

ORDINANCE NO. 2475

AN ORDINANCE OF THE CITY OF PLANTATION RELATING TO THE SUBJECT OF MASSAGE; AMENDING THE ZONING CODE TO UPDATE ZONING REGULATIONS AND DEFINITIONS FOR MASSAGE ESTABLISHMENTS TO BE CONSISTENT WITH STATE LAW AND REGULATION; AMENDING THE USE REGULATIONS IN THE SPI-2 ZONING DISTRICT TO MAKE MASSAGE ESTABLISHMENTS A CONDITIONAL USE WHICH IS ALLOWED ONLY IN THE HCS: HEALTHCARE SERVICES SUBDISTRICT, HC: HYBRID COMMERCIAL SUBDISTRICT, AND THE PO: PROFESSIONAL OFFICES SUBDISTRICT; AMENDING THE CITY'S OTHER ZONING USE REGULATIONS SO AS TO MAKE MASSAGE ESTABLISHMENTS A CONDITIONAL USE WHICH IS ALLOWED ONLY IN THE B-2P CENTRAL BUSINESS DISTRICT, B-3P GENERAL BUSINESS DISTRICT, AND SPI-3 DISTRICT; UPDATING AND AMENDING THE CITY'S BUSINESS REGULATIONS PERTAINING TO MASSAGE ESTABLISHMENTS AND MASSAGE THERAPISTS TO MAKE SAME MORE CONSISTENT WITH STATE LAW AND REGULATION; PROVIDING THAT APPEALS FROM THE DENIAL, REVOCATION, OR SUSPENSION OF A LOCAL BUSINESS RECEIPT TAX FOR A MASSAGE THERAPIST OR A MASSAGE ESTABLISHMENT SHALL BE MADE TO THE BOARD OF ADJUSTMENT; PROVIDING A DEFINITION OF PUBLIC NUISANCE IN CONNECTION WITH THE FOREGOING; PROVIDING FINDINGS; PROVIDING A SEVERANCE CLAUSE; AND PROVIDING AN EFFECTIVE DATE THEREFOR.

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, Section 480.052, Florida Statutes, confirms the authority of a city to regulate persons and establishments licensed under Chapter 480, Florida Statutes, entitled, "Massage Practice," provided such municipal regulation does not exceed the powers of the State under such law or be inconsistent with such law;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PLANTATION, FLORIDA, THAT:

SECTION 1. Sec. 27-1 of the Code of Ordinances of the City of Plantation is hereby amended to create a definition for "Massage Establishment", and to insert in its appropriate alphabetical listing of definitions within such section the following definition:

"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 27, Plantation City Code, as may be amended from time to time, and Chapter 14, Article IV, Division 7 of this Code. A Massage Establishment is a type of a Personal Services business listing, but because of special public concerns with this use, it is subject to special rules and regulations.

SECTION 2. Subsection 27-613.3 (17) of the Code of Ordinances of the City of Plantation is hereby amended to revise supplemental note (17) to create supplemental regulations for Massage Establishments that are independent of other types of personal services [and in recognition that “body wrapping” is already subject to supplemental note (55)] regulating the Master List of State Road 7 Subdistrict Uses, allow Massage Establishments only in the HCS: Health Care Subdistrict and HC: Hybrid Commercial Subdistrict, and only in such Subdistricts as a conditional use, and to reference operating standards, so as to read as follows:

Sec. 27-613.3. Supplemental regulations to the Master List of State Road 7 Subdistrict uses.

- (17) ~~Body wrapping is a permitted accessory use to a beauty parlor and to a toning salon. Body wrapping is defined as a weight loss, and skin reconditioning and toning technique, which involves wrapping a subject with an elastic material, by a licensed physician, nurse, physical therapist, masseuse, or beautician.~~

Massage Establishments are only permitted as a conditional use in the HCS: Healthcare Services Subdistrict and the HC: Hybrid Commercial Subdistrict; consequently, Massage Establishments are not permitted in any other SPI-2 Subdistrict. Massage Establishments must continuously satisfy the requirements of Section 480.043, Florida Statutes, as may be amended from time to time, Chapter 64B7-26, F.A.C. et. seq., as may be amended from time to time, the applicable off-street parking requirement set forth in this Chapter, and the operating requirements of Div. 7 of Article IV, Chapter 14 of this Code. The City finds and determines that three (3) or more occurrences of the circumstances described in Sec. 14-169 A-D, Plantation City Code, within any calendar year is adverse to the public health, safety, and welfare, and is sufficient to cause a Massage Establishment to lose its legal status, be classified as a public nuisance, and become illegal and a violation of the Code. Each day that the public nuisance exists as a result of the foregoing sentence shall be a new and separate offence. The City may enforce violations of the Code in any manner specified in Sec. 1-13 and Sec. 1-14, Plantation City Code. Any Massage Establishment that loses its legal status as a result of meeting the foregoing definition of public nuisance may be abated and enjoined in any manner consistent with law, in addition to all other available remedies.

