

ORDINANCE 2501

AN ORDINANCE AMENDING THE CITY OF HURST CODE OF ORDINANCES SECTION 27-3 DEFINITIONS BY ADDING AND REMOVING DEFINITIONS RELATIVE TO MASSAGE ESTABLISHMENTS; AMENDING CITY OF HURST CODE OF ORDINANCES SECTIONS 27-11, 27-12, 27-13, 27-15.1, 27-15.2, AND 27-15.4 REGARDING MASSAGE ESTABLISHMENTS; AND AMENDING THE CITY OF HURST CODE OF ORDINANCES CHAPTER 12 BY ADDING A NEW ARTICLE XV ENTITLED MASSAGE ESTABLISHMENTS; PROVIDING A PENALTY; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; CONTAINING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the City Council finds and determines that there is a public necessity for the zoning changes provided herein, that the public demands it, that the public interest clearly requires the amendment; and

WHEREAS, the City Council is of the opinion that the zoning changes herein effectuated furthers the purpose of zoning as set forth in the City of Hurst Comprehensive Zoning Ordinance and is in the best interest of the citizens of the City of Hurst; and

WHEREAS, the City is authorized by law to adopt the provisions contained herein, and has complied with all the prerequisites necessary for the passage of this ordinance; and

WHEREAS, the City Council has determined that the amendment to the Hurst Code of Ordinances herein made is in the best interest of the health, safety, and general welfare of the citizens of the City of Hurst; and

WHEREAS, all statutory and constitutional requirements for the passage of this ordinance have been adhered to, including, but not limited to the Open Meetings Act.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HURST, TEXAS;

SECTION 1: THAT the facts and recitations set forth in the preamble of this Ordinance are hereby found to be true and correct and are incorporated herein into this Ordinance.

SECTION 2: THAT City of Hurst Code of Ordinances Chapter 27, Section 27-3, Definitions, subsections (22.5), (75), (94), and (108.5) are hereby amended and replaced, which shall read as follows:

(22.5) *Commercial amusement (indoor)*: An enterprise such as a health club, racquetball club, karate club, recreation club or organization providing for activities, services, and instruction for the entertainment, exercise, and improvement of fitness and health of customers, clients, or members, but not including hospitals, clinics, massage establishments, or arcades. Uses or combinations would typically include bowling alleys, ice or roller skating rinks, racquetball and handball courts, indoor tennis courts, weight-lifting and nautilus facilities, exercise areas, swimming pools and spas, martial arts, classrooms and/or practice areas, gymnasiums, and indoor running or jogging tracks.

(75) *Massage Establishments*: As defined by Chapter 12 of this Code.

(94) *Personal service shop*: An establishment for the purpose of supplying limited personal services such as: cleaning and laundry collection station, interior decorating, watch and jewelry repair, reader, art gallery, library, museum, studio for professional artwork, photography, dance or fine arts; including teaching of applied and fine arts. This definition does not include massage establishment, barbershops, beauty shops or hairdressers.

(108.5) *Sexually oriented business*: A nude studio, modeling studio, love parlor, adult bookstore, adult movie theater, adult video arcade, adult movie arcade, adult video store, adult motel or other commercial enterprise, the primary business of which is the offering of a service or

the selling, renting or exhibiting of devices or any other items intended to provide sexual stimulation or sexual gratification to the customer. The individual terms contained in this subsection shall have the same meaning ascribed to them by Chapter 17.5 of the Hurst Code of Ordinances.

SECTION 3: THAT City of Hurst Code of Ordinances Chapter 27, Section 27-11, NB Neighborhood Business District, subsection (b)(3) is amended and replaced, which shall read as follows:

(3) Personal service shops (no massage establishments);

SECTION 4: THAT City of Hurst Code of Ordinances Chapter 27, Section 27-12, Limited Business District, subsection (b)(3) is amended and replaced, which shall read as follows:

(3) Personal service shops (no massage establishments);

SECTION 5: THAT City of Hurst Code of Ordinances Chapter 27, Section 27-13, GB General Business District, subsection (b)(11) is amended and replaced, which shall read as follows:

(11) Personal service shops (no massage establishments);

SECTION 6: THAT City of Hurst Code of Ordinances Chapter 27, Section 27-15.1, TX 10 Texas Highway 10 Multiuse District, subsection (b)(15) is amended and replaced, which shall read as follows:

(15) Personal services shops (no massage establishments);

SECTION 7: THAT City of Hurst Code of Ordinances Chapter 27, Section 27-15.2, TC Town Center District, subsection (b)(24) is amended and replaced, which shall read as follows:

(24) Personal service shops – no massage establishments, tattoo parlors, or body piercing parlors allowed;

SECTION 8: THAT City of Hurst Code of Ordinances Chapter 27, Section 27-15.4, Mixed-Use Planned Development Overlay District, subsection (e)(9) is amended and replaced, which shall read as follows:

(9) Massage establishments, tattoo parlors, gambling or gaming outlets.

