

ORDINANCE NO. 2924-13

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF WINTER PARK, FLORIDA; AMENDING CHAPTER 58 “LAND DEVELOPMENT REGULATIONS”, ARTICLE III “ZONING”, SECTION 58-84 “GENERAL PROVISIONS FOR NON-RESIDENTIAL ZONING DISTRICTS” SO AS TO FURTHER REGULATE MASSAGE THERAPY BUSINESSES CONDUCTED OR LOCATED IN THE CITY OF WINTER PARK, AND TO PROHIBIT RESIDENTIAL USE OF SUCH COMMERCIAL AND OFFICE SPACE HELD OUT AS A MASSAGE THERAPY BUSINESS; PROVIDING FOR CONFLICTS, SEVERABILITY, AND AN EFFECTIVE DATE.

RECITALS AND LEGISLATIVE FINDINGS

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 under Chapter 480, Florida Statutes, (which relates to the regulation of massage therapists and massage therapy establishments); and

WHEREAS, Section 480.052, Florida Statutes, expressly provides that the Florida laws regulating massage therapy and massage therapists (found in Chapter 480, Florida Statutes and in the implementing regulations found, in relevant part, in Chapter 64B7-26 and 64B7-30, Florida Administrative Code) shall not be construed to prohibit a municipality from regulating persons or establishments not licensed pursuant to Chapter 480, Florida Statutes; and

WHEREAS, the Florida courts have held that a city, under its general police power may regulate occupations or businesses, which by their nature, location or the manner in which they are conducted, if conducted without restriction, are or may be materially injurious to public health, morals, comfort, prosperity or convenience, or otherwise detrimental to the general welfare (see, e.g., *Rotenberg v. City of Ft. Pierce*, 202 So.2d 782 (Fla. 4th DCA 1967) (Regarding the regulation by the City of Ft. Pierce of junkyards); *City of Miami Beach v. Austin Burke, Inc.*, 185 So.2d 720 (Fla. 3d DCA 1966) (Allowing for the regulation of liquidation and distressed goods sales and special licensing thereof as a means of protection of the buying public from false or misleading advertising and deception)); and

WHEREAS, the Florida Attorney General presented a report to the Florida House Criminal Justice Subcommittee on January 16, 2013, in connection with then proposed legislation concerning “massage establishments”; and

WHEREAS, the summary analysis of the House of Representatives Staff for PCBCRJS 13-01 regarding massage establishments is presented of record and is incorporated into these legislative findings by the City Commission of the City of Winter Park; and

WHEREAS, the City Commission of the City of Winter Park adopts and incorporates by reference the findings reported by the House of Representatives Staff Analysis in its report on Bill CS/CS/CS/HB 7005 regarding massage establishments and the articles reported in the media incorporated in that Staff Analysis; and

WHEREAS, the staff analysis supporting the regulation of massage establishments states that the majority of massage establishments engage in the legitimate practice but “some [massage establishments] have been recognized as sites where illegal activity, such as human trafficking occurs.”; and

WHEREAS, in October, 2010, the Center for the Advancement of Human Rights at Florida State University provided the Florida Task Force on Human Trafficking a “statewide strategic plan on human trafficking”, and in that plan it was found that Florida is the third most popular American destination for human traffickers and that sex trafficking is the most underreported offense; 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 occurs; and

WHEREAS, the strategic plan is available and may be viewed at http://www.cahr.fsu.edu/sub_category/Florida_StrategicPlanonHumanTrafficking.html (which the attorney for the City Commission of the City of Winter Park last visited to verify availability on June 4, 2013); and

WHEREAS, the City Commission has been made aware of reports from law enforcement and published in the media, concerning the adverse secondary effects associated with unregulated and unlicensed massage businesses; and

WHEREAS, the City Commission finds that unregulated massage businesses, particularly those which operate during early morning or late night hours carry a substantial risk of adverse secondary effects such as diminished property values, crime (including prostitution), and contribute to the exploitation and trafficking of human beings for illicit purposes; and

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

WHEREAS, the City Commission desires to provide further standards for the operation of massage therapy businesses; and

WHEREAS, the zoning text amendment provided herein regulates in a permissible manner massage businesses, and is intended to promote and regulate lawful and legitimate massage therapy businesses in the City of Winter Park, and to prohibit

massage therapy and massage businesses that are not licensed by the state pursuant to Chapter 480, Florida Statutes; and

WHEREAS, the regulations herein are consistent with the City's Comprehensive Plan; and

WHEREAS, the zoning text changes provided herein will promote and protect property values, and the zoning meets the criteria established by Chapter 166, Florida Statutes; and

WHEREAS, pursuant to and in compliance with law, notice has been given to Orange County and to the public by publication in a newspaper of general circulation to notify the public of this proposed Ordinance and of public hearings to be held; and

WHEREAS, the City staff recommends this Ordinance, and the Planning and Zoning Board of the City of Winter Park recommended this regulation at its meeting held on May 7, 2013; and

WHEREAS, the City Commission of the City of Winter Park held a duly noticed public hearing on the proposed zoning changes set forth hereunder and considered the findings and advice of staff, citizens, and all other interested parties who submitted written and oral comments; and

WHEREAS, the City Commission of the City of Winter Park considered statements received from staff, citizens and other interested parties who submitted comments, and further considered supporting data and analyses concerning adverse secondary effects of illegitimate massage business; and

WHEREAS, the City Commission recognizes that legitimate and licensed therapeutic massage is a legitimate and valuable service; and

WHEREAS, the City Commission of the City of Winter Park hereby finds that sufficient, competent and substantial evidence support the zoning regulations established by this Ordinance; and

WHEREAS, the City Commission hereby finds that this Ordinance serves a legitimate government purpose, is within its police and regulatory power, and is in the best interest of the public health, safety and welfare of the residents of Winter Park, Florida.

