

ORDINANCE NO. NU-3437

AN ORDINANCE RELATING TO ENFORCEMENT AGAINST NUISANCES, SPECIFICALLY WEEDS AND VEGETATION, IN THE CITY OF OVERLAND PARK, KANSAS; AMENDING AND REPEALING EXISTING OVERLAND PARK MUNICIPAL CODE SECTIONS 7.20.110, 7.20.120, 7.20.130, 7.20.140, 7.20.150, 7.20.160, 7.20.180 AND 7.20.190 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 7.20.110 is hereby amended to read as follows:

7.20.110 Purpose, Objectives, and Findings.

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

1. Prohibit the growth of Noxious Weeds, Uncontrolled growth of Invasive Species, and encourage the preservation, planting, and maintenance of Native Plants;
2. Require reasonable Control and action to:
 - a. Prevent the Excessive Growth of 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.
3. Provide a method of enforcement of violations of this Chapter;
4. Provide procedures to notify the Owner, Occupant or Agent of the property that a violation of this Chapter exists and to allow for self-abatement by such Persons;
5. Provide the Owner, Occupant or Agent an opportunity to be heard concerning violations of this Chapter;
6. Provide procedures to allow the City to abate the violation should the Owner, Occupant or Agent fail to timely act;
7. Provide a method of assessing or collecting costs for such abatement by the City; and
8. Establish that violations of this Chapter are unlawful and to provide penalties for enforcement through the Municipal Court system.

B. The objectives of the Weed and Vegetation Enforcement Act are to:

1. To enhance the City's environmental health by promoting plants that are native to the region;

2. To protect the City's environmental health by prohibiting plants that are likely to cause environmental harm or harm to human health;
3. To require control and action to prevent the Excessive Growth of Vegetation, eradicate Noxious Weeds, and Poisonous Plants to the Touch, and prevent the spread of Invasive Plants.

C. The Governing Body hereby finds that:

1. Excessive Growth of Vegetation;
2. Noxious Weeds;
3. Poisonous Plants to the Touch; and
4. The growth of Invasive Plants are all a public nuisance that degrade natural and maintained landscape areas, displace native plant species, increase erosion, destroy wildlife habitat, and/or adversely affect public health, safety or welfare; and that allowing them to proliferate 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 2. Overland Park Municipal Code Section 7.20.120 is hereby amended to read as follows:

7.20.120 Definitions.

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

- A. **Agent** shall mean any Person 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 or partnership ownership; an agent, administrator, executor or manager directed by the Owner, estate, or court order to represent the interests of real property or to otherwise maintain, care or control activities on the property; or corporate officer.
- B. **City** shall mean the City of Overland Park, Kansas.
- C. **Control or Controlled** 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 of Vegetation** shall mean any grasses, dandelions, herbaceous plants or vines or other uncontrolled or uncultivated vegetation that is more than eight (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 include trees, bushes, shrubs, flowers, and ornamental or garden plants, either cultivated or uncultivated, if such vegetation is not made readily distinguishable from any Excessive Growth of Vegetation.

- E. **Invasive Plants** shall mean species, including its seeds, spores, or other biological material capable of propagating that species, that is not native to that ecosystem; and whose presence causes or is likely to cause harm to the environment, economy, and/or human health. These species often grow, reproduce, and spread rapidly. Invasive Plants shall include bamboo. Said plants are only allowed when properly Controlled.
- F. **Native Plants** shall mean vegetation that has evolved and naturally occurs in the region including native grasses, herbaceous plants, vines, shrubs, or trees.
- G. **Noxious Weeds** shall mean plants listed as Category A, Category B or Category C noxious weed in Kansas Administrative Regulations Section 4-8-44 (effective March 26, 2021), entitled “Designation Noxious Weeds” or listed as a noxious weed in 2 CSR 70-45.005 entitled “Noxious Weed List” of the Missouri Register, Vol. 48, No. 16, August 15, 2023.
- H. **Occupant** shall mean any Person who has a severable or nonseverable interest in real property either by oral or written lease or covenant, or by other methods of conveying a limited interest in such property; or any Person who occupies or has possession of such property.
- I. **Owner** shall mean the named property owner as indicated by the records of the Records and Tax Administration or Appraiser’s office in Johnson County, Kansas.
- J. **Person** shall mean any individual, individuals, partnership, corporation, unincorporated association, other business organization, committee, board, trustee, receiver, or Agent.
- K. **Planned Sustainable Landscape** shall mean a planned, intentional, and maintained planting of primarily native plants, grasses, vines, shrubs, or trees, including but not limited to rain gardens, meadow vegetation, and ornamental plants. Planned Sustainable Landscapes do not include turf grass lawns left unattended for the purpose of returning to a natural state.
- L. **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.

SECTION 3. Overland Park Municipal Code Section 7.20.130 is hereby amended to read as follows:

7.20.130 Violations; Responsibility to Abate.

- A. It shall be unlawful for any Owner, Occupant or Agent of 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 any areas between the property lines of said 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 shall be responsible for the abatement of any violation of this Section. Further, it is the responsibility of the Owner, Occupant or Agent 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 Excessive Growth of Vegetation, any Noxious Weeds, any Poisonous Plants to the Touch, or any uncontrolled growth of Invasive Plants in the surrounding area.
- C. Vegetation which constitutes one of the following shall not be deemed a violation under A.1. of this Section:
 - 1. Planned Sustainable Landscape,
 - 2. Controlled ornamental or food producing garden;

Provided such vegetation does not encroach on adjacent property.

