

**ORDINANCE NO. ROCR-3305**

**AN ORDINANCE OF THE CITY OF OVERLAND PARK, KANSAS RELATING TO REGULATION OF SIGNS; AMENDING AND REPEALING EXISTING OVERLAND PARK MUNICIPAL CODE SECTIONS 5.70.90 AND 7.04.170 AND PROVIDING SUBSTITUTE PROVISIONS THEREFOR.**

WHEREAS, at the recommendation of City staff and the Planning Commission, the Governing Body adopted Ordinance No. ZRR-3300 revising the City’s regulations of signs in the Unified Development Ordinance; and

WHEREAS, in light of the changes made to the Unified Development Ordinance by Ordinance No. ZRR-3300, the Governing Body hereby finds it both necessary and appropriate to change the following sections of the Overland Park Municipal Code as set forth hereafter.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF OVERLAND PARK, KANSAS, AS FOLLOWS:

SECTION 1. Overland Park Municipal Code Section 5.70.090 is hereby amended to read as follows:

**5.70.090 Prohibited Acts.**

---

It is unlawful for any transient merchant to:

- A. Operate or conduct business or activities in violation of any zoning requirements of the City, including but not limited to, set back requirements.
- B. Operate or conduct business or activities except in areas zoned C-3, CP-3, M-2, MP-2, CP-3J, IP-2J, PEC-3J, or PRB-3J, and where the conduct of such business or activities shall be within two hundred (200) feet of any residentially zoned property used for residential purposes.
- C. Operate or conduct business or activities until one-half hour before sunrise or after one-half hour past sunset or at any time that would cause the need for the use of artificial lighting other than existing lighting.
- D. Fail to provide safely accessible and sufficient parking for customers and employees of the Transient Merchant. For the purposes of this Section, “safely accessible” parking means a parking area configured so that the Transient Merchant’s employees and customers can safely enter and exit the public and private right-of-way without creating a traffic, sight distance or any other type of hazard or danger. For the purposes of this Section, “sufficient” parking means a number of parking spaces equal to or exceeding the number of employees on site plus customer parking in a quantity that is reasonably likely to prevent customer parking overflows given the nature of the Transient Merchant’s business or activities.
- E. Locate the Transient Merchant business or activities, including business vehicles, structures, signs and parking, in a manner that causes congestion, interferes with the traffic flow, or prevents the normal use of parking facilities by existing businesses in the same area. In no event shall a Transient Merchant located entirely or partly in a parking lot used by an existing business reduce the number of available parking spaces to a level more than ten (10%) percent below the total number of parking spaces required by the zoning regulations.
- F. Use any electronic device for sound amplification in an outdoor area, or to otherwise violate any applicable noise ordinance or regulation.

- G. Provide any false or misleading information in completing the license application, or to fail to obtain permission of the property owner or property manager where such business or activity is being conducted.
- H. Fail to provide at the request of a customer a written receipt for purchases exceeding FIVE DOLLARS in cash or tangible property which receipt shall be electronically printed or signed by the Person making the sale and shall set forth: the name and contact information of the Transient Merchant, a brief description of the goods, wares, merchandise or services sold, the total purchase price, the amount of applicable sales tax, the amount of payment, and the balance due and terms of payment (if any).
- I. Fail to provide any Person the Transient Merchant's name, the name of the company or organization represented, or the name of the goods, wares, merchandise or services sold, or to make any representation as to identity which is false or misleading.
- J. Fail to allow authorized law enforcement officers or City officers to enter into or upon the premises or to otherwise interfere with any inspection of the premises or business.
- K. Fail to remove any structure, device, trash, or debris caused, created or associated with the Transient Merchant's business or activities in an outdoor area.
- L. Operate or conduct business or activities if the licensee or any agent or employee has been convicted of a felony, misdemeanor, or ordinance violation involving force, violence, moral turpitude, deceit, fraud, or the violation of any law regulating the act of solicitation, peddling, hawking, canvassing, or merchandising within the past five (5) years in this state or any other state or subdivision thereof or of the United States.
- M. Erect or display more than one sign or any sign greater than allowed for a temporary sign in O.P.M.C. Section 18.440.130 (as may be amended). When approved with the license, a separate sign permit shall not be required. Any attention attracting device or any other prohibited sign as set forth in O.P.M.C. Section 18.440.020 (as may be amended) are prohibited from use.
- N. Erect or construct any structure, tent, or building greater than one hundred and twenty (120) square feet.
- O. Operate or conduct business or activities within fifty (50) feet of any driveway entrance or access lane from a public street to an existing business.
- P. Operate or conduct more than one Transient Merchant business or activity on the same property at any one time.
- Q. Operate or conduct business or activities in the public right-of-way or in or upon any park or other public property.
- R. Operate or conduct business or activities that create a traffic or sight distance hazard or any other type of public hazard or danger.

