

**ORDINANCE NO. 2014 - 20**

**AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF HALLANDALE BEACH, FLORIDA, AMENDING CHAPTER 7, BUSINESSES; ARTICLE XIII, MESSAGE SERVICES; SECTION 7-461 MESSAGE SERVICES; PROVIDING FOR CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, on June 14, 2013, Florida Governor Rick Scott approved Chapter No. 2013-212, Laws of Florida (Ch. 2013-212), amending provisions of the Florida Statutes that control the massage services industry; and

**WHEREAS**, on October 1, 2013, the amended provisions went into effect prohibiting massage establishments from operating between the hours of midnight (12:00 a.m.) and 5:00 a.m., and further prohibiting any operator from utilizing a massage establishment as a principal domicile, unless the establishment is zoned for residential use; and

**WHEREAS**, Section 480.052, Florida Statutes, expressly allows a municipality to regulate persons and establishments licensed as massage therapists, so long as such regulation does not exceed the powers of the State of Florida or is inconsistent with Chapter 480, Florida Statutes; and

**WHEREAS**, the City wishes to exercise its regulatory authority under its home rule powers to provide for the regulation of Massage Therapists and Massage Establishments, and to make its existing regulations more consistent with State law and regulation; and

**WHEREAS**, The Mayor and City Commission of the City of Hallandale Beach desire to amend Section 7-461 Massage Services of the Code of Ordinances to reflect the amendments adopted in Chapter 480 of the Florida Statutes; and

**WHEREAS**, consistent with the authority granted to a municipality in Section 480.052, the Mayor and City Commission have determined that additional standards are necessary for the proper regulation of massage parlors operating in the City of Hallandale Beach; and



Apprentice means a person approved by the State Board of Massage therapy (meeting the qualifications stated in Chapter 64B7-20.002, F.A.C.) to study massage under the control, and instruction of a massage therapist.

Completed Application means an application packet which contains all required information and documentation.

Disqualifying Conduct means any of the following within the five (5) year period preceding the date of inquiry, (except for conduct involving violations of Florida Statutes Chapters 794, 800, or 847):

- A. Being convicted or found guilty, regardless of adjudication, of a crime in any jurisdiction, which relates to the practice of massage or to the ability to practice massage. Any plea of nolo contendere shall be considered a conviction for purposes of this chapter.
- B. The occurrence of sexual activity by any person or persons in any Massage Establishment.
- C. Engaging in or permitting any person or persons to engage in sexual activity in such Owner's Massage Establishment, or to use such Establishment to make arrangements to engage in sexual activity with any client.
- D. Using the therapist-client relationship to engage in sexual activity with any client.
- E. Delegating professional responsibilities to a person when the licensee delegating such responsibilities, knows or has reason to know that such person is not qualified by training, experience, or licensure to perform such professional responsibilities.
- F. Aiding, assisting, procuring, or advising any unlicensed person to practice massage contrary to State law, or the Rules of the Department of Health or Board of Massage Therapy.
- G. Refusing to permit the Department of Health or the City to inspect the business premises of the licensee during normal business hours.
- H. Refusing to produce immediately, a Valid Government Identification for each Massage Therapist upon the City's request (meaning, a failure of each Massage Therapist to carry a Valid Governmental Identification on his or her person and produce same for inspection upon the City's request).
- I. Practicing massage at a site, location, or place which is not duly licensed as a Massage Establishment.
- J. Presenting the license of another as his or her own.

- 101 K. Allowing another to utilize his or her license.
- 102 L. Using, or attempting to use, a license that has been revoked.
- 103 M. Falsely impersonating any other license holder of a like or different name.
- 104 N. Providing false or forged evidence to the City in connection with an application for a
- 105 massage therapy services certificate.
- 106 O. Committing any infraction specified in Rule 64B7-30.002, F.A.C. as same may be
- 107 amended from time to time; or
- 108 P. Committing any misdemeanor or felony offense which relates directly to the
- 109 operation of a Massage Establishment, whether as a Massage Establishment Owner
- 110 or operator or employee thereof; or
- 111 Q. Failure of the Owner or Massage Therapist to register under the provisions of Florida
- 112 Statutes Chapter 775; or,
- 113 R. The applicant having been convicted in a court of competent jurisdiction of :
- 114 a. Any violation of Florida Statutes Chapters 456, 794, 796, 800, 847, or 893; or
- 115 b. Conspiracy or attempt to commit any such offense.
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117 *In Good Standing means:*

