

## **City Administrator Report to Mayor & City Council**

*2017.12.29, Edition No. 291*

### **WEEKLY UPDATE:**

- Snow: The City of Muscatine has declared a Snow Emergency effective at noon today through noon on Sunday. Alternate parking will be in effect.
- Committees: City Council Committees - The following committees have council representation on them...Audit, MUSCOM, MAGIC, and Solid Waste Commission. We will place this item on the council agenda for discussion January 4th.
- Budget & Fund Balance Policies: As we approach budget, please see the summary below of fund balances/polices.
- Mississippi Drive: An updated closure map is attached.
- Fran: Just a reminder that Fran's retirement party is January 12th from 3-5pm in the City Council Chambers.
- Property Maintenance: Attached is the property maintenance code for Overland Park, Kansas. This might be an interesting model for us. Instead of adopting the entire International Property Maintenance Code, they adopted 10 or so pages of regulations targeting only the aspects of property maintenance that can be enforced and observed without having to gain entry into a structure.
- Library: Parking in the lots at the Musser Public Library and HNI Community Center, 408 East 2nd Street, will be unavailable to the general public starting January 2, 2018. Work on remodeling the former HNI Headquarters begins on January 2, 2018, and it is anticipated that the library will move from its present location on Iowa Avenue to the new building during Spring of 2018. Parking will be limited to construction workers and library staff during this time period.

### **Fund Balance Policies**

- Fort Dodge: Policy is 20%, but after getting beat-up by Moodys several years ago we keep it above 35%. Last couple years has been a little over 40%, but that includes some reserved fund balance like CVB and etc.
- Marion: 35% by policy (exclusive of transfers).
- Burlington: 14% (better than the 2% from 5 years ago) with a policy of 15% minimum.
- Clinton: 20% of one year GF expenses.
- Marshalltown: Policy is 15% of the expenditures of the General Fund Operating Budget.
- Ottumwa: A range of 15-25%. Currently 22.6%, but it will be decreasing.



# Mississippi Drive Update

Mississippi Drive between Iowa Avenue and Cedar Street remains closed

Closed,  
opening soon

Iowa Ave entrance  
to Riverside Park  
remains closed

Open

Open

Cedar St entrance  
to Riverside Park  
is open

Mississippi Dr

Open



## TITLE 7 - HEALTH AND SANITATION

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### 7.26 PROPERTY MAINTENANCE

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### **7.26.010 Legislative Findings.**

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The Governing Body finds that there exists within the City structures and lands which are unfit for human use or habitation due to dilapidation, defects increasing the hazards of fire, accidents or other calamities, lack of ventilation, light or sanitary facilities, or due to such other conditions which render such structures or lands dangerous or injurious to the health, safety or general welfare of the occupants of such structures and lands or other residents of the City, or which have a blighting influence on the properties in the area. Such other conditions include the following, without limitation: Defects therein increasing the hazards of fire, accident, or other calamities; lack of adequate ventilation; air pollution; light or sanitary facilities; dilapidation; disrepair; structural defects; uncleanliness; overcrowding; inadequate ingress and egress; dead and dying trees, limbs or other unsightly natural growth or unsightly appearances that constitute a blight to adjoining property, the neighborhood or the City; walls, sidings or exteriors of a quality and appearance not commensurate with the character of the properties in the neighborhood; unsightly stored or parked material, equipment, supplies, machinery, trucks or automobiles or parts thereof; vermin infestation; inadequate drainage; or any violation of health, fire, building or zoning ordinances and regulations or any other laws, regulations or ordinances relating to the use of land and the use and occupancy of the buildings and improvements.

The Governing Body further finds that any of the foregoing conditions render such structures or lands unsafe, unsanitary or dangerous or detrimental to the health, safety or morals, or otherwise inimical to the welfare of the residents of the City, and it is hereby deemed necessary to require or cause the repair, closing, demolition or removal of such structures or lands in the manner herein provided.

(History: Ord. PM-1579 §1, 89; PM-1219 §1, 83; PM-1044 §1, 79;

### **7.26.020 Scope.**

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The provisions of this chapter shall apply to residential and nonresidential structures, to residential and nonresidential lands and to vacant lots.

(History: Ord. PM-1579 §2, 89; PM-1044 §2,79)

### **7.26.025 Definitions.**

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The following words and phrases when used in this chapter shall, for the purpose of this chapter, have the meanings respectively ascribed to them in this section unless otherwise defined in the text of the section.

