

Bobbie Walthall

From: Tom Markus
Sent: Tuesday, March 07, 2017 12:26 PM
To: Bobbie Walthall
Cc: City Commissioners Email
Subject: FW: Follow up questions regarding proposed ordinance
Attachments: Q&A_2.pdf

Please add to late distribution for agenda.

-----Original Message-----

From: Maria Garcia
Sent: Tuesday, March 07, 2017 11:37 AM
To: Tom Markus
Cc: Toni Wheeler; Randy Larkin; Diane Stoddard; Casey Toomay; Brandon McGuire; Tarik Khatib; Greg Pruett; Sherri Riedemann
Subject: RE: Follow up questions regarding proposed ordinance

Answers to Commissioner Boley's follow-up questions are attached.

Maria Kaminska Garcia, Assistant City Attorney – mgarcia@lawrenceks.org City Attorney's Office | City of Lawrence, KS P.O. Box 708, Lawrence, KS 66044 office (785) 832-3470 | fax (785) 832-3405

-----Original Message-----

From: Tom Markus
Sent: Monday, March 06, 2017 8:27 AM
To: Maria Garcia
Cc: Toni Wheeler; Randy Larkin; Diane Stoddard; Casey Toomay; Brandon McGuire; Stuart Boley
Subject: FW: Follow up questions regarding proposed ordinance

Please review and respond.

-----Original Message-----

From: Stuart Boley
Sent: Monday, March 06, 2017 7:06 AM
To: Tom Markus
Subject: Follow up questions regarding proposed ordinance

Tom,

I appreciate the response we received to the questions posed last week. Here are some follow ups.

2. While staff obtained information from seven cities about their ordinances, it appears that industry information was obtained from only two. Is that the case? No information was provided in response to the question "What other points of comparison did staff consider in drafting the ordinance?" Should the lack of such a response be interpreted as confirmation that no other points of comparison were considered? How did staff identify that there are approximately 40 businesses in Lawrence? What efforts did staff make to identify

the number of legitimate massage therapists in Lawrence? What efforts did staff make to identify the number of the clients they serve?

3. Staff did not provide any analysis of how the cities used for comparison are dissimilar to Lawrence. Did it escape their notice that each of those cities are parts of metropolitan areas with populations far exceeding that of Lawrence? Wichita is part of a metro area with more than 645,000 residents, while the suburban cities listed are part a metro area of more than 2,000,000.

Staff referenced contacts they made to other clerks' offices and other police departments. Please provide a listing of these contacts with a synopsis of each.

4. Staff provided a lengthy narrative in response to a set of questions about numbers. Please answer the questions that were asked. It's okay to respond that staff doesn't know, but if that is the case, please be direct about it.

7. Three impacts are mentioned but the list is incomplete. This is acknowledged subsequently in the staff response when discussing areas of pushback. Please make another attempt to provide a complete list of the impacts on therapists. Significantly, staff listed no impacts on clients. Please make an attempt to list those impacts as well.

While this was not part of the original set of questions, it is prompted by the staff response. Please provide a listing of all contacts with those in the massage therapy community, both in Lawrence and in the cities used for comparison, that were used in the preparation of the proposed ordinance, with a synopsis of each.

It would be useful to receive this information by 3 pm tomorrow so I'll have a chance to prepare adequately for the issue on the agenda.

Thanks.

Stuart

Sent from my iPad

2. While staff obtained information from seven cities about their ordinances, it appears that industry information was obtained from only two. Is that the case? No information was provided in response to the question "What other points of comparison did staff consider in drafting the ordinance?" Should the lack of such a response be interpreted as confirmation that no other points of comparison were considered? How did staff identify that there are approximately 40 businesses in Lawrence? What efforts did staff make to identify the number of legitimate massage therapists in Lawrence? What efforts did staff make to identify the number of the clients they serve?

Staff was able to speak with someone from the City Clerk’s offices in six of the seven Kansas cities listed (staff was unable to reach someone in Kansas City at the time staff conducted this research). Below is a summary of what we learned when speaking with the various offices. Please note that these calls were made before we drafted the first draft of Ordinance 9305, so are many months old.