SECTION 3. Subsection 27-721 (3) of the Code of Ordinances of the City of Plantation is hereby amended to revise supplemental note (3) to create supplemental regulations for Massage Establishments that are independent of other types of personal services regulated by

the Master List of Business Uses found in Section 27-720, Plantation City Code, update the definition of Massage Establishment, make Massage Establishments a conditional use which is allowed only in the B-2P Central Business District, B-3P General Business District, and SPI-3 District, and reference operating standards, so as to read as follows:

- (3) ~~Massage parlors, permitted and regulated under chapter 480 of the Florida Statutes, or its successor, are permitted on a conditional use basis. As used herein, the term massage parlor shall apply to a business primarily engaged in the activity of massage; defined as any method of pressure on or friction against the external parts of the body with the hands or with the aid of any mechanical or electrical apparatus, with or without such supplementary aids as rubbing alcohol, oils, powders, creams or lotions, performed by a certified massage therapist, medical practitioner, chiropractor, acupuncturist, physical therapist, or similar professional person licensed by the state.~~

Massage Establishments are only permitted as a conditional use in the B-2P Central Business District, B-3P General Business District, and SPI-3 District; consequently, Massage Establishments are not permitted in any other zoning district (except only where allowed on a conditional use basis in the SPI-2 zoning district). Massage Establishments must continuously satisfy the requirements of Section 480.043, Florida Statutes, as may be amended from time to time, Chapter 64B7-26, F.A.C. et. seq., as may be amended from time to time, the applicable off-street parking requirement set forth in this Chapter, and the operating requirements of Div. 7 of Article IV, Chapter 14 of this Code. The City finds and determines that three (3) or more occurrences of the circumstances described in Sec. 14-169 A-D, Plantation City Code within any calendar year is adverse to the public health, safety, and welfare, and is sufficient to cause a Massage Establishment to lose its legal status, be classified as a public nuisance, and become illegal and a violation of the Code. Each day that the public nuisance exists as a result of the foregoing sentence shall be a new and separate offence. The City may enforce violations of the Code in any manner specified in Sec. 1-13 and Sec. 1-14, Plantation City Code. Any Massage Establishment that loses its legal status as a result of meeting the foregoing definition of public nuisance may be abated and enjoined in any manner consistent with law, in addition to all other available remedies.

SECTION 4. Section 27-743(21) of the Plantation Code of Ordinances is hereby amended to create a specific off-street parking requirement for Massage Establishments and clarify the prior meaning of same, so as to read as follows:

Sec. 27-743. Amount of off-street parking.

- (21) *Medical and dental office buildings and/or clinics; medical or dental laboratories; Massage Establishments.* One (1) parking space per one hundred fifty (150) square feet of gross floor area.

SECTION 5: Div. 7 of Article IV, Chapter 14 of the Code of Ordinance of the City of Plantation is hereby enacted to create business regulations for Massage Establishments and Massage Practice, so as to read:

Div. 7. MASSAGE ESTABLISHMENTS AND MASSAGE PRACTICE

Sec. 14-160 - Definitions. The terms used herein are intended to be construed in light of the provisions of Chapter 480, Florida Statutes, and the Administrative Rules promulgated thereunder.

As used in this Division:

“Apprentice” means a person approved by the State Board of Massage Therapy (meeting the qualifications stated in Chapter 64B7-29.002, F.A.C.) to study massage under the control, direction, and instruction of a Massage Therapist.

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

“In good standing” shall mean:

- i. That the applicant’s state license is current;
- ii. That the applicant’s state license will not expire during the fiscal year for which the Local Business Tax Receipt is issued (or if such is the case, that a renewal for the state license has been filed);
- iii. That there are no pending Department of Health Administrative complaints against the applicant which seek permanent revocation or suspension of the applicant’s state license;
- iv. That there are no pending Department of Health Administration complaints against the applicant’s state license seeking a restriction of practice or placement on probation (the City may disregard this evidence if it receives a Resolution from the Board of Massage Therapy or a letter from the Executive Director of the Department of Health indicating that the remedy sought will not preclude the applicant from pursuing the occupation requested in the Local Business Tax Receipt); and,
- v. That the applicant is being prosecuted, or criminal charges are pending at the state or federal prosecutor, at the time the City must approve or deny the application for Local Business Receipts Tax, 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 identified in Section 14-169 of this Code.

