisory Board was replaced with § 8-161.

Sec. 8-17. Amendment of Section 3109.4 of the International Building Code.

[Section 3109.4 and all of its subsections of the International Building Code is hereby deleted in its entirety and is hereby amended to read as follows:]

3109.4 Residential swimming pools. Residential swimming pools shall comply with Appendix G of the 2003 International Residential Code.

Ord. No. 04-10208, § 1, 10-11-04)
Editor's Note: Ord. No. 04-10208 adopted § 8-17. Former § 8-17 pertaining to the membership of the Building Advisory Board was replaced with § 8-163.

Sec. 8-18. Amendment of Section 3303.4 of the International Building Code.

[Section 3303.4 of the International Building Code is hereby amended to read as follows:]

3303.4 Vacant lot. Where a structure has been demolished or removed, the following conditions shall be met:

1. The premises left vacant by removal or demolition shall be cleared of all trash, debris, junk and discarded building material;

2. All foundations and slab floors shall be removed to at least one foot below ground level, unless another building or other structure is to be re-erected immediately upon the foundation as specified in the application for the permit;

All open wells, cisterns, cellars, basements or other excavations remaining on said lot shall be filled and compacted to prevent the accumulation of water, unless the same are to be used immediately with another structure to be erected thereon.

(Ord. No. 04-10208, § 1, 10-11-04)
Editor's Note: Former § 8-18 pertaining to appointments and terms of the Building Advisory Board was replaced with § 8-164.

Sec. 8-19. Amendment of Section 3409 of the International Building Code.

[Section 3409 of the International Building Code is hereby amended to read as follows:]

Buildings or portions of buildings shall be accessible to persons with disabilities as required by the Americans with Disabilities Act Accessibility Guidelines (ADAAG).

(Ord. No. 04-10208, § 1, 10-11-04)
Editor's Notes: Former § 8-19 pertaining to compensation to board members of the Building Advisory Board was replaced with § 8-165.

Sec. 8-20. Amendment of Section H101.2 of the International Building Code.

[Section H101.2 of the International Building Code is hereby amended to read as follows:]

H101.2 Signs permits. Permits for signs shall be as required by Article VI, Chapter 8 of the Salina Municipal Code of Ordinances.

(Ord. No. 04-10208, § 1, 10-11-04)
Editor's Notes: Former § 8-20 pertaining to officers of the Building Advisory Board was replaced with § 8-166.

Sec. 8-21. Amendment of Section H105.2 of the International Building Code.

[Section H105.2 of the International Building Code is hereby amended to read as follows:]

H105.2 Permits, drawings and specifications. Where a permit is required, as provided in Article VI, Chapter 8 of the Salina Municipal Code of Ordinances, construction documents shall be required. These documents shall show the dimensions, material and required details of construction, including loads, stresses and anchors.

(Ord. No. 04-10208, § 1, 10-11-04)
Editor's Notes: Former § 8-21 pertaining to meeting quorum of the Building Advisory Board was replaced with § 8-167.

Sec. 8-22. Amendment of Section 903.2.7 of the International Building Code.

[Section 903.2.7 of the International Building Code is hereby amended to read as follows:]

[F] 903.2.7 Group R. An automatic sprinkler system installed in accordance with Section 903.3 shall be provided throughout all buildings with a Group R fire area.

Exception: Unless required by some other provision of this code, an automatic sprinkler system shall not be required in detached Group R-2 buildings having 6 dwelling units or less where such buildings, do not have basements and are not more than one story in height, and provided that such buildings do not exceed 5,000 square feet (372 m^2) in area.

(Ord. No. 04-10253, § 1, 1-3-05)
Editor's Notes: Former § 8-22 pertaining to the purpose of the Building Advisory Board was replaced with § 8-162.

Sec. 8-23. Amendment of Section 2902.1 of the International Building Code.

[Section 2902.1 of the International Building Code is hereby amended to read as follows:]

2902.1 Minimum number of fixtures. Plumbing fixtures shall be provided for the type of occupancy and in the minimum number shown in Table 2902.1 Types of occupancies not shown in Table 2902.1 shall

be considered individually by the building official. The number of occupants shall be determined by this code. Occupancy classification shall be determined in accordance with Chapter 3.

Exceptions:

1. *Substitution for water closets.* In each bathroom or toilet room, urinals shall not be substituted for more than 67 percent of the required water closets.
2. For the purposes of satisfying the requirements of the building code, water fountains and/or service sinks shall not be required in any occupancy.

(Ord. No. 05-10263, § 1, 03-21-05)

Secs. 8-24 – 8-30. Reserved.

Editor's Notes: Ord. No. 04-10208 repealed §§ 8-23 – 8-30. Former § 8-23 pertaining to the appeal procedure to the Building Advisory Board was replaced with § 8-168. Former § 8-24 pertaining to the meeting schedule of the Building Advisory Board was replaced with § 8-170.

DIVISION 2. ADOPTION OF RESIDENTIAL BUILDING CODE WITH AMENDMENTS

Sec. 8-31. International Residential Code adopted.

There is hereby adopted, by reference, by the city for the purpose of providing minimum standards to safeguard life or limb, health, property, and public welfare by regulating and controlling the design, construction, quality of materials, location, operation, alteration, repair, maintenance, use and occupancy of all buildings and structures within the city and certain equipment specifically regulated therein, that certain building code known as the International Residential Code, recommended and published by the International Code Council for One- and Two-Family Dwellings, being particularly the 2003 edition including Appendix G, but not including any other appendices thereto, except as amended in this article of the Salina Code, of which not fewer than three (3) copies have been, and are now filed in the office of the city clerk and the same are hereby incorporated as fully as if set out at length herein and the provisions thereof shall be controlling in the construction of all buildings and structures therein contained within the corporate limits of the city.

(Ord. No. 04-10208, § 1, 10-11-04)

State law references: Authority to incorporate standard codes by reference, K.S.A. 12-3009 et seq.

Sec. 8-32. Amendment of Section R101.2 of the International Residential Code.

[Section R101.2 of the International Residential Code is hereby amended to read as follows:]

R101.2 Scope. The provisions of the *International Residential Code for One- and Two-Family Dwellings* shall apply to the construction, alteration, movement, enlargement, replacement, repair, equipment, use and occupancy, location, removal and demolition of detached one- and two-family dwellings and multiple single-family dwellings (townhouses) not more than three stories in height with a separate means of egress and their accessory structures.

Exception: The demolition of these structures shall be governed by Chapter 33 of the International Building Code.

(Ord. No. 04-10208, § 1, 10-11-04)

Sec. 8-33. Amendment of Section R101.7 of the International Residential Code.

[Section R101.7 of the International Residential Code is hereby amended to read as follows:]

R102.7 Existing structures. The legal occupancy of any structure existing on the date of adoption of this code shall be permitted to continue without change, except as is specifically covered in this code. Chapter 18 of the Salina Municipal Code or the *International Fire Code*, or as is deemed necessary by the building official for the general safety and welfare of the occupants and the public.

(Ord. No. 04-10208, § 1, 10-11-04)

Sec. 8-34. Amendment of Section R105.1 of the International Residential Code.

[Section R105.1 of the International Residential Code is hereby amended to read as follows:]

R105.1 Required. Any owner or authorized agent who intends to construct, enlarge, alter, repair, move, demolish, or change the occupancy of a building or structure, or to cause any such work to be done, shall first make application to the building official and obtain the required permit.

(Ord. No. 04-10208, § 1, 10-11-04)

Sec. 8-35. Amendment of Section R105.2 of the International Residential Code.

[Section R105.2 of the International Residential Code is hereby amended to read as follows:]

R105.2 Work exempt from permit. Permits shall not be required for the following. Exemption from the permit requirements of this code shall not be deemed to grant authorization for any work to be done in any manner in violation of the provisions of this code or any other laws or ordinances of this jurisdiction.

Building:

1. One-story detached accessory structures, provided the floor area does not exceed 120 square feet (18.58 m2).
2. Fences not over 6 feet (1829 mm) high.
3. Retaining walls that are not over 4 feet (1219 mm) in height measured from the bottom of the footing to the top of the wall, unless supporting a surcharge.
4. Water tanks supported directly upon grade if the capacity does not exceed 5,000 gallons (18927 L) and the ratio of height to diameter or width does not exceed 2 to 1.
5. Sidewalks and driveways, platforms and decks not more than 30 inches (762 mm) above adjacent grade and not over any basement or story below.
6. Painting, papering, tiling, carpeting, cabinets, counter tops and similar finish work.
7. Prefabricated swimming pools that are less than 24 inches (610 mm) deep.
8. Swings and other playground equipment accessory to a one or two-family dwelling.
9. Window awnings supported by an exterior wall which do not project more than 54 inches (1372 mm) from the exterior wall and do not require additional support.

(Ord. No. 04-10208, § 1, 10-11-04)

Sec. 8-36. Amendment of Section R105.2.1 of the International Residential Code.

Section R105.2.1 of the International Residential Code is hereby deleted in its entirety

(Ord. No. 04-10208, § 1, 10-11-04)

Editor's Notes: Ord. No. 04-10208 adopted § 8-36. Former § 8-36 pertained to the adoption of Uniform Building Code was replaced with § 8-1, adopting the International Building Code. Ord. No. 04-10208 repealed § 8-36.1 pertaining to local amendments of the Uniform Building Code.

Sec. 8-37. Amendment of Section R105.3 of the International Residential Code.

[Section R105.3 of the International Residential Code is hereby amended to read as follows:]

R105.3 Application for permit. To obtain a permit, the applicant shall first file an application therefor in writing on a form furnished by the department of building safety for that purpose.

Such application shall:

1. Identify and describe the work to be covered by the permit for which application is made.
2. Describe the land on which the proposed work is to be done by legal description, street address or similar description that will readily identify and definitely locate the proposed building or work.
3. Indicate the use and occupancy for which the proposed work is intended.

4. Be accompanied by construction documents and other information as required in Section R106.1.
5. State the valuation of the proposed work when the application is for an alterations or renovation.
6. Be signed by the applicant, or the applicant's authorized agent.
7. Give such other data and information as required by the building official.

(Ord. No. 04-10208, § 1, 10-11-04)
Editor's Notes: Ord. No. 04-10208 adopted § 8-37. Former § 8-37 pertaining to Definitions for code was repealed by Ord. No. 04-10208.

Sec. 8-38. Amendment of Section R106.3.1 of the International Residential Code.

[Section R106.3.1 of the International Residential Code is hereby amended to read as follows:]

R106.3.1 Approval of construction documents. When the building official issues a permit, the construction documents shall be approved in writing or by stamp. One set of construction documents so reviewed shall be retained by the building official.

(Ord. No. 04-10208, § 1, 10-11-04)
Editor's Notes: Former §§ 8-37.1 and 8-38 provided for local amendments of the Uniform Building Code.

Sec. 8-39. Amendment of Section R112 of the International Residential Code.

[Section R112 of the International Residential Code is hereby amended to read as follows:]

R112.1 General. The Building Advisory Board shall hear and decide appeals of orders, decisions or determinations made by the building official relative to the application and interpretation of this code. The building official shall be an ex officio member of said board but shall have no vote on any matter before the board. The board of appeals shall be appointed by the governing body and shall hold office at its pleasure. The board shall adopt rules of procedure for conducting its business, and shall render all decisions and findings in writing to the appellant with a duplicate copy to the building official. *See Article II, Chapter 8 of Salina Municipal Code*

R112.2 Deleted

R112.2.1 Deleted

R112.2.2 Deleted

R112.3 Deleted

R112.4 Deleted

(Ord. No. 04-10208, § 1, 10-11-04)
Editor's Notes: Ord. No. 04-10208 adopted § 8-39. Former § 8-39 pertained to local amendments of the Uniform Building Code.

Sec. 8-40. Amendment of Section R303.1 of the International Residential Code.

[Section R303.1of the International Residential Code is hereby amended to read as follows:]

R303.1 Habitable rooms. All habitable rooms shall be provided with aggregate glazing area of not less than 8 percent of the floor area of such rooms. All habitable rooms, except habitable rooms in basements, shall be provided with natural ventilation. Such ventilation shall be through windows, doors, louvers or other approved openings to the outdoor air. Such openings shall be provided with ready access or shall otherwise be readily controllable by the building occupants. The minimum openable area to the outdoors shall be 4 percent of the floor area being ventilated.

Exceptions:

1. The glazed areas need not be openable where the opening is not required by Section R310 and an approved mechanical ventilation system is provided capable of producing 0.35 air change per hour in

the room or a whole-house mechanical ventilation system is installed capable of supplying outdoor ventilation air of 15 cubic feet per minute (cfm) (7.08 L/s) per occupant computed on the basis of two occupants for the first bedroom and one occupant for each additional bedroom.

2. The glazed areas need not be provided in rooms where Exception 1 above is satisfied and artificial light is provided capable of producing an average illumination of 6 footcandles (6.46 lux) over the area of the room at a height of 30 inches (762 mm) above the floor level.

(Ord. No. 04-10208, § 1, 10-11-04)
Editor's Notes: Ord. No. 04-10208 adopted § 8-40. Former § 8-40 pertained to local amendments to the Uniform Building Code.

Sec. 8-41. Amendment of Section R303.3 of the International Residential Code.

[Section R303.3 of the International Residential Code is hereby amended to read as follows:]

R303.3 Bathrooms. Bathrooms, water closet compartments and other similar rooms shall be provided with aggregate glazing area in windows of not less than 3 square feet (0.279 m2), one-half of which must be openable.

Exception: The glazed areas shall not be required where artificial light and a mechanical ventilation system are provided. The minimum ventilation rates shall be 50 cfm (23.6 L/s) for intermittent ventilation or 20 cfm (9.4 L/s) for continuous ventilation. Ventilation air from the space shall be exhausted directly to the outside. Bathroom exhaust air ducts may terminate in an attic that is provided with ventilation conforming to the requirements of Section R806, provided further that such ventilation requirements may not be reduced by the installation of a vapor barrier.

(Ord. No. 04-10208, § 1, 10-11-04)
Editor's Notes: Ord. No. 01-10025 repealed § 8-41 and was replaced with § 8-36.7.

Sec. 8-42. Amendment of Section R309.5 of the International Residential Code.

[Section R309.5 of the International Residential Code is hereby amended to read as follows:]

R309.5 Flood hazard areas. For detached garages located in flood hazard areas as established by Table R301.2(1), garage floors shall be:

1. Elevated to or above the design flood elevation as determined in Section R323; or

2. Located below the design flood elevation provided they are at or above grade on all sides, are used solely for parking, building access, or storage, meet the requirements of Section R323, and are otherwise constructed in accordance with this code.

(Ord. No. 04-10208, § 1, 10-11-04)
Editor's Notes: Ord. No. 01-10025 repealed § 8-42 and was replaced with § 8-36.8

Sec. 8-43. Amendment of Section R311.4.3 of the International Residential Code.

[Section R311.4.3 of the International Residential Code is hereby amended to read as follows:]

R311.4.3 Landings at doors. There shall be a floor or landing on each side of each exterior door.

Exception: Where a stairway of four or fewer risers or 30 inches or less of elevation change is located on the exterior side of a door, other than the required exit door, a landing is not required for the exterior side of the door.

The floor or landing at the exit door required by Section R311.4.1 shall not be more than 1.5 inches (38 mm) lower than the top of the threshold. The floor or landing at

exterior doors other than the exit door required by Section R311.4.1 shall not be required to comply with this requirement but shall have a rise no greater than that permitted in Section R311.5.3.

Exception: The landing at an exterior doorway shall not be more than 73/4 inches (196 mm) below the top of the threshold, provided the door, other than an exterior storm or screen door does not swing over the landing. The width of each landing shall not be less than the door served. Every landing shall have a minimum dimension of 36 inches (914 mm) measured in the direction of travel.

Ord. No. 04-10208, § 1, 10-11-04)
Editor's Notes: Ord. No. 04-10208 adopted § 8-43. Former § 8-43 pertained to local amendments to the Uniform Building Code.

Sec. 8-44. Amendment of Section R311.5.3 of the International Residential Code.

[Section R311.5.3 of the International Residential Code is hereby amended to read as follows:]

R311.5.3 Stair treads and risers.

R311.5.3.1 Riser height. The maximum riser height shall be 8 inches (196 mm). The riser shall be measured vertically between leading edges of the adjacent treads. The greatest riser height within any flight of stairs shall not exceed the smallest by more than 3/8 inch (9.5 mm).

R311.5.3.2 Tread depth. The minimum tread depth shall be 9 inches (254 mm). The tread depth shall be measured horizontally between the vertical planes of the foremost projection of adjacent treads and at a right angle to the tread's leading edge. The greatest tread depth within any flight of stairs shall not exceed the smallest by more than 3/8 inch (9.5 mm). Winder treads shall have a minimum tread depth of 9 inches (254 mm) measured as above at a point 12 inches (305) mm from the side where the treads are narrower. Winder treads shall have a minimum tread depth of 6 inches (152 mm) at any point. Within any flight of stairs, the greatest winder tread depth at the 12-inch (305 mm) walk line shall not exceed the smallest by more than 3/8 inch (9.5 mm).

(Ord. No. 04-10208, § 1, 10-11-04)
Editor's Notes: Ord. No. 04-10208 adopted § 8-44. Former § 8-44 pertained to local amendments to the Uniform Building Code.

Sec. 8-45. Amendment of Section R311.5.6.3 of the International Residential Code.

[Section R311.5.6.3 of the International Residential Code is hereby amended to read as follows:]

R311.5.6.3 Handrail grip size. All required handrails shall be of one of the following types or provide equivalent graspability.

1. Type I. Handrails with a circular cross section shall have an outside diameter of at least 11/4 inches (32 mm) and not greater than 2 inches (51 mm). If the handrail is not circular it shall have a perimeter dimension of at least 4 inches (102 mm) and not greater than 61/4 inches (160 mm) with a maximum cross section of dimension of 21/4 inches (57 mm).

2. Type II. Handrails with a perimeter greater than 61/4 inches (160mm)shall provide a graspable finger recess area on both sides of the profile. The finger recess shall begin within a distance of 3/4 inch (19 mm) measured vertically from the tallest portion of the profile and achieve a depth of at least 5/16 inch (8mm) within 7/8 inch (22mm) below the widest portion of the profile. This required depth shall continue for at least 3/8 inch (10mm) to a level that is not less than 13/4 inches (45 mm) below the tallest portion of the profile. The minimum width of the handrail above the recess shall be 11/4 inches (32 mm) to a <u>maximum of 2 3/4 inches</u> (70 mm). Edges shall have a minimum radius of 0.01 inches (0.25 mm).

Exception: Handrails for exterior stairs of 4 risers or less need not be provided with finger recesses.

(Ord. No. 04-10208, § 1, 10-11-04)
Editor's Notes: Ord. No. 04-10208 adopted § 8-45. Former § 8-45 pertained to local amendments of the Uniform Building Code.

Sec. 8-46. Amendment of Section R317.2.2 of the International Residential Code.

[Section R317.2.2 of the International Residential Code is hereby amended to read as follows:]

R317.2.2 Parapets. Parapets shall not be required for townhouses as an extension of common walls. Where roof surfaces adjacent to the wall or walls are at different elevations and the higher roof is more than 30 inches (762 mm) above the lower roof. The common wall construction from the lower roof to the underside of the higher roof deck shall not have less than a 1-hour fire-resistive rating. The wall shall be rated for exposure from both sides.

(Ord. No. 04-10208, § 1, 10-11-04)

Sec. 8-47. Amendment of Section R318.1 of the International Residential Code.

Section R318.1of the International Residential Code is hereby deleted in its entirety.

(Ord. No. 04-10208, § 1, 10-11-04)

Sec. 8-48. Amendment of Section R323 of the International Residential Code.

Section R323 *Flood-resistant Construction* and all of its subsections are hereby deleted in their entirety.

(Ord. No. 04-10208, § 1, 10-11-04)

Sec. 8-49. Amendment of Section R401.3of the International Residential Code.

[Section R401.3 of the International Residential Code is hereby amended to read as follows:]

R401.3Drainage. Surface drainage shall be diverted to a storm sewer conveyance or other approved point of collection so as to not create a hazard. Lots shall be graded so as to drain surface water away from foundation walls. The grade away from foundation walls shall fall a minimum of 2% within the first 10 feet (3048 mm).

Exception: Where lot lines, walls, slopes or other physical barriers prohibit 2% of fall within 10 feet (3048 mm), drains or swales shall be provided to ensure drainage away from the structure.

(Ord. No. 04-10208, § 1, 10-11-04)

Sec. 8-50. Amendment of Section R403.1 of the International Residential Code.

[Section R403.1 of the International Residential Code is hereby amended to read as follows:]

R403.1 General. All exterior walls shall be supported on continuous solid or fully grouted masonry or concrete footings, wood foundations, or other approved structural systems which shall be of sufficient design to accommodate all loads according to Section R301 and to transmit the resulting loads to the soil within the limitations as determined from the character of the soil. Footings shall be supported on undisturbed natural soils or engineered fill.

Exception: A one-story wood or metal frame building not used for human occupancy and not over 200 square feet may be constructed with walls supported on wood foundation plates laid directly on the ground when approved by the building official.

(Ord. No. 04-10208, § 1, 10-11-04)

Sec. 8-51. Amendment of Section R404.1 of the International Residential Code.

[Section R404.1 of the International Residential Code is hereby amended to read as follows:]

R404.1 Concrete and masonry foundation walls. Concrete and masonry foundation walls shall be selected and constructed in accordance with the provisions of this section or in accordance with ACI 318, NCMA TR68-A or ACI 530/ASCE 5/TMS 402 or other approved structural standards. When ACI 318 or ACI 530/ASCE 5/TMS402 or the provisions of this section are used to design concrete or masonry foundation walls, project drawings, typical details and specifications are not required to bear the seal of the architect or engineer responsible for design, unless otherwise required by the state law of the jurisdiction having authority. All 8" and 10" thick walls supporting more than 4', but not more than 8' of unbalanced fill in Group I soils as classified by Table R405.1 shall be reinforced with a single mat of bars spaced a maximum of 24" on center both vertically and horizontally. Reinforcement shall be a minimum size of #4 and a minimum grade of 40.

(Ord. No. 04-10208, § 1, 10-11-04; Ord. No. 04-10255, § 1, 1-3-05)
Editor's Notes: Ord No. 04-10208 adopted § 8-51. Former § 8-51 pertaining to application requirement for general license was replaced with § 8-179.

Sec. 8-52. Amendment of Section R404.1.7 of the International Residential Code.

[Section R404.1.7 of the International Residential Code is hereby amended to read as follows:]

R404.1.7 Backfill placement. Backfill shall not be placed against the wall until one of following conditions has been meet:

1. The wall has cured for a minimum of 7 days or,
2. The wall has sufficient strength and has been anchored to the floor above or,
3. The wall has been sufficiently braced to prevent damage by the backfill.

Exception: Bracing is not required for walls supporting less than 4 feet (1219 mm) of unbalanced backfill.

Compaction of backfill shall not be initiated until the wall has been anchored to the floor above or provided with temporary bracing.

Exception: Backfill against contiguous basement walls beneath garage floors may be compacted before the walls have been anchored to the floor above provided that the walls have cured for a minimum of 7 days.

(Ord. No. 04-10208, § 1, 10-11-04)
Editor's Notes: Ord. No. 04-10208 adopted § 8-52. Former § 8-52 pertaining displaying of license was replaced by § 8-186.

Sec. 8-53. Amendment of Section R405.1 of the International Residential Code.

[Section R405.1of the International Residential Code is hereby amended to read as follows:]

R405.1 Concrete or masonry foundations. Drains shall be provided around all concrete or masonry foundations that retain earth and enclose habitable or usable spaces located below grade. Drainage tiles, perforated pipe or other approved systems or materials shall be installed either inside or outside of the foundation and shall discharge by gravity or mechanical means into an approved drainage system. The top of open joints of drain tiles shall be protected with strips of building paper, and perforated pipe shall be covered with an approved filter membrane material. When installed outside of the foundation, the drainage tiles or perforated pipe shall be placed on a minimum of 2 inches (51

mm) of washed gravel or crushed rock at least one sieve size larger than the tile joint opening or perforation and covered with not less than 6 inches (153 mm)of the same material. When perforated pipe is installed inside of the foundation, the pipe may be bedded in and covered by course sand in lieu of washed gravel or crushed rock.

Exception: *The pump and discharge piping for* a drainage system designed to be discharged by mechanical means is not required when the foundation is installed on well-drained ground or sand-gravel mixture soils according to the Unified Soil Classification System, Group I Soils, as detailed in Table R405.1 unless or until water is found to be infiltrating the system.

These requirements shall not be deemed to reduce any other more restrictive requirements that may be mandated by subdivision regulation or flood fringe construction.

(Ord. No. 04-10208, § 1, 10-11-04)
Editor's Notes: Ord. No. 04-10208 adopted § 8-53. Former § 8-53 pertaining to license fees was replaced with § 8-181.

Sec. 8-54. Amendment of Section R506.2.3 of the International Residential Code.

Section R506.2.3 of the International Residential Code is hereby deleted in its entirety.

(Ord. No. 04-10208, § 1, 10-11-04)
Editor's Notes: Ord. No. 04-10208 adopted § 8-54. Former § 8-54 pertaining to expiration and renewal of licenses was replaced with § 8-182.

Sec. 8-55. Amendment of Chapters 12 through 40 of the International Residential Code.

Chapters 12 through 40 are hereby deleted in their entirety.

(Ord. No. 04-10208, § 1, 10-11-04)
Editor's Notes: Ord. No. 04-10208 adopted § 8-55. Former § 8-55 pertaining to deadline for renewal of license was replaced with § 8-183.

Sec. 8-56. Amendment of Section AG105 of Appendix G of the International Residential Code.

[Section AG105 of Appendix G of the International Residential Code is hereby amended to read as follows:]

AG105.2 Outdoor swimming pool. An outdoor swimming pool, including an in-ground, aboveground or on-ground pool, hot tub or spa shall be provided with a barrier which shall comply with the following:

1. The top of the barrier for portable, on-ground pools shall be at 42 inches (1219 mm) above grade measured on the side of the barrier which faces away from the swimming pool. The top of the barrier for permanent pools shall be at least 72 inches (1219 mm) above grade measured on the side of the barrier which faces away from the swimming pool. The maximum vertical clearance between grade and the bottom of all barriers shall be 2 inches (51 mm) measured on the side of the barrier which faces away from the swimming pool. Where the top of the pool structure is above grade, such as an aboveground pool, the barrier may mounted on top of the pool structure. Where the barrier is mounted on top of the pool structure, the maximum vertical clearance between the top of the pool structure and the bottom of the barrier shall be 4 inches (102 mm).

2. Openings in the barrier shall not allow passage of a 4-inch-diameter (102 mm) sphere.

3. Solid barriers which do not have openings, such as a masonry or stone wall, shall not contain indentations or protrusions except for normal construction tolerances and tooled masonry joints.

4. Where the barrier is composed of horizontal and vertical members and the distance between the tops of the horizontal members is less than 45 inches (1143 mm), the horizontal members shall be located on the swimming pool side of the fence. Spacing between vertical members shall not exceed 1.75 inches (44 mm) in width. Where there are decorative cutouts within vertical members, spacing within the cutouts shall not exceed 1.75 inches (44 mm) in width.

5. Where the barrier is composed of horizontal and vertical members and the distance between the tops of the horizontal members is 45 inches (1143 mm) or more, spacing between vertical members shall not exceed 4 inches (102 mm). Where there are decorative cutouts within vertical members, spacing within the cutouts shall not exceed 1.75 inches (44 mm) in width.

6. Maximum mesh size for chain link fences shall be a 2.25-inch (57 mm) square unless the fence is provided with slats fastened at the top or the bottom which reduce the openings to not more than 1.75 inches (44 mm).

7. Where the barrier is composed of diagonal members, such as a lattice fence, the maximum opening formed by the diagonal members shall not be more than 1.75 inches (44 mm).

8. Access gates shall comply with the requirements of Section AG105.2, Items 1 through 7, and shall be equipped to accommodate a locking device. Pedestrian access gates shall open outward away from the pool and shall be self-closing and have a self-latching device. Gates other than pedestrian access gates shall have a self-latching device. Where the release mechanism of the self-latching device is located less than 54 inches (1372 mm) from the bottom of the gate, the release mechanism and openings shall comply with the following:

    8.1. The release mechanism shall be located on the pool side of the gate at least 3 inches (76 mm) below the top of the gate, and

    8.2. The gate and barrier shall have no opening greater than 0.5 inch (12.7 mm) within 18 inches (457 mm) of the release mechanism.

9. Where a wall of a dwelling serves as part of the barrier for a permanent pool, one of the following conditions shall be met:

    9.1. The pool shall be equipped with a powered safety cover in compliance with ASTM F1346; or

    9.2. All doors with direct access to the pool through that wall shall be equipped with an alarm which produces an audible warning when the door and its screen, if present, are opened. The alarm shall sound continuously for a minimum of 30 seconds immediately after the door is opened and be capable of being heard throughout the house during normal house-hold activities. The alarm shall automatically reset under all conditions. The alarm system shall be equipped with a manual means, such as touchpad or switch, to temporarily deactivate the alarm for a single opening. Such deactivation shall last for not more than 15 seconds. The deactivation switch(es) shall be located at least 54 inches (1372 mm) above the threshold of the door; or 9.3. Other means of protection, such as self-closing doors with self-latching devices, which are approved by the governing body, shall be acceptable so long as the degree of protection afforded is not less than the protection afforded by Item 9.1 or 9.2 described above.

10. Where the barrier is mounted on top of the pool structure, and the means of access is a ladder or steps, then:

    10.1. The ladder or steps shall be capable of being secured, locked or removed to prevent access, or

    10.2. The ladder or steps shall be surrounded by a barrier which meets the requirements of Section AG105.2, Items 1 through 9. When the ladder or steps are secured, locked or removed, any opening created shall not allow the passage of a 4-inch-diameter (102 mm) sphere.

(Ord. No. 04-10208, § 1, 10-11-04)
Editor's Notes: Ord. No. 04-10208 adopted § 8-55. Former § 8-55 pertaining to deadline for renewal of license was replaced by § 8-185.

Secs. 8-57 – 8-70. Reserved.

Editor's Notes: Ord. No. 04-10208 repealed §§ 8-57 – 8-70. Former § 8-57 pertaining to surety bond requirements was repealed by Ord. No. 02-10086. Former § 8-58 pertaining to insurance requirements was replaced with § 8-178. Former § 8-59 pertaining to suspension and revocation of license was replaced with § 8-187. Former §§ 8-66 – 8-70 pertaining to the adoption of the electrical code and local amendments was replaced with Division 5 of Art. I.

DIVISION 3. ADOPTION OF PLUMBING CODE WITH AMENDMENTS[3]

Sec. 8-71. Uniform Plumbing Code adopted.

There is hereby adopted, by reference, by the city for the purpose of providing minimum standards to safeguard life or limb, health, property, and public welfare by regulating and controlling the design, construction, quality of materials, location, operation, alteration, repair, maintenance, of plumbing and drainage systems within the city and certain equipment specifically regulated therein, that certain plumbing code known as the Uniform Plumbing Code, recommended and published by the International Association of Plumbing and Mechanical Officials, being particularly the 2003 edition not including appendices thereto, except as amended in this article of the Salina Code, of which not fewer than three (3) copies have been, and are now filed in the office of the city clerk and the same are hereby incorporated as fully as if set out at length herein and the provisions thereof shall be controlling in the construction and maintenance of all buildings and structures therein contained within the corporate limits of the city.

(Code 1966, § 9-200; Ord. No. 82-8925, § 1, 8-2-82; Ord. No. 85-9089, § 1, 8-12-85; Ord. No. 89-9308, §§ 1, 2, 2-6-89; Ord. No. 94-9619, § 1, 2-7-94; Ord. No. 98-9853, § 1, 2-2-98; Ord. No. 01-10048, § 1, 7-23-01; Ord. No. 04-10208, § 1, 10-11-04)
State law references: Authority to incorporate standard codes by reference, K.S.A. 12-3009 et seq. **Editor's Notes:** Ord. No. 04-10208 adopted § 8-71, formerly 8-176.

Sec. 8-72. Appeals.

Appeals of orders, decisions or determinations made by the building official relative to the application and interpretation of this code shall be heard and decided by *The Building Advisory Board*. See Article II, Chapter 8 of Salina Municipal Code.

(Ord. No. 04-10208, § 1, 10-11-04)

[3] **Editor's Note.** Division 3 created by Ord. No. 04-10208.

Sec. 8-73. Amendment of Section 102.1of the Uniform Plumbing Code.

[Section 102.1 of the Uniform Plumbing Code is hereby amended to read as follows:]

102.1 Authority Having Jurisdiction. The Authority Having Jurisdiction shall be the City of Salina and the building official.

(Ord. No. 04-10208, § 1, 10-11-04)
Editor's Notes: Ord. No. 04-10208 adopted § 8-73, formerly 8-177. Former § 8-73 pertaining to administrative authority was repealed.

Sec. 8-74. Amendment of Section 103.1.2 of the Uniform Plumbing Code.

[Section 103.1.2 and all of its subsections of the Uniform Plumbing Code are hereby amended to read as follows:]

103.1.2 Exempt Work. A permit shall not be required for the following:

103.1.2.1 The stopping of leaks in drains, soil, waste or vent pipe, provided, however, that should any drainpipe, soil, waste or vent pipe become defective and it becomes necessary to remove and replace more than 48" of the same with new material, the same shall be considered as new work and a permit shall be procured and inspection made as provided in this Code.

103.1.2.2 (1) The clearing of stoppages, including the installation of new exterior cleanouts when required for cleaning and the removal and reinstallation of water closets or:

(2) the repairing of leaks in pipes, valves or fixtures, provided such repairs do not involve or require the rearrangement of valves, pipes, or fixtures.

103.1.2.3 No permit shall be required to replace faucets, dishwashers, garbage disposals, a fixture with a like fixture, gas flex connectors or water heater vent connectors.

Exemption from the permit requirements of this Code shall not be deemed to grant authorization for any work to be done in violation of the provisions of the Code or any other laws or ordinances of this jurisdiction including but not limited to those in Chapter 8 Article III for licensing.

(Ord. No. 94-9619, § 1, 2-7-94; Ord. No. 98-9853, § 1, 2-2-98; Ord. No. 01-10048, 1, 7-23-01; Ord. No. 04-10208, § 1, 10-11-04)
Editor's Notes: Ord. No. 04-10208 adopted § 8-74, formerly 8-178.

Sec. 8-75. Amendment of Section 103.4.1 of the Uniform Plumbing Code.

[Section 103.4.1 of the Uniform Plumbing Code is hereby amended to read as follows:]

103.4.1 Permit Fees. The fee for each permit shall be as set forth in the fee schedule adopted pursuant to section 2-2 of the Salina Code of Ordinances.

(Ord. No. 94-9619, § 1, 2-7-94; Ord. No. 98-9853, § 1, 2-2-98; Ord. No. 01-10048, 1, 7-23-01; Ord. No. 04-10208, § 1, 10-11-04)
Editor's Notes: Ord. No. 04-10208 adopted § 8-75, formerly § 8-178.

Sec. 8-76. Amendment of Section 103.4.2 of the Uniform Plumbing Code.

[Section 103.4.2 Plan Review Fees is hereby amended to read as follows:]

103.4.2 Plan Review Fees. No fees shall be charged for plan review.

(Ord. No. 94-9619, § 1, 2-7-94; Ord. No. 98-9853, § 1, 2-2-98; Ord. No. 01-10048, 1, 7-23-01; Ord. No. 04-10208, § 1, 10-11-04)
Editor's note: Ord. No. 04-10208 adopted § 8-78, former § 8-178, Formerly 8-178 pertained to amendments to Chapter 1 of the Uniform Plumbing Code. Ord. No. 94-9618, § 2, adopted Feb. 7, 1994, repealed §§ 8-76 and 8-78, Formerly, § 8-76 pertained to qualifications of inspector and § 8-78 provided for the building official to act as inspector in certain instances. Such sections had been derived from the 1966 Code, §§ 9-108 and 9-110. Sec. 8-77, being nonsubstantive, was reserved.

Sec. 8-77. Amendment of Section 316.1.3 of the Uniform Plumbing Code.

[Section 316.1.3 of the Uniform Plumbing Code is hereby amended to read as follows:]

316.1.3 Soldered Joints. Joints in copper tubing shall be made by appropriate use of approved copper or copper alloy fittings. Surfaces to be joined by soldering shall be cleaned bright by manual or mechanical means. The joints shall be properly fluxed with an approved type flux, and made up with approved solder. Flux is not required to be water-soluble for water supply piping. All solder and fluxes shall be manufactured to approved standards. Solders and fluxes with a lead content which exceeds two-tenths (0.20) of one (1) percent are prohibited in piping systems used to convey potable water.

(Ord. No. 94-9619, § 1, 2-7-94; Ord. No. 98-9853, § 1, 2-2-98; Ord. No. 01-10048, § 1, 7-23-01; Ord. No. 04-10208, § 1, 10-11-04)
Editor's Notes: Ord. No. 04-10208 adopted § 8-77, formerly § 8-186.

Sec. 8-78. Amendment of Section 317.0 of the Uniform Plumbing Code.

[Section 317.0 of the Uniform Plumbing Code is hereby amended to read as follows:]

317.0 Increasers and Reducers. Where different sizes of pipes or pipes and fittings are to be connected, the proper size increasers or reducers or reducing fittings shall be used between the two sizes. Bushings are approved fittings for this purpose in vent piping and as increasers in drainage piping. Brass or cast iron body cleanouts shall not be used as a reducer or adapter from cast iron drainage pipe to iron pipe size (IPS) pipe.

(Ord. No. 94-9619, § 1, 2-7-94; Ord. No. 98-9853, § 1, 2-2-98; Ord. No. 01-10048, § 1, 7-23-01; Ord. No. 04-10208, § 1, 10-11-04)
Editor's Notes: Ord. No 04-10208 adopted § 8-78, formerly § 8-186. Former § 8-78 provided for the building official to act as inspector was repealed by Ord. No. 94-9618.

Sec. 8-79. Amendment of Section 412.2 of the Uniform Plumbing Code.

[Section 412.2 of the Uniform Plumbing Code and all of its subsections is hereby amended to read as follows:]

412.2 Location of Floor Drains. Floor drains shall be installed in the following areas:

412.2.1 Toilet rooms containing two (2) or more water closets or a combination of one (1) water closet and one (1) urinal, except in a dwelling unit.

412.2.2 Commercial kitchens.

412.2.3 Laundry rooms in commercial buildings and common laundry facilities in multi-family dwelling buildings.

(Ord. No. 94-9619, § 1, 2-7-94; Ord. No. 98-9853, § 1, 2-2-98; Ord. No. 01-10048, § 1, 7-23-01; Ord. No. 04-10208, § 1, 10-11-04)
Editor's Notes: Ord. No. 04-10208 adopted § 8-79, formerly § 8-181. Former § 8-79 pertaining to general duties of inspector is referenced in the NEC.

Sec. 8-80. Amendment of Section 413.0 of the Uniform Plumbing Code.

Section 413.0 Minimum Number of Required Fixtures and all of its subsections are hereby deleted in their entirety.

(Ord. No. 94-9619, § 1, 2-7-94; Ord. No. 98-9853, § 1, 2-2-98; Ord. No. 01-10048, § 1, 7-23-01; Ord. No. 04-10208, § 1, 10-11-04)
Editor's Notes: Ord. No. 04-10208 adopted § 8-79, formerly § 8-181. Former § 8-80 pertaining to enforcement by inspector is referenced in the NEC.

Sec. 8-81. Amendment of Section 505.1 of the Uniform Plumbing Code.

[Section 505.1 of the Uniform Plumbing Code is hereby amended to read as follows:]

505.1 Prohibited Locations

Water heaters which depend on the combustion of fuel for heat shall not be installed in a room used or designed to be used for sleeping purposes, bathroom, clothes closets or in a closet or other confined space opening into a bath or bedroom.

Exception: Direct vent water heaters. The replacement of fuel burning water heaters that are located in bathrooms or closets accessible from a bathroom shall be permitted provided that the only access to such spaces is not through a bedroom.

Where not prohibited by other regulations, water heaters may be located under a stairway or landing.

(Ord. No. 94-9619, § 1, 2-7-94; Ord. No. 98-9853, § 1, 2-2-98; Ord. No. 01-10048, § 1, 7-23-01; Ord. No. 01-10055, § 3, 10-22-01; Ord. No. 02-10076, § 1, 4-22-02; Ord. No. 04-10208, § 1, 10-11-04)
Editor's Notes: Ord. No. 04-10208 adopted § 8-81, formerly § 8-182. Former § 8-81 pertained to building official to decide questions was repealed

Sec. 8-82. Amendment of Section 508.2 of the Uniform Plumbing Code.

[Section 508.2 of the Uniform Plumbing Code is hereby amended to read as follows:]

508.2 Access and Working Space

508.2.1 Every water heater installation shall be accessible for inspection, repair, or replacement. An unobstructed solidly floored working space not less than thirty 30 inches in depth and width and 72 inches high shall be provided immediately in front of and centered at the firebox access opening.

Exception: Such space need not be furnished for water heaters installed above a lay-in ceiling when removable ceiling panels are immediately adjacent to the firebox access opening.

A door opening into such space shall not be considered as an obstruction. The appliance space shall be provided with an opening or doorway of sufficient size to remove the water heater. Such access shall be continuous by means of an opening or door, and solidly floored passageway not less than two 2 feet in width and large enough to permit removal of the water heater, but not less than thirty 30 inches in height. Passageways less than 72" high shall be limited to 20' in length.

508.2.2 A lighting fixture shall be provided at or near water heater locations. The lighting fixture shall be controlled by at least one switch located adjacent to the usual point of entry into the space.

Exception: (1) These requirements shall not apply to the replacement of existing water heaters.

(2) These requirements shall not apply to water heaters located above lay-in ceilings when ceiling panels immediately adjacent to the appliance can be removed.

(Ord. No. 94-9619, § 1, 2-7-94; Ord. No. 98-9853, § 1, 2-2-98; Ord. No. 01-10048, § 1, 7-23-01; Ord. No. 01-10055, § 3, 10-22-01; Ord. No. 02-10076, § 1, 4-22-02; Ord. No. 04-10208, § 1, 10-11-04
Editor's Notes: Ord. No. 04-10208 adopted § 8-82, formerly § 8-182. Former § 8-82 pertained to removal of wires, turning off of current in case of fire was repealed and addressed in the National Electrical Code.

Sec. 8-83. Amendment of Section 510.6.3.1 of the Uniform Plumbing Code.

[Section 510.6.3.1 of the Uniform Plumbing Code is hereby amended to read as follows:]

510.6.3.1 Category I Appliances. The sizing of natural draft venting systems serving one or more listed appliances equipped with a draft hood or appliances listed for use with Type B gas vent, installed in a single story of a building, shall be in accordance with one of the following methods.

(1) The provisions of this chapter.

(2) Vents serving a single, draft-hood equipped new-location appliance, fan-assisted combustion system appliances, or combinations of fan-assisted combustion system and draft-hood-equipped appliances shall be sized in accordance with section 511.0 of this chapter or other approved engineering methods.

(3) For sizing an individual gas vent for a single, draft-hood equipped replacement appliance, the effective area of the vent connector and the gas vent shall be not less than the area of the appliance draft hood outlet or greater than seven times the draft hood outlet area. Such vents and their connectors shall be limited to a combined maximum change in direction of 180 degrees. Vents requiring greater change in direction shall be sized in accordance with section 511.0 of this chapter.

(4) For sizing an existing gas vent connected to two appliances with draft hoods, the effective area of the vent shall be not less than the area of the larger draft hood outlet plus 50% of the area of the smaller draft hood outlet or greater than seven times the smaller draft hood outlet area. Vents connectors for such systems shall be sized in accordance with sections 510.10.3.3 and 510.10.9.2 of this chapter. Each vent connector shall be limited to a combined maximum change in direction of 180 degrees. Vents connectors requiring greater change in direction shall be sized in accordance with section 511.0 of this chapter.

(5) Approved engineering practices.

(Ord. No. 94-9619, § 1, 2-7-94; Ord. No. 98-9853, § 1, 2-2-98; Ord. No. 01-10048, § 1, 7-23-01; Ord. No. 01-10055, § 3, 10-22-01; Ord. No. 02-10076, § 1, 4-22-02; Ord. No. 04-10208, § 1, 10-11-04

Editor's Notes: Ord. No. 04-10208 adopted § 8-83, formerly § 8-182. Ord. No. 94-9618, § 2, adopted Feb. 7, 1994, repealed § 8-83, condemnation of unsafe items and material, as derived from the 1966 Code, § 9-120.

Sec. 8-84. Amendment of Section 603.3.2 of the Uniform Plumbing Code.

[Section 603.3.2 of the Uniform Plumbing Code is hereby amended to read as follows:]

603.3.2 The premise owner responsible person shall have the backflow prevention assembly tested by a certified backflow assembly tester at the time of installation, repair, or relocation and tested and overhauled on the schedule listed in Chapter 41 Division 4 Cross Connections of the City of Salina Code of Ordinances. The periodic testing shall be performed in accordance with the procedures referenced in Table 14-1 by a tester qualified in accordance with those standards.

(Ord. No. 94-9619, § 1, 2-7-94; Ord. No. 98-9853, § 1, 2-2-98; Ord. No. 01-10048, § 1, 7-23-01; Ord. No. 01-10055, § 3, 10-22-01; Ord. No. 02-10076, § 1, 4-22-02; Ord. No. 04-10208, § 1, 10-11-04)

Editor's Notes: Ord. No. 04-10208 adopted § 8-84, formerly § 8-183. Former § 8-84 pertained to inspection, condemnation, correction of defective or dangerous condition was repealed and referenced in the National Electrical Code.

Sec. 8-85. Amendment of Section 603.4.6.1 of the Uniform Plumbing Code.

[Section 603.4.6.1 of the Uniform Plumbing Code is hereby amended to read as follows:]

603.4.6.1 Potable water supplies systems having no pumps or connections for pumping equipment, and no chemical injection or provision for chemical injection, shall be protected from backflow by one of the following devices:

1. Atmospheric vacuum breaker
2. Pressure vacuum breaker
3. Reduced pressure backflow preventer
4. Double check valve assembly

(Ord. No. 94-9619, § 1, 2-7-94; Ord. No. 98-9853, § 1, 2-2-98; Ord. No. 01-10048, § 1, 7-23-01; Ord. No. 01-10055, § 3, 10-22-01; Ord. No. 02-10076, § 1, 4-22-02; Ord. No. 04-10208, § 1, 10-11-04)
Editor's Notes: Ord. No. 04-10208 adopted § 8-85, formerly § 8-183. Former § 8-85 pertained to liabilities not affected was repealed and referenced in the National Electrical Code.

Sec. 8-86. Amendment of Section 603.4.6.4 of the Uniform Plumbing Code.

[Section 603.4.6.4 of the Uniform Plumbing Code is hereby amended to read as follows:]

603.4.6.4 Where systems which include a chemical injector or any provisions for chemical injection designed to add chemicals to the potable water system shall be prohibited.

(Ord. No. 94-9619, § 1, 2-7-94; Ord. No. 98-9853, § 1, 2-2-98; Ord. No. 01-10048, § 1, 7-23-01; Ord. No. 01-10055, § 3, 10-22-01; Ord. No. 02-10076, § 1, 4-22-02; Ord. No. 04-10208, § 1, 10-11-04)
Editor's Notes: Ord. No. 04-10208 adopted § 8-86, formerly § 8-183. Former § 8-86 pertained to violations was repealed and referenced in the National Electrical Code.

Sec. 8-87. Amendment of Section 603.4.22 of the Uniform Plumbing Code.

[Section 603.4.22 of the Uniform Plumbing Code is hereby amended to read as follows:]

603.4.22 Combination stop-and-waste valves or cocks shall not be installed underground.

Exception: Stop and waste valves may be installed in a pit approved by the City Department of Utilities.

(Ord. No. 94-9619, § 1, 2-7-94; Ord. No. 98-9853, § 1, 2-2-98; Ord. No. 01-10048, § 1, 7-23-01; Ord. No. 01-10055, § 3, 10-22-01; Ord. No. 02-10076, § 1, 4-22-02; Ord. No. 04-10208, § 1, 10-11-04)
Editor's Notes: Ord. No. 04-10208 adopted § 8-87, formerly § 8-183.

Sec. 8-88. Amendment of Section 608.5 of the Uniform Plumbing Code.

[Section 608.5 of the Uniform Plumbing Code is hereby amended to read as follows:]

608.5 Relief valves located inside a building shall be provided with a drain, not smaller than the relief valve outlet, of galvanized steel, hard drawn copper piping and fittings, CPVC, or listed relief valve drain tube with fittings which will not reduce the internal bore of the pipe or tubing (straight lengths as opposed to coils) and shall extend from the valve to an indirect waste receptor or to within six inches of a nonabsorbent floor that provides an unobstructed flow to a floor drain and shall be pointed downward.

Exception: Drain tubes serving relief valves that are part of replacement equipment may terminate six inches above the floor serving the equipment served by the valve if drainage piping is not readily accessible. The discharge pipe shall be installed in a manner to minimize personal injury or property damage and so that draining water is readily observable by the building occupants. Drain tubes shall not terminate in a crawl space. Drain tubes for replacement equipment may terminate at an indirect waste receptor that drains to the outside of the building. Indirect waste receptors shall be drained by a minimum 1¼" drain line with the terminal end screened with ¼" mesh.

No part of such drain pipe shall be trapped or subject to freezing. The terminal end of the drainpipe shall not be threaded.

(Ord. No. 94-9619, § 1, 2-7-94; Ord. No. 98-9853, § 1, 2-2-98; Ord. No. 01-10048, § 1, 7-23-01; Ord. No. 01-10055, § 3, 10-22-01; Ord. No. 02-10076, § 1, 4-22-02; Ord. No. 04-10208, § 1, 10-11-04)
Editor's Notes: Ord. No. 04-10208 adopted § 8-88, formerly § 8-183.

Sec. 8-89. Amendment of Section 609.9of the Uniform Plumbing Code.

[Section 609.9 of the Uniform Plumbing Code and all of its subsections is hereby amended to read as follows:]

609.9.5 All new or repaired private water mains 4" and larger in diameter shall be disinfected prior to use as required by the City of Salina Department of Utilities. For the purpose of this section, water main shall mean any water piping which connects a building or buildings to the public water supply for the purpose of furnishing water for domestic, process or fire suppression purposes.

(Ord. No. 94-9619, § 1, 2-7-94; Ord. No. 98-9853, § 1, 2-2-98; Ord. No. 01-10048, § 1, 7-23-01; Ord. No. 01-10055, § 3, 10-22-01; Ord. No. 02-10076, § 1, 4-22-02; Ord. No. 04-10208, § 1, 10-11-04)
Editor's Notes: Ord. No. 04-10208 adopted § 8-89, formerly § 8-183.

Sec. 8-90. Amendment of Section 609.10 of the Uniform Plumbing Code.

[Section 609.10 of the Uniform Plumbing Code is hereby amended to read as follows:]

609.10 Water Hammer. All building water supplies systems in which quick acting valves over installed shall be provided with devices to absorb high pressures resulting from the quick closing of these valves. Quick closing valves are defined as valves operated by an electrical solenoid, or flushometer valves. Manually operated ball valves, gate valves or wheel valves are not considered quick closing valves. These pressure absorbing devices shall be either air chambers or approved mechanical devices. Water pressure shock arresters shall be installed as close as possible to quick acting valves at the end of long pipe or near batteries of fixtures or both. Water pressure shock arresters or pressure absorbing devices are not required for residential structures with separate water services.

(Ord. No. 94-9619, § 1, 2-7-94; Ord. No. 98-9853, § 1, 2-2-98; Ord. No. 01-10048, § 1, 7-23-01; Ord. No. 01-10055, § 3, 10-22-01; Ord. No. 02-10076, § 1, 4-22-02; Ord. No. 04-10208, § 1, 10-11-04)
Editor's Notes: Ord. No. 04-10208 adopted § 8-89, formerly § 8-183.

Sec. 8-91. Amendment of Section 610.7 of the Uniform Plumbing Code.

[Section 610.7 of the Uniform Plumbing Code is hereby amended to read as follows:]

610.7 On any proposed water piping installation sized using Table 6-5, the following conditions shall be determined.

Total number of fixture units as determined from Table 6-4, Equivalent Fixture Units, for the fixtures to be installed. For the purpose of calculating building supply pipe sizing, fixture units for lawn sprinkling systems need not be included.

Developed length of supply pipe from meter to most remote outlet.

Difference in elevation between the meter of other source of supply and the highest fixture or outlet.

Pressure in the street main or other source of supply at the locality where the installation is to be made.

In localities where there is a fluctuation of pressure in the main throughout the day, the water piping system shall be designed on the basis of the minimum pressure available.

(Ord. No. 94-9619, § 1, 2-7-94; Ord. No. 98-9853, § 1, 2-2-98; Ord. No. 01-10048, § 1, 7-23-01; Ord. No. 01-10055, § 3, 10-22-01; Ord. No. 02-10076, § 1, 4-22-02; Ord. No. 04-10208, § 1, 10-11-04)
Editor's Notes: Ord. No. 04-10208 adopted § 8-89, formerly § 8-183.

Sec. 8-92. Amendment of Section 707.4 of the Uniform Plumbing Code.

[Section 707.4 of the Uniform Plumbing Code is hereby amended to read as follows:]

707.4 Each horizontal drainage pipe shall be provided with a cleanout at its upper terminal and each run of piping, which is more than one hundred (100) feet (30480 mm) in total developed length, shall be provided with a cleanout for each one hundred (100) feet (30480 mm), or fraction thereof, in length of such piping.

Exceptions:

1. Cleanouts may be omitted on a horizontal drain line less than five (5) feet (1524 mm) in length unless such line is serving sinks or urinals.
2. Cleanouts may be omitted on any horizontal drainage pipe installed on a slope of seventy-two (72) degrees (1.26 rad) or less from the vertical angle (angle of one-fifth (1/5) bend).
3. Excepting the building drain and its horizontal branches, a cleanout shall not be required on any pipe or piping which is above the floor level of the lowest floor of the building.
4. An approved type of two-way cleanout fitting, installed inside the building wall near the connection between the building drain and building sewer or installed outside of a building at the lower end of a building drain and extended to grade, may be substituted for an upper terminal cleanout.
5. A cleanout may be omitted on a 3" or 4" horizontal drain line where a clean out would normally be required when that location is accessible from a water closet flange.
6. A cleanout may be omitted on an 1½" or 2" horizontal drain line where a clean out would normally be required when that location is accessible from a point where a slip-joint trap

arm connects directly to a tee in a vertical drain line that connects with the horizontal drain.

(Ord. No. 98-9853, § 2, 2-2-98; Ord. No. 01-10048, § 1, 7-23-01; Ord. No. 04-10208, § 1, 10-11-04)
Editor's Notes: Ord. No. 04-10208 adopted § 8-92, formerly 8-185.

Sec. 8-93. Amendment of Section 710.3.3 of the Uniform Plumbing Code.

[Section 709.0 of the Uniform Plumbing Code is hereby amended to read as follows:]

709.0 Gravity Drainage Required Wherever practicable, all plumbing fixtures shall be drained to the public sewer or private sewage disposal system by gravity. Where it is determined by the Authority Having Jurisdiction that gravity drainage for an alteration is impractical, drainage piping serving such plumbing fixtures shall meet the requirements of Section 710.0.

Exception: Upon prior approval by the Authority Having Jurisdiction, low flow fixtures such as but not limited to bar sinks, hand sinks, and indirect waste receptors for drink stations may drain into an approved, self-contained water removal system.

(Ord. No. 98-9853, § 2, 2-2-98; Ord. No. 01-10048, § 1, 7-23-01; Ord. No. 04-10208, § 1, 10-11-04)
Editor's Notes: Ord. No. 04-10208 adopted § 8-93, formerly 8-185.

Sec. 8-94. Amendment of Section 710.3.3 of the Uniform Plumbing Code.

[Section 710.3.3 of the Uniform Plumbing Code is hereby amended to read as follows:]

710.3.3 When serving any area with an occupant load of greater than 15 as determined by the 2003 International Building Code in any public use occupancy, the ejector or pump shall be capable of passing a two 2 inches diameter solid ball, and the discharge piping of each ejector or pump shall have a backwater valve and gate valve, and be a minimum of three (3) inches in diameter.

(Ord. No. 98-9853, § 2, 2-2-98; Ord. No. 01-10048, § 1, 7-23-01; Ord. No. 04-10208, § 1, 10-11-04)
Editor's Notes: Ord. No. 04-10208 adopted § 8-94, formerly 8-185

Sec. 8-95. Amendment of Section 710.9 of the Uniform Plumbing Code.

[Section 710.9 of the Uniform Plumbing Code is hereby amended to read as follows:]

710.9 All such pumps and receiving tanks shall be automatically discharged and, when serving any area with an occupant load of greater than 15 as determined by the 2003 International Building Code in any public use occupancy, shall be provided with dual pumps or ejectors arranged to function independently in case of overload or mechanical failure. The pumps shall have an audio and visual alarm, readily accessible, that signals pump failure or an overload condition. The lowest inlet shall have the minimum clearance of two (2) inches from the high water or "starting" level of the sump.

(Ord. No. 98-9853, § 2, 2-2-98; Ord. No. 01-10048, § 1, 7-23-01; Ord. No. 04-10208, § 1, 10-11-04)
Editor's Notes: Ord. No. 04-10208 adopted § 8-94, formerly 8-185

Sec. 8-96. Amendment of Section 712.1 of the Uniform Plumbing Code.

[Section 712.1 of the Uniform Plumbing Code is hereby amended to read as follows:]

712.1 Media. The piping of the plumbing, drainage, and venting systems shall be tested with water or air. The Administrative Authority may require the removal of any cleanouts, etc., to ascertain if the pressure has reached all parts of the system. After the plumbing fixtures have been set and their traps filled with water, they shall be submitted to a final test.

Exception: No testing will be required for plastic DWV systems.

(Ord. No. 98-9853, § 2, 2-2-98; Ord. No. 01-10048, § 1, 7-23-01; Ord. No. 04-10208, § 1, 10-11-04)
Editor's Notes: Ord. No. 04-10208 adopted § 8-94, formerly 8-185. Former §§ 8-96 – 8-110 pertaining to the electrical code panel was repealed by Ord. No. 86-9164.

Sec. 8-97. Amendment of Section 807.4 of the Uniform Plumbing Code.

Section 807.4 is hereby deleted in its entirety.

(Ord. No. 00-10004, § 1, 11-13-00; Ord. No. 01-10048, § 1, 7-23-01; Ord. No. 04-10208, § 1, 10-11-04)
Editor's Note: Ord. No. 04-10208 adopted § 8-97, formerly § 8-186. Former §§ 8-96 – 8-110 pertained to the electrical code panel was repealed by Ord. No. 86-9164.

Sec. 8-98. Amendment of Section 905.4 of the Uniform Plumbing Code.

[Section 905.4 of the Uniform Plumbing Code is hereby amended to read as follows:]

905.4 All vent pipes, except as provided in section 905.4.0, shall extend undiminished in size above the roof, or shall be reconnected with a soil or waste vent of proper size except as provided in this section.

905.4.0 Air Admittance Valves

905.4.1 Where permitted. In remodel construction where venting above the roof is impractical, individual and branch vents shall be permitted to terminate with a connection to an air admittance valve when first approved by the Administrative Authority. The air admittance valve shall only vent fixtures that are on the same floor level.

905.4.2 General. Individual and branch type air admittance valves shall be listed and shall conform to ASSE 1051.

905.4.3 Installation. The valves shall be installed in accordance with the requirements of this section and manufacture's installation instructions. Air admittance valves shall be installed after the DWV testing required by Section 712.2 or 712.3 has been performed.

905.4.4 Location. The air admittance valve shall be located the minimum of six (6) inches above the highest flood level rim of the fixture being served. The air admittance valve shall be located within the maximum developed length permitted for the vent. The air admittance valve shall be installed a minimum of six (6) inches above insulation materials.

905.4.5 Access and Ventilation. Access shall be provided to all air admittance valves. The valve shall be located within a ventilated space that allows air to enter the valve.

905.4.6 Size. The air admittance valve shall be rated for the size of the vent to which the valve is connected.

(Ord. No. 01-10048, § 2, 7-23-01; Ord. No. 03-10128, § 1; Ord. No. 04-10208, § 1, 10-11-04)
Editor's Notes: Ord. 04-10208 adopted § 8-98, formerly 8-187. Former §§ 8-96 – 8-110 pertained to the electrical code panel was repealed by Ord. 86-9164

Sec. 8-99. Amendment of Section 908.1 of the Uniform Plumbing Code.

[Section 908.1 of the Uniform Plumbing Code is hereby amended to read as follows:]

908.1 Wet venting is limited to vertical drainage piping receiving the discharge from the trap arm of one (1) and two (2) fixture unit fixtures that also serves as a vent for not to exceed four (4) fixtures. All wet vented fixtures shall be within the same story; provided, further, that fixtures with a continuous vent discharging into a wet vent shall be within the same story as the wet vented fixtures. No wet vent shall exceed six (6) feet in developed vertical length.

Exception: One horizontal offset may be permitted in a wet vented section. The length of the offset is limited to the lengths of trap arms as required in table 10-1.

(Ord. No. 01-10048, § 2, 7-23-01; Ord. No. 03-10128, § 1; Ord. No. 04-10208, § 1, 10-11-04)
Editor's Notes: Ord. 04-10208 adopted § 8-99, formerly 8-187. Former §§ 8-96 – 8-110 pertained to the electrical code panel.

Sec. 8-100. Amendment of Section 1101.1 of the Uniform Plumbing Code.

[Section 1101.1 of the Uniform Plumbing Code is hereby amended to read as follows:]

1101.1 Where Required. All roofs, paved areas, yards, courts, and courtyards shall be drained away from adjoining property and into a separate storm sewer system, or into a combined sewer system where a separate storm sewer system is not available, or to some other place of disposal satisfactory to the Authority Having Jurisdiction such as but not limited to public streets and/or public drainage easements. In the case of one- and two-family dwellings, storm water may be discharged on flat areas such as streets or lawns so long as the storm water shall flow away from the building and shall not create a nuisance.

(Ord. No. 01-10048, § 2, 7-23-01; Ord. No. 04-10208, § 1, 10-11-04)
Editor's Notes: Ord. 04-10208 adopted § 8-100, formerly 8-188. Former §§ 8-96 – 8-110 pertained to the electrical code panel was repealed by Ord. No. 86-9164.

Sec. 8-101. Amendment of Section 1101.5.1 of the Uniform Plumbing Code.

[Section 1101.5.1 of the Uniform Plumbing Code is hereby amended to read as follows:]

1101.5.1 Subsoil drains shall be provided around the perimeter of buildings having basements, cellars, or crawl spaces or floors below grade when required by the International Building Code, The International Residential Code, or the Authority Having Jurisdiction. Such subsoil drains may be positioned inside or outside of the footing, shall be of perforated or open-jointed approved drain tile or pipe not less than three (3) inches (80 mm) in diameter, and shall be laid in gravel, slag, crushed rock, approved three-quarter (3/4) inch (19.1 mm) crushed recycled glass aggregate, or other approved porous material with a minimum of four (4) inches (102 mm) surrounding the pipe on all sides. Filter media shall be provided for exterior subsoil piping.

(Ord. No. 01-10048, § 2, 7-23-01; Ord. No. 04-10208, § 1, 10-11-04)
Editor's Notes: Ord. 04-10208 adopted § 8-101, formerly 8-188. Former §§ 8-96 – 8-110 pertained to the electrical code panel was repealed by Ord. No. 86-9164.

Sec. 8-102. Amendment of Section 1101.7 of the Uniform Plumbing Code.

[Section 1101.7 of the Uniform Plumbing Code is hereby amended to read as follows:]

1101.7 Areaway Drains. All open subsurface space adjacent to a building serving as an entrance to the basement or cellar of a building shall be provided with a drain or drains. Such areaway drains

shall be two (2) inches (50 mm) minimum diameter for areaways not exceeding one hundred (100) square feet (9.3 m2) in area, and shall be discharged in the manner provided for subsoil drains not serving continuously flowing springs or ground water (see Sections 1101.5.2 and 1101.5.3). Areaways in excess of one hundred (100) square feet (9.3 m2) shall not drain into subsoil. Areaway drains for areaways exceeding one hundred (100) square feet (9.3 m2) shall be sized according to Table 11-2.

(Ord. No. 01-10048, § 2, 7-23-01; Ord. No. 04-10208, § 1, 10-11-04)
Editor's Notes: Ord. 04-10208 adopted § 8-102, formerly 8-188. Former §§ 8-96 – 8-110 pertained to the electrical code panel was repealed by Ord. No. 86-9164.

Sec. 8-103. Amendment of Section 1101.8 of the Uniform Plumbing Code.

[Section 1101.8 of the Uniform Plumbing Code is hereby amended to read as follows:]

1101.8 Window Areaway Drains. Window areaways not exceeding ten (10) square feet (0.9 m2) in area may discharge to the subsoil drains through a two (2) inch (50 mm) pipe. If subsoil drains are not required, such areaways may be drained by any method approved by the Authority Having Jurisdiction. Consideration shall be given to such other methods for other factors such as curbs, grading, overhangs, covers or any combination of these factors that would limit the amount of water that could infiltrate the areaway. However, window areaways exceeding ten (10) square feet (0.9 m2) in area shall be handled in the manner provided for entrance areaways (see Section 1101.7).

(Ord. No. 01-10048, § 2, 7-23-01; Ord. No. 04-10208, § 1, 10-11-04)
Editor's Notes: Ord. 04-10208 adopted § 8-103, formerly 8-188. Former §§ 8-96 – 8-110 pertained to the electrical code panel was repealed by Ord. No. 86-9164.

Sec. 8-104. Amendment of Section 1101.9 of the Uniform Plumbing Code.

Section 1101.9 Filling Stations and Motor Vehicle Washing Establishments of the Uniform Plumbing Code is hereby deleted in its entirety.

(Ord. No. 01-10048, § 2, 7-23-01; Ord. No. 04-10208, § 1, 10-11-04)
Editor's Notes: Ord. 04-10208 adopted § 8-104, formerly 8-188. Former §§ 8-96 – 8-110 pertained to the electrical code panel was repealed by Ord. No. 86-9164.

Sec. 8-105. Amendment of Section 1101.10 of the Uniform Plumbing Code.

Section 1101.10 Paved Areas of the Uniform Plumbing Code is hereby deleted in its entirety.

(Ord. No. 01-10048, § 2, 7-23-01; Ord. No. 04-10208, § 1, 10-11-04)
Editor's Notes: Ord. 04-10208 adopted § 8-105, formerly 8-188. Former §§ 8-96 – 8-110 pertained to the electrical code panel was repealed by Ord. No. 86-9164.

Sec. 8-106. Amendment of Section 1101.11.1 of the Uniform Plumbing Code.

[Section 1101.11.1 of the Uniform Plumbing Code is hereby amended to read as follows:]

1101.11.1 Primary Roof Drainage. Roof areas of a building shall be drained by roof drains or gutters. The location and sizing of drains and gutters shall be coordinated with the structural design and pitch of the roof. Unless otherwise required by the Authority Having Jurisdiction, roof drains, gutters, vertical conductors or leaders, and horizontal storm drains for primary drainage shall be sized based on a storm of sixty (60) minutes duration and 100-year return period.

Exception: Gutters are not required for structures subject to the International Residential Code.

(Ord. No. 01-10048, § 2, 7-23-01; Ord. No. 04-10208, § 1, 10-11-04)
Editor's Notes: Ord. 04-10208 adopted § 8-106, formerly 8-188. Former §§ 8-96–8-110 pertained to the electrical code panel repealed by Ord. 86-9164.

Sec. 8-107. Amendment of Section 1109.2 of the Uniform Plumbing Code.

[Section 1109.2 of the Uniform Plumbing Code is hereby amended to read as follows:]

1109.2 Methods of Testing Storm Drainage Systems. Except for approved ABS or PVC systems, outside leaders and perforated or open-jointed drain tile, the piping of storm drain systems shall be tested upon completion of the rough piping installation by water or air, and proved tight. The Authority Having Jurisdiction may require the removal of any cleanout plugs to ascertain whether the pressure has reached all parts of the system. Either of the following test methods shall be used:

(Ord. No. 01-10048, § 2, 7-23-01; Ord. No. 04-10208, § 1, 10-11-04)
Editor's Notes: Ord. 04-10208 adopted § 8-107, formerly 8-188. Former §§ 8-96 – 8-110 pertained to the electrical code panel was repealed by Ord. No. 86-9164.

Sec. 8-108. Amendment of Section 1211.2.4.1 of the Uniform Plumbing Code.

[Section 1211.2.4.1 of the Uniform Plumbing Code is hereby amended to read as follows:]

1211.2.4.1 Ceiling Locations. Gas piping shall be permitted to be installed in accessible spaces between a fixed ceiling and a dropped ceiling provided that such spaces are not used as a plenum. Valves shall not be located in such spaces.

Exception: Equipment shutoff valves required by this Code shall be permitted to be installed in accessible spaces containing vented gas utilization equipment.

(Ord. No. 01-10055, § 4, 10-22-01; Ord. No. 02-10087, § 2, 7-8-02; Ord. No 04-10208, § 1, 10-11-04)
Editor's Notes: Ord. 04-10208 adopted § 8-108, formerly 8-188.1. Former §§ 8-96 – 8-110 pertained to the electrical code panel was repealed by Ord. No. 86-9164.

Sec. 8-109. Amendment of Section 1211.2.5 of the Uniform Plumbing Code.

[Section 1211.2.5 of the Uniform Plumbing Code is hereby amended to read as follows:]

1211.2.5 Prohibited Locations. Gas piping inside any building shall not be installed in or through a circulating air plenum or duct, clothes chute, chimney or gas vent, ventilating duct, dumbwaiter, or elevator shaft. This provision shall not apply to ducts used to provide combustion and ventilation air in accordance with Section 507.0.

(Ord. No. 01-10055, § 4, 10-22-01; Ord. No. 02-10087, § 2, 7-8-02; Ord. No 04-10208, § 1, 10-11-04)
Editor's Notes: Ord. 04-10208 adopted § 8-109, formerly 8-188.1. Former §§ 8-96 – 8-110 pertained to the electrical code panel was repealed by Ord. No. 86-9164.

Sec. 8-110. Amendment of Section 1212. 1 of the Uniform Plumbing Code.

[Section 1212.1 of the Uniform Plumbing Code is hereby amended to read as follows:]

1212.1 Connecting Gas Equipment. Gas utilization equipment shall be connected to the building piping in compliance with 1212.4 and 1212.5 by one of the following:

(1) Rigid metallic pipe and fittings.

(2) Semirigid metallic tubing and metallic fittings. Aluminum alloy tubing shall not be used in exterior locations.

(3) Listed flexible gas connectors in compliance with ANSI Z21.24, *Standard for Connectors for Gas Appliances*. The connector shall be used in accordance with the terms of their listing and shall conform to the following requirements.

(a) Listed metal appliance connectors shall have an overall length of not to exceed three (3) feet (914 mm) except a range or dryer connector, which may not exceed six (6) feet (1829 mm).

(b) No part of such connector shall be concealed within or extended through any wall, floor, partition, or appliance housing.

(c) All connectors shall be of such size as to provide the total demand of the connected appliance based on the applicable Tables 12-9 or 12-10.

(4) CSST where installed in accordance with the manufacturer's instructions.

(5) Listed non-metallic gas hose connectors in accordance with 1212.2.

(6) Gas-fired food service (commercial cooking) equipment listed for use with casters or otherwise subject to movement for cleaning, and other large and heavy gas utilization equipment that can be moved, shall be connected in accordance with the connector manufacturer's installation instructions using a listed appliance connector complying with ANSI Z21.69, Standard for Connectors for Movable Gas Appliances.

(7) In 1212.1(2), (3), and (5), the connector or tubing shall be installed so as to be protected against physical and thermal damage. Aluminum alloy tubing and connectors shall be coated to protect against external corrosion where they are in contact with masonry, plaster, or insulation or are subject to repeated wettings by such liquids as water (except rain water), detergents, or sewage.

(Ord. No. 01-10055, § 4, 10-22-01; Ord. No. 02-10087, § 2, 7-8-02; Ord. No 04-10208, § 1, 10-11-04)
Editor's Notes: Ord. 04-10208 adopted § 8-110, formerly 8-188.1. Former §§ 8-96 – 8-110 pertained to the electrical code panel was repealed by Ord. No. 86-9164

Sec. 8-111. Amendment of Section 1212.4 of the Uniform Plumbing Code.

[Section 1212.4of the Uniform Plumbing Code is hereby amended to read as follows:]

1212.4 Equipment Shutoff Valves and Connections. Gas utilization equipment connected to a piping system shall have an accessible, approved manual shutoff valve with a nondisplaceable valve member, or a listed gas convenience outlet, installed in the same room as the appliance, within 6 ft (1.8 m) of the equipment it serves. Where a connector is used, the valve shall be installed upstream of the connector. A union or flanged connection shall be provided downstream from this valve to permit removal of controls. Shutoff valves serving decorative gas appliances shall be permitted to be installed in fireplaces if listed for such use.

Exception: Shutoff valves for vented decorative appliances and decorative appliances for installation in vented fireplaces shall not be prohibited from being installed in an area remote from the appliance where such valves are provided with ready access. Such valves shall be permanently identified and shall serve no other equipment.

(Ord. No. 01-10055, § 4, 10-22-01; Ord. No. 02-10087, § 2, 7-8-02; Ord. No 04-10208, § 1, 10-11-04)
Editor's Notes: Ord. No. 04-10208 adopted § 8-111, formerly 8-188.1. Former § 8-111 pertained to license required for electrical contractors was replaced with § 8-174.

Sec. 8-112. Amendment of Section 1214.4 of the Uniform Plumbing Code.

[Section 1214.4 of the Uniform Plumbing Code and all of its subsections is hereby amended to read as follows:]

1214.4 Test Pressure.

1214.4.1 Test pressure shall be measured with a manometer or with a pressure-measuring device designed and calibrated to read, record, or indicate a pressure loss due to leakage during the pressure test period. The source of pressure shall be isolated before the pressure tests are made. Mechanical gauges used to measure test pressures shall have a range such that the highest end of the scale is not greater than two times the test pressure.

1214.4.2 The test pressure to be used shall be no less than 10 psi (68.9kPa) for systems designed for less than 2 pounds inlet pressure, nor less than 60 pounds (413kPa) for welded pipe or systems designed for 2 or more pounds of inlet pressure.

1214.4.3 Test duration shall be not less than 30 minutes for welded pipe or systems designed for 2 or more pounds of inlet pressure or for a system designed for less than 2 pounds of inlet pressure, the test duration shall be a minimum of 1~~0~~5 minutes. The duration of the test shall not be required to exceed 24 hours.

(Ord. No. 01-10055, § 4, 10-22-01; Ord. No. 02-10087, § 2, 7-8-02; Ord. No 04-10208, § 1, 10-11-04)
Editor's Notes: Ord. No. 04-10208 adopted § 8-112, formerly 8-188.1. Former § 8-112 pertained to scope of electrical contractor's license was replaced with § 8-174.

Sec. 8-113. Amendment of Section 1312.1 of the Uniform Plumbing Code.

[Section 1312.1 of the Uniform Plumbing Code is hereby amended to read as follows:]

1312.1 Before any medical gas or medical vacuum system is installed or altered in any hospital, medical facility, or clinic, duplicate plans and specifications shall be filed with the Authority Having Jurisdiction. Such plans shall be sealed by a mechanical engineer licensed in the State of Kansas, and shall bear a notation that the plans have been designed in conformance to Chapter 13 of the 2003 Uniform Plumbing Code. Approval of the plans shall be obtained prior to issuance of any permit by the Authority Having Jurisdiction.

(Ord. No. 01-10048, § 2, 7-23-01; Ord. No. 04-10208, § 1, 10-11-04)
Editor's Notes: Ord. No. 04-10208 adopted § 8-113, formerly **§** 8-189. Former § 8-113 pertained to exemptions of license requirement was replaced with § 8-173.

Sec. 8-114. Amendment of Section 1329.3 of the Uniform Plumbing Code.

Section 1329.3 of the Uniform Plumbing Code is hereby deleted in its entirety.

(Ord. No. 01-10048, § 2, 7-23-01; Ord. No. 04-10208, § 1, 10-11-04)
Editor's Notes: Ord. No. 04-10208 adopted § 8-114, formerly **§** 8-189. Former § 8-114 pertained to doing work without meeting requirements was replaced with § 8-175.

Sec. 8-115. Amendment of Section 1329.4 of the Uniform Plumbing Code.

Section 1329.4 of the Uniform Plumbing Code is hereby deleted in its entirety.

(Ord. No. 01-10048, § 2, 7-23-01; Ord. No. 04-10208, § 1, 10-11-04)
Editor's Notes: Ord. No. 04-10208 adopted § 8-115, formerly **§** 8-189.

Sec. 8-116. Amendment of Section 1329.5 of the Uniform Plumbing Code.

[Section 1329.5 of the Uniform Plumbing Code is hereby amended to read as follows:]

1329.5 Testing. Testing shall be conducted in the presence of an independent certification agency.

(Ord. No. 01-10048, § 2, 7-23-01; Ord. No. 04-10208, § 1, 10-11-04)
Editor's Notes: Ord. No. 04-10208 adopted § 8-116, formerly **§** 8-189.

Sec. 8-117. Amendment of Section 1329.6 of the Uniform Plumbing Code.

[Section 1329.6 of the Uniform Plumbing Code is hereby amended to read as follows:]

1329.6 Retesting. If the independent certification agency finds that the work does not pass tests, necessary corrections shall be made and the work shall then be resubmitted for test or inspection.

(Ord. No. 01-10048, § 2, 7-23-01; Ord. No. 04-10208, § 1, 10-11-04)
Editor's Notes: Ord. No. 04-10208 adopted § 8-117, formerly **§** 8-189.

Sec. 8-118. Amendment of Section 1329.13 of the Uniform Plumbing Code.

[Section 1329.13 of the Uniform Plumbing Code is hereby amended to read as follows:]

1329.13 Approval. Upon satisfactory completion of all tests and certification of the medical gas and medical vacuum systems by the independent certification agency and submittal of the approval certifications to the Authority Having Jurisdiction, a certificate of approval shall be issued by the Authority Having Jurisdiction to the permittee.

(Ord. No. 01-10048, § 2, 7-23-01; Ord. No. 04-10208, § 1, 10-11-04)
Editor's Notes: Ord. No. 04-10208 adopted § 8-118, formerly **§** 8-189.

Sec. 8-119 – 8-120. Reserved.

DIVISION 4. ADOPTION OF MECHANICAL CODE WITH AMENDMENTS[4]

Sec. 8-121. Uniform Mechanical Code adopted.

There is hereby adopted, by reference, by the city for the purpose of providing minimum standards to safeguard life or limb, health, property, and public welfare by regulating and controlling the design, construction, quality of materials, location, operation, alteration repair and maintenance of heating, ventilating, cooling, refrigeration systems, incinerators and other miscellaneous heat-producing appliances, that certain building code known as the Uniform Mechanical Code, recommended and published by the International Association of Plumbing and Mechanical Officials, being particularly the 2000 edition not including appendices thereto, except as amended in this article of the Salina Code, of which not fewer than three (3) copies have been, and are now filed in the office of the city clerk and the same are hereby incorporated as fully as if set out at length herein and the provisions thereof shall be controlling in the construction and maintenance of all buildings and structures therein contained within the corporate limits of the city.

(Code 1966, § 9-440; Ord. No. 82-8930, § 1, 8-2-82; Ord. No. 85-9090, § 1, 8-12-85; Ord. No. 89-9309, §§ 1, 3, 2-6-89; Ord. No. 94-9620, § 1, 2-7-94; Ord. No. 98-9854, § 1, 2-2-98; Ord. No. 01-10055, § 1, 10-22-01; Ord. No. 02-10080, § 1, 5-20-02; Ord. No. 04-10208, § 1, 10-11-04)
State law references: Authority to incorporate standard codes by ref, K.S.A. 12-3009. **Ed. Notes:** Ord. No. 04-10208 adopted § 8-121, formerly § 8-281.

Sec. 8-122. Amendment of Section 108.1 of the Uniform Mechanical Code.

[Section 108.1 of the Uniform Mechanical Code is hereby amended to read as follows:]

108.1 General. The Administrative Authority as used in this code shall mean the City of Salina and the building official. The Administrative Authority is hereby authorized and directed to enforce all the provisions of this code. For such purposes the Administrative Authority shall have the powers of a law enforcement officer.

The Administrative Authority shall have the power to render interpretations of this code and to adopt and enforce rules and regulations supplemental to this code as may be deemed necessary in order to clarify the application of the provisions of this code. Such interpretations, rules and regulations shall be in conformity with the intent and purpose of this code.

(Ord. No. 85-9090, § 2, 8-12-85; Ord. No. 89-9309, §§ 2, 3, 2-6-90; Ord. No. 94-9620, § 1, 2-7-94; Ord. No. 98-9854, § 1, 2-2-98; Ord. No. 01-10055, § 1, 10-22-01; Ord. No. 04-10208, § 1, 10-11-04)
Editor's Note: Ord. No. 04-10208 adopted § 8-122, formerly § 8-282.

Sec. 8-123. Amendment of Section 110.0 of the Uniform Mechanical Code.

[Section 110.0 of the Uniform Mechanical Code and all of its subsections is hereby amended to read as follows:]

110.0 Board of Appeals. Appeals of orders, decisions or determinations made by the building official relative to the application and interpretation of this code shall be heard and decided by the Building Advisory Board. See Article II, Chapter 8 of Salina Municipal Code

110.1 Deleted

110.2 Deleted

(Ord. No. 85-9090, § 2, 8-12-85; Ord. No. 89-9309, §§ 2, 3, 2-6-90; Ord. No. 94-9620, § 1, 2-7-94; Ord. No. 98-9854, § 1, 2-2-98; Ord. No. 01-10055, § 1, 10-22-01; Ord. No. 04-10208, § 1, 10-11-04)
Editor's Note: Ord. No. 04-10208 adopted § 8-123, formerly § 8-282.

Sec. 8-124. Amendment of Section 115.1 of the Uniform Mechanical Code.

[Section 115.1 of the Uniform Mechanical Code is hereby amended to read as follows:]

115.1 General. Fees shall be assessed in accordance with the provisions of this. The fees are to be determined and adopted by this jurisdiction.

(Ord. No. 85-9090, § 2, 8-12-85; Ord. No. 89-9309, §§ 2, 3, 2-6-90; Ord. No. 94-9620, § 1, 2-7-94; Ord. No. 98-9854, § 1, 2-2-98; Ord. No. 01-10055, § 1, 10-22-01; Ord. No. 04-10208, § 1, 10-11-04)
Editor's Note: Ord. No. 04-10208 adopted § 8-124, formerly § 8-282.

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[4] **Editor's Note:** Division 4 created by Ord. No. 04-10208, formerly Article III.

Sec. 8-125. Amendment of Section 115.2 of the Uniform Mechanical Code.

[Section 115.2 of the Uniform Mechanical Code is hereby amended to read as follows:]

115.2 Permit Fees. The fee for each permit shall be as set forth the fee schedule adopted pursuant to section 2-2 of the Salina Code of Ordinances.

(Ord. No. 85-9090, § 2, 8-12-85; Ord. No. 89-9309, §§ 2, 3, 2-6-90; Ord. No. 94-9620, § 1, 2-7-94; Ord. No. 98-9854, § 1, 2-2-98; Ord. No. 01-10055, § 1, 10-22-01; Ord. No. 04-10208, § 1, 10-11-04)
Editor's Note: Ord. No. 04-10208 adopted § 8-125, formerly § 8-282.

Sec. 8-126. Amendment of Section 115.3 of the Uniform Mechanical Code.

Section 115.3 of the Uniform Mechanical Code is hereby deleted.

(Ord. No. 85-9090, § 2, 8-12-85; Ord. No. 89-9309, §§ 2, 3, 2-6-90; Ord. No. 94-9620, § 1, 2-7-94; Ord. No. 98-9854, § 1, 2-2-98; Ord. No. 01-10055, § 1, 10-22-01; Ord. No. 04-10208, § 1, 10-11-04)
Editor's Note: Ord. No. 04-10208 adopted § 8-126, formerly § 8-282.

Sec. 8-127. Amendment of Section 303.1 of the Uniform Mechanical Code.

[Section 303.1 of the Uniform Mechanical Code is hereby amended to read as follows:]

303.1 General. Each appliance shall be designed for use with the type of fuel to which it will be connected. Appliances shall not be converted from the fuel specified on the rating plate for use with a different fuel without securing reapproval from the Administrative Authority and as recommended by the manufacturer of either the original equipment or the conversion equipment. The serving gas supplier may convert appliances in accordance with procedures approved by the Administrative Authority without securing reapproval of the appliance if properly relabeled. An accessible approved shutoff valve shall be installed in the fuel gas piping outside of each appliance and ahead of the union connection thereto in addition to any valve provided on the appliance. Such valve shall be within six (6) feet (1.8 m) of the appliance it serves, and in the same room or space where the appliance is located.

Exceptions:

1. Shutoff valves may be accessibly located inside or under an appliance when such appliance can be removed without removal of the shutoff valve.
2. Shutoff valves may be accessibly located inside wall heaters and wall furnaces listed for recessed installation where necessary maintenance can be performed without removal of the shutoff valve.
3. Shutoff valves for decorative appliances for installation in vented fireplaces shall not be prohibited from being installed in an area remote from the appliance where such valves are provided with ready access. Such valves shall be permanently identified and shall serve no other equipment.

(Ord. No. 84-9041, § 1, 8-27-84; Ord. No. 94-9620, § 1, 2-7-94; Ord. No. 98-9854, § 1, 2-2-98; Ord. No. 01-10055, § 1, 10-22-01; Ord. No. 04-10208, § 1, 10-11-04)
Editor's Notes: Ord. No. 04-10208 adopted § 8-127, formerly § 8-283.

Sec. 8-128. Amendment of Section 309.0 of the Uniform Mechanical Code.

[Section 309.0 of the Uniform Mechanical Code is hereby amended to read as follows:]

309.0 Electrical Connections. Equipment regulated by this code requiring electrical connections of more than 50 Volts shall have a positive means of disconnect adjacent to and in sight from the equipment served. A 120 volt receptacle shall be located within 25 feet (7620 mm) of the equipment for service and maintenance purposes. The receptacle is not required for replacement of existing equipment in the same location. The receptacle must be located on the same level as the equipment and be accessible. Low voltage wiring of 50 Volts or less within a structure shall be installed in a manner to prevent physical damage.

(Ord. No. 84-9041, § 1, 8-27-84; Ord. No. 94-9620, § 1, 2-7-94; Ord. No. 98-9854, § 1, 2-2-98; Ord. No. 01-10055, § 1, 10-22-01; Ord. No. 04-10208, § 1, 10-11-04)
Editor's Notes: Ord. No. 04-10208 adopted § 8-128, formerly § 8-283.

Sec. 8-129. Amendment of Section 504.3.2.2 of the Uniform Mechanical Code.

[Section 504.3.2.2 of the Uniform Mechanical Code is hereby amended to read as follows:]

504.3.2.2 Length Limitation. Unless otherwise permitted or required by the dryer manufacturer's installation instructions and approved by the Administrative Authority, domestic dryer moisture exhaust ducts shall not exceed to total combined horizontal and vertical length 30 feet (9150 mm) of 4 inch vent or 37 feet (11285 mm), of 5 inch vent, including two 90 degree (1.57 rad) elbows. Two feet (610 mm) shall be deducted for each 90 degree (1.57 rad) for each additional elbow. If the vent passes through space that is unheated it shall be insulated to prevent condensation.

(Ord. No. 98-9854, § 2, 2-2-98; Ord. No. 01-10055, § 1, 10-23-01; Ord. No. 04-10208, § 1, 10-11-04)
Editor's Notes: Ord. No. 04-10208 adopted § 8-129, formerly § 8-284.

Sec. 8-130. Amendment of Section 707.0 of the Uniform Mechanical Code.

[Section 707.0 of the Uniform Mechanical Code and all of its subsection is hereby amended to read as follows:]

707.0 Area of Combustion Air Openings

707.1 General. The net free area of openings, ducts or plenums supplying combustion air to an area containing fuel-burning appliances shall be as specified in Table 7-1and sections 707.2 and 707.3. When grilles, screens or louvers are inserted in combustion-air openings, the provisions of Section 702.3 apply. Permanent mechanically pressurized combustion-air facilities in central heating plants, fossil-fueled steam electric generating plants, district heating plants, industrial facilities and power boiler plants are exempt from the requirements of Table 7-1.

707.2 One Permanent Opening Method: One permanent opening, commencing within 12 in. (300 mm) of the top of the enclosure, shall be provided. The equipment shall have clearances of at least 1 in. (25 mm) from the sides and back and 6 in. (160 mm) from the front of the appliance. The opening shall directly communicate with the outdoors or shall communicate through a vertical or horizontal duct to the outdoors or spaces that freely communicate with the outdoors and shall have a minimum free area of:

(1) 1 in.2/3000 btu/h (700 mm2/kW) of the total input rating of all equipment located in the enclosure, and

(2) Not less than the sum of the areas of all vent connectors in the space.

707.3 Combination Indoor and Outdoor Combustion Air.

The use of a combination of indoor and outdoor combustion air shall be in accordance with 707.3.1 through 707.3.3.

707.3.1 Indoor Openings. Where used, openings connecting the interior spaces shall comply with Section 507.3.1.

707.3.2 Outdoor openings shall be located in accordance with Section 507.4.1 and 507.4.2.

707.3.3 Outdoor Openings Size. The outdoor openings size shall be calculated in accordance with the following:

The ratio of interior spaces shall be the available volume of all communicating spaces divided by the required volume.

The outdoor size reduction factor shall be 1 minus the ratio of interior spaces.

The minimum size of outdoor openings shall be the full size of outdoor openings calculated in accordance with Section 507.4.1 or 507.4.2, multiplied by the reduction factor. The minimum dimension of air openings shall not be less than 3 in. (80 mm).

(Ord. No. 04-10208, § 1, 10-11-04)

Sec. 8-131. Amendment of Section 808.0 of the Uniform Mechanical Code.

[Section 808.0 of the Uniform Mechanical Code is hereby amended to read as follows:]

808.0 Size of Gravity Venting System

For sizing an individual gas vent for a single, draft-hood equipped replacement appliance, the effective area of the vent connector and the gas vent shall be not less than the area of the appliance draft hood outlet or greater than seven times the draft hood outlet area. Such vents and their connectors shall be limited to a combined maximum change in direction of 180 degrees. Vents requiring greater change in direction shall be sized in accordance with Appendix C of this Code.

(Ord. No. 04-10208, § 1, 10-11-04)
Editor's Note: Ord. No. 04-10208 adopted § 8-131. Former § 8-131 pertained to classes of electrical mechanics was replaced with § 8-176.

Sec. 8-132. Amendment of Section 809.3 of the Uniform Mechanical Code.

[Section 809.3 of the Uniform Mechanical Code is hereby amended to read as follows:]

809.3 For sizing an existing gas vent connected to two appliances with draft hoods, the effective area of the vent shall be not less than the area of the larger draft hood outlet plus 50% of the area of the smaller draft hood outlet or greater than seven times the smaller draft hood outlet area. The effective area of each vent connector for such systems shall be not less than the area of the appliance draft hood outlet or greater than seven times the draft hood outlet area. Lengths of vent connectors and manifolds shall be limited as required by sections 815.2.2.7 of this chapter. Each vent connector shall be limited to a combined maximum change in direction of 180 degrees. Vents connectors requiring greater change in direction shall be sized in accordance with section 511.0 of this chapter.

New vent systems shall be installed in accordance with Appendix C of this code.

(Ord. No. 04-10208, § 1, 10-11-04)
Editor's Notes: Ord. No. 04-10208 adopted § 8-132. Former § 8-132 pertained to master electrician requirement was replaced with § 8-174.

Sec. 8-133. Amendment of Section 810.1 of the Uniform Mechanical Code.

[Section 810.1of the Uniform Mechanical Code is hereby amended to read as follows:]

810.1 The venting system shall be in a safe condition.

(Ord. No. 04-10208, § 1, 10-11-04)
Editor's Notes: Ord. No. 04-10208 adopted § 8-133. Ord. No. 86-9164 repealed §§ 8-133--8-136 pertaining to the board of electrical examiners.

Sec. 8-134. Amendment of Section 813.0 of the Uniform Mechanical Code.

[Section 810.0 of the Uniform Mechanical Code and all of its subsections is hereby amended to read as follows:]

813.0 Masonry Chimneys

813.1 Design Masonry chimneys shall be built and installed in accordance with NFPA 211, Standard for Chimneys, Fireplaces, Vents, and Solid Fuel-Burning Appliances, and lined with approved clay flue lining, a listed chimney lining system, or other approved material that will resist corrosion, erosion, softening, or cracking from vent gases at temperatures up to 1800°F (982°C).

Exception: Masonry chimney flues lined with a chimney lining system specifically listed for use with listed gas appliances with draft hoods, Category I appliances, and other gas appliances listed for use with Type B vents shall be permitted. The liner shall be installed in accordance with the liner manufacturer's instructions and the terms of the listing. A permanent identifying label shall be attached at the point where the connection is to be made to the liner. The label shall read: "This chimney liner is for appliances that burn gas only. Do not connect to solid or liquid fuel-burning appliances or incinerators."

813.2 Gas Venting into Existing Masonry Chimneys. Existing lined masonry chimneys may be used to vent gas appliances, provided:

813.2.1 Inspection of Chimneys.

(A) Before replacing an existing appliance or connecting a vent connector to a chimney, the chimney passageway shall be examined to ascertain that it is clear and free of obstructions and shall be cleaned if previously used for venting solid-or liquid-fuel-burning appliances or fireplaces.

(B) Chimneys shall be lined in accordance with NFPA 211, Standard for Chimneys, Fireplaces, Vents, and Solid-Fuel Burning Appliances.

(C) Cleanouts shall be examined to determine that they will remain tightly closed when not in use.

(D) When inspection reveals that an existing chimney is not safe for the intended application, it shall be repaired, rebuilt, lined, relined, or replaced with a vent or chimney to conform to NFPA 211, Standard for Chimneys, Fireplaces, Vents, and Solid- Fuel-Burning Appliances, and shall be suitable for the equipment to be attached.

813.2.2 Size of Chimneys The effective area of a chimney venting system serving listed gas appliances with draft hoods, Category I appliances, and other appliances listed for use with Type B vents shall be in accordance with one of the following methods:

813.2.2.1 For sizing an individual chimney venting system for a single appliance with a draft hood, the effective areas of the vent connector and chimney flue shall be not less than the area of the appliance flue collar or draft hood outlet or greater than seven time the draft hood outlet area.

813.2.2.2 For sizing a chimney venting system connected to two or more appliances with a draft hoods, the effective area of the chimney flue shall be not less than the area of the largest draft hood outlet plus 50 percent of the area of the smaller draft hood outlets, or greater than seven times the smallest draft hood outlet area.

813.2.2.3 Appendix C of this code.

813.2.2.4 Other approved engineering methods.

813.2.2.5 Chimney venting systems using mechanical draft shall be sized in accordance with approved engineering methods. Where an incinerator is vented by a chimney serving other gas utilization equipment, the gas input to the incinerator shall not be included in calculating chimney size, provided the chimney flue diameter is not less than 1 in. (25 mm) larger in equivalent diameter than the diameter of the incinerator flue outlet.

813.2.3 Automatically controlled gas appliances connected to a chimney which also serves equipment burning liquid fuel shall be equipped with an automatic pilot. A gas appliance vent connector and a chimney connector from an appliance burning liquid fuel may be connected into the same chimney through separate openings, provided the gas appliance is vented above the liquid fuel-burning appliance, or both may be connected through a single opening if joined by a suitable fitting located at the chimney.

813.2.4 The vent or chimney connector shall enter the chimney at least six (6) inches (152 mm) from the bottom of the chimney. The chimney shall be provided with a cleanout. If six (6) inches (152 mm) are not available, a cleanout shall be provided by installing a capped tee in the vent connector next to the chimney.

(Ord. No. 04-10208, § 1, 10-11-04)
Editor's Notes: Ord. No. 04-10208 adopted § 8-134. Ord. No. 86-9164 repealed §§ 8-133--8-136 pertaining to the board of electrical examiners.

Sec. 8-135. Amendment of Section 904.5 of the Uniform Mechanical Code.

[Section 904.5 of the Uniform Mechanical Code is hereby amended to read as follows:]

904.5. In a room used or designed to be used as a bedroom, bathroom, closet or in any enclosed space with access only through such room or space.

Exception 1: Direct vent furnaces, enclosed furnaces and electric heating furnaces. Access to furnaces located in an attic or under-floor crawl space may be through a closet.

Exception 2: The replacement of warm air furnaces that are located in existing bathrooms shall be permitted provided that the only access to the bathroom is not through a bedroom.

(Ord. No. 00-10004, § 2, 11-13-00; Ord. No. 04-10208, § 1, 10-11-04)
Editor's Note: Ord. No. 04-10208 adopted § 8-135, formerly 8-286. Ord. No. 86-9164 repealed §§ 8-133--8-136 pertaining to the board of electrical.

Sec. 8-135.1. Amendment of Section 906.6.5 of the Uniform Mechanical Code.

[Section 906.6.5 of the Uniform Mechanical Code is hereby amended to read as follows:]

906.6.5 From a room or space having any fuel-burning appliances therein.

Exception: This shall not apply to:

1. Fireplaces, fireplace appliances, residential cooking appliances, direct vent appliances, enclosed furnaces and domestic-type clothes dryers installed within the room or space.
2. A gravity-type or listed vented wall furnace.
3. A blower-type system complying with the following requirements:

   Where the return air is taken from a room or space having a volume exceeding one (1) cubic foot (0.028 m3) for each ten (10) Btu/h (2.93 W) fuel input rate of all fuel-burning appliances therein. At least 75 percent of the supply air is discharged back into the same room or space. Return-air inlet shall not be located within ten (10) feet (3048 mm) of any appliance firebox or draft diverter in the same enclosed room or confined space.
4. Detached accessory structures that are regulated by the International Residential Code and S-1 garages provided that the only gas-burning appliance in the space is a single induced-draft type forced air furnace, and provided further that supply air is not ducted to any other spaces.

(Ord. No. 06-10334, § 1, 6-19-06)

Sec. 8-136. Amendment of Section 908.0 of the Uniform Mechanical Code.

[Section 908.0 of the Uniform Mechanical Code is hereby amended to read as follows:]

908.0 Attic Furnaces. Upright furnaces may be installed in an attic or furred space more than five (5) feet (1524 mm) in height, provided the required listing sand furnace and duct clearances are observed. Horizontal furnaces may be installed in an attic or furred space provided the required listings and furnace and duct clearances are observed.

Clearances of a warm-air attic furnace from combustibles shall be as specified in Section 304.1.

An attic or furred space in which a warm-air furnace is installed shall be accessible by an opening and passageway as large as the largest piece of the furnace and in no case less than 30 inches by 30 inches (762 mm x 762 mm) continuous from the opening to the furnace and its controls.

Exception: The access opening into the space may be 22 inches by 30 inches (559 mm X 762 mm), provided the largest piece of equipment can be removed through the opening.

The distance from the passageway access to furnace shall not exceed 20 feet (2096 mm) measured along the center line of the passageway. The passageway shall be unobstructed and shall have continuous solid flooring not less than 24 inches (610 mm) wide from the entrance opening to the furnace.

A level working platform not less than 30 inches (762 mm) in depth and width shall be provided in front of the entire firebox side of the warm-air furnace and if the furnace temperature-limit control, air filter, fuel-control valve, vent collar or air-handling unit in not serviceable from the firebox side of the furnace, a continuous floor not less than 24 inches (610 mm) in width shall be provided from the platform in front of the firebox side of the furnace to and in front of this equipment.

Exception: A working platform need not be provided when the furnace can be serviced from the required access opening.

A permanent electric outlet and lighting fixture controlled by a switch located at the required passageway opening shall be provided at or near the furnace.

Exception: Neither an outlet nor a light shall be required for furnaces installed above a lay-in ceiling when tiles immediately adjacent to the furnace can be removed.

(Ord. No. 98-9854, § 3, 2-2-98; Ord. No. 01-10055, § 1, 10-22-01; Ord. No. 02-10076, § 1, 4-22-02; Ord. No. 04-10208, § 1, 10-11-04)
Editor's Notes: Ord. No. 04-10208 adopted § 8-136, formerly § 8-285. Ord. No. 86-9164 repealed §§ 8-133--8-136 pertaining to the board of electrical examiners.

Sec. 8-137. Amendment of Section 910.8 of the Uniform Mechanical Code.

[Section 910.8 of the Uniform Mechanical Code is hereby amended to read as follows:]

910.8 Access. Every Furnace installed in or on an exterior wall of a building, which is designed so that the burners or controls must be serviced from outside the building, shall be readily accessible.

Furnaces located on the roof of a building shall be readily accessible.

Exceptions:

1. Permanent exterior ladders providing roof access need not extend closer than 12 feet to the finish grade.
2. A portable ladder may be used for access for furnaces on the single-story portion of a Group R or U Occupancy.
3. Permanent ladders for equipment access need not be provided at parapets or walls less than 30 inches (762 mm) in height.
4. New equipment replacing existing equipment in the same location shall not be required to conform with this requirement.

(Ord. No. 98-9854, § 3, 2-2-98; Ord. No. 01-10055, § 1, 10-22-01; Ord. No. 02-10076, § 1, 4-22-02; Ord. No. 04-10208, § 1, 10-11-04)
Editor's Notes: Ord. No. 04-10208 adopted § 8-137, formerly § 8-285. Former § 8-137 pertained to reexamination after failure.

Sec. 8-138. Amendment of Section 916.3 of the Uniform Mechanical Code.

[Section 916.3 of the Uniform Mechanical Code is hereby amended to read as follows:]

916.3 Unvented. Unvented fuel-burning room heaters shall not be installed, used, maintained or permitted to exist in a Group I or R Occupancy, nor shall an unvented heater be installed in any building, whether as a new or as a replacement installation, unless permitted by this section. This subsection shall not apply to portable oil-fired unvented heating used as supplemental heating in Group S, Divisions 3, 4, and 5 and Group U Occupancies, and regulated by the Fire Code.

Exception: Unvented heaters, gas logs and fireplaces may be installed in Group A, B, and M occupancies and R3 single family dwellings (except bathrooms and bedrooms). Unvented gas log is a listed natural gas or liquefied petroleum gas burning log with an open flame consisting of a metal frame or base supporting simulated logs which is designed so that its primary function lies in the aesthetic effect of the logs and flame. An unvented fireplace is a listed unvented gas log permanently installed in a freestanding enclosure designed and approved for installation in walls or other building structures. Unvented heaters, gas logs, and fireplaces:

1. Shall be equipped with an approved oxygen-depletion sensor;
2. Shall be listed;

3. Shall not be installed in any room which does not have an alternative source of primary heating (does not apply to heaters);
4. Shall have free air volume of at least 50 cubic feet for each 1000 BTUs of thermal input;
5. Shall be permanently installed;
6. Shall not be equipped or connected to any automatic ignition or shut-off device except the oxygen depletion sensor;
7. Must be fueled by natural gas or liquid propane;
8. Must bear the label of the American Gas Association or be UL listed.

(Ord. No. 98-9854, § 3, 2-2-98; Ord. No. 01-10055, § 1, 10-22-01; Ord. No. 02-10076, § 1, 4-22-02; Ord. No. 04-10208, § 1, 10-11-04)
Editor's Notes: Ord. No. 04-10208 adopted § 8-138, formerly § 8-285. Former § 8-138 pertained to issuance of licenses was repealed.

Secs. 8-139 – 8-145. Reserved.

Editor's Notes: Ord. No. 04-10208 repeals 8-139 – 8-141. Former § 8-139 pertaining to license fees was replaced with § 8-181. Former § 8-140 pertaining to expiration & renewal of licenses was replaced with § 8-182. Former § 8-141 pertaining to suspension, revocation of license was replaced with § 8-187.

DIVISION 5. ADOPTION OF ELECTRIC CODE WITH AMENDMENTS[1]

Sec. 8-146. National Electrical Code adopted.

There is hereby adopted, by reference, by the city for the purpose of providing minimum standards to safeguard life or limb, health, property, and public welfare by regulating and controlling the design, construction, quality of materials, location, operation, alteration repair and maintenance of electrical wiring and apparatus for the utilization of electric current, that certain electrical code known as the National Electrical Code, as recommended and published by the National Fire Protection Association, being particularly the 2002 edition not including appendices thereto, except as amended in this article of the Salina Code, of which not fewer than three (3) copies have been, and are now filed in the office of the city clerk and the same are hereby incorporated as fully as if set out at length herein and the provisions thereof shall be controlling in the construction and maintenance of all buildings and structures therein contained within the corporate limits of the city.

(Code 1966, § 9-179; Ord. No. 81-8830, § 1, 1-12-81; Ord. No. 84-8990, § 1, 1-19-84; Ord. No. 89-9307, §§ 1, 2, 2-6-89; Ord. No. 94-9618, § 1, 2-7-94 ;Ord. No. 98-9855, § 1, 2-2-98; Ord. No. 01-10063, § 1, 11-26-01; Ord. No. 04-10208, § 1, 10-11-04)
State law references: Authority to incorporate standard codes by reference, K.S.A. 12-3009 et seq. **Editor's Notes:** Ord. No. 04-10208 adopted § 8-146, formerly § 8-66.

Sec. 8-147. Amendment of Article 80.2 of the National Electrical Code.

[Article 80.2 of the National Electrical Code is hereby amended to read as follows:]

80.2 Definitions.

Authority Having Jurisdiction. The organization, office, or individual responsible for approving equipment, materials, an installation, or a procedure. As used in this code the Authority Having Jurisdiction shall mean the City of Salina.

Chief Electrical Inspector. An electrical inspector who either is the authority having jurisdiction or is designated by the authority having jurisdiction and is responsible for administering the requirements of this Code. As used in this code the Chief Electrical Inspector shall mean the Building Official.

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[1] **Editor's Notes:** Division 5 created by Ord. No. 04-10208, formerly Article V.

Electrical Inspector. An individual meeting the requirements of 80.27 and authorized to perform electrical inspections.

(Ord. No. 04-10208, § 1, 10-11-04)
Editor's Notes: Ord. No. 04-10208 adopted § 8-147, formerly § 8-81 pertaining to Building Official to decide question had similar provisions.

Sec. 8-148. Amendment of Article 80.15 of the National Electrical Code.

[Article 80.15 of the National Electrical Code and all of its subsections is hereby amended to read as follows:]

80.15 Appeals. Appeals of orders, decisions or determinations made by the building official relative to the application and interpretation of this code shall be heard and decided by the Building Advisory Board. See Article II, Chapter 8 of Salina Municipal Code.

(Ord. No. 04-10208, § 1, 10-11-04)

Sec. 8-149. Amendment of Article 80.19 of the National Electrical Code.

[Article 80.19 of the National Electrical Code and all of its subsections is hereby amended to read as follows:]

80.19 Permits and Approvals, Permits required No person shall install or repair, change or add to any wiring for the transmitting of electric current for light, heat or power or install or repair any lighting, fixtures, devices, disconnects, service or control equipment that has been installed in or upon any building in the city without the owner, electrical contractor or person doing such work first obtaining a permit covering such work from the Department of Building Services. except that no permit shall be required to execute any of the classes of electrical work specified in the following:

(1) Installation or replacement of equipment such as lamps and of electric utilization equipment approved for connection to suitable permanently installed receptacles. Replacement of flush or snap switches, fuses, lamp sockets, and receptacles, and other minor maintenance and repair work, such as replacing worn cords and tightening connections on a wiring device

(2) The process of manufacturing, testing, servicing, or repairing electric equipment or apparatus

(3) No permit shall be required for installation of low-voltage circuits.

Permits and approvals shall conform to 80.19(A) through (H).

(A) Application.

(1) Activity authorized by a permit issued under this *Code* shall be conducted by the permittee or the permittee's agents or employees in compliance with all requirements of this *Code* applicable thereto and in accordance with the approved plans and specifications. No permit issued under this *Code* shall be interpreted to justify a violation of any provision of this *Code* or any other applicable law or regulation. Any addition or alteration of approved plans or specifications shall be approved in advance by the authority having jurisdiction, as evidenced by the issuance of a new or amended permit.

(2) A copy of the permit shall be posted or otherwise readily accessible at each work site or carried by the permit holder as specified by the authority having jurisdiction.

(B) Content. Permits shall be issued by the authority having jurisdiction and shall bear the name and signature of the authority having jurisdiction or that of the authority having jurisdiction's designated representative. In addition, the permit shall indicate the following:

(1) Operation or activities for which the permit is issued

(2) Address or location where the operation or activity is to be conducted

(3) Name and address of the permitee

(4) Permit number and date of issuance

(5) Period of validity of the permit

(6) Inspection requirements

(C) Issuance of Permits. The authority having jurisdiction shall be authorized to establish and issue permits, certificates, notices, and approvals, or orders pertaining to electrical safety hazards pursuant to 80.23

~~*(D)*~~

(E) Fees. The fee for each permit required by this code shall be as set forth in the fee schedule adopted pursuant to section 2-2 of the Salina Code of Ordinances.

(F) Inspection and Approvals.

(1) Upon the completion of any installation of electrical equipment that has been made under a permit other than an annual permit, it shall be the duty of the person, firm, or corporation making the installation to notify the Electrical Inspector having jurisdiction, who shall inspect the work within a reasonable time.

(2) Where the Inspector finds the installation to be in conformity with the statutes of all applicable local ordinances and all rules and regulations, the Inspector shall notify such authorization to the supplier of electric service. When a certificate of temporary approval is issued authorizing the connection of an installation such certificates shall be issued to expire at a time to be stated therein and shall be revocable by the Electrical Inspector for cause.

(3) When any portion of the electrical installation within the jurisdiction of an Electrical Inspector is to be hidden from view by the permanent placement of parts of the building, the person, firm, or corporation installing the equipment shall notify the Electrical Inspector, and such equipment shall not be concealed until it has been approved by the Electrical Inspector, provided that on large installations, where the concealment of equipment proceeds continuously, the person, firm, or corporation installing the equipment shall give the Electrical Inspector due notice in advance, and inspections shall be made periodically during the progress of the work.

(4) If, upon inspection, any installation is found not to be fully in conformity with the provisions of Article 80, and all applicable ordinances, rules, and regulations, the Inspector making the inspection shall at once forward to the person, firm, or corporation making the installation a written notice stating the defects that have been found to exist.

(G) Revocation of Permits. Revocation of permits shall conform to the following:

(1) The authority having jurisdiction shall be permitted to revoke a permit or approval issued if any violation of this Code is found upon inspection or in case there have been any false statements or misrepresentations submitted in the application or plans on which the permit or approval was based.

(2) Any attempt to defraud or otherwise deliberately or knowingly design, install, service, maintain, operate, sell, represent for sale, falsify records, reports, or applications, or other related activity in violation of the requirements prescribed by this Code shall be a violation of this Code. Such violations shall be cause for immediate suspension or revocation of any related licenses, certificates, or permits issued by this jurisdiction. In addition, any such violation shall be subject to any other criminal or civil penalties as available by the laws of this jurisdiction.

(3) Revocation shall be constituted when the permittee is duly notified by the authority having jurisdiction.

(4) Any person who engages in any business, operation, or occupation, or uses any premises, after the permit issued therefor has been suspended or revoked pursuant to the provisions of this Code, and before such suspended permit has been reinstated or a new permit issued, shall be in violation of this Code.

(5) A permit shall be predicated upon compliance with the requirements of this Code and shall constitute written authority issued by the authority having jurisdiction to install electrical equipment. Any permit issued under this Code shall not take the place of any other license or permit required by other regulations or laws of this jurisdiction.

(6) The authority having jurisdiction shall be permitted to require an inspection prior to the issuance of a permit

(7) A permit issued under this Code shall continue until revoked or for the period of time designated on the permit. The permit shall be issued to one person or business only and for the location or purpose described in the permit. Any change that affects any of the conditions of the permit shall require a new or amended permit.

(H) Applications and Extensions. Applications and extensions of permits shall conform to the following:

(1) Every permit issued by the Building Official under the provisions of this code shall expire by limitation and become null and void if the work authorized by such permit is not commenced within 180 days from the date of such permit, or if the work authorized by such permit is suspended or abandoned at any time after the work is commenced for a period of 180 days. Before such work can be recommenced, a permit shall be first obtained to do so, and the fee therefor shall be one half the amount required for a new permit for such work, provided no changes have been made or will be made in the original plans and specifications for such work, and provided further that such suspension or abandonment has not exceeded one year. In order to renew action on a permit after expiration, the permittee shall pay a new full permit fee.

Any permittee holding an unexpired permit may apply for an extension of the time within which work may commence under that permit when the permittee is unable to commence work within the time required by this section for good and satisfactory reasons. The building official may extend the time for action by the permittee for a period not exceeding 180 days on written request by the permittee showing that circumstances beyond the control of the permittee have prevented action from being taken. No permit shall be extended more than once.

(2) Applications for permits shall be made to the authority having jurisdiction on forms provided by the jurisdiction and shall include the applicant's answers in full to inquiries set forth on such forms. Applications for permits shall be accompanied by such data as required by the authority having jurisdiction, such as plans and specifications, location, and so forth. Fees shall be determined as required by local laws.

(3) The authority having jurisdiction shall review all applications submitted and issue permits as required. If an application for a permit is rejected by the authority having jurisdiction, the applicant shall be advised of the reasons for such rejection. Permits for activities requiring evidence of financial responsibility by the jurisdiction shall not be issued unless proof of required financial responsibility is furnished.

(Ord. No. 04-10208, § 1, 10-11-04)

Editor's Notes: § 8-149 adopted similar provisions as former §§ 8-149, 8-151, 8-152, 8-156 – 8-162.

(E) Fees. The fee for each permit required by this code shall be as set forth in the fee schedule adopted pursuant to section 2-2 of the Salina Code of Ordinances.

(F) Inspection and Approvals.

(1) Upon the completion of any installation of electrical equipment that has been made under a permit other than an annual permit, it shall be the duty of the person, firm, or corporation making the installation to notify the Electrical Inspector having jurisdiction, who shall inspect the work within a reasonable time.

(2) Where the Inspector finds the installation to be in conformity with the statutes of all applicable local ordinances and all rules and regulations, the Inspector shall notify such authorization to the supplier of electric service. When a certificate of temporary approval is issued authorizing the connection of an installation such certificates shall be issued to expire at a time to be stated therein and shall be revocable by the Electrical Inspector for cause.

(3) When any portion of the electrical installation within the jurisdiction of an Electrical Inspector is to be hidden from view by the permanent placement of parts of the building, the person, firm, or corporation installing the equipment shall notify the Electrical Inspector, and such equipment shall not be concealed until it has been approved by the Electrical Inspector, provided that on large installations, where the concealment of equipment proceeds continuously, the person, firm, or corporation installing the equipment shall give the Electrical Inspector due notice in advance, and inspections shall be made periodically during the progress of the work.

(4) If, upon inspection, any installation is found not to be fully in conformity with the provisions of Article 80, and all applicable ordinances, rules, and regulations, the Inspector making the inspection shall at once forward to the person, firm, or corporation making the installation a written notice stating the defects that have been found to exist.

(G) Revocation of Permits. Revocation of permits shall conform to the following:

(1) The authority having jurisdiction shall be permitted to revoke a permit or approval issued if any violation of this Code is found upon inspection or in case there have been any false statements or misrepresentations submitted in the application or plans on which the permit or approval was based.

(2) Any attempt to defraud or otherwise deliberately or knowingly design, install, service, maintain, operate, sell, represent for sale, falsify records, reports, or applications, or other related activity in violation of the requirements prescribed by this Code shall be a violation of this Code. Such violations shall be cause for immediate suspension or revocation of any related licenses, certificates, or permits issued by this jurisdiction. In addition, any such violation shall be subject to any other criminal or civil penalties as available by the laws of this jurisdiction.

(3) Revocation shall be constituted when the permittee is duly notified by the authority having jurisdiction.

(4) Any person who engages in any business, operation, or occupation, or uses any premises, after the permit issued therefor has been suspended or revoked pursuant to the provisions of this Code, and before such suspended permit has been reinstated or a new permit issued, shall be in violation of this Code.

(5) A permit shall be predicated upon compliance with the requirements of this Code and shall constitute written authority issued by the authority having jurisdiction to install electrical equipment. Any permit issued under this Code shall not take the place of any other license or permit required by other regulations or laws of this jurisdiction.

(6) The authority having jurisdiction shall be permitted to require an inspection prior to the issuance of a permit

(7) A permit issued under this Code shall continue until revoked or for the period of time designated on the permit. The permit shall be issued to one person or business only and for the location or purpose described in the permit. Any change that affects any of the conditions of the permit shall require a new or amended permit.

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(1) Every permit issued by the Building Official under the provisions of this code shall expire by limitation and become null and void if the work authorized by such permit is not commenced within 180 days from the date of such permit, or if the work authorized by such permit is suspended or abandoned at any time after the work is commenced for a period of 180 days. Before such work can be recommenced, a permit shall be first obtained to do so, and the fee therefor shall be one half the amount required for a new permit for such work, provided no changes have been made or will be made in the original plans and specifications for such work, and provided further that such suspension or abandonment has not exceeded one year. In order to renew action on a permit after expiration, the permittee shall pay a new full permit fee.

Any permittee holding an unexpired permit may apply for an extension of the time within which work may commence under that permit when the permittee is unable to commence work within the time required by this section for good and satisfactory reasons. The building official may extend the time for action by the permittee for a period not exceeding 180 days on written request by the permittee showing that circumstances beyond the control of the permittee have prevented action from being taken. No permit shall be extended more than once.

(2) Applications for permits shall be made to the authority having jurisdiction on forms provided by the jurisdiction and shall include the applicant's answers in full to inquiries set forth on such forms. Applications for permits shall be accompanied by such data as required by the authority having jurisdiction, such as plans and specifications, location, and so forth. Fees shall be determined as required by local laws.

(3) The authority having jurisdiction shall review all applications submitted and issue permits as required. If an application for a permit is rejected by the authority having jurisdiction, the applicant shall be advised of the reasons for such rejection. Permits for activities requiring evidence of financial responsibility by the jurisdiction shall not be issued unless proof of required financial responsibility is furnished.

(Ord. No. 04-10208, § 1, 10-11-04)
Editor's Notes: § 8-149 adopted similar provisions as former §§ 8-149, 8-151, 8-152, 8-156 – 8-162.

Sec. 8-150. Amendment of Article 80.27 of the National Electrical Code.

Article 80.27 of the National Electrical Code and all of its subsections is hereby deleted in its entirety.

(Ord. No. 04-10208, § 1, 10-11-04)

Sec. 8-151. Amendment of Article 210.12 of the National Electrical Code.

Article 210.12 of the National Electrical Code is hereby deleted in its entirety.

(Ord. No. 04-10208, § 1, 10-11-04)
Editor's Notes: Ord. No. 04-10208 adopted § 8-151, formerly § 8-67. Former § 8-151 pertained to electrical permit required was replaced with § 8-149.

Sec. 8-152. Amendment of Article 210.63 of the National Electrical Code.

[Article 210.63 of the National Electrical Code is hereby amended to read as follows:]

210-63. Heating, Air-Conditioning, and Refrigeration Equipment Outlet. A 125-volt, single-phase, 15- or 20-ampere-rated receptacle outlet shall be installed at an accessible location for the servicing of heating, air-conditioning, and refrigeration equipment. This is not required for replacement of existing equipment in the same location. The receptacle shall be located on the same level and within twenty-five ft. (7.62 m) of the heating, air-conditioning, and refrigeration equipment. The receptacle outlet shall not be connected to the load side of the equipment disconnecting means.

(Ord. No. 98-9855, § 2, 2-2-98; Ord. No. 01-10063, § 1, 11-26-01; Ord. No. 02-10076, § 1, 4-22-02; Ord. No. 04-10208, § 1, 10-11-04)
Editor's Notes: Ord. No. 04-10208 adopted § 8-152, formerly 8-67. Former § 8-152 pertaining to when a permit is not required was replaced with § 8-149.

Sec. 8-153. Amendment of Article 230.70 of the National Electrical Code.

[Article 230.70 of the National Electrical Code is hereby amended to read as follows:]

230.70 General. Means shall be provided to disconnect all conductors in a building or other structure from the service-entrance conductors.

(A) Location. The service disconnecting means shall be installed in accordance with 230.70(A)(1), (2), and (3).

(1) Readily Accessible Location. The service disconnecting means shall be installed at a readily accessible location either outside of a building or structure or inside nearest the point of entrance of the service conductors. For one and two family dwellings, the length of service conductors between the meter and the service disconnect shall not exceed 10 feet. For all other buildings where the service disconnecting means is located inside a building or structure, that portion of the service conductors located inside the building or structure shall not exceed 10 feet in length.

(Note: See 230.6 - Conductors considered outside the building)

(2) Bathrooms. Service disconnecting means shall not be installed in bathrooms.

(3) Remote Control. Where a remote control device(s) is used to actuate the service disconnecting means, the service disconnecting means shall be located in accordance with 230.70(A)(1).

(Ord. No. 98-9855, § 2, 2-2-98; Ord. No. 01-10063, § 1, 11-26-01; Ord. No. 02-10076, § 1, 4-22-02; Ord. No. 04-10208, § 1, 10-11-04)
Editor's Notes: Ord. No. 04-10208 adopted § 8-153, formerly 8-67. Former § 8-153 repealed by Ord. No. 94-9618 pertaining to record of permits required.

Sec. 8-154. Amendment of Article 300.22 of the National Electrical Code.

[Article 300.22 subsection (C) of the National Electrical Code is hereby amended to read as follows:]

300.22. Wiring in Ducts, Plenums, and Other Air-Handling Spaces.

(C) Other Space Used for Environmental Air. This section applies to space used for environmental air-handling purposes other than ducts and plenums as specified in 300.22(A) and (B). It does not include habitable rooms or areas of buildings, the prime purpose of which is not air handling.

Exception: This section shall not apply to the joist or stud spaces of dwellin*g* units governed by the International Residential Code where the wiring passes through such spaces

(1) Wiring Methods. The wiring methods for such other space shall be limited to totally enclosed, nonventilated, insulated busway having no provisions for plug-in connections, Type MI cable, Type MC cable without an overall nonmetallic covering, Type AC cable, or other factory-assembled multiconductor control or power cable that is specifically listed for the use, or listed prefabricated cable assemblies of metallic manufactured wiring systems without nonmetallic sheath. Other types of cables and conductors shall be installed in electrical metallic tubing, flexible metallic tubing, intermediate metal conduit, rigid metal conduit without an overall nonmetallic covering, flexible metal conduit, or, where accessible, surface metal raceway or metal wireway with metal covers or solid bottom metal cable tray with solid metal covers.

(2) Equipment. Electrical equipment with a metal enclosure, or with a nonmetallic enclosure listed for the use and having adequate fire-resistant and low-smoke-producing characteristics, and associated wiring material suitable for the ambient temperature shall be permitted to be installed in such other space unless prohibited elsewhere in this *Cod*e.

Exception: Integral fan systems shall be permitted where specifically identified for such use.

(Ord. No. 01-10063, § 2, 11-26-01; Ord. No. 02-10076, § 1, 4-22-02; Ord. No. 04-10208, § 1, 10-11-04)
Editor's Notes: Ord. No. 04-10208 adopted § 8-154, formerly § 8-68. Former § 8-154 pertained to permit fees was replaced with § 8-149.

Secs. 8-155 – 8-160. Reserved.

Editor's Notes: Ord. No. 04-10208 repealed §§ 8-155 – 8-160. Former § 8-155 pertaining payment of fee; failure to pay was replaced with § 8-182. Former §& 8-156 – 8-160 pertaining to conditions to issuance of permit, inspector to inspect, inspection approval required, when inspections to be accomplished, and inspector's right of entry was replaced with § 8-149.

ARTICLE II. BUILDING ADVISORY BOARD[6]

Sec. 8-161. Created.

There is hereby created the Building Advisory Board (hereinafter referred to as "the board").

(Ord. No. 89-9164, § 1, 11-3-86; Ord. No. 88-9281, § 2, 10-17-88; Ord. No. 02-10076, § 1, 4-22-02; Ord. No. 04-10208, § 10-11-04)
Editor's Notes: Ord. No. 04-10208 adopted § 8-161, formerly § 8-16. Former § 8-161 pertaining to concealing wiring before inspection was replaced with § 8-149.

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[6] **Editor's note:** Ord. No. 04-10208 adopted Art. II, with new sections. Ord. No. 02-10076 amended the title of article II. **Cross references:** Administration, Ch. 2; boards and commissions generally, § 2-136 et seq.

Sec. 8-162. Purpose.

The purpose of the board shall be to:

1. Study all model construction codes and local ordinances adopted by the city regarding the residential and commercial building industry and to make recommendations to the board of city commissioners regarding any update of the city building codes.
2. Act in an advisory capacity to the board of city commissioners on any requests for ordinance changes affecting the city building codes.
3. Render interpretations upon request by the building official and recommend policy.
4. Serve as a board of appeals to hear any appeals of orders, decisions or determinations made by the building official relative to the application and interpretation of this code.
5. Recommend rules and regulations to be adopted by resolution to the board of city commissioners regarding the registration of general contractors and tradesmen, the licensure of plumbing, mechanical, electrical and mobile home contracting businesses, and individual trade licensure for plumbers, mechanics, electricians and mobile home craftsmen.

(Ord. No. 86-9164, § 1, 11-3-86; Ord. No. 00-10011, § 2, 11-13-00; Ord. No. 02-10076, § 1, 4-22-02; Ord. No. 04-10208, § 1, 10-11-04)
Editor's Notes: Ord. No. 04-10208 adopted § 8-162, formerly § 8-22. Former § 8-162 pertaining to inspections of alterations and changes was replaced with § 8-149.

Sec. 8-163. Membership.

The board shall consist of eleven (11) members, including one (1) of each of the following:

1. Licensed architect
2. Licensed structural engineer
3. Realtor
4. Plumbing contractor
5. Master or journeyman plumber
6. Electrical contractor
7. Master or journeyman electrician
8. Licensed mechanical engineer
9. Heating and air-conditioning contractor
10. Home building contractor
11. Commercial building contractor

(Ord. No. 86-9164, § 1, 11-3-86; Ord. No. 00-10011, § 1, 11-13-00; Ord. No. 04-10208, § 10-11-04)
Editor's Notes: Ord. No. 04-10208 adopted § 8-163, formerly § 8-17. Former § 8-163 pertained to certificate of approval requsired before setting meter or connection current was repealed and referenced by the National Electrical Code.

Sec. 8-164. Appointment and term.

Members of the board shall be appointed by the mayor, with the consent of the board of city commissioners. Three (3) of the initial members shall be appointed to a one-year term, three (3) to a two-year term, three (3) to a three-year term, and three (3) to a four-year term. All subsequent appointments shall be for a four-year term. No member shall serve more than two (2) consecutive terms.

(Ord. No. 86-9164, § 1, 11-3-86; Ord. No. 04-10208, § 1, 10-11-04)
Editor's Notes: Ord. No. 04-10208 adopted § 8-164, formerly § 8-18.

Sec. 8-165. Compensation.

The members of the board shall serve without compensation.

(Ord. No. 86-9164, § 1, 11-3-86; Ord. No. 04-10208, § 1, 10-11-04)
Editor's Notes: Ord. No. 04-10208 adopted § 8-165, formerly § 8-19.

Sec. 8-166. Officers.

The board shall elect one (1) of its members as chairman for a term of one (1) year. The chairman shall preside at all meetings of the board. The board shall elect, in the same manner and for the same term, one (1) of its members as vice-chairman who shall act as chairman during the absence of the chairman.

(Ord. No. 86-9164, § 2, 11-3-86; Ord. No. 04-10208, § 1, 10-11-04)
Editor's Notes: Ord. No. 04-10208 adopted § 8-166, formerly 8-20.

Sec. 8-167. Quorum.

Six (6) members of the board shall constitute a quorum for the purpose of conducting the board's business.

(Ord. No. 86-9164, § 1, 11-3-86; Ord. No. 00-10011, § 1, 11-13-00; Ord. No. 04-10208, § 1, 10-11-04)
Editor's Notes: Ord. No. 04-10208 adopted § 8-167, formerly § 8-21.

Sec. 8-168. Appeal procedure.

Any appeal to be heard by the board must be filed within ten (10) calendar days from the date of the chief building official's decision prompting the appeal. Such appeal must be filed in the city's Building Services department on a form provided by that office. The appeal shall then be placed on the agenda of the next regularly scheduled meeting of the board.

(Ord. No. 86-9164, § 1, 11-3-86; Ord. No. 04-10208, § 1, 10-11-04)
Editor's Notes: Ord. No. 04-10208 adopted § 8-168, formerly § 8-23.

Sec. 8-169. Limitations on authority.

An application for appeal shall be based on a claim that the true intent of the applicable code or the rules legally adopted thereunder have been incorrectly interpreted, the provisions of the applicable code do not fully apply, or an equally good or better form of construction is proposed. The board shall have no authority to waive requirements of any codes duly adopted or amended by this chapter.

(Ord. No. 04-10208, § 1, 10-11-04)

Sec. 8-170. Meetings.

The board shall determine its own meeting schedule. Special meetings of the board may be called at the discretion of the chairman or by the vice-chairman in the event the chairman is unavailable to consider the request for a special meeting.

(Ord. No. 86-9164, § 1, 11-3-86; Ord. No. 88-9281, § 3, 10-17-88; Ord. No. 04-10208, § 1, 10-11-04)
Editor's Notes: Ord. No. 04-10208 adopted § 8-170, formerly § 8-24.

ARTICLE III. LICENSE AND REGISTRATION REQUIREMENTS[7]

DIVISION 1. LICENSE OR REGISTRATION REQUIRED

Sec. 8-171. Registration required.

It shall be unlawful for any person to perform work that requires a building, moving or demolition permit and/or erect, construct, enlarge, alter, repair, move, improve, remove, convert or demolish any building, structure, fence, retaining wall, irrigation system, signs, or driveway or other concrete flatwork in the city, or cause the same to be done unless such person has been validly registered with the city to perform such work. A contractor license shall not be deemed to preclude the requirement for registration when the work being performed is not within the scope of the contractor's license as defined by this Article. In extending the rights and privileges of registration, the city makes no statement of the technical competency of the registrant.

(Ord. No. 00-10005, § 1, 11-13-00; Ord. No. 04-10208, § 1, 10-11-04)
Editor's Notes: Ord. No. 04-10208 adopted § 8-171, formerly § 8-509.

Sec. 8-172. Registration classifications

Registration shall be divided into the following classifications:

Registered Contractor. A person that plans and supervises the unlimited construction, alternation, remodeling, addition, improvement or repair of any building or structure.

Registered Tradesman. A person that plans and supervises the construction, alternation, remodeling, addition, improvement or repair of any building or structure in an amount not to exceed twenty-five thousand dollars ($25,000).

(Ord. No. 00-10005, § 1, 11-13-00; Ord. No. 02-10076, § 1, 4-22-02; Ord. No. 04-10208, § 1, 10-11-04)
Editor's Notes: Ord. No. 04-10208 adopted § 8-172, formerly § 8-508.

Sec. 8-173. Exemptions from registration.

(1) A bona fide owner of a single-family dwelling being used exclusively as the owner's dwelling, including the usual accessory buildings, provided that said owner personally purchases and installs all material used in the construction, and further provided all other portions of this chapter are adhered to. The same shall apply to a new dwelling. When a permit is issued to an owner under this exemption, the exemption shall not be granted to the owner for any other address for a period of 1 year from the date the permit was issued. This exemption shall not preclude the requirement that all paid subcontractors hired by the owner must be registered or licensed;

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[7] **Editor's Note:** Ord. No. 04-10208 adopted Article III, formerly Articles IV and XVII.

(2) The property owner or persons who are regularly employed by the property owner, when work performed at that location does not require a permit;

(3) The property owner acting as his own general contractor when a permit is required when all actual work is performed by registered and/or licensed subcontractors;

(4) Employees of the City of Salina when working on any properties owned by the City.

(5) Employees of Saline County when working on any properties owned by the County.

(6) A licensed contractor when performing any work within the scope of their license as defined in this Article; or

(7) Any person who has a currently valid mobile home craftsman license issued by the city while performing repairs or replacements to the systems located within a mobile home under the provisions of Article IV of Chapter 22;

(Ord. No. 00-10005, § 1, 11-13-00; Ord. No. 04-10208, § 1, 10-11-04)
Editor's Notes: Ord. No. 04-10208 adopted § 8-173, formerly § 8-509.

Sec. 8-174. Contracting License required.

It shall be unlawful for any person or business to perform solid-fuel appliance installations, electrical work, plumbing work or HVAC mechanical work or cause the same to be done unless such persons possess or are employed by a business that possesses a valid solid-fuel appliance installation, electrical, plumbing and/or mechanical contracting license issued by the City Clerk for the type of work being done. For the purposes of this article the following definitions shall apply:

(a) Electrical work shall include the installation, replacement, repair or alteration of disconnect, service or control equipment or of permanent premises electrical wiring, lighting, fixtures and/or utilization equipment or devices not otherwise connected by approved attachment cord and cap. Electrical work shall not include circuits and equipment operating at less than 50 volts, communication wiring or devices, or the repair of motors or utilization equipment.

(b) Plumbing work shall include the installation, replacement, repair or alteration of water, wastewater, vent, hydronic and fuel gas piping, water heaters and boilers for both domestic potable water and environmental heating and their vents, medical gas systems, plumbing fixtures and appliances. Plumbing work shall not include the clearing of stoppages or the repair of plumbing appliances such, as but not limited to dishwashers, garbage disposals, water softeners or ice machines.

(c) HVAC mechanical work shall include the installation, replacement, repair or alteration of any ventilation or exhaust system, chilled water systems, hydronic, refrigerant, fuel gas or condensate piping, water heaters and boilers for both domestic hot water and space heating, refrigeration systems including electrical disconnecting means immediately adjacent to remote condensers, incinerators or other miscellaneous heat-producing appliances or warm air heating systems whereby heating is accomplished by distributing heated air by forced or gravity circulation or by radiation. Mechanical work shall not include the installation or repair of solid-fuel appliances, cooking or clothes drying equipment, fully self-contained permanent electrical environmental heating and/or cooling appliances, or self-contained appliances or refrigeration equipment such as, but not limited to, ice machines, ice cream machines, walk-in coolers and freezers without remote condensers and other similar appliances which require only electrical and/or water hook-ups.

(d) Solid-fuel appliance installations shall mean the installation of any permanent appliances or constructions used for heating or cooking that rely on the combustion of solid-type fuels such as,

but not limited to, wood, coal, corn or pellets. Such installations shall include masonry fireplaces as well as factory built appliances.

A licensed electrical, plumbing or mechanical contractor shall be a master certified by the City in the trade for which licensing is sought or have in their full-time employ at all times a designated master certified by the City in the trade for which licensing is sought. For the purpose of this section, the master shall act as the designated master for only one contractors license in the trade for which they hold such certification. A licensed solid-fuel appliance installation contractor shall be an installer licensed by the city as a solid-fuel appliance installer or have in their full-time employ at all times an installer licensed by the city as a solid-fuel appliance installer.

(Code 1966, § 9-130 and 9-207; Ord. No. 94-9619, § 2, 2-7-94; Ord. No. 99-9953, § 1, 10-18-99; Ord. No. 99-9954, § 2, 10-18-99; Ord. No. 01-10055, § 5, 10-22-01; Ord. No. 02-10076, § 1, 4-22-02; Ord. No. 04-10208, § 1, 10-11-04; Ord. No. 05-10257, § 1, 3-7-05)
Cross references: Administration, Ch. 2; boards and commissions generally, § 2-136 et seq. **Cross references:** Licenses generally, Ch. 20. **Editor's Notes:** Ord. No. 04-10208 adopted § 8-174, formerly §§ 8-111, 8-202, 8-214, 8-292, and 8-294.

Sec. 8-175. Trade license required.

It is shall be unlawful for any person to engage in the trade or otherwise perform plumbing work, electrical work or HVAC mechanical work as defined in section 8-174 within or on any building or premises within the city without first having secured a master, journeyman or apprentice license for the trade at which they are laboring and being in the employ of a licensed contractor. It shall further be unlawful for any person to engage in the trade or otherwise perform any installations of solid-fuel appliances without first having secured a solid-fuel installers license or apprentice license.

(Code 1966, § 9-130 and 9-207; Ord. No. 94-9619, § 2, 2-7-94; Ord. No. 99-9953, § 1, 10-18-99; Ord. No. 99-9954, § 2, 10-18-99; Ord. No. 01-10055, § 5, 10-22-01; Ord. No. 02-10076, § 1, 4-22-02; Ord. No. 04-10208, § 1, 10-11-04; Ord. No. 05-10257, § 2, 3-7-05)
Cross references: Administration, Ch. 2; boards and commissions generally, § 2-136 et seq. **Cross references:** Licenses generally, Ch. 20. **Editor's Notes:** Ord. No. 04-10208 adopted § 8-175, formerly §§ 8-111, 8-114, 8-202, and 8-292.Sec. 8-176. Classification of trade licenses.

Sec. 8-176. Classification of trade licenses.

1. *Master.* A master shall provide written certification of passage of the standard trade exam for Master as prescribed by the State of Kansas with a minimum score of 75%.

2. *Journeyman.* A journeyman shall provide written certification of passage of the standard trade exam for journeyman as prescribed by the State of Kansas with a minimum score of 75%.

3. *Solid-fuel appliance installer.* A solid-fuel appliance installer shall provide written certification of passage of the Woodburning Specialist and the Pellet Specialist examinations administered by the National Fireplace Institute or any other approved fireplace hearth certification test developed by an independent and nationally recognized testing organization or educational institute approved by the department in order to be licensed.

4. *Apprentice.* Any person earning his livelihood as a solid-fuel appliance installer, plumber, electrician, or HVAC mechanic but who has not acquired the necessary longevity of experience to be eligible to become a journeyman, or who with the necessary longevity of experience has not passed the required journeyman or solid-fuel appliance installer examination, is hereby classified as an apprentice. An apprentice shall not work except when under the immediate supervision and direction of a licensed journeyman, master or solid-fuel appliance installer properly licensed by the city. No person who has had his license revoked for cause, shall be allowed to work as an apprentice..

(Ord. No. 04-10208, § 1, 10-11-04; Ord. No. 05-10257, § 3, 3-7-05)
Editor's Notes: Ord. No. 04-10208 adopted § 8-176, formerly §§ 8-131, 8-201, and 8-291. Former § 8-176 pertained to adoption of the UPCode was replaced with § 8-72.

Sec. 8-177. Exemptions from contracting or trade licensing.

(1) Any person working in or upon any building or premises owned and occupied by an agency of the state or federal government;

(2) Any person operating as a public utility under franchise with the city, supplying power, communications or services may supply and maintain any measuring equipment installed by them, together with their overhead lines, so long as they remain the property of the utility company supplying the service;

(3) Any person employed by the water and sewerage department shall be exempt from the provisions of this section when performing labor on property owned and maintained by the city;

(4) A bona fide owner of a single-family dwelling being used exclusively as the owner's dwelling, including the usual accessory buildings, provided that said owner personally purchases and installs all material used in the construction, and further provided all other portions of this chapter are adhered to. The same shall apply to a new dwelling. When a permit is issued to an owner under this exemption, the exemption shall not be granted to the owner for any other address for a period of 1 year from the date the permit was issued.

(5) Persons who own or are regularly employed by the property owner are exempt from the licensing requirement when they are performing work on the property that is exempt from the requirements for a permit. An appropriate license is required for all work that requires a permit.

(6) Any person who has a currently valid mobile home craftsman license issued by the city while performing repairs or replacements to the systems located within a mobile home under the provisions of article IV of chapter 22;

(7) Persons or firms who are installing private sewer mains or private water mains and who have a supervising employee on the job site at all times that has passed the Underground Utilities 331 test as given by Block and Associates/Experior shall be licensed as a Utility Contractor. The building code advisory and appeals board may also approve alternate tests. Minimum requirements for insurance will be the same as for a plumbing contractor.

(8) Any person who has currently been operating a business in the city of Salina for the calendar years of 2001, 2002, 2003 and 2004 that specializes in the installation of solid-fuel appliances or masonry fireplaces but who is not or does not employ a certified solid-fuel appliance installer, may apply for a temporary license to become a solid-fuel appliance installation contractor, but shall have until March 1, 2006 to become or to employ a licensed solid-fuel appliance installer. Application for such temporary license must be made before June 1, 2005.

(Ord. No. 04-10208, § 1, 10-11-04; Ord. No. 05-10257, § 4, 3-7-05)

Editor's Notes: Ord. No. 04-10208 adopted § 8-177, formerly §§ 8-113, 8-202, and 8-292. Former § 8-177 pertaining to administrative authority was replaced by § 8-73.

DIVISION 2. GENERAL LICENSE AND REGISTRATION REQUIREMENTS[8]

Sec. 8-178. Insurance requirements for contractor licensing and registration

Each licensee or registrant shall procure and maintain in full force, for the duration of the license or registration, public liability insurance, with limits of not less than the maximum liability for claims which could be asserted against the city, for any number of claims arising out of a single occurrence or accident under the Kansas Tort Claims Act, as amended (currently five hundred thousand dollars ($500,000.00)). Each registrant shall also procure and maintain in full force, for the duration of the

[8] **Editor's Notes:** Ord. No. 04-10208 created Division 1, formerly Article IV and XVII.

registration, Workman's Compensation Insurance as required by the State of Kansas. Proof of coverage for all required insurance policies shall be on file with the city at all times. Each insurance policy shall contain a clause to the effect that the policy shall not at any time during the license or registration period be canceled or reduced, restricted or limited, unless the city license or registration period be canceled or reduced, restricted or limited, unless the city clerk's office is given ten (10) days written notice.

(Ord. No. 00-10005, § 1, 11-13-00; Ord. No. 00-10011, § 3, 11-13-00; Ord. No. 02-10076, § 1, 4-22-02; Ord. No. 04-10208, § 1, 10-11-04)
Editor's Notes: Ord. No. 04-10208 adopted § 8-178, formerly §§ 8-58 and 8-517. Former § 8-178 pertained to local amendments to the UPC.

Sec. 8-179. Application required.

An applicant for license or registration shall complete and submit an application form available from the city clerk's office. The information to be provided includes the following:

(1) The complete name, mailing address, street address, and telephone number of the proposed registrant or licensee.

(2) An applicant for contractor licensing shall provide the complete name and certification number of the designated master.

(3) Other pertinent information deemed necessary by the building official.

The application shall be accompanied by proof that the applicant is currently insured to meet the requirements of Section 8-178.

(Ord. No. 00-10011, § 3, 11-13-00)
Editor's Notes: Ord. No. 04-10208 adopted § 8-179, formerly §§ 8-51 and 8-510. Former § 8-179 pertained to local amendments to the UPC was replaced with §§ 8-74 – 8-118.

Sec. 8-180. Qualifications for Examination

Application for examination for trade licensing shall be made to the Building Services Department. Such application shall contain an affidavit verifying the following experience requirements;

(a) *Master.* An applicant for the masters examination must certify a minimum of six (6) years of practical experience in the trade for which they seek licensure, doing the type of work they will be required to perform, supervise or direct. Two (2) years satisfactory work at an accredited trade school and five (5) years practical experience may be accepted in lieu of the foregoing requirements.

(b) *Journeyman.* An applicant for the journeyman's examination must certify a minimum of four (4) years of practical experience in the trade for which they seek licensure, doing the type of work they will be required to perform. Two (2) years satisfactory work at an accredited trade school and three (3) years practical experience may be accepted in lieu of the foregoing requirements.

Code 1966, § 9-145; Ord. No. 84-9012, § 1, 4-2-84; Ord. No. 99-9953, § 1, 10-18-99; Ord. No. 01-10019, § 1, 1-22-01; Ord. No. 04-10208, § 1, 10-11-04)
Editor's Notes: Ord. No. 04-10208 adopted § 8-180, formerly §§ 8-209.1 and 8-293. Former § 8-180 pertained to local amendments to the UPC was replaced with §§ 8-74 – 8-118.

Sec. 8-181. Fee.

The registration or license fees and renewal fees shall be paid to the city clerk. All fees shall be as prescribed in section 2-2.

(Code 1966, § 9-152; Ord. No. 00-10005, § 1, 11-13-00; Ord. No. 00-10011, § 3, 11-13-00; Ord. No. 04-10208, § 1, 10-11-04))
Editor's Notes: Ord. No. 04-10208 adopted § 8-181, formerly §§ 8-1, 8-53, 8-139, 8-208, and 8-513. Former § 8-181 pertained to local amendments to the UPC was replaced with §§ 8-74 – 8-118.

Sec. 8-182. Expiration, renewal, suspension of license or registration.

Unless renewed, each registration or license shall expire on the 31st day of December of the third year regardless of when the license was secured. The City Clerk may suspend any registration or license for the following reasons;

(1) Failure to remit any required registration or license fees;

(2) Failure to provide annual insurance certification.

(3) Failure to maintain any required insurance.

(4) Whenever a permit or inspection fee is required by this Chapter, and the fee is not paid on or before the tenth of the month following the issuance of a permit or the making of the inspection, the registration or license of the person liable for the fee shall be suspended until such time as the fee is paid.

(5) The City Clerk may suspend a contractor license for failure to maintain a designated master.

(Code 1966, §§ 9-153 & 9-154; Ord. No. 00-10005, § 1, 11-13-00; Ord. No. 00-10011, § 3, 11-13-00; Ord. No. 01-10064, § 1, 11-19-01; Ord. No. 04-10208, § 1, 10-11-04)
Editor's Notes: Ord.No. 04-10208 adopted § 8-182, formerly §§ 8-2, 8-54, 8-59, 8-140, 8-141, 8-155, and 8-512. Former § 8-182 pertained to local amendments to the UPC was replaced with §§ 8-74 – 8-118.

Sec. 8-183. Deadline for renewal of license.

No renewal registration or license will be issued to any registrant or licensee after January thirty-first. Renewal requests received after that date will be handled as an initial application.

(Ord. No. 00-10011, § 3, 11-13-00)
Editor's Notes: Ord. No. 04-10208 adopted § 8-183, formerly §§ 8-55 and 8-514. Former § 8-183 pertained to local amendments to local amendments to the UPC was replaced with §§ 8-74 – 8-118.

Sec. 8-184. Grandfathered Trade licenses.

Trade licenses issued by the City based on any test or criteria other than passage of the standard trade exam prescribed by the State of Kansas shall remain valid and in good standing until they expire or are revoked for cause. Upon expiration or revocation, the licensee must apply for a new license based on passage of the standard trade exam in order to continue to labor at the trade for which they seek licensure.

(Ord. No. 04-10208, § 1, 10-11-04)
Editor's Notes: Ord. No. 04-10208 adopted § 8-184. Former § 8-184 pertained to size of potable water piping was repealed and reference by the UPC.

Sec. 8-185. Registration and License not transferable; misuse.

(a) No Registrant or licensee shall allow his/her registration or license, by name or other identification, to be transferred, assigned, or used in any manner directly or indirectly, or for any purpose, by any person other than the licensee.

(b) No person shall advertise in any manner implying or stating that they will provide services for work that requires a license or use the title or designation of any licensee regulated herein, unless licensed under the provisions of this article.

(Ord. No. 00-10011, §§ 1 & 3, 11-13-00)
Editor's Notes: Ord. No. 04-10208 adopted § 8-185, formerly §§ 8-56 and 8-515. Former § 8-185 pertained to local amendments to the UPC was replaced with §§ 8-74 – 8-118.

Sec. 8-186. License to be displayed.

Each registrant or contractor licensee must conspicuously post or display the registration or license in the public reception area of their place of business. Any person performing work for which a trade license is required shall have their license readily available at all times that work is being performed.

(Ord. No. 00-10011, §§ 1, 3, 11-13-00; Ord. No. 04-10208, § 1, 10-11-04)
Editor's Notes: Ord. No. 04-10208 adopted § 8-186, formerly §§ 8-52 and 8-511. Former § 8-186 pertaining to local amendments to the UPC was replaced with §§ 8-74 – 8-118.

Sec. 8-187. Suspension and revocation.

(1) Any license or registration provided for in this article may be suspended or revoked for cause by the city manager. Acts that may be deemed as sufficient cause for revocation or suspension of a license may include but are not limited to the following:

(a) Misrepresentation of a material fact in obtaining a license or registration.

(b) Fraudulent use of a person or firm's license or registration.

(c) A willful violation or repeated violations of the technical codes and other related city ordinances, or failure to comply with any lawful order of the building official.

(d) Negligence in providing reasonable safety measures for the protection of workers and the public.

(e) Bad faith or unreasonable delay in the performance of work.

(2) Each licensee or registrant shall be held responsible for the violation of these and other related regulations by the licensee or registrant by persons or subcontractors employed by the licensee or registrant. The building official shall notify the licensee or registrant in writing at any time the licensee or registrant is under consideration for suspension or revocation. A date, no less than ten (10) days after notification is mailed, will be established for a hearing before the city manager to which the licensee or registrant may appear and be heard. The city manager shall provide, in writing, his decision regarding the status of the licensee or registrant.

(3) Appeal. Any suspension or revocation of a license or registration may be appealed to the board of city commissioners by filing a notice of appeal with the city clerk's office. The appeal shall be heard by the board of city commissioners at their next regularly scheduled meeting. Any decision of the board of city commissioners shall be subject to appeal pursuant to applicable state law.

(Ord. No. 00-10005, § 1, 3, 1-13-00; Ord. No. 04-10208, § 1, 10-11-04)
Editor's Notes: Ord. No. 04-10208 adopted § 8-187, formerly §§ 8-59 and 8-518. Former § 8-187 pertaining to local amendments to the UPC was replaced with §§ 8-74 – 8-118.

Sec. 8-188 – 8 –200. Reserved.

Editor's Notes: Ord. No. 04-10208 repealed §§ 8-188 – 8-200. Former §§ 8-188 – 8-189 pertaining to local amendments to the UPC was replaced with §§ 8-74 – 8-118.

ARTICLE IV. CODE FOR ABATEMENT OF DANGEROUS BUILDINGS[9]

Sec. 8-201. Uniform Code for the Abatement of Dangerous Buildings adopted.

There is hereby adopted, by reference, by the city for the purpose of providing minimum standards to safeguard life or limb, health, property and public welfare by regulating and controlling the abatement of dangerous buildings within the city, that certain building code known as the Uniform Code for the Abatement of Dangerous Buildings, recommended and published by the International Conference of Building Officials, being particularly the 1997 Edition thereof, including the appendices thereto, of which not fewer than three (3) copies have been and now are filed in the office of the city clerk, and the same is hereby incorporated as fully as if set out at length herein and the provisions thereof shall be controlling in the abatement of dangerous buildings within the corporate limits of the city.

(Code 1966, § 9-460; Ord. No. 82-8932, § 1, 8-2-82; Ord. No. 89-9310, §§ 1, 2, 2-6-89; Ord. No. 04-10208, § 1, 10-11-04)
State law references: Authority to incorporate standard codes by reference, K.S.A. 12-3009 et seq. **Editor's Notes:** Ord. No. 04-10208 adopted § 8-201, formerly § 8-331. Former § 8-201 pertaining to definitions of classifications of plumbers was replaced with § 8-176.

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[9] **Editor's Notes:** Ord. No. 04-10208 adopted Article IV, formerly Article IX.

Secs. 8-202 – 8-220. Reserved.

Editor's Notes: Ord. No. 04-10208 repeals §§ 8-202 – 8-220. Former § 8-202 pertaining to plumbing certification requirements was replaced by §§ 8-175 and 8-176. §§ 8-203 – 8-207 was previously reserved. Former § 8-208 pertaining to application fees was replaced with § 8-181. Ord. No. 01-10064 repealed and reserved § 8-209 pertaining to gas fitter's examination requirement. Former §§ 8-210 – 8-12 pertaining to fortiture of fee for failure to appear and issuance of certificate was repealed by Ord. No. 04-10208. Former § 8-213 pertaining to registration of certificate, license prerequisite to do work was replaced with § 8-180. Former § 8-214 pertaining to master plumber requirement was replaced § 8-174.

ARTICLE V. STRUCTURES DAMAGED BY FIRE, EXPLOSION, OR WINDSTORM[10]

Sec. 8-221. Authorization.

The city is hereby authorized to utilize the procedures established by K.S.A. 40-3901 et seq., whereby no insurance company shall pay a claim of a named insured for loss or damage to any building or other structure located within the city, arising out of any fire, explosion, or windstorm, where the amount recoverable for the loss or damage to the building or other structure under all policies is in excess of seventy-five (75) percent of the face value of the policy covering such building or other insured structure, unless there is compliance with the procedures set out in this article.

(Ord. No. 97-9809, § 1, 6-23-97; Ord. No. 04-10208, § 1, 10-11-04)
Editor's Notes: Ord. No. 04-10208 adopted § 8-221, formerly § 8-500.

Sec. 8-222. Procedure.

(a) When final settlement on a covered claim has been agreed to or arrived at between the named insured and the company and final settlement exceeds seventy-five (75) percent of the face value of the policy covering any building or other insured structure, and when all amounts due to the holder of a first real estate mortgage against the building or other structure, pursuant to the terms of the policy and endorsements thereto, shall have been paid, the insurance company shall execute a draft payable to the director of finance in an amount equal to the sum of fifteen (15) percent of the covered claim payment unless the building official of the city has issued a certificate to the insurance company that the insured has removed the damaged building or other structure, as well as all associated debris, or replaced, rebuilt, or otherwise made the premises safe and secure.

(b) Such transfer of funds shall be on a pro rata basis by all companies insuring the building or other structure. Policy proceeds remaining after the transfer to the city shall be disbursed in accordance with the policy terms.

(c) Upon the transfer of funds as required by subsection (a) of this section, the insurance company shall provide the city with the name and address of the named insured, the total insurance coverage applicable to said building or other structure, and the amount of the final settlement agreed to or arrived at between the insurance company and the insured whereupon the building official shall contact the named insured by registered mail, notifying them that the insurance proceeds have been received by the city and apprise them of the procedures to be followed under this article.

(Ord. No. 97-9809, § 1, 6-23-97; Ord. No. 04-10208, § 1, 10-11-04)
Editor's Notes: Ord. No. 04-10208 adopted § 8-222, formerly § 8-501.

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[10] **Editor's Notes:** Ord. No. 04-10208 adopted Article V, formerly Article XVI.

Sec. 8-223. Fund created; deposit of moneys.

The director of finance is hereby directed to create a fund to be known as the "Insurance Proceeds Fund." All moneys received by the director of finance as provided for by this article shall be placed in that fund and deposited in an interest-bearing account.

(Ord. No. 97-9809, § 1, 6-23-97; Ord. No. 04-10208, § 1, 10-11-04)
Editor's Notes: Ord. No. 04-10208 adopted § 8-223, formerly § 8-502.

Sec. 8-224. Building inspector; investigation, removal of structure.

(a) Upon receipt of moneys as provided for by this article, the director of finance shall immediately notify the building official of the receipt, and transmit all documentation received from the insurance company to the building official.

(b) Within twenty (20) days of the receipt of the moneys, the building official shall determine, after prior investigation, whether the city shall instigate proceedings under the provisions of K.S.A. 12-1750 et seq., as amended.

(c) Prior to the expiration of the twenty (20) days established by subsection (b) of this section, the building official shall notify the director of finance whether he or she intends to initiate proceedings under K.S.A. 12-1750 et seq., as amended.

(d) If the building official has determined that proceedings under K.S.A. 12-1750 et seq., as amended, shall be initiated, he or she will do so immediately but no longer than thirty (30) days after receipt of the moneys by the director of finance.

(e) Upon notification to the director of finance by the building official that no proceedings shall be initiated under K.S.A. 12-1750 et seq., as amended, the director of finance shall pay all such moneys received, plus interest, to the insured as identified in the communication from the insurance company.

(Ord. No. 97-9809, § 1, 6-23-97; Ord. No. 04-10208, § 1, 10-11-04)
Editor's Notes: Ord. No. 04-10208 adopted § 8-224, formerly § 8-503.

Sec. 8-225. Removal of structure.

If the building official determines that it is necessary to act under K.S.A. 12-1750 et seq., as amended, with regard to a building or other structure damaged by fire, explosion, or windstorm, any proceeds received by the director of finance under the authority of section 8-501(a) relating to that building or other structure shall be used to reimburse the city for any expenses incurred by the city in repairing or removing the building or other structure. All moneys in excess of that which is ultimately necessary to comply with the provisions for the repair of the building or other structure, less salvage value, if any, shall be paid to the insured. Should the expenses incurred by the city exceed the insurance proceeds paid to the director of finance under section 8-501(a) the excess expenses incurred shall be assessed against the property and paid and collected in the manner provided by K.S.A. 12-1755, as amended.

(Ord. No. 97-9809, § 1, 6-23-97; Ord. No. 04-10208, § 1, 10-11-04)
Editor's Notes: Ord. No. 04-10208 adopted § 8-225, formerly § 8-504.

Sec. 8-226. Relation to insurance policies.

This article shall not make the city a part to any insurance contract, nor is the insurer liable to any party for any amount in excess of the proceeds otherwise payable under its insurance policy.

(Ord. No. 97-9809, § 1, 6-23-97; Ord. No. 04-10208, § 1, 10-11-04)
Editor's Notes: Ord. No. 04-10208 adopted § 8-226, formerly 8-505.

Sec. 8-227. Insurers; liability.

Insurers complying with this article or attempting in good faith to comply with this article shall be immune from civil or criminal liability and such action shall not be deemed in violation of K.S.A. 40-2404 and any amendments thereto, including withholding payment of any insurance proceeds pursuant to this article, or releasing or disclosing any information pursuant to this article.

(Ord. No. 97-9809, § 1, 6-23-97; Ord. No. 04-10208, § 1, 10-11-04)
Editor's Notes: Ord. No. 04-10208 adopted § 8-227, formerly § 8-506.

Sec. 8-228. Regulations authorized.

The city manager is hereby authorized to promulgate any further regulations necessary to implement the provisions of this article.

(Ord. No. 97-9809, § 1, 6-23-97; Ord. No. 04-10208, § 1, 10-11-04)
Editor's Notes: Ord. No. 04-10208 adopted § 8-228, formerly § 8-507.

Sec. 8-229 – 8-235. Reserved.

ARTICLE VI. SIGN CODE[11]

Sec. 8-236. General.

All signs located outside of buildings shall conform to the requirements of Appendix Chapter H of the 2003 International Building Code as published by the International Code Council and to Chapter 42 Article X of the Salina Municipal Code of Ordinances, for the purpose of providing minimum standards to safeguard life or limb, health, property and public welfare.

(Code 1966, § 9-63; Ord. No. 82-8924, § 1, 8-2-82; Ord. No. 89-9311, §§ 1, 2, 2-6-89; Ord. No. 04-10208, § 1, 10-11-04)
State law references: Authority to incorporate standard codes by reference, K.S.A. 12-3009 et seq. **Editor's Notes:** Ord. No. 04-10208 adopted § 8-236, formerly 8-381.

Sec. 8-237. Permit required.

No advertising sign shall hereafter be hung or erected until after a permit to hang, erect or locate the same has been obtained from the building official. No sign erected or constructed prior to the adoption of this code shall be relocated, rebuilt or remodeled without coming into compliance with the provisions hereof and until after a sign permit has been obtained to effect such alteration or relocation.

(Code 1966, §§ 9-66, 9-67; Ord. No. 04-10208, § 1, 10-11-04)
Editor's Notes: Ord. No. 04-10208 adopted § 8-237, formerly § 8-382.

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[11] **Editor's Notes:** Ord. No. 04-10208 adopted Article VI, formerly Article XI.

Sec. 8-238. Signs exempt from permit.

Permits shall not be required for signs meeting the exemption requirements of sections 42-504, 42-505 and 42-508 of Chapter 42 of the Salina Municipal Code of Ordinances.

(Ord. No. 04-10208, § 1, 10-11-04)

Sec. 8-239. Application.

An applicant for permit shall complete and submit an application form available from the Building Services Department. The information to be provided shall include, but is not limited to, the following:

(1) Address where the sign will be installed or altered.

(2) Name of the property owner.

(3) Name of the registered sign installer.

(4) Name of licensed electrical contractor for lighted signs.

Type and area of proposed sign.

(Ord. No. 04-10208, § 1, 10-11-04)

Sec. 8-240. Signs permit fees.

Any person desiring a permit under the provisions of this section shall, at the time of receiving such permit, pay to the city the fee as prescribed in section 2-2.

(Ord. No. 04-10208, § 1, 10-11-04)

Secs. 8-241 – 8-245. Reserved.

ARTICLE VII. RESERVED.

Secs. 8-246 – 8-280. Reserved.

ARTICLE VIII. RESERVED.[12]

Secs. 8-281 – 8-330. Reserved.

Editor's Notes: Ord. No. 04-10208 repealed §§ 8-281 – 8-330, former §§ 8-281 – 8-330 pertained to adoption of Mechanical Code, local amendments to the Mechanical Code, mechanical contractors, and license and permit requirements.

ARTICLE IX. RESERVED.[13]

Secs. 8-332--8-350. Reserved.

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[12] **Editor's Note:** Ord. No. 04-10208 repealed Article VIII and moved to Article I, Division 4.

[13] **Editor's Note:** Ord. No. 04-10208 repealed Article IX and moved to Article IV.

ARTICLE X. DEMOLITION, REMOVAL OR RELOCATION OF BUILDINGS

DIVISION 1. GENERALLY

Sec. 8-351. Duties required of permittee.

It is hereby made the duty of all applicants to whom a permit has been issued or granted by the city to:

(1) Complete the work of moving, tearing down, or dismantling within the time specified in the permit;

(2) On a building moved to property within the city, to complete the building in accordance with plans and specifications and city building codes within time specified in the permit;

(3) Clear from the premises left vacant by such removal or demolition all trash, debris, junk and discarded building material;

(4) Removal of all foundation and slab floors at least one foot below ground level, unless another building or other structure is to be reerected immediately upon the foundation as specified in the application for the permit;

(5) Fill all open wells, cisterns, cellars, basements or other excavations remaining on said lot, unless the same are to be used immediately with another structure to be erected thereon;

(6) At all times keep the premises in a safe condition in order to avoid creating a fire hazard or any menace to the public health or safety of the general public.

(Code 1966, § 9-328)

Secs. 8-352--8-360. Reserved.

DIVISION 2. PERMIT

Sec. 8-361. Required.

No person shall commence the removal, demolition or relocation of any structure or any portion thereof within the city without first securing a permit from the building official as provided in this division. The provisions of this article shall also be applicable to the moving of a structure from without the city limits to property located within the city.

(Code 1966, § 9-324)

Sec. 8-362. Application.

The application for a permit as required by this division shall set forth the following:

(1) Name and address of applicant;

(2) Two (2) photographs of the structure proposed to be moved and located on property within the city;

(3) Legal description of property upon which the structure is now located and where the structure is to be relocated;

(4) Plans and specifications for the relocation of any structure within the city. Plans must include full compliance with all applicable building codes of the city;

(5) Demolition plans shall include manner in which work will be accomplished and a description of the safeguards to be employed for protection of persons or property;

(6) Time of commencement of work and estimated time of completion

(Code 1966, § 9-326)

Sec. 8-363. Issuance.

Upon the filing of the application and bond required in section 8-364 and the payment of the fees as prescribed by the building code, the building official may issue a permit to the applicant if he finds that the applications, in all respects, complies with the provisions of this article and other applicable provisions of the Code. The building official shall specify in the permit the time granted by him for completion of all work required to be done thereunder. For good cause shown, the building official may once extend the period of time granted by the permit for completion of the work for a period not to exceed fifty (50) percent of the time granted under the original permit. Further extension of time may only be granted upon proper application to the board of commissioners. The permit may be issued subject to such restrictions as may be necessary to insure compliance with this article.

(Code 1966, § 9-327)

Sec. 8-364. Reserved.

Editor's note: Ord. No. 02-10086, § 1, adopted June 17, 2002, repealed § 8-364 in its entirety. Formerly said section pertained to bond required and derived from Code 1966, § 9-329 and subsequent amendments. See the Code Comparative Table.

Secs. 8-365--8-380. Reserved.

ARTICLE XI. RESERVED.[14]

Sec. 8-383 – 8-400. Reserved.

Editor's Notes: Ord. No. 04-10218 repealed § 8-385 pertaining Application of Chapter 42 for sign regulations. Former § 8-385 was replaced with § 42-506. Ord. No. 04-10218 repealed § 8-386 pertaining to noncommercial opinion signs and combining with § 42-504. Ord. No. 04-10218 repealed § 8-387 pertaining to political campaign signs. Former § 8-387 was combined with § 42-504. Ord. No. 05-10267 repealed Article XI. Former Secs. 8-383 and 8-384 were combined with Secs. 8-171 and 8-178.

ARTICLE XII. FENCES, WALL AND HEDGES

Sec. 8-401. Permit.

No person shall install any fence or wall without first having procured a written permit therefore from the building official. The city clerk shall charge a fee as prescribed in section 2-2.

(Code 1966, § 9-346; Ord. No. 02-10087, § 2, 7-8-02)

Secs. 8-402--8-425. Reserved.

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[14] **Cross references:** Advertising, Ch. 3; zoning regulations for signs, § 42-501 et seq. **State law references:** Highway advertising control act, K.S.A. 68-2231 et seq.

ARTICLE XIII. RESERVED[15]

Secs. 8-426--8-460. Reserved.

ARTICLE XIV. PRIVATE SWIMMING POOLS

Sec. 8-461. Definitions.

For the purpose of this article, certain terms shall have the meanings respectively ascribed to them:

(1) *Private swimming pool* shall mean that it is not open to the public, that it is not publicly owned or not otherwise regulated by the State of Kansas, either by statute or by rules and regulations by one of its administrative bodies.

(2) *Permanent Swimming pool* shall mean any permanently constructed structure in or on the ground intended for swimming or wading, having a depth of two (2) feet or more at any point.

(3) *Portable Swimming pool* shall mean any manufactured inflatable or collapsible pool designed to be stored for non seasonal use and intended for swimming or wading, having a depth of two (2) feet or more at any point.

(Ord. No. 83-8962, § 1, 5-2-83; Ord. No. 03-10166, § 1, 8-25-03)

Sec. 8-462. Permit required.

It shall be unlawful to construct or establish a private swimming pool either in or upon the ground without first having obtained a permit therefor from the permits and inspections division.

(Ord. No. 83-8962, § 1, 5-2-83)

Sec. 8-463. Application for permit.

Application for maintenance and construction of a private swimming pool shall be made to the permits and inspections division by the owner of the property or the contractor. The application shall be accompanied by plans, specifications and a plot plan of the property. The plot plan shall show the accurate location of the proposed swimming pool on the property.
(Ord. No. 83-8962, § 1, 5-2-83)

Sec. 8-464. Construction, design and maintenance generally.

(a) *Construction and design.* Construction and design of private swimming pools shall be such that they may be maintained and operated as clean and sanitary pools at all times.

(b) *Maintenance.* The owner of every private swimming pool shall be responsible for maintaining said pool in good sanitary condition and shall prevent breaks in the pool and water from the pool overflowing onto adjacent public or private property.

(Ord. No. 83-8962, § 1, 5-2-83)

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[15] **Editor's note:** Ord. No. 00-10011, § 10, adopted Nov. 13 2000, repealed Art. XIII, §§ 8-426--8-429, 8-436--8-438, 8-446, 8-447 in their entirety. Formerly, said sections pertained to elevators and elevator installation as adopted by Code 1966, as amended. See the Code Comparative Table.

Sec. 8-465. Compliance with the plumbing code.

All piping, drains and water purification equipment shall be installed in accordance with the provisions of the plumbing code of the city.

(1) *Source of water supply.* No source of water other than that secured from the city water distribution system shall be used in private swimming pools.

(2) *Backflow prevention required.* All water inlet pipes shall be equipped with approved back-flow protection.

(3) *Discharge system.* All private swimming pools hereafter constructed shall be provided with at least one drainage outlet extending from the pool to either a storm sewer or other drainage area which shall be approved by the permits and inspections division.

(Ord. No. 83-8962, § 1, 5-2-83)

Sec. 8-466. Compliance with the electrical code; lighting.

(a) *Generally.* All electrical installations provided or installed in conjunction with private swimming pools shall be installed in conformance with the National Electrical Code.

(b) *Lighting.* No artificial lighting shall be maintained or operated in such a manner as to be a nuisance to the neighboring properties.

(Ord. No. 83-8962, § 1, 5-2-83)

Sec. 8-467. Location of pools.

Outside or open air swimming pools shall be located in compliance with the chapter 42 of the Salina Code.
(Ord. No. 83-8962, § 1, 5-2-83)

Sec. 8-468. Enclosure of pools.

Every private permanent swimming pool shall be completely enclosed by a fence or wall not less than six (6) feet in height. Every private portable swimming pool shall be completely enclosed by a fence or wall not less than 42 inches in height. The design of such fence or wall may be solid or shall be designed so that no portion of the fence or wall shall permit the passing of a six-inch sphere through the fence or wall. In addition the fence or wall shall not be designed with features which could be used for climbing over said fence or wall. Maximum mesh size for chain link fences shall be a 2.25-inch square. Gates shall be self-closing and shall have a latch or other mechanism which shall engage automatically on closing. . Where the release mechanism of the self-latching device is located less than 54 inches from the bottom of the gate, the release mechanism shall be located on the pool side of the gate at least 3 inches below the top of the gate, and the gate and barrier shall have no opening greater than 0.5 inch within 18 inches of the release mechanism. Exception: The door of a dwelling which opens onto a pool enclosure need not be equipped with such a device.

(Ord. No. 83-8962, § 1, 5-2-83)

Secs. 8-469--8-475. Reserved.

CHAPTER 9. CEMETERIES[1]

Sec. 9-1. Management.

The city manager is hereby directed to supervise, manage and operate The Gypsum Hill Cemetery, being a municipal cemetery of the city, under such rules, bylaws and regulations as may be adopted by the board of commissioners.

(Code 1966, § 10-1)

Sec. 9-2. Employees.

The city manager is hereby authorized to employ such persons as may be necessary to operate and maintain the municipal cemetery under the rules, bylaws and regulations of the board of commissioners.

(Code 1966, § 10-2)

Sec. 9-3. Closing hours of Gypsum Hill Cemetery.

The Gypsum Hill Cemetery shall be closed to the general public between the hours of midnight and 5:00 a.m. No persons other than law enforcement officers and city employees engaged in city business shall either enter or remain within the Gypsum Hill Cemetery when the cemetery is to be closed to the general public.

(Ord. No. 92-9497, § 1, 4-6-92)

Sec. 9-4. Rules of conduct.

(a) The city manager is hereby authorized and directed to adopt and amend such rules and regulations regarding the manner of conduct of persons entering into the Gypsum Hill Cemetery so as to maintain an atmosphere appropriately respectful toward those deceased persons interred there. Such rules and regulations and any amendments thereto must be approved by the governing body and filed in the office of the city clerk prior to implementation.

(b) Any person who persists in violating such rules and regulations after being warned by a police officer or other employee of the city shall be deemed to have forfeited the privilege of entering the cemetery, and shall be guilty of criminal trespass.

(Ord. No. 92-9497, § 1, 4-6-92)

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[1] **Case law annotations:** Construction and operation of mortuary on real estate dedicated for purposes of sepulture, or any other commercial use of any portion of that area not directed to selling of cemetery lots with proper access thereto or for maintenance and beautification of area, constitutes use in a manner not contemplated by original dedication, not fairly within terms of that dedication, and not within scope of statutes regulating cemetery corporations. Connolly v. Frobenius, 2KA2d 30, 574 p. 2d 971 (1978). **Cross references:** Streets, sidewalks and other public places, Ch. 35. **State law references:** Municipal cemeteries, K.S.A. 17-1301 et seq.

CHAPTER 10. CIVIL EMERGENCIES AND DISASTERS[1]

Art. I. In General, §§ 10-1--10-15
Art. II. City-county Emergency Preparedness Board, §§ 10-16--10-38
Art. III. Emergency Proclamation, §§ 10-39--10-49
Art. IV. Emergency Action in Response to a Release or Threatened Release of Material Into or Upon the Environment, §§ 10-50--10-53

ARTICLE I. IN GENERAL

Secs. 10-1--10-15. Reserved.

ARTICLE II. CITY-COUNTY EMERGENCY PREPAREDNESS BOARD[2]

Sec. 10-16. Purposes.

The declared purposes of this article are to provide for the preparation and carrying out of plans for the protection of persons and property within Salina and Saline County in the event of a disaster.

(Res. No. 3245, § 1, 9-8-75)

Sec. 10-17. Definitions.

The following words and phrases, when used in this article, shall have the meanings respectively ascribed to them:

Disaster shall mean the occurrence or imminent threat of widespread or severe damage, injury or loss of life or property resulting from any natural or man-made cause, including, but not limited to, fire, flood, earthquake, wind, storm, epidemics, air contamination, blight, drought, infestation, explosion, riot or hostile military or paramilitary action.

Emergency preparedness means the preparation for and the carrying out of all emergency functions, other than functions for which military forces or other federal agencies are primarily responsible, to prevent, minimize, and repair injury and damage resulting from disasters.

(Res. No. 3245, § 2, 9-8-75)
Cross references: Definitions and rules of construction generally, § 1-2.

Sec. 10-18. Organization of board.

(a) There is hereby created a Salina-Saline County Emergency Preparedness Board, hereinafter referred to as the "board", which shall consist of five (5) members to be selected as follows:

(1) The board of commissioners of the city shall appoint two (2) members, at least one of which shall be a city commissioner. The city commission member shall be appointed annually and the other member for a term of three (3) years.

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[1] **State law references:** Militia, defense and public safety, K.S.A. Ch. 48; emergency preparedness for disasters, K.S.A. 48-904 et seq.

[2] **Cross references:** Administration, Ch. 2; boards and commissions generally, § 2-136 et seq. **State law references:** Disaster agencies, K.S.A. 48-929.

(2) The board of commissioners of the county shall appoint two (2) members, at least one of which shall be a county commissioner. The county commissioner shall be appointed annually and the other member for a term of three (3) years.

(3) The four (4) members appointed above provided shall appoint a fifth member who shall serve for a term of two (2) years. If the four (4) members are unable to agree upon a fifth member, then the probate judge of the county shall appoint the fifth member by January twentieth.

(b) The board shall organize annually on or before January thirtieth of each year. In the event of resignation or death of any member of the board, his position shall be filled by the original appointing body.

(c) The members of the board shall serve without compensation, but shall be reimbursed for actual and necessary expenses incurred in connection with their duties.

(d) The board shall be provided with appropriate office space, supplies and equipment in the emergency operations center, but it shall incur no expense until the same has been authorized by the governing bodies of the city and county, and the funds from which such expenses shall be payable have been designated; provided, nothing herein shall be construed as requiring such authorization or designation where work is done by a regular officer, office, department, board or other agency of the city or county for the benefit of the board.

(Res. of 3245, § 3, 9-8-75)

Sec. 10-19. Power and duties of the board.

The Salina-Saline County Emergency Preparedness Board shall have the following powers and duties:

(1) To employ an overall coordinator to supervise and coordinate the activities of all emergency preparedness in the city and county. Such coordinator shall have authority to make additional appointments, however, they shall be confirmed by the board before becoming effective;

(2) To adopt, amend and repeal rules, regulations and bylaws governing its procedure and activities;

(3) To supervise Salina-Saline County Emergency Preparedness Department and to cooperate with any federal and state agencies created and existing from time to time for the purpose of effectuating emergency preparedness;

(4) To act jointly and cooperate with other emergency preparedness organizations;

(5) To assist the division of emergency preparedness of the state and perform such services as required;

(6) To create boards and/or committees, either within or without its membership, to aid in the discharge of its power and duties;

(7) To supervise and direct investigations and report to the governing bodies of the city and county and to the governor and adjutant general of the state with recommendations for legislation, regulations or other appropriate action as it may deem necessary with respect to the type of activity or matters of public concern or welfare insofar as the same shall or may be related to defense and relief from the effects of manmade or natural disasters;

(8) To request the cooperation and assistance of the agencies and officials of the city and county in the state;

(9) To confirm emergency plans and the expenditure of funds;

(10) To exercise the legislative function.

(Res. No. 3245, § 4, 9-8-75)

Sec. 10-20. Authority and duties of the coordinator of Salina-Saline County Emergency Preparedness Department.

(a) There is hereby created the position of coordinator of Salina-Saline County Emergency Preparedness Department. Such coordinator shall be employed by the board.

(b) The coordinator is hereby empowered:

(1) To request the boards of city and county commissioners to proclaim the existence or the threatened existence of a disaster or an emergency and the termination thereof; if the boards of the city and county commissioners are in session, or, to issue such proclamation if the boards of city and county commissioners are not in session, subject to confirmation by the board of city and county commissioners at the earliest practicable time;

(2) Through the city and city commissioners, to proclaim a state of disaster or a state of extreme emergency when in the opinion of the coordinator, local resources are inadequate to cope with the disaster;

(3) To control and direct the effort of emergency preparedness in this city and county for the accomplishment of the purpose of this article;

(4) To coordinate the cooperation between divisions, services, and staff of the emergency preparedness effort of this city and county, and to resolve questions of authority that may arise between them;

(5) To administer emergency preparedness pursuant to programs and methods approved by the board;

(6) To supervise the administrative functions of the Salina-Saline County Emergency Preparedness Department;

(7) To represent the Salina-Saline County Emergency Preparedness Department in all dealings with the public, private business and industry, and government agencies pertaining to emergency preparedness functions.

(Res. No. 3245, § 5, 9-8-75)

Sec. 10-21. Succession.

In the event of the death, nonavailability or failure of the coordinator to act, the assistant coordinator shall thereupon become the acting coordinator and shall be vested with all the powers of the coordinator, until such time as the coordinator reverts to his position or a new coordinator is employed by the board. In the event the assistant coordinator is unable to assume the duties of the coordinator, the chairman of the board, the vice-chairman of the board, or a member of the board, in that order, will assume the duties of the coordinator.

(Res. No. 3245, § 6, 9-8-75)

Sec. 10-22. Organization of emergency preparedness.

All officials and employees of the city and county, together with those volunteer forces enrolled to aid them during a disaster, and all groups, organizations and persons who may by agreement or operation of law be charged in the city and county during such disaster, shall constitute the emergency preparedness organization of the city and county.

(Res. No. 3245, § 7, 9-8-75)

Sec. 10-23. Budget and expenditures.

The emergency preparedness board shall prepare a proposed budget estimating the amount of funds necessary to carry on the program of emergency preparedness, which budget shall be submitted to the governing bodies of the city and county as is herein provided. The funds necessary to meet the expenditures shall be provided equally by the city and county. Payment of all bills shall be made as provided by law, provided current monthly operating expenses shall be certified to the board.

(Res. No. 3245, § 8, 9-8-75)

Sec. 10-24. Termination of board.

The Salina-Saline County Emergency Preparedness Board shall terminate or cease activities whenever the board is dissolved or suspended by action of the boards of city and county commissioners, or as by law provided.

(Res. No. 3245, § 9, 9-8-75)

Sec. 10-25. Necessity declared.

This article is hereby declared necessary for the preservation of the public peace, health and safety.

(Res. No. 3245, § 10, 9-8-75)

Secs. 10-26--10-38. Reserved.

ARTICLE III. EMERGENCY PROCLAMATION

Sec. 10-39. Authority of mayor.

Whenever, in the judgment of the mayor or in the event of his inability to act, the acting mayor determines that an emergency exists as a result of mob action or other civil disobedience causing danger of injury to or damages to persons or property, he shall have power to impose by proclamation any or all of the following regulations necessary to preserve the peace and order of the city:

(1) To impose a curfew upon all or any portion of the city thereby requiring all persons in such designated curfew areas to forthwith remove themselves from the public streets, alleys, parks or other public places; provided, however, that physicians, nurses and ambulance operators performing medical services, utility personnel maintaining essential public services, firemen and city authorized or requested law enforcement officers and personnel may be exempted from such curfew;

(2) To order the closing of any business establishments anywhere within the city for the period of the emergency, such businesses to include, but not be limited to, those selling intoxicating liquors, cereal malt beverages, gasoline or firearms;

(3) To designate any public street, thoroughfare or vehicle parking areas closed to motor vehicles and pedestrian traffic;

(4) To call upon regular and auxiliary law enforcement agencies and organizations within or without the city to assist in preserving and keeping the peace within the city.

(Code 1966, § 10 1/2-1)

Sec. 10-40. Effective time.

The proclamation of emergency provided in this article shall become effective upon its issuance and dissemination to the public by appropriate news media.

(Code 1966, § 10 1/2-2)

Sec. 10-41. Termination.

Any emergency proclaimed in accordance with the provisions of this article shall terminate after forty-eight (48) hours from the issuance thereof, or upon the issuance of a proclamation determining an emergency no longer exists, whichever occurs first; provided, however, that such emergency may be extended for such additional periods of time as determined necessary by resolution of the board of commissioners.

(Code 1966, § 10 1/2-3)

Sec. 10-42. Failure to comply.

Any person who shall willfully fail or refuse to comply with the orders of duly authorized law enforcement officers or personnel charged with the responsibility of enforcing the proclamation of emergency authorized in this article shall be deemed guilty of a misdemeanor.

(Code 1966, § 10 1/2-4)

Secs. 10-43--10-49. Reserved.

ARTICLE IV. EMERGENCY ACTION IN RESPONSE TO A RELEASE OR THREATENED RELEASE OF MATERIAL INTO OR UPON THE ENVIRONMENT

Sec. 10-50. Definitions.

The following definitions shall apply in the interpretation and enforcement of this article:

Governmental entities shall include the City of Salina, Saline County, the Salina-Saline County Emergency Preparedness Department, the Salina Airport Authority, and any entity responding under a mutual aid agreement with the City of Salina.

Person shall include any individual, corporation, association, partnership, firm, trustee or legal representative.

Emergency action shall mean all of the concerted activities conducted in order to prevent or mitigate injury to human health or the environment from a release or threatened release of any material into or upon the environment.

Recoverable expenses. In general, "recoverable expenses" are those expenses that are reasonable, necessary and allocable to the emergency action. Recoverable expenses shall not include normal expenditures that are incurred in the course of providing what are traditionally local services and responsibilities, such as routine firefighting. Expenses allowable for recovery may include, but are not limited to:

(1) Disposable materials and supplies acquired, consumed and expended specifically for the purpose of the emergency action.

(2) Compensation of employees for the time and efforts devoted specifically to the emergency action that is not otherwise provided for in the governmental entity's operating budget.

(3) Rental or leasing of equipment used specifically for the emergency action (e.g., protective equipment or clothing, scientific and technical equipment).

(4) Replacement costs for equipment owned by the governmental entity that is contaminated beyond reuse or repair, if the governmental entity can demonstrate that the equipment was a total loss and that the loss occurred during the emergency action (e.g., self-contained breathing apparatus irretrievable contaminated during the response).

(5) Decontamination of equipment contaminated during the response.

(6) Special technical services specifically required for the response (e.g., costs associated with the time and efforts of technical experts or specialists not otherwise provided for by the governmental entity).

(7) Other special services specifically required for the emergency action.

(8) Laboratory costs for purposes of analyzing samples taken during the emergency action.

(9) Any costs of cleanup, storage or disposal of the released material.

(10) Costs associated with the service, supplies and equipment procured for a specific evacuation.

(11) Medical expenses incurred as a result of response activities.

(12) Legal expenses that may be incurred as a result of the emergency action, including efforts to recover expenses pursuant to this article.

Release shall mean any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into or upon the environment.

(Ord. No. 89-9312, § 1, 2-6-89)

Sec. 10-51. Purpose.

This article provides a means for the governmental entities to recover, through civil suit, the recoverable expenses they incur in taking an emergency action.

(Ord. No. 89-9312, § 1, 2-6-89)

Sec. 10-52. Liability.

Any and all persons responsible for a release or threatened release which results in an emergency action shall be liable to the governmental entities for the recoverable expenses resulting from the emergency action.

(Ord. No. 89-9312, § 1, 2-6-89)

Sec. 10-53. Recovery of expense.

The staffs of the governmental entities involved in the emergency action shall keep a detailed record of its recoverable expenses resulting from the emergency action. Promptly after completion of the emergency action, the staffs shall certify those expenses to the appropriate legal counsel and shall request that legal counsel bring a civil action for recovery of the recoverable expenses against any and all persons responsible for the emergency action. Not less than thirty (30) days before filing the civil suit, legal counsel shall submit a written, itemized claim for the total certified expenses incurred by the governmental entities for the emergency action to the responsible party and a written notice that, unless the amounts are paid in full to the respective governmental entities within thirty (30) days after the date of the mailing of the claim and notice, legal counsel will file a civil action for the stated amount. Moneys recovered under this article shall be credited to the appropriate funds of the governmental entity from which moneys were expended in performing the emergency action.

(Ord. No. 89-9312, § 1, 2-6-89)

CHAPTER 11 ECONOMIC DEVELOPMENT[1] (RESERVED)

[1] **Cross references:** Planning Ch. 29; urban renewal, App. A, Charter ord. no. 2. **State law references:** Economic development, K.S.A. 12-1740 et seq.; urban renewal law, K.S.A. 17-4742 et seq.

CHAPTER 12. ELECTIONS[1]

Sec. 12-1. City to consist of one ward.

The city shall consist of one ward to be known as the first ward.

(Code 1966, § 11-1)

Sec. 12-2. City divided into precincts.

The first ward shall be divided into thirty-three (33) voting precincts which shall be numbered one (1) through thirty-three (33), inclusive. The boundaries of each voting precinct shall be as indicated on the map on file in the clerk's office, which is made a part hereof by reference.

(Code 1966, § 11-2)

Sec. 12-3. Precincts and voting in territory outside city but in city school districts.

All territory outside the corporate limits of the city which has been attached to the city for school purposes and which is a part of the city school district shall be and the same is hereby attached to the several voting precincts of the city contiguous thereto and all persons residing in any such attached territory and possessing the qualifications of an elector under the laws of the state shall be qualified to vote at an election in the city for school purposes only in any voting precinct of such city which lies contiguous to the attached territory where such person resides, and the boundaries of which voting precinct, if extended, would include the residence of such school district voter, and the ballots furnished to any such person for the purpose of voting at any such election shall be so prepared as to permit such person to vote for school purposes only and the judges and clerks of election in any voting precinct at which any such votes are cast shall prepare and keep a separate record of the persons casting such ballots received by them at any such election.

(Code 1966, § 11-3)

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[1] **Cross references:** Administration, Ch. 2. **State law references:** Elections, K.S.A. Ch. 25.

CHAPTER 13. EQUAL OPPORTUNITY AND AFFIRMATIVE ACTION[1]

Art.	**I.**	**In General, §§ 13-1--13-50**
Art.	**II.**	**Human Relations Commission, §§ 13-51--13-70**
Art.	**III.**	**Unlawful Practices, §§ 13-71--13-80**
Art.	**IV.**	**Complaint Procedures, §§ 13-81--13-100**
Art.	**V.**	**Housing, §§ 13-101--13-130**
Art.	**VI.**	**Public Contracts, §§ 13-131--13-140**
Art.	**VII.**	**The Organizational Structure and Responsibilities for Carrying Out the City's Commitment to the Principle of Nondiscrimination in City Employment, §§ 13-141--13-160**

ARTICLE I. IN GENERAL

Sec. 13-1. Declaration of policy.

(a) The practice or policy of discrimination against individuals by reason of race, sex, familial status, disability, religion, age, color, national origin or ancestry is a matter of concern to the city since such discrimination threatens not only the rights and privileges of the inhabitants of the city but menaces the institutions and foundations of a free democratic state. It is hereby declared to be the policy of the city to eliminate and prevent discrimination in all employment relations, to eliminate and prevent discrimination, segregation or separation in all areas of public accommodations, and to eliminate and prevent discrimination, segregation or separation in housing as provided in this chapter.

(b) It is also declared to be the policy of [this] city to assure equal opportunities and encouragement to every citizen regardless of race, sex, disability, religion, age, color, national origin or ancestry, in securing and holding, without discrimination, employment in any field of work or labor for which a person is properly qualified or qualifiable, to assure equal opportunity to all persons within the city to full and equal public accommodations, and to assure equal opportunities in housing without distinction on account of race, sex, familial status, disability, religion, color, national origin or ancestry. It is further declared that the opportunity to secure and to hold employment, the opportunity for full and equal public accommodations as covered by this chapter and the opportunity for full and equal housing are civil rights of every citizen. To protect these rights, it is hereby declared to be the purpose of this chapter to establish and to provide a city human relations commission and a human relations department.

(Ord. No. 92-9493, § 1, 2-3-92)

Sec. 13-2. Definitions.

When used in this chapter, the following words and phrases shall have the meaning indicated. This chapter prohibits discrimination based upon sex, and accordingly, the personal pronouns and gender of nouns used in this chapter shall not be construed as limiting the provisions of this chapter to one or to the other sex:

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[1] **Editor's note:** Sections 1, 2, of Ord. No. 92-9493, adopted Feb. 3, 1992, repealed Ch. 13, §§ 13-1--13-3, 13-16--13-22, 13-26--13-28, 13-41--13-44, 13-56--13-59, 13-71--13-78 in its entirety and added a new Ch. 13 to read as herein set out. Former Ch. 13 pertained to similar subject matter and derived from the Code of 1966, §§ 11A-1, 11A-2, 11A-10, 11A-11, 11A-30, 11A-31, 11A-40, 11A-50, 11A-60--11A-64, 11A-70--11A-73, 11A-80, 11A-91--11A-96, 11A-98 and Ord. No. 81-8889, § 1, 12-7-81. *In order to keep related material together, the editor has combined the sections pertaining to definitions to read as herein set out; thus reserving any unused sections originally provided for in Ord. No. 92-9493.* **Cross references:** Administration, Ch. 2.

Age means an age of forty (40) or more years but less than seventy (70) years.

Chairperson means the person chairing the human relations commission created by this chapter.

Commission means the human relations commission created by this chapter.

Complainant means any person claiming to be aggrieved by any unlawful discriminatory practice or violation of this chapter.

Contract means any contract entered into by the city or any of its agencies.

Contractor means any individual, partnership, corporation, association or other entities entering into a contract with the city and who is an employer as herein defined.

Director means the director of the human relations department.

Disability means, with respect to an individual:

(1) A physical or mental impairment that substantially limits one (1) or more of the major life activities of such individual;

(2) A record of such an impairment; or

(3) Being regarded as having such an impairment by the person or entity alleged to have committed the unlawful discriminatory practice complained of.

"Disability" does not include current, illegal use of a controlled substance as defined in section 102 of the federal controlled substance act (21 U.S.C. 802), in housing discrimination. In employment and public accommodation discrimination, "disability" does not include an individual who is currently engaging in the illegal use of drugs where possession or distribution of such drugs is unlawful under the controlled substance act (21 U.S.C. 812) when the covered entity acts on the basis of such use.

Dwelling means any building, structure or portion thereof which is occupied as, or designated or intended for occupancy as, a residence by one (1) or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.

Employee means any person employed by an employer but does not include any individual employed by such individual's parents, spouse, or child, or in the domestic service of any person.

Employer includes any person in the city employing four (4) or more persons, and any person acting directly or indirectly for an employer, labor organizations, nonsectarian corporations, organizations engaged in social service work, and the City of Salina and all political and municipal subdivisions thereof, but shall not include a nonprofit fraternal or social association or corporation.

Employment agency includes any person or governmental agency undertaking, with or without compensation, to procure opportunities to work or to procure, recruit, refer or place employees.

Familial status means having one (1) or more individuals less than eighteen (18) years of age domiciled with:

(1) A parent or another person having legal custody of such individual or individuals; or

(2) The designee of such parent or other person having such custody, with the written permission of such parent or other person.

The protections against discrimination afforded individuals on the basis of familial status shall apply to any person who is pregnant or is in the processing of securing legal custody of any individual who has not attained the age of eighteen (18) years.

Financial institution means any person regularly engaged in the business of lending money or guaranteeing loans on housing accommodations or real property.

Hotel means every building or other structure which is kept, used, maintained, advertised or held out to the public as a place where sleeping accommodations are offered for pay primarily to transient guests and in which four (4) or more rooms are used for the accommodation of such guests, regardless of whether such building or structure is designated as a cabin camp, tourist cabin, motel or other type of lodging unit.

Housing accommodation means:

(1) Any building or portion thereof which is used or intended for use as the residence or sleeping place of one (1) or more persons.

(2) The term "housing accommodations" shall not mean or include:

a. The rental of a dwelling, or a portion thereof, containing accommodations for no more than two (2) families, one (1) of which is occupied by the owner or his family at the time of rental;

b. The rental of less than four (4) rooms in a one-family dwelling to another person or persons by the owner or occupant of such accommodations in which he or members of his family reside.

Labor organization includes any organization which exists for the purpose, in whole or in part, of collective bargaining, of dealing with employers concerning grievances, terms or conditions of employment or of other mutual aid or protection in relation to employment.

Occupational qualifications as used herein, are those qualifications which can be shown to be demonstrably valid to the normal operation or performance of a particular job, business or enterprise.

Owner shall mean and include the owner, lessee, sublessee, assignee, manager, agent, or other person, firm or corporation having the right to sell, rent or lease any housing accommodation or real property within the corporate limits of the city.

Person includes one (1) or more individuals, partnerships, associations, organizations, corporations, municipal corporations, quasi-municipal corporations, governmental agencies, public bodies, legal representatives, trustees, trustees in bankruptcy, receivers, fiduciaries, mutual companies or unincorporated organizations.

Person aggrieved means any person who claims to have been injured by a discriminatory act or practice or believes that such person will be injured by a discriminatory act or practice that is about to occur.

Probable cause means the presence of a reasonable ground for belief in the existence of the allegation of a violation of any statute, ordinance, or other authority, orders, rules or regulations.

Public accommodations shall include any person who caters or offers goods, services, facilities and accommodations to the public. Public accommodations include, but are not limited to, any lodging establishment or food service establishment, as defined by K.S.A. 36-501 and amendments thereto; any bar, tavern, barbershop, beauty parlor, theater, skating rink, bowling alley, billiard parlor,

amusement park, recreation park, swimming pool, lake, gymnasium, mortuary or cemetery which is open to the public; or any public transportation facility. Public accommodations do not include a religious or nonprofit fraternal or social association or corporation.

Real estate broker means any person who, for a fee or other valuable consideration, sells, purchases, exchanges, rents, negotiates, offers or attempts to negotiate the sale, purchase, exchange or rental of housing accommodations or real property of another person.

Real estate salesman or agent means any person employed by a real estate broker to perform, or to assist in the performance of, any or all of the functions of a real estate broker.

Reasonable accommodation means:

(1) (In the context of employment under article III of this chapter) making existing facilities used by employees readily accessible to and usable by individuals with disabilities; job restructuring; parttime or modified work schedules; reassignment to a vacant position; acquisition or modification of equipment or devices; appropriate adjustment or modifications of examinations, training materials or policies; provision of qualified readers or interpreters; and other similar accommodations for individuals with disabilities.

(2) (In the context of housing under article V of this chapter) those reasonable measures which may be necessary to afford a disabled person equal opportunity to use and enjoy a dwelling unit, including public and common use areas.

Restaurant means any place in which food is served or is prepared for sale or service on the premises or elsewhere. Such term shall include, but not be limited to, fixed or mobile restaurant, coffee shop, cafeteria, short-order cafe, luncheonette, grill, tea room, sandwich shop, soda fountain, tavern, private club, roadside stand, industrial feeding establishment, catering kitchen, commissary and any other private, public or nonprofit organization or institution routinely serving food and any other eating or drinking establishment or operation where food is served or provided for the public with or without charge.

Respondent means any person alleged to have committed any unlawful act or violation of this chapter.

Subcontractor means any individual, partnership, corporation, association, or other entity, or any combination of the foregoing which shall undertake, by virtue of a separate contract with a contractor as defined herein, to fulfill all or any part of any contractor's obligation under a contract with the city, or who shall exercise any right granted to a franchise holder, and who is an employer as herein defined.

To rent means to lease, to sublease, to let and otherwise to grant for a consideration the right to occupy premises not owned by the occupant.

(Ord. No. 92-9493, § 1, 2-3-92; Ord. No. 92-9519, § 1, 7-20-92)
Cross references: Definitions and rules of construction, generally, § 1-2.

Sec. 13-3. Construction.

(a) The provisions of this chapter shall be construed liberally for the accomplishment of the purposes thereof. Nothing contained in this chapter shall be deemed to repeal any of the provisions of any other law of this city relating to discrimination because of race, religion, color, sex, disability, national origin or ancestry, unless the same is specifically repealed by this chapter.

(b) Nothing in this chapter shall be construed to mean that an employer shall be forced to hire unqualified or incompetent personnel, or discharge qualified or competent personnel.

(Ord. No. 92-9493, § 1, 2-3-92)

Sec. 13-4. Invalidity of part.

If any clause, sentence, paragraph or part of this chapter or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction to be invalid such judgment shall not affect, impair or invalidate the remainder of this chapter and the application thereof to other persons or circumstances, but shall be confined in its operation to the clause, sentence, paragraph or part thereof directly involved in the controversy in which such judgment shall have been rendered and the persons or circumstances involved. It is hereby declared to be the legislative intent that this chapter would have been adopted had such provisions not been included.

(Ord. No. 92-9493, § 1, 2-3-92)

Secs. 13-5--13-50. Reserved.

ARTICLE II. HUMAN RELATIONS COMMISSION[2]

Sec. 13-51. Created.

There is hereby created the human relations commission.

(Ord. No. 92-9493, § 1, 2-3-92)

Sec. 13-52. Composition, appointment.

The human relations commission shall consist of nine (9) members, at least three (3) of whom shall be members of a significant ethnic or minority group within the community, who shall be appointed by the mayor, with the consent of the board of commissioners.

(Ord. No. 92-9493, § 1, 2-3-92)

Sec. 13-53. Terms.

Initial appointments to the human relations commission shall be for one-, two-, and three-year terms, and thereafter all appointments shall be for a term of three (3) years and until a successor is qualified, provided; however, no person shall serve for more than eight (8) consecutive years. The term of office of each chairperson and vice-chairperson shall be for one (1) year, and no person shall serve for more than two (2) consecutive terms in the same office, unless such election to the immediately subsequent term is made by members of the commission by unanimous vote.

(Ord. No. 92-9493, § 1, 2-3-92)

Sec. 13-54. Compensation.

The members of the human relations commission shall serve without compensation.

(Ord. No. 92-9493, § 1, 2-3-92)

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[2] **Cross references:** Administration, Ch. 2; boards and commissions generally, § 2-136 et seq.

Sec. 13-55. Officers.

The human relations commission shall elect one (1) of its members as chairperson, who shall preside at all meetings of the commission and perform all the normal duties and functions of the chairperson. The mayor shall convene the first meeting of the commission and conduct the election of the chairperson. The commission shall elect, in the same manner, one (1) of its members as vice chairperson who shall act as chairperson during the absence or incapacity of the chairperson and, when so acting, the member so designated shall have and perform all the duties and functions of the chairperson of the commission. The chairperson or vice-chairperson may resign from office without resigning from the commission. In such event, the commission shall elect another member as a replacement for the unexpired term.

(Ord. No. 92-9493, § 1, 2-3-92)

Sec. 13-56. Quorum.

A majority of the presently serving members of the human relations commission shall constitute a quorum for the purpose of conducting its business.

(Ord. No. 92-9493, § 1, 2-3-92)

Sec. 13-57. Powers and duties.

The commission shall have the following functions, powers and duties:

(1) To receive, initiate, investigate and pass upon complaints alleging discrimination in employment, public accommodations and housing because of race, religion, color, sex, disability, national original or ancestry and complaints alleging discrimination in housing because of familial status.

(2) To subpoena witnesses, compel their appearance and require the production for examination of records, documents and other evidence or possible sources of evidence and to examine, record and copy such materials and take and record the testimony or statements of such persons. The commission may issue subpoenas to compel access to or the production of such materials, or the appearance of such persons, and may issue interrogatories to a respondent to the same extent and subject to the same limitations as would apply if the subpoena or interrogatories were issued or served in aid of a civil action in the district court. The commission shall have access at all reasonable times to premises and may compel such access by application to a court of competent jurisdiction; provided that the commission first complies with the provisions of Article 15 of the Kansas Bill of Rights and the Fourth Amendment to the United States Constitution relating to unreasonable searches and seizures.

(3) To hold public hearings, administer oaths, and take depositions to the same extent and subject to the same limitations as would apply if the deposition was taken in aid of a civil action in the district court. In case of the refusal of any person to comply with any subpoena, interrogatory or search warrant issued hereunder, the human relations commission may make application to the district court to compel compliance pursuant to state law.

(4) To act in concert with other parties in interest in order to eliminate and prevent discrimination and segregation, prohibited by this chapter, by including any term in a conciliation agreement as could be included in a final order under this chapter.