SECTION 9: THAT the City of Hurst Code of Ordinances Chapter 12, Licenses and Business Regulations, is hereby amended by adding a new Article XV entitled "Massage Establishments," which shall read as follows:

ARTICLE XV. MASSAGE ESTABLISHMENTS

DIVISION 1. GENERALLY

Section 12-760 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:

Administrator means the building official of the city or any person designated by the city manager to administer the provisions of this article.

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.

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 include any services offered or performed for compensation at a massage establishment that involve physical contact with a client, and may include the use of oil, salt glow, a heat lamp, a hot and cold pack or the meaning ascribed in Section 455.001 of the Texas Occupations Code.

Crime of moral turpitude means any crime involving dishonesty, fraud, deceit, misrepresentation, or deliberate violence, or an act of baseness, vileness, or shameless conduct that shows a moral indifference to the social duties which an individual owes to his or her community.

Licensee means the person or entity licensed by the State of Texas through the Texas Department of State Health Services to operate a massage establishment. The term "licensee" shall also include operator.

Section 12-761 - Applicability.

This article shall not apply to:

- (1) An establishment or person that holds a license, permit, certificate, or other credential issued by this state under law other than Chapter 455 of the Texas Occupations Code; and offers or performs massage therapy under the scope of that credential;
- (2) A place of business where a licensed massage therapist practices as a solo practitioner in a manner consistent with Chapter 455 of the Texas Occupations Code; or
- (3) A place of business where 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 a part of the person's practice.

DIVISION 2. PERMIT

Sec. 12-765. - Permit required.

- (a) No person shall operate a massage establishment without a valid unexpired permit issued by the administrator.
- (b) No person may obtain a permit to operate a massage establishment without first having provided proof of valid and current licenses issued by the State of Texas, in accordance with Chapter 455 of the Texas Occupations Code, for any massage therapist employed by the massage establishment and for the massage establishment. It shall be unlawful for any person to operate a massage establishment after such licenses have been revoked, or during a period for which such licenses have been suspended.
- (b) Such permit shall be issued only upon validation of all state licenses and requirements, upon the payment of all fees required by this article, and upon approval of the administrator.
- (c) A permit granted under this article shall expire 12 months from the date of issuance. A permit to operate a massage establishment will not be renewed if there has not been at least one annual inspection by the administrator within the previous twelve months evidencing compliance with state licensing requirements for massage therapists and massage establishments as well as all applicable city ordinances and regulations.

Sec. 12-766. - Massage establishment license display.

- (a) A massage establishment shall be licensed by the Texas Department of State Health Services in accordance with state laws and regulations governing massage establishments. The license holder shall display such license in a prominent location in the massage establishment and make a copy of such license easily accessible and available for inspection by the public.
- (b) Each licensed massage establishment must notify each client of the name, mailing address, and telephone number of the Texas Department of State Health Services for the purpose of directing complaints to the department. This information must be provided on a sign displayed in a prominent location in the massage establishment.

Sec. 12-767. - Authorization for criminal background checks.

After an application has been made for a permit to operate a massage establishment, the administrator shall verify with the Texas Department of State Health Services that the applicant has successfully passed a background check acceptable to the department. In the event the Texas Department of State Health Services has not conducted a criminal history background check at the time of application for the permit, the administrator, in his or her discretion, may conduct a criminal history background check on the applicant, owner, operator, or investor in the massage establishment. An applicant is not eligible for a permit if the applicant, in the five years preceding the date of the application, has been finally convicted of a misdemeanor involving moral turpitude or any felony.

Sec. 12-768. - Employee list and licenses.

At the time of making application for the permit to operate a massage establishment, the applicant shall submit to the administrator, the names and addresses of all employees of the massage establishment for which a permit is sought, a copy of the current State of Texas massage therapy license for each massage therapist, and a copy of the State of Texas massage establishment license for the establishment.

Sec. 12-769. - Fees; refund.

(a) The fee for the original permit and renewal shall be as established in the adopted fee schedule for each such massage establishment. No refund of registration fees shall be made.

Sec. 12-770. - Issuance or revocation of permit.

(a) The administrator may deny an application for, or revoke any, permit issued under this article if the applicant or holder of such permit or the owner, operator, manager, or employee of any massage establishment in the city commits any of the following acts or fails to comply with or meets any of the following requirements:

(1) Prior or subsequent final conviction in any court of a misdemeanor involving moral turpitude or any felony.

