

ORDINANCE NO. 19-60

AN ORDINANCE PERTAINING TO THE OLATHE PUBLIC OFFENSE CODE; ADDING NEW SECTIONS 9.12.186 AND 9.04.049; AMENDING SECTIONS 9.04.050, 9.07.095, 9.07.200, 9.08.210, 9.12.120, 9.12.130, 9.13.010, 9.13.030, 9.14.010, 9.14.020, AND 9.17.010 AND REPEALING THE EXISTING SECTIONS.

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

NEW SECTION ONE: Section 9.12.186 is hereby added to the Olathe Municipal Code to read as follows:

“9.12.186 Endangering the Food Supply

(A) Endangering the food supply is knowingly:

(1) Bringing into this state any domestic animal which is infected with any contagious or infectious disease or any animal which has been exposed to any contagious or infectious disease;

(2) Exposing any animal in this state to any contagious or infectious disease;

(3) Except as permitted under K.S.A. 2-2112 et seq., and amendments thereto, bringing or releasing into this state any plant pest as defined in K.S.A. 2-2113, and amendments thereto, or exposing any plant to a plant pest; or

(4) exposing any raw agricultural commodity, animal feed or processed food to any contaminant or contagious or infectious disease.

(B) As used in this section:

(1) “Animal feed” means an article which is intended for use for food for animals other than humans and which is intended for use as a substantial source of nutrients in the diet of the animal, and is not limited to a mixture intended to be the sole ration of the animal;

(2) “Contagious or infectious disease” means any disease which can be spread from one subject to another by direct or indirect contact or by an intermediate agent, including, but not limited to, anthrax, all species of brucellosis, equine infectious

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anemia, hog cholera, pseudorabies, psoroptic mange, rabies, tuberculosis, vesicular stomatitis, avian influenza, pullorum, fowl typhoid, psittacosis, viscerotropic velogenic Newcastle disease, foot-and-mouth disease, rinderpest, African swine fever, piroplasmosis, vesicular exanthema, Johne's disease, scabies, scrapies, bovine leukosis and bovine spongiform encephalopathy;

(3) "Processed food" means any food other than a raw agricultural commodity and includes any raw agricultural commodity that has been subject to processing, such as canning, cooking, freezing, dehydration or milling; and

(4) "Raw agricultural commodity" means any food in its raw or natural state, including all fruits that are washed, colored or otherwise treated in their unpeeled natural form prior to marketing.

(C) Endangering the food supply is a Class A public offense except if the contagious or infectious disease is foot-and-mouth disease in which class it is classified as a felony under state law and will be referred to the appropriate prosecuting authority."

NEW SECTION TWO: Section 9.04.049 is hereby added to the Olathe Municipal Code to read as follows:

"9.04.049 Unlawful Interference with an Emergency Medical Services Attendant.

(A) Unlawful interference with an emergency medical service provider is knowingly:

(1) Interfering with any emergency medical service provider while engaged in the performance of such emergency medical service provider's duties; or

(2) Obstructing, interfering with or impeding the efforts of any emergency medical service provider to reach the location of an emergency.

(B) Unlawful interference with an emergency medical service provider is a Class B Public Offense.

(C) As used in this section, "emergency medical service" means the same as in K.S.A. 65-6112, and amendments thereto.

(D) A person who violates the provisions of this section may also be prosecuted for, convicted of, and punished for assault or battery.

(E) The provisions of this section do not apply to the act of a police officer securing the scene of an emergency.”

SECTION THREE: Section 9.04.050 of the Olathe Municipal Code is hereby amended to read as follows:

“9.04.050 Unlawful Interference with a Firefighter ~~or a Person Who Provides Emergency Medical Treatment.~~

~~Unlawful interference with a firefighter or a person who provides emergency medical treatment is knowingly and intentionally interfering with, molesting or assaulting, as defined in Section 9.04.010, any firefighter or a person who provides emergency medical treatment while engaged in the performance of his or her duties, or knowingly and intentionally obstructing, interfering with or impeding the efforts of any firefighter or a person who provides emergency medical treatment while engaged in the performance of his or her duties, or knowingly and intentionally obstructing, interfering with or impeding the efforts of any firefighter or a person who provides emergency medical treatment to reach the location of a fire or accident. Unlawful interference with a firefighter or a person who provides emergency medical treatment is a Class B Public Offense.~~

(A) Unlawful interference with a firefighter is knowingly:

(1) Interfering with any firefighter while engaged in the performance of such firefighter’s duties; or

(2) Obstructing, interfering with or impeding the efforts of any firefighter to reach the location of a fire or other emergency.