<p>Wichita: The local ordinance at the time staff called Wichita had been on the books for approximately 10 years, but it had not been enforced and the city did not then issue licenses. However, City of Wichita staff advised that massage businesses were becoming an increasing problem in Wichita particularly because of the increase in human trafficking associated with some of them. Because of that, new draft language updating the local ordinance is being submitted to the Wichita City Council for consideration in the near future. If adopted, the ordinance would be enforced by police (criminal violations); the fire department (fire code violations); and code enforcement (building, zoning, health code violations). They would work as a team on problem locations. Since that conversation, Wichita passed a new massage ordinance.</p>
<p>Kansas City (Wyandotte): N/A</p>
<p>Shawnee: Uses its ordinances and advises that overall it has been helpful.</p>
<p>Leawood: Has had its ordinance on the books for approximately 10 years. Its staff advises that it is currently used and there have not been any issues once a business or person becomes licensed. Staff estimates that approximately 15 businesses and 75-100 therapists are licensed. Leawood performs inspections of businesses to ensure compliance with the city code. Staff says that human trafficking has not been a notable issue in Leawood and that the laws regulating massage businesses likely help keep those numbers down.</p>
<p>Lenexa: Staff advises that its ordinance was most recently updated in 2013, and that it is currently being enforced. Code enforcement performs inspections at least once a year and more if needed. During those inspections, city staff checks logs and makes sure that no doors are locked, for example. Occasionally the police department accompanies code enforcement. Prostitution is becoming a greater issue so additional amendments to the Code may be made in the next 6 months to address new concerns, although draft language is not yet available.</p>
<p>Olathe: Utilizes its ordinance, and the city clerk’s office actively issues (or denies when</p>

appropriate) licenses for massage therapists and businesses. Currently, the clerk's office estimates that there are approximately 100 licensees in the city. Olathe staff reports that its laws are less restrictive than other surrounding cities, but that it may deny a license if a potential licensee has been denied in another city having stricter requirements. Staff also notes that human trafficking and prostitution are increasing problems in the area.

Assistant City Attorney Maria Garcia spoke with Michelle Breckenridge from the Olathe City Attorney's Office this morning since Olathe's ordinance is relatively new (adopted in 2015 and it amended Olathe's previous massage laws). Michelle stated that the reason Olathe adopted the 2015 amendments was because police were seeing an uptick in prostitution at massage businesses. Michelle says that she believes this ordinance has been helpful to the police and that it is going well so far.

Overland Park: Adopted its ordinance in 1976, and it underwent a substantial amendment in 2008 that tightened the education and certification requirements. Overland Park staff advises that the city has been active in denying, suspending, and revoking licenses and that overall the local law has been a very useful tool. It notes that while there are many legitimate massage businesses and therapists, the industry does attract prostitutes who may use massage therapy as a guise. However, staff believes that the city's regulations provide a screening tool that allows city officials to identify and put out of business those who engage in massage therapy for unlawful purposes.

As previously reported, staff reviewed ordinances and laws from other jurisdictions to try and craft an ordinance for Lawrence that achieved our goals. Direct information from affected business was also considered in crafting this ordinance.

Staff determined that there are approximately 40 businesses in Lawrence by utilizing the phone book, internet research, and county and staff knowledge. We did not actively attempt to identify how many legitimate businesses there are in Lawrence, but no one that worked on this ordinance disputes that most of the businesses are legitimate. There are small groups that are illegitimate businesses, though I would defer further explanation of why police believe they are illegitimate to the police. Please keep in mind that officers/detectives will not divulge active law enforcement investigations. Staff did not determine how many clients are served by the existing massage businesses, as there is no readily accessible repository on the number of clients served by existing massage businesses.

3. Staff did not provide any analysis of how the cities used for comparison are dissimilar to Lawrence. Did it escape their notice that each of those cities are parts of metropolitan areas with populations far exceeding that of Lawrence? Wichita is part of a metro area with more than 645,000 residents, while the suburban cities listed are part a metro area of more than 2,000,000. Staff referenced contacts they made to other clerks' offices and other police departments. Please provide a listing of these contacts with a synopsis of each.

The cities we looked at are not all comparable in size, as you point out in your comparison to Wichita. However, according to the U.S. Census Bureau's website, here is the 2015 estimated population of the cities.

Olathe	134,305
Wichita	389,965
Leawood	34,579
Shawnee	65,046
Lawrence	93,917
Overland Park	186,515
Kansas City	151,306
Lenexa	52,490

The City ordinance would regulate only what is within city limits, so the actual population of the cities, without the metro area, should be what is considered.