(5) To apply to the district court for enforcement of any conciliation agreement by seeking specific performance of such agreement.

(6) To issue such final orders after a public hearing as may remedy any existing situation found to violate this chapter and prevent its recurrence; and, if necessary, to seek enforcement of such final orders pursuant to federal and state law.

(7) To endeavor to eliminate prejudice among the various ethnic groups and people with disabilities in the city and to further good will among such groups.

(8) To create such advisory agencies and conciliation councils, as in its judgment will aid in effectuating the purposes of this chapter; to study the problem of discrimination in all or specific fields or instances of discrimination because of race, religion, color, sex, disability, national origin or ancestry; to foster, through community effort or otherwise, good will, cooperation and conciliation among the groups and elements of the population of the city; and to make recommendations to the commission for the development of policies and procedures, and for programs of formal and informal education, which the commission may recommend to the city commission. Such advisory agencies and conciliation councils shall be composed of representative citizens serving without pay. The commission may itself make the studies and perform the acts authorized by this paragraph. It may, by voluntary conferences with parties in interest, endeavor by conciliation and persuasion to eliminate discrimination in all the stated fields and to foster good will and cooperation among all elements of the population of the city.

(9) To accept contributions from any person to assist in the effectuation of this chapter and to seek and enlist the cooperation of private, charitable, religious, labor, civic and benevolent organizations for the purposes of this chapter.

(10) To issue such publications and such results of investigation and research as in its judgment will tend to promote good will and minimize or eliminate discrimination because of race, religion, color, sex, disability, national origin or ancestry.

(11) To render each year to the city manager and to the city commission a full written report of all of its activities and of its recommendations.

(12) To receive and accept federal funds to effectuate the purposes of this chapter and to enter into agreements with any federal agency for such purpose.

(Ord. No. 92-9493, § 1, 2-3-92)

Sec. 13-58. Creation of department.

There is hereby created a human relations department for the purpose of administering and enforcing the provisions of this chapter or as hereafter amended.

(Ord. No. 92-9493, § 1, 2-3-92)

Sec. 13-59. Position of director of human relations created; appointment, salary.

There is hereby created the position of director of human relations of the city to be appointed by and directly responsible to the city manager. The human relations commission may submit recommendations to the city manager of applicants for this position, but merit and fitness shall be the governing criteria in the selection of the director of human relations.

(Ord. No. 92-9493, § 1, 2-3-92)

Sec. 13-60. Duties, responsibilities, and authority of human relations director.

The director shall have the following duties, responsibilities, and authority. The administration of this chapter shall be the responsibility of the director of the human relations department and his designated staff. The director shall promulgate procedure to implement, expedite, and effectuate the provisions of this chapter. In addition to any powers and responsibilities heretofore conferred in the director, the director shall have the power and responsibility to:

(1) Seek to eliminate and prevent discrimination in employment because of race, sex, religion, age, color, national origin, ancestry, disability, or familial status, by employers, labor organizations, employment agencies, or other persons, and to take other actions against discrimination because of race, sex, religion, age, color, national origin, ancestry, disability, or familial status, as provided herein;

(2) Effectuate the purposes of this chapter first by conference, conciliation, and persuasion so that persons may be guaranteed their civil rights and good will fostered;

(3) Seek cooperation from, and upon request, make technical assistance available to all city government departments and agencies;

(4) Receive, investigate, initiate and attempt to conciliate complaints alleging discrimination in employment, housing and public accommodations because of race, sex, religion, age, color, national origin, ancestry, disability, or familial status;

(5) Pursue the goals of affirmative action implementation within municipal government and external to municipal government through continued dialogue and technical assistance;

(6) In conducting an investigation, the director or his staff shall have access at all reasonable times to premises, records, documents, and other evidence or possible sources of evidence, and may examine, record, and copy such materials and take and record the testimony or statements of such persons as are reasonably necessary for the furtherance of the investigation. In case of the refusal of any person to comply with any subpoena issued by the local human relations commission, or to testify to any matter regarding which such person may be lawfully questioned, the district court of Saline County may, upon application of the local human relations department, order such person to comply with such subpoena and to testify to the extent such person could be so compelled pursuant to the provisions of subsection (2) of section 13-57 and state law;

(7) Request that the city attorney apply to the district court of Saline County for temporary or permanent injunctive relief to enjoin violation of this chapter;

(8) Request that the city attorney apply to the district court of Saline County for enforcement of any conciliation agreement by seeking specific performance of such agreement;

(9) Attend all meetings and serve as secretary of the human relations commission; provide necessary reports, such as agenda, minutes, and schedules of commission meetings to the commission, to the governing body, and to the city manager; advise the local news media of commission meetings and agenda.

(Ord. No. 92-9493, § 1, 2-3-92)

Secs. 13-61--13-70. Reserved.

ARTICLE III. UNLAWFUL PRACTICES

Sec. 13-71. Unlawful employment practices.

(a) It shall be an unlawful employment practice:

(1) For an employer, because of the race, religion, age, color, sex, disability, national origin or ancestry of any person to refuse to hire or employ such person to bar or discharge such person from employment or to otherwise discriminate against such person in compensation or in terms, conditions or privileges of employment; to limit, segregate, separate, classify or make any distinction in regards to employees; or to follow any employment procedure or practice which, in fact, results in discrimination, segregation or separation without a valid business necessity.

(2) For a labor organization, because of the race, religion, age, color, sex, disability, national origin or ancestry of any person, to exclude or to expel from its membership such person or to discriminate in any way against any of its members or against any employer or any person employed by an employer.

(3) For any employer, employment agency or labor organization to print or circulate or cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for employment or membership or to make any inquiry in connection with prospective employment or membership, which expresses, directly or indirectly, any limitation, specification or discrimination as to race, religion, age, color, sex, disability, national origin or ancestry, or any intent to make any such limitation, specification or discrimination, unless based on a bona fide occupational qualification.

(4) For any employer, employment agency or labor organization to discharge, expel or otherwise discriminate against any person because such person has opposed any practices or acts forbidden under this chapter or because such person has filed a complaint, testified or assisted in any proceeding under this chapter.

(5) For an employment agency to refuse to list and properly classify for employment or to refuse to refer any person for employment or otherwise discriminate against any person because of such person's race, religion, age, color, sex, disability, national origin or ancestry; or to comply with a request from an employer for a referral of applicants for employment if the request expresses, either directly or indirectly, any limitation, specification or discrimination as to race, religion, color, sex, disability, national origin or ancestry.

(6) For an employer, labor organization, employment agency, or school which provides, coordinates or controls apprenticeship, on-the-job, or other training or retraining program, to maintain a practice of discrimination, segregation or separation because of race, religion, age, color, sex, disability, national origin or ancestry, in admission, hiring, assignments, upgrading, transfers, promotion, layoff, dismissal, apprenticeship or other training or retraining program, or in any other terms, conditions or privileges of employment, membership, apprenticeship or training; or to follow any policy or procedure which, in fact, results in such practices without a valid business motive.

(7) For any person, whether an employer or an employee or not, to aid, abet, incite, compel or coerce the doing of any of the acts forbidden under this chapter, or attempt to do so.

(8) For an employer, labor organization, employment agency or joint labor-management committee to:

a. Limit, segregate or classify a job applicant or employee in a way that adversely affects the opportunities or status of such applicant or employee because of the disability of such applicant or employee;

b. Participate in a contractual or other arrangement or relationship, including a relationship with an employment or referral agency, labor union, an organization providing fringe benefits to an employee or an organization providing training and apprenticeship programs that has the effect of subjecting a qualified applicant or employee with a disability to the discrimination prohibited by this chapter;

c. Utilize standards criteria, or methods of administration that have the effect of discrimination on the basis of disability or that perpetuate the discrimination of others who are subject to common administrative control;

d. Exclude or otherwise deny equal jobs or benefits to a qualified individual because of the known disability of an individual with whom the qualified individual is known to have a relationship or association;

e. Not make reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless such employer, labor organization, employment agency or joint labor-management committee can demonstrate that the accommodation would impose an undue hardship on the operation of the business thereof;

f. Deny employment opportunities to a job applicant or employee who is an otherwise qualified individual with a disability, if such denial is based on the need to make reasonable accommodation to the physical or mental impairments of the employee or applicant;

g. Use qualification standards, employment tests or other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities unless the standard, test or other selection criteria, as used, is shown to be job-related for the position in question and is consistent with business necessity; or

h. Fail to select and administer tests concerning employment in the most effective manner to ensure that, when such test is administered to a job applicant or employee who has a disability that impairs sensory, manual or speaking skills, the test results accurately reflect the skills, aptitude or whatever other factor of such applicant or employee that such test purports to measure, rather than reflecting the impaired sensory, manual or speaking skills of such employee or applicant (except where such skills are the factors that the test purports to measure).

(b) It shall not be an unlawful employment practice to fill vacancies in such way as to eliminate or reduce imbalance with respect to race, religion, age, color, sex, disability, national origin or ancestry.

(Ord. No. 92-9493, § 1, 2-3-92)

Sec. 13-72. Unlawful public accommodation practices.

It shall be an unlawful public accommodation practice:

(1) For any person, as defined herein being the owner, operator, lessee, manager, agent or employee of any place of public accommodation to refuse, deny or make a distinction, directly or indirectly, in offering its goods, services, facilities, and accommodations to any person as

covered by this chapter because of race, religion, color, sex, disability, national origin or ancestry, except where a distinction because of sex is necessary because of the intrinsic nature of such accommodation.

(2) For any person, whether or not specifically enjoined from discriminating under any provisions of this chapter, to aid, abet, incite, compel or coerce the doing of any of the acts forbidden under this chapter, or to attempt to do so.

(3) For any person, to refuse, deny, make a distinction, directly or indirectly, or discriminate in any way against persons because of the race, religion, color, sex, disability, national origin or ancestry of such persons in the full and equal use and enjoyment of the services, facilities, privileges and advantages of any institution, department or agency of the State of Kansas or any political subdivision or municipality thereof.

(4) Nothing in this chapter shall prohibit a religious organization, association or society, or any nonprofit institution or organization operated, supervised, or controlled by or in conjunction with a religious organization, association, or society, from limiting its offerings of goods, services, facilities, and accommodations, to persons of the same religion, or from giving preference to such persons, provided that such offerings above mentioned are not, in fact, offered for commercial purposes.

(Ord. No. 92-9493, § 1, 2-3-92)

Sec. 13-73. Unlawful housing practices.

Those acts which are unlawful housing practices are set forth in article V of this chapter.

(Ord. No. 92-9493, § 1, 2-3-92)

Secs. 13-74--13-80. Reserved.

ARTICLE IV. COMPLAINT PROCEDURES

Sec. 13-81. Filing of complaint.

(a) Any person claiming to be aggrieved by an alleged unlawful act or practice may, personally or by an attorney-at-law, make, sign and file with the commission a verified complaint in writing which shall state the name and address of the person alleged to have committed the unlawful practice complained of, and which shall set forth the particulars thereof and contain such other information as may be required by the commission. The director or commission upon its own initiative, or the city attorney, may, in like manner, make, sign and file such complaint.

(b) In the event a complaint is against the city or any of its officials or employees, the complaint will be referred to the Kansas Commission on Civil Rights.

(Ord. No. 92-9493, § 1, 2-3-92)

Sec. 13-82. Time for filing complaint.

Any complaint filed pursuant to this chapter, except as otherwise provided in the case of an alleged discriminatory housing practice, must be so filed within six (6) months after the alleged unlawful act or practice, unless the act complained of consists of a continuing pattern or practice of discrimination in which event it will be from the last act of discrimination.

(Ord. No. 92-9493, § 1, 2-3-92)

Sec. 13-83. Submission of a false, misleading or incomplete complaint, statement, response or report.

Any person who knowingly and intentionally submits or files or causes to be submitted or filed, a false, misleading, or incomplete complaint, statement, response or report with the commission, the director or any of the department's personnel, shall be guilty of a misdemeanor.

(Ord. No. 92-9493, § 1, 2-3-92)

Sec. 13-84. Investigation by commission.

Whenever the commission has, in its own judgment, reason to believe that any person has engaged in a practice in violation of this chapter, or has engaged in a pattern or practice of discrimination, the commission may conduct an investigation without filing a complaint and shall have the same powers during such investigation as provided for in the investigation of complaints. The person to be investigated shall be advised of the nature and scope of the investigation prior to its commencement. The purpose of the investigation shall be to resolve any such problems promptly. In the event such problems cannot be resolved within a reasonable time, the commission may issue a complaint whenever the investigation has revealed a violation of this chapter has occurred. The information gathered in the course of the first investigation may be used in processing the complaint.

(Ord. No. 92-9493, § 1, 2-3-92)

Sec. 13-85. Conciliation.

(a) During the period beginning with the filing of such complaint and ending with the commencement of an administrative hearing or a dismissal of the complaint, the director shall, to the extent feasible, engage in conciliation with respect to such complaint.

(b) A conciliation agreement arising out of such conciliation shall be an agreement between the respondent and the complainant, and shall be subject to approval by the director. Such agreements may include in the provisions thereof any terms or condition which may be included in a final order of the commission.

(c) In a manner consistent with K.S.A. 44-1019(f)(1) and amendments thereto, each conciliation agreement shall be made public unless the person aggrieved and respondent otherwise agree and the commission determines that disclosure is not required to further the purposes of this article.

(d) Any of the parties to a conciliation agreement may apply to the Saline County District Court for specific performance of any such agreement.

(Ord. No. 92-9493, § 1, 2-3-92)

Sec. 13-86. Notice and investigation.

After the filing of any complaint by an aggrieved individual, by the commission, or by the city attorney, the commission shall within ten (10) days after the filing of the complaint, serve a copy on each of the parties alleged to have violated this chapter. The director shall then make, with the assistance of staff, a prompt investigation of the alleged unlawful act or practice.

(Ord. No. 92-9493, § 1, 2-3-92)

Sec. 13-87. Probable cause; conciliation; determination.

(a) Upon completion of the investigation, two (2) commissioners will be assigned by the chairperson to determine, with the advice of the city prosecutor, whether probable cause exists based upon the documented results of the investigation. If the two (2) commissioners are unable to agree on whether probable cause exists, the city prosecutor shall determine the matter.

(b) If it is determined that no probable cause exists for crediting the allegations of the complaint, the director within ten (10) business days from such determination, shall cause to be issued and served upon the complainant and respondent written notice of such determination. The director shall then administratively close the commission's complaint file.

(c) If it is determined that probable cause exists for crediting the allegations for the complaint, the director shall immediately endeavor to eliminate the unlawful act or practice complained of by conference and conciliation. The complainant, respondent and commission shall have forty-five (45) days from the date respondent is notified in writing of a finding of probable cause to enter into a conciliation agreement. The members of the commission shall not disclose what has transpired in the course of such endeavors.

(Ord. No. 92-9493, § 1, 2-3-92)

Sec. 13-88. Administrative hearing.

In case of failure to eliminate the unlawful act or practice complained of by conference and conciliation within the time allowed under section 13-87(c), or in advance thereof, if in the judgment of the commission circumstances so warrant, the commission shall commence a hearing in accordance with the provisions of the Kansas administrative procedures act naming as parties the complainant and the person(s), named in such complaint, hereinafter referred to as respondent. A copy of the notice of hearing shall be served on the respondent. The municipal judge shall serve as the hearing officer.

(Ord. No. 92-9493, § 1, 2-3-92)

Sec. 13-89. Subpoenas.

The complainant or respondent may apply to the director with a request that the commission issue subpoenas for the attendance of any person or the production or examination of any books, records or documents pertinent to the proceeding at the hearing. Upon such application the commission shall issue such subpoenas.

(Ord. No. 92-9493, § 1, 2-3-92)

Sec. 13-90. Presentation of case.

The case in support of the complaint shall be presented before the hearing officer by the city attorney or city prosecutor, or by private counsel of the complainant. Any endeavors at conciliation shall not be received in evidence.

(Ord. No. 92-9493, § 1, 2-3-92)

Sec. 13-91. Order of hearing officer; affirmative action; notice of compliance.

(a) If the hearing officer finds a respondent has engaged in or is engaging in any unlawful employment practice or unlawful discriminatory practice as defined in this chapter, the hearing officer shall render an order requiring such respondent to cease and desist from such unlawful discriminatory practice and to take such affirmative action, including but not limited to, the hiring reinstatement, or upgrading of employees, with or without back pay, and the admission or restoration to membership in any respondent labor organizations, the admission to and full and equal enjoyment of the goods, services, facilities, and accommodations offered by any respondent place of public accommodation denied in violation of this chapter, as, in the judgment of the hearing officer, will effectuate the purposes of this chapter, including a requirement for report of the manner of compliance. Such order may also include an award of compensatory damages and damages for pain, suffering and humiliation which are incidental to the act of discrimination, except that an award for such pain, suffering and humiliation shall in no event exceed the sum of two thousand dollars ($2,000.00).

(b) The order of the hearing officer shall be deemed an order of the commission.

(c) The commission's order shall be subject to enforcement and review pursuant to K.S.A. 12-16,106 and amendments thereto.

(d) Within fifteen (15) days after the hearing officer's order is served by the commission requiring or prohibiting action by a respondent, the respondent shall notify the commission in writing of the manner in which the respondent has complied with the order.

(e) In the case of an order with respect to a discriminatory practice that occurred in the course of a business subject to a licensing or regulation by a state agency, the commission may, not later than thirty (30) days after the respondent has complied with the order, or, if such order is judicially reviewed under subparagraph (c) above, thirty (30) days after such order is in substance affirmed upon such review:

(1) Send copies of the findings of fact, conclusions of law, and the order, to that agency; and

(2) Recommend to the agency appropriate disciplinary action, including, where appropriate, the suspension or revocation of the license of the respondent.

(Ord. No. 92-9493, § 1, 2-3-92)

Sec. 13-92. Dismissal of complaint.

If the hearing officer finds that a respondent has not engaged in an unlawful discriminatory practice, the hearing officer shall render an order dismissing the complaint as to such respondent.

(Ord. No. 92-9493, § 1, 2-3-92)

Sec. 13-93. Rules.

The commission is hereby authorized to adopt rules of practice to govern, expedite and effectuate the foregoing procedure and its own actions thereunder.

(Ord. No. 92-9493, § 1, 2-3-92)

Secs. 13-94--13-100. Reserved.

ARTICLE V. HOUSING

Sec. 13-101. Unlawful discriminatory housing practices.

Subject to the provisions of section 13-104 and amendments thereto, it shall be unlawful for any person:

(1) To refuse to sell or rent after the making of a bona fide offer, to fail to transmit a bona fide offer or refuse to negotiate in good faith for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, religion, color, sex, disability, familial status, national origin or ancestry.

(2) To discriminate against any person in the terms, conditions or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, religion, color, sex, disability, familial status, national origin or ancestry.

(3) To make, print, publish, disseminate or use, or cause to be made, printed, published, disseminated or used, any notice, statement, advertisement or application, with respect to the sale or rental of a dwelling that indicates any preference, limitation, specification or discrimination based on race, religion, color, sex, disability, familial status, national origin or ancestry, or an intention to make any such preference, limitation, specification or discrimination.

(4) To represent to any person because of race, religion, color, sex, disability, familial status, national origin or ancestry that any dwelling is not available for inspection, sale or rental when such dwelling is in fact so available.

(5) For profit, to induce or attempt to induce any person to sell or rent any dwelling by representation regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, religion, color, sex, disability, familial status, national origin or ancestry.

(6) To deny any person access to or membership or participation in any multiple-listing service, real estate brokers' organization or other service, organization or facility relating to the business of selling or renting a dwelling, or to discriminate against such person in the terms or conditions of such access, membership or participation, because of race, religion, color, sex, disability, familial status, national origin or ancestry.

(7) To discriminate against any person in such person's use or occupancy of a dwelling because of the race, religion, color, sex, disability, familial status, national origin or ancestry of the people with whom such person associates.

(8) a. To discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a disability of:

1. That buyer or renter;

2. A person residing in or intending to reside in that dwelling after it is sold, rented or made available; or

3. Any person associated with that buyer or renter.

b. To discriminate against any person in the terms, conditions or privileges of sale or rental of a dwelling or in the provision of services or facilities in connection with such dwelling because of a disability of:

1. That person;

2. A person residing in or intending to reside in that dwelling after it is so sold, rented or made available; or

3. Any person associated with that person.

c. For purposes of this subsection (8), discrimination includes:

1. A refusal to permit, at the expense of the person with a disability, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises; except that, in the case of a rental, the landlord may where it is reasonable to do so, condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted;

2. A refusal to make reasonable accommodations in rules, policies, practices or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling; or

3. In connection with the design and construction of covered multifamily dwellings for first occupancy on and after February 15, 1992, a failure to design and construct such dwelling in such a manner that:

(i) The dwellings have at least one building entrance on an accessible route, unless it is impractical to do so because of the terrain or unusual characteristics of the site.

(ii) With respect to dwellings with a building entrance on an accessible route:

(a) The public use and common use portions of such dwellings are readily accessible to and usable by persons with disabilities;

(b) All the doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by persons with disabilities who are in wheelchairs; and

(c) All premises within such dwellings contain the following features of adaptive design:

(1) An accessible route into and through the dwelling;

(2) Light switches, electrical outlets, thermostats and other environmental controls in accessible locations;

(3) Reinforcements in bathroom walls to allow later installation of grab bars; and

(4) Usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.

d. Compliance with the appropriate requirements of the American national standard for buildings and facilities providing accessibility and usability for physically handicapped people, commonly cited as "ANSI A117.1", suffices to satisfy the requirements of subsection (8)c.3.(ii)(c).

e. As used in this subsection (8), "covered multifamily dwellings" means:

1. Buildings consisting of four (4) or more units if such buildings have one (1) or more elevators; and

2. Ground floor units in other buildings consisting of four (4) or more units.

f. Nothing in this chapter shall be construed to invalidate or limit any state law or ordinance that requires dwellings to be designed and constructed in a manner that affords persons with disabilities greater access than is required by this chapter.

g. Nothing in this subsection (8) requires that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.

(Ord. No. 92-9493, § 1, 2-3-92; Ord. No. 92-9519, § 2, 7-20-92)

Sec. 13-102. Real estate transactions.

(a) It shall be unlawful for any person or other entity whose business includes engaging in real estate related transactions to discriminate against any person making available such a transaction, or in the terms or conditions of such a transaction, because of the race, religion, color, sex, disability, familial status, national origin or ancestry of such person or of any person associated with such person in connection with any real estate related transaction.

(b) As used in this section, "real estate related transaction" means any of the following:

(1) The making or purchasing of loans or providing other financial assistance:

a. For purchasing, constructing, improving, repairing or maintaining a dwelling; or

b. Secured by residential real estate.

(2) The selling, brokering or appraising of residential real property.

(c) Nothing in this section prohibits a person engaged in the business of furnishing appraisals of real property to take into consideration factors other than race, religion, color, sex, disability, familial status, national origin or ancestry.

(Ord. No. 92-9493, § 1, 2-3-92)

Sec. 13-103. Intimidation, interference.

It shall be unlawful to coerce, intimidate, threaten or interfere with any person in the exercise or enjoyment of, or on account of such person's having exercised or enjoyed, or on account of such person's having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by section 13-101 or 13-102 and amendments thereto.

(Ord. No. 92-9493, § 1, 2-3-92)

Sec. 13-104. Limitations.

(a) Nothing in this chapter shall prohibit a religious organization, association or society, or any nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association or society, from limiting the sale, rental or occupancy of dwellings which it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preference to such persons, unless membership in such religion is restricted on account of race, color, national origin or ancestry. Nor shall anything in this chapter prohibit a nonprofit private club in fact not open to the public, which as an incident to its primary purpose or purposes provides lodgings which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodgings to its members or from giving preference to its members.

(b) Nothing in this chapter, other than the prohibitions against discriminatory advertising as provided in subparagraph (3) of section 13-101, and amendments thereto, shall apply to:

(1) The sale or rental of any single-family house by an owner, provided the following conditions are met:

a. The owner does not own or have any interest in more than three (3) single-family houses at any one (1) time; and

b. The house is sold or rented without the use of a real estate broker, agent or salesperson or the facilities of any person in the business of selling or renting dwellings. If the owner selling the house does not reside in it at the time of the sale or was not the most recent resident of the house prior to such sale, the exemption in this subsection applies to only one (1) such sale in any twenty-four-month period; or

(2) Rooms or units in buildings containing living quarters occupied or intended to be occupied by no more than four (4) families living independently of each other, if the owner actually maintains and occupies one (1) of such living quarters as the owner's residence.

(c) (1) Nothing in this chapter limits the applicability of any reasonable local, state or federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling. Nor does any provision in this chapter regarding familial status apply with respect to housing for older persons.

(2) As used in this subsection "housing for older persons" means housing:

a. Provided under any state or federal program that the Secretary of the United States Department of Housing and Urban Development determines is specifically designed and operated to assist elderly persons (as defined in the state or federal program); or

b. Intended for, and solely occupied by, persons sixty-two (62) years of age or older; or

c. Intended and operated for occupancy by at least one person fifty-five (55) years of age or older per unit. In determining whether housing qualifies as housing for older persons under this subsection the following factors must also be present:

(i) The existence of significant facilities and services specifically designed to meet the physical or social needs of older persons, or if the provision of such facilities and services is not practicable, that such housing is necessary to provide important housing opportunities for older persons; and

(ii) That at least eighty (80) percent of the units are occupied by at least one person fifty-five (55) years of age or older per unit; and

(iii) The publication of, and adherence to, policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons fifty-five (55) years of age or older.

(3) Housing shall not fail to meet the requirements for housing for older persons by reason of:

a. Persons residing in such housing as of the date of enactment of this act who do not meet the age requirements of subsections (c)(2)b. or c.; provided, that new occupants of such housing meet the age requirements of sections (c)(2)b. or c.; or

b. Unoccupied units; provided, that such units are reserved for occupancy by persons who meet the age requirements of subsections (c)(2)b. or c.

(d) Nothing in this chapter prohibits conduct against a person because such person has been convicted two (2) or more times by any court of competent jurisdiction of the illegal manufacture or distribution of a controlled substance as defined in section 102 of the federal controlled substances act (21 U.S.C. 802).

(Ord. No. 92-9493, § 1, 2-3-92; Ord. No. 92-9519, § 3, 7-20-92; Ord. No. 92-9535, § 1, 9-21-92)

Sec. 13-105. Administration.

The authority and responsibility for administering this article shall be in the commission. The complaint procedure set forth in article IV of this chapter shall apply to complaints filed under this article, except to the extent rights of the parties and the applicable procedures are more specifically addressed herein.

(Ord. No. 92-9493, § 1, 2-3-92)

Sec. 13-106. Complaints.

(a) Any person aggrieved may file a verified complaint with the commission. Such complaints shall be in writing, shall state the facts upon which the allegations of a discriminatory housing practice are based and shall contain such other information and be in such form as the commission may require. Complaints must be filed within one (1) year after the alleged discriminatory housing practice occurred, but may be reasonably and fairly amended at any time. The commission upon its own initiative or the city attorney may, in like manner, make, sign and file such complaint.

(b) Upon receipt of any such complaint the commission shall serve notice upon the aggrieved person acknowledging such filing and advising the aggrieved person of the time limits and choice of forums provided under this article. Within ten (10) days after the filing of the complaint the director shall serve on the respondent a notice identifying the alleged discriminatory housing practice and advising the respondent of respondent's procedural rights and obligations under this article, together with a

copy of the original complaint. Service of the notice shall be made in the manner prescribed by the code of civil procedure.

(c) A respondent may file an answer to the complaint with the commission no later than ten (10) days after service of the notice of the complaint.

(d) A person who is not named as a respondent in a complaint, but who is identified as a respondent in the course of investigation, may be joined as an additional or substitute respondent upon written notice, under subsections (a) and (b), to such person from the commission.

(Ord. No. 92-9493, § 1, 2-3-92)

Sec. 13-107. Conciliation.

(a) During the period beginning with the filing of such complaint and ending with the commencement of an administrative hearing or a dismissal of the complaint, the director shall, to the extent feasible, engage in conciliation with respect to such complaint.

(b) A conciliation agreement arising out of such conciliation shall be an agreement between the respondent and the complainant, and shall be subject to approval by the director. Such agreements may include in the provisions thereof any terms or condition which may be included in a final order of the commission.

(c) In a manner consistent with K.S.A. 44-1019(f)(1) and amendments thereto, each conciliation agreement shall be made public unless the person aggrieved and respondent otherwise agree and the commission determines that disclosure is not required to further the purposes of this article.

(d) Any of the parties to a conciliation agreement may apply to the Saline County District Court for specific performance of any such agreement.

(Ord. No. 92-9493, § 1, 2-3-92)

Sec. 13-108. Investigation.

After the commission assumes jurisdiction of a complaint, the commission shall within thirty (30) days after receipt of the complaint commence an investigation thereof, and complete such investigation, including conciliation, within one hundred (100) days after the filing of the complaint, unless it is impracticable to do so. If the commission is unable to complete the investigation within one hundred (100) days, the commission shall inform the parties in writing of the reasons for not doing so.

(Ord. No. 92-9493, § 1, 2-3-92)

Sec. 13-109. Prompt judicial action.

If the commission concludes at any time following the filing of a complaint that prompt judicial action is necessary to carry out the purposes of this chapter, the commission may bring a civil action in the district court of Saline County, for appropriate temporary or preliminary relief pending final disposition of the complaint under this section. Any temporary restraining order or other order granting preliminary or temporary relief shall be issued in accordance with the rules of civil procedure. The commencement of a civil action under this subsection does not affect the initiation or continuation of administrative proceedings under this article.

(Ord. No. 92-9493, § 1, 2-3-92)

Sec. 13-109.1. Final administrative disposition.

The commission shall make final administrative disposition within one (1) year after the filing of the complaint unless it is impracticable to do so. If the commission is unable to make final administrative disposition of the complaint within one (1) year of the date of filing, the commission shall inform the parties in writing of the reasons for not doing so.

(Ord. No. 92-9493, § 1, 2-3-92)

Sec. 13-110. Probable cause, conciliation.

(a) Upon completion of the investigation, two (2) commissioners will be assigned by the chairperson to determine, with the advice of the city prosecutor, whether probable cause exists based upon the documented results of the investigation. If the two (2) commissioners are unable to agree on whether probable cause exists, the city prosecutor shall determine the matter.

(b) If it is determined that no probable cause exists for crediting the allegations of the complaint, the director, within ten (10) business days from such determination, shall cause to be issued and served upon the complainant and respondent written notice of such determination. The director shall then administratively close the commission's complaint file.

(c) If it is determined that probable cause exists for crediting the allegations of the complaint, the commission shall serve written notice of such determination on the person aggrieved. The commission shall proceed to try to eliminate or correct the alleged discriminatory housing practice by informal methods of conference, conciliation and persuasion which shall be held, insofar as possible

(Ord. No. 92-9493, § 1, 2-3-92)

Sec. 13-111. Conciliation failure.

If the commission is unable to resolve the alleged unlawful discriminatory housing practice, it shall notify the parties in writing that conciliation efforts have failed.

(Ord. No. 92-9493, § 1, 2-3-92)

Sec. 13-112. Election for civil action.

(a) After the commission has issued a notice of conciliation failure pursuant to section 13-111 of this article, the complainant, the respondent, or the commission may elect to have the claims and issues asserted in the reasonable grounds determination decided in a civil action commenced and maintained by the commission.

    (1) An election for a civil action under this subsection shall be made no later than twenty (20) days after an electing complainant or respondent receives the notice of conciliation failure, or if the commission makes the election, not more than twenty (20) days after the notice of conciliation failure is issued. A complainant or respondent who makes an election for a civil action pursuant to this subsection shall give notice to the commission. If the commission makes an election, it shall notify all complainants and respondents of the election.

    (2) If an election is made under this subsection, no later than sixty (60) days after the election is made the commission shall commence a civil action in the federal district court in its own name on behalf of the complainant. In such an action, the commission shall be represented by an attorney employed by the commission.

(b) In a civil action brought under this section, the rights and remedies of the parties shall be determined by applicable federal law. The relief that may be granted in such a civil action shall include at least actual and punitive damages, injunctive and equitable relief as provided by applicable federal law.

(Ord. No. 92-9493, § 1, 2-3-92; Ord. No. 92-9519, § 4, 7-20-92)

Sec. 13-113. Administrative hearing.

If the commission is unable to eliminate or correct the alleged discriminatory housing practice by informal methods of conference, conciliation and persuasion, and if an election for a civil action is not made pursuant to section 13-112, a hearing shall be held before a hearing officer in the manner provided in section 13-87 through 13-89 and the amendments thereto, for holding hearings under this chapter. In any such hearing, the burden of proof shall be on the complainant.

(Ord. No. 92-9493, § 1, 2-3-92)

Sec. 13-114. Order of hearing officer; affirmative action; notice of compliance.

(a) If the hearing officer shall find that a respondent has engaged in or is engaging in any discriminatory housing practice, the hearing officer shall render an order requiring the respondent to cease and desist from such discriminatory housing practice, and such order may direct a respondent to take such affirmative action as the hearing officer deems necessary to effectuate the intent and purposes of this article, including, but not limited to, the selling or renting of specified real property and the lending of money for the acquisition, construction, rehabilitation, repair or maintenance of real property. Such order may also include an award of compensatory damages and of damages for pain, suffering and humiliation which are incidental to the act of discrimination, except that an award for such pain, suffering and humiliation shall in no event exceed the sum of two thousand dollars ($2,000.00). Such order may also, to vindicate the public interest, assess a civil penalty against the respondent:

(1) In an amount not exceeding ten thousand dollars ($10,000.00), if the respondent has not been adjudged to have committed any prior discriminatory housing practice;

(2) Subject to the provisions of subsection (a)(4), in an amount not exceeding twenty-five thousand dollars ($25,000.00), if the respondent has been adjudged to have committed one other discriminatory housing practice during the five-year period ending on the date of the filing of the complaint;

(3) Subject to the provisions of subsection (a)(4), in an amount not exceeding fifty thousand dollars ($50,000.00), if the respondent has been adjudged to have committed two (2) or more discriminatory housing practices during the seven-year period ending on the date of the filing of the complaint; and

(4) If the acts constituting the discriminatory housing practice that is the object of the complaint are committed by the same natural person who has been previously adjudged to have committed acts constituting a discriminatory housing practice in the amounts provided by subsections (a)(2) and (a)(3) without regard to the period of time within which any subsequent discriminatory housing practice occurred.

Such civil penalties shall be paid into the city treasury to the credit of the city general fund.

(b) The order of the hearing officer shall be deemed an order of the commission.

(c) The commission's order shall be subject to enforcement and review pursuant to K.S.A. 12-16,106 and amendments thereto.

(d) Within fifteen (15) days after the hearing officer's order is served by the commission requiring or prohibiting action by a respondent, the respondent shall notify the commission in writing of the manner in which the respondent has complied with the order.

(e) In the case of an order with respect to a discriminatory housing practice that occurred in the course of a business subject to a licensing or regulation by a state agency, the commission may, not later than thirty (30) days after the respondent has complied with the order, or, if such order is judicially reviewed under subparagraph (c) above, thirty (30) days after such order is in substance affirmed upon such review:

(1) Send copies of the findings of fact, conclusions of law, and the order, to that agency; and

(2) Recommend to the agency appropriate disciplinary action, including, where appropriate, the suspension or revocation of the license of the respondent.

(Ord. No. 92-9493, § 1, 2-3-92; Ord. No. 92-9519, § 5, 7-20-92)

Sec. 13-115. Dismissal of complaint.

If the hearing officer finds that a respondent has not engaged in an unlawful discriminatory housing practice, the hearing officer shall render an order dismissing the complaint as to such respondent.

(Ord. No. 92-9493, § 1, 2-3-92)

Sec 13-116. Rules.

The commission is hereby authorized to adopt rules of practice to govern, expedite and effectuate the foregoing procedure and its own actions thereunder.

(Ord. No. 92-9493, § 1, 2-3-92)

Secs. 13-117--13-130. Reserved.

ARTICLE VI. PUBLIC CONTRACTS

Sec. 13-131. Required contract provisions.

(a) Every contract for or on behalf of the city or any agency thereof, for construction, alteration or repair of any public building or public work or for the acquisition of materials, equipment, supplies, or services, shall contain provisions by which the contractor and any subcontractors agree that:

(1) The contractor and subcontractor shall observe the provisions of this chapter and shall not discriminate against any person in the performance of work under the present contract because of race, sex, religion, age, color, national origin, ancestry or disability.

(2) In all solicitations, or advertisements for employees, the contractor shall include the phrase equal opportunity employer, or a similar phrase to be approved by the director.

(b) In any contract entered into by the city or any of its agencies or departments, there shall be included a provision that during the performance of the contract, the contractor will not discriminate against any employee or applicant for employment in the performance of the contract and every contractor shall include similar provisions in all subcontracts under such person's contract with the city.

(Ord. No. 92-9493, § 1, 2-3-92)

Sec. 13-132. Affirmative action by contractors required.

(a) Any contractor entering into a contract with the city and such person's subcontractor shall take affirmative action to insure that employees are treated equally without regard to their race, sex, religion, age, color, national origin, ancestry or disability. Such affirmative action shall include, but not be limited to, the following: Employment, upgrading, demotion or transfer, recruiting or recruitment, advertising, layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeship. The contractor and subcontractor shall agree to post, in conspicuous places available to employees and applicants for employment, notices to be provided by the director setting forth provisions of this article. The contractor and such person's subcontractors shall provide all affirmative action information and necessary documents to implement the compliance with the requirements of all federal, state and local laws and ordinances.

(b) It shall be no excuse that the employer has a collective bargaining agreement with any union providing for exclusive referral or approval systems. The failure of the contractor or subcontractors to comply with the requirements of this article shall be grounds for cancellation, termination, or suspension of the contract, in whole or in part, by the board of commissioners with the contractor or subcontractors until satisfactory proof with intent to comply will be submitted to and accepted by the board of commissioners.

(Ord. No. 92-9493, § 1, 2-3-92)

Sec. 13-133. Affirmative action plans.

Every contractor and subcontractor prior to entering into a contract with the city shall submit to the director of human relations an acceptable written affirmative action plan which shall:

(1) Identify areas of employment, employment policies, and employment practices which require action by the contractor or subcontractor to assure equal employment opportunity;

(2) Analyze these areas, policies and practices to determine what actions by said contractor or subcontractor will be most effective;

(3) Establish a plan with goals and timetables designed to achieve equal employment opportunity; and

(4) Include provisions for implementation, monitoring, and periodic evaluation in order to insure that it continues to be a valid plan.

(Ord. No. 92-9493, § 1, 2-3-92)

Sec. 13-134. Exemptions.

The provisions of this article shall not apply to:

(1) Contractors or suppliers who would not be considered as an "employer" as defined in section 13-2;

(2) Contracts and subcontracts not exceeding twenty thousand dollars ($20,000.00); and

(3) Call type or purchase order agreements which do not exceed twenty thousand dollars ($20,000.00) in total per calendar year; provided, vendors, contractors and suppliers who will supply or expect to supply the city with goods or services exceeding twenty thousand dollars ($20,000.00) during the subsequent calendar year not be exempt from the requirements of this article;

provided, the above exemptions shall not conflict with applicable state or federal laws.

(Ord. No. 92-9493, § 1, 2-3-92)

Secs. 13-135--13-140. Reserved.

ARTICLE VII. THE ORGANIZATIONAL STRUCTURE AND RESPONSIBILITIES FOR CARRYING OUT THE CITY'S COMMITMENT TO THE PRINCIPLE OF NONDISCRIMINATION IN CITY EMPLOYMENT

Sec. 13-141. Definitions.

The words and phrases defined in the following sections, when used in this article, shall have the meanings indicated:

Directors means the director of personnel and the director of human relations.

Minority as defined by the federal EEOC are members of racial or ethnic groups which have encountered, or now encounter, employment or other discrimination in our society because of such group membership or affiliations. Ethnic categories as defined by federal EEOC are:

(1) The category "white" should include persons of Indo-European descent, including Pakistani and East Indian.

(2) The category "black" should include persons of African descent as well as those identified as Jamaican, Trinidadian and West Indian.

(3) The category "Spanish Surnamed" should include persons of Mexican, Puerto Rican, Cuban, Central, South or Latin American or Spanish descent.

(4) The category "American Indian" or "Alaskan Native" should include persons having origin in any of the "original peoples" of North America, and who maintain cultural identification through tribal affiliation.

(5) The category "Asian American" or "Pacific Islander" should include persons having origins in any of the "original peoples" of the Far East, the Indian subcontinent or the Pacific Islands. This area includes China, India, Japan, Korea, Malaysia, Thailand, the Philippine Islands and Samoa.

Program means the affirmative action program.

(Ord. No. 92-9493, § 1, 2-3-92)
Cross references: Definitions and rules of construction generally, § 1-2.

Secs. 13-142--13-144. Reserved.

Sec. 13-145. Administration.

The administration of this article shall be the responsibility of the city manager.

(Ord. No. 92-9493, § 1, 2-3-92)

Sec. 13-146. Selection standards.

(a) The directors will cause a review of all job specifications to assure that requirements contained therein are job related and do not present unreasonable barriers for entry by minority, female or disabled applicants.

(b) The directors will cause a review of all written examinations administered to assure that they do not have a discriminatory effect on minority, female or disabled applicants.

(c) As new classifications are established, or new selection standards utilized, the directors will review each standard to assure its nondiscriminatory nature.

(Ord. No. 92-9493, § 1, 2-3-92)

Sec. 13-147. Recruiting and advertising.

(a) In order to insure nondiscrimination in employment opportunities, the director of personnel shall promptly notify the director of human relations of any vacancy to be filled. The director of human relations shall, upon receiving any job vacancy listing, promptly post notice of such in public locations in at least three (3) places throughout the city. The director of personnel shall be responsible for seeing that an advertisement is given publication in at least one (1) and not more than three (3) periodical news agencies with general circulation in the city. The city shall be responsible for the payment of all advertising costs. No person shall be employed to fill any vacancy, except in the semiskilled and laborer-type categories, within ten (10) days after the vacancy is listed with the director of human relations, unless in the opinion of the city manager, an emergency exists. Vacancies in the semiskilled and laborer-type categories may be filled after publication of the vacancy. All applications for employment shall be filled with the director of personnel.

(b) Recruiting efforts shall be directed toward educational institutions having minority and/or female or disabled enrollment.

(c) Communications and referral relationships to be established and maintained with groups and organizations likely to yield minority, female or disabled applicants.

(d) Advertising for applicants shall be done in the manner most likely to reflect the city's affirmative desire to attract minority, female and disabled applicants.

(Ord. No. 92-9493, § 1, 2-3-92)

Sec. 13-148. Affirmative management.

(a) It shall be unlawful for the head of any department, official agent, or employee of the city or of any department thereof acting for or on behalf of said city in any manner involving employment by the city, to discriminate against any person otherwise qualified in employment or in tenure, terms or conditions of employment, or to discriminate in promotion or increase in compensation; or to publish offers of or to offer employment based upon such discrimination; or to adopt or enforce any rule or employment policy which discriminates between employees or prospective employees; or to seek information relating to age, race, sex, religion, color, national origin, ancestry or disability from any person or employee, as a condition of employment, tenure, terms or in connection with conditions of employment, promotion or increase in compensation unless such information is demonstrably valid as being as essential qualification, or to discriminate in the selection of personnel for training.

(b) The directors will work closely with each department head in the following areas:

(1) *Classification plan.* Analyze and restructure where justified to provide maximum opportunity for applicants to qualify for employment, as well as, for employees to advance.

(2) *Staff orientation.* Initiate programs to assure that all personnel responsible for selection and supervision are award of and provided with training to develop skill in implementing the affirmative action program.

(3) *Identify areas for concentrated efforts.* The directors shall develop statistical information relative to the utilization of minorities, females and disabled in all departments of the city, identify areas of deficiency, and develop goals and methods for correcting such deficiencies.

(Ord. No. 92-9493, § 1, 2-3-92)

Sec. 13-149. Evaluation.

(a) There is hereby established an affirmative action evaluation committee composed of the city manager or his designee, the director of personnel, the director of human relations and other department heads as the city manager may deem appropriate. The city manager or his designee shall serve as chairman of the committee.

(b) The committee shall advise the department heads on implementation procedures, identification of areas for concentrated efforts, and aid in other matters related to implementation of the program.

(c) The committee shall meet not less than quarterly to review overall progress on implementation of the program. They shall make any modifications as may be necessary to assure maximum, effective implementation of the program.

(Ord. No. 92-9493, § 1, 2-3-92)

Sec. 13-150. Training for upward mobility.

The city manager will take measures to assure that maximum opportunity is afforded to minorities, women and disabled for entry into training or educational programs which will enhance their employment for upward mobility potential.

(Ord. No. 92-9493, § 1, 2-3-92)

Sec. 13-151. Reports.

The city manager will submit an annual report to the board of commissioners on the status of the affirmative action program.

(Ord. No. 92-9493, § 1, 2-3-92)

Secs. 13-152--13-160. Reserved.

CHAPTER 14 FIRE PREVENTION AND PROTECTION[1]

Art. I. In General, §§ 14-1--14-16
Art. II. Firemen's Relief Association, §§ 14-17--14-40
Art. III. Fire Prevention Code, §§ 14-41--14-67
Div. 1. Generally, §§ 14-41--14-50
Div. 2. Fireworks, §§ 14-51--14-65
Div. 3. Liquefied Petroleum Gases, §§ 14-66, 14-67

ARTICLE I. IN GENERAL

Sec. 14-1. Contracts for fire protection for property outside the city limits.

Pursuant to K.S.A. 80-1502, the city may enter into a fire protection contract with any county, township or individual or group of individuals, firm or corporation whose property is situated outside the city limits, to furnish firefighting service. A fire protection contract shall be made by ordinance and shall be assignable only upon prior written approval of the city manager.

(Code 1966, § 12-1; Ord. No. 83-8984, § 1, 12-19-83; Ord. No. 94-9622, § 1, 2-7-94)

Sec. 14-2. Calculation of charges.

The annual charge for fire protection furnished by the city under a fire protection agreement shall be payable in advance and shall equal one hundred twenty-five (125) percent of the mill levy required to provide fire protection service within the limits of the city for the year in which the contract is executed or renewed, multiplied by the most recently available assessed valuation of the property (including land, improvements and personal property) for which fire protection is to be furnished; subject, however, to a maximum annual charge for any one (1) tract of property in one (1) ownership of twenty-five thousand dollars ($25,000.00).

(Ord. No. 94-9622, § 2, 2-7-94)

Sec. 14-3. Initial term.

Regardless of the commencement date of any fire protection contract, the initial term of the contract shall end the next following December 31st. The charge for the initial term of the contract shall be calculated according to section 14-2 above and shall be prorated on the basis of the number of months included in the initial term.

(Ord. No. 94-9622, § 2, 2-7-94)

Sec. 14-4. Renewal.

A fire protection contract shall renew on a calendar year-to-year basis if the annual charge prescribed in section 14-2 above, as it now provides or as it may be amended, is paid to and accepted by the city no later than the December 31st immediately prior to the renewal term.

(Ord. No. 94-9622, § 2, 2-7-94)

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[1] **Cross references:** Buildings and structural appurtenances, Ch. 8; removal of wires, turning off current in case of fire, § 8-82; false fire alarms, § 25-84; burning of garbage, § 34-32; payment upon retirement to certain members of the fire department, App. A, Charter ord. no. 15. **State law references:** Fire protection, K.S.A. Ch. 31.

Sec. 14-5. Termination.

A fire protection contract shall be subject to termination at any time that, upon the recommendation of the fire chief, the governing body finds it contrary to the public interest for the city to continue to provide fire protection service under the contract. Annexation of the real estate covered by a fire protection contract shall terminate the contract. Upon termination of a fire protection contract, the city shall pay to the property owner a prorated refund based upon the number of months remaining in the term of the contract.

(Ord. No. 94-9622, § 2, 2-7-94)

Sec. 14-6--14-16. Reserved.

ARTICLE II. FIREMEN'S RELIEF ASSOCIATION[2]

Sec. 14-17. Composition.

The Firemen's Relief Association of Salina shall be composed of all regularly paid members of the fire department.

(Code 1966, § 12-38)

Sec. 14-18. Officers specified.

The officers of the firemen's relief association shall consist of a president, vice-president, secretary and treasurer and a board of directors which shall consist of the president, vice-president, secretary and two (2) members, to be selected as provided by the bylaws of the firemen's relief association.

(Code 1966, § 12-39)

Sec. 14-19. Bylaws, regulations authorized.

The fireman's relief association shall adopt such bylaws, rules and regulations as it may deem advisable in carrying out and promoting the objects of the association, not inconsistent with this article or the laws of the state.

(Code 1966, § 12-41)

Sec. 14-20. Records.

The secretary shall keep a complete record of the transactions of the association, which shall at all times be subject to inspection by the board of commissioners.

(Code 1966, § 12-42)

Sec. 14-21. Custody of funds; bond of treasurer.

The treasurer of the firemen's relief association shall at all times be the custodian of all funds belonging to the association, and he shall give bond for the safekeeping of such funds and for faithful performance in such sum with such sureties as may be approved by the board of commissioners.

(Code 1966, § 12-43)

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[2] **Cross references:** Administration, Ch. 2; boards and commissions generally, § 2-136 et seq. **State law references:** Firemen's relief fund, K.S.A. 40-1701 et seq.

Sec. 14-22. Procedure for disbursements.

The firemen's relief association shall, through the president, vice-president and secretary of the association, present to the board of directors of the association, in writing, a statement of any disbursements that they desire to make, and if the same is approved by the board of directors, the amount so approved shall be allowed by the firemen's relief association of the use and purposes of the relief fund. In all cases involving expenditures or payments in an amount of five hundred dollars ($500.00) or more prior certification shall be obtained from the city attorney that such expenditure or payment complies with K.S.A. Chapter 40, Article 17.
(Code 1966, § 12-44)

Sec. 14-23. Statutory limitation on use of funds.

All moneys received by the treasurer of the firemen's relief association for firemen's relief shall be set apart and used by the firemen's relief association solely and entirely for the objects and purposes set forth in this article and as set forth in K.S.A. Chapter 40, Article 17, and shall be paid to and distributed by the firemen's relief association under such provisions as shall be made by the board of commissioners.
(Code 1966, § 12-45)

Sec. 14-24. Investments.

The officers of the firemen's relief association may invest any amount not exceeding ninety (90) percent of all such moneys, in purchasing bonds of the city; provided, that if the bonds of the city are not obtainable, United States government bonds may be purchased or any municipal bond of this state may be purchased; provided further, that such relief funds are used to purchase bonds where the bonded indebtedness of the municipality does not exceed fifteen (15) percent of its assessed valuation as shown by the last assessment preceding such investment. Such purchase must be approved by the board of commissioners of the city; provided, that it shall be the duty of the city attorney to examine all such bonds as to the validity and report thereon in writing to the board of commissioners and the firemen's relief association and no bonds shall be purchased by said firemen's relief association until they have been approved and found valid by the city attorney.
(Code 1966, § 12-46)

Sec. 14-25. Funds to be held in trust; purpose for which used; loans to city.

All moneys collected and received by the firemen's relief association shall be held in trust and used as a fund for relief of any member of the fire department when injured or physically disabled in or by reason of the discharge of his duties as such, and for the relief or in payment of gratuities to the widow or those dependent on any member of such fire department who may be killed in the discharge of his duties as fireman, or who may die from the effects of injuries so received or from disease contracted by reason of his duties as such, and for the payment of the necessary funeral expense of any member of such fire department when killed in the discharge of his duties as fireman, or in the case of death resulting from injuries so received or disease contracted by reason of his duties as such, or for the further purpose of paying a pension to members who are unfit for service for having served for a period of not less than twenty (20) years on the department, such pension not to exceed in amount one-half of the monthly salary at the date of retirement, or for the purchase of insurance which would provide for any and all of the foregoing purposes for which such fund is authorized; provided however, that the firemen's relief association is hereby authorized to lend part or all of such funds to the city to be used by the city in the improvement of its fire department and equipment thereof and the city is hereby authorized to borrow the same and issue to the treasurer of the firemen's relief association its warrant therefor bearing interest payable semiannually at a rate of not to exceed six (6) percent per annum.
(Code 1966, § 12-47)

Sec. 14-26. Limitations on insurance.

The firemen's relief association may provide insurance as provided in section 14-25, subject to the following limitations:

(1) Policies must be purchased, owned and held by the firemen's relief association.

(2) Policies must name the firemen's relief association as beneficiary and must not obtain a provision which would permit the assured to change the beneficiary;

(3) Life insurance must be term insurance only; and

(4) Policies must be limited to cover only accidental injuries or disease suffered or contracted, or death resulting therefrom, by reason of duties as a member of the fire department; provided, however, that it will be permissible for the association to purchase policies giving twenty-four (24) hour coverage by requiring individual members to pay the additional cost over the limited coverage, which additional cost is hereby determined to be fifteen (15) percent of the total premium on the policy.

(Code 1966, § 1, 2-48)

Sec. 14-27. Double benefits prohibited.

No person having been a regularly paid member of the fire department shall be entitled to receive benefits in the form of relief and pensions at the same time and such double benefits are hereby prohibited.

(Code 1966, § 12-49)

Secs. 14-28--14-40. Reserved.

ARTICLE III. FIRE PREVENTION CODE

DIVISION 1. GENERALLY

Sec. 14-41. International Fire Code 2003 adopted.

There is hereby adopted, by ordinance, by the city of Salina the 2003 edition of the *International Fire Code,* regulating and governing life and property from fire and explosion hazards arising from the storage, handling and use of hazardous substances, materials and devices in the occupancy of buildings and premises in the City of Salina, that certain code and standards known as the International Fire Code 2003 (IFC), including its several appendices published by the International Code Council, being particularly the 2003 edition, except as amended in this article of the Salina Code, of which not fewer than three (3) copies have been, and are now filed in the office of the city clerk and the same are hereby incorporated as fully as if set out at length herein and the provisions thereof shall be controlling in the construction of all buildings and structures therein contained within the corporate limits of the city.

(Code 1966, § 12-76; Ord. No. 89-9327, § 1, 7-17-89; Ord. No. 94-9621, § 1, 2-7-94; Ord. No. 98-9856, § 1, 2-2-98; Ord. No. 04-10209, § 1, 10-11-04)
State law references: Authority to incorporate standard codes by reference, K.S.A. 12-3009 et seq.

Sec. 14-42. Amendment of Section 101.1 of the International Fire Code.

[Section 101.1 is hereby amended to read as follows:]

101.1 Title. These regulations shall be known as the Fire Code of City of Salina, hereafter referred to as "this code."

(Ord. No. 04-10209, § 1, 10-11-04)
Editor's Notes: Ord. No. 04-10209 adopted § 14-42. Former § 14-42 pertaining to violations is referenced in the IFC.

Sec. 14-42.1. Amendment of Section 102.2 of the International Fire Code.

[Section 102.2 is hereby amended to read as follows:]

102.2 Administrative, Operational and Maintenance Provisions. The administrative, operational and maintenance provisions of this code shall apply to:

1. Conditions and operations arising after the adoption of this code.
2. Existing conditions and operations.
    - Each reference to the International Existing Building Code shall mean the International Building Code.
    - Each reference to the International Electric Code shall mean the National Electric Code.
    - Each reference to the International Mechanical Code shall mean the Uniform Mechanical Code.
    - Each reference to the International Plumbing Code shall mean the Uniform Plumbing Code.
    - The City Commission shall serve as the Board of Appeals. Section 108 of the International Fire Code 2003.

(Ord. No. 04-10209, § 1, 10-11-04)

Sec. 14-42.2. Amendment of Section 102.6 of the International Fire Code.

[Section 102.6 is hereby amended to read as follows:]

102.6 Referenced codes and standards. Referenced standards adopted by reference.

- Life Safety Code 2000, Chapters:
    - 13,14 - Day Care Occupancies
    - 18,19 – Health Care Occupancies
- Appendices adopted with International Fire Code 2003
- Appendix B/Fire Flow Requirements for Buildings
- Appendix C/Fire Hydrant Locations and Distribution
- Appendix D/Apparatus Access Roads excluding Section D103.1
- Appendix E/Hazard Categories
- Appendix F/Hazard Ranking
- Appendix G/Cryognic Fluids/Weight and Volume Equivalents

(Ord. No. 04-10208, § 1, 10-11-04)

Sec. 14-42.3. Amendment of Section 105.1.1 of the International Fire Code.

[Section 105.1.1 is hereby amended to read as follows:]

105.1.1 Permit required. Permits required by this code shall be obtained from the appropriate City of Salina Department (Planning, Zoning, Building Services, Fire Department). Permit fees, if any, shall be paid prior to issuance of the permit. Issued permits shall be kept on the premises designated therein at all times and shall be readily available for inspection by the designated code official.

(Ord. No. 04-10208, § 1, 10-11-04)

Sec. 14-42.4. Amendment of Section 109.3 of the International Fire Code.

[Section 109.3 is hereby amended to read as follows:]

109.3 Violation Penalties. Any person who shall violate any provisions of the fire prevention code adopted by reference in section 109.3 or any changes or additions thereto prescribed by this division, or fail to comply therewith, or who shall violate or fail to comply with any order made thereunder, or who shall build in violation of any detailed statement of specifications or plans submitted and approved hereunder, or any certificate or permit issued thereunder, and from which no appeal has been taken hereunder, shall severally for every violation and noncompliance, respectively, be guilty of a misdemeanor. The imposition of one (1) penalty for any violation shall not excuse the violation or permit it to continue, and all such persons or corporations shall be required to correct or remedy such violations or defects within a reasonable time. When not otherwise specified, each ten (10) days that prohibited conditions are maintained shall constitute a separate offense. The application of a penalty shall not be held to prevent the enforced removal of prohibited conditions.

(Ord. No. 04-10209, § 1, 10-11-04)

Sec. 14-43. Amendment of Section 307.3.1 of the International Fire Code.

Section 307.3.1 is hereby deleted entirely.

(Ord. No. 04-10209, § 1, 10-11-04)

Sec. 14-43.1. Amendment of Section 307.3.2 of the International Fire Code.

[Section 307.3.2 is hereby amended to read as follows:]

307.3.2 Recreational Fires. Recreational fires shall not be conducted within 25 feet (7620mm) of any structure or combustible material. The maximum height of the pile size is 3 feet (914mm) or less in diameter and 2 feet (610mm) or less in height. Conditions which could cause a fire to spread with 25 feet (7620) of a structure shall be eliminated prior to ignition.

(Ord. No. 04-10209, § 1, 10-11-04)

Sec. 14-43.2. Amendment to Section 307.4 of the International Fire Code.

[Section 307.4 is hereby amended to read as follows:]

307.4 Attendance. Open burning or recreational fires shall be constantly attended until the fire is extinguished. A minimum of one portable fire extinguisher complying with Section 906 with a minimum of 4-A rating or other approved on site fire-extinguisher equipment, such as dirt, sand, water barrel, garden hose or water truck, shall be available for immediate utilization.

(Ord. No. 04-10209, § 1, 10-11-04)

Sec. 14-44. Amendment to Section 308.3.1 of the International Fire Code, Open flame cooking devices.

Section 308.3.1 is hereby deleted entirely.

(Ord. No. 04-10209, § 1, 10-11-04)

Secs. 14-45 – 14-46. Reserved.

Sec. 14-47. Amendment of Section 903.2.7 of the International Fire Code.

[Section 903.2.7 of the International Fire Code is hereby amended to read as follows:]

[F] 903.2.7 Group R. An automatic sprinkler system installed in accordance with Section 903.3 shall be provided throughout all buildings with a Group R fire area.

Exception: Unless required by some other provision of this code, an automatic sprinkler system shall not be required in detached Group R-2 buildings having 6 dwelling units or less where such buildings, do not have basements and are not more than one story in height, and provided that such buildings do not exceed 5,000 square feet (372 m^2) in area.

(Ord. No. 04-10254, § 1, 1-3-05)

Sec. 14-48. Amendment to Section 1008.1.8.3 of the International Fire Code.

[Section 1008.1.8.3 is hereby amended to read as follows:

1008.1.8.3 Locks and latches. Locks and latches shall be permitted to prevent operation of doors where any of the following exists.

1. Places of detention or restraint
2. In buildings in occupancy Group A having an occupant load of 300 or less, Groups B, F, M and S, and in churches, the main exterior door or doors are permitted to be equipped with key-operated locking devices, thumb turn locking devices or panic hardware devices from the egress side provided:

   2.1 Key-operated locking devices shall not permit the key to be removed from the egress side when in the locked position.

   2.2 The locking device is readily distinguishable in the locked position.

   2.3 A readily visible durable sign is posted on the egress side on or adjacent to the door stating: **THIS DOOR TO REMAIN UNLOCKED WHEN BUILDING IS OCCUPIED.** The sign shall be in letters 1 inch (25mm) high on a contrasting background.

   2.4 The use of the key-operated locking device is revocable by the fire code official for due cause.
3. Where egress doors are used in pairs, approved automatic flush bolts shall be permitted to be used, provided that the door leaf having the automatic flush bolts has no doorknob or surface-mounted hardware.

4. Doors from individual dwelling or sleeping units of Group R occupancies having an occupant load of 10 or less are permitted to be equipped with a night latch, dead bolt or security chain, provided such devices are openable from the inside without the use of a key or tool.

(Ord. No. 04-10209, § 1, 10-11-04)

Secs. 14-49 – 14-50. Reserved.

DIVISION 2. FIREWORKS

Sec. 14-51. Defined.

Fireworks shall mean and include any combustible or explosive composition, or any substance or combination of substances, or article prepared for the purpose of producing a visible or audible effect by combustion, explosion, deflagration, or detonation, and shall include blank cartridges, toy pistols, toy cannons, toy canes, or toy guns in which explosives are used, the type of balloons which require fire underneath to propel the same, firecrackers, torpedoes, skyrockets, Roman candles, Dago bombs, sparklers, or other devices containing any explosive substance; except that the term "fireworks" shall not include: Auto flares; punks; paper caps containing not in excess of an average of twenty-five hundredths of a grain of explosive content per cap, and/or toy pistols, toy canes, toy guns or other devices for the use of such caps; snakes of glow worms which are defined as pressed pellets of pyrotechnic composition that produce a large, snake-like ash upon burning whereby the ash expands in length as the pellet burns, however, these devices may not contain mercuric thiocyanate; smoke devices, which are defined as tubes, cones, or spheres containing pyrotechnic composition that, upon ignition, produce white or colored smoke as a primary effect; trick noisemakers, which are defined as items containing not in excess of an average of twenty-five hundredths of a grain of explosive content per item that produce a small report intended to surprise the user and are described as follows:

(1) *Party poppers,* which are defined as small plastic or paper items containing a small quantity of explosive composition that is friction sensitive with a string which protrudes from the device that is pulled to ignite it and the same thereafter expels paper streamers and produces a small report;

(2) *Booby traps,* which are defined as small tubes with strings protruding from both ends, are similar to a party popper in design, and the ends of the strings are pulled to ignite the friction-sensitive composition which then produces a small report;

(3) *Snappers,* which are defined as small, paper-wrapped items containing a minute quantity of explosive composition coated on small bits of sand and when dropped, the device explodes and produces a small report;

(4) *Trick matches,* which are defined as kitchen or book matches that have been coated with a small quantity of explosive of pyrotechnic composition and upon ignition of the match, a small report or shower of sparks is produced;

(5) *Cigarette loads,* which are defined as small wooden pegs that have been coated with a small quantity of explosive composition and upon ignition of a cigarette containing one (1) of the pegs, a small report is produced;

(6) *Auto burglar alarms*, which are defined as tubes that contain pyrotechnic composition that produce a loud whistle and/or smoke when ignited, also, a small quantity of explosive may be used to produce a small report which is ignited by a squib;

the same and use of which shall be permitted at all times.

(Code 1966, § 12-119; Ord. No. 87-1977, § 1, 3-23-87)
Cross references: Definitions and rules of construction genrally, § 1-2.

Sec. 14-52. Manufacture prohibited.

The manufacture of fireworks is prohibited within the city.

(Code 1966, § 12-120)

Sec. 14-53. Storing, selling, dealing in, possessing, using, exploding.

(a) Except as hereinafter provided, it shall be unlawful for any person to store, to offer for sale, expose for sale, sell at retail, possess, use or explode any fireworks; provided that the chief of the fire department shall have power to adopt reasonable rules and regulations for granting of permits for supervised public displays of fireworks by the city, fair associations, amusement parks, and other organizations. Every such display shall be handled by a competent operator approved by the chiefs of police and fire departments of the city, and shall be of such character, and so located, discharged or fired as in the opinion of the chief of the fire department, after proper inspection, shall not be hazardous to property or endanger any person.

(b) Application for permits shall be made in writing at least fifteen (15) days in advance of the date of the display. After such privilege shall have been granted, sale, possession, use and distribution of fireworks for such display shall be lawful for that purpose only. No permit granted hereunder shall be transferable.

(Code 1966, § 12-121; Ord. No. 97-9802, § 1, 2, 5-12-97)

Sec. 14-53.1. Amendment to Section 3301.1.3 of the International Fire Code.

[Section 3301.1.3 is hereby amended to read as follows:]

3301.1.3 Fireworks. Any reference to Fireworks in the International Fire Code shall be referenced in this section of the Salina Code. The possession, manufacture, storage, sale, handling and use of fireworks are prohibited.

Exceptions:

1. Storage and handling of fireworks as permitted in Section 3304.
2. Manufacture, assembly and testing of fireworks as permitted in Section 3305.
3. The use of Fireworks for display as permitted in Section 3308.

The possession, storage, sale, handling and use of specific types of Division 1.4G fireworks where allowed by applicable local or state laws, ordinances and regulations provided such fireworks comply with CPSC 16 CFR, Parts 1500 and 1507, and DOTN 49 CFR, Parts 100-178, for consumer fireworks.

(Ord. No. 04-10209, § 2, 10-11-04)

Sec. 14-54. Liability insurance required for display.

The permittee for a fireworks display shall file with the city clerk a policy of liability insurance issued by some company authorized to do business in the state, which shall provide liability insurance coverage in an amount of at least five hundred thousand dollars ($500,000.00) for the payment of any and all damages which may be caused either to persons or to property by reason of the permitted display, and arising from any act of the permittee, his agents, employers or subcontractors.

(Code 1966, § 12-122)

Sec. 14-55. Reserved.

Editor's note: Section 4-55, pertaining to the disposal of unfired fireworks and derived from Code 1966, § 12-123, was repealed by § 9 of Ord. No. 89-9327, passed July 17, 1989.

Sec. 14-56. Exceptions.

Nothing in this division shall be construed to prohibit the use of fireworks by railroads or other transportation agencies for signal purposes or illumination, or the sale or use of blank cartridges for a show or theater, or for signal or ceremonial purposes in athletics or sports, or for use by military organizations. Such agencies shall store their supplies of fireworks in accordance with the fire code.

(Code 1966, § 12-124)

Sec. 14-57. Seizure of violations.

The chief of the fire or police department shall seize, take, remove, or cause to be removed at the expense of the owner all stocks of fireworks offered or exposed for sale, stored, or held in violation of this division.

(Code 1966, § 12-125)

Sec. 14-58. Nuisance declared; abatement.

The possession, storing, displaying for sale, selling, offering for sale, giving away, discharging, firing or using of any of the fireworks, pyrotechnics or other articles mentioned in section 14-51 at any place within the city by any person, is hereby declared to be a nuisance and any such nuisance may be abated by injunction or otherwise as provided for in K.S.A. 13-1417; provided, that the remedy provided for in this section is in addition to the penalty for violation of this division.

(Code 1966, § 12-126)
Cross references: Nuisances generally, Ch. 24.

Secs. 14-59--14-65. Reserved.

DIVISION 3. LIQUEFIED PETROLEUM GASES

Sec. 14-66. Regulations adopted.

The "Rules and Regulations Relating to the Liquefied Petroleum Gas Industry of the State of Kansas" promulgated and issued by the state fire marshal and filed with the Revisor of Statutes, are hereby incorporated in this Code by reference and made a part hereof the same as if set out in full.

(Code 1966, § 12-139)

Sec. 14-67. Violations, penalty.

Any person who shall violate any of the regulations as incorporated by reference by section 14-66 shall be guilty of a misdemeanor.

(Code 1966, § 12-140)
Editor's note: Ord. No. 94-9621, § 3, adopted Feb. 7, 1994, repealed former Div. 4, Miscellaneous hazards, §§ 14-76--14-79. Such sections had been derived from the 1966 Code, §§ 12-146--12-149. Secs. 14-68--14-75, being nonsubstantive have been deleted.

Sec. 14-68. Amendment to Appendix B, Section B103 of the International Fire Code.

[Section B103.4 is hereby added to read as follows:]

103.4 Pre August 1, 1989. A reduction in required fire flow of 75 percent (but not less than 1,000 gallons per minute) as approved by the chief, is allowed when the construction is on a tract of land for which final platting and zoning was in effect as of August 1, 1989. (Approval of required platting and zoning shall not include approval of a final development plan in a planned development district).

(Ord. No. 04-10209, § 3, 10-11-04)

Sec. 14-69. Amendment to Appendix B, Section B105.1 of the International Fire Code.

[Section B105.1 is hereby amended to read as follows:]

B105.1 One- and two-family dwellings. The minimum fire flow requirements for one- and two-family dwellings having a fire-flow calculation area which does not exceed 3,600 square feet (344.5m^2) shall be 1,000 gallons per minute (3785.4L/min). Fire flow and flow duration for dwellings having a fire-flow calculation area in excess of 3,600 square feet (344.5m^2) shall not be less than that specified in Table B105.1.

Exception:

1. Reduction in required fire flow of 50 percent as approved, is allowed when the building is provided with an approved automatic sprinkler system.
2. Exposure distance from adjacent buildings meets the requirements of National Fire Protection Association NFPA 80A, Recommended Practice for Protection of Buildings from Exterior Fire Exposures.
3. Construction is on a tract of land for which final platting and zoning was in effect as of August 1, 1989. (Approval of required platting and zoning shall not include approval of a final development plan in a planned development district.)

(Ord. No. 04-10209, § 3, 10-11-04)

Sec. 14-70. Amendment to Appendix B, Section B105.2 of the International Fire Code.

[Section B105.2 is hereby amended to read as follows:]

B105.2 Buildings other than one-and two-family dwellings. The minimum fire flow and flow duration for buildings other than one-and two-family dwellings shall be as specified in Table B105.1

Exception:

1. A reduction in required fire flow of up to 50 percent, as approved is allowed when the building is provided with an approved automatic sprinkler system installed in accordance with Section 903.3.1.1 or 903.3.1.2 of the International Fire Code. Where buildings are also of Type I or II

construction and are a light-hazard occupancy as defined by NFPA 13, the reduction may be up to 75 percent. The resulting fire flow shall not be less that 1,000 gallons per minute for the prescribed duration as specified in Table B 105.1.

2. Exposure distance from adjacent buildings meets the requirements of National Fire Protection Association NFPA 80A, Recommended Practice for Protection of Buildings from Exterior Fire Exposures.

3. Construction is on a tract of land for which final platting and zoning was in effect as of August 1, 1989. (Approval of required platting and zoning shall not include approval of a final development plan in a planned development district.)

(Ord. No. 04-10209, § 3, 10, 11-04)

Sec. 14-71. Amendment to Appendix C, Section C103.1 Fire hydrants available.

[Sections C103.1 and C1054 are hereby amended to read as follows:]

Sec. C103.1 Fire hydrants available. The minimum number of fire hydrants available to a building shall not be less than one (1) hydrant for every 1,500 (gpm) or fraction thereof as available or less required Fire Flow when applied to fire apparatus access roads and perimeter public streets from which fire operations could be conducted. Additional hydrants may be required based on extenuating circumstances as determined by the Fire Code Official.

Sec. C105 Distribution of Fire Hydrants

C105.1 Hydrant spacing. The average spacing between fire hydrants shall not exceed 500 feet.

Exception: The fire chief may accept a deficiency of up to 10 percent where existing. Fire hydrants provide all or a portion of the required fire hydrant service.

Regardless of the average spacing, fire hydrants shall be located such that all points on streets and access roads adjacent to a building are within 250 feet.

For SI: 1 foot = 304.8 mm, 1 gallon per minute = 3.785 L/m.

a. Reduced by 100 feet for dead-end streets and roads.

b. Where streets are provided with median dividers which can be crossed by fire fighters pulling hose lines, or where arterial streets are provided with four or more traffic lanes and have a traffic count of more than 30,000 vehicles per day, hydrant spacing shall average 500 feet on each side of the street and be arranged on an alternating basis.

c. Where new water mains are extended along streets where hydrants are not needed for protection of structures or similar fire problems, fire hydrants shall be provided at spacing not to exceed 1,000 feet to provide for transportation hazards.

d. One hydrant for each 1,500 gallons per minute or fraction thereof.

Table C105.1 of appendix C is hereby deleted entirely.

(Ord. No. 05-10262, § 1, 3-7-05)

Next page number is 251.

CHAPTER 15. FLOOD PREVENTION AND CONTROL[1]

Art. I. In General, §§ 15-1--15-15
Art. II. Flood Protection Works, §§ 15-16--15-21

ARTICLE I. IN GENERAL

Sec. 15-1. Police power extended to system.

The police power of the city is hereby extended to include the entire flood control system owned and operated by the city, as shown on the flood control map on file in the office of the city clerk.

(Code 1966, § 13-1)

Sec. 15-2. Lands included in corporate limits.

The lands shown on the flood control map as being within the flood control system shall be deemed to be a part of the corporate limits of the city.

(Code 1966, § 13-2)

Sec. 15-3. General ordinances applicable.

All general ordinances of the city are hereby declared to be applicable to the above mentioned flood control property.

(Code 1966, § 13-3)

Sec. 15-4. Trespassing on, damaging, interfering with property.

It shall be unlawful for anyone to trespass, encroach upon, injure, damage, destroy or interfere with any of the flood control property belonging to the city.

(Code 1966, § 13-4)

Sec. 15-5. Manager to prepare regulations.

The city manager is hereby authorized and directed to prepare such rules and regulations as may be necessary in regard to the management and control of the flood control property owned by the city.

(Code 1966, § 13-5)

Secs. 15-6--15-15. Reserved.

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[1] **Cross references:** Buildings and structural appurtenances, Ch. 8; flood plain zoning district, § 42-426 et seq. **State law references:** Flood plain regulation, K.S.A. 12-734 et seq.

ARTICLE II. FLOOD PROTECTION WORKS

Sec. 15-16. Findings.

The board of commissioners hereby declares that in the public interest and for the protection of life and property of citizens of this city, this article is deemed necessary.

(Code 1966, § 13-11)

Sec. 15-17. Flood protection works; city engineer to review plans for certain proposed construction or excavations.

No construction or excavation or other works shall be made or commenced within one thousand (1,000) feet landward or riverward of the center line of any flood protection works defined as including levees, floodwalls and appurtenances and such further distance as may be determined necessary by the city engineer under certain circumstances then existing, of the center line of any flood protection works that may impair or endanger the proposed function of any such flood protection works; provided, that any plan or proposal for such construction or excavation shall be submitted to the city engineer for examination and determination as to the probability of any impairment or endangerment to such flood protection works by the proposed construction or excavation.

(Code 1966, § 13-12)

Sec. 15-18. Issuance or denial of permit for construction or excavation.

If the city engineer shall determine, upon good authority, that the proposed construction or excavation referred to in section 15-2 shall be detrimental or will impair or endanger the function of any flood protection works, permission for such construction shall be denied. However, if a determination that no impairment or endangerment of such flood protection works by such proposed construction or excavation may occur, a permit for such construction or excavation shall be issued by the city engineer after the applicant has fulfilled the prerequisite requirements of the building code and other pertinent ordinances.

(Code 1966, § 13-13)

Sec. 15-19. Restricted or conditional permit.

The city engineer may issue, within sound discretion and upon good authority, a restricted or conditional permit for such proposed construction or excavation.

(Code 1966, § 13-14)

Sec. 15-20. Withholding of grade sheet or building permit.

The building official shall withhold the issuance of any building permit until compliance with this article.

(Code 1966, § 13-15)

Sec. 15-21. Appeals from decision of city engineer.

Any person feeling aggrieved by the determination of the city engineer under the conditions and terms of this article may appeal in writing to the board of commissioners within ten (10) days of such determination by the city engineer.

(Code 1966, § 13-16)

Next page number is 255.

CHAPTER 16. RESERVED[1]

[1] Chapter 16 was repealed in its entirely by Ord. No. 04-10236, 10-11-04.

Next page number is 265.

CHAPTER 17. HEALTH AND SANITATION[1]

Art. I. In General, §§ 17-1--17-15
Art. II. City-county Board of Health, §§ 17-16--17-20

ARTICLE I. IN GENERAL

Sec. 17-1. "Health department" defined.

Whenever in this Code and other ordinances of the city the words "health department" are used they shall refer to the city-county health department.

(Code 1966, § 15-1)
Cross references: Definitions and rules of construction generally, § 1-2.

Sec. 17-2. "Health officer" defined.

(a) Whenever in this Code and other ordinances of the city the words "health officer" are used they shall refer to the health officer appointed by the joint city-county board of health.

(b) "Health officer" shall also include assistants authorized by the joint city-county board of health and acting for and under the supervision of the health officer.

(Code 1966, § 15-2)
Cross references: Definitions and rules of construction generally, § 1-2.

Secs. 17-3--17-15. Reserved.

ARTICLE II. CITY-COUNTY BOARD OF HEALTH[2]

Sec. 17-16. Organization.

The board, as originally created and established in 1955 by joint resolution of the county and the city, shall consist of eleven (11) members. The board shall include two (2) members of the board of commissioners of the city to be appointed by the mayor for a one-year term beginning April 15th of each year; and two (2) members of the board of county commissioners to be appointed by the chairman for a one-year term beginning January 15th of each year. Those members of the board shall select as the remaining members of the board the following residents of Saline County for no more than three (3) consecutive terms each:

(1) A doctor of medicine or osteopathy representing the Saline County Medical Society selected from a list of two (2) or more qualified nominees submitted by that Society shall serve a three (3) year term beginning the January 1st following the appointment.

(2) A dentist representing the Saline County Dental Society selected from a list of two (2) or more qualified nominees submitted by that Society shall serve a three (3) year term beginning the January 1st following the appointment.

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[1] **Cross references:** Department of public health, § 2-121 et seq; food and food handlers, Ch. 16; nuisances, Ch. 24; public utilities, Ch. 31; solid waste, Ch. 34; water and sewers, Ch. 41. **State law references:** Public health generally, K.S.A. Ch. 65.

[2] **Cross references:** Administration, Ch. 2; boards and commissions generally, § 2-136 et seq. **State law references:** Joint boards of health, K.S.A. 65-205 et seq.

(3) A registered nurse representing the local district of the Kansas State Nurses' Association selected from a list of two (2) or more qualified nominees submitted by that Association shall serve a three (3) year term beginning the January 1st following the appointment.

(4) A veterinarian representing the Saline County Veterinary Medical Association selected from a list of two (2) or more qualified nominees submitted by that Association shall serve a three (3) year term beginning the January 1st following the appointment.

(5) Three (3) members-at-large shall be selected from the combined expression of interest forms on file with the city and the county. The members-at-large shall consist of two residents of the City of Salina and one resident of Saline County residing outside the City of Salina. The members-at-large shall each serve a three (3) year term beginning the January 1st following the appointment; provided, however, that in order to establish staggered terms for the members-at-large, the initial terms of the three (3) members-at-large shall be three (3) years, two (2) years, and one (1) year, respectively.

(Res. No. 1576, § 1, 6-28-55; Res. No. 3311, 3-14-77; Ord. No. 05-10268, § 1, 4-18-05)

Sec. 17-17. Powers and duties.

The functions, powers and duties of the board shall include all functions, powers, duties and limitations as are now or hereafter may be provided by law for the conduct of local municipal or county boards of health, including, without limitation, the following:

(1) Determine and define the policies for the promotion of the public health and sanitation of the county.

(2) Appoint an administrator/health officer.

(3) Adopt, amend and repeal rules, regulations and bylaws governing its programs and procedures.

(4) File with the governing bodies of the county and the city during January of each year a report of its activities and a statement of all receipts and expenditures during the preceding year.

(Res. No. 1576, § 2, 6-28-55; Ord. No. 05-10268, § 1, 4-18-05)

Sec. 17-18. Officers.

The board shall elect a chair, vice-chair, and a treasurer from its membership. The administrator/health officer, or his/her designated representative, shall serve as secretary to the board. The treasurer shall give bond to be approved by the governing bodies of the county and the city for the safekeeping and due disbursement of all funds that may come into the treasurer's hands.

(Res. No. 1576, § 3, 6-28-55; Ord. No. 05-10268, § 1, 4-18-05)

Sec. 17-19. Budget and expenditures.

(a) The board shall prepare a proposed annual budget estimating the amount of funds necessary to carry on its public health programs for submission to the governing bodies of the county and the city no later than May 31st each year.

(b) Following consideration of the board's proposed budget and approval of a final budget by the governing bodies, the funds necessary to meet the necessary expenditures shall be provided by the governing bodies of the county and the city on an equal basis, unless the governing bodies agree otherwise.

(c) All money provided for health and sanitation purposes by the governing bodies of the county and the

city shall, when collected, be paid over to the treasurer of the board in an amount not exceeding that budgeted by those governing bodies for such purposes. The board shall have the exclusive control of the expenditures of all money paid to the credit of its treasurer for health and sanitation purposes, and the treasurer shall receive and pay out all the moneys under the control of the board as ordered by it.

(Res. No. 1576, § 4, 6-28-55; Ord. No. 05-10268, § 1, 4-18-05)

Sec. 17-20. Termination.

The board shall terminate and cease activity whenever the governing body of either the county or the city adopts a resolution declaring its intention to withdraw from the agreement. The governing body so declaring shall deliver to the to the other governing body and the board a certified copy of the resolution on or before July 1st, and such withdrawal and dissolution shall become effective at the end of that calendar fiscal year. Any money remaining in the hands of the treasurer of the board upon its dissolution shall be repaid to the respective treasurers of the governing bodies of the county and the city in the same proportion in which the governing bodies contributed during the last calendar fiscal year. All other unexpended financial contributions shall be returned to their respective donors.

(Res. No. 1576, § 5, 6-28-55; Ord. No. 05-10268, § 1, 4-18-05)

CHAPTER 18. HOUSING[1]

Art. I. In General, §§ 18-1--18-20
Art. II. Administration and Enforcement, §§ 18-21--18-60
Div. 1. Generally, §§ 18-21--18-40
Div. 2. Appeals, §§ 18-41--18-60
Art. III. Use and Occupancy Regulations, §§ 18-61--18-81

ARTICLE I. IN GENERAL

Sec. 18-1. Short title.

This chapter shall be known as the "Minimum Housing Code."

(Code 1966, § 16-1)

Sec. 18-2. Compliance required.

Buildings used in whole or in part as a home or residence of a single family or person and every building used in whole or in part as a home or residence of two (2) or more persons or families living in separate apartments shall conform to the requirements of this chapter.

(Code 1966, § 16-2)

Sec. 18-3. Policy and purpose declared.

The board of commissioners declares the purpose of this chapter is to protect, preserve and promote the physical and mental health of the people, investigate and control communicable diseases, regulate privately and publicly owned dwellings for the purpose of sanitation and public health, and protect the safety of the people and promote the general welfare by legislation which shall be applicable to all dwellings now in existence or hereafter constructed and which legislation:

(1) Establishes minimum standards for basic equipment and facilities for light, ventilation and heating, for safety from fire for the use and location and amount of space for human occupancy, and for safe and sanitary maintenance;

(2) Determines the responsibilities of owners, operators and occupants of dwellings; and

(3) Provides for the administration and enforcement thereof.

(Code 1966, § 16-3)

Sec. 18-4. Definitions.

The following definitions shall apply to the enforcement of this chapter:

(1) *Basement* shall mean a portion of a building located partly underground, but having less than half of its clear floor-to-ceiling height below the average grade of the adjoining ground.

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[1] **Cross references:** Buildings and structural appurtenances, Ch. 8; mobile homes and trailers, Ch. 22; public utilities, Ch. 31; solid waste, Ch. 34; subdivision regulations, Ch. 36; water and sewers, Ch. 41; zoning regulations, Ch. 42. **State law references:** Housing law, K.S.A. 17-2336 et seq.

(2) *Building official* shall be that person appointed by the city manager, together with the city health officer and such assistant officers as the city manager shall designate.

(3) *Cellar* shall mean a portion of a building located partly or wholly underground, and having half or more than half of its clear floor-to-ceiling height below the average grade of the adjoining ground.

(4) *Dwelling* shall mean any building which is wholly or partly used or intended to be used for living or sleeping by human occupants; provided that temporary housing as hereinafter defined shall not be regarded as a dwelling.

(5) *Dwelling unit* shall mean any room or group of rooms located within a dwelling and forming a single habitable unit with facilities which are used, or intended to be used, for living, sleeping, cooking and eating.

(6) *Garbage* shall mean any accumulation of animal, fruit or vegetable waste matter that attends the preparation, use, cooking, delivering, or storage of meats, fish, fowl, fruits or vegetables.

(7) *Habitable dwelling* shall mean any structure or part thereof that shall be used as a home or place of abode by one or more persons.

(8) *Habitable room* shall mean a room designed to be used for living, sleeping, eating or cooking purposes, excluding bathrooms, toilet rooms, closets, halls and storage places, or other similar places, not used by persons for extended periods.

(9) *Infestation* shall mean the presence, within or around a dwelling, of insects, rodents or other pests.

(10) *Multiple dwelling* shall mean any dwelling containing more than two (2) dwelling units.

(11) *Occupant* shall mean any person, over one year age, living, sleeping, cooking, or eating in, or having actual possession of, a dwelling unit or rooming unit.

(12) *Operator* shall mean any person who has charge, care, or control of a building, or part thereof, in which dwelling units or rooming units are let.

(13) *Owner* shall mean any person who, jointly or severally along with others, shall be in actual possession of, or have charge, care and control of any dwelling unit within the city as owner, employee, or agent of the owner, or as trustee or guardian of the estate or person of the title holder, and such person shall be deemed and taken to be the owner or owners of such property within the true intent and meaning of this chapter and shall be bound to comply with the provisions to the same extent as the record owner and notice to any such person shall be deemed and taken to be a good and sufficient notice as if such person or persons were actually the record owner or owners of such property.

(14) *Plumbing* shall mean and include all of the following supplied facilities and equipment: Gas or fuel pipes, gas or fuel burning equipment, water pipes, garbage disposal units, waste pipes, water closets, sinks, installed dishwashers, lavatories, bathtubs, shower baths, installed clothes washing machines, catch basins, drains, vents and any other similar supplied fixtures, together with all connections to water, sewer, gas or fuel lines.

(15) *Refuse* shall include garbage and trash.

(16) *Rooming house* shall mean any dwelling, or that part of any dwelling containing one or more rooming units, in which space is let by the owner or operator to three (3) or more persons who are not husband or wife, son or daughter, mother or father, or sister or brother of the owner or operator.

(17) *Rooming unit* shall mean any room or group of rooms forming a single habitable unit used or intended to be used for living and sleeping; but not for cooking or eating purposes.

(18) *Supplied* shall mean paid for, furnished, or provided by, or under the control of, the owner or operator.

(19) *Temporary housing* shall mean any tent, trailer, or other structure used for human shelter which is designed to be transportable and which is not attached to the ground, to another structure, or to any utilities system on the same premises for more than thirty (30) consecutive days, or one which is located in a mobile homes court duly licensed by the city.

(20) *Trash, combustible* shall mean waste consisting of papers, cartons, boxes, barrels, wood and excelsior, tree branches, yard trimmings, wood furniture, bedding and leaves.

(21) *Trash, noncombustible* shall mean waste consisting of metals, tin cans, glass, crockery, other mineral refuse and ashes and street rubbish and sweepings.

(22) *Meaning of certain words.* Whenever the words "dwelling," "dwelling unit," "roominghouse," "rooming unit," "premises," are used in this chapter, they shall be construed as though they were followed by the words "or any part thereof."

(Code 1966, § 16-4)
Cross references: Definitions and rules of construction generally, § 1-2.

Sec. 18-5. Reserved.

Editor's note: Ord. No. 95-9717, § 2, adopted Jan. 8, 1996, repealed § 18-5, pertaining to violations and nuisances declared as derived from the Code of 1966, § 16-5.

Sec. 18-6. Responsibilities of owners, occupants generally.

Every dwelling, including all yards, lawns and courts shall be kept clean and free from any accumulation of filth, rubbish, garbage or any similar matter. It shall be the duty of each occupant of a dwelling unit to keep in clean condition the portion (of the property which he occupies and of which he has exclusive control, to comply with the rules and regulations and to place all garbage and refuse in proper containers. If receptacles are not provided by the owner, then the occupant shall provide such receptacles as may be necessary to contain all garbage and trash. Every occupant of a dwelling containing a single dwelling unit shall be responsible for the extermination of any insects, rodents or other pests therein or on the premises; and every occupant of a dwelling unit in a dwelling containing more than one dwelling unit shall be responsible for such extermination whenever his dwelling unit is the unit primarily infested. Notwithstanding the foregoing provisions of this section, whenever infestation is caused by failure of the owner to maintain a dwelling in a ratproof or reasonably insect-proof condition, extermination shall be the responsibility of the owner and operator. Whenever infestation exists in two (2) or more of the dwelling units in any dwelling, or in the shared or public parts of any dwelling containing two (2) or more dwelling units, extermination thereof shall be the responsibility of the owner.

(Code 1966, § 16-7)

Sec. 18-7. Maintenance and repair.

Every dwelling and every part thereof shall be maintained in good repair by the owner or agent and shall be fit for human habitation. The roof shall be maintained so as not to leak and all rainwater shall be drained therefrom so as not to cause dampness in the walls or ceilings. All floors, stairways, doors, porches, windows, skylights, chimneys, toilets, sinks, walls and ceilings shall be kept in good repair and good usable condition.

(Code 1966, § 16-8)

Secs. 18-8--18-20. Reserved.

ARTICLE II. ADMINISTRATION AND ENFORCEMENT[2]

DIVISION 1. GENERALLY

Sec. 18-21. Responsibility for enforcement.

The building official is hereby authorized and directed to enforce all of the provisions of this chapter. The city manager may also appoint such number of inspectors as may be necessary from time to time, or he may deputize such employees as may be necessary, to carry out the functions required for the enforcement of this chapter.

(Code 1966, § 16-19)

Sec. 18-22. Smoke detectors in case of fire.

Should a fire occur in any dwelling or dwelling unit, and that dwelling or dwelling unit is found not to be equipped with approved and operable smoke detectors as required in this chapter, the owner, the operator, and/or the occupant, if the occupant is or may be responsible for the violation, shall be charged with a violation of this chapter. In addition, the owner, operator, and/or occupant shall be issued a notice of violation as provided for in section 18-24 initiating the procedure for correction of the violation.

(Ord. No. 88-9262, § 4, 8-1-88)

Sec. 18-23. Inspection authorized.

(a) *Generally*. For the purpose of determining compliance with the provisions of this chapter, the building official, or his authorized representative, is hereby authorized and directed to make inspections to determine the condition, use and occupancy of dwellings, dwelling units, rooming units, and the premises upon which the same are located. For the purpose of making such inspections, the building official or his authorized representative, is hereby authorized to enter, examine and survey all dwellings, dwelling units, rooming units and premises upon which the same are located, at all reasonable times.

(b) *Notification and right of entry*. The owner, operator and occupant of every dwelling, dwelling unit, and rooming unit shall give the building official, or his authorized representative, free access to such dwelling, dwelling unit, or rooming unit, and its premises, for the purpose of such inspection, examination and survey. If entry for the purpose of such inspection is refused, the building official, or his authorized representative, shall have recourse to every remedy provided by law to secure

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[2] **Cross references:** Administration, Ch. 2.

entry, including, but not limited to, application for warrant or an order of the municipal court or the district court authorizing the inspection.

(c) *Occupant to give owner access for repairs or alterations.* Every occupant shall give the owner thereof, or his agent or employees, access to any part of such dwelling, or its premises, at all reasonable times for the purpose of making such repairs or alterations as are necessary to effect compliance with the provisions of the chapter, or with any rule or regulations adopted and promulgated, or any order issued pursuant to the provisions of this chapter.

(Code 1966, § 16-21; Ord. No. 88-9262, § 1, 8-1-88)

Sec. 18-24. Notice of violations required.

Except in those instances in which sections 18-22 or 18-26 are applicable, whenever the building official or his authorized representative determines that there has been a violation of any provisions of this chapter or any rule or regulation adopted pursuant hereto, he shall give notice of such alleged violation to the person or persons who are or may be responsible therefor, as enumerated in section 18-25(4).

(Code 1966, § 16-22; Ord. No. 88-9262, § 2, 8-1-88)

Sec. 18-25. Contents of notice; service.

This notice of violation shall:

(1) Be in writing;

(2) Particularize the violations alleged to exist or to have been committed;

(3) Provide a reasonable time, but not less than ten (10) days in any event, for the correction of the violations particularized;

(4) Be addressed to and served upon the owner of the property, the operator of the dwelling, and the occupant of the dwelling unit or the rooming unit concerned, if the occupant is or may be responsible for violation. Service shall be by personal service or by registered or certified mail, return receipt requested, delivered to addressee only. If service is made by registered or certified mail, the building official or his authorized representative shall include in the record a verified statement giving details regarding the mailing. If one or more persons to whom the notice is addressed cannot be found or served after diligent effort to do so, service may be made upon such person by posting a notice in a conspicuous place in or about the dwelling affected by the notice, in which event the building official or his authorized representative shall include in the record a statement as to why such posting was necessary.

(Code 1966, § 16-23; Ord. No. 88-9262, § 3, 8-1-88)

Sec. 18-25.1. Nuisance declared--Municipal court prosecution.

Any violation of the provisions of this chapter shall be deemed a nuisance and detrimental to the health, safety and welfare of the inhabitants of this city. As an alterative to any other remedy under this article, any person or persons who are or may be responsible for any violation of this chapter may be prosecuted in municipal court and punished by:

(1) An order to vacate, repair and/or demolish;

(2) An order authorizing the city to repair and/or demolish and assessing the costs thereof;

(3) A fine of not more than five hundred dollars ($500.00);

(4) Imprisonment for a period of not exceeding six (6) months; or

(5) Any combination of the above.

Each day any violation of this chapter continues shall constitute a separate offense.

(Ord. No. 95-9717, § 1, 1-8-96)
Cross references: Nuisances generally, Ch. 24.

Sec. 18-26. Designation, condemnation of unfit dwellings.

The designation of dwellings or dwelling units as unfit for human habitation and the procedure for the condemnation and placarding of such unfit dwellings or dwelling units shall be carried out in compliance with, the following requirements:

(1) *Standards.* The building official may determine that any dwelling unit is unfit for human use or habitation if he finds that conditions exist in such structure which are dangerous or injurious to the health, safety or morals of the occupants of such buildings, or other residents of the city, or which shall have a blighting influence on properties in the area. Such conditions may include the following without limitations: Defects therein increasing the hazards of fire, accident, or other calamities; lack of adequate ventilation; air pollution; light or uncleanliness, sanitary facilities; dilapidation; disrepair, structural defects; overcrowding; inadequate ingress and egress; dead and dying trees, limbs or other unsightly natural growth; unsightly appearances that constitute a blight to the adjoining property, the neighborhood or the city; walls, siding or exteriors of a quality and appearance not commensurate with the character of the properties in the neighborhood; unsightly stored or parked material, equipment, supplies, machinery, trucks, or automobiles or parts thereof; vermin infestation; inadequate drainage; or any violation of the health, fire, building or zoning regulations, or other law or regulations relating to the use of land and the use and occupancy of the buildings and improvements.

(2) *Placarding, order to vacate.* Any dwelling or dwelling unit condemned as unfit for human habitation and so designated and placarded by the building official shall be vacated within thirty (30) days.

(3) *Compliance required before reoccupancy.* No dwelling or dwelling unit which has been condemned and placarded as unfit for human habitation shall again be used for human habitation until written approval is secured from and such placard is removed by, the building official. The building official shall remove such placard whenever the defect or defects upon which the condemnation and placarding action were based have been eliminated. It shall be unlawful for anyone to let, lease, occupy or permit the occupancy, whether for a consideration or not, of any dwelling so posted and any violation of this provision shall constitute a misdemeanor within the meaning of this chapter. It shall be unlawful for any person to deface or remove the placard from any dwelling or dwelling unit which has been condemned as unfit for human habitation and placarded as such, except the building official as herein provided, and any violation of this provision shall constitute a misdemeanor within the meaning of this chapter.

(Code 1966, § 16-24)

Sec. 18-27. Order to repair, remove or demolish.

At the time of the placarding and order to vacate specified by section 18-26(2), the building official shall determine the cost of repairs, alterations, or improvements and shall notify the owner of his

determination. The building official shall also issue and cause to be served upon the owner in the manner specified for serving notice in section 18-25(4) hereof, a further order which:

(1) If the repair, alteration or improvement of the structure can be made at a cost which is less than three hundred (300) percent of the then current assessed taxable value of the structure, requires the owner, within the time specified in the order, to repair, alter, or improve such structure so as to render it fit for human use or habitation and commanding the owner to leave such structure vacant until compliance with such order; or

(2) If the repairs, alterations or improvements of the structure cannot be made at a cost which is less than three hundred (300) percent of the then current assessed taxable value of the structure, requires the owner within the time specified in the order to remove or demolish such structure.

(Code 1966, § 16-25)

Sec. 18-28. Procedure for repairs or demolition.

(a) Whenever a petition is filed with the building official or his designated agent, by at least five (5) residents of the city charging that any structure is unfit for human use or habitation, or whenever it appears to the building official, or his designated agent, on his own motion, that any structure is unfit for human use or habitation, he shall, if his preliminary investigation discloses a basis for such charges, issue and cause to be served upon the owner, every mortgagee of record and all parties in interest in such structure (including persons in possession) a complaint stating the charges in that respect. Such complaint shall contain a notice that a hearing will be held before the building official or his designated agent at a place therein fixed not less than ten (10) days nor more than thirty (30) days after the serving of the complaint. The owner, mortgagee and parties in interest shall have the right to file and answer to the complaint and to appear in person, or otherwise, and give testimony at the place and time fixed in the complaint; and that the rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the building official.

(b) If, after such notice and hearing the building official determines that the structure under consideration is unfit for human use or habitation he shall state in writing his findings of facts in support of such determination and shall issue and cause to be served upon the owner thereof an order which:

(1) If the repair, alteration or improvements of the structure can be made at a reasonable cost in relation to the value of the structure, which shall not exceed three hundred (300) percent of the then current assessed taxable value of the structure, the owner of the property shall within the time specified in the order, repair, alter or improve such structure to render it fit for human use or habitation or shall vacate and close the structure until conformance with this chapter is made; or,

(2) If the repair, alteration or improvement of the structure cannot be made at a reasonable cost in relation to the value of the structure, that is to say, less than three hundred (300) percent of the then current assessed taxable value of the structure, which is hereby fixed as a reasonable cost by the board of commissioners, the owner shall within the time specified in the order remove or demolish such structure.

(c) If the owner fails to comply with an order to repair, alter or improve or to vacate and close the structure within one hundred twenty (120) days from the date of issuance of such order, the building official may cause such structure to be repaired, altered or improved, or to be vacated and closed.

(d) If the owner fails to comply with an order to remove or demolish the structure within one hundred twenty (120) days from the date of issuance of such order, the building official may cause such structure to be removed or demolished.

(e) The amount of the cost of such repairs, alterations or improvements, or vacating and closing or removal or demolition by the building official shall be a lien against the real property upon which such cost was incurred and such lien, including as part thereof allowance of his costs and the necessary attorney's fees, may be foreclosed in judicial proceedings, in the manner provided or authorized by law for loans secured by liens on real property or shall be assessed as a special assessment against the lot or parcel of land on which the structure was located and the city clerk shall at the time of certifying other city taxes, certify the unpaid portion of the aforesaid costs and the county clerk shall extend the same on the tax rolls of the county against the lot or parcel of land. If the structure is removed or demolished by the building official he shall sell the materials of such structure and shall credit the proceeds of such sale against the cost of the removal or demolition and if there be any balance remaining it shall be paid to the parties entitled thereto as determined by proper judicial proceedings instituted by the building official after deducting the costs of such judicial proceedings including his necessary attorney's fees incurred therein, as determined by the court.

(Code 1966, § 16-26)

Sec. 18-29. Conditions making structures unfit for human use or habitation.

The building official may determine that a structure is unfit for human use or habitation if he finds that conditions exist in such structure which are dangerous or injurious to the health, safety or morals of the occupants of such buildings or other residents of the city or which have a blighting influence on properties in the area. Such conditions may include the following without limitations: Defects therein increasing the hazards of fire, accident or other calamities; lack of adequate ventilation, air pollution; light or sanitary facilities; dilapidation; disrepair, structural defects, uncleanliness; overcrowding; inadequate ingress and egress; dead and dying trees; limbs or other unsightly natural growth; unsightly appearances that constitute a blight to adjoining property, the neighborhood or the city; walls, siding or exteriors of a quality and appearance not commensurate with the character of the properties in the neighborhood; unsightly stored or parked material, equipment, supplies, machinery, trucks or automobiles or parts thereof; vermin infestation; inadequate drainage; or any violation of health, fire, building or zoning regulations, or any other laws or regulations relating to the use of land and the use and occupancy of buildings and improvements.

(Code 1966, § 16-27)

Sec. 18-30. Service of complaint or order.

Complaints or orders issued by the building official pursuant to this section shall be served upon persons either personally or by registered or certified mail, but if the whereabouts of such persons is unknown and the same cannot be ascertained by the building official in the exercise of reasonable diligence, and the building official shall make an affidavit to that effect, then the serving of such complaint or order upon such person may be made by publishing the same once each week for two (2) consecutive weeks in the official newspaper of the city. A copy of such complaint or order shall be posted in a conspicuous place on the premises affected by the complaint or order. A copy of such complaint or order shall also be filed with the clerk of the district court of the county and such filing of the complaint or order shall have the force and effect as other lis pendens notices provided by law.

(Code 1966, § 16-28)

Sec. 18-31. Emergency abatement.

(a) Whenever, in the judgment of the building official an emergency exists which requires immediate action to protect the public health, safety or welfare, an order may be issued, without notice, conference, or hearing, directing the owner, occupant, operator, or agent to take such action as is appropriate to correct or abate the emergency. If circumstances warrant, the building official may act to correct or abate the emergency.

(b) The owner, occupant, operator or agent shall be granted a conference on the matter upon his request, as soon as practicable but such conference shall in no case stay the abatement or correction of such emergency.

(Code 1966, § 16-29)

Secs. 18-32--18-40. Reserved.

DIVISION 2. APPEALS

Sec. 18-41. Building codes advisory and appeals board.

(a) The building codes advisory and appeals board (referred to in this chapter as "the board") shall serve to provide for final interpretation of the provisions of this chapter and to hear appeals provided for hereunder. The board may adopt reasonable rules and regulations for conducting its business and shall render all decisions and findings in writing to the appellant with a copy to the building official. Appeals to the board regarding matters addressed by this chapter shall be processed in accordance with the provisions contained in section 18-42 et seq. Copies of all rules or regulations adopted by the board shall be delivered to the building official who shall make them freely accessible to the public.

(b) The board shall have the power to hear and decide appeals where it is alleged that there is an error in any order, requirement, decision or determination made by the building official in the enforcement of this chapter. The board may also when it deems the same appropriate, grant variances, waivers or exceptions to any portion, standard or requirement of this chapter providing that such variance, waiver or exception is not contrary to the purpose of this chapter as stated in section 18-3.

(Code 1966, § 16-30; Ord. No. 88-9281, § 4, 10-17-88)
Cross references: Administration, Ch. 2; boards and commissions generally, § 2-136 et seq.

Sec. 18-42. Procedure.

(a) *Right of appeal.* Any person, officer of the city or of any governmental agency or body aggrieved by any decision, notice or order of the officer administering the provisions of this chapter may appeal such decision to the board.

(b) *Form of appeal.* Any person entitled to appeal the decision, notice or order of the building official may appeal the same by filing at the office of the building official within ten (10) days from the date of the service of such decision, notice or order upon them, a written appeal containing the following:

(1) A hearing in the words: "Before the Building Codes Advisory and Appeals Board of the City of Salina, Kansas;"

(2) A caption reading "Appeal of _____," giving the names of all appellants participating in the appeal;

(3) A brief statement setting forth the legal interest of each of the appellants in the building or the land involved in the notice and order;

(4) A brief statement in ordinary and concise language of that specific order or action protested, together with any material facts claimed to support the contentions of the appellant;

(5) A brief statement in ordinary and concise language of the relief sought and the reasons why it is claimed the protested order of action should be reversed, modified, or otherwise set aside;

(6) The signature of all parties named as appellants, and their official mailing addresses;

(7) The verification of the appellants as to the truth of the matters stated in the appeal.

(c) *Scheduling and noticing appeal for hearing.* Within ten (10) days after receiving the written appeal the board shall fix a date, time and place for the hearing of the appeal by the board. Such date shall be not less than ten (10) days nor more than sixty (60) days from the date the appeal was filed with the building official. Written notice of the time and place of the hearing shall be given at least ten (10) days prior to the date of the hearing to each appellant by the secretary of the board either by causing a copy of such notice to be delivered to the appellant personally, or sent by certified mail, postage prepaid, return receipt requested, at the address shown on the appeal.

(Code 1966, § 16-31; Ord. No. 88-9281, § 5, 10-17-88)

Sec. 18-43. Effect of failure to appeal.

Failure of any person to file an appeal in accordance with the provisions of section 18-42 shall constitute a waiver of his right to an administrative hearing and adjudication of the notice and order, or to any portion thereof.

(Code 1966, § 16-33)

Sec. 18-44. Scope of hearing.

Only those matters or issues specifically raised by the appellant shall be considered in the hearing of the appeal.

(Code 1966, § 16-34)

Sec. 18-45. Stay order.

Enforcement of any notice and order of the building official issued under this chapter shall be stayed during the pendency of an appeal there from which is properly and timely filed.

(Code 1966, § 16-35)

Sec. 18-46. Procedure for conduct of hearing appeals.

(a) *General:*

(1) *Record.* A record of the entire proceedings shall be made by tape recording or by any other means of permanent recording determined to be appropriate by the board.

(2) *Reporting.* The proceedings at the hearing shall be reported by a stenographic reporter if requested by any party thereto. A transcript shall be made available to all parties upon request and upon payment of a fee equal to the cost involved in making the transcript.

(3) *Continuances.* The board may grant continuances for good cause shown.

(4) *Oaths, certification.* In any proceedings under this chapter, the board has the power to administer oaths and affirmations and to certify to official acts.

(5) *Reasonable dispatch.* The board shall proceed with reasonable dispatch to conclude any matter before it. Due regard shall be shown for the convenience and necessity of any parties or their representatives.

(b) *Form of notice of hearing:* The notice to appellant shall be substantially in the following form, but may include other information:

You are hereby notified that a hearing will be held before the Building Codes Advisory and Appeals Board at the City Commission Room, City--County Building, 300 West Ash Street, Salina, Kansas, on the _____ day of _____, 19_____, at _____ o'clock _____M., upon the notice and order served upon you. You may be present at the hearing. You may be, but need not be, represented by counsel. You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You may request the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents, or other things by filing an affidavit therefor with the board.

(c) *Subpoenas:*

(1) *Filing of affidavit.* The board may obtain issuance and service of a subpoena for the attendance of witnesses or the production of other evidence at a hearing upon the request of a member of the board or upon written demand of any party. The issuance and service of such subpoenas shall be obtained upon the filing of an affidavit therefor which states the names and addresses of the proposed witnesses; specifies the exact things sought to be produced and the materiality thereof in detail to the issues involved; and states that the witness has the desired things in their possession or under their control. A subpoena need not be issued when affidavit is defective in any particular.

(2) *Penalties.* Any person who refuses, without lawful excuse, to attend any hearing, or to produce material evidence in their possession or under their control as required by any subpoena served upon such person as provided for herein, shall be guilty of a misdemeanor.

(d) *Conduct of hearing:*

(1) *Rules.* Hearing need not be conducted according to the technical rules relating to evidence and witnesses.

(2) *Oral evidence.* Oral evidence shall be taken only on oath or affirmation.

(3) *Hearsay evidence.* Hearsay evidence may be used only if it would be admissible over objection in civil actions in courts of competent jurisdiction in this state.

(4) *Admissibility of evidence.* Any relevant evidence shall be admitted if it is the type of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any statutory rule or common law which might make improper the admission of such evidence over objection in civil actions in courts of competent jurisdiction in this state.

(5) *Exclusion of evidence.* Irrelevant and unduly repetitious evidence shall be excluded.

(6) *Rights of parties.* Each party shall have these rights, among others:

a. To call and examine witnesses on any matter relevant to the issues of the hearing;

b. To introduce documentary and physical evidence;

c. To cross-examine opposing witnesses on any matter relevant to the issues of the hearing;

d. To impeach any witness regardless of which party first called the witness to testify;

e. To rebut evidence against him/her;

f. To represent himself/herself or to be represented by counsel.

(7) Official notice.

a. What may be noticed. In reaching a decision, official notice may be taken, either before or after submission of the case for decision of any fact which may be judicially noticed by the courts of this state or of official records of the board or departments and ordinances of the city or rules and regulations of the board.

b. Parties to be notified. Parties present at the hearing shall be informed of the matters noticed, and these matters shall be noted in the record referred to therein, or appended thereto.

c. Opportunity to refute. Parties present at the hearing shall be given a reasonable opportunity, on request, to refute the officially noticed matters by evidence or by written or oral presentation of authority, the manner of refutation to be determined by the board.

d. Inspection of premises. The board may inspect any building or premises involved in the appeal during the course of the hearing, provided that:

1. Notice of such inspection shall be given to the parties before the inspection is made;

2. The parties are given an opportunity to be present during the inspection; and

3. The board shall state for the record upon completion of the inspection the material facts observed and the conclusion drawn therefrom.

Each party then shall have a right to rebut or explain the matters so stated by the board, the manner of rebuttal or explanation to be determined by the board.

(e) *Method and form of decision:*

(1) *Hearing before board.* No member of the board who did not hear the evidence or has not read the entire record of the proceedings shall note or take part in the decision upon a contested case heard by the board.

(2) *Form of decision.* The decision of the board shall be in writing and shall contain findings of facts, a determination of the issues presented, and the requirements to be complied with by the parties. A copy of the decision shall be delivered to appellant personally, or sent to them by certified mail, postage prepaid, return receipt requested.

(3) *Effective date of decision.* The effective date of the decision shall be the date stated therein.

(Code 1966, § 16-36; Ord. No. 88-9281, § 6, 10-17-88)

Sec. 18-47. Appeals from decision of board.

Any person, officer of the city or of any governmental agency or body aggrieved by the decision of the board may appeal such decision by filing an action in the district court. Such action must be filed within thirty (30) days from the effective date of the decision of the board.

(Code 1966, § 16-37; Ord. No. 88-9281, § 7, 10-17-88)

Secs. 18-48--18-60. Reserved.

ARTICLE III. USE AND OCCUPANCY REGULATIONS

Sec. 18-61. Scope, applicability.

No person shall occupy as owner-occupant or let to another for occupancy any dwelling or dwelling unit, for the purpose of living, sleeping, cooking or eating therein, which does not comply with the following requirements. The following requirements are hereby declared essential to the health and safety of the occupants of such dwelling or dwelling unit.

(Code 1966, § 16-54)

Sec. 18-62. Basement or cellar.

The basement or cellar of any dwelling shall be reasonably dry and ventilated and shall be kept free from rubbish accumulation.

(Code 1966, § 16-55)

Sec. 18-63. Heating.

Every dwelling and every dwelling unit shall be so constructed, insulated and maintained and be provided by the owner or occupant with heating units so that it is capable of reaching an air temperature of seventy (70) degrees Fahrenheit under ordinary winter conditions. The chimney of the dwelling or dwelling unit shall be maintained in good order, and the owner of the approved heating equipment shall maintain it in good order and repair.

(Code 1966, § 16-56)

Sec. 18-64. Natural light and ventilation.

(a) *Natural or artificial light and ventilation.* All guest rooms, dormitories and habitable rooms within a dwelling unit shall be provided with natural light by means of windows or skylights with an area of not less than one-tenth of the floor area of such rooms with a minimum of twelve (12) square feet.

All bathrooms, water closet compartments, laundry rooms, and similar rooms shall be provided with natural ventilation by means of windows or skylights with an area of not less than one-tenth of the floor area of such rooms with a minimum of three (3) square feet. Not less than one-half of the required window or skylight area shall be open-able to provide natural ventilation.

(b) *Origin of light and ventilation.* Required windows shall open directly onto a street or public alley or court located on the same lot as the building. Exception: Required windows may open into a roofed porch where the porch:

(1) Abuts a street, yard, or court; and

(2) Has a ceiling height of not less than seven (7) feet; and

(3) Has the longer side at least sixty-five (65) percent open and unobstructed.

A required window in a service room may open into a vent shaft which is open and unobstructed to the sky and not less than four (4) feet in least dimension. No vent shall extend through more than two (2) stories.

For the purpose of determining light and ventilation requirements, any room may be considered as a portion of an adjoining room when one-half of the area of the common wall is open and unobstructed and provides an opening of not less than one-tenth of the floor area of the interior room or twenty-five (25) square feet, whichever is greater.

(c) *Mechanical ventilation.* In lieu of openable windows for natural ventilation, a mechanical ventilation system may be provided. Such system shall be capable of providing two (2) air changes per hour in all guest rooms, dormitories, habitable rooms, and in public corridors. One-fifth of the air supply shall be taken from the outside. In bathrooms, water closet compartments, laundry rooms, and similar rooms a mechanical ventilation system connected directly to the outside, capable of providing five (5) air changes per hour, shall be provided.

(d) *Vent shaft.* A required window in a service room may open into a vent shaft which is open and unobstructed to the sky and not less than four (4) feet in least dimension. No vent shaft shall extend through more than two (2) stories.

(e) *Hallways.* All public hallways, stairs and other exitways shall be adequately lighted at all times in accordance with the Uniform Building Code.

(f) *Sleeping areas.* All rooms or areas used for sleeping purposes shall be provided with a secondary means of exit. This may be provided by an additional door or window leading to the exterior of the building.

(Code 1966, § 16-57)

Sec. 18-65. Windows and doors.

Every window and exterior door shall be reasonably weathertight, watertight and rodent-proof and shall be kept in good working condition and repair.

(Code 1966, § 16-58)

Sec. 18-66. Lighting.

(a) Every habitable room shall have a ceiling electric outlet and a duplex outlet in the wall or floor, or at least two (2) wall or floor outlets.

(b) Every laundry room, furnace room, hall, porch and corridor shall have one ceiling or wall type electric light fixture.

(c) All electrical wiring and fixtures shall be properly installed, maintained in safe and good working order, and shall be connected to the source of electric power in a safe manner.

(Code 1966, § 16-59)

Sec. 18-67. Basement and cellar dwelling units.

No dwelling unit partially below grade shall be used for living purposes unless:

(1) Floors and walls are weathertight;

(2) Total window area, total operable area and ceiling height are in accordance with this chapter; and

(3) Required minimum window area of every habitable room is entirely above the grade of the ground adjoining such window area.

(Code 1966, § 16-60)

Sec. 18-68. Floor area and ceiling heights.

(a) *Ceiling heights.* Habitable rooms, storage rooms and laundry rooms shall have a ceiling height of not less than seven (7) feet, six (6) inches. Hallways, corridors, bathrooms, toilet rooms and basement and cellar dwelling units shall have a ceiling height of not less than seven (7) feet measured to the lowest projection from the ceiling.

(b) *Superficial floor area.* Every dwelling unit shall have at least one room which shall have not less than one hundred twenty (120) square feet of superficial floor area. Every room which is used for both cooking and living or both living and sleeping purposes shall have not less than one hundred fifty (150) square feet of superficial floor area. Every room used for sleeping purposes shall have not less than seventy (70) square feet for one person and ninety (90) square feet for two (2) persons. Where more than two (2) persons occupy a room used for sleeping purposes the required superficial floor area shall be increased at the rate of fifty (50) square feet for each occupant in excess of two (2).

Exception: Nothing in this section shall prohibit the use of an efficiency living unit meeting the following requirements:

(1) The unit shall have a living room of not less than two hundred twenty (220) square feet of superficial floor area. An additional one hundred (100) square feet of superficial floor area shall be provided for each occupant of such unit in excess of two (2).

(2) The unit shall be provided with a separate closet.

(3) The unit shall be provided with a kitchen sink, cooking appliance and refrigeration facilities each having a clear working space of not less than thirty (30) inches in front. Light and ventilation conforming to this chapter shall be provided.

(4) The unit shall be provided with a separate bathroom containing a water closet, lavatory, and bathtub or shower.

(5) Whenever one of the occupants of a sleeping room is less than seven (7) years old, the allowed occupancy may be increased by one, by special permission of the board.

(c) *Width.* No habitable room shall be less than seven (7) feet in any dimension and no water closet space less than thirty (30) inches in width and shall provide a clear space in front of the water closet not less than twenty-four (24) inches.

(Code 1966, § 16-61)

Sec. 18-69. Bathing facilities.

(a) Bathing facilities shall be provided in rooming and boardinghouses in the form of a tub or shower for each eight (8) occupants. Separate facilities, plainly marked, shall be provided for each sex.

(b) Every dwelling unit shall contain within a room which affords privacy to a person in the room, a bathtub or shower in good working condition and properly connected to an approved water and sewer system.

(Code 1966, §§ 16-62, 16-66)

Sec. 18-70. Toilet facilities.

(a) A water closet shall be provided for each six (6) occupants of a rooming or boardinghouse, and shall be separated with separate access from bathing facilities if more than four (4) occupants are served by each. Separate facilities shall be provided for each sex and shall be plainly marked.

(b) There shall be at least one flush water closet in good working condition for each dwelling unit, which flush water closet shall be located within the dwelling unit and in a room which affords privacy.

(Code 1966, §§ 16-63, 16-67)

Sec. 18-71. Kitchen sink.

In every dwelling unit there shall be at least one kitchen sink with public water under pressure and connected to the public sewer, or if that sewer system is not available, to a sewage disposal system approved by the joint city-county health department.

(Code 1966, § 16-64)

Sec. 18-72. Water heating facilities.

Every dwelling shall have water heating facilities which are properly installed and maintained in a safe and good working condition and are capable of heating water to such a temperature as to permit an adequate amount of water to be drawn at every required kitchen sink, lavatory basin, bathtub or shower at a temperature of not less than one hundred twenty (120) degrees Fahrenheit.

(Code 1966, § 16-65)

Sec. 18-73. Lavatory facilities.

Every dwelling unit shall contain within its walls a lavatory basin in good working condition and properly connected to an approved water and sewer system and located in the same room as the required flush water closet or as near to the room as practicable.

(Code 1966, § 16-68)

Sec. 18-74. Maintenance of plumbing.

All plumbing, water closets and other plumbing fixtures in every dwelling or dwelling unit shall be maintained in good working order.

(Code 1966, § 16-70)
Cross references: Plumbing code, § 8-176 et seq.

Sec. 18-75. Private wastewater disposal system--Generally.

Where a public sanitary sewer is not available under the provisions of section 41-114, the building sewer shall be connected to a private wastewater disposal system complying with the provisions of this article.

(Ord. No. 84-9006, § 1, 3-26-84)
Editor's note: Ord. No. 84-9006, §§ 1, 2, adopted March 26, 1984, repealed § 18-75 in its entirety and added new provisions. Former § 18-75 was concerned with privies and derived from Code 1966, § 16-71.

Sec. 18-75.1. Same--Permit.

Before commencement of construction of a private wastewater disposal system, the owner shall first obtain a written permit signed by the director. The application for such permit shall be made on a form furnished by the city, which the applicant shall supplement by any plans, specifications, and other information as are deemed necessary by the director. A permit and inspection fee of one dollar ($1.00) shall be paid to the city at the time the application is filed. A permit for a private wastewater disposal system shall not become effective until the installation is completed to the satisfaction of the director. He shall be allowed to inspect the work at any stage of construction and, in any event, the applicant for the permit shall notify the director when the work is ready for final inspection, and before any underground portions are covered. The inspection shall be made within forty-eight (48) hours of the receipt of notice by the director or his representative.

(Ord. No. 84-9006, § 1, 3-26-84)

Sec. 18-75.2. Same--Compliance.

The type, capacities, location, and layout of a private wastewater disposal system shall comply with all regulations of the Kansas Department of Health and Environment. When a public water supply is used, no permit shall be issued for any private wastewater disposal system employing subsurface soil absorption facilities where the area of the lot is less than twenty thousand (20,000) square feet. In the case of a private water supply, the minimum lot size will be forty thousand (40,000) square feet. No septic tank or cesspool system shall be permitted to discharge to any natural outlet.

(Ord. No. 84-9006, § 1, 3-26-84)

Sec. 18-75.3. Same--Availability of sewer.

At such time as a public sewer system becomes available to a property served by a private wastewater disposal system, as provided in section 41-114, a connection shall be made to the public wastewater collection system in compliance with this article. Private wastewater disposal systems taken out of service shall be rendered safe in a manner approved by the director. In general, underground structures shall be drained and filled with gravel, chat, sand or soil. Above grade structures and portions of underground structures extending to or above the ground line shall be razed and the site cleared of all debris and graded to provide free drainage.

(Ord. No. 84-9006, § 1, 3-26-84)

Sec. 18-75.4. Same--Responsibility of owner.

The owner shall operate and maintain the private wastewater disposal system in a sanitary manner at all times, at no expense to the city.

(Ord. No. 84-9006, § 1, 3-26-84)

Sec. 18-75.5. Same--Additional requirements.

No statement contained in this article shall be construed to interfere with any additional requirements that may be imposed by the health officer or any provisions of the building code of the city.

(Ord. No. 84-9006, § 1, 3-26-84)

Sec. 18-76. Lighting of toilets and bathrooms.

Every toilet and every bathroom in every dwelling shall have at least one electric light in either the ceiling or on the wall.

(Code 1966, § 16-72)

Sec. 18-77. Garbage and trash receptacles.

Every dwelling and every dwelling unit shall be provided with such receptacles as may be necessary to contain all garbage and trash and such receptacles shall at all times be maintained in good repair, and shall comply with the standards set forth in chapter 34.

(Code 1966, § 16-73)

Sec. 18-78. Means of access.

There shall be, for each dwelling unit, a separate access either to a hallway, stairway, or street, which is safe and in good repair.

(Code 1966, § 16-74)

Sec. 18-79. Drainage.

All courts, yards or other areas on the premises of any dwelling shall be so graded and drained that there is no pooling of the water thereon. Properly constructed wading and swimming pools and fish ponds are excepted from this section.

(Code 1966, § 16-75)

Sec. 18-80. Attached garages and non-dwelling areas.

All non-dwelling occupants shall be separated from the dwelling by a solid wall or ceiling with a fire resistance rating of not less than one hour as defined in the building code of the city.

(Code 1966, § 16-76)

Sec. 18-81. Smoke detectors.

(a) *Required installation.* Every dwelling and dwelling unit shall be provided with operable smoke detectors conforming to Uniform Building Code Standard No. 43-6. In dwelling units, detectors shall be mounted on the ceiling or wall at a point centrally located in the corridor or area giving access to rooms used for sleeping purposes. In an efficiency dwelling unit, the detector shall be centrally located on the ceiling of the main room. Where sleeping rooms are on an upper level, the detector shall be placed at the center of the ceiling directly above the stairway. All detectors shall be located in accordance with approved manufacturer's instructions. When activated, the detector shall provide an alarm in the dwelling unit.

(b) *Power source.* In new construction, required smoke detectors shall receive their primary power from the building wiring when such wiring is served from a commercial source. Wiring shall be

permanent and without a disconnecting switch other than those required for overcurrent protection. Smoke detectors may be battery operated when installed in existing buildings, or in buildings without commercial power.

(c) *Basements.* A smoke detector shall be installed in the basement of dwelling units having a stair-way which opens from the basement into the dwelling. Such detector shall be connected to a sounding device or other detector to provide an alarm which will be audible in the sleeping area.

(Ord. No. 88-9262, § 5, 8-1-88)

CHAPTER 19. LIBRARY[1]

Art. I. In General, §§ 19-1--19-20
Art. II. Library Board, §§ 19-21--19-38

ARTICLE I. IN GENERAL

Sec. 19-1. Use of library.

The library shall be free to the use of the inhabitants of the city, subject always to such reasonable rules and regulations as the library board may adopt, and the board may exclude from the use of the library any and all persons who shall willfully violate such rules. The library board may extend the use and privilege of such library to nonresidents of the city and may make exchanges of books with any other library upon such terms and conditions as the board may from time to time by regulations prescribe.

(Code 1966, § 19-18)
State law references: Similar provisions, K.S.A. 12-1227.

Sec. 19-2. Stealing, taking books, property.

It shall be unlawful for any person to steal, take and carry away from the public library any book, pamphlet, periodical, paper or other property or take from the free public library of the city any such book, pamphlet, periodical, paper or other property in any manner except in accordance with the rules made by the board of directors of the library.

(Code 1966, § 19-31)
Cross references: Offenses against property, § 25-56 et seq.

Sec. 19-3. Failing to return books after notice.

It shall be unlawful for any person to take, borrow or obtain from the free public library of the city any book, pamphlet, periodical, paper or other property, and neglect to return the same within two (2) weeks from the date of the mailing by the librarian to such person's address of a notice to return the same, in accordance with the rules of the library board.

(Code 1966, § 19-32)

Sec. 19-4. Damaging books or property.

It shall be unlawful for any person to willfully cut, mutilate, mark, tear, write upon, deface or otherwise injure or destroy, in whole or in part, any book, pamphlet, periodical, map, document, picture or written or engraved or printed paper belonging to the free public library of the city, or suffer any such injury to be inflicted while such property is in his custody, or willfully injure or deface any of the furniture or property in the rooms of the library.

(Code 1966, § 19-33)
Cross references: Offenses against property, § 25-56 et seq.

Secs. 19-5--19-20. Reserved.

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[1] **Cross references:** Streets, sidewalks and other public places, Ch. 35. **State law references:** Libraries in general, K.S.A. Ch. 12, Art. 12.

ARTICLE II. LIBRARY BOARD[2]

Sec. 19-21. Composition.

The library board shall consist of seven (7) appointed members and the mayor as an ex officio member.

(Code 1966, § 19-1)
State law references: Similar provisions, K.S.A. 12-1222.

Sec. 19-22. Appointment.

The mayor shall, as terms expire or vacancies occur, appoint, with the approval of the board of commissioners, members of the library board.

(Code 1966, § 19-2)

Sec. 19-23. Terms.

Regular terms of members of the library board shall be for four (4) years, ending April thirtieth.

(Code 1966, § 19-3)
State law references: Similar provisions, K.S.A. 12-1222.

Sec. 19-24. Powers of mayor as ex officio member of board.

The mayor, as an ex officio member of the library board, shall have the same powers as appointed members.

(Code 1966, § 19-4)
State law references: Similar provisions, K.S.A. 12-1222.

Sec. 19-25. Board members not to hold other city offices.

No person holding any office in the city shall be appointed a member of the library board while holding such office.

(Code 1966, § 19-5)
State law references: Similar provisions, K.S.A. 12-1222.

Sec. 19-26. Residence.

All members appointed to the library board shall be residents of the city.

(Code 1966, § 19-6)
State law references: Similar provisions, K.S.A. 12-1222.

Sec. 19-27. Filling vacancies.

Vacancies on the library board occasioned by removal from the city, resignation or otherwise, shall be filled by appointment for the unexpired term.

(Code 1966, § 19-7)
State law references: Similar provisions, K.S.A. 12-1222.

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[2] **Cross references:** Administration, Ch. 2; boards and commissions generally, § 2-136 et seq. **State law references:** Authority for library board, K.S.A. 12-1222 et seq.

Sec. 19-28. Number of terms on board limited.

No person who has been appointed for two (2) consecutive four (4) year terms on the library board shall be eligible for further appointment to such board until two (2) years after the expiration of the second term.

(Code 1966, § 19-8)
State law references: Similar provisions, K.S.A. 12-1222.

Sec. 19-29. Compensation.

Members of the library board shall receive no compensation for their services as such but shall be allowed their actual and necessary expenses in attending meetings and in carrying out their duties as members.

(Code 1966, § 19-9)
State law references: Similar provisions, K.S.A. 12-1222.

Sec. 19-30. Corporate status, title, powers.

The library board shall constitute a body corporate and politic, processing the usual powers of a corporation for public purposes, under the name and style of "The Board of Directors of Salina Library" and under such name may contract, sue and be sued and acquire, hold and convey real and personal property in accordance with law.

(Code 1966, § 19-10)
State law references: Similar provisions, K.S.A. 12-1223.

Sec. 19-31. Approval of board dealings in real property required.

The acquisition or disposition of real property shall be subject to the approval of the board of commissioners.

(Code 1966, § 19-11)
State law references: Similar provisions, K.S.A. 12-1223.

Sec. 19-32. Organization, officers.

The members of the library board shall annually organize by the election of a chairman, a secretary and a treasurer and such other officers as they may deem necessary.

(Code 1966, § 19-12)
State law references: Similar provisions, K.S.A. 12-1224.

Sec. 19-33. Date, place of regular meetings; calling special meetings.

The library board shall fix the date and place of its regular meetings and special meetings may be called by the chairman or upon written request of a majority of the members.

(Code 1966, § 19-13)
State law references: Similar provisions, K.S.A. 12-1224.

Sec. 19-34. Notice of special board meetings.

Written notice, stating the time and place of any special meeting of the library board and for the purpose for which called, shall, unless waived, be given each member of the board at least two (2) days in advance of such meeting, and no business other than that stated in the notice shall be transacted at such meeting.

(Code 1966, § 19-14)
State law references: Similar provisions, K.S.A. 12-1224.

Sec. 19-35. Powers and duties.

The library board shall have the following powers and duties:

(1) To make and adopt rules and regulations for the administration of the library;

(2) With the approval of the board of commissioners to purchase or lease a site or sites and to lease or erect a building or buildings for the use of the library;

(3) To acquire by purchase, gift or exchange, books, magazines, papers, printed materials, slides, pictures, films, projection equipment, phonograph records and other material and equipment deemed necessary by the board for the maintenance and extension of modern library service;

(4) To employ a librarian and such other employees as the board shall deem necessary and to remove them and to fix their compensation;

(5) To establish and maintain a library or libraries and traveling library service within the city or within any other municipality with which service contract arrangements have been made;

(6) To contract with other libraries established under the provisions of K.R.S. 12-1215 to 12-1235 inclusive, or with the governing body of a municipality not maintaining a public library for the furnishing of library service to the inhabitants of such municipality to the extent and upon such terms as may be agreed upon, and to contract to furnish library service to any school library as to use the library of the public school to supplement the facilities of the public library;

(7) To receive, accept and administer any money appropriated or granted to it by the state or the federal government or any agency thereof for the purpose of aiding or providing library service;

(8) To receive and accept any gift or donation to the library and administer the same in accordance with any provisions thereof;

(9) To make annual reports to the state librarian and the board of commissioners of the city on or before January thirty-first of each year for the preceding calendar year, showing receipts and disbursements from all funds under its control, and showing such statistical information relating to library materials acquired and on hand, number of library users, library services available, and other information of general interest as the board of commissioners may require;

(10) As to money received from sources other than a tax levy for library purposes, in its discretion, to place such money in a separate fund or funds, or to place the money in the fund to which the tax levy money is credited unless the grantor or donor shall direct how and for what purpose the money shall be handled and spent.

(Code 1966, § 19-15)
State law references: Similar provisions, K.S.A. 12-1225.

Sec. 19-36. Bond of treasurer.

The treasurer of the library board shall give bond, in an amount fixed by the board and approved by the board of commissioners, for the safekeeping and due disbursement of all funds that may come into his hands as such treasurer. Such bond shall be filed with the city clerk.

(Code 1966, § 19-16)
State law references: Similar provisions, K.S.A. 12-1226.

Sec. 19-37. Duties of treasurer.

The county treasurer shall pay over to the treasurer of the library board all funds collected for the maintenance of the library, and the treasurer of the library board shall pay out such funds on orders of the board signed by the secretary and chairman thereof. Such treasurer shall keep an accurate record of all moneys received and disbursed by him and make a report thereof to the library board monthly, or as often as the board shall require.

(Code 1966, § 19-17)
State law references: Similar provisions, K.S.A. 12-1226.

Sec. 19-38. Budgets and tax levies.

(a) In addition to the powers and duties conferred by law, the board of directors of the free public library shall prepare, publish and approve an annual budget for the maintenance and support of the free public library in the same manner as required by law applying to other taxing units and shall annually levy a tax not to exceed two and five-tenths (2.5) mills on each dollar of the assessed tangible valuation of the property of such city for the maintenance and support of such free public library. Whenever the board of directors determines that the tax currently being levied by such board is insufficient to maintain and support the library and such board desires to increase the mill levy above the current levy, such board may adopt a resolution declaring it necessary to increase such annual levy in an amount which together with the amount of the current levy shall not exceed a total of four (4) mills in any year.

(b) Whenever the board of directors of the free public library determines that the tax levy of four (4) mills authorized by subsection (a) is insufficient to maintain and support the library, the board shall adopt a resolution declaring it necessary to increase the annual levy by an additional amount not to exceed one-fourth mill in any one year up to a total amount which shall not exceed an amount equal to six (6) mills in any year.

(c) Any such resolution adopted under subsection (a) or (b) shall state the total amount of the tax to be levied for library purposes and shall be published once each week for two (2) consecutive weeks in the official city newspaper. Whereupon such annual levy in an amount not to exceed the amount stated in the resolution may be made for the ensuing budget year and each successive budget year unless a petition requesting an election upon the proposition to increase the tax levy in excess of the current tax levy, signed by electors equal in number to not less than five (5) per cent of the electors who voted at the last preceding regular city election, as shown by the poll books, is filed with the county election officer within sixty (60) days following the date of the last publication of the resolution. In the event a valid petition is filed, no such increased levy shall be made without such proposition having been submitted to and having been approved by a majority of the electors voting at an election called and held thereon. All such elections shall be called and held in the manner prescribed for the calling and holding of elections upon the question of the issuance of bonds under the general bond law. Such taxes shall be levied and collected in like manner as other taxes, which

levy the clerk of such board of directors shall certify, on or before August twenty-fifth of each year, to the county clerk who is hereby authorized and required to place the same on the tax roll of the county to be collected by the county treasurer and paid over by the county treasurer to the treasurer of such board of directors.

(Code 1966, § 19-19)
State law references: Similar provisions, K.S.A. 12-1215.

CHAPTER 20. LICENSES[1]

Sec. 20-1. License and compliance required.

It shall be unlawful for any person, either as principal, officer, agent or employee:

(1) To conduct, pursue, carry on or operate in the city, any of the trades, occupations, businesses or professions specified in this Code without having first paid to the city clerk a license fee prescribed in section 2-2, and having procured a license from the city clerk, to engage in and carry on such trade, occupation, business or profession;

(2) To fail to comply with all the regulations as provided in this chapter.

(Ord. No. 94-9660, § 1, 10-24-94)

Sec. 20-2. Application.

Any person engaging in any of the trades, occupations, businesses or professions upon which license fees are levied shall, except when otherwise provided, file an application with the city clerk for a license to carry on such trade, occupation, business or profession.

(Ord. No. 94-9660, § 1, 10-24-94)

Sec. 20-3. Age of licensees.

No license shall be issued to a person under eighteen (18) years of age, unless otherwise specifically authorized.

(Ord. No. 94-9660, § 1, 10-24-94)
Cross references: Minors generally, Ch. 21.

Sec. 20-4. Fees.

(a) The application for a license shall be accompanied by the necessary fee.

(b) License fees levied pursuant to section 2-2 and other provisions of this Code shall, except when otherwise provided, be received by the city clerk, who shall issue receipts therefor. All fees, with copies of the receipts, shall be provided to the city treasurer by the city clerk for daily deposit.

(c) All license fees shall be credited to the general fund, except when another fund is specifically designated by ordinance.

(Ord. No. 94-9660, § 1, 10-24-94)
Cross references: Establishment of license fee, § 2-2.

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[1] **Cross references:** Administration, Ch. 2; license for loudspeakers and sound trucks, § 3-5; retailer's license for alcoholic liquor, § 5-36 et seq.; distributor's license for alcoholic liquor, § 5-51 et seq.; retailer's license for cereal malt beverages, § 5-91 et seq.; license for private clubs, § 5-136 et seq.; license for carnivals, circuses and tent shows, § 6-31 et seq.; license for adult oriented businesses, § 6-54 et seq.; licensing of commercial animal establishments, § 7-116 et seq.; license for electrical contractors, § 8-111; license for mechanical contractors, § 8-291; license required for sign business, § 8-383; license for elevator contractors, § 8-436; licensing of mobile home parks, § 22-22; license for mobile home contractors and craftsmen, § 22-51; license for bondsmen, § 23-20 et seq.; licensing of peddlers and solicitors, Ch. 28; license for merchant or private policemen, § 30-36 et seq.; license for going-out-of-business sales, § 32-36 et seq.; license for junk and junk dealers, § 33-46 et seq.; license for private haulers of solid waste, § 34-61 et seq.; licensing of contractors for driveways and sidewalks, § 35-157; license for trimmers and traders of trees and shrubs, § 39-110 et seq.; business license for taxicabs, § 40-11 et seq. drivers license for taxicabs, § 40-21 et seq. **State law references:** Limitations and procedures for exercise of constitutional home rule power of taxation, K.S.A. 12-137.

Sec. 20-5. Issuance.

The city clerk shall issue all licenses, except when otherwise provided. All licenses shall bear the signature of the city clerk and the city seal.

(Ord. No. 94-9660, § 1, 10-24-94)

Sec. 20-6. Contents.

Licenses shall state the name of the licensee, the purpose for which the license is issued, the place where the trade, occupation, business or profession is to be carried on, if the license is for a specific location, the dates of the licensing period, the amount of the fee paid and any other such information as deemed appropriate by the city clerk.

(Ord. No. 94-9660, § 1, 10-24-94)

Sec. 20-7. Fees, due date.

(a) Annually. All license fees levied on an annual or multi-year basis shall be deemed to expire on December 31 provided that one partial year be deemed a complete year for this purpose. Alcohol business licenses, excluding cereal malt beverage licenses, are issued concurrently with the state license for a period of one (1) year.

(b) Weekly. All license fees levied on a weekly basis shall be valid for a consecutive seven-day period.

(c) Daily. All license fees levied on a daily basis shall be valid for one (1) calendar day, regardless of the time of issue.

(d) Any license, subsections (a) through (c) above, which expires on a weekend or holiday, must be renewed before the expiration date if the licensee wishes to engage in or carry on such trade, occupation, business or profession without interruption.

(e) If a licensee has continued to operate without renewing the license, neither a new license or a renewal license shall be issued until the licensee has paid all applicable license fees for the period of continued operation. Such license shall be dated to begin on the day following the expiration of the previous license.

(Ord. No. 94-9660, § 1, 10-24-94; Ord. No. 05-10270, § 1, 4-18-05)

Sec. 20-8. Licensing requirements, partial years.

Any person entering into a trade, occupation, business or profession for which an annual license is required and which shall expire on December 31, shall immediately apply, pay for and obtain a license subject to the following:

(1) If the date the application is made is prior to July 1, the full amount of the license fee shall be collected.

(2) If the date the application is made July 1 or after, and the amount of the annual license fee is in excess of sixty dollars ($60.00), then the applicant shall only be required to pay one-half (½) the fee established by this Code. If the fee is sixty dollars ($60.00) or less, the full fee shall be charged.

(Ord. No. 94-9660, § 1, 10-24-94)

Sec. 20-9. Recovery of fee by suit.

In addition to the criminal penalty, the city may recover in civil action, in any court of competent jurisdiction, the amount of the license fee prescribed in section 2-2.

(Ord. No. 94-9660, § 1, 10-24-94)

Sec. 20-10. License to be posted, exhibited.

Each license shall be posted in a conspicuous place where the trade, occupation, business or profession is carried on and the holder of such license shall immediately show such license to any authorized representative of the city when requested.

(Ord. No. 94-9660, § 1, 10-24-94)

Sec. 20-11. Regulated business subject to inspection.

All trades, occupations, businesses and professions licensed shall, if regulated, be open and subject to inspection at all reasonable times by authorized representatives of the city to ascertain that the persons conducting trades, occupations, businesses or professions are complying with all applicable regulations of the city or the health department.

(Ord. No. 94-9660, § 1, 10-24-94)

Sec. 20-12. Duty to carry, exhibit license.

Any licensed person, not having a permanent location, shall carry such license and shall present the license for inspection when requested to do so.

(Ord. No. 94-9660, § 1, 10-24-94)

Sec. 20-13. Transferability.

No license issued hereunder shall be transferable or assignable, unless specifically stated under the Code.

(Ord. No. 94-9660, § 1, 10-24-94)

Sec. 20-14. Refunds prohibited.

No refund for the unused period of a license shall be made.

(Ord. No. 94-9660, § 1, 10-24-94)

Sec. 20-15. Separate license required for each place of business.

A separate license shall be obtained for each place conducted, operated, maintained or carried on by each person engaged in any trade, occupation, business or profession for which a license is required.

(Ord. No. 94-9660, § 1, 10-24-94)

Sec. 20-16. Other regulations not affected.

This chapter shall not be construed so as to amend, modify or repeal any of the rules and regulations of the trades, occupations, businesses or professions otherwise provided for in this Code or other ordinances of the city and is meant to be supplementary only.

(Ord. No. 94-9660, § 1, 10-24-94)

Sec. 20-17. License not to authorize violation of law.

Nothing herein shall be construed as to permit any licensee licensed under the provisions of this Code to violate any law of the United States, the State of Kansas or any provision of this Code or ordinance of the city.

(Ord. No. 94-9660, § 1, 10-24-94)

Sec. 20-18. Compliance prerequisite to license.

Provisions of this Code and other ordinances regulating any trade, occupation, business or profession required to pay a license fee and secure a license under this Code shall be observed and complied with before any license is issued.

(Ord. No. 94-9660, § 1, 10-24-94)

Sec. 20-19. Forfeiture.

Where there are regulations by ordinance for any trade, occupation, business or profession, pursued, carried on or operated in the city, any failure by any licensed person to observe such regulations may result in the suspension or revocation of the license.

(Ord. No. 94-9660, § 1, 10-24-94)

Next page number is 305.

CHAPTER 21. MINORS[1]

Art. I. In General, §§ 21-1--21-15
Art. II. Curfew, §§ 21-16, 21-17

ARTICLE I. IN GENERAL

Secs. 21-1--21-15. Reserved.

ARTICLE II. CURFEW[2]

Sec. 21-16. Definitions.

When using this chapter, the following words and phrases shall have the meaning indicated:

(1) *Emergency* means an unforeseen combination of circumstances or the resulting state that calls for immediate action. The term includes, but is not limited to, a fire, natural disaster, automobile accident, or any situation requiring immediate action to prevent serious bodily injury or loss of life.

(2) *Child* or *Children* means any person/persons fifteen (15) or less years of age.

(3) *Parent*, when used in relation to a child, includes a guardian, conservator, and every person who is by law liable to maintain, care for, or support the child.

(4) *Public place* means any place to which the public or a substantial group of the public has access and includes, but is not limited to, streets, school grounds, shopping centers, parking lots, parks, playgrounds, transportation facilities, theatres, restaurants, shops, bowling alleys, taverns, cafes, arcades, and similar areas that are open to the use of the public. As a type of public place, a street is a way or place, of whatever nature, open to the use of the public as a matter of right for purposes of vehicular travel or in the case of a sidewalk thereof for pedestrian travel. "Street" includes that legal right-of-way, including, but not limited to, improved traffic lanes, the curb, the sidewalks, whether paved or unpaved, and any grassy area or other grounds found within the legal right-of-way of the street.

(Ord. No. 96-9749, § 1, 7-15-96)

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[1] **Cross references:** Streets, sidewalks and other public places, Ch. 35.

[2] **Editor's note:** Ord. No. 96-9749, Adopted July 15, 1996, repealed and replaced Art. II, §§21-16 and 21-17, with new provisions, set out herein as Art. II, §§ 21-16--21-20. Former Art. II pertained to similar subject matter as derived from the Code of 1966, §§ 23-149 and 23-150. **Cross references:** Employment of minors by retailers of alcoholic liquor, § 5-20; furnishing cereal malt beverages to minors, § 5-71; misrepresenting age to obtain cereal malt beverages, § 5-72;loitering by minors around cereal malt beverage premises, § 5-73; consumption of alcoholic beverages by minors at private clubs prohibited, § 5-124; age of players for billiards and pool tables, § 6-156; age of licensees, § 20-3; purchase by pawnbrokers and secondhand dealers from children, § 33-19.

Sec. 21-17. Curfew for children.

Pursuant to the city's home rule authority and in accordance with the policy statement set forth in Resolution Number 96-5032, any child is prohibited from being in or upon a public place within the city during the period beginning at 11:00 p.m. and ending at 6:00 a.m.

(Ord. No. 96-9749, § 1, 7-15-96)

Sec. 21-18. Exceptions.

The following shall constitute valid exceptions to the operation of the curfew for children:

(1) When a child is accompanied by a parent of the child.

(2) When a child is accompanied by an adult authorized by a parent of the child to take the parent's place in accompanying the child for a designated period of time and purpose within a specified area.

(3) When a child is upon an emergency errand directed by the child's parent.

(4) When a child is on the sidewalk or property where the child resides, or on either side of the street from the place where the child resides and the adult owner or resident of that property has given permission for the child to be there.

(5) When a child is going to, engaged in, or returning from, without stop or detour, a lawful employment facility.

(6) When a child is going to, attending, or returning from, without stop or detour, an official school, religious, or other recreational activity, supervised by adults and sponsored by the city, a civic, school, or religious organization or similar entity.

(Ord. No. 96-9749, § 1, 7-15-96)

Sec. 21-19. Process.

In accordance with the Kansas Code for Care of Children (K.S.A. 38-1501 et seq., and amendments thereto), a law enforcement officer observing a child engaged in activity prohibited by this chapter shall be deemed to have:

(1) Probable cause to believe that the child is a "child in need of care" as defined by K.S.A. 38-1502(a), and amendments thereto; and

(2) Reasonable grounds to believe that the circumstances of the child are such that continuing in the place in which the child has been found would be harmful to the child;

And may, therefore, take the child into custody pursuant to K.S.A. 38-1527, and amendments thereto, and either:

(1) Deliver the child to the custody of the child's parent or other guardian; or

(2) Transport the child to a designated location for the purpose of undergoing the juvenile intake and assessment process.

(Ord. No. 96-9749, § 1, 7-15-96)

Sec. 21-20. Severability.

If any provision of this chapter, including any exception, part, phrase, or term, or the application thereof to any person or circumstances is held invalid, the application to other persons or circumstances shall not be affected thereby and the validity of this chapter in any and all other respects shall not be affected.

(Ord. No. 96-9749, § 1, 7-15-96)

CHAPTER 22. MOBILE HOMES AND TRAILERS[1]

Art. I. In General, §§ 22-1--22-15
Art. II. General Regulations Applicable to all Existing and Future Mobile Homes and Mobile Home Owners, §§ 22-16--22-35
Art. III. New Parks or Park Expansions, §§ 22-36--22-50
Art. IV. Mobile Home Contractors and Craftsmen, §§ 22-51--22-80
Div. 1. Generally, §§ 22-51--22-70
Div. 2. Permits and Inspections, §§ 22-71--22-80

ARTICLE I. IN GENERAL

Sec. 22-1. Definitions.

The following words and phrases, when used in this chapter, shall have the meanings specifically ascribed to them:

(1) *Easement* means a vested or acquired right to use land, other than as a tenant, for a specified purpose.

(2) *Mobile home* means any movable structure designed for occupancy as a residence, office, business, etc., which was not or cannot be determined to have been built in accordance with the building code of the city. This definition excludes any movable structure which was designed for recreational purposes or not designed for permanent attachment to utilities.

(3) *Mobile home park or court* means an area, piece, parcel, tract, lot or plot of land which is licensed by the city, and which is used or intended for use or occupancy by one or more mobile homes. This term does not include sales lots on which unoccupied mobile homes, whether new or used, are located for the purposes of storage, inspection or sale.

(4) *Mobile home space (area unit)* means a plot of land within a mobile home park which can accommodate one mobile home and which provides the necessary utility services for water, sewerage and electricity.

(5) *Mobile home stand* means that part of an individual area which has been reserved for the replacement of the mobile home, appurtenant structures or additions.

(6) *Recreational space (open space)* means any area or space designed for joint use of tenants occupying mobile home parks.

(7) *Recreational vehicle* means a vehicular-type unit primarily designed as temporary living quarters for recreational, camping, or travel use, which either has its own motive power or is mounted on or drawn by another vehicle. The basic entities include: travel trailer, camping trailer, truck camper and motor home.

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[1]***Cross references:** Buildings and structural appurtenances, Ch. 8; housing, Ch. 18; planning, Ch. 29; public utilities, Ch. 31; solid waste, Ch. 34; streets, sidewalks and other public places, Ch. 35; subdivision regulations, Ch. 36; traffic and motor vehicles, Ch. 38; water and sewers, Ch. 41; zoning regulations, Ch. 42; MH manufactured home park district, § 42-216 et seq. **State law references:** Uniform standards code for manufactured homes and recreational vehicles, K.S.A. 75-1211 et seq.

(8) *Roadway* means a private street which affords a principal means of public access to properties or structures; same to be identified on the plan.

(Code 1966, § 21-1)
Cross references: Definitions and rules of construction generally, § 1-2.

Secs. 22-2--22-15. Reserved.

ARTICLE II. GENERAL REGULATIONS APPLICABLE TO ALL EXISTING AND FUTURE MOBILE HOMES AND MOBILE HOME OWNERS

Sec. 22-16. Location.

(a) It shall be unlawful for any person to maintain, use, occupy or lease a mobile home within the city outside of a licensed mobile home park or outside of an area zoned for that use by the ordinances of the city except as provided below.

(b) It shall be permissible hereunder for a bona fide guest of the householder to park a recreational vehicle in the rear yard of a dwelling for a period not to exceed fifteen (15) days; provided, that such recreational vehicle may be used only for sleeping purposes or temporary storage during such fifteen (15) day period and it does not constitute a hazard or a nuisance.

(Code 1966, § 21-12)

Sec. 22-17. Placement.

(a) Except as herein provided any mobile home used as a residence shall be placed on mobile home stands and tied down and blocked as designated by K.S.A. 75-1226 through 75-1232.

(b) Mobile homes in parks existing prior to May 3, 1976 shall not be permitted to park closer than five (5) feet to the side line of its area unit, nor shall it be so parked that it is closer than ten (10) feet to any other mobile home or any other building located in the mobile home court.

(c) All mobile homes in new parks or park expansions shall be located so as to maintain a clearance of not less than twenty (20) feet from another mobile home or appurtenance thereto, except when placed end-to-end there shall be a minimum separation of twelve (12) feet. No mobile home shall be located closer than twenty-five (25) feet from any building within the park, other than accessory buildings located on the same space.

(Code 1966, § 21-13)
Cross references: Bulk regulations for mobile homes, § 42-221.

Sec. 22-18. Alteration of systems.

All alterations of internal mechanical systems (electric, gas and plumbing) shall comply with the applicable sections of this Code.

(Code 1966, § 21-14)

Sec. 22-19. Environmental standards.

(a) *Drainage.* Every park or portion thereof to be constructed under the provisions of this chapter shall provide for the following in the manner herein specified:

(1) All land proposed for mobile home parks shall be protected against flooding.

(2) All such parks shall be drained and shall be located in areas free from swamps or standing pools of water.

(3) The ground surface in all parts of every park shall be graded and equipped to drain all surface water.

(b) *Nuisances.* All parks shall be maintained free of public nuisances.

(Code 1966, § 21-15)

Sec. 22-20. Storm protection.

Storm shelters. In each new park or in park expansions of ten (10) units or more, accumulated from the date of this chapter, properly ventilated and constructed storm shelters shall be provided in a central or other convenient location at a rate of eighteen (18) square feet of shelter space for each newly constructed mobile home space. Storm shelters shall be built in accordance with the building codes of the city.

(Code 1966, § 21-16)

Sec. 22-21. Responsibilities.

(a) *Responsibilities of mobile home park owner.* The mobile home park owner shall be responsible for the acts of any of his agents, servants, employees, or representatives. It shall be the responsibility of the mobile home park owner to:

(1) See that each unit is properly located and secured in conformance with this chapter;

(2) See that initial connections of each mobile home to gas, liquefied petroleum, electricity, water and sewerage systems are performed by a licensed craftsman, i.e., electrician, plumber, gas fitter, or mobile home craftsman, in accordance with this Code;

(3) Provide each mobile home space with a minimum of one hundred (100) amperes service (two (2) fifty (50) amperes mains within the park service supply) and outlets to provide two hundred twenty (220) volts, to all mobile homes equipped for such service;

(4) Keep a register containing a record of all mobile homes, owners if not owner occupied, and tenants located within each park. The register shall contain the name and address of each known occupant; the apparent make, model, year and manufacturer of each mobile home; and the dates of arrival and departure of each mobile home. The person operating each park shall keep the register available for inspection at all reasonable hours by law enforcement officers, assessors and other officials whose duties necessitate acquisition of such information. The original records of the register shall not be destroyed for a period of one year following the date of registration;

(5) Keep a map of the park outlining the address, number and location of each mobile home. A copy of the map shall be furnished to the emergency preparedness office;

(6) Provide for the storage, collection and disposal of refuse and garbage so as not to create a health hazard, rodent harborage, insect breeding area, accident or fire hazard, or unsightly condition.

a. All refuse and garbage shall be stored in flytight, watertight, rodent-proof containers. Containers shall be provided in sufficient number and capacity to properly store all refuse and garbage.

b. Racks or holders shall be provided for all refuse and garbage containers. Such container racks or holders shall be so designed as to prevent containers from being tipped, to minimize spillage and container deterioration, and to facilitate cleaning around them.

c. All refuse and garbage shall be collected at least once weekly by a licensed private refuse hauler.

(7) Obtain the required licenses;

(8) Obtain all building permits for accessory buildings or structures; and

(9) Insure that all new mobile home installations and lots upon which they are located are inspected at time of installation by the building official.

(b) *Responsibility of the mobile home owner.* It shall be the responsibility of the mobile home owner to:

(1) Acquire permits before altering and connecting any structural, electrical, gas, mechanical, or sanitary systems within the mobile home;

(2) Supply power to the mobile home through the use of a feeder assembly consisting of not more than three (3) mobile home power-supply cords, each rated fifty (50) amperes, or a permanently installed circuit;

Exception: A mobile home that is factory-equipped with gas or oil-fired central heating equipment and cooking appliances shall be permitted to be provided with a mobile home power-supply cord rated forty (40) amperes.

(3) The overall length of a power-supply cord, measured from the end of the cord to the face of the attachment shall not exceed thirty-six and one-half (36 1/2) feet. Cords with adapters and pigtail ends, splices, extension cords, and similar items will not be permitted; and

(4) Skirt the mobile home with a solid and wind-resistant material to be approved by the mobile home park owner. Skirting shall enclose the total open area under the mobile home.

(Code 1966, § 21-17)

Sec. 22-22. Licensing.

(a) *License required.* It shall be unlawful for any person to maintain or operate within the corporate limits of the city, any mobile home park unless such person shall first obtain a license therefor as hereinafter provided.

(b) *Requirements for issuance.* The city clerk shall issue a license for the operation of a mobile home court when presented with:

(1) Written application by the owner or lessee of such mobile home court on forms supplied by the city clerk;

(2) The receipt of the city treasurer for the proper fees, as hereinafter provided;

(3) Proof that the proposed park is zoned correctly or is an existing nonconforming use;

(4) Certification by the building official that the park complies with all applicable sections of this Code.

(c) *License fees.* A license fee as prescribed in section 2-2 shall be paid upon approval of the application for licensing (relicensing).

(d) Revocation:

(1) If, at any time, it is determined by the city that the mobile home park does not conform to the applicable sections of this Code, the mobile home park owner shall be given sixty (60) days to bring the park into compliance.

(2) If the owner fails to comply with the applicable sections of this Code, his license shall be revoked and it shall be unlawful for him to operate a mobile home park or collect rent from any tenant of such park after the date the license was revoked.

(3) Mobile home park residents shall be given sixty (60) days to relocate their mobile homes from the unlicensed park.

(4) Additional sixty (60) day extensions may be granted by the building official in cases of undue hardship and where a bona fide effort by such mobile home park licensee to comply with this Code is made.

(Code 1966, § 21-18)
Cross references: Licenses generally, Ch. 20.

Sec. 22-23. Park service distribution systems.

(a) *Gas distribution system.* The gas distribution system in the mobile home park shall meet all the requirements of this Code. When liquefied petroleum gas is used, the provisions of the "Rules and Regulations Relating to the Liquefied Petroleum Gas Industry of the State of Kansas" as adopted by this Code shall apply.

(1) Gas service systems shall be inspected by the building official prior to release of service.

(2) Connection of a gas line to the mobile home shall be by a flexible connector bearing the seal of the American Gas Association.

(3) An iron-bodied, brass core cock with provisions for locking in closed position shall be installed on the riser as close as practicable to the point of emergence from the ground, and the riser shall be protected by a solid post set in the ground adjacent to the riser pipe.

(4) An approved automatic gas safety regulation device shall be installed in the service line or an automatic shut-off with plastic nipple shall be installed directly above the core cock.

(5) Gas meters shall be removed upon discontinuance of service by gas service company. Slugging of meters is prohibited.

(b) *Park water distribution systems.* The water distribution system in the mobile home park shall meet all the requirements of this Code and the state board of health. The size and location of all water mains shall be approved by the city engineer.

(c) *Electrical distribution system.* The electrical distribution system in the mobile home park shall meet all the requirements of this Code.

(1) Electrical service systems shall be inspected by the building official prior to release of service.

(2) A minimum of one hundred (100) amperes service will be required at each new mobile home stand (two (2) fifty (50) amperes mains within the park service panel).

(3) No splices shall be allowed in any mobile home power supply cord.

(4) Electrical meters shall be removed upon discontinuance of service by electrical service company. Slugging of meters is prohibited.

(d) *Sanitary sewer system.* Individual sewer connections shall be provided for each mobile home space in the park and shall meet all the requirements of this Code and the state board of health. The size and location of all sewer mains shall be approved by the city engineer.

(e) *Fire protection.* Within each mobile home park there shall be provided a fire protection system approved by the fire chief in accordance with the Mobile Home Park Fire Safety Code of the National Fire Protection Association (NFPA).

(Code 1966, § 21-19; Ord. No. 02-10087, § 1, 7-8-02)

Secs. 22-24--22-35. Reserved.

ARTICLE III. NEW PARKS OR PARK EXPANSIONS

Sec. 22-36. Development requirements.

(a) *Compliance with zoning.* Nothing in this chapter shall be construed as authorizing a mobile home park in any part of the city contrary to the zoning regulations.

(b) *Size, marking, parking, drainage and recreational areas for mobile home spaces.* Each mobile home space shall contain a minimum area of four thousand five hundred (4,500) square feet, plus five hundred (500) square feet for recreational or open area, clearly defined by appropriate markers with space provided for off-street parking for two (2) automobiles and shall be located on a well-drained site, properly graded to insure rapid drainage and freedom from stagnant pools of water. Each space shall be at least forty (40) feet wide and one hundred (100) feet in depth, except in the case of corner lots which shall provide a minimum width of forty-five (45) feet. The recreational or open area may be included in each mobile home space or may be developed separately. Separate recreational or open areas shall not be less than three thousand five hundred (3,500) square feet and required setbacks, roadways, rights-of-way, and off-street parking spaces shall not be considered as recreational or open areas.

(c) *Proximity of mobile home to lot line, other mobile homes, buildings.* All mobile homes shall be located so as to maintain a clearance of not less than twenty (20) feet from another mobile home or appurtenances thereto, except when placed end-to-end there shall be minimum separation of twelve (12) feet. No mobile home shall be located closer than twenty-five (25) feet from any building within the park, other than accessory buildings located on the same space.

(Code 1966, § 21-30)

Sec. 22-37. Park plan.

Any person hereafter desiring to develop or enlarge a mobile home park shall submit a plan in conformance with the zoning regulations.

(Code 1966, § 21-31)

Sec. 22-38. Construction standards.

(a) *Public streets.* All dedicated public streets within the environs of the park shall be constructed in accordance with the city engineering street development and pavement standards prior to placement of mobile homes on stands.

(b) Roadways (private streets):

(1) Generally layout:

a. Roadways used as public ways shall be provided on the site where necessary to furnish principal trafficways for convenient access to the mobile home stands, or drives or other facilities in the park.

b. They shall be designed to permit connection with existing facilities where necessary for the proper functioning of the drainage and utility systems.

c. They shall be designed for the convenient movement of traffic. Dead-end streets shall be provided with adequate surfaced turning space, a minimum of sixty (60) feet in diameter with no parking, and eighty (80) feet in diameter with parking. The maximum length of a dead-end street shall be six hundred (600) feet.

(2) Intersections generally shall be at right angles and at no point intersect at an angle less than sixty (60) degrees. Intersections of more than two (2) streets at one point shall be avoided.

(3) *Width of roadways.* All improved roadways will be surfaced a minimum of twenty-four (24) feet in width without parking and thirty-two (32) feet in width with parking.

(4) *Surfacing.* All streets, roadways, and parking lanes within the area of the park included in the plan are required to be surfaced with asphalt, concrete, rock, or suitable substitute prior to placement of mobile homes on abutting stands.

(c) *Fire protection.* The fire chief shall designate certain streets or roadways within the park as fire lanes.

(d) *Lighting.* All interior streets and walkways shall be lighted by not less than three-tenths (0.3) footcandles of artificial light.

(e) *Mobile home service lines.* Within each mobile home park all utility lines, from the mobile home to source, including those for electricity and telephone, shall be underground.

(f) Mobile home stand:

(1) Construction:

a. *Flexibl e surface:* A minimum of five (5) inches thick gravel, stone or compacted surface treated to discourage plant growth; or

b. *Hard surface:* A minimum of eighteen (18) inches wide concrete ribbons or slabs capable of carrying the weight of the mobile home.

(g) *Addresses shall be posted.* Each approved mobile home stand will be assigned an address by the city engineering department if the plan is approved. The assigned address shall be posted so as to publicly identify the address of the unit to which the address is assigned.

(Code 1966, § 21-32)

Secs. 22-39--22-50. Reserved.

ARTICLE IV. MOBILE HOME CONTRACTORS AND CRAFTSMEN

DIVISION 1. GENERALLY

Sec. 22-51. License required.

(a) It shall be unlawful for any person to engage in the business of electrical, mechanical or plumbing contracting in or on mobile homes without first having secured a mobile home contractor license.

(b) It shall further be unlawful for any person to engage in the trade or otherwise perform the act of installing, repairing or altering electrical wiring for light, heat or power, and all other electrical equipment, appliances and devices, air conditioning, heating equipment, or plumbing in or on a mobile home within the city without first having secured a master mobile home craftsman license and be in the employ of a licensed mobile home contractor. The following exceptions shall be allowed:

(1) Persons having a journeyman mobile home craftsman license as provided for herein, shall be permitted to work when they are in the employ of a licensed mobile home contractor, and he is under the supervision or direction of a licensed master mobile home craftsman.

(2) A person having an apprentice mobile home craftsman license, as provided for herein, shall be permitted to work when accompanied by and under the supervision or direction of a master mobile home craftsman.

(c) Nothing in this article shall prohibit an electrician, plumber, or gas fitter from performing the services for which he is licensed under this Code in or on a mobile home.

(Code 1966, § 9-411)
Cross references: Licenses generally, Ch. 20.

Sec. 22-52. Application for craftsman; examination; fees generally; expiration of licenses.

(a) Applications for examination for a master mobile home craftsman license, a journeyman mobile home craftsman license, or an apprentice mobile home craftsman license shall be made to the building official. The building official shall examine the applicant, shall consider applicant's experience, training and other qualifications, and if found satisfactory, the building official shall authorize the city clerk to issue the license for which application was made. The minimum qualifications shall be the same as are hereinafter set out. At least one-half (1/2) of the examination shall be written.

(b) Fees under this section shall be as prescribed in section 2-2.

(c) Licenses shall expire on the thirty-first day of December of the third year regardless of when the license was secured. Any applicant that does not renew by January 31 must submit a new application and the applicant must prove himself qualified before a license may be issued.

(Code 1966, § 9-412; Ord. No. 9281, § 8, 10-17-88; Ord. No. 01-10064, § 2, 11-19-01)

Sec. 22-53. Contractor's application.

Applications for a mobile home contractor's license shall be made to the city clerk. The building official shall examine the applications and, if found satisfactory, shall authorize the city clerk to issue the license for which the application was made.

(Code 1966, § 9-413; Ord. No. 88-9281, § 9, 10-17-88)

Sec. 22-54. Craftsman classes established.

There are hereby established the following classes of mobile home craftsmen:

(1) *Master mobile home craftsman.* A master mobile home craftsman shall certify at least five (5) years of practical experience in the field of mobile home repair. Such experience shall include plumbing, gas, electrical, mechanical, and structural installation, repair or alteration to mobile homes. Graduation from an approved trade school or a combination of training and experience may qualify an individual to take an examination for a license.

(2) *Journeyman mobile home craftsman.* A journeyman mobile home craftsman is any person earning a livelihood as a mobile home craftsman, but who has not acquired the necessary longevity of experience to qualify as a master mobile home craftsman, but shall certify at least three (3) years of practical experience in the field of mobile home repair. Such experience shall include plumbing, gas, electrical, mechanical and structural installation, repair or alteration to mobile homes. Graduation from an approved trade school or a combination of training and experience may qualify an individual to take an examination for a license.

(3) *Apprentice mobile home craftsman.* An apprentice mobile home craftsman is any person earning a livelihood as a mobile home craftsman, but who has not acquired the necessary longevity or experience to qualify as a journeyman mobile home craftsman. Except by special written permission and consent issued by the building official, an apprentice mobile home craftsman shall not work except under the immediate supervision and direction and in the presence of a licensed master mobile home craftsman, properly licensed by the city. No person who has had their license revoked for cause shall be allowed to work as an apprentice mobile home craftsman without the expressed consent of the building official. A person shall be qualified to take an examination for a license if in the employ of a master mobile home craftsman.

(Code 1966, § 9-414; Ord. No. 88-9281, § 10, 10-17-88)

Sec. 22-55. Mobile home craftsman board of examiners created; membership.

(a) There is hereby created a mobile home craftsman board of examiners to consist of three (3) persons, all of whom will be appointed by the mayor with the approval of the board of commissioners and one of whom will be designated to pass upon the qualifications, as elsewhere set forth in this article, of all persons engaged in the repair, installation or alteration of mobile homes or their components.

(b) The membership of a board shall consist of the city plumbing and gas inspector, the city electrical inspector, and a licensed master mobile home craftsman. Members shall be appointed for a term of one year.

(Code 1966, § 9-415)
Cross references: Administration, Ch. 2; boards and commissions generally, § 2-136 et seq.

Sec. 22-56. Board to hold meetings.

It shall be the duty of the members of the mobile home craftsman board of examiners, under such rules and regulations as they shall prescribe, to hold meetings as necessary, on days to be announced by the mobile home craftsman board of examiners, for the purpose of passing upon the qualifications of parties desiring licenses to perform the duties of mobile home craftsman.

(Code 1966, § 9-416)

Sec. 22-57. Examinations; scope.

It shall be the duty of the building official to conduct examinations of applicants for mobile home craftsman licenses. Examinations shall consist of questions, problems and demonstrations designed to show the extent of the applicant's knowledge concerning the detailed provisions of this article and the applicable city codes, the practical experience in this type of work which the applicant has had and the degree of proficiency the applicant has attained. The examination shall be given on the basis of the current code at the time which the examination is given. At least one-half of the examination shall be written.

(Code 1966, § 9-417; Ord. No. 88-9281, § 11, 10-17-88)

Sec. 22-58. Issuance of license.

(a) After certification by the building official, licenses may be issued by the city clerk. Upon issuance of a license, the holder thereof shall be authorized to perform repairs to mobile homes including, without limitation, mechanical and structural repairs and to make installations, alterations and repairs to the electrical, plumbing and gas systems located within the mobile home and to make the normal exterior connections of existing mobile home park systems, if the connection may be made at the mobile home space.

(b) The holder of this license shall not be authorized to install or repair any part of the mobile home park electrical, plumbing or gas systems.

(Code 1966, § 9-418; Ord. No. 88-9281, § 12, 10-17-88)

Sec. 22-59. Suspension or revocation of license.

Any mobile home craftsman's license may be suspended for a definite length of time or revoked outright by the building codes advisory and appeals board for good and sufficient cause. Such decisions are subject to written appeal to the board of commissioners and such appeals shall be filed in writing with the building codes advisory and appeals board within ten (10) days after the decision has been rendered. Any and all such appeals arising from such rulings of the building codes advisory and appeals board shall be expedited and completed not later than thirty (30) days after an appeal has been filed.

(Code 1966, § 9-429; Ord. No. 88-9281, § 13, 10-17-88)

Sec. 22-60. Insurance required.

Each licensee shall procure and maintain in full force, for the duration of the license, public liability insurance, with limits of not less than the maximum liability for claims which could be asserted against the city, for any number of claims arising out of a single occurrence or accident under the Kansas Tort Claims Act, as amended (currently five hundred thousand dollars ($500,000.00)). Each registrant shall also procure and maintain in full force, for the duration of the registration, Workman's Compensation Insurance as required by the State of Kansas. Proof of coverage for all required insurance policies shall be on file with the city at all times. Each insurance policy shall contain a clause to the effect that the policy shall not at any time during the registration period be canceled or reduced, restricted or limited, unless the city clerk's office is given ten (10) days written notice.

(Code 1966, § 9-429; Ord. No. 01-10064, § 2, 11-19-01)

Sec. 22-61. Reserved.

Editor's note: Ord. No. 02-10086, § 1, adopted June 17, 2002, repealed § 22-61 in its entirety. Formerly said section pertained to bond required and derived from Code 1966, § 9-429.

Sec. 22-62. Contractor required to employ master mobile home craftsman.

It shall be required of the holder of a mobile home contractor's license, as a condition of the issuance thereof, that he shall employ a licensed master mobile home craftsman at all times while such license shall be in effect.

(Code 1966, § 9-431)

Sec. 22-63. Nonresident mobile home craftsman.

A nonresident mobile home craftsman is a person holding a valid license for other than the City of Salina. Such craftsman shall be honored provided that the issuing city shall have entered into an agreement with the City of Salina, granting reciprocal privileges to the holders of valid Salina mobile home craftsman licenses, and further provided that the issuing city shall conduct examinations to determine the qualifications of its licensee. Such qualifications shall be parallel with those of the City of Salina. Any decision as to doubtful qualifications of a licensee shall be determined by the building official. Nothing in this section shall exempt the nonresident mobile home craftsman from obtaining the proper licenses or permits from the City of Salina.

(Code 1966, § 9-424; Ord. No. 88-9281, § 14, 10-17-88)

Secs. 22-64--22-70. Reserved.

DIVISION 2. PERMITS AND INSPECTIONS

Sec. 22-71. Permit required.

No mobile home contractor or craftsman shall perform any installation or repair to any mobile home without first obtaining a permit from the building official.

(Code 1966, § 9-420)

Sec. 22-72. When permit not required.

This article shall not be construed to mean that a permit shall be required before replacing minor defective devices. The installation on new appliances requires a permit in every case. Any direct connection to the gas, water, or electrical supply lines will require a permit in every case.

(Code 1966, § 9-421)

Sec. 22-73. Record of permits required.

A complete record shall be kept by the building official of all permits issued.

(Code 1966, § 9-422)

Sec. 22-74. Permit fee established.

The permit fee for the moving in and connection to the gas, water or electrical mains for mobile homes shall be as prescribed in section 2-2. For permits covered under the electrical or plumbing section of this Code the established fee schedule will apply.

(Code 1966, § 9-423)

Sec. 22-75. Payment of fee; failure to pay.

All permit fees shall be due and payable to the city clerk, not later than the tenth of the month following the month in which the permit was issued. Failure of any mobile home contractor or craftsman to remit payment of permit fees by the specified date will be a violation of this article, and shall constitute sufficient grounds for revocation of the mobile home contractor or craftsman license.

(Code 1966, § 9-424)

Sec. 22-76. Building official to inspect.

It shall be the duty of the building official to inspect, or cause to be inspected, any work for which permits are required by this article.

(Code 1966, § 9-425)

Sec. 22-77. Inspection, approval required.

Any work performed under this article will require inspection and approval by the building official.

(Code 1966, § 9-426)

Sec. 22-78. Concealing work before inspection.

No mobile home craftsman shall conceal, or cause to be concealed, work performed under this article prior to inspection and approval.

(Code 1966, § 9-427)

Sec. 22-79. Certificate of approval required before setting meters or connection.

Prior to supplying electrical current, gas, or water to a newly parked mobile home or a mobile home which has been temporarily disconnected therefrom, a certificate of approval must be issued by the building official.

(Code 1966, § 9-428)

Sec. 22-80. Calls for inspection.

Only mobile home contractors or master mobile home craftsman shall be allowed to contact the building official and request inspection and approval of any work done under this article.

(Code 1966, § 9-432)

CHAPTER 23. MUNICIPAL COURT[1]

Art. I. In General, §§ 23-1--23-15
Art. II. Bail Bond Agents and Companies, §§ 23-16--23-37
Div. 1. Generally, §§ 23-16--23-19
Div. 2. Licenses, §§ 23-20--23-37

ARTICLE I. IN GENERAL

Sec. 23-1. Creation.

There is hereby created the municipal court which is created pursuant to and governed by the provisions of K.S.A. Chapter 12, Articles 41 through 47, inclusive.

(Ord. No. 97-9824, § 1, 8-25-97)

Secs. 23-2--23-15. Reserved.

ARTICLE II. BAIL BOND AGENTS AND COMPANIES

DIVISION 1. GENERALLY

Sec. 23-16. Definitions.

The following word, terms or phrases, as used in this article, shall have the following meanings:

Bail bond agent. A person who acts in writing bonds on behalf of a bail bond company.

Bail bond company. Any person or firm, other than an insurance company, who issues bail bonds for compensation.

Crime. A crime is an act or omission defined by law and for which, upon conviction, a sentence of death, imprisonment or fine, or both imprisonment and fine is authorized, or in the case of a traffic infraction, a fine is authorized. Crimes are classified as felonies, misdemeanors and traffic infractions.

Insurance agent. Any person licensed by the Kansas State Insurance Commissioner to write surety bonds in the State of Kansas and who represents an authorized insurance company.

Insurance company. A company authorized by the Kansas State Insurance Commissioner to write surety bonds.

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[1] **Editor's note:** Section 3 of Ord. No. 97-9824, adopted Aug. 25, 1997, repealed §§ 23-1, 23-16--23-32, pertaining to similar subject matter as derived from § 1 of Ord. No. 95-9698, adopted Aug. 7, 1995 and § 1 of Ord. No. 96-9732, adopted April 22, 1996. Section 1 of Ord. No. 97-9824, added §§ 23-1, 23-16--23-37 to read as herein set out. **Case law annotation**--Act creating city courts (Laws 1923, Ch. 132., as amended by Laws 1927, Ch. 179) upheld against several attacks of unconstitutionality. State v. Smith, 130 Kan. 228, 285 P. 542 (1930) **Cross references:** Administration, Ch. 2; police, Ch. 30; municipal court costs and fees, App. A, Charter Ord. No. 18. **State law references:** Code of procedure for municipal courts, K.S.A. 12-4101 et seq.

Licensee. Any licensed bail bond agent or bail bond company.

Person. A firm, partnership, association of persons, corporation, organization or any other group acting as a unit, as well as an individual.

(Ord. No. 97-9824, § 1, 8-25-97; Ord. No. 03-10152, § 1, 7-7-03)

Sec. 23-17. Entering, loitering, soliciting business at the police department, Saline County jail, municipal court or district court.

It shall be unlawful for any person, whether acting on the person's own behalf or through an agent or representative:

(1) To enter the police department, Saline County jail, municipal court or for the purpose of obtaining employment as a bail bond agent without having been called by a person in custody or some other person acting on behalf of the person in custody.

(2) To loiter in the police department, Saline County jail, municipal court or district court. Such licensee shall conduct business as quickly as possible and leave the premises immediately upon completion.

(3) To personally or otherwise solicit or refer business in, at or near the police department, Saline County jail, municipal court or district court.

(Ord. No. 97-9824, § 1, 8-25-97; Ord. No. 03-10152, § 1, 7-7-03)

Sec. 23-18. Attorney referral.

It shall be unlawful for any licensee:

(1) To recommend, directly or indirectly, any lawyer to a client for whom a bond has been executed.

(2) To refuse to issue a bail bond unless a particular attorney is retained.

(3) To offer any legal advice to a client, predict the outcome of a case to a client, or advise a client to appeal a decision of the court.

(4) To speak with an attorney on behalf of a client.

(Ord. No. 97-9824, § 1, 8-25-97; Ord. No. 03-10152, § 1, 7-7-03)

Sec. 23-19. Referral of bail bond business for compensation prohibited.

It shall be unlawful for any licensee to directly or indirectly give or promise to give any compensation to secure, send or refer bail bond business to the licensee, unless such person is licensed as an agent of the licensee.

(Ord. No. 97-9824, § 1, 8-25-97)

DIVISION 2. LICENSES[2]

Sec. 23-20. Bail bond company license; required.

It shall be unlawful for any person, other than an insurance company authorized to do business by the Kansas State Insurance Commissioner, to demand or receive compensation for providing surety on any bail bond, recognizance bond, appeal bond or other court bond unless such person is licensed as a bail bond company as provided by this article.

(Ord. No. 97-9824, § 1, 8-25-97; Ord. No. 03-10152, § 1, 7-7-03)

Sec. 23-21. Same--Application.

Any person desiring to secure a license for a bail bond company shall file with the city clerk an application provided by the city clerk. Such application shall contain the following information and any other information deemed necessary by the city clerk:

(1) The business name, address, phone number and type of business entity.

(2) The name, home address, home phone number and date of birth for each owner.

(3) A statement from each owner listing any criminal conviction, including traffic infractions within five (5) years of the application date

(4) A statement from each owner listing any pending criminal charge, including traffic infractions.

(5) A statement from each owner listing any criminal conviction for which they are currently on diversion, probation or parole.

(6) A statement from each owner listing any unsatisfied forfeiture or judgment thereon entered on any bail bond written by the owner or the firm in any court.

(7) A ten thousand dollar ($10,000.00) irrevocable letter of credit as provided in sections 23-22.

(Ord. No. 97-9824, § 1, 8-25-97; Ord. No. 03-10152, § 1, 7-7-03)

Sec. 23-22. Bail bond company license; Irrevocable letter of credit.

(a) The applicant shall use as security for issuing bail bonds a bank issued irrevocable letter of credit in a form approved by the city clerk, with the following minimum requirements:

(1) Shall show the City of Salina only as beneficiary.

(2) Shall have a minimum value of ten thousand dollars ($10,000.00).

(3) Shall expire no sooner than March 31 following the licensing period.

(4) Shall contain provisions that the lending agency must give the city clerk thirty (30) days notice prior to cancellation.

(5) Shall contain provisions allowing the City of Salina to collect on any open bonds the licensee may have should the letter of credit not be renewed, as outlined in subsection (c) below.

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[2] Cross references: Licenses, Ch. 20

(b) If the city must make demand upon the letter of credit such that the amount secured by the letter falls below ten thousand dollars ($10,000.00), the licensee shall have to provide to the city clerk written evidence from the issuing bank that credit of a minimum value of ten thousand dollars ($10,000.00) has been restored. Until such time that the letter of credit is restored, the bail bonding company shall be removed from the bonding list and unable to write any new bonds.

(c) If the applicant has any open bonds and fails to renew the letter of credit, whether or not the applicant is still operating as a bail bonding company, the city shall, no sooner than one week prior to the expiration of the letter of credit, collect on the letter of credit for the amount of the open bonds and hold the funds as a cash bond. Any funds not needed to pay forfeitures will be returned to the bonding company once the bonding company has been released from any liability. Should a company no longer desire to operate as a bail bonding company and not wish to revoke any open bonds or have the city collect on the letter of credit, a letter of credit may be given for the amount of the bonds still open. Such reduced amount letter of credit shall not expire for a minimum of three (3) months. Should there still be open bonds upon its expiration, the same procedures as outlined above will be followed.

(Ord. No. 97-9824, § 1, 8-25-97; Ord. No. 99-9946, § 1, 9-20-99; Ord. No. 03-10152, § 1, 7-7-03)

Sec. 23-23. Bail bond agent license; required.

It shall be unlawful for any person who acts in writing bonds as an employee or owner of a bail bond company to do so unless licensed as a bail bond agent as provided by this article.

(Ord. No. 97-9824, § 1, 8-25-97; Ord. No. 03-10152, § 1, 7-7-03)

Sec. 23-24. Same--Application.

Any person desiring to secure a license as a bail bond agent shall file, with the city clerk, an application provided by the city clerk. Such application shall contain the following information and any other information deemed necessary by the city clerk:

(1) The name, home address and home phone number of the applicant.

(2) The applicant's date of birth.

(3) A statement listing any criminal convictions, including traffic infractions, within five (5) years of the application date.

(4) A statement listing any pending criminal charge including traffic infractions.

(5) A statement from each owner listing any criminal conviction for which they are currently on diversion, probation or parole.

(6) Name, address and phone number of the bail bond company where the agent will be employed.

(Ord. No. 97-9824, § 1, 8-25-97; Ord. No. 03-10152, § 1, 7-7-03)

Sec. 23-25. Examination of application, investigation, report on criminal record of applicant, approval, issuance, appeal of denial.

(a) If the application for a license is in proper form and accompanied by the license fee as prescribed in section 2-2, the police chief, city prosecutor and the city clerk, or their representatives, shall cause an investigation to be made of the facts set forth in the application and of the record of such applicant in the municipal court and the district court of the county, and any other courts in which the chief of police may have reason to believe the applicant has a record.

(b) No license shall be issued to:

(1) A person who, within five (5) years prior to the date of the application, has been convicted of a felony.

(2) A person who shall have any unsatisfied forfeiture or judgment thereon entered on any bail bond in any court.

(3) A person unless the face value of its letter of credit payable to the city equals a minimum of ten thousand dollars ($10,000.00).

(4) A person, unless all the owners shall be qualified to obtain a license.

(c) If an applicant:

(1) is currently on diversion, probation or parole for any criminal offense other than a traffic infraction;

(2) has criminal charges other than a traffic infraction pending in any court;

(3) within the last five (5) years has been convicted for a criminal offense other than a traffic infraction; or

(4) has previously had bail bond company or bail bond agent license revoked; then

(d) The city manager shall consider the application for a license, the report and recommendation, and any other relevant information received concerning the applicant. If satisfied with the application, the city manager may approve the application.

(e) If the application is approved, the city clerk shall issue a license to the applicant. If the application for the license is denied, the license fee shall be returned.

(f) Any denial of the application by the city manager may be appealed to the governing body by filing a notice of appeal with the city clerk in accordance with Section 23-33.

(Ord. No. 97-9824, § 1, 8-25-97; Ord. No. 03-10152, § 1, 7-7-03)

Sec. 23-26. Fingerprinting.

All applicants for bail bond company or agent licenses shall be fingerprinted. The cost of the fingerprinting is the responsibility of the applicant.

(Ord. No. 97-9824, § 1, 8-25-97; Ord. No. 03-10152, § 1, 7-7-03)

Sec. 23-27. Photo-identification badge.

Upon the issuance of a bail bond agent license, the city clerk shall issue a photo-identification badge to the licensee, which shall be worn by the licensee in such a way as to be conspicuous at all times when the licensee is acting as a bail bond agent. The licensee shall return the badge to the city clerk upon the expiration or revocation of the license.

(Ord. No. 97-9824, § 1, 8-25-97; Ord. No. 03-10152, § 1, 7-7-03)

Sec. 23-28. Notification of certain events.

All licensees under this article shall be required to immediately report to the city clerk:

(1) Any criminal charge, including traffic infractions filed against the licensee.

(2) Any criminal conviction, including traffic infractions against the licensee.

(3) Any unsatisfied forfeiture or judgment thereon entered on any bail bond in any court.

The city clerk shall administratively develop a system whereby the Salina Municipal Court and the Saline County District Court shall be advised of any information reported under this section.

(Ord. No. 97-9824, § 1, 8-25-97; Ord. No. 03-10152, § 1, 7-7-03)

Sec. 23-29. Judicial suspension or restriction.

Pending a formal hearing and final determination by the city manager, the municipal judge shall have the authority to temporarily suspend or restrict the authority of any licensee under this article from issuing any bond if the municipal judge determines that continued exercise of licensee's authority adversely impacts the effective administration of the court. No judgment shall be rendered regarding the temporary suspension or restriction of the bonding authority of a licensee without first providing an opportunity for the licensee to be heard by the municipal judge. Immediately following a judgment, both the city manager and the licensee shall be provided written notification of the specific judgment, findings supporting the judgment and the municipal judge's recommendation for further action.

(Ord. No. 97-9824, § 1, 8-25-97; Ord. No. 03-10152, § 1, 7-7-03)

Sec. 23-30. Administrative suspension or revocation, notice, hearing, decision, appeal.

(a) Any license issued under this article may be suspended, restricted or revoked by the city manager, after notice and hearing, for any of the following reasons:

(1) If the licensee fraudulently obtained the license by giving false information in the application.

(2) If the licensee has violated any of the terms of this article.

(3) If the licensee has become ineligible to obtain a license under the provisions of this article.

(4) If the licensee fails to make a timely report to the city clerk as required by section 23-28.

(5) If the licensee charges fees in excess of the maximum fee in the fee schedule provided by the licensee in section 23-34(b).

(6) If a judgment entered in Salina Municipal Court on a bond involving a licensee is unpaid.

(7) If a licensee fails to restore the required letter of credit as provided in section 23-22.

(8) If the municipal judge determines that continued exercise of licensee's authority adversely impacts the effective administration of the court.

(b) The city manager may immediately suspend, restrict, or revoke any license, pending a restriction, suspension or revocation hearing if the public safety or welfare is best served by such action, or if the licensee has repeatedly failed to properly serve the public interest in carrying out the duties of either a bail bond company or bail bond agent in accordance with this article. A hearing shall be set not later than ten (10) working days from the date of receipt of the appellant's written statement or written recommendation from the municipal judge. Notice of a hearing for restriction, suspension or

revocation of a license issued pursuant to this article shall be provided in writing and shall set forth specifically the grounds for the proposed action, and the time and place of the hearing. Notice shall be mailed, postage prepaid, to the licensee at the address shown on the license application or at the last known address of the licensee. Following the hearing, the licensee shall be notified in writing of the decision, including any restriction guidelines, duration of any suspension or any prerequisites to reapplication imposed in conjunction with any revocation.

(Ord. No. 97-9824, § 1, 8-25-97; Ord. No. 03-10152, § 1, 7-7-03)

Secs. 23-31 – 23-32. Reserved.

Editor's Notes: Sec. 23-31 repealed by Ord. No. 03-10152 pertaining to suspension and/or revocation of license by the board of commissioners. Sec. 23-32 repealed by Ord. No. 03-10152 pertaining to notice of hearing of suspension and/or revocation of license.

Sec. 23-33. Appeals to governing body.

(a) Any applicant or licensee aggrieved by the action or decision of the city manager to deny, suspend or revoke a license under this article shall have the right to appeal such action or decision to the governing body within ten (10) days after the notice of the action or decision has been mailed to the person or firm.

(b) An appeal to the governing body shall be taken by filing with the city clerk a written statement setting forth the grounds for the appeal.

(c) A hearing shall be set not later than twenty (20) working days from the date of receipt of the appellant's written statement.

(d) Notice of the time and place of the hearing shall be given to the appellant in the same manner as provided for the mailing of notice of hearing provided in section 23-30(a) above. The decision of the governing body on the appeal shall be final and binding on all parties concerned. Any denial of an application by the governing body shall be subject to appeal pursuant to then applicable state law.

(Ord. No. 97-9824, § 1, 8-25-97; Ord. No. 03-10152, § 1, 7-7-03)

Sec. 23-34. List of licensees and fee schedules; posting.

(a) The city clerk shall maintain a list of persons licensed under the provisions of this article and their telephone numbers. At any time the list of persons licensed changes, the city clerk shall provide the Saline County sheriff with a copy of the revised list for posting in such manner and in such locations as the sheriff designates.

(b) Each company shall furnish to the city clerk a schedule of the minimum and maximum fees charged by such licensee. This section shall not be construed as setting the fees of the licensees and such licensees may charge such fees as they may desire so long as the fee is within the limits set forth in the schedule of fees furnished by the licensee.

(Ord. No. 97-9824, § 1, 8-25-97; Ord. No. 03-10152, § 1, 7-7-03)

Sec. 23-35. Insurance agent/company; registration.

(a) Any Kansas licensed insurance agent desiring to operate a bail bonding company as a representative of an underwriting insurance company must register in the office of the city clerk. On a form provided by the city clerk, the agent shall be required to provide the following:

(1) Name, address and phone number of agent.

(2) Name, contact person, address and phone number of insurance agency.

(3) Copies of power of attorney and sample bond form.

(4) Proof that the insurance company is authorized by the Kansas Insurance Commissioner to do business in the state.

(5) Copy of the agent's current Kansas insurance license.

(6) Name, manager name, address and phone number of business if different from (a) above.

(b) A separate registration form for each agent working under the same company name is required.

(c) Each insurance agent acting as a bail bond agent shall be required to obtain and wear a photo identification badge as outlined in section 23-27.

(d) There shall be no license fee assessed for registration under this section, except a fee shall be charged for the identification badge required by subsection (c) above.

(Ord. No. 97-9824, § 1, 8-25-97; Ord. No. 03-10152, § 1, 7-7-03)

Sec. 23-36. Insurance bonds; forfeited.

(a) Any bond provided by an insurance agent shall be due and payable upon the forfeiture date set by the municipal judge. If an agent fails to pay a forfeited bond within the allotted time, the city clerk shall contact the underwriting insurance company for payment.

(b) The city clerk may remove the insurance agent and/or the business from the list of those authorized to bond, as provided in section 23-34(a), if any forfeited bonds are not paid in a timely manner.

(Ord. No. 97-9824, § 1, 8-25-97; Ord. No. 03-10152, § 1, 7-7-03)

Sec. 23-37. Application of general rules regarding licenses.

Unless more specifically provided in this article, the general rules regarding licenses contained in Chapter 20 of this Code shall also apply to licenses issued pursuant to this article."

(Ord. No. 97-9824, § 1, 8-25-97; Ord. No. 03-10152, §, 7-7-03)

Next page number is 335.

CHAPTER 24. NUISANCES[1]

Sec. 24-1. Purpose and findings.

(a) The purpose of this chapter is to provide reasonable controls restricting and prohibiting the creation and allowing of nuisances to exist on property within the City of Salina; to declare that certain conditions constitute public nuisances, which are unsightly, are a menace and dangerous to health of the inhabitants of the city and are offensive to the general public health, safety, and welfare of the community; to provide a method of enforcement of this chapter; to provide procedures to notify property owners or those in control of property that a violation exists and to allow for self-abatement by such persons; to provide property owners or those in control of property notification and an opportunity to be heard concerning violations of this chapter; to provide administrative procedures to allow the city to direct the abatement of violations; to provide a method of assessment or collection of costs for abatement by the city; to declare that the existence of such violations is unlawful and to provide penalties for enforcement through the municipal court system.

(b) The governing body of the City of Salina, hereby finds that nuisances and unsafe or dangerous structures, as defined herein, on private property or adjacent rights-of-way or easements are public nuisances which are unsightly, a menace, dangerous to the health of the inhabitants of the city and are offensive to the general public health, safety, and welfare of the community. Such nuisances promote conditions which cause:

(1) Disease;

(2) Pollution;

(3) Proliferation of rodents, vermin, insects, and reptiles;

(4) The spread of fire;

(5) A harmful environment for transients and to the community as a result of transient use;

(6) Harmful attractions for children;

(7) Adverse impact on the use and enjoyment of property including the reduction of property values and the integrity of the neighborhood;

(8) Obstructions or interference on any street, alleyway, sidewalk, stream or drainage;

(9) Interference with the orderly development of property in the city.

(Ord. No. 98-9865, § 1, 4-20-98)

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[1] ***Editor's note:** Section 2 of Ord. No. 98-9865, adopted April 20, 1998, repealed §§ 24-1--24-10, pertaining to similar subject matter as derived from §§ 15-6, 15-11, 15-24, 15-40, 15-41 of the 1966 Code; the 1983 Code; §§ 1--5 of Ord. No. 87-9194, adopted July 27, 1987; § 1 of Ord. No. 89-9328, adopted July 17, 1989; and § 1 of Ord. No. 95-9718, adopted Jan. 8, 1996. Section 1 of Ord. No. 97-9824, added §§ 23-1, 23-16--23-37 to read as herein set out. **Cross references:** Code for abatement of dangerous buildings, § 8-331 et seq.; violations of provisions on fences, walls and declared nuisances, § 8-411; fireworks declared as nuisance, § 14-58; health and sanitation, Ch. 17; offenses generally, Ch. 25; solid waste, Ch. 34; snow and ice on sidewalks declared a nuisance, § 35-251; inoperable vehicles, § 38-81 et seq.; noise from motor vehicles, § 38-151 et seq.; diseased trees and shrubs, § 39-70 et seq.; water and sewers, Ch. 41. **State law references:** Authority for this chapter, K.S.A. 1336; maintaining a public nuisance, K.S.A. 21-4106; permitting a public nuisance, K.S.A. 21-4107.

Sec. 24-2. Definitions.

For purposes of this chapter, the following definitions shall apply:

Agent shall mean any person or entity listed in the Saline County, Kansas, Appraiser's Office or Treasurer's Office for the purpose of paying taxes; a registered agent with the Kansas Secretary of State's Office for corporate or partnership ownership; an agent or manager directed by the property owner, estate, or court order to represent the interests of the property or to otherwise control activities on the property, or a corporate officer.

City shall mean the City of Salina, Kansas.

Graffiti shall mean any drawing, painting, writing, figure or mark, regardless of its content, of the type which is commonly known and referred to as "graffiti" which is written, drawn, painted, sprayed, scratched or otherwise placed or affixed, regardless of the nature of the material used, on any wall, window, rock, building or portion thereof, fence, gate, sign, other structure, tree or other real or personal property, either publicly or privately owned, and that is visible from any adjacent public or private property or public or private right-of-way.

Nuisance shall mean any condition which causes or creates an unreasonable interference with the rights of the general public and shall include, but not be limited to:

(1) Graffiti;

(2) Noxious weeds, rank vegetation and weeds and indigenous grasses that are uncontrolled or exceed twelve (12) inches in height, including any vegetation on the right-of-way abutting the owner's property;

(3) Accumulation of garbage, rubbish, trash, refuse, junk and other abandoned materials, metals, building materials or other litter which creates an unsightly appearance;

(4) The exposed carcasses of animals or fowl not disposed of after death;

(5) Rank ponds or standing water (including swimming pools, water receptacles, and undrained areas);

(6) Accumulation of animal waste;

(7) Any building or other structure which is in such a dilapidated condition that it is infested with rodents or insects, left unsecured to allow entry of animals, humans or the natural elements such as rain, hail and snow, or otherwise left unkempt, unsightly, or unsanitary creating a menace to the health and safety of the people residing in the vicinity thereof, or presents a more than ordinarily dangerous fire hazard in the vicinity where it is located;

(8) Brush, limbs, trees, shrubs, or plants which are dead, diseased or infested which present a harmful or dangerous condition to the public;

(9) Any condition which provides harborage for rodents, reptiles, insects and other vermin;

(10) Exposed refrigerators, freezers, or other appliances left unsecured;

(11) All disagreeable or obnoxious odors and stenches, as well as the conditions, substances or other causes which give rise to the emission or generation of such odors and stenches (including rank or infested compost heaps);

(12) The pollution of any well or cistern, stream, river, lake, or body of water by sewage, dead animals, industrial wastes or other substances;

(13) Smoke, gas, soot or cinders, in abnormal quantities, or any amount of noxious fumes;

(14) Any rank sewage, rank septic system, rank vault or rank cesspool;

(15) Any building, structure, or other place or location where any activity which is in violation of local, state or federal law is conducted, performed or maintained;

(16) Any other condition which is determined to present a dangerous or harmful condition to the public.

Person shall mean any individual, individuals, partnership, corporation, limited liability company, unincorporated association, other business organization, committee, board, trustee, receiver agent, or any representative who has charge, care of or responsibility for maintenance of any property, lot or parcel of land regardless of status as owner, tenant or lessee, and regardless of whether such person has possession.

Property owners shall mean the named property owner as indicated by the records of the register of deeds or appraiser's office in Saline County, Kansas.

Tenant shall mean any person who has a severable or nonseverable interest in the property by either oral or written lease or covenant, or by other methods of conveying a limited interest in such lands; or any person who occupies or has possession of such property.

Unsafe structures shall mean any structure or part of a structure which remains or is damaged to present a dangerous or unsafe condition to the public including, but not limited to, structures damaged by fire, damaged by natural events or elements such as wind, tornadoes, earthquakes, flooding or settling of the ground; damaged by insect infestation; damaged due to the failure to provide reasonable maintenance; structures occupied or unoccupied which have broken windows, missing boards or siding, unsecured doors, or unsecured openings which allow the harboring of animals, insects, transients, or create an attraction to children; structures which, in the opinion of the building official present an unsafe or dangerous condition to those on or near the property; unfinished structures where no occupancy permit has been issued, and any building permit has lapsed for more than thirty (30) days; after eighteen (18) months from the date of the first building permit and where no inspection for newly completed work has been requested from the city within the last forty-five (45) days.

(Ord. No. 98-9865, § 1, 4-20-98)

Sec. 24-3. Prohibited.

It shall be unlawful for any person to cause, permit, maintain or allow the creation or maintenance of a nuisance. As an alternative to the remedy of abatement as provided under this chapter, any such person may be prosecuted in municipal court and be punished by:

(1) An order to abate the nuisance;

(2) An order authorizing the city to abate the nuisance and assessing the costs thereof;

(3) A fine of not more than five hundred dollars ($500.00);

(4) Imprisonment for a period of not exceeding six (6) months; or

(5) Any combination of the above.

Each day any violation of this chapter continues shall constitutes a separate offense.

(Ord. No. 98-9865, § 1, 4-20-98)

Sec. 24-4. Inspection.

The building official or his designee shall have the authority and it shall be his or her duty to enter into and examine at any and all times all buildings, lots and places of all descriptions within the city for the purpose of ascertaining the conditions thereof so far as the public health and safety may be affected thereby. If the property owner or occupant of any building or premises in the city prevents or attempts to prevent any employee of the city from entering or examining such building or premises for the purpose described above during reasonable hours the city may then request an administrative search warrant from the district court.

(Ord. No. 98-9865, § 1, 4-20-98)

Sec. 24-5. Notice to abate.

Wherever a nuisance is found to exist within the city, the building official or his designee shall, on behalf of the city clerk, give written notice to the property owner, tenant or agent of such property upon which such nuisance exists. The notice to abate a nuisance issued under the provisions of this chapter shall contain:

(1) An order requiring that the property owner, tenant or agent of such property remove and abate from the premises the thing or things therein described as a nuisance within a time to be specified in the notice, not exceeding ten (10) days. Weed and vegetation notices must provide a minimum of five (5) days for the nuisance to be abated;

(2) The location of the nuisance, if the same is stationary;

(3) A description of what constitutes the nuisance;

(4) A statement of acts necessary to abate the nuisance;

(5) That before the expiration of the time period to abate the nuisance, the recipient thereof may request a hearing before the building official as the designated representative of the governing body;

(6) A statement that if the nuisance is not abated as directed and no request for hearing is made within the prescribed time, the city will abate the nuisance and the cost of such abatement shall be assessed and charged against the lot or parcel of ground on which the nuisance was located, or shall be collected as a personal debt of the property owner in the manner provided by K.S.A. 12-1, 115, and K.S.A. 12-1617f and amendments thereto, or both. In addition to or in lieu of the city abating the nuisance the city prosecutor may file charges in municipal court;

(7) A statement that no further notice will be given in the same calendar year to remove weeds or vegetation.

It shall be unlawful for the property owner of any property who has received a compliance order or upon whom a notice of violation has been served to sell, transfer, mortgage, lease or otherwise dispose of to another until the provisions of the violation notice have been complied with, or until such property owner shall first furnish the grantee, transferee, mortgagee or lessee a true copy of any violation notice issued by the building official or his designee and shall furnish to the building official a signed and notarized statement from the grantee, transferee, mortgagee or lessee, acknowledging the receipt of such violation notice and fully accepting the responsibility without condition for making the corrections or repairs required by violation notice.

