

ORDINANCE NO. ZRR-2854

AN ORDINANCE RELATING TO THE UNIFIED DEVELOPMENT ORDINANCE FOR THE CITY OF OVERLAND PARK, KANSAS; AMENDING AND REPEALING EXISTING SECTIONS 18.390.010, 18.390.030, 18.390.075 and 18.390.140.

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

SECTION 1. Overland Park Municipal Code Section 18.390.010 is hereby amended to read as follows:

18.390.010 Intent and interpretation

- A. It is the intent of this Chapter to regard certain activities as being accessory to the principal use of the premises that may be carried on underneath the umbrella of the principal use. An activity will be considered an accessory use or structure when it is conducted in conjunction with the principal use and the activity constitutes only an incidental part of the total activity that takes place on the property, and is commonly associated with the principal use and integrally related to it.
- B. For purposes of interpreting subsection A:
 - 1. A use or structure may be regarded as "incidental" if it is both insubstantial and subordinate in relation to the principal use.
 - 2. To be "commonly associated" with a principal use, it is not necessary for an accessory use or structure to be connected with such principal use more times than not, but only that the association of such accessory use or structure with such principal use takes place with sufficient frequency that there is common acceptance of their relatedness.

SECTION 2. Overland Park Municipal Code Section 18.390.030 is hereby amended to read as follows:

18.390.030 District A and all residential districts

The following are accessory uses and structures in District A and all residential districts; subject to the performance standards set forth in Section 18.390.140:

- A. Day care homes, group day care homes, child care centers, preschools and Mother's Day Out programs.
- B. Fences or walls.
- C. Flag poles.
- D. Garages and carports.

- E. Gardens.
- F. Gates or guard houses for subdivisions or multi-family projects.
- G. Ground-mounted satellite dish antennas.
- H. Hobby activities.
- I. Home occupations.
- J. Keeping of animals.
- K. Outside Storage of equipment, materials or vehicles.
- L. Parking areas.
- M. Play equipment.
- N. Signs.
- O. Solar collectors.
- P. Swimming pools and associated mechanical equipment.
- Q. Television and radio antennas not exceeding 60 feet in height.
- R. Tool/lawn equipment sheds not exceeding 200 square feet.
- S. Recycling collection point.

SECTION 3. Overland Park Municipal Code Section 18.390.075 is hereby amended to read as follows:

18.390.075 District MXD

The following are accessory uses and structures in District MXD; subject to the performance standards set forth in Section 18.390.140:

- A. Cooling towers.
- B. Fences or walls.
- C. Flag poles.
- D. Food service, recreation areas, swimming pools, clubhouses, vending machines, mail rooms and laundry facilities in association with the residential portion of a mixed use

project.

- E. Garages and carports.
- F. Gardens.
- G. Hobby activities.
- H. Home occupations.
- I. Keeping of animals.
- J. Maintenance buildings.
- K. Parking areas.
- L. Play equipment.
- M. Power generators.
- N. Private parking garages.
- O. Satellite dish antennas.
- P. Signs.
- Q. Solar collectors.
- R. Swimming pools and associated mechanical equipment.
- S. Television, radio or microwave antennas not exceeding 100 feet in height.
- T. Tool/lawn equipment sheds not exceeding 200 square feet.
- U. Trash collection centers.
- V. Recycling collection point.

SECTION 4. Overland Park Municipal Code Section 18.390.140 is hereby amended to read as follows:

18.390.140 Development and performance standards

- A. Animals.
Domestic animals may be kept, and farm animals such as horses, ponies, cows and chickens may be kept, except that on a lot or tract of less than three (3) acres in size, a special use permit shall be required for the keeping of farm animals. The keeping of

animals is also subject to the provisions of Title 6 of the Code.