Please see the chart in question 1 for a synopsis of contact with the City Clerk’s Office in other cities. Detective Pruett will discuss contact he had with other police departments during his presentation tonight.

4. Staff provided a lengthy narrative in response to a set of questions about numbers. Please answer the questions that were asked. It's okay to respond that staff doesn't know, but if that is the case, please be direct about it.

We believe the question was answered previously. You asked how many cases have been prosecuted in Lawrence and other cities. We wrote that we know of one human trafficking case related to massage in Douglas County last year, but that a representative from the District Attorney’s Office will attend Tuesday night so you may ask him at that time. We gave the prosecutor a heads up about your question so that he can provide an informed answer. We also wrote that we do not have statistics from other cities.

If we have misunderstood your question, please let us know.

7. Three impacts are mentioned but the list is incomplete. This is acknowledged subsequently in the staff response when discussing areas of pushback. Please make another attempt to provide a complete list of the impacts on therapists. Significantly, staff listed no impacts on clients. Please make an attempt to list those impacts as well.

This ordinance would implement regulations on Massage Businesses and Massage Therapists that have never existed in Lawrence previously. Therefore, it is appropriate to say that each provision would have an impact on the businesses and the therapists who work in Lawrence. Your question was about how this ordinance impacts massage therapists and their clients specifically. The ways it impacts Massage Therapists are:

(1) Massage Therapists would need to get a license from the City Clerk after paying the \$75 licensing fee and filling out an application. A background check would be performed by the City Clerk. The therapists would obtain a City-issued ID card as well that they would need to present to enforcement officials upon request. Massage Therapists would be required to renew their license every 2 years and pay a \$50 renewal fee. The license would be at risk for revocation if the therapist is found to have lied on an application for licensure or accumulates a criminal

history (excluding minor traffic/parking violations). Should a license be denied or revoked, the proposed Ordinance provides a method for appealing that decision.

(2) Massage Therapists would be limited on the hours of operation. The ordinance proposes that that no Massage Therapist work between the hours of 10 p.m. and 5 a.m.

(3) There is a provision entitled “Operations” under 6-2018, which regulates activities of massage businesses. Massage Therapists would be affected by these provisions by being required to keep their work space clean and safe; maintaining their equipment in a clean and sanitary condition; washing towels, linens and other items for personal use before each use; leaving doors to the business open subject to a few exceptions like if the Therapist is a sole practitioner and there is no one else there to watch the doors; and being prohibited from making contact with a client’s genitals or chest along with keeping those areas of the client covered.

(4) Massage Therapists would need to comply with inspections performed from time to time by Code Enforcement and/or law enforcement officials, provided though, that such therapists and businesses would get advanced notice of such inspection (unless such notice would hinder a law enforcement investigation).

(5) Therapists would be required to help keep records on their clients, including the client’s name, address, the service requested and provided, and the room in which the service was provided. That register would remain in the businesses/therapists’ possession, unless police could show a need to access it through a search warrant or search warrant exception, or unless the business consents to handing it over to police.

(6) Licensed Therapists would have some assurance that their industry has a reasonable regulation structure in place to help legitimize the businesses providing true health and wellness benefits.

This ordinance would impact clients by:

(1) Allowing them to see that their Massage Therapist has been licensed by the City since in order to obtain a license the Therapist would need to provide proof of education & exam, or meeting the requirements of the grandfather provisions, and properly filling out a licensing application. They would also see that the Massage Business in which they receive a massage by a therapist has been properly registered with the City Clerk’s office, as evidenced by a certificate that would need to be hung in a place clients could see.

(2) Providing a safer environment for clients by requiring that the rooms and products used on them be sanitary.

- (3) A small possibility that code or law enforcement would enter the business during a massage, though this would rarely if ever happen *during* a massage unless police had probable cause a crime was being committed in the massage room and needed immediate access to the room.
- (4) Their name and contact information possibly being provided to code or law enforcement officers via the register, should police have a need to see the register and provide a search warrant, exigency, or obtain consent from the Massage Therapist before receiving the register.

While this was not part of the original set of questions, it is prompted by the staff response. Please provide a listing of all contacts with those in the massage therapy community, both in Lawrence and in the cities used for comparison, that were used in the preparation of the proposed ordinance, with a synopsis of each.

