

**ORDINANCE NO. ZRR-3314**

**AN ORDINANCE OF THE CITY OF OVERLAND PARK, KANSAS RELATING TO THE UNIFIED DEVELOPMENT ORDINANCE AND THE REGULATIONS REGARDING PROTEST PETITIONS FOR REZONINGS AND SPECIAL USE PERMITS; AMENDING AND REPEALING EXISTING OVERLAND PARK MUNICIPAL CODE SECTIONS 18.140.150 AND PROVIDING SUBSTITUTE PROVISIONS THEREFOR.**

WHEREAS, at the recommendation of City staff and the Planning Commission, the Governing Body is hereby revising the City’s regulations regarding protest petitions for rezonings and special use permits in the Unified Development Ordinance 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 18.140.150 is hereby amended/added to read as follows:

**18.140.150 Consideration of Rezonings and Special Use Permits**

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**A. Public hearing required.**

Consideration of all applications for rezoning or a special use permit shall require a public hearing before the Planning Commission, with publication notice and notice to surrounding property owners as required by Sections 18.140.070 and 18.140.080, respectively.

**B. Procedures.**

Except as hereinafter provided, the procedures for Planning Commission and Governing Body consideration of rezoning or special use permit applications shall conform to the procedures set forth in Section 18.140.120 for zoning text amendments. Prior to submission of the application to the Planning Commission, City staff shall determine whether dedication of right-of-way will be required pursuant to the provisions of 18.400. The Governing Body shall not take action on an original recommendation of the Planning Commission unless the time for filing the protest petition as provided in subsection C has elapsed. Provided, however, that where the right to file a protest petition has been waived in a verified statement signed by all property owners holding such right, the Governing Body may consider the recommendation at any time.

**C. Protest petitions.**

1. A protest petition against any rezoning or a special use permit application shall be filed in the office of the City Clerk not later than the end of the business day (5:00 p.m.) on the 14th day following the date of the conclusion of the Planning Commission's public hearing held pursuant to the publication notice. In order to be considered a "valid" protest, a protest petition must be timely filed and duly signed and verified by the owners of record of 20% or more of the property subject to the application or by the owners of record of 20% or more of the total property within the area required to be notified by Section 18.140.080, excluding streets and public ways and the property subject to the application when provided for by K.S.A. 12-757(f). Verification of the genuineness and correctness of the signatures on the protest petition, either individually or collectively, shall be made by a person who has signed the protest petition.
2. The 14-day period for filing the protest petition shall begin with the day following the

conclusion of the public hearing before the Planning Commission and shall end at 5:00 p.m. on the 14th calendar day thereafter. For purposes of calculating the 14-day period, weekends and holidays shall be counted. Provided, however, if the filing deadline falls on a weekend, holiday or other non-business day for City offices, then the filing deadline shall be at 5:00 p.m. on the next regular business day.

3. Once a valid protest petition has been filed with the City, it may be withdrawn as follows:
  - a. A property owner who has signed a protest petition may withdraw the property owner's name and property from the protest petition by filing with the City Clerk a verified affidavit of the property owner's withdrawal from the protest petition no later than the end of business (5:00 pm) on the third day following the end of the above-described 14-day period. The affidavit shall state and fully explain the rights being waived by the withdrawal. In such event, the protest percentage for the total protest area shall be adjusted accordingly. If the property is owned by more than one owner of record, the withdrawal of any owner shall be sufficient to effectuate the withdrawal under this section.
  - b. The entire protest petition may be withdrawn if every property owner who signed the protest petition signs a verified affidavit of withdrawal which states and fully explains the rights being waived by the withdrawal of the protest petition. Such affidavits of withdrawal must be filed with the City Clerk no later than the end of business (5:00 pm) on the third day following the end of the above-described 14-day period.
  - c. For purposes of withdrawal, signatures shall not be required of the City where City-owned property lies within the protest area or of entities controlling rights-of-way or utility easements.

**D. Adoption where valid protest petition filed.**

Where a valid protest petition has been filed, an ordinance approving the rezoning or special use permit application shall not be passed except by the affirmative vote of ten (10) or more members of the Governing Body.

**E. Criteria for considering applications.**

In considering any application for rezoning or a special use permit, the Planning Commission and the Governing Body may give consideration to the criteria stated below, to the extent they are pertinent to the particular application. In addition, the Planning Commission and Governing Body may consider other factors which may be relevant to a particular application.

1. The character of the neighborhood.
2. The zoning and uses of nearby properties, and the extent to which the proposed use would be in harmony with such zoning and uses.
3. The suitability of the property for the uses to which it has been restricted under the applicable zoning district regulations.
4. The length of time the property has remained vacant as zoned.
5. The extent to which approval of the application would detrimentally affect nearby properties.
6. The extent to which the proposed use would substantially harm the value of nearby properties.
7. The extent to which the proposed use would adversely affect the capacity or safety of that portion of the road network influenced by the use, or present parking problems in the vicinity of the property.
8. The extent to which utilities and services, including but not limited to, sewers, water service, police and fire protection, and parks and recreation facilities, are available and adequate to

- serve the proposed use.
9. The extent to which the proposed use would create excessive stormwater runoff, air pollution, water pollution, noise pollution or other environmental harm.
  10. The extent to which there is a need for the use in the community.
  11. The economic impact of the proposed use on the community.
  12. The ability of the applicant to satisfy any requirements applicable to the specific use imposed pursuant to the zoning district regulations or [18.370](#).
  13. The gain, if any, to the public health, safety and welfare due to denial of the application as compared to the hardship imposed upon the landowner, if any, as a result of denial of the application.
  14. The conformance of the proposed use to the Master Plan, the Land Use Intensity System and other adopted planning policies.
  15. The recommendation of professional staff.

SECTION 2. Existing Overland Park Municipal Code Section 18.140.150 is hereby repealed.

SECTION 3. 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 4. Nothing in this Ordinance shall be construed to affect any existing protest petition, any rights acquired, any 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 5. This Ordinance shall take effect and be in force as of the date of its passage, approval and publication as provided by law.

PASSED by the City Council this 5<sup>th</sup> day of April, 2021.

APPROVED by the Mayor this 5<sup>th</sup> day of April, 2021.

**CITY OF OVERLAND PARK, KANSAS**

(SEAL)

(s) Carl Gerlach  
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 Carl Gerlach, Mayor

ATTEST:

APPROVED AS TO FORM:

(s) Elizabeth Kelley  
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 Elizabeth Kelley  
 City Clerk

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