

ORDINANCE NO. 2022-34

AN ORDINANCE OF THE CITY OF VENICE, FLORIDA, AMENDING THE CODE OF ORDINANCES CHAPTER 62, STREETS, SIDEWALKS AND OTHER PUBLIC PLACES, ARTICLE V, PUBLIC RIGHT-OF-WAY AND PUBLIC PROPERTY PERMITS, SECTION 62-121, ACTIVITIES REQUIRING PERMIT, SECTION 62-122, EXEMPTIONS, SECTION 62-123, APPLICATION, SECTION 62-124, ISSUANCE; CONDITIONS; TRANSFER, SECTION 62-125, PROHIBITIONS, SECTION 62-126, SCHEDULE OF FEES AND CHARGES, SECTION 62-127, LIABILITY INSURANCE; IDENTIFICATION OF CITY, SECTION 62-128, VIOLATIONS; ENFORCEMENT, AND SECTIONS 62-129 TO 62-150, RESERVED; PROVIDING FOR REPEAL OF ALL ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR SEVERABILITY AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the City of Venice owns, maintains, and manages right-of-way (ROW) and other property that may be desired for a specific or defined purpose by members of the public; and

WHEREAS, the City ROW is utilized for numerous public purposes including vehicular and pedestrian access, utility lines, communication lines, public signs, trees, benches, trash cans and irrigation; and

WHEREAS, in the Historic Downtown District, the public ROW is used by several restaurants and merchants, for outdoor dining and display purposes; and

WHEREAS, the city desires to revise its regulations governing the use of public ROW and other property in order to better protect the public interest and contribute to a safe and healthy environment.

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 62, Streets, sidewalks and other public places, Article V, Public right-of way and public property permits, Section 62-121, Activities requiring permit, is hereby struck in its entirety and replaced with the following:

Sec. 62-121. - Activities requiring permit or city approval.

(a) A special event permit is required for parades, fairs, festivals, exhibitions, and similar activities occurring upon any public right-of-way or public property within the city.

(b) Where occurring upon any public right-of-way or public property within the city, city approval is required for the display and/or sale of any merchandise and outdoor dining including the placement of tables, chairs or other items for food and/or beverage services.

SECTION 3. Chapter 62, Streets, sidewalks and other public places, Article V, Public right-of way and public property permits, Section 62-122, Exemptions, is hereby struck in its entirety and replaced with the following:

Sec. 62-122. - Exemptions.

The provisions of this article shall not apply to the following:

- (1) News racks upon any public right-of-way or public property.
- (2) Installation of improvements or construction activities in the city right-of-way. Right-of-way use authorization prior to initiating the installation of any improvements or conducting any construction activities within the city right-of-way shall be obtained from the city engineer or his or her designee consistent with section 62-62 of the City Code.

SECTION 4. Chapter 62, Streets, sidewalks and other public places, Article V, Public right-of way and public property permits, Section 62-123, Application, is hereby struck in its entirety and replaced with the following:

Sec. 62-123. - Application.

To obtain a special event permit or city approval for use of public right-of-way or public property for display of merchandise or outdoor dining, an application shall be submitted to the city manager or his designee in advance of the commencement of the activity. The application shall contain the following:

- (a) The name, address, telephone number and e-mail address of the applicant.
- (b) A detailed description of the activity and a timeline for which the permit or approval is sought.
- (c) A detailed description and site plan depicting all structures and activity areas proposed for the public right-of-way or public property sought to be utilized. Site plans for outdoor dining or display of merchandise shall define and illustrate the dimensions and locations of all objects to be placed in the area sought to be utilized.
- (d) The length of time for which the activity is sought.
- (e) The hours during which the activity will occur.
- (f) All other information which the city deems relevant for consideration of the application.
- (g) An application fee, as established by the city manager or his designee, shall accompany all applications.
- (h) A description of any proposed impacts to, obstructions of, or adjustments to the locations of city owned items in the right-of-way such as benches, trees, bike racks, trash cans, and

public art. Applicant shall work to design a layout which accommodates all City owned items.

- (i) For outdoor dining or display of merchandise, for any use that extends beyond the length of the public right-of-way or public property immediately adjacent to (measured parallel to front lot line) the subject property, the written consent of the adjacent, affected property owner must be obtained and provided as part of the application process. The use may extend to the end of one adjacent property, but may not then extend to the end of any other adjacent property.

SECTION 5. Chapter 62, Streets, sidewalks and other public places, Article V, Public right-of way and public property permits, Section 62-124, Issuance; conditions; transfer, is hereby struck in its entirety and replaced with the following:

Sec. 62-124 Additional requirements for outdoor dining or display of merchandise.