(Ord. No. 98-9865, § 1, 4-20-98)

Sec. 24-6. Service of notice.

The notice to abate nuisance shall be served on the property owner, tenant or agent of such property by restricted mail or by personal service, or if the premises is unoccupied and the property owner is a nonresident, then by mailing the notice by restricted mail to the last known address of the owner of the premises. In cases of weeds or vegetation where the property owner is unknown or is a nonresident and there is no resident agent, a notice shall be published in the official city paper. Ten (10) days after said publication the city shall cut or destroy weeds or vegetation on the property.

(Ord. No. 98-9865, § 1, 4-20-98)

Sec. 24-7. Hearing.

(a) The building official is hereby designated as the representative of the governing body for the purposes of conducting hearings requested by any recipient of a notice to abate nuisance.

(b) The recipient of a notice to abate a nuisance may request a hearing before expiration of the waiting period by filing a request for such hearing on a form available in the office of the building official. The hearing shall be conducted pursuant to rules adopted by the building official and made available to the public in the office of the building official. The party requesting such hearing shall be given written notice no less than three (3) days in advance of the scheduled hearing. No action to abate the nuisance shall be taken by the city pending the outcome of the hearing. If the building official determines that the notice to abate nuisance is without sufficient basis, the notice shall be rescinded. If the notice to abate is determined to have sufficient basis the recipient shall be allowed the original waiting period to voluntarily abate the nuisance commencing with the date of the building official's determination, and in default thereof the city may take any necessary action to abate the nuisance.

(Ord. No. 98-9865, § 1, 4-20-98)

Sec. 24-8. Abatement by city.

(a) In addition to the remedy of prosecution and enforcement as provided in section 1-10, if the property owner, tenant or agent, fails to comply with the requirement of the notice for a period longer than that named in the notice, then the city may proceed to have the things described in the notice removed and abated from the lot or parcel of ground.

(b) The abatement of a nuisance by the city shall not be a defense or excuse to the owner of a vehicle or property in violation of this chapter.

(c) The building official or his designee shall take all necessary measures, as described in the corrective action section of the violation notice, to cause the removal and abating of all nuisances under this chapter and he/she may do or cause to be done whatsoever in his/her judgement shall be necessary to carrying out such measures.

(Ord. No. 98-9865, § 1, 4-20-98)

Sec. 24-9. Assessment of city's costs.

The city shall give notice to the property owner or agent by restricted mail of the total cost of such abatement or removal incurred by the city. Such notice shall state that payment of such costs is due and payable within thirty (30) days following receipt of such notice. The city may also recover investigative cost as well as the cost of providing notice, including any postage, required by this section. If the cost of such removal or abatement and notice is not paid within the thirty-day period, the cost shall be assessed and charged against the lot or parcel of ground on which the nuisance was located, or shall be collected as a personal debt of the property owner in the manner provided by Kansas law.

(Ord. No. 98-9865, § 1, 4-20-98)

Sec. 24-10. Emergency abatement.

Whenever, in the judgement of the building official, or his designee, an emergency exists which requires immediate abatement of a nuisance to protect the public health, safety or welfare, an order may be issued directing the owner, occupant, operator or agent to take appropriate action to immediately correct or abate the nuisance causing the emergency. If the owner, occupant, operator or agent does not take immediate action to correct or abate the emergency or is not immediately available, the building official or his designee may act to correct or abate the emergency with any costs incurred to be assessed pursuant to section 24-9.

(Ord. No. 98-9865, § 1, 4-20-98)

Next page number is 345.

CHAPTER 25. OFFENSES, MISCELLANEOUS PROVISIONS[1]

Art.	**I.**	**In General, §§ 25-1--25-40**
Art.	**II.**	**Anticipatory Offenses, §§ 25-41--25-50**
Art.	**III.**	**Offenses Against Persons, §§ 25-51--25-70**
Art.	**IV.**	**Sex Offenses, §§ 25-71--25-80**
Art.	**V.**	**Offenses Affecting Children, §§ 25-81--25-90**
Art.	**VI.**	**Offenses Against Property, §§ 25-91--25-110**
Art.	**VII.**	**Offenses Affecting Governmental Functions, §§ 25-111--25-130**
Art.	**VIII.**	**Offenses Against Public Peace, §§ 25-131--25-150**
Art.	**IX.**	**Offenses Against Public Safety, §§ 25-151--25-170**
Art.	**X.**	**Offenses Against Public Morals, §§ 25-171--25-180**
Art.	**XI.**	**Violations, Penalties, §§ 25-181--25-190**
Art.	**XII.**	**Miscellaneous Provisions, §§ 25-191--25-200**

ARTICLE I. IN GENERAL

Sec. 25-1. Definitions.

The following definitions shall apply when the words and phrases defined are used in this chapter except when a particular context clearly requires a different meaning:

Act. A failure or omission to take action.

Air gun or air rifle. Any device whether or not in the shape and form commonly associated with the terms pistol, sidearm, small arm, rifle, shotgun, or any other type of gun designed to forcibly expel from an opening therein any pellet or BB shot, and whether operating from and upon compressed air or mechanical or elastic springwork or otherwise.

Alcoholic beverage or alcoholic liquor. Alcohol, spirits, wine, beer and every liquid or solid, patented or not, containing alcohol, spirits, wine or beer and capable of being consumed as a beverage by a human being, but shall not include any cereal malt beverage.

Another. A person or persons as defined in this Code other than the person whose act is claimed to be an offense.

Cereal malt beverage. Any fermented but undistilled liquor brewed or made from malt or from a mixture of malt or malt substitute, but does not include any such liquor which contains more than 3.2 percent alcohol by weight.

City or this city. All land and water either within or outside the boundary of the city over which the city has either exclusive or concurrent jurisdiction, and the air space above such land and water.

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[1] **Editor's note:** Ord. No. 91-9475, §§ 1, 2, adopted Nov. 18, 1991, repealed Ch. 25, §§ 25-1--25-7, 25-21--25-28, 25-41--25-43, 25-56--25-66, 25-81--25-86, 25-101, 25-116--25-121, 25-136, 25-146--25-152, 25-176--25-185, 25-200--25-203, and added a new Ch. 13 to read as herein set out. Former Ch. 13 pertained to similar subject matter and derived from the Code of 1966, §§ 23-1--23-4, 23-15, 23-16, 23-19--23-24, 23-27--23-29, 23-31, 23-32, 23-43--23-54, 23-57, 23-59, 23-69--23-80, 23-82, 23-88, 23-89, 23-93--23-96, 23-107, 23-109--23-111, 23-113, 23-114, 23-124--23-128, 23-134, 23-135, 23-146--23-147.1, 23-151, 23-151.1, 23-154--23-156; Ord. No. 86-9162, § 1, adopted Oct. 20, 1986; Ord. No. 88-9273, §§ 2--5, adopted Aug. 15, 1988; Ord. No. 89-9326, §§ 1, 2, adopted July 10, 1989. Ord. No. 90-9403, § 1, adopted Aug. 20, 1990; and Ord. No. 91-9446, §§ 1, 2, adopted June 17, 1991. In order to keep related material together, the editor has combined the sections pertaining to definitions to read as herein set out, thus reserving any unused sections originally provided for in Ord. No. 91-9475. **Cross references:** Nuisances generally, Ch. 24; police, Ch. 30.

Conduct. An act or series of acts, and the accompanying mental state.

Conviction. A judgment of guilt entered upon a plea or finding of guilt.

Correctional officer or employee. Any officer or employee of the Kansas Department of Corrections or any independent contractor, or any employee of such contractor, working at a correctional institution.

Deception. Knowingly and willfully making a false statement or representation, express or implied, pertaining to a present or past existing fact.

To deprive permanently:

(1) Take from the owner the possession or use or benefit of the owner's property, without intent to restore the same; or

(2) Retain property without intent to restore the same or with intent to restore to the owner only if the owner purchases or leases it back, or pays a reward or compensation for its return; or

(3) Sell, give, pledge or otherwise dispose of any interest in property or subject it to the claim of a person other than the owner.

Dwelling. A building or portion thereof, a tent, a vehicle, or other enclosed space which is used or intended for use as a human habitation, home or residence.

Firearm. Any pistol, revolver, rifle, shotgun or other weapon which will or is designed to or may readily be converted to expel a projectile by the action of an explosion, expanding gases or other combustion.

Handgun. A pistol, revolver, or other firearm of any description, loaded or unloaded, from which any shot, bullet, or other missile can be discharged, the length of the barrel of which, not including any revolving, detachable, or magazine breech, does not exceed twelve (12) inches.

Intent to defraud. An intention to deceive another person and to induce such other person, in reliance upon such deception, to assume, create, transfer, alter or terminate a right, obligation or power with reference to property.

Law enforcement officer. Any person who by virtue of his or her office or public employment is vested by law with a duty to maintain public order or to make arrests for offenses, whether that duty extends to all offenses or is limited to specific offenses.

Minor. Any person under the age of eighteen (18) [years].

Obtain. To bring about a transfer of interest in or possession of property, whether to the offender or to another.

Obtains or exerts control over property. Includes but is not limited to, the taking, carrying away, or the sale, conveyance, or transfer of title to, interest in, or possession of property.

Owner. A person who has any interest in property.

Person. An individual, public or private corporation, government, partnership or unincorporated association.

Personal property. Goods, chattels, effects, evidences of rights in action and all written instruments by which any pecuniary obligation, or any right or title to property, real or personal, shall be created, acknowledged, assigned, transferred, increased, defeated, discharged or dismissed.

Property. Anything of value, tangible or intangible, real or personal.

Prosecution. All legal proceedings by which a person's liability for an offense is determined.

Public employee. A person employed by or acting for the city and who is not a public officer.

Public offense or offense. An act or omission defined by this Code which, upon conviction, is punishable by fine, confinement or both fine and confinement.

Public officer. Includes the following whether elected or appointed:

(1) An executive or administrative officer of the city;

(2) A member of the governing body of the city;

(3) A judicial officer, which shall include a judge, municipal judge, magistrate, juror, master or any other person appointed by a judge or court to hear or determine a cause or controversy and who is not a judicial officer;

(4) A hearing officer shall include any person authorized by law or private agreement to hear or determine a cause or controversy and who is not a judicial officer;

(5) A law enforcement officer or public safety officer;

(6) Any other person exercising the functions of a public officer under color of right.

Real property or real estate. Every estate, interest and right in lands, tenements and hereditaments.

Solicit or solicitation. To command, authorize, urge, incite, request or advise another to commit an offense.

Stolen property. Property over which control has been obtained by theft.

Threat. A communicated intent to inflict physical or other harm on any person or on property.

Vessel. Any watercraft designed to be propelled by machinery, oars, paddles or wind action upon a sail for navigation on the water.

Written instrument. Any paper, document, or other instrument containing written or printed matter or the equivalent thereof, used for the purpose of reciting, embodying, conveying or recording information, and any money, tokens, stamps, seal, badge, trademark, or other evidence or symbol of value, right, privilege or identification, which is being capable of being used to the advantage or disadvantage of some person.

(Ord. No. 91-9475, § 1, 11-18-91; Ord. No. 93-9600, § 1, 10-11-93)

Sec. 25-2. Offenses and construction of terms.

The provisions of the laws of the state relating to misdemeanors in reference to offenses and construction of terms insofar as the same relate to and are applicable shall apply to this chapter.

(Ord. No. 91-9475, § 1, 11-18-91)

Sec. 25-3. Liability for offenses of another.

(a) A person is criminally responsible for an offense committed by another if such person intentionally aids, abets, advises, hires, counsels or procures the other to commit the offense;

(b) A person liable under subsection (a) hereof is also liable for any other offense committed in pursuance of the intended offense if reasonably foreseeable by such person as a probable consequence of committing or attempting to commit the offense intended;

(c) A person liable under this section may be charged with and convicted of the offense although the person alleged to have directly committed the act constituting the offense lacked criminal or legal capacity to commit the offense or has not been convicted or has been acquitted or has been convicted of some other degree of the offense or of some other offense based on the same act.

(Ord. No. 91-9475, § 1, 11-18-91)

Sec. 25-4. Corporations, criminal responsibility; individual.

(a) *Corporations; criminal responsibility:*

(1) A corporation is criminally responsible for acts committed by its agents when acting within the scope of their authority.

(2) Agent means any director, officer, servant, employee or other person who is authorized to act in behalf of the corporation.

(b) *Individual liability for corporate offenses:*

(1) An individual who commits public offenses, or causes public offenses to be performed, in the name of or on behalf of a corporation is legally responsible to the same extent as if such acts were in his or her own name or on his or her own behalf;

(2) An individual who has been convicted of an offense based on conduct performed by the individual for and on behalf of a corporation is subject to punishment as an individual upon conviction of such offense, although a lesser or different punishment is authorized for the corporation.

(Ord. No. 91-9475, § 1, 11-18-91)

Secs. 25-5--25-40. Reserved.

ARTICLE II. ANTICIPATORY OFFENSES

Sec. 25-41. Attempt.

(a) An attempt to commit any public offense is:

(1) Any overt act toward the perpetration of an offense done by a person who intends to commit such offense but fails in the perpetration thereof or is prevented or intercepted in executing such offense.

(2) It shall not be a defense to a charge of attempt that the circumstances under which the act was performed or the means employed or the act itself were such that the commission of the offense was not possible.

(b) An attempt to commit a Class A violation is a Class B violation.

(c) An attempt to commit a Class B or C violation is a Class C violation.

(Ord. No. 91-9475, § 1, 11-18-91)

Sec. 25-42. Conspiracy.

(a) A conspiracy to commit a public offense is:

(1) An agreement with another person to commit an offense made unlawful by this Code, or to assist to commit an offense made unlawful by this Code. No person may be convicted of a conspiracy unless an overt act in the furtherance of such conspiracy is alleged and proved to have been committed by him or her or by a co-conspirator.

(2) It shall be a defense to a charge of conspiracy that the accused voluntarily and in good faith withdrew from the conspiracy, and communicated the fact of such withdrawal to one (1) or more of his or her co-conspirators, before any overt act in furtherance of the conspiracy has been committed by the accused or by a co-conspirator.

(Ord. No. 91-9475, § 1, 11-18-91)

Secs. 25-43--25-50. Reserved.

ARTICLE III. OFFENSES AGAINST PERSONS

Sec. 25-51. Battery.

(a) Battery is:

(1) Intentionally or recklessly causing bodily harm to another person; or

(2) Intentionally causing physical contact with another person when done in a rude, insulting or angry manner.

(b) Except as provided in subsection (c), battery is a Class B violation.

(c) (1) Upon a first conviction of a violation of this section under circumstances which constitute a domestic battery, a person shall be guilty of a Class B violation and sentenced to not less than forty-eight (48) consecutive hours nor more than six (6) months' imprisonment and fined not less than two hundred dollars ($200.00), nor more than five hundred dollars ($500.00) or in the court's discretion the court may enter an order which requires the person enroll in and successfully complete a domestic violence prevention program.

(2) If, within five (5) years immediately preceding commission of crime, a person is convicted of a violation of this section a second time under circumstances which constitute a domestic battery, having at least one (1) time before within such period been convicted for such crime or a violation of a comparable crime under the laws of any municipality, state, federal government or foreign government, such person shall be guilty of a Class A violation and sentenced to not less than five (5) days nor more than one (1) year's imprisonment and fined not less than five hundred dollars ($500.00) nor more than one thousand dollars ($1,000.00). The five (5) days' imprisonment mandated by this subsection may be served in a work release program only after such person has served forty-eight (48) consecutive hours' imprisonment, provided such work release program requires such person to return to confinement at the end of each day in the work release program. The person convicted must serve at least five (5) consecutive days' imprisonment before the person is granted probation, suspension or reduction of sentence or parole or is otherwise released. As a condition of any grant or probation, suspension of sentence or parole or of any other release, the person shall be required to enter into and complete a treatment program for domestic violence prevention.

(3) As used in this section:

a. Domestic battery means a battery against a family or household member by a family or household member; and

b. Family or household member means persons eighteen (18) years of age or older who are spouses, former spouses, parents or stepparents and children or stepchildren, and persons who are presently residing together or who have resided together in the past, and persons who have a child in common regardless of whether they have been married or who have lived together at any time. Family or household member also includes a man and woman if the woman is pregnant and the man is alleged to be the father, regardless of whether they have been married or have lived together at any time; and

c. For the purpose of determining whether a conviction is a first or second in sentencing under this section:

1. Conviction includes being convicted of a violation of this section or entering into a diversion or deferred judgment agreement in lieu of further criminal proceedings on a complaint alleging a violation of this section;

2. Conviction includes being convicted of a violation of a law of another state, or an ordinance of any city, or resolution of any county, which prohibits the acts that this section prohibits or entering into a diversion or deferred judgment agreement in lieu of further criminal proceedings in a case alleging a violation of such law, ordinance or resolution;

3. Only convictions occurring in the immediately preceding five (5) years including prior to the effective date of this act shall be taken into account, but the court may consider other prior convictions in determining the sentence to be imposed within the limits provided for a first or second offender, whichever is applicable; and

4. It is irrelevant whether an offense occurred before or after conviction for a previous offense.

(Ord. No. 91-9475, § 1, 11-18-91; Ord. No. 96-9759, § 1, 9-9-96; Ord. No. 99-9911, § 1, 2, 2-8-99)

Sec. 25-52. Battery against law enforcement officer.

Battery against a law enforcement officer is a battery, as defined in section 25-51 of this article, committed against a uniformed or properly identified state, county or city law enforcement officer other than a correctional officer or employee, while such officer is engaged in the performance of his or her duty.

Battery against a law enforcement officer is a Class A violation.

(Ord. No. 91-9475, § 1, 11-18-91; Ord. No. 96-9759, § 1, 9-9-96)

Sec. 25-53. Vehicular battery.

(a) Vehicular battery is unintentionally causing bodily harm to another human being which is done while committing a violation of K.S.A. 8-1566, 8-1567 or 8-1568, and amendments thereto, or any ordinance of this city which prohibits any of the acts prohibited by those statutes.

(b) Vehicular battery is a Class A violation for which the offender, if the violation is committed while committing a violation of K.S.A. 8-1567 and amendments thereto or any ordinance of this city which prohibits any acts prohibited by that statute, shall:

(1) Be fined not less than one thousand dollars ($1,000.00);

(2) Not be eligible for release on probation, suspension or reduction of sentence or parole until the person has served at least ninety (90) days' imprisonment;

(3) Be required, as a condition of any grant of probation, suspension or reduction of sentence, parole or other release, to enter into and successfully complete an alcohol and drug safety action program or a treatment program as provided in K.S.A. 8-1008 and amendments thereto, or both the education and treatment programs; and

(4) Have driving privileges suspended, or suspended and restricted, as provided by K.S.A. Supp. 8-1014.

(c) As used in this section, "bodily injury" means great bodily harm, disfigurement or dismemberment.

(Ord. No. 91-9475, § 1, 11-18-91)

Sec. 25-54. Assault.

An assault is an intentional threat or attempt to do bodily harm to another coupled with apparent ability and resulting in immediate apprehension of bodily harm. No bodily contact is necessary.

Assault is a Class C violation.

(Ord. No. 91-9475, § 1, 11-18-91)

Sec. 25-55. Assault of a law enforcement officer.

Assault of a law enforcement officer is an assault, as defined in section 25-54 of this article, committed against a uniformed or properly identified state, county or city law enforcement officer while such officer is engaged in the performance of his or her duty.

Assault of a law enforcement officer is a Class A violation.

(Ord. No. 91-9475, § 1, 11-18-91)

Sec. 25-56. Resisting arrest.

It shall be unlawful for any person to assault or strike, or in any manner resist, obstruct or oppose any law enforcement officer, his deputy, or lawful assistant in the making of any lawful detention, stop or arrest.

Resisting arrest is a Class A violation.

(Ord. No. 91-9475, § 1, 11-18-91; Ord. No. 96-9759, § 1, 9-9-96)

Sec. 25-57. False information.

It shall be unlawful for any person to make a statement or provide information known by such person to be false to any law enforcement officer to prevent, obstruct, impair or pervert the administration of law.

(Ord. No. 91-9475, § 1, 11-18-91)

Sec. 25-58. Compliance with order.

It shall be unlawful for any person to refuse to comply with an order of a law enforcement officer made in the performance of official duties.

(Ord. No. 91-9475, § 1, 11-18-91)

Sec. 25-59. Interfering with an officer.

It shall be unlawful for any person to intentionally do any act or utter any word encouraging, inciting, or proposing or intending to encourage or incite, any person in the custody of a law enforcement officer, to prevent or hinder his or her arrest; and it shall be unlawful for any person to interfere, in any manner, with a law enforcement officer engaged in the discharge of any official duty.

(Ord. No. 91-9475, § 1, 11-18-91)

Sec. 25-60. Unlawful interference with fire fighter.

Unlawful interference with a fire fighter is knowingly and intentionally interfering with, molesting or assaulting any fire fighter while engaged in the performance of his or her duties, or knowingly and intentionally obstructing, interfering with or impeding the efforts of any fire fighter to reach the location of a fire.

Unlawful interference with a fire fighter is a Class B violation.

(Ord. No. 91-9475, § 1, 11-18-91)

Sec. 25-61. Water system property, hydrants; damaging, tampering with.

It shall be unlawful for any person to open any hydrant or loosen the bolts, screws or fastenings thereof or put anything therein, or willfully, wantonly or carelessly injure any water pipes or wantonly or mischievously handle or meddle with the same or any part thereof within the city; provided, that the provisions of this section with reference to opening and loosening any bolts or screws and parts of such hydrants or insertion of anything therein, shall not apply to the members of the fire department of the city, the officers or authorities of the city or to any person having lawful authority to open, repair, touch or control or use the same.

(Ord. No. 91-9475, § 1, 11-18-91)

Sec. 25-62. Unlawful restraint.

Unlawful restraint is knowingly and without legal authority restraining another so as to interfere substantially with his or her liberty. This section shall not apply to acts done in the performance of duty by any authorized law enforcement officer of the city. Any merchant, his or her agent or employee, who has probable cause to believe that a person has actual possession of and has wrongfully taken; or is about to wrongfully take merchandise from a mercantile establishment may detain such person:

(1) On the premises; or

(2) In the immediate vicinity thereof, in a reasonable manner and for a reasonable period of time for the purpose of investigating the circumstances of such possession.

Such reasonable detention shall not constitute an arrest nor an unlawful restraint. Unlawful restraint is a Class A violation.

(Ord. No. 91-9475, § 1, 11-18-91)

Sec. 25-63. Violation of protective order.

(a) It shall be unlawful to knowingly or intentionally violate:

(1) A protection from abuse order issued pursuant to K.S.A. 60-3105, 60-3106 and 60-3107, and amendments thereto; or

(2) A protective order issued by a court of any state or Indian tribe that is consistent with the provisions of 18 U.S.C. 2265, and amendments thereto; or

(3) A restraining order issued pursuant to K.S.A. 38-1542, 38-1543 and 60-1607, and amendments thereto; or

(4) An order issued as a condition of pretrial release, diversion, probation, suspended sentence or postrelease supervision that orders the person to refrain from having any direct or indirect contact with another person; or

(5) An order issued as a condition of release after conviction or as a condition of a supersedeas bond pending disposition of an appeal, that order the person to refrain from having any direct or indirect contact with another person.

(b) As used in this section "order" includes any order issued by a municipal or district court.

(c) Violation of a protective order is a Class A person misdemeanor.

(Ord. No. 91-9475, § 1, 11-18-91; Ord. No. 96-9750, § 1, 7-22-96)

Secs. 25-64--25-70. Reserved.

ARTICLE IV. SEX OFFENSES

Sec. 25-71. Lewd, lascivious behavior.

(a) Lewd and lascivious behavior is:

(1) Engaging in sexual intercourse or sodomy with any person or animal with the knowledge or reasonable anticipation that the participants are being viewed by a person sixteen (16) or more years of age; or

(2) The exposure of a sex organ in a public place, or in the presence of a person who is sixteen (16) or more years of age and not the spouse of the offender and who has not consented thereto, with intent to arouse or gratify the sexual desires of the offender or another.

Lewd and lascivious behavior is a Class B violation.

(Ord. No. 91-9475, § 1, 11-18-91; Ord. No. 99-9911, § 1, 2, 2-8-99)

Sec. 25-72. Peeping toms.

It shall be unlawful for any person to go upon the property owned or occupied by another for the purpose of looking into or peeping into any window, door, skylight or other opening in a house.

(Ord. No. 91-9475, § 1, 11-18-91)

Sec. 25-73 Soliciting acts of prostitution, sodomy or sexual activity.

(a) It shall be unlawful upon the streets or in other public places within the corporate limits of the city for any person to solicit or agree with any other person to participate in an act of prostitution, sodomy or sexual activity.

(b) Definitions. For the purpose of this section, the following terms shall have the meanings respectively ascribed to them:

(1) *Prostitution* is performing for hire, or offering or agreeing to perform for hire where there is an exchange of value, any of the following acts:

a. Sexual activity; or

b. Oral or anal copulation.

(2) *Public place* means any place to which the general public has access.

(3) *Sexual activity* includes, but is not limited to, heterosexual intercourse, sodomy, cunnilingus, fellatio, masturbation or sadistic, masochistic homosexual, coprophilic sexual activity, or other bodily contact stimulation of the genitals of any person with the intent to arouse or gratify the sexual desires of the offender or another.

(4) *Sodomy* means oral or anal copulation between persons who are not husband and wife or consenting adult members of the opposite sex, or between a person and an animal, or coitus with an animal. Any penetration, however slight, is sufficient to complete the offense of sodomy.

(5) *Solicit* means to invite, authorize, urge, incite, advise, persuade, or attempt to persuade, command, encourage or request another to participate in an act prohibited herein, to promote such an act or to offer to perform an act prohibited by this section.

Soliciting acts of prostitution, sodomy or sexual activity is a Class B misdemeanor.

(Ord. No. 02-10098, § 1, 8-19-02)

Secs. 25-74--25-80. Reserved.

ARTICLE V. OFFENSES AFFECTING CHILDREN[2]

Sec. 25-81. Furnishing alcoholic liquor to a minor.

(a) Furnishing alcoholic liquor to a minor is directly or indirectly, selling to, buying for, giving or furnishing any alcoholic liquor to any person under twenty-one (21) years of age.

(b) It shall be a defense to a prosecution under this section if:

(1) The defendant is a licensed retailer, club, drinking establishment or caterer or holds a temporary permit, or an employee thereof;

(2) The defendant sold the alcoholic liquor to the minor with reasonable cause to believe that the minor was twenty-one (21) or more years of age; and

(3) To purchase the alcoholic liquor, the minor exhibited to the defendant a draft card, driver's license, birth certificate or other official or apparently official document purporting to establish that such minor was twenty-one (21) or more years of age.

Furnishing alcoholic liquor to a minor is a Class B violation for which the minimum fine is two hundred dollars ($200.00).

(Ord. No. 91-9475, § 1, 11-18-91)
Cross references: Legal fee for consumption of malt beverages, § 5-66.

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[2] **Cross references:** Alcoholic beverages, Ch. 5.

Sec. 25-82. Furnishing cereal malt beverage to a minor.

(a) Furnishing cereal malt beverage to a minor is buying for or selling, giving or furnishing, whether directly or indirectly, any cereal malt beverage to any person under twenty-one (21) years of age.

(b) This section shall not apply to the furnishing of cereal malt beverage by a parent or legal guardian to such parent's child or such guardian's ward.

(c) It shall be a defense to a prosecution under this section if:

(1) The defendant is a licensed retailer, or an employee thereof;

(2) The defendant sold the cereal malt beverage to the person with reasonable cause to believe that such person was twenty-one (21) or more years of age; and

(3) To purchase the cereal malt beverage, the person exhibited to the defendant a draft card, driver's license, birth certificate or other official or apparently official document purporting to establish that such person was twenty-one (21) or more years of age.

Furnishing cereal malt beverage to a minor is a Class B violation for which the minimum fine is two hundred dollars ($200.00).

(Ord. No. 91-9475, § 1, 11-18-91)

Sec. 25-83. Watercraft, lifesaving devices required.

The operator of every vessel shall require every person twelve (12) years of age or under to wear a United States Coast Guard approved type I, type II or type III personal flotation device while aboard or being towed by such vessel. A life belt or ring shall not satisfy the requirement of this section.

Violation of this section shall constitute a Class C violation.

(Ord. No. 91-9475, § 1, 11-18-91)

Sec. 25-84. Purchase or possession of cigarette and tobacco products by persons under eighteen (18) years of age.

(a) It shall be unlawful for any person who is under eighteen (18) years of age to purchase or attempt to purchase or possess or attempt to possess cigarettes or tobacco products.

(b) Any person charged with violating this section shall be issued a notice to appear and, prior to the time specified in the notice to appear, may enter a written appearance, waive right to trial, plead guilty or no contest and pay the fine and court costs provided by law. Payment may be made by mail or in person and may be by personal check. The cigarette and tobacco citation shall not have been complied with if a check is not honored for any reason, or if the fine and court costs are not paid in full. When a person charged with a cigarette and tobacco infraction makes payment without executing a written waiver of right to trial and plea of guilty or no contest, the payment made shall be deemed such an appearance, waiver of right to trial and plea of no contest.

(c) As used in this section:

(1) *Cigarette* means any roll for smoking, made wholly or in part of tobacco, irrespective of size or shape, and irrespective of tobacco being flavored, adulterated or mixed with any other ingredient if the wrapper is in great part made of any material except tobacco.

(2) *Tobacco products* means cigars, cheroots, stogies, periques; granulated, plug cut, crimp cut, ready rubbed and other smoking tobacco; snuff, snuff flower; cavendish; plug and twist

tobacco; fine cut and other chewing tobaccos; shorts; refuse scraps, clippings, cuttings and sweepings of tobacco, and other kinds and forms of tobacco, prepared in such a manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking. Tobacco products do not include cigarettes.

Violation of this section is a cigarette and tobacco infraction for which the fine is twenty-five dollars ($25.00).

(Ord. No. 96-9758, § 1, 8-26-96)

Sec. 25-85. Furnishing cigarettes or tobacco products to a minor.

(a) It shall be unlawful for any person, directly or indirectly, to:

(1) Sell, give or furnish any cigarettes or tobacco products to any person under eighteen (18) years of age; or

(2) Buy any cigarettes or tobacco products for any person under eighteen (18) years of age.

In determining the penalty to be imposed for a violation of this section by a licensed retail dealer whose employee sold, furnished or distributed the cigarettes or tobacco products, the court shall consider it to be a mitigating circumstance if the employee had completed a training program, approved by the secretary of revenue or the secretary's designee, in avoiding sale, furnishing or distributing of cigarettes and tobacco products to persons under eighteen (18) years of age.

(b) It shall be a defense to a prosecution under this section if:

(1) The defendant is a licensed retail dealer or a person authorized by law to distribute samples;

(2) The defendant sold, furnished or distributed the cigarettes or tobacco products to the person under eighteen (18) years of age with reasonable cause to believe the person was of legal age to purchase or receive cigarettes or tobacco products; and

(3) To purchase or receive the cigarettes or tobacco products, the person under eighteen (18) years of age exhibited to the defendant a driver's license, Kansas non-driver's identification card or other official or apparently official document containing a photograph of the person and purporting to establish that the person was of legal age to purchase or receive cigarettes or tobacco products.

(c) It shall be a defense to a prosecution under this section if:

(1) The defendant engages in the lawful sale, furnishing or distribution of cigarettes or tobacco products by mail; and

(2) The defendant sold, furnished or distributed the cigarettes or tobacco products to the person by mail only after the person had provided to the defendant an unsworn declaration, conforming to K.S.A. 53-601 and amendments thereto, that the person was eighteen (18) or more years of age.

(d) As used in this section, cigarettes and tobacco products are defined as set forth in section 25-84.

Furnishing cigarettes or tobacco products to a minor is a Class B violation.

(Ord. No. 01-10038, § 1, 6-18-01)

Secs. 25-86--25-90. Reserved.

ARTICLE VI. OFFENSES AGAINST PROPERTY[3]

Sec. 25-91. Theft.

Theft is any of the following acts done with the intent to deprive the owner permanently of the possession, use or benefit of the owner's property:

(1) Obtaining or exerting unauthorized control over property; or

(2) Obtaining by deception, control over property; or

(3) Obtaining by threat, control over property; or

(4) Obtaining control over stolen property knowing the property to have been stolen by another.

Theft of property of the value of less than one thousand dollars ($1000.00) is a Class A violation.

(Ord. No. 91-9475, § 1, 11-18-91; Ord. No. 04-10222, § 1, 8-2-04)

Sec. 25-92. Intent to permanently deprive.

(a) In any prosecution under this article, the following shall be prima facie evidence of intent to permanently deprive the owner or lessor of property of the possession, use or benefit thereof:

(1) The giving of a false identification or fictitious name, address or place of employment at the time of obtaining control over the property; or

(2) The failure of a person who leases or rents personal property and fails to return the same within ten (10) days after the date set forth in the lease or rental agreement for the return of the property, if notice is given to the person renting or leasing the property to return the property within seven (7) days after receipt of the notice, in which case the subsequent return of the property within the seven-day period shall exempt such transaction from consideration as prima facie evidence as provided in this section.

(b) In any prosecution in which the object of the alleged theft is a book or other material borrowed from a library, it shall be prima facie evidence of intent to permanently deprive the owner of the possession, use or benefit thereof if the defendant failed to return such book or material within thirty (30) days after receiving notice from the library requesting its return, in which case the subsequent return of the book or material within the thirty-day period shall exempt such transaction from consideration as prima facie evidence as provided in this section.

(c) The word "notice" as used herein shall be construed to mean notice in writing and such notice in writing will be presumed to have been given three (3) days following deposit of the notice as registered or certified matter in the United States mail, addressed to such person who has leased or rented the personal property or borrowed the library materials at the address as it appears in the information supplied by such person at the time of such leasing, renting or borrowing, or to such person's last known address.

(Ord. No. 91-9475, § 1, 11-18-91)

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[3] **Cross references:** Stealing, taking books and other property from library, § 19-2; damaging books or library property, § 19-4; purchasing stolen property by pawnbrokers and secondhand dealers, § 33-20.

Sec. 25-93. Theft; lost, mislaid property.

Theft of lost or mislaid property is failure to take reasonable measures to restore lost or mislaid property to the owner by a person who has obtained control of such property, who knows or learns the identity of the owner thereof, and who intends to deprive the owner permanently of the possession, use or benefit of the property.

Theft of lost or mislaid property is a Class A violation.

(Ord. No. 91-9475, § 1, 11-18-91)

Sec. 25-94. Theft of services.

(a) Theft of services is obtaining services from another by deception, threat, coercion, stealth, tampering or use of false token or device.

(b) "Services" within the meaning of this section, includes, but is not limited to, labor, professional service, cable television service, public or municipal utility or transportation service, telephone service, lodging, entertainment and the supplying of equipment for use.

(c) "Tampering" within the meaning of this section, includes, but is not limited to:

(1) Making a connection of any wire, conduit or device, to any service or transmission line owned by a public or municipal utility, or by a telephone or cable television service provider;

(2) Defacing, puncturing, removing, reversing or altering any meter or any connections, for the purpose of securing unauthorized or unmeasured electricity, natural gas, water, telephone service or cable television service;

(3) Preventing any such meters from properly measuring or registering;

(4) Knowingly taking, receiving, using or converting to such person's own use, or the use of another, any electricity, natural gas or water which has not been measured; or any telephone or cable television service which has not been authorized; or

(5) Causing, procuring, permitting, aiding or abetting any person to do any of the preceding acts.

(d) In any prosecution under this section, the existence of any of the connections of meters, alterations or use of unauthorized or unmeasured electricity, natural gas, telephone service, cable television service, or water service specified in subsection (c), shall be prima facie evidence of intent to violate the provisions of this section by the person or persons using or receiving the direct benefits from the use of the electricity, natural gas, telephone service, cable television service or water service passing through such connections or meters, or using the electricity, natural gas, water, telephone service or cable television service which has not been authorized or measured.

Theft of service is a Class A misdemeanor.

(Ord. No. 91-9475, § 1, 11-18-91; Ord. No. 97-9808, § 1, 6-9-97)

Sec. 25-95. Unlawful deprivation of property.

Unlawful deprivation of property is obtaining or exerting unauthorized control over property, with intent to deprive the owner of temporary use thereof, without the owner's consent but not with the intent of depriving the owner permanently of the possession, use or benefit of his or her property.

Unlawful deprivation of property is a Class A violation.

(Ord. No. 91-9475, § 1, 11-18-91)

Sec. 25-96. Criminal damage to property.

Criminal damage to property is by means other than by fire or explosive:

(1) Willfully injuring, damaging, mutilating, defacing, destroying, or substantially impairing the use of any property in which another has an interest without the consent of such other person; or

(2) Injuring, damaging, mutilating, defacing, destroying or substantially impairing the use of any property with intent to injure or defraud an insurer or lienholder.

Criminal damage to property is a Class B misdemeanor if the property damaged is of the value of less than five hundred dollars ($500.00) or is of the value of five hundred dollars ($500.00) or more and is damaged to the extent of less than five hundred dollars ($500.00).

(Ord. No. 91-9475, § 1, 11-18-91; Ord. No. 96-9746, § 1, 6-17-96)

Sec. 25-97. Criminal trespass.

(a) Criminal trespass is entering or remaining upon or in any land, structure, vehicle, aircraft or watercraft by a person, when:

(1) Such person knows or reasonably should know that he or she is not authorized or privileged to do so; or

(2) Such person enters or remains therein in defiance of an order not to enter or to leave such premises or property personally communicated to such person by the owner thereof or other authorized person; or

(3) Such premises or property are posted in a manner reasonably likely to come to the attention of intruders, or are locked or fenced or otherwise enclosed, or shut or secured against passage or entry; or

(4) Such person enters or remains therein in defiance of a restraining order issued pursuant to K.S.A. 60-1607, 60-3105, 60-3106, or 60-3107 or K.S.A. 38-1542, 38-1543 or 38-1563, and amendments thereto, and the restraining order has been personally served upon the person so restrained.

(b) (1) Entering or remaining upon or in any public or private land or structure in a manner that interferes with access to or from any health care facility by a person who knows such person is not authorized or privileged to do so and such person enters or remains thereon or therein in defiance of an order not to enter or to leave such land or structure personally communicated to such person by the owner of the health care facility or other authorized person.

(2) As used in this section:

(a) *Health care facility* means any licensed medical care facility, certified health maintenance organization, licensed mental health center, or mental health clinic, licensed psychiatric hospital or other facility or office where services of a health care provider are provided directly to patients.

(b) *Health care provider* means any person:

(1) Licensed to practice a branch of the healing arts;

(2) Licensed to practice psychology;

(3) Licensed to practice professional or practical nursing;

(4) Licensed to practice dentistry;

(5) Licensed to practice optometry;

(6) Licensed to practice pharmacy;

(7) Licensed to practice podiatry;

(8) Licensed as a social worker; or

(9) Registered to practice physical therapy.

(3) Criminal trespass is a Class B violation.

(a) If a person is arrested on a warrant or arrested on probable cause without a warrant, pursuant to a violation of subsection (a)(4), such person shall not be allowed to post bond pending such person's first appearance in court provided that a first appearance occurs within forty-eight (48) hours after arrest.

(b) Upon conviction of a violation of subsection (a)(4), a person shall be sentenced to not less than forty-eight (48) consecutive hours of imprisonment which must be served either before or as a condition of any grant or probation or suspension or reduction of sentence.

(Ord. No. 91-9475, § 1, 11-18-91; Ord. No. 96-9746, § 2, 6-17-96; 96-9759, § 1, 9-9-96)

Sec. 25-98. Littering.

Littering is dumping, throwing, placing, depositing or leaving or causing to be dumped, thrown, deposited or left any refuse of any kind or any object or substance which tends to pollute, mar or deface, into, upon or about:

(1) Any public street, highway, alley, road, right-of-way, park or other public place, or any lake, stream, watercourse, or other body of water except by direction of some public officer or employee authorized by law to direct or permit such acts; or

(2) Any private property without the consent of the owner or occupant of such property.

Littering is a Class C violation.

(Ord. No. 91-9475, § 1, 11-18-91)

Sec. 25-99. Tampering with a landmark.

Tampering with a landmark is willfully and maliciously:

(1) Removing any monument of stone or other durable material, established or created for the purpose of designating the corner of or any other point upon the boundary of any lot or tract of land, or of the state, or any legal subdivision thereof; or

(2) Defacing or altering marks upon any tree, post or other monument, made for the purpose of designating any point on such boundary; or

(3) Cutting down or removing any tree, post or other monument upon which any such marks have been made for such purpose, with intent to destroy such marks; or

(4) Breaking, destroying, removing or defacing any milepost, milestone or guideboard erected by authority of law on any public highway or road; or

(5) Defacing or altering any inscription on any such marker or monument; or

(6) Altering, removing, damaging or destroying any public land survey corner or accessory without complying with the provisions of K.S.A. 58-2011.

Tampering with a landmark is a Class C violation.

(Ord. No. 91-9475, § 1, 11-18-91)

Sec. 25-100. Tampering with a traffic signal.

Tampering with a traffic signal is intentionally manipulating, altering, destroying or removing any light, sign, marker, railroad switching device, or other signal device erected or installed for the purpose of controlling or directing the movement of motor vehicles, railroad trains, aircraft or watercraft.

Tampering with a traffic signal is a Class C violation.

(Ord. No. 91-9475, § 1, 11-18-91)

Secs. 25-101--25-110. Reserved.

ARTICLE VII. OFFENSES AFFECTING GOVERNMENTAL FUNCTIONS[4]

Sec. 25-111. Compounding an offense.

Compounding an offense is accepting or agreeing to accept anything of value as consideration for a promise not to initiate or aid in the prosecution of a person who has committed an offense.

Compounding an offense is a Class A violation.

(Ord. No. 91-9475, § 1, 11-18-91)

Sec. 25-112. Obstructing legal process or official duty.

Obstructing legal process or official duty is knowingly and willfully obstructing, resisting, opposing or interfering with any person authorized by law to serve process in the service or execution or in the attempt to serve or execute any writ, warrant, process or order of a court, or in the discharge of any official duty.

Obstructing legal process or official duty is a Class A violation.

(Ord. No. 91-9475, § 1, 11-18-91; Ord. No. 96-9759, § 1, 9-9-96)

Sec. 25-113. Escape from custody.

(a) Escape from custody is escaping while held in lawful custody on a charge or conviction of a public offense.

(b) As used in this section:

(1) *Custody* means arrest; detention in a facility for holding persons charged with or convicted of offenses; detention for extradition or deportation; detention in a hospital or other facility pursuant to court order, imposed as a specific condition of probation or parole or imposed as a

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[4] **Cross references:** Administration, Ch. 2; resisting firemen, § 14-3.

specific condition of assignment to a community correctional services program; or any other detention for law enforcement purposes. Custody does not include general supervision of a person on probation or parole or constraint incidental to release on bail.

(2) *Escape* means departure from custody without lawful authority or failure to return to custody following temporary leave lawfully granted pursuant to express authorization of law or order of a court.

Escape from custody is a Class A violation.

(Ord. No. 91-9475, § 1, 11-18-91)

Sec. 25-114. Same, aiding escape.

It shall be unlawful for any person to:

(1) Assist another who is in lawful custody on a charge or conviction of a crime to escape from such custody; or

(2) Supply to another who is in lawful custody on a charge or conviction of crime, any object or thing adapted or designed for use in making an escape, with intent that it shall be so used; or

(3) Introduce into an institution in which a person is confined on a charge or conviction of crime any object or thing adapted or designed for use in making any escape, with intent that it shall be so used.

(Ord. No. 91-9475, § 1, 11-18-91)

Sec. 25-115. Falsely reporting an offense.

Falsely reporting an offense is informing a law enforcement officer that an offense has been committed, knowing that such information is false and intending that the officer shall act in reliance upon such false information.

Falsely reporting an offense is a Class A violation.

(Ord. No. 91-9475, § 1, 11-18-91)

Sec. 25-116. Simulating legal process.

Simulating legal process is:

(1) Sending or delivering to another any document which simulates or purports to be or is reasonably designed to cause others to believe it to be a summons, petition, complaint, or other judicial process, with intent thereby to induce payment of a claim;

(2) Printing, distributing or offering for sale any such document, knowing or intending that it shall be so used.

This section does not apply to the printing, distribution or sale of blank forms of legal documents intended for actual use in judicial proceedings.

Simulating legal process is a Class A violation.

(Ord. No. 91-9475, § 1, 11-18-91)

Sec. 25-117. Tampering with public record.

Tampering with a public record is knowingly and without lawful authority altering, destroying, defacing, removing or concealing any public record.

Tampering with a public record is a Class A violation.

(Ord. No. 91-9475, § 1, 11-18-91)

Sec. 25-118. Tampering with public notice.

Tampering with public notice is knowingly and without lawful authority altering, defacing, destroying, removing or concealing any public notice posted according to law, during the time the notice is required or authorized to remain posted.

Tampering with a public notice is a Class C violation.

(Ord. No. 91-9475, § 1, 11-18-91)

Sec. 25-119. False signing of petition.

False signing of a petition is the affixing of any fictitious or unauthorized signature to any petition, memorial or remonstrance, intended to be presented to the legislature, or either house thereof, or to any agency or officer of the State of Kansas or any of its political subdivisions.

False signing of an official petition is a Class C violation.

(Ord. No. 91-9475, § 1, 11-18-91)

Sec. 25-120. False impersonation.

False impersonation is representing one's self to be a public officer or employee or a person licensed to practice or engage in any profession or vocation for which a license is required by the laws or the State of Kansas, with knowledge that such representation is false.

False impersonation is a Class B violation.

(Ord. No. 91-9475, § 1, 11-18-91)

Sec. 25-121. Interference with conduct of public business in public building.

Interference with the conduct of public business in public buildings is:

(1) Conduct at or in any public building owned, operated or controlled by the state or any of its political subdivisions so as to willfully deny to any public official, public employee, or any invitee on such premises, the lawful rights of such official, employee, or invitee to enter, to use the facilities, or to leave, any such public building;

(2) Willfully impeding any public official or employee in the lawful performance of duties or activities through the use of restraint, abduction, coercion, or intimidation or by force and violence or threat thereof;

(3) Willfully refusing or failing to leave any such public building upon being requested to do so by the chief administrative officer, or his or her designee, charged with maintaining order in such public building, if such person is committing, threatens to commit, or incites others to commit, any act which did or would if completed, disrupt, impair, interfere with, or obstruct the lawful missions, processes, procedures, or functions being carried on in such public building;

(4) Willfully impeding, disrupting or hindering the normal proceedings of any meeting or session conducted by any judicial or legislative body or official at any public building by any act of intrusion into the chamber or other areas designated for the use of the body, or official conducting such meeting or session, or by any act designed to intimidate, coerce or hinder any member of such body, or any official engaged in the performance of duties at such meeting or session;

(5) Willfully impeding, disrupting or hindering, by any act of intrusion into the chamber or other areas designed for the use of any executive body or official, the normal proceedings of such body or official.

Interference with the conduct of public business in public buildings is a Class A violation.

(Ord. No. 91-9475, § 1, 11-18-91)

Sec. 25-122. Interference with police dogs.

(a) It shall be unlawful for any person to strike, abuse, tease, harass, or assault any dog being used by the city for the purpose of performing the duties of a police dog regardless of whether the dog is on duty or off.

(b) It shall be unlawful for any person to interfere with a dog being used by the police department or attempt to interfere with the handler of the dog in such a manner as to inhibit, restrict or deprive the handler of his or her control of the dog.

Violation of this section is a Class C violation.

(Ord. No. 91-9475, § 1, 11-18-91)
Cross references: Interference with police dogs and handlers, § 30-3.

Sec. 25-123. Unlawful use of identification cards.

(a) It shall be unlawful for any person, for any purpose, to:

(1) Display, cause or permit to be displayed, or have in possession, any fictitious, fraudulently altered or fraudulently obtained identification card.

(2) Lend any identification card to any other person or knowingly permit the use thereof by another.

(3) Display or represent any identification card not issued to the person as being the person's card.

(4) Permit any unlawful use of an identification card issued to the person.

(5) Display or possess any photograph, photostat, duplicate, reproduction or facsimile of an identification card unless authorized by the provisions of this act.

(6) Photograph, photostat, duplicate or in anyway reproduce any identification card or facsimile thereof in such a manner that it could be mistaken for a valid identification card or display or have in possession any such photograph, photostat, duplicate, reproduction or facsimile unless authorized by law.

(7) Display or cause or permit to be displayed any canceled identification card.

(b) Violation of paragraphs (1) or (7) of subsection (a) is a class B violation. Violation of paragraphs (2), (3), (4), (5), or (6) of subsection (a) is a class A violation.

(c) It shall be unlawful for any person to:

(1) Lend any identification card to or knowingly permit the use of any identification card by any person under twenty-one (21) years of age for use in the purchase of any alcoholic liquor.

(2) Lend any identification card to or knowingly permit the use of any identification card by any person under the legal age for consumption of cereal malt beverage for use in the purchase of any cereal malt beverage.

(3) Lend any identification card, driver's license of other form of identification to aid any other person in obtaining an identification card or replacement identification card.

(4) Display or cause to be displayed or have in possession any fictitious or fraudulently altered identification card by any person under twenty-one (21) years of age for use in the purchase of any alcoholic liquor or cereal malt beverage.

(d) (1) Upon a first conviction of a violation of any provision of subsection (c), a person shall be guilty of a class B violation and shall be sentenced to not less than one hundred (100) hours of community service and fined not less than two hundred dollars ($200.00) nor more than five hundred dollars ($500.00).

(2) On a second or subsequent conviction of a violation of any provision of subsection (c), a person shall be guilty of a class A violation.

(d) The provisions of this section shall apply to any identification card, driver's license or other form of identification whether issued under the laws of this state or issued under the laws of another state or jurisdiction.

(Ord. No. 02-10099, § 1, 8-19-02)

Secs. 25-124--25-130. Reserved.

ARTICLE VIII. OFFENSES AGAINST PUBLIC PEACE[5]

Sec. 25-131. Disorderly Conduct.

Disorderly conduct, with knowledge or probable cause to believe that such acts will alarm, anger or disturb others or provoke an assault or other breach of the peace, is:

(1) Engaging in brawling or fighting; or

(2) Disturbing an assembly, meeting or procession, not unlawful in its character; or

(3) Using offensive, obscene or abusive language or engaging in noisy conduct tending reasonably to arouse alarm, anger or resentment in others; or

(4) Urinate/defecating in public; or

(5) Willfully throwing, depositing or placing any substance upon any property in which another has an interest without the consent of such other person, when such action does not constitute criminal damage to property.

Disorderly conduct is a Class C violation.

(Ord. No. 91-9475, § 1, 11-18-91; Ord. No. 03-10123, § 1, 1-13-03)

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[5] **Cross references:** Nuisances, Ch. 24; intoxication and disorderly conduct, § 5-75.

Sec. 25-132. Disturbing the peace.

(a) It shall be unlawful for any person to make, continue, maintain or cause to be made or continued any excessive, unnecessary, unreasonable or unusually loud noise that is plainly audible across a property line or from a distance of fifty (50) feet from the source of the noise, which either annoys or disturbs a person of normal sensitivities, or injures or endangers the comfort, repose, health, peace or safety of others within the city. For purposes of this section, a property line is defined as an imaginary line drawn through the points of contact of adjoining lands, apartments, condominiums, townhouses and duplexes owned, rented or leased by different persons, a demarcation or a line of separate [separation] of properties, and also, for any two (2) or more buildings sharing common grounds, the line drawn midway between any two (2) such buildings. All areas devoted to public right-of-way shall be deemed to be across the property line. For the purpose of this definition, the property line includes all points on a plane formed by projecting the property line in a manner deemed appropriate by the enforcing police officer.

(b) It shall be unlawful for any person to use, operate or permit the use or operation of any electronic device, radio receiving set, television, musical instrument, phonograph, or other machine or device for the producing or reproducing of sound in such a manner that is plainly audible across a property line or from a distance of fifty (50) feet from the source of the noise, which either annoys or disturbs a person of normal sensitivities, or injures or endangers the comfort, repose, health, peace or safety of neighboring inhabitants. Neighboring inhabitants shall include persons living within or occupying residential districts of single or multifamily dwellings and shall include areas where multiple-unit dwellings and high-density residential districts are located.

(c) No person shall congregate with other persons, participate in, or be in any part or gathering of people from which sound emanates of a sufficient volume that is plainly audible from a distance of fifty (50) feet, so as to annoy or disturb persons of normal sensitivities, or injure or endanger the comfort, repose, health, peace or safety of persons residing in any residential area. No person shall visit or remain within any residential dwelling unit or within the vicinity of a residential dwelling unit wherein such gathering of people is taking place except persons who have gone there for the sole purpose of abating such disturbance. A police officer may order all persons present in any group or gathering from which said sound emanates, other than the owner or tenants of the dwelling unit, to immediately disperse in lieu of being charged under this section. Owners or tenants of the dwelling unit shall immediately abate the disturbance and, failing to do so, shall be in violation of this section.

(d) Electronically amplified sounds authorized by city permit, emanating from band concerts, block parties or other performances or similar activities publicly or privately sponsored and presented in any public space outdoors, shall not be in violation of this section, provided that the sponsor of the activity immediately complies when directed by any police officer or other authorized city official to decrease or discontinue the electronic amplification when, in the official's determination, the noise levels created are unreasonable and injure or endanger the comfort, repose, health, peace or safety of others within the city.

(e) It shall be unlawful for any person, while operating, driving, or parking a motor vehicle, to use or operate any electronic device, radio, television, tape player, compact disc player or other device for the producing or reproducing of sound in such a manner that it disturbs the peace, quiet and comfort of persons in the vicinity of the motor vehicle. Unless a person is operating under a loud speaker permit issued pursuant to section 3-5 of the Salina Code, it shall be a violation of this section if the sound emanating from the electronic device, radio, television, tape player, compact disc player or other device for producing or reproducing sound in or on the motor vehicle is clearly audible from a distance of fifty (50) feet.

(f) Statement of intent. No provision of this section shall be construed to limit or abridge the rights of any person to peacefully assemble and express opinions. It is the purpose of this section to protect individuals from unreasonable intrusions caused by excessive, unnecessary, unreasonable or unusually loud noises.

(Ord. No. 91-9475, § 1, 11-18-91; Ord. No. 01-10039, § 1, 6-18-01)

Sec. 25-133. Unlawful assembly.

Unlawful assembly is the meeting or coming together of not less than five (5) persons for the purpose of engaging in conduct constituting either disorderly conduct, as defined by section 25-131 of this article or a riot, as defined by section 25-135 of this article, or when in a lawful assembly of not less than five (5) persons, agreeing to engage in such conduct.

Unlawful assembly is a Class B violation.

(Ord. No. 91-9475, § 1, 11-18-91)

Sec. 25-134. Remaining at unlawful assembly.

Remaining at an unlawful assembly is willfully failing to depart from the place of an unlawful assembly after being directed to leave by a law enforcement officer.

Remaining at an unlawful assembly is a Class A violation.

(Ord. No. 91-9475, § 1, 11-18-91)

Sec. 25-135. Riot.

Riot is any use of force or violence which produces a breach of the public peace, or any threat to use such force or violence against any person or property if accompanied by power or apparent power of immediate execution, by five (5) or more persons acting together and without authority of law.

Riot is a Class A violation.

(Ord. No. 91-9475, § 1, 11-18-91)

Sec. 25-136. Loitering or trespassing on grounds of any public or private school or institution.

(a) It shall be unlawful for any person to loiter or trespass on or about the premises and grounds of any public or private school; of the public library; or around any assembly of persons at school or public activities or athletic events whether or not such events are being conducted by public or private school authorities.

(b) It shall be unlawful for any person or student who is not regularly enrolled in a public or private school; or who has been suspended or dismissed from a public or private school; to persist in staying or remaining on or about the premises or grounds without any lawful purpose.

Loitering or trespassing on grounds of any public or private school or institution is a Class B violation.

(Ord. No. 91-9475, § 1, 11-18-91; Ord. No. 96-9759, § 1, 9-9-96)

Sec. 25-137. Maintaining a public nuisance.

Maintaining a public nuisance is by act, or by failure to perform a legal duty, intentionally causing or permitting a condition to exist which injures or endangers the public health, safety or welfare.

Maintaining a public nuisance is a Class C violation.

(Ord. No. 91-9475, § 1, 11-18-91)

Sec. 25-138. Permitting a public nuisance.

Permitting a public nuisance is knowingly permitting property under the control of the offender to be used to maintain a public nuisance, as defined in section 25-137 of this article.

Permitting a public nuisance is a Class C violation.

(Ord. No. 91-9475, § 1, 11-18-91)

Sec. 25-139. Giving a false alarm.

The giving of a false alarm is:

(1) Initiating or circulating a report or warning of an impending bombing or other crime or catastrophe, knowing that the report or warning is baseless and under such circumstances that is likely to cause evacuation of a building, place of assembly or facility of public transport or to cause public inconvenience or alarm;

(2) Transmitting in any manner to the fire department of any city, township or other municipality, a false alarm of fire, knowing at the time of such transmission that there is no reasonable ground for believing that such fire exists; or

(3) Making a call in any manner for emergency service assistance including police, fire, medical or other emergency service provided under K.S.A. 12-5301 et seq., and amendments thereto, knowing at the time of such call that there is no reasonable ground for believing such assistance is needed.

Giving a false alarm is a Class A violation.

(Ord. No. 91-9475, § 1, 11-18-91)

Sec. 25-140. Desecrating a cemetery.

Desecrating a cemetery is knowingly and without authorization of law:

(1) Destroying, cutting, mutilating, defacing or otherwise injuring, tearing down or removing any tomb, monument, memorial or marker in a cemetery, or any gate, door, fence, wall, post or railing or any enclosure for the protection of a cemetery or any property in a cemetery;

(2) Obliterating any grave, vault, niche or crypt; or

(3) Destroying, cutting, breaking or injuring any building, statuary, ornamentation, tree, shrub or plant within the limits of a cemetery.

Desecrating a cemetery is a Class A violation if the damage is to the extent of less than five hundred dollars ($500.00).

(Ord. No. 91-9475, § 1, 11-18-91)

Sec. 25-141. Harassment by telephone.

Harassment by telephone is use of telephone communication for any of the following purposes:

(1) Making any comment, request, suggestion or proposal which is obscene, lewd, lascivious, filthy or indecent; or

(2) Making a telephone call, whether or not conversation ensues, with intent to abuse, threaten or harass any person at the called number; or

(3) Making or causing the telephone of another repeatedly to ring, with intent to harass any person at the called number; or

(4) Making repeated telephone calls, during which conversation ensues, solely to harass any person at the called number; or

(5) Playing any recording on a telephone, except recordings such as weather information or sports information when the number thereof is dialed, unless the person or group playing the recording shall identify itself or himself or herself and state that it is a recording; or

(6) Knowingly permitting any telephone under one's control to be used for any of the purposes mentioned herein.

Harassment by telephone is a Class A violation.

(Ord. No. 91-9475, § 1, 11-18-91)

Sec. 25-142. Aggressive begging/soliciting.

(a) It shall be unlawful for any person to:

(1) Solicit money or other things of value, or to solicit the sale of goods or services, in an aggressive manner in a public area; or

(2) Solicit money or other things of value, or to solicit the sale of goods or services on private property or residential property, if the owner, tenant, or lawful occupant has asked the person not to solicit on the property, or has posted a sign clearly indicating that solicitations are not welcome on the property.

(b) As used in this section:

(1) "Aggressive manner" means:

1. *Threatening approaches.* Approaching the person being solicited in a manner that (1) is likely to cause a reasonable person to fear imminent bodily harm or the commission of a criminal act upon property in the person's possession, or (2) is intended to or is likely to intimidate the person being solicited into responding affirmatively to the solicitation;

2. *Following.* Following the person being solicited, if that conduct (1) is intended to cause a reasonable person to fear imminent bodily harm or the commission of a criminal act upon property in the person's possession, or (2) is intended to or is likely to intimidate the person being solicited into responding affirmatively to the solicitation;

3. *Physical contact.* Intentionally or recklessly making any physical contact with or touching another person in the course of the solicitation, or approaching with an arm's length of the person, except with the person's consent;

4. *Continuing to solicit.* Continuing to solicit a person after the person has made a negative response, if continuing the solicitation (1) is intended to or is likely to cause a reasonable person to fear imminent bodily harm or the commission of a criminal act upon property in the person's possession, or (2) is intended to or is reasonably likely to intimidate the person being solicited into responding affirmatively to the solicitation;

5. *Verbal threats.* Intentionally or recklessly using words (1) intended to or likely to cause a reasonable person to fear imminent bodily harm or the commission of a criminal act upon property in the person's possession, or (2) likely to intimidate the person into responding affirmatively to the solicitation; or

6. *Blocking sidewalk or street or pathway.* Intentionally or recklessly blocking the safe or free passage of the person being solicited or requiring the person to take evasive action to avoid physical contact with the person making the solicitation.

(2) *"Intimidate"* means to engage in conduct which would make a reasonable person feel threatened or fearful of harm to the person's personal safety or property.

(3) *"Public area"* means any place to which the general public has access and a right to resort for business, entertainment or other lawful purpose, including, but not limited to, alleys, bridges, buildings, driveways, parking lots, parks, plazas, sidewalks, and streets open to the general public, and the doorways and entrances to buildings and dwellings, and the grounds enclosing them.

(4) *"To solicit"* includes, without limitation, the spoken, written, or printed word or such other acts or bodily gestures as are conducted in the furtherance of the purposes of begging, soliciting, or asking for any item of value, monetary or otherwise.

Aggressive begging/soliciting is a Class B violation.

(Ord. No. 96-9745, § 1, 6-17-96)

Secs. 25-143--25-150. Reserved.

ARTICLE IX. OFFENSES AGAINST PUBLIC SAFETY

Sec. 25-151. Unlawful use of weapons.

(a) Unlawful use of weapons is knowingly:

(1) Selling, manufacturing, purchasing, possessing or carrying any bludgeon, sandclub, metal knuckles or throwing star, or any knife, commonly referred to as a switchblade, which has a blade that opens automatically by hand pressure applied to a button, spring or other device in the handle of the knife, or any knife having a blade that opens or falls or is ejected into position by the force of gravity or by an outward, downward, or centrifugal thrust or movement;

(2) Carrying concealed on one's person, or possessing with intent to use the same unlawfully against another, a dagger, dirk, billy, blackjack, slingshot, dangerous knife, straight-edged razor, stiletto or any other dangerous or deadly weapon or instrument of like character, except that an ordinary pocket knife with no blade more than four (4) inches in length shall not be construed to be a dangerous knife, or a dangerous or deadly weapon or instrument;

(3) Carrying on one's person or in any land, water or air vehicle, with intent to use the same unlawfully, a tear gas or smoke bomb or projector or any object containing a noxious liquid, gas or substance;

(4) Carrying any pistol, revolver or other firearm concealed on one's person except when on the person's land or in the person's abode or fixed place of business;

(5) Setting a spring gun;

(6) Possessing any device or attachment of any kind designed, used or intended for use in silencing the report of any firearm.

(b) Subsections (a)(1), (2), (3) and (4) shall not apply to or affect any of the following:

(1) Law enforcement officers, or any person summoned by any such officers to assist in making arrests or preserving the peace while actually engaged in assisting such officer;

(2) Wardens, superintendents, directors, security personnel and keepers of prisons, penitentiaries, jails and other institutions for the detention of persons accused or convicted of crime, while acting within the scope of their authority;

(3) Members of the armed services or reserve forces of the United States or the Kansas National Guard while in the performance of their official duty; or

(4) Manufacture of, transportation to, or sale of weapons to a person authorized under (b)(1) through (b)(3) of this section to possess such weapons.

(c) Subsection (a)(4) shall not apply to or affect the following:

(1) Watchmen, while actually engaged in the performance of the duties of their employment;

(2) Licensed hunters or fishermen, while engaged in hunting or fishing;

(3) Private detectives licensed by the state to carry the firearm involved, while actually engaged in the duties of their employment;

(4) Detectives or special agents regularly employed by railroad companies or other corporations to perform fulltime security or investigative services, while actually engaged in the duties of their employment; or

(5) The state fire marshal, the state fire marshal's deputies or any member of a fire department authorized to carry a firearm pursuant to K.S.A. 31-157 and amendments thereto, while engaged in an investigation in which such fire marshal, deputy or member is authorized to carry a firearm pursuant to K.S.A. 31-157 and amendments thereto.

(d) Subsections (a)(1) and (6) shall not apply to any person who sells, purchases, possesses or carries a firearm, device or attachment which has been rendered unserviceable by steel weld in the chamber and marriage weld of the barrel to the receiver and which has been registered in the national firearms registration and transfer record in compliance with 26 U.S.C. 5841 et seq. in the name of such person and, if such person transfers such firearm, device or attachment to another person, has been so registered in the transferee's name by the transferor.

(e) It shall be a defense that the defendant is within an exemption.

Violation of this section is a Class B violation.

(Ord. No. 91-9475, § 1, 11-18-91)

Sec. 25-152. Hostile demonstrations with dangerous weapons.

It shall be unlawful for any person to make any demonstration in a hostile manner with any dangerous or deadly weapon against the person or property of another; provided, that the provisions of this section shall not apply to officers of the law and their deputies in the performance of their duties.

(Ord. No. 91-9475, § 1, 11-18-91)

Sec. 25-153. Confiscation, disposition of weapons.

(a) Upon conviction of a violation of sections 25-151 or 25-152 of this article, any weapon seized in connection therewith shall remain in the custody of the municipal court.

(b) Any stolen weapon so seized and detained, when no longer needed for evidentiary purposes, shall be returned to the person entitled to possession, if known. All other confiscated weapons when no longer needed for evidentiary purposes, shall in the discretion of the municipal court, be destroyed, preserved as city property or forfeited to the law enforcement agency seizing the weapon. All weapons forfeited to any law enforcement agency may be donated to the department of wildlife and parks or to the Kansas Bureau of Investigation for law enforcement, testing, comparison or destruction by the Kansas Bureau of Investigation Forensic Laboratory.

(Ord. No. 91-9475, § 1, 11-18-91; Ord. No. 93-9603, § 1, 10-11-93)

Sec. 25-154. Unlawful discharge of firearms.

Unlawful discharge of firearms is the discharging or firing of any gun, rifle, pistol, revolver or other firearm within the city. This section shall not be construed to apply to:

(1) The discharge of firearms by any duly authorized law enforcement officer when necessary in the discharge of his or her official duties;

(2) The discharge of firearms in any licensed shooting gallery;

(3) Firing squads for ceremonials; nor

(4) A legitimate gunsmith in pursuit of his or her trade.

Unlawful discharge of firearms is a Class B violation.

(Ord. No. 91-9475, § 1, 11-18-91)

Sec. 25-155. Air gun, air rifle, bow and arrow, slingshot or BB gun.

The unlawful operation of an air gun, air rifle, bow and arrow, slingshot or BB gun is the shooting, discharging or operating of any air gun, air rifle, bow and arrow, slingshot or BB gun, within the city, except within the confines of a building or other structure from which the projectiles cannot escape.

Unlawful operation of an air gun, air rifle, bow and arrow, slingshot or BB gun is a Class C violation.

(Ord. No. 91-9475, § 1, 11-18-91)

Sec. 25-156. Seizure of weapon.

The chief of police of the city or his or her duly authorized representative is hereby empowered to seize and hold any air gun, air rifle, bow and arrow, slingshot or BB gun used in violation of section 25-155 of this article, and is further empowered to seize and hold as evidence pending a hearing before a court of competent jurisdiction any air gun, air rifle, bow and arrow, slingshot or BB gun used in violation of section 25-155.

(Ord. No. 91-9475, § 1, 11-18-91)

Sec. 25-157. Unlawful aiding, abetting.

It shall be unlawful for any person to conspire to or aid and abet in the operation or discharging or causing to be operated or discharged any air gun, air rifle, bow and arrow, BB gun or slingshot except as provided in section 25-155 within the city, whether individually or in connection with one (1) or more persons or as principal, agent or accessory; and it is further unlawful for every parent or guardian of a minor child who willfully or knowingly permits or directs the operation or discharge of any air gun, air rifle, bow and arrow, BB gun or slingshot by such minor child within the city except as provided in section 25-63 of this article.

Violation of this section is a Class C violation.

(Ord. No. 91-9475, § 1, 11-18-91)

Sec. 25-158. Creating a hazard.

Creating a hazard is:

(1) Storing or abandoning in any place accessible to children, a container which has a compartment of more than one and one-half (1 1/2) cubic feet capacity and a door or lid which locks or fastens automatically when closed and which cannot be easily opened from the inside, and failing to remove the door, lock, lid or fastening device on such container; or

(2) Being the owner or otherwise having possession of property upon which a cistern, well or cesspool is located and knowingly failing to cover the same with protective covering of sufficient strength and quality to exclude human beings and domestic animals therefrom; or

(3) Exposing, abandoning or otherwise leaving any explosive or dangerous substance in a place accessible to children.

Creating a hazard is a Class B violation.

(Ord. No. 91-9475, § 1, 11-18-91)

Sec. 25-159. Unlawful failure to report a wound.

Unlawful failure to report a wound is the failure by an attending physician or other person to report to the chief of police his or her treatment of:

(1) Any bullet wound, gunshot wound, powder burn or other injury arising from or caused by the discharge of a firearm; or

(2) Any wound which is likely to or may result in death and is apparently inflicted by a knife, ice pick or other sharp or pointed instrument.

Unlawful failure to report a wound is a Class C violation.

(Ord. No. 91-9475, § 1, 11-18-91)

Sec. 25-160. Reserved.

(Ord. No. 93-9600, § 2, 10-11-93; Ord. No. 05-10283 repealed Sec. 25-160 pertaining to negligent storage of firearms)

Sec. 25-161. Inhaling toxic vapors.

(a) It shall be unlawful for any person to knowingly inhale or breathe the fumes of any substance having the property of releasing toxic vapors, for the purpose of causing a condition of intoxication, euphoria, excitement, exhilaration, stupefaction, or dulled senses of the nervous system, or to possess, buy, or use any such substance for the purpose of violating or aiding another to violate this section. However, this section does not apply to the inhalation of anesthesia for medical or dental purposes, when directed or prescribed by a duly licensed physician, dentist or certified registered nurse anesthetist.

(b) As used in this section, "any substance having the property of releasing toxic vapors" means and includes any glue, cement, paint, gasoline, aerosol, drug or other substance or combination of substances of whatever kind containing one (1) or more of the following chemical compounds: acetone, an acetate, benzene, butyl alcohol, ethyl alcohol, ethylene dichloride, isopropyl alcohol, methyl alcohol, methyl ethyl ketone, pentachlorophenol, petroleum ether, toluene or any group of polyhalogenated hydrocarbons containing fluorine and chlorine.

Inhaling toxic vapors is a Class A violation.

(Ord. No. 00-10010, § 1, 7-9-01)

Secs. 25-162--25-170. Reserved.

ARTICLE X. OFFENSES AGAINST PUBLIC MORALS

Sec. 25-171. Gambling, terms defined.

Definitions of gambling terms used in this section shall be as follows:

(a) *Bet.* A bet is a bargain in which the parties agree that, dependent upon chance, one stands to win or lose something of value specified in the agreement. A bet does not include:

(1) Bona fide business transactions which are valid under the laws of contracts including, but not limited to, contracts for the purchase or sale at a future date of securities or other commodities, and agreements to compensation for loss caused by the happening of the chance including, but not limited to, contracts of indemnity or guaranty and life or health and accident insurance;

(2) Offers of purses, prizes or premiums to the actual contestants in any bona fide contest for the determination of skill, speed, strength, or endurance or to the bona fide owners of animals or vehicles entered in such a contest;

(3) A lottery as defined in this section;

(4) Any bingo game by or for participants managed, operated or conducted in accordance with the laws of the state by an organization licensed by the state to manage, operate or conduct games of bingo;

(5) A lottery operated by the state pursuant to the Kansas lottery act; or

(6) Any system of parimutuel wagering managed, operated and conducted in accordance with the Kansas parimutuel racing act.

(b) *Lottery.* A lottery is an enterprise wherein for a consideration the participants are given an opportunity to win a prize, the award of which is determined by chance. As used in this subsection, a lottery does not include a lottery operated by the state pursuant to the Kansas lottery act.

(c) *Consideration.* Consideration means anything which is a commercial or financial advantage to the promoter or a disadvantage to any participant. Consideration does not include:

(1) Mere registration without purchase of goods or services; personal attendance at places or events, without payment of an admission price or fee; listening to or watching radio and television programs; answering the telephone or making a telephone call and acts of like nature.

(2) Sums of money paid by or for participants in any bingo game managed, operated or conducted in accordance with the laws of the state by any bona fide nonprofit religious, charitable, fraternal, educational or veteran organization licensed to manage, operate or conduct bingo games under the laws of the state and it shall be conclusively presumed that such sums paid by or for such participants to be for the benefit of the sponsoring organizations for the use of such sponsoring organizations in furthering the purposes of such sponsoring organizations;

(3) Sums of money paid by or for participants in any lottery operated by the state pursuant to the Kansas lottery act; or

(4) Sums of money paid by or for participants in any system of parimutuel wagering managed, operated and conducted in accordance with the Kansas parimutuel racing act.

(d) *Gambling device.* A gambling device is a contrivance which for a consideration affords the player an opportunity to obtain something of value, the award of which is determined by chance, or any token chip, paper, receipt or other document which evidences, purports to evidence or is designed to evidence participation in a lottery or the making of a bet. The fact that the prize is not automatically paid by the device does not affect its character as a gambling device.

(e) *Gambling place.* A gambling place is any place, room, building, vehicle, tent or location which is used for any of the following:

(1) Making and settling bets;

(2) Receiving, holding, recording or forwarding bets or offers to bet;

(3) Conducting lotteries; or

(4) Playing gambling devices.

Evidence that the place has a general reputation as a gambling place or that, at or about the time in question, it was frequently visited by persons known to be commercial gamblers or known as frequenters of gambling places is admissible on the issue of whether it is a gambling place.

(f) *Gambling.* Gambling is:

(1) Making a bet;

(2) Entering or remaining in a gambling place with intent to make a bet, to participate in a lottery, or to play a gambling device.

Gambling is a Class B violation.

(Ord. No. 91-9475, § 1, 11-18-91)

Cross references: Gambling prohibited in carnivals, circuses and tent shows, § 6-17.

Sec. 25-172. Permitting premises to be used for commercial gambling.

Permitting premises to be used for commercial gambling is intentionally:

(1) Granting the use or allowing the continued use of a place as a gambling place;

(2) Permitting another to set up a gambling device for use in a place under the offender's control.

Permitting premises to be used for commercial gambling is a Class B violation.

(Ord. No. 91-9475, § 1, 11-18-91)

Sec. 25-173. Possession of a gambling device.

(a) Possession of a gambling device is knowingly possessing or having custody or control, as owner, lessee, agent, employee, bailee or otherwise of any gambling device.

(b) It shall be a defense to a prosecution under this section that the gambling device is an antique slot machine and that the antique slot machine was not operated for gambling purposes while in the owner's or the defendant's possession. A slot machine shall be deemed an antique slot machine if it was manufactured prior to the year 1950.

(c) It shall be a defense to a prosecution under this section that the gambling device is possessed or under custody or control of a manufacturer registered under the federal gambling devices act of 1962 (15 U.S.C. 1171 et seq.) or a transporter under contract with such manufacturer with intent to transfer for use:

(1) By the Kansas lottery or Kansas lottery retailers as authorized by law and rules and regulations adopted by the Kansas lottery commission;

(2) By a licensee of the Kansas racing commission as authorized by law and rules and regulations adopted by the commission; or

(3) In a state other than the State of Kansas.

Possession of a gambling device is a Class B violation.

(Ord. No. 91-9475, § 1, 11-18-91)

Secs. 25-174--25-180. Reserved.

ARTICLE XI. VIOLATIONS, PENALTIES

Sec. 25-181. Classes of violations and confinement.

(a) For the purpose of sentencing, the following classes of violations and the punishment and the terms of confinement authorized for each class are established:

(1) *Class A,* the sentence for which shall be a definite term of confinement in the city or county jail which shall be fixed by the court and shall not exceed one (1) year;

(2) *Class B,* the sentence for which shall be a definite term of confinement in the city or county jail which shall be fixed by the court and shall not exceed six (6) months;

(3) *Class C,* the sentence for which shall be a definite term of confinement in the city or county jail which shall be fixed by the court and shall not exceed one (1) month;

(4) *Unclassified violations,* which shall include all offenses declared to be violations without specification as to class, the sentence for which shall be in accordance with the sentence specified in the section that defines the offense; if no penalty is provided in such law, the sentence shall be the same penalty as provided herein for a Class C violation.

(5) Cigarette and tobacco infraction, a violation of section 25-84 of this chapter that proscribes or requires the same behavior as that proscribed or required by statutory provision that is classified as a cigarette and tobacco infraction in subsection (m) or (n) of K.S.A. 79-3321 and amendments thereto, the sentence for which shall consist of a fine only. No confinement is authorized by law.

(b) Upon conviction of a violation, a person may be punished by a fine, as provided in section 25-182 of this article, instead of or in addition to confinement, as provided in this section.

(c) In addition to or in lieu of any other sentence authorized by law, whenever there is evidence that the act constituting the violation was substantially related to the possession, use or ingestion of cereal malt beverage or alcoholic liquor by such person, the court may order such person to attend and satisfactorily complete an alcohol or drug education or training program certified by the

administrative judge of the judicial district or licensed by the secretary of social and rehabilitation services.

(Ord. No. 91-9475, § 1, 11-18-91; Ord. No. 96-9758, § 2, 8-26-96)

Sec. 25-182. Fines.

A person convicted of a violation may, in addition to, or instead of, the confinement authorized by law, be sentenced to pay a fine which shall be fixed by the court as follows:

(1) Class A violation, a sum not exceeding two thousand five hundred dollars ($2,500.00).

(2) Class B violation, a sum not exceeding one thousand dollars ($1,000.00).

(3) Class C violation, a sum not exceeding five hundred dollars ($500.00).

(4) Unclassified violation, any sum authorized by the section that defines the offense. If no penalty is provided in such law, the fine shall not exceed the fine provided herein for a Class C violation.

(5) Cigarette and tobacco infraction, a sum of twenty-five dollars ($25.00)

(Ord. No. 91-9475, § 1, 11-18-91; Ord. No. 96-9758, § 2, 8-26-96)

Secs. 25-183--25-190. Reserved.

ARTICLE XII. MISCELLANEOUS PROVISIONS

Sec. 25-191. Application; Kansas Criminal Code.

The provisions of the Kansas Criminal Code (K.S.A. 21-3101:4621, inclusive and amendments thereto), which are in their nature applicable to the jurisdiction of the city and in respect to which no special provision is made by ordinance of the city are applicable to this criminal code.

(Ord. No. 91-9475, § 1, 11-18-91)

Sec. 25-192. Severability.

If any provision of this code is declared unconstitutional, or the application thereof to any person or circumstance is held invalid, the constitutionality of the remainder of the code and the applicability thereof to other persons and circumstances shall not be affected thereby.

(Ord. No. 91-9475, § 1, 11-18-91)

Secs. 25-193--25-200. Reserved.

Next page number is 385.

CHAPTER 26. OIL AND GAS[1]

Art. I. In General, §§ 26-1--26-15
Art. II. Permit, §§ 26-16--26-26

ARTICLE I. IN GENERAL

Sec. 26-1. Rights of landowners.

Neither this chapter nor any permit issued hereunder shall be interpreted to grant any right or license to the permittee to enter upon or occupy in any respect, in the drilling or production operations, any land except by the written consent of the owner; nor shall it limit or prevent the free right of any landowner to contract for the amount of royalty to be paid with respect to his own land.

(Code 1966, § 24-14)

Sec. 26-2. Removal of equipment required.

It shall be the duty of every person to whom a permit may be issued as provided in this chapter, after the well has been drilled in the event the same is a dry hole or abandoned, to remove the derrick, drilling tools, equipment and machinery from the location of the well and to restore the premises to their original condition, as nearly as it is practical, and to see that the well is properly plugged. If oil or gas is produced from such well, then it shall be the duty of the holder of the permit upon the completion of the drilling of the well to remove all machinery, equipment and material not necessary to be retained for use in the production of the oil or gas from such well, and insofar as can be done, consistent with the production from such well to restore the premises to their original condition as nearly as practical. All of which, either in the event of a dry hole or a producing well, shall be done within sixty (60) days after completion of the drilling of the well.

(Code 1966, § 24-15)

Sec. 26-3. Conveyance of oil out of city required; temporary storage; fencing of excavations and slush ponds.

In operating under any permit issued under this chapter, all oil, gas and water produced or arising from the operations, shall be piped or otherwise conveyed or removed from the limits of the city except the ordinary use of slush pond and the temporary storage of not to exceed five hundred (500) barrels of oil for each well; and all excavations and slush ponds shall be completely enclosed with six (6) foot woven wire fencing. The laying of any pipe lines by any permittee shall be done under the supervision of the city engineer.

(Code 1966, § 24-16)

Sec. 26-4. Fencing of storage facilities.

(a) All crude petroleum tank batteries, including but not limited to, receiving tanks, storage tanks, catwalks and diked areas and all pump jacks and motors shall be securely and permanently fenced by a six (6) foot chain link fence, topped by three (3) strands of barbed wire. Any gate installed for

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[1] **State law references:** Oil and gas, K.S.A. Ch. 55.

operative use in such fence shall be designed of like or equivalent material and shall be securely locked at all times and adaptable to opening only by key.

(b) Production of crude petroleum from subsurface within the city, except after strict compliance, as a condition precedent, with the requisites of this section, is hereby prohibited.

(Code 1966, § 24-17)

Secs. 26-5--26-15. Reserved.

ARTICLE II. PERMIT

Sec. 26-16. Required.

It shall be unlawful for any person to commence the drilling of a well for oil or gas within the city limits without first having procured from the city a permit therefor to be issued by authority of the board of commissioners in accordance with the terms and conditions of this article.

(Code 1966, § 24-1)

Sec. 26-17. Application.

Before any permit shall be granted for the commencement of a well for the production of oil or gas, an application therefor shall be filed with the city clerk. Such application shall show:

(1) That the applicant has good and valid oil and gas leases from property owners covering at least a ten (10) acre tract;

(2) Evidence of agreement in writing between the lessee or lessees, and the lessors, if more than one, providing for a pooling of all royalties arising from said production on said tract, to be distributed to the property owners in accordance with the number of acres of each owner in the tract;

(3) Such application shall be accompanied by a plat or map of such tract showing the proposed location of the well, which location shall in no instance be closer than three hundred (300) feet of any boundary line of the tract unless by the unanimous vote of the commissioners but not upon any street or alley. Such map shall show the location of each residence upon the tract and all improvements;

(4) A drilling agreement providing adequate protection to the parties in interest, by enclosing the drilling rig on all sides, equipping the same with adequate fire extinguishers, which are to be kept in good order; including a reasonable and adequate plan for the handling of the slush, basin sediment and salt water that may be produced in the drilling of the well; and facilities for handling production to the end that it may not be necessary to store oil on the area in excess of five hundred (500) barrels per well. Such agreement or agreements shall make further provisions that in the event the well is a dry hole, or nonproductive of either oil or gas, all materials, equipment, tools and machinery of every kind and character shall be removed therefrom within sixty (60) days and the premises fully restored to their original condition as nearly as practical.

(Code 1966, § 24-2)

Sec. 26-18. Bond or deposit.

A good and sufficient surety bond, signed by the applicant for a drilling permit hereunder and by a corporate surety authorized to do business in the state, or a cash deposit in such amount as deemed sufficient by the board of commissioners, but in no event less than five thousand dollars ($5,000.00) shall be tendered to the board and approved by the city clerk prior to the issuance of a permit pursuant to the terms of this chapter, conditioned upon faithful compliance with the terms and conditions of this chapter, and further conditioned upon saving and holding the city free and harmless from any damage resulting to the city as a result of drilling, pumping, repairing or other operations by the permittee, the laying of pipe lines, the setting of tanks or as result of moving machinery and equipment over any street in the city; provided, that the permittee or his or its assigns shall pay the annual premium due upon said surety bond within ten (10) days following expiration of each year and file a receipt therefor in the office of the city clerk.

(Code 1966, § 24-3)

Sec. 26-19. Liability insurance.

Each permittee hereunder shall carry and maintain public liability insurance on each well or group of wells, with limits of not less than the maximum liability for claims which could be asserted against the city, for any number of claims arising out of a single occurrence or accident under the Kansas Tort Claims Act, as amended and shall deposit proof of payment of renewal premiums thereon with the city clerk.

(Code 1966, § 24-4)

Sec. 26-20. Issuance.

Upon the filing of an application for a drilling permit, the same shall be considered by the board of commissioners and if the board of commissioners shall deem such application adequate and the drilling of the well not injurious to public or private property, the same shall be granted.

(Code 1966, § 24-6)

Sec. 26-21. Denial.

(a) The board of commissioners shall have the power and reserves the authority to refuse any application for a permit where by reason of the proposed application for the proposed well, and character and value of the permanent improvements already erected on the tract applied for, or adjacent thereto, and the uses to which the land and surroundings are adapted for civic purposes or for sanitary reasons, the drilling of a gas or oil well will be a serious disadvantage to the city and to its inhabitants as a whole; provided, that when a permit shall be refused for any of these reasons, but not otherwise, the deposit or cash paid with the application shall be returned to the applicant. Except as hereinbefore provided if any application is found by the board of commissioners to comply in all respects with this chapter, the city clerk shall be authorized to issue a permit for the drilling of the well provided for.

(b) If a permit is denied, the filing fee shall be refunded to the applicant.

(Code 1966, §§ 24-7, 24-8)

Sec. 26-22. Permit to specify location; drilling elsewhere prohibited.

A drilling permit hereunder shall specify the particular location of the well to be drilled, and it shall be unlawful for the permittee to drill elsewhere in the tract.

(Code 1966, § 24-9)

Sec. 26-23. Applicant must have right to drill.

No permit shall be granted or issued for the drilling of a well except upon ground held by the applicant under oil and gas mining lease, or grant, or drilling contract from the owner giving the owner's permission to drill the well.

(Code 1966, § 24-10)

Sec. 26-24. Duration.

No permit which shall be issued under this article, or any rights, privileges or franchise granted hereby or hereunder, shall exist longer than for a period of ten (10) years from the date of the issuance of the permit or as long thereafter as oil and/or gas is produced from the tract.

(Code 1966, § 24-12)

Sec. 26-25. Termination.

When a drilling permit shall have been issued, the same shall terminate and become inoperative without any action on the part of the board of commissioners, unless within sixty (60) days from the date of issue of such permit actual drilling of the well shall have been commenced, and after the drilling of a well shall have commenced, the cessation for a like period of the drilling operations shall cancel the permit, and the well shall be considered as abandoned for all purposes of this chapter and it shall be unlawful thereafter to continue drilling of such well without the issuance of another permit.

(Code 1966, § 24-11)

Sec. 26-26. Revocation.

Upon default by a permittee in complying with any provisions of this chapter, the board of commissioners may revoke any permit hereunder, after five (5) days' notice to the permittee by registered mail. Thereupon the permittee shall cease and desist from all operations under and pursuant to any such permit.

(Code 1966, § 24-13)

CHAPTER 27. PARKS AND RECREATION[1]

Art. I. In General, §§ 27-1--27-15
Art. II. Park Regulations, §§ 27-16--27-18

ARTICLE I. IN GENERAL

Secs. 27-1--27-15. Reserved.

ARTICLE II. PARKS REGULATIONS[2]

Sec. 27-16. Closing hours of parks.

(a) Sunset and Bill Burke Parks within the city shall be closed to the general public between the hours of 11:00 p.m. and 5:00 a.m.

(b) Oakdale, Lakewood, Jerry Ivey, Indian Rock, Kenwood (west of Kenwood Drive, area of locomotive only) and Centennial. Parks within the city shall be closed to the general public between the hours of 12:00 midnight and 5:00 a.m.

(c) No persons, other than law enforcement officers, city employees engaged in city business, or persons with a permit issued pursuant to section 27-17 below, shall either enter or remain within a park listed in subsections (a) and (b) when the park is closed to the general public.

(Ord. No. 91-9439, § 1, 5-6-91; Ord. No. 93-9583, § 1, 7-12-93)

Sec. 27-17. Permit system.

The city manager is authorized to adopt and administer a permit system whereby persons applying for and obtaining such a permit shall have access to a specific park for a specific program, activity or event during such time as the park is otherwise closed to the public.

(Ord. No. 91-9439, § 1, 5-6-91)

Sec. 27-18. Lakewood Lake boating limitations.

Lakewood Lake shall be closed to the operation of any motorized vessel under power of an internal combustion engine. "Vessel" shall include a boat or any other recreational device designed for operation in the water.

(Ord. No. 94-9636, § 1, 6-6-94)

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[1] **Cross references:** Streets, sidewalks and other public places, Ch. 35. **State law references:** Public recreation and playgrounds generally, K.S.A. 12-1901 et seq.

[2] **Editor's note:** Ord. No. 91-9439, § 2, adopted May 6, 1991, repealed Art. II, §§ 27-16, 27-16.1, 27-16.2, and 27-17, in its entirety. Former Art. II pertained to similar subject matter and derived from the Code of 1966, §§ 25-7--25-9, Ord. No. 90-9380, § 1, adopted April 23, 1990, and Ord. No. 90-9407, § 1, adopted Sept. 10, 1990.

CHAPTER 28. PEDDLERS AND SOLICITORS[1]

Art.	**I.**	**In General, §§ 28-1--28-10**
Art.	**II.**	**Permit, §§ 28-11--28-25**
Art.	**III.**	**Operating Regulations, §§ 28-26--28-40**
Art.	**IV.**	**Ice Cream Street Vendors, §§ 28-41--28-75**
		Div. 1. License, §§ 28-41--28-50
		Div. 2. Operating Regulations, §§ 28-51--28-75
Art.	**V.**	**Suspension, Revocations, Appeals, §§ 28-76--28-85**
Art.	**VI.**	**Penalty, § 28-86**

ARTICLE I. IN GENERAL

Sec. 28-1. Public purpose.

This chapter is intended to protect against criminal activity, including fraud and burglary; minimize the unwelcome disturbance of citizens and the disruption of privacy; and to otherwise preserve the public health, safety and welfare by regulating, controlling and licensing door-to-door peddlers, solicitors and ice cream street vendors.

(Ord. No. 97-9798, § 1, 4-4-97)

Sec. 28-2. Definitions.

As used in this chapter, the words and phrases herein defined shall have the following meanings unless the context otherwise requires:

Goods means any goods, wares, foodstuffs, merchandise or services offered for sale, whether or not displayed. This does not include frozen dairy and non-dairy desserts offered for sale by ice cream street vendors.

Ice cream street vendor means a person who travels by any type of vehicle, either motorized or not, upon the improved portion of any street, selling or offering for sale any single-serving frozen dairy or non-dairy dessert.

Peddler means any person who goes upon the premises of any private residence in the city, not having been invited by the occupant thereof, carrying or transporting goods, wares, merchandise or personal property of any nature and offering the same for sale. This does not include ice cream street vendors or businesses temporarily located on private property who are required to obtain a temporary use permit.

Peddling includes all activities ordinarily performed by a peddler as indicated under the definition of "peddler" in this section.

Solicitor means any person who goes upon the premises of any private residence in the city, not having been invited by the occupant thereof, for the purpose of taking or attempting to take orders for the sale of goods, merchandise, wares, or other personal property of any nature for future

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[1] **Editor's note:** Ord. No. 97-9798, adopted Apr. 4, 1997, repealed and replaced Ch. 28, §§ 28-1--28-27 with new provisions, designated as §§ 28-1--28-3, 28-11--28-18, 28-26--28-31, 28-41--28-43, 28-51--28-67, 28-76--28-78 and 28-86. Prior to repeal, former Ch. 28 pertained to similar subject matter as derived from Ord. No. 96-9740, § 1, adopted May 20, 1996. **Cross references:** Licenses generally, Ch. 20.

delivery, or for services to be performed in the future.

Soliciting includes all activities ordinarily performed by a solicitor as indicated under the definition of "solicitor" in this section.

(Ord. No. 97-9798, § 1, 4-4-97)

Sec. 28-3. Severability.

The provisions of this chapter are declared to be severable. If any section, sentence, clause, or phrase of the chapter shall for any reason be held to be invalid or unconstitutional by a court of competent jurisdiction, such decisions shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this chapter, but they shall remain in effect; it being the legislative intent that this chapter shall remain in effect notwithstanding the invalidity of any part.

(Ord. No. 97-9798, § 1, 4-4-97)

Secs. 28-4--28-10. Reserved.

ARTICLE II. PERMITS

Sec. 28-11. Permit requirements and exemptions.

It shall be unlawful for any person eighteen (18) years of age or older to engage in peddling or soliciting activities within the city without first obtaining a permit issued by the city clerk.

(Ord. No. 97-9798, § 1, 4-4-97)

Sec. 28-12. Permit for sponsoring juvenile peddlers or solicitors.

(a) No person under the age of eighteen (18) shall be permitted to engage in peddling or soliciting activities except as provided in this section.

(b) A permit shall be obtained by a sponsoring person, company or organization for the conduct of any peddling or soliciting activities involving, in whole or in part, a sales force of one (1) or more persons under eighteen (18) years of age.

(c) The sponsor shall be responsible for supervising and controlling the conduct of all persons, including juveniles, peddling or soliciting under the sponsor's permit.

(Ord. No. 97-9798, § 1, 4-4-97)

Sec. 28-13. Permit application.

Every person subject to the provisions of this chapter shall file with the office of the city clerk an application in writing on a form furnished by that office, which shall provide the following information:

(1) Proof of age, address and identification of the applicant, to be provided through the applicant's driver's license, or other legally recognized form of identification;

(2) A brief description of the business or activity to be conducted;

(3) The hours and location for which the permit to engage in peddling or soliciting is desired;

(4) If employed, the name, address and telephone number of the employer; or if acting as an agent,

the name, address and telephone number of the principal who is being represented, with credentials in written form establishing the relationship and the authority of the employee or agent to act for the employer or principal, as the case may be;

(5) A statement as to whether or not the applicant has been convicted of a felony, misdemeanor or ordinance violation (other than traffic violations), the nature of the offense or violation, the penalty or punishment imposed, the date when and place where such offense occurred, and other pertinent details;

(6) Kansas sales tax number or proof of exemption from the collection of Kansas sales tax.

(7) Proof of possession of any license or permit which the applicant is required to have under state law in order to conduct the proposed business.

(8) An acknowledgment of the applicant's familiarity with the Kansas Consumer Protection Act (K.S.A. 50-623 et seq.), including the consumer's right to cancel a door-to-door sale, as defined in the act, until midnight of the third business day after the day on which the consumer signs an agreement or offer to purchase.

(9) If any individual product or service is to be offered for sale at a price of twenty-five dollars ($25.00) or more, a copy of the receipt or contract to be used by the applicant in any door-to-door sale as required by K.S.A. 50-640.

(10) An acknowledgment that the applicant is aware and understands that to violate the operating regulations set forth in this article while either peddling or soliciting is prohibited.

(Ord. No. 97-9798, § 1, 4-4-97)

Sec. 28-14. Fees.

At the time the permit application is filed with the office of the city clerk, the applicant shall pay a fee established pursuant to section 2-2 of this Code.

(Ord. No. 97-9798, § 1, 4-4-97)

Sec. 28-15. Application review and permit issuance.

Upon receipt of an application, the city clerk, or the city clerk's authorized representative, shall review the application as deemed necessary to ensure the protection of the public health, safety and general welfare. If the application is found to be satisfactory, the city clerk shall, upon receipt of the permit fee, issue the permit to the applicant.

(Ord. No. 97-9798, § 1, 4-4-97)

Sec. 28-16. Denial of permit.

Upon the city clerk's review of the application, the city clerk may refuse to issue a permit to the applicant for either of the following reasons:

(1) If the application is incomplete; or

(2) If the information provides a reasonable basis for determining that the public health, safety, and welfare will be threatened by issuance of a permit to the applicant.

(Ord. No. 97-9798, § 1, 4-4-97)

Sec. 28-17. Application of general rules regarding licenses.

Unless more specifically provided in this article, the general rules regarding licenses contained in Chapter 20 of this Code shall also apply to permits issued pursuant to this article.

(Ord. No. 97-9798, § 1, 4-4-97)

Sec. 28-18. Term of permit.

Any permit issued pursuant to this article shall be for a term of the remainder of the calendar year in which the permit is issued.

(Ord. No. 97-9798, § 1, 4-4-97)

Secs. 28-19--28-25. Reserved.

ARTICLE III. OPERATING REGULATIONS

Sec. 28-26. Identification badges.

At the same time the permit is issued, the city clerk shall issue to each permittee a badge which shall be worn by the permittee in such a way as to be conspicuous at all times while the permittee is soliciting or peddling in the city.

(Ord. No. 97-9798, § 1, 4-4-97)

Sec. 28-27. Hours of peddling or soliciting.

No person shall engage in either peddling or soliciting between the hours of 9:00 p.m. and 8:00 a.m.

(Ord. No. 97-9798, § 1, 4-4-97)

Sec. 28-28. Primary entrance.

It shall be unlawful for any person while either peddling or soliciting to knock, ring the doorbell, or otherwise attempt to gain the attention of the occupant(s) of the residence other than at the primary entrance to the residence.

(Ord. No. 97-9798, § 1, 4-4-97)

Sec. 28-29. Entry upon signed premises unlawful.

It shall be unlawful for any person while either peddling or soliciting to knock, ring the doorbell, or otherwise attempt to gain the attention of the occupant(s) of a residence in the city where the owner, occupant, or person legally in charge of the premises has posted, at the primary entrance to the premises, or at the entry to the principal building on the premises, a sign bearing the words "No Peddlers," "No Solicitors," or words of similar import.

(Ord. No. 97-9798, § 1, 4-4-97)

Sec. 28-30. Aggressive peddling or soliciting prohibited.

It shall be unlawful for any person to engage in peddling or soliciting in an aggressive manner. As used in this section, "aggressive manner" means either approaching a person present at the residence or continuing the peddling or soliciting activity after the person has made a negative response, whether before or after being invited into the residence, in a manner that (1) is likely to cause a reasonable person to fear imminent bodily harm or the commission of a criminal act upon property in the person's

possession or in or about the residence, or (2) is intended to or is likely to intimidate the person into responding affirmatively to the peddling or soliciting activity. Aggressive peddling or soliciting is a Class B misdemeanor.

(Ord. No. 97-9798, § 1, 4-4-97)

Sec. 28-31. Sales from vehicles on improved public streets.

It shall be unlawful for any person to engage in peddling or soliciting activities from any vehicle while the vehicle is located upon the improved portion of any street, avenue, boulevard or alley within the city. This section shall not apply to the following:

(1) The delivery of previously ordered merchandise.

(2) The sale of ice cream from vehicles regulated under Article IV of this chapter.

(Ord. No. 97-9798, § 1, 4-4-97)

Secs. 28-32--28-40. Reserved.

ARTICLE IV. ICE CREAM STREET VENDORS

DIVISION 1. LICENSE

Sec. 28-41. Licensing.

It is unlawful for any person to act as an ice cream street vendor as defined by section 28-2 without first having obtained a license as provided by this division.

(Ord. No. 97-9798, § 1, 4-4-97)

Sec. 28-42. Application.

Before the city shall issue any license required by this division, the proposed licensee must complete an application supplied by the city clerk.

(Ord. No. 97-9798, § 1, 4-4-97)

Sec. 28-43. License fee.

The annual license fee, as prescribed in section 2-2, shall be paid at the time the application is submitted to the city clerk's office. The fee shall be refunded if no license is issued.

(Ord. No. 97-9798, § 1, 4-4-97)

Secs. 28-44--28-50. Reserved.

DIVISION 2. OPERATING REGULATIONS

Sec. 28-51. Liability insurance.

There shall be filed with the city clerk a certificate of insurance covering all vehicles operated under this article in such form as the city clerk may deem proper, issued by an insurance company approved by the state insurance commissioner and authorized to do business in the state, insuring the public against injury, loss or damage resulting to persons or property from the use, maintenance and operation of any vehicle operated under this article for which such permit is granted, in an amount of not less than fifty thousand dollars ($50,000.00) for injury to any one (1) person and an amount of not less than one hundred thousand dollars ($100,000.00) for injury to all persons injured in any one (1) occurrence; and property damage not less than ten thousand dollars ($10,000.00) per each occurrence.

(Ord. No. 97-9798, § 1, 4-4-97)

Sec. 28-52. Operator's license required.

No person shall operate any vehicle under this article unless the person is the holder of a valid motor vehicle operator's license.

(Ord. No. 97-9798, § 1, 4-4-97)

Sec. 28-53. Unauthorized passengers.

No person, other than the authorized operator of a vehicle and other persons expressly authorized by the owner or lessee of a vehicle, shall be in or upon said vehicle.

(Ord. No. 97-9798, § 1, 4-4-97)

Sec. 28-54. Inspection of vehicle.

Each vehicle used in the operation of an ice cream street vendor shall be required to pass an annual inspection by the appropriate state or local health agency and the department of general services before a license may be issued or renewed. Any vehicle that has been inspected by the city within ninety (90) days prior to renewal need not be reinspected.

(Ord. No. 97-9798, § 1, 4-4-97)

Sec. 28-55. Hours of sale.

It is unlawful to operate a vehicle in the business of an ice cream street vendor between 8:30 p.m. of each day and continuing until 10:00 a.m. the following day.

(Ord. No. 97-9798, § 1, 4-4-97)

Sec. 28-56. Routes.

It is unlawful for any vendor to sell or attempt to sell along any particular route more than three (3) times during a twenty-four-hour period.

(Ord. No. 97-9798, § 1, 4-4-97)

Sec. 28-57. Sales near schools.

It is unlawful for a transaction to occur within one hundred twenty-five (125) feet from the boundaries of public or private school property for a period commencing thirty (30) minutes before the regular school day of any such school and continuing until thirty (30) minutes after the adjournment of the regular school day of any such school.

(Ord. No. 97-9798, § 1, 4-4-97)

Sec. 28-58. Speed of vehicle.

It is unlawful for any such vehicle to exceed a speed of fifteen (15) miles per hour when cruising neighborhoods seeking sales or when attempting to make a sale.

(Ord. No. 97-9798, § 1, 4-4-97)

Sec. 28-59. U-turns.

It is unlawful for any such vehicle to make a U-turn on any block.

(Ord. No. 97-9798, § 1, 4-4-97)

Sec. 28-60. Driving backwards.

It is unlawful for any such vehicle to drive backwards to make or attempt any sale.

(Ord. No. 97-9798, § 1, 4-4-97)

Sec. 28-61. Sound devices.

No sound device or bell shall be allowed or used by any such vehicle except that amplified music or chimes are allowed provided that such are not audible any distance greater than three hundred (300) feet and that they be turned off when the vehicle is stationary for the purpose of making sales or otherwise; provided, that the use of amplified music or chimes is prohibited before 10:00 a.m. and after 8:30 p.m. of each day.

(Ord. No. 97-9798, § 1, 4-4-97)

Sec. 28-62. Marking and lighting on vehicle.

It is unlawful for any such vehicle to be operated unless there is clearly marked upon such vehicle a prominent sign visible to both the front and rear with the wording "Caution Children," and one or more flashing amber caution lights visible from front, rear and both sides.

(Ord. No. 97-9798, § 1, 4-4-97)

Sec. 28-63. Parking to dispense products.

It is unlawful for an operator to stop, stand or park such vehicle in any street, alley, avenue, boulevard or sidewalk or other public right-of-way for the purpose of dispensing its products to customers, so as to obstruct the free flow of traffic in the street; provided that an operator may stop, stand or park such vehicle with its right wheels next to the curb, but that no vehicle will remain standing in any one location for a period exceeding ten (10) minutes.

(Ord. No. 97-9798, § 1, 4-4-97)

Sec. 28-64. Selling near an intersection.

It is unlawful for the operator of any such vehicle to dispense its products within fifty (50) feet of any street intersection.

(Ord. No. 97-9798, § 1, 4-4-97)

Sec. 28-65. Vehicle stationary during sale.

Every vehicle shall be stationary while in the process of selling or dispensing its products while upon a public street, alley, avenue, boulevard or other public right-of-way within the city.

(Ord. No. 97-9798, § 1, 4-4-97)

Sec. 28-66. Sales from vehicle.

It is unlawful for any operator to sell to any person who is standing in the street. All sales must occur on the side of the vehicle next to the curb.

(Ord. No. 97-9798, § 1, 4-4-97)

Sec. 28-67. Sales in public parks.

It is unlawful for any such vehicle to operate or its operator to dispense products while located in any public park of the city or public parking lot within the city.

(Ord. No. 97-9798, § 1, 4-4-97)

Secs. 28-68--28-75. Reserved.

ARTICLE V. SUSPENSION, REVOCATION, APPEALS

Sec. 28-76. Permit and license suspension or revocation.

Any permit or license issued under this chapter may be revoked or suspended by the city manager, after notice and hearing, for any of the following reasons:

(1) Fraud, misrepresentation or false statement contained in the application for a permit or license;

(2) Fraud, misrepresentation or false statement made by the permittee in the course of peddling, soliciting or vending;

(3) Peddling, soliciting or vending in violation of this chapter or contrary to the provisions contained in the permit or license;

(4) Conviction for any crime involving moral turpitude; or

(5) Peddling, soliciting or vending in such a manner as to create a public nuisance, constitute a breach of the peace, endanger the health, safety or general welfare of the public, or otherwise in violation of local, state or federal law.

The city manager may immediately suspend any permit or license, pending the suspension or revocation hearing, if the public health, safety, or welfare is best served by such a temporary suspension.

(Ord. No. 97-9798, § 1, 4-4-97)

Sec. 28-77. Notice and hearing.

Notice of a hearing for suspension or revocation of a permit or license issued pursuant to this chapter shall be provided in writing and shall set forth specifically the grounds for the proposed suspension or revocation and the time and place of the hearing. Notice shall be mailed, postage prepaid, to the permittee or licensee at the address shown on the permit application or at the last known address of the permittee or licensee.

(Ord. No. 97-9798, § 1, 4-4-97)

Sec. 28-78. Appeals.

(a) Any person aggrieved by the decision of the city clerk to deny a permit or license applied for under this article shall have the right to appeal the decision to the city manager within ten (10) days after the notice of the decision has been mailed to the person.

(b) Any person aggrieved by the action or decision of the city manager to deny, suspend or revoke a permit applied for under this article shall have the right to appeal such action or decision to the board of city commissioners within (10) days after the notice of the action or decision has been mailed to the person.

(c) An appeal to either the city manager or board of city commissioners shall be taken by filing with the city clerk a written statement setting forth the grounds for the appeal.

(d) A hearing shall be set not later than ten (10) working days from the date of receipt of the appellant's written statement.

(e) Notice of the time and place of the hearing shall be given to the appellant in the same manner as provided for the mailing of notice of action or decision.

(f) The decision of the board of city commissioners on the appeal shall be final and binding on all parties concerned.

(Ord. No. 97-9798, § 1, 4-4-97)

Secs. 28-79--28-85. Reserved.

ARTICLE VI. PENALTY

Sec. 28-86. Penalty.

Unless otherwise stated, any person violating any of the provisions of this chapter is guilty of a misdemeanor and upon conviction thereof shall be punished as provided by section 1-10.

(Ord. No. 97-9798, § 1, 4-4-97)

CHAPTER 29. PLANNING[1]

Art.	**I.**	**In General, §§ 29-1--29-15**
Art.	**II.**	**City Planning Commission, §§ 29-16--29-35**
Art.	**III.**	**North Central Regional Planning Commission, §§ 29-36--29-42**

ARTICLE I. IN GENERAL

Sec. 29-1. Application fees.

(a) Every planning or zoning application or request filed with the city for the following services:

1. Conditional use permit (exception)
2. Appeal
3. Variance
4. Text amendment of zoning ordinance
5. Street name change
6. Annexation
7. Other planning or zoning requests, except those specified in subsection (b);

shall be accompanied by such fee as determined by resolution of the city adopted pursuant to section 2-2.

(b) The fees to be charged for services rendered in connection with planned development districts, amendments to the zoning district map, subdivision or platting of property shall be based upon costs incurred by the city in processing applications for these activities. The city manager shall cause accurate records to be kept for city costs incurred for salaries, employee benefits, postage and advertising. The applicant shall be required to pay to the city the cost incurred prior to the application being placed on the planning commission or city commission agenda. Such costs may, at the city manager's discretion, include preliminary discussions with the applicant prior to formal filing of an application.

(c) The city manager is authorized to adopt administrative procedures, including a deposit, to implement the intent of this section.

(Ord. No. 81-8882, §§ 1, 2, 10-19-81)

Secs. 29-2--29-15. Reserved.

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[1] **Cross references:** Administration, Ch. 2; buildings and structural appurtenances, Ch. 8; economic development, Ch. 11; mobile homes and trailers, Ch. 22; public utility, Ch. 31; streets, sidewalks and other public places, Ch. 35; subdivision regulations, Ch. 36; water and sewers, Ch. 41; zoning regulations, Ch. 42. **State law references:** Planning and zoning, K.S.A. 12-701 et seq.

ARTICLE II. CITY PLANNING COMMISSION[2]

Sec. 29-16. Created.

There is hereby created a commission to be known as the city planning commission of the City of Salina.

(Code 1966, § 27-1)
State law references: Authority to create city planning commission, K.S.A. 12-701.

Sec. 29-17. Composition; appointment.

The city planning commission shall consist of nine (9) electors of which number, two (2) members shall reside outside of, but within three (3) miles of the corporate limits of the city and all of the remaining members shall be residents of the city. All members shall be appointed by the mayor, by and with the consent of the board of commissioners.

(Code 1966, § 27-2)
State law references: Similar provisions, K.S.A. 12-702.

Sec. 29-18. Terms.

The members of the city planning commission first appointed shall serve respectively for terms of one year, two (2) years and three (3) years; thereafter members shall be appointed for terms of three (3) years each.

(Code 1966, § 27-2)
State law references: Similar provisions, K.S.A. 12-702.

Sec. 29-19. Vacancies.

Vacancies on the city planning commission shall be filled by appointment for the unexpired term only.

(Code 1966, § 27-2)
State law references: Similar provisions, K.S.A. 12-702.

Sec. 29-20. Compensation.

Members of the city planning commission shall serve without compensation for their services.

(Code 1966, § 27-2)
State law references: Similar provisions, K.S.A. 12-702.

Sec. 29-21. Powers and duties.

The city planning commission shall have those powers and duties as specified in Article 7 of Chapter 12 of the Kansas Statutes Annotated and amendments thereto.

(Code 1966, § 27-3)

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[2] **Cross references:** Administration, Ch. 2; boards and commissions generally, § 2-136 et seq.

Sec. 29-22. Application fees.

Every application for a zoning certificate, occupancy certificate and variance, conditional use permit, filing of a notice of appeal, map amendment (rezoning), zoning text amendment, preliminary or final plat approval, annexation, street name change or any other request or application to the planning commission shall be accompanied by the fee as prescribed in section 2-2.

(Code 1966, § 27-4)

Secs. 29-23--29-35. Reserved.

ARTICLE III. NORTH CENTRAL REGIONAL PLANNING COMMISSION[3]

Sec. 29-36. Created.

There is hereby created the North Central Regional Planning Commission in Cloud, Ellsworth, Jewell, Lincoln, Ottawa, Mitchell, Republic, Saline, and Washington Counties, Kansas.

(Code 1966, § 27-91)

Sec. 29-37. Membership.

Any incorporated city or county government within Cloud, Ellsworth, Jewell, Lincoln, Ottawa, Mitchell, Republic, Saline and Washington Counties is eligible for membership in the North Central Regional Planning Commission upon passage of an appropriate ordinance or resolution and acceptance by the commission. Each city shall be represented by its mayor or his designee from the governing body or official responsible to the governing body. Each county shall be represented by the chairman of the board of county commissioners or his designee from the commission. Each county may appoint by majority vote of each board of county commissioners representatives from special interest groups and/or minority groups located within the counties. Representatives appointed shall serve at the pleasure of the board of county commissioners. All members shall continue to hold office until their successors are duly appointed and qualified.

(Code 1966, § 27-92)

Sec. 29-38. Compensation.

All members of the North Central Regional Planning Commission shall serve without compensation.

(Code 1966, § 27-93)

Sec. 29-39. Meetings.

Meeting of the North Central Regional Planning Commission shall be held at least once each three (3) months on a date determined by the commission. Special meetings may be called by the chairman, or the vice chairman in the absence of the chairman, or as otherwise provided, upon at least twenty-four (24) hours notice. All meetings of the commission shall be open to the public.

(Code 1966, § 27-94)

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[3] **Cross references:** Administration, Ch. 2; boards and commissions generally, § 2-136 et seq. **State law references:** Area planning, K.S.A. 12-716 et seq.

Sec. 29-40. Functions, duties and powers.

The North Central Regional Planning Commission shall have all the functions, duties and powers as provided in K.S.A. Sections 12-716 to 12-721 inclusive, as amended. The general purpose of the North Central Regional Planning Commission shall be to make those studies and plans for the development of the region, eliminate planning duplication and promote economy and efficiency in the coordinated development of the region and the general welfare and prosperity of its people. These plans may include, but shall not be limited to recommendations for sanitary sewage and solid waste disposal systems, airports, parks, and recreational areas, public institutions, prevention of blighted conditions, regulatory codes and general capital improvement programs.

(Code 1966, § 27-95)

Sec. 29-41. Rules.

The North Central Regional Planning Commission shall adopt bylaws, including rules for the transaction of commission business, which shall include, but not be limited to:

(1) Membership;

(2) Officers;

(3) Meetings and voting;

(4) Organization of the commission;

(5) Staff and budget;

(6) Sharing of costs.

(Code 1966, § 27-96)

Sec. 29-42. Separability.

If this article, or any part thereof, shall be held or determined to be unconstitutional, illegal, ultravires or void, the same shall not be held or construed to change or annul any provision hereof which may be legal or lawful; and in the event this article or any part thereof, shall be held unconstitutional, illegal, ultravire or void, the same shall not affect any action heretofore taken by the North Central Regional Planning Commission as heretofore established and constituted.

(Code 1966, § 27-97)

CHAPTER 30. POLICE[1]

Art. I. In General, §§ 30-1--30-15
Div. 1. Canine Operations, §§ 30-1--30-15
Art. II. Merchant or Private Policeman, §§ 30-16--30-46
Div. 1. Generally, §§ 30-16--30-35
Div. 2. License and Permit, §§ 30-36--30-46

ARTICLE I. IN GENERAL

DIVISION 1. CANINE OPERATIONS

Sec. 30-1. Canine corps.

Any dog used by the city, whether owned, leased, rented or borrowed for the purpose of performing duties with the police department of the city, shall be commissioned as a member of the canine corps and shall perform such duties as may be designated by the chief of police or the officer in charge of such unit who has been delegated the responsibility for the handling and supervision of such animal.

(Ord. No. 89-9330, § 1, 8-7-89)

Sec. 30-2. Abuse prohibited.

It shall be unlawful for any person to strike, hit, beat, abuse, tease, harass, pet or assault any dog being used by the city for the purpose of performing the duties of a police dog regardless of whether the dog is on or off duty.

(Ord. No. 89-9330, § 1, 8-7-89)

Sec. 30-3. Interference prohibited.

It shall be unlawful for any person to interfere with a dog being used by the police department or attempt to interfere with the handler of the dog in such a manner as to inhibit, restrict or deprive the handler of his or her control of the dog.

(Ord. No. 89-9330, § 1, 8-7-89)

Secs. 30-4--30-15. Reserved.

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[1] **Cross references:** Administration, Ch. 2; municipal court, Ch. 23; offenses and miscellaneous provisions, Ch. 35; traffic and motor vehicles, Ch. 38; payment upon retirement to certain members of the police department, App. A, Charter Ord. No. 15.

ARTICLE II. MERCHANT SECURITY SERVICES

DIVISION 1. GENERALLY

Sec. 30-16. Definitions.

The following words and phrases, when used in this article, shall have the meaning, unless the context clearly indicates a different meaning, respectively ascribed to them as follows:

(1) *License* shall mean a certificate granting permission for a person to operate a merchant security service.

(2) *Merchant security service* shall mean any person engaged for hire in the business of guarding, watching, patrolling or otherwise attempting to provide security for a real or personal property of another person; provided, however, that a bona fide employee of a person or firm shall not be considered as engaged in a security business.

(3) *Merchant security guard* shall mean any individual who is employed by a merchant security to guard, watch, patrol or otherwise attempt to provide security for the real or personal property of another person.

(4) *Permit* shall mean a certificate granting permission for an individual who is employed by a merchant security to operate as a merchant security guard. For purpose of this Article, those provisions applicable to licenses under Chapter 20 shall likewise apply to a permit.

(Code 1966, § 28-48; Ord. No. 03-10174, § 1, 11-24-03)
Cross references: Definitions and rules of construction generally, § 1-2.

Sec. 30-17. Uniform and badges.

Uniforms and badges, if any, worn by agents or employees of merchant security service licensees while employed within the city, will be of a different color and design from those worn by officers of the police department.

(Code 1966, § 28-59; Ord. No. 03-10174, § 1, 11-24-03)

Sec. 30-18. Marking of vehicles.

No vehicle used by a merchant security service or merchant security guard while performing the duties for which he is licensed or for which he has obtained a permit under this article shall be painted with the same color scheme or marked with identifying insignia similar in color or design to those used by the police department.

(Code 1966, § 28-66; Ord. No. 91-9448, § 1, 6-17-91; Ord. No. 03-10174, § 1, 11-24-03)
State law references: Vehicle to be registered in the state, K.S.A. 12-1679.

Sec. 30-19. Reserved.

Editor's note: Sections 2, 3 of Ord. No. 91-9448, adopted June 17, 1991, repealed § 30-19 which pertained to radio equipment in vehicles and derived from the Code of 1966, § 28-67.

Sec. 30-20. Use of red or blue lights and sirens prohibited.

Any vehicle used by a merchant security service or merchant security guard while performing the duties for which he is licensed, or for which he has obtained a permit under this article shall not operate any flashing red or blue lights or sirens, if any, equipped on the vehicle within the city.

(Code 1966, § 28-68; Ord. No. 03-10174, § 1, 11-24-03)

Sec. 30-21. Reserved.

Editor's note: Sections 2, 3 of Ord. No. 91-9448, adopted June 17, 1991, repealed § 30-21 which pertained to right to carry concealed firearms and derived from the Code of 1966, § 28-60.

Sec. 30-22. Change in personnel.

(a) Whenever an agent or employee of a merchant security service is no longer employed, for any reason, his former employer shall immediately notify the city clerk in writing. The city clerk shall forward a copy of the notification to the chief of police.

(b) Whenever an agent or employee of a merchant security service is no longer employed, he shall forthwith surrender his permit and his identification card issued to him to his former employer which shall forward the same to the city clerk. In the event the person surrendering the permit and identification card is reemployed during the remainder of the calendar year, the identification card and permit may be reissued to him without charge.

(Code 1966, § 28-62; Ord. No. 03-10174, § 1, 11-24-03)

Sec. 30-23. Reserved.

Editor's note: Sections 2, 3, of Ord. No. 91-9448, adopted June 17, 1991, repealed § 30-23 which pertained to reporting change of vehicles and derived from the Code of 1966, § 28-63.

Sec. 30-24. Change of business address.

Any merchant security service changing place of business shall immediately notify the city clerk of such fact, together with the new address of the new place of business. The city clerk shall forward a copy of the notification to the chief of police.

(Code 1966, § 28-64; Ord. No. 03-10174, § 1, 11-24-03)

Sec. 30-25. Unlawful acts.

(a) It shall be unlawful for any merchant security service licensee or merchant security guard permittee to:

(1) Hinder or interfere with any investigation under the jurisdiction of the police department;

(2) Fail to report immediately to the police department violations of city, state or federal laws which constitute felonies or breaches of peace coming to his attention. This section shall not apply to misdemeanor person crimes or misdemeanor or felony property crimes coming to the attention of the licensee or permittee while on his client's business, when the client is the victim and does not wish to report the matter;

(3) Fail to notify the police department of any arrests and fail to turn such person over to the police department; provided, the licensee or permittee, upon refusal of the police department to take

custody of the subject, may turn the individual over to any law enforcement agency having legal jurisdiction;

(4) Represent himself to be a member of the police department;

(5) Willfully suppress facts that pertain to any violation of city, state or federal law.

(b) No licensee or employee of a licensee shall have any greater authority to arrest than would another private citizen. Nothing in this article shall be construed to mean that a licensee or an employee of a licensee may conduct criminal investigations, make arrests, use force, or take any other action on behalf of, under color of laws of, or under the authority of the city.

(Code 1966, § 28-61; Ord. No. 03-10174, § 1, 11-24-03)

Sec. 30-26 – 30-35. Reserved.

DIVISION 2. LICENSE AND PERMIT[2]

Sec. 30-36. Required.

(a) No person shall provide or engage in a business which provides merchant security service within the city unless such person shall possess a valid license from the city to engage in such business.

(b) No individual shall perform any service within the city as a merchant security guard unless such individual shall have in his possession a valid permit from the city to perform such service.

(Code 1966, § 28-49)

Sec. 30-37. In addition to other licenses or permits.

This article is intended to be in addition to all other licenses and permits, or other law enforcement authority vested in persons by the state, county or the city and shall not be a defense to the failure to secure a license or permit that the person had such other authority.

(Code 1966, § 28-56, Ord. No. 03-10174, § 1, 11-24-03)

Sec. 30-38. License and/or permit application.

(a) Any person desiring to obtain a merchant security service license or merchant security guard permit shall submit to the city clerk, in writing on a form approved by the city manager and provided by the city clerk, all required information. In addition, the applicant may be required to provide other pertinent information as the city manager or chief of police may reasonably deem necessary. An application is considered complete when all materials necessary to make a determination on the application have been received.

(b) No permit shall be issued to any person to perform security service as a merchant security guard unless application therefor has been approved by the employer who is the holder of the valid merchant security service license.

(Code 1966, § 28-50, Ord. No. 04-10174, § 1, 11-24-03)

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[2] **Cross references:** Licenses generally, Ch. 20.

Sec. 30-39. Conditional merchant security guard permit.

A conditional merchant security guard permit, good for up to ninety (90) days, may be issued pending receipt of the Kansas Bureau of Investigation criminal background check. The original application for a permit shall be reviewed by the chief of police, a local background check conducted, and a determination made to issue a temporary permit, within five (5) business days after a complete application has been received. An individual meeting the requirements of Sec. 30-40 may be issued a conditional permit. Results of the Kansas Bureau of Investigation check may be grounds to revoke the conditional permit and deny a regular permit.

(Code 1966, § 28-51, Ord. No. 03-10174, § 1, 11-24-03)

Sec. 30-40. Approval or disapproval of applications.

Before a merchant security service license or a merchant security guard permit is issued, the chief of police shall cause an investigation to be made of the facts set forth in the application and of the record of such applicant in the municipal court and the district court of the county, and any other courts in which the chief of police may have reason to believe the applicant has a record, and shall report to the city manager all information secured from such investigation relative to the applicant's record.

(a) The city manager shall consider the application, the report and recommendation of the chief of police, and any other information which may come to him concerning the applicant. If the city manager is satisfied that the applicant is a fit person to be issued the applicable license or permit, the city manager may approve the application and direct the city clerk to issue the license or permit, which, unless revoked or suspended, shall remain in effect until the following December 31. The city manager may disapprove the application if the city manager determines that the applicant is not a fit person to be issued the license or permit. Without limitation, the city manager may disapprove the application if the city manager finds that the applicant:

(1) Is less than eighteen (18) years of age;

(2) Is not of good moral character;

(3) Has been convicted of a felony, misdemeanor, ordinance violation, or crime involving moral turpitude or of illegally using, carry8ing, or possessing a dangerous weapon;

(4) Has made any false statement, given any false information, or failed to declare a material fact in connection with an application for a license or permit or a renewal or reinstatement thereof;

(5) Fails to meet such other public safety related requirements as may be established by the city manager or the chief of police; or

(6) If seeking a merchant security guard permit, is not employed by a merchant security service licensed under this division.

(b) Any denial of an application by the city manager may be appealed to the board of commissioners by filing a notice of appeal with the city clerk, which appeal shall be heard by the board of commissioners at their next regularly scheduled meeting. Any denial of an application by the board of commissioners shall be subject to appeal pursuant to then applicable state law.

(Code 1966, § 28-52; Ord. No. 03-10174, § 1, 11-24-03)

Sec. 30-41. Insurance.

All merchant security service business licensees shall carry public liability insurance, with limits of not less than the maximum liability for claims which could be asserted against the city, for any number arising out of a single occurrence or accident under the Kansas Tort Claims Act, as amended. It shall be the licensee's responsibility to determine that its insurance carrier has notified the city clerk of any lapse or cancellation in coverage within ten (10) days of notification to be insured.

(Code 1966, § 28-57; Ord. No. 03-10174, § 1, 11-24-03)

Sec. 30-42. Bond.

The applicant for merchant security service license hereunder shall file a bond of surety authorized to do business in the state in the sum of ten thousand dollars ($10,000) conditioned that the applicant shall and will carry out and perform all of the duties imposed upon him by the provisions of this article and that such applicant will indemnify and save harmless the city from all liability for any injury to persons or property which the principal, his agent, servant or employee may cause by reason of engaging in the business of merchant security service. Such bond shall be approved as to form by the city attorney.

(Code 1966, § 28-65; Ord. No. 03-10174, § 1, 11-24-03)

Sec. 30-43. License and permit fees.

The fee for a merchant security service license and/or merchant security guard permit shall be as prescribed in Section 2-2.

(Code 1966, § 28-53; Ord. No. 03-10174, § 1, 11-24-03)

Sec. 30-44. Reserved.

Editor's Note: Section 30-44 repealed by Ord. No. 03-10174 pertaining to permit fees, expire, termination.

Sec. 30-45. Identification cards.

The city clerk shall issue an identification card to each applicant which shall be carried at all times while on duty as a merchant security guard. The identification card shall include information as deemed necessary by the city manager.

(Code 1966, § 28-58; Ord. No. 96-9756, § 1, 8-19-96; Ord. No. 03-10174, § 1, 11-27-03)

Sec. 30-46. Revocation or suspension.

(a) A merchant security service license or a merchant security guard permit may be revoked or suspended by the city manager for violation of any federal or state statute, or city ordinance; falsification of application documents, violation of any provisions of this article, or for any act committed by a licensee or permittee which is deemed by the city manager to make the licensee or permittee unfit to handle the responsibilities of such license or permit. The licensee or permittee shall have the duty to advise the city clerk upon conviction or upon entering into any diversion agreement relating to the above described violations.

(b) A revocation of suspension of a merchant security service license or a merchant security guard permit may be appealed to the board of commissioners by the licensee or permittee filing a notice of appeal with the city clerk, which appeal shall be heard by the board of commissioners at their next regularly scheduled meeting.

(c) Upon a revocation by the city manager, the merchant security service license or merchant security guard permit holder shall immediately surrender the applicable license or permit to the city clerk.

(Code 1966, § 28-55; Ord. No. 03-10174, § 1, 11-24-03)

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CHAPTER 30.5. PUBLIC HEALTH[1]

ARTICLE I. SMOKING IN RESTAURANTS

Sec. 30.5-1. Public policy.

It shall be the public policy of the city to promote the health and welfare of its citizens and the traveling public by increasing substantially the opportunity to enjoy public dining without the health hazard posed by second-hand smoke.

(Ord. No. 02-10077, § 2, 5-6-02)

Sec. 30.5-2. Definitions.

For the purpose of this article, the following words and terms as used herein are defined to mean the following:

Accessory bar means a place within a restaurant for the incidental service of alcoholic beverages and associated snacks, appetizers, and other products for consumption on the premises. Full restaurant food service shall not be available in an accessory bar.

Bingo hall means any room, hall, building, enclosure or outdoor area used for the management, operation or conduct of a game of bingo by any nonprofit organization holding a license to manage, operate or conduct games of bingo pursuant to Kansas law and in which food service for consumption on the premises is incidental to the primary activity of the establishment.

Bowling center/alley means a place of business open to the public which offers the use of not less than twelve (12) full scale bowling lanes that are each equipped with operable automatic pin setting apparatus and in which food service for consumption on the premises is incidental to the primary activity of the establishment.

Class A club means a premises so licensed by the State of Kansas which is owned or leased by a corporation, partnership, business trust or association and which is operated thereby as a bona fide nonprofit social, fraternal or war veterans' club, as determined by the director, for the exclusive use of the corporate stockholders, partners, trust beneficiaries or associates (referred to as members) and their families and guests accompanying them.

Class B club means a premises so licensed by the State of Kansas operated for profit by a corporation, partnership or individual, to which members of such club may resort for the consumption of food or alcoholic beverages and for entertainment.

Drinking establishment means premises so licensed by the State of Kansas which may be open to the general public, where alcoholic liquor by the individual drink is sold.

Hotel/motel non-retail dining area means that area in a hotel or motel designated for serving and consumption of non-retail "complementary" food or beverages served by the hotel or motel to those persons renting a hotel or motel room.

Licensed club means a class A or class B club with a valid license issued by the State of Kansas.

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[1] **Charter references:** Smoking areas designated, § K.S.A. 21-4010; smoking in public places, § K.S.A. 21-4013.

Other person in charge means the agent of the proprietor authorized to perform administrative direction to, and general supervision of, the activities within a restaurant at any given time.

Physically separated means separated from the smoke-free restaurant area by continuous floor-to-ceiling walls which are interrupted only by doors which are continuously closed other than when a person is actively entering or exiting the smoke-free area.

Private dining or banquet room means an entire restaurant, room or hall used for a private social function and for which seating arrangements are in control of the sponsor of the function and not the proprietor or person in charge of the room or hall.

Proprietor means the party, regardless of whether or not the party is owner or lessee of the restaurant, who ultimately controls, governs, or directs the activities within the restaurant. The term does not mean the owner of the property, unless the owner ultimately controls, governs, or directs the activities within the restaurant. The term proprietor may apply to a corporation, partnership or limited liability company as well as to an individual.

Recreational facility means a place of business open to the public for the primary purpose of offering for use game tables or other mechanical forms of entertainment or competition and in which food service for consumption on the premises is incidental to the primary activity of the establishment.

Restaurant means a building, structure, enclosure, or any part of a building, structure, or enclosure with table, booth, or counter seating for eleven (11) or more persons and used as, maintained as, advertised as, or held out to be an operation which prepares, serves or otherwise provides for sale of food and beverages for consumption on the premises.

Separate designated smoking area means an indoor area where smoking is allowed, physically separated from the required smoke-free restaurant areas, and which includes physical separation and appropriate ventilation so that smoke from those areas does not drift, permeate, or re-circulate into any smoke-free restaurant areas.

Smoking means the:

(1) Carrying or placing of a lighted cigarette, lighted cigar, or lighted pipe or any other lighted smoking equipment in one's mouth for the purpose of inhaling and exhaling smoke;

(2) Placing of a lighted cigarette, lighted cigar, or lighted pipe or any other lighted smoking equipment in an ashtray or other receptacle and allowing smoke to diffuse in the air; or

(3) Carrying or placing of a lighted cigarette, lighted cigar, or lighted pipe or any other lighted smoking equipment in one's hands or any appendage or devices and allowing smoke to diffuse in the air.

(Ord. No. 02-10077, § 2, 5-6-02)

Sec. 30.5-3. Regulation of smoking.

Smoking shall not be permitted in a restaurant, except as follows:

(1) *Outdoor or sidewalk seating.* Smoking may be permitted in the outdoor or sidewalk seating portions of a restaurant if the outdoor or sidewalk seating area and the indoor smoke-free restaurant area are physically separated.

(2) *Time of day exception.* The provisions of this ordinance shall not apply to a restaurant during that time between 9:00 p.m. and 5:00 a.m. During that time, a proprietor of a restaurant may designate a smoking area in accordance with K.S.A. 21-4009 et seq.

(Ord. No. 02-10077, § 2, 5-6-02)

Sec. 30.5-4. Restaurant located in a larger facility.

When a restaurant is located within a facility larger than the area used for the restaurant, no person shall smoke in the entire facility unless the proprietor or other person in charge of the facility has designated a smoking area which qualifies as a separate designated smoking area as defined by this ordinance. Restaurants located within a larger facility include, without limitation, restaurants in truck stops, hotels, retail establishments, and convention or meeting facilities.

(Ord. No. 02-10077, § 2, 5-6-02)

Sec. 30.5-5. Requirements relating to physical separation and ventilation.

The city building official is authorized to make reasonable requirements and determinations consistent with the building code and this ordinance with regard to physical separation and appropriate ventilation in any case where those requirements need to be applied to smoke-free restaurant areas adjacent or connected to areas in which smoking is permitted.

(Ord. No. 02-10077, § 2, 5-6-02)

Sec. 30.5-6. Exemptions.

The prohibition against smoking in restaurants set forth in this ordinance shall not apply to a:

(1) Licensed club;

(2) Bowling center/alley;

(3) Bingo hall;

(4) Recreational facility;

(5) Hotel/motel non-retail dining area;

(6) Private dining or banquet room; or

which, if located within a facility in which a restaurant is also located, must meet the separation and ventilation requirements of a separate designated smoking area.

(Ord. No. 02-10077, § 2, 5-6-02)

Sec. 30-5.7. Waiver for certain licensed drinking establishments.

(a) Licensed drinking establishments which derive from sales of food for consumption on the licensed drinking establishment premises not in excess of thirty (30) of its gross receipts from all sales of food and beverages on such premises in a twelve-month period shall be eligible for a waiver from the requirements of this chapter. In order to obtain such a waiver, application shall be made by the holder of the drinking establishment license verifying by sworn affidavit that the drinking establishment falls below the maximum food sales ratio. The city may, at its discretion and from time to time, require from the drinking establishment licensee copies of reports filed by the licensee with the Kansas Department of Alcohol and Beverage Control in order to verify licensee's food sales ratio.

(b) Drinking establishment licensees seeking to open a drinking establishment or substantially change operation of an existing establishment so that it may operate under the waiver for qualifying licensed drinking establishments shall provide a sworn affidavit and agreement which shall state that the licensee's business plan projections indicate sales of food for consumption on the licensed drinking establishment premises shall not exceed thirty (30) percent of its gross receipts from all sales of food and beverages on such premises.

(Ord. No. 02-10077, § 2, 5-6-02)

Sec. 30.5-8. Responsibility of proprietors.

The proprietor or other person in charge of a place governed by this article shall:

(1) Meet all signage requirements;

(2) Advise any person smoking in an area where smoking is prohibited that he or she is smoking in violation of city ordinance;

(3) Advise any person who smokes in an area where smoking is prohibited by this ordinance to refrain from smoking and, if the person does not refrain from smoking after being asked to do so, shall ask the person to leave. If the offending person refuses to leave, the proprietor shall handle the situation consistent with lawful methods for handling persons acting in a disorderly manner or as a trespasser;

(4) Remove all ashtrays and other smoking paraphernalia from areas where smoking is prohibited; and

(5) In the case of a restaurant located within a facility larger than the area used for the restaurant, comply with all physical separation and ventilation standards to prevent the drifting, permeation, or re-circulation of smoke from any separate designated smoking area into the adjacent or connected areas of the restaurant.

(Ord. No. 02-10077, § 2, 5-6-02)

Sec. 30.5-9. Penalties.

Violation of the prohibition against smoking in a restaurant set forth in this article shall be classified as an ordinance cigarette or tobacco infraction and shall be punishable by a fine in the amount established by state law as the fine for a cigarette or tobacco infraction (currently twenty-five dollars ($25.00)). Violation of the responsibilities of proprietors and other persons in charge of a place governed by this article shall be punishable under the general penalty provisions of Salina Code Section 1-10.

(Ord. No. 02-10077, § 2, 5-6-02)

Sec. 30.5-10. Administrative regulations.

Rules and regulations pertaining to signage, extensions of time for compliance-related construction, or other matters necessary for the implementation of this article shall be adopted by resolution of the governing body.

(Ord. No. 02-10077, § 2, 5-6-02)

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CHAPTER 31. PUBLIC UTILITIES[1]

Sec. 31-1. Reserved.

Editor's note: Section 2 of Ord. No. 97-9808, adopted June 9, 1997, repealed § 31-1 in its entirety. Formerly, § 31-1 pertained to tampering with electric or gas meters, etc., and derived from § 30-1 of the 1966 Code.

Sec. 31-2. Reserved.

Editor's note: Section 2 of Ord. No. 97-9808, adopted June 9, 1997, repealed § 31-2 in its entirety. Formerly, § 31-2 pertained to taking gas or current not passing through meter and derived from § 30-2 of the 1966 Code.

Sec. 31-3. Reserved.

Editor's note: Section 2 of Ord. No. 97-9808, adopted June 9, 1997, repealed § 31-3 in its entirety. Formerly, § 31-3 pertained to unlawful device as prima facie evidence against customer and derived from § 30-3 of the 1966 Code.

Sec. 31-4. Company's right of entry and inspection.

The servants and employees of every company or corporation supplying gas or electric current to the city or its inhabitants shall have the right at all reasonable times to enter the premises of every consumer of gas or electric current at meter rates for the purpose of inspecting its wires, pipes and meters to ascertain whether or not the meters are correctly measuring the whole quantity of gas or electric current supplied to such consumer and a denial of such right of inspection during reasonable hours by any consumer at meter rates shall be prima facie evidence that such consumer is taking and using gas or electric current, as the case may be, without the whole quantity thereof passing through and being measured by a meter provided for that purpose.

(Code 1966, § 30-4)

Sec. 31-5. Reserved.

Editor's note: Section 2 of Ord. No. 97-9808, adopted June 9, 1997, repealed § 31-5 in its entirety. Formerly, § 31-5 pertained to tampering with cable TV and derived from § 30-5 of the 1966 Code.

Sec. 31-6. Discontinuing service if gas or electricity, fraudulently taken.

The individual company or corporation supplying gas or electric current will not be bound to furnish either gas or electric current to the person convicted of fraudulently taking gas or electric current.

(Code 1966, § 30-6)

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[1] **Cross references:** Administration, Ch. 2; posting on utility poles, § 3-3; buildings and structural appurtenances, Ch. 8; health and sanitation, Ch. 17; housing, Ch. 18; mobile homes and trailers, Ch. 22; planning, Ch. 29; solid waste, Ch. 34; streets, sidewalks and other public places, Ch. 35; water and sewers, Ch. 41; special fund for paying utility cost, App. A, Charter ord. no. 17; franchises, App. B.

Sec. 31-7. Painting of poles.

It is hereby made the duty of the owner or owners, or lessee or lessees, or agent or agents of the owner or owners of all telegraph, telephone, electric light and other poles now standing or hereafter placed in any parking, curb or street of the city and used in any way by the public service companies or corporations doing business in the city, to keep such poles painted to the satisfaction of the city manager.

(Code 1966, § 30-7)

Sec. 31-8. Poles prohibited in certain district.

It shall be unlawful for any person to set or erect any telegraph or telephone poles or pole line or cable television poles or pole line in any street, avenue or alley in the city within that part of the city lying between North Street on the north, South Street on the south, Front Street on the east and Tenth Street on the west; provided, that this section shall not be construed to prevent the use, maintenance and repair of pole lines now in use within such limits.

(Code 1966, § 30-8)

Sec. 31-9. Underground wires required where poles prohibited.

All telegraph, telephone and cable television lines constructed along or across any street, avenue or alley in the territory described in section 31-8, shall be placed underground and in compliance with directions of the city engineer; provided, that this section shall not be construed to prevent additional cables and lines being placed on poles in use prior to January 1, 1910.

(Code 1966, § 30-9)

Sec. 31-10. Trimming of trees, branches.

Where trees and branches extending over the streets, avenues and alleys of the city obstruct and prevent the proper construction and operation of electric light, power, telephone or cable television lines, such trees or branches may be cut and trimmed by the company operating such lines sufficient to permit the proper construction and operation of such lines, such trimming, however, to be done under the direction and supervision of the superintendent of streets and in such manner as not to unnecessarily injure or impair the life and appearance of such trees.

(Code 1966, § 30-10)
Cross references: Trees and shrubs generally, Ch. 39.

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CHAPTER 32. SALES

Art. I. In General, §§ 32-1--32-15
Art. II. Going Out of Business Sales, §§ 32-16--32-30
Div. 1. Generally, §§ 32-16--32-25
Div. 2. License, §§ 32-26--32-30

ARTICLE I. IN GENERAL

Sec. 32-1. Auctions of new goods.

Auctions of new goods shall be governed by and in all respects comply with the requirements and regulations of K.S.A. Chapter 58, Article 10.

(Code 1966, § 23-148)

Secs. 32-2--32-15. Reserved.

ARTICLE II. GOING OUT OF BUSINESS SALES

DIVISION 1. GENERALLY

Sec. 32-16. Goods which may be advertised.

It shall be unlawful to advertise, sell or expose for sale at any sale governed by this article or to list in the inventory required by this article, any goods, wares or merchandise which are not regular stock of the store which is to be closed out at such sale or to make any replenishments or additions to such stock for the purpose of such sale during the time thereof. No wares or merchandise shall be sold other than those actually included in the inventory.

(Code 1966, § 20-78)

Secs. 32-17--32-25. Reserved.

DIVISION 2. LICENSE[1]

Sec. 32-26. Required.

It shall be unlawful for any person to advertise or conduct or carry on in the city any sales of goods, wares or merchandise that is represented as quitting business, going out of business, complete liquidation or similar sale without first having filed with the city clerk the inventory under oath herein provided for, complying with the provisions of this article and obtaining from the city clerk a license to do so as a "closing out sale license." No goods, wares or merchandise shall be included in the inventory

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[1] ***Cross references:** Licenses generally, Ch. 20.

which are not actually in the place of business described in the application for license at the time the application is made. All sales governed by the provisions of this article shall be conducted in the place of business described in the application and license.

(Code 1966, § 20-75)

Sec. 32-27. Application.

The inventory referred to in section 32-26 shall be made part of the application for a license under this division, which application shall be in writing. The application shall also state the place and manner of conducting such a sale. The application shall be signed by the person seeking to secure a license, or by the proper officer of the corporation, if it is a corporation, and the application shall be sworn to by the proper person signing such application, which oath shall state the information given therein is full, true, and known to the affiant to be so.

(Code 1966, § 20-76)

Sec. 32-28. Fee.

The fee for a license under this division shall be as prescribed in section 2-2.

(Code 1966, § 20-75)

Sec. 32-29. Time limitation.

Only one license required in section 32-26 shall be issued to any one person within a twelve (12) month period, and such license shall not be issued to any one person for a longer period of time than ninety (90) days.

(Code 1966, § 20-77)

Sec. 32-30. Waiting period.

Application shall be made to the city clerk and no sales as defined herein shall be commenced until five (5) days after the license shall have been issued.

(Code 1966, § 20-79)

CHAPTER 33. SECONDHAND GOODS

Art. I. In General, §§ 33-1--33-15
Art. II. Pawnbrokers, Secondhand Dealers and Precious Metal Dealers, §§ 33-16--33-35
Art. III. Junk and Junk Dealers, §§ 33-36--33-54
Div. 1. Generally, §§ 33-36--33-45
Div. 2. License, §§ 33-46--33-54

ARTICLE I. IN GENERAL

Secs. 33-1--33-15. Reserved.

ARTICLE II. PAWNBROKERS, SECONDHAND DEALERS AND PRECIOUS METAL DEALERS[1]

Sec. 33-16. Record and report to police required.

Every pawnbroker and every buyer of secondhand or old gold or silver or diamonds or other secondhand jewelry, shall keep at his place of business a register in which he shall enter in writing a minute description of all property taken, purchased or received by him in the conduct of his business, including any number that may be in or upon any article, together with the time of the purchase and the name and place of residence, giving street and number, if within the city, of the person selling or leaving the property; also the amount paid for such property or loaned thereon. He shall make such entries within one hour after the purchase of the property, and such entries shall be made in ink and shall not in any manner be erased, obliterated or defaced. It shall be the further duty of every such dealer or buyer to make out and deliver to the police department of the city, every day before the hour of 12:00 midnight a legible and correct copy from the register, of all property received or purchased during the preceding twenty-four (24) hours, and a good description of the person from whom the same were purchased.

(Code 1966, § 26-1)

Sec. 33-17. Availability of records for inspection.

The register required by section 33-16 shall at all times be kept open to the inspection of the board of commissioners, city manager and the police department.

(Code 1966, § 26-2)

Sec. 33-18. Availability of merchandise for inspection.

The dealer or buyer shall, upon request, exhibit to any commissioner, the city manager or member of the police department for inspection any article purchased or received by him.

(Code 1966, § 26-3)

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[1] **Cross references:** Licensing of pawnbrokers and precious metal dealers, App. A, Charter ord. no. 19. **State law references:** Regulation of pawnbrokers, K.S.A. 16-706 et seq.

Sec. 33-19. Purchases from children.

No dealer or buyer under this article shall purchase or receive any article or property from any person under the age of eighteen (18) years.

(Code 1966, § 26-4)
Cross references: Minors generally, Ch. 21.

Sec. 33-20. Purchasing stolen property.

No buyer or dealer under this article shall buy or purchase any stolen property which he may from any cause have reason to believe or suspect cannot be rightfully or lawfully sold by the person so offering it for sale.

(Code 1966, § 26-5)
Cross references: Offenses against property, § 25-56 et seq.

Sec. 33-21. Forfeiture of license.

In addition to the criminal penalty provided for violation of this Code, any dealer or pawnbroker, licensed under the terms of this article or any ordinance of the city, who violates, fails, neglects or refuses to comply with the terms of this chapter shall forfeit such license upon a hearing before the board of commissioners after five (5) days' notice duly given of the time and place of such hearing.

(Code 1966, § 26-7)

Sec. 33-22. Merchandise to be displayed for three days before sale.

Every buyer or dealer under this article shall keep in plain view of the public in some conspicuous place, for a period of at least three (3) days from the date and time of purchase or receiving same, all articles so purchased or received.

(Code 1966, § 26-6)

Secs. 33-23--33-35. Reserved.

ARTICLE III. JUNK AND JUNK DEALERS[2]

DIVISION 1. GENERALLY

Sec. 33-36. "Junk" defined.

Junk is hereby defined, for the purposes of this article, to be old iron, lead, brass, steel, copper or other metals, wires, cables, rags or bagging, rope, rubber, bones, paper, bottles and other and similar old materials and old machinery and old automobiles or parts thereof.

(Code 1966, § 18-1)
Cross references: Definitions and rules of construction generally, § 1-2.

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[2] **State law references:** Junk dealers, K.S.A. 50-619 et seq.

Sec. 33-37. Storing junk at unlicensed location.

It shall be unlawful to store junk at any location in the city other than one licensed as provided in this article.

(Code 1966, § 18-12)

Sec. 33-38. Storage regulations.

All places where any junk as herein defined is kept or stored, together with all junk therein, shall at all times be kept in a sanitary condition, open to the inspection of any police or sanitation officer of the city, and any junk dealer, junk buyer, automobile junk dealer, automobile junk parts dealer, or scrap metal processor shall conduct all business, service, storage, and display of goods or junk in a permanent building, or behind a fence not less than five (5) feet in height, which fence shall be at all times kept in good repair. In the event junk is kept or stored in an area within one hundred (100) feet of any residentially zoned area or within one hundred (100) feet of an arterial street, then said fence shall be designed in a manner to substantially obscure the view from said arterial street or residentially zoned area. In addition, all fences shall be landscaped by nondeciduous plantings of shrubs and/or trees for the purpose of enclosing and beautifying such place or yard and to screen the same from the public view. Except, no fencing or landscaping shall be required for any portion of property so used, which is within twenty-five (25) feet of a railroad track or tracks. Provided, that in any yard or place in which junk is kept or stored, and which was located on August 16, 1965, in any district defined by the zoning ordinance of the city as a commercial or residential district, no junk shall be kept or stored and no fence shall be erected nearer than fifty (50) feet to the line of any street or avenue upon which such yard or place abuts. This section shall take precedence over any conflicting ordinance or any conflicting provisions of any ordinance, concerning setback lines and the erection of fences.

(Code 1966, § 18-13; Ord. No. 82-8920, § 1, 8-2-82)

Sec. 33-39. Reports to police required; time articles must be kept.

Every junk dealer or automobile junk dealer shall make a list of every article or group of articles purchased by him which list shall contain a description of the articles purchased, sufficient to identify the same, and the name of the person from whom the same were purchased and date and hour of purchase and shall furnish a true and correct copy of such list, signed by such purchaser, with the chief of police of the city, before noon of each day covering the articles purchased during the preceding day. In case of any automobile or piece of machinery bearing or which is by law required to bear a motor or serial number, such motor or serial number or both if such automobile or piece of machinery has or is required to have both, shall be shown, and if any such motor or serial number shall be defaced or erased, such fact shall be shown on such report and it shall be unlawful for any person purchasing any such article to sell the same or to remove the same from the location at which it may be stored or kept, or to tear down or remove parts therefrom, until the same has been in his possession for at least forty-eight (48) hours.

(Code 1966, § 18-14)

Secs. 33-40--33-45. Reserved.

DIVISION 2. LICENSE[3]

Sec. 33-46. Required.

It shall be unlawful for any person to carry on a business of buying, selling, collecting, trading, exchanging or otherwise dealing in junk without having first obtained a license to do so as provided in this division.

(Code 1966, § 18-2)

Sec. 33-47. Application.

Any person desiring a license under this division shall make application in writing to the city clerk which application shall set forth the full name of the applicant together with his residence address and if a dealer, the location at which such junk is to be kept or stored.

(Code 1966, § 18-3)

Sec. 33-48. Submission, approval of application.

An application for a license under this division shall be submitted to the city clerk and if the city clerk approves such application and location, he may issue such license upon payment of license fee as herein required.

(Code 1966, § 18-4)

Sec. 33-49. Classification of licensees.

Persons required to be licensed under this division shall be classified and defined as follows:

(1) *Junk dealers:* Any person or persons who engage in the city in buying, collecting, trading in, exchanging or otherwise dealing in junk as herein defined, and shipping, selling or otherwise disposing of the same in truckload or carload lots, and who conduct such business at or from any yard or place in the city where such junk, while owned or held by such person, is kept or stored; provided, that the term "junk dealer" as herein used, shall not include any person classified as an "automobile junk dealer" or as an "automobile junk parts dealer" as hereinafter defined.

(2) *Junk buyers:* Any person or persons who engage in the city in buying, collecting, trading in, exchanging or otherwise dealing in junk as herein defined, and shipping, selling or otherwise disposing of the same in truckload or carload lots, but who do not have in the city any yard or place from which such business is conducted; provided, that the term "junk buyer" as herein used shall not include any person classified as an "automobile junk dealer" or as an "automobile junk parts dealer" as hereinafter defined.

(3) *Junk collector:* Any person or persons who engage in the city in buying, collecting, trading in, exchanging or otherwise dealing in junk as herein defined, for resale within the city, who do not have or maintain any yard or other place in the city from which such business is conducted, and who do not sell, ship or otherwise dispose of such junk outside of the city; provided, that the term "junk collector" as used herein shall not include any person classified as an "automobile junk dealer" or as an "automobile junk parts dealer" as herein defined.

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[3] **Cross references:** Licenses generally, Ch. 20.

(4) *Paper junk dealers:* Any person or persons who engage in the city in buying, selling or collecting old paper, cardboard or pasteboard boxes, rags, bagging or other similar materials, or bailing the same at any place in the city.

(5) *Automobile junk dealers:* Any person or persons who engage in the city in the business of buying, selling, storing, exchanging, trading or otherwise dealing in old automobiles or parts thereof for the purpose of wrecking, dismantling or junking such old automobiles or parts thereof, except old batteries, old tires or other old automobile parts which are purchased separately from the automobiles from which they were removed, or dealing in old automobiles for any purpose other than as vehicles, and who conduct such business at or from any place in the city where any such old automobiles or parts thereof are wrecked, dismantled, junked, kept or stored; provided, that this section shall not apply to regular dealers in new or secondhand automobiles, who may as an incident to their regular business engage in selling or dealing in old automobiles.

(6) *Automobile junk parts dealers:* Any person or persons who engage in the city in the business of buying, selling, storing, exchanging, trading or otherwise dealing in old automobiles or parts thereof, except old batteries, old tires or other old automobile parts which are purchased separately from the automobiles from which they were removed, or dealing in old automobiles for any purpose other than for use as vehicles, who do not engage in the business of wrecking, dismantling, junking or storing such old automobiles or parts thereof within the city, but who engage in the business of selling parts from such wrecked, dismantled or junked automobiles at or from any store, yard or other place in the city.

(7) *Scrap metal processor:* Any person or persons who engage in the city in the business of buying, selling, storing, exchanging, trading or otherwise dealing in scrap metal.

(Code 1966, § 18-5; Ord. No. 82-8919, § 1, 8-2-82)

Sec. 33-50. Fees.

The fees for licenses required by this division shall be as prescribed in section 2-2.

(Code 1966, § 18-6)

Sec. 33-51. Scope of licenses.

Any person who pays a license fee for a license classification as herein provided, shall, without paying any additional license, be entitled to engage in any other business as provided for in this article for which the same or a lesser fee is provided for herein.

(Code 1966, § 18-7)

Sec. 33-52. Collector's license required for each vehicle.

A junk collector's license as provided for herein shall be required for each wagon or vehicle used for the collection of junk.

(Code 1966, § 18-9)

Sec. 33-53. Additional licenses for separate places of business.

No junk dealer, junk buyer, automobile junk dealer or automobile junk parts dealer shall operate more than one yard or place of business under one license, but shall secure an additional license for each yard or place of business operated by him; provided, that no license shall be required of any such dealer for the operation of a separate store, or place of business where individual parts taken from any junk automobile are sold as parts and not as junk.

(Code 1966, § 18-10)

Sec. 33-54. Suspension, revocation.

Any license issued under this division may be revoked by the board of commissioners upon conviction of the licensee or any agent, employee or officer of any licensee of the violation of any provisions of this article, or of any ordinance or law relating to the purchase or possession of stolen property, and may be suspended pending the hearing of any such charge prior to conviction.

(Code 1966, § 18-11)

CHAPTER 34. SOLID WASTE[1]

Art.	**I.**	**In General, §§ 34-1--34-15**
Art.	**II.**	**Refuse and Sanitation, §§ 34-16--34-50**
Art.	**III.**	**Private Haulers, §§ 34-51--34-80**
		Div. 1. Generally, §§ 34-51--34-60
		Div. 2. License, §§ 34-61--34-80
Art.	**IV.**	**Soiled Waste Disposal Area, §§ 34-81--34-89**
Art.	**V.**	**Salina/Saline Solid Waste Management Committee, §§ 34-90--34-96**

ARTICLE I. IN GENERAL

Secs. 34-1--34-15. Reserved.

ARTICLE II. REFUSE AND SANITATION

Sec. 34-16. Definitions.

For the purpose of this article:

Authorized collector of refuse means any person duly qualified and operating under a license issued by the city as provided for in this Code or the ordinances of the city, or the licensee's duly authorized agent.

Commercial dwelling means a building or portion thereof designed for or occupied by four (4) or more families as a residence.

Commercial enterprise means a person engaged in the operation of a commercial enterprise and such commercial enterprises shall include the following: Boardinghouses, rooming houses, hotels, restaurants, motels, trailer courts, public buildings, retail stores, schools, churches, hospitals, wholesale houses and all other users commonly designated as commercial or business.

Dwelling unit shall mean the enclosure, building or portion thereof occupied by one (1) or more persons for and as living quarters.

Multiple dwellings shall mean a building designed for or occupied by more than one (1) family and less than four (4) families.

Refuse means all putrescible and nonputrescible solid wastes except body wastes. Refuse includes garbage, rubbish, ashes, street cleanings, dead animals, and solid market and industrial wastes.

Single-family dwelling shall mean a building designed for and occupied by one family.

(Code 1966, §§ 31-11, 31-35; Ord. No. 02-10107, § 1, 11-4-02)
Cross references: Definitions and rules of construction generally, § 1-2.

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[1] **Cross references:** Buildings and structural appurtenances, Ch. 8; housing, Ch. 15; health and sanitation, Ch. 17; housing, Ch. 18; mobile homes and trailers, Ch. 22; nuisances generally, Ch. 24; littering, § 25-57; public utilities, Ch. 31; water and sewers, Ch. 41; franchises, App. B.

Sec. 34-17. General duties of occupants.

Every occupant of any dwelling, premises or commercial establishment shall keep his premises in a clean and sanitary condition and free from any accumulations of refuse, and each occupant of any such premises shall dispose of all refuse in a clean and sanitary manner in accordance with the minimum requirements set forth in this Code.

(Code 1966, § 31-36)

Sec. 34-18. Manner of disposal to be approved.

All refuse collected under the terms of this article shall be disposed of in a manner approved by the city manager.

(Code 1966, § 31-37; Ord. No. 02-10107, § 1, 11-4-02)

Sec. 34-19. Who may collect and dispose of refuse.

All refuse accumulated within the city shall be collected, conveyed and disposed of by an authorized collector of refuse, the city, or persons authorized to dispose of their own refuse.

(Code 1966, § 31-38)

Sec. 34-20. Frequency of collection.

Any and all refuse shall be collected and removed from all premises at least once every ten (10) days.

(Code 1966, § 31-39; Ord. No. 02-10107, § 1, 11-4-02)

Sec. 34-21. Removal by city if person responsible fails.

Failure of the property owner, his authorized agent, tenant, householder or occupant to cause all refuse to be removed from any premises and disposed of as provided herein, shall be cause for the city manager to order the refuse collected and disposed of in accordance with chapter 24.

(Code 1966, § 31-40; Ord. No. 02-10107, § 1, 11-4-02)

Sec. 34-22. Disposal from unoccupied premises.

It shall be the responsibility of the property owner or his authorized agent to cause to be collected and disposed of all refuse accumulated at or on any unoccupied premises within the corporate limits of the city not later than seven (7) days following vacation of the premises. Upon failure of the property owner or his authorized agent to dispose of such refuse within the seven (7) days following vacation of premises, the city manager shall attempt to notify the property owner or his authorized agent to cause to be collected and disposed of according to the provisions of this article all refuse accumulated at or on the premises within forty-eight (48) hours. Inability to contact the property owner or his authorized agent, or failure of the property owner or his authorized agent to dispose of the accumulated refuse as ordered, shall be cause for the city manager to order the refuse collected and disposed of in accordance with chapter 24.

(Code 1966, § 31-41; Ord. No. 02-10107, § 1, 11-4-02)

Secs. 34-23, 34-24. Reserved.

Editor's note: Ord. No. 92-9541, § 1, adopted Nov. 2, 1992, repealed § 34-24, which pertained to cleaning of garbage containers and was derived from the 1966 Code, § 31-43. Sec. 34-23 was nonsubstantive.

Sec. 34-25. Storage to be inaccessible to vermin, approved.

Refuse containing food waste or other putrescible material shall be stored so as to be inaccessible to vermin. All other refuse shall be stored in a manner approved by the city manager.

(Code 1966, § 31-44; Ord. No. 02-10107, § 1, 11-4-02)

Sec. 34-26. Unlawful to store refuse or refuse containers upon public right-of-way.

(a) It shall be unlawful to store refuse or refuse containers upon the public right-of-way; provided however, this shall not prohibit the temporary storage thereon for collection purposes.

(b) For the purposes of this section, temporary storage shall mean the placing of refuse containers on the public right-of-way for collection purposes, which will allow the placing of refuse containers on the public right-of-way the evening prior to the day designated for collection; provided such containers are removed the evening of the day of collection.

(Ord. No. 80-8816, §§ 1, 2, 10-27-80)

Sec. 34-27. Adequacy of storage facilities.

Storage facilities shall be adequate for the proper storage of all refuse.

(Code 1966, § 31-45; Ord. No. 01-10107, § 1, 11-4-02)

Sec. 34-28. Cleanliness of storage areas.

Refuse storage areas shall be clean and shall not constitute a nuisance.

(Code 1966, § 31-46; Ord. No. 02-10107, § 1, 11-4-02)

Sec. 34-29. Storage by commercial enterprises.

(a) Refuse storage rooms or enclosures used by commercial enterprises shall be constructed of easily cleanable, washable materials and shall be vermin proofed. The floors, and the walls up to at least the level reached by splash or spray, shall be of relatively nonabsorbent materials. Refuse containers outside the establishment shall be stored either on a concrete slab, or on a rack which is at least twelve (12) inches above the ground, or in such other manner as shall be approved by the city manager.

(b) Storage of undrained refuse by commercial enterprises is permissible providing it is stored in containers and accumulation shall not exceed two (2) days.

(Code 1966, § 31-47; Ord. No. 02-10107, § 1, 11-4-02)

Sec. 34-30. Prevention of spillage from containers.

All containers used for refuse shall be stored, housed, enclosed or secured so as to prevent spillage by wind or animals. Lids or covers unless permanently attached to container shall be secured to the storage rack or apparatus, unless containers are stored inside a room.

(Ord. No. 02-10107 § 1, 11-4-02)

Sec. 34-31. Burning refuse.

Refuse shall not be burned at any time except in an incinerator or other appliance constructed specifically for such purposes and approved by the fire department, and equipped with a flue, chimney, or smokestack which will carry the smoke and odors therefrom above surrounding rooftops.

(Ord. No. 02-10107 § 1, 11-4-02)

Sec. 34-32. Unusual situations.

In situations which are not contemplated or considered by the terms and conditions of this article, the city manager shall have the power and the authority to grant special rights and privileges on a temporary basis for the collection, hauling and disposal of refuse where such special privileges are required in order to maintain the health and sanitation of the city and its inhabitants or such rights and privilege is required to avoid the creation of a public nuisance.

(Ord. No. 02-10107 § 1, 11-4-02)

Sec. 34-33. Service charges for refuse collection; rules and regulations.

(a) City refuse collection service shall be available to householders and occupants of residential premises within the city desiring such service. For the purpose of this article, residential premises shall include single family, duplex and triplex dwellings.

(b) The board of commissioners shall, by resolution, from time to time as they deem necessary, adopt such fees as are necessary for the operation of the refuse collection service.

(c) The city manager shall recommend to the board of commissioners adjustments in such fees as are necessary to pay the costs of the operation of the refuse collection service.

(d) The city manager shall formulate such rules and regulations as may be necessary to provide for the operation of the refuse collection service. The rules and regulations shall become effective when filed with the city clerk.

(Ord. No. 02-10107 § 1, 11-4-02)

Sec. 34-34. Billing for service charges; when due and payable.

The charges required to be paid in section 34-33 shall be billed monthly. The refuse service charge shall be billed along with the monthly water bill and total bill shall be due and payable upon rendering.

(Ord. No. 02-10107 § 1, 11-4-02)

Sec. 34-35. When bills delinquent; discontinuing service for delinquency.

In general, all refuse service accounts shall be considered delinquent if not paid on or before the date specified on the monthly billing statement. If not paid within ten (10) days following the date of delinquency, service shall be discontinued without notice and such discontinuance shall not be construed to constitute a waiver of the city's right to proceed for the amount of such unpaid bill. In the event of such discontinuance, service shall not be resumed until the accumulated delinquent fees have been paid.

(Ord. No. 02-10107 § 1, 11-4-02)

Sec. 34-36. Authority to adopt regulations.

The sanitation division is authorized to adopt and promulgate additional rules and regulations as may be necessary to supplement provisions of this article.

(Ord. No. 02-10107 § 1, 11-4-02)

Secs. 34-37, 34-38. Reserved.

Editor's note: Ord. No. 02-10107, § 1, adopted November 4, 2002, repealed §§ 34-37, 34-38 in their entirety. Formerly said sections pertained to contracts for service to dwellings and authority to adopt regulations and derived from Code 1966, §§ 31-20, 31-23.

Secs. 34-39--34-50. Reserved.

ARTICLE III. PRIVATE HAULERS

DIVISION 1. GENERALLY

Sec. 34-51. Standards for transportation and vehicles.

The following standards and requirements are hereby established as minimum for the sanitary transportation of refuse:

(1) Vehicles used for the transportation of refuse shall have a hauling body constructed of metal, or shall have a metal lining on the floor and all sidewalls.

(2) Vehicles shall be provided with a means of covering the refuse to be hauled and of keeping such refuse securely within the hauling body. The hauling body shall be provided with a tight metal hood having adequate openings fitted with smoothly operating loading and unloading doors, or shall be provided with heavy tarpaulin or other canvas cover fitted with proper eyes, grommets and tie ropes and hooks whereby the cover can be held securely over the loaded refuse in a manner acceptable to the city manager.

(3) Vehicles used for carrying refuse shall be cleaned as often as may be necessary to prevent persistent odors and attraction of flies.

(4) Vehicles used for transporting refuse shall carry a legend or identifying sign on each side. The legend shall be painted on the vehicle, or be placed on a separate durable plaque which shall be firmly fixed to the vehicle when used for refuse collection and transportation. Such legend shall be printed in letters no less than two (2) inches in height and one (1) inch in width, and shall be clearly legible. Such legend shall include the name of the licensed hauler.

(5) Vehicles shall not be loaded with refuse in a manner which will permit material to fall out, or blow out of the vehicle.

(6) Containers used for the transportation of refuse shall be constructed and maintained so as to prevent any spillage or leakage of liquid.

(7) Vehicles used for transporting refuse shall be properly maintained in good operating condition in order to provide dependable service to subscribers. The vehicle shall be equipped with adequate safety lights to warn vehicular traffic of refuse trucks stopped for loading.

(Code 1966, § 31-73; Ord. No. 02-10107, § 2, 11-4-02)
Cross references: Traffic and motor vehicles, Ch. 38.

Sec. 34-52. Additional regulations authorized.

The city manager shall make, adopt and publish such rules as may be necessary to make this article effective and facilitate the systematic collection, handling and disposal of refuse including the authority to approve variations from vehicle standards and requirements in Section 34-51. Variations may be approved when alternate means of comparably protecting the public health and safety are proposed by an authorized collector of refuse."

(Code 1966, § 31-74; Ord. No. 02-10107, § 2, 11-4-02; Ord. No. 03-10180, § 1, 12-08-03)

Secs. 34-53--34-60. Reserved.

DIVISION 2. LICENSE[2]

Sec. 34-61. Required; exemptions.

(a) It shall be unlawful for any person to collect, transport or haul on any streets or alleys in the city or dispose in any manner any refuse accumulated in the city without first having obtained a refuse hauler's license as described in this division; provided, this section shall not be construed to apply to the following:

(1) Any and all governmental agencies;

(2) To persons who collect and transport refuse produced on premises owned and/or occupied by said persons;

(3) Builders or demolition contractors, or other persons engaged in construction or similar occupations;

(4) To persons engaged in the occupations known as tree trimmers or tree surgeons, agriculture, arboriculture, horticulture, gardening, lawn care, landscaping, nursery work, or similar occupations.

(b) Persons who are not required to obtain a license under this division shall comply with all other sections of this article and such other regulations as are prescribed by the city codes for the transportation of refuse over and upon the streets and alleys of the city.

(Code 1966, § 31-62; Ord, No. 02-10107, § 3, 11-4-02)

Sec. 34-62. Application; approval.

Each person or firm required by this division to be licensed to collect or remove refuse within the city shall make application for an annual refuse hauler license with the city clerk.

(Code 1966, § 31-63; Ord. No. 94-9659, § 1, 10-24-94; Ord. No. 97-9787, § 1, 2-17-97; Ord. No. 02-10107, § 3, 11-4-02)

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[2] **Cross references:** Licenses generally, Ch. 20.

Sec. 34-63. Liability insurance required.

A certificate of insurance shall show that the applicant is covered by an effective public liability insurance policy issued by a solvent corporation authorized to do business within the state, with limits of not less than the maximum liability for claims which could be asserted against the city, for any number of claims arising out of a single occurrence or accident under the Kansas Tort Claims Act, as amended. Such insurance policy shall not be canceled or terminated until at least twenty (20) days after a notice of cancellation of the insurance policy is received by the city clerk.

(Code 1966, § 31-64)

Sec. 34-64. Issuance, contents of license.

Each refuse hauler shall be issued a refuse hauler license signed by the city clerk, and issued with the corporate seal of the city affixed thereto. The license shall recite the number of the license, the name of the company and the amount paid for such license.

(Code 1966, § 31-65; Ord. No. 97-9787, § 1, 2-17-97)

Sec. 34-65. Fee.

The refuse hauler's license fee under this division shall be as prescribed in section 2-2.

(Code 1966, § 31-66; Ord. No. 97-9787, § 1, 2-17-97; Ord. No. 02-10107, § 3, 11-4-02)

Sec. 34-66. Revocation.

(a) A refuse hauler's license may be revoked or suspended by the city manager for violation of or failure to comply with any provisions of this article.

(b) A revocation or suspension of refuse hauler's license may be appealed to the board of commissioners by the licensee filing a notice of appeal with the city clerk, which appeal shall be heard within ten (10) days after the filing of the notice of appeal by the board of commissioners at their regularly scheduled meeting.

(Code 1966, § 31-71; Ord. No. 97-9787, § 1, 2-17-97; Ord. No. 02-10107, § 3, 11-4-02)

Secs. 34-67, 34-68. Reserved.

Editor's note: Ord. No. 02-10107, § 3, adopted November 4, 2002, repealed §§ 34-67 and 34-68 in their entirety. Formerly said sections pertained to transfer and revocation and derived from Code 1966, §§ 31-72, 31-69 and subsequent amendments.

Secs. 34-69--34-80. Reserved.

ARTICLE IV. SOLID WASTE DISPOSAL AREA

Sec. 34-81. Establishment.

Section Seven (7), Township Fifteen (15), Range Three (3) West of the 6th P.M. in Saline County, Kansas, is hereby established as the solid waste disposal area for the city and shall be considered as the solid waste disposal area as the phrases used in this article.

(Code 1966, § 31-81)

Sec. 34-82. Use restricted.

All persons shall be privileged to use the facilities of the solid waste disposal area upon payment of the established fees for the depositing or dumping of solid waste originating within the city or the county.

In the interest of assuring the city's ongoing capability for the disposal of solid waste originating in the city and the county, no person shall use the facilities of the solid waste disposal area for the purpose of disposing of solid waste originating outside the county without first obtaining a permit from the city.

(Code 1966, § 31-82; Ord. No. 88-9240, § 1, 4-4-88)

Sec. 34-83. Rules and regulations.

All persons or their agents, having the right to use the facilities of the solid waste disposal area as provided in this article shall abide by and conform with all the rules and regulations which may be promulgated by the city manager in regard to the operation of the solid waste disposal area and with all instructions or orders of the persons authorized by the city to supervise dumping operations and with all signs and notices posted at the area. No person or their agents shall have the right to use the disposal area except during hours specified by notice posted at the gate or entrance thereof.

(Code 1966, § 31-83; Ord. No. 88-9240, § 2, 4-4-88)

Sec. 34-84. Removal of objects.

No persons or their agents, shall, except by written permission of the city, remove any article or object which has been deposited or dumped at the solid waste disposal area.

(Code 1966, § 31-84)

Sec. 34-85. Service fees.

(a) The city shall from time to time, by resolution, establish fees for the use of the solid waste disposal area and the fees shall become effective upon publication of the resolution establishing fees in the official city paper.

(b) The board of commissioners may temporarily suspend or waive the collection of the service fees established by the city for the use of the solid waste disposal area.

(Code 1966, §§ 31-85, 31-86; Ord. No. 02-10107, § 4, 11-4-02)

Sec. 34-86. Permit for disposal of waste originating outside the county--Application.

Application for a permit for disposal of waste originating outside the county shall be made on forms made available in the office of the city clerk. The application shall specify the following:

(1) The specific source of the waste material.

(2) The specific nature of the waste material.

(3) The estimated volume and frequency of dumping.

(4) The name, address and telephone number of the individual or firm requesting the permit.

(Ord. No. 88-9240, § 3, 4-4-88)

Sec. 34-87. Same--Approval.

The city manager is hereby authorized to grant any permit application after determining that:

(1) Processing the nature and volume of the proposed waste material will not have an adverse financial impact on operation of the city's solid waste disposal area;

(2) The nature of the proposed waste material will not have an adverse environmental impact on the city's solid waste disposal area; and

(3) The nature and volume of the proposed waste material will not have an adverse affect upon the capability of the city's solid waste disposal area to accommodate the future solid waste disposal needs of the city and county.

(Ord. No. 88-9240, § 4, 4-4-88)

Sec. 34-88. Same--Terms.

The city clerk's office shall issue the permit to the applicant upon approval by the city manager and upon payment of the established permit fee necessary to offset the administrative expense of processing the permit application. The permit shall be for a period not to exceed five (5) years and shall be limited to the source, nature, volume, and frequency of use shown on the permit. Any deviation from the stated volume and frequency of dumping shall require reapplication for possible reissuance of a revised permit based upon review under the criteria outlined in section 34-87. Any deviation from the source or nature shown on the permit shall result in forfeiture of the permit.

(Ord. No. 88-9240, § 5, 4-4-88)

Sec. 34-89. Same--Nontransferable; presentation and payment of use fees.

The permit shall not be transferable by the original permit holder to any other person or firm without prior approval by the city. The permit must be presented at the solid waste disposal area on each occasion of its use pursuant to the permit. The permit holder shall pay the standard fees established for use of the solid waste disposal area.

(Ord. No. 88-9240, § 6, 4-4-88)

ARTICLE V. SALINA/SALINE SOLID WASTE MANAGEMENT COMMITTEE

Sec. 34-90. Created.

There is hereby created the Salina/Saline County Solid Waste Management Committee (hereinafter referred to as "the committee").

(Ord. No. 96-9751, § 1, 7-22-96)

Sec. 34-91. Purpose.

The purpose of the committee shall be:

To provide for a solid waste management system plan to serve the residents of cities and unincorporated areas within the county. K.S.A. 65-3405(c);

To review the solid waste management plan at least annually and provide any recommendations for revisions of the plan to the city commission, for submittal to the Kansas Department of Health and Environment;

To hold a public hearing at least every five (5) years on the plan and future goals of solid waste management in Saline County.

(Ord. No. 96-9751, § 1, 7-22-96)

Section 34-92. Membership.

In accordance with K.S.A. 64-3405, the membership of the committee shall include a total of thirteen (13) members, as follows:

(a) Five (5) residents of the City of Salina, nominated by the mayor of the City of Salina and appointed by the governing body of the City of Salina, representing the City of Salina as a city of the first class located in Saline County.

(b) One (1) resident of the unincorporated area of Saline County, nominated by the board of Saline County commissioners and appointed by the governing body of the City of Salina, representing the unincorporated areas of Saline County.

(c) One (1) resident of any of the cities of the third class located within Saline County (Assaria, Brookville, Gypsum, New Cambria, and Smolan), nominated by a majority of the mayors of those cities and appointed by the governing body of the City of Salina, representing the cities of the third class located in Saline County.

(d) Six (6) residents of Saline County at-large, including four (4) nominated by the mayor of the City of Salina and two (2) nominated by the board of Saline County commissioners, and all appointed by the governing body of the City of Salina.

Elected officials and employees of either Saline County or any city located within Saline County shall neither be nominated nor appointed to the committee.

(Ord. No. 96-9751, § 1, 7-22-96; Ord. 03-10153, § 1, 7-14-03)

Section 34-93. Appointment and term.

Those persons first appointed as members of the board shall be appointed for the following terms:

(1) Three (3) city appointees for terms of three (3) years.

(2) Two (2) city of Salina appointees for terms of four (4) years.

(3) One (1) county unincorporated appointee for a term of four (4) years.

(4) One (1) city of the third class appointee for a term of four (4) years.

(5) Four (4) city nominated city at-large appointees for terms of three (3) years.

(6) Two (2) county nominated at-large appointees for a term of three (3) years.

Upon expiration of the term of each first appointed committee member, subsequent terms for all members shall be for a period of three (3) years. Committee members can be appointed and reappointed for up to three full consecutive terms. Any member having served three full consecutive terms shall qualify for reappointment one year following expiration of the preceding consecutive terms. Any vacancy occurring among the membership shall be filled in the same manner as original appointments.

(Ord. No. 96-9751, § 1, 7-22-96; Ord. No. 03-10153, § 1, 7-14-03)

Sec. 34-94. Compensation.

The members of the committee shall serve without compensation.

(Ord. No. 96-9751, § 1, 7-22-96)

Sec. 34-95. Officers.

The committee shall elect from its membership a committee chair and vice chair for terms of one (1) year. The chair shall preside at all meetings of the committee. The vice chair shall act as chair at meetings of the committee in the absence of the committee chair.

(Ord. No. 96-9751, § 1, 7-22-96)

Section 34-96. Quorum.

A simple majority of those persons on the committee at any given time shall constitute a quorum for the purpose of conducting the committee's business.

(Ord. No. 96-9751, § 1, 7-22-96; Ord. No. 03-10153, § 1, 7-14-03)

CHAPTER 35. STREETS, SIDEWALKS AND OTHER PUBLIC PLACES[1]

Art. I. In General, §§ 35-1--35-20
Art. II. Bench Marks, §§ 35-21--35-35
Art. III. Obstructions and Encroachments, §§ 35-36--35-60
Div. 1. Generally, §§ 35-36--35-50
Div. 2. Obstructing Visibility at Intersections, §§ 35-51--35-60
Art. IV. Moving Buildings, §§ 35-61--35-100
Div. 1. Generally, §§ 35-61--35-80
Div. 2. Permit, §§ 35-81--35-100
Art. V. Numbering Buildings, §§ 35-101--35-120
Art. VI. Driveways and Sidewalks, §§ 35-121--35-175
Div. 1. Generally, §§ 35-121--35-150
Div. 2. Permit, §§ 35-151--35-175
Art. VII. Service Pipes and Sewers Ahead of Paving, §§ 35-176--35-200
Art. VIII. Excavations, §§ 35-201--35-230
Art. IX. Railroad Crossings, §§ 35-231--35-250
Art. X. Snow and Ice on Sidewalks, §§ 35-251--35-255

ARTICLE I. IN GENERAL

Sec. 35-1. Ramps or runways prohibited.

It shall be unlawful for any person to place or use, or to permit, cause or allow to be placed or used any ramp or runway attached to the curb on or along any public street or thoroughfare in the city and which projects into any such street or thoroughfare and onto the pavement thereof, the ramp or runway herein referred to being such as is commonly used for the purpose of driving automobiles or other vehicles over the curb when no driveway entrance is cut into the curb.

(Code 1966, § 32-2)

Sec. 35-2. Salt water prohibited on pavement.

It shall be unlawful for any person to pour, dump, place or throw, or to cause to be poured, thrown, placed or dumped, into or upon the sidewalk, pavement or gutter in any street, alley or other public highway or thoroughfare in the city, or in any such place that the same will run or drain into or upon any such sidewalk, pavement or gutter, any salt water, salt or ice and salt, or salty solution, substance or liquid. Any person either acting for himself or as the agent, representative, employee or member, officer or manager of any such person who shall violate any of the provisions of this section, shall be guilty of a misdemeanor.

(Code 1966, § 32-3)

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[1] **Cross references:** Any ordinance dedicating, establishing, opening, reopening, naming, renaming, widening, narrowing or vacating a street, boulevard, avenue, alley, or other public way, including rights-of-way saved from repeal, § 1-5(5); any ordinance establishing or changing the grade of any street, avenue, boulevard or other public way saved from repeal, § 1-5(6); airport, Ch. 4; consumption of alcoholic liquor in public places, § 5-24; consuming cereal malt beverages in public streets, § 5-68; buildings and structural appurtenances, Ch. 8; cemeteries, Ch. 9; fire prohibited on streets, § 14-78; sale of gasoline on streets and sidewalks, § 14-79; library, Ch. 19; curfew for minors, § 21-16 et seq.; mobile homes and trailers, Ch. 22; parks and recreation, Ch. 27; planning; Ch. 29; public utilities, Ch. 31; subdivision regulations, Ch. 36; traffic and motor vehicles, Ch. 38; trees and shrubs, Ch. 39; vehicles for hire, Ch. 40; water and sewers, Ch. 41; zoning regulations, Ch. 42.

Sec. 35-3. Driving rod or stake through pavement.

It shall be unlawful for any person at any time for any purpose whatever, to drive any rod or stake through any pavement on any street, alley or other public ground in the city without first obtaining the written permit of the city engineer to do so.

(Code 1966, § 32-8)

Sec. 35-4. Removing, interfering with barricades, warning devices.

It shall be unlawful for any person to remove, displace, take away or in any manner interfere or meddle with any barricade, barrier, obstruction, railing, light or other warning signal placed by the city, or any agent thereof or by any person acting under the authority or with the consent of the city, for the purpose of protecting any pavement, sidewalk or other public improvement in the course of construction in the city.

(Code 1966, § 32-9)

Sec. 35-5. Using sidewalk or paving protected by barriers, warning devices.

It shall be unlawful for any person to walk upon or use any sidewalk or to use or operate any kind of vehicle upon and over any pavement in the course of construction in the city when the same shall be protected against such use by means of barriers, barricades, obstructions, lights or other warning signals placed there by the city or by persons acting with authority and consent of the city, for the purpose of protecting such unfinished pavement, sidewalk or other public work against damage until its completion.

(Code 1966, § 32-10)

Sec. 35-6. Permits required for certain construction in, under streets, sidewalks.

It shall be unlawful for any person to construct in any street or in or under any sidewalk in the city any bulkheads, cellar or basement ways, areaways, railings or stairways, or excavations for any of the same without first securing from the board of commissioners a permit for the same which shall in each case state specifically the terms and conditions under which such permit is issued and the manner in which and the conditions under which the same shall be maintained.

(Code 1966, § 32-11)

Sec. 35-7. Protection of stairways, areaways.

It shall be unlawful for any person to use or maintain in any street or in or under any sidewalk in the city any cellar or basement way, areaway or stairway, unless the same shall be protected by an iron railing on all exposed sides thereof which shall consist of at least two (2) rails, the top one of which shall be at least thirty-nine (39) inches above the street level and the other rail one-half that height from the street level. In the case of stairways leading into any such cellar or basement way or areaway, the head of such stairway shall be protected by an iron gate comprised of at least two (2) rails of the same height from the street as herein specified for other railings, which shall open outward from such cellar or basement way or areaway, and shall be so constructed that the same shall at all times be securely latched so that the same cannot be opened by a person walking into or against the same from the outside thereof, and such gate shall be constructed that it shall at all times be kept closed except when in actual use.

(Code 1966, § 32-12)

Secs. 35-8--35-20. Reserved.

ARTICLE II. BENCH MARKS

Sec. 35-21. Bench marks established.

The bench marks heretofore established in the city by the United States Coast and Geodetic Survey and placed upon certain established buildings and at other places in the city, as hereinafter set forth, are hereby established as the official bench marks to be used in ascertaining and fixing the elevations and grades of the streets and alleys in the city, the location of said established bench marks and their elevations above sea level, as fixed by said survey being as follows, to wit:

At Salina, 0.9 mile north along Santa Fe Avenue from the crossing of the Union Pacific Railroad, directly across Otis Avenue from the southeast corner of the grounds of the St. John's Military School, 277.3 feet east of the east concrete curb of the north end of Santa Fe Avenue, 34.0 feet west of the center of North Fifth Street, 33.0 feet south of the center of Otis Avenue, 11.2 feet east southeast of a fire hydrant, set in a concrete post about flush with the top of the ground. A bench mark disk stamped M 167 1934.....1217.196 feet

At Salina, along the west side of the block occupied by the old Saline County Court House, along the east side of Tenth Street and about midway between Elm Street and Park Street, in the north wall of the brick boiler house, 4.0 feet west of the northeast corner of and 2.5 feet east of the east side of the north entrance door, 3.2 feet above the top of a concrete walk, set vertically in the north wall of the building. A bench mark disk stamped Q 167 1934.....1229.397 feet.

At Salina, 4.0 miles south along the Union Pacific Railroad from the station at Salina, at a road crossing, 3 poles south of milepost 4, 143 feet south of the center line of Magnolia Road, 74 feet west of the west rail, 44.5 feet west of a fence, 2.6 feet north of a witness post, set in the top of a concrete post which projects 0.5 foot above the ground, directly beneath the center of a power line tower. A bench mark disk stamped B 292 1952.....1238.734 feet.

(Code 1966, § 32-23)

Secs. 35-22--35-35. Reserved.

ARTICLE III. OBSTRUCTIONS AND ENCROACHMENTS

DIVISION 1. GENERALLY

Sec. 35-36. Prohibited.

It shall be unlawful for any person to obstruct or encroach upon any sidewalk, street, avenue, alley or other public property.

(Code 1966, § 32-37)

Sec. 35-37. Notice and removal.

Wherever any obstruction may be found upon any sidewalk, street, avenue, alley or in other public places in the city, it shall be the duty of the chief of police immediately to notify the owner or occupier of the premises fronting thereon or the person placing the same thereon to remove the same without delay, and upon failure so to do, the chief of police shall have the obstruction removed at the expense of the owner or occupiers of the property and such expenses, if not paid, shall be a valid claim in favor of the city against such persons.

(Code 1966, § 32-38)

Sec. 35-38. Temporary while receiving, shipping merchandise.

Persons occupying premises fronting thereon may have such temporary use of the streets and sidewalks as shall be actually necessary in receiving and shipping merchandise.

(Code 1966, § 32-39)

Sec. 35-39. In the course of building construction.

Any person erecting buildings in the city may, for the time occupied in their erection and while it is necessary to do so, occupy a reasonable portion of the streets and sidewalks in front of the same for receiving and delivering materials, but in no case shall he obstruct the gutters so as to prevent the passage of water therein, and when it shall be necessary in any such case for the owner of the property to take up and remove the sidewalk, he shall, at the time of so taking up and removing, construct a temporary sidewalk not less than three (3) feet wide for the public travel and convenience; and in case of open basements or other excavations, the owner or occupier of the property upon which the same are situated or the person in charge of the excavation shall provide the same with sufficient guards to protect against accidents.

(Code 1966, § 32-40)

Sec. 35-40. Use of public property for aesthetic purposes by abutting property owners.

The board of commissioners may grant a permit to any person to use a portion of any sidewalk, street, avenue, alley or other public property abutting upon their property for aesthetic purposes notwithstanding the provisions of section 35-36. Application for such permit shall be made to the city clerk and shall be referred by him to the board of commissioners. The application for such permit shall be accompanied by a detailed plan and specifications for the proposed project. If the board of commissioners, on consideration of the application, finds that the proposed project will be beneficial to the appearance of the city and in accordance with any comprehensively planned development program for the area, and will not interfere with the use of the sidewalks, street, avenue or alley for the public purpose for which it was intended, the board of commissioners may grant a permit to the applicant for such purpose on such terms, conditions and restrictions as it deems in the public interest; provided however, that any permit granted hereunder shall be subject to revocation by the board of commissioners in the event that the property is required for public purposes or if the abutting property owners fail or neglect to use the same for the purposes for which the permit was granted or fail or neglect to maintain the same in a good state of repair and in that event, then the abutting property owner shall be required to remove any improvements made under the permit.

(Code 1966, § 32-41)

Sec. 35-40.1. Use of air space above the alleyways within Business Improvement District No. 1.

In the event any owner of property abutting an alleyway within the boundaries of Salina Business Improvement District Number 1 requests a permit to use a portion of the air space above the alley for improvements to the property, the zoning administrator may grant such a permit following review and recommendation by the Salina Business Improvement District Number 1 design review board. Authorized improvements shall consist of awnings, canopies, marquees and signs. The application for such permit shall be made in conjunction with the building permit application for the improvements. Minimum requirements for consideration for a permit shall be that:

(1) The proposed improvements extend over the alleyway no more than one-half the width of the alleyway.

(2) The proposed improvement may be approved only if it is a minimum of eight (8) feet above the highest grade elevation of the alleyway. In addition, any proposed improvement to be located in an alleyway maintained by the city with mechanized street sweeping equipment shall be approved only if it is determined by the director of general services that the physical presence of the proposed improvement will not inhibit the use of such equipment.

(3) The property owner execute an agreement acknowledging responsibility for all ongoing maintenance necessary to keep the improvements in a good state of repair and appearance.

(4) The property owner execute an agreement to hold the city harmless and to indemnify the city for any loss, cost or damage caused by such use and to procure and maintain public liability insurance covering the improvements for limits of not less than the maximum liability for claims which could be asserted against the city for any number of claims arising out of a single occurrence or accident under the Kansas Tort Claims Act, as it now exists or may hereafter be amended.

(5) The property owner execute an agreement acknowledging that the permit shall be subject to revocation by the board of commissioners if the property is required for public purposes or if the property owner fails to comply with any condition of the permit and that in either such event the improvements shall be immediately removed without compensation.

(6) The property owner execute an agreement acknowledging that in the event of an imminent threat to public health or safety, the city manager may direct the immediate removal of the improvement without compensation.

(Ord. No. 88-9248, § 1, 4-25-88)

Sec. 35-40.2. Use of public sidewalk in C-4 Central Business District for business hours placement of moveable signs and outdoor furniture.

In the event any owner of a building constructed without setback from an abutting public sidewalk or arcade in the C-4 Central Business District requests a permit for use by the owner or the owner's tenant for the abutting sidewalk or arcade for business hours placement of either a moveable sign or outdoor furniture, the city manager's designee may grant such a permit following review and recommendation by the Salina Business Improvement District Number 1 Design Review Board based upon administrative guidelines approved by the city manager. A moveable sign for which a permit is obtained pursuant to this section shall be exempt from any other sign permit requirements.

(Ord. No. 99-9931, § 1, 6-14-99)

Sec. 35-41. Wires in streets--Prohibited.

It shall be unlawful for any person, except electric light, telephone, telegraph and cable television companies, or other persons who shall have or may hereafter secure a franchise or license so to do, to construct, place or maintain any wires in, over or across any of the public streets or alleys or other public thoroughfares or public places in the city.

(Code 1966, § 32-42)

Sec. 35-42. Same--Duty to remove; declared nuisance; abatement.

Any wires constructed, placed or maintained contrary to the provisions of the preceding section shall be removed by the person responsible therefor at the direction of the electrical inspector of the city. If such wires are not so removed, they shall be deemed to constitute a public nuisance and may be abated as other public nuisances are abated, at the cost of such person, and in addition to such remedy by abatement, the electrical inspector shall have authority to take down and remove any such wires at any time at the cost of such person.

(Code 1966, § 32-43)

Sec. 35-43. Newsracks.

The placing of newsracks shall be allowed upon sidewalks or other public property by permit issued by the city clerk. The city manager is authorized to adopt administrative regulations regarding the issuance of such permits based upon public safety and public property maintenance concerns. The term "newsrack" shall include any device for holding and dispensing multiple copies of any newspaper publication for free or for a charge.

(Ord. No. 90-9405, § 1, 8-27-90)

Secs. 35-44--35-50. Reserved.

DIVISION 2. OBSTRUCTING VISIBILITY AT INTERSECTIONS

Sec. 35-51. Prohibited.

In all areas on public or private property at any corner formed by intersecting public streets or public streets intersecting with private driveways, it shall be unlawful to install, set out or maintain or to allow the installation, setting out or maintenance of any sign, fence, hedge, shrubbery, natural growth or other obstruction to view, or the parking of any vehicle within that triangle formed as hereby described, such areas to be herein referred to as the clear sight zone.

(1) In uncontrolled intersections, the triangle is formed by the curblines (or the shoulder of the road where no gutter exists) of the intersecting streets drawn from the apex of the intersecting curblines back a distance of sixty (60) feet with a line drawn between such points.

(2) At intersections controlled only by yield signs, a clear sight zone consists of two (2) triangles at each approach, one (1) on each side of any vehicle approaching the intersection. The triangle to the left of the approaching vehicle is calculated by utilizing table 1, which table appears at the end of this section.

(3) At intersections controlled only by stop signs, a clear sight zone consists of two (2) triangles at each approach, one (1) on each side of any vehicle approaching the intersection. The triangle to

the left of the approaching vehicle is calculated by utilizing table 2, which table appears at the end of this section.

(4) At intersections controlled only by full signalization or four-way stop signs, the clear sight zone consists of a triangle formed by the curblines (or the shoulder of the road where no gutter exists) of the intersecting streets drawn from the apex of the intersecting curblines back a distance of fourteen (14) feet with a line drawn between such points.

(5) At intersections formed by public alleys and streets, the clear sight zone consists of two (2) triangles at each approach, one (1) on either side of the intersecting alley. The legs of these triangles are formed by the intersection of the curbline of the street (or the shoulder of the road where no gutter exists) and the centerline of the alley. These triangles are formed by measuring along the curbline (or shoulder) of the street from the center of the alley eighty (80) feet to the left and sixty-five (65) feet to the right and connecting each of these points to a point which is determined by measuring along the centerline of the alley back a distance of twenty (20) feet from the curbline (or shoulder) of the street.

(6) At intersections formed by private driveways normally accessible to the public and public streets, clear sight zones will be determined utilizing the standards set forth for intersections controlled only by stop signs above.

If on-site conditions exist which have not been adequately anticipated by the adoption of these regulations, the situation will be reviewed by specific appropriate regulations will be determined by the city engineer.

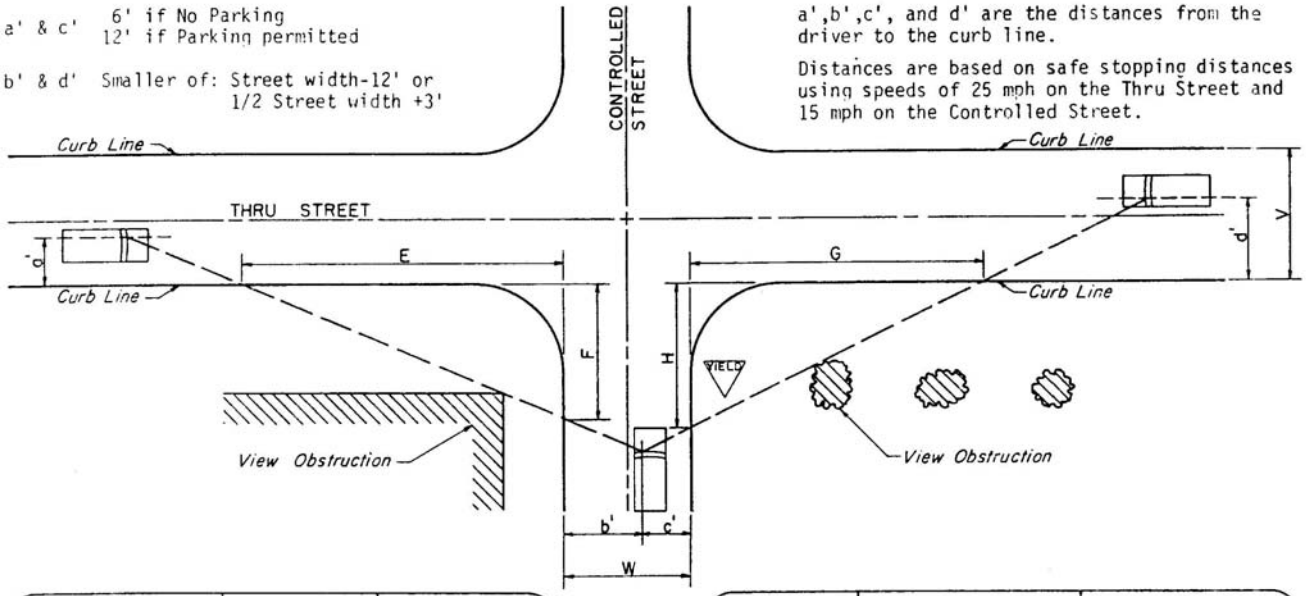
Yield Sign Sight Triangle

a' & c' 6' if No Parking
12' if Parking permitted

b' & d' Smaller of: Street width-12' or
1/2 Street width +3'

a',b',c', and d' are the distances from the driver to the curb line.

Distances are based on safe stopping distances using speeds of 25 mph on the Thru Street and 15 mph on the Controlled Street.



Controlled Street Width	Parking on Thru Street		No Parking on Thru Street	
W	E	F	E	F
25'	83'	39'	96'	45'
29'	79'	38'	92'	44'
33'	76'	36'	89'	42'
37'	74'	35'	87'	41'

Note: Values for E & F vary with the width of the Controlled Street (W).

Thru Street Width	Parking on Controlled Street		No Parking on Controlled Street	
V	G	H	G	H
25'	82'	39'	88'	42'
29'	73'	35'	79'	38'
33'	68'	32'	74'	35'
37'	63'	30'	69'	33'

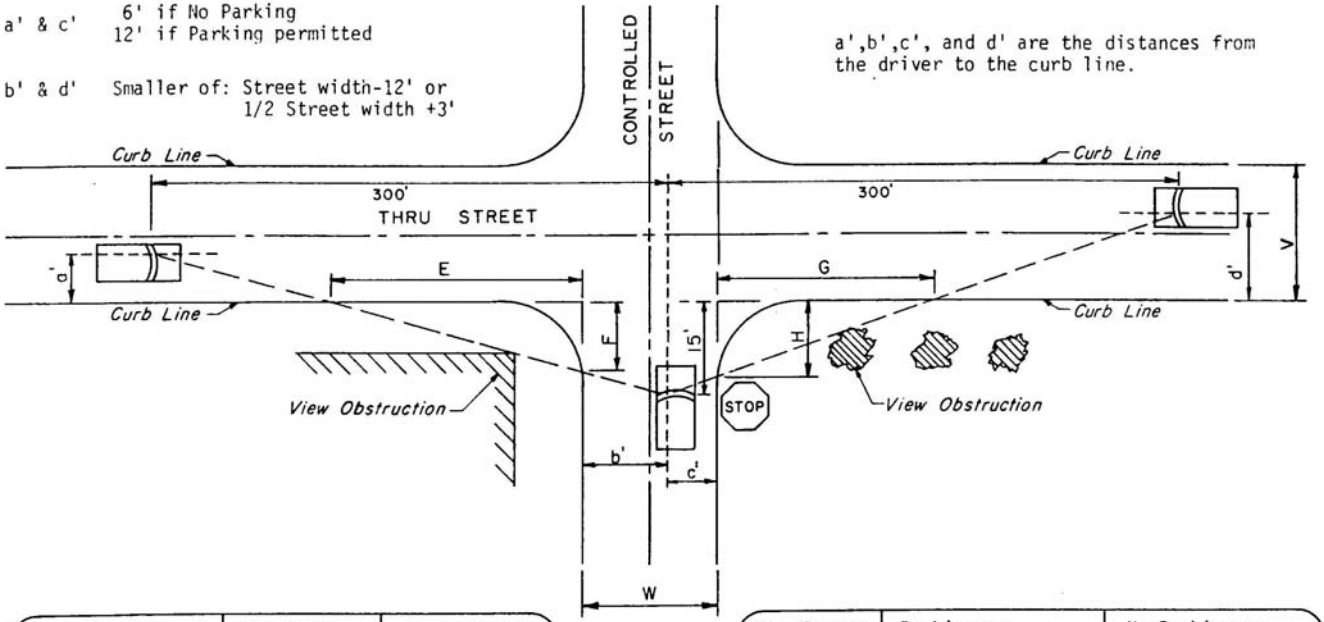
Note: Values for G & H vary with the width of the Thru Street (V).

Stop Sign Sight Triangle

a' & c' 6' if No Parking
12' if Parking permitted

b' & d' Smaller of: Street width-12' or
1/2 Street width +3'

a',b',c', and d' are the distances from the driver to the curb line.



Controlled Street Width	Parking on Thru Street		No Parking on Thru Street	
W	E	F	E	F
25'	154'	14'	201'	14'
29'	150'	14'	197'	14'
33'	147'	13'	195'	14'
37'	145'	13'	193'	14'

Note: Values for E & F vary with the width of the Controlled Street (W).

Thru Street Width	Parking on Controlled Street		No Parking on Controlled Street	
V	G	H	G	H
25'	149'	14'	155'	14'
29'	129'	14'	135'	14'
33'	118'	14'	124'	14'
37'	111'	14'	117'	14'

Note: Values for G & H vary with the width of the Thru Street (V).

Sec. 35-52. Exceptions.

The provisions of section 35-51 shall not apply to permanent buildings; public utilities poles; equipment required for traffic control; hedges trimmed to a height of less than three (3) feet; trees, the limbs of which are at all times kept trimmed of limbs and sucker growth on the trunk to a height of at least eight (8) feet or the limbs of which overhang the public street and are at all times kept trimmed of sucker growth to a height of at least thirteen (13) feet; plant species not planted in the form of a hedge, which are so planted and trimmed as to leave at all times a clear and unobstructed cross view; fences not exceeding four (4) feet in height, provided that the ratio of the solid portion of the fence to the open shall not exceed twenty-five (25) percent; supporting members appurtenant to permanent buildings existing on June 25, 1965; official warning signs or signals; places where the contour of the ground is such that there can be no cross visibility or signs mounted ten (10) feet or more above the ground whose supports do not constitute an obstruction; and noncommercial signs constructed parallel with the base line which, in the opinion of the police department, do not obstruct the clear sight zone. All heights herein mentioned shall be measured from the gutter grade at the apex of the clear sight zone triangle.

