

CHARTER ORDINANCE NO. NINETY-NINE

A CHARTER ORDINANCE EXEMPTING THE CITY OF OVERLAND PARK, KANSAS, FROM ALL THE PROVISIONS OF K.S.A. 12-1692, 12-1693, 12-1694, 12-1694b, AND K.S.A. 12-1695, WHICH RELATE TO THE LEVY OF A TRANSIENT GUEST TAX BY CITIES LOCATED WITHIN COUNTIES HAVING A POPULATION OF MORE THAN THREE HUNDRED THOUSAND (300,000); FROM ALL THE PROVISIONS OF K.S.A. 12-1696, RELATING TO DEFINITIONS PERTAINING TO TRANSIENT GUEST TAX; FROM THE PROVISIONS OF K.S.A. 12-1697 (a) RELATING TO THE LEVY OF TRANSIENT GUEST TAX; FROM THE PROVISIONS OF K.S.A. 12-1698 (e), RELATING TO CITY TRANSIENT GUEST TAX FUND; FROM ALL THE PROVISIONS OF K.S.A. 12-16,101, RELATING TO A COMMITTEE TO MAKE RECOMMENDATIONS FOR PROGRAMS AND EXPENDITURES; AND FROM ALL THE PROVISIONS OF K.S.A. 12-16,113, RELATING TO AN ANNUAL ACCOUNTING OF EXPENDITURES; PROVIDING SUBSTITUTE AND ADDITIONAL PROVISIONS ON THE SAME SUBJECT; AND FURTHER REPEALING CHARTER ORDINANCE NUMBERS THIRTY-FIVE, FORTY-ONE, FIFTY-SEVEN, SEVENTY, AND NINETY-ONE.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF OVERLAND PARK, KANSAS:

Section 1. The City of Overland Park, 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 all the provisions of K.S.A. 12-1692, 12-1693, 12-1694, 12-1694b, and K.S.A. 12-1695, which relate to the levy of a transient guest tax by cities located within counties having a population of more than three hundred thousand (300,000); all the provisions of K.S.A. 12-1696, relating to definitions pertaining to transient guest tax; the provisions of Subparagraph (a) of K.S.A. 12-1697 and the provisions of Subparagraph (e) of K.S.A. 12-1698, which relate to the levy of a transient guest tax, to the maximum rate thereof, and to the purposes for which transient guest tax revenues may be spent; all the provisions of K.S.A. 12-16,101, relating to a committee to make recommendations for programs and expenditures; and all the provisions of K.S.A. 12-16,113, relating to an annual accounting of expenditures; and hereby provides substitute and additional provisions on the same subjects as set forth herein; hereby authorizes the issuance of transient guest tax revenue bonds without an election thereon; hereby authorizes expenditure of transient guest tax revenues for the purpose of paying the principal and interest on sales tax revenue bonds, transient guest tax revenue bonds or other bonds issued by the City for certain purposes; hereby authorizes a pledge solely and only of transient guest tax revenues to the payment of transient guest tax revenue bonds without an election thereon; hereby authorizes the appointment or establishment of a body to make recommendations for programs and expenditures; and hereby authorizes an annual accounting of expenditures. Such referenced statutes are applicable to the City of Overland Park but are part of enactments that are not uniformly applicable to all cities in Kansas.

Section 2. The City of Overland Park, Kansas, a city of the first class, by the power invested in it by Article 12, Section 5, of the Constitution of the State of Kansas, hereby elects to exempt, and does exempt itself from all the provisions of K.S.A. 12-1692, 12-1693, 12-1694, 12-1694b, and 12-1695, which are part of enactments that apply to said city, but not uniformly to all cities, and provides the following substitute and additional provisions on the same subject:

“The City of Overland Park is a city of the first class authorized by law to levy transient guest tax. The transient guest tax levied by the City shall be administered and collected by the Kansas Department of Revenue in accordance with K.S.A. 12-1696 et seq. and amendments thereto and this Ordinance.”

Section 3. The City of Overland Park, Kansas, a city of the first class, by the power invested in it by Article 12, Section 5, of the Constitution of the State of Kansas, hereby elects to exempt, and does exempt itself from all the provisions of K.S.A. 12-1696, which is part of an enactment that applies to said city, but not uniformly to all cities, and provides the following substitute and additional provisions on the same subject:

“As used in this act, the following words and phrases have the meaning respectively ascribed to them herein:

(a) “Person” means an individual, firm, partnership, corporation, joint venture or other association of persons;

(b) “Hotel, motel or tourist court” means: (1) any structure or building which contains rooms furnished for the purposes of providing lodging, which may or may not also provide meals, entertainment or various other personal services to transient guests, and which is kept, used, maintained, advertised or held out to the public as a place where sleeping accommodations are sought for pay or compensation by transient or permanent guests and having more than two bedrooms furnished for the accommodation of such guests; or (2) any short-term rental.

(c) “Transient guest” means a person who occupies a room in a hotel, motel or tourist court for not more than 28 consecutive days;

(d) “Business” means any person engaged in the business of renting, leasing or letting living quarters, sleeping accommodations, rooms or a part thereof in connection with any hotel, motel or tourist court, including any short-term rental company;

(e) “Accommodations broker” means any business which maintains an inventory of two or more rooms in one or more locations which are offered for pay to a person or persons for not more than 28 consecutive days.

(f) “Short-term rental” means any home, cabin, apartment, condominium, or other residential dwelling where one or more rooms is offered for pay to a person or persons, and which is advertised online through a short-term rental company.

(g) “Short-term rental company” means a person or an affiliate of the person that: (1) provides a platform through which an unaffiliated person, or the agent of an unaffiliated person, offers one or more short-term rentals in exchange for payment, and (2) the person or an affiliate of the person collects or processes the payment for the short-term rentals.