“Massage” means the manipulation of the soft tissues 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 27, Plantation City Code, as may be amended from time to time, and Chapter 14, Article IV, Division 7 of this Code.

“Massage Therapist” means a person licensed as required by Chapter 480, “Massage Practice Act”, Florida Statutes, who administers massage for compensation.

“Owner” means the sole proprietor, partnership, limited partnership, corporation, limited liability company, or other business entity that operates a Massage Establishment.

“Recognized School” means any school or institution of learning, which school or institution of learning has been approved or accredited by the Florida Board of Massage, or other appropriate State department or agency.

“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 64B7-31.001, from practicing colonic irrigation.

“Sponsoring Massage Therapist” means a licensed Massage Therapist whose record with the Department of Health indicates compliance with Chapter 456 and 480, Florida Statutes, and the rules promulgated thereunder. A Sponsoring Massage Therapist must have been engaged in the actual practice of massage for at least three (3) years prior to the sponsorship.

“Valid Government Identification” for the purposes of this Division 7 shall mean:

- i. A valid, unexpired driver license issued by any state, territory or district of the United States;
- ii. A valid, unexpired identification card issued by any state, territory, or district of the United States;
- iii. A valid, unexpired United States passport;
- iv. A naturalization certificate issued by the United States Department of Homeland Security;

- v. A valid, unexpired alien registration receipt card (green card); or
- vi. A valid, unexpired employment authorization card issued by the United States Department of Homeland Security.

Sec. 14-161 – Local Business Tax Receipt Required, Exclusions.

- A. It is unlawful for a Massage Therapist to administer a massage in the City unless he or she has a valid Local Business Tax Receipt issued by the City.
- B. It is unlawful for any Owner to operate a Massage Establishment in the City unless the Owner has a valid Local Business Tax Receipt issued by the City.
- C. It is unlawful for the Owner of any Massage Establishment to allow any person who is not a Massage Therapist and who does not have a Local Business Tax Receipt required by this Section to administer a massage in the Massage Establishment.
- D. The provisions of this Division do not apply to the following massages, and such massages are expressly excluded from the requirements of this Division:
 - 1. A massage of the upper body while the client is fully clothed and seated in a chair.
 - 2. A massage administered in a hospital, medical clinic or in the office of a physician, chiropractor, osteopath, nurse, or physical therapist licensed by the State of Florida.
 - 3. A massage administered in a nursing home, convalescent care facility, assisted living facility, progressive care facility, life care facility, or as part of a licensed home health care program (such as hospice, for example).
 - 4. A massage administered by a physician, chiropractor, osteopath, physical therapist or nurse, licensed by the State of Florida, in any location.
 - 5. A massage administered at an organized public event, such as a health fair or sporting event, which is open for participation or viewing by the general public.
 - 6. A massage administered at a school which offers a massage therapy program that has received programmatic approval from the Florida Board of Education; provided however, that this exclusion applies only if the individual administering the massage is a student enrolled at the school and receives no compensation for doing so.
 - 7. A massage administered by an athletic trainer employed by or on behalf of a fitness club, school, or athletic team performing or training within this State.

8. A massage, excluding colonic irrigation, at the residence of a client, at the office of a client, at a sports event, or at a trade show.

Sec. 14-162 - Reporting and Notice Requirement.

- A. The Owner of a Massage Establishment shall notify the City, in writing, of the name and address of each person employed (or retained on an independent contractor basis) as a Massage Therapist, within five (5) business days of such person being employed or contracted.
- B. In the event the Owner knows, or with the exercise of reasonable diligence should have known, of facts and circumstances which would cause a reasonable person to conclude that the Massage Establishment (or the Owner thereof) has violated a provision of this Division, or any ordinance, law, rule, or regulation of the City, the State, the Department of Health, or any other public governmental regulatory agency which regulates the operation of Massage Establishments, the Owner shall report such facts and circumstances to the City Clerk and to the Florida Department of Health in writing within thirty (30) days of the occurrence of such facts and circumstances if known, or of the date that the Owner should have known of the occurrence of such facts and circumstances.

In the event the Florida Department of Health initiates disciplinary proceedings against the license of the Owner of the Massage Establishment which can result in the suspension, revocation, or termination of the Massage Establishment's license, the Owner shall post a conspicuous, weather resistant notice on the exterior of the front door of the Massage Establishment, which shall be in bold face font type no less than 72 points in size, and which shall state "THIS ESTABLISHMENT'S LICENSE IS UNDER STATE DISCIPLINARY REVIEW." This notice shall remain posted until such proceedings are concluded.

