

ORDINANCE NUMBER 17-10907

AN ORDINANCE AMENDING SALINA CODE SECTIONS 2-200, 2-201, 2-206, 2-207, 2-208, 5-16, 5-24, 5-25, 35-40.2, 35-261, 35-262, 35-265, 35-267, AND 35-272 PERTAINING TO THE SALINA BUSINESS IMPROVEMENT DISTRICT NUMBER 1 AND REPEALING THE EXISTING SECTIONS.

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

Section 1. Amendment. Section 2-200 of the Salina Code is amended to read as follows:

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.

Section 2. Amendment. Section 2-201 of the Salina Code is amended to read as follows:

Sec. 2-201. Membership.

The board shall consist of seven (7) members recommended by the board of advisors of the Salina 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 Salina Business Improvement District Number 1.
- (2) Property owner within the Salina Business Improvement District Number 1.
- (3) Design professional, including but not limited to a licensed professional engineer, architect or landscape architect.

Section 3. Amendment. Section 2-206 of the Salina Code is amended to read as follows:

Sec. 2-206. Purpose.

The purpose of the board shall be:

- (1) To advise and make recommendations to the board of city commissioners or Salina 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 the Salina 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.

Section 4. Amendment. Section 2-207 of the Salina Code is amended to read as follows:

Sec. 2-207. Certificate of compatibility.

- (a) No person shall perform or cause to be performed any work to:
 - (1) Construct; demolish; or change the existing exterior design, material, color, texture, finish, or appearance of any building or any other improvement to real property in the Salina Business Improvement District Number 1; or
 - (2) Introduce, change, substitute, or remove any physical feature affecting the

appearance of real property in the Salina Business Improvement District Number 1; without first applying for and obtaining a certificate of compatibility, subject only to the exclusions outlined in subsection (b).

- (b) A certificate of compatibility shall not be required:
 - (1) If the work includes only routine maintenance and results in no change to the existing design, material, color, texture, finish, or appearance of a building or other improvement to real property; or
 - (2) If circumstances warrant authorization of emergency repairs of a pre-approved nature and scope, in the sole discretion of the building official.
- (c) If the work requiring a certificate of compatibility requires any other type of permit, the permit shall not be issued unless a certificate of compatibility has been issued for the work.

Section 5. Amendment. Section 2-208 of the Salina Code is amended to read as follows:

Sec. 2-208. Authorization and findings.

Any application for a building permit which relates to property included within the Salina 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 board members present and voting, any of the following findings can be made:

- (1) The general design, material and color of the proposed construction or change present 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.

In considering applications for certificates of compatibility, the board's decisions shall be based upon the adopted Design Guidelines for Downtown Salina as approved and amended from time to time by resolution of the governing body.

Section 6. Amendment. Section 5-16 of the Salina Code is amended to read as follows:

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 cereal malt beverage.

- (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) *Microbrewery* means a brewery licensed by the director of alcoholic beverage control of the department of revenue to manufacture, store and sell domestic beer.
- (8) *Microbrewery packaging and warehousing facility* means a microbrewery licensed to perform those functions authorized under K.S.A. 41-308b(b).
- (9) *Minor* means any person under twenty-one (21) years of age.
- (10) *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.
- (11) *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.
- (12) *Retailer* means a person who sells at retail, or offers for sale at retail, alcoholic liquors. Retailer does not include a microbrewery, microdistillery or a farm winery.
- (13) *Sale* means any transfer, exchange or barter in any manner or by any means whatsoever for a consideration and includes all sales made by any person, whether principal, proprietor, agent, servant or employee.
- (14) *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 drinking establishment, a licensed caterers or a holders of a temporary permit. "Sell at retail" and "sale at retail" do not refer to or mean sales by a distributor, a microbrewery, a farm winery, a licensed club, a licensed drinking establishment, a licensed caterer or a holder of a temporary permit.
- (15) *Special event* means a picnic, bazaar, festival or other similar community gathering, which has been approved by the governing body.
- (16) *Special event temporary permit* is a permit issued pursuant to K.S.A. 41-2645(e) that allows the permit holder to offer for sale, sell and serve alcoholic liquor for consumption on public streets, alleys, roads, sidewalks or highways for a special event approved by the governing body by ordinance.
- (17) *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.

- (18) *To sell* includes to solicit or receive an order for, to keep or expose for sale and to keep with intent to sell.
- (19) *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.

Section 7. Amendment. Section 5-24 of the Salina Code is amended to read as follows:

Sec. 5-24. Consumption on public streets, alleys, roads or highways.

