

Please Note: The Comparison Grid was essential to securing the votes of Council Members, since it showed them how all options regarding amendments were explored. The Grid takes headings from several massage establishment ordinances and statutes and compares them with the City of Houston’s then-existing ordinance, Texas-wide regulations, and model language recommended by Polaris. The City of Houston also received feedback from Children at Risk, the Houston Police Department, and additional stakeholders when crafting model language. The last column, “Lang From,” identifies the person and/or agency recommending specific language and indicates whether the Special Advisor to the Mayor on Human Trafficking considered it worthwhile to discuss the change with City Legal. All those items marked with “ADD” were ultimately discussed with Legal. Based on initial recommendations, City Legal assisted in narrowing the problem by balancing changes with other existing ordinances and responding to stakeholder concerns. Ultimately, City Legal proposed recommended language based on the analysis afforded by the Comparison Grid. *Be aware that the comparison based upon the Texas Occupations Code was not exhaustive .*

Acronyms Used: COH - City of Houston; C@R - Children at Risk; ARA - Administration and Regulatory Affairs (COH Department); HPD - Houston Police Department; DSHS - Texas Department of State Health Services; TDLR - Texas Department of Licensing and Regulation; TAC - Texas Administrative Code; ME - massage establishment; IME - illicit massage establishment; LMT - licensed massage therapist; MT - massage therapy; SOB - sexually-oriented business.

Statute Heading	City of Houston (COH) Current Ordinance Addresses?	TX Occupations Code/TX Administrative Code Addresses?	Polaris Model	Children at Risk (C@R) Input	MPD Recommendation	Proposed Model Language	Lang From
Current State and COH law	State requires (massage establishments (MEs) with two or more licensed massage therapists (LMTs) in establishment) massage therapy (MT) licensing. COH does not have a local permitting process.	COH requires display of ME license with a current year validation card but not MT license					FYI
Purpose	N		Y-Public health	None	Agree	To establish the Health and Safety of a place of business that advertises or offers massage therapy or other massage services unless specifically exempted by the Act. The term includes a place of business that advertises or offers any service described by a derivation of the terms "massage therapy" or "other massage services" as defined by the Ordinance.	Houston Police Department (HPD) Sgt.
Definitions	Y	Y-almost identical	Y	Necessary based on any new provisions proposed; change Department reference which currently means TX Department of State Health Services (DSHS) when licensing is transferred to TX Department of Licensing and Regulation (TDLR).	Agree, agency oversight change takes place in 2017-2019.	Will depend on any new provisions added: For example, new sections dealing with “employees,” “managers,” “owners”, or “sexual contact” may result in the need for additional definitions. It is important to note that the code currently provides a definition for “Department” as “The Texas Department of State Health Services.” When licensing is transferred from DSHS to TDLR, the ordinance language will need to be amended to reflect that change.	C@R-ADD
Inspections	N -has provision relating to sanitary conditions but no inspection requirement.	Y-but doesn't indicate how often	Y-time to time but at least once a year, exemption if no prior violation	None	Agree with HPD Sgt. language	Inspection by a Peace Officer: Peace Officers, Fire Safety Officials, and designated City Employees are authorized to inspect any business in the City of Houston for violations of these Regulations. These Regulations do not authorize a right of entry prohibited by law. Peace Officers, Fire Safety Officials, and designated City Employees may enter a business with consent, with a warrant, or under exigent circumstances. A Massage Establishment permit issued pursuant to these Regulations gives Peace Officers, Fire Safety Officials, and designated City Employees implied consent to enter and to inspect any Massage Establishment for violations of these Regulations. (Not recommending permitting scheme but laying out as requested).	HPD Sgt.-ADD Minus reference to local permit