SECTION 2. Overland Park Municipal Code Section 7.04.170 is hereby amended to read as follows:

### **7.04.170 Definitions.**

For purposes of this Act, the following definitions shall apply:

- A. **City** shall mean the City of Overland Park, Kansas.
- B. **Property owner** shall mean the named property owner as indicated by the records of the Records and Tax Administration or Appraiser's Office in Johnson County, Kansas.
- C. **Drainageway** shall mean a man-made or natural conveyance that transports stormwater overland which is frequently referred to as a channel, swale, engineered swale, ditch, gully, stream, or watercourse. The **drainageway** includes all land inundated during the 1% design storm. A drainageway does not include areas where water flows in a non-concentrated or sheet

flow condition.

- D. **Representative** shall mean any person or entity listed in the Johnson County, Kansas, Appraiser's Office or Treasurer's Office for the purposes 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 real property; or a corporate officer.
- E. **Person** shall mean any individual; individuals; partnership; corporation; unincorporated association; other business organization; committee; board; trustee; receiver; agent; or any representative who has charge, care 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.
- F. **Tenant** shall mean any person who has a severable or nonseverable interest in the real property either by 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 real property.
- G. **Perennial violator** shall mean any person who shows an annual pattern of failing to comply with this Act which may be shown by repeated notices of abatement, notices of costs, or previous violations of this Act.
- H. **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, graffiti, rank vegetation; rank or infested compost heaps; dense smoke; excessive dust, ash, or fine particles in the air; rank ponds or standing water including swimming pools, water receptacles, and undrained areas; cesspools creating on or rising to the surface; rank odors; unkempt trash, refuse, brush and limbs, debris or building materials; rank sewage or septic system; excessive accumulation of animal waste; exposed animal carcasses after death; sheds, garages, or other out-buildings allowing infestation of rodents or insects or left unsecured to allow entry of animals, humans, or the natural elements such as rain, hail and snow, or otherwise left unkempt or unsightly, except for outdoor dog or pet houses maintained in a clean and reasonable manner; trees, shrubs, or plants which are dead, diseased or infested which present a harmful or dangerous condition to the public; exposed refrigerators or freezers, or other appliances left unsecured; private streets on residential and commercial properties containing potholes or other conditions creating safety hazards for pedestrians or motor vehicles; encroachments in the public right-of-way for private purposes which create a safety hazard including, but not limited to, fixed basketball goals and masonry mailbox enclosures; surface discharge from sump pumps or other subsurface drainage lines in a manner that causes buildup of algae or ice that endangers pedestrian or vehicular traffic; and any other condition which is determined to present a dangerous or harmful condition to the public.
- I. **Unsafe structure** 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, due to the opinion of qualified experts or inspectors, including but not limited to, fire, engineering, or architectural experts, 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 30 days; structures which remain unfinished, or without an occupancy permit, after 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 45 days.

- J. **Qualified expert** shall mean a person who is regularly employed to conduct structural inspections to comply with life, safety, mechanical, health, and building codes or a licensed professional in the field of engineering or architecture.
- K. **Graffiti** shall mean any drawing, painting, writing, inscription, 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, utility box, utility pole, 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.

SECTION 4. Existing Overland Park Municipal Code Sections 5.70.090, and 7.04.170 are hereby repealed.

SECTION 5. If any section, subsection, sentence, clause or phrase of this Ordinance is, for any reason, held to be unconstitutional, unenforceable, or otherwise void, such decision shall not affect the validity of the remaining portions of this Ordinance and the provisions hereby adopted.

SECTION 6. Nothing in this Ordinance shall be construed to affect any notice of violation, suit or proceeding impending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing, under any act or ordinance hereby repealed as set forth in this Ordinance; nor shall any just or legal right or remedy of any character be lost, impaired or affected by this Ordinance.

SECTION 7. This Ordinance shall take effect and be in force from January 1, 2021 and after its publication in the official City newspaper as required.

PASSED by the City Council this 7th day of December, 2020.

APPROVED by the Mayor this 7th day of December, 2020.

**CITY OF OVERLAND PARK, KANSAS**

(SEAL)

(s) Carl Gerlach  
 \_\_\_\_\_  
 Carl Gerlach, Mayor

ATTEST:

APPROVED AS TO FORM:

(s) Elizabeth Kelley  
 \_\_\_\_\_  
 Elizabeth Kelley  
 City Clerk

(s) Stephen B. Horner  
 \_\_\_\_\_  
 Stephen B. Horner  
 Senior Assistant City Attorney