

ORDINANCE NO. NU-2939

AN ORDINANCE RELATING TO ENFORCEMENT AGAINST NUISANCES IN THE CITY OF OVERLAND PARK, KANSAS; AMENDING AND REPEALING EXISTING OVERLAND PARK MUNICIPAL CODE SECTIONS 7.20.100, 7.20.110, 7.20.120, 7.20.130, 7.20.140, 7.20.150, 7.20.160, 7.20.170, 7.20.180, 7.20.190 AND 7.20.200.

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

SECTION 1. Overland Park Municipal Code Section 7.20.100 is hereby amended to read as follows:

7.20.100 Title.

~~The title of the~~ Overland Park Municipal Code Sections 7.20.100 through 7.20.200, inclusive shall be known as the Weed and Vegetation Enforcement Act ~~(WAVE Act).~~

SECTION 2. Overland Park Municipal Code Section 7.20.110 is hereby amended to read as follows:

7.20.110 Purpose and Findings.

A. The purpose of the Weed and Vegetation Enforcement Act is to:

1. ~~provide~~ Require reasonable ~~e~~Controls and ~~action to:~~
 - a. ~~restricting~~ Prevent the ~~e~~Excessive ~~g~~Growth of ~~w~~Weeds, grasses, and other uncultivated ~~Vv~~Vegetation;
 - b. Eradicate Noxious Weeds;
 - c. Eradicate Poisonous Plants to the Touch; and
 - d. Prevent the growth of Invasive Plants that are not properly Controlled.
2. ~~to declare that the e~~Excessive ~~g~~Growth of such ~~v~~Vegetation is noxious, unsightly, offensive to the residential and commercial areas in the City, and is offensive to the general public health, safety and welfare of the community; ~~to p~~Provide a method of enforcement ~~of violations~~ of this ~~Act~~Chapter; ~~to p~~
3. Provide procedures to notify ~~the Owner, Occupant or Agent property owners or those in control~~ of the property that a violation ~~of this Chapter~~ exists and to allow for self-abatement by such ~~owner~~Persons; ~~to p~~
4. Provide ~~the Owner, Occupant or Agent property owners or those in control of the property notification and~~ an opportunity to be heard concerning violations of ~~this the Act~~Chapter; ~~to p~~
5. Provide ~~administrative~~ procedures to allow the City to ~~direct the abatement of~~ abate the violations ~~should the Owner, Occupant or Agent fail to timely act~~; ~~to p~~
6. Provide a method of assessing or collecting costs for such abatement ~~by the City~~; ~~and to d~~
7. ~~Establish~~declare that ~~the existence of such~~ violations ~~of this Chapter~~ are unlawful and to provide penalties for enforcement through the Municipal Court system.

B. The Governing Body ~~of the City~~ hereby finds that:

- ~~(1) the allowance of the e~~Excessive ~~g~~Growth of Vegetation;
- ~~(2) Noxious Weeds;~~
- ~~(3) Poisonous Plants to the Touch; and~~
- ~~(4) Invasive Plants that are not properly Controlled;~~

~~Are all certain v~~Vegetation is noxious, unsightly, and offensive to the residential and commercial ~~development areas~~ in the City, and are all offensive to the general public health, safety, and welfare of the community. ~~Excessive~~Said vegetation ~~growth~~ creates potential traffic safety problems; promotes conditions which accelerates the spread of fires; promotes the nesting and proliferation of rodents, snakes, ~~mosquitoes insects, and~~ vermin, and other creatures which constitute a menace to health, public safety or welfare; creates short and long-term impacts on the area including the diminution of property values and the integrity of the neighborhood; and interferes with the orderly development and use of property in the City.

