

Massage Establishments Ordinance Evaluation

Recommendations to Combat Human Trafficking

children **at Risk**
Speaking Out + Driving Change for Children

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EXECUTIVE SUMMARY

Illicit massage parlors help to facilitate the sex trade across the United States and pose a particular threat to the safety, health, and wellbeing of Houstonians. These businesses may claim to offer legitimate services, but they offer commercial sex to customers and contribute to sex trafficking. Sex trafficking occurs when the business uses force, fraud, or coercion to facilitate commercial sex acts or when a minor is involved.

According to online research of a website where sex buyers provide reviews of illicit massage parlors, Houston is home to more active massage parlors than any other city in Texas. There are estimated to be over 200 active parlors in Houston which represents over one-third of total active parlors in the state. These illicit massage parlors are also extremely popular; Houston has hundreds more buyer reviews than any other city in Texas.

The regulation of massage businesses and massage practitioners is a necessary step in reducing commercial sexual exploitation and preventing traffickers from abusing this industry for their own profit. Massage establishments in Texas are regulated by both state and local law. The Texas Massage Therapy Act (Chapter 455, Texas Occupations Code) is the primary state statute covering massage therapists and massage establishments. Until recently, the state law designated

the Texas Department of State Health Services (DSHS) as the regulatory authority for massage therapy. The relevant rules adopted by DSHS are found in the Texas Administrative Code (Title 25, Part 1, Chapter 140, Subchapter H). An important change took place during the 84th Legislative Session in 2015 when the legislature passed [Senate Bill 202](#) and transferred licensing oversight of the massage industry from DSHS to the Texas Department of Licensing and Regulation (TDLR). That legislation will go into effect in 2017 with the transition to be completed by 2019. Finally, the City of Houston also has ordinances in its city code specifically related to massage establishments (Chapter 28, Article XII).

The Polaris Project is a renowned leader in the fight against human trafficking and operates the national human trafficking hotline. The organization has drafted model elements of a massage parlor ordinance. The following pages evaluate regulations impacting massage establishments in Houston, using the elements of the model ordinance as a framework for analysis. This document makes some recommendations for necessary changes to the city code, and encourages deeper consideration on other potential changes. Excerpts of state law, local law, or the model ordinance are included in the evaluation where necessary and access to each is available in the appendix. This document does not purport to include an exhaustive analysis of conflicts with state or federal law, nor does it provide advice on the constitutionality of various provisions.

Key findings and recommendations which are more thoroughly explored in the following pages:

- *The current municipal code makes reference to the wrong administrative code provisions and this should be corrected;*
- *The administrative agency currently identified in the municipal code will no longer be the proper agency for regulation, and this pending change should be anticipated by the municipal code;*
- *The city should consider whether it would be feasible to create a permitting scheme for massage establishments at the city level;*
- *The law should be more clear about the ability to conduct periodic inspections of massage establishments;*
- *Immunity for human trafficking victims should be codified;*
- *Consider provisions which can promote awareness of human trafficking within massage establishments;*
- *Hold businesses accountable when they employ or contract unlicensed massage providers;*
- *Include a prohibition on sexual conduct within a massage establishment;*
- *Ensure that any additional provisions do not conflict with state law or pose constitutional concerns.*

GENERAL

Purpose

A purpose section provides an opportunity to give a clear basis for interpretation and enforcement. The City Council may provide findings in other ways and this section is not absolutely necessary in municipal law. The City of Houston massage establishment ordinance has no purpose section. This brief makes no recommendation as to whether a purpose section should be adopted.

Polaris Project Ordinance:

PURPOSE.

The purpose of this ordinance is to protect the public health, safety and welfare by regulating massage establishments and massage practitioners in order to prevent sex trafficking in persons and commercial sexual exploitation.

Definitions

The Houston ordinance currently uses terms and definitions which are similar or identical to state regulations. The current ordinance is relatively brief which translates into a short list of definitions. Whether the city adopts any new substantive provisions will dictate whether it must also add relevant definitions. 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.

Houston Ordinance:

Sec. 28-361. - Definitions.

As used in this article, the following words, terms and phrases, shall have the meanings ascribed to them in this section, unless the context of their usage clearly indicates a different meaning:

Communicable disease means Methicillin-resistant Staphylococcus aureus (MRSA), scabies, and tuberculosis.

Department means the Texas Department of State Health Services.

Massage means and includes any process consisting in kneading, rubbing or otherwise manipulating the skin of the body of a individual, either with the hand, or by means of electrical instruments or apparatus, or other special apparatus, but shall not include massage by duly licensed physicians and chiropractors, registered physical

therapists who treat only patients recommended by a licensed physician and who operate only under such physicians' direction, or massage of the face practiced by duly licensed personnel of beauty parlors or barbershops.

Massage establishment means any building, room, place or establishment, other than a regularly licensed hospital, medical clinic, or licensed physical therapy treatment facility where massage is practiced upon the human body for compensation by any person not a duly licensed physician or chiropractor, whether with or without the use of mechanical, therapeutic or bathing devices, and shall include Turkish bathhouses. This term shall not include, however, beauty parlors or barbershops duly licensed by the state, or places wherein registered physical therapists treating only patients recommended by a licensed physician and operate only under such physician's direction.

Massage therapist means a person who practices or administers massage therapy or other massage services to a client for compensation. The term includes a licensed massage therapist, therapeutic massage practitioner, massage technician, masseur, masseuse, myotherapist, body massager, body rubber, or any derivation of those titles.