We have a list of businesses we contacted, along with the Massage Therapists who attended the initial meeting and others who we have met with in person or by phone. We would prefer to not make those lists public, as they contain some private contact information. If you would like to see the list, please feel free to stop by the City Attorney's Office. I have hand-written notes from many of the meetings if you would like to see those, but I would need time to go through my large file and find them and may not have them prepared by your 3 p.m. deadline.

As for contacts in other cities, I spoke with representatives in the City Clerk's offices. A summary of those conversations is in the chart from question 1 above. I did not write down specific names.

Bobbie Walthall

From: Carlos Castillo <carlos@sdimarco.com>
Sent: Monday, March 06, 2017 3:07 PM
To: Maria Garcia; Bobbie Walthall
Cc: Carlos Castillo
Subject: Concerns regarding Ordinance No 9305 -

Good afternoon,

My main concern with Ordinance No 9305 is that even though it is (according to its own title) 'PERTAINING TO THE LICENSING AND REGULATION OF MASSAGE THERAPY BUSINESS WITHIN THE CITY OF LAWRENCE, KANSAS', it handles two completely separate issues:

1 - Massage Therapy Business.

2 - Sexually oriented business such as motion picture theaters, bath houses, arcade booths, sex shops, cabarets, and nude modeling studios.

The following sections should be MOVED to a difference ordinance (new or existing) that deals strictly with sexually oriented business:

Section 2: Chapter VI, Article 2, Section 6-201:

6-201 (A) Bathhouse, (B) Display publicly, (C) Explicit sexual material, (D) Gross public floor, (F) Media, (G) Media Store, (H) Modeling Studio, (I) Motion picture arcade booth, (J) Operator, (K) Primary live entertainment, (L) Sadomasochistic practices, (M) Sex shop, (N) Sexually oriented business, (O) Sexually oriented cabaret, (P) Sexually oriented media, (Q) Sexually oriented media store, (R) Sexually oriented motion picture theater, (S) Sexually oriented toys or novelties, (T) Specified Anatomical Areas, (U) Specified sexual activities, and (V) Video Store ALONG with

Section 3: Chapter VI, Article 2, Section 6-210:

6-2001 - PROHIBITIONS

These sections have absolutely NOTHING to do with Ordinance 9305 that pertains to the licensing and regulation of massage therapy business within the city of Lawrence. All of those restrictions should not be dependent (or only pertained) to Massage Therapy, but to all business types within the City of Lawrence, and therefore be on a ordinance by itself.

A second concern I have about the ordinance is with the the definition of **bathhouse** (Section 2, Chapter VI, Article 2, Section 6-201 (A)). Wherever it ends up within the city ordinances, the definition should be modified as follows:

1. Bathhouse means an establishment or business which provides the services of baths of all kinds, including all forms and methods of hydrotherapy, unless operated by a medical practitioner or professional physical therapist, **or Massage Therapist** licensed by the state.

There are numerous flotation tanks, saunas, and steam tents currently being used in several spas in the City of Lawrence (and all over the world) under the supervision of massage therapists. For more information about some of these devices currently being used within the city limits, please visit the websites below.

<http://sdimarco.com/body/steam-therapy.html>

<https://www.floatkansas.com>

Thank you very much for taking the time to take my concerns into consideration. If you have any questions or comments, please do not hesitate to contact me via email or phone. My contact information is provided below.

Best Regards

Carlos Castillo
Owner
Salon Di Marco and Day Spa
733 Massachusetts St
Lawrence, KS 66044
(785) 843-0044
(785) 550-2780 (mobile)

Bobbie Walthall

To: Tom Markus
Subject: RE: Draft Ordinance 9305

From: Stuart Boley
Sent: Monday, March 06, 2017 8:28 AM
To: Steven Maynard-Moody
Cc: Tom Markus
Subject: Fwd: Draft Ordinance 9305

Steven,

Thank you for your comments. I am forwarding them to Tom.