SECTION 3. Overland Park Municipal Code Section 7.20.120 is hereby amended to read as follows:

7.20.120 Definitions.

For the purposes of this ~~Aet~~Chapter, the following definitions shall apply:

- A. ~~“Representative Agent”~~ shall mean any ~~p~~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 ~~of~~ partnership ownership; an agent or manager directed by the ~~p~~Property ~~o~~Owner, estate, or court order to represent the interests of ~~the real~~ property or to otherwise maintain, care or control activities on the ~~real~~ property; or corporate officer.
- B. ~~“City”~~ shall mean the City of Overland Park, Kansas;.
- C. ~~“Control”~~ shall mean the planned and intentional planting, trimming and cultivation of vegetation, including, but not limited to, the prevention of the unintended and uncultivated production of viable seed or the vegetative spread of a plant.
- D. ~~“Excessive growth~~**Excessive Growth of Vegetation**~~”~~ shall mean any ~~w~~Weed, grass, or other uncontrolled and uncultivated vegetation which is more than eight 40(8”) inches in height above the ground or in length if matted down as measured along the stem. The abatement of Excessive Growth of Vegetation may and shall include ~~all~~ trees, bushes, shrubs, flowers, and ornamental or garden plants, either cultivated or uncultivated, if such plants are vegetation is not made readily distinguishable from surrounding vegetation of any ~~e~~Excessive ~~g~~Growth of Vegetation, ~~and plants which are poisonous to the touch including poison ivy, poison oak, and poison sumac;~~
- E. ~~“Invasive Plants”~~ shall mean to include, but not be limited to, meadow fescue (*Festuca pratensis*); sunflower, common (*Helianthus annuus*); and bamboo. Said plants are only allowed when properly Controlled.
- F. ~~“Noxious Weeds”~~ shall mean all noxious weeds as defined in the Kansas Noxious Weed Law K.S.A. 2-1314 et seq. (as may be amended), including, but not be limited to, field bindweed (*Convolvulus arvensis*); musk (nodding) thistle (*Carduus nutans L.*); Johnson grass (*Sorghum halepense*); bur ragweed (*Ambrosia grayii*); Canada thistle (*Cirsium arvense*); leafy spurge (*Euphorbia esula*); hoary cress (*Cardaria draba*); quackgrass (*Agropyron repens*); Russian knapweed (*Centaurea repens*); sericea lespedeza (*Lespedeza cuneata*);

- kudzu (Pueraria lobata); and pignut (Hoffmannseggia densiflora).
- G. **“~~Tenant~~Occupant”** shall mean any ~~p~~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~~property; or any ~~p~~Person who occupies or has possession of such ~~real~~ property;.
- H. **“~~Property o~~wner”** shall mean the named property owner as indicated by the records of the ~~Register of Deeds~~Records and Tax Administration or Appraiser’s office in Johnson County, Kansas;.
- I. **“~~Perennial violator~~Perennial Violator”** shall mean any ~~p~~Person who shows an annual pattern of failing to comply with this ~~Aet~~Chapter, which may be shown by repeated notices of abatement, notices of costs, or previous violations of this ~~Aet~~Chapter.
- J. **“Person”** shall mean any individual; individuals; partnership; corporation; unincorporated association; other business organization; committee; board; trustee; receiver; ~~or a~~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;~~
- K. **“~~Poisonous Plants to the Touch~~”** shall mean any plants at any height or state of maturity ~~which are poisonous to the touch, including, but not limited to, poison ivy, poison oak and poison sumac.~~
- L. **“~~Vegetation~~”** shall mean to include, but not be limited to, weeds, woody vines, brush, grass, and uncultivated plants;
- L. **“Weeds”** shall mean to include, but not be limited to, barnyard grass (Echinochloa crusgalli); beggar tick, sticktight, devil’s pitchfork (Bidens frondosa); burdock (Arctium minus); Canada goldenrod (Solidago canadensis); crabgrass, large or large hairy (Digitaria sanguinalis); cocklebur (Xanthium strumarium); curled dock, sour dock (Rumex crispus); curltop smartweed (Polygonum lapathifolium); daisy fleabane (Erigeron strigosus); dandelion (Taraxacum officinale); dogbane (Apocynum cannabinum); fall panicum (Panicum dichotomiflorum); flannel mullein (Verbascum thapsus); fireweed (Kochia scoparia); foxtail barley (Hordemjubatum); green foxtail (Solaria viridis); hedge parsley (Forilis arvensis); hemp (Cannabis sativa); hoary verbena (Verbena stricta); horsenettle (Solanum carolinense); horseweed (Conyza canadensis); Indian mallow, velvet leaf (Abutilon theophrasti); ironweed (Vernonia baldwinii); Japanese brome (Bromus japonicus); lambsquarter (Chenopodium album); maple-leaved goosefoot (Chenopodium hybridum); milkweed (Asclepias syriaca); mullein, common (Verbascum thapsus); patience dock (Rumex patientia); Pennsylvania smartweed (Polygonum pennsylvanicum); pennycress (Thlaspi arvense); pigweed, rough, or redroot (Amaranthus retroflexus); pokeberry (Phytolacca americana); prickly wild lettuce (Lactuca serriola); purpletop grass (Tridens flavus); ragweed, common (ambrosia artemisiifolia); ragweed, giant kinghead (Ambrosia trifida); sagewort (Artemisia ludoviciana); shepherd’s purse (Capsella bursa-pastoris); smooth dock (Rumex altissimus); snakeroot (Eupatorium rugosum); Spanish needles (Bidens bipinnata); spurge, nodding or upright spotted (Euphorbia maculata); stinging nettle, nettle (Urtica dioica); stinkgrass, lovegrass (Eragrostis cilianensis); sumpweed (Iva annua); swamp smartweed, tanweed, devil’s shoestring (Polygonum coccineum); tall thistle (Cirsium altissimum); treacle mustard or spreading erysimum (Erysimum arvense); tumble panicgrass or witchgrass (Panicum capillare); tumbleweed, tumble amaranth (Amaranthus albus); water hemp (Amaranthus rudis); and wild four-o’clock (mirabilis nyctaginea).~~shall mean to~~