- (2) Prior or subsequent final conviction of, entering a plea of nolo contendere or guilty to, or receiving deferred adjudication for an offense involving prostitution or any other sexual offense.
- (3) The occurrence at the massage establishment of any act or conduct in violation of this article.
- (4) Massaging genital organs, sex organs, or private parts of the human body, including but not be limited to the male and female genital areas, female breasts, and the area of the human buttocks.
- (5) Failure to submit current state licenses for the massage establishment and any massage therapist operating at the massage establishment.
- (6) Failure to properly register a customer or maintain a customer registration ledger as required by applicable state law.
- (7) Knowingly permitting a customer to provide false registration information.
- (8) Violation of the hours of operation as set forth in this article.
- (9) Prohibiting entrance to the administrator or a law enforcement officer for the purpose of inspection of the licensed premises or the books or records required to be kept by this article.
- (10) Failure to provide the required books or records for inspection as required by this article or applicable state law.
- (11) Performing any massage procedure, service or treatment, or asking or collecting a charge for same, other than the services displayed as required by this article.
- (12) Violation of any of the sanitary requirements set forth in this article.
- (13) Failure to display a list of services performed in the massage establishment as required by this article.
- (14) Failure to pass an inspection conducted by the administrator or other designated officer in accordance with this article.

- (b) The administrator, or other officer as designated by the city manager, shall notify the applicant or licensee in writing of the decision to deny issuance or revoke a permit and list the reasons for such denial or revocation. The decision of the administrator shall be final, unless, within ten days of notice of the administrator's decision, the applicant or licensee provides sufficient evidence that such action causing the violation or conduct has been cured. If such violation has been cured to the satisfaction of the administrator, or other designated officer, then the permit shall be promptly reinstated. If after the ten day cure period, such violation or conduct is not cured to the satisfaction of the administrator or other designated officer, the applicant or licensee should be informed in writing of the denial and such denial or revocation shall become final, unless appealed in writing to the city manager within ten days. The city manager shall review the evidence and render a decision within thirty days of receipt of an appeal. The decision of the city manager shall be final.
- (c) A permit holder whose permit has been revoked may be re-issued a permit only as follows:
- (1) If a permit has been revoked once within a twelve-month period, the permit holder may not be re-issued a permit until after the expiration of 30 days from the date of revocation.
 - (2) If a permit has been revoked twice within a twelve-month period, the permit holder may not be issued a permit until after the expiration of 90 days from the date of revocation.
 - (3) If a permit has been revoked three times within a twelve-month period, the permit holder may not be issued a permit until after the expiration of 180 days from the date of revocation.
- (d) For the purposes of subsection (c), the date of revocation is deemed to be the date the permit revocation becomes final pursuant to subsection (b).
- (e) This section shall not prevent any applicant or licensee from complying with any other city code, ordinance, rule, regulation, or applicable state law governing zoning or certificates of occupancy.

Sec. 12-771. - Inspection of massage establishments, fees.

- (a) No permit will be issued without an annual inspection of the massage establishment conducted by the administrator to ensure compliance with this article. The fee for the annual inspection shall be as established in the adopted fee schedule for each such massage establishment. No refund of inspection fees shall be made.
- (b) The administrator shall be authorized to inspect any massage establishment to determine or ensure compliance with the provisions of this article during the hours of operation of the massage establishment.
- (c) Whenever necessary to inspect or enforce any of the provisions of this article, the administrator may enter the building or premises at all reasonable times during the hours of operation to conduct any duty authorized by this article. If the building or premises are occupied, the administrator must present proper credentials and request entry. If the building or premises are unoccupied, the administrator must make a reasonable effort to locate the owner or other persons having charge or control of the building or premises and request entry. If entry is refused, or, if the owner or other person having charge or control of the building or premises cannot be located, the administrator may exercise any and all enforcement powers granted by law to secure entry.
- (d) The administrator reserves the right, and shall be authorized to, enter the premises at any time to inspect the massage establishment, if in the sole discretion of the administrator, an inspection is required to protect the public health, sanitation, or safety.

Sec. 12-772. - Enforcement; penalty for violation.

- (a) The administrator shall have primary responsibility for enforcing all provisions of this article. Other officers of the city, as designated by the city manager and administrator, shall share responsibility for enforcing the provisions of this article.
- (b) The city may exercise any and all enforcement powers granted by law in enforcing the provisions of this article.
- (c) Any person or corporation who violates any of the provisions of this article or fails to comply with any of the requirements thereof shall be

guilty of a misdemeanor and subject to a fine not to exceed two thousand dollars (\$2,000). Each day that a violation is permitted to exist shall constitute a separate offense. Any association, partnership, or corporation that violates this article shall be guilty of a health and sanitation misdemeanor and subject to such fine.

DIVISION 3. GENERAL STANDARDS

Sec. 12-776 - General standards.

