

ORDINANCE NO. 3453

AN ORDINANCE AMENDING AND RESTATING, IN ITS ENTIRETY, CHAPTER 18, ARTICLE V, MASSAGE ESTABLISHMENTS, OF THE CODE OF ORDINANCES OF THE CITY OF NORTH RICHLAND HILLS; PROVIDING A PENALTY; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES AND REPEAL OF CONFLICTING PROVISIONS; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, In 2016, an interdepartmental task force identified the need for revisions to the standards and regulations contained in Chapter 18 of the Code of Ordinances as they relate to massage establishments; and

WHEREAS, the existing regulations, which were created in the 1970's, are outdated and no longer reflect current industry standards and practices; and

WHEREAS, an updated set of procedures and standards is being recommended to align with state regulations pursuant to Chapter 455 of the Texas Occupations Code that now governs the licensing of massage establishments; and

WHEREAS, the City Council finds that revisions to the ordinance are necessary to protect the public health and safety, provide consistency in the registration of customers, and to update general standards and sanitary requirements for massage establishments.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NORTH RICHLAND HILLS, TEXAS, THAT:

Section 1: 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 Chapter 18, Article V, Massage Establishments, of the Code of Ordinances of the City of North Richland Hills shall be amended and restated in its entirety to read as follows:

ARTICLE V. – MASSAGE ESTABLISHMENTS

DIVISION 1. - GENERALLY

Sec. 18-311. - Definitions.

The words, terms and phrases, when used in this Article shall have the meanings set forth in this section, except where the context 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.

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.

Department means the Texas Department of State Health Services.

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.

Massage establishment means a place of business that advertises or offers massage therapy or other massage services as defined herein and is licensed by the state of Texas in accordance with Chapter 455 of the Texas Occupations Code, and Title 25 of the Texas Administrator, as amended, including establishments variously known as massage parlors, and similar derivations. This term does not include beauty parlors or barber shops duly licensed by the State, or licensed hospitals, medical clinics, or licensed physical therapy facilities.

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, or any derivation of those titles.

Massage therapy means the manipulation of soft tissue by hand or through a mechanical or electrical apparatus for the purpose of body massage and includes effleurage (stroking), petrissage (kneading), tapotement (percussion), compression, vibration, friction, nerve strokes, and Swedish gymnastics. The terms "massage," "therapeutic massage," "massage technology," "myotherapy," "body massage," "body rub," or any derivation of those terms are synonyms for "massage therapy."

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.

Prohibited body areas means body areas defined as including all genital organs, sex organs, and private parts of the human body and shall include, but not be limited to, the male and female genital areas, female breasts, and the area of the human buttocks.

Sec. 18-312. – Applicability of this Article.

This Article shall not apply to:

- a) 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

- b) A person who is subject to state licensing as set forth in Chapter 455 of the Texas Occupations Code, while that person is practicing within the scope of that license and employs or contracts with a licensed massage therapist to provide massage therapy as a part of the person's practice.

Secs. 18-313—18-330. - Reserved.

DIVISION 2. – CERTIFICATE OF OCCUPANCY

Sec. 18-331. – Certificate of occupancy required.

- a) It shall be unlawful for any person to obtain a certificate of occupancy 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 further 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 certificate of occupancy shall be issued only upon validation of all state licenses and requirements, upon the payment of all required fees as specified in section 18-335, and approval of the Administrator.
- c) Maintenance of a certificate of occupancy to operate a massage establishment shall require at least an annual inspection by the Administrator evidencing compliance with State licensing requirements for massage therapists and massage establishments as well as all applicable City ordinances and regulations.

Sec. 18-332. – Massage establishment license display.

- a) A massage establishment shall be licensed by the Department 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 Department 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. 18-333. – Authorization for criminal background checks.

After an application has been made for a certificate of occupancy, the Administrator shall verify with the Department that the applicant has successfully passed a background check acceptable to the Department. In the event the Department has not conducted a criminal history background check at the time of application for the certificate of occupancy, 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 certificate of occupancy if the applicant, in the five years preceding the date of the application, has been finally convicted of a misdemeanor involving moral turpitude or a felony.

Sec. 18-334. – Employee List and Licenses.