(a) Site plans shall be displayed so they are clearly visible from the public right-of-way or public property at all times. Any changes to the approved site plan must be re-submitted for approval by the city.

(b) The applicant is responsible for general maintenance of the designated area and any applicants that provide food and/or beverage service shall power wash the designated area at least once a quarter or whenever visible spills and food stains occur.

(c) Applicants shall at all times maintain a clear unobstructed pedestrian pathway of at least six feet (72 inches) wide, or a width to meet the current Americans with Disabilities Act (ADA) pedestrian pathway standard, whichever is greater. The city, or applicant if so required, shall mark or otherwise delineate the pedestrian pathway. It is the responsibility of the applicant to ensure the pathway remains free of impairment or obstruction including chairs, tables and other objects.

(d) The applicant shall maintain an unobstructed clearing of a minimum of 24 inches from the face of the curb. The city shall mark or otherwise delineate the curb clearance.

(e) Structures used to display merchandise shall be low profile and may not exceed 48 inches in height, except one tall display item is permitted, such as a clothes rack or similar item, not to exceed 6 feet in height and 5 feet in width.

(f) Applicant shall ensure the public property is maintained in a clean manner, free from all litter and trash at the close of business each day.

SECTION 6. Chapter 62, Streets, sidewalks and other public places, Article V, Public right-of way and public property permits, Section 62-125, Prohibitions, is hereby struck in its entirety and replaced with the following:

Sec. 62-125. - Approval; approval with conditions; denial.

(a) Upon submission of a completed application and payment of the application fee and any other applicable charges, the city manager or his designee may either approve, approve with conditions, or deny the application. The city manager or his designee shall consider the following factors in deciding whether or not approve the application:

- (1) The extent to which the proposed activity will disrupt normal municipal functions.
- (2) The extent to which the proposed activity will impact the public health, safety and welfare.
- (3) The extent to which the proposed activity is compatible with the surrounding area.
- (4) The extent to which the proposed activity impacts previously permitted activity.

(b) The city manager or his designee may impose conditions on the application approval which he deems necessary in light of the factors enumerated in this section. Any approval in accordance with this article shall be nontransferable.

SECTION 7. Chapter 62, Streets, sidewalks and other public places, Article V, Public right-of way and public property permits, Section 62-126, Schedule of fees and charges, is hereby struck in its entirety and replaced with the following:

Sec. 62-126. - Prohibitions.

The use of misters, misting apparatuses, and similar devices capable of emitting a spray, propellant, liquid or other substance onto a public street, public sidewalk, or other public right-of-way is prohibited.

SECTION 8. Chapter 62, Streets, sidewalks and other public places, Article V, Public right-of way and public property permits, Section 62-127, Liability insurance; identification of city, is hereby struck in its entirety and replaced with the following:

Sec. 62-127. - Schedule of fees and charges.

The city may establish a schedule of fees and charges for the use of public rights-of-way and public property. The schedule of fees and charges may be adopted and changed by resolution of city council.

SECTION 8. Chapter 62, Streets, sidewalks and other public places, Article V, Public right-of way and public property permits, Section 62-128, Violations; enforcement, is hereby struck in its entirety and replaced with the following:

Sec. 62-128. - Liability insurance; identification of city.

(a) No permit or city approval shall be issued in accordance with this article until the applicant has provided the city with proof of liability insurance and where applicable, proof of liquor liability insurance with coverage limits deemed adequate by the risk manager. The city manager

or his designee shall require that the city be named as an additional insured upon any such policy of insurance.

(b) In consideration for the approval of an application in accordance with this article, the applicant shall indemnify and hold harmless the city and its officers, agents and employees from any liability or loss sustained as a result of claims or demands arising from any use or activity in accordance with this article or any activity conducted in connection therewith.

SECTION 9. Chapter 62, Streets, sidewalks and other public places, Article V, Public right-of way and public property permits, Sections 62-129 to 62-150, Reserved, is hereby amended as follows:

Sec. 62-129. – Enforcement.

A violation of any provision of this article or a stipulation/condition contained in a special event permit or approval for outdoor dining or display of merchandise will be enforced according to section 1-14 or section 2-333 of the City Code of Ordinances.

Secs. 62-130—62-150. Reserved.

SECTION 10. All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed.

SECTION 11. 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 12. 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 10TH DAY OF JANUARY 2023.

First Reading: December 13, 2022

Final Reading: January 10, 2023

Adoption: January 10, 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 10th day of January 2022, a quorum being present.

WITNESS my hand and the official seal of said City this 10th day of January, 2023.

Kelly Michaels, MMC, City Clerk

Approved as to form:

Kelly Fernandez, City Attorney