- C. In the event an Owner of a Massage Establishment knows, or with the exercise of reasonable diligence should know, of facts and circumstances which would cause a reasonable person to conclude that a Massage Therapist practicing in the Massage Establishment has violated a provision of this Division, or any ordinance, law, rule, or regulation of the City, the State, the Department of Health, or any other public governmental regulatory agency which regulates Massage Practice, the Owner of the Massage Establishment where the Massage Therapist works shall: (i) report such facts and circumstances to the City Clerk and to the Florida Department of Health, in writing and within thirty (30) days of the occurrence of such facts and circumstances if known, or of the date that the Owner should have known of the occurrence of such facts and circumstances, and (ii) terminate the contract or employment relationship between the Massage Establishment and the Massage Therapist involved or not allow him or her on the premises (provided that this shall not be required where the allegations are disputed formally by the Massage Therapist in administrative or judicial legal proceedings).

In the event the Florida Department of Health initiates disciplinary proceedings against the license of a Massage Therapist who is employed (or contractually retained) by a Massage Establishment which can result in the suspension, revocation, or termination of the Massage Therapist's license, the Owner shall post a conspicuous weather resistant notice on the exterior of the front door of the Massage Establishment, which shall be in bold face font type no less than 72 points in size, and which shall state "THERAPIST'S LICENSE UNDER STATE DISCIPLINARY REVIEW." This notice shall remain posted until such proceedings are concluded.

Sec. 14-163 - Application for Massage Establishment Local Business Tax Receipt.

- A. In addition to the general requirements for applications for Local Business Tax Receipts set forth in this Chapter 14, the Completed Application for a Massage Establishment Local Business Tax Receipt shall include: (i) all documentation provided to the Florida Department of Health for licensure of the proposed Massage Establishment (or most recent licensure renewal, if renewed), (ii) a copy of the Florida Department of Health's inspection report as such is described in Chapter 64B7-26.004, F.A.C., for the proposed location, (iii) a copy of all Florida Department of Health inspection reports as such is described in Chapter 64B7-26.004 and 64B7-26.005, F.A.C., for all other Massage Establishment locations operated by the Owner in the past five (5) years, (iv) a copy of all Florida Department of Health disciplinary reports, notices of noncompliance and citations for all Massage Establishment locations operated by the Owner as a Massage Establishment in the past five (5) years, (v) a copy of any current restrictions issued by the Florida Department of Health on the license of the applicant, (vi) a list of dates in which the Owner's license was deemed delinquent, retired or in inactive status by the Florida Department of Health for all locations operated by the Owner as a Massage Establishment in the past five (5) years, (vii) the names and addresses of the applicant (if an individual), of the stockholders holding more than five (5) percent of the stock of the corporation, and the officers and directors of the corporation (if the applicant is a corporation), of all partners including limited partners (if the applicant is a partnership), of all members (if the applicant is a Limited Liability Company), the manager or other person principally in charge of the day to day operation of the Massage Establishment, and the names of all Massage Therapists that will work on the premises, (viii) a copy of the license and Valid Government Identification of each Massage Therapist employed or contracted to work in the Massage Establishment, (ix) a statement of whether the Owner's Massage Establishment license and the license of any other individual described in the preceding clause (vii) and related to the occupation of Massage Practice has been placed on probation or suspended or revoked or terminated in the past five (5) years, and whether the Owner and any other individual described in the preceding clause (vii) has engaged in disqualifying conduct as described herein in the past five (5) years; and (x) a copy of the Massage Establishment's license.
- B. The information required by this Section shall also be required for any Application to renew a Local Business Tax Receipt for a Massage Establishment.

- C. If, during the term of a Local Business Tax Receipt, any of the information submitted on the original or renewal application changes, the applicant shall notify the City Clerk of such change within ten (10) business days thereafter, in writing.

Sec. 14-164 - Application for Massage Therapist Local Business Tax Receipt.

