

Houston, Texas Case Study: Amending City's Massage Ordinance

Case Study Overview

During the second half of 2015, the End Trafficking in Illicit Massage Businesses Initiative focused on local government efforts and began to encourage cities to create or amend certain aspects of local massage establishment ordinances. Concurrently, Houston, Texas established the Special Advisor to the Mayor on Human Trafficking position, which propelled creation of phase 1 of the City's first comprehensive strategic plan. One objective of the plan is to institutionalize the City's response which includes making ordinance amendments as necessary. The Houston City Council unanimously passed amendments to the city's massage establishment ordinance. The amendments expanded the definition of "massage establishments" to include those that advertise or offer a massage or other massage services and also provided law enforcement with greater discretion to enter and inspect massage establishments.

This case study focuses on Houston's 2015 efforts around amending and strengthening the ability of the Houston Police Department's Vice and Differential Response Team (HPD DRT) to enforce city ordinances in order to build cases to shut down illicit massage businesses within the city limits of Houston.

In the summer of 2015, Polaris and Houston's Special Advisor to the Mayor on Human Trafficking, Minal Patel-Davis, initiated discussions about the high concentration of illicit massage businesses in Houston. As Houston began to address the broader issue of human trafficking, they focused part of their efforts on this specific manifestation of human trafficking.

The Problem

Prior to the amendments, Houston's city ordinance for massage businesses limited the Houston Police Department's (HPD) investigations into possible illicit activity. The governing ordinance as it existed before December 2, 2015 limited HPD's authority to the inspection of state licensed massage establishments. Suspected illicit massage businesses claimed that they were "spas" and not massage businesses, and were not subject to the city's massage establishment ordinance. As a result, HPD and its Differential Response Teams (DRT) were frequently denied entry into known illicit massage businesses because they were categorized as "spas" and not venues of "massage." They were denied access to these suspected businesses regardless of these business' advertisements claiming to offer "massage" services.

PROBLEM:

Suspected Illicit Massage Businesses

regularly denied entry into the establishment, claiming they were "spas" and not subject to the city's massage establishment ordinance.



The Goal of Amending Houston's Massage Ordinance

The main goals in amending the massage ordinance were to increase the effectiveness of the HPD DRT and HPD Vice Division (HPD Vice) and to increase the overall risk to business for illicit massage business owners and operators.

The Amendments to the Massage Ordinance

Through the efforts of the Mayor's office, Houston worked with a number of parties, including the city's Legal Department, HPD, City Council Members, and representatives from the professional massage industry to identify deficiencies or loopholes in the current ordinance and to devise possible solutions. HPD DRT provided critical comments that helped to determine the greatest issue that they would like to see solved in order to make it easier to investigate possible illicit establishments. The city's legal department also provided creative ordinance amendment proposals that balanced HPD priorities with massage industry's interests as stakeholders.

Houston engaged members of the professional massage industry, including Massage Envy franchise owners, and the Texas chapter of the American Massage Therapy Association (AMTA-TX). The professional massage industry provided great insight into the concerns of the legitimate massage industry. AMTA-TX fully supported the proposed amendments to the ordinance and provided a letter of support. Additionally, a Massage Envy franchise owner as well as a Massage Envy Regional Therapist Support Manager testified before the City Council in support of the amendments as they were written.

ACTION:

Houston amended its
"massage
establishment"
definition and created
a new "access; right
of entry" section.

First, the ordinance's definition of "massage establishments"ⁱ was amended to expand the types of establishments that would meet the definition. The new definition not only continues to include massage establishments, but it also expands the definition to include establishments that advertise and/or offer massage or other massage services. This amendment addresses the issue HPD encountered with its limited authority to inspect state licensed massage establishments.

Next, the city included access language that provides "peace officers appointed or employed by a law enforcement agency of" Texas easier "right of entry" into massage establishments. This section allows for law enforcement and those acting as its agents to "enter the premises of a massage establishment"ⁱⁱ for the purposes of inspections or investigations.ⁱⁱⁱ

This amendment provides law enforcement with the authority that would allow for easier access into these illicit massage establishments.