include, but not be limited to, barnyard grass (*echinochloa crusgalli*); beggar tick, stiektight, devil's pitchfork (*bidens frondosa*); burdock (*arctim minus*); Canada goldenrod (*solidago canadensis*); crabgrass, large or large hairy (*digitaria sanguinalis*); cocklebur (*xanthium strumarium*); curled dock, sour dock (*rumex crispus*); curltop smartweed (*polygonum lapathifolium*); daisy fleabane (*erigeron strigosus*); dandelion (*taraxacum officinale*); dog bone (*apocynum cannabinum*); fall panicum (*panicum dichotomiflorum*); fescue (*festuca pratensis*); flannel mullein (*verbascum thapsus*); fireweed (*koehia scoparia*); foxtail barley (*hordemjubatum*); green foxtail (*selaria viridis*); hedge parsley (*forilis arvensis*); hemp (*cannabis sativa*); hoary verbena (*verbena stricta*); horsenettle (*solanum carolinense*); horseweed (*conyza canadensis*); Indian mallow, velvet leaf (*abutilon theophrasti*); ironweed (*vernonia baldwinii*); Japanese brome (*bromus japonicus*); Johnson grass (*sorghum halepense*); lambsquarter (*chenopodium album*); maple leaved goosefoot (*chemopodium hydrobriudum*); milkweed (*asclepias syriacs*); mullen, common (*verbascum thapsus*); musk, nodding thistle (*carduus nutans*); patience dock (*rumex patientia*); Pennsylvania smartweed (*polygonum pennsylvanicum*); pennyress (*thalspi arvense*); pigweed, rough, or redroot (*amaranthus retroflexus*); pokeberry (*phytolacca americana*); prickly wild lettuce (*lactuca serriola*); purpletop grass (*tridens flavus*); ragweed, common (*ambrosia artemisiifolia*); ragweed, giant kinghead (*ambrosia trifida*); sagewort (*artmisia ludoviciana*); shepherd's purse (*capsella bursapastoris*); smooth dock (*rumex altissimus*); snakeroot (*eupatorium rugosum*); Spanish needles (*bidens bipannata*); spurge, nodding or upright spotted (*euphorbia maculata*); stinging nettle, nettle (*urtica dioecia*); stinkgrass, lovegrass (*eragrostis cilianesis*); sumpweed (*iva annua*); sunflower, common (*helianthus annuus*); swamp smartweed, tanweed, devil's shoestring (*polygonum coccineum*); tall thistle (*cirsium altissimum*); treacle mustard or spreading erysimum (*erysimum arvense*); tumble panicgrass or witchgrass (*panicum capilare*); tumbleweed, tumble amaranth (*amaranthus albus*); water hemp (*amaranthus rudis*); wild four o'clock (*mirabilis nyctaginea*).

SECTION 4. Overland Park Municipal Code Section 7.20.130 is hereby amended to read as follows:

7.20.130 ~~Excessive Growth Unlawful Violations~~; Responsibility to Abate.