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- 119 a. That the applicant's state license is current;
- 120 b. That the applicant's state license will not expire during the fiscal year for which
- 121 the massage therapy services certificate is issued (or if such the case, that a
- 122 renewal for the state license has been filed);
- 123 c. That there are no pending Department of Health Administrative complaints
- 124 against the applicant which seek permanent revocation or suspension of the
- 125 applicant's state license;
- 126 d. That there are no pending Department of Health Administration complaints
- 127 against the applicant's state license seeking a restriction of practice or placement
- 128 on probation (the city may disregard this evidence if it receives a resolution from
- 129 the Board of Massage Therapy, or a letter from the Executive Director of the
- 130 Department of Health indicating that the remedy sought will not preclude the
- 131 applicant from pursuing the massage therapy services certificate; and
- 132 e. That the applicant is not being prosecuted, or has criminal charges pending at
- 133 the state or federal prosecutor, at the time the city must approve or deny the
- 134 application for the massage therapy services certificate, or where the applicant

has within the five (5) years preceding the date of the application pled guilty or nolo contendere to crimes involving the disqualifying conduct as within this section.

Massage Services means the manipulation of the soft tissue of the human body with the hand, foot, arm, or elbow, whether or not such manipulation is aided by hydrotherapy, including colonic irrigation, or thermal therapy; any electrical or mechanical device; or the application to the human body of a chemical or herbal preparation.

Massage Establishment means a site or premises, or portion thereof, wherein a licensed Massage therapist practices massage, and which meets the requirements of chapter 480.043, Florida Statutes, as may be amended from time to time, and Chapter 64B7-26, F.A.C. et. Seq., as may be amended from time to time, and Chapter 32, Division 25, Section 32-779 City of Hallandale Beach Code, as may be amended from time to time. This definition shall not be construed to include a hospital, nursing home, medical clinic, or the office of a physician, surgeon, physical therapist, chiropractor or osteopath duly licensed by this state.

Sexual or Genital Parts means the genitals, pubic area, anus, perineum of any person, and/or the vulva of a female.

Sexual Activity means any direct or indirect physical contact by any person or between persons which is intended to erotically stimulate either person or both, or which is likely to cause such stimulation and includes sexual intercourse, fellatio, cunnilingus, masturbation, or anal intercourse. For purposes of this definition, masturbation means the manipulation of any body tissue with the intent to cause sexual arousal. As used herein, sexual activity can involve the use of any device or object, and is not dependent on whether penetration, orgasm, or ejaculation has occurred. Nothing herein shall be interpreted to prohibit a licensed Massage Therapist, duly qualified under Rule 64B7-31.00, from practicing colonic irrigation.

(b) ~~Application for certificate for massage therapy services.~~ All businesses providing massage services, as defined in Chapter 32, Zoning and Land Development Code, Section 32-8, "Definitions," shall apply for a massage therapy services certificate from the city. An application for a massage therapy services certificate shall include the following information on a form provided by the city:

Massage Therapy Services Certificate. No establishment shall be permitted to offer or provide massage services within the city without a massage therapy services certificate issued pursuant to this section. All persons providing massage services at the establishment must be

duly licensed under F.S. §480.041 et seq.; approved as a massage therapy apprentice as defined in F.S. §480.033, or possess another valid health care practitioner license duly issued by the Florida Department of Health pursuant to F.S. Ch. 456.

(1) ~~Proof of valid Florida Board of Massage Therapy license issued to the establishment in accordance with F.S. § 480.043 et seq.; and~~

Application. All businesses providing massage services, as defined within this Section and in Chapter 32, Zoning and Land Development Code, Section 32-8, "Definitions," shall apply for a massage therapy services certificate from the city. Any operator applying for a massage therapy services certificate shall include the following information on a form provided by the city:

a. Proof of valid Florida Board of Massage Therapy license issued to the establishment in accordance with F.S. §480.043 et seq.; and

b. Proof of valid Florida Board of Massage Therapy or other state health care practitioner license for all personnel providing massage services at the establishment, in accordance with F.S. §480.041 et seq. or F.S. Ch. 456; or proof of Florida Board of Massage apprenticeship approval as defined in F.S. §480.033, if applicable; and

c. Proof of valid Florida driver's license or other government-issued identification for every person and massage therapist working at the establishment.