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Unpermitted Massage Establishments	N		N	-	Add language - HPD Sgt. provided.	Unpermitted Massage Establishments: An unpermitted business that holds itself out as a Massage Establishment by sign, advertisement, word-of-mouth, or by offering, through any media, any form of massage as defined by State law, is subject to inspection by any Peace Officer, Fire Safety Official, and designated City Employee and is a Massage Establishment under these Regulations. Refusal to allow any Peace Officer, Fire Safety Official, and designated City Employee entry to inspect such unpermitted Massage Establishment may be considered in establishing probable cause for the issuance of a search warrant to inspect for violations of these Regulations.	HPD Sgt.-ADD
Exemptions	Y-included in definitions but can expand to cover additional business types.	Y- solo practitioner, does not use a business name	Y - physicians, surgeons, chiropractors, etc. not included in COH ordinance.	Modify to include other professionals not currently covered by law to clarify target	Agree, helpful to avoid over regulation	Exemptions included in the model ordinance but not specifically included in the Houston ordinance include: licensed physicians, surgeons, chiropractors, and osteopaths; nurses who are registered under state law; trainers of any professional sports franchise or educational institution athletic team; and any organization which is exempt from taxation as a bona fide fraternal, charitable, religious, benevolent or nonprofit organization under the internal revenue laws of the United States.	Model -ADD
Enforcement and Penalties	Y-Single penalty regardless of which provision is violated, does not state who has the power of enforcement.	Y	Y- several penalties but associated with a permitting scheme.	None	Agree	Only add different penalties and language around it if permitting scheme is established.	DO NOT ADD
Severability	Not in ME Ordinance but is covered in the Code of Provisions section 1-9	-	Y	None - covered in code of ordinance	Agree with HPD Sgt. language	All provisions of this ordinance are separately enforceable and independently enforceable.	HPD Sgt. -ADD

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Trafficking Victim Immunity	N	N	Y -as affirmative defense	Should consider in ME ordnance and Prostitution ordinance	Agree, prostitution ordinance amendment requires a paradigm shift first and there are issues of outcry	It shall be an affirmative defense to penalties under this ordinance that he or she was under duress or was coerced into violating any provisions of this ordinance. A victim of trafficking in persons, pursuant to relevant state or federal laws, shall not be deemed criminally liable for any violation of this ordinance committed as a direct result of, or incident or related to, being trafficked.	Model-ADD
ME Permit	N- local permitting process, Dallas and San Antonio have local permitting processes. Ordinance mandates if ME advertising for massage, ME needs license from DSHS; references wrong code - Texas Administrative Code (TAC), Chapter 141, needs to reference 140.	Y-licensing requirements for ME and display	Y	If COH references state licensing requirements, update ordinance appropriately to reference TAC Chap 140 and consider local permitting process like San Antonio and Dallas.	Agree with administrative change only.	COH does not have a local licensing procedure for massage establishments. Ordinance currently mandates that businesses advertising or offering massage services must be licensed by DSHS, but the ordinance currently references an outdated code. The ordinance cites Title 25, Texas Administrative Code, Chapter 141; however, the Texas Administrative Code has been updated and the relevant portions are now located in Chapter 140. Also, recent state legislation has transferred the oversight of the massage industry from the Dept. of State Health Services to the TX Dept. of Licensing and Regulation. If COH chooses to rely on state licensing requirement, update ordinance appropriately.	C@R- Correct State reference

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Application for ME Permit	N	Y		Administrative burden but extra level of oversight, San Antonio and Dallas have licensing procedures overseen by Chief of Police.	Permitting will not capture unpermitted establishments.	Permitting at the COH level: As per Administration and Regulatory Affairs (ARA) Director, reference Game Room ordinance for model language for COH permitting process (enclosed for your reference). ARA creates an application form, mail out new requirement information to universe, need to set parameters for license such as inspections, background checks, revenue could go toward HPD enforcement, to Human Trafficking Abatement Fund or to Differential Response Team (DRT). Please reference San Antonio Ordinance for sample parameters. ARA stated cost of service estimate is \$560 and \$41 for background checks, the cost for background checks may decrease soon. Since we have less than 500 Massage Establishments including both illicit and licensed ARA said there are nominal increased costs associated with permitting because it fits into their existing processes. Dallas has a \$200 annual fee for each establishment and San Antonio has a \$75 fee and requires an additional location permit for \$35.	DO NOT ADD	
Non transferability of Permit	N	Y		Y- include non transferability in permitting process	None	If we create permitting process, make non transferable.	TAC states "licenses may not be sold or transferred to another address". If want to also add at local level reference San Antonio ordinance, it says: No massage business permit is transferable, severable or divisible, and such authority as a permit confers shall be conferred only upon the permittee named therein.	Can reference
Issuance or Denial of Permit	N			Y	None	If permitting process, need timeline, payments and lack of convictions for sex crimes.	If adopted issuance of permit at local level, timeline for issuing a permit as well as certain conditions that must be met, such as fee payments and lack of convictions for certain sex crimes.	DO NOT ADD