SECTION 4. Overland Park Municipal Code Section 7.20.140 is hereby amended to read as follows:

7.20.140 Public Officer; Notice of Violation; Hearing.

- A. The City Manager shall designate a public officer(s) to administer and enforce this Chapter. If it is determined that a violation of this Chapter exists, the public officer shall file a written report with the City, and shall direct that a notice of violation be sent to the Owner, Occupant or Agent of the property; provided, however, if a violation was previously issued within the same calendar year of the violation, 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 the Owner is a nonresident, such notice shall be sent by certified mail, return receipt requested, to the last known address of the Owner. In cases where the Owner is unknown or is a nonresident, and there is no resident agent, then the City Clerk shall publish the notice of the 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 Act;
 - 3. A description of the violation that would reasonably allow the Owner, Occupant or Agent to determine the nature of the violation to allow for self-abatement;

4. That the violation must be abated by the Owner, Occupant or Agent within ten (10) days from the date of the mailing of the notice of violation; or within ten (10) days of publication if publication was deemed necessary;

5. That, prior to the expiration of the notice period, the Owner, Occupant or Agent may request in writing a hearing before the hearing officer;

6. That the failure to comply with the notice of violation shall result in the City abating the violation, with the assessment of costs of abatement (including a reasonable administrative fee and the cost of all notice) made against the property and the Owner, Occupant or Agent;

7. That payment of the assessment of costs is due and payable within thirty (30) days of the notice of assessment, or the assessment will be added to the property tax as a special assessment, as provided for by K.S.A. 12-1617e, 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.

9. 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.

D. If the recipient of the notice of violation makes a written request for a hearing within the notice period, the City shall schedule a hearing during a regular business day within ten (10) calendar days from the receipt of the request. The hearing shall be conducted by a designated hearing officer who is not a subordinate of the public officer who issued the notice of violation or conducted the investigation. The hearing officer shall receive evidence, review the investigation, and prepare a written order. The order shall be sent 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 state the relevant facts and the specific code provisions relied upon, and any other stipulations, methods of abatement, or orders as deemed necessary by the hearing officer.

E. If the public officer determines that a violation of this 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 no other procedures are required as a prerequisite to the issuance of a Notice to Appear.

SECTION 5. 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 fails to request a hearing and or fails to self-abate the violation within the notice period, the City may enter 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 abate the violation. The City may use its own employees or contract for services to abate the violation. Any authorized officer or agent of the City 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 abates the violation, it shall provide a notice of costs to the Owner, Occupant or Agent by certified mail, return receipt requested, at the last known mailing address. 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 Clerk shall certify the aforesaid costs at the time of certifying other City taxes to the County Clerk, and the County Clerk shall extend the same on the tax roll of the County against the property, and it shall be collected by the County Treasurer 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 6. Overland Park Municipal Code Section 7.20.160 is hereby amended to read as follows:

7.20.160 Reserved.

SECTION 7. 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 in violation of this Chapter shall be subject to prosecution in the Overland Park Municipal Court. Any Person found guilty of violating the provisions of this Chapter shall be subject to a fine up to \$500.00 and not more than ten (10) days in jail, or both a fine and jail sentence. Any Person found guilty of this Chapter two (2) or more times within any one-year period 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 Chapter does not limit the City's right to pursue assessment or collection of costs as stated in this Chapter, or by other laws.
- C. Each day that any violation of this Chapter shall continue shall constitute a separate offense.

SECTION 8. Overland Park Municipal Code Section 7.20.190 is hereby amended to read as follows:

7.20.190 Exceptions.

This Chapter shall not be made applicable to:

- A. Land zoned 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;
- B. Undeveloped tracts of land zoned 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;
- C. For the tracts of land identified in subsections A and B:
 - 1. Such tracts shall not allow any Excessive Growth of Vegetation and/or growth of agricultural crops within thirty (30) feet of the edge of the street or curb adjacent to

any other roadway or the property line of any property being used for residential or commercial purposes.

2. For tracts zoned other than for agricultural uses, where the City determines that any Excessive Growth of Vegetation creates or enhances an identifiable health or safety problem, the procedures shall be followed as provided in this Chapter for the abatement of such Excessive Growth of Vegetation.
- 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 Excessive Growth of Vegetation in such areas creates or enhances an identifiable health or safety problem, 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. Planned Sustainable Landscape areas that meet the following criteria:
1. The owner is responsible for ensuring that all landscape material in a Planned Sustainable Landscape is maintained in a healthy condition and managed so as not to include unintended vegetation.
 2. The Planned Sustainable Landscape cannot contain Invasive Plants which are not Controlled, turf grass, or any Noxious Weeds.
 3. The landscape boundaries are clearly defined through edging or containment and no vegetation is encroaching onto a neighboring property.
 4. The Planned Sustainable Landscape meets the following setback requirements:
 - a. Three feet from side and/or rear lot lines running the length of the property
 - b. No setback is required on side or rear lot lines where the defined landscape area abuts another similar private or public landscape area, or if a solid fence at least four feet in height is installed along the lot line adjoining the planned landscape
- F. 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 9. Existing Overland Park Municipal Code Sections 7.20.110, 7.20.120, 7.20.130, 7.20.140, 7.20.150, 7.20.160, 7.20.180 and 7.20.190 are hereby repealed.

SECTION 10. 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 6th day of November, 2023.

APPROVED by the Mayor this 6th day of November, 2023.

CITY OF OVERLAND PARK

(s) Curt Skoog
Curt Skoog, Mayor

ATTEST:

APPROVED AS TO FORM:

(s) Elizabeth Kelley
Elizabeth Kelley, City Clerk

(s) Trevor Stiles
Trevor Stiles, Sr. Assistant City Attorney