

ORDINANCE NO. STR-2849

AN ORDINANCE RELATING TO STREETS, STREETLIGHTING AND SIDEWALKS IN THE CITY OF OVERLAND PARK, KANSAS; ADDING NEW CHAPTER 13.10 ENTITLED “PUBLIC STREET, STREETLIGHTING AND SIDEWALK REQUIREMENTS” AND INCLUDING OVERLAND PARK MUNICIPAL CODE SECTIONS 13.10.010, 13.10.020, 13.10.030, 13.10.040, 13.10.050, 13.10.060, 13.10.070, 13.10.080, 13.10.090, 13.10.100, 13.10.110, 13.10.120 AND 13.10.130; AMENDING AND REPEALING OVERLAND PARK MUNICIPAL CODE SECTIONS 13.48.010 AND 13.48.020; REPEALING OVERLAND PARK MUNICIPAL CODE SECTIONS 13.01.010, 13.01.020, 13.01.030, 13.01.040, 13.01.050, 13.01.060, 13.01.070, 13.015, 13.02.001, 13.02.010, 13.02.020, 13.02.030, 13.02.040, 13.02.045, 13.02.050, 13.02.055, 13.02.060, 13.02.070, 13.02.080, 13.02.090, 13.02.100, 13.02.110, 13.02.120, 13.02.130, 13.02.140, 13.02.150, 13.02.160, 13.02.165, 13.02.170, 13.02.180, 13.02.190, 13.02.200, 13.02.210, 13.02.220, 13.02.230, 13.03.010, 13.03.020, 13.03.030, 13.03.040, 13.03.050, 13.03.060, 13.03.070, 13.03.080, 13.03.090, 13.03.100, 13.03.110, 13.03.120, 13.03.130, 13.03.140, 13.03.150, 13.03.160, 13.03.170, 13.03.180, 13.03.190, 13.03.200, 13.03.210, 13.03.220, 13.03.230, 13.03.240, 13.03.250, 13.03.260, 13.03.270, 13.03.280, 13.03.290, 13.03.300, 13.03.310, 13.03.320, 13.03.330, 13.03.340, 13.03.350, 13.03.360, 13.03.370, 13.03.380, 13.03.390, 13.03.400, 13.03.410, 13.03.420, 13.03.430, 13.03.440, 13.03.450; 13.05.010, 13.05.020, 13.05.030, 13.05.035, 13.05.040, 13.05.050; 13.08.001, 13.08.010, 13.08.020, 13.08.025, 13.08.030, 13.08.050, 13.08.060, 13.08.070, 13.08.075, 13.08.080, 13.08.090, 13.08.100, 13.08.110, 13.08.130, 13.08.140, 13.08.145, 13.08.160, 13.08.170, 13.08.180, 13.08.190, 13.08.200, 13.08.210, 13.08.220, 13.08.230, 13.08.240, 13.08.250, 13.16.010, 13.16.020, 13.16.030, 13.16.040, 13.16.050, 13.16.060, 13.16.070, 13.16.080, 13.16.090, 13.16.100, 13.16.110, 13.16.120, 13.16.130 AND 13.16.140.

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

SECTION 1. Overland Park Municipal Code Section 13.10.010 is hereby added to read as follows:

13.10.010 Definitions.

The following words and phrases whenever used in Title 13 of the Overland Park Municipal Code, shall be understood as defined in this Section unless from the context a different meaning is intended or unless a different meaning is specifically defined and more particularly directed to the use of such words or phrases:

- A. “City” means the City of Overland Park, Kansas.
- B. “City Engineer” is the professional engineer employed by the City as the “City Engineer.” “City Engineer” also refers to the City Engineer’s official designated representative.
- C. “Design and Construction Standards Manual” means the current design specification standards for public and private streets, stormwater facilities, stormwater treatment

facilities, erosion and sediment control, streetlighting and all related appurtenances adopted by the City Engineer pursuant to the provisions of Section 13.10.020.