A. It shall be unlawful for any ~~pProperty o~~Owner, Occupant or Agent~~Owner, representative, tenant or other such person with control, occupancy, or possession~~ of real property to allow on said property any:

1. Excessive Growth of Vegetation;
2. Noxious Weeds;
3. Poisonous Plants to the Touch; or
4. Invasive Plants that are not properly Controlled.

Such prohibition shall include ~~excessive growth of vegetation on any lot or parcel of land within the City, including~~ any areas between the property lines of said ~~lot or parcel~~property and the center line of any adjacent street or alley, including, but not specifically limited to, sidewalks, streets, alleys, easements and rights-of-way. Any violation of this Section is hereby declared a nuisance, and is subject to abatement and prosecution as hereinafter provided.

B. The Owner, Occupant or Agent~~property owner, representative, tenant or other such person~~

~~with control, occupancy, or possession of real property~~ shall be responsible for the abatement of any ~~excessive growth of vvegetation as made unlawful byviolation of~~ this ~~sectionSection~~. Further, it is the responsibility of the ~~Owner, Occupant or Agent property owner, representative, tenant or other such person with control, occupancy or possession~~ to clearly mark, stake out, or otherwise distinguish between trees, bushes, shrubs, flowers, and ornamental or garden plants, or any Controlled Invasive Plants, as compared to any ~~eExcessive vGrowth of Vegetation, any Noxious Weeds, any Poisonous Plants to the Touch, or any uncontrolled Invasive Plants~~ in the surrounding area.

SECTION 5. Overland Park Municipal Code Section 7.20.140 is hereby amended to read as follows:

7.20.140 Public Officer; Notice of Abatement Violation; Hearing; Designated Officer.

- A. The City Manager shall designate a public officer(s) to ~~be charged with the administration~~ and enforcement of this ~~ActChapter~~. ~~The public officer shall authorize the investigation of violations of the Act.~~ If it is determined that a violation of this ~~ActChapter exists is in existence~~, then the public officer shall file a written report with the City, and shall direct that a notice of abatement violation be sent to the ~~pProperty oOwner, oOccupant or aAgent of the property; provided, however, if a notice of violation was previously issued within one (1) year of the violation and contained the notice set forth in subsection C.8., no further notice is required prior to any abatement action by the City.~~
- B. The notice of violation shall be sent by certified mail, return receipt requested, ~~;~~ or by personal service. ~~If the property is unoccupied and where the oOwner is a nonresident, such notice shall be sent by certified mail, return receipt requested, to the last known address of the Owner. In such event, if is unknown or is a nonresident of the sState of Kansas, there is no resident agent,~~ then the City Clerk shall ~~immediately also~~ publish the notice of the abatement violation in the official City newspaper.
- C. The notice of violation shall state:
1. A common or legal description of the property where the violation exists;
 2. That the property is in violation of the Weed and Vegetation Enforcement this Act;
 3. A description ~~of the nature~~ of the violation that would reasonably allow the Owner, Occupant or Agent ~~pProperty oOwner or other responsible pPerson, occupant or agent~~ to determine the nature of the violation to allow for self-abatement;
 4. That the ~~condition creating the~~ violation shall must be abated by the Owner, Occupant or Agent ~~by the property owner or other such responsible party~~ within five (5) days from the date of the mailing of the notice of abatement violation; or within ten (10) days of publication if publication ~~of the notice is was~~ deemed necessary;~~;~~
 5. That, ~~upon written request received~~ prior to the expiration of the notice period, the Owner, Occupant or Agent ~~pProperty oOwner, occupant or agent~~ may request in writing a hearing before the ~~Governing Body or its designated hearing officerrepresentative~~;
 6. That the failure to comply with the notice of abatement violation shall result in the City abating the violation, with the assessment of costs (including a reasonable administrative fee and the cost of all notice) made against the property ~~or~~ and the ~~oOwner, oOccupant or aAgent~~;
 7. That ~~the owner, occupant or agent in charge of the property will be given an~~