- A. In addition to the general requirements for applications for Local Business Tax Receipts set forth in Chapter 14, the Completed Application for a Massage Therapist Local Business Tax Receipt shall include: (i) all documentation provided to the Florida Department of Health for the Massage Therapist's licensure (or most recent licensure renewal, if renewed), (ii) a copy of the Massage Therapist's license and Valid Government Identification, (iii) a copy of the most recent Florida Department of Health's inspection report as such is described in Chapter 64B7-26.004, F.A.C., for the Massage Establishment wherein the Massage Therapist intends to practice, (iv) a copy of all Florida Department of Health disciplinary reports, notices of noncompliance, administrative complaints, and citations in the past five (5) years concerning the Massage Therapist, (v) a copy of any current restrictions issued by the Florida Department of Health on the Massage Therapist's license, (vi) a list of dates in which the Massage Therapist's license was deemed delinquent, retired or in inactive status by the Florida Department of Health in the past five (5) years, (vii) documentation for all continuing education courses over the past four (4) years, and (viii), a copy of the Local Business Tax Receipt for the Massage Establishment where the Massage Therapist will practice.
- B. The information required by this Section shall also be required for any Application to renew a Local Business Tax Receipt for a Massage Therapist.
- C. If, during the term of a Local Business Tax Receipt, any of the information submitted on the original or renewal application changes, the applicant shall notify the City of such change within ten (10) business days thereafter, in writing.

Sec. 14-165 - Approval or Denial of Massage Establishment Local Business Tax Receipt Applications and Renewals.

- A. Within sixty (60) working days following receipt of a Completed Application, the City shall either issue the Local Business Tax Receipt or mail a written statement of the reasons for denial.
- B. The City shall deny a Local Business Tax Receipt of an applicant where any of the following conditions exist:
1. The applicant has not provided the City with a Complete Application; or,
 2. The applicant has made one or more material misstatements in the application for a Local Business Tax Receipt or renewal of Local Business Tax Receipt; or,

3. The applicant does not have a current license in good standing from the Florida Department of Health to operate a Massage Establishment at the site proposed; or,
4. The Florida Department of Health has initiated disciplinary proceedings against the applicant which can result in the suspension, revocation, or termination of the applicant's license and such proceedings are not concluded; or,
5. The Massage Establishment, as proposed or as same exists, as applicable, would not or does not comply with all applicable laws, including, but not limited, to, all the City's building, fire, zoning, and other land development regulations (provided however, that Massage Establishments which are legal nonconforming uses with respect to the City's zoning regulations will be able to not fully comply with the requirements of this paragraph to the extent of their zoning nonconformities); or,
6. All persons to be employed (or retained on an independent contractor basis) by the applicant as Massage Therapists do not have current licenses in good standing from the Florida Department of Health to engage in the occupation of Massage Therapist; or,
7. The Florida Department of Health has initiated disciplinary proceedings against the license of a Massage Therapist listed on the applicant's application which can result in the suspension, revocation, or termination of the Massage Therapist's license and such proceedings are not concluded; or,
8. Facts and circumstances exist which would cause a reasonable person to conclude that the applicant has violated a provision of this Division, or any ordinance, law, rule, or regulation of the City, the State, the Department of Health, or any other public governmental regulatory agency which regulates the operation of Massage Establishments, that the applicant knew of the violation or with the exercise of reasonable diligence should have known of the violation, and that the applicant has failed to report such facts and circumstances to the City Clerk and to the Florida Department of Health in writing within thirty (30) days of the occurrence of such facts and circumstances if known, or the date that the applicant with the exercise of reasonable diligence should have known of the violation; or,
9. Facts and circumstances exist which would cause a reasonable person to conclude that a Massage Therapist practicing in the Massage Establishment has violated a provision of this Division, or any ordinance, law, rule, or regulation of the City, the State, the Department of Health, or any other public governmental regulatory agency which regulates the operation of Massage Establishments or Massage Practice, that the applicant knew of the violation or with the exercise of reasonable diligence should have known of the violation, and that the applicant has: (i) failed to report such facts and circumstances to the City Clerk and to the Florida Department of Health in writing within thirty (30) days of the occurrence

of such facts and circumstances if known, or the date that the applicant with the exercise of reasonable diligence should have known of the violation, and (ii) failed to terminate the contract or employment relationship between the Massage Establishment and the Massage Therapist involved, or otherwise failed to disallow him or her on the premises (provided that this shall not be required where the allegations are disputed formally by the Massage Therapist in administrative or judicial legal proceedings); or,

10. The Massage Establishment meets the definition of a public nuisance in Sec. 14-175, Plantation City Code; or,

11. The Owner has allowed a person to administer a massage in the Massage Establishment who:

a. Does not have a valid Local Business Tax Receipt, or

b. Is not licensed in accordance with State law and regulation; or,

c. Whose license with the Department of Health is not in good standing.