(2) ~~Proof of valid Florida Board of Massage Therapy or other state health care practitioner license for all employees providing massage services at the establishment, in accordance with F.S. § 480.041 et seq. or F.S. ch. 456; or proof of Florida Board of Massage apprenticeship approval as defined in F.S. § 480.033, if applicable to employee(s)~~ Term of massage therapy services certificate. Once issued, a massage therapy services certificate shall remain valid for a period of one (1) year, or until there is a change of the use, ownership, name, location of the establishment from that specified on the approved certificate, or until such time that the City-issued Business Tax Receipt (BTR) expires.

a. Renewal. The operator of any massage establishment that holds a certificate must submit an application to renew the certificate within thirty (30) days prior to the expiration date of the current certificate in order to continue operating.

b. When there is a change of the use, ownership, business name, or establishment name, or establishment location from that specified on the approved certificate, a new certificate shall be required.

c. All establishments providing massage services within the city as of the date of adoption of this article shall make an application in accordance with subsection (b) of this section within sixty (60) days of the date of adoption of this article.

(4) Requirement to supply updated information. In the first week of each month during the term of a massage services certificate, each establishment holding a certificate must supply the city with the following information on a form, and in the manner prescribed by the city:

a. Revocation, expiration, or change to the status of the state licenses described in subsection (b); and

b. Updated state driver's license or other government-issued identification information for all personnel providing massage services at the establishment, including new staff members.

c. Proof of valid licensure of any new employees, pursuant to Subsection (b)(1) of this Section, within 7 days of employment, regardless of monthly report due date.

(5) Display of certificate. Establishments must display the valid certificate in a place easily visible to any person entering the establishment and must maintain proof of valid licenses and identification of each staff member on the premises of the establishment at all times during operation.

(6) Revocation. The following shall be nonexclusive grounds for revocation of a massage therapy services certificate:

a. Noncompliance with any provision in subsection (b) "Certificate" of this section; or

b. Noncompliance with Chapter 480 of the Florida Statutes; or

c. Failure to update information as required by subsection (4) of this section; or

d. The city's determination that issuance of a certificate was granted based upon false information, misrepresentation of fact, or mistake of fact by the

representative of the establishment holding the certificate, or his or her agent.

(7) Revocation procedure. The procedure for revocation of a massage therapy services certificate shall be in accordance with section 18-40(b)-(f), by clear and convincing evidence.

(8) Exemptions. Massage services in state-licensed hospitals and hospices, or those massages provided by a massage therapist acting under the direction of a licensed medical provider or practitioner, shall be exempt from the certificate requirements of this section.

~~(c) Requirement to supply updated information.~~ Each month during the term of a massage therapy services certificate, each establishment holding a certificate shall supply the city with the following information on a form and in the manner prescribed by the city. Prohibited Activities. Any massage establishment operating in the city must abide by the following conditions:

(1) ~~Revocation, expiration, or change to the status of the state licenses described in subsection (b); and~~ No establishment shall be permitted to provide massage services within the city without a massage services certificate issued pursuant to subsection (b) of this section.

(2) ~~Updated state license information for all employees providing massage services at the establishment, including new employees.~~ It shall be unlawful for any person in a massage establishment to engage in sexual activity, as defined in this section.

(3) 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, employee, or any other person under his or her control or supervision to engage in sexual activity.

(4) No massage services shall be offered or performed between the hours of 10:00 p.m. and 6:00 a.m. This subsection does not apply to massage services that are exempt pursuant to F.S. §480.0475(1)(a)-(c), which includes:

a. Massage establishments located on the premises of a health care facility, hotel, public airport or pari-mutuel facility;

b. Massage services performed under the prescription of a duly licensed medical practitioner; and



c. Massage services performed during special events with the express approval of the city. Each establishment shall apply in advance for special events permission on a form and in the manner prescribed by the city.

(5) No persons are permitted to utilize the massage establishment as a principle domicile unless otherwise permitted as a home occupation under Chapter 32, Zoning and Land Development Code.

