

Requested by: Police Department
Prepared by: City Attorney

ORDINANCE NO. 2023-50

AN ORDINANCE OF THE CITY OF VENICE, FLORIDA, AMENDING THE CODE OF ORDINANCES, CHAPTER 42, MISCELLANEOUS OFFENSES, TO ADD SECTION 42-5, MASSAGE THERAPISTS AND ESTABLISHMENTS; PROVIDING FOR REPEAL OF ALL ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, Section 480.052, Florida Statutes provides local governments the authority to regulate persons and establishments whether licensed or unlicensed that engage in the practice of massage therapy; and

WHEREAS, the Venice City Council finds that the practice of massage therapy, and places providing massage for compensation, affect the public health, safety and welfare; and

WHEREAS, the Venice City Council finds that regulation of those persons and entities engaged in the business or practice of massage is in the best interest of the City of Venice to protect the health, safety, and welfare of its residents, visitors, and workers.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF VENICE, FLORIDA as follows:

SECTION 1. The above whereas clauses are ratified and confirmed as true and correct.

SECTION 2. Chapter 42, Miscellaneous Offenses, Section 42-5, Reserved, is hereby amended as follows:

Sec. 42-5. ~~Reserved~~ Massage therapists and establishments.

- (a) Purpose. Pursuant to F.S. § 480.052, it is the purpose of this section to regulate those persons and entities holding themselves out as massage therapists and massage establishments, and to regulate employees of such businesses, as an exercise of the city's police power in order to protect the health, safety and welfare of the residents, visitors, and workers of the city.
- (b) Definitions. The following words, terms, and phrases, when used in this section, shall have the following meanings:
- (1) City manager means the chief administrative officer of the city or his or her designee.
 - (2) Employees means and shall encompass those persons in direct employ and those persons acting as independent contractors.

- (3) Establishment shall have the meaning set forth in F.S. § 480.033.
 - (4) Establishment owner shall have the meaning set forth in F.S. § 480.033.
 - (5) Venice Police Department means the Police Chief of the City of Venice, Florida, or the Police Chief's officers.
 - (6) Massage shall have the meaning set forth in F.S. § 480.033.
 - (7) Massage establishment shall mean an establishment that holds itself out as providing massage as defined in F.S. § 480.033.
 - (8) Massage therapist shall have the meaning set forth in F.S. § 480.033.
 - (9) Premises means the real property, or portion thereof, upon which the massage establishment is located, including, but not limited to, the establishment and the grounds, private walkways, and parking lots and/or parking garages under the ownership or control of the establishment.
- (c) Penalty. Any person violating any provisions of this section shall be punished as provided in section 1-14 of this Code. For violations of this section that are continuous with respect to time, each day the violation continues is a separate offense. For violations of this section that are not continuous with respect to time, each violation is a separate offense. Nothing in this section and no action taken hereunder shall be held to exclude such other civil, criminal or administrative proceedings as may be authorized by other provisions of this Code or any of the laws in force in the city, or to exempt anyone violating this Code or any part of said laws from any penalty which may be incurred.
- (d) Scope of Regulations.
- (1) This section shall not apply to and shall not be enforced against any hospital or other professional health care establishment, including but not limited to, a physician's, physical therapist's, or chiropractor's office, or nursing home, that is separately licensed as such by the state.
 - (2) All persons or entities holding themselves out as massage therapists or massage establishments and their employees shall comply with this section.
- (e) General Operating Provisions.
- (1) Any person or entity holding themselves out as a massage establishment shall keep on file, on the premises, a list of all persons who perform any service on the premises, their home addresses and home or mobile telephone number, their duties and services performed, and whether such person has a license or provisional permit issued by the state pursuant to the

Florida Massage Practice Act. The establishment owner or operator must also keep on file, on the premises, a copy of the two most-recent state permit applications.