- B. Family day care homes, day care homes, group day care homes, child care centers, preschools and Mother's Day Out programs.
1. Family day care homes shall be permitted provided that the day care provider shall be licensed or registered with the State of Kansas and that there are no employees other than persons residing on the premises.
 2. Day care homes and group day care homes shall be permitted subject to the approval of a Residential Day Care Permit by the Governing Body according to the procedures in Section 18.140.470. The following standards shall apply:
 - a. The day care provider shall be licensed by the State of Kansas and shall reside on the premises.
 - b. Outside play areas shall be fenced.
 - c. Only one employee, other than persons residing on the premises, shall be permitted.
 - d. Prior to the approval of a Residential Day Care Permit or the renewal of a permit, the home shall be inspected for compliance with any applicable building or fire codes. If any deficiencies are found, they shall be corrected prior to approval of the permit by the Governing Body.
 - e. The initial permit shall be valid for a maximum of one year from the date of Governing Body approval. The first renewal of a permit may be approved for up to three years, and subsequent renewals may be approved for up to five years.
 3. Child care centers, preschools and Mother's Day Out programs may be permitted as an accessory use only in religious, educational and community buildings. Such programs shall be subject to a general traffic plan being submitted to and approved by the City Traffic Engineer, or his or her designee. Such plan shall not permit parking on any adjacent public street, and shall include a drop-off and pick-up site designed to prevent traffic congestion or vehicles stacking up onto the public streets.
- C. Fences or walls.
1. Fences or walls may be constructed to a maximum height of eight (8) feet above the average grade subject to the restrictions of this subsection. Where a new fence or wall is constructed or an existing fence or wall is being extended, a permit shall be obtained from the Code Administrator. A fence permit shall also be required for the replacement or reconstruction of fifty percent (50%) or more

of the linear length of the entire existing fence.

2. Fences or walls (including retaining walls) in any planned district shall be approved by the Planning Commission as part of the final development plan prior to the issuance of any fence permit.
3. Retaining walls may be permitted where they are reasonably necessary due to the topography of the lot, where the wall is located at least two (2) feet from any street right-of-way, and where the wall does not extend more than six (6) inches above the ground level of the land being retained.
4. Any fence or wall constructed prior to the adoption of these regulations which does not meet the standards of this subsection may be reconstructed, replaced and maintained at its present location resulting in a fence of the same size and material; provided, however, that the following standards shall be met:
 - a. where fifty percent (50%) or more of the linear length of the entire existing fence is being reconstructed or replaced, such fence shall comply with the design standards listed in subsection 5b. below; and
 - b. no fence shall be replaced or reconstructed in a manner which obstructs the sight distance triangles as defined in Section 18.420.060.

Whenever any fence or fence section changes with respect to location, size or material, then the result shall be a fence or fence section that is in full compliance with all requirements for location and design, except for changes in location required for compliance with Section 18.420.060.

5. In residential districts the following restrictions and standards shall apply to all fences and walls:
 - a. Location.
 - 1) Front yard. A fence or wall may not be constructed in the front yard or in front of the front platted building line, whichever is more restrictive, except for decorative entry fences. (See Section 18.245.050 for front yard fences in the PRN District). A decorative entry fence shall:
 - (a) Extend no further than 12 feet in front of the front surface of the residence and shall in no case be closer than 15 feet to any public or private street right-of-way.
 - (b) Be located in front of the main entry to the residence and shall not extend beyond either side of the residence.

- (c) Not connect with any other fence on the property, nor with any fence defined as a decorative landscape element.
 - (d) Be decorative in nature, be three (3) feet or less in height, and be limited to or similar to one of the following types of construction: brick or stone walls, split rail, wood rail, wrought iron, or spaced picket fence.
 - (e) Not define an area which is completely enclosed without an ungated opening to the yard at least 36 inches in width.
 - (f) Be maintained in good condition such that (1) painted portions of the fence do not have chipping or peeling paint, (2) elements of the fence that are broken or missing are promptly repaired or replaced, and (3) the area at the base of the fence is kept free of debris and neatly trimmed.
- 2) Rear yard. A fence or wall may be constructed on the rear property line on all lots whose rear lot lines abut another lot or a designated thoroughfare. However, no fence shall be permitted in any platted landscape easement except as a part of an approved master fence/screening plan. In the case of a double frontage lot whose rear yard abuts a super-collector, collector or local street, a fence or wall may be constructed no closer than 15 feet to the rear property line.
 - 3) Side yard. A fence or wall may be constructed on the side property line, except that no fence shall be closer than 15 feet to any super-collector, collector or local street right-of-way. In addition, no fence shall be permitted in any platted landscape easement except as a part of an approved master fence/screening plan.

b. Design standards.

