

ORDINANCE NO. ZRR-3417

AN ORDINANCE OF THE CITY OF OVERLAND PARK, KANSAS RELATING TO THE UNIFIED DEVELOPMENT ORDINANCE AND ZONING REGULATIONS REGARDING SITE PLANS AND DEVELOPMENT PLANS; AMENDING AND REPEALING EXISTING OVERLAND PARK MUNICIPAL CODE SECTIONS 18.140.180, 18.140.200, 18.140.220 AND 18.140.240 AND PROVIDING SUBSTITUTE PROVISIONS THEREFOR; REPEALING EXISTING SECTION 18.140.230.

WHEREAS, at the recommendation of City staff and the Planning Commission, the Governing Body hereby revises the City's regulations 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 18.140.180 is hereby amended to read as follows:

18.140.180 Site Plans: Consideration

- A. **Site Plan Requirement.** No property with a zoning district classification requiring approval of a site plan may be developed or redeveloped without a site plan (or revised site plan) being submitted to and approved by the Director. Unless appealed, the decision of the Director shall be final.
- B. **Site Plan Criteria.** The criteria for consideration of an application for a site plan or a revised site plan shall be the criteria set forth in 18.140.150 E., to the extent they are pertinent to the particular application, as well as the following additional criteria:
 - 1. All submission requirements have been met.
 - 2. The plan conforms with all applicable regulations and design standards for the site's zoning district, as well as any other applicable adopted plans or policies (including but not limited to, landscaping and screening plan, lighting, architecture and setbacks).
 - 3. The site is capable of accommodating the proposed uses, buildings, parking and drives with appropriate open space, and adequate separation from surrounding land uses.
 - 4. The plan provides for safe and easy ingress, egress and internal traffic circulation.
 - 5. The plan is consistent with good land planning and site engineering design principles.
 - 6. The plan provides an appropriate degree of harmony between the architectural quality of the proposed buildings and the surrounding neighborhood.
 - 7. The plan represents an overall development pattern that is consistent with the Comprehensive Plan, the Official Street Map and other adopted planning policies.
 - 8. Right-of-way for any abutting thoroughfare has been dedicated pursuant to the provisions of 18.400.
- C. **Appeals.**
 - 1. The Director's disapproval of a site plan or revised site plan may be appealed to the Planning Commission by filing a notice of appeal with the City Clerk within 14 days after the Director's decision. The Planning Commission may affirm, reverse or modify the Director's decision with a simple majority vote.
 - 2. The Planning Commission's decision on the appeal may be appealed to the Governing Body by either the applicant or the Director by filing a notice of appeal with the City Clerk

within 14 days after the date of the Planning Commission’s decision. The Governing Body may affirm, reverse or modify the Planning Commission’s decision with a simple majority vote.

Section 2. Overland Park Municipal Code Section 18.140.200 is hereby amended to read as follows:

18.140.200 Preliminary Development Plans: Consideration

A. Plans for planned zoning districts.

1. Preliminary Development Plan Requirement. No property with a planned zoning district classification may be developed or redeveloped without an approved preliminary and final development plan. When property is rezoned to a planned zoning district, the preliminary development plan shall be considered and approved as part of the rezoning application. Changes in the preliminary development plan may be made only after the approval of a revised preliminary development plan as set forth hereafter. In the event that the application for the revised preliminary development plan is denied, the previously-approved preliminary development plan will remain in effect.
2. Determination of Changes. Unless additional information is requested, the Director shall determine whether a proposed revised preliminary development plan contains “substantial or significant changes” within 5 business days of filing the application. For purposes of this Section, "substantial or significant changes" shall mean any of the following:
 - a. Increases in the density or intensity of residential uses of more than 5%.
 - b. Increases in the total floor area of all nonresidential buildings covered by the plan of more than 10%.
 - c. Increases of lot coverage of more than 5%.
 - d. Increases in the height of any building of more than 10%.
 - e. Changes of architectural style which will make the project less compatible with surrounding uses.
 - f. Changes in ownership patterns or stages of construction that will lead to a different development concept.
 - g. Changes in ownership patterns or stages of construction that will impose substantially greater loads on streets and other public facilities.
 - h. Decreases of any peripheral setback of more than 5%.
 - i. Decreases of areas devoted to open space of more than 5% or the substantial relocation of such areas.
 - j. Changes of traffic circulation patterns that will affect traffic outside of the project boundaries.
 - k. Modification or removal of conditions or stipulations to the preliminary development plan approval.
 - l. For any developments proposed in the RP-OE, RP-OS, or PRN zoning districts, any change in the specified use or maintenance of any designated open space lands.
 - m. For any developments proposed in the PRN zoning district, any changes in the type of dwelling units or style of dwelling units proposed to be constructed in a particular area or block.
 - n. For any developments proposed in the MXD zoning district the following shall apply (see Mixed Use Design Guidelines for additional information):