No person shall drink or consume alcoholic liquor on the public streets, alleys, roads or highways or inside vehicles while on the public streets, alleys, roads or highways, except that alcoholic liquor may be consumed at a special event held on public streets, alleys, roads, or adjoining sidewalks located within the Salina Business Improvement District Number 1, Oakdale Park, Jerry Ivey Park, Bill Burke Park, or the East Crawford Recreation Area; provided that:

- (1) Such public street, alley, or road is closed to motor vehicle traffic by the governing body;
- (2) A written request for such consumption and possession of alcoholic liquor at such special event has been made to the governing body on a application form provided by the city;
- (3) Based upon the information contained in the written application, the special event is reviewed and approved by the governing body, by ordinance, on the basis of criteria established by resolution of the governing body, with or without conditions; and

A special event temporary permit has been issued for the special event pursuant to state law.

Section 8. Amendment. Section 5-25 of the Salina Code is amended to read as follows:

Sec. 5-25. Consumption on specified property owned by the city.

Pursuant to K.S.A 41-719(d):

- (1) It shall be lawful to drink, or consume alcoholic liquor at the following locations and areas, at times and places authorized by the rules and regulations adopted for such locations' operation:
 - (a) Within the fenced grounds of Dean Evans Stadium, located in the East Crawford Recreation Area;
 - (b) Within the confines of the Salina Bicentennial Center, and on the grounds and parking lots under city ownership surrounding the Salina Bicentennial Center, located in Kenwood Park;
 - (c) Within the confines of the Smoky Hill Museum, located at 211 West Iron Avenue;
 - (d) Within the confines of the portion of Memorial Hall leased to Community Access Television of Salina, located at 410 W. Ash; and
 - (e) Within a sidewalk dining area, as defined within chapter 35, pursuant to a sidewalk café license agreement executed by the city commission.
- (2) Only in association with a special event approved by the city manager, with or without conditions, based upon the information contained in a written application on a form provided by the city and consideration on the basis of criteria established by resolution of the governing body, it shall be lawful to drink or consume alcoholic liquor within the boundaries of the

following locations:

- (a) Jerry Ivey Park;
- (b) Bill Burke Park;
- (c) Oakdale Park;
- (d) Those areas within the East Crawford Recreational Area other than within the fenced grounds of Dean Evans Stadium;
- (e) The Municipal Golf Course; and
- (f) Those areas within the Salina Business Improvement District Number 1 owned by the city and not requiring a special event temporary permit pursuant to Section 5-24.

Section 9. Amendment. Section 35-40.2 of the Salina Code is amended to read as follows:

Sec. 35-40.2. Use of public sidewalk in C-4 Central Business District for placement of moveable flower pots, planters, bicycle racks and business only-placement of moveable signs and outdoor furniture.

If any owner of a building constructed without setback from an abutting public sidewalk, plaza or arcade in the C-4 central business district requests a permit for use by the owner or the owner's tenant of the abutting sidewalk, plaza or arcade for the placement of movable flower pots, movable planters, moveable bicycle racks, and/or business-hours-only placement of movable signs and/or movable 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 regulations recommended by the city manager and adopted by the city commission. A moveable sign for which a permit is obtained pursuant to this section shall be exempt from any other sign permit requirements.

Section 10. Amendment. Section 35-261 of the Salina Code is amended to read as follows:

Sec. 35-261. Definitions.

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

- (1) *Adjoining sidewalk or plaza* means the area of sidewalk or plaza located within the area defined by the projection of the angle of the exterior walls of a restaurant building. If a restaurant building has adjoining sidewalk or plaza on connecting sides, the area between the two resulting segments of adjoining sidewalk or plaza may be included in the “adjoining sidewalk or plaza” for purposes of determining the sidewalk dining area.
- (2) *Applicant* means the owner of a restaurant who has filed with the city an application for a sidewalk café license agreement.
- (3) *Application* means the completed city form and any accompanying documentation filed with the city by the applicant for the purpose of obtaining a sidewalk café license agreement.
- (4) *Extended sidewalk or plaza* means the area of sidewalk or plaza connected to and uninterrupted extending from the adjoining sidewalk or plaza.
- (5) *Licensee* means the owner of a restaurant authorized under this article to use sidewalk and/or plaza for sidewalk dining pursuant to a sidewalk café license agreement.