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Display of Permit	Y, requires display of state license but references wrong TAC section, change 141 to 140	Y, in prominent location	Y	Consider incorporating a recent photograph, state guidelines on this are unclear, not an additional administrative burden.	If permitting process created, require photo.	Reference San Antonio: The massage business permittee shall display his permit in an open and conspicuous place on the premises of the massage business. State regulations require its license displayed in a prominent location. COH ordinance requires display of State license but cites wrong section of TX Administrative Code, relevant provision is in Chapter 140 rather than 141, *regulations also moving again. San Antonio's application for permit requires photos, this is not an additional administrative burden on the local government.	DO NOT ADD permitting, correct State reference
Revocation or Suspension	N	Y can revoke	Y	If COH creates its own permitting process, violation of ordinance can be grounds for revocation, need hearing process.	Agree with C@R	Reference San Antonio. ARA can revoke in Game Room ordinance. The Game Room ordinance lays out process for revocation; need to speak to City Attorney and Municipal Judge for feedback on process if permitting adopted. (Game Room ordinance enclosed for your review).	DO NOT ADD
MT license	N	Y	Y	ME only employees or contractors can provide massages. Immunity for HT victims critical if this is added so as not to penalize victims.	Punitive	Regulated by State and can be punitive to human trafficking victim.	NA
MT Application	N	Y	Y	MT license procedure is in TAC 140, if COH adopts language, take the regulatory transfer to TDLR into account.	Agree	Reflect TAC 140 and language for future TDLR transfer.	ADD
Issuance of License	N	Y	Y	Overseen by state and if at local level would resemble state.	No permitting at local level needed	Regulated by State and can be punitive to human trafficking victim.	DO NOT ADD
Display of License	N	Y	Y	COH does not require display, should mandate just as it does with the ME license.	Agree	Require Display of MT license, penalize ME for violations. May need to include immunity for trafficking victim.	ADD
Revocation or Suspension of ME License	N	Y-DSHS can revoke	Y	If COH permits, need parameters for grounds for suspension and need hearing process.	No permitting at local level needed	If local permitting process established, need revocation/suspension language. Reference Game Room Ordinance for such language.	DO NOT ADD

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MT License Requirement	References ME requirements for a state license, no reference to license for a MT.	Y - requires MT to meet certain conditions to be licensed	N	Incorporate reference to state requirement for MTs. Mandate that ME may only allow employees or contractors to provide massages if those individuals have appropriate MT license from the State.	Agree	Only if immunity provided to human trafficking victims who lack proper licensure and may be exploited in ME's, avoid penalizing potential victims.	DO NOT ADD
Application for MT License	N	Y-MT licensing procedure is outlined in TAC 140 and will be transferred from DSHS to TDLR.		If COH ordinance includes MT license language, should take regulatory transfer into account.	Agree	Language reflect TDLR change.	ADD
Issuance of License MT	N	Y		Overseen by state and if at local level would resemble state requirements for ME.	Overly burdensome for MTs	Regulated by State and can be punitive to human trafficking victim.	DO NOT ADD
Display of MT License	N	Y- MT must carry current ID card, must display license in public manner at business location.		COH could mandate display of MT license.	Agree	Make punitive to ME if MT license is not properly displayed.	ADD
Revocation or Suspension of MT license	N	Y DSHS has authority to revoke or suspend licenses.		If COH created permitting process, violation of ordinance can be considered ground for suspension and a process established for hearings in which proper city agency determines whether a suspension or revocation is merited.	Disagree with permitting at local level of MTs	Regulated by State and can be punitive to human trafficking victim.	DO NOT ADD
Employment or Contracting of MT	Y-prohibitions on employing individual with criminal records for sexual offenses or with a disease.	Y	Y	COH should make clear that it is illegal for ME's to allow unlicensed individual to provide massage services. Can mimic State and Model.	Agree	Make punitive to ME if unlicensed individual is working in ME.	ADD
Hours	Y 10 pm - 8 am closed		Y	COH reasonable restriction	Agree, no change needed	NA	NA