Stuart

Sent from my iPad

Begin forwarded message:

From: "Maynard-Moody, Steven" <smm@ku.edu>
Date: March 6, 2017 at 8:24:29 AM CST
To: "lsoden@lawrenceks.org" <lsoden@lawrenceks.org>, "sboley@lawrenceks.org" <sboley@lawrenceks.org>, "mamyx@lawrenceks.org" <mamyx@lawrenceks.org>, "matthewjherbert@gmail.com" <matthewjherbert@gmail.com>, "llarsen@lawrenceks.org" <llarsen@lawrenceks.org>
Cc: Carey Maynard-Moody <careymm@sunflower.com>
Subject: **Draft Ordinance 9305**

Dear City Commissioners:

Carey and I ask you to reject the current draft of Ordinance 9305. For many years and as part of our overall wellness, we both have regular massages. We have had massage and body work as part of physical therapy and from many of the local professionals. The current ordinance draft assumes falsely that massage is associated with human trafficking and sex work. This facile and cruel connection is deeply offensive to Carey and me, as regular users of massage, but also because it denigrates the professionalism and care given to us by our local massage professionals.

We strongly recommend that you consider the alternative Ordinance based on Industry-standards and presented by Holly Krebs. This ordinance properly focuses on safe and ethical standards for massage therapists and the health and safety of clients, such as Carey and myself. It also eliminates the ethically questionable registry of clients.

Human trafficking and involuntary sex work is an affront to human rights and dignity. We support all efforts in our community to address this issue. But human trafficking and sex work are completely unrelated to professional massage therapy. The ordinance should not make this false and demeaning equivalence.

As some of you know, I am director of KU's Institute for Policy & Social Research. As part of our research program, we have developed The Anti-Slavery and Human Trafficking Initiative or ASHTI, <http://ipsr.ku.edu/ASHTI/>. I asked experts in the field if there was any connection between legitimate, professional massage and human trafficking. They could recall no connections. (As an aside, they were complementary of Lawrence law enforcement in their understanding of these difficult issues.)

Thank you for your attention to this issue.

Steven and Carey Maynard-Moody
1645 Barker Ave
785-550-3674 (mobile)

Bobbie Walthall

To: Barry Walthall
Subject: RE: Ordinance 9305



Mrs. Bobbie J. Walthall, Administrative Assistant – bjwalthall@lawrenceks.org
City Manager's Office | [City of Lawrence, KS](http://www.cityoflawrenceks.org)
P.O Box 708, Lawrence, KS 66044
office (785) 832-3400 | fax (785) 832-3405

From: Barry Walthall
Sent: Monday, March 06, 2017 9:24 AM
To: Greg Smith
Cc: Bobbie Walthall
Subject: RE: Ordinance 9305

Barry Walthall, Building Official bwalthall@lawrenceks.org
Planning & Development Services | www.lawrenceks.org/pds
Development Services Division, 1 Riverfront Plaza, Suite 110
P.O. Box 708, Lawrence, KS 66044
office (785) 832-3101 | fax (785) 832-3110

Your opinion counts! Customer feedback helps us serve you better. Please tell us how we're doing by completing this short online Customer Satisfaction Survey: <http://lawrenceks.org/pds/survey/satisfaction>.

From: Greg Smith [<mailto:kugreg@gmail.com>]
Sent: Monday, March 6, 2017 9:17 AM
To: Leslie Soden <lsoden@lawrenceks.org>; Stuart Boley <sboley@lawrenceks.org>; Mike Amyx <mamyx@lawrenceks.org>; Matthew Herbert <matthewjherbert@gmail.com>; Lisa Larsen <llarsen@lawrenceks.org>; Barry Walthall <bwalthall@lawrenceks.org>
Subject: Ordinance 9305

Fellow Lawrencians,

While I think it is highly honorable to seek a way to halt or at least reduce sex work and human trafficking, I feel like your proposed ordinance is rather heavy handed and creates undue burdens on valid massage & bodywork professionals and creates huge holes in privacy for those of us who utilize them therapeutically.

I ask the City Commission to reject Ordinance 9305 and to direct City staff to craft a different ordinance modeled on industry-standard regulations for massage therapy. I feel that if the city would throw a wider net, outside of our region, to look at national trends in this type of regulation, I think you will find a more reasoned approach. One that will be enforceable, and not vilify those people who choose this work as a profession.

I also feel like the ordinance as written misses an opportunity. Real legislation regarding massage therapy regulations should focus on governing professional, safe, and ethical standards of conduct, which are not

included in the proposed ordinance, and they should protect the health and safety of the public, rather than concentrate solely on policing illegal sex work.

Please re-think the ordinance as written, go back and craft something that would protect the people you represent, and still provide similar results, without the negative impact on legitimate business.

Thank you for your consideration,
Greg Smith
1017 Prescott Dr
Lawrence, KS