A. **Chapter or this chapter** shall mean Chapter 7.26 of the Overland Park Municipal Code.

- B. **Code or this code** shall mean the Overland Park Municipal Code.
- C. **Land** except where specifically limited, or where the context would require limitation, the use of the terms "land" or "real property" shall refer to residential land, nonresidential land and vacant lots.
- D. **Nonresidential land** shall mean the real property on which nonresidential structures are situated.
- E. **Nonresidential structure** shall mean any structure which is used for other than residential purposes, or a part of such structure, or a structure a part of which is used for other than residential purposes and, where applicable, the premises on which such structures are situated.
- F. **Owner** shall mean any person, partnership or corporation who alone or jointly or severally with others has legal title to residential or nonresidential land and/or structures or vacant lots or any person, partnership or corporation who is trustee or guardian of the estate or person of the title holder.
- G. **Public officer** shall mean a Neighborhood Enforcement Specialist, a Neighborhood Enforcement Supervisor, the Administrator of Neighborhood Services, a Police Officer, or any other individual designated as a public officer by the City Manager.
- H. **Residential land** shall mean the real property on which residential structures are situated.
- I. **Residential structure** shall mean any building or structure or part thereof, used and occupied for human habitation, or intended to be so used if unoccupied, and includes any appurtenances belonging thereto or usually enjoyed therewith.
- J. **Sales inventory** shall mean all equipment, vehicles and products which are displayed or available for sale or temporarily stored on the premises for repair or service.
- K. **Section** shall mean the stated section of the Overland Park Municipal Code.
- L. **Structure** except where specifically limited, or where the context would require limitation, the use of the word "structure" within this ordinance shall refer to both residential and nonresidential structures.
- M. **Trim** shall mean all finish elements to the exterior of the structure including but not limited to finish elements surrounding windows, doors, and other openings, ornamental features, and fascia board.
- N. **Vacant lot** shall mean any real property on which there is situated no residential or nonresidential structures.
- O. **Vehicle** means any automobile, truck, tractor, farm machinery or motorcycle which as originally built contained an engine, regardless of whether it contains an engine at any other time.

(History: Ord. PM-1930 §1, 95; PM-1696 §1, 91; PM-1579 §3, 89)

## 7.26.030 Public Officer.

The Neighborhood Enforcement Specialist is hereby designated the public officer to exercise the powers prescribed by this chapter. In addition to the authority which may be specifically provided in this chapter, the public officer may exercise such powers as may be necessary or convenient to carry out and effectuate the purposes and provisions of this chapter. The public officer may appoint and fix the duties of such officers, agents and employees as the public officer deems necessary to carry out the purposes of this chapter and may delegate any of the aforementioned functions or powers to such officer, agents and employees.

(History: Ord. PM-1930 §2, 95; PM-1579 §4, 89; PM-1044 §3,79)

### **7.26.035 Owner Responsibility.**

The owner of the land shall maintain such land and structures thereon in compliance with the requirements set forth in this chapter. A person shall not occupy as owner-occupant or allow another to occupy or use land or structures which do not comply with the requirements of this chapter.

(History: Ord. PM-1579 §5, 89)

### **7.26.036 Corporations; Responsibility.**

- A. A corporation is responsible under this chapter for acts committed by its agents when acting within the scope of their authority.
- B. "Agent" means any director, officer, servant, employee or other person who is authorized to act on behalf of the corporation.

(History: Ord. PM-1579 §6, 89)

### **7.26.037 Individual Liability for Corporate Violation.**

- A. An individual who violates any provision of this chapter, or causes such violations to exist, in the name of or on behalf of a corporation is legally responsible to the same extent as if such violations were in his or her own name or on his or her own behalf.
- B. An individual who has been convicted of a violation of this chapter based on conduct performed by him or her for and on behalf of a corporation is subject to punishment as an individual upon conviction of such violation.

(History: Ord. PM-1579 §7, 89)

### **7.26.040 Right of Entry; Unlawful Interference; Penalty.**

- A. Any authorized officer or agent of the City, pursuant to this chapter, shall be allowed to enter onto any land within the City limits to investigate violations of this chapter, provided that such entries shall be made in such a manner as to cause the least possible inconvenience to the persons in possession and said officer or agent shall obtain an order for this purpose from a court of competent jurisdiction in the event entry is denied or resisted.

- B. Any authorized officer or agent of the City pursuant to this chapter shall be allowed to enter onto any land within the City limits to abate violations of this chapter.
- C. It shall be unlawful for any person to interfere with a public officer or agent of the City in performing his or her duties pursuant to this chapter whether investigating or abating violations.
- D. Any person who interferes with an officer or agent of the City pursuant to this chapter shall be punished as provided in Section [7.26.260](#) of this Code.

(History: Ord. PM-1579 §8, 89; Ord.1044 §4,79)

### **7.26.045 Registering Allegations. (Repealed)**

Repealed.