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Intoxicated Persons	N		Y - unlawful to admit	Community may seek to prevent intoxicated persons from patronizing because sexually exploited persons can suffer abuse at hands of patrons and increase risk of violence.	Agree but not enforceable to disallow intoxicated persons, disallow alcohol instead.	San Antonio reference: No person shall sell, give, dispense, provide or keep or cause to be sold, given, dispensed, provided or kept, any alcoholic beverage on the premises of any massage business.	ADD
Indecent Conduct	N	Y - prohibit sexual conduct with clients and prohibit ME's from allowing indecent activity within the business.	Y	COH should add provisions to add another layer of protection, can pull from TAC or Model.	Agree	TAC section 140.361 (h) states: A massage establishment may not: 1) employ or contract with an individual who is not a US citizen or legal permanent resident with a valid work permit; 2) employ a minor unless the minor's parents or legal guardian authorizes in writing the minor's employment by the establishment; 3) allow a nude or partially nude employee to provide massage therapy or other massage services to a customer; 4) allow any individual, including a student, license holder, or employee to engage in sexual contact in the massage establishment; 5) allow any individual, including a student, license holder, or employee, to practice massage therapy in the nude or in clothing designed to arouse or gratify sexual desire of any individual; or 6) allow an unlicensed student to provide massage therapy or other massage services to the public beyond the department approved internship.	ADD
Lock Requirement for Massage Rooms (SLEEPING QUARTERS)	Y-Sleeping or residential purpose rooms must remain locked during business hours.	Y-State allows for massages in locked rooms but mandates rooms used wholly or in part for sleeping or residential purposes must remain locked during business hours.	Y-unlawful for any massage service to be carried on in any room or area that is capable of being locked.	Indicating no room used for massage services can have a lock would ease ability of inspections.	More aggressive but with proper exemptions for solo practitioners.	San Antonio Reference Entrances and Exits: No massage business shall have any entrance or any exit way providing a direct passageway to any other types of business, residences or living quarters. (Any other business - may need exemptions for solo practitioners working within a doctor, physical therapist or doctor's office or out of their own home). Also referenced in cell I34. Dallas Reference: Hours of Operation and Living Quarters Prohibited No Massage Establishment shall be kept open for any purpose between the hours of 10:00 pm and 8:00 am, and no such establishment shall be operated or conducted in connection either directly or indirectly, with any place used for living or sleeping quarters.	ADD with exemptions

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Register of MT's	Y-Requires employees name and addresses so any law enforcement can inspect.	More expansive than Model. TX law requires all employees and contractors to be registered.	Requires register of MT only	COH could be modified to cover both employees and contractors, include license and employment information and reflect that future inspections may be done by an agency other than health and human services.	Agree	Worth researching/clarifying.	ADD
Business Records	Y-some COH ordinances require records for clients	Y-Must maintain records on clients	Record date and hour of massage, name and address and name of MT administering massage	Model too burdensome, TX and COH laws unclear how excessive these requirements are.	Agree with HPD Sgt. language	Requirement of the following records on premises - must be available to a peace officer upon demand: Record of each employee includes name, address, DOB, state ID number or SSN, job function, W-2 or W-4 form, copy of application for work with game room, I-9 E-Verify Form, and photograph of employee. Daily Register: to include name, DOB, state ID number or SSN, and job function of each employee	HPD Sgt.-ADD
Unlawful advertisement	Y- implicitly covers illicit massage establishments (IME) that advertises legitimate services. Advertisement of massage therapy is subject to license display requirement.	If not licensed shall not use word massage on any sign or display. Under no circumstances can a sexually-oriented business (SOB) use the word massage on any sign or other form of advertising.	Y	COH can insert a separate provision to put greater weight on the prohibition against false advertisement.	Agree	TAC Code section 140.306(a) states: (a) A person, including a massage therapy instructor, a massage school, a massage therapist, or massage establishment, who is not licensed under the Act, shall not use the word "massage" on any sign, display, or other form of advertising unless the person is expressly exempt from the license requirements of the Act. Under no circumstances may a sexually oriented business use the word "massage" or bath" on any sign or other form of advertising. Sgt. language above states sign, advertisement, word of mouth or by offering through any media, any form of massage as defined by State law.	ADD