(Ord. No. 27-286, § 1, 3-7-07)

Inspections

Inspections of massage establishments are an important component of identifying illegal practices. Cities choose a variety of paths in determining the frequency of inspection as well as the parties authorized to make the inspection. San Antonio's massage parlor ordinance authorizes periodic warrantless administrative searches to ensure sanitation and health requirements.¹

Courts have recognized that Fourth Amendment limitations on searches may not apply to pervasively regulated businesses such as the massage industry. The 5th Circuit held that San Antonio's provision did not authorize unreasonable searches and was not facially unconstitutional,² and other courts have ruled favorably on similar statutes.

Similar to the San Antonio ordinance, the Houston ordinance has a provision relating to sanitary conditions; however, the Houston provision makes no mention of inspections. The administrative rules promulgated by DSHS also do not define how often a massage establishment may be inspected.

Polaris Project Ordinance:

INSPECTIONS.

¹ 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. (Sec 17-45(a))

² 578 F.2d 1002 (5th Cir. 1978).

- a. The Law Enforcement shall from time to time, but at least once a year, make an inspection of each massage establishment in the city [or county or town] for the purposes of determining that the provisions of this ordinance or other applicable laws or regulations are met. [optional - Any department of the city [or county or town] may inspect any massage establishment.]**
- b. [optional – If (i) no public complaint against a massage establishment was reported to the regulatory agency in the previous calendar year, (ii) no violation of this ordinance was found in the previous calendar year, and (iii) the massage establishment was inspected and found in full compliance with this ordinance in the previous calendar year, then the massage establishment is not subject to the minimum inspection requirement of once a year for that calendar year.]**
- c. Such inspections shall be conducted at a reasonable time, in a reasonable manner.**
- d. The premises may be inspected outside of business or operating hours, as necessary in any situation which poses an immediate threat to life, property or public safety, or for the purpose of preventing trafficking in persons and commercial sex activities in massage establishments**
- e. An establishment claiming to be exempt from the provisions of this ordinance under section 1(4) may be inspected as well. The owner or manager of an establishment, or an individual, who claims to be exempt from this ordinance, shall produce, on demand of a person authorized under this section to perform inspections, documentation sufficient to show that the establishment or the individual is exempt.**
- f. It shall be unlawful for any person to fail to allow a person authorized under this section to perform inspections access to the premises immediately or to hinder such person in any manner**
- g. A person authorized under this section to perform inspections may enter a room or cubicle in which a customer or client is or is presumed to be currently receiving a massage only after knocking on the door, if there is a door, and verbally identifying himself or herself by name and job title and announcing he or she is about to enter for the purpose of inspecting the room or cubicle.**
- h. This section does not restrict or limit the right of entry vested in any law enforcement agency.**

i. During an inspection, the persons authorized under this section to perform inspections shall verify the identity of all on-duty massage practitioners by checking a photo identification and a massage practitioner license.

Exemptions

Exemptions are included in order to avoid over-regulation of certain professions and to clarify that those professions are not the target of the regulations. The model ordinance provides these exemptions in a separate section while the Houston ordinance includes language within its definitions. Based on the Houston ordinance's definition of a massage establishment, it does not include "beauty parlors or barbershops duly licensed by the state, or places wherein registered physical therapists treating only patients recommended by a licensed physician and operate only under such physician's direction." The ordinance may be modified to include exemptions for other professionals not currently covered by the law in order to be clear about the target of the ordinance.

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.

Under state law, massage establishments are exempt from licensure if:

(1) the place of business is owned by the federal government, the state, or a political subdivision of the state;

(2) at the place of business, a licensed massage therapist practices as a solo practitioner and:

(A) does not use a business name or assumed name; or

(B) uses a business name or an assumed name and provides the massage therapist's full legal name or license number in each advertisement and each time the business name or assumed name appears in writing;

(3) at the place of business, an acupuncturist, athletic trainer, chiropractor, cosmetologist, midwife, nurse, occupational therapist, perfusionist, physical therapist, physician, physician assistant, podiatrist, respiratory care practitioner, or surgical assistant licensed or certified in this state employs or contracts with a licensed massage therapist to provide massage therapy as part of the person's practice; or

(4) at the place of business, a person offers to perform or performs massage therapy:

(A) for not more than 72 hours in any six-month period; and

(B) as part of a public or charity event, the primary purpose of which is not to provide massage therapy.

(Texas Administrative Code § 140.364)

Enforcement and Penalties

The current Houston ordinance creates a single penalty regardless of which provision is violated. The model ordinance includes several administrative penalties which would likely only be utilized by a jurisdiction that chooses to enact its own licensing scheme. Additionally, the Houston ordinance does not explicitly state who has the power of enforcement.

Houston Ordinance:

Sec. 28-370. - Penalty.

Failure to comply with any of the requirements of this article shall result in a violation and punishable by a fine of not less than \$500.00, nor more than \$2,000.00. Each day's violation shall constitute a separate offense.

(Ord. No. 27-286, § 1, 3-7-07)

Severability

Severability provisions are commonly included to allow unconstitutional sections to be severed from the overall ordinance. There is not a severability section within the massage establishment ordinance; however, this issue is still covered because the Houston municipal code includes a catch-all severability provision earlier in the code (§1-9).

Trafficking Victim Immunity

It is important to recognize that individuals who are in violation of a massage establishment ordinance may in fact be victims of human trafficking. Efforts to combat illicit massage parlors sometimes unintentionally criminalize the victims who are intended to be protected. An immunity provision clarifies that victims of human trafficking are not criminally liable. The City of Houston currently has no such explicit provision. The city should consider such a provision both within its massage establishment ordinance as well as its prostitution ordinance.

Polaris Project Ordinance:

TRAFFICKING VICTIM IMMUNITY

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.