1. Internal sub-zones in an MXD development may be changed administratively if no internal property or units have been sold to a separate entity.
 2. Perimeter sub-zones in an MXD development may be changed to a less intensive sub-zone without a public hearing. Any changes of the perimeter property line of an MXD zoned development shall result in a revised preliminary plan subject to the requirements found in 18.140.150.
3. Revised Preliminary Development Plan - Non-substantial Change. Changes in the preliminary development plan which are not substantial or significant may be approved by the Planning Commission by a simple majority vote. Unless appealed, the decision of the Planning Commission shall be final.
4. Revised Preliminary Development Plan - Substantial Change. Substantial or significant changes in the preliminary development plan shall require a public hearing before the Planning Commission, with publication notice and notice to surrounding property owners in the manner required by 18.140.070 and 18.140.080 respectively, and a neighborhood meeting when required by 18.140.065. The Planning Commission shall recommend approval or denial to the Governing Body by a simple majority vote; a tie vote shall be deemed a recommendation for denial. The Governing Body may accept or override the Planning Commission's recommendation with a simple majority vote.
 - a. Protest Petition. A protest petition may be filed against a revised preliminary development plan with substantial or significant changes in the same manner and process as set forth in 18.140.150 C. When a valid protest petition is filed, approval of the revised preliminary plan shall require a vote of 10 or more members of the Governing Body.
 - b. PRN Districts. For substantial or significant changes to preliminary development plans in the PRN, Planned Residential Neighborhood District only the area directly affected by the revisions or that area subject to the application will be subject to the notice and protest provisions.
5. Preliminary Development Plan Criteria. The criteria for consideration of an application for a preliminary development plan or revised preliminary development plan shall be the criteria set forth in 18.140.150 E., to the extent they are pertinent to the particular application, as well as the following additional criteria:
 - a. All submission requirements have been met.
 - b. The plan conforms with all applicable regulations and design standards for the site's zoning district, as well as any other applicable adopted plans or policies (including but not limited to, landscaping and screening plan, lighting, architecture and setbacks).
 - c. The site is capable of accommodating the proposed uses, buildings, parking and drives with appropriate open space, and adequate separation from surrounding land uses.
 - d. The plan provides for safe and easy ingress, egress and internal traffic circulation.
 - e. The plan is consistent with good land planning and site engineering design principles.
 - f. The plan provides an appropriate degree of harmony between the architectural quality of the proposed buildings and the surrounding neighborhood.
 - g. The plan represents an overall development pattern that is consistent with the Comprehensive Plan, the Official Street Map, and other adopted planning policies.

- h. Right-of-way for any abutting thoroughfare has been dedicated pursuant to the provisions of 18.400.

6. Appeals.

- a. The Director's determination of whether a proposed revised preliminary development plan contains "substantial or significant changes" may be appealed to the Planning Commission by filing a notice of appeal with the City Clerk within 14 days after the date of the Director's decision. The Planning Commission may affirm, reverse or modify the Director's decision with a simple majority vote, and its decision will be final. (See A.2 above)
- b. The Planning Commission's disapproval of a revised preliminary development plan with non-substantial changes may be appealed to the Governing Body by filing a notice of appeal with the City Clerk within 14 days after the date of the Planning Commission's decision. The Governing Body may affirm, reverse or modify the Planning Commission's decision with a simple majority vote. (See A.3 above)

B. Plans for non-residential uses in residential districts.

- 1. Development Plan Requirement. No property being used for a non-residential use in a residential district may be developed or redeveloped without an approved preliminary and final development plan. Changes in the preliminary development plan may be made only after the approval of a revised preliminary development plan as set forth hereafter. In the event the application is denied, any previously-approved preliminary development plan will remain in effect.
- 2. Preliminary Development Plan. A preliminary development plan or a revised preliminary development plan for a non-residential use in a residential district shall require a public hearing before the Planning Commission, with publication notice and notice to surrounding property owners in the manner required by 18.140.070 and 18.140.080 respectively, and a neighborhood meeting when required by 18.140.065. The Planning Commission may approve or deny the application by a simple majority vote. Unless appealed, the decision of the Planning Commission shall be final.
- 3. Preliminary Development Plan Criteria. The criteria for consideration of a preliminary development plan or a revised preliminary development plan for a non-residential use in a residential district shall be the criteria set forth in 18.140.200 A.5. above.
- 4. Appeals.
 - a. By Applicant. The applicant may appeal the Planning Commission's decision for a preliminary development plan or a revised preliminary development plan for a non-residential use in a residential district to the Governing Body by filing a notice of appeal with the City Clerk within 14 days after the date of the Planning Commission's decision. The Governing Body may affirm, reverse or modify the Planning Commission's decision with a simple majority vote.
 - b. By Neighboring Property Owners. The owners of 20% of the total property within the area required to be notified by subsection B2. above (applying the notice requirement of 18.140.180), excepting public streets and ways, may appeal the Planning Commission's approval of a preliminary development plan or a revised preliminary development plan for a non-residential use in a residential district to the Governing Body by filing a petition for appeal with the City Clerk within 14 days after the date of the Planning Commission's decision. Verification of the genuineness and correctness of the signatures on the petition for appeal, either individually or collectively, shall be made by a person who has signed the petition.