NOW, THEREFORE, BE IT ENACTED BY THE CITY COMMISSION OF THE CITY OF WINTER PARK, FLORIDA, AS FOLLOWS:

Section 1. Incorporation of Recitals as Legislative Findings. The recitals are incorporated herein and are made fully a part of this Ordinance as the Legislative findings of the Commission in support of this Ordinance.

Section 2. Amendment of Chapter 58. Chapter 58, “Land Development Code”, Article III “Zoning”, Section 58-84 “General Provisions for Non-Residential Zoning Districts”, is hereby amended and modified by adding a new subsection (DD) to read as follows:

“Section 58-84 General Provisions for Non-Residential Zoning Districts.

(DD) Massage Therapy Businesses. A massage therapy business is one in which state licensed massage therapists provide therapeutic massage services. The City adopts the definition of “massage” in Section 480.033(3), Florida Statutes, meaning:

“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.” A “massage therapist” shall mean a person licensed by the State of Florida pursuant to Chapter 480, Florida Statutes, who administers massage for compensation.

Unless expressly exempted, no person may provide massage as part of any business or for any consideration or remuneration at any location in the City of Winter Park unless the business is located in an area zoned for massage therapy.

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 inside the City of Winter Park in a permitted non-residential zoning district, and the hours of operation shall be only between the hours of 7:00 a.m. through 10:00 p.m., subject to the exceptions set forth in paragraph (4) of 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 private residence.
- 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. Residential services within the premises of a massage therapy business, such as sleeping, cooking or other facilities, are strictly prohibited except to the extent that bathroom facilities are required in order to maintain state licensure under the requirements of 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 to have and use appliances that are lawfully and regularly made a part of a legitimate massage therapy business and which are not used in any manner that would violate any provision in Chapter 480, Florida Statutes and Chapters 64B7-26 and 64B7-30, Florida Administrative Code, including all prohibitions against sexual misconduct that may be grounds for disciplinary action under Florida law.

6. A person violating the provisions of this Section commits a violation of the City of Winter Park's Municipal Code and

commits a misdemeanor of the second degree. A violation of the provisions of this section may also result in the revocation or suspension of the violator's business tax receipt, as provided in Section 94-41 of the City of Winter Park's Municipal Code.

7. The requirements of this section do not apply where the massage is performed by a licensed massage therapist acting under the prescription of a physician or physician assistant licensed under Chapter 458, Florida Statutes; an osteopathic physician or physician assistant licensed under Chapter 459, Florida Statutes; a chiropractic 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.

8. Any premises in which massage is offered or performed by persons unlicensed by the State of Florida 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 of Winter Park's Municipal Code of Ordinances and such activity may be declared a nuisance and may be abated and enjoined as provided in Section 823.05, Florida Statutes, as a public nuisance.

Section 3. Amendment of Chapter 62. Chapter 62, is hereby amended and modified by adding a new subsection 62-123 to read as follows:

"Section 62-123. Massage Practices in Violation of Section 58-84.

The owner, operator or person in control of any premises in the City of Winter Park in which massage is offered or provided in violation of either Florida law (Chapter 480, Florida Statutes and Chapters 64B7-26 and 64B7-30, Florida Administrative Code) or in violation of Section 58-84 of this Code, shall be liable for a violation of this Code in accordance with the provisions in Section 1-7, and shall commit a misdemeanor of the second degree, punishable as provided in Sections 775.082 or 775.083, Florida Statutes. 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 in Section 58-84 of the Code, shall be liable for a Code violation in

accordance with Section 1-7 of this Code and shall commit a misdemeanor of the second degree, punishable as provided in Sections 775.082 or 775.083, Florida Statutes.”

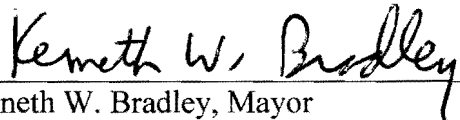
Section 4. Severability. If any section, subsection, sentence, clause, phrase, word or provision of this ordinance is for any reason held invalid, unlawful or unconstitutional by any court, whether for substantive, procedural, facial or other reasons, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions of this ordinance.

Section 5. Conflicts. All ordinances or parts of ordinances in conflict with any of the provisions of this Ordinance are hereby repealed.

Section 6. Codification. Section 58-84, Chapter 58, and Section 62-123, Chapter 62, that amend the City Code shall be codified in the City Code as specified therein. Any section, paragraph number, letter or heading within the Code may be changed or modified as necessary to effectuate the codification. Grammatical, typographical and similar or like errors may be corrected in the Code, and additions, alterations and omissions not affecting a material substantive change in the construction or meaning of this Ordinance may be freely made.


Section 7. Effective Date Of Ordinance. This Ordinance shall become effective immediately upon its passage and adoption by the City Commission of the City of Winter Park, Florida.

Adopted by the City Commission of the City of Winter Park, Florida in a regular meeting assembled on the 24th day of June, 2013.



Kenneth W. Bradley, Mayor

ATTEST:



Cynthia S. Bonham, City Clerk