MESSAGE ESTABLISHMENT PERMIT

Massage Establishment Permit Requirement

A major distinction between the City of Houston and other jurisdictions is that the City of Houston does not have a local licensing procedure for massage establishments. Houston's 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 provisions are now located in Chapter 140. Moreover, recent state legislation has transferred the oversight of the massage industry from the Department of State Health Services to the Texas Department of Licensing and Regulation.

If the City of Houston chooses to rely on state licensing requirements, it should update its ordinance appropriately. Alternatively, the city may follow the path of the model ordinance and other major cities in Texas and create a permitting process at the local level.

Houston Ordinance:

Sec. 28-362. - Massage establishment license display requirement.

A place of business that advertises massage therapy or offers massage therapy or other massage services must be licensed by the department as provided by Title 25, Texas Administrative Code, Chapter 141. A massage establishment must display the establishment's license along with a current year validation card in a prominent location available for inspection by the public as provided by Section 141.51 of Title 25, Texas Administrative Code.

(Ord. No. 27-286, § 1, 3-7-07)

Application for Massage Establishment Permit

The City of Houston does not currently have its own permitting process for massage establishments but relies on the state procedures. The city is able to avoid a certain level of administrative burden on itself as well as burden on legitimate massage establishments by relying solely on the state permit. However, other cities have chosen to adopt their own permit requirements in order to ensure an extra level of oversight. The city should consider whether it has the capacity for overseeing a permitting process for massage establishments and how the fees

collected from that process would be allocated. San Antonio and Dallas each have licensing procedures overseen by the police department.

Non-Transferability of Permit

If a city creates its own permitting system, the Polaris Project recommends making permits non-transferable in order to ensure the system's integrity and avoid opportunities for parlors to relocate within sex trafficking networks.

Under current Texas administrative rules, massage "licenses may not be sold or transferred to another address."³

Issuance of Permit

The need for a section on the issuance of a permit depends on whether the city adopts a permitting process. This section would outline the timeline for issuing a permit as well as certain conditions that must be met, such as fee payments and the lack of any convictions for certain sex crimes.

Display of Permit

State regulations require a massage establishment to display its license in a prominent location. Houston's municipal code also requires display of the license but currently cites the wrong section of the Texas Administrative Code. The relevant provision is located in Chapter 140 rather than 141; moreover, these provisions will be moving again in the next few years as discussed above.

One potential change based on the model ordinance would be to require a recent photograph of the permit owner to be attached to the permit. It is unclear whether permits currently issued by the state include a photograph of the applicant, but this provision would not place an administrative burden on the local government and would allow customers to more readily identify the business owner.

Houston Ordinance:

Sec. 28-362. - Massage establishment license display requirement.

A place of business that advertises massage therapy or offers massage therapy or other massage services must be licensed by the department as provided by Title 25, Texas Administrative Code, Chapter 141. A massage establishment must display the establishment's license along with a current year validation card in a prominent location available for inspection by the public as provided by Section 141.51 of Title 25, Texas Administrative Code.

³ Texas Administrative Code § 140.307(c)

(Ord. No. 27-286, § 1, 3-7-07)

Revocation or Suspension

As the regulatory agency overseeing the permitting of the massage industry, DSHS currently has the authority to revoke or suspend licenses. If the city chooses to create its own permitting process, violation of the massage establishments ordinance can be considered ground for suspension and a process established for hearings in which the proper city agency determines whether a suspension or revocation is merited.

MESSAGE PRACTITIONER LICENSE

Massage Practitioner License Requirement

State law requires a massage therapist to meet certain conditions in order to obtain a license. While the Houston ordinance references requirements for a massage establishment to have a license, it makes no reference to the license for a massage therapist.

Although the focus of this ordinance is on the legitimacy of the business, the city could also easily incorporate state requirements for the individual practitioners as well. A provision could be inserted into the city code mandating that massage establishments may only allow employees or contractors to provide massages if those individuals have the appropriate massage therapist license from the state.

The trafficking victim immunity discussed earlier in this brief will be particularly important if provisions are enacted to address massage practitioners. Trafficking victims who lack proper licensure may be exploited in illicit parlors, and the goal of the city ordinance is not to penalize these victims.

Application for Massage Practitioner License

Like the massage establishment license requirements, the procedure for massage therapists is currently outlined in Chapter 140 of the Texas Administrative Code and will soon be transferred from DSHS to TDLR. If the city chooses to include language about the licensure of massage therapists, it should take this regulatory transfer into account.

Issuance of License

These requirements are also overseen by the state and if enacted at the local level would closely resemble requirements for a massage establishment.

Display of License

The city ordinance currently makes no mention of displaying a massage therapist's license. Just as it does with the massage establishment license, the city code could mandate display of the practitioner's license.

Texas Administrative Code § 140.307:

(b) A license must be displayed in an appropriate and public manner at the business location of the licensed business, or in the primary office or place of employment of the licensed individual. In the absence of a primary office or place of employment, the licensed individual shall carry a current identification card.

Revocation or Suspension

As the regulatory agency overseeing the permitting of the massage industry, DSHS currently has the authority to revoke or suspend licenses. If the city chooses to create its own permitting process, violation of the ordinance can be considered ground for suspension and a process established for hearings in which the proper city agency determines whether a suspension or revocation is merited.

OPERATIONAL REQUIREMENTS

Employment or Contracting of Massage Practitioners

The current Houston ordinance contains prohibitions on employing individuals with criminal records for sexual offenses or with a communicable disease. The ordinance should be broadened to make it clear that it is illegal for a massage establishment to allow unlicensed individuals to provide massage services. These requirements are included in state regulations and the model ordinance and can be mimicked. Individuals who are prostituted in illicit massage parlors typically have no license to practice massage therapy. In order to prevent criminal charges against a victim, the ordinance should be clear that the business can be held accountable and not just the massage practitioner.

