

ORDINANCE NO. 19-XX

AN ORDINANCE AMENDING OLATHE MUNICIPAL CODE SECTIONS 5.36.010, 5.36.050, 5.36.080, 5.36.140, AND 5.36.150 PERTAINING TO MASSAGE THERAPY AND REPEALING THE EXISTING SECTIONS AND SECTIONS 5.36.060 AND 5.36.090.

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

SECTION ONE: Section 5.36.010 of the Olathe Municipal Code is hereby amended to read as follows:

“5.36.010 Definitions.

[“Adult business establishment” has the meaning provided by Chapter 5.50.](#)

“Conviction” means being found guilty or entering into a diversion agreement or deferred judgment agreement.

[“Criminal Charge” means any time a person is required to appear as a defendant in municipal, state, or federal court based on a law enforcement allegation.](#)

“Employee” means any person, other than a massage therapist, who renders any service for or on behalf of a licensee under this Chapter and/or who receives compensation from the licensee or a patron.

“Healing arts practitioner” is defined by the provisions of K.S.A.65-2801, et. seq.

“Health official” means any person employed by the City of Olathe and designated by the City Manager to enforce and administrate the provisions of this Chapter.

“Massage therapist” means any person who, for any consideration whatsoever, engages in massage therapy.

“Massage therapy” means any method which may include but is not specifically limited to stroking, kneading, tapping, compression, vibration, rocking, friction, pressure, and those techniques based on manipulation or the application of pressure to the muscular structure or soft tissues of the human body, which may also include non-forceful passive or active movement and/or the application of techniques intended to affect the energetic systems of the body. The

use of oils, lotions, powders, or other lubricants may also be included. "Massage therapy" does not mean the touching, in any fashion, of a patron's pubic region, genitals, perineum, anal region, and/or the female breast.

"Massage therapy establishment" means any establishment licensed hereunder where any person, firm, partnership, association, or corporation engages in massage therapy for compensation.

~~"Minor traffic violation" means any violation classified as a traffic infraction or ordinance traffic infraction pursuant to K.S.A. 8-2118(c), and amendments thereto.~~

"Off-site massage therapy" means massage therapy that is provided by a massage therapist on the business premises of a massage patron.

"Operator" means any owner, manager, individual, licensee, person, and/or employee principally in charge of a massage therapy establishment at any given time.

"Patron" means any person who utilizes or receives the services of any massage therapist and/or massage therapy establishment subject to the provisions of this Chapter and under such circumstances that it is reasonably expected he or she will pay money or give any other consideration therefor.

"Police officer" means any duly authorized law enforcement officer employed by the City of Olathe.

"Table shower" means an activity in which a patron is washed by a massage therapist."

SECTION TWO: Section 5.36.050 of the Olathe Municipal Code is hereby amended to read as follows:

"5.36.050 Applications for Massage Therapy Establishment License and Massage Therapist License.

(A) Every applicant for a massage therapy establishment license or massage therapist license ~~to operate a massage therapy establishment~~ must file an application with the City ~~Clerk~~ and pay a non-refundable fee. Such fee will be established by the Governing Body by resolution.

~~(B) The application for a massage therapy establishment license will set forth the exact nature of the services to be provided, the proposed place of business, and the name, address, and telephone number of each applicant and any operator.~~

~~(C) In addition to the foregoing, any~~ Any applicant for a ~~massage therapy establishment~~ license must furnish the following information:

(1) Name, telephone number, and address;~~Written evidence that the applicant and the operator(s) of the business are at least eighteen (18) years old by providing a copy of a current state or federal issued form of identification;~~

(2) Current local address;

(3) Social Security number, weight, height, color of hair and eyes of the applicant~~and operator(s);~~

~~(34)~~ Written evidence that the applicant of the business are at least eighteen (18) years old by providing a copy of a current state or federal issued form of identification;

(5) Business, occupation, or employment of the applicant for the three (3) years immediately preceding the date of application;

~~(4) The massage therapy establishment license history of the applicant; whether the applicant while previously operating in this or another city or state under license has had such license denied, suspended or revoked, or has voluntarily surrendered the license in lieu of revocation or suspension by a city or any state or local agency within ten (10) years prior to the date of application and the reason why the license was denied, revoked, suspended or voluntarily surrendered;~~

(6) All criminal charges which resulted in a conviction based on the allegations for any of the offenses listed in Section 5.36.080(A)(1)(a), (c)-(h) against the applicant in any city or state, fully disclosing the place and court where the criminal charge occurred, and the disposition of the criminal charge;