- (6) *Plaza* means any uncovered city-owned real property or public right-of-way designated for pedestrian public use and not motor vehicle traffic or parking.
- (7) *Restaurant* shall have the same meaning as provided in section 42-755.
- (8) *Sidewalk dining* means the consumption of food, beverages (including, but not limited to, alcoholic liquor beverages or cereal malt beverages), or both, by patrons of a restaurant outdoors on a specific area of a sidewalk and/or plaza set aside for that purpose.
- (9) *Restaurant building* means the building in which a restaurant is located within the Salina Business Improvement District Number 1
- (10) *Sidewalk café license agreement* means the agreement between the city and the owner of a restaurant stating the terms under which the owner of the restaurant may utilize the sidewalk dining area for sidewalk dining.
- (11) *Sidewalk dining area* means that portion of the adjoining sidewalk or plaza and, if applicable, the extended sidewalk or plaza which has been approved by the city for sidewalk dining pursuant to a sidewalk café license agreement.
- (13) *Unobstructed walkway* means the area of sidewalk and/or plaza to remain open for unobstructed pedestrian traffic between the sidewalk dining area and street curb, permanent plantings, permanent street lighting, or other permanent obstructions.

Section 11. Amendment. Section 35-262 of the Salina Code is amended to read as follows:

Sec. 35-262. Sidewalk café license agreement required; sidewalk dining prohibited outside of the Salina Business Improvement District Number 1.

No owner or manager of a restaurant shall permit sidewalk dining without first obtaining a sidewalk café license agreement. No sidewalk café license agreement shall be issued for an establishment that does not meet the definition of “restaurant” or for a restaurant located outside of the Salina Business Improvement District Number 1.

Section 12. Amendment. Section 35-265 of the Salina Code is amended to read as follows:

Sec. 35-265. Application approval or denial.

- (a) *Review by Salina Business Improvement District Number 1 design review board.* An application for a sidewalk café license agreement shall be referred by the zoning administrator to the Salina Business Improvement District Number 1 design review board for review. The Salina Business Improvement District Number 1 design review board shall review such application within a reasonable time thereafter.
- (b) *Recommendation to city commission; city commission review.* After reviewing an application, the Salina Business Improvement District Number 1 design review board shall submit a written recommendation to the city commission, which may adopt, modify or reject the recommendation of the Salina Business Improvement District Number 1 design review board, or may return the application to the Salina Business Improvement District Number 1 design review board for further consideration together with a statement specifying the basis therefore. If the city commission

chooses to approve an application, subject to its modifications, if any, and to execute the sidewalk café license agreement, the application shall be incorporated into the sidewalk café license agreement.

(c) *Criteria for review and recommendation.*

- i. *Review.* The Salina Business Improvement District Number 1 design review board shall review all applicable evidence regarding the sidewalk dining area, existing and proposed structures, neighboring uses, street access, pedestrian traffic circulation, utilities, drainage, the proposed operation, and such other evidence as deemed appropriate.
- ii. *Standards.* The Salina Business Improvement District Number 1 design review board shall issue a recommendation in relation to each specific application based upon specific written findings of fact taking into consideration the particular evidence presented to it, in order to determine whether the proposed sidewalk café license agreement complies with the following criteria:
 - 1.The proposed sidewalk café license agreement complies with all applicable provisions of this article or administrative regulations adopted pertaining to sidewalk dining;
 - 2.Sidewalk dining on the sidewalk dining area will contribute to the welfare of the public by increasing the vibrancy and appeal of the city in the Salina Business Improvement District Number 1;
 - 3.Sidewalk dining on the sidewalk dining area will not cause substantial injury to the value of other property in the neighborhood in which it is located; and
 - 4.The location and size of the sidewalk dining area with respect to unobstructed walkway in the immediate vicinity of the sidewalk dining area will not unreasonably impede pedestrian traffic.

(d) *Denial authority.*

- i. The above notwithstanding, the Salina Business Improvement District Number 1 design review board is authorized to deny an application if one of the following conditions are satisfied by mailing a notice of denial to the applicant at the applicant's address provided in the application, stating the reason for the denial and that the applicant has the right to appeal such denial:
 - 1.The application is incomplete;
 - 2.The applicant does not meet the definition of a "restaurant" as provided by section 35-261 above;
 - 3.The proposed use of the sidewalk and/or plaza in the application will not comply with this article or regulations adopted pursuant to this article; or
 - 4.The applicant has had a sidewalk café license agreement terminated by the city for any reason within two years prior to submission of the application.

Provided, however, that if the sole basis for denial is an incomplete application, the Salina Business Improvement District Number 1 design review board may allow the applicant additional time to complete the application.

If the Salina Business Improvement District Number 1 design review board denies an application, the applicant may appeal the denial to the city commission by filing a notice of appeal in the office of the city clerk on a form provided by that office. The notice of appeal must be filed within 14 calendar days of the date of the board's decision and shall state the basis for the appeal. The city commission shall review such denial within a reasonable time thereafter and may affirm or overrule the denial of the Salina Business Improvement District Number 1 design review board, may approve the sidewalk café license agreement with additional conditions, or may return the application to the Salina Business Improvement District Number 1 design review board for further consideration together with a statement specifying the basis therefore.

