

ORDINANCE NO. 19-XX

**AN ORDINANCE ADDING NEW OLATHE MUNICIPAL CODE SECTION 9.12.195
PERTAINING TO OPERATING A VESSEL UNDER THE INFLUENCE.**

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

SECTION ONE: Section 9.12.195 of the Olathe Municipal Code is hereby added to the Olathe Municipal Code to read as follows:

**“9.12.195. Operating a Vessel Under the Influence of Alcohol
or Drugs; Penalties.**

(A) No person shall operate or attempt to operate any vessel within this city while:

(1) The alcohol concentration in the person’s blood or breath as shown by any competent evidence, including other competent evidence, as defined in K.S.A. 32-1130(b)(1), and amendments thereto, is .08 or more;

(2) The alcohol concentration in the person’s blood or breath, at the time or within three hours after the person operated or attempted to operate the vessel is .08 or more;

(3) The alcohol concentration in the person’s blood or breath, at the time or within three hours after the person operated or attempted to operate the vessel is .02 or more and the person is less than 21 years of age;

(4) Under the influence of alcohol to a degree that renders the person incapable of safely operating a vessel;

(5) Under the influence of any drug or combination of drugs to a degree that renders the person incapable of safely operating a vessel; or

(6) Under the influence of a combination of alcohol and any drug or drugs to a degree that renders the person incapable of safely operating a vessel.

(B) If a person is charged with a violation of this section involving drugs, the fact that the person is or has been entitled to use the drug under the laws of this state shall not constitute a defense against the charge.

(C) No person shall operate or attempt to operate any vessel within this State for three months after the date of refusal of submitting to a test if such person refuses to submit to a test pursuant to K.S.A. 32-1132, and amendments thereto.

(D) Except as provided by subsection (E), violation of this section is a violation punishable:

(1) On the first conviction, by imprisonment of not more than one year or a fine of not less than \$100 nor more than \$500, or both; and

(2) On the second or a subsequent conviction shall be sentenced to not less than ninety (90) days nor more than one year and a fine of not less than \$100 nor more than \$500.

(E) Subsection (D) shall not apply to or affect a person less than 21 years of age who submits to a breath or blood alcohol test requested pursuant to K.S.A. 32-1132 and amendments thereto, and produces a test result of an alcohol concentration of .02 or greater but less than .08. Such person's boating privileges upon the first occurrence shall be suspended for 30 days and upon a second or subsequent occurrence shall be suspended for 90 days.

(F) In addition to any other penalties prescribed by law or rule and regulation, any person convicted of a violation of this section shall be required to satisfactorily complete a boater safety education course of instruction approved by the secretary of wildlife, parks and tourism.

(G) As used in this section, "operate" means to navigate or otherwise use a motorboat or a vessel."

SECTION TWO: 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.