

City of Houston, Texas, Ordinance No. 20__-_____

AN ORDINANCE AMENDING ARTICLE XII, CHAPTER 28 OF THE CODE OF ORDINANCES, HOUSTON, TEXAS, RELATING TO MASSAGE ESTABLISHMENTS; CONTAINING FINDINGS AND OTHER PROVISIONS RELATING TO THE FOREGOING SUBJECT; PROVIDING FOR SEVERABILITY; AND DECLARING AN EMERGENCY.

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WHEREAS, Chapter 455 of the Texas Occupations Code provides for the comprehensive regulation of businesses that advertise or offer massage therapy or other massage services (i.e. massage establishments); and

WHEREAS, with limited exception, the above-referenced state law supersedes regulations adopted by Texas cities relating to licensing or regulating massage therapists; and

WHEREAS, Article XII, Chapter 28 of the City of Houston Code of Ordinances (“City Code”) contains the City’s limited regulations regarding the operation of massage establishments in the City of Houston; and

WHEREAS, the current provisions of the City Code authorize law enforcement officers to conduct investigations at state-licensed massage establishments; and

WHEREAS, there are a number of illicit massage establishments operating in Houston that claim to offer legitimate services, but instead offer commercial sex to customers; and

WHEREAS, these illicit massage establishments and the illegal conduct that occurs within them help to facilitate and promote prostitution, the sex trade, and human trafficking across the United States and pose a significant threat to the health, safety, and welfare of all Houstonians; and

WHEREAS, the Administration recommends targeted amendments to the City’s massage establishments ordinance to:

- (1) Expand the definition of massage establishments to include businesses that advertise or offer massages and other massage services; and
- (2) Provide that peace officers appointed or employed by a law enforcement agency of this state may enter the premises of a massage establishment to inspect the premises for compliance with all applicable laws; **NOW, THEREFORE,**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOUSTON, TEXAS:

Section 1. That the findings contained in the preamble of this Ordinance are determined to be true and correct and are hereby adopted as part of this Ordinance.

Section 2. That Article XII of Chapter 28 of the Code of Ordinances, Houston, Texas, is hereby amended to read as set forth in Exhibit A, attached hereto and incorporated herein.

Section 3. That the City Attorney is hereby authorized to direct the publisher of the Code of Ordinances, Houston, Texas, (the "Code") to make such nonsubstantive changes to the Code as are necessary to conform to the provisions adopted in this Ordinance, and also to make such changes to the provisions adopted in this Ordinance to conform them to the provisions and conventions of the published Code.

Section 4. That, if any provision, section, subsection, sentence, clause, or phrase of this Ordinance, or the application of same to any person or set of circumstances, is for any reason held to be unconstitutional, void or invalid, the validity of the remaining portions of this Ordinance or their application to other persons or sets of circumstances shall not be affected thereby, it being the intent of the City Council in adopting this Ordinance that no portion hereof or provision or regulation contained herein shall become inoperative or fail by reason of any unconstitutionality, voidness or invalidity of any other portion hereof, and all provisions of this Ordinance are declared to be severable for that purpose.

Section 5. That there exists a public emergency requiring that this Ordinance be passed finally on the date of its introduction as requested in writing by the Mayor; therefore, this Ordinance shall be passed finally on such date and shall take effect immediately upon its passage and approval by the Mayor; however, in the event that the

Mayor fails to sign this Ordinance within five days after its passage and adoption, it shall take effect in accordance with Article VI, Section 6, Houston City Charter.

PASSED AND ADOPTED this ___ day of _____, 201_.

APPROVED this ___ day of _____, 201_.

Mayor of the City of Houston

Pursuant to Article VI, Section 6, Houston City Charter, the effective date of the foregoing Ordinance is _____.

City Secretary

gbc
Prepared by Legal Dept. *Richard U. Hamel*
RVG:cm 11/20/2015 Senior Assistant City Attorney
Requested by Minal Davis, Special Advisor to the Mayor on Human Trafficking
L.D. File No. 0421500199001

EXHIBIT A

Chapter 28

MISCELLANEOUS OFFENSES AND PROVISIONS

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 or massage therapy means and includes any process consisting in kneading, rubbing or otherwise manipulating the skin of the body of an individual, either with the hand, or by means of electrical instruments, devices, 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 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.

Massage therapist means a person who practices massage therapy or administers massages 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.

Other massage services has the meaning ascribed in Section 455.001 of the Texas Occupations Code.

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

A massage establishment or 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 140. 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 140.361 of Title 25, Texas Administrative Code.

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 establishment in a clean and sanitary condition at all times. All instruments and mechanical, therapeutic and bathing devices or parts thereof that come into contact with the human body shall be sterilized on a regular basis and shall be rendered free from harmful organisms in a manner consistent with applicable state and local laws and regulations. Towels and linens furnished for use of one patron shall not be furnished for use of another until thoroughly laundered.

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.

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.

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.

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.

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.

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

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

Sec. 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.

Sec. 28-371. 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 violation shall constitute and be punishable as a separate offense. Each day's violation shall constitute a separate offense.

Sec. 28-372. Cumulative effect.

The provisions of this article are cumulative of applicable state law and regulations concerning massage establishments. To the extent there exists any difference or inconsistency between the provisions of this article and applicable state law or regulations, the more restrictive shall apply.

Secs. 28-373—28-400. Reserved.