- D. “Easement” is an interest in land that entitles its holder to a definite and limited use of land owned by another.
- E. “Engineer” or “Project/Design Engineer” is the Professional Engineer registered in the State of Kansas, who is responsible for the design of the improvements or his designated representative.
- F. “Owner/Responsible Party” means the person or party that owns a piece of property or is responsible for maintenance and upkeep as designated by the Owner.
- G. “Private Streetlights” means a streetlight system, consisting of luminaire, mounting arm (if any), pole, foundation, junction boxes, cabling, conduit, control center, and all appurtenances which are not owned, operated and maintained by the City.
- H. “Public Improvement Permit” is a permit issued by the City to the Responsible Party, or contractor after the review and approval of designs, plans, and specifications that are required prior to commencing work on any Public Improvement Project.
- I. “Public Improvement Project” means any public improvement neither financed in whole or in part by the City nor administered by the City in the City’s Right-of-Way, City-owned property, or City Easements including, but not limited to, streets, bridges, bike/hike trails, parkways, curbs, gutters, storm sewer, traffic signals, traffic signs, streetlights, Traffic Control System, retaining walls, fences, sidewalks, and facilities that will be maintained by the City upon completion and acceptance of the project.
- J. “Public Streetlights” means a streetlight system, consisting of luminaire, mounting arm (if any), pole, foundation, junction boxes, cabling, conduit, control center, and all appurtenances located within the public Right-of-Way which meets the requirements of the City and is owned, operated and maintained by the City.
- K. “Right-of-Way” means the area on, below or above the present and future City streets, alleys, bridges, bikeways, parkways and sidewalks.
- L. “Standard” or “Standards” mean the Design and Construction Standards Manual and the Standard Details, collectively.
- M. “Standard Details” means the current drawings or graphical illustrations of construction requirements for infrastructure that has been approved for general use by the City Engineer pursuant to the provisions of Section 13.10.020.
- N. “Traffic Control Systems” means traffic signals, fiber optic conduit and cables, service and junction boxes, dynamic message signs, trail blazer signs, CCTV cameras, and all appurtenances used for the purpose of controlling traffic flow, collecting traffic-related

data and communicating information to the traveling public.

SECTION 2. Overland Park Municipal Code Section 13.10.020 is hereby added to read as follows:

13.10.020 Design Criteria, Construction Specifications, and Standard Details.

A. Incorporation by Reference

The Standards are hereby incorporated by reference into the Overland Park Municipal Code for the purpose of providing certain design specifications and standards and for enforcing compliance with same. No fewer than three (3) copies of said Standards shall be marked Official Copy and filed with the City Clerk to be open to inspection and available to the public at all reasonable business hours.

B. Standards

Unless otherwise specified and approved, all public improvements shall be designed, constructed, and inspected in accordance with the requirements in this Chapter and the current requirements for public improvements contained within the Standards.

C. Private Streets

Private streets shall be constructed to public street standards.

D. Adoption of and Amendments to Standards

1. The requirements for public streets contained within the Design and Construction Standards Manual shall be adopted and amended by the City Engineer following a public input process. The public input process shall include the following minimum steps: 1) Posting on the City website the proposed Design and Construction Standards Manual in draft form a minimum of 30 days prior to the City Engineer holding a public informational meeting; and 2) extending a written comment period for a minimum of 30 days after the public informational meeting. A new public input process is not required for revisions to the proposed draft Design and Construction Standards Manual if the same is adopted by the City Engineer within 180 days of the public informational meeting.

2. The Standard Details shall be adopted and amended by the City Engineer and shall be on file in the office of the City Clerk.

Section 3. Overland Park Municipal Code Section 13.10.030 is hereby added to read as follows:

13.10.030 Approval of Public Improvement Plans.

Any person or entity proposing to construct a Public Improvement Project shall apply for a Public Improvement Permit. The application shall include construction plans that contain maps, diagrams, detailed construction drawings, and specifications that the City may require. If the City finds the proposed construction plan conforms to the City's Standards, the City may grant approval by signing submitted plans and issuing a Public Improvement Permit. Otherwise the City shall disapprove of the proposed construction plans in writing. Any interested party may appeal the approval or disapproval of the construction plans to the Governing Body through the

Public Works Committee by submitting a written notice to the City Clerk and providing copy of the notice to the City Engineer within ten days. In the case of an appeal from an approval by the City, approval shall be suspended until the appeal is heard by the Public Works Committee.

SECTION 4. Overland Park Municipal Code Section 13.10.040 is hereby added to read as follows:

13.10.040 Maintenance Agreements for Landscape Islands.

When landscape islands are constructed within the Right-of-Way as part of a private development project, the Owner/Responsible Party shall submit a Right-of-Way maintenance agreement for approval by the City. The approved Right-of-Way maintenance agreement shall be recorded with the Johnson County Records and Tax Administration.

SECTION 5. Overland Park Municipal Code Section 13.10.050 is hereby added to read as follows:

13.10.050 Streetlighting Construction and Maintenance.

A. General

Unless otherwise specified and approved, all Public Streetlights shall be designed, constructed and inspected in accordance with the requirements of this Chapter and the current Standards.