The following are standards for the operation of any massage establishment. It shall be unlawful for any license holder, owner, operator, or manager of a massage establishment to do or commit any of the following prohibited acts, fail to comply with the following standards, or knowingly permit any employee to do so. It shall further be unlawful for any employee or customer of a massage establishment to do or commit any of the following prohibited acts or fail to comply with the following standards, where herein imposed upon them.

- (1) A massage therapist shall be clothed from the shoulders to the knees at all times while administering massage therapy, other massage services, or in the presence of any customer.
- (2) A customer's buttocks and genitals shall be covered, at a minimum, at all times during massage therapy, or while receiving other massage services.
- (3) A massage establishment shall only operate between the hours of 8:00 a.m. to 9:00 p.m. (hours of operation).
- (4) Doors into areas or rooms where massage therapy is performed shall remain unlocked at all times.
- (5) A massage establishment shall not include any place or room that could be construed either directly or indirectly as living or sleeping quarters.
- (6) A detailed list of the various massage procedures, treatment, and services performed in the massage establishment and the respective charge or cost for each shall be in writing and displayed in a prominent location in the massage establishment and made easily accessible and available for inspection by the public.

- (7) A massage establishment shall not provide any bathing or shower services as a part of massage therapy or other massage services. This includes the use of bathhouses, table showers, cabinet baths, the use of tubs or showers, or any similar services. This section does not prohibit the use of showers by customers in separate dressing rooms or locker rooms.

Sec. 12-777. - Employee lists.

The manager, operator, or person in charge of a massage establishment shall maintain, on the premises, a list of the names and addresses of all employees, as required by the Texas Department of State Health Services. The list shall be readily available for inspection upon the request of the administrator or any law enforcement officer.

Sec. 12-778. - Access.

All massage establishments operating under the authority of this article are declared public places, and during hours of operation, shall not have the doors to the entrances or exits of the massage establishment locked or obstructed in any way to prevent free ingress and egress of people. However, such doors may be closed.

Sec. 12-779. - Sanitary requirements.

- (a) General requirements. Each massage establishment shall be maintained in accordance with applicable state sanitary and health codes and regulations governing massage establishments.
- (b) Hand washing. All massage therapists and operators at a massage establishment shall wash their hands thoroughly before administering massage manipulations to any customer.

Sec. 12-780. - Registration of customers.

- (a) The manager, operator, or other person in charge of a massage establishment shall maintain a complete written daily register listing the name, address, phone number, and type of identification provided for each customer. A current driver's license or other government-issued identification containing descriptive information consistent with the physical characteristics of such customer shall be satisfactory personal identification in verifying the name and address of the customer.

- (b) It shall be unlawful for any customer to give false identification as to name or address. It shall further be unlawful for the manager, operator or employees to knowingly permit a customer to give a false name or address.
- (c) The daily register must be kept and maintained at the licensed establishment for two years. It shall be made available to the administrator or a law enforcement officer for inspection upon request at any time during the hours of operation of the massage establishment.
- (d) Licensees must provide an initial consultation to each client prior to the first massage session and obtain the signature of the client on a consultation document, as required by the Department of State Health Services. The consultation document must be maintained as required by the Texas Administrative Code.

SECTION 10: THAT any person intentionally, knowingly, recklessly, or with criminal negligence violating any of the provisions of this ordinance shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined an amount not to exceed Two Thousand Dollars (\$2,000). Each day such violation shall be allowed to continue shall constitute a separate violation and be punishable hereunder.

SECTION 11: THAT this Ordinance shall be cumulative of all provisions of the Code of Ordinances of the City of Hurst, except where the provisions of this Ordinance are in direct conflict with the provisions of such ordinances and such Code, in which event conflicting provisions of such ordinances and such Code are hereby repealed.

SECTION 12: THAT it is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraph or section of this Ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Ordinance, since the same would be been enacted by the City Council without the incorporation in this Ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.

SECTION 13: THAT all rights and remedies of the City of Hurst are expressly saved as to any and all violations of the provisions of any ordinances in the Code of Ordinances of the City of Hurst that have accrued at the time of the effective date of this Ordinance; and, as to such accrued violations and all

pending litigation, both civil and criminal, whether pending in court or not, under such ordinances, same shall not be affected by this Ordinance but may be prosecuted until final disposition by the courts.

SECTION 14: THAT this ordinance shall be in full force and effect upon final approval.

AND SO IT IS ORDAINED.

Passed on first reading on the 8th day of February 2022 by a vote of 6 to 0.

Passed and Approved on second reading on the 22nd day of February 2022 by a vote of 6 to 0.

ATTEST:



Rita Frick, City Secretary

CITY OF HURST:



Henry Wilson, Mayor

Approved as to form:



City Attorney