C. In the event of a determination by the City to deny a Local Business Tax Receipt for a Massage Establishment, the City shall provide notice of such action to the applicant by certified mail, return receipt requested, which notice shall state that the denial shall become effective within thirty (30) calendar days of the date of notice, unless the applicant institutes an appeal of such administrative determination by filing an Appeal to the Board of Adjustment within such thirty (30) calendar day period in accordance with Chapter 27, Article III, Division 2 of this Code, pertaining to the appeal of a decision of an administrative official (specifically, Sec. 27-43, Plantation City Code). In the event of such Appeal, and in the event the Board of Adjustment determines that the administrative determination should not be upheld, the application shall be returned to the City Clerk who shall cause the City to re-evaluate the application and approve or deny same within thirty (30) days of the decision of the Board of Adjustment.

Sec. 14-166 - Massage Establishment Local Business Tax Receipt Suspension or Revocation.

A. No Local Business Tax Receipt granted herein shall confer any vested right in favor of any person or business entity, or operate as an equitable estoppel, against the City enforcing its law.

B. After an investigation, any Local Business Tax Receipt issued for a Massage Establishment may be revoked or suspended by the City where any of the following is found:

1. The Owner or a Massage Therapist has violated any provision of this Division, or has failed to comply with one or more of the requirements of this Division; or
 2. The Owner or a Massage Therapist is a person who has engaged in disqualifying conduct as described in Section 14-169; or
 3. The City determines that any of the conditions in Section 14-165 B are applicable; or,
 4. The Massage Establishment meets the definition of a public nuisance in Section 14-175, Plantation City Code.
- C. In the event of a determination by the City to suspend or revoke a Local Business Tax Receipt for a Massage Establishment, the City shall provide notice of such action to the holder of the Local Business Tax Receipt by certified mail, return receipt requested, which notice shall state that the suspension or revocation shall become effective within thirty (30) calendar days of the date of notice, unless the holder of the Local Business Tax Receipt institutes an appeal of such administrative determination by filing an Appeal to the Board of Adjustment within such thirty (30) calendar day period in accordance with Chapter 27, Article III, Division 2 of this Code, pertaining to the appeal of a decision of an administrative official (specifically, Sec. 27-43, Plantation City Code). In the event of such Appeal, the suspension or revocation shall be deemed effective only if and after the Board of Adjustment determines that the administrative determination should be upheld. In the event the administrative determination is not Appealed, the suspension or revocation shall be deemed effective as provided in the notice.
- D. No Massage Establishment shall be open to the public, or allow massages to be conducted therein, during the time period that its Local Business Tax Receipt is suspended.
- E. A Massage Establishment shall not be open to the public, or allow massages to be conducted therein, in the event its Local Business Tax Receipt is revoked. In this event, it shall immediately cease, discontinue, and close.

Sec. 14-167 - Approval or Denial of Massage Therapist Local Business Tax Receipt Applications and Renewals.

- A. Within sixty (60) working days following receipt of a Completed Application, the City shall either issue the Local Business Tax Receipt or mail a written statement of the reasons for denial.
- B. The City shall deny a Local Business Tax Receipt of an applicant where any of the following conditions exist:
 1. The applicant has not provided the City with a Complete Application; or,

2. The applicant has made one or more material misstatements in the application for a Local Business Tax Receipt or renewal of Local Business Tax Receipt; or
 3. The applicant does not have a current license as a Massage Therapist from the Florida Department of Health which is in good standing; or,
 4. The Florida Department of Health has initiated disciplinary proceedings against the applicant which can result in the suspension, revocation, or termination of the applicant's license and such proceedings are not concluded; or,
 5. The Massage Establishment where the Massage Therapist practices or proposes to practice, does not have a current license from the Department of Health which is in good standing; or,
 6. The Massage Establishment where the Massage Therapist practices or proposes to practice, would not or does not comply with all applicable laws, including, but not limited to, all the City's building, fire, zoning, and other land development regulations (provided however, that Massage Establishments which are legal nonconforming uses with respect to the City's zoning regulations will be able to not fully comply with the requirements of this paragraph to the extent of their zoning nonconformities); or,
 7. Facts and circumstances exist which would cause a reasonable person to conclude that the applicant has violated a provision of this Division, or any ordinance, law, rule, or regulation of the City, the State, the Department of Health, or any other public governmental regulatory agency which regulates the practice of Massage, that the applicant knew of the violation or with the exercise of reasonable diligence should have known of the violation, and the applicant has failed to report such facts and circumstances to the City Clerk and to the Florida Department of Health in writing within thirty (30) days of the occurrence of such facts and circumstances if known, or the date the applicant should have known of the violation with the exercise of reasonable diligence; or;
 8. The Massage Establishment where the applicant proposes to practice Massage meets the definition of a public nuisance in Sec. 14-175, Plantation City Code.
- C. In the event of a determination by the City to deny a Local Business Tax Receipt for a Massage Therapist, the City shall provide notice of such action to the applicant by certified mail, return receipt requested, which notice shall state that the denial shall become effective within thirty (30) calendar days of the date of notice, unless the applicant institutes an appeal of such administrative determination by filing an Appeal to the Board of Adjustment within such thirty (30) calendar day period in accordance with Chapter 27, Article III, Division 2 of this Code, pertaining to the appeal of a decision of an administrative official (specifically, Sec. 27-43, Plantation City Code). In the event of such Appeal, and in the event the Board of Adjustment