(6) No massage establishment shall be permitted to provide massage services within this city in violation of the zoning limitations as provided in Chapter 32, Zoning and Land Development Code, Section 32-779, "Massage Services."

(d) ~~*Term of massage therapy services certificate*~~ Penalties.

(1) ~~Once issued, a massage therapy services certificate shall remain valid until there is a change of the use, ownership, establishment name, or establishment location from that specified on the approved certificate;~~ A person violating the provisions of F.S. §480.0475 may face criminal charges up to a third degree felony, pursuant to subsection (3) of that section.

(2) ~~When there is a change of the use, ownership, business name, or establishment name, or establishment location from that specified on the approved certificate, a new certificate shall be required;~~ Pursuant to F.S. §§60.05 and 823.05, the operation of any massage establishment in violation of F.S. §480.0475, is a declared nuisance and may result in an injunction and costs ordered against that establishment, the operator of that establishment, or owner or agent of the building or ground on which that establishment exists.

(3) ~~All establishments providing massage services within the city as of the date of adoption of this article shall make an application in accordance with subsection (b) within 60 days of the date of adoption of this article~~ Violations of subsections (b) "Certificate" and (c) "Prohibited Activities" of this section shall additionally be punishable in a manner to be prescribed by the city and may result in the revocation of a massage services certificate, the imposition of fines, or the pursuit of criminal charges against the massage establishment and/or person(s) in violation of these ordinances.

(e) ~~All persons providing massage services at the establishment holding the certificate for massage therapy services shall be duly licensed under F.S. § 480.041 et seq.; approved as a massage therapy apprentice as defined in F.S. § 480.033; or possess another valid health care practitioner license duly issued by the Florida Department of Health pursuant~~

to F.S. ch. 456. ~~The massage services provided at the establishment shall be related to the profession for which the person giving the massage is licensed.~~ Posting Notice of Prohibited Acts Statement.

Every person owning, operating or managing a massage parlor shall post a copy of the following statement:

"It shall be unlawful for any person in a massage establishment to place his or her 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, or for such other person to request or permit such placing, touching, fondling or massaging.

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, employee, or any other person under his or her control or supervision to perform such acts prohibited above.

Any person violating these provisions shall be punished by fine not exceeding \$500, or imprisonment for a term not exceeding sixty (60) days, or both, in the discretion of the court."

The statement shall be posted in a conspicuous place in the massage establishment, so that it may be readily seen by persons entering the premises.

~~(f) — Revocation. The following shall be grounds for revocation of a massage therapy services certificate:~~

~~(1) — Noncompliance with subsection (e) of this section.~~

~~(2) — Failure to update information as required by subsection (c) of this section for a period of three or more consecutive months.~~

~~(3) — The city's determination that issuance of a certificate was granted based upon false information, misrepresentation of fact, or mistake of fact by the representative of the establishment holding the certificate, or his or her agent.~~

~~(4) — Revocation procedure. The procedure for revocation of a massage therapy services certificate shall be in accordance with section 18-40(b) — (f), by clear and convincing evidence.~~

**SECTION 2. Conflict.** All ordinances or portions of the Code of Ordinances of the City of Hallandale Beach in conflict with the provisions of this ordinance shall be repealed to the extent of such conflict.

**SECTION 3. Severability.** Should any provision of this ordinance be declared by a court of competent jurisdiction to be invalid, the same shall not affect the validity of the ordinance as a whole, or any part thereof, other than the part declared to be invalid.

**SECTION 4. Codification.** It is the intention of the Mayor and City Commission that the provisions of this ordinance be incorporated into the Code of Ordinances; to effect such intention the words "ordinance" or "section" may be changed to other appropriate words.

**SECTION 5.** This Ordinance shall take effect immediately upon adoption.

PASSED AND ADOPTED on 1<sup>st</sup> reading on May 21, 2014.

PASSED AND ADOPTED on 2<sup>nd</sup> reading on June 4, 2014.

SPONSORED BY: CITY ADMINISTRATION

ATTEST:

\_\_\_\_\_  
JOY F. COOPER  
MAYOR

\_\_\_\_\_  
SHEENA D. JAMES, CMC  
CITY CLERK

APPROVED AS TO LEGAL SUFFICIENCY and  
FORM

\_\_\_\_\_  
V. LYNN WHITFIELD  
CITY ATTORNEY