

ORDINANCE #2014-27

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF THE CITY OF DORAL, FLORIDA, AMENDING THE CITY CODE BY CREATING ARTICLE V. "MASSAGE THERAPY ESTABLISHMENTS," IN CHAPTER 8, "BUSINESS"; PROVIDING ADDITIONAL OPERATIONAL STANDARDS FOR MASSAGE THERAPY ESTABLISHMENTS; PROVIDING FOR ENFORCEMENT AND PENALTIES; PROVIDING FOR INCORPORATION INTO THE CITY CODE; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the trade and exploitation of human beings for the purposes of indentured servitude, forced prostitution and labor, and any other activity that deprives a person of his/her human rights ("human trafficking activity") constitute modern-day slavery and a worldwide crisis; and

WHEREAS, no community, including the City of Doral (the "City"), is immune to human trafficking activity due, in part, because of various legitimate business fronts that serve to mask the illegal and indignant activity; and

WHEREAS, several governmental agencies, from the City Police Department to the Office of the Attorney General of Florida, have reported substantiated findings that massage establishments have been regularly recognized as sites the mask and host human trafficking activity; and

WHEREAS, the strategic plan resulting from the Florida Task Force on Human Trafficking stated that massage establishments are recognized as sites where human trafficking activity occurs; and

WHEREAS, Section 480.52, Florida Statutes, expressly allows a municipality to regulate persons and establishments licensed as massage therapists, so long as such

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regulation does not exceed the powers of the State of Florida under Chapter 480, Florida Statutes; and

WHEREAS, the Mayor and City Council have been made aware of reports, from law enforcement and published in the media, that human trafficking activity may be occurring may be occurring as an adverse secondary effect associated with unregulated and unlicensed massage businesses; and

WHEREAS, the Mayor and City Council find that unregulated massage businesses, particularly those that operate during early morning or late night hours, carry a substantial risk of contributing to the occurrence of human trafficking activity, as well as conducting other criminal activity and diminished property values; and

WHEREAS, pursuant to Section 480.052, state law does not preempt local regulation of massage establishments; and

WHEREAS, the Mayor and City Council desire to provide further standards for the operation of massage therapy establishments, recognizing that there are legitimate licensed, and reputable massage therapy establishments that will be likewise protected by additional operational standards; and

WHEREAS, the Mayor and City Council believe that policies contained herein to reduce the opportunities for human trafficking activities to occur further the health, safety, and welfare of the City and are in the best interest of the community.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DORAL, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The above Recitals are confirmed, adopted, and incorporated herein and made a part hereof by this reference.

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Section 2. **Code Amended.** The Code of Ordinances of the City of Doral is hereby amended by creating Article V, “Massage Therapy Establishments,” in Chapter 8, “Business,” to provide as follows:

* * *

CHAPTER 8. BUSINESS

ARTICLE V – MASSAGE THERAPY ESTABLISHMENTS

Sec. 5-200 Legislative Intent.

It is the intent of the City Council of the City of Doral, Florida, to enact by Ordinance, in accordance with Chapter 480, Florida Statutes, local laws providing for regulations and standards for massage therapy establishments that cumulatively work to protect legitimate massage therapy establishments and to eliminate opportunities for illegitimate massage therapy establishments to serve as fronts and/or hosts for human trafficking activities, with the greater intention of preserving the dignity and human rights of all persons in the city.

Sec. 5-201 Definitions.

The terms of this section shall have the same definitions as provided in Section 480.033, Florida Statutes, as may be amended from time to time, unless specifically provided otherwise herein. For the purposes of clarity, the City adopts from Section 480.033 the definitions of the following words:

- (1) “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;
- (2) “Massage therapist” means a person licensed as required by this act, who administers massage for compensation; and
- (3) “Establishment” means a site or premises, or portion thereof, wherein a massage therapist practices massage.

Sec. 5-202, ~~Unlicensed provision of massage unlawful.~~

Unless expressly exempted, no person may provide massage as part of any business or for any consideration or remuneration in the city, unless the

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individual is duly licensed under Chapter 480, Florida Statutes, the individual and/or Establishment has obtained an appropriate business tax receipt from the City, and the individual and/or Establishment has all other city and county approvals necessary to carry on such a business.

Sec. 5-203. Requirements for Massage Establishments.

A permitted massage therapy business shall meet all of the following requirements:

- (1) The massage therapy business (or establishment) shall be licensed and meet all of the requirements set out in Florida law, including the requirements in Chapter 480, Florida Statutes, and Chapters 64B7-26 and 64B7-30, Florida Administrative Code.
- (2) All persons in the massage therapy business or establishment who offer to provide or provide massage as defined in this Section and in Section 480.033, Florida Statutes, shall be licensed by the State of Florida and the license shall be in good standing. Each licensed massage therapist shall be in compliance with all requirements of Florida law, including those statutes and administrative rules referenced in this Section.
- (3) The massage therapy business may only operate between the hours the hours of 5:00 a.m. through midnight, subject to the exceptions set forth in article this section.
- (4) The hours of operation set forth in paragraph (3) of this section do not apply to any of the following:
 - (a) A massage therapy business located on the premises of a healthcare facility as defined in Section 408.07, Florida Statutes;
 - (b) A health care clinic as defined in Section 400.9905(4), Florida Statutes;
 - (c) A hotel, motel, or bed and breakfast inn, as those terms are defined in Section 509.242, Florida Statutes;
 - (d) A timeshare property as defined in Section 721.05, Florida Statutes;
 - (e) A massage performed by a massage therapist acting under the prescription of a physician or physician assistant licensed under Chapter 458, Florida Statutes, a chiropractic physician and/or an