(Code 1966, §§ 32-56, 36-505(2); Ord. No. 90-9374, §§ 2, 3, 4-2-90)

Sec. 35-53. Preexisting violations not excepted.

No obstruction to cross visibility shall be determined to be an exception from the application of this division because of its being in existence on June 21, 1965, unless expressly exempted by the terms of this division.

(Code 1966, §§ 32-57, 36-505(3))

Sec. 35-54. Notice, removal by property owner.

When in the opinion of the police department an obstruction to visibility exists as prohibited herein, it shall be the duty of the department to give notice in writing to the property owner or owners complained against, providing that the notice shall specify in what manner a traffic hazard has been alleged to exist. Such notice shall direct the removal by the property owner or owners of such structures, trees or other obstructions which constitute said traffic hazard. Such property owner or owners shall be allowed ten (10) days in which to comply with the order, except obstructions of a temporary nature which shall be removed on notice.

(Code 1966, §§ 32-58, 36-505(4))

Sec. 35-55. Removal by city.

If within ten (10) days after the service of such notice, either by mailing or by personal delivery, the owner or owners of the lot or parcel of land have failed, refused, or neglected to remove such obstructions, then the city shall cause to be removed such obstructions on the lot or pieces of land of said owner, and the cost of such removal shall be assessed and charged against the lot or parcel of ground on which the obstruction was located and the city clerk shall at the time of certifying other city taxes, extend the same on the tax rolls 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 taxes are collected and paid.

(Code 1966, §§ 32-59, 36-505(5))

Secs. 35-56--35-60. Reserved.

ARTICLE IV. MOVING BUILDINGS

DIVISION 1. GENERALLY

Sec. 35-61. Notice to building official required.

The applicant for a moving permit shall give the building official twenty-four (24) hours' notice in writing or in person before moving the building on any city street, which shall entitle the applicant to use the streets of the city for such moving operations during one calendar day.

(Code 1966, § 32-78)

Sec. 35-62. Height of building.

The over-all height of a building, when loaded up for moving, shall not exceed twenty-five (25) feet, as determined by the building official.

(Code 1966, § 32-79)

Sec. 35-63. Removal of wires.

Any person desiring to move any house or other building on, over or across any street, avenue, alley or other public thoroughfare, across or along which any telegraph, telephone, electric light or fire alarm wires, coaxial cable, railroad signal light power lines or other types of wires or cables have been erected and maintained with the knowledge, permission and consent of the city, shall give to the person owning or in charge of such wires at least twenty-four (24) hours' written notice of the time and place, when and where it may be necessary to cut or remove such wires to permit the moving of such house or other building and shall deposit in advance with such person the estimated cost of cutting, removing and replacing such wires. The owner or person in charge of such wires shall, within a reasonable time after the hour mentioned in such notice, remove the wires for a sufficient length of time to permit such moving, and the entire cost and expense of removing, cutting and replacing of the wires, including the time spent by the employees of the owner of such wires in going to and from such place, so as to permit the moving of any such house or other building, shall be paid by the person making such request; provided, however, that if by the terms of any existing franchise or ordinance, any person has been given the right to maintain wires on, along or across any street or public thoroughfare in the city at a distance of not less than sixteen (16) feet from the ground, then the person owning such wires shall not be required to remove and replace the same without charge unless such wires shall be less than sixteen (16) feet above the surface of street.

(Code 1966, § 32-80)

Sec. 35-64. Moving on certain streets prohibited; special permits.

It shall be unlawful for any person to move any house or other building into, along, through, upon or across Santa Fe Avenue, Fifth Street and Seventh Street between the south line of Elm Street and the south line of Walnut Street, or into, through, along, upon or across Ash Street, Iron Avenue or Walnut Street between the east line of Fourth Street and the west line of Ninth Street, except that for the moving of any house or other building across the Smoky Hill River or across or along any of such streets, a special permit may be granted by the city manager.

(Code 1966, § 32-81)

Sec. 35-65. Precautions required when building left in street at any time.

If any house or other building being moved shall be left standing in any street at night or at any other time, while no work is being done in connection with the moving thereof, the person doing such moving shall place at each end of the block a warning sign of such size and method of construction as may be approved by the building official, which shall, however, leave space at either side of such sign for the passing of traffic, for the purpose of notifying users of such street that the same is blocked and impassable, and any such sign shall be sufficiently lighted at night so as to make it plainly visible to all approaching the same and the person so moving any such house or building at the close of work on each day notify the fire chief of the exact location of any such house or other building in any street, avenue, alley or other public thoroughfare in the city.

(Code 1966, § 32-82)

Sec. 35-66. Precautions required when left in street at night.

It shall be unlawful for any person to permit any house or other building being moved to stand in or upon any street, avenue, alley or any other public thoroughfare in the city between the hour of sunset and the hour of sunrise without placing and maintaining between such hours, in a conspicuous position on the house or other building, at least three (3) red lights or flashing lights or lanterns on each side of such house from which direction any traffic may approach, and without placing and maintaining between such house, upon any and all apparatus or equipment used in connection with such house moving, and remaining in any such street and thoroughfare, a sufficient number of red lights or flashing lights or lanterns so as to make the same visible to all approaching traffic.

(Code 1966, § 32-83)

Sec. 35-67. Extending over curb line.

No house or other building shall be moved over, through, on or across any street, avenue, alley or other public thoroughfare in the city, where any part of such house or building extends over either curb line of such street, alley or public thoroughfare, except in the block from which or into which the house is to be moved.

(Code 1966, § 32-84)

Sec. 35-68. Planking required; exception.

No house or other building shall be moved over or along any paved street in the city unless planking not less than two (2) inches in thickness, of a width equal to the full width of the rollers on which the building is moved, shall be laid under all rollers; provided, that where any such house or building has a total floor area on all floors intended for living or business purposes of one thousand two hundred fifty (1,250) square feet or less, the person moving the same, with the consent and written permission of the city engineer, on a showing made to such engineer that such house or building can be moved without planking without injury to the paving on any street, omit such planking on any such street or such part thereof as may be described in such permit; provided further, that a permit to omit such planking, or the use of planking where required and used, shall not relieve the person moving any such house or other building or the surety on his bond, from liability for any damage which may be done to any pavement over or along which such house or building may be moved.

(Code 1966, § 32-85)

Sec. 35-69. Trimming of trees.

No tree or any branch, limb or part thereof shall be broken, cut off or removed by any person for the purpose of moving any house or building, except under the direction and supervision of the building official or of a person duly authorized by him, and in such manner and way and with such treatment of the tree thereafter as may be approved by the building official. Any person so breaking or removing any tree or part thereof as herein provided for or who shall direct or request such breaking, cutting or removing, or who may be responsible therefor, shall pay the expense of such supervision and the expense of any employees of the building official or the city in and about such supervision or in the cutting or treatment of such tree; provided, that this section shall not be deemed to permit the cutting or trimming of any tree contrary to the provisions of the laws of the state nor to relieve any such person of any liability on account of any such laws of the state; provided further, that for the purpose of this section, the building official or his employees or other employees of the city, shall, when engaged in the cutting, trimming or removing of any tree or part thereof for the purpose of permitting any house or building to be moved, or when engaged in any manner in trimming or cutting any tree or part thereof at the direction or request of any such person, be deemed to be the agent and representative of the person on whose behalf such cutting or trimming as provided for by the permit for moving such house or building; and such person shall be responsible for the acts of the building official or any other such employees in connection with the cutting, trimming or destruction of any such tree or parts thereof.

(Code 1966, § 32-86)
Cross references: Trees and shrubs generally, Ch. 39.

Sec. 35-70. Leaving building standing more than one hour.

No building shall be stopped and left standing for a longer period than one hour except between the hours of 5:00 p.m. of one day and 8:00 a.m. of the succeeding day.

(Code 1966, § 32-87)

Sec. 35-71. Crossing railroad tracks.

No house or building moving permit shall be issued without the mover having first obtained from any railroad whose tracks are to be crossed a written statement indicating that the railroad and the mover have agreed upon the time that the tracks are to be crossed by the house or building being moved so that the time of crossing will be coordinated with all existing train schedules. This written statement must be filed with the city clerk before the house or building moving permit shall be issued by the city clerk. The mover shall notify the railroad whose tracks are to be crossed of the intended date and hour of crossing within forty-eight (48) hours of that time. The railroad shall advise the movers of its schedules and execute the consent and deliver the same to the mover within not less than twenty-four (24) hours following notification of the railroad by the mover.

(Code 1966, § 32-88)

Sec. 35-72. Violations.

Any person, either as an individual or as the officer, agent, representative, employee or member of any firm or corporation, and whether as the owner or as the representative of such owner of the house being or to be moved, or whether as the contractor for the moving of any such house, who shall violate any of the provisions of this article, or who shall order, direct, authorize or permit the violation of any of the provisions of this article shall be deemed guilty of a misdemeanor; provided, that each and every violation of any provisions of this article shall be deemed a separate offense and that each separate day's

violation of the provisions of this article shall be deemed a separate offense; provided further, that the person making the application for the permit provided for in this article, whether as an individual or as an agent, employee or representative of any firm or corporation, shall be deemed to have authorized and shall be responsible for any violation of this article by any other person in any way connected with the moving of such house or building, but nothing herein contained shall be considered as relieving any other person from responsibility of any violation of the terms of this article of which such person may be found guilty.

(Code 1966, § 32-89)

Secs. 35-73--35-80. Reserved.

DIVISION 2. PERMIT

Sec. 35-81. Required.

No person either as an individual or as the agent, employee, officer, representative or member of any firm or corporation, shall move any frame house or other building, or any part thereof, from one place to another within the city, and through, over, on or across any street, avenue, alley or other public thoroughfare within the city without first making application for and securing a permit so to do from the city clerk as provided in this division.

(Code 1966, § 32-70)

Sec. 35-82. Application.

The application for a moving permit shall contain a description of the building, its location, the location to which it is to be moved and the proposed route.

(Code 1966, § 32-71)

Sec. 35-83. Approval of application by building official.

Before any application for a moving permit is filed, it shall be referred to the building official of the city, who shall inspect any such house or building described in such application, and if the floor area does not exceed two thousand (2,000) square feet, and if in his opinion, such house or building is in a proper and fit condition to be moved to the destination designated by the applicant, and that after such moving it will remain in a proper and fit condition for the use intended, he shall endorse his certificate of approval upon the application.

(Code 1966, § 32-72)

Sec. 35-84. Approval of route by fire chief, city engineer.

If the application for a moving permit is approved by the building official, he shall submit the same to the fire chief and the city engineer for their approval of the route over which such building is to be moved. Such approval shall be noted on the application; and if the route is rejected, the fire chief or city engineer shall note thereon a route which is satisfactory to them.

(Code 1966, § 32-73)

Sec. 35-85. Fees.

(a) For a moving permit to move any frame house or other building or any part thereof through, over, on or across any street, avenue, alley or other public thoroughfare within the city, the applicant shall pay to the city at the time such application is filed an initial fee as prescribed in section 2-2.

(b) If the moving operations are not completed within one calendar day, the applicant shall pay to the city for use of its streets an additional fee in the amount of the initial fee for each calendar day or any part thereof, for which the city streets are used in such moving operations.

(Code 1966, §§ 32-74, 32-75)

Sec. 35-86. Bond required.

Before the issuance of any permit by the city clerk, the applicant therefor shall file with the city clerk a bond in the sum of five thousand dollars ($5,000.00) conditioned that the applicant shall and will carry out and perform all of the duties imposed upon him by the provisions of this article, and that such applicant will indemnify and save harmless the city and all other persons from and against all damages and injury caused by such moving and from and against all claims for injury or damage whatsoever suffered or claimed to have been suffered on account of the moving of any such house or building or on account of the omission or commission of any act in connection therewith, and indemnifying the city and the public and any and all persons against any injury, damage or loss suffered by them or caused by reason of the moving or resulting therefrom or from the violation of any of the terms of this article. Such bond shall be approved as to form by the city attorney and as to the sufficiency of the sureties by the city manager. Any individual who is damaged by reason of such moving may file suit directly against the surety named in such bond. One bond may be filed by any person to cover any and all moving of houses or buildings by such person during the period of such bond. Any surety may cancel any such bond as to future liability by giving ten (10) days' notice in writing of such cancellation to the city clerk, to take effect at the expiration of said ten (10) days, and after the giving of such notice, no permit shall be issued to the principal in such bond until he shall file another bond as required by this section.

(Code 1966, § 32-77)

Sec. 35-87. Issuance, duration.

When an application for a moving permit is filed, with the certificate of the building official, fire chief, and city engineer, noted thereon, the city clerk shall issue the permit, which permit shall be valid for sixty (60) days from the date of issuance.

(Code 1966, § 32-76)

Secs. 35-88--35-100. Reserved.

ARTICLE V. NUMBERING BUILDINGS

Sec. 35-101. Compliance required; exception.

All the business buildings and dwellings situated within the corporate limits of the city shall be numbered in the manner and according to the plan specified in article V of chapter 35 of the Salina Code; provided, however, that the business buildings and dwellings which have been using addresses and numbers not in strict conformance with the provisions of section V of chapter 35 of the Salina Code on the effective date of this section need not comply with said numbering system.

(Code 1966, § 32-100; Ord. No. 84-9056, § 1, 12-17-84)

Sec. 35-102. Starting points.

The initial or starting lines for building numbers shall be Santa Fe Avenue and Iron Avenue, numbering north and south from Iron Avenue and east and west from Santa Fe Avenue, and allowing one hundred (100) numbers to each block. All short and angling streets shall take the nearest parallel corresponding block number. The city engineer is hereby authorized to make exceptions, but as consistent with the numbering system provided as possible, for odd arrangements of streets.

(Code 1966, § 32-101)

Sec. 35-103. Even and odd numbers.

Beginning at the intersection of Santa Fe Avenue and Iron Avenue, even numbers shall be assigned to the right-hand side of the streets and odd numbers to the left-hand side of the streets. The assignment of address numbers shall be the responsibility of the city engineer.

(Code 1966, § 32-102)

Sec. 35-104. Size of figures.

The figures used for numbering buildings shall not be less than two and one-half (2 1/2) inches high and shall be a color that contrasts with the building background for increased visibility.

(Code 1966, § 32-103; Ord. No. 90-9412, § 1, 10-15-90)

Sec. 35-105. Assignment of numbers.

It shall be the duty of the city engineer to see that all buildings which may hereafter be erected, or changed in the fronts of buildings already erected, shall be supplied with the number or numbers to which they shall be entitled under this article by the owners thereof and in all such cases the figures shall correspond with the plan or system and specifications herein contained. The building official shall state the street number of the building on the building permit for a new building.

(Code 1966, § 32-104)

Sec. 35-106. Duty to display numbers.

All business buildings or dwellings situated within the corporate limits of the city shall display the number assigned to that building on the front of the building.

(Code of 1966, § 32-105; Ord. No. 90-9412, § 2, 10-15-90)

Sec. 35-107. Curb marking license or permit required.

No person shall paint, apply or otherwise mark letters, numbers, or other graphics on a street, curb, public sidewalk, or other public improvement located in the public right-of-way (collectively referred to as "curb marking") without first applying for and obtaining a license or permit issued by the city clerk. Any person engaged in performing curb marking for other property owners, whether compensated or not, shall first obtain a curb marking license in accordance with Chapter 20. Any person performing curb marking in relation to his or her own property shall first obtain a curb marking permit.

(Ord. No. 96-9768, § 1, 11-4-96)

Sec. 35-108. Specifications.

The city manager is authorized and directed to establish requirements for the curb marking license and curb marking permit, including, but not limited to, specifications relating to color, size, and public purpose. It shall be unlawful to fail to obtain a curb marking license or permit when required or fail to comply with the requirements established pursuant to this section.

(Ord. No. 96-9768, § 1, 11-4-96)

Sec. 35-109. Public disclaimer.

Any advertisements or solicitations by a curb marking license holder shall include the statement that: "This is not a city government, fire or police department program. Our firm is licensed by the City of Salina to perform curb marking, but the city neither requires this type of curb marking, nor endorses any particular curb marking service".

(Ord. No. 96-9768, § 1, 11-4-96)

Sec. 35-110. Fees.

The application for a curb marking license shall be accompanied by the necessary license fee set forth in section 2-2 of this Code. No fee shall be required for a curb marking permit.

(Ord. No. 96-9768, § 1, 11-4-96)

Secs. 35-111--35-120. Reserved.

ARTICLE VI. DRIVEWAYS AND SIDEWALKS

DIVISION 1. GENERALLY

Sec. 35-121. Definitions.

The following works and phrases, when used in this article, shall have the meanings respectively ascribed to them:

(1) *Contractor* means a person who is licensed by the city to perform concrete construction within the public right-of-way.

(2) *Corner* means the point of intersection of the property lines of a corner lot where two (2) streets intersect.

(3) *Curb parking space* means a length of curb equal to twenty-two (22) feet where an automobile or other vehicle can park.

(4) *Curb return* means that portion of a curb next to a driveway approach which includes the radius of curvature or the ramp-type lug on commercial or industrial type pavements and which connects the driveway approach to the street curb.

(5) *Driveway* means a place on private property for the operation of automobiles and other vehicles.

(6) *Driveway approach* means an area, construction or facility between the roadway of a public street and private property. For clarification, a driveway approach must provide access to something definite on private property such as a parking area, a driveway or a door at least seven (7) feet wide intended and used for the entrance of vehicles.

(7) *Outside sidewalk line* means a line parallel to the property line lying along the edge of the sidewalk nearest the street roadway or curb; or, where no sidewalk exists, a line in the street right-of-way parallel to and six (6) feet from the line of the private property.

(8) *Parcel of land* means a lot or lots, or tract officially registered under one ownership.

(Code 1966, § 32-116)
Cross references: Definitions and rules of construction generally, § 1-2.

Sec. 35-122. Supervision of work; rules; regulations authorized.

All work done under a permit issued in compliance with this article shall be under the direction and supervision of the city engineer, who is hereby authorized to make the necessary rules, regulations and specifications with respect to materials for and method of construction of such driveway approaches or sidewalks. Such rules, regulations and specifications shall be kept on file in the office of the city engineer and the city clerk at all times.

(Code 1966, § 32-131)

Sec. 35-123. Reserved.

Sec. 35-124. Plans and specifications adopted; filing; amendments.

The plans and specifications for sidewalks, driveway approaches, curbing and guttering and other concrete work in the streets and designated "Specifications for Concrete Work", are hereby adopted by reference. Copies shall be kept on file in the offices of the city clerk and the city engineer.

(Code 1966, § 32-217)

Sec. 35-125. Compliance with plans and specifications.

All sidewalks, driveway approaches, curbing and guttering constructed, reconstructed or rebuilt in any of the streets or public grounds of the city shall be constructed of concrete in accordance with plans and specifications as to material and methods of construction to be furnished by the city engineer.

(Code 1966, § 32-205)

Sec. 35-126. Maintenance required; removal and reconstruction.

Every driveway approach and recessed parking area shall be maintained and kept in a safe condition by the owner of the property served thereby, and any such driveway approach which shall not be so maintained and kept or which shall interfere with or obstruct the drainage carried by such street or the use of the street for the purpose of travel shall be repaired to conform with the specifications of this article and the rules, regulations and specifications of the city engineer or be removed.

The city engineer, or city clerk, after giving thirty (30) days' notice to the owner or his or her agent of the necessity therefor and failure of the property owner to perform said improvements may make all necessary repairs at any time. An account of the cost thereof shall be kept and reported to the governing body.

The city shall, by ordinance, levy a special assessment against the lot or piece of land so repaired for the cost of repairs, and if the abutting property owner does not pay the assessment within thirty (30) days, upon the city clerk mailing to the owner or his or her agent, if known, a printed or written notice of the amount of such repairs, the full amount shall be certified by the city clerk to the county clerk to be put on the tax rolls for collection like other taxes.

(Code 1966, § 32-133; Ord. No. 85-9106, § 1, 10-28-85)

Sec. 35-127. Compliance with article required.

In addition to the rules, regulations and specifications promulgated by the city engineer with respect to driveway approaches or sidewalks, the following requirements shall be complied with in the work done under the provisions of this article.

(Code 1966, § 32-141)

Sec. 35-128. Approaches to be paved.

All driveway approaches shall be paved.

(Code 1966, § 32-142)

Sec. 35-129. Where driveway approaches prohibited.

It shall be unlawful for any person to construct, alter or extend, or permit to cause to be constructed, altered or extended, any driveway approach which can be used only as a parking space or area between the curb and private property.

(Code 1966, § 32-129)

Sec. 35-130. Reserved.

Sec. 35-131. Location of driveway approach.

No portion of a driveway approach, including the curb return, shall be constructed within six and one-half (6 1/2) feet of a corner.

(Code 1966, § 32-159)

Sec. 35-132. Width of driveway approaches.

No driveway approach shall be less than eight (8) feet nor more than thirty (30) feet in width at the outside walk line; provided, that the city engineer shall be empowered to grant special exceptions to the above and foregoing limitations. The granting or denial of such special consent by the city engineer shall be predicated upon the calculated additional hazard to the general public as a consequence of allowing such exception in each particular case.

(Code 1966, § 32-156)

Sec. 35-133. Distance between driveway approaches.

There shall be not less than one curb parking space between any two (2) driveway approaches located on any parcel of land.

(Code 1966, § 32-157)

Sec. 35-134. Location of sidewalks.

(a) Sidewalks shall be property-line sidewalks or curb sidewalks.

(b) A property-line sidewalk is one whose inside edge is one (1) foot from the adjacent property line; or, in business districts, at the property line.

(c) A curb sidewalk is one abutting the curb or curbline.

(d) When a sidewalk exists on one side of a street between two (2) adjacent streets that cross or intersect it or in the case of a dead-end street, from the last street to the end of the dead-end street, all new sidewalk construction shall be located to conform with the existing sidewalk location.

(Code 1966, § 32-218)

Sec. 35-135. Protection of public; nonliability of city.

The owner and contractor shall protect the public from injury and/or damage during the construction of driveway approaches or sidewalks and it is herein stipulated as an essential condition of the issuance of a permit that the city shall not be liable for damage which may arise from the prosecution of the work.

(Code 1966, § 32-145)

Sec. 35-136. Exemption for contractors with city.

This article shall not apply to any person doing or performing any work of the nature herein described for the city under a contract with such city and for which regular performance, maintenance and statutory bonds are required by the city and furnished by the contractor for the specific work covered by any such contract.

(Code 1966, § 32-204)

Sec. 35-137. Procedure for sidewalks generally.

The procedure for the construction, reconstruction and repair of sidewalks shall be as provided by Article 18 of Chapter 12 of Kansas Statutes Annotated, and according to requirements specified by ordinance; provided, that nothing herein shall be construed as prohibiting the use of Article 6a, Chapter 12, Kansas Statutes Annotated.

(Code 1966, § 32-206)

Sec. 35-138. Procedure for sidewalks on petition of property owners.

(a) Whenever a petition signed by persons owning not less than fifty (50) percent of the real estate abutting the proposed sidewalk construction paying for the construction of a sidewalk or sidewalks in the area proposed, is filed with the city clerk, the board of commissioners may, in its discretion, by resolution, order such sidewalk or sidewalks constructed.

(b) The cost of all sidewalks constructed under the provisions of this section shall be assessed to the property abutting on such sidewalks.

(c) When a sidewalk or sidewalks has or have been constructed and where special assessments must be levied for the expense thereof, the board of commissioners shall, as soon as the cost is ascertained, levy an assessment against the lots or pieces of land chargeable therefor, by ordinance, and the property owner shall have thirty (30) days after the publication of the ordinance within which to make full payment of the assessment. The city clerk shall mail a notice not less than fifteen (15) days

prior to the end of the thirty (30) days to the owner of the property as shown on the records of the office of the register of deeds, but failure of the owner to receive notice shall not affect the validity of the assessment. The board of commissioners may issue bonds in the manner provided in the general bond law to finance the unpaid balance of any such special assessments.

(d) The assessment for construction of such sidewalks shall be levied as provided for in K.S.A. 12-1811, 12-1812 and 12-1814; provided, that temporary notes may be issued during the construction of such sidewalks and before the issuance of sidewalk bonds.

(Code 1966, § 32-207)

Sec. 35-139. Notice of completion of work; inspection; disapproval and correction; license revocation.

The contractor shall notify the city engineer of the completion of any work for which a permit has been issued hereunder. If the city engineer shall, upon inspection of any such completed work, find that such work has not been done in conformity with the plans and specifications for such work, the city engineer shall have the authority to order any changes in such work which may, in his opinion, be necessary, or may order the same removed and reconstructed. If any contractor shall fail to comply with any order of the city engineer in connection with any such work, the city engineer may issue an order revoking the license of such contractor, which order may, on application of the contractor filed with the city clerk within ten (10) days from the date of such order, be reviewed and approved or set aside by the board of commissioners.

(Code 1966, § 32-219)

Sec. 35-140. Violations.

Any person, whether acting for himself or as the agent, representative, employee, officer or member of any corporation or copartnership, who shall construct, reconstruct or rebuild any of the work mentioned in this article in violation of the provisions hereof or contrary to the plans and specifications for such work as provided for herein or who shall do any such work without securing a permit thereof as herein required, or who, when required by this article, shall do any such work without securing the license and filing the bond or bonds required by this article, or who shall otherwise violate any of the provisions of this article shall be deemed guilty of a misdemeanor.

(Code 1966, § 32-220)

Secs. 35-141--35-150. Reserved.

DIVISION 2. PERMIT

Sec. 35-151. Required.

No sidewalks, driveway approaches, curbing, guttering or any other concrete work in any street or public grounds in the city shall be constructed, reconstructed or rebuilt until a permit therefor shall have been issued by the city engineer, and shall be on such form as may be prescribed by the city, and any such plans and specifications referred to in this article shall be deemed to be a part of any such permit.

(Code 1966, § 32-117, 32-215; Ord. No. 96-9757, § 8-26-96)

Sec. 35-152. Fee.

The fee for issuance of a permit under this division shall be as prescribed in section 2.2.

(Code 1966, § 32-215)

Sec. 35-153. Contents of form.

The permit form shall contain information showing:

(1) Type of construction;

(2) The dimensions of the proposed driveway approach or proposed sidewalk;

(3) The location of the driveway approach or sidewalk by lot and block number as well as by street and house number;

(4) Such other information as may be required by the city engineer.

(Code 1966, § 32-119)

Sec. 35-154. Who must obtain permits.

The permit shall be obtained by the contractor or by the contractor's duly authorized agent desiring to construct the driveway approach or sidewalk.

(Code 1966, § 32-120; Ord. No. 96-9757, § 1, 8-26-96)

Sec. 35-155. Issuance.

Permits hereunder shall be issued by the city engineer if the city engineer has determined that the contractor has complied with the terms of this article and such rules, regulations and specifications of the city engineer as shall be on file in the office of the city engineer and in the office of the city clerk.

(Code 1966, § 32-121; Ord. No. 96-9757, § 1, 8-26-96)

Sec. 35-156. License, security prerequisite to permit.

No permit required by section 35-151 shall be issued to any person from whom a license and security is required until such license shall be issued and such security filed and approved.

(Code 1966, § 32-216; Ord. No. 96-9757, § 1, 8-26-96)

Sec. 35-157. Licensing.

No person shall engage in the work of constructing, reconstructing or rebuilding sidewalks, driveways, curbing, guttering or other concrete work in the streets, alleys or other public grounds in the city unless such person has been validly registered with the city as outline in Article XVII of Chapter 8.

(Code 1966, §§ 32-208, 32-209; Ord. No. 01-10064, § 3, 11-19-01)
Cross references: Licenses generally, Ch. 20.

Sec. 35-158. Security required.

Before a permit shall be issued by the city engineer, the registrant shall file with the city clerk's office a corporate surety bond as outlined in Article XVII of Chapter 8.

(Code 1966, §§ 32-125--32-127, 32-213, 32-214; Ord. No. 96-9757, § 1, 8-26-96; Ord. No. 01-10064, § 3, 11-19-01)

Sec. 35-159. Term.

The driveway approach or sidewalk shall be completed within one hundred twenty (120) days after the date of issuance of a permit hereunder.

(Code 1966, § 32-124)

Sec. 35-160. Revocation.

(a) All permits granted for the use of public property under the terms of this division shall be revocable at the will of the board of commissioners.

(b) A permit issued under the provisions of this division may be revoked by the city engineer at any time he is satisfied that the work is not being performed according to the provisions thereof.

(Code 1966, §§ 32-122, 32-123)

Secs. 35-161--35-175. Reserved.

ARTICLE VII. SERVICE PIPES AND SEWERS AHEAD OF PAVING

Sec. 35-176. Duty to lay.

It shall be the duty of the owner or owners of any lot or lots within the corporate limits of the city to construct and lay water service pipes, gas service pipes and sewers to the back of the curb abutting such lot or lots whenever ordered so to do by order, resolution or ordinance of the board of commissioners made in conformity to law; provided, that such water service pipes, gas service pipes and sewers shall not, by said board of commissioners, be ordered constructed or laid under the provisions of this article except in regard to property abutting upon streets upon which paving has been ordered; provided further, that the board of commissioners shall not order the laying or construction of more than one water service pipe, one gas service pipe or one sewer for each lot or fractional parts thereof along and abutting said paving, nor shall any service pipes or sewers be so ordered in any streets within the city where the mains for the same are not laid.

(Code 1966, § 32-231)
State law references: Authority to require, K.S.A.12-832.

Sec. 35-177. Notice by city required.

The board of commissioners shall give notice of any order to construct water service pipes, gas service pipes or sewers by publishing an order to such effect for three (3) consecutive days in the official city paper.

(Code 1966, § 32-232)
State law references: Similar provisions, K.S.A. 12-833.

Sec. 35-178. Laying by city; assessment of costs.

If the owner or owners of a lot or lots ordered to lay and construct pipes or sewers hereunder shall refuse or neglect to lay down or construct such water service pipes, gas service pipes or sewers within thirty (30) days from and after the last publication of such order, then the board of commissioners shall proceed to construct or cause to be constructed and laid such water service pipes, gas service pipes or

sewers in accordance with the provisions of law and the cost thereof shall be assessed against the lot or fractional parts thereof for which such service pipes or sewers are laid.

(Code 1966, § 32-233)
State law references: Similar provisions, K.S.A. 12-833.

Sec. 35-179. Certification, collection of assessments.

Assessments under this article shall be certified by the city clerk to the county clerk to be collected according to law in the same manner as paving assessments are collected.

(Code 1966, § 32-234)
State law references: Similar provisions, K.S.A. 12-833.

Sec. 35-180. Construction after expiration of deadline.

After the expiration of the time designated in an order for the construction of service pipes or sewers hereunder, then the owner or owners shall not construct or cause the same to be constructed, without first having written authority therefor from the board of commissioners.

(Code 1966, § 32-235)

Sec. 35-181. Compliance with ordinances, specifications.

The laying and construction of all service pipes and sewers as hereinbefore provided for shall be in accordance with all city ordinances regulating the same and shall be in accordance with the plans, specifications and requirements as provided for by ordinance or direction of the board of commissioners.

(Code 1966, § 32-236)

Secs. 35-182--35-200. Reserved.

ARTICLE VIII. EXCAVATIONS

Sec. 35-201. Permit required.

No person shall make any excavation in any street, alley or other public ground in the city for any purpose whatsoever, except excavations required for work under contract with the city for which usual performance and maintenance bonds are required, until he shall first secure from the city engineer a permit to make such excavation.

(Code 1966, § 32-247)

Sec. 35-202. Bond required; amount, terms.

No permit required by this article shall be granted until there shall be filed with the city clerk a bond to be given by the applicant as principal with good and sufficient sureties approved by the city manager, in the principal sum of not less than two thousand dollars ($2,000.00), running to the city as obligee for the benefit of the city and any other person who may be injured by any violation of the conditions thereof, such bond to be conditioned for the faithful performance by the principal thereof of all work which may be done by him within the period covered by the bond under any permit which may be granted to him under the provisions of this article for the making of any excavation in any street, alley or other public

grounds in the city, and that all work done thereunder shall be done in strict conformity with all ordinances of the city relating to such work and in accordance with the plans and specifications of the city engineer relating thereto, and that the principal in such bond will indemnify and save harmless the city and all other persons against all costs, damages and injuries sustained by the city or by any other person whomsoever, by reason of the carelessness or neglect of the principal of said bond or his agents, servants, employees or representatives, either on account of their failure to comply with the provisions of this Code or the ordinances of the city relating to such work or with the rules and regulations adopted pursuant thereto or with any of the plans and specifications governing the performance thereof, or otherwise.

(Code 1966, § 32-250)

Sec. 35-203. Cancellation of bond.

No bond required by this article given by any person shall be cancelled nor shall the surety thereon be relieved from further liability under any such bond until he shall file with the city clerk a notice in writing at least ten (10) days prior to the date of the cancellation thereof, of the intention of the surety of its cancellation of liability under such bond and after the filing of such notice with the city clerk, no further permit shall be granted to the principal in any such bond so cancelled until a new bond shall have been filed and approved; provided, that no cancellation of any bond shall affect the liability of the principal or surety thereupon on any work done pursuant to any permit issued prior to the receipt of the notice of such cancellation.

(Code 1966, § 32-251)

Sec. 35-204. Filling, repair to be done by city.

The filling and tamping of all excavations and the repair of all pavements over any such excavation shall be done by the street department on order of the city engineer and in accordance with the specifications for such work prepared by the city engineer.

(Code 1966, § 32-253)

Sec. 35-205. Procedure for refilling, charging costs.

Upon notification by the city engineer that any excavation is to be refilled, the superintendent of streets shall, within twenty-four (24) hours, exclusive of Saturdays, Sundays and legal holidays, take charge of such excavation and shall refill the same and make all necessary paving repairs all in accordance with the plans and specifications of the city engineer, and shall certify to the city clerk the quantities of filling and paving repairs required; and the total charges as calculated from such quantities and the schedule of charges shall be charged against the person obtaining the permit for the excavation, and such person shall pay the amount due thereon to the city clerk immediately on demand.

(Code 1966, § 32-254)

Sec. 35-206. Special provisions for public service corporations.

The city engineer may permit any public service corporation to furnish labor and materials and refill excavations and repair pavements, but the permit required by this article shall be required in all cases and all such work shall be done strictly in accordance with the plans and specifications of the city engineer as herein provided for.

(Code 1966, § 32-255)

Sec. 35-207. Notice required when excavation ready for refilling; order to street department.

The party to whom any permit is issued under this article shall notify the city engineer when such party is ready for the excavation to be refilled. The city engineer shall note thereon the time of receipt of such notice and shall immediately order the street department to refill the excavation.

(Code 1966, § 32-256)

Sec. 35-208. Street department to assume jurisdiction; maintenance of barriers, etc.

The street department shall, within twenty-four (24) hours of the notice required above, exclusive of Saturdays, Sundays and legal holidays, take charge of such excavations and shall thereafter maintain the necessary barriers, barricades and lanterns until the refilling and repaving is completed and ready to open to traffic.

(Code 1966, § 32-257)

Sec. 35-209. Responsibility of permittee for barriers, etc.

The party to whom the permit is issued hereunder shall maintain all barriers, barricades and lanterns and shall be responsible for all damages or injuries arising from or incidental to such excavation until the same has been taken charge of by the street department as provided for above or until the expiration of twenty-four (24) hours, exclusive of Saturdays, Sundays and legal holidays, after the city engineer has received notice that the excavation is ready for refilling, and after the expiration of said twenty-four (24) hours, exclusive of Saturdays, Sundays and legal holidays, from the receipt of notice by the city engineer, the party making such excavation under any such permit shall not be liable in connection with any injuries which may be sustained in connection with such excavation except such as may result from defective work done by such person in connection with such excavation, or the actual negligence of such party.

(Code 1966, § 32-258)

Sec. 35-210. Safety precautions required; liability of permittee.

Every person to whom any permit is issued, as hereinbefore provided, shall enclose all excavations which he or they may make in the public streets, avenues or alleys with sufficient barriers and danger signals at all times, and must maintain sufficient warning lights at night, and must take all the necessary precautions to guard the public against all accidents from the beginning of the work to the completion of the same, and shall only make such excavations on condition that he is or they are liable for all damages that may result from the necessary prosecution against the city in consequence of any accident or accidents to persons, animals, vehicles, conduits or property of any kind, and such person, persons, company or corporation shall also be liable to the city on their bond for the same. Trenches or ditches in depth of six (6) feet or more, and in all trenches and ditches made in treacherous soil, or near buildings, the sides of said trenches or ditches shall be so braced as to prevent caving or injury to the adjoining premises; and the party excavating and his bondsmen shall be liable to said city for all damages arising by reason of neglect or carelessness in this respect.

(Code 1966, § 32-259)

Sec. 35-211. Disposition of money received.

All money received by the city to pay the cost of refilling excavations and repairing pavements shall be credited to the fund maintaining the street department.

(Code 1966, § 32-260)

Sec. 35-212. Condition of restored surface.

All paving, curbing, guttering or macadamizing shall be replaced and renewed in as perfect and substantial condition as before being disturbed.

(Code 1966, § 32-263)

Sec. 35-213. Qualifications of workmen.

All such paving, curbing, guttering and macadamizing shall be done by men who are experienced in such work and fully qualified to do the same in a proper and substantial manner.

(Code 1966, § 32-264)

Sec. 35-214. Duty to keep part of street or sidewalk available for use.

If possible, all parties making excavations under the provisions of this article in any of the streets, avenues, alleys or sidewalks of said city shall, at all times, be required to keep open in said streets, avenues, alleys and sidewalks good, sufficient, secure and unobstructed passageways for the safe passage of all vehicles and pedestrians.

(Code 1966, § 32-265)

Sec. 35-215. Plans, specifications.

The city engineer shall, from time to time, prepare standard plans and specifications for the making of excavations in the streets, alleys and other public grounds of the city and for the making of pavement cuts and for refilling and tamping the same and for repairing pavements, and shall be filed in the office of the city clerk and the city engineer, and it shall be a condition of any permit issued under this article that the person receiving the same shall comply in all respects with all such standard plans and specifications.

(Code 1966, § 32-266)

Sec. 35-216. Obedience to city engineer.

Any directions that may be given, either in writing or orally, by the city engineer, or any person entrusted with the supervision of such work, to any person engaged in making or refilling any excavation shall be immediately obeyed; and the violation of such directions, or the failure to perform the same, shall be deemed a misdemeanor.

(Code 1966, § 32-267)

Sec. 35-217. Violations.

It shall be unlawful for any person to make or attempt to make any excavation or refill the same, or do or attempt to do any other act in violation of the provisions of this article, or for any person to remove or attempt to remove from the site of the excavation or work any of the barricades, danger signals or lights required by the provisions of this article.

(Code 1966, § 32-268)

Secs. 35-218--35-230. Reserved.

ARTICLE IX. RAILROAD CROSSINGS[2]

Sec. 35-231. Duty to construct; manner of construction.

It shall be the duty of every company owning, managing or operating any railroad within the limits of the city which crosses any street, alley or highway or which traverses any such street, alley or highway within the city, to construct and keep in repair substantial and suitable crossings at each intersection of such railroad with such streets, alleys or highways, such crossings to be constructed in accordance with the plans and specifications as approved by the office of the city engineer. The company shall first file with the city clerk plans and specifications for the construction of such crossings, and obtain from the city manager permission to construct such crossings in accordance therewith.

(Code 1966, § 32-279)

Sec. 35-232. Waiver of construction requirements.

The city manager may waive the provisions of section 35-231 by written waiver as to any crossing which it is unnecessary to construct and maintain in accordance herewith on account of light traffic over such crossing, and a written waiver from the city manager as to any such crossing shall be good until such time as such waiver is revoked by the city manager or the board of commissioners, which may be done at any time. The city manager shall file with the city clerk a copy of all such waivers, and the city clerk shall keep them on file until they are revoked.

(Code 1966, § 32-280)

Secs. 35-233--35-250. Reserved.

ARTICLE X. SNOW AND ICE ON SIDEWALKS

Sec. 35-251. Declared nuisance.

All snow and ice remaining upon any sidewalks abutting on any lot, tract or piece of land twelve (12) hours after the snow has fallen or ice has accumulated are hereby declared to be a nuisance.

(Code 1966, § 32-302)
Cross references: Nuisances generally, Ch. 24.

Sec. 35-252. Duty to remove.

It is hereby made the duty of the owner, occupant or person in charge of any lot or piece of land abutting on any sidewalk to remove all snow and ice fallen or accumulated upon the sidewalk within twelve (12) hours after such snow has fallen or ice has accumulated.

(Code 1966, § 32-303)

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[2] **Cross references:** Trains and railroads, § 38-116 et seq.

Sec. 35-253. Failure to remove.

It shall be unlawful for any owner, occupant or person in charge of any lot, tract or piece of land abutting on any sidewalk to fail to remove from such sidewalk any snow or ice within twelve (12) hours after the snow has fallen or ice has accumulated upon the sidewalks.

(Code 1966, § 32-304)

Sec. 35-254. Removal by city and assessment of costs.

The city manager is hereby authorized and empowered to cause the removal of snow and ice constituting a nuisance and to keep a true account of the cost of such removal and to report the cost as to each lot, tract or piece of land to the board of commissioners, and the board of commissioners shall pass an ordinance assessing the cost of such removal to the abutting lot, tract or piece of land, and such assessment shall be certified by the city clerk to the county clerk to be collected and paid over to the city in the same manner as other special assessments or taxes are collected and paid over to the city.

(Code 1966, § 32-305)

Sec. 35-255. Exception; snow accumulations from street snow removal.

The provisions of this article requiring removal of snow and ice from sidewalks, by the owner, occupant or person in charge of any lot, tract, or piece of land abutting on any sidewalk, shall not apply to any snow or ice accumulated on the sidewalk as the result of the city's efforts in removing snow from city streets.

(Ord. No. 88-9254, § 1, 6-13-88)

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CHAPTER 36. SUBDIVISION REGULATIONS[1]

Art.	**I.**	**In General, §§ 36-1--36-25**
Art.	**II.**	**Application Procedure and Approval Process, §§ 36-26--36-70**
		Div. 1. Generally, §§ 36-26--36-35
		Div. 2. Preliminary Plat, §§ 36-36--36-50
		Div. 3. Final Plat, §§ 36-51--36-58
		Div. 4. Lot Split Regulations, §§ 36-59--36-70
Art.	**III.**	**Requirements for Improvements, Reservations and Design, §§ 36-71--36-90**
Art.	**IV.**	**Specifications for Documents to Be Submitted, §§ 36-91, 36-92**

ARTICLE I. IN GENERAL

Sec. 36-1. Title.

This chapter shall hereafter be known, cited and referred to as the "Subdivision Regulations of the City of Salina, Kansas."

(Ord. No. 80-8828, § 1(1.1), 12-22-80)

Sec. 36-2. Definitions.

(a) For the purposes of this chapter certain numbers, abbreviations and words used herein shall be used, interpreted and defined as set forth in this section. Any word or phrase which is defined in this section, or elsewhere in this chapter shall have the meaning as so defined whenever the word or phrase is used in this chapter, unless such definition is expressly limited in its meaning or scope.

(b) Unless the context clearly indicates to the contrary:

(1) The word "shall" is always mandatory and the word "may" is always permissive.

(2) The words "used" or "occupied" as applied to any land or building shall be construed to include the words "intended, arranged or designed to be used or occupied".

(3) The word "building" includes "structure" and a building or a structure includes any part thereof.

(c) Any term not defined in this chapter or section shall be as defined in the zoning regulations of chapter 42.

(d) The following words and phrases, when used in this chapter, shall have the meanings respectively ascribed to them:

(1) *Alley.* A public or private right-of-way primarily designed to serve as secondary access to the side or rear of those properties whose principal frontage is on some other street.

(2) *Applicant.* The owner or duly designated representative of land proposed to be subdivided, or for which conditional use permit, amendment, variance, zoning certificate or certificate of occupancy has been requested. Consent shall be required from the legal owner of the premises.

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[1] **Cross references:** Any ordinance approving, dedicating, accepting, designating, redesignating or vacating any plats saved from repeal, § 1-5(16); buildings and structural appurtenances, Ch. 8; housing, Ch. 18; mobile homes and trailers, Ch. 22; planning, Ch. 29; streets, sidewalks and other public places, Ch. 35; water and sewers, Ch. 41; zoning regulations, Ch. 42; subdividing required prior to zoning, § 42-8.

(3) *Area.* The size of a piece of land, usually described in terms of square feet or acres.

(4) *Arterial street.* See street, arterial.

(5) *Block.* A tract of land bounded by streets, or by a combination of streets and public parks, cemeteries, railroads, rights-of-way, shorelines, or boundary lines of municipalities.

(6) *Bond.* A form of security, including a cash deposit, surety bond, collateral, property or instrument of credit in an amount and form satisfactory to the city engineer. All bonds shall be approved by the board of commissioners wherever a bond is required by this chapter.

(7) *Building.* Any covered structure built for the support, shelter or enclosure of persons, animals, chattels or movable property of any kind and which is permanently affixed to the land.

(8) *Collector street.* See street, collector.

(9) *Common open space.* A parcel of land or an area of water, or combination of both land and water, within a site designated as a planned development zoning district and designated and intended for the use and/or enjoyment of the residents of the planned development. Common open space does not include streets, alleys, parks, off-street parking or loading areas, public open space, or other facilities dedicated by the developer for public use.

(10) *Comprehensive plan.* Official public document adopted by the local government as a policy guide to decisions about the physical development of the community. The plan encompasses all geographical parts of the community and all functional elements which bear on physical development.

(11) *Cul-de-sac.* See street, cul-de-sac.

(12) *Developer.* The legal or beneficial owner of all of the land proposed to be included in a subdivision or planned development or duly authorized agent thereof, the holder of an option or contract to purchase, a lessee having a remaining term of not less than forty (40) years, or other person having an enforceable proprietary interest in such land, shall be deemed to be a developer for the purpose of this chapter.

(13) *Double frontage lot.* See lot, double frontage.

(14) *Drainage easement.* See easement, drainage.

(15) *Easement.* Authorization by a property owner for the use by another, and for a specified purpose, of any designated part of his property. The property owner retains ownership of the easement.

(16) *Easement, drainage.* An easement to be utilized for improving the removal of runoff water from a subdivision or a group of subdivisions.

(17) *Easement, pedestrian.* An easement for providing pedestrian access.

(18) *Easement, temporary.* An easement utilized primarily for construction purposes or to give access for a limited period of time.

(19) *Easement, utility.* An easement within which the common service delivery lines (electric, telephone, CATV, water, sanitary sewer, etc.), are located.

(20) *Fence.* A freestanding structure of metal, masonry composition or wood or any combination thereof resting on or partially buried in the ground and rising above ground level, used for confinement screening or partition purposes.

(21) *Final plat.* See plat, final.

(22) *Flood fringe.* That portion of the floodplain lying outside of the floodway, i.e., subject to being covered by floodwaters of the regulatory flood, but not required to carry and discharge the flood waters.

(23) *Floodplain.* A watercourse and land adjacent to a watercourse subject to inundation from a flood having a chance occurrence in any one (1) year of one (1) percent.

(24) *Floodway.* The channel of a stream or other watercourse and the land area adjacent to the stream channel that is required to carry and discharge the floodwaters of the regulatory flood (100-year flood) without undue restriction.

(25) *Improvements.* All facilities constructed or erected by a subdivider or the general public within a subdivision to permit and facilitate the use of lots or blocks for a principal residential, commercial or industrial use.

(26) *Local street.* See street, local.

(27) *Landscaping.* The improvement of a lot, parcel or tract of land with grass, shrubs, and/or trees. Landscaping may include pedestrian walks, flower beds, ornamental objects such as fountains, statuary, and other similar natural and artificial objects designed and arranged to produce an aesthetically pleasing effect.

(28) *Land use plan.* A portion of the comprehensive plan indicating the general anticipated use of the land within the city's jurisdiction.

(29) *Lot.* A portion or basic parcel of a subdivision, the plat of which has been recorded in the office of the county register of deeds. The owner of any such lot or parcel shall be deemed to be an equitable owner.

(30) *Lot, corner.* A lot which adjoins the point of intersection or meeting of two (2) or more streets.

(31) *Lot, double frontage.* A lot, two (2) opposite lot lines of which abut public streets which are more or less parallel. Also known as double frontage or reverse frontage lots.

(32) *Lot, zoning.* A parcel of land that is designated by its owner or developer, at the time of applying for a zoning certificate as a tract, all of which is to be used, developed or built upon as a unit under single ownership. As long as it satisfies the above requirements such lot may consist of:

a. A single lot of record;

b. A portion of a lot of record;

c. A combination of complete lots of record, complete lots and portions of lots of record or portions of lots of record.

(33) *Lot line.* The boundary line of a lot as recorded in the office of the county register of deeds.

(34) *Lot width.* The distance between the side lot lines of a lot, measured along the established building setback line.

(35) *Occupancy permit.* See permit, occupancy.

(36) *Official street classification plan.* A municipally adopted document denoting the status of a given section of public right-of-way (arterial, collector, residential, etc.). See also street.

(37) *Parks.* See public open space.

(38) *Pedestrian.* Any means of locomotion which is not motor driven (i.e., walking, bicycling, etc.).

(39) *Permit, building.* A certificate issued by the building official or his designee to allow construction of a specific type of structure.

(40) *Permit, occupancy.* A permit issued by the zoning administrator after certification that such land use, structure or building is fit for human occupancy and complies with all the provisions of the zoning regulations and other applicable city codes, ordinances, rules and regulations.

(41) *Planned development district.* A zoning district which allows the use of flexible land use controls to be applied to the development of land. The procedure and statutory requirements governing this district are contained in the zoning regulations of the city.

(42) *Plat, final.* The map or plan of record of a subdivision, and any accompanying material as described in this chapter. The date of submittal of the final plat commences the sixty (60) day statutory review period as provided in K.S.A. 12-705.

(43) *Plat, preliminary.* The preliminary drawings and information as described in this chapter and as defined in the zoning regulations and any other applicable city codes, ordinances, rules and regulations.

(44) *Principal use.* The main use of land as distinguished from a subordinate or accessory use.

(45) *Private street.* See street, private.

(46) *Protective covenants.* Restrictions governing the use of land within a given subdivision placed on the land by the owner at the time of platting.

(47) *Public open space (park).* A parcel of land or an area of water, or a combination of land and water dedicated to the public and available for the use and enjoyment of the general public. Public open space does not include streets, alleys or off-street parking or loading areas.

(48) *Public sewer and water system.* Any system, other than an individual septic tank or tile field or an individual well, operated by a municipality or other governmental agency or public utility for the treatment of wastes and the furnishing of water.

(49) *Restrictive covenants.* See protective covenants.

(50) *Right-of-way.* A tract of land, generally a strip, occupied or intended to be occupied by a street, crosswalk, railroad, road, electric transmission line, oil or gas pipeline, water main, sanitary or storm sewer main, or for another special purpose. A right-of-way is generally owned by or dedicated to the public or a public utility.

(51) *Screening.* Decorative fencing, evergreen vegetation, earthen mounds or a combination of these maintained for the purpose of concealing from view the area behind such structures or evergreen vegetation. When fencing is used for screening, it shall not be less than six (6) or more than eight (8) feet in height.

(52) *Setback.* The distance between the front lot line and the principal building on the lot.

(53) *Sidewalk.* A pedestrian walkway with a concrete surface constructed to city minimum standards.

(54) *Street.* A right-of-way, other than an alley, dedicated to public use, which provides principal vehicular and pedestrian access to adjacent properties.

(55) *Street, arterial.* A street of considerable continuity which is primarily a traffic artery for intercommunication between large areas and which only rarely provides access to abutting properties.

(56) *Street, collector.* A street supplementary to arterial streets and a means of intercommunication between this system and smaller areas; used to some extent for through traffic and to some extent for access to abutting properties.

(57) *Street, cul-de-sac.* A street having only one outlet and being permanently terminated by a vehicle turn-around at the other end.

(58) *Street, frontage.* A public or private marginal access street generally paralleling and contiguous to any arterial or a collector street and designed to promote safety by eliminating unlimited ingress and egress to such arterial or collector street by providing points of access at predetermined and more or less evenly spaced intervals.

(59) *Street, half.* A street in which only a portion of the right-of-way is dedicated at the time of platting on the assumption that the remainder of the right-of-way will be dedicated when the adjoining property is developed.

(60) *Street, private.* Any street designed for vehicular traffic not dedicated as a public thoroughfare. The city has no maintenance responsibilities for a private street.

(61) *Street, residential.* Any street designed primarily to provide access to abutting property.

(62) *Structure.* Anything constructed or erected with a fixed location on the ground, or attached to something having a fixed location on the ground. Structures include, but are not limited to: buildings, walls, sheds, towers and bins.

(63) *Subdivision regulations.* The official subdivision regulations of the city, together with all amendments thereto, adopted pursuant to K.S.A 12-705, 705a, 705b, and 705c.

(64) *Tree.* A large woody perennial plant with one or more main trunks and many branches. A tree with any trunk which has a diameter of six (6) or more inches when measured at a height of three (3) feet above the average grade level shall be protected by this chapter.

(65) *Utility easement.* See easement, utility.

(66) *Walkway easement.* See easement, pedestrian.

(67) *Waterbody.* Any area covered by water at least six (6) months per year and which the deepest portion has a minimum depth of three (3) feet.

(68) *Watercourse.* A body of water flowing in an identifiable channel or course, natural or man made, and which is not dry more than six (6) months a year.

(69) *Zoning lot.* See lot, zoning.

(70) *Zoning ordinance.* The official zoning regulations of the city together with any and all amendments adopted pursuant to K.S.A. 12-707 et seq.

(Ord. No. 80-8828, § 1(6.1, 6.2), 12-22-80)
Cross references: Definitions and rules of construction generally, § 1-2.

Sec. 36-3. Authority.

(a) By authority of resolution by the board of commissioners, adopted pursuant to the powers and jurisdiction vested through K.S.A. 12-705 and 12-705a-c and other applicable laws, statutes, ordinances and regulations of the state and amendments thereto, the city does hereby exercise the power and authority to review, approve and disapprove plats for subdivision of land within the corporate limits of the municipality. In addition, the city shall exercise the power and authority to review, approve and disapprove plats in unincorporated territory lying outside of but within three (3) miles of the city limits in accordance with any interlocal agreements entered into with the county pursuant to K.S.A. 12-2904.

(b) No land governed by this chapter shall be subdivided until the subdivider or his agent shall submit and obtain approval of the preliminary and final plats by the planning commission and until the approved plat is filed with the county register of deeds. No building permit or certificate of occupancy shall be issued for any parcel or plat of land within the city which was created by subdivision regulations and no excavation of land or construction of any public or private improvements shall take place or be commenced except in conformity with the regulations.

(Ord. No. 80-8828, § 1(1.2), 12-22-80; Ord. No. 90-9386, §§ 1, 7, 6-18-90)

Sec. 36-4. Policy and purposes.

It is hereby declared to be the policy of the city to consider the subdivision of land and the subsequent development of the subdivided plat as subject to the control of the city pursuant to the comprehensive plan for the orderly, planned, efficient and harmonious physical and economic development of the community. Land to be subdivided shall be of such character that it can be used safely for building purposes without danger to health, or peril from fire, flood or other menace, and land shall not be developed until available public facilities and improvements exist and proper provisions have been made for drainage, water, sewerage, and capital improvements such as schools, parks, recreation facilities and transportation facilities and improvements. The existing and proposed public improvements shall conform to and be properly related to the proposals shown in the comprehensive plan, official street classification plan and/or major street plan, and the capital improvements program of the city. This chapter shall supplement and facilitate the enforcement of the provisions and standards contained in building and housing codes, zoning regulations, the comprehensive plan, official street classification plan and/or major street plan and capital improvement program of the city. This chapter is adopted for the following purposes:

(1) To protect and provide for the public health, safety and general welfare of the municipality;

(2) To guide the future growth and development of the municipality in accordance with the comprehensive plan that represents the most beneficial use of private and public areas of the municipality, considering the suitability of such areas and having regard for the use of land and building development;

(3) To provide for adequate light, air and privacy; to secure safety from fire, flood and other danger and to prevent overcrowding of the land and undue congestion of population;

(4) To protect the character and the social and economic stability of all parts of the municipality and to encourage the orderly and beneficial development of all parts of the municipality;

(5) To protect and conserve the value of land throughout the municipality and the value of buildings and improvements upon the land, and to minimize the conflicts among the uses of land and buildings;

(6) To provide a guide to public policy and action in facilitating adequate provision for transportation, water, sewerage, schools, parks, playgrounds, recreation and other public requirements and in the efficient provision of public facilities and services and for private enterprise in building development, investment and other economic activity relating to uses of land and buildings throughout the municipality;

(7) To provide the most beneficial relationship between the uses of land and buildings and the circulation of traffic throughout the municipality having particular regard to the avoidance of congestion in the streets and highways and the pedestrian traffic movements appropriate to the various uses of land and buildings through the municipality, and to provide for the proper location and width of streets and building lines;

(8) To establish reasonable standards of design and procedures for subdivision and resubdivisions; to further the orderly layout and use of land to insure proper legal descriptions and proper monumenting of subdivided land;

(9) To promote the expansion of the community in accordance with the availability and capacity of existing and projected public facilities and services;

(10) To prevent the pollution of air, streams and ponds; to assure adequate drainage; to safeguard ground water resources; and to encourage the wise use and management of natural resources throughout the municipality in order to preserve the integrity, stability and beauty of the community and the value of the land;

(11) To preserve the natural beauty and topography of the municipality and to insure appropriate development with regard to these natural features;

(12) To provide for open spaces through the most efficient design and layout of the land in providing for minimum width and area of lots while preserving the density of land as established in the zoning regulations.

(Ord. No. 80-8828, § 1(1.3), 12-22-80)
Cross references: Requirements for improvements, reservations and design, § 36-71 et seq.

Sec. 36-5. Interpretation, conflict.

(a) In their interpretation and application, the provisions of this chapter shall be held to be the minimum requirements for the promotion of the public health, safety and general welfare.

(b) This chapter is not intended to interfere with, abrogate or annul any other ordinance, regulations, statute or other provision of law. Where any provision of this chapter imposes restrictions, different from those imposed by any other provision of this chapter or any other ordinance, regulation or other provision of law, whichever provisions are more restrictive or impose higher standards shall control.

(c) This chapter is not intended to abrogate any easement, covenant or other private agreement or restriction, provided that where the provisions of this chapter are more restrictive or impose higher standards or regulations than such easement, covenant or private agreement or restriction, the requirements of this chapter shall govern. Where such private agreement imposes more restrictive, or higher standards, and the planning commission determines that they are not inconsistent with this chapter, then such private provisions shall be operative and supplemental to this chapter.

(Ord. No. 80-8828, § 1(1.4), 12-22-80)

Sec. 36-6. Saving provision.

This chapter shall not be construed as abating any action now pending under, or by virtue of, prior existing subdivision regulations, or as discontinuing, abating, modifying, or altering any penalty accruing or about to accrue, or as affecting the liability of any person or as waiving any right of the city under any section or provision existing at the time of adoption of this chapter, or as vacating or annulling any rights obtained by any person, by lawful action of the city except as shall be expressly provided for in this chapter.

(Ord. No. 80-8828, § 1(1.5), 12-33-80)

Sec. 36-7. Amendments.

For the purpose of providing for the public health, safety and general welfare, the planning commission may from time to time amend the provisions imposed by this chapter in accordance with K.S.A. 12-705.

(Ord. No. 80-8828, § 1(1.7), 12-22-80)

Sec. 36-8. Conditions.

Regulation of the subdivision of land and the attachment of reasonable conditions to land subdivision is an exercise of valid police power delegated by the state to the city as provided in K.S.A. 12-705. The developer has the duty of compliance with reasonable conditions laid down by the planning commission for design, dedication, improvement and restrictive use of the land so as to conform to the physical and economic development of the city and to the safety and general welfare of the future plot owners in the subdivision and of the community at large.

(Ord. No. 80-8828, § 1(1.8), 12-22-80)

Sec. 36-9. Vacation of plats.

Any plat or any part of any plat may be vacated by the owner of the premises, at any time before the sale of any lot therein, by a written instrument, to which a copy of such plat shall be attached, declaring the same to be vacated. Such an instrument shall be approved by the planning commission in like manner as plats of subdivision. The board of commissioners, however, may reject any such instrument which abridges or destroys any public rights in any of its public uses, improvements, streets, or alleys. Such an instrument shall be executed, acknowledged or approved, and recorded or filed, in like manner as plats of subdivisions; and being duly recorded or filed shall operate to destroy the force and effect of the recording of the plat so vacated, and to divest all public rights in the street, alleys and public grounds, and all dedications laid out or described in such plat. When lots have been sold, the plat may be vacated in the manner herein provided by all the owners of lots in such plat joining in the execution of such written instrument.

(Ord. No. 80-8828, § 1(1.9), 12-22-80)

Sec. 36-10. Variations and exceptions.

(a) *General*. Where the planning commission finds that particular hardships or practical difficulties may result from strict compliance with this chapter, it may approve variations or exceptions to this chapter so that substantial justice may be done and the public interest secured. Economic loss or hardship is not sufficient grounds for the granting of a variance or exception. Such variation or exception shall not have the effect of nullifying the intent and purpose of this chapter; and further provided, the planning commission shall not approve variations unless it shall make findings based upon the evidence presented to it in each specific case that:

(1) The granting of the variation will not be detrimental to the public safety, health or welfare or injurious to other property or improvements in the neighborhood in which the property is located;

(2) The conditions upon which the request for a variation are based are unique to the property for which the variation is sought, and are not applicable generally to other property;

(3) Because of the particular physical surroundings, shape or topographical conditions of the specific property involved, an extraordinary hardship to the owner would result, as distinguished from a mere inconvenience, if the strict letter of this chapter is carried out;

(4) The variation will not in any manner vary the provisions of the zoning regulations, ordinance, comprehensive plan, official street classification plan and/or major street plan or official map of the city.

(b) *Conditions.* In approving variances and exceptions, the planning commission may require such conditions as will, in its judgment, secure substantially the objective of the standards or requirements of this chapter.

(c) *Procedures.* An application for any such variance shall be submitted in writing by the subdivider at the time when the preliminary plat is filed for the consideration of the planning commission. The applicant shall state fully the grounds for the variance and all of the facts relied upon by the petitioner.

(Ord. No. 80-8828, § 1(1.10), 12-22-80)

Sec. 36-11. Enforcement, violations and penalties.

(a) *General:*

(1) It shall be the duty of the secretary to the planning commission (hereinafter referred to as the "secretary") to enforce this chapter, and to bring to the attention of the city attorney or his designated assistant, any violations or lack of compliance herewith.

(2) No owner, or agent of the owner, of any parcel of land located in a proposed subdivision shall transfer or sell any such parcel before a plat of such subdivision has been approved by the planning commission, in accordance with the provisions of this chapter, and filed with the county register of deeds.

(3) The subdivision of any lot or any parcel of land by the use of metes and bounds description for the purpose of sale, transfer or lease with the intent of evading this chapter, shall not be permitted. All such described subdivisions shall be subject to all of the requirements contained in this chapter.

(4) No building permit shall be issued for the construction of any building or structure located on a lot or plat subdivided or sold in violation of the provisions of this chapter.

(b) *Violations and penalties.* Any person who fails to comply with, or violates any of the provisions of this chapter shall be subject to a penalty as provided in section 1-10.

(c) *Civil enforcement.* Appropriate actions and proceedings may be taken by law or in equity to prevent any violations of this chapter, to prevent unlawful construction, to recover damages, to restrain, correct or abate a violation to prevent illegal occupancy of a building structure or premises, and these remedies shall be in addition to the penalties described above.

(Ord. No. 80-8828, § 1(1.11), 12-22-80)

Secs. 36-12--36-25. Reserved.

ARTICLE II. APPLICATION PROCEDURE AND APPROVAL PROCESS

DIVISION 1. GENERALLY

Sec. 36-26. Compliance required.

Whenever any subdivision of land is proposed, before any contract is made for the sale of lots and before any permit for the erection of a structure in the proposed subdivision shall be granted, the owner or his authorized agent, shall apply for and secure the approval of the proposed subdivision in accordance with the procedures outlined in this chapter.

(Ord. No. 80-8828, § 1(2.1-1), 12-22-80)

Sec. 36-27. Official submission dates.

For the purpose of this chapter the date of the regular meeting of the planning commission (including any adjourned date thereof) at which the public hearing on the final plat is closed, shall constitute the official submittal date of the plat. At that time the statutory period required for formal approval or disapproval of the plat shall commence.

(Ord. No. 80-8828, § 1(2.1-2), 12-22-80)

Sec. 36-28. Submission schedule.

The order in which city and county commissions shall be approached and the action required on the part of each commission to allow the plat to be referred to the next authority is contained in the Interlocal Agreement between Saline County and the City of Salina for cooperation and coordination in the approval of subdivision plats within three (3) miles of the Salina city limits, dated February 2, 1988, and herein incorporated by reference.

(Ord. No. 80-8828, § 1(2.1-3), 12-22-80; Ord. No. 90-9386, §§ 2, 7, 6-18-90)

Secs. 36-29--36-35. Reserved.

DIVISION 2. PRELIMINARY PLAT

Sec. 36-36. Application procedure and requirements.

The applicant shall file an application for approval of a preliminary plat. The application shall:

(1) Be made on forms available at the office of the secretary together with a fee pursuant to the city fee schedule, which may be changed from time to time;

(2) Include all land which the applicant proposes to subdivide and all land adjacent to or opposite the street frontage from applicant's land;

(3) Be accompanied by a minimum of ten (10) blueline or, blackline copies of the preliminary plat as described in this chapter;

(4) Be presented to the secretary or authorized designee in accordance with the current schedule of subdivision processing, available from the secretary;

(5) Include a list of all property owners adjacent to the proposed subdivision as provided in section 36-39. This list shall be obtained from records kept at the county clerk's office or from a licensed and bonded abstract company.

(Ord. No. 80-8828, § 1(2.2-1), 12-22-80; Ord. No. 90-9386, §§ 3, 7, 6-18-90)

Sec. 36-37. Review by appropriate agencies.

The secretary or authorized designee shall refer the proposed preliminary plat to the appropriate agencies for their review and recommendations.

(Ord. No. 80-8828, § 1(2.2-2), 12-22-80)

Sec. 36-38. Planning staff and planning commission review.

The planning staff shall review the proposed plat in accordance with the schedule of subdivision processing currently in effect. The applicant shall be notified of deficiencies within twenty-eight (28) days of the appropriate filing deadline. The preliminary plat shall be scheduled for planning commission hearing within forty-five (45) days of the appropriate filing deadline.

(Ord. No. 80-8828, § 1(2.2-3), 12-22-80)

Sec. 36-39. Notification process.

Ten (10) days prior to the scheduled meeting at which the proposed preliminary plat is to be considered the secretary or designee shall notify all owners of adjacent properties, platted or unplatted, in writing of the proceedings in effect. For notification purposes only all public lands, public or private easements and rights-of-way adjacent to the project shall be considered as part of the proposed project provided such lands do not exceed three hundred (300) feet in width. See sections 36-36(5) and 36-91(4)a.

(Ord. No. 80-8828, § 1(2.2-4), 12-22-80)

Sec. 36-40. Preliminary approval.

After the planning commission has reviewed the preliminary plat and other testimony and exhibits submitted at the public hearing, the applicant shall be advised of any required changes and/or additions. The planning commission shall approve, conditionally approve, or disapprove the preliminary plat within thirty (30) days after the date of the regular meeting of the planning commission at which the public hearing for preliminary approval including adjournment date thereof is closed. A determination on the application for preliminary plat approval shall be made within ninety (90) days of the appropriate filing deadline.

(Ord. No. 80-8828, § 1(2.2-5), 12-22-80)

Sec. 36-41. Effective period of preliminary approval.

The approval of a preliminary plat shall be effective for a period of one (1) year. At the end of that time, final approval of the subdivision must have been obtained from the planning commission, although the plat need not yet be signed and filed with the county register of deeds. The planning commission may, at their own discretion, grant one (1) six (6) month extension to this time period upon written request. Any plat not receiving final plat approval within the period of time set forth herein shall be required to be reprocessed as a preliminary plat in accordance with this chapter and be approved prior to submission of a final plat. Any plat required to be reprocessed under this section shall be subject to another filing fee and to all zoning restrictions and subdivision regulations in effect at the time of refiling.

(Ord. No. 80-8828, § 1(2.2-6), 12-22-80)

Sec. 36-42. Zoning regulations.

Every plat shall conform to existing zoning regulations and subdivision regulations applicable at the time of proposed final plat approval, except that any plat which has received preliminary plat approval shall be exempt from any subsequent amendments to the zoning ordinance rendering the plat nonconforming as to bulk or use, provided that final plat approval is obtained within the one-year period.

(Ord. No. 80-8828, § 1(2.2-7), 12-22-80)

Secs. 36-43--36-50. Reserved.

DIVISION 3. FINAL PLAT

Sec. 36-51. Application procedure and requirements.

Following the approval of the preliminary plat, the applicant, if he wishes to proceed with the subdivision, shall file with the planning commission an application for final approval of a subdivision plat. The application shall:

(1) Be made on forms available from the office of the secretary together with a fee pursuant to the city fee schedule, which may be changed from time to time;

(2) Include the entire subdivision, or section thereof, which derives access from an existing state, county or local government highway or street;

(3) Be accompanied by a minimum of six (6) blackline copies of the subdivision plat, as described in this chapter;

(4) Comply in all respects with the preliminary plat, as approved;

(5) Be presented to the secretary or his designee in accordance with the subdivision processing schedule currently in effect and available from the secretary;

(6) Include a list of all property owners adjacent to the proposed subdivision as provided in section 36-53. This list shall be obtained from records kept in the county clerk's office or a licensed and bonded abstractor's office.

(Ord. No. 80-8828, § 1(2.3-1), 12-22-80)

Sec. 36-52. Planning staff review.

The planning staff shall review the proposed final plat for conformance with the approved preliminary plat and the subdivision regulations in accordance with the schedule of final plat processing then in effect. The applicant shall be notified of any deficiencies within fourteen (14) days of the applicable filing deadline.

(Ord. No. 80-8828, § 1(2.3-2), 12-22-80)

Sec. 36-53. Notification process.

Ten (10) days prior to the scheduled meeting, at which the final plat is to be considered, the secretary or designee shall notify all owners of adjacent properties, platted or unplatted, in writing of the proceedings in effect. For notification purposes only, all public lands, public or private easements and rights-of-way adjacent to the tract shall be considered as part of the tract, provided such lands do not exceed three hundred (300) feet in width. See section 36-51(6).

(Ord. No. 80-8828, § 1(2.3-3), 12-22-80)

Sec. 36-54. Review by the planning commission.

The proposed final plat shall be reviewed by the planning commission for conformance with the approved preliminary plat and with all applicable codes and regulations of the city within forty-five (45) days of the applicable filing deadline on the current schedule of subdivision processing. Upon approval the chairman of the planning commission (hereinafter referred to as chairman) and secretary shall endorse the proposed final plat.

(Ord. No. 80-8828, § 1(2.3-4), 12-22-80)

Sec. 36-55. Review by the board of commissioners.

The proposed final plat shall be reviewed by the board of commissioners after the planning commission has endorsed the plat. Approval by the board of commissioners shall take the form of a motion approving the plat and authorizing the mayor to sign the final plat. Board action shall be within sixty (60) days of the applicable filing deadline shown on the current schedule of subdivision processing unless the applicant requests a delay.

(Ord. No. 80-8828, § 1(2.3-5), 12-22-80)

Sec. 36-56. Submission and review.

Subsequent to approval by the board of commissioners, two (2) reproducibles of the original of the subdivision plat on polyester drafting film and four (4) copies of the subdivision plat on paper shall be submitted to the secretary for final review. One (1) reproducible copy and all paper copies shall remain with the secretary for city records. No final approval shall be endorsed on the plat until a review has indicated that all requirements of this chapter have been met.

(Ord. No. 80-8828, § 1(2.3-6), 12-22-80)

Sec. 36-57. Vested rights.

No vested rights shall accrue to any plat by reason of preliminary or final approval until the actual signing of the plat by the chairman; and all requirements, conditions or regulations adopted by the planning commission applicable to the subdivision or on all subdivisions generally shall be deemed a condition for any subdivision prior to the time of the signing of the final plat by the chairman and secretary. Where the planning commission has required conditions for approval prior to signing of the final plat, the planning commission shall not modify the conditions set forth in the final approval.

(Ord. No. 80-8828, § 1(2.3-7), 12-22-80)

Sec. 36-58. Recording of plat.

(a) The chairman and secretary, the mayor and the city clerk will sign the reproducible polyester drafting film original of the subdivision plat.

(b) It shall be the responsibility of the subdivider to file the plat with the county register of deeds' office within sixty (60) days of the date of signature. If the plat is not recorded within sixty (60) days the planning commission may rescind their approval of the plat.

(Ord. No. 80-8828, § 1(2.3-8), 12-22-80)

DIVISION 4. LOT SPLIT REGULATIONS

Sec. 36-59. Purpose.

The purpose of these regulations is to provide for the division of a lot within a subdivision into not more than two (2) lots or tracts without having to comply with the platting requirements described in these regulations. An existing platted lot may be divided or split into not more than two (2) parts which singularly or combined with an adjoining lot or part of a lot results in two (2) building lots which meet the minimum size and area requirements of the zoning district in which the lots are located. Any further division of the new lots shall require replatting in accordance with the requirements described in these regulations.

(Ord. No. 95-9710, § 1, 10-16-95)

Sec. 36-60. Application procedure and requirements.

A written application for a split shall be made to the planning department. Each application shall be submitted with three (3) copies of a plot plan, certified by a licensed land surveyor at a scale of one (1) inch equals thirty (30) feet or less and shall contain the following information:

(1) Location of the existing lot within the subdivision as related to the nearest existing streets;

(2) Location of existing easements and utilities;

(3) Dimensions of the divided portions of the lot;

(4) Location and width of driveways or accessways, existing and proposed;

(5) Dimensions of all existing structures and their locations with respect to the existing lot lines;

(6) Signature of the owner(s); and

(7) Legal description(s) of the property(ies).

(Ord. No. 95-9710, § 1, 10-16-95)

Sec. 36-61. Planning staff review.

Upon receipt of the application, the planning department shall review it for compliance with the zoning and subdivision regulations. If the application and the plot plan comply with all applicable regulations, the lot split shall be approved by the planning department and shall bear the signature of the planning director. The applicant shall file the approved lot split with the Saline County Register of Deeds. A copy of the filed request must be returned to the planning department, who will make and distribute additional copies to the building official, city clerk and city engineer.

(Ord. No. 95-9710, § 1, 10-16-95)

Sec. 36-62. Approval standards.

The division of lots pursuant to this chapter shall comply with the comprehensive plan, any major street and road plans, applicable zoning ordinance requirements, these regulations and all other applicable regulations. No lot split shall be approved if:

(1) A new street or alley is needed or proposed;

(2) There is less street right-of-way than required by this chapter;

(3) Any easement requirements have not been satisfied or existing easements would have to be modified to accommodate the proposed lot split;

(4) The lot splits will result in a tract without frontage on a public street or approved private street;

(5) A lot or parcel of substandard size will be created, except where a lot split will result in the substandard-sized portion being recombined with an adjoining standard-sized, platted lot and where this recombination is duly filed and recorded with the Saline County Register of Deeds; or

(6) The lot split will result in a substantial increase in service requirements (e.g. utilities, drainage, traffic control, street improvements, etc.) and will constitute a significant deviation from the basis upon which approval of the original plat was granted.

(Ord. No. 95-9710, § 1, 10-16-95)

Sec. 36-63. Building permits.

No building permit shall be issued for any site which contains a division of a platted lot of record, unless such division has been approved in the manner provided by this chapter.

(Ord. No. 95-9710, § 1, 10-16-95)

Secs. 36-64--36-70. Reserved.

ARTICLE III. REQUIREMENTS FOR IMPROVEMENTS, RESERVATIONS AND DESIGN

Sec. 36-71. General.

(a) *Conformance to applicable rules and regulations.* In addition to the requirements established herein, all subdivision plats shall comply with all applicable ordinances of the city and all city policy documents, including all streets, drainage systems and parks shown on the land use plan or other officially adopted plan; any rules of the health department and/or the state department of health; the rules of the state department of transportation if the subdivision or any lot contained therein abuts a state highway or connecting street; the standards and regulations adopted by the city engineer, and all boards, commissions, agencies and officials of the city; and all pertinent standards contained within the planning guides published by the applicable regional or metropolitan planning commission. Plat approval may be withheld if a subdivision is not in conformity with the above guides or the policy and purposes of this chapter established in section 36-4.

(b) *Restrictive covenants.* If the owner places restrictions on any of the land contained in the subdivision greater than those required by the zoning ordinance or this chapter, such restrictions or reference thereto may be required to be indicated on the final subdivision plat, or the planning commission may require that restrictive covenants be recorded with the county register of deeds in form to be approved by the city attorney.

(c) *Plats straddling municipal boundaries.* Whenever access to the subdivision is required across land in another local governmental jurisdiction, the planning commission may request assurance from the city attorney that access is legally established, from the city engineer that the access road is adequately improved, or that a performance bond has been duly executed and is sufficient in amount to assure the construction of the access road. Lot lines shall be laid out so as not to cross municipal boundary lines.

(d) *Monuments.* The applicant shall place permanent reference monuments in the subdivision as required herein and as approved by a registered land surveyor. Monuments shall be located on street right-of-way lines, at street intersections, angle points of curve and block corners.

(1) The external boundaries of a subdivision shall be monumented in the field by monuments of concrete not less than twenty-four (24) inches in depth, not less than four (4) inches square or five (5) inches in diameter and marked on top with a one-half inch by twenty-four-inch iron rod securely imbedded. These monuments shall have affIxed thereto a metal or plastic cap bearing the name and/or registration number of the responsible land surveyor legibly stamped or imprinted thereon. These monuments shall be placed at all corners, at each end of all curves, at all angle points in any line, and at all angle points along the meander line, such points to be not less than twenty (20) feet back from the bank of any river or stream, except that when such corners or points fall within a street, or proposed future street, the monuments shall be placed on the right-of-way line of the street. The location of these monuments shall also be marked on the ground by the use of wooden stakes.

(2) All block corners, including the PC and PT of curved block lines, shall be marked with iron monuments no smaller than one-half inch in diameter and two (2) feet in length driven into the ground flush with the existing ground surface. The location of such monuments shall be shown on the final plat and marked on the ground by use of wooden stakes. Sufficient information shall be shown on the plat to allow an experienced surveyor to locate or relocate all points and lines shown on the plat, including all pertinent curve data. The error of closure of the boundaries of any enclosed area within the plat shall not exceed one (1) foot in three thousand (3,000) feet.

(3) All monuments shall be properly set in the ground and approved by a registered land surveyor or a performance bond, based upon the city engineer's estimate, shall have been issued for monument placement prior to city planning commission approval of the final plat.

(e) *Character of the land.* Land which the planning commission Finds to be unsuitable for subdivision or development due to flooding, improper drainage, steep slopes, rock formation, adverse earth formations or topography, utility easements or other features which will reasonably be harmful to the safety, health and general welfare of inhabitants of the land and surrounding areas shall not be subdivided or developed unless adequate methods are formulated by the developer and approved by the planning commission, upon recommendation of the city engineer, to solve the problems created by the unsuitable land conditions.

(f) *Subdivision name.* The proposed name of the subdivision shall not duplicate or closely approximate phonetically the name of any other subdivision in the area covered by this chapter. The planning commission shall have final authority to designate the name of the subdivision.

(Ord. No. 80-8828. § 1(3.1), 12-22-80; Ord. No. 90-9386, §§ 4, 7, 6-18-90)

Sec. 36-72. Lots and lot improvements.

(a) *Lot splits.* No provision of this chapter shall be construed as to require a replat for the split of any lot into two (2) tracts if it is zoned residentially. Should a tract be zoned industrially it may be divided into any number of tracts without a replat.

(b) *Lot arrangement.* The lot arrangement shall be such that there will be no foreseeable difficulties, for reasons of topography or other conditions, in securing building permits to build on all lots in compliance with city codes and in providing legal access to lots from an approved public street.

(c) *Lot dimensions.* Lot dimensions shall comply with the minimum standards of the zoning ordinance. Where lots are more than double the minimum required for the zoning district, the planning commission may require that such lots be arranged so as to allow further subdivision and the opening of future streets where they would be necessary to serve such potential lots, all in compliance with the zoning ordinance and this chapter. Side lot lines shall be at right angles to street lines or radial on curved streets unless a variation from this rule will give better street or lot plan. Dimensions of corner lots shall be large enough to allow for erection of buildings, observing the minimum front yard setback from both streets. Depth and width of properties reserved or laid-out for business, commercial or industrial purposes shall be adequate to provide for the off-street parking and loading facilities required for the type of use and development contemplated as established in the zoning ordinance.

(d) *Double frontage lots and access to lots:*

(1) *Double frontage lots.* Double frontage lots shall be avoided except where necessary to provide separation of residential development from traffic arterials or to overcome specific disadvantages of topography and orientation.

(2) *Access from arterials.* Lots shall not derive access exclusively from an arterial or collector street. When driveway access from an arterial or collector street may be necessary for several adjoining lots, the planning commission may require that such lots be served by a combined access drive in order to limit possible traffic hazard on such street. Driveways should be designed and arranged as to avoid requiring vehicles to back into traffic on arterials.

(e) *Lot drainage.* Individual lot drainage shall be coordinated with the general storm drainage pattern for the area.

(f) *Fencing.* Each subdivider and/or developer shall be required to furnish and install fence wherever the planning commission determines that a hazardous condition may exist. Such fences shall be constructed according to standards established by the city engineer and shall be noted as to height and material on the final plat. No certificate of occupancy shall be issued until the fence improvements have been duly installed or a performance bond sufficient to cover the cost of the fencing, as determined by the city engineer, is filed with the city clerk.

(g) *Waterbodies and watercourses.* If a tract being subdivided contains a waterbody, or portion thereof, lot lines shall be drawn so as to distribute the entire ownership of the waterbody among the adjacent lots. The planning commission may approve an alternative plan whereby ownership of and responsibility for safe maintenance of the waterbody is so placed that it will not normally become a

city responsibility. Not more than twenty-five (25) percent of the minimum area of a lot required under the zoning ordinance may be satisfied by land which is under water. Where a watercourse separates the buildable area of a lot from the street by which it has access, provisions shall be made for installation of a culvert or other structure, of a design approved by the city engineer.

(Ord. No. 80-8828, § 1(3.2), 12-22-80)

Sec. 36-73. Performance bond.

(a) A performance bond, if required, shall include an amount to guarantee completion of all requirements contained in this chapter, including, but not limited to, lot drainage, fencing, sidewalk construction, and all other lot improvements required by the planning commission. Such performance bond shall be sufficient to cover the cost of the improvements as determined by the city engineer, shall specify the time for completion, and be filed with the city clerk.

(b) At the expiration of the performance bond, whether or not a certificate of occupancy has been issued, the city may enforce the provisions of the bond where the provisions of this section or any other applicable law, ordinance or regulation have not been complied with.

(Ord. No. 80-8828, § 1(3.3), 12-22-80)

Sec. 36-74. General street requirements.

(a) *Frontage on improved streets.* No subdivision shall be approved unless the area to be subdivided shall have frontage on and access from an existing state, county, or township highway; or a street shown upon a plat approved by the planning commission and recorded in the county register of deeds' office. The planning commission shall further require that the entire right-of-way required by this chapter and official street classification plan and/or major street plan be dedicated to the board of commissioners as a condition of final plat approval.

(b) *Topography and arrangement.*

(1) All streets shall be arranged so as to obtain as many building sites as possible at or above the grades of the streets. Grades of streets shall conform as closely as possible to the original topography. A combination of steep grades and curves shall be avoided.

(2) All streets shall be properly integrated with the existing and proposed system of thoroughfares and dedicated rights-of-way as established on the official street classification and/or major street plan.

(3) All thoroughfares shall be properly related to special traffic generators such as industries, business districts, schools, churches and shopping centers; to population densities and to the pattern of existing and proposed land uses.

(4) Residential streets shall be laid out to conform as closely as possible to the topography, to discourage use by through traffic, to permit efficient drainage and utility systems, and to require the minimum number of streets necessary to provide convenient and safe access to property.

(5) The use of curvilinear streets, culs-de-sac or U-shaped streets shall be encouraged.

(6) In business or industrial developments, the streets and other access ways shall be planned in connection with the grouping of buildings, location of rail facilities and the provision of alleys, truck loading and maneuvering areas, walks and parking areas so as to minimize conflict of movement between the various types of traffic, including pedestrian.

(c) *Blocks.*

(1) Blocks shall have sufficient width to provide for two (2) tiers of lots of appropriate depths. Exceptions to this prescribed block width shall be permitted in blocks adjacent to railroads, waterways, arterials or unplatted property.

(2) The lengths, widths and shapes of blocks shall be such as are appropriate for the locality and the type of development contemplated, but block lengths in residential areas shall not exceed three thousand two hundred (3,200) feet in perimeter measurement. Non-through streets (cul-de-sacs) shall not be included in the perimeter measurement. Blocks along arterials shall not be less eight hundred (800) feet in length.

(3) The planning commission may require the reservation of easements and/or rights-of-way through blocks to accommodate utilities, drainage facilities or pedestrian traffic.

Pedestrian ways or crosswalks not less than ten (10) feet wide may be required by the planning commission through blocks more than eight hundred (800) feet long in order to provide circulation or access to schools, playgrounds, shopping centers, transportation or other community facilities.

Blocks designed for industrial use shall be of such length and width as may be determined suitable by the planning commission for prospective use.

(d) *Access to arterials.* Where a subdivision borders on or contains an existing or proposed arterial, the planning commission may require that access to such arterial streets be limited by one (1) of the following means:

(1) The subdivision of land so that lots back onto the arterial and front onto a parallel local street; no access shall be provided by the developer in a strip of land along the rear property line of such lots.

(2) A series of culs-de-sac, U-shaped streets, or short loops entered from and designed generally at right angles to such a parallel street, with the rear lines of their terminal lots backing onto the arterial. No access to the arterial shall be allowed.

(3) A frontage street (separated from the arterial by a planting or grass strip and having access thereto at suitable points).

(e) [*Street names.*] Names shall be sufficiently different in sound and in spelling from other street names in the city, so as not to cause confusion. A street which is, or is planned as, a continuation of an existing street shall bear the same name.

(f) [*Reserve strips.*] Except as required in subsection (d), the creation of reserve strips adjacent to a proposed street in such a manner as to deny access from adjacent property to such street shall not be permitted.

(g) *Layout and dedication of streets and dead-end streets.*

(1) *Dedication of streets.* The arrangement of streets shall provide for the continuation of principal streets between adjacent properties when such continuation is necessary for convenient movement of traffic, effective fire protection, efficient provision of utilities, and where such continuation is in accordance with the city plan. If the adjacent property is undeveloped and the street must be a dead-end street temporarily, the right-of-way shall be extended to the property line. A temporary cul-de-sac shall be provided on all temporary dead-end streets, with the notation on the subdivision plat that land outside the normal street right-of-way shall revert to

abuttors whenever the street is continued. The planning commission may limit the length of temporary dead-end streets in accordance with the design standards of this chapter.

(2) *Dead-end streets (permanent).* A dead-end street shall be designed as a cul-de-sac street and shall consist of a fifty (50) foot right-of-way leading from a street terminated by a circular turnaround. The right-of-way of the turnaround shall not be less than one hundred (100) feet in diameter. The maximum length of a cul-de-sac street shall be six hundred (600) feet from the right-of-way line of the commencing street along the centerline right-of-way out of the cul-de-sac to the right-of-way line of the turnaround. See section 36-77 (a)(1).

(Ord. No. 80-8828, § 1 (3.4), 12-22-80; Ord. No. 86-9143, § 1, 7-21-86; Ord. No. 87-9188, § 1, 5-18-87; Ord. No. 96-9760, § 1, 9-16-96)

Sec. 36-74.1 Street design standards.

(a) *Public streets.* In order to provide for streets of suitable location, width and improvement to accommodate prospective traffic and afford satisfactory access to police, fire-fighting, snow removal, sanitation and road-maintenance equipment, and to coordinate streets so as to compose a convenient system and avoid undue hardships to adjoining properties, the following design standards are hereby required (see Table I). Street classification may be indicated on the official street classification and/or major street plan; otherwise, it shall be determined by the Planning Commission. These standards may be modified on a showing that special conditions exist such as drainage and utility requirements, safe and efficient traffic movement, intersection design or emergency services access. Access control and acceleration and deceleration lanes may be required to properly handle traffic flow and to protect the carrying capacity of the street. Public streets shall be constructed in accordance with city design standards and specifications.

Table I
Public Street Design Standards

Street Classification	Min. R/W Width	Min. Pvmt. Width*	Min. Curve Radius	Min. Tangent Length Between Curves
Arterial 5-Lane 4-Lane	 100' 80'	 65' 53'	 500' 500'	 200' 200'
Collector 3-Lane 2-Lane	 70' 60'	 41' 33' (29')[1]	 300' 300'	 150' 150'
Local Street	60'	29' (33')[2]	150'	100'
Frontage Road	50'	25'	150'	100'
Cul-de-sac Approach Turnaround	 50' (60')[3] 100'	 29' 90'**	 150' ----	 100' ----

**Back of curb to back of curb.*
***Allows for an optional island with a 15' radius in residential areas.*

Footnotes to Table I

[1] City Engineer may approve a reduction in paving width on a two lane collector street from 33' B-B to 29' B-B when on street parking is prohibited.

[2] City Engineer may require a 33' pavement width on local streets that serve as through streets or major entry points into subdivisions.

[3] 60' right-of-way is required on dead end streets that exceed 600 ft. in length.

(b) *Private Streets.*

(1) Private streets may be approved within Planned Development Districts in accordance with Section 42-403(a)(11) when:

a. The proposed private streets will have direct access onto a public street;

b. The proposed private streets are not necessary to provide direct traffic access to public streets from properties located outside the development;

c. The proposed private streets are so laid out or designed so as to discourage through traffic; and

d. The proposed private streets will provide for adequate access, the safe movement of traffic, proper drainage and serve as an adequate alternative to a public street.

(2) A notation shall be placed on all plats of any subdivision in which private streets are established stating that: "All maintenance of the right-of-way and street surface shall be the responsibility of the abutting property owner or owner's association. No private street may be dedicated to or accepted by the City of Salina for public street purposes until it is brought into conformance with the minimum standards for public streets of the city."

(3) When private streets are proposed, the developer shall submit to the Planning Commission for approval a written and binding declaration, to be recorded with the final plat establishing an owner's association or similar legal entity which will have:

a. The legal authority to maintain and exercise control over the street; and

b. The power to compel contributions from owners within the development to cover their proportionate shares of the cost associated with maintenance of the street.

(4) Private streets shall be designed so as to provide a minimum of forty-five (45) feet of right-of-way and twenty-five (25) feet of paved driving surface. Private cul-de-sacs shall be designed to provide a minimum of twenty (20) feet of circular paved driving surface with the outer edge of the pavement having a minimum radius of thirty-five (35) feet within a right-of-way having a minimum radius forty (40) feet. All private streets shall conform to the design standards established by the City Engineer which is herein adopted by reference as if set out at length in this section.

(5) Street names shall be assigned by the developer, subject to Planning Commission approval, by placing the name on the plat. Names shall be sufficiently different in sound and spelling so as not to cause conflict or confusion with existing public or private streets. The city shall install street name signs within the public right-of-way at the intersection of public streets and private streets. Street name signs shall be installed by the developer at all other intersections within the development prior to issuance of any building permits. The private street name signs shall be constructed, located and installed in accordance with design standards established by the City Engineer.

(6) All lots and tracts which have frontage on and take their primary access from a named private street shall have an address assigned off of that private street.

(7) For the purpose of this section, a "private street" shall mean any open way used for vehicular traffic, not dedicated to the public and not a shared driveway or part of a parking lot, designed and used to provide vehicular access to two (2) or more lots or tracts.

(c) *Railroads and limited access highways.* Railroad rights-of-way and limited access highways where located as to affect the subdivision of adjoining lands shall be treated as follows:

(1) In residential districts a buffer strip at least twenty-five (25) feet in depth in addition to the normal depth of the lot required in the district shall be provided adjacent to the railroad right-of-way or limited access highway. This strip shall be part of the platted lots and shall be designated on the plat: "This strip is reserved for screening. The placement of habitable structures hereon is prohibited.

(2) Streets parallel to the railroad, when intersecting a street which crosses the railroad at grade, shall be a distance of at least one hundred fifty (150) feet from the railroad right-of-way. Such distance shall be determined with due consideration of the minimum distance required for future separation of grades by means of appropriate approach gradients.

(d) *Intersections:*

(1) Streets shall be laid out so as to intersect as nearly as possible at right angles. A proposed intersection of two (2) new streets shall have no angle less than seventy-five (75) degrees. An oblique street shall be curved approaching an intersection and be approximately at right angles for at least one hundred (100) feet from the intersection. Not more than two (2) streets shall intersect at any point unless specifically approved by the Planning Commission.

(2) A proposed new intersection along one side of an existing arterial street shall, wherever practicable, coincide with any existing intersections on the opposite side of such street. Street jogs with centerline offsets of less than one hundred fifty(150)feet shall not be permitted on any class street, except where the intersected street has separated dual drives without median breaks at either intersection. Intersections of streets along arterials shall be at least eight hundred (800) feet apart.

(Ord. No. 96-9760, § 1, 9-16-96; Ord. No. 98-9904, § 1, 12-7-98; Ord. No. 03-10144, §, 8-25-03; Ord. No. 04-10203, § 1, 5-7-04)

Sec. 36-74.2. Street dedications and reservations.

(a) *New perimeter streets.* Street systems in new subdivisions shall be laid out so as to eliminate or avoid new perimeter half streets except when necessary for street alignment. Where an existing half street is adjacent to new subdivision the other half of the street shall be dedicated by the subdivider. The planning commission may authorize a new perimeter street where the subdivider dedicates the entire required street right-of-way width within their own subdivision.

(b) *Widening and realignment of existing streets.* Where a subdivision borders an existing narrow street or when the master plan, official map or zoning setback regulations indicate plans for realignment or widening of a street that would require use of some of the land in the subdivision, the applicant shall be required to dedicate such areas for widening or realignment of such street. Such frontage streets shall be dedicated by the applicant at his own expense to the full width as required by this chapter. Land reserved for any street purposes may not be counted in satisfying yard or area requirements of the zoning ordinance whether the land is to be dedicated to the city in fee simple or an easement for roadway purposes is granted to the city.

(Ord. No. 96-9760, § 1, 9-16-96)

Sec. 36-75. Drainage and storm sewers.

(a) *General requirements.* The planning commission shall not approve any plat of a subdivision which does not make adequate provisions for storm water runoff control. This control may be accomplished through the use of temporary detention basins, open channels, and/or closed conduits. The applicant shall be required to submit a drainage report prepared by a licensed professional engineer which examines the effects of the proposed subdivision on all upstream and downstream drainage conditions. The scope of this report shall be determined by the city engineer. The drainage report shall assume the ultimate development of the entire drainage basin based upon the current land use plan and the current and proposed zoning of the land within the drainage basin. Calculation of storm flows and runoff characteristics of the subdivision shall be performed in accordance with the design criteria established by the city engineer. The city engineer shall inform the planning commission, in writing, of the effects of the proposed subdivision on the existing storm drainage system based upon the above submitted drainage report. The city may require the developer of the proposed subdivision to construct or cause to be constructed all necessary storm drainage systems, designed in accordance with the design criteria established by the city engineer, prior to the issuance of any building permit.

(b) *Location.* Drainage facilities shall be located in the street right-of-way where feasible, or in perpetual unobstructed easements of appropriate width.

(c) *Floodplain areas.* The planning commission, when it deems necessary for the health, safety or welfare of the present and future population of the area and necessary for the conservation of water, drainage and facilities, may prohibit the subdivision of any portion of the property which lies within the floodplain of any stream or drainage course. These floodplain areas shall be preserved from any and all destruction or damage resulting from clearing, grading or dumping of earth, waste materials or stumps, except at the direction of the planning commission.

(d) *Dedication of drainage easements:*

(1) *General requirements.* Where a subdivision is traversed by a watercourse, drainageway, channel or stream, there shall be provided a storm water easement or drainage right-of-way conforming substantially to the lines of such watercourse, and of such width and construction as will be adequate for the purpose. The drainage shall be maintained by an open channel with landscaped banks and adequate width for maximum potential volume of flow, unless some other design is approved by the city engineer and planning commission.

(2) *Drainage easements:*

a. Where topography or other conditions are such as to make impractical the inclusion of drainage facilities within street rights-of-way, perpetual unobstructed easements at least fifteen (15) feet in width, or more if determined necessary by the city engineer, shall be provided across property outside the street. Drainage easements shall be carried from the street to a natural watercourse or to other drainage facilities.

b. When a proposed drainage system will carry water across adjacent private land outside the subdivision, appropriate drainage rights must be secured and indicated on the plat.

c. The applicant shall dedicate, either in fee simple or by drainage or conservation easement, land on both sides of existing watercourses, to a distance to be determined by the planning commission.

d. Low-lying lands along watercourses subject to flooding or overflowing during storm periods, whether or not included in areas for dedication, shall be preserved and retained in their natural state as drainage ways. Not more than twenty-five (25) percent of such land or land subject to periodic flooding shall be computed for determining the number of lots to be utilized or for computing the area requirements of any lot.

(Ord. No. 80-8828, § 1 (3.5),12-22-80)

Sec. 36-76. Water and sewer facilities.

(a) *Individual wells and central water systems.* If a public water system is not available, individual wells may be used or a central water system provided in such a manner that an adequate supply of potable water will be available to every lot in the subdivision. Water samples shall be submitted to the health department for its approval. Individual wells and central water systems shall be approved by the appropriate health authorities. Certification of approval shall be submitted to the planning commission, prior to preliminary plat approval.

(b) *Individual sewerage systems and package plants.* If municipal sewerage system is not available, an individual sewage treatment system may be used or a public sewerage system provided in such a manner that said system shall be approved by the appropriate state and/or local health authorities.

(Ord. No. 80-8828, § 1(3.6), 12-22-80)

Sec. 36-77. Sidewalks.

(a) *Required improvements:*

(1) Sidewalks shall be included within the dedicated nonpavement right-of-way on both sides of all streets except cul-de-sacs. No sidewalks shall be required on culs-de-sac provided the six hundred (600) foot maximum length requirement in section 36-74(a)(7)b. has not been varied under the provisions of section 36-10.

(2) The developer will be required to construct the sidewalk prior to the issuance of an occupancy permit for any building or post a performance bond to insure construction.

(3) Sidewalks shall be built in the public right-of-way with the inside edge approximately one (1) foot outside the property line unless an exception is approved by the city engineer due to topography, the presence of trees or other obstructions or to match an existing curbside sidewalk. Sidewalks shall be constructed in accordance with city design standards and specifications.

(b) *Widening and realignment of existing streets.* Where a subdivision borders an existing narrow street or when the master plan, official map or zoning setback regulations indicate plans for realignment or widening of a street that would require use of some of the land in the subdivision, the applicant shall be required to dedicate such areas for widening or realignment of such street. Such frontage streets shall be dedicated by the applicant at his own expense to the full width as required by this chapter. Land reserved for any street purposes may not be counted in satisfying yard or area requirements of the zoning ordinance whether the land is to be dedicated to the city in fee simple or an easement for roadway purposes is granted to the city.

(Ord. No. 80-8828, § 1(3.7), 12-22-80; Ord. No. 98-9904, § 2, 12-7-98)

Sec. 36-78. Utilities.

(a) All new utility lines, including but not limited to natural gas, electrical power, telephone lines and cable TV cables shall be placed underground within designated easements in all residential subdivisions within the City of Salina that are approved after the effective date of this provision. The subdivider, developer or owner of the property being platted shall make the necessary arrangements with the utility provider for the installation of underground utilities. No building permit for a principal structure shall be issued in a subdivision where underground utilities are required until the utility companies involved have provided confirmation to the building official that the necessary utility lines for that property have been installed or that they have commenced installation of the utility lines.

The provisions of this Section shall not apply to any of the following:

(1) Poles used exclusively for street or area lighting or traffic control signals.

(2) Radio, television, and wireless communication towers and antennas.

(3) Existing poles, overhead wires, and associated overhead structures, when part of a continuous line, or services to individual properties from existing overhead lines that are within a subdivision previously approved in conformance with these regulations. Nothing in this section will prevent the replacement of existing poles, overhead wires, and associated overhead structures on lines when necessary for the purpose of maintaining the line or upgrading the capacity.

(4) Subdivisions located within the urban service area but outside the city limits.

(5) New subdivisions or replats of existing subdivisions that are less than ten (10) acres in size and are located in developed areas which presently have an overhead type of distribution system.

(6) Electric distribution or transmission lines with capacities of three thousand (3,000) KVA or more.

(7) Transformers, transformer pads, telephone service pedestals or other above-ground facilities normally used with and as a part of an underground distribution system.

(8) Existing poles, overhead wires, and associated overhead structures, when part of a continuous line, or services to individual properties from such existing overhead lines that are within a subdivision previously approved in accordance with existing regulations.

(9) Existing poles, overhead wires, and associated overhead structures, when part of a continuous line, or services to individual properties from such existing overhead lines that serve properties adjacent to but not within areas being subdivided.

(10) Existing overhead lines attached to the exterior surface of a building by means of a bracket or other fixture and extending from one (1) location on the building to another location on the same building, or to an adjacent building without crossing a property line.

(11) Any communication line, which would otherwise be required by this Section to be underground that uses an overhead pole or structure exempted by this section.

(12) Underground installation of wiring or electrical power, telephone and cable television shall not be required in flood plain areas, drainage easements, major drainage ways or other areas where there is frequently standing water.

The subdivider may request a waiver from the requirements of section 36-78(a) if physical conditions of the land, or economic conditions associated with the nature of the subdivision in question make underground installation infeasible. Such request shall be accompanied by a report from the responsible utility provider stating the per linear foot cost differential between the average cost of installation of underground utilities and the estimated cost for the subject subdivision. The planning commission shall review the request and make a recommendation to the governing body as to whether the request shall be approved or denied.

(b) Easements centered on rear or side lot lines shall be provided where necessary for utilities (private and municipal), and such easements shall be at least twenty (20) feet wide. Coordination shall be required between the subdivider and the applicable utility companies for the establishment of necessary utility easements on adjoining properties outside the boundaries of the proposed subdivision.

(Ord. No. 80-8828, § 1(3.8), 12-22-80; Ord. No. 02-10081, § 1, 5-20-02)

Sec. 36-79. Public uses.

The applicant at his discretion, may choose to dedicate a portion of the plat to the city for use as a park, playground, school or any other public use. After proper determination of its necessity by the planning commission, and the appropriate city official or public agency involved in the acquisition and use of each such site and a determination has been made to acquire the site by the public agency, the site may be dedicated by the applicant to the city or other appropriate agency on the final plat.

(Ord. No. 80-8828, § 1(3.9), 12-22-80)

Sec. 36-80. Preservation of natural features and amenities.

(a) *General.* Existing features which would add value to residential development or to the city as a whole, such as trees, as herein defined, watercourses, historic spots and similar irreplaceable assets, shall be preserved in the design of the subdivision.

(b) *Protection from harmful influences:*

(1) Every effort shall be made to protect adjacent residential areas from potential nuisance of existing or proposed nonresidential subdivisions, including the provision of extra depth in parcels backing on existing or potential residential or nonresidential development and provisions for a permanently landscaped buffer strip when deemed necessary by the planning commission.

(2) Street carrying nonresidential traffic, especially truck traffic, shall not be extended to the boundaries of adjacent existing or potential residential areas.

(Ord. No. 80-8828, § 1(3.10), 12-22-80)

Sec. 36-81. Dedication of public park land.

(a) *General requirement.* In subdividing or resubdividing land zoned and intended for residential use, the developer shall dedicate or reserve land for public park purposes, or pay a fee in lieu of dedication, or select a combination of dedication and a fee. The method chosen to meet this requirement shall be determined by the developer with consideration given to the standards set out in these regulations and the recommendation of the parks and recreation advisory board. Provided however, the board of commissioners shall not be obligated to accept a dedication or reservation of land even if the final plat approved by the planning commission includes a dedication or reservation.

(b) *Amount of dedication.* The number of acres of land required to be dedicated or reserved shall be determined from the following table, which is based on the density of development as permitted by the zoning of the property being subdivided. The area required to be dedicated or reserved shall be exclusive of all street rights-of-way and drainage detention pond easements.

	Zoning of Area	*Percent of Total Land Area Being Subdivided to be Dedicated or Reserved for Park Purposes*
RS	Residential suburban	2
R, R-1	Single-family residential	5
R-2	Multi-family residential	6
R-2.5	Multi-family residential	8
R-3	Multi-family residential	10
PDD	Residential	2 - 10

(c) *Location and design standards.* Any land dedicated or reserved shall conform with the comprehensive plan of the city and be consistent with the plans and policies of the parks and recreation advisory board. The location, size and configuration of the land to be dedicated or reserved shall be determined by the design of the streets, lots, and blocks of the subdivision with consideration given to the preservation of natural physical features.

All lands to be dedicated or reserved shall meet the following standards, unless a variation or exception is granted as provided in section 36-10:

(1) No dedications or reservations shall be accepted from subdivisions of tracts containing less than twenty (20) acres.

(2) The dedicated tract shall contain not less than two (2) contiguous acres and be a minimum of two hundred (200) feet at the narrowest dimension.

(3) The dedicated tract shall have at least two hundred (200) feet of street frontage and be easily accessible to residents of adjacent subdivisions. Consideration shall be given to placing parks where they can be added to by future subdivisions.

(4) At least fifty (50) percent of the dedicated tract shall have a grade of less than four (4) percent. The balance may consist of steep slopes, streams, ditches, lakes or other natural features.

(5) Natural features such as wooded areas, streams, oxbows, and other natural assets shall be preserved whenever possible.

(d) *Payment in lieu of dedication.* In the event the land to be dedicated or reserved is less than the amount of acreage required or the land does not meet the location and design standards, the payment of a fee in lieu of dedication shall be required. The fee shall be based on the total number of dwelling units permitted within the subdivision times a fee schedule for each dwelling unit type. Said fee schedule shall be as established by Ordinance Number 97-9847 and any amendments thereto.

Any fees collected shall be placed in a neighborhood park account and used for improvement of neighborhood parks including acquisition of land. Such fees must be used for land and facilities that will be located in the neighborhood park service area of the subdivision from which the fees were collected. A record of fees paid into and expended from the fund, shall be kept by the city. In the event funds have not been expended on such purposes within fifteen (15) years from the date received then the fees shall be refunded in the following manner:

(1) If paid in full at the time of platting, to the developer.

(2) If paid at the time of the building permit, to the record property owner at the time of the refund.

(e) *Credit for private open space.* Private open space for park and recreational purposes within a proposed development may be credited for up to fifty (50) percent of the requirement for dedication of public park land or payment of a fee in lieu thereof provided that the following standards are met:

(1) That yards, setbacks and other open areas required by zoning and building regulations shall not be included in computing the area set aside as private open space.

(2) That the private open space shall be reasonably useable for park and recreation purposes.

(3) That the private open space shall be perpetually restricted for park and recreation purposes by recorded plat or restrictive covenant.

(4) That the private open space shall be permanently owned and maintained by the owner of the development or by a legally established homeowners association.

(f) *Indication on preliminary plat.* At the time of preliminary plat submittal, the developer shall indicate whether a dedication of land or a fee in lieu of dedication is being proposed. Any land proposed to be dedicated shall be shown on the preliminary plat. The proposed plat shall be referred to the parks and recreation advisory board for review and recommendation.

(g) *Prerequisite for final plat approval.* When land is being dedicated it shall be shown on the final plat and marked "Dedicated for Public Park Purposes." Such dedications shall not be effective until the dedication has been specifically accepted by the board of commissioners.

When a fee in lieu of dedication is required, total payment shall be made prior to final plat approval by the board of commissioners or, at the option of the developer, payment may be made at the time of issuance of a building permit on each individual lot. In the latter case, the fee shall be in accordance with the fee schedule referenced in section (d).

(h) *Reservation of park land.* In some cases, the board of commissioners may determine that the reservation of park land for future dedication is more appropriate than immediate dedication of such land. In such cases, the land to be reserved shall be shown on the final plat and marked "Reserved for Public Park Purposes" and a covenant shall be written on the recorded plat indicating the latest date, time and manner in which dedication shall occur. Such future dedications shall be at no cost to the city except for the reimbursement of any costs paid by the owner for street, utility, drainage, and other public improvements benefitting the reserved land.

(i) *Effective area.* The requirements herein shall apply to all lands within the city limits or being annexed into the city limits concurrent with subdivision approval lying south and east of a line described as follows: beginning where Magnolia Road extended intersects the western boundary of the city; thence easterly along Magnolia Road to Ninth Street; thence northerly along Ninth Street to Cloud Street; thence easterly along Cloud Street to Ohio Street, thence northerly along Ohio Street to Crawford Avenue; thence easterly along Crawford Avenue to the Smoky Hill River; thence northerly along the Smoky Hill River and cutoff channel to the northeastern boundary of the city.

(Ord. No. 97-9832, § 1, 12-22-97)

Secs. 36-82--36-90. Reserved.

ARTICLE IV. SPECIFICATIONS FOR DOCUMENTS TO BE SUBMITTED

Sec. 36-91. Preliminary plat.

The preliminary plat shall be prepared by a registered land surveyor, licensed engineer or registered architect drawn to a scale of not more than one hundred (100) feet to an inch on a sheet with dimensions of twenty-four (24) by thirty-six (36) inches. Sheets shall be numbered in sequence if more than one (1) sheet is used. The plat shall contain the following:

(1) *Name:*

a. Name of subdivision if property is within an existing subdivision;

b. Proposed name if property is not within a previously platted subdivision. This name shall not be so similar to any existing subdivision name in or near the city as to cause confusion.

(2) *Ownership:*

a. Name, address and telephone number of legal owner or agent of property and citation of last instrument conveying title to each parcel or property involved in the proposed subdivision, giving grantor, grantee, date and land records reference;

b. Citation of any existing legal rights-of-way or easements affecting the property;

c. Existing covenants on the property, if any;

d. Name, address and telephone number of the professional person responsible for surveys, subdivision design, and for the design of public improvements.

(3) *Description.* Location of property by government lot, section, township, range and county, north arrow, graphic scale, written scale and date of preparation.

(4) *Features:*

a. Location of property lines and names of all adjoining property owners from the latest assessment rolls as stated in section 36-39. The location of existing easements, burial grounds, railroad rights-of-way, watercourses, wooded areas and individual trees as defined in this chapter;

b. Location, width and names of all existing or platted streets or other public ways within or immediately adjacent to the tract and the location and width of proposed streets;

c. Location and sizes of existing sewers, water mains, culverts, wells, septic tanks, and other underground structures within the tract and immediately adjacent thereto; existing permanent buildings and utility poles on or immediately adjacent to the site and utility rights-of-way;

d. If other than public systems are proposed, preliminary proposals for alternative means of providing water supply and sanitary waste treatment and disposal; preliminary provisions for collecting and discharging surface water drainage;

e. A vicinity map showing streets and other general development of the surrounding area;

f. Whenever the plat covers only a part of an applicant's contiguous holdings, the applicant shall submit, at a scale of no more than two hundred (200) feet to the inch, a sketch of the proposed subdivision area, together with its proposed street system and an indication of the probable future street and drainage system of the remaining portion of the tract;

g. The location, bearings and dimensions of all boundary lines of the property to be expressed to the nearest foot; this boundary survey shall be prepared by a registered land surveyor;

h. The location of pertinent features such as swamps, parks, bridges, railroads, as determined by the planning commission; ground elevation at vertical intervals not exceeding five (5) feet in areas of fifteen (15) percent grade or more and two (2) feet in all other areas of lesser grade;

i. The locations and dimensions of all proposed or existing lots expressed to the nearest foot;

j. The locations and dimensions of all property proposed to be set aside for park and playground use, or other public or private reservation, with designation of the purpose thereof, and conditions, if any, of the dedication or reservation;

k. The name and address of the owner or owners of land to be subdivided, the name and address of the subdivider if other than the owner, and the name of the land surveyor, engineer or architect;

l. The date of the plat, approximate north point, graphic and written scale and sufficient data acceptable to the city engineer to determine readily the location, bearing and length of all lines, and to reproduce such lines on the ground; the location of all proposed monuments;

m. Names of all new streets;

n. Front yard setback lines for all lots and portions of lots as required by the zoning regulations;

o. Blocks shall be consecutively numbered. All lots in each block shall be consecutively numbered;

p. A statement of the use of any lot as proposed by the applicant;

q. Explanation of drainage easements, site easements and reservations, if any;

r. The area of the plat and closure calculations of the exterior boundary including the latitude and departure of each course shall be submitted. The area of the subdivision shall be computed by the double meridian distance (D.M.D.) method. The error of closure of the perimeter survey shall not exceed one (1) foot for each five thousand (5,000) feet of perimeter;

s. The lack of information under any specified item herein, or improper information supplied by the applicant, shall be cause for disapproval of a preliminary plat.

(Ord. No. 80-8828, § 1(4.1), 12-22-80; Ord. No. 90-9386, §§ 5, 7, 6-18-90)

Sec. 36-92. Final plat.

(a) *General*. The final plat shall be submitted in the form of an original drawing in waterproof ink on mylar or other polyester drafting film drawn to a scale no smaller than one (1) inch to one hundred (100) feet on a twenty-four (24) by thirty-six (36) inch sheet. The final subdivision plat shall be

prepared by a registered land surveyor. It is desirable that the drawing of the final plat appear on a single sheet. When this is impossible, a small scale key map shall appear on the first sheet showing the entire area platted and the sheet on which each platted area appears. All revision dates must be shown as well as the following:

(1) Name of the subdivision;

(2) Location map showing the location of the subdivision relative to adjacent subdivisions, tracts and the city limits;

(3) A legal description prepared by a registered land surveyor of the tract being subdivided;

(4) The perimeter boundary lines of the subdivision showing all property corners, land lines, distances, bearings and angles, and other references used in the legal description of the tract. The boundary of the platted areas should be accurately indicated by a heavy solid line;

(5) All lot lines, right-of-way lines, streets and easements shall be shown with their dimensions to the nearest one hundredth (0.01) of a foot and in actual respective location;

(6) Prior to the submittal of the final plat, all block corners, including the PC and PT of curved block lines, shall be marked by iron monuments no smaller than one-half inch in diameter and two (2) feet in length, driven into the ground flush with the existing ground surface. The location of such monuments shall be shown on the final plat and marked on the ground by use of wooden stakes. Sufficient information shall be shown on the plat to allow an experienced surveyor to locate or relocate all points and lines shown on the plat, including all pertinent curve data. The error of closure of the boundaries of any enclosed area within the plat shall not exceed one (1) foot in three thousand (3,000) feet;

(7) Prior to the submittal of the final plat, all corners in the boundary of the subdivision shall be monumented with an iron bar no smaller than one-half inch in diameter and two (2) feet in length, set rigidly in concrete (K.S.A. 58-2001);

(8) Where any section or quarter-section corner is involved, in the control establishing the location of a subdivision boundary, said point shall be clearly monumented and referenced before it is used in the subdivision control;

(9) All areas, except street rights-of-way and utility easements, to be dedicated to the public or reserved for public use or for the exclusive use of the property owners within the subdivision, shall be clearly outlined and a legal description of the same shall appear on the final plat with the intended use clearly noted thereon;

(10) North point, graphic scale, written scale and date of preparation;

(11) Protective covenants shall be lettered on the final plat or submitted on a separate sheet with appropriate references made on the final plat, and signed by the subdivider and/or owner;

(12) Lots and blocks shall be numbered in an orderly manner conforming with established numbering procedures previously used in the city and approved by the city engineer;

(13) Any restrictions in addition to the protective covenants shall be lettered on the plat;

(14) All easement lines shall be shown and properly labeled and dimensioned;

(15) All plats located in a flood hazard area shall conform to Resolution No. 3186 and shall be so noted on the plat. Suggested wording is as follows:

"This plat shall conform with the provisions of Resolution No. 3186 of the City of Salina dealing with flood hazard areas."

(16) The flood fringe and floodway, if known, shall be identified on the plat.

(b) *Certificates.* The following certificates, duly signed as appropriate, shall appear on the final plat upon its submittal:

SURVEYOR'S CERTIFICATE

STATE OF KANSAS)
)ss
COUNTY OF SALINE)

I, the undersigned, do hereby certify that I am a registered land surveyor in the State of Kansas, with experience and proficiency in land surveying; that the heretofore described property was surveyed and subdivided by me, or under my supervision; that all Subdivision Regulations of the City of Salina, Kansas have been complied with in the preparation of this plat; and that all of the monuments shown herein actually exist and their positions are correctly shown to the best of my knowledge and belief.

Given under my hand and seal at _____, Kansas, this _____ day of _____, A.D. 19___.

_____

OWNER'S CERTIFICATE

STATE OF KANSAS)
)ss
COUNTY OF SALINE)

This is to certify that the undersigned is the owner(s) of the land described in the plat, and that he has caused the same to be surveyed and subdivided as indicated thereon, for the uses and purposes therein set forth, and does hereby acknowledge and adopt the same under the style and title thereon indicated.

All street rights-of-way as shown on this plat are hereby dedicated to the public. An easement or license to the public to locate, construct and maintain or authorize the location, construction and maintenance of poles, wires, conduits, water, gas and sewer pipes or required drainage channels or structures under or upon the area marked for easements on this plat is hereby granted.

Given under my hand at _____, Kansas, this _____ day of _____, A.D. 19_____.

_____

STATE OF KANSAS)
)ss
COUNTY OF SALINE)

The undersigned, being a duly licensed and bonded abstracter or authorized representative thereof, hereby certifies that the above is the legal owner(s) of record of the property shown on this plat.

Dated this _____ day of _____, A.D. 19_____.

_____

CORPORATE OWNER'S CERTIFICATE

STATE OF KANSAS)
)ss
COUNTY OF SALINE)

This is to certify that the undersigned Proprietor, _____, owns the land described in the plat and has caused the same to be surveyed and subdivided as indicated thereon, for the uses and purposes therein set forth and does hereby acknowledge and adopt the same under the style and title thereon indicated.

All streets as shown on this plat are hereby dedicated to the public. An easement or license to the public to locate, construct and maintain or authorize the location, construction and maintenance of poles, wires, conduits, water, gas and sewer pipes or required drainage channels or structures under or upon the areas marked for easements on this plat is hereby granted.

Given under my hand at _____, Kansas, this _____ day of _____, A.D. 19_____.

_____
Corporate Name

_____
Corporate Title

ATTEST:

_____
, Secretary

STATE OF KANSAS)
)ss
COUNTY OF SALINE)

The undersigned, being a duly licensed and bonded abstractor or an authorized representative thereof, hereby certifies that the above is the legal owner(s) of the property shown on this plat.

Dated this _____ day of _____, A.D. 19_____.

_____

NOTARY CERTIFICATE

STATE OF KANSAS)
)ss
COUNTY OF SALINE)

I, _____, a Notary Public in and for said county, in the state aforesaid, do hereby certify that_____, personally known to me to be the same person(s) whose name(s) are subscribed to the foregoing instrument as such owner(s), appeared before me this day in person and acknowledged that he (they) signed and delivered the plat as his (their) own free and voluntary act for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this _____ day of _____, A.D. 19_____.

_____

COUNTY CLERK AND CITY CLERK CERTIFICATE

STATE OF KANSAS)
)ss
COUNTY OF SALINE)

I do hereby certify that there are no delinquent general taxes, no unpaid current general taxes, no unpaid forfeited taxes, and no redeemable tax sales against any of the land included in this plat.

I further certify that I have received all statutory fees in conjunction with the plat.

Given under my hand and seal at Salina, Kansas, this _____ day of _____, A.D. 19_____.

_____ _____
County Clerk City Clerk

CERTIFICATE AS TO SPECIAL ASSESSMENTS

STATE OF KANSAS)
)ss
COUNTY OF SALINE)

I do hereby certify that there are no delinquent or unpaid current or forfeited special assessments or any deferred installments thereof that have not been apportioned against the tract of land included in this plat.

Given under my hand and seal at Salina, Kansas, this ____ day of _____, A.D. 19_____.

_____ _____
County Clerk City Clerk

SALINA CITY PLANNING COMMISSION CERTIFICATE

STATE OF KANSAS)
)ss
COUNTY OF SALINE)

Approved this _____ day of _____, A.D. 19_____.

SALINA CITY PLANNING COMMISSION
SALINA, KANSAS

_____
Chairman

ATTEST:

_____
Secretary

SALINE COUNTY PLANNING AND ZONING COMMISSION CERTIFICATE

STATE OF KANSAS)
)ss
COUNTY OF SALINE)

Approved this _____ day of _____, A.D. 19_____.

SALINE COUNTY PLANNING ZONING COMMISSION
SALINE COUNTY, KANSAS

_____
Chairman

ATTEST: _____
Secretary

CERTIFICATE OF THE CITY COMMISSION

STATE OF KANSAS)
)ss
COUNTY OF SALINE)

Approved this _____ day of _____, A.D. 19_____.

BOARD OF CITY COMMISSIONERS OF THE CITY OF SALINA, KANSAS

_____
Mayor

ATTEST: _____
City Clerk

CERTIFICATE OF THE COUNTY COMMISSIONERS

STATE OF KANSAS)
)ss
COUNTY OF SALINE)

Approved this _____ day of _____, A.D. 19_____.

BOARD OF COUNTY COMMISSIONERS OF SALINE COUNTY, KANSAS

_____
Chairman

ATTEST: _____
County Clerk

REGISTER OF DEEDS CERTIFICATE

STATE OF KANSAS)
)ss
COUNTY OF SALINE)

Plat of _____ Addition filed of record in my office on this _____ day of _____, at _____ M., and duly recorded in Volume _____ of Plats, at Page _____.

_____
Register of Deeds

Filing Fee of _____ Paid.

(Ord. No. 80-8828, § 1(4.2), 12-22-80; Ord. No. 90-9386, §§ 6, 7, 6-18-90)

Next page number is 525.

CHAPTER 37. TAXATION[1]

[1] **Editor's note:** Charter ord. no. 22, § 4, adopted September 15, 1986, repealed Ch. 37 which consisted of §§ 37-16--37-18. The aforesaid sections were concerned with the transient guest tax and the convention and tourism committee, and derived from the Code of 1966, §§ 32A-11--32A-13; and Ord. No. 80-8818, § 1, adopted November 10, 1980. For similar provisions, see App. A, Charter ord. no. 22.

Next page number is 535.

CHAPTER 38. TRAFFIC AND MOTOR VEHICLES[1]

Art.	**I.**	**In General, §§ 38-1--38-20**
Art.	**II.**	**Miscellaneous Rules, §§ 38-21--38-40**
Art.	**III.**	**Stopping, Standing and Parking, §§ 38-41--38-100**
		Div. 1. Generally, §§ 38-41--38-50
		Div. 2. Reserved, §§ 38-51--38-80
		Div. 3. Inoperable Vehicles, §§ 38-81--38-100
Art.	**IV.**	**Parades and Processions, §§ 38-101--38-115**
Art.	**V.**	**Trains and Railroads, §§ 38-116--38-130**
Art.	**VI.**	**Size, Weight and Load, §§ 38-131--38-150**
Art.	**VII.**	**Noise, §§ 38-151--38-157**

ARTICLE I. IN GENERAL

Sec. 38-1. Incorporating Standard Traffic Ordinance.

(a) *Incorporation by reference.* There is hereby incorporated by reference for the purpose of regulating traffic within the corporate limits of the City of Salina, Kansas, that certain standard traffic ordinance known as the "Standard Traffic Ordinance for Kansas Cities," 33rd Edition (2005), prepared and published in book form by the League of Kansas Municipalities, Topeka, Kansas, except as Sections 33 and 85 contained therein are modified as set forth in paragraphs (b) and (c) below. No fewer than three (3) copies of the Standard Traffic Ordinance shall be marked or stamped "Office Copy as Adopted by Ordinance Number 05-10295", with all sections or portions thereof intended to be omitted or changed clearly marked to show any such omission or change and to which shall be attached a copy of this section, and filed with the city clerk to be open to inspection and available to the public at all reasonable hours.

(b) *Amendment.* Section 33 of the Standard Traffic Ordinance is hereby amended to read as follows:

"Section 33. Maximum speed limits.

(a) Except when a special hazard exists that requires lower speed for compliance with Section 32, the limits specified in this section or established as hereinafter authorized shall be maximum lawful speeds, and no person shall drive a vehicle at a speed in excess of such maximum limits:

(1) In any city park, fifteen (15) miles per hour, unless posted differently, in which case the maximum speed limit shall be the posted speed limit;

(2) In any school zone, twenty (20) miles per hour;

(3) In any non-arterial residential district, thirty (30) miles per hour;

(4) In any alley, ten (10) miles per hour;

[1] **Cross references:** Ordinances prescribing traffic regulations for specific streets or areas saved from repeal, § 1-5(13); distributing matter in or attaching to motor vehicles, § 3-1; transportation of alcoholic liquor, § 5-23; mobile homes and trailers, Ch. 22; police, Ch. 30; standards for transportation in vehicles for private garbage haulers, § 34-51; streets, sidewalks and other public places, Ch. 35; vehicles for hire, Ch. 40. **State law references:** Automobiles and other vehicles generally, K.S.A. Ch. 8; powers of local authorities, K.S.A. Ch. 8, Art. 20.

(5) In all other locations, fifty-five (55) miles per hour, unless posted differently, in which case the maximum speed limit shall be the posted speed limit.

The maximum speed limits established by or pursuant to this paragraph shall be of force and effect regardless of whether signs are posted giving notice thereof.

(b) No person shall drive a school bus to or from school, or interschool functions or activities, at a speed greater than forty-five (45) miles per hour on any roadway having a dirt, sand or gravel surface, and in no event shall a school bus be driven to and from school, or functions or activities, in excess of fifty-five (55) miles per hour, notwithstanding any maximum speed limit in excess thereof. The provisions of this subsection shall apply to buses used for the transportation of students enrolled in community colleges or area vocational schools when such buses are transporting students to or from school functions or activities.

(c) *Amendment.* Section 85 of the Standard Traffic Ordinance is hereby amended to read as follows:

"Section 85. Stopping, Standing or Parking Prohibited in Specified Places. Except when necessary to avoid conflict with other traffic, or in compliance with law or the directions of a police officer or official traffic-control device, no person shall:

(a) Stop, stand or park a vehicle:

(1) On the roadway side of any vehicle stopped or parked at the edge or curb of a street;

(2) On a sidewalk;

(3) Within an intersection;

(4) On a crosswalk;

(5) Between a safety zone and the adjacent curb or within 30 feet of points on the curb immediately opposite the ends of a safety zone, unless a different length is indicated by signs or markings;

(6) Alongside or opposite any street excavation or obstruction when stopping, standing or parking would obstruct traffic;

(7) Upon any bridge or other elevated structure upon a highway or within a highway tunnel;

(8) On any railroad tracks;

(9) On any controlled-access highway;

(10) In the area between roadways of a divided highway, including crossovers;

(11) At any place where official signs prohibit stopping; or

(12) Alongside the curb of a street where the curb is painted yellow.

(b) Stand or park a vehicle, whether occupied or not except momentarily to pick up or discharge a passenger or passengers:

(1) In front of a public or private driveway;

(2) Within fifteen (15) feet of a fire hydrant;

(3) Within twenty (20) feet of a crosswalk at an intersection;

(4) Within thirty (30) feet upon the approach to any flashing signal, stop sign or traffic-control signal located at the side of the roadway;

(5) Within twenty (20) feet of the driveway entrance to any fire station and on the side of a street opposite the entrance to any fire station within seventy-five (75) feet of said entrance, when properly sign-posted;

(6) At any place when official signs prohibit standing.

(c) Park a vehicle, whether occupied or not, except temporarily for the purpose of, and while actually engaged in, loading or unloading property or passengers:

(1) Within fifty (50) feet of the nearest rail of a railroad crossing;

(2) At any place where official signs prohibit parking.

(d) No person shall move a vehicle not lawfully under his control into any such prohibited area or away from a curb such a distance as is unlawful.

(e) No person shall stand or park a vehicle in areas designated as fire lanes upon public or private property.

(Ord. No. 87-9175, § 1, 3-16-87; Ord. No. 88-9274, §§ 1, 2, 8-22-88; Ord. No. 90-9414, §§ 1, 2, 11-5-90; Ord. No. 91-9491, § 1, 12-19-91; Ord. No. 92-9538, § 1, 10-12-92; Ord. No. 93-9578, § 1, 6-28-93; Ord. No. 93-9584, § 1, 8-2-93; Ord. No. 94-9656, § 1, 9-26-94; Ord. No. 96-9743, § 1, 6-17-96; Ord. No. 96-9752, § 1, 8-5-96; Ord. No. 97-9821, § 1, 8-11-97; Ord. No. 98-9886, § 1, 8-17-98; Ord. No. 99-9952, § 1, 10-18-99; Ord. No. 00-10001, § 1, 10-2-00; Ord. No. 01-10043, § 1, 6-25-01; Ord. No. 02-10093, § 1, 8-5-02; Ord. No. 03-10157, § 1, 7-28-03; Ord. No. 04-10225, § 1, 8-9-04; Ord. No. 05-10295, § 1 7-18-05)

Sec. 38-1.1. Traffic infractions and traffic offenses.

(a) An ordinance traffic infraction is a violation of any section of this chapter that prescribes or requires the same behavior as that prescribed or required by a statutory provision that is classified as a traffic infraction in K.S.A. 8-2118.

(b) All traffic violations which are included within this chapter, and which are not ordinance traffic infractions as defined in subsection (a) of this section shall be considered traffic offenses.

(Ord. No. 87-9175, § 2, 3-16-87)

Sec. 38-1.2. Penalties for scheduled fines.

The fine for violation of any ordinance traffic infraction or any other offense for which the municipal judge establishes a fine in a fine schedule shall not be less than ten dollars ($10.00) nor more than one hundred dollars ($100.00). A person tried and convicted of an ordinance traffic infraction or other traffic offense for which a fine has been established in a schedule of fines shall pay a fine fixed by the court not to exceed five hundred dollars ($500.00).

(Ord. No. 87-9175, § 3, 3-16-87)

Sec. 38-2. Regulations to conform to street plan.

All traffic regulations of the city shall conform, as nearly as practicable, with the master street plan adopted by the city, and filed with the city clerk.

(Code 1966, § 22-2)

Sec. 38-3. Manager may designate use of streets for other purposes.

The city manager shall have the authority to temporarily close any street or part thereof so as to allow the use of the street or any portion thereof for any activity or purpose having a general public or community-wide purpose or function and the city manager is hereby authorized to place appropriate signs or devices in the street indicating the temporary closing thereof.

(Code 1966, § 22-65)

Sec. 38-4. Quiet zones.

Whenever authorized signs are erected indicating a zone of quiet, no person operating a motor vehicle within any such zone shall sound the horn or other warning device of the vehicle except in an emergency. The city manager shall have authority to temporarily establish a zone of quiet upon any street where a person is seriously ill if requested so to do by the written statement of at least one (1) registered physician certifying to its necessity. Such temporary zone of quiet shall embrace all territory with a radius of two hundred (200) feet of the building occupied by the person named in the request of said physician. Such temporary zone of quiet and any other zone of quiet declared by any ordinance of the city shall be designated by the city manager by placing at a conspicuous place in the street a sign or marking bearing the words "Quiet Zone."

(Code 1966, § 22-115)

Secs. 38-5, 38-6. Reserved.

Editor's note: Ord. No. 96-9753, § 1, adopted Aug. 5, 1996, repealed §§ 38-5 and 38-6, pertaining to licensing drivers under the age of sixteen, as derived from the Code of 1966, §§ 22-31 and 22-32.

Sec. 38-7. Provisions not to interfere with real property owners.

Nothing in this chapter shall be construed to prevent the owner of real property used by the public for purposes of vehicular travel by permission of the owner and not as a matter of right from prohibiting such use, or from requiring other or different or additional conditions than those specified in this chapter or otherwise regulating such use as may seem best to such owner.

(Code 1966, § 22-13)
State law references: Similar provisions, K.S.A. 8-2012.

Secs. 38-8, 38-9. Reserved.

Editor's note: Section 1 of Ord. No. 97-9837, adopted Nov. 10, 1997, repealed §§ 38-8 and 38-9 in their entirety. Formerly, §§ 38-8 and 38-9 pertained to operating bicycles, etc., for children under the age of sixteen and derived from §§ 22-351 and 22-352 of the 1966 Code.

Sec. 38-10. Definition of street or highway.

In addition to the definition of a "street or highway" as set forth in the traffic ordinance for Kansas Cities as adopted by Ordinance Number 83-8943 the term "street or highway" shall also include in addition to those areas specifically enumerated therein, all areas open to the public for vehicular traffic, whether publicly or privately maintained.

(Ord. No. 83-8974, § 1, 10-17-83)

Sec. 38-11. Provisions applicable to areas open to public vehicular traffic.

The provisions of this chapter and all other traffic ordinances of the city shall be applicable to all areas open to the public for vehicular traffic, whether publicly or privately owned.

(Ord. No. 83-8974, § 1, 10-17-83)

Secs. 38-12--38-20. Reserved.

ARTICLE II. MISCELLANEOUS RULES

Sec. 38-21. Careless driving.

It shall be unlawful for any person to drive or operate a vehicle upon a highway or street in a careless or heedless or an inattentive manner, or without due caution and circumspection, or in any manner not constituting reckless driving but so as to endanger or be likely to endanger any person or property.

(Code 1966, § 22-77)

Sec. 38-22. Boarding, alighting from moving vehicle.

It shall be unlawful for any person to board or alight from any vehicle while such vehicle is in motion.

(Code 1966, § 22-205)

Secs. 38-23, 38-24. Reserved.

Editor's note: Section 1 of Ord. No. 97-9837, adopted Nov. 10, 1997, repealed §§ 38-23 and 38-24 in their entirety. Formerly, §§ 38-23 and 38-24 pertained riding bicycles on sidewalks and derived from §§ 22-209 and 22-210 of the 1966 Code.

Sec. 38-25. Impersonating blind or incapacitated person.

It shall be unlawful for any person, unless totally or partially blind or otherwise incapacitated, while on any public street or highway, to carry in a raised or extended position a cane or walking stick which is white in color or white tipped with red.

(Code 1966, § 22-222)

Sec. 38-26. Obedience to school crossing guards.

The driver of any vehicle traveling on any street designated as a school zone or school zone crosswalk shall bring such vehicle to a complete stop before passing or approaching any such school building or crosswalk whenever he is signaled or requested so to do by a traffic officer, school flagman or school patrol placed in such street for the purpose of directing traffic past any such school building or crosswalk; and after being signaled to stop, it shall be unlawful for the driver of any such vehicle to proceed along any such street until such street is cleared of school children and until the person giving such signal shall have signaled the driver of such vehicle to proceed.

(Code 1966, § 22-7)

Sec. 38-27. Driving off roadway.

It shall be unlawful for any person to drive any motor vehicle, motorcycle, mini-bike, or other motor driven vehicle upon or across any public or private grounds in the city or upon the flood control dikes of the city, except upon the improved portions of public streets, parking lots, permanent or temporary driveways and such other places as may be permitted by ordinances of the city; provided, however, the board of commissioners may, by resolution, designate areas where certain types of motor driven cycles or similar vehicles may be operated.

(Ord. No. 83-8975, § 1, 10-17-83)

Sec. 38-28. Speed in school zones.

No driver, when passing through a school zone or school speed zone shall, during the hours posted, operate any vehicle in excess of the posted speed limit.

(Ord. No. 83-8976, § 1, 10-17-83)

Sec. 38-29. Riding bicycles in Salina Business Improvement District No. 1 and on publicly and privately owned property.

(a) It shall be unlawful for any person to ride a bicycle on any sidewalk within the boundaries of Salina Business Improvement District No. 1 as established by city ordinance.

(b) It shall be unlawful for any person to ride a bicycle upon any street, alley, sidewalk, parking lot or other property, either publicly or privately owned and open to the public, when a sign prohibiting such activity is conspicuously posted on the property.

(Ord. No. 97-9837, § 1, 11-10-97)

Sec. 38-30. Duties when riding bicycle on sidewalk.

In residential districts, no person shall ride a bicycle on a sidewalk except with due care for the safety of pedestrians, and the rider of a bicycle on a sidewalk, when approaching or passing a pedestrian, shall slow or stop the same, if necessary, to avoid colliding with or interfering with the passage of any pedestrian on such sidewalk.

(Ord. No. 97-9837, § 1, 11-10-97)

Sec. 38-31. Riding human powered wheeled devices on publicly and privately owned property.

(a) It shall be unlawful for any person to operate or ride upon a skateboard, roller skates, roller blades or other human powered device designed primarily for recreational use upon any public street, alley, sidewalk, parking lot or other publicly owned property located within the boundaries of Salina Business Improvement District No. 1 as established by city ordinance.

(b) It shall be unlawful for any person to operate or ride upon a skateboard, roller skates, roller blades or other human powered wheeled device designed primarily for recreational use upon any street, alley, sidewalk, parking lot or other property, either publicly or privately owned and open to the public, when a sign prohibiting such activity is conspicuously posted on the property.

(Ord. No. 97-9837, § 1, 11-10-97)

Sec. 38-32. Parental responsibility for violations by children.

Any parent or guardian of any child under the age of sixteen (16) years who permits such child to ride or operate any vehicle; bicycle; or skateboard, roller skates, roller blades or other human powered wheeled device designed primarily for recreational use in the city shall be responsible for the obedience of such child to the requirements of this chapter, and it shall be unlawful for any parent or guardian of any such child to knowingly permit the violation by such child of any of the provisions of this chapter, or to furnish to or permit the use by any such child of any vehicle; bicycle; or skateboard, roller skates, roller blades or other human powered wheeled device designed primarily for recreational use in violation of the provisions of this chapter, and the continued violation by any such child of any provisions of this chapter after notice of such violation has been brought to the attention of such parent or guardian shall be presumed to be with the knowledge and consent of such parent or guardian.

(Ord. No. 97-9837, § 1, 11-10-97)

Sec. 38-33. Police to take up vehicles, bicycles or other devices.

If any child under the age of sixteen (16) years shall operate or ride on any vehicle; bicycle; or skateboard, roller skates, roller blades or other human powered wheeled device designed primarily for recreational use in violation of the provisions of this chapter or if any such vehicle, bicycle or device, or the equipment involved in its operation, fails to comply with the requirements of this chapter, any police officer of the city may take possession of such vehicle, bicycle or device and take the same to the police headquarters in the city, and there keep the same until the parents or guardian of such child are notified and until arrangements are made by such parent or guardian to comply with the requirements of this chapter.

(Ord. No. 97-9837, § 1, 11-10-97)

Sec. 38-34 Pedestrians, certain vehicle restricted on interstate highway system

It shall be unlawful for pedestrians, persons operating or using bicycles or other non-motorized traffic, persons leading, driving or riding animals or persons operating a vehicle of any type with a horsepower of less than five (5), to use any controlled access highway or any interstate highway system within the city limits.

(Ord. No. 02-10100, § 1, 8-19-02)

Sec. 38-35. Notice of change of address or name.

Whenever any person, after applying for or receiving a driver's license shall move from the mailing address or residence address named in such application or in the license issued to such person, or when the name of the licensee is changed by marriage or otherwise, such person, within 10 days thereafter, shall notify the Division of Motor Vehicles of the State of Kansas in writing of such person's old and new mailing and residence addresses or of such former and new names and of the number of any driver's license then held by such person.

(Ord. No. 04-10190, § 1, 4-5-04)

Secs. 38-36--38-39. Reserved.

ARTICLE III. STOPPING, STANDING AND PARKING[2]

DIVISION 1. GENERALLY

Sec. 38-40. Designating prohibited or restricted parking.

The city manager may designate, and direct appropriate signage or pavement markings for, prohibited or restricted parking areas on any public street, park road or public parking lot.

(Ord. No. 96-9777, § 1, 1-13-97)

Editor's note: Ord. No. 96-9777, adopted Jan. 13, 1997, repealed and replaced §§ 38-41.3, 38-41.7, 38-44 and 38-45, with new provisions, designated herein as §§ 38-40 and 38-44--38-48. Prior to repeal, §§ 38-41.3, 38-41.7, 38-44 and 38-45 pertained to parking regulations as derived from the Code of 1966, §§ 22-146, 22-158, 22-181, 22-183; Ord. No. 81-8885, § 1, adopted Nov. 2, 1981; Ord. No. 81-8886, § 1, adopted Nov. 2, 1981; Ord. No. 84-9045, § 1, adopted Sept. 24, 1984; and Ord. No. 86-1940, § 1, adopted July 7, 1986.

Sec. 38-41. Parking of certain vehicles on streets in residential areas; arterial streets at night prohibited.

It shall be unlawful for any person to use any residential street in the city for what is commonly known as nighttime parking of any truck (except pickup trucks), tractor, trailer, mobile home, motor home, boat or bus; provided however, this provision shall not apply to streets which are located in commercial or industrial areas and which have not been designated by the city as arterial streets; and if such truck is used for the transportation of livestock or gasoline or other flammable liquid, the same shall not be parked at any time in any driveway or yard within fifty (50) feet of any dwelling house occupied by any person or family other than the person or family of the person owning or using such truck or commercial vehicle. For the purpose of this section, "nighttime" shall be defined as the period of time from one-half (1/2) hour after sundown until one-half (1/2) hour before sunrise. For the purpose of this section, "residential area" shall be defined as an area where fifty (50) percent or more of the property abutting the street within the block is used for residential purposes. "Commercial or industrial areas" shall be defined as areas where fifty (50) percent or more of the property abutting the street within the block is used for commercial or industrial purposes.

(Code 1966, § 22-150)

Sec. 38-42. Parking on private property without permission prohibited.

(a) It shall be unlawful for any person to park, place or leave standing, whether attended or unattended, any vehicle upon the private real property of another, without the consent of the owner or lessee of the real property.

(b) Whenever any person complains under oath that a vehicle is standing on private real property in violation of subsection (a), any police officer is hereby authorized to provide for the removal of such vehicle to the nearest garage or other place of safety as outlined herein. Absent an emergency situation in which damage to property or personal injury is likely if the vehicle is not removed immediately, no vehicle shall be removed without either:

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[2] **Cross references:** Off-street parking and loading requirements, § 42-541 et seq.

(1) Personally notifying the owner of the violation and giving said person a reasonable time to move said vehicle; or

(2) Placing notice of the violation in a noticeable place on the vehicle, then waiting forty-eight (48) hours, and making a reasonable attempt to locate the owner of the illegally parked vehicle.

If an emergency situation exists, any police officer is authorized to provide for the removal of such vehicle immediately. The owner or other person entitled to the possession of such vehicle shall be required to pay the reasonable costs of such removal and storage before being entitled to possession of such vehicle.

(c) It is declared to be a public offense for any person to violate subsection (a) and any person convicted of such violation thereof shall be punished by a fine of not more than fifty dollars ($50.00).

(d) If any person contests validity of the towing of his or her vehicle, or contests the costs and fees related to towing his or her vehicle, said person is entitled to a hearing on these issues within seventy-two (72) hours after notifying the clerk of the municipal court of the issue. Said hearing shall be in the municipal court of the City of Salina.

(Code 1966, §§ 22-153--22-155; Ord. No. 84-9023, § 1, 5-14-84)

Sec. 38-43. Impounding, removal of nuisance vehicles.

(a) Any unoccupied vehicle left parked continuously upon any street of the city twenty-four (24) hours or more is hereby declared to be a nuisance. It shall be the duty of the chief of police to cause any such vehicle to be removed and impounded in a public vehicular garage. Said removal shall take place only after the following procedures.

(b) Absent an emergency situation in which damage to property or personal injury is likely if the vehicle is not moved immediately, no vehicle shall be removed without either:

(1) Personally notifying the owner of the violation and giving said person a reasonable time to move said vehicle; or

(2) Placing notice of the violation in a noticeable place on the vehicle then waiting forty-eight (48) hours, and making a reasonable attempt to locate the owner of the illegally parked vehicle.

If an emergency situation exists, any police officer is authorized to provide for the removal of such vehicle to the nearest garage or other place of safety immediately. After towing a vehicle in an emergency situation, the chief of police is required to make a reasonable attempt to notify the owner of the towed vehicle of the location of said vehicle and the procedure for returning said vehicle to the owner or other person entitled to possession of said vehicle.

Any vehicle towed in an emergency or nonemergency situation shall be surrendered to the identified owner thereof, only upon the payment of storage charge and towing fee, which is necessarily incurred by the chief of police, or any other department of the city for the towing and storage of such vehicle.

(c) Any vehicle against which there have been issued three (3) or more traffic summons, either for exceeding the parking limit or for being parked at a place where parking is prohibited, either by this chapter or any other ordinance of the city, and where the owner of such vehicle has failed to appear in municipal court for the disposition of such cases, is hereby declared to be a nuisance. It shall be the duty of the chief of police to cause such vehicle to be removed and impounded on sight, thereafter, such vehicle shall be surrendered to the duly identified owner thereof only upon payment of the storage charge and tow-in fee, which is necessarily incurred by the chief of police, or any other department of the city for towing and storage of said vehicle.

(d) If any person contests validity of the towing of his or her vehicle, or contests the costs and fees related to the towing of his or her vehicle, under this section, said person is entitled to a hearing on said matter within seventy-two (72) hours. Said hearing shall be in the municipal court of Salina, Kansas.

(Code 1966, § 22-14; Ord. No. 84-9022, § 1, 5-14-84)

Sec. 38-44. Establishing zones.

The board of commissioners shall from time to time, by resolution, designate and establish parking zones and time limits therein.

(Ord. No. 96-9777, § 1, 1-13-97)
Note: See editor's note following § 38-41.

Sec. 38-45. Overtime parking prohibited.

(a) It shall be unlawful for any person to cause, allow or permit any vehicle registered in the name of or operated by such person to be parked overtime or beyond the period of legal parking time established for any city street or parking lot.

(b) Whenever any motor vehicle without driver is found in violation of this section, the officer finding such vehicle shall take its registration number and may take any other information displayed on the vehicle which may identify its owner or operator, and shall conspicuously affix to such vehicle a traffic citation.

The owner or operator may, within forty-eight (48) hours of the time when such notice was attached to such vehicle, enclose the notice with two dollars ($2.00) if the violation was for parking beyond the period of legal parking for the zone in violation of subsection (a) and pay the same to the clerk of the municipal court or by depositing the fine and notice in a courtesy fine collection box as a penalty for and in full satisfaction of such violation.

If the penalty is not paid within forty-eight (48) hours of the time when the citation was attached to such vehicle, the penalty for the violation shall increase to five dollars ($5.00), payable to the clerk of the municipal court or by depositing the fine and notice in a courtesy fine collection box.

The owner or operator may contest the ticket by contacting the clerk of the municipal court and requesting a trial date. Once a request for a trial date has been made to the clerk, the enforcement provisions are stayed, pending decision by the municipal court judge.

If the owner or operator does not pay or request a hearing within a period of forty-eight (48) hours, the clerk of the municipal court shall send to the owner, of the motor vehicle to which the traffic citation was affixed, a letter informing the owner of the violation and warning that in the event such letter is disregarded for a period of five (5) days, a warrant of arrest will be issued. The fine will then increase to twenty-five dollars ($25.00) which will be the amount of the bond.

The failure of such owner or operator to make such provisions within forty-eight (48) hours of the time the citation was issued shall render the owner or operator subject to the penalties hereinafter provided for violation of the provisions of this division. Court costs are not assessed for overparking tickets.

(Ord. No. 96-9777, § 1, 1-13-97)

Sec. 38-46. Marking of vehicles in areas where parking time is limited.

The police department shall cause all vehicles parked in areas where the length of parking time is limited to be marked in such manner as to distinguish such vehicles during the hours in which the parking requirements within such areas are effective, and any person who shall remove, erase, or destroy or cause to be removed, erased or destroyed any mark placed upon any such vehicle or upon the tires thereof by any police officer, otherwise than for the purpose and in the course of complying [with] the provisions of this chapter, shall be guilty of a misdemeanor with penalties set out in section 38-48.

(Ord. No. 96-9777, § 1, 1-13-97)
Note: See editor's note following § 38-41.

Sec. 38-47. Temporary suspension.

When warranted by the public interest, the city manager is hereby authorized to temporarily suspend the parking regulations outlined in this division as they apply to specific locations within the city.

(Ord. No. 96-9777, § 1, 1-13-97)
Note: See editor's note following § 38-41.

Sec. 38-48. Violations.

(a) Any person who shall violate any parking provisions of the Code or any other parking regulations, except as otherwise provided, shall be punished by a fine of not more than twenty-five dollars ($25.00) and court costs.

(b) When a vehicle is parked within any area wherein parking is prohibited, each full hour shall be deemed to be a separate offense.

(c) When a vehicle is parked within an area wherein the length of time a vehicle is permitted to park is limited, each successive period of time, equal to the permitted time, shall constitute a separate offense.

(Ord. No. 96-9777, § 1, 1-13-97)
Note: See editor's note following § 38-41.

Secs. 38-49, 38-50. Reserved.

DIVISION 2. RESERVED[3]

Secs. 38-51--38-80. Reserved.

[3] **Editor's note:** Section 1 of Ord. No. 92-9507, adopted May 11, 1992, repealed Div. 2, §§ 38-51--38-71, in its entirety. Formerly, Div. 2 pertained to parking in parking meter zones and derived from the Code of 1966, §§ 22-169--22-191; Ord. No. 81-8885, § 1, adopted Nov. 2, 1981; Ord. No. 81-8886, § 1, adopted Nov. 2, 1981; Ord. No. 84-9045, § 2, adopted Sept. 24, 1984; and Ord. No. 87-9221, § 1, adopted Oct. 26, 1987.

DIVISION 3. INOPERABLE VEHICLES[4]

Sec. 38-81. Finding of governing body.

The board of commissioners finds that junked, wrecked, dismantled, inoperative, discarded or abandoned vehicles, or parts thereof, in and upon all property within the city is a matter affecting the health, safety, and general welfare of the citizens of the city, for the following reasons:

(1) Such vehicles serve as a breeding ground for flies, mosquitoes, rats and other insects and rodents;

(2) They are a danger to persons, particularly children because of broken glass, sharp metal protrusions, insecure mounting on blocks, jacks or supports and because they are a ready source of fire and explosion;

(3) They encourage pilfering and theft, and constitute a blighting influence upon the area in which they are located thereby causing a loss in property value to surrounding property;

(4) They constitute a fire hazard in that they block access for fire equipment to adjacent buildings and structures.

(Code 1966, § 23-171)

Sec. 38-82. Definitions.

The following words and phrases, when used in this division, shall have the meanings respectively ascribed to them:

(1) *Inoperable* means a condition of being junked, wrecked, wholly or partially dismantled, discarded, abandoned, or unable to perform the functions or purposes for which it was originally constructed, or for which it may have been subsequently modified.

(2) *Vehicle* means any automobile, truck, tractor, aircraft or motorcycle, which as originally built contained an engine or designed to contain an engine, regardless of whether it contains an engine at any other time.

(Code 1966, § 23-172)
Cross references: Definitions and rules of construction generally, § 1-2.

Sec. 38-83. Prohibitions and exceptions.

It shall be unlawful for any person or his agent, either as owner, lessee, tenant, or occupant of any real property within the city to park, store, or deposit, or permit to be parked, stored, or deposited thereon an inoperable vehicle, unless:

(1) The inoperable vehicle is enclosed in a garage or other building.

(2) The person is a duly licensed automobile junk dealer and the inoperable vehicle is kept in compliance with section 33-38.

(3) The inoperable vehicle is stored on property located in either the I-2 or the I-3 zoning district and completely enclosed by screening of not less than six (6) feet in height.

Provided, however, that nothing in this section authorizes the maintenance of a public nuisance.

(Code 1966, § 23-173; Ord. No. 87-9189, § 1, 5-18-87; Ord. No. 8-9356, § 1, 11-13-89)

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[4] **Cross references:** Nuisances generally, Ch. 24.

Secs. 38-84, 38-85. Reserved.

Editor's note: Ord. No. 87-9189, § 4, adopted May 18, 1987, repealed § 38-84 and § 38-85 in their entirety. Former § 38-84, concerning temporarily disabled vehicles, derived from the Code of 1966, § 23-174; and former § 38-85, concerning screening, derived from the Code of 1966, § 23-175.

Sec. 38-86. Presumptions that a vehicle is inoperable.

Any one (1) of the following conditions shall raise the presumption that a vehicle is inoperable:

(1) Absence of an effective registration plate upon such vehicle;

(2) Placement of the vehicle, or parts thereof, upon jacks, blocks, chains or other supports;

(3) Absence of one (1) or more parts of the vehicle necessary for the lawful operation of the vehicle upon the streets and highways.

(Code 1966, § 23-176)

Sec. 38-87. Nuisance and abatement.

Any inoperable vehicle parked, stored or deposited in a manner other than that permitted under this division is hereby declared a nuisance and may be abated under the same authority and procedure for the abatement of nuisances as set forth in chapter 24, Nuisances, as they now exist or may be amended.

(Ord. No. 91-9422, § 1, 1-7-91)
Editor's note: Sections 1, 2 of Ord. No. 91-9422, adopted Jan. 7, 1991, repealed § 38-87 pertaining to procedure following informal complaint and provided for a new § 38-87 to read as herein set out. Former § 38-87 derived from the Code of 1966, § 23-177 and Ord. No. 87-9189, § 2, adopted May 18, 1987.

Sec. 38-88. Penalty.

(a) Any person violating the provisions of this division shall be guilty of a misdemeanor and shall be fined not less than twenty-five dollars ($25.00) or more than five hundred dollars ($500.00), or imprisoned not to exceed five (5) days, or be both so fined and imprisoned, for each offense. Each day such violation continues to exist shall constitute a separate offense.

(b) Upon a conviction for violation of this division, it shall be within the court's discretion to order that the vehicle be removed and stored at the expense of the person so convicted.

(Code 1966, § 23-178; Ord. No. 87-9189, § 3, 5-18-87)

Secs. 38-89--38-100. Reserved.

ARTICLE IV. PARADES AND PROCESSIONS

Sec. 38-101. Permit required.

(a) No procession or parade other than a funeral procession, excepting the forces of the United States Army or Navy, the military forces of this state, and the forces of the police and fire departments, shall occupy, march or proceed along any street except in accordance with a permit issued by the chief of police and other regulations as set forth herein which may apply. A permit must be requested at least two (2) weeks prior to the parade or procession.

(b) The permit fee shall be as prescribed in section 2-2.

(Code 1966, § 22-234)

Sec. 38-102. Pennant or escort required for funeral procession.

A funeral composed of a procession of vehicles shall be identified as such by the display upon the outside of at least the first four (4) vehicles in such procession, of a pennant of a type designated by the chief of police or the traffic division of the police department, or shall be escorted by a police vehicle or vehicles.

(Code 1966, § 22-235)

Sec. 38-103. Duties of drivers in processions.

Each driver in a funeral or other procession shall drive as near to the right-hand edge of the roadway as practical and follow the vehicle ahead as closely as is practical and safe.

(Code 1966, § 22-236)

Sec. 38-104. Driving through processions.

No driver of a vehicle shall drive between the vehicles comprising a funeral or other authorized procession while they are in motion and when such vehicles are conspicuously designated as required in this article. This provision shall not apply at intersections where traffic is controlled by traffic-control signals or police officers.

(Code 1966, § 22-237)

Secs. 38-105--38-115. Reserved.

ARTICLE V. TRAINS AND RAILROADS[5]

Sec. 38-116. Trains blocking streets.

It shall be unlawful for the directing officer or the operator of any railroad train to direct the operation of or to operate the same in such a manner as to prevent the use of any street for purposes of travel for a period of time longer than five (5) minutes, except that this provision shall not apply to trains of cars in motion other than those engaged in switching.

(Code 1966 § 22-254)

Sec. 38-117. Backing trains, cars across crossings.

It shall be unlawful for the directing officer or the operator of any railroad train or any brakeman, switchman, engineer, or other employee or officer of any railroad to permit or cause to permit any train or car or cars of a train or other object moving along such track to back across any street, avenue or thoroughfare in the city without first stationing, or causing to be stationed in said street, avenue or thoroughfare, a flagman or other employee of the railroad whose duty it shall be to warn, by suitable signals, all approaching traffic of the immediate approach of such train or car or cars of such train or other object moving along such track; provided, that no railroad car or cars, or other object moving along such track shall be shuttled, switched, driven or "bumped" across any street, avenue or thoroughfare in the city unless such cars are attached to an engine and under proper control.

(Code 1966, § 22-255)

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[5] **Cross references:** Railroad crossings, § 35-231 et seq.

Secs. 38-118--38-130. Reserved.

(Ord. No. 81-8835, § 1, 2-2-81 amended Sec. 38-118 pertaining to unlawful to sound train whistle at certain intersection. Ord No. 05-10284 repealed Sec. 38-118, 7-11-04)

ARTICLE VI. SIZE, WEIGHT AND LOAD

Sec. 38-131. Compliance required.

It shall be unlawful for any person to drive or move or for the owner or lessee to cause or knowingly permit to be driven or moved on any highway any vehicle or combination of vehicles of a size or weight exceeding the limitations stated in Article 19 of Chapter 8 of Kansas Statutes Annotated or otherwise in violation of this article, and the maximum size and weight of vehicles herein specified shall be lawful throughout the city.

(Code 1966, § 22-325)
State law references: Similar provisions, K.S.A. 8-1901(a).

Sec. 38-132. Exemptions.

The provisions of this article governing size, weight and load shall not apply to fire apparatus, road machinery, farm tractors or to implements of husbandry temporarily moved upon a highway, or to a vehicle operated under the terms of a special permit issued as herein provided.

(Code 1966, § 22-326)
State law references: Similar provisions, K.S.A. 8-1901(e).

Sec. 38-133. Width of vehicles and loads thereon.

(a) The total outside width of any vehicle or the load thereon shall not exceed eight (8) feet, except as otherwise provided in this section.

(b) A farm tractor or a fertilizer dispensing machine shall not be permitted to travel on any highway which is a part of the national system of interstate and defense highways. Whenever a farm tractor or implement of husbandry, and any load on any such vehicle, exceeds the width limitations prescribed by this section to the extent that the width of such vehicle, including any load thereon, exceeds the width of that portion of a roadway on which such vehicle is driven, which is marked as a single lane of traffic, or, if such roadway has not been marked for lanes of traffic, the width of such vehicle exceeds more than one-half the width of such roadway, the driver shall move such vehicle as soon as possible as far to the right-hand side of the highway as is practicable and safe upon the approach of any oncoming or following vehicle and upon approaching the crest of a hill.

(c) Whenever pneumatic tires, in substitution of the same type or other types of tires, have been heretofore or are hereafter placed upon a vehicle in operation upon the effective date of this chapter, the maximum width from the outside of one (1) wheel and tire to the outside of the opposite wheel and tire shall not exceed eight (8) feet six (6) inches, but in such event the outside width of the body of such vehicle or the load thereon shall not exceed eight (8) feet.

(d) The total outside width of the body of a bus, excluding all rearview mirrors, turn signal lamps and handhold equipment used in intercity transit operations or a bus used in local urban transit operations, shall not exceed eight (8) feet six (6) inches.

(c) Whenever pneumatic tires, in substitution of the same type or other types of tires, have been heretofore or are hereafter placed upon a vehicle in operation upon the effective date of this chapter, the maximum width from the outside of one (1) wheel and tire to the outside of the opposite wheel and tire shall not exceed eight (8) feet six (6) inches, but in such event the outside width of the body of such vehicle or the load thereon shall not exceed eight (8) feet.

(d) The total outside width of the body of a bus, excluding all rearview mirrors, turn signal lamps and handhold equipment used in intercity transit operations or a bus used in local urban transit operations, shall not exceed eight (8) feet six (6) inches.

(e) A vehicle may be loaded with cylindrically shaped bales of hay which extend not to exceed twelve (12) feet width-wise of the vehicle, but no vehicle so loaded may be moved on any highway designated as a part of the national system of interstate and defense highway system and no vehicle so loaded may be moved later than thirty (30) minutes after sunset or before thirty (30) minutes before sunrise. No vehicle loaded as authorized by this subsection (e) shall travel more distant than fifty (50) miles from the usual place the vehicle is parked when not in use.

(f) A housetrailer or mobile home which exceeds the width as provided in subsection (c) may be moved on the highways of this state upon obtaining a permit as provided herein, if the driver of the vehicle pulling such housetrailer or mobile home has a valid driver's license and if such driver carries with him or her evidence that such housetrailer or mobile home, and the vehicle pulling it, are covered by motor vehicle liability insurance with limits of not less than one hundred thousand dollars ($100,000.00) for injury to any one (1) person, and three hundred thousand dollars ($300,000.00) for injury to person in any one (1) accident, and twenty-five thousand dollars ($25,000.00) for injury to property.

(Code 1966, § 22-327)
State law references: Similar provisions, K.S.A. 8-1902, 8-1911(g).

Sec. 38-134. Projecting loads on passenger vehicles.

No passenger-type vehicle shall be operated on any highway with any load carried thereon extending beyond the left side of such vehicle nor extending more than six (6) inches beyond the right side thereof.

(Code 1966, § 22-328)
State law references: Similar provisions, K.S.A. 8-1903.

Sec. 38-135. Height and length of vehicles and loads.

(a) No vehicle including any load thereon shall exceed a height of thirteen and one-half (13 1/2) feet.

(b) No motor vehicle shall exceed a length of forty-two and one-half (42 1/2) feet extreme overall dimension, inclusive of front and rear bumpers.

(c) Except as otherwise provided in subsections (d) and (e), no combination of vehicles coupled together shall exceed a total length of sixty-five (65) feet.

(d) The limitations in this section governing maximum length of a truck tractor and semitrailer or other combinations of vehicles coupled together shall not apply to vehicles operating in the daytime when transporting poles, pipe, machinery or other objects of a structural nature which cannot readily be dismembered, except that it shall be unlawful to operate any such vehicle or combination of vehicles which exceeds a total length of eighty-five (85) feet unless a special permit for such operation has been issued by the secretary of transportation or by an agent or designee of the secretary pursuant to

K.S.A. 8-1911. For the purpose of authorizing the issuance of such special permits at ports of entry, weight stations or motor vehicle inspection stations, the secretary of transportation may contract with the secretary of revenue for such purpose, and in such event, the secretary of revenue or any agent or designee of the secretary of revenue may issue such special permit pursuant to the terms and conditions of the contract. The limitations in this section shall not apply to vehicles transporting such objects operated at nighttime by a public utility when required for emergency repair of public service facilities or properties or when operated under special permit as provided in K.S.A. 8-1911, but in respect to such night transportation every such vehicle and the load thereon shall be equipped with a sufficient number of clearance lamps on both sides and marker lamps upon the extreme ends of any projecting load to clearly mark the dimensions of such load.

(e) The limitations of this section governing the maximum length of combinations of vehicles shall not apply to a combination of vehicles consisting of a truck tractor towing a housetrailer, if such housetrailer does not exceed fourteen (14) feet in width and such combination of vehicles does not exceed an overall length of ninety-five (95) feet.

(f) The limitations of this section governing the maximum length of combinations of vehicles upon roads and highways under the jurisdiction of the secretary of transportation or local authorities shall not apply to any vehicle operating on a route designated by the secretary or local authority between a Kansas turnpike authority toll booth and a motor freight truck terminal located within a ten-mile radius of any such toll booth, under a permit issued pursuant to K.S.A. 8-1911, and amendments thereto, by the secretary with respect to roads and highways under the secretary's jurisdiction, or a local authority, with respect to roads and highways under such local authority's jurisdiction. Notwithstanding any other provision of law to the contrary, for the purposes of this subsection, all two-laned roads and highways within the corporate limits of a city shall be deemed to be under the jurisdiction of such city.

(Code 1966, § 22-329)
State law references: Similar provisions, K.S.A. 8-1904.

Sec. 38-136. Wheel and single-axle load limits.

(a) The gross weight upon any wheel of a vehicle shall not exceed the following:

(1) When the wheel is equipped with a high pressure pneumatic, solid rubber or cushion tire, eight thousand (8,000) pounds;

(2) When the vehicle is being operated on a highway of the interstate system or on a highway not approved and designated by the secretary of transportation pursuant to paragraph (3) of this subsection, and the wheel is equipped with a low pressure pneumatic tire, nine thousand (9,000) pounds;

(3) When the wheel is equipped with a low pressure pneumatic tire, ten thousand (10,000) pounds if the vehicle is operated on a highway not included in the interstate system and such highway has been approved and designated for such operations by the secretary of transportation.

(b) The gross weight upon any one (1) axle of a vehicle shall not exceed the following:

(1) When the wheels attached to said axle are equipped with high pressure pneumatic, solid rubber or cushion tires, sixteen thousand (16,000) pounds;

(2) When the vehicle is being operated on a highway of the interstate system or on a highway not approved and designated by the secretary of transportation pursuant to paragraph (3) of this

subsection, and the wheels attached to said axle are equipped with low pressure pneumatic tires, eighteen thousand (18,000) pounds;

(3) When the wheels attached to said axle are equipped with low pressure pneumatic tires, twenty thousand (20,000) pounds if the vehicle is operated on a highway not included in the interstate system and such highway has been approved and designated for such operations by the secretary of transportation.

(c) When and if the congress of the United States returns to this state the exclusive power to determine wheel and axle load limits on the interstate system, or when and if the congress of the United States adopts gross weight limits on the interstate system commensurate with such limits prescribed by this section for vehicles not being operated on the interstate system, the wheel and axle load limits prescribed by this section for vehicles being operated on the interstate system shall no longer apply and thereupon the wheel and axle load limits prescribed by this section for vehicles not being operated on the interstate system shall apply to vehicles being operated on the interstate system.

(d) For the purposes of this section, an axle load shall be defined as the total load on all wheels whose centers are included within two parallel transverse vertical planes not more than forty (40) inches apart, and further, that any axle placed within seven (7) feet of any adjacent axle shall at all times carry its proportionate part of the load permitted on such pair of axles.

(e) For the purposes of this section, every pneumatic tire designed for use and used when inflated with air to less than one hundred (100) pounds pressure shall be deemed a low pressure pneumatic tire, and every pneumatic tire inflated to one hundred (100) pounds pressure or more shall be deemed a high pressure pneumatic tire.

(f) For the purposes of this section, the term "interstate system" means the national system of interstate and defense highways.

(Code 1966, § 22-332)
State law references: Similar provisions, K.S.A. 8-1908.

Sec. 38-137. Gross weight.

No vehicle or combination of vehicles shall be moved or operated on any street or bridge when the gross weight thereof exceeds the limits specified in K.S.A. 8-1909.

(Code 1966, § 22-333)

Sec. 38-138. Enforcement of vehicle weight laws.

(a) Any police officer or properly designated department of revenue agent or employee having reason to believe that the gross weight of a vehicle or combination of vehicles or the gross weight on any axle or tandem axles is unlawful is authorized to require the driver to stop and submit to a weighing of the same by means of either portable or stationary scales and may require that such vehicle be driven to any scales suitable for this purpose within five (5) miles. When portable scales are used for weighing for the purpose of this section, the location of such portable scales shall be not more than ten (10) miles from any stationary scales whose accuracy is certified in accordance with law.

(b) Whenever a police officer or properly designated department of revenue agent or employee upon weighing a vehicle or combination of vehicles, determines that the weight is unlawful, such officer, agent or employee may require the driver to stop the vehicle in a suitable place and remain standing until such portion of the load is removed as may be necessary to reduce the gross weight of such vehicle or combination of vehicles or remove or redistribute the gross weight on any axle or tandem

axles to such limit as permitted under Article 19 of Chapter 8 of Kansas Statutes Annotated. All material so unloaded shall be cared for by the owner, lessee or operator of such vehicle at the risk of such owner, lessee or operator.

(c) Any driver of a vehicle or combination of vehicles who fails or refuses to stop and submit such vehicle or combination of vehicles to weighing as provided in this section or who fails or refuses when directed by an officer or properly designated department of revenue agent or employee, to comply with the provisions of this section, shall be guilty of a misdemeanor.

(Code 1966, § 22-334)
State law references: Similar provisions, K.S.A. 8-1910.

Sec. 38-139. Through truck traffic prohibited on certain streets.

Whenever, by resolution of the board of commissioners, a street is designated as one on which through truck traffic is prohibited, it shall be the duty of the city manager to erect appropriate signs giving notice thereof, and after the erection of such signs, it shall be unlawful for any person to operate a truck having a gross vehicle weight of over sixteen thousand (16,000) pounds thereon for any purpose other than making deliveries to premises located within the corporate limits of the city.

(Code 1966, § 22-335)

Secs. 38-140--38-150. Reserved.

ARTICLE VII. NOISE[6]

Sec. 38-151. Engine brakes prohibited in certain zones.

(a) It shall be unlawful for the driver of any vehicle to use, operate or cause to be used or operated an "engine brake" (sometimes referred to as a "compression brake") defined as "a device which retards the forward motion of a motor vehicle by the use of the compression of the engine of the motor vehicle" within zones within the city limits designated by the city manager and marked by signage stating "No engine brakes zone."

(b) When designating the zones in which use or operation of the engine brakes is prohibited, the city manager shall consider roadway and traffic control characteristics and the potential for excessive noise from engine brake usage to disturb the peace in nearby residential districts.

(c) It shall be an affirmative defense to prosecution under this section that the engine brakes were applied in an emergency and were necessary to prevent imminent danger to a person or to property.

(Ord. No. 02-10106, § 1, 10-21-02)

Secs. 38-152, 38-153. Reserved.

Editor's note: Section 1 of Ord. No. 90-9404, adopted Aug. 20, 1990, repealed §§ 38-151--38-153, pertaining to noise prohibitions and limits and deriving from Ord. No. 81-8873, § 1(22-124--22-126), adopted Aug. 24, 1981.

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[6] **Cross references:** Nuisances, Ch. 24.

Sec. 38-154. Adequate mufflers or sound dissipative devices.

(a) It shall be unlawful for any person to operate, or cause to be operated, any motor vehicle not equipped with a muffler or other sound dissipative device in good working order and in constant operation.

(b) It shall be unlawful for any person to remove or render inoperative or cause to be removed or rendered inoperative, other than for purposes of maintenance, repairs or replacement, any muffler sound dissipative device on a motor vehicle.

(Ord. No. 81-8873, § 1(22-127), 8-24-81)

Sec. 38-155. Motor vehicle horns and signaling devices.

The following acts, and causes thereof, are declared to be in violation of this article:

(1) The sounding of any horn, or other auditory signaling device on or in any motor vehicle, except as a warning of danger;

(2) The sounding of any horn, or other auditory signaling device which produces the sound level in excess of eighty-five (85) dBA at fifteen (15) meters (fifty (50) feet), except as a warning of danger.

(Ord. No. 81-8873, § 1(22-128), 8-24-81)

Sec. 38-156. Standing motor vehicles.

It shall be unlawful for any person to operate the engine providing motive power, or an auxiliary engine of a motor vehicle with a manufacturer's gross vehicle weight rating of ten thousand (10,000) pounds or more or any auxiliary equipment attached thereto for a consecutive period longer than ten (10) minutes while such vehicle is standing and located within one hundred fifty (150) feet of property zoned and used for residential purposes between the hours of 11:00 p.m. and 7:00 a.m. the following day, except where vehicle is standing within a completely enclosed structure.

(Ord. No. 81-8873, § 1(22-129), 8-24-81)

Sec. 38-157. Exempt vehicles.

The following are exempt from the operation of this article:

(1) Emergency vehicles designated as such by the laws of the state, or by ordinance of this city, and ambulances on emergency call;

(2) Construction or agricultural equipment and street maintenance equipment that are on a job site or traveling on street or highways.

(Ord. No. 81-8873, § 1(22-130), 8-24-81)

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CHAPTER 39. TREES AND SHRUBS[1]

Art.	**I.**	**In General, §§ 39-1--39-29**
Art.	**II.**	**Tree Advisory Board, §§ 39-30--39-49**
Art.	**III.**	**Protection of Public Trees, §§ 39-50--39-69**
Art.	**IV.**	**Duties and Abatement of Nuisances, §§ 39-70--39-89**
Art.	**V.**	**Street Trees, §§ 39-90--39-109**
Art.	**VI.**	**Licensing and Regulations, §§ 39-110--39-116**

ARTICLE I. IN GENERAL

Sec. 39-1. Definitions.

As used in this chapter, unless the context clearly indicates otherwise, the following words and phrases shall have the meanings ascribed to them in this section:

Owner or agent shall refer to the owners of record, installment purchasers, lessees, occupants or their representatives.

Private tree shall mean any tree or shrub located on private property.

Public tree shall mean any tree or shrub located on a public street, parkway, avenue, alley, right-of-way, or other public property. The term "public tree" includes "street trees."

Public way shall mean any public street, parkway, avenue, alley, right-of-way, or sidewalk.

Street tree shall mean any tree or shrub lying between property lines on either side of all streets, alleys, avenues or rights-of-way within the city.

(Ord. No. 91-9421, § 1, 1-7-91)
Cross references: Definitions and rules of construction, generally, § 1-2.

Secs. 39-2--39-5. Reserved.

Sec. 39-6. Tree sizes.

(a) Large trees are designated as those attaining at maturity a height of forty-five (45) feet or more.

(b) Medium trees are designated as those attaining a height of thirty (30) to forty-five (45) feet.

(c) Small trees are designated as those attaining a height of less than thirty (30) feet.

(Ord. No. 91-9421, § 1, 1-7-91)

Secs. 39-7--39-14. Reserved.

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[1] **Editor's note:** Sections 1 and 2 of Ord. No. 91-9421, adopted Jan. 7, 1991, repealed Ch. 39, §§ 39-1--39-10, 39-21, 39-22, 39-31--39-36, 39-51--39-53, in its entirety and provided for a new Ch. 39 to read as herein set out. Formerly, Ch. 39 pertained to similar subject matter and derived from the Code of 1966, §§ 33-3--33-10, 33-21--33-24, 33-26--33-28, 33-30, 33-41--33-43 and Ord. No. 88-9231, § 1, adopted Jan. 25, 1988. For purposes of classification, the editor has redesignated the provisions originally designated as Art. I into Art. II and renumbered Arts. II--VII as Arts. I--VI. **Cross references:** Trimming of trees and branches for public utilities, § 31-10; streets, sidewalks and other public places, Ch. 35; trimming of trees for moving of buildings, § 35-69.

Sec. 39-15. Authority to regulate.

The board of commissioners is hereby authorized to regulate the planting, maintenance, treatment and removal of trees and shrubbery in the city as they relate to matters of health, safety and the enjoyment of property.

(Ord. No. 91-9421, § 1, 1-7-91)

Sec. 39-16. City forester, appointment, authority.

A city forester or other city personnel shall be designated by the city manager to administer the provisions of this chapter. The city forester shall have the authority to:

(1) Regulate, administer, and supervise planting, maintenance, protection, spraying, fertilizing, treating, pruning, trimming and removal of public trees and private trees where they endanger other private trees or public trees, or when they endanger the public safety or hinder the use of public property; and

(2) Enter upon public and private property to perform inspections or carry out his authority.

(Ord. No. 91-9421, § 1, 1-7-91)

Sec. 39-17. Rights of property owners over street trees.

The owners of property abutting on streets, alleys, avenues and boulevards shall have such interest in the growing street trees in front, to the rear, or to the side of such real estate as to enable the owners in case of injury to or destruction of such street trees to recover damages from the person causing the injury or destruction. Such abutting property owners shall have the right of action in any court of competent jurisdiction to enjoin injury to or destruction of such street trees, except that no recovery or injunction shall be had against the city or franchised utility companies in the making of public improvements or in any other reasonable exercise of its authority over streets, alleys, avenues, boulevards or rights-of-way over the street trees located thereon.

(Ord. No. 91-9421, § 1, 1-7-91)

Sec. 39-18. Right of city to maintain trees not affected.

Nothing in this chapter shall be deemed to impair the right of the city to trim, protect or otherwise care for public trees and the city forester is hereby authorized and directed, whenever it may be necessary, to perform or cause to be performed any such work.

(Ord. No. 91-9421, § 1, 1-7-91)

Sec. 39-19. Powers of city in case of general infection.

When it appears there is likely to be a general infection or infestation of trees or shrubs within the city by tree or plant disease or insect pest or larvae potentially resulting in damage to or death of many trees or shrubs, the board of commissioners may provide such preventative measures or treatments as may be necessary and may pay the cost from the general fund or other designated fund.

(Ord. No. 91-9421, § 1, 1-7-91)

Sec. 39-20. Rules and regulations.

The city forester with the consent of the tree advisory board may establish additional rules and regulations consistent with the provisions of this chapter pertaining to:

(1) The planting, removal and care of trees and shrubs.

(2) Those aspects of the conduct of the business of licensees under this chapter directly affecting public health and safety.

No fewer than three (3) copies of the current rules and regulations shall be retained on file with the city clerk for inspection by the public during regular office hours. It shall be unlawful for any person to violate the rules and regulations.

(Ord. No. 91-9421, § 1, 1-7-91)

Sec. 39-21. Violation and penalty.

Any person, firm or corporation violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than five hundred dollars ($500.00) or by imprisonment for thirty (30) days or by both such fine and imprisonment and be responsible for damages. Each and every day's violation of any of the provisions of this chapter shall constitute a separate offense.

(Ord. No. 91-9421, § 1, 1-7-91)

Secs. 39-22--39-29. Reserved.

ARTICLE II. TREE ADVISORY BOARD

Sec. 39-30. Created.

There is hereby created the Salina Tree Advisory Board (hereinafter referred to as "the board").

(Ord. No. 91-9421, § 1, 1-7-91)

Sec. 39-31. Purpose.

The purpose of the board shall be:

(1) To recommend policy on all matters concerning trees on public property to the parks and recreation advisory board.

(2) To advise the city staff on treescape planting and other nonpolicy matters.

(3) To promote tree plantings, preservation and proper tree care to the citizens of the city.

(4) To hear appeals from licensing decisions by the city forester.

(Ord. No. 91-9421, § 1, 1-7-91)

Sec. 39-32. Membership.

The board shall consist of seven (7) members recommended by the parks and recreation advisory board and appointed by the mayor with the consent of the governing body.

(Ord. No. 91-9421, § 1, 1-7-91)

Sec. 39-33. Appointment and term.

Those persons first appointed as members of the board shall be appointed for the following terms:

(1) One (1) member for a term of two (2) years.

(2) Two (2) members for terms of three (3) years.

(3) Two (2) members for terms of four (4) years.

(4) Two (2) members for terms of five (5) years.

Upon expiration of the term of each board member, subsequent terms shall be for a period of four (4) years. Any vacancy occurring among the membership of the board shall be filled by appointment of the mayor with the consent of the governing body.

(Ord. No. 91-9421, § 1, 1-7-91)

Sec. 39-34. Compensation.

The members of the board shall serve without compensation.

(Ord. No. 91-9421, § 1, 1-7-91)

Sec. 39-35. Officers.

The board shall elect from its membership a board chair and vice-chair for terms of one year. The board chair shall preside at all meetings of the board. The vice-chair shall act as chair at meetings of the board in the absence of the board chair.

(Ord. No. 91-9421, § 1, 1-7-91)

Sec. 39-36. Quorum.

Four (4) members of the board shall constitute a quorum for the purpose of conducting the board's business.

(Ord. No. 91-9421, § 1, 1-7-91)

Secs. 39-37--39-49. Reserved.

ARTICLE III. PROTECTION OF PUBLIC TREES

Sec. 39-50. Damaging public trees while moving buildings or equipment.

Any person while moving any building or equipment shall use the highest degree of care to be taken to prevent injury to public trees and shall be liable for any unnecessary damage to public trees done while moving any building. Such damage shall be immediately reported to the city manager, and it shall be the duty of the city forester to examine, estimate and determine such damage.

(Ord. No. 91-9421, § 1, 1-7-91)

Sec. 39-51. Attachment of wires prohibited.

It shall be unlawful for any electric power or telephone or telegraph company, or for any other person or corporation, to attach or anchor any wires to any public tree in the city or to continue to maintain any wires previously attached or anchored to any public tree.

(Ord. No. 91-9421, § 1, 1-7-91)

Sec. 39-52. Damage to public trees prohibited.

No person shall intentionally damage a public tree by cutting or carving any tree, attaching any rope, wire, nails, advertising poster, or other contrivance to any tree, or allowing any fire, gaseous liquid, solid substance which is harmful to such trees to come in contact with it. No person shall excavate any ditches, tunnels, trenches, or lay any device within a radius of ten (10) feet from any public tree without first notifying the city forester. In cases of emergencies, utility companies and departments do not have to notify the city forester prior to the work; however, the city forester should be notified as soon as possible. No person shall deposit, place, store or maintain upon any public right-of-way any stone, brick, sand, concrete, or other materials which may impede the free passage of water, air, and fertilizer to the roots of any public tree growing therein.

(Ord. No. 91-9421, § 1, 1-7-91)

Sec. 39-53. Tree topping.

It shall be unlawful for any person, to top any public tree. Topping is defined as the severe cutting back of limbs to stubs larger than three (3) inches in diameter in the tree's crown to such a degree so as to remove the normal canopy and disfigure the tree. Trees severely damaged by storms or other causes, or certain trees under utility wires or other obstructions where other pruning practices are impractical, may be exempted from this provision at the determination of the city forester. Firms doing normal tree trimming for line clearance shall make a reasonable effort to notify the landowner seven (7) days prior to the tree trimming.

(Ord. No. 91-9421, § 1, 1-7-91)

Secs. 39-54--39-69. Reserved.

ARTICLE IV. DUTIES AND ABATEMENT OF NUISANCES[2]

Sec. 39-70. Duty to trim trees on or near public sidewalks and remove dead limbs or branches.

It shall be the duty of the owner or agent of real estate in the city abutting upon a public street to:

(1) Keep all private trees located on and all street trees located adjacent to such real estate properly trimmed in a manner such that no part of a tree projects over a public sidewalk less than eight (8) feet above sidewalk level.

(2) Remove all dead limbs or branches from all private trees located on and all street tree located adjacent to such real estate which project over any public sidewalk abutting the real estates.

(Ord. No. 91-9421, § 1, 1-7-91; Ord. No. 02-10070, § 1, 3-4-02)

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[2] **Cross references:** Nuisances generally, Ch. 24.

Sec. 39-71. Duty to notify city of dead trees, limbs or branches.

It shall be the duty of the owner or agent of real estate in the city abutting upon a public street notify the city forester of any dead trees, branches, or limbs which project over the public street at the curb line.

(Ord. No. 91-9421, § 1, 1-7-91; Ord. No. 02-10070, § 1, 3-4-02)

Sec. 39-72. Duty to maintain trees and shrubs free from disease and insects.

It shall be the duty of the owner or agent of real estate in the city to maintain any adjacent street tree or private tree free from plant disease or insect or larvae infestation, the presence of which will likely lead to the destruction of the tree or shrub or other trees or shrubs in the community.

(Ord. No. 91-9421, § 1, 1-7-91)

Sec. 39-73. Violations declared a nuisance.

The condition resulting from the failure of the owner or agent of real estate in the city to uphold any one or more of the duties outlined in this article is found to present a danger to public health and safety and is hereby declared a nuisance.

(Ord. No. 91-9421, § 1, 1-7-91)

Sec. 39-74. Preliminary notice.

When the city forester determines that a nuisance exists under this article, the city forester shall give written notice of the condition creating the nuisance to the owner or agent of the real estate upon which the public nuisance exists and shall at the same time advise the owner or agent of a reasonable period of time in which the nuisance must be abated. In determining a reasonable period of time for abatement by the owner or agent, the city forester shall take into consideration any and all relevant factors such as the effect of weather conditions at the time, the degree of health or safety hazard presented, and the nature and cost of the project necessary to abate the nuisance.

(Ord. No. 91-9421, § 1, 1-7-91)

Sec. 39-75. Abatement procedure.

If the owner or agent of the real estate upon which the public nuisance exists fails to abate the nuisance within the time permitted in the preliminary notice, the city may initiate the procedures for abatement of nuisances set forth in chapter 24, Nuisances, as they now exist or may be amended.

(Ord. No. 91-9421, § 1, 1-7-91)

Sec. 39-76. Emergency abatement.

Whenever the city forester determines that an emergency exists which requires immediate abatement of a nuisance to protect the public health, safety or welfare, an order may be issued directing the owner or agent of the real estate to take appropriate action to immediately abate the nuisance causing the emergency. If the owner or agent does not take immediate action to abate the emergency or is not immediately available, the city forester may act to abate the emergency with any costs incurred to be assessed and collected in the manner provided under chapter 24, Nuisances.

(Ord. No. 91-9421, § 1, 1-7-91)

Secs. 39-77--39-89. Reserved.

ARTICLE V. STREET TREES

Sec. 39-90. Street tree planting procedure.

The planting of any street tree shall be performed in a strict accordance with the following requirements:

(1) No street tree shall be placed so as to cause a traffic hazard or in violation of the city's clear sight ordinance.

(2) No street tree shall be planted within a distance of ten (10) feet from any fire hydrant.

(3) It is recommended that only small trees be planted under overhead wires.

(4) Approval by the city forester of species and location of all trees to be planted is required by abutting property owner.

(5) No person shall plant a tree in the public right of way without first obtaining a permit from the city forester.

Whenever any tree shall be planted or set out in conflict with the provisions of this section, it shall be lawful for the city forester to remove or cause removal of the tree and the exact cost resulting shall be assessed to the owner as provide by law in the cause of special assessments.

(Ord. No. 91-9421, § 1, 1-7-91; Ord. No. 02-10070, § 2, 3-4-02)

Sec. 39-91. Notification of forester prior to removal.

It shall be unlawful to remove any live street tree from public right-of-way without notifying the city forester in advance.

(Ord. No. 91-9421, § 1, 1-7-91)

Sec. 39-92. Tree species.

The tree advisory board shall compile an annual recommended street tree list.

(Ord. No. 91-9421, § 1, 1-7-91)

Secs. 39-93--39-109. Reserved.

ARTICLE VI. LICENSING AND REGULATIONS

Sec. 39-110. When license required; application.

No person shall engage in the business of cutting, pruning, removing, spraying or otherwise treating trees within the city, without first procuring license from the city clerk of the city. The application for a license shall specify the types of service for which the applicant desires to be licensed. Nothing contained in this article shall be construed to prevent owners or occupants from performing work on their own property.

(Ord. No. 91-9421, § 1, 1-7-91; Ord. No. 02-10109, § 1, 11-4-02)

Sec. 39-111. Examination of applicant's qualifications, etc.

Before any such license shall be issued or renewed, the application shall be submitted by the city clerk to the city forester who shall examine the applicant's qualifications and competency to be licensed to engage in the types of service for which the applicant has applied. A current certification from the Kansas Arborist Association or equivalent certification may be used in lieu of a written examination. The applicant shall demonstrate such actual practical ability and competence or furnish such evidence of previous satisfactory experience or state certification as the city forester deems proper. The city forester shall return the application to the city clerk with an endorsement of approval for the type of service in which the applicant has been found qualified, or an endorsement of disapproval accompanied by a written explanation for all other applied-for types of service. The city clerk shall issue or refuse to issue license in accordance with the endorsement of the city forester. Notice of the city clerk's refusal to issue a license shall be mailed to the applicant at the mailing address shown on the application.

(Ord. No. 91-9421, § 1, 1-7-91)

Sec. 39-112. Appeal.

Any decision of the city forester relating to the granting or revocation of a license may be appealed to the tree advisory board. The appeal may be made by delivering written notice of appeal to the city clerk within fourteen (14) days of the mailing of the notice of the city clerk's refusal to issue the license or notice of revocation. The tree advisory board shall hear the appeal no less than ten (10) days after the filing of appeal, unless the hearing is continued at the request of the applicant. After hearing the appeal, the tree advisory board may:

(1) Uphold the refusal to issue or the revocation of the license.

(2) Recommend to the city manager that the city clerk be directed to issue the license or that the revocation be rescinded.

(3) Refer the matter to the city forester for further consideration with or without specific instruction.

(Ord. No. 91-9421, § 1, 1-7-91)

Sec. 39-113. Insurance required.

Each person who makes application for a license or renewal under this article shall furnish an acceptable certificate of liability insurance covering the work in which they are engaged and upon the terms and conditions set out in this section. The certificate of insurance shall show that the applicant is covered by an effective public liability insurance policy issued by a solvent corporation authorized to do business within the state and shall be issued with limits or not less that the maximum liability for claims which could be asserted against the city, for any number of claims arising out of a single occurrence or accident under the Kansas Tort Claims Act, as amended. Such insurance policy shall not be cancelled or terminated until at least twenty (20) days after the notice of cancellation of the insurance policy is received by the city clerk.

(Ord. No. 91-9421, § 1, 1-7-91; Ord. No. 91-9479, § 1, 11-25-91; Ord. No. 02-10109, § 2, 11-4-02)

Sec. 39-114. License fee.

The city clerk shall collect the license fees under this article as prescribed in section 2-2.

(Ord. No. 91-9421, § 1, 1-7-91)

Sec. 39-115. Identification on vehicles and equipment or at job site.

All vehicles and trailers operated by a licensee for the transportation of equipment, and all self-propelled, draw or tow equipment used by a licensee in the business shall have the name, city, state, and telephone number on both sides of the vehicle, trailer or equipment in plain and legible figures and letters. However, in the case of towed trailers or equipment properly marked, the towing vehicle is not required to be marked with licensee identification.

As an alternative to vehicle and equipment identification, a licensee may place at each job site, a sign, not to exceed five (5) square feet, providing the name, city, state and telephone number of the licensee. A job site sign shall be located so as to be readable from the nearest public street, but shall not be placed in the public right-of-way.

Violation of this section shall be sufficient grounds for revocation of the licensee's license.

(Ord. No. 91-9421, § 1, 1-7-91; Ord. No. 93-9598, § 1, 9-217-93)

Sec. 39-116. License revocation.

(a) The city forester may at any time revoke a license under the following circumstances:

(1) The licensee doing business as a pest control operator under the laws of the state has had his state license revoked; provided the license, where applicable, shall be revoked only as to the treating of trees and shrubs.

(2) The licensee shall fail to furnish an acceptable written certificate of public liability insurance within twenty (20) days from the date notice is received from the city, that the or insurance policy previously furnished by the licensee is to be cancelled or terminated.

(3) The licensee or any employee, solicitor, agent, or representative of the licensee has made any material misrepresentations for the purpose of defrauding any member of the public.

(4) The licensee or any employee, solicitor, agent, or representative of the licensee has used any method or material which is not suitable for the purpose for which it is employed or provided, or has used any method or material without respect to public health, safety and welfare in the treating of trees and shrubs.

(5) The licensee has failed to display the name and address of the licensee on all vehicles and equipment used by the licensee in the business in the manner required under this article.

(b) Revocation of a license shall be effected by giving notice in writing posted not less than fifteen (15) days prior to the date set for revocation of the license and mailing notice to the licensee at the address shown on the license application.

(Ord. No. 91-9421, § 1, 1-7-91; Ord. No. 02-10109, § 3, 11-4-02)

CHAPTER 40. VEHICLES FOR HIRE[1]

Art. I. Taxicabs, §§ 40-1--40-39
Div. 1. Generally, §§ 40-1--40-10
Div. 2. Business License, §§ 40-11--40-30
Div. 3. Driver's License, §§ 40-31--40-39

ARTICLE I. TAXICABS

DIVISION 1. GENERALLY

Sec. 40-1. Definitions.

Whenever used in this article, the following terms shall be defined as follows:

Taxicab shall mean any motor vehicle used to carry passengers for hire to a location in the city for which public patronage is solicited, but shall not include a vehicle:

(1) Used exclusively for carrying passengers over fixed routes;

(2) Owned by a licensed mortician while used in conjunction with a funeral service; or

(3) The operation of which is financed in whole or in part by federal grant funding.

Taximeter shall mean a mechanical device used to measure the time and/or distance driven in the use of a taxicab and to calculate the resulting charge.

Taxicab company shall mean any person, partnership, corporation, or association licensed by the city to operate one or more taxicabs.

(Ord. No. 94-9637, § 1, 6-20-94)
Cross references: Definitions and rules of construction generally, § 1-2.

Sec. 40-2. Charges.

Each licensed taxicab company shall keep on file with the city clerk a schedule of its maximum charges. All charges shall be conspicuously posted in each taxicab, unless the charges have been determined by written contract between the owner and the passenger. Any charges based upon a combination of time and distance shall be:

(1) Measured by a fully operating and accurately calibrated taximeter; and

(2) Upon the request of a passenger, documented by a receipt showing the distance traveled and the resulting charge.

Any charge made to a passenger at a rate greater than the maximum rate on file with the city clerk shall be a separate violation. It shall be unlawful for any person to refuse to pay the legal charges for a taxicab.

(Ord. No. 94-9637, § 1, 6-20-94)

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[1] **Editor's note:** Ord. No. 94-9637, § 2, adopted June 20, 1994, repealed Ch. 40, §§ 40-1, 40-2, 40-46--40-96, 40-106--40-117, pertained to similar subject matter as derived from the code of 1966, §§ 34-1, 34-5, 34-39--34-41, 34-43--34-82, 34-87--34-94, 34-96, 34-98, 34-99, 34-101--34-104; Ord. No. 87-9182, § 1, adopted May 4, 1987; and Ord. No. 91-9451, § 1, adopted June 24, 1991. Section 1 of Ord. No. 94-9637 contained provisions enacting a new Ch. 40, §§ 40-1--40-4, 40-11--40-21, and 40-31--40-39 to read as herein set out. **Cross references:** Streets, sidewalks and other public places, Ch. 35; traffic and motor vehicles, Ch. 38.

Sec. 40-3. Passengers.

No intermediate pick-ups shall be made without the consent of the passengers then in the taxicab. It shall be unlawful for the driver of any taxicab to carry more passengers than for whom safely operating seat belts are provided.

(Ord. No. 94-9637, § 1, 6-20-94)

Sec. 40-4. Items left in taxicab.

Any item of personal property left in a taxicab shall be promptly delivered to the police department, unless the item can be sooner delivered to its owner.

(Ord. No. 94-9637, § 1, 6-20-94)

Secs. 40-5--40-10. Reserved.

DIVISION 2. BUSINESS LICENSE[2]

Sec. 40-11. Required.

It shall be unlawful for any person, corporation, partnership, limited liability company, or association to operate a taxicab without an annual taxicab company license issued by the city.

(Ord. No. 94-9637, § 1, 6-20-94)

Sec. 40-12. Application.

Any applicant desiring to secure a license for the operation of a taxicab company shall file with the city clerk written application forms provided by the city clerk. The application shall include a listing of the vehicles to be operated by the taxicab company and shall be accompanied by a copy of the title certificate for each vehicle.

(Ord. No. 94-9637, § 1, 6-20-94)

Sec. 40-13. License fee.

The annual license fee, payable in advance, for the taxicab company license shall be established pursuant to section 2-2 and shall include a base fee, plus a fee for each taxicab operated.

(Ord. No. 94-9637, § 1, 6-20-94)

Sec. 40-14. Vehicles and inspections.

It shall be unlawful to operate a taxicab unless it is in good physical and mechanical condition. In the interest of public safety, any applicant shall be deemed to have consented to reasonable inspections of its taxicabs at the city's discretion and expense, and the city reserves the right to make such inspections, to assure that each taxicab is equipped with safely operating seat belts, brakes, lights, tires, horn, muffler, rearview mirror, windshield wipers, taximeter (when applicable) and knobs or handles upon the inside of all doors by which each door can be easily opened.

(Ord. No. 94-9637, § 1, 6-20-94)

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[2] **Cross references:** Licenses generally, Ch. 20.

Sec. 40-15. Annual inspection.

In addition to the city's general right to inspect all taxicabs at its discretion, the taxicab company shall submit its taxicabs for inspection by the city upon application for an initial or renewal taxicab company license. Any taxicab that has been inspected by the city within ninety (90) days prior to the scheduled annual inspection need not be reinspected.

(Ord. No. 94-9637, § 1, 6-20-94)

Sec. 40-16. Insurance required.

It shall be unlawful for a taxicab company to operate a taxicab without the insurance coverage required in this section. No taxicab company license shall be granted until the applicant shall deposit and maintain with the city clerk a policy of automobile liability insurance issued to the taxicab company in a form approved by the city and issued by an insurance company admitted by the Office of the Kansas Commissioner of Insurance to issue this line of insurance. The policy shall specifically identify the covered vehicles and shall include limits of liability of no less than those required by Kansas law for any policy of motor vehicle liability insurance issued by an insurer to an owner residing in this state. The policy shall include recitals to the effect that the policy:

(1) Is issued in accordance with and under the requirements of this article;

(2) Is issued for the benefit of and for the purpose of protecting the public, including passengers of a taxicab, against injuries or damages resulting from the negligent operation of the taxicab;

(3) Shall remain in effect until cancelled as provided below, regardless of any statements, declarations, misrepresentations, acts or omissions of the assured or of any agent, employee, or representative of the assured, whether in the application for the policy or in the schedule of statements or declarations contained or referred to in the policy, or made, committed, or omitted before or after the occurrence of any injury or damages caused by the operation of such vehicle; and

(4) Shall provide that no cancellation of the policy or any endorsement thereon shall be effective until the expiration of ten (10) days after notice of such cancellation shall have been delivered to the city clerk.

Any policy issued by any insurance company with knowledge that a covered vehicle is to be used as a taxicab in the city shall be deemed to include the provisions of this article, whether such provisions are specifically recited therein or not.

(Ord. No. 94-9637, § 1, 6-20-94)

Sec. 40-17. Issuance.

If the applicant meets all of the requirements of this article, the city clerk shall issue to the applicant a taxicab company license which, unless revoked or suspended, shall remain in effect until the following December 31. Subsequent renewals of the license shall be based upon the calendar year.

(Ord. No. 94-9637, § 1, 6-20-94)

Sec. 40-18. Identification number and certificate.

Upon the issuance of a taxicab company license, the city clerk will assign an identification number to each taxicab to be operated by the taxicab company and shall provide a certificate indicating that the taxicab is operated by a licensed taxicab company in compliance with this chapter. The identification number must be displayed with letters no less than three (3) inches in height, either on the vehicle itself

or upon a front license plate. The exterior identification number display requirement may be waived by the city clerk in the case of a limousine type vehicle not advertised for regular taxicab transportation. The certificate must be displayed in the taxicab in a manner that it will be visible to any passengers, unless the charges for service have been determined by written contract between the owner and the passenger in which case a copy of the certificate may instead be attached to the contract.

(Ord. No. 94-9637, § 1, 6-20-94)

Sec. 40-19. Taxicabs placed in service during license year.

Whenever a taxicab company license holder wishes to place a taxicab in service during the license year, either in addition to or in place of existing taxicabs, the licensee shall:

(1) Notify the city clerk and shall pay the license fee applicable to each taxicab;

(2) Submit the vehicle for inspection by the city; and

(3) Provide proof of the required insurance.

When all of the requirements of this article are met in relation to the proposed taxicab, the city clerk will certify the taxicab in accordance with section 40-18.

(Ord. No. 94-9637, § 1, 6-20-94)

Sec. 40-20. Nontransferable.

A taxicab company license, taxicab identification number, and a taxicab certificate issued pursuant to sections 40-11 and 40-18 shall all be nontransferable.

(Ord. No. 94-9637, § 1, 6-20-94)

Sec. 40-21. Revocation or suspension.

(a) If a taxicab company operates or permits the operation of a taxicab in violation of this article, the city manager may suspend its taxicab company license for a period of up to ten (10) days. The suspension may be appealed to the board of city commissioners by filing a notice of appeal with the city clerk, which appeal shall be heard by the board of city commissioners at its next regularly scheduled meeting.

(b) In the event of a second violation within a licensing year, in addition to the suspension provided for in subsection (a), the city manager may recommend to the board of city commissioners that the taxicab company license be revoked. The city manager's recommendation will be heard by the board of city commissioners at its earliest regularly scheduled meeting which will allow for five (5) days' written notice of the hearing to the taxicab company.

(Ord. No. 94-9637, § 1, 6-20-94)

Secs. 40-22--40-30. Reserved.

DIVISION 3. DRIVER'S LICENSE[3]

Sec. 40-31. License required.

It shall be unlawful for any person to act as a driver of a taxicab without having first secured a license to be issued by the city clerk as provided in this article.

(Ord. No. 94-9637, § 1, 6-20-94)

Sec. 40-32. Application.

A taxicab driver's license shall be applied for in writing on such forms as the city clerk may prescribe. Such application shall include the information necessary to clearly identify the applicant and provide a basis for determining whether the applicant's character or habits makes the applicant unfit to transport the public.

(Ord. No. 94-9637, § 1, 6-20-94)

Sec. 40-33. License fee.

Each application for a license under this division shall be accompanied by the payment of a license fee established pursuant to section 2-2.

(Ord. No. 94-9637, § 1, 6-20-94)

Sec. 40-34. Kansas driver's license.