(B) Unlawful interference with a firefighter is a Class B Public Offense.

(C) A person who violates the provisions of this section may also be prosecuted for, convicted of, and punished for assault or battery.

(D) The provisions of this section do not apply to the act of a police officer securing the scene of an emergency.”

SECTION FOUR: Section 9.07.095 of the Olathe Municipal Code is hereby amended to read as follows:

“9.07.095 Trespassing on Railroad Property

(A) It shall be unlawful for any person to:

(1) Without consent of the owner or the owner's agent, enter or remain on railroad property, knowing that it is railroad property; or

(2) Recklessly cause in any manner the derailment of a train, railroad car or rail-mounted work equipment.

(B) Subsection (A) ~~shall~~ will not be construed to interfere with the lawful use of a public or private crossing.

(C) Nothing in this Section shall be construed as limiting a representative or member of a labor organization which represents or is seeking to represent the employees of the railroad, from conducting such business as provided under the Railway Labor Act (45 U.S.C. 151, et seq.) and other federal labor laws.

(D) Trespassing on railroad property is a Class A public offense."

SECTION FIVE: Section 9.07.200 of the Olathe Municipal Code is hereby amended to read as follows:

"9.07.200 Automobile Master Key Violation

~~(1)~~(A) Automobile master key violation is either

~~(a)~~(1) Selling or offering to sell a motor vehicle master key knowingly designed to fit the ignition switch of more than one motor vehicle ~~to a person who is not regularly carrying on the business of garage proprietor or locksmith or employed as a law enforcement officer~~; or

~~(b)~~(2) Possession of a motor vehicle master key designed to fit the ignition switch of more than one motor vehicle by a person knowing it to be such a key ~~who is not regularly carrying on the business of garage proprietor or locksmith or employed as a law enforcement officer~~.

~~(2) It shall not be unlawful for the owner of two (2) or more vehicles to possess a motor vehicle master key for any or all of the motor vehicles so owned, nor shall the sale of such master keys to such owner be unlawful.~~

~~(3)~~(B) Automobile master key violation is a Class B Public Offense.

(C) The provisions of this section shall not apply to a:

(1) Law enforcement officer;

(2) Person who is regularly carrying on the business of garage proprietor or locksmith;

(3) Owner of two or more vehicles who possess such motor vehicle master key for any or all of the motor vehicles so owned; or

(4) Person who sells a motor vehicle master key to a person described in subsection (c)(3)."

SECTION SIX: Section 9.08.210 of the Olathe Municipal Code is hereby amended to read as follows:

"9.08.210 Crime of Intimidation of a Witness or Victim

Intimidation of a witness or victim is ~~knowingly and maliciously~~ preventing or dissuading, or attempting to prevent or dissuade, with intent to vex, annoy, harm or injure in any way another person or an intent to thwart or interfere in any manner with the orderly administration of justice:

~~(a)~~(A) Any witness or victim from attending or giving testimony at any civil or criminal trial, proceeding or inquiry authorized by law; or

~~(b)~~(B) Any witness, victim or person acting on behalf of a victim from:

(1) Making any report of the victimization of a victim to any law enforcement officer, prosecutor, probation officer, parole officer, correctional officer, community correctional services officer, ~~or~~ judicial officer, the secretary for children and families, the secretary for aging and disability services, or any agent or representative of either secretary, or any person required to make a report pursuant to K.S.A. 38-2223, and amendments thereto;

(2) causing a complaint, indictment or information to be sought and prosecuted, or causing a violation of probation, parole, or assignment to a community correctional services

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program to be reported and prosecuted, and assisting in its prosecution;

(3) causing a civil action to be filed and prosecuted and assisting in its prosecution; or

(4) arresting or causing or seeking the arrest of any person in connection with the victimization of a victim.

~~(e)~~(C) Intimidation of a witness or victim is a Class B Public Offense.

(D) As used in this section

(1) "Victim" means any individual:

(a) against whom any crime under the laws of this state, any other state or the United States is being, has been or is attempted to be committed; or

(b) who suffers a civil injury or loss; and

(2) "Witness" means any individual:

(a) Who has knowledge of the existence or nonexistence of facts relating to any civil or criminal trial, proceeding or inquiry authorized by law;

(b) Whose declaration under oath is received or has been received as evidence for any purpose;

(c) Who has reported any crime or any civil injury or loss to any law enforcement officer, prosecutor, probation officer, parole officer, correctional officer, community correctional services officer or judicial officer;

(d) Who has been served with a subpoena issued under the authority of a municipal court or any court or agency of this state, any other state or the United States; or

(e) Who is believed by the offender to be an individual described in this subsection.”