~~opportunity to pay the assessment, and, failure to pay such payment of the assessment of costs is due and payable within thirty (30) days of the notice of assessment, or shall result in the assessment being will be added to the property tax as a special assessment, as provided for by K.S.A. 12-1717e, as may be amended. And further, the City may also pursue collection by seeking a personal judgment against the Owner, Occupant or Agent in Johnson County District Court, as provided for by K.S.A. 12-1,115, as may be amended;~~

~~8. That no further notice is required to be given by the City prior to the abatement of any additional violations on the property for one (1) year from the date of the notice of violation, and that any additional costs will be assessed in the same manner.~~

~~98. That separate from and independent of any abatement of the violation by the City, such violations are also subject to prosecution in the Overland Park Municipal Court.~~

~~ED. If the recipient of the notice of abatement violation makes a written request for hearing within the notice period, then the City shall immediately schedule a hearing during a regular business day within ten (10) calendar days from the receipt of the written request. The hearing shall be conducted by a designated hearing officer who shall is not be a subordinate of the public officer who issued the notice of abatement violation or conducted the investigation. The hearing officer shall receive evidence, review the investigation, and prepare a written order. The order shall be sent by certified mail to all relevant parties within ten (10) days of the hearing, unless otherwise stated at the hearing, and prior to the City taking any action to abate the violation. The order shall describe state the relevant facts relied upon, state and the specific code provisions being relied upon should a violation be found, and state any such other stipulations, methods of abatement, or orders as deemed necessary by the hearing officer.~~

~~DE. If an authorized the public officer determines that a violation of this Act Chapter exists, the public officer may issue a Notice to Appear in Municipal Court for such violation. Such prosecution shall be separate and independent of any abatement action, and nNo other procedures are required as a prerequisite to the issuance of a Notice to Appear.~~

~~E. In lieu of giving notice as provided above, the authorized public officer may, for the initial notice or any subsequent notice, send a one-time yearly written notification by mail or personal service. Such notice shall include the same information required above. In addition, such notice shall include a statement that no further notice shall be given prior to removal of wWeeds. If such a one-time notice is sent pursuant to this sSubsection, no additional notices are required to be sent prior to removal of wWeeds for one calendar year from the date of that notice.~~

SECTION 6. Overland Park Municipal Code Section 7.20.150 is hereby amended to read as follows:

7.20.150 Abatement by City; Notice of Costs; Assessment and Collection.

A. If the ~~Owner, Occupant or Agent property owner, representative, or tenant~~ fails to request a hearing and ~~fails~~ to self-abate the violations within the notice period, ~~then~~ the City ~~shall may~~ go onto the property to abate the violation in a reasonable manner. The City shall not be responsible for damage to property due to reasonable methods of gaining entrance onto the property, or for damages to property in the reasonable exercise of its duty ~~to the public~~ to abate the violations. The City may use its own employees or contract for services to abate

~~the violations of the Act.~~ Any authorized officer or agent of the City ~~shall be allowed to may~~ relocate or remove any trash, debris, limbs or brush, building materials or other such items if such relocation or removal is reasonably necessary to abate the violation.

B. If the City ~~takes action to~~ abates the violation, it shall provide a notice of costs to the Owner, Occupant or Agent~~property owner, representative, or tenant.~~ ~~The notice of costs shall be delivered~~ by certified mail, return receipt requested, at the last known mailing address; ~~or i.~~ If the property is vacant or unoccupied, the notice of costs shall also be posted on the property in a reasonable manner. The notice of costs shall state:

1. The common or legal description of the property, or both;
2. The nature of the violation, including relevant ordinances;
3. The nature of the work performed to abate the violation;
4. The costs incurred for the abatement of the violations in either a lump sum or in itemized form;
5. That the notice is a demand for payment within thirty (30) days from the date of the notice;
6. That failure to pay the entire amount within thirty (30) days shall allow the City to file a tax lien against the property or to pursue litigation for the recovery of the costs, or both;
7. That such additional remedies to recover costs shall include additional amounts including additional administrative costs, attorneys' fees when applicable, and interest; and
8. That payments shall be made by check or money order made payable to the City, with no post-dating of the check, and sent to the address stated within the notice, with a written indication of the purpose for the payment and the address of the property where the violations occurred. Partial payments will not be accepted and shall be considered as non-payments.