In order to apply for and maintain a taxicab driver's license an applicant must have and maintain a valid Kansas driver's license.

(Ord. No. 94-9637, § 1, 6-20-94)

Sec. 40-35. Investigation, report on criminal record of applicant.

Before a taxicab driver's license is issued, the chief of police shall cause an investigation to be made of the facts set forth in the application and of the record of such applicant in the municipal court and the district court of the county, and any other courts in which the chief of police may have reason to believe the applicant has a record, and shall report to the city manager all information secured from such investigation relative to the applicant's record.

(Ord. No. 94-9637, § 1, 6-20-94)

Sec. 40-36. Approval of application; issuance; appeal of denial.

(a) The city manager shall consider the application for a taxicab driver's license, the report and recommendation of the chief of police, and any other information which may come to him concerning the applicant. If the city manager is satisfied that the applicant is a fit person to transport the public, the city manager may approve the application and direct the city clerk to issue the applicant a license, which, unless revoked or suspended, shall remain in effect until the following December 31. Subsequent renewals of the license shall be based upon the calendar year.

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[3] **Cross references:** Licenses generally, Ch. 20.

(b) Any denial of an application by the city manager may be appealed to the board of commissioners by filing a notice of appeal with the city clerk, which appeal shall be heard by the board of commissioners at their next regularly scheduled meeting. Any denial of an application by the board of commissioners shall be subject to appeal pursuant to then applicable state law.

(Ord. No. 94-9637, § 1, 6-20-94)

Sec. 40-37. Identification badge required.

At the time the taxicab driver's license application is approved, a driver's license identification badge will be issued. The badge shall be in a form prescribed by the city clerk and shall show the taxicab driver's license number, badge number, and the expiration date of the license. While on duty, the taxicab driver shall display the identification badge in a manner that it will be visible to any passengers. Only the identification badge of the driver on duty shall be displayed in a taxicab.

(Ord. No. 94-9637, § 1, 6-20-94)

Sec. 40-38. Renewal.

In order to be considered for renewal of a taxicab driver's license for a subsequent calendar year without lapse, the license holder must file an application and pay the applicable fee prior to December 20 of the current license year. Consideration of the renewal application shall be in the same manner and based upon the same criteria as the initial application for a taxicab driver's license.

(Ord. No. 94-9637, § 1, 6-20-94)

Sec. 40-39. Revocation or suspension.

(a) A taxicab driver's license may be revoked or suspended by the city manager for any of the following reasons:

(1) Upon conviction of violation of any federal or state law;

(2) For operating any vehicle while under influence of drugs or alcohol;

(3) For reckless driving;

(4) For transporting open container;

(5) For leaving the scene of an accident;

(6) For failure to make full report of an accident to the police department;

(7) For permitting another person to use his license;

(8) For obliterating any official entry on his license identification badge;

(9) Upon conviction of a third major traffic violation during any one (1) license year. A major traffic violation is hereby defined to include:

a. Speeding;

b. Nonobservance of lights or signs;

c. Improper brakes;

d. Making a left or U-turn where not permitted;

e. Driving on the wrong side of the street.

(10) For violation of or failure to comply with any of the provisions of this article.

(b) Upon conviction of any item (1) through (8) listed above, or upon entering into any diversion agreement, the taxicab license holder must immediately notify the city clerk of such conviction or diversion.

(c) A revocation or suspension of taxicab driver's license may be appealed to the board of commissioners by the licensee filing a notice of appeal with the city clerk, which appeal shall be heard by the board of commissioners at their next regularly scheduled meeting.

(d) Upon a revocation, the taxicab license holder shall deliver the driver's license identification badge to the city clerk and shall be ineligible to apply for relicensing for two (2) years from the effective date of the revocation. Upon a suspension, the taxicab license holder shall deliver the driver's license identification badge to the city clerk for the duration of the suspension.

(Ord. No. 94-9637, § 1, 6-20-94)

CHAPTER 41. WATER AND SEWERS[1]

Art.	**I.**	**In General, §§ 41-1--41-19**
Art.	**II.**	**Water, §§ 41-20--41-69**
		Div. 1. Generally, §§ 41-20--41-50
		Div. 2. Air Conditioning Systems, §§ 41-51--41-59
		Div. 3. Water Conservation, §§ 41-60--41-70
		Div. 4. Cross Connections, §§ 41-70--41-70.9
Art.	**III.**	**Sewers, §§ 41-71--41-85**
Art.	**IV.**	**Rates and Charges, §§ 41-86--41-109**
Art.	**V.**	**Use of Public and Private Sewers and Drains, §§ 41-110--41-124**
Art.	**VI.**	**Installation and Connection of Building Sewers and Drains, §§ 41-125--41-144**
Art.	**VII.**	**Discharge Criteria, §§ 41-145--41-170**
Art.	**VIII.**	**Penalties and Violations, §§ 41-171--41-180**
Art.	**IX.**	**Industrial Pretreatment, §§ 41-181--41-222**

ARTICLE I. IN GENERAL

Sec. 41-1. Systems combined.

It is hereby declared, found and determined to be necessary for the public health, safety, welfare and benefit of the city, and its inhabitants that the waterworks system and the sewage disposal system of the city as defined and referred to in K.S.A. 12-856 to 12-868, including all improvements and extensions thereto, be combined, and it is hereby declared that thenceforth from and after August first, 1961, the waterworks system and the sewage disposal system of the city, as defined and referred to in K.S.A. 12-856 to 12-868, including all future improvements and extensions thereto, whether to the waterworks system or to the sewage disposal system, shall be and the same are combined and shall be known as the water and sewerage system of the city. Such water and sewerage system shall be operated and financed as provided in K.S.A. 12-856 to 12-868.

(Code 1966, § 35-1)

Sec. 41-2. Deposit, use of revenues.

All revenues derived from the sale and consumption of water and from the management and operation of the water and sewerage department, shall be deposited daily in the city treasury to the credit of the department and shall be kept in a separate fund to be known as the water and sewerage department fund. Such revenues shall be used only for the purposes authorized by law.

(Code 1966, § 35-3)

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[1] **Cross references:** Buildings and structural appurtenances, Ch. 8; plumbing code, § 8-176 et seq.; health and sanitation, Ch. 17; housing, Ch. 18; mobile homes and trailers, Ch. 22; nuisances generally, Ch. 24; planning, Ch. 29; public utilities, Ch. 31; solid waste, Ch. 34; streets, sidewalks and other public places, Ch. 35; subdivision regulations, Ch. 36; sewer and water facilities regulated by zoning ordinance, § 42-62; special fund for paying utility costs, App. A, Charter Ord. No. 17; franchises, App. B.

Sec. 41-3. Cost records required.

In addition to customer's accounts, there shall be kept a set of cost books and records complete enough to show the cost of producing and distributing water and providing sewer service and repairing and maintaining the water and sewer systems and equipment, and such other items as shall be necessary for the intelligent management of the water and sewerage department.

(Code 1966, § 35-4)

Sec. 41-4. Petty cash fund.

(a) There is hereby established a petty cash fund for the use of the water and sewerage department for the purpose of paying postage, freight, temporary labor, and other emergency expenses, including refund of deposits made to secure payment of accounts. The sum of money authorized for the petty cash fund shall be established from time to time by resolution.

(b) The petty cash fund shall be deposited in the designated city depository bank as a separate account and shall be paid out on the order of the cashier of the water and sewerage department by checks which shall state clearly the purpose for which issued.

(c) The payees of all checks drawn on petty cash funds shall certify thereon over their signatures that such services were rendered, supplies furnished or refunds received, as the case may be, and any false certification on any check shall be deemed obtaining money under false pretenses and punished as provided by law.

(d) Whenever the petty cash fund becomes low or depleted, the cashier shall prepare vouchers covering such expenses as have been paid from the petty cash fund, and shall submit such vouchers together with the paid checks to the city clerk for audit, and allowances of the amount from the contributing funds. Warrants issued therefor shall be payable to the petty cash fund and shall be deposited therein to restore the petty cash fund to its original amount, for use as herein provided.

(Code 1966, § 35-8; Ord. No. 91-9429, § 1, 3-18-91)
State law references: Authority to create petty cash fund, K.S.A. 12-825a.

Sec. 41-5. Reserved.

Sec. 41-6. Regulations declared contractual; discontinuing service for violators.

The rates, rules and regulations herein established shall be considered a part of the contract with every person supplied with water or wastewater service by the city, either within or without the corporate limits of the city. Such person, by applying for and accepting water or wastewater service shall be held and considered as consenting to be bound thereby, and in case of violation of any rules or regulations in force or upon failure to pay any charges or penalties herein provided for, the water may be cut off or wastewater service discontinued from the premises or place of violation and not turned on again or resumed except by order of the director of finance and administration, after satisfactory assurance that there be no further cause for complaint and upon payment of any charges.

(Code 1966, § 35-9; Ord. No. 93-9612, § 1, 12-20-93)

Sec. 41-7. Director's right of entry.

The director of finance and administration or the director of utilities or persons authorized by him, may enter at any reasonable hour any premises supplied with water or wastewater service in order to inspect or repair wastewater or water facilities, meters, pipes or fixtures or to investigate the use of water, or to obtain meter readings.

(Code 1966, § 35-10; Ord. No. 93-9612, § 2, 12-20-93)

Sec. 41-8. Reserved.

Editor's note: Section 2 of Ord. No. 97-9808, adopted June 9, 1997, repealed § 41-8 in its entirety. Formerly, § 41-8 pertained to tampering with meters, facilities and derived from § 35-11 of the 1966 Code.

Sec. 41-9. Policy and regulations.

The city manager shall be responsible for all affairs relating to the operation of the combined water and sewer utility. The city manager shall be responsible and be authorized to make, direct and adopt administrative regulations, establish fees and do all those things necessary for the operation of said utility not inconsistent with this Code.

(Ord. No. 83-8986, § 1, 12-19-83)

Secs. 41-10--41-19. Reserved.

ARTICLE II. WATER

DIVISION 1. GENERALLY

Sec. 41-20. Consumer defined.

(a) The consumer, as referred to herein, shall be the party receiving water or service for a property classified as follows:

(1) *Apartment:* A room or a suite of rooms within an apartment house arranged, intended, or designed for a place of residence of a single family, individual, or group of individuals living together as a single house-keeping unit.

(2) *Dwelling, one-family:* A detached building arranged, intended or designed for occupancy by one family.

(3) *Building, one-business:* A building under one roof, occupied by one business.

(4) *Building, multiple-business:* A building owned by one person having a number of office, shops or stores, using in common one hall and one or more means of ingress and egress.

(5) *Dwelling, two-family:* A building arranged, intended or designed for occupancy by two (2) families, each household unit of which shall be considered an individual consumer.

(6) *Apartment house:* A building arranged, intended, or designed for more than two (2) families, each household unit of which shall be considered an individual consumer.

(7) *Boarding house* or *lodging house:* A building other than a hotel, occupied as a single housekeeping unit, where lodging and/or meals are provided for five (5) or more persons for compensation, pursuant to previous arrangement, but not for the public or transients.

(8) *Hotel:* A building occupied or used as a more-or-less temporary abiding place of individuals or groups of individuals who are lodged, with or without meals, and in which there are more than twelve (12) sleeping rooms and no provision for cooking in individual rooms.

(b) Where by special written permission of the director of utilities, more than one consumer is permitted to obtain water through a single meter or battery of meters, a charge at the uniform maximum rate as prescribed by section 41-86 per hundred cubic feet or per thousand gallons for two thousand (2,000) cubic feet as it now exists or as hereafter amended shall be made.

(Code 1966, § 35-44)
Cross references: Definitions and rules of construction generally, § 1-2.

Sec. 41-21. Application for service required.

Any person making proper application and complying with the requirements herein set forth shall be supplied with water by the water and sewerage department providing the property to be supplied adjoins a water main or distributing pipe. Except as otherwise provided, all applicants for water shall be on a form to be furnished by the department and shall be signed by the person making such application and shall state the location of the premises for which water is to be furnished and all purposes for which water is required and any other information required by the department. Application for extra service by existing customers or for the transfer of service may be made by telephone.

(Code 1966, § 35-23)

Sec. 41-22. Security deposits.

Upon initiating service or transferring service an applicant for water service shall pay a security deposit unless they have established a satisfactory credit record with the water and wastewater department through past dealings.

(1) Residential deposits shall be no less than fifty dollars ($50.00). In lieu of a cash deposit a residential customer may use the following:

a. A letter of guarantee from another City of Salina Water and Wastewater customer in good standing;

b. A letter of reference from another utility; or

c. A bank letter of credit.

(2) Commercial deposits shall be equal to that of a residential applicant if their average monthly consumption is one thousand five hundred (1,500) cubic feet or less. If their monthly average is greater than one thousand five hundred (1,500) cubic feet the commercial deposit shall equal two (2) times the average monthly consumption of the premises or like business, times the current rate. In lieu of a cash deposit commercial customers may use the following instruments in lieu of a cash deposit:

a. A surety bond; or

b. A bank letter of credit.

Any applicant for service or existing consumer shall, upon demand of the director of finance and administration, increase such deposit when, if in the opinion of the director or representatives, such increase may be necessary to protect the city from loss.

(Code 1966, § 35-24; Ord. No. 93-9612, § 3, 12-20-93)

Sec. 41-23. Deposit accounts.

A separate account of each water deposit shall be made showing the date on which such deposit is received, the name of the depositor, and the amount thereof.

(Code 1966, § 35-25)

Sec. 41-24. Interest on deposits.

The city shall pay to the customer making a water deposit interest at the rate determined by the state corporation commission pursuant to K.S.A. 12-822, which interest shall be credited once a year or credited on the first day of January thereafter to the credit of the customer's outstanding account, unless prior to the first day of January such customer shall request the payment of such interest in cash, in which event the payment of interest shall be made as requested. Any interest credited shall be subject to call and payment at any time, but shall not draw interest.

(Code 1966, § 24-26; Ord. No. 84-9017, § 1, 4-9-84)

Sec. 41-25. Basis of deposit; application to payment of bills.

The amount of deposit required shall at all times be reasonable, and shall be based upon the value of the maximum service rendered; and such advance deposit, together with the interest due thereon, may be applied to the payment of any bills due on discontinuance of service.

(Code 1966, § 35-27)

Sec. 41-26. Refund of deposits and interest.

If a customer is able to present an accepted document of credit after paying the deposit, the deposit plus interest will be applied to the customer's account.

The city shall refund the security deposit plus interest after the depositor has established one (1) year of timely pay. This will be done by applying the deposit and interest to the customer's account.

After one (1) year of timely pay by the customer of record the guarantor will be released from his/her liability.

If the utility is unable to refund the deposit because of poor credit, interest on the deposit will be applied to the customers account and the utility will continue to hold the deposit until such time the customer establishes good credit.

If a terminated customer skips on their account and there is a letter of guarantee on file, the amount guaranteed will be transferred to the guarantor's account before turning the balance of the account over for collection.

(Code 1966, § 35-28; Ord. No. 93-9612, § 4, 12-20-93)

Sec. 41-27. Unclaimed deposits.

Any amount of security deposit and the accrued interest thereof remaining in the account of any customer in accordance with this article who has discontinued service with the water and sewerage department shall be processed in accordance with the terms of the Kansas Disposition of Unclaimed Property Act, as amended.

(Code 1966, § 35-29; Ord. No. 88-9246, § 1, 4-11-88)

Sec. 41-28. Taps and charges.

(a) The phrase "lineal feet" where hereinafter used shall be deemed to refer to the front footage of the private property that may be served from any existing water main or water mains that may hereafter be installed by the water and wastewater department; in the event any such property is carved into lots and irregularly shaped, the lineal footage shall be deemed to refer to the main width of any such irregular lot.

(b) Whenever any person desires to obtain water service to any property, which has not heretofore paid the cost of a water main, by special assessment or other means, shall as a condition precedent to the installation of such service, pay a connection charge based on front footage of property to be served. The director of utilities shall annually determine that charge. It shall be the duty of any person applying for a new water service to correctly state the lineal front footage of property to be thereby served. In the event of the failure to do so, the director of finance and administration is hereby directed to forthwith discontinue water service to any such property where the lineal front footage was misrepresented. No charge shall be made to property that can be served from paralleling installation in the event that the property to be so served has been a consumer of water from the department antecedent to September 13, 1954.

(c) Whenever any person requests a new water service, he shall apply for such service at the water and wastewater department customer service office. The utility will tap the main and install the water service line terminating with a curb cock if the meter is to be installed on private property or terminate with a curb cock and meter set if meter is installed on public property. Before the new service is turned on the property owner shall pay the cost thereof as determined by the director of utilities, to the water and wastewater department at their customer service office. The plumbing inspector for the city also shall approve all the plumbing on private property served by the service line prior to its being turned on.

(d) If a customer or property owner requests the replacement or relocation of all or any part of an existing water service line due to size or location the water utility shall make the change or replacement. The cost of such change or replacement shall be determined by the director of utilities and borne by the customer or property owner. Such costs shall be paid at the customer service office before the water service will be turned on.

(e) The maintenance of all water service lines (including those originally paid for and owned by the property owner) shall be performed by the water utility at the water utility's expense. The maintenance obligation shall cover the water service line from the water main through the curb cock if the meter is set on private property or through the meter set if the meter is set on public property.

(Code 1966, § 35-30; Ord. No. 83-8986, § 12, 12-19-83; Ord. No. 93-9612, § 5, 12-20-93)

Sec. 41-29. Maintenance of plumbing, etc.; wasting water.

All water consumers shall keep their own fixtures, service lines and all other appurtenances in good repair and protected from frost at their own expense, and shall prevent all unnecessary waste of water, keeping all fixtures closed when not in use.

(Code 1966, § 35-31; Ord. No. 83-8986, § 2, 12-19-83)

Sec. 41-30. City not liable for interrupted service, right to cut off water; repairs.

It is expressly stipulated that no claim shall be made against the city or the water and sewerage department because of any break in the service or any damage arising from cutting off of water to repair means, service lines, make connections, frozen meters, or for any other purpose that becomes necessary. The right is hereby reserved to cut off water at any time when deemed necessary. Defective service lines must be promptly repaired; otherwise the water may be shut off at the curb cock if leak is on private property or at the corporation cock if leaking on public property.

(Code 1966, § 35-32; Ord. No. 83-8986, § 2, 12-19-83)

Sec. 41-31. Abandoned service lines to be capped or plugged.

When a service line is abandoned the water and sewerage department shall shut off and cap or plug the line at the corporation cock. If the line is to be utilized at a later date the line will be reactivated by the water and sewerage department at the property owners expense.

(Code 1966, § 35-33; Ord. No. 83-8986, § 2, 12-19-83)

Sec. 41-32. Meters required.

All water sold by the water and sewerage department shall be measured by meter unless supplied under special contract according to established rates.

(Code 1966, § 35-34)

Sec. 41-33. Department to furnish, install meters.

All meters in the corporate limits shall be furnished by the water and sewerage department and installed without cost to the customer.

(Code 1966, § 35-35)

Sec. 41-34. Installation of meters.

All water meters shall be installed in accordance with the regulations and specifications of the water and sewerage department promulgated by the director of utilities and filed with the department and the building official.

(Code 1966, § 35-36)

Sec. 41-35. Reserved.

Editor's note: Ord. No. 93-9612, § 11, adopted Dec. 20, 1993, repealed § 41-35, meter location, as derived from the 1966 Code, § 35-37.

Sec. 41-36. Dirt, rubbish prohibited in meter or service box.

No person shall deposit dirt, stone or rubbish of any nature in any meter box or curb box.

(Code 1966, § 35-38)

Sec. 41-37. Meters to be accessible, unobstructed.

The occupant of any building or premises or customer of service therefor or premises where a meter is located shall keep the meter free from all obstructions so that it is at all times conveniently accessible for reading, inspecting or repairing. Where a water meter is inaccessible due to the noncooperation of the customer, the director of utilities may in his discretion require that the meter be moved to a location designated by him at the expense of the property owner.

(Code 1966, § 35-39)

Sec. 41-38. Consumer responsible for damage to meter.

Whether a meter is located in a building, an approved meter box or housing in the parking or sidewalk or elsewhere, the consumer or owner of the property in which such meter is placed shall be responsible for its protection and preservation and any damage sustained by such meter shall be charged to the consumer or other of the property served and the same shall be collectible in the same manner as monthly water bills.

(Code 1966, § 35-40; Ord. No. 83-8986, § 2, 12-19-83)

Sec. 41-39. Meters damaged by hot water, steam, improper thawing.

Whenever a meter is damage by hot water or steam or by an improper method of thawing when frozen, the cost of the repairs shall be chargeable to the property and the same shall be collectible in the same manner as monthly water bills.

(Code 1966, § 35-41; Ord. No. 83-8986, § 2, 12-19-83)

Sec. 41-40. Consumers furnishing water to others; separate meter for each consumer required.

Patrons of the water system shall not allow water to be taken from the premises, nor permit any connection being made to his service line without first obtaining written permission from the director of utilities. Water shall be used only on the premises to which the service is extended, and not more than one consumer shall receive water through a single meter except by special written permission of the director of utilities.

(Code 1966, § 35-42)

Sec. 41-41. Unlawful use of water.

It shall be unlawful for any person to take or use water from the waterworks of the city without notice to the water and sewerage department and without payment for the same as provided by the rules and regulations herein contained. No person shall turn on or shut off the water at any valve, curb cock, corporation cock or other places regulating the supply of water to any premises or part of the waterworks system except duly authorized employees of the department or persons authorized to do so by the director of utilities.

(Code 1966, § 35-43)

Sec. 41-42. Fluoridating water supply system authorized.

(a) The water and sewerage department is hereby directed and authorized to install and operate equipment which will introduce sufficient fluoride compound to raise the fluoride concentration in the finished water to one part of fluoride for every million parts of water being distributed to the water supply system of the city, or such concentration as is ordered from time to time by the state board of health.

(b) The water and sewerage department shall operate the fluoride system in accordance with standards established by the state board of health and shall make such periodic inspections as in their judgment may be deemed necessary to safeguard the health and welfare of the citizens of the city and shall be responsible for the expedient, safe, proper and efficient operation of the fluoridation.

(Code 1966, § 35-45)

Secs. 41-43--41-50. Reserved.

DIVISION 2. AIR CONDITIONING SYSTEMS

Sec. 41-51. Definitions.

For the purpose of this division, the following terms shall have and be construed to have the following meanings:

(1) *Air conditioning system* shall include any combination of equipment, whether compressor or other type, by which heat is removed from the air and from which the accumulated or effluent heat is wholly or partially removed by the use of water.

(2) *Person* shall mean all users of air conditioning equipment connected with the municipal water supply or emptying water into municipal storm or sanitary sewers, including natural persons, partnerships, corporations or associations. Whenever used with respect to a penalty, the term "person" as applied to partnerships or associations shall mean the partners thereof, and as applied to corporations, the officers thereof.

(3) *System* shall mean a single air conditioning unit or group or collection of such units or any other combination of air conditioning apparatus connected to the municipal water supply in a common location, or a municipal storm sewer or sanitary sewer, such as an apartment or office building or supplied with water through any single customer service pipe connected to the municipal water supply system or emptying into municipal storm or sanitary sewers.

(4) *Tons* shall mean the manufacturers rating of the compressor on an air conditioning system so operated based on American Society of Refrigeration Engineers or American Refrigeration Institute standards of ratings.

(5) *Water conservation equipment or facilities* shall mean evaporative condensers, cooling towers, spray ponds, recirculating pumps or return disposal wells.

(Code 1966, § 35-79)
Cross references: Definitions and rules of construction generally, § 1-2.

Sec. 41-52. Types of air conditioners.

All air conditioners hereafter installed shall be air cooled or equipped with water conservation equipment or facilities.

(Code 1966, § 35-80)

Secs. 41-53--41-58. Reserved.

Editor's note: Ord. No. 93-9612, § 11, adopted Dec. 20, 1993, repealed §§ 41-53--41-58, which pertained to air conditioner installation: permit, inspection, violators, surcharge, and back siphonage prevention. Such sections were derived from the 1966 Code, §§ 35-81--35-85. Section 41-58, establishing priorities for use of the city's water supply and sanitary sewers, and derived from Code 1966, § 35-86, was repealed by § 3 of Ord. No. 89-9341, adopted Sept. 11, 1989.

Sec. 41-59. Waste prohibited.

It shall be unlawful for any person to waste water. The use of water in violation of any of the terms of this division shall be deemed waste. Water flowing into a gutter or into a street, alley or sidewalk, directly or indirectly, from an air conditioning system shall be deemed waste.

(Code 1966, § 35-87)

DIVISION 3. WATER CONSERVATION

Sec. 41-60. Purpose.

The purpose of this division is to provide for the declaration of a water watch, water warning or a water supply emergency and the implementation of voluntary and mandatory water conservation measures throughout the city in the event such a watch, warning or emergency is declared.

(Ord. No. 89-9341, § 2, 9-11-89; Ord. No. 97-9833, § 1, 10-27-97)

Sec. 41-61. Definitions and classes of usage established.

(a) *Definitions.* The following definitions shall apply in the interpretation, implementation and enforcement of this division:

(1) *Water,* as the term is used in this division, shall mean water available to the City of Salina for treatment by virtue of its water rights or any treated water introduced by the city into its water distribution system, including water offered for sale at any coin-operated site.

(2) *Customer,* as the term is used in this division, shall mean the customer of record using water for any purpose from the city's water distribution system and for which either a regular charge is made or, in the case of coin sales, a cash charge is made at the site of delivery.

(3) *Waste of water,* as the term is used in this division, includes, but is not limited to, permitting water to escape down a gutter, ditch or other surface drain or failure to repair a controllable leak of water due to defective plumbing.

(b) *Classes of usage.* The following classes of uses of water are established:

Class 1

Water used for outdoor watering, either public or private, for gardens, lawns, trees, shrubs, plants, parks, golf courses, playing fields, swimming pools or other recreational areas, or the washing of motor vehicles, boats, trailers or the exterior of any building or structure.

Class 2

Water used for commercial or industrial, including agricultural, purposes, except water actually necessary to maintain the health and personal hygiene of bona fide employees while such employees are engaged in the performance of their duties at their place of employment.

Class 3

Domestic usage, other than that which would be included in either classes 1 or 2.

Class 4

Water necessary only to sustain human life and the lives of domestic pets and maintain standards of hygiene and sanitation.

(Ord. No. 89-9341, § 2, 9-11-89)

Sec. 41-62. Declaration of a water watch, water warning, or water emergency.

(a) *Declaration of water watch.* Whenever the city manager finds that conditions indicate that the probability of a drought or some other condition causing a major water supply shortage is rising, the city manager shall be empowered to declare, that a water watch exists and shall take steps to inform the public and ask for voluntary reductions in water use. Such a watch shall be deemed to continue until it is declared by the city manager to have ended. The city manager's determination that a water watch exists shall be subject to review by the governing body at its next regular or special meeting.

(b) *Declaration of water warning.* Whenever the city manager finds that drought conditions or some other condition causing a major water supply shortage are present and supplies are starting to decline, the city manager shall be empowered to declare that a water warning exists and will recommend, to the governing body, restrictions on nonessential uses during the period of warning. Such a warning shall be deemed to continue until it is declared by the city manager to have ended. The city manager's determination that a water warning exists and the recommended restrictions shall be subject to review by the governing body at its next regular or special meeting.

(c) *Declaration of water emergency.* Whenever the city manager finds that an emergency exists by reason of a shortage of water supply needed for essential uses, the city manager shall be empowered to declare that a water supply emergency exists and will impose mandatory restrictions on water use during the period of the emergency. Such an emergency shall be deemed to continue until it is declared by the city manager to have ended. The city manager's determination that a water emergency exists shall be subject to review by the governing body at its next regular or special meeting.

(Ord. No. 89-9341, § 2, 9-11-89; Ord. No. 97-9833, § 1, 10-27-97)

Sec. 41-63. Voluntary conservation measures.

Upon the declaration of a water watch or warning as provided in section 41-62, the city manager is authorized to call on all water consumers to employ voluntary water conservation measures to limit or eliminate nonessential water uses, included, but not limited to, limitations on the following uses:

(1) Sprinkling of water on lawns, shrubs or trees (including golf courses).

(2) Washing of motor vehicles.

(3) Use of water in swimming pools, fountains and evaporative air conditioning systems.

(4) Waste of water.

(Ord. No. 89-9341, § 2, 9-11-89; Ord. No. 97-9833, § 1, 10-27-97)

Sec. 41-64. Mandatory conservation measures.

Upon the declaration of a water supply emergency as provided by section 41-62, the city manager is also authorized to implement certain mandatory water conservation measures, including, but not limited to, the following:

(1) Suspension of new connections to the city's water distribution system, except connections of fire hydrants and those made pursuant to agreements entered into by the city prior to the effective date of the declaration of the emergency;

(2) Restrictions on the uses of water in one (1) or more classes of water uses, wholly or in part;

(3) Restrictions on the sales of water at coin-operated facilities or sites;

(4) The imposition of water rationing based on any reasonable formula, including, but not limited to, the percentage of normal use and per capita or per consumer restrictions;

(5) Complete or partial bans on the waste of water; and

(6) Any combination of the foregoing measures.

(Ord. No. 89-9341, § 2, 9-11-89)

Sec. 41-65. Emergency water rates.

Upon the declaration of a water supply emergency as provided in section 42-62, the governing body of the city shall have the power to adopt emergency water rates by resolution designed to conserve water supplies. Such emergency rates may provide for, but are not limited to:

(1) Higher charges for increasing usage per unit of use (increasing block rates);

(2) Uniform charges for water usage per unit of use (uniform unit rate); or

(3) Extra charges in excess of a specified level of water use (excess demand surcharge).

(Ord. No. 89-9341, § 2, 9-11-89)

Sec. 41-66. Regulations.

During the effective period of any water supply emergency as provided for in section 41-62, the city manager is empowered to promulgate such regulations as may be necessary to carry out the provisions of this division, any water supply emergency resolution, or emergency water rate resolution. Such regulations shall be subject to the approval of the governing body at its next regular or special meeting.

(Ord. No. 89-9341, § 2, 9-11-89)

Sec. 41-67. Violations, disconnections and penalties.

(a) If the city manager, director of utilities, or other city official or officials charged with implementation and enforcement of this division or a water supply emergency resolution learn of any violation of any water use restrictions imposed pursuant to sections 41-64 or 61-66 of this division, a written notice of the violation shall be affixed to the property where the violation occurred and the customer of record and any other person known to the city who is responsible for the violation or its correction shall be provided with either actual or mailed notice. Said notice shall describe the violation and order that it be corrected, cured or abated immediately or within such specified time as the city determines reasonable under the circumstances. If the order is not complied with, the city may terminate water service to the customer subject to the following procedures:

(1) The city shall give the customer notice by mail or actual notice that water service will be discontinued within a specified time due to the violation and that the customer will have an opportunity to appeal the termination by requesting a hearing scheduled before a city official designated as a hearing officer by the city manager;

(2) If such hearing is requested by the customer charged with the violation, he or she shall be given a full opportunity to be heard before termination is ordered; and

(3) The hearing officer shall make findings of fact and order whether service should continue or be terminated.

(b) A fee of fifty dollars ($50.00) shall be paid for the reconnection of any water service terminated pursuant to subsection (a). In the event of subsequent violations, the reconnection fee shall be two hundred dollars ($200.00) for the second violation and three hundred dollars ($300.00) for any additional violations.

(c) Violations of this division shall be a municipal offense and may be prosecuted in municipal court. Any person so charged and found guilty in municipal court of violating the provisions of this division shall be guilty of a municipal offense. Each day's violation shall constitute a separate offense. The penalty for an initial violation shall be a mandatory fine of one hundred dollars ($100.00). In addition, such customer may be required by the court to serve a definite term of imprisonment, which shall be fixed by the court and shall not exceed thirty (30) days. The penalty for a second or subsequent conviction shall be a mandatory fine of two hundred dollars ($200.00).

(Ord. No. 89-9341, § 2, 9-11-89)

Sec. 41-68. Emergency termination.

Nothing in this division shall limit the ability of any properly authorized city official from terminating the supply of water to any or all customers upon the determination of such city official that emergency termination of water service is required to protect the health and safety of the public.

(Ord. No. 89-9341, § 2, 9-11-89)

Sec. 41-69. Severability.

If any provision of this division is declared unconstitutional, or the application thereof to any person or circumstance is held invalid, the constitutionality of the remainder of the ordinance from which it was derived and its applicability to other persons and circumstances shall not be affected thereby.

(Ord. No. 89-9341, § 2, 9-11-89)

DIVISION 4. CROSS CONNECTIONS

Sec. 41-70. Purpose.

The purpose of this division is to protect the public water supply system of the City of Salina from contamination due to backflow from any cross connection; to prohibit and eliminate all cross connections between a private water supply and the public water supply; and to provide for the maintenance of a continuing effective cross connection control program. This program shall include regularly scheduled inspections to detect and eliminate certain cross connections as well as to prevent any future backflow from other regulated cross connections. The utilities department of the city shall be responsible for conducting the cross connection control program.

(Ord. No. 93-9571, § 1, 6-7-93; Ord. No. 03-10145, § 1, 6-2-03)

Sec. 41-70.1. Definitions.

[As used in this division, the following words and terms shall have the meaning ascribed thereto:]

Air gap. The unobstructed vertical distance at least twice the diameter of the supply line and no less than one (1) inch, through the free atmosphere, between the lowest opening from any pipe or faucet supplying water to a tank, plumbing fixture, or other device and the flood level rim of a receptacle.

Approved device. Devices tested and accepted by a recognized testing laboratory approved by the Kansas Department of Health and Environment and the utilities department.

Backflow. The flow of water or other substances into the distribution system of a potable supply of water from any source other than its intended source. Backsiphonage is one type of backflow.

Backflow preventer. A device or means to prevent backflow.

Backsiphonage. The flowing back of contaminated or polluted substances from a plumbing fixture or any vessel or source into the potable water supply system due to negative pressure in said system.

Chemigation. Any process whereby pesticides, fertilizers or other chemicals or animal wastes are added to the potable water system for the purpose of application to land, crops, lawns, greenhouse vegetation or land vegetation through an irrigation system.

Contaminant. Any substance that upon entering the potable water supply would render it a danger to the health or life of the consumer.

Cross connection. Any physical connection or arrangement between two (2) otherwise separate piping systems, one of which contains potable water and the other which contains water or any substance of unknown or questionable quality whereby there may be flow from one system to the other.

Double check valve assembly. A device consisting of two (2) internally loaded soft seated check valves with positive shut-off valves on both upstream and downstream ends, and properly located test ports.

Dual check valve. A device consisting of two (2) internally loaded soft seated check valves. This device does not contain test ports and is acceptable for use only at the meter of residential customers.

Dual check valve with atmospheric vent. A dual check valve with an atmospheric vent which, in the event of failure of the downstream check valve, vents leakage into the atmosphere through the vent port. This device is suitable for use with residential boilers, sterilizers, processing tanks, and dairy equipment.

Free water surface. A water surface at atmospheric pressure.

Flood level rim. The edge of the receptacle from which water overflows.

Frost proof closet. A hopper with no water in the bowl and with the trap and water supply control valve located below frost line.

Irrigation system. Any device or combination of devices having a hose, pipe or other conduit which connects directly or indirectly to the city water system, through which water is drawn and applied to land, crops, lawns, greenhouse vegetation or land vegetation. The term does not include any hand held hose sprayer or other similar device.

KDHE. The Kansas Department of Health and Environment.

O*verhaul.* To examine thoroughly, with a view to repairs.

Person. Any individual, partnership, copartnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity, or any other legal entity or their legal representatives, agents or assigns. The singular shall include the plural where indicated by the context.

Plumbing. The practice, materials and fixtures used in the installation, maintenance, extension and alteration of all piping fixtures, appliances and appurtenances.

Pollution. The presence of any foreign substance (organic, inorganic or biological) in water which tends to degrade its quality so as to constitute a hazard or impair the usefulness or quality of the water to a degree which does not create an actual hazard to the public health but which does adversely affect the water quality.

Private water supply. All water supplies other than the public water supply system of the city.

Reduced pressure zone backflow preventer. An assembly of two (2) independently acting soft seated approved check valves together with a hydraulically operating differential pressure relief valve located between the check valves and at the same time below the first check valve. The unit shall contain properly located test cocks and resilient seated shut-off valves at each end of the assembly. To be approved these assemblies must be accessible for inspection and testing and be installed in an aboveground location where no part of the assembly will be submerged.

Tester. A trained technician licensed by the city clerk upon approval of the utilities department to perform testing and repair of backflow preventers.

Utilities Department. The agency of the municipal government vested with the responsibility for enforcement of the cross connection ordinances.

Vacuum. Any absolute pressure less than that exerted by the atmosphere.

Vacuum breaker. A device that permits entrance of air into the water supply distribution line to prevent backsiphonage.

Water, potable. Water free from impurities in amounts sufficient to cause disease or harmful physiological effects. It's quality shall conform to KDHE requirements for public water supplies.

Water, nonpotable. Water that is not safe for human consumption or that is of questionable potability.

(Ord. No. 93-9571, § 1, 6-7-93; Ord. No. 03-10145. § 1, 6-2-03)

Sec. 41-70.2. Prohibited cross connections.

(a) *Private water supplies.* No person shall establish or permit to be established or maintain or permit to be maintained, any cross connection whereby a private water supply may enter the public water supply system of the city.

(b) *Chemigation.* No person shall apply any substance by the chemigation process through an irrigation system as defined in this division.

(Ord. No. 93-9571, § 1, 6-7-93; Ord. No. 03-10145, § 1 6-2-03)

Sec. 41-70.3. Regulated cross connections.

Cross connections made in the following installations shall be regulated in the following manner:

(1) *Boilers.* Potable water connections to boiler feed water systems in which boiler water conditioning chemicals are or can be introduced shall be made through an air gap or through a reduced pressure zone backflow preventer located in the potable water line before the point where such chemicals may be introduced.

(2) *Refrigeration unit condensers and cooling jackets.* Except when potable water provided for a refrigeration condenser or cooling jacket is entirely outside the piping or tank containing a toxic refrigerant, the inlet connection shall be provided with an approved backflow preventer. Heat exchangers used to heat water for potable use shall be of the double wall type.

(3) *Cross connections not subject to backpressure.* Where a water cross connection is not subject to back pressure, a vacuum breaker shall be installed on the discharge side of the last valve on the line serving the fixture or equipment. A list of some conditions requiring protective devices of this kind are given in the following table:

Partial list of cross connections not subject to back pressure.

a. Aspirators and ejectors;

b. Commercial dish washing machine;

c. Commercial laundry machine;

d. Dental units;

e. Garbage can cleaning machines;

f. Flush tanks;

g. Hose bibs;

h. Hose outlets;

i. Steam tables;

j. Tank and vats.

(4) *Cross connections subject to backpressure.* Where a potable water cross connection is made to a line, fixture, tank, vat, pump, or other equipment with a hazard of backflow where the water cross connection is subject to backpressure, an air gap shall be installed. Where an air gap cannot be installed, the utilities department may require the use of an approved reduced pressure zone backflow preventer. A partial list of such connections is shown in the following table:

Partial list of cross connections subject to back pressure:

a. Chemical lines;

b. Dock water outlets;

c. Fire sprinkler systems;

d. Hose bibs (where hose use is above free water surface);

e. Industrial process water lines;

f. Pressure tanks;

g. Pumps;

h. Steam lines;

i. Swimming pools;

j. Tanks and vats, bottom inlets.

(5) *Other cross connections.* Connection to the public potable water supply system for the following is prohibited unless properly protected by the appropriate backflow prevention device.

a. Bidets;

b. Operating, dissecting, embalming, and mortuary tables or similar equipment; in such installations the hose used for water supply shall terminate at least twelve (12) inches away from every point of the table or attachments;

c. Pumps for nonpotable substances; priming only through an air gap;

d. Building drains, sewers, or vent systems;

e. Commercial buildings or industrial plants manufacturing or otherwise using polluting or contaminating substances;

f. Underground irrigation systems;

g. Any fixture of similar hazard.

(Ord. No. 93-9571, § 1, 6-7-93; Ord. No. 03-10145, § 1, 6-2-03)

Sec. 41-70.4. Protective backflow preventers required.

(a) Approved devices to protect against backflow shall be installed at all existing and newly installed fixtures and equipment where, in the judgment of the utilities department, backflow may occur and where there is a hazard of contamination of the public water supply system. If in the judgment of the utilities department an approved backflow prevention device is required, or if previously installed backflow prevention devices do not meet current requirements, the director of utilities or his agent will give notice in writing to the customer to install the proper device. The customer shall immediately install the proper device at the customer's expense. Failure to comply shall be grounds for discontinuing water service to the customer until the device is properly installed.

(b) Approved devices shall be installed at an approved location on a consumer's water service line whenever the following conditions exist:

(1) Premises where water or any objectionable substance that would be an actual or potential hazard to the health and well-being of consumers shall protect the public system with an approved backflow prevention assembly commensurate with the degree of hazard. This shall include the handling of process water and water originating from the public water system which has been subject to deterioration in quality.

(2) Premises where cross connections are uncontrolled shall protect the public water supply installing an approved air gap or an approved reduced pressure zone backflow prevention device.

(3) Premises where because of security requirements or other prohibitions it is impossible to complete an in-plant cross connection inspection, the public water system shall be protected by an approved air gap or an approved reduced pressure zone backflow prevention assembly.

(c) Premises which may fall into one (1) or more of the above-mentioned categories may be, but are not limited to the following:

(1) Beverage bottling plants;

(2) Buildings: hotels, apartments, public or private buildings, or other structures having actual or potential cross connections;

(3) Car wash facilities;

(4) Chemical manufacturing, handling, or processing plants;

(5) Chemically contaminated water;

(6) Dairies and cold storage facilities;

(7) Film or photography processing laboratories;

(8) Fire systems;

(9) Hospitals, medical centers, morgues, mortuaries, autopsy facilities, clinics, or nursing and convalescent homes;

(10) Laundries;

(11) Metal cleaning, processing, or fabricating plants;

(12) Oil and gas production, storage, or transmission facilities;

(13) Packing or food processing plants;

(14) Paper and paper products plants;

(15) Power plants;

(16) Radioactive materials plants or handling facilities;

(17) Restricted or classified facilities;

(18) Rubber plants;

(19) Sand, gravel, or asphalt plants;

(20) Schools;

(21) Solar heating systems;

(22) Temporary services: fire hydrants, air valves, blow-offs and other outlets.

(Ord. No. 93-9571, § 1, 6-7-93; Ord. No. 03-10145, § 1, 6-2-03)

Sec. 41-70.5. Installation of approved devices.

When required, approved devices shall be installed by a plumbing contractor licensed to make the installation by the city in accordance with the manufacturer's instructions, any applicable utilities department regulations, and the Uniform Plumbing Code or any other applicable local, state or federal laws. The owner of an owner-occupied single-family residence may personally install the approved devices in the owner's residence without a license, but shall not be exempt from any required permits required testing or inspections. Backflow and backsiphonage devices of all types shall be in an accessible location. Installation in pits or any other location not properly drained shall be prohibited, unless dual check valves are installed in the meter box. Atmospheric vacuum breakers shall be installed with the critical level at least six (6) inches above the flood rim of the fixture they serve and on the discharge side of the last control valve to the fixture. No shut-off valve or faucet shall be installed beyond the atmospheric vacuum breaker. Pressure vacuum breakers shall be installed with the critical level at least twelve (12) inches above the flood rim but may have control valves downstream from the vacuum breaker. For closed equipment or vessels, such as pressure sterilizers, the top of the vessel shall be considered the flood level rim, and a check valve shall be installed on the discharge side of the pressure vacuum breaker.

(Ord. No. 93-9571, § 1, 6-7-93; Ord. No. 03-10145, § 1, 6-2-03)

Sec. 41-70.6. Testing, maintenance and repair of approved devices.

It shall be the responsibility of building and premises owners to maintain all backflow preventers within the building or on the premises in good working order and to make sure no piping or other arrangements have been installed for the purpose of bypassing the backflow devices. The utilities department will set appropriate testing and overhaul schedules for such devices. Testing intervals shall not exceed one (1) year and overhaul intervals shall not exceed five (5) years for devices located within a building or on premises having a high degree of hazard. A building or premises having a low degree of hazard, including but not limited to one- and two-family dwellings, shall be subject to testing intervals not to exceed five (5) years and overhaul intervals not to exceed ten (10) years.

(Ord. No. 93-9571, § 1, 6-7-93; Ord. No. 03-10145, § 1, 6-2-03)

Sec. 41-70.7. Qualified technicians.

Testing and overhaul of all backflow preventers shall be made by qualified technicians. Qualified technicians are those technicians who have completed a training course and have passed a written examination approved by the utilities department. Upon approval of the utilities department, the city clerk shall license the device testers after ascertaining the technician meets the above qualifications. Periodic training is required to maintain the testers qualifications and license.

(Ord. No. 93-9571, § 1, 6-7-93; Ord. No. 03-10145, § 1, 6-3-03)

Sec. 41-70.8. Inspection.

The utilities department or other designate of the city manager shall have the right of entry into any building or premises in the city as frequently as necessary in order to ensure that plumbing has been installed in a manner as to prevent the possibility of contamination of the public water supply system of the city.

(Ord. No. 93-9571, § 1, 6-7-93; Ord. No. 03-10145, § 1, 6-2-03)

Sec. 41-70.9. Protection from contaminants.

Pursuant to its home rule authority and K.S.A. 65-163a, the City of Salina, may refuse to deliver water to any premises where a condition exists which might lead to the contamination of the public water supply system and may continue to refuse to deliver water until the condition is corrected to the satisfaction of the city. In addition, the city may immediately terminate water service to a premises where a backflow condition exists which may be hazardous to the health of customers served by the public water supply system of the city.

(Ord. No. 93-9571, § 1, 6-7-93; Ord. No. 03-10145, § 1, 6-2-03)

ARTICLE III. SEWERS

Sec. 41-71. Sewer connections.

(a) Persons owning dwelling houses or buildings within the city which are located near a sewer, or in a block within any sewer district in the city through which a sewer extends are hereby required to make such connections with the sewer system of the city as may be necessary in the judgment of the joint city-county board of health for the protection of the health of the public, for the purpose of disposing of all substances from any such building affecting the public health which may be lawfully and properly disposed of by means of such sewer.

(b) If any person shall fail to refuse to connect any building or buildings with the sewer system of the city as herein provided for, for more than ten (10) days after being notified in writing by the joint city-county board of health to do so, then the city may cause such premises and buildings to be connected with the sewer system and the city is hereby authorized to advertise for bids for the construction and making of such sewer connections, and to contract therefor with the lowest responsible bidder or bidders, and to cause such premises to be connected with the sewer system.

(c) To pay the costs and expenses of work done in connecting premises to the sewer system, the city may assess the costs and expenses against the property and premises so connected, such assessment

to be made in the same manner as other special assessments are made.

(Code 1966, §§ 15-7--15-9)

Sec. 41-71.1. Sewer connection permits and fees.

(a) The phrase "lineal footage" where hereinafter used shall be deemed to refer to the front footage of the private property that may be served from any existing public sanitary sewer pipeline or in the event any such property is irregularly shaped, the lineal footage shall be deemed to refer to the adjusted width of any such irregular tract.

(b) Any person desiring to obtain sanitary sewer service to any property which has not heretofore paid the cost of a sanitary sewer main, by special assessment or other means, shall as a condition precedent to the installation of such service, pay a connection charge based on front footage of property to be served. The director of utilities shall annually determine that charge. It shall be the duty of any person applying for a new sanitary sewer service to correctly state the lineal footage of property to be thereby served. In the event of the failure to do so, the director of utilities is hereby directed to forthwith discontinue sanitary sewer service to any such property where the lineal footage was mispresented.

(c) Any person requesting a new sanitary sewer service, shall apply for such service at the utilities department. Before the new service is connected, the applicant shall pay the cost thereof as determined by the director of utilities. The plumbing inspector for the city also shall approve all the plumbing on private property serviced by the service line prior to the sanitary sewer being connected.

(Code 1966, § 9-204; Ord. No. 93-9612, § 6, 12-20-93; Ord. No. 94-9628, § 1, 4-4-94; Ord. No. 99-9935, § 1, 7-12-99)

Sec. 41-71.2. Work not requiring a permit.

No permit shall be required in the case of any repair work as follows: The stopping of leaks in drains, soil, waste or vent pipe, provided, however, that should any trap (other than tubular traps), drainpipe, soil, waste or vent pipe be or become defective and it becomes necessary to remove and replace the same with new material in any part or parts, the same shall be considered as new work and a permit shall be procured and an inspection made as hereinbefore provided. No permit shall be required for the clearing of stoppages or the repairing of leaks in pipes, valves or fixtures, where such repairs do not involve or require the rearrangement of tubular traps, valves, pipes or fixtures.

(Code 1966, § 9-205)

Sec. 41-72. Application for sewer service when not served with city water.

Any person desiring sewer service for any premises not served with city water shall make application therefor in the same manner and subject to the same conditions as applications for water service as provided in section 1-21. He shall pay the same deposit as is required of applicants for water service.

(Code 1966, § 35-12)

Sec. 41-73. Oil, grease; draining into sewers, rivers, etc.

It shall be unlawful for any person to place, run, pour or drain into any sewer or cause or permit the placing, running, pouring or draining into any sewer or into any street, alley or other place from which the same may run or drain into any sewer or into any river or creek, any fuel oil, lubricating oil, crank case oil or grease or any other kind of oil or grease whatsoever.

(Code 1966, § 23-152)

Secs. 41-74 – 41-76. Reserved.

Editor's Notes: Sec. 41-74 created by Ord. No. 94-9628, § 2, 4-4-94 and repealed by Ord. No. 03-10171. Sec. 41-75 created by Ord. No. 94-9628, § 2, 4-4-94, amended by Ord. No. 95-9707, § 1, 10-9-95, and repealed by Ord. No. 03-10171. Sec. 41-76 created by Ord. No. 94-9628, § 2, 4-4-94 and repealed by Ord. 03-10171, 10-27-03) Sections pertains to East Dry Creek Interceptor charge.

Secs. 41-77--41-85. Reserved.

ARTICLE IV. RATES AND CHARGES

Sec. 41-86. Adoption by resolution.

The board of commissioners hereby finds and determines that the rates, fees or charges for the use of and services rendered by the combined water and sewerage department, in order to fully meet the requirements of the statutes of the state, shall be established from time to time by resolution.

(Code 1966, § 35-54; Ord. No. 81-8836, § 1, 2-9-81)

Sec. 41-87. Charge for water used by city.

All water used by any city department for any purpose whatsoever, excepting only that used by the fire department for extinguishing fires, shall be measured and charged for in the same manner as water used by private consumers at a rate to be fixed by the board of commissioners. Where it is impracticable to meter the water so used, it shall be estimated by the director of utilities.

(Code 1966, § 35-56)

Sec. 41-88. Charge when meter fails to register.

In case any meter fails to register for any cause, the amount charged for water during such period shall be estimated by the director of finance and administration, such estimate to be based on the average amount registered during a like preceding period and such other information as is available.

(Code 1966, § 35-57; Ord. No. 93-9612, § 7, 12-20-93)

Sec. 41-89. Reserved.

Editor's note: Ord. No. 93-9612, § 11, adopted Dec. 20, 1993, repealed § 41-89, hydrant rental, as derived from the 1966 Code, § 35-59.

Sec. 41-90. Reduction in sewer charge when some water not discharged to sewers.

If any user of water shall use more than two thousand (2,000) cubic feet of water in any month for commercial or industrial purposes, and if, as established by separate meter installed and maintained by such user, or by other records kept and maintained by such user and open for inspection by the city's representatives, more than one-fourth of the water so used by the customer was not discharged into the city's sewage disposal system, then the sewerage charge made to such customer for the use and service of the city's sewage disposal system shall be based on the amount of water furnished such customer during said month, less the amount of such water which was not discharged into the city's sewage disposal system.

(Code 1966, § 35-61)

Sec. 41-91. Reserved.

Editor's note: Ordinance No. 90-9384, § 1, adopted May 14, 1990, repealed § 41-91, which section agreed not to decrease the rate or interest on bonds purchased to enlarge, extend and improve the waterworks plant and system or sewer system, and which derived from Code 1966, § 35-62.

Sec. 41-92. Free service prohibited.

No water or sanitary sewerage service shall be furnished or rendered by the city's combined water and sewerage system free of charge.

(Code 1966, § 35-63)

Sec. 41-93 Water Service for Irrigation; User charges and Billing.

(a) All water meters, except those specifically installed for the sole purpose of irrigating yards and lawns, shall be read and bills for water and wastewater service (or either) rendered monthly, and such bills shall be collected as a combined bill for water and wastewater service furnished each customer. Each bill shall be payable upon the rendering of such bill and if not paid on or before the specified due date as shown on the bill, such bill shall be considered delinquent and subject to a late charge.

(b) All bills unpaid twenty-three (23) days after date of issue shall be considered delinquent and subject to an additional charge of five (5) percent of the total current charges.

(c) If the rendered bill and late charge are not paid by the twenty-fifth (25) day after issue, then a disconnect for nonpayment notice shall be issued for those bills in excess of fifteen dollars ($15.00). The disconnect for nonpayment notice shall provide the customer of record with the following information:

(1) The amount due on the unpaid balance;

(2) The customer's right to a hearing before the department; provided such request is made at least three (3) working days prior to the disconnection for nonpayment date;

(3) Notice that service will be disconnected for nonpayment in seven (7) days if the bill remains unpaid.

If the customer of record is not the occupant where water and wastewater service is provided, then the department shall provide similar notification to the occupant. The request for a hearing must by no later than three (3) working days before the date of discontinuance for nonpayment. Such hearing will be conducted by one or more of the following representatives: Director of Finance and Administration, water office supervisor, customer service representative, or such other representative of similar management grades as may be appointed by the Director of Finance and Administration. The department is authorized to discontinue and disconnect water service for any customer who shall be delinquent in the payment of those bills in excess of fifteen dollars ($15.00). Customers are responsible for furnishing the department with their correct address for billing purposes.

(d) On the disconnection day for nonpayment the service personnel of the water and wastewater department shall attempt to collect the total amount of the delinquent bill, the service charge of ten dollars ($10.00), and the current bill. The service personnel must collect a minimum of the delinquent bill plus the service charge or the service shall be disconnected.

(e) If no one is at the location to be turned off, the service personnel shall leave a door hanger telling the occupant the water service has been disconnected for nonpayment of bill.

(f) If the service to the property is terminated for nonpayment, it shall remain disconnected until such customer pays the full amount of all water and wastewater bills, including such cash deposit as the director of finance and administration or representatives may require and the service charge.

(g) All water meters which are installed for the sole purpose of irrigating yards shall be read on a monthly basis. For the period of April through October, inclusive, water service (which shall include the applicable customer charge plus water consumed) shall be billed monthly. For the period of November through March, inclusive, a bill shall be rendered only in the event that water use is registered, in which case the billing shall be limited to the amount due for the water registered."

(Code 1966, § 35-64; Ord. No. 84-9048, § 1, 11-19-84; Ord. No. 93-9612, § 8, 12-20-93; Ord. No. 03-10173, § 1, 11-10-03)

Sec. 41-94. Department not responsible for delivery of bill; duplicates.

The water and sewerage department does not assume the responsibility for speedy and safe delivery of, or failure to receive bill; a duplicate may be obtained by calling in person at the office of the department.

(Code 1966, § 35-65)

Sec. 41-95. Corrections and refunds.

The city manager, or his designee, shall have authority to make corrections or refunds of overpayments or improper water bills due to error in the water and sewerage department, or in any other circumstance in which it is deemed to be in the city's best interest to adjust the amount billed.

(Code of 1966, § 35-66; Ord. No. 91-9463, § 1, 9-16-91)

Sec. 41-96. Service not to be furnished until accounts paid.

Whenever any consumer of water shall move from one location or premises to another in or adjacent to the city, or whenever water is turned off at any premises on account of the failure of the consumer to pay the water charges for water used on any such premises, or whenever any consumer or applicant for water service is indebted to the water and wastewater department of the city for any water or wastewater service previously furnished to him either at the premises for which an application is made or at any other place in the city, the director of finance and administration shall refuse to turn on or authorize the turning on of water for any such consumer or applicant at any place until all previous charges due to the department for whatever premises, have been fully paid by such consumer or applicant, and all other requirements and charges, whether in the nature of penalties, shut off or turn on charges, or deposits, shall have been paid, and no applicant or consumer shall be entitled to have water turned on at any premises until all such charges and requirements have been fully paid and complied with.

(Code 1966, § 35-67; Ord. No. 93-9612, § 9, 12-20-93)

Sec. 41-97. Regulations to secure payment authorized.

The director of finance and administration shall be authorized to make such reasonable rules and regulations to secure the payment of any sums due the water and sewerage department as may, in his judgment, be necessary.

(Code 1966, § 35-68; Ord. No. 93-9612, § 10, 12-20-93)

Sec. 41-98. Combined reading of multiple meters; when permitted.

(a) The water consumption, as shown by multiple meters servicing a single structure or a group of structures having a single or common plumbing system, may be combined for purposes of computing charges.

(b) All single meter installations shall be computed for billing on an individual basis.

(Code 1966, § 35-69)

Secs. 41-99--41-109. Reserved.

ARTICLE V. USE OF PUBLIC AND PRIVATE SEWERS AND DRAINS[2]

Sec. 41-110. Definitions.

(a) *Terms and phrases.* The following definitions shall apply to the enforcement of articles V through IX of this chapter:

(1) *Act or the act.* The Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 U.S.C. 1251, et seq.

(2) *American Society of Testing Materials (ASTM).* The American Society of Testing Materials or publications thereof.

(3) *Approval authority.* The Environmental Protection Agency.

(4) *Authorized representative.* An authorized representative of a user may be:

a. A responsible corporate officer, if the industrial user is a corporation. For the purpose of this paragraph, a responsible corporate officer means:

1. A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or

2. The manager of one (1) or more manufacturing, production, or operations facilities employing more than two hundred fifty (250) persons or having gross annual sales or expenditures exceeding twenty-five million dollars ($25,000,000.00) (in second quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

b. A general partner or proprietor if the industrial user is a partnership or sole proprietorship respectively.

c. A duly authorized representative of the individual designated in paragraph a. or b. of this section if:

1. The authorization is made in writing by the individual described in paragraph a. or b.;

2. The authorization specifies either an individual or a position having responsibility for the overall operation of the facility from which the industrial discharge originates, such as the position of plant manager, operator of a well, or well field superintendent, or a position of equivalent responsibility, or having overall responsibility for environmental matters for the company; and

3. The written authorization is submitted to the control authority.

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[2] **Editor's note:** Sections 1 and 5 of Ord. No. 92-9505, adopted April 27, 1992, repealed Art. V, §§ 41-110--41-115, and provided for a new Art. V to read as herein set out. Formerly, Art. V dealt with similar subject matter and derived from Ord. No. 84-9007, § 1, adopted March 26, 1984.

(5) *Biochemical oxygen demand (BOD).* The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five (5) days at twenty (20) degrees Centigrade, expressed in milligrams per liter (mg/l).

(6) *Building drain.* That part of the lowest horizontal piping of a drainage system which receives the discharge from soil, waste and other drainage pipes inside the walls of the building and conveys it to the building sewer beginning two (2) feet outside the building wall.

(7) *Building sewer.* The extension from the building drain to the public wastewater collection system or other place of disposal.

(8) *Bypass.* The intentional diversion of wastestreams from any portion of a users treatment facility.

(9) *Chemical oxygen demand (COD).* The oxygen consuming capacity of inorganic and organic matter present in wastewater expressed as the amount of oxygen consumed from a chemical oxidant as under standard laboratory procedure in milligrams per liter.

(10) *City.* The Municipality of Salina, Kansas.

(11) *Combined sewer.* A sewer receiving both surface runoff and sewage.

(12) *Composite sample.* A combination of individual samples in which the volume of each individual sample is proportional to the discharge of flow. The sample frequency is proportional to the flow rate over the sample period or the sample frequency is proportional to time.

(13) *Control authority.* The director of utilities for the City of Salina.

(14) *Cooling authority.* The water discharged from any use such as air conditioning, cooling or refrigeration or to which the only pollutant added is heat.

(15) *Department.* The City of Salina Utilities Department.

(16) *Direct discharge.* The discharge of sewage into waters of the state.

(17) *Director.* The Director of Utilities of the City of Salina, Kansas, or his delegated representative.

(18) *Domestic wastewater.* Any wastewater discharged from any user that has characteristics that could be reasonable expected from a household.

(19) *Environmental Protection Agency (EPA).* The U.S. Environmental Protection Agency or where appropriate, the term may also be used as a designation for the administrator or other duly authorized official of said agency.

(20) *Categorical pretreatment standards.* Any regulation containing pollutant discharge limits promulgated by the EPA in accordance with section 307(b) and (c) of the Act (33 U.S.C. 1317), which applies to a specific category of industrial users.

(21) *Four-day average.* The arithmetic average concentration value for four (4) consecutive monitoring days.

(22) *Garbage.* Solid wastes from the domestic and commercial preparation, cooking and dispensing of food, and from the handling, storage and sale of produce.

(23) *Governing body.* The board of commissioners of the City of Salina, Kansas.

(24) *Grab sample.* An individual sample collected in less than fifteen (15) minutes.

(25) *Health officer.* A person having public health responsibility by the State of Kansas and/or by Saline County.

(26) *Holding tank waste.* Any waste from holding tanks such as vessels, chemical toilets, campers, trailers, septic tanks and vacuum pump tank trucks.

(27) *Indirect discharge.* The introduction of pollutants into a POTW from any nondomestic source regulated under section 307 (b), (c) or (d) of the Act.

(28) *Industrial user.* A source of indirect discharge.

(29) *Industrial wastes.* The liquid wastes from industrial manufacturing processes, trade, or business as distinct from domestic wastewater.

(30) *Interference.* A discharge which, alone or in conjunction with a discharge or discharges from other sources, both:

a. Inhibits or disrupts the POTW, its treatment processes or operation, or its sludge processes, use or disposal; and

b. Therefore is a cause of a violation of any requirement of the POTW's NPDES permit (including an increase in the magnitude or duration of a violation) or of the prevention of sewage sludge use or disposal in compliance with the following statutory provisions and regulations or permits issued thereunder (or more stringent state or local regulations): section 405 of the Clean Water Act, the Solid Waste Disposal Act (SWDA) (including Title II, more commonly referred to as the Resource Conservation and Recovery Act (RCRA), and including state regulations contained in any state sludge management plan prepared pursuant to subtitle D of the SWDA), the Clean Air Act, the Toxic Substances Control Act, and the Marine Protection, Research and Sanctuaries Act.

(31) *Local limits.* Specific prohibitions or limits on pollutants or pollutant parameters developed by the POTW in accordance with 40 C.F.R. section 403.5(c) for the purpose of implementing the prohibitions listed in 40 C.F.R. section 403.5(a)(1) and (b).

(32) *Municipal sewer system.* Sanitary sewers, pumping stations, sewage treatment plants, main sewers, interceptor sewers, outfall sewers, and works for the collection, transportation, pumping and treating of wastewater, sewage or industrial waste thereto, necessary in the maintenance and operation of the same.

(33) *Pretreatment standard or standard.* Any local, state, or federal regulation containing pollutant discharge limits. This term includes local limits, prohibitive discharge limits including those promulgated under 40 C.F.R. section 403.5, and categorical pretreatment standards.

(34) *National pollutant discharge elimination system or NPDES permit.* A discharge permit issued by the approval authority pursuant to section 402 of the act (33 U.S.C. 1342).

(35) *National prohibitive discharge standard or prohibitive discharge standard.* Any (present or future) regulation developed under the authority of 307(b) of the act and 40 C.F.R. section 403.5.

(36) *Natural outlet.* Any outlet into a watercourse, pond, ditch, lake or other body of surface or groundwater.

(37) *New source:*

a. Any building, structure, facility or installation from which there is or may be a discharge of pollutants, the construction of which commenced after the publication of proposed pretreatment standards under section 307(c) of the act which will be applicable to such source if such standards are thereafter promulgated in accordance with that section, provided that:

1. The building, structure, facility or installation is constructed at a site at which no other source is located; or

2. The building, structure, facility or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or

3. The production or wastewater generating processes of the building, structure, facility or installation are substantially independent of an existing source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source should be considered.

b. Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility or installation meeting the criteria of paragraphs a.2., or a.3. of this section but otherwise alters, replaces, or adds to existing process or production equipment.

c. Construction of a new source as defined under this paragraph has commenced if the owner or operator has:

1. Begun, or caused to begin as part of a continuous on site construction program:

(i) Any placement, assembly, or installation of facilities or equipment; or

(ii) Significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or

2. Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering and design studies do not constitute a contractual obligation under this paragraph.

(38) *pH.* The negative logarithm of the hydrogen ion concentration measured in grams per liter of a solution.

(39) *Pass through.* A discharge which exits the POTW into waters of the United States in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the POTW's NPDES permit (including an increase in the magnitude or duration of a violation).

(40) *Person.* Any individual, partnership, copartnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity, or any other legal entity or their legal representatives, agents or assigns. The singular shall include the plural where indicated by the context.

(41) *Pollution.* The manmade or man-induced alteration of the chemical, physical, biological or radiological integrity of water.

(42) *Pollutant.* Any dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discharged equipment, rock, sand, cellar dirt and industrial, municipal and agricultural waste discharged into water.

(43) *Pretreatment or treatment.* The reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging, or otherwise introducing such pollutants into a POTW. The reduction or alteration may be obtained by physical, chemical, or biological process, process changes, or by other means, except where prohibited by 40 C.F.R. section 403.6(d). Appropriate pretreatment technology includes control equipment, such as equalization tanks or facilities, for protection against surges or slug loadings that might interfere with or otherwise be incompatible with the POTW. However, where wastewater from a regulated process is mixed in an equalization facility with unregulated wastewater or with wastewater from another regulated process, the effluent from the equalization facility must meet an adjusted pretreatment limit calculated in accordance with 40 C.F.R. section 403.6(e).

(44) *Pretreatment requirements.* Any substantive or procedural requirement relating to pretreatment, other than a national pretreatment standard imposed on a user.

(45) *Private sewer.* A sewer not owned or maintained by the City of Salina.

(46) *Private wastewater disposal system.* Any system of wastewater disposal not publicly owned or operated.

(47) *Private water supply.* All water supplies not owned and operated by the City of Salina.

(48) *Properly shredded garbage.* The wastes from the preparation, cooking, and dispensing of food which have been shredded to such a degree that all particles will be carried freely under the flow conditions normally prevailing in public sewers, with no particles greater than one-half inch (1.27 centimeters) in any dimension.

(49) *Public sewer.* A sewer in which all owners of abutting properties have equal rights and is controlled by public authority.

(50) *Public water supply.* All water supplies owned and operated by the City of Salina.

(51) *Publicly owned treatment works (POTW).* A treatment works as defined by section 212 of the act, which is owned by a state or municipality (as defined by section 502(4) of the act). This definition includes any devices and systems used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes and other conveyances only if they convey wastewater to a POTW treatment plant. The term also means the municipality as defined in section 502(4) of the act, which has jurisdiction over the indirect discharges to and the discharges from such a treatment works.

(52) *Sanitary sewer.* A sewer which carries wastewater and to which storm, surface and groundwater are not intentionally admitted.

(53) *Sanitary sewerage system.* Any devices, units and systems used in the collection, transportation, storage, treatment, recycling and reclamation of municipal wastewater or industrial wastes of liquid nature including all land and appurtenances thereto owned by the

city and as further defined for a publicly owned treatment works (POTW) under section 211 of the Federal Water Pollution Control Act (33 U.S.C. 1292).

(54) *Sewer.* A pipe or conduit for carrying wastewater.

(55) *Shall.* "Shall" is mandatory, "may" is permissive.

(56) *Significant industrial user.* (i) All categorical industrial users and (ii) any noncategorical industrial user that:

a. Discharges an average of twenty-five thousand (25,000) gallons per day or more of process wastewater ("process wastewater" excludes sanitary, noncontact cooling and boiler blowdown wastewater);

b. Contributes a process wastestream which makes up five (5) percent or more of the average dry weather hydraulic or organic (BOD, TSS, etc.) capacity of the treatment plant; or

c. Has a reasonable potential, in the opinion of the control or approval authority, to adversely affect the POTW treatment plant (inhibition, pass-through of pollutants, sludge contamination, or endangerment of POTW workers).

(57) *Slug load.* Any pollutant (including BOD) released in a discharge at a flow rate or concentration which will cause a violation of the specific discharge prohibition in 40 C.F.R. section 403.

(58) *State.* State of Kansas.

(59) *Standard industrial classification (SIC).* A classification pursuant to the Standard Industrial Classification Manual issued by the executive office of the president, office of management and budget, 1972.

(60) *Storm drain (storm sewer).* A sewer which carries storm and surface waters and drainage but excludes wastewater and industrial wastes, other than unpolluted cooling water.

(61) *Storm sewer.* Any flow occurring during or following any form of natural precipitation and resulting therefrom.

(62) *Suspended solids (SS).* Solids that either float on the surface of, or are suspended in water, wastewater or other liquids and which are removable by laboratory filtering.

(63) *Terms.* Unless the context of usage indicates otherwise, the meaning of terms in this article that are not defined, shall be as defined in the latest edition of "Glossary: Water and Wastewater Control Engineering" prepared by joint editorial board of the American Public Health Association, American Society of Civil Engineers, American Water Works Association and Water Pollution Control Federation.

(64) *Total toxic organics.* As defined in the applicable pretreatment standards as found in 40 C.F.R. Chapter I, subchapter N, parts 405--471.

(65) *Toxic pollutant.* Any pollutant or combination of pollutants listed as toxic in regulations promulgated by the administrator of EPA under the provision of the Clean Water Act 307(a) (40 C.F.R. part 403 appendix B).

(66) *Uniform plumbing code.* The latest revision of the uniform plumbing code published by the International Association of Plumbing and Mechanical Officials.

(67) *Upset.* An exceptional incident in which there is unintentional and temporary noncompliance with categorical pretreatment standards because of factors beyond the reasonable control of the user. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, lack of preventative maintenance, or careless or improper operation.

(68) *User.* Any person who contributes, causes or permits the discharge of wastewater into the city's sanitary sewerage system.

(69) *Wastewater.* A combination of the water-carried wastes from residences, business buildings, institutions and industrial establishments, together with such ground, surface and stormwaters that may be present.

(70) *Wastewater collection system.* Each, and all, of the common lateral sewers, within a publicly owned treatment system, which are primarily installed to receive wastewaters directly from facilities which convey wastewater from individual structures or from private property, and which include service connection "Y" fittings designed for connection with those facilities. The facilities which convey wastewater from individual structures or from private property to the public lateral sewer or its equivalent, are specifically excluded from the definition, with the exception of pumping units, and pressurized lines, for individual structures or groups of structures when such units are owned and maintained by the City of Salina, Kansas.

(71) *Wastewater treatment plant.* Any unit processes, facilities, land and appurtenances thereto, providing primary treatment, secondary treatment and/or advanced treatment of wastewaters and the resulting sludges, contributed to the sanitary sewerage system.

(72) *Water Pollution Control Federal (WPCF) or publications thereof.* The water environment federation or publications thereof.

(73) *Waters of the state.* All streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, reservoirs, aquifers, irrigation systems, drainage systems and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, which are contained within, flow through or border upon the state or any portion thereof.

(74) *Watercourse.* A channel in which a flow of water occurs, either continually or intermittently.

(b) *Abbreviations.* The following abbreviations shall have the designated meanings:

(1) *BOD.* Biochemical oxygen demand [five (5) day, unless otherwise noted as "Ultimate BOD"].

(2) *C.F.R.* Code of federal regulations. Any reference to a section of the C.F.R. shall include the section as in effect upon the adoption of the ordinance or as it may subsequently be amended or renumbered.

(3) *COD.* Chemical oxygen demand.

(4) *EPA.* Environmental Protection Agency.

(5) *K.A.R.* Kansas administrative regulations. Any reference to a section of the K.A.R. shall include the section as in effect upon the adoption of the ordinance or as it may subsequently be amended or renumbered.

(6) *KDH&E.* Kansas Department of Health and Environment.

(7) *K.S.A.* Kansas Statutes Annotated. Any reference to a section of the K.S.A. shall include the section as in effect upon the adoption of the ordinance or as it may subsequently be amended or renumbered.

(8) *l.* Liter.

(9) *Mg.* Milligrams.

(10) *Mg/l.* Milligrams per liter.

(11) *NPDES.* National pollutant discharge elimination system.

(12) *SIC.* Standard industrial classification.

(Ord. No. 92-9505, § 1, 4-27-92)

Sec. 41-111. General.

It shall be unlawful for any person to place, deposit or permit to be deposited any human or animal excrement, garbage or other objectionable waste in any unsanitary manner on public or private property within the city or any area under the jurisdiction of the city.

(Ord. No. 92-9505, § 1, 4-27-92)

Sec. 41-112. Treatment required.

It shall be unlawful to discharge any wastewater or other polluted waters into any natural outlet except where suitable treatment has been provided in accordance with subsequent provisions of this chapter.

(Ord. No. 92-9505, § 1, 4-27-92)
Cross references: Private wastewater disposal system, § 18-75.

Sec. 41-113. Private wastewater disposal systems.

Except as hereinafter provided, it shall be unlawful to construct or maintain any privy, privy vault, septic tank, cesspool, or other facility intended or used for the disposal of wastewater.

(Ord. No. 92-9505, § 1, 4-27-92)

Sec. 41-114. Requirements.

The owner(s) of all homes, buildings or properties used for human occupancy, employment, recreation or other purposes, situated within the city and abutting any street, alley or right-of-way in which there is now located a sanitary sewer of the city, is hereby required to install, at the owner(s) expense, toilet facilities therein and to connect such facilities directly with the proper public wastewater collection system in accordance with the provisions of this article within ninety (90) days after the official notice to do so, provided that the public wastewater collection system is within one hundred (100) feet of the property line. The director or health officer shall have the authority to require connection to the public wastewater collection system when the system is over one hundred (100) feet from the property line in cases where a health hazard exists.

(Ord. No. 92-9505, § 1, 4-27-92)

Sec. 41-115. Sewer connections.

No sewer connection will be permitted for areas outside the city limits until the developer or owner obtains approval from the governing body. Any sewer lines needed to connect with existing city sewer mains and laterals must conform to city and state specifications.

(Ord. No. 92-9505, § 1, 4-27-92)

Secs. 41-116--41-124. Reserved.

ARTICLE VI. INSTALLATION AND CONNECTION OF BUILDING SEWERS AND DRAINS

Sec. 41-125. General.

No unauthorized person shall uncover, make any connections with or opening into, use, alter, or disturb any public sewer or appurtenance thereof without first obtaining a written permit from the director.

(Ord. No. 84-9007, § 1, 3-26-84)

Sec. 41-126. Permit required.

There shall be one class of building sewer permit for residential and commercial service. The owner or his agent shall make application on a special form furnished by the city. The permit application shall be supplemented by any plans, specifications, or other information considered pertinent in the judgment of the director. A permit and inspection fee for a residential or commercial building sewer permit shall be paid to the city clerk at the time the application is filed. Permits for industrial wastes are covered under section 41-196.

(Ord. No. 84-9007, § 1, 3-26-84)

Sec. 41-127. Indemnification.

All cost and expenses incident to the installation and connection of the building sewer shall be borne by the owner. The owner shall indemnify the city from any loss or damage that may directly or indirectly be occasioned by the installation of the building sewer.

(Ord. No. 84-9007, § 1, 3-26-84)

Sec. 41-128. Building sewer.

A separate and independent building sewer shall be provided for every building except where one building stands at the rear of another on an interior lot and no sewer is available or can be constructed to the rear building through an adjoining alley, courtyard, or driveway. The building sewer from the front building may be extended to the rear building and the whole considered as one building sewer. In all buildings in which any building drain is too low to permit gravity flow to the public wastewater collection system, the wastewater carried by such a building drain shall be lifted by an approved means and discharged to the building sewer.

(Ord. No. 84-9007, § 1, 3-26-84)
Cross references: Requirements, § 41-114.

Sec. 41-129. Existing building sewer.

Old building sewers may be used in connection with new buildings only when they are found, on examination and test by the director, to meet all requirements of this chapter.

(Ord. No. 84-9007, § 1, 3-26-84)

Sec. 41-130. Sewer construction.

The size, slope, alignment, materials of construction of a building sewer, and the methods to be used in excavating and backfilling the trench, installing jointing, and testing the building sewer, shall conform to the uniform plumbing code as hereinafter modified.

(Ord. No. 84-9007, § 1, 3-26-84)

Sec. 41-131. Minimum pipeline diameter.

Minimum internal pipeline diameter for all building sewers shall be four (4) inches.

(Ord. No. 84-9007, § 1, 3-26-84)

Sec. 41-132. Pipeline materials.

Building sewers shall be constructed of one of the following pipeline materials:

(1) Extra-strength vitrified clay pipeline and fittings conforming to ASTM C 700.

(2) Polyvinyl chloride (PVC) gravity sewer pipe and fittings, Type PSP or PSM conforming to ASTM standards D 3033 or D 3034. All PVC sewer pipe shall be at least Schedule 40.

(3) ABS composite sewer pipe conforming to ASTM D 2680.

(4) Reinforced plastic mortar pipe conforming to ASTM D 3262.

(5) Cast or ductile iron pipe with a minimum pressure rating of one hundred fifty (150) pounds per square inch conforming to federal specification WW-P421b, or American National Standards Institute (ANSI) A21.51, A21.6 or A21.8, except that iron used in the manufacture of the pipe shall have minimum design strength value, in pounds per square inch, of twenty-one thousand (21,000) for bursting strength and forty-five thousand (45,000) for modulus of rupture.

(Ord. No. 84-9007, § 1, 3-26-84)

Sec. 41-133. Inflow sources.

No person shall make connection of roof downspouts, exterior or interior foundation drains, areaway drains, or other sources of surface runoff or groundwater to a building sewer or building drain which in turn is connected directly or indirectly to a public wastewater collection system.

(Ord. No. 84-9007, § 1, 3-26-84)

Sec. 41-134. Building sewer connections.

The connection of the building sewer into the public wastewater collection system shall conform to the requirements of the uniform plumbing code or other applicable rules and regulations of the city. All such connections shall be made gastight and watertight. Any deviation from the prescribed procedures and materials must be approved by the director before installation.

(Ord. No. 84-9007, § 1, 3-26-84)

Sec. 41-135. Connection inspection.

The applicant for the building sewer permit shall notify the building inspector when the building sewer is ready for inspection and connection to the public sewer. The connection shall be made under the supervision of the director or his representative.

(Ord. No. 84-9007, § 1, 3-26-84)

Sec. 41-136. Safety.

All excavations for building sewer installation shall be adequately guarded with barricades and lights so as to protect the public from hazard. Streets, sidewalks, parkways, and other public property disturbed in the course of the work shall be restored in a manner satisfactory to the director.

(Ord. No. 84-9007, § 1, 3-26-84)

Secs. 41-137--41-144. Reserved.

ARTICLE VII. DISCHARGE CRITERIA[3]

Sec. 41-145. General.

No person shall discharge or cause to be discharged any stormwater, surface water, groundwater, roof runoff, subsurface drainage, uncontaminated cooling water, or unpolluted industrial process waters to any sanitary sewer. Stormwater and all other unpolluted drainage shall be discharged to sewer specifically designated as storm sewers by the director or to a natural outlet. Such flows are also subject to federal and state regulations.

(Ord. No. 92-9505, § 2, 4-27-92)

Sec. 41-146. General discharge prohibitions.

No person shall contribute or cause to be contributed, directly or indirectly, any pollutant(s) which cause pass through or interference. Any trucked or hauled pollutants shall not be contributed, directly or indirectly, to the POTW except at discharge points designated by the POTW. These general prohibitions and the specific prohibitions enumerated in this article apply to each user introducing pollutants into a POTW whether or not the user is subject to other national pretreatment standards or any other national, state or local pretreatment standards or requirements.

(Ord. No. 92-9505, § 2, 4-27-92)

Sec. 41-147. Flammable or explosive materials.

No person shall discharge or cause to be discharged any pollutants which create a fire or explosion hazard in the POTW, including, but not limited to, wastestreams with a closed cup flashpoint of less than one hundred forty (140) degrees Fahrenheit (60 degrees Centigrade) using the test methods specified in 40 C.F.R. section 261.21.

(Ord. No. 92-9505, § 2, 4-27-92)

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[3] **Editor's note:** Sections 2 and 5 of Ord. No. 92-9505, adopted April 27, 1992, repealed Art. VII, §§ 41-145--41-163 and provided for a new Art. VII to read as herein set out. Formerly, Art. VII pertained to similar subject matter and derived from Ord. No. 84-9007, § 1, adopted March 26, 1984.

Sec. 41-148. Solid or viscous substances.

No person shall discharge or cause to be discharged any solid or viscous substances which may cause obstruction, interference, or pass through to the POTW such as, but not limited to: Petroleum oil, nonbiodegradable cutting oil, products of mineral oil origin, grease or garbage with particles greater than one-half inch in any dimension, animal guts or tissues, paunch manure, bones, hair, hides or fleshings, entrails, whole blood, feathers, ashes, cinders sand, spent lime, stone or marble dust, metal, glass, straw, shavings, grass clippings, rags, spent grains, spent hops, waste paper, wood, plastics, gas, tar, asphalt residues, residues from refining, or processing of fuel or lubricating oil, mud or glass grinding, polishing wastes, or any waste containing fats, wax, grease or oil, whether emulsified or not, in excess of one hundred (100) milligrams per liter (100 mg/l) or containing substances which may solidify or become viscous at temperatures between thirty-two (32) degrees Fahrenheit and one hundred twenty (120) degrees Fahrenheit.

(Ord. No. 92-9505, § 2, 4-27-92)

Sec. 41-149. pH limitations.

No person shall discharge or cause to be discharged any wastewater having a pH less than 5.0 or higher than 9.0, or wastewater having any other corrosive property capable of causing damage or hazard to structures, equipment and/or personnel.

(Ord. No. 92-9505, § 2, 4-27-92)

Sec. 41-150. Toxic pollutants.

No person shall discharge or cause to be discharged any wastewater containing toxic pollutants in sufficient quantity, either singly or by interaction with other pollutants, to injure or interfere with any wastewater treatment process, which result in the presence of toxic gases, vapors, or fumes within the POTW in a quantity that may cause acute worker health and safety problems, create a toxic effect in the receiving waters of the sanitary sewerage system or to exceed the limitation set forth in a federal categorical pretreatment standard. A toxic pollutant shall include, but not be limited to, any pollutant identified pursuant to section 307(a) of the Clean Water Act.

(Ord. No. 92-9505, § 2, 4-27-92)

Sec. 41-151. Noxious or malodorous.

No person shall discharge or cause to be discharged any noxious or malodorous liquids, gases or solids which either singly or by interaction with other wastes are sufficient to create a public nuisance or hazard to life or are sufficient to prevent entry into the sewers for maintenance and repair.

(Ord. No. 92-9505, § 2, 4-27-92)

Sec. 41-152. Reuse or reclamation of waste.

No person shall discharge or cause to be discharged any substance which may cause the wastewater treatment plant effluent or any other product of the sanitary sewerage system such as residues, sludges or scums to be unsuitable for reclamation and reuse or to interfere with the reclamation process. In no case shall a substance discharge cause the sanitary sewerage system to be in noncompliance with sludge use or disposal criteria, guidelines or regulations developed under section 405 of the act; any criteria, guidelines or regulations affecting sludge use or disposal developed pursuant to the Solid Waste Disposal Act, the Clean Air Act, the Toxic Substances Control Act or state criteria applicable to the sludge management method being used.

(Ord. No. 92-9505, § 2, 4-27-92)

Sec. 41-153. NPDES permit violation.

No person shall discharge or cause to be discharged any substance which will cause the sanitary sewerage system to violate its NPDES and/or state disposal system permit or the receiving water quality standards set forth in K.A.R. 28-16-28b through 28-16-28f.

(Ord. No. 92-9505, § 2, 4-27-92)

Sec. 41-154. Color, taste or odor limitations.

No person shall discharge or cause to be discharged any wastewater with objectionable color, taste or odor-producing substances not removed in the treatment process, such as, but not limited to phenols, dye wastes and vegetable tanning solutions.

(Ord. No. 92-9505, § 2, 4-27-92)

Sec. 41-155. Temperature limitations.

No person shall discharge or cause to be discharged any wastewater having a temperature which will inhibit biological activity in the wastewater treatment plant resulting in interference, but in no case heat in such quantities that the influent temperature at the wastewater treatment plant exceeds forty (40) degrees Centigrade (104 degrees Fahrenheit).

(Ord. No. 92-9505, § 2, 4-27-92)

Sec. 41-156. Oxygen demanding pollutants.

No person shall discharge or cause to be discharged any pollutants, including oxygen demanding pollutants (BOD, etc.) released at a flow rate and/or pollutant concentration which a user knows or has reason to know will cause interference to the sanitary sewerage system. In no case shall a slug load have a flow rate or contain concentrations or qualities of pollutants that exceed for any time period longer than fifteen (15) minutes more than five (5) times the average twenty-four (24) hour concentration, quantities or flow during normal operation.

(Ord. No. 92-9505, § 2, 4-27-92)

Sec. 41-157. Radioactive waste.

No person shall discharge or cause to be discharged any wastewater containing any radioactive waste or isotopes of such half-life or concentration as may exceed limits established by the director in compliance with applicable state or federal regulations.

(Ord. No. 92-9505, § 2, 4-27-92)

Sec. 41-158. Hazardous or nuisance materials.

(a) No person shall discharge or cause to be discharged substances, materials, water or wastes which create a public nuisance. No materials shall be discharged, other than aqueous mixtures generated during normal process operations, that are considered hazardous as defined by 40 C.F.R. section 261.21 (ignitable), section 261.22 (corrosive), section 261.23 (reactive), section 261.24 (EP toxicity), section 261.31 (hazardous waste from nonspecific sources), and section 261.32 (hazardous waste from specific sources). Under no circumstances shall concentrated hazardous wastes be discharged to the sewer system.

(b) The user shall notify the POTW, the EPA regional waste management division director, and state hazardous waste authorities in writing of any discharge into the POTW of a substance, which, if otherwise disposed of, would be a hazardous waste under 40 C.F.R. part 261. Such notification must

include the name of the hazardous waste as set forth in 40 C.F.R. part 261, the EPA hazardous waste number, and the type of discharge (continuous, batch, or other). If the user discharges more than one hundred (100) kilograms of such waste per calendar month to the POTW, the notification shall also contain the following information to the extent such information is known and readily available to the user:

(1) An identification of the hazardous constituents contained in the wastes;

(2) An estimation of the mass and concentration of such constituents in the wastestream expected to be discharged during that calendar month; and

(3) An estimation of the mass of constituents in the wastestream expected to be discharged during the following twelve (12) months.

All notifications must take place within one hundred eighty (180) days of the effective date of this article. Users who commence discharging after the effective date of this article shall provide the notification no later than one hundred eighty (180) days after the discharge of the listed or characteristic hazardous waste. Any notification under this paragraph need be submitted only once for each hazardous waste discharged. However, notifications of changed discharges must be submitted under section 41-190a. The notification requirement in this section does not apply to pollutants already reported under the self-monitoring requirements of 40 C.F.R. section 403.12(b)(d) and (e).

(c) Discharges are exempt from the requirements of paragraph (b) of this section during a calendar month in which they discharge no more than fifteen (15) kilograms of hazardous wastes, unless the wastes are acute hazardous waste as specified in 40 C.F.R. section 261.30(d) and (e). Discharge of more than fifteen (15) kilograms of non-acute hazardous wastes in a calendar month, or of any quantity of acute hazardous wastes as specified in 40 C.F.R. section 261.30(d) and (e) requires a one-time notification. Subsequent months during which the user discharges more than such quantities of any hazardous waste do not require additional notification.

(d) In case of any new regulations under section 3001 of the Resource Conservation and Recovery Act (RCRA) identifying additional characteristics of hazardous waste or listing any additional substance as a hazardous waste, the user must notify the POTW, the EPA regional waste management waste division director, and state hazardous waste authorities of the discharge of such substance within ninety (90) days of the effective date of such regulation.

(e) In the case of any notification made under this section, the user shall certify that it has a program in place to reduce the volume and toxicity of hazardous wastes generated to the degree it has determined to be economically practical.

(Ord. No. 92-9505, § 2, 4-27-92)

Sec. 41-159. Enforcement action.

If any waters or wastes are, or are proposed to be, discharged to the public wastewater collection system, which contain the substances or possess the characteristics enumerated in sections 41-147 through 41-158 of this article, the director may:

(1) Reject the wastes (see sections 41-6, 41-172),

(2) Require pretreatment to an acceptable condition for discharge to the public wastewater collection system,

(3) Require control over the quantities and rates of discharge, and/or

(4) Require payment to cover the added cost of handling and treating the waste not covered by existing taxes or user charges.

If the director permits the pretreatment or equalization of waste flows, the design and installation of the plants and equipment shall be subject to the review and approval of the director, and subject to the requirements of all applicable codes, ordinances, and laws. Where preliminary treatment or flow-equalizing facilities are provided for any water wastes, they shall be maintained continuously in satisfactory and effective operation by the owner, at his expense.

(Ord. No. 92-9505, § 2, 4-27-92)

Sec. 41-160. Grease, flammable wastes and sand.

Grease, oil and sand interceptors shall be provided when, in the opinion of the director, they are necessary for the proper handling of liquid wastes containing grease in excessive amounts, or any flammable waste, sand, or other harmful ingredients; except that such interceptors shall not be required for private living quarters or dwelling units. All interceptors shall be of a type and capacity approved by the director and shall be located as to be readily and easily accessible for cleaning and inspection.

(Ord. No. 92-9505, § 2, 4-27-92)

Sec. 41-161. Control manhole.

When required by the director, the owner of any property serviced by a building sewer carrying industrial wastes shall install a suitable control manhole together with such necessary meters and other appurtenances to the building sewer, to facilitate observation, sampling, and measurement of the wastes. Such a manhole, when required, shall be accessibly and safely located, and shall be constructed in accordance with plans approved by the director. The manhole shall be installed by the owner at his expense, and shall be maintained by him so as to be safe and accessible at all times.

(Ord. No. 92-9505, § 2, 4-27-92)

Sec. 41-162. Test procedures.

All analysis required by an industrial wastewater discharge permit shall conform to the techniques prescribed in 40 C.F.R. part 136. All self-monitoring analysis or compliance monitoring requires the use of a laboratory certified by KDHE for both the method of analysis and the parameter. For each measurement or sample the permittee shall record the exact place, date, and time of sampling, the date of the analysis, the analytical techniques or methods used, and the individual(s) or name of the laboratory who performed the sampling and analysis and results. If the permittee monitors any pollutant at the location(s) designated in the industrial wastewater discharge permit more frequently than required, using approved procedures, the results shall be included in the periodic compliance report. Such increased frequencies shall also be indicated.

(Ord. No. 92-9505, § 2, 4-27-92)

Sec. 41-163. Pretreatment.

Any pretreatment standards, as established by state, federal, or other public agencies of jurisdiction for such discharge, will be used as the minimum requirements by the director as applied to this chapter.

(Ord. No. 92-9505, § 2, 4-27-92)

Secs. 41-164--41-170. Reserved.

ARTICLE VIII. PENALTIES AND VIOLATIONS[4]

Sec. 41-171. Vandalism.

No unauthorized person shall maliciously, willfully, or negligently break, damage, destroy, uncover, deface, or tamper with any structure, appurtenance, or equipment which is a part of the sanitary sewerage system. Any person violating this provision shall be subject to immediate arrest under charge of disorderly conduct.

(Ord. No. 92-9505, § 3, 4-27-92)

Sec. 41-172. Notice.

Any user found to be violating any provision of articles V through VII shall be served by the city with written notice stating the nature of the violation. The offender shall permanently cease all violations.

(Ord. No. 92-9505, § 3, 4-27-92)

Sec. 41-173. Penalties and recovery of losses of the city.

Any user who violates articles V through VII:

(1) Shall be guilty of a misdemeanor, and on conviction thereof shall be fined in an amount up to one thousand dollars ($1,000.00) for each violation, or imprisonment not exceeding thirty (30) days, or by both such fine and imprisonment. If the conviction is for a violation committed after a first conviction, punishment shall be a fine of up to one thousand dollars ($1,000.00) for each violation, or imprisonment not exceeding ninety (90) days, or by both such fine and imprisonment. Each day in which any such violation shall continue shall be deemed a separate offense.

(2) Shall become liable to the city for any expenses (including legal fees), costs, losses, fines, penalties, damages, or judgments incurred by the city, arising out of such violation.

(Ord. No. 92-9505, § 3, 4-27-92)

Secs. 41-174--41-180. Reserved.

ARTICLE IX. INDUSTRIAL PRETREATMENT[5]

Sec. 41-181. Purpose.

The purpose of this article is:

(1) To prevent the introduction of pollutants into the sanitary sewerage system which could interfere with the normal operation of the system, and/or contaminate the resulting sludge;

(2) To prevent the introduction of pollutants into the sanitary sewerage system which could pass through the system, inadequately treated, into receiving waters or the atmosphere or otherwise be incompatible with the system; and

(3) To improve the opportunity to recycle and reclaim wastewaters and sludges from the system.

(Ord. No. 92-9505, § 4, 4-27-92)

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[4] **Editor's note:** Sections 3 and 5 of Ord. No. 92-9505, adopted April 27, 1992, repealed Art. VIII, §§ 41-171--41-173, and provided for a new Art. VIII to read as herein set out. Formerly, Art. VIII pertained to similar subject matter and derived from Ord. No. 84-9007, § 1, adopted March 26, 1984.

[5] **Editor's note:** Sections 4 and 5 of Ord. No. 92-9505, adopted April 27, 1992, repealed Art. IX, §§ 41-181--41-219, and provided for a new Art. IX to read as herein set out. Formerly, Art. IX pertained to similar subject matter and derived from Ord. No. 84-9007, § 1, adopted March 26, 1984.

Sec. 41-182. Policy.

This article provides for the regulation of contributors to the sanitary sewerage system through the issuance of permits to certain users, as determined by the director, and through enforcement of general requirements for the other users, authorizes monitoring and enforcement activities, requires user reporting, assumes that existing customer's capacity will not be preempted and provides for the setting of charges and fees for the equitable distribution of costs resulting from the program established herein.

(Ord. No. 92-9505, § 4, 4-27-92)

Sec. 41-183. Application, administration and enforcement.

This article shall apply to all users that discharge industrial wastes into the sanitary sewerage system. Except as otherwise provided herein, the director shall administer, implement and enforce the provisions of this article. To assist in the enforcement of the provisions of this article, the director is authorized to develop, implement, and amend as may be necessary from time to time, an industrial pretreatment program enforcement policy. The guidelines contained in the policy shall be regarded as guidance for minimum action and shall not preclude more strenuous action under this article if deemed necessary by the director.

(Ord. No. 92-9505, § 4, 4-27-92)

Sec. 41-184. General discharge prohibitions.

No user shall contribute or cause to be contributed, directly or indirectly, any pollutant or wastewater which will interfere with the operation or performance of the sanitary sewerage system as listed under section 41-146.

(Ord. No. 92-9505, § 4, 4-27-92)

Sec. 41-185. Federal categorical pretreatment standards.

Industrial users shall provide necessary wastewater treatment as required to comply with the most stringent provisions of this article, federal pretreatment standards, as established by 40 C.F.R. chapter I, subchapter N, parts 405--471, state standards and permit conditions, and shall achieve compliance with all national categorical pretreatment standards within the time limitations as specified by the federal pretreatment regulations, and with any other pretreatment standards by applicable deadlines.

(Ord. No. 92-9505, § 4, 4-27-92)

Sec. 41-186. Modification of federal categorical pretreatment standards.

Where the city's sanitary sewerage system achieves consistent removal of pollutants limited by federal pretreatment standards, the city may apply to the approval authority for modification of specific limits in the federal pretreatment standards if the requirements contained in 40 C.F.R. section 403.7, are fulfilled.

(Ord. No. 92-9505, § 4, 4-27-92)

Sec. 41-187. State requirements.

State requirements and limitations on discharges shall apply in any case where they are more stringent than federal requirements and limitations or those in this chapter.

(Ord. No. 92-9505, § 4, 4-27-92)

Sec. 41-188. City's right of revision.

The city reserves the right to establish by ordinance more stringent limitations or requirements on discharges to the sanitary sewerage system if deemed necessary to comply with the objectives presented in section 41-181.

(Ord. No. 92-9505, § 4, 4-27-92)

Sec. 41-189. Dilution.

No permittee shall increase the use of potable, cooling, or process water, or in any way, attempt to dilute a discharge as a partial or complete substitute for adequate treatment to achieve compliance with the limitations contained in the federal categorical pretreatment standards, or any other pollutant-specific limitation(s) developed by the city or state.

(Ord. No. 92-9505, § 4, 4-27-92)

Sec. 41-190. Accidental discharge.

Each user, subject to the requirements of this article, shall provide protection from accidental discharge of prohibited materials or other substances regulated by this article. Facilities required to prevent accidental discharge of prohibited materials shall be provided and maintained at the user's own cost and expense. Detailed plans, showing facilities and operating procedures to provide this protection, shall be submitted to the city for review and approval by the city before construction of the facility. Review and approval of such plans and operating procedures shall not relieve the user from the responsibility to modify the facility as necessary to meet the requirements of this article. All categorical and noncategorical users shall notify the POTW immediately of all discharges that could cause problems to the POTW, including any slug loadings, by the user. In the case of an accidental discharge, it is the responsibility of the user to immediately telephone and notify the director of the incident. The notification shall include location of discharge, type of waste, concentration and volume and corrective actions.

(Ord. No. 92-9505, § 4, 4-27-92)

Sec. 41-190.1. Notification of changed discharge.

All industrial users shall promptly notify the POTW in advance of any substantial change in the volume or character of pollutants in their discharge, including the listed or characteristic hazardous wastes for which the industrial user has submitted initial notification under 40 C.F.R. section 403.12(p).

(Ord. No. 92-9505, § 4, 4-27-92)

Sec. 41-191. Noncompliance notification.

If for any reason, the industrial user does not comply with or will be unable to comply with any effluent limitations specified in this ordinance or the industrial wastewater discharge permit, the user shall provide the department with the following information:

(1) Immediately upon becoming aware of such a condition verbal notification must be made containing the following information:

   a. A description of the discharge and cause of noncompliance, and

   b. The period of noncompliance including exact date and times or if not corrected, the anticipated time the noncompliance is expected to continue, and the steps taken to reduce, eliminate and prevent recurrence of the noncomplying discharge.

(2) Within five (5) days of becoming aware of such a condition a written report must be submitted containing the following information:

a. A description of the discharge and cause of noncompliance, and

b. The period of noncompliance including exact dates and times or if not corrected, the anticipated time the noncompliance is expected to continue, and the steps taken to reduce, eliminate and prevent recurrence of the noncomplying discharge.

The above information shall also be provided with the submittal of the periodic compliance report.

(Ord. No. 92-9505, § 4, 4-27-92)

Sec. 41-192. Notice to employees.

A notice shall be permanently posted on the user's bulletin board or other prominent place advising employees whom to call in the event of a dangerous discharge. Employers shall ensure that all employees who may cause or suffer such a dangerous discharge to occur are advised of the emergency notification procedure.

(Ord. No. 92-9505, § 4, 4-27-92)

Sec. 41-193. Fees.

It is the purpose of this article to provide for the recovery of costs from users of the city's sanitary sewerage system for the implementation of the program established herein.

(Ord. No. 92-9505, § 4, 4-27-92)

Sec. 41-194. Charges and fees.

The city may adopt charges and fees which may include:

(1) Fees for reimbursement of costs of setting up and operating the city's pretreatment program;

(2) Fees for monitoring, inspections and surveillance procedures;

(3) Fees for reviewing accidental discharge procedures and construction;

(4) Fees for permit applications;

(5) Fees for filing appeals;

(6) Fees for consistent removal by the city of pollutants otherwise subject to federal pretreatment standards;

(7) Other fees as the city may deem necessary to carry out the requirements contained herein.

The fees relate solely to the matters covered by this article and are separate from all other fees chargeable by the city.

(Ord. No. 92-9505, § 4, 4-27-92)

Sec. 41-195. Wastewater discharges.

No industrial user as defined in this chapter shall discharge any wastewater into the POTW contained within the jurisdiction of the city without a city permit.

(Ord. No. 92-9505, § 4, 4-27-92)

Sec. 41-196. General permits.

All nondomestic users proposing to connect or to contribute to the sanitary sewerage system shall obtain a wastewater discharge permit before connecting to or contributing to the sanitary sewerage system. Certain existing users identified by the director connected to or contributing to the sanitary sewerage system shall obtain a wastewater discharge permit within one hundred eighty (180) days after the effective date of this article.

(Ord. No. 92-9505, § 4, 4-27-92)

Sec. 41-197. Permit application.

Users required to obtain a wastewater discharge permit shall complete and file with the city an application in the form prescribed by the city, and accompanied by a fee of one hundred dollars ($100.00). Existing users shall apply for a wastewater discharge permit within thirty (30) days after the effective date of this article and proposed new users shall apply at least ninety (90) days prior to connecting to the sanitary sewerage system. In support of the application, the user shall submit, in units and terms appropriate for evaluation, the following information:

(1) Name, address and location (if different from the address);

(2) SIC number according to the Standard Industrial Classification Manual, Bureau of the Budget, 1972, as amended;

(3) Wastewater constituents and characteristics including, but not limited to, those mentioned in sections 41-184 through 41-190 as determined by a KDH&E certified analytical laboratory; sampling and analysis shall be performed in accordance with the procedures established by the EPA pursuant to section 304(g) of the act and contained in 40 C.F.R. part 136, as amended;

(4) Time and duration of contribution;

(5) Average daily and three-minute peak wastewater flow rates, including daily, monthly and seasonal variations if any;

(6) Site plans, floor plans, mechanical and plumbing plans and details to show all sewers, sewer connections and appurtenances by the size, location and elevation;

(7) Description of activities, facilities and plant processes on the premises including all materials which are or could be discharged;

(8) The nature and concentration of any pollutants in the discharge which are limited by any city, state or federal pretreatment standards and a statement regarding whether or not the pretreatment standards are being met on a consistent basis and if not, whether additional operation and maintenance (O&M) and/or additional pretreatment is required for the user to meet applicable pretreatment standards;

(9) If pretreatment or other measures will be required to meet the pretreatment standards, the shortest schedule by which the user will provide such additional pretreatment. The completion date in this schedule shall not be later than the compliance date established for the applicable pretreatment standard. The following conditions shall apply to this schedule:

a. The schedule shall contain increments of progress in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the user to meet the applicable pretreatment standards (e.g., hiring an engineer, completing preliminary plans, completing final plans,

review and approval of construction plans by the director, executing contract for major components, commencing construction, completing construction, etc.).

b. No increment referred to in paragraph a. shall exceed nine (9) months.

c. Not later than fourteen (14) days following each date in the schedule and the final date for compliance, the authorized representative of the user shall submit a progress report to the director including, as a minimum, whether or not it complied with the increment of progress to be met on such date and, if not, the date on which it expects to comply with this increment of progress, the reason for delay and the steps being taken by the user to return the construction to the schedule established. In no event shall more than nine (9) months elapse between such progress reports to the director.

(10) Each product produced by type, amount, process or processes and rate of production;

(11) Type and amount of raw materials processed (average and maximum per day);

(12) Number and type of employees and hours of operation of plant and proposed or actual hours of operation of pretreatment system;

(13) The user shall submit a list of any environmental control permits held by or for the facility.

(14) Any other information as may be deemed by the director to be necessary to evaluate the permit application.

The city will evaluate the data furnished by the user and may require additional information. After evaluation and acceptance of the data furnished, the city may issue a wastewater discharge permit subject to terms and conditions provided herein.

(Ord. No. 92-9505, § 4, 4-27-92)

Sec. 41-198. Permit modifications.

As soon as possible subsequent to the promulgation of changes to any national categorical pretreatment standard, the wastewater discharge permit of the users subject to such standards shall be revised to require compliance with such standard within the time frame prescribed by such standard. Where a user subject to a national categorical pretreatment standard has not previously submitted an application for a wastewater discharge permit as required by section 41-197, the user shall apply for a wastewater discharge permit within forty-five (45) days after the promulgation of the applicable national categorical pretreatment standard. In addition, the user with an existing wastewater discharge permit shall submit to the director within one hundred eighty (180) days after the promulgation of an applicable federal categorical pretreatment standard, the information required by subsections (8) and (9) of section 41-197.

(Ord. No. 92-9505, § 4, 4-27-92)

Sec. 41-199. Permit conditions.

Wastewater discharge permits shall be expressly subject to all provisions of this article and all other applicable regulations, and charges and fees established by the city. Permits shall contain the following:

(1) Statement of duration;

(2) Statement of nontransferability without, at a minimum, prior notification to the POTW and provision of a copy of the existing control mechanism to the new owner or operator;

(3) Effluent limits based on applicable general pretreatment standards in 40 C.F.R. part 403, categorical pretreatment standards, local limits, and state and local law;

(4) Self-monitoring sampling, reporting, notification and record keeping requirements, including an identification of the pollutants to be monitored, sampling location, sampling frequency, and sample type, based on the applicable general pretreatment standards contained in 40 C.F.R. part 403, categorical pretreatment standards, local limits, and state and local law;

(5) Statement of applicable civil and criminal penalties for violation of pretreatment standards and requirements, and any applicable compliance schedule. Such schedules may not extend the compliance date beyond applicable federal deadline.

(6) Other conditions as deemed appropriate by the city to ensure compliance with this article.

(Ord. No. 92-9505, § 4, 4-27-92)

Sec. 41-200. Permit duration.

Permits shall be issued for a specific time period, not to exceed two (2) years. A permit may be issued for a period less than a year or may be stated to expire on a specific date. The user shall apply for permit reissuance a minimum of ninety (90) days prior to the expiration of the user's existing permit. The terms and conditions of the permit may be subject to modification by the city during the term of the permit as limitations or requirements as identified in sections 41-184 through 41-190 are modified or other just causes exist. The user shall be informed of any proposed changes in his permit at least thirty (30) days prior to the effective date of change. Any changes or new conditions in the permit shall include a reasonable time schedule for compliance.

(Ord. No. 92-9505, § 4, 4-27-92)

Sec. 41-201. Permit transfer.

Wastewater discharge permits are issued for a specific user for a specific operation. A wastewater discharge permit shall not be reassigned or transferred or sold to a new owner, new user, different premises, or a new or changed operation without the approval of the director.

(Ord. No. 92-9505, § 4, 4-27-92)

Sec. 41-202. Compliance date report.

Within ninety (90) days following the date for final compliance with applicable pretreatment standards or, in the case of a new source, following commencement of the introduction of wastewater into the sanitary sewerage system, any user subject to pretreatment standards and requirements shall submit to the director a report indicating the nature and concentration of all pollutants in the discharge from the regulated process which are limited by pretreatment standards and requirements and the average and maximum daily flow for these process units in the user's facility which are limited by such pretreatment standards or requirements. The report shall state whether the applicable pretreatment standards or requirements are being met on a consistent basis and, if not, what additional pretreatment is necessary to bring the user into compliance with the applicable pretreatment standards or requirements. This statement shall be signed by an authorized representative of the user, and certified by a licensed professional engineer in the State of Kansas.

(Ord. No. 92-9505, § 4, 4-27-92)

Sec. 41-203. Periodic compliance reports, self monitoring.

(a) Any user subject to a pretreatment standard, after the compliance date of such pretreatment standard or, in the case of a new source, after commencement of the discharge into the sanitary sewerage system shall submit to the director during the months of June and December, unless required more frequently in the pretreatment standard or by the director, a report indicating the nature and concentration of pollutants in the effluent which are limited by such pretreatment standards. In addition this report shall include a record of the estimated average and maximum daily flows during the reported period. At the discretion of the director and in consideration of such factors as local high or low flow rates, holidays, budget cycles, etc., the director may agree to alter the months during which the above reports are to be submitted.

(b) The director may impose mass limitations on users, where the imposition of mass limitations are appropriate, to meet applicable pretreatment standards or requirements. In such cases, the report required by section 41-203(a) above shall indicate the mass of pollutants regulated by pretreatment standards in the effluent of the user. These reports shall contain the results of sampling and analysis of the discharge, including the flow and the nature and concentration, or production and mass, where requested by the director, of pollutants contained therein which are limited by the applicable pretreatment standards. The frequency of monitoring shall be prescribed in the applicable pretreatment standard. All analysis shall be performed by a KDH&E certified laboratory in accordance with the procedures established by the EPA pursuant to section 304(h) of the act and contained in 40 C.F.R. part 136 and amendments thereto or with any other test procedures approved by the EPA. Sampling shall be performed in accordance with the techniques approved by the EPA.

(Ord. No. 92-9505, § 4, 4-27-92)

Sec. 41-204. Monitoring facilities.

(a) The city shall require monitoring facilities to be provided and operated at the user's own expense and to allow inspection, sampling and flow measurements of the building sewer and/or internal drainage systems. The monitoring facility should normally be situated on the user's premises, but the city may, when such a location would be impractical or cause undue hardship on the user, allow the facility to be constructed in the public right-of-way and located so that it will not be obstructed by landscaping or parked vehicles.

(b) There shall be ample room in or near such sampling manhole or monitoring facility to allow accurate sampling and preparation of samples for analysis. The monitoring facility, sampling and measuring equipment shall be maintained at all times in a safe and proper operating condition at the expense of the user.

(c) Whether constructed on public or private property, sampling and monitoring facilities shall be provided in accordance with the city's requirements and all applicable local construction standards and specifications. Construction shall be completed within ninety (90) days following written notification by the city.

(Ord. No. 92-9505, § 4, 4-27-92)

Sec. 41-205. Inspection and sampling.

(a) *Right of entry.* The permittee shall allow authorized representatives of the department, KDH&E, or division or the EPA upon presentation of credentials, to enter upon the permittee's premises and at reasonable time to have access to and copy any record required to be kept by the industrial user to inspect monitoring equipment or monitoring method(s) required by the industrial wastewater

discharge permit, and to sample any discharge from the facility or any waste or material generated or stored on the premises.

(b) *Monitoring manhole.* When required by the director, the industrial user shall install a suitable monitoring manhole(s) together with such necessary meters and other appurtenances to facilitate observation, sampling and monitoring of wastes. Such a manhole, when required, shall be readily accessible in a safe location, and shall be constructed in accordance with plans approved by the director. The manhole shall be installed by the industrial user, at the industrial user's expense, and shall be maintained so as to be safe and accessible at all times.

(Ord. No. 92-9505, § 4, 4-27-92)

Sec. 41-206. Pretreatment.

Required users shall provide wastewater treatment as required to comply with this chapter and shall achieve compliance with all federal categorical pretreatment standards within the time limitations as specified by the federal pretreatment regulations. Any facilities required to pretreat wastewater to a level acceptable to the director shall be provided, operated and maintained at the user's expense. Detailed plans showing the pretreatment facilities and operating procedures shall be submitted to the director for review and shall be acceptable to the director before construction of the facility. The review of such plans and operating procedures will in no way relieve the user from the responsibility of modifying the facility as necessary to produce an effluent acceptable to the director under the provisions of this chapter. Any subsequent changes in the pretreatment facilities or method of operation shall be reported to and be approved by the director prior to the user's initiation of the changes.

(Ord. No. 92-9505, § 4, 4-27-92)

Sec. 41-207. Publication of noncompliance.

The director shall biannually publish in the largest daily newspaper a list of instances of significant noncompliance. For purposes of this section, instances of significant noncompliance are industrial users which meet one or more of the following criteria:

(1) Violations of wastewater discharge limits:

a. Chronic violations. Sixty-six (66) percent or more of the measurements exceed the same daily maximum limit or the same average limit in a six-month period (any magnitude of exceedance).

b. Technical review criteria (TRC) violations. Thirty-three (33) percent or more of the measurements exceed the same daily maximum limit or the same average limit by more than the TRC in a six-month period.

There are two (2) groups of TRCs:

Group I for conventional pollutants (BOD, TSS, fats, oil, and grease), TRC = 1.4

Group II for all other pollutants, TRC = 1.2

c. Any other violation(s) of an effluent limit (average or daily maximum) that the control authority believes has caused, alone or in combination with other discharges, interference (e.g., slug loads) or pass-through; or endangered the health of the sewage treatment personnel or the public.

d. Any discharge of a pollutant that has caused imminent endangerment to human health/welfare or to the environment and has resulted in the POTWs exercise of its emergency authority under section 41-210 or 41-211 to halt or prevent such a discharge.

(2) Violations of compliance schedule milestones, contained in a local control mechanism or enforcement order, for starting construction, completing construction, and attaining final compliance by ninety (90) days or more after the schedule date.

(3) Failure to provide reports for compliance schedules, self-monitoring data, or categorical standards (baseline monitoring reports, ninety-day compliance reports, and periodic reports) within thirty (30) days from the due date.

(4) Failure to accurately report noncompliance.

(5) Any other violation or group violations that the control authority considers to be significant.

(Ord. No. 92-9505, § 4, 4-27-92)

Sec. 41-208. Recordkeeping requirements.

(a) Any industrial user subject to the reporting requirements established in this ordinance shall maintain records of all information resulting from any monitoring activities required by this article. Such records shall include for all samples:

(1) The date, exact place, method, and time of sampling and the names of the person or persons taking the samples;

(2) The dates analyses were performed;

(3) Who performed the analyses;

(4) The analytical techniques and methods used; and

(5) The results of such analyses.

(b) Any user subject to the reporting requirements established in this article shall be required to retain for a minimum of three (3) years any records of monitoring activities and results (whether or not such monitoring activities are required by this section) and shall make such records available for inspection and copying by the director, KDH&E, and the EPA except that information deemed confidential as defined in Section 41-209. This period of retention shall be extended during the course of any unresolved litigation regarding the user or the POTW or when requested by the director, KDH&E or the EPA.

(Ord. No. 92-9505, § 4, 4-27-92)

Sec. 41-209. Confidential information.

(a) Information and data on a user obtained from reports, questionnaires, permit applications, permits and monitoring programs and from inspections shall be available to the public or other governmental agency without restriction unless the user specifically requests and is able to demonstrate to the satisfaction of the director that the release of such information would divulge information, processes or methods of production entitled to protection as trade secrets of the user.

(b) When requested, the portions of a report which might disclose trade secrets or secret processes shall not be made available for inspection by the public but shall be made available upon written request to governmental agencies for uses related to this article, the national pollutant discharge elimination

system (NPDES) permit, and/or the pretreatment programs; provided, however, that such portions of a report shall be available for use by the state or any state agency in judicial review or enforcement proceedings involving the person furnishing the report. Wastewater constituents and characteristics will not be recognized as confidential information.

(Ord. No. 92-9505, § 4, 4-27-92)

Sec. 41-210. Harmful contributions.

The director may suspend the sanitary sewerage service and/or a wastewater discharge permit when such suspension is necessary, in the opinion of the director, in order to stop an actual or threatened discharge which presents or may present an imminent or substantial endangerment to the health or welfare of persons, to the environment, causes interference to the sanitary sewerage system or causes the city to violate any condition of its NPDES permit.

(Ord. No. 92-9505, § 4, 4-27-92)

Sec. 41-211. Suspension order.

Any person notified of a suspension of the sanitary sewerage service and/or the wastewater discharge permit shall immediately stop or eliminate the discharge. In the event of a failure of the person to comply voluntarily with the suspension order, the director may take such steps as deemed necessary, including immediate severance of the sewer connection, and/or severance of the water supply to prevent or minimize damage to the sanitary sewerage system or endangerment to any individuals. The director shall reinstate the wastewater discharge permit and/or the sanitary sewerage service upon proof of the elimination of the noncomplying discharge. A detailed written statement submitted by the user describing the causes of the harmful contribution and the measures taken to prevent any future occurrence shall be submitted to the director within five (5) days of the date of occurrence.

(Ord. No. 92-9505, § 4, 4-27-92)

Sec. 41-212. Revocation of permit.

Any user who violates the following conditions of this article or applicable state and federal regulations is subject to having his permit revoked in accordance with the procedures in sections 41-210 through 41-215;

(1) Failure of a user to factually report the wastewater constituents and characteristics of his discharge;

(2) Failure of the user to report significant changes in operations, or wastewater constituents and characteristics;

(3) Refusal of reasonable access to the user's premises for the purpose of inspection or monitoring; or

(4) Violation of conditions of the permit.

(Ord. No. 92-9505, § 4, 4-27-92)

Sec. 41-213. Notification of violation.

Whenever the director finds that any user has violated or is violating this article, the wastewater discharge permit, or any prohibition, limitation or requirements contained herein, the city may serve upon such person a written notice stating the nature of the violation. Within five (5) days of the date of the notice, a plan for the satisfactory correction thereof shall be submitted to the director by the user.

(Ord. No. 92-9505, § 4, 4-27-92)

Sec. 41-214. Show cause hearing.

(a) The director may order any user who causes or allows an authorized discharge to enter the sanitary sewerage system to show cause before the governing body why the proposed enforcement action should not be taken. A notice shall be served on the user specifying the time and place of a hearing to be held by the governing body regarding the violation, the reasons why the action is to be taken, the proposed enforcement action and directing the user to show cause before the governing body why the proposed enforcement action should not be taken. The notice of the hearing shall be served personally or by registered or certified mail (return receipt requested) at least ten (10) days before the hearing. Service may be made on any agent or officer of a corporation.

(b) The governing body may itself conduct the hearing and take the evidence, or may designate any of its members or any officer or employee of the director to:

(1) Issue in the name of the governing body notices of hearings requesting the attendance and testimony of witnesses and the production of evidence relevant to any matter involved in such hearings;

(2) Take the evidence;

(3) Transmit a report of the evidence and hearing, including transcripts and other evidence, together with recommendations to the governing body for action thereon.

(c) At any hearing held pursuant to this article, testimony taken must be under oath and recorded stenographically. The transcript, so recorded, will be made available to any member of the public or any party to the hearing upon payment of the usual charges thereof.

(d) After the governing body has reviewed the evidence, it may issue an order to the user responsible for the discharge directing that, following a specified time period, the sewer service be discontinued unless adequate treatment facilities, devices or other related appurtenances shall have been installed or existing treatment facilities, devices, or other related appurtenances are properly operated. Further orders and directives as are necessary and appropriate may be issued.

(Ord. No. 92-9505, § 4, 4-27-92)

Sec. 41-215. Legal action.

If any person violates the provisions of this article, federal or state pretreatment requirements or any order of the city, the city manager may cause an action to be brought in the name of the city in a court of competent jurisdiction for appropriate legal and/or equitable relief.

(Ord. No. 92-9505, § 4, 4-27-92)

Sec. 41-216. Penalties, costs and losses of city.

Any user who is found to have violated an order of the governing body or who has failed to comply with any provision of this article, or the orders, rules, regulations and permits issued hereunder:

(1) May be assessed a criminal or civil penalty of up to one thousand dollars ($1,000.00) for each offense. Each calendar day on which a violation shall occur or continue shall be deemed a separate and distinct offense. In addition to the penalties provided herein, the city may recover reasonable attorneys' fees, court costs, and witness fees and expenses against the person found to have violated this article or the orders, rules, regulations and permits issued hereunder.

(2) Shall become liable to the city for any expenses (including legal fees), costs, losses, fines, penalties, damages, or judgments incurred by the city, arising out of such violation.

(Ord. No. 92-9505, § 4, 4-27-92)

Sec. 41-217. Falsifying information.

Any person who knowingly makes any false statements, representation or certification in any application, record, report, plan or other document filed or required to be maintained pursuant to this article or wastewater discharge permit, or who falsifies, tampers with or knowingly renders inaccurate any monitoring device or method required under this article shall, upon conviction, be punished by a fine of up to one thousand dollars ($1,000.00) for each offense.

(Ord. No. 92-9505, § 4, 4-27-92)

Sec. 41-218. Validity.

All ordinances or parts of ordinances inconsistent or conflicting herewith are hereby repealed to the extent of such inconsistency or conflict.

(Ord. No. 92-9505, § 4, 4-27-92)

Sec. 41-219. Invalidity.

The invalidity of any section, clause, sentence or provision of this chapter shall not affect the validity of any other part of this chapter which can be given effect without such invalid part or parts.

(Ord. No. 92-9505, § 4, 4-27-92)

Sec. 41-220. Reporting and signatory requirements.

(a) Pursuant to the requirements of 40 C.F.R. section 403.12, the industrial user shall submit to the city all required reports, including baseline monitoring reports, compliance schedules, progress reports, permit application, ninety-day compliance reports, self-monitoring reports, or any other technical or discharge reports as directed by the city.

(b) All reports specified in 40 C.F.R. section 403.12, including those in paragraph (a) of this section, shall include the certification statement as set forth below and in 40 C.F.R. section 403.6(a)(2)(ii), and shall be signed by an authorized representative of the industrial user:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

(Ord. No. 92-9505, § 4, 4-27-92)

Sec. 41-221. Public accessibility of records.

Except for data determined to be confidential under 33 USC section 1318 and/or K.A.R. 28-16-96, all reports prepared in accordance with the terms in the industrial waste water discharge permit and this article shall be available for public inspection at the office of the department. Effluent shall not be considered confidential. Knowingly making any false statement on any report or tampering with equipment to falsify data may result in the imposition of criminal penalties as provided for in 33 USC section 1319, K.S.A. 65-170c and/or K.A.R. 28-16-94.

(Ord. No. 92-9505, § 4, 4-27-92)

Sec. 41-222. Authorization of local limits.

The director is authorized to develop and enforce specific local limits as required by 40 C.F.R. section 403.5(c)(1), or demonstrate that they are not necessary.

(Ord. No. 92-9505, § 4, 4-27-92)

CHAPTER 42. ZONING REGULATIONS[1]

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[1] ***Cross references:** Ordinances amending the zoning map or zoning or rezoning specific property saved from repeal, § 1-5(17); airport zoning, § 4-46 et seq.; proximity of public dances to residences, § 6-47; buildings and structural appurtenances, Ch. 8; housing, Ch. 18; mobile homes and trailers, Ch. 22; planning, Ch. 29; streets, sidewalks and other public places, Ch. 35; subdivision regulations, Ch. 36. **State law references:** Planning and zoning, K.S.A. 12-701 et seq.; establishment of city district and zones, K.S.A. 12-707 et seq.

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ARTICLE I. IN GENERAL

Sec. 42-1. Title.

This chapter, including the zoning district maps made a part hereof, by reference, may be known and cited as the "Zoning Regulations".

(Code 1966, § 36-100)

Sec. 42-2. Intent and purpose.

This chapter, adopted pursuant to the provisions of the Kansas Statutes Annotated, Sections 12-707 through 12-721, are intended to serve the following purposes:

(1) To protect and promote the public health, safety, convenience, comfort and general welfare of the city;

(2) To regulate and restrict the location and use of buildings and the uses of land within each district or zone and to regulate and restrict the height, number of stories and size of buildings, the percentage of lots that may be occupied by buildings and other structures, the size of yards, courts, and other open spaces, and the density of population;

(3) To guide the future growth and development of the city in accordance with the comprehensive plan adopted by the planning commission;

(4) To protect and conserve the value of land throughout the city and the value of buildings appropriate to the various districts established by this chapter;

(5) To provide adequate light, air and privacy, to secure safety from fire, flood and other danger, and to prevent overcrowding and undue congestion of land and population;

(6) To bring about the gradual conformity of the uses of land and buildings throughout the city through the comprehensive zoning plan set forth in this chapter, and to minimize the conflicts among the uses of land and buildings;

(7) To promote the most beneficial relation between the uses of land and buildings and the circulation of traffic throughout the city;

(8) To provide a guide for public policy and action in the efficient provision of public facilities and services and for private enterprise in building development, investment and other economic activity relating to uses of land and buildings throughout the city; and

(9) To prevent pollution, encourage the wise use and sound management of natural resources, promote aesthetic values and preserve the historical character of the city.

(Code 1966, § 36-101)

Sec. 42-3. Territorial application.

This chapter shall apply to all structures and land in the city, but the planning commission may waive all requirements of this chapter for the following uses when appropriate:

(1) Poles, wires, cables, conduits, vaults, laterals, pipes, mains, valves or other similar equipment for the distribution to consumers of telephones or other communications, electricity, gas or water, or the collection of sewage or surface water operated or maintained by public utility, but not including substations located on or above the surface of the ground.

(2) Railroad tracks, signals, bridges and similar facilities on a railroad right-of-way, and maintenance and repair work on such facilities and equipment. This provision shall not include any facilities and equipment listed as a permitted use in the I-3, heavy industrial district.

(3) Agricultural structures or land used for agriculture. In the event that any structure or land ceases to be used only for agriculture, then such structure or land shall be subject to all applicable regulations.

(Code 1966, § 36-102(1))

Sec. 42-4. Existing permits.

This chapter is not intended to abrogate or annul any building permit, zoning certificate, variance, conditional use permit or certificate of occupancy lawfully issued before February 14, 1977, except as follows: If this chapter makes the proposed use under such permit, variance or certificate nonconforming as to use or bulk, and there has been no substantial change of position, expenditure, construction or operation, or incurrence of substantial obligations by the permit, certificate or variance holder in reliance on such permit, certificate or variance prior to May 15, 1977, the building permit, zoning certificate, conditional use permit, or variance will be invalid. If substantial construction or substantial operations have taken place and are continuing at the time, the proposed use may be completed.

(Code 1966, § 36-102(2))

Sec. 42-5. Certificate of occupancy.

When a structure is completed under a permit or certificate to which section 42-4 applies, a certificate of occupancy shall be issued in accordance with the zoning regulations in effect at the time the building permit or zoning certificate was issued.

(Code 1966, § 36-102(3))

Sec. 42-6. New construction, reconstruction or change in use.

All new construction or alteration of a building or structure, every change in bulk, all new uses of buildings or land, and every change, enlargement or relocation of use, shall conform to this chapter. Existing nonconforming uses and bulk may continue, subject to the provisions of article XII of this chapter.

(Code 1966, § 36-102(4))

Sec. 42-7. Annexed land.

All land which may hereafter be annexed to the city shall, from and after the effective date of such annexation, be considered to be subject to the zoning regulations of the RS district unless zoned otherwise at the time of annexation or until such time as the land may legally be rezoned.

(Code 1966, § 36-102(5))

Sec. 42-8. Subdividing required prior to zoning.

Land shall be subdivided in accordance with the subdivision regulations of the city prior to rezoning any area to any district other than the A-1 district. The zoning request shall be tentatively approved, subject to proper subdividing for a period not to exceed one year. The planning commission may grant one extension not exceeding six (6) months, upon written application. In the event that proper subdividing is not completed within the specified time, the planning commission shall recommend appropriate action to the board of commissioners.

(Code 1966, § 36-102(6))
Cross references: Subdivision regulations, Ch. 36.

Secs. 42-9--42-20. Reserved.

ARTICLE II. AMENDMENTS[2]

Sec. 42-21. Authority.

For the purpose of promoting the public health, safety and welfare, conserving the value of property throughout the city, and lessening or avoiding congestion in the public streets, the board of commissioners may, from time to time, in the manner hereinafter set forth, amend this chapter, the district boundary lines and the zoning map, provided that in all amendatory ordinances adopted under the authority of this chapter, due allowance shall be made for existing conditions, the conservation of property values, and the uses to which property is devoted at the time of adoption of such amendatory ordinance.

(Code 1966, § 36-200)

Sec. 42-22. Initiation.

Proposals for amendment may be initiated by the board of commissioners, the planning commission, or upon application of the owner of the property affected pursuant to the procedure set forth in section 42-23.

(Code 1966, § 36-201)

Sec. 42-23. Form of application.

(a) When the board of commissioners, or the planning commission, proposes an amendment, it shall transmit its proposal, including information prescribed in subsections (b)(2) and (b)(3) below, to the planning commission for a public hearing and a report thereon.

(b) When the owner of the property affected proposes an amendment to this chapter or to any zoning district created thereby, an application for such amendment, addressed to the board of commissioners, shall be filed in duplicate with the planning commission. The application shall be in such form and contain such information as shall be prescribed from time to time by the planning commission, but shall in all instances contain the following information:

(1) The applicant's name and address;

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[2] **State law references:** Amendments or changes in zoning, K.S.A. 12-708.

(2) The precise wording of any proposed amendment to the text of this chapter;

(3) If affecting a change in the zoning map:

a. The legal description and street address of the property proposed to be reclassified;

b. The name and address of the owner or owners of the property;

c. The present zoning classification and existing uses of the property proposed to be reclassified;

d. The area of the property proposed to be reclassified; and

e. An ownership list certified by a registered abstractor of the owners of all property located within two hundred (200) feet of the boundaries of the property to be affected by the proposed amendment.

(4) Such application shall be accompanied by a fee pursuant to the city fee schedule, which may be changed from time to time.

(Code 1966, § 36-202)

Sec. 42-24. Public hearing.

(a) *Generally.* The planning commission shall hold a public hearing on each proposed amendment at a reasonable time and place as established by the planning commission. It shall hold such hearing within forty-five (45) days from the date on which the proposed amendment is referred to, filed with, or initiated by the planning commission. An applicant for an amendment may waive the requirement that such hearing be held within forty-five (45) days.

(b) *Notice of hearing.* The planning commission shall publish a notice of the public hearing at least once in the official city newspaper at least twenty (20) days prior to the date of the hearing. Such notice shall fix the date, time and place for such hearing and contain a statement regarding the proposed changes in regulations or in the boundary or classification of any zone or district. If the proposed amendment would change the zoning classification or district boundary of specific property, such notice shall contain the legal description or a general description sufficient to identify the property under consideration, its present zoning classification, and its proposed classification. In such case, written notice of such proposed amendment shall also be mailed at least twenty (20) days prior to the hearing to the owners of record of the affected property and to all owners of record of lands located within two hundred (200) feet of the area proposed to be altered. If the affected property is located adjacent to or outside the city limits, the area of notification shall be extended to one thousand (1,000) feet into the unincorporated area. In addition to the published and written notice, a sign shall be posted on the land which is under consideration for rezoning. The planning commission may give such additional notice to other persons as it may, from time to time, provide by its rules.

(c) *Conduct of hearing.* The hearing, which may be adjourned from time to time, shall be conducted in accordance with such procedures as the planning commission shall prescribe by rule. Any interested person or party may appear and be heard at the hearing in person, by agent or by attorney. The planning commission may request a report on any proposed amendment from any governmental official or agency, or any other person, firm or corporation. If such report is made, a copy thereof shall be made available to the applicant and any other interested person in the offices of the planning commission.

(Code 1966, § 36-203; Ord. No. 91-9485, § 1, 12-9-91)

Sec. 42-25. Report and recommendation of planning commission.

Within forty (40) days after the close of a public hearing on a proposed amendment, the planning commission shall submit a report to the board of commissioners. A copy of the report shall be filed with the city clerk and with the zoning administrator and such copies shall be available for public inspection. A copy of the report shall be mailed to the owner of the specific property affected by the proposed amendment. Such report shall contain a recommendation for approval or disapproval and the reasons therefor based on evidence presented and matters considered at the hearing. The following matters shall be considered when approving or disapproving a rezoning request:

(1) The character of the neighborhood and the uses and zoning of nearby property;

(2) The suitability of the subject property for development with uses permitted under existing zoning;

(3) The availability of public facilities and services to support the uses permitted on the subject property under proposed zoning;

(4) The conformance of the requested change to the city's comprehensive plan;

(5) Any other information or factors relevant to the subject rezoning request.

The report submitted to the board of commissioners shall be accompanied by a copy of the record of the hearing on the proposed amendment.

(Code 1966, § 36-204; Ord. No. 87-9195, § 1, 7-27-87; Ord. No. 91-9485, § 2, 12-9-91)

Sec. 42-26. Action by board of commissioners.

(a) *Adoption of amendments.* The board of commissioners shall not act upon a proposed amendment until it has received a written report and recommendation from the planning commission. Upon receipt of said report and recommendation and consideration of the matters contained in section 42-25, the board of commissioners may:

(1) Adopt such recommendation by ordinance;

(2) Override the planning commission's recommendation by a two-thirds majority vote of the entire membership; or

(3) Return such recommendation to the planning commission with a statement specifying the basis for the board of commissioner's failure to approve or disapprove. If the board of commissioners returns the recommendation, the planning commission, after considering the same, may resubmit its original recommendation giving reasons therefore or submit a new and amended recommendation. Upon receipt of such recommendation, the governing body, by a simple majority thereof, may adopt or may revise or amend and adopt such recommendation by ordinance, or it need take no further action thereon. If a proposed amendment is not acted upon finally by the board of commissioners within one hundred twenty (120) days of the date upon which the planning commission's recommendation is received, such proposed amendment shall be deemed to have been denied, unless the applicant for such amendment shall have consented to an extension of such period of time. Whenever a proposed amendment has been denied, such amendment shall not thereafter be passed without a further public hearing and notice thereof as provided in section 42-24.

(b) *Protest.* If a written protest against a proposed amendment is filed in the office of the city clerk within fourteen (14) days after the date of the conclusion of the public hearing pursuant to the published notice, signed by the owners of record of twenty (20) percent or more of any real property proposed to be rezoned or by the owners of record of twenty (20) percent or more of the total area required to be notified by this act of the proposed rezoning of specific property, excluding public streets and ways, the ordinance adopting such amendment shall not be passed except by at least a three-fourths vote of all of the members of the board of commissioners.

(Code 1966, § 36-205; Ord. No. 91-9485, § 3, 12-9-91)
State law references: Appeals to district court, K.S.A. 12-712.

Sec. 42-27. Limitations on reapplication.

After one official rezoning application has been denied, an application for rezoning of the subject property to the same or less restrictive zoning district cannot be filed until the expiration of six (6) months from the date of final action by the board of commissioners.

(Ord. No. 87-9203, § 1, 9-28-87)

Secs. 42-28--42-39. Reserved.

ARTICLE III. DISTRICTS, MAPS AND BOUNDARIES

Sec. 42-40. Establishment of districts.

(a) The city is hereby divided into the following districts, the respective symbol for each type of district being set forth opposite its title:

Symbol	*Title*
A-1	Agricultural District
RS	Single-Family Residential Suburban District
R	Single-Family Residential District
R-1	Single-Family Residential District
R-2	Multiple-Family Residential District
R-2.5	Multiple-Family Residential District
R-3	Multiple-Family Residential District
MH	Manufactured Home Park District
U	University District
C-1	Restricted Business District
C-2	Neighborhood Shopping District
C-3	Shopping Center District
C-4	Central Business District
C-5	Service Commercial District
C-6	Heavy Commercial District
I-1	Industrial Park District
I-2	Light Industrial District
I-3	Heavy Industrial District

(b) From time to time, planned development districts (PDD), planned commercial districts (PC-1 through PC-6), floodplain (FP) districts, and heritage conservation (HC) districts may be established pursuant to articles VII, VIII and IX, respectively of this chapter. Each such district may be designated on the zoning map and in the text of this chapter by symbol only.

(Code 1966, § 36-300; Ord. No. 87-9187, § 1, 5-11-87; Ord. No. 87-9200, § 1, 9-21-87)

Sec. 42-41. Zoning map.

(a) *Generally.* The areas and boundaries of districts are hereby established on the zoning maps of the city, a copy of which is on file in the office of the zoning administrator. Such maps, referred to herein as the "zoning map", together with everything shown thereon, are hereby made a part of this chapter.

(b) *Area covered.* It is the intent of this chapter that the entire area of the city, including all land and water areas, streets, alleys, railroads and other rights-of-way be included in the districts established herein. Any area not shown on the zoning map as being included in any district shall be deemed to be in the R-1 single-family residential district.

(Code 1966, § 36-301)

Sec. 42-42. District boundaries on zoning map.

In the event that uncertainties exist with respect to the intended boundaries of the various districts as shown on the zoning map, the following rules shall apply:

(1) District boundaries are the center lines of streets, alleys or other rights-of-way, unless otherwise indicated.

(2) Where district boundaries do not coincide with streets, alleys or other rights-of-way, but do coincide with lot lines, such lot lines shall be construed to be the boundary of such district.

(3) Where district boundaries do not coincide with streets, alleys, other rights-of-way or lot lines, the district boundaries shall be determined by use of the scale shown on the zoning map.

(4) When a lot held in one ownership on February 14, 1977, is divided by a district boundary line, the entire lot shall be construed to be within the less restrictive district unless the application of this construction would increase the area of the less restrictive portion of the lot by more than twenty-five (25) percent.

(5) All streets, alleys, public ways, waterways and railroad rights-of-way, if not otherwise specifically designated, shall be deemed to be in the same zone as the property immediately abutting them. Where the center line of a street, alley, public way, waterway or railroad right-of-way serves as a district boundary, the zoning of such areas, unless otherwise specifically designated, shall be deemed to be the same as that of the abutting property up to such center line.

(Code 1966, § 36-302)

Sec. 42-43. Zoning classifications.

For the purpose of establishing a table of zoning classifications of lesser change for the purpose specified in K.S.A. 12-708 the following is hereby adopted:

Number	*Symbol*	*Title*
1	A-1	Agricultural District
2	RS	Single-family Residential Suburban District
3	R	Single-family Residential District
4	R-1	Single-family Residential District
5	R-2	Multiple-family Residential District
6	R-2.5	Multiple-family Residential District
7	R-3	Multiple-family Residential District
8	MH	Manufactured Home Park District
9	U	University District
10	C-1	Restricted Business District
11	C-2	Neighborhood Shopping District
12	C-3	Shopping Center District
13	C-4	Central Business District
14	C-5	Service Commercial District
15	C-6	Heavy Commercial District
16	I-1	Industrial Park District
17	I-2	Light Industrial District
18	I-3	Heavy Industrial District

Number 18, District I-3, is classified as the least restrictive zone classification and any other classification on the basis of inverse numerical order shall be considered zone classification of lesser change for the purpose set forth in K.S.A. 12-708.

(Ord. No. 85-9065, § 1, 3-11-85; Ord. No. 87-9187, § 2, 5-11-87)

Secs. 42-44--42-55. Reserved.

ARTICLE IV. GENERAL USE REGULATIONS

Sec. 42-56. Permitted uses.

No structure shall hereafter be built, moved or remodeled and no structure or land shall hereafter be used, occupied or designed for use or occupancy except for a use that is permitted within the zoning district in which the structure or land is located.

(Code 1966, § 36-400)

Sec. 42-57. Conditional uses.

No use of a structure or land that is designated as a conditional use in any zoning district shall hereafter be established, and no existing conditional use shall hereafter be changed to another conditional use in such district unless a conditional use permit is secured in accordance with the provisions of section 42-597(b).

(Code 1966, § 36-401)

Sec. 42-58. Accessory uses.

(1) *Permitted uses.* Permitted accessory uses include but are not limited to the following:

a. A storage building or structure incidental to a permitted use, provided that no such structure that is accessory to a residential dwelling (e.g. storage building, workshop, gazebo, greenhouse, etc.) shall exceed 360 square feet and shall be no taller than the dwelling or more than 16 feet in height whichever is less;

b. A detached garage or carport provided that no such structure that is accessory to a one or two-family dwelling shall exceed 770 square feet, except in the A-1 or RS district it shall not exceed 1,200 square feet, shall be no taller than the dwelling or more than 20 feet in height whichever is less, and shall be compatible with the residential dwelling in terms of design, appearance and materials;

c. An attached garage or carport provided that such structure is physically attached to a one or two-family dwelling by a common wall, shall not exceed the size of the dwelling it is attached to and shall be compatible with the dwelling in terms of design, appearance and materials. Attached garages shall be subject to same setback requirements as the principal structure on the lot.

d. A private swimming pool and bathhouse, provided that no part of such structure or use is located in the front yard setback;

e. In the RS district only, a guest house (without kitchen facilities) or rooms for guests in an accessory building, provided such facilities are used for the occasional housing of guests of the occupants of the principal building, and not as rental units, for permanent occupancy as housekeeping units and provided that no part of such structure is located in the front yard setback;

f. Statuary, arbors, trellises, barbecue stoves, flagpoles, fences, walls and hedges;

g. Fallout shelters, provided that they shall not be used for any principal or accessory use not permitted in the zoning district and provided that no part of such structure is located in the front yard setback;

h. Signs, when permitted by article X of this chapter and by the individual district regulations;

i. Off-street parking and loading spaces, as permitted by article XI of this chapter;

j. Restaurants, drugstores, gift shops, clubs, lounges and newsstands, when located in a permitted hotel, motel or office building;

k. Employee restaurants and cafeterias, when located in a permitted business, manufacturing or industrial building;

l. Outdoor storage or overnight parking, in a residential district, of boats, boat trailers, or recreational vehicles, provided such storage does not constitute a traffic or safety hazard, and buses when associated with a church or school and parked no closer than fifty (50) feet from any adjacent residential district;

m. Wind energy conversion systems (WECS) under the following restrictions:

1. The minimum distance from all zoning lot lines to any tower, pole or other support base of the WECS shall be determined by the following table:

Rotor Diameter(feet)	*Setback Distance (feet)*
5	100
10	165
15	220
20	270
25	310
30	340
35	365
40	385

Intermediate rotor size distances shall be interpolated. The WECS shall not be located in any required yard.

2. The WECS shall not cause interference to microwave communications or radio and television reception in the area. Noise levels measured at the lot line shall not exceed sixty (60) dBA in a residential zone.

3. To limit climbing access to a WECS tower, or other support structure, a six-foot high fence with locking portal shall be placed around the WECS support or if a tower is utilized, the tower climbing apparatus shall be limited to no lower than twelve (12) feet from the ground or the WECS support may be mounted on a roof top.

4. All blades of a WECS shall be constructed of non-metallic substances. If the applicant can prove, in written form, that no electromagnetic interference will result, a metal content of up to twenty-five (25) percent will be acceptable.

5. The WECS shall be located in compliance with the guidelines of the federal aviation regulations with regard to airport approach (15.503) and clearance around VOR and DVOR stations.

6. Height of the WECS shall not exceed the maximum height restriction in the zone where it is located by more than twenty (20) feet. The height of the WECS shall be measured at the center of the blade diameter.

7. Data pertaining to the WECS's safety and structural integrity shall be certified by a licensed engineer and filed with the building permit application. The tower or support and top adaptor shall meet the restrictions specified in the city's building code.

8. The WECS, if interconnected to a utility system, shall meet the requirements for interconnection and operation as set forth in the electric utility's current service regulations applicable to WECS.

9. A plot plan shall be submitted with the application for building permit showing the proposed location and height of the WECS, fencing and all existing buildings within two hundred (200) feet of the exterior lot lines.

10. The owner/operator shall provide covenants, easements or similar documentation to assure sufficient wind to operate the WECS unless adequate accessibility to the wind is provided by the site.

11. The owner/operator shall certify that the WECS does not violate any covenants of record.

12. The applicant shall provide a certificate of liability insurance. Annually the owner/operator shall present evidence to the zoning administrator that the liability insurance is still in effect.

n. Parking of an occupied motor home or travel trailer when associated with a hospital providing treatment to the owner or related individual, provided such parking does not constitute a traffic or safety hazard or a nuisance, the vehicle is parked beyond the front yard setback and no closer than fifty (50) feet from an adjacent residential property line, and the board of zoning appeals finds that the proposed use will not have an adverse effect on neighboring properties.

(2) Bulk regulations. Accessory structures and uses shall comply with the bulk regulations applicable in the zoning district in which they are located, and:

a. Shall be set back at least five (5) feet from the rear lot line when no alley exists and ten (10) feet when an alley exists;

b. Shall maintain a three-foot side yard, except that no part of any accessory building shall be located closer than three (3) feet in residential districts and ten (10) feet in all other districts to any principal structure, either on the same lot or an adjacent lot, unless it is attached to, or forms a part of, such principal structure;

c. Shall, on corner lots, be set back from the side street a distance not less than that required for the principal structure; and

d. Fences shall comply with article XII of chapter 8; and

e. In no event shall an accessory building or structure be allowed which is larger in size or area than the principal building, structure or use it serves.

(3) *Use limitations.* Accessory structures and uses shall comply with the use regulations applicable in the zoning district in which they are located, but no accessory structure shall be constructed and occupied on any lot prior to the time of the completion of the construction of the principal structure to which it is accessory.

(Code 1966, § 36-402; Ord. No. 81-874, § 1, 9-14-81; Ord. No. 87-9179, § 1, 4-13-87; Ord. No. 89-9352, §§ 1, 2, 11-13-89; Ord. No. 93-9593, § 1, 9-20-93; Ord. No. 98-9903, § 1, 12-7-98)

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;

(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.

(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) *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.

(3) *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.

(4) *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.

(5) *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.

(6) *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:

a. 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.

b. 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.

c. 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.

d. Application Requirements.

1. 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.

2. 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.

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

e. 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.

f. 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.

g. 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.

h. 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.

(7) *Moveable structures.* A temporary use permit may be issued for the sale of merchandise 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:

a. Such sales are conducted by the owner or lessee of the property on which it is conducted.

b. Such sales are temporary and limited to one (1) event comprising a maximum of two (2) consecutive weeks in any six-month period;

c. 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;

d. Applicants for sales shall obtain the appropriate sales tax license and, if applicable, temporary fence permits;

e. 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;

f. 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 within five (5) hours. Provided, however, a permit shall not be required for mobile food vendors accessory to permitted uses which operate for four (4) hours or less at a given location.

(8) *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:

a. 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;

b. No required off-street parking or loading area will be utilized for such display, storage or dispensing;

c. No food or drink shall be displayed outside the building except in accordance with standards and prior written approval of the health department; and

d. 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.

(9) *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.

(Code 1966, § 36-403; Ord. No. 89-9331, §§ 1, 2, 8-14-89; Ord. No. 03-10149, § 1, 7-7-03)

Sec. 42-60. Home occupations.

A home occupation may be a permitted accessory use in all residential districts it the following conditions are met:

(1) *Restrictions and limitations:*

a. The home occupation shall be conducted entirely within the principal residential building, except as provided by this chapter, and such use must be clearly incidental and secondary to the residential use of the building;

b. No more than twenty-five (25) percent of the gross floor area of a dwelling unit shall be devoted to the home occupation; provided, however, that rooms let to roomers are not subject to this limitation;

c. No alteration of the principal residential building shall be made that changes the character of that building as a residence;

d. No display or storage of equipment or material outside of a building or structure shall be permitted;

e. No mechanical or electrical equipment other than normal domestic or household equipment shall be used and the home business must not involve the use of hazardous chemicals or flammable liquids;

f. The home business must be operated by a resident of the dwelling, employees or other assistance shall be limited to immediate members of the family residing on the premises;

g. No stock in trade (except article produced by members of the immediate family) shall be displayed or sold on the premises;

h. No exterior sign or display shall be permitted, except that one (1) nonilluminated wall sign, not more than two (2) square feet in sign area, may be used to advertise the home occupation;

i. The home occupation shall not project any obnoxious noise, smoke, dust, odor or glare so as to create a nuisance or adverse condition upon adjoining properties or dwelling units;

j. The home occupation shall not generate traffic in a volume that would create a need for parking greater than that which can be accommodated on the premises or which is inconsistent with the normal parking usage of the district;

k. A home occupation conducted in a garage or accessory building shall not be in operation earlier than 7:30 a.m. or later than 10:00 p.m.

l. The operator of a home business must obtain a home occupation certificate from the zoning administrator. The certificate is not transferable, it may not be transferred to a different occupant or to a new location.

(2) *Particular home occupations permitted.* Permitted home occupations include, but are not limited to, the following list of home occupations; provided, however, that each listed occupation is subject to the restrictions and limitations above:

a. Home teaching or instruction, including music and dance, provided no more than three (3) students are taught at any one (1) time and no more than twelve (12) students per day;

b. Day care homes for children, when properly registered with the Salina-Saline County Health Department, provided such homes shall have all yard areas enclosed that are devoted to such use;

c. Artists, sculptors, authors, composers, photographers;

d. Barber and beauty shops; provided, that only one (1) chair and operator shall be permitted;

e. Dressmaker, seamstress, tailor;

f. Minister, rabbi, priest;

g. Office facility for realtors, insurance agents, brokers, sales representatives and manufacturing representatives when no exchange of tangible goods is made on the premises;

h. Professional office for physician, dentist, lawyer, architect, engineer, accountant, bookkeeper or other similar profession;

i. Home crafts, baking, food preparation; provided that no machinery or equipment shall be used or employed other than that which would customarily be found in the home, including machinery or equipment that would customarily be employed in connection with a hobby or avocation not conducted for gain or profit;

j. Repair of items such as small appliances, personal electronic goods (such as radios, televisions and stereos), furniture, and hunting and fishing gear; provided, that the use fully conforms with the performance requirements for home occupations;

k. Hobby breeders; provided, that no more than ten (10) dogs are kept on a zoning lot and that the provisions of section 7-102 have been complied with;

(3) Particular home occupations prohibited:

a. Automobile and other motor vehicle repair and painting services;

b. Funeral homes;

c. Medical or dental clinics;

d. Preschools and group day care centers, unless specifically permitted by the district regulations;

e. Rental of trailers, cars and other equipment;

f. Restaurants;

g. Retail sales such as antiques, secondhand merchandise, salesman's samples, etc.;

h. Stables, kennels and animal hospitals.

(4) *Special provisions.* A home occupation certificate may be issued by the board of zoning appeals for the following use, if the board finds in its review that the proposed use will not have an adverse effect on neighboring properties;

a. Any of the uses listed in subsection (2) above may be conducted in a detached garage or accessory building if the board of zoning appeals finds that the proposed use will conform with the performance requirements for in-home home occupations.

b. Bed and breakfasts, provided the dwelling has no more than six (6) guest rooms and no meeting rooms or convention facilities; and provided, that at least one (1) parking space for every two (2) rooms can be accommodated on site;

c. Small engine repair, including lawn mowers; provided, that repair activity is conducted within a structure.

(Code 1966, § 36-404; Ord. No. 81-8863, § 1, 8-3-81; Ord. No. 89-9353, §§ 1, 2, 11-13-89)

Sec. 42-61. Number of structures and uses on the zoning lot and access to the lot.

(a) Not more than one (1) principal residential structure shall be located on a single zoning lot, unless permitted by the district regulations in which located, nor shall a principal residential building be located on the same zoning lot with any other principal building, except as may be permitted by article VII of this chapter relating to planned development districts.

(b) In agricultural, commercial or industrial districts, any number of structures (except residential structures) and uses may be constructed or established on a single zoning lot, but no single zoning lot shall be smaller than the minimum lot area prescribed for the district in which it is located.

(c) No land which is located in a residential district shall be used for a driveway, walkway or access purpose to any land which is located in any commercial or industrial district.

(Code 1966, § 36-405)

Sec. 42-62. Sewer and water facilities.

The health department shall approve all proposed sewer and water systems other than those defined as public.

(Code 1966, § 36-406)
Cross references: Water and sewers generally, Ch. 41.

Section 42-63. Easements.

(a) No building or structure, nor any addition thereto, shall be constructed or placed within any platted or recorded public easement, unless expressly authorized by the board of commissioners. Prior to granting such authorization, the city shall consult with public utilities whose lines may be affected. In granting such authorization, the board of commissioners may impose conditions necessary to protect any existing. A property owner may place buildings or structures not requiring a building permit and fences, trees, shrubs and other nonstructural improvements within a utility easement at his or her own risk (i.e., removal, relocation, or replacement) without special authorization provided required permits have been obtained.

(b) No property owner may construct maintain or allow any natural or non-natural structures or vegetative barriers (including but not limited to trees, shrubbery, berms, fences, walls or pole signs) within any drainage easement dedicated, purchased or otherwise granted to the public which the City Engineer finds obstructs, impedes, or otherwise interferes with the drainage of stormwater. Drainage easements shall not be filled or otherwise physically altered without the written approval of the City Engineer.

(Ord. No. 91-9486, § 1, 12-9-91; Ord. No. 04-10219, § 1, 7-26-04)

Sec. 42-64. Residential-design manufactured homes.

On and after January 1, 1992, residential design manufactured homes, as defined in this chapter, shall be permitted in any residential district when in compliance with the following architectural and aesthetic standards:

(1) The home shall have a minimum of eight hundred eighty (880) square feet of main floor living area, excluding any attached garage or porch, and the longest exterior dimension of the body shall be not more than two and one-half (2 1/2) times the shortest exterior dimension.

(2) The roof shall be double-pitched and have a minimum vertical rise of three (3) inches for each twelve (12) inches of horizontal run, and shall be covered with material that is residential in appearance, including but not limited to wood, asphalt, composition or fiberglass, or metal roofing material. The roof shall have a minimum eave projection or overhang of ten (10) inches on at least two (2) sides, which may include a four (4) inch gutter.

(3) The exterior siding shall be made of nonreflective material customarily used on site-built dwellings, such as wood, composition or simulated wood, clapboards, conventional vinyl or metal lap siding, brick, stucco, or similar materials, but excluding smooth, ribbed or corrugated metal or plastic panels. Siding material shall extend below the top of the exterior foundation or curtain wall and the joint shall be flashed in accordance with city building codes.

(4) The home shall be installed in accordance with the recommended installation procedures of the manufacturer and city building codes. The running gear, tongue, axles, and wheels shall be removed from the unit at the time of installation. A continuous, permanent masonry foundation or permanent masonry piers with masonry curtain wall, unpierced except for required ventilation and access, shall be installed under the perimeter of the home.

(5) The home shall have a garage and covered porch at the main entrance, if fifty (50) percent or more of existing homes on the same and/or adjacent block face have garages and/or covered porches. Where required or installed, the roofing and siding material must be of a type approved for the home itself.

(6) Any site-built addition to the home or detached accessory building shall comply with city building codes.

(Ord. No. 91-9487, § 1, 12-9-91)

Sec. 42-65. Landscaping regulations.

Landscaping regulations are as follows:

(1) *Intent and purpose.* The intent and purpose of these landscaping regulations are as follows:

(a) Enhance the visual appearance of the community through the use of trees and landscape materials to create an aesthetically pleasing environment.

(b) Encourage trees and landscape vegetation to screen unsightly views, soften hard architectural lines, frame buildings and views, and buffer uncomplimentary land uses.

(c) Improve environmental conditions by providing air purification, oxygen regeneration, ground water recharge, storm water runoff retardation, and noise and glare reduction.

(d) Increase the energy-efficiency of buildings through the control of wind, sun and shade by the proper placement of trees and landscape vegetation.

(e) Preserve and protect existing trees and natural landscape areas from destruction and removal.

(2) *Applicability.* The regulations established herein shall apply to all new development and substantial levels of redevelopment and/or additions within the corporate boundaries of the city, except single-family detached dwellings, single-family attached townhomes, duplex dwellings and any development occurring on property zoned A-1 Agricultural, MH-S Manufactured Home Subdivision, U University, C-4 Central Business District, I-2 Light Industrial, or I-3 Heavy Industrial under Chapter 42 of this Code.

(3) *Definitions.* For the purpose of this section, the following words and terms as used herein are defined to mean the following:

a. *Landscape material:* Shall consist of such living material as trees, shrubs, ground cover/vines, turf grasses, and nonliving material such as: rocks, pebbles, sand, bark, brick pavers, earthen mounds (excluding pavement), and/or other items of a decorative or embellishment nature such as: fountains, pools, walls, fencing, sculpture, etc.

b. *Landscaped open space:* All land area within the property lines not covered by building or pavement.

c. *Turf grass:* A species of perennial grass grown as permanent lawns or for landscape purposes as distinguished from those species grown for agricultural or commercial seed purposes.

d. *Native grasses:* Species of perennial grass other than those designated as noxious weeds by the State of Kansas.

e. *Ground cover:* Landscape materials, or living low-growing plants other than agricultural crops and turf grass, installed in such a manner so as to form a continuous cover over the ground surface.

f. *Shrubs:* Any self-supporting, woody plant of a species which normally grows to an overall height of less than fifteen (15) feet in this region.

g. *Trees:* Any self-supporting, woody plant of a species which normally grows to an overall minimum height of fifteen (15) feet in this region.

h. *Deciduous trees:* Generally those trees which shed their leaves annually, such as ash, oak, maple, etc.

i. *Evergreen trees:* Generally those trees which do not shed their leaves annually, such as pine, spruce, cedar, etc.

j. *Ornamental trees:* Generally trees thirty (30) feet or less in height at maturity, including flowering trees and "patio" trees.

k. *Shade trees:* Generally deciduous trees that reach a height of thirty (30) to sixty (60) feet or taller at maturity.

l. *Street trees:* Any tree located within the city right-of-way on either side of all public avenues, or ways.

m. *Yard trees:* Any tree which is not a street tree as defined in this subsection.

n. *Significant stands of trees:* A group of twenty (20) or more trees, with a minimum two-inch caliper and/or seven (7) or more feet in height, located within an area of approximately two thousand five hundred (2,500) square feet.

(4) *Landscape plans required.* The landscape plan requirements of these regulations are as follows:

a. A landscape plan shall be submitted in connection with other plans to develop property covered by these regulations. In the case of requests to rezone property to PPD planned development or PC planned commercial, the landscape plan shall be submitted at the time of the rezoning application and shall be approved by the planning commission. For other developments, the landscape plan shall be submitted at the time of the building permit application and shall be approved by the zoning administrator prior to the issuance of the building permit. The approval plan shall be binding on present and future property owners, unless formally amended.

b. All landscape plans shall include the following information:

1. A north arrow and scale.

2. The location of all proposed landscape materials including existing trees proposed to be saved.

3. A listing of the proposed plant materials indicating the type, number and size at the time of planting.

4. The location of proposed structures and parking areas showing the type of surfacing.

5. The location, type and size of all aboveground and underground utilities.

6. Topography and final grading adequate to specify plantings for sloping areas.

7. Proposed plans for provision of water to plant materials.

8. Any other provisions applicable to the project including measures to be taken during construction to protect existing trees to be saved or plans requiring excavation or construction within street right-of-way or utility easements.

(5) *Required landscaping for front yards.*

a. The minimum amount of landscaped area in the front yard of covered zoning districts and uses when located adjacent to public streets shall be as follows:

1. On a zoning lot with an average depth of one hundred fifty (150) feet or less: ten (10) square feet of landscaped front yard per lineal foot of street frontage.

2. On a zoning lot with an average depth of more than one hundred fifty (150) feet but less than two hundred fifty (250) feet: fifteen (15) square feet of landscaped front yard per lineal foot of street frontage.

3. On a zoning lot with an average depth of more than two hundred fifty (250) feet: twenty (20) square feet of landscaped front yard per lineal foot of street frontage.

For zoning lots with frontage on two (2) or more streets (i.e., two (2) or more front yards), the amount of landscaped front yard required along each street frontage may be reduced by thirty (30) percent.

b. A minimum of one (1) shade tree or three (3) ornamental trees shall be planted for every five hundred (500) square feet of required landscaped front yard.

c. The following design standards shall apply to required landscaping and trees in front yards:

1. Trees shall be selected from the Recommended Tree List for Salina.

2. The minimum size at the time of planting of required trees shall be as follows: shade trees--one and one-half-inch caliper measured six (6) inches above the ground; ornamental trees--one-inch caliper measured six (6) inches above the ground; evergreen trees--five (5) feet in height.

3. Trees shall be located in planter areas of sufficient size to allow for growth, prevent damage from vehicles, and avoid unnecessary maintenance to structures, walks and drives; a minimum of twenty-five (25) square feet of permeable area around each tree is recommended.

4. Adequate distance between individual trees shall be provided; minimum spacing should be fifteen (15) feet for ornamental trees and thirty (30) feet for shade trees.

5. Shrubbery may be substituted for up to one-third of the required trees at the rate of ten (10) shrubs per one (1) required tree. Substitute shrubbery shall attain a mature height of at least two (2) feet and shall be no less than two-gallon container size at time of planting.

6. The required trees and shrubs (except evergreen varieties) may be located in adjacent public right-of-way if approved by the city engineer, there are no conflicts with utilities, and the plantings are located no closer than three (3) feet to the curb line of adjacent streets. No tree shall be planted between the curb and the sidewalk if the clear space is less than five (5) feet wide.

7. Trees, shrubbery, walls and fences located near the intersection of streets shall maintain sight visibility clearance as specified in Chapter 35 of this Code. All fences and walls shall be built with the finished side out and located toward the private property side of required landscaped front yards to maintain a landscaped appearance along the street.

(6) *Required buffers.*

a. A landscaped buffer is required along the common property line in any nonresidential development in any zoning district where such development is adjacent to any residential development and in any multifamily residential development (a development with three (3) or more dwelling units in one (1) building excepting single-family attached townhouses) in any zoning district where such development is adjacent to single-family residential development.

b. The design standards for landscaped buffers shall be as follows:

1. The required buffer shall be a minimum of fifteen (15) feet in width. For developments with more than one (1) required landscaped buffer, the width of each buffer may be reduced to ten (10) feet.

2. There shall be one (1) shade tree and five (5) shrubs or two (2) ornamental trees and five (5) shrubs for each fifty (50) feet of the length of the buffer.

3. A minimum of one-third of the trees and shrubs shall be evergreen.

4. Parking spaces serving any use allowed in the C-1 district or any district of lesser classification may be located within the required buffer not closer than five (5) feet from the property line provided a dense planting screen or solid wall or fence is installed. No buildings, driveways, or accessory facilities may be located within any portion of a required buffer.

5. Standards specified in subsection (5)c shall also apply to landscaped buffers.

(7) *Parking lot screening.*

a. Open unenclosed parking areas containing more than six (6) parking spaces shall be effectively screened from adjacent residential developments and streets when located within one hundred (100) feet thereof, except at points of ingress and egress, to a minimum height of six (6) feet adjacent to residences and three (3) feet adjacent to streets above the parking surface by the use of walls, fences, bermed lawns and/or plantings.

b. Parking lots containing more than fifty (50) spaces shall contain landscaped islands equal to five (5) percent of the total paved area. Such islands shall be in addition to the other landscaped area requirements.

c. The design standards for parking lot screening shall be as follows:

1. Vertical walls and decorative fences should avoid a monotonous appearance by architectural variation or use of trees, shrubs and/or vines.

2. Parking lot screening may be located within and substituted for required landscaped front yards and buffers provided that the minimum number of trees otherwise required are established. Shrubs used to meet screening requirements shall not substitute for required trees.

3. Landscape materials should be located in a planting strip having a minimum width of three (3) feet where walls and fences are combined with vines and shrubs, five (5) feet where trees and shrubs are used exclusively, and ten (10) feet where berms are combined with trees, shrubs, walls or fences to create the screening effect. The planting strip shall be measured from the edge of the parking lot paving to the edge of the adjacent sidewalk or property line.

4. Standards specified in subsection (5)c shall also apply to parking lot screening.

d. Trash receptacles, mechanical equipment, and service areas shall also be screened from pedestrian access ways and the street right-of-way.

(8) *Other landscape standards.* The following additional landscape standards shall also apply:

a. Existing trees may be credited toward the required number of trees provided all of the following conditions exist:

1. The trees are healthy, at least one and one-half (1 1/2) inches in caliper measured six (6) inches above the ground, and are a desirable species as determined by the city forester.

2. The trees are located within the street right-of-way or are within twenty-five (25) feet of the property line.

3. Provisions are taken to protect the trees during construction to ensure long-term survival.

b. Landscape plantings should be planted, mulched and staked according to Publication #L-802 "Woody Plant Material and Installation Specifications" published by the Kansas State Forestry Division.

c. Landscaping shall not interfere with the function or accessibility of any gas, electric, water, sewer, telephone or other utilities or easements. Prior to excavation within any public right-of-way or easements, the location of all underground utilities shall be determined and any required permits shall be obtained.

d. Required landscaped area shall consist of a minimum of eighty (80) percent in ground surface covered by living plant materials or turf grass. The remaining twenty (20) percent may be covered with bark, wood chips, rock, bricks, stone or similar nonliving materials provided an effective weed barrier is installed.

e. All land area not covered by landscaping, paved parking, drives and walkways, and structures shall be seeded with perennial grass and regularly mowed and maintained in a proper appearance.

(9) *Maintenance.* The maintenance requirements for all landscaping areas shall be as follows:

a. The landowner is responsible for the maintenance of all landscaped areas and shall keep them in a proper, neat and orderly appearance and free from litter and debris at all times.

b. Maintenance shall include mowing, trimming, weeding, mulching, restaking, pruning, fertilizing, disease and insect control and other necessary operations.

c. All landscaped areas shall be provided with a permanent water supply, except as otherwise shown on the landscape plan and approved by the city. Irrigation systems shall

be designed and operated to avoid watering impervious surfaces and streets. Landscape designers and property owners are encouraged to utilize xeriscaping and take advantage of its water saving principles and practices.

d. The city shall have the authority to require that all dead trees, shrubs and plants be replaced during the next planting season.

(10) *Exceptions and modifications.* The provisions of this section may be excepted or modified as follows:

a. The expansion or redevelopment of a site utilizing all or parts of an existing building(s) shall not be required to meet the landscaping requirements of this section, except as follows:

1. When the value of renovation or reconstruction exceeds fifty (50) percent of the appraised value of existing improvements, as determined by the county appraiser; or

2. When there is more than a thirty (30) percent increase in the gross floor area of existing buildings on the site.

b. Where there exists extraordinary topography, existing vegetation, land ownership, site boundaries and dimensions, adjacent development characteristics or other exceptional circumstances or conditions, the zoning administrator may modify or vary the strict provisions of these regulations as is deemed appropriate, provided the intent and purpose of this section is maintained.

(11) *Completion or assurances for installation.*

a. Prior to the issuance of a certificate of occupancy for any structure where landscaping is required, except as provided in subsection b below, all work indicated on the approved landscape plan shall be completed, inspected and approved by the zoning administrator. Prior to approval, the quantities, locations, types and sizes of plants and other landscape materials shall be checked for compliance.

b. A landowner may obtain a certificate of occupancy for a structure prior to completion of required landscaping work if completion is not possible due to seasonal or weather conditions, and if acceptable assurances are submitted guaranteeing the completion of said landscaping. The acceptable assurance, such as an irrevocable letter of credit, performance bond, certified check, or escrow account, shall be equal to one hundred twenty-five (125) percent of the cost to complete the landscaping work and shall be accompanied by a written agreement assuring that such landscaping will be completed prior to the expiration date of said assurance. If an inspection reveals that said landscaping work is not completed prior to the expiration date of said assurance, the city shall utilize said assurance to pay for the completion of the landscaping work.

(12) *Enforcement.*

a. Until the provisions of this section, including the condition of any permits issued thereunder, have been fully met, the city may withhold issuance of any building permit, certificate of occupancy or inspection required under the city building codes or the city may issue cease and desist orders for further development.

b. All landscaping shall be subject to periodic inspection by the zoning administrator, or an authorized representative, to determine compliance with the approved landscape plan and

the requirements of this section. When the landscaping has not been installed, maintained, or replaced to comply with said plan and requirements, a written corrective order shall be issued to the alleged violator. The order shall specify the subsections of this section that are in violation.

(Ord. No. 94-9624, § 1, 2-28-94)

Sec. 42-66. Critical drainage areas.

Critical drainage areas may be designated by the board of city commissioners following a report and recommendation from the planning commission. The city engineer shall identify areas that should be considered for designation as critical drainage areas. No development or substantial improvement, as defined in article XIV, may be undertaken within a critical drainage area without first obtaining a permit from the zoning administrator. The zoning administrator shall not approve any development which does not provide adequate drainage improvements so as not to inordinately expose the development as well as surrounding land to increased stormwater flooding. Said drainage improvements shall be designed in accordance with criteria established by the city engineer. The city engineer shall review proposed drainage improvement plans and advise the zoning administrator if such plans comply with established criteria. The completion of said improvements shall be the responsibility of the applicant. This regulation shall not apply to any platted lot zoned single-family residential, regardless of size, nor any platted lot containing less than ten thousand (10,000) square feet of land area, regardless of the zoning classification.

(Ord. No. 97-9780, § 1, 2-10-97; Ord. No. 97-9815, § 1, 7-28-97)

Sec. 42-67. Adult-oriented businesses--Locations.

(a) It shall be unlawful for any person to operate or cause to be operated an adult-oriented business unless permitted within the zoning district in which the business is located.

(b) It shall be unlawful for any person to operate or cause to be operated an adult-oriented business within one thousand (1,000) feet of any of the following within the corporate limits of the city.

(1) A boundary of a residential district;

(2) A church or synagogue;

(3) A school (grades K through 12);

(4) A group day care center or kindergarten; or

(5) A public park or playground, if any portion of the park or playground or a street abutting any portion of the park or playground is within or abuts a residential district.

For the purposes of this subsection, measurement shall be made in a straight line, without regard to intervening structures or objects, from the nearest portion of the building or structure used as part of the premises where an adult-oriented business is conducted, to the nearest property line of the premises of a church or rectory, school, group day care center or kindergarten or to the nearest boundary of an affected public park or playground or residential district.

(c) It shall be unlawful for any person to operate or establish or cause or permit another to operate or establish an adult-oriented business which is located within five hundred (500) feet of another adult-oriented business. The distance between two (2) adult-oriented businesses shall be measured in a straight, without regard to intervening structures or objects, from the closest exterior walls of the structures in which the businesses are located.

(d) It shall be unlawful for any person to cause or permit the operation, establishment or maintenance of more than one (1) adult-oriented business in the same building, structure or portion thereof.

(Ord. No. 97-9828, § 1, 10-6-97)
Cross references: Licensing and regulations, § 6-46 et seq.

Sec. 42-68. Outdoor amplified sound.

No commercial business may use sound amplifiers, loud speakers or other similar devices in an outdoor area on private property located within five hundred (500) feet of a residential district without first obtaining a conditional use permit from the city planning commission. Notification of the public hearing date shall be provided to affected property owners. The city planning commission shall not approve the permit for any such devices which would create noise levels that would unreasonably disturb the peace, quiet, comfort or tranquility of neighboring inhabitants. If the permit is approved, appropriate requirements and conditions may be established and a time limit may be set for expiration unless renewed for an additional period. The permit may be revoked if the requirements and conditions are not complied with.

(Ord. No. 98-9861, § 1, 4-13-98)

Sec. 42-69. Wireless communication facilities.

(a) *Purpose and objectives.* The purpose of these regulations is to establish standards and requirements for the siting of commercial wireless telecommunications facilities. These regulations are designed to comply with the Telecommunications Act of 1996 and any other applicable laws. The objectives are as follows:

(1) Encourage the location of wireless communication facilities in non-residential areas and on sites where the adverse impact is minimal;

(2) Encourage the joint use of new and existing wireless communication facilities;

(3) Encourage wireless communication facilities to be designed and installed in a manner that minimizes any adverse visual impact.

(4) Encourage wireless telecommunication facilities to be provided to the community in a safe, effective and efficient manner;

(5) Facilitate the ability of the providers of wireless communications services to provide such services to the community through an efficient and timely application process;

(6) Avoid potential damage to adjacent properties from tower failure through careful siting of wireless communications facilities;

(7) Ensure that the regulation of wireless communication facilities does not have the effect of prohibiting the provision of personal wireless services, and does not unreasonably discriminate among functionally equivalent providers of such service; and

(8) Create a hierarchy that influences both where new wireless communication facilities are located and the types of antennas that are used so that new facilities have the least amount of visual impact on the community.

(b) *Definitions*. For purposes of this section, the following words and terms as used herein are defined to mean the following:

Abandonment, in the case of a non co-located facility, shall mean: (a) failure to start operations within ninety (90) days of completion of the structure, or (b) to cease operation for a period of ninety (90) or more consecutive days. In the case of a co-located facility, abandonment shall mean: (a) failure to start operations within one hundred eighty (180) days of completion of the structure, or (b) to cease operation for a period of one hundred eighty (180) or more consecutive days.

Administrative permit shall mean a process and approval by the planning director as described in this section.

Antenna shall mean any exterior apparatus designed for telephonic, radio, data, internet, or video communications through the sending and/or receiving of electromagnetic waves, and includes equipment attached to a tower or building for the purpose of providing wireless communication services, including unlicensed wireless telecommunications services, wireless telecommunications services utilizing frequencies authorized by the Federal Communications Commission for "cellular", "enhanced specialized mobile radio", "specialized mobile radio" and "personal communications services", telecommunications services, and it's attendant base station.

Antenna support structure shall mean any pole, telescoping mast, tower, tripod, or other structure which supports a devise used in the transmitting or receiving of radio frequency signals.

Array shall mean a set of antennas for one (1) carrier or service that are placed on a structure at a given height and spaced so as to avoid interference.

Board of commissioners shall mean the governing body of the City of Salina.

Camouflage describes a wireless communication facility that is disguised, hidden, or integrated with an existing structure as an architecturally compatible element or a wireless communication facility that is placed within an existing or proposed structure so as to be effectively hidden from view.

Co-location means the placement of a new wireless communication facility on an existing tower, existing building or structure.

Design shall mean the appearance of wireless communication facilities and equipment buildings, including such features as their materials, colors, texture, scale, and shape.

EIA shall mean the Electronics Industry Association.

Equipment enclosures shall mean a structure, shelter, cabinet, or vault used to house and protect the electronic equipment necessary for processing wireless communication signals and associated equipment. Associated equipment may include air conditioning, back power supplies and emergency generators.

Existing tower shall mean any tower in existence at the time of application for an administrative permit or special permit.

FAA shall mean the Federal Aviation Administration.

FCC shall mean the Federal Communications Commission.

Fair market value shall mean the price at which a willing seller and a willing buyer will trade.

Fall zone shall mean the area on the ground within a prescribed radius from the base of a wireless communication facility within which there is a potential hazard from falling debris or collapsing material.

Guyed tower shall mean a tower that is supported, in whole or part, by guyed wires and ground anchors.

Height shall mean the vertical distance above grade to the highest point of the antenna support structure, including the lightning rod and antenna.

Lattice tower shall mean a tower that is constructed to be self-supporting by lattice type supports and without the use of guyed wires or other supports.

Modification shall mean the changing of any portion of a wireless communication facility from its description in a previously approved permit. Examples include, but are not limited to, changes in design, height, number or location of antennas.

Monopole tower shall mean a tower consisting of a single free-standing pole or spire self-supported on a permanent foundation, constructed without guy wire, ground anchors, or other supports.

Mount shall mean the structure or surface upon which wireless communication facilities are mounted. There are three (3) types of mounts: (i) Building mounted--a wireless communication facility affixed to the roof or side of a building, (ii) Ground mounted--a wireless communication facility fixed to the ground such as a tower, and (iii) Structure mounted--a wireless communication facility fixed to a structure other than a building, such as light standards, utility poles, and bridges.

Operator shall mean an individual, partnership, association, joint-stock company, trust, or corporation engaged in control and maintenance of all instrumentalities, facilities and apparatus incidental to wireless telecommunication transmission, including but not limited to, a tower, antennae, associated buildings, cabinets and equipment. For the purposes of this article, an "operator" may or may not hold a lease, license or title on or for the site on which a tower is located.

Owner shall mean either the owner of the real property on which the wireless communication facility, tower or antenna is located or the owner of the wireless communication facility, tower or antenna itself.

Provider shall mean every corporation, company, association, joint stock company, firm, partnership, limited liability company, other entity and individual which provides personal wireless service over wireless communication facilities.

Screening shall mean materials which effectively hide personal wireless facilities from view, or landscaping in accordance with the requirements of the Zoning Ordinance.

Security barrier shall mean a wall, fence, or berm that has the purpose of sealing a wireless communication facility from unauthorized entry or trespass.

Site shall mean a tract or parcel of land that contains wireless communication facilities including any antenna, support, structure, building, accessory buildings, and parking and may include other uses associated with or ancillary to wireless communication services.

Special permit shall mean a process and approval by the planning commission or board of commissioners as described in this section.

Tower shall mean any structure that is designed, constructed or used for the primary purpose of supporting one (1) or more antennas, including self-supporting lattice towers, guyed towers, or

monopole towers. The term encompasses wireless communication facilities including microwave towers, common-carrier towers, cellular telephone towers or personal communications services towers, alternative tower structures, and the like. For purposes of this section the term "tower" does not include radio and television transmission towers, amateur radio transmitting towers or broadcast facilities.

Unlicensed wireless services shall mean commercial mobile services that operate on public frequencies and do not need a FCC license.

Wireless communication service and *wireless communication facilities* used in the chapter shall be defined in the same manner as the Title 47, United States Code, Section 332 (c)(7)(C), as may be amended now or in the future and includes facilities for the transmission and reception of radio microwave signals used for communication, cellular phone, personal communication services, enhanced specialized mobile radio, and any other wireless services licenses by the FCC and unlicensed wireless services.

(c) *Permit required.*

(1) No person shall locate an antenna or tower for wireless communication purposes or alter an existing wireless communication facility upon any lot or parcel within the City of Salina except as provided in this chapter.

(2) Maintenance or repair of a wireless communication facility and related equipment, excluding structural work or changes in height, dimensions or number of antenna, towers, or buildings is excluded from the requirement to obtain a permit. Building permits may still be required.

(3) Installation of wireless communication facilities requires either an administrative permit (Class A Permit) issued by the planning director or approval of a special permit (Class B or Class C Permit) by the planning commission or board of commissioners.

a. *Class A Permit:* The planning director may issue an administrative permit in the following cases:

1. An application to co-locate additional antennas on an existing facility;

2. An application to place an antenna on an existing structure in the U or C-4 Districts;

3. An application to place an antenna on an existing structure in a C-2, C-3, C-5, C-6, C-7 or I-1 district that extends no more than twenty (20) feet above the maximum permitted structure height in that district;

4. An application to construct a monopole tower up to one hundred twenty (120) feet in height in an I-2 or I-3 district if the proposed tower site is within four hundred (400) feet of a residential area or up to two hundred (200) feet in height if the proposed tower site is more than four hundred (400) feet from the nearest residential area.

Within thirty (30) days after receiving a complete application, the planning director shall either approve, approve with conditions or deny the request for a (Class A) administrative permit, or shall refer the application to the planning commission for a public hearing.

If a request for an administrative permit is not acted upon within thirty (30) days, or is denied, or the conditions imposed thereon are unacceptable to the applicant, then the applicant may, by written notice to the planning director, convert the request for an administrative permit to an application for a (Class B) special permit. Moreover, an

applicant may, in lieu of and without first seeking an administrative permit hereunder, request a special permit for its proposed facility.

b. *Class B Permit.* The Planning Commission may issue a special permit after holding a public hearing in accordance with the procedures established in Sections 42-24 of the Salina Code in the following cases:

1. An application to construct a monopole tower in an I-2 or I-3 district which does not meet the criteria for a Class A administrative permit;

2. An application to construct a monopole tower up to two hundred (200) feet in height in an A-1, U, C-2, C-3, C-5, C-6, C-7 or I-1 district if the proposed tower will maintain a setback from adjacent property and public right-of-way equal to or greater than the proposed height of the tower; or

3. An application to construct a rooftop facility on an existing structure in C-2, C-3, C-5, C-6, C-7 or I-1 district which would extend more than twenty (20) feet above the maximum permitted structure height in that district.

c. *Class C Permit.* The board of commissioners may issue a special permit following a public hearing and recommendation by the planning commission in the following cases:

1. An application to construct a tower in a C-1 district or any residential district;

2. An application to construct a tower in a historic district or within five hundred (500) feet of a property listed on the National Register of Historic Places; or to place a rooftop facility on a local landmark or building listed on the National Register of Historic Places;

3. An application to construct a tower within any approach zone to the Salina Municipal Airport;

4. An application to construct a lattice type tower anywhere within the city;

5. An application to construct a tower in the C-2, C-3, C-5, C-6, C-7 or I-1 districts which does not comply with the performance standards in subsection (h); or

6. An application to construct a tower over two hundred (200) feet in height anywhere within the city.

d. *Denial of special permit.* Any decision to deny a special permit under this section shall be made in writing and shall state the specific reasons for the denial. Any denial by the planning commission may be appealed to the board of commissioners. Any denial by the board of commissioners shall be deemed a final administrative decision, subject to judicial review and appeal. In the event that a special permit application is denied by the planning commission or board of commissioners, no new request for the same or substantially similar administrative or special permit shall be accepted or processed within six (6) months after denial of that application.

e. *Protests.* The notification and protest area for special permit applications shall be four hundred (400) feet from the proposed tower site. If a Class B permit is approved by the planning commission, affected property owners shall have the same right to present a protest petition to the board of 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.

(d) *Locational preferences.* Wireless communication facilities shall be located and designed to minimize any adverse effects on surrounding properties, particularly residential properties. In its review of requests for new tower construction the City of Salina will give preferred status to locations where the existing topography, surrounding land uses, existing buildings or other structures provide the greatest amount of visual screening. Proposed towers in sensitive areas will be discouraged. The City of Salina's locational preferences for siting new wireless communication facilities are listed below:

(1) Preferred location sites:

a. Publicly owned sites on which wireless communication facilities can be unobtrusively located with regard to visibility, aesthetic appearance and public safety. Such sites may include locating on existing buildings, light poles or water towers, co-locating on existing towers, screened roof-top facilities or other camouflaged sites for antennas and recreation areas, athletic fields, school grounds, maintenance yards and other publicly owned facilities for towers.

b. Privately owned sites which possess the same characteristics as a. above.

c. Sites in commercially or industrial zoned districts where wireless communication facilities would be minimally obtrusive, would have a minimal impact on the surrounding area and are an appropriate distance from residential areas.

(2) Limited preference sites:

a. Sites on other public property.

b. Sites on other commercially or industrially zoned property.

(3) Sensitive location sites. Sites located in areas with predominantly residential uses, environmentally sensitive areas, entryway corridors to the city, local landmarks or historic districts, properties listed or eligible to be listed on the National Register of Historic Places and the environs of the Salina Municipal Airport.

(e) *Application requirements.*

(1) Pre-application conference. Prior to the acceptance of an application by the city, 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 current and future facilities.

(2) Applications for either an administrative permit or a special permit for a wireless communication facility shall be filed with the planning director and shall include the following:

a. A plot plan of the site and the proposed facility drawn to an accurate scale and showing all pertinent information. The application material shall provide sufficient information, as determined by the planning director, to allow a complete review of the proposal. The application material shall also include sufficient detail to indicate compliance with all applicable design and performance standards. Failure to provide adequate information may result in the rejection of the application.

b. A copy of the lease between the applicant and the owner. The lease shall contain the following provisions: (1) the owner and the applicant shall have the ability to enter into leases with other providers for collocation with the consent of each party which shall not unreasonably be withheld; and (2) the landowner shall be responsible for the removal of the tower or facility in the event the lessee fails to remove it upon abandonment.

c. A statement explaining the need for the facility to provide or enhance wireless communication services in the area including a map of the service area of the proposed facility.

d. A statement identifying which location preference, identified in subsection (d) the proposed facility is meeting. If the proposed location is not a preferred location site, the applicant shall describe:

(i) Whether any preferred location sites are located within the service area of the proposed wireless communication service facility;

(ii) What good faith efforts and measures were taken to investigate each of these preferred location sites and why such efforts were unsuccessful;

(iii) Why the use of a preferred location site is not technologically, legally or economically feasible;

(iv) How and why the proposed site is required to meet service demands for the proposed facility and citywide network; and

(v) The distance between the proposed facility and the nearest residential unit and residentially zoned properties.

e. A statement indicating proposed measures designed to minimize potentially adverse visual effects on adjacent properties with consideration given to design, unobtrusiveness, minimum height necessary to accommodate antennae, avoidance of artificial light and the color of the facility.

f. A statement describing the proposed fall zone around the facility.

g. If the application is for a new tower, a report from the manufacturer or a licensed professional engineer describing the tower's maximum capacity including the number of antennas it can accommodate for co-location, taking into consideration radio frequency interference, mass, height, and other characteristics, as well as options to overcome any problems those considerations may pose to service delivery.

h. A signed statement from the tower owner stating that the owner and future successors will allow shared use of the tower if (1) capacity exists based on current and planned use by owner; (2) a future applicant for space on the tower agrees in writing to pay any reasonable charge for shared use and (3) the potential use is technologically compatible.

i. A description of the security barrier surrounding the base of the tower and accessory equipment. The description should include the method of fencing, finished color and, if applicable, the method of camouflage and illumination.

j. A description of the anticipated maintenance and monitoring program for the antennae and back up equipment, including frequency of maintenance services.

(f) *Inventory of towers.* Each applicant for an administrative or special permit shall submit an inventory of its facilities and an inventory of the facilities of those companies proposing to co-locate on the proposed facility (tower or antenna mount) within the city. No permit will be approved unless the applicant demonstrates to the satisfaction of the city by substantial evidence that no existing facility (whether or not owned by the applicant) can accommodate, as is or through modification, the proposed facility. Substantial evidence to demonstrate that no existing facility is suitable shall consist of any of the following:

(1) An affidavit demonstrating that the applicant made diligent efforts to install or co-locate on existing towers and other existing structures within the geographic search area as determined by a qualified radio frequency engineer.

(2) An affidavit demonstrating that existing towers and structures located within the geographic search area, as determined by a qualified radio frequency engineer, and within one (1) mile radius of the proposed tower site do not have the capacity to provide reasonable technical service consistent with the applicant's technical system, including but not limited to, applicable FCC requirements.

(3) Written technical evidence from a qualified radio frequency engineer that existing towers and structures within the geographic search area are not of sufficient height to meet the applicable FCC requirements.

(4) Written technical evidence from a qualified structural engineer that existing towers and structures within the geographic search area do not have sufficient structural strength to support the proposed facility.

(5) A written statement from a qualified radio frequency engineer submitting technical evidence substantiating his opinion that the existing towers and structures within the geographic search area are incompatible due to electromagnetic/radio frequency interference or interference with public safety communications or the usual and customary transmission or reception of radio, television, or other communications service enjoyed by surrounding properties and that antenna on the existing tower or structure cannot be relocated on the existing structure to accommodate additional users.

(6) An affidavit that the fees, costs, or contractual provisions required by the owner to share an existing tower or structure within the geographic search area or to adapt an existing tower or structure within the geographic search area for sharing, are unreasonable.

(7) The applicant demonstrates that there are other limiting factors that render existing towers and structures within the geographic search area and within a one (1) mile radius of the proposed tower site unsuitable.

(8) The applicant demonstrates that state of the art technology used in their wireless telecommunications business and within the scope of the applicant's FCC license is unsuitable for the site involved.

(9) The applicant demonstrates that there are other limiting factors that render existing towers and structures within the geographic search area and within a one (1) mile radius of the proposed tower site unsuitable.

(g) *Standards for evaluation of special permit applications.*

(1) The planning commission or board of commissioners may approve, by special permit, a wireless communication facility in any zoning district after review and consideration of all of the following:

a. Conformity with the city's Comprehensive Plan.

b. Preference of site location in accordance with subsection (d).

c. Compatibility with abutting property and surrounding land uses.

d. Adverse impacts such as visual, environmental or safety impacts.

e. Color and finish of the proposed tower.

f. Screening potential of existing vegetation, structures and topographic features.

g. Potential for adequate screening of proposed facilities, ground level equipment, and tower base.

h. Scale of facility in relation to surrounding land uses.

i. Impact on entry corridors into the city.

j. Impact on landmark structures, historically significant structures or districts, or architecturally significant structures.

(2) An application to construct new towers may be denied if the applicant has not shown by substantial evidence that it has made a good faith effort to mount the facilities on an existing structure and/or tower.

(3) Locations in sensitive location sites shall be considered only if the applicant:

a. Provides evidence showing what good faith efforts and measures were taken to secure a preferred location site or limited preference site within one (1) mile of the proposed facility; and

b. Demonstrates with engineering evidence why each such preferred location site or limited preference site was not technologically or economically feasible.

(h) *Performance standards.* Unless otherwise specified, all wireless communication facilities shall comply with the following performance standards. The planning commission may recommend and the board of commissioners may grant a waiver from these standards when supported by sufficient justification and if the purpose and objectives of this section would be better served thereby.

(1) Height. The maximum height for a communications tower is two hundred (200) feet, excluding a lightning rod not to exceed twenty (20) ft. All new towers in excess of one hundred (100) feet shall be designed to accommodate at least two (2) providers and those in excess of one hundred fifty (150) feet at least three (3) providers.

(2) Design type. All towers, except those designed as an architecturally compatible element, shall be a monopole design unless otherwise specifically approved by the board of commissioners. Guyed towers shall not be permitted.

(3) Setbacks. Towers shall be set back from any property line or a public right-of-way a distance equal to the tower height. Towers, except those designed as an architecturally compatible element, shall be set back four hundred (400) feet from any surrounding property zoned for single-family or two-family residential use.

(4) Facility appearance.

a. Towers shall either maintain a galvanized steel finish or, subject to any applicable standards of the FAA, be painted a neutral color to reduce visual obtrusiveness so as to be consistent with the natural or built environment of the site.

b. The design of the equipment structure and any other associated permitted structures shall, to the maximum extent practicable, use materials, colors, textures, screening, and landscaping that minimize the visual impact and enhance compatibility with the surrounding natural or built environment. Additionally the design of the site shall also

comply with any design guidelines as may be applicable to the particular zoning district in which the facility is located.

c. For co-located telecommunications facilities, the antenna and supporting electrical and mechanical equipment must be a neutral color that is identical to, or closely compatible with, the color or the supporting structure to minimize the visual impact and enhance compatibility with surrounding development.

(5) Lighting. No signals, artificial lights, or illumination shall be permitted on any facility unless required by the FAA or other applicable authority. If required, the lighting shall be designed to minimize off-site impacts. Security lighting around the base of the tower may be provided if the lighting is shielded so that no light is directed towards adjacent properties or rights-of-way.

(6) Security fencing. Towers and associated accessory buildings and equipment shall be enclosed by a security fence or wall that is a minimum of six (6) feet in height and is equipped with an anti-climbing device or apparatus. Access shall be through a locked gate or door in the required fence or wall. Additional measures may be required as a condition of the issuance of an administrative permit as deemed necessary by the planning director or the planning commission or board of commissioners in the case of a special permit, so long as the additional measures are reasonably related to a security issue.

(7) Outdoor storage. No outdoor storage of vehicles, materials, or equipment is permitted. Equipment not used in direct support of the facility shall not be stored or parked on site unless repairs to the facility are being made.

(8) Signs. No signs, including commercial advertising, logo, political signs, flyers, flags, or banners, but excluding warning signs, shall be allowed on any part of the tower or antenna site. Any signs placed in violation of this section shall be removed immediately at the owner or operator's expense. Notwithstanding any contrary provisions of the city's zoning ordinance, the following warning signs shall be utilized in connection with the tower or antenna site, as applicable:

a. If high voltage is necessary for the operation of the tower or associated equipment, "HIGH VOLTAGE--DANGER" warning signs shall be permanently attached to each side of the fence or wall surrounding the structure.

b. "NO TRESPASSING" warning signs shall be permanently attached to the fence or wall surrounding the structure and spaced no more than forty (40) feet apart; (a) the height of the lettering of the warning signs shall be at least twelve (12) inches and the signs shall be installed at least five (5) feet above the finished grade; (b) the warning signs may be attached to freestanding poles if the content of the sign may be obstructed by landscaping.

c. A sign on the gate indicating the name and address of the tower owner and a phone number where the tower owner can be reached twenty-four (24) hours a day in case of an emergency shall be permanently attached to the fence.

(9) Parking. Each facility site shall provide paved parking for use by maintenance personnel. A minimum of one (1) space shall be provided per user located on the facility site. No vehicle storage shall be permitted.

(10) Landscaping. Facilities must comply with all applicable landscaping requirements of the zoning ordinance. The planning director, planning commission or board of commission may require landscaping in excess of those requirements in order to enhance compatibility with adjacent

uses or zoning districts. At a minimum, the landscaping shall consist of a landscape strip of not less than ten (10) feet in width planted with materials which will provide a visual barrier to a minimum height of six (6) feet, as approved by the city. The landscape strip shall be exterior to any security fence or wall.

(11) Facility replacement.

a. *Modification to existing site.* Up to fifty (50) percent of the height of an existing tower may be replaced with no resulting increase in height as part of modifications made to provide for co-location of a new facility. Replacement of more than fifty (50) percent shall be considered a new tower and shall meet all of the applicable requirements for new construction.

b. *Rebuilding damaged or destroyed existing site.* Existing tower and facilities that are damaged or destroyed may be rebuilt through administrative review and approval by the planning director provided the replacement tower or facility is the same as the original in type, location, and intensity or brings a previously nonconforming tower or facility into a greater conformance with these standards, and no more than fifty (50) percent of the tower or facility is involved. If more than fifty (50) percent of the tower or facility is involved, it shall be considered a new facility and shall meet all the applicable requirements for new construction. All replacement shall comply with then applicable building codes and a new administrative permit or special permit and building permit shall be obtained and be completed within one hundred eighty (180) days from the date the tower or facility was damaged or destroyed. If no permit is obtained or it expires, or replacement is not timely completed, the tower of facility shall be deemed abandoned.

(12) Removal of abandoned facility. Any facility deemed abandoned pursuant to this chapter or any facility that is not operated for a continuous period of twelve (12) months shall be considered abandoned, and the owner or last operator thereof shall remove it within ninety (90) days of receipt of a "written notice to remove" from the city. Failure to remove an abandoned tower or facility within ninety (90) days shall be grounds to remove it at the owner's or last operator's expense. If there are two (2) or more users of a single tower or facility, then this provision shall not become effective until all users cease using it.

(i) *General requirements.* Wireless communication providers shall comply at all times with the current applicable FCC and FAA standards and regulations. Prior to the issuance of a building permit to construct a facility, the owner/applicant or operator/applicant shall provide the city with the required clearances, licenses and certifications from all agencies of the federal government with the authority to regulate towers and antennas.

(1) Building Codes; safety standards. To ensure the structural integrity of towers the owner or operator of a tower shall ensure that it is maintained in compliance with standards contained in applicable federal, state or local building codes and the applicable standards for towers that are published by the Electronic Industries Association ("EIA") as amended from time to time. If, upon inspection, the building official concludes that a tower fails to comply with such codes and standards, then upon notice being provided to the operator or owner of the tower, the operator shall have thirty (30) days to bring the tower into compliance with such standards. Failure to bring a tower into compliance within thirty (30) days shall constitute grounds for removal of the tower at the owner or operator's expense.

(2) Structural design. Towers shall be constructed to current EIA standards, which may be amended from time to time, and all applicable building codes adopted by the city. Furthermore,

any improvements and/or additions to existing towers shall comply with the requirements of this chapter and shall require submission of construction plans sealed and verified by a professional engineer which demonstrate compliance with the EIA standards and all other good industry practices. The plans shall be submitted and reviewed at the time building permits are requested.

(Ord. No. 98-9885, § 1, 8-17-98; Ord. No. 01-10033, § 1, 6-4-01)

Secs. 42-70--42-75. Reserved.

ARTICLE V. GENERAL BULK REGULATIONS

Sec. 42-76. Bulk requirements.

(a) In this chapter, bulk requirements are expressed in terms of maximum structure height, maximum lot coverage, minimum setbacks and minimum front, side and rear yards. No structure, or part thereof, shall hereafter be built, or moved or remodeled, and no structure or land shall hereafter be used, occupied, arranged or designed for use of occupancy:

(1) So as to exceed the maximum lot coverage percentage, or the maximum of structure height specified for the zoning district in which the structure is located;

(2) So as to provide any setback or front, side or rear yard that is less than that specified for the zoning district in which such structure or use of land is located or maintained;

(3) Which is smaller in area than the minimum area, or minimum lot area per dwelling unit, required in the zoning district in which the structure or land is located;

(4) Which is narrower than the minimum lot width required in the zoning district in which the structure or land is located; or

(5) Which is shallower than the minimum lot depth required in the zoning district in which the structure or land is located.

(b) No existing structure shall hereafter be remodeled so as to conflict or further conflict with the lot area per dwelling unit requirements for the zoning district.

(Code 1966, § 36-500)

Sec. 42-77. Yard requirements for open land.

If a zoning lot is, or will be, occupied by a permitted use without structures, then the minimum setback and minimum side and rear yards that would otherwise be required for such zoning lots shall be provided and maintained unless some other provision of this chapter requires or permits a different minimum setback, front, side or rear yard. The front, side and rear yards shall not be required on zoning lots used for garden purposes without structures, or on zoning lots used for open public recreation areas.

(Code 1966, § 36-501)

Sec. 42-78. Restrictions on allocation and disposition of required yards or open space.

(a) No part of the lot area, or of a yard, or other open space, or off-street parking or loading space provided in connection with any structure or use in order to comply with this chapter shall, by reason of change of ownership or otherwise, be included as part of the minimum lot area or of a yard, or open space, or off-street parking or loading space required for any other structure or use, except as specifically provided herein.

(b) All of the lot area and all yards and other open spaces provided in connection with any structure or use in order to comply with this chapter shall be located on the same lot as such structure or use.

(c) No part of the lot area, or of a yard, or other open space, or off-street parking or loading space provided in connection with any structure or use (including, but not limited to, any structure or use existing on the effective date of this chapter or of any amendment thereof) shall be subsequently reduced below, or further reduced if already less than, the minimum requirements of this chapter for the equivalent new construction.

(Code 1966, § 36-502)

Sec. 42-79. Permitted obstructions in required yards.

The following shall not be considered to be obstructions when located in a required yard:

(1) *In all yards.* Open terraces not over thirty-six (36) inches above the average level of the adjoining ground but not including a permanently roofed-over terrace or porch; awnings or canopies; steps thirty-six (36) inches or less above grade which are necessary for access to a permanent structure or for access to a lot from a street or alley; arbors and trellises; flagpoles; and signs, when permitted by article X of this chapter.

(2) *In any yard except a front yard.* Accessory uses permitted by article IV of this chapter; recreational and laundry drying equipment; and open space and enclosed fences not exceeding six (6) feet in height. If any provision in this chapter requires a fence in a front yard, or a fence that has a minimum height in excess of five (5) feet, then such fence shall be a permitted obstruction within the meaning of this section.

(3) *In front yards.* Open, unenclosed porches projecting eight (8) feet or less and fences on corner or double frontage lots in accordance with the requirements of section 8-407(1).

(Code 1966, § 36-503; Ord. No. 80-8795, § 1, 6-23-80; Ord. No. 81-8842, § 1, 3-23-81)

Sec. 42-80. Lot size requirements and bulk regulations for public utility facilities.

Notwithstanding any other provision of this chapter, none of the following public utility or public service uses shall be required to comply with the lot size requirements and bulk regulations of the zoning district in which they are located:

(1) Cable TV poles;

(2) Electric and telephone substations and distribution systems;

(3) Gas regulator stations;

(4) Poles, wires, cables, conduits, vaults, laterals, pipes, mains, valves, or other similar equipment for the transmission of electricity, gas or water;

(5) Pumping stations;

(6) Radio, television and microwave transmitting or relay stations and towers;

(7) Transformer stations;

(8) Water towers or standpipes;

(9) Any other similar use.

(Code 1966, § 36-504)

Sec. 42-81. Obstructing visibility at intersections.

See sections 35-51 et seq.; for regulations concerning obstructing visibility at intersections.

(Code 1966, § 36-505)

Sec. 42-82. Corner lots in residential districts.

(a) On any corner lot in the R, R-1, R-2, R-2.5, R-3 and MH-S districts a single-family or two-family dwelling shall be required to maintain a front yard setback adjacent to only (1) street. The front yard setback shall be required adjacent to the street abutting the principal entrance which shall be identified as the official address assigned to the property. For the non-address side of a corner lot, the following setback requirements shall apply:

(1) When the non-address side of a dwelling is on a residential or collector street, the required front yard setback may be reduced to fifteen (15) feet if the lot is back to back with another corner lot and to twenty (20) feet in every other case.

(2) All detached garages, attached garages and carports facing the street on the non-address side of a dwelling shall be set back at least twenty (20) feet from the property line.

(b) In the case of a corner lot which is a platted lot of record that is fifty (50) feet in width or less, one (1) of the two (2) required front yards may be reduced to no less than fifteen (15) feet, subject to the requirements of subsection (2) above relating to garage setbacks.

(Ord. No. 95-9709, § 1, 10-16-95)

Sec. 42-83 Fences, Walls and Hedges

(a) Erecting, maintaining for spite prohibited. No person shall erect or maintain any fence, wall or hedge for the definite purpose of annoying any other person, or for the purpose of injuring another by obstructing the view, shutting out the sunshine, hindering ventilation or causing inconvenience in any other manner.

(b) Electrical fences prohibited. No electrically charged fence shall be erected or maintained.

(c) Erecting, maintaining on public property. No privately owned fence, wall or hedge shall be erected or maintained on any public property; provided however, a split rail fence not exceeding a height of three (3) feet may be erected within the right-of-way of a local residential street when placed at least six (6) feet from the curb or traveled way.

(d) Hedges along streets, alleys. It shall be unlawful for the owner or occupant of any real estate in the city to permit or allow any hedge standing or growing thereon as a fence along any of the public streets or alleys of the city to be or become more than three (3) feet in height or to permit or allow the same to extend into the streets or alleys more than one (1) foot.

(e) Fences classified. For the purposes of this article, fences are hereby classified into the following types:

(1) Class 1. Masonry walls;

(2) Class 2. Ornamental iron;

(3) Class 3. Woven wire or chain link.

(4) Class 4. Wood picket or split rail (more than fifty (50) percent open);

(5) Class 5. Solid fences (wood or metal less than fifty (50) percent open).

