

**ORDINANCE NO. POC-3269**

**AN ORDINANCE RELATING TO THE MUNICIPAL CODE OF THE CITY OF OVERLAND PARK, KANSAS; AMENDING AND REPEALING EXISTING OVERLAND PARK MUNICIPAL CODE SECTION 11.04.260 AND PROVIDING SUBSTITUTE PROVISIONS THEREFOR.**

**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 11.04.260 is hereby amended to read as follows:

- A. It is unlawful for any person to commit any of the offenses hereinafter described in this title, and any person so offending is guilty of a public offense and, upon conviction thereof, shall be punished as set forth herein.
- B. **Classes of violations and confinement.**  
For the purpose of sentencing, the following classes of public offense violations and the punishment and the terms of confinement authorized for each class are established:
  - 1. Persons convicted of a class A violation shall be sentenced to a definite term of confinement in the city or county jail which shall be fixed by the court and shall not exceed one year.
  - 2. Persons convicted of a class B violation shall be sentenced to a definite term of confinement in the city or county jail which shall be fixed by the court and shall not exceed six months.
  - 3. Persons convicted of a class C violation shall be sentenced to a definite term of confinement in the city or county jail which shall be fixed by the court and shall not exceed one month.
  - 4. Unclassified violations, which shall include all offenses without specification as to class, the sentence for which shall be in accordance with the sentence specified in the section that defines the offense; if no penalty is provided in such section, the penalty shall be the same penalty as provided herein for a class C violation.
- C. Upon conviction of a violation, a person may be punished by a fine, as provided in paragraph E, instead of or in addition to confinement, as provided in this section.
- D. In addition to or in lieu of any other sentence authorized by law, whenever there is evidence that the act constituting the violation was substantially related to the possession, use or ingestion of cereal malt beverage or alcoholic liquor by such person, the court may order such person to attend and satisfactorily complete an alcohol or drug education or training program certified by the chief judge of the judicial district or licensed by the secretary of social and rehabilitation services.
- E. Whenever there is evidence that the act constituting a violation was motivated in whole or in part by bias as described below, the following mandatory minimum sentences shall apply, unless other mandatory minimum sentences are applicable:

1. Upon a first conviction of one of the crimes set forth in paragraph E(3) below, and a showing of any motive or intent relating to, or any antipathy, animosity or hostility based upon the race, color, gender, religion, national origin, age, sexual orientation, gender identity, ancestry, disability or handicap of another individual or group of individuals, a person shall be punished by a fine of no less than five hundred dollars (\$500) of which all or a portion may be suspended during a period of probation or parole, and/or no less than six (6) months in jail, which sentence may be suspended during a period of probation or parole.
2. Upon a second conviction of one of the crimes set forth in paragraph E(3) below, and a showing of any motive or intent relating to, or any antipathy, animosity or hostility based upon the race, color, gender, religion, national origin, age, sexual orientation, gender identity, ancestry, disability or handicap of another individual or group of individuals, a person shall be punished by a fine of no less than five hundred dollars (\$500) of which a minimum of two hundred and fifty dollars (\$250) shall be assessed; all or a portion of the balance may be suspended during a period of probation or parole, and/or no less than six (6) months in jail, which sentence may be suspended during a period of probation or parole, but only after such person has served a minimum of three (3) days in jail.
3. Mandatory minimum penalties outlined in E(1) and (2) above shall apply to the following crimes:
  - a. Section 11.08.020, Battery;
  - b. Section 11.12.020, Criminal Damage to Property;
  - c. Section 11.12.030, Criminal Trespass;
  - d. Section 11.28.045, Harassment by Telecommunication Device;
  - e. Section 11.60.071, Criminal Carrying of a Weapon;
  - f. Section 11.60.072, Unlawful Discharge of Firearms
4. Upon a first conviction of one of the crimes set forth in paragraph E(6) below, and a showing of any motive or intent relating to, or any antipathy, animosity or hostility based upon the race, color, gender, religion, national origin, age, sexual orientation, gender identity, ancestry, disability or handicap of another individual or group of individuals, a person shall be punished by a fine of no less than five hundred dollars (\$500) of which all or a portion may be suspended during a period of probation or parole, and/or no less than one (1) month in jail, which sentence may be suspended during a period of probation or parole.
5. Upon a second conviction of one of the crimes set forth in paragraph E(6) below, and a showing of any motive or intent relating to, or any antipathy, animosity or hostility based upon the race, color, gender, religion, national origin, age, sexual orientation, gender identity, ancestry, disability or handicap of another individual or group of individuals, a person shall be punished by a fine of no less than five hundred dollars (\$500) of which a minimum of two hundred and fifty dollars (\$250) shall be assessed; all or a portion of the balance may be suspended during a period of probation or parole, and/or no less than one (1) month in jail, which sentence may be suspended during a period of probation or parole, but only after such person has served a minimum of three (3) days in jail.

6. Mandatory minimum penalties outlined in E(4) and (5) above shall apply to the following crimes:
  - a. Section 11.08.010, Assault;
  - b. Section 11.28.040, Disorderly Conduct

**F. Fines.**

1. A person convicted of a public offense violation may, in addition to or instead of the confinement set forth in paragraph B above, be sentenced to pay a fine which shall be fixed by the court as follows:
  - a. Class A violation, a sum not exceeding \$2,500.
  - b. Class B violation, a sum not exceeding \$1,000.
  - c. Class C violation, a sum not exceeding \$500.
  - d. Unclassified violation, any sum authorized by the section that defines the offense or if no penalty is provided in such law, the fine shall not exceed the fine provided herein for a class C violation.
2. As an alternative to any of the above fines, the fine imposed may be fixed at any greater sum not exceeding double the pecuniary gain derived from the crime by the offender.

**Section 2.** Existing Overland Park Municipal Code Section 11.04.260 is hereby repealed.

**Section 3.** 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 21<sup>st</sup> day of October, 2019.

APPROVED by the Mayor this 21<sup>st</sup> day of October, 2019.

**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) Tammy M. Owens  
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 Tammy M. Owens, City Attorney