Sec. 28-367. - Employment of certain persons prohibited.

It shall be unlawful for any person operating a massage establishment to knowingly employ, in any capacity therein, any person who has been convicted, entered a plea of nolo contendere or guilty to, or received deferred adjudication for an offense involving prostitution or any other sexual offense. It shall also be unlawful for any person suffering from a communicable disease to work in any massage establishment.

(Ord. No. 27-286, § 1, 3-7-07)

Polaris Project Ordinance:

EMPLOYMENT OR CONTRACTING OF MASSAGE PRACTITIONERS

It shall be unlawful for the owner, proprietor, manager or person in charge of a massage establishment to allow any person to practice massage in the massage establishment without having obtained a massage practitioner's license pursuant to this ordinance [and/or the state licensing program].

Texas Administrative Code §140.361. General Requirements for Massage Establishments.

(a) A massage establishment shall employ or contract with only licensed massage therapists to perform massage therapy or other massage services. Documentation of the employment or contract relationship and verification that the licensed massage therapist is a United States citizen or a legal permanent resident with a valid work permit shall be maintained by the massage establishment and made available during an inspection or investigation. Required documentation for each person providing massage therapy or other massage services shall include:

- (1) a copy of the current massage therapist license;***
- (2) proof of eligibility to work in the United States; and***
- (3) if an employee, a completed I-9 form, or if under an independent contractor or contract labor agreement, a copy of the contract signed by both the owner or operator and the licensed massage therapist.***

§140.361. General Requirements for Massage Establishments.

(h) A massage establishment may not:

- (1) employ or contract with an individual who is not a United States citizen or a legal permanent resident with a valid work permit;***
- (2) employ a minor unless the minor's parent 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 client, 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 the 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.***

Hours

Illicit massage parlors often operate during late night hours when legitimate massage establishments are not in operation. Houston already has a reasonable restriction on the hours of operation for massage businesses.

Sec. 28-365. - Hours of operation.

No massage establishment shall be kept open for any purpose between the hours of 10:00 p.m. and 8:00 a.m. on any day.

(Ord. No. 27-286, § 1, 3-7-07)

Unlawful to Admit Intoxicated Persons

Sexually exploited individuals can suffer abuse at the hands of patrons and intoxication may increase the risk of violence. Consequently, a community may seek to prevent intoxicated persons from patronizing massage parlors. The model ordinance addresses this issue by making it unlawful for massage establishments to admit intoxicated persons.

Polaris Project Ordinance:

UNLAWFUL TO ADMIT INTOXICATED PERSONS

It shall be unlawful for the owner, proprietor, manager or person in charge of a massage establishment to harbor, admit, receive or permit to be or remain in or about any such place, any drunken person or any person under the influence of intoxicating liquor or narcotic drugs.

Indecent Conduct

Perhaps the most important element of a massage establishment ordinance seeking to prevent sex trafficking is a prohibition on commercial sexual activity. Illicit massage parlors hide behind a thin veil of legitimacy and use a seemingly legal industry to facilitate sexual exploitation.

State regulations prohibit massage therapists from engaging in sexual contact with clients and also prohibit massage establishments from allowing indecent activity within the business.

The city should consider adopting similar provisions into its own ordinance in order to add another layer of protection against sexual exploitation. Provisions can be drawn from the administrative code or the model ordinance. Some businesses may claim they hire independent contractors rather than employees and thus seek to escape liability; therefore, such workers should be included in the scope of the ordinance.

Texas Administrative Code § 140.361(h)

A massage establishment may not:

- (1) employ or contract with an individual who is not a United States citizen or a legal permanent resident with a valid work permit;***
- (2) employ a minor unless the minor's parent 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 client, 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 the 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.

Polaris Project Ordinance:

INDECENT CONDUCT

a. It shall be unlawful for any person, in a massage establishment, to place his or her hand or hands upon, to touch with any part of his or her body, to fondle in any manner, or to massage, a sexual or genital part of any other person.

b. It shall be unlawful for any person, in a massage establishment, to expose his or her sexual or genital parts, or any portion thereof, to any other person. It shall also be unlawful for any person, in a massage establishment, to expose the sexual or genital parts, or any portions thereof, of any other person.

c. It shall be unlawful for any person, while in the presence of any other person in a massage establishment, to fail to conceal with a fully opaque covering, the sexual or genital parts of his or her body.

d. It shall be unlawful for any person owning, operating or managing a massage establishment, knowingly to cause, allow or permit in or about such massage establishment, any agent, massage practitioner, employee, or any other person under his or her control or supervision to perform such acts prohibited in subsections a, b or c of this section.

[optional - A claim that a person in violation of this section is an independent contractor is not a valid defense.]

No-Lock Requirement for Massage Rooms

A notable difference between the Texas statutes and the model ordinance involves rooms in massage establishments that may be locked. Whereas the model ordinance makes it unlawful for any massage service to be carried on in any room or area that is capable of being locked, the Texas statute contains no such provision and instead includes a provision that mandates *rooms used wholly or in part for sleeping or residential purposes must remain locked* during business hours.

Indicating that no room used for massage services can have a lock would ease the ability of inspections.

Polaris Project Ordinance:

NO-LOCK REQUIREMENT FOR MASSAGE ROOMS

It shall be unlawful for any massage service to be carried on within any cubicle, room, booth, or any area within a massage establishment which is fitted with a door capable of being locked.

Register of Massage Practitioners

Requiring a massage establishment to maintain a list of all massage practitioners eases the investigative burden on law enforcement and regulatory agencies. Texas and local law are more expansive than the model code because while the model ordinance requires a register of massage practitioners, Texas law requires a register of all employees and contractors. The Houston ordinance 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.