~~(57)~~ All criminal charges which resulted in a conviction based on the allegations for any of the offenses listed in Section 5.36.080(A)(1)(b) or (i) offenses (except minor traffic violations) charged against the applicant or any criminal charges offenses charged on, against or related to any massage therapy establishment which applicant was operating or employed by, in this or another any city or state within ten (10) years prior to the date of application, fully disclosing the place and court where the criminal charge offense occurred, and the disposition of the criminal charge offense, and the circumstances thereof;

(8) All criminal charges which resulted in a conviction based on the allegations for any of the offenses listed in Section

5.36.080(A)(1)(j) against the applicant in any city or state within five (5) years prior to the date of the application, fully disclosing the place and court where the criminal charge occurred, and the disposition of the criminal charge;

(9) Whether the applicant:

(a) has an active warrant for arrest for or is currently charged with any criminal charge listed in Section 5.36.080(A)(1);

(b) has previously been issued a license by any city or state for an adult business establishment or escort service or has been employed by any such establishment.

(10) The massage therapy license history of the applicant, including, but not limited to:

(a) whether the applicant has had such license denied, suspended or revoked, or such license is currently suspended;

(b) if such license was denied, suspended, revoked or voluntarily suspended, then the reason why the license was denied, revoked, suspended or voluntarily surrendered.

(C) Any applicant for a massage therapy establishment license must also furnish the following information:

(1) The proposed place of business and exact nature of the services to be provided;

(2) All criminal charges against or related to any massage therapy establishment which applicant was operating or employed by, in any city or state within ten (10) years prior to the date of application, fully disclosing the place and court where the criminal charge occurred, and the disposition of the criminal charge.

(D) Any applicant for a massage therapist license must also furnish the following information:

(1) Name, address, and telephone number of employing establishment;

(2) The position or function the applicant is being hired to provide within the employing establishment.

(~~DE~~) The applicant must provide written authorization for the City, its agents and employees to seek information and investigate the truth of the statements set forth in the application and the qualifications of the applicant ~~and the operator(s)~~ for the license.

~~(E) In the case of applicants who personally provide massage therapy, the applicant must also apply for and receive a massage therapist license as required in Section 5.36.030(A).~~

(F) Upon submission of a request for renewal on a form provided by the City and a fee, an expiring massage therapist license may be renewed by the City, and an expiring massage therapy establishment license may be renewed by the City ~~Clerk~~ if there has been no change in ownership. Such fee will be adopted by the Governing Body by resolution. All requests for renewal must be received by the City at least thirty (30) days prior to the expiration of the license.

If the renewal request is not received at least thirty (30) days prior to the expiration, the City ~~Clerk~~ may be unable to process the renewal request prior to the expiration of the license. ~~The renewal form will require a notarized statement that there have been no criminal offenses (except minor traffic violations) charged against the applicant or criminal offenses charged on, against or related to the massage therapy establishment within the preceding twelve (12) months.~~

(G) No suspended license will be renewed. If a suspended license lapses during a suspension period, a new application for a massage therapy establishment license may only be filed upon the expiration of the period of suspension.”

SECTION THREE: Section 5.36.080 of the Olathe Municipal Code is hereby amended to read as follows:

“5.36.080 Issuance, Denial, Voidance of Massage Therapy Establishment License or Massage Therapist License.

(A) After the filing of an application in the proper form and completion of a criminal background investigation, the City ~~Clerk~~ will examine the application, and after such examination, will issue a massage therapy license or massage therapist license ~~for a massage therapy establishment~~ unless the City ~~Clerk~~ finds that:

(1) The applicant ~~or operator of the establishment~~ has a conviction based on the charged allegations for:

(a) a person felony, as defined by Kansas law;

(b) non-person felony, as defined by Kansas law, in the ten (10) years immediately preceding the date of the application; ~~a felony; or~~

(c) an offense involving sexual misconduct with children;

(d) obscenity;

(e) promoting prostitution or equivalent ~~charge~~ offense;

(f) solicitation of a lewd act;

(g) prostitution, buying sexual relations, or selling sexual relations, or equivalent offense;

(h) any other sexual related offense;

(i) any criminal charge applicable to massage therapy arising out of the individual's prior massage establishment(s) or individual massage therapist license(s) in the ten (10) years immediately preceding the date of the application;

(b) any of the following misdemeanors in the ~~last~~ five (5) years ~~immediately preceding the date of the application~~ ~~for any of the following~~:

(1) domestic violence

(2) a person criminal offense

(3) a drug violation

(4) a second or subsequent DUI

(5) furnishing alcohol to minors; or

~~(c) an offense involving sexual misconduct; including but not limited to obscenity, solicitation of a lewd or unlawful act, or prostitution; or~~