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osteopathic physician licensed under Chapter 460, Florida Statutes, a podiatric physician licensed under Chapter 461, Florida Statutes, an advanced registered nurse practitioner licensed under part I of Chapter 464, Florida Statutes, or a dentist licensed under Chapter 466, Florida Statutes; and

- (f) A massage provided by a licensed massage therapist during a special event wherein the City has approved the operation during the special event.
- (5) No massage establishment or business may be used as a place of residence for any person. Facilities essential to a residence, such as, without limitation, a bedroom or a full kitchen, are prohibited in massage therapy business and/or establishment, except to the extent that bathroom and/or such other facilities are required to maintain state licensure under Chapter 480, Florida Statutes, and Chapters 64B7-26 and 64B7-30, Florida Administrative Code. It shall not be a violation for a massage therapy business or establishment to have and to use appliances associated with prohibited facilities that are lawfully and regularly made a part of the regular, legitimate business of a massage establishment and which are not used in any manner that would violate city, county, and state laws.

Sec. 5-204. Enforcement & Penalties.

- (1) It shall be unlawful to operate a massage therapy business or establishment in contravention of this article. A person violating the provisions of this article commits a violation of the city's municipal code and commits a misdemeanor of the second degree. A violation of the provisions of this Article may also result in the revocation or suspension of the violator's business tax receipt, as provided in section 41-78 of the city code. The city shall report any violations of this article by a licensed massage therapist to the Florida Department of Professional and Business Regulation, or such other agency as may correspond to the situation, which may result in additional penalties.
- (2) Any premises in which massage is offered or performed, by persons unlicensed by the State of Florida or otherwise in violation or otherwise in violation of the provisions of Chapter 480, Florida Statutes, and Chapters 64B7-26 and 64B7-30, Florida Administrative Code, for which discipline may be imposed by the State of Florida, shall be in violation of the city code, and such activity may be declared a nuisance and may be abated and enjoined, as provided in Section 823.05, Florida Statutes, and/or such other applicable laws, as a public nuisance.

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- (3) The owner, operator, or person in control, of any premises in the city in which massage is offered or provided in violation of either Florida law or this Article shall be liable for a violation of the city code pursuant to Chapter 11 of the code, and shall commit a misdemeanor of the first degree, punishable as provided by Sections 775.082 or 775.083, Florida Statutes. A second or subsequent violation of this section is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
- (4) A person who is unlicensed as a massage therapist by the State of Florida or, notwithstanding the possession of such a license, violates a provision of Chapter 480 or Chapters 64B7-26 or 64B7-30, Florida Administrative Code, which would subject the individual to discipline by the State of Florida for a violation of the requirements of the license, or who violates any provision of this Article, shall be liable for a code violation pursuant to Chapter 11 of this Code and shall commit a misdemeanor of the first degree, punishable as provided in Sections 775.082 or 775.083, Florida Statutes.

* * *

Section 3. Implementation. The City Manager, City Clerk, and City Attorney are hereby authorized and directed to implement the provisions of this Ordinance and to take any and all necessary administrative actions as may be appropriate by their position to execute the purpose of this Ordinance.

Section 4. Education Resource. The City Manager and City Clerk are hereby directed to create, and take all necessary actions to produce and populate, an educational web page within the City of Doral's website providing the public with information and resources on how to identify and combat human trafficking.

Section 5. Incorporation into the Code. The provisions of this Ordinance, to the extent appropriate, shall become and be made a part of the Code of Ordinances of the City of Doral. The City Clerk is authorized to take all actions necessary to incorporate the provisions of this Ordinance into the Code of Ordinances, including, but

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not limited to, renumbering or relettering sections and to change and that the word “ordinance” may be changes to “section,” “article,” or such other appropriate word or phrase in order to accomplish such intention.

Section 6. Severability. The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 7. Conflicts. All ordinances or parts of ordinances, resolution or parts of resolutions, in conflict herewith, are repealed to the extent of such conflict.

Section 8. Effective Date. This Ordinance shall become effective immediately

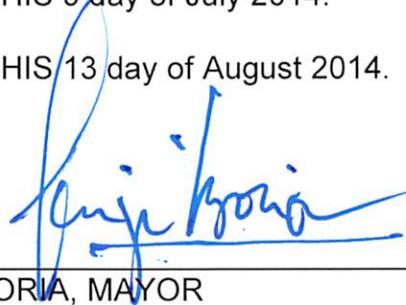
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The foregoing Ordinance was offered by Councilmember Rodriguez Aguilera who moved its adoption. The motion was seconded by Vice Mayor Fraga and upon being put to a vote, the vote was as follows:

Mayor Luigi Boria	Yes
Vice Mayor Christi Fraga	Yes
Councilwoman Ana Maria Rodriguez	Yes
Councilwoman Bettina Rodriguez Aguilera	Yes
Councilwoman Sandra Ruiz	Yes

PASSED AND ADOPTED on FIRST READING THIS 9 day of July 2014.

PASSED AND ADOPTED on FIRST READING THIS 13 day of August 2014.



LUIGI BORIA, MAYOR

ATTEST:



BARBARA HERRERA, CITY CLERK

APPROVED AS TO LEGAL FORM AND SUFFICIENCY
FOR THE SOLE USE AND RELIANCE OF THE CITY OF DORAL



WEISS SEROTA HELFMAN PASTORIZA COLE & BONISKE, PL
CITY ATTORNEY

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