At the time of making application for the certificate of occupancy 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 certificate of occupancy 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. 18-335. - Fee; proration; refund.

The fee for the certificate of occupancy shall be as established in Appendix A for each such massage establishment. If the certificate of occupancy is obtained between January 1 and June 30 of any year, the full amount of such fee shall be paid. If such certificate of occupancy is obtained between July 1 and December 31 of any year, the fee shall be one-half of such amount. No refund of certificate of occupancy fees shall be made.

Secs. 18-336. - Reserved.

Sec. 18-337. – Issuance or Revocation of Certificate of Occupancy.

- (a) The Administrator may refuse to approve the issuance of or revoke any certificate of occupancy issued under this Article if the holder of such certificate 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 meet any of the following requirements imposed by this Article:
- (1) Prior or subsequent final conviction in any court of a misdemeanor involving moral turpitude or a felony in accordance with Section 18-333.
 - (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, including, but not limited to, the standards of operation set forth in section 18-361.
 - (4) Massage of prohibited body areas.
 - (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 section 18-361.
 - (12) Violation of any of the sanitary requirements set forth in section 18-364.
 - (13) Failure to display a list of services performed in the massage establishment as required by section 18-361.
 - (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 certificate of occupancy and list the reasons for such denial or revocation. The decision of the Administrator shall be final, unless, within ten (10) 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 Certificate of Occupancy shall be promptly reinstated. If after the 10 day cure period, such violation or conduct is not cured to the satisfaction of the Administrator or other designated officer, such denial or revocation shall become final, unless appealed in writing to the city manager. The city manager shall review the evidence and render a decision within thirty (30) days of receipt of an appeal. The decision of the city manager shall be final. An applicant or licensee may not appeal a decision of the Administrator denying the issuance of or revocation of a certificate of occupancy denied or revoked pursuant to sections 18-337(a)(1), (a)(2), or (a)(5).
- (c) 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. 18-338. - Inspection of massage establishments.

- (a) 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.
- (b) 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.

- (c) 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. 18-339. – 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, 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 as set forth in section 1-13 of this Code of Ordinances. 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.

Secs. 18-340—18-360. - Reserved.

DIVISION 3. - STANDARDS OF OPERATION

Sec. 18-361. - 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 shall be covered at a minimum, from the waist down, at all times during massage therapy, or while receiving other massage services.
- (3) A massage establishment shall only operate between the hours of 8:00am and 10:00pm (hours of operation).
- (4) The number of rooms where massage therapy is performed shall not exceed the number of licensed massage therapists employed by and working at the massage establishment.
- (5) Doors into areas or rooms where massage therapy is performed shall remain unlocked at all times.
- (6) A massage establishment shall not include any place or room that could be construed either directly or indirectly as living or sleeping quarters.
- (7) 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.
- (8) 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. 18-362. - 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 Department. The list shall be readily available for inspection upon the request of the Administrator or any law enforcement officer.

Sec. 18-363. – 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. 18-364. - 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. 18-365. - 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 a 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.

Secs. 18-366-18-400. - Reserved.

Section 3: 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 any such violation shall be allowed to continue shall constitute a separate violation and be punishable hereunder.

Section 4: This Ordinance shall be cumulative of all provisions of the Code of Ordinances of the City of North Richland Hills, 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 5: It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs and sections of this Ordinance are severable, and, if any phrase, clause, sentence, 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 have been enacted by the City Council without the incorporation in this Ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.

Section 6: All rights and remedies of the City of North Richland Hills are expressly saved as to any and all violations of the provisions of any ordinances in the Code of Ordinances of the City of North Richland Hills 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 7: The City Secretary is hereby authorized and directed to cause the publication of the descriptive caption and penalty clause of this ordinance two times.

Section 8: This ordinance shall be in full force and effect upon publication as required by Section 7 herein.

AND IT IS SO ORDAINED.

PASSED AND APPROVED on the _____ day of March, 2017.

CITY OF NORTH RICHLAND HILLS

By: _____
Oscar Trevino, Mayor

ATTEST:

Alicia Richardson, City Secretary

Approved as to Form and Legality:

Maleshia Farmer, City Attorney