(2) The applicant ~~or operator of the establishment~~:

(a) is not over the age of eighteen (18) years; or

(b) has an active warrant for arrest for or is currently charged with any criminal charge listed in Section 5.36.080(A)(1); or

(c) has previously been issued a license by any city or state for an adult business establishment or escort service or has been employed by any such establishment; or ~~is currently on probation or diversion or has a deferred judgment for any criminal offense listed in this Section; or~~

~~(b) has an active warrant for arrest for any criminal offense listed in this Section; or~~

~~(c) is currently charged with any criminal offense listed in this Section; or~~

(d) has ~~knowingly~~ made any false, misleading, or fraudulent statement of fact in or in support of the application for a massage therapy license in any city or state~~the license application or in any document required by the City in conjunction therewith; or~~

(e) has voluntarily surrendered a massage therapy ~~establishment~~ license ~~or similar permit~~ in lieu of revocation, or had such license ~~or permit~~ revoked or a such license ~~or permit~~ is currently suspended, by any city or ~~any~~ state ~~or local agency~~; or

(f) if seeking a massage therapist license, has not been certified by the National Certification Board for Therapeutic Massage & Bodywork (NCBTMB) or has not passed the Massage & Bodywork Licensing Examination (MBLEx) ~~fails to disclose information in response to questions in the license application; or~~

(3) The correct fee has not been paid to the City; or

(4) For a massage therapy establishment license, ~~T~~the operation, as proposed by the applicant, if permitted, would not comply with all applicable laws, including, but not limited to, the City's building, zoning, and health regulations; or

(5) For a massage therapy establishment license, there are facts which reasonably indicate that the establishment's operations would be influenced by an individual with a relationship with the applicant and such individual has previously been denied a massage therapy license or had such license revoked, suspended, or non-renewed or would be ineligible for a license under this Chapter. ~~The applicant or operator(s) of the business are not over the age of eighteen (18) years; and~~

~~(6) The applicant or operator(s) of the business would be ineligible to receive a license under the provisions of this Chapter.~~

(B) Any ~~massage therapy establishment~~ license issued under the provisions of this Chapter must be displayed at all times by the licensee in an open and conspicuous place in the massage therapy establishment.

(C) Renewal applications are subject to the same criteria as an original application except as provided otherwise in Sections 5.36.050(F) and 5.36.050(G).

(D) If the application is denied, the applicant will be notified by United States first class mail, postage prepaid, mailed to the applicant's mailing address as identified in the application.

Upon denial, based upon any false, misleading, or fraudulent statement of fact in or in support of a massage therapy license application related subsection (A)(1)(j) of this Section, the applicant shall be ineligible to reapply for any license under this Chapter for a period of one year from the date of denial. A denied applicant can submit a written request to the Chief of Police for a waiver of the ineligibility, who may grant such waiver upon a showing of good cause.

(E) If a license is issued and it is determined that the license should not have been issued because of noncompliance with this Section, then the City will void the license and notify the applicant by United States first class mail, postage prepaid, mailed to the applicant's mailing address as identified in the application.

(F) Any applicant aggrieved by a denial of an application or a denial of a request for a waiver of ineligibility may seek judicial review of the decision pursuant to Kansas law.

SECTION FOUR: Section 5.36.140 of the Olathe Municipal Code is hereby amended to read as follows:

“5.36.140 Massage Therapy Establishment Regulations.

The operation of any massage therapy establishment will be subject to the following regulations:

(A) The licensee will have the massage therapy establishment supervised at all times when open for business by himself/herself or an operator. The licensee or operator will personally supervise the establishment, and will not violate or permit others to violate any applicable provision of this Chapter.

(B) Every licensee will at all times be responsible for the conduct of business on the licensed massage therapy establishment premises and for any act or conduct of an operator, massage therapist or employee, which constitutes a violation of the provisions of this Chapter. Any violation of the city, state or federal laws committed on the licensed premises by any licensee, operator, massage therapist or employee affecting the eligibility or suitability of the licensee to hold a license, constitutes a violation by the licensee and may be grounds for suspension or revocation of same.

(C) The massage therapy establishment will be closed and operations will cease between the hours of ~~twelve (12) a.m.~~ ten (10) p.m. and six (6) a.m.

(D) No alcoholic or cereal malt beverages, nor the possession or consumption thereof, will be allowed in or upon the massage therapy establishment premises.

(E) All licensees, operators, massage therapists and employees will wear outer garments while at the establishment. Diaphanous or transparent clothing is prohibited. All licensees, operators, massage therapists and employees must be fully clothed at all times.