(f) Requirements for fences, hedges enclosing dwelling plots. In any location zoned residential, fences shall conform to the following requirements:

(1) Front yard. Front yard fences and hedges erected in front of the required front yard building line (see Article VI, District Regulations) shall be of any class. Class 2, 3 and 4 fences shall not exceed a height of four (4) feet; Class 1 and 5, fences shall not exceed a height of three (3) feet. Fences and hedges on corner lots in which the rear yard abuts the front yard of the adjoining lot shall conform to the requirements for front yard fences and hedges for such part of the fence or hedge as abuts the adjoining front yard.

a. Fences on corner lots. Where a property is located on a corner lot, thus requiring compliance with two (2) or more front yards, a solid fence may be erected, not to exceed six (6) feet to height along the nonaddress front yard extending to the property line. Such fence shall not be erected in violation of Section 42-81, Obstructing visibility at intersections. b. Fences on double frontage lots. Where a property consists of a lot where two (2) opposite lot lines abut public streets which are more or less parallel and thus requires compliance with two (2) front yard setbacks, a solid fence may be erected not to exceed six (6) feet in height along the yard which has been designated as the rear yard by the owner or developer. When one (1) of the streets abutting such a lot has been officially designated by the city as an arterial street, said fence shall not be erected in violation of Section 42-81, Obstructing visibility at intersections.

(2) Side yard. Side yard fences erected back of the required front yard building line and within the required side yard of the lot (see Article VI, District Regulations) may be of any class not over six (6) feet in height. The height restrictions herein provided shall not be applicable to planting of shrubs and/or trees used as a hedge.

(3) Rear yard. Rear yard fences and hedges erected along the rear property line may be of any class not over eight (8) feet in height, except as provided by subsection (1). The height restrictions herein provided shall not be applicable to planting of shrubs and/or trees used as a hedge.

(4) Prohibited fences. No barbed wire or other sharp pointed fences shall be erected or maintained in any residential or commercial district.

(5) Fences on retaining walls. In case of a fence erected on top of a retaining wall, the height shall be measured from the grade of the low side; provided, that in any case, a fence of Class 2, 3, 4, or 5 may be erected on top of a retaining wall to a height not to exceed six (6) feet above the grade of the high side.

(6) Retaining walls. Retaining walls shall be adequately designed and drained so as to resist all lateral pressure to which they may be subjected. Retaining walls shall not be built higher than the grade of the ground on the high side of the wall when such would exceed the height allowed for a Class 1 fence, the height of which is measured from the low side of the wall.

(7) Variations. When, in the judgement of the Board of Zoning Appeals, the public health, safety and welfare will be substantially served, the neighborhood property will not be materially damaged, and a certified copy of a written agreement between neighboring property owners has been filed with the Board of Zoning Appeals, it may, at its discretion vary the requirements herein; provided, that no violation of Chapter 42 may be permitted.

(g) Barbed wire. Barbed wire fences may be installed in industrial districts but the barbed wire must be installed at a height no lower than six (6) feet from the ground.

(h) Requirements for commercial and industrial fences. Commercial or industrial fences may be of any class and the height thereof shall not exceed ten (10) feet; provided that when such fences are built in required front yard setback spaces (see Article VI, District Regulations), they shall be limited to Class 3 type fences which shall not exceed a height of eight (8) feet unless the fence is required elsewhere in this chapter for screening purposes. A fence required for screening purposes shall be of Class 5 type construction. (See Section 42-79 regarding required obstructions in front yards.)

(i) Maintenance of fences. Fences shall be kept in repair and any dilapidated, dangerous or unsightly fence shall be removed or repaired when so ordered by the Zoning Administrator or his or her designee.

(j) Violations declared nuisances; removal. Any fence, hedge or wall erected or maintained in violation of the provisions of this article is hereby declared to be a nuisance and shall be removed by the owner thereof within five (5) days after receipt of notice from the Zoning Administrator or his or her designee to remove same.

(Ord. No. 04-10217, § 1, 10-11-04)
Editor's Notes: Ord. No. 04-10217 adopted § 42-83, formerly §§ 8-402 – 8-411.

Secs. 42-84--42-100. Reserved.

ARTICLE VI. DISTRICT REGULATIONS

DIVISION 1. GENERALLY

Secs. 42-101--42-110. Reserved.

DIVISION 2. A-1 AGRICULTURAL DISTRICT

Sec. 42-111. Design.

The A-1 district is designed to reflect the pattern of land uses that are found in the rural areas of the city.

(Code 1966, § 36-600)

Sec. 42-112. Permitted uses.

Permitted uses in the A-1 district are as follows:

(1) Agriculture, as defined in this chapter;

(2) Cemeteries, including crematories and mausoleums when used in conjunction with a cemetery, but not including mortuaries;

(3) Dog kennels or animal hospitals, provided no structure or pen housing any animals shall be located nearer than seven hundred fifty (750) feet to the boundary of any residential district;

(4) Dwellings, single-family;

(5) Family-care facilities;

(6) Oil or gas well drilling, provided such well is, or will be, located more than five hundred (500) feet from any school, residential district boundary, or any residential building other than a residential building occupied by the owner, lessee or operator of the premises on which the well is located (see section 42-113);

(7) Public service and public utility uses, as follows, provided such use is, or will be, located more than three hundred (300) feet from the boundary of any residential district (see section 42-113):

a. Ambulance service;

b. Electric and telephone substations and distribution centers;

c. Gas regulator stations;

d. Poles, wires, cables, conduits, vaults, laterals, pipes, mains, valves and other similar equipment for the transmission, as distinguished from distribution to consumers, of telephone or other communications, electricity, gas or water, operated or maintained by a public utility, as defined in this chapter;

e. Police and fire stations;

f. Pumping stations;

g. Radio, television and microwave transmitting or relay stations and towers;

h. Telephone exchanges;

i. Transformer stations;

j. Water reservoirs and standpipes;

(8) Recreational and social facilities, as follows:

a. Country clubs, including golf, swimming and tennis clubs;

b. Golf courses, but not including golf driving ranges, pitch and putt, or miniature golf courses;

c. Parks and playgrounds;

d. Privately owned dwellings for seasonal occupancy and not designed or used for permanent occupancy, such as summer homes and cottages, and hunting and fishing lodges and cabins;

e. Public athletic fields.

(9) Religious institutions, as follows:

a. Churches, chapels, temples, synagogues, cathedrals, and shrines;

b. Convents, seminaries, monasteries, and nunneries;

c. Rectories, parsonages and parish houses.

(10) Riding stables, provided no structure housing horses shall be located nearer than seven hundred fifty (750) feet to the boundary of any residential district;

(11) Well head stations, well separators and other similar above-the-ground facilities customarily used for the distribution, transmission or storage of oil or natural gas, provided no such equipment shall be located nearer than five hundred (500) feet from the boundary of any residential district. Such equipment may be in enclosed buildings or in the open, but it must be completely enclosed behind a chain link fence with a two (2) inch or less mesh, or its equivalent, not less than six (6) feet in height;

(12) Accessory and temporary uses, and home occupations, as permitted by article IV of this chapter;

(13) Signs, as permitted by article X of this chapter;

(14) Off-street parking, as required by article XI of this chapter.

(Code 1966, § 36-600(1); Ord. No. 80-8796, § 1, 7-7-80)

Sec. 42-113. Conditional uses.

Conditional uses in the A-1 district are as follows:

(1) Airports;

(2) Campgrounds, subject to the provisions of section 42-224(b) and (c);

(3) Community sewage treatment plants;

(4) Educational institutions as follows:

a. Boarding schools and academies;

b. Colleges and universities;

c. Primary, intermediate and secondary schools.

(5) Excavation, extraction, or mining of sand, gravel, or other raw materials from the earth for resale. The conditions imposed on such excavation, extraction, or mining may include, but are not limited to, requirements for setbacks from schools and residential districts, screening, fencing, redevelopment, and restrictions on the grade of the excavation and vehicular access thereto;

(6) Greenhouses and nurseries;

(7) Group-care facilities;

(8) Group day-care centers when located in a nonresidential building;

(9) Hospitals, sanitariums, rest homes and nursing homes;

(10) Libraries and museums;

(11) Noncommercial recreational buildings, community centers, auditoriums, stadiums, and arenas;

(12) Oil or gas well drilling when not permitted by section 42-112;

(13) Power plants;

(14) Public service and public utility uses listed in section 42-112(7), but which are, or will be located nearer than three hundred (300) feet to the boundary of a residential district;

(15) Public utility substations;

(16) Recreational facilities such as campgrounds, youth camps, gun clubs, and skeet and trap shooting ranges;

(17) Sanitary landfill, subject to state requirements.

(Code 1966, § 36-600(2); Ord. No. 80-8796, § 2, 7-7-80)

Sec. 42-114. Lot size requirements.

Lot size requirements in the A-1 district are as follows:

(1) Minimum lot area: four (4) acres.

(2) Minimum lot width: two hundred (200) feet.

(3) Minimum lot depth: two hundred (200) feet.

(Code 1966, § 36-600(3))

Sec. 42-115. Bulk regulations.

Bulk regulations in the A-1 district are as follows:

(1) Maximum structure height: forty-five (45) feet.

(2) Yard requirements:

a. Minimum front yard:

1. Eighty (80) feet, measured from the center line of the street or fifty (50) feet, measured from the front lot line, whichever is greater.

2. When an addition to an existing nonconforming structure located on a corner lot is to be constructed, said addition may be allowed to match the front yard setback of the existing structure, provided that the front yard so affected does not abut an arterial street with right-of-way less than one hundred (100) feet, and further provided that the construction conforms with all remaining bulk regulations.

b. Minimum side yard on each side of a zoning lot:

1. Single-family dwellings: ten (10) feet.

2. All other permitted and conditional uses: twenty-five (25) feet.

c. Minimum rear yard: twenty-five (25) feet.

(Code 1966, § 36-600(4); Ord. No. 84-9003, § 1, 2-13-84)

Secs. 42-116--42-125. Reserved.

DIVISION 3. RS SINGLE-FAMILY RESIDENTIAL SUBURBAN DISTRICT

Sec. 42-126. Design.

The RS district is designed for single-family dwellings and compatible uses, at a density not less than one acre per dwelling unit (1 unit/acre).

(Code 1966, § 36-601)

Sec. 42-127. Permitted uses.

Permitted uses in the RS district are as follows:

(1) Agriculture as defined in this chapter;

(2) Dwellings, single-family detached;

(3) Family-care facilities;

(4) Golf courses, not including accessory clubhouses, golf driving ranges, pitch and putt or miniature golf courses;

(5) Parks and playgrounds;

(6) Accessory and temporary uses and home occupations, as permitted by article IV of this chapter;

(7) Signs, as permitted by article X of this chapter;

(8) Off-street parking and loading, as required by article XI of this chapter.

(Code 1966, § 36-601(1); Ord. No. 80-8796, § 3, 7-7-80)

Sec. 42-128. Conditional uses.

Conditional uses in the RS district are as follows:

(1) Churches, chapels, temples, synagogues, cathedrals and shrines;

(2) Group-care facilities;

(3) Group day care centers providing care for no more than twelve (12) children in an occupied dwelling or with no maximum limitation if located in a nonresidential building; provided that preschools providing care for no more than twelve (12) children per session may be located in an unoccupied dwelling.

(4) Hobby breeders keeping between eleven (11) and nineteen (19) dogs on a zoning lot, subject to the provisions of adequate screening, waste disposal facilities, pest control and fencing;

(5) Hospitals, sanitariums, rest homes and nursing homes, provided that they shall be screened from adjacent residential property and shall be directly accessible to a collector or arterial street;

(6) Public utility uses, as follows, provide that the location is first approved by the planning commission, and provided further, that a landscape plan or screening plan, if necessary, is first approved by the planning commission:

a. Substations;

b. Gas regulator stations;

c. Police and fire stations;

d. Pumping stations;

e. Ambulance services.

(7) Schools, primary, intermediate and secondary;

(8) Swimming clubs, tennis clubs and clubhouses accessory to golf courses;

(9) YMCA, YWCA and other similar uses, as defined in this chapter.

(Code 1966, § 36-601(2); Ord. No. 80-8796, § 4, 7-7-80; Ord. No. 81-8863, § 2, 8-3-81; Ord. No. 88-9287, § 1, 11-14-88; Ord. No. 01-10061, § 1, 10-22-01)

Sec. 42-129. Lot size requirements.

Lot size requirements in the RS district are as follows:

(1) Minimum lot area: one acre.

(2) Minimum lot width: one hundred (100) feet.

(3) Minimum lot depth: one hundred fifty (150) feet.

(Code 1966, § 36-601(3))

Sec. 42-130. Bulk regulations.

Bulk regulations in the RS district are as follows:

(1) Maximum structure height: thirty-five (35) feet.

(2) Yard requirements:

a. Minimum front yard:

1. Eighty (80) feet, measured from the center line of the street or fifty (50) feet, measured from the front lot line, whichever is greater.

2. When an addition to an existing nonconforming structure located on a corner lot is to be constructed, said addition may be allowed to match the front yard setback of the existing structure, provided that the front yard so affected does not abut an arterial street with right-of-way less than one hundred (100) feet, and further provided that the construction conforms with all remaining bulk regulations.

b. Minimum side yard on each side of a zoning lot:

1. Single-family dwellings: Ten (10) feet.

2. Group day care centers located in an existing structure resided in by one or more members of the family operating such a facility: ten (10) feet.

3. All other permitted and conditional uses: twenty-five (25) feet.

c. Minimum rear yard: thirty (30) feet.

(3) Maximum lot coverage: thirty (30) percent.

(Code 1966, § 36-601(4); Ord. No. 84-9003, § 2, 2-13-84; Ord. No. 85-9116, § 1, 12-23-85)

Secs. 42-131--42-140. Reserved.

DIVISION 4. R SINGLE-FAMILY RESIDENTIAL DISTRICT

Sec. 42-141. Design.

The R district is designed to provide a single-family dwelling zone at a density of not less than eight thousand five hundred (8,500) square feet per dwelling unit (5.1 units acre).

(Code 1966, § 36-602)

Sec. 42-142. Permitted uses.

Permitted uses in the R district are as follows:

(1) Agriculture, as defined in this chapter;

(2) Dwellings, single-family detached;

(3) Family-care facilities;

(4) Golf courses, but not including accessory clubhouses, or golf driving ranges, pitch and putt or miniature golf courses;

(5) Parks and playgrounds;

(6) Accessory and temporary uses and home occupations, as permitted by article IV of this chapter;

(7) Signs, as permitted by article X of this chapter;

(8) Off-street parking and loading, as required by article XI of this chapter.

(Code 1966, § 36-602(1); Ord. No. 80-8796, § 5, 7-7-80)

Sec. 42-143. Conditional uses.

Conditional uses in the R district are as follows:

(1) Churches, chapels, temples, synagogues, cathedrals and shrines;

(2) Group-care facilities;

(3) Group day-care centers providing care for no more than twelve (12) children in an occupied dwelling or with no maximum limitation if located in a nonresidential building; provided that preschools providing care for no more than twelve (12) children per session may be located in an unoccupied dwelling.

(4) Hobby breeders keeping between eleven (11) and nineteen (19) dogs on a zoning lot, subject to the provisions of adequate screening, waste disposal facilities, pest control and fencing;

(5) Hospitals, sanitariums, rest homes and nursing homes, provided that they shall be screened from adjacent residential property and shall be directly accessible to a collector or arterial street;

(6) Public utility uses, as follows, provided that the location is first approved by the planning commission and provided further that a landscape plan or screening plan, if necessary, is first approved by the planning commission:

a. Ambulance services;

b. Gas regulator stations;

c. Police and fire stations;

d. Pumping stations;

e. Substations;

f. Water towers and standpipes.

(7) Schools: primary, intermediate and secondary;

(8) Swimming clubs, tennis clubs, and clubhouses accessory to golf courses;

(9) YMCA, YWCA and other similar uses, as defined in this chapter.

(Code 1966, § 36-602(2); Ord. No. 80-8796, § 6, 7-7-80; Ord. No. 81-8863, § 3, 8-3-81; Ord. No. 87-9207, § 1, 9-28-87; Ord. No. 88-9287, § 2, 11-14-88; Ord. No. 01-10061, § 1, 10-22-01)

Sec. 42-144. Lot size requirements.

Lot size requirements in the R district are as follows:

(1) Minimum lot area:

a. Single-family detached dwellings: eight thousand five hundred (8,500) square feet.

b. Group day care centers located in an existing structure resided in by one or more members of the family operating such a facility: eight thousand five hundred (8,500) square feet.

c. All other permitted and conditional uses: fifteen thousand (15,000) square feet.

(2) Minimum lot width:

a. Single-family detached dwellings: seventy (70) feet.

b. Group day care centers located in an existing structure resided in by one or more members of the family operating such a facility: seventy (70) feet.

c. All other permitted and conditional uses: one hundred (100) feet.

(3) Minimum lot depth: one hundred (100) feet.

(Code 1966, § 36-602(3); Ord. No. 85-9116, § 2, 12-23-85)

Sec. 42-145. Bulk regulations.

Bulk regulations for the R district are as follows:

(1) Maximum structure height: thirty-five (35) feet.

(2) Yard requirements:

a. Front yard:

1. Property located adjacent to the following various types of streets shall maintain the following yard requirements regardless of whether it is a front, side, or rear yard, or any combination thereof:

i. Residential street: thirty (30) feet from the property line or sixty (60) feet from the center line, whichever is greater.

ii. Collector street: thirty (30) feet from the property line or sixty (60) feet from the center line, whichever is greater.

iii. Arterial street: thirty (30) feet from the property line or eighty (80) feet from the center line, whichever is greater.

2. When an addition to an existing nonconforming structure located on a corner lot is to be constructed, said addition may be allowed to match the front yard setback of the existing structure, provided that the front yard so affected does not abut an arterial street with right-of-way less than one hundred (100) feet, and further provided that the construction conforms with all remaining bulk regulations.

3. Where not less than seventy (70) percent of the zoning lots between two (2) intersecting public street rights-of-way have developed, any newly constructed single-family dwelling may maintain the same front yard setback of either adjacent existing dwelling, provided that all of the following conditions exist:

i. The adjacent property to be matched has not been granted a variance from front yard setback.

ii. Neither adjacent land use is used for nonresidential purposes.

iii. The proposed dwelling is not to be placed on a corner lot.

iv. The structure is proposed to be placed no closer than fifteen (15) feet from the front property line.

b. Minimum side yards:

1. Residential buildings: seven and five-tenths (7.5) feet on each side of the zoning lot.

2. Group day care centers located in an existing structure resided in by one or more members of the family operating such facility: seven and five-tenths (7.5) feet on each side of the zoning lot.

3. All other permitted and conditional uses: fifteen (15) feet on each side of the zoning lot, except accessory uses which shall be permitted and governed by article IV of the chapter.

c. Minimum rear yard: twenty-five (25) feet.

(3) Maximum lot coverage: thirty (30) percent.

(Code 1966, § 36-602(4); Ord. No. 84-9003, § 3, 2-13-84; Ord. No. 85-9116, § 3, 12-23-85; Ord. No. 86-9142, § 1, 7-21-86; Ord. 03-10143, § 1, 5-12-03)

Secs. 42-146--42-155. Reserved.

DIVISION 5. R-1 SINGLE-FAMILY RESIDENTIAL DISTRICT

Sec. 42-156. Design.

The R-1 district is designed to provide a dwelling zone at a density of not less than six thousand (6,000) square feet per dwelling unit (7.26 units acre).

(Code 1966, § 36-603)

Sec. 42-157. Permitted uses.

Permitted uses in the R-1 district are as follows:

(1) Dwellings, single-family detached;

(2) Family-care facilities;

(3) Golf courses, but not including accessory clubhouses, or golf driving ranges, pitch and putt or miniature golf courses;

(4) Home occupations;

(5) Parks and playgrounds;

(6) Accessory and temporary uses, as permitted by article IV of this chapter;

(7) Signs, as permitted by article X of this chapter;

(8) Off-street parking and loading, as required by article XI of this chapter.

(Code 1966, § 36-603(1); Ord. No. 80-8796, § 7, 7-7-80)

Sec. 42-158. Conditional uses.

Conditional uses in the R-1 district are as follows:

(1) Churches, chapels, temples, synagogues, cathedrals and shrines;

(2) Group-care facilities;

(3) Group day-care centers providing care for no more than twelve (12) children in an occupied dwelling or with no maximum limitation if located in a nonresidential building; provided that preschools providing care for no more than twelve (12) children per session may be located in an unoccupied dwelling.

(4) Hobby breeders keeping between eleven (11) and nineteen (19) dogs on a zoning lot, subject to the provisions of adequate screening, waste disposal facilities, pest control and fencing;

(5) Hospitals, sanitariums, rest homes and nursing homes, provided that they shall be screened from adjacent residential property and shall be located on an arterial street;

(6) Public utility uses, as follows, provided that the location is first approved by the planning commission, and provided further, that a landscape plan or screening plan, if necessary, is first approved by the planning commission.

a. Ambulance service;

b. Gas regulator stations;

c. Police and fire stations;

d. Pumping stations;

e. Substations;

f. Water towers and standpipes.

(7) Schools: primary, intermediate and secondary;

(8) Swimming clubs, tennis clubs and clubhouses accessory to golf courses;

(9) YMCA, YWCA and other similar uses, as defined in this chapter.

(Code 1966, § 36-603(2); Ord. No. 80-8796, § 8, 7-7-80; Ord. No. 81-8863, § 4, 8-3-81; Ord. No. 87-9208, § 1, 9-28-87; Ord. No. 88-9287, § 3, 11-14-88; Ord. No. 01-10061, § 1, 10-22-01)

Sec. 42-159. Lot size requirements.

Lot size requirements in an R-1 district are as follows:

(1) Minimum lot area:

a. Single-family detached dwellings: six thousand (6,000) square feet.

b. Group day care centers located in an existing structure resided in by one (1) or more members of the family operating such a facility: six thousand (6,000) square feet.

c. All other permitted and conditional uses: fifteen thousand (15,000) square feet.

(2) Minimum lot width:

a. Single-family detached dwellings: sixty (60) feet.

b. Group day care centers located in an existing structure resided in by one (1) or more members of the family operating such a facility: sixty (60) feet.

c. All other permitted and conditional uses: one hundred (100) feet.

(3) Minimum lot depth: one hundred (100) feet.

(Code 1966, § 36-603(3); Ord. No. 85-9116, § 4, 12-23-85; Ord. No. 87-9208, § 2, 9-28-87)

42-160. Bulk regulations.

Bulk regulations in the R-1 district are as follows:

(1) Maximum structure height: thirty-five (35) feet.

(2) Yard requirements:

a. Front yard:

1. Property located adjacent to the following various types of streets shall maintain the following yard requirements regardless of whether it is a front, side, or rear yard, or any combination thereof:

i. Residential street: twenty-five (25) feet from the property line or fifty-five (55) feet from the center line, whichever is greater.

ii. Collector street: twenty-five (25) feet from the property line or fifty-five (55) feet from the center line, whichever is greater.

iii. Arterial street: twenty-five (25) feet from the property line or seventy-five (75) feet from the center line, whichever is greater.

2. When an addition to an existing nonconforming structure located on a corner lot is to be constructed, said addition may be allowed to match the front yard setback of the existing structure, provided that the front yard so affected does not abut an arterial street with right-of-way less than one hundred (100) feet, and further provided that the construction conforms with all remaining bulk regulations.

3. Where not less than seventy (70) percent of the zoning lots between two (2) intersecting public street rights-of-way have developed, any newly constructed single-family dwelling may maintain the same front yard setback of either adjacent existing dwelling, provided that all of the following conditions exist:

i. The adjacent property to be matched has not been granted a variance for front yard setback.

ii. Neither adjacent land use is used for nonresidential purposes.

iii. The proposed dwelling is not to be placed on a corner lot.

iv. The structure is proposed to be placed no closer than fifteen (15) feet from the front property line.

b. Minimum side yard:

1. Residential buildings: seven and five-tenths (7.5) feet on each side of the zoning lot.

2. Group day care centers located in an existing structure resided in by one (1) or more members of the family operating such a facility: seven and five-tenths (7.5) feet on each side of the zoning lot.

3. All other permitted and conditional uses: twenty-five (25) feet on each side of the zoning lot, except accessory uses which shall be permitted and governed by article IV of the chapter.

c. Minimum rear yard: twenty-five (25) feet.

(3) Maximum lot coverage: thirty-five (35) percent.

(Code 1966, § 36-603(4); Ord. No. 84-9003, § 4, 1-13-84; Ord. No. 85-9116, § 5, 12-23-85; Ord. No. 86-9142, § 2, 7-21-86; Ord. No. 87-9208, § 3, 9-28-87; Ord. No. 03-10143, § 1, 5-12-03)

Secs. 42-161--42-170. Reserved.

DIVISION 6. R-2 MULTIPLE-FAMILY RESIDENTIAL DISTRICT

Sec. 42-171. Design.

The R-2 district is designed to provide for multiple-family development at a minimum of three thousand (3,000) square feet per dwelling unit with the provision that no single lot may be less than six thousand (6,000) square feet in area (14.5 units/acre).

(Code 1966, § 36-604)

Sec. 42-172. Permitted uses.

Permitted uses in the R-2 district are as follows:

(1) Dwellings:

a. Single-family detached;

b. Single-family attached, not exceeding two (2) units per building;

c. Two-family detached;

(2) Family-care facilities;

(3) Golf courses, but not including accessory clubhouses or commercial golf driving ranges, pitch and putt or miniature golf courses;

(4) Home occupations;

(5) Park and playgrounds;

(6) Accessory and temporary uses, as permitted by article IV of this chapter;

(7) Signs, as permitted by article X of this chapter;

(8) Off-street parking and loading, as required by article XI of this chapter.

(Code 1966, § 36-604(1); Ord. No. 80-8796, § 9, 7-7-80; Ord. No. 89-9316, §§ 1, 5, 3-6-89)

Sec. 42-173. Conditional uses.

Conditional uses in the R-2 district are as follows:

(1) Churches, chapels, temples, synagogues, cathedrals and shrines;

(2) Group care facilities;

(3) Group day care centers providing care for no more than twelve (12) children in an occupied dwelling or with no maximum limitation if located in a nonresidential building; provided that

preschools providing care for no more than twelve (12) children per session may be located in an unoccupied dwelling.

(4) Group rehabilitation facility;

(5) Hobby breeders keeping between eleven (11) and nineteen (19) dogs on a zoning lot, subject to the provision of adequate screening, waste disposal facilites, pest control and fencing;

(6) Hospitals, sanitariums, rest homes and nursing homes, provided that they shall be screened from adjacent residential property and shall be directly accessible to a collector or arterial street;

(7) Multiple-family dwellings; provided however, that any such use which exists on March 10, 1989, shall be deemed to be a nonconforming use but shall, without further action be deemed a lawful conforming use;

(8) Public utility uses, as follows, provided that the location is first approved by the planning commission and provided further that a landscape plan or screening plan, if necessary, is first approved by the planning commission:

a. Ambulance services;

b. Gas regulator stations;

c. Police and fire stations;

d. Pumping stations;

e. Substations;

f. Water towers and standpipes.

(9) Rooming and boarding houses;

(10) Schools: primary, intermediate and secondary;

(11) Single-family attached dwellings exceeding two (2) but not exceeding six (6) units per building;

(12) Swimming clubs, tennis clubs and clubhouses accessory to golf courses;

(13) YMCA, YWCA and other similar uses, as defined in this chapter.

(Code 1966, § 36-604(2); Ord. No. 80-8796, § 10, 7-7-80; Ord. No. 81-8863, § 5, 8-3-81; Ord. No. 84-9020, § 1, 5-7-84; Ord. No. 87-9209, § 1, 9-28-87; Ord. No. 88-9287, 11-14-88; Ord. No. 89-9316, §§ 2, 5, 3-6-89; Ord. No. 91-9465, § 1, 9-9-91; Ord. No. 01-10061, § 1, 10-22-01)

Sec. 42-174. Lot size requirements.

Lot size requirements in the R-2 district are as follows:

(1) Minimum lot area:

a. Single-family and two-family detached dwellings: six thousand (6,000) square feet.

b. Single-family attached dwellings: three thousand (3,000) square feet per dwelling.

c. Group day care centers located in an existing structure resided in by one (1) or more members of the family operating such a facility is a:

1. Single-family detached dwelling: six thousand (6,000) square feet; and

2. Single-family attached or two-family dwelling: three thousand (3,000) square feet per family.

d. Multifamily: three thousand (3,000) square feet per family but not less than six thousand (6,000) square feet.

e. Other permitted and conditional uses: fifteen thousand (15,000) square feet.

(2) Minimum low width:

a. Single-family and two-family detached dwellings: fifty (50) feet.

b. Single-family attached dwellings: twenty-four (24) feet, except that for corner lots the minimum shall be forty (40) feet.

c. Two-family dwelling: fifty (50) feet.

d. Group day care centers located in an existing structure resided in by one (1) or more members of the family operating such a facility in a single-family or two-family dwelling: fifty (50) feet.

e. Multiple-family dwellings and other permitted and conditional uses: sixty (60) feet.

(3) Minimum lot depth: one hundred (100) feet.

(4) Maximum lot coverage:

a. Permitted uses: thirty-five (35) percent.

b. Conditional uses: forty (40) percent.

(Code 1966, § 36-604(4); Ord. No. 84-9003, § 5, 1-13-84; Ord. No. 85-9116, § 7, 12-23-85; Ord. No. 86-9142, § 3, 7-21-86; Ord. No. 87-9209, § 3, 9-28-87; Ord. No. 89-9316, §§ 4, 5, 3-6-89)

Sec. 42-175. Bulk regulations.

Bulk regulations in the R-2 district are as follows:

(1) Maximum structure height:

a. Permitted uses: thirty-five (35) feet;

b. Conditional uses: fifty (50) feet.

(2) Yard requirements:

a. Front yard:

1. Property located adjacent to the following various types of streets shall maintain the following yard requirements regardless of whether it is a front, side, or rear yard, or any combination thereof:

i. Residential street: twenty-five (25) feet from the property line or fifty-five (55) feet from the centerline, whichever is greater.

ii. Collector street: twenty-five (25) feet from the property line of fifty-five (55) feet from the centerline, whichever is greater.

iii. Arterial street: twenty-five (25) feet from the property line or seventy-five (75) feet from the centerline, whichever is greater.

2. When an addition to an existing nonconforming structure located on a corner lot is to be constructed, said addition may be allowed to match the front yard setback of the existing structure; provided, that the front yard so affected does not abut an arterial street with right-of-way less than one hundred (100) feet; and further provided, that the construction conforms with all remaining bulk regulations.

b. Minimum side yard:

1. Residential buildings: seven and five-tenths (7.5) feet on each side of the zoning lot; except that:

i. Residential buildings which have the entrances to two (2) or more units facing the side yard shall have a minimum side yard of ten (10) feet on the side of the building on which such entrances are located.

ii. Single-family attached residential dwellings may have the side yard reduced to zero at the common lot line.

2. Group day care centers located in an existing structure resided in by one (1) or more members of the family operating such a facility: seven and five-tenths (7.5) feet on each side of the zoning lot; except that residential buildings which have the entrances to two (2) or more units facing the side yard shall have the minimum side yard of ten (10) feet on the side of the building on which such entrances are located.

3. All other permitted and conditional uses shall have a side yard on each side of twenty (20) feet, except accessory uses which shall be permitted and governed by article IV of the chapter.

4. There shall be an additional side yard setback of one (1) foot for each two (2) feet of height over forty (40) feet.

c. Minimum rear yard: twenty-five (25) feet.

Secs. 42-176--42-185. Reserved.

DIVISION 7. R-2.5 MULTIPLE-FAMILY RESIDENTIAL DISTRICT

Sec. 42-186. Design.

The R-2.5 district is designed to provide for multiple-family development at minimum of two thousand (2,000) square feet per dwelling unit with the provision that no single lot may be less than six thousand (6,000) square feet in area (21.8 units/acre).

(Code 1966, § 36-604A)

Sec. 42-187. Permitted uses.

Permitted uses in the R-2.5 district are as follows:

(1) Dwellings:

a. Single-family;

b. Two-family;

c. Multiple-family;

d. Rooming and boardinghouses.

(2) Family-care facilities;

(3) Golf courses, but not including accessory clubhouses or commercial golf driving ranges, pitch and putt or miniature golf courses;

(4) Group-care facilities;

(5) Home occupations;

(6) Parks and playgrounds;

(7) Accessory and temporary uses, as permitted by article IV of this chapter;

(8) Signs, as permitted by article X of this chapter;

(9) Off-street parking and loading, as required by article XI of this chapter.

(Code 1966, § 36-604A(1); Ord. No. 80-8796, § 11, 7-7-80)

Sec. 42-188. Conditional uses.

Conditional uses in the R-2.5 district are as follows:

(1) Churches, chapels, temples, synagogues, cathedrals and shrines;

(2) Group day care centers providing care for no more than twelve (12) children in an occupied dwelling or with no maximum limitation if located in a nonresidential building; provided that preschools providing care for no more than twelve (12) children per session may be located in an unoccupied dwelling.

(3) Group rehabilitation facility;

(4) Hobby breeders keeping between eleven (11) and nineteen (19) dogs on a zoning lot, subject to the provision of adequate screening, waste disposal facilities, pest control and fencing;

(5) Hospitals, sanitariums, rest homes and nursing homes, provided that they shall be screened from adjacent residential property;

(6) Multiple-family dwellings for elderly and/or handicapped persons with the following permitted exceptions to the required bulk and lot size:

a. *Minimum lot area:* Five hundred (500) square feet per dwelling unit.

b. *Bulk regulations:*

1. Maximum structure height: One hundred fifty (150) feet except as provided in subsection (6)b.2.ii.

2. Minimum yard requirements:

i. *Front yard:* Thirty (30) feet on all sides abutting a street.

ii. *Side yard:* Fifteen (15) feet except there shall be an additional side yard setback of one (1) foot for each two (2) feet of height over fifty (50) feet.

iii. *Rear yard:* Twenty-five (25) feet.

(7) Professional offices, provided that they be located on an arterial or collector street and occupy a structure of less than two thousand (2,000) square feet of gross floor area;

(8) Public utility uses, as follows, provided that the location is first approved by the planning commission and provided further that a landscape plan or screening plan, if necessary, is first approved by the planning commission:

a. Ambulance services;

b. Gas regulator stations;

c. Police and fire stations;

d. Pumping stations;

e. Substations;

f. Water towers and standpipes.

(9) Schools: primary, intermediate and secondary;

(10) Swimming clubs, tennis clubs and clubhouses accessory to golf courses;

(11) YMCA, YWCA and other similar uses, as defined in this chapter.

(Code 1966, § 36-604A(2); Ord. No. 80-8796, § 12, 7-7-80; Ord. No. 81-8863, § 6, 8-3-81; Ord. No. 87-9020, § 2, 5-7-84; Ord. No. 87-9210, § 1, 9-28-87; Ord. No. 88-9287, § 5, 11-14-88; Ord. No. 91-9465, § 2, 9-9-91; Ord. No. 01-10061, § 1, 10-22-01)

Sec. 42-189. Lot size requirements.

Lot size requirements in the R-2.5 district are as follows:

(1) Minimum lot area:

a. Single-family detached dwellings: six thousand (6,000) square feet.

b. Single-family attached or two-family dwellings: not less than three thousand (3,000) square feet per family.

c. Group day care centers located in an existing structure resided in by one (1) or more members of the family operating such a facility in a:

i. Single-family detached dwelling: six thousand (6,000) square feet; and

ii. Group day care centers operating in a single-family attached or two-family dwelling: three thousand (3,000) square feet per family.

d. Multifamily: two thousand (2,000) square feet per family but not less than six thousand (6,000) square feet.

e. Other permitted and conditional uses: fifteen thousand (15,000) square feet.

(2) Minimum lot width:

a. Single-family dwellings: fifty (50) feet.

b. Two-family dwelling: fifty (50) feet.

c. Group day care centers located in an existing structure resided in by one (1) or more members of the family operating such a facility in a single-family or two-family dwelling: fifty (50) feet.

d. Multiple-family dwellings and other permitted and conditional uses: sixty (60) feet.

(3) Minimum lot depth: one hundred (100) feet.

(Code 1966, § 36-604A(3); Ord. No. 85-9116, § 8, 12-23-85; Ord. No. 87-9210, § 2, 9-28-87)

Sec. 42-190. Bulk regulations.

Bulk regulations in the R-2.5 district are as follows:

(1) Maximum structure height: seventy-five (75) feet except as provided in subsection (2)b.3.

(2) Yard requirements:

a. Front yard:

1. Property located adjacent to the following various types of streets shall maintain the following yard requirements regardless of whether it is a front, side, or rear yard, or any combination thereof:

i. Residential street: twenty-five (25) feet from the property line or fifty-five (55) feet from the center line, whichever is greater.

ii. Collector street: twenty-five (25) feet from the property line or fifty-five (55) feet from the center line, whichever is greater.

iii. Arterial street: twenty-five (25) feet from the property line or seventy-five (75) feet from the center line, whichever is greater.

2. When an addition to an existing nonconforming structure located on a corner lot is to be constructed, said addition may be allowed to match the front yard setback of the existing structure, provided that the front yard so affected does not abut an arterial street with right-of-way less than one hundred (100) feet, and further provided that the construction conforms with all remaining bulk regulations.

b. Minimum side yard:

1. Residential buildings: seven and five-tenths (7.5) feet on each side of the zoning lot, except that residential buildings which have the entrances to two (2) or more units facing the side yard shall have a minimum side yard of ten (10) feet on the side of the building on which such entrances are located.

2. Group day care centers located in an existing structure resided in by one (1) or more members of the family operating such a facility: seven and five-tenths (7.5) feet on each side of the zoning lot, except that residential buildings which have the entrances to two (2) or more units facing the side yard shall have a minimum side yard of ten (10) feet on the side of the building on which such entrances are located.

3. All other permitted and conditional uses shall have a side yard on each side of twenty (20) feet, except accessory uses which shall be permitted and governed by article IV of the chapter.

4. There shall be an additional side yard setback of one (1) foot for each two (2) feet of height over forty (40) feet.

c. Minimum rear yard: twenty-five (25) feet.

(3) Maximum lot coverage: forty (40) percent.

(Code 1966, § 26-604A(4); Ord. No. 84-9003, § 6, 2-13-84; Ord. No. 85-9116, § 9, 12-23-85; Ord. No. 86-9142, § 4, 7-21-86; Ord. No. 87-9210, § 3, 9-28-87)

Secs. 42-191--42-200. Reserved.

DIVISION 8. R-3 MULTIPLE-FAMILY RESIDENTIAL DISTRICT

Sec. 42-201. Design.

The R-3 district is designed to provide for multiple-family development at a minimum of one thousand (1,000) square feet per dwelling unit with the provision that no single lot may be less than six thousand (6,000) square feet in area (43.6 units/acre).

(Code 1966, § 36-605)

Sec. 42-202. Permitted uses.

Permitted uses in the R-3 district are as follows:

(1) Dwellings:

a. Single-family;

b. Two-family;

c. Multiple-family;

d. Rooming and boardinghouses.

(2) Family-care facilities;

(3) Golf courses, but not including accessory clubhouses or commercial golf driving ranges, pitch and putt or miniature golf courses;

(4) Group-care facilities;

(5) Home occupations;

(6) Parks and playgrounds;

(7) Accessory and temporary uses, as permitted by article IV of this chapter;

(8) Signs, as permitted by article X of this chapter;

(9) Off-street parking and loading, as required by article XI of this chapter.

(Code 1966, § 36-605(1); Ord. No. 80-8796, § 13, 7-7-80)

Sec. 42-203. Conditional uses.

Conditional uses in the R-3 district are as follows:

(1) Churches, chapels, temples, synagogues, cathedrals and shrines;

(2) Group day care centers providing care for no more than twelve (12) children in an occupied dwelling or with no maximum limitation if located in a nonresidential building; provided that preschools providing care for no more than twelve (12) children per session may be located in an unoccupied dwelling.

(3) Group rehabilitation facility;

(4) Hobby breeders keeping between eleven (11) and nineteen (19) dogs on a zoning lot, subject to the provision of adequate screening, waste disposal facilities, pest control and fencing;

(5) Hospitals, sanitariums, rest homes and nursing homes, provided that they shall be screened from adjacent residential property;

(6) Multiple-family dwellings for elderly and/or handicapped persons with the following permitted exceptions to the required bulk and lot size:

a. *Minimum lot area:* Five hundred (500) square feet per dwelling unit.

b. *Bulk regulations:*

1. Maximum structure height: One hundred fifty (150) feet except as provided in subsection (6)b.2.ii.

2. Minimum yard requirements:

i. *Front yard:* Thirty (30) feet on all sides abutting a street.

ii. *Side yard:* Fifteen (15) feet except there shall be an additional side yard setback of one (1) foot for each two (2) feet of height over fifty (50) feet.

iii. *Rear yard:* Twenty-five (25) feet.

(7) Professional offices, provided that they be located on an arterial or collector street and occupy a structure of less than two thousand (2,000) square feet of gross floor area;

(8) Public utility uses, as follows, provided that the location is first approved by the planning commission and provided further that a landscape plan or screening plan, if necessary, is first approved by the planning commission:

a. Ambulance services;

b. Gas regulator stations;

c. Police and fire stations;

d. Pumping stations;

e. Substations;

f. Water towers and standpipes.

(9) Schools: primary, intermediate and secondary;

(10) Swimming clubs, tennis clubs and clubhouses accessory to golf courses; YMCA, YWCA and other similar uses, as defined in this chapter.

(Code 1966, § 36-605(2); Ord. No. 80-8796, § 14, 7-7-80; Ord. No. 81-8863, § 7, 8-3-81; Ord. No. 84-9020, § 3, 5-7-84; Ord. No. 87-9211, § 1, 9-28-87; Ord. No. 88-9287, § 6, 11-14-88; Ord. No. 91-9465, § 3, 9-9-91; Ord. No. 01-10061, § 1, 10-22-01)

Sec. 42-204. Lot size requirements.

Lot size requirements in the R-3 district are as follows:

(1) Minimum lot area:

a. Single-family detached dwellings; six thousand (6,000) square feet.

b. Single-family attached or two-family dwellings: not less than three thousand (3,000) square feet per family.

c. Multiple-family: one thousand (1,000) square feet per family but not less than six thousand (6,000) square feet.

d. Group day care centers located in an existing structure resided in by one (1) or more members of the family operating such a facility in a:

1. Single-family detached dwelling: six thousand (6,000) square feet; and

2. Group day care centers operating in a single-family attached or two-family dwelling: three thousand (3,000) square feet per family.

e. Other permitted and conditional uses: fifteen thousand (15,000) square feet.

(2) Minimum lot width:

a. Single-family dwellings: fifty (50) feet.

b. Two-family dwelling: fifty (50) feet.

c. Group day care centers located in an existing structure resided in by one (1) or more members of the family operating such a facility in a single-family or two family dwelling: fifty (50) feet.

d. Multiple-family dwellings and other permitted and conditional uses: sixty (60) feet.

(3) Minimum lot depth: one hundred (100) feet.

(Code 1966, § 36-605(3); Ord. No. 85-9116, § 10, 12-23-85; Ord. No. 87-9211, § 2, 9-28-87)

Sec. 42-205. Bulk regulations.

Bulk regulations in the R-3 district are as follows:

(1) Maximum structure height: seventy-five (75) feet except as provided in subsection (2)b.3.

(2) Yard requirements:

a. Front yard:

1. Property located adjacent to the following various types of streets shall maintain the following yard requirements regardless of whether it is a front, side, or rear yard, or any combination thereof:

i. Residential street: twenty-five (25) feet from the property line or fifty-five (55) feet from the center line, whichever is greater.

ii. Collector street: twenty-five (25) feet from the property line or fifty-five (55) feet from the center line, whichever is greater.

iii. Arterial street: twenty-five (25) feet from the property line or seventy-five (75) feet from the center line, whichever is greater.

2. When an addition to an existing nonconforming structure located on a corner lot is to be constructed, said addition may be allowed to match the front yard setback of the existing structure, provided that the front yard so affected does not abut an arterial street with right-of-way less than one hundred (100) feet, and further provided that the construction conforms with all remaining bulk regulations.

b. Minimum side yard:

1. Residential buildings: seven and five-tenths (7.5) feet on each side of the zoning lot, except that residential buildings which have the entrances to two (2) or more units facing the side yard shall have a minimum side yard of ten (10) feet on the side of the building on which such entrances are located.

2. Group day care centers located in an existing structure resided in by one (1) or more members of the family operating such a facility: seven and five-tenths (7.5) feet on each side of the zoning lot, except that residential buildings which have the entrances to two (2) or more units facing the side yard shall have a minimum side yard of ten (10) feet on the side of the building on which such entrances are located.

3. All other permitted and conditional uses shall have a side yard on each side of twenty (20) feet, except accessory uses which shall be permitted and governed by article IV of the chapter.

4. There shall be an additional side yard setback of one (1) foot for each two (2) feet of height over forty (40) feet.

c. Minimum rear yard: twenty-five (25) feet.

(3) Maximum lot coverage: forty (40) percent.

(Code 1966, § 36-605(4); Ord. No. 84-9003, § 7, 2-13-84; Ord. No. 85-9116, § 11, 12-23-85; Ord. No. 86-9142, § 5, 7-21-86; Ord. No. 87-9211, § 3, 9-28-87)

Secs. 42-206--42-215. Reserved.

DIVISION 9. MH MANUFACTURED HOME PARK DISTRICT[3]

Sec. 42-216. Design.

The MH district is designed to provide for the placement of manufactured homes built in compliance with the Federal Manufactured Housing Construction and Safety Standards. Two (2) subdistricts are created within the manufactured home district, "MH-S" (manufactured home--subdivision) and "MH-P" (manufactured home--park). In the "MH-S" district all manufactured homes are to be placed on individually subdivided lots. The "MH-P" district allows manufactured homes to be placed on rented spaces within the manufactured home parks.

(Ord. No. 91-9488, § 1, 1-6-92)

Sec. 42-217. MH-S Manufactured home subdivisions--Permitted uses.

Permitted uses in the MH-S district are as follows:

(1) Dwellings, single-family detached;

(2) Family-care facilities;

(3) Golf courses, including accessory clubhouse or golf driving range, but not pitch and putt or miniature golf courses;

(4) Manufactured homes;

(5) Modular homes;

(6) Parks and playgrounds;

(7) Accessory, temporary, and home occupation uses, as permitted by article IV of this chapter;

(8) Signs, as permitted by article X of this chapter;

(9) Off-street parking and loading as required by article XI of this chapter.

(Ord. No. 91-9488, § 1, 1-6-92)

Sec. 42-218. Same--Conditional uses.

Conditional uses in the MH-S district are as follows:

(1) Churches, chapels, temples, synagogues, cathedrals and shrines;

(2) Group-care facilities;

(3) Group day-care centers providing care for no more than twelve (12) children in an occupied dwelling or with no maximum limitation if located in a nonresidential building;

(4) Hospitals, sanitariums, rest homes and nursing homes, provided they shall be screened from adjacent residential property and shall be directly accessible to a collector or arterial street;

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[3] **Cross references:** Mobile homes and trailers generally, Ch. 22.

(5) Public utility uses, as follows: provided that a landscape plan or screening plan, if necessary, is first approved by the planning commission;

a. Ambulance service;

b. Gas regulator stations;

c. Police and fire stations;

d. Pumping station;

e. Substations;

f. Water towers and standpipes.

(6) Schools: primary, intermediate and secondary;

(7) Swimming clubs, tennis clubs and community clubhouses;

(8) YMCA, YWCA and other similar uses as defined in this chapter.

(Ord. No. 91-9488, § 1, 1-6-92)

Sec. 42-219. Same--Lot size requirements.

Lot size requirements in the MH-S district are as follows:

(1) Minimum lot area:

a. Single-family detached dwellings, modular homes, manufactured homes, family-care facilities, and parks and playgrounds: six thousand (6,000) square feet.

b. Group day care centers located in an existing structure resided in by one (1) or more members of the family operating such a facility: six thousand (6,000) square feet.

c. All other permitted and conditional uses: fifteen thousand (15,000) square feet, except no minimum for gas regulator stations, pumping stations, or substations.

(2) Minimum lot width:

a. Single-family detached dwellings, modular homes, manufactured homes, and family-care facilities: sixty (60) feet.

b. Group day care centers located in an existing structure resided in by one (1) or more members of the family operating such a facility: sixty (60) feet.

c. All other permitted and conditional uses: one hundred (100) feet, except no minimum for gas regulator stations, pumping stations or substations.

(3) Minimum lot depth: one hundred (100) feet, except no minimum for gas regulator stations, pumping stations or substations.

(Ord. No. 91-9488, § 1, 1-6-92)

Sec. 42-220. Same--Bulk regulations.

Bulk regulations in the MH-S district are as follows:

(1) Maximum structure height: thirty-five (35) feet.

(2) Yard requirements:

a. Front yard:

1. Property located adjacent to the following various types of streets shall maintain the following yard requirements regardless of whether it is a front, side, or rear yard, or any combination thereof:

i. Residential street: twenty (20) feet from the property line or fifty (50) feet from the center line, whichever is greater.

ii. Collector street: twenty-five (25) feet from the property line or fifty-five (55) feet from the center line, whichever is greater.

iii. Arterial street: twenty-five (25) feet from the property line or seventy-five (75) feet from the center line, whichever is greater.

2. When an addition to an existing nonconforming structure located on a corner lot is to be constructed, said addition may be allowed to match the front yard setback of the existing structure, provided that the front yard so affected does not abut an arterial street with right-of-way less than one hundred (100) feet, and further provided that the construction conforms with all remaining bulk regulations.

3. When seventy (70) percent or more of the zoning lots between two (2) intersecting public street rights-of-way have developed, any newly constructed single-family dwelling or manufactured home dwelling may maintain the same front yard setback of either adjacent existing dwelling, provided that all of the following conditions exist:

i. The adjacent property to be matched has not been granted a variance for front yard setback.

ii. Neither adjacent land use is used for nonresidential purposes.

iii. The proposed dwelling is not to be placed on a corner lot.

iv. The structure is proposed to be placed no closer than fifteen (15) feet from the front property line.

b. Minimum side yard:

1. Residential buildings: seven and five-tenths (7.5) feet on each side of the zoning lot.

2. Group day care centers located in an existing structure resided in by one operating such a facility: seven and five-tenths (7.5) feet on each side of the zoning lot.

3. All other permitted and conditional uses: twenty-five (25) feet on each side of the zoning lot, except accessory uses which shall be permitted and governed by article IV of this chapter.

c. Minimum rear yard: fifteen (15) feet.

(3) Maximum lot coverage: thirty-five (35) percent.

(Ord. No. 91-9488, § 1, 1-6-92)

Sec. 42-221. Same--Development standards.

Development standards in the MH-S district are as follows:

(1) The tract to be used for a manufactured home subdivision shall not be less than two (2) acres in area, unless it is an extension of or addition to an existing manufactured home subdivision.

(2) Streets, private roadways, sidewalks, utilities, drainage facilities and other improvements shall be designed, constructed and installed to comply with Chapter 36 of the Salina Code, Subdivision Regulations.

(3) All manufactured homes located within a manufactured home subdivision shall comply with the following requirements:

a. Each manufactured home shall have a minimum width of fourteen (14) feet and a minimum main floor area, excluding any attached garage or porch, of eight hundred (800) square feet;

b. The roof shall be double pitched and shall overhang both side walls or the front end wall of the unit by at least six (6) inches, and shall be covered with material that is residential in appearance, including but not limited to wood, asphalt, composition or fiberglass shingles. Roofing materials shall not consist of corrugated aluminum, fiberglass or metal;

c. The exterior siding shall consist of nonreflective siding material such as wood, composition or simulated wood, clapboard, conventional vinyl or metal lap siding, brick, stucco or similar materials, but excluding smooth, ribbed or corrugated metal or plastic panels. Siding material shall extend below the top of the exterior foundation or curtain wall and the joint between siding and enclosure wall shall be flashed in accordance with the city building code.

d. Each manufactured home shall be installed in accordance with the recommended installation procedures of the manufacturer upon a basement, slab, piers or other permanent masonry foundation that complies with the city building code so as to be classified and taxed as real property under K.S.A. 79-340. Each unit shall be permanently anchored to and supported by permanent footings extending to the frost line. Anchoring straps or cables affixed to ground anchors shall not be considered sufficient. Exterior over-the-top tie downs shall not be permitted. If interior piers are used for the foundation, the crawlspace shall be enclosed by a permanent, full perimeter exterior curtain wall consisting of concrete or masonry. The enclosure wall shall be unpierced except for required access and ventilation;

e. The running gear, tongue, axles and wheels shall be removed;

f. Each manufactured home shall be permanently connected to all utilities in conformance with applicable city codes;

g. Each lot shall have access from an improved public or private street and two (2) off-street parking spaces.

(Ord. No. 91-9488, § 1, 1-6-92)

Sec. 42-222. MH-P Manufactured home parks--Permitted uses.

Permitted uses in the MH-P district are as follows:

(1) Dwellings, single-family detached;

(2) Family-care facilities;

(3) Manufactured homes;

(4) Mobile homes, as permitted by section 42-230;

(5) Modular homes;

(6) Parks and playgrounds;

(7) Customary accessory uses, such as laundry facilities, manager's office, clubhouse, community buildings, etc.;

(8) Accessory, temporary and home occupation uses, as permitted by article IV of this chapter;

(9) Signs, as permitted by article X of this chapter;

(10) Off-street parking and loading, as required by article XI of this chapter.

(Ord. No. 91-9488, § 1, 1-6-92)
Cross references: Placement of mobile homes, § 22-17.

Sec. 42-223. Same--Conditional uses.

Conditional uses in the MH-P district are as follows:

(1) Recreational campgrounds, subject to the regulations specified in section 42-229;

(2) All conditional uses listed in the MH-S district, provided that they shall be governed by the requirements of the MH-S district.

(Ord. No. 91-9488, § 1, 1-6-92)

Sec. 42-224. Same--Lot size requirements.

Lot size requirements in the MH-P are as follows:

(1) Minimum lot area:

a. Manufactured home parks: two (2) acres, unless it is an extension of or an addition to an existing park.

b. Each manufactured home space shall provide a minimum area of four thousand (4,000) square feet.

c. Other permitted uses: six thousand (6,000) square feet.

(2) Minimum lot width:

a. Manufactured home spaces: forty (40) feet, except that corner lots shall provide a minimum width of forty-five (45) feet.

b. Other permitted uses: sixty (60) feet.

(3) Minimum lot depth: one hundred (100) feet.

(Ord. No. 91-9488, § 1, 1-6-92)

Sec. 42-225. Same--Bulk regulations.

Bulk regulations in the MH-P district are as follows:

(1) Maximum structure height: thirty-five (35) feet.

(2) Minimum separation and setback requirements for manufactured homes:

a. All manufactured homes shall be located so as to maintain a clearance of not less than fifteen (15) feet from another manufactured home or appurtenance thereto, or twenty (20) feet from another mobile home or appurtenance thereto. No manufactured home shall be located closer than twenty (20) feet from any principal building within the park or three (3) feet from any accessory building. Accessory buildings shall be located so as to comply with the bulk regulations in section 42-58.

b. All structures shall maintain the following minimum setbacks:

1. Internal residential streets: twenty (20) feet from the property line or forty (40) feet from the center line, whichever is greater.

2. External residential streets: twenty-five (25) feet from the property line or fifty-five (55) feet from the center line, whichever is greater.

3. Collector street: twenty-five (25) feet from the property line or fifty-five (55) feet from the center line, whichever is greater.

4. Arterial street: twenty-five (25) feet from the property line or seventy-five (75) feet from the center line, whichever is greater.

5. MH-P district boundary: twenty-five (25) feet from the boundary of any other residential district.

(3) Maximum lot coverage: forty (40) percent.

(Ord. No. 91-9488, § 1, 1-6-92)

Sec. 42-226. Same--Development standards.

(1) *Utilities:* New manufactured home parks shall be permitted only when served by an approved sewer and water supply system. Within each manufactured home park all utility lines, from manufactured home to source, including electricity and telephone lines, shall be placed underground.

(2) *Drainage:* Parks shall be located on a well-drained site, properly graded to insure rapid drainage, and shall be kept free of stagnant pools of water.

(3) *Density:* Manufactured home parks hereafter approved shall have a minimum area of four thousand five hundred (4,500) square feet of space per manufactured home, exclusive of internal streets and rights-of-way.

(4) *Recreation area:* Each manufactured home park shall devote a minimum of five hundred (500) square feet per manufactured home space for recreational or open area. This recreational or open area may be included in each manufactured home space or may be developed separately. Separate recreational or open areas shall not be less than four thousand (4,000) square feet and required setbacks, roadways, rights-of-way and off-street parking spaces shall not be considered as recreational or open areas. A minimum of fifty (50) percent of the separate recreational or open space area shall be constructed or provided prior to the development of one-half (1/2) of the project, and all recreational facilities or open areas shall be constructed or provided by the time the project is seventy-five (75) percent developed.

(5) *Storm shelters:* In each new park or in park expansions of ten (10) units or more, properly ventilated and constructed storm shelters shall be provided in a central or other convenient location at a rate of eighteen (18) square feet of shelter space for each newly constructed manufactured home space. Storm shelters shall be built in accordance with the building codes of the city.

(6) *Streets:*

a. General layout:

1. A manufactured home park shall be directly accessible to a public street by means of internal private paved streets within the park. Each mobile home lot shall obtain exclusive access from internal private streets, with no direct access to external public streets.

2. Internal streets shall be designed to permit connection with existing storm sewer and other drainage facilities.

3. Internal streets shall be designed for the convenient movement of traffic and emergency vehicles. Dead-end streets shall be provided with adequate surfaced turning space, a minimum of sixty (60) feet in diameter with no parking, and eighty (80) feet in diameter with parking. The maximum length of a dead-end street shall be six hundred (600) feet.

4. Intersections generally shall be at right angles and at no point shall streets intersect at an angle less than sixty (60) degrees. Intersections of more than two (2) streets at one (1) point shall be avoided.

b. Width of roadways:

1. Internal streets with no on-street parking allowed shall have a minimum of twenty (20) feet of paving.

2. Internal streets with parking allowed on one (1) side only shall have a minimum of twenty-six (26) feet of paving.

3. Internal streets with parking allowed on both sides of the street shall have a minimum of twenty-nine (29) feet of paving.

4. A minimum of forty (40) feet of right-of-way shall be provided for internal streets. All structures shall maintain a twenty (20) feet setback from the right-of-way line.

c. Surfacing:

1. All internal streets shall be hard-surfaced with asphalt or concrete or suitable substitute approved by the city engineer.

2. Street surfaces shall be durable and graded to insure adequate surface drainage and shall be maintained free of cracks, holes and other hazards. All internal streets shall be owned and maintained by the owner of the manufactured home park.

(7) *Fire protection:* The fire chief may designate certain internal streets within the park as fire lanes.

(8) *Parking:* Adequate parking shall be provided for the use of park residents and guests. Each mobile home lot shall have off-street parking for two (2) automobiles.

(9) *Walkways:* A system of hard-surfaced walkways shall be provided connecting individual manufactured home spaces with park streets and all community facilities provided for park residents. A portion of the roadway surface may be reserved for walkways provided the roadway is widened accordingly and pedestrian and vehicular traffic will not interfere with one another.

(10) *Lighting:* All private internal streets and walkways shall be lighted by not less than three-tenths (0.3) foot candles of artificial light.

(11) *Landscaping:*

a. Perimeter screening. All manufactured home parks shall provide a permanently landscaped buffer area of at least twenty-five (25) feet in width around those portions of the park perimeter that border public rights-of-way or residential zoning districts. Such areas may contain trees, shrubbery, grass, benches, fencing, berms or other landscaping features. Setback areas not bordering public rights-of-way or residential districts may be used to fulfill recreational or open area requirements.

b. Park landscaping. Exposed ground surfaces within each manufactured home park shall be paved, covered with stone, gravel or other solid material or protected with a vegetative growth capable of preventing soil erosion and objectionable dust. All areas not used for street access, parking, walkways, buildings or service shall be completely and permanently landscaped and the entire site maintained in good condition. Planting of trees and shrubs is required to the extent needed to provide for:

1. Screening of objectionable views and neighboring uses.

2. Adequate shade for the manufactured homes in the park.

(12) *Manufactured home stands (pad):* A stand shall be provided on every manufactured home lot to accommodate the manufactured home and attached accessory structures. The stand shall consist of concrete ribbons or slabs a minimum of eighteen (18) inches wide and capable of carrying the weight of the manufactured home. Anchoring facilities for the placement and tie-down of the manufactured home shall be installed in accordance with K.S.A. 75-1226 through 1232 before any home is occupied.

(13) *Lot identification:* Each stand within a manufactured home park shall be assigned an address by the city engineering department. The assigned address shall be clearly posted or displayed so as to publicly identify the unit to which the address is assigned.

(Ord. No. 91-9488, § 1, 1-6-92)

Sec. 42-227. Same--Park plan.

Any person hereafter desiring to develop or enlarge a manufactured home park shall submit a park plan, which shall accompany the application for amendment to the MH-P district. No permits for a manufactured home park shall be issued until the park plan has been approved as part of the rezoning process and the proposed development or expansion is in compliance with the terms of this chapter. Such plan shall be drawn to a scale of not less than one (1) inch equals one hundred (100) feet and two (2) copies shall accompany the application for MH-P zoning. Such plan shall include the following information:

(1) Name and address of the owner and applicant.

(2) Location and legal description of the manufactured home park.

(3) The area and dimensions of the tract of land proposed to be rezoned.

(4) Topographic survey of the property with contour intervals of two (2) feet, natural features and existing structures and streets.

(5) The number, location and dimensions of all lots, including proposed building setbacks from exterior property lines and from internal streets.

(6) The location and width of internal streets and walkways.

(7) Plans for controlling surface drainage.

(8) The location of existing and proposed water, sewer, gas, electrical, and other utility lines and easements protecting these utilities.

(9) The location of recreation, storage, laundry, refuse, and other common facilities and/or service buildings and areas.

(10) The location and description of the street and area lighting system.

(11) Plans for screening including the use of plant materials, fencing and other landscaping structures and features.

(12) Other information as may be requested by the planning commission or the board of commissioners.

(Ord. No. 91-9488, § 1, 1-6-92)

Sec. 42-228. Same--Park plan review.

The planning commission shall review the rezoning request, including the park plan, and recommend approval or denial to the board of commissioners or may request modifications to the proposed park plan as are deemed necessary to comply with the MH-P district regulations.

Approval by the board of commissioners shall amend the zoning map, establishing an MH-P district for the property designated in the application and shall constitute approval of the park plan. The approved park plan shall be incorporated by reference in the ordinance creating the MH-P district.

(Ord. No. 91-9488, § 1, 1-6-92)

Sec. 42-229. Recreational campground plans.

The applicant for a conditional use permit to allow a recreational campground in an MH-P, A-1 or C-7 district shall submit a preliminary campground plan, drawn to a scale of not less than one (1) inch equals one hundred (100) feet, and showing the general layout of the proposed campground. Two (2) copies of the plan shall accompany the conditional use permit application. Such plan shall comply with the following minimum requirements:

(1) The tract to be used as a campground shall not be less than two (2) acres in area and shall be permitted only when served by an approved sanitary sewer and water supply system.

(2) Permitted uses within the campground shall include:

a. Motor homes;

b. Travel trailers;

c. Tents and tent trailers;

d. Customary accessory uses such as laundry facilities, manager's office, clubhouse, swimming pool, etc.

(3) Contours at two (2) foot intervals shall be indicated on the plan.

(4) The campground shall be located on a well-drained site, properly graded, where necessary, to insure rapid drainage and freedom from stagnant pools of water.

(5) Sight-obscuring screening of not less than six (6) feet in height shall be provided between the campground and any other residential zoning district.

(6) A minimum setback of twenty-five (25) feet must be maintained along all boundaries of the campground that adjoin a public street or a residential zoning district.

(7) Service buildings shall be provided at a rate of one (1) for each one hundred (100) camping spaces. Each service building shall:

a. Be located in a reasonable central location within the campground;

b. Be of permanent construction;

c. Have an accessible, adequate, safe and potable supply of cold water;

d. Have one (1) flush-type toilet, one (1) lavatory, and one (1) shower or bathtub for females; and one (1) flush-type toilet, one (1) lavatory, and one (1) shower or bathtub for males for each thirty (30) camping spaces. All lavatories, bathtubs, and showers shall be connected with both hot and cold running water;

e. Comply with all applicable chapters of the building code regarding the construction of buildings and the installation of electrical, plumbing, heating, and air conditioning systems;

f. Be maintained in a clean, sanitary condition and kept free of any condition that will endanger the health or safety of any occupants or the public.

(8) Vented storm shelters shall be provided in a central or other convenient location at the rate of twelve (12) square feet per designated or intended camping space.

(9) Structures shall not exceed thirty-five (35) feet in height.

Upon approval of the preliminary campground plan by the planning commission, the applicant shall prepare and submit two (2) copies of a final campground plan, which shall incorporate any changes or alterations requested, to the secretary of the planning commission. Upon the determination by the secretary that the final campground plan accurately reflects the desires of the planning commission, a conditional use permit will be issued. An approved copy shall be forwarded, within seven (7) days, to the zoning administrator, who may issue the required permits upon proper application.

(Ord. No. 91-9488, § 1, 1-6-92)

Sec. 42-230. Special provisions.

(1) Manufactured home parks shall comply with the provisions of chapter 22 of the Salina Code.

(2) All manufactured homes placed in new, expanded or existing manufactured home parks after January 1, 1992, shall have been manufactured after June 15, 1976 and shall bear a label certifying that it was built in compliance with the Federal Manufactured Home Construction and Safety Standards (42 U.S.C. Sec. 5401); provided however, that mobile homes built prior to June 15, 1976, and not bearing a HUD code label shall be permitted to be placed within an existing manufactured home park if the unit has been inspected by the building official and bears a certificate stating that the unit meets or exceeds HUD code standards or any minimum housing code standards adopted by the city. For the purposes of this section, "existing manufactured home park" means any park properly licensed and in operation prior to January 1, 1992.

(3) Mobile homes located in manufactured home parks existing prior to January 1, 1992 and on individual zoning lots shall hereafter be deemed lawful nonconforming uses and shall be subject to the provisions of section 42-579 of the Salina Code. Mobile Homes located or placed in existing manufactured home parks and meeting the criteria in section 42-230(2) above shall be considered lawful conforming uses in the MH-P district.

(Ord. No. 91-9488, § 1, 1-6-92)

Sec. 42-231. Unused manufactured home park.

Whenever a property zoned MH-P ceases to be used for such purposes for a period of two (2) years, the planning commission may initiate action and hold a public hearing to rezone the property back to a more appropriate zoning district.

(Ord. No. 91-9488, § 1, 1-6-92)

Secs. 42-232--42-235. Reserved.

DIVISION 10. U UNIVERSITY DISTRICT

Sec. 42-236. Design.

The U district is a zone that is designed to be used separately as a district zone or in combination with any one (1) or more of the residential districts. The two (2) principal functions of this district are:

(1) To give the university-oriented functions more flexibility than they would have if located in a residential district; and

(2) To permit the establishment of the types of uses which ordinarily cluster about a university, but which are not located on university property.

(Code 1966, § 36-607)

Sec. 42-237. Permitted uses.

Permitted uses in the U district are as follows:

(1) Art galleries, libraries and museums;

(2) Colleges, universities and theological schools, including their buildings owned or leased for administrative and faculty offices, classrooms, laboratories, chapels, auditoriums, lecture halls, libraries, student and faculty centers, athletic facilities and dormitories;

(3) Fraternal and service clubs, as defined;

(4) Fraternities and sororities;

(5) Lodging and boardinghouses;

(6) Offices, meetings rooms, laboratories and other facilities for educational, fraternal, professional, religious and statistical research organization and institutions;

(7) Parking lots for passenger automobiles, accessory to uses permitted in the university district;

(8) Schools: elementary, intermediate and secondary.

(Code 1966, § 36-607(1))

Sec. 42-238. Conditional uses.

Conditional uses in the U district are as follows:

(1) Private or public parking lots or garages operated for profit or not for profit, provided that there shall not be any accessory or permitted uses in conjunction with such use, and that no parking garage shall exceed forty (40) feet in height, and provided further, that all parking lots or garages shall be landscaped or screened according to a landscape plan or screening plan which has first been approved by the planning commission;

(2) No other conditional uses are permitted, except such conditional uses as could otherwise be allowed in any residential district with which this district is combined.

(Code 1966, § 36-607(2))

Sec. 42-239. Lot size requirements.

Lot size requirements in the U district are as follows:

(1) Minimum lot area:

a. Colleges, universities and theological school structures: no minimum requirement.

b. Structures providing lodging rooms for unmarried students: three hundred seventy-five (375) square feet per lodging room.

c. All other permitted and conditional uses shall comply with the minimum lot area required in the residential district with which the university district is combined.

(2) Minimum lot width:

a. Colleges, universities, and theological school structures: no minimum requirement.

b. All other permitted and conditional uses shall comply with the minimum lot width required in the residential district with which the university district is combined.

(3) Minimum lot depth:

a. Colleges, universities, and theological school structures: no minimum requirement.

b. All other permitted and conditional uses shall comply with the minimum lot depth required in the residential district with which the university district is combined.

(Code 1966, § 36-607(3))

Sec. 42-240. Bulk regulations.

Bulk regulation in the U district are as follows:

(1) When the university district regulations are applied in combination with the restrictions of any residential district, then all structures shall comply with the bulk regulations in the residential district with which the university district is combined, except that the rear yard may be reduced to eight (8) feet for parking garages.

(2) There shall be an additional one-foot setback for each two (2) feet of height over forty (40) feet.

(3) When the university district is applied as a separate zoning district, then the following bulk regulations shall apply:

a. Maximum lot coverage: thirty (30) percent.

b. Minimum setback: fifty (50) feet from each public street and from each lot line that adjoins property in any other zoning district.

c. Maximum structure height: no limitations.

(Code 1966, § 36-607(4))

DIVISION 10.1 H-M HOSPITAL-MEDICAL DISTRICT

Sec. 42-241. Design.

The H-M district is designed and intended to be a special purpose zoning district. The three (3) principal purposes of this district are:

(1) To give hospital oriented functions more flexibility in development and design compatible with health care delivery than they would have if located in a residential or commercial district; and

(2) To permit the establishment of the types of uses which ordinarily cluster around a hospital or medical center.

(3) To preserve and protect the city's designated historic districts by insuring that adequate buffers are provided adjacent to historic district boundaries and by discouraging hospital development outside the Hospital-Medical district in adjacent historic districts.

(Ord. No. 03-10139, § 1, 5-5-03)

Sec. 42-242. Permitted uses.

Permitted uses in the H-M district are as follows:

(1) Ambulance garages;

(2) Cancer treatment centers;

(3) Dental offices and clinics;

(4) Dental surgeons;

(5) Health care related diagnostic and therapeutic services;

(6) Health care related mobile services;

(7) Hearing testing services;

(8) Hospice facilities;

(9) Hospitals;

(10) Kidney dialysis facilities;

(11) Medical conference and education centers;

(12) Medical equipment sales;

(13) Medical laboratories;

(14) Medical offices and clinics;

(15) Medical research centers;

(16) Mental health and chemical dependence facilities;

(17) Multi-level parking garages;

(18) Optical shops;

(19) Outpatient surgery centers;

(20) Pharmacies;

(21) Recreational vehicle hook up stations for occupied motor homes and travel trailers. One (1) station shall be permitted per one hundred (100) licensed hospital beds and stations may be located no closer than fifty (50) feet from a residential property line;

(22) Support housing for health center staff, physicians and the locum-tenems program;

(23) Surface parking lots;

(24) Support services facilities such as laundry service, child care centers, building maintenance facilities and energy plants;

(25) Other health care related facilities and services not expressly listed as conditional uses;

(26) Accessory and temporary uses, as permitted by Article IV of the chapter;

(27) Signs as permitted by Article X of this chapter; and

(28) Off-street parking and loading, as required by Article XI of this chapter.

(Ord. No. 03-10139, § 2, 5-5-03)

Sec. 42-243. Conditional uses.

Conditional uses in the H-M District are as follows:

(1) Commercial and retail businesses that are freestanding and not health care related;

(2) Freestanding buildings greater than twelve thousand, five hundred (12,500) square feet in size and less than two (2) stories in height;

(3) Group care facilities;

(4) Heliports;

(5) Nursing homes and assisted living facilities;

(6) Publicly-owned parking lots; and

(7) Single-family and two-family dwellings.

(Ord. No. 03-10139, § 3, 5-5-03)

Sec. 42-244. Lot size requirements.

Lot size requirements in the H-M district are as follows:

(1)	Minimum lot area:	Six thousand (6,000) square feet for residential uses. Seven thousand (7,500) square feet for other uses.
(2)	Minimum lot width:	Thirty-five (35) feet at property line. Sixty (60) feet at building setback line.
(3)	Minimum lot depth:	One hundred (100) feet.

(Ord. No. 03-10139, § 4, 5-5-03)

Sec. 42-245. Bulk regulations.

Bulk regulations in the H-M district are as follows:

(1) Maximum structure height: Six (6) stories. This limitation shall not apply to chimneys, flues, stacks, fire escapes, elevator enclosures, equipment penthouses rooftop support lighting or other appurtenances needed to operate and maintain the building on which they are located. Rooftop communication towers and antennas shall not be subject to this height limit but shall be subject to the requirements in Section 42-69.

(2) Minimum structure height: Two (2) stories, except that additions to existing larger facilities, freestanding buildings less than twelve thousand five hundred (12,500) square feet in size and support services buildings may be one (1) story in height.

(3) Minimum yard requirements:

(a) Front yard: No minimum setback requirement on Santa Fe Avenue, a fifteen (15) foot will be required on Fifth Street and a twenty-five (25) foot setback will be required on property abutting any other public street.

(b) Side yard: None required, except when, a side yard in this district abuts a residential district or designated historic district, a side yard of twenty-five (25) feet shall be provided.

(c) Rear yard: None required, except when a rear yard in this district abuts a residential district or designated historic district, a side yard of twenty-five (25) feet shall be provided.

(d) In addition to the above noted setbacks, for each foot of building height about forty (40) feet, the required setback shall increase by one (1) foot for each additional one (1) foot in building height.

(4) Maximum lot coverage:

(a) Parking garages: One hundred (100) percent except that parking garages adjacent to residential and historic district boundaries must comply with the rear and side yard setback requirements in Section 42-245(3).

(b) Penn Campus tower bounded by Ash Street, Penn Avenue, Johnstown Avenue and Oakdale Avenue: Ninety (90) percent

(c) Santa Fe Campus Hospital Tower: Seventy-five (75) percent.

(d) All other freestanding buildings and facilities: Fifty (50) percent.

(5) Maximum site coverage: Ninety (90) percent (including buildings, paving and sidewalks on a lot);

(6) Minimum landscaped area: Ten (10) percent (excluding parking lot islands)."

(Ord. No. 03-10139, § 5, 5-5-03)

Sec. 42-246. Use limitations.

Use limitations in the H-M district shall be as follows:

(1) Where the exterior boundary of the H-M district is marked by a public street, a buffer area not less than fifteen (15) feet in width shall be maintained abutting the H-M side of the right-of-way. No structures shall be permitted in said buffer area except for monument signs, walls or fences.

(2) Where the exterior boundary of the H-M district abuts a residential district, a buffer area not less than fifteen (15) feet in width shall be maintained on the H-M district side of the property line. This buffer area shall be landscaped and screening provided in accordance with the requirements of Section 42-65(6).

(3) Exterior lighting fixtures shall be shaded so that no direct light is cast upon any property located in a residential district and so that no glare is visible to any traffic on any public street.

(Ord. No. 03-10139, § 6, 5-5-03)

Sec. 42-247. Special provisions.

Special provisions in the H-M district shall be as follows:

(1) Setbacks shall be measured from the H-M district boundary with the exception of this special provision. Where a designated historic district established prior to the effective date of this ordinance overlays the H-M district, development shall be limited to buildings no more than two (2) stories in height within that historic district overlay and shall conform with the minimum setbacks set out in Section 42-245(3). In locations where a historic district overlays the H-M district the historic district boundary line shall be used as the property line for the purpose of measuring setback for buildings above two (2) stories in height. New construction within historic district overlay area shall be designed to be compatible with the architectural character of the historic district.

(Ord. No. 03-10139, § 7, 5-5-03)

Secs. 42-248 – 42-250. Reserved.

DIVISION 11. C-1 RESTRICTED BUSINESS DISTRICT

Sec. 42-251. Design.

The C-1 district is designed to provide for a restricted commercial alternative to multiple-family development adjacent to arterial streets and highways, and at the same time avoid the typical strip commercial development. To achieve this end, a very limited number of nonretail businesses are permitted.

(Code 1966, § 36-608)

Sec. 42-252. Permitted uses.

Permitted uses in the C-1 district are as follows:

(1) Business and professional offices, provided that any warehouse or storage space associated with such offices shall not exceed fifty (50) percent of the gross floor area of the principal structure;

(2) Churches, chapels, temples, synagogues, cathedrals and shrines;

(3) Group day-care centers provided that such use shall be separated from any commercial or industrial use in accordance with the requirements of the city's adopted building code.

(4) Medical and dental clinics, and guidance centers;

(5) Mortuaries and funeral homes; including crematories, providing that such facility is completely enclosed and that no odor or noise is discernible outside the structure;

(6) Office building or clinic: The following uses would be permitted when located in an office building, or medical or dental clinic, provided such uses could be entered only from an interior lobby or hallway and there is no advertising or display visible from the exterior of the structure:

a. Barbershops;

b. Beauty shops;

c. Gift shops;

d. Newsstands;

e. Package liquor stores;

f. Pharmacies;

g. Restaurants.

(7) Office facilities for salesmen, sales representatives, or manufacturer's representative, when no retail, wholesale, or exchange of goods is made or transacted on the premises;

(8) Offices for ministers, rabbis, priests, etc.;

(9) Public utility uses, including substations and ambulance services;

(10) Studios or offices for artists, sculptors, authors, composers, photographers, or other similar uses;

(11) YMCA, YWCA and other similar organizations;

(12) Signs, as permitted by article X of this chapter;

(13) Accessory and temporary uses, as permitted by article IV of this chapter;

(14) Off-street parking and loading as required by Article XI of this chapter.

(Code 1966, § 36-608(1); Ord. No. 83-8954, § 1, 1-24-83; Ord. No. 84-9020, § 4, 5-7-84; Ord. No. 84-9029, § 1, 7-9-84; Ord. No. 88-9241, § 1, 4-11-88)

Sec. 42-253. Conditional uses.

Conditional uses in the C-1 district are as follows:

(1) Banks and financial institutions;

(2) Mail order houses;

(3) Multiple-family dwellings for elderly and/or handicapped persons with the following permitted exceptions to the required bulk and lot size:

a. Minimum lot area: five hundred (500) square feet per dwelling unit.

b. Bulk regulations:

1. Maximum structure height: one hundred fifty (150) feet except as provided in subsection (3)b.2.ii.

2. Minimum yard requirements:

i. Front yard: thirty (30) feet on all sides abutting a street.

ii. Side yard: fifteen (15) feet except there shall be an additional side yard setback of one foot for each two (2) feet of height over fifty (50) feet.

iii. Rear yard: twenty-five (25) feet.

3. Maximum lot coverage: forty (40) percent.

(4) Research laboratories (limited to research such as medical records, statistical research, etc.);

(5) Small animal hospitals, providing that such facility is completely enclosed and that no odor or noise is discernible outside the structure;

(6) All permitted uses in the R-3 district, provided that they shall be governed by the requirements of the R-3 district.

(Code 1966, § 36-608(2))

Sec. 42-254. Lot size requirements.

Lot size requirements in the C-1 district are as follows:

(1) Minimum lot width: seventy-five (75) feet.

(2) Minimum lot depth: one hundred (100) feet.

(Code 1966, § 36-608(3))

Sec. 42-255. Bulk regulations.

Bulk regulations in the C-1 district are as follows:

(1) Maximum structure height: thirty (30) feet, except multiple-family development which shall be governed by the regulations for the R-3 district, provided that there shall be one additional foot of setback on the side yards for each two (2) feet of height over thirty (30) feet.

(2) Minimum yard requirements:

a. Front yard:

1. Property located adjacent to the following various types of streets shall maintain the following yard requirements regardless of whether it is a front, side, or rear yard, or any combination thereof:

i. Residential street: twenty-five (25) feet from the property line or fifty-five feet from the center line, whichever is greater.

ii. Collector street: twenty-five (25) feet from the property line or fifty-five (55) feet from the center line, whichever is greater.

iii. Arterial street: twenty-five (25) feet from the property line or seventy-five (75) feet from the center line, whichever is greater.

2. When an addition to an existing nonconforming structure located on a corner lot is to be constructed, said addition may be allowed to match the front yard setback of the existing structure, provided that the front yard so affected does not abut an arterial street with right-of-way less than one hundred (100) feet, and further provided that the construction conforms with all remaining bulk regulations.

b. Minimum side yard: eight (8) feet on each side.

c. Minimum rear yard: twenty-five (25) feet.

(3) Maximum lot coverage: thirty (30) percent.

(Code 1966, § 46-608(4); Ord. No. 84-9003, § 9, 2-13-84; Ord. No. 9142, § 7, 7-21-86)

Sec. 42-256. Use limitations.

Use limitations in the C-1 district are as follows:

(1) All business, service, storage and display of goods shall be conducted within a completely enclosed structure.

(2) Exterior lighting fixtures shall be shaded so that no direct light is cast upon any property located in a residential district and so that no glare is visible to any traffic on any public street.

(3) Sight obscuring screening of not less than six (6) feet in height shall be provided along all lot lines that abut a residential district; however, if the property actually utilized for permitted or conditional nonresidential purposes (including accessory parking areas) lies one hundred (100) feet or more from an abutting residential lot line, no screening is required along that lot line.

(4) Offstreet parking and loading areas associated with the uses permitted in this district shall not be permitted to cover more than fifty (50) percent of the total area of any required front yard.

(Code 1966, § 36-608(5); Ord. No. 84-9002, § 1, 2-13-84; Ord. No. 95-9704, § 1, 8-28-95)

Secs. 42-257--42-265. Reserved.

DIVISION 12. C-2 NEIGHBORHOOD SHOPPING DISTRICT

Sec. 42-266. Design.

The C-2 district is designed to permit areas of convenience shopping facilities of no less than one (1) acre so located to serve one (1) or more residential neighborhoods.

(Code 1966, § 36-609)

Sec. 42-267. Permitted uses.

Permitted uses in the C-2 district are as follows:

(1) Antique shops;

(2) Apparel stores;

(3) Art galleries;

(4) Banks and financial institutions;

(5) Barbershops;

(6) Beauty shops;

(7) Bicycle shops;

(8) Bookstores;

(9) Business and professional offices;

(10) Camera and photographic supply stores;

(11) Churches, chapels, temples, synagogues, cathedrals and shrines;

(12) Dry cleaning and laundry receiving stations where no processing or cleaning of clothing is done on the premises;

(13) Florist shops;

(14) Food stores, including grocery stores, meat markets, bakeries and delicatessens;

(15) Gift shops and variety stores;

(16) Group day care centers, provided that such use shall be separated from any commercial or industrial use in accordance with the requirements of the city's adopted building code;

(17) Medical and dental clinics, and guidance centers;

(18) Mortuaries and funeral homes, including crematories, providing that such facility is completely enclosed and that no odor or noise is discernible outside the structure;

(19) Optical shops;

(20) Pharmacies;

(21) Public utility uses, including substations and ambulance services;

(22) Self-service laundry and dry cleaning establishments;

(23) Shoe repair shops;

(24) Studios or offices for artists, sculptors, authors, composers, photographers and other similar uses;

(25) Tailor shops;

(26) YMCA, YWCA and other similar organizations;

(27) Any other similar retail business not specifically listed in any section is permitted if it complies with the conditions and restrictions contained in section 42-271;

(28) Accessory and temporary uses, as permitted by article IV of this chapter;

(29) Signs, as permitted by article X of this chapter;

(30) Off-street parking and loading, as required by article XI of this chapter.

(Code 1966, § 36-609(1); Ord. No. 82-8918, § 1, 8-9-82; Ord.No. 83-8954, § 2, 1-24-83; Ord. No. 84-9020, § 5, 5-7-84; Ord. No. 84-9029, § 2, 7-9-84; Ord. No. 88-9241, § 2, 4-11-88; Ord. No. 909386, §§ 1, 3, 8-13-90)

Sec. 42-268. Conditional uses.

Conditional uses in the C-2 district are as follows:

(1) Hardware stores;

(2) Package liquor stores;

(3) Research laboratories (limited to medical records, statistical research, etc.);

(4) Restaurants, excluding drive-up window service and drive-in establishments;

(5) Small animal hospitals, providing that such facility is completely enclosed and that no odor or noise is discernible outside the structure;

(6) Taverns;

(7) Telephone exchanges and telephone transmission equipment structures;

(8) All permitted and conditional uses in the R-3 district, provided that they shall be governed by the requirements of the R-3 district.

(Code 1966, § 36-609(2); Ord. No. 909396, §§ 2, 3, 8-13-90)

Sec. 42-269. Lot size requirements.

Lot size requirements in the C-2 district are as follows:

(1) Minimum lot width: seventy-five (75) feet.

(2) Minimum lot depth: one hundred (100) feet.

(3) Minimum zoning area: Ten thousand (10,000) square feet unless contiguous to or within two hundred (200) feet of a similar zoning district.

(Code 1966, § 36-609(3); Ord. No. 90-9379, §§ 1, 2, 4-9-90)

Sec. 42-270. Bulk regulations.

Bulk regulations in the C-2 district are as follows:

(1) Maximum structure height: fifty (50) feet.

(2) Yard requirements:

a. Front yard:

1. Property located adjacent to the following various types of streets shall maintain the following yard requirements regardless of whether it is a front, side, or rear yard, or any combination thereof:

i. Residential street: twenty-five (25) feet from the property line or fifty-five (55) feet from the center line, whichever is greater.

ii. Collector street: twenty-five (25) feet from the property line or fifty-five (55) feet from the center line, whichever is greater.

iii. Arterial street: twenty-five (25) feet from the property line or seventy-five (75) feet from the center line, whichever is greater.

2. When an addition to an existing nonconforming structure located on a corner lot is to be constructed, said addition may be allowed to match the front yard setback of the existing structure, provided that the front yard so affected does not abut an arterial street with right-of-way less than one hundred (100) feet, and further provided that the construction conforms with all remaining bulk regulations.

b. Side yard: none required, except when, a side yard in this district abuts a residential district a side yard of fifteen(15) feet shall be provided.

c. Rear yard: none required except when a rear yard in this district abuts a residential district, a rear yard of fifteen (15) feet shall be provided.

d. Canopies used in conjunction with retail gasoline service may extend up to twelve (12) feet into the required front yard setback. At no time shall the canopy extend over the right-of-way.

(3) Maximum lot coverage: thirty-five (35) percent.

(Code 1966, § 36-609(4); Ord. No. 83-8970, § 1, 8-22-83; Ord. No. 84-9003, § 10, 2-13-84; Ord. No. 86-9142, § 8, 7-21-86)

Sec. 42-271. Use limitations.

Use limitations in the C-2 district are as follows:

(1) All business establishments shall be retail or service establishments dealing directly with consumers. All goods produced on the premises shall be sold at retail on the premises where produced.

(2) All business, service, storage and display of goods shall be conducted within a completely enclosed building, except that an area equivalent to not more than five (5) percent of the total floor area may be used for open display and sales.

(3) Exterior lighting fixtures shall be shaded so that no direct light is cast upon any property located in a residential district and so that no glare is visible to any traffic on any public street.

(4) Sight obscuring screening of not less than six (6) feet in height shall be provided along all lot lines that abut a residential district; however, if the property actually utilized for permitted or conditional nonresidential purses (including accessory parking areas) lies one hundred (100) feet or more from an abutting residential lot line, no screening is required along that lot line.

(5) No individual business establishment shall occupy more than twenty-five thousand (25,000) square feet of floor space.

(Code 1966, 36-609(5); Ord. No. 84-9002, § 2, 2-13-84)

Secs. 42-272--42-280. Reserved.

DIVISION 13. C-3 SHOPPING CENTER DISTRICT

Sec. 42-281. Design.

The C-3 district is designed to provide a district of no less than one (1) acre for a relatively broad range of retail shopping facilities which primarily consist of specialty shops and stores.

(Code 1966, § 36-610)

Sec. 42-282. Permitted uses.

Permitted uses in the C-3 district are as follows:

(1) Antique shops;

(2) Apparel stores;

(3) Appliance stores;

(4) Auditoriums and community theatres;

(5) Automobile sales and rental, within a completely enclosed building, except that the outdoor display and sale of automobiles may be approved as a temporary use provided that sales events shall be limited to a maximum of four (4) consecutive days in any six-month period.

(6) Automobile service and accessory stores, provided that all service shall be conducted within a completely enclosed building;

(7) Banks and financial institutions;

(8) Barbershops;

(9) Beauty shops;

(10) Bicycle shops;

(11) Blueprinting and photostating establishments;

(12) Bookstores;

(13) Business and professional offices;

(14) Camera and photographic supply stores;

(15) Carpet and rug stores;

(16) China and glassware stores;

(17) Churches, chapels, temples, synagogues, cathedrals and shrines;

(18) Department stores;

(19) Dog kennels, providing that such facilities are completely enclosed and that no odor or noise is discernible outside the structure;

(20) Dry cleaning establishments;

(21) Drygoods stores;

(22) Florist shops;

(23) Food stores, including grocery stores, meat markets, bakeries, and delicatessens;

(24) Furniture stores;

(25) Furrier shops, including the incidental storage and conditioning of furs;

(26) Gasoline service stations;

(27) Gift shops;

(28) Governmental buildings;

(29) Group day-care centers provided that such use shall be separated from any commercial or industrial use in accordance with the requirements of the city's adopted building code;

(30) Hardware stores;

(31) Hobby shops;

(32) Hotels and motels;

(33) Interior decorating shops, including upholstering, making of draperies, slipcovers and other similar articles which are conducted as a part of, or secondary to, a retail operation;

(34) Jewelry stores;

(35) Leather goods and luggage stores;

(36) Mail-order houses;

(37) Medical and dental clinics, and guidance centers;

(38) Mortuaries and funeral homes; including crematories, providing that such facility is completely enclosed and that no odor or noise is discernible outside the structure;

(39) Music stores and musical instrument sales and repair;

(40) Newsstands;

(41) Optical sales;

(42) Package liquor stores;

(43) Paint and wallpaper stores;

(44) Pet grooming shops;

(45) Pet stores;

(46) Pharmacies;

(47) Physical and health services such as private gymnasiums and reducing salons;

(48) Private clubs (clubs and organizations, and fraternal and service clubs as defined only);

(49) Printing plants;

(50) Public utility uses, including substations and ambulance services;

(51) Radio and television broadcasting stations;

(52) Recording studios;

(53) Research laboratories;

(54) Restaurants, with or without drive-up window service, other than drive-in establishments;

(55) Restricted production and repair limited to the following: Alteration and custom tailoring of clothing for retail sale only; jewelry from precious metal; watches; dentures; optical lenses; and other similar activities;

(56) Schools: music, dance or business;

(57) Self-service laundry and dry cleaning establishments;

(58) Small animal hospitals, providing that such facility is completely enclosed and that no odor or noise is discernible outside the structure;

(59) Sporting goods stores;

(60) Tailors;

(61) Telephone exchanges and telephone transmission equipment structures;

(62) Theatres, indoor only;

(63) Travel bureaus and transportation ticket offices;

(64) Variety stores;

(65) Any other similar retail business not specifically listed is permitted if it complies with the conditions and the restrictions contained in section 42-286 of this chapter;

(66) Accessory and temporary uses, as permitted by article IV of this chapter;

(67) Signs, as permitted by article X of this chapter;

(68) Off-street parking and loading, as required by article XI of this chapter.

(Code 1966, § 36-601(1); Ord. No. 81-8863, § 8, 8-3-81; Ord. No. 82-8918, § 2, 8-9-82; Ord. No. 83-8954, § 3, 1-24-83; Ord. No. 84-9020, § 6, 5-7-84; Ord. No. 84-9029, § 3, 7-9-84; Ord. No. 87-9196, § 1, 7-27-87; Ord. No. 88-9241, § 3, 4-11-88; Ord. No. 95-9695, § 1, 7-10-95)

Sec. 42-283. Conditional uses.

Conditional uses in the C-3 district are as follows:

(1) Bus stations;

(2) Contractor's offices;

(3) Mini-warehouses;

(4) Multiple-family dwellings provided they shall be governed by the R-3 multiple-family residential district requirements. Such requirements shall include consideration of density, yards, off-street parking, lot coverage and all other requirements for multifamily development as required in the R-3 residential district, except that there shall be one (1) additional foot of setback for each two (2) feet of height over thirty-five (35) feet;

(5) Multiple-family dwellings for elderly and/or handicapped persons with the following permitted exceptions to the required bulk and lot size:

a. Minimum lot area: five hundred (500) square feet per dwelling unit.

b. Bulk regulations:

1. Maximum structure height: one hundred fifty (150) feet except as provided in subsection (5)b.2.ii.

2. Minimum yard requirements:

i. Front yard: thirty (30) feet on all sides abutting a street.

ii. Side yard: fifteen (15) feet except there shall be an additional side yard setback of one (1) foot for each two (2) feet of height over fifty (50) feet.

iii. Rear yard: twenty-five (25) feet.

3. Maximum lot coverage: forty (40) percent.

(6) Taverns.

(Code 1966, § 36-610(2))

Sec. 42-284. Lot size requirements.

Lot size requirements in the C-3 district are as follows: no minimum, but zoning district must be a minimum of one (1) acre, unless contiguous to or within two hundred (200) feet of a similar district. The minimum zoning area may not be varied by more than ten (10) percent.

(Code 1966, § 36-610(3))

Sec. 42-285. Bulk regulations.

Bulk regulations in the C-3 district are as follows:

(1) Maximum structure height: thirty-five (35) feet.

(2) Yard requirements:

a. Front yard:

1. Property located accent to the following various types of streets shall maintain the following yard requirements regardless of whether it is a front, side, or rear yard, or any combination thereof:

i. Residential street: twenty-five (25) feet from the property line or fifty-five (55) feet from the centerline, whichever is greater.

ii. Collector street: twenty-five (25) feet from the property line or sixty-five (65) feet from the centerline, whichever is greater.

iii. Arterial street: twenty-five (25) feet from the property line or seventy-five (75) feet from the centerline, whichever is greater.

2. When an addition to an existing nonconforming structure located on a corner lot is to be constructed, said addition may be allowed to match the front yard setback of the existing structure, provided that the front yard so affected does not abut an arterial street with right-of-way less than one hundred (100) feet, and further provided that the construction conforms with all remaining bulk regulations.

b. Side yard: none required except when a side yard in this district abuts a residential district, a side yard of fifteen (15) feet shall be provided.

c. Rear yard: none required except when a rear yard in this district abuts a residential district, a rear yard of fifteen (15) feet shall be provided.

d. Canopies used in conjunction with retail gasoline service may extend up to twelve (12) feet into the required front yard setback. At no time shall the canopy extend over the right-of-way.

(3) Maximum lot coverage: forty (40) percent.

(Code 1966, § 36-610(4); Ord. No. 83-8970, § 2, 8-22-83; Ord. No. 84-9003, § 11, 2-13-84; Ord. No. 86-9142, § 9, 7-21-86; Ord. No. 87-9212, § 1, 9-28-87)

Sec. 42-286. Use limitations.

Use limitations in the C-3 district are as follows:

(1) All business establishments shall be retail or service establishments dealing directly with the consumer. All goods produced on the premises shall be sold at retail on the premises where produced.

(2) All business, service, storage and display of goods shall be conducted within a completely enclosed building, except:

a. Restaurants which may have food and beverage service on an outdoor patio not more than fifty (50) percent the size of the indoor eating space.

b. Garden centers accessory to a department or grocery store which may have outdoor display and sales of plants, nursery stock and gardening supplies in an area not greater than fifteen (15) percent of the floor area of the store, provided that the outdoor display area may not be located between the front of the principal building and an arterial street.

c. Other required conditions:

1. The area used for outdoor service, display and sales shall be enclosed or otherwise separated from the off-street parking area and circulation drives.

2. The area used for outdoor service, display and sales shall be adjacent to the principal building and such area shall comply with the setback requirements for the principal building.

3. The area used for outdoor service, display and sales shall be calculated as floor area in determining the number of required off-street parking spaces.

(3) No business establishment shall offer or sell food or beverages for consumption on the premises in parked motor vehicles.

(4) Exterior lighting fixtures shall be shaded so that no direct light is cast upon any property located in a residential district and so that no glare is visible to any traffic on any public street.

(5) Sight obscuring screening of not less than six (6) feet in height shall be provided along all lot lines that abut a residential district; however, if the property actually utilized for permitted or conditional nonresidential purposes (including accessory parking areas) lies one hundred (100) feet or more from an abutting residential lot line, no screening is required along that lot line.

(Code 1966, § 36-610(5); Ord. No. 84-9002, § 3, 2-13-84; Ord. No. 88-9264, § 1, 8-1-88)

Secs. 42-287--42-300. Reserved.

DIVISION 14. C-4 CENTRAL BUSINESS DISTRICT

Sec. 42-301. Design.

The C-4 district is designed to provide a district for a broad range of retail shopping facilities.

(Code 1966, § 36-611)

Section 42-302. Permitted uses.

Permitted uses in the C-4 district are as follows:

(1) Antique shops;

(2) Apparel stores;

(3) Appliance stores;

(4) Art galleries, libraries and museums;

(5) Auditoriums and community theaters;

(6) Automobile sales, rental and service, provided all displays of vehicles are within a completely enclosed building; provided however, that any such use with an outdoor display area in

existence on January 8, 2000 shall be deemed to be a lawful nonconforming use;

(7) Auto parts stores;

(8) Banks and financial institutions;

(9) Barbershops;

(10) Beauty shops;

(11) Bicycle shops;

(12) Blueprinting and photostating establishments;

(13) Bookstores;

(14) Bus stations;

(15) Business and professional offices;

(16) Camera and photographic supply stores;

(17) Carpet and rug stores;

(18) China and glassware stores;

(19) Contractor's offices;

(20) Department stores;

(21) Dog kennels, providing that such facilities are completely enclosed and that no odor or noise is discernible outside the structure.

(22) Dry cleaning establishments;

(23) Drygoods stores;

(24) Electrical contractors;

(25) Electronic parts and supplies;

(26) Florist shops;

(27) Food stores, including grocery stores, meat markets, bakeries, and delicatessens;

(28) Fraternal and service clubs;

(29) Furniture stores;

(30) Furrier shops, including the incidental storage and conditioning of furs;

(31) Gasoline service stations;

(32) Gift shops;

(33) Government buildings;

(34) Group day care centers provided that such use shall be separated from any commercial or industrial use in accordance with the requirements of the city's adopted building code;

(35) Hardware stores;

(36) Hobby shops;

(37) Hospitals, sanitariums, rest homes, and nursing homes, provided that parking is provided in accordance with Section 42-553;

(38) Hotels and motels, providing that parking is provided in accordance with Section 42-553;

(39) Interior decorating shops, including upholstering, making of draperies, slipcovers and other similar articles which are conducted as a part of, and secondary to, a retail operation;

(40) Jewelry stores;

(41) Leather goods and luggage stores;

(42) Mail-order houses;

(43) Mechanical contractors;

(44) Medical and dental clinics, and guidance centers;

(45) Mini-warehouses;

(46) Mortuaries and funeral homes; including crematories, provided that such facility is completely enclosed and that no odor or noise is discernible outside the structure;

(47) Music stores and musical instrument sales;

(48) Newspaper offices and printing;

(49) Newsstands;

(50) Office equipment and supply;

(51) Optical sales;

(52) Package liquor stores;

(53) Paint and wallpaper stores;

(54) Parking garages and lots;

(55) Pawnshops;

(56) Pest control and exterminators;

(57) Pet grooming shops;

(58) Pet stores;

(59) Pharmacies;

(60) Physical and health services such as private gymnasiums and reducing salons;

(61) Printing plant;

(62) Public utility uses including substations and ambulance services;

(63) Radio and television broadcasting stations;

(64) Radio and television repair shops;

(64) Radio and television repair shops;

(65) Recording studios;

(66) Residential dwellings, accessory to and located above or below the ground floor of another principal use.

(67) Restaurants which do not serve or sell alcoholic beverages, but no drive-in establishments;

(68) Restricted production and repair limited to the following: alteration and custom tailoring of clothing for retail sale only; jewelry from precious metal; watches; dentures; optical lenses; and other similar activities;

(69) Schools: music, dance or business;

(70) Self-service laundry and dry cleaning establishments;

(71) Shoe repair shops;

(72) Small animal hospitals, providing that such facility is completely enclosed and that no odor or noise is discernible outside the structure;

(73) Sporting goods stores;

(74) Tailor shops;

(75) Telephone exchanges and telephone transmission equipment structures;

(76) Theaters, indoor only;

(77) Travel bureaus and transportation ticket offices;

(78) Variety stores;

(79) YMCA, YWCA, and other similar organizations;

(80) Any other similar retail business not specifically listed is permitted if it complies with the conditions and restrictions contained in Section 42-306;

(81) Accessory and temporary uses, as permitted by Article VI of this chapter,

(82) Signs, as permitted by Article X of this Chapter;

(83) Off-street parking and loading, as required by Article XI of this chapter."

(Code 1966, § 36-611(1); Ord. No. 81-8863, § 9, 8-3-81; Ord. No. 82-8918, § 3, 8-9-82; Ord. No. 83-8954, § 4, 1-24-83; Ord. No. 84-9020, § 7, 5-7-84; Ord. No. 88-9241, § 4, 4-11-88; Ord. No. 92-9536, § 1, 10-12-96; Ord. No. 99-9961, § 1, 1-3-00; Ord. No. 01-10056, § 1, 9-24-01; Ord. No. 05-10281, § 1, 6-20-05)

Section 42-303. Conditional uses.

Conditional uses in the C-4 district are as follows:

(1) Amusement arcades, indoor only;

(2) Amusement and vending devices, sales and service;

(3) Appliance stores, sales and service;

(4) Automobile repair;

(5) Car washes;

(6) Church, chapel, temple, synagogue and shrine;

(7) Custom cabinet and woodworking shop;

(8) Drinking establishments, including restaurants that serve alcoholic beverages;

(9) Equipment sales, rental and service, except construction-type equipment;

(10) Food and/or beverage service on an outdoor patio which is accessory to a restaurant or bar, provided that the patio area may not exceed the size or occupant load of the indoor serving space;

(11) Furniture repair and restoration shop;

(12) Glass and mirror sales and service;

(13) Group care facility;

(14) Group day-care centers;

(15) Handcrafts, ceramics and similar art work;

(16) Home improvement center;

(17) Motorcycle sales, rental and service;

(18) Residential dwellings located on the ground floor or within buildings used principally for residential purposes, provided that parking is provided at one half the ratio set forth in Section 42-553 and provided that such development shall comply with the R-3 Multiple-Family District requirements for density and lot size (Section 42-204) in addition to the C-4 bulk regulations;

(19) Residential dwellings for elderly and/or handicapped persons, located on the ground floor or within buildings used principally for residential purposes, provided that parking is provided at one half the ratio set in Section 42-553 and provided that such development shall have a minimum lot area of five hundred (500) square feet per dwelling unit in addition to complying with the C-4 bulk regulations;

(20) Teen Centers;

(21) Testing and research laboratories;

(22) Warehouse and wholesale houses.

(Code 1966, § 36-611(2); Ord. No. 91-9440, § 1, 5-13-91; Ord. No. 92-9536, § 2, 10-12-92; Ord. No. 99-9961, § 2, 1-3-00; Ord. No. 01-10021, § 1, 2-12-01; Ord. No. 01-10056, § 2, 9-24-01; Ord. No. 05-10281, § 2, 6-20-05; Ord No. 06-10339, § 1, 7-17-06)

Sec. 42-304. Lot size requirements.

Lot size requirements in the C-4 district are as follows: no minimum requirements.

(Code 1966, § 36-611(3))

Sec. 42-305. Bulk regulations.

Bulk regulations in the C-4 district are as follows:

(1) Maximum structure height: no limitations.

(2) Yard requirements:

a. Front yard: none.

b. Side yard: none required, except as provided below.

c. Rear yard: none required, except as provided below.

d. Where any side and/or rear yard abuts a residential district, a landscaped side and/or rear yard shall be provided along such side and/or rear yard that is ten (10) feet in width.

(3) Maximum lot coverage: one hundred (100) percent.

(Code 1966, § 36-611(4))

Sec. 42-306. Use limitations.

Use limitations in the C-4 district are as follows:

(1) All business establishments shall be retail or service establishments dealing directly with consumers. All goods produced on the premises shall be sold at retail on the premises where produced. No products produced in this district shall be of a nature that they would be classified as a permitted use in the I-2 or I-3 districts if produced separately from a use permitted in this district.

(2) All business, service, storage and display of goods shall be conducted within a completely enclosed building.

(3) No business establishment shall offer or sell food or beverages for consumption on the premises in parked motor vehicles.

(4) Exterior lighting fixtures shall be shaded so that no direct light is cast upon any property located in a residential district and so that no glare is visible to any traffic on any public street.

(Code 1966, § 36-611(5); Ord. No. 95-9694, § 1, 7-10-95; Ord. No. 99-9961, § 3, 1-3-00; Ord. No. 01-10056, § 3, 9-24-01)

Secs. 42-307--42-315. Reserved.

DIVISION 15. C-5 SERVICE COMMERCIAL DISTRICT

Sec. 42-316. Design.

The C-5 district is designed for those business and commercial uses which draw their customers from motorists on the highway, or for whom a location on a highway or arterial street is especially useful or necessary. Although some of the typical retail uses are permitted in other commercial districts, most of these permitted this district would not blend well into a prime retail area.

(Code 1966, § 36-612)

Sec. 42-317. Permitted uses.

Permitted uses in the C-5 district are as follows:

(1) Ambulance services;

(2) Apparel stores;

(3) Appliance stores, sales and service;

(4) Automobile sales and rental and service;

(5) Automotive parts, wholesale;

(6) Automotive sales, service and parts;

(7) Banks and financial institutions;

(8) Barbershops;

(9) Beauty shops;

(10) Bicycle shops;

(11) Boat sales, rental and service;

(12) Bonding agencies;

(13) Bookstores;

(14) Bowling alleys;

(15) Business and professional offices;

(16) Camera and photographic supply stores;

(17) Car washes;

(18) Carpet and rug stores;

(19) China and glassware stores;

(20) Churches, chapels, temples, synagogues, cathedrals and shrines;

(21) Commercial off-street parking as a principal use;

(22) Contractor's office;

(23) Dog kennels, providing that such facilities are completely enclosed and that no odor or noise is discernible outside the structure;

(24) Equipment sales and rental, not including heavy equipment type such as bulldozers and cranes;

(25) Florist shops;

(26) Food stores and delicatessens;

(27) Fraternal and service clubs;

(28) Furniture stores;

(29) Garden stores; greenhouses and nurseries;

(30) Gasoline service stations;

(31) Gift and souvenir shops;

(32) Group day-care centers provided that such use shall be separated from any commercial or industrial use in accordance with the requirements of the city's adopted building code.

(33) Hardware stores;

(34) Hobby shops;

(35) Hotels and motels;

(36) Jewelry stores;

(37) Leather and luggage stores;

(38) Music stores and musical instrument sales and repair;

(39) Newsstands;

(40) Office equipment and supply;

(41) Optical sales;

(42) Package liquor stores;

(43) Paint and wallpaper stores;

(44) Parking garages and lots;

(45) Pawnshops;

(46) Pest control and exterminators;

(47) Pet stores and pet grooming shops;

(48) Pharmacies;

(49) Pitch and putt, and miniature golf courses;

(50) Printing plants;

(51) Private clubs;

(52) Public utility uses, including substations;

(53) Radio and television sales and service;

(54) Recreational vehicle rental, sales and service;

(55) Restaurants, including drive-in establishments, serving food or beverages to customers for consumption on the premises or in parked motor vehicles;

(56) Self-service laundry and dry-cleaning establishments;

(57) Service and fraternal clubs and lodges;

(58) Small animal hospitals, providing that such facility is completely enclosed and that no odor or noise is discernible outside the structure;

(59) Sporting goods stores;

(60) Truck sales and service;

(61) Variety stores;

(62) YMCA, YWCA, and other similar organizations;

(63) Any other similar retail business not specifically listed is permitted if it complies with the conditions and the restrictions contained in section 42-336;

(64) Accessory and temporary uses, as permitted by article IV of this chapter;

(65) Signs as permitted by article X of this chapter;

(66) Off-street parking and loading, as required by article XI of this chapter.

(Code 1966, § 36-612(1); Ord. No. 81-8863, § 10, 8-3-81; Ord. No. 83-8954, § 5, 1-24-83; Ord. No. 84-9029, § 4, 7-9-84; Ord. No. 86-9158, § 1, 9-22-86; Ord. No. 88-9241, § 5, 4-11-88)

Sec. 42-318. Conditional uses.

Conditional uses in the C-5 district are as follows:

(1) Amusement parks and skating rinks;

(2) Animal hospitals, provided that all pens shall be in an enclosed structure;

(3) Automobile repair;

(4) Group care facilities;

(5) Group rehabilitation facilities;

(6) Hospitals, sanitariums, rest homes and nursing homes;

(7) Lumber yards;

(8) Mini-warehouses;

(9) Multifamily dwellings, provided that:

a. New buildings and additions to existing buildings shall comply with the requirements of the R-3 district and parking shall be provided in conformance with section 42-553;

b. Conversions of existing nonresidential buildings shall comply with the lot size requirements of the R-3 district (section 42-204) in addition to the bulk regulations in the C-5 district and parking may be provided at one-half ratio set forth in section 42-553.

(10) Multifamily dwellings for elderly and/or handicapped persons provided that:

a. New buildings and additions to existing buildings shall comply with the requirements of the R-3 district, with the exceptions to the bulk and lot size regulations permitted in section 42-203 and parking shall be provided in conformance with section 42-553;

b. Conversions of existing nonresidential buildings shall comply with the requirements of the R-3 district, with the exception to lot size regulations permitted in section 42-203 in addition to the bulk regulations in the C-5 district and parking shall be provided in conformance with section 42-553.

(11) Outdoor theatres;

(12) Taverns;

(13) Telephone exchanges and telephone transmission equipment structures.

(Code 1966, § 36-612(2); Ord. No. 91-9440, § 2, 5-13-91; Ord. No. 94-9629, § 1, 4-4-94)

Sec. 42-319. Lot size requirements.

Lot size requirements in the C-5 district are as follows:

(1) Minimum lot width: seventy-five (75) feet.

(2) Minimum lot depth: one hundred (100) feet.

(Code 1966, § 36-612(3))

Sec. 42-320. Bulk regulations.

Bulk regulations in the C-5 district are as follows:

(1) Maximum structure height: fifty (50) feet.

(2) Yard requirements:

a. Minimum front yard:

1. Property located adjacent to the following various types of streets shall maintain the following yard requirements regardless of whether it is a front, side or rear yard or any combination thereof:

i. Residential street: twenty-five (25) feet from the property line or fifty-five (55) feet from the center line, whichever is greater.

ii. Collector street: twenty-five (25) feet from the property line or fifty-five (55) feet from the center line, whichever is greater.

iii. Arterial street: twenty-five (25) feet from the property line or seventy-five (75) feet from the center line, whichever is greater.

2. When an addition to an existing nonconforming structure located on a corner lot is to be constructed, said addition may be allowed to match the front yard setback of the existing structure, provided that the front yard so affected does not abut an arterial street with right-of-way less than one hundred (100) feet, and further provided that the construction conforms with all remaining bulk regulations.

b. No side or rear yard setback shall be required, other than under the conditions specified in subsection 2 (a), except that when located adjacent to property in a residential district there shall be a setback of ten (10) feet.

c. Each motel and hotel shall have a minimum side yard on each side of the zoning lot of not less than ten (10) feet, and a minimum rear yard of not less than twenty (20) feet.

d. Gasoline pumps, air and water service, canopies and other fixtures used in connection with gasoline delivery shall be located no less than twelve (12) feet from the property line of any abutting street. However, a canopy may be constructed which further extends to, but not beyond, the front property line.

e. Sight obscuring screening of not less than six (6) feet in height shall be provided along all lot lines that abut a residential district; however, if the property actually utilized for permitted or conditional non-residential purposes (including accessory parking areas) lies one hundred (100) feet or more from an abutting residential lot line, no screening is required along that lot line.

(3) Maximum lot coverage: fifty (50) percent.

(Code 1966, § 36-612(4); Ord. No. 83-8970, § 3, 8-22-83; Ord. No. 84-9003, § 12, 2-13-84; Ord. No. 86-9142, § 10, 7-21-86; Ord. No. 99-9947, § 1, 9-13-99)

Sec. 42-321. Use limitations.

Use limitations in the C-5 district are as follows:

(1) No structure shall be used for residential purposes except for the use of the owner or operator of the business located on the premises and except that accommodation may be offered to transient public by motels and hotels.

(2) All outdoor storage and vehicles in operating condition and off-street parking and loading spaces shall be enclosed by screening as provided in section 42-320(2)e. Off-street parking and loading spaces and the storage of automobiles and other motor vehicles in operating condition shall be so enclosed when such use abuts on a residential district at a side or a rear lot line or is separated from the district only by an alley.

(3) All business establishments shall be retail or service establishments dealing directly with consumers, except wholesale when permitted as a conditional use. All goods produced on the premises shall be sold on the premises where produced.

(4) Exterior lighting fixtures shall be shaded wherever necessary to avoid casting direct light on any property located in a residential district.

(5) Drive-in establishments offering food or services directly to customers waiting in parked motor vehicles shall screen the space allocated for customers and motor vehicles in the same manner as is required in subsection (2).

(6) Sight-obscuring screening of not less than six (6) feet in height shall be provided along all lot lines that abut a residential district; however, if the property actually utilized for permitted or conditional nonresidential purposes (including accessory parking areas) lies one hundred (100) feet or more from an abutting residential lot line, no screening is required along that lot line.

(Code 1966, § 36-612(5); Ord. No. 84-9002, § 4, 2-13-84)

Secs. 42-322--42-330. Reserved.

DIVISION 16. C-6 HEAVY COMMERCIAL DISTRICT

Sec. 42-331. Design.

The C-6 district is designed for commercial uses which deal with the sale and/or service of heavy equipment or products.

(Code 1966, § 36-613)

Sec. 42-332. Permitted uses.

Permitted uses in the C-6 district are as follows:

(1) Agricultural implement sales and service;

(2) Ambulance services;

(3) Amusement parks and skating rinks;

(4) Animal hospitals, provided that all pens shall be in an enclosed structure;

(5) Antique shops;

(6) Apparel stores;

(7) Appliance stores;

(8) Armories;

(9) Auditoriums and community theatres;

(10) Automobile and truck sales and rental, including accessory repair and painting operations and facilities, provided that such operations or facilities shall comply with all the use limitations in section 42-336;

(11) Automotive repair;

(12) Automotive parts, wholesale;

(13) Automotive sales, service and parts;

(14) Banks and financial institutions;

(15) Barbershops;

(16) Beauty shops;

(17) Bicycle shops;

(18) Blueprinting and photostating establishments;

(19) Boat sales rental and service;

(20) Bonding agencies;

(21) Bookstores;

(22) Bowling alleys;

(23) Business and professional offices;

(24) Camera and photographic supply stores;

(25) Car washes;

(26) Carpet and rug stores;

(27) China and glassware stores;

(28) Commercial off-street parking as a principal use;

(29) Contractor's offices;

(30) Department stores;

(31) Dog kennels, providing that such facilities are completely enclosed and that no odor or noise is discernible outside the structure;

(32) Dry cleaning establishments;

(33) Dry goods stores;

(34) Electrical contractors;

(35) Electronic parts and supplies;

(36) Equipment sales and rental;

(37) Florist shops;

(38) Food stores and delicatessens;

(39) Fraternal and service clubs;

(40) Furniture stores;

(41) Furrier shops;

(42) Garden stores, greenhouses and nurseries;

(43) Gasoline service stations;

(44) Gift and souvenir shops;

(45) Governmental buildings;

(46) Group day-care centers provided that such use shall be separated from any commercial or industrial use in accordance with the requirements of the city's adopted building code.

(47) Hardware stores;

(48) Hobby shops;

(49) Hospitals, sanitariums, rest homes and nursing homes;

(50) Hotels and motels;

(51) Interior decorating shops, including upholstering, making of draperies, slipcovers and other similar articles;

(52) Jewelry stores;

(53) Leather and luggage stores;

(54) Lumber yards;

(55) Mail-order houses;

(56) Mechanical contractors;

(57) Medical and dental clinics, and guidance centers;

(58) Mini-warehouses;

(59) Mobile home and trailer sales and rental, but not including the use of any mobile home as a residence;

(60) Mortuaries and funeral homes; including crematories, providing that such facility is completely enclosed and that no odor or noise is discernible outside the structure;

(61) Music stores and musical instrument sales;

(62) Newspaper offices and printing;

(63) Newsstands;

(64) Office equipment and supply;

(65) Optical sales;

(66) Package liquor stores;

(67) Paint and wallpaper stores;

(68) Parking garages and lots;

(69) Pawnshops;

(70) Pest control and exterminators;

(71) Pet grooming shops;

(72) Pet stores;

(73) Pharmacies;

(74) Physical and health services;

(75) Printing plants;

(76) Private clubs;

(77) Public utility uses, including substations;

(78) Radio and television broadcasting stations;

(79) Radio and television repair shops;

(80) Recording studios;

(81) Recreational vehicle rental, sales and service;

(82) Restaurants, including drive-in establishments;

(83) Restricted production and repair limited to the following: Alteration and custom tailoring of clothing for retail sale only; jewelry from precious metals; watches; dentures; optical lenses; and other similar activities;

(84) Schools: music, dance or business;

(85) Self-service laundry and dry cleaning establishments;

(86) Shoe repair shops;

(87) Sporting goods stores;

(88) Tailor shops;

(89) Taverns;

(90) Telephone exchanges and telephone transmission equipment structures;

(91) Theatres, indoor only;

(92) Variety stores;

(93) YMCA, YWCA, and other similar organizations;

(94) Any other similar retail business not specifically listed is permitted if it complies with the conditions and the restrictions contained in section 42-336;

(95) Accessory and temporary uses, as permitted by article IV of this chapter;

(96) Signs as permitted by article X of this chapter;

(97) Off-street parking and loading, as required by article XI of this chapter.

(Code 1966, § 36-613(1); Ord. No. 81-8863, § 11, 8-3-81; Ord. No. 83-8954, § 6, 1-24-83; Ord. No. 84-9020, § 8, 5-7-84; Ord. No. 88-9241, § 6, 4-11-88; Ord. No. 91-9440, § 3, 5-13-91)

Sec. 42-333. Conditional uses.

Conditional uses in the C-6 district are as follows:

(1) Dog racing tracks;

(2) Horse racing tracks;

(3) Outdoor theatres;

(4) Tire repairs shops, recapping, etc.;

(5) Warehouse and wholesale houses.

(Code 1966, § 36-613(2); Ord. No. 80-8808, § 1, 8-25-80; Ord. No. 81-8863, § 12, 8-3-81; Ord. No. 86-9159, § 1, 9-22-86; Ord. No. 87-9173, § 1, 2-9-87)

Sec. 42-334. Lot size requirements.

Lot size requirements in the C-6 district are as follows:

(1) Minimum lot width: seventy-five (75) feet.

(2) Minimum lot depth: one hundred (100) feet.

(Code 1966, 36-613(3))

Sec. 42-335. Bulk regulations.

Bulk regulations in the C-6 district are as follows:

(1) Maximum structure height: fifty (50) feet.

(2) Yard requirements:

a. Front yard:

1. Property located adjacent to the following various types of streets shall maintain the following yard requirements regardless of whether it is a front, side or rear yard or any combination thereof.

   i. Residential street: twenty-five (25) feet from the property line or fifty-five (55) feet from the center line, whichever is greater.

   ii. Collector street: twenty-five (25) feet from the property line or fifty-five (55) feet from the center line, whichever is greater.

   iii. Arterial street: twenty-five (25) feet from the property line or seventy-five (75) feet from the center line, whichever is greater.

2. When an addition to an existing nonconforming structure located on a corner lot is to be constructed, said addition may be allowed to match the front yard setback of the existing structure, provided that the front yard so affected does not abut an arterial street with right-of-way less than one hundred (100) feet, and further provided that the construction conforms with all remaining bulk regulations.

b. No side or rear yard setback shall be required other than under the conditions specified in subsection (2)a., except that when located adjacent to a property in a residential district there shall be a setback of ten (10) feet.

c. Each motel and hotel shall have a minimum side yard on each side of the zoning lot of not less than ten (10) feet, and a minimum rear yard of not less than twenty (20) feet.

d. Gasoline pumps, air and water service, canopies and other fixtures used in connection with gasoline delivery shall be located no less than twelve (12) feet from the property line of any abutting street. However, a canopy may be constructed which further extends to, but not beyond, the front property line.

(3) Maximum lot coverage: fifty (50) percent.

(Code 1966, § 36-613(4); Ord. No. 83-8970, § 4, 8-22-83; Ord. No. 84-9003, § 13, 2-13-84; Ord. No. 86-9142, § 11, 7-21-86)

Sec. 42-336. Use limitations.

Use limitations in the C-6 district are as follows:

(1) No structure shall be used for residential purposes except for a security guard or night watchman or the owner or operator of the business located on the premises.

(2) All outdoor storage including off-street parking spaces shall be enclosed by screening from adjacent property located in a residential district.

(3) All lighting shall be so located to avoid casting direct light upon any property located in a residential district.

(4) Sight-obscuring screening of not less than six (6) feet in height shall be provided along all lot lines that abut a residential district; however, if the property actually utilized for permitted or conditional nonresidential purposes (including accessory parking areas) lies one hundred (100) feet or more from an abutting residential lot line, no screening is required along that lot line.

(Code 1966, § 36-613(5); Ord. No. 84-9002, § 5, 2-13-84)

DIVISION 16.1. C-7 HIGHWAY COMMERCIAL DISTRICT[4]

Sec. 42-337. Design.

The C-7 district is designed to permit the development of service uses associated with interchange areas and other locations along major limited access highways. At certain access points food, lodging, motor vehicle service and fuel providers can be clustered to provide convenient service to the traveling public. The uses permitted in this district are required to be in an enclosed structure or effectively screened and the premises are to be appropriately landscaped so as to protect and enhance the appearance of interstate entrances and major arteries of access to the city.

(Ord. No. 89-9354, § 1, 11-13-89)

Sec. 42-338. Permitted uses.

Permitted uses in the C-7 district are as follows:

(1) Bus stations;

(2) Car washes;

(3) Commercial off-street parking as a principal use;

(4) Gasoline service stations and accessory convenience stores;

(5) Gift and souvenir shops;

(6) Hotels, motels and convention facilities;

(7) Restaurants, including drive-up and drive-in establishments;

(8) Truck stops and accessory service;

(9) Accessory and temporary uses, as permitted by article IV of this chapter;

(10) Signs as permitted by article X of this chapter;

(11) Off-street parking and loading, as required by article XI of this chapter.

(Ord. No. 89-9354, § 2, 11-13-89)

Sec. 42-339. Conditional uses.

Conditional uses in the C-7 district are as follows:

(1) Agricultural implement sales and service;

(2) Automobile and truck sales, rental and repair service;

(3) Automotive parts stores;

(4) Beverage distributors;

(5) Boat sales, rental and service;

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[4] **Editor's note:** Ordinance No. 89-9354, §§ 1--6, adopted Nov. 13, 1989, amended the Code by adding provisions designated as §§ 42-337--42-342 and pertaining to a new C-7 Highway Commercial District. In as much as the placement of these provisions puts them at the end of Div. 16, C-6 Heavy Commercial District, and does not provide that they be a separate division, the editor, at his discretion, has created for and place these provisions in a new Div. 16.1 as set out above.

(6) Building supply stores and lumber yards;

(7) Business and professional offices;

(8) Commercial recreation facilities;

(9) Department and discount stores;

(10) Equipment sales and rental;

(11) Food stores and delicatessens;

(12) Fraternal and service clubs;

(13) Furniture stores;

(14) Governmental buildings;

(15) Manufactured home and mobile home sales;

(16) Private clubs;

(17) Public utility uses, including substations;

(18) Recreational vehicle campgrounds;

(19) Recreational vehicles sales, rental and service;

(20) Warehouses and wholesale houses.

(Ord. No. 89-9354, § 3, Ord. No. 90-9382, §§ 1, 2, 5-14-90)

Sec. 42-340. Lot size requirements.

Lot size requirements in the C-7 district are as follows:

(1) Minimum lot width: seventy-five (75) feet.

(2) Minimum lot depth: one hundred (100) feet.

(3) Minimum zoning area: one (1) acre, unless contiguous to or within two hundred (200) feet of a similar district. The minimum zoning area may not be varied by more than ten (10) percent.

(Ord. No. 89-9354, § 4, 11-13-89)

Sec. 42-341. Bulk regulations.

Bulk regulations in the C-7 district are as follows:

(1) Maximum structure height: fifty (50) feet.

(2) Yard requirements:

a. Front yard: thirty (30) feet on all sides abutting a street; except when located adjacent to an arterial street, there shall be a setback of seventy-five (75) feet from the street center line. The greater distance shall prevail.

b. Side yard: ten (10) feet, except when located adjacent to property in a residential district where a twenty-foot setback shall be required.

c. Rear yard: ten (10) feet, except when located adjacent to property in a residential district

where a twenty-foot setback shall be required.

d. Gasoline pumps, air and water service, canopies and other fixtures used in connection with gasoline delivery shall be located no less than twelve (12) feet from the property line of any abutting street; however, a canopy may be constructed which further extends to, but not beyond, the front property line.

(3) Maximum lot coverage: fifty (50) percent.

(Ord. No. 89-9354, § 5, 11-13-89)

Sec. 42-342. Use limitations.

Use limitations in the C-7 district shall be as established for the C-5 district (section 42-321) and as follows:

(1) All walks, access drives and parking areas shall be surfaced with a permanent asphalt or concrete paving and, except for paved areas, the grounds shall be planted with appropriate vegetative materials and landscaped according to an approved landscape plan which shall be filed in the zoning administrator's office.

(2) No outdoor storage shall be permitted in that area of the property between the front of the principal building or buildings and the public street on which the principal building or buildings front. All outdoor storage and loading areas elsewhere on the property shall be screened by fencing or landscaping treatment in such a manner that it shall not be visible from any public street. Areas devoted to outdoor storage, off-street parking and loading and the display of goods offered for sale or rental shall be screened when such areas abut a residential district at a side or rear lot line.

(3) Signage shall be governed by the sign regulations for the C-5 district (section 42-522).

(Ord. No. 89-9354, § 6, 11-13-89)

Secs. 42-343--42-345. Reserved.

DIVISION 17. I-1 INDUSTRIAL PARK DISTRICT

Sec. 42-346. Design.

The I-1 district is designed to permit a broad range of industrial activities within certain limitations. The uses permitted in this district are required to be in an enclosed structure and all premises are to be landscaped according to an approved landscape plan. All walks, drives and parking areas shall be all-weather surfaced.

(Code 1966, § 36-614)

Sec. 42-347. Permitted uses.

Permitted uses in the I-1 district are as follows:

(1) Adding machine manufacture;

(2) Armories;

(3) Artificial flower manufacture;

(4) Automobile rental agency;

(5) Automotive parts, wholesale;

(6) Bakery, wholesale;

(7) Beverage manufacturing and bottling works (excluding malts and spirits);

(8) Bicycle manufacture;

(9) Blueprinting and photostating;

(10) Book publishing;

(11) Boot and shoe manufacture;

(12) Broom manufacture;

(13) Business, professional and administrative offices;

(14) Cabinet maker;

(15) Candy manufacture;

(16) Cap and hat manufacture;

(17) Carpenter shop;

(18) Carpet cleaning;

(19) Cleaning and pressing;

(20) Clock factory;

(21) Clothing manufacture and assembly;

(22) Coffin manufacture;

(23) Cold storage warehouse;

(24) Commission house;

(25) Condensed milk manufacture;

(26) Cosmetic manufacture;

(27) Dental laboratory;

(28) Drug manufacture;

(29) Dry cleaning;

(30) Drygoods, wholesale;

(31) Dyeing and cleaning;

(32) Electrical repair;

(33) Electrical sign manufacture;

(34) Electronic parts and supplies;

(35) Envelope manufacture;

(36) Equipment sales and rental, except heavy construction equipment;

(37) Express storage and delivery station;

(38) Frozen food lockers;

(39) Fruit and vegetable drying;

(40) Fur warehouse;

(41) Furniture warehouse/storage;

(42) Garden stores, greenhouses and nurseries;

(43) Grocery store, wholesale;

(44) Group day-care centers provided that such use shall be separated from any commercial or industrial use in accordance with the requirements of the city's adopted building code;

(45) Gymnasium equipment manufacture;

(46) Hat cleaning;

(47) Jewelry manufacture;

(48) Knit goods manufacture;

(49) Laboratories;

(50) Laundry;

(51) Limb (artificial) manufacture; (prosthesis manufacture);

(52) Loose-leaf book manufacture;

(53) Mattress manufacture;

(54) Medicine manufacture;

(55) Milk bottling plant;

(56) Millinery making;

(57) Mineral distillation and bottling;

(58) Moving company, with storage facilities;

(59) Newspaper offices and printing;

(60) Office equipment and supply manufacture;

(61) Office equipment and supply wholesale;

(62) Optical goods manufacture;

(63) Organ manufacture;

(64) Paper products manufacture;

(65) Pencil factory;

(66) Perfumery;

(67) Pharmaceutical products manufacture;

(68) Phonograph manufacture;

(69) Photo engraving company;

(70) Piano manufacture;

(71) Popcorn factory;

(72) Printing plants;

(73) Produce warehouse;

(74) Public utility plants and services, including substations;

(75) Publishing company;

(76) Pump station;

(77) Radio and television broadcasting stations;

(78) Radio and television repair shops;

(79) Radio manufacture;

(80) Recording studios;

(81) Relay station (radio, television, etc.);

(82) Research facilities;

(83) Saddle manufacture;

(84) Sign painting;

(85) Small animal hospitals;

(86) Soap manufacture;

(87) Soda water manufacture;

(88) Sporting goods manufacture;

(89) Stair manufacture;

(90) Storage warehouse;

(91) Tailor shop;

(92) Tea and spice packing;

(93) Television aerials (classed with building to which attached);

(94) Television manufacture;

(95) Television sending or relay towers;

(96) Textile manufacture;

(97) Thermometer or thermostat manufacture;

(98) Transfer company, baggage storage;

(99) Trunk manufacture;

(100) Upholstery manufacture;

(101) Wallpaper manufacture;

(102) Warehouse;

(103) Watch manufacture;

(104) Water company appurtenances;

(105) Waterproofing treatment and manufacture;

(106) Wholesale houses;

(107) Wholesale produce storage and market;

(108) Window shade manufacture;

(109) Wire brush manufacture;

(110) Wood products manufacture;

(111) Woodworking shops;

(112) Woven goods manufacture;

(113) Accessory and temporary uses, as permitted by Article IV of this chapter;

(114) Signs, as permitted by Article X of this chapter;

(115) Off-street parking and loading, as required by Article XI of this chapter.

(Code 1966, § 36-614(1); Ord. No. 88-9242, § 1, 4-11-88)

Sec. 42-348. Conditional uses.

Conditional uses in the I-1 district are as follows:

(1) Automobile and truck washes;

(2) Automobile repair (no wrecking yard);

(3) Boat sales, rental and service;

(4) Building materials yard;

(5) Contractor's office and storage yard;

(6) Mini-warehouses;

(7) Pest control and exterminators;

(8) Plumbing shop;

(9) Recreational vehicle rental, sales and service;

(10) Truck terminals;

(11) Welding shop (no salvage yard).

(Code 1966, § 36-614(2); Ord. No. 88-9242, § 2, 4-11-88)

Sec. 42-349. Lot size requirements.

Lot size requirements in the I-1 district are as follows:

(1) Minimum lot width: one hundred (100) feet.

(2) Minimum lot depth: one hundred fifty (150) feet.

(3) Minimum zoning area: one acre, unless contiguous to or within two hundred (200) feet of a similar district. The minimum zoning area may not be varied by more than ten (10) percent.

(Code 1966, § 36-614(3))

Sec. 42-350. Bulk regulations.

Bulk regulations in the I-1 district are as follows:

(1) Maximum structure height: fifty (50) feet.

(2) Yard requirements:

a. Front yard: thirty-five (35) feet on all sides abutting a street, except when located adjacent to an arterial street, there shall be a setback of seventy-five (75) feet from the street center line. The greater distance shall prevail.

b. Side yard: twenty (20) feet.

c. Rear yard: twenty (20) feet.

(3) Maximum lot coverage: thirty-five (35) percent.

(Code 1966, § 36-614(4))

Sec. 42-351. Use limitations.

Use limitations in the I-1 district are as follows:

(1) All operations, activities and storage shall be conducted wholly inside a building or buildings, unless the nearest point of such operation or activity is more than two hundred (200) feet from the boundary of any zoning district other than an I-1, I-2, or I-3 district and except that storage may be maintained outside the building in side yards or rear yards if such storage area is separated from public streets and other property (except property located in an I-1, I-2, or I-3 district) by screening of not less than six (6) feet in height.

(2) No retail sales or services shall be permitted except incidental or accessory to a permitted use.

(3) Servicing and maintenance of vehicles shall be permitted only when such is necessary to the conduct of a permitted use.

(4) All premises in an I-1 district shall be furnished with all-weather, hard surface walks and, except for parking areas, the grounds shall be planted and landscaped according to a landscape

plan which shall be filed in the zoning administrator's office.

(5) If a lot in an I-1 district adjoins a residential district, screening shall be provided at the lot lines sufficient to protect, on a year-round basis, the privacy of adjoining residential uses, however, if the property actually utilized for permitted or conditional nonresidential purposes (including accessory parking areas) lies two hundred (200) feet or more from an adjoining residential lot line, no screening is required along that lot line.

(6) No building shall be used for residential purposes except that a watchman may reside on the premises.

(7) Exterior lighting shall be shaded so that no direct light is cast upon any property located in a residential district or upon any street where glare is visible to traffic.

(Code 1966, § 36-614(5); Ord. No. 84-9002, § 6, 2-13-84)

Secs. 42-352--42-360. Reserved.

DIVISION 18. I-2 LIGHT INDUSTRIAL DISTRICT

Sec. 42-361. Design.

The I-2 district is designed to permit industrial activities of a limited nature. This includes uses which in many cases are compatible with adjacent use districts.

(Code 1966, § 36-615)

Sec. 42-362. Permitted uses.

Permitted uses in the I-2 district are as follows:

(1) Any retail or commercial use, except those listed as conditional uses in the I-2 or I-3 districts;

(2) Adding machine manufacture;

(3) Armories;

(4) Artificial flower manufacture;

(5) Automobile assembly;

(6) Automobile and truck washes;

(7) Automobile rental agency;

(8) Automobile repair (no wrecking yard);

(9) Bakery, wholesale;

(10) Beverage manufacturing and bottling (excluding malts and spirits);

(11) Bicycle manufacture;

(12) Blacksmith (no salvage yard);

(13) Book publishing;

(14) Boot and shoe manufacture;

(15) Bottling works;

(16) Broom manufacture;

(17) Building materials yard;

(18) Cabinet maker;

(19) Candy manufacture;

(20) Canning and preserving factory;

(21) Cap and hat manufacture;

(22) Carpenter shop;

(23) Carpet cleaning;

(24) Cleaning and pressing;

(25) Clock factory;

(26) Clothing manufacture;

(27) Coffin manufacture;

(28) Cold storage warehouse;

(29) Commission house;

(30) Concrete burial vault company;

(31) Condensed milk manufacture;

(32) Contractor's storage yard and offices;

(33) Cosmetic manufacture;

(34) Creamery, wholesale;

(35) Dairy, wholesale;

(36) Dental laboratory;

(37) Drug manufacture;

(38) Dry cleaning establishment;

(39) Drygoods, wholesale;

(40) Dyeing and cleaning;

(41) Electrical repair;

(42) Electrical sign manufacture;

(43) Enameling and painting;

(44) Engraving plant;

(45) Envelope manufacture;

(46) Express storage and delivery station;

(47) Feed and seed stores;

(48) Feed manufacturer;

(49) Feed, wholesale;

(50) Flour and grain storage and elevators;

(51) Food products manufacture;

(52) Frozen food lockers;

(53) Fruit and vegetable drying;

(54) Fur warehouse;

(55) Furniture warehouse/storage;

(56) Garage, repair;

(57) Garment factory;

(58) Greenhouses, retail and wholesale;

(59) Grocery store, wholesale;

(60) Gymnasium equipment manufacture;

(61) Hangars with repair facilities;

(62) Hat cleaning;

(63) Hatchery;

(64) Hay, grain, feed, wholesale;

(65) Ice cream manufacture;

(66) Ice manufacture;

(67) Jewelry manufacture;

(68) Knit goods manufacture;

(69) Laboratories;

(70) Laundry;

(71) Limb (artificial) manufacture; (prosthesis manufacture);

(72) Lime and cement warehouse;

(73) Looseleaf book manufacture;

(74) Lumber yard;

(75) Macaroni manufacture;

(76) Machinery and implement sales, rental, storage and repair;

(77) Mattress manufacture;

(78) Medicine manufacture;

(79) Metal fabrication and assembly;

(80) Milk bottling plant;

(81) Milk depot, wholesale;

(82) Millinery making;

(83) Mineral distillation and bottling;

(84) Mini-warehouses;

(85) Mobile home sales and service;

(86) Motorcycle repair;

(87) Moving company, with storage facilities;

(88) Newspaper offices and printing;

(89) Office building on same site as industry (factory);

(90) Office equipment and supply manufacture;

(91) Optical goods manufacture;

(92) Organ manufacture;

(93) Overalls manufacture;

(94) Paper products manufacture;

(95) Pencil factory;

(96) Perfumery;

(97) Pest control and exterminators;

(98) Pharmaceutical products manufacture;

(99) Phonograph manufacture;

(100) Photo engraving company;

(101) Piano manufacture;

(102) Plumbing shop;

(103) Popcorn factory;

(104) Printing plants;

(105) Produce warehouse;

(106) Public utility plants and services, including substations;

(107) Publishing company;

(108) Pump station;

(109) Radio manufacture;

(110) Refrigerator manufacture;

(111) Refuse service;

(112) Relay station (radio, television, etc.);

(113) Research facilities;

(114) Rug cleaning;

(115) Saddle manufacture;

(116) Screw and bolt manufacture;

(117) Seed company (processing);

(118) Sheet metal shop;

(119) Shirt factory;

(120) Sign painting;

(121) Small animal hospitals;

(122) Soap manufacture;

(123) Soda water manufacture;

(124) Sporting goods manufacture;

(125) Stair manufacture;

(126) Storage warehouse;

(127) Tailor shop;

(128) Taxicab storage, repair;

(129) Tea and spice packing;

(130) Television aerials (classed with building to which attached);

(131) Television manufacture;

(132) Television sending or relay towers;

(133) Textile manufacture;

(134) Thermometer or thermostat manufacture;

(135) Tin products, wholesale;

(136) Tinsmith shop;

(137) Tire repair shop, recapping, etc.;

(138) Transfer company, baggage storage;

(139) Truck sales, rental and service;

(140) Truck terminals;

(141) Trunk manufacture;

(142) Upholstery manufacture;

(143) Vulcanizing shop (rubber);

(144) Wallpaper manufacture;

(145) Warehouse;

(146) Washing machine manufacture;

(147) Watch manufacture;

(148) Water company appurtenances;

(149) Waterproofing treatment and manufacture;

(150) Welding shop (no salvage);

(151) Wholesale houses;

(152) Wholesale produce storage and market;

(153) Window shade manufacture;

(154) Wire brush manufacture;

(155) Wood products manufacture;

(156) Woodworking shops;

(157) Worsted goods manufacture;

(158) Woven goods manufacture;

(159) Accessory and temporary uses, as permitted by article IV of this chapter;

(160) Signs, as permitted by article X of this chapter;

(161) Off-street parking and loading, as required by article XI of this chapter;

(162) Any other similar industrial use, provided that it complies with the limitations in section 42-366.

(Code 1966, § 36-615(1))

Sec. 42-363. Conditional uses.

Conditional uses in the I-2 district are as follows: None.

(Code 1966, § 36-615(2))

Sec. 42-364. Lot size requirements.

Lot size requirements in the I-2 district are as follows:

(1) Minimum lot area: five thousand (5,000) square feet.

(2) Minimum lot width: fifty (50) feet.

(3) Minimum lot depth: one hundred (100) feet.

(Code 1966, § 36-615(3))

Sec. 42-365. Bulk regulations.

Bulk regulations in the I-2 district are as follows:

(1) Maximum structure height: no limitation.

(2) Minimum yard requirements:

a. Minimum front yard:

1. Twenty-five (25) feet on all sides abutting a street, except when located adjacent to an arterial street there shall be a setback of seventy-five (75) feet from the street center line. The greater distance shall prevail.

2. When an addition to an existing nonconforming structure located on a corner lot is to be constructed, said addition may be allowed to match the front yard setback of the existing structure, provided that the front yard so affected does not abut an arterial street with right-of-way less than one hundred (100) feet, and further provided that the construction conforms with all remaining bulk regulations.

b. Side yard: no minimum requirement, but if a side yard abuts a residential district, a side yard of ten (10) feet shall be provided.

c. Minimum rear yard: no minimum requirement, but if a rear yard abuts a residential district, a rear yard of ten (10) feet shall be provided.

d. Canopies used in conjunction with retail gasoline service may extend up to twelve (12) feet into the required front yard setback. At no time shall the canopy extend over the right-of-way.

(3) Maximum lot coverage: fifty (50) percent.

(Code 1966, § 36-615(4); Ord. No. 83-8970, § 5, 8-22-83; Ord. No. 84-9003, § 14, 2-13-84)

Sec. 42-366. Use limitations.

Use limitations in the I-2 district are as follows:

(1) All operations, activities and storage shall be conducted wholly inside a building, or buildings, unless the nearest point of such operation or activity is more than two hundred (200) feet from the boundary of any other zoning district other than an I-2 or I-3 district and except that storage may be maintained outside the building in side or rear yards if such storage area is separated from public streets and other property (except property located in an I-2 or I-3 district) by screening of not less than six (6) feet in height.

(2) Servicing and maintenance of vehicles shall be permitted only when such is necessary to the conduct of a permitted use.

(3) If a lot in an I-2 district adjoins a residential district, screening shall be provided at the lot lines sufficient to protect, on a year-round basis, the privacy of adjoining residential uses, however, if the property actually utilized for permitted or conditional nonresidential purposes (including accessory parking areas) lies two hundred (200) feet or more from an adjoining residential lot line, no screening is required along that lot line.

(4) No building shall be used for residential purposes except that a watchman may reside on the premises.

(Code 1966, § 36-615(5); Ord. No. 84-9002, § 7, 2-13-84)

Secs. 42-367--42-380. Reserved.

DIVISION 19. I-3 HEAVY INDUSTRIAL DISTRICT

Sec. 42-381. Design.

The I-3 district is designed for those industries which are apt to have an extensive impact on the surrounding area. If possible, I-3 district should be separated from residential districts and the more restricted business districts by intervening or restrictive industrial or commercial zones.

(Code 1966, § 36-616)

Sec. 42-382. Permitted uses.

Permitted uses in the I-3 district are as follows:

(1) Any retail or commercial use except those listed as conditional in section 42-383;

(2) All permitted uses in the I-2 district;

(3) Airplane repair and manufacture;

(4) Automobile manufacturing;

(5) Bag cleaning;

(6) Bank equipment manufacture;

(7) Barrel manufacture;

(8) Beet sugar manufacture;

(9) Beverage manufacture and bottling;

(10) Bleaching powder manufacture;

(11) Blooming mill;

(12) Blueing manufacture;

(13) Boat manufacture;

(14) Box manufacture;

(15) Brass foundry;

(16) Brewery;

(17) Brick yard and kiln;

(18) Bronze manufacture;

(19) Brush manufacture;

(20) Can manufacture;

(21) Candle manufacture;

(22) Car manufacture;

(23) Car wheel foundry;

(24) Cast iron pipe manufacture;

(25) Casting foundry;

(26) Celluloid manufacture;

(27) Chalk manufacture;

(28) Charcoal manufacture and pulverizing;

(29) Cheese manufacture;

(30) Chocolate and cocoa products;

(31) Cider and vinegar manufacture;

(32) Clay products;

(33) Coal yards;

(34) Coffee roasting;

(35) Concrete batching or "ready mixed" plant;

(36) Concrete products company;

(37) Copper manufacture;

(38) Cotton yarn manufacture;

(39) Culvert pipe manufacture;

(40) Electrical supply manufacture;

(41) Elevator manufacture;

(42) Emery cloth manufacture;

(43) Engine manufacture;

(44) Excelsior manufacture;

(45) Fire brick manufacture;

(46) Fire clay products manufacture;

(47) Flour and grain milling;

(48) Foundry;

(49) Fuel storage and distribution;

(50) Furnace manufacture;

(51) Furniture manufacture;

(52) Glass manufacture;

(53) Hair products factory;

(54) Hardware manufacture;

(55) Heating supplies and appliances manufacture;

(56) Hosiery mill;

(57) Iron (ornamental) works;

(58) Lath manufacture;

(59) Laundry machinery manufacture;

(60) Leather and leather goods manufacture;

(61) Light and power manufacture;

(62) Linen goods manufacture;

(63) Linoleum manufacture;

(64) Lubricating machinery manufacture;

(65) Lumber mill;

(66) Machine shop;

(67) Machinery manufacture;

(68) Mailbox manufacture;

(69) Malt products manufacture;

(70) Meat cutter and coffee grinder manufacture;

(71) Meat packing plant;

(72) Metal polish manufacture;

(73) Metal weather-stripping manufacture;

(74) Milling company;

(75) Mini-warehouses;

(76) Monument works;

(77) Motorcycle manufacture;

(78) Nail manufacture;

(79) Needle manufacture;

(80) Oilcloth manufacture;

(81) Packing (meat, poultry) plant;

(82) Pattern shop;

(83) Pipe (concrete) manufacture;

(84) Pipe (metal) manufacture;

(85) Planing mill;

(86) Plaster of paris manufacture;

(87) Plating works;

(88) Poultry food manufacture;

(89) Printing ink manufacture;

(90) Quilt manufacture;

(91) Radiator (heating) manufacture;

(92) Rivet manufacture;

(93) Rope manufacture;

(94) Rubber cement manufacture;

(95) Rubber manufacture;

(96) Rug manufacture;

(97) Salt manufacture;

(98) Salvage storage yard;

(99) Sand and gravel storage yard;

(100) Sand paper manufacture;

(101) Sausage or sausage casing manufacture;

(102) Sawmill;

(103) Sewer pipe manufacture;

(104) Shingle manufacture;

(105) Shoe manufacture;

(106) Shovel manufacture;

(107) Starch manufacture;

(108) Soybean oil manufacture;

(109) Stone cutting and screening;

(110) Stove and range manufacture;

(111) Sweeping compound manufacture;

(112) Syrup and preserve manufacture;

(113) Tack manufacture;

(114) Terra cotta manufacture;

(115) Tile manufacture;

(116) Tin foil manufacture;

(117) Tin products manufacture;

(118) Tire manufacture;

(119) Tool manufacture;

(120) Vinegar manufacture;

(121) Washing powder manufacture;

(122) Washing soda manufacture;

(123) Waste paper products manufacture;

(124) Wire manufacture;

(125) Wood preserving treatment manufacture;

(126) Accessory and temporary uses, as permitted by article IV of this chapter;

(127) Signs, as permitted by article X of this chapter;

(128) Off-street parking and loading, as required by article XI of this chapter.

(Code 1966, § 36-616(1))

Sec. 42-383. Conditional uses.

Conditional uses in the I-3 district are as follows:

(1) Anhydrous ammonia production and storage;

(2) Explosives manufacture and storage (including fireworks);

(3) Any other uses not now or hereafter prohibited by ordinance of the city.

(Code 1966, § 36-616(2))

Sec. 42-384. Lot size requirements.

Lot size requirements in the I-3 district are as follows:

(1) Minimum lot area: five thousand (5,000) square feet.

(2) Minimum lot width: fifty (50) feet.

(3) Minimum lot depth: one hundred (100) feet.

(Code 1966, § 36-616(3))

Sec. 42-385. Bulk regulations.

Bulk regulations in the I-3 district are as follows:

(1) Maximum structure height: no limitation.

(2) Minimum yard requirements:

a. Minimum front yard:

1. Twenty-five (25) feet on all sides abutting a street, except when located adjacent to an arterial street there shall be a setback of seventy-five (75) feet from the street center line. The greater distance shall prevail.

2. When an addition to an existing nonconforming structure located on a corner lot is to be constructed, said addition may be allowed to match the front yard setback of the existing structure, provided that the front yard so affected does not abut an arterial street with right-of-way less than one hundred (100) feet, and further provided that the construction conforms with all remaining bulk regulations.

b. Side yard: no minimum requirement, but if a side yard abuts a residential district, a side yard of ten (10) feet shall be provided.

c. Minimum rear yard: no minimum requirement, but if a rear yard abuts a residential district, a rear yard of ten (10) feet shall be provided.

d. Canopies used in conjunction with retail gasoline service may extend up to twelve (12) feet into the required front yard setback. At no time shall the canopy extend over the right-of-way.

(3) Maximum lot coverage: seventy-five (75) percent.

(Code 1966, § 36-316(4); Ord. No. 83-8970, § 6, 8-22-83; Ord. No. 84-9003, § 15, 2-13-84)

Sec. 42-386. Use limitations.

Use limitations in the I-3 district are as follows:

(1) If a lot in an I-3 district adjoins a residential district, screening shall be provided at the lot lines sufficient to protect, on a year-round basis, the privacy of adjoining residential uses, however if the property actually utilized for permitted or conditional nonresidential purposes (including accessory parking areas) lies two hundred (200) feet or more from an adjoining residential lot line, no screening is required along that lot line.

(2) No building shall be used for residential purposes except that a watchman or custodian may reside on the premises.

(Code 1966, § 36-616(5); Ord. No. 84-9002, § 8, 2-13-84)

Secs. 42-387--42-400. Reserved.

ARTICLE VII. PLANNED DEVELOPMENT DISTRICTS[5]

DIVISION 1. GENERALLY

Sec. 42-401. Purpose.

The application of flexible land use controls to the development of land is often difficult or impossible with traditional zoning district regulations. In order to permit the use of more flexible land use regulations and to facilitate use of the most advantageous techniques of land development, the board of commissioners is authorized by Kansas Statutes Annotated, Sections 12-725 through 12-733, to establish planned development districts in which the zoning regulations are in harmony with the general purpose and intent of this chapter, and with the comprehensive plan of the city, but in which such regulations differ in one or more respects from the zoning regulations that are applicable in any of the districts that are established by this chapter.

(Code 1966, § 36-700)

Sec. 42-402. General provisions.

(a) The board of commissioners may, by ordinance, approve the establishment of a planned development district on any parcel or tract of land which is suitable for, and of sufficient size to be planned and developed or redeveloped, as a planned unit development and in a manner consistent with the intent and purpose of this chapter and with the comprehensive plan.

(b) A planned development district may be established for a residential planned development or for a general planned development. A development shall be deemed to be a residential planned development when it is limited to dwelling units in detached, semi-detached, attached or multi-storied structures, or any combination thereof; and nonresidential uses of a religious, cultural, recreational and business character that are primarily designed and intended to serve the residents of the residential planned development. A development shall be deemed to be a general planned development when it contains business and/or industrial structures and uses exclusively or when it blends residential structures or dwelling units in a unified plan with business and/or industrial structures and uses.

(c) Business and industrial structures and uses in planned development districts shall comply with the limitation of use standards for any commercial or industrial district in which any contemplated use is first permitted in this chapter and with the off-street parking and loading requirements contained in article XI of this chapter.

(Code 1966, § 36-701)

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[5] **State law references:** Planned unit development in cities and counties, K.S.A. 12-725 et seq.

Sec. 42-403. Standards and criteria for planned developments.

(a) *For all planned developments.* A development plan that is not inconsistent with the standards set out in this section or with such general policies or specific rules and regulations for planned development districts as may be adopted from time to time by the board of commissioners or the planning commission and placed of [on] public record in the office of the zoning administrator shall prima facie be deemed to have qualified for preliminary approval. No such policies, rules or regulations shall be revised or added to so as to be applicable to a specific proposal for a planned development after an application for preliminary approval of a specific development plan has been filed. A development plan shall not be inconsistent with the following general standards for use of land, and the use, type, bulk, design, and location of buildings, the density or intensity of use, the common open space, the public facilities and the development by geographic division of the site:

(1) The planned development can be substantially completed within the period of time specified in the schedule of development submitted by the developer.

(2) The planned development will not substantially injure or damage the use, value and enjoyment of surrounding property nor hinder or prevent the development of surrounding property in accordance with the land use plan.

(3) The site will be accessible from public roads that are adequate to carry the traffic that will be imposed upon them by the proposed development and the streets and driveways on the site of the proposed development will be adequate to serve the residents, occupants, or users of the proposed development. Traffic-control signals will be provided without expense to the city when the board of commissioners determines that such signals are required to prevent traffic hazards or congestion in adjacent streets.

(4) The development will not impose an undue burden on public services and facilities, such as fire and police protection.

(5) The entire tract or parcel of land to be occupied by the planned development shall be held in a single ownership, or if there are two (2) or more owners, the application for such planned development shall be filed jointly by all such owners.

(6) The development plan shall contain such proposed covenants, easements and other provisions relating to the bulk, location and density of residential buildings, nonresidential uses and structures, and public facilities as are necessary for the welfare of the planned development and are not inconsistent with the best interests of the area. Such covenants, easements and other provisions, if part of the development plan as finally approved, may be modified, removed or released only with the consent of the board of commissioners after a public hearing before, and recommendations by, the planning commission as provided in section 42-404(b)(1). All such covenants shall specifically provide for enforcement by the city in addition to the landowners within the development.

(7) The planning commission may designate divisible geographic areas of the entire parcel to be developed as a planned unit development and shall, in such case, specify reasonable periods within which development of each such area must be commenced. In the case of residential planned developments and general planned developments which contain residential buildings, the planning commission may permit in each area deviations from the number of dwelling units per acre established for the entire planned development, provided such deviation shall be adjusted for in other sections of the development so that the number of dwelling units per acre authorized for the entire planned development is not affected. The period of time established

for the completion of the entire development and the commencement date for each section thereof may be modified from time to time by the planning commission, upon the showing of good cause by the developer, provided that in no case shall any extension of time exceed twelve (12) months. The developer shall provide and record easements and covenants or shall make such other arrangements, and shall furnish such performance bond, escrow deposit, or other financial guarantees as may be determined by the planning commission to be reasonably required to assure performance in accordance with the development plan and to protect the public interest in the event of abandonment of the plan before completion.

(8) The location and arrangement of structures, parking areas, walks, lighting and appurtenant facilities shall be compatible with the surrounding land uses, and any part of a planned development not used for structures, parking and loading areas, or accessways, shall be landscaped or otherwise improved, unless said open space would accomplish the intent of this section if left in its natural state.

(9) When business or manufacturing structures or uses in a planned development district abut a residential district or residential buildings in the same development, screening shall be provided. In no event shall a business or manufacturing structure in a planned development district be located nearer than one hundred (100) feet to a residential building.

(10) Notwithstanding any of the other provisions of this chapter, when a shopping center is developed as a planned development district, such shopping center shall provide a parking space in off-street parking for each two hundred (200) square feet of floor area in the structures located in the planned shopping center development. Such off-street parking facilities shall comply with the provisions of article XI of this chapter.

(11) The specifications for the width and surfacing of streets and highways, alleys, ways for public utilities, for curbs, gutters, sidewalks, street lights, public parks and playgrounds, school grounds, storm drainage, water supply and distribution, sanitary sewers and sewage collection and treatment established in the subdivision regulations of the city, as amended from time to time may, within the limits hereinafter specified, be waived or modified by the planning commission where the commission finds that such specifications are not required in the interests of the residents or occupants of the planned development and that the waiver or modification of such specifications would not be inconsistent with the interests of the city.

(12) Any modifications of the zoning or other regulations that would otherwise be applicable to the site are warranted by the design to the development plan, and the amenities incorporated in it, and are not inconsistent with the interest of the public generally.

(b) *Standards for residential planned developments and general planned developments containing residential buildings.*

(1) Any development plan that does not propose to increase the number of dwelling units per acre that would otherwise be permitted on the property under the zoning regulations otherwise applicable thereto shall be prima facie qualified for preliminary approval insofar as residential density is concerned. A development plan may provide for a greater number of dwelling units per acre than would be permitted by the zoning regulations otherwise applicable to the site, but if the number of dwelling units per acre exceeds by more than ten (10) percent that permitted by the zoning regulations otherwise applicable to the site, the developer has the burden to show that such excess will not have an undue and adverse impact on existing public facilities and on the reasonable enjoyment of neighboring property. The planning commission, in determining the reasonableness of a proposed increase in the number of dwelling units per acres, shall

recognize that increased density may be compensated for by additional private amenities and by increased efficiency in public services to be achieved by the amount, location and proposed use of common open space, and the location, design and type of dwelling units. The planning commission shall, in its determination, also consider that the physical characteristics of the site may make increased densities appropriate in the particular location.

(2) When common open space is provided in a development plan, the amount and location of such common open space shall be consistent with the declared function of the common open space as set forth in the application for a planned development district. The development plan shall include such provisions for the ownership and maintenance of the common open space as are reasonably necessary to ensure its continuity, care, conservation and maintenance, and to ensure that remedial measures will be available to the city if the common open space is permitted to deteriorate or is not maintained in a condition consistent with the best interest of the planned development or of the city.

(3) When a planned development includes common open space, such common open space shall not be used for the construction of any structure which is inconsistent with its intended use, nor shall such open space ever be computed as a part of the required minimum lot area, or any required yard, of any other structure. Adequate safeguards, including recorded covenants, shall be provided to prevent the subsequent development and the future construction of structures on such open space. When a structure is permitted in said open space, its construction shall be allowed only after receiving specific approval from the planning commission.

(4) The total ground area occupied by buildings and structures shall not exceed thirty-five (35) percent of the total ground area of the planned development.

(5) Nonresidential uses of an educational or recreational nature shall be designed or intended primarily for the use of the residents of the planned development.

(6) Other nonresidential uses may include and shall be limited to the following:

a. Nonresidential uses of the extent such nonresidential uses are designed or intended to serve the residents of the planned development or adjacent neighborhood. Where residential uses are proposed in conjunction with nonresidential uses no structure designed or intended to be used in part or in whole, for business, commercial or industrial purposes shall be constructed prior to the construction of not less than thirty (30) percent of the total number of dwelling units proposed in the development plan. However, if in the opinion of the planning commission, said construction of dwelling units would be contrary to public interest or to the interest of the city as a whole, specific written findings of fact which support such conclusion shall be made and the percentage of required dwelling units may be reduced to the level deemed appropriate within the general purpose and intent of these regulations.

b. Commercial or business uses having a major impact upon the city as a whole, or major sub-elements thereof, such as shopping centers, office complexes, major recreational and entertainment facilities, together with such other uses that are designed or intended to serve such activities and uses.

c. Industrial parks, including other supporting uses necessary for and designed or intended to serve such activities or uses.

(7) Planned developments in areas that are on the fringes of urban development or are in largely undeveloped areas shall maintain the following minimum yards:

a. The distance at the closest point between any structure and the boundary of the planned development district shall be at least two (2) times the perpendicular distance from the lowest first floor window sill to the highest point on the roof of the structure.

b. When two (2) or more structures are located in any proposed planned development, the distance at the closest point between any two (2) structures containing residential uses, or between a structure containing residential uses and any other structure, shall be equal to two (2) times the perpendicular distance from the lowest first floor window sill of any structure containing residential uses to the highest point in the roof of the other structure.

(Code 1966, § 36-702; Ord. No. 81-8887, § 1, 5-3-82)

Sec. 42-404. Procedure for securing approval of a planned development and the establishment of a planned development district.

(a) *Preliminary development plan:*

(1) A developer seeking the establishment of a planned development district shall prepare and submit to the planning commission a preliminary development plan for such planned development district.

(2) The preliminary development plan shall contain the following documents and information:

a. A survey of the tract that is to be developed showing existing features of the property including streets, alleys, easements, utility lines, existing land use, general topography, physical features, and drainage;

b. A site plan showing the location and arrangement of all existing and proposed structures, the proposed traffic circulation pattern within the development, the areas to be developed for parking, the points of ingress and egress, including access streets where required, the relationship of abutting land uses and zoning districts, proposed lots and blocks, if any, proposed public or common open space, if any, including parks, playgrounds, school sites, and recreational facilities, and proposed drainage;

c. A preliminary plat of subdivision for which approval has been secured pursuant to the applicable ordinances, rules and regulations relating to subdivision approval or a copy of the existing recorded plat which is appropriate for the intended plan;

d. A statement of the anticipated residential density (when applicable), the proposed total gross floor area, and the percentage of the development which is to be occupied by structures;

e. Preliminary sketches of the proposed structures and landscaping;

f. When a planned development is to be constructed in stages, a schedule for the development of such stages shall be submitted. No such stage shall have a residential density that exceeds by more than twenty (20) percent the proposed residential density of the entire planned development. When a planned development provides for common open space, the total area of common open space provided at any stage of development shall, at a minimum, bear the same relationship to the total open space to be provided in the entire planned development as the stages completed or under the development bear to the entire planned development;

g. Evidence that the applicant has sufficient control over the tract to effectuate the proposed plan, including a statement of all the ownership and beneficial interests in the tract of land and the proposed development;

h. When it deems it to be necessary, the planning commission may require a traffic survey setting out and analyzing the effect that the planned development will have upon traffic in the streets and thoroughfares adjacent to and in the vicinity of the proposed development;

i. A statement showing the relationship of the planned development to the comprehensive plan and future land use plan for the city;

j. In the case of general planned developments, a statement identifying the principal types of business and/or industrial uses that are to be included in the proposed development;

k. When a planned development includes provisions for common open space, streets, utilities, drainage ways or recreational facilities, a statement describing the provision that is to be made for the care and maintenance of such open space, streets, utilities, drainage ways or recreational facilities.

l. Copies of any restrictive covenants that are to be recorded with respect to property included in the planned development district.

(b) *Action on preliminary development plan:*

(1) *Hearing, findings and recommendation of planning commission.* The planning commission shall, within forty-five (45) days after a preliminary development plan is filed with it, hold a public hearing on the preliminary development plan after giving the notice required by article II of this chapter for hearings on amendments. Such public hearing shall consider all aspects of the preliminary development plan including all proposed stages and/or units of development. Within ten (10) days after the last public hearing on such plan, the planning commission shall prepare and transmit to the board of commissioners andto the developer specific findings of fact with respect to the extent to which the preliminary development plan complies with the standards set out in this section, together with its recommendations to the board of commissioners with respect to the action to be taken on the preliminary development plan. The commission may recommend disapproval, approval, or approval with amendments, conditions or restrictions. Copies of the findings and recommendations of the planning commission shall be made available to any other interested persons.

(2) *Action by the board of commissioners.* The board of commissioners shall approve or disapprove the preliminary development plan within twenty-one (21) days after it receives the findings and recommendations of the planning commission thereon. If the preliminary development plan is disapproved, the developer shall be furnished with a written statement of the reasons for disapproval of the plan. If the preliminary development plan is to be approved, the board of commissioners shall, after receiving from the developer any acceptance required by subsection (b)(3) of this section, adopt an ordinance approving the preliminary development plan, and establishing a planned development district for the parcel or tract of land included in the preliminary development plan.

(3) *Restrictions and conditions.* The board of commissioners may alter the preliminary development plan, and impose such restrictions and conditions on the planned development as it may deem necessary to insure that the development will be in harmony with the general purpose and intent of this chapter and with the comprehensive plan of the city. When the board of commissioners alters the preliminary development plan, or imposes any restrictions or

conditions on such plan, the developer shall have fifteen (15) days within which to file an acceptance of such alterations, restrictions or conditions with the board of commissioners. When an acceptance is required by this section, no ordinance approving a preliminary development plan and establishing a planned development district shall be adopted until such acceptance has been filed with the planning commission.

(4) *Form of ordinance.* An ordinance approving a planned development and establishing a planned development district shall specify the zoning regulations and restrictions that will, pursuant, to the development plan, apply in the planned development district and shall describe the boundaries of such district or set such boundaries out on a map that is incorporated and published as a part of such ordinance. Such ordinance shall also specify the conditions and restrictions that have been imposed by the board of commissioners on the planned development, and the extent to which the otherwise applicable district regulations have been varied or modified. When the planning commission has designated divisible geographic areas that may be developed as a planned development, the ordinance shall authorize the planning commission to modify the schedule of development to the extent set out in section 42-403(a)(7).

(Code 1966, § 36-703; Ord. No. 87-9204, § 1, 9-28-87)

Sec. 42-405. Status of preliminary development plan after approval.

(a) Within seven (7) days after the adoption of an ordinance approving a preliminary development plan and establishing a planned development district such ordinance shall be certified by the city clerk and shall be filed in the office of the zoning administrator. A certified copy shall be mailed to the developer. When approval of a preliminary plan has been granted, the same shall be noted on the zoning map maintained in the office of the zoning administrator.

(b) Preliminary approval of a development plan shall not qualify said plan for recording. A development plan which has been given preliminary approval as submitted or which has been given preliminary approval with alterations, conditions and restrictions, which have been accepted by the developer (and provided that the developer has not defaulted or violated any of the conditions of the preliminary approval), shall not be modified or revoked or otherwise impaired by action of the city pending an application or applications for approval of a final development plan without the consent of the developer, provided an application for final approval is filed, or in the case of staged developments, provided applications are filed within the time or times specified in the ordinance granting approval of the preliminary plan. If no time is specified in such ordinance, then an application for approval of a final development plan, or all stages thereof, shall be filed within three (3) years.

(c) In the event a development plan is given preliminary approval and thereafter, but prior to approval of a final development plan, the developer shall:

(1) Choose to abandon the plan, he shall so notify the planning commission in writing; or

(2) Fail to file an application, or applications, for approval of a final plan within the required time period, the preliminary plan shall be deemed to be revoked.

(d) When a preliminary plan is revoked, all that portion of the preliminary plan for which final approval has not been given shall be subject to those provisions of the zoning regulations and other local ordinances, that were applicable thereto immediately prior to the approval of the preliminary plan, as they may be amended from time to time. The board of commissioners shall forthwith adopt an ordinance repealing the planned development district for that portion of the development that has not

received final approval and reestablishing the zoning and other regulatory provisions that would otherwise be applicable. When a preliminary development plan is revoked, such revocation shall be noted on the zoning map in the office of the zoning administrator and in the records of the city clerk.

(Code 1966, § 36-704)

Sec. 42-406. Application for approval of final development plan.

(a) An application for approval of a final development plan may be filed for all the land included in an approved planned development district or in phases for an individual tract or tracts within the district. A complete application and required application fees shall be submitted by the developer within the time frame specified in section 42-205(b).

(b) The applicant shall submit four (4) copies of all drawings and two (2) copies of all supporting written documents constituting the final development plan application. The application shall include:

(1) A final plat or boundary survey showing the location and dimensions of existing and/or proposed lots and blocks, rights-of-way, easements and common areas as well as the acreage of the tract;

(2) A detailed site plan showing the location, dimensions and proposed building setbacks of all principal structures, the location and dimensions of all existing and proposed curb cuts, driveways and aisles, public and private streets, off-street parking and loading areas, sidewalks, drainage ways and detention areas;

(3) Preliminary building plans, including exterior elevations;

(4) The location, height and material of screening walls and fences and the location of outdoor trash storage facilities;

(5) Proposed landscaping plans, including the location and planting schedule of all perimeter and interior landscaping and noting any trees or vegetation to be removed;

(6) Proposed lighting and signage plans;

(7) The location of existing and proposed utilities (water mains, sanitary sewers, storm sewers) in and adjacent to the property;

(8) The paving width and type of surfacing proposed for any private streets;

(9) The proposed topography or grading plan for the area at a contour interval of not more than two (2) feet;

(10) Proof of the establishment of an association or entity to own, manage and maintain the common open space, recreation areas and facilities, private streets and any other area within the development that is to be retained for the exclusive use and benefit of the residents, lessees and owners;

(11) Copies of all restrictions or covenants that are to be applied to the development area;

(12) Any other information the planning director or planning commission may require in order to give full and complete consideration to the final development plan.

(c) A public hearing by the planning commission on an application for approval of a final development plan, or area thereof, shall not be required provided the final plan is in substantial compliance with the approved preliminary development plan, or area thereof. A final development plan shall be

deemed to be in substantial compliance with the approved preliminary plan, provided no substantial modifications are proposed by the developer. Substantial modifications shall include:

(1) Additions to land uses from those approved with the PDD ordinance;

(2) An increase in the net residential density of more than ten (10) percent;

(3) An increase in floor area or lot coverage of more than ten (10) percent;

(4) A reduction of open space by more than ten (10) percent or a substantial relocation of open space that would change the character of the development;

(5) A substantial change to the elevation of the site, grading plan or drainage plan;

(6) Changes to street locations or the traffic circulation plan;

(7) Deletions or changes to any restrictions, conditions, or limitations that were included in the approved preliminary development plan or the PDD ordinance.

If the final development plan is not in substantial compliance with the preliminary plan, the planning director shall, within twenty-one (21) days of the date the application for approval of the final plan is filed, so notify the developer in writing, setting out the particular ways in which the final plan is not in substantial compliance with the preliminary plan. The developer may make such changes in the final plan as are necessary to bring it into compliance with the preliminary plan, or he may file a written request that the planning commission hold a public hearing on his application for final approval. If the developer shall fail to take either of these alternate actions within sixty (60) days, he shall be deemed to have abandoned the plan. If such public hearing shall be held, notice thereof shall be given, and the hearing shall be conducted in the manner prescribed in section 42-24. Within fourteen (14) days after the conclusion of the public hearing, the planning commission shall either approve or deny the final plan. Said action shall be in the form and contain the findings required for a recommendation on a preliminary development plan.

(d) In the event a public hearing is not required and a complete application for final approval has been filed, the planning commission shall, within forty-five (45) days of such filing, grant such plan final approval. Provided however, that in the event a final plan is filed that meets the standards for substantial compliance but contains modifications or variations from the approved preliminary plan which are judged by the planning commission not to be in the public interest, the planning commission may, after discussing recommended revisions with the applicant, refuse to grant final approval. If the applicant does not agree to the revisions suggested by the planning commission or otherwise declines to revise the plan as submitted, the planning commission may deny approval of the plan and return it to the applicant with a written notice setting forth the reasons why one (1) or more modifications are not in the public interest. Such notice shall be mailed within fourteen (14) days of the decision to deny the final development plan. Modifications or variations that might justify denial would be any change or modification that may affect the character or quality of the development or affect the compatibility with nearby properties. Such changes might involve, but are not limited to, the following: the architectural design of buildings and structures, exterior building materials, the orientation of a building, landscaping and screening, signage, lighting, parking, setbacks or the deletion of buildings, structures or common use amenities.

Following the denial of a final development plan by the planning commission, the applicant may choose to revise the plan in accordance with the recommendations of the planning commission and resubmit it for approval, or may within thirty (30) days of receipt of notice of denial, choose to appeal the decision of the planning commission to the governing body for final decision.

(e) Following approval of a final development plan by the planning commission or approval on appeal by the governing body, all required signatures shall be affixed to the final development plan. The approved final development plan and all other final plan documents shall be filed in the zoning administrator's office. All applicable covenants and owners association documents must be approved and filed in the register of deeds office prior to issuance of any building permits.

(f) If a final development plan is approved and thereafter the developer shall abandon part or all of said development plan and shall notify the planning commission in writing, then no further development shall take place and the governing body shall adopt an ordinance repealing the planned development district ordinance and rezoning the property back to the zoning district classification which existed just prior to the application for a planned development district. The property owner may make application for rezoning to some other zoning district classification and the planning commission shall consider the application in the same manner as for any application for rezoning.

If the developer fails to commence the construction of an approved final development plan within 18 months of the approval date and has not applied for an extension of the above time limits, the planning commission shall revoke its approval of the final plan and shall so notify the developer in writing. If, within thirty (30) days of receipt of the notice of such revocation, the developer does not present to the planning commission an application for reinstatement of the final development plan, the planning commission shall consider that the plan in question has been abandoned and the governing body shall adopt an ordinance repealing the planned development district ordinance and rezoning the subject property back to its former zoning classification.

(Code 1966, § 36-705; Ord. No. 97-9835, § 1, 11-10-97)

Sec. 42-407. Amendments.

A planned development district ordinance or an approved preliminary or final development plan may be amended by the board of commissioners, but only after a public hearing has been held pursuant to notice by section 42-24(b) and findings of fact and recommendations have been prepared by the planning commission and transmitted to the board of commissioners in the manner required by section 42-404(b)(1). Nothing in this section shall be construed as requiring a public hearing in the case of minor alterations. The determination of the need for a public hearing shall be at the discretion of the zoning administrator.

(Code 1966, § 36-706)

Sec. 42-408. Recording.

Upon approval of the final development plan by the planning commission, the same, together with the final subdivision plat shall be recorded with the register of deeds in the manner prescribed in the subdivision regulations.

(Code 1966, § 36-707)

DIVISION 2. REZONING TO A PLANNED COMMERCIAL DISTRICT

Sec. 42-409. Purpose.

If an applicant for rezoning to a commercial district has a specific development proposal and wishes to present it as such or if the planning commission believes that submittal of a site development plan is needed to ensure that the development will be compatible with surrounding neighborhoods, then the applicant may file an application for rezoning to a planned commercial district. The rezoning of land in Salina to one (1) of the planned commercial districts shall be for the propose of encouraging and requiring orderly commercial development of a quality generally equal to that of the standard commercial districts but permitting deviations from the underlying district regulations. The use of planned zoning procedures is intended to encourage efficient development of relatively small, separate tracts of land under one (1) ownership, and innovative and imaginative site planning which will minimize detrimental effects on the surrounding neighborhood. Such procedures are authorized by Kansas Statutes Annotated, 12-725 through 12-733.

(Ord. No. 87-9201, § 1, 9-21-87)

Sec. 42-410. Standards of development.

(a) A proposal to rezone land to a planned commercial district shall be subject to the same criteria relative to neighborhood compatibility, conformance to the comprehensive plan, adequacy of streets and utilities and other land use policies normally utilized in making zoning decisions in Salina.

(b) The submittal by the developer and the approval by the city of site development plans represents a firm commitment that actual development will follow the approved site development plan in architectural concept, intensity of use, landscaping and screening and quantity of open space.

(c) Commercial and office buildings should be planned and developed so as to avoid strip development patterns along thoroughfares. Control of vehicular access, architectural style, landscaping and signage will be exercised to soften the impact on nearby residential neighborhoods, and to minimize adverse effects on the adjacent street system.

(d) The permitted uses in planned commercial districts shall be the same as those permitted in the equivalent standard zoning districts, provided that limitations on the uses permitted may be imposed by the planning commission and the board of commissioners when it is deemed necessary to protect the interest of neighboring property owners.

(e) The maximum height of buildings and structures, setback and bulk of buildings, amount of lot coverage, paring requirements, screening, lighting and other performance standards shall be generally equal to those required in the equivalent standard zoning district; however, deviations from these requirements may be approved if it is deemed that other features and amenities will be gained. In addition, conditions and restrictions may be imposed on the plan to ensure that more appropriate development is produced and adverse impacts are avoided.

(Ord. No. 87-9201, § 1, 9-21-87)

Sec. 42-411. Rezoning property for planned commercial development.

Application for rezoning property to a planned commercial district shall consist of a standard application for a zoning map amendment as set forth in section 42-23. The applicant shall specifically state what zoning classification is being requested (PC-1, PC-2, PC-3, PC-4, PC-5 or PC-6), provide a list of proposed uses and list any deviations from the bulk and use limitations that are being requested. The applicant shall also submit a site development plan for purposes of depicting the character and scale of

the proposed project. The same procedures as set forth in article II for the adoption of an original zoning ordinance or amendment thereto shall be followed by the planning commission and board of commissioners in the establishment of a planned commercial district.

(Ord. No. 87-9201, § 1, 9-21-87)

Sec. 42-412. Content of site development plan.

A site development plan shall be prepared by a registered architect, engineer or surveyor at a scale of one inch equals fifty (50) feet, or one inch equals one hundred (100) feet on a tract of land containing five (5) acres or more, for any proposed development on property proposed for rezoning. The development plan shall include all the following:

(1) Proposed name of the development;

(2) Location by legal description;

(3) Names, addresses and telephone numbers of applicant and designer of plans;

(4) Date, North Arrow, Scale of Plan (one inch to fifty (50) feet or one inch to one hundred (100 feet);

(5) Contours at two (2) foot intervals. Any area subject to one-hundred-year flooding shall be indicated;

(6) The boundary lines of the area included in the site plan, including angles, dimensions and reference to a section corner, quarter corner or point on a recorded plat;

(7) Existing sewers, water mains, culverts and other underground facilities within the tract, indicating pipe sizes, grades, manholes and location;

(8) Location, arrangement and dimensions of proposed buildings and structures, together with related parking and loading areas, entrances, exits, vehicular drives, walkways, screening, drainage handling, public streets, and any existing easements;

(9) A schedule indicating total floor area, land area, parking spaces, total estimated employment on site, building site coverage and any other quantities needed to determine compliance with this article;

(10) Preliminary sketches of building elevations depicting the general style, size and exterior construction materials of the buildings proposed;

(11) Location, height and type of walls and fences, lighting, signage, and landscape material.

(Ord. No. 87-9201, § 1, 9-21-87)

Sec. 42-413. Review procedures for site development plans.

(a) The city staff shall review the site development plan to determine compliance with city ordinances, regulations and policies.

(b) A site development plan submitted with a rezoning application shall be scheduled for the planning commission's consideration and public review at the same public hearing as the rezoning application is to be considered.

(c) The planning commission shall review the plan to determine if it demonstrates a satisfactory quality of design and compatibility with other uses and structures in the neighborhood.

(d) The planning commission shall prepare and transmit to the board of commissioners and to the developer its findings with respect to the extent to which the site development plan complies with the standards set out in this section together with its recommendation to the board of commissioners with respect to the action to be taken on the site development plan. The planning commission shall either:

(1) Recommend approval or disapproval of the plan as submitted; or

(2) Recommend approval of the plan subject to certain revisions or conditions; or

(3) Recommend that the plan be resubmitted to the planning commission after substantial revisions to the plan are made.

(Ord. No. 87-9201, § 1, 9-21-87)

Sec. 42-414. Form of ordinance.

An ordinance establishing a planned commercial district shall specify the zoning regulations that will apply within the planned commercial district and shall describe the boundaries of such district. Such ordinance shall also specify the conditions and restrictions that have been imposed by the board of commissioners on the planned commercial development, and the extent to which the otherwise applicable district regulations have been varied and modified.

(Ord. No. 87-9201, § 1, 9-21-87)

Sec. 42-415. Status of site development plan after approval.

(a) No change of zone to a planned commercial district shall take effect until a site development plan containing all required revisions is approved by the board of commissioners. A copy of the approved site development plan shall be filed in the office of the zoning administrator and noted on the official zoning map prior to the issuance of any building permits. The approved site plan shall be incorporated by reference in the ordinance creating a planned commercial district.

(b) Approved development plans shall become null and void eighteen (18) months from the date of approval if a building permit has not been issued during that time period. However, upon written request from the property owner or authorized agent, the board of commissioners may grant an extension of the time limit for a specified length of time not to exceed one additional year.

(c) If the applicant fails to obtain a building permit within the valid time limit, the site development plan shall be deemed to be revoked and the subject property shall automatically revert to its former zoning classification.

(Ord. No. 87-9201, § 1, 9-21-87)

Sec. 42-416. Recording of approval.

After rezoning to a planned commercial district has been approved, the landowner shall file or record with the register of deeds a statement that a plan for the area has been approved, that such plan is applicable to certain specified legally described land, and that copies of said plan are available in the office of the zoning administrator. The statement shall specify the area covered by the plan, the proposed density or intensity of land uses and other pertinent information sufficient to notify any prospective purchasers or users of land of the existence of such a plan. The recorded statement shall specify that the site development plan shall become binding upon all successors and assigns unless it is formally amended or expires for failure to obtain building permits.

(Ord. No. 87-9201, § 1, 9-21-87)

Sec. 42-417. Amendments.

A planned commercial district ordinance or an approved site development plan may be amended by the board of commissioners, but only after a public hearing has been held pursuant to notice by section 42-24 and findings of fact and recommendations have been prepared by the planning commission and transmitted to the board of commissioners for final action as required for original approval. Nothing in this section shall be construed as requiring a public hearing in the case of minor alterations. The determination of the need for a public hearing shall be at the discretion of the zoning administrator.

(Ord. No. 87-9201, § 1, 9-21-87)

DIVISION 3. CORRIDOR OVERLAY DISTRICTS

Sec. 42-418. South Ninth Street Corridor Overlay District.

The South Ninth Street Corridor Overlay (CO) District is designed to achieve a high-quality, planned mixed-use development pattern along South Ninth Street. Predominant uses shall consist of low to moderate intensity service commercial businesses. Secondary uses may consist of ancillary support facilities and limited retail activities. Businesses within the district shall not create incompatible land use relationships, heavy traffic loads or other adverse impacts to surrounding areas. The district is intended to be applied to areas designated by the South Ninth Street Corridor Study. All uses and activities shall be subject to the regulations of the underlying zoning district unless otherwise specified herein.

(Ord. No. 99-9949, § 1, 10-11-99)

Sec. 42-418.1. Permitted uses.

Permitted uses in the CO District shall be as follows:

(1) Automobile sales and service.

(2) Automobile service and accessory stores.

(3) Boat and RV sales and service.

(4) Furniture showrooms.

(5) Research and development facilities.

(6) Truck sales and service.

(Ord. No. 99-9949, § 1, 10-11-99)

Sec. 42-418.2. Conditional uses.

The following uses may be permitted in the CO District if reviewed and approved in accordance with the provisions of sec. 42-597.2 of this chapter and following an evaluation of the projected amount of traffic to be generated by the proposed use, square footage of proposed buildings, and compatibility of proposed use with nearby land uses:

(1) Agricultural implement sales and service.

(2) Business and professional offices.

(3) Convenience gasoline and food stores.

(4) Duplicating and mailing services.

(5) Express package facilities.

(6) Farm and ranch supply stores.

(7) Gasoline service stations with car wash.

(8) Garden centers and nurseries.

(9) Group day care centers.

(10) Hotels and motels.

(11) Physical fitness centers.

(12) Public utilities.

(13) Restaurants.

(14) Travel agencies.

(15) Warehouses and wholesale houses.

(Ord. No. 99-9949, § 1, 10-11-99)

Sec. 42-418.3. Property development regulations.

Each site shall be subject to the following property development regulations:

(1) *Planned development zoning.* All applications for rezoning shall be for Planned Development District (PDD) or Planned Commercial (PC) zoning.

(2) *Minimum lot size.* All uses must be located on a parcel having a minimum lot size of one (1) acre.

(3) *Paved areas.* All access drives, parking areas and sidewalks shall be paved with asphalt or concrete.

(4) *Landscaping.* All sites shall be landscaped in accordance with the provisions of sec. 42-65 of this chapter.

(5) *Signage.* No signs shall exceed thirty (30) feet in height. No mobile or ground anchored banner signs shall be permitted. No offsite advertising signs shall be permitted on a site more than one hundred (100) feet east of I-135.

(6) *Driveways.* Access drives must be located a minimum of one hundred (100) feet from public streets, fifty (50) feet from other access drives, and twenty-five (25) feet from interior property lines unless shared access is provided.

(7) *Outdoor storage.* All materials, supplies, and equipment (not displayed for sale) shall be stored in an enclosed building or located in the side or rear yard and screened from visibility from adjacent streets.

(8) *Exterior lighting.* Exterior lighting fixtures shall be aimed or shaded so that no direct light is cast towards any street traffic.

(9) *Architectural design.* All development shall demonstrate a high quality visual appearance from the street. The architectural design of buildings, site improvements and landscaping shall

appear integrated and coordinated. The main entrances to primary buildings shall face Ninth Street or Water Well Road. All primary buildings shall have an attractive exterior finish and no precast concrete or metal panels shall face Ninth Street or Water Well Road unless the overall design presents a compatible appearance.

(Ord. No. 99-9949, § 1, 10-11-99)

Sec. 42-418.4. Effective area.

The provisions of the CO District shall apply to that area bounded by a line one-quarter (1/4) mile south of the centerline of Schilling Road on the north, Ninth Street on the east, a line three-eighths (3/8) mile south of the centerline of Water Well Road on the south, and Interstate 135 on the west.

(Ord. No. 99-9949, § 1, 10-11-99; Ord. No. 05-10303, § 1, 8-22-05)

Secs. 42-419--42-425. Reserved.

ARTICLE VIII FLOOD PLAIN ZONING DISTRICT[6]

DIVISION 1. STATUTORY AUTHORIZATION, FINDINGS OF FACT AND PURPOSES

Sec. 42-426. Statutory authorization.

The Legislature of the State of Kansas has in K.S.A. 12-705, 12-707, 12-710, 12-734 and 12-735 delegated the responsibility to local governmental units to adopt zoning regulations designed to protect the public health, safety and general welfare.

(Ord. No. 86-9119, § 1, 2-3-86)

Sec. 42-427. Findings of fact.

(a) *Flood losses resulting from periodic inundation.* The flood hazard areas of the City of Salina, Kansas, are subject to inundation which may result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare.

(b) *General causes of these flood losses.* These flood losses are caused by:

(1) The cumulative effect of obstruction in floodways causing increases in flood heights and velocities; and

(2) The occupancy of flood hazard areas by uses vulnerable to floods or hazardous to others which are inadequately elevated or otherwise unprotected from flood damages.

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[6] **Editor's note:** Ord. No. 86-9119, § 6, adopted February 3, 1986, repealed Art. VIII, §§ 42-426--42-439, in its entirety, and § 6 of the same ordinance enacted new provisions included herein as §§ 42-426--42-449. Former §§ 42-426--42-439, derived from the Code of 1966, §§ 36-800--36-813. **Cross references:** Flood prevention and control, Ch. 15. **State law references:** Floodplain regulation, K.S.A. 12-734 et seq.

(c) *Methods used to analyze flood hazards.* This article uses a reasonable method of analyzing flood hazards which consists of a series of interrelated steps.

(1) Selection of a base flood which is based upon engineering calculations which permit a consideration of such flood factors as its expected frequency of occurrence, the area inundated, and the depth of inundation. The base flood selected for this ordinance is representative of large floods which are reasonably characteristic of what can be expected to occur on the particular streams subject to this ordinance. It is in the general order of a flood which could be expected to have a one percent chance of occurrence in any one year, as delineated on the Federal Emergency Management Agency's Flood Insurance Study, and illustrative materials dated February 5, 1986, as amended, and any future changes thereto.

(2) Calculation of water surface profiles based upon an hydraulic engineering analysis of the capacity of the stream channel and over-bank areas to convey the base flood.

(3) Computation of the floodway required to convey this flood without increasing flood heights more than one foot at any point.

(4) Delineation of floodway encroachment lines within which no obstruction is permitted which would cause any increase in flood height.

(5) Delineation of floodway fringe, i.e., that area outside the floodway encroachment lines but which still is subject to inundation by the base flood.

(Ord. No. 86-9119, § 1, 2-3-86)

Sec. 42-428. Statement of purpose.

It is the purpose of this article to promote and protect the public health, safety and general welfare and to minimize those losses described in section 42-427(a) by applying the provisions of this article to:

(a) Restrict or prohibit uses which are dangerous to health, safety, or property in times of flooding or cause undue increases in flood heights or velocities.

(b) Require that uses vulnerable to floods, including public facilities which serve such uses, be provided with flood protection at the time of initial construction.

(c) Protect individuals from buying lands which are unsuited for certain purposes because of flood hazard.

(d) Assure that eligibility is maintained for property owners in the community to purchase flood insurance in the national flood insurance program.

(Ord. No. 86-9119, § 1, 2-3-86)

DIVISION 2. GENERAL PROVISIONS

Sec. 42-429. Lands to which the article applies.

(a) The Flood Insurance Study of the City of Salina, Kansas (effective date: February 5, 1986), including the flood boundary and floodway map (floodway map) and the flood insurance rate map (FIRM) issued by the federal emergency management agency is hereby adopted and incorporated by reference for the purpose of identifying all lands within the jurisdiction of the City of Salina, Kansas,

to which this article shall apply. No fewer than three (3) copies of the flood insurance study adopted above have been filed in both the office of the city clerk and the office of the zoning administrator and are available for examination by the public during normal office hours.

(b) This article shall apply to all lands within the jurisdiction of the City of Salina, Kansas, identified on the flood insurance rate map (FIRM) as numbered and unnumbered A zones (including the AH zone) and within the zoning districts FW and FF established in division 4 of this article. In all areas covered by this article, no development shall be permitted except upon issuance of a permit to develop granted by the City of Salina or its duly designated representative under such safeguards and restrictions as the City of Salina or the designated representative may reasonably impose for the promotion and maintenance of the general welfare, health and safety of the inhabitants of the community and where specifically noted in divisions 5, 6 and 7.

(Ord. No. 86-9119, § 1, 2-3-86)

Sec. 42-430. Rules for interpretation of district boundaries.

(a) The boundaries of the floodway (FW) and floodway fringe (FF) overlay districts shall be determined by scaling distances on the official zoning map or on the flood insurance rate map or floodway map. Where interpretation is needed to determine the exact location of the boundaries of the districts as shown on the official zoning map, as for example where there appears to be a conflict between a mapped boundary and actual field conditions, the zoning administrator shall make the necessary interpretation. In such cases where the interpretation is contested, the board of zoning appeals will resolve the dispute. The base flood elevation for the point in question shall be the governing factor in locating the district boundary on the land. The person contesting the location of the district boundary shall be given a reasonable opportunity to present his case to the board and to submit his own technical evidence, if he so desires.

(b) Any flood plain district designated on the official zoning map pursuant to prior ordinance shall be lifted from the official zoning map and shall be of no further force or effect.

(Ord. No. 86-9119, § 1, 2-3-86)

Sec. 42-431. Compliance.

No development located within known flood hazard areas of this community shall be located, extended, converted or structurally altered without full compliance with the terms of this article and other applicable regulations.

(Ord. No. 86-9119, § 1, 2-3-86)

Sec. 42-432. Warning and disclaimer of liability.

The degree of flood protection required by this article is considered reasonable for regulatory purposes and is based on engineering and scientific methods of study. Larger floods may occur on rare occasions or the flood height may be increased by man-made or natural causes, such as ice jams and bridge openings restricted by debris. This article does not imply that areas outside floodway and floodway fringe district boundaries or land uses permitted within such districts will be free from flooding or flood damages. This article shall not create liability on the part of the City of Salina, Kansas or any officer or employee thereof for any flood damages that may result from reliance on this article or any administrative decision lawfully made thereunder.

(Ord. No. 86-9119, § 1, 2-3-86)

Sec. 42-433. Appeal.

Where a request for a permit to develop is denied by the zoning administrator the applicant may appeal such denial for such permit directly to the board of zoning appeals.

(Ord. No. 86-9119, § 1, 2-3-86)

DIVISION 3. DEVELOPMENT PERMIT

Sec. 42-434. Permit required.

No person, firm or corporation shall initiate any development or substantial improvement or cause the same to be done without first obtaining a separate permit for development as defined in article XIV.

(Ord. No. 86-9119, § 1, 2-3-86)

Sec. 42-435. Administration.

(a) The zoning administrator is hereby appointed to administer and implement the provisions of this article.

(b) Duties of the zoning administrator shall include, but not be limited to:

(1) Review of all development permits to assure that sites are reasonably safe from flooding and that the permit requirements of this article have been satisfied.

(2) Review of permits for proposed development to assure that all necessary permits have been obtained from those federal, state or local governmental agencies from which prior approval is required.

(3) Notification of adjacent communities and the Division of Water Resources, Kansas State Board of Agriculture prior to any alteration or relocation of a watercourse, and evidence shall be submitted of such notification to the federal emergency management agency.

(4) Assurance that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is not diminished.

(5) Verification, recording and maintenance of records of the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures.

(6) Verification, recording and maintenance of records of the actual elevation (in relation to mean sea level) to which the new or substantially improved structures have been floodproofed.

(7) Obtaining certification from a registered professional engineer or architect when floodproofing is utilized for a particular structure.

(Ord. No. 86-9119, § 1, 2-3-86)

Sec. 42-436. Application for permit.

To obtain a permit, the applicant shall first file an application in writing on a form furnished for that purpose. Every such application shall:

(a) Identify and describe the work to be covered by the permit.

(b) Describe the land on which the proposed work is to be done by lot, block, tract and house and street address, or similar description that will readily identify and definitely locate the proposed building or work.

(c) Indicate the use of occupancy for which the proposed work is intended.

(d) Be accompanied by plans and specifications for proposed construction.

(e) Be signed by the permittee or his authorized agent who may be required to submit evidence to indicate such authority.

(f) Give such other information as reasonably may be required by the zoning administrator.

(Ord. No. 86-9119, § 1, 2-3-86)

DIVISION 4. ESTABLISHMENT OF ZONING DISTRICTS

Sec. 42-437. Establishment of zoning districts.

The mapped flood plain areas within the jurisdiction of this article are hereby divided into the two (2) following districts: A floodway overlay district (FW) and a floodway fringe overlay district (FF) identified in the flood insurance study (and accompanying maps(s)). Within these districts all uses not meeting the standards of this article and those standards of the underlying zoning district shall be prohibited. These zones shall be consistent with the numbered and unnumbered A zones (including the AH zone) as identified on the official FIRM and identified in the flood insurance study provided by the federal emergency management agency.

(Ord. No. 86-9119, § 1, 2-3-86)

DIVISION 5. STANDARDS FOR FLOODWAY OVERLAY DISTRICT AND THE FLOODWAY FRINGE OVERLAY DISTRICT

Sec. 42-438. Requirement for permit.

No permit for development shall be granted for new construction, substantial improvements and other improvements including the placement of manufactured homes within all numbered and unnumbered A zones unless the conditions of this division are satisfied.

(Ord. No. 86-9119, § 1, 2-3-86; Ord. No. 87-9184, § 1, 5-11-87)

Sec. 42-439. Special provisions for unnumbered A zones.

All areas identified as unnumbered A zones on the FIRM are subject to inundation of the one hundred-year flood; however, the water surface elevation was not provided. The unnumbered A zones shall be subject to all development provisions of this article. If flood insurance study data is not available, the community shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from a federal, state or other source as criteria for reviewing new construction, substantial improvements, or other development in Zone A in order to administer the provisions of division 4 through division 7 of this article.

(Ord. No. 86-9119, § 1, 2-3-86; Ord. No. 87-9184, § 2, 5-11-87)

Sec. 42-440. Development standards.

New construction, subdivision proposals, substantial improvements, prefabricated buildings, placement of manufactured homes and other development shall required:

(a) Design or anchorage to prevent flotation, collapse or lateral movement due to flooding;

(b) New or replacement water supply systems and/or sanitary sewage systems be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters, and on-site waste disposal systems be located so as to avoid impairment or contamination:

(c) New development and substantial improvements to:

(1) Use construction materials and utility equipment that are resistant to flood damage; and

(2) Use construction methods and practices that will minimize flood damage, consistent with economic practicability.

(d) Electrical, heating, ventilation, plumbing, and air-conditioning equipment and other service facilities be designed and/or located so as to prevent water from entering or accumulating within components during conditions of flooding.

(e) All utility and sanitary facilities be elevated to up to the base flood protection elevation or floodproofed to one-foot above the base flood elevation;

(f) That until a floodway has been designated, where appropriate, no development, including landfill, may be permitted within Zones A1-30 on the city's FIRM unless the applicant for the land use has demonstrated that the proposed use, when combined with all other existing and reasonably anticipated uses, will not increase the water surface elevation of the one hundred-year flood more than one (1) foot on the average cross section of the reach in which the development or landfill is located as shown on the flood insurance rate study, incorporated by reference (section 42-427(c) of this article);

(g) Storage of material and equipment:

(1) The storage or processing of materials that are in time of flooding buoyant, flammable, explosive, or could be injurious to human, animal or plant life is prohibited.

(2) Storage of other material or equipment may be allowed if not subject to major damage by floods and firmly anchored to prevent flotation or if readily removable from the area within the time available after flood warning.

(h) Subdivision proposals and other proposed new development be required to assure that:

(1) All such proposals are consistent with the need to minimize flood damage;

(2) All public utilities and facilities, such as sewer, gas, electrical, and water systems are located, elevated and constructed to minimize or eliminate flood damage;

(3) Adequate drainage is provided so as to reduce exposure to flood hazards; and

(4) Proposals for development of five (5) acres or fifty (50) lots, whichever is lesser, include within such proposals the base flood elevation.

(Ord. No. 86-9119, § 1, 2-3-86; Ord. No. 87-9185, § 1, 5-11-87)

DIVISION 6. FLOODWAY FRINGE (FF) OVERLAY DISTRICT[7]

Sec. 42-441. Permitted uses.

Any uses permitted in division 7 shall be permitted in the floodway fringe (FF) overlay district. No use shall be permitted in the district unless the standards of divisions 5 and 6 are met.

(Ord. No. 86-9119, § 1, 2-3-86)

Sec. 42-442. Standards for the floodway fringe overlay district.

(a) New construction or substantial improvements of residential structures shall be required to have the lowest floor, including basement, elevated to or above the base flood elevation (only within zones A1 to A30 or AH on the city's FIRM) or floodproofed to at least one (1) foot above the base flood elevation. Any basement area, together with attendant utilities and sanitary facilities, below that level shall be designed and constructed so that the structure is watertight with walls that are impermeable to the passage of water without human intervention. Basement walls shall be built with the capability to resist hydrostatic and hydrodynamic loads and the effects of buoyancy resulting from the one-hundred-year frequency flood and shall be designed so minimal structural damage will occur if this design is exceeded. The floodproofed design elevation is the one-hundred-year base flood elevation plus one (1) foot.

(1) The bottom of the lowest basement openings, such as doors and windows, must be placed at least one (1) foot above the one-hundred-year base flood elevation.

(2) The basement floor must not be lower than five (5) feet below the floodproofed design elevation.

(3) The land around the entire foundation must be filled at least to the one-hundred-year base flood elevation.

(4) Floodproofed basements may not be constructed within the floodway.

(5) Basements constructed in accordance with this regulation shall not be used for sleeping purposes.

(6) A registered professional engineer or architect shall certify that the floodproofing measures used in the structure satisfy the standards of the subsection. This certification shall include the specific elevation (in relation to mean sea level) to which the structure is floodproofed.

(7) The zoning administrator shall certify that the structure has been built in accordance with this design.

(b) New construction or substantial improvements of nonresidential structures shall be required to have the lowest floor, including basement, elevated to or above the base flood elevation or, together with attendant utility and sanitary facilities, to be floodproofed so that below one (1) foot above the base flood level the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy. A registered professional engineer or architect shall certify that the standards of this subsection are satisfied. Such certification shall be provided to the zoning administrator as set forth in section 42-435(b)(7).

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[7] **Editor's note:** Including the AH zone.

(c) All new construction and substantial improvements that have fully enclosed areas below the lowest floor that are at or below elevations subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria:

(1) A minimum of two (2) openings having a total net area of not less than one (1) square inch for every square foot of enclosed area subject to flooding shall be provided;

(2) The bottom of all openings shall be no higher than one (1) foot above grade; and

(3) Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

(d) Within AH zones adequate drainage paths around structures on slopes shall be required in order to guide floodwaters around and away from proposed structures.

(e) All manufactured homes shall be anchored to resist flotation, collapse, or lateral movement by providing over-the-top and frame ties to ground anchors. Specific requirements shall be that:

(1) Over-the-top ties be provided at each of the four (4) corners of the manufactured home, with two (2) additional ties per side at intermediate locations and manufactured homes less than fifty (50) feet long requiring one (1) additional tie per side;

(2) Frame ties be provided at each corner of the home with five (5) additional ties per side at intermediate points and manufactured homes less than fifty (50) feet long requiring four (4) additional ties per side;

(3) All components of the anchoring system be capable of carrying a force of four thousand eight hundred (4,800) pounds; and

(4) Any additions to the manufactured home be similarly anchored.

(f) All manufactured homes to be placed or substantially improved within zones A1 to A30, AH and AE on the City of Salina's FIRM shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is at or above the base flood elevation and securely anchored to an adequately anchored foundation system in accordance with the provisions of section 42-442(e).

