

## ORDINANCE NO. O-18-21

### AN ORDINANCE OF THE CITY OF MISSOURI CITY, TEXAS, AMENDING CHAPTER 18, BUSINESSES, OF THE MISSOURI CITY CODE; ESTABLISHING REGULATIONS RELATED TO MASSAGE ESTABLISHMENTS; PROVIDING FOR REPEAL; PROVIDING A PENALTY; AND PROVIDING FOR SEVERABILITY.

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WHEREAS, the City of Missouri City (the "City") is a home rule municipality with all of the express and implied powers to enact ordinances that provide for and maintain the health, safety and welfare of its residents; and

WHEREAS, the City Council of the City of Missouri City finds it to be in the best interest of the residents of the City to adopt regulations for massage establishments in the interest of public safety; now therefore,

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

Section 1. The facts and recitals set forth in the preamble of this Ordinance are hereby found to be true and correct and are in all things incorporated herein and made a part hereof.

Section 2. The Missouri City Code is hereby amended by adding a new Article VIII of Chapter 18 to provide as follows:

#### **"CHAPTER 18 – BUSINESSES**

. . . .

#### **ARTICLE VIII – MASSAGE ESTABLISHMENTS**

##### **Sec. 18-901. Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

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

*Massage establishment* means any place of business that advertises massage therapy or offers massage therapy as a service, but not a duly licensed physician, whether with or without the use of mechanical or therapeutic devices. 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 V.T.C.A., Occupations Code § 455.155, as amended.

*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.

*Massage therapy* means the manipulation of soft tissue. The term includes, but is not limited to, effleurage (stroking), petrissage (kneading), tapotement (percussion), compression, vibration, friction, nerve strokes, Swedish gymnastics, and reflexology, either by hand or with mechanical or electrical apparatus for the purpose of body massage. Massage therapy may include the use of oil, salt glows, heat lamps, or hot and cold packs. Equivalent terms for massage therapy are massage, therapeutic massage, massage technology, myo-therapy, body massage, body rub or any derivation of those terms. Massage therapy is a health care service when the massage therapy is for therapeutic purposes. As used in this article, the terms "therapy" and "therapeutic" do not include diagnosis, the treatment of illness or disease, or any service or procedure for which a license to practice medicine, chiropractic, physical therapy or podiatry is required by law. Massage therapy does not constitute chiropractic practice.

*Other massage services* has the meaning ascribed in V.T.C.A., Occupations Code § 455.001.

#### **Sec. 18-902. Massage establishment licensing requirements.**

- (a) A massage establishment or a place of business that advertises massage therapy or offers massage therapy or other massage services must be licensed in accordance with V.T.C.A., Occupations Code ch. 455 and title 16, Texas Administrative Code, chapter 117, as such chapters may be amended.
- (b) A massage therapist or massage establishment must display the massage therapist or massage establishment's valid and current license in a prominent location available for inspection by the public.

#### **Sec. 18-903. Hours of operation.**

No massage establishment shall be kept open for any purpose between the hours of 10:00 p.m. and 6:00 a.m. on any day.

#### **Sec. 18-904. Use of premises as living or sleeping quarters.**

A person managing, keeping or operating a massage establishment shall not operate such establishment in connection, either directly or indirectly, with any place used for living or sleeping quarters.

**Sec. 18-905. Maintenance of premises; sterilization and cleaning of equipment.**

It shall be the duty of every person conducting or operating a massage establishment to keep the establishment at all times in a clean and sanitary condition. All instruments and mechanical or therapeutic devices, or parts thereof, that come into contact with the human body shall be sterilized by a modern and industry-approved method of sterilization before initial use, and any such instruments and devices, or parts thereof, after having been used upon one patron, shall be sterilized before being used upon another, 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 by one patron shall not be furnished for use by another until thoroughly laundered.

**Sec. 18-906. Cleanliness and health of employees generally; accommodation of diseased patrons.**

All massage therapists in a massage establishment shall wash their hands thoroughly before administering massage therapy to each patron accommodated. It is unlawful for a person suffering from a communicable disease to be employed by a massage establishment. No owner, manager, keeper, custodian, operator or employee of a massage establishment shall knowingly accommodate a person suffering from a communicable disease as a patron therein.

**Sec. 18-907. List of employees.**

The manager or person in charge of a massage establishment shall keep a list of the names and addresses of all employees, both on duty and off duty, and such list, in accordance with the law, shall be immediately available during regular business hours for inspection upon the request of any law enforcement officer or city health officer.

**Sec. 18-908. Responsibility of employer for acts of employees.**

The persons managing, keeping or operating a massage establishment shall be responsible for the acts of their employees in the conduct of such business. This section does not relieve an owner or an employee of potential liability pursuant to this article.

**Sec. 18-909. Prohibited Operations.**

- (a) It shall be unlawful for any person operating a massage establishment to employ, in any capacity therein, any person who has been convicted of, entered a plea of nolo contendere or guilty to, or received deferred adjudication for an offense involving prostitution or another sexual offense, or the practice or administration of massage therapy at or for a sexually oriented business.
- (b) It shall be unlawful to operate a massage establishment as a sexually oriented business as defined by Section 18-701 of the Missouri City Code.
- (c) It shall be unlawful for a person to commit a crime or offense involving prostitution or another sexual offense resulting in a conviction, or to which a plea

of nolo contendere or guilty was entered or deferred adjudication was received, on the premises of a massage establishment.

(d) It shall be unlawful for a massage therapist to dress in attire that:

(1) is transparent or substantially exposes the person's undergarments; or

(2) exposes the person's breasts, buttocks, anus or genitals.

(e) It shall be unlawful for any person operating a massage establishment to offer bathing or showering services.

#### **Sec. 18-910. Access; right of entry.**

A peace officer appointed or employed by a law enforcement agency of this state or a city health officer may enter the premises of a massage establishment for periodic inspections, in accordance with the law, to determine compliance with this article. If entry and access to the premises of the massage establishment is denied, entry may be made under the authority of a warrant to inspect the massage establishment.

#### **Sec. 18-911. Cumulative effect; effect of state law.**

The provisions of this article are cumulative of the applicable state law and regulations concerning massage establishments. To the extent there exists any conflict between the provisions of this article and applicable state law, the state law provision shall prevail to the extent of the conflict."

Section 3. Repeal. All ordinances or parts of ordinances in conflict herewith, if any, shall be and are hereby repealed only to the extent of such conflict.

Section 4. Penalty. Any person who violates, or any person who causes or allows another person to violate, any provision of this Ordinance shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than Five Hundred Dollars (\$500.00). Each occurrence of any violation of this Ordinance shall constitute a separate offense.

Section 5. *Severability.* In the event any clause, phrase, provision, sentence or part of this Ordinance or the application of the same to any person or circumstance shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision hereof, other than the part declared to be invalid or unconstitutional; and the City Council of the City of Missouri City, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, or whether there be one or more parts.

PASSED and APPROVED on first reading this 21<sup>st</sup> day of May, 2018.

PASSED, APPROVED and ADOPTED on second and final reading this 20<sup>th</sup> day of August, 2018.

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/s/Allen Owen, Mayor

ATTEST:

APPROVED AS TO FORM:

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/s/Maria Jackson, City Secretary

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/s/E. Joyce Iyamu, City Attorney