

PRELIMINARY DEVELOPMENT PLAN PROTEST PETITION GUIDELINES

(nonresidential use in residential district)
(Provided by the City of Overland Park, Kansas)

These guidelines are designed to assist those who wish to exercise their right to file a Protest Petition in opposition to the granting of a preliminary development plan by the City of Overland Park. This document is only a guide. There may be issues which are not addressed herein. You should consult with your attorney in regard to the completion and filing of your specified Protest Petition.

Pursuant to Kansas law and the laws of Overland Park, a valid Protest Petition in opposition to the granting of a preliminary development plan requires the signatures of at least 20 percent of all the owners of the property for which a preliminary development plan is sought, or signatures of all of the owners of at least 20 percent of the total area, excepting public streets and ways, located within the statutory area of notification. The statutory area of notification includes the real property located within two hundred (200) feet of the boundaries of the area for which a preliminary development plan is sought; or, if the area is adjacent to unincorporated property, the incorporated real property located within two hundred (200) feet of the boundaries of the area for which a preliminary development plan is sought and the unincorporated property within one thousand (1,000) feet of the boundaries of the area for which a preliminary development plan is sought. (For specific calculations, consult with either the Planning Development Services Department or a private attorney).

If a valid Protest Petition is filed with the City Clerk within 14 days after the conclusion of the Planning Commission public hearing regarding this preliminary development plan application, then the affirmative votes of seven members of the Governing Body are needed to approve the preliminary development plan.

REQUIREMENTS OF PROTEST PETITION

1. The preliminary development plan number and the description of the property as provided on the legally required notice for which the preliminary development plan is sought must be added to the Protest Petition in the designated space.

2. Signers of the Protest Petition must be the owners of the real property for which a preliminary development plan is sought or be owners of real property within the statutory area of notification for which a preliminary development plan is sought. Owners of real property that is beyond the City limits but within the statutory area of notification for which a preliminary development plan is sought shall be eligible to sign the Petition.

3. Signers of the Protest Petition must sign their full names as they appear on the deed to the property recorded in the office of the Register of Deeds. If Mary Smith signs as "Mrs. John Smith," her signature will not be counted. If the county records indicate that Mary Smith owns the property yet she

has remarried and changed her name to Mary Jones, she should sign the Petition “Mary Jones/formerly Mary Smith.”

4. All owners of a particular parcel of property must sign in order to place the property into protest. If the parcel is owned in joint tenancy or tenancy in common, both joint tenants or all tenants in common must sign in order to place the property into protest.

5. Joint tenants or co-tenants may not sign for each other unless the Petition itself shows that the joint tenant or co-tenant was authorized to sign for the other joint tenant or co-tenant. For example, if Mary Smith signs “Bill and Mary Smith,” only her signature will be counted and the property will not be placed into protest for lack of the signature of the other joint tenant or co-tenant. Likewise, if Bill Smith signs “Mr. and Mrs. Bill Smith,” only his signature is valid.

6. If one person signs as attorney-in-fact for another person, a copy of the power-of-attorney must be provided.

7. If a parcel is owned by a partnership, all of the partners must sign in order for the parcel to be placed into protest. Furthermore, the proper name in which the property is held and the address of the property must be shown on the face of the Petition.

8. If a parcel is owned by a corporation, only the signature of the president of the corporation can bind the corporation. Any officer, other than the corporate president, given legal authority to bind the corporation may sign the Petition provided that he/she furnishes the City with proper documentation of his/her authority (articles of incorporation, by-laws, or power-of-attorney or other document establishing the authority of that person to act on behalf of the corporation). Furthermore, the proper name in which the property is held and the address of the property must be shown on the face of the Petition.

9. A Protest Petition may consist of one or more sheets entitled “Preliminary Development Plan Protest Petition.” The signatures on each such sheet must be verified. The individual who verifies each such sheet must have witnessed all of the signatures affixed to that sheet and must have his or her verifying signature notarized. If several such sheets are filed, a separate verification and notarization must be affixed to each sheet. One person may verify one or more such sheets provided that person is one of the signers of one of the sheets constituting the Petition, is an owner of property within the statutory area of notification for which a preliminary development plan is sought, and witnessed all of the signatures on each sheet he/she is verifying.

All signatures should be on the “Preliminary Development Plan Protest Petition” form provided by the City. Use of an attached blank sheet for additional signatures is strongly discouraged and may result in the Petition being rejected.

10. If there is evidence leading a reviewing City staff member to believe any signature is not genuine, such signature may be considered improper and insufficient.

11. The Protest Petition must be filed within 14 days after the date of the conclusion of the Planning Commission public hearing regarding the preliminary development plan application at issue. Even though the preliminary development plan application may be returned to the Planning Commission at a later date, the Protest Petition can only be filed during the 14 days after the date of the conclusion of the Planning Commission's original public hearing.

12. The Protest Petition must be filed with the City Clerk for the City of Overland Park, Kansas, 8500 Santa Fe, Overland Park, Kansas, before 5 p.m. on or before the 14th day after the date of the conclusion of the public hearing before the Planning Commission. The day following the Planning Commission hearing shall be counted as the first day. If the 14th day falls on a weekend or holiday, the Petition must be filed before 5 p.m. on the first business day following that weekend or holiday.

After the Protest Petition is filed with the City, various departments of the City will review the legality of the Petition. If you have any questions about the Protest Petition procedure, or its completion, please contact the Planning and Development Services Department at 895-6217 or contact a private attorney.