C. If the payment of costs is not made within the thirty (30)-day period, ~~the City may file an affidavit of pending action with the Johnson County, Kansas Department of Records and Tax Administration with respect to the aforesaid costs. In addition, the City may levy a special assessment for such cost against the lot or piece of land. The City Clerk shall certify the aforesaid costs~~ at the time of certifying other City taxes to the eCounty eClerk, ~~shall certify the aforesaid costs,~~ and the eCounty eClerk shall extend the same on the tax roll of the eCounty against the ~~lot or parcel of ground~~property, and it shall be collected by the eCounty eTreasurer and paid to the City as other City taxes are collected and paid.

Provided further, the City may collect the costs in the manner provided at K.S.A. 12-1,115, as may be amended, by bringing an action in the appropriate court as a personal debt.

The City may pursue both assessment and collection at the same time until the full cost, including applicable interests, court costs, attorneys' fees, and administrative costs have been paid in full (Ref. K.S.A. 12-1617f, as may be amended).

SECTION 7. Overland Park Municipal Code Section 7.20.160 is hereby amended to read as follows:

7.20.160 Public Notice of Act.

The City Clerk shall cause a general public notice to be placed in the official City newspaper once each year during the month of ~~March~~April. The notice shall read substantially as follows:

PUBLIC NOTICE
CITY OF OVERLAND PARK, KANSAS
WEED AND VEGETATION ENFORCEMENT ACT

Notice is hereby given to all ~~property~~-owners, ~~representatives~~occupants, and ~~tenants~~agents of property located within the City ~~limits~~ of Overland Park, Kansas, that it is unlawful to allow any:

- ~~the~~(1) eExcessive ~~g~~Growth of ~~Vegetation~~Weeds, grass, and uncultivated plants. Excessive ~~g~~Growth means more than ~~teneight (408)~~ inches in height or more than ~~teneight (408)~~ inches in length if matted down.
- (2) Noxious Weeds, as defined in the Kansas Noxious Weed Law at K.S.A. 2-1314 et seq.;
- (3) Poisonous Plants to the Touch; or
- (4) Invasive Plants that are not properly Controlled, including, but not limited to meadow fescue (Festuca pratensis); sunflower, common (Helianthus annuus); and bamboo.

Violators will be subject to prosecution and assessment of costs for abatement of such violations. The Overland Park Weed and Vegetation Enforcement Act is located at Chapter 7.20 of the Overland Park Municipal Code. Members of the public are welcome to review these laws during regular business hours at the Overland Park City Hall, 8500 Santa Fe, Overland Park, Kansas, or on the City's website at opkansas.org.

SECTION 8. Overland Park Municipal Code Section 7.20.170 is hereby amended to read as follows:

7.20.170 Right of Entry; Unlawful Interference; ~~Penalty~~.

- A. Any authorized officer or agent of the City, pursuant to this ~~Aet~~Chapter, shall be allowed to enter onto any ~~land~~-property within the City limits to investigate violations of this ~~Aet~~Chapter or for the abatement of violations pursuant to this ~~Aet~~Chapter.
- B. It shall be unlawful for any ~~p~~Person to interfere with a public officer or agent of the City in performing his or her duties pursuant to this ~~Aet~~Chapter whether investigating or abating violations.
- C. Any ~~p~~Person who interferes with an officer or agent of the City pursuant to this ~~Aet~~Chapter shall be punished as provided in Section 1.12.010 of this Code.

SECTION 9. Overland Park Municipal Code Section 7.20.180 is hereby amended to read as follows:

7.20.180 Penalty.

- A. Any ~~Owner, Occupant or Agent~~ property owner, representative, or tenant found in violation of this ~~Aet~~Chapter shall be subject to prosecution in the Overland Park Municipal Court. Any ~~such~~ ~~p~~Person found guilty of violating the provisions of this ~~Aet~~Chapter shall be subject

to a fine of not less than \$50.00 nor more than \$500.00 and not more than ten (10) days in jail, or both a fine and jail sentence. Any ~~p~~Person found guilty of this ~~AetChapter~~ two (2) or more times within any one-year period, or determined by the Municipal Court to be a ~~p~~Perennial ~~v~~Violator shall be fined not less than \$250.00 nor more than \$500.00 and shall be subject to a sentence not to exceed ten (10) days in jail, or both a fine and a jail sentence.