SECTION SEVEN: Section 9.12.120 of the Olathe Municipal Code is hereby amended to read as follows:

“9.12.120 Failure to Register Sale of Explosives

(1) Failure to register sale of explosives is, with no requirement of a culpable mental state, the omission, by the seller of any explosive or detonating substance, to keep a register of every sale or other disposition of such explosives made by him as required by this Section.

(2) The register of sales required by this Section shall contain the date of the sale or other disposition, the name, address, age and occupation of the person to whom the explosive is sold or delivered, the kind and amount of explosive delivered, the place at which it is to be used and for what purposes it is to be used. Said register and said record of sale or other disposition shall be open for inspection by any law enforcement officer, mine inspector or fire marshal of this state for a period of not less than one (1) year after said sale or other disposition.

(3) Failure to register sale of explosives is a Class A public Offence.”

SECTION EIGHT: Section 9.12.130 of the Olathe Municipal Code is hereby amended to read as follows:

“9.12.130 Failure to Register Receipt of Explosives

(A) Failure to register receipt of explosives is, with no requirement of a culpable mental state, the omission, by any person to whom delivery of any quantity of explosive or other detonating substance is made, to acknowledge the receipt thereof by signing his name in the register provided in Section 9.12.120 on the page where the record of such delivery is entered.

(B) Failure to register receipt of explosives is a Class B Public Offense.”

SECTION NINE: Section 9.13.010 of the Olathe Municipal Code is hereby amended to read as follows:

“9.13.010 Promoting Obscenity

(A) Promoting obscenity is knowingly or recklessly:

(1) Manufacturing, issuing, selling, giving, providing, lending, mailing, delivering, transmitting, publishing, distributing, circulating, disseminating, presenting, exhibiting or advertising any obscene material; or obscene devices; or

(2) Possessing any obscene material or obscene device with intent to issue, sell, give, provide, lend, mail, deliver, transfer, transmit, publish, distribute, circulate, disseminate, present, exhibit or advertise such material or device; or

(3) Offering or agreeing to manufacture, issue, sell, give, provide, lend, mail, deliver, transmit, publish, distribute, circulate, disseminate, present, exhibit or advertise any obscene material or obscene device; or

(4) Producing, presenting or directing an obscene performance or participating in a portion thereof which is obscene or which contributes to its obscenity.

(B) Evidence that materials or devices were promoted to emphasize their prurient appeal shall be relevant in determining the question of the obscenity of such materials, or devices. There shall be a presumption that a person promoting obscene materials or obscene devices did so knowingly or recklessly if:

(1) The materials or devices were promoted to emphasize their prurient appeal; or

(2) The person is not a wholesaler or promotes the materials or devices in the course of the person’s business.

(C) (1) Any material or performance is “obscene” if:

(a) The average person applying contemporary community standards would find that the material or

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performance, taken as a whole, appeals to the prurient interest;

(b) The average person applying contemporary community standards would find that the material or performance has patently offensive representations or descriptions of

(1) Ultimate sexual acts, normal or perverted, actual or simulated, including sexual intercourse or sodomy, or

(2) Masturbation, excretory functions, sadomasochistic abuse or lewd exhibition of genitals; and

(c) Taken as a whole, a reasonable person would find that the material or performance lacks serious literary, educational, artistic, political or scientific value.

(2) "Material" means any tangible thing which is capable of being used or adapted to arouse interest, whether through the medium of reading, observation, sound or other manner.

(3) "Obscene Device" means a device, including a dildo or artificial vagina designed or marketed as useful primarily for the stimulation of human genital organs, except such devices disseminated or promoted for the purpose of medical or psychological therapy.

(4) "Performance" means any play, motion picture, dance or other exhibition performed before an audience.

(5) "Wholesaler" means a person who sells, distributes or offers for sale or distribution obscene materials or devices only for resale and not to the consumer and who does not manufacture, publish or produce such materials or devices.