The Governing Body may affirm, reverse or modify the Planning Commission's decision with a simple majority vote. Withdraw of a petition for appeal or any signature thereon may be made in the same manner as set forth in 18.140.150 C.3.

5. Combined Preliminary and Final Development Plan. With the Director's consent, final development plans for non-residential uses in residential districts may be combined with the (revised) preliminary development plan provided that all information required by both 18.140.190 and 18.140.210 is submitted with the plan. Where a combined preliminary and final development plan is submitted, it shall be considered in accordance with the provisions of B.2 above.

Section 3. Overland Park Municipal Code Section 18.140.220 is hereby amended to read as follows:

18.140.220 Final Development Plans: Consideration

- A. **Final Development Plan Requirement.** No property with either (i) a planned zoning district classification, or (ii) that is being used for a non-residential use in a residential district, may be developed or redeveloped without an approved final development plan. Final development plans must conform with the approved preliminary development plan and can be approved as set forth hereafter. Prior to consideration of any final development plan, City staff shall determine whether dedication of right-of-way will be required pursuant to 18.400.
- B. **Consideration of Modifications.** Unless additional information is requested, the Director shall determine whether a proposed final development plan contains any modifications and whether such modifications are "substantial or significant changes" within 5 business days of filing the application. For purposes of this Section, "substantial or significant changes" shall mean any of the factors set forth in 18.140.200 A.2.
- C. **Final Development Plan.**
 1. No Modification or Non-Substantial Change. A final development plan which contains no modifications or additions or which contains modifications but is in substantial compliance with the approved preliminary development plan shall be approved by the Planning Commission if the Commission determines that:
 - a. All relevant new details are provided;
 - b. All applicable standards are satisfied and deemed to be adequate, including but not limited to the landscaping and screening plan, lighting, architecture, and other factors not considered with the preliminary development plan; and
 - c. All other submission requirements and required stipulations have been satisfied.

The Planning Commission's decision shall be made with a simple majority vote.

2. Substantial Change. In the event of a determination that the proposed final development plan is not in substantial compliance with the approved preliminary development plan or that it contains "substantial or significant changes," the applicant shall not proceed with its final development plan application but shall instead be required to make an application for a revised preliminary plan pursuant to 18.140.200.
3. Appeals.
 - a. The determination of the Director of whether a proposed final development plan: (i) contains modifications; (ii) is not in substantial compliance with the approved preliminary development plan; or (iii) contains "substantial or significant changes," may be appealed to the Planning Commission by filing a notice of appeal with the City Clerk within 14 days after the date of the Director's decision. The Planning Commission may affirm, reverse or modify the Director's decision with a simple majority vote, and its decision will be final.

- b. The Planning Commission's disapproval of non-substantial changes to a final development plan may be appealed to the Governing Body by filing a notice of appeal with the City Clerk within 14 days after the date of the Planning Commission's decision. The Governing Body may affirm, reverse or modify the Planning Commission's decision with a simple majority vote.

D. Revisions to Approved Final Development Plans. Revisions to an approved final development plan which are not substantial or significant in nature may be approved administratively by the Director. Revisions to an approved final development which are substantial or significant cannot be approved, and the applicant shall instead be required to make an application for a revised preliminary plan pursuant to 18.140.200. For purposes of this Section, "substantial or significant changes" shall mean any of the factors set forth in 18.140.200 A.2.

Section 4. Overland Park Municipal Code Section 18.140.240 is hereby amended to read as follows:

18.140.240 Final Development Plans: Abandonment

In the event that a plan or a section thereof is given final development plan approval and thereafter the landowner (or designee) either: (i) abandons said plan or the section thereof; or (ii) fails to commence the planned development within 18 months after final development plan approval has been granted, then in either event such final approval shall terminate and shall be deemed null and void. Whenever a final development plan or section thereof has been abandoned as provided in this Section, no development shall take place on the property until a new final development plan has been approved.

Section 5. Existing Overland Park Municipal Code Sections 18.140.180, 18.140.200, 18.140.220 18.140.230, and 18.140.240 are hereby repealed.

Section 6. 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 7. Nothing in this Ordinance shall be construed to affect any notice of violation, suit or proceeding impending in any court, or any rights acquired, or 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 8. This Ordinance shall take effect and be in force as of the date of its passage, approval and publication as provided by law.

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PASSED by the City Council this 11th day of September, 2023.

APPROVED by the Mayor this 11th day of September, 2023.

CITY OF OVERLAND PARK, KANSAS

(SEAL)

(s) Curt Skoog
Curt Skoog, Mayor

ATTEST:

APPROVED AS TO FORM:

(s) Elizabeth Kelley
Elizabeth Kelley
City Clerk

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