Texas Administrative Code § 140.361(i):

(i) A massage establishment shall:

(1) properly maintain and secure for each client the initial consultation documents, all session notes, and related billing records;

(2) maintain a current list of all establishment employees and/or contractors at all times which includes:

(A) full name;

(B) address;

(C) job title;

(D) license number and expiration date (if licensed as a massage therapist); and

(E) start date of employment/contract.

Houston Ordinance:

Sec. 28-366. - Management to keep list of employees.

The manager or person in charge of a massage establishment shall maintain, on the premises, a list of the names and addresses of all employees therein, both on duty and off duty, and such list shall be readily available for inspection upon the request of any law enforcement officer or department of health and human services official. Failure to comply with this provision shall be an offense.

(Ord. No. 27-286, § 1, 3-7-07)

Business Records

The model ordinance and some existing city ordinances requires massage establishments to keep records on the clients who patronize their services. Current administrative regulations require Texas massage establishments to “properly maintain and secure for each client the initial consultation documents, all session notes, and related billing records.” It is unclear how extensive these requirements are and may not be as burdensome as the model ordinance.

Polaris Project Ordinance:

BUSINESS RECORDS

An owner or manager of a massage establishment shall keep a record of the date and hour of each massage, the name and address of the customer or client receiving the massage and the name of the massage practitioner practicing or administering the massage. Such record shall be maintained for a minimum period of one (1) year and shall be open to inspection by any person authorized under this ordinance to perform inspections. Information furnished or secured as a result of such inspection shall be confidential.

Unlawful Advertisement

A major problem with illicit massage parlors is that they advertise themselves as offering a legitimate service. The Houston ordinance implicitly covers this concern by indicating that any “business that advertises massage therapy” is subject the requirement to display a license; however, the city could insert a separate provision in the ordinance to put greater weight on the prohibition against false advertisement.

Texas Administrative Code §140.306(a):

(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.

Polaris Project Ordinance:

UNLAWFUL ADVERTISEMENT

A person who is not duly licensed or a massage establishment that has not obtained a permit under this ordinance may not use the word “massage” on any form of advertising unless the person or the organization is expressly exempt from this ordinance.

Entrances and Exits

Some illicit massage parlors require women to remain in the business and live on-site. One method of confronting this issue is to disallow direct passageways to living quarters. The Houston ordinance mirrors state regulations by mandating that sleeping quarters be separated from the establishment by a solid wall or a wall with a locked door. This restriction is substantially similar to the model ordinance. This arrangement helps the situation but women could still be forced to live in the closed-off but on-site area. A more ideal, but perhaps unfeasible, regulation may be one in which the massage establishment is not allowed to share the residential property whatsoever.

Houston Ordinance:

Sec. 28-364. - Operation in connection with living or sleeping quarters prohibited.

A massage establishment must maintain separation from rooms used wholly or in part for residential or sleeping purposes by a solid wall or by a wall with a solid door which shall remain locked during business hours.

(Ord. No. 27-286, § 1, 3-7-07)

Signage

The model ordinance includes a provision about signage outside a massage establishment. This type of restriction may only be necessary if there is a local concern that illicit parlors are hiding in plain sight by not posting exterior signs. If the city were to adopt such an ordinance, it should be careful not to be overly burdensome on legitimate establishments. Similar restrictions are not currently in place at the state level.

Polaris Project Ordinance:

SIGNAGE

A massage establishment shall affix an exterior sign stating its trade or business name as appears on its permit application near its main entrance. The sign shall be erected facing a street or highway that is not a private lane, in a conspicuous location within ten (10) feet of the property line. The sign shall be visible from the nearest public street or highway and clearly indicate that the said premise is a massage establishment.

Windows

Illicit massage parlors commonly block visibility through windows in order to conceal their activity. The model ordinance includes a provision to disallow this type of practice. It is not obvious whether this restriction would apply to the heavy tint which is commonly used on these windows. Similar provisions do not exist at the state or local level.

Polaris Project Ordinance:

WINDOWS

It shall be unlawful to cause complete obstruction of the passage of light through any windows of the massage establishment premise by means including but not limited to affixing plywood, paper, or taping other opaque materials over the windows. This restriction does not apply to the standard use of curtains or blinds.

MISCELLANEOUS

There are other potential elements which were not included in the Polaris Project model ordinance but are worthy of consideration. This section identifies some of those elements.

Sanitation & Maintenance

The model ordinance makes no reference to the sanitation requirements of a massage establishment. These requirements are typically covered by state regulations but also provide the city government an opportunity make health inspections and identify potential signs of trafficking. The Houston ordinance provides some limited sanitation requirements, but the method of oversight for this provision is not clear. Language similar to the San Antonio ordinance below could be used to expand the Houston requirement and also make it clear that periodic inspections are allowed.

Houston Ordinance:

Sec. 28-363. - Maintenance of premises and equipment.

It shall be the duty of every person conducting or operating a massage establishment to keep the same at all times in a clean and sanitary condition. All instruments and mechanical, therapeutic and bathing devices or parts thereof that come into contact with the human body shall be sterilized by an approved method of sterilization. Towels and linens furnished for use of one patron shall not be furnished for use of another until thoroughly laundered.

Sec. 28-368. - Cleanliness of employees.

All massage therapists and operators at a massage establishment shall wash their hands thoroughly before administering massage manipulations to any patron.