(History: Ord. REP-2763 §1, 2008; PM-1579 §9, 89)

### **7.26.050 Exterior of Structure Maintenance. (Repealed)**

Repealed.

(History: Ord. PM-1579 §34, 89; PM-1044 §5, 79)

### **7.26.060 Foundation.**

- A. The foundation of a structure shall be maintained higher than the adjacent ground level and have no openings large enough to allow animals to enter under the structure.
- B. The foundation elements shall support the structure at all points.
- C. Any repair or replacement necessitated by this section shall be accomplished with materials that are compatible with the remaining foundation.

(History: Ord. PM-1579 §10, 89; PM-1044 §6, 79)

### **7.26.070 Exterior Wall Surface.**

Exterior wall surfaces including screened-off areas, doors, and windows shall be free of holes, breaks, loose or damaged construction materials, and any other conditions which might admit rain, moisture, insects or animals to the interior portions of the walls or occupied spaces of the structure. Cracks in mortar between bricks or stone shall be sealed. All exterior wall surfaces shall be maintained and kept in repair using materials compatible with the remaining undamaged wall surfaces and recognized as acceptable pursuant to City building code. Where an existing painted wall surface has areas of chipping, peeling, scaling or missing paint equal to or greater than 20 percent of the painted area, then such surface shall be repainted, or stripped of all paint and given a water-resistant coating if necessary.

(History: Ord. PM-1930 §3, 95; PM-1579 §11, 89; PM-1044 §7, 79)

### **7.26.075 Trim**

All trim shall be maintained in sound condition free of holes, breaks, or loose or damaged construction materials. Areas that are damaged as described herein shall be repaired or replaced with material compatible with the remaining undamaged trim. Where trim has been previously painted and any trim surface contains areas of chipping, peeling, scaling or missing paint equal to or greater than 20 percent of the trim surface, then such surface shall be repainted, or stripped of all paint and given a water-resistant coating if necessary.

(History: Ord. PM-1930 §4, 95; PM-1579 §12, 89)

## **7.26.080 Windows and Doors.**

- A. Every exterior opening shall be fitted with a window, door, basement hatchway cover or crawl space cover, as appropriate, which shall be tight and maintained in sound condition and good repair to prevent the entrance of animals, rain and surface drainage water into the structure. Every doorway which gives access from a habitable room or area to the exterior of the structure shall be fitted with a door, equipped with hardware capable of ensuring security and privacy to the occupants of such habitable room or structure.
- B. Every window shall be in good condition and fit tightly within its frame. All windows shall be fully supplied with glass windowpanes without open cracks or holes. Windowpanes may only be repaired using a means specifically designed for glass repair and approved by the public officer, or another material may be substituted for the glass if it is similar in appearance and form to glass and is approved by the public officer. An entire window unit may be replaced with an opaque material provided that the sash and frame are removed and replaced with a building material suitable for exterior use and finished to match the adjacent wall surfaces. If screens, frames for screens, or storm windows are provided, the entire assembly shall be maintained in good effective working condition and repair. When present, awnings are to be kept in good repair. Every other opening located within four (4) feet of the ground level shall be protected against the possible entry of insects and rodents.
- C. Every exterior door shall be maintained in good condition and when closed shall fit well within its frame. Every door hinge and door latch shall be maintained in effective working condition. Every door available as an exit shall be capable of being easily opened from the inside. Where a door has been previously painted and any door surface contains areas of chipping, peeling, scaling or missing paint equal to or greater than 20 percent of the door surface, then such surface shall be repainted, or stripped of all paint and given a water-resistant coating if necessary.
- D. When existing approved windowpanes, doors, or other external openings are externally covered for security or other reasons, the material used shall be painted or treated the same color as the trim or structure.

(History: Ord. PM-1930 §5, 95; PM-1579 §13, 89; PM-1044 §8, 79)

## **7.26.090 Roofing and Guttering.**

The roof, eave, and soffit shall be structurally sound, tight, and shall not admit rain. Roof shingles that are missing, torn or damaged shall be replaced with new shingles compatible with those that are existing. Any roof surface that will allow water to enter the structure will be repaired at the point or points of leak by materials that are compatible with the existing roof material. If the roof has deteriorated and has lost its water repellent characteristics, the affected area will be replaced with materials compatible with the unaffected portions of the roof. Any guttering or downspouts that have been broken, rusted, or damaged shall be repaired or replaced with materials that are compatible with the undamaged guttering and downspouts. Where guttering or down-spouts have been previously painted and any surface contains areas of chipping, peeling, scaling or missing paint equal to or greater than 20 percent of the guttering or downspout surface, then such surface shall be repainted, or stripped of all paint and given a water-resistant coating if necessary.