determines that the administrative determination should not be upheld, the application shall be returned to the City Clerk who shall cause the City to re-evaluate the application and approve or deny same within thirty (30) days of the decision of the Board of Adjustment

Sec. 14-168 - Massage Therapist Local Business Tax Receipt Revocation or Suspension.

- A. No Local Business Tax Receipt granted herein shall confer any vested right in favor of any person, or operate as an equitable estoppel, against the City enforcing its law.
- B. After an investigation, any Massage Therapist Local Business Tax Receipt may be revoked or suspended by the City where it is found that:
 - 1. The Massage Therapist has violated any provision of this Division, or has failed to comply with one or more of the requirements of this Division; or
 - 2. The Massage Therapist is a person who has engaged in disqualifying conduct as described in Section 14-169; or
 - 3. The City determines that any of the conditions in Section 14-167 B are applicable; or,
 - 4. The Massage Establishment where the Massage Therapist practices massage meets the definition of a public nuisance in Sec. 14-175, Plantation City Code.
- C. In the event of a determination by the City to suspend or revoke a Local Business Tax Receipt for a Massage Therapist, the City shall provide notice of such action to the holder of the Local Business Tax Receipt by certified mail, return receipt requested, which notice shall state that the suspension or revocation shall become effective within thirty (30) calendar days of the date of notice, unless the holder of the Local Business Tax Receipt institutes an appeal of such administrative determination by filing an Appeal to the Board of Adjustment within such thirty (30) calendar day period in accordance with Chapter 27, Article III, Division 2 of this Code, pertaining to the appeal of a decision of an administrative official (specifically, Sec. 27-43, Plantation City Code). In the event of such Appeal, the suspension or revocation shall be deemed effective in the event the Board of Adjustment determines that the City determination should be upheld. In the event the determination is not Appealed, the suspension or revocation shall be deemed effective as provided in the notice.

Sec. 14-169 - Disqualifying Conduct Defined. As used in Division, "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 directly 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. No Massage Establishment Owner shall engage in or permit any person or persons to engage in sexual activity in such Owner's Massage Establishment or use such Establishment to make arrangements to engage in sexual activity in any other place.
- D. No Massage Therapist shall use the therapist-client relationship to engage in sexual activity with any client or to make arrangements 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 Governmental 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, except as provided in Section 14-161D.
- J. Present as his or her own the license of another.
- K. Allow the use of his or her license by an unlicensed person.
- L. Use, or attempt to use, a license that has been revoked.
- M. Falsely impersonating any other license holder of like or different name.
- N. The Owner or Massage Therapist provides false or forged evidence to the City in connection with an application for a Local Business Tax Receipt.
- O. Any infraction specified in Rule 64B7-30.002, F.A.C. as same may be amended from time to time; or

- P. Any misdemeanor or felony offense which relates directly to the operation of a Massage Establishment, whether as a Massage Establishment Owner or operator or employee thereof, or a Massage Therapist; or
- Q. The Owner or a Massage Therapist is required to register under the provisions of Florida Statutes Chapter 775; or,
- R. The applicant been convicted in a court of competent jurisdiction of:
 - 1. Any violation of Florida Statutes Chapters 456, 794, 796, 800, 847, or 893; or
 - 2. Conspiracy or attempt to commit any such offense.

Sec. 14-170 - Employment of Unlawful Massage Therapists Prohibited. An Owner shall not retain as an independent contractor, or hire or employ, a Massage Therapist unless such Massage Therapist possesses a valid Local Business Tax Receipt required by this Division and a Valid Governmental Identification.