(D) It is a defense to a prosecution for obscenity that:

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(1) The persons to whom the allegedly obscene material was disseminated, or the audience to an allegedly obscene performance, consisted of persons or institutions having scientific, educational or governmental justification for possessing or viewing the same;

(2) The defendant is an officer, director, trustee or employee of a public library and the allegedly obscene material was acquired by such library and was disseminated in accordance with regular library policies approved by its governing body; or

(3) The allegedly obscene material or obscene device was purchased, leased or otherwise acquired by a public, private or parochial school, college or university, and that such material was either sold, leased, distributed or disseminated by a teacher, instructor, professor or other faculty member or administrator of such school as a part of or incident to an approved course or program of instruction at such school.

(E) The provisions of this Section prescribing a criminal penalty for exhibit of any obscene motion picture shown in a commercial showing to the general public shall not apply to a projectionist, or assistant projectionist, if such projectionist or assistant projectionist has no financial interest in the show or in its place of presentation other than regular employment as a projectionist or assistant projectionist and no personal knowledge of the contents of the motion picture. The provisions of this Section shall not exempt any projectionist or assistant projectionist from criminal liability for any act unrelated to projection of motion pictures in commercial showings to the general public.

(F) Promoting obscenity is a Class A Public Offense on conviction of the first offense. Conviction of second or subsequent offense is a felony.

(G) Upon any conviction of promoting obscenity, the court may require, in addition to any fine or imprisonment imposed, that the defendant enter into a reasonable recognizance with good and sufficient

surety, in such sum as the court may direct, but not to exceed \$50,000, conditioned that, in the event the defendant is convicted of a subsequent offense of promoting obscenity within two years after such conviction, the defendant shall forfeit the recognizance.”

SECTION TEN: Section 9.13.030 of the Olathe Municipal Code is hereby amended to read as follows:

“9.13.030 Promoting Obscenity to Minors

(1) Promoting obscenity to minors is promoting obscenity as defined by Section 9.13.010 and amendments thereto, where the recipient of the obscene material or obscene device or a member of the audience of an obscene performance is a child under the age of 18 years.

(2) Evidence that materials or devices were promoted to emphasize their prurient appeal shall be relevant in determining the question of the obscenity of such materials or devices. There shall be a rebuttable presumption that a person promoting obscene materials or obscene devices did so knowingly or recklessly if:

(a) The materials or devices were promoted to emphasize their prurient appeal; or

(b) The person is not a wholesaler and promotes the materials or devices in the course of the person’s business.

(3) It shall be an affirmative defense to any prosecution under this Section that:

(a) The defendant had reasonable cause to believe that the minor involved was 18 years old or over, and such minor exhibited to the defendant a draft card, driver’s license, birth certificate or other official or apparently official document purporting to establish that such minor was 18 years old or more.

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(b) The allegedly obscene material was purchased, leased or otherwise acquired by a public, private or parochial school, college or university, and that such material was either sold, leased, distributed or disseminated by a teacher, instructor, professor or other faculty member or administrator of such school as part of or incident to an approved course or program of instruction at such school.

(c) The defendant is an officer, director, trustee or employee of a public library and the allegedly obscene material was acquired by a public library and was disseminated in accordance with regular library policies approved by its governing body.

(d) An exhibition in a state of nudity is for a bona fide scientific or medical purpose, or for an educational or cultural purpose for a bona fide school, museum or library.

(3) Promoting obscenity to minors is a Class A Public Offense on conviction of the first offense. Conviction of second or subsequent offense is a felony.”

SECTION ELEVEN: Section 9.14.010 of the Olathe Municipal Code is hereby amended to read as follows:

“9.14.010 False Membership Claim

(A) A false membership claim is knowingly and falsely representing oneself to be a member of a fraternal, or veteran’s organization ~~or a private club, licensed to serve alcoholic liquors for consumption upon the premises, pursuant to the laws of the State of Kansas.~~

(B) False membership claim is a Class C Public Offense.”

SECTION TWELVE: Section 9.14.020 of the Olathe Municipal Code is hereby amended to read as follows:

“9.14.020 Unlawful Dog Fighting

(A) Unlawful dog fighting is:

(1) Causing, for amusement or gain, any dog to fight with or injure another dog;

(2) Knowingly permitting such fighting or injuring on premises under one’s ownership, charge or control; or

(3) Training, owning, keeping, transporting or selling any dog for the purpose or with the intent of having it fight with or injure another dog.

(B) Unlawful possession of dog fighting paraphernalia is possession of any braking stick, treadmill, wheel, hot walker, cat mill, cat walker, jenni, or other paraphernalia together with evidence that the paraphernalia is being used or is intended for use in the unlawful conduct of dog fighting.