- 1) All fences and walls shall be constructed with a finished surface facing outward from the property (e.g., in the case of a wooden fence, a "finished surface" means a surface of the fence where the pickets or slats are fully exposed to view). The posts and support beams shall be on the inside of the finished surface or shall be designed as an integral part of the finished surface. Provided, however, that where the Director of Planning and Development Services or his/her designee determine that there are practical difficulties in complying with this standard, the fence posts may be outside the finished surface.

- 2) All fence segments abutting a designated thoroughfare, except on corner lots, shall provide one gate opening per lot to allow access to the area between the fence and the edge of the street for maintenance and mowing.
 - c. Exceptions for fences in landscape easements. Where a master fence/screening plan has been approved as provided for in Section 18.460.220, all fences in the platted landscape easement shall conform with the master fence/screening plan approved by the Planning Commission. Changes to this plan shall be permitted only if a new master fence/screening plan is approved by the Planning Commission.
6. In all commercial and industrial districts, a fence or wall may be constructed on any side or rear property line but shall not be located in any required front yard setback or be closer to any public or private street than the required setback for a building. All fences and walls shall be constructed with a finished side facing outward from the property. The posts and support beams shall be on the inside of the finished surface or shall be designed as an integral part of the finished surface. Planning Commission approval will be required for fences or walls in any planned zoning district or in any industrial district.
- D. Garages, carports and storage buildings. (See Section 18.245.050 for garages in the PRN District)
1. For any one-family or two-family dwelling, there shall be permitted one detached garage or covered carport. Detached garage or carport spaces shall not exceed 250 square feet for each 3,000 square feet of lot area; provided, that in no event shall such areas exceed a total of 1,200 square feet. An attached garage or carport shall be subject to the same required setbacks as the main structure. A detached garage or carport shall be subject to the setbacks required for detached accessory buildings.
 2. For any multi-family residential development, all detached garages or carports shall be subject to the setbacks required for detached accessory buildings. If the applicable district regulations do not contain separate provisions for accessory structures, then the setback requirements for the main structure shall apply.
 3. In all residential districts, the design and construction of any garage, carport or storage building shall be similar to or compatible with the design and construction of the main building. The exterior building materials and colors shall be similar to the main building or shall be commonly associated with residential construction.
- E. Hobby activities.
A hobby activity may be operated as an accessory use by the occupant of the premises purely for personal enjoyment, amusement or recreation so long as the activity is not in

conflict with any City ordinance. Articles produced or constructed shall not be sold unless the activity complies with the requirements for a home occupation.

F. Home occupations.

Home occupations are permitted as an accessory use to a residence subject to the following provisions:

1. Purpose and intent.

It is the purpose and intent of these requirements to:

- a. Maintain neighborhood integrity and preserve the residential character of neighborhoods by encouraging compatible land uses.
- b. Provide residents of the City with an option to utilize their residences as places to enhance or fulfill personal economic goals as long as the choice of home occupations does not infringe on the residential rights of neighbors.
- c. Establish criteria for operating home occupations in dwelling units within residential districts.
- d. Assure that public and private services such as streets, sewers, water or utility systems are not burdened by home occupations to the extent that usage significantly exceeds that which is normally associated with a residence.