(Ord. No. 27-286, § 1, 3-7-07)

San Antonio Ordinance:

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 handwashing 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 other such rooms, the walls, ceilings and floors shall be constructed or covered with a material that is smooth, nonabsorbent and easily cleaned.*

(Ord. No. 66723, § 17, 3-3-88)

Sec. 17-46. - Sheets, towels, etc.

Towels, cloths and sheets shall not be used for more than one (1) patron. Heavy white paper may be substituted for sheets provided that such paper is changed for every patron. Soiled linens and towels shall be stored in a clearly marked receptacle and shall not be reused prior to laundering.

(Ord. No. 66723, § 18, 3-3-88)

Sec. 17-48. - Equipment.

All equipment used for the treatment of patrons at establishments regulated by this chapter shall be kept in a clean and sanitary condition, and the equipment shall be kept in a good and safe state of repair at all times.

(Ord. No. 66723, § 20, 3-3-88)

Access

Entrances and exits are covered in the model ordinance inasmuch as they connect to other businesses or dwellings. However, massage parlors may also attempt to block or lock the main entrance of the establishment, particularly to identify law enforcement prior to entrance. The city may consider language similar to the San Antonio ordinance below which disallows locking entrances or exits during business hours.

San Antonio Ordinance:

Sec. 17-44. - Access.

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 free ingress and egress of persons; provided, however, such doors may be closed.

(Ord. No. 66723, § 16, 3-3-88)

Human Trafficking Poster

Certain venues are common venues for facilitating human trafficking. Legislators have identified venues in the past such as certain bars, airports, and sexually oriented businesses, and mandated the posting of human trafficking information. These informational posters typically provide hotline information and tips to help individuals identify trafficking as well as increase awareness among victim populations who may not self-identify as victims or know how to get help. No such statewide statute appears to exist relating to massage establishments, but the City of Houston should explore whether this is a possibility at the local level. In Houston, minority populations are particularly vulnerable and should be represented in awareness materials.

San Francisco Ordinance Sec. 29.31:

(i) Human Trafficking Information Notices.

Massage Establishments must comply with the requirements of California Civil Code Section 52. 6. The required notices of human trafficking information and telephone hotline numbers shall be posted in English. Spanish. Cantonese, Vietnamese, and other appropriate languages as determined by the Department.

Patronization

Although the focus of this ordinance is on the massage establishment, it should be kept in mind that buyers of commercial sex drive the market for illicit massage parlors. Consequently, it is important that laws also address individuals who attempt to patronize illicit parlors and fuel the sex trafficking industry. These provisions are likely covered by state and city laws relating to prostitution rather than within massage establishment regulations, but the relation of such laws to the massage industry is worth nothing.

APPENDIX

Houston Ordinance

ARTICLE XII. - MASSAGE ESTABLISHMENTS

Sec. 28-361. - Definitions.

As used in this article, the following words, terms and phrases, shall have the meanings ascribed to them in this section, unless the context of their usage clearly indicates a different meaning:

Communicable disease means Methicillin-resistant *Staphylococcus aureus* (MRSA), scabies, and tuberculosis.

Department means the Texas Department of State Health Services.

Massage means and includes any process consisting in kneading, rubbing or otherwise manipulating the skin of the body of a individual, either with the hand, or by means of electrical instruments or apparatus, or other special apparatus, but shall not include massage by duly licensed physicians and chiropractors, registered physical therapists who treat only patients recommended by a licensed physician and who operate only under such physicians' direction, or massage of the face practiced by duly licensed personnel of beauty parlors or barbershops.

Massage establishment means any building, room, place or establishment, other than a regularly licensed hospital, medical clinic, or licensed physical therapy treatment facility where massage is practiced upon the human body for compensation by any person not a duly licensed physician or chiropractor, whether with or without the use of mechanical, therapeutic or bathing devices, and shall include Turkish bathhouses. This term shall not include, however, beauty parlors or barbershops duly licensed by the state, or places wherein registered physical therapists treating only patients recommended by a licensed physician and operate only under such physician's direction.

Massage therapist means a person who practices or administers massage therapy or other massage services to a client for compensation. The term includes a licensed massage therapist, therapeutic massage practitioner, massage technician, masseur, masseuse, myotherapist, body massager, body rubber, or any derivation of those titles.

(Ord. No. 27-286, § 1, 3-7-07)

Sec. 28-362. - Massage establishment license display requirement.

A place of business that advertises massage therapy or offers massage therapy or other massage services must be licensed by the department as provided by Title 25, Texas Administrative Code, Chapter 141. A massage establishment must display the establishment's license along with a current year validation card in a prominent location available for inspection by the public as provided by Section 141.51 of Title 25, Texas Administrative Code.

(Ord. No. 27-286, § 1, 3-7-07)

Sec. 28-363. - Maintenance of premises and equipment.

It shall be the duty of every person conducting or operating a massage establishment to keep the same at all times in a clean and sanitary condition. All instruments and mechanical, therapeutic and bathing devices or parts thereof that come into contact with the human body shall be sterilized by an approved method of sterilization. Towels and linens furnished for use of one patron shall not be furnished for use of another until thoroughly laundered.

(Ord. No. 27-286, § 1, 3-7-07)

Sec. 28-364. - Operation in connection with living or sleeping quarters prohibited.

A massage establishment must maintain separation from rooms used wholly or in part for residential or sleeping purposes by a solid wall or by a wall with a solid door which shall remain locked during business hours.

(Ord. No. 27-286, § 1, 3-7-07)

Sec. 28-365. - Hours of operation.

No massage establishment shall be kept open for any purpose between the hours of 10:00 p.m. and 8:00 a.m. on any day.

(Ord. No. 27-286, § 1, 3-7-07)

Sec. 28-366. - Management to keep list of employees.