(History: Ord. PM-1930 §6, 95; PM-1579 §14, 89; PM-1044 §9,79)

### **7.26.100 Attached Structures.**

Porches, landings, fire escapes, decks, railings, and exterior stairs shall be maintained in a safe and functional condition and kept in good repair. Treads, risers, floor surfaces and railings that evidence excessive wear or are broken, warped, missing or loose shall be replaced. Any repair or replacement work required pursuant to this section shall be accomplished with materials that are compatible to the undamaged portions of the structure.

(History: Ord. PM-1930 §7, 95; PM-1579 §15, 89; PM-1044 §10, 79)

### **7.26.105 Fences.**

All fencing including gates shall be maintained in sound condition free of damage, breaks, or missing structural members.

Areas that are leaning, buckling, sagging, or deteriorating shall be repaired or replaced with material compatible with the undamaged portions of the fence. Where fencing has been previously painted and there are areas of chipping, peeling, scaling or missing paint equal to or greater than 20 percent of the fence surface, then such surface shall be repainted, or stripped of all paint and given a water-resistant coating if necessary.

(History: Ord. PM-1930 §8, 95; PM-1579 §16, 89)

### **7.26.110 Land Maintenance. (Repealed)**

Repealed.

(History: Ord. PM-1579 §34, 89; PM-1044 §11, 79)

### **7.26.120 Animal Sanitation.**

- A. No excessive accumulation of animal waste shall be permitted on any property. All carcasses of animals shall not remain exposed after death. The provisions of this subsection shall not apply to any property that is zoned RUR, PRUR, RLD or PRLD that was annexed into the City pursuant to Ordinance No. A-2719, unless and until such land is rezoned.
- B. Animal wastes shall not be disposed of in an open ditch or storm drain.

(History: Ord. PM-2721 §1 2008; PM-1044 §12, 79)

### **7.26.130 Pools of Water.**

- A. Ponds, reservoirs, swimming pools or other receptacles of water shall be maintained free of trash, debris, garbage or other effluvia and shall not serve as a breeding ground for insects or other vectors.
- B. The provisions of this section shall not apply to any property that is zoned RUR, PRUR, RLD or PRLD that was annexed into the City pursuant to Ordinance No. A-2719, unless and until such property is rezoned.

(History: Ord. PM-2720 §1 2008; PM-1579 §17, 89; PM-1044 §13, 79)

### **7.26.140 Shed, Garages or Other Out-buildings.**

Sheds, garages or other out-buildings shall be maintained in the same manner as provided in Sections [7.26.060](#) through [7.26.100](#). Provided, however, that outbuildings on agriculturally zoned property and used for agricultural purposes shall be exempt from the requirements of this section.

(History: Ord. PM-1579 §18, 89; PM-1044 §14, 79)

### **7.26.150 Private Sewer Systems.**

Private sewage treatment facilities shall be maintained in a manner to prevent the surfacing of effluent or the emission of offensive odors. Temporary sanitary facilities are restricted to construction projects and recreational activities for which approval has been granted. Such facilities shall be maintained in a clean, sanitary and free-of-odor manner and not be offensive to any nearby residents.

(History: Ord. PM-1579 §19, 89; PM-1044 §15, 79)

### **7.26.160 Hard Surfaces, Walkways and Driveways.**

Hard-surfaces, walkways and driveways on private property shall not be allowed to deteriorate to the extent they constitute a safety hazard. For the purposes of this section, the term "safety hazard" shall include but not be limited to a paved surface which is broken, heaved, collapsed or missing to the degree that vehicles using the surface are at risk of being damaged or pedestrians walking on the surface are at risk of falling or tripping. There shall be a presumed violation of this section if there have been actual incidents of personal injury or property damage as a result of deterioration as described above.

(History: Ord. PM-1930 §9, 95; PM-1579 §20, 89; PM-1044 §16, 79)

### **7.26.165 Rain Barrels**

The City promotes the benefits of the use of rain barrels while recognizing the need to blend their use into a residential setting. To balance the environmental, drainage and other benefits of rain barrels with the potential for nuisance, aesthetic or other issues that may result from the use of the same, rain barrels are permitted in residential districts subject to the following:

- A. One rain barrel per each downspout is allowed on any residential building façade, when said rain barrel is:
  - 1. Approximately 65 gallons or less in capacity;
  - 2. Screened from view at grade or reasonably blends with the building's façade and surrounding landscaping/vegetation;
  - 3. Located adjacent to the building envelope;
  - 4. Not elevated more than 24 inches above adjacent grade, placed on a stable surface, and maintained in such a way as to prevent tipping;
  - 5. Secured with a lid (lids with a designed screen opening are acceptable);
  - 6. Maintained in a safe and functional condition and kept in good repair; and
  - 7. Maintained to prevent any offensive odors, any mosquito or other insect eggs and larvae, any other nuisance or any other city code violation.
- B. Larger rain barrels or even multiple rain barrels per downspout are allowed when the rain barrels are:
  - 1. Located in the rear yard or side yard behind the front building line;
  - 2. Screened from view at grade from the right-of-way and any adjacent property;
  - 3. Placed on a stable surface, and maintained in such a way as to prevent tipping;
  - 4. Secured with a lid (lids with a designed screen opening are acceptable);
  - 5. Maintained in a safe and functional condition and kept in good repair; and
  - 6. Maintained to prevent any offensive odors, any mosquito or other insect eggs and larvae, any other nuisance or any other city code violation.
  - 7. Subject to the 20% of allowable outside storage area calculation set forth in O.P.M.C. Section **7.26.170**.
- C. The Director of Planning and Development Services (or his or her designee) is authorized to interpret the application of the requirements in subsections A and B above. The Director is further authorized to approve reasonable alternative requirements that meet the general goal and intent of this Section.
- D. If the recipient of a notice of violation of this Section makes a written request for a hearing within the notice period, the City shall schedule a hearing before a designated hearing officer during a regular business day within ten (10) calendar days from the receipt of the request. The hearing officer shall receive evidence, review the investigation, and prepare a written order. The order shall be sent by certified mail to all relevant parties within ten (10) days of the hearing, unless otherwise stated at the hearing and prior to the City taking any action to abate the violation. The order shall describe the relevant facts and the specific Code provisions relied upon, and state any other stipulations, methods of abatement, or orders as deemed necessary by the hearing officer.

(History: Ord. PM-3015 §1 2013)

**7.26.170 Outdoor Storage - One- and Two-Family Dwellings.**

The following items, objects or structures are permitted: No property owner or resident shall allow the placement, storage, installation, or construction of any item, object or structure on any property zoned or used for a single-family or two-family residence except as specifically and explicitly permitted by this Section.

- A. Any item, object or structure permitted under the applicable provisions of the Unified Development Ordinance, Overland Park Municipal Code, in full compliance with the authorizing provision and any additional requirements specified in this Section. The intent of this Subsection is to permit only those items specifically permitted under the applicable zoning district regulations or the applicable accessory use regulations.
- B. Authorized trash containers stored and maintained in compliance with the requirements of Chapter 7.36 of the Overland Park Municipal Code.
- C. Firewood, neatly stacked and free of insects and vermin, provided that such storage shall not occur at any location on the property that is closer to a street than the nearest primary wall surface of the residence. For the purposes of this Section, "primary wall surface" shall mean any exterior wall surface of the residence that is visible from the street and not perpendicular to the street, but excluding porches, carports and minor building projections such as fireplaces or bay windows.

Any item, object or structure specifically authorized in Subsection A must be located within a fully enclosed structure, or within the back yard and substantially screened from view from any adjacent property by a wall or fence; provided, however, this requirement shall not apply to the outside storage of the following equipment and materials allowed as accessory uses: flag poles, play equipment and other such accessory uses for which this location and screening requirement has been determined by the Director of Planning and Development Services to be impractical, or infeasible, or for which a specific location and screening requirement has been adopted. The Director of Planning and Development Services may approve mature landscape materials as an acceptable screen if he/she determines that it provides the substantial equivalent of approved fence or wall materials. Materials for a fence or wall shall be of a type, material and quality compatible with the immediate neighborhood, as determined by the Director of Planning and Development Services. Such screening shall be constructed and maintained in accordance with applicable City codes and shall be adequate to prevent substantial viewing of the enclosed objects from any place within the adjacent property or any structure located on that property.

Notwithstanding any other applicable provision, permitted items, objects or structures shall occupy no more than 20% of the allowable outside storage area. In measuring the area occupied by such items, objects or structures to determine if the permitted 20% is exceeded, a rectangle shall be constructed to include all points where any such item, object or structure is located, and the area shall be calculated to include all that area within the rectangle. This method of calculating area shall not apply to those items specifically authorized in Subsections B or C above.

The provisions of this Section shall not apply to those properties annexed into the City by either Ordinance No. A-2367 or Ordinance No. A-2719 that have a zoning designation based on the Johnson County Zoning Regulations.