2. Area of use.

Home occupations shall be entirely contained within the interior of a residence and shall not be located in garages or accessory structures on the site. No visible evidence of the business shall be apparent from the street or the surrounding area. Family day care homes as defined in Section 18.110.155 will be allowed to have an outside play area which shall be fenced. A home occupation shall use no more than twenty percent (20%) of the total dwelling unit floor area. Those home occupations which require occasional meetings using more than twenty percent (20%) of the floor area may be permitted, provided such meetings do not occur more frequently than once per month.

3. Employees.

The home occupation shall be conducted by family members residing on the premises with no assistance from other individuals or groups.

4. Sales, repairs and leasing.

- a. The commercial exchange of tangible goods or other items constituting a sale between the proprietor of a home occupation and members of the general public shall not be permitted on the premises of a home

occupation. "Members of the general public" shall not include persons in the home by prior individualized invitation.

- b. The repair of items as a home occupation may occur only when the delivery and pickup of the items is conducted off the premises by the proprietor of the home occupation or by employees of the home occupation as defined in this Section. No trips shall be generated to or from the home occupation by customers with items which have been or are to be repaired.
- c. The exchange of items in a lease agreement between the proprietor of a home occupation or an employee and a customer shall not occur on the premises of a home occupation.

- 5. Traffic and parking.
No parking in the public right-of-way shall occur as a result of the home occupation except for occasional meetings. If parking for a home occupation occurs in a manner or frequency causing disturbance to the normal traffic flow for the neighborhood, the occupation shall be considered a business best operated in a commercial district rather than as a home occupation, and will no longer be permitted as an accessory use.
- 6. Changes to exterior.
The appearance of a dwelling as a residence shall not be altered to the extent that attention is drawn to the structure as a commercial or business operation. Alterations of building material, size or color, lighting fixtures or intensity, parking area, or any other exterior change should neither cause the structure to lose its residential character nor detract from the residential character of the neighborhood.
- 7. Nuisance controls.
A home occupation shall not create excessive noise, dust or dirt, heat, smoke, odors, vibration or glare or bright lighting which would be in excess of that created by a single residential dwelling. The production, dumping, or storage of combustible or toxic substances shall not be permitted on site. Additionally, a home occupation shall not create interference with, or fluctuations of, radio or television transmissions.
- 8. Visitation.
A home occupation may attract patrons, students or any business-related individuals only between the hours of 6:00 a.m. and 9:00 p.m. At any time during the day or evening, the parking standards in this Section shall apply to the activity generated by the home occupation. A home occupation shall not generate more than six business-related visitations per day, consisting of six arrivals and six departures by vehicle. Family day care operations shall not generate more than twelve arrivals and twelve departures per day by vehicle. These standards shall

not be construed so as to prohibit occasional group gatherings, recitals or demonstrations. However, such gatherings shall not occur more frequently than once per month and must be held within the visitation hours specified in this Section.

9. Signage.

No signage or other forms of advertising pertaining to the home occupation may be placed or painted onto the exterior of the residence or in the yard of a residence.

10. Complaints and appeals.

Complaints against home occupations shall be made to the Planning and Development Services Department, or may be initiated by City staff members. Any person found to be in violation of the provisions of this Section relating to home occupations shall be notified in writing by the Director of Planning and Development Services, or his or her designee. Any person who is aggrieved by a determination that a violation exists may appeal that determination to the Community Development Committee. Any appeal must be filed within ten (10) days of the date on which the written notification was issued. If an appeal is filed, the Community Development Committee shall hold a hearing to review the notice of violation within thirty (30) days of the filing date of the appeal. The Committee shall uphold or reverse the determination that a home occupation violation exists within thirty (30) days of the date of the hearing. Any further appeals by any aggrieved party may be made to the District Court of Johnson County, Kansas, pursuant to K.S.A. 60-2101(d), or amendments thereto.

11. Presumption of Violation.

If an occupant of a residence is repairing a motor vehicle, trailer, camper or boat not registered to that address, then a presumption shall be made that the work is being done for compensation and that a home occupation violation is occurring. This presumption can be rebutted if the occupant can document that the repair work in question is not being done for compensation.