The manager or person in charge of a massage establishment shall maintain, on the premises, a list of the names and addresses of all employees therein, both on duty and off duty, and such list shall be readily available for inspection upon the request of any law enforcement officer or department of health and human services official. Failure to comply with this provision shall be an offense.

(Ord. No. 27-286, § 1, 3-7-07)

Sec. 28-367. - Employment of certain persons prohibited.

It shall be unlawful for any person operating a massage establishment to knowingly employ, in any capacity therein, any person who has been convicted, entered a plea of nolo contendere or guilty to, or received deferred adjudication for an offense involving prostitution or any other sexual offense. It shall also be unlawful for any person suffering from a communicable disease to work in any massage establishment.

(Ord. No. 27-286, § 1, 3-7-07)

Sec. 28-368. - Cleanliness of employees.

All massage therapists and operators at a massage establishment shall wash their hands thoroughly before administering massage manipulations to any patron.

(Ord. No. 27-286, § 1, 3-7-07)

Sec. 28-369. - Accommodation of diseased patrons prohibited.

No person suffering from a communicable disease, to the knowledge of the owner, custodian or employee of a massage establishment, shall be accommodated as a patron therein.

(Ord. No. 27-286, § 1, 3-7-07)

Sec. 28-370. - Penalty.

Failure to comply with any of the requirements of this article shall result in a violation and punishable by a fine of not less than \$500.00, nor more than \$2,000.00. Each day's violation shall constitute a separate offense.

(Ord. No. 27-286, § 1, 3-7-07)

Secs. 28-371—28-400. - Reserved.

Texas Administrative Code

The relevant provisions of the Texas Administrative Code can be found here:

[http://texreg.sos.state.tx.us/public/readtac\\$ext.ViewTAC?tac_view=5&ti=25&pt=1&ch=140&sc h=H](http://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=5&ti=25&pt=1&ch=140&sc h=H)

Polaris Project Resources

Additional resources can be found here: <https://polarisproject.org/category/illicit-massage-business/>

Massage Therapy Establishment Application

MASSAGE THERAPY ESTABLISHMENT APPLICATION INSTRUCTION SHEET

Enclosed is the application packet for the massage therapy establishment license - two year term. Included in the packet is the application, a copy of the Massage Therapy Act, and the Texas Department of State Health Services Rules.

PRINT or TYPE all information on the application. Please answer all questions completely, do not leave any blank. The application fee must be paid by personal check, cashiers check or money order. No cash.

Proof of passing the Jurisprudence Exam (which covers Texas law and rules related to massage therapy) is required for all applications postmarked on or after 6/1/09. The Jurisprudence Exam fee of \$40.00 must be paid online. Instructions for completing the exam online can be found here: <https://txn.esslearning.com/catalogs/tdlr/mtlp.html>

To expedite processing, make sure the application is complete. If you do not receive a response within five weeks, call (512) 834-6616.

Send completed application and related documentation with your fee to:

Texas Department of State Health Services
Massage Therapy Licensing Program
P.O. Box 12197
Austin, Texas 78711-2197

Requests regarding the status of your application or other information should be sent to:

Texas Department of State Health Services
Massage Therapy Licensing Program
P.O. Box 149347, Mail Code 1982
Austin, Texas 78714-9347
512/834-6616
massage@dshs.state.tx.us

APPLICATION CHECK LIST:

BE SURE TO:

Read the Massage Therapy Act (Texas Occupations Code, Chapter 455) and the Rules relating to massage therapy (25 Texas Administrative Code, Chapter 140) before completing the application.
Attach the \$305.00 application fee (guaranteed funds only)
Answer all questions and all blanks filled in.
Attach a signed and notarized affidavit.

NOTE: No massage establishment can commence operation until the application for licensure of the establishment has been approved. In addition, an establishment may employ only licensed massage therapists to perform massage

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MASSAGE THERAPY ESTABLISHMENT APPLICATION

5. List All Massage Therapists Who Are Working With This Establishment:
Attach additional page(s) with the following information on each massage therapist:
name, address, job title, license number and expiration date, birth date, social security

number, and start date of employment/contract.

Number of massage therapists listed on the attached page (s) _____

6. List all personnel who exercise operational and/or managerial control over the operations of the establishment, or if they directly or indirectly control the day-to-day operations of the establishment.

| <u>Name</u> | <u>Title</u> | <u>Address</u> | <u>Date of Birth</u> | <u>%Owned</u> |
|-------------|--------------|----------------|----------------------|---------------|
|-------------|--------------|----------------|----------------------|---------------|

7. Describe the type of available or proposed facilities and services.

8. Attach a current inspection report of the local Fire Marshall. If an inspection is not required by the County or City, a letter from the County Attorney or City Official must be submitted.

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9. Attach a photocopy of the valid sales tax permit issued to the massage establishment, if applicable.

10. Attach a floor plan of the proposed massage establishment that includes a sketch of the following items:

- Entrance and exits;
- Length and width of establishment (in feet);
- Total square feet;
- Location of restroom(s); and
- Number of massage tables.

Evidence of separation from the establishment of rooms used wholly or in part for residential or sleeping purposes by a solid wall or by a wall with a solid door which shall remain locked during business hours.

11. Proposed opening date: _____

12. Has any owner or operator been convicted of a felony or misdemeanor?
☐ Yes ☐ No

Has any owner or operator ever entered a plea of nolo contendere, entered a plea of guilty, or received deferred adjudication for a felony or misdemeanor?
☐ Yes ☐ No

If you answered yes to either of the above, provide the following information and documents for all felony and/or misdemeanor offenses (not minor traffic violations). Include any convictions which are currently on appeal. Attach additional information/documentation if appropriate.