(History: Ord. PM-2846 §1, 2009; PM-2694 §1, 2008; PM-2400 §1, 2002; PM-1930 §10, 95; PM-1697 §1, 91; PM-1579 §21,89; PM-1044 §17,79)

**7.26.175 Outdoor Storage - Other Property.**

No property owner or occupant shall allow the placement, storage, installation, or construction of any item, object or structure on any property other than that property zoned or used for a single-family or two-family residence except as specifically and explicitly permitted by this section. The following items, objects or structures are permitted:

- A. Any item, object or structure permitted under the applicable provisions of the Unified Development Ordinance, Overland Park Municipal Code, in full compliance with the authorizing provision. The intent of this subsection is to permit only those items specifically permitted under the applicable zoning district regulations or the applicable accessory use regulations.
- B. Authorized trash containers stored and maintained in compliance with the requirements of Chapter 7.36 of the Overland Park Municipal Code.

The provisions of this section shall not apply to those properties annexed into the City by either Ordinance No. A-2367 or Ordinance No. A-2719 that have a zoning designation based on the Johnson County Zoning Regulations.

(History: Ord. PM-2694 §2, 2008; PM-2400 §2, 2002; PM-1930 §11, 95)

**7.26.180 Trash and Refuse.**

No property owner, occupant or other person shall place or allow to remain, on any property, drainage course or other land, any solid waste, as that term is defined in Chapter 7.36 of the Overland Park Municipal Code, or any worn out, broken, or worthless item, waste, garbage, trash, debris, or refuse, unless such material is in an authorized trash container stored and maintained in compliance with Chapter 7.36 of the Overland Park Municipal Code. Such materials include, without being limited to, those that impede mowing of weeds or tall grass, are food products or food containers attracting insects, rodents or animals, or are useless as evidenced by their broken, deteriorated or dismantled condition.

- A. In addition to any other penalties or remedies provided by law, any prohibited items, including but not limited to trash, trash bags, large limb piles, boxes, carpet padding, building supplies or material, or any other materials that are determined by an authorized enforcement officer to create an imminent threat or substantial risk of being spread, scattered or blown onto neighboring properties or public property or right-of-way and creating a substantial interference with the use and enjoyment of said properties, may be subject to summary abatement by the City.
- B. In addition to any other penalties or remedies provided by law, any prohibited items, including but not limited to materials that reasonably appear to an authorized enforcement officer to be discarded items or materials that, by virtue of their nature, amount or composition, create a substantial interference with the use and enjoyment of neighboring properties or public property or right-of-way, may be subject to accelerated abatement by the City.
- C. Upon a determination that a situation described in subsection A exists and that summary abatement without notice is necessary and appropriate, the enforcement officer shall order immediate abatement without any requirement for notice.

D. Upon a determination that a situation described in subsection B exists and that accelerated abatement is appropriate, the enforcement officer shall post the property where the materials are located with a notice warning that accelerated abatement will occur unless the violation is corrected as required. If the tax records of Johnson County indicate that the owner of the property resides at the location of the violation, and the violation is not removed within 24 hours from the time of posting, the enforcement officer may authorize immediate abatement. In addition, if the tax records of Johnson County indicate that the owner of the property resides at a different location in the City, the enforcement officer shall post that location with the same notice. If such notice is posted and the violation is not removed within 48 hours from the time of posting, the enforcement officer may authorize immediate abatement. If the tax records indicate that the property owner resides outside the City, the enforcement officer shall send such notice to that address by overnight delivery, and the time of abatement will be 48 hours from the time of posting; provided, however, that the time for abatement shall run from the posting of the property where the violation exists and not from the delivery of said notice to either the overnight delivery service or the recipient, provided said notice is promptly sent to said delivery service as soon as feasible after the posting and the enforcing officer reasonably believes that at least 24 hours is likely to occur from the anticipated delivery time of said notice to the time of abatement.

E. If summary, accelerated or regular abatement is required, the property owner shall be responsible for payment of the cost of the abatement. The notice of costs, the assessment and collection of said costs shall be as provided in Section [7.20.150](#) of the Overland Park Municipal Code. The Director of Planning and Development Services is authorized to add an administrative fee, not to exceed \$100 dollars, to such costs if, in the judgment of said Director, the nature or frequency of required abatement justifies imposition of said fee. The property owner, within fifteen days from mailing of the notice of costs, may request a hearing on whether the assessment should be applied to the property. The procedure for said hearing shall be as set forth in Section [7.20.140](#) C of the Overland Park Municipal Code.

F. The provisions of this section shall not apply to brush piles or other accumulations of vegetative materials, or to other accumulations of materials used for agricultural purposes, on any property that is zoned RUR, PRUR, RLD or PRLD that was annexed pursuant to Ordinance No. A-2719, unless and until such property is rezoned.

(History: Ord. PM-2727 §1, 2008; PM-2054 §1, 97; PM-1930 §12, 95; PM-1579 §22, 89; PM-1044 §18, 79)

### **7.26.182 Inoperable Vehicles. (Repealed)**

Repealed. See 7.22.