(g) No manufactured home shall be placed in a floodway except in an existing manufactured home park or existing manufactured home subdivision.

(h) Detached garages and other accessory buildings used exclusively for the storage of motor vehicles, and storage of other items readily removable in the event of a flood warning, may have their lowest floor below the base flood elevation provided the structure is designed and constructed to meet the following requirements:

(1) Use of the structure must be limited to parking or limited storage and not used for human habitation.

(2) The structure must be built using unfinished and flood damage resistant materials.

(3) The structure must be adequately anchored to prevent flotation, collapse, or lateral movement which may result in damage to other structures. This is a mandatory measure, pursuant to 44 CFR, Section 60.3(a)(3). It must also meet the Section 60.3(c)(5) openings requirement.

(4) Any mechanical and utility equipment in the structure must be elevated to one (1) foot above the base flood elevation or floodproofed.

(5) The structure shall be constructed and placed on the building site so as to offer the minimum resistance to the flood [flow] of floodwaters.

(6) The structure shall not exceed seven hundred twenty (720) square feet.

(7) The structure must comply with the floodway provisions of the community's ordinance and address floodplain encroachment provisions at 44 CFR, Section 60.3(c)(10) or (d)(3).

(Ord. No. 86-9119, § 1, 2-3-86; Ord. No. 86-9133, § 1, 5-5-86; Ord. No. 86-9145, § 1, 7-21-86; Ord. No. 87-9186, § 1, 5-11-87; Ord. No. 92-9524, § 1, 8-10-92)

DIVISION 7. FLOODWAY (FW) OVERLAY DISTRICT

Sec. 42-443. Permitted uses.

Only uses having a low flood damage potential and not obstructing flood flows shall be permitted within the floodway (FW) district to the extent that they are not prohibited by any other ordinance and are consistent with the underlying zoning district. All encroachments, including fill, new construction, substantial improvements and other developments shall be prohibited unless approved as a variance and certification by a registered professional engineer or architect is provided demonstrating that encroachments shall not result in any increase in flood levels in the floodway during occurrence of the base flood discharge. No use shall increase the flood levels of the base flood. The following uses are permitted, subject to the standards of divisions 5 and 6:

(a) Agricultural uses such as general farming, pasture, nurseries, forestry.

(b) Residential uses such as lawns, gardens, parking and play areas.

(c) Nonresidential areas such as loading and parking areas, airport landing strips, new and used car lots, and streets.

(d) Public and private recreational uses such as golf courses, archery ranges, picnic grounds, parks, wildlife and nature preserved.

(Ord. No. 86-9119, § 1, 2-3-86)

DIVISION 8. VARIANCES

Sec. 42-444. Conditions for approval.

Where by reason of exceptional narrowness, shallowness, shape, topography or other extraordinary or exceptional situation or condition of a specific piece of property, the strict application of any provision of this article would result in peculiar and exceptional hardship upon the owner of the property as an unreasonable deprivation of use as distinguished from the mere grant of a privilege, the board of zoning appeals may authorize a variance from strict application so as to relieve the demonstrable difficulties or hardships, provided that such a variance may be granted generally if:

(a) The structure is to be erected on a lot of one-half acre or less in size and such lot is contiguous to (not including adjacent public streets) and surrounded by lots with existing structures constructed below the base flood protection elevation, or

(b) The structure is listed on the National Register of Historic Places, the State Inventory of Historic Places or carries a local landmark (HC) designation.

(Ord. No. 86-9119, § 1, 2-3-86)

Sec. 42-445. Findings required.

Any request for a variance may be granted only upon a finding by the board of zoning appeals that:

(a) The conditions prerequisite to the granting of a variance set forth in K.S.A. 12-715 have been met, and

(b) Issuance of the variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local ordinances or state laws, particularly K.S.A. 12-734.

(Ord. No. 86-9119, § 1, 2-3-86; Ord. No. 86-9146, § 1, 7-21-86)

Sec. 42-446. Determination of minimum standards.

Variances may only be issued upon a determination that the applicant requesting a variance shall meet the minimum necessary standards of this article to afford relief.

(Ord. No. 86-9119, § 1, 2-3-86)

Sec. 42-447. Notification of increased insurance rates.

The zoning administrator shall notify the applicant that the issuance of a variance to locate a structure at an elevation below the one hundred-year flood level will result in increased rates for flood insurance coverage. The applicant will provide written and notarized acknowledgement of such notification.

(Ord. No. 86-9119, § 1, 2-3-86)

DIVISION 9. VIOLATIONS

Sec. 42-448. Violations.

In addition to the penalties and relief set forth in section 42-599, if the violation relates to a provision of this article, the attorney general and the chief engineer of the Division of Water Resources of the Kansas State Board of Agriculture may institute injunctions, mandamus or other appropriate action or proceedings to prevent the unlawful erection, construction, maintenance or use, or to correct or abate such violations, or to prevent the occupancy of such buildings, structure or land.

(Ord. No. 86-9119, § 1, 2-3-86)

DIVISION 10. AMENDMENTS

Sec. 42-449. Amendments to flood plain district regulations.

No amendment shall be made to this article that proposes to create or to effect any change or variation in the flood plain district, or that proposes to regulate or restrict the location and use of structures, encroachments, and uses of land within such district without the city first submitting such proposed change, accompanied by complete maps, plans, profiles, specifications, textual matter and other data and information to the chief engineer, Division of Water Resources, Kansas State Board of Agriculture for written approval thereof.

(Ord. No. 86-9119, § 1, 2-3-86)

Secs. 42-450--42-455. Reserved.

ARTICLE IX. HERITAGE CONSERVATION DISTRICT

DIVISION 1. GENERALLY[8]

Sec. 42-456. Purpose.

The heritage conservation district is designed to be used in conjunction with any existing zoning district. The purposes of this district are:

(1) To identify, safeguard and preserve the city's historic and cultural heritage;

(2) To protect and enhance historic landmarks and districts which represent distinctive and important elements of the city's cultural, social, economic, political, archaeological and/or architectural history;

(3) To stabilize and improve property values in areas designated as historically and/or architecturally significant; and

(4) To enhance the attractiveness of the city to home buyers, visitors and shoppers and thereby promote business and tourism.

(Ord. No. 90-9387, § 1, 6-25-90)

Sec. 42-457. Permitted uses.

Permitted and conditional uses in the heritage conservation district shall be the same as those otherwise allowed in the underlying zoning district and all other requirements of that district shall apply.

(Ord. No. 90-9387, § 1, 6-25-90)

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[8] **Editor's note:** Section 2 of Ord. No. 90-9387, adopted June 25, 1990, amended Ch. 42 by repealing provisions designated as Div. 1 of Art. IX, §§ 42-456--42-461, containing general provisions relative to the Heritage Conservation District and derived from Code 1966, §§ 36-8A00, 36-8A01, and 36-8A07--36-8A10. Section 1 of Ord. No. 90-9387, enacted provisions designated and incorporated as a new Civ. 1, §§ 42-456--42-468.

Sec. 42-458. Definitions.

For the purpose of administration of this article, the following words or terms are hereby defined. Unless specifically defined below, words or terms in this article shall be interpreted so as to give them the same meaning as they have in common usage and so as to give this article its most reasonable application.

Administrator. The designated individual assigned to administer, interpret and enforce the provisions of this division; also known as the secretary for the heritage commission.

Alteration. Any act or process that changes one (1) or more of the exterior architectural features of a structure, including, but not limited to, the erection, construction, reconstruction or removal of any structure.

Area. Properties, near to or adjacent to one another, capable of being described with such definiteness that their collective location may be established and boundaries definitely ascertained.

Building. A structure, such as a house, barn, church, hotel, courthouse, city hall, social hall, commercial structure, library, factory, mill, train deport, theater, school, store or similar construction, created to shelter any form of human activity. The term also may refer to a small group of buildings which constitute an historically and functionally related unit such as a courthouse and jail, house and barn, mansion and carriage house, church and rectory, and farmhouse and related outbuildings.

Certificate of appropriateness. A certificate issued by the commission indicating its approval of plans for alteration, construction, removal or demolition of a landmark or of a structure within an historic district based primarily on design consideration.

Certificate of economic hardship. A certificate issued by the commission indicating its approval of plans for alteration, construction, removal or demolition of a landmark or of a structure within an historic district based primarily on economic considerations.

City commission. The government body of the City of Salina, Kansas.

Commission. The Heritage Commission of the City of Salina, Kansas.

Construction. The act of adding an addition to an existing structure or the erection of a new principal or accessory structure on a lot or property.

Contributing. A significant building, site, structure or object which adds to the architectural qualities, historic association or archaeological values of an historic district because:

(1) It was present during the pertinent historic time;

(2) It possesses integrity and reflects its significant historic character or is capable of yielding important information about the pertinent historic period; or

(3) It independently meets the standards and criteria of this division.

Demolition. Any act or process that destroys in part or in whole a landmark or a structure within an historic district.

Design guideline. A standard of appropriate activity that will preserve the historic and architectural character of a structure or area.

Exterior architectural appearance. The architectural character and general composition of the exterior of a structure, including, but not limited to, the kind, color and texture of the building material and the type, design and character of all windows, doors, light fixtures, signs and appurtenant elements.

Historic district. An area designated as an historic district by ordinance of the city commission and which may contain within definable geographic boundaries one (1) or more significant sites, structures or objects and which may have within its boundaries other properties or structures that, while not of such historic, archeological and/or architectural significance to be designated as landmarks, nevertheless, contribute to the overall visual characteristics of the significant sites, structure or objects located within the historic district.

Landmark. A site, structure or object designated as a landmark by ordinance of the city commission, pursuant to procedures prescribed herein, that is worthy of rehabilitation, restoration and preservation because of its historic, archeological and/or architectural significance to the City of Salina, Kansas.

Object. Those physical items that have functional; aesthetic, cultural, historical or scientific value and are relatively small in scale and simply constructed. While an object may be, by nature or design, movable, it should be located in a specific setting or environment appropriate to its significant historic use, role or character. Objects include sculptures, monuments, street signs, fence posts, hitching posts, mileposts, boundary markers, statuary and fountains.

Owner of record. Those individuals, partnerships, firms, corporations, public agencies or any other legal entities holding title to property but not including legal entities holding mere easements or leasehold interests; may also be referred to as property owner(s). Current owner(s) of record are those listed as owners on the records of the register of deeds. For the purposes of this article, the vote of owner(s) of record shall require the complete signature(s) of the listed owner(s) on the records of the register of deeds. For example, deeds designating joint ownership by two (2) individuals shall require the signature of both individuals for a single vote to be recorded.

Property. An area of land, undivided by a street, alley, railroad, stream or similar physical feature, under common ownership or control, which is or will be occupied by one (1) structure or land use, and any accessory structures and uses. A property could be made up of one (1) or more lots or record, one (1) or more portions of a lot or lots of record, or any combination thereof. The term shall include landscape features.

Removal. Any relocation of a structure in whole or in part on its site or to another site.

Repair. Any change to a structure or object that is not construction, removal, alteration or demolition.

Site. The location of a significant event, a prehistoric or historic occupation or activity, or a building or structure, whether standing, ruined or vanished, where the location itself possesses historic, cultural or archeological value regardless of the value of any existing structure. Examples of sites include habitation sites, burial sites, village sites, hunting and fishing sites, ceremonial sites, battlefields, ruins of historic buildings and structures, campsites, designed landscapes, natural features, springs and landscapes having cultural significance.

Structure. Anything constructed or erected, the use of which requires permanent or temporary location on or in the ground, including, but not limited to, the following: buildings, walls, gazebos, signs, towers and swimming pools.

(Ord. No. 90-9387, § 1, 6-25-90)

Sec. 42-459. Heritage conservation survey.

(a) The heritage commission shall cause and commit to be undertaken a historical resources survey of the City of Salina to identify buildings, structures, sites, neighborhoods and areas that may have historical, cultural or architectural importance or value to the community. As a part of the survey, the heritage commission shall review and evaluate any prior surveys and studies by any public or private organization and compile appropriate descriptions, facts and photographs. All new surveys and inventories shall utilize the inventory form and survey manual prepared by the Kansas Historic Preservation Department.

(b) Upon completion of the survey for all or a portion of the city, the heritage commission shall:

(1) Identify the most significant resources with potential for designation as a landmark or historic district;

(2) Devise and adopt procedures to initiate and consider the nomination of these potential landmarks and historic districts;

(3) Prepare and adopt a heritage conservation plan containing goals, objectives and policies to guide decision-makers in preserving the community's historic resources.

(Ord. No. 90-9387, § 1, 6-25-90)

Sec. 42-460. Salina Register of Historic Places.

(a) There is hereby established a Salina Register of Historic Places, which shall include:

(1) A description of all buildings, structures, sites and objects designated as landmarks pursuant to this article.

(2) A description of the boundaries of each area designated as an historic district pursuant to this article.

The boundaries of landmarks and historic districts shall be recorded on the zoning map of the city. A current copy of the Salina Register of Historic Places and zoning map shall be kept on file in the office of the zoning administrator.

(b) Landmarks may include any:

(1) Exterior of a structure;

(2) Property or part thereof;

(3) Landscape feature or object.

(c) Historic districts may include two (2) or more structures and/or properties. Individual buildings, sites, structures and objects within designated historic districts shall be classified as contributing or noncontributing.

(Ord. No. 90-9387, § 1, 6-25-90)

Sec. 42-461. Nomination of landmarks and historic districts.

Nomination may be made only by application. Application for nomination of a site, structure or object for designation as a landmark or of an area for designation as an historic district may be made by motion of the heritage commission or city commission; or in the case of a landmark, by the owner of record of the nominated property or structure; or in the case of an historic district, by twenty-five (25) percent or more of the owners of record of property in a proposed historic district.

(Ord. No. 90-9387, § 1, 6-25-90)

Sec. 42-462. Criteria for designation.

(a) The heritage commission shall, upon such investigation as it deems necessary, make a determination as to whether a nominated site, structure, object or area possesses significant historical, archeological and/or architectural qualities and thus qualifies for designation pursuant to one (1) or more of the following criteria:

(1) Its character, interest or value as part of the development, heritage or cultural characteristics of the community, county, state or nation;

(2) Its location as a site of a significant local, county, state or national event;

(3) Its identification with a person or persons who significantly contributed to the development of the community, county, state or nation;

(4) Its embodiment of distinguishing characteristics of an architectural style valuable for the study of a period, type, method of construction or use of indigenous materials;

(5) Its identification as a work of a master builder, designer, architect or landscape architect whose individual work has influenced the development of the community, county, state or nation;

(6) Its embodiment of elements of design, detailing, materials or craftsmanship that render it architecturally significant;

(7) Its embodiment of design elements that make it structurally or architecturally innovative;

(8) Its unique location or singular physical characteristics that make it an established or familiar visual feature;

(9) Its character as a particularly fine or unique example of a utilitarian structure, including, but not limited to, farmhouses, gas stations or other commercial structures, with a high level of integrity or architectural significance;

(10) Its location as a site of prehistoric or historic occupation or activity possessing significant archeological value.

(b) Any site, structure, object or area that meets one (1) or more of the above criteria shall also have sufficient integrity of location, design, materials and workmanship to make it worthy of preservation or restoration.

(Ord. No. 90-9387, § 1, 6-25-90)

Sec. 42-463. Public hearing and designation.

(a) *Generally.* The heritage commission shall hold at least one (1) public hearing on each property to be designated as a landmark or historic district at a reasonable time and place as established by the heritage commission. It shall hold such hearing no later than forty-five (45) days from the date the application is filed.

(b) *Notice of hearing.* At least twenty (20) days in advance of the public hearing on the proposed designation, notice of same shall be published in the official city newspaper. The notice shall state the date, time and place of the hearing and contain a street address and legal description of the nominated property. The heritage commission shall also send by regular mail a written notice of the public hearing, containing the same information as the public hearing, containing the same information as the published notice, to the owners of record and all property owners within two hundred (200) feet of the nominated landmark or historic district at least twenty (20) days prior to

the hearing. From time to time, as provided by its rules, the heritage commission may give such additional notice to other persons as it desires.

(c) *Conduct of hearing.* The hearing, which may be continued, shall be conducted and a record of the proceedings shall be preserved and filed in the office of the city clerk. Any person or party may appear and be heard at the hearing in person, by agent or by attorney. The heritage commission may request a report from any government official or agency or any other person, firm or corporation. If such report is made, a copy thereof shall be made available by the secretary of the heritage commission to the owner(s) of the affected property and any other interested person.

(d) *Report and recommendation.* Within thirty (30) days after the close of the public hearing, the heritage commission shall adopt a recommendation to be submitted to the city commission that the nominated landmark or historic district does or does not meet the criteria for designation. The recommendation shall be accompanied by the following information:

(1) Explanation of the significance or lack of significance of the nominated landmark or historic district as it relates to the criteria for designation as set forth in section 42-462;

(2) Explanation of the integrity or lack of integrity of the nominated landmark or historic district;

(3) In the case of a nominated landmark found to meet the criteria for designation:

a. The significant exterior architectural features of the nominated landmark that should be protected; and

b. The types of construction, alteration, demolition and removal, other than those requiring a building or demolition permit, that cannot be undertaken without obtaining a certificate of appropriateness.

(4) In the case of a nominated historic district found to meet the criteria for designation:

a. The types of significant exterior architectural features of the structures within the nominated historic district that should be protected;

b. The types of construction, alteration, demolition and removal, other than those requiring a building or demolition permit, that cannot be undertaken without obtaining a certificate of appropriateness; and

c. A list of all contributing sites, structures and objects within the historic district.

(5) A map showing the location of the nominated landmark or the boundaries of the nominated historic district.

(e) *City commission designation:*

(1) The city commission shall consider the application at a public hearing, which may be during a regularly scheduled meeting. The city commission shall not consider the application until the period for the filing of written protests has lapsed. Prior to that hearing, the city commission shall be provided with the recommendations and record of the proceedings before the heritage commission. At the conclusion of the public hearing, the city commission may approve an ordinance designating a nominated site, structure or object as a landmark or designating an area as an historic district.

(2) The heritage commission may recommend and the city commission may designate a landmark or historic district which includes a portion of the structures and/or properties under consideration and described in any notice.

(3) The heritage commission may recommend and the city commission may amend or rescind designation of a landmark or historic district in the same manner and procedure as is followed in a designation of a landmark or historic district.

(4) In the case of a denial of landmark nomination, subsequent nomination attempts shall not occur within one (1) year or without a change or ownership of the property, whichever occurs first. A subsequent nomination of an historic district may not be made within one (1) year unless there has been a substantial reconfiguration of the proposed nominated district.

(f) *Notice of designation:*

(1) The administrator shall forward notice of designation of any landmark or historic district approved by the city commission to the Kansas State Historical Society.

(2) Within seven (7) days after approval of such an ordinance, the administrator shall notify in writing the owner of each structure or property designated as a landmark or included within an historic district. The administrator shall also notify the city building official of the designation.

(3) The designation of a landmark or historic district shall in no way alter the uses permitted by the existing zoning classification or district of the properties so designated. A desire to change permitted uses shall require the filing of an application requesting a zoning change as provided by the Zoning Ordinance of the City of Salina.

(f) *Designation protest procedures:*

(1) *Protest of landmark designation.* A protest of any landmark nomination may be filed with the city clerk any time within fourteen (14) days following the conclusion of the heritage commission's public hearing on the nomination. The protest shall be executed in writing by the owner(s) of record of the nominated landmark. The city clerk shall provide a protest form upon request. Upon submittal of a valid protest petition, it shall be forwarded to the city commission. Such property may be designated a landmark only by a three-fourths favorable vote of all the members of the city commission.

(2) *Protest of historic district designation by property owner within proposed district.* The consent of a majority of the owners within a proposed historic district shall be required for the city to designate an historic district. Owners of a property within a proposed district shall be given thirty (30) days within which to file written consents or objections to the inclusion of their property in the proposed district. Said thirty (30) days shall commence upon the conclusion of the public hearing before the heritage commission. Owners of property shall be entitled to one (1) vote for each taxable property of which they are the owner of record as acknowledged by the records of the Register of Deeds of Saline County, Kansas. If property owners fail to respond as set forth herein, they shall be deemed to have consented to the inclusion of their property in the proposed district. If a majority (fifty-one (51) percent or more) of the owners within a proposed historic district file a written protest against the inclusion of their property in the proposed historic district, then the city commission shall deny the application nominating the area as an historic district. If thirty-five (35) percent or more of the owners of property within a proposed historic district file a written protest against the inclusion of their property in the proposed historic district, then the city commission may adopt an ordinance designating the proposed area as an historic district only upon the affirmative vote of three-fourths of all the members of the city commission.

(Ord. No. 90-9387, § 1, 6-25-90)

Sec. 42-464. Certificate of appropriateness.

(a) *When certificate required.* A certificate of appropriateness shall be required before the following actions affecting the exterior architectural appearance of any landmark or property within an historic district may be undertaken:

(1) Any construction, alteration or removal requiring a building permit from the City of Salina;

(2) Any demolition in whole or in part requiring a demolition permit from the city;

(3) Any construction, alteration, demolition or removal affecting a significant exterior architectural or historical feature as specified in the ordinance designating the landmark or historic district. However, such requirement shall not apply to such repairs and maintenance measures minimally required to prevent additional loss or harm to the structure resulting from accidental or natural causes.

Nothing in this article shall be construed to prevent the ordinary maintenance or repair of a structure or building.

(b) *Application for certificate of appropriateness.* A copy of every application for a demolition permit or a building permit, including any accompanying plans and specifications, affecting the exterior architectural appearance of a landmark or of a property within an historic district will be forwarded to the heritage commission and shall initiate an application for a certificate of appropriateness. The building inspection department shall not issue the demolition or building permit until a certificate of appropriateness has been issued by the heritage commission. Application for review of construction, alteration, demolition or removal not requiring a building permit for which a certificate of appropriateness is required shall be initiated on a form prepared by the heritage commission.

(c) *Determination by heritage commission:*

(1) Any applicant may request a meeting with the heritage commission before the application is received or during the review of the application. The commission shall consider the completed application at a regular or special meeting. To prevent unnecessary delay in construction, the administrator may issued certificates of appropriateness for the renovation or reconstruction of any structure when such work substantially reproduces the existing design and is performed in the existing material. The chairman or vice-chairman shall cosign any certificates of appropriateness issued in this manner.

(2) The chairman of the commission may appoint a subcommittee of four (4) of its members to review applications for a certificate of appropriateness for all types of actions except demolitions when delay to the next regular meeting would create an unnecessary inconvenience to the applicant. A certificate of appropriateness may be issued prior to the next regular meeting upon the signatures of all but one (1) of the members of that subcommittee.

(3) The commission shall review the application and issue or deny the certificate of appropriateness within forty-five (45) days of receipt of the application. Written notice of the decision shall be provided to the applicant and the building inspection department within seven (7) days following the determination and shall be accompanied by a certificate of appropriateness in the case of approval.

(d) *Denial of certificate of appropriateness:*

(1) A denial of a certificate of appropriateness shall be accompanied by a statement of the reasons for the denial. The heritage commission shall make recommendations to the applicant concerning changes, if any, in the proposed project that would cause the commission to reconsider its denial and shall confer with the applicant and attempt to resolve as quickly as possible the differences between the owner and the commission. The applicant may resubmit an amended application or reapply for a building or demolition permit that takes into consideration the recommendations of the commission.

(2) Any person dissatisfied with a determination by the heritage commission concerning a certificate of appropriateness may file an appeal to the city commission within fourteen (14) days of the date of notification of that determination. The city commission must act on this request within thirty (30) days of receipt and must hold a public hearing on the appeal.

(e) *Standards for review:*

(1) An application for a certificate of appropriateness shall be evaluated on a sliding scale, depending upon the designation of the building, structure, site or object in question. The certificate shall be evaluated upon the following criteria:

a. Most careful scrutiny and consideration shall be given to applications for designated landmarks;

b. Slightly less scrutiny shall be applied to properties designated as "contributory" within an historic district;

c. The least stringent evaluation is applied to "noncontributory" properties of a landmark or historic district. There shall be a presumption that a certificate of appropriateness should be approved in this category unless the proposed construction or demolition would significantly encroach upon, damage or destroy the landmark or historic district. If the heritage commission denies a certificate of appropriateness in this category, and the owner appeals to the city commission, the burden to affirm said denial shall be upon the heritage commission and the city commission.

(2) In considering an application for a certificate of appropriateness, the heritage commission shall be guided by the following general standards in addition to any design criteria in this article and in the ordinance designating the landmark or historic district:

a. Every reasonable effort shall be made to provide a compatible use for a property that requires minimal alteration of a building, structure, site or object and its environment, or to use a property for its originally intended purpose.

b. The distinguishing original qualities or character of a building, structure or site and its environment shall not be destroyed. The removal or alteration of any historic material or distinctive architectural feature should be avoided when possible.

c. All buildings, structures and sites shall be recognized as products of their own time. Alterations that have no historical basis and that seek to create an earlier appearance shall be discouraged.

d. Changes that may have taken place in the course of time are evidence of the history and development of a building, structure or site and its environment. These changes may have acquired significance in their own right and this significance shall be recognized and respected.

e. Distinctive stylistic features or examples of skilled craftsmanship that characterize a building, structure or site shall be treated with sensitivity.

f. Deteriorated architectural features shall be repaired rather than replaced, wherever possible. In the event replacement is necessary, the new material should match the material being replaced in composition, design, color, texture and other visual qualities. Repair or replacement of missing architectural features should be based on accurate duplication of features, substantiated by historic, physical or pictorial evidence rather than on conjectural designs or the availability of different architectural elements from other buildings or structures.

g. The surface cleaning of structures shall be undertaken with the gentlest means possible. Sandblasting and other cleaning methods that will damage the historic building materials shall not be undertaken.

h. Every reasonable effort shall be made to protect and preserve archaeological resources affected by, or adjacent to, any project.

i. Contemporary design for alterations and additions to existing properties shall not be discouraged when such alterations and additions do not destroy significant historical, architectural or cultural material, and such design is compatible with the size, scale, color, material and character of the property or neighborhood.

(f) *Design criteria:*

(1) The purpose of the following design criteria is to encourage preservation of intact significant properties, restoration of significant properties, restoration of significant properties that have already undergone insensitive alterations, and new construction, as long as such complements existing buildings and streetscapes. It is not the intention of these criteria to discourage new architectural styles.

(2) In considering any application for a certificate of appropriateness, the commission shall consider the standards for review listed in paragraph (e) above and the following design criteria:

a. Alterations. Specific design criteria for exterior alterations of landmarks and contributing properties within historic districts shall be based on the U.S. Secretary of the Interior's Standards for Rehabilitation, as published in section 36, Code of Federal Regulation, part 67, and as revised from time to time, and by further reference to such specific design criteria as the commission may require for the designation of the landmark or historic district.

b. New construction and additions to existing buildings:

1. The design for new construction shall be sensitive to and take into account the special characteristics that the district is established to protect. Such consideration may include, but should not be limited to, building scale, height, orientation, site coverage, spatial separation from other buildings, facade and window patterns, entrance and porch size and general design, materials, textures, color, architectural details, roof forms, emphasis on horizontal or vertical elements, walls, fences, landscaping and other features deemed appropriate by the commission.

2. New buildings need not duplicate older styles of architecture but must be compatible with the architecture within the district. Styles of architecture will be controlled only to ensure that their exterior design, materials and color are in harmony with neighboring structures.

c. Demolition, relocation and land surface change:

1. Demolition in whole or in part of individual landmarks or any contributory structure within an historic district shall ordinarily not be permitted. Exceptions are allowed only if a structure has been substantially damaged through fire, windstorm, flood or deterioration, and if there is reasonable proof that it would not be economically or physically feasible to rehabilitate. Other exceptions may be allowed if a structure does not possess the integrity, originality, craftsmanship, age or historical significance to merit preservation. However, demolition of past additions which have not gained historical significance and which have disguised or sheathed original elements or facades are encouraged, as long as the intention is to restore such elements or facades.

2. Structures should not be removed from their original site. Exceptions will be allowed only if there is substantial evidence that it would not be practical or economical to utilize the building on its present site. If a structure lies in the path of a public improvement project involving the City of Salina, and if the building is worthy of preservation by virtue of its integrity, originality, craftsmanship, age or historical significance, relocation may be considered as an alternative.

3. Substantial change of land surface within the boundaries of a landmark or historic district should not be permitted. Exceptions will be allowed only if there is substantial evidence that the change would not be detrimental to the historical and architectural character of surrounding structures or landscaping.

d. Signage guidelines. The heritage commission shall receive copies of any request for permit, appeal or variance regarding a sign to be located on a landmark or within an historic district. The commission shall review and approve such requests under the procedures set forth within this section for other permits, subject to the following guidelines:

1. Signs should be designed and placed so as to appear an integral part of the building design, in proportion to the structure and environment and to respect neighboring properties within historic districts.

2. Obscuring or disrupting important design elements is discouraged. Signs should be designed with appropriateness relative to the services of the establishment served.

3. Signs should be maintained if they are determined to be an original part of the building or if they have acquired significance by virtue of their age, design, materials, craftsmanship or historical significance.

4. Illumination of signs should be properly shielded or diffused so as to eliminate glare and be of a low enough wattage to not detract from or set apart the structure.

5. Descriptive signs as an integral part of the structure are encouraged. Such signs could include building dates, historic descriptions, commemorations, etc.

6. Freestanding signs may be considered, if appropriate and necessary to preserve the character of the landmark or historic district.

e. Accessory structures and landscaping:

1. Existing characteristics such as trees, walls, stairs, paving materials, fencing, walkways and other similar structures or site features that reflect the landmark or historic district's history and development shall be retained.

2. Landscaping should be appropriate to the scale and the unique features of the landmark or historic district.

3. Accessory structures to a designated landmark or within the boundaries of a designated historic district shall be appropriate to and compatible with the architectural features of the primary structures. Structures accessory to noncontributory buildings within a designated historic district shall be so designed as to not detract from the historical or architectural character of the district.

(3) Within each of the designated categories, the design criteria will be applied more stringently to properties of greater significance than those with lesser significance as determined by their respective designation. The heritage commission may prepare and adopt more specific design guidelines as it deems necessary to supplement the provisions of this division for the review of certificates of appropriateness. The city commission must first approve such additional design guidelines before said guidelines shall become effective.

(Ord. No. 90-9387, § 1, 6-25-90)

Sec. 42-465. Certificate of economic hardship.

(a) *Purpose.* A certificate of economic hardship serves as an alternative to and wherever a certificate of appropriateness would otherwise be required. The purpose of the certificate of economic hardship is to provide relief where the application of this article would otherwise impose undue hardship.

(b) *Application for certificate.* Application for a certificate of economic hardship shall be made on a form prepared by the heritage commission. Such application may be made in conjunction with or separately from an application for, or upon the denial of, a certificate of appropriateness. The commission shall hold a public hearing concerning such applications within thirty (30) days of receipt of application.

The administrator shall assist all applicants in the preparation of applications for certificates of economic hardship. Every reasonable effort shall be made to limit the costs to the applicant and to assure efficient processing of the application. The commission shall require the submission of financial documents, professional reports and expert testimony only when they are necessary to review an application.

The commission may solicit expert testimony or request that the applicant for a certificate of economic hardship make submissions concerning any or all of the following information before it makes a determination on the application:

(1) Estimate of the cost of the proposed construction, alteration, demolition or removal, and an estimate of any additional cost that would be incurred to comply with the recommendations of the commission for changes for the issuance of a certificate of appropriateness.

(2) A report from qualified or bonded persons with experience in rehabilitation as to the structural soundness of any structures on the property and their suitability for rehabilitation.

(3) Estimated market value of the property in its current condition; after completion of the proposed construction, alteration, demolition, or removal; and after any changes recommended by the commission; and, in the case of a proposed demolition, after renovation of the existing property for continued use.

(4) In the case of a proposed demolition, an estimate from an architect, developer, real estate consultant, appraiser or other real estate professional experienced in rehabilitation as to the economic feasibility of rehabilitation or reuse of the existing structure on the property.

(5) If the property is income-producing, the annual gross income from the property for the previous two (2) years; itemized operating and maintenance expenses for the previous two (2) years; and depreciation, deduction and annual cash flow before and after debt service, if any, during the same period.

(6) Remaining balance on any mortgage or other financing secured by the property and annual debt service, if any, for the previous two (2) years.

(7) All appraisals obtained within the previous two (2) years by the owner or applicant in connection with the purchase, financing or ownership of the property.

(8) Any listing of the property for sale or rent, price asked and offers received, if any, within the previous two (2) years.

(9) Assessed value of the property according to the two (2) most-recent assessments.

(10) Real estate taxes for the previous two (2) years.

(11) Form of ownership or operation of the property, whether sole proprietorship, for-profit or not-for-profit corporation, limited partnership, joint venture, or other.

(12) Any other information considered necessary by the commission to a determination as to whether the property does yield or may yield a reasonable return to the owners.

(c) *Determination.* The commission shall review all the evidence and information required of an applicant for a certificate of economic hardship and make a determination within forty-five (45) days of receipt of the application whether the denial of the application will deprive the owner of the property of reasonable use of, or reasonable economic return on, the property. Written notice of the determination shall be provided in the same manner as notification of a determination concerning a certificate of appropriateness.

(d) *Appeal.* Any person dissatisfied with a determination by the heritage commission concerning a certificate of economic hardship may file an appeal to the city commission within fourteen (14) days of the date of notification of that determination. The city commission must act on this request within thirty (30) days of receipt and must hold a public hearing on the matter.

(Ord. No. 90-9387, § 1, 6-25-90)

Sec. 42-466. Property owned by public agencies.

In the City of Salina many of the historically and architecturally significant buildings, sites, structures and objects are owned by government entities. The preservation of such buildings, sites, structures and

objects is established as national policy in the National Historic Preservation Act of 1966, as amended. The Kansas Historic Preservation Act, as amended, declares that the historical, architectural, archeological and cultural heritage of Kansas is an important asset of the state and that its preservation and maintenance should be among the highest priorities of government. To accomplish the adopted policies of the federal and state governments and to accomplish the purposes of this chapter, the following regulations promote the preservation of publicly owned historically and architecturally significant buildings, sites, structures and objects:

(1) For properties in the City of Salina, the city commission may authorize the submittal of an application to list a building, site, structure, object or district owned by a unit of government on the Kansas or the National Register of Historic Places. The authorization of the pertinent unit of government, if other than the City of Salina, should be obtained before submittal of such an application if required by applicable state or federal law and regulations.

(2) To further the purposes of this chapter, the city may enter into agreements with other units of government. The city shall specifically seek to negotiate an agreement with the state historic preservation officer whereby the state delegates certain responsibilities to the city, including, but not limited to, the review of building and/or demolition permit applications. The commission may recommend, and the city commission shall authorize in behalf of the city, entering into such agreements. Such agreements may address:

a. Designation of landmarks and historic districts;

b. Administration or the use of preservation fund resources;

c. Improvements to landmarks or properties in historic districts, and properties adjacent to landmarks or historic districts;

d. Demolition and clearance of all or a portion of landmarks, properties in historic districts, and properties adjacent to landmarks or historic districts;

e. Efforts to encourage the maintenance of landmarks and properties in historic districts; and

f. Other mutually acceptable provisions.

(3) Proposed improvements to a building, site, structure or object owned by the city (designated as a landmark or located in an historic district) shall be reviewed and approved according to the procedures and regulations listed herein. Proposed demolition and/or clearance of a building, site, structure or object owned by the City of Salina (designated as a landmark or located in an historic district) shall be reviewed and approved according to the procedures and regulations listed herein.

(Ord. No. 90-9387, § 1, 6-25-90)

Sec. 42-467. Exceptions.

Exceptions to the building code of the City of Salina may be available to owners of landmarks and buildings within historic districts as set forth in section 104 of the building code.

(Ord. No. 90-9387, § 1, 6-25-90)

Sec. 42-468. Minimum maintenance requirement.

All real property, and any building, structure or utility thereon, designated as an historic landmark or located within a historic district, whether owned or controlled privately or by any public body, shall receive reasonable care, maintenance and upkeep appropriate for its protection, preservation, enhancement, perpetuation or use in compliance with the terms of this article and the applicable codes of the city.

(Ord. No. 90-9387, § 1, 6-25-90)

Sec. 42-469. Purpose.

The conservation district is designed as an overlay district to supplement designated historic landmarks and districts and may be used in conjunction with any existing zoning district. The purpose of the conservation district is to:

(1) Develop and maintain the appropriate environment for buildings, structures, sites and areas that reflect varied planning and architectural styles and distinguished phases of Salina's history;

(2) Maintain and enhance the many private and public elements that are unique to the fabric, theme and character of each neighborhood and area, including but not limited to, lighting, pathways, street trees, natural areas and other features that may, from time to time, be identified by the citizens and property owners of neighborhoods, areas and subsections thereof;

(3) Abate the removal and demolition of historic structures, and cultivate civic pride in the accomplishments of the past; and

(4) Retain and enhance those properties which contribute to the character of the conservation district and to encourage their adaptation for appropriate use.

(Ord. No. 97-9789, § 1, 2-17-97)

Sec. 42-469.1. Definitions.

[The following words, terms or phrases, as used in this division, shall have their given meanings:]

Conservation district. An area designated as a conservation district by ordinance of the city commission which may contain within definable geographic boundaries, significant sites, structures or objects that, while not of such historic, archeological and/or architectural significance to be designated landmarks or in combination designated an historic district, nevertheless contribute to the overall visual characteristics of the significant sites, structures or objects located within the conservation district.

Significant resource; A site, building, structure, or object identified as possessing historic, archeological and/or architectural significance in the Salina, Kansas, Historic Resources Survey Part II, published June 30,1985, for the Salina City Heritage Commission.

Sec. 42-469.2. Heritage commission powers and duties within conservation districts.

It is intended that the heritage commission will review development within the conservation district in order to maintain underlying and desirable characteristics of structures and areas within such districts, while recognizing the need for innovation and individual expression in the development of these districts. In carrying out this mission, the commission shall have the following powers and duties within conservation districts:

(1) To review applications for demolition or relocation of identified significant resources contained within the conservation district(s);

(2) Approve, conditionally approve or deny demolition or relocation of identified significant resources contained within the conservation district(s) requiring a building permit through the issuance or denial of certificates of appropriateness; or

(3) To review any programs being considered by the city commission that are designed to stimulate preservation and rehabilitation of structures and properties, and to review any proposed action or development utilizing these programs.

(Ord. No. 97-9789, § 1, 2-17-97)

Sec. 42-469.3. Conservation district designation or recision.

An area may be designated or rescinded as a conservation district by the city commission upon recommendation of the heritage commission.

Criteria and procedures for nomination and designation of a conservation district are as described in sections 42-461 thru 42-463, Heritage Conservation District Ordinance 90-9387, adopted June 1990.

(Ord. No. 97-9789, § 1, 2-17-97)

Sec. 42-469.4. Certificate of appropriateness.

A certificate of appropriateness shall be required before any demolition or relocation is undertaken upon any identified significant resource in the conservation district. Application procedures are as follows:

(1) No demolition or moving permit shall be issued within the conservation district, affecting an identified significant resource, until a certificate of appropriateness has been issued by the heritage commission.

(2) Application and review procedures for proposals affecting identified significant resources located within the conservation district are set forth in section 42-464, Certificate of Appropriateness.

Sec. 42-469.5. Standards for certificates of appropriateness.

(a) In considering an application for a certificate of appropriateness the heritage commission shall be guided by the criteria set forth in section 42-464 and the following criteria:

(b) *Relocation.* In considering an application for a certificate of appropriateness for relocation of an identified significant building or structure, the heritage commission shall determine whether the project substantially complies with the following standards:

(1) The proposed relocation will avoid demolition of the building or structure;

(2) The proposed relocation will not diminish the historical or architectural significance of the building or structure or the physical integrity and historical associations of the conservation district;

(3) The proposed relocation will not have a detrimental effect on the structural soundness of the building or structure;

(4) The relocation will be performed by a professional building mover and the project complies with existing city ordinances for moving a building or structure.

(c) *Demolition.* In considering an application for certificate of appropriateness for demolition of an identified significant building or structure, the heritage commission shall determine whether the project substantially complies with the following standards:

(1) The demolition is required to alleviate a threat to public health and safety;

(2) The architectural integrity of the building or structure is no longer evident;

(3) The streetscape within the context of the conservation district would not be negatively affected;

(4) The demolition would not adversely affect the conservation district in relation to remaining surrounding buildings or structure;

(5) The base zoning of the site is incompatible with reuse of the building or structure;

(6) The reuse plan is consistent with existing codes and ordinances for replacement and new construction;

(7) The property has not suffered from willful neglect, as evidenced by the following;

a. Willful or negligent acts by the owner or tenant that leads to deterioration of the building or structure;

b. Failure to perform normal maintenance and repairs;

c. Failure to diligently solicit and retain tenants; and

d. Failure to secure and board the building or structure if vacant.

(8) The denial of a certificate of appropriateness for demolition would cause an economic hardship as defined and determined pursuant to the provisions of section 42-465, Certificate of Economic Hardship.

(d) Upon making findings that the standards set out above are not sufficiently met, the heritage commission may deny the certificate of appropriateness or defer a decision for relocation or demolition for up to one (1) year during which the applicant must conduct a bona fide effort to preserve the building or structure. The one-year period shall begin only when the bona fide effort has commenced. A bona fide effort shall consist of all of the following actions:

(1) Marketing the property for sale or lease;

(2) Filing an application for alternative funding sources for preservation, such as Neighborhood Revitalization Act, etc;

(3) Filing an application for alternative uses if available or feasible, such as rezoning or conditional uses, etc.; and

(4) Obtaining written statements from licensed building contractors or architects detailing the actual costs to rehabilitate the property.

Upon the completion of the one (1) year period and if the applicant provides evidence of a bona fide preservation effort, the heritage commission shall make a final decision for a certificate of appropriateness for relocation or demolition.

(Ord. No. 97-9789, § 1, 2-17-97)

Sec. 42-469.6. Exceptions of certificate of appropriateness for demolition of hazardous structures.

A hazardous structure shall be exempt from the provisions governing demolition if the building official determines, in writing, that the structure currently is an imminent hazard to public safety.

(Ord. No. 97-9789, § 1, 2-17-97)

Sec. 42-469.7. Application requirements for certificates of appropriateness in conservation districts.

Applications for certificates of appropriateness shall be made on a form provided by the city planning office, and shall include the information and material as set forth in section 42-464.

(Ord. No. 97-9789, § 1, 2-17-97)

Sec. 42-469.8. Appeals.

All decisions of the heritage commission including deferrals may be appealed to the city commission pursuant to the provisions of section 42-464.

(Ord. No. 97-9789, § 1, 2-17-97)

Sec. 42-470. Reserved.

DIVISION 2. HERITAGE COMMISSION[9]

Sec. 42-471. Created; purposes.

The heritage commission is hereby created, whose purposes will be to inventory, promote, list, record, protect, preserve and enhance places, areas, features or sites within the city that have special significance in the architectural, archaeological, cultural or historical sense. The commission shall also advise the board of commissioners and other groups concerning preservation of the city's historic and cultural heritage.

(Code 1966, § 36-8A02)

Sec. 42-472. Membership.

The heritage commission shall consist of seven (7) members, all of whom must reside within the city limits, to be appointed by the board of commissioners. The membership of the commission shall include, but not be limited to, one (1) architect, one (1) historian, one (1) archeologist, landscape architect, architectural historian, or urban planner, one (1) city planning commissioner, one (1) member of the real estate or legal profession, and two (2) other individuals that the board of commissioners may wish to consider.

(Code 1966, § 36-8A02; Ord. No. 91-9433, § 1, 3-25-91)

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[9] **Cross references:** Administration, Ch. 2; boards and commissions generally, § 2-136 et seq.

Sec. 42-473. Terms of office.

Appointments to the heritage commission shall be for a term of three (3) years. Three (3) members of the first commission shall serve for three (3) years, two (2) members shall serve for two (2) years and two (2) members shall serve for one (1) year. Thereafter, all members shall serve for three (3) years.

(Code 1966, § 36-8A04)

Sec. 42-474. Compensation; expenses.

The members of the heritage commission shall serve without compensation except for necessary expenses sustained in carrying out their official duties. Such expenses shall be paid by the city as authorized by the board of commissioners.

(Code 1966, § 36-8A04)

Sec. 42-475. Officers.

The heritage commission shall annually elect, from its membership a chairman and vice-chairman, whose terms of office shall be one (1) year. The heritage commission shall appoint a secretary from the city planning department, who shall keep a record of all minutes, resolutions and proceedings and other actions of the commission.

(Code 1966, § 36-8A05)

Sec. 42-476. Vacancies.

All vacancies on the heritage commission shall be filled by the board of commissioners.

(Code 1966, § 36-8A05)

Sec. 42-477. Quorum; voting; minutes.

The presence of four (4) members of the heritage commission shall constitute a quorum, and issues shall be decided by a majority vote of the members present. The minutes of each meeting shall be filed in the office of the city clerk.

(Code 1966, § 36-8A05)

Sec. 42-478. Financial support.

The heritage commission may accept donations, grants and other financial assistance from any public body or any agency, including but not limited to, the city, the county, the state, and any of its agencies, and from any private individual or groups for the purpose of carrying out the functions, powers and duties of the heritage commission, including property acquisition and renovation. These funds shall be utilized exclusively for heritage conservation purposes and shall be kept in a separate account requiring heritage commission and city approval for utilization. The heritage commission may, with the approval of the board of commissioners, enter into agreements and contracts with the public or private consultants for the purpose of assisting the heritage commission in carrying out its functions, duties and powers.

(Code 1966, § 36-8A06)

Secs. 42-479--42-500. Reserved.

ARTICLE X. SIGNS[10]

DIVISION 1. GENERALLY

Sec. 42-501. Permits.

No sign, except for normal repair and for signs listed in sections 42-504 and 42-505, shall be painted, constructed, erected, remodeled, relocated or expanded until a zoning certificate (sign permit) for such sign has been obtained pursuant to the procedure set forth in this article.

(Code 1966, § 36-900)

Sec. 42-502. Zoning certificate (sign permit) required.

(a) The zoning certificate (sign permit) must be obtained from the office of the zoning administrator.

(b) A zoning certificate (sign permit) shall be either issued or refused by the zoning administrator within ten (10) days after the receipt of an application therefor or within such further period as may be agreed to by the applicant. No zoning certificate for any sign shall be issued unless the sign complies with the regulations of this article.

(c) A zoning certificate (sign permit) shall become null and void four (4) months after the date on which it is issued unless within such four (4) month period, construction, building, moving, remodeling or reconstruction of a structure or sign is commenced or a use is commenced.

(Code 1966, § 36-901)

Sec. 42-503. Sign standards.

(a) The gross surface area of a sign shall be the sum of all surface areas of all sign faces, except that for signs designed as double faced signs, with both faces parallel and the distance between the faces does not exceed two (2) feet, then only one (1) face of the sign shall be considered in determining the gross surface area. When two (2) or more signs are located on a zoning lot, the gross surface area of all signs on the lot shall not exceed the maximum allowable for the district regulations. For computing the area of any wall sign which consists of letters, numbers and symbols mounted or painted on a wall, the area shall be deemed to be the area of the smallest rectangular figure which can encompass all of the letters, numbers or symbols.

(b) Sign height shall be measured from ground level at the base of or below the sign to the highest element of the sign.

(c) All signs must conform to the regulations and design standards of the building code of the city and all wiring of all electrical signs must conform to the electrical code of the city.

(d) Illuminated signs shall be shaded wherever necessary to avoid direct casting of light upon property located in any residential district or upon any public street or park. Any illuminated sign located on a lot adjacent to or across the street from any residential district, which sign is visible from such residential district, shall be illuminated only during business hours or between the hours of 7:00 a.m. and 10:00 p.m.

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[10] **Cross references:** Sign code, § 8-381 et seq.

(e) No signs with flashing, pulsating or moving lights or lights which create the illusion of movement shall be permitted in any residential district or in the C-1, C-2, or C-4 districts. A sign whereon the current time and/or temperature is indicated by intermittent lighting is permitted in all districts except residential districts. Computer-operated electronic message signs are permitted in all districts except residential, C-1, and C-2 districts. No signs with moving parts, revolving beacons, strobe lights or signs which emit an audible sound shall be permitted in any district.

(f) No sign shall block any required accessway or window.

(g) No sign shall be attached to a tree or utility pole whether on public or private property.

(h) On corner and through lots, each lot line that abuts a street or highway shall be considered a separate street frontage.

(i) No metal sign shall be located within eight (8) feet vertically and four (4) feet horizontally of electric wires or conductors in free air carrying more than forty-eight (48) volts, whether or not such wires or conductors are insulated or otherwise protected.

(j) No sign shall be maintained at any location where by reason of its position, size, shape or color it may obstruct, impair, obscure, interfere with the view of, or be confused with any traffic-control sign, signal or device, or where it may interfere with, mislead or confuse traffic.

(k) No sign shall be located in any vision triangle formed by the curb lines of any two (2) intersecting streets, except signs mounted ten (10) feet or more above the ground whose supports do not constitute an obstruction. (See also section 42-81).

(l) No sign shall be permitted to locate on public property in any district. In the C-4 district, signs may extend over public property no farther than six and one-half (6 1/2) feet or to within two (2) feet of the back of the curb, whichever distance is smaller. Any sign so extending must be a minimum of ten (10) feet above grade.

(m) All signs which are more than four (4) feet above grade shall be securely fastened so as to prevent movement.

(n) Any time a sign is removed from its structural support, except for the purposes of maintenance, repair, replacement, repainting or cleaning, or due to an act of God, the structural support shall be removed within twenty-four (24) hours, provided further, that if a sign removed for the purposes of maintenance, repair, replacement, repainting or cleaning, or due to an act of God, if not reinstalled within thirty (30) days of the removal, then the structural support shall be removed within twenty-four (24) hours.

(Code 1966, § 36-901; Ord. No. 80-8821, § 1, 11-24-80; Ord. No. 81-8857, § 1, 6-22-81; Ord. No. 90-9381, §§ 1, 9, 5-14-90; Ord. No. 06-10337, § 1, 7-10-06)

Section 42-504. Exemptions Generally.

The following signs shall be exempt from the requirements of this article.

(1) Flags of a government or of a political, civic, philanthropic, educational or religious organization, displayed on private property;

(2) Signs of a duly constituted governmental body, including traffic or similar regulatory devices, legal notices, warnings at railroad crossings, and other instructional or regulatory signs having to do with health, hazards, parking, swimming, dumping, etc.;

(3) Memorial signs and tablets displayed on private property;

(4) Address numerals and other signs required to be maintained by law or governmental order, rule or regulation, provided that the content and size of the signs does not exceed the requirements of such law, order, rule or regulation;

(5) Small signs, not exceeding five (5) square feet in area, displayed on private property for the convenience of the public, including signs to identify entrance and exit drives, parking areas, one-way drives, restrooms, freight entrances, and the like;

(6) Scoreboards in athletic stadiums;

(7) Noncommercial opinion signs and political signs not exceeding eight (8) square feet displayed on private property in nonresidential and residential zoning districts.

(8) Banner signs across public rights-of-way not exceeding six (6) feet high and forty-eight (48) feet long may only be displayed from crosswalk frames between Ash Street and Mulberry Street over Santa Fe Avenue in accordance with limitations specified by signed agreement with the Salina City Commission.

(9) Window signs identifying a business, product or service offered on the premises that is affixed to the interior of the window of a shop or store front and not covering over thirty-three (33) percent of the total window area on a single wall.

(Code 1966, § 36-903; Ord. No. 90-9381, §§ 2, 9, 5-14-90; Ord. No. 04-10218, § 1, 10-11-04)
Editor's Notes: Ord. No. 04-10218 adopted § 42-504, combining former §§ 42-504, 8-386, and 8-387.

Sec. 42-505. Exemption from zoning certificate requirement.

The following signs shall be exempt from the zoning certificate (sign permit) requirements of section 42-502, but shall comply with all of the other requirements of this article and of the applicable district regulations;

(1) Illuminated nameplate signs not exceeding two (2) square feet in gross surface area accessory to a single-family or two-family dwelling;

(2) Illuminated identification signs not exceeding forty (40) square feet in gross surface area accessory to a multiple-family dwelling;

(3) Illuminated bulletin board signs not exceeding forty (40) square feet in gross surface area accessory to a church, school or public or nonprofit institution; subject to the provisions of section 42-503(d);

(4) Illuminated business signs when located on property used for agricultural purposes and pertaining to the sale of agricultural products produced on the premises.

(Code 1966, § 36-904)

Sec. 42-506. Classification of signs--Functional types.

The following signs are classified by function:

(1) *Advertising sign.* A sign which directs attention to a business, commodity, service or entertainment conducted, sold, or offered at a location other than the premises on which the sign is located, or to which it is affixed (off-premise sign).

(2) *Bulletin board sign.* A sign that indicates the name of an institution or organization on whose premises it is located and which contains the name of the institution or organization, the name or names of persons connected with it, and announcements of persons, events or activities appearing or occurring at the institution. Such signs may also present a greeting or similar message.

(3) *Business sign.* A sign that directs attention to a business or profession conducted, or to a commodity or service sold, offered or manufactured, or an entertainment offered, on the premises where the sign is located or to which it is affixed.

(4) *Construction sign.* A temporary sign indicating the names of architects, engineers, landscape architects, contractors, and similar artisans involved in the design and construction of a structure or project only during the construction period and only on the premises on which the construction is taking place.

(5) *Identification sign.* A sign having the name and address of a building, business, development or establishment. Such signs may be wholly or partly devoted to a readily recognized symbol.

(6) *Nameplate sign.* A sign giving the name and/or address of the owner or occupant of a building or premises on which it is located, and where applicable, a professional status.

(7) *Noncommercial opinion signs* shall mean a sign which does not advertise products, goods, businesses or services and which expresses an opinion or other point of view and shall include a political campaign sign.

(8) *Political campaign sign* shall mean a sign which does not advertise products, goods, businesses or services and which either endorses by name a specific registered candidate for elective office or expresses a position in relation to a ballot question.

(9) *Real estate sign.* A sign pertaining to a sale or lease of the lot or tract of land on which the sign is located, or to the sale or lease of one or more structures, or a potion thereof located thereon."

(Code 1966, 36-905; Ord. No. 04-10218, § 1, 10-11-04)
Editor's Notes: Ord. No. 04-10218 adopted § 42-506, cominb §§ 8-385 and former 42-506.

Sec. 42-507. Same--Structural types.

The following signs are classified as types:

(1) *Awning, canopy and marquee sign.* A sign that is mounted or painted on, or attached to, an awning, canopy or marquee that is otherwise permitted by this chapter. No such sign shall project more than twenty-four (24) inches above, below, or twelve (12) inches beyond the physical dimensions of the awning, canopy or marquee, and a minimum of eight (8) feet of clearance shall be provided above grade.

(2) *Decorative sign.* A sign or display fabricated of canvas, cloth, fabric, plastic, plywood, or other light, impermanent material and designed or intended to be displayed in connection with an event for a short period of time.

(3) *Ground sign.* Any sign placed upon, or supported by, the ground independently of the principal building or structure on the property. Signs on accessory structure shall be considered ground signs.

(4) *Mobile sign.* A sign that is not permanently affixed to the ground or a building and is designed or constructed to be easily moved from one (1) location to another, including signs mounted upon or designed to be mounted on a trailer, even if the sign has had its wheels removed.

(5) *Pole sign.* A sign that is mounted on a freestanding pole, the bottom edge of which sign is six (6) feet or more above ground level.

(6) Projecting sign. A sign that is wholly or partly dependent upon a building for support and which projects more than twelve (12) inches from such building.

(7) *Roof sign.* A sign erected, constructed and maintained wholly upon or projecting above any portion of the roof of a building or having the roof as the principal means of support. A mansard shall be considered part of the wall of the building.

(8) *Wall sign.* A sign fastened to or painted on a wall of a building or structure in such a manner that the wall becomes merely the supporting structure or forms the background surface, and which does not project more than twelve (12) inches from such building.

(Ord. No. 88-9283, § 1, 11-14-88; Ord. No. 90-9381, §§ 3, 9, 5-14-90)

Sec. 42-508. Temporary signs.

(a) The following signs shall be exempt from the zoning certificate (sign permit) requirements of section 42-502, but shall comply with all of the requirements of this article and the applicable district regulations:

(1) Advertising signs for special public events sponsored by governmental, philanthropic, and nonprofit organizations, subject to the following provisions:

a. Only one (1) sign shall be allowed on a zoning lot. Such sign shall not exceed thirty-two (32) square feet in area.

b. Signs will only be permitted seven (7) days in advance of the event and must be removed within twenty-four (24) hours after the close of the event.

(2) Decorative business signs such as banners, pennants, streamers, ribbons, flags, balloons, or other attention-attracting devices, subject to the following limitations:

a. Signs placed over an existing sign face, placed at least eight (8) feet above ground level on existing poles or other supports which serve another primary purpose or placed on an existing building, canopy, fence or other structure located behind the front yard setback line shall have no special event or time limitations.

b. Signs placed in any other location shall only be used for special promotional events which shall only include the future opening of a new business, grand opening for a new business, and licensed going-out-of-business sales. The sign shall be limited to a single sign no larger than thirty-two (32) square feet displayed for a maximum of twenty-one (21) days for each such event.

(b) Mobile signs may be permitted upon issuance of a zoning certificate (sign permit) and when in compliance with all of the other requirements of this article, the applicable district regulations, and of the following provisions:

(1) Only one (1) mobile sign shall be allowed on a zoning lot.

(2) Mobile signs shall not exceed thirty-two (32) square feet in area.

(3) Mobile signs shall not be placed within twenty-five (25) feet of an existing pole sign or ground sign, within fifty (50) feet of another mobile sign or within the clear vision triangle of any street or driveway.

(4) Mobile signs shall not be placed on the premises of an establishment which has an existing pole sign or ground sign located in the front yard.

(5) Mobile sign permits shall be valid for not more than thirty (30) days. Each establishment may be issued not more than four (4) permits during a calendar year for a combined total of sixty (60) days.

(6) Mobile signs shall be of rigid construction and anchored or weighted to prevent movement or overturning by wind.

(7) Electrical lines shall not lie on the ground where vehicular or pedestrian traffic is permitted. Use of aboveground extension cords is prohibited. All wiring shall comply with the electrical code of the city.

(8) Use of red, yellow, or green external lighting shall be prohibited. Any light shall be constant in intensity or color at all times.

(Ord. No. 88-9283, § 2, 11-14-88; Ord. No. 96-9776, § 1, 1-6-97)

Sec. 42-509. Maintenance and safety.

All signs, including attendant braces, supports, guys and anchors, shall be kept in a safe and sound structural condition and maintained in a presentable state of appearance. Defective parts shall be repaired or replaced and display surfaces shall be kept neatly painted or posted and readable at all times. Every sign and its immediate surroundings shall be maintained in a clean and sanitary condition and free of all offensive substances, rubbish and weeds. All maintenance required is the responsibility of the owner of the sign. Where ownership cannot be determined, the property owner is responsible for the maintenance of the sign. If the zoning administrator shall find that any sign is unsafe, insecure, has been abandoned, or has been erected or is beingmaintained in violation of the article, he shall give written notice to the owner thereof to repair, alter or remove the sign so as to comply with the standards herein set forth.

(Ord. No. 90-9381, § 4, 5-14-90)

Sec. 42-510. Abandoned signs.

Any sign which no longer advertises a bona fide business conducted, product sold or service provided shall be deemed to be abandoned and shall be removed at the expense of the owner. Sign panels shall be removed within ninety (90) days of the vacation of the premises or discontinuance of the advertised activity. Sign frames and poles shall be removed within one (1) year of vacation of the premises or discontinuance of the advertised activity unless new sign panels are installed advertising a bona fide activity. Provided however, an appeal for an extension of up to one (1) year for removal of sign frames and poles may be granted by the design review board or board of zoning appeals when found to be justified. The installation of new sign panels on the same sign frame and pole shall not require the issuance of a new sign permit. If however, a new permit shall be required then the sign shall comply with the provisions of this article.

(Ord. No. 90-9381, § 7, 5-14-90; Ord. No. 98-9897, § 1, 11-2-98)

Secs. 42-511--42-515. Reserved.

DIVISION 2. DISTRICT REGULATIONS.

Sec. 42-516. A-1 agricultural district.

The following sign regulations shall apply in the A-1 agricultural district:

(1) Functional types permitted: Any type listed in section 42-506.

(2) Structural types permitted: Any type listed in section 42-507.

(3) Number of signs permitted: One (1) per zoning lot provided that advertising signs shall not be permitted within five hundred (500) feet of a residence and not closer than five hundred (500) feet of a residence and not closer than five hundred (500) feet from another advertising sign.

(4) Maximum gross surface area:

a. Advertising sign: Four hundred (400) square feet.

b. All other types: Thirty-two (32) square feet.

(5) Maximum height: Thirty (30) feet.

(6) Required setback: None required, except that any sign which exceeds two hundred (200) square feet in gross surface area shall maintain the same setback that is required for principal structures and in no case shall a sign project over public property.

(7) Illumination: Illumination of signs is prohibited.

(Code 1966, § 36-907(1))

Sec. 42-517. RS, R, R-1, R-2, R-2.5, R-3 and MH residential districts.

The following sign regulations shall apply in the RS, R, R-1, R-2, R-2.5, R-3 and MH residential districts:

(1) Functional types permitted:

a. Bulletin board signs;

b. Business signs;

c. Construction signs;

d. Identification signs;

e. Nameplate signs;

f. Real estate signs.

(2) Structural types permitted:

a. Ground signs;

b. Wall signs;

c. Awning, canopy and marquee signs (when used in conjunction with a conditional use along a collector or arterial street only).

(3) Number of signs permitted:

a. Ground sign: one (1) per zoning lot.

b. Wall signs: two (2) per zoning lot.

c. Awning, canopy and marquee signs: one (1) per zoning lot.

d. A maximum of three (3) signs is permitted per zoning lot.

(4) Maximum gross surface area:

a. Bulletin board signs: Thirty-two (32) square feet.

b. Business signs: Eight (8) square feet.

c. Construction signs: Thirty-two (32) square feet.

d. Identification signs: Thirty-two (32) square feet.

e. Nameplate signs: Two (2) square feet.

f. Real estate signs: Eight (8) square feet per lot, provided that one sign of not more than one hundred (100) square feet in area announcing the sale of lots and/or homes in a subdivision may be located on such development. Such signs shall be removed at the end of three (3) years from the date of issuance of permit, or when seventy-five (75) percent of the lots in the subdivision or development have been sold, whichever occurs sooner.

g. Business signs: When used in conjunction with a conditional use and only along a collector or arterial street; one (1) square foot of sign area for each lineal foot of building frontage, not to exceed thirty-two (32) square feet.

(5) Maximum height:

a. All signs shall be placed flat against a building or designed as part of an architectural feature thereof except that signs may be detached if they do not exceed a height of six (6) feet or project into any required building setback area.

b. No height limit is specified for signs placed flat against or painted on the wall of a building, or other attached signs provided all other provisions of this section are complied with.

(6) Required setback:

a. All signs, except real estate and construction signs, shall maintain the same setback required for principal structures.

b. When used in conjunction with a conditional use and only along a collector or arterial street, the entire sign shall be set back at least ten (10) feet.

(7) Illumination: No sign shall be illuminated, except that identification signs and bulletin board signs may internally or externally illuminated, provided that no direct light shall be cast upon any residential property.

(Code 1966, § 36-907(2); Ord. No. 80-8825, § 1, 12-15-80; Ord. No. 85-9074, § 1, 6-3-85; Ord. No. 91-9424, § 1, 2-4-91; Ord. No. 03-10126, § 1, 1-13-2003)

Sec. 42-518. U University district.

The following sign regulations shall apply in the university district:

(1) Functional types permitted:

a. Bulletin board signs;

b. Construction signs;

c. Identification signs;

d. Nameplate signs.

(2) Structural types permitted:

a. Ground signs;

b. Pole signs;

c. Wall signs.

(3) Number of signs permitted: no limitation except as specified in subsection (4).

(4) Maximum gross surface area:

a. One (1) square foot for each six (6) lineal feet of building frontage except as noted in b. below.

b. Outdoor football/soccer stadiums shall be permitted no more than two (2) signs not to exceed one hundred sixty (160) square feet each. These signs shall be located within fifty (50) feet of the outdoor stadium and separated by a minimum of fifty (50) feet.

(5) Maximum height: No height limit is specified for signs placed flat against a building, painted on the wall of a building or designed as a part of an architectural feature thereof. Detached signs shall not exceed ten (10) feet in height.

(6) Required setback:

a. All signs of thirty-two (32) square feet or less shall maintain a minimum setback of ten (10) feet.

b. All signs larger than thirty-two (32) square feet in area shall maintain the required setback for principal structures in the "U" university district.

(7) Illumination: Only signs which are illuminated by reflected light from a source not contained within the sign itself shall be permitted. Internally illuminated signs shall not be permitted. No direct light shall be cast upon any residential property.

(Ord. No. 80-8825, § 2, 12-15-80)

Sec. 42-519. C-1 restricted business district.

The following sign regulations shall apply in the C-1 restricted business district:

(1) Functional types permitted: any type listed in section 42-506, except advertising signs.

(2) Structural types permitted: any type listed in section 42-507, except roof signs, projecting signs and mobile signs.

(3) Number of signs permitted:

a. Ground sign: One per zoning lot.

b. Pole sign: One per zoning lot.

c. Others: Two (2) per zoning lot.

(4) Maximum gross surface area: one square foot of sign area for each lineal foot of building frontage, not to exceed thirty-two (32) square feet.

(5) Maximum height:

a. All signs shall be placed flat against a building or designed as part of an architectural feature thereof except that signs may be detached it they do not exceed a height of eight (8) feet or project into any required building setback area.

b. No height limit is specified for signs placed flat against or painted on the wall of a building, or for other attached signs provided all other provisions of this section are complied with.

(6) Required setback: entire sign shall be set back ten (10) feet.

(7) Illumination: illuminated signs shall be permitted.

(Code 1966, § 36-907(3))

Sec. 42-520. C-2 neighborhood shopping district.

The following sign regulations shall apply in the C-2 neighborhood shopping district:

(1) Functional types permitted: Any type listed in section 42-506, except advertising signs.

(2) Structural types permitted: Any type listed in section 42-507, except mobile signs, projecting signs, and roof signs.

(3) Number of signs permitted: Two (2) per business.

(4) Maximum gross surface area: One square foot of sign area for each lineal foot of building frontage.

(5) Maximum height: Thirty (30) feet.

(6) Required setback: No minimum setback, except that pole sign supports must maintain a ten-foot setback.

(7) Illumination: Illuminated signs shall be permitted.

(Code 1966, § 36-907(4))

Sec. 42-521. C-3 and C-4 commercial districts.

The following sign regulations shall apply in the C-3 shopping center and C-4 central business districts:

(1) *Functional types permitted.* Any type listed in section 42-506, except that advertising signs for other than special public events sponsored by governmental, philanthropic and nonprofit organizations shall be prohibited in the C-4 district and district and advertising signs other than computerized electronic message displays shall be prohibited in the C-3 district.

(2) *Structural types permitted.* Any type listed in section 42-507, except that mobile signs and roof signs shall be prohibited in the C-4 district.

(3) *Number of signs permitted.* No maximum limitation in the C-3 district. In the C-4 district, four (4) signs per business with a maximum of ten (10) signs per zoning lot; provided, however, the following additional restrictions shall apply:

a. No more than one (1) projecting sign or ground/pole sign shall be allowed per street frontage.

b. Ground/pole signs shall be allowed only on zoning lots without buildings or those with buildings having a front yard setback of ten (10) feet or more.

c. Ground/pole signs and projecting signs shall not be allowed in combination along the same street frontage.

(4) *Maximum gross surface area:*

a. In the C-3 district, four (4) square feet of sign area for each lineal foot of building frontage; where no building frontage exists, one (1) square foot of sign area for each lineal foot of street frontage.

b. In the C-4 district, three (3) square feet of sign area for each lineal foot of building frontage for allowable signage other than a ground/pole sign or a projecting sign; where no building frontage exists, one (1) square foot of sign area for each lineal foot of street frontage. Irrespective of building or street frontage, no property or zoning lot shall be restricted to less than thirty-six (36) square feet of sign area. No more than sixty-seven (67) percent of allowable sign area may be displayed on any building wall or street frontage. In regards to projecting signs and ground/ pole signs, the following maximum area limitations shall apply:

Building Frontage	Projecting Signs*	Ground/Pole Signs
25 feet or less	30 sq. ft.	45 sq. ft.
26-50 feet	36 sq. ft.	54 sq. ft.
51 feet or more	48 sq. ft.	72 sq. ft.

*The maximum area for a projecting sign on a building wall without street frontage shall be four (4) square feet.

(5) *Maximum height.* In the C-3 district, no sign shall project more than thirty (30) feet above the highest point of the roof of the structure associated with or on which it is located. In the C-4 district, projecting or wall signs may not project above the lowest point of the roof of the structure to which it is attached; ground/pole signs may not exceed thirty (30) feet in height above grade.

(Ord. No. 90-9381, §§ 5, 9, 5-14-90)

Sec. 42-522. C-5, C-6 and C-7 commercial districts.

The following sign regulations shall apply in the C-5, service commercial, C-6, heavy commercial and C-7, highway commercial districts:

(1) Functional types permitted: Any type listed in section 42-506.

(2) Structural types permitted: Any type listed in section 42-507.

(3) Maximum gross surface area:

a. Four (4) square feet of sign area for each lineal foot of building frontage.

b. Where no building frontage exists, four (4) square feet of sign area for each lineal foot of street frontage.

(4) Maximum height:

a. Signs located on an arterial, collector or residential street: Fifty (50) feet.

b. Signs oriented toward a designated interstate highway and located on property within six hundred sixty (660) feet of the interstate right-of-way: Fifty (50) feet above the interstate roadbed and associated bridges and ramps, with a maximum sign height of seventy (70) feet. Where the interstate roadbed is below the grade elevation of adjoining property, the maximum sign height shall be fifty (50) feet.

c. Artificially raising the ground level through filling or berming for the sole purpose of increasing sign height shall not be permitted.

(5) Required setback: None required, except that any sign which exceeds two hundred (200) square feet in gross surface area shall maintain the same setback required for principal structures, and in no case shall a sign project over public property.

(6) Illumination: Illuminated signs shall be permitted.

(Code 1966, § 36-907(6); Ord. No. 95-9708, § 1, 10-16-95)

Sec. 42-523. I-1 industrial park district.

The following sign regulations shall apply in the I-1 industrial park district:

(1) Functional types permitted: Any type listed in section 42-506, except advertising signs.

(2) Structural types permitted: Any type listed in section 42-507, except roof signs.

(3) Number of signs permitted: Two (2) per establishment.

(4) Maximum gross surface area: One (1) square foot for each two (2) feet of lineal street frontage.

(5) Maximum height: Thirty (30) feet.

(6) Required setback: Ten (10) feet.

(7) Illumination: Illuminated signs shall be permitted.

(Code 1966, § 36-907(7))

Sec. 42-524. I-2 and I-3 industrial districts.

The following sign regulations shall apply in the I-2 light industrial and I-3 heavy industrial districts:

(1) Functional types permitted: Any type listed in section 42-506.

(2) Structural types permitted: Any type listed in section 42-507.

(3) Number of signs permitted: No limitation.

(4) Maximum gross surface area: Four (4) square feet for each lineal foot of street frontage.

(5) Maximum height:

a. Roof sign: Thirty (30) feet above the highest point of the structure on which the sign is located.

b. All other signs: Thirty (30) feet.

(6) Required setback: None required.

(7) Illumination: Illuminated signs shall be permitted.

(Code 1966, § 36-907(8))

Sec. 42-525. Historic signs.

(a) Specific provisions of this sign ordinance may be waived by the board of city commissioners for designated historic signs upon application by the owner or by city-initiated application.

(b) Upon filing of said application, the heritage commission, with or without review and recommendation from the [Salina Business District Number 1] Design Review Board, may recommend, and the city commission may declare, a sign to be of "historic significance" by making findings according to the guidelines below. Except for requirement pertaining to safety, structural integrity or maintenance, a sign so designated shall be deemed to conform to this article.

(c) To be designated "historically significant," a sign must be found to comply with all of the following guidelines:

(1) The sign has been in continuous existence at the present location for not less than twenty-five (25) years.

(2) The sign possesses such exemplary design, technology, craftsmanship, materials and/or a means of illumination that it significantly enhances the cultural, historical and/or aesthetic quality of the community.

(3) The sign has not been significantly altered from its historic period or, if altered, is restorable to its historic function and appearance.

(d) Once designated "historically significant," removal of the sign shall be subject to the provisions of article IX, regarding demolition or removal of heritage landmarks.

(Ord. No. 90-9381, § 8, 5-14-90)

Secs. 42-526--42-540. Reserved.

ARTICLE XI. OFF-STREET PARKING AND LOADING[11]

DIVISION 1. GENERALLY

Secs. 42-541--42-550. Reserved.

[11] **Cross references:** Stopping, standing and parking generally, § 38-41 et seq.

DIVISION 2. OFF-STREET PARKING

Sec. 42-551. Applicability.

In any zoning district, all structures built and all uses established hereafter shall provide accessory off-street parking in accordance with the regulations of this division. When an existing structure or use is expanded, accessory off-street parking shall be provided in accordance with the regulations of this division for the total area or capacity of such expansion.

(Code 1966, § 36-1000(1))

Sec. 42-552. General provisions.

(a) *Utilization.* Required accessory off-street parking facilities provided for the uses hereinafter listed shall be solely for the parking of motor vehicles in operating condition of patrons, occupants or employees of such uses.

(b) *Area.* A required off-street parking space shall be at least eight (8) feet six (6) inches in width and at least nineteen (19) feet in length, exclusive of access drives or aisles, ramps, columns, office or work areas.

(c) *Access.* Each required off-street parking space shall open directly upon a driving aisle having a width in accordance with the angle of parking as follows:

Aisle width	*Parking angle*				
	0°	*30°*	*45°*	*60°*	*90°*
One-way traffic	12'	11'	12'	17'	24'
Two-way traffic	19'	20'	20'	20'	24'

Driveways connecting an off-street parking area to a street shall not be less than ten (10) feet in width for one-way traffic and eighteen (18) feet in width for two-way traffic except that ten-foot wide driveways are permissible for two-way traffic when the driveway is not longer than fifty (50) feet, it provides access to no more than 6 spaces, and sufficient turnaround space is provided so that vehicles will not back into a public street.

(d) *Open and enclosed parking.* No open off-street parking, driving or maneuvering areas shall cover more than sixty (60) percent of the total area of any front yard in any district except in the C-4, C-5, C-6, I-2, and I-3 districts. No motor vehicle or recreation vehicle shall be parked in any front yard except upon a driveway or adjacent surfaced parking area. The area devoted to driveway purposes shall not be considered in determining whether off-street parking requirements have been met except for single family or two-family detached and single-family attached dwellings. Enclosed buildings and carports containing off-street parking shall be subject to the yard requirements applicable to structures in the district in which located.

(e) *Design and maintenance:*

(1) *Design.* Off-street parking spaces shall comply with such design standards relating to curb length, stall depth, driveway width, island width, barriers, and ingress and egress as may be established from time to time by the city. Off-street parking spaces may be open to the sky or enclosed in a building.

(2) *Surfacing.* All open off-street parking spaces, access drives and aisles shall be paved with asphalt or concrete. As an alternative to asphalt or concrete, off-street parking spaces, access drives and aisles may be surfaced with alternative methods of paving, provided that the pavement surface and base for any alternative to asphalt and concrete must be designed by a professional engineer licensed in the State of Kansas and reviewed and approved by the City Engineer. A pavement cross-section shall be provided demonstrating the structural ability of the design to support the anticipated vehicle loads including fire apparatus.

The paved surfacing requirement shall not apply to the following uses: any permitted use in the RS, R, R-1, R-2, R-2.5, R-3, or MH residential zoning district with a parking requirement of six (6) or fewer spaces or any permitted use in the A-I agricultural, I-2 or I-3 industrial zoning district. Although exempt from the paving requirement, access drives and parking spaces for the above uses shall be graded and surfaced with crushed stone, gravel, or other all-weather material. All parking areas shall be properly maintained and kept free of potholes, weeds, dust, trash and debris. Loose material shall be contained within the designated parking area and kept from spilling into public streets.

(3) *Screening.* All open off-street parking areas containing more than six (6) parking spaces shall be effectively screened on each side that adjoins any property situated in a single-family residential district by a wall, fence or densely planted compact evergreen hedge not less than six (6) feet or more than eight (8) feet in height. Parking areas shall be arranged and designed so as to prevent damage to, or intrusion into, such wall, fence or hedge.

(4) *Lighting.* Any lighting used to illuminate off-street parking areas shall be directed away from residential properties in such a way as not to interfere with the residential use.

(5) *Storage and repair.* No storage of merchandise, materials, equipment, refuse containers, inoperable vehicles or the repair of vehicles shall be permitted in required off-street driving aisles or parking spaces.

(6) *Computation.* When determination of the number of off-street parking spaces required by this division results in a requirement of a fractional space, the fraction of one-half or less may be disregarded, and a fraction in excess of one-half shall be counted as one (1) parking space.

(7) *Collective and joint use provisions.* One (1) off-street parking area may serve several different uses provided the area contains the total required spaces for all uses. In addition, different uses may make joint use of the same parking spaces provided written assurances are given that such uses operate at different or nonconflicting times. All regulations covering the location of accessory parking spaces in relation to the uses served shall be adhered to.

(8) *Location.* All parking spaces required to serve buildings or uses shall be located on the same zoning lot or in the same zoning district as such building or use, except that such parking spaces may be provided in an adjacent zoning district if such district allows parking lots or parking garages as a permitted use. But in no instance shall required off-street parking be located more than six hundred (600) feet (as measured along lines of public access) from the use which it serves.

(9) *Employee parking.* Parking spaces required on an employee basis shall be based on the maximum number of employees on duty or residing, or expected to be on duty or residing, or both, on the premises at any one (1) time, at the same time as the building permit is issued.

(10) *Maximum number of spaces.* The total number of accessory parking spaces provided for a single-family, a two-family or multiple-family dwelling shall not exceed that required by this

division, for such use or for any equivalent new use by more than fifty (50) percent or four (4) spaces, whichever number is greater.

(11) *Exempt zone.* Notwithstanding any other provision of this chapter, no accessory off-street parking facilities shall be required for any structure in the C-4 central business districts except residences, and those uses specifically required to provide parking.

(12) *Determination of required spaces.* When determining the required number of off-street parking spaces for apartment houses, lodging, boarding or rooming houses, fraternities, sororities, and dormitories, an occupant shall mean an individual separate and distinct from the immediate family of the owner, landlord or operator.

(Code 1966, § 36-1000(2); Ord. No. 87-9205, § 1, 9-28-87; Ord. No. 88-9243, § 1, 4-11-88; Ord. No. 90-9419, § 1, 12-17-90; Ord. No. 06-10327, § 1 4-24-06)

Sec. 42-553. Off-street parking space requirements.

Off-street parking spaces accessory to the uses hereinafter designated shall be provided as follows:

(1) *Dwelling and lodging uses.*

a. Bed and breakfast: One (1) space for each two (2) guest rooms, plus two (2) spaces for the owner/occupant.

b. Dormitories, fraternities, sororities and other loading facilities for students: One (1) space for each occupant for the first twenty (20) occupants and three-fourths (3/4) space for each occupant thereafter.

c. Family-care facilities: One (1) space for every two (2) residents, except where residents are unable to drive, plus one (1) space for each employee on the premises and one (1) space for guest parking for every eight (8) residents.

d. Group-care facilities: Same as family-care facilities.

e. Group-rehabilitation facilities: Same as family-care facilities.

f. Group day-care centers: One (1) space for each employee on the premises, plus one (1) space for loading and unloading for every twelve (12) children and two (2) spaces for resident or facility vehicles.

g. Home occupations: Two (2) spaces for the owner/occupant.

h. Hotels and motels: One (1) space for each room, plus seventy-five (75) percent of spaces otherwise required for accessory restaurants, assembly rooms and related facilities.

i. Manufactured and mobile home parks: Two (2) spaces for each home.

j. Multiple-family dwellings for elderly and/or handicapped persons: One (1) parking space for each dwelling unit for the first twenty (20) units and three-fourths (3/4) space for each unit thereafter.

k. Rooming and boarding houses: One (1) space for each sleeping room beyond the first two (2) rooms, plus two (2) spaces for the owner/occupant.

l. Single-family, two-family and townhome dwellings: Two (2) spaces for each dwelling unit.

m. Three-family and multiple-family dwellings: Two (2) spaces for each dwelling unit for the first twenty (20) units and one and one-half (1 1/2) spaces for each unit thereafter.

(2) *Commercial and industrial uses:*

a. Automobile repair garages and service stations: Two (2) spaces for each service bay, plus one (1) space for each employee, but not less than a total of five (5) spaces.

b. Banks and financial institutions: One (1) space for each two hundred (200) square feet of floor area devoted to public banking services, plus one (1) space for each three hundred (300) square feet of floor area devoted to office use, plus four (4) stacking spaces for each drive-up window.

c. Barber shops or beauty parlors: Two (2) spaces per chair.

d. Bowling alleys: Five (5) spaces per lane, plus seventy-five (75) percent of spaces otherwise required for accessory uses such as restaurants and game rooms.

e. Business and professional offices: One (1) space for each three hundred (300) square feet of floor area.

f. Car washes: Four (4) stacking, holding and drying spaces for each stall in self-serve establishments; six (6) stacking, holding and drying spaces for each stall in attended or automated establishments.

g. Cartage, express, parcel delivery and freight terminal establishments: One (1) space for each two (2) employees plus one (1) space for each vehicle maintained on the premises.

h. Convenience stores: One (1) space for each two hundred (200) square feet of floor area.

i. Dental and medical offices: One (1) space for each two hundred (200) square feet of floor area.

j. Eating and drinking establishments: One (1) space for each fifty (50) square feet of customer service or dining floor area or one (1) space for each three (3) persons based on the maximum occupancy at designed capacity, whichever is greater, provided that restaurants with drive-through service shall have eight (8) stacking spaces for each drive-up window with four (4) of such spaces located at the ordering station, and provided that drive-in restaurants shall have at least ten (10) parking spaces. All spaces shall be designed so as not to impede vehicle circulation on-site or on abutting streets.

k. Furniture, hardware and appliance stores: One (1) space for each four hundred (400) square feet of floor area.

l. Manufacturing, production, assembly or processing of goods, materials or products; One (1) space for each six hundred (600) square feet of floor area or one (1) space for every two (2) employees, whichever is greater.

m. Mini-warehouses: One (1) space for each ten (10) storage cubicles, equally distributed throughout the storage area and designed such that access drives have sufficient width to allow vehicles to both unload and pass, plus two (2) spaces at the business office for use by the staff and prospective clients.

n. Mortuaries and funeral homes: One (1) space for each four (4) seats in the parlor plus one (1) space for each employee and vehicle on the premises.

o. Motor vehicle showrooms and sales facilities, including car, mobile home and recreational vehicle lots: One (1) space for each four hundred (400) square feet of floor area plus one (1) space for each three thousand (3,000) square feet of open lot area devoted to the display of vehicles for sale or rent.

p. Retail stores: One (1) space for each two hundred fifty (250) square feet of floor area.

q. Theaters: One (1) space for each four (4) seats.

r. Warehouse, storage and wholesale establishments: One (1) space for each two thousand (2,000) square feet of floor area or one (1) space for every two (2) employees, whichever is greater.

(3) *Other uses:*

a. Auditoriums, gymnasiums and other places of assembly: One (1) space for each three (3) persons or seats based upon the maximum designed seating capacity.

b. Churches: One (1) space for each four (4) seats in the sanctuary or largest assembly room.

c. Hospitals: One (1) space for each bed, plus one (1) space for each two (2) employees (other than doctors) and one (1) space for each doctor assigned to the staff.

d. Nursing and convalescent homes: Six (6) spaces for the first three thousand (3,000) square feet of gross floor area and one (1) space for each additional one thousand (1,000) square feet with a minimum of six (6) spaces per establishment.

e. Primary and intermediate schools, nursery schools and group day care centers, public or private; One (1) space for each faculty member and other employee or two (2) spaces per classroom, whichever is greater.

f. Private clubs and lodges: One (1) space for each three (3) persons based on the maximum designed capacity.

g. Secondary schools, public or private: One (1) space for each faculty member and other employee plus one (1) space for each eight (8) students.

h. Swimming pools and clubs: One (1) space for each fifty (50) square feet of water area.

i. Trade and business schools: One (1) space for each faculty member and other employee plus one (1) space for each three (3) students.

j. Other permitted or special uses not listed above:

Spaces shall be provided in accordance with the determination of the zoning administrator with respect to the number of spaces required to serve employees and/or customers.

(Code 1966, § 36-1000(3); Ord. No. 94-9653, § 1, 9-19-94)

Sec. 42-554. Modification of required spaces.

(a) A request may be made for a reduction in the number of off-street parking spaces otherwise required by these regulations. Such requests shall be accompanied by data supporting reduced parking demand for the proposed uses. The board of commissioners or board of zoning appeals may approve a reduction upon finding that: (1) an adequate number of vacant parking spaces will be available at all times other than peak hours during peak seasons of use; (2) traffic circulation in the driving aisles will not become congested by motorists searching for a vacant space; and (3) parking cars will not overflow into adjacent streets.

(b) In addition, business and professional offices, dental and medical offices, eating and drinking establishments, furniture, hardware and appliance stores or retail stores shall not provide excessive parking. The number of parking spaces provided shall not exceed the requirement set out in these regulations by more than twenty-five (25) percent without approval by the board of commissioners or the board of zoning appeals. Applicants requesting to exceed this limitation shall provide data justifying the need for additional parking.

(Ord. No. 94-9653, § 2, 9-19-94)

Secs. 42-555--42-560. Reserved.

DIVISION 3. OFF-STREET LOADING

Sec. 42-561. Applicability.

In any zoning district, all structures built and all uses established hereafter, shall provide accessory off-street loading spaces. When an existing structure is expanded, accessory off-street loading spaces shall be provided in accordance with the regulations of this division for the area of such expansion.

(Code 1966, § 36-1001(1))

Sec. 42-562. Standards for required off-street loading.

(a) *Location.* All required loading spaces or berths shall be located on the same lot as the use served. All motor vehicle loading berths which abut or are adjacent to a residential district shall be completely screened therefrom by building walls, or a uniformly painted solid fence, wall or door, or any combination thereof, not less than six (6) feet or more than eight (8) feet in height. No permitted or required loading space or berth shall be located within forty (40) feet of the nearest point of intersection of any two (2) streets or highways.

(b) *Area.* Unless otherwise specified, a required off-street loading space or berth shall be ten (10) feet in width by at least twenty-five (25) feet in length, exclusive of aisle and maneuvering space, and shall have a vertical clearance of at least fourteen (14) feet.

(c) *Access.* Each required off-street loading space or berth shall be designated with appropriate means of vehicular access to a street, highway or alley in a manner which will least interfere with traffic movement.

(d) *Surfacing.* All open off-street loading shall be improved with a compacted select gravel base, not less than seven (7) inches thick, surfaced with an all-weather material.

(e) *Repair and service.* No motor vehicle repair work or service of any kind shall be permitted in conjunction with any off-street loading facilities.

(f) *Utilization.* Space allocated for any off-street loading berth shall not, while so allocated, be used to satisfy the space requirements for any off-street parking facilities or portions thereof.

(g) *Minimum facilities.* Uses for which off-street loading facilities are required by this section but which are located in buildings that have a floor area that is less than the minimum above which off-street loading facilities are required, shall be provided with adequate receiving facilities, accessible by motor vehicle, from any adjacent alley, service drive, or open space on the same lot.

(Code 1966, § 36-1001(2))

Sec. 42-563. Off-street loading berth requirements.

(a) No off-street loading facilities are required in any residential district, except that elementary and intermediate schools shall provide at least one (1) loading space for passenger automobiles for each fifty (50) students based upon the designed maximum capacity of the school.

(b) On the same lot with every building, or part thereof, erected hereafter in any commercial or industrial district, there shall be provided on the lot adequate space for motor vehicles to load and unload in order to avoid interference with the public streets or alleys. Such space shall include the following minimum off-street loading spaces:

(1) For banks, medical and dental clinics, and business and professional offices: one (1) loading berth shall be provided for each building that contains one thousand (1,000) to one hundred thousand (100,000) square feet of gross floor area, and for each additional one hundred thousand (100,000) square feet of gross floor area or fraction thereof up to five hundred thousand (500,000) square feet, one (1) additional loading berth shall be provided, plus one (1) additional loading berth for each additional five hundred thousand (500,000) square feet of gross floor area, or any fraction thereof, in excess of five hundred thousand (500,000) square feet.

(2) For amusement establishments, bowling alleys, pool halls, dance halls, gymnasiums, indoor and outdoor theatres, swimming pools, skating rinks and other similar amusement establishments: one (1) loading berth shall be provided for each building that contains one thousand (1,000) to one hundred thousand (100,000) square feet of gross floor area, and for each additional one hundred thousand (100,000) square feet of gross floor area, or any fraction thereof, one (1) additional loading berth shall be provided.

(3) For hotels and motels, meeting halls, service and fraternal clubs and lodges, funeral parlors and mortuaries: one (1) loading berth shall be provided for buildings containing one thousand (1,000) to one hundred fifty thousand (150,000) square feet of gross floor area, plus one (1) additional loading berth for each additional one hundred fifty thousand (150,000) square feet of gross floor area, or fraction thereof. Each such loading berth for buildings in excess of twenty thousand (20,000) square feet of gross floor area shall not be less than ten (10) feet in width by sixty (60) feet in length.

(4) For all other uses in the C-1 through C-6 districts, except mini-warehouses which require none, loading facilities shall be provided in accordance with the following table:

Gross Floor Area of Structure in Square Feet	Required Number and Size of Loading Berths
1,000 to 9,999	1 (10 feet by 25 feet each)
10,000 to 24,999	2 (10 feet by 25 feet each)
25,000 to 39,999	2 (10 feet by 60 feet each)
40,000 to 100,000	3 (10 feet by 60 feet each)

For each additional two hundred thousand (200,000) square feet of gross floor area, or any fraction thereof, over one hundred thousand (100,000) square feet of gross floor area, one (1) additional loading berth shall be provided. Each such additional loading berth shall be at least ten (10) feet in width by sixty (60) feet in length.

(5) For all uses in the I-1, I-2, and I-3 industrial districts, except mini-warehouses which require none, loading facilities shall be provided in accordance with the following table:

Gross Floor Area of Structure in Square Feet	Required Number and Size of Loading Berths
1,000 to 9,999	1 (10 feet by 25 feet each)
10,000 to 39,999	1 (10 feet by 60 feet each)
40,000 to 100,000	2 (10 feet by 60 feet each)

For each additional one hundred thousand (100,000) square feet of gross floor area, or any fraction thereof, one (1) additional loading berth shall be provided. Each such additional berth shall be at least ten (10) feet in width and sixty (60) feet in length.

(Code 1966, § 36-1001(3))

Secs. 42-564--42-575. Reserved.

ARTICLE XII. NONCONFORMING USES, BULK AND SIGNS

Sec. 42-576. Applicability.

This article applies only to lots, buildings, structures, signs and nonbuilding uses in existence on February 14, 1977. The lawful use of any premises existing on February 14, 1977 may be continued as hereinafter provided although neither such use nor bulk conforms to this chapter.

(Code 1966, § 36-1100)

Sec. 42-577. Nonconforming lots of record.

(a) *In residential districts:*

(1) In any residential district, notwithstanding the regulations imposed by any other provision of this chapter, a single-family, detached dwelling which complies with the restrictions in subsection (a)(2) may be erected on a lot that is not less than twenty-five (25) feet in width and that consists entirely of a tract of land that:

a. Has less than the prescribed minimum lot area, width or depth, or all three (3); and that

b. Is shown by a recorded plat or deed to have been owned separately and individually from adjoining tracts of land at a time when the creation of a lot of such size and width at such location would not have been prohibited by any zoning ordinance; and

c. Has remained in separate and individual ownership from adjoining tracts of land continuously during the entire time that the creation of such lot has been prohibited by the applicable zoning ordinance or ordinances.

(2) Construction permitted by subsection (a)(1) shall comply with all of the regulations (except lot area, width and depth) applicable to single-family dwellings in the zoning district in which the lot in question is located; provided, however, that the following side yard requirements shall apply in place of the side yard requirements otherwise applicable:

a. The dwelling shall be placed on the lot so as to provide a yard on each side of the dwelling.

b. The sum of the widths of the two (2) side yards on each lot shall be not less than the smaller of:

1. Twenty-five (25) percent of the width of the lot; or
2. The minimum total for both side yards prescribed by the bulk regulations for said zoning district.

c. No side yard shall be less than ten (10) percent of the width of the lot, and in no case less than three (3) feet.

(b) *In districts other than residential districts:*

(1) In any district other than a residential district, notwithstanding the regulations imposed by any other provision of this chapter, a building designed for any permitted use may be erected on a lot of the type described in subsection (a).

(2) Construction permitted by subsection (b)(1) shall comply with all of the regulations (except lot area, width and depth) applicable in the zoning district in which the lot in question is located; provided, however, that the width of any side yard need not be greater than that derived by applying the following formula (wherein the width of any side yard required = x):

$$\frac{X}{\text{Actual lot width}} = \frac{\text{Minimum side yard required by district regulations}}{\text{Minimum lot width required by district regulations}}$$

(Code 1966, § 36-1101)

Sec. 42-578. Nonconforming structures.

(a) *Authority to continue.* Any structure which is devoted to a use which is permitted in the zoning district in which it is located, but which is located on a lot which does not comply with the applicable lot size requirements and/or the applicable bulk regulations, may be continued, so long as it remains otherwise lawful, subject to the restrictions in subsection (b) through (d).

(b) *Enlargement, repair, alterations.* Normal maintenance and repairs, structural alterations, enlargement, or remodeling of a building or structure with nonconforming bulk is permitted if the same does not increase the degree of existing nonconformity or create any new nonconforming bulk in such building or structure, except that as to structures located on a lot that does not comply with the applicable lot size requirement, the side yard requirements shall be determined by section 42-577(a)(2) or 42-577(b)(2), whichever is applicable.

(c) *Damage or destruction.* No buildings or structures occupied by a nonconforming use or nonconforming as to bulk, destroyed or damaged by fire or other causes to the extent of fifty (50) percent or more of last full value as shown by the assessor's records, excluding the assessed valuation of the land, shall be repaired or rebuilt except in conformity with this chapter, provided that structures located on a lot that does not comply with the applicable lot size requirements shall not in any event be required to provide a side yard that exceeds the yard requirements in section 42-577(a)(2) or 42-577(b)(2), whichever is applicable. Any building, structure or any part thereof occupied by a nonconforming use or nonconforming as to bulk which is damaged to an extent less than fifty (50) percent of last full value as shown by the assessor's records, excluding the assessed valuation of the land, may be repaired or restored provided that a zoning certificate is obtained and substantial reconstruction is undertaken within one (1) year after such damage and is diligently pursued to completion. Otherwise such building, structure or part thereof shall thereafter be occupied only by a conforming use, and shall conform to the bulk requirements of this chapter.

(d) *Moving.* No structure described in subsection (a) shall be moved in whole or in part for any distance whatever, to any other location on the same or any other lot unless the entire structure shall thereafter conform to the regulations of the zoning district in which it is located after being moved.

(Code 1966, § 36-1102)

Sec. 42-579. Nonconforming uses.

(a) *Authority to continue.* Any lawfully existing nonconforming use or part or all of a structure or any lawfully existing nonconforming use of land, not involving a structure or only involving a structure which is accessory to such use of land, may be continued, so long as otherwise lawful, subject to the regulations contained in subsections (b) through (i) and section 42-58(d).

(b) *Repair, maintenance and remodeling:*

(1) Normal maintenance and incidental repair, or replacement, installation or relocation of nonbearing walls, nonbearing partitions, fixtures, wiring or plumbing, may be performed on any structure that is devoted in whole or in part to a nonconforming use; provided, however, that it does not extend the nonconforming use or violate any other provisions of this article.

(2) Nothing in this chapter shall be deemed to prevent the strengthening or restoring to a safe condition of a structure in accordance with an order of a public official who is charged with protecting the public safety and who declares such structure to be unsafe and orders its restoration to a safe condition (where such restoration will not be in violation of any other provision of this article).

(3) No structure that is devoted in whole or in part to a nonconforming use shall be remodeled unless the entire structure and use thereof shall thereafter conform to all regulations of the zoning district in which it is located.

(c) *Extension or enlargement.* No structure that is devoted in whole or in part to a nonconforming use shall be extended, expanded, enlarged or added to in any manner unless such structure and the use thereof conform to the regulations of the district in which it is located. Such prohibited activities shall include without being limited to:

(1) Extension of such use to any structure or land area other than one occupied by such nonconforming use on February 14, 1977 (or on the effective date of a subsequent amendment hereto that causes such use to become nonconforming).

(2) Extension of such use within a building or other structure to any portion of the floor area that was not occupied by such nonconforming use on February 14, 1977 (or on the effective date of a subsequent amendment hereto that causes such use to become nonconforming); provided, however, that such use may be extended throughout any part of such building or other structure that was lawfully and manifestly designed or arranged for such use on such date.

(d) Damage or destruction. No building or structure occupied by a nonconforming use or nonconforming as to bulk, destroyed or damaged by fire or other causes to the extent of fifty (50) percent or more of last full value as shown by the assessor's records, excluding the assessed valuation of the land, shall be repaired or rebuilt except in conformity with these regulations; provided that structures located on a lot that does not comply with the applicable lot size requirements shall not in any event be required to provide a side yard that exceeds the yard requirements in section 42-577(a)(2) or 42-577(b)(2), whichever is applicable. Any building, structure or any part thereof occupied by a nonconforming use or nonconforming as to bulk, which is damaged to an extent less than fifty (50) percent of last full value as shown by the assessor's records,

excluding the assessed valuation of the land, may be repaired or restored provided that a zoning certificate is obtained and substantial reconstruction is undertaken within one year after such damage and is diligently pursued to completion. Otherwise such building, structure or part thereof shall thereafter be occupied only by a conforming use, and shall conform to the bulk requirements of these regulations.

(e) *Moving.* No structure that is devoted in whole or in part to a nonconforming use, shall be moved in whole or in part for any distance whatever, to any other location on the same or any other lot, unless the entire structure and the use thereof shall thereafter conform to all regulations of the zoning district in which it is located after being so moved. No nonconforming use of land shall be moved in whole or in part for any distance whatever, to any other location on the same or any other lot, unless such use shall thereafter conform to all regulations of the zoning district in which it is located after being so moved.

(f) *Change in use.* If no structural alterations are made, a nonconforming use of a building may be changed to another nonconforming use of a more restricted classification. A nonconforming use, if changed to a conforming use or a more restrictive nonconforming use, may not thereafter be changed back to a less restricted use than that to which it was changed.

(g) *Abandonment* or *discontinuance:*

(1) When a nonconforming use of land, not involving a structure, or involving only a structure which is accessory to the nonconforming use of land, is discontinued or abandoned, for a period of twelve (12) consecutive months (regardless of any reservation of an intent not to abandon or to resume such use), such use shall not thereafter be reestablished or resumed, and any subsequent use or occupancy of such land shall comply with the regulations of the zoning district in which such land is located.

(2) When a nonconforming use of a part or all of a structure which was designed and intended for a use which is permitted in the zoning district in which such structure is located, regardless of how it was originally used or is presently being used, is discontinued or abandoned for a period of twelve (12) consecutive months (regardless of any reservation of an intent not to abandon or to resume such use), such use shall not thereafter be reestablished or resumed, and any subsequent use or occupancy of such structure shall comply with the regulations of the zoning district in which such structure is located.

(3) When a nonconforming use of a part or all of a structure which was not designed and intended for any use which is permitted in the zoning district in which such structure is located, regardless of how it was originally used or is presently being used, is discontinued or abandoned for a period of twenty-four (24) consecutive months (regardless of any reservation of an intent not to abandon or to resume such use), such use shall not thereafter be reestablished or resumed, and any subsequent use or occupancy of such structure shall comply with the regulations of the zoning district in which such structure is located.

(h) *Nonconforming accessory uses.* No use which is accessory to a principal nonconforming use shall continue after such principal use shall cease or terminate.

(i) *Nonconforming residential uses.* Notwithstanding the provisions of subsections (b) and (c), any structure which is devoted to a residential use and which is located in a commercial or industrial district, may be remodeled, extended, expanded and enlarged; provided that after any such remodeling, extension, expansion or enlargement, such structure shall not be used to accommodate a greater number of dwelling or lodging units than such structure accommodated prior to any such work.

(j) *Status of newly created nonconforming uses.* Notwithstanding the provisions of subsections (c) and (d), any structure which is devoted in whole or in part to a use which is made nonconforming by the enactment of this chapter, may be remodeled, extended, expanded, enlarged, repaired, or rebuilt; provided, however that the provisions of this section apply only to the use which existed on February 14, 1977.

(Code 1966, § 36-1103; Ord. No. 83-8957, § 1, 3-21-83)

Sec. 42-580. Status of conditional uses.

(a) *Status of existing conditional uses.* Where a use exists on February 14, 1977, and is permitted only as a conditional use in the zoning district in which it is located, such use shall not be deemed to be a nonconforming use, but shall, without further action, be deemed a lawful conforming use in such zoning district.

(b) *Status of future conditional uses.* Any use for which a conditional use permit has been issued as provided in article XIII of this chapter shall not be deemed to be a nonconforming use, but shall, without further action, be deemed a lawful conforming use.

(Code 1966, § 36-1104)

Sec. 42-581. Nonconforming signs.

(a) *When deemed nonconforming; exception.* All existing signs which are not specifically permitted or which do not comply with all of the provisions of this chapter for the zoning district in which they are located as of April 17, 1990, shall be considered nonconforming signs. Provided, however, theatre marque signs in existence on April 17, 1990, and located in the C-4 district shall be deemed lawfully conforming signs, except for requirements pertaining to safety, structural integrity, and maintenance and shall not be subject to the abandonment requirements set forth in section 42-510.

(b) *Repairs and damage.* Nonconforming signs may not, after February 14, 1977, be enlarged, structurally altered or extended unless such sign shall be made to comply with all of the provisions of this chapter, except that normal repairs and repainting of nonconforming signs are permitted. When a permanent nonconforming sign is destroyed or damaged by any means to the extent of fifty (50) percent or more of its present day replacement value, it shall not thereafter be restored unless such sign shall be made to conform to all of the provisions of this chapter.

(c) *Removal of nonconforming signs.* Any sign that does not conform to the sign regulations for the zoning district in which it is located shall be removed in accordance with the following schedule:

(1) A sign having a total area of twenty-four (24) square feet or less which is located in any residential district shall be removed within two (2) years from the date such sign became nonconforming with respect to this chapter.

(2) All other signs located in any residential district shall be removed within four (4) years from the date such sign became nonconforming with respect to this chapter.

(d) *Nonconforming open storage yards, outdoor display* or *junk yards.* Any nonconforming open storage yard, outdoor display or junk yard or any other nonconforming uses of land, not involving a structure or involving only structures which are accessory to such use of land shall be discontinued or made to conform to the regulations of the zoning district in which located within two (2) years from the date such use became nonconforming with respect to these regulations. However, no such use shall be required to terminate if within the period it shall be located within a completely enclosed building or surrounded by a solid fence screening the stored goods or materials from general view.

(Code 1966, § 36-1105; Ord. No. 90-9381, §§ 6, 9, 5-14-90)

Secs. 42-582--42-595. Reserved.

ARTICLE XIII. ADMINISTRATIVE PROVISIONS[12]

Sec. 42-596. Enforcement.

(a) *Enforcement officer.* This chapter shall be enforced by a zoning administrator who shall be appointed by the city manager and who shall be authorized to expend such funds, employ deputies and clerical assistants, and to carry out his duties under this chapter as shall be approved from time to time by the city as follows:

(1) Approve and issue all zoning and occupancy certificates and make and maintain records thereof;

(2) Conduct inspections of buildings, structures and uses of land to determine compliance with the provisions of this chapter;

(3) Receive, file and forward to the board of zoning appeals the records of all appeals and all applications for conditional uses and variances;

(4) Maintain permanent and current records of the zoning regulations, including but not limited to, all zoning maps, amendments, special uses, variances, appeals and applications thereof and records of hearings thereon;

(5) Prepare and have available in book, pamphlet or map form, on or before March thirty-first of each year:

a. The compiled text of the zoning regulations and amendments thereto, including all amendments adopted through the preceding December thirty-first; and

b. A zoning map or maps, showing the zoning districts, divisions and classifications in effect on the preceding December thirty-first.

(6) Maintain a supply of copies of the compiled text of the zoning regulations, and the rules of the board of zoning appeals. A fee for each copy shall be charged to defray the cost of printing;

(7) Provide such clerical, technical and consultative assistance as may be required by the board of zoning appeals and other boards, commissions and officials in the exercise of their duties relating to this chapter;

(b) *Zoning certificates and certificates of occupancy granted only in conformance with regulations:*

(1) *Zoning certificates.* Unless a zoning certificate shall first have been obtained from the office of the zoning administrator:

a. The construction, building, moving, remodeling or reconstruction of any structure shall not be commenced;

b. Permits pertaining to the use of land or structures shall not be issued by any other official, officer, employee, department, board or bureau of the city;

c. Any zoning certificate issued in conflict with these regulations shall be null and void.

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[12] **Cross references:** Administration generally, Ch. 2.

(2) *Occupancy certificates.* No structure or addition thereto constructed, built, moved, remodeled or reconstructed after February 14, 1977, shall be occupied or used for any purpose; and no land vacant on February 14, 1977, shall be used for any purpose; and no use of any land or structure shall be changed to any other use, unless an occupancy certificate shall first have been obtained from the office of the zoning administrator certifying that the proposed use or occupancy complies with all the provisions of this chapter.

(c) *Zoning certificate:*

(1) *Application for zoning certificate.* Every application for a zoning certificate shall be accompanied by a plot plan, in duplicate, drawn to scale and in such form as may, from time to time, be prescribed by the zoning administrator, showing the location, ground area, height, and bulk of all present and proposed structures, drives and parking lots, the building lines in relation to lot lines, waste disposal areas, the use to be made of such present and proposed structures on the land, and such other information as may be required by the zoning administrator for the proper enforcement of this chapter. One copy of the plot plan shall be retained by the zoning administrator as a public record.

(2) *Issuance of zoning certificate.* A zoning certificate shall be either issued or refused by the zoning administrator within ten (10) days after the receipt of an application thereof or within such further period as may be agreed to by the applicant. When the zoning administrator refuses to issue a zoning certificate, he shall advise the applicant in writing of the reasons for the refusal.

(3) *Period of validity.* A zoning certificate shall become null and void four (4) months after the date on which it is issued unless within such four (4) month period construction, building, moving, remodeling or reconstruction of a structure is commenced or a use is commenced.

(d) *Occupancy certificate:*

(1) *Application for occupancy certificate.* Every application for a zoning certificate shall be deemed to be an application for an occupancy certificate. Every application for an occupancy certificate for a new or changed use of land or structures where no zoning certificate is required shall be filed with the office of the zoning administrator and be in such form and contain such information as the zoning administrator shall provide by general rule.

(2) *Issuance of occupancy certificate.* No occupancy certificate for a structure or addition thereto constructed, built, moved, remodeled or reconstructed after February 14, 1977 shall be issued until such work has been completed and the premises inspected and certified by the office of the zoning administrator to be in full and complete compliance with the plans and specifications upon which the zoning certificate was issued. No occupancy certificate for a new use of any structure or land shall be issued until the premises have been inspected and certified by the office of the zoning administrator to be in full and complete compliance with all the applicable regulations for the zoning district in which it is located. Pending the issuance of a permanent occupancy certificate, a temporary occupancy certificate may be issued to be valid for a period not to exceed six (6) months from its date pending the completion of any addition or during partial occupancy of the premises. An occupancy certificate shall be issued, or written notice shall be given to the applicant stating the reasons why a certificate cannot be issued, within ten (10) days after the receipt of an application thereof, or after the office of the zoning administrator is notified in writing that the structures or premises are ready for occupancy.

(Code 1966, § 36-1200)

Sec. 42-597. Board of zoning appeals.

(a) *Authorization.* The board of zoning appeals for the City of Salina is hereby established in accordance with K.S.A. 12-714.

(b) *Membership.* The board shall consist of seven (7) members who shall be appointed by the mayor with the approval of the board of city commissioners. All members shall be residents of the city. None of the members appointed shall hold any other elected or appointed office or position in the city government, except that one member shall be a member of the planning commission.

(c) *Power and duties.* The board shall have the power to:

(1) Hear and decide appeals where it is alleged there is an error in any order, requirement, decision or determination made by the zoning administrator in the enforcement of the zoning regulations. The board may reverse or may modify the order, requirement, decision or determination and to that end shall have all the powers of the administrative official from whom the appeal is taken.

(2) Authorize in specific cases a variance from the specific terms of these zoning regulations which shall not be contrary to the public interest where, due to special conditions, a literal enforcement of the provisions of the regulations will result in unnecessary hardship for the applicant. The board shall be limited to granting variances on matters including, but not limited to, building height, setbacks, lot size and lot coverage, as provided by the zoning regulations. A request for a variance may be granted after a public hearing upon a finding by the board that all of the following conditions have been met:

a. The variance requested arises from such condition which is unique to the property in question and which is not ordinarily found in the same zone or district, and is not created by an action or actions of the property owner or applicant.

b. The granting of the permit for variance will not adversely affect the rights of adjacent property owners or residents.

c. The strict application of the provisions of the zoning regulations from which the variance is requested will constitute an unnecessary hardship upon the property owner represented in the application.

d. The variance requested will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare.

e. Granting the variance desired will not be opposed to the general spirit and intent of the zoning regulations.

(3) In permitting a variance, the board may impose appropriate conditions and safeguards including, but not limited to, planting screens, fencing, construction commencement and completion dates, lighting, road access restrictions, parking requirements or any other requirement which the board deems appropriate under the circumstances, upon a finding that they are necessary to fulfill the purpose and intent of the zoning regulations.

(4) The board is not authorized to issue the following types of variances:

a. A variance which would allow a use not otherwise permitted in the zoning district.

b. A variance to a zoning ordinance definition.

c. A variance to expand or enlarge a nonconforming use.

d. A variance that would increase residential density above the maximum allowed in a zoning district.

e. A variance that would create a zero lot line setback.

f. A variance to the owner of a substandard lot where such lot was created in violation of the zoning regulations.

g. A variance that would increase the number of permitted signs on a zoning lot.

(d) *Commencement of proceeding before the board.*

(1) *Appeals.*

a. By whom: Appeals to the board may be taken by any person aggrieved, or by any officer, department, or board of the city, or any governmental agency or body affected by any decision or interpretation of the zoning administrator. Such appeal shall be filed with the secretary of the board within thirty (30) days from the date of the decision by the zoning administrator, and such appeal shall specify, in writing, the grounds for appeal of the administrator's decision. The zoning administrator, when notified by the board of zoning appeals, shall transmit to the board all the papers constituting the record upon which the action appealed from was taken, within the time period established by the rules of the board.

b. Effect of appeal: An appeal stays all proceedings in furtherance of the action appealed from, including a permittee's right to proceed with development or other activities under a building permit, the issuance of which is a subject of the appeal.

(2) *Variances.* Any person may apply to the board for a variance by filing an application with the secretary of the board. The application shall include the following:

a. The name, address, telephone number and signature of the property owner and applicant.

b. The name and address of the architect, professional engineer or contractor, if any.

c. A site plan of the property showing the following:

1. Property lines of the subject property.

2. Size and location of existing structures and the distance between all existing and proposed structures on the property.

3. Setbacks for all existing and proposed structures on the property.

4. Any other dimension and/or information that may be relevant to the request.

d. A survey or verification that property and structure dimensions on the site plan are correct.

e. The names and addresses of the record owners of all property adjoining the property in question.

f. A narrative statement of how the statutory requirements in K.S.A. 12-715 are met.

(3) *Representation.* An applicant must appear in person at the public hearing, or be represented by an agent or attorney, in order for the board to act on the application.

(e) *Written decisions.* The board shall render its decision and findings in writing within thirty (30) days of the conclusion of the hearing. Decisions shall be filed in a public office designated by the board of commissioners and shall be a public record.

(f) *Dissatisfaction with the determination of the board.* Any person, official or governmental body dissatisfied with any order or determination of the board of zoning appeals may bring an action in district court to determine the reasonableness of any such order or determination.

(Code 1966, § 36-1201; Ord. No. 88-9244, § 1, 4-11-88)
Cross references: Administration, Ch. 2; boards and commissions generally, § 2-136 et seq.

Sec. 42-597.1. Administrative variance.

(a) *Authorization.* If an applicant's variance request is within fifteen (15) percent of the municipal requirements of the zoning regulations, the applicant may apply for an administrative variance from the zoning administrator. In order to grant such a variance, the zoning administrator shall use the same criteria as the board of zoning appeals. The applicant must demonstrate that his application satisfies the statutory requirements of K.S.A. 12-15, and in addition, an administrative variance can only be granted with the consent of adjoining property owners.

(b) *Application procedure.* An application for an administrative variance shall be filed with the office of the zoning administrator. The application submission requirements shall be the same as for a variance request to the board of zoning appeals, with the following additional requirements:

(1) After a completed application is submitted, the zoning administrator shall prepare a signature sheet and map of adjoining properties for the applicant.

(2) The applicant must obtain the signatures of all property owners listed on the sheet.

(3) After return of the completed signature sheet, the zoning administrator may issue a certificate for an administrative variance if it meets the required statutory conditions.

(c) *Appeals to the board of zoning appeals.* If an adjoining property owner refuses to sign the signature sheet or if the zoning administrator refuses to grant an administrative variance request, the applicant may still make application to the board of zoning appeals for the variance.

(Ord. No. 88-9244, § 2, 4-11-88)

Sec. 42-597.2. Conditional use permits.

(a) *Authorization.* It is recognized that certain uses may be desirable when located in the community, but that these uses may be incompatible with other uses permitted in a zoning district and may possess characteristics of such unique and special nature relative to location, design, size, method of operation, circulation and public facilities that each specific use must be considered individually. Therefore, the planning commission may authorize, as an exception to the provisions of this chapter, the establishment of those conditional uses that are expressly authorized to be permitted as a conditional use in a particular zoning district or in one or more zoning districts. No conditional use shall be authorized as an exception to this chapter unless the planning commission is specifically authorized by this chapter to grant such conditional use and unless such grant complies with all the applicable provisions of this chapter.

(b) *Application for conditional use permit.* An application for a conditional use permit shall be filed with the office of the zoning administrator who shall forward a copy to the secretary of the planning commission. The application shall contain the following information:

(1) The name, address, telephone number and signature of the property owner and applicant.

(2) The name and address of the architect, professional engineer or contractor, if any.

(3) Description of existing use and/or zoning.

(4) A narrative description of the proposed conditional use.

(5) A site plan of the property showing the following:

a. Property lines and building setbacks of the subject property.

b. Size and location of all existing and proposed structures on the property.

c. Parking and loading areas.

d. Vehicular access and circulation.

e. Existing and proposed signs.

f. Refuse and service areas.

g. Utilities and drainage ways.

h. Open spaces, landscaping, screening and fencing.

i. Such other information as the planning commission may require to determine if the proposed conditional use meets the intent and requirements of this chapter.

(6) A survey or verification that property and structure dimensions on the site plan are correct.

(7) The names and addresses of the record owners of all property located within two hundred (200) feet of the property in question.

(c) *Hearing on conditional use permits.* A public hearing on the conditional use permit application shall be held and notice thereof given as provided in K.S.A. 12-708 and section 42-24 of this chapter.

(1) *Review.* The planning commission shall review all applicable evidence regarding the site, existing and proposed structures, neighboring uses, parking areas, driveway locations, street access, traffic generation and circulation, utilities, drainage, the proposed operation, and such other evidence as deemed appropriate.

(2) *Standards.* The planning commission shall not grant a conditional use permit unless it shall, in each specified case, make specific written findings of fact directly based upon the particular evidence presented to it, that support all of the following conclusions:

a. The proposed conditional use complies with all applicable regulations of this chapter, including lot size requirements, bulk regulations, use limitations, and performance standards;

b. The proposed conditional use at the specified location will contribute to and promote the welfare or convenience of the public;

c. The proposed conditional use will not cause substantial injury to the value of other property in the neighborhood in which it is to be located;

d. The location and size of the conditional use, the nature and intensity of the operation involved or conducted in connection with it, and the location of the site with respect to streets giving access to it are such that the conditional use will not dominate the immediate neighborhood so as to prevent development and use of neighboring property in accordance with the applicable zoning district regulations. In determining whether the conditional use will so dominate the immediate neighborhood, consideration shall be given to:

1. The location, nature and height of buildings, structures, walls and fences on the site; and

2. The nature and extent of landscaping and screening on the site.

e. Off-street parking and loading areas will be provided in accordance with the standards set forth in Article XI of this chapter, and such areas will be screened from adjoining residential uses and located so as to protect such residential uses from any injurious effect;

f. Adequate utility, drainage, and other such necessary facilities have been or will be provided;

g. Adequate access roads or entrance and exit drives will be provided and shall be so designed to prevent traffic hazards and to minimize traffic congestion in public streets and alleys.

(3) *Conditions.* In granting a conditional use permit, the commission may impose appropriate conditions and safeguards including but not limited to planting screens, fencing, construction commencement and completion dates, lighting, operational controls, duration of a use, improved traffic circulation, access restrictions, parking requirements, drainage facilities or any other requirement which the commission deems appropriate upon a finding that they are necessary to fulfill the purpose and intent of this chapter.

(d) *Appeal to city commission.* An applicant who is dissatisfied with the decision of the planning commission may appeal the decision to the board of city commissioners, provided the appeal is submitted in writing to the office of the zoning administrator within fourteen (14) days from the planning commission's action. Upon receipt of an appeal from the action of the planning commission, the board of commissioners shall set a hearing date to consider all information, testimony and minutes of the planning commission's public hearing to reach a decision on the applicant's request. The board of city commissioners may affirm the decision or return the application to the planning commission for further consideration together with a statement specifying the basis for their disagreement. Upon receipt of a second decision from the planning commission, the board of city commissioners may affirm, modify or overrule the decision of the planning commission. The board of commissioners shall overrule the planning commission by a favorable vote of a majority of the full board of commissioners.

(e) *Protest.* Affected property owners shall have the same right to present a protest petition to the city commission 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.

(f) *Period of validity.* No conditional use permit granted by the planning commission shall be valid for a period longer than one hundred eighty (180) days from the date in which the planning commission grants the conditional use, unless within such one hundred eighty (180) day period:

(1) A building permit is obtained and the erection or alteration of a structure is started; or

(2) An occupancy permit is obtained and a use commenced.

The planning commission may grant one extension not exceeding one hundred eighty (180) days, upon written application, without notice or hearing.

(Ord. No. 88-9244, § 3, 4-11-88)

Sec. 42-598. Fees.

Every application for a zoning certificate, occupancy certificate, variance, conditional use permit, or amendment, or the filing of a notice of appeal shall be accompanied by such fee as shall be specified from time to time, by ordinance of the board of commissioners.

(Code 1966, § 36-1202)

Sec. 42-599. Violations and penalties.

(a) *Complaints of violations.* Any person may file a written complaint with the zoning administrator of an alleged violation of these regulations stating fully the cases and basis for such violation. The zoning administrator shall record such complaint, investigate it, and take appropriate action as necessary.

(b) *Notification.* Whenever the zoning administrator has determined that any of the provisions of the regulations have been or are being violated, he shall notify, in writing, the person responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it. The zoning administrator may order:

(1) Discontinuance of any illegal use of land, buildings, or structures;

(2) Removal of illegal buildings, structures or any additions or alterations thereto;

(3) Discontinuance of any illegal work being done; or

(4) Take any other appropriate action authorized by these or any other applicable regulations to put an end to such violation.

(c) *Penalties.* Any person, firm, or corporation who shall violate any of the provisions of these regulations or fail to comply with any order or regulation, or who shall build in violation of any specifications or plans submitted and approved, or any certificate or permit issued thereunder, shall, for each and every violation and noncompliance respectively be deemed guilty of a misdemeanor. Upon conviction thereof, the person, firm, or corporation shall be fined in a sum of not less than fifty dollars ($50.00) nor more than five hundred dollars ($500.00) for each offense. Each and every day a violation is permitted to exist after notification thereof shall be deemed a separate offense.

(d) *Remedies.* In the event that any building, structure or sign is constructed, reconstructed, relocated, or maintained; or any building, structure, sign or land is used in violation of these regulations, an appropriate action or proceeding in law or equity may be instituted in the name of the City of Salina, to prevent such unlawful development, construction, reconstruction, alteration, relocation, maintenance or use, or to restrain, abate, enjoin or correct such violation, to prevent the occupancy of such building, structure or land or to prevent any illegal acts, conduct, business or use in and about the premises. These remedies shall be in addition to the penalties in subsection (c) above.

(Code 1966, § 36-1203; Ord. No. 88-9245, § 1, 4-11-88)

Sec. 42-600. Interpretation, conflict and separability.

(a) *Interpretation.* In their interpretation and application, the provisions of this chapter shall be considered to be the minimum requirements for the protection and promotion of the public health, safety and welfare.

(b) *Conflict with public and private provisions:*

(1) *Public provisions.* The provisions of this chapter are not intended to interfere with, abrogate or annul any other law, ordinance, resolution, rule or regulation; where any provision of this chapter imposes restrictions different from those imposed by any other statute, ordinance, resolution, rule, regulation or other provision of law, whichever provisions are more restrictive, or impose higher standards, shall control.

(2) *Private provisions.* This chapter is not intended to abrogate, annul or otherwise interfere with any easement, covenant or any other private agreement or restriction, provided, however, that where this chapter is more restrictive or imposes higher standards or requirements than such easements, covenants, private agreements or restrictions, the requirements of this chapter shall govern.

(c) *Separability.* If any part or provision of this chapter or application thereof to any person or circumstances is adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part, provision or application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this chapter or its application to other persons or circumstances. The city hereby declares that it would have enacted the remainder of this chapter even without any such part, provision or application.

(Code 1966, § 36-1204)

Sec. 42-601. Savings provision.

This chapter shall not be construed as abating any action now pending under prior existing zoning regulations, or as discontinuing, abating, modifying or altering any penalty accruing or to accrue, or as affecting the liability of any person or as waiving any rights of the city under any provision existing on February 14, 1977 or as vacating or annulling any rights obtained by any person by lawful action of the city, except as shall be expressly provided for in this chapter.

(Code 1966, § 36-1205)

Sec. 42-602. Reservations and repeals.

Upon the adoption of this chapter, Ordinance Number 6613 of Salina, adopted April 11, 1962, as amended, is hereby repealed, except as to such sections expressly retained herein.

(Code 1966, § 36-1206)

Secs. 42-603--42-615. Reserved.

ARTICLE XIV. DEFINITIONS[13]

Sec. 42-616. Generally.

(a) For the purposes of this chapter, certain numbers, abbreviations, terms and words used herein shall be used, interpreted and defined as set forth in this article. Any word or phrase which is defined in this article, or elsewhere in this chapter, shall have the meaning as so defined whenever the word or phrase is used in this chapter, unless such definition is expressly limited in its meaning or scope.

(b) Unless the context clearly indicates to the contrary:

(1) Words used in the present tense include the future tense; words used in the singular number include the plural; and words used in the plural number include the singular.

(2) The word "shall" is always mandatory and the word "may" is always permissive.

(3) The word "person" includes individuals, corporations, partnerships, associations, governmental bodies, agencies, and all other legal entities.

(4) The words "used" or "occupied" as applied to any land or building shall be construed to include the words "intended, arranged or designed to be used or occupied."

(5) The word "building" includes "structure" and a building or a structure includes any part thereof.

(6) The word "city" means the City of Salina.

(Code 1966, § 36-1300)

Sec. 42-617. Accessory.

"Accessory" is the term applied to a building structure or use or a portion of a principal building which is clearly incidental or subordinate to, and customary in connection with, the principal building, structure or use, which is located on the same plot with the principal building, structure or use, and which contributes to the comfort, convenience or necessity of occupants, business or industry in the principal building or use served. Any accessory building or structure attached to a principal building or structure by a shared common wall shall be deemed to be part of such principal building or structure in applying the bulk requirements to such building or structure.

(Code 1966, § 36-1301(1); Ord. No. 05-10264, § 2, 4-4-05)

Sec. 42-617.1. Adult-oriented business.

Adult-oriented business means an adult arcade, adult entertainment business, adult media or merchandise outlet, adult motion picture theater or similar type of adult oriented business as defined by City Code.

(Ord. No. 97-9828, § 1, 10-6-97; Ord. No. 00-9969, § 1, 2-14-00)

Sec. 42-618. Advertising sign.

See "sign, advertising."

(Code 1966, § 36-1301(2))

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[13] **Cross references:** Definitions and rules of construction generally, § 1-2.

Sec. 42-618.1. Actuarial premium rates.

"Actuarial premium rates" are those rates established by the administrator pursuant to individual community studies and investigations which are undertaken to provide flood insurance in accordance with section 1307 of the act and the accepted actuarial principles. "Risk premium rates" include provisions for operating costs and allowances.

(Ord. No. 86-9119, § 2, 2-3-86)

Sec. 42-619. Agriculture uses.

"Agriculture use" is the use of a tract of land not less than five (5) acres for growing crops in the open, dairying, pasturage, horticulture, floriculture, and necessary accessory uses, including the structures necessary for carrying out farming operations and the residence of the person who owns or operates the farm, and the family thereof; provided, however, such agricultural use shall not include the following uses:

(1) The maintenance and operation of commercial greenhouses or hydroponic farms, except in zoning districts in which such uses are expressly permitted;

(2) Wholesale or retail sales as an accessory use unless the same are specifically permitted by these regulations;

(3) The feeding, grazing, or sheltering of animals or poultry in either penned enclosures or in open pasture within one hundred (100) feet of any lot line.

(Code 1966, § 36-1301(3))

Sec. 42-620. Airport.

"Airport" is any area of land or water which is used, or intended for use for the landing or taking off of aircraft, and any appurtenant areas which are used or intended for use for airport buildings, other airport facilities or rights-of-way, including taxiways, aircraft storage areas, hangars and other necessary buildings and open spaces.

(Code 1966, § 36-1301(4))

Sec. 42-621. Alley.

"Alley" is a public or private right-of-way primarily designed to serve as secondary access to the side or rear of these properties whose principal frontage is on some other street.

(Code 1966, § 36-1301(5))

Sec. 42-622. Alteration.

"Alteration," as applied to a building structure, is a change or rearrangement of the supporting members, or an enlargement, or the moving of one (1) location or position to another.

(Code 1966, § 36-1301(6))

Sec. 42-623. Animal hospital.

"Animal hospital" is a facility for the medical and surgical treatment of animals and their care during the time of such treatment.

(Code 1966, § 36-1301(7))

Sec. 42-624. Apartment.

"Apartment" is a part of a building consisting of a room or suite of rooms intended, designed or used as a residence by an individual or a single-family and located in a multiple-family dwelling.

(Code 1966, § 36-1301(8))

Sec. 42-625. Apparel stores.

"Apparel stores" are stores selling clothing for men, women or children at retail.

(Code 1966, § 36-1301(9))

Sec. 42-625.1. Appeal.

"Appeal" is a written request for a review of the zoning administrator's interpretation of any provision of this chapter.

(Ord. No. 86-9119, § 2, 2-3-86)

Sec. 42-626. Appliance repairs.

"Appliance repairs" is the repairing and servicing of common household appliances such as washing machines, television sets, power tools, electric razors, radios and refrigerators.

(Code 1966, § 36-1301(10))

Sec. 42-627. Appliance sales.

"Appliance sales" is the sale of common household appliances such as washing machines, television sets, power tools, electric razors, radios and refrigerators, and repair of the same types of appliances as are sold on the premises where such repairs are incidental or accessory to the sale of such types of appliances.

(Code 1966, § 36-1301(11))

Sec. 42-628. Applicant.

"Applicant" is the owner or duly designated representative of land proposed to be subdivided, or for which conditional use permit, amendment, variance, zoning certificate or certificate of occupancy has been requested. Consent shall be required from the legal owner of the premises.

(Code 1966, § 36-1301(12))

Sec. 42-629. Area.

"Area" is a price of land capable of being described with such accuracy that its location may be established and boundaries definitely ascertained.

(Code 1966, § 36-1301(13))

Sec. 42-629.1. Area of shallow flooding.

"Area of shallow flooding" is a designated AH zone on the city's flood insurance rate map (FIRM) with a one (1) percent or greater annual chance of flooding to an average depth of one (1) to three (3) feet where a clearly defined channel is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

(Ord. No. 86-9119, § 2, 2-3-86)

Sec. 42-629.2. Area of special flood hazard.

"Area of special flood hazard" is the land in the flood plain within the city subject to one percent or greater chance of flooding in any given year.

(Ord. No. 86-9119, § 2, 2-3-86)

Sec. 42-630. Automobile service and accessory stores.

"Automobile service and accessory stores" are stores engaged primarily in the business of selling and installing tires, batteries and other automobile parts and accessories. Automobile service includes the lubrication of automobiles and the replacement of minor parts but does not include major repair work, such as motor replacement, body and fender repair or spray painting.

(Code 1966, § 36-1301(14); Ord. No. 87-9196, § 2, 7-27-87)

Sec. 42-630.1. Automobile repair.

"Automobile repair" is the repair, rebuilding or reconditioning of motor vehicles or parts thereof, including such major repairs as spray painting, body, fender, transmission, differential, axle, spring and frame repairs; repairs of radiators requiring removal thereof and major overhauling of engines.

(Ord. No. 87-9196, § 3, 7-27-87)

Sec. 42-631. Automobile sales.

"Automobile sales" is the sale of new and used automobiles and other motor vehicles in operating condition; the storage of automobiles and other motor vehicles in operating condition; but not including storage of trucks of more than five (5) tons in weight or buses; and, the repair and servicing of such vehicles, but not including body work, painting, or motor rebuilding, unless specifically permitted by the zoning district regulations.

(Code 1966, § 36-1301(15))

Sec. 42-632. Awning.

"Awning" is a roof-like cover that is temporary in nature and that projects from the wall of a building for the purpose of shielding a doorway or window from the elements.

(Code 1966, § 36-1301(16))

Sec. 42-633. Awning sign.

See "sign, awning, canopy, and marquee."

(Code 1966, § 36-1301(17))

Sec. 42-634. Banks and financial institutions.

"Banks and financial institutions" are commercial banks, savings and loan associations, brokerage offices and other similar financial institutions, but not including pawnshops.

(Code 1966, § 36-1301(18))

Sec. 42-634.1. Base flood.

"Base flood" is the flood having one percent chance of being equalled or exceeded in any given year.

(Ord. No. 86-9119, § 2, 2-3-86)

Sec. 42-634.2. Bar.

"Bar" is an establishment serving alcoholic beverages in which the principal business is the sale of such beverages at retail for consumption on the premises and in which food sales is only incidental to the consumption of such beverage.

(Ord. No. 01-10056, § 4, 9-24-01)

Sec. 42-635. Beverage distributors.

"Beverage distributors" are warehouses for the storage and distribution of beer, soft drinks and other beverages, but not including bottling plants and similar industrial uses.

(Code 1966, § 36-1301(19))

Sec. 42-636. Block.

"Block" is a tract of land bounded by streets or by a combination of streets and public parks, cemeteries, railroads, rights-of-way, shorelines or boundary lines of municipalities.

(Code 1966, § 36-1301(20))

Sec. 42-637. Building.

"Building" is any covered structure built for the support, shelter or enclosure of persons, animals, chattels or moveable property of any kind, and which is permanently affixed to the land.

(Code 1966, § 36-1301(21))

Sec. 42-638. Building, principal.

"Principal building" is a building in which is conducted the main or principal use of the lot on which said building is situated.

(Code 1966, § 36-1301(22))

Sec. 42-639. Bulk, nonconforming.

"Nonconforming bulk" is that part of a building, structure or nonbuilding use which does not conform to one or more of the applicable bulk regulations herein.

(Code 1966, § 36-1301(24))

Sec. 42-640. Bulk regulations.

"Bulk regulations" are regulations controlling the size of structures and the relationships of structures and uses to each other and to open areas and lot lines. Bulk regulations include regulations controlling:

(1) Maximum height;

(2) Maximum lot coverage;

(3) Minimum size of yard and setbacks.

(Code 1966, § 36-1301(25))

Sec. 42-641. Bulletin board sign.

See "sign, bulletin board."

(Code 1966, § 36-1301(23))

Sec. 42-642. Business and professional office.

"Business and professional office" means a building or a portion of a building used for the conduct of business by persons including, but not limited to, a single doctor or dentist, accountants, architects, attorneys, consultants, engineers, insurance agents, investment consultants, real estate brokers, where there is no display of merchandise and the storage and sale of merchandise is clearly incidental to the service provided.

(Code 1966, § 36-1301(26); Ord. No. 91-9464, § 1, 9-9-91)

Sec. 42-643. Campground.

"Campground" is an area or premises in which space is provided for transient occupancy or use by tourists occupying tents, recreational vehicles, or mobile homes less than twelve (12) feet wide.

(Code 1966, § 36-1301(27))

Sec. 42-644. Camping trailer.

"Camping trailer" is a vehicular portable unit mounted on wheels and constructed with collapsible partial side walls which fold for towing by another vehicle and unfold at the camp site to provide temporary living quarters for recreational, camping or travel use. (See recreational vehicle.)

(Code 1966, § 36-1301(28))

Sec. 42-645. Canopy.

"Canopy" is any structure, moveable or stationary, attached to and deriving its support from framework or posts or other means independent of a connected structure for the purpose of shielding a platform, stoop or sidewalk from the elements; or, a roof-like structure of a permanent nature which projects from the wall of a structure and overhangs the public way.

(Code 1966, § 36-1301(29))

Sec. 42-646. Canopy sign.

See "sign, awning, canopy, and marquee."

(Code 1966, § 36-1301(30))

Sec. 42-647. Capacity in persons.

"Capacity in persons" is the maximum number of persons that can avail themselves of the services (or goods) of an establishment, at any one time, with reasonable comfort.

(Code 1966, § 36-1301(31))

Sec. 42-648. Car wash.

"Car wash" is a building or portion thereof, containing facilities for washing more than two (2) automobiles, using production line methods with a chain conveyor, blower, steam cleaning device, or other mechanical devices; or providing space, water, equipment or soap for the complete or partial hand-washing of such automobiles, whether by operator or by customer.

(Code 1966, § 36-1301(32))

Sec. 42-649. Commercial district.

"Commercial district" is any zoning district designated with a "C", for example "C-1", "C-2", etc.

(Code 1966, § 36-1301(33))

Sec. 42-650. Common open space.

"Common open space" is a parcel of land or an area of water, or combination of both land and water, within a site designated as a planned residential development district and designed and intended for the use and enjoyment of the residents of the planned residential development. Common open space does not include streets, alleys, parks, off-street parking or loading areas, public open space, or other facilities dedicated by the developer for public use. Common open space shall be substantially free of structures but may contain such improvements as are approved as a part of the general development plan and are appropriate for the recreation of residents of the planned residential development.

(Code 1966, § 36-1301(34))

Sec. 42-651. Completely enclosed building.

"Completely enclosed building" is a building separated on all sides from adjacent open space or from other buildings by fixed exterior or party walls, pierced only by windows and entrance or exit doors, and covered by a permanent roof.

(Code 1966, § 36-1301(35))

Sec. 42-652. Construction sign.

See "sign construction."

(Code 1966, § 36-1301(36))

Sec. 42-653. Corner lot.

"Corner lot" is a lot which adjoins the point of intersection or meeting of two (2) or more streets and in which the interior angle formed by the street lines is one hundred thirty-five (135) degrees or less. If the street lines are curved, the angle shall be measured at the point of intersection of the extensions of the street lines in the directions which they take at the intersections of the street line with the side lot and with the rear lot line of the lot. If the street line is curved at its point of intersection with the side lot line or rear lot line, the tangent to the curve at that point shall be considered the direction of the street.

(Code 1966, § 36-1401(37))

Sec. 42-653.1. Critical drainage area.

"Critical drainage area" is an area designated on the official zoning map of the city that is subject to periodic flooding due to stormwater ponding or sheet flow.

(Ord. No. 97-9780, § 1, 2-10-97)

Sec. 42-654. Day care home.

"Day care home" is a home in which regular care is given for less than eighteen (18) hours a day to a maximum of six (6) children under kindergarten age including the family's own children in this age group and four (4) additional children kindergarten age and over, with a maximum of ten (10) children including the provider's children. Day care homes shall meet all requirements of the Kansas Department of Health and Environment, Bureau of Maternal and Child Health.

(Code 1966, § 36-1301(38); Ord. No. 82-8914, § 1, 6-21-82)

Sec. 42-655. Density.

"Density" is the restriction on the number of dwelling units that may be constructed per acre or per square feet of zoning lot area.

(Code 1966, § 36-1301(39))

Sec. 42-656. Developer.

"Developer" is the legal or beneficial owner of all of the land proposed to be included in a planned development, or the duly authorized agent thereof. The holder of an option or contract to purchase, a lessee having a remaining term of not less than forty (40) years, or other person having an enforceable proprietary interest in such land, shall be deemed to be a developer for the purpose of this chapter.

(Code 1966, § 36-1301(40))

Sec. 42-656.1. Development.

"Development" is any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

(Ord. No. 86-9119, § 2, 2-3-86; Ord. No. 92-9524, § 2, 8-10-92)

Sec. 42-657. Dog kennel.

"Dog kennel" is any place where more than four (4) dogs are kept, maintained, boarded and/or bred for a fee and/or offered for sale except those places/persons meeting the minimum requirements as hobby breeders.

(Code 1966, § 36-1301(41); Ord. No. 81-8863, § 13, 8-3-81)

Sec. 42-657.1. Drinking establishment.

"Drinking establishment" is an establishment which may be open to the general public, where alcoholic liquor by the drink is sold [K.S.A. 41-2601(i)].

(Ord. No. 01-10056, § 5, 9-24-01)

Sec. 42-658. Drive-in establishment.

"Drive-in establishment" is a place of business being operated for the sale and purchase at retail of food and other goods, services or entertainment, which is laid out and equipped so as to allow some or all of its patrons to be served or accommodated while remaining in their automobiles on the premises or elsewhere on the premises but outside any completely enclosed structures; or an establishment which customarily packages food for carry out.

(Code 1966, § 1301(42); Ord. No. 82-8918, § 4, 8-9-82)

Sec. 42-658.1. Drive-up window.

"Drive-up window" is a window for service to a customer in a vehicle with the intent that the customer not consume the food or beverages on the premises in parked vehicles.

(Ord. No. 82-8918, § 4, 8-9-82)
Editor's note: Ord. No. 82-8918, § 4 adopted Aug. 9, 1982, added (42a) to § 36-1301 of the 1966 Code. At the editor's discretion, said provisions have been included as § 42-658.1 of this Code.

Sec. 42-659. Dry cleaning (self-service).

"Dry cleaning (self-service)" is an establishment providing facilities with which customers may dry clean their own clothes or other fabrics.

(Code 1966, § 36-1301(43))

Sec. 42-660. Dry cleaning plant.

"Dry cleaning plant" is an establishment in which clothing and other fabrics are dry cleaned professionally.

(Code 1966, § 36-1301(44))

Sec. 42-661. Dwelling.

"Dwelling" is a permanent building or portion thereof, designed and used exclusively for residential occupancy, including single-family and multiple-family dwellings, manufactured and mobile homes and rooming and boarding houses, but not including hotels and motels.

(Code 1966, § 36-1301(45); Ord. No. 94-9629, § 2, 4-4-94)

Sec. 42-662. Dwelling, attached.

"Attached dwelling" is a residential building which is joined to another dwelling at one (1) or more sides by a party wall or walls.

(Code 1966, § 36-1301(46))

Sec. 42-663. Dwelling, detached.

"Detached dwelling" is a residential building which is entirely surrounded by open space on the same lot.

(Code 1966, § 36-1301(47))

Sec. 42-664. Dwelling, multiple-family.

"Multiple-family dwelling" is a residential building containing three (3) or more dwelling units.

(Code 1966, § 36-1301(48))

Sec. 42-665. Dwelling, single-family.

"Single-family dwelling" is a residential building containing one (1) dwelling unit only.

(Code 1966, § 36-1301(49))

Sec. 42-666. Dwelling, two-family.

"Two-family dwelling is a residential building containing two (2) dwelling units only.

(Code 1966, § 36-1301(50))

Sec. 42-667. Dwelling unit.

"Dwelling unit" is one (1) or more rooms in a residential building or residential portion of a building which are arranged, designed, used or intended for use by one (1) family, and which includes cooking space and lawful sanitary facilities reserved for the occupants thereof.

(Code 1966, § 36-1201(51))

Sec. 42-668. Easement.

"Easement" is authorization by a property owner for the use by another, and for a specified purpose, of any designated part of his property.

(Code 1966, § 1301(52))

Sec. 42-668.1. Existing construction.

"Existing construction" is (for the purposes of determining flood insurance rates) any structure for which the "start of construction" commenced before the effective date of the FIRM. "Existing construction" may also be referred to as "existing structures".

(Ord. No. 86-9119, § 2, 2-3-86)

Sec. 42-668.2. Reserved.

Editor's note: Section 7 of Ord. No. 87-9184, adopted May 11, 1987, repealed § 42-668.2, concerning existing mobile home parks and subdivisions, in its entirety. Former § 42-668.2 derived from Ord. No. 86-9119, § 2 adopted February 3, 1986.

Sec. 42-668.3. Existing structures.

See "existing construction".

(Ord. No. 86-9119, § 2, 2-3-86)

Sec. 42-668.4. Reserved.

Editor's note: Section 7 of Ord. No. 87-9184, adopted May 11, 1987, repealed § 42-668.4, concerning expansion of mobile home parks and subdivisions, in its entirety. Former § 42-668.4 derived from Ord. No. 86-9119, § 2, adopted February 3, 1986.

Sec. 42-669. Family.

"Family" is an individual, or two (2) or more persons related by blood, marriage or legal adoption, a group of not more than four (4) persons not related by blood, marriage or legal adoption or not more than eight (8) "disabled" persons (as defined by K.S.A. 12-736) residing in a dwelling licensed by the State of Kansas as a group home living together as a single housekeeping unit in a dwelling unit, including foster children and domestic servants; provided however, families having not more than two (2) persons may include not more than two (2) roomers.

(Code 1966, § 36-1301(53); Ord. No. 94-9629, § 2, 4-4-94)

Sec. 42-670. Family care facility.

"Family care facility" is a dwelling which is licensed by the State of Kansas as a "group home" to provide room and board, personal care, rehabilitation services, and supervision in a family environment for not more than eight (8) persons with a "disability" (as defined by K.S.A. 12-736), plus no more than two (2) support staff.

(Code 1966, § 36-1301(54); Ord. No. 91-9464, § 2, 9-9-91)

Sec. 42-671. Fence.

"Fence" is a freestanding structure of metal, masonry, composition or wood or any combination thereof resting on or partially buried in the ground and rising above ground level, and used for confinement, screening or partition purposes.

(Code 1966, § 36-1301(55))

Sec. 42-672. Final plat.

"Final plat" is the map or plan or record of a subdivision, and any accompanying material, as described in the subdivision regulations.

(Code 1966, § 36-1301(56))

Sec. 42-673. Flexible zoning.

"Flexible zoning" is zoning which permits uses of land and density of buildings and structures different from those which are allowed as of right within the zoning district in which the land is situated.

(Code 1966, § 36-1301(57))

Sec. 42-673.1. Flood or flooding.

"Flood" or "flooding" is a general and temporary condition of partial or complete inundation of normally dry land areas from:

(1) The overflow of inland or tidal waters; or

(2) The unusual and rapid accumulation or runoff of surface waters from any source.

(Ord. No. 86-9119, § 2, 2-3-86)

Sec. 42-674. Flood fringe.

"Flood fringe" is that portion of the flood plain lying outside of the floodway, i.e., subject to being covered by floodwaters of the regulatory flood, but not required to carry and discharge the flood waters.

(Code 1966, § 36-1301(58))

Sec. 42-674.1. Flood insurance rate map.

"Flood insurance rate map" (FIRM) is an official map of the community, on which the flood insurance study has delineated the flood hazard boundaries and the zones establishing insurance rates applicable to the community.

(Ord. No. 86-9119, § 2, 2-3-86)

Sec. 42-674.2. Flood insurance study.

"Flood insurance study" is the official report provided by the federal emergency management agency. The report contains flood profiles, as well as the flood boundary floodway map and the water surface elevation of the base flood.

(Ord. No. 86-9119, § 2, 2-3-86)

Sec. 42-675. Flood plain.

"Flood plain" is a watercourse and land adjacent to a watercourse subject to inundation from a flood having a chance occurrence in any one year of one (1) percent.

(Code 1966, § 36-1301(59))

Sec. 42-676. Floodway.

"Floodway" is the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

(Code 1966, § 36-1301(60); Ord. No. 86-9119, § 3, 2-3-86)

Sec. 42-676.1. Floodway fringe.

"Floodway fringe" is that area of the flood plain, outside of the floodway, that on the average is likely to be flooded once every one hundred (100) years (i.e., that has a one percent chance of flood occurrence in any one year).

(Ord. No. 86-9119, § 2, 2-23-86)

Sec. 42-677. Floor area.

"Floor area" is the sum of the gross horizontal areas of the several floors of the building measured from the exterior faces of the exterior walls or from the center line of walls separating two (2) buildings computed as follows:

(1) For determining floor area ratio: The sum of the following areas: a. The basement floor area when more than one-half of the basement height is above the finished lot grade level where curb level has not been established; b. elevator shafts and stairwells at each floor; c. floor space used for mechanical equipment (except equipment, open or enclosed, located on the roof); d. penthouses; e. attic space having headroom of seven (7) feet, ten (10) inches or more; f. interior balconies and mezzanines; g. enclosed porches; and h. floor area devoted to accessory uses. Space devoted to off-street parking or loading shall not be included in the floor area. The floor area of structures devoted to bulk storage of materials including, but not limited to, grain elevators and petroleum storage tanks shall be computed by counting each ten (10) feet of height, or fraction thereof, as being equal to one floor.

(2) For determining off-street parking and loading requirements: The sum of the following areas: a. Floor space devoted to the principal use of the premises, including accessory storage areas located within selling or working space such as counters, racks, or closets; b. any basement floor area devoted to retailing activities; and c. floor area devoted to the production or processing of goods or to business or professional offices. For this purpose, floor area shall not include space devoted primarily to storage purposes (except as otherwise noted herein), off-street parking or loading facilities, including aisles, ramps, and maneuvering space, or basement floor area other than area devoted to retailing activities, the production or processing of goods, or business or professional offices.

(Code 1966, § 36-1301(61))

Sec. 42-678. Food stores.

"Food stores" are stores which sell foods, fresh or frozen, and other items commonly sold in connection therewith and including, but not limited to, stores commonly referred to as dairy stores, delicatessens, fruit and vegetable markets, grocery stores, health food stores, nut shops and supermarkets. Sales must be made at retail on the premises.

(Code 1966, § 36-1301(62))

Sec. 42-679. Fraternal and/or service clubs.

"Fraternal and/or service clubs" are associations formally organized for a common purpose, or interest, and operated not for profit for persons who are bona fide members paying annual dues, which own, hire, or lease premises, the use of which premises is restricted to such members and their guests. The affairs and management of such associations are conducted by a board of directors, executive committee, or similar body chosen by the members at their annual meeting. Food, meals and beverages may be served on the premises, provided adequate dining space and kitchen facilities are available. Alcoholic beverages may be sold or served to members and their guests, provided such service is secondary and incidental to the promotion of some other common objective of the organization, and further provided that such sale or service of alcoholic beverages is in compliance with all federal, state, county and local laws.

(Code 1966, § 36-1301(63))

Sec. 42-679.1. Freeboard.

"Freeboard" is a factor of safety usually expressed in feet above a flood level for purposes of flood plain management. "Freeboard" tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, clogged bridge openings, and the hydrological effect of urbanization of the watershed.

(Ord. No. 86-9119, § 2, 2-3-86)

Sec. 42-680. Front lot line.

See "lot line, front."

(Code 1966, § 36-1301(64))

Sec. 42-681. Front yard.

See "yard, front."

(Code 1966, § 36-1301(65))

Sec. 42-682. Frontage.

"Frontage" is the length of a front lot line or lines.

(Code 1966, § 36-1301(66))

Sec. 42-683. Garage, residential.

“Residential Garage” is a detached accessory building enclosed on at least three (3) sides or a portion of a dwelling used for the parking of and storage of motor vehicles belonging to the occupants of the residence. An attached garage must share a common wall with the residence it serves.

(Code 1966, § 36-1301(67); Ord. No. 05-10264, § 3, 4-4-05)

Sec. 42-684. Garage sale.

"Garage sale" is the temporary retail use of single or multiple-family structures located in a residential district consisting of the sale of five (5) or more miscellaneous items acquired by the sellers for their ultimate use or consumption. This definition includes, but is not limited to porch, yard, sidewalk, basement, rummage, tag or other similar sale.

(Code 1966, § 36-1301(67a))

Sec. 42-685. Garden stores.

"Garden stores" are stores which sell growing plants, seeds, bulbs, shrubs and gardening and landscaping tools, implements and supplies, including lawn furniture.

(Code 1966, § 36-1301(68))

Sec. 42-686. Gasoline service station.

"Gasoline service station" is the use of any structure and surrounding land for the storage and sale of gasoline or other motor fuels; the sale and installation of automobile lubricants, supplies and accessories; the washing, polishing, cleaning and servicing of motor vehicles; and the performance of minor maintenance activities such as engine tuneups, brakes, mufflers, hoses, belts, alignments and similar work, but not including major repair such as body work, painting, or motor rebuilding involving machine work.

(Code 1966, § 36-1301(69); Ord. No. 91-9440, § 4, 5-13-91)

Sec. 42-687. Ground sign.

See "sign, ground."

(Code 1966, § 36-1301(70))

Sec. 42-688. Group care facility.

"Group care facility" is a state licensed or approved facility which provides resident services for nine (9) or more persons with a "disability" (as defined by K.S.A. 12-736) not including support staff. These individuals are provided services in accordance with their individual needs such as room and board, personal care, and adult supervision.

(Code 1966, § 36-1301(71); Ord. No. 91-9464, § 3, 9-9-91)

Sec. 42-689. Group day care center.

"Group day care center" is any facility providing care for seven (7) or more children for part or all of a day, away from the home of the parent or legal guardian, not meeting the definition of a day care home; and including full day care, preschool, group day care home, child care center, play groups, centers giving emphasis to special programming for children, kindergartens not accredited by the state department of public instruction, and other establishments offering care to groups of children for part or all of the day. Group day care centers shall meet all requirements of the Kansas Department of Health and Environment, Bureau of Maternal and Child Health.

(Code 1966, § 36-1301(72); Ord. No. 82-8914, § 2, 6-21-82; Ord. No. 87-9206, § 1, 9-28-87)

Sec. 42-689.1. Group rehabilitation facility.

"Group rehabilitation facility" is a state licensed or approved facility providing custodial care in a supervised living environment for one (1) or more persons residing voluntarily or by court placement, including, but not limited to, correctional and post-correctional centers, juvenile detention facilities, and temporary custody facilities.

(Ord. No. 91-9464, § 4, 9-9-91)

Sec. 42-690. Height, maximum.

"Maximum height" is a horizontal plane above and parallel to the average finished grade of the entire zoning lot at the height shown in the district regulations. No part of any structure shall project through such plane except:

(1) Chimneys, flues, stacks, fire escapes, gas holders, elevator enclosures, ventilators, skylights, water tanks and similar roof structures needed to operate and maintain the building on which they are located;

(2) Flag poles, television aerials, water towers and tanks, steeples and bell towers, carillons, monuments, cupolas, broadcasting and microwave transmitting and relay towers, and electric transmission line towers.

(Code 1966, § 36-1301(73); Ord. No. 81-8863, § 14, 8-3-81)

Sec. 42-690.1. Highest adjacent grade.

"Highest adjacent grade" is the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

(Ord. No. 86-9119, § 2, 2-3-86)

Sec. 42-690.2. Historic structure.

"Historic structure" means any structure that is:

(a) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the national register;

(b) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the secretary to qualify as a registered historic district;

(c) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of Interior; or

(d) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:

    (1) By an approved state program as determined by the Secretary of the Interior, or

    (2) Directly by the Secretary of the Interior in states without approved programs.

(Ord. No. 92-9524, § 3, 8-10-92)

Sec. 42-691. Hobby breeder.

"Hobby breeder" is any person who owns more than four (4) but less than twenty (20) purebred, registered dogs over the age of nine (9) months, which are habitually boarded and lodged within said person's domicile or yard; and who, furthermore, provides a fenced and/or totally enclosed exercise area; and provided, furthermore, that such animals are, at all times, kept in said fenced or enclosed area, except when under the personal and immediate control of the owner.

(Ord. No. 81-8863, § 14, 8-3-81)

Sec. 42-692. Home occupation.

"Home occupation" is a profession or other occupation not otherwise permitted in the district, which is conducted as an accessory use on a residential lot by one or more members of the family residing on the premises.

(Code 1966, § 36-1301(74))

Sec. 42-692.1. Hospital.

One or more buildings, one of which must be a hospital (defined as a public or private institution designed, intended or used to provide physical or mental health services, inpatient and overnight accommodations and medical or surgical care to persons suffering from injury, illness or disease.) A hospital complex may also include a cafeteria or restaurant, medically related heliports, rehabilitation centers, extended care clinics, physical therapy/employee exercise facilities, and shops for medical equipment, pharmaceutical supplies, gifts, books, magazines, toiletries, flowers, candy or similar items, provided such uses are primarily for the benefit of patients, staff, and visitors and are located so as not to normally attract other retail customers. A hospital complex may also include, in the same building as the hospital or in separate buildings, other health care and health-care-related services, which may include, but shall not be limited to, the following: child care centers, employee housing, temporary patient/patient family housing, parking garages and medical office buildings.

(Ord. No. 03-10156, § 1, 7-28-03)

Sec. 42-693. Hotel.

"Hotel" is a building or portion thereof, or a group of buildings, which provides sleeping accommodations for transients on a daily or weekly basis, whether such establishments are designated as a hotel, inn, automobile court, motel, motor inn, motor lodge, tourist cabin, tourist court, or otherwise.

(Code 1966, § 36-1301(75))

Sec. 42-694. Identification sign.

See "sign, identification."

(Code 1966, § 36-1301(76))

Sec. 42-695. Industrial district.

"Industrial district" is any zoning district designated with an "I", for example "I-1", "I-2", etc.

(Code 1966, § 36-1301(77))

Sec. 42-696. Junkyard.

"Junkyard" is an area of land with or without buildings, used for or occupied by a deposit, collection or storage, outside a completely enclosed building, of used or discarded materials such as wastepaper, rags or scrap material, used building materials, house furnishings, machinery, vehicles or parts thereof, with or without the dismantling, processing, salvage, sale or other use or disposition of the same.

(Code 1966, § 36-1301(78))

Sec. 42-697. Landscaping.

"Landscaping" is the improvement of a lot, parcel or tract of land with grass and shrubs and/or trees. Landscaping may include pedestrian walks, flowerbeds, ornamental objects such as fountains, statuary, and other similar natural and artificial objects designed and arranged to produce an aesthetically pleasing effect.

(Code 1966, § 36-1301(79))

Sec. 42-698. Laundry.

"Laundry" is an establishment in which clothing and other fabrics are laundered professionally.

(Code 1966, § 36-1301(80))

Sec. 42-699. Laundry (self-service).

"Laundry (self-service)" is an establishment providing facilities with which customers may launder their own clothes or other fabrics.

(Code 1966, § 36-1301(81))

Sec. 42-700. Lodging house.

"Lodging house" is a business establishment which provides sleeping and living quarters (but not individual cooking facilities) in an immovable structure on a weekly or monthly basis.

(Code 1966, § 36-1301(82))

Sec. 42-701. Lot area.

"Lot area" is the area of a horizontal plane bounded by the front, side and rear lot lines.

(Code 1966, § 36-1301(83))

Sec. 42-702. Lot, corner.

See "corner lot."

(Code 1966, § 36-1301(84))

Sec. 42-703. Lot coverage.

"Lot coverage" is that percentage of a lot which, when viewed directly from above, would be covered by a structure or structures, or any part thereof, excluding projecting roof eaves.

(Code 1966, § 36-1301(85))

Sec. 42-704. Lot depth.

"Lot depth" is the distance between the midpoint of the front lot line and the midpoint of the rear lot line.

(Code 1966, § 36-1301(86))

Sec. 42-705. Lot line.

"Lot line" is a lot boundary line. (See "lot line, front"; "lot line, rear"; "lot line, side").

(Code 1966, § 36-1301(87))

Sec. 42-706. Lot line, front.

"Front lot line" is a street right-of-way line forming the boundary of a lot.

(Code 1966, § 36-1301(88))

Sec. 42-707. Lot line, rear.

"Rear lot line" is the lot line that is most distant from, and is, or is most nearly, parallel to, the front lot line. If a rear lot line is less than twelve (12) feet long, or if the lot comes to a point at the rear, the rear lot line shall be a line at least fifteen (15) feet long, lying wholly within the lot, parallel to the front line. If a zoning lot has two (2) or more front lot lines, the owner or developer shall designate the yard which is to be the rear yard.

(Code 1966, § 36-1301(89))

Sec. 42-708. Lot line, side.

"Side lot line" is a lot line which is neither a front lot line nor a rear lot line.

(Code 1966, § 36-1301(90))

Sec. 42-709. Lot of record.

"Lot of record" is a lot which is part of a subdivision, the plat of which has been recorded in the office of the county register of deeds, or a parcel of land the deed to which was recorded prior to February 14, 1977. The owner of such a lot or parcel shall be deemed to be any equitable owner.

(Code 1966, § 36-1301(91))

Sec. 42-710. Lot size requirements.

"Lot size requirements" are restrictions on the dimensions of lots including minimum lot area, width and depth; and maximum density. Minimum lot area, width and depth establish the size of the zoning lot on which a structure or use, or two (2) or more structures or uses, may be constructed or established.

(Code 1966, § 36-1301(92))

Sec. 42-711. Lot width.

"Lot width" is the distance on a horizontal plane between the side lot lines measured at right angles to the lot depth at the established front building line. Lot width shall never be less than thirty-five (35) feet at the front lot line.

(Code 1966, § 36-1301(93))

Sec. 42-712. Lot, zoning.

"Zoning lot" is a parcel of land that is designated by its owner or developer, at the time of applying for a zoning certificate as a tract all of which is to be used, developed, or built upon as a unit under single ownership. As long as it satisfies the above requirements such lot may consist of:

(1) A single lot of record;

(2) A portion of a lot of record; or

(3) A combination of complete lots of record, complete lots and portions of lots of record, or portions of lots of record.

(Code 1966, § 36-1301(94))

Sec. 42-712.1. Lowest floor.

"Lowest floor" means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access or storage, in an area other than a basement area, is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this chapter.

(Ord. No. 87-9184, § 5, 5-11-87)

Sec. 42-712.2. Manufactured home.

"Manufactured home" is a structure built on a permanent chassis and transportable in one (1) or more sections, which contains all necessary plumbing, heating, air conditioning and electrical systems, and is designed to be used as a dwelling, with or without a permanent foundation, when connected to all required utilities. Such structures have not and cannot be determined to have been built in accordance with adopted city building codes but have been constructed in conformance with the Federal Manufactured Home Construction and Safety Standards Act generally knows as the HUD Code established pursuant to 42 U.S.C. Section 5403. For flood plain management purposes, the term "manufactured home" also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than one hundred eighty (180) consecutive days. For insurance purposes, the term "manufactured home" does not include park trailers, travel trailers, and other similar vehicles.

(Ord. No. 87-9184, § 5, 5-11-87; Ord. No. 91-9489, § 1, 12-9-91)

Sec. 42-712.3. Manufactured home park.

"Manufactured home park" is a tract of land in single ownership which is used or intended to be used by two (2) or more manufactured homes located on leased or rented spaces and which has sanitary facilities, water, electricity and other similar utilities available to permit residential occupancy of the homes. This term does not include sales lots on which unoccupied manufactured homes, whether new or used, are located for the purpose of storage, inspection or sale.

(Ord. No. 87-9184, § 5, 5-11-87; Ord. No. 91-9489, § 2, 12-9-91)

Sec. 42-712.4. Manufactured home subdivision.

"Manufactured home subdivision" is a tract of land containing two (2) or more individually owned lots, which are or intended to be developed with manufactured homes owned by the respective lot owners which are placed on permanent foundations and permanently connected to sanitary facilities, water, electricity and other similar utilities available to permit residential occupancy of the homes.

(Ord. No. 87-9184, § 5, 5-11-87; Ord. No. 91-9489, § 3, 12-9-91)

Sec. 42-712.5. Mobile home.

"Mobile home" is a structure built on a permanent chassis and transportable in one (1) or more sections, which contains all necessary plumbing, heating, air conditioning and electrical systems, and is designed to be used as a dwelling, with or without a permanent foundation, when connected to all required utilities. Such structures have not and cannot be determined to have been built in accordance with adopted city building codes, were manufactured prior to June 15, 1976, or were not manufactured in conformance with the HUD Code as is required for a manufactured home. The term mobile home does not include a recreational vehicle.

(Ord. No. 91-9489, § 4, 12-9-91)

Sec. 42-712.6. Residential-design manufactured home.

"Residential-design manufactured home" is a manufactured home on a permanent foundation which has minimum dimensions of twenty-two (22) body feet in width, a pitched roof, and siding and roofing material which are customarily used on site-built homes, and which complies with the architectural and aesthetic standards specified in section 42-64 of these regulations. A residential-design manufactured home shall be considered a single-family dwelling.

(Ord. No. 91-9489, § 5, 12-9-91)

Sec. 42-713. Marquee sign.

See "sign, awning, canopy, and marquee."

(Code 1966, § 36-1301(95))

Sec. 42-713.1. Medical and dental clinic.

"Medical and dental clinic" means a building or buildings occupied by two (2) or more physicians, dentists, or other members of a healing profession where the primary use is the delivery of health care services.

(Ord. No. 91-9464, § 5, 9-9-91)

Sec. 42-714. Mini-warehouse.

"Mini-warehouse" is a building or group of buildings in a controlled-access and/or fenced compound that contains varying sizes of individual, compartmentalized, and controlled-access stalls or lockers for the dead storage of excess personal property of an individual or family when such is not located on the lot with their residence, such as passenger motor vehicle, recreational vehicle, motorcycle, boat, and other items of personal property generally stored in residential accessory structures.

(Code 1966, § 36-1301(95a))

Secs. 42-715--42-718. Reserved.

Editor's note: Section 7 of Ord. No. 87-9184, adopted May 11, 1987, repealed §§ 42-715--42-718 in their entirety Former §§ 42-715--42-718, concerning definitions for mobile home provisions, derived from the Code of 1966, § 36-1301(96)--(99)

Sec. 42-719. Mobile sign.

See "sign, mobile."

(Code 1966, § 36-1301(100))

Sec. 42-719.1. Modular home.

"Modular home" is a structure which the manufacturer certified as constructed in accordance with adopted city building codes, which is transportable in one (1) or more sections but is not constructed on a permanent chassis, and which is designed to be used as a dwelling on a permanent foundation when connected to required utilities including plumbing, heating, air conditioning and electrical systems contained therein.

(Ord. No. 91-9489, § 6, 12-9-91)

Sec. 42-720. Motor freight terminal.

"Motor freight terminal" is a building or area in which freight brought by truck is assembled and/or stored for routing in intrastate and interstate shipment by truck or in which semi-trailers, including tractor and/or trailer units, and other trucks are parked or stored.

(Code 1966, § 36-1301(101))

Sec. 42-721. Motor home.

"Motor home" is a vehicular unit designed to provide temporary living quarters for recreational, camping, or travel use built on or permanently attached to a self-propelled motor vehicle chassis or on a chassis cab or van which is an integral part of the completed vehicle. (See "recreational vehicle.")

(Code 1966, § 36-1301(102))

Sec. 42-722. Nameplate sign.

See "sign, nameplate."

(Code 1966, § 36-1301(103))

Sec. 42-722.1. New construction.

New construction means, for the purposes of determining insurance rates, structures for which the start of construction commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, new construction means structures for which the start of construction commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.

(Ord. No. 86-9119, § 2, 2-3-86; Ord. No. 92-9524, § 4, 8-10-92)

Sec. 42-723. Nonconforming lot of record.

"Nonconforming lot of record" is an unimproved lot which does not comply with the lot size requirements for any permitted use in the district in which it is located.

(Code 1966, § 36-1301(104))

Sec. 42-724. Nonconforming structure.

"Nonconforming structure" is a structure which does not comply with the lot size requirements of bulk regulations applicable to new structures in the zoning district in which it is located.

(Code 1966, § 36-1301(105))

Sec. 42-725. Nonconforming use.

"Nonconforming use" is an existing use of a structure or land which does not comply in some respect with the use regulations applicable to new uses in the zoning district in which it is located.

(Code 1966, § 36-1301(106))

Sec. 42-726. Nonconformity.

"Nonconformity" is a nonconforming use, nonconforming structure, or a nonconforming lot of record.

(Code 1966, § 36-1301(107))

Sec. 42-727. Nursing or convalescent home.

"Nursing or convalescent home" is an institution for the care of children or the aged or infirm, or a place of rest for those suffering bodily disorders, but not including facilities for surgical care or institutions for the care and treatment of mental illness, alcoholism or narcotics addition.

(Code 1966, § 36-1301(108))

Sec. 42-728. Occupancy permit.

"Occupancy permit" is a permit issued by the zoning administrator after certification that such land, use, structure or building is fit for human occupancy and complies with all of the provisions of the zoning regulations and other applicable city codes, ordinances, rules and regulations.

(Code 1966, § 36-1301(109))

Sec. 42-729. Office.

See "business and professional offices."

(Code 1966, § 36-1301(110))

Sec. 42-730. Off-premise sign.

See "sign, advertising."

(Code 1966, § 36-1301(111))

Sec. 42-731. Outdoor storage.

"Outdoor storage" is the storage of goods and materials outside of any building or structure, but not including storage of a temporary or emergency nature.

(Code 1966, § 36-1301(112))

Sec. 42-731.1. Overlay district.

"Overlay district" is a district in which additional requirements act in conjunction with the underlying zoning district(s). The original zoning district designation does not change.

(Ord. No. 86-9119, § 2, 2-3-86)

Sec. 42-732. Package liquor store.

"Package liquor store" is an establishment in which alcoholic beverages are sold for consumption off the premises.

(Code 1966, § 36-1301(113))

Sec. 42-733. Parking garage.

"Parking garage" is a building used for the storage of motor vehicles, which contains space rented to the general public by the hour, day, week, month or year, and including the accessory sale of gasoline and motor oil if wholly within a completely enclosed building.

(Code 1966, § 36-1301(114))

Sec. 42-734. Parking lot.

"Parking lot" is an open area used for the storage of motor vehicles which contains space rented to the general public by the hour, day, week, month or year.

(Code 1966, § 36-1301(115))

Sec. 42-735. Parking space.

"Parking space" is a surfaced area, enclosed in the main building or in an accessory building, or unenclosed, exclusive of driveways, permanently reserved for the temporary storage of one automobile, and connected with a street or alley by a surfaced driveway which affords satisfactory ingress or egress for automobiles.

(Code 1966, § 36-1301(116))

Sec. 42-736. Pharmacies.

"Pharmacies" are stores which sell prescription and nonprescription drugs and medicine and medical, surgical, and dental supplies and appliances only.

(Code 1966, § 36-1301(117))

Sec. 42-737. Planning commission.

"Planning commission" means the Salina City Planning Commission, as established in accordance with K.S.A. 12-701 et seq., and with the powers and authority therein granted.

(Code 1966, § 36-1301(118))

Sec. 42-738. Pole sign.

See "sign, pole."

(Code 1966, § 36-1301(119))

Sec. 42-739. Preliminary plat.

"Preliminary plat" is the preliminary drawings and information as described in this chapter and as defined in the subdivision regulations to be submitted to the planning commission for its approval.

(Code 1966, § 36-1301(120))

Sec. 42-740. Principal structure.

"Principal structure" is a structure in which a principal use of the lot on which the structure is located is conducted.

(Code 1966, § 36-1301(121))

Sec. 42-741. Principal use.

"Principal use" is the main use of land or structures as distinguished from a subordinate or accessory use.

(Code 1966, § 36-1301(122))

Sec. 42-742. Private club.

"Private club" is an association organized and operated for profit or not for profit for persons who are bona fide members paying annual dues, which owns, hires, or leases premises, the use of which premises is restricted to such members and their guests. Food, meals and beverages may be served on such premises provided adequate dining room space and kitchen facilities are available. Alcoholic beverages may be served or sold to members and their guests provided such service or sale of alcoholic beverages is in compliance with all federal, state, county and local laws.

(Code 1966, § 36-1301(123))

Sec. 42-743. Projecting sign.

See "sign, projecting."

(Code 1966, § 36-1301(124))

Sec. 42-744. Public open space.

"Public open space" is a parcel of land or an area of water, or a combination of land and water dedicated to public use and available for the use and enjoyment of the general public. Public open space does not include streets, alleys or off-street parking or loading areas.

(Code 1966, § 36-1301(125))

Sec. 42-745. Public sewer and water system.

"Public sewer and water system" is any system, other than an individual septic tank or tile field, or individual well, operated by a municipality or other governmental agency or a public utility for the disposal of wastes and the furnishing of water.

(Code 1966, § 36-1301(126))

Sec. 42-746. Railroad right-of-way.

"Railroad right-of-way" is a strip of land with tracks and auxiliary facilities for track operation, but not including freight depots or stations, loading platforms, train sheds, warehouses, car or locomotive shops, or car yards.

(Code 1966, § 36-1301(127))

Sec. 42-747. Real estate sign.

See "sign, real estate."

(Code 1966, § 36-1301(128))

Sec. 42-748. Rear lot line.

See "lot line, rear."

(Code 1966, § 36-1301(129))

Sec. 42-749. Rear yard.

See "yard, rear."

(Code 1966, § 36-1301(130))

Sec. 42-750. Recreational vehicle.

"Recreational vehicle" is a vehicular-type unit primarily designed as temporary living quarters for recreational, camping, or travel use, which either has its own motive power or is mounted on or drawn by another vehicle. The basic entities include: travel trailer, camping trailer, topper, truck camper and motor home.

(Code 1966, § 36-1301(138))

Sec. 42-751. Regulatory flood.

This term and definition is to be deleted.

(Code 1966, § 36-1301(131); Ord. No. 86-9119, § 4, 2-3-86)

Sec. 42-752. Remodeling.

"Remodeling" is any change in a structure (other than incidental repairs and normal maintenance) which may prolong its useful life, or the useful life of its supporting members such as bearing walls or partitions, columns, beams, girders or foundations; or the construction of any addition to, or enlargement of, a structure; or the removal of any portion of a structure.

(Code 1966, § 36-1301(132))

Sec. 42-753. Residential building.

"Residential building" is a building all or part of which contains one or more dwelling units, including single-family dwellings, two-family dwellings, multiple-family dwellings, lodging houses, mobile homes, dormitories, sororities and fraternities.

(Code 1966, § 36-1301(133))

Sec. 42-754. Residential district.

"Residential district" is any zoning district designated with an "R", for example "R-1", "R-2", etc., any planned development district that contains residential buildings and the MH mobile home district.

(Code 1966, § 36-1301(134))

Sec. 42-755. Restaurant.

"Restaurant" is a public eating or drinking establishment, the facilities, equipment, and manner and hours of operation of which are consistent with a food service operation, including but not limit to the types of business establishments customarily referred to as cafes, cafeterias, coffee shops, dairy bars, restaurants and sofa fountains.

(Code 1966, § 36-1301(135); Ord. No. 01-10056, § 6, 9-24-01)

Sec. 42-756. Retail sales.

"Retail sales" is the sale of goods, merchandise and commodities for use or consumption.

(Code 1966, § 36-1301(136))

Sec. 42-757. Riding stables.

"Riding stables" are structures in which saddle horses are kept, maintained and/or boarded, and in connection with which saddle horses are rented to the general public or made available to members of a private club. Exercise rings and show rings shall be considered uses accessory to the use of the premises of a riding stable.

(Code 1966, § 36-1301(137))

Sec. 42-758. Right-of-way.

"Right-of-way" is a strip of land occupied or intended to be occupied by a street, crosswalk, railroad, road, electric transmission line, oil or gas pipeline, water main, sanitary or storm sewer main, or for another special use.

(Code 1966, § 36-1301(139))

Sec. 42-758.1. Risk premium rates.

See "Actuarial premium rates."

(Ord. No. 86-9119, § 2, 2-3-86)

Sec. 42-759. Roof sign.

See "sign, roof."

(Code 1966, § 36-1301(140))

Sec. 42-759.1. Rooming and boarding house.

"Rooming and boarding house" is a single-family residential dwelling with one (1) kitchen used to provide lodging for one (1) week or longer for compensation, with or without meals, for three (3) but not more than eight (8) persons, each with a private room excluding the resident owner or occupant and family thereof.

(Ord. No. 94-9629, § 3, 4-4-94)

Sec. 42-760. Screening.

"Screening" is decorative fencing or evergreen vegetation maintained for the purpose of concealing from view the area behind such structures or evergreen vegetation. When fencing is used for screening, it shall be not less than six (6) or more than eight (8) feet in height.

(Code 1966, § 36-1301(141))

Sec. 42-761. Setback.

"Setback" is the distance between the front lot line and the principal building on the lot.

(Code 1966, § 36-1301(142))

Sec. 42-762. Side lot line.

See "lot line, side."

(Code 1966, § 36-1301(143))

Sec. 42-763. Side yard.

See "yard, side."

(Code 1966, § 36-1301(144))

Sec. 42-764. Sign.

"Sign" is any writing (including letters, words or numerals), pictorial representation (including illustrations or decorations), emblem (including devices, symbols, or trademarks), flag, banner, streamer, pennant, string of lights, or display calculated to attract the attention of the public, or any other figure of similar character which:

(1) Is a structure or any part thereof, or a portable display, or is attached to, painted on, or in any other manner represented on a building or other structure or on the ground;

(2) Is used to announce, direct attention to, or advertise; and

(3) Is not located inside a building.

(Code 1966, § 36-1301(145))

Sec. 42-765. Sign, advertising.

"Advertising sign" is a sign which directs attention to a business, commodity, service, or entertainment conducted, sold, or offered at a location other than the premises on which the sign is located, or to which it is affixed (off-premise sign).

(Code 1966, § 36-1301(146))

Sec. 42-766. Sign, awning, canopy, and marquee.

"Awning, canopy and marquee sign" is a sign that is mounted or painted on, or attached to, an awning, canopy, or marquee that is otherwise permitted by these regulations. No such sign shall project more than twenty-four (24) inches above, below, or twelve (12) inches beyond the physical dimensions of the awning, canopy, or marquee, and a minimum of eight (8) feet of clearance shall be provided above grade.

(Code 1966, § 36-1301(147))

Sec. 42-767. Sign, bulletin board.

"Bulletin board sign" is a sign that indicates the name of an institution or organization on whose premises it is located and which contains the name of the institution or organization, the name or names of persons connected with it, and announcements of persons, events, or activities occurring at the institution. Such signs may also present a greeting or similar message.

(Code 1966, § 36-1301(148))

Sec. 42-768. Sign, business.

"Business sign" is a sign which directs attention to a business or profession conducted, or to a commodity or service sold, offered or manufactured, or an entertainment offered, on the premises where the sign is located or to which it is affixed.

(Code 1966, § 36-1301(149))

Sec. 42-769. Sign, canopy.

See "sign, awning, canopy, and marquee."

(Code 1966, § 36-1301(150))

Sec. 42-770. Sign, construction.

"Construction sign" is a temporary sign indicating the names of architects, engineers, landscape architects, contractors, and similar artisans involved in the design and construction of a structure or project only during the construction period and only on the premises on which the construction is taking place.

(Code 1966, § 36-1301(151))

Sec. 42-771. Sign, ground.

"Ground sign" is any sign placed upon, or supported by, the ground independently of the principal building or structure on the property. Signs on accessory structures shall be considered ground signs.

(Code 1966, § 36-1301(152))

Sec. 42-772. Sign, identification.

"Identification sign" is a sign giving the name and address of a building, business, development or establishment. Such signs may be wholly or partly devoted to a readily recognized symbol.

(Code 1966, § 36-1301(153))

Sec. 42-773. Sign, marquee.

See "sign, awning, canopy, and marquee."

(Code 1966, § 36-1301(154))

Sec. 42-774. Sign, mobile.

"Mobile sign" is a sign which is designed to be easily transported and is attached to a trailer or other nonmotive powered vehicle.

(Code 1966, § 36-1301(155))

Sec. 42-775. Sign, nameplate.

"Nameplate sign" is a sign giving the name and/or address of the owner or occupant of a building or premises on which it is located, and where applicable, a professional status.

(Code 1966, § 36-1301(156))

Sec. 42-776. Sign, off-premise.

See "sign, advertising."

(Code 1966, § 36-1301(157))

Sec. 42-777. Sign, pole.

"Pole sign" is a sign that is mounted on a free-standing pole, the bottom edge of which sign is six (6) feet or more above ground level.

(Code 1966, § 36-1301(158))

Sec. 42-778. Sign, projecting.

"Projecting sign" is a sign that is wholly or partly dependent upon a building for support and which projects more than twelve (12) inches from such building

(Code 1966, § 36-1301(159))

Sec. 42-779. Sign, real estate.

"Real estate sign" is a sign pertaining to the sale or lease of the lot or tract of land on which the sign is located, or to the sale or lease of one or more structures, or a portion thereof located thereon.

(Code 1966, § 36-1301(160))

Sec. 42-780. Sign, roof.

"Roof sign" is a sign erected, constructed and maintained wholly upon or over the roof of a building and having the roof as the principal means of support.

(Code 1966, § 35-1301(161))

Sec. 42-781. Sign, wall.

"Wall sign" is a sign fastened to or painted on a wall of a building or structure in such a manner that the wall becomes merely the supporting structure or forms the background surface, and which does not project more than twelve (12) inches from such building.

(Code 1966, § 36-1301(162))

Sec. 42-782. Small animal hospital.

"Small animal hospital" is a facility for the medical and surgical treatment of ordinary household pets, such as dogs, cats, birds, and the like, excluding however, horses, donkeys, burros, goats, sheep, or other similar animals or pets not capable of being cared for entirely within the confines of a residence.

(Code 1966, § 36-1301(163))

Sec. 42-782.1. Start of construction.

"Start of construction" (for the purposes of the floodplain regulations) includes substantial improvements, and means the date the building permit was issued, provided the actual start of construction repairs, reconstruction, rehabilitation, addition, placement, or other improvement was within one hundred eighty (180) days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include the excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation of buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

(Ord. No. 86-9119, § 2, 2-3-86; Ord. No. 87-9184, § 3, 5-11-87; Ord. No. 95-9524, § 5, 8-10-92)

Sec. 42-783. Structure.

(a) "Structure" is anything constructed or erected with a fixed location on the ground, or attached to something having a fixed location on the ground. Among other things, structures include buildings, walls, sheds, towers, and bins. For purposes of this chapter, residential air conditioning condensation units and similar cooling system apparatus, or so-called "window" or "room" conditioners shall not be considered as structures.

(b) "Structure" (for the purposes of the flood plain regulations) means a walled and roofed building that is principally above ground, as well as a manufactured home, and a gas or liquid storage tank that is principally above ground.

(Code 1966, § 36-1301(164); Ord. No. 86-9119, § 5, 2-3-86; Ord. No. 87-9184, § 4, 5-11-87)

Sec. 42-784. Subdivision.

"Subdivision" is any land, vacant or improved, which is divided or proposed to be divided into two (2) or more lots for the purpose of offer, sale, lease or development. Subdivision includes the division or development of residential and non-residential zoned land.

(Code 1966, § 36-1301(165))

Sec. 42-785. Subdivision regulations.

"Subdivision regulations" are the official subdivision regulations of the city, together with all amendments thereto, adopted pursuant to Kansas Statutes Annotated, Section 12-705.

(Code 1966, § 36-1301(166))

Sec. 42-785.1. Substantial improvement.

"Substantial improvement" is any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds fifty (50) percent of the market value of the structure before the start of construction of the improvement. This term includes structures which have incurred substantial damage, regardless of the actual repair work performed. The term does not, however, include either:

(1) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or

(2) Any alteration of an historic structure, provided that the alteration will not preclude the structure's continued designation as an historic structure.

(Ord. No. 86-9119, § 2, 2-3-86; Ord. No. 95-9524, § 6, 8-10-92)

Sec. 42-785.2. Substantial damage.

Substantial damage means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed fifty (50) percent of the market value of the structure before damage occurred.

(Ord. No. 92-9524, § 7, 8-10-92)

Sec. 42-786. Reserved.

Editor's note: Ord. No. 01-10056, § 7, adopted September 24, 2001, repealed § in its entirety. Formerly said section pertained to the definition of tavern and derived from Code 1966, § 36-1301(167).

Sec. 42-787. Temporary use.

"Temporary use" is a use permitted in the zoning district subject to a specific time limit; unless otherwise specified in these regulations, a time period not to exceed two (2) years.

(Code 1966, § 36-1301(168))

Sec. 42-788. Topper.

"Topper" is a portable unit constructed to provide temporary living quarters for recreational, travel, or camping use, consisting of a roof and sides and designed to be loaded onto and unloaded from the bed of a pickup truck. (See "recreational vehicle.")

(Code 1966, § 36-1301(169))

Sec. 42-789. Trailer.

"Trailer" is a vehicle standing on wheels or on rigid supports which is used for transporting boats, cargo or property.

(Code 1966, § 36-1301(170))

Sec. 42-790. Travel trailer.

"Travel trailer" is a vehicular unit, mounted on wheels, designed to provide temporary living quarters for recreational, camping, or travel use and of such size or weight as not to require special highway movement permits when drawn by an authorized vehicle, and with a living area of less than two hundred twenty (220) square feet, excluding built-in equipment (such as wardrobes, closets, cabinets, kitchen units or fixtures) and bath and toilet rooms. (See "recreational vehicle.")

(Code 1966, § 36-1301(171))

Sec. 42-791. Truck camper.

"Truck camper" is a portable unit constructed to provide temporary living quarters for recreational, travel, or camping use, consisting of a roof and sides and designed to be loaded onto and unloaded from the bed of a pickup truck. (See "recreational vehicle.")

(Code 1966, § 36-1301(172))

Sec. 42-792. Undue restriction of the regulatory flood.

"Undue restriction of the regulatory flood" is a restriction or blocking of the conveyance of flood-water on a flood plain created by structures or fill which, when coupled with an assumed equal conveyance reduction on the opposite side of the flood plain, results in an increase in the height of the regulatory flood of more than one foot.

(Code 1966, § 36-1301(173))

Sec. 42-793. Use.

"Use" is any purpose for which a structure or a tract of land may be designed, arranged, intended, maintained or occupied; also, any activity, occupation, business or operation carried on, or intended to be carried on, in a structure or on a tract of land.

(Code 1966, § 36-1301(174))

Sec. 42-794. Use regulations.

"Use regulations" are the provisions of this chapter which identify permitted and conditional uses, impose use limitations, require adherence to performance standards and regulate home occupations and accessory and temporary uses.

(Code 1966, § 36-1301(175))

Sec. 42-794.1. Variance.

"Variance" is a grant of relief to a person from the requirements of this chapter which permits construction and/or development in a manner otherwise prohibited by this chapter where specific enforcement would result in unnecessary hardship.

(Ord. No. 86-9119, § 2, 2-3-86)

Sec. 42-795. Vision clearance area.

"Vision clearance area" is a triangular area on a lot at the intersection of two (2) streets or a street and a railroad, two (2) sides of which are lot lines measured from the corner intersection of the lot lines to a distance specified in this chapter. The third side of the triangle is a line across the corner of the lot joining the ends of the other two (2) sides. Where the lot lines at intersections have rounded corners, the lot lines will be extended in a straight line to a point of intersection.

(Code 1966, § 36-1301(176))
Cross references: Obstructing visibility at intersections, §§ 35-51 et seq., 42-81.

Sec. 42-796. Wall sign.

See "sign, wall."

(Code 1966, § 36-1301(177))

Sec. 42-797. Wholesale sales.

"Wholesale sales" are the sale of goods, merchandise and commodities for resale.

(Code 1966, § 36-1301(178))

Sec. 42-798. Width, lot.

See "lot width."

(Code 1966, § 36-1301(179))

Sec. 42-799. Wind energy conversion system (WECS).

"Wind energy conversion system (WECS)" means any device such as wind generator, wind charger, windmill or wind turbine which converts wind energy to another form of useable energy.

(Ord. No. 81-8875, § 1, 9-14-81)

Sec. 42-800. Yard.

"Yard" is open space on a lot which is unoccupied and unobstructed from its lowest level to the sky, except for permitted obstructions.

(Code 1966, § 36-1301(180))

Sec. 42-801. Yard, front.

"Front yard" is a yard extending along the full length of a front lot line and back to a line drawn parallel to the front lot line at a distance therefrom equal to the depth of the required front yard. On a corner lot or a double or reverse frontage lot, each yard that abuts a front lot line shall be considered a front yard.

(Code 1966, § 36-1301(181))

Sec. 42-802. Yard, rear.

"Rear yard" is a yard extending along the full length of the rear lot line and back to a line drawn parallel to the rear lot line at a distance therefrom equal to the depth of the required rear yard. In the case of a corner lot, there shall be no rear yard as defined, and in such case the sides opposite the street sides shall be considered as side yards for setback purposes.

(Code 1966, § 36-1301(182))

Sec. 42-803. Yard, side.

"Side yard" is a yard extending along a side lot line and back to a line drawn parallel to the side lot line at a distance therefrom equal to the width of the required minimum side yard, but excluding any area encompassed within a front yard or rear yard. Dimensions of minimum side yards specified in the district regulations of this chapter refer to the required width of each side yard rather than to the width of both side yards, unless otherwise specified.

(Code 1966, § 36-1301(183))

Sec. 42-804. YMCA, YWCA, Boy Scouts, Girl Scouts, Campfire Girls and other similar groups.

"YMCA, YWCA, Boy Scouts, Girl Scouts, Campfire Girls and other similar groups" are associations formally organized for a common purpose, or interest, and operated not for profit for persons who are bona fide members, which own, hire, or lease premises, the use of which premises is primarily utilized for the promotion of the common purpose or interest of the association. Food, meals and beverages may be served on such premises, provided adequate dining room space and kitchen facilities are available. No alcoholic beverages may be served or sold on the premises.

(Code 1966, § 36-1301(184))

Sec. 42-805. Zoning lot.

See "lot, zoning."

(Code 1966, § 36-1301(185))

Sec. 42-806. Zoning regulations.

"Zoning regulations" are the official zoning regulations of the city together with any and all amendments adopted pursuant to Kansas Statutes Annotated, Section 12-107, et seq.

(Code 1966, § 36-1301(186))

Secs. 42-807--42-814. Reserved.

ARTICLE XV. AIRPORT ZONING DISTRICT[14]

Sec. 42-815. Short title.

This article shall be known and may be cited as "Salina Municipal Airport Zoning Ordinance."

(Ord. No. 92-9534, § 1, 9-21-92)

Sec. 42-816. Definitions.

As used in this article, unless the context otherwise requires:

(1) *Airport* means Salina Municipal Airport.

(2) *Airport elevation* means the established elevation of the highest point on the usable landing area.

(3) *Airport hazard* means any structure, tree or use of land which obstructs the airspace required for, or is otherwise hazardous to, the flight of aircraft in landing or taking off at the airport.

(4) *Airport reference point* means the point established as the approximate geographic center of the airport landing area and so designated.

(5) *Board of adjustment* means the board of directors of the Salina Airport Authority.

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[14] **State law references:** Airport zoning regulations, K.S.A. 3-701 et seq.

(6) *Height*, for the purpose of determining the height limits in all zones set forth in this article and shown on the zoning map, the datum shall be mean sea level elevation unless otherwise specified.

(7) *Instrument runway* means a runway equipped or to be equipped with a precision electronic navigation aid or landing aid or other air navigation facilities suitable to permit the landing of aircraft by an instrument approach under restricted visibility conditions.

(8) *Landing area* means the area of the airport used for the landing, taking off or taxing of aircraft.

(9) *Large airplane* means an airplane of more than twelve thousand five hundred (12,500) pounds (5,700 kg) maximum certificated takeoff weight.

(10) *Nonconforming use* means any preexisting structure, tree, natural growth or use of land which is inconsistent with the provisions of this article or an amendment thereto.

(11) *Noninstrument runway* means a runway other than an instrument runway and includes both nonprecision and visual runways.

(12) *Nonprecision instrument runway* means a runway with an approved or planned straight-in instrument approach procedure which has no existing or planned precision instrument approach procedure.

(13) *Person* means an individual, firm, partnership, corporation, company, association, joint stock association, or body politic, and includes a trustee, receiver, assignee, administrator, executor, guardian, or other representative.

(14) *Runway* means the paved surface of an airport landing area.

(15) *Small airplane* means an airplane of twelve thousand five hundred (12,500) pounds (5,700 kg) or less maximum certificated takeoff weight.

(16) *Structure* means an object constructed or installed by man, including, but without limitation, buildings, towers, smokestacks, and overhead transmission lines.

(17) *Tree* means any object of natural growth.

(18) *Visual runway* means a runway without an existing or planned straight-in instrument approach procedure.

(Ord. No. 92-9534, § 1, 9-21-92)

Sec. 42-817. Aircraft use zones.

In order to carry out the provisions of this article, there are hereby created and established certain zones which include all of the land lying within the instrument approach zones, noninstrument approach zones, transition zones, horizontal zone and conical zone. Such areas and zones are shown on Salina Municipal Airport Airspace Drawing consisting of one (1) sheet, prepared by the Salina Airport Authority and dated May, 1992, which is attached to this article and made a part hereof. The various zones are hereby established and defined as follows:

(1) *Instrument approach zone.* An instrument approach zone is established at each end of the instrument runway for instrument landings and takeoffs. The instrument approach zones shall have a width of one thousand (1,000) feet at a distance of two hundred (200) feet beyond each end of the runway, widening thereafter uniformly to a width of sixteen thousand (16,000) feet at a distance of fifty thousand two hundred (50,200) feet beyond each end of the runway, its center line being the continuation of the centerline of the runway.

(2) *Nonprecision instrument approach zone.* A nonprecision instrument approach zone is established at each end of all nonprecision instrument runways for nonprecision instrument landings and takeoffs. Two (2) approach zone sizes exist, one for runways serving small airplanes, one for runways serving large airplanes.

Large airplanes: The nonprecision instrument approach zone shall have a width of five hundred (500) feet at a distance of two hundred (200) feet beyond each end of the runway, widening thereafter uniformly to a width of three thousand five hundred (3,500) feet at a distance of ten thousand two hundred (10,200) feet beyond each end of the runway, its centerline being the continuation of the centerline of the runway.

Small airplanes: The nonprecision instrument approach zone shall have a width of five hundred (500) feet at a distance of two hundred (200) feet beyond each end of the runway, widening thereafter uniformly to a width of two thousand (2,000) feet at a distance of five thousand two hundred (5,200) feet beyond each end of the runway, its centerline being the continuation of the centerline of the runway.

(3) *VFR approach zone.* A visual flight rules (VFR) approach zone shall have a width of two hundred fifty (250) feet at a distance of two hundred (200) feet beyond each end of the runway widening thereafter uniformly to a width of one thousand two hundred fifty (1,250) feet at a distance of five thousand two hundred (5,200) feet beyond each end of the runway.

(4) *Transition zones.* Transition zones are hereby established adjacent to each instrument and noninstrument runway and approach zone as indicated on the zoning map. Transition zones symmetrically located on either side of runways have variable widths as shown on the airspace drawing.

Transition zones extend outward from a line two hundred fifty (250) feet on either side of the centerline of the noninstrument runway, for the length of such runway plus two hundred (200) feet on each end; and five hundred (500) feet on either side of the centerline of the instrument runway, for the length of such runway plus two hundred (200) feet in each end, and are parallel and level with such runway centerlines. This described zone is known as the primary surface. The transition zones along such runways slope upward and outward one (1) foot vertically for each seven (7) feet horizontally to the point where they intersect the horizontal surface. Further, transition zones are established adjacent to both instrument and noninstrument approach zones for the entire length of the approach zones. These transition zones have variable widths, as shown on the zoning map. Such transition zones flare symmetrically with either side of the runway approach zones from the base of such zones and slope upward and outward at the rate of one (1) foot vertically for each seven (7) feet horizontally to the points where they intersect the surfaces of the horizontal and conical zones. Additionally, transition zones are established adjacent to the instrument approach zone where it projects through and beyond the limits of the conical zone, extending a distance of five thousand (5,000) feet measured horizontally from the edge of the instrument approach zones at right angles to the continuation of the centerline of the runway.

(5) *Horizontal surface.* The horizontal surface is a horizontal plane one hundred fifty (150) feet above the established airport elevation, the perimeter of which is constructed by swinging arcs of specified radii from the center of each end of the primary surface of each runway and connecting the adjacent arcs. The radius of each arc is: (1) five thousand (5,000) feet for all runways designated as visual or nonprecision-small airplane; and (2) ten thousand (10,000) feet for all other runways. The radius of the arc specified for each end of a runway will have the same arithmetical value. That value will be the highest determined for either end of the runway.

When a five thousand (5,000) foot arc is encompassed by tangents connecting two adjacent ten thousand (10,000) foot arcs, the five thousand (5,000) foot arc shall be disregarded on the construction of the perimeter of the horizontal surface.

(6) *Conical surface.* The conical surface is hereby established as a surface extending outward and upward from the periphery of the horizontal surface at a slope of one (1) foot vertically for each twenty (20) feet horizontally for a horizontal distance of four thousand (4,000) feet.

(Ord. No. 92-9534, § 1, 9-21-92)

Sec. 42-818. Height limitations.

(a) Except as otherwise provided in this article, no structure or tree shall be erected, altered, allowed to grow, or maintained in any zone created by this article to a height in excess of the height limit herein established for such zone. Such height limitations are hereby established for each of the zones in question as follows:

(1) *Instrument approach zone.* One (1) foot in height for each fifty (50) feet in horizonal distance beginning at a point two hundred (200) feet from and at the center line elevation of the end of the instrument runway and extending a distance of ten thousand two hundred (10,200) feet from the end of the runway; thence one (1) foot in height for each forty (40) feet in horizontal distance to a point fifty thousand two hundred (50,200) feet from the end of the runway;

(2) *Noninstrument approach zones.* Large airplanes: One (1) foot in height for each thirty-four (34) feet in horizontal distance beginning at a point two hundred (200) feet from and at the centerline elevation of the end of the noninstrument runway and extending to a point ten thousand two hundred (10,200) feet from the end of the runway; Small airplanes: One (1) foot in height for each twenty (20) feet in horizontal distance beginning at a point two hundred (200) feet from and at the centerline elevation at the end of the noninstrument runway and extending to a point five thousand two hundred (5,200) feet from the end of the runway;

(3) *Transition zones.* One (1) foot in height for each seven (7) feet in horizontal distance beginning at any point two hundred fifty (250) feet normal to and at the elevation of the centerline of noninstrument runways, extending two hundred (200) feet beyond each end thereof, and five hundred (500) feet normal to and at the elevation of the centerline of the instrument runway, extending two hundred (200) feet beyond each end thereof, extending to a height of one hundred fifty (150) feet above the airport elevation which is one thousand two hundred eighty-five (1,285) feet above mean sea level. In addition to the foregoing, there are established height limits of one (1) foot vertical height for each seven (7) feet horizontal distance measured from the edges of all approach zones for the entire length of the approach zones and extending upward and outward to the points where they intersect the horizontal or conical surfaces. Further, where the instrument approach zone projects through and beyond the conical surface a height limit of one (1) foot for each seven (7) feet of horizontal distance shall be maintained beginning at the edge of the instrument approach zone and extending a distance of five thousand (5,000) feet from the edge of the instrument approach zone measured normal to the centerline of the runway extended;

(4) *Horizontal surface.* One hundred fifty (150) feet above the airport elevation or a height of one thousand four hundred thirty-five (1,435) feet above mean sea level;

(5) *Conical surface.* One (1) foot in height for each twenty (20) feet of horizontal distance beginning at the periphery of the horizontal surface, extending three hundred fifty (350) feet above the airport elevation; and

(6) *Excepted height limitations.* Nothing in this article shall be construed as prohibiting the growth, construction or maintenance of any tree or structure to a height up to seventy-five (75) feet above the surface of the land; except when, because of the terrain, land contour or topographic features, such tree or structure would extend above the height limits prescribed for such zone.

(b) Where an area is covered by more than one (1) height limitation, the more restrictive limitations shall prevail.

(Ord. No. 92-9534, § 1, 9-21-92)

Sec. 42-819. Use restrictions.

Notwithstanding any other provisions of this article, no use may be made of land within any zone established by this article in such a manner as to create electrical interference with radio communication between the airport and aircraft, make it difficult for flyers to distinguish between airport lights and others, result in glare in the eyes of flyers using the airport, impair visibility in the vicinity of the airport or otherwise endanger the landing, taking off, or maneuvering of aircraft.

(Ord. No. 92-9534, § 1, 9-21-92)

Sec. 42-820. Nonconforming uses.

(a) Regulations not retroactive. The regulations provided by this article shall not be construed to require the removal, lowering or other change or alteration of any structure or tree not conforming to the regulations as of September 21, 1992 as amended, or otherwise interfere with continuance of any nonconforming use, except as provided in subsection 3 of Section 3-707 of the General Statutes Supplement of 1947, or any amendments thereto; provided, however, that the city may require upon thirty (30) days' notice in writing any person owning and maintaining any nonconforming pole or pole line upon the roads and highways immediately adjoining the airport to remove, lower, change, or alter said nonconforming pole or pole line, upon prior payment by the city to said person of the reasonable and necessary expense of removing, lowering, changing, or altering the pole or pole line; or in lieu thereof to execute a good and sufficient bond with corporate surety thereon as security for the payment of the reasonable and necessary expense of removing, lowering, changing, or altering such pole or pole lines. Reasonable and necessary expense of removing, lowering, changing or altering the pole or pole line shall include, among other items of expense, the actual cost of (1) constructing underground conduits and the construction of such wires and equipment in such conduits, and (2) rerouting wires together with the poles, cross arms and other equipment connected thereto, together with the cost of any of a new right-of-way made necessary by such rerouting.

(b) *Marking and lighting.* Notwithstanding the preceding provision of this section, the owner of any nonconforming structure or tree is hereby required to permit the installation, operation, and maintenance thereon of such markers and lights as shall be deemed necessary by the building official to indicate to the operators of aircraft in the vicinity of the airport, the presence of such airport hazards. Such markers and lights shall be installed, operated, and maintained at the expense of the city.

(Ord. No. 92-9534, § 1, 9-21-92)

Sec. 42-821. Permits.

(a) *Future uses.* Except as specifically provided in subsections (1), (2) and (3) hereunder, no material change shall be made in the use of land and no structure or tree shall be erected, altered, planted or otherwise established in any zone hereby created unless a permit therefor shall have been applied for and granted. Each application for a permit shall indicate the purpose for which the permit is desired,

with sufficient particularity to permit it to be determined whether the resulting use, structure or tree would conform to the regulations herein prescribed. If such determination is in the affirmative, the permit shall be granted.

(1) In the area lying within the limits of the horizontal surface and the conical surface, no permit shall be required for any tree or structure less than seventy-five (75) feet of vertical height above the ground, except when because of terrain, land contour or topographic features such tree or structure would extend above the height limits prescribed for such zone.

(2) In the areas lying within the limits of the instrument and noninstrument approach zones but at a horizontal distance of not less than four thousand two hundred (4,200) feet from each end of the runways, no permit shall be required for any tree or structure less than seventy-five (75) feet of vertical height above the ground, except when such tree or structure would extend above the height limit prescribed for such instrument or noninstrument approach zone.

(3) In the areas lying within the limits of the transition zones beyond the perimeter of the horizontal surface, no permit shall be required for any tree or structure less than seventy-five (75) feet of vertical height above the ground except when such tree or structure, because of terrain, land contour or topographic features would extend above the height limit prescribed for such transition zones.

Nothing contained in any of the foregoing exceptions shall be construed as permitting or intending to permit any construction, alteration or growth of any structure or tree in excess of any of the height limits established by this article except as set forth in section 42-818.

(b) *Existing uses.* No permit shall be granted that would allow the establishment or creation of an airport hazard or permit a nonconforming use, structure, or tree to be made or become higher, or become a greater hazard to air navigation, than it was on September 21, 1992, or on the effective date of any amendment to this article, or than it is when the application for a permit is made. Except as indicated, all applications for such a permit shall be granted.