Any person, firm or corporation who constructs any new public street shall be responsible for the installation of street lighting except where streetlights are not required by provisions of this Chapter.

B. Private Streetlights in the Public Right-of-Way

Private Streetlights installed in the Right-of-Way shall only be permitted upon approval by the Governing Body through the Public Works Committee and execution and recording of the City standard maintenance agreement with the Johnson County Records and Tax Administration. Private Streetlight systems in the Right-of-Way shall meet the same illumination requirements as Public Street Lights.

C. Streetlights Not Constructed in RE Zoning Districts

In RE Zoning Districts, as defined in Title 18 of the Municipal Code, streetlights may be omitted at the option of the developer. In subdivisions where streetlights are not to be constructed, an agreement or deed restrictions shall be recorded with the Johnson County Records and Tax Administration stating that all costs of any future project to construct streetlights in the subdivision shall be spread among all properties in the subdivision. Such streetlights shall be designed and constructed in accordance with the Standards that are in place at the time of installation.

SECTION 6. Overland Park Municipal Code Section 13.10.060 is hereby added to read as follows:

13.10.060 Sidewalk Construction.

A. General

All sidewalks constructed upon Right-of-Way or public sidewalk Easements shall be constructed in accordance with the Standards.

B. Construction of Public Sidewalks Adjacent to Non-Residential Development Projects

Any person or entity constructing a new building, a building addition, major renovations to an existing building as defined in Section 18.410.050 of the Municipal Code, or significant site improvements shall be required to construct a public sidewalk along the public street frontage in conformance with the Standards. The City may waive this requirement for minor site improvements. Public sidewalk construction requirements for single-family and two-family residential developments are subject to Section 13.10.060 C below.

C. Construction of Public Sidewalks Adjacent to Single-Family and Two-Family Developments

Any person or entity obtaining a building permit for a single-family or two-family dwelling shall be required to construct a public sidewalk along the public street frontage in conformance with the Standards. Where sidewalks are required adjacent to tracts, or other locations where no building permit or site development permit will be obtained, the sidewalk shall be bonded, permitted, and constructed within the adjacent Public Improvement Projects. In cases where there is no associated building permit or adjacent Public Improvement Project shall be approved and permitted in accordance with Section 13.10.060 E of this Chapter.

D. Sidewalks Not Constructed in RE Zoning Districts

In RE Zoning Districts, sidewalks may be omitted at the option of the developer. In subdivisions where sidewalks are not to be constructed, an agreement or deed restrictions shall be recorded with the Johnson County Records and Tax Administration stating that all costs of any future project to construct sidewalks in the subdivision shall be spread among all properties in the subdivision.

E. Sidewalk Plan Approval

Any person or entity proposing to construct a sidewalk adjacent to or upon any Right-of-Way or Easement shall apply to the City Engineer for approval of the location, dimensions, design and construction methods and materials of such sidewalk. The application shall be a plan submitted and shall contain such detailed drawings and specifications as the City Engineer may require. If the City Engineer finds that any such sidewalk will conform to the Standards, he or she shall issue approval by issuance of a permit. No additional plan approval shall be required when a detailed sidewalk plan has been approved as a part of a building, site development or Public Improvement Permit application.

F. Location

All public sidewalks constructed within the City shall be located in the public Right-of-Way or within an Easement.

G. Failure to Provide Required Sidewalks

Any person or entity shall construct sidewalks as set forth in this Chapter within 90 days following the first issuance of any form of certificate of occupancy or certificate of completion for associated building or site development permits. Failure to complete sidewalk construction within 90 days following the first issuance of any form of a certificate of occupancy or certificate of completion is a Code violation and subject to penalties as set forth in Section 13.10.120 of this Chapter.

SECTION 7. Overland Park Municipal Code Section 13.10.070 is hereby added to read as follows:

13.10.070 Pedestrian Considerations During Construction.

- A. Closure of existing public sidewalks or bike/hike paths shall be allowed only after receiving the appropriate City permit.
- B. The City may impose reasonable conditions upon the issuance of a permit in order to protect the public health, safety, and welfare, to ensure the structural integrity of the Right-of-Way, to protect the property and safety of other users of the Right-of-Way, and to minimize the disruption and inconvenience to the traveling public.
- C. Closures shall be performed in a manner consistent with all applicable federal, state, and local laws including, but not limited to the Americans with Disabilities Act of 1990, 42 U.S.C. 12101 et seq.
- D. In no case shall public sidewalks or bike/paths be closed to pedestrian traffic for a period in excess of 30 days without prior approval from the City.