(History: Ord. PM-1901, §1, 95; PM-1579 §23, 89; IV-677)

### **7.26.184 Temporarily Disabled Vehicle. (Repealed)**

Repealed. See 7.22.

(History: Ord. PM-1901 §1, 95; PM-1579 §24, 89; IV-677)

**7.26.186 Exceptions. (Repealed)**

Repealed. See 7.22.

(History: Ord. PM-1901 §1, 95; PM-1579 §25, 89; IV-677)

**7.26.190 Dead, Diseased, Harmful or Obstructive Vegetation. (Repealed)**

Repealed.

(History: Ord. PM-1579 §34, 89; PM-1147 §2, 82; PM-1152 §1, 82; PM-1044 §19, 79; DST)

**7.26.200 Weed and Grass Control. (Repealed)**

Repealed. See 7.20.

(History: Ord. PM-1579 §34, 89; PM-1044 §20, 79)

**7.26.210 Unfit for Human Habitation; Notice of Hearing.**

- A. Whenever a petition is filed with the public officer or by at least five residents of the City charging that any structure or land is unfit for human use or habitation or whenever it appears to the public officer, on the officer's own motion, that any structure or land is unfit for human use or habitation as being in violation of one or more of the sections of this chapter, the public officer shall, if the officer's preliminary investigation discloses a basis for such charges issue and cause to be served upon the owner, every mortgagee of record and all parties in interest in such structure and/or land, including persons in possession, a notice of hearing stating the allegations.
- B. Such notice shall be directed to the owner. Such notice shall state that a hearing will be held before the public officer or the officer's designated agent at a place therein fixed not less than 10 days nor more than 30 days after the serving of said notice.
- C. Such notice shall also state that the owner, mortgagee, and the parties in interest shall be given the right to file an answer to the allegations and to appear in person, or otherwise with or without legal counsel, and give testimony at the place and time fixed in the notice. Said notice shall also state that the rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the public officer.
- D. During said hearing, the public officer shall have the power and authority to administer oaths and affirmations, examine witnesses, and receive evidence. The rules of evidence utilized by courts in Kansas shall not be controlling in hearings before the public officer.

(History: Ord. PM-1579 §26, 89; PM-1219 §2, 83; PM-1147; PM-1044 §21, 79)

**7.26.220 Orders of Public Officer.**

Within 30 days of any hearing or appeal held pursuant to Section [7.26.210](#) the public officer shall issue a written order containing findings of fact and stating the officer's determination whether the structure or land is unfit for human use or habitation. Such order shall be directed to the owner and served in a manner prescribed in Section [7.26.240](#) upon the owner and all other persons entitled to notice according to the provisions of Section [7.26.210](#).

If the public officer determines that the structure or land is unfit for human use or habitation, the order shall require as follows:

- A. If repair, alteration or improvement of the said structure can be made at a reasonable cost in relation to the value of the structure, which cost shall not exceed 50% of the fair market value of such structure, the owner of the said structure shall within the time specified in the order, repair, alter or improve such structure to render it fit for human use or habitation or shall vacate and close the structure until conformance with this chapter is met; or
- B. If the repair, alteration or improvement of the said structure cannot be made at a reasonable cost in relation to the value of the structure, that is to say, 50% or less of the fair market value of such structure, which percentage is hereby deemed to be a reasonable standard by which to require either repair, alteration or improvement, or removal or demolition, the owner shall within the time specified in said order remove or demolish such structure.

(History: Ord. PM-1579 §27, 89; PM-1219 §3, 83; PM-1044 §22, 79)

### **7.26.230 Failure to Comply with Order.**

- A. If the owner fails to comply with an order pursuant to Section [7.26.220A](#) to repair, alter or improve or to vacate and close the structure or land, the public officer may cause such structure or land to be repaired, altered or improved, or to be vacated and closed.
- B. If the owner fails to comply with an order pursuant to Section [7.26.220B](#) to remove or demolish the structure, the public officer may cause such structure to be removed or demolished.
- C. The amount of the cost of the repairs, alterations, improvements, vacating and closing or removal or demolition by the public officer shall be a lien against the real property upon which the cost was incurred. Such lien shall include allowance of the officer's costs and the necessary attorney's fees and may be foreclosed in judicial proceedings in the manner provided or authorized by law for loans secured by liens on real property. In lieu of foreclosure, the costs, including the officer's costs, may be assessed as a special assessment against the lot or parcel of land on which the structure was located, in which case the city clerk, at the time of certifying other City taxes, shall certify the unpaid portion of the costs and the county clerk shall extend the same on the tax rolls of the county against the lot or parcel of land. If the structure is removed or demolished by the public officer, the officer shall sell the materials of such structure and shall credit the proceeds of the sale against the cost of the removal or demolition. If there is any balance remaining, it shall be paid to the parties entitled thereto as determined by proper judicial proceedings instituted by the public officer after deducting the costs of such judicial proceedings, including necessary attorneys' fees incurred therein, as determined by the court.