In amending the city ordinance, Houston was able to make it easier to obtain a search warrant from a municipal judge. Increasing the impact of the Houston Police Department's Differential Response Team (HPD DRT) officers to accompany the efforts of the HPD Vice Division officers meant that HPD should be able to better cite illicit massage businesses for violations.

In line with the advice of HPD, its Vice Division and DRT officers, and the professional massage industry, Houston decided against an amendment that would require a city establishment permit. The resistance



was rooted in the idea that this kind of licensure scheme would merely burden the professional massage industry and fail to apply additional pressures on the illicit massage business owners. The city found that of the 240 identified illicit massage businesses, only nine of the businesses had gone through the process of obtaining a state massage license. With this low number of state licenses, the city had no reason to believe that illicit massage businesses in Houston would apply for a city permit. In addition, a city licensing scheme would burden legitimate business owners with extra costs and procedures and burden the city with having to maintain another permitting scheme.

After an intensive three plus month process and with the support of HPD, the City Council unanimously passed the final amendment language to the ordinance on December 2, 2015, going into effect immediately.

INTRODUCED AND PASSED LANGUAGE TO HOUSTON'S MASSAGE ORDINANCE:

Amended Definition (substantive changes underlined):

Houston, Texas, Code of Ordinances § 28-361. Definitions; "Massage Establishment means any building, room, place, or any establishment whose business includes advertising or offering a massage or other massage services upon the human body for compensation by any person whether with or without the use of mechanical, therapeutic or bathing devices, and shall include Turkish bathhouses. This term shall not include beauty parlors or barbershops duly licensed by the state, or licensed hospitals, medical clinics, or licensed physical therapy facilities or establishments wherein registered physical therapists treat only patients recommended and referred by a licensed physician and operate only under such physician's direction. Additionally, the term shall not include a place of business where a licensed massage therapist practices as a solo practitioner in a manner consistent with the applicable provisions of Section 455.155 of the Texas Occupations code as amended."

New "Access; right of entry" Section:

Houston, Texas, Code of Ordinance § 28-370. Access; right of entry. "A peace officer appointed or employed by a law enforcement agency of this state may enter the premises of a massage establishment pursuant to Sections 455.104 and 455.353 of the Texas Occupations Code. If entry and access to the premises of the massage establishment is denied, entry shall be made under the authority of a warrant to inspect the massage establishment."

Conclusion

Being only three months old at the time of this case study, it is too soon to see what impact the newly amended ordinance will have on Houston's illicit massage businesses. It is likely, however, that the City will experience an increase in operations and arrests in the coming months in 2016. Currently, Houston is in the process of training its HPD DRT officers on the amended ordinance. So far, 144 DRT officers have been trained. The trainings the HPD DRT officers are receiving includes an overview of human trafficking, the illicit massage establishment problem that Houston faces, and the amendments to the city's ordinance. The training will conclude in April 2016.



EXPECTED OUTCOME:

Once officers are trained on the updated ordinance, the city expects that Houston will see an increase in investigations into illicit massage businesses and arrests of owners and operators.

Houston's approach to its city ordinance represents one city's efforts in addressing illicit massage businesses and the criminal networks that often own these storefront locations. Houston considered many factors and implications before deciding its approach to (1) amend its definition of massage establishment, and (2) incorporate state access language providing law enforcement easier access into massage establishments. Houston determined that a new establishment permitting scheme would be unnecessary and over burdensome and decided against creating a new city-level process. Houston is an example of the importance for each city to analyze and identify the unique needs of a city. What works in one city, will not necessarily work in another, highlighting the need for each locality to work with all key local stakeholders when considering changes to its regulations. Eliminating these networks requires a concerted effort

to tackle the owner and network structure, provide a comprehensive safety net for survivors, and learn new techniques for investigating, prosecuting, and victim-informed care.

i Houston, Texas, Code of Ordinances § 28-361.

ii Houston, Texas, Code of Ordinances § 28-370 Access; right of entry.

iii Id.