(c) *Nonconforming uses abandoned or destroyed.* Whenever the building official determines that a nonconforming structure or tree has been abandoned or more than eighty (80) percent torn down, physically deteriorated, or decayed, no permit shall be granted that would allow such structure of tree to exceed the applicable height limit or otherwise deviate from the zoning regulations.

(d) *Variances.* Any person desiring to erect or increase the height of any structure, or permit the growth of any tree, or use his property, not in accordance with the regulations prescribed in this article, may apply to the board of adjustment for a variance from such regulations. Such variances shall be allowed where it is duly found that a literal application or enforcement of the regulations would result in practical difficulty or unnecessary hardship and the relief granted would not be contrary to the public interest but will do substantial justice and be in accordance with the spirit of this article.

(e) *Hazard marking and lighting.* Any permit or variance granted may, if such action is deemed advisable to effectuate the purpose of this article and be reasonable in the circumstances, be so conditioned as to require the owner of the structure or tree in question to permit the city at its own expense, to install, operate and maintain thereon such markers and lights as may be necessary to indicate to flyers the presence of an airport hazard.

(Ord. No. 92-9534, § 1, 9-21-92)

Sec. 42-822. Enforcement.

It shall be the duty of the building official to administer and enforce the regulations prescribed herein. Applications for permits and variances shall be made to the building official upon a form furnished by him. Applications required by this article to be submitted to the building official shall be promptly considered and granted or denied by him. Applications for action by the board of adjustment shall be forthwith transmitted by the building official.

(Ord. No. 92-9534, § 1, 9-21-92)

Sec. 42-823. Board of adjustment.

(a) There is hereby created a board of adjustment to have and exercise the following powers:

(1) To hear and decide appeals from any order, requirement, decision or determination made by the building official in the enforcement of this article;

(2) To hear and decide special exceptions to the terms of this article upon which such board of adjustment under such regulations may be required to pass;

(3) To hear and decide specific variances.

(b) The board of adjustment shall consist of all of the members of the board of directors of the airport authority as created in accordance with article II of Chapter 4; and that by appointment to the board of directors of the airport authority shall automatically constitute appointment to the board of adjustment for the same term as provided for in article II of chapter 4.

(c) The board of adjustment shall adopt rules for its governance and procedure in harmony with the provisions of this article. Meetings of the board of adjustment shall be held at the call of the chairman and at such other times as the board of adjustment may determine. The chairman, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses. All hearings of the board of adjustment shall be public. The board of adjustment shall keep minutes of its proceedings showing the vote of each member upon each question or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall immediately be filed in the office of the city clerk and shall be a public record.

(d) The board of adjustment shall make written findings of fact and conclusions of law giving the facts upon which it acted and its legal conclusions from such facts in reversing, affirming or modifying any order, requirement, decision or determination which comes before it under the provisions of this article.

(e) The concurring vote of a majority of the members of the board of adjustment shall be sufficient to reverse any order, requirement, decision or determination of the building official or to decide in favor of the applicant on any matter upon which it is required to pass under this article, or to effect any variation in this article.

(Ord. No. 92-9534, § 1, 9-21-92)

Sec. 42-824. Appeals.

(a) Any person aggrieved, or any taxpayer affected, by any decision of the building official made in his administration of this article, may appeal to the board of adjustment.

(b) All appeals hereunder must be taken within a reasonable time as provided by the rules of the board of adjustment, by filing with the building official a notice of appeal specifying with the grounds

thereof. The building official shall forthwith transmit to the board of adjustment all the papers constituting the record upon which the action appealed from was taken.

(c) An appeal shall stay all proceedings in furtherance of the action appealed from, unless the building official certifies to the board of adjustment, after the notice of appeal has been filed with it, that by reason of the facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed except by order of the board of adjustment on notice to the building official and on due cause shown.

(d) The board of adjustment shall fix a reasonable time for hearing appeals, give public notice and due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing any party may appear in person or by agent or by attorney.

(e) The board of adjustment may, in conformity with the provision of this article, reverse or affirm, in whole or in part, or modify the order, requirements, decision or determination appealed from and may make such order, requirement, decision or determination, as may be appropriate under the circumstances.

(Ord. No. 92-9534; § 1, 9-21-92)

Sec. 42-825. Judicial review.

Any person aggrieved, or any taxpayer affected, by any decision of the board of adjustment, may appeal to the district court of the county as provided in K.S.A. 3-709.

(Ord. No. 92-9534, § 1, 9-21-92)

APPENDIX A. CHARTER ORDINANCES[1]

No. 1. Limitation on Tax Levies
No. 2. Urban Renewal, §§ 1--7
No. 3. Limitation on Tax Levies
No. 4. Longevity Pay for Fire Department
No. 5. Payment Upon Retirement to Certain Members of the Police and Fire Departments
No. 6. Contribution By Officers and Members of the Fire and Police Departments for Retirement Systems
No. 7. Investment of Money for Policemen's and Firemen's Pension Funds
No. 8. Band
No. 9. Limitation on Tax Levies, §§ 1--4
No. 10. Cereal Malt Beverage Licenses, §§ 1--3
No. 11. Licensing of Pawnbrokers
No. 12. Licensing of Pawnbrokers
No. 13. General Improvements, §§ 1--4
No. 14. Consumption of Alcoholic Liquor in Public Places, §§ 1--4
No. 15. Payment Upon Retirement to Certain Members of the Police & Fire Departments, §§ 1--3
No. 16. Special Fund for Paying Utility Costs and Employee Benefits
No. 17. Special Fund for Paying Utility Costs and Employee Benefits, §§ 1--8
No. 18. Municipal Court Costs and Fees, §§ 1--4
No. 19. Licensing of Pawnbrokers and Precious Metal Dealers, §§ 1--4
No. 20. Fixed Asset Records for Buildings and Land, §§ 1--3
No. 21. Municipal Court Costs and Fees, §§ 1--6
No. 22. Promotion of Tourism and Conventions, §§ 1--6
No. 23. General Improvements and Issuance of Bonds, §§ 1--5
No. 24. Salaries of Members of Governing Bodies, §§ 1--4
No. 25. General Improvements and Issuance of Bonds, §§ 1--5
No. 26. Membership of Convention and Tourism Committee, §§ 1--4
No. 27. Exempting the City From the Provisions of the K.S.A. 13-1017, As Amended, §§ 1--3
No. 28. Exempting the City From the Provisions of K.S.A. 12-868, §§ 1--4
No. 29. Exempting the City From the Provisions of K.S.A. 13-1024a, §§ 1--5
No. 30. Exempting the City From the Provisions of K.S.A. 12-1008, §§ 1--5

[1] **Cross references:** Charter ordinances saved from repeal, § 1-5(15); administration, Ch. 2.

NO. 1. LIMITATION ON TAX LEVIES[2]

CHARTER ORDINANCE EXEMPTING THE CITY OF SALINA, KANSAS, FROM K.S.A. 79-1951 AND PROVIDING SUBSTITUTE AND ADDITIONAL PROVISIONS ON THE SAME SUBJECT. AUTHORIZING AND LIMITING TAX LEVIES IN ANY ONE YEAR ON EACH DOLLAR OF ASSESSED TANGIBLE VALUATION AND PRESCRIBING AN AGGREGATE LIMIT FOR ALL CITY WIDE TAX LEVIES.

NO. 2. URBAN RENEWAL[3]

A CHARTER ORDINANCE EXEMPTING THE CITY OF SALINA, KANSAS, FROM THE PROVISIONS OF K.S.A. 17-4754 AND PROVIDING SUBSTITUTE AND ADDITIONAL PROVISIONS ON THE SAME SUBJECT; DEFINING THE POWERS OF THE CITY FOR THE PURPOSE OF AIDING IN THE PLANNING, UNDERTAKING AND CARRYING OUT OF THE URBAN RENEWAL PROJECTS LOCATED WITHIN THE CITY AND PROVIDING THE PROCEDURE FOR THE ISSUANCE AND SALE OF GENERAL OBLIGATION BONDS OF THE CITY FOR THE PURPOSE OF UNDERTAKING OR CARRYING OUT OF AN URBAN RENEWAL PROJECT OF THE CITY.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF SALINA, KANSAS:

Section 1. Election to exempt.

That the City of Salina, Kansas, a city of the first class of less than 125,000 population by the power vested in it by Article 12, Section 5, of the Constitution of the State of Kansas, hereby elects to exempt and does exempt itself from and makes inapplicable to it K.S.A. 17-4754 which is not applicable uniformly to all cities of the first class and provides substitute and additional provisions as hereafter provided.

Section 2. Powers and duties generally.

The governing body of the City of Salina, Kansas, is hereby authorized and empowered for the purpose of aiding in the planning, undertaking or carrying out of any urban renewal project within its corporate limits, upon such terms, with or without consideration, as it may determine:

(a) Dedicate, sell, convey or lease any of its interest in any property or grant easements, licenses or other rights or privileges therein to a municipality;

(b) Incur the entire expense of any public improvements made by such public body in exercising the powers granted in this section;

(c) Do any and all things necessary to aid or cooperate in the planning or carrying out of an urban renewal plan;

(d) Lend, grant or contribute funds to a municipality;

(e) Enter into agreements (which may extend over any period, notwithstanding any provision or rule of law to the contrary) with a municipality or other public body respecting action to be taken pursuant to any of the powers granted by this act, including the furnishing of funds or other assistance in connection with an urban renewal project; and

(f) Cause public buildings and public facilities including parks, playgrounds, recreational, community, education, water, sewer or drainage facilities, or any other works which it is otherwise empowered to undertake to be furnished; furnish, dedicate, close, vacate, pave, install, grade, regrade, plan or replan streets, roads, sidewalks, ways or other places; plan or replan, zone or

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[2] **Editor's note:** Charter Ordinance No. 1 was repealed by Charter Ordinance No. 3.

[3] **Cross references:** Economic Development, Ch. 11.

rezone any part of the public body or make exceptions from building regulations; and cause administrative and other services to be furnished to the municipality. If at any time title to or possession of any urban renewal project is held by any public body or governmental agency, other than the municipality, which is authorized by law to engage in the undertaking, carrying out, or administration or urban renewal projects (including any agency or instrumentality of the United States of America), the provisions of the agreements referred to in this section shall inure to the benefit of and may be enforced by such public body or governmental agency. As used in this ordinance, the term "municipality" shall also include an urban renewal agency vested with all of the urban renewal project powers pursuant to the provisions of K.S.A. 17-4756 and any amendments thereto.

Section 3. Transactions without notice or advertising, etc.

Any sale, conveyance, lease or agreement, provided for in this ordinance may be made by the governing body without appraisal, public notice, advertisement or public bidding.

Section 4. Furnishing of financial and other assistance.

For the purpose of aiding in the planning, undertaking or carrying out of an urban renewal project of an urban renewal agency, the governing body may (in addition to its other powers and upon such terms, with or without consideration, as it may determine) do and perform any or all of the actions or things which by the provisions of Section 1 of this ordinance, the governing body is authorized to do or perform, including the furnishing of financial and other assistance.

Section 5. Issuance of bonds.

For the purposes of this ordinance, or for the purpose of aiding in the planning, undertaking or carrying out of an urban renewal project within the city, the governing body may (in addition to any authority to issue bonds pursuant to K.S.A. 17-4751) issue and sell its general obligation bonds: Provided, that before any general obligation bonds may be issued under the urban renewal law, the city shall adopt a resolution, finding and declaring it necessary to issue such bonds, which resolution shall state the purpose for which said bonds are to be issued and the maximum amount of bonds to be issued, and shall contain a statement relating to the provisions for protest as hereinafter provided, which resolution shall be published once each week for two (2) consecutive weeks in the official paper of the city, and if within sixty (60) days after the date of the last publication of said resolution, a protest, signed by not less than five per cent (5%) of the electors in the municipality, as determined by the vote cast for secretary of state at the last preceding general election, is filed with the city clerk, the bonds shall not be issued, unless the governing body calls an election within the time and in the manner prescribed by K.S.A. 10-120 or any amendments thereto, and the proposition shall receive the favorable vote of a majority of the votes cast on the proposition.

Section 6. Publication of ordinance.

This ordinance shall be published once a week for two (2) consecutive weeks in The Salina Journal, the official city newspaper.

Section 7. Effective.

This is a charter ordinance and shall take effect sixty-one (61) days after final publication unless a sufficient petition for a referendum is filed and a referendum held on the ordinance as provided in Article 12, Section 5, Subdivision (c) of the Constitution of Kansas in which case the ordinance shall become effective, if approved by a majority of the electors voting thereon.

Adopted by the governing body by not less than two-thirds (2/3) vote of the members elect voting in favor thereof, and approved by the mayor this 4th day of April, 1966.

NO. 3. LIMITATION ON TAX LEVIES[4]

A CHARTER ORDINANCE EXEMPTING THE CITY OF SALINA, KANSAS, FROM K.S.A. 79-1951 AND PROVIDING SUBSTITUTE AND ADDITIONAL PROVISIONS ON THE SAME SUBJECT: AUTHORIZING AND LIMITING TAX LEVIES IN ANY ONE YEAR ON EACH DOLLAR OF ASSESSED TANGIBLE VALUATION AND PRESCRIBING AN AGGREGATE LIMIT FOR ALL CITY WIDE TAX LEVIES; AMENDING CHARTER ORDINANCE NO. 1 OF THE CITY OF SALINA, KANSAS, AND REPEALING SAID ORIGINAL CHARTER ORDINANCE.

NO. 4. LONGEVITY PAY FOR FIRE DEPARTMENT[5]

A CHARTER ORDINANCE EXEMPTING THE CITY OF SALINA, KANSAS, FROM THE PROVISIONS OF K.S.A. 13-791 WHICH PROVIDES LONGEVITY PAY FOR REGULAR APPOINTED MEMBERS OF THE FIRE DEPARTMENT.

NO. 5. PAYMENT UPON RETIREMENT TO CERTAIN MEMBERS OF THE POLICE AND FIRE DEPARTMENTS[6]

A CHARTER ORDINANCE EXEMPTING THE CITY OF SALINA, KANSAS, FROM THE PROVISIONS OF K.S.A. 13-14a08 WHICH PROVIDES FOR PAYMENTS UPON RETIREMENT TO CERTAIN MEMBERS OF THE POLICE DEPARTMENT OR FIRE DEPARTMENT AND PROVIDING SUBSTITUTE AND ADDITIONAL PROVISIONS ON THE SAME SUBJECT.

NO. 6. CONTRIBUTIONS BY OFFICERS AND MEMBERS OF THE FIRE AND POLICE DEPARTMENTS FOR RETIREMENT SYSTEMS[7]

A CHARTER ORDINANCE EXEMPTING THE CITY OF SALINA, KANSAS, FROM THE PROVISIONS OF K.S.A. 13-14a06, WHICH PROVIDES FOR MEMBERSHIP FEES AND CONTRIBUTIONS BY OFFICERS AND MEMBERS OF THE FIRE AND POLICE DEPARTMENTS FOR THEIR RETIREMENT SYSTEMS AND PROVIDING FOR REFUNDS UPON TERMINATION OF SERVICES WITH SAID DEPARTMENTS AND PROVIDING SUBSTITUTE AND ADDITIONAL PROVISIONS ON THE SAME SUBJECT.

NO. 7. INVESTMENT OF MONEY FOR POLICEMEN'S AND FIREMEN'S PENSION FUNDS[8]

A CHARTER ORDINANCE EXEMPTING THE CITY OF SALINA, KANSAS, FROM THE PROVISIONS OF K.S.A. 13-14a05, WHICH PROVIDES FOR THE DESIGNATION AND INVESTMENT OF MONEY DERIVED FROM TAXES AND ASSESSMENTS FOR THE POLICEMEN'S AND FIREMEN'S PENSION FUNDS, PROVIDING FOR A MINIMUM RESERVE FOR EACH FUND, FOR THEIR RETIREMENT SYSTEMS AND PROVIDING SUBSTITUTE AND ADDITIONAL PROVISIONS ON THE SAME SUBJECT.

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[4] **Editor's note:** Charter ordinance no. 3 was repealed by charter ordinance no. 9.

[5] **Editor's note:** Charter ordinance no. 4 has been rendered obsolete by the subsequent repeal of K.S.A. 13-791.

[6] **Editor's note:** Charter ordinance no. 5 was repealed by charter ordinance no. 15.

[7] **Editor's note:** Charter ordinance no. 6 was rendered obsolete by adoption of a new state law.

[8] **Editor's note:** Charter ordinance no. 7 was adopted on March 29, 1971. It has since been rendered obsolete by adoption of a new state law.

NO. 8. BAND[9]

A CHARTER ORDINANCE EXEMPTING THE CITY OF SALINA, KANSAS, FROM THE PROVISIONS OF K.S.A. 12-14a05, WHICH DEFINES A BAND FOR THE PURPOSES OF USE OF BAND FUNDS AND PROVIDING SUBSTITUTE AND ADDITIONAL PROVISIONS ON THE SAME SUBJECT.

NO. 9. LIMITATION ON TAX LEVIES[10]

A CHARTER ORDINANCE EXEMPTING THE CITY OF SALINA, KANSAS, FROM K.S.A. 79-1951, WHICH PROVIDES FOR A MAXIMUM RATE OF LEVY IN ANY ONE YEAR; PROVIDING SUBSTITUTE AND ADDITIONAL PROVISIONS ON THE SAME SUBJECT; AMENDING CHARTER ORDINANCE NO. 3 OF THE CITY OF SALINA, KANSAS, AND REPEALING SAID EXISTING CHARTER ORDINANCE.

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

Section 1. Election to exempt.

That Charter Ordinance No. 3 of the City of Salina, Kansas, is hereby amended to read as follows:

(1) That the City of Salina, a city of the first class, by the power vested in it by Article 12, Chapter 5 of the Constitution of the State of Kansas, hereby elects to exempt and does exempt itself from and make inapplicable to it K.S.A. 79-1951, which is not applicable uniformly to all cities and to provide substitute and additional provisions of the same subject.

(2) That the governing body of the City of Salina is hereby authorized and empowered to levy taxes in each year on each dollar of assessed tangible valuation of said city and to set such rate of levy as may be needed to meet the requirements of its adopted budget for the following purposes: General operating fund, which shall include the following activities: General government, police department; fire department; health and sanitation; waste disposal; streets, alleys and highways; maintenance of public buildings; swimming pool; parks; animal control; street lighting; traffic signals and parking control; civil defense; airport; judgments; band; cemetery; general improvement (except improvements for which special assessments are made); industrial fund; noxious weeks, tree maintenance; and flood control.

Provided that the city purposes specifically authorized by other statutes are not excluded because they are not above enumerated; and provided further that the aggregate of all citywide tax levies of said city is not limited, except as provided by legislative enactments uniformly applicable to all cities.

Section 2. Repealer.

Charter Ordinance No. 3 of the City of Salina, Kansas is hereby repealed.

Section 3. Publication of ordinance.

This ordinance shall be published once a week for two (2) consecutive weeks in the Salina Journal, the official city newspaper.

Section 4. Effective date.

This is a Charter Ordinance and shall take effect sixty-one (61) days after final publication, unless a sufficient

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[9] **Editor's note:** Charter ordinance no. 8 was adopted on October 29, 1973. It has since been rendered obsolete by the repeal of K.S.A. 12-14a05.

[10] **Cross references:** Taxation generally, Ch. 37.

petition for a referendum is filed and a referendum held on the ordinance as provided in Article 12, Section 5, Subdivision (c) of the Constitution of Kansas in which case the ordinance shall become effective if approved by the majority of the electors voting thereon.

Adopted by the governing body by not less than two-thirds (2/3) of the members elect voting in favor thereof and approved by the mayor this 18th day of March, 1974.

NO. 10. CEREAL MALT BEVERAGE LICENSES[11]

A CHARTER ORDINANCE EXEMPTING THE CITY OF SALINA, KANSAS, FROM THE PROVISIONS OF K.S.A. 41-2702, WHICH PROVIDES IT TO BE UNLAWFUL TO SELL CEREAL MALT BEVERAGES AT RETAIL WITHOUT FIRST SECURING A LICENSE THEREFOR AND ESTABLISHING THE PROCEDURE AND LICENSE FEES THEREFOR; AND PROVIDING SUBSTITUTE AND ADDITIONAL PROVISIONS ON THE SAME SUBJECT.

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

Section 1. Election to exempt.

That the City of Salina, Kansas, a city of the first class by the powers vested in it by Article 12, Chapter 5 of the Constitution of the State of Kansas, hereby elects to and does exempt itself from and makes inapplicable to it the provisions of K.S.A. 41-2702 and provides substitute and additional provisions on the same subject as follows, to wit:

"41-2702. Licenses; application to city or county; railway cars; notice to township; renewals; forms; fees; disposition of moneys.

"No person shall sell any cereal malt beverage at retail without having first secured a license for each place of business as herein provided. In case such place of business is located within the corporate limits of a city then the application for license shall be made to the governing body of such city. In all other cases the application for license shall be made to the board of county commissioners in the county in which such place of business is to be located, except that the application for license to sell on railway cars shall be made to the director of taxation as hereinafter provided. The board of county commissioners in any county shall not issue a license without giving the clerk of the township board in the township where the applicant desires to locate, written notice by registered mail, of the filing of said application. The township board may within ten (10) days file advisory recommendations as to the granting of such license and such advisory recommendations shall be considered by said board of county commissioners before such license is issued: Provided. That if such license be granted and issued said board of county commissioners shall grant and issue renewals thereof upon application of the license holder, if he be qualified to receive the same and unless such license be revoked as provided by law: And provided further, That said board of county commissioners shall notify the township board of all applications for renewals and said township board may within ten (10) days file advisory recommendations as to the renewal of such licenses or the refusal thereof with said board of county commissioners and such advisory recommendations shall be considered by said board of county commissioners before any such renewal is granted. The application shall be verified and upon a form prepared by the attorney general of the state and shall contain: (a) The name and residence of the applicant and how long he has resided within the State of Kansas; (b) the particular place for which a license is desired; (c) the name of the owner of the premises upon which the place of business is located; (d) a statement that the applicant is a citizen of the United States and not less than twenty-one (21) years of age and that he has not within two (2) years immediately preceding the date of making application been convicted of a felony or any crime involving moral turpitude, or been adjudged guilty of drunkenness, or driving a motor vehicle while under the influence of intoxicating liquor or the violations of any other intoxicating liquor law of any state or of the

[11] ***Cross references:** Cereal malt beverages generally, § 5-66 et seq.; retailer's license fee for cereal malt beverages, § 5-93.

United States.

"Such application shall be accompanied by a fee of not less than twenty-five dollars ($25.00) nor more than three hundred dollars ($300.00) as may be prescribed by the board of county commissioners or the governing body of the city, as the case may be, except in counties that have a population in excess of one hundred sixty-five thousand (165,000) persons, such application shall be accompanied by a fee of not less than twenty-five dollars ($25.00) nor more than two hundred dollars ($200.00) as may be prescribed by the board of county commissioners or the governing body of the city, as the case may be, except that an application for a license to sell on railway cars shall be accompanied by a fee of one hundred dollars ($100.00). All license fees collected by the director of taxation shall be paid into the state treasury and the state treasurer shall credit ninety percent (90%) of the same to the general fund of the state and the remaining ten percent (10%) he shall credit to the revenue administration fee fund.

"The board of county commissioners of the several counties or the governing body of a city shall issue a license upon application duly made as otherwise provided for herein, to any person engaged in business in said county or city and qualified to receive said license, to sell only at retail cereal malt beverages in original and unopened containers, and not for consumption on the premises. Said license fee to be not less than twenty-five dollars ($25.00) nor more than one hundred fifty dollars ($150.00) per year. No license issued under this act shall be transferable."

Section 2. Publication of ordinance.

This ordinance shall be published once a week for two (2) consecutive weeks in the Salina Journal, the official city newspaper.

Section 3. Effective date.

This is a Charter Ordinance and shall take effect sixty-one (61) days after final publication unless a sufficient petition is filed and a referendum held on the ordinance as provided in Article 12, Section 5, Subdivision (c) of the Constitution of Kansas, in which case the ordinance shall become effective if approved by a majority of the electors voting thereon.

Adopted by the governing body by not less than two-thirds (2/3) of the members elect voting in favor thereof and approved by the Mayor this 9th day December, 1974.

NO. 11. LICENSING OF PAWNBROKERS[12]

A CHARTER ORDINANCE EXEMPTING THE CITY OF SALINA, KANSAS, FROM THE PROVISIONS OF K.S.A. 1973 SUPP. 16-707, WHICH PROVIDES FOR THE LICENSING OF PAWNBROKERS AND PROVIDING SUBSTITUTE AND ADDITIONAL PROVISIONS ON THE SAME SUBJECT.

NO. 12. LICENSING OF PAWNBROKERS[13]

A CHARTER ORDINANCE EXEMPTING THE CITY OF SALINA, KANSAS, FROM THE PROVISIONS OF K.S.A. 1973 SUPP. 16-707, WHICH PROVIDES FOR THE LICENSING OF PAWNBROKERS AND PROVIDING SUBSTITUTE AND ADDITIONAL PROVISIONS ON THE SAME SUBJECT AND REPEALING CHARTER ORDINANCE NUMBER 11.

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[12] **Editor's note:** Charter ordinance no. 11 was adopted on December 9, 1974, and was later repealed by charter ordinance no. 12.

[13] **Editor's note:** Charter ordinance no. 12 was adopted on May 12, 1975, and was later repealed by charter ordinance no. 19.

NO. 13. GENERAL IMPROVEMENTS

A CHARTER ORDINANCE EXEMPTING THE CITY OF SALINA, KANSAS, FROM THE PROVISIONS OF K.S.A. 13-1024a AND PROVIDING SUBSTITUTE AND ADDITIONAL PROVISIONS ON THE SAME WHICH RELATE TO GENERAL IMPROVEMENTS AND THE ISSUANCE OF BONDS FOR THE PURPOSE OF PAYING FOR SAID IMPROVEMENTS.

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

Section 1. Election to exempt.

That the City of Salina, Kansas, by the power vested in it by Article 13, Section 5 of the Constitution of the State of Kansas, hereby elects to exempt itself from and make inapplicable to it the provisions of K.S.A. 13-1024a and provide substitute and additional provisions as hereinafter set forth in this ordinance. Such referenced provisions are either enactments or a part thereof which are applicable to this city that are not applicable uniformly to all cities.

Section 2. Substitute and additional provisions.

That the City of Salina, does hereby provide substitute and additional provisions on the same subject as follows, to wit:

"13-1024a. General improvements and land therefor; borrowing money and bond issues; when election required.

"For the purpose of paying for any bridge, viaduct, public building, including the land necessary therefor, for lands for public parks and developing the same, within or without the city, for the establishment and construction of crematories, desiccating or reduction work, including the land necessary therefor, within or without the city, or for the improvement, repair or extension of any waterworks, sewage disposal plant, electric light plant, crematory, desiccating or reduction work or other public utility plant owned by the city, and for the purpose of rebuilding, adding to or extending to the same from time to time, as the necessities of the city may require, the city may borrow money and issue its bonds for the same; *Provided*, That no bonds shall be issued for such purposes unless the same were authorized by a majority of the votes cast at an election held for that purpose: *Provided further*, That any city of the first class may issue the bonds of such city for the purpose of paying for any of the improvements mentioned in this section and the land necessary therefor without such bonds having been authorized by a vote of the people, but the total amount of bonds issued for such purposes shall not exceed the sum of two hundred fifty thousand dollars ($250,000) in any one year."

Section 3. Publication of ordinance.

This Charter Ordinance shall be published once a week for two (2) consecutive weeks in The Salina Journal, the official city newspaper.

Section 4. Effective date.

This is a Charter Ordinance and shall take effect sixty-one (61) days after final publication, unless a sufficient petition for referendum is filed and the referendum held on the ordinance as provided in Article 12, Section 5, Subdivision (c)(3) of the Constitution of the State of Kansas, in which case the ordinance shall become effective if approved by a majority of the electors voting thereon.

Passed by the governing body by not less than two-thirds (2/3) of the members elect voting thereon this 19th day of September, 1977.

NO. 14. CONSUMPTION OF ALCOHOLIC LIQUOR IN PUBLIC PLACES[14]

A CHARTER ORDINANCE EXEMPTING THE CITY OF SALINA, KANSAS FROM THE PROVISIONS OF K.S.A. 41-719 AND PROVIDING SUBSTITUTE AND ADDITIONAL PROVISIONS ON THE SAME WHICH RELATE TO THE CONSUMPTION OF ALCOHOLIC LIQUOR IN PUBLIC PLACES.

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

Section 1. Election to exempt.

That the City of Salina, Kansas, by the power vested in it by Article 12, Section 5 of the Constitution of the State of Kansas hereby elects to exempt itself from and make inapplicable to it the provisions of K.S.A. 41-719 and provide substitute and additional provisions as hereinafter set forth in this ordinance. Such referenced provisions are either enactments or a part thereof which are applicable to this city that are not applicable uniformly to all cities.

Section 2. Substitute and additional provisions.

That the City of Salina does hereby provide substitute and additional provisions on the same subject as follows, to wit:

"41-719. Consumption of alcoholic liquor in public places prohibited; exceptions; penalties.

"It shall be unlawful for any person to drink or consume alcoholic liquor upon the public streets, alleys, roads or highways, or in beer parlors, taverns, pool halls or places to which the general public has access, whether or not an admission or other fee is charged or collected, or upon property owned by the state or any governmental subdivision thereof or inside vehicles while upon the public streets, alleys, roads or highways; *Provided, however,* The limitations, aforesaid, shall not apply to real property leased by a city to others under the provisions of K.S.A. 12-1740 to 12-1749, both sections inclusive, and any amendments thereto, if such real property is actually being used for hotel or motel purposes or purposes incidental thereto, nor shall said limitations apply to any state owned or operated building or structure and the surrounding premises which are furnished to and occupied by any state officer or employee as a residence; *Provided further,* That by ordinance, any city having a population of more than thirty thousand (30,000) may by ordinance exempt certain property, title of which is vested in such city, from the provisions of this act. Any person violating the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than fifty dollars ($50) nor more than two hundred dollars ($200), or by imprisonment for not more than six (6) months or be both so fined and imprisoned."

Section 3. Publication of ordinance.

This Charter Ordinance shall be published once a week for two (2) consecutive weeks in The Salina Journal, the official city newspaper.

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[14] **Cross references:** Alcoholic liquor generally, § 5-16 et seq.; consumption of alcoholic liquor in public places, § 5-24.

Section 4. Effective date.

This is a Charter Ordinance and shall take effect sixty-one (61) days after final publication, unless a sufficient petition for referendum is filed and the referendum held on the ordinance is provided in Article 12, Section 5, Subdivision (c)(3) of the Constitution of the State of Kansas, in which case the ordinance shall become effective if approved by a majority of the electors voting thereon.

Passed by the governing body by not less than two-thirds (2/3) of the members elect voting thereon this 3rd day of October, 1977.

NO. 15. PAYMENT UPON RETIREMENT TO CERTAIN MEMBERS OF THE POLICE AND FIRE DEPARTMENTS[15]

A CHARTER ORDINANCE REPEALING CHARTER ORDINANCE NUMBER 5 WHICH EXEMPTS THE CITY OF SALINA, KANSAS, FROM THE PROVISIONS OF K.S.A. 13-14a08 WHICH PROVIDES FOR PAYMENT UPON RETIREMENT TO CERTAIN MEMBERS OF THE POLICE DEPARTMENT AND FIRE DEPARTMENT AND PROVIDING SUBSTITUTE AND ADDITIONAL PROVISIONS ON THE SAME SUBJECT.

BE IT ORDAINED by the governing body of the City of Salina, Kansas:

Section 1. Repealer.

That Charter Ordinance Number 5 of the City of Salina, Kansas, be and the same is hereby repealed.

Section 2. Publication of ordinance.

This ordinance shall be published once a week for two (2) consecutive weeks in The Salina Journal, the official city newspaper.

Section 3. Effective date.

This is a Charter Ordinance and it shall take effect sixty-one (61) days after final publication unless a sufficient petition is filed and a referendum held on the ordinance as provided in Article 12, Section 5, Subdivision (3) of the Constitution of Kansas in which case the ordinance shall become effective if approved by the majority of the electors voting thereon.

Adopted by the governing body by not less than two-thirds (2/3) of the members elect voting in favor thereof and approved by the mayor this 17th day of October, 1977.

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[15] **Cross references:** Fire prevention and protection, Ch. 14; police, Ch. 30.

NO. 16. SPECIAL FUND FOR PAYING UTILITY COSTS AND EMPLOYEE BENEFITS[16]

A CHARTER ORDINANCE EXEMPTING THE CITY OF SALINA, KANSAS, FROM K.S.A. 79-5011; PROVIDING SUBSTITUTE AND ADDITIONAL PROVISIONS ON THE SAME SUBJECT; AND AUTHORIZING THE LEVYING OF TAXES TO CREATE A SPECIAL FUND FOR THE PURPOSE OF PAYING UTILITY SERVICE COSTS.

NO. 17. SPECIAL FUND FOR PAYING UTILITY COSTS AND EMPLOYEE BENEFITS[17]

A CHARTER ORDINANCE EXEMPTING THE CITY OF SALINA, KANSAS, FROM K.S.A. 79-5011; PROVIDING SUBSTITUTE AND ADDITIONAL PROVISIONS ON THE SAME SUBJECT; AND AUTHORIZING THE LEVYING OF TAXES TO CREATE A SPECIAL FUND FOR THE PURPOSE OF PAYING UTILITY COSTS AND EMPLOYEE BENEFITS; AMENDING CHARTER ORDINANCE NUMBER 16 AND REPEALING SAID ORIGINAL CHARTER ORDINANCE.

BE IT ORDAINED by the governing body of the City of Salina, Kansas:

Section 1. Election to exempt.

The City of Salina, Kansas, by the power vested in it by Article 12, Section 5 of the Constitution of the State of Kansas, hereby elects to exempt itself from and make inapplicable to it K.S.A. 79-5011, and to provide substitute and additional provisions as hereinafter set forth in this charter ordinance. K.S.A. 79-5011 is a part of the enactment of the legislature establishing an aggregate tax levy limitation applicable to this city but not applicable uniformly to all cities, and the legislature has not established classes of cities for the purpose of imposing aggregate limitations under said constitutional provision.

Section 2. No limitation on tax levy for certain purposes.

The provisions of K.S.A. 79-5001 to 79-5016, inclusive, shall not apply to or limit the levy of taxes by the City of Salina, for the payment of:

(a) Principal and interest upon bonds and temporary notes;

(b) No-fund warrants issued with the approval of the state board of tax appeals;

(c) Legal judgments rendered against the city;

(d) Rent due under any lease with a public building commission;

(e) Special assessments charged against the city-at-large;

(f) Utility service costs, whether paid from a separate property tax levy fund of the city or from any other tax supported fund;

(g) Employee benefit costs.

Section 3. Specific levies exempt from aggregate levy limitation.

The provisions of Article 50 of Chapter 79 of the Kansas Statutes Annotated shall not apply to any taxes levied by the City of Salina, levied under the provisions of K.S.A. 40-2305, 74-4920, 74-4967, 12-11a03, 13-1441 or 12-1617h or 13-14100, and K.S.A. 1977 Supplement 13-14a02, 14-10a02, or to any tax levies required for the payment of employer contributions to any pension and retirement program, or to any other taxes authorized by state law to be levied in addition to or exempt from the aggregate levy limitation of the

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[16] **Editor's note:** Charter ordinance no. 16 was adopted on May 15, 1978, and was later repealed by charter ordinance no. 17.

[17] **Cross references:** Public utilities, Ch. 31; water and sewers, Ch. 41.

City of Salina.

Amounts produced from any levy specified or authorized in this charter ordinance, including any levy or purpose authorized to be levied in addition to or exempt from the aggregate levy limit of the city, shall not be used in computing any aggregate limitation under Article 50 of Chapter 79 of the Kansas Statutes Annotated.

Section 4. Levy for utility service costs.

The City of Salina is hereby authorized to levy a tax for the purpose of paying utility service costs. As used in this charter ordinance, "utility service costs" shall include payments made by the city to a water, electric or natural gas system, company or utility for the purpose of obtaining street lighting or traffic control signals or for the lighting, heating, cooling or supplying of water or energy to any city building or facility or for the operation or performance of any function or service by the city.

Section 5. Levy for employee benefit costs.

The City of Salina is hereby authorized to levy a tax for the purpose of paying employee benefit costs. As used in this charter ordinance, "employee benefit costs", shall include without limitation, payments made by the city for social security, Kansas Public Employees Retirement System, workmen's compensation benefits, employment security, unemployment compensation benefits, Kansas Police and Fire Retirement System, employee and officer liability protection and medical, health, hospitalization and life insurance, whether for the employee or his or her dependents.

Section 6. Repealer.

Chapter Ordinance Number 16 of the City of Salina, Kansas, is hereby repealed.

Section 7. Publication of ordinance.

This charter ordinance shall be published once each week for two (2) consecutive weeks in the official city newspaper.

Section 8. Effective date.

This is a charter ordinance and shall take effect sixty-one (61) days after its final publication, unless a sufficient petition for a referendum is filed and a referendum held on the ordinance as provided in Article 12, Section 5, Subdivision (c)(3) of the Constitution of Kansas, in which case the ordinance shall become effective if approved by the majority of the electors voting thereon.

Adopted by the governing body by not less than two-thirds (2/3) of the members-elect voting in favor thereof and approved by the Mayor this 18th day of June, 1979.

NO. 18. MUNICIPAL COURT COSTS AND FEES[18]

A CHARTER ORDINANCE RELATING TO THE IMPOSITION AND COLLECTION OF MUNICIPAL COURT COST AND RELATED FEES.

[18] **Editor's note:** Charter ordinance no. 18 was adopted on May 12, 1980, and was later repealed by charter ordinance no. 21.

NO. 19. LICENSING OF PAWNBROKERS AND PRECIOUS METAL DEALERS[19]

A CHARTER ORDINANCE EXEMPTING THE CITY OF SALINA, KANSAS, FROM THE PROVISIONS OF K.S.A. 16-707, WHICH PROVIDES FOR THE LICENSING OF PAWNBROKERS AND PRECIOUS METAL DEALERS AND PROVIDING SUBSTITUTE AND ADDITIONAL PROVISIONS ON THE SAME SUBJECT AND REPEALING CHARTER ORDINANCE NUMBER 12.

BE IT ORDAINED by the Board of Commissioners of the City of Salina, Kansas:

Section 1. Election to exempt; replacement provisions.

That the City of Salina, Kansas, a city of the first class, by the powers vested in it by Article 12, Section 5 of the Constitution of the State of Kansas, hereby elects to and does exempt itself from and makes inapplicable to it the provisions of K.S.A. 16-707 and provides substitute and additional provisions on the same subject, as follows, to-wit:

"16.707. Licensing of pawnbrokers and precious metal dealers; application fee; disposition.

(a). No person shall engage or continue in business as a pawnbroker or precious metal dealer without first obtaining a license therefor. The person shall obtain such license from the clerk.

(b). Application for a license shall be in writing and shall state the full name and place of residence of the applicant. If the applicant is a partnership, the application shall contain the name and place of residence of each officer, shareholder or member thereof. The application shall include the address of the places where the business is to be conducted, the hours and days of the week during which the applicant proposes to engage in the business of pawnbroking or dealing in precious metals at each such place, and such other information as may be necessary to determine the applicant's qualifications for a license in accordance with the provisions of state law. Each applicant shall also submit with the application:

(1). A statement that the applicant is the holder of a valid registration certificate issued by the Director of Revenue pursuant to K.S.A. 79-3608 for each place of business for which application for a license is made; and

(2). A detailed inventory and description of all goods, wares, merchandise, precious metals or other property held in pledge or for sale at the time the application at each place of business stated therein, including whether the same was received in pledge, purchased as secondhand merchandise or precious metal purchased for resale.

(c). The license application shall be in a form approved by the attorney general. Each application shall be accompanied by a fee as determined pursuant to Ordinance Number 81-8881 which shall be paid annually upon renewal of the license. All such fees received by the city clerk shall be deposited in the city general fund."

Section 2. Prohibition of ordinance.

This ordinance shall be published once a week for two (2) consecutive weeks in the Salina Journal, the official city newspaper.

Section 3. Repealer.

That Charter Ordinance Number 12 is hereby repealed.

Section 4. Effective date.

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[19] **Cross references:** Pawnbrokers, secondhand dealers and precious metal dealers, § 33-16 et seq.

This is a Charter Ordinance and shall take effect sixty-one (61) days after final publication unless a sufficient petition is filed and a referendum held on the ordinance as provided in Article 12, Section 5, Subdivision (c) of the Constitution of Kansas, in which case the ordinance shall become effective if approved by a majority of the electors voting thereon.

Adopted by the Board of Commissioners by not less than two-thirds (2/3) of the members elect voting in favor thereof and approved by the Mayor this 16th day of November, 1981.

NO. 20. FIXED ASSET RECORDS FOR BUILDINGS AND LAND

A CHARTER ORDINANCE EXEMPTING THE CITY OF SALINA, KANSAS, FROM K.S.A. 1980 SUPP. 75-1120(a) WHICH REQUIRES CERTAIN MUNICIPALITIES TO MAINTAIN FIXED ASSET RECORDS FOR BUILDINGS AND LAND.

WHEREAS, 1980 Supp. 75-1120(a) requiring certain municipalities of the State of Kansas to maintain fixed asset records for buildings and land, does not apply uniformly to all municipalities of the State of Kansas; and,

WHEREAS, the City of Salina, Kansas, wishes to exempt itself from the said provisions, SO NOW, THEREFORE,

BE IT ORDAINED by the Board of Commissioners of the City of Salina, Kansas:

Section 1. Election to exempt.

The City of Salina, Kansas, a city of the first class, by the power vested in it by Article 12, Section 5, of the Constitution of the State of Kansas hereby elects to and does exempt itself from the provisions of K.S.A. 1980 Supp. 75-1120(a) and while still conforming with all other generally accepted accounting principles make inapplicable to said city that portion of said statute which would otherwise require said city to maintain fixed asset records for buildings and land.

Section 2. Publication of ordinance.

This ordinance shall be published once each week for two (2) consecutive weeks in the Salina Journal, the official city newspaper.

Section 3. Effective date.

This is a Charter Ordinance and shall take effect sixty-one (61) days after final publication unless a sufficient petition for a referendum is filed as provided in Article 12, Section 5, Subdivision (c)(3) of the Constitution of the State of Kansas, in which case the ordinance shall become effective only if approved by a majority of the electors voting thereon.

Adopted by the Board of Commissioners by not less than two-thirds (2/3) of the members elect voting in favor thereof and approved by the Mayor this 9th day of November, 1981.

NO. 21. MUNICIPAL COURT COSTS AND FEES[20]

A CHARTER ORDINANCE RELATING TO THE IMPOSITION AND COLLECTION OF MUNICIPAL COURT COSTS AND RELATED FEES; AMENDING CHARTER ORDINANCE NUMBER 18 OF THE CITY OF SALINA, KANSAS, AND REPEALING THE EXISTING CHARTER ORDINANCE.

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

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[20] **Cross references:** Municipal court generally, Ch. 23.

Section 1. Election to exempt.

The City of Salina hereby elects to exempt itself from the provisions of K.S.A. 12-4112, pursuant to Article 12, Section 5(c)(1), of the Kansas Constitution.

Section 2. Provision for court costs and fees.

In lieu of the provisions of K.S.A. 12-4112, the governing body of the City of Salina may by ordinance or resolution provide substitute and additional provisions relative to court costs and fees to be charged and collected in all actions and cases filed and docketed in the Municipal Court of the City of Salina, Kansas.

Section 3. Purposes.

All court costs and fees which may be provided for by the governing body are to be collected by the Municipal Court, or Clerk, and shall be paid into a fund called the Municipal Court Fund, and shall be maintained by the City Clerk, to be disbursed upon proper voucher for the purposes authorized by the governing body.

Section 4. Repealer.

Charter Ordinance Number 18 of the City of Salina, Kansas, is hereby repealed.

Section 5. Publication of ordinance.

This ordinance shall be published once a week for two (2) consecutive weeks in the Salina Journal, the official city newspaper.

Section 6. Effective date.

This is a Charter Ordinance and shall take effect sixty-one (61) days after final publication, unless a sufficient petition for a referendum is filed and a referendum held on the ordinance as provided in Article 12, Section 5, Subdivision (c) of the Constitution of Kansas in which case the ordinance shall become effective if approved by the majority of the electors voting thereon.

Adopted by the Governing Body by not less than two-thirds (2/3) of the members elect voting in favor and approved by the Mayor this 11th day of February, 1985.

NO. 22. PROMOTION OF TOURISM AND CONVENTION[21]

A CHARTER ORDINANCE EXEMPTING THE CITY OF SALINA, KANSAS, FROM K.S.A. 12-1697 AND 12-16,101 CONCERNING THE PROMOTION OF TOURISM AND CONVENTIONS, AUTHORIZING THE LEVYING OF A TRANSIENT GUEST TAX BY COUNTIES OR CITIES; PROVIDING FOR APPOINTMENT OF A CONVENTION AND TOURISM COMMITTEE; PROVIDING SUBSTITUTE PROVISIONS ON THE SAME SUBJECT; AND REPEALING CHAPTER 37 OF THE SALINA CODE.

Be it Ordained by the Governing Body of the City of Salina, Kansas:

Section 1. The City of Salina hereby elects to exempt itself from the provisions of K.S.A. 12-1697 and 12-16,101 pursuant to Article 12, Section 5 of the Kansas Constitution and adopts the substitute provisions set forth below.

Section 2. The following substitute provisions are hereby adopted in place of K.S.A. 12-1697:

Promotion of tourism and conventions; tax levy by city or county; basis of tax; payment and collection; requirements prior to levy.

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[21] **Editor's note:** Charter ordinance no. 26 adopted May 20, 1991, amended section 3 of Charter ordinance no. 22 by providing that a member of the board of city commissioners shall no longer be an ex-officio member of the committee but shall be appointed by the mayor to a specific term along with other committee members. **Cross references:** Membership of the convention and tourism committee, Charter ord. no. 26, § 3.

(a) In order to provide revenues to promote tourism and conventions, the Board of City Commissioners is hereby authorized to levy a transient guest tax at not to exceed the rate of five (5) percent upon the gross receipts derived from or paid by transient guests for sleeping accommodations, exclusive of charges for incidental services or facilities, in any hotel, motel or tourist court. The percentage of such tax shall be determined by the Board of City Commissioners and shall be specified in the resolution authorizing the same.

(b) Any transient guest tax levied pursuant to this section shall be based on the gross rental receipts collected by any business.

(c) The taxes levied pursuant to this section shall be paid by the consumer or user to the business and it shall be the duty of each and every business to collect from the consumer or users the full amount of any such tax, or an amount equal as nearly as possible or practicable to the average equivalent thereto. Each business collecting any of the taxes levied hereunder shall be responsible for paying over the same to the state department of revenue in the manner prescribed by K.S.A. 12-1698 and the state department of revenue shall administer and enforce the collection of such taxes.

(d) A transient guest tax authorized by this section shall not be levied until the Board of City Commissioners has passed a resolution authorizing the same.

Section 3. The following substitute provisions are hereby adopted in place of K.S.A. 12-16,101:

Convention and tourism committee; appointment; terms; contracts and programs.

(a) The Board of City Commissioners hereby establishes a committee to be known as the "Convention and Tourism Committee" to make recommendations concerning the programs and expenditures for the promotion of conventions and tourism. Except as otherwise provided in this paragraph, the Committee shall consist of ten (10) members who shall be individuals knowledgeable and active in the promotion of tourism and conventions. The initial membership of the committee shall consist of the existing Convention and Tourism Committee members, who shall each serve the balance of their respective present terms and until a successor is appointed. A member of the Board of City Commissioners, to be appointed by the Mayor, and the President of the Salina Area Chamber of Commerce shall be ex-officio members of this committee. The remaining eight (8) members of the committee shall be appointed by the Mayor with the consent of the Board of City Commissioners to no more than two (2) consecutive terms of four (4) years each and until a successor is appointed.

(b) The Board of Commissioners shall have the authority to contract for convention and tourism programs to be implemented.

Section 4. Chapter 37 of the Salina Code and any other ordinances or resolutions of the City of Salina in conflict herewith are hereby repealed.

Section 5. This ordinance shall be published once a week for two (2) consecutive weeks in The Salina Journal, the official city newspaper.

Section 6. This is a Charter Ordinance and shall take effect sixty-one (61) days after final publication unless a sufficient petition is filed and a referendum held on the ordinance as provided in Article 12, Section 5, Subdivision (c) of the Constitution of Kansas, in which case the ordinance shall become effective if approved by a majority of the electors voting thereon.

Adopted by the Board of Commissioners by not less than two-thirds (2/3) of the members elect voting in favor thereof and approved by the Mayor this 15th day of September, 1986.

NO. 23. GENERAL IMPROVEMENTS AND ISSUANCE OF BONDS[22]

A CHARTER ORDINANCE EXEMPTING THE CITY OF SALINA, KANSAS, FROM THE PROVISIONS OF K.S.A. 13-1024a AND PROVIDING SUBSTITUTE AND ADDITIONAL PROVISIONS ON THE SAME WHICH RELATE TO GENERAL IMPROVEMENTS AND THE ISSUANCE OF BONDS FOR THE PURPOSE OF PAYING FOR SAID IMPROVEMENTS.

Be it Ordained by the Governing Body of the City of Salina, Kansas:

Section 1. Election to exempt.

That the City of Salina, Kansas, by the power vested in it by Article 12, Section 5 of the Constitution of the State of Kansas, hereby elects to exempt itself from and make applicable to it the provisions of K.S.A. 13-1024a and provide substitute and additional provisions as hereinafter set forth in this ordinance. Such referenced provisions are either enactments or a part thereof which are applicable to this city that are not applicable uniformly to all cities.

Section 2. Substitute and additional provisions.

That the City of Salina, does hereby provide substitute and additional provisions on the same subject as follows, to wit:

13-1024a. General improvements and land therefor; borrowing money and bond issues; when election required.

For the purpose of paying for any bridge, viaduct, public buildings, including the land necessary therefor, for land for public parks and developing the same within or without the city, for the establishment and construction of crematories, desiccating or reduction work, including the land necessary therefor, within or without the city, or for the improvement, repair or extension of any waterworks, sewage disposal plant, electric light plant, crematory, desiccating or reduction work or other public utility plant owned by the city, and for the purpose of rebuilding, adding to or extending the same from time to time, as the necessities of the city may require, the city may borrow money and issue its bonds for the same; Provided, that no bonds shall be issued for such purposes unless the same were authorized by a majority of the votes cast at an election held for that purpose; Provided further, that any city of the first class may issue bonds of such city for the purpose of paying for any of the improvements mentioned in this section and the land necessary therefor without such bonds having been authorized by a vote of the people, but the total amount of bonds issued for such purposes shall not exceed the sum of seven hundred fifty thousand dollars ($750,000.00) in any one year.

Section 3. Repealer.

That Charter Ordinance Number 13 of the City of Salina, Kansas, be and the same is hereby repealed.

Section 4. Publication of ordinance.

This Charter Ordinance shall be published once a week for two (2) consecutive weeks in The Salina Journal, the official city newspaper.

Section 5. Effective date.

This is a Charter Ordinance and shall take effect sixty-one (61) days after final publication, unless a sufficient petition for referendum is filed and the referendum held on the ordinance as provided in Article 12, Section 5, Subdivision (c)(3) of the Constitution of the State of Kansas, in which case the ordinance shall become effective if approved by a majority of the electors voting thereon.

Passed by the Governing Body by not less than two-thirds (2/3) of the members elect voting thereon this 22nd day of August, 1988.

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[22] **Editor's note:** The motion regarding the referendum election necessary for approval of Charter ordinance no. 23 was defeated at a regular meeting of the board of commissioners held on November 21, 1988.

NO. 24. SALARIES OF MEMBERS OF GOVERNING BODIES

A CHARTER ORDINANCE EXEMPTING THE CITY OF SALINA, KANSAS, FROM THE PROVISIONS OF K.S.A. 12-1008 AND PROVIDING SUBSTITUTE AND ADDITIONAL PROVISIONS ON THE SAME WHICH RELATE TO SALARIES OF MEMBERS OF GOVERNING BODIES.

Be it Ordained by the Governing body of the City of Salina, Kansas:

Section 1. Election to exempt.

That the City of Salina, Kansas, by the power vested in it by Article 12, Section 5 of the Constitution of the State of Kansas, hereby elects to exempt itself from and make inapplicable to it the provisions of K.S.A. 12-1008 and provide substitute and additional provisions as hereinafter set forth in this ordinance. Such referenced provisions are either enactments or a part thereof which are applicable to this city that are not applicable uniformly to all cities.

Section 2. Substitute and additional provisions.

That the City of Salina, does hereby provide substitute and additional provisions on the same subject as follows, to wit:

12-1008. Salaries of members of governing bodies of certain first class cities fixed by ordinance; bond.

The governing body of any city having a population of more than one hundred fifty thousand (150,000) and operating under the provisions of this act, shall, by ordinance fix the salary of members of the governing body, including the mayor, but any salary so fixed shall not exceed the sum of three thousand dollars ($3,000.00) per annum for commissioners, nor more than four thousand dollars ($4,000.00) per annum for the mayor of such city. Salaries so fixed shall be payable in monthly installments, in cities of the first class with a population of not more than ninety thousand (90,000), each commissioner shall receive such compensation as the governing body shall fix by ordinance but not exceed one thousand two hundred dollars ($1,200.00) a year, payable in monthly installments and in cities of the first class shall give the necessary bond required by cities of this class under the commission government.

Section 3. Publication of ordinance.

This Charter Ordinance shall be published once a week for two (2) consecutive weeks in The Salina Journal, the official city newspaper.

Section 4. Effective date.

This is a Charter Ordinance and shall take effect sixty-one (61) days after the final publication, unless a sufficient petition for referendum is filed and the referendum held on the ordinance as provided in Article 12, Section 5, Subdivision (c)(3) of the Constitution of the State of Kansas, in which case the ordinance shall become effective if approved by a majority of the electors voting thereon.

Passed by the Governing Body by not less than two-thirds (2/3) of the members elect voting thereon this 22nd day of August, 1988.

NO. 25. GENERAL IMPROVEMENTS AND ISSUANCE OF BONDS[23]

A CHARTER ORDINANCE EXEMPTING THE CITY OF SALINA, KANSAS, FROM THE PROVISIONS OF K.S.A. 13-1024a AND PROVIDING SUBSTITUTE AND ADDITIONAL PROVISIONS ON THE SAME WHICH RELATE TO GENERAL IMPROVEMENTS AND THE ISSUANCE OF BONDS FOR THE PURPOSE OF PAYING FOR SAID IMPROVEMENTS.

Be it Ordained by the Governing Body of the City of Salina, Kansas:

Section 1. Election to exempt.

That the City of Salina, Kansas, by the power vested in it by Article 12, Section 5 of the Constitution of the State of Kansas, hereby elects to exempt itself from and make inapplicable to it the provisions of K.S.A. 13-1024a and provide substitute and additional provisions as hereinafter set forth in this ordinance. Such referenced provisions are either enactments or a part thereof which are applicable to this city that are not applicable uniformly to all cities.

Section 2. Substitute and additional provisions.

That the City of Salina, does hereby provide substitute and additional provisions on the same subject as follows, to wit:

13-1024. General improvements and land therefor; borrowing money and bond issues; when election required.

For the purposes of paying for any bridge, viaduct, public buildings, including the land necessary therefor, for land for public parks and developing the same, within or without the city, for the establishment and construction of crematories, desiccating or reduction of work, including the land necessary therefor, within or without the city, or for the improvement, repair or extension of any waterworks, sewage disposal plant, electric light plant, crematory, desiccating or reduction work or other public utility plant owned by the city, and for the purpose of rebuilding, adding to or extending the same from time to time, as the necessities of the city may require, the city may borrow money and issue its bonds for the same; Provided, that no bonds shall be issued for such purposes unless the same were authorized by a majority of the votes cast at an election held for that purpose; Provided further, that any city of the first class may issue bonds of such city for the purpose of paying for any of the improvements mentioned in this section and the land necessary therefor without such bonds having been authorized by a vote of the people, but the total amount of bonds issued for such purposes shall not exceed the sum of seven hundred fifty thousand dollars ($750,000.00) in any one year.

Section 3. Repealer.

That Charter Ordinance Number 13 of the City of Salina, Kansas, be and the same is hereby repealed.

Section 4. Publication of ordinance.

This Charter Ordinance shall be published once a week for two (2) consecutive weeks in The Salina Journal, the official city newspaper.

Section 5. Effective date.

This is a Charter Ordinance which the Governing Body wishes to submit to a referendum without petition and shall become effective when approved by a majority of the electors voting thereon at an election to be called by separate ordinance, all pursuant to Article 12, Section 5 of the Kansas Constitution.

Passed by the Governing Body by not less than two-thirds (2/3) of the members elect voting thereon this 19th day of December, 1988.

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[23] **Editor's note:** Charter ordinance no. 25 failed at referendum, 2,680/5,316, held on February 28, 1989.

NO. 26. MEMBERSHIP OF CONVENTION AND TOURISM COMMITTEE

A CHARTER ORDINANCE AMENDING SECTION 3 OF CHARTER ORDINANCE 22 CONCERNING THE MEMBERSHIP OF THE CONVENTION AND TOURISM COMMITTEE; AND REPEALING THE EXISTING SECTION.

Be it Ordained by the Governing Body of the City of Salina, Kansas:

Section 1. Amended.

That Section 3 of Charter Ordinance 22 is hereby amended to read as follows:

Section 3. The following substitute provisions are hereby adopted in place of K.S.A. 12-16,101:

Convention and tourism committee; appointment; terms; contracts and programs.

(a) The Board of City Commissioners hereby establishes a committee to be known as the "Convention and Tourism Committee" to make recommendations concerning the programs and expenditures for the promotion of conventions and tourism. Except as otherwise provided in this paragraph, the committee shall consist of ten (10) members who shall be individuals knowledgeable and active in the promotion of tourism and conventions. The initial membership of the committee shall consist of the existing Convention and Tourism Committee members, who shall each serve the balance of their respective present terms and until a successor is appointed. The president of the Salina Area Chamber of Commerce shall be an ex officio member of this committee. The remaining nine (9) members of the committee shall be appointed by the Mayor with the consent of the Board of City Commissioners to no more than two (2) consecutive terms of four (4) years each and until a successor is appointed.

(b) The Board of Commissioners shall have the authority to contract for convention and tourism programs to be implemented.

Section 2. Repealer.

That the existing Section 3 of Charter Ordinance 22 and any other ordinances or resolutions in conflict herewith are hereby repealed.

Section 3. Publication of ordinance.

This ordinance shall be published once a week for two (2) consecutive weeks in The Salina Journal, the official city newspaper.

Section 4. Effective date.

This is a Charter Ordinance and shall take effect sixty-one (61) days after final publication unless a sufficient petition is filed and a referendum held on the ordinance as provided in Article 12,Section 5, Subdivision (c) of the Constitution of Kansas, in which case the ordinance shall become effective if approved by a majority of the electors voting thereon.

Adopted by the Board of Commissioners by not less than two-thirds (2/3) of the members elect voting in favor thereof and approved by the Mayor this 20th day of May, 1991.

NO. 27. EXEMPTING THE CITY FROM THE PROVISIONS OF K.S.A. 13-1017, AS AMENDED

Be it ordained by the governing body of the City of Salina, Kansas:

Section 1. Election to Exempt.

The City of Salina, Kansas, by the power vested in it in Article 12, Section 5 of the Constitution of the State of Kansas, hereby elects to exempt itself from the provisions of K.S.A. 13-1017, as amended, part of an enactment which applies to this City, but does not apply uniformly to all cities;

Section 2. Publication of Ordinance.

This Charter Ordinance shall be published once each week for two consecutive weeks in the Salina Journal, the official city newspaper.

Section 3. Effective Date.

This Charter Ordinance shall take effect sixty (60) days after final publication, unless a sufficient petition is filed and a referendum held on the ordinance as provided in Article 12, Section 5(c) of the Constitution of the state of Kansas, in which case this Charter Ordinance shall become effective upon approval by a majority of the electors voting thereon.

Adopted by the Board of Commissioners by not less than two-thirds (2/3) of the members elect voting in favor thereof and approved by the Mayor this 24th day of July, 1995.

Cross references: Public improvement procedures policy statement, § 2-233.

NO. 28. EXEMPTING THE CITY FROM THE PROVISIONS OF K.S.A. 12-868

A CHARTER ORDINANCE EXEMPTING THE CITY OF SALINA, KANSAS FROM THE PROVISIONS OF K.S.A. 12-868 AND PROVIDING SUBSTITUTE AND ADDITIONAL PROVISIONS ON THE SAME SUBJECT RELATING TO COMBINED WATER AND SEWAGE SYSTEM BONDS.

Be it ordained by the governing body of the City of Salina, Kansas:

Section 1. [Election to Exempt.]

The City of Salina, Kansas (the "City") by virtue of the powers vested in it by Article 12, Section 5, of the Constitution of the State of Kansas, hereby elects to exempt itself from and hereby make inapplicable to it Section 12-868, Kansas Statutes Annotated, that applies to the City, but is part of an enactment which does not apply uniformly to all cities, and hereby provides substitute and additional provisions on the same subject as hereinafter provided.

Section 2. [Revenue Bonds.]

The City of Salina, Kansas, having issued revenue bonds under K.S.A. 12-856 et seq. or having authorized or issued waterworks revenue bonds and sewage system revenue bonds under any other authority may, from time to time, without an election, issue its combined waterworks and sewage system revenue bonds pursuant to the provisions of K.S.A. 12-856 et seq. in lieu of or in refund of any such revenue bonds previously authorized or issued. The power herein granted to issue bonds shall be supplemental to and not amendatory of the provisions of K.S.A. 10-102. The City of Salina, Kansas, having issued revenue bonds under K.S.A. 12-856 et seq. may, from time to time, issue general obligation bonds, under the provisions of the general bond law, to refund any previous issue or part thereof of its outstanding revenue bonds, including the principal amount thereof and all

accrued outstanding interest thereon. Such general obligation bonds shall not be issued until a resolution adopted by the governing body of the City of Salina, Kansas, stating the purpose for which such bonds are to be issued and the total amount of the bonds proposed to be issued shall be published once each week for two consecutive weeks in the official newspaper of the City of Salina, Kansas. After publication, such bonds may be issued unless a petition requesting an election on the proposition, signed by electors equal in number to not less than 5% of the electors of the City of Salina, Kansas who voted for the office of secretary of state at the last preceding general election of such office, is filed with the clerk of the City of Salina, Kansas, within 20 days following the last publication of such resolution. If such a petition is filed, the governing body of the City of Salina, Kansas shall not issue the general obligation bonds unless the proposition shall receive the approval of a majority of the votes cast thereon at an election called for such purpose.

Section 3. [Publication of Ordinance.]

This Charter Ordinance shall be published once each week for two consecutive weeks in the official City newspaper.

Section 4. [Effective Date.]

This Charter Ordinance shall take effect sixty-one (61) days after final publication unless a sufficient petition for a referendum is filed requiring a referendum to be held on this ordinance as provided in Article 12, Section 5, Subdivision (c) (3) of the Constitution of the State of Kansas, in which case the ordinance shall be effect if approved by a majority of the electors voting thereon.

Passed by the governing body, not less than two-thirds of the members elect voting in favor thereof.

NO. 29. EXEMPTING THE CITY FROM THE PROVISIONS OF K.S.A. 13-1024A

A CHARTER ORDINANCE EXEMPTING THE CITY OF SALINA, KANSAS, FROM THE PROVISIONS OF K.S.A. 13-1024a AND PROVIDING SUBSTITUTE AND ADDITIONAL PROVISIONS ON THE SAME SUBJECT RELATING TO GENERAL IMPROVEMENTS AND THE ISSUANCE OF BONDS FOR THE PURPOSE OF PAYING FOR SAID IMPROVEMENTS GENERALLY, AND AN ANIMAL SHELTER SPECIFICALLY.

NO. 30. EXEMPTING THE CITY FROM THE PROVISIONS OF K.S.A. 12-1008

A CHARTER ORDINANCE EXEMPTING THE CITY OF SALINA, KANSAS, FROM THE PROVISIONS OF K.S.A. 12-1008 AND PROVIDING SUBSTITUTE AND ADDITIONAL PROVISIONS ON THE SAME WHICH RELATE TO SALARIES OF MEMBERS OF THE GOVERNING BODY, AND REPEALING CHARTER ORDINANCE NUMBER 24.

Be it ordained by the Governing Body of the City of Salina, Kansas:

Section 1. Election to exempt.

The City of Salina, Kansas (the "City") by the power vested in it by Article 12, Section 5, of the Constitution of the State of Kansas, hereby elects to exempt itself from and make inapplicable to it Section 12-1008 of the Kansas Statutes Annotated, that applies to the City, but is part of an enactment which does not apply uniformly to all cities, and hereby provides substitute and additional provisions on the same subject as hereinafter provided.

Section 2. Substitute and additional provisions.

The City of Salina hereby adopts the following substitute and additional provisions for Section 12-1008 of the Kansas Statutes Annotated:

Commencing May 1, 1999, each member of the Governing Body of the City of Salina, Kansas, shall be compensated at the rate of three hundred dollars ($300.00) per month.

Section 3. Repealer.

Charter Ordinance Number 24 of the City of Salina, Kansas, is hereby repealed.

Section 4. Publication of Ordinance.

This Charter Ordinance shall be published once each week for two consecutive weeks in the official City newspaper.

Section 5. Effective Date.

This Charter Ordinance shall take effect sixty-one (61) days after final publication unless a sufficient petition for a referendum is filed requiring a referendum to be held on this ordinance as provided in Article 12, Section 5, Subdivision (c)(3) of the Constitution of the State of Kansas, in which case the ordinance shall become effective if approved by a majority of the electors voting thereon.

Passed by the governing body, not less than two-thirds of the members elect voting in favor thereof.

CHARTER ORDINANCE NO. 31

A CHARTER ORDINANCE EXEMPTING THE CITY OF SALINA, KANSAS, FROM THE PROVISIONS OF K.S.A. 13-1024a; PROVIDING SUBSTITUTE AND ADDITIONAL PROVISIONS ON THE SAME SUBJECT RELATING TO GENERAL IMPROVEMENTS AND THE ISSUANCE OF BONDS FOR THE PURPOSE OF PAYING FOR SAID IMPROVEMENTS GENERALLY, AND AN ANIMAL SHELTER AND A FAMILY AQUATIC PARK SPECIFICALLY; AND REPEALING CHARTER ORDINANCE NUMBER 29.

CHARTER ORDINANCE NUMBER 32

A CHARTER ORDINANCE AMENDING CHARTER ORDINANCE NUMBER 29 AS IT EXEMPTED THE CITY OF SALINA, KANSAS FROM THE PROVISIONS OF K.S.A. 13-1024a AND PROVIDING SUBSTITUTE AND ADDITIONAL PROVISIONS ON THE SAME SUBJECT RELATING TO GENERAL IMPROVEMENTS AND THE ISSUANCE OF BONDS FOR THE PURPOSE OF PAYING FOR SAID IMPROVEMENTS GENERALLY AND CERTAIN IMPROVEMENTS SPECIFICALLY.

CHARTER ORDINANCE NUMBER 33

A CHARTER ORDINANCE EXEMPTING THE CITY OF SALINA, KANSAS FROM THE PROVISIONS OF K.S.A. 13-1024a; PROVIDING SUBSTITUTE AND ADDITIONAL PROVISIONS ON THE SAME SUBJECT RELATING TO GENERAL IMPROVEMENTS AND THE ISSUANCE OF BONDS FOR THE PURPOSE OF PAYING FOR SAID IMPROVEMENTS; AND REPEALING CHARTER ORDINANCE NUMBER 31 AND CHARTER ORDINANCE NUMBER 32.

BE IT ORDAINED by the governing body of the City of Salina, Kansas:

Section 1. Election to Exempt. The City of Salina, Kansas (the "City") by virtue of the powers vested in it by Article 12, Section 5, of the Constitution of the State of Kansas, hereby elects to exempt itself from and hereby make inapplicable to it Section 13-1024a, Kansas Statutes Annotated, that applies to the City, but is part of an enactment which does not apply uniformly to all cities, and thereby provides substitute and additional provisions on the same subject as hereinafter provided.

Section 2. Substitute and Additional Provisions. The City of Salina, Kansas hereby adopts the following substitute and additional provisions for Section 13-1024a, Kansas Statutes Annotated:

> As a complete alternative to all other methods provided by law, the city may borrow money and issue its bonds for the purpose of paying the project cost (which may include acquisition of interests in real estate and architectural, engineering, and other professional services) for the following categories of projects:

Project Category	Description
A.	Streets. Construction, reconstruction, improvement or repair of any street or roadway located within or partially within the city limits and not designated as a main trafficway pursuant to K.S.A. 12-685 *et seq*.
B.	Bridges and Viaducts. Construction, reconstruction, improvement or repair of any bridge or viaduct located within or partially within the city limits and not located on a street designated as a main trafficway pursuant to K.S.A. 12-685 *et seq*.
C.	Public Parks. Acquisition of land for public park purposes and acquisition, construction, reconstruction, improvement and repair of park and recreation facilities, whether located inside or outside the city limits.
D.	Public Buildings. Acquisition, construction, reconstruction, improvement or repair of public buildings or acquisition of land for the construction, reconstruction, improvement or repair of public buildings, whether located inside or outside the city limits.
E.	Storm Water Drainage Systems. Improvement, extension, or repair of storm water drainage systems, whether located inside or outside the city limits.
F.	Water Works and/or Sanitary Sewer Systems. Improvement, extension, or repair of the city-owned water works and/or sanitary sewer systems, and appurtenances thereto, whether located inside or outside the city limits.
G.	Animal Shelter. Construction of an animal shelter.

Issuance of bonds by the city pursuant to this charter ordinance shall require authorization by a majority of the votes cast at an election held for that purpose, except, however, that in any calendar year the city may issue bonds pursuant to this charter ordinance without an election, as follows:

(1) a maximum of $250,000 under each of project categories A through E;

(2) a maximum of $2,000,000 under project category F; and

(3) a maximum of $900,000 for project category G.

Section 3. Repealer. That Charter Ordinance Number 31 and Charter Ordinance Number 32 of the City of Salina, Kansas, are hereby repealed.

Section 4. Publication of Ordinance. This Charter Ordinance shall be published once each week for two consecutive weeks in the official City newspaper.

Section 5. Effective Date. This Charter Ordinance shall take effect sixty-one (61) days after final publication unless a sufficient petition for a referendum is filed requiring a referendum to be held on this ordinance as provided in Article 12, Section 5, Subdivision (c)(3) of the Constitution of the State of Kansas, in which case the ordinance shall become effective if approved by a majority of the electors voting thereon.

Passed by the governing body, not less than two-thirds of the members elect voting in favor thereof.

Introduced: October 6, 2003
Passed: October 20, 2003

Next page is 935.

APPENDIX B. FRANCHISES[1]

Art.	**I.**	**Westar Energy, Inc. – Electric Franchise**
Art.	**II.**	**Kansas Gas Service – Natural Gas Franchise**
Art.	**III.**	**Salina Cable T.V. System**
Art.	**IV.**	**Southwestern Bell Telephone Company**

ARTICLE I. WESTAR ENERGY, INC – ELECTRIC FRANCHISE[2]

ORDINANCE NUMBER 05-10292

AN ORDINANCE GRANTING TO WESTAR ENERGY, INC. AN ELECTRIC FRANCHISE INCLUDING THE RIGHT TO CONSTRUCT, OPERATE AND MAINTAIN ELECTRIC TRANSMISSION, DISTRIBUTION AND STREET LIGHTING FACILITIES WITHIN THE CORPORATE LIMITS OF THE CITY OF SALINA, KANSAS.

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

Section 1. **Definitions.**

For purposes of this Franchise, the following words and phrases shall have the meanings given herein:

City as the Grantor – shall mean the City of Salina, Kansas.

Company as the Grantee – shall mean Westar Energy, Inc., a Kansas Corporation.

Distributed or Distribution – shall mean all sales, distribution, or transportation to any consumer for use within the City by the Company or by others through the Facilities of the Company in the Right-of-Way.

Facilities – shall mean all electric distribution lines, substations, works, and plants together with all necessary appurtenances thereto.

Gross receipts – shall mean any and all compensation and other consideration derived directly by the Company from any Distribution of electric energy within the corporate limits of the City to a consumer for any use, including domestic, commercial and industrial purposes, through charges as provided in tariffs filed and approved, and including without limitation interruptible sales and single sales; except that such term shall not include revenues from any operation or use of any or all of the Facilities in the Right-of-Way by others nor shall such term include revenue from certain miscellaneous charges and accounts, including but not limited to delayed or late payment charges, connection and disconnection fees, reconnection fees, customer project contributions, returned check charges, and temporary service charges.

Public Improvement – shall mean any existing or contemplated public facility, building, or capital improvement project, financed by the City, including without limitation, streets, alleys, sidewalks, sewer, water, drainage, Right-of-Way improvement, and Public Projects.

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[1] **Editor's note:** Printed herein are the franchises of the city. Catchlines were added by the editor. **Cross references:** Any ordinance granting any right, privilege, easement or franchise to any person saved from repeal, § 1-5(12); public utilities, Ch. 31; solid waste, Ch. 34; water and sewers, Ch. 41. **State law references:** Franchises, K.S.A. 12-2001 et seq.

[2] **Editor's note:** Ord. No. 86-9125 repealed by Ord. No. 05-10292.

Public Project – shall mean any project planned or undertaken by the City or any other governmental entity for construction, reconstruction, maintenance, or repair of public facilities or improvements, including without limitation streets, alleys, sidewalks, sewer system, water system, drainage system, Right-of-Way improvement, or any other purpose of a public nature.

Public Project for Private Development – shall mean a Public Project, or that portion thereof, arising solely from a request or requirement of a third (3rd) party primarily for the benefit and use of a third (3rd) party.

Right-of-Way – shall mean only the area of real property in which the City has a dedicated or acquired right-of-way interest in the real property. It shall include the area on, below, or above the present and future streets, alleys, avenues, roads, highways, or boulevards dedicated or acquired as rights-of-way. The term does not include the airwaves above a right-of-way with regard to wireless telecommunications or other non-wire telecommunications or broadcast service, easements obtained by utilities, or private easements in platted subdivisions or tracts. The term does not include property owned or held by the City but not typically considered right-of-way, including, but not limited to, City parks and reserves and City buildings.

Street Right-of-Way – shall mean the entire width between property lines of land, property, or an interest therein of every way publicly maintained where any part thereof is open to the use of the public for purposes of vehicular traffic, including street, avenue, boulevard, highway, expressway, alley, or any other public way for vehicular travel by whatever name.

Utility Easement – shall mean an easement owned by or dedicated to the City for the purpose of providing the Company and other utilities access to customers and users of any utility service.

Section 2. **Grant.**

There is hereby granted to Company, the non-exclusive right, privilege, and franchise to construct, maintain, extend, and operate its Facilities in, through, and along the Right-of-Way of the City for the purpose of supplying electric energy to the City and the inhabitants thereof for the full term of this Franchise; subject, however, to the terms and conditions herein set forth. Nothing in this grant shall be construed to franchise or authorize the use of the Company's Facilities or the Right-of-Way by the Company or others, for any purpose not related to the provision of electric energy. The Company may not allow a subsidiary, affiliate, or a third (3rd) party to acquire rights to occupy the Rights-of-Way under this Franchise; provided, that nothing in this section shall prevent Company from allowing the use of its Facilities by others when such use is compensated to the City under the provisions of a franchise granted by the City to any such third party.

Section 3. **Term.**

a. The term of this Franchise shall be fifteen (15) years from the effective date of this Ordinance.

b. Upon 60 days advance written notice by the City, the franchise fee percentage rate may be changed on the fifth or tenth anniversary of the effective date of this Ordinance.

c. Upon written request of either the City or the Company, the franchise shall be reopened and renegotiated at any time upon any of the following events:

    1. Change in federal, state, or local law, regulation, or order which materially affects any rights or obligations of either the City or the Company, including but not limited to the scope of the grant to the Company or the compensation to be received by the City; or

    2. Change in the structure or operation of the electrical energy industry which materially affects any rights or obligations of either the City or the Company, including but not

limited to the scope of the grant to the Company or the compensation to be received by the City; or

3. Any other material and unintended change or shift in the economic benefit to the City or a change the Company did not anticipate upon accepting the grant of this Franchise.

d. Amendments under this section, if any, shall be made by ordinance as prescribed by statute. The franchise shall remain in effect according to its terms pending completion of any review or renegotiation pursuant to subsection (c).

Section 4. **Compensation to the City.**

a. In consideration of and as compensation for the franchise hereby granted to the Company by the City, the Company shall make an accounting to the City of all electric energy that has been distributed on a monthly basis. The Company shall pay the City:

   A sum equal to 5 percent (5%) of the Gross Receipts received from the Distribution of electric energy; and

   The above sum shall be adjusted for uncollectible receivables and for uncollectible receivables which are later collected.

b. Payment of the compensation above shall commence on the Effective Date identified in Section 18 as the first day of January, 2006, Prior to the Effective Date, payments shall continue to be calculated and be paid in the manner previously provided in Ordinance 86-9126. Such payments shall be made to the City under procedures, which are mutually agreed to by the Company and the City within thirty (30) days of the last day of the month to which such accounting shall apply.

c. In the event the accounting rendered to the City by the Company is found to be incorrect, then payment shall be made on the corrected amount, it being agreed that the City may accept any amount offered by the Company, but the acceptance thereof by the City shall not be deemed a settlement of such item if the amount is in dispute or later found to be incorrect. The Company agrees that all of its books, records, documents, contracts and agreements as may be reasonably necessary for an effective compliance review of this Ordinance shall upon reasonable notice and at all reasonable times be opened to the inspection and examination of the officers of the City and its duly authorized agents, auditor, and employees for the purpose of verifying said accounting. Notwithstanding the obligation herein, the Company shall have the right to require the reasonable protection of proprietary information of the Company.

Section 5. **Payment and Charges.**

The payments and compensation herein provided shall be in lieu of all other licenses, taxes, charges, and fees, except that the usual general property taxes and special ad valorem property assessments, sales and excise taxes, charges made for privileges which are not connected with the electric energy business, and any permit fees and charges for pavement cuts or other permit fees and charges based on restoring premises to their previous condition will be imposed on the Company and are not covered by the payments herein.

Section 6. **Use of Right-of-Way.**

a. The use of the Right-of-Way under this Franchise by the Company shall be subject to all rules, regulations, policies, resolutions, and ordinances now or hereafter adopted or promulgated by the

City in the reasonable exercise of its police power relating to use, placement, location, or management of utilities located in the City's Right-of-way. In addition, the Company shall be subject to all laws, rules, regulations, policies, resolutions, and ordinances now or hereafter adopted or promulgated by the City in the reasonable exercise of its police power relating to permits, fees, sidewalk and pavement cuts, utility location, construction coordination, screening, and other requirements on the use of the Right-of-Way; provided, however, that nothing contained herein shall constitute a waiver of or be construed as waiving the right of the Company to oppose, challenge, or seek judicial review of, in such manner as is now or may hereafter be provided by law, any such rules, regulation, policy, resolution, or ordinance proposed, adopted, or promulgated by the City. Further, the Company shall comply with the following:

b. The Company's use of the Right-of-Way shall in all matters be subordinate to the City's use of the Right-of-Way for any public purpose. The Company shall coordinate the installation of its Facilities in the Right-of-Way in a manner which minimizes adverse impact on Public Improvements, as reasonably determined by the City. Where installation is not otherwise regulated, the Facilities shall be placed with adequate clearance from such Public Improvements so as not to conflict with such Public Improvement.

c All earth, materials, trees, flowers, shrubs, landscaping, sidewalks, paving, crossings, pavement markings, utilities, Public Improvements, or improvements of any kind located within the Right-of-Way damaged or removed by the Company in its activities under this Franchise shall be fully repaired or replaced promptly by the Company to the reasonable satisfaction of the City and without cost to the City . However, when such activity is a joint project of utilities or franchise holders, the expenses thereof shall be prorated among the participants. Nothing in this Franchise shall require the Company to repair or replace any materials, trees, flowers, shrubs, landscaping or structures located within a Utility Easement, which interfere with the Company’s access to any of its Facilities located in a Utility Easement.

d. Except in the event of an emergency, as reasonably determined by the Company, the Company shall comply with all laws, rules, regulations, policies, resolutions, or ordinances now or hereinafter adopted or promulgated by the City relating to any construction, reconstruction, repair, or relocation of Facilities which would require any street closure which reduces traffic flow. Notwithstanding the foregoing exception all work, including emergency work performed in the traveled way or which in any way impacts vehicular or pedestrian traffic shall be properly signed, barricaded, and otherwise protected in conformance with the latest edition of the Manual of Uniform Traffic Control Devices, unless otherwise agreed to by the City.

e. The Company shall cooperate promptly and fully with the City and take all reasonable measures necessary to provide accurate and complete information regarding the location of its Facilities located within the Right-of-Way when requested by the City or its authorized agents for a Public Project. Such location and identification shall be promptly communicated in writing to the City without cost to the City, its employees, agents, or authorized contractors. The Company shall designate and maintain an agent, familiar with the Facilities, who is responsible for providing timely information needed by the City for the design and replacement of Facilities in the Right-of-Way during and for the design of Public Improvements. At the request of the Company, the City may include design for Facilities in the design of Public Projects. Also at the request of the Company, the City and/or its contractor(s) or agent(s) shall provide accurate and timely field locations of proposed Public Projects in the event the Company is required to install new and/or relocate its Facilities.

f. The Company shall coordinate with the City on the design and placement of Facilities in the Right-of-Way during and for the design of Public Projects. At the request and sole expense of the Company, the City may include design for Facilities in the design of Public Projects. Upon request by the City and within the time period specified in the City's request, the Company shall locate, remove, relocate, or adjust any Facilities located in Right-of-Way if reasonably necessary for a Public Project. Such location, removal, relocation, or adjustment for a particular Public Project shall be performed by the Company once without expense to the City, its employees, agents, or authorized contractors and shall be specifically subject to rules and regulations of the City pertaining to such. Such relocation or adjustment shall be completed as soon as possible within the time set forth in any request by the City for such relocation or adjustment. If additional location, removal, relocation, or adjustment becomes necessary as a result of inaccurate or mistaken information provided by the Company or City, the party which provided such inaccurate or mistaken information shall be responsible for costs associated with such additional location, removal, relocation, or adjustment without expense to the other party. The City will use its best efforts, to continue to provide a location in the Right-of-Way for the Company's Facilities as part of a Public Project, provided that the Company has cooperated promptly and fully with the City in the design of its Facilities as part of the Public Project.

g. The Company shall not be responsible for the expenses of relocation to accommodate any new Public Project for Private Development initiated after the effective date of this Ordinance. The expenses attributable to such a project shall be the responsibility of the third (3rd) party upon the request and appropriate documentation of the Company. Before such expenses may be billed to the third (3rd) party, the Company shall be required to coordinate with the third (3rd) party and the City on the design and construction to ensure that the work required is necessary and done in a cost effective manner. Upon the request of the Company or the third party, the allocation of expenses attributable to the project shall be made in the reasonable determination of the City. Eligible third parties may request to have the City specially assess those expenses billed by the Company under this section.

h. The City may continue to provide a location in the Right-of-Way for the Company's Facilities as part of a Public Project, provided that the Company has cooperated promptly and fully with the City in the design of its Facilities as part of the Public Project.

i. It shall be the responsibility of the Company to take adequate measures to protect and defend its Facilities in the Right-of-Way from harm or damage. If the Company fails to accurately locate Facilities when requested, it shall have no claim for costs or damages against the City. The Company shall be responsible to the City and its agents, representatives, and authorized contractors for all damages including, but not limited to, delay damages, repair costs, down time, construction delays, penalties or other expenses of any kind arising out of the failure of the Company to perform any of its obligations under this Ordinance. The above general provisions notwithstanding, the City and its authorized contractors shall take reasonable precautionary measures including calling for utility locations through Kansas One Call and exercising due caution when working near the Company's Facilities.

j. All technical standards governing construction, reconstruction, installation, operation, testing, use, maintenance, and dismantling of the Facilities in the Right-of-Way shall be in accordance with applicable present and future federal, state, and City laws and regulations, including but not limited to the most recent standards of the Kansas Corporation Commission and U.S. Department of Transportation. It is understood that the standards established in this paragraph are minimum standards and the requirements established or referenced in this Franchise may be additional to or stricter than such minimum standards.

k. The City encourages the conservation of the Right-of-Way by the sharing of space by all utilities. Notwithstanding provisions of this Franchise prohibiting third (3rd) party use, to the extent required by federal or state law, the Company will permit any other franchised entity by an appropriate grant, or a contract, or agreement negotiated by the parties, to use any and all Facilities constructed or erected by the Company.

l. Permission is hereby granted to the Franchisee to trim trees upon and overhanging the right-of-way and utility easements. Franchisee shall perform line clearance work in accordance with regulations established under OSHA 29 CFR 1910.269. All pruning operations shall be performed by personnel qualified to perform the work and in accordance with the latest versions of ANSI Z133.1 (Safety Requirements for Pruning, Repairing, Maintaining and Removing Trees, and Cutting Brush) and ANSI A300 (Part 1) (Standard Practices for Tree, Shrub, and Other Woody Plant Maintenance). For routine trimming operations, customers shall be contacted at least one (1) week in advance by either personal contact or by informational door hanger.

Section 7. Indemnity and Hold Harmless.

The Company shall indemnify and hold and save the City, its officers, employees, agents, and authorized contractors, harmless from and against all claims, damages, expense, liability, and costs including reasonable attorney fees, to the extent occasioned in any manner by the Company's occupancy of the Right-of-Way. In the event a claim shall be made or an action shall be instituted against the City growing out of such occupancy of the Right-of-Way by Facilities of the Company, then upon notice by the City to the Company, the Company shall assume responsibility for the defense of such actions at the cost of the Company, subject to the option of the City to appear and defend at its own cost, any such case.

Section 8. Notice of Property Annexed by City

Notwithstanding anything to the contrary in this Franchise, the fee provided for in Section 4 above shall not become effective within any area annexed by the City until 30 days after that the City provides the Company with a certified copy of the annexation ordinance, proof of publication as required by law and a map of the city detailing the annexed area.

Section 9. Right of Assignment.

This Franchise shall be assignable only in accordance with the laws of the State of Kansas, as the same may exist at the time when any assignment is made; provided, however, that the franchise may be assigned by the Company without action by the City to any entity which succeeds to all or substantially all of the electric utility business of the Company. Provided, however, in the event that the Company is no longer required to obtain the approval of the Kansas Corporation Commission for an assignment, such assignment shall be subject to the consent of the City, which consent shall not be unreasonably withheld. In the event of an assignment to a successor that has been documented by a written assumption of the Franchise executed by the successor, the Company shall be released from all obligations which are assumed in writing by such successor.

Section 10. Termination and Forfeiture of Franchise.

(a) In addition to all other rights and powers retained by the City under this franchise, the City reserves the right to terminate the franchise and all rights and privileges of the Company hereunder, in the event of a material failure on the part of the Company, its successors or assigns,

to comply with any of the provisions of this ordinance, or if the Company, its successors or assigns, should do or cause to be done any material act or thing prohibited by or in violation of the terms of the ordinance. In such event, the Company, its successors and assigns, shall forfeit all rights and privileges granted by this ordinance and all rights hereunder shall cease, terminate and become null and void, provided that said forfeiture shall not take effect until the City shall carry out the following proceedings:

(i) Before the City terminates the franchise, it shall first mail to the Company written notice setting forth in detail the neglect or failure of the Company.

(ii) The Company shall have sixty (60) calendar days thereafter in which to comply with the conditions of this franchise.

(iii) If, at the end of such sixty (60) day period, the City determines that the Company has not complied with the conditions of this franchise and this franchise is subject to termination for that reason, the City, in order to terminate this franchise, shall enact an ordinance setting out the grounds upon which the franchise is to be terminated (the "Termination Ordinance").

(iv) If, within thirty (30) calendar days after the effective date of the Termination Ordinance, the Company has not filed an action in the Saline County District Court seeking the determination of whether the Company has violated the terms of this franchise and that the franchise is subject to termination for that reason, the franchise shall be terminated as of thirty (30) days following the effective date of the Termination Ordinance.

(v) If within thirty (30) days after the effective date of the Termination Ordinance, the Company does file an action to determine whether the Company has violated the term of this franchise and that the franchise is subject to termination for that reason, and the court rules that this franchise is subject to termination by reason of the violation of its terms, this franchise shall terminate thirty (30) calendar days after such final judgment is rendered.

(b) In the event of a final adjudication of bankruptcy of the Company under Title 11 of the United States Bankruptcy Code, the City shall have full power and authority to terminate, revoke, and cancel any and all rights granted under this franchise.

(c) The failure of the Company to comply with any of the provisions of this franchise or the doing or causing to be done by the Company of anything prohibited by or in violation of the terms of this franchise shall not be a ground for the termination of this franchise when such act or omission on the part of the Company is due to any cause or delay beyond the control of the Company, its successors and assigns, or bona fide legal proceedings.

<u>Section 11.</u> Rights and Duties of Company Upon Expiration or Termination of Franchise.

Upon expiration of this franchise, whether by lapse of time, by agreement between the Company and the City, or by forfeiture, the Company shall have the right to remove any and all of its Facilities used in its Electric Utility Service within a reasonable time after such expiration or termination, unless the City notifies the Company in writing that the City or third party intends to purchase the Facilities. In the event the City notifies the Company that the Facilities are to be purchased, the Facilities shall be sold to the City or the third party by the Company, its successors or assigns, for the compensation provided by applicable law. In the event the City notifies the Company that the Facilities can be removed by the Company, it shall be the duty of the Company, immediately upon such removal, to restore the streets, avenues, alleys, parks and other public ways and grounds from which the Facilities are removed to as good condition as existed before the removal.

Section 12. **Acceptance of Terms by Company.**

Within thirty (30) days after the final passage and approval of this Ordinance, the Company shall file with the City Clerk of the City its acceptance in writing of the provisions, terms and conditions of this Ordinance, this Ordinance shall constitute a non-exclusive contract between the City and the Company

Section 13. **Conditions of Franchise.**

This non-exclusive franchise, grant, and privilege is granted under and subject to all applicable laws and under and subject to all of the orders, rules, and regulations now or hereafter adopted by governmental bodies now or hereafter having jurisdiction.

Section 14. **Notices.**

Except in Emergencies, all notices by either the City or the Company to the other shall be made by depositing such notice in the U.S. Mail or by other mutually agreed upon method. Emergency notices shall be provided by telephone, with written notice immediately following by U.S. Mail. All notices shall be addressed as follows:

City: City Clerk
City of Salina, Kansas
P.O. Box 736
Salina, KS 67402-0736

Company: Senior Director
Customer and Community Support
Box 208
Wichita, KS 67201

Section 15. **Non-waiver Provision**

The failure of either party to insist in any one or more instances upon; the strict performance of any one or more of the terms or provisions of this ordinance shall not be construed as a waiver or relinquishment for the future of any such term or provision, in the same shall continue in full force and in effect. No waiver or relinquishment shall be deemed to have been made by either party unless the waiver or relinquishment is in writing and signed by the parties.

Section 16. **Invalidity of Ordinance.**

If any clause, sentence, or section of this Ordinance shall be held to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remainder, as a whole or any part thereof, other than the part declared to be invalid; provided, however, the City may elect to declare that this entire ordinance is invalidated if the portion declared invalid is, in the judgment of the City, an essential part of this Ordinance.

Section 17. **Governing Law; Venue**

(a) The rights and privileges granted to the Company by this Franchise shall at all times be subordinate and inferior to the rights of the public in and to the ordinary use of the Right-of-Way, and nothing in this franchise shall be considered as a surrender by the City of its right and power to us and relocate the use of its Right-of Way.

(b) The franchise and the right herein granted are subject to the provisions of existing federal and state laws, including those hereafter enacted, pertaining to the granting of franchises.

(c) The obligations and undertakings of both parties hereto shall be performed at Salina, Saline County, Kansas. In the event that any legal proceeding is brought to enforce the terms of this franchise, the proceeding shall be brought in State or Federal courts, as appropriate, having jurisdiction for Saline County, Kansas.

Section 18. **Effective Date of Ordinance.**

After its passage and approval by the City, acceptance by the Company, and publication in the official city newspaper, this Ordinance shall take effect and be in force on the first day of January, 2006 (the "Effective Date of this ordinance").

Section 19. **Repeal of Conflicting Ordinances.**

Ordinance No. 86-9125, which heretofore granted a non-exclusive franchise to the Company, and which became a contract between the City and the Company in accordance with its terms, and all other ordinances and resolutions or parts thereof inconsistent or in conflict with the terms hereof, are hereby canceled, annulled, repealed, and set aside as of the Effective Date of this ordinance.

Introduced: June 27, 2005
Passed: July 11, 2005

ARTICLE II. KANSAS GAS SERVICE – NATURAL GAS FRANCHISE[3]

ORDINANCE NUMBER 05-10289

AN ORDINANCE GRANTING TO KANSAS GAS SERVICE, A DIVISION OF ONEOK, INC., ITS SUCCESSOR AND ASSIGNS, A NATURAL GAS FRANCHISE, INCLUDING THE RIGHT TO CONSTRUCT OPERATE, MAINTAIN A NATURAL GAS DISTRIBUTION SYSTEM WITHIN THE CORPORATE LIMITS OF THE CITY OF SALINA, KANSAS.

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

Section 1. **Definitions.**

For purposes of this Franchise, the following words and phrases shall have the meanings given herein:

City as the Grantor – shall mean the City of Salina, Kansas.

Company as the Grantee – shall mean Kansas Gas Service, A division of ONEOK, Inc.

Distributed or Distribution – shall mean all sales, distribution, or transportation to any consumer or user for use within the City by the Company or by others through the Facilities of the Company in the Right-of-Way.

Facilities – shall mean natural gas mains, pipes, boxes, reducing and regulating stations, laterals, conduits and service extension together with all necessary appurtenances thereto.

[3] **Editor's note:** Ord. No. 86-9126 repealed by Ord. No. 05-10289

Gross receipts – shall mean any and all compensation and other consideration derived directly by Company from any Distribution of natural gas within the corporate limits of the City to a consumer for any use, including domestic, commercial, and industrial purposes, and including without limitation interruptible sales and single sales; and shall include revenues from any operation or use of any or all of the Facilities in the Right-of-Way by the Company or others including without limitation charges as provided in tariffs filed and approved, and shall also include all fees or rentals received by the Company for the lease or use of pipeline capacity within the corporate limits of the City; but such terms shall not include revenue from certain miscellaneous chargers and accounts as set forth in the Terms and Conditions of Gas Service on file and approved, including but not limited to connection and disconnections fees, reconnection fees, customer project contributions, returned check charges, temporary service charges, and delayed or late payment charges as such terms are used in tariffs filed and approved.

"MCF" - shall mean a measurement of natural gas equal to one thousand cubic feet. It is assumed for purposes of this ordinance that one MCF equals 1,000,000 British Thermal Units (BTUs)

Public Improvement – shall mean any existing or contemplated public facility, building, or capital improvement project, financed by the City, including without limitation, streets, alleys, sidewalks, sewer, water, drainage, Right-of-Way improvement, and Public Projects.

Public Project – shall mean any project planned or undertaken by the City for construction, reconstruction, maintenance, or repair of public facilities or improvements, including without limitation streets, alleys, sidewalks, sewer system, water system, drainage system, Right-of-Way improvement, or any other purpose of a public nature paid for with public funds.

Public Project for Private Development – shall mean a Public Project, or that portion thereof, arising solely from a request or requirement of a third (3rd) party primarily for the benefit and use of a third (3rd) party.

Right-of-Way – shall mean present and future public streets, alleys, bridges, rights-of-way, public utility easements, and easements dedicated in plats of the city for streets and alleys.

Settlement Prices – shall mean the settlement prices for natural gas futures contracts traded on the New York Mercantile Exchange (NYMEX) on the 15th day of each month as published daily in the *Wall Street Journal (WSJ)* on the following business day (or the next day in which Settlement Price is published).

Street Right-of-Way – shall mean the entire width between property lines of land, property, or an interest therein of every way publicly maintained where any part thereof is open to the use of the public for purposes of vehicular traffic, including street, avenue, boulevard, highway, expressway, alley, or any other public way for vehicular travel by whatever name.

Transport Gas - shall mean all natural gas transported by the Company or by others, but not sold by the Company, to any consumer or user within the City through the Facilities of the Company in the Right-of-Way.

Volumetric Rate – shall mean that sum measured in cents per MCF as determined by the City by ordinance or such amount as may be hereafter adjusted according to the provisions of this Section. The Volumetric Rate Calculation Form incorporated herein as Attachment A shall be used for the recalculation of the Volumetric Rate. The recalculation shall be effective each January 1 and shall be based on Settlement Prices for the twelve-month period beginning in July of the second proceeding year and ending in June of the preceding year. For the 15th day of each month during said twelve-month period, the Settlement Prices for the next twelve months will be summed and

divided by twelve to determine an average Settlement Price. The average Settlement Prices for each of the twelve months shall be summed and divided by twelve and multiplied by 5% to obtain the Volumetric Rate to be effective January 1 of the next succeeding year. The Volumetric Rate shall be calculated by the City in accordance with the procedures in Attachment A and filed with the City Clerk by July 31 of each year after written notice to the Company.

Section 2. **Grant.**

(a) There is hereby granted to Company, the non-exclusive right, privilege, and franchise to construct, maintain, extend, and operate its Facilities in, through, and along the Right-of-Way of the City for the purpose of supplying natural gas to the City and the inhabitants thereof for the full term of this Franchise; subject, however, to the terms and conditions herein set forth. Nothing in this grant shall be construed to franchise or authorize the use of the Company's Facilities or the Right-of-Way by the Company or others, for any purpose not related to the provision of natural gas. The Company may not allow a subsidiary, affiliate, or a third (3rd) party to acquire rights to occupy the Rights-of-Way under this Franchise; provided, that nothing in this section shall prevent Company from allowing the use of its Facilities by others when such use is compensated to the City under the provisions of this franchise or in accordance with the provisions of Ordinance No. 05-10291 and any amendments thereto.

(b) Company shall not enter into or continue any arrangement by which natural gas owned by any party other than Company shall be transported, distributed, or sold through any portion of Company's Facilities in the Right-of-Way for delivery to any person within the City unless the City is compensated for such use by the Company, transporter, consumer, or some other party in accordance with the provisions of Ordinance No. 05-10291 and any amendments thereto.

(c) By this franchise, the Company is granted the authority to collect on behalf of the City the compensation to be made to the City by other parties using the Company's Facilities for Distribution of Transport Gas. The Company agrees to collect such sums for the City and to submit such payments in the manner provided in Section 4. Nothing in this Section allowing the transportation of gas owned by others shall relieve Company from the responsibility of complying with the franchise requirements to maintain its Facilities in the Right-of-Way.

Section 3. **Term.**

a. The term of this Franchise shall be fifteen (15) years from the effective date of this Ordinance.

b. Upon written request of either the City or the Company, the franchise may be reviewed after five (5) years from the effective date of this ordinance and either the City or the Company may propose amendments to any provision of this franchise by giving thirty days written notice to the other of the amendment(s) desired. The City and the Company shall negotiate in good faith in an effort to agree upon mutually satisfactory amendment(s).

c. Upon written request of either the City or the Company, the franchise shall be reopened and renegotiated at any time upon any of the following events:

   1. Change in federal, state, or local law, regulation, or order which materially affects any rights or obligations of either the City or the Company, including but not limited to the scope of the grant to the Company or the compensation to be received by the City; or

   2. Change in the structure or operation of the natural gas industry which materially affects any rights or obligations of either the City or the Company, including but not limited to the scope of the grant to the Company or the compensation to be received by the City; or

3. Any other material and unintended change or shift in the economic benefit to the City or a change the Company did not anticipate upon accepting the grant of this Franchise.

d. The compensation provision of this franchise shall be reopened and renegotiated if energy consumers within the City have access to alternative natural gas suppliers or other suppliers of energy through pipelines who use the Right-of-Way and/or easements granted on publicly owned property and do not pay a franchise fee or other payment substantially equivalent to this franchise, which results in a material and unfair disadvantage to the Company. The use of Right-of-Way provision of this franchise shall be reopened and renegotiated if energy consumers within the city have access to alternative natural gas suppliers or other suppliers of energy through pipelines who use the Right-of-Way and do not have requirements on the use of Right-of-Way substantially equivalent to the requirements of this franchise, which results in a material and unfair disadvantage to the Company. Upon any such event, the City shall have up to one hundred twenty (120) days after written request of the Company in which to restore competitive neutrality, provided that any adjustment in compensation resulting from renegotiations under this Subsection (d) shall be effective no later than 120 days after such notice.

e. Failure of the City and Company to successfully renegotiate the materially affected provisions of the franchise under subsection (c) or (d) shall give rise to dispute resolution as follows: At the expiration of 180 days from the date of the written request (or sooner if requested by both the City and the Company) the City and the Company shall each select a representative who shall jointly select a third representative. The three representatives shall hear the positions of the City and Company and shall determine the matters in disagreement by majority vote. Such decision shall be presented to City and the Company as the renegotiated language under subsection (c) or (d). Rejection of the dispute resolution by either the City or the Company shall give rise to the remedies provided by Section 10, or at the option of the parties, the franchise shall remain in effect according to its then existing terms.

f. Amendments under this section, if any, shall be made by ordinance as prescribed by statute. The franchise shall remain in effect according to its terms pending completion of any review or renegotiation pursuant to subsections (b), (c), (d), or (e).

<u>Section 4.</u> Compensation to the City.

a. In consideration of and as compensation for the franchise hereby granted to the Company by the City, the Company shall make an accounting to the City of all natural gas that has been Distributed on a monthly basis. The Company shall pay the City:

   i. A sum equal to 5 percent (5%) of the Gross Receipts received from the Distribution of natural gas.

   ii. A sum equal to the Volumetric Rate multiplied by the number of MCF of Transport Gas.

   The sums in (i) and (ii) above shall be adjusted for uncollectible receivables and for uncollectible receivables which are later collected.

b. Payment of the compensation above shall commence on the Effective Date identified in Section 18 as the first day of January, 2006. Prior to the Effective Date, payments shall continue to be calculated and be paid in the manner previously provided in Ordinance 86-9126. Such payments shall be made to the City under procedures, which are mutually agreed to by the Company and the City within thirty (30) days of the last day of the month to which such accounting shall apply.

c. In the event the accounting rendered to the City by the Company is found to be incorrect, then payment shall be made on the corrected amount, it being agreed that the City may accept any amount offered by the Company, but the acceptance thereof by the City shall not be deemed a settlement of such item if the amount is in dispute or later found to be incorrect. The Company agrees that all of its books, records, documents, contracts and agreements as may be reasonably necessary for an effective compliance review of this Ordinance shall upon reasonable notice and at all reasonable times be opened to the inspection and examination of the officers of the City and its duly authorized agents, auditor, and employees for the purpose of verifying said accounting. Notwithstanding the obligation herein, the Company shall have the right to require the reasonable protection of proprietary information and to provide redacted documents or require the City or its agents to enter into such agreements pertaining to confidentiality as may reasonably protect the proprietary information of the Company but which do not unreasonably frustrate the purposes of this subsection. The Company shall have no obligation, however, to make payment upon Transport Gas for which the Company has not been paid.

Section 5. **Payment and Charges.**

The payments and compensation herein provided shall be in lieu of all other licenses, taxes, charges, and fees, except that the usual general property taxes and special ad valorem property assessments, sales and excise taxes, or charges made for privileges which are not connected with the natural gas business, will be imposed on the Company and are not covered by the payments herein. From and after the date hereof, however, the permit fees required of the Company by any ordinance presently in effect or hereafter adopted for a permit to excavate in or adjacent to any street, alley, or other public place shall be deemed a part of the compensation paid in Section 4 and shall not be separately assessed or collected by the City; in no event, however shall this provision be interpreted to waive the requirement of notice to the City and the procedural requirements of such ordinance.

Section 6. **Use of Right-of-Way.**

The use of the Right-of-Way under this Franchise by the Company shall be subject to all rules, regulations, policies, resolutions, and ordinances now or hereafter adopted or promulgated by the City in the reasonable exercise of its police power relating to use, placement, location, or management of utilities located in the City's Right-of-Way. In addition, the Company shall be subject to all laws, rules, regulations, policies, resolutions, and ordinances now or hereafter adopted or promulgated by the City in the reasonable exercise of its police power relating to permits, sidewalk and pavement cuts, utility location, construction coordination, screening, and other requirements on the use of the Right-of-Way; provided, however, that nothing contained herein shall constitute a waiver of or be construed as waiving the right of the Company to oppose, challenge, or seek judicial review of, in such manner as is now or may hereafter be provided by law, any such rules, regulation, policy, resolution, or ordinance proposed, adopted, or promulgated by the City and, further provided, other than the items enumerated in Section 5 above, that such laws, rules, regulations, policies, resolutions, or ordinances shall not require the payment of additional fees or additional costs for the use of the Right-of-Way. In any event, the Company is granted an offset for such fees and costs against the franchise fees required to be paid hereunder. Further, the Company shall comply with the following:

a. The Company's use of the Right-of-Way shall in all matters be subordinate to the City's use of the Right-of-Way for any public purpose. The Company shall coordinate the installation of its Facilities in the Right-of-Way in a manner which minimizes adverse impact on Public Improvements, as reasonably determined by the City. Where installation is not otherwise

regulated, the Facilities shall be placed with adequate clearance from such Public Improvements so as not to conflict with such Public Improvement.

b. All earth, materials, sidewalks, paving, crossings, utilities, Public Improvements, or improvements of any kind located within the Right-of-Way damaged or removed by the Company in its activities under this Franchise shall be fully repaired or replaced promptly by the Company to the reasonable satisfaction of the City and without cost to the City. However, when such activity is a joint project of utilities or franchise holders, the expenses thereof shall be prorated among the participants.

c. Except in the event of an emergency, as reasonably determined by the Company, the Company shall comply with all laws, rules, regulations, policies, resolutions, or ordinances now or hereinafter adopted or promulgated by the City relating to any construction, reconstruction, repair, or relocation of Facilities which would require any street closure which reduces traffic flow. Notwithstanding the foregoing exception all work, including emergency work performed in the traveled way or which in any way impacts vehicular or pedestrian traffic shall be properly signed, barricaded, and otherwise protected in conformance with the latest edition of the Manual of Uniform Traffic Control Devices, unless otherwise agreed to by the City.

d. The Company shall cooperate promptly and fully with the City and take all reasonable measures necessary to provide accurate and complete information regarding the location of its Facilities located within the Right-of-Way when requested by the City or its authorized agents for a Public Project. Such location and identification shall be promptly communicated to the City in writing or shall be identified through physical markings of the location without cost to the City, its employees, agents, or authorized contractors. The Company shall designate and maintain an agent, familiar with the Facilities, who is responsible for providing timely information needed by the City for the design and replacement of Facilities in the Right-of-Way during and for the design of Public Improvements. At the request of the Company, the City may include design for Facilities in the design of Public Projects. Also at the request of the Company, the City and/or its contractor(s) or agent(s) shall provide accurate and timely field locations of proposed Public Projects in the event the Company is required to install new and/or relocate its Facilities.

e. Upon request by the City, the Company shall promptly locate, remove, relocate, or adjust any Facilities located in Right-of-Way if reasonably necessary for a Public Project. Such location, removal, relocation, or adjustment for a particular Public Project shall be performed by the Company once without expense to the City, its employees, agents, or authorized contractors and shall be specifically subject to rules and regulations of the City pertaining to such; provided, that if the Company demonstrates to the satisfaction of the City that the Facility was originally established in a private easement that thereafter became part of the Right-of-Way for which no compensation was paid to the Company by the City, the removal, relocation, or adjustment shall be without expense to the Company unless such private easement had been acquired by the City from the Company. If additional location, removal, relocation, or adjustment becomes necessary as a result of inaccurate or mistaken information provided by the Company or City, the party which provided such inaccurate or mistaken information shall be responsible for costs associated with such additional location, removal, relocation, or adjustment without expense to the other party. The City shall continue to use its best efforts to provide a location in the Right-of-Way for the Company's existing facilities as part of a Public Project, provided that the Company has cooperated promptly and fully with the City in the design of its Facilities as part of the Public Project.

f. The Company shall not be responsible for the expenses of relocation to accommodate any new Public Project for Private Development initiated after the effective date of this Ordinance. The expenses attributable to such a project shall be the responsibility of the third (3rd) party upon the request and appropriate documentation of the Company. Before such expenses may be billed to the third (3rd) party, the Company shall be required to coordinate with the third (3rd) party and the City on the design and construction to ensure that the work required is necessary and done in a cost effective manner.

g. It shall be the responsibility of the Company to take adequate measures to protect and defend its Facilities in the Right-of-Way from harm or damage. If the Company fails to accurately locate Facilities when requested, it shall have no claim for costs or damages against the City and its authorized contractors except to the extent the City and its authorized contractors are responsible for the harm or damage by their negligence or intentional conduct. The Company shall be responsible to the City and its agents, representatives, and authorized contractors for all damages including, but not limited to, repair costs, penalties or other expenses arising out of the failure of the Company to perform any of its obligations under this Ordinance except to the extent another party is responsible for the harm or damage by its negligence or intentionally caused harm, provided, that if the responsibility of the City and its agents, representatives, and authorized contractors does not arise as a contractual obligation, the Company shall have the right at its option to step in and defend such claim in its own right. The above general provisions notwithstanding, the City and its authorized contractors shall take reasonable precautionary measures including calling for utility locations through Kansas One Call and exercising due caution when working near the Company's Facilities. Subject to the Company's responsibilities above, the Company shall have the right to collect for damages to its Facilities resulting from negligence or intentional misconduct by the City and its duly authorized agents, representatives and contractors.

h. All technical standards governing construction, reconstruction, installation, operation, testing, use, maintenance, and dismantling of the Facilities in the Right-of-Way shall be in accordance with applicable present and future federal and state laws and regulations, including but not limited to the most recent standards of the Kansas Corporation Commission and U.S. Department of Transportation, and further, to the extent they are not inconsistent with federal or state laws, City of Salina standard technical qualifications as may be amended from time to time, or such substantive equivalents as may hereinafter be adopted or promulgated. It is understood that the standards established in this paragraph are minimum standards and the requirements established or referenced in this Franchise may be additional to or stricter than such minimum standards.

Section 7. Indemnity and Hold Harmless.

The Company shall indemnify and hold and save the City, its officers, employees, agents, and authorized contractors, harmless from and against all claims, damages, expense, liability, and costs including reasonable attorney fees, to the extent occasioned in any manner by the Company's occupancy of the Right-of-Way, except to the extent that such were caused by the negligence or intentional conduct of the City, its officers, employees, agents, or authorized contractors. In the event a claim shall be made or an action shall be instituted against the City growing out of such occupancy of the Right-of-Way by Facilities of the Company, then upon notice by the City to the Company, the Company shall assume responsibility for the defense of such actions at the cost of the Company, subject to the option of the City to appear and defend at its own cost, any such case; provided, that the Company shall have no duty to defend any such action to the extent that such action has resulted from the negligence or intentional conduct of the City, its officers, employees, agents, or authorized contractors.

Section 8. **Notice of Property Annexed by City**

Notwithstanding anything to the contrary in this Franchise, the fee provided for in Section 4 above shall not become effective within any area annexed by the City until the first of the month billing cycle which begins no more than 60 days after the date that the City provides the Company with a certified copy of the annexation ordinance, proof of publication as required by law and a map of the City detailing the annexed area.

Section 9. **Right of Assignment.**

This Franchise shall be assignable only in accordance with the laws of the State of Kansas, as the same may exist at the time when any assignment is made.

Section 10. **Termination and Forfeiture of Franchise.**

(a) In addition to all other rights and powers retained by the City under this franchise, the City reserves the right to terminate the franchise and all rights and privileges of the Company hereunder, in the event of a material failure on the part of the Company, its successors or assigns, to comply with any of the provisions of this ordinance, or if the Company, its successors or assigns, should do or cause to be done any material act or thing prohibited by or in violation of the terms of the ordinance. In such event, the Company, its successors and assigns, shall forfeit all rights and privileges granted by this ordinance and all rights hereunder shall cease, terminate and become null and void, provided that said forfeiture shall not take effect until the City shall carry out the following proceedings:

(i) Before the City terminates the franchise, it shall first mail to the Company written notice setting forth in detail the neglect or failure of the Company.

(ii) The Company shall have ninety (90) calendar days thereafter in which to comply with the conditions of this franchise.

(iii) If, at the end of such ninety (90) day period, the City determines that the Company has not complied with the conditions of this franchise and this franchise is subject to termination for that reason, the City, in order to terminate this franchise, shall enact an ordinance setting out the grounds upon which the franchise is to be terminated (the "Termination Ordinance").

(iv) If, within thirty (30) calendar days after the effective date of the Termination Ordinance, the Company has not filed an action in the Saline County District Court, or some other court of competent jurisdiction to determine whether or not the Company has violated the terms of this franchise and that the franchise is subject to termination for that reason, the franchise shall be terminated as of thirty (30) days following the effective date of the Termination Ordinance.

(v) If within thirty (30) days after the effective date of the Termination Ordinance, the Company does file an action to determine whether or not the Company has violated the term of this franchise and that the franchise is subject to termination for that reason, and prosecutes such action to final judgment with due diligence, then, in that event, in case the court rules that this franchise is subject to termination by reason of the violation of its terms, this franchise shall terminate thirty (30) calendar days after such final judgment is rendered.

(b) The failure of the Company to comply with any of the provisions of this franchise or the doing or causing to be done by the Company of anything prohibited by or in violation of the terms of this franchise shall not be a ground for the termination of this franchise when such act or omission on the part of the Company is due to any cause or delay beyond the control of the Company, its successors and assigns, or bona fide legal proceedings.

Section 11. Rights and Duties of Company Upon Expiration or Termination of Franchise.

Upon expiration of this franchise, whether by lapse of time, by agreement between the Company and the City, or by forfeiture, the Company shall have the right to remove any and all of its Facilities used in its Natural Gas Utility Service within a reasonable time after such expiration or termination, but in such event, it shall be the duty of the Company, immediately upon such removal, to restore the streets, avenues, alleys, parks and other public ways and grounds from which the Facilities are removed, to the equivalent condition as the same were before said removal was effected.

Section 12. Acceptance of Terms by Company.

Within sixty (60) days after the final passage and approval of this Ordinance, the Company shall file with the City Clerk of the City its acceptance in writing of the provisions, terms and conditions of this Ordinance, this Ordinance shall constitute a contract between the City and the Company.

Section 13. Conditions of Franchise.

This non-exclusive franchise, grant, and privilege is granted under and subject to all applicable laws and under and subject to all of the orders, rules, and regulations now or hereafter adopted by governmental bodies now or hereafter having jurisdiction, and each and every provision hereof shall be subject to acts of God, fires, strikes, riots, floods, war and other causes beyond Company's control.

Section 14. Notices.

Except in Emergencies, all notices by either the City or the Company to the other shall be made by depositing such notice in the U.S. Mail or by other mutually agreed upon method. Emergency notices shall be provided by telephone, with written notice immediately following by U.S. Mail. All notices shall be addressed as follows:

City: City Clerk
City of Salina, Kansas
P.O. Box 736
Salina, KS 67402-0736

Company: President
Kansas Gas Service
A Division of ONEOK, Inc.
7421 W. 129th Street
Overland Park, Kansas 66213

Section 15. Non-waiver Provision

The failure of either party to insist in any one or more instances upon the strict performance of any one or more of the terms or provisions of this ordinance shall not be construed as a waiver or relinquishment for the future of any such term or provision, and the same shall continue in full force and in effect. No waiver or relinquishment shall be deemed to have been made by either party unless the waiver or relinquishment is in writing and signed by the parties.

Section 16. **Invalidity of Ordinance.**

If any clause, sentence, or section of this Ordinance shall be held to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remainder, as a whole or any part thereof, other than the part declared to be invalid.

Section 17. **Governing Law; Venue**

(a) The franchise and the right herein granted are subject to the provisions of existing federal and state laws, including those hereafter enacted, pertaining to the granting of franchises.

(b) The obligations and undertakings of both parties hereto shall be performed at Salina, Saline County, Kansas. In the event that any legal proceeding is brought to enforce the terms of this franchise, the proceeding shall be brought in State or Federal courts, as appropriate, having jurisdiction for Saline County, Kansas.

Section 18. **Effective Date of Ordinance.**

After its passage and approval by the City, acceptance by the Company, and publication in the official city newspaper, this Ordinance shall take effect and be in force on the first day of January, 2006 (the "Effective Date" of this ordinance).

Section 19. **Repeal of Conflicting Ordinances.**

Ordinance No. 86-9126, which heretofore granted a non-exclusive franchise to the Company, and which became a contract between the City and the Company in accordance with its terms, and all other ordinances and resolutions or parts thereof inconsistent or in conflict with the terms hereof, are hereby canceled, annulled, repealed, and set aside as of the Effective Date of this ordinance.

Introduced: June 27, 2005
Passed: July 11, 2005

ARTICLE III. SALINA CABLE T.V. SYSTEM[4]

ORDINANCE NUMBER 92-9492

AN ORDINANCE OF THE CITY OF SALINA, KANSAS, GRANTING TO COMMUNICATIONS SERVICES, INC., OR THE LAWFUL SUCCESSOR, TRANSFEREE, OR ASSIGNEE THEREOF, A FRANCHISE FOR PROVISION OF CABLE SERVICES TO SALINA, KANSAS; AND REPEALING ORDINANCE NUMBER 8544.

Be it Ordained by the Governing Body of the City of Salina, Kansas:

Section I. Definition of terms.

Affiliate means any person which directly or indirectly owns or controls grantee, any person which grantee directly or indirectly owns or which it controls, or any person under common ownership or control with grantee.

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[4] **Editor's note:** Former Art. II, which was repealed by Ord. No. 86-9126, derived from Ord. No. 6982, adopted June 19, 1967.

Basic Cable Service or *Basic Service* means any service tier which includes the retransmission of local broadcast television signals.

Cable Act means the Cable Communications Policy Act of 1984, as amended.

Cable Service means (A) the one-way transmission to subscribers of (i) video programming, or (ii) other programming service; and (B) subscriber interaction, if any, which is required for the selection of such video programming or other programming service.

Cable System means, subject to the limitations in 47 U.S.C. §522(6), a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment or other communications equipment that is designed to provide cable service to multiple subscribers in Salina.

City, Salina or *franchising authority* means the City of Salina, Kansas, or the lawful successor, transferee or assignee thereof.

Effective date shall mean the date the city's grant becomes effective, as provided in accordance with Section 2.3.

FCC means Federal Communications Commission, or any successor governmental entity thereto.

Franchise shall mean this document, all exhibits thereto, all matters incorporated by reference and all amendments thereto, which collectively authorize construction and operation of the cable system for the purpose of offering cable service and other service to subscribers.

Grantee means Communications Services, Inc., or the lawful successor, transferee, or assignee thereof.

Install, construct, operate and maintain or similar formulations, shall include, but not be limited to, all work which is or may be performed in connection with the cable system or any structure installed or used by grantee in connection with such cable system, including but not limited to, installation, construction, operation, maintenance, relocation, removal, modification, repair or erection of such structures.

Person means any entity, including an individual, partnership, association, joint stock company, corporation, or governmental entity.

Public way shall mean the surface of, and space above and below, any public street, highway, freeway, bridge, land path, alley court, boulevard, sidewalk, parkway, way, lane, public way, drive, circle, or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips, or rights-of-way dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the city in the service area which shall entitle the city and the grantee to the use thereof for the purpose of installing, operating, repairing, and maintaining the cable system. Public way shall also mean any easement now or hereafter held by the city within the service area for the purpose of installing, operating, repairing and maintaining the cable system. Public way shall also mean any easement now or hereafter held by the city within the service area for the purpose of public travel, or for utility or public service use dedicated for compatible uses, and shall include other easements or rights-of-way as shall within their proper use and meaning entitle the city and the grantee to the use thereof for the purposes of installing or transmitting grantee's cable service over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, compliances, attachments, and any other property as may be ordinarily necessary and pertinent to the cable system.

Service area means the municipal boundaries of Salina, as those boundaries may be added to or reduced by annexation or other legal means.

Service tier means a category of cable service provided by grantee and for which a separate charge is made by grantee.

Video programming means programming provided by or generally considered comparable to programming provided by a television broadcast station.

Section II. Grant of franchise.

2.1 Grant. The city authorizes grantee to use public ways to install, construct, operate and maintain a cable television system. Grantee must pay all fees and compensation to the city required by the franchise or state or federal statutes and constitutions.

2.2 Term. The franchise granted hereby shall expire fifteen (15) years after its effective date unless lawfully terminated in accordance with its terms or other applicable law, or altered in accordance with Section 14.4.

2.3 Effective Date. This franchise shall become effective sixty (60) days after publication, provided that, this franchise shall not become effective until all conditions precedent are satisfied. For all conditions precedent to be satisfied the city must sign the franchise agreement, and grantee must, within forty-five (45) days of the date the franchise is signed by the city: (a) sign the franchise and accept its terms; and (b) provide all warranties, proofs, and other documents required by the franchise.

2.4 Effect of Acceptance. By accepting the franchise, grantee: (a) acknowledges and accepts the city's legal right to issue and enforce the franchise; (b) agrees it will not oppose intervention by the city in any proceeding affecting the Salina system; (c) accepts and agrees to each and every provision contained herein; and (d) agrees that the franchise was granted pursuant to processes and procedures consistent with applicable law, and agrees it will not raise any claim or defense to the contrary.

2.5 Rights Reserved. The city reserves its rights under its lawful police powers, and nothing in this franchise shall be read to limit those rights. The city, among other things, does not waive requirements of various codes and ordinances, and resolutions, including zoning codes, codes regarding building permits and fees, or time or manner of construction. Any fees or charges paid, so long as generally applicable and not unreasonably discriminatory, shall be paid in addition to the franchise fee required under this franchise.

2.6 Effect on Prior Franchise. Ordinance No. 8544 shall be of no further force and effect as of the effective date of this franchise. The parties, upon the effective date of this franchise and payment of the amounts required under this Section 2.6, mutually release any claims each had or may have against the other under Ordinance 8544 except with respect to claims related to the drop agreement between grantee and the city; claims (if any) related to payment of the 1991 franchise fee; and claims for indemnification, contribution or insurance related to grantee's operations under Ordinance No. 8544, which survive. Grantee shall pay to the city on the effective date of the franchise, the sum of $770,000 as part of the costs relating to the grant of the new franchise which gives the grantee the right to distribute, sell, or provide goods or services within the specified service area, pursuant to proceedings conducted under 47 U.S.C. §546. The parties affirm and agree that the payments made hereunder do not constitute franchise fee payments within the meaning of 47 U.S.C. §542 and fall within the exceptions contemplated by 47 U.S.C. §542(g)(2)(C)--(D).

2.7 Franchise Nonexclusive. This franchise shall in no way limit the city from authorizing construction of other cable systems. During the term of this franchise, and subject to limitations on local authority under applicable law:

a. Before issuing any cable television franchise the city shall conduct a proceeding to determine whether an applicant's proposal meets the future cable-related needs and interests of the community. Grantee shall be notified of that proceeding, and shall be given an opportunity to appear in the proceeding and to present evidence relevant to the determination of future cable-related needs and interests.

b. In the event the city enters into any franchise, permit, license, authorization, or other agreement of any kind with any other person or entity other than grantee to enter upon or use the streets and public rights-of-way for the purposes of constructing or operating a cable system or providing cable service to any part of the service area, the material provisions thereof shall be reasonably comparable to those contained herein in order that one operator not be granted an unfair competitive advantage over another.

c. However, grantee must cooperate with a new franchisee concerning the availability of access programming to the new system, to the end that both the benefits and burdens of the access system, including programming shall be equitably shared.

Section III. Use of streets and public grounds.

3.1 No Interference or Endangerment. The grantee may not endanger nor unreasonably interfere with the lives or property of persons; unreasonably interfere with property of the city or any public utility; or unnecessarily hinder or obstruct use of the public ways. The franchise does not establish priority for use of public ways over holders of other permits or franchises; it grants no vested interest in occupying any particular position in the public ways. The city shall control distribution of space in the public ways, but may not exercise that authority unreasonably. No poles shall be erected by the grantee without the prior approval of the city with regard to location, height, types and any other pertinent aspect. As far as possible, arrangements shall be made for use of existing utility poles. No location of any pole or wire-holding structure shall give rise to a vested interest in city property or public ways and such poles or structures shall be removed or modified by the grantee at its expense whenever the city reasonably determines that the public interest will be enhanced thereby.

3.2 No Hindrance to Public Works and Improvements. Grantee shall, at its cost, install, construct, operate and maintain its system as directed by the city or other authorized government entity so as to permit the city or other authorized government entity to install, construct, maintain or operate public works or public improvements. The grantee, at its expense, shall relocate or remove its cable system as requested by the city for reasons of traffic conditions, public health and safety and protection of property, street construction, grade change, or construction of any public improvement. Grantee, at its expense, shall promptly alter or relocate its cable system to conform to any new line or grade. Grantee, at its expense, shall remove and relocate its structures which obstruct public ways, or whenever the city closes a public way. The city shall give the grantee written notice specifying a deadline for completion of the removal or relocation. If, after fifteen (15) business days from the deadline provided in the written notice, grantee fails to remove or relocate its system as required by the city or other authorized government entity, the city or other authorized government entity may remove or relocate grantee's cable system, and grantee shall compensate the city or other authorized government entity for all reasonable expenses incurred thereby.

3.3 Removal or Relocation in Event of Emergency. In event of emergency, or where the cable system creates or is contributing to an imminent danger to health, safety or property, the city may remove or relocate grantee's cable system without prior notice.

3.4 Relation to Penalties for Failure to Provide Service. The grantee shall not be penalized by the city for any failure to provide service which results from relocation or removal under Section 3.2 or 3.3,

where the cable was installed in accord with applicable safety codes and generally accepted industry standards.

3.5 Other General Conditions on Use of Public Ways.

a. Grantee, at its cost, shall protect or support public or private property to prevent damage caused by construction, installation, maintenance or operation of its cable system. If grantee fails to protect such property, the city may do so, and grantee shall compensate the city for all reasonable expenses incurred thereby. Grantee, within ten (10) days of completion of work and at its expense, shall restore public ways it disturbs to as good a condition as prior to disturbance; and within that period shall repair, replace or compensate property owners for damage to public or private property caused by grantee (the city may elect to repair or replace public property, such as sewage lines, and bill grantee for the reasonable cost of repair). Subject to the foregoing, grantee may trim trees and other vegetation from public way, at its expense and subject, at the city's option, to the city's supervision.

b. Grantee shall notify any person whose property is damaged by grantee within four (4) hours of the time the damage is discovered. At a minimum, this section requires grantee to place a prominent notice in a prominent place on the damaged property, and to make diligent efforts to contact the property owner or resident directly.

c. All excavation shall be performed so as to create the least inconvenience to public, and in accordance with permits issued by the city. The city shall have the right to supervise all excavation.

3.6 Special Conditions on Use of Compatible Easements. The grantee shall ensure:

a. That the safety, functioning and appearance of the property and the convenience and safety of other persons are not adversely affected by the installation, construction, maintenance or operation of the cable system;

b. That the cable system, or any part thereof, shall be removed or relocated at grantee's expense upon the property owner's request whenever the compatible easement is closed or relocated in accordance with law;

c. That the cost of the installation, construction, operation or maintenance of the cable system or any part thereof shall be borne by the grantee or the subscriber, in accordance with the requirements of the franchise; and

d. The owner of the property shall be justly compensated in accordance with applicable law by the grantee for any damages caused by the installation, construction, operation or maintenance of the cable system or any part thereof by the grantee.

3.7 Movement of Wires for Third Person. Grantee shall raise or lower wires or equipment upon the reasonable request of any third person, including any person holding a building moving permit. Expenses associated with raising and lowering the wires or equipment (except where this franchise or applicable laws or agreements provide otherwise) shall be paid by the person requesting the same and the grantee may require advance payment. Grantee shall be entitled to require that it be given up to ten (10) business days advance notice by the person requesting the movement.

3.8 No Guarantee of Accuracy of Maps. The city does not guarantee the accuracy of any maps showing the horizontal or vertical location of existing structures. In public ways, where necessary, the location shall be verified by excavation.

3.9 Construction Standards. The construction, installation, operation and maintenance of the cable system and all parts thereof shall be performed in an orderly and workmanlike manner. All such work shall be performed in accordance with the following safety, construction and technical specifications and codes and standards, as they may now exist or be amended or adopted hereafter:

a. Occupational Safety and Health Administration (OSHA) Safety and Health Standards;

b. National Electrical Code;

c. National Electrical Safety Code (NESC);

d. Obstruction Marking and Lighting, AC 70/7460 i.e., Federal Aviation Administration;

e. Construction, Marking and Lighting of Antenna Structures, FCC Rules Part 17;

f. All Federal, State and Municipal Construction Requirements, including FCC Rules and Regulations;

g. All Building and Zoning Codes, and all Land Use Restrictions and local safety codes; and

In the event of a conflict among codes and standards, the most stringent code or standard shall apply (except insofar as those standards, if followed, would result in a system which could not meet requirements of federal, state or local law; and except for such minor modifications as are typical in the industry). The city may adopt reasonable additional standards after consultation with the grantee as required to ensure that work continues to be performed in an orderly and workmanlike manner, or to reflect changes in standards which may occur over the franchise term.

3.10 Subcontractors. All contractors or subcontractors shall be properly licensed, and each contractor or subcontractor shall have the same obligations with respect to its work as grantee would have under this franchise and applicable laws if the work were performed by grantee. Grantee shall be responsible for ensuring that the work of contractors and subcontractors is performed consistent with the franchise and applicable law, shall be fully responsible for all acts or omissions of contractors or subcontractors and shall be responsible for promptly correcting acts or omissions by any contractor or subcontractor.

3.11 Removal of Wires. Grantee shall remove its cable system from the public ways within twelve (12) months of the lawful termination of the franchise, unless city provides for some later date to ensure continuity of service to subscribers, provided that, this Section 3.11 shall not be read to waive rights grantee might otherwise have under applicable law. The city may require grantee to continue to provide service and to cooperate with transition to another provider as necessary to assure continuity of service to subscribers. Grantee may be required to continue to provide service, under the same terms and conditions as if the franchise remained in effect, for a period not to exceed eighteen (18) months from the later of the scheduled termination date, or the final determination of the lawfulness of any termination. Grantee shall have twelve (12) months to remove its cable system from the last day of any period it is required to continue to provide service. If the cable system is not removed, it shall be deemed abandoned.

3.12 Use of Equipment by City. Subject to applicable tariffs, the city may use poles or conduits of grantee at no charge, so long as the use does not interfere with grantee's use. The city shall indemnify, defend and save harmless grantee for all claims arising out of the city's use of grantee's poles or conduits, including reasonable attorneys fees and costs. Nothing in this section prohibits the grantee from participating in the defense of any litigation by its own counsel at its own cost.

3.13 Aerial and Underground Construction. With regard to all areas of new construction or line extension, where the transmission and distribution facilities of public utilities providing telephone communications and electric services are located underground, the grantee likewise shall locate its cable system underground. In any area of new construction or line extension where the telephone or electric utility lines are relocated so that both electric and telephone lines are located underground, after the effective date of this franchise, grantee likewise shall relocate its cable system underground, if it is given notice and access to the public utilities' facilities at the time that such are placed underground.

Notwithstanding this Section 3.13, the city, through exercise of its lawful police powers, may require the grantee to place existing facilities underground, in which case grantee shall be compensated for its reasonable costs incurred in placing its facilities underground.

Section IV. System facilities, equipment and services.

4.1 System Design.

a. Grantee shall upgrade its system so that the system in its entirety uses at least 450 mHz equipment of high quality and reliability. Grantee shall integrate a fiber optic backbone design, and in a manner which will reduce the number of trunk amplifiers in a cascade out of the headend to a maximum number of eight (8), and so that optical receive sites have no more than four (4) trunk amplifiers in a cascade. The fiber optic technology will integrate into the system in a manner which permits the grantee to take full advantage of the benefits of that technology, including increased reliability and improved system performance.

b. Grantee shall install, replace as necessary and maintain, a dedicated, bidirectional fiber optic link between the access center and the headend. The link shall be completed within six (6) months of the effective date of the franchise, or the date the access center is completed, whichever is later. The dedicated connection shall be designed and include all equipment, including but not limited to laser transmitters, modulators, and processors required so that the access center can send signals to the headend on at least three (3) channels initially; and so that the access center can remotely (1) route signals originated at the center or at other locations onto any of the three access channels on the regular subscriber network; and (2) otherwise control the signals to allow for smooth breaks, transitions, insertion of station ID's and other material.

c. The grantee shall install, replace as necessary and maintain, dedicated bidirectional fiber optic links and all equipment required to make them operable so that the City/County Building, the Bicentennial Center, Fire Station #1, the Law Enforcement Center, the two public high schools, Kansas State University-Salina College of Technology, Kansas Wesleyan, the Public Library, and the Community Theatre, will be able to send signals to the access center using those dedicated, bidirectional fiber optic links; provided however, that grantee is obligated to provide a total of one portable laser transmitter one fixed laser transmitter, and two channel modulators for use at these locations. The link between the City/County Building and the access center shall be completed within six (6) months of the effective date of this franchise, or the date the access center is completed, whichever is later. The other links required under this Section 4.1.c shall be completed no later than the date the system upgrade is completed as required by Section 4.1.h hereof, or the date the access center is completed, whichever is later.

d. The grantee shall install, replace as necessary and maintain, dedicated bidirectional fiber optic links and all equipment required to make them operable so that all public schools may send signals to the access facility; provided that, grantee shall have no obligation under this Section 4.1.d. to provide any laser transmitter or modulator. The links shall be completed by the date the system upgrade is completed as required by Section 4.1.h hereof.

e. The grantee shall use equipment generally used in high-quality, reliable, modern systems of similar design, including but not limited to back-up power supplies capable of providing power to the system for three (3) hours in the event of an electrical outage; and including but not limited to modulators, antennae, amplifiers and other electronics which permit and are capable of passing through the signals received at the headend without substantial alteration or deterioration. This obligation shall include the obligation to install equipment to retransmit in stereo satellite and local broadcast signals provided in stereo. The obligation to provide back-up power supplies requires grantee to provide back-up power supplies at each fiber optic receive node.

f. The grantee shall install equipment so that the headend is capable of providing at least 60-plus channels in full configuration and will develop signals of high quality throughout the service area (including on channels retransmitting upstream signals received through the headend), and so that the headend has adequate ventilation and space to be able to meet or exceed these design requirements.

g. The grantee, to the extent practical, shall install equipment and construct its system so that, except for premium or pay-per-view services, a subscriber can use all features such as remote control units for VCR and television set for simultaneous viewing and recording on different channels.

h. The upgrade required under this Section shall be completed no later than August 31, 1993, if this franchise is signed by the city no later than January 1, 1992. The completion date will be extended one day for each day between January 1, 1992 and the date the franchise is signed by the city. The city shall grant reasonable extensions of time to complete construction in particular areas of the city if, prior to the scheduled time for completion, grantee shows that, notwithstanding its due diligence, it has been unable to extend service to a specified area because the acts or omissions of a third party (not including grantee's subcontractors or agents) have caused a delay in construction beyond delays reasonably expected during the course of a rebuild or upgrade, and grantee proposes a reasonable alternative deadline for extension of service to that area.

4.2 System Design Review Process.

a. At least thirty (30) days prior to the date construction of any required upgrade or rebuild is scheduled to commence, grantee shall provide a detailed system design and construction plan, available for review by the city either at the local office of the grantee, or, at the city's request, at any TCI office designated by the city, which shall include at least the following elements:

1. Design type; trunk and feeder design; number and location of hubs or nodes.

2. Distribution system-cable, fiber, equipment to be used.

3. Headend design and reception facilities including make and model number of antennae, signal processors, modulators, demodulators, etc.

4. Plans for standby power at headend, hubs/nodes, and satellite terminals. The plan should state the make and model number of equipment to be used as well as time capacity.

5. The emergency alert system grantee plans to install including: make and model numbers of equipment; whether system will override all audio and video channels or only audio channels; and how system will be activated and from where.

6. Longest amplifier cascade in system (number of amplifiers, number of miles, type of cable/fibre).

7. Design maps and tree trunk maps for the system. The system design will be shown on maps of industry standard scale using standard symbology, and shall depict all electronic and physical features of the cable plant.

b. The city shall have twenty (20) days from the date grantee notifies the city the design and construction plans are available for review to submit comments on the plans. Grantee must submit a written response to the comments including an amended plans, if appropriate, within ten (10) days of the date it receives the city's comments. The city reserves any rights it may have under this franchise, including rights to impose penalties or terminate the franchise based on the design.

4.3 Initial and Continuing Tests. The grantee shall perform all tests necessary to demonstrate compliance with the requirements of 47 CFR 76 subpart K of the FCC rules and regulations. All tests shall be conducted in accordance with the most current publications of Tektronix, "No Loose Ends", and/or NCTA's, "Recommended Practices for Measurements on Cable Television Systems." The grantee shall perform at least the following tests:

a. The grantee in conjunction with various manufacturers shall perform a preconstruction quality test on quantities of system components determined by the grantee based on random samples. All new trunk and distribution cable shall be sweep tested on the reel to verify compliance with manufacturers specification of frequency response and structural return loss. No component shall be used in the system which fails to meet the manufacturers' specification.

b. Acceptance tests. The grantee shall perform acceptance tests on the entire system at the conclusion of the upgrade to demonstrate compliance with 47 CFR 76 subpart K of the FCC Rules and Regulations in accordance with Section 4.7.

   The city has the option of witnessing the tests. The test results shall be submitted to the city for review. The grantee shall have the obligation, without further notice from the city, to take corrective action if any segment is not operating or performing within 47 CFR 76 subpart K of the FCC Rules and Regulations in accordance with Section 4.7.

c. Continuing tests. The grantee and the city will jointly select test points at various points of the system. The quantity of these test points will be mutually agreed upon based on what best represents the architecture of the system. The grantee shall perform proof of performance tests at these locations annually in conjunction with 47 CFR 76 subpart K through the life of the franchise, and at other points mutually agreed upon where system user complaints indicate tests are warranted or as required to test all major trunk lines. The city shall have the option of witnessing the tests. A written report of the test results shall be filed with the city within thirty (30) days of the test. If a location fails to meet performance specifications as outlined in 47 CFR 76 subpart K in accordance with Section 4.7, the grantee, without requirement of additional notice or request from the city, shall take corrective action, re-test the locations and advise the city of the action taken and results achieved.

4.4 Inspections during Construction. The city may conduct inspections of construction areas and subscriber installations, including to assure compliance with applicable laws, codes and requirements of this franchise. The grantee shall be notified of any violations found during course of inspections. The grantee must bring violations into compliance within thirty (30) days of date it receives notice, and submit a report to the city describing the steps taken to bring itself into compliance. Inspection does not relieve the grantee of its obligation to build in compliance with all provisions of the franchise.

4.5 Other Construction Procedures. The Grantee:

a. Shall follow a system design and construction plan consistent with its obligations under this franchise, use the equipment specified, (or substitute equipment of equivalent or better quality) in such distribution system design plan and construction plan (except insofar as those plans, if carried out, would result in construction of a system which would not meet requirements of federal, state or local law; and except for such minor modifications as are typical in the industry).

b. Shall use equipment of good and durable quality.

c. Shall provide a monthly construction report to the city in a form reasonably required by the city.

d. Shall maintain a public file showing its plan and timetable for construction of the cable system. Grantee shall notify residents in any construction area at least one (1) day in advance before first entering onto property to perform any work in conjunction with system construction, and shall additionally notify affected residents in advance of any work which will involve excavation, replacement of poles, or tree trimming.

e. Shall make available within, sixty (60) days of implementation of the upgrade, as-built system design maps for the city's review at the local office of the grantee, or at the city's request, at any TCI office designated by the city.

f. Shall provide maps showing the actual location of additions or extensions to its lines within thirty (30) days of completion of system construction in any geographic area.

4.6 System Maintenance.

a. Interruptions to be minimized. The grantee shall schedule maintenance so that activities likely to result in an interruption of service are performed during periods of minimum subscriber use of the system. The grantee shall make best efforts to minimize interruptions of service consistent with reasonable and customary upgrade practices.

b. Maintenance practices. In addition to its other obligations, grantee shall (a) use replacement components of good and durable quality, with characteristics better or equal to replaced equipment; and (b) follow the more stringent of industry maintenance standards or corporate maintenance standards.

4.7 System Performance. The system shall meet or exceed the standards set forth in 47 C.F.R. Section 76.601 et seq. ("FCC Standards"), as those standards may be in effect at all times. The parties anticipate that the standards may be revised between the date the franchise is signed and the date the initial system upgrade is completed, and agree that the system will be designed and constructed so that it shall meet or exceed FCC Standards in effect at all times. If the FCC Standards are eliminated and not replaced, the city may continue to enforce the standard which existed prior to the date of elimination. If the city has authority to establish standards, standards may be amended or added in conjunction with and subject to the Section 10.12 periodic review.

4.8 Future System Upgrades/Rebuilds. Grantee shall provide additional or new facilities and equipment, expand channel capacity and otherwise upgrade or rebuild its system throughout the franchise term as required to incorporate improvements in technology to reasonably meet the needs and interests of the community in light of the costs thereof.

4.9 System Extension.

a. The grantee shall build its system so that it is able to provide service to all areas located within the city limits as they existed on January 1, 1991. It must build the system so that it can extend service to residents, including residents located in areas which may be annexed in the future, in accordance with 4.9.b.

b. Line extension requirements.

1. Existing city limits. Within the city boundaries as they existed on January 1, 1991, the grantee must extend service upon request to any person or business for no charge other than the then-prevailing, normal installation charge, unless the grantee demonstrates to the city's satisfaction that extraordinary circumstances justify a waiver of this section.

2. New areas.

(i) For areas annexed after January 1, 1991, grantee will extend its trunk and distribution system to serve subscribers requesting service after the date hereof at the then-prevailing normal installation charge (unless the grantee demonstrates to the city's satisfaction that extraordinary circumstances justify a higher charge) where:

A. The new subscriber requesting service is located within five hundred (500) feet from the nearest existing cable system plant, or

B. The number of homes to be passed by such extension is equal to or greater than five (5) homes per quarter mile of such extension measured from the nearest existing Cable System plant.

(ii) Cost sharing. In the event that the requirements set forth in 4.9.b.2.i. are not met, the grantee will extend its cable television system on request based upon the following cost-sharing formula.

A. $\frac{\text{Total cost to construct extension*}}{\text{Quarter miles of extension}}$ = Cost per quarter mile of extension

B. $\frac{\text{Total cost per quarter mile of extension}}{5}$ = Grantee's share per subscriber

C. $\frac{\text{Total cost to construct extension}}{\text{Number of subscribers requesting service}}$ = Cost per subscriber

D. Cost per subscriber minus grantee's share per subscriber = Subscriber's share

*Total cost to construct extension is defined as the actual turnkey cost to construct the entire extension including electronics, pole make-ready charges and labor, but not the cost of the subscriber drop.

3. Subscriber drops. The grantee shall not assess any additional cost for service drops of one hundred fifty (150) feet or less unless the grantee demonstrates to the city's satisfaction that extraordinary circumstances justify a higher charge. Where a drop exceeds one hundred fifty (150) feet in length, grantee may charge subscriber for the difference

between grantee's actual costs associated with installing a one hundred fifty (150) foot drop, and grantee's actual cost of installing the longer drop. Provided that, drop length shall be the shorter of (1) the actual length of installed drop or (2) shortest distance to the point where grantee would be required to extend its distribution system.

4. In any area where grantee would be entitled to install a drop above-ground, grantee will provide the subscriber the option to have the drop installed underground, but may charge the subscriber the difference between the actual cost of the above-ground installation and the actual cost of the underground installation.

5. Time for extension. Grantee must extend service to any person who requests it: within seven (7) days of the request, where service can be provided by activating or installing a drop; after the upgrade of the system is completed, within thirty (30) days of the request within the existing city limits as of January 1, 1991, where an extension is required, or in any case where an extension of one-half mile or less is required; or within six (6) months for annexed areas where an extension of one-half mile or more is required.

6. Notwithstanding the foregoing, grantee shall install one drop at no charge to every school and public building. Grantee may charge for service delivered over that drop; however, the city and school may install facilities and equipment to transmit the signal to all rooms within a building, and shall not be required to pay any more for service than the grantee charges for delivery to a single drop point to a residential subscriber.

4.10 Public, Educational and Governmental Use.

a. PEG channel capacity. Grantee shall set aside three (3) downstream channels for public, educational and governmental ("PEG") use initially. One (1) channel must be activated on the effective date of the franchise, and two (2) additional channels must be activated on the earlier of September 30, 1993, or completion of the system upgrade required by Section 4.1.h. hereof. In addition, grantee must activate upstream capacity in accordance with 4.1.b--d. All PEG access channels must be provided as part of any basic service tier.

b. Requirements regarding rules and procedures for use of PEG channels.

1. The city shall designate a nonprofit access management corporation (hereafter, "Access Corporation"), initially "Community Access Television of Salina, Inc." to manage the use of the PEG channels required under the franchise.

2. The Access Corporation shall establish and enforce rules for use of the PEG channels (i) to assure nondiscriminatory access to the channels to similarly situated users; and (ii) to promote use and viewership of the channels, consistent with the obligation to provide nondiscriminatory access to similarly situated users. The city shall be responsible for establishing and enforcing rules for use of the channel capacity and managing the use of the channels during any period such Access Corporation does not exist.

3. The grantee may not exercise any editorial control over the content of programming on the designated channels (except for such programming the grantee may produce and cablecast on the same basis as other channel users).

4. The channels shall be available at no charge to users and to the Access Corporation.

5. When access channels are not being used to carry programming provided by other access users, the Access Corporation at its sole cost and expense shall have the right to back-up access programming with other programming, consistent with its mission to promote

public, educational and governmental use of the channels. This paragraph shall not limit grantee's rights under 47 U.S.C. §531(d).

c. Equipment and facilities. Grantee shall pay to the city for PEG access equipment and facilities the following amounts:

1. For facilities $150,000, to be deposited on the effective date of the franchise; and

2. For equipment; $200,000, to be deposited on the effective date of the franchise.

The above-described $350,000 is included in and not in addition to those funds described in Section 2.6 above.

d. Access services. Grantee shall have a continuing obligation to provide adequate playback, training, outreach, administrative support and production assistance to access users, in accordance with community needs as reasonably ascertained by the city in light of the costs thereof; provided that, grantee shall have no obligation under this section so long as it maintains a valid and binding contract with the Access Corporation designated by the city. Nothing in this section requires or shall be deemed to require grantee to make any payment which constitutes a franchise fee under 47 U.S.C. §542.

e. General. The parties agree that any cost to grantee associated with providing access services, facilities and equipment under this franchise, including without limitation the amounts set forth in 4.10.c.1--2, and payments made outside this franchise, if any, are not part of the franchise fee, and fall within one or more of the exceptions to 47 U.S.C. §542.

4.11 Leased Use.

a. Number of channels. The grantee shall provide leased access channels as required under the Cable Act.

b. Reservation of rights. In the event the leased access requirements of Cable Act change, the city may require grantee to continue to provide channels it was required to provide under the Cable Act, if consistent with federal law.

c. To the maximum extent permitted consistent with federal laws and regulations, the city may regulate terms and conditions for leased use of the channels; may require the grantee to provide leased users access to system facilities, equipment and services under reasonable terms and conditions; may require the grantee to attach or interconnect its system to equipment and facilities to facilitate leased use of the channels, under reasonable terms and conditions; and may establish other rules and regulations to promote leased use of the channels.

d. The grantee shall maintain a file showing the terms and conditions under which it provided services, facilities, equipment and channels to leased users. The file shall, at a minimum, show the lease price, all compensation to the grantee (including compensation in cash, in-kind services, facilities and equipment, or by barter), and the nature of the lessee, or its programming, if considered in establishing the lease term and conditions. The file shall be provided to the city upon request.

4.12 Subscriber Services.

a. For the period beginning on the effective date of the franchise through the completion of the system upgrade required by Section 4.1 hereof: a minimum of thirty-six (36) activated channels and twenty-six (26) basic service channels;

b. For the period beginning on completion of the system upgrade required by Section 4.1 hereof, through the end of the franchise (subject to future agreements in light of changes in system capacity): a minimum of forty-five (45) activated channels and twenty-one (21) basic service channels.

c. In addition to such other service requirements as may be contained in this franchise, grantee agrees to provide the following broad categories of services:

   1. Kansas broadcast programming;

   2. Kansas educational broadcast programming;

   3. Non-network arts/cultural programming;

   4. Non-network educational and informational programming;

   5. Children's programming;

   6. Public affairs programming services which address major local, state and federal issues of interest to the citizens of Salina; and

   7. Programming which satisfies ascertained needs and interests of the citizens of Salina.

   Nothing in subparagraphs c.1 or c. hereof shall be read to require grantee to carry every Kansas commercial or educational broadcast station.

d. Grantee shall conduct subscriber surveys on a regular basis, no less than once every three (3) years, to determine the programming needs and interests of its subscribers.

4.13 Nondiscrimination.

a. Grantee shall not unlawfully discriminate against any subscriber or potential subscriber on basis of race, color, religion, national origin, age, or sex; or deny service to any group of potential subscribers because of the income of the residents of the area in which a group of potential subscribers reside; provided that, nothing shall prohibit grantee from providing a "lifeline" type of service to the poor, the elderly, the developmentally disabled or physically disabled.

b. Grantee shall ensure that its services are accessible, as far as possible, to disabled people. All closed-caption programming retransmitted by the system shall include the closed-caption signal.

4.14 No City Control.

a. During the term of this franchise, the city may not prohibit grantee from providing any program or class of programs, or otherwise censor communications over the cable system; except that, nothing in this section shall be read to authorize grantee to engage in communications which are prohibited by law, or to expand or contract any rights the city may have to enforce generally applicable laws with respect to obscenity, libel, slander or otherwise unprotected speech against the grantee (for channels the grantee controls), program producer or other responsible party.

b. Parental control device. Upon request, grantee shall provide parental control devices to any subscriber. Grantee shall charge no more than its cost for the parental control devices it provides.

Section V. Rate regulation and consumer protection.

5.1 Regulation of Rates. The city may regulate grantee's rates and charges to the maximum extent permitted consistent with federal law and regulations. Grantee shall file a schedule of its rates and charges with the city on the effective date of this franchise.

5.2 Prior Approval. Grantee shall be required to submit any change in rates or charges to the city for approval prior to implementing that change, to the extent grantee may be required to do so consistent with federal laws and regulation. Nothing in this section shall be deemed to waive any rights grantee may have under 47 U.S.C. §543(e)(1).

5.3 Notice of Changes. At least sixty (60) days prior to implementing any changes in rate levels, services or service terms, grantee shall provide the city written notice describing any such changes it plans to make and the proposed effective dates for the changes (or, in cases where the change in services or service terms is not known to grantee sixty (60) days prior to the date the change is to be implemented, as soon as possible and no later than thirty (30) days prior to implementing any change). At least thirty (30) days prior to implementing any changes in rate level, services or service terms and conditions, grantee must provide each affected subscriber notice, describing the changes it plans to make and the proposed effective dates for the changes. Any change made without the required notice shall be of no force or effect in determining the payments owed or the legal rights of the city or subscribers, but grantee may make an otherwise lawful change once the notice is given.

5.4 Support for Access.

a. The city recognizes that provision of support for PEG access is a valid expense associated with the provision of basic service under this franchise, and that grantee should be compensated through its rates for reasonable costs associated with the provision of support for PEG access. The parties agree that existing rates compensate grantee for costs associated with providing the support required by Section 4.10 a--c.

b. The city agrees that grantee may pass-through in 1992 up to $0.60 per basic subscriber per month to compensate it for any additional support it actually provides for access to the Access Corporation. This pass-through amount to the Access Corporation may be increased each year by an amount not to exceed the percentage increase in basic service (not considering the amount attributable to access collected under this section 5.4.b), or if there is no basic service rate, by an amount not to exceed the percentage increase in the level of service most comparable to basic service. The pass-through for access, as it may be increased from time to time in accordance with this section 5.4.b., may be shown as a separate line item on the subscriber's bill. The amount collected by grantee under this section 5.4.b shall not be deemed "gross revenues" for purposes of calculating the franchise fee owed to the city. This section 5.4.b. is without prejudice to grantee's right to provide additional amounts for and in support of access, and to seek to reflect those additional amounts in rates.

5.5 Customer Service Standards.

a. Grantee shall have an obligation to provide high-quality service to its subscribers throughout the franchise term. To this end, the parties have established initial customer service standards which standards are set forth in Attachment 1 [incorporated herein by reference]. Grantee shall meet or exceed the customer service standards on an ongoing basis.

b. Grantee's service must be provided subject to all rights its subscribers may have under federal, state or local laws.

5.6 Right to Maintain Antenna. The grantee shall not, as a condition to providing service, require a subscriber or potential subscriber to remove any existing antenna, or disconnect an antenna except at the express direction of the subscriber or potential subscriber, or prohibit or discourage a subscriber from installing an antenna switch provided such equipment and installations are consistent with applicable codes.

5.7 Duty to Install Telephone Monitoring Equipment. The grantee shall install such devices as are required to enable it to determine whether it is complying with each and every standard for customer telephone service, as amended from time to time.

5.8 Nondiscrimination. Except to the extent and for the time it is prohibited from doing so by federal law, the city prohibits grantee from discriminating among similarly situated subscribers in the provision of any services, facilities or equipment. Nothing shall prohibit grantee from conducting temporary bona fide promotions, except the grantee may not discriminate among subscribers in the price for any service tier or program service unless the promotional rate is available to all similar classes of subscribers throughout Salina.

Section VI. EEO.

6.1 EEO. The grantee shall comply with federal, state and local laws and regulations governing equal employment opportunities, as the same may be from time to time amended.

Section VII. Reserved.

Section VIII. Franchise fees.

8.1 Franchise Fee. As compensation for the use of valuable public ways, and to defray certain of the costs associated with cable regulation during the franchise term, grantee shall pay the city five percent (5%) of the gross revenues it derives or which any person who would be defined as a cable operator under 47 U.S.C. §602(4) derives in connection with the operations of the Salina system. The franchise shall be read to prevent grantee from avoiding the provisions of this section by lease, contract or other arrangement.

The term gross revenues includes, but is not limited to: revenues from pay, pay-per-view and basic service subscriptions; revenues from the provision of services, facilities or equipment to subscribers; revenues from the sale of all advertising; revenues for carriage of any service; revenues received from home shopping services; and any other compensation received, from any source and regardless of form, cash and non-cash. Any sales tax collected from subscribers on behalf of any federal, state or local government or agency shall not be considered part of grantee's gross revenues. Grantee is not required to pay a franchise fee on revenues recorded as received but which are in fact "bad debt," except grantee must pay the fee on all recoveries of bad debt. Revenues from advertising sold for transmission on more than one system shall be allocated on a pro rata basis, (revenues divided by number of basic subscribers capable of receiving the advertising on the systems for which the advertising is sold) times (the number of basic subscribers in the city).

8.2 Not in Lieu of Other Taxes. The franchise fee payment is not a payment in lieu of any other tax, fee or assessment. This paragraph is not intended to waive any rights grantee may have to claim that a particular tax, fee or assessment constitutes a franchise fee for purposes of 47 U.S.C. §542(g).

8.3 Payments Quarterly. Franchise fee payments are due and payable quarterly: May 15 for the first quarter, August 15 for the second quarter, November 15 for the third quarter and February 15 for the

fourth quarter of each calendar year. Interest on late payments shall be paid at the statutory rate then applicable on any late payments. Penalties may be imposed for materially inaccurate reporting or underpayment to the city.

8.4 No Accord or Satisfaction. Acceptance of any payment shall not operate as an accord or satisfaction, or a waiver of any right under the franchise or law, provided, however, that the city shall commence any action on any payment within five (5) years of the due date of the payment.

8.5 Reporting Forms. Each payment shall be accompanied by a form reporting revenues and subscriber levels by category. A copy of the form which will be used initially is included as Attachment A [incorporated herein by reference]. The city may from time to time make such reasonable amendments to the form as are required to ensure that all gross revenues are reported clearly and accurately.

8.6 Right to Audit. The city shall have the right to audit the grantee's books on reasonable notice to ensure compliance with this franchise fee section.

Section IX. Liability, indemnity and insurance.

9.1 Indemnity. The grantee shall indemnify, defend and save the city harmless from all loss or damages sustained by the city on account of any suit, judgment, execution, claim or demand (including legal fees incurred) resulting from grantee's installation, construction, operation or maintenance of its system. The duty to indemnify and hold harmless shall include but not be limited to a duty to indemnify against losses or damages sustained as a result of grantee's acts or omissions (1) arising out of grantee's use or attempt to use public ways; and (2) arising out of any claim for invasion of the right of privacy, libel, slander, copyright violation, patent infringement or the like. The indemnity is conditioned on the following: the city must notify grantee within thirty (30) days after the presentation of any claim or demand, either by suit or otherwise, made against the city on account of any act or omission by grantee. Nothing in this section prohibits the city from participating in the defense of any litigation by its own counsel at its own cost.

9.2 Insurance.

a. The grantee shall maintain the following insurance for its own coverage and for use in indemnification of the city:

    1. A comprehensive general liability policy in the minimum of $500,000 for damage to any single property, and $1,000,000 for damage aggregate per single accident or occurrence; $1,000,000 for bodily injury to any one person and $2,000,000 bodily injury aggregate per single accident or occurrence; or in such other amounts as are acceptable to the city and provide substantially equivalent coverage. The city shall be designated as an additional insured.

    2. Automobile liability in the same amounts.

    3. Worker's Compensation and Employer's liability insurance in the statutory amounts required.

b. No later than sixty (60) days after the effective date of the franchise the grantee shall furnish the city certificates of insurance, in a form satisfactory to the city, showing that grantee has all the insurance required by this section. Grantee shall provide new certificates upon renewal of any policy or if the insurance carrier for any policy changes. The insurance policies required herein shall contain an endorsement stating that:

It is understood and agreed that this policy may not be cancelled nor the amount of coverage reduced until thirty (30) days after receipt by the city clerk of the City of Salina, Kansas, by certified mail, of a written notice of intent to cancel or reduce the coverage.

c. The amounts and types of insurance required herein are subject to reconsideration at each four-year review period. The city may request appropriate revisions. Grantee may not unreasonably refuse to comply. Any new certificate must be submitted within thirty (30) days of any agreed revision.

d. The grantee's compliance with these insurance requirements shall in no way waive or limit its duty to indemnify and hold harmless.

9.3 No Limitation. The rights of the city and the obligations of grantee under this franchise shall not be diminished in any respect by recovery of any amounts under this Section.

9.4 No Liability. The city shall not be liable to grantee for any damages or loss which grantee may suffer as the result of the city's lawful exercise of the authority granted under this franchise.

Section X. Monitoring performance; exercise of regulatory authority.

10.1 Inspection of Books and Records.

(a) The city may require grantee or any affiliate in control or possession of documents to produce documents, including financial documents the city deems necessary to ensure compliance with the grantee or any affiliate obligations under this franchise, at the City/County Building for inspection and copying. The documents requested shall be produced upon reasonable notice and no later than thirty (30) days after the request for production. If the books, records, maps or plans or other requested documents are too voluminous, or for security reasons cannot be copied and moved, then Grantee or its affiliate may request that the city inspect them at some other location, provided that (1) the grantee or its affiliate makes necessary arrangements for copying documents selected by the city after review; and (2) the grantee or its affiliate pays all travel and additional copying expenses incurred by the city in inspection of those documents. The parties agree that any payments made by grantee or any affiliate hereunder are not a franchise fee and fall within one of the exceptions thereto.

(b) Grantee has the right to obtain relief from any court of competent jurisdiction on the ground that the city has unreasonably determined that information requested under this Section is necessary to ensure compliance with the franchise.

10.2 Inspection of Installations.

(a) Upon reasonable notice and during normal business hours, the city shall have the right to inspect grantee's facilities and equipment and to perform tests as the city deems necessary to ensure compliance with the terms of the franchise.

(b) Grantee has the right to obtain relief from any court of competent jurisdiction on the ground that the city has unreasonably determined that the inspection or tests to be performed under this Section are necessary to ensure compliance with the franchise.

10.3 Requests for Information. The grantee or any affiliate in control or possession of information respecting the grantee's cable system in Salina shall respond to reasonable inquiries from the city concerning the construction, operation, installation or maintenance of that cable system; plans for its expansion; or the grantee or affiliate's financial or legal status. The grantee or affiliate shall provide the information requested within thirty (30) days of request. Requests for extensions of time to respond shall not be unreasonably denied.

10.4 Records Maintained. In addition to public file records and maps, the grantee shall maintain records of the following:

a. Records of outages, indicating date, duration, area and the estimated number of subscribers affected, type of outage and cause in a form reasonably required by the city.

b. Records of service calls for repair and maintenance, indicating date and time service was requested, date of acknowledgement and date and time service was scheduled (if it was scheduled), the date and time service was provided and (if different) the date and time the problem was solved. Grantee's service call log contains this information in a form acceptable to the city.

c. Records of installation/reconnection and requests for service extension, indicating date of request, date of acknowledgement, and date and time service was extended. Grantee's work order contains this information in a form acceptable to the city.

d. Records of complaints, indicating date complaint received, nature of complaint and resolution of complaint, and date of resolution. Grantee's system complaint call report and the reports provided in b. and c. above contain this information in a form acceptable to the city.

The records shall be kept at the grantee's local office and shall be available for city review and copying during normal business hours. The parties shall cooperate to amend requirements under this section so that the city has access to information to evaluate grantee's compliance with the franchise and so that grantee may amend its forms as its services evolve.

10.5 Reports Prepared. The grantee shall provide the following reports:

a. A monthly report stating subscriber totals for each category of service; the number of subscribers added and the number disconnecting. Grantee's monthly subscriber recap contains this information in a form acceptable to the city.

b. An annual report showing the number of system extensions; and the amount of contribution and number of contributing subscribers and costs associated with any extension made under 4.9.b.2.ii in a form reasonably required by the city.

c. A monthly summary showing the number of service calls received by type; and the percentage of service calls compared to the subscriber base by type of complaint. Grantee's monthly service call report contains this information in a form acceptable to the city.

d. A summary of number of outages, number of planned outages, number of outages during prime viewing hours, and number of outages by approximate duration in a form reasonably required by the city.

e. Annually, a franchise fee report showing revenues received, by category, in a form reasonably required by the city; and

f. Annually, a list of officers and directors of grantee and grantee's parent.

10.6 Documents to be Provided. Grantee shall provide the following documents to the city in a timely manner, so as to permit the city to protect any interests it may have in any proceeding, and in no event later than within thirty (30) days of the date the documents are received or filed, without regard to whether the documents are received or filed by grantee or an affiliate.

a. Annual report, if any, of grantee, or each affiliate of grantee which controls grantee and issues an annual report;

b. Copyright filings reflecting the operation of the Salina system;

c. FCC Forms 325 and 395 for the Salina system, or their successor forms;

d. Any filing made at the FCC or any state or federal agency regarding the Salina system; its proof-of-performance tests; its RF signal leakage tests; and

e. Any notice of deficiency; forfeiture; or other document issued by any state or federal agency instituting any investigation or civil or criminal proceeding; regarding the Salina system, grantee, or any affiliate of grantee, to the extent the same may directly affect or bear upon operations in Salina.

f. Any request for protection under bankruptcy laws, or any judgment related to a declaration of bankruptcy.

10.7 Testing. When, based on investigation or subscriber complaint, the city has questions concerning the reliability or technical quality of system, the city may require grantee to perform tests and prepare a report showing (1) the nature of the complaint or problem which precipitated the test; (2) the system component or area tested; (3) the equipment and procedures used; (4) any conclusions drawn from the tests; and (5) other information pertinent to understanding tests. The city may observe the tests. The city annually may require the grantee to perform tests and prepare reports regarding two (2) occurrences under this Section 10.7, and grantee shall bear the costs of performing the tests and preparing the reports regarding those occurrences, whether or not the tests show grantee's system meets the requirements of this franchise. If in any calendar year the city requires grantee to perform more than two (2) tests under this Section 10.7, the reasonable costs associated with performing those tests shall be borne as follows: at the grantee's expense if the system performance is not in compliance with the requirements of this franchise, and at the city's expense if the system performance is in compliance with the requirements of this franchise.

10.8 No Limitation. Grantee's duty to prepare reports, submit documents and conduct tests under this Section 10 shall not limit grantee's duty to permit the city to inspect documents, or grantee's duty to respond to requests for other information under other provisions of the franchise or applicable law.

10.9 Confidentiality of Information. The grantee shall mark any information which it produces to the city which constitutes a business or trade secret "confidential," and produce it to a person designated by the city for purposes of holding such information. To the extent permitted under applicable law, and except where to do so could be inconsistent with its obligations under this franchise and applicable law, information produced by grantee which contains business or trade secrets shall be kept confidential. The city shall promptly notify grantee if any person requests access to the information under the Kansas Open Records Act, or if the city determines that it will be necessary to reveal the information in the discharge of its obligations under the franchise and applicable law, so that grantee may take appropriate steps as may be available to protect any rights it may claim to have to prevent disclosure.

10.10 Four-Year Review.

a. During the years which commence on the fourth, eighth and twelfth anniversaries of the effective date of the franchise, the city may commence a review of grantee's performance under the franchise. As part of this review, the city may consider: (1) whether grantee has complied with its obligations under franchise and applicable law; (2) whether customer service standards, technical standards, bond or security fund requirements are adequate or excessive; and (3) other issues as may be raised by grantee, the city or the public.

b. The city shall conduct public hearings to provide grantee and the public the opportunity to comment on grantee's performance and other issues considered as part of the four-year review.

10.11 Five-year reviews: technological changes.

a. During each of the years which commence on the fifth and tenth anniversaries of the effective date of the franchise, the city may commence a review to determine whether grantee has satisfied its obligation to respond to community needs and interests by incorporating technological advances into its system through upgrades and rebuilds.

b. The city shall conduct public hearings to provide grantee and the public the opportunity to comment on the issues which are to be considered in this five-year review.

c. At any time after the commencement of the five-year review, the city may require the grantee to submit a proposal describing its plans including a timetable and costs, to incorporate technological advances into its system through upgrades or rebuilds. The city may set a deadline for submission of the paper, which deadline shall provide the grantee no fewer than ninety (90) days to prepare the proposal from the date a written request for the proposal is submitted to the grantee.

d. Following receipt of the proposal, the city and the grantee shall negotiate in good faith to develop a plan, including a timetable, for an appropriate upgrade or rebuild of the system. If the parties are unable to reach agreement within ninety (90) days after receipt of the proposal the city may commence an administrative proceeding in accordance with this section to review the proposal.

e. The city shall provide prompt public notice of the administrative proceeding to consider whether the grantee's proposal for upgrade or rebuild is reasonable to meet future community-related needs and interests, taking into account the cost of meeting such needs and interests.

f. In any proceeding under paragraph (d), the grantee shall be afforded adequate notice and the grantee and city shall be afforded fair opportunity for full participation, including the right to introduce relevant evidence, to require the production of evidence to compel the relevant testimony of officials, agents, employees or consultants of the other, to compel the testimony of other persons as permitted by law and to question witnesses. The parties may introduce evidence regarding system design and capacity in other communities. A transcript shall be made of any proceeding.

g. The city and grantee shall attempt to select jointly a third party to conduct the administrative hearing described above. If the parties are unable to agree upon a single hearing officer, each may select one officer and the two officers so selected shall select a third officer.

h. At the completion of a proceeding under section (d), the administrative hearing officer[s] shall issue a written decision, adopting, rejecting or modifying the proposal for rebuild or upgrade, and shall transmit a copy of the decision to the city and to the grantee. The governing body of the city may then adopt, reject or modify the decision of the hearing officer, and shall issue a written statement setting forth the reasons for its actions. Grantee shall be bound by the city's decision, unless it appeals the decision within sixty (60) days of the date it is issued, under subsection (i).

i. If the grantee is adversely affected by the decision of the city, it may file an appropriate action in any court of competent jurisdiction. For purposes of that action, the parties stipulate that the record of the administrative hearing and the decisions of the administrative hearing officer(s) and the city shall constitute the entire factual record. Grantee shall be entitled to such relief as the court deems appropriate (i) if the grantee demonstrates that the action of the city was not supported by a preponderance of the evidence, based on the stipulated record or (ii) if the court finds the city's actions were not in compliance with the procedural requirements of this section.

10.12 Five-year reviews: access equipment and facilities.

a. This franchise, as originally adopted, provided that during each of the years which commence on the fifth and tenth anniversaries of the effective date of the franchise, the city may commence a review to determine whether additional facilities or equipment are appropriate to meet community needs and interests in public, educational or governmental use of cable, taking into consideration the cost of providing the same.

b. Based upon the review commenced by the city in 1997, the city has determined that additional equipment is required for public, educational or governmental use. In order to provide the needed equipment, grantee shall:

   (1) Pay to the city the amount of $40,000 no later than June 1, 1999; and

   (2) Pay to the city $0.15 per basic subscriber per month commencing June 1, 1999 and continuing through May 31, 2003, which grantee may pass through to basic subscribers either in the same manner or included as a part of the pass through for support of PEG access as provided in section 5.4 of this franchise.

c. If following the review to be commenced by the city in 2002, including public hearings regarding what facilities or equipment may be necessary to meet community needs and interests, taking into consideration the costs to subscribers of such facilities or equipment, the city determines that the need for additional facilities or equipment warrants the continuation beyond May 31, 2003 of a charge to be paid by grantee per basic subscriber per month, the city shall notify grantee of the charge(s), if any, that will apply for the remainder of the term of this franchise no later than sixty (60) days prior to its effective date. The charge, if any, determined by the city may vary from time to time, either as an amount specified by the city in advance or based upon a recognized index identified by the city. Grantee shall pay to the city the charge per basic subscriber per month in the amount determined by the city for the remainder of the term of the franchise. Grantee may pass the charge through to basic subscribers either in the same manner or included as a part of the pass through for support of PEG access as provided in section 5.4 of this franchise.

10.13 Grantee Cooperation. The grantee shall cooperate in the four and five-year reviews, including by submitting reports on the state of cable technology.

10.14 Exercise of Authority. The city may exercise appropriate regulatory authority under the provisions of this franchise and applicable law, as amended from time to time.

10.15 Obligation to Release. The grantee shall take all steps required, if any, to ensure that it is able to provide the city all information which must be provided or may be required under this franchise, including by providing appropriate subscriber privacy notices. Nothing in this section shall be read to require grantee to violate 47 U.S.C. §551.

Section XI. Performance guaranties; remedies; termination.

11.1 Performance Bond.

a. During the period beginning on the effective date of franchise, grantee shall maintain a performance bond, or other surety acceptable to the city, in a form acceptable to the city, in the amount of $350,000 to ensure faithful performance of the system construction requirements.

b. The bond or other surety shall be released within twelve (12) months after grantee provides written notice to city that the system construction has been completed in accordance with the franchise.

c. The city may re-establish performance bond requirements in the event any future system rebuild or upgrade is required, in any amount not to exceed ten percent (10%) of the estimated cost of the proposed rebuild or upgrade.

11.2 Security Fund.

a. During the term of franchise, grantee shall deposit with the city a security fund in the amount of $75,000, which shall be provided in cash or in the form of an irrevocable letter of credit or other instrument in a form acceptable to the city. The instrument shall give the city the unconditional right to draw on security fund as it deems necessary to ensure the compliance with each and every provision of the franchise, including provisions with respect to indemnities, damages, losses and penalties, provided that at least thirty (30) days prior to drawing on the fund, the city notifies the grantee of the reason it intends to draw on the fund, so that grantee may take steps to cure any noncompliance.

b. The grantee shall replenish the security fund within thirty (30) days of the date the city mails the grantee written notice stating (a) that money has been withdrawn from the fund; (b) the amount of the withdrawal; and (c) the reason for the withdrawal.

c. The security fund amount may be adjusted throughout the term of the franchise by the city by resolution to take into account increases in the consumer price index.

11.3 Liquidated Damages. Because grantee's failure to comply with provisions of this franchise will result in injury to the city, and because it will be difficult to estimate the extent of such injury, the city and grantee hereby agree to the following liquidated damages, which represent both parties' best estimate of the damages resulting from the specified injury. Damage amounts may be adjusted throughout term of franchise by the city by resolution to take into account increases in the consumer price index.

a. For failure to complete construction or extend service in accordance with the franchise: $750/day for each day the violation continues;

b. For failure to comply with material requirements for public, educational and government use of system: $250/day for each day the violation continues;

c. For repeated, willful or continuing failure to submit reports, maintain records, provide documents or information: $100/day for each day the violation continues;

d. For violation of customer service standards, except for those set forth below, $150 per violation per day;

e. For repeated, willful or continuing violation of Sections 2, 3 and 9 of the customer service standards, $200 per violation.

f. For failure to comply with transfer provisions: $500/day from the date of any unlawful transfer; and

g. For all other material violations including an unreasonable claim that a document contains a trade secret or confidential information when the document does not contain a trade secret or confidential information: $250/day for each day violation continues.

11.4 Termination. The franchise shall terminate on the expiration date hereof, and at the city's option may be terminated, subject to the provisions of Section 11.5 for the following reasons:

a. If grantee's charter or other authorization to conduct business in Kansas is revoked, or any other license which grantee requires to conduct business in Salina is revoked.

b. If grantee is adjudged bankrupt;

c. For a substantial violation of any material provision of the franchise, or any material rule, order or regulation or other determination of the city made pursuant to the franchise;

d. For any attempt to evade any material provision of the franchise or to practice any fraud or deceit upon cable system subscribers or the city;

e. For failure to complete system construction on schedule; or for failure to obtain necessary licenses or authorizations for construction or operation prior to the scheduled dates, respectively, for commencing construction or commencing service to subscribers;

f. If the system is abandoned; or

g. For fraudulent or negligent misrepresentation of fact in obtaining the franchise, obtaining any rate change, or in obtaining or objecting to any amendment of the franchise.

11.5 Procedures for Termination and Forfeiture.

a. The city shall notify grantee of the alleged violation which may warrant termination, which notice shall (1) describe the specific alleged violation; (2) direct grantee to correct or to show cause why alleged violation should not be corrected; and (3) state the time for response which shall be no less than thirty (30) days from the date grantee is sent notice.

b. Within the time designated, grantee must (1) cure the violation or (in the event the violation cannot be completely cured within the time period specified) take reasonable steps to begin to cure, and submit a written response to city, identifying the specific steps taken; or (2) contest the assertion of noncompliance, describing all facts relevant to claim, supported by affidavits and documents. No further opportunity to cure is required before the city exercises its rights under the franchise. Grantee's duty to cure includes a duty to pay any liquidated damages owed to the city from the date of the initial violation.

c. If grantee contests the city's assertion of noncompliance, or fails to completely cure the default, the city shall schedule a hearing to review the default. The city shall cause to be served upon such grantee at least seven (7) days prior to the date of such hearing, a written notice of the city's intent to review; the potential remedies sought; and the time and place of the meeting, notice of which shall be published at least once, no later than seven (7) days before such meeting in a newspaper of general circulation within the city. The city shall hear any person interested therein, and shall specifically provide grantee an opportunity to be heard, and shall determine whether or not any failure, refusal or neglect by the grantee was with just cause.

d. If the city shall determine such failure, refusal, or neglect by the grantee was without just cause, then the city may take any actions it is permitted to take under this franchise or applicable law. Such actions may be taken immediately upon completion of the hearing contemplated by this section or at such time or after such additional proceedings as the city may specify.

e. Except where precluded by court order, pending litigation or any appeal to any regulatory body or court having jurisdiction over the grantee shall not excuse the grantee from the performance of its obligations under this ordinance or the franchise.

f. For purposes of this section, and subject to force majeure, the system shall be deemed abandoned if, during any period this franchise is in effect, grantee fails to provide services over the system for ninety-six (96) consecutive hours without the prior consent of the city.

11.6 Remedies Cumulative. Remedies provided herein are cumulative and in addition to other rights the city may have at law or equity or under the franchise, which it may exercise at any time.

11.7 Sale of System on Termination. Without limiting any rights of the city under other provisions of federal, state or local law:

a. If renewal of the franchise is denied, the city shall have an option to acquire ownership of the system or require grantee to transfer ownership to another person. Any such acquisition or transfer shall be at fair market value, determined on the basis of the cable system valued as a going concern but with no value allocated to the franchise itself.

b. If the franchise is revoked for cause the city shall have an option to acquire ownership of the cable system or require grantee to transfer ownership to another person. Any such acquisition or transfer shall be at an equitable price, as that term is used in 47 U.S.C. §547(b).

11.8 Notification of Option. The city shall notify the grantee of its intent to exercise its option to buy upon termination for cause within six (6) months of the final determination of the validity of the city's decision to terminate. The city and grantee shall enter into good faith negotiations promptly to establish price in accordance with section 11.7 and terms and conditions which reflect usual industry practices.

Section XII. Transfer.

12.1 No Transfer Without Consent. The franchise may not be assigned or transferred, in whole or part, or leased or sublet, mortgaged or pledged in trust by any means without the city's prior consent. A change of control or ownership of grantee shall be considered a transfer of the franchise. The term "control" includes actual working control in whatever manner exercised, and shall be deemed to have occurred upon acquisition or accumulation by any person of ten percent (10%) of the shares or interests in grantee or any entity which directly owns or controls grantee. Grantee and the proposed transferee must cooperate in the city's investigation of the transfer and each is required to provide pertinent documents and respond to reasonable requests for information. In reviewing a transfer request, the city may examine the financial, technical and legal qualifications of the transferee; whether the transferee agrees to accept and be bound by each and every term of the franchise; whether the transferee agrees to accept to be bound by related amendments, ordinances and resolutions then lawfully in effect, whether the transferee agrees to assume all liability and responsibility for acts or omissions of grantee, known and unknown; whether the transferee agrees that the transfer will not allow it to exercise any rights which could not have been exercised by the transferor, had it continued to hold the franchise; and any other matter which the city is legally entitled or required to consider. The city may grant, deny or establish conditions on transfer, as appropriate hereunder to protect its interests in the franchise and the public interest but may not withhold its consent to a transfer unreasonably.

12.2 Securing Debt. Notwithstanding the foregoing, pledges in trust or mortgages of the assets of the system to secure an indebtedness may be made without the city's prior consent; except that no such arrangements may be made which would in any respect under any condition prevent grantee or any successor from complying with all its obligations under the franchise, nor may any such arrangement permit a third party to succeed to the interest of grantee without the prior consent of the city.

12.3 Certain Transfers to Affiliates. Notwithstanding the foregoing, the city recognizes that grantee is indirectly owned by TCI Central, Inc. ("TCI Central"), which in turn owns or controls directly a number of other cable companies. In order to facilitate reorganization of TCI Central companies, as deemed appropriate, the city agrees that prior consent shall not be required for any transfer to any company owned or controlled or under common control and with the same direct parent as TCI Central, i.e., TCI Holdings, Inc., and which is intended after such transfer to remain under the ownership or control of TCI

Central or an entity under common control or with the same direct parent as TCI Central, provided that, no such transfer shall be valid unless and until grantee and transferee submit a binding agreement and warranty to the city, stating that: (a) the transferee has read, accepts and agrees to be bound by each and every term of the franchise and related amendments, regulations, ordinances and resolutions then in effect; (b) the transferee assumes all liabilities and responsibility under the franchise, and related amendments, regulations, ordinances and resolutions then lawfully in effect for the acts and omissions of grantee known and unknown, and agrees that the transfer shall not permit it to take any position or exercise any right which could not have been exercised by grantee; (c) the transfer will not substantially increase the financial burdens upon or substantially diminish the financial resources available to the system operator, comparing the grantee to the transferee in a manner which materially may affect the Salina system; grantee and transferee shall also describe the nature of the transfer, and submit complete information regarding the effect of the transfer on the direct and indirect ownership and control of the system operator.

12.4 Prior To Construction. No transfer shall be granted prior to substantial completion of the system construction required under this franchise.

12.5 Effect of Unlawful Transfer. Notwithstanding Sections 11.4 and 11.5 every transfer, assignment or change of control made in violation of this section shall make the franchise subject to cancellation.

12.6 Timetable for Consideration. Any request for a transfer shall be deemed granted unless the city acts upon the request within one hundred twenty (120) days of the date the transferee submits a request for approval of the transfer and transferee and transferor have submitted the information which they may be required to submit in connection with the transfer. The timetable may be extended with the consent of the city and either the grantee or transferee.

12.7 Transfer Fees. Any person who desires the city to consider an application for transfer or assignment of the franchise to it shall compensate the city for all costs (including reasonable consultant and attorneys fees) associated with considering the application for transfer or assignment.

Section XIII. Representations and warranties.

13.1 Valid Corporate Form. Grantee represents and warrants it is a corporation duly authorized to conduct business in Kansas and to enter into this franchise.

13.2 No Outstanding Forfeitures. Grantee represents and warrants that to the best of its knowledge there are no forfeitures or notices of investigations pending against it at state and federal levels relating to the operation of the Salina system and that grantee is, to the best of its knowledge, in compliance with all applicable state and federal laws governing operation of the Salina cable system.

13.3 Familiarity with Franchise. Grantee and the city represent and warrant that they have read and understand all provisions of this franchise.

13.4 Ability to Perform. Grantee represents that it has the financial, legal and technical ability to comply with all its obligations under the franchise.

Section XIV. Miscellaneous.

14.1 Time of Essence, Maintenance of Records of Essence. In determining whether grantee has substantially complied with franchise, the parties agree that time is of essence to the agreement. As a result, grantee's failure to complete construction, extend service, seek approval of transfers or provide information in a timely manner may constitute substantial breaches. The maintenance of records and provision of reports in accordance with the franchise is also of essence to the agreement.

14.2 No Waiver. No failure of city or grantee to exercise and no delay in exercising any right shall operate as a waiver of city's or grantee's rights hereunder, nor shall single or partial exercise of any right preclude any other right. A waiver of any right or remedy at one time shall not affect exercise of that right or remedy at any other time, or limit grantee's duty to comply with the franchise at any other time. For a waiver by either party to be effective, it must be in writing. The failure of city to take any action in the event of a material breach shall not constitute a waiver of rights, or affect the right of the city to enforce the franchise with respect to that breach or any other breach.

14.3 Effect of Preemption; Federal and State Law. Grantee must comply with all applicable provisions of federal and state law, except to the extent those provisions are superseded by a provision of this franchise. If the city's ability to enforce any franchise provision is finally and conclusively preempted, then the provision shall be deemed preempted but only to the extent and for the period the preemption is required by law. If, as a result of a change in law or otherwise, the provision would again be enforceable, it shall be enforceable and grantee will comply with all obligations thereunder without the requirement of any action by city.

14.4 Severability. If any section, subsection, sentence, clause or phrase of this franchise is for any reason held illegal, invalid or unconstitutional by the decision of any court of competent jurisdiction, or by any state or federal regulatory authority having jurisdiction thereof, such decision shall not affect the validity of the remaining portions hereof; provided that if a court of competent jurisdiction declares, or any state or federal regulatory authority having jurisdiction declares that Section 10.12 is illegal, invalid, or unconstitutional, or may otherwise not be enforced according to its terms, the city at its option may shorten the franchise term to a period no shorter than ten (10) years from the effective date of this franchise, and in any event no shorter than thirty-six (36) months from the date the city exercises its option.

14.5 Interpretation. Any dispute regarding the interpretation of the franchise terms is to be resolved in a manner most favorable to the public interest.

14.6 Acts of God. Grantee shall not be deemed in default or noncompliance with provisions of this franchise where performance was rendered impossible by war or riots, civil disturbance, hurricanes, floods or other natural catastrophes or similar events beyond grantee's control, and the franchise shall not be revoked or grantee penalized for such noncompliance, provided the grantee takes immediate and diligent steps to bring itself back into compliance and to comply as soon as possible with the franchise under the circumstances without endangering the health, safety and integrity of grantee's employees or property, or the health, safety and integrity of the public, or public or private property.

14.7 Notice. Notice shall be provided by mail, to persons designated by the grantee and the city.

14.8 Descriptive Headings. The headings set forth herein are descriptive only.

14.9 Kansas Law Applies. Kansas law shall govern the interpretation of this franchise.

14.10 Compliance with Applicable Laws. Except as otherwise provided in this franchise, the grantee and the city shall comply with applicable federal and state laws.

Section XV. Repealer.

That Ordinance Number 8544 is hereby repealed.

Section XVI. Effective date.

That this ordinance shall be in full force and effect from and after its adoption and publication once in the official city newspaper.

Introduced: January 6, 1992 Second Reading: January 13, 1992 Third Reading: January 27, 1992

ARTICLE IV. SOUTHWESTERN BELL TELEPHONE COMPANY[5]

ORDINANCE NUMBER 03-10124

AN ORDINANCE GRANTING TO SOUTHWESTERN BELL TELEPHONE COMPANY L.P., d/b/a SBC KANSAS, A FRANCHISE FOR THE RIGHT TO CONSTRUCT, OPERATE, MAINTAIN AND EXTEND A TELECOMMUNICATIONS SYSTEM IN THE CITY OF SALINA, KANSAS, AND REPEALING ORDINANCE NUMBER 98-9894.

Be it ordained by the governing body of the City of Salina, Kansas:

SECTION 1. ***Grant of Franchise.*** Pursuant to K.S.A. 2002 Supp. 12-2001, a contract franchise ordinance is hereby granted to Southwestern Bell Telephone Company L.P., d/b/a SBC Kansas (SBC), a telecommunications local exchange service provider providing local exchange service within the City of Salina, Kansas ("City"), subject to the provisions contained hereafter. The term of this ordinance shall be for a period beginning April 1, 2003, and ending December 31, 2006. Compensation for said contract franchise ordinance shall be established pursuant to Section 3 of this ordinance.

SECTION 2. ***Definitions.*** For the purpose of this contract franchise ordinance, the following words and phrases and their derivations shall have the following meaning:

"Access line" shall mean and be limited to retail billed and collected residential lines; business lines; ISDN lines; PBX trunks and simulated exchange access lines provided by a central office based switching arrangement where all stations served by such simulated exchange access lines are used by a single customer of the provider of such arrangement. Access line may not be construed to include interoffice transport or other transmission media that do not terminate at an end user customer's premises, or to permit duplicate or multiple assessment of access line rates on the provision of a single service or on the multiple communications paths derived from a billed and collected access line. Access line shall not include the following: Wireless telecommunications services, the sale or lease of unbundled loop facilities, special access services, lines providing only data services without voice services process by a telecommunications local exchange services provider or private line service arrangements.

"Access line count" means the number of access lines serving consumers within the corporate boundaries of the city on the last day of each month.

"Access line fee" means a fee determined by a city, up to a maximum as set out in K.S.A. 2002 Supp. 12 –2001 and amendments thereto, to be used by a telecommunications local exchange service provider in calculating the amount of access line remittance.

"Access line remittance" means the amount to be paid by a telecommunications local exchange service provider to a city, the total of which is calculated by multiplying the access line fee, as determined in the city, by the number of access lines served by that telecommunications exchange service provider within that city for each month in that calendar quarter.

"***City Regulations"*** shall refer to all laws, rules, and regulations of the City, whether established by ordinance, resolution, or other authorized method.

"Gross receipts" means only those receipts collected from within the corporate boundaries of the city enacting the franchise and which are derived from the following: (A) Recurring local exchange

[5] **Editor's note:** Ord. No. 98-9894, adopted Oct. 26, 1998, repealed former App. B, Art. IV, §§ 1--14, relative to the Southwestern Bell Telephone Company, and reenacted §§ 1--17 to read as herein set out. The provisions of former §§ 1--14 derived Ord. No. 88-9278, adopted Sept. 26, 1988.

service for business and residence which includes basic exchange service, touch tone, optional calling features and measured local calls; (B) recurring local exchange access line services for pay phone lines provided by a telecommunications local exchange service provider to all pay phone service providers; (c) local directory assistance revenue; (D) line status verification/busy interrupt revenue; (E) local operator assistance revenue; and (F) nonrecurring local exchange service revenue which shall include customer service for installation of lines, reconnection of service and charge for duplicate bills. All other revenues, including, but not limited to, revenues from extended area service, the sale of lease of unbundled network elements, nonregulated services, carrier and end user access, long distance, wireless telecommunications services, lines providing only data service without voice services processed by a telecommunications local exchange service provider, private line service arrangements, internet, broadband and all other services not wholly local in nature are excluded from gross receipts. Gross receipts shall be reduced by bad debt expenses. Uncollectible and late charges shall not be included within gross receipts. If a telecommunications local exchange service provider offers additional services of a wholly local nature which if in existence on or before July 1, 2002, would have been included with the definition of gross receipts, such services shall be included from the date of the offering of such services in the city.

"Local exchange service" means local switched telecommunications service within any local exchange service area approved by the state corporation commission, regardless of the medium by which the local telecommunications service is provided. The term local exchange service shall not include wireless communication services.

"Provider" shall mean a local exchange carrier as defined in subsection (h) of K.S.A. 66-1, 187, and amendments thereto, or a telecommunications carrier as defined in subsection (m) of K.S.A. 66-1, 187, and amendments thereto.

"Public right-of-way" means only the area of real property in which the city has a dedicated or acquired right-of-way interest in the real property. It shall include the area on, below or above the present and future streets, alleys, avenues, roads, highways, parkways or boulevards dedicated or acquired as right-of-way. The term does not include the airwaves above a right-of-way with regard to wireless telecommunications or other nonwire telecommunications or broadcast service, easements obtained by utilities or private easements in platted subdivisions or tracts.

"Telecommunications local exchange service provider" means a local exchange carrier as defined in subsection (h) of K.S.A. 66-1,187, and amendments thereto, and a telecommunications carrier as defined in subsection (m) of K.S.A. 66-1,187, and amendments thereto, which does, or in good faith intends to, provide local exchange service. The term telecommunications local exchange service provider does not include an interexchange carrier that does not provide local exchange service, competitive access provider that does not provide local exchange service or any wireless telecommunications local exchange service provider.

SECTION 3. ***Compensation.*** Compensation made pursuant to this contract franchise ordinance shall be paid on a monthly basis without invoice or reminder from the City and paid within forty-five (45) days after the last day of the applicable month. For the first partial calendar year of this contract franchise ordinance, said compensation shall be a sum equal to 5% of gross receipts. Thereafter, compensation for each calendar year of the remaining term of the contract franchise ordinance shall continue to be based on a sum equal to 5% of gross receipts; unless the City notifies SBC prior to ninety (90) days before the end of the calendar year that it intends to increase or decrease the percentage of gross receipts for the following calendar year or that it intends to switch to an access line fee for the following calendar year. In the event City elects compensation based on an access line fee, nothing herein precludes City from switching back to a gross receipts fee provided City notifies SBC prior to

ninety (90) days before the end of the calendar year. Beginning January 1, 2004, any increased access line fee or gross receipt fee shall be in compliance with the public notification procedures set forth in subsections (l) and (m) K.S.A. 2002 Supp. 12-2001.

SECTION 4. ***Examination of Records***. The City shall have the right to examine, upon written notice to the telecommunications local exchange service provider, no more than once per calendar year, those records necessary to verify the correctness of the compensation paid pursuant to this contract franchise ordinance.

SECTION 5. ***Compliance with Law.*** As a condition of this contract franchise ordinance, SBC is required to obtain and is responsible for any necessary permit, license, certification, grant, registration or any other authorization required by any appropriate governmental entity, including, but not limited to, the City, the Federal Communications Commission (FCC) or the Kansas Corporation Commission (KCC), subject to SBC's right to challenge in good faith such requirements as established by the FCC, KCC or other City regulations. SBC shall also comply with all applicable laws, statutes and/or city regulations, subject to SBC's right to challenge in good faith such laws, statutes and/or city regulations.

SECTION 6. ***Not a Cable Operator.*** This contract franchise ordinance does not provide SBC the right to provide cable service as a cable operator (as defined by 47 U.S.C. § 522 (5)) within the City. Upon SBC's request for a franchise to provide cable service as a cable operator (as defined by 47 U.S.C. § 522 (5)) within the City, the City agrees to timely negotiate such franchise in good faith with SBC. SBC agrees that this franchise does not permit it to operate an open video system without payment of fees permitted by 47 U.S.C. § 573(c)(2)(B) and without complying with FCC regulations promulgated pursuant to 47 U.S.C. § 573.

SECTION 7. ***Facilities***. SBC shall have the right pursuant to this contract franchise ordinance to construct, maintain and operate poles, conduit, cable, switches and related appurtenances and facilities along, across, upon and under any public right-of-way. Such appurtenances and facilities shall be so constructed and maintained as not to obstruct or hinder the usual travel or public safety on such public ways or obstruct the legal use by other utilities.

SECTION 8. ***Limited to Public Right-of-Way***. Nothing in this contract franchise ordinance shall be interpreted as granting SBC the authority to construct, maintain or operate any facility or related appurtenance on property owned by the city outside of the public right-of-way.

SECTION 9. ***Right-of-Way Management***. The authority of SBC to use and occupy the public right-of-way shall always be subject and subordinate to the reasonable public health, safety, and welfare requirements and regulations of the City. The City may exercise its home rule powers in its administration and regulation related to the management of the public right-of-way provided that any such exercise must be competitively neutral and may not be unreasonable or discriminatory. Nothing herein shall be construed to limit the authority of the City to require a competitive infrastructure provider to enter into a contract franchise ordinance.

SECTION 10. ***Limitation on Use of Portion of Right-of-Way***. The City shall have the authority to prohibit the use or occupation of a specific portion of public right-of-way by SBC due to a reasonable public interest necessitated by public health, safety and welfare so long as the authority is exercised in a competitively neutral manner and is not unreasonable or discriminatory. A reasonable public interest shall include the following:

(1) The prohibition is based upon a recommendation of the city engineer, is related to public health, safety and welfare and is nondiscriminatory among providers, including incumbent providers;

(2) SBC has rejected a reasonable, competitively neutral and nondiscriminatory justification offered by the City for requiring an alternate method or alternate route that will result in neither unreasonable additional installation expense nor a diminution of service quality;

(3) the City reasonable determines, after affording the provider reasonable notice and an opportunity to be heard, that a denial is necessary to protect the public health and safety and is imposed on a competitively neutral and nondiscriminatory basis; or

(4) the specific portion of the public right-of-way for which SBC seeks use and occupancy is environmentally sensitive as defined by state or federal law or lies within a previously designated historic district as defined by local, state or federal law.

SECTION 11. ***Right-of-Way Regulations***. SBC shall comply with all laws and city regulations governing the use of public right-of-way.

SECTION 12. ***Repair of Damage to Right-of-Way***. The City requires SBC to repair all damage to the public right-of-way caused by the activities of SBC, or of any agent affiliate, employee, or subcontractor of SBC, while occupying, installing, repairing or maintaining facilities in a public right-of-way and to return the right-of-way, to its functional equivalence before the damage pursuant to the reasonable requirements and specifications of the City. If SBC fails to make the repairs required by the City, the City may effect those repairs and charge SBC the costs of those repairs. If the City incurs damages as a result of a violation of this subsection, then the City shall have a cause of action against SBC for violation of this subsection, any may recover its damages, including reasonable attorney fees, if SBC is found liable by a court of competent jurisdiction.

SECTION 13. ***Fees***. The City may assess any of the following fees against SBC for use and occupancy of the public right-of-way, provided that such fees reimburse the City for its reasonable, actual and verifiable costs of managing the city right-of-way, and are imposed on all such providers in a nondiscriminatory and competitively neutral manner;

(1) A permit fee in connection with issuing each construction permit to set fixtures in the public right-of-way within the City as provided in K.S.A. 17-1901, and amendments thereto, to compensate the City for issuing, processing and verifying the permit application;

(2) an excavation fee for each street or pavement cut to recover the costs associated with construction and repair activity of SWTB, their assigns, contractors and/or subcontractors with the exception of construction and repair activity required pursuant to subsection (l) of K.S.A. 2002 Supp. 17-1901 related to construction and maintenance activities directly related to improvements for the health, safety and welfare of the public; provided, however, imposition of such excavation fee must be based upon a regional specific or other appropriate study establishing the basis for such costs which takes into account the life of the city street prior to the construction or repair activity and the remaining life of the city street. Such excavation fee is expressly limited to activity that results in an actual street or pavement cut;

(3) inspection fees to recover all reasonable costs associated with city inspection of the work of SBC in the right-of-way;

(4) repair and restoration costs associated with repairing and restoring the public right-of-way because of damage caused by SWTB , its assigns, contractors, and/or subcontractors in the right-of-way; and

(5) a performance bond, in a form acceptable to the City, from a surety licensed to conduct

surety business in state of Kansas, insuring appropriate and timely performance in the construction and maintenance of facilities located in the public right-of-way.

SECTION 14. ***Indemnification and Hold Harmless***. SBC shall indemnify and hold the City and its officers and employees harmless against any and all claims, lawsuits, judgments, costs, liens, losses, expenses, fees (including reasonable attorney fees and costs of defense), proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including personal or bodily injury (including death), property damage or other harm for which recovery of damages is sought, to the extent that it is found by a court of competent jurisdiction to be caused by the negligence of SBC, any agent, officer, director, representative, employee, affiliate or subcontractor of SBC, or their respective officers, agents, employees, directors or representatives, while installing, repairing or maintaining facilities in a public right-of-way.

The indemnity provided by this subsection does not apply to any liability resulting from the negligence of the City, its officers, employees, contractors or subcontractors. If SBC and the City are found jointly liable by a court of competent jurisdiction, liability shall be apportioned comparatively in accordance with the laws of this state without, however, waiving any governmental immunity available to the City under state law and without waiving any defenses of the parties under state or federal law. This section is solely for the benefit of the City and SBC and does not create or grant any rights, contractual or otherwise, to any other person or entity.

SECTION *15.* ***Notification of Claims***. SBC or the City shall promptly advise the other in writing of any known claim or demand against SBC or the City related to or arising out of SBC's activities in a public right-of-way.

SECTION 16. ***Removal or Relocation of Facilities***. If requested by City, in order to accomplish construction and maintenance activities directly related to improvements for the health, safety, and welfare of the public, SBC shall remove its facilities from the public right of way or shall relocate or adjust its facilities within the public right of way at no cost to the City. Such relocation or adjustment shall be completed as soon as reasonably possible within the time set forth in any request by the City for such relocation or adjustment. Any damages suffered by the City or its contractors as a result of SBC's failure to timely relocate or adjust its facilities shall be borne by SBC.

SECTION 17. ***Tree Trimming.*** Permission is hereby granted to SBC to trim trees upon any overhanging streets, alleys, sidewalks and public places of said city so as to prevent the branches of such trees from coming in contact with SBC's facilities, all the said trimming shall comply with all applicable laws, statutes and/or city regulations.

SECTION 18. ***Non-exclusive Franchise***. Nothing herein contained shall be construed as giving SBC any exclusive privileges, nor shall it affect any prior or existing rights of SBC to maintain a telecommunications system within the City.

SECTION 19. ***Resold Access Lines.*** SBC shall collect and remit compensation as described in Section 3 on those access lines that have been resold to another telecommunications local exchange service provider.

SECTION 20. ***Notices.*** Any required or permitted notice under this contract franchise ordinance shall be in writing. Notice upon the City shall be delivered by first class United States mail or by personal delivery to:City Manager

City of Salina
P.O. Box 736
Salina, KS 67402-0736

Notice upon SBC shall be delivered by first class United States mail or by personal delivery to:

SBC Kansas
Director-Municipal Affairs
220 E. 6th Street, Room 505
Topeka, KS 66603

SECTION 21. ***Failure to Enforce*.** The failure of either party to enforce and remedy any noncompliance of the terms and conditions of this contract franchise ordinance shall not constitute a waiver of rights nor a waiver of the other party's obligations as provided herein.

SECTION 22. ***Force Majeure***. Each and every provision hereof shall be subject to acts of God, fires, strikes, riots, floods, war and other disasters beyond SBC's or the City's control.

SECTION 23. ***Applicable Law.*** This contract franchise ordinance is made under and in conformity with the laws of the State of Kansas. No such contract franchise shall be effective until the ordinance granting the same has been adopted as provided by law.

SECTION 24. ***Repealer*.** Ordinance Number 98-9894 as extended pursuant to Ordinance Number 02-10121 is hereby repealed effective April 1, 2003.

SECTION 25. ***Effective Date***. Following the adoption of this ordinance and its and publication in the official city newspaper, this ordinance shall be in full force and effect from and after April 1, 2003.

Introduced: January 13, 2003
Passed: January 27, 2003

STATUTORY REFERENCE TABLE

This table shows the location within this Code, either in the text or notes following the text, of references to the state law or related matters.

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