(History: Ord. PM-1579 §28, 89; PM-1219 §4, 83; PM-1044 §23, 79)

### **7.26.240 Unfit for Human Habitation; Service of Notices of Hearing and Orders.**

Notices of hearing or orders issued by the public officer pursuant to this chapter shall be served upon persons either personally or by registered or certified mail. If the location of such persons is unknown and cannot be ascertained by the public officer in the exercise of reasonable diligence, and the public officer makes an affidavit to that effect, service may be made by publishing the notice of hearing or order once in an official City newspaper. A copy of such notice of hearing or order shall be posted in a conspicuous place on the premises affected by the notice or order. A copy of such notice or order shall also be filed with the clerk of the district court of Johnson County and the filing of the notice or order shall have the same force and effect as other lis pendens notices provided by law.

(History: Ord. PM-1579 §29, 89; PM-1219 §5, 83; PM-1044 §24, 79)

### **7.26.250 Appeals.**

- A. Any person affected by a written order issued by the public officer as provided for in Section [7.26.220](#) following a hearing before such public officer, may appeal the finding of the public officer to the Community Development Committee of the Overland Park City Council. Any such request for a hearing before the Community Development Committee shall be filed within the period of not less than 10 days nor more than 30 days after the order of the public officer. Notice of such appeal shall be served by the appellant upon all parties entitled to notice under Section [7.26.210](#) and in the manner provided in Section [7.26.240](#). Following the conclusion of the hearing on any such appeal, the Community Development Committee shall enter an order affirming, reversing or modifying the order of the public officer. Such order shall be issued and served in the same manner as required by Section [7.26.220](#) and shall become the order of the public officer for purposes of K.S.A. 17-4759(e) or any amendments thereto.
- B. Any person affected by an order issued by the Community Development Committee may petition the district court of Johnson County for an injunction restraining the public officer from carrying out the provisions of the order and for such further relief as may be authorized pursuant to KSA 17-4759(e), or amendments thereto. Any such petition shall be filed within 30 days after the posting and service of the order of the Community Development Committee.

(History: Ord. PM-1579 §30, 89; PM-1044 §25, 79)

### **7.26.260 Violation; Penalty.**

The violation of any provision of this chapter is a public offense and any person convicted thereof shall be punished as provided in Section [1.12.010](#). Each day that any violation of this chapter shall continue shall constitute a separate offense. Prosecution of any violation as a public offense pursuant to this section may be in addition to, or as an alternative to, any other remedy or course of action available to the City under this chapter.

(History: Ord. PM-1579 §31, 89; PM-1044 §26, 79)

### **7.26.270 Construction.**

Nothing in this chapter shall be construed to abrogate or impair the powers of the courts or of any department of the City to enforce any other provisions of the Overland Park Municipal Code, where such provisions are applicable, and the powers conferred by this chapter shall be in addition and supplemental to the powers conferred by any other law. In addition, nothing in this chapter shall be construed to impair or limit in any way the power of the City to define and declare nuisances and to cause their removal or abatement by summary proceedings or otherwise.

(History: Ord. PM-1579 §32, 89; PM-1044 §27, 79)

### **7.26.280 Invalidity.**

If any word, phrase, sentence, or section of this chapter, or the application thereof to any person or circumstances, is held invalid, the invalidity shall be deemed not to affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

(History: Ord. PM-1044 §28, 79)

### **7.26.285 Savings Clause.**

Neither the adoption of this ordinance nor the repeal or amendment of any ordinance or part or portion thereof shall in any manner affect the prosecution for violations of ordinances, which violations were committed prior to the effective date hereof, nor be construed as affecting any of the provisions of such ordinances relating to the collection of any such license, fee or penalty, or the penal provisions applicable to any violation thereof, nor to affect the validity of any bond or cash deposit in lieu thereof required to be posted, filed or deposited pursuant to any ordinance, and all rights and obligations thereunder appertaining shall continue in full force and effect.

(History: Ord. PM-1579 §33, 89)

### **7.26.290 Authority.**

This chapter is adopted by authority of KSA 17-4759 and Article 12, Section 5 of the Kansas Constitution.

(History: Ord. PM-1044 §29, 79)

### **7.26.300 Rental Registration Requirements. (Repealed)**

Repealed.

(History: Ord. RLI-3120 §16, 2016; PM-2796 §1, 2009; PM-2660 §1, 2007)

Effective on: 2/23/2016