12. Other regulations.

Home occupations shall comply with all other local, state or federal regulations pertinent to the activity pursued, and the imposition of requirements under this Chapter shall not be construed as an exemption from such regulations.

G. Outside storage and use of equipment, material or vehicles.

1. The parking or storage of boats, camping trailers, pickup campers, motor homes, recreational vehicles, hauling trailers and commercial vehicles shall be subject to the provisions of Chapter 7.22 of the Code.

2. In commercial districts, trucks, vans and trailers that are regularly driven or towed as a part of the operation of any permitted use may be parked but may not be used

for the storage or sale of merchandise. Semitrailers shall not be parked or stored on the same lot for more than ten days in any 30-day period. Temporary storage buildings or storage structures designed to be easily moved are not permitted as an accessory use or structure.

3. Hauling trailers may also be stored in District C-3 or CP-3.
4. Notwithstanding the foregoing, useful items may be stored outside under the conditions set forth in Section 7.26.170 of the Code. Storage of such items shall be permitted only to the extent that it is accessory to the residential use of the property; storage related to any business activity shall not be permitted.

H. Parking and loading areas.

Parking and loading areas are subject to the requirements of Chapter 18.430.

I. Satellite dish antennas.

Satellite dish antennas are permitted subject to the following requirements. These requirements are intended to protect the safety and character of the community without unduly impairing the ability of any such antenna to receive an acceptable signal. Any person may request an exception to these rules by submitting written evidence to the Director of Planning and Development Services that it is not possible to install an antenna which would receive a signal of acceptable quality and be in compliance with the requirements of this Section. The Director or his/her designee shall respond to such request in writing and may grant an exception where the requirements preclude an acceptable signal quality. This exception shall specify an alternative location for the antenna which minimizes any negative impact on the safety or character of the community.

1. All Districts

No satellite dish antenna shall be utilized as a sign. All antennas greater than two meters (79") in diameter shall be screened from view from surrounding properties to the greatest extent possible without interfering with the operation of the antenna. Plans detailing such screening shall be approved by the Planning Commission as a Final Development Plan prior to installation of any such antenna.

2. Residential and Agricultural Districts

a. Satellite dish antennas one meter (39") or less in diameter may be building-mounted or ground-mounted. In no case shall the height of the antenna and supporting mast exceed 60 feet in height. Where the antenna is ground-mounted on a self-supporting mast, the mast shall be set back a distance from any property line equal to one-third of its height and shall not be located in the front yard.

b. Satellite dish antennas greater than one meter (39") in diameter shall be

ground-mounted and shall not exceed 13 feet in height (distance between the average surrounding grade and the highest point on the satellite dish antenna). The antenna shall be located within the rear yard and shall be set back from all property lines a distance at least equal to its height. On a corner lot, the antenna shall not be closer to the side lot line adjacent to the street than the main structure. All cables and electrical lines serving the antenna shall be located underground.

3. Commercial and Industrial Districts.
Satellite dish antennas in commercial or industrial districts may be either ground-mounted or building-mounted. Ground-mounted antennas shall not exceed 30 feet in height and shall be located behind the required yard setbacks applicable to accessory structures in that district. Building-mounted antennas shall not extend more than 13 feet above the roof surface.

J. Signs.
Signs are subject to the requirements of Chapter 18.440.

K. Solar collectors.
Solar collectors are permitted provided that the following performance standards are met:

1. Roof-mounted solar collectors located on front or side building roofs visible from the public right-of-way shall not extend above the peak of the roof plane on which they are mounted, and no portion of any such solar collector shall extend more than 24 inches perpendicular to the point on the roof where it is mounted.
2. Roof-mounted solar collectors located on the rear side of building roofs shall not extend above the peak of the roof plane on which they are mounted, and no portion of any such solar collector shall extend more than four (4) feet perpendicular to the point on the roof where it is mounted.
3. Ground-mounted solar collectors shall not exceed eight (8) feet in total height and shall be located within the rear yard at least 12 feet inside the property line.
4. All lines serving a ground-mounted solar collector shall be located underground.