(C) Unlawful attendance of dog fighting is entering or remaining on the premises where the unlawful conduct of dog fighting is occurring, whether the person knows or has reason to know that dog fighting is occurring on the premises.

(D) Unlawful conduct of dog fighting is a Class A Public Offense.

(E) Unlawful possession of dog fighting paraphernalia is a Class A Public Offense.

(F) Unlawful attendance of dog fighting is a Class B Public Offense.

(G) A person who violates the provisions of this section may also be prosecuted for, convicted of, and punished for cruelty to animals.”

SECTION THIRTEEN: Section 9.17.010 of the Olathe Municipal Code is hereby amended to read as follows:

“9.17.010 Possession of Marijuana; Controlled Substance; Penalties.

(A) Except as authorized by the Uniform Controlled Substance Act, K.S.A. 65-4101 et seq., and amendments thereto, it shall be unlawful for any person to manufacture, possess, have under such person’s control, administer, deliver, distribute, dispense or compound marijuana.

(B) As used in this Section, “marijuana” means all parts of all varieties of the plant cannabis whether growing or not, the seeds thereof, the resin extracted from any part of the plant and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, except the resin extracted therefrom, fiber, oil, or cake or the sterilized seed of the plant which is incapable of germination or cannabidiol (other trade name: 2-[(3-methyl-6-(1-methylethenyl)-2-cyclohexen-1-yl]-5-pentyl-1,3-benzenediol).

(C) It shall be an affirmative defense to prosecution under this section arising out of a person’s possession of any cannabidiol treatment preparation if the person:

(1) Has a debilitating medical condition, as defined in subsection (F), and amendments thereto, or is the parent or guardian of a minor child who has such debilitating medical condition;

(2) Is possessing a cannabidiol treatment preparation, as defined in subsection (F), and amendments thereto, that is being used to treat such debilitating medical condition; and

(3) Has possession of a letter, at all times while the person has possession of the cannabidiol treatment preparation, that:

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(a) Shall be shown to a law enforcement officer on such officer's request;

(b) Is dated within the preceding 15 months and signed by the physician licensed to practice medicine and surgery in Kansas who diagnosed the debilitating medical condition;

(c) Is on such physician's letterhead; and

(d) Identifies the person or the person's minor child as such physician's patient and identifies the patient's debilitating medical condition.

(D) Upon a conviction, plea of no contest or guilty for violation of this Section, the municipal judge shall order such person to submit to and complete an alcohol and drug evaluation by a community based alcohol and drug safety action program certified pursuant to K.S.A. 8-1008, and amendments thereto, and to pay a fee not to exceed the fee established by that statute for such evaluation. A diversion agreement based upon a violation of this Section shall also require a person to submit to and complete an alcohol and drug evaluation by a community based alcohol and drug safety action program certified pursuant to K.S.A. 8-1008, and amendments thereto, and to pay a fee not to exceed the fee established. If the judge finds that person is indigent, the fee may be waived.

D.(E) Any person who violates this Section shall be guilty of a Class A public offense.

(F) As used in this section:

(1) "Cannabidiol treatment preparation" means an oil containing cannabidiol (other trade name: 2-[(3-methyl-6-(1-methylethenyl)-2-cyclohexen-1-yl]-5-pentyl-1,3-benzenediol) and tetrahydrocannabinol, as described in K.S.A. 65-4105, and amendments thereto, and having a tetrahydrocannabinol concentration of no more than 5% relative to the cannabidiol

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concentration in the preparation, verified through testing by a third-party, independent laboratory.”

(2) “Debilitating medical condition” means a medically diagnosed chronic disease or medical condition causing a serious impairment of strength or ability to function, including one that produces seizures, for which the patient is under current and active treatment by a physician licensed to practice medicine and surgery in Kansas.”

SECTION FOURTEEN: Existing sections 9.04.050, 9.07.095, 9.07.200, 9.08.210, 9.12.120, 9.12.130, 9.13.010, 9.13.030, 9.14.010, 9.14.020, and 9.17.010 are hereby repealed.

SECTION FIFTEEN: This Ordinance shall take effect and be in force from and after its passage and publication as provided by law.

PASSED by the Governing Body this _____ day of _____, 2019.

SIGNED by the Mayor this _____ day of _____, 2019.

Mayor

ATTEST:

City Clerk

(SEAL)

APPROVED AS TO FORM:

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City Attorney

Publish one time and return one Proof of Publication to the City Clerk and one to the City Attorney.