Indicate offense(s) committed _____
Date(s) of conviction(s) _____
City, County, and State where offense(s) committed _____
List other names you have used (e.g. married/maiden, etc) _____
Are/were you on probation/parole? ☐ Yes ☐ No If YES, discharge date _____

Submit copies of charging documents (referred to as indictment or information) and judgment or other documents showing disposition of the case(s). If still on parole/probation, submit letter from parole or probation officer indicating compliance with all parole or probationary conditions.

NOTE: Failure to report convictions may result in denial of the application or revocation of license.

13. Under local law is the establishment required to register as a sexually oriented business?
☐ Yes ☐ No If yes, you must enclose a copy of the local license and applicable rules/ordinances.

Refer to: Texas Occupations Code Title 3, Section 455.155(d) "A sexually oriented business may not: (1) register under this chapter; or (2) operate as a massage establishment under this chapter".

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14. Check the Type of Ownership and complete the appropriate section.

☐ Individual ☐ Partnership ☐ Corporation

Indicate your federal I.D. Number (Issued by Internal Revenue Service)

INDIVIDUAL

- (a) Name of owning individual _____
(b) Address of owner _____
(c) Telephone No. Home (_____) _____ Business (_____) _____

PARTNERSHIP

- (a) Name of owning partnership _____
(b) Registered address of partnership place of business _____
(c) Telephone Number of partnership place of business (_____) _____
(d) List names of all partners and percentage of ownership

| Name | % Owned |
|-------|---------|
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |

CORPORATE OWNERSHIP

- (a) Name of owning corporation _____
(b) Registered address of corporation _____
(c) Telephone number of corporation _____
(d) List all officers, directors and registered agents of the corporation. (Use additional sheet, if necessary, and identify as Attachment A). List each shareholder owning stock aggregating at least 35% of the total issued and outstanding shares. Subsidiary corporations should list the parent corporation as stockholders

| Name | Title | Address | % Owned |
|-------|-------|---------|---------|
| _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ |

(e) Corporate Franchise Tax: Check one if owner is a corporation:

- () Franchise Tax is Current
() Franchise Tax is Not Current
() Corporation is exempt

() Out-of-State Corporation - not subject to Texas tax

AFFIDAVIT

This form shall be executed and submitted by **each** of the following:

In the case of an individual, that individual;

In the case of ownership by a partnership, each partner;

In the case of ownership by a profit corporation, each shareholder of the corporation owning at least 35% of the total issued and outstanding shares, each director, and each officer;

In the case of ownership by a non-profit corporation, each director or officer of the corporation must complete this form.

Disclosure of a social security number by an applicant is mandatory under the Family Code, Section 231.302 and the Health Insurance Portability and Accountability Act of 1996, Section 221. Social Security numbers are confidential and will be used for identification and reporting purposes required by law.

You may reproduce this form as many times as needed.

(Establishment Name)

(Establishment Address)

Name _____
(Last) (First) (Middle) (Maiden)

Sex () Male () Female Date of Birth _____
Social Security Number mm/dd/yy

Position Or Title _____

Business Address _____
Street City County State Zip

Home Address _____
Street City County State Zip

Work Phone No.

Home Phone No.

Answer the following questions. If a question does not apply, enter [Not Applicable]. Do not leave any space blank.

1. List all other states in which you have operated an establishment.

2. List all massage establishments in which you have held an ownership interest of 35% or by which you have been employed in any capacity whether in or out of this state.
3. If you have ever had a diploma, credential, license or certificate of any kind denied, revoked, or suspended, or if you have been employed by an establishment whose credential, license, or certification has been denied, revoked, or suspended, please state the facts here.
4. If you have ever been convicted of a felony or a misdemeanor other than a minor traffic offense, please state the date, court, offense, and punishment.

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AFFIDAVIT

STATE OF _____ COUNTY OF _____, WHERE
WITNESSED. THE INDIVIDUALS NAMED BELOW, BEING DULY SWORN, DEPOSE AND SAY THAT
THE INFORMATION IN THIS APPLICATION, ACCOMPANYING ESTABLISHMENT INFORMATION,
SUPPLEMENTS, ADDENDA, EXHIBITS, AND MATERIALS ARE TRUE AND CORRECT TO THE BEST
OF THEIR KNOWLEDGE AND BELIEF. FURTHER, THE ESTABLISHMENT WILL BE OPERATED IN
COMPLIANCE WITH THIS APPLICATION AND ALL LEGAL REQUIREMENTS. ANY DEFICIENCIES
WILL BE IMMEDIATELY CORRECTED AND CHANGES IN THE OPERATION WILL NOT BE MADE
UNTIL WRITTEN APPROVAL FROM THE TEXAS DEPARTMENT OF STATE HEALTH SERVICES IS
RECEIVED, IF REQUIRED BY THE RULES.

Signature of each individual owner, each partner if a partnership, or each director if a corporation (if
applicant is another type of business entity, the Texas Department of State Health Services shall identify
signatures needed). Use additional pages, if necessary, for signatures.

| | |
|----------------------|---------------------------------|
| _____ (Signature) | _____ (Typed Name and Title) |
|----------------------|---------------------------------|

| | |
|------------------------|---------------------------------|
| _____ — (Signature) | _____ (Typed Name and Title) |
|------------------------|---------------------------------|

| | |
|------------------------|---------------------------------|
| _____ — (Signature) | _____ (Typed Name and Title) |
|------------------------|---------------------------------|

SUBSCRIBED AND SWORN TO BEFORE ME THIS _____ DAY OF _____, _____
MY COMMISSION EXPIRES _____.

| | |
|-------------------|---------------|
| _____ SEAL | NOTARY PUBLIC |
|-------------------|---------------|