L. No temporary or incomplete building, and no automotive equipment, trailer, recreational vehicle, garage or other use or building accessory to a family dwelling shall be erected, maintained or used for residential purposes.

M. No accessory use or structure except basketball goals, flag poles and fences, as permitted, shall be located in any front yard.

N. Unless otherwise specifically provided, any accessory use or structure greater than 10 feet in height shall be located a distance of at least 1/3 its height from any side or rear property line.

O. The total floor area of all accessory uses listed in Section 18.390.060 shall not exceed ten percent (10%) of the gross floor area of any building.

P. A recycling collection point as defined in this Ordinance may be permitted as an accessory use only after approval of a final development plan by the Planning Commission. Prior to granting any such approval, the Planning Commission shall consider the impact of the proposed activity and structure on:

1. Adjacent properties and uses;
2. The visual appearance of the area; and
3. Traffic circulation on and off the site.
In District A and all residential districts, recycling collection points may be permitted only in conjunction with a nonresidential use such as a school, church, or community building.

Q. Bus Shelters.

Bus shelters may be erected upon issuance of the appropriate building permit(s) by the Planning and Development Services Department. Such permits shall be issued only if the following standards are met:

1. The location of the bus shelter relative to street geometrics, traffic patterns and sidewalk locations does not create significant traffic hazards for vehicles or pedestrians, and does not create any obstacles to pedestrian access to the shelter.
2. The bus shelter is located such that riders can safely and easily move from the shelter to the bus and the bus can move safely from the traffic flow to the shelter and then back into traffic.
3. The bus shelter is located within a curbed area, and is anchored to a concrete pad.
4. The location of the bus shelter does not interfere with the operation or maintenance of any existing or planned traffic control devices, stormwater or utility facilities, lines or equipment.
5. The bus shelter, if located on private property, does not reduce the number of parking spaces below the required amount, or interfere with the safe circulation of vehicular and pedestrian traffic.
6. The bus shelter is transparent in nature, no more than eight (8) feet in height, and if lighting is present, all light fixtures are cut-off fixtures shielding the light source at an angle of 90 degrees from vertical.
7. The bus shelter does not contain any signs or advertising except for bus

schedules, routing information and the logo(s) of the public transportation provider(s).

8. The bus shelter is located a minimum of two (2) feet from the back of the curb of any public street, and meets all sight-distance requirements.
9. The bus shelter, if located within the public right-of-way, is subject to maintenance agreements.
10. The bus shelter, if located on private property, is not subject to setback requirements from the public right-of-way.

R. Swimming Pools and associated equipment.

1. Setbacks:

Swimming pools and associated mechanical filtering equipment located in residential areas shall meet the setback for accessory buildings per Section 18.180.070.

2. Screening.

- a. In residential districts, mechanical filtering equipment and heating equipment of new in-ground pools shall be screened from view, unless the equipment is located greater than twenty-five (25) feet from any rear or side property line.
- b. Any mechanical equipment visible from streets shall be screened.
- c. An approved solid privacy fence at the property line shall be deemed as providing required screening.
- d. Screening shall be any combination of landscaping, solid fence, or other enclosure. The screening shall be approved by the Director of Planning and Development Services, or his or her designee, prior to a permit being issued for the pool.

Denial of a building permit by the Planning and Development Services Department based on the interpretation of the standards listed above, may be appealed to the Board of Zoning Appeals.

SECTION 5. Existing Overland Park Municipal Code Sections 18.390.010, 18.390.030, 18.390.075 and 18.390.140 are hereby repealed.

SECTION 6. 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 5th day of April, 2010.

APPROVED by the Mayor this 5th day of April, 2010.

Carl Gerlach, Mayor

ATTEST:

Marian Cook
City Clerk

APPROVED AS TO FORM:

J. Bart Budetti
Senior Assistant City Attorney