Sec. 14-171 - Employment of Apprentices. An Owner that wishes to hire an Apprentice must notify the City Clerk prior to such hire and provide the name of the Apprentice and of the Sponsoring Massage Therapist. In addition, the Apprentice shall provide to the City Clerk all documentation provided to the Department of Health supporting his or her qualification as an Apprentice. The Sponsoring Massage Therapist shall provide to the City Clerk the proposed schedule for completion of the apprenticeship and make available for inspection by the City the daily record of hours completed by the Apprentice, as more particularly described in Chapter 64B7-29.003, F.A.C. The Sponsoring Massage Therapist must also provide the City the information required and described in Chapter 64B7-29.004- 64B7-29.007, F.A.C.

Sec. 14-172 - Hours of Operation. The Owner shall not conduct or operate a Massage Establishment between the hours of Ten O'clock p.m. (10:00 p.m.) and Six O'clock a.m. (6:00 a.m.) of the following day, and shall exclude all customers, patrons and visitors from the premises of a Massage Establishment between those hours. This Section does not apply to a Massage Establishment:

- A. Located on the premises of a health care facility as defined in s. 408.07 or of a hotel, motel, or bed and breakfast inn, as those terms are defined in s. 509.242; or
- B. In which every massage performed between the hours of Ten O'clock p.m. (10:00 p.m.) and Six O'clock a.m. (6:00 a.m.) is performed by a massage therapist acting under the direction of a physician or physician assistant licensed under chapter 458, an osteopathic physician or physician assistant licensed under chapter 459, a chiropractic physician licensed under chapter 460m a podiatric physician licensed under chapter 461, an advanced registered nurse practitioner licensed under part I of chapter 464, or a dentist licensed under chapter 466.

Sec. 14-173 - Display of Local Business Tax Receipts. The Owner of a Massage Establishment shall display the Massage Establishment Local Business Tax Receipt and the Local Business Tax Receipt of each and every Massage Therapist employed in the Massage Establishment (or contracted by the Massage Establishment) in an open and conspicuous place on the premises. Passport-size photographs of the Owner and Massage Therapist shall be affixed to the respective Local Business Tax Receipt on display pursuant to this Section.

Sec. 14-174 - Local Business Tax Receipt Limitations. No Massage Therapist issued a Local Business Tax Receipt under this Division may practice such occupation in any location in the City other than that location specified on the Local Business Tax Receipt.

Sec. 14-174-No Domicile. The Owner of a Massage Establishment may not use or permit the Massage Establishment to be used as a principle domicile unless the Massage Establishment is zoned for residential use.

Sec. 14-175- Public Nuisance.

- A. The City finds and determines that three (3) or more occurrences of the circumstances described in Sec. 14-169 A-D, Plantation City Code within any calendar year is adverse to the public health, safety, and welfare, and is sufficient to cause a Massage Establishment to lose its legal status, be classified as a public nuisance, and become illegal and a violation of the Code. Each day that the public nuisance exists as a result of the foregoing sentence shall be a new and separate offence.
- B. The City finds and determines that a violation of Sec. 14-174 of this Code is adverse to the public health, safety, and welfare, and is sufficient to cause a Massage Establishment to lose its legal status, be classified as a public nuisance, and become illegal and a violation of the Code. Each day that the public nuisance exists as a result of the foregoing sentence shall be a new and separate offence.
- C. The City may enforce violations of the Code in any manner specified in Sec. 1-13 and Sec. 1-14, Plantation City Code. Any Massage Establishment that loses its legal status as a result of being a public nuisance may be abated and enjoined in any manner consistent with law, in addition to all other available remedies.

SECTION 6. Severability.

Should any section, paragraph, sentence, clause, phrase or other part of this Ordinance be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of this Ordinance as a whole or any portion or part thereof, other than the part so declared to be invalid.

SECTION 7. Effective Date.

This Ordinance shall take effect immediately upon passage on second reading by the City Council and signature by the Mayor.

PASSED ON FIRST READING by the City Council this 9th day of January, 2013.

PASSED AND ADOPTED ON SECOND READING by the City Council this 13th day of February, 2013.

SIGNED by the Mayor this ___ day of _____, 2013.

Diane Peltis Bendekovic
MAYOR

ATTEST:

Susan K. Slattery
CITY CLERK

	APPROVED	DATE
REQUESTED BY:	_____	
DEPT. OK:	_____	
ADMIN. OK:	_____	
ATTY. OK:	<u><i>Donald J. ...</i></u>	_____
		AS TO FORM ONLY

RECORD ENTRY:

I HEREBY CERTIFY that the Original of the foregoing signed Ordinance was received by the Office of the City Clerk and entered into the Public Record this 26 day of February, 2013.

Susan K. Slattery
Susan Slattery, City Clerk