Section 4. The City of Overland Park, Kansas, 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, the provisions of K.S.A. 12-1697(a), which is part of an enactment that applies to said city, but not uniformly to all cities, and provides the following substitute and additional provisions on the same subject:

“(a) The Governing Body of the City of Overland Park, Kansas, is hereby authorized to levy a transient guest tax at a rate not to exceed nine percent (9%) 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 Governing Body and shall be specified in an ordinary ordinance authorizing the same.”

Section 5. The City of Overland Park, Kansas, 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, the provisions of K.S.A. 12-1698(e), which is part of an enactment that applies to said city, but not uniformly to all cities, and provides the following substitute and additional provisions on the same subject:

“(e)(i) Revenues received by the City from the transient guest tax shall be expended solely and only for the purpose of promoting activities relating to conventions and tourism; for the purpose of paying all or a part of the cost of designing, acquiring, constructing, reconstructing, improving, equipping, furnishing, repairing, enlarging, remodeling, operating and maintaining capital projects relating to conventions and tourism, including, but not limited to real estate, buildings, improvements, furnishings, machinery and equipment for a convention center, exposition hall, public auditorium and related facilities; for the purpose of paying the principal and interest on sales tax revenue bonds, transient guest tax revenue bonds or other bonds issued by the City, the proceeds of which are used to design, acquire, construct, reconstruct, improve, equip, furnish, repair, enlarge and remodel such capital projects; and for the purpose of paying for economic development in an amount up to \$50,000 per year. The revenues received by the City from the transient guest tax shall be credited to such fund or funds of the City and shall be apportioned among the above-listed purposes in an ordinary ordinance.

(ii) The City of Overland Park is hereby authorized to issue transient guest tax revenue bonds for the purpose of paying all or part of the cost of designing, acquiring, constructing, reconstructing, improving, equipping, furnishing, repairing, enlarging or remodeling capital projects relating to conventions and tourism, including, but not limited to, real estate, buildings, improvements, furnishings, machinery and equipment for a convention center, exposition hall, public auditorium and related facilities, and to pledge solely and only transient guest tax revenues to the payment of the transient guest tax revenue bonds, all without an election thereon. In no event shall such bonds be a general obligation of the City of Overland Park, nor constitute an indebtedness of the City of Overland Park for which the faith and credit of the City of Overland Park is pledged, nor give rise to a charge against the general credit or taxing powers of the City of Overland Park, and such bonds shall so state on their face.”

Section 6. The City of Overland Park, Kansas, 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, the provisions of K.S.A. 12-16,101, which is part of an enactment that applies to said city, but not uniformly to all cities, and provides the following substitute and additional provisions on the same subject:

“The City may adopt a resolution setting forth substitute and additional provisions for establishing or appointing a committee or other body to make recommendations concerning the use of transient guest taxes to serve the needs of the City.”

Section 7. The City of Overland Park, Kansas, 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, the provisions of K.S.A. 12-16,113, which is part of an enactment that applies to said city, but not uniformly to all cities, and provides the following substitute and additional provisions on the same subject:

“Any entity which receives transient guest tax revenues from the City in the aggregate in any year in excess of \$25,000 for the purpose of paying the costs of tourism and convention activities pursuant to any charter ordinance, ordinance, or resolution which imposes a transient guest tax, shall provide for the separate accounting of the receipt and disbursement of such funds and shall provide to the city an accounting of the receipt and expenditures of such funds that is acceptable to the City after the end of the fiscal year of such entity.”

Section 8. Rules and Regulations. The City Manager is authorized to adopt reasonable rules and regulations as may be necessary for the lawful implementation of this Ordinance.

Section 9. Severability. It is hereby declared to be the intention of the governing body that the sections, subsections, paragraphs, sentences, clauses and phrases of this charter ordinance are severable, and if any phrase, clause, sentence, paragraph, subsection or section of this charter ordinance shall be declared unconstitutional or otherwise invalid by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs, subsections and sections of this charter ordinance, since the same would have been enacted by the governing body without the incorporation into this charter ordinance of any unconstitutional or otherwise invalid phrase, clause, sentence, paragraph, subsection or section.

Section 10. Charter Ordinance Nos. Thirty-Five, Forty-One, Fifty-Seven, Seventy, and Ninety-One are hereby repealed.

Section 11. This Ordinance shall be published once each week for two consecutive weeks in the official City newspaper.

Section 12. THIS IS A CHARTER ORDINANCE AND SHALL TAKE EFFECT 61 DAYS AFTER FINAL PUBLICATION UNLESS WITHIN 60 DAYS OF ITS FINAL PUBLICATION A PETITION SIGNED BY A NUMBER OF ELECTORS OF THE CITY OF OVERLAND PARK EQUAL TO NOT LESS THAN TEN PERCENT OF THE NUMBER OF ELECTORS WHO VOTED AT THE LAST PRECEDING REGULAR CITY ELECTION SHALL BE FILED IN THE OFFICE OF THE CITY CLERK OF OVERLAND PARK

DEMANDING AN ELECTION ON THE CHARTER ORDINANCE, IN WHICH CASE THE CHARTER ORDINANCE SHALL BECOME EFFECTIVE ONLY IF AND WHEN 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, the 20th day of July, 2020.

CITY OF OVERLAND PARK

(s) Carl Gerlach
Carl Gerlach, Mayor

ATTEST:

(s) Elizabeth Kelley
Elizabeth Kelley
City Clerk

APPROVED AS TO FORM:

(s) Michael Koss
Michael Koss
Senior Assistant City Attorney