SECTION 8. Overland Park Municipal Code Section 13.10.080 is hereby added to read as follows:

13.10.080 Responsibility for Sidewalk Maintenance and Repair.

All persons or entities owning land adjacent to public Right-of-Way or Easement upon which there is located a sidewalk, are deemed and held responsible for the maintenance and repair of the sidewalk.

- A. Notice to Repair
Whenever the City Engineer finds that such public sidewalks are in need of repair or otherwise a safety hazard, the City Engineer may issue a Notice to Repair to the Owner of the property adjacent to the sidewalk. The Notice to Repair shall inform the Owner of the required repair or maintenance of the sidewalk and the maximum time period of which the Owner will be allowed to make such repairs, not to exceed 60 days.
- B. Failure to Comply with Notice - Repairs by City
If the Owner fails to comply with the requirements of the Notice to Repair within the

time specified in the Notice, the City Engineer may proceed to have such repairs made by City staff or by a contractor employed by the City. The City Engineer shall report the actual construction cost of repairs to the City Clerk for purposes of assessment in accordance with Section 13.10.080 C, below.

- C. **Assessment of Costs to Abutting Landowner**
The City Clerk, at the time of certifying other City taxes to the County Clerk, shall certify unpaid construction costs for sidewalk repairs plus an administrative cost of 5% of the unpaid repair costs. The City Clerk shall submit the costs, including 5% administrative fee to the County Clerk who shall extend the total of such certified and assessed cost on the tax roll of the County and the same shall constitute a special assessment against the lot or parcel of land abutting the sidewalk. The sidewalk repair costs shall be paid from the general fund or other proper fund of the City; and such fund shall be reimbursed when payments therefor are received or when such assessments are collected and received by the City.

SECTION 9. Overland Park Municipal Code Section 13.10.090 is hereby added to read as follows:

13.10.090 Insurance Requirements.

Unless otherwise specified and approved, the contractor shall secure and maintain or have maintained throughout the duration of the project, insurance of the type and in at least the amounts specified in the Standards to protect against all hazards or risks of loss as hereinafter specified. Such insurance shall protect against all hazards or risks of loss generated by the contractor, any of his subcontractors, or by anyone directly or indirectly employed by the contractor or his subcontractors. If required by the City Engineer, the contractor shall offer the City evidence of such insurance coverage and all renewals thereof in the form of the certificate of insurance provided to the City.

SECTION 10. Overland Park Municipal Code Section 13.10.100 is hereby added to read as follows:

13.10.100 Performance and Maintenance Surety Requirements.

The contractor shall submit a performance and maintenance surety for all Public Improvement Projects prior to issuance of a Public Improvement Permit. The surety shall be in the amount equal to the full construction value of the public improvements. The surety shall remain in force for a period of two years after the date of completion and acceptance of the improvements by the City Engineer. Acceptable forms of a surety include: a cash deposit, a performance and maintenance bond on a form acceptable to the City Engineer, or an irrevocable letter of credit from an acceptable financial institution on a form prescribed by the City's Chief Financial Officer. If surety is given in the form of a cash deposit, all remaining money and any interest accrued thereon the cash deposit shall be returned to the contractor two years after the date of completion and acceptance of the project.

SECTION 11. Overland Park Municipal Code Section 13.10.110 is hereby added to read as follows:

13.10.110 Variances and Appeals.

A. Variances

Any variance of the provisions in this Chapter shall be submitted to and approved by the Governing Body through the Public Works Committee. The City Engineer may grant a variance to the Standards which have been adopted by the City Engineer.

In the event that a conditional variance is granted by the Public Works Committee related to sidewalk installation and a demand is later made by the City Engineer for the sidewalk to be installed, the person or entity having ownership of the tract that is the subject matter of the variance at the time of the demand shall, within 45 days from the date of mailing of the demand by the City Engineer by certified mail, install the sidewalk in accordance with this Chapter.

B. Appeals

Appeals of decisions made by the City Engineer will be made in accordance with the process specified in Section 13.10.030.

SECTION 12. Overland Park Municipal Code Section 13.10.120 is hereby added to read as follows:

13.10.120 Violations and Penalties

Any person or entity violating any provision of this Chapter is guilty of a public offense, and upon conviction thereof shall be fined, unless otherwise specified, in accordance with Section 1.12.010. Every day that this Chapter is violated shall constitute a separate offense.

SECTION 13. Overland Park Municipal Code Section 13.10.130 is hereby added to read as follows:

13.10.130 Enjoinment.

Notwithstanding the foregoing penalty Section, the City may institute civil actions including an action to enjoin violations of this Chapter.