(F) A licensed establishment must be kept clean and operated in a sanitary manner.

(G) A patron's pubic region, genitals, perineum, anal region, and/or the female breast must be covered at all times by opaque towels, sheets, cloths or undergarments when in presence of a licensee, operator, massage therapist or employee.

(H) Any contact by a licensee, operator, massage therapist or employee with a patron's pubic region, genitals, perineum, anal region, and/or the female breast is prohibited.

(I) Clean, laundered sheets and towels will be provided to patrons for use. Such items will be laundered after each use thereof and stored in a sanitary manner.

(J) Wet and dry heat rooms, showers, and other bathing compartments, and toilet rooms will be thoroughly cleaned each day the massage therapy establishment is in operation. Bathtubs or individual soaking areas will be thoroughly cleaned after each use.

(K) Table showers are prohibited.

(L) All massage therapy establishments and/or operators of massage therapy establishments will keep and maintain on the premises a current register of all massage therapists showing each individual's name,

home address, telephone number, license number and a copy of the therapist's license and government-issued identification. Such register will be open to inspection during business hours by any health official or police officer.

(M) All operators of a massage therapy establishment will keep a daily register at the massage therapy establishment of all patrons, with names, addresses, telephone numbers, and parental or legal guardian authorization (if applicable). Said daily register will, at all times during business hours, be subject to inspection by any health official or police officer and must be kept on file for one (1) year from the date of each entry.

(N) No massage therapy establishment operator or employee will place, publish, distribute or cause to be placed, published or distributed, any advertisement offering or suggesting the availability of any service which is either prohibited or not authorized under this Chapter.

(O) No individual will sleep between the hours of ten (10) p.m. and six (6) a.m. at, reside at, or inhabit ~~or otherwise sleep overnight at~~ a massage therapy establishment. Prima facie evidence of violating this provision includes but is not limited to the presence of a cot, sleeping bag, air mattress, bed mat, or bed.

(P) No operator or employee will permit the provision, offer to provide or provide to any patron any service with the intent to arouse or gratify the sexual desires of the operator, massage therapist, employee or patron.

SECTION FIVE: Section 5.36.150 of the Olathe Municipal Code is hereby amended to read as follows:

“5.36.150 Massage Therapist Regulations.

Massage therapists are subject to the following regulations when providing services:

(A) The massage therapist will not violate any applicable provision of this Chapter.

(B) A massage therapist will not provide massage therapy on patrons between the hours of ~~twelve (12) a.m.~~ ten (10) p.m. and six (6) a.m.

(C) A massage therapist will not consume any alcoholic or cereal malt beverages during business hours or while providing massage therapy.

(D) Any violation of the city, state or federal laws committed by a therapist affecting his/her eligibility or suitability to hold a license may be grounds for suspension or revocation of same.

(E) All massage therapists will wear outer garments while providing massage therapy. Diaphanous or transparent clothing is prohibited. The massage therapist must be fully clothed at all times.

(F) A patron's pubic region, genitals, perineum, anal region, and the female breast must be covered at all times by opaque towels, sheets, cloths or undergarments when in the presence of the massage therapist.

(G) Any contact by a massage therapist with a patron's pubic region, genitals, perineum, anal region, and/or the female breast is prohibited.

(H) Table showers are prohibited.

(I) A massage therapist will not provide or permit any massage therapy to be provided to a patron under the age of eighteen (18) unless the patron is accompanied to the massage therapy establishment by a parent or legal guardian, and the parent or legal guardian authorizes the massage therapy in writing.

(J) No massage therapist will place, publish, distribute or cause to be placed, published or distributed, any advertisement offering or suggesting the availability of any service which is either prohibited or not authorized under this Chapter.

(K) A massage therapist will notify the City ~~Clerk~~ of any change in massage therapy establishment employment within thirty (30) calendar days of the change.

(L) No massage therapist will permit the provision, offer to provide or provide to any patron any service with the intent to arouse or gratify the sexual desires of the massage therapist or patron.

(M) A massage therapist will keep a daily register at the massage therapy establishment of all patrons, with names, addresses, telephone numbers, and parental or legal guardian authorizations (if applicable). Said daily register will at all times during business hours be subject to inspection by any health official or police officer and must be kept on file for one (1) year from the date of each entry.

SECTION SIX: Existing Sections 5.36.050, 5.36.060, 5.36.080, 5.36.090, 5.36.140, and 5.36.150 are hereby repealed.

SECTION SEVEN: 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:

City Attorney

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