Section 13. Amendment. Section 35-267 of the Salina Code is amended to read as follows:

Sec. 35-267. Sidewalk café license agreement renewal; denial.

(a) *Renewals.*

- i. *Payment of fee and certificate of insurance.* The Salina Business Improvement District Number 1 design review board shall grant an annual renewal of a sidewalk café license agreement then in effect for an existing or reduced sidewalk dining area, upon submission by licensee to the city clerk of a renewal application form, along with payment of the renewal fee and submission of a certificate of insurance establishing that the applicant has procured appropriate liability insurance and that such insurance is current, in accordance with section 35-268, unless as otherwise provided in subsection (b) below.
- ii. *Payment deadline.* *Payment of the renewal fee and submission of a certificate of insurance must be delivered to the city clerk by February 1. If a licensee fails to make the renewal payment and/or to provide an adequate certificate of insurance by February 1, the licensee must pay a \$50 penalty prior to March 1 to be eligible for an annual renewal of a sidewalk café license agreement, in addition to satisfying other renewal requirements under this section. No payments or certificates of insurance shall be accepted for renewal purposes after March 1.*

(b) *Denial authority.*

- i. *Grounds.* The Salina Business Improvement District Number 1 design review board shall not grant an annual renewal and shall mail a notice of denial to the licensee at the licensee's address shown on the renewal application, stating the reason for the non-renewal and that the licensee has the right to appeal such non-renewal, if:
 1. The licensee has failed to pay the appropriate renewal fee and/or has failed to submit to the city clerk the requisite certificate of insurance by the deadlines set forth above;
 2. The city has received a written objection or notice of withdrawal of permission from an owner of record (including any equitable owners) or any tenants of real property whose permission is required pursuant to section 35-264(d); or

- 3. The city commission has directed that such renewal shall not be issued.
 - ii. *Effect.* If the Salina Business Improvement District Number 1 design review board does not grant a renewal, the sidewalk café license agreement shall terminate on May 1.
- (c) *Appeals.*
- i. *City commission hearing.* If the Salina Business Improvement District Number 1 design review board declines to renew a sidewalk café license agreement, the licensee may appeal the decision of the Salina Business Improvement District Number 1 design review board to the city commission by filing a notice of appeal in the office of the city clerk, on a form provided by that office. The notice of appeal must be filed within 14 calendar days of the date of the board’s decision and, and such written request shall state the basis for the appeal. The city commission shall review the Salina Business Improvement District Number 1 design review board’s decision within a reasonable time thereafter and may affirm or overrule the decision of the Salina Business Improvement District Number 1 design review board, may renew the sidewalk café license agreement with additional conditions, or may return the issue of renewal to the Salina Business Improvement District Number 1 design review board for further consideration together with a statement specifying the basis therefore.
 - ii. *Pendency of appeal.* The term of the sidewalk café license agreement shall be extended during the pendency of any appeal to the city commission under this section, provided that the basis for the Salina Business Improvement District Number 1 design review board’s decision is not based, in whole or in part, upon the licensee’s failure to submit to the city clerk the requisite certificate of insurance.

Section 14. Amendment. Section 35-272 of the Salina Code is amended to read as follows:

Sec. 35-272. City’s rights to execute other license agreements unaffected. Nothing in this article shall be construed to limit the city’s right to execute license agreements outside the Salina Business Improvement District Number 1 or to execute license agreements not relating to sidewalk dining in the Salina Business Improvement District Number 1.

Section 15. Repealer. Existing Salina Code Sections 2-200, 2-201, 2-206, 2-207, 2-208, 5-16, 5-24, 5-25, 35-40.2, 35-261, 35-262, 35-265, 35-267, 35-272 are repealed.

Section 16. Effective. This ordinance shall be in full force and effect from and after its adoption and publication once in the official city newspaper by the following summary:

Ordinance No. 17-10907 Summary

On November 13, 2017 the City Commission passed Ordinance No. 17-10907. The Ordinance amends Salina Code Sec. 2-200, 2-201, 2-206, 2-207, 2-208, 5-16, 5-24, 5-25, 35-40.2, 35-261, 35-262, 35-265, 35-267, and 35-272 pertaining to the Salina Business Improvement District Number 1 and repeals the existing sections. A complete copy of the Ordinance can be found at www.salina-ks.gov or in the office of the City Clerk, 300 W. Ash, free of charge. This summary is certified by the City’s legal counsel.

Introduced: November 6, 2017
Passed: November 13, 2017

Kaye J. Crawford, Mayor

[SEAL]
ATTEST:

Shandi Wicks, CMC, City Clerk

The publication summary set forth above is certified this ____ day of November, 2017:

Greg A. Bengtson, City Attorney