- B. Prosecution of any offender under this ~~AetChapter~~ does not limit the City's right to pursue assessment or collection of costs as stated in this ~~AetChapter~~, or by other laws.
- C. Each day that any violation of this ~~AetChapter~~ shall continue shall constitute a separate offense.

SECTION 10. Overland Park Municipal Code Section 7.20.190 is hereby amended to read as follows:

7.20.190 Exceptions.

This ~~AetChapter~~ shall not be made applicable to:

- A. Land zoned ~~for where~~ agricultural uses are a permitted use if such tract is one (1) contiguous tract, not intersected by any public roadway and is greater than twenty (20) acres if undeveloped and contiguous to other such undeveloped tracts where the total acreage of all undeveloped tracts exceeds twenty (20) acres; or to a
- B. Undeveloped tracts of land zoned other than for where agricultural uses are not a permitted use if such tract is one (1) contiguous tract, not intersected by any public roadways and is greater than twenty (20) acres; ~~provided however, any such tract zoned other than for agricultural uses~~
- C. For the tracts of land identified in subsections A and B:
 - 1. Such tracts shall not allow ~~the any e~~Excessive ~~g~~Growth of ~~v~~Vegetation, ~~as defined pursuant to this Act,~~ in any area within sixty (60) feet from the center line of a two-lane public roadway, or within thirty (30) feet of the property line adjacent to any other public roadway or of the property line of any property being used for residential or commercial purposes.;
 - 2. For tracts where agricultural crops are allowed to be grown, such tracts shall not allow the growing of crops in any area within sixty (60) feet from the center line of a two-lane public roadway, or within thirty (30) feet of the property line adjacent to any other public roadway or of the property line of any property being used for residential or commercial purposes.
 - 3. provided further, f~~For any such tracts~~ zoned other than for agricultural uses, where the City determines that any ~~e~~Excessive ~~g~~Growth of ~~v~~Vegetation creates or enhances an identifiable health or safety problem, including, but not limited to, the creation of a fire hazard or the proliferation of rodents, snakes, insects, vermin and other creatures which constitute a menace to health, public safety or welfare~~rats, mosquitoes, vermin or creates a fire hazard,~~ the procedures shall be followed as provided in this ~~AetChapter~~ for the abatement of such ~~e~~Excessive ~~g~~Growth of ~~v~~Vegetation.
- ~~B~~D. Public parks, public golf courses, public natural preservation areas, public open space, public wildlife preservation areas, designated stream corridor areas, inaccessible public creek areas, and stormwater treatment facilities utilizing native vegetation as required by Chapter 16.210 of this Code (as may be amended); provided, however, where the City determines that any

~~e~~Excessive ~~g~~Growth of ~~v~~Vegetation in such areas creates or enhances an identifiable health or safety problem, including, but not limited to, the creation of a fire hazard or the proliferation of rodents, snakes, insects, vermin and other creatures which constitute a menace to health, public safety or welfare~~rats, mosquitoes, vermin or creates a fire hazard,~~ the City shall take such action as it deems necessary to mitigate such problem, consistent with the public interest in maintaining and protecting such areas.

E. Any tract or combination of tracts as determined by the Director of Planning and Development Services, or his or her designee, to meet the intent of the exceptions identified in subsections A-D.

SECTION 11. Overland Park Municipal Code Section 7.20.200 is hereby amended to read as follows:

7.20.200 Severability.

If any section, subsection, paragraph, sentence, clause or phrase in this ~~e~~Chapter or any part thereof is for any reason held to be unconstitutional or invalid ~~of~~ ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this ~~e~~Chapter or any part thereof.

SECTION 12. Existing Overland Park Municipal Code Sections 7.20.100, 7.20.110, 7.20.120, 7.20.130, 7.20.140, 7.20.150, 7.20.160, 7.20.170, 7.20.180, 7.20.190 and 7.20.200 are hereby repealed.

SECTION 13. This ordinance shall take effect and be in force from and after its publication in an official City newspaper.

PASSED by the City Council this _____ day of _____, 2011.

APPROVED by the Mayor this _____ day of _____, 2011.

Carl Gerlach, Mayor

ATTEST:

APPROVED AS TO FORM:

Marian Cook
City Clerk

Stephen B. Horner
Senior Assistant City Attorney