SECTION 14. Overland Park Municipal Code Section 13.48.010 is hereby amended to read as follows:

13.48.010 Gross Weight Limits on Bridges.

~~The City Engineer may determine and declare maximum gross weight limits on roadway bridges in accordance with Section 12.04.196.2. of the Municipal Code.~~

A. ~~The City Engineer may determine and declare maximum gross weight limits on roadway bridges in accordance with Section 12.04.196.2 of the Municipal Code. The City Engineer may determine and declare upon the basis of an engineering investigation the maximum gross weight limits for any roadway bridge within the City. These limits shall be effective when posted upon appropriate signs adjacent to said bridges. No person, firm, association, partnership or corporation shall drive a vehicle in excess of the posted gross weight limits upon said bridges.~~

- ~~B. Whenever the Kansas Department of Transportation shall determine upon the basis of an engineering investigation maximum gross weight limits on any bridge which is on a state highway connecting link, said maximum gross weight limits shall be effective at all times when appropriate signs giving notice thereof are erected adjacent to said bridges.~~
- ~~C. The maximum gross weight limit on any bridge not posted otherwise shall be the maximum gross weight limit as set forth in Section.~~

SECTION 15. Overland Park Municipal Code Section 13.48.020 is hereby amended to read as follows:

13.48.020 Liability.

Any person, firm, association, partnership or corporation driving, operating or moving any vehicle, object, or contrivance upon the bridges as designated in Section 13.48.010 and in violation of the weight restrictions as set forth in Section 13.48.010 shall be liable for all damages which said bridges or structures may sustain as a result of any operation, driving or moving of such vehicle, object, contrivance, weighing in excess of the maximum weight as set forth in Section 13.48.010.

SECTION 16. Existing Overland Park Municipal Code Sections 13.01.010, 13.01.020, 13.01.030, 13.01.040, 13.01.050, 13.01.060, 13.01.070, 13.015, 13.02.001, 13.02.010, 13.02.020, 13.02.030, 13.02.040, 13.02.045, 13.02.050, 13.02.055, 13.02.060, 13.02.070, 13.02.080, 13.02.090, 13.02.100, 13.02.110, 13.02.120, 13.02.130, 13.02.140, 13.02.150, 13.02.160, 13.02.165, 13.02.170, 13.02.180, 13.02.190, 13.02.200, 13.02.210, 13.02.220, 13.02.230, 13.03.010, 13.03.020, 13.03.030, 13.03.040, 13.03.050, 13.03.060, 13.03.070, 13.03.080, 13.03.090, 13.03.100, 13.03.110, 13.03.120, 13.03.130, 13.03.140, 13.03.150, 13.03.160, 13.03.170, 13.03.180, 13.03.190, 13.03.200, 13.03.210, 13.03.220, 13.03.230, 13.03.240, 13.03.250, 13.03.260, 13.03.270, 13.03.280, 13.03.290, 13.03.300, 13.03.310, 13.03.320, 13.03.330, 13.03.340, 13.03.350, 13.03.360, 13.03.370, 13.03.380, 13.03.390, 13.03.400, 13.03.410, 13.03.420, 13.03.430, 13.03.440, 13.03.450; 13.05.010, 13.05.020, 13.05.030, 13.05.035, 13.05.040, 13.05.050; 13.08.001, 13.08.010, 13.08.020, 13.08.025, 13.08.030, 13.08.050, 13.08.060, 13.08.070, 13.08.075, 13.08.080, 13.08.090, 13.08.100, 13.08.110, 13.08.130, 13.08.140, 13.08.145, 13.08.160, 13.08.170, 13.08.180, 13.08.190, 13.08.200, 13.08.210, 13.08.220, 13.08.230, 13.08.240, 13.08.250, 13.16.010, 13.16.020, 13.16.030, 13.16.040, 13.16.050, 13.16.060, 13.16.070, 13.16.080, 13.16.090, 13.16.100, 13.16.110, 13.16.120, 13.16.130, 13.16.140, 13.48.010 and 13.48.020 are hereby repealed.

SECTION 17. This ordinance shall take effect and be in force from and after February 10, 2010 and its publication in an official City newspaper.

PASSED by the City Council this ___ day of February, 2010.

APPROVED by the Mayor this ____ day of February, 2010.

Carl Gerlach, Mayor

ATTEST:

Marian Cook, City Clerk

APPROVED AS TO FORM:

Tammy M. Owens
Senior Assistant City Attorney