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Entrance and Exits	Y- Sleeping Quarters separated from the establishment by a solid wall or with a locked door.	Y	Substantially similar to COH	COH ordinance helps situation but women can still be forced to live in the closed off but on site area. More ideal but unfeasible regulations may be that the ME is not allowed to share the residential property whatsoever.	Agree, would need exemptions for solo practitioners.	San Antonio Reference Entrances and Exits: No massage business shall have any entrance or any exit way providing a direct passageway to any other types of business, residences or living quarters. (Any other business - may need exemptions for solo practitioners working within a doctor, physical therapist or doctor's office or out of a their own home). Dallas Reference: and no such establishment shall be operated or conducted in connection either directly or indirectly, with any place used for living or sleeping quarters. Also referenced in cell I30.	ADD
Signage	N	N	Y - signage outside a massage establishment	Model suggestion may only be necessary if there is a local concern that MEs are hiding in plain sight by not posting exterior signs. Do not want to be overly burdensome on legitimate establishments.	Agree	NA	DO NOT ADD
Windows	N	N	Y - Disallows blocking window visibility to keep MEs from concealing activity.	Not clear if model applies to heavy tint which is commonly used on ME windows.	Agree, if not too burdensome on legitimate businesses	NA	DO NOT ADD
Sanitation and Maintenance	Y-Limited to sanitary equipment and employees	Y	N	Typically covered by State but provides COH an opportunity to make health inspections and identify potential signs of trafficking. Method of oversight for COH provision is not clear. Reference San Antonio ordinance to expand the Houston requirement and also make it clear that periodic inspections are allowed.	Agree, may need to balance to avoid selective enforcement issues.	San Antonio ordinance, (also referenced in Cell F4): Sec 17-45 - Sanitation. (a) All premises used pursuant to this chapter shall be periodically inspected during regular business hours by the Chief of Police or his authorized representative for safety of structure and adequacy of plumbing ventilation, heating and illumination. (b) Floors shall be free from any accumulation of dust, dirt and refuse. Well marked toilet and hand washing facilities for permittees, employees and patrons shall be provided. All walls, ceilings, windows and doors shall be free of dust, dirt, refuse and mold. In high humidity areas, including toilet rooms, shower rooms, steam rooms, locker rooms, and such rooms, the walls ceilings and floors shall be constructed or covered with a material that is smooth, nonabsorbent and easily cleaned.	ADD

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Access	N	N	Covers how Entrances and Exits connect to businesses and dwellings, but IMEs try and block or lock the main entrance of the establishment particularly to identify Law Enforcement prior to entrance.	COH can consider San Antonio language which disallows locking entrances or exits during business hours. San Antonio declares them public places.	Agree, unless closed for lunch and not actually operating, be back soon scenario.	San Antonio reference: All massage establishments operating under the authority of this chapter are declared to be public places, and shall not, during business hours, have the doors to the entrances or exits of such establishments locked or obstructed in any way so as to prevent ingress and egress of persons, provided, however that such doors may be closed.	ADD language less aggressive than San Antonio
Human Trafficking poster	N	N	N	Human Trafficking poster posted in different languages to report tips, help victims self recognize. COH should explore whether this is a possibility at the local level. San Francisco enforces CA Civil Code - requiring information and hotline numbers.	Agree	Worth researching	DO NOT ADD
Patronization	Y-likely covered in state and city laws related to prostitution	N	N	Worth noting link to Illicit massage industry and prostitution.	Disagree	NA	NA