- (2) All persons and entities holding themselves out as massage establishments and their employees, including without limitation, all persons performing massage, shall be licensed in accordance with state law. No person who is required to have a state mandated license shall perform any service on the premises until such person has procured such a license. Managers and supervisors shall inspect and verify that each person who performs services on the premises who is required to have a valid state license does in fact have the required license, and that such license is available for inspection on the premises at all times. No person on the premises engaging in massage for which a state license is required shall refuse to provide a copy of the person's state massage therapist license upon request by any customer or city official.
- (3) Records required to be maintained under this article shall be kept for a minimum of three years. Records shall be made available to the city manager or Venice Police Department for inspection or copying during business hours, at the massage establishment's business location in the city.
- (4) A readable sign shall be posted at the main entrance identifying the business. Signs shall comply with the sign requirements of the city Land Development Code.
- (5) All persons and entities holding themselves out as massage establishments shall, at all times, operate and maintain the premises in accordance with all applicable laws and regulation, including without limitation the Florida Massage Practice Act and all rules and regulations adopted pursuant thereto, Florida Statutes, the Florida Administrative Code, this Code, the city Land Development Code and the Florida Building Code.
- (6) All employees and other persons on the premises, with the exception of customers receiving a massage from a state licensed massage therapist, shall be completely clothed. For the purposes of this section, the term "completely clothed" means having on the upper portion of the body, either a blouse or a shirt which shall cover all the upper body except the arms and neck, and on the lower body, either pants or shorts and said pants or shorts must cover from the waist down to at least the middle of the thigh. All clothes worn in compliance with this section shall be entirely opaque.
- (7) Minimum lighting shall be provided in accordance with the city's building code.

- (8) All interior doors shall not be equipped with locks, or any device designed to prevent, impede, or delay entry into a room. Massage establishment exterior doors may be equipped with locks but shall remain unlocked while the establishment is open. Exterior doors may remain locked while the establishment is open only if there is no more than one employee on the premises of the establishment.
- (9) Futon, beds, and mattresses shall not be permitted in any massage establishment. Sofas shall not be permitted in any massage establishment except in the customer waiting rooms, which room shall include the formal entrance to the establishment.
- (10) A person operating a massage establishment may not use or permit the establishment to be used as a principal domicile unless the establishment is zoned for residential use.
- (11) It shall be unlawful to operate a massage establishment with storefront windows that have material and glazing applied or affixed that reduces light transmission through the windows to less than 32 percent, plus or minus 3 percent, or increase light reflectance to more than 20 percent.
- (12) Massage establishments and their employees shall ensure that storefront windows are not blocked by curtains, blinds, or similar material during those times when the establishment is occupied by patrons or is open to the public.
- (13) All persons and entities holding themselves out as massage establishments and their employees shall permit the city manager, Venice Police Department, or their designees or agents to inspect, from time to time on an occasional basis, the premises of the establishments for the purpose of ensuring compliance with this section. Such establishments and employees shall permit such inspections on weekdays between 9:00 a.m. and 5:00 p.m. as well as those times when the establishment is occupied by any of its staff or is open to the public. This section shall be construed to authorize only reasonable inspections of the premises pursuant to this section.
- (14) Any premises, building, dwelling or other structure in which massages are conducted in violation of this section is declared to be a public nuisance, harmful to the public health, safety, and welfare. The city may bring an action in the circuit court to restrain, prohibit, and/or enjoin the use of such premises.
- (15) The operation of a business in violation of this section is declared to be a public nuisance, harmful to the public health, safety, and welfare. The city may bring an action in the circuit court to restrain, prohibit, and/or enjoin

such operation.

- (16) Nothing in this section is intended to conflict with the provisions of the Florida Constitution or any Florida Statute. In the event of a conflict between this section and either the Florida Constitution or the Florida Statutes, then the provisions of the Florida Constitution or Florida Statutes, as applicable, shall control.

SECTION 3. All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed.

SECTION 4. If any part, section, subsection or other portion of this ordinance or any application thereof to any person or circumstance is declared void, unconstitutional or invalid for any reason, such part, section, subsection or other portion, or the prescribed application thereof, shall be severable and the remaining provisions of this ordinance, and all applications thereof not having been declared void, unconstitutional or invalid, shall remain in full force and effect. The city council specifically declares that no invalid or prescribed provision or application was an inducement to the enactment of this ordinance and that it would have enacted this ordinance regardless of the invalid or prescribed provision or application.

SECTION 5. This Ordinance shall become effective immediately upon its approval and adoption, as provided by law.

PASSED BY THE CITY COUNCIL OF THE CITY OF VENICE, FLORIDA THIS 12TH DAY OF DECEMBER 2023.

First Reading: November 28, 2023

Final Reading: December 12, 2023

Adoption: December 12, 2023

Nick Pachota, Mayor

ATTEST:

Kelly Michaels, MMC, City Clerk

I, Kelly Michaels, MMC, City Clerk of the City of Venice, Florida, a municipal corporation in Sarasota County, Florida, do hereby certify that the foregoing is a full and complete, true and correct copy of an Ordinance duly adopted by the Venice City Council, at a meeting thereof duly convened and held on the 12th day of December 2023, a quorum being present.

WITNESS my hand and the official seal of said City this 12th day of December 2023.

Kelly Michaels, MMC, City Clerk

